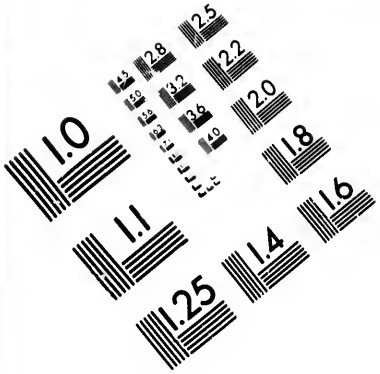

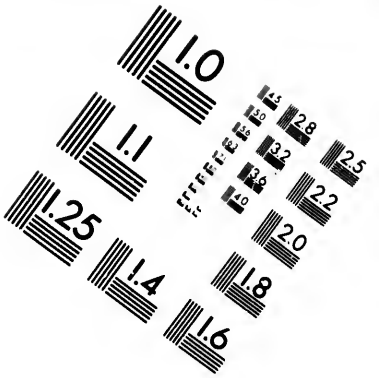

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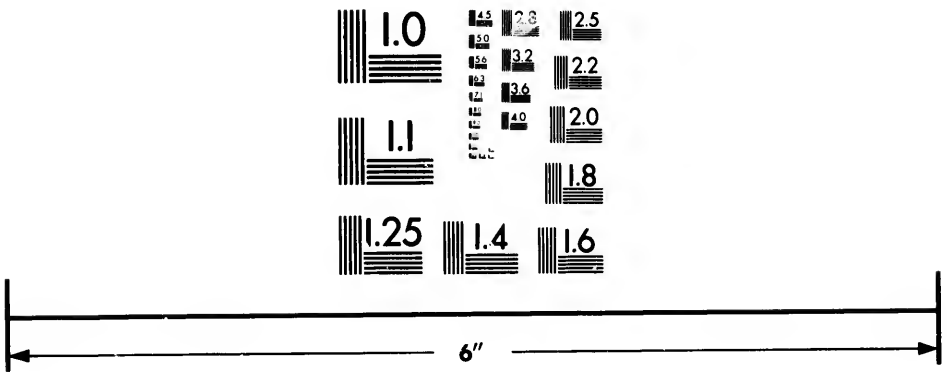

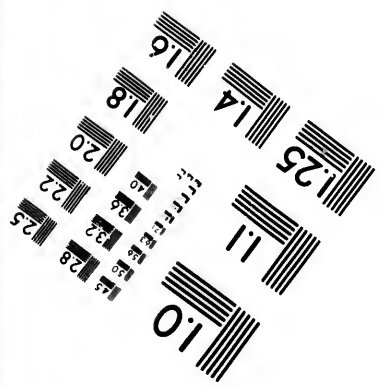

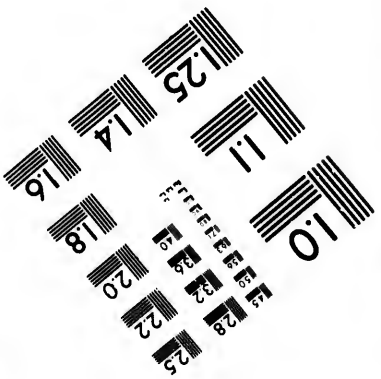

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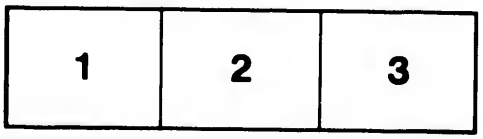

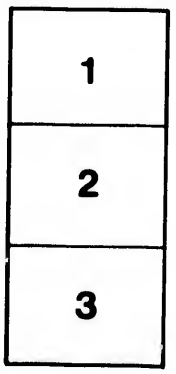

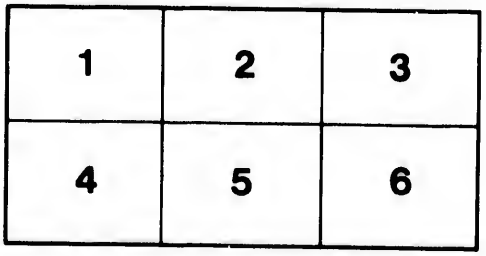

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SPEECH

OF

Mr. GIROUARD, M.P.,

ON THE

EXECUTION OF LOUIS RIEL.

HOUSE OF COMMONS, MARCH 24TH, 1886.

Mr. GIROUARD. After this protracted debate and the expression of the desire which has been made that the vote should be taken this evening, I do not intend to make a long speech. I wish only to offer a few remarks to explain the vote I am going to give against the Government. I made up my mind to cast that vote on the 13th of November last, when I joined with sixteen friends and supporters of the Government in the Province of Quebec, in transmitting to the hon. Premier the following telegram :—

"Under the present circumstances the execution of Louis Riel will be an act of cruelty, the responsibility of which we refuse to take."

