APPENDIX.

EXHIBIT No. 1.

Batoche.

If you massacre our families, we are going to massacre the indian agent and other prisoners.

LOUIS "DAVID" RIEL,
Exovede.

Per J. W. Astley, bearer, May 12th 1885.

(Endorsement on Exhibit No. 1)

May 12th 1885.

Mr. Riel,—I am anxious to avoid killing women and children and have done my best to avoid doing so. Put your women and children in one place and let us know where it is and no shot shall be fired on them. I trust to your honor not to put men with them.

FRED. MIDDLETON.
Com. N. W. Field forces.

EXHIBIT No. 2.

Batoche.

Sir,—If you massacre our families, we will begin by Indian Lash and other prisoners.

LOUIS "DAVID" RIEL,
Exovede.

F. E. Jackson, bearer, 12th May 1885.

EXHIBIT No. 3.

Batoche, 12th May 1885.

Major General Middleton,

General,—Your prompt answer to my note shows that I was right in mentioning to you the cause of humanity. We will gather our families in one place and as soon as it is done we will let you know.

I have the honor to be, General,
Your humble servant,

LOUIS "DAVID" RIEL.

EXHIBIT No. 4.

I do not like war and if you do not retreat and refuse an interview, the question remaining the same the prisoners.

EXHIBIT No. 5.

St. Antony, March 21st., 1885.

To Major Crozier,
Commandant of the police force at Carlton and Battleford.

Major,—The councillors of the provisional government of the Saskatchewan have the honor to communicate to you the following conditions of surrender; you will be required to give up completely the situation which the Canadian Government have placed you in, at Carlton and Battleford, together with all government properties.

In case of acceptance you and your men will be set free on your parole of honor to keep the peace. And those who will chose to leave the country will be furnished with teams and provisions to reach Qu'Appelle.

In case of non-acceptance, we intend to attack you when to morrow the Lord's day is over; and to commence without delay a war of extermination upon all those who have shown themselves hostile to our rights.

Messrs Charles and Maxime Lepine are the gentlemen with whom you will have to treat.

Major, we respect you. Let the cause of humanity be a consolation to you for the reverses which the governmental misconduct has brought upon you.

Louis David Riel,
Exovede.

Réné Parenteau, *Chairmen*,
Charles Nolin.
Gabriel Dumont.
Moïse Ouellette.
Albert Monkman.
Baptiste Boyer.
Donald Ross.
Amable Jobin.

Jean-Baptiste Parenteau.
Pierre Henry.
Albert Delorme.
Dam. Carrière.
Maxime Lépine.
Baptiste Boucher.
David Tourond.

Ph. Garnot, *Secretary*.

St. Antony, March 21st., 1885.

To Messrs Charles Nolin and Maxime Lépine

Gentlemen,—If Major Crozier acceeds to the conditions of surrender, let him use the following formula and no other; "Because I love my neighbour as myself for the sake of God, and to prevent bloodshed and principally the war of extermination which threatens the country, I agree to the above conditions of surrender."

If the Major writes this formula and signs it, inform him we will receive him and his men, monday.

Yours, Louis David Riel,
Exovede.

EXHIBIT No. 6.

A calamity has fallen upon the country yesterday. You are responsible for it before God and men.

Your men cannot claim that their intentions were peacible since they were bringing along cannons. And they fired many shots first.

God has pleased to grant us the victory ; and as our movement is to save our rights, our victory is good ; and we offer it to the Aimighty.

Major, we are Christians in war as in peace. We write to you in the name of God and of humanity to come and take away your dead whom we respect. Come and take them to-morrow before noon.

We inclose herein copy of a resolution adopted to day by the representatives of the French Half-breeds.

True copy.

PH. G.

EXHIBIT No. 7.

TO THE HALF-BREEDS OF LAKE QU'APPELLE.

(*The address is in French and the letter in English.*)

Dear relatives,—We have the pleasure to let you know that on the 26th of last month, God has given us a victory over the mounted police. Thirty Half-breeds and five Cree indians have met hundred and thirty policemen and volunteers. Thanks to God, we have defeated them. Yourselves, dear relatives, be courageous ; do what you can. If it is not done yet, take the stores, the provisions, the munitions, (Then follow two or three lines not intelligible.

EXHIBIT No. 8.

[Translation.]

God Almighty has always taken care of the Half-breeds. He has fed them for a long while in the wilderness. It was Divine Providence tbat increased the herds of buffaloes grazing on our prairies and the abundance which our forefathers have enjoyed, was as marvellous as the manna falling from heaven. But we have failed in gratefulness towards God our Almighty Father, and it is on account of that that we have fallen into the hands of a government whose sole aim was to plunder us. Oh, if we had understood what God was doing in our favor before Confederation, we would have adopted measures in consequence, and the Half-breeds in the North-West would have exacted the necessary conditions to secure for our children that freedom, that possession of the land which are indispensable to one's happiness. But fifteen years of suffering, of poverty and underhand and malicious persecution, have opened our eyes, and the sight of the abyss of demoralisation into which the Dominion plunges us deeper and deeper every day has, through the mercy of God, struck us with terror, and frightened us more of this hell where the mounted police and the Government are trying to drive us openly than we are of their fire arms, which after all can but destroy our bodies. In our alarm, we have heard from the bottom of our hearts a voice which said : "Justice commands you to take up arms." Dear relatives and friends, we advise you to be on your guard. Be ready to face all events. Take with you all the Indians, gather them from all sides. Seize all the munitions that you can, in every store wherever it is. Grumble, growl and threaten, raise the Indians. Proclaim that the police at Fort Pitt and Fort Bataille is powerless. We beg of God to open the route for us, and once we have entered it, we shall help you to take Fort Bataille and Fort Pitt. Trust in Jesus-Christ. Trust in and put yourselves under the keeping of the Holy Virgin.

Pray to St. Joseph for he is all powerful with God. Implore the powerful intercession of St. Jean-Baptiste, the glorious patron saint of the Canadians and of the Half-breeds. Make your peace with God. Obey his commandments. We ask Him to be amongst you and to make you succeed.

Try to communicate as soon as possible to the Half-breeds and Indians at Fort Pitt, the news we send you. And tell them to be on their guard, to be ready to face all events

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EXHIBIT No. 9.

TO THE HALF-BREEDS,
TO THE INDIANS,
TO THE HALF-BREEDS AND TO THE INDIANS AT FORT BATAILLE AND VICINITY

[Translation.]

Dear brethren and dear relatives,—Since we have written, important things have occurred. The police came to attack us. We met them and God has given us a victory. Thirty Half-breeds and five Indians stood the fight against 120 men and after 35 or 40 minutes, the latter ran away. Join us in blessing God for the success which He has had the charity to favor us with. Rise up, face the enemy and if you can, take Fort Bataille. Destroy it. Save all the goods and provisions and come and join us. You are in sufficient numbers to send us perhaps a detachment 40 or 50 strong. All that you do, do it for the sake of God, under the keeping of Jesus-Christ, the Holy Virgin, St-Joseph and St-Jean-Baptiste and be sure that Faith works wonders.

LOUIS DAVID RIEL, Exovede.

(in pencil) Signed by the members of the Council.

EXHIBIT No. 10.

TO MY BRETHREN THE ENGLISH AND FRENCH HALF-BREEDS OF LAKE QU'APPELLE AND VICINITY.

[Translation.]

Dear relatives and friends,—If you have not already heard of it we will tell you the motives which induce us to take up arms. You are aware that from time immemorial our forefathers have risked their lives to defend this country which was theirs and which is ours. The Ottawa government has taken possession of our native land. It's now fifteen years that they deny us our rights and that they offend God Almighty by heaping thousands of injuries upon us. The employees commit all kind of crimes. The members of the mounted police scandalize every one by their bad talk and their bad conduct. They are depraved so that our wives and daughters are no more in safety when living near them. They have'nt got the least respect for the rules of decency. Oh ! my brethren and friends, we are bound to trust in God always, but now that the measure is full, we have particular need to recommend ourselves to our Saviour. Perhaps you will look upon these things in the same light as we do. Our country is taken from us and then it is misgoverned so that if we let things go on, before long it will be impossible for us to be saved. The english Half-breeds of the Saskatchewan side with us openly. The Indians are coming and join us on all sides. Buy all the munition you can. Go and get some, if necessary, on the other side of the line. Be ready. Do not listen to the offers that the Ottawa government will try to submit to you. These offers are those of thieves. Don't sign any papers or petitions. Trust in God Almighty.

Saint-Antoine, March 23rd., 1885

[*Translation*].

To our relatives.—Thanks for the good news that you took the trouble to send us. Since you are willing to help us, may God bless you.

Justice commands to take up arms. And if you see the police passing by, attack them, destroy them. (And written across the first part of this letter in english "After wards notify the Wood Indians not to be taken.")

EXHIBIT No. 11

"I will not begin to work before twelve hours."

[*Translation*].

Our relatives, thanks for the good news that you took the trouble to send us. Since you are willing to help us may God bless you. And if you see the police passing by, attack them and take away their arms. Justice commands to take up arms. Afterwards notify the Wood Indians not to be taken unawares, but rather to be on their guard, let them take munitions from all the stores at Nut Lake, Fish Lake.

M. F. X. Batoche,—The french Half-breeds have taken up arms in a body. None of our people are against it. Tell our relatives, the Indians, to be prepared to come and help us if necessary. Take all the company's munitions.

EXHIBIT No. 12.

[*Translation*].

Depend on God and on the circumstances that Providence actually brings forth in the Saskatchewan. We shall not forget you. If promises are held forth to you, say that the time for promises is past. We have reached a pass that compels us to require proofs for every thing. Pray, be good, obey God's commandments and nothing will fail you.

EXHIBIT No. 13.

Dear relatives, We thank you for the good news that you took the trouble to send us. Since you are willing to help us, may God bless you in all what is to be done for our common salvation.

Justice commands to take up arms. And if you see the police passing by, stop it and take away their arms.

Afterwards notify the Wood Indians that they might be surprised : let them be ready to all events, in being calm and courageous to take all the powder, the shot, the lead the posts and the cartridges from the Hudson's Bay stores, at Nut Lake and Fishing Lake. Do not kill anybody. Do not molest nor illtreat anybody. Fear not, but take away the arms.

LOUIS "DAVID" RIEL.

EXHIBIT No. 14.

Gentlemen,—The councillors of the Half breeds, now under arms at St. Anthony, have received your message of the 22nd of March, 1885.

They thank you for the sympathy with which you honor them even in this crisis, and of which you have given ample proof before.

Situated as you are, it is difficult for you to approve (immediately) of our bold but just uprising, and you have been wise in your course.

Canada (Ottawa) has followed with us neither the principles of right nor constitutional methods of government. They have been arbitrary in their doings. They have usurped the title of the aboriginal Half-breeds to the soil. And they dispose of it at conditions opposed to honesty. Their administration of our lands, is which are already weighing altogether false, and which are already weighing very hard on all classes of the North-West people. They deprive their own immigrants of their franchises, of their liberties, not only political but even civil, and as they respect no right, we are justified before God and men to arm ourselves, to try and defend our existence, rather to see it crushed.

As to the Indians, you know, gentlemen, that the Half-breeds have great influence over them. If the bad management of Indians affairs by the Canadian Government has been fifteen years without resulting in an outbreak, it is due only to the Half-breeds who have up to this time persuaded to keep quiet. But now that the Indians, now that even ourselves are compelled to resort to arms, how can we tell them to keep quiet? We are sure that if the English and French Half-breeds unite well in this time of crisis not only can we control the Indians but we will also have their weight on our side in the balance.

Gentlemen, please do not remain neutral. For the love of God, help us to save the Saskatchewan. We sent to-day a number of men with Mr. Monkman to help and support (under as it is just) the cause of the aboriginal Half-breeds. Public necessity means no offence. Let us join willingly. The aboriginal Half-breeds will understand that if we do so much for their interest, we are entitled to their most hearty response.

You have acted admirable in sending copy of your resolutions to Carlton as well as to St. Anthony. We consider that we have only two ennemies in.

The french Half-breeds believe that they are only two enemies, Coshen and Carlton. Dear brethren in Jesus-Christ let us avoid the mistakes of the past.

We consider it an admirable act of, it has been an admirable act of prudence that you should have sent copies of your resolutions to the police in Carlton and to the men of St. Anthony.

We, dear brothers in Jesus-Christ, let us avoid the mistakes of the past, let us work for us and our children, as true christians.

LOUIS "DAVID" RIEL.
Exovede.

If we are well united the police will surrender, and come out of Carlton as the hen's heat causes the chicken to come out of the shell. A strong union between the French and English Half-breeds is the only guarantee that there will be no blood shed.

EXHIBIT No. 15.

Resolved first that. When England gave that country to the H. B. Co. two hundred years ago, the North-West belonged to France as history shows it.

And when the treaty of Paris ceded Canada to England no mention of any kind was made of the North-West.

As the American English Colonies helped England to conquer Canada they ought to have a share of conquest and that share ought to be the North West since commercially and politically the United States Government have done more for the North-West than ever England did.

Resolved first, that our union is and always will be most respectuous towards the American Governement, their policy, their interest, and towards the territorial government of Montana as well.

Second. That our union will carefully avoid causing any difficulty whatever to the United States, and will not conflict in any way with the constitution and laws of the government, it is doubtful whether England really owns the North-West because the first act of government that England ever accomplished over that North-West was to give it as a prey to the sordid monopoly of the Hudson Bay Company (200) two hundred years ago.

Her second act of government of any importance over that country, was to give it in 1870 as a pray to the Canadians.

Our union is and always will be most respectful towards the American.

Annexation.

Against England and Rome.

Manitoba. French Canadians.

EXHIBIT No. 16

The French Half-breed members of the provisional government of the Saskatchewan, have seperated from Rome and the great mass of the people have done the same.

If our priests were willing to help us and up to this time our priests have shown themselves unwilling to leave Rome. They wish to govern us in a manner opposed to our interest and they wish to continue and govern us according to the dictates of Leo the 13th.

Dear brothers in Jesus-Christ, for the sake of God, come and help us so that that enterprise against Rome may be a success, and in return we will do all our power to secure our political rights.

EXHIBIT No. 17.

