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Gr. Brit. Colonial Office

CORRESPONDENCE

WITH THE

GOVERNOR-GENERAL OF CANADA

RESPECTING THE

EXTRADITION

OF

M. LAMIRANDE.

Presented to both Houses of Parliament by Command of Her Majesty.
March 1867.

LONDON:
PRINTED BY HARRISON AND SONS.

508.

SCHEDULE.

DESPATCHES FROM THE GOVERNOR-GENERAL.

DESPATCHES FROM THE SECRETARY OF STATE.

DESPATCHES FROM THE GOVERNOR-GENERAL.

Despatches from the Governor-General.

No. 1. No. 1.

Copy of a DESPATCH from Viscount Monck to the Right Hon. the Earl of Carnarvon.

(No. 155.) Quebec, October 6, 1866.
(Received October 24, 1866.)

My Lord, (Answered, No. 84, October 27, 1866, page 99.)

I HAVE the honour to transmit, for presentation to Her Majesty, an address from certain inhabitants of the city of Montreal, praying that a certain prisoner named Lamirande, lately delivered under my warrant of extradition to the authorities of the French Government, may be returned to Montreal, in order that his case may be investigated there before the Court of Queen's Bench, on writ of *habeas corpus*.

I have the honour to transmit also affidavits from Joseph Doutre, Esq., Q.C., and C. L. Spilthorn, Esq., Advocate, counsel for Lamirande, and the judgment of Mr. Justice Drummond, of the Queen's Bench, on an application for a writ of *habeas corpus*.

With respect to the statement of the facts of the case contained in these affidavits, as far as they came within my personal knowledge, I believe it to be accurate.

It is true that I stated to Mr. Spilthorne, when he presented a petition to me on the subject at Ottawa, that time should be afforded to the prisoner to apply for a writ of *habeas corpus*, and that sufficient time not only to apply for, but to obtain the writ, was allowed, is apparent from the judgment of Mr. Justice Drummond, who says, speaking of the proceedings before him on the 24th, "I would have issued the writ before adjourning the Court, had the Counsel for the prisoner insisted upon it."

But while on the one hand sufficient time should be allowed to a prisoner to avail himself of any advantages which our laws allow him, I think on the other hand a friendly Power with which a Treaty of Extradition exists, would have good grounds of complaint if unnecessary delays were interposed by the Executive in carrying those Treaty obligations into effect.

In this case the prisoner was committed by the Magistrate on the 22nd August.

Late in the forenoon of the 24th August, the Solicitor-General for Lower Canada, Mr. Langevin, came to my residence near Quebec, with the warrant of extradition, and gave me his opinion in writing, that in point of law the case was one for extradition.

In justice to the Solicitor-General I must here correct an error into which Mr. Doutre has fallen, in relating my statement of the verbal advice tendered to me by Mr. Langevin with respect to the effect of my warrant on an application for a writ of *habeas corpus*.

I am made to say, that I executed the warrant "on the express understanding that it would in no way interfere with the proceedings adopted, or to be adopted, by the prisoner for obtaining a writ of *habeas corpus*."

What I did ask Mr. Langevin was, whether the execution of my warrant would interfere with the writ of *habeas corpus* if the prisoner's counsel had obtained it in the period (forty-eight hours as it appeared from the dates), which had then elapsed since the committal. To this Mr. Langevin replied in the negative, and I believe his answer was quite right in point of law.

I may state, that the practice which I have always followed in cases of extradition, of which we have a great number on the application of the Government of the United States is, in cases in which no questions of policy arise and which merely

involve points of law, to guide myself by the advice of the Law Officers of the Crown.

This appeared to me such a case, and as the Solicitor-General advised me that in point of law it was right the prisoner should be surrendered, and I was under the impression from the dates, that forty-eight hours had elapsed between the committal of the prisoner and the signing of my warrant, which appeared to me ample time for obtaining the writ of *habeas corpus*, I executed it.

It is true that on first hearing that the prisoner had been removed under my warrant, and before I was fully informed of the whole facts of the case, I did express my regret that he had been deprived of an advantage by my act, and I said that I would do what I could to enable him to bring his case before another tribunal.

I accordingly sent a message to your Lordship by Atlantic Telegraph,* briefly informing you of the facts of the case, and stating that, should an application be made for a writ of *habeas corpus* in England, I wished that if possible my warrant should not be a bar to it.

I am bound to say, that on a calm review of the whole facts, it appears to me that the miscarriage in the case is due to the want of diligence on the prisoner's part in suing out the writ of *habeas corpus*, for which full time was allowed; which writ, if it had been issued, would have suspended the execution of my warrant until the Court of Queen's Bench had had an opportunity of delivering its judgment on the merits of the case.

It may be right to state, by way of explanation, that though my warrant of extradition bears date the 23rd of August, the day upon which it was sealed at Ottawa, I did not, in point of fact, sign it as I have stated, until the 24th. The discrepancy arose from the fact that the officer who has the custody of my seal was at Ottawa, whereas I was at Quebec.

I have, &c.

The Right Hon. the Earl of Carnarvon, &c. &c. &c.

(Signed) MONCK.

Incl. 1 in No. 1.

Inclosure 1 in No. 1

Mr. DOUTRE to the Earl of CARNARVON.

MY LORD, Montreal, October 4, 1866.

I HAVE the honour to enclose a petition to Her Majesty from citizens of Canada, and especially from Montreal, concerning what is described as the fraudulent removal of E. S. Lamirande from the jurisdiction of the Court of Queen's Bench at Montreal, and praying Her Majesty to use Her authority for restoring the said Lamirande to the jurisdiction of the said Court. Your Lordship will oblige by laying it before Her Majesty, and inform the signers through me of its result. Messrs. Mackenzie, Trelleme and Trinden, Solicitors of London, may be applied to for further informations if required.

I have, &c.

(Signed) JOSEPH DOUTRE, Q.C.

To Lord Carnarvon,
Secretary of State for the Colonies, London.

Incl. 2 in No. 1.

Inclosure 2 in No. 1.

Province of Canada, District of Montreal.

To Her Most Gracious Majesty Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

The Petition of the Undersigned, humble subjects of your Majesty,

Most respectfully represents,

THAT from facts of public notoriety, in this part of the Province of Canada, it is manifest that Ernest Sureau Lamirande, claimed by France under the Extradition

* The following is a copy of the telegram sent by Lord Monck to Lord Carnarvon:—

(Telegram.) "Quebec, August 30, 1866.

"PRISONER, named Lamirande, delivered to French Government under my warrant, went in 'Damascus' on 25th. Owing to delay in obtaining habeas corpus he was removed before it issued. Application will be made to English Courts by Mackenzie and Co. I wish my warrant not to be an obstacle. Do not reply.

"LORD MONCK."

Treaty of February 1843, on a charge of forgery, was fraudulently removed during the night of the 24th-25th August last, from the jurisdiction of the Judges of the Court of Queen's Bench, sitting in Montreal, while proceedings were pending for his release, in virtue of your Majesty's writ of *habeas corpus*, such removal being resorted to in order to prevent the said E. S. Lamirande from obtaining the benefit of the said writ.

That previous to the said E. S. Lamirande being thus removed from the jurisdiction of the said Court, the Hon. L. T. Drummond, one of the Judges thereof, before whom the proceedings for *habeas corpus* were pending for his release, intimated to the Counsel engaged on behalf of the Crown, the private prosecutor, and the prisoner, that he was of opinion that there was no cause or law to authorize the extradition of the said Lamirande, and adjourned the case to the next morning for the purpose of ordering the issue of the writ of *habeas corpus* and the consequent release of the prisoner.

That in the morning of the 25th August last, the writ of *habeas corpus* was ordered to issue and issued accordingly, but that the return thereto was that the prisoner had been delivered over to the Agent of the French Government in the course of the previous night.

That by such fraudulent removal, the said Court has been set at defiance to the evil example and scandal of your Majesty's dutiful subjects.

Wherefore your Petitioners most respectfully pray that your Majesty be pleased to use your authority for restoring the said Ernest Sureau Lamirande to the jurisdiction of the Court of Queen's Bench, sitting at Montreal, so that the said Lamirande be there dealt with according to law, and in a manner worthy of your Majesty's Crown and dignity.

And your Petitioners will ever pray.

Montreal, September 22, 1866.

(Signed) C. S. CHERRIER, Q.C.
(And 72 others.)

Inclosure 3 in No. 1. Incl. 3 in No. 1.

Province of Canada, District of Montreal. (L. S.)

In the PETITION of C. S. CHERRIER, Q.C., and others, relative to the Extradition of ERNEST SUREAU LAMIRANDE.

JOSEPH DOUTRE of the City of Montreal, Esquire, Queen's Counsel, being duly sworn, doth depose and say:

That the deponent is practising before all Her Majesty's Courts in this part of Canada, constituting heretofore the Province of Lower Canada, as Attorney, Advocate, Proctor, Solicitor, and Barrister, since the year 1847, and has been commissioned as one of Her Majesty's Counsel.

That on the evening of the 1st day of August last the deponent's services were retained on behalf of Ernest Sureau Lamirande, formerly a French subject, arrested the same day in pursuance of a warrant issued under the signature of his Excellency the Governor-General of Canada, on a charge qualified as follows in the said warrant:

"Whereas one Ernest Sureau Lamirande, late of Poitiers, in the French Empire, stands accused of the crime of forgery by having in his capacity of cashier of the Branch of the Bank of France at Poitiers, made false entries in the books of the said bank, and thereby defrauded the said bank of the sum of 700,000 francs, &c."

That from the beginning of the proceedings tending to the extradition of the prisoner, the deponent anticipated that the said prisoner would be arbitrarily and illegally dealt with by the Magistrate and the officers prosecuting his extradition, and the deponent felt bound to take unusual precautions to protect the prisoner; that this expectation on the part of the deponent was grounded on the following facts:—

The ordinary judicial officer before whom these proceedings should have taken place having obtained a leave of absence, a temporary Magistrate of Police had been appointed to fill the vacancy; the Magistrate so temporarily appointed, William H. Brehaut, Esquire, had been already dismissed from office as Clerk of the

Crown for malversation, and had been re-appointed to a public office without having ever attempted to remove the causes of his dismissal, and he owed his re-appointment to the exclusive political influence of the actual Attorney-General for Canada East; the Advocate representing the Attorney-General East in the prosecution of crime, on behalf of the Crown, T. K. Ramsay, Esq., had also been dismissed from office for insubordination towards his superior officers, the political adversaries of the actual Attorney-General; he also had been re-appointed to a public office through the exclusive political influence of the said Attorney-General. And his zealous advocacy of the extradition of the prisoner was such that the private prosecution often left the entire matter in his hands. The Deputy Clerk of the Crown, C. E. Schiller, whose participation in the proceedings complained of shall hereafter be shown, had also been dismissed from the same office for malversation, and had also been re-appointed without having ever attempted to remove the causes of his dismissal, and through the exclusive political influence of the said Attorney-General. The private prosecutor, the Bank of France, had selected for their Counsel Messrs. Pominville and Bétournay, the partners in business of the said Attorney-General, the latter and his said partners practising in Montreal, under the name and firm of Carter, Pominville, and Bétournay.

That the parties engaged in prosecuting the extradition of the prisoner, revealed so manifestly their determination to carry away the prisoner, that nothing short of the fair and impartial dealings of his Excellency the Governor-General could prevent them from accomplishing their object.

That since many years a rule of practice has obtained in this district, in matters of *habeas corpus*, requiring a notice of twenty-four hours to be given to the Attorney representing the Attorney-General, before presenting the petition for obtaining the writ.

That the arbitrary manner in which the proceedings were carried on against the prisoner induced the deponent to suspect that whenever the prisoner would be committed for extradition, this delay of twenty-four hours would be employed by the private prosecutor in obtaining the warrant of extradition from his Excellency the Governor-General, and in executing such warrant with sufficient dispatch to outrun the proceedings on *habeas corpus*, and thus frustrate the prisoner from the benefit thereof.

That on the 15th of August last, after the close of the investigation on the part of the private prosecutor, and before entering on the defence of the prisoner, the deponent addressed to his Excellency the Governor-General, in the name of the prisoner, a petition in which he exposed that none of the provisions of the Treaty and of the Statute 6 and 7 Vict., cap. 75, had been complied with, and that even if they had, the facts charged on the prisoner did not constitute the crime of forgery; that notwithstanding the illegality of the detention of the prisoner, he had reason to suspect that he would be committed, and that an attempt would be made to surprise the good faith and sense of justice of his Excellency, in order to obtain from his Excellency a warrant of extradition before the prisoner could submit his case to a higher tribunal under a writ of *habeas corpus*, and finally praying his Excellency not to give an order for the surrender of the prisoner without allowing him the necessary time to submit his case under a writ of *habeas corpus;* and not to leave any room to accidents, the deponent requested Charles L. Spilthorn, Esquire, to proceed to Ottawa, and present the petition personally to his Excellency, and bring back an answer; that on his return to Montreal the said C. L Spilthorn reported to the deponent that he had received both from his Excellency the Governor-General, and from the Attorney-General a formal promise that ample time would be allowed to the prisoner to apply for a writ of *habeas corpus.*

That on the 22nd day of August last, the proceedings before the Police Magistrate were brought to a close and a decision rendered at half-past 7 in the evening, committing the prisoner for extradition; that on the late hour, at which the above decision of the Police Magistrate was rendered, it was impossible to give a legal notice to the Crown Prosecutor for the next night; that on the next morning, the 23rd day of August, the deponent caused to be served on the Crown Prosecutor, a copy of the petition of the prisoner for a writ of *habeas corpus*, with a notice, that such petition would be presented in Chambers to any of the Judges of the Court of Queen's Bench, then present. On the following day, 24th August, twenty-four hours after such service, that at the appointed hour on the latter day, the said petition was presented to the Honourable L. T. Drummond, one of the Judges of the said Court

of Queen's Bench, in the presence of the said T. K. Ramsay, Esq., Crown Prosecutor, who argued as a preliminary point, that as the Crown was not the only party interested, the twenty-four hours' notice was insufficient, and requested longer delay to answer the petition; that on this demand the deponent answered, that although the notice was that required by the practice of the Court, he had no objection to grant even three or four days' delay for arguing the case, provided that the writ should immediately issue, and that the prisoner be, by that means, placed under the exclusive control of the Court; the deponent adding, that although he could not substantiate his apprehensions, and those of the prisoner, by affidavits, he had strong suspicions that by some means or other, the prisoner would not be dealt with fairly and according to law; that on the mention of these apprehensions and suspicions, the Crown Prosecutor replied that it was a calumny against the institutions of the country, to suppose that the prisoner could be exposed to any unfair treatment; that the Honourable Judge having decided that the notice was sufficient, the case was argued by deponent on behalf of the prisoner, by the said T. K. Ramsay on behalf of the Crown, and by F. P. Pominville for the private prosecutor; Mr. Ramsay arguing the points of law, and Mr. Pominville the facts of the case; that the deponent, having been prevented from entering in the facts, by the said Judge, for the reason that the mind of the said Judge was, as he expressed, sufficiently made up on the points of law, Mr. Pominville was also interrupted for the same cause, the Honourable Judge clearly expressing his opinion, that he thought there was no cause for the extradition of the prisoner, and adding that, as the questions raised were important, on account of their international character, he would take until the next morning for preparing his judgment, and consequently adjourned the case to the next day.

That on the evening of the same day, 24th August, between half-past 8 and 9 o'clock, the deponent was called upon by parties, who informed him that they had credible information that the prisoner was to be carried away within a short time the same night, that deponent answered that the prisoner could not be taken away upon any authority other than that of the Governor-General, who had promised to allow the prisoner the necessary time for obtaining a writ of *habeas corpus*, adding that if he was taken away, it must be with the forged signature of the Governor-General; that he (the deponent) had no means to protect his client against forgeries; that although disbelieving such information, the deponent immediately repaired to the residence of the said Judge, to lay it before him, which he did, by an affidavit stating the facts; that on this information of the deponent, the said Judge accompanied the deponent to the Grand Trunk Railway Station, where a train was to leave at ten minutes after 10 o'clock the same night for Quebec, with the object of commanding any person that might be engaged in taking away the prisoner, to desist from doing so, as the prisoner was then under his jurisdiction; that the presence at the railway station of the French detective Melin, the High Constable Bissonnette, and of Sipling, a Montreal Constable, giving some substance to the information conveyed to the deponent, the said Judge, after stating to the High Constable that he had information under oath, of a threatened attempt to take away the prisoner, started for the gaol, where he left a written order commanding the gaoler not to deliver the prisoner on the authority of whomsoever, as he was then under the jurisdiction of the said Judge; that the deponent, conceiving that his mission as an interpreter of the law did not impose upon him the duty of resorting to other means of defence, he left the matter in this state until the next morning; that on the 25th August, the writ of *habeas corpus* was ordered to issue, and accordingly issued, and the gaoler's return to it was that the prisoner had been delivered over to an agent of the French Government during the previous night, on the warrant of the Deputy Sheriff, founded on the warrant of the Governor-General, dated the 23rd day of the same month; that on this return, the Honourable Judge called upon the Deputy Sheriff to give an account of his conduct, in the presence of the deponent, that the Deputy Sheriff then stated that he had given his warrant on the demand of Mr. Bétournay, one of the Attorney-General's partners in business, and in official ignorance of the proceedings for *habeas corpus*; that the Deputy Sheriff having received orders to produce the Governor-General's warrant, it appeared that the said warrant was in the handwriting of the above-named C. E. Schiller, Deputy Clerk of the Crown, who being asked how it happened that that document was in his handwriting, answered that some time before the decision of the Police Magistrate, he had received from the Crown Prosecutor, the said

T. K. Ramsay, a draft of the said warrant, with a request to him, Schiller, to write it on parchment and have it ready for use, when need be; that in the presence of the said C. E. Schiller, the gaoler was asked by the said Judge when and where he had received the warrant of the Deputy Sheriff, and he answered that he had received it during the night of the 24th August, at the residence of the Deputy Sheriff, where he had gone for some other pressing business connected with his official duties (which was true), and where he had seen, occupied with the obtaining of a warrant for taking away Lamirande, the said Mr. Bétournay, C. E. Schiller, High Constable Bissonnette, French detective Melin, and Constable Sipling; that the deponent, desiring to exhaust all means of preventing the illegal surrender of the prisoner, called upon the Governor-General at Quebec, on the 29th of August, accompanied by C. L. Spilthorn, Esq., who had presented the petition above referred to, of the prisoner, at Ottawa, on the 17th August, and had obtained the promise also above referred to, from his Excellency and the Attorney-General; that in that interview, his Excellency fully acknowledged that he had made that promise; that the deponent and the said C. L. Spilthorn, having written a joint report of that interview with the Governor-General, and that report being communicated to the Governor-General, his Excellency, by a letter addressed to the deponent by his Secretary, Denis Godley, Esq., under date of the 12th September instant, acknowledged in the following terms the correctness of its contents:—

"I have the honour to inform you that I have laid the paper which you enclosed to me in your letter of the 11th instant, before the Governor-General, and I am to acquaint you that it is therein correctly stated his Excellency told Mr. Spilthorn that ample time would be allowed to Lamirande to obtain a writ of *habeas corpus* before the execution of the warrant for his extradition." That in this interview his Excellency explained that when he had signed the warrant of extradition, he had done so at the request of Solicitor-General Langevin, under the express understanding that it would in no way interfere with the proceedings adopted, or to be adopted, by the prisoner for obtaining a writ of *habeas corpus*,—that having been deceived in the execution of that understanding, he felt more grieved than any one for having been instrumental in committing a grave wrong towards the prisoner, and he would do any thing practicable to redress that wrong,—that it was then and there understood that his Excellency would telegraph through the Cable to the Honourable the Secretary of State for the Colonies, to support in the measure of his powers the proceedings which would be adopted by the Councillors to whom the deponent was to telegraph for obtaining a writ of *habeas corpus* in England, and for that object his Excellency requested the deponent to communicate to him the names of the Councillors the deponent intended to employ in London, that the deponent having returned to Montreal on the night of the 29th August, he telegraphed on the 30th to his Excellency that he would entrust Messrs. Mackenzie, Treherne and Trinden, Solicitors of London, with the duty of applying for a writ of *habeas corpus;* and the same day the deponent telegraphed through the Atlantic Cable to that legal firm in the following terms:—"See Lord Carnarvon. E. S. Lamirande, kidnapped by E. Justin Melin, and Joseph Sipling, on steam-ship 'Damascus,' S. Watts, captain, due Londonderry, 3rd September. Use *habeas corpus;*" that from the conversations of the deponent with his Excellency, the deponent was lead to believe that the promised telegram of his Excellency would make up for the insufficiency of information conveyed by the telegram of the deponent, which impression was confirmed by a letter of the Secretary of the Governor-General, addressed to the deponent under date the 10th September last, in following terms:—"In reply to your request that the telegram of the Governor-General to the Secretary of State for the Colonies should be communicated to you, I am to acquaint you that his Excellency in his message to Lord Carnarvon, expressed his desire that his warrant for Lamirande's extradition should not be any obstacle to the prisoner's obtaining a writ of *habeas corpus* in England, as his Excellency understood that an application for that purpose would be made in the English Courts."

That on the 25th August last, judgment was rendered, ordering the issuing of the writ of *habeas corpus;* that in return thereto the gaoler stated, that during the night of the 24th and 25th August, he had delivered over the prisoner to E. J. Melin, agent of the French Government, on the warrant of the Deputy-Sheriff, founded on the warrant of the Governor-General, that on this return the Judge seeing that an order for the discharge of the prisoner would be of no avail,

adjourned to another day the recording of his judgment, which was afterwards recorded in the terms of the accompanying record.

And further deponent saith not, and hath signed.

(Signed) JOSEPH DOUTRE.

Sworn and acknowledged before me, at Montreal, the 4th October, 1866.

(Signed) CHARLES MONDELET, Jun.

Charles L. Spilthorn, of the city of New York, Attorney and Counsellor-at-Law being duly sworn, doth depose and say, that having taken communication of the foregoing affidavit, he may and do declare that all and every the facts therein contained are personally known to him, and are true, and hath signed.

(Signed) C. L. SPILTHORN.

Sworn and acknowledged before me, this 4th day of October, 1866.

(Signed) CHARLES MONDELET, Jun.

Inclosure 4 in No. 1. Incl. 4 in No. 1

Province of Canada, District of Montreal. (L.S.)

In the matter of Ernest Sureau Lamirande.

CHARLES L. SPILTHORN, of the city of New York, Attorney and Counsellor-at-Law, being duly sworn on the holy Evangelists, doth depose and say as follows:—I have assisted at the examination and trial of the said Lamirande, at Montreal, before the Police Magistrate Bréhaut, and am well acquainted with the case. On the 15th of August, 1866, I was solicited by Joseph Doutre, Esq., Counsel for Lamirande, to go to Ottawa, in order to present personally to his Excellency the Governor-General, a petition which Mr. Doutre had hastily prepared in the name and in the interest of Lamirande; in that petition it was exposed to his Excellency that there was no ground to extradite Lamirande; that none of the formalities provided by law had been fulfilled, and that even if they were, there was not in the whole matter the shadow of the crime for which his extradition was demanded; that, notwithstanding all this, there was reason to suspect that some attempt would be made to surprise the good faith and sense of justice of his Excellency, in order to obtain from him a warrant of extradition, without giving time to the prisoner to apply to the regular tribunals of the country, and submit his case for examination; the petition concluded by praying his Excellency not to warrant the surrender of the prisoner in haste, and to give him time to have his case carefully considered by the legal authority.

Having been one of the Counsel of Lamirande in New York, and seeing that the ground of his extradition was a manifest false pretence, I could not decline to act as Mr. Doutre requested me to do, and I started the evening of the same day for Ottawa. After reaching this place, I presented, on the 16th of August, the petition of Lamirande, to the Governor-General, through Denis Godley, Esq., private Secretary of his Excellency; on the same day, in the afternoon, Mr. Godley informed me that the petition had been referred to the Honourable the Attorney-General Cartier. On the 17th I was received by his Excellency, who told me spontaneously that he knew the object of my visit, that he had seen and read the petition of Lamirande, and that there was no occasion to entertain any fear, that nothing would be done hurriedly nor without the fullest consideration; that Lamirande would be allowed all the time required for applying by *habeas corpus* or other legal means to all competent Courts of Her Majesty; then a general conversation followed about the facts of the case. I explained to his Excellency the case of Windsor, decided in London in the spring of 1865, when the same question was decided by the highest and most distinguished Judges of England, by which decision it was established that, admitting all the facts alleged in the case of Lamirande, there was no ground for extradition. I mentioned, that when this case had been cited before the Police Magistrate, the Crown Prosecutor had laughed at the decision of those English Judges, as being no authority. His Excellency expressed the high respect he entertained for the opinion of the Judges of the Court of Queen's Bench, which, besides being the highest Court, was presided over

by the most eminent and learned Judges of England. After repeating the assurance that the prisoner would be allowed the most ample time and opportunity of having his case fully examined by all competent Courts, not excluding the Courts of England, as I had alluded to the possibility of resorting to them, his Excellency advised me to see the Honourable Attorney-General Mr. Cartier, and ordered one of his officers to introduce me to him. After some conversation about the case and other matters, M. Cartier told me that there would and could be no precipitation in the decision of the Governor; that all the papers must be submitted to the Executive and personally to the Governor, after the commitment, if there were any; that these proceedings would necessarily take several days, and that his Excellency would not decide except after mature deliberation and according to his own judgment. He added, that he did not see any occasion for hurrying the matter; that we should have all the time required for *habeas corpus*, and finally, that I might have the fullest confidence in the word of the Governor-General, whose promise I had communicated to him. We then parted in the most friendly way.

On the 22nd of August, the argument being closed before the Police Magistrate at 6 o'clock P.M., he rendered his Judgment at half-past 11, notwithstanding the prayer of Mr. Doutre to postpone it to the following day for better consideration. His Excellency was then passing through Montreal from Ottawa to Quebec, and it was rumoured that he would stop an hour at Montreal. Everything was so much hurried up that this circumstance looked very suspicious to the prisoner as he communicated to his Counsel. As soon as possible an application was made for a writ of *habeas corpus*.

I was present in Chambers, Court of Queen's Bench, on the 24th of August, when Mr. Ramsay, the Crown prosecutor, complained of the short notice of twenty-four hours he had received of the petition for *habeas corpus*. Although the Judge decided that the notice was sufficient, Mr. Doutre offered to allow two or three days to answer it, provided the writ should issue immediately, so as to place the prisoner more expressly under the exclusive control of the Honourable Judge and Court. Mr. Ramsay having declined to accept that offer, Mr. Doutre, after some argument of the case, stated that he felt bound to make himself the echo of his client's mind, and to express the deep apprehension of foul play under which he laboured. Mr. Ramsay protested against such insinuations and, as he said, calumniations of the institutions of the country, the Governor-General being the only person under whose warrant the prisoner could be extradited, and he was fully protected against any illegal processes. His Honour the Judge said that the question being of high importance, and the prisoner being from this moment under the control of the Court, he would take to the next day to mature his Judgment. The Counsel for the French Government was also present, and heard on their behalf.

On the same night, 24th of August, at about half-past 8, I was at Mr. Doutre's house, when he told me that persons who wished not to be seen had at that moment assured him that Lamirande was to be spirited away that night. We could not believe it; notwithstanding Mr. Doutre went to the house of the Judge to consult him, and I went to the Bonaventure Station, where all trains leave. At about half-past 9, Mr. Doutre, in company of the Judge, Mr. Drummond, before whom the application for *habeas corpus* was made, came there also. Then the Judge meeting High Constable Bissonette, told him that an affidavit had been made before him to the effect that some attempt was to be made during the night to remove the prisoner Lamirande from his jurisdiction.

Mr. Bissonette answered that he knew nothing thereof, and had received no order to that effect.

Mr. Justice Drummond then told Mr. Bissonette that he gave him notice thereof, and that if any such thing should happen he would hold him responsible. Immediately after this Mr. Bissonette and the French detective Melin, who was in Bissonette's company, disappeared, when Judge Drummond said that having sufficient evidence that there was something on foot, he would go to the gaol.

A few minutes after, the Quebec train being in motion, Mr. Doutre advised me to go down to Quebec, and do as circumstances would require. I did so; but the train stopped at Point St. Charles, and we were all detained there until 1 o'clock A.M. During that interval I walked up and down, and saw that the train was divided in two parts, some three or four cars having been left some distance behind. About one or two minutes before the final departure of the train the two parts were coupled together. Having more than suspicions about what was going on, I tried to look into those cars. One of them was a baggage-car, having a kind of balcony

passage. Seeing light in that car, I went in the passage and saw Lamirande through the window. The door was locked. Around Lamirande I saw High Constable Bissonette, the French detective Melin, and one or two others I did not know. I called Lamirande by his name, and he made a move towards me, but he was immediately brought down by force, and the light inside was blown out. I did not see him any more before reaching Point Levi, near Quebec, on the morning of the 25th of August. On the way down I prepared two telegrams, one addressed to the Governor-General, the other to lawyers of Quebec. I applied to five stations to have my telegrams sent to their destination. In two of them I found no operator; in two others I was told that they were not in working order; and in the last, objection was made to my telegrams because they were written in pencil. We arrived at Point Levi at about 10 o'clock. I met Lamirande at the ferry-boat. I asked his guardians under what authority they were conveying him. They answered at first that they had no account to give, but at last they said that they had the Governor's warrant. I reminded Bissonette of what had been told him by Mr. Justice Drummond in my presence. He answered that when he had the Governor's warrant he laughed at Judge's orders. Bissonette's assistants were saying the same; this all amidst threats of violence and arrest against me if I said anything more. All the while the ferry-boat was directed towards the steamer "Damascus," laying at the Quebec wharf, and waiting for the ferry, under steam. Lamirande was immediately transferred on the steamer, which left a few minutes afterwards. My mission was then at an end. I could not do anything more for Lamirande, and I returned. When I came back to Montreal the Judge had given his decision, allowed the writ of *habeas corpus*, and pronounced his opinion for discharging the prisoner.

The other facts connected with this affair being related in an affidavit of Joseph Doutre, Esq., are omitted in the present deposition to avoid repetition. And further deponent says not; and this deposition being read to him, he declares it contains the truth and has signed.

(Signed) C. L. SPILTHORN.

Sworn and acknowledged before me, at Montreal, this fourth day of October, one thousand eight hundred and sixty-six.

(Signed) CHARLES MONDELET, Jun.

Inclosure 5 in No. 1. Incl. 5 in No. 1.

Province of Canada, District of Montreal. (L.S.)

In Chambers.—Tuesday, August 28, 1866.

Before the Honourable Mr. Justice DRUMMOND.

In the matter of Ernest Sureau Lamirande, for writ of *habeas corpus*.