Having been elected as a Conservative, and a Conservative in principle, I thought I could not come to that conclusion without consulting my constituents. I did so at the first opportunity, on the 15th of November, the day before the execution. I told them that under the circumstances there was no party tie strong enough to hold me in face of the execution of Louis Riel, and I offered them my seat. The answer was not only their unanimous approbation of the course I had taken, but the immediate transmission of a telegram to the hon. Premier in Ottawa informing him that the course I had followed was unanimously approved by my constituents. While voting against the Government and thus obeying the express desire of my constituents, I do not intend to change my political opinions. I am a believer in the National Policy and in the policy of the Canadian Pacific Railway. To quiet the mind of the hon. member for Lincoln (Mr. Rykert), I may even tell him that

I do not intend to take back one proposition of the six hours' speech of last Session. Were I of the opinion that the Government of the day were primarily responsible for the rebellion in the North-West, as the Liberals of the Province of Quebec stated at meetings before the execution, I would blame the Government, not only for having executed Riel, but for not having granted him a full pardon; but I never held that opinion. I never contended that Riel was a hero; I always looked on him as a lunatic; and I blame the Government for not having treated him as such. That is the reason why I took part in the agitation in the Province of Quebec —an agitation which was condemned the other day in such strong language by the hon. member for Kent, New Brunswick (Mr. Landry), because he had no accurate idea of its true character and tendency. If he had been at those meetings, as I was, although I was not at many of them, he would be in a position to say before the House and the country that there were never any meetings in the Dominion of Canada more orderly, more constitutional and more loyal. The hon. member for Kent has referred us to the example of the good people of Acadia. Everybody knows that the poor Acadians, from the time they were dispersed like slaves all over this continent to a very recent period, if not to the present time, had been a long-suffering people. The hon. gentleman told us that these Acadians suffered quietly the dispossession of their land after seventy years of possession. He could also have told us that to-day they are suffering in silence the closing of a college—if I mistake not, the St. Louis College—because the French language was taught in it. The Acadian people have been, and, no doubt, are yet very patient; but I am very much afraid that under those circumstances their patience is not a virtue but a necessity. I will tell the hon. gentleman that whenever the rights of the French population of the Province of Quebec are assailed; whenever their nationality, their language, their religion, their institutions or their laws are attacked, he will find protests from the Province of Quebec; he will find agitation and resistance by all legal and constitutional means. We had an agitation, one perhaps more important than that which has brought about the present crisis, in the years 1872 and 1873. At that time the members from the Province of Quebec had the humiliation of standing alone. The hon. member for Victoria, New Brunswick (Mr. Costigan) asked the censure of this House on the Government for not having disallowed the New Brunswick school law. The French, I may say the Catholic members from the Province of Quebec, stood alone, except that they had the

support of the hon. member for the county of Ottawa (Mr. Wright); but I say now, since the speech of the leader of the Opposition and the other speeches delivered by hon. gentlemen representing English constituencies, I can no longer say that this crisis is one of race or religion. In 1872, we were agitating for religious liberty for the French Acadians and the Catholic minority of New Brunswick. To-day, as far as I, at least, am concerned, I am protesting on behalf of personal liberty; I am urging the importance of showing respect for those laws which have been enacted in this country for the protection of life. To-day the man who is the occasion of this debate may be a poor, miserable lunatic, to-morrow he may be any other member of the community. If I had been called upon to draft the motion of the hon. member for Montmagny (Mr. Landry), I would have worded it differently; I would not have put the question whether the sentence of Louis Riel should have been allowed to have been carried out; but I would have asked the House to censure the Government, not for having allowed the sentence to be carried out, but for having ordered the execution. If Riel had been convicted under the laws of the Provinces, the question would have been properly put as it is; but as he was convicted under the special constitution of the North-West, as he was convicted under a law which says that no sentence of death shall be carried out unless an order be given by the Executive. I say the question is whether the Government was right or wrong in ordering the execution of Louis Riel. The mode of administering criminal justice in the North-West is very different from the mode which prevails in the rest of the Dominion. In all the Provinces the presiding judge is independent of the Crown, and has nothing to expect from the Crown; the jury is composed of twelve members, and if it is the wish of the accused he may have, in the Provinces of Quebec and Manitoba, six of his own language or nationality on the jury. In all the old Provinces, there is a regular mode provided by law of summoning jurors; but what do we see in the North-West? In the first place, the magistrate who is called upon to preside is only a stipendiary magistrate, and holds his office during the pleasure of the Government; in the second place, we have only six jurors; in the third place, the accused is not entitled, as a matter of right, to a mixed jury; and fourthly, the judge is entrusted with the summoning of the jury. It is perfectly evident that the trial which took place under these laws, although a legal one, was not a fair one, was not British, as we understand the principles of British criminal justice

But, Sir, the constitution of the North-West, special as it is, has provided for certain guarantees against a miscarriage of justice. In the first place, there is an appeal given to the Court of Appeals of Manitoba, an appeal which does not exist in the old Provinces; in the second place, there is a final appeal to the Executive. Section 76 of the North-West Act of 1886 said:

"When any person has been convicted of a capital offence and is sentenced to death, the Stipendiary Magistrate shall forward to the Minister of Justice full notes of the evidence, with his report upon the case; and the execution shall be postponed from time to time by the Stipendiary Magistrate, if found necessary, until such report is received and the pleasure of the Governor thereon is communicated to the Lieutenant-Governor."

