

This provision, however, gives the minimum of what is required of the company; and these defendants themselves have recognized, and indeed it must be obvious, that much more may and in many cases will be demanded than an observance of this section. In this case it is well, in my humble judgment, that the statute is not exhaustive, as, in order to indict a railway company under this section, it is necessary that the leave of the Board of Railway Commissioners shall first be obtained.

R. S. C. ch. 37, sec. 411, fixes the penalty of \$500 for an offence against the section of the Railway Act already referred to (sec. 287), and sec. 431 (4) provides that no prosecution shall be had against the company for any penalty under this Act in which the company might be held liable for a penalty exceeding \$100, without the leave of the Board being first obtained. Upon application to the Board they declined to allow a prosecution under sec. 287 without further evidence.

No indictment, therefore, was preferred based upon the Railway Act, but the defendants were indicted under secs. 221 and 247 of the Criminal Code. Another count was added under sec. 279 of the Code, but that was withdrawn by the Crown, and the defendants were called upon to plead upon the following indictment:

"The jurors for Our Lord the King upon their oaths present that the Michigan Central Railroad Company on the 9th day of August, in the year of Our Lord 1907, at the town of Essex, in the county of Essex, and at other places in the said county, were guilty of a common nuisance. And the jurors aforesaid upon their oath aforesaid do further present that the said Michigan Central Railroad Company, at the time and places aforesaid, were guilty of an indictable offence in that the said the Michigan Central Railroad Company had then and there under their charge and control certain inanimate things, to wit, a certain car loaded with an explosive substance, and the said explosive substance, the said inanimate things, being such that they might, in the absence of precaution and care, endanger human life, and thereby the said the Michigan Central Railroad Company became and was under a legal duty to take reasonable precautions against and use reasonable care to avoid such dan-