THE Honourable Mr. Justice Drummond pronounced the following Judgment:—

On the 26th July last, a document under the signature of his Excellency the Governor-General, purporting to be a warrant for the extradition of the petitioner, issued under the authority vested in his Excellency by the provisions of the Statute passed by the Legislature of the United Kingdom of Great Britain and Ireland in the sixth and seventh years of Her Majesty's reign, intituled "An Act to give effect to a Convention between Her Majesty and the King of the French for the apprehension of certain offenders," setting forth that the said petitioner stood accused of the crime of "forgery, for having, in his capacity of cashier of the branch of the Bank of France, at Poitiers, made false entries in the books of the said bank, and thereby defrauded the said bank of the sum of seven hundred thousand francs;" that a requisition had been made to his Excellency by the Consul-General of France in the Province of British North America, to issue his warrant for the apprehension of the said petitioner, and requiring all Justices of the Peace and other Magistrates and officers of justice within their several jurisdictions to aid in apprehending the petitioner and committing him to gaol.

Under this document the prisoner was arrested, and after examination before William H. Bréhaut Esq., Police Magistrate and Justice of the Peace, was fully

committed to the common gaol of this district on the 22nd day of the current month of August.

On the following day, between the hours of 11 and 12 o'clock in the forenoon, notice was given in due form by the prisoner's counsel to the counsel charged with the criminal prosecutions in this district, that he (the said counsel for the prisoner) would present a petition to any one of the Judges of the Court of Queen's Bench, who might be present in Chambers at 1 o'clock in the afternoon of the following day (the 24th), praying for a writ of *habeas corpus* and the discharge of the prisoner.

At the time appointed this petition was submitted to me.

Mr. J. Doutre appeared for the petitioner, Mr. T. K. Ramsay for the Crown, and Mr. Pominville for the private prosecutor.

A preliminary objection raised on the ground of insufficient notice was overruled.

Mr. Doutre then set forth his client's case in a manner so lucid that I soon convinced myself, after perusing the Statute cited in the warrant of extradition, that the warrant itself, the pretended warrant of arrest alleged to have been issued in France (*arrêt de renvoi*), and all the proceedings taken with a view to obtain the extradition of the petitioner, were unauthorized by the above cited Statute, illegal, null, and void, and that the petitioner was therefore entitled to his discharge from imprisonment.

But as Mr. Pominville, whom I supposed to be acting as counsel for the Bank of France, wished to be heard, I adjourned the discussion of the case until the following morning.

I would have issued the writ before adjourning had the counsel for the prisoner insisted upon it; but that gentleman was no doubt lulled into a sense of false security by the indignation displayed by the counsel for the Crown, when Mr. Doutre signified to me his apprehension that a *coup de main* was in contemplation to carry off the petitioner before his case had been decided.

On the following morning, Saturday, the 25th of this month, I ordered the issuing of a writ of *habeas corpus* to bring the petitioner before me, with a view to his immediate discharge.

My decision to discharge him was founded upon the reasons following:—

1. Because it is provided by the 1st section of the Act of the British Parliament to give effect to a Convention between Her Majesty and the King of the French for the apprehension of certain offenders (6 & 7 Vic., cap. 75) that every requisition to deliver up to justice any fugitive accused of any of the crimes enumerated in the said Act shall be made by an Ambassador of the Government of France, or by an accredited Diplomatic Agent, whereas the requisition made to deliver up the petitioner to justice has been made by Abel Frederic Gautier, Consul-General of France in the Provinces of British North America, who is neither an Ambassador of the Government of France nor an accredited Diplomatic Agent of that Government, according to his own avowal upon oath.

2. Because by the 3rd section of the said Statute it is provided that no Justice of the Peace or any other person shall issue his warrant for any such supposed offender until it shall have been proved to him upon oath or affidavit that the person applying for such warrant is the bearer of a warrant of arrest, or other equivalent judicial document issued by a Judge or competent Magistrate in France, authenticated in such manner as would justify the arrest of the supposed offender in France upon the same charge, or unless it shall appear to him that the act charged against the supposed offender is clearly set forth in such warrant of arrest or other judicial document; whereas the Justice of the Peace who issued his warrant against the petitioner issued the same without having any such proof before him, the only document produced before him, as well as before me, in lieu of such warrant of arrest or equivalent judicial document, being a paper writing alleged to be a translation into English of a French document made by some unknown and unauthorized person in the office of counsel for the prosecutor at New York, and bearing no authenticity whatever.

3. Because, supposing the said document purporting to be a translation of an *acte d'accusation* or indictment, accompanied by a pretended warrant for arrest, and designated as an *arrêt de renvoi*, to be authentic, it does not contain the designation of any crime comprised in the number of the various crimes for or by reason of the alleged commission of which any fugitive can be extradited under the said Statute.

4. Because by the 1st section of the said Act it is provided that no Justice of the Peace shall commit any person accused of any of the crimes mentioned in the said Act (to wit, murder, attempt to commit murder, forgery, and fraudulent bankruptcy), unless upon such evidence as according to the laws of that part of Her Majesty's dominions, in which the supposed offender shall be found, would justify the apprehension and committal for trial of the person so accused if the crime of which he shall be accused had been there committed.

Whereas the evidence produced against the petitioner upon the accusation of forgery brought against him before the committing Magistrate would not have justified him in apprehending or committing the petitioner for the crime of forgery had the acts charged against him been committed in that part of Her Majesty's dominions where the petitioner was found, to wit, in Lower Canada.

5. Because the said warrant for the extradition of the prisoner, as well as the warrant for his apprehension, does not charge him with the commission of any one of the crimes for which a warrant of extradition can be issued under this Statute, inasmuch as in both of the said warrants the alleged offence is charged against the petitioner as "forgery, by having in the capacity of cashier of the branch of the Bank of France at Poitiers, made false entries in the books of the Bank, and thereby defrauded the said Bank of the sum of 700,000 francs."

Whereas the said offence as thus designated does not constitute the crime of forgery according to the laws of England and Lower Canada, for to use the words of Judge Blackburn, when he pronounced Judgment concurrently with C. J. Cockburn and Judge Shee, in a case analogous to this (*ex parte* Charles Windsor, Court of Queen's Bench, May 1865)," forgery is the false making of an instrument purporting to be that which it is not; it is not the making of an instrument purporting to be that which it is; it is not the making of an instrument which purports to be what it really is, but which contains false statements. Telling a lie does not become a forgery because it is reduced to writing."

The gaoler's return to this writ of *habeas corpus* was that he had delivered over the prisoner to Edme Justin Melin, Inspecteur Principal de Police de Paris, on the night of the 24th instant, at 12 o'clock, by virtue of an order signed by W. H. Sanborn, Deputy Sheriff, grounded upon an instrument signed by his Excellency the Governor-General.

It appears that the petitioner thus delivered up to this French policeman is now on his way to France, although his extradition was illegally demanded, although he was accused of no crime under which he could have been legally extradited, and although, as I am credibly informed, his Excellency the Governor-General had promised, as he was bound in honour and justice to grant, the petitioner an opportunity of having his case decided by the first tribunal of the land before ordering this extradition.

It is evident that his Excellency has been taken by surprise, for the document signed by him is a false record, purporting to having been signed on the 23rd instant at Ottawa, while his Excellency was at Quebec, and falsely certified to have been recorded at Ottawa before it had been signed by the Governor-General.

In so far as the petitioner is concerned, I have no further order to make, for he whom I was called upon to bring before me is now probably on the high seas, swept away by one of the most audacious and hitherto successful attempts to frustrate the ends of justice which has yet been heard of in Canada.

The only action I can take in so far as he is concerned is to order a copy of this Judgment be transmitted by the Clerk of the Crown to the Governor-General for the adoption of such measures as his Excellency may be advised to take to maintain that respect which is due to the Courts of Canada and to the laws of England.

As to the public officers who have been connected with this matter, if any proceedings are to be adopted against them, they will be informed thereof on Monday, the 24th day of September next, in the Court of Queen's Bench, holding criminal jurisdiction, to which day I adjourn this case for further consideration.

We the Honourable Louis Antoine Dessaulles and William Ermatinger, Esquire, Clerk of the Crown for the district of Montreal, do hereby certify that the foregoing is a copy of the Judgment rendered by the Honourable Lewis Thomas Drummond, one of the Justices of the Court of Queen's Bench for Lower Canada at

Montreal, on the 28th day of August, 1866, upon the petition of the said Ernest Sureau Lamirande for writ of *habeas corpus*.

(Signed) DESSAULLES AND ERMATINGER,
Clerk of the Crown, District of Montreal.

Crown Office, Montreal, October 4, 1866.

No. 2.

No. 2. COPY of a DESPATCH from Viscount MONCK to the Right Hon. the Earl of CARNARVON.

(No. 164.) Quebec, October 18, 1866.

MY LORD, (Received November 1, 1866.)

I HAVE the honour to acknowledge the receipt of your Lordship's despatch No. 61* of September 22, transmitting a copy of a despatch from Her Majesty's Ambassador at Paris, to the Secretary of State for Foreign Affairs, accompanied by a letter from a French subject named Lamirande, complaining of his having been given up to the French Government under the Extradition Treaty, and more especially of the manner in which he was removed from Canada while his case was still under consideration of a Judge of the Court of Queen's Bench.

I have also the honour to acknowledge the receipt of your despatch No. 67† of September 27, in which you inform me that Her Majesty's Ambassador had been instructed to request a delay in the legal proceedings against Lamirande until authentic information about his case had been received from Canada.

I had hoped to have been able, in conformity with your Lordship's instructions, to have sent my report of this case by last week's mail; but, owing to the fact that the ship which brought your first despatch was delayed much beyond the usual time of arrival, I found it impossible to get all the information ready in time.

I have now the honour to transmit the several documents connected with the extradition of Lamirande, noted in the margin;‡ and I also beg leave to refer your Lordship to my despatch on this subject, No. 155§ of the 6th instant, and the papers inclosed in it.

This case seems to divide itself naturally into three heads:—

1st. The legal grounds which exist for the extradition of the prisoner.

2nd. The manner of his extradition.

3rd. The conduct of the different persons connected with the Government who took any part in the proceedings.

I shall endeavour to express to your Lordship my views on the subject in this order.

The first and most important question to be resolved is whether this prisoner has committed any act for which his surrender could be demanded under the Extradition Treaty with France.

The crime alleged against him is that of "forgery, by having, in the capacity of cashier of the branch of the Bank of France at Poitiers, made false entries in the books of the Bank, and thereby defrauded the said Bank of the sum of 700,000 francs."

In the French version of the Treaty the word used in treating of crimes of this description is "faux," which, in the English version,—I presume for want of an equivalent English word,—is rendered by the word "forgery."

Now, I believe, it is true that, according to the English law, the falsification of entries in a banker's book does not constitute the crime of "forgery."

But it is equally true that, under this Treaty, prisoners may be surrendered to the French authorities for acts which are not cognizable by the criminal law of England.

It is only necessary to state, in order to prove this, that "fraudulent bankruptcy" is one of the acts for which a prisoner may be surrendered, and that this act is notoriously not punishable criminally in England.

In order, therefore, to ascertain whether this prisoner has committed an offence for which he might be legally surrendered under the Treaty, it is necessary to discover what meaning the French criminal law attaches to the word "faux."

* Page 97. † Page 99.

‡ The Attorney-General for Lower Canada to Lord Monck, October 17, 1866; T. K. Ramsay, Esq., to the Hon. the Attorney-General for Lower Canada; Depositions.

§ Page 1.

On referring to:—

"Les Codes Français Collationnés sur les Textes Officiels," par Louis Tripier, seizième édition, Paris 1865; Code Pénal, livre iii, chapitre 3; Crimes et Délits contre la Paix Publique, section première "Du Faux"—

I find that the word "faux" includes a great variety of acts which, I presume, would not be "forgery" by British law.

Section 3 of this chapter is headed "Des faux en écriture publique ou authentique, et de Commerce ou de Banque."

Article 3 of this section, page 853, reads as follows:—

"Seront punies de travaux forcés à temps toutes autres personnes qui auront commis un faux en écriture authentique et publique ou en écriture de commerce ou de banque.

"Soit par contrefaçon ou altération d'écritures ou de signatures.

"Soit par fabrication de conventions, dispositions, obligations ou décharges, ou par leur insertion après coup dans les actes."

From this, I think, it is apparent that the act for which the extradition of the prisoner was demanded is a crime by the laws of France, and is included under the general designation "faux" used in the French version of the Treaty.

These considerations appear to me to dispose of the question as to whether the prisoner has committed any act for which his extradition could be demanded under the Treaty with France.

The next point of dispute in the case is as to the authority of the French official who made the demand for the surrender of the prisoner, namely, the Consul-General of France in British North America. I confess that when the subject came before me for my decision my own opinion concurred with that of the Law Officers of the Crown in Canada, that the Consul-General who resided amongst us as the recognized Agent of the French Foreign Office, was clothed with sufficient powers to put the Treaty and statute in operation.

The only other question, as it appears to me, connected with this branch of the case, refers to the legal documents which the statute requires to be given in evidence before the Magistrate on the preliminary investigation.

The objection to the extradition of the prisoner in this respect, seems to rest principally on the non-production of a legal document from the French Court, called an "arrêt de renvoi."

In order to explain the bearing of this objection, it is necessary to state that this prisoner originally escaped from France to New York, where an application was made for his extradition under the provisions of the Treaty between France and the United States of America.

On the investigation of this application before the Magistrate at New York, Lamirande was represented by Mr. Spilthorn, who was also one of his counsel at Montreal.

The "arrêt de renvoi" alluded to, was produced in due form before the Court at New York, and it was proved at the investigation at Montreal, on the oath of Mr. J. R. Condert, an advocate residing at New York, that the document was abstracted by Mr. Spilthorn, and that the prosecutors have never since been able to recover possession of it.

Lamirande effected his escape from jail at New York before judgment was given there on the application for his extradition, came to Canada, and the application for his extradition was made here.

On the proof of the facts which I have above detailed to account for the absence of the "arrêt de renvoi" at the trial at Montreal, the Magistrate admitted secondary evidence of its contents to be given.

I was advised that it was competent for him to do so, and I think your Lordship will agree with me that, assuming that this advice was sound in law, the case was not one in which I was called on to depart from the strict letter of the law in favour of the prisoner.

I think I have now given your Lordship the impression produced on my mind by the consideration of all the points raised as to the grounds which existed for the surrender of Lamirande.

You will find them dealt with elaborately and in a more technical form in the accompanying Reports from the Attorney-General and Mr. Ramsay, the counsel who represented the Attorney-General in the investigation at Montreal.

I now come to the consideration of the manner in which this prisoner was taken out of the jurisdiction of the Canadian Courts.

By the 6th and 7th Vict., chap. 75 (the statute passed for giving effect to the Extradition Treaty with France), the public functionaries named in the Act, amongst them, in Colonies, the Governor, are required, on being notified that a person who is accused of having committed within French territory any of the crimes enumerated in the statute, to issue their warrant for his apprehension.

This was done by me in the case of Lamirande.

The next step required by the statute is the examination of the charge on oath before a Justice of the Peace.

This proceeding also took place, and on the 22nd August the prisoner was duly committed by the Justice "to jail, there to remain until delivered pursuant to such requisition."

In the meantime, and while the investigation before the Justice of the Peace was proceeding, I think about the 16th or 17th of August, a petition was presented to me, stating that apprehensions were entertained that this prisoner would be carried out of the jurisdiction of the Canadian Courts, without having time allowed him to make an application for a writ of *habeas corpus*. On that occasion I saw Mr. Spilthorn, one of the counsel for the prisoner, and I told him that time for making such an application should be allowed.

On the 22nd of August I left Ottawa for Quebec, arriving there on the morning of the 23rd.

Late in the forenoon of the 24th, Mr. Langevin, Solicitor-General for Lower Canada, called upon me with the warrant of extradition (bearing date the 23rd, on which day it was sealed at Ottawa, where the officer who has charge of my seal resides), and gave me his opinion in writing that, in point of law, the case came within the provisions of the Extradition Treaty, and that the warrant should issue.

Seeing that the case involved no question of public policy, and was one the decision of which rested on legal points, I determined to act on the opinion of the Solicitor-General.

I then looked at the date of the committal (the 22nd), and as two days appeared to have elapsed since the prisoner had been committed to jail, it seemed to me that ample time had been allowed to enable him to obtain a writ of *habeas corpus*.

I then asked the Solicitor-General whether, supposing a writ of *habeas corpus* had been sued out, the signing of the warrant of extradition would prevent the prisoner from obtaining the benefit of it. To this Mr. Langevin replied that it would not.

Having satisfied myself on these points, I signed the warrant of extradition, which I am informed was sent to Montreal by the ordinary train from Quebec, and arrived there late in the evening of the same day.

It is scarcely necessary for me to add that when I signed the warrant of extradition, I was not aware, and I am assured by him that neither was the Solicitor-General, that any application had been made for a writ of *habeas corpus* on behalf of the prisoner.

These are the facts as far as they came within my own knowledge; and it appears to me that the sole question is, whether the time allowed the prisoner between his committal on the 22nd, and the execution of the warrant late in the evening of the 24th, was or was not sufficient to enable him to obtain a writ of *habeas corpus*, in order to have the legal points in his favour considered and decided by a competent tribunal.

This matter appears to me to be at once set at rest by the statement of Mr. Justice Drummond, namely, that the case was brought before him on the 24th, and that "he would have issued the writ before adjourning had the counsel for the prisoner insisted upon it."

Had the Judge adopted this course, the prisoner would have been, according to the opinion given to me by the Solicitor-General, taken into the custody of the Court, and if the Judge so decided, would have been discharged before the warrant of extradition could have been executed.

Unfortunately the Judge did not act in this manner, which I believe I am justified in saying is the ordinary practice in cases of application for a writ of *habeas corpus*, and in consequence the warrant of extradition was executed, and the prisoner was sent out of the Province.

Mr. Justice Drummond is represented as having gone in person to the prison, and forbidden the gaoler to deliver up the prisoner to any authority whatever, but it is scarcely necessary to say, that the proceedings which the Judge adopted in this respect, instead of, as he might have done, immediately issuing the writ of

habeas corpus, were entirely extra-judicial and irregular, and that no public official would have been justified in disobeying, in conformity with directions so given, the requirements of a duly executed and authenticated warrant.

Should your Lordship think that I signed the warrant of extradition with so much haste that sufficient time was not allowed to the prisoner to obtain the writ of *habeas corpus*, I feel that in this view of the case I am chargeable with the responsibility of the miscarriage which has occurred.

The third branch of the subject remains to be considered, namely, the conduct of those who took part in these proceedings.

These persons are myself, the Attorney- and Solicitor-General for Lower Canada; Mr. Bréhaut, the committing Magistrate; Mr. Ramsay, the gentleman who represented the Attorney-General at the investigation at Montreal; and Mr. Schiller, Deputy Clerk of the Crown.

With regard to myself, I have laid before your Lordship without reserve every step which I took in the transaction.

I have observed an apparent desire on the part of almost all those who have discussed this subject, to protect me from blame at the expense of the Law Officers of the Crown by the assertion that I was made the victim of a deception, and that I was surprised into putting my signature to the warrant of extradition.

The narrative which I have given to your Lordship shows that I am neither able or willing to accept any such protection.

I signed the warrant with the full knowledge of what I was doing, and in the opinion that, assuming the prisoner to use ordinary diligence in the assertion of his legal rights, he had been allowed sufficient time for that purpose.

The part which Mr. Cartier, the Attorney-General, took personally in the matter was very slight. During the greater part of the time occupied in the preliminary investigation before the Magistrate he was at Ottawa.

He was, I believe, at Montreal when the prisoner was committed, but I do not think it is alleged that he took any part in the proceedings. When the warrant of extradition was signed, and the prisoner was removed, the Attorney-General was at the sea-side more than 300 miles from Montreal.

The interference of Mr. Langevin, the Solicitor-General, with the proceedings in the case, was confined to the two legal opinions which he gave me. The one in writing on the whole facts of the case, that the prisoner ought to be surrendered; the other verbally that the signing of the warrant of extradition would not interfere with the operation of the writ of habeas corpus if the writ had been issued before the execution of the warrant by the extradition of the prisoner.

I have not heard any insinuation against the conduct of Mr. Bréhaut in the matter, nor do I believe it is impugned.

Mr. Ramsay's connection with the case is detailed at length in his own report, and I cannot see that he has laid himself open to any charge.

Your Lordship will observe that he explains the statement in Mr. Justice Drummond's observations, by saying that his indignation was excited, and expressed at the application by Mr. Doutre of the term "kidnapping" to the regular execution of a valid legal warrant, and that he pointedly told both the Judge and the counsel for the prisoner that the Governor's warrant of extradition was the only means by which Lamirande could be removed.

I do not understand that the conduct of Mr. Schiller, the Deputy Clerk of the Crown, has been impugned.

I have thus endeavoured to lay before your Lordship with as much clearness and conciseness as I can command, an account of the facts of this case.

I have to express my regret that any prisoner should appear to have been removed from the Province, the affairs of which I have the honour to administer, without having secured the benefit of every privilege which our law could afford him.

I must, however, call your Lordship's attention to the fact that no one step has been taken in this case which, assuming the legal ground for extradition to exist, is not in strict conformity with the law.

Before your Lordship shall decide on the merits of the share which I have had personally in this transaction, I desire to bring before your notice some general considerations affecting the duties which my position casts upon me in reference to such cases.

I assume that Extradition Treaties are based on the principle that all men

have a common interest in the suppression of the crimes which are made the subjects of these international contracts.

This being assumed, it follows, in my opinion, that persons accused of crimes under Treaties of Extradition are entitled to no favour or indulgence at the hands of public officers entrusted with the execution of the law.

They are entitled to every right which the provisions of our law, strictly administered, allows them, but to nothing more.

Some stress has been laid on what is called my "promise" to the prisoner's counsel when he saw me at Ottawa, that time should be allowed him for making his application for a writ of *habeas corpus*.

The "promise" alluded to consisted merely of a declaration that time was always allowed for such a purpose, and that his case would not be treated differently from that of other prisoners in similar circumstances.

Had I made the prisoner's counsel a promise that any unusual favour should be shown to him, or that the ordinary routine should in his case be changed, I should, according to my ideas, have violated my public duty.

I also wish to call your Lordship's attention to the nature of the writ of *habeas corpus*, and the mode in which that writ is brought to bear on the execution of the laws.

The issue of the writ of *habeas corpus* is not a step in the ordinary routine of the administration of justice.

The right to obtain this writ is an extraordinary power conferred by statute on a prisoner, by means of which he can arrest the usual course of the administration of the law, and test the validity of the proceedings adopted against him.

But until the writ is issued and the ordinary course of the law thereby suspended, the machine of legal administration continues to move on, and if a prisoner neglects to avail himself with proper diligence of the privileges which the statute confers upon him, he has no right to complain if his interests suffer.

I have endeavoured to show that in this case sufficient time was allowed by me to this prisoner to assert his legal rights.

If I had allowed him more than this, I think I should not have performed my duty, and the prisoner having neglected to take advantage of the opportunity afforded him, cannot, I think, reasonably charge me with blame for the results of the supineness of himself or his counsel.

If those results were produced by the improper conduct of any persons representing the Crown in the transaction, such persons should be held strictly responsible for their Acts, but I am unable to see that this has been the case, and assuming, with Mr. Justice Drummond, that sufficient time was allowed to the prisoner to obtain the writ of *habeas corpus*, I think the conclusion is inevitable, that the blame for what has happened rests with those, who having charge of the prisoner's interests, neglected to avail themselves of the opportunity afforded them.

I have, &c.

The Right Hon. the Earl of Carnarvon, &c. &c. &c.

(Signed) MONCK.

Incl. 1 in No. 2.

Inclosure 1 in No. 2.

REPORT of the Attoney-General.

To his Excellency the Right Honourable Viscount Monck, Governor-General of Canada, &c.

May it please your Excellency,

IN obedience to the request contained in the letter of Denis Godley, Esq., your Lordship's Secretary, I have the honour to lay before your Excellency a copy of all the proceedings which took place before the Police Magistrate, by whom Ernest Sureau Lamirande was committed, and the report of T. K. Ramsay, Esq.; and at the same time to report to your Excellency, that I have carefully examined all those proceedings, and have no hesitation in saying that, under the evidence adduced before that Magistrate, the commitment was properly ordered.

I fully concur in the report made by the Honourable H. L. Langevin, Solicitor-

General for Lower Canada, advising your Excellency that the warrant of extradition ought to isssue.

I have further to remark that I have carefully perused the report of Mr. Ramsay, and that I fully agree with him in the legal argument used by him, and the legal position taken by him, in support of the Police Magistrate's decision, and in support of the propriety and necessity of the issue of a warrant of extradition in the case.

Without entering into any of the different arguments stated by Mr. Ramsay, the principal question to be solved is, what law should apply to determine the criminality of the offence committed by Lamirande; whether it should be the criminal law of England and Canada, nearly alike, or the law of France. I consider that the offence of which Lamirande was accused, came within the Treaty for, although not strictly forgery according to the criminal law of England and Canada, yet the evidence was sufficient to establish the Commission of one of the offences mentioned in the Treaty, viz., the "crime de faux," or forgery, as determined by the laws of France. As there exists considerable difference between forgery, "crime de faux," in France, and forgery according to the laws of England and this country, I am of opinion that the determining the offence according to the laws of the former country, with which the Treaty was made, was correct, the laws of France being taken to establish the crime. The contrary, would in my opinion, render the Treaty a dead letter.

With regard to any supposed irregularity in the documents produced as evidence against Lamirande, I may mention that the *arrêt de renvoi* stated to have been wanting, and the absence of which is accounted for in Mr. Ramsay's Report, by the fact of its having been abstracted in New York by Lamirande's Counsel, was replaced by the next best evidence which could be produced, and which I consider to be in such case strictly legal. An authentic translation properly certified and duly proved bearing the initials of the Commissioner in the United States, with whom it was filed, and by whom it was used. I therefore consider that the objection made to such copy being received as evidence is of no avail.

As to the other objections they are amply answered by Mr. Ramsay.

With regard to the writ of *habeas corpus*, it could not be directed against the Governor's warrant, but against the commitment of the Magistrate who investigated the case; and as there was a delay of more than fifty hours between the commitment which took place on Wednesday the 22nd August last, and the surrender of the prisoner late on Friday night following, ample time and opportunity were afforded to obtain the writ of *habeas corpus*. Thus the prisoner was by no means deprived of the privileges attached to the obtaining of that writ. The proceedings in matters of *habeas corpus* must be prompt and summary. By the 4th section of chapter 95 of the the consolidated statutes of Lower Canada (24th Geo. III, cap. 1, sec. 3), the writ of *habeas corpus* must be granted at once, and without any delay by the Judge to whom the request for its issue is made; and the Judge is, within forty-eight hours (two days) after the party is brought before him, bound to give his decision whether the prisoner has to be discharged or not. The prisoner had thus more time to claim and procure the issue of the writ than is given by law to the Judge to decide on the merits of the case. Besides which the investigation had already occupied a period of more than three weeks, thus affording every opportunity for making preparation for the adoption of any course which the prisoner's Counsel might have contemplated.

I respectfully call the attention of your Excellency to the statement of Mr. Ramsay, that on Friday the 24th August, Mr. Justice Drummond adjourned the case, of his own motion, and that the adjournment was solicited neither by Mr. Ramsay, nor by the Counsel acting on behalf of the French Government; and that Judge Drummond has stated that if the Counsel of the prisoner had moved for the issue of the writ on that day he would have granted it. Thus, if any blame exists for the non-issuing of the writ, it attaches either to the Judge, if he thought it correct to issue the writ, or to the prisoner's Counsel who did not move for its issue.

As the departure of the steam-ship on the following Saturday afforded the readiest way of conveying the prisoner out of Her Majesty's dominions, it became necessary to use great diligence after the commitment to have the warrant of extradition executed in time, to enable the officer who was to take charge of the prisoner to avail himself of that conveyance. These facts being known to the

prisoner's Counsel, it was his duty also to have used diligence in any proceedings to be taken by him, which diligence does not appear to have been used.

Your Excellency's warrant once issued there were no means of retarding its operation, and in its immediate execution the Sheriff, or his deputy, appears to have done no more than his duty.

Moreover, I consider that if the prisoner had been liberated under any writ of *habeas corpus*, for the reasons given in Mr. Justice Drummond's extra-judicial opinion alluded to in Mr. Ramsay's Report, a failure of justice would have taken place, and that the French Government would have been in a position rightly to complain that the Treaty had not been carried out in this case.

(Signed) GEO. E. CARTIER,
Attorney-General for Lower Canada.

Ottawa, October 17, 1866.

Incl. 2 in No. 2.

Inclosure 2 in No. 2.

Mr. Ramsay to the Attorney-General.

Sir, Court House, Montreal, October 15, 1866.

I HAVE the honour to re-inclose you Mr. Godley's letter and the extract from Mr. Justice Drummond's Judgment in the case of Lamirande which accompanied that letter.

In order that you may be enabled to convey to his Excellency complete information as to the position I assumed, I shall trouble you with a narrative of my whole connection with the matter.

On Friday, the 3rd of August last, I was informed of the arrest of Lamirande under a demand for extradition by the French Government for the crime of forgery. As I was aware of the anxiety created in England by the notice given to Her Majesty's Government of the intention of the French Government to put an end to the Extradition Treaty, owing to the failure on the part of the English authorities to give it effect, and also of the steps taken in England to induce France to abandon this resolve, although I had no special instructions from you in the matter, I thought it my duty to notify the Magistrate of my intention to watch the proceedings on the part of the Crown. Some little time after I met Mr. Pominville, who informed me that he was retained on the part of the French Government, and he introduced me to a Mr. Condert, who had conducted the proceedings on the part of the French Government in the United States, where Lamirande had been arrested previously, and from which he had escaped. We had some conversation as to the accusation, and to the sort of proof that I should consider necessary to enable me to take conclusions for the extradition of the prisoner. On the 6th, the inquiry began before the Magistrate and was continued till the 15th, when the prosecution was closed. During the taking of the evidence I took little or no interest in the matter, and indeed was rarely present, as I did not conceive the Crown had anything to do with the means the private prosecutor took to make out his case. When, however, the case for the prosecution was closed and the Counsel for the prisoner moved his discharge, I opposed his application and maintained that a case within the Treaty had been made out. After a long argument the Police Magistrate refused to discharge the prisoner, and his Counsel then prayed to be allowed to adduce evidence for the defence. Although it is purely discretionary with the Magistrate to hear evidence or not for the defence, and that the ordinary practice here is to decline to admit it, I at once assented to the delay being accorded, and said that I considered extradition cases to be so exceptional in their character that evidence for the defence when offered should never be refused. The Magistrate then adjourned the case to the 20th. On the 20th, the prisoner was again brought up for examination, and the evidence suggested on his part was terminated on Wednesday, the 22nd, at what time I do not know, as I was not present when the evidence was closed. The Magistrate then heard the parties by their Counsel, but I took no part in the hearing as I had been heard on the 15th, and as I did not consider the new evidence had in any way altered the position of the case. After the argument, for which I did not remain, the Magistrate adjourned for an hour or an hour and a half to prepare his judgment. On his return he fully committed the prisoner for extradition.

