

It appears by the certificate of the magistrate that the only full notes of the evidence taken at the trial were taken by "short-hand reporters" appointed by the magistrate. Although it is not so stated, I think that we may assume that these notes were taken in what is known as short hand. *Omnia presumuntur rite esse acta* is a maxim applicable as well in criminal as in civil matters, and if we cannot make such an assumption we must assume them to have been in the ordinary form of writing, or at least in such form of writing as would satisfy the statute. The statutory provision is, that "full notes" are to be taken "in writing." The very definitions of the words "writing," and "to write," are sufficient to show that the methods of recording language covered by the word "stenography," come within the term "writing." The very derivation of the word "stenography" shows it to mean a mode or modes of writing. "Stenography" is a generic term which embraces every system of short hand, whether based upon alphabetic, phonetic, or hieroglyphic principles. There are advantages and these advantages both in stenography and in ordinary writing for the purpose of reporting the evidence given orally in a court of justice. The magistrate is not obliged to take the notes himself; he is authorized by the statute to cause it to be done by another or others. It has not been the practice so far as I know, in any court in Canada to take down *verbatim* question and answer in ordinary writing, and that could not be presumed to be required. If it is not, but the notes are taken in narrative form, their accuracy depends largely on the ability of the reporter hurriedly to apprehend the effect of question and answer and throw them together so as properly to set down the idea of the witness. Any system by which question and answer are given *verbatim* is certainly more likely to be accurate than this method, notwithstanding the chances of error suggested by Mr. Ewart. The short hand system of the reporter may be something which himself alone can understand, it may be a system which is known to many, and it may be that his notes can be read by many. I think that we are not entitled to assume, for the purpose of holding the conviction illegal, that in the present instance it was a system understood by the reporter alone, even if that assumption should properly lead to that conclusion.

The use of short hand reporters in the courts had been in vogue for a considerable time in more than one of the Provinces when the North-West Territories Act of 1880 was passed; and when Parliament provided only for the taking of the notes "in writing," without any further limitation of such a general word, it may be well understood to have had in view a class or method of writing which was in such general use. I have felt the more satisfied in coming to this conclusion, as it has not been suggested that the prisoner has been put under any disadvantage by the system adopted for reporting the evidence and proceedings, or that the report of the evidence or proceedings is in any respect inaccurate.

The question of insanity is raised upon this appeal as a question of fact only. No objection has been made to the charge of the magistrate to the jury. The principles laid down by the courts of Upper Canada, under the Act which authorized the granting of new trials in criminal cases, and which have been referred to by my brother Taylor, appear to me to be those which should govern this court in hearing and determining appeals from convictions in the North-West Territories upon questions of fact, except that it is hardly accurate to say that the court will not undertake to determine on what side is the weight of evidence, but only if there is evidence to go to the jury. This hardly applies in a case like the present. The presumption of law is that the prisoner is, and was, sane. The burden of proof of insanity is upon the defence. *McNaghten's case*, 10 Cl. & Fin. 204; *Regina v. Stokes*, 3 C. & K. 185; *Regina v. Layton*, 4 Cox C. C. 149. Without evidence to go to the jury, the prisoner cannot be acquitted upon the plea of insanity. If there is in such a case to be any appeal after a conviction, it must be on the ground that the evidence is so overwhelming in favor of the insanity of the prisoner that the court will feel that there has been a miscarriage of justice—that a poor, deluded, irresponsible being has been adjudged guilty of that of which he could not be guilty if he were deprived of the power to reason upon the act complained of, to determine by reason if it was right or wrong.

Certainly, a new trial should not be granted if the evidence were such that the jury