It is perfectly clear, therefore, that the review made by the Executive of Louis Riel's case, was a matter of right defined by the constitution of the North-West The accused, when brought before the Regina tribunal, only raised two issues: the first one was the jurisdiction of the court, and the second the plea of insanity. The Manitoba Court of Appeals has pronounced upon both pleas and dismissed them. The Privy Council disposed only of the question of jurisdiction, but their Lordships took very good care to state that no argument had been offered on the plea of insanity. The case being thus disposed of in the courts, it then came, in the regular order of things, to the Executive. What was the duty of the Executive? I say that the verdict was wrong. If there was a doubt as to the justice of the verdict, if there was a doubt that the verdict was against the evidence, it was the duty of the Government to commute the sentence. In the examination of the case, the functions of the Executive are judicial, but after having arrived at the decision that the verdict was wrong, then the functions became administrative; that is to say, in finding out the means of preventing a miscarriage of justice. The Executive, in examining the case, is not a court of appeals in the sense that it can order a new trial as can the court of Manitoba; but in the sense that the duty of the Executive is to examine every part of the evidence, and see whether the verdict be correct or not. This proposition, I contend, Mr. Speaker, is the necessary consequence of the constitution of the North-West. If, as laid down by the hon. the Minister of Justice the other evening, the Government should not go beyond the verdict, if the Government has no right to examine the evidence and see whether the verdict is correct or not, then where was the wisdom, where was the reason of the law which says that all the notes of the evidence should be transmitted to the Executive, and, more than that, that the execution

cannot take place unless the good pleasure of the Governor General has been transmitted to the Lieutenant Governor? But, even if the Government viewed this case as an ordinary case of clemency, even if the case had come from the old Provinces, my contention is that the Government were wrong in taking the view that they had no right to examine the evidence and go beyond the verdict. What is the practice of the Home Office in these cases? Lord Carnarvon said, before the House of Lords, in 1864:

"At present the prerogative of mercy was vested in the Crown, and administered under the advice of the Secretary of State. In the exercise of that prerogative the Secretary of State was called upon to pay regard to the moral aspect of the case, as contrasted with the legal. He had to deal with the representations made to him with respect to undue influence having been allowed to particular facts—that some particular facts had been withheld—that fresh evidence had been discovered, and that, in short, there had been a failure of justice. As matters at present stood, the Secretary of State was in the position of a court of criminal appeal."

I know that some high authorities have objected to the words "Court of Appeal" being used when speaking of the jurisdiction of the Home Secretary, because the Home Secretary can order no new trial; but it is admitted all round, by all those who are more familiar with the matter, that, if not in name, the jurisdiction of the Home Secretary is virtually a court of review. Sir S. H. Walpole, several times Secretary of State, and who was quoted by the Minister of Justice, said before the Capital Punishment Commission that the practice of the Home Office was:

"To examine the memorial which was sent with reference to the case; to consult the judge who had tried the case; to have a report from the judge of the evidence; to lay before the judge any new facts or any facts which had been brought under the notice of the Secretary of State, and to request from the judge a report as to his opinion upon that new evidence or upon the matter. Upon all these materials being brought before the Secretary of State, he was then in a position, not in the least degree to re-hear the case, but simply to advise the Crown whether there were any circumstances which would justify the exercise of mercy, either in an absolute or a qualified sense—that is to say, either pardon or commutation.

"Q. When you say that it is not the practice of the Secretary of State to re-hear a case, does not the Secretary of State go into the evidence?—A. Every atom of it. The Secretary assumes that, the trial having been conducted before a competent tribunal (that is a tribunal constituted according to British principle), a right conclusion has been arrived at, unless it can be pointed to him that there is something upon which that tribunal has erred. But in the majority of cases even that point does not arise, because in the majority of cases the question submitted to the Secretary of State is whether there are not certain circumstances which have not been sufficiently brought before the jury which palliate the matter considerably, and which ought to induce the Secretary of State to recommend to the Crown an alteration or mitigation of the sentence.

"Q. And do you remember," continued the Commission to Sir S. H. Walpole, "that you there authorised an intelligent person upon the

spot to have the distances measured, to show whether they were in conformity with the evidence which was impugned upon that ground ?"—A. Certainly I did.

Sir S. H. Walpole continues his evidence :

"Dr. Lushington.—Q. But sometimes it operates as a court of appeal ; take Smethurst's case ?—A. It may operate as a court of appeal.

"Dr. Lushington.—Q. In a few cases where the question is one of guilt or innocence, it must act as a court of appeal ?—A. Yes ; not judicially, but of necessity.

Q. It must advise the Crown whether the case is sufficiently clear to justify the sentence being carried out ?—A. Quite so. * * *

Mr. Neate —Q. In your experience is it not very unusual for the Home Secretary to act at variance with the recommendation of the judge who tried the case ?—A. I do not think it is usual to do so in one sense, because I really believe, from my experience at the Home Office, that there is no necessity to differ from the judge who tried the case. Now and then there is such a necessity, and then the Secretary of State does take upon himself the responsibilty of differing.

Q. There is no settled rule at the Home Office that you will not act at variance with the recommendation of the judge after you have put the case before him ?—A. Certainly not.

"The Duke of Richmond.—Q. The judgment of the Secretary of State is entirely unfettered ?—A. Absolutely unfettered."

Sir George Grey, who was Secretary of State at that time, in 1864, was also examined before the same commission, and he said :

"I see that there is an impression, from what is written upon this matter, that the duty of the Secretary of State is to sit as a court of review, and to re-try cases and set aside verdicts. The cases of that kind are extremely few. There was Smethurst's case, which was not decided by me. There the facts of the trial were re-opened ; and one case occurred certainly to myself, which was a case of medical evidence, in which I had a great deal of communication with the judge. I did not think it altogether satisfactory, and I think that the judge was of the same opinion."

Since 1864 the practice of the Home Office has not become more rigid. In fact, if we judge from the statement of Sir William Harcourt, quoted by my friend the honorable member for Rouville (Mr. Gigault) in his very able speech to the House, it has become still more liberal and indulgent, following, no doubt, the influence of the age, which is more and more against capital punishment :

"In the practice of the Home Office, where the jury recommended to mercy the capital sentence was never executed. * * * There was the case of difficulty, however, where the jury recommended mercy and the judge did not second the recommendation, and in that case it remained for the Secretary of State to form his own judgment on the subject."

