

killed others and have been executed, both in England whence we take our law, and in Canada in which we live. . . . Life would not be safe under such circumstances. There is one in every three hundred persons, in most countries; of persons who are insane in one way or another, and it would never do if the law were such that one man out of every three hundred (that in Toronto would be something over a thousand people) could go out and slay at will without being brought to task and punished by the strong arm of the law. A man is not to be acquitted on the ground of insanity unless his mind is so affected thereby that he is not capable of appreciating the nature and quality of his act, and of knowing that such act was wrong. It is not the law here, as it is said to be in some countries, that if an insane person, who is capable of appreciating the nature and quality of the act, and of knowing that it is forbidden by law (for that is the meaning in this connection of the word "wrong") has what is called an impulse to do the act which he cannot resist, he is to be acquitted on the ground of insanity. I charge you as a matter of law that it is not enough for the prisoner to have proved for him that he had lost the power of inhibition—the power of preventing himself from doing what he knew was wrong. It is your duty to find a verdict of guilty if you find that the prisoner killed Loughheed, and if at the same time it has not been proved to your satisfaction that the condition described by Dr. Bruce Smith was not his actual condition; in other words if he killed the man, and it has not been proved that his condition was not as Dr. Bruce Smith says it was, he is guilty of murder, and it is your duty to find so."

The prisoner was convicted and sentenced to death.

Mr. Justice Riddell reserved a case for the Court of Appeal upon this charge, but refused to reserve a case upon the question whether the prisoner being undoubtedly insane could be executed.

The learned judge referred to 32 C.L.J., pp. 75, 76; *Re Creighton*, 14 Can. C.C. 349; *R. v. Thomas*, Crim. App. Cas. 36.

Held, that the charge of the trial judge correctly stated the law and that the prisoner was properly convicted.

Robinette, K.C., for prisoner. *Cartwright*, K.C., and *Bayly*, K.C., for the Crown.