Dear relatives,—We have the pleasure to let you know that, on the 26th of last month, God has given us a victory over the mounted police.

Thirty-five Half-breeds and some five or six Cree Indians have met hundred and twenty policemen and volunteers.

Thanks to God we have defeated them. Yourselves dear relatives, be courageous. Do what you can? If it is not done, take the stores, the provisions and the munitions. And without delay come this way as many as it is possible. Send us news.

Louis "David" Riel,
Exovede.

Moise Ouellette.
J. Baptiste Boucher.
Donald Ross.
Baptiste Parenteau.
Maxime Lépine.
Charles Trottier.

Damase Carrière.
Emmanuel Champagne.
Pierre Henry.
Pierre Gariépy.
Albert Monkman.
Ambroise Jobin.

The mounted police are making preparations for an attack, they are gathering themselves in one force and no delay should exist, come and reinforce us.

EXHIBIT No. 18

[*Translation*]

Saint-Antoine, April 9th., 1885.

To the Half-breeds and Indians of Fort Bataille and vicinity.

Since we wrote to you, important things have occurred. The police attacked us We met them. God has given us a victory. Thirty Half-breeds and five Crees stood the fight against one hundred and twenty men. After fighting during thirty-eight or forty minutes, the enemy took flight.

Bless God with us for the success that he has had the charity to give us. Rise up. Face the police. If possible, if it is not done yet, take Fort Bataille Destroy it. Save all the provisions and goods and come and join us. You are in sufficient numbers to send us a detachment forty or fifty strong.

All that you do, do it for the sake of God Almighty, under the keeping of Jesus-Christ, the Holy Virgin, St. Joseph and St. Jean-Baptiste.

Be convinced that Faith works wonders.

LOUIS "DAVID" RIEL, *Exovede.*

PIERRE PARENTEAU,
CHARLES TROTTIER,
BTE. BOUCHER,
PIERRE HENRY,
ANT. JOBIN,

DONALD ROSS,
PIERRE GARIÉPY,
DAMASE CARRIÈRE,
M. LÉPINE,
P. H. GARNOT, *secretary.*

EXHIBIT No. 19.

Major General Frederick Middleton,

General,—I have received only to-day yours of the 13th instant. My council are dispersed, I wish you would let them quiet and free. I hear that presently you are absent. Would I go to Batoche, who is going to receive me? I will go to fulfil God's will.

LOUIS "DAVID" RIEL, *Exovede.*

15th May, 1885.

EXHIBIT No. 20.

Duck Lake, March, 27th, 1885.

TO MAJOR CROZIER, COMMANDING OFFICER FORT CARLTON.

Sir,—A calamity has fallen upon the country yesterday, you are responsible for it before God and men.

Your men cannot claim that their intentions were peaceable since they were bringing along cannons. And they fired many shots first.

God has been pleased to grant us the victory, and as our movement is to save our lives, our victory is good, and we offer it to the Almighty.

Major, we are Christians in war as in peace. We write in the name of God and of humanity to come and take away your dead whom we respect. Come and take them to-morrow before noon.

We enclose herein copy of a resolution adopted to-day by the representatives of the French Half-breeds

Louis "David" Riel, *Exovede.*

Albert Monkman,
Gabriel Dumont,
Norbert Delorme,
Pierre Gariépy,
Pierre Parenteau,
Donald Ross,
Moïse Ouellette,

Maxime Lépine,
J. Bte. Boucher,
Damase Carrière,
Bte. Parentaeu,
Pierre Parenteau,
Aml. Jobin,
David Tourond,
P. Garnot, *Secrétaire.*

Copy of minutes.

That a prisoner be liberated and given a letter to the commanding officer at Carlton, inviting him in the name of God and of humanity to come and take away the bodies of the unfortunate who fell yesterday on his side, in the combat; that far from being molested he will be accompanied by our condoléances in the fulfilment of that sorrowful duty; that we will wait till to-morrow noon. Moved by Mr. Monkman, seconded by Mr. John Baptiste Boucher, and unanimously carried. Dated March 27th, 1885.

IN APPEAL.

CANADA, Province of Manitoba. } COURT OF QUEEN'S BENCH.

THE QUEEN *vs.* RIEL.

Appeal from North-West Territories.—Presence of prisoner.—Production of papers.

PRESENT—WALLBRIDGE, C. J.; TAYLOR, KILLAM, JJ.

SUMMARY

The Court of Queen's Bench in Manitoba has no power to send a *habeas corpus* to the North-West Territories, and will hear an appeal in the absence of the prisoner.

Upon a criminal appeal from the North-West Territories, the original papers should be produced. If the prisoner cannot procure them, the Court will act on sworn or certified copies.

Winnipeg, 2nd September, 1885.

This was an appeal by a prisoner who had been convicted of treason before a stipendiary magistrate and a justice of the peace in the North West-Territories. By arrangement, counsel for the Crown and the prisoner appeared in court. The stipendiary magistrate had sent to the clerk of the court certain papers which he certified to be "a true record," with copies of the exhibits put in at the trial certified as true copies.

J. S. EWART, Q. C., and F. X. LEMIEUX and CHS. FITZPATRICK, of the Quebec bar, for the prisoner. The Statute 43 Vic. c. 25, s. 77, is as follows :—"A person convicted of any offence punishable by death, may appeal to the Court of Queen's Bench in Manitoba, which shall have jurisdiction to confirm the conviction, or to order a new trial ; and the mode of such appeal, and all particulars relating thereto, shall be determined from time to time by ordinance of the Lieutenant Governor in Council."

No procedure has been provided, and there is therefore no means of procuring either the papers or the attendance of the prisoner, who is entitled to argue his case in person. In *Reg.* v. *Whalen*, 28 U. C. Q. B. 108, the Court of Error and Appeal refused to proceed with an appeal until the papers were properly brought before it.

C. ROBINSON, Q. C., and B. B. OSLER, Q. C., both of the Ontario bar, and J. A. M. AIKENS, Q. C., for the Crown. All the requisite papers are before the Court, and the prisoner's counsel must elect whether they will proceed or not. The Crown makes no objection to the regularity of the appeal.

WALLBRIDGE, C. J., delivered the judgment of the Court :—

The statute gives the prisoner the right to appeal, and is silent as to his presence or absence.

The North-West Territories are outside the limits of Manitoba.

This Court has no power to send a *habeas corpus* beyond its own limits, and the Statute has made no provision in this respect.

By the statute 43 Vic., c. 25, sec. 77, power is given to a person convicted, to appeal to the Court of Queen's Bench in Manitoba, which court shall have power to confirm the conviction, or to order a new trial. This extent of the power of this court, is wholly statutory. This statute, in effet, directs the prisoner to make this appeal, not merely by appearing by counsel, but by placing the court in such a position that the court can hear

the appeal. This section also enacts that the mode of the appeal, and all particulars relating thereto, shall be determined from time to time by ordinance of the Lieutenant Governor in Council, *i. e.*, of the North-West Territories.

No such regulations have been made, and this court has no power to compel the making of them.

The appellant desires to know upon what proceedings his appeal is to be heard. We are of opinion that the original papers should be before us.

If the prisoner has applied for them and they have been refused to him, the Court will receive as sufficient, sworn copies, or copies properly certified.

The prisoner does not show that he has made any effort to get these papers, or that they have been refused to him.

Counsel for the Crown say they are ready to go on now, and argue the appeal upon the papers already transmitted by the stipendiary magistrate before whom the prisoner was tried.

Counsel for the prisoner decline to concur in this mode.

We are of opinion that the original papers, *i, e.* the proceedings and evidence taken and had on the trial, should be transmitted to this court. If it be shown that these have been demanded and cannot be had, then the court will receive verified copies of them.

It is the duty of the person appealing, to supply this court with the necessary papers upon which the appeal is to be heard, or to do all in his power for that purpose. The statute before cited has given the prisoner the right to appeal to this court, which has no power to send its process outside the limits of the province. We are, therefore, of opinion that we cannot send a *habeas corpus* to bring the prisoner before us; nevertheless, we are by law obliged to hear his appeal.

Counsel for the prisoner have given the stipendiary magistrate notice of their intention to appeal, and he has sent to this court certain papers, which upon inspection appear to be copies, but are certified to as a true and correct record of the proceedings at the trial of Louis Riel upon the charges set forth therein; and after evidence and address of counsel, he concludes as follows: "Certified a true record," and he annexes thereto copies of the exhibits. Again is appended a certificate—"Certified true copies."

If the prisoner desires time to procure the original papers, the Court will adjourn for a sufficient length of time to enable him to get them.

THE QUEEN *vs.* RIEL.

Treason.—Jurisdiction of North-West Court.—Information.—Evidence in shorthand.—Appeal upon fact.—Insanity.

SUMMARY

1. In the North West Territories a stipendiary magistrate and a justice of the peace, with the intervention of a jury of six, have power to try a prisoner charged with treason. The Dominion Act 43 Vic. c. 25 is not *ultra vires*.
2. The information in such case (if any information be necessary) may be taken before the stipendiary magistrate alone. An objection to the information would not be waived by pleading to the charge after objection taken.
3. At the trial in such case the evidence may be taken by a shorthand reporter.
4. A finding of "guilty" will not be set aside upon appeal if there be any evidence to support the verdict.
5. To the extent of the powers conferred upon it, the Dominion Parliament exercises not delegated, but plenary powers of legislation.

Insanity, as a defence in criminal cases, discussed.

J. S. Ewart, Q. C., and F. X. Lemieux and Charles Fitzpatrick, of the Quebec Bar, for the prisoner.

C. Robinson, Q. C., and B. B. Osler, Q. C., both of the Ontario Bar, and J. A. M. Aikens, Q. C., for the Crown.

Winnipeg, 9th September, 1885.

WALLBRIDGE, C. J.—The prisoner was tried before Hugh Richardson, Esquire, a stipendiary magistrate in and for the North-West Territories, in Canada, upon a charge of high treason. The trial took place on the twentieth day of July, A. D. 1885, at Regina, in that territory, under the Dominion Act 43 Vic. c. 25, known as "The North-West Territories Act, 1880."

Section 1 of that Act declares, that the territories known as Rupert's Land and the North-West Territory (excepting the Provinces of Manitoba and Keewatin), shall continue to be styled and known as "The North-West Territories."

Manitoba was erected into a separate province by the Dominion Act 33 Vic. c. 3, (12th May, 1870,) intituled "An Act to amend and continue the Act 32 and 33 Vict. c. 3, and to establish and provide for the government of the Province of Manitoba." Since which time Manitoba has formed a distinct province, with regularly organized government, separate legislature and courts. By an Imperial Act passed in 34 and 35 Vict. c. 28, cited as "The British North America Act, 1871," the Act 33 Vic. c. 3, providing for the government of the Province of Manitoba, was declared valid and effectual, from the day of its having received the Royal assent.

The North-West Territories Act, 1880, before referred to, under the head "Administration of Justice," section 74, empowers the Governor to appoint, under the Great Seal, one or more fit and proper person or persons, barristers-at-law or advocates of five years standing, in any of the provinces, to be and act as stipendiary magistrates within the North-West Territories. And by sec. 76, each stipendiary magistrate shall have magisterial and other functions appertaining to any justice of the peace, or any two justices of the peace; and one stipendiary magistrate is by that section, and the four following sub-sections, given power to try certain crimes therein mentioned, in a summary way, without the intervention of a jury. For crimes thus enumerated, the prisoner can be punished only by fine or fine and imprisonment, or by being sentenced to a term in the penitentiary. Sub-section 5 of section 76, however, under which this prisoner was tried, is in the following words:—

"In all other criminal cases, the stipendiary magistrate and a justice of the peace, with the intervention of a jury of six, may try any charge against any person or persons, for any crime."

Sub-section 10 of said section is in these words:—

"Any person arraigned for treason or felony may challenge peremptorily, and without cause, not more than six persons." And by sub-section 11, "The Crown may peremptorily challenge not more than four jurors."

If any doubt were entertained whether this Act was intended to extend to the crime of treason, this section would explain it; as by it an alteration is made in the number of peremptory challenges allowed to the Crown, reducing them to four.

By section 77 of that Act, it is enacted, that: "Any person convicted of any offence punishable by death, may appeal to the Court of Queen's Bench of Manitoba, which shall have jurisdiction to confirm the conviction or to order a new trial, and the mode of such appeal, and all particulars relating thereto, shall be determined from time to time by ordinance of the Lieutenant-Governor in Council."

This prisoner was arraigned, and pleaded not guilty, and was tried before the said Hugh Richardson, esquire, a stipendiary magistrate, and Henry LeJeune, esquire, a justice of the peace, with the intervention of a jury of six jurymen.

The case was tried upon the plea of not guilty to the charge. The prisoner was defended by able counsel, and all evidence called which he desired. No complaint is now made as to unfairness, haste, or want of opportunity of having all the evidence heard which he desired to have heard. The jury returned a verdict of guilty, and recommended the prisoner to mercy. Upon this state of circumstances, the case came before the Court of Queen's Bench for Manitoba, by way of appeal, under section 77 of the North-West Territories Act, hereinbefore mentioned. It will be observed that the power of this court upon appeal is limited to the disposition of the case in two ways,

viz. : either, in the words of the statute, "to confirm the conviction, or to order a new trial." We can dispose of it only in one of these two ways.

Upon the argument before this court no attempt was, or could be, made to show that the prisoner was innocent of the crime charged ; in fact, the evidence as to guilt is all one way. The witnesses called upon the defence were so called upon the plea of insanity. The whole evidence was laid before us, and upon examining that evidence I think counsel very properly declined to argue the question of the guilt or innocence of the prisoner.

