

The
Ontario Weekly Notes

Vol. I.

TORONTO, OCTOBER 13, 1909.

No. 3.

COURT OF APPEAL.

SEPTEMBER 29TH, 1909.

REX v. BLYTHE.

Criminal Law—Conviction for Murder—Nondirection—Intoxication of Prisoner—Manslaughter—New Trial.

The following is a revised report of the judgment of the Court noted ante p. 17.

The judgment of the Court was delivered by Moss, C.J.O. (oral):—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, a case should be stated upon this question. This result has been reached after as full consideration of the matter as if a stated case was before us.

That being the conclusion, it will follow, from the understanding that was spoken of yesterday at the conclusion of the argument, that the present conviction will be set aside, and a new trial will be granted to the prisoner; and, that being the view the Court has taken of the case, we deem it proper and right, as much in the interest of the prisoner as in other interests, that we should not comment upon the evidence that was before the jury or upon the way in which the case was finally presented to the jury.

It may be said, however, that there can be no reason to suppose for a moment from the case as it presents itself to us, that if the learned trial Judge had been requested to charge the jury in the way in which it is now stated he should have done, he would have refused to do so.

It would have been obvious to him as it now appears to be to every one concerned, that the alleged condition of intoxication and the extent of that intoxication were proper to be considered by the