

ruary, 1911, of a common nuisance. See *Rex v. Toronto R.W. Co.* (1911), 23 O.L.R. 186.

The indictment contained several counts, only one of which, 6A, was in question, the jury having failed to agree upon a verdict as to the other counts.

Count 6A charged undue, dangerous, and illegal overcrowding of passengers in the cars of the defendant company.

The case was heard by MEREDITH, C.J.O., GARROW, MACLAREN, MAGEE, and HODGINS, J.J.A.

H. H. Dewart, K.C., and D. L. McCarthy, K.C., for the defendant company.

J. R. Cartwright, K.C., and Edward Bayly, K.C., for the Crown.

MEREDITH, C.J.O., delivering the judgment of the Court, after setting out count 6A, and referring to secs. 221, 222, and 223 of the Criminal Code, said that all of the objections urged by counsel for the defendant company, except perhaps one, were dealt with by RIDDELL, J., in his judgment, 23 O.L.R. 186; with which he (the Chief Justice) entirely agreed, and to which he had but little to add.

In addition to the reasons given for holding that the defendant company had omitted to discharge a legal duty, the Chief Justice referred to the power which the defendant company has under what is now sec. 163 of the Ontario Railway Act, R.S.O. 1914 ch. 185, to make by-laws respecting the number of passengers to be allowed in cars (clause *i*), and the power under sec. 169 to enforce observance of such by-laws. Such a by-law requires the approval of the Ontario Railway and Municipal Board before it can take effect; but no such by-law appeared to have been passed, and so no attempt had been made to obtain the power which it would confer. It should not be understood that without such a by-law the defendant company would not have the powers mentioned in clause (*i*).

The learned Chief Justice was unable to agree with the contention of counsel for the defendant company that what was stated in count 6A to have been done was not indictable and punishable as a crime. He referred to the report of the Royal Commission appointed in 1878 to consider the law relating to indictable offences; and to Archbold's *Criminal Pleading*, 24th ed., pp. 1, 147, 150.

It was intended by sec. 152 of the Code drafted by the Com-