The argument before us was confined to the constitutionality of the court in the North-West Territory, and to the question of the insanity of the prisoner. As to the question of constitutionality, or jurisdiction, in my opinion the court before which the prisoner was tried does sustain its jurisdiction, under and by the Imperial Act 31 & 32 Vic. c. 105, s. 5, being The Rupert's Land Act, 1868, by which power is given to the Parliament of Canada to make, ordain and establish laws, institutions and ordinances, and to constitute such courts and officers as may be necessary for the peace, order, and good government of Her Majesty's subjects therein, meaning Rupert's Land, being the country embraced within that Territory within which this crime was committed. This statute alone confers upon the Dominion Parliament the power both to make laws and establish courts. Secondly, The Dominion Act 32 & 33 Vic., c. 5, intituled "An Act for the temporary government of Rupert's Land and the North West Territories, when united with Canada," passed in pursuance of section 146 of the British North America Act, 1867, by which both Rupert's Land and the North-West Territory were declared to be comprehended under the one designation of "The North-West Territories." Ample power is there given to make, ordain, and establish laws, institutions and ordinances for the peace, order and good government of Her Majesty's subject therein ; and section 6 of that Act confirm the officers and functionaries in their offices, and in all the powers and duties as before then exercised. This Act, if *ultra vires* of the Dominion Parliament, at that time, was validated by the Imperial Act 34 & 45 Vic., c. 28, intituled "An Act respecting the establishment of provinces in the Dominion of Canada," in which the 32 & 33 Vic., c. 3, is in express words made valid, and is declared "to be, and be deemed to have been, valid and effectual for all purposes whatsoever, from the date at which it received the assent (22nd of June, 1869), in the Queen's name, of the Governor General of the Dominion of Canada." In my judgment, under both these Acts the courts in the North-West Territories are legally established, and whether the power were a delegated power or a plenary power, appears to me indifferent. The question is asked, could the Dominion Parliament legislate on the subject of treason ? That question does not arise, because the Imperial Act validates the Dominion Act, and thus the Act has the full force of an Imperial Act.

The Imperial Act has, by express words, made the Dominion Act "valid and effectual for all purposes whatever from its date," and it thus became in effect an Imperial Act, and has all the effect and force which the Imperial Parliament could give it.

The Dominion Parliament thus had power to make the enactment called "The North-West Territories Act of 1880," and the prisoner was tried and convicted in accordance with the provisions of this latter Act. Of the regularity of those proceedings no complaint is made except upon one point, which is that the information or charge upon which the prisoner was tried does not show that the information was taken before the stipendiary magistrate and a justice of the peace, and it is contended that this objection is fatal to the form of the information. By section 76 of the N. W. T. Act, the stipendiary magistrate is declared to have the magisterial and other functions of a justice, or any two justices of the peace. An information could not only have been laid before him, as it in fact was, but could have been laid before, and taken by, a single justice of the peace. But if what is meant by the objection is, that the charge, for that is the word used in that sub-section of the statute under which the prisoner was tried, should show on its face that this charge was tried before the stipendiary magistrate and a justice, then it is answered by the fact that he was so tried before the stipendiary magistrate and Henry LeJeune, a justice of the peace.

The fifth section of the statute thus having been complied with as to the form of the charge, the law is, that inferior courts must show their jurisdiction on the face of their proceedings; but the contrary is the law in the case of superior courts. A court having jurisdiction to try a man for high treason and felonies punishable with death, cannot be called an inferior court; and this court has all the incidents appertaining to a superior court, and is the only court in the North-West Territories.

The court constituted under the North-West Territories Act of 1880, being a superior court, need not show jurisdiction on the face of its proceedings. The authorities cited to maintain the position were of inferior jurisdiction and are not applicable.

On the 7th may, 1880, the Dominion Government, by the North-West Territories Act, constituted the Court of the Queen's Bench of Manitoba a Court of Appeal in respect to offences punishable with death.

It is the prisoner, however, who appeals to us, not the Crown, and he can hardly be heard to object to the jurisdiction to which he appeals.

It is further urged that the stipendiary magistrate did not take, or cause to be taken, in writing, full notes of the evidence and other proceedings upon the trial.

It is true, the evidence produced to us appears to have been taken by a short hand writer; whether the stipendiary magistrate took, or caused to be taken, other notes in writing after the trial, in pursuance of sub-section 7 of section 76 of the Act, does not appear.

It is the prisoner, for it is his appeal, who furnishes this court with the evidence upon which the appeal is heard, and the Crown does not object to it.

Unless expressly required by statute, the judge who tries a criminal case is not bound to take down the evidence, and when he is required to do so, it is in order that it may be forwarded to the minister of Justice. Sub-section five, under which the trial took place, says nothing about the evidence, but simply that the stipendiary magistrate and a justice of the peace, with the intervention of a jury of six, may try any charge, against any person or persons, for any crime.

It is sub-section seven which directs the stipendiary magistrate to take or cause to be taken, in writing, full notes of the evidence and other proceedings thereat; and sub-section eight enacts, that when a person is 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.

Suppose the notes of the evidence were taken by a short hand reporter, and afterwards extended by him, does not the stipendiary magistrate, in the words of the statute, "cause to be taken in writing full notes of the evidence."

I am of opinion that, *for the trial*, the stipendiary magistrate is not bound to take down the evidence, but he is bound to do so to forward the same to the minister of Justice.

In my opinion there is no departure from the direction of the statute. He does cause them to be taken. The directions, first to take them by short hand, and then to extend them by writing, is all one direction, or causing to be taken. This seems to me a reasonable compliance with the requirements of sub-section seven. Is it not too rigid a reading of the statute to say that the writing must be done whilst the trial progresses. Sub-section eight does not say a copy shall be sent to the minister of Justice, but "full notes of the evidenee shall be sent to the minister of Justice."

Suppose the notes of the evidence were burned by accident—would the prisoner be denied his appeal?

The Crown has not objected to the evidence as furnished by the prisoner. The exception is purely technical, and in my opinion is not a valid one.

A good deal has been said about the jury being composed of six only. There is no law which says that a jury shall invariably consist of twelve or of any particular number. In Manitoba, in civil cases, the jury is composed of twelve, but nine can find a verdict. In the North-West Territories Act, the Act itself declares that the jury shall consist of six, and this was the number of the jury in this instance. Would the stipendiary magis

trate have been justified in impannelling twelve, when the statute directs him to impannel six only?

It was further complained that this power of life and death was too great to be entrusted to a stipendiary magistrate.

What are the safeguards?

The stipendiary magistrate must be a barrister of at least five years standing. There must be associated with him a justice of the peace, and a jury of six. The court must be an open public court. The prisoner is allowed to make full answer and defence by counsel.

Section 77 permits him to appeal to the Court of Queen's Bench in Manitoba, when the evidence is produced, and he is again heard by counsel, and three judges re-consider his case. Again, the evidence taken by the stipendiary magistrate, or that caused to be taken by him, must, before the sentence is carried into effect, be forwarded to the minister of Justice; and sub-section eight requires the stipendiary magistrate to postpone the execution, from time to time, until such report is received, and the pleasure of the Governor thereon is communicated to the Lieutenant-Governor. Thus, before sentence is carried out, the prisoner is heard twice in court, through counsel and his case must have been considered in Council, and the pleasure of the Governor thereon communicated to the Lieutenant-Governor.

It seems to me the law is not open to the charge of unduly or hastily confiding the power in the tribunals before which the prisoner has been heard. The sentence, when the prisoner appeals, cannot be carried into effect until his case has been three times heard, in the manner above stated.

Counsel then rest the prisoner's case upon the ground of insanity, and it is upon this latter point only that the prisoner called witnesses.

The jury by their finding have negatived this ground, and the prisoner can only ask, before us, for a new trial, we have no other power of which he can avail himself. The rule at law in civil cases is, that the evidence against the verdict must greatly preponderate before a verdict will be set aside; and in criminal cases in Ontario, whilst the law (now repealed) allowed applications for new trials, the rule was more stringent—a verdict in a criminal case would not be set aside if there was evidence to go to the jury, and the judge would not express any opinion upon it if there was evidence to go to the jury, if their verdict could not be declared wrong. I have carefully read the evidence, and it appears to me that the jury could not reasonably have come to any other conclusion than the verdict of guilty; there is not only evidence to support the verdict, but it vastly preponderates.

It is said the prisoner labored under the insane delusion that he was a prophet, and that he had a mission to fulfil. When did this mania first seize him, or when did it manifest itself? Shortly before he came to Saskatchewan he had been teaching school in Montana. It was not this mania that impelled him to commence the work which ended in the charge at Batoche. He was invited by a deputation, who went for him to Montana. The original idea was not his—did not originate with him. It is argued, however, that his demeanor changed in March, just before the outbreak. Before then he had been holding meetings, addressing audiences, and acting as a sane person. His correspondence with General (now Sir Frederick) Middleton betokens no signs of either weakness of intellect or of delusions, taking the definitions of this disease, as given by the experts. And how does his conduct comport therewith? The maniac imagines his delusions real, they are fixed and determinate, the bare contradiction causes irritability.

The first witness called by the prisoner, the Rev. Father Alexis André, in his cross-examination says as follows:—

Q. Will you please state what the prisoner asked of the Federal Government?—A, I had two interviews with the prisoner on that subject.

Q. The prisoner claimed a certain indemnity from the Federal Government. Didn't he?—A. When the prisoner made his claim, I was there with another gentleman, and

he asked $100,000. We thought that was exorbitant, and the prisoner said : "Wait a little, I will take at once $35,000 cash."

Q. Is it not true the prisoner told you he himself was the half-breed question?—A. He did not say so in express terms, but he conveyed that idea. He said : "If I am satisfied, the Half-breeds will be."

The witness continues : I must explain this. This objection was made to him, that even if the Government granted him the $35,000, the half-breed question would remain the same ; and he said, in answer to that : "If I am satisfied, the Half-breeds will be."

Q. Is it not a fact he told you he would even accept a less sum than the $35,000? —A. Yes : he said, "Use all the influence you can, you may not get all that, but get all you can, and if you get less, we will see."

This was the cross-examination of a witness called by the prisoner.

To General Middleton, after prisoner's arrest, he speaks of his desire to negotiate for a money consideration.

In my opinion, this shows he was willing and quite capable of parting with this supposed delusion, if he got the $35,000.

A delusion must be fixed, acted upon, and believed in as real, overcome and dominate in the mind of the insane person. An insanity which can be put on or off at the will of the insane person, according to the medical testimony, is not insanity at all in the sense of mania.

Dr. Roy testified to his having been confined in the Beauport asylum at Quebec, from which he was discharged in January, 1878. His evidence was so unsatisfactory, the answer not readily given, and his account of prisoner's insanity was given with so much hesitation, that I think the jury were justified in not placing any great reliance upon it.

Dr. Clarke, of the Toronto asylum, as an expert, was not sufficiently positive to enable any one to form a definite opinion upon the question of the sanity of the prisoner.

Dr. Wallace, of the Hamilton asylum ; Dr. Jukes, the medical officer, who attended the prisoner from his arrival at Regina ; General Middleton, and Captain Young—these all failed to find insanity in his conduct or conversation. Neither could the Rev. Mr. Pitblado, who had a good opportunity of conversing with him.

In my opinion, the evidence against his insanity very greatly preponderates. Besides, it is not every degree of insanity or mania that will justify his being acquitted on that ground. The rule in that respect is most satisfactorily laid down in the *McNaghten* case 10 Cl. & Fin. 200. Notwithstanding the party accused did the act complained of with a view, under the influence of insane delusion, of redressing some supposed grievances or injury, or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law.

I think the evidence upon the question of insanity shows that the prisoner did know that he was acting illegally, and that he was responsible for his acts.

In my opinion, a new trial should be refused, and the conviction confirmed.

Taylor, J.—This is an appeal brought under the provisions of section 77 of the North-West Territories Act, 1880, Dom. Stat. 43 Vic., c. 25, by Louis Riel, from a judgment rendered against him at Regina, in the North-West Territories.

On the 20th day of july last the appellant was charged before Hugh Richardson, Esq., stipendiary magistrate, and Henry Le Jeune, Esq., a justice of the peace, sitting as a court under the provisions of section 76 of the above mentioned statute, with the crime of treason. After a plea by the appellant to the jurisdiction of the court, and a demurrer to the sufficiency in law of the charge or indictement, had both been overruled, the appellant pleaded not guilty. The trial was then, upon his application, adjourned for some days to procure the attendance of witnesses on his behalf. On the 28th of july

the trial was proceeded with, and a large number of witnesses were called and examined. At the trial the appellant was defended by three gentlemen of high standing at the bar of the Province of Quebec. Judging from the arguments addressed to this court by two of these gentlemen on the present appeal, I have no hesitation in speaking of them as learned, able and zealous, fully competent to render to the appellant all the assistance in the power of counsel to afford him. On the 1st of august, the case having been left to the jury, they returned a verdict of guilty, and thereupon sentence of death was pronounced. From that he brings his appeal.

It was not urged before this court, as it was on the trial at Regina, that the appellant should have been sent for trial to the Province of Ontario, or to the Province of British Columbia, instead of his being brought to trial before a stipendiary magistrate and a justice of the peace in the North-West Territories.

This point not having been argued, it is unnecessary to consider whether the Imperial Acts 43 Geo. III., c. 138 : 1 & 2 Geo. IV., c. 66, and 22 & 23 Vic. c. 26, are, or are not now in force. Only a passing allusion was made to them by counsel. The first of them was repealed by the Statute Law Revision Act, 1872 (35 & 36 Vic. c. 63), and part of the second was repealed by the Statute Law Revision Act, 1874 (37 & 38 Vic. c. 35). At all events, the Imperial Government has never, under the authority of these, appointed in the North-West Territories justices of the peace, nor established courts, while under other statutes hereafter referred to, wholly different provision has been made for dealing with crime in those Territories, so that they must be treated as obsolete if not repealed.

It was contended by the appellant's counsel that the Imperial statutes relating to treason, the 25 Edw. III., c. 2 : 7 Wm. III., c. 3 ; 36 Geo. III., c. 7, and 57 Geo. III., c. 6, which define what is treason, and provide the mode in which it is to be tried, including the qualification of jurors, their number, and the method of choosing them, are in force in the North-West Territories. And it was argued, that in legislating for the North-West Territories, the people of which are not represented in the Dominion Parliament, that Parliament exercises only a delegated power, which must be strictly construed, and cannot be exercised to deprive the people there of rights secured to them as British subjects by Magna Charta, or in any way alter these old statutes to their prejudice. Now of this argument against any change being made in rights and privileges secured by old charters and statutes, a great deal too much may be made.

