

Ward is stated merely as an illustration of the way in which the nuisance alleged affected the individual mentioned as one of the public, the consequence, in short, of the offence.

The nuisance the commission of which defendants are charged with is the omission to discharge a legal duty, which omission endangered the life, health, or safety of the public, a sufficient statement of what constitutes a common or public nuisance either at common law or under the Code, sec. 191. The duty alleged is that which existed as well at common law as under sec. 213 of the Code; every one who has in his possession or under his control anything whatever, animate or inanimate, or who maintains anything whatever which in the absence of precaution or care may endanger human life, is under a legal duty to take reasonable precaution against and to use reasonable care to avoid such danger, and is criminally responsible for the consequences of omitting without lawful excuse to perform such duty. And sec. 192 of the Code (1st branch) enacts that everyone is guilty of an indictable offence and liable to one year's imprisonment or a fine (as to corporations see sec. 639) who commits any common nuisance which endangers the lives, safety, or health of the public. . . .

[Union Colliery Co. v. The Queen, 31 S. C. R. 81, 4 Can. Cr. Cas. 400; Regina v. Great Northern R. W. Co., 9 Q. B. 315, and Pharmaceutical Society v. London, etc., 5 App. Cas. 857, referred to.]

I agree with what the learned County Judge is reported to have said in the case above cited that "the public can only look for protection to the general law applicable to those using the highway; such law would apply to a street railway company operating cars constructed in such manner as to be likely to endanger the lives and safety of persons using the highway in common with the railway. The defendants have acquired no rights for their cars on the highway in common with the railway." And again: "I am of opinion that the defendants are under a legal duty to operate their cars upon the highway so as to avoid endangering the lives of the public using the highway in common with themselves. What form these precautions ought to take must be largely a matter of evidence."

In the case at bar the evidence was that on lines of defendants on streets running north and south, as Avenue road, with double tracks thereon, the cars going north ran on the