

jury as bearing upon the question of intent. And, no doubt, if his attention had been drawn to it, he would have directed the jury that the presumption that a man intends the natural consequences of his act may be rebutted in the case of a man who is drunk, by shewing that his mind was so affected by the drink he had taken that he was incapable of knowing that what he was doing was dangerous, that it was likely to inflict serious injury; and they would have been asked to pass upon that, having regard to the evidence before them.

Those in charge of the case seemed to be directing their minds to other views of the case, and that view of it was overlooked, or at all events not thought of sufficiently to determine them to ask that it should be presented among the other issues before the jury. The result seems to have been that perhaps the prisoner has not had his case presented to the jury as fully to his advantage as it would have been had the matter been presented on his behalf in that way.

Without entering upon the case further, having in view the new trial, it is only necessary to repeat that this result has been reached after full consideration of the matter, treating it as if a stated case was now before us.

HIGH COURT OF JUSTICE.

MASTER IN CHAMBERS.

SEPTEMBER 29TH, 1909.

HAMILTON BRIDGE WORKS CO. v. GENERAL CONTRACTING CO.

Mechanics' Liens—Summary Proceeding to Enforce Lien — Contemporaneous Action to Recover Money in Respect of which Lien Claimed—Motion to Stay Action.

The plaintiffs began a summary proceeding against the defendants under the Mechanics' Lien Act, and also began an action against them to recover the sum of money in respect of which the lien was sought to be enforced.

The defendants moved for an order staying the action.

G. H. Kilmer, K.C., for the defendants, relied on the Judicature Act, sec. 57 (10), and the cases noted in Holmsted & Langton's Judicature Act, in loc.

H. M. Mowat, K.C., for the plaintiffs, invoked sec. 28 of the Mechanics' Lien Act, which provides that the taking of any proceedings for the recovery of the claim, or the recovery of any personal judgment for the claim, shall not merge, waive, or destroy any lien created by the Act, unless the plaintiff so agrees in writing; contend-