

REPORTS AND NOTES OF CASES.

Province of Alberta.

SUPREME COURT.

Harvey, C.J., Scott, Stuart, Beek,
Simmons, and Walsh, JJ.]

[16 D.L.R. 203.]

REX v. ANDERSON.

1. *Criminal law—Insanity as a defence—Degree of proof.*

It is misdirection to instruct the jury in a murder trial in which the defence is insanity, that such defence must be made out so as to satisfy the jury "beyond a reasonable doubt," the latter expression having, by long judicial usage, become associated with the idea that more is required than merely being "satisfied" that the fact of insanity is proved.

McNaghten's Case, 10 Cl. & F. 200, considered; *R. v. Myshrall*, 8 Can. Cr. Cas. 474, referred to.

2. *Evidence—Presumption as to sanity—Preponderance of evidence to rebut.*

The rule as to presumption of sanity "until the contrary is proved" (Cr. Code, 1906, sec. 19), as applied to a defence of insanity in a criminal case merely requires proof of insanity by a preponderance of evidence to the satisfaction of the jury.

R. v. Jefferson, 72 J.P. 467, 1 Cr. App. Cas. 95, 24 Times L.R. 877, considered.

3. *Evidence—Medical books—Oral proof of their authority.*

If a witness called to give expert testimony is asked about a text book (ex. gr., as to mental diseases) and expresses ignorance of it, or denies its authority, no further use of it can be made by reading extracts from it, for that would be in effect making it evidence; but, if he admits its authority, he then, in a sense, confirms it by his own testimony, and then may quite properly be asked for an explanation of any apparent differences between its opinion and that stated by him.