Speaking of the jurisdiction of the Home Office, when having to deal with a case just like the present one—a case of insanity—Sir William Harcourt says :

"There were cases in his experience where the evidence of insanity was not brought before the judge and the jury. * * * The Secretary of State had power to send medical men of experience and examine into the condition of the prisoner, and when these medical men reported, as they had done occasionally, that they did not regard the prisoner as responsible for his actions, either at the time of the commission of the offence or subsequently, the capital sentence was not carried out."

And Sir R. Assheton Cross, also once a Secretary of State, said on the same occasion, while discussing, in 1881, the Capital Punishment Abolition Bill:

"The right hon. and learned gentleman (Sir Wm. Harcourt), in his (Sir R. Assheton Cross's) opinion, most correctly stated what were the true functions of a Secretary of State in this matter."

Such were the duties of the Government under the Canadian Statute concerning the North-West, or at common law, as dispensators of the prerogative of mercy. Have they complied with these regulations? The first mistake I notice is the misapprehension they have made of their duty. I was surprised yesterday to hear it stated by the hon. Minister of Justice, who is certainly an able lawyer, that in dealing with this case the Government had no power to go beyond the verdict. Then what was the good of that Canadian Statute which says that the execution of a man sentenced to death shall not take place without an order of the Executive? Then, Mr. Speaker, what is the meaning of all the rules laid down by the Home Office, which say that the Crown shall examine into a case like this, regarding the insanity of the prisoner, either at the time of the commission of the offence or subsequently? It is the duty of the Executive to examine every particle of the evidence, to weigh it, and even to afford a chance to bring fresh evidence in order that there may be no miscarriage of justice. I blame the Government for not having complied with these rules. I blame the Government, in the first place, for having no report from the judge. I have read all the proceedings in this case, and have looked in vain for a report of the judge to see whether he was in a position to agree with the jury, in order that mercy might have been exercised by the Government; and I am surprised the Government has ordered the execution of the man without asking whether the judge who presided at the trial agreed with the jury. I blame the Government for having ordered the execution of Louis Riel because fresh evidence was adduced, the evidence of the three medical men, after sentence had been pronounced, and had not been referred to Judge Richardson for his report thereon, contrary to the practice prevailing in the Home Office in England. It was the duty of the Government to ask the opinion of Judge Richardson upon the value

of this fresh evidence, to see whether, in view of it, he was in a position to recommend the prisoner to mercy. Mr. Speaker, we find another ground for clemency in the undue influence which was allowed to prevail during the trial in some particular facts. All the witnesses who were examined on the part of the Crown, or a great many of them, attributed the insanity plea to a purpose. They stated that Riel was not really insane, but that he was feigning and simulating insanity for the purpose of succeeding in his rebellion. This opinion, which was expressed by so many witnesses, was due to the great influence which prevailed in that portion of the country against Louis Riel; the witnesses had no reason to suppose that the insanity plea was only put up by counsel, and that the prisoner was feigning insanity for a purpose. When we consider that this trial took place under military guard, to protect the prisoner against public indignation, we can easily imagine the great undue influence that was allowed to prevail against the accused; when we examine the petitions which were sent to the Government, asking for the execution of Louis Riel, we are surprised to see that not a single petition came from the whole Dominion except from Regina, where the man was being tried and convicted, and another from Moosomin, a short distance away—all coming from the very district whence the jurors were taken, where the judge was sitting, and where, within a short distance from the place, even the judges in appeal were sitting. I also blame the Government for not having exercised clemency, because the judge refused to allow some particular facts to be proved. I do not agree with the leader of the Opposition that the State papers which were asked for had no bearing upon the case, because they could not justify rebellion. I do not pretend that these papers would justify rebellion; I know they would not justify rebellion, but at the same time I think they might have gone a long way with the court in mitigating the sentence, if not in altering it. I blame the Government for the execution, because they were aware that important witnesses could be summoned, but that they did not summon them. The name of Dr. Howard has been mentioned during this debate. I am sorry, indeed, that the hon. member for Montreal Centre (Mr. Curran), sitting here, as he does, as a judge, went to a man, whom he considered to be an important witness, and asked him his opinion on the case. He knows very well that is not the way cases are conducted by judges, or even by lawyers. I would have been very glad indeed if the Government, in issuing the medical commission, had given instructions to examine Dr. Howard, to have him cross-ex-

amined, and also to examine Dr. Vallée, of the Beauport Lunatic Asylum, who had Louis Riel under his treatment for two years, and who was unable to attend the trial because he was sick at the time. Sir, I blame the Government for not having heard those witnesses who were specially aware of the facts concerning the plea of insanity. There has been a diversity of opinion expressed on the floor of this House as to the value of the evidence adduced during the trial concerning the mental condition of the prisoner. I do not intend wearying the House by making quotations from that evidence. Every portion of it has already been quoted, pro and con, and is familiar to all the members. But, Mr. Speaker, the way I read the evidence I am convinced that the verdict was against that evidence, so far as the plea of insanity was concerned. It is said that the Court of Appeals in Manitoba was more competent to express an opinion as to whether that verdict was well founded or not than is this House. It is even said we have no jurisdiction in the matter; but I believe I have disposed of the latter point, that it is our duty to examine whether the verdict was supported by the evidence. Let us see whether there is any expression of opinion, either from the jury, the judge, or from the Court of Appeals of Manitoba, or from the Privy Council in England, so far as the plea of insanity is concerned. It is true the jury brought in a verdict of guilty; it is true we should take that verdict as it is—that it means that Riel was not so insane as to escape conviction. But the jury undoubtedly considered the question of insanity when they recommended him to mercy. Are we to be told that the jury really meant nothing by it? What were the pleas of the defence? They were: first, want of jurisdiction by the court; and second, the plea of insanity. I do not agree with the leader of the Opposition that a juror should explain the intentions of the jury. That is not the way a verdict should be attacked. I am more inclined to believe that the recommendation of the jury to mercy was based on what was before the court. What was before the court? Were the grievances of the half-breeds brought to the notice of the jurors? Not at all. Evidence on that point was not allowed by the judge. The only point brought to the notice of the jury was the plea of insanity, and whatever may have been the views of that particular juror who wrote to the leader of the Opposition, my conviction is that the recommendation to mercy can have no other legal meaning except that the jury had doubts as to the sanity of Riel, not strong enough to acquit him, but strong enough to cause

