

breed question would remain the same, and he said in answer to that, if I am satisfied, the Half-breeds will be."

He also says that the priests met and put the question: "Is it possible to allow Riel to continue in his religious duties, and they unanimously decided that on this question he was not responsible—that he was completely a fool on this question—that he could not suffer any contradiction. On the questions of religion and politics we considered that he was completely a fool." There is nothing in all that which would justify the conclusion that the man so spoken of was not responsible in the eye of the law for his actions. Many people are impatient of contradiction, or of authority being exercised over them, yet they cannot on that account secure protection from the consequences of their acts as being of unsound mind.

The Rev. Mr. Fourmond, who was one of the clergy who met for the purpose spoken of by the Rev. Mr. André, shows that the conclusion they came to, was come to, because they thought it the more charitable one. Rather than say he was a great criminal, they would say he was insane. The views the appellant professed respecting the Trinity, the Holy Spirit, the Virgin Mary, the authority of the clergy, and other matters were what shocked these gentlemen. But heresy is not insanity, at least in the legal and medical sense of the term.

The most positive evidence as to insanity is given by Mr. Roy, the medical superintendent of Beauport asylum, in which appellant resided for nineteen months about ten years ago. But his evidence is given in such an unsatisfactory way, so vaguely, and with such an evident effort to avoid answering plain and direct questions, as to render it to my mind exceedingly unreliable. The other medical witness who speaks to his insanity is Dr. Clark, of the Toronto asylum. He says: "The prisoner is certainly of insane mind," but he qualifies that opinion by prefacing it with the statement, "assuming that he was not a malingerer." And even he says: "I think he was quite capable of distinguishing right from wrong." Against the evidence of these gentlemen there is that of Dr. Wallace, of the Hamilton asylum, and Dr. Jukes, the senior surgeon of the mounted police force, both of whom are quite positive in giving opinions of the appellant's sanity.

It was contended that the very fact that he, a man who had seen the world, could ever hope to succeed in a rebellion, and contend successfully with the force of the Dominion, backed as that would be, in case of need, by all the power of England, was in itself conclusive proof of insanity. But the evidence of several witnesses, specially of Captain Young, shows that he never had any idea of entering seriously into such a contest. The appellant told that witness that he was not so foolish as to imagine that he could wage war against Canada and Britain. His plan, as he detailed it, was to try and capture at Duck Lake, Major Crozier and his force of police, and then, holding them as hostages, compel the government to accede to his demands. What these were he had already told the Rev. Mr. André—\$100,000, or in cash \$35,000, and if he could not get even that, then as much as he could. Having failed to capture Major Crozier, he hoped to draw into a snare General Middleton and a small force, in order to hold them as hostages for a like purpose. The fighting which actually took place was not the means by which he had hoped to secure his ends. The Rev. Mr. Pitblado gives evidence similar to that of Captain Young.

Certainly the evidence entirely fails to relieve the appellant from responsibility for his conduct, if the rule laid down by the judges in reply to a question put to them by the House of Lords, in *MacNaghten's Case*, 10 Cl. & Fin. 200, be the sound one. That rule was thus expressed: "Notwithstanding the party accused did the act complained of, with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law; by which expression we mean, the law of the land." This has, I believe, ever since it was laid down, been regarded as the sound and correct rule of law on this subject.

In my judgment a new trial must be refused, and the conviction affirmed.