Immediately on the termination of inquiry before the Magistrate, I believe the

private prosecutor made preparations to obtain the Governor's warrant authorizing the extradition. And here it is necessary to say a few words. An erroneous opinion has taken largely possession of the public mind that the prisoner to be extradited has a right to some sort of an appeal, and that the Governor-General is to supervise the decision of the committing Magistrate. It is impossible to conceive a greater blunder. The action of the Governor-General is not judicial, but executive. The reason he is called upon to do the last act of extradition is not that he may decide whether the evidence is sufficient, or whether the Magistrate has given a good or a bad judgment, but because the Act of Parliament may be terminated by the rupture of the Treaty, of which a Court of Justice might not have cognizance, and of which the Governor must necessarily have the earliest information, as for instance, in the case of war, which breaks all Treaties. Again, the examination of the commitment under a writ of *habeas corpus* is not in the nature of an appeal; it is not a necessary incident to extradition, and therefore there was no call upon the prosecution or on the Executive to give any delay at all for a proceeding which might or which might not be taken, and which is not contemplated in the Act giving effect to the Treaty.

On the morning of the 23rd, I got notice from Mr. Doutre that he would apply for a writ of *habeas corpus* on the 24th, at 1 P.M. I went to Chambers, and met both Mr. Justice Drummond and Mr. Justice Mondilet. As the latter had already had cognizance of the affair, and as he had informed me, one day I met him in a railway train, that he was going into town on purpose to be ready to hear any application that might be made in the Lamirande case, I told him that a writ was then to be demanded. With a slight air of embarrassment they both told me that Mr. Justice Drummond would take the case. Some little time after Mr. Doutre came in and made his application, to which I interposed an objection that the notice was short, stating my reason for making the objection, that as I did not represent the French Government I could not waive any right. Mr. Justice Drummond then interrupted me very rudely, saying, that he would not pass the whole afternoon with such quibbling. From that moment I began to suspect that the liberation of Lamirande was a foregone conclusion, and that Mr. Justice Drummond's appearance in Chambers that day—a most unusual circumstance, for I had not seen him there once during the vacation—was not unpremeditated, and I soon became convinced that a portion of that plan was to compel me to silence. Shortly afterwards some allusion being made to a fact in the record, Mr. Doutre asked if the papers had been sent up. I asked him if he had given notice to the Magistrate, to which he answered he had not. This, again, called forth some expressions of irritability from the Judge, who declared he would not be trifled with, and he sent for the Deputy Clerk of the Crown. On the arrival of the clerk he stated that the record had not been yet sent to the Crown Office by the Magistrate, and that the Magistrate was not then there, but that he should be sent for. It is only due to the Deputy Clerk of the Crown to say that however intemperately given, the directions of the Judge were carried out with the utmost celerity, and in less than an hour the papers were procured from the Magistrate and brought into Chambers. And here it may be as well to state that we have an express enactment declaring that the Magistrate must have notice to send up his papers, and, furthermore, before the issue of the writ the Judge had no authority over the record at all.

By our Statute copied from the old Statute of Charles, on an application for a writ of *habeas corpus*, the Judge in vacation, under a penalty of 500*l.* in case of contravention, is obliged to issue the writ "upon view of the copy of the warrant of commitment" unless, first, the commitment be for treason or felony plainly expressed in the warrant, or, secondly, that the prisoner be in execution. The prisoner Lamirande was in neither category, and it was, therefore, the imperative duty of the Judge to issue his order for the writ fortwith. Had he acted as the law directs, all the difficulties which ensued would have been avoided; and the Sheriff refusing to deliver up Lamirande on the demand of the French officer would have been within the reservation contained in his Excellency's warrant, and the responsibility of surrendering or discharging Lamirande would then have been with the Judge upon whom it ought to rest, and not on the officers of the Executive. To relieve the Judge of the imputation of irregularity a miserable quibble has been advanced. It has been said the writ of *habeas corpus* is a writ of right, but not of course. Now what do those words signify? Simply this, that there are two exceptions, those I have enumerated wherein he is not obliged to issue the writ on view of the copy of the warrant of commitment, to neither of which, however, did

the case in point belong. Having made the mistake of taking the argument on the petition, the prisoner remained during the whole time it lasted subject to being extradited by a warrant from the Governor, which being directed to the Sheriff would be acted on by him, perhaps even in ignorance of the petition for a writ; but whether ignorant of the fact or not, he would at all events have no legal excuse for delaying obedience to the writ. It will, doubtless, be in your recollection that one of the most serious charges against the Chief of Police, Mr. Lamothe, after the enlargement of the St. Albans raiders by the Judge of Sessions, was his delaying only half-an-hour to execute a warrant issued for their re-arrest by a Judge of the Superior Court acting in his capacity of a Justice of the Peace, in order that he, Mr. Lamothe, should have time to inquire as to the legality of the re-arrest. Can it, then, be pretended that the Sheriff, even if he did know that an application for a *habeas corpus* was pending, could have refused obedience to the Governor's warrant till the decision was come to? Such a doctrine would lead to the most extraordinary results, and to the destruction of all executive subordination. Besides, if a notice of an application for a writ of *habeas corpus* could thus paralyze the action of the Executive, it would be competent for a prisoner, committed for extradition, by repeated applications to defer the evil day as long as he chose.

But to return to the narrative, after the papers came up, Mr. Justice Drummond announced his intention of sitting as late as might be necessary r the hearing, and Mr. Doutre entered at great length into the case. When he had spoken for nearly an hour, Mr. Drummond asked me to answer what Mr. Doutre had said, for from what he had heard he said he felt disposed to discharge the prisoner. I then replied, speaking only to the law of the case, and not occupying twenty minutes, but maintaining that the case was within the Treaty. When I had finished, I mentioned that Mr. Pominville, on the part of the French Government, had something to say as to the facts. So soon as Mr. Pominville rose, Mr. Drummond said that he would adjourn the case to the next day. After the extradition it was stated boldly in one of the newspapers that Mr. Pominville had asked for an adjournment. This is totally incorrect. It was the Judge who, of his movement, ordered it (see the extract of his Judgment inclosed by Mr. Godley, where he says, "I adjourn, &c."); and after the announcement that the Judge would sit late, this took us not a little by surprise, for it was hardly 5 o'clock, and I had made arrangements with the Deputy Clerk of the Crown, Mr. Schiller, that he should not go so long as the Judge sat, in order that no delay should occur in issuing the writ, if ordered. Within half-an-hour after the adjournment, I left the Court-house, and heard nothing of the proceedings till next morning about 10, when I learned that Lamirande had been removed during the night under a warrant from the Governor-General. I was just going to write to the Judge to tell him that this put an end to the case, when I got a message from him to say he wanted to see me. I found him labouring under quite as much irritability as on the day before, and as he seemed desirous of finding fault with some one, and at a loss to know with whom he ought to find fault, I thought it right to tell him that had I been asked by the Sheriff the night before whether Lamirande ought to be given up, there being no other cause of detainer in the Sheriff's hands, I should have told him to obey the Governor's warrant immediately. I added, however, that I had not had an opportunity of giving this advice as I had never seen the Sheriff or his deputy on the subject. It is, perhaps, however right for me to state here that the Sheriff was not at all likely to ask my advice, for in a similar case in June I had telegraphed in, for the guidance of the Sheriff, to say that the Governor's warrant must be obeyed according to its tenor at all hazards, and there is but one exception to the Governor's warrant, namely, that the prisoner be not detained "for any other cause, matter, or thing." This answer seemed at the time to satisfy Mr. Drummond, and a few minutes after he even came to my chambers without there being anything in his manner indicative of violent feeling. It was, therefore, a new surprise for me when on the return of the writ of *habeas corpus*, which, be it observed, he issued after he was well aware of the removal of the prisoner, he indulged in a most unmeasured attack on the officer of justice, who had conducted the prosecution. As a report of this attack got into the newspapers, I thought it my duty to reply in a letter addressed to the "Montreal Gazette," a copy of which is appended marked A, so that these most injurious and libellous accusations should not go abroad uncontradicted.

On the 27th, Mr. Justice Drummond, having determined to give a Judgment in the case, although there was no prisoner, and no order could be made, actually took possession of the Court of Appeals, where he has only a right to sit as one of five

Judges, and there before a great concourse of people read a Judgment, and made observations, which I am informed, for I had declined to be present, were correctly reported in the "Herald" of the 29th. It is from this report, the extract inclosed in Mr. Godley's letter is taken. I was not present when the words mentioned in the inclosed extract were used; but so soon as I saw the report, I replied to the renewed attack by a letter in the "Gazette," B, and in that letter is to be found my answer to the portion of the Judge's remarks, adverted to by Mr. Godley. The indignation I expressed was at the use of the word "kidnap" by Mr. Doutre, and I at once told him that it was idle to talk of kidnapping, for that the prisoner could only be removed by one process, that is on the warrant of the Governor-General. Had the distinctions thus established, before the extradition, been observed afterwards, much foolish declamation would have been avoided, and much ill-feeling prevented. To affirm that a man removed by process of law is kidnapped is nonsense; and to affirm that Lamirande was kidnapped is to beg the question.

Having recapitulated the main facts of the case in order to give you a full idea of the position I took, it only remains for me to refer to the legal considerations which induced me to regard the case as coming within the Treaty.

The only question that gave rise to any solicitude on my part was the question of whether, the offence not being forgery by our law, Lamirande could be extradited for forgery by the law of France; and, if so, whether we should take the law of France as stated in the *arrêt de renvoi* and the French affidavit, or oblige the prosecution to make further proof of the constituents of forgery by the law of France. It would probably have been agreeable to the prosecution had I adopted the view that the offence charged was forgery by our law, or even had I left my opinion as to the nature of the offence doubtful; indeed, one of them, Mr. W. Coudert, battled long and earnestly to bring me to the conclusion that it was; but I unhesitatingly stated my opinion, on the 15th, when the case for the Crown was closed, that forgery, by the law of England, had not been brought home to the prisoner, and that the question to be decided was, whether he could be extradited on the proof of forgery according to the law of France. The issue was thus narrowed down to a very small point, and, as I have said, there was no equivocation as to the view of the case taken by me. It is true much time was wasted in the discussion of whether the demand by the French Consul was legal, and as to whether the evidence was sufficient to maintain the accusation. It was also pretended that the French detective ought to be actually in possession of a French warrant of arrest.

The whole of this part of the discussion appeared to me idle in the extreme. It is not necessary to be a lawyer to know that the authority of the French Consul to demand the extradition was an executive, and not a judicial question, and one in which the prisoner could not have any legitimate interest. It is a stipulation in favour of the power from which the extradition is sought, and not in favour of the prisoner.

Again, as to the evidence of the falsification, nothing could be more complete, and it was not even seriously denied. As I found myself under the necessity of answering publicly, on the 1st of September, Mr. Justice Drummond's extra-judicial opinions expressed on the 27th in the Court of Appeals, I shall now repeat the argument I then used. Before doing so, however, there is one point to which I have not there adverted; and it is whether the prosecution was bound to prove the foreign law by testimony. I think not; and that it is not competent for the Judge here to go behind the French warrant. But, at any rate, this was not insisted upon seriously at the time, and, besides, it is not strictly true that there is no evidence of the French law, for the French deposition on which the proceedings in France were based, after setting up the facts, calls it forgery.

Mr. Justice Drummond said:—

"My decision to discharge him was founded on the reasons following:—First, because it is provided by the first section of the Act of the British Parliament to give effect to a Convention between Her Majesty and the King of the French for the apprehension of certain offenders (6 and 7 Vict., cap. 75); that every requisition to deliver up to justice any fugitive accused of any of the crimes enumerated in the said Act shall be made by an Ambassador of the Government of France, or by an accredited Diplomatic Agent; whereas the requisition made to deliver up the petitioner to justice has been made by Abel Frederic Gautier, Consul-General of France in the Provinces of British North America, who is neither an Ambassador

of the Government of France nor an accredited Diplomatic Agent of that Government, according to his own avowal upon oath."

In the first place, it is evident that, if the requisition must be made by an Ambassador, and it must be this the Judge means, it renders the Treaty inapplicable in all the Colonies. In the next place the statute does not use the terms employed by the Judge. It is not said a requisition "shall be made." In the statute there is nothing imperative; the form is purely directory. It says:—

"That, in case requisition be duly made, pursuant to the said Convention in the name of His Majesty the King of the French, by his Ambassador or other accredited Diplomatic Agent, &c., it shall be lawful," &c.

Now every one knows that, in the interpretation of statutes, there is a wide difference between what is directory and what is imperative (2 Dwarris, page 713); and it is often a question of great nicety to decide whether a particular clause is the one or the other, But technically, the question stands thus: on the part of the prisoner it was pretended that the requisition by an Ambassador was a condition precedent imperatively fixed by statute, without which the Governor's warrant was a nullity.

On the part of the prosecution it was maintained that the words were purely directory; that the necessity of a requisition was established in favour of the power called upon to extradite, and that consequently it was for the executive of that power to decide whether a sufficient requisition had been made, and that it was in no way competent for the Court to go behind the Governor's warrant directing all Justices to aid in the apprehension of the prisoner.

It was further maintained that this interpretation was not only agreeable to the general objects of the statute and conformable to the principle of interpretation already laid down, but that it also appeared, by other words in the statute, which goes on to say that, this requisition being made, the Governor is authorized "by warrant under his hand and seal to signify that such requisition has been so made, and to require all Justices, &c." Besides, if this question were not to be settled by the signification of the Governor, how is it to be established in any case that the requisition was made by a "Diplomatic Agent?" The warrant cannot contain the proof otherwise than by the declaration it contains; will it, then, be pretended that, being denied on the part of the prisoner, the Ambassador or other Diplomatic Agent will be obliged to file his credentials? Mr. Drummond's holding implies so much. But whoever heard of the credentials of a Diplomatic Agent being judged of by any one but the executive with which he has been put in relation? Does not the very expression "accredited Diplomatic Agent" used in the statute, exclude all doubt? It is only necessary to ask, by whom is credit to be given? It therefore would appear that Mr. Justice Drummond's first point is a blunder, and that "a poor Magistrate who has never pretended to read the law" may be nearer right than he.

The Judge goes on to say:—

"2ndly. Because by the 3rd section of the said statute it is provided that no Justice of the Peace, or any person, shall issue his warrant for any such supposed offender, until it shall have been proved to him upon oath or affidavit that the person applying for such warrant is the bearer of a warrant of arrest, or other equivalent judicial document, issued by a Judge or competent Magistrate in France, authenticated in such manner as would justify the arrest of the supposed offender in France upon the same charge; or unless it shall appear to him that the act charged against the supposed offender is clearly set forth in such warrant of arrest or other judicial document; whereas the Justice of the Peace who issued his warrant against the petitioner, issued the same without having any such proof; the only document produced before him, as well as before me, in lieu of such warrant of arrest or equivalent judicial document, being a paper writing, alleged to be a translation into English of a French document made by some unknown and unauthorized person in the office of counsel for the prosecutor, and bearing no authenticity whatever.

The law and the Judge's commentary are so mixed up, that, for a proper understanding of the question, it is necessary to reproduce the terms of the Statute, which are as follows:—

"Provided always, that no Justice of the Peace or other person shall issue his warrant for the apprehension of any such supposed offender until it shall have been proved to him, upon oath or by affidavit, that the party applying for such warrant is the bearer of a warrant of arrest, or other equivalent judicial document

issued by a Judge or competent Magistrate in France, authenticated in such manner as would justify the arrest of the supposed offender in France upon the same charge; or *unless it shall appear to him that the acts charged against the supposed offender, are clearly set forth in such warrant of arrest, or other equivalent judicial document.*"

Now, the Judge's interpretation, following Mr. Doutre, is that there must be an affidavit or deposition by the bearer of a warrant of arrest, declaring that he has this French warrant, "or other equivalent judicial document." But to say this is to ignore the alternative italicized above; the critical reading of the Statute being, that the Magistrate shall not proceed to apprehend, even on the reception of the Governor's first warrant, either until it is established by oath or deposition that the person applying is bearer of a French warrant, or other equivalent document; or unless it shall appear to the Magistrate that such warrant exists. This, too, is consonant with common sense, which Mr. Justice Drummond's reading is not. Had the Magistrate not the alternative of acting without the actual presence of the French warrant, the prisoner would infallibly escape, even when he could not find an enthusiastic attorney to purloin it; for all he would have to do would be to keep out of the place where this dangerous document was, and as but one person could be the "bearer" of it, so only one person could be effectually employed in the pursuit.

It is easy to understand why rogues and their counsel should maintain such a strained interpretation of a Statute, but it is inconceivable that a Judge should be found to adopt it. The translation of the *arrêt de renvoi* was never filed by the prosecution as a substitute for a warrant, because the prosecution never admitted that such warrant was required; but in the absence of the original, which had been made away with by the prisoner's counsel in New York, it was produced to justify the Magistrate in committing him. The *arrêt de renvoi* being an indictment, as we should say, it presumes a warrant of arrest, or other judicial document, and therefore, under the express words of the Statute, justified the Police Magistrate in acting.

Mr. Drummond continues:—

"3rd. Because, supposing the said document purporting to be a translationo an *acte d'accusation* or indictment, accompanied by a pretended warrant of arrest, and designated as *arrêt de renvoi*, to be authentic, it does not contain the designation of any crime comprised in the number of the various crimes for or by reason of the alleged commission of which any fugitive can be extradited under the Statute.

"4th. Because by the first section of the said Act it is provided that no Justice of the Peace shall commit any person accused of any of the crimes mentioned in the said Act (to wit, murder, attempt to commit murder, forgery, and fraudulent bankruptcy), unless upon such evidence as, according to the laws of that part of Her Majesty's dominions in which the supposed offender shall be found, would justify the apprehension and committal for trial of the person so accused, if the crime of which he shall be accused had been then committed. Whereas the evidence produced against the petitioner upon the accusation of forgery brought against him before the committing Magistrate, would not have justified him in apprehending or committing the petitioner for the crime of forgery, had the acts acts charged against him been committed in that part of Her Majesty's dominions where the petitioner was found, to wit, in Lower Canada.

"5th. Because the said warrant for the extradition of the petitioner, as well as the warrant for his apprehension, does not charge him with the commission of any one of the crimes for which a warrant of extradition can be issued under this Statute, inasmuch as in both of the said warrants the alleged offence is charged against the petitioner as 'forgery, by having in the capacity of cashier of the branch of the Bank of France at Poitiers, made false entries in the books of the bank, and thereby defrauded the said bank of the sum of 700,000 francs;' whereas the said offence, as thus designated, does not constitute the crime of forgery according to the laws of England and Lower Canada, for, to use the words of Judge Blackburn when he pronounced judgment concurrently with Chief Justice Cockburn and Judge Shee in a case analogous to this (*ex parte* Charlotte Windsor, Court of Queen's Bench, May 1865), 'Forgery is the false making of an instrument, purporting to be that which it is not; it is not the making of an instrument purporting to be that which it is; it is not the making of an instrument which purports to be what it really is, but which contains false statements. Telling a lie does not become a forgery because it is reduced to writing.'"

These three paragraphs really contain the great question of this case. In

enumerating the offences for which an accused person may be extradited, must we look for the constituents of the offence to the law of the country violated, or to that in which the extradition is demanded? Much is to be said on both sides of this question; and there can be no doubt that in dealing with the American Treaty, and particularly so long as slavery existed in that country, it was necessary for the great common law felonies, such as murder and manslaughter, to look to the common law of England as the guide. And of this the Americans could not, and cannot, complain, for they take their common law from us; and, therefore, in using an English common law term, they must be supposed to use it with the common law signification. This was the view taken in the Anderson case, and rightly. We would not tolerate that the people of a southern State of the Union should convert manslaughter into murder by the existence of a system condemned long previous to the Treaty, by the public morality of the Empire. About the intention too of this law giving effect to the American Treaty there was no doubt. It had been fully discussed in Parliament when the Bill was passed, and distinctly admitted on all hands that, in a case such as Anderson's, the fugitive would not be delivered up.

With regard to the French Treaty the question is totally different. There is no common origin for the two laws; and consequently, when the term does not express the same offence in both countries, there is no reason for making the definition according to the law of the one rather than of the other. But, in addition to this, it is perfectly clear that in the English statute the law of France was not ignored; but to make this apparent to the general reader, we must proceed to details. The crimes enumerated for which extradition may be sought may be divided into three categories for the purposes of this examination:—

1. Murder, for which the equivalent is distinctly set up in the statute; it comprehends the terms "assassination, parricide, infanticide, and poisoning."

2. Fraudulent bankruptcy, which has no equivalent in the criminal law of England at all.

3. Forgery, which has not at all the same signification in France and in England.

Now, if it be true that, with the exception of murder (the meaning of which is thus absolutely defined), the law of England was alone contemplated, the mention of fraudulent bankruptcy was a mere farce. It must, however, be said, in support of Mr. Justice Drummond's opinion, that even this view has been held; and a Solicitor-General in Lower Canada formally gave it as his opinion that we should not extradite in cases of fraudulent bankruptcy, there being no such crime known to our laws; and we believe that this opinion was acted upon in several instances. On the other hand, it must be said that the latest case in England under the Treaty is for the extradition of a fraudulent bankrupt. (*Ex parte* Widemann, in the Weekly Notes of the 30th June of this year.) It is thus plain that in England it is not settled that the offence must be one under the laws of England. The same argument will apply to forgery, if not to the same degree at all events to a very great extent. Forgery in France and forgery in England are perfectly different, and this is very natural. A mere misdemeanour at common law, forgery has been so altered that now almost every forgery is a felony, and many things which were not crimes are now forgeries. The same thing has taken place in France, so that to refuse to give up a man accused of a particular kind of forgery, because it was not common to both laws, would be almost to annul the Treaty in so far as regards that offence. But it is said that the statute is imperative; they rely on this passage:—

"Upon such evidence as, according to the laws of that part of Her Majesty's dominions, would justify the apprehension and committal for trial of the person so accused if the crime of which he or she shall be so accused had been there committed, it shall be lawful for such Justice of the Peace, or other person having power to commit as aforesaid, to issue his warrant for the apprehension of such person, and also to commit the person so accused to gaol, there to remain until delivered pursuant to such requisition as aforesaid."

Now this clause does not bear out the pretension; and if it did, it would be applicable to fraudulent bankruptcy as well as to forgery, and Mr. Dunbar Ross' opinion, when Solicitor-General, would be correct. But this we see by the Widemann case is not the view now taken in England. To make Mr. Justice Drummond's dictum agree with the Widemann case, we should require to make a distinction not to be found in the law, which it should be unnecessary to remind "a

Judge who has read the law," is against all principle. "Ubi lex non distinguit, nec nos debemus distinguere." But do the words cited bear out Mr. Drummond's reading? We maintain they do not. Their only meaning is this: that there must be sufficient evidence to justify the magistrate in committing, had the offence been an offence here and been committed here. In other words, it is a caution to the Magistrate to deal with the case as he would with any other preliminary examination for an alleged crime here. How it could have got abroad that he has any other duty than that one, almost purely ministerial, which he performs daily in dealing with those accused of crime here, we cannot imagine, unless it be explained by the jealousy that exists on the subject of extradition in England, as Lord Clarendon said in the House of Lords, when the Bill was recently introduced to give greater effect to the French Treaty.

Another of the points made was that we had not the *arrêt de renvoi*. I have already shown that it was not necessary for us to have it; but even if it had been necessary to produce it before the committing Magistrate in ordinary cases, it certainly would not have been so in this case. It is in evidence that the *arrêt de renvoi* had been made away with by Mr. Spilthorn, the prisoner's counsel at New York (he does not venture to deny the taking), and that being proved, it was competent for us to give the next best evidence at our disposal, which undoubtedly was the translated copy of the *arrêt de renvoi* prepared for the United States' Commissioner and initialed by him as one of the documents of his record.

But the real question now is, not whether the law as laid down by the Police Magistrate judicially, or that expressed by the Judge extra-judicially, is correct. The only person legally seized of the question and who could give a judgment decided for the extradition, and it therefore only remains to inquire whether that decision was carried out in a lawful manner or not. I am quite ready to admit, with the most violent of the papers here, that the act was one which if not legal was kidnapping; but I think it has been made sufficiently clear that the act of the Sheriff in giving him up was not only justifiable but the only course he could lawfully pursue. The absurdity of the pretension that notice of an application for a writ of *habeas corpus* served upon me was to have the same effect as a writ served upon the gaoler is too transparent to deserve comment. But it has been said there was indecent haste, and that the Governor-General had promised time to apply for a writ of *habeas corpus*, or as Mr. Doutre somewhat untechnically calls it, "time to bring the case before higher tribunals." As for the matter of haste, it is expressly enjoined in the Statute giving effect to the Treaty (6 and 7 Vict., cap 75, sec. 4) that the prisoner is to be removed out of Her Majesty's dominions in the readiest way. Now the readiest way and the only way of sending Lamirande out of Canada was by the river, and as the steamer was to sail on the morning of Saturday the 25th, it was obviously incumbent on those representing the French authorities to lose no time in procuring the Governor's warrant, so as to take advantage of that mode of conveyance. The escape of Lamirande from custody in the United States, the day before the Commissioner was to pronounce judgment upon his case, and the presence here of his counsel, Mr. Spilthorn, whose extraordinary proceedings relative to the *arrêt de renvoi* at New York have already been remarked, were additional reasons for inducing the agents of the French Government not to allow time for further machinations. As to the alleged promise of the Governor-General I have, of course, nothing to say but this, that even if made in the terms Mr. Doutre alleges, it was fully redeemed, for ample time was given to get out the writ, and if its issue was delayed till Tuesday, the fault must be between Mr. Doutre and the Judge, the latter of whom does not hesitate to state that if Mr. Doutre had insisted he would have issued the writ on the 24th, Friday. To this Mr. Doutre may fairly reply that if he had a right to the writ before the argument it was unnecessary for him to insist, his application should have been enough.

I do not care to take up your time in offering any apology for the part I have taken in this affair, for I feel that my acts speak for themselves; but I may be permitted to say a word on one piece of criticism by the Judge. He said it was my "duty to inform the Governor that a writ of *habeas corpus* was demanded." But why more in this case than any other, or am I in all cases of extradition to keep the Governor advised by telegraph of each step of the procedure? Besides, if Mr. Doutre's story be true, the case in question is the very last in which such an exceptional proceeding on my part was required, for it would appear that so far back as the 3rd of August, Messrs. Doutre and Doutre had appealed to the Governor-

General to protect their client whom they then called "Felix Gastier;" and later, on the 15th, we find MM. Doutre and Daoust again informing the Governor-General that it is their intention "to appeal to higher tribunals" in favour of their client, whose name then turned out to be Ernest Sureau Lamirande, the well-known fugitive from Poitiers. Instead of attempting to fix on the Governor-General the imputation of not having kept his word, Mr. Doutre would do well to explain how it came to pass that Doutre and Doutre should petition on the 3rd of August for Felix Gastier, and that Doutre and Daoust should petition for the same man under the name of Ernest Sureau Lamirande on the 15th.

I have, &c.

(Signed) T. K. RAMSAY,
Advocate prosecuting for the Crown, District of Montreal.

To the Hon. George Et. Cartier,
Attorney-General, Lower Canada, Ottawa.

(A.)

To the Editor of the "Montreal Gazette."

Sir,

THE "Herald" of this morning contains two columns of the report of a pretended judicial proceeding in the Lamirande case, accompanied by a characteristic attack on the Attorney-General. It is very plain that the declamation of Mr. Justice Drummond and Mr. Doutre *à propos* of nothing (for there was no case, and neither of them ventured to move for or take any rule or other proceeding), was simply intended to give Mr. Cartier's enemies a pretext for abusing him; so impossible is it, without rectitude of purpose and complete sobriety, to overcome the recollection of political defeat. But my object is not to review or attempt to answer the contradictions and absurdities of these tirades. I feel perfectly satisfied that nothing I can say or write will ever prevent Mr. Justice Drummond from at all times preferring effect to truth, and therefore my explaining to him that to call the giving up of a prisoner on the warrant of the Governor kidnapping is simply a naked falsehood, would be a pure waste of time. I shall therefore briefly state how and why Lamirande was given up, and from that it will at once be obvious that the outcry of Mr. Drummond and Mr. Doutre is simply beside the question.

We have a Treaty with France, enforced by an Imperial Statute, by which we agree to give up persons accused of certain offences therein enumerated. The procedure is this: The French Government claims the extradition of the accused, and the Governor (in the Colonies) issues his warrant, charging all justices and officers of justice to aid in the capture of the fugitive. On his apprehension he is brought before a Magistrate, who deals with the charge, or who ought to deal with it, precisely as if the offence had been committed here. This being done, the prisoner is either fully committe or he is discharged. If committed, the papers are forwarded to the Government, and the Governor issues his warrant for the extradition of the prisoner, who is at once delivered up, provided there be no other cause (*i. e.* criminal cause) for his detention. It is an error to suppose that there is any right of appeal from the decision of the Governor; but if application is made in proper time a writ of *habeas corpus* may be procured, which would have the effect of bringing the prisoner before the Court or Judge to examine into the cause of his detention. In Lamirande's case no such writ was either granted or issued, and therefore it is positively untrue that the prisoner was in the hands of the Court or Judge, as Mr. Drummond said. Without this writ there was no power known to the law to stop the execution of the Governor's warrant; and this I at once explained to Mr. Justice Drummond in chambers, on Saturday morning, when he first spoke to me on the subject. I then told him that had the Sheriff consulted me, which he did not, I should have advised him to obey the warrant without a moment's loss of time. So unanswerable was this that Mr. Drummond, shifting his ground, said that he had put in a commitment before the removal of the prisoner; but I afterwards found that what he was pleased to call a commitment was no commitment at all, but an order not to deliver Lamirande up on any warrant whatever. What renders this proceeding doubly ludicrous is that Mr. Justice Drummond was the person most terribly severe upon Mr. Justice Mondelet for his order in the Blossom case; yet when Mr. Mondelet gave that order he was sitting at the Court of Queen's Bench, whereas when Mr. Drummond gave his he was prowling about the town at night without any official character

whatever but that of a Justice of the Peace. On Saturday afternoon Mr. Justice Drummond again shifted his ground, and he was pleased to tell me that it was my duty to interfere in some way or another, and prevent the Governor's warrant taking effect. For Mr. Justice Drummond's information, let me say that when I seek a guide as to duty I shall endeavour to select some one more immaculate than him, but in so far as regards the present case I may add that I was very unlikely to commit an illegality to prevent the extradition, inasmuch as I highly approved of it.

And now one word as to the prisoner. Lamirande was cashier of the Bank of France at Poitiers, and he there robbed his employers of 700,000 francs (28,000*l.* sterling), falsified books and entries (forged as the French Court calls it), and fled to the United States. Being arrested there and about to be extradited, he managed to drug his guard and escaped to Canada, while his lawyer stole the *arrêt de renvoi*, or French indictment, which formed part of the record before the Commissioner. And this is the person for whom Mr. Justice Drummond felt so lively a personal interest as to induce him to abandon the retirement of his home and endure the fatigues of sitting in chambers, for, I believe, almost the first time since the beginning of vacation.

