

tion of affairs. If the council have or discover any remedy, or if they decide that the limitation already made by the engineer should be enforced, application may be made to me—and I reserve leave to the Crown to apply. Or, if circumstances change in any way, the Crown may apply—or, if the defendants do not proceed with due diligence in opening other lines, etc., etc.

It is a matter of satisfaction that the verdict of "guilty" on the count 6A establishes overcrowding constituting a common nuisance. The fact that the nuisance has only been found by the jury to endanger property and health, and that the division in the jury prevented a finding that it endangered health also, is only a matter of detail; the nuisance has been found; the consequence is not of importance. All that any Court would think of doing, had the conviction been on the count 6 also, can be done under the conviction as found. If the conviction be sustained, it may well be that no further proceedings will be taken on count 6, and a nolle prosequi entered on that count.

As to the first four counts, no harm can arise from delay in trying these; they are all for past defects. The defendants, through their counsel, undertake to make a careful experiment with every device which was suggested at the trial; and to adopt and use such devices as may prove successful.

If this undertaking be carried out—and the mechanical superintendent swore that he had carte blanche to experiment and try anything which occurred to him or of which he was informed, and to adopt everything, no matter what the cost, which was calculated to increase protection for the public—it may be unnecessary to proceed with the first four counts again. In any event, the adjournment of the present trial will not prevent a bill being laid for the operation of the road since the finding of this bill by the grand jury, even if anything before this date is excluded, which I much doubt.

On the whole, with the undertakings mentioned, I think the further trial of this case may be adjourned to the next sitting at Toronto for the trial of criminal cases.

RIDDELL, J.

FEBRUARY 3RD, 1911.

*JONES v. TORONTO AND YORK RADIAL R.W. CO.

Street Railway—Injury to Person Crossing Track—Negligence—Excessive Speed—Failure to Give Warning—Causal Negligence—Contributory Negligence—Ultimate Negligence—Findings of Jury.

*To be reported in the Ontario Law Reports.