THE COURT, on the 24th September, 1909, gave judgment refusing to direct a stated case upon the grounds urged before the trial Judge; but suggested that an application should be made to the trial Judge to state a case upon the new grounds.

Upon the same day Robinette applied to RIDDELL, J., to state a case, and upon the following day RIDDELL, J., gave judgment refusing the application, saying (in part) :—No one having at the trial made any pretence that the mind of the prisoner was affected by intoxication in the direction indicated, and there being no evidence in that direction, it would have been idle for me to have charged the jury upon what is, of course, undoubted law in the case of a prisoner proved to have been drunk at the time of committing the offence, and told them that the presumption that a man is taken to intend the natural consequences of his act is rebutted in the case of a man who is drunk, by shewing his mind to have been so affected by the drink that he was incapable of knowing that what he was doing was dangerous. No one doubts the law: but the law stated does not apply to the present case. "Where a Judge sums up to a jury, he must not be taken to be inditing a treatise on the law:" Rex v. Meade, [1909] 1 K. B. 895, at p. 898.

On the 28th September, 1909, Robinette, for the prisoner, moved before the Court of Appeal (MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, JJ.A.), for an order directing the trial Judge to submit a question as to the state of intoxication of the defendant to the Court for its opinion and determination.

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

The question raised was fully argued upon the motion, and counsel agreed that the matter should be left to the Court as if argued on a stated case.

MOSS, C.J.O., on the following day, delivered the judgment of the Court:

We have now considered the case with care, and, I think I may say, with due regard to the gravity of the issues involved, and the importance of the matter to the prisoner, and, after deliberation, we have come to the conclusion, though not without some hesitation on the part of some of the members of the Court, that, looking at the whole case, and regarding the evidence as it went to the jury, it is better to say in that qualified way that we think that there should have been a case stated upon this question. That being the conclusion, of course it will follow, from the understanding that was spoken of yesterday at the conclusion of the argument,