them to recommend him to mercy and save him from the gallows. What has been the position of Judge Richardson? We know the feeling of the jury, that it was a feeling of mercy. Did the judge refuse to agree with the jury? I have already mentioned that the Government did not even trouble themselves by asking his opinion. The Statute says he shall forward the evidence with a report thereon. There is no such report. The practice of the Home Office of England is that the judge shall be consulted upon the evidence. He should have been consulted in this case as to whether he agreed with the position of the jury in their recommendation to mercy. He was not consulted, and it cannot be said to-day that the judge was against the opinion of the jury. I will not say anything as to the Privy Council because they were not called on to examine this question—was the Court of Appeals in Manitoba called upon to give a decision as to the propriety of exercising mercy? That court was called on to express an opinion as to whether a correct verdict had been found; but certainly they never expressed any opinion that there was not sufficient ground for the Government to exercise the prerogative of clemency. I hope the House will pardon me if I offer one or two more remarks upon this plea of insanity, which I believe is the great question in the case, in fact it is the only point at issue, so far as I am concerned. Was Riel really insane? As I have said, I do not intend to trouble the House by reading extracts from the evidence; but I find in that evidence an important fact, which is most important in helping us to decide the case. I find the fact established beyond doubt that Riel was confined in a lunatic asylum in the Province of Quebec by order of the Quebec Government. That he was insane at one time, there is no doubt; he was suffering from monomania on religion and politics. This fact is established beyond a shadow of doubt. He was in the Beauport Lunatic Asylum for nearly nineteen months, and was there when no reason existed for simulating insanity. What could he expect to gain by making such a pretension? He could have lived in liberty if he were sane. I am going to read from medical as well as legal authorities bearing on this case. Dr. Winslow says:

"In cases of murder, when insanity is urged as an extenuating plea, it is necessary to enquire whether the person has on any previous period of his life manifested any signs of mental derangement. If such be the fact, it ought to constitute a *primâ facie* case in his favor."

Taylor on Evidence, vol. 1, p. 204, says:

"If any derangement or imbecility is proved or admitted at any particular period, it is presumed to continue, till disproved."

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

expect that General Middleton, just coming from a victory, was going to say that he had been fighting a fool? Certainly not; he was not going to hurt his own reputation in that way. You may judge of the character of the evidence by the additional fact that Captain Young and another captain in the army that went to fight Riel and his followers, were among the witnesses. By this you may judge of the character of the evidence that the Crown brought forward in order to destroy the legal presumption that when a man is once a lunatic, once crazy, once a maniac, he is always a lunatic, always crazy, always a maniac, in the eyes of the law. Under these circumstances, I consider it was the duty of the Government to appoint a medical commission. This duty was so clear—I am not going to refer to private conversations—that we were led to understand by members of the Cabinet themselves that a medical commission would be appointed, and, in fact, the promise was made publicly and reported in all the ministerial organs in our Province. Under the circumstances, the least we could expect in view of—to use a very mild expression—the doubts which the evidence left on the public mind, as regards Riel's mental state, in face of the numerous precedents in England, it was the duty of the Government to appoint not a few medical men to examine the mental state of Riel since the sentence had been passed according to the rules stated by Blackstone, but to examine his state of mind in accordance with the practice of the Home Office. Blackstone, quoted by the Minister of Justice the other evening, did not mention a case where the Executive of the day had to consider whether there had been a miscarriage of justice, where the insanity of the prisoner before the sentence is at stake, but several Home Secretaries of State have provided for that case, and they consider it to be their duty in such case to appoint medical men of experience to examine the mental state of the prisoner not only since the sentence, but also at the time of the commission of the offence. The Government was strengthened in that position, not only as a sense of duty, but also by the numerous petitions which had been sent from the Province of Quebec and other parts of the Dominion asking for a medical commission. Sir, that commission was never appointed; and I blame the Government for not having done so, for not having fulfilled the promises publicly made that one would be appointed. What did they appoint instead? They appointed three medical men to ascertain the mental state of Louis Riel since the sentence. The jurisdiction of these men should have been larger; and, defective as these men were as far as their competency is concerned, they

should not have been limited to an examination of the mental state of Louis Riel only since the sentence was pronounced. The first objection I have to the appointment of these men was, that they were servants of the Government. I feel certain that if these men had been independent of the Government, caring more for their reputation as practitioners than as servants of the Government, the original telegrams which have disappeared would never have disappeared. I also object that some members of that commission at least were incompetent. Dr. Lavell may have had some experience, but there is not a shadow of doubt—it was never pretended that Drs. Jukes and Valade had any. I also complain that this so-called commission—because they are not properly called a commission—were not allowed sufficient time to enable them to pronounce an opinion on the case. The eminent physician, Esquirol, says:

"There are some insane persons so reasonable that it is necessary to live with them and to follow them in every action of their life before pronouncing them mad."

