
REPORTS AND NOTES OF CASES.

Province of Ontario.

COURT OF APPEAL.

Full Court.]

REX v. BLYTHE.

[Sept. 29.

Criminal law—Conviction for murder—Non-direction—Alleged intoxication of prisoner—New trial.

On Feb. 9, 1909, the prisoner was tried before RIDDELL, J., upon a charge of murdering his wife by repeated blows with an iron poker, and convicted. He was sentenced to be hanged on May 13, but was reprieved by the Governor-General till June 17. On June 15, 1909, counsel for the prisoner applied to the trial judge, under 8 & 9 Edw. VII. c. 9, to reserve a case for the Court of Appeal, upon certain grounds specified, but the application was refused.

On Sept. 22 (the prisoner having been again reprieved), counsel for the prisoner, moved before the Court of Appeal 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.

The court, on Sept. 24, 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.

This was done, but RIDDELL, J., refused the application, saying: "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