

by the said Act. . . .” If this contention be entitled to prevail, the whole proceeding in the Criminal Court is *ultra vires*. I am satisfied that the law is not as contended for by the defendants; but I am asked to state a case for the Court of Appeal upon that point. Counsel for the Crown, recognising its importance, concedes the propriety of such a case being stated—and such a case will be stated without delay. If the decision of the Court of Appeal be adverse to the Crown, no proceedings at all can be taken upon the indictment—and all parties recognise the absurdity of proceedings being taken, at great expenditure of time and money, which may be wholly nugatory.

This course could not have been taken had it not been that a conviction has been obtained upon one count—that conviction, however, will enable all points of law to be raised and finally determined by the Court of Appeal.

In the meantime, I reserve sentence and other proceedings on the conviction already had. It would not be advisable in the public interest to order the defendants forthwith to obey the direction given some years ago by the city engineer, approved by the council, limiting the number of passengers to be carried on each car. The Ontario Railway and Municipal Board, upon whom the legislature have, by the Act of 1910, 10 Edw. VII. ch. 83, sec. 4, imposed the duty of determining whether a street railway company does not run cars enough, have refused to order the defendants to operate more cars, holding that the only remedy for the overcrowding is obtaining more streets. While I am not at all satisfied (upon the evidence at this trial) that more cars may not be operated by a modification of the routes taken so as to avoid the funnels at King and Yonge and at Yonge and College streets, it would be indecorous, to say the least, for me to direct the abatement of the nuisance found to exist by placing more cars on the routes now in existence.

The defendants by their counsel undertake to experiment (in good faith) with a view of increasing the accommodation by modifying the routes, etc., and that is all, I think, that can be asked at the present time, if another undertaking, also given, in taken into consideration, namely, that the defendants will proceed, with all due speed and expedition, with the opening of other lines so as to relieve the congestion. The results of this congestion notoriously, and as proved in evidence, are scandalous and a disgrace to Toronto and to those responsible, whoever they may be.

The city council may have information—and, if not information, the means of obtaining information—shewing some method of rectifying the present discreditable and even indecent condi-