That these rights and privileges, wrested by the people from tyrannical Sovereigns many centuries ago, were and are valuable, there can be no question. Were the Sovereign at the present day endeavouring to deprive the people of any of these, for the purposes of oppression, it would speedily be found that the love of liberty is as strong in the hearts of British subjects to-day as it was in the hearts of their forefathers, and they would do their utmost to uphold and defend rights and privileges purchased by the blood of their ancestors. But it is a very different thing when the legislature, composed of representatives of the people, chosen by them to express their will, deem it expedient to make a change in the law, even though that change may be the surrender of some of these old rights and privileges.

That the Dominion Parliament represents the people of the North-West Territories cannot, I think, be successfully disputed. It may be, that the inhabitants of these Territories are not represented in parliament by members sitting there chosen directly by them, but these Territories form part of the Dominion of Canada, the people in them are citizens of Canada, not, as it was put by counsel, neighbours, just in the same way as all the people of this Dominion are part and parcel of the great British Empire. The people of these Territories are represented by the Dominion Parliament, just as the inhabitants of all the colonies are represented by the House of Commons of England. Legislation for these Territories by the Dominion Parliament, must indeed precede their being directly represented there. Before they can be so, the number of representatives they are to have, the qualification of electors, and other matters must be provided for by the Dominion Parliament itself or by Local Legislatures created by that Parliament.

The question then is, what powers of legislation with reference to the North-West Territories have been conferred upon the Dominion Parliament by Imperial authority.

In the exercise of that authority, whatever it may be, it is not exercising a delegated authority.

To found an argument as to Parliament exercising a delegated authority, upon the language used by American writers, or upon judicial decisions in the United States, appears to me to be wholly fallacious. In the States of the American Union the theory is, that the sovereign power is vested in the people, and they, by the Constitution of the State, establishing a legislature, delegate to that body certain powers, a limited portion of the sovereign power which is vested in the people. The people, however, still retain certain common law rights, the authority to deal with which they have not delegated to the legislative body. Hence the language used by Bronson, J., in *Taylor* vs. *Porter*, 4 Hill, at p. 144.—"Under our form of government the legislature is not supreme. It is only one of the organs of that absolute sovereignty which resides in the whole body of the people. Like other departments of the government it can only exercise such powers as have been delegated to it." It is in the light of this theory that the language of Mr. Justice Story in *Wilkinson* vs. *Leland*, 2 Peters, 627, must be read and by which it must be construed. The case of the British Parliament is quite different, "in which," as Blackstone says (*Blackstone*, Christian's Ed., Vol. I., p. 147, "the legislative power and (of course) the supreme and absolute authority of the State, is vested by our constitution." And again, at p. 160, he says, "It hath sovereign and uncontrollable authority in the making, conferring, enlarging, restraining, abrogating, repealing, revising and expounding of laws, concerning matters of all possible denominations * * * * this being the place where that absolute despotic power which must in all governments reside somewhere, is entrusted by the constitution of these kingdoms."

To the extent of the powers conferred upon it, the Dominion Parliament exercises not delegated but plenary powers of legislation, though it cannot do anything beyond the limits which circumscribe these powers. When acting within them, as was said by Lord Selborne in *The Queen* vs. *Burah*, L. R. 3 App. Ca., at p. 904, speaking of the Indian Council, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature as those of that Parliament itself. That the Dominion Parliament has plenary powers of legislation in respect of all matters entrusted to it was held by the Supreme Court in *Valin* vs. *Langlois*, 3 Sup. C. R. 1, and *City of Fredericton* vs. *The Queen*, 3 Sup. C. R. 505. So also, the judicial committee of the Privy Council have held, in *Hodge* vs. *The Queen*, L. R. 9 App. Ca. 117, that the local legislatures when legislating upon matters within section 92 of the British North America Act, possess authority as plenary and as sample, within the limits prescribed by that section, as the Imperial Parliament in the plenitude of its power possessed and could bestow.

The power of the Dominion Parliament to legislate for the North-West Territories seems to me to be derived in this wise, and to extend thus far. By section 146 of the British North America Act it was provided, that it should be lawful for Her Majesty, with the advice of Her Privy Council, "on address from the Houses of the Parliament of Canada, to admit Rupert's Land and the North Western Territory, or either of them, into the Union, on such terms and conditions in each case as are in the addresses expressed, and as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland."

In 1867, the Dominion Parliament presented an address praying that Her Majesty would be pleased to unite Rupert's Land and the North Western Territory with the Dominion, and to grant to the Parliament of Canada authority to legislate for their future welfare and good government. The address also stated, that in the event of Her Majesty's Government agreeing to transfer to Canada the jurisdiction and control over the said region, the Government and Parliament of Canada would be ready to provide that the legal rights of any corporation, company or individual within the same should be respected and placed under the protection of courts of competent jurisdiction.

The following year, 1868, the Rupert's Land Act, 31 and 32 Vic., c. 105, was passed by the Imperial Parliament. For the purposes of the Act the term Ruperts,

Land is declared to include the whole of the lands and territories held, or claimed to be held, by the Governor and Company of Adventurers of England trading into Hudson's Bay. The Act then provides for a surrender by the Hudson's Bay Company to Her Majesty of all their lands, rights, privileges, etc., within Rupert's Land, and provides that the surrender shall be null and void unless within a month after its acceptance Her Majesty shall, by order in Council, under the provisions of section 146 of the British North America Act, admit Rupert's Land into the Dominion. The fifth section provides that it shall be competent for Her Majesty, by any Order in Council, to declare that Rupert's Land shall be admitted into and become part of the Dominion of Canada; "and thereupon it shall be lawful for the Parliament of Canada, from the date aforesaid, to make, ordain, and establish within the land and territory so admitted as aforesaid, institutions, and ordinances, and to constitute such courts and officers as may be necessary for the peace, order, and good government of Her Majesty's subjects and others therein."

In 1869, a second address was presented, embodying certain resolutions and terms of agreement come to between Canada and the Hudson's Bay Company, and praying that Her Majesty's would be pleased to unite Rupert's Land on the terms and conditions expressed in the foregoing resolutions, and also to unite the North-Western Territory with the Dominion of Canada, as prayed for, by and on the terms and conditions contained in the first address.

The same year the Dominion Parliament passed an Act, 32 & 33 Vic. c. 3, for the temporary government of Rupert's Land and the North-Western Territory, when united with Canada, which was to continue in force until the end of the next session of Parliament.

The following year, 1870, another Act was passed, 33 Vic., c. 3, which amended and continued the former Act, and which formed out of the North-West Territory this Province of Manitoba. The last section of this act re-enacted, extended, and continued in force the 32 & 33 Vic. c. 3 until the 1st day of January, 1871, and until the end of the session of Parliament then next ensuing.

On the 23rd of June, 1870, Her Majesty by Order in Council, after reciting the addresses presented by the Parliament of Canada, ordered and declared "that from and after the 15th day of July, 1870, the North-Western Territory shall be admitted into, and become part of, the Dominion of Canada, upon the terms and conditions set forth in the first hereinbefore recited address, and that the Parliament of Canada shall, from the day aforesaid, have full power and authority to legislate for the future welfare and good government of the said territory."

By virtue of that Order in Council and of the 31 & 32 Vic. c. 105, it seems to me, that on the 15th of July, 1870, the Parliament of Canada became entitled to legislate and to make, ordain and establish within the North-West Territories all such laws, institutions, and ordinances, civil and criminal, and to establish such courts, civil and criminal, as might be necessary for peace, order, and good government therein. The language used is even wider than is used in the 91st section of the British North America Act, which defines the legislative authority of the Parliament of Canada, extending by subsection 27 to the criminal law; while there is not as there the restrictions, "except the constitution of courts of criminal jurisdiction," but on the contrary express authority to constitute courts without any limitation.

That by that Order in Council and Act the authority thereby given extends over that part of the North-West Territory where the events occurred out of which the charge against the appellant arose, there can be no doubt. By the terms of the agreement between Canada and the Hudson's Bay Company, the latter were to retain certain lands, and in a schedule annexed to the Order in Council the exact localities are mentioned. In the Saskatchewan District the names Edmonton, Fort Pitt, Carlton House, and other places appear.

It is true that in 1871, another Act was passed by the Imperial Parliament, the 34 & 35 Vic. c. 28, spoken of by Mr. Fitzpatrick as "The Doubts-Removing Act," but I cannot come to the conclusion which he seeks to draw from that fact, and from its con-

firming two Acts of the Canadian Parliament, that the former Act, 31 & 32 Vic. c. 105, did not give the Dominion Parliament full power to legislate for the North-West Territory. The former Act provided for the admission of Rupert's Land and the North-Western Territory into the Dominion, but was silent as to the division of the Territory so admitted, into Provinces, or as to their representation in parliament. That it was doubts on these matters which the Act was intended to remove is shown by the preamble. It is in these words, "Whereas doubts have been entertained respecting the powers of the Parliament of Canada to establish provinces in Territories admitted, or which may hereafter be admitted into the Dominion of Canada, and to provide for the representation of such provinces in the said Parliament; and it is expedient to remove such doubts and to vest such powers in the said Parliament." The second and third sections then provide for the establishment of provinces, for, in certain cases, the alteration of their limits, and for their representation in Parliament. The fourth section, in general terms, says, "the Parliament of Canada may from time to time make provision for the administration, peace, order, and good government, of any territory, not for the time being included in any province;" a power which Parliament already had in the most ample manner. Then follows a confirmation of the Canadian Acts 32 & 33 Vic. c. 3, and 33 Vic. c. 3. That the Act should contain such a confirmation is easily accounted for. The Imperial Act 31 & 32 Vic. c. 105, s. 5, provided that it should be competent for Her Majesty, by Order in Council, "to declare that Rupert's Land shall, from a date to be therein mentioned, be admitted," &c., and "thereupon it shall be lawful for the Parliament of Canada, from the date aforesaid," to make laws, &c.

The Order in Council was made on the 23rd of June, 1870, and the date therein mentioned was the 15th of July, 1870. Now, a reference to the two Canadian Acts shows, that the 32nd and 33rd Vic., c. 3, was assented to on the 22nd of June, 1869, and the 33rd Vic. c. 3, on the 12th of May, 1870. So, in fact, they were both passed before the time arrived at which the Parliament of Canada had the right to legislate respecting the North-West. But they had been acted upon, and the Province of Manitoba actually organized, therefore they were confirmed and declared valid from the date at which they received the assent of the Governor General.

Acting under the authority given in the most ample manner by these Acts of the Imperial Parliament, and, as it seems to me, in the exercise not of a delegated authority, but of plenary powers of legislation, the Dominion Parliament enacted the North-West Territories Act, 1880 (43 Vic., c. 25) which provides, among other things, for the trial of offences committed in these Territories in the manner there pointed out.

The appointment of stipendiary magistrates, who must be barristers-at-law or advocates of five years' standing, is provided for by the 74th section.

By the 76th section, each stipendiary magistrate shall have power to hear and determine any charge against any person for any criminal offence alleged to have been committed within certain specified territorial limits. These words are quite wide enough to include the crime of treason. The various sub-sections of section 76 provide for the mode of trial in certain classes of offences. Those specified in the first four sub-sections are to be tried by the stipendiary magistrate in a summary way without the intervention of a jury. Then the 5th sub-section says, "In all other criminal cases the stipendiary magistrate and a justice of the peace, with the intervention of a jury of six, may try any charge against any person or persons for any crime." Again the words are quite wide enough to cover the crime of treason.

Counsel for the appellant contended that from the word treason being used in the 10th sub-section, and no where else in the Act, it must be inferred that the Act did not intend to deal with the crime of treason, except in the matter of challenging jurors, which is dealt with in that sub-section. The suggestion made by Mr. Robinson is, however, the more reasonable one, namely, that treason is there named advisedly, to put beyond doubt, there being only 36 jurors summoned, that a prisoner charged with that particular crime should not be entitled to exercise the old common law right, which a prisoner charged with treason had, of challenging, peremptorily and without cause, thirty-five jurors.

The question must next be considered, whether the proceedings against the appellant have been conducted according to the requirements of this Act.

The record before the Court shows that the trial took place before a stipendiary magistrate and a justice of the peace, with a jury of six selected and sworn after the appellant had exercised his right of challenging several jurors.

Two objections to the regularity of the proceedings are, however, raised. The first of these is, that the information upon which the appellant was charged was exhibited before the stipendiary magistrate alone, and not before the stipendiary magistrate and a justice of the peace. An inspection of the document shows the fact to be so. But is it necessary that the information should be exhibited before both?

The powers and jurisdiction of stipendiary magistrates are set out in section 76 of the North-West Territories Act, 1880.

The first part of the section says, each stipendiary magistrate "shall have the magisterial and other functions appertaining to any justice of the peace, or any two justices of the peace, under any laws or ordinances which may from time to time be in force in the North-West Territories." That is a distinct proposition. By the schedule annexed to the Act one of the laws in force there is the 32 & 33 Vic., c. 30. Under the 1st section of that Act it is clear that a charge or complaint that any person has committed, or is suspected to have committed treason, may be exhibited before one justice of the peace, and a warrant for his apprehension issued by such justice.

Section 76 then goes on further, that each stipendiary magistrate "shall also have power to hear and determine any charge against any person for any criminal offence," &c. In all other criminal cases than those specified in the first four sub-sections he and a justice of the peace, with the intervention of a jury of six, may try the charge. It is only when the charge comes to be tried that the presence of a justice of the peace along with him is necessary. To hold that the words "try any charge" include the exhibiting of the information, or that it must be so, before both a stipendiary magistrate and a justice of the peace, seems to me to involve the holding also, that for the purpose of exhibiting the information there is also necessary the intervention of a jury of six. Now the jury cannot be called into existence until the charge has been made, the accused arraigned upon it, and he has pleaded to it.

