

by the Act, and therefore that the appeals, both of Lanark and Renfrew, should be allowed and the action dismissed.

APRIL 12TH, 1905.

C. A.

REX v. TORONTO R. W. CO.

*Criminal Law—Indictment of Street Railway Company for Nuisance—Negligent Operation of Cars—Want of Proper Appliances—Fenders—Cars Running Reversely.*

Case reserved by the Chairman of the General Sessions of the Peace for the county of York, upon an indictment and conviction of defendants for a nuisance, consisting in the negligent operation of their cars, without proper appliances, etc., so as to endanger the lives and safety of His Majesty's subjects, etc.

J. Bicknell, K.C., and J. W. Bain, for defendants.

J. R. Cartwright, K.C., for the Crown.

The judgment of the Court (MOSS, C.J.O., OSLER, MACLENNAN, GARROW, MACLAREN, JJ.A.), was delivered by

OSLER, J.A.:—The indictment on which these defendants were convicted seems to have been framed upon the precedent of one in a former case against them, . . . which was then held to be sufficient as an indictment for a common nuisance under secs. 191, 213, of the Criminal Code. The charge there was that the company operated cars constructed in such a manner as to be likely to endanger the lives and safety of persons using the highway in common with the railway, that is to say, without proper fenders: *The Queen v. Toronto Railway Co.* (June, 1900), 4 Can. Cr. Cas. 4. The form is needlessly prolix, but I am of opinion that the 1st and 4th counts, at all events, of the indictment now in question sufficiently charge a common nuisance either at common law or under sec. 191 and the first part of sec. 192 of the Code. These counts, in substance, allege that defendants were authorized to operate a street railway on certain streets in the city of Toronto, and in doing so were under a legal duty to take reasonable care and precautions to avoid endangering the lives and safety of the public, but without reasonable excuse neglected to take such precautions and did thereby endanger the lives and safety of the public and thereby committed a common nuisance. The causing of the death of Elizabeth