While talking of conspiracy it would be, however, interesting to learn from Mr. Drummond, at whose invitation he undertook to adjudicate in Lamirande's case? The effort was not unpremeditated for the interesting fact was duly *heralded* on Friday morning.

Your obedient servant,
(Signed) T. K. RAMSAY.

Montreal, August 27, 1866.

(B.)

To the Editor of the "Montreal Gazette."

Sir,

IN this morning's issue of the "Herald" I find the following sentence:—

"That he (the Judge) did not do so (issue the writ of *habeas corpus* at once), therefore, was plainly due to a representation by the advocates for the prosecution, one of them representing the Attorney-General, which if not false in words was false in intention, and had all the effect of falsehood upon the Court whom these gentlemen were bound to assist instead of deceive."

It is of course of very little importance to me what gloss it may be convenient for the editors of the "Herald" to give to a very simple transaction; but it is, perhaps, as well the public should know that Mr. Kirby, one of the editors of the "Herald," was present in Chambers on Saturday afternoon, when Mr. Justice Drummond made the utterly unfounded statement that anything was said by me to give Mr. Doutre to understand that the prisoner would not be given up on the arrival of the Governor's warrant. I then immediately rose and contradicted Mr. Justice Drummond's statement in the most pointed manner; and moreover, I repeated the conversation which took place, which was to this effect, and as nearly as I recollect in these words. I said, "It was idle to talk of kidnapping (the expression used by Mr. Doutre), for the prisoner could only be removed by one process, that is, on the warrant of the Governor-General." I thus pointed out specially to the Judge and Mr. Doutre the single peril to which the prisoner was exposed, and Mr. Drummond did not venture in my presence to contradict my statement of the facts. It is, therefore, gross bad faith on his part, and on that of the writer in the "Herald" to renew an accusation which the Judge could not stand to the head of when first made and denied. The fact is Mr. Justice Drummond and Mr. Doutre are anxious to throw on my shoulders the responsibility of their own blunder. They had the means, or at least the Judge had, to stop the extradition without the interference of any one, and now he is furious because the gaoler, or I, or some one else, did not rush in to accept no end of responsibility to cover over his *laches*. In one place Mr. Justice Drummond suggests that "the gaoler might have waited till morning;" in another "that it was my duty to inform the Governor that a writ of *habeas corpus* was demanded!!" and after all this bombast, even after the delivery of the judgment, which ordered nothing, this is all that can be said—somebody might have done for Mr. Drummond what he ought to have done for himself.

It is not my intention at present to dwell on the extra-judicial opinions expressed

by Mr. Justice Drummond yesterday. With the public they will probably be differently estimated; but he is reported to have made one statement which I cannot pase over in silence. He says, "In fact, some persons engaged in the prosecution of this man for forgery have themselves been instrumental in a falsification of one of the most solemn documents that can be issued by the Governor-General." In answer to this I must state, without the least reserve, that this is the most audacious calumny I ever heard of in my life, for it impugns the authenticity of the Governor's signature, and of the great Seal of the province. No man knows better than Mr. Drummond that when the Governor is absent from the seat of Government, official documents are recorded, sealed and dated at the seat of Government, and forwarded to him for his signature. This was the practice when Mr. Drummond was Attorney-General, and one which was followed during the absence of tne Governor last winter when the Government was administered by Sir John Michel, who lived at Montreal.

In leaving this discussion to the arbitrament of the public, I shall permit myself to prophecy that no further proceeding of any kind will be taken in this matter, and for this very good reason that there is no room for any. Had there been anything wrong that could be taken hold of, will any one believe that Mr. Justice Drummond would have vacillated so many days between declarations of its not being for him to take the initiative, and threats of terrible measures for the 24th.

Your obedient servant,
(Signed) T. K. RAMSAY.

Montreal, August 29, 1866.

Incl. 3 in No. 2.

Inclosure 3 in No. 2.

Mr. BREHAUT to the Honourable the PROVINCIAL SECRETARY.

SIR, Police Office, Montreal, August 22, 1866.

I HAVE the honour to transmit herewith, the depositions and other documents in the case of Ernest Sureau Lamirande, for extradition.

I have, &c.
(Signed) W. H. BREHAUT, Police Magistrate.

The Hon. the Provincial Secretary,
Ottawa.

Incl. 4 in No. 2,

Inclosure 4 in No. 2.

DEPOSITIONS.

Police Office.

Province of Canada, District of Montreal,
City of Montreal.

To all or any of the Constables or other Peace Officers in the said District of Montreal, and to the Keeper of the Common Gaol at the said City of Montreal, in the said District of Montreal.

Whereas Ernest Sureau Lamirande, late of Poitiers, in the French Empire, now present in the city of Montreal, in the district of Montreal aforesaid, was this day charged before me, William H. Brehaut, Esq., Police Magistrate in and for the district of Montreal, on the oath of Edme Justin Melin and others, with the crime of forgery, by having, in his capacity of cashier of the branch of the Bank of France, at Poitiers, on the 12th day of March, 1866, made false entries in the books of the said bank, and thereby defrauded the said bank of the sum of 700,000 francs:

And whereas a requisition has been made to his Excellency the Governor-General of this province, by the Consul-General of France in the provinces of British North America, pursuant to the terms of the Convention between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of the French, signed at London, on the 13th day of February, in the year of our Lord 1843; and the Acts of the Parliament of the United Kingdom of Great

Britain and Ireland, passed to give effect to the said Convention, to issue his warrant for the apprehension of the said Ernest Sureau Lamirande, accused of having committed the crime aforesaid, after the ratification of the said Convention:

And whereas in compliance with the said requisition, his Excellency the Governor-General has, by warrant under his hand and seal, bearing date at Ottawa, in the said province, the 26th day of July, in the year of our Lord 1866, required each and every the Justices of the Peace, and other Magistrates, and officers of justice, within their several jurisdictions in the said province of Canada, to aid in apprehending and committing him, the said Ernest Sureau Lamirande, to any one of the gaols within the said province of Canada, for the purpose of being delivered up to justice, according to the provisions of the said Convention and the Acts to give effect thereto:

And whereas it appears to the said Police Magistrate, that the acts charged against the supposed offender, are clearly set forth in a warrant of arrest or other equivalent judicial document, issued by a competent Magistrate in France:

And whereas divers persons have been examined upon oath before me, touching the truth of the said charge:

And whereas copy of a deposition taken in France touching the said charge, duly authenticated, has been produced and filed before me:

And whereas such evidence would be, according to the laws of Canada, sufficient to justify the apprehension and committal of the said Ernest Sureau Lamirande, if the offence of which he is accused, had been committed in Canada:

And whereas the said Ernest Sureau Lamirande, by himself and his counsel, has had full opportunity to cross-examine the said witnesses and to adduce such evidence as he deemed advisable in his own defence:

And whereas the said Ernest Sureau Lamirande has not shown any good cause why he should not be committed for extradition, according to the requirements of the said Convention, and the laws passed to give effect thereto:

These are therefore to command you, the said constables or peace officers, or any of you, to take the said Ernest Sureau Lamirande, and him safely convey to the common gaol, at the city of Montreal aforesaid, and there deliver him to the keeper thereof, together with this precept, and do hereby command you the said keeper of the said common gaol, to receive the said Ernest Sureau Lamirande into your custody in the said common gaol, and there safely to keep him until he is delivered pursuant to the requisition aforesaid, or by process of law.

Given under my hand and seal, this 22nd day of August, in the year of our Lord, 1866, at the said city of Montreal, in the district aforesaid.

(Signed) W. H. BREHAUT,

(Seal) Police Magistrate.

Bureau de Police.

Province du Canada, District de Montreal,
Cité de Montreal.

Ernest Sureau Lamirande, ci-devant de Poitiers, dans l'Empire Français, actuellement dans la cité de Montreal, dans le dit district, est accusé ce jour devant le Soussigné, William H. Brehaut, Ecuyer, Magistrat de Police dans et pour le district de Montreal, le quinzième jour d'Août de l'année de Notre Seigneur mil huit cent soixante-six, d'avoir le dit Ernest Sureau Lamirande, le douzième jour de Mars dernier, à Poitiers, dans l'Empire Français, commis le crime de faux en ayant, en sa qualité de Caissier de la succursale de la Banque de France à Poitiers, fait de fausses entrées dans les livres de la dite Banque et par ce moyen fraudé la dite Banque de la somme de sept cent mille francs, en contravention à la loi; et la dite accusation étant lue au dit Ernest Sureau Lamirande, et les témoins à charge, Edme Justin Melin, Louis Leonce Coudert, Frédéric R. Coudert, et Abel Frédéric Gautier, étant interrogés séparément en sa présence, j'ai adressé la parole au dit Ernest Sureau Lamirande, comme suit:—

"Ayant entendu le témoignage, désirez-vous dire quelque chose en réponse à l'accusation? Vous n'êtes pas obligé d'y répondre, à moins que vous ne le vouliez bien; mais tout ce que vous direz sera mis par écrit, et pourra faire preuve contre vous lors de votre procès."

Là-dessus le dit Ernest Sureau Lamirande dit comme suit: "Mes avocats m'ont avisé de ne rien dire."

Et le dit accusé ne dit rien de plus et a signé la présente, ayant été lue en sa présence.

(Signé) E. S. LAMIRANDE.

Prise devant moi à la Cité de Montreal, les jour et an ci-dessus mentionnés.

(Signé) W. H. BREHAUT, P. M.

Session Spéciale de la Paix.

Devant WM. H. BREHAUT, Ecr., Magistrat de Police.

Dans le cas d'Ernest S. Lamirande, sur Extradition.

La poursuite ayant déclaré n'avoir pas d'autre preuve que celle qui se trouve au dossier, le prisonnier se réservant de faire une preuve si la présente demande n'était pas accordée, demande qu'il soit élargi, attendu que rien ne justifie sa plus longue détention.

Montreal, le 15 Août, 1866.

(Signé) JOSEPH DOUTRE,
Avocat du Prisonnier.

(A.)

Two thousand dollars reward will be paid for the re-arrest of one Ernest Sureau Lamirande, who escaped from the custody of a Deputy Marshal of the United States on the 3rd of July instant.

He is of a dark bilious complexion, about 5 feet 6 inches high, slight build, very dark eyes, black hair, slightly touched with grey. Had one tooth decayed and partly broken on the left side of the upper jaw. Wore a full beard at the time of his escape, and was dressed in black. Speaks no English.

Apply to:

COUDERT BROTHERS,
49, Wall Street, New York.

(B.)

Sureau de Lamirande, *alias* Lamirande, Ernest Charles Constant, accused of thefts ("qualifiés"), breaches of trust ("qualifiés"), forgeries in commercial or banking accounts, and of having made use of forged documents ("pièces").

Assizes of the Department of the Vienne.—May 29, 1866.

Napoleon, by the grace of God and will of the people Emperor of the French, to all to whom these presents shall come, greeting:

The Imperial Court of Poitiers has, in the Chambre des Mises en Accusation, rendered the following Decree:—

After hearing the report made to-day in the name of the Procureur-General (District Attorney), by Mr. Duverger, his substitute, of the criminal proceedings instituted before the tribunal of the district of Poitiers (Vienne), against Sureau de Lamirande *alias* Lamirande, Ernest Charles Constant, former cashier of the branch of the Bank of France in Poitiers, 42 years of age, born on the 29th of October, 1823, at Civray (Vienne), residing latterly at Poitiers (and who has since absconded), charged with thefts ("qualifiés"), breaches of trust ("qualifiés"), forgeries in commercial or banking accounts, and of having made use of forged documents:

Having seen all the papers and proceedings in the case:

Having seen also the requisitoire (requisition) of the Procureur-General under date of this day, written and signed by Mr. Duverger, his substitute, and which reads as follows:

Having seen the Articles 379, 386, 408, 147, 148, and 164 of the Penal Code, and the Article 217 and those following of the Code d'Instruction Criminelle:

Whereas from the judicial examination of the charges and evidence of guilt result there appear sufficient grounds to arraign the accused on his trial for the offences which are charged to him. and which being qualified crimes, are punished with afflictive and ignominous penalties by the afore-quoted Articles of the Penal Code:

Whereas, in fact, on the 12th of March, 1866, Sureau Delamirande, who was only known under the name of Lamirande, which he always used to sign, cashier at the branch of the Bank of France at Poitiers, since the month of August 1858, has absconded, carrying with him the key of the upper compartment of the safe, for daily use, of which he was the only accountant, and of which he had the handling in his aforesaid capacity, in which compartment were contained a large amount of funds and bills of the Bank of France; and that the examination of that safe has shown, that previous to his departure Sureau de Lamirande embezzled from said safe, and appropriated to his own use 485,271 francs 64 centimes in specie and bank-bills belonging to the Bank of France:

Whereas, in order to ascertain the whole amount of the embezzlements or substractions of which the cashier had been guilty, there had been instituted an immediate and minute examination of all the valuables which should have been in the reserve of the bank, which is called vault or cellar, and in which is deposited the specie which is taken from the safe for daily use in proportion as the latter contains too much of it, but which is no longer at the personal and exclusive disposition of the cashier, for one can only enter that vault or cellar by means of two different keys, one of which is in the hands of the director; and that it has been established, according to the accounts, that there was there a deficiency of 219,004 francs 30 centimes, either by the impairing of a large number of bags of gold and silver practised by the cashier, or by the substraction of gold bags, which it was easy for the latter to abstract in the cellar or vault where he was superintending the deposits and the shipments of funds when he was alone, by taking advantage of the absence of the director and the employés of the bank who had charge of the transfer of the bags:

Whereas it is thence proved that Sureau de Lamirande has embezzled or fraudulently abstracted, to the prejudice of the Bank of France, while he was the paid cashier thereof, a total amount of 704,275 francs 94 centimes:

Whereas Sureau de Lamirande, in his capacity of cashier, had to furnish the Director of the Bank, every evening, with a statement ("bordereau de situation") signed by him, and in which he certified the state of the several safes of the bank, indicating by their several values the sums contained in each of them, that is to say, in the safe for daily use, in a second safe, called "auxiliary safe," and in the vault. That he has made that "bordereau," or daily balance-sheet, on the 12th of March, 1866, a few hours previous to his departure. That thus, by handing on that said day to the Director of the Branch a balance-sheet certified true, and signed by him, attesting that the totality of the cash of the Branch of Poitiers amounted to 11,443,566 francs 84 centimes, while in reality the cash was lessened by the amounts embezzled or abstracted by him, he has been guilty of forgery in commercial or banking accounts, by fraudulently altering in the said balance-sheet the declarations and facts which it was to contain and establish, and has, besides, knowingly made use of said forged statement by handing it to the director, all in order to conceal the fraudulent substractions and the embezzlements he had perpetrated:

Whereas the said thefts and embezzlements commenced at a period long prior to the 12th of March, 1866, Sureau Lamirande, in order to conceal them, has constantly since then, up to this last date of the 12th of March, inserted in the daily balance-sheets made up and handed by him to the director, the false declaration that there was in cash a superior amount to that which was really there, which multiplies the forgeries which he has perpetrated:

The Procureur-General requests that it please the Court to declare that there is reason to arraign said Sureau de Lamirande, *alias* Lamirande, Ernest Charles Constant, 42 years of age, former cashier of the Branch of the Bank of France in Poitiers:—

1. For having within ten years, at Poitiers, fraudulently abstracted sundry amounts of specie in gold or silver, in the vault or cellar of the Branch of the Bank of France, and at the prejudice of that establishment. For having perpetrated those fraudulent substractions with the circumstance that he was the hired

"salarié" cashier or hired employé ("homme de service à gages") of the said Bank of France.

2. For having at Poitiers, within ten years, and, namely, on the 12th of March, 1866, embezzled or made away with, to the prejudice of the Bank of France, who was the owner thereof, funds and bills placed in the safe for daily use of the Branch of Poitiers, which had only been handed over and entrusted to him in trust or by way of mandate, upon condition to return or account for them, or to use and employ them as he should be directed. For having perpetrated the embezzlements hereabove specified under the circumstance that he was the cashier or hired clerk of the said Bank of France.

3. With having at Poitiers, on the 12th of March, 1866, fraudulently inserted in the balance-sheet signed by him, which it was his duty to establish and to certify every day in his capacity of cashier of the Branch of the Bank of France, in order to state the cash account of said branch, the false declaration that the cash account, on said day, amounted to 11,443,556 francs 84 centimes, while it was, in reality, inferior to that amount by all the sums abstracted or embezzled by him, and having thus fraudulently altered the declarations and facts which this balance-sheet was to contain and establish.

4. For having on the same day and at the same place made use of that forged document, knowing it to be a forgery when handing it over to the Director of the branch of the Bank of France in Poitiers, to establish the situation of the cash account of that establishment on the 12th of March, 1866.

5. For having at Poitiers within ten years and previously to the 12th day of March, 1866, fraudulently inserted in several balance-sheets signed by him, which it was his duty to establish, and to certify every day in his capacity as cashier of the branch of the Bank of France, in order to state the cash account of said branch, the false declarations that the cash account amounted to a sum superior to that which really existed, which was inferior to the figure indicated by all the sums abstracted or embezzled by him, and having thus fraudulently falsified the declarations, and facts which these balance-sheets were to contain and to establish.

6. For having at the same period and at the same place made use of those forged documents, knowing that they were forged when handing them over to the Director of the branch of the Bank of France in Poitiers, in order to establish the balance-sheet of that establishment on the days indicated.

Said instruments and requisitoire having been read by the Court in the presence of the substitute of the Procureur-General and of the clerk, have been left on the desk.

The substitute of the Procureur-General and the clerk having withdrawn.

The Court after having deliberated thereon without leaving the Court-room, and without communicating with anyone.

Whereas the acts in question are provided for and qualified crimes by the Articles 379, 386, 408, 147, 148, 164 of the Code Penal, and that from the proceedings result charges and indications of culpability sufficient to cause the accused to be arraigned and sent before the assizes.

Adopting, moreover, the facts and motives enumerated in the requisitoire of the Procureur-General here-above transcribed.

Declares that there is cause to arraign Ernest Charles Constant Sureau de Lamirande, *alias* Lamirande—

1. For having within ten years at Poitiers fraudulently abstracted sundry amounts of specie in gold or silver, in the vault or cellar of the branch of the Bank of France, and at the prejudice of that establishment.

For having perpetrated these fraudulent substractions with the circumstance that he was the hired ("salarié") cashier, or hired employé ("homme de service à gages") of the said Bank of France.

2. For having at Poitiers within ten years, and namely, on the 12th of March, 1866, embezzled and made away with, to the prejudice of the Bank of France, who was the owner thereof, funds and bills placed in the safe for daily use of the branch of Poitiers, which had only been handed over and entrusted to him in trust, or by way of mandate, upon condition to return or account for them, or to use or employ them as he should be directed.

For having perpetrated the embezzlements here-above specified under the circumstance that he was the cashier or hired clerk of the said Bank of France.

3. With having at Poitiers, on the 12th of March, 1866, fraudulently inserted

on the balance-sheet signed by him, which it was his duty to establish and to certify every day in his capacity of cashier of the branch of the Bank of France, in order to state the cash account of said branch, the false declarations that the cash account, on said day amounted to 11,443,556 francs 84 centimes, while it was in reality inferior to that amount, by all the sums abstracted or embezzled by him, and having thus fraudulently altered the declarations and facts which this balance-sheet was to contain and establish.

4. For having on the same day and at the same place made use of that forged document, knowing it to be a forgery when handing it over to the Director of the branch of the Bank of France in Poitiers, to establish the situation of the cash account of that establishment on the 12th of March, 1866.

5. For having at Poitiers within ten years, and previously to the 12th of March, 1866, fraudulently inserted in several balance-sheets signed by him, which it was his duty to establish and certify every day in his capacity of cashier of the branch of the Bank of France, in order to state the cash account of said branch, the false declarations that the cash account amounted to a sum superior to that which really existed, which was inferior to the figure indicated, by all the sums abstracted or embezzled by him, and having thus fraudulently falsified the declarations and facts which those balance-sheets were to contain and to establish.

6. For having at the same period and at the same place made use of those forged documents, knowing that they were forged when handing them over to the Director of the branch of the Bank of France in Poitiers, in order to establish the balance-sheet of that establishment on the days indicated.

In consequence sends said Ernest Charles Constant Sureau de Lamirande, *alias* Lamirande, before the Court of Assizes of the Vienne, at Poitiers, in order to be tried according to the law.

With a view to which the Procureur-General will draw up the arraignment against him.

The Court orders moreover that all constables ("huissiers") or officers of the public force shall arrest Sureau de Lamirande, *alias* Lamirande, Ernest Charles Constant, formerly cashier of the branch of the Bank of France in Poitiers, forty-two years of age, born on the 29th of October, 1823, at Civray (Vienne), residing latterly at Poitiers (and who has since absconded), to be directly brought to the gaol established near the Court of Assizes of the Vienne, in Poitiers, and entered in the gaol-book of the said gaol, as accused of the acts enumerated in part of the present Decree, and constituting the crimes provided for and punished by the Articles 379, 386, 408, 147, 148, 164 of the Code Penal.

Thus adjudicated at the Imperial Court (Chambre des Mises en Accusation), at Poitiers, the 29th day of May, 1866, by Messrs. Bonnet, Knight of the Imperial Order of the Legion of Honour, President, Gaillard, Knight of the Imperial Order of the Legion of Honour, Aubin, Pareault, Barbier (this latter called in to complete the required number), Counsellors ("Conseillers"), who have all signed the present Decree, as well as Mr. E. Marrot, Chief Clerk.

We summon and order all constables, who will be so requested to execute the said Decree, to all our Procureurs-Généraux and to our Procureurs near the tribunals of first instance to stand by it, to all the commanders and officers of the public force to give their help when they will be legally required to do so.

A correct and authentic copy delivered to the Procureur-General, who has demanded it.

The Chief Clerk,

(Seal of Imperial Court of Poitiers) (Signed) E. MARROT.

Examined by us Jean Baptiste Fortuné Fortoul, Knight of the Imperial Order of the Legion of Honour, First President of the Imperial Court of Poitiers, for legalization of the signature of Mr. E. Marrot, Chief Clerk of the said Court.

Poitiers, May 31, 1866.

(Seal of Imperial Court of Poitiers) (Signed) FORTOUL.

(Seal of Imperial Court of Poitiers, First Presidence)

Examined by us President of the Chambre des Mises en Accusation of the Imperial Court of Poitiers.

Poitiers, May 31, 1866.

(Signed) ARMAND BONNET.

(Seal of Imperial Court of Poitiers)

Examined by us Jean Baptiste Fortuné Fortoul, Knight of the Imperial Order of the Legion of Honour, First President of the Imperial Court of Poitiers, for legalisation of the signature of Mr. Bonnet, President de Chambre, in said Court.

Poitiers, May 31, 1866.

(Seal of Imperial Court, First Presidence, Poitiers)

Transmitted the present arraignment to his Excellency, the Keeper of the Seals, Minister of Justice and of Worship, by us Procureur-General near the Imperial Court of Poitiers.

Poitiers, May 31, 1866.

The Procureur-General,

(Seal of Imperial Court of Poitiers, Procureur-General) (Signed) DAMAY.

Seen for authentication of the above signature of Messrs. Bonnet, Fortoul, and Damay.

Paris, June 2, 1866.

By delegation of the Keeper of the Seals,
Minister of Justice and Worship,
The Chief Clerk,
(Signed) CH. MAURAT LAROCHE.

(Seal of Keeper of the Seals, Minister of Justice and Worship)

The Minister of Foreign Affairs certifies as genuine the signature of Mr. Maurat Laroche.

Paris, June 2, 1866.

By authorization of the Minister,
For the Sub-Director, Chief of the Chancellor's Office,

(Seal of Foreign Office) (Signed) DUBOIS.

Examined at the Legation of the United States of America at Paris, June 4, 1866.

The signature of M. Dubois duly legalised.

(Signed) JOHN HAY,

(Seal of Legation of the United States of America in France) Secretary of Legation.

A true copy. (Signed) W. H. BREHAUT, P.M.

Tribunal de Poitiers, Cabinet du Juge d'Instruction.

L'an 1866, et le 2 Avril :

DEVANT nous, Alexandre Henri Jolly, Juge d'Instruction de l'arrondissement de Poitiers, Département de la Vienne, en notre cabinet, au Palais de Justice de Poitiers, assisté de Gustave Poncin, Commis Greffier assermenté :

A comparu sur notre invitation le témoin ci-après, auquel nous avons donné connaissance des faits sur lesquels il est appelé à déposer.

Lequel témoin, introduit hors la présence de l'inculpé, après avoir prêté serment de dire toute la vérité, rien que la vérité, et enquis par nous de ses noms, prénoms, âge, profession et demeure, s'il est domestique, parent ou allié de l'inculpé et à quel degré, nous a répondu et fait sa déposition ainsi qu'il suit :—

Du Bois de Jancigny, Henri Marie, âgé de 31 ans, Inspecteur de la Banque de France, demeurant à Paris :—

J'ai été envoyé par M. le Gouverneur de la Banque de France pour faire une enquête sur les faits signalés par M. le Directeur de la Succursale de Poitiers, dans ses dépêches du 13 Mars au soir ; ces dépêches avertissaient le Gouvernement de la Banque de la fuite de Lamirande, caissier de la dite succursale, et d'un déficit en espèces évalué dans le premier moment à 190,000 francs. Je suis arrivé à Poitiers, e Mercredi 14 Mars, à 5 heures du soir, et me suis immédiatement rendu dans les bureaux de la succursale de la Banque, où M. Bailly, Directeur, M. de Gretry, l'un des censeurs, et plusieurs administrateurs, achevaient la vérification de la serre aux espèces et de la caisse auxiliaire commencée la veille. Toute l'attention était à ce moment concentrée sur la caisse courante, celle dans laquelle le caissier puise à son gré pour les besoins du service, et la seule dont il ait l'entière disposition, puisque le Directeur n'en possède aucune clé.

Outre les vantaux extérieurs qui la protègent, cette caisse en fer se divise en trois compartiments superposés, et fermés chacun par un petit volet, également en fer, et muni d'une serrure particulière. Il y a donc les clés principales, c'est-à-dire celles des vantaux extérieurs et trois clés différentes pour chacun des compartiments intérieurs.

Or, Lamirande en partant avait eu soin de laisser à M. Queyriaux, teneur de livres de la succursale, les clés nécessaires pour ouvrir deux de ces trois compartiments ; celui du milieu dans lequel se trouvait un approvisionnement en billets de toute coupure et en espèces suffisant pour faire face aux besoins du service, et celui du bas qui servait de dépôt aux titres engagés pour avances, et aux effets de commerce constituant le portefeuille de la succursale. Mais la clé la plus essentielle, celle du compartiment supérieur dans lequel était enfermée la masse des billets et dix-sept sacs d'or de 20,000 francs chaque, n'avait pas été retrouvée. Cette particularité était assurément très-grave dans les circonstances où l'on se trouvait, et elle avait fait naître dans l'esprit de tous des appréhensions pénibles. La crainte avait augmenté à mesure qu'on avait pu reconnaître l'étendue du déficit en espèces.

Pour moi, et dès mon arrivée, Lamirande étant en fuite depuis quarante-huit heures, et ayant pris la précaution de laisser toutes ses clés, moins celle du compartiment qui contenait précisement la réserve des billets qui devait être à peu de chose près de 500,000 francs, il ne pouvait être douteux que cette réserve avait disparu, et dans mon esprit Lamirande avait emporté tout ce qu'il avait pu.

Je fis forcer le volet de ce compartiment en présence du Directeur et de la plupart des administrateurs, et nous reconnûmes qu'en effet tout avait disparu, moins 40,000 francs en billets de cent francs, et les dix-sept sacs d'or de 20,000 francs qui étaient en apparence intacts.

A partir de ce moment, reprenant à nouveau le travail commencé par le Directeur, assisté des membres de son conseil, je m'occupai de la vérification de la serre aux espèces, de la caisse auxiliaire, et de la caisse courante. Cette vérification a été minutieusement faite par moi, en présence du Directeur, et à l'aide des garçons qui ont pesé sous mes yeux toutes les espèces d'or et d'argent, contenues soit dans la serre soit dans la caisse auxiliaire, soit dans la caisse courante. J'ai compté personnellement tous les billets.

La situation du 12 Mars au soir, la dernière que fit Lamirande et qui est signée par lui, ne pouvant plus concorder avec ce qui existait en caisse au moment de mon arrivée le 14 au soir, puisqu'il y avait eu pendant les journées du 13 et du 14 des entrées et des sorties de billets et d'espèces, je fus obligé pour établir rationnellement et avec certitude le chiffre du déficit, de constater le mouvement de ces deux journées ; et je reconnus que le 14 au soir, les caisses devaient contenir ensemble, d'après les écritures du Journal et du Grand-Livre de la Succursale, 11,261,533 francs 9 centimes, tandis qu'en réalité les sommes que j'y avais trouvées en billets, or, argent et billon, le tout appartenant à la Banque de France, ne s'élevaient qu'à 10,557,257 francs 15 centimes, ce qui constituait un déficit total de 704,275 francs 94 centimes, dont 219,004 francs 30 centimes manquaient en espèces dans la serre, et 485,271 francs 64 centimes manquaient dans la caisse courante, cette dernière somme presque toute en billets.

Demande. Les questions que nous allons vous adresser n'ont certainement pas pour cause un soupçon qui atteindrait M. le Directeur. M. Queyriaux, chef de comptabilité, jouit lui aussi d'une réputation intacte ; mais vous venez de dire, et cela ce comprend, que vous n'avez pu faire la situation de la caisse qu'au moment de votre arrivée. Or, pendant les journées du 13 et du 14 M. Queyriaux a confondu les fonds qu'il recevait et ceux qu'il touchait dans la caisse altérée du caissier Lamirande ; d'un autre côté les deux clés de la serre auraient été depuis le 13 au soir jusqu'au 14, à 4 heures, dans les mêmes mains, contrairement aux règlements ; si l'inculpé était présent ne pourrait-il pas rejeter sur d'autres une partie de la responsabilité qu'on fait peser sur lui, et pourriez-vous nous fournir le moyen de combattre ce système de défense ?—*Réponse.* Ce système n'aurait à mes yeux aucune valeur. Je reconnais que rigoureusement il est possible de dire que le 13 au matin, M. Queyriaux, abusant des fonds qu'il avait à sa disposition par la délégation du Caissier, a pu soustraire de ces fonds quelques billets de cent et de cinquante francs, puisque c'est lui seul qui a reconnu la partie de la caisse courante que lui abandonnait Lamirande, mais j'oppose à ce soupçon d'abord la parfaite honorabilité de M. Queyriaux qui est notoirement établie, ensuite le danger auquel il se serait exposé en opérant un détournement quelconque. En effet, le Caissier

avait annoncé son retour pour faire sa caisse, tout le monde croyait à ce retour, et ce n'est qu'après quatre heures, c'est-à-dire, quand les opérations étaient déjà closes qu'on a commencé à avoir la certitude de la fuite de Lamirande.