The case of *Reg.* vs. *Russell*, 13 Q. B. 237, was cited in support of this objection, but, as I read that case, it is a direct authority against it. An information was exhibited under the Act for the General Regulation of the Customs, before a single justice, and was dismissed by the justices before whom the charge was brought for trial, on the ground that it should have been exhibited before two justices, in conformity with section 82 of the Act for the Prevention of Smuggling. That section provided that all penalties and forfeitures incurred or imposed by any Act relating to the customs should and might be "sued for, prosecuted, and recovered by action of debt, bill, plaint, or information in any of Her Majesty's Courts of Record," &c., "or by information before any two or more of Her Majesty's Justices of the Peace," &c. A rule calling on the justices to show cause why a mandamus should not issue commanding them to proceed to adjudicate upon the information, was obtained. Upon the return of the rule, counsel for the justices contended, that the provision that the penalty may be "sued for," by information, must refer to the commencement of the proceeding, in like manner as in the provision that it may be "sued for" by action. But the Court made the rule for a mandamus absolute, Lord Denman, C. J., who delivered the judgment of the court, saying, "The 82nd section of the Act does not necessarily mean that the information must be laid before two justices, but only that it must be heard before two justices."

The next objection is, that at the trial full notes of the evidence and proceedings thereat, in writing, were not taken, as required by the statute, section 76, sub-section 7. What was actually done, as it is admitted on both sides, was, that the evidence and a record of the proceedings were taken down at the time by stenographers appointed by the magistrate, and they afterwards extended their notes.

The objection cannot be, that the magistrate did not himself take notes of the

evidence and proceedings, for the statute says he shall "take, or cause to be taken," full notes, &c. It must be that the notes were taken by stenographic signs or symbols.

No doubt, enactments regulating the procedure in courts seem usually to be imperative, and not merely directory. *Maxwell on Statutes*, 456; *Taylor* vs. *Taylor*, L. R. 1 Ch. Div. at p. 431. But the force of the objection depends upon what is meant by the word "writing." In proceeding to consider it, I am not conscious of being in any way prejudiced, from the circumstance that I am myself a stenographer. The statute does not specify any method or form of writing, as that which is to be adopted. "Writing" is, in the Imperial Dictionary, said to be "The act or art of forming letters or characters, on paper, parchment, wood, stone, the inner bark of certain trees, or other material, for the purpose of recording the ideas which characters and words express, or of communicating them to others by visible signs." In the same work, "to write," is defined thus, "To produce, form or make by tracing, legible characters expressive of ideas," Is not stenographic writing the production of "legible characters expressive of ideas"? The word is formed from two Greek words, "stenos" and "graphô," and means simply "close writing." If the objection is a good one, it must go the length of insisting that the notes must be taken down in ordinary English characters, in words at full length. If any contractions or abbreviations were made, the objection would have quite as much force as it has to the method adopted in this case.

Re Stanbro, 1 Man. L. R. 325, was an entirely different case. It was one under the Extradition Act, and the evidence was taken in short hand, as is usual on a trial. The Court held, that the reporter's notes extended, which were produced before it, on the argument on the return of a writ of *habeas corpus* obtained by the prisoner, could not be looked at, and that there was realiy no evidence. But the Court so held, because the provisions of the 32nd & 33rd Vic. c. 30, s. 39, were applicable to the mode in which the evidence should be taken in extradition proceedings. That section requires the depositions to be put in writing, read over to the witness, signed by him, and also signed by the justice taking the same. The depositions in the case in question had not been read over to the witnesses, nor signed by them; nor were they signed by the judge who took them, so that clearly the requirements of the Act had not been complied with.

In addition to the objections already dealt with, it was argued that the appellant is entitled to a new trial, on the ground that the evidence adduced proved his insanity, and that the jury should have so found, and therefore rendered a verdict of not guilty.

The section of the statute which gives an appeal, says, in general terms, that any person convicted may appeal, without saying upon what grounds; so there can be no doubt the one thus taken is open to the appellant. The question, however, arises. How should the Court deal with an appeal upon matters of evidence? We have no precedents in our own court, but the decisions in Ontario during the time when the Act respecting new trials and appeals, and writs of error in criminal cases, in Upper Canada (Con. Stat. U. C. c. 113) was in force there, may be referred to as guides. By the first section of that Act, any person convicted of any treason, felony, or misdemeanour, might apply for a new trial upon any point of law, or question of fact, in as ample a manner as in a civil action.

The decisions under the Act are uniform and consistent, and a few of them may be referred to.

The earliest case upon the point, and perhaps the leading case, is *Reg. vs. Chubbs*, 14 U. C. C. P. 32, in which the prisoner had been convicted of a capital offence. In giving judgment, Wilson, J., said: "In passing the Act, giving the right to the accused to move for, and the Court to grant, a new trial, I do not see that it was intended to give courts the power to say that a verdict is wrong, because the jury arrived at conclusions which there was evidence to warrant; although from the same state of facts, other and different conclusions might fairly have been drawn, and a contrary verdict honestly given." Richards, C. J., before whom the case had been tried, said: "If I had been on the jury, I do not think I should have arrived at the same conclusions, but as the law casts upon them the responsibility of deciding how far they will give credit to the wit-

nesses brought before them, I do not think we are justified in reversing their decision, unless we can be *certain* that it is wrong."

In *Reg. vs. Greenwood*, 23 U. C. Q. B. 255, a case in which the prisoner had been convicted of murder, Hagarty, J., said: "I consider that I discharge my duty as a judge before whom it is sought to obtain a new trial on the ground of the alleged weakness of the evidence, or of its weight in either scale, in declaring my opinion that there was evidence proper to be submitted to the jury; that a number of material facts and circumstances were alledged properly before them—links as it were in a chain of circumstantial evidence—which it was their especial duty and province to examine carefully, to test their weight and adaptability each to the other * * * * To adopt any other view of the law, would be simply to transfer the conclusion of every prisoner's guilt or innocence from the jury to the judges."

Reg. vs. Hamilton, 16 U. C. C. P. 340, was also a case in which the prisoner had been convicted of murder. Richards, C. J., who delivered the judgment of the court, said: "We are not justified in setting aside the verdict, unless we can say the jury were wrong in the conclusion they have arrived at. It is not sufficient that we would not have pronounced the same verdict; before we interfere we must be *satisfied* they have arrived at an erroneous conclusion." So, in *Reg. vs. Seddons*, 16 U. C. C. P. 389, it was said: "The verdict is not perverse, nor against law and evidence; and although it may be somewhat against the judge's charge, that is no reason for interfering, if there be evidence to sustain the finding, because the jury are to judge of the sufficiency and weight of the evidence."

In *Reg. vs. Slavin*, 17 U. C. C. P. 205, the law on the subject was thus stated: "We do not profess to have scanned the evidence with the view of saying whether the jury might or might not, fairly considering it, have rendered a verdict of acquittal. We have already declared on several occasions that this is not our province under the statute. It is sufficient for us to say that there was evidence which warranted their finding."

The learned counsel for the appellant have argued with great force and ability that the overwhelming weight of the evidence is to establish his insanity. Under the authorities cited, all that my duty requires me to do is to see if there is any evidence to support the finding of the jury, which implies the appellant's sanity. I have, however, read carefully the evidence, not merely that of the experts, and what bears specially upon this point, but the general evidence. It seemed to me proper to do so, because it is only after acquiring a knowledge of the appellant's conduct and actions throughout, that the value of the expert evidence can be properly estimated.

After a critical examination of the evidence, I find it impossible to come to any other conclusion than that at which the jury arrived. The appellant is, beyond all doubt, a man of inordinate vanity, excitable, irritable and impatient of contradiction. He seems to have at times acted in an extraordinary manner; to have said many strange things, and to have entertained, or at least professed to entertain, absurd views on religious and political subjects. But it all stops far short of establishing such unsoundness of mind as would render him irresponsible, not accountable for his actions. His course of conduct indeed shows, in many ways, that the whole of his apparently extraordinary conduct, his claims to divine inspiration, and the prophetic character, was only part of a cunningly devised scheme to gain, and hold, influence and power over the simple minded people around him, and to secure personal immunity in the event of his ever being called to account for his actions. He seems to have had in view, while professing to champion the interests of the Métis, the securing of pecuniary advantage for himself. This is evident from, among other circumstances, the conversation detailed by the Rev. Mr. André. That gentleman, after he had spoken of the appellant claiming that he should receive from the Government $100,000, but would be willing to take at once $35,000 cash, was asked. "Is it not true that the prisoner told you that he himself was the half-breed question." His reply is. "He did not say so in express terms, but he conveyed that idea. He said, if I am satisfied, the Half-breeds will be. I must explain this. This objection was made to him, that even if the Government granted him $35,000, the half-

breed question would remain the same, and he said in answer to that, if I am satisfied, the Half-breeds will be."

He also says that the priests met and put the question : "Is it possible to allow Riel to continue in his religious duties, and they unanimously decided that on this question he was not responsible—that he was completely a fool on this question—that he could not suffer any contradiction. On the questions of religion and politics we considered that he was completely a fool." There is nothing in all that which would justify the conclusion that the man so spoken of was not responsible in the eye of the law for his actions. Many people are impatient of contradiction, or of authority being exercised over them, yet they cannot on that account secure protection from the consequences of their acts as being of unsound mind.

The Rev. Mr. Fourmond, who was one of the clergy who met for the purpose spoken of by the Rev. Mr. André, shows that the conclusion they came to, was come to, because they thought it the more charitable one. Rather than say he was a great criminal, they would say he was insane. The views the appellant professed respecting the Trinity, the Holy Spirit, the Virgin Mary, the authority of the clergy, and other matters were what shocked these gentlemen. But heresy is not insanity, at least in the legal and medical sense of the term.

The most positive evidence as to insanity is given by Mr. Roy, the medical superintendent of Beauport asylum, in which appellant resided for nineteen months about ten years ago. But his evidence is given in such an unsatisfactory way, so vaguely, and with such an evident effort to avoid answering plain and direct questions, as to render it to my mind exceedingly unreliable. The other medical witness who speaks to his insanity is Dr. Clark, of the Toronto asylum. He says : "The prisoner is certainly of insane mind," but he qualifies that opinion by prefacing it with the statement, "assuming that he was not a malingerer." And even he says : "I think he was quite capable of distinguishing right from wrong." Against the evidence of these gentlemen there is that of Dr. Wallace, of the Hamilton asylum, and Dr. Jukes, the senior surgeon of the mounted police force, both of whom are quite positive in giving opinions of the appellant's sanity.

It was contended that the very fact that he, a man who had seen the world, could ever hope to succeed in a rebellion, and contend successfully with the force of the Dominion, backed as that would be, in case of need, by all the power of England, was in itself conclusive proof of insanity. But the evidence of several witnesses, specially of Captain Young, shows that he never had any idea of entering seriously into such a contest. The appellant told that witness that he was not so foolish as to imagine that he could wage war against Canada and Britain. His plan, as he detailed it, was to try and capture at Duck Lake, Major Crozier and his force of police, and then, holding them as hostages, compel the government to accede to his demands. What these were he had already told the Rev. Mr. André—$100,000, or in cash $35,000, and if he could not get even that, then as much as he could. Having failed to capture Major Crozier, he hoped to draw into a snare General Middleton and a small force, in order to hold them as hostages for a like purpose. The fighting which actually took place was not the means by which he had hoped to secure his ends. The Rev. Mr. Pitblado gives evidence similar to that of Captain Young.

Certainly the evidence entirely fails to relieve the appellant from responsibility for his conduct, if the rule laid down by the judges in reply to a question put to them by the House of Lords, in *MacNaghten's Case*, 10 Cl. & Fin. 200, be the sound one. That rule was thus expressed : "Notwithstanding the party accused did the act complained of, with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law ; by which expression we mean, the law of the land." This has, I believe, ever since it was laid down, been regarded as the sound and correct rule of law on this subject.

In my judgment a new trial must be refused, and the conviction affirmed.

KILLAM, J.—I concur fully in the conclusions of my brother-judges and in the reasons supporting the same, with the exception, perhaps, of holding somewhat different opinions from some of those expressed by the Chief Justice as to the effect of the sub-section of the 76th section of the North-West Territories Act, requiring full notes of the evidence to be taken upon the trial, and as to the form of the charge in question. Were it not for the importance of the case, and that a mere formal concurrence in the judgments of the other members of the Court might appear to arise to some extent from some disinclination to consider fully and to discuss the important questions that have been raised, I should rather have felt inclined to say merely that I agree with the opinions which those judgments express.

What I shall add has been written after having had a general idea of the views of my brother-judges, but principally before I had an opportunity of perusing the full expression of their views, and with a desire to present some views upon which they might not touch, rather than with the idea that their opinions required to be differently expressed.

I need not recapitulate the facts of the case or the proceedings taken, and I will refer to the statutes less fully than if I were delivering the sole judgment of the Court.

The prisoner first pleaded to the jurisdiction of the Court before which he was arraigned, and to this plea counsel for the Crown demurred. The decision of the Court allowing the demurrer forms one of the grounds of this appeal. The judgment on this demurrer appears to have been based upon the decision of this Court in Easter Term last, in the case of *Regina* v. *Connor*, in which the prisoner appealed against a conviction for murder by a court constituted exactly as in the present instance. I was not present upon the hearing of the appeal in that case, and judge of the points raised only from the report in the MANITOBA LAW REPORTS. From that report it does not appear that the jurisdiction of the Court was so much objected to as the mode in which the prisoner was charged with the offence, it being contended that he should be tried only upon an indictment found by a grand jury, or a charge made upon a coroner's inquest. It seems, notwithstanding that decision, still to be open to the prisoner to question the power of Parliament to establish the Court for the trial of the offence charged against him. I mean that the point is not yet *res judicata* so far as this Court is concerned. Even if it were so, in the event of any new argument of importance being adduced by the present or any other appellant, it would be quite competent for this Court, though not for the Court below, to reconsider the decision.

The authority of the Parliament of Canada to institute such a Court, and particularly to do so for the trial of a person upon a charge of high treason, is now denied; and it is also contended for the prisoner that the statute was not intended to provide for the trial of a charge of that nature. It has been argued that the powers of the Canadian Parliament are delegated to it by the Imperial Parliament, and that they must be considered to have been given subject to the rights guaranteed to British subjects by the Common Law of England, Magna Charta, the Bills of Rights, and many statutes enacted by the Imperial Parliament, among which rights are claimed to be the right of a party accused of crime to a trial by a jury of twelve of his peers, who must all agree in their verdict before he can be convicted, and the right of a party accused of high treason to certain safeguards provided in connection with the procedure upon his trial. It is also argued that high treason is a crime *sui generis*; that it is an offence against the sovereign authority of the state; and that it must be presumed, notwithstanding the provisions of the British North America Acts and the other Acts giving the Parliament of Canada authority in the North-West Territories, that the Imperial Parliament still reserved the right to make laws respecting high treason and the mode of trial for that offence; and also that the provisions of the Act 43 Vic. c. 25, s. 76, are inconsistent with enactments of the Imperial Parliament, and therefore inoperative. There can be no doubt that the Imperial Parliament has full power to legislate away any of the rights claimed within Great Britain and Ireland. Its position is not in any way analogous to that of the Legislatures, either State or Federal, under the Constitution of the United States, and the American authorities cited by counsel for the prisoner can have no application.

