

Best on Evidence, p. 372, ed. 1883, says :

“Although the law in general presumes against insanity, yet where the fact of insanity has been shown, its continuance will be presumed.”

Let me quote specially from a recent authority. In the case of *Close vs. Dickson et al*, Superior Court of Montreal, 1872, Mr. Justice Johnson said :

“The law generally presumes all persons to be sane, and that presumption only disappears upon conclusive proof to the contrary; but when a person is once plainly proved to be insane, as this man was, the existence of a lucid interval requires the most conclusive testimony to establish it. . . . I have followed the rule laid down in Taylor's Medical Jurisprudence and also in Wharton and Stille's work: ‘Testimony to establish lucid intervals or partial or general insanity must possess two characteristics—first, it should come from persons of general capacity, skill and experience in regard to those subjects in all its bearings and relations; second, it should come as far as practicable from those persons who have had extensive opportunities to observe the conduct, habits and mental peculiarities of the person whose capacity is brought in question, extending over a considerable period of time, and reaching back to a period anterior to the date of the malady.’”

Then what becomes of the proposition laid down by the Government, that the onus of proof fell upon the prisoner? This fact being established beyond doubt, that Riel was a lunatic at one time, the onus of proof fell upon the Crown, and I say the presumption of insanity has not been rebutted by the evidence produced in the case. We have, on the contrary, sufficient corroboration of that presumption, at least so far as the state of his mind is concerned, as to leave no doubt that the verdict was rendered against the evidence. I refer especially to the evidence of Father André, Garnot, Father Fourmond, Drs. Roy and Clark. Where is the evidence of the Crown to destroy that presumption? Dr. Wallace is, no doubt, an able man, and a man in a position to judge of a case like this, but he is forced to admit that he had not the necessary time to give it justice. We have also the evidence of Dr. Jukes, who became acquainted with the accused only after the rebellion was over—after the excitement which brought his partial mania into operation was over. More than that, we have the admission by Dr. Jukes, that he is not a competent man. What does the rest of the evidence for the Crown consist of? We have the testimony of Capt. Young, Rev. Mr. Pitblado, Capt. Deane and Capt. Pigott. Many of those men never had any conversation with Riel, as far as those particular subjects are concerned, on which his mind was diseased, and there is a remarkable fact that all these witnesses never had any acquaintance with Riel before the rebellion was over. I think the Crown must have been very hard pressed to prove the sanity of Riel when they felt forced to examine General Middleton. Could they