Dr. Hood says:

"How impossible then is it for casual visitors in passing through the wards of a lunatic asylum, to form a correct judgment of the real mental state of any of the inmates around them."

Beck, in his Medical Jurisprudence, says:

"It is his (physician's) duty, and should be his privilege, to spend several days in the examination of a lunatic before he pronounces a decided opinion. If this be allowed to him, and also if he be enabled to obtain a complete history of the antecedent circumstances, much may be effected towards forming a correct opinion."

This is also the opinion of Mr. Justice Johnson in the case that I have alluded to, and I believe that no authority can be quoted in support of the contrary view. Take, for instance, the celebrated case of John Trith, decided in 1790. He was charged with attempting an assault on His Majesty the King. His friends pretended that he was insane. He was brought before all the Ministers of State, and was examined and cross-examined by the Attorney-General. There were so many doubts as to his mental state that he was sent to Newgate, and there remained under the immediate surveillance of two eminent medical men—not for two or three days, nor for one month or several months, but for two years, and it was only at the end of those two years that those eminent medical men were able to come before a court of justice where the man was tried for high treason, and to swear that, knowing the habits of the man so well as they did from such long observation, they had no doubt he was insane, and the result was he was acquitted of the crime and sent to a place of confinement. That is the way that the laws relating to personal liberty and the pro-

tection of life are understood in the old country. Is it only on this continent of America, in this Dominion of Canada, where our institutions are supposed to be modelled after the institutions of the Mother Country, that we may see the example of a man alleged by his friends to be insane, having his fate decided in a very few days—in fact, in a very few hours—and being sent to the gallows? In this Parliament, where there is a good deal of legal talent and as much impartiality as you will find in any court, we find the opinion freely expressed by hon. gentlemen of different races and religions, that that man was insane. Sir, it is a disgrace to this Government and to this country that an injustice of that kind could be even suspected. Another objection I have with regard to the appointment of those medical men, is, that their appointment and all their proceedings were kept secret. The reason given is that it was the only way to arrive at the truth, as Riel would be more clever than the doctors, and might make them find him insane although he would be sane. This contention is altogether unfounded. Dr. Winslow—and his remarks apply to the witnesses who contended that Riel's insanity was simulated—says:

"Is the insanity simulated? Persons conversant with the peculiarities of disordered minds, who have been in the habit of observing the manner of the insane, will have but little difficulty in detecting real from feigned derangement. Georget maintains that it is impossible for a person who has not made the insane a subject of study, to simulate madness so as to deceive a physician well acquainted with the disease."

Now, the proceeding of the medical commission is contrary to the experience of our laws. A year or two ago we had a celebrated case of insanity in Montreal. I refer to the case of Mrs. Lynam. The judge, after having examined many witnesses, had doubts as to whether she was sane or insane, and he referred the case to a man of experience, Dr. Vallée, one of the superintendents of the Beauport Lunatic Asylum. How did Dr. Vallée proceed? Witnesses were heard; he examined the evidence that had been adduced; counsel, I believe, were also heard; the proceedings were open, because, as Dr. Winslow and all the great medical authorities say, it is impossible for a man to deceive experienced medical men in this matter; and on a certain day Dr. Vallée came before the court with his report, which was immediately read. It was not kept back for some weeks by the parties interested, but it was at once opened and delivered to the public in order that the public mind might be satisfied whether justice had been done in the case or not. What did we see in the case of Riel? Not only the proceedings of the medical men were kept secret, but even the report of

that so-called commission was kept secret for a long time after by the Government. If the report of the medical men had been in favor of the Government, as is contended to-day, why was it not delivered to the public, in order that the public might be satisfied that justice had been done in this case? I cannot conclude my remarks without offering my view of what is insanity. There is a great deal of diversity of opinion, it is said, on this subject between lawyers and doctors. A long time ago Lord Mansfield, in the celebrated Bellingham case, laid down the law to be that, no matter how a man may be suffering under delusion, he should not escape responsibility unless it could be proved that he could not tell the difference between right and wrong. The doctors went just as far in the other direction. They held that if a man was suffering under mania, no matter whether the matter complained of had any connection with the mania or not, he was not responsible. Between these two extreme opinions public opinion accepted the principle that a man suffering from a disease known as monomania, or is deluded on one or two subjects, is not guilty, if any connection can be shown between the crime complained of and the mania under which he suffers. It will not, perhaps, be uninteresting to show how far the medical profession goes in this respect. I will simply read a resolution unanimously adopted at a meeting of the Association of Medical Officers of Asylums for the Insane in the year 1865. It was as follows:—

"That so much of the legal test of the mental condition of an alleged criminal lunatic has rendered him a responsible agent because he knows the difference between right and wrong, is inconsistent with the fact well known to every member of this meeting, that the power of distinguishing between right and wrong exists frequently among those who are undoubtedly insane, and is often associated with dangers and uncontrollable delusion."

