

tion of the change that was made in the phraseology of the instructions existing prior to 1878, when the instructions were issued, subsequent to the adoption of the suggestions made by Mr. Blake, confirm the opinion that the change made was in form rather than substance, and that while the Governor-General is directed to "receive the advice of his Council," he is still free, after having received that advice, to decide the case "upon his own deliberate judgment." Can any prerogative of the Crown be limited, much less abrogated, by mere implication? or by anything short of express words? No doubt, in the great majority of cases, the Governor would act upon the advice of his Council, and the instances would be very rare in which either he would be called to account for acting upon that advice, or his ministers be called to account for giving it. It unfortunately has happened, as it notably happened in the case of Riel, that the question whether the plea of insanity should prevent the execution of the sentence of the Court has become a great political question, involving grave political consequences. In that case Ministers took the full responsibility of the advice which they offered—advice upon which the Governor-General thought proper to act. No question, therefore, arose, such as that which we are now discussing, and very happily it was so. But had His Excellency taken a different view and decided that the plea of insanity was borne out, and in consequence commuted the death penalty into one of imprisonment for life, as the Governor-General has just done in the case of Shortis, he would, if our reasoning is correct, have been acting within his constitutional power in doing so, and equally his Ministers, having fulfilled their duty in giving him advice, would not have been called upon to resign unless the House of Commons, to which they were responsible, had expressed the opinion that in giving that advice they were in error.

In the case before us the Ministers gave no advice. Being unable as a body to form an opinion, they were incompetent to advise. They were unable to, and, therefore, did not fulfil their duty. It is idle to say that, being unable to agree, their giving no advice was equivalent to saying affirmatively that