

ELECTRIC RAILWAYS.**Mimico Sunday Car Case.**

At Toronto, June 15, County Judge McDougall quashed the indictment against the Toronto & Mimico Electric Ry. Co. for running cars on Sundays. The decision is due to the finding that the indictment was faulty in two particulars. It was based on a section which is an amendment to the Lord's Day Act, & then asks for a penalty as provided under the criminal code, which, the Judge holds, cannot be consistent, as the breach of the statute should be punished in accordance with the provisions of the Lord's Day Act, but as there is a difficulty in bringing up a corporation under the latter act, according to the holding of Judge McDougall, the point will probably be carried to the Court of Appeal for adjustment. It was also found that the prosecution was delayed beyond the statutory limit.

This judgment is on a motion to quash an indictment preferred at the December Sessions, 1897, against the T. & M. E. Ry. Co. The alleged offence set out in the indictment read:—That the defendant, at the Township of Etobicoke, in the County of York, on June 27, 1897, being the Lord's Day, did unlawfully & without excuse disobey a statute or act of the Legislature of Ontario, 60 Victoria, cap. 14, section 95, by unlawfully running cars or trams, & unlawfully & wilfully carrying passengers thereon, the same not being necessary for the purpose of keeping the track clear of snow or ice or for other acts of necessity or charity, & that the T. & M. E. Ry. & L. Co. did thereby commit an indictable offence contrary to the Criminal Code, sec. 138.

Section 138 of the Code reads as follows:—“Every one is guilty of an indictable offence & liable to 1 year's imprisonment who, without lawful excuse, disobeys any act of the Parliament of Canada or of any Legislature in Canada by wilfully doing any act which it forbids, or omitting to do any act which it requires to be done, unless some penalty or other mode of punishment is expressly provided by law.”

Section 95, cap. 14, of 60 Victoria, of Ontario, for the breach of which the defendants were indicted, reads as follows:—“No street car company or tramway company, or any electrical railway company, except where it shall be necessary for the purpose of keeping the tracks clear of snow or ice or for other acts of necessity or charity, shall run cars or trams upon the Lord's Day. The foregoing shall not apply to companies which have before April 1, 1897, regularly run cars on Sunday, nor shall it confer any rights so as to run cars on the Lord's Day not now possessed by them, nor shall it affect or apply to any company which has by its charter or any special act the right or authority to run cars on Sunday, nor shall it affect the right (if any) of the Toronto Ry. Co. to run cars upon the Lord's Day, if or when sanctioned by the vote of the electors under 55 Victoria, cap. 99, & 57 Victoria, cap. 93, but this proviso shall not confer upon the Toronto Ry. Co. any right to run cars upon the Lord's Day which it does not now possess (if any) if sanctioned by such vote, nor shall this section apply to or affect any of the provisions of the Electric Railway Act of 1895.”

The defendant's counsel took 5 objections to the indictment, as follows:

1. The indictment does not show that the defendant did not prior to April 1, 1897, regularly run on Sunday.
2. The statute contains other exceptions, & the indictment does not show that the defendant does not come within the exceptions.
3. The statute is an amendment to an act of the Province, being Chap. 203 of the Revised Statutes of Ontario (1887), “An act to

prevent the profanation of the Lord's Day,” & the act provides a penalty or mode of punishment for disobedience thereto. The act has now been repealed by the Revised Statutes of Ontario (1897), & no prosecution can be continued thereunder.

4. The indictment does not allege that no penalty or other mode of punishment for the disobedience of the statute was expressly provided by law.

5. The prosecution was not commenced within 1 month after the commission of the offence.

The Judge holds that the 3rd & 5th objections go to the root of the whole matter, & if they can be sustained it would be unnecessary to consider the others. He then set out his decision, that sec. 95 is undoubtedly an amendment, relating to the observance of the Lord's Day, having been added after it was shown in the Hamilton S. Ry. case that the general prohibition of the Lord's Day Act did not apply to a company incorporated for the purpose of operating street cars. He continues: “If sec. 95, cap. 14 of the statute of 1897, from the date of its being assented to, should be read into the Lord's Day Act as it stood upon that date, it is contended the present indictment will not lie, because the Lord's Day Act provides its own penalties & procedure for breaches of its provisions, & therefore, the case falls within the exception of the latter part of sec. 138 of the code.”

