Judgement 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, delivered 22nd October 1885.

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 prerogative 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

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been committed. No question 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 Lordships' opinion as it would have been if leave to appeal had been granted, and they have been dealt with by the judgements 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 & 35 Vict., 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 differing 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 law 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., cap. 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 Sub-section, 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 the 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 Lordships will, therefore, humbly advise Her Majesty that leave should not be granted to prosecute this appeal.