The case of MacNaghten, which was the occasion of the expression of opinion from the English judges in 1843, will not support the contention of this Government that it is sufficient for the criminal to know the difference between right and wrong. Their Lordships, although giving no opinion upon any case before them, but upon abstract questions of law, always a dangerous thing to do, stated that a man suffering from monomania to be held irresponsible, must not know the nature of his act, or if he does, must not know that that act is wrong. Such was the opinion of the English judges in the MacNaghten case, but even their opinion in that case has not been considered as settling the question in England. Chief Justice Cockburn, in a letter, sent in the year 1879, on the Criminal Code (Indictable Offences) Bill, said:

"The language of the judges in the House of Lords has no doubt been repeated as of general application, but erroneously. Their answers had reference to the specific questions put them by the House."

And immediately after, he goes on to say:

"The point has not come under judicial decision in a case which really raised the question."

This was said in 1879 The answers given by two learned Judges of the Exchequer Court in England, before the Capital Punishment Commission, in 1864, shows that really the lawyers and doctors are not so very far apart on this question of insanity. Lord Cranworth, a long time Baron of the Exchequer Court, answered:

"Is there not a variation between the medical opinions and the legal definitions upon the subject? I am not able to answer that question; very likely it is so."

Take the opinion of Baron Bramwell, another Baron of the Exchequer Court, on the same question, which is to be found on pages 23 and 24 of the report of that commission:

"Mr Neate.—I observe that in your last letter to the commissioners, as the result of your experience, you use these words: 'Six prisoners in six cases were acquitted on the ground of insanity, and rightly. I do not mean that the prisoners were insane as the law requires.' I observe that you say that they were rightly acquitted, although they hardly came within the limits of legal insanity. Have you alterations to suggest in the legal definition of insanity?—A. No; I think that the legal definition is perfectly right.

"Q. But you say that they were rightly acquitted, although their insanity was not to the extent which the law requires?—A. I will explain that observation, which is, no doubt, an apparent contradiction. What I mean is, that according to the practice of juries, which has met with the sanction of judges, or which has been without any reprobation from the judges, and which is in accordance with public feeling, these prisoners were rightly acquitted."

So much for the doctrine of insanity, and I believe that the law upon that point was rightly laid down by Lord Erskine as early as the trial of James Hadfield for firing at George the Third. He said:

"To deliver a lunatic from responsibility to criminal justice, the relation between the disease and the act should be apparent. When the connection is doubtful, the judgment should certainly be most indulgent, from the great difficulty of diving into the secret sources of a disordered mind."

This is what the Government should have done, and what they have not done, for there is a doubt, and there is more than a doubt—there is, in my mind, ample proof—that this man was insane; but if some hon. members are not willing to go that far, I claim there is more than a legitimate doubt in their minds that the man was insane, and the proposition of Lord Erskine, as to the difficulty of diving into the secret sources of a disordered mind, should be acted upon. I will not trouble the House with citing more authorities.

An hon. MEMBER. Hear, hear.

Mr. GIROUARD. I hear an hon. gentleman say "hear, hear." I think he deserves to be afflicted with a six hours' speech, but I have too much consideration for the rest of the House, though I may not have much for him, to indulge in a speech of that length. I am not going to trouble the House with reading the report of the medical men, Dr. Lavell, Dr. Valade and Dr. Jukes. In my mind their conclusions are that this man was insane. Drs. Lavell and Valade said he was suffering from monomania on religion and politics. Does it require long comment to show there was connection between the rebellion and the monomania on politics and religion. I look upon another portion of the conclusion of these gentlemen as mere sophistry, namely, that with the exception of these two points, monomania on religion and politics, this man knew the difference between right and wrong. It is not within the province of medical men to testify to that fact. Their province is only to state the nature of the disease under which the man was suffering, and let the jurors, court or Government draw from that statement whether the prisoner knew the difference between right and wrong. Dr. Haslam, on that point, says:

"It is not the province of the medical witness to pronounce an opinion as to the prisoner's capability of distinguishing right from wrong. It is the duty of the medical man, when called upon to give evidence in a court of law, to state whether he considers insanity to be present in any given case, not to acertain the quantity of reason the person imputed to be insane, may or may not possess. * * * It is sufficient," continues Dr. Haslam, "for the medical practitioner to know that the person's mind is deranged, and that such a state of insanity will be sufficient to account for the irregularity of his actions."

I will conclude these remarks, in order to give more time to other hon. gentlemen who wish to explain their position. I heard, the other day, the Minister of the Interior say that it was a matter of very little importance whether petitions were sent from the country or not to the Government, on the question of the proper exercise of the prerogative of mercy. I was never so much surprised as to hear that the Government are not in duty bound to consider such petitions. In most cases they are the only mode that can be adopted to show the Government what public feeling is on a particular case, in order to induce the Government to exercise the prerogative of mercy. Was the public feeling which prevailed throughout the whole Dominion with regard to the fate of this unfortunate man in favor of his execution? It was thought at one time that strong influence was brought from an influential body of men asking for Riel's blood. When the papers were brought down, we found only three petitions from the whole Dominion calling for his execution: one from the Orangemen of the