There is no power under the British Constitution to question the authority of Parliament. It may yet have to be considered whether it has so effectually given up its powers of legislation in regard to the internal affairs of Canada, by the British North America Act and some other statutes, that it cannot resume them; whether, in case of a conflict between the Parliament of Canada and the Imperial Parliament, the Courts of Canada are bound by the enactments of the one or the other; but these are questions which need not now be decided. It is true that the Parliament of Canada is the creature of statute, and that its powers cannot be greater than the statutes expressly or impliedly bestow upon it, but there has been no attempt by the Imperial Parliament to take away or to encroach upon the powers given to the Parliament of Canada, and we have nothing to do at present with speculations upon the effect of such an attempt. The British North America Act, 1867, begins with the recital that the Provinces of Canada, Nova Scotia and New-Brunswick "have expressed their desire to be federally united into one Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a constitution similar in principle to that of the United Kingdom." By section 9 the executive government and authority of and over Canada are declared to be vested in the Queen. Under section 17 there is "one Parliament" for Canada, consisting of the Queen, an Upper House—styled the Senate—and the House of Commons. By section 18 the privileges, immunities and powers of the Senate and House of Commons are to be such as are from time to time defined by the Parliament, but so as not to exceed those of the British House of Commons at the passing of the Act.

It thus appears that the Parliament of Canada is not, within its legislative powers, placed in an inferior position to that of Britain. The Sovereign form as integral part of the Canadian as of the British Parliament, the Executive authority is vested in the Queen. So far as relates to her internal affairs, Canada stands in a position of equal dignity and importance with the United Kingdom, and, except in so far as the action of the Sovereign may be indirectly controlled by the Imperial Parliament, Canada stands in this respect rather in the position of a sister kingdom than in that of a dependency.

It is principally by the 91st section that the legislative authority of the Canadian Parliament is defined; and under this section it can "make laws for the peace, order and good government of Canada," in relation to all matters not coming within the classes of subjects assigned exclusively to the Legislatures of the Provinces. By a portion of section 146 provision is made for the admission by Order in Council of Rupert's Land and the North-West Territories upon addresses from the Canadian Houses of Parliament, and under this provision and under the Rupert's Land Act, 31 and 32 Vic. c. 105, and the British North America Act, 1871, 34 and 35 Vic. c. 28, the North-West Territories have been added to the Dominion. By these two latter Acts the jurisdiction and powers of the Parliament of Canada are enlarged, both as to the territory over which they may be exercised and the subjects upon which laws may be enacted. There are no Provincial Legislatures (except in Manitoba) to share in the legislation, and there is no qualification of or exception from the power of legislation upon all matters and subjects relating to the "peace, order and good government" of Her Majesty's subjects and others in these added territories. Over these territories and with the addition of these subjects of legislation the Parliament of Canada is in the same position as it was over the Dominion when first formed, and in respect of the subjects of legislation committed to it by the British North America Act, 1867.

The American theory of constitutional government is, that the legislatures are composed of delegates from the people, and that certain rights and powers only are committed to them, and that the people have retained to themselves certain rights necessary to the free enjoyment of life and liberty which the legislatures have been given no power to interfere with, and it is now attempted to apply the term "delegated" to the bestowal by the Imperial upon the Dominion Parliament of the powers of legislation conferred by the Confederation and other Acts, and in this way to introduce the same theory into the consideration of our constitution. The principle of the British Constitution is, however, that the people of the State, the three estates of realm, composed of the Sovereign, the Lords and the Commons, are all assembled in Parliament, and that the enactments of

Parliament are those of the whole nation, and not of delegates from the people. From this necessarily follows the complete supremacy of Parliament, its power to legislate away the rights guaranteed by Magna Charta, the Bill of Rights, or any enactments of Parliament or charters of the Sovereign. As is said by Lord Campbell in *Logan* vs. *Murslem*, 4 Moore P. C. Cas. 296: "As to what has been said as to a law not being binding if it be contrary to reason, that can receive no countenance from any court of justice whatever. A court of justice cannot set itself above the legislature. It must suppose that what the legislature has enacted is reasonable, and all, therefore, that we can do is to try and find out what the legislature intended."

As this Dominion was intended to be formed "with a Constitution similar in principle to that of the United Kingdom," having a Parliament not of an inferior character, but of the dignity and importance to which I have referred, there can be doubt that, in this respect, it stands in the same position as the Imperial Parliament with regard to the subject matters upon which it may legislate. That this is so has been determined by judicial decision. Mr. Justice Willes, in *Phillips* vs. *Eyre*, L. R. 6 Q. B. 20, says: "A confirmed Act of the local Legislature, whether in a settled or conquered colony, has, as to matters within its competence and the limits of its jurisdiction, the operation and force of sovereign legislation, though subject to be controlled by the Imperial Parliament." In the *Godhue Will Case*, 19 Gr. 382, Draper, C. J., having reference to an Act of the Provincial Legislature of Ontario, says: "As in England it is a settled principle that the Legislature is the supreme power, so in this Province I apprehend that, within the limits mapped out by the authority which gave us our present constitution, the legislature is the supreme power." This view of the position of the Provincial Legislatures is upheld by the Privy Council in *Hodge* vs. *The Queen*, L. R. 9 App. Cas. 117. In *Valin* vs. *Langlois*, 3 Sup. C. R. 1, Ritchie, C. J., says: "I think that the British North America Act vests in the Dominion Parliament plenary power of legislation, in no way limited or circumscribed, and as large and of the same nature and extent as the Parliament of Great Britain, by whom the power to legislate was conferred, itself had. The Parliament of Great Britain clearly intended to divest itself of all legislative power over this subject matter, and it is equally clear that what it divested itself of, it conferred wholly and exclusively upon the Parliament of the Dominion." And this doctrine of a delegation of powers cannot be more aptly met than in the judgment of the Privy Council in *Regina* vs. *Burah*, L. R. 3 App. Cas. 889, referred to by my brother Taylor. The following remarks of Lord Selborne are so applicable that I must repeat them. He says (p. 904): "The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament, which created it, and it can of course do nothing beyond the limits which circumscribe those powers. But when acting within those limits it is not in any sense an agent or delegate of the Imperial Parliament, but has and was intended to have plenary powers of legislation, as large and of the same nature as those of Parliament itself."

I take it that the plenary powers of legislation conferred upon the Parliament of Canada include the right to alter or repeal prior Acts of the Imperial Parliament upon subjects upon which the Canadian Parliament is given power to legislate, so far as the internal government of Canada is concerned. The powers which the Imperial Parliament alone could formerly exercise upon these subjects in our North-West, whether by making laws entirely new, or by repeal or amendment of existing laws, our Parliament can now exercise. Nor do I think that the Imperial Act, 28 & 29 Vic. c. 13, is inconsistent with that view. Under section 2 of that Act, "Any Colonial law which is or shall be is any respect repugnant to the provisions of any Act of Parliament extending to the Colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act of Parliament, or having in the Colony the force and effect of such Act, shall be read subject to such Act, Order or Regulation, and shall to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative." This is not in any sense an Act of Interpretation of Imperial Statutes, which is to be considered as part of and to be read with Acts of the Imperial Parliament, and if it is repugnant to the British North America Act, 1867, and if by the latter Act powers are given to the Parliament of Canada without the limitation imposed

by the former Act, the British North America Act, as being the later one, must prevail. But even without this view, I cannot think that the repugnancy referred to is such as would be involved by an amendment or repeal of an Act of the Imperial Parliament upon a subject upon which plenary powers of legislation were subsequently given to the Parliament of Canada. There could only be considered to be repugnancy within the meaning of the Act if it appeared by the Imperial Act that it was to remain in force notwithstanding any subsequent action of the colonial legislature, or if it were enacted after the plenary powers of legislation were granted, and were thus shown to be intended to override any Act which the colonial legislature had passed or might thereafter pass. It will be observed also that it is only an Act of Parliament "extending to the Colony" to which reference is made in the section cited ; and by the first section of the Act, in construing the Act, "An Act of Parliament or any provision thereof," is only to be said to "extend to any colony when it is made applicable to the colony by the express words or necessary intendment of any Act of Parliament." And by section 3, "No Colonial law shall be deemed to have been void or inoperative on the ground of repugnancy to the law of England, unless the same shall be repugnant to the provisions of some such Act of Parliament, Order, or Regulation as aforesaid." Thus, it was evidently not the intention to exclude the colonial legislatures from making laws inconsistent with those which may have been enacted by the British Parliament for Britain or the United Kingdom particularly, and which may be in force in the colony solely by virtue of the principle that the British subjects settling therein carried with them the laws of Britain, or that by conquest the laws of Britain came in force. By the fifth section of this same Act, "Every colonial legislature shall have and be deemed at all times to have had full power within its jurisdiction to establish courts of judicature, and to abolish and reconstitute the same, and to alter the constitution thereof, and to make provision for the administration of justice therein." It must surely, then, not have been intended that such a legislature should be limited in its establishment of these courts, and in its regulation of the procedure therein, to courts constituted as those of England, and a procedure similar to that which Parliament has thought proper to establish for English courts, or to a jury system which can be traced back to the early ages of English history, or even to trial by jury at all.

Nor can I see any reason to suppose that it was not intended that the Parliament of Canada should not have power to legislate regarding the crime of treason in Canada. It certainly seems to be given when power is given to make laws for the peace, order and good government of Canada. Even jurisdiction to declare what shall be and what shall not be acts of treason, when committed within Canada, against the person of the Sovereign herself, might safely be committed to the Parliament of Canada when the Sovereign is a part of Parliament, and has also power of disallowance of Acts, even after they have been assented to in her name by the Governor General. The propriety or impropriety of providing for the selection of a jury by a stipendiary magistrate appointed by the Crown to hold office during pleasure, of reducing to so small a number the peremptory challenges, and other provisions relating to the constitution of the court and the mode of procedure to which objection has been made, is for Parliament and not for the Courts to decide. We can only decide whether Parliament has, as I think it clearly appears that it has, even without the Rupert's Land Act, full power to constitute courts and to determine their method of procedure. With the provision in the Rupert's Land Act, authorizing the Parliament of Canada "to constitute such courts and officers as may be necessary for the peace, order and good government of Her Majesty's subjects and others" in the North-West Territories, it does not appear that there can be any doubt that such courts are to be constituted with power to try a charge of high treason, as well as any other charge.

That the Canadian Parliament intended that the Court constituted under the North-West Territories Act of 1880, section 76, sub-sections 5 and following sub-sections, should have power to hear and try a charge of treason, there can be no doubt. After provision is made for the trial of certain charges in a summary way, without a jury, the provision in sub-section 5 is that "*In all other criminal cases* (which must include a case

of high treason) the stipendiary magistrate and a justice of the peace, with the intervention of a jury of six, may try *any* charge against any person or persons for *any* crime" (which must include the crime of treason).

Sub-section 10 provides that "any person arraigned for *treason* or felony may challenge peremptorily and without cause not more than six jurors." It was remarked that this is the only mention of treason in the Act, but it was the only occasion for its being specially mentioned. In view of the peculiar right of challenge in a case of treason, under the laws of England, it was important to place it beyond doubt, by special mention, that in a case of treason as in any other case the number of peremptory challenges was to be limited to six. The wording of the sub-section may not be strictly correct, as not recognizing that treason is a felony, but the sub-section is not on that account of any less importance as showing the intention to give to the court jurisdiction over a charge of treason.

I cannot agree with the argument of counsel for the Crown, that an objection to the information is not open on this appeal, on account of the prisoner having pleaded to the charge. He demurred to the charge, and his demurrer being overruled he was obliged to plead. There is no indictment, and I do not think that an objection to the charge need be by a formal demurrer. In fact, it appears that the proceedings may be of the most informal character. Under section 77, "a person convicted of an offence punishable by death" has a right of appeal to this court, which has jurisdiction "to confirm the conviction or to order a new trial." There can be no appeal until there has been a conviction, and I cannot see that the prisoner should be prevented from making any point that he may raise in any way before the court below the subject of appeal. If a new trial should in any case be granted on the ground of a defect in the charge, it would undoubtedly be allowed to the prisoner to withdraw his plea when he should be again brought up for trial, if this were considered necessary in order to give effect to the objection. Indeed, it appears to me that this would not be necessary, for I am of opinion that, upon a new trial, everything must be begun *de novo*, and the prisoner asked to plead again. There is no court continuing all the time before which he has pleaded ; there must be a new court established for the trial of each charge, and the proceedings upon the first trial cannot be incorporated with those upon the second.

In my opinion, it is not necessary that a "charge," within the meaning of sub-section 5, should be made on oath before the court having the jurisdiction to try the charge. By section 76, the stipendiary magistrate is given the "magisterial and other functions of a justice of the peace," and power to "hear and determine any charge against any person" in the manner set out in the various sub-sections of the section. I take it that the "charge" referred to in the 5th sub-section is one laid before him by information, as before a justice of the peace, to procure the committal of a party for trial. The charge having been so made he has to summon the jury and procure the attendance of a justice of the peace, and before the court so constituted the charge is to be tried. This is what has been done in the present instance.

The remaining objection of law to the conviction is to the method of taking the notes of the evidence, I cannot agree in the view that the clause requiring full notes of the evidence and other proceedings to be taken upon the trial is directory merely. Whether the notes are to be taken merely for transmission to the minister of Justice, as required by the 8th sub-section, or with a view also to use upon the appeal allowed, it is equally important that they be taken. If it is only with a view to their transmission to the minister, as the 8th sub-section also provides for the postponement of the execution of a sentence of death until the pleasure of the Governor has been communicated to the Lieutenant Governor, it is an important part of the procedure at the trial that the notes of evidence be taken in order that the action of the Executive may be based upon the real facts proved; almost, if not quite, as important as that the evidence should be laid properly before the jury itself. I should not hesitate to adjudge illegal a conviction of a capital offence shown to have been obtained upon a trial so conducted that these facts could not be properly laid before the Executive by the notes of evidence, for which the statute provides, taken down during the progress of the trial.