D'ailleurs, l'essentiel en pareille circonstance est d'avoir un point de départ exact qui puisse servir de base à toutes les opérations, quelles qu'en soient l'importance et la durée. Je ne puis vous assurer que M. Queyriaux a compté tous ses billets et toutes ses espèces le 13 au matin, puisque je n'y étais pas; mais ce que je puis vous dire, c'est que cet employé m'a remis une situation datée du 13 au matin, détaillée par nature de billets et constatant aussi le nombre de sacs d'or et d'argent, ainsi que la monnaie d'or et d'argent en rouleaux et à découvert. Donc, pour moi, la reconnaissance des valeurs laissées à la disposition de M. Queyriaux a été faite par lui, si non rigoureusement au moins très-approximativement, et s'il est vrai de dire que les fonds qui ont servi aux opérations de la succursale pendant les journées du 13 et du 14 ont été pris ou versés dans une caisse altérée, il est inexact de supposer qu'il ait pu y avoir un trouble ou une confusion quelconque dans le maniement de ces fonds, dont les entrées et les sorties sont établies de la manière la plus nette et la plus claire par des écritures authentiques.

Quant aux clés, l'objection ne me parait pas plus fondée. Je me suis informé de ce qui s'est passé relativement à la double clé qui ouvre la caisse auxiliaire et la serre, et j'ai su par le témoignage de M. Bailly, de M. Queyriaux, et des garçons de recette de la succursale, que le Mardi soir, la clé de la porte qui conduit à la caisse auxiliaire et à la serre avait été enfermée par M. Bailly dans les compartiments inférieurs de la caisse courante dont M. Queyriaux, caissier par intérim, avait emporté la clé, et que M. Bailly, détenteur de l'autre clé qui ouvre la caisse auxiliaire et la serre, avait en outre fermé les volets extérieurs qui couvrent tous les compartiments de la caisse courante et en avait gardé la seconde clé.

De cette façon M. Queyriaux avait une des clés des trois caisses et M. Bailly les autres. Le règlement a donc été parfaitement observé.

D. Vous savez que plus de 400 sacs de 1,000 francs en écus ont été trouvés altérés dans la serre; on avait aussi substitué dans des sacs d'or des pièces d'argent: pouvez-vous faire connaître votre appréciation sur la manière dont les altérations ont eu lieu?—*R.* Il m'est impossible d'admettre que les altérations des sacs d'argent ont été commises dans la serre. Il fallait avoir pendant longtemps à sa disposition ces sacs pour les vider en partie et les rogner, et on ne laissait jamais Lamirande assez longtemps seul dans la serre pour qu'il y puisse consommer cette opération. Toutes les fraudes ont dû se commettre dans la caisse même où Lamirande déjeunait tous les jours. Il avait à ce moment tout le temps de préparer ses sacs, puisque le teneur de livres sortait pour déjeuner à la même heure, et que les garçons ne rentrent jamais avant une heure de l'après-midi. Le bureau du Directeur est séparé de la caisse par deux vastes pièces; il pouvait donc entendre venir son Directeur et se cacher. Il était également averti par le bruit des pas et de la porte d'entrée qu'il fallait ouvrir, si quelqu'un venait à sa caisse pour payer ou recevoir. Il pouvait donc parfaitement commettre ces altérations dans sa caisse.

Je crois aussi qu'il lui était facile de faire transporter les sacs ainsi altérés dans la serre ou dans la caisse auxiliaire. Il co-opérait souvent à ce transport, qui devrait n'être fait que par les garçons.

Il a pu aussi, pendant une opération effectuée dans la serre, mettre dans sa poche un sac préparé à l'avance et contenant des pièces d'argent, pour le substituer dans la serre à un sac intact contenant 10,000 francs en or. Je me suis assuré de cette possibilité en descendant dans la serre avec un sac dans mes poches pour en remonter un autre contenant 10,000 francs en or.

Quant à la date des détournements sur lesquels vous appelez aussi mon attention, je crois que les détournements en argent sont bien antérieurs aux détournements d'or. Ainsi les sacs altérés se trouvaient dans des cases qui ne servaient plus depuis plusieurs années aux expéditions de fonds. La toile était pourrie et il était impossible de les ouvrir et de les refermer. Probablement que les sacs d'or n'ont été altérés que quand il ne lui a plus paru possible d'altérer les sacs d'argent. Les sacs d'argent altérés les premiers l'ont été il y a peut-être quatre ans. Il y a beaucoup moins de temps qu'on a commencé à altérer les sacs d'or.

D. Les livres tenus par Lamirande étaient-ils réguliers et au courant?—*R.* Il y avait un grand désordre dans toute sa comptabilité. Je m'exprime administrativement, car il ne s'agit que d'irrégularités de forme. Lamirande devait tenir un livre intitulé "Journal de Caisse," dont les feuilles sont cotées et paraphées, et qui doit être arrêté chaque soir ou au plus tard le lendemain matin. Les Caissiers

tiennent ordinairement une main courante, qui n'est autre qu'un livre de caisse provisoire et qu'ils copient ensuite sur le livre journal pour tenir ce dernier plus proprement. Or Lamirande, qui devait faire chaque soir cette copie, ne l'avait pas faite depuis le mois d'Octobre dernier, époque du passage de l'inspecteur.

Il résulte de tout ce que je viens de dire que les soustractions reprochées à Lamirande remontant à trois ou quatre ans; il a dû fournir chaque jour pendant ces trois ou quatre années une situation mensongère; et il a attesté cette situation par sa signature, ce qui parait constituer autant de faux en écriture de banque.

Lecture faite, le témoin a persisté et a signé avec nous et le greffier.

La présente copie transcrite sur huit rôles et certifiée exacte par nous soussigné, Juge d'Instruction de l'arrondissement de Poitiers.

Poitiers, le 27 Avril, 1866.

(Sceau) (Signé) JOLLY.

Vu pour légalisation de la signature de M. Jolly apposée ci-contre.

Paris, le 30 Avril, 1866.

Par délégation du Garde des Sceaux,
Ministre de la Justice et des Cultes,
(Sceau) Le Chef de Bureau,
(Signé) CH. MAURAT LAROCHE.

Le Ministre des Affaires Etrangères certifie véritable la signature de Ch. Maurat Laroche.

Paris, le 30 Avril, 1866.

Par autorisation du Ministre,
Pour le Sous-Directeur, Chef de la Chancellerie,
(Sceau) (Signé) DUBOIS.

Vu à la Légation des Etats-Unis d'Amérique à Paris, le 1 Mai, 1866. Bon pour la légalisation de la signature de M. Dubois apposée ci-contre.

(Signé) JOHN HAY,
(Sceau) Secrétaire de Légation.

Nous, Garde des Sceaux Ministre Secrétaire d'Etat de la Justice et des Cultes, certifions véritable la signature de M. Jolly, Juge d'Instruction près le Tribunal de Poitiers, lequel Juge est autorisé, d'après les lois de l'Empire, à recevoir les dépositions, et à faire prêter serment aux déposants.

Paris, le 2 Juin, 1866.

(Sceau) (Signé) J. BAROCHE.

Nous, Ministre Secrétaire d'Etat au Département des Affaires Etrangères de France, certifions véritable la signature de M. Baroche, Ministre Secrétaire d'Etat du Département de la Justice et des Cultes de France.

Paris, le 28 Juin, 1866.

Le Ministre Secrétaire d'Etat au Département des Affaires Etrangères de France,
(Sceau) (Signé) DROUYN DE LHUYS.

Legation of the United States, Paris, Empire of France, June 29, 1866.

I, John Bigelow, Envoy Extraordinary and Minister Plenipotentiary of the United States to the Empire of France. do hereby certify that the foregoing deposition is legally and properly authenticated, so as to entitle it to be received in evidence by the tribunals of this country as prescribed by the Act of Congress, approved June 22, 1860.

(Seal) (Signed) JOHN BIGELOW.

(D.)

Procès-Verbal de Saisie de Pièce à Conviction.

L'an 1866, et le 29 de Mars:

Nous, Alexandre Henri Jolly, Juge d'Instruction de l'arrondissement de Poitiers, assisté de M. Gustave Poncin, notre Greffier:

Vu la procédure suivie contre Lamirande, inculpé de détournement au préjudice de la succursale de la Banque de France à Poitiers:

Attendu qu'il résulte de l'instruction que l'inculpé, en sa qualité de caissier, signait chaque jour à quatre heures, quelquefois cinq heures, après la clôture des opérations de la succursale un état de situation de la caisse :

Que le 12 Mars, 1866, il a signé un état de situation duquel il résultait que la serre contenait 850 sacs d'argent de 1,000 francs chacun, et 36 sacs d'or de 10,000 francs chacun. Que la caisse auxiliaire contenait en billets et espèces 8,810,011 francs, et que la caisse courante contenait, en billets 892,300 francs, et en espèces, 503,700 francs 54 centimes :

Attendu que des soustractions ont été commises depuis longtemps dans la serre, et avant la rédaction du bordereau dont nous venons de donner l'analyse, dans la caisse courante ; que par conséquent l'inculpé a, en sa qualité de caissier, altéré les écritures de banque, ou affirmé par sa signature une situation mensongère :

Qu'il importe par conséquent de saisir le bordereau dont il s'agit, comme pièce à conviction :

Nous nous sommes transporté, comme dit est, à la succursale de la Banque de France, et avons reçu des mains de M. Bailly, Directeur, le bordereau dont il vient d'être parlé, qui a été signé ne varietur par lui, nous et notre Greffier.

Nous avons déclaré cette pièce saisie pour être déposée au greffe du tribunal et servir ce que de droit.

Et après lecture nous avons signé avec M. le Directeur et notre Greffier. Ainsi signé—BAILLY : JOLLY, Juge d'Inst. : PONCIN, Greffier.

La présente copie certifiée conforme à l'original par nous, Juge d'Instruction soussigné.

La présente copie, transcrite sur un rôle et demi, est certifiée exacte par nous soussigné, Juge d'Instruction de l'arrondissement de Poitiers.

Poitiers, le 26 Avril, 1866.

(Sceau) (Signé) JOLLY.

Vu pour légalisation de la signature de M. Jolly, apposée ci-dessus.

Paris, le 30 Avril, 1866.

Par délégation du Garde des Sceaux,
Ministre de la Justice et des Cultes,
(Sceau) Le Chef de Bureau,
(Signé) CH. MAURAT LAROCHE.

Le Ministre des Affaires Etrangères certifie véritable la signature de Ch. Maurat Laroche.

Paris, le 30 Avril, 1866.

Par autorisation du Ministre,
Pour le Sous-Directeur Chef de la Chancellerie,
(Sceau) (Signé) DUBOIS.

Vu à la Légation des Etats-Unis d'Amérique à Paris, le 1 Mai, 1866. Bon pour la légalisation de la signature de M. Dubois apposée ci-contre.

(Signé) JOHN HAY,
(Sceau) Secrétaire de Légation.

Bureau de Police.

Province du Canada, District de Montreal,
Cité de Montreal.

La dénonciation et plainte d'Edme Justin Melin, Inspecteur Principal de Police de la ville de Paris, dans l'Empire Français, actuellement dans la cité de Montreal, dans le district de Montreal, prise sous serment ce 16me jour d'Août, dans l'année de notre Seigneur 1866, par le Soussigné, William H. Brehaut, Ecuyer, Magistrat de Police dans et pour le district de Montreal, lequel déclare :—

Le 17me jour de Mars dernier j'ai été chargé par le Préfet de Police de la ville de Paris susdite de rechercher et arrêter un nommé Ernest Sureau Lamirande, caissier de la succursale de la Banque de France à Poitiers, dans l'Empire Français, lequel était placé sous le coup d'un mandat d'arrêt, lancé par le Juge d'Instruction à Poitiers susdit, sous l'inculpation de détournement de fonds, au préjudice de la Banque de France, au montant de 700,000 francs. Mes renseignements me démontrèrent que le dit Ernest Sureau Lamirande avait quitté la France pour se rendre

en Angleterre. Je le suivis là, et trouvai son passage à Londres et à Liverpool, où il s'était embarqué sous le nom de "Thibault," à bord du vapeur "Moravian," en destination pour Portland, dans l'Etat du Maine, un des Etats-Unis d'Amérique. Je m'embarquai de suite pour les Etats-Unis, et j'arrivai à New York le 2 Avril dernier.

Après l'avoir cherché à New York, il fut découvert au Metropolitan Hotel, et appréhendé le 9 du dit mois d'Avril. Après son arrestation à New York, comme susdit, un arrêt de renvoi fut expédié par le Procureur Impérial à Poitiers au Consul-Général de France à New York, l'accusant, en outre, du détournement de fonds, de falsification d'écritures, et de faux en écritures de commerce, par son bordereau de situation mensonger, et de fausses entrées dans les livres de la dite succursale, fraudant par là la dite Banque de France au montant de 700,000 francs. Le dit arrêt de renvoi a été émané après une instruction complète faite par le Juge d'Instruction à Poitiers.

Pendant sa détention à New York je lui fis de nombreuses visites, et il devint très-expansif vis-à-vis de moi. Il a plusieurs fois avoué et confessé volontairement, et sans promesses ni menaces, en ma présence, avoir détourné des fonds au montant sus-mentionné; et il m'a même souvent dit comment il s'y prenait pour sortir les fonds de la banque. Après l'arrivée de l'arrêt de renvoi à New York, je lui en donnai avis, lui disant qu'il était accusé de plus de faux en écritures de commerce par son bordereau de situation, et il me répondit, "C'est vrai; je le sais bien." Plusieurs fois depuis il me fit la même admission, et toutes les admissions qu'il m'a faites relativement aux offenses desquelles il était accusé, l'ont été spontanément et volontairement de sa part, et sans aucune promesse ni aucune menace de ma part pour les obtenir.

Pendant l'instruction de son procès pour extradition à New York, le dit Ernest Sureau Lamirande s'est évadé. Il a depuis été arrêté dans la Province du Canada. Je l'ai vu dans la prison commune du district de Montreal. Je l'ai parfaitement reconnu pour être le dit Lamirande, et je n'ai aucun doute sur son identité; il avait même sur lui les mêmes habits qu'il portait le jour qu'il s'est évadé. Le dit Ernest Sureau Lamirande est maintenant prisonnier dans le Bureau de Police de la dite cité de Montreal, où je fais la présente déposition. A New York le dit Lamirande a pris le nom de "Dyhers," venant de Belgique; mais après son arrestation, et lors de ma seconde visite, il a reconnu qu'il était bien Lamirande. J'accompagnais alors M. le Consul-Général Gautier Boileau.

Pourquoi je demande justice, et j'ai signé, lecture faite.

(Signé) MELIN.

Assermenté par devant moi à Montréal, le 6 Août, 1866.

(Signé) W. H. Brehaut, P.M.

La précédente déposition ayant été lue en présence du prisonnier, Ernest Sureau Lamirande, demande lui est faite s'il désire poser des questions au déposant, et il répond qu'il désire poser au témoin les questions suivantes par son Conseil, Mr. Doutre:—

Question. Avec la qualité que vous vous êtes donnée, n'avez-vous pas celle aussi d'espion de la police secrète; c'est-à-dire d'espion payé?

[Mr. Ramsay, de la part de la Couronne, s'objecte à la question. Objection maintenue.]

Q. D'après les lois Françaises n'est-il pas vrai que l'espion payé pour le service de la police secrète, ou en d'autres termes le dénonciateur pécuniairement récompensé par la loi, ne peut pas être témoin dans les cas où il agit dans cette qualité?

[Même objection. Objection maintenue.]

Q. N'est-il pas vrai que par l'Article 322 du Code d'Instruction Criminelle de France, paragraphe 6, les dépositions des dénonciateurs dont la dénonciation est récompensée pécuniairement par la loi, ne peuvent être reçues?

[Même objection. Objection maintenue.]

Q. Par qui avez-vous été employé pour suivre les traces du prisonnier?—*R.* Par le Préfet de Police.

Q. Quel est votre traitement pour les fonctions que vous remplissez actuellement en Amérique, et spécialement en Canada?—*R.* Mon traitement fixe est le même que si j'étais à Paris. J'ai aux Etats-Unis un crédit ouvert chez un banquier. Je dépense ce dont j'ai besoin, et à ma rentrée en France je ferai le compte de mes dépenses à la Préfecture, comme cela se fait toujours.

Q. Quelle différence y aura-t-il dans vos émoluments si vous réussissez ou ne réussissez pas à amener le prisonnier en France?—*R.* Aucune.

Q. Où le prisonnier se trouvait-il à New York, lorsque vous dites lui avoir fait les visites mentionnées dans votre examen en chef?—*R.* A la prison de Ludlow.

Q. Le prisonnier connaissait-il alors en quelle qualité vous vous trouviez à New York?—*R.* Oui.

Q. Aviez-vous jamais connu le prisonnier avant d'aller à New York à sa recherche?—*R.* Non.

Q. N'est-il pas vrai que le prisonnier a recusé et recuse actuellement votre témoignage?

[Objecté de la part de la Couronne. Objection maintenue.]

Q. Y a-t-il actuellement ici quelqu'un muni d'un mandat d'arrêt émanant de quelque Cour ou Tribunal de France?

[Même objection. Objection maintenue.]

Q. Aviez-vous à New York entre les mains, ou quelqu'autre dans l'intérêt du Gouvernement Français avait-il entre les mains, un mandat d'arrêt ou autre acte judiciaire équivalent émané d'un Juge ou d'une autorité compétente en France; et si tel est le cas, dites de quelle offense le prisonnier était accusé?—*R.* J'étais porteur d'une dépêche télégraphique de M. le Procureur Impérial à Poitiers au Préfet de Police à Paris, ce qui équivaut à un mandat d'arrêt. Mais en outre j'étais porteur d'un mandat d'arrêt décerné par M. Jolly, Juge d'Instruction à Poitiers, où Lamirande était inculpé de détournement de fonds au préjudice de la Banque de France. Il n'y avait que cette accusation-là sur le mandat dont j'étais muni. Plus tard il est arrivé un arrêt de renvoi qui inculpait Lamirande de faux.

Q. Que sont devenus ces documents?—*R.* Ces documents sont restés aux Etats-Unis.

Q. Dans les visites que vous avez faites à Lamirande à New York, lui avez-vous dit que son père et son frère avaient été arrêtés en conséquence des faits qui étaient reprochés à Lamirande et pour lesquelles il était arrêté à New York?—*R.* Je lui ai dit en effet que j'avais appris que son père et son frère étaient arrêtés.

Q. Qu'y avait-il de vrai dans ce que vous lui disiez relativement à son père et à son frère?—*R.* On me l'avait dit en quittant la France, mais je ne l'affirmais pas en parlant à Lamirande. J'ai su depuis que le frère seul aurait été arrêté.

Q. Quand avez-vous appris que le père n'avait pas été arrêté?—*R.* Je n'ai jamais appris que le père ne l'avait pas été.

Q. Dites-vous que rien n'a détruit chez vous la croyance que le père avait été arrêté?—*R.* Rien n'a détruit ma croyance.

Q. D'après ce que vous savez par vos correspondances, avec Poitiers ou aucune autre partie de la France, prétendez-vous dire que rien n'a affecté chez vous l'information dont vous parlez plus haut comme vous ayant été communiquée avant votre départ de France relativement à l'arrestation du père et du frère de Lamirande?—*R.* Je n'ai jamais appris officiellement l'arrestation non plus que la mise en liberté.

Q. N'avez-vous pas dit plus tard à Lamirande que ni son père ni son frère n'avaient pas été arrêtés?—*R.* Non.

Q. Avez-vous jamais été muni d'un mandat d'arrêt émané sous l'autorité du Procureur Impérial de Poitiers, ou avez-vous vu tel mandat?—*R.* Je n'ai pas eu d'autres documents que ceux que j'ai mentionnés plus haut.

Q. Combien de temps avant l'époque que vous dites que Lamirande s'est évadé avez-vous reçu l'arrêt de renvoi?—*R.* Je ne sais pas.

Q. Quand prétendez-vous que le prisonnier s'est évadé de New York?—*R.* Je crois que c'est le 3 Juillet.

Q. Quelle connaissance avez-vous de l'instruction qui a précédé l'émanation de de l'arrêt de renvoi?—*R.* Aucune.

Q. Dans les visites que vous avez faites à Lamirande à New York, lui avez-vous parlé de ce que le Consul ferait pour lui s'il retournait en France?—*R.* Le Consul-Général, la première fois que nous sommes allés ensemble voir Lamirande, et où il a reconnu être bien Lamirande, lui a dit que s'il retournait volontairement en France il écrirait à ses Juges pour les intéresser à sa position, et il a donné sa parole d'honneur qu'il partirait. Je lui ai moi-même souvent parlé dans le même sens et lui ai donné le conseil de rentrer en France. Je lui disais que s'il rentrait volontairement comme il le promettait, M. le Consul-Général écrirait ce qu'il avait dit, et que moi, dans ma déposition orale à Poitiers, devant la Cour d'Assises, je lui serais agréable. Ces conversations ont eu lieu dix, douze, quinze, ou vingt fois.

Le lendemain ou peut-être le jour même de son arrestation, les conversations du genre que je viens de rapporter ont eu lieu entre Lamirande et moi. A une certaine époque après que la procédure en extradition eut été commencée, j'ai continué de voir Lamirande, et un jour il me dit: Je ne puis plus parler avec vous de mon affaire, parlons d'autres choses; et en effet nous avons parlé d'autres choses. Durant cette procédure, j'ai un jour cessé complétement de le visiter. Je ne le voyais plus qu'à l'audience, où je n'avais aucune conversation avec lui.

Q. Combien de temps avant son évasion avez-vous cessé de le visiter?—*R.* Je ne puis pas dire.

Q. Peut-il s'être écoulé un mois aussi bien que huit jours entre le moment où vous avez cessé de le visiter et celui de son évasion?—*R.* Je ne puis pas dire; il peut y avoir quinze jours, il peut y avoir huit jours. Je ne puis pas préciser.

Q. Quand vous avez cessé de le visiter avait-il jamais été question de l'accuser de faux, et comment?—*R.* Oui; je lui avais dit en prison qu'il était accusé de faux par son bordereau de situation ainsi que l'arrêt de renvoi le disait, et il en est convenu, et il a même cherché à donner une explication à l'interprétation du mot "faux."

Q. Veuillez rapporter aussi exactement que possible ce que Lamirande vous a dit relativement à son bordereau de situation?—*R.* Il n'a pas été question entre nous de son bordereau de situation, je lui ai dit: Vous êtes inculpé de faux en écritures de commerce. Comment comprend-t-on le faux? me dit-il. Je lui dis alors: Par votre bordereau de situation mensonger que vous avez signé le jour de votre départ. Alors il me dit: Ce n'est pas un faux comme la loi le veut. C'est là ce qu'il y a de plus saillant dans la conversation que j'ai eue avec Lamirande.

Q. Lui avez-vous dit en quoi l'on prétendait que son bordereau de situation était mensonger et faux?—*R.* En énonçant dessus qu'il existait dans les caisses de la banque une somme de 700,000 francs qu'il emportait. C'est ainsi que cela m'avait été dit et que je l'ai répété à Lamirande. Je n'ai pas vu son bordereau de situation.

Q. Cette conversation a-t-elle eu lieu avant ou après l'arrivée de l'arrêt de renvoi?—Il en a probablement été question avant, mais il en a certainement été question après. J'avais reçu des lettres qui me l'annonçaient, c'est-à-dire, qu'il était inculpé de faux.

Q. Le Consul-Général de France à New York n'a-t-il pas dit à Lamirande devant vous, qu'il ne pesait contre lui aucune accusation de faux et qu'il ne pouvait être puni que d'emprisonnement?—*R.* Quand j'ai vu Lamirande avec M. le Consul-Général, c'était le lendemain de son arrestation, et il était évident que nous ne connaissions pas qu'il existait une accusation de faux; donc on ne pouvait pas en parler, et je ne me rappelle pas que M. le Consul-Général ait parlé d'emprisonnement.

Q. Savez-vous si dans la manière dont le directeur de Lamirande rend compte des faits reprochés à Lamirande il est question d'accuser ce dernier de faux?—*R.* Je n'ai jamais lu ni entendu lire cette pièce.

Q. D'après ce que vous a dit Lamirande, son bordereau de situation aurait-il été vrai et exact si Lamirande n'avait pas emporté 700,000 francs?—*R.* Je ne puis pas répondre à cela, mais si les 700,000 francs fussent restés là, il ne se serait pas sauvé et nous ne courrions pas après lui.

Q. D'après ce que Lamirande vous a dit, qu'est-ce que le bordereau de situation aurait dû contenir pour n'être pas mensonger et faux?—*R.* Il n'a pas été question de cela entre nous.

Q. De quelles écritures de commerce parliez-vous à Lamirande quand vous lui disiez qu'il était inculpé de faux?—*R.* Je lui disais qu'on l'inculpait de faux en ce qu'il avait falsifié ses écritures et fait un faux bordereau de situation.

Q. En quoi lui disiez-vous qu'il avait falsifié ses écritures?—*R.* Je lui disais simplement qu'il avait falsifié ses écritures, sans lui dire en quoi il les avait falsifiées, parce que je n'avais pas reçu d'autres informations.

Q. Qu'est-ce que Lamirande disait à cela?—*R.* J'aurais bien de la peine à le dire, je ne me le rappelle pas.

Q. Lamirande a-t-il jamais reconnu devant vous autre chose que ce qui suit: Que la somme de 700,000 francs qu'il avait enlevée était portée dans son bordereau comme étant dans la caisse de la banque, et qu'elle ne se trouvait pas là vu qu'il l'avait enlevée?—*R.* Quand je lui ai dit qu'il était inculpé de faux, il en est convenu.

Q. Qu'est-ce qu'il a reconnu ?—*R.* Quand je lui ai dit qu'il était inculpé de faux par son bordereau de situation il a répondu : Je le sais bien.

Q. En quoi son bordereau de situation l'inculpait-il de faux, d'après ce que vous lui disiez ?—*R.* Je l'ignore ; je ne connaissais qu'une chose, son inculpation, et je lui en ai donné connaissance.

Q. D'après les informations que vous aviez reçues et que vous communiquiez à Lamirande, était-il question d'autres choses que de soustraction de la somme de 700,000 francs dont vous avez parlé ?—*R.* Oui, il était question de l'accusation de faux.

Q. Cette accusation de faux avait-elle rapport à cette somme d'argent ?—*R.* C'est un crime à part.

Q. La somme d'argent en question a-t-elle quelque rapport plus ou moins direct avec cette somme d'argent ?—*R.* Pour moi l'une découle de l'autre.

Q. D'après les informations qui vous ont guidé dans toute cette affaire, le bordereau de situation fourni par Lamirande lors de son départ serait-il faux si la somme de 700,000 francs était réintégrée dans les caisses de la Banque de Poitiers ?

[Objecté à cette question de la part de la Couronne. Objection renvoyée.]

R. Quand l'argent serait réintégré dans la caisse le faux existerait la même chose.

Q. Alors en quoi consistait le faux ?—*R.* Pour moi, et d'après les renseignements que j'avais reçus, c'est de faire figurer sur son bordereau de situation qu'il a signé et qui est une pièce officielle, une somme comme existant dans la caisse et dans les serres et n'y existant pas.

Q. Est-ce là ce que Lamirande a reconnu devant vous, ou est-ce autre chose ?—*R.* Pour moi, Lamirande a reconnu avoir fait un faux.

Q. S'est-il agi, entre Lamirande et vous, lorsque vous parliez de faux, d'autre chose que de faire figurer sur son bordereau de situation une somme comme existant dans la caisse et dans les serres, et qui n'y existait pas ?—*R.* Oui, nous avons causé des registres aussi.

Q. Que s'est-il dit à propos des registres ?—*R.* Je lui ai dit qu'on l'inculpait de falsification d'écritures en outre du bordereau de situation.

Q. De quelles écritures s'agissait-il ?—*R.* On ne m'a jamais donné de détails. Je ne connaissais que l'inculpation.

Q. Que s'est-il dit entre Lamirande et vous relativement à ces écritures ?—*R.* Je dirai toujours la même chose. Nous ne parlions que de l'inculpation. Je ne pouvais pas lui donner de détails. Je n'en connaissais pas. Il le reconnaissait.

De consentement cette cause est continuée à demain à onze heures du matin pour plus ample transquestion du témoin par le prisonnier.

Montreal, le 6 Août, 1866.

(Signé) W. H. BREHAUT, P. M.

Avenant ce jourd'hui le 7me jour d'Août dans l'année de Notre Seigneur 1866, le déposant susnommé et désigné comparait de nouveau devant le Soussigné, William H. Brehaut, Ecuyer, Magistrat de Police dans et pour le District de Montréal, et étant ré-assermenté en présence du prisonnier, Ernest Sureau Lamirande, la transquestion du dit déposant est continuée comme suit :—

Q. Quand vous avez parlé de falsification d'écritures à Lamirande, s'agissait-il d'écritures concernant la somme d'argent qui manquait dans la caisse de la banque après son départ ?—*R.* C'est mon avis qu'il s'agissait de cela.

Q. D'après les informations que vous communiquiez à Lamirande après les avoir reçues vous-même, reprochait-on au registre tenu par Lamirande la même irrégularité que l'on reprochait à son bordereau de situation, ou quelque chose de différent ?—*R.* J'ai déjà dit que je n'avais point eu de détails sur la manière dont procédait Lamirande, que seulement j'avais été informé de falsification d'écritures et de faux en écritures de commerce par son bordereau de situation.

Q. Avez-vous jamais dit à Lamirande qu'on lui reprochait des altérations d'écritures ou de chiffres soit dans les registres soit dans son bordereau de situation ?—*R.* Pour moi, altération ou falsification signifie la même chose. J'ai pu me servir des deux mots dans mes conversations avec lui.

Q. Veuillez préciser ce que Lamirande a reconnu devant vous et dans quels

termes il l'a fait?—*R.* Quand j'ai dit à Lamirande qu'il était inculpé en outre de détournement, de faux en écritures de commerce, il m'a répondu: C'est vrai, je e sais bien.

Q. A quoi s'appliquaient les paroles de Lamirande, "C'est vrai, je le sais bien?"—*R.* Pour moi, je suis moralement convaincu que cette réponse voulait dire, qu'il se reconnaissait coupable du fait.

Q. Rapportez en quels termes Lamirande a discuté avec vous le caractère de l'offense qui pouvait résulter des faits qu'on lui reprochait?—*R.* Lamirande a prétendu que le faux qui lui était reproché n'était pas celui que la loi caractérisait ainsi.

Q. De quels arguments se servait-il pour repousser la qualification de faux comme applicable à ses actes?—*R.* Je ne pense pas que nous ayons discuté. Je ne me rappelle bien que de ceci, c'est que Lamirande a prétendu que le faux duquel il était inculpé n'était pas celui caractérisé par la loi.

