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TORONTO, FEBRUARY 15, 1911.

No. 21.

HIGH COURT OF JUSTICE.

RIDDELL, J.

FEBRUARY 3RD, 1911.

REX v. TORONTO R.W. CO.

Criminal Law—Indictment of Street Railway Company for Nuisance—Verdict of "Guilty" on one Count—Disagreement of Jury on Remaining Counts—Postponement of New Trial on these Counts—Terms—Undertakings—Exclusive Jurisdiction of Ontario Railway and Municipal Board—Reservation of Case for Court of Appeal—Deferring of Sentence.

An application by the defendants to postpone the trial of those counts in an indictment for common nuisance against the defendants which the jury failed to pass upon at the trial.

H. L. Drayton, K.C., for the Crown.

W. Nesbitt, K.C., and H. H. Dewart, K.C., for the defendants.

RIDDELL, J.:—The indictment contains six counts. Of these, the first deals with the appliances for protection of life, etc., of persons in the street generally; the second and third with the death of a lad, Goldenberg; the fourth with "Y"-ing or moving reversely; the counts 6 and 6A with overcrowding. The jury found a verdict of guilty on the count charging overcrowding to such an extent as to endanger the property and health of the public; but failed to agree upon that charging overcrowding to such an extent as to endanger health, etc.—why or on what ground or principle I confess my inability to understand—and also failed to agree upon the first four counts. This disagreement on the first four counts is quite intelligible, as the evidence called for the defence indicated that the defendants were not behind, but actually in advance of, any other on this continent in life-saving appliances—while it was sworn by men of great experience in street railway operation that the means suggested