It appears by the certificate of the magistrate that the only full notes of the evidence taken at the trial were taken by "short-hand reporters" appointed by the magistrate. Although it is not so stated, I think that we may assume that these notes were taken in what is known as short hand. *Omnia præsumuntur rite esse acta* is a maxim applicable as well in criminal as in civil matters, and if we cannot make such an assumption we must assume them to have been in the ordinary form of writing, or at least in such form of writing as would satisfy the statute. The statutory provision is, that "full notes" are to be taken "in writing." The very definitions of the words "writing," and "to write," are sufficient to show that the methods of recording language covered by the word "stenography," come within the term "writing." The very derivation of the word "stenography" shows it to mean a mode or modes of writing. "Stenography" is a generic term which embraces every system of short hand, whether based upon alphabetic, phonetic, or hieroglyphic principles. There are advantages and these advantages both in stenography and in ordinary writing for the purpose of reporting the evidence given orally in a court of justice. The magistrate is not obliged to take the notes himself; he is authorized by the statute to cause it to be done by another or others. It has not been the practice so far as I know, in any court in Canada to take down *verbatim* question and answer in ordinary writing, and that could not be presumed to be required. If it is not, but the notes are taken in narrative form, their accuracy depends largely on the ability of the reporter hurriedly to apprehend the effect of question and answer and throw them together so as properly to set down the idea of the witness. Any system by which question and answer are given *verbatim* is certainly more likely to be accurate than this method, notwithstanding the chances of error suggested by Mr. Ewart. The short hand system of the reporter may be something which himself alone can understand, it may be a system which is known to many, and it may be that his notes can be read by many. I think that we are not entitled to assume, for the purpose of holding the conviction illegal, that in the present instance it was a system understood by the reporter alone, even if that assumption should properly lead to that conclusion.

The use of short hand reporters in the courts had been in vogue for a considerable time in more than one of the Provinces when the North-West Territories Act of 1880 was passed; and when Parliament provided only for the taking of the notes "in writing," without any further limitation of such a general word, it may be well understood to have had in view a class or method of writing which was in such general use. I have felt the more satisfied in coming to this conclusion, as it has not been suggested that the prisoner has been put under any disadvantage by the system adopted for reporting the evidence and proceedings, or that the report of the evidence or proceedings is in any respect inaccurate.

The question of insanity is raised upon this appeal as a question of fact only. No objection has been made to the charge of the magistrate to the jury. The principles laid down by the courts of Upper Canada, under the Act which authorized the granting of new trials in criminal cases, and which have been referred to by my brother Taylor, appear to me to be those which should govern this court in hearing and determining appeals from convictions in the North-West Territories upon questions of fact, except that it is hardly accurate to say that the court will not undertake to determine on what side is the weight of evidence, but only if there is evidence to go to the jury. This hardly applies in a case like the present. The presumption of law is that the prisoner is, and was, sane. The burden of proof of insanity is upon the defence. *McNaghten's* case, 10 Cl. & Fin. 204; *Regina* v. *Stokes*, 3 C. & K. 185; *Regina* v. *Layton*, 4 Cox C. C. 149. Without evidence to go to the jury, the prisoner cannot be acquitted upon the plea of insanity. If there is in such a case to be any appeal after a conviction, it must be on the ground that the evidence is so overwhelming in favor of the insanity of the prisoner that the court will feel that there has been a miscarriage of justice—that a poor, deluded, irresponsible being has been adjudged guilty of that of which he could not be guilty if he were deprived of the power to reason upon the act complained of, to determine by reason if it was right or wrong.

Certainly, a new trial should not be granted if the evidence were such that the jury

could reasonably convict or acquit. Mr. Lemieux laid great stress upon the fact that the jury accompanied their verdict with a recommendation to mercy, as showing that they thought the prisoner insane. I cannot see that any importance can be attached to this. I have read very carefully the report of the charge of the magistrate, and it appears to have been so clearly put that the jury could have no doubt of their duty in case they thought the prisoner insane when he committed the acts in question. They could not have listened to that charge without understanding fully that to bring in a verdict of guilty was to declare emphatically their disbelief in the insanity of the prisoner. The recommendation may be accounted for in many ways not connected at all with the question of the sanity of the prisoner.

The stipendiary magistrate adopts, in his charge to the jury, the test laid down in *MacNaghten's* case, 10 Cl. & F. 204. Although this rule was laid down by the leading judges of England, at the time, to the House of Lords, it was not so done in any particular case which was before that tribunal for adjudication, and it could hardly be considered as a decision absolutely binding upon any court. I should consider this court fully justified in departing from it, if good ground were shown therefor, or, if, even without argument of counsel against it, it appeared to the court itself to be improper as applied to the facts of a particular case. In the present instance, counsel for the prisoner do not attempt to impugn the propriety of the rule, and in my opinion they could not successfully do so. It has never, so far as I can find, been overruled, though it may to some extent have been questioned. This rule is, that "notwithstanding the party did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed, if he knew at the time of committing such crime that he acted contrary to law."

Mr. Justice Maule, on the same occasion, puts it thus : "To render a person irresponsible for crime on account of unsoundness of mind, the unsoundness should, according to the law as it has long been understood and held, be such as rendered him incapable of knowing right from wrong."

The argument for the insanity of the prisoner is based to a certain extent on the idea that he was in such a state of mind that he did not know that the acts he was committing were wrong : that he fancied himself inspired of Heaven, and acting under the direction of Heaven, and in a holy cause. It would be exceedingly dangerous to admit the validity of such an argument for adjudging an accused person insane, particularly where the offence charged is of such a nature as that of which this prisoner is convicted. A man who leads an armed insurrection does so from a desire for murder, rapine, robbery, or for personal gain or advantage of some kind, or he does so in the belief that he has a righteous cause, grievances which he is entitled to take up arms to have redressed. In the latter case, if sincere, he believes it to be right to do so, that the law of God permits, may, even calls upon him, to do so, and to adjudge a man insane on that ground, would be to open the door to an acquittal in every case in which a man with an honest belief in his wrongs, and that they were sufficiently grievous to warrant any means to secure their redress, should take up arms against the constituted authorities of the land. His action was exceedingly rash and foolhardy, but he reasoned that he could achieve a sufficient success to extort something from the Government, whether for himself or his followers. His actions were based on reason and not on insane delusion.

It is true that there were some medical opinions that the prisoner was insane, based upon an account of his actions and his previous history, but the jury were not bound to accept such opinions. The jury had to listen to the grounds for these opinions, and to form their own judgment upon them. In my opinion, the evidence was such that the jury would not have been justified in any verdict than that which they gave ; but even if it be admitted that they might reasonably have found in favor of the insanity of the prisoner, it cannot be said that they could not reasonably find him sane.

I hesitate to add anything to the remarks of my brother Taylor upon the evidence on the question of insanity. I have read over very carefully all the evidence that was laid before the jury, and I could say nothing that would more fully express the opinions

I have formed from its perusal than what is expressed by him. I agree with him also in saying that the prisoner has been ably and zealously defended, and that nothing that could assist his case appears to have been left untouched. If I could see any reason to believe that the jury, whether from passion or prejudice, or otherwise, had decided against the weight of the evidence upon the prisoner's insanity, I should desire to find that the Court could so interpret the statute as to be justified in causing the case to be laid before another jury for their consideration, as the only feelings we can have towards a fellow creature who has been deprived of the reason which places us above the brutes, are sincere pity and a desire to have some attempt made to restore him to the full enjoyment of a sound mind.

The prisoner is evidently a man of more than ordinary intelligence, who could have been of great service to those of his race in this country; and if he were insane, the greatest service that could be rendered to the country would be, that he should, if possible, be restored to that condition of mind which would enable him to use his mental powers and his education to assist in promoting the interests of that important class in the community to which he belongs. It is with the deepest regret that I recognize that the acts charged were committed without any such justification, and that this Court cannot in any way be justified in interfering.

In my judgment, the conviction must be confirmed.

APPEAL TO THE PRIVY COUNCIL.

P. C. No. 1743.

CERTIFIED copy of a report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General in Council, on the 25th Sept. 1885.

The Committee of the Privy Council have had under consideration a petition from Louis Riel, now under sentence of death at Regina, in the North-West Territories of Canada, through his counsel, Messrs. Lemieux and Fitzpatrick, asking that such steps may be adopted by the Governor General in Council as will allow him the necessary time to procure an appeal to the Queen's Most Excellent Majesty in Council from the sentence and judgment rendered in his case at Regina.

The Minister of Justice to whom the petition was referred for immediate action, reports with respect to the application for delay in order to allow the prisoner time to appeal to the Privy Council, that the Magistrate has postponed the execution until the 16th of October, and he recommends that Your Excellency be moved to communicate with the Right Honorable the Principal Secretary of State for the Colonies with a view, if possible, to secure an early meeting of the Judicial Committee of the Privy Council in order that the question as to whether leave to appeal in this matter will be granted or not, shall be determined at the earliest possible time.

The Committee concur in the above recommendation of the Minister of Justice, and they submit the same for approval.

(Signed) JOHN J. MCGEE.
Clerk, Privy Council.

IN THE PRIVY COUNCIL.

In appeal from the Court of Queen's Bench for the Province of Manitoba, Dominion of Canada.

LOUIS RIEL,
Appellant.

and

THE QUEEN,
Respondent.

To the Queen's Most Excellent Majesty in Council.

The humble petition of Louis Riel sheweth, as follows :—

1st. On the 20th, 21st, 22nd, 23rd, 24th and 25th days of July last, your petitioner was tried for the crime of treason before a stipendiary magistrate and a justice of the peace, with the intervention of a jury of six persons in the North-West Territories of the Dominion of Canada, and having been found guilty has been sentenced to death.

2nd. Your petitioner caused an appeal to be taken to the court of Queen's Bench for the Province of Manitoba, and that court has confirmed the sentence aforesaid.

3rd. Your petitioner feels aggrieved by the proceedings of the said courts for the following, amongst other reasons :

1st. The said stipendiary magistrate and justice had no jurisdiction to try Your petitioner for the crime aforesaid.

2nd. If they had jurisdiction in any case of treason, there was not in the case of your

petitioner, any indictment preferred by any grand jury or inquisition found by any coroner's inquest against your petitioner.

3rd. An information was laid against your petitioner, but even if a mere information was sufficient, that in the case of your petitioner was taken before the stipendiary magistrate alone who had no jurisdiction at all.

4th. The evidence at the trial was not taken down by the stipendiary magistrate, and by him caused to be taken down in writing, as directed by the Statute in that behalf.

5th. Upon the appeal to the Court of Queen's Bench, your petitioner was not permitted to be present nor were any of the papers or the record properly before the Court.

6th. The trial of your petitioner and the circumstances out of which it arose are deemed by the people of Canada to be matters of no ordinary importance, have divided the population into two opposing parties, and it is essential not only upon these grounds, but also from the fact that a large number of trials arising out of the same circumstances are being had before the same functionaries that the question raised by this petition should be adjudicated and settled.

The petitioner must therefore pray :

1st. That Your Majesty will be graciously pleased to order that your petitioner may have special leave to appeal and be at liberty to enter and prosecute his appeal from the afore said sentence and judgment respectively, and that the said stipendiary magistrate and justice may be ordered to transmit forthwith the transcript of the proceedings and evidence in the matter to the Privy Council office, or that Your Majesty may be graciously pleased to make such further or other order as to Your Majesty in Council may appear just and proper.

And your petitioner will ever pray, &c.

(Signed) F. X. Lemieux,
" Chs. Fitzpatrick.

Quebec, September 14th, 1885.

True copy.

Chs. Fitzpatrick.

(COPY)

CANADA.

No. 243.

COLONEL STANLEY TO THE DEPUTY-GOVERNOR.

Downing Street,
24th October, 1885.

Sir,—With reference to my telegram of the 22nd instant, I have the honor to transmit to you the accompanying copies of the judgment of the Lords of the judicial committee of the Privy Council, on the petition for leave to appeal of Louis Riel.

I have, &c.

(Signed,) Robert G. W. Herbert,
for the Secretary of State.

The Deputy-Governor.

Judgment of the Lords of the Judicial committee of the Privy Council on the petition of Louis Riel, from the Court of Queen's Bench for the Province of Manitoba.

Present :

The Lord Chancellor.
Lord Fitzgerald.
Lord Monkswell.
Lord Hobhouse.
Lord Esher.
Sir Barnes Peacock.

This is a petition of Louis Riel, tried in July last at Regina, in the North-West Territories of Canada, and convicted of high treason, and sentenced to death, for leave to appeal against an order of the Queen's Bench of Manitoba, confirming that conviction.

It is the usual rule of this committee not to grant leave to appeal in criminal cases, except where some clear departure from the requirements of justice is alleged to have taken place. Whether in this case the prerogatives to grant an appeal still exists, as their Lordships have not heard that question argued, they desire neither to affirm nor to deny, but they are clearly of opinion that in this case leave should not be given.

The petitioner was tried under the provisions of an Act passed by the Canadian Legislature, providing for the administration of criminal justice for those portions of the North-West Territory of Canada, in which the offence charged against the petitioner is alleged to have been committed. No questions has been raised that the facts as alleged were not proved to have taken place, nor was it denied before the original tribunal, or before the Court of Appeal in Manitoba, that the acts attributed to the petitioner amounted to the crime of high treason.

The defence upon the facts sought to be established before the jury was, that the petitioner was not responsible for his acts by reason of mental infirmity.

The jury before whom the petitioner was tried negatived that defence, and no argument has been presented to their Lordships directed to show that that finding was otherwise than correct. Of the objections raised on the face of the petition two points only seem to be capable of plausible or, indeed, intelligible expression, and they have been urged before their Lordships with as much force as was possible, and as fully and completely in their Lordship's opinion as it would have been if leave to appeal had been granted, and they have been dealt with by the judgments of the Court of Appeal in Manitoba with a patience, learning and ability that leaves very little to be said upon them.

