

could reasonably convict or acquit. Mr. Lemieux laid great stress upon the fact that the jury accompanied their verdict with a recommendation to mercy, as showing that they thought the prisoner insane. I cannot see that any importance can be attached to this. I have read very carefully the report of the charge of the magistrate, and it appears to have been so clearly put that the jury could have no doubt of their duty in case they thought the prisoner insane when he committed the acts in question. They could not have listened to that charge without understanding fully that to bring in a verdict of guilty was to declare emphatically their disbelief in the insanity of the prisoner. The recommendation may be accounted for in many ways not connected at all with the question of the sanity of the prisoner.

The stipendiary magistrate adopts, in his charge to the jury, the test laid down in *MacNaghten's* case, 10 Cl. & F. 204. Although this rule was laid down by the leading judges of England, at the time, to the House of Lords, it was not so done in any particular case which was before that tribunal for adjudication, and it could hardly be considered as a decision absolutely binding upon any court. I should consider this court fully justified in departing from it, if good ground were shown therefor, or, if, even without argument of counsel against it, it appeared to the court itself to be improper as applied to the facts of a particular case. In the present instance, counsel for the prisoner do not attempt to impugn the propriety of the rule, and in my opinion they could not successfully do so. It has never, so far as I can find, been overruled, though it may to some extent have been questioned. This rule is, that "notwithstanding the party 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 acted contrary to law."

Mr. Justice Maule, on the same occasion, puts it thus: "To render a person irresponsible for crime on account of unsoundness of mind, the unsoundness should, according to the law as it has long been understood and held, be such as rendered him incapable of knowing right from wrong."

The argument for the insanity of the prisoner is based to a certain extent on the idea that he was in such a state of mind that he did not know that the acts he was committing were wrong: that he fancied himself inspired of Heaven, and acting under the direction of Heaven, and in a holy cause. It would be exceedingly dangerous to admit the validity of such an argument for adjudging an accused person insane, particularly where the offence charged is of such a nature as that of which this prisoner is convicted. A man who leads an armed insurrection does so from a desire for murder, rapine, robbery, or for personal gain or advantage of some kind, or he does so in the belief that he has a righteous cause, grievances which he is entitled to take up arms to have redressed. In the latter case, if sincere, he believes it to be right to do so, that the law of God permits, may, even calls upon him, to do so, and to adjudge a man insane on that ground, would be to open the door to an acquittal in every case in which a man with an honest belief in his wrongs, and that they were sufficiently grievous to warrant any means to secure their redress, should take up arms against the constituted authorities of the land. His action was exceedingly rash and foolhardy, but he reasoned that he could achieve a sufficient success to extort something from the Government, whether for himself or his followers. His actions were based on reason and not on insane delusion.

It is true that there were some medical opinions that the prisoner was insane, based upon an account of his actions and his previous history, but the jury were not bound to accept such opinions. The jury had to listen to the grounds for these opinions, and to form their own judgment upon them. In my opinion, the evidence was such that the jury would not have been justified in any verdict than that which they gave; but even if it be admitted that they might reasonably have found in favor of the insanity of the prisoner, it cannot be said that they could not reasonably find him sane.

I hesitate to add anything to the remarks of my brother Taylor upon the evidence on the question of insanity. I have read over very carefully all the evidence that was laid before the jury, and I could say nothing that would more fully express the opinions