

The Ontario Weekly Notes

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No. 2.

COURT OF APPEAL.

SEPTEMBER 29TH, 1909.

REX v. BLYTHE.

Criminal Law—Conviction for Murder—Nondirection—Intoxication of Prisoner—Inability to Appreciate Nature and Result of Acts—Manslaughter—New Trial.

On the 9th February, 1909, the prisoner was tried before RIDDELL, J., with a jury, upon a charge of murdering his wife by repeated blows with an iron poker, and convicted. He was sentenced to be hanged on the 13th May, 1909, but was reprieved by the Governor-General till the 17th June, 1909.

On the 15th June, 1909, counsel for the prisoner applied to the trial Judge, under 8 & 9 Edw. VII. ch. 9, to reserve a case for the Court of Appeal, upon certain grounds specified. RIDDELL, J., refused the application, and on the 29th June, 1909, stated reasons for his refusal (14 O. W. R. 363.)

On the 22nd September, 1909 (the prisoner having been again reprieved), T. C. Robinette, K.C., for the prisoner, moved before the Court of Appeal (MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, J.J.A.), for leave to appeal or for an order directing the trial Judge to state a case for the opinion of the Court, upon the ground stated before the trial Judge, and upon the further ground that the trial Judge should have specifically instructed the jury that they should consider the prisoner's state of intoxication, and that, if they thought his state of intoxication was such as to prevent him from appreciating the nature and result of his acts, they should not convict of murder, but of manslaughter.

J. R. Cartwright, K.C., and E. Bayly, K.C., for the Crown.