The first point is that the Act itself under which the petitioner was tried was *ultra vires* the Dominion Parliament to enact. That Parliament derived its authority for the passing of that statute from the Imperial Statute, 34 and 35 Vic. Chap. 28, which enacted that the Parliament of Canada may from time to time make provision for the administration, peace, order, and good government of any territory not for the time being included in any province.

It is not denied that the place in question was one in respect of which the Parliament of Canada was authorized to make such provision, but it appears to be suggested that any provision differring from the provisions which in this country have been made for administration, peace, order and good government cannot, as matters of law, be provisions for peace, order and good government in the territories to which the Statute relates, and further that, if a Court of law should come to the conclusion that a particular enactment, was not calculated as matter of fact and policy to secure peace, order, and good government, that they would be entitled to regard any Statute directed to those objects, but which a Court should think likely to fail of that effect, as *ultra vires* and beyond the competency of the Dominion Parliament to enact.

Their Lordships are of opinion that there is not the least colour for such a contention. The words of the Statute are apt to authorize the utmost discretion of enactment for the attainment of the objects pointed to. They are words under which the widest departure from Criminal procedure as it is known and practised in this country have been authorized in Her Majesty's Indian Empire.

Forms of procedure unknown to the English common laws have there been established and acted upon, and to throw the least doubt upon the validity of powers conveyed by those words would be of widely mischievous consequence.

There was indeed a contention upon the construction of the Canadian Statute, 43 Vict., Chap. 25, that high treason was not included in the words: "any other crimes," but it is too clear for argument, even without the assistance afforded by the 10th subsection, that the Dominion Legislature contemplated high treason as comprehended within the language employed.

The second point suggested assumes the validity of the Act, but is founded upon the

assumption that the Act has not been complied with. By the 7th sub-section of the 76th section it is provided that the magistrate shall take or cause to be taken in writing full notes of evidence and other proceedings thereat, and it is suggested that this provision has not been complied with, because though no complaint is made of inaccuracy or mistake, it is said that the notes were taken by a shorthand writer under the authority of the magistrate, and by a subsequent process extended into ordinary writing intelligible to all. Their Lordships desire to express no opinion what would have been the effect if the provision of the statute had not been complied with, because it is unnecessary to consider whether the provision is directory only, or whether the failure to comply with it would be ground for error, inasmuch as they are of opinion that the taking full notes of the evidence in shorthand was a causing to be taken in writing full notes of the evidence, and a literal compliance therefore with the Statute.

Their Lordship's will, therefore, humbly advise Her Majesty that leave should not be granted to prosecute this appeal.

PETITION FOR A MEDICAL COMMISSION.

P. C. 2020.

[*Translation*].

TO HIS EXCELLENCY

THE RIGHT HONORABLE HENRY CHARLES KEITH PETTY-FITZMAURICE, MARQUIS OF LANSDOWNE, GOVERNOR-GENERAL OF THE DOMINION OF CANADA, &C., &C., &C.

The Petition of F. X. Lemieux, advocate, of the city of Quebec,

Humbly represents :

That he has acted as one of the Counsel of Louis Riel, accused and convicted of the crime of high treason, at Regina, during the course of the month of August last ;

That at the time of the trial of Louis Riel it was established that the latter had already been confined for insanity in certain lunatic asylums viz ; in 1874 in the Longue-Pointe asylum, at Montreal in 1876, at the Beauport asylum, Quebec in 1879, in a lunatic asylum at Washington, United States.

That credible witnesses, amongst whom Revd. Fathers André and Fourmond and Hon. Charles Nolin, and others, have proved, at the trial, that Louis Riel, had before, during and after the rising in the North-West, to their own knowledge, given sure and positive evidence of insanity by his deeds, words and general behaviour and that they truly beleived that Riel was not responsible for his actions during the time already mentioned.

That this evidence of the insanity of Riel has been corroborated and strengthened by the testimony of two lunacy physicians, Messrs Roy of Quebec and Clarke of Toronto.

That Dr Roy has, moreover declared that Riel had been under his immediate care during the eighteen months for which he had been confined at Beauport and that Riel was then suffering from a mental disorder, or ambitions Monomania called Megalomania; that from Louis Riel's antecedents, the evidence made of insane actions and the examination of the accused at the time of his trial, Dr Roy has sworn that he verily believed that Riel was insane and incapable of discerning right from wrong.

That Dr Clarke has declared under oath that for the same reasons as those used by Dr Roy, he was of opinion that Riel was a monomaniac and that he was suffering from a mental disorder which rendered him incapable of discerning right from wrong, but that, inasmuch, as he had never seen Riel before the time of the trial, it would have been necessary for him to examine the patient during perhaps a couple of months, in order to enable him to make an exact report as to his mental condition.

That this insanity has been so much proved that the jury have been impressed by proof which has been made of it, to such an extent that they recommanded Riel to the clemency of the Court.

That yeur petition has been informed in a credible manner, that since the verdict has been given, the insanity and mania of Riel have considrably increased, and that he is actually insane and incontrollable.

Your petitioner, therefore humbly prays that Your Excellency be pleased to appoint a medical commission composed of specialists and alienists, whose duty it will be to examine the said Louis Riel, actually detained in Regina, in the mounted police military camp, and to ascertain the state of mind and mental condition of the said Louis Riel and to report to the authorities accordingly.

And your petitioner will ever pray.

(Signed,) F. X. LEMIEUX,
Attorney for Louis Riel.

[*Translation*].

I, FRANÇOIS ROY, physician and surgeon, co-proprietor and superintendent of the lunatic asylum at Beauport, of the city of Quebec, solemnly declare :—

That all the facts alleged and contained in the above petition are true.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Act passed in the 37th year of Her Majesty's Reign intituled " An Act for the suppression of voluntary and extra judicial oaths, " and have signed

(Signed) F. E. ROY, M. D.

Sworn before me at Quebec this 24th day of october 1885.

(Signed) ALEXANDER CHAUVEAU, J. S. P.

[*Translation*].

CANADA
Prowince of Quebec.

F. X. LEMIEUX, Petitioner for a medical commission to examine into the mental state of Louis Riel.

I, FRANÇOIS-XAVIER LEMIEUX, of the city of Quebec, advocate, and a member of the Legislative Assembly of the Province of Quebec solemnly declare :

That I was engaged as attorney and advocate for Louis Riel, at the time of his trial for high treason at Regina in the course of the months of July and August last. That since the time that the verdict of guilty was brought against Louis Riel and the sentence of death pronounced against him, I have had some correspondence with different persons, who since that time have had frequent relations and interviews with Louis Riel, and all these persons have declared to your petitioner that they truly believed that Louis Riel was insane and that his insanity had considerably increased since the time of the verdict.

That on the 31st August last, nearly a month after the verdict, the Révérend Père André, Supérieur des Oblats, sent me a letter from Regina, in which among other things he said as follows :

" MY DEAR MR. LEMIEUX,

" By this time you should be in Winnipeg and in this hope I send you these lines to " salute you and to wish you success in your praiseworthy attempt to save the poor and " unfortunate Riel. Since your departure from Regina I have visited your client regular- " ly every day.

" The experience I have gained of this man by continual contact with him has only " confirmed me more and more in the opinion I had already formed of him, that he is " crazy and insane (craqué et toqué, *a crank*) both in regard to religion and to politics. " It is only necessary to hear him speak of his visions for the reform of the world in " regard to religion as well as politics, to be quite certain of this unhealthy and crazy " state of mind.

" I have just been visiting him, and during an hour he spoke of extraordinary revelations made to him by the spirit the previous night, and that he has been ordered to communicate to me and to all the Catholic clergy : " The great cause of sin in the world " is the revolt of the body against the spirit, it is because we do not chew our food " enough, and by this want of mastication it communicates animal life only to the body " while by masticating and chewing it well, it spiritualizes the body."

" He had been searching for this secret since fifteen years and it had been communicated to him but the previous night, and he was in a state of great joy for having discovered this means which will prove to be a powerful agent to communicate spiritual life in bodies gradually leaving this world to rise to heaven.

While he was speaking he suddenly stops showing me his hand : " Do you see, says he, blood flowing in the veins ; the telegraph is operating actively, and I feel it, they are talking about me, and questioning authorities, in Ottawa, about me."

It is of similar fantastic visions he speaks with me every day. I am convinced that he is not acting a part, he speaks with a conviction and a sincerity which leave no doubt in my mind about the state of his mind, he has retracted his errors but he believes himself to day to be a prophet and invested with a divine mission to reform the world on the day he has spoken to the Court and when I reprove him for his foolish and extravagant ideas, he answers that he submits, but that he cannot stifle the voice that speaks in him and the spirit that commands him to communicate to the world the revelations he receives. One must have the ferocious hatred of a fanatic or the stupidity of an idiot, to say that Riel is not a fool, because he is intelligent in other matters, as if history was not filled with such anomalies among certain men who, remarkable in certain subjects, have lost the balance which contains intelligence within the limits from which it cannot escape without losing its privilege of guiding us or making us responsible for our own acts.

Riel is truly a phenomenon worth studying. He is under many aspects remarkable. One must know him and above all study him closely to find out that he is a prey to an invincible delusion, which deprives of that faculty which is called *common sense* and which is the criterion which God has given us to enable us to judge of the goodness or of the malice of our own acts. Riel has certainly not the common sense which can shew him the bearings of his actions and specially so when religion and politics are concerned. These are the principles which guide me in my treatment of him since he is in gaol. Although his opinions upon religion are greatly erroneous, I do not hold him responsible and do admit him to receive sacraments. And for all that, he often renews the errors which he has retracted and which he again retracts when I point out to him his heresies as contrary to the dogmas taught by the Holy Catholic Church.

" On the day following such retractation, he talks to me more ardently than ever " about his revelations and his communication with some angel who honors him with a " nocturnal visit."

. . . . . .

I have gone to Regina, about the eight of September last, for the only purpose of seeing Riel, who on many occasions, by letters and telegrams had begged that I should go and see him, as he had very important matters to communicate to me, he said. I have had many interviews with him, during which he did not say one word about his case which had been taken in appeal before the Court of Queen's Bench, in Manitoba, but he spoke to me of his mission, of his prophecies, of his visions, and heavenly communications and of the other subjects mentioned in the foregoing extracts of the letter from Father André

And during the long conversations which I had with him, I hardly could obtain a few words which had even a dim light of common sense.

I had seen Louis Riel during about a month, at the time of his trial and I solemnly declare it, at the time when I saw him last (8 september ultimo) his mental condition was greatly altered and his mind had considerably weakened and I truly believe that at the date of the 8th September and up to now, Louis Riel was mad and incapable of discerning right from wrong.

Such is also the opinion of persons whom I have met at Regina and who have seen Riel since his trial.

I make this solemn declaration conscientionsly believing the same to be true and by virtue of the Act passed in the 37th year of Her Majesty's reign intituled "An Act for the suppression of voluntary and extrajudicial oaths." And I have signed.

(Signed) F. X. Lemieux.

Acknowledged before me at Quebec, this 28th day of October, 1885.

(Signed) D. Murray, J. P.

LIST OF PETITIONS — "RIEL" CASE.

Name of County, Municipality, &c.	By whom sent.	For Commutation.	For Medical Enquiry.
County of Vaudreuil	H. McMillan, M.P.	For	For
Three Rivers and Nicolet	T. E. Methot	"	
St. Jean-Baptiste, Cote St. Louis et Mile-End	A. Desjardins, M.P.		"
Lachine	Electors		
Parish of Varennes	F. X. Perrault	"	
Township of Clarence, Co. of Prescott	Electors	"	
Parish of St. Laurent	"		"
County of Two Mountains	Municipal Council	"	
City of St. Hyacinthe	Citizens	"	
Batiscan, St. Prospère, Ste. Géneviève	"	"	
Parish of Pointe Claire	Electors		"
Whitehall, N. Y.	Citizens		"
Roxton and Roxton Falls	"	"	
Parish of St. Narcisse	"	"	
Yamachiche, Shawenegan et St. Etienne	E. Gerin	"	
Trois Pistoles	Electors	"	
Berthier (en haut)	Citizens		"
Manitoba, Province of	Inhabitants		"
St. François-Xavier	Citizens	"	"
Isle Bizard	Electors		"
St. Jérome	Citizens		"
Three Rivers	"	"	
L'Islet	P. B. Casgrain, M.P.	"	
St. Jean Port Joli	Citizens	"	
Quebec	"	"	
Rimouski	Electors	"	
Chicago, Ill	Citizens	"	
Fraserville (Rivière du Loup)	Electors	"	
St. François (Montmagny)	Citizens	"	
County of Montmagny	Council	"	
Notre-Dame du Mont Carmel	Citizens	"	
St. Sauveur, Que.	"	"	
Rimouski	Electors	"	
Coaticook	"	"	
St. Paul	Citizens	"	
L'Islet	Electors	"	
County of Essex, Ont.	Citizens	"	
Manitoba, Province of	Electors		"
St. Etienne	Council	"	
Holyoke, U. S.	L. Laframboise	"	
County of Maskinongé	A. L. Desaulniers, M. P.	"	
County of L'Assomption	Electors	"	
Cap St. Ignace	Citizens	"	
Gaspé and Rimouski	Electors	"	
Red River, Man	Inhabitants	"	
Minnesota, U.S.	Residents	"	
St. John, P. Q.	Electors	"	
Manitoba	"	"	

LIST OF PETITIONS — "RIEL" CASE.—*(Continued.)*

Name of County, Municipality, &c.	By whom sent.	For Commutation.	For Medical Enquiry.
Iberville, P. Q.	Electors	"	
City of Ottawa	French Canadians		"
County of Morris, Man	Electors	"	
Town of Sorel	Citizens	"	
Granville, France	Lucien Dion	"	
Sherbrooke	Citizens	"	
Ste. Geneviève	Inhabitants	"	
Qu'Appelle River	Half-Breeds	"	
Joliette		"	
Sherbrooke, Compton		"	
Sherbrooke		"	
Farnham		"	
St. Pierre		"	
Cranbourne		"	
County Montmagny		"	