The Judge quotes authorities, & argues that amendments passed to statutes are usually directed against defects which have since come into notice since the statutes were passed. He holds that sec. 95 is clearly an enactment in pari materia with the Lord's Day Act, & the two acts, together with section 136 of the Electric Railway Act, which deals with Sunday traffic upon railways coming within the act, form one homogeneous & consistent body of law, & each of them may explain every other part of the common system to which they belong. “It is, in my opinion,” he continues, “only carrying out the clear intention of the Legislature to read all the amendments contained in that act into the proper statutes, even though such statute intended to be amended may not be expressly named in the amending clause.”

Judge McDougall then quotes Lord Mansfield: “Where there are different statutes in pari materia, though made at different times, or even expired, & not referring to each other, they shall be taken and construed together as one system & as explanatory of each other.”

“If, then,” he continues, “sec. 95 of the Act of 1897 is to be read as forming part of the Lord's Day Act from April 13, 1897 (the date of its sanction), the prosecution for the alleged offence committed by the defendant is governed by the provisions of the Lord's Day Act. The remedy given is to proceed summarily before a justice of the peace, & the penalty is a fine not exceeding \$40, to be collected by distress, but if default is made in payment, & distress fails to realize the fine, imprisonment may be imposed.”

The Judge holds that the 5th objection, that the prosecution was not commenced within 1 month after the offence was committed, holds good, as the date of the latter was June 27, & the indictment was not found until December.

The indictment is, therefore, quashed, but without costs, the defendant succeeding upon the 3rd and 5th objections.

The case was argued at the last general sessions by J. Bicknell for the defendant, & Crown Attorney Dewart for the Crown.

Judge McDougall, the day after the delivery of the above judgment, granted the County Crown Attorney's motion for a reserved case, which he did with much doubt as to his jurisdiction, expressing the opinion, however, that the points were important & that the

Court of Appeal could decide the question of jurisdiction.

It is a notable fact that all Canadian street railways have done an excellent business this year. In Montreal & Toronto the earnings have been running away ahead of a year ago, & the same is reported from Hamilton, London, St. John & Halifax. The returns all over certainly afford a very fair indication of prosperity.

Electric Railway Legislation.

The following Acts were passed at the recent Dominion session:—

Respecting the Montreal Island Belt Line Ry. Co.

Respecting the Intercolonial Radial Ry. Co. To incorporate the Dawson City Electric Lighting & Tramway Co.

To incorporate the Three Rivers & North Shore Electric Ry. Co.

To incorporate the Seven Miles Canyon & White Horse Tramway Co.

Respecting the Queenston Heights Bridge Co.

British Columbia Lines.

B. C. Electric Ry.—The half-yearly interest on the 4½% debentures & the 6% income bonds due May 15 has been paid at the offices of Sperling & Co., London, Eng.

The Vancouver City Railway & Light Committee has been discussing with the City Solicitor the proposed extension of the speed limit to be granted to the B. C. E. R. Co. for running its cars in the city. Finding that there was insufficient data on which to act, within the experience of the city itself, the Clerk was instructed to write all the leading cities of Eastern Canada & the U.S. to ascertain the rate of speed permitted by civic authorities compatible with the public safety.

On May 24 an electric car with 60 passengers was proceeding from Vancouver to New Westminster at a rapid rate, when the axle broke & the car completely overturned. The occupants were jumbled together as the car, still on its side, ploughed along the side of the track. Miraculous as it seems, nobody was killed, though several were more or less injured. Many were cut by broken glass.

The Maritime Provinces.

St. John Ry.—The annual meeting which was to have taken place June 8 has been adjourned till July 6. The annual statement & report will consequently not be issued till that date. It is understood the Co. has had a very satisfactory year. A dividend of 3% for the 6 months ending April 30 has been declared, payable June 15. This is an increase over the first half of the year of ½%.

Ontario Lines.

Amherstburg, Windsor & Harrow.—A company in Detroit has made a proposition to build an electric railway from Amherstburg to Windsor & Harrow, & wants a bonus of \$15,000. Several bridges would be required.

Berlin & Waterloo St. Ry.—A press report that the G.T.R. has obtained an option on this line & that it will be extended to Preston, lacks confirmation.

Brantford Electric St. Ry.—J. Easton, who was so badly injured in a street railway accident 2 years ago in West Brantford, has settled with the Co., getting \$4,000 in full of all claims, defendant to pay all costs. The sensational law suit to recover damages will be well remembered. The jury awarded Easton the immense verdict of \$12,000, which