

and will acknowledge that they are just in principle; since, in point of fact, Lamirande having formally declined to take advantage of the results that would accrue from his surrender, the question no longer possesses any but a theoretical interest.

I have, &c.,

(Signed,)

JULIAN FANE.

(Inclosure 1 in No. 39.)

*M. de Moustier to M. Fane.*

(Translation.)

PARIS, March 1, 1867.

SIR,—You did me the honor of writing to me on the 14th of January last, to request, in the name of the Government of the Queen, the surrender of the condemned prisoner Lamirande, as having been unduly given up to French justice.

When I was on the point of answering that communication, the Minister of Justice informed me that Lamirande had just written of his own accord to the Procureur-Général of Poitiers, to declare that he renounced all claim to his surrender. Since then he wrote to M. Baroche to renew that declaration in terms still more explicit; and I learn that his brother recently called at the Embassy in order to ratify and explain to you the purport of the convicted prisoner's declarations, of which he was the bearer. There can be no doubt, therefore, as to the formal wish of Lamirande to remain in France to undergo his sentence, and the British Government will probably consider that the documents which establish that intention should put an end to the discussion of which he is the object.

Nevertheless I do not believe it useless to examine the legal questions raised by your communication.

The demand of the Queen's Government is based on two grounds:—

*First*, That the application for Lamirande's extradition was not made through the intervention of a Diplomatic Agent, such as is required by the Treaty, and by the British Statute giving effect to the Treaty.

*Secondly*, That the crime for which Lamirande was given up did not constitute the crime of forgery ("*faux*,") contemplated by the Treaty.

In regard to the first point, we allow willingly that the text of the Treaty only mentions Diplomatic Agents; but ought it to be interpreted in a sense absolutely excluding the competency of agents placed in a similar position to that of the French Consul General at Quebec? If such an interpretation should prevail, it could only reveal a new and lamentable omission in the Treaty of 1843; and in regard to this I must first call to mind that in point of fact, in the present instance, the persons charged with the pursuit of Lamirande, who were the bearers of the warrant issued against him, could not have requested, on their way through England, as your letter supposes, the intervention of the French Ambassador in London, inasmuch as at that time the accused had fled, not to British territory but to the United States. The same persons afterwards, like the fugitive, went over direct from Federal soil into Canada, and it was the prompt requisition alone, addressed by our Consul General to the Governor of that Colony, which could have made the extradition possible.

That incident, on the contrary, shows how indispensable, in cases of urgency, the action of Consular Agents may be, and at the same time the necessity of an interpretation breathing, above all things, that spirit of practical conciliation which should preside over the execution of international acts.

Besides, an extradition granted without a request made through a diplomatic channel has nothing in itself opposed to the practice followed under certain circumstances by Great Britain either towards France or other countries.

To this day extradition is carried out in French and English Colonies on the simple request of the Governor, without recourse having been made to a diplomatic channel, and without the British Government ever having protested against that way of proceeding.

Recently, in 1863, England entered into an agreement with Italy respecting Malta, whereby applications for extradition could be made by Consular Agents.

Lastly, the clause of the Anglo-American Treaty of 1842, which refers to extraditions between the two countries, leaves it to be supposed, as you allow, that the power of requesting the surrender of criminals is by no means limited to Diplomatic Agents, properly