Q. Quelle raison donnait-il pour dire que ses actes ne constituaient pas le faux caractérisé par la loi?—*R.* Je crois, mais je ne l'affirme pas, que Lamirande prétendait que le faux était une fausse signature, tandis que la sienne était vraie.

Q. Avez-vous eu, tant à New York qu'à Montréal, des consultations avec ceux qui dirigeaient la poursuite sur le caractère à donner à l'accusation que l'on entendait porter contre Lamirande?—*R.* A New York, oui; mais à Montréal, non. Mais à New York la question de faux on n'en a jamais parlé, parce que le fait de détournement rentrait dans le Traité, bien que l'arrêt de renvoi qui a été remis entre les mains de M. le Juge Commissaire Betts porte cette inculpation.

Q. Avez-vous eu à Montreal des conversations dans lesquelles on vous a expliqué pourquoi l'inculpation n'était pas la même ici qu'à New York?—*R.* Il était inutile qu'on me l'explique. Je la connaissais à Londres, en Angleterre, où je suis allé souvent pour des extraditions; je connaissais le Traité qui existait entre la France et cette Puissance et ses Colonies. Il a été question de toute l'affaire de Lamirande entre les avocats de la poursuite et moi; nous avons lu le Traité qui existe entre l'Angleterre et la France, et je n'avais pas besoin qu'on me l'explique, je le connaissais bien d'avance.

Q. A-t-il été question entre vous des moyens à prendre pour donner aux faits la couleur d'un faux?—*R.* Non.

Q. Les avocats de la poursuite ne vous ont-ils pas dit qu'il n'y avait aucun moyen dans ce pays de baser une accusation de faux sur les faits que l'on reprochait à Lamirande?—*R.* Avant de voir les avocats de Montreal, j'étais allé à Québec, où sans le conseil de personne j'ai fait un affidavit inculpant Lamirande de faux; par conséquent je savais ce qu'il y avait à faire avant de voir les avocats de Montréal. Les avocats de la poursuite à Montréal ne m'ont pas dit qu'il n'y avait aucun moyen dans ce pays de baser une accusation de faux sur les faits que l'on reprochait à Lamirande.

Q. Pourquoi l'accusation de faux n'a-t-elle pas eu de suite à New York, lorsque l'arrêt de renvoi la contenait?—*R.* Probablement parce que l'inculpation de détournement de fonds suffisait.

Q. L'accusation de faux n'a-t-elle pas été abandonnée à New York sur l'avis des hommes de loi qui la déclaraient incompatible avec les faits, et cela n'a-t-il pas été constaté par le Commissaire Betts?—*R.* Je n'ai jamais entendu parler de cela.

Q. Veuillez donner la substance de ce que vous avez déclaré dans l'affidavit que vous dites avoir donné à Quebec?—*R.* Dans l'affidavit j'ai dit que Lamirande fugitif de la justice Française et de la justice Américaine devait, d'après les renseignements que je possédais, s'être réfugié sur le territoire Canadien; qu'en France il était inculpé de détournement de fonds d'une somme de 700,000 francs au préjudice de la Banque de France à Poitiers; que de plus il était inculpé de falsification d'écritures et de faux en écritures de commerce par son bordereau de situation.

Q. Si la somme de 500,000 francs eut été enlevée de la Banque de Poitiers par un autre que Lamirande, existait-il quelque chose pour vous justifier de dire que son bordereau de situation était faux?—*R.* Il existait ceci, l'arrêt de renvoi qui l'inculpait.

Q. Existait-il quelque chose dans la conduite de Lamirande qui eût mis en doute la vérité de son bordereau de situation, si la somme d'argent eut été prise par un autre?—*R.* Je l'ignore.

Q. D'après ce que vous connaissez du Traité entre la France et l'Angleterre,

pouvez-vous dire quelle durée doit avoir ce Traité et comment on peut y mettre fin? —*R.* Par suite de circonstances que je ne connais pas le Gouvernement de l'Empereur des Français a dénoncé au Gouvernement Anglais que le Traité devait prendre fin le 1er Juin, 1866, mais le Gouvernement Anglais a demandé à ce qu'il soit continué jusqu'à ce qu'un nouveau Traité soit fait.

Q. D'après la loi Française quel est le crime le plus grave, du détournement de fonds ou du faux, et quel est celui qui entraîne la peine la plus sévère?—*R.* Le faux, évidemment.

Q. D'après les conversations que vous avez eues avec Lamirande, qu'est-ce qu'il reconnaissait être faux; était-ce son bordereau de situation ou la caisse?—*R.* Je crois qu'il reconnaît faux la falsification des écritures et aussi son bordereau de situation.

[Le prisonnier déclare par son Conseil, M. Doutre, n'avoir pas d'autres questions à poser au témoin.

M. Pominville, pour la poursuite, pose au témoin la question suivante en ré-examen.]

Q. Dans les transquestions qui vous ont été posées de la part du prisonnier vous avez parlé d'une conversation que le Consul-Général avait eue avec le prisonnier et qu'il lui aurait dit, "que s'il retournait volontairement en France, il écrirait à ses Juges pour les intéresser à sa position, et il a donné sa parole d'honneur qu'il partirait;" veuillez dire à la suite de quelle conversation entre le Consul-Général et le prisonnier le Consul-Général a ainsi parlé.—*R.* Quand nous sommes arrivés moi et M. le Consul-Général et M. Beranger, Vice-Consul, à la prison de Ludlow, on nous fit entrer dans une petite pièce; l'individu a été amené près de nous; M. le Consul-Général lui a dit: Est-ce vous qui êtes Lamirande? Oui, Monsieur. Vous étiez caissier à Poitiers? Oui, Monsieur; et je connais ma position, mon intention n'est pas de résister aux lois de mon pays. Alors M. le Consul-Général lui a dit: Ce n'est pas une visite officielle que je vous fais, elle est toute de bienveillance et comme Consul-Général. Je dois m'intéresser à tous mes nationaux, et puis que vous ne voulez pas résister, écrivez-moi un mot par lequel vous vous mettrez à ma disposition; alors j'écrirai à vos Juges pour les intéresser à votre position, car d'après ce que m'a dit M. Melin, votre famille est honorée et honorable.

La poursuite déclare n'avoir pas d'autres questions à poser en ré-examen et cet examen est conséquemment clos. Et le dit déposant a signé.

(Signé) MELIN.

Prise et reconnue devant moi, à Montreal, le 7 Août, 1866.

(Signé) W. H. BREHAUT, P.M.

Bureau de Police.

Province du Canada, District de Montreal.

La déposition de Louis Léonce Coudert, Ecuyer, Avocat de la ville de New York, dans l'Etat de New York, un des Etats-Unis d'Amérique, actuellement dans la cité de Montréal, dans le district de Montréal, prise sous serment ce 7me jour d'Août, dans l'année de Notre Seigneur 1866, au Bureau de Police dans le Palais de Justice, dans la cité de Montréal, dans le district de Montréal susdit, par le Soussigné, William H. Brehaut, Ecuyer, Magistrat de Police dans et pour le district de Montréal, en présence d'Ernest Sureau Lamirande, ci-devant de Poitiers, dans l'Empire Français, qui est maintenant accusé devant moi, sur plainte portée devant moi, sous serment, en vertu des dispositions de la Convention entre Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande et Sa Majesté le Roi des Français, et des statuts faits et pourvus à cet effet, d'avoir commis à Poitiers, dans l'Empire Français, le crime suivant mentionné dans et prévu par la dite Convention entre Sa Majesté la Reine et le dit Roi des Français, savoir:—

D'avoir le dit Ernest Sureau Lamirande commis le crime de faux, en ayant, en sa qualité de caissier de la succursale de la Banque de France à Poitiers, fait de fausses entrées dans les livres de la dite Banque et par ce moyen fraudé la dite banque de la somme de 700,000 francs.

Le déposant Louis Léonce Coudert dépose et dit comme suit:—

Je connais le prisonnier depuis plusieurs mois. Je l'ai fait arrêter d'abord comme Sureau Lamirande, quoiqu'il se fût fait passer d'abord sous le nom de

Thiebault, ensuite sous le nom de Dyhers. Je l'ai attaqué en extradition et l'ai fait comparaître devant le Commissaire Betts, en vertu d'un mandat émané du Président des Etats-Unis à la réquisition du Gouvernement Français. Le jour de sa comparution devant Mr. Betts, en réponse aux questions préliminaires il déclara, ou plutôt son avocat déclara pour lui et en sa présence, que son nom était Sureau Lamirande, âgé, je crois, de 41 ou 42 ans, mais je ne suis pas exactement sûr de l'âge. Je l'attaquais aussi civilement sous le nom de Sureau Lamirande. Son prénom était Ernest, et il y en avait peut-être d'autres. L'objet de la poursuite civile était de recouvrer la somme détournée au montant de 200,000 dollars. Il fut assigné personnellement sous le nom de Sureau Lamirande, et sur cette assignation il comparût par avocat, mit une défense, le tout étant devant une Cour de Juridiction compétente, et dans cette cause il fut condamné contradictoirement en 200,000 dollars comme étant bien Sureau Lamirande. Je le vis aussi personnellement plusieurs fois, la première fois le 9 Avril, 1866, jour où il fut arrêté; d'abord au Metropolitan Hotel, mais là je ne lui ai pas parlé, et ensuite dans le Ludlow-street Gaol de la ville de New York, lorsqu'il me reconnut maintes fois son identité. Il m'a promis bien souvent de rentrer volontairement en France, m'a prié de ne pas entamer de poursuite en extradition contre lui en me disant: "La Banque a bien assez perdu par moi, sans que je lui fasse perdre autre chose." La première fois que je lui ai parlé, c'était le jour de son arrestation. Je l'avais tracé personnellement moi-même, de Portland à New York; d'abord il me dit qu'il ne savait pas ce dont je parlais, et en lui parlant de l'affaire je lui mentionnai ce que m'avait dit le Consul-Général ou M. Melin, que son père était arrêté. Il me dit que ce n'était pas vrai, que ça ne pouvait pas être, qu'il était resté à New York plus longtemps qu'il ne le pensait, dans l'espoir de voir des journaux de France, et d'y trouver les détails de l'affaire et savoir si l'on trouverait sa famille. Cela parut lui faire beaucoup de peine; il pleura même, et enfin se reconnut comme étant réellement la personne que je cherchais, c'est-à-dire, Sureau Lamirande, caissier de la Banque de France à Poitiers. Je lui dis aussi que j'avais trouvé à Quebec un M. Valin, auquel il avait remis 6,000 francs de l'argent volé, et que ce M. Valin était excessivement chagriné de se trouver en possession de ces fonds-là. Il me dit que M. Valin n'en connaissait pas l'origine et que lui seul était coupable. Je dois ajouter que je fis saisir aussi à New York, dans le procès civil et en vertu du jugement contre lui, en faveur de la Banque de France, environ 135,000 francs, je crois que c'est la somme exacte. Je l'ai vu en outre bien souvent, quand il venait au tribunal; son identité n'a jamais été mise en question, il a reconnu au moins cent fois qu'il était la personne inculpée dans l'affaire de la Banque de Poitiers. L'investigation pour l'extradition du prisonnier a duré à peu près trois mois et il comparaissait devant le tribunal quelquefois une fois, quelquefois deux fois, et même trois fois par semaine. C'est notre bureau, c'est-à-dire, mes frères et moi comme Coudert frères; qui poursuivions devant le tribunal en vertu des ordres émanés du Consul-Général de France à New York. Outre cela, j'ai une procuration spéciale de la Banque de France en mon nom. Le prisonnier était assisté de plusieurs avocats à New York. Nous reçûmes dans le procès civil, dans lequel il était défendu par des avocats de New York, deux copies de pièces que nous ont fait remettre, en défendant la cause, les avocats du prisonnier; ces copies étaient signées "Lamirande." Je jure que le prisonnier maintenant devant moi est le nommé Sureau Lamirande que j'ai poursuivi à New York, et qui a répondu à l'investigation qui a été faite à New York pour son extradition. Depuis que je l'ai vu à New York, il s'est coupé la moustache et une partie de la barbe, mais s'il veut ouvrir la bouche on trouvera qu'il a une dent de manque du côté gauche, mâchoire supérieure, cette dent est cariée et en partie cassée. Il a disparu de New York et je l'ai revu ici à Montréal. Il était, lorsqu'il s'est évadé de New York, sous la charge du Marshal des Etats-Unis, mais il était sous la charge immédiate du Député Marshal Greene. A la suite de l'évasion du prisonnier nous avons, c'est-à-dire, la maison Coudert frères a fait imprimer un certain nombre de proclamations, dont l'une est maintenant produite et marquée de la lettre A. L'extradition du prisonnier a été demandée, à New York, sur une première pièce qui ne parlait, je crois, que de détournement de fonds; cette pièce a été envoyée avant que l'instruction en France fut terminée. Lorsque l'instruction fut terminée, on nous envoya des dépositions et un arrêt de renvoi, lequel l'inculpait de détournement et de faux. A l'époque où ces derniers documents nous ont été transmis, l'instruction pour l'extradition du prisonnier pour détournement de déniers était commencée. Sous le Traité avec les Etats-Unis nous pouvions aussi

bien l'extrader pour détournement que pour faux, et il était parfaitement inutile de rien changer à la procédure commencée pour détournement.

Et le dit déposant ne dit rien de plus et a signé, lecture faite.

(Signé) LOUIS LEONCE COUDERT.

Assermenté par-devant moi, à Montréal, le 7 Avril, 1866.

(Signé) W. H. BREHAUT, P.M.

La précédente déposition ayant été faite et lue, en présence du prisonnier Ernest Sureau Lamirande, demande lui est faite s'il désire poser des questions au témoin, et il répond qu'il désire lui poser les questions suivantes par son Conseil Mr. Doutre.

Question. Est-ce sur vos instructions et sous votre direction que l'arrestation du prisonnier a été effectuée en Canada?

[Mr. Ramsay s'objecte à la question de la part de la Couronne en autant qu'elle n'a aucun rapport à l'examen préliminaire, l'arrestation du prisonnier ayant été ordonnée par le warrant de son Excellence le Gouverneur-Général. Objection maintenue.]

Q. Combien de temps s'est-il écoulé entre le commencement des procédures en extradition à New York et l'époque où l'arrêt de renvoi dont vous avez parlé est arrivé de France?—*R.* Je ne pourrais vous le dire. Je ne m'en souviens pas. L'affaire a traîné longtemps après le commencement formel des procédés en extradition, parce que Lamirande priait de ne pas la pousser, disant qu'il rentrerait volontairement en France. L'arrêt de renvoi nous est arrivé de deux à quatre semaines avant l'évasion du prisonnier.

Q. L'addition du faux au détournement de fonds dans l'arrêt de renvoi a-t-elle été faite à la suite de suggestions de votre part, ou de ceux avec qui vous agissiez à New York auprès des autorités Françaises?—*R.* Aucunement.

Q. Avez-vous participé à Montreal dans des consultations sur la manière de requérir l'extradition du prisonnier en Canada?

[Objecté de la part de la Couronne. Objection maintenue.]

Q. En quoi consistaient les différentes pièces qui ont été reçues de France à New York, à propos de l'extradition du prisonnier?—*R.* Autant que je m'en souviens, il y avait un mandat d'arrêt, des dépositions, un arrêt de renvoi comme documents.

Q. Que sont devenues toutes ces pièces?—*R.* Je crois qu'elles ont toutes été déposées entre les mains de M. Betts, le Commissaire, devant qui se faisaient les procédés en extradition. La première pièce est le mandat d'amener (je crois que jusqu'à présent nous l'avons appelé mandat d'arrêt), c'est là la pièce où le prisonnier était inculpé de détournement de fonds, ensuite se fait l'enquête ou l'instruction; comme ces dépositions prises dans l'instruction prouvaient un détournement de fonds et un faux, la pièce qui est fondée là-dessus, c'est-à-dire, l'arrêt de renvoi, l'accuse des deux crimes commis. Je crois que nous avons reçu ces pièces dans l'ordre suivant: d'abord le mandat d'amener, ensuite les dépositions, et après l'arrêt de renvoi. L'arrêt de renvoi correspond à peu près à l'indictment dans ce pays.

Q. Y avait-il au nombre de ces dépositions celle du directeur ou principal officier de la Succursale de la Banque de France à Poitiers, M. Adolphe Bailly?—*R.* Personnellement je n'avais pas la charge de la poursuite de M. Lamirande. Je crois cependant qu'il y avait une déposition faite par un nommé Bailly, mais je ne sais pas quelle était sa qualité officielle.

Q. Pouvez-vous dire pourquoi le prisonnier n'est accusé que de faux ici?—*R.* Parce que c'était tout ce qu'il fallait pour l'extrader.

Q. L'identité du prisonnier avec le nommé Ernest Sureau Lamirande, accusé de détournement de fonds ou de faux au préjudice de la Banque de France, Succursale de Poitiers, a-t-elle jamais été affirmée par des personnes qui l'eussent connu en France autre que lui-même?—*R.* Non; nous jugions qu'il devait se connaître lui-même, et que le signalement que nous avions reçu de France correspondait parfaitement avec lui.

Q. Ce signalement était-il photographié ou descriptif?—*R.* Tous deux.

Le prisonnier déclarant n'avoir plus d'autres questions à poser au témoin, cet examen est clos et le déposant a signé.

(Signé) LOUIS LEONCE COUDERT.

Pris et reconnu devant moi, à Montréal, ce 7 Août, 1866.

(Signé) W. H. BREHAUT, P.M.

Bureau de Police.

Province du Canada, District de Montreal.

La déposition d'Edme Justin Melin, Inspecteur Principal de Police, de la Ville de Paris, dans l'Empire Français, actuellement dans la Cité de Montreal, dans le district de Montreal, prise sous serment ce 14me jour d'Août, dans l'année de Notre Seigneur 1866, au Bureau de Police, dans le Palais de Justice, dans la Cité de Montréal, dans le district de Montréal susdit, par le Soussigné, William H. Brehaut, Ecuyer, Magistrat de Police, dans et pour le district de Montréal, en présence d'Ernest Sureau Lamirande, ci-devant de Poitiers, dans l'Empire Français, qui est maintenant accusé devant moi sur plainte portée devant moi sous serment, en vertu des dispositions de la Convention entre Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande, et Sa Majesté le Roi des Français, et des statuts faits et pourvus à cet effet, d'avoir commis à Poitiers, dans l'Empire Français, le crime suivant mentionné dans et prévu par la dite Convention entre Sa Majesté la Reine et le dit Roi des Français, savoir :—

D'avoir le dit Ernest Sureau Lamirande commis le crime de faux en ayant, en sa qualité de caissier de la succursale de la Banque de France à Poitiers, fait de fausses entrées dans les livres de la dite banque, et par ce moyen fraudé la dite banque de la somme de 700,000 francs.

Le déposant Edme Justin Melin dépose et dit comme suit :—

Je produis la déposition de Henri Marie du Bois de Jansigny, Inspecteur de la Banque de France, demeurant à Paris, dans l'Empire Français, prise au Tribunal de Poitiers, Cabinet du Juge d'Instruction, le 2 Avril, 1866. Cette déposition est marquée de la lettre C. Je connais la signature de M. Dubois, Chef du Bureau de la Chancellerie, celle de M. Baroche, Ministre de la Justice en France, celle de M. Drouyn de Lhuys, Ministre des Affaires Etrangères en France. Les signatures apposées au document produit comme susdit sont bien celles des dits Dubois, Baroche et Drouyn de Lhuys. Je suis familier avec la signature de M. Dubois pour l'avoir vu signer bien souvent devant moi ; je jure que la signature apposée sur le document est la sienne. Quant aux autres je ne les ai jamais vu signer, mais j'ai souvent eu dans mes mains des documents et pièces officielles signés par eux.

Et le dit déposant ne dit rien de plus et a signé, lecture faite.

(Signé) MELIN.

Assermenté par-devant moi, à Montréal, ce 14 Août, 1866.

(Signé) W. H. Brehaut, P.M.

La déposition précédente ayant été faite et lue en présence du prisonnier Ernest Sureau Lamirande, demande lui est faite s'il a des questions à poser au témoin, et il répond par son Conseil M. Doutre, qu'il n'en a pas.

Montreal, le 14 Août, 1866.

(Signé) W. H. Brehaut, P.M.

Bureau de Police.

Province du Canada, District de Montreal.

La déposition d'Abel Frédéric Gautier, Consul-Général de France, pour les Provinces Britanniques de l'Amérique au Nord, demeurant à la Cité de Québec, dans le district de Québec, prise sous serment ce 14 Août, dans l'année de Notre Seigneur 1866, au Bureau de Police, dans le Palais de Justice, dans la Cité de Montréal, dans le district de Montréal susdit, par le Soussigné, William H. Brehaut, Ecuyer, Magistrat de Police, dans et pour le district de Montréal, en présence d'Ernest Sureau Lamirande, ci-devant de Poitiers, dans l'Empire Français, qui est maintenant accusé devant moi, sur plainte portée devant moi sous serment, en vertu des dispositions de la Convention entre Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande et Sa Majesté le Roi des Français, et des statuts faits et pourvus à cet effet, d'avoir commis à Poitiers, dans l'Empire Français, le crime suivant mentionné dans et prévu par la dite Convention entre Sa Majesté la Reine et le dit Roi des Français, savoir :—

D'avoir le dit Ernest Sureau Lamirande commis le crime de faux, en ayant, en sa qualité de caissier de la succursale de la Banque de France à Poitiers, fait de fausses entrées dans les livres de la dite banque et par ce moyen fraudé la dite banque de la somme de 700,000 francs.

Le déposant Abel Frédéric Gautier dépose et dit comme suit :—

Je suis le seul Agent du Gouvernement Français dans les cinq Provinces Britanniques de l'Amérique du Nord. Ayant pris communication de la pièce marquée C, je déclare que la signature Drouyn de Lhuys est bien celle du Ministre des Affaires Etrangères de France, Chef du Département dont je dépends. Les documents judiciaires généralement ne sont pas signés par le Ministre lui-même. C'est par exception et pour lui donner plus d'importance que le Ministre des Affaires Etrangères a signé cette pièce. Quant à la signature de M. Dubois, elle m'est également parfaitement connue, et nous avons, tous les Agents du Département des Affaires Etrangères, pour instruction de la légaliser. Je connais la signature de M. Bigelow, Ministre des Etats-Unis en France. Je produis maintenant une pièce marquée de la lettre D, au bas de laquelle se trouve apposée la signature de M. Dubois; je la reconnais parfaitement authentique, et je suis prêt, tant pour la signature de M. Drouyn de Lhuys que pour celle de M. Dubois, de les certifier officiellement et d'y apposer mon sceau. Cela se rapporte aux deux pièces produites.

Et le dit déposant ne dit rien de plus et a signé, la précédente déposition lui ayant été lue.

(Signé) FREDC. GAUTIER.

Assermenté par-devant moi, à Montréal, ce 14 Août, 1866.

(Signé) W. H. Brehaut, P.M.

La déposition précédente ayant été faite et lue en présence du prisonnier, Ernest Sureau Lamirande, demande lui est faite s'il a des questions à poser au témoin, et il répond qu'il désire lui poser les questions suivantes par son Conseil, Mr. Doutre :—

Question. Où et comment se trouvent définies les fonctions que vous remplissez en Canada?—*Réponse.* Elles sont définies par des centaines de dépêches, d'instructions, de circulaires qui me sont transmises par mon Département.

Q. Quelle différence faites-vous entre les fonctions d'un Consul-Général et celles d'un Agent Diplomatique?—*R.* Les Agents Diplomatiques sont chargés des relations politiques entre deux pays; ce sont eux qui concluent et signent les Traités, et, comme je viens de le dire, tout ce qui se rattache aux relations politiques du pays où ils résident, avec la France. Les Consuls-Généraux ne s'occupent point de ces questions. Ils s'occupent seulement de tenir leur Gouvernement au courant des affaires du pays où ils résident, et à prêter l'appui de leur position officielle aux intérêts Français.

Q. D'après cela considérez-vous que vous êtes ici un Agent Diplomatique du Gouvernement Français?—*R.* Non; et je n'ai jamais pris ce titre.

Q. Savez-vous sur la demande de qui son Excellence le Gouverneur-Général a émané le warrant qui se trouve entre les mains du Magistrat de Police devant lequel nous procédons en ce moment?—*R.* Sur la mienne.

Q. L'extradition du prisonnier a-t-elle été demandée à son Excellence le Gouverneur-Général par aucun autre représentant du Gouvernement Français que vous-même?—*R.* Non pas que je sache.

Q. Comment le warrant de son Excellence est-il parvenu à William H. Brehaut, Ecuyer, Magistrat de Police, devant qui nous procédons?—*R.* Le warrant m'a été adressé à Québec par le Secrétaire Provincial. Je l'ai reçu le 3 Août, et comme j'avais appris alors l'arrestation du prisonnier, je l'ai apporté moi-même à Montréal, et l'ai remis à M. Pominville pour en faire l'usage qu'il jugerait convenable. Le warrant qui m'est présenté est exactement celui qui m'a été envoyé par le Secrétaire Provincial.

Q. Avez-vous jamais vu signer soit M. Drouyn de Lhuys, Ministre des Affaires Etrangères en France, soit M. Dubois, Chef de Bureau de la Chancellerie, dont il est question dans votre examen en chef, ainsi que M. Bigelow, Ministre des Etats-Unis en France?—*R.* Non; mais je puis produire vingt dépêches qui m'ont été adressées personnellement par M. Drouyn de Lhuys; quant à la signature de M. Dubois, elle m'a été transmise officiellement de manière à pouvoir la légaliser en toute circonstance.

Le prisonnier déclare n'avoir plus d'autres questions à poser au déposant; en conséquence cet examen est clos, et le déposant a signé lecture faite.

(Signé) FREDC. GAUTIER.

Prise et reconnue par-devant moi, à Montreal, ce 14 Août, 1866.

(Signé) W. H. Brehaut, P.M.

Bureau de Police.

Province du Canada, District de Montreal.

La déposition de Frédéric R. Coudert, Ecuyer, avocat de la ville de New York, dans l'Etat de New York, un des Etats-Unis d'Amérique, actuellement dans la cité de Montréal, dans le district de Montréal, prise sous serment ce 14me jour d'Août, dans l'année de notre Seigneur 1866, au Bureau de Police, dans le Palais de Justice, dans la cité de Montréal, dans le district de Montréal susdit, par le Soussigné, William H. Brehaut, Ecuyer, Magistrat de Police dans et pour le district de Montréal, en présence d'Ernest Sureau Lamirande, ci-devant de Poitiers, dans l'Empire Français, qui est maintenant accusé devant moi sur la plainte portée devant moi, sous serment en vertu des dispositions de la Convention entre Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande et Sa Majesté le Roi des Français, et des statuts faits et pourvus à cet effet, d'avoir commis à Poitiers, dans l'Empire Français, le crime suivant mentionné dans et prévu par la dite Convention entre Sa Majesté la Reine et le dit Roi des Français, savoir:—

D'avoir le dit Ernest Sureau Lamirande commis le crime de faux, en ayant, en sa qualité de caissier de la Succursale de la Banque de France à Poitiers, fait de fausses entrées dans les livres de la dite banque, et par ce moyen fraudé la dite banque de la somme de 700,000 francs.

Le déposant, Frédéric R. Coudert, dépose et dit comme suit:—

Je suis avocat, pratiquant à New York depuis 1852. J'ai été employé comme Conseil dans la poursuite contre le prisonnier Lamirande à New York. Le prisonnier, M. Lamirande, a été arrêté et traduit devant le tribunal de M. le Commissaire Betts. Nous avons eu de nombreuses séances dans lesquelles ma raison sociale de Coudert Frères, représentait le Gouvernement Français, et plusieurs avocats, entre autres Mr. Spilthorne, ici présent, représentaient le prisonnier Lamirande. Ces séances ont duré jusqu'au 3 Juillet dernier. A cette séance, ou à la précédente, je ne puis affirmer laquelle, Mr. Spilthorne demanda la permission au Commissaire d'emporter avec lui une pièce écrite en Français, venant de France, *et que nous appelons l'arrêt de renvoi. Cette pièce avait été prouvée par nous* comme pièce authentique, et admise comme telle par le Juge Commissaire. Nous avions également prouvé une traduction en langue Anglaise faite dans mon bureau, et dont je puis certifier l'exactitude. Cette traduction avait été également reçue par le Juge, et marquée de ses initiales; elle est maintenant entre mes mains. Lorsque Mr. Spilthorne demanda la permission d'emporter ce document, il dit qu'il le rapporterait à la prochaine séance. Je ne fis aucune objection à ce que la demande de Mr. Spilthorne fût accordée. Mais mon frère, qui était associé avec moi dans la poursuite, me fit observer qu'il ne confierait pas un document de cette valeur à Mr. Spilthorne, que probablement je ne le reverrais (ce document) jamais. Depuis ce jour je n'ai jamais revu cette pièce, quoique je l'aie cherchée *parmi tous les papiers* de Mr. Betts, ne la trouvant pas. Je *me rendis chez* M. Spilthorne; je lui rappelai le fait qu'il avait emporté ce document; il reconnut l'avoir pris. Mais il dit qu'il ne savait pas s'il l'avait rendu ou non, qu'il faudrait pour qu'il s'en assurât qu'il cherchât parmi ses papiers; que ses papiers étaient à son domicile, et il me jurait, que s'il pouvait trouver le papier en question, je l'aurais à mon bureau le lendemain, Mercredi, à 9 heures. Je dis à Mr. Spilthorne que le cas était urgent; qu'il me rendrait un service personnel s'il voulait aller chez lui immédiatement, que je payerais une voiture afin qu'il perdît moins de temps. Mais je ne pus obtenir de lui qu'il le fît. Le lendemain, vers 10 heures, n'ayant reçu aucune communication de Mr. Spilthorne, je lui envoyai un de mes commis, avec une lettre, lui demandant l'arrêt de renvoi; il ne m'a pas répondu, et je n'ai jamais revu le papier. Je n'ai pas connaissance qu'il y ait une copie Française de ce document, et je ne crois pas qu'il y en ait.

Q. Avez-vous en votre possession la traduction Anglaise de l'arrêt de renvoi qui a servi devant le Commissaire Betts à New York?—*R.* Oui, Monsieur, j'ai ce document; le voici.

Mr. Ramsay, représentant la Couronne, fait motion que ce document soit filé et reçu par la Cour.

M. Doutre, Conseil du prisonnier, s'objecte à la motion et à la production de ce document, vu qu'il ne possède aucun des caractères voulus par le Statut 6 et 7 Vict., c. 75, s. 3.

La Cour renvoie l'objection et le document est filé et marqué de la lettre B.

Le déposant continue comme suit :—

La traduction est une traduction comparée par moi-même avec le papier prouvé en témoignage devant Mr. Betts, laquelle traduction a été soumise à l'autre côté et à laquelle je n'ai jamais entendu d'objection.

