

No. 4.

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COPY of a DESPATCH from the Right Hon. the Earl of CARNARVON to Viscount
MONCK.

(No. 110.)

MY LORD,

Downing Street, November 24, 1866.

HER Majesty's Government have had under their consideration your despatches noted in the margin,* respecting the case of E. S. Lamirande recently surrendered to the French authorities.

This person was apprehended on a charge of forgery committed in France, under a warrant issued by you on requisition of the French Consul-General. He was brought duly before a Magistrate, and on the 22nd of August committed by him to gaol with a view to his surrender. But some days before that date you were informed that the prisoner intended to apply for a writ of *habeas corpus* (as he was clearly entitled to do), and you promised that time for making such an application should be allowed.

On the 24th of August you signed a warrant authorizing the prisoner's surrender. This step you took on the advice of your Solicitor-General, and you state that when you took it neither you nor he were aware that any application had been made for a writ of *habeas corpus*. You did not take any steps to ascertain this point; but as two days appeared to have elapsed since the committal of the prisoner to gaol, you considered that ample time had been allowed to enable him to obtain that writ.

The application in fact was made and argued before the Court of Queen's Bench at Montreal, on the very day on which you signed your warrant at Quebec. The Judge had reserved his decision till the following day. Meanwhile the warrant once signed by you had become available by those who were interested in its immediate execution. On the evening of the 24th it was presented to the prison authorities at Montreal who, of course, were bound to obey it. Under its authority Lamirande was delivered over and at once sent off to France.

The next morning the Court declared him entitled to his release.

Various questions have been raised with reference to this surrender, which, it is necessary to observe, purported to be made under authority of the Imperial Act 6 and 7 Vict., cap. 75. For the purposes of that Act (which in this respect is differently framed from a similar Act of the same year relating to the United States), I am advised that the requisition for Lamirande's delivery ought to have been made not by the Consul, but by a "Diplomatic Agent," in the strict sense of that phrase, and that the facts alleged against him did not constitute the crime of forgery, according to the English law, on the plea of which his surrender was claimed.

These, however, are matters on which I am not surprised that you should have guided yourself, by the advice which you received from your Solicitor-General. I can only regret that his opinion, on the faith of which your warrant was signed, should have so materially differed from that adopted by the Court of Queen's Bench in Canada, and by Her Majesty's Law Officers in this country.

The proceeding by which the French authorities were enabled to obtain possession of the person of Lamirande, requires, I am sorry to say, more serious notice from me. You appear to consider that, having reference to the nature of the offences charged against this person, to the general duty of contributing by all proper means to the execution of substantial justice, and to the written and unwritten obligations which subsist between England and France—two civilized and friendly nations—it was your duty to allow to the prisoner little more than the smallest possible time within which it was practicable for him to obtain a decision on his application for the writ of *habeas corpus*. I by no means undervalue the considerations by which your judgment was influenced. I need hardly say that I give you entire credit for being exclusively actuated by them. But I am obliged to add that I wholly dissent from the conclusion at which you arrived. Being fully informed of the prisoner's intention to apply to the Supreme Court, it was your duty not to regulate your conduct by conjectures which any accident might disturb, and which the time required by the Judge for deliberation did in fact disturb; but to take care that the authority which you hold from Her Majesty was not directly or indirectly abused to frustrate the administration of justice in a matter which had

* No. 155, October 6, page 1; No. 164, October 18, page 12; No. 173, October 25, page 62; No. 174, October 25, page 65; No. 175, October 25, page 66; and No. 182, October 31, 1866, page 91.