was insane. It is idle to confuse the question before us with the complex idea of age, ill-health, intemperance and liability to be influenced, for there is no evidence whatever that either Julie Morin, or anybody in her interest, exercised any influence over him whatever. We may presume that Julie Morin spoke to him about his will, but we do not know it. The only time he seems to have spoken to her about how his property was to be left was before making the will of the 8th October, and then his niece was in the house and probably might have been present. At any rate, Julie Morin either consented to the change, or her influence did not control the testator. The evidence only discloses a fragment of the conversation between the deceased and Julie Morin, from which nothing conclusive one way or other can be gathered.

The naked question is one of insanity, and this is a question open to endless speculation. With greater facility than any other question it drifts into the unfathomable regions of metaphysics, which are beyond our domain. We have no canon of sanity, we have a rule as to responsibility. Irresponsibility must be established by facts. After hearing all that has been said one way or another, I must say that I have no hesitation in expressing the opinion that the Appellant has failed to establish her pretension, and that the will of the 27th November, 1878, should be maintained. To the careful judgment of Chief Justice Meredith, I have only to add, that the evidence of Dr. Russell and of Miss Russell seem to me to stand alone in support of the pretensions of the intervening party, and Miss Russell's evidence appears to me totally inadmissible. She is directly interested in the issue, and if not nominally a party to the suit, she is its promoter. Dr. Russell's evidence is much affected by his certificate. I do not desire to say anything unnecessarily disagreeable of a gentleman occupying so highly respectable a professional standing as Dr. Russell, but I must dissent from the opinion expressed by the Chief Justice, that his certificate within the explanations given, does not affect in the least the doctor's testimony. The explanation amounts to this, that in the interest of the testator at one time, he gave his assurance, on his professional responsibility, of a fact, which, another interest arising, he declares to be untrue. It has been said Dr. Russell's certificate only declared him to be sane enough to receive money, not to bequeath it. This is a novel distinction; but really the effect of the receipt of the money was to ratify the donation by Russell. Dr. Russell's intentions may have been excellent, but I must necessarily set his testimony as to a matter of opinion, so contradicted, entirely aside. Without the evidence of Miss Russell and of Dr. Russell, there is really nothing to support the pretensions of the intervening party but gossip.

The long and able dissent of the learned Chief Justice compels me to extend my remarks beyond the limits I intended, in order that it may not appear that the majority of the Court has over-looked any point in the case. It is to be observed that the ground taken by the Chief Justice is very different from that taken at the argument. Mr. Cook's contention was, that Wm. Russell being insane on the 2nd of January, it must be presumed that the insanity began some time previous to that, and went back at all events to the 27th November, but not to the 8th October, for his client claims under a will of that date. It is impossible for her to pretend that she claims under a will made by a person she knew to be insane. But this doctrine of a presumed insanity prior to interdiction is totally untenable in law. If it were to be admitted, the first question would be as to how far back it extends. The doctrine of the law is that sanity is presumed until insanity is established, unless there be interdiction, and then the presumption is in favor of insanity; but it is only by interdiction that the burthen of proof passes from the party alleging the insanity to the party denying it; and this must be as true when dealing with an act done the day before the interdiction as of an act done a year before.

Akin to this doctrine of the plaintiff is the theory of progressive madness, mentioned in one of the medical books quoted by the Chief Justice. As a medical view I dare say it is very correct. One readily conceives the idea that madness does not usually declare itself in an instant. It frequently, I dare say, begins with birth. But Courts take no notice of possibilities of this sort.

The view of the case taken by the learned Chief Justice is that Russell was insane from the end of September, and this being established, it is for those who support the will to show it was made in a lucid interval. I entirely agree with this proposition if the fact were proved, but I