western district of Toronto, and two from the citizens of the Dominion living in Regina and Moosomin. No one else asked for the life of this man; but, on the other hand, we find, at the last page of the report, that there were 75 to 100 petitions asking that his life should be spared, if he were not altogether pardoned. As far as I am concerned, my constituents sent petitions to the Government, not asking for pardon, because, like myself, they were not in favor of giving liberty to this dangerous lunatic, but asking for commutation. Where was the clamor asking that this man should be executed? It is not to be found anywhere, except, perhaps, in the articles of the *Globe* and the Grits of Ontario, but since when has it happened that the Government of this country are to be dictated to by the *Globe* and the Grits of Ontario? Why did they not take public opinion as represented by the *Mail* and by their own friends, and by the Conservatives of Quebec, as well as the Liberals of that Province? Why did they take the view of the Grit party? I cannot understand it. I say that, in view of the exhibition of public opinion to-day in this House, when we see that an important portion, the Grit party at least, has changed its mind, when we see that the *Globe* shows that it was not serious in making representations asking for the blood of that man, it is perfectly clear that the whole public opinion of the Dominion was in favor of the commutation of that sentence, and I blame the Government for not having understood that public opinion. Now, before taking my seat, I wish to refer to a statement made at the opening of the Session by the right hon. the Premier of this Dominion. He stated that, when he was banquetted by the St. George's Club in London, he was forced to testify in favor of the loyalty of the French Canadians. I am sure that more than one of us last December was surprised to see that the Premier was placed in that inexplicable position. As to a man having a language different from the language of the English people, having a religion different from the majority of the English people, having a veneration for institutions which may not be the institutions of Great Britain—are the people of England not aware that such a man can be a loyal man? Look at France; look at Alsace and Lorraine—German Lorraine; has France ever found within its dominions men more loyal, although they were Germans, although they spoke the German language, and although most of them professed a religion different from that of the French people, than the inhabitants of those Provinces? Look at Great Britain herself, look at the French population of the Islands of the British Channel; are they not faith-

ful to their language? Do they not love their language, their laws, and their institutions; and has Great Britain any more loyal subjects than the French inhabitants of those islands? Taking the Scotch, the Irish, and the English people, do we not see different nationalities and sometimes different local laws; and who can pretend that these different nationalities are not devoted to the British Empire and to the British Crown? Are we going to be told that, in England, they do not know the history of the French Canadians? That might be said, perhaps, somewhere on the continent, but it cannot be said in Great Britain. They know there as well as we know in this country that in 1776 the French Canadians of that day had to fight General Lafayette and officers under him who had been in the Canadian army a few years before. These French Canadians fought for the glorious British flag, which was then deserted by many of England's own sons. Look at 1812. Was it not a French Canadian—Colonel De Salaberry—and his three hundred braves who repulsed the invasion of the Americans at Chateauguay? Look even at 1837, which, perhaps, will be quoted to us as a sample of disloyalty. We were not then disloyal to the Crown or to the British Empire. It was only an uprising for the redress of grievances and against a tyrannical Canadian Government. We were then fighting for the privileges of responsible government, and without that fighting I doubt very much whether the privileges of responsible government would have been given so soon to the Canadian people. Look, later on, to the year 1865 or 1866, when we were threatened with a Fenian invasion. Were the French Canadians behind their fellow-countrymen of other origins. No, they were to the front; and I recollect well my hon. friend from Montreal East (Mr. Coursol) taking the musket in his hand in defence of the Canadian flag and British institutions. Look, later on yet, to 1869 and 1870. There was then a rebellion in the North-West, which has been brought under the notice of hon. members so often during this debate. Then, as in 1837, the French half-breeds were fighting for liberty, they were fighting for the privileges of responsible government, and against the tyranny of the Canadian Government. I said so last year during that six hours' speech, and the facts cannot be controverted, and they were not contradicted during that debate, that when the rebellion took place the Government had not a particle of title to the lands in the North-West. These men, in the absence of any local authority, took the law in their own hands in order to secure for their people political liberty, and we have to-day the testi-

mony of even the enemies of the half-breeds of that time —the testimony of a man like Mr. McArthur, an officer of the Hudson Bay Company, who was himself a prisoner of Louis Riel in those days, in a statement which he made at a public lecture in Winnipeg, that to the firmness of the half-breeds in 1870 the people of Manitoba were indebted for the privileges of responsible government. And, last year, did our countrymen remain behind? Notwithstanding anything which may have been said, I do not think it can be pretended that our men did not go to the North-West for the purpose of defending the Dominion flag and the Dominion authority; and if all the French Canadians did not see fire, there were at least two companies who went in pursuit of Big Bear under Colonel Strange, and Colonel Strange was the first man to admit that he never wished to see better soldiers. Now, Mr. Speaker, in view of all these facts we believe that Sir E. P. Taché was right when he said that the last shot fired for British connection on the American continent would be fired by a French Canadian. Why is it, then, that the hon. Premier, in discussing Canadian affairs at a banquet given by the St. George's Club, had to defend French Canadians against the imputations which were then made upon their loyalty? It was in consequence of the utterances of the organ of the Conservative party in the Province of Ontario, the Toronto *Mail*, who should have known the French people better. That leading paper was not satisfied with denouncing us as bad party men—I would have allowed him to do so in face, perhaps, of some provocation which the *Mail* received from papers in the Province of Quebec—but when the *Mail* branded us as rebels, and threatened us with a second conquest, saying that at that time there would be no Treaty of Paris, I say then there should have been a protest, not only from the hon. Premier, but from every member of his Cabinet, to show that the *Mail* was not expressing the opinion of the Conservative party of the Province of Ontario. Why threaten us with no second Treaty of Paris? I ask the English minority of the Province of Quebec if they ever suffered from any bad treatment or injustice at our hands? Have they not received fair play from the French Canadians? If there is one who can say so, I would like him to rise and say so. No, Mr. Speaker; we have respected the feelings of the English minority of the Province of Quebec —not only their feelings but their prejudices; and, Sir, occupying in this Dominion the position that the English minority occupy in the Province of Quebec, we expect, we have a right to expect, that they will respect our feelings and even our prejudices.

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