

“obstruct the fair and reasonable use of the thoroughfare.” These quoted words are from the Tree Planting Act, R. S. O. ch. 243, sec. 2 (1), and are there applied to the tree itself as first planted, and the section in hand appears to be fairly readable as supplemental to that, so as to provide for the case of a tree rightly planted and by growth no obstruction as a whole, but yet becoming objectionable by its sweep and droop of branch.

Taking it that jurisdiction exists, yet the power of general supervision must be exercised by by-law. The power to interfere is conferred by the Municipal Act, and is to be brought into operation as that Act provides by sec. 325. Indeed sec. 575 expressly indicates that trimming is to be done under the provisions of a by-law. I refer to *Waterous v. Palmerston*, 20 O. R. 411, 19 A. R. 47, 21 S. C. R. 556.

Order made quashing resolution for informality, but, as its validity on the merits is favoured, without costs.

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SEPTEMBER 25TH, 1902.

C. A.

GABY v. CITY OF TORONTO.

*Appeal—Court of Appeal—Motion to Quash—Third Party—Appeal against Defendants—Making Plaintiff a Party,*

A motion by the plaintiff to quash the appeal of the third party as against the plaintiff was heard at the same time as the appeal of the defendants against the judgment in favour of the plaintiff and the appeal of the third party as against both plaintiff and defendants. See the former reports, ante 440, 606.

J. H. Lennox and S. B. Woods, for plaintiff.

A. F. Lobb and W. C. Chisholm, for defendants.

J. Bicknell, K.C., and J. W. Bain, for third party.

The judgment of the Court (OSLER, MACLENNAN, MOSS, GARROW, JJ.A.) was delivered by

OSLER, J.A., holding that the motion to quash was a useless proceeding, as plaintiff was brought into Court on defendants' appeal, and both appeals were heard together. The third party was not wrong in making both defendants parties to the appeal. It was at all events a convenient course.

Motion dismissed with costs to be paid by plaintiff to third party.