Le déposant ne dit rien de plus et après lecture faite il déclare que cette déposition contient la vérité, y persiste et a signé.

(Signé) F. R. COUDERT.

Assermenté par-devant moi, à Montreal, ce 12 Août, 1866.

(Signé) W. H. BREHAUT, P.M.

La déposition précédente ayant été faite et lue en présence du prisonnier Ernest Sureau Lamirande, demande lui est faite s'il a des questions à poser au témoin et il répond qu'il désire poser au déposant les questions suivantes par son Conseil, M. Doutre.

Question. Est-ce sur l'arrêt de renvoi dont vous avez parlé que le prisonnier a été arrêté aux Etats Unis?—*Réponse.* Non.

Q. Comment et pourquoi cet arrêt de renvoi se trouvait-il dans la procédure instituée à New York?—*R.* Comme preuve à l'appui, offerte de la part de la poursuite.

Q. Pour quel crime le prisonnier était-il arrêté aux Etats-Unis?—*R.* Pour ce que nous appelons le crime d'embezzlement.

Q. Quand le prisonnier a été arrêté, ceux qui le faisaient arrêter étaient-ils munis d'un mandat d'arrêt émané de France?—*R.* Je crois que oui, ou alors ou peu de temps après nous en avons été muni; nous ne nous en sommes pas servi pour le faire arrêter.

Q. Qu'est devenu le mandat d'arrêt en vertu duquel le prisonnier a été détenu à New York en vue de son extradition, et pourquoi ce document n'est-il pas entre les mains de ceux qui poursuivent ici l'extradition du prisonnier?—*R.* Le seul mandat d'arrêt sous lequel le prisonnier ait été arrêté c'est le mandat de Mr. Betts, qui se trouve naturellement dans son bureau, je présume. Si vous voulez parler du mandat d'arrêt, signé par Mr. Jolly, Juge d'Instruction, immédiatement après la fuite de M. Lamirande, et avant qu'il ne fut mis en accusation, je crois que ce document est entre les mains de MM. Pominville et Betournay.

Q. De quel crime le prisonnier est-il accusé dans le mandat d'arrêt émané de France et qui se trouve entre les mains de MM. Pominville et Betournay?

[Objecté par M. Betournay, pour la poursuite. Objection maintenue.]

Q. Le Commissaire Betts a-t-il tenu aucune séance sur l'accusation portée à New York contre le prisonnier après que l'arrêt de renvoi que vous dites être disparu, eut été confié à Mr. Spilthorne?—*R.* Je ne crois pas. Comme je vous ai déjà dit, ce document lui a été confié à la dernière ou l'avant-dernière séance, mon impression est que c'est la dernière; dans ce cas-là il n'y a pas eu d'autre séance.

Q. Quel est le dépositaire ou gardien légal des papiers dont cette pièce a fait partie?—*R.* M. le Commissaire Betts.

Q. Est-il à votre connaissance si M. le Commissaire Betts a jamais requis M. Spilthorne de remettre cette pièce au dossier?—*R.* Non, il est pas à ma connaissance, mais j'ai autorité de M. Betts de prendre les dépositions dans la cause. C'est une autorité écrite; je l'ai reçue par télégraphe et elle a été envoyée par lettre à M. Osborn, un de ses collègues qui me l'a communiquée en la retirant de son sac à paperasses (waste-paper basket), et qui l'a rejetée là après me l'avoir communiquée. J'ai reçu aussi un télégramme au même effet. M. Osborn m'avait déjà laissé examiner les papiers pour prendre ceux que je voulais, et M. Betts lui-même avait permis à mon commis, quelques jours avant, de prendre les pièces que je voulais.

Q. La disparution de cet arrêt de renvoi a-t-elle donné lieu à quelque procédure de votre part?—*R.* Oui, Monsieur, j'ai consulté le District Attorney; il m'a dit que je devrais faire une plainte, c'était Vendredi dernier. Voulant éviter de faire une plainte contre un confrère, j'envoyai un commis chez M. Spilthorne, vers trois heures, heure à laquelle on m'avait dit qu'il y serait; il n'y était pas et j'appris pour la première fois qu'il devait partir pour le Canada. Je me rendis chez le Commissaire Osborn, je signai un affidavit; il signa son warrant pour l'arrestation de

M. Spilthorne, le remit entre les mains du Marshal, mais le Marshal ne put pas le trouver.

Q. Voulez-vous nous donner la substance de l'affidavit?—*R.* Les faits tels que je vous les ai donnés, avec cette addition que dans mon opinion M. Spilthorne gardait ce papier pour le voler ou le détruire, afin qu'on n'en eût pas le bénéfice au Canada. C'est là aussi près que possible ce que j'ai déposé.

Q. Quelle est la désignation de l'offense pour laquelle M. Osborn a émis son warrant contre M. Spilthorne?—*R.* Je refuse de répondre à la question, ne sachant pas si je pourrais donner la désignation exacte que lui donnerait le Procureur.

[La Cour permet au témoin de ne pas faire d'autre réponse.]

Q. Dans quel but M. Spilthorne avait-il demandé à emporter cette pièce avec lui?—*R.* Naturellement je ne saurais affirmer positivement quel était son but, il a allégué qu'il voulait la comparer avec ma traduction.

Q. Depuis combien de temps cette traduction était-elle alors faite?—*R.* Je ne saurais vous le dire, peut-être huit jours peut-être quinze jours.

Q. Le document que vous avez produit est-il matériellement le même que celui que M. Spilthorne voulait comparer avec l'arrêt de renvoi?—*R.* Je ne pourrais vous le dire positivement.

Q. L'arrêt de renvoi que vous dites être resté entre les mains de M. Spilthorne, était-il un document original ou une copie?—*R.* Le document remis à M. Spilthorne était une copie certifiée de telle façon à servir comme original devant les tribunaux de France d'après les témoins.

Q. Avez-vous montré à M. Spilthorne aucune autorisation écrite de la part de M. le Commissaire Betts, à vous donnée, de prendre possession du dit arrêt de renvoi?—*R.* M. Spilthorne m'ayant juré qu'il me le rendrait à moi et ne m'ayant pas parlé d'autorisation de M. Betts, je ne lui en parlai pas non plus.

Q. Le tribunal présidé par M. Betts est-il une Cour de Record?—*R.* Pour certains objets il est assimilé à une Cour de Record; par exemple, pour le détournement d'un papier, par la loi du Congrès, cependant il n'a pas techniquement de Clerk ou Greffier.

Q. Etes-vous l'un de ceux qui avez dirigé la procédure en extradition contre le prisonnier à New York?—*R.* Elle a été entièrement dirigée par mon bureau, mes frères et moi.

Q. L'extradition du prisonnier était-elle poursuivie sur une accusation de faux aux Etats-Unis?

[Objecté par la poursuite. Objection maintenue.]

Q. Que sont devenues les pièces produites aux Etats-Unis et qui accompagnaient le dit arrêt de renvoi?—*R.* Une partie se trouve chez le Commissaire Betts, une partie entre les mains de MM. Pominville et Betournay, et l'arrêt de renvoi je ne sais pas où il est.

Q. Y avait-il au nombre de ces documents des dépositions prises en France et entr'autres celle du Directeur de la Succursale de la Banque de France à Poitiers?

[Objecté par la poursuite. Objection maintenue.]

Q. Quelle est la partie de ces documents qui est restée entre les mains de M. le Commissaire Betts?

[Même objection. Objection maintenue.]

Q. Existe-t-il à votre connaissance aucune déposition, ce que nous appelons, aux Etats-Unis et au Canada, affidavit, qui accuse le prisonnier de faux?

[Même objection de la part de la poursuite, en autant que la question est trop générale et qu'elle devrait se limiter à la poursuite contre le prisonnier en Canada. Objection renvoyée.]

R. Il existait des dépositions, je présume qu'elles existent toujours. J'ai vu une ou plusieurs dépositions dans lesquelles on disait que M. Lamirande avait fait de faux bordereaux et qu'il avait fait des faux en écritures de commerce pour cacher ses vols. Je me rappelle même qu'un témoin déposait avoir vérifié sa caisse et l'avoir comparée avec son bordereau de situation qui au moyen de chiffres cachait un déficit de plusieurs centaines de 1,000 francs, et que d'après ce témoin ou un autre M. Lamirande avait dû depuis longtemps faire de faux bordereaux, je crois tous les jours mais au moins très souvent.

Q. Avez-vous jamais vu aucun de ces bordereaux ou pièces arguées de faux?—*R.* Non, Monsieur, mais j'ai vu un procès-verbal, je crois, constatant qu'on avait saisi une telle pièce.

Q. La pièce mentionnée dans ce procès-verbal était-elle attaquée comme fausse?—*R.* Je ne sais pas; si je me rappelle, cette pièce avait été saisie dès l'origine, soit immédiatement après la fuite de M. Lamirande ou après l'examen des livres.

Q. Cette pièce a-t-elle été envoyée en Amérique?—*R.* Non; je n'ai jamais vu la pièce; les livres non plus n'ont pas été envoyés en Amérique.

Q. A-t-on envoyé des fac-similes ou copies des pièces arguées de faux?—*R.* Non pas que je sache, mais je crois que la substance des pièces est dans l'arrêt de renvoi dont j'ai aujourd'hui produit une traduction fidèle.

Q. Savez-vous qui représente le Gouvernement Français dans la demande d'extradition qui est faite en Canada?—*R.* Je présume que c'est M. le Consul-Général.

Le prisonnier déclare n'avoir plus d'autres questions à poser au témoin, et cet examen est clos; et le déposant a signé après lecture faite.

(Signé) F. R. COUDERT.

Prise et reconnue devant moi, à Montreal, ce 14 Août, 1866.

(Signé) W. H. BREHAUT, P.M.

DEFENSE.

Bureau de Police.

Province du Canada, District de Montreal.

La déposition de Charles L. Spilthorn, Ecuyer, Avocat de la Ville de New York, un des Etats-Unis d'Amérique, actuellement dans la Cité de Montreal, dans le District de Montreal, prise sous serment ce 20me jour d'Août, dans l'année de notre Seigneur 1866, au Bureau de Police, dans le Palais de Justice, dans la Cité de Montreal, dans le district de Montreal susdit, par le Soussigné, William H. Brehaut, Ecuyer, Magistrat de Police, dans et pour le District de Montreal, en présence d'Ernest Sureau Lamirande, ci-devant de Poitiers, dans l'Empire Français, qui est maintenant accusé devant moi, sur plainte portée devant moi, sous serment, en vertu des dispositions de la Convention entre Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande et Sa Majesté le Roi des Français, et des Statuts faits et pourvus à cet effet, d'avoir commis à Poitiers, dans l'Empire Français, le crime suivant mentionné dans et prévu par la dite Convention entre Sa Majesté la Reine et le dit Roi des Français, savoir:—

D'avoir le dit Ernest Sureau Lamirande commis le crime de faux, en ayant en sa qualité de caissier de la Succursale de la Banque de France à Poitiers, fait de fausses entrées dans les livres de la dite banque et par ce moyen fraudé la dite banque de la somme de 700,000 francs.

Le déposant, Charles L. Spilthorn, dépose et dit comme suit:—

J'ai été employé comme l'un des avocats du prisonnier à New York, lorsque son extradition y était demandée. Depuis le commencement de la poursuite pour son extradition en Avril dernier jusqu'à son départ de New York que j'ai compris être le 3 Juillet dernier. Le document produit sous la marque B m'étant montré je ne puis pas bien dire si j'ai vu ce document-là à New York au nombre des pièces qui se trouvaient produites devant le Commissaire Betts, devant qui se poursuivait l'extradition du prisonnier.

Q. Avez-vous vu le document dont cette pièce B prétend être une traduction?—*R.* J'ai vu un document sur la table auprès de laquelle M. le Commissaire Betts était assis, où se traitait l'affaire, qu'on prétendait être une copie envoyée de Poitiers, en France, d'un prétendu arrêt attribué à la Chambre des Mises en Accusation de Poitiers. Ce document était rédigé en Français. On l'appelait, je crois, alors, acte d'accusation—indictment en Anglais. Pour autant que je puisse me souvenir, ce devait être un arrêt de renvoi. C'est difficile de dire si c'était le même document que l'on a désigné comme arrêt de renvoi devant cette Cour et dont on a prétendu que le document B était une traduction. Il n'y a eu qu'un seul document de ce genre produit devant le Commissaire Betts à New York, et ce doit être celui dont on a prétendu que la pièce B était une traduction.

Q. Cet arrêt de renvoi, celui en langue Française, était-il admis à New York, par le Commissaire comme authentique conformément à la loi Française ou au Traité d'Extradition?

[Objecté de la part de la Couronne. Objection maintenue.]

Q. Dites-nous ce que vous connaissez de la pièce B, et du document dont elle prétend être une traduction.—*R.* On avait annoncé qu'il y avait à communiquer à Mr. Betts, à produire devant la Cour de Mr. Betts, un certain nombre de pièces dans lesquelles on disait que se trouvait ce prétendu arrêt de renvoi dont on disait avoir fait des traductions. Ces pièces étaient marquées par Mr. Betts, ne varientur, car je dois expliquer que quoiqu'un Juge marque une pièce, ce n'est pas une preuve de sa réception, et c'est même l'habitude à New York de les faire marquer avant qu'on les offre comme preuve. Il y avait une prétendue traduction du dit arrêt de renvoi, dans laquelle traduction il y avait beaucoup de blancs, et il fut observé que cette traduction ne pouvait être admise comme étant incompréhensible. Les Conseils du prisonnier ici objectèrent à la réception de ces pièces de la part du Commissaire Betts, et là-dessus il fut décidé par le Commissaire que les pièces restaient à la Cour sauf toute objection après pour vérifier. Nous demandâmes alors un délai; on était pressé de pousser la procédure en avant et Mr. Betts m'offrit de prendre le prétendu arrêt de renvoi avec moi et de bien examiner pour le comparer avec la traduction. Je ne me souviens pas très-bien maintenant si j'ai pris la pièce avec moi ou non. A la prochaine audience M. Lamirande était parti, il ne fut plus question de rien. Mais aucune de ces pièces alors produites, le prétendu arrêt de renvoi et la prétendue traduction y comprises, ne fut définitivement admise ou reçue comme preuve ou dûment authentiquée par Mr. Betts. Déjà auparavant Mr. Betts avait rejeté la copie de la déposition du Directeur de la Banque de Poitiers comme n'étant pas dûment authentiquée, et l'acte de renvoi ainsi que les autres pièces produites étaient exactement authentiquées comme la pièce qui avait été rejetée. Ainsi la copie de l'arrêt de renvoi venue de France, ainsi que la prétendue traduction n'étaient pas admises comme preuve, la traduction était déclarée par les Défenseurs de l'accusé incorrecte, à cause des blancs qui s'y trouvaient et d'autres termes qui nous paraissaient incorrects. Parlant des blancs, Mr. Coudert a dit alors qu'il avait laissé ces blancs, parce qu'il n'avait pas pu traduire les termes Français. Aucun expert n'a été entendu pour vérifier la traduction comme cela se fait ordinairement à New York. Comme Lamirande était parti et que l'affaire fut remise par Mr. Betts au 2 Septembre suivant pour le cas qu'il fût repris, je ne me suis plus occupé avant de venir ici, de la procédure du prisonnier. Dix ou douze jours passés Mr. Coudert est venu à mon office; il m'a dit qu'il avait été au bureau de Mr. Betts pour voir s'il ne trouverait pas le prétendu arrêt de renvoi, qu'il avait cherché dans ses papiers à lui-même et qu'il ne l'avait pas trouvé, qu'il venait voir s'il n'était pas dans mon dossier. Je lui ai dit que j'étais sur le point de déloger et que j'avais mis mes papiers dans des malles chez moi, où se trouvait le dossier de Lamirande. Je lui ai dit que je ne savais pas bien si j'avais eu la pièce, mais que mon impression était que je ne l'avais plus dans aucun cas, parce qu'il me semblait l'avoir vu à la Cour à la dernière audience. Mr. Coudert me demanda d'aller de suite chez moi pour voir. Je ne le pouvais pas, attendu que j'avais plusieurs clients qui venaient me consulter et qui étaient pressés. Que je verrais, que j'examinerais mes papiers et que je lui en donnerais des nouvelles le lendemain, et que si je trouvais la pièce et si je pouvais la lui remettre, que je le ferais. J'ai ajouté qu'il ferait bien d'aller chez Mr. Betts lui-même, qui était à la campagne, qui avait déjà plusieurs fois emporté les pièces avec lui à son domicile, et que si je ne la trouvais pas elle devait être là. Mr. Coudert m'a répondu qu'il n'avait pas le temps et qu'il était persuadé que je la trouverais. J'ai fait des recherches partout et je n'ai pas trouvé la pièce. Le lendemain j'allai conduire un Juge de la Cour Supérieure qui s'en allait en Angleterre, et j'ai fait dire par un de mes commis à Mr. Coudert que je n'avais pas trouvé la pièce, que je chercherais encore et que je la remettrais à Mr. Betts, à qui seul je pouvais la remettre si je la trouvais, car Mr. Coudert n'avait aucune autorité, et ne m'en avait point montré, pour avoir cette pièce en cas que je la trouvasse. J'aurais manqué à tous mes devoirs en la lui remettant. Je suis allé spontanément à la Cour de Mr. Betts pour voir s'il était là et pour lui demander s'il avait la pièce, et qu'en cas que je la retrouvasse ce que je devais en faire; il n'y était pas, on disait qu'il était à la campagne et ne reviendrait qu'en Septembre prochain. Mr. Coudert manifestait l'intention d'apporter cette pièce ici, à Montreal, de la soustraire ainsi à la Cour à laquelle elle appartenait, et je me serais rendu, en cas que je l'eusse eue, complice d'un crime en remettant, pour cet objet, la pièce à Mr. Coudert. Je ne pouvais la remettre qu'à Mr. Betts, toujours dans le cas qu'elle eût été en ma possession.

Q. Connaissez-vous la loi Française en général et spécialement en ce qui concerne la manière d'authentiquer les documents en France?

[Objecté par la Couronne. Objection renvoyée.]

R. Oui. Je suis né Français, j'ai fait une partie de mon cours de droit à Paris, j'ai assisté à beaucoup d'affaires en France. J'ai été admis avocat en Belgique, où j'ai pratiqué pendant plus de vingt ans comme avocat. A peu d'exceptions près les Codes Français et Belge sont les mêmes.

Q. Le document marqué B est-il authentiqué de telle manière qu'il justifierait l'arrestation du délinquant y mentionné en France sur la même accusation?—*R.* Pour la France on n'arrête des délinquants que sur des originaux. Si les originaux manquent il y a une disposition dans le Code d'Instruction Criminelle qui y pourvoit. Ces dispositions sont contenues dans les Articles 521, 522, 523, et 524:

L'Article 521 contient les dispositions suivantes: "Lorsque par l'effet d'un incendie, d'une inondation ou de toute autre cause extraordinaire, des minutes d'arrêt rendues en matières criminelles ou correctionnelles et non encore exécutées ou des procédures encore indécises auront été détruites, enlevées, ou se trouveront égarées, et qu'il n'aura pas été possible de les rétablir, il sera procédé ainsi qu'il suit:

"Article 522. S'il existe une expédition ou copie authentique de l'arrêt elle sera considérée comme minute et en conséquence remise dans le dépôt destiné à la conservation des arrêts. A cet effet tout officier public, ou tout individu dépositaire d'une expédition ou d'une copie authentique de l'arrêt est tenu, sous peine d'y être contraint par corps, de la remettre au Greffe de la Cour qui l'a rendu sur l'ordre qui en sera donné par le Président de cette Cour. Cet ordre lui servira de décharge envers ceux qui auront intérêt à la pièce. Le dépositaire de l'expédition ou copie authentique de la minute détruite, enlevée ou égarée, aura la liberté, en la remettant dans le dépôt public, de s'en faire délivrer une expédition sans frais.

"Article 523. Lorsqu'il n'existera plus, en matière criminelle, d'expédition ni de copie authentique de l'arrêt, si la déclaration du jury existe encore, en minute ou en copie authentique, on procédera d'après cette déclaration à un nouveau jugement.

"Article 524. Lorsque la déclaration du jury ne pourra plus être représentée ou lorsque l'affaire aura été jugée sans jury, et qu'il n'en existera aucun acte par écrit, l'instruction sera recommencée à partir du point où les pièces se trouveront manquer tant en minutes qu'en expéditions ou copies authentiques."

Q. Comment les dépositions de témoins doivent-elles être signées pour avoir aucune valeur en France?

[Objecté par la Couronne. Objection renvoyée.]

R. D'après les Articles 75 et 76 du Code d'Instruction Criminelle, les formalités suivantes sont requises:—

"Article 75. Les témoins prêteront serment de dire toute la vérité, rien que la vérité. Le Juge d'Instruction leur demandera leurs nom, prénom, âge, état, profession, demeure; s'ils sont domestiques, parents ou alliés des parties; il sera fait mention de la demande et des réponses des témoins.

"Article 76. Les dépositions seront signées du juge, du greffier et du témoin après que la lecture en aura été faite et qu'il aura déclaré y persister. Si le témoin ne veut ou ne peut signer, il en sera fait mention. Chaque page du cahier d'information sera signée par le juge et par le greffier."

L'Article 74 du même Code porte ce qui suit:—

"Ils représenteront" (entendant par là les témoins) "avant d'être entendus la citation qui leur aura été donnée pour déposer; et il en sera fait mention dans le procès-verbal."

Je dois ajouter qu'il s'agit des témoins entendus devant le Juge d'Instruction.

Q. D'après votre connaissance du droit Français, un huissier ou officier de la force publique pourrait-il arrêter un délinquant en France, avec un document du caractère de celui marqué B?

[Objecté par la Couronne. Objection maintenue.]

Q. Voulez-vous citer le texte de l'Article 147 de Code Pénal Français mentionné dans la pièce B?—*R.* L'Article 147 du Code Pénal Français dit:—

"Seront punis des travaux forcés à temps toutes autres personnes qui auront commis un faux en écritures authentiques et publiques, ou en écritures de commerce ou de banques, soit par contrefaçon ou altération d'écritures ou de signatures, soit par fabrication de conventions, dispositions, obligations ou décharges, ou par leur

insertion après coup dans ces actes, soit par addition ou altération de clauses, de déclarations ou de faits que ces actes avaient pour objet de recevoir et de constater.

"Article 148. Dans tous les cas exprimés au présent paragraphe, celui qui aura fait usage des actes faux sera puni des travaux forcés à temps."

Q. Les Articles 379, 386, 408, et 164 du Code Pénal Français ont-ils trait au crime de faux?—*R.* Non; l'Article 379 est relatif au vol; l'Article 386 est aussi relatif au vol avec circonstances aggravantes; l'Article 408 est relatif au détournement de fonds; l'Article 164 est relatif à une amende accessoire à la peine de faux.

Q. D'après ce que vous connaissez de la loi Française résulte-t-il un faux des faits consignés comme suit dans la pièce B, page 7:

"3. With having at Poitiers, on the 12th of March, 1866, fraudulently inserted on the balance-sheet signed by him, which it was his duty to establish and to certify every day in his capacity of cashier of the branch of the Bank of France, in order to state the cash account of said branch, the false declarations that the cash account on said day amounted to 11,440,556 francs 84 centimes, while it was in reality inferior to that amount by all the sums abstracted or embezzled by him, and having thus fraudulently altered the declarations and facts which this balance-sheet was to contain and establish?"

[Objecté par la Couronne. Objection maintenue.]

Q. Avez-vous eu avec M. Edme Justin Melin, Agent de Police, qui a déposé dans cette affaire, quelque conversation relativement aux conversations qu'il aurait eues lui-même avec le prisonnier à New York touchant l'accusation de faux portée contre le prisonnier? Si tel est le cas rapportez ce qu'il vous a dit.—*R.* Oui. Voici ce que je sais relativement à cela. Le prisonnier, M. Melin, moi et même Mr. Betts, étions ensemble chez Delmonico. Je fis l'observation à M. Melin que le prisonnier avait eu tort de quitter l'Angleterre, puisque là il ne pouvait être extradé que pour assassinat, pour faux et banqueroute frauduleuse, et que certainement on ne l'accuserait pas d'aucun de ces faits. M. Melin dit qu'en effet aucun de ces faits ne pouvait exister contre le prisonnier, mais qu'il aurait trouvé moyen d'avoir M. Lamirande en Angleterre, qu'il connaissait très-bien son métier, qu'il était chasseur d'hommes, qu'il chercherait son gibier et le trouverait par tous les moyens et qu'il le mangerait, voulant dire par là qu'il aurait sa récompense. M. Lamirande protestait hautement qu'il n'avait jamais commis de faux. Lorsque la première fois il fut parlé de l'accusation de faux à la Cour devant Mr. Betts, M. Lamirande se récria hautement que c'était une infamie, que jamais il n'avait commis de faux et qu'on ne pourrait pas prouver cela contre lui. Il a dit cela en présence de M. Melin et de beaucoup d'autres. Lorsqu'on produisit le prétendu arrêt de renvoi, M. Lamirande disait encore hautement qu'il ne pouvait pas en croire ses yeux, et moi-même j'ajoutai que je ne pensais pas qu'il y avait en France des Magistrats capables de voir là un faux; que c'était tout le contraire, à moins que ce ne fût un tour qu'on voulait jouer dans l'affaire Lamirande comme on avait déjà fait, neuf ans auparavant, dans l'affaire Carpentier, Grelet et Parrot et autres, où j'étais avocat et où Mr. Betts était commissaire, où ne pouvant obtenir l'extradition sur l'accusation de burglary on avait accusé les prisonniers de faux pour obtenir plus sûremen leur extradition; que là-dessus on avait obtenu l'extradition de Grelet, qui n'avai jamais été accusé ni condamné pour faux en France, mais condamné pour abus d confiance, pour lequel il n'y avait pas d'extradition; que je prierais Mr. Betts d'y faire une attention toute particulière si l'on venait avec cette accusation devant lui d'autant plus je disais à Mr. Betts, que le cas d'embezzlement, pour lequel on demandait l'extradition de M. Lamirande, n'était pas un cas d'extradition aux yeux de la loi Américaine, dans la position de M. Lamirande. Là-dessus, Mr. Coudert, qui a déposé ici, et qui était le principal avocat qui menait l'affaire, a dit qu'il me comprenait et qu'il n'entendait pas du tout demander l'extradition pour faux et même qu'il y renonçait expressément, il était entendu qu'on ne parlerait pas de faux. M. Melin était présent, il a entendu les protestations de M. Lamirande. Un ancien Procureur du Roi Français était présent; il a été entendu comme témoin dans l'affaire de la part de la défense, et qui disait qu'il ne pouvait pas comprendre qu'un tel arrêt fût rendu par des Magistrats Français dans un cas si clair où le faux n'était pas possible. M. Melin lui-même disait, en bon garçon qu'il est, que c'était absurde, qu'il n'y avait pas de faux là.

Q. Savez-vous si après l'arrivée à New York de la copie d'arrêt de renvoi dont la pièce B prétend être une traduction, M. Melin a eu aucune conversation à la prison avec le prisonnier, et s'il a pu avoir de telles conversations avec M. Melin sur

le faux après les conversations que vous venez de rapporter?—*R.* Sur la possibilité je ne pourrais rien dire, mais sur le sens moral je puis m'expliquer. Lorsque la procédure a commencé devant Mr. Betts au mois d'Avril, il n'y avait aucune question encore d'un arrêt de renvoi pour faux, ni de faux en aucune manière; personne n'en avait jamais parlé. On en avait d'autant moins parlé que la déposition du directeur de la Banque de Poitiers (qui était avec M. Lamirande) chez Mr. Betts avec un mandat d'arrêt attribué à Jolly, Juge d'Instruction à Poitiers, ainsi qu'une plainte au Procureur Impérial de Poitiers, plus une complainte de M. le Consul-Général Français à New York, avait été déposée pour l'arrestation de M. Lamirande chez Mr. Betts, il était expressément dit dans cette déposition du dit directeur qu'on pouvait aussi frauder la banque par altération d'écritures, mais que ce n'était pas là le cas avec M. Lamirande. Dans le mandat d'arrêt du dit Juge d'Instruction, ainsi que dans la plainte faite au Procureur Impérial, il n'était pas dit un mot du faux, et on ordonnait seulement l'arrestation de M. Lamirande pour détournement de fonds en citant les Articles 379 et 408 du Code Pénal Français, qui n'ont trait qu'au vol et au détournement de fonds. Jusqu'alors personne n'avait parlé de faux à M. Lamirande, puisque personne n'en avait connaissance; j'entends jusqu'au moment où pour la première fois M. Lamirande vint devant le Commissaire Betts; alors moi et les autres Conseils de M. Lamirande avons défendu à M. Lamirande de recevoir encore M. Melin, ou de lui parler encore en particulier. M. Melin a dit lui-même que M. Lamirande n'a plus voulu le recevoir, et notre refus était fondé sur ce que M. Melin par des promesses et des insinuations avait prétendu tirer de M. Lamirande des confessions contraires à sa position. M. Melin m'avait dit lui-même qu'il avait dit à Lamirande que s'il voulait tout avouer, et retourner, il serait moins puni, et que son père et ses parents étaient en prison à Poitiers. Mais M. Melin ajoutait qu'il le faisait par bienveillance pour le prisonnier.

Le déposant ne dit rien de plus pour le présent, sa déposition est continuée à demain, à 11 heures du matin, et le déposant a signé, lecture faite.

(Signé) C. L. SPILTHORN.

Assermentée, prise et reconnue par-devant moi à Montréal, ce 20me jour d'Août, 1866.

(Signé) W. H. Brehaut, P.M.

Avenant ce jourd'hui le 21me jour d'Août dans l'année de Notre Seigneur 1866, le déposant susnommé comparaît de nouveau devant le Soussigné, William H. Brehaut, Ecuyer, Magistrat de Police dans et pour le district de Montreal, et étant ré-assermenté en présence du prisonnier Ernest Sureau Lamirande, sa déposition est reprise et continuée comme suit:—

Je déclare en outre de ce que j'ai dit déjà et dépose qu'il n'est pas vrai que j'aie juré, que j'aie dit au témoin Coudert que je jurais de lui rendre la pièce dite arrêt de renvoi si je la trouvais, je ne me sers même jamais de ces expressions; je ne lui ai dit autre chose à ce sujet que ce que j'ai déposé hier. Il n'est pas vrai non plus que, comme le même Coudert l'a déposé, que j'ai demandé la dite pièce à Mr. Betts pour l'emporter, et si je l'ai prise avec moi, ce dont je ne me souviens pas exactement, c'est Mr. Betts lui-même qui me l'a volontairement remise. Je l'ai si peu demandée et prise, que pour vérifier la prétendue traduction offerte par Mr. Coudert, Mr. Clinton et moi, nous avons demandé une remise de l'affaire pour vérifier la dite traduction ainsi que les autres traductions offertes avec les pièces prétendument venues de France, y compris le prétendu arrêt de renvoi, au bureau de Mr. Betts, et c'est là-dessus que Mr. Coudert demandant à presser l'affaire et pour ne pas perdre de temps, que Mr. Betts m'a spontanément offert la pièce pour la prendre avec moi, et il n'est pas vrai non plus, comme le dit Mr. Coudert ici, que son frère ou lui ait fait la moindre objection, et je disais que je préférerais même de beaucoup vérifier les pièces dans le bureau de Mr. Betts.

