"In particular cases other matters are inquired into, but those cases are extremely few. In some of them the delicate and difficult question of the state of the criminal's mind is raised, in which experience proves there is obviously a large margin for difference of opinion; but this would not be improved by requiring all evidence to be on oath, for on matters of opinion there will always be great variety of opinion, and the oath is no security, because a man giving his opinion may honestly swear that he believes so and so. Certificates, therefore, are just as valuable whether they are on oath or not; and the only other evidence is that occasionally given by friends and relatives, as to the convict's state of mind at former periods—matters which are not of such difficult solution as may at first sight appear. * * * At present the functionary to whom this duty is confided, having ample assistance, is able to consider this subject without delay. He is, moreover, a responsible Minister of the Crown, and is, therefore, accountable to Parliament for the manner in which he discharges his duties."

There you find the responsibility of the Government declared by the Lord Chancellor, the head of the judiciary and the legal official of the Government, who explains what is done in criminal cases where a man has been convicted and sentenced; and a question exists as to the state of his mind. You find that an enquiry is made, that medical opinions are taken, and evidence is taken as to the facts from which conclusions are to be drawn. Then the Royal Commission on Indictable Offences in 1878 composed as I said before, of Judges Blackburn, Barry, Lush and Stephen, said:

"It must be borne in mind, that, although insanity is a defence which is applicable to any criminal charge, it is most frequently put forward in trials for murder, and for this offence the law—and we think wisely—awards upon conviction a fixed punishment which the judge has no power to mitigate. In the case of any other offence, if it should appear that the offender was afflicted with some unsoundness of mind, but not to such a degree as to render him irresponsible—in other words where the criminal element predominates, though mixed in a greater or less degree with the insane element—the judge can apportion the punishment to the degree of criminality, making allowance for the weakened or disordered intellect But in a case of murder this can only be done by an appeal to the Executive; and we are of opinion that this difficulty cannot be successfuly avoided by any definition of insanity which would be both safe and practicable, and that many cases must occur which cannot be satisfactorily dealt with otherwise than by such an appeal."

Now, this is stated at a late day by men of the highest authority, having had the advantage of the evidence of many learned men engaged in the actual administration of the criminal law, declaring the theory and practice of that administration in cases in which there is a weak or disordered intellect, though not so weak or disordered as to justify a verdict of not guilty on the ground of insanity; and in language in which I would only weaken by attempting to restate the argument, they point out, what common sense and common humanity approve, that a weak and disordered intellect, although there may be enough to leave a man responsible, leaves him not responsible to the same degree as to the severity of punishment as if he were of perfectly sound mind; and that which, in all other cases, by the law, the precise sentence proper to be awarded as proportioned to the moral guilt and to the palliative circumstances, is to be fixed by the judge, in the particular case in which the sentence is that of death, that duty is to be discharged by the Executive. Sir James Stephen, in his book to which I have so frequently alluded, alluding to the provision of recording sentence, which, as I have said, had the effect of a reprieve, says:

"I remember a case in which Mr. Justice Wightman ordered sentence of death to be recorded upon a conviction for murder. The prisoner, though not quite mad enough to be acquitted, was obviously too mad to be hanged. I have met with cases in which I wished I had a similar power."

Sir James also says:

"These considerations appear to me to show that murder, however accurately defined, must always admit of degrees of guilt, and it seems to me to follow that some discretion in regard to punishment ought to be provided in this and in nearly every other case. This discretion does in fact exist at present and is exercised by the Home Secretary, though on every conviction of murder sentence of death is passed by the judge."

Then he gives cases affecting the guilt of such an offence:

"(1) Absence of positive intention to kill, &c.
"(2) Provocation, &c.
"(3) There are many cases in which a man's mind is more or less affected by disease, but in which it cannot be said that he is entitled to be altogether acquitted on the ground of insanity."

And then he gives a long series of other cases, the precise case to which I allude being number 3, and proving demonstratively that this case was recognised by our law, which else would be a barbarous and inhuman law, and that it justifies the principle of dealing with the case according to the circumstances. Then Lord Penzance, during a debate in the House of Lords in 1870, said:

"Well, the Home Secretary does as much as any man can do, under the circumstances. He makes his inquiry. It very often happens that the crime is one which depends on scientific evidence, as in the case of poisoning, and then he has often a very delicate task. In other cases new and additional facts are alleged; but there are no authorised sources of information. I believe, indeed, that he sometimes sends down persons to make inquiries on the spot"

Again, Sir James Stephen in his book, speaking as to the doubts thrown on the justice of a verdict, or the accuracy of the evidence, and the course of the Home Secretary in Smethurst's case, shows that:

"Sir George Lewis, Home Secretary, says: * * * * I have come to the conclusion that there is sufficient doubt of the prisoner's guilt to render it my duty to advise the grant to him of a free pardon. * * * * The necessity which I have felt for advising Her Majesty to grant a free pardon in this case has not, as it appears to me, arisen from any defect in the constitution or proceedings of our criminal tribunals; it has risen from the imperfections of medical science, and from fallibility of the judgment in an obscure malady, even of skilful and experienced practitioners."

I am unable to deal with some of the cases in our own country as fully as the hon. member for Ottawa (Mr. Mackintosh), but I observe a report in the *Mail* newspaper of a trial which took place in October, 1882, at Napanee. One Lee was tried for murder and the defence was insanity. The medical evidence was conflicting. One doctor proved that he had examined the prisoner and in his opinion he was insane, and insanity was not feigned. Another doctor was called and said he had come to the same conclusion. The gaol surgeon thought the examination disclosed delusions, and he saw indications of insanity. Another doctor thought the prisoner was acting a part and knew quite well what he was doing. The judge charged that the evidence showed that his mind was, perhaps, not very strong, although some years ago he had labored under delusions. At and about the date of the crime, persons who were in frequent intercourse with him discovered nothing to lead them to suppose him of unsound mind. A person taking revenge is not acting under delusion; he is doing it with some degree of knowledge of the difference between right and wrong. There was a verdict of guilty rendered, and there is no report of a recommendation for mercy. The judge in passing sentence said that after hearing all the evidence he was quite of opinion that at the time the prisoner committed the crime he knew what he was doing and was perfectly accountable for his action. He was sentenced to death. That sentence was commuted. It was commuted by hon. gentlemen opposite. I am not able to speak with authority as to the circumstances of the commutation; and I state simply that I received a letter on the case this morning, and therefore too late to enable me to apply to the hon. gentleman as I otherwise would have done to bring down the papers, but I now make the application. The letter is written by a respectable person who ought to know and who professes to know as to the circumstances which preceded that commutation. But before I refer further to that letter, I should like to give the reporter's account of the prisoner as published in the *Mail*:

"The prisoner whose appearance is not such as to give the unprofessional eye much, if any, indication of insanity has watched the case apparently with much interest throughout. He seemed to understand about what evidence each witness called would give, and it could be noticed as some of the more important ones came to the stand that he placed himself in an attitude of close attention as if to catch every word said. He did not at any time display indifference, and toward the close though showing signs of weariness seemed to take, if possible, more interest than at first and to be in a measure impressed with a sense of his peril. In this respect there was a visible change in his countenance after he heard the address of the Crown counsel and the judge's charge, and a very marked one when the verdict was rendered."