

LATCHFORD, J.:— . . . The question is as to the liability of the defendants the Corporation of the City of Toronto. That question depends on whether they owed the plaintiff any duty to leave the boulevard on the west side of the tracks unobstructed by the blocks. A by-law has been put in, which prohibits any person from walking upon any boulevard, if there are crossings along, across, or adjoining such boulevard at convenient distances. . . .

[The learned Judge found that there were such crossings.]

The power to set apart and lay out such portions of any street as a municipal council may deem requisite or necessary for the purposes of boulevards was given by 51 Vict. ch. 28, sec. 32, and continued by the Consolidated Municipal Act, 55 Vict. ch. 42, sec. 550, sub-sec. 1; R. S. O. 1897 ch. 223, sec. 637, sub-sec. 3; and 3 Edw. VII. ch. 19, sec. 637, sub-sec. 3.

Power to make regulations for the protection of all boulevards constructed in the public streets was given by 57 Vict. ch. 55, sec. 9, and sec. 638 of R. S. O. 1897 ch. 223, and 3 Edw. VII. ch. 19.

The by-law of the defendants . . . was passed on the 24th October, 1904.

I do not think it possible to restrict the prohibition in the by-laws to boulevards laid out under sec. 638, at or near the sides of public streets. The council had power to enact and did enact a regulation regarding any boulevard. That is this case. The defendants' by-law prohibited the plaintiff from crossing where he was injured, it being shewn that the defendants had provided safe crossings at a convenient distance. Had he conformed to the prohibition, the injury would not have resulted. The tort arises out of the transgression, and the plaintiff has, I think, no remedy. . . .

[Reference to Lowery v. Walker, [1909] 2 K. B. 433; Dean v. Clayton, 7 Taunt. at p. 489; Bird v. Holbrook, 4 Bing. 628; Barnes v. Ward, 9 C. B. at p. 392.]

Action dismissed as against the city corporation without costs.