Q. Dans une accusation de faux portée en France la production de la pièce arguée de faux est-elle nécessaire?

[Objecté de la part de la Couronne. Objection maintenue.]

Q. Après la clôture de votre examen hier, M. Melin vous a-t-il parlé de la déposition qu'il vous avait entendu faire? et veuillez rapporter ce qu'il vous en a dit.

[Objecté de la part de la Couronne. Objection maintenue.]

Q. M. Melin vous a-t-il dit hier après la clôture de votre déposition que vous

aviez exactement rapporté les conversations que vous aviez eues avec lui à New York?

[Objecté de la part de la Couronne. Objection maintenue.]

Le Conseil du prisonnier déclare n'avoir plus d'autres questions à poser au témoin produit par lui; la dite déposition est lue au déposant, qui déclare qu'elle contient la vérité et a signé.

(Signé) C. L. SPILTHORN.

Assermentée, prise et reconnue par-devant moi à Montreal, ce 21me jour d'Août 1866.

(Signé) W. H. BREHAUT, P.M.

Lecture ayant été faite de la déposition précédente, en présence du prisonnier Ernest Sureau Lamirande, M. Pominville, Conseil de la poursuite, déclare désirer poser au témoin les questions suivantes en contre-interrogatoire.

Q. Avez-vous agi comme défenseur de l'accusé Lamirande à New York durant tout le temps de la demande pour son extradition?—*R.* Oui.

Q. Quels étaient les autres défenseurs de l'accusé qui ont agi conjointement et de concert avec vous?—*R.* Mr. Clinton et Mr. Stalnecht.

Q. Combien de temps après l'arrestation de l'accusé Lamirande avez-vous été retenu comme son défenseur?—*R.* Depuis l'arrestation pour extradition jusqu'au moment où il est parti et même le 5 Juillet, puisque je me suis rendu à l'audience et il n'y était pas. Je me rappelle maintenant que quelque temps avant l'arrestation pour extradition j'avais été consulté par l'accusé. Lamirande avait été arrêté pour prétendu détournement de fonds d'abord au nom d'un banquier de Paris, dont on prétendait qu'il avait pris l'argent, et ensuite on a agi de ce chef pour la Banque de France, dont on prétendait alors qu'il avait détourné les mêmes fonds. Les frères Coudert étaient les avocats de la Banque de France et j'avais été consulté par Lamirande dans ce procès. Ceci était civilement.

Q. D'après la réponse que vous venez de donner doit-on comprendre que l'accusé Lamirande a été arrêté deux fois?—*R.* L'accusé Lamirande a été arrêté d'abord civilement et successivement, si je me rappelle bien, deux fois, c'est-à-dire, qu'il avait été arrêté une première fois et pendant qu'il était en prison on lui a signifié qu'il était arrêté une seconde fois. Je ne pourrais pas dire au juste ici s'il y a eu deux arrestations civiles; mais pour sûr il y en a eu une, et c'est pendant qu'il était arrêté ainsi civilement qu'un ordre d'arrestation a été donné contre lui pour extradition sur le fondement de détournement de fonds au préjudice de la Banque de France.

Q. Alors c'est sur le mandat d'arrêt pour détournement de fonds et pour l'extradition de l'accusé que vous avez agi comme Conseil, comme son défenseur?—*R.* J'ai agi comme Conseil dans le procès civil ainsi que dans la demande d'extradition.

Q. Dites-nous combien de temps après l'arrestation de Lamirande vous l'avez vu pour la première fois?—*R.* Il était arrêté depuis quelque temps civilement lorsque je l'ai vu et qu'il m'a consulté la première fois, peut-être huit, dix ou quinze jours après; peut-être plus ou peut-être moins. Je ne saurais le dire exactement.

Q. N'est-il pas vrai que la demande pour l'extradition de l'accusé Lamirande à New York ne reposait et n'a reposé que sur le détournement des déniers de la Banque de Poitiers et le crime d'embezzlement?—*R.* Je ne connais pas d'autre demande d'extradition contre M. Lamirande que pour détournement, et je ne puis pas appeler ici, comme je ne l'ai pas fait à New York, le prétendu "embezzlement," en langue Française un crime, ni en France ni aux Etats-Unis, mais simplement un délit dans le cas de Lamirande.

Q. Combien de temps a duré devant le Commissaire Betts l'instruction pour l'extradition de l'accusé Lamirande?—*R.* Je ne puis pas préciser exactement le jour qu'a commencé la procédure dans le mois d'Avril, mais c'était dans le mois d'Avril, et elle a duré jusqu'au 5 Juillet, après l'évasion d'accusé.

Q. Pendant le cours de cette instruction pour l'extradition de l'accusé Lamirande, n'est-il pas vrai qu'il a été produit devant le Commissaire Betts certain nombre de documents sur lesquels ce dernier a mis ses initiales?—*R.* Je crois que oui.

Q. Prenez communication de la pièce B produite en cette affaire, et dites si vous trouvez écrites les initiales du dit Commissaire Betts?—*R.* Je vois E, A, et B.

Je ne pourrais pas attester que ce sont là les initiales de Mr. Betts, mais j'ai beaucoup de doutes que ce soient là ses initiales, parce qu'il me semble d'après les initiales que j'ai vues de Mr. Betts, mais je n'en ai pas vu beaucoup, elles étaient plus nettement et plus fermement tracées. Je ne puis rien assurer là-dessus.

Q. Pouvez-vous jurer que les initiales qui se trouvent sur le document B ne sont pas les initiales de M. le Commissaire Betts?—*R.* Je ne jure rien là-dessus.

Q. Quand cette pièce a été produite devant le Commissaire Betts, les Conseils de l'accusé, MM. Clinton et Stalnecht, ont-ils fait quelqu'objection?—*R.* Je ne me souviens pas que cette pièce-ci ait jamais été produite devant le Commissaire Betts, car je ne l'y ai jamais lue ni vue moi-même; mais je sais que quand on a produit des prétendues traductions de la pièce que Coudert a appelée ici "arrêt de renvoi," ces traductions contenaient, comme je l'ai dit dans mon examen en chef, des blancs, et que Mr. Clinton et moi se sont opposés, et ont objecté à l'admission tant de la prétendue pièce venue de France qu'à la dite traduction d'icelle. Quant à Mr. Stalnecht, je crois qu'il n'était pas à l'audience, où il ne venait pas toujours.

Q. Connaissez-vous la distinction entre un arrêt de renvoi et un acte d'accusation en France?—*R.* Oui. L'arrêt de renvoi est rendu par la Chambre des Mises en Accusation, après instruction et investigation de la charge portée contre l'accusé. Lorsqu'un accusé est présent on est généralement plus circonspect et on entre dans plus de détails que lorsqu'il est absent, et en son absence cela se fait généralement assez légèrement. L'acte d'accusation est un écrit postérieur à l'acte de renvoi qu'a ordre de rédiger le Procureur-Général, et c'est sur cet acte d'accusation qui est signifié à l'accusé et qui est lu à la Cour d'Assises devant le jury que se fait la procédure criminelle contre l'accusé.

Q. L'arrêt de renvoi ne contient-il pas toutes les inculpations contre l'accusé?—*R.* Généralement; cependant s'il ressortait devant la Cour d'Assises d'autres faits que ceux contenus dans l'acte de renvoi, la Cour d'Assises se donne souvent le droit de le juger là-dessus.

Q. N'est-il pas vrai qu'à New York, durant l'instruction pour l'extradition de l'accusé Lamirande, des avocats Français ont été consultés ou examinés, tant de la part de la poursuite que de la défense relativement à la légalisation des pièces venues de France et produites dans l'affaire?—*R.* Oui.

Q. N'est-il pas vrai que nonobstant l'opinion exprimée par les défenseurs de l'accusé Lamirande, l'avocat Français produit de la part de la défense déclara que les pièces produites étaient suffisamment légalisées?—*R.* Si je me rappelle bien, il a déclaré le contraire, qu'elles ne l'étaient pas.

Q. Pouvez-vous jurer que cet avocat Français, examiné de la part de la défense, a déclaré que ces pièces n'étaient pas suffisamment légalisées pour être admises devant les tribunaux Français?—*R.* Au mieux de mon souvenir, il a dit que pour qu'une légalisation fût valable elle devait contenir ce qu'en dit M. Merlin dans le "Répertoire de Jurisprudence" au mot "Légalisation," et comme elles ne contenaient pas ces réquisites il disait qu'elles n'étaient pas suffisantes, comme légalisation.

Q. L'avocat Français, consulté de la part de la poursuite, a-t-il été de même opinion que celui dont vous venez de parler?—*R.* Je ne me souviens pas très-bien de ce qu'il a dit, mais pour autant que je me souvienne de ce qu'il a dit, étant transquestionné, qu'on ne pouvait en France agir que sur des pièces originales qui alors n'avaient pas besoin d'être légalisées dans leur ressort. Je dois ajouter qu'il était très-contradictoire dans ses réponses, et que Mr. Clinton l'a même traité de parjure en plaidant. C'était un homme qui n'agissait pas comme avocat, mais on douta beaucoup qu'il eut la qualité d'avocat.

Q. Sur le serment que vous avez prêté, n'est-il pas vrai que M. Catois, l'avocat Français consulté de la part de la défense, a admis devant le Commissaire Betts, devant le tribunal, qu'il y avait des cas où des dépositions légalisées telles que l'étaient celles produites, étaient reçues en France?

[Objecté de la part de la défense. Objection renvoyée.]

R. Je ne me souviens pas bien s'il a été interrogé là-dessus, ou ce qu'il a répondu; mais je sais bien qu'il a dit qu'en matière criminelle en France on ne pouvait recevoir que les pièces originales, et si elles étaient anéanties ou perdues, qu'on ne pouvait admettre des copies que comme il est prescrit par le Code d'Instruction Criminelle.

Q. Combien de temps avant l'évasion de l'accusé Lamirande de New York l'arrêt de renvoi a-t-il été produit devant le Commissaire Betts?—*R.* Au mieux de mon souvenir le Jeudi ou le Mercredi auparavant.

Q. Avant la production de cet arrêt de renvoi devant le Commissaire Betts avait-il été question d'inculpation de faux contre l'accusé Lamirande?—*R.* Non, pas à ma connaissance, à l'audience.

Q. Combien de temps après la production de cet arrêt de renvoi devant le Commissaire Betts l'avez-vous eu en votre possession?—*R.* Je ne me rappelle pas si je l'ai pris avec moi ou non. Si je l'ai eu avec moi, c'était à une des dernières audiences.

Q. Y a-t-il eu des correspondances échangées entre Mr. Coudert et vous relativement à cet arrêt de renvoi?—*R.* Mr. Coudert m'a écrit un billet le lendemain ou le surlendemain qu'il était venu chez moi pour demander la dite pièce.

Q. Savez-vous qu'un mandat d'arrêt a été lancé contre vous à New York relativement à la dite pièce, arrêt de renvoi, dont il a été question dans cette affaire?—*R.* Je n'en sais rien. Mr. Coudert l'a déposé ici.

Q. Comme avocat de l'accusé Lamirande vous avez soutenu, n'est-ce pas, à New York qu'il ne pouvait pas être extradé?—*R.* Oui, et je le soutiens encore.

Q. N'est-ce pas vous qui avez donné des instructions et fourni des renseignements au défenseur de l'accusé Lamirande ici, relativement à la demande pour son extradition?—*R.* Oui, j'en ai fourni quelques-unes.

L'avocat de la poursuite déclare n'avoir pas d'autres questions à poser au témoin et cet examen est clos, et après lecture faite le déposant a signé.

(Signé) C. L. SPILTHORN.

Prise et reconnue par-devant moi à Montréal ce 21me jour d'Août, 1866.

(Signé) W. H. BREHAUT, P.M.

DEFENSE.

Bureau de Police.

Province du Canada, District of Montreal.

La déposition d'Emile B. Morel, Ecuyer, Avocat de la ville de New York, dans l'Etat de New York, un des Etats-Unis d'Amérique, actuellement dans la cité de Montreal, dans le district de Montreal, prise sous serment ce 22me jour d'Août, dans l'année de notre Seigneur 1866, au Bureau de Police, dans le Palais de Justice, dans la cité de Montreal, dans le district de Montreal susdit, par le Soussigné, William H. Brehaut, Ecuyer, Magistrat de Police, dans et pour le district de Montreal, en présence d'Ernest Sureau Lamirande, ci-devant de Poitiers, dans l'Empire Français, qui est maintenant accusé devant moi, sur plainte portée devant moi sous serment en vertu des dispositions de la Convention entre Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande et Sa Majesté le Roi des Français, et des Statuts faits et pourvus à cet effet, d'avoir commis à Poitiers, dans l'Empire Français, le crime suivant mentionné dans et prévu par la dite Convention entre Sa Majesté la Reine et le dit Roi des Français, savoir:—

D'avoir le dit Ernest Sureau Lamirande commis le crime de faux, en ayant, en sa qualité de caissier de la succursale de la Banque de France à Poitiers, fait de fausses entrées dans les livres de la dite Banque et par ce moyen fraudé la dite Banque de la somme de 700,000 francs.

Le déposant Emile B. Morel dépose et dit comme suit:

Question. Avez-vous eu quelque rapport avec la poursuite qui a eu lieu à New York pour l'extradition du prisonnier en Avril, Mai, et Juin dernier?—*Réponse.* J'étais avocat particulier de M. Lamirande à New York, mais je ne paraissais pas en nom comme un de ses défenseurs devant le Commissaire Betts. Il me consultait dans son affaire d'extradition et dans ses autres affaires en général, J'ai assisté à presque toutes les séances qui ont eu lieu devant le Commissaire Betts. J'ai notamment assisté à une séance, je ne me souviens pas si c'est la dernière ou l'avant-dernière séance avant la fuite de Lamirande, et à cette séance Mr. Coudert, avocat de la poursuite, produisit un acte ou prétendue copie d'un prétendu arrêt de renvoi, ainsi qu'une prétendue traduction de la dite copie. Les défenseurs de l'accusé s'opposèrent à la réception de ces pièces; primo, parce que la prétendue copie du prétendu arrêt de renvoi n'était pas dûment légalisée; et, secundo, s'opposèrent à la réception de la traduction, parce qu'il y avait beaucoup de blancs et qu'elle était autrement incorrecte et inintelligible. Mr. Betts décida qu'il n'admettrait pas les pièces définitivement, qu'il réservait sa décision à cet égard. Les avocats de l'accusé demandèrent un délai, afin de pouvoir examiner les dites pièces et comparer la traduction faite par Mr. Coudert. Alors Mr. Betts répondit que

comme il ne désirait pas prolonger l'affaire plus longtemps par des délais, il priait Mr. Spilthorn d'emporter la pièce avec lui et que de cette manière-là les pièces pourraient être examinées de là à la prochaine séance. Je n'ai pas remarqué si Mr. Spilthorn a emporté la pièce oui ou non. Lorsque l'on produisit ce prétendu arrêt de renvoi qui accusait soi-disant M. Lamirande de faux, un cri universel retentit de toutes parts quant à l'absurdité d'une pareille accusation.

Q. Voulez-vous dire si le document produit devant Mr. Betts comme traduction du prétendu arrêt de renvoi était la même que la pièce B produite ici, et si c'était la même était-elle alors dans l'état où vous trouvez aujourd'hui la pièce B? —*R.* Je vous dirai que j'ai bien entendu dire par Mr. Clinton, qu'il y avait une masse de mots non traduits et en blanc dans la dite traduction de Mr. Coudert, ce dont Mr. Coudert convint, et qu'il attribua à l'impossibilité où il s'était trouvé de traduire ces mots, parce qu'il ne les comprenait pas exactement ; qu'il ne savait pas en apprécier leur exacte valeur ; mais quant à la pièce B, je ne puis pas dire l'avoir vue ; par conséquent, je ne sais pas si c'est celle-là ou pas. Je ne pourrais pas assurer positivement s'il y a eu une séance après celle où M. Spilthorn a été requis d'emporter la traduction pour la comparer, mais je ne le crois pas. Je sais qu'on s'est réuni une fois, mais il n'y a pas eu de séance, à cause de la maladie d'un des avocats. Je ne dis rien de positif à cet égard.

Q. M. Edme Justin Melin a-t-il exprimé en votre présence ce qu'il savait ou pensait de l'accusation de faux, soit à New York, soit ici?—*R.* M. Melin, comme tout le monde, a convenu de l'absurdité d'une pareille accusation ; il disait qu'on ne pouvait pas l'extrader pour faux, qu'il n'y avait pas là de faux. Ici à Montréal, à plusieurs reprises, devant d'autres personnes il a reconnu que tout ce que Mr. Spilthorn avait dit ici était vrai, et qu'il n'avait jamais voulu dire dans son témoignage que M. Lamirande s'était reconnu coupable de faux, qu'il avait seulement reconnu qu'on l'avait accusé de faux.

Q. M. Melin a-t-il été témoin à New York?—*R.* Non pas que je m'en rappelle. Je ne comprends pas comme témoignage les affidavits qu'il aurait pu donner ; et j'ignore s'il en a donné. Je veux seulement parler des témoignages oraux.

Q. Le prisonnier était-il accusé de faux à New York soit dans les procédés de son extradition soit dans les dépositions qui servaient de base à cette procédure? —*R.* Avant la production de la prétendue copie du prétendu arrêt de renvoi, on n'avait jamais parlé de faux. J'ai lu les différentes dépositions ou prétendues dépositions, qui étaient déposées au Greffe, et, entr'autres, la déposition de M. Bailly, l'un des Directeurs, je crois, de la Succursale de la Banque de France à Poitiers, dans laquelle déposition M. Bailly disait qu'on pouvait faire des détournements de fonds au moyen de faux, ou d'altérations dans les livres, et que tel n'était pas le cas avec M. Lamirande. Je n'ai nulle part vu le fait de faux bordereaux, ou même de fausses entrées, je crois, mentionnée. Il faut bien s'entendre que je parle des pièces déposées au Greffe à New York avant la production de la prétendue copie du prétendu arrêt de renvoi, car je n'aimerais pas qu'on dirait que je me contredis. Quand on a produit devant le Commissaire Betts la prétendue copie du prétendu arrêt de renvoi, le prisonnier s'est écrié hautement qu'il ne se reconnaissait pas coupable de faux ; que ce n'était pas un faux ; et les MM. Coudert eux-mêmes ont convenu qu'il n'y avait pas matière à faux, et qu'ils abandonnaient toute espèce de poursuite à cet égard.

Q. Connaissez-vous suffisamment les conditions des Traités d'Extradition entre la France et les Etats-Unis, pour dire si le faux est l'un des crimes pour lesquels l'extradition peut être respectivement demandée entre ces deux Puissances ?

[Objecté par la Couronne. Objection renvoyée.]

R. Oui ; le faux est l'un des crimes énumérés dans ces Traités.

Le Conseil du prisonnier déclare n'avoir pas d'autres questions à poser au témoin produit. Et le déposant, après lecture faite, déclare que sa déposition contient la vérité, y persiste et a signé.

(Signé) EMILE B. MOREL.

Assermentée, prise et reconnue par-devant moi à Montréal, ce 22me jour d'Août, 1866.

(Signé) W. H. Brehaut, P.M.

La déposition précédente ayant été faite et lue en présence du prisonnier, Ernest Sureau Lamirande, M. Pominville, Conseil de la poursuite, déclare désirer poser au témoin les questions suivantes en contre-interrogation :—

Q. Depuis quand êtes-vous avocat?—*R.* Je suis avocat depuis 1860.

Q. Depuis l'arrestation de Lamirande ici n'avez-vous pas été son aviseur et n'est-ce pas vous qui avez fourni à l'avocat qui le défend toutes les informations, renseignements, relativement à cette affaire?—*R.* Je suis un des conseils de Lamirande ici ; nous nous sommes consulté avec Mr. Doutre sur son affaire.

Q. Mr. Spilthorn, témoin, entendu de la part de la défense, est-il aussi conseil de l'accusé?—*R.* Je ne sais pas jusqu'à quel point Mr. Spilthorn se considère comme le conseil de l'accusé.

Q. Quel degré de parenté y a-t-il entre Mr. Spilthorn et vous?—*R.* Mr. Spilthorn est mon oncle. J'ai étudié la loi chez lui. Nous pratiquons dans le même bureau.

Q. Dois-je comprendre que vous êtes en société avec Mr. Spilthorn?—*R.* Oui et non.

Q. Dans votre examen en chef vous dites que vous avez agi à New York comme l'avocat particulier de Lamirande, dites-nous donc ce que vous entendez par là?—*R.* C'est-à-dire que M. Lamirande me consultait sur ses affaires en général en dehors de ses autres avocats.

Q. Combien de temps après l'arrestation de Lamirande à New York l'avez-vous vu pour la première fois?—*R.* Je ne sais pas si c'est quinze jours ou trois semaines après, mais je ne puis rien certifier de certain à cet égard.

Q. Dans quel temps a commencé l'instruction à New York pour l'extradition de Lamirande?—*R.* Je crois me rappeler que c'est dans le courant du mois de Mai. L'extradition était demandée pour le crime d'embezzlement, il n'était alors nullement question d'inculpation de faux, pas que je sache. Cette procédure pour l'extradition de l'accusé s'est continuée jusqu'à la fuite du prisonnier. J'ai entendu dire qu'il s'était enfui le 3 Juillet. L'instruction pour l'extradition du prisonnier tirait alors à sa fin.

Q. Combien de temps avant la fuite du prisonnier l'arrêt de renvoi a-t-il été produit devant le Commissaire Betts?—*R.* Je dis que je n'étais pas tout à fait certain, mais que je croyais que cela a été à la dernière ou à l'avant-dernière séance.

Q. Avez-vous lu l'arrêt de renvoi produit devant le Commissaire Betts?—*R.* Je ne me rappelle pas l'avoir lu.

Q. Avez-vous lu la traduction qui en a été faite?—*R.* Je ne m'en rappelle pas.

Q. Avez-vous vu les initiales du Commissaire Betts sur les pièces et documents produits devant lui dans l'affaire de Lamirande?—*R.* Je ne m'en rappelle pas.

Q. Les objections faites par les avocats de l'accusé relativement aux pièces produites ont-elles été couchées par écrit?—*R.* Je crois que oui, parce que c'est l'habitude de le faire.

Q. Mr. Clinton, l'un des avocats de l'accusé, parle-t-il le Français?—*R.* Je ne le sais pas.

Q. Avez-vous vu dans le bureau de Mr. Spilthorn ou le vôtre l'arrêt de renvoi dont vous avez parlé plus haut?—*R.* Non.

Q. N'est-il pas vrai que lorsque vous dites dans votre examen en chef "un cri universel retentit de toute part quant à l'absurdité de l'accusation de faux," vous n'entendez parler que des avocats de l'accusé?—*R.* J'entends parler aussi de M. Catois, un avocat très distingué de France, qui a dit qu'il ne comprenait pas comment des Magistrats Français pouvaient se prostituer à une pareille infamie que d'accuser ainsi indûment un individu de faux sachant qu'il n'y avait pas de faux possible d'après les lois Françaises. J'ai remarqué que tous excepté ceux intéressés dans la poursuite trouvaient la chose incroyable et absurde.

Q. Ce M. Catois n'était-il pas un des avocats consultés de la part de la défense?—*R.* Non, il ne l'était pas, car au contraire j'ai toujours entendu dire à M. Catois qu'il ne venait pas pour approuver les fautes que le prisonnier aurait pu commettre, mais qu'il venait simplement pour déposer devant et instruire le juge de ce qu'étaient les lois, le droit et la justice en France, qu'il le savait mieux que personne à New York pour ce genre d'affaires, parce que lui-même avait été Procureur du Roi en France pendant de nombreuses années.

Q. Combien y avait-il de personnes présentes au tribunal dans l'occasion où l'arrêt de renvoi a été produit?—*R.* Je ne les ai pas compté.

Q. A part les avocats tant de la poursuite que de la défense, et vous y compris, y avait-il plus de cinq personnes?—*R.* Je sais qu'il y avait plusieurs personnes, mais je ne puis pas répondre autrement avec certitude.

Q. Y avait-il plus de six personnes?—*R.* Je n'en sais rien.

Q. Y en avait-il plus de trois?—*R.* Je ne m'en rappelle pas ou plutôt je n'en sais rien, mais je pense que oui.

Q. N'est-il pas vrai que le nommé Melin, dont vous avez parlé dans votre examen en chef, vous a toujours dit qu'il n'accusait pas Lamirande, qu'il était accusé par la justice Française, et que par conséquent il croyait l'accusation fondée; et n'a-t-il pas ajouté aussi que la réponse que Lamirande lui avait faite concernant le faux indiquait implicitement qu'il se reconnaissait coupable?—*R.* Non, si je me rappelle bien il m'a toujours dit le contraire. Il m'a dit qu'il ne pouvait pas accuser Lamirande de s'être avoué coupable de faux puisqu'il ne s'était jamais avoué coupable; voilà ce qu'il m'a dit.

Q. Quand vous a-t-il dit cela?—*R.* Il me l'a dit hier encore, ici à la porte de la Cour; et je lui ai entendu dire différentes autres fois ici même et ailleurs, où nous demeurons, à l'Hôtel Jacques Cartier.

Q. Qui a invité Melin à aller à l'Hôtel Jacques Cartier, et pourquoi a-t-il été invité à s'y rendre?—*R.* Je ne me rappelle pas s'il y est venu de son propre gré ou s'il y a été invité, je n'en suis pas sûr.

Q. Rapportez les propres expressions dont s'est servi M. Melin lorsqu'il vous a parlé de l'inculpation de faux portée contre l'accusé?—*R.* Je crois me rappeler qu'il s'est servi des termes, ou à peu près des termes, mentionnés plus haut par moi. Je ne puis pas dire exactement mot par mot les expressions qu'il a employées.

Q. Sur le serment que vous avez prêté, n'est-il pas vrai que M. Melin vous a dit dans les occasions en question que lorsqu'il avait parlé à Lamirande de l'arrêt de renvoi qui l'inculpait de faux, Lamirande avait répondu: "Oui c'est vrai, je le sais"?—*R.* Je ne m'en rappelle pas. Je suis moralement certain du contraire.

Q. N'est-il pas vrai que le nommé Melin vous a dit que pour lui personnellement il ne pouvait accuser Lamirande de faux, mais que la réponse de Lamirande, en lui parlant de ce crime, "Je le sais bien," indiquait implicitement, dans la conviction de Melin, que Lamirande se reconnaissait coupable?—*R.* Je ne me rappelle pas que Melin m'ait jamais dit cela.

Q. Sur le serment que vous avez prêté, donnez les expressions dont s'est servi hier Melin quand il vous a parlé de l'affaire de faux?—*R.* Comme je l'ai déjà dit, je ne pourrais pas dire mot pour mot les expressions dont s'est servi Melin, mais je puis dire que les expressions qu'il a employées et la teneur des expressions qu'il a employées, et qu'il a à peu près littéralement employées, si pas littéralement, ont été celles-ci: "Je ne puis pas accuser Lamirande de s'être avoué coupable à moi, attendu qu'il ne s'est jamais avoué coupable à moi de faux."

Q. Melin était-il sous serment lorsqu'il vous a ainsi parlé?—*R.* J'aimerais que le savant avocat m'expliquât ce qu'il entend par être sous serment.

Q. Savez-vous si vous êtes sous serment et que vous avez donné votre déposition sous serment?—*R.* Oui, je sais que je suis sous serment et que j'ai donné ma déposition sous serment.

Q. Avez-vous aidé ou participé à l'évasion du prisonnier Lamirande de New York?—*R.* Je refuse de répondre à cette question, parce qu'elle est inconvenante, impertinente, indécente, sale, et indigne d'un avocat, et si j'avais plus d'épithètes dans ma bouche je les soumettrais encore dans ma réponse.

Le Conseil de la poursuite, M. Pominville, déclare n'avoir pas d'autre question à poser au témoin, et cet examen est clos. Et le déposant a signé, lecture faite.

(Signé) EMILE B. MOREL.

Prise et reconnue par-devant moi à Montréal, ce 22me jour d'Août, 1866.

(Signé) W. H. BREHAUT, P.M.

No. 3.

No. 3.

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

(No. 173.) Quebec, October 25, 1866.

MY LORD, (Received November 7, 1866.)

REFERRING to my despatches No. 155* of the 6th October, and No. 164,† of the 18th October, I have the honour to transmit, for your Lordship's information, three extracts from the "Montreal Herald" of September 25th, October the 18th, and October the 22nd, containing reports of what took place on those days in the Court of Queen's Bench at Montreal, respecting the necessity for notice in applications for the writ of *habeas corpus*.

I have, &c.

The Right Hon. the Earl of Carnarvon, &c. &c. &c.

(Signed) MONCK.

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* Page 1. † Page 12.

Inclosure in No. 3.

Extracts from the "Montreal Herald."

The Lamirande Case—Court of Queen's Bench.

THIS morning (September 25), before the Judge (Mr. Justice Drummond) took his seat, the Court was crowded with professional men and others, attracted by the expectation of a lively discussion respecting the Lamirande case.

Mr. Doutre, Q.C., said there was a reference in the charge to the Grand Jury in the Lamirande case. All the difficulty in this case had arisen from the practice of requiring twenty-four hours' notice in an application for writ of *habeas corpus*. In order to show the working of that rule and the necessity for its abrogation, he would communicate to the Court documents which would make it manifest that as long as that rule existed there was no human means of protecting the liberty of a person claimed under extradition Treaties. While the proceedings were going on before the Police Magistrate it was easily seen that, law or no law, Lamirande would be committed for extradition. In these circumstances and in view of the present rule, it was felt that there would be a surprise attempted, and to guard against this a petition was presented to his Excellency pointing out the facts of the case, and an acknowledgment was received stating that the petition had been referred to the Attorney-General East's department. To confine himself to written documents and not referring to what took place at Ottawa, he would read the following report:—

"On the 29th of August, 1866, the undersigned, Joseph Doutre, Q.C., and C. L. Spilthorn, attorney and counsellor at law, had the honour of meeting his Excellency the Governor-General of Canada, &c., at Quebec, in relation to the extradition of Ernest Sureau Lamirande, claimed by France as a fugitive criminal.

"In that interview his Excellency acknowledged that Mr. Spilthorn, one of the undersigned, having presented a petition from the said Lamirande to his Excellency about the 17th of August, 1866, in Ottawa, praying his Excellency that in case he (Lamirande) should be committed for extradition by the Police Magistrate then investigating the matter, he (Lamirande) should be allowed the necessary time to submit his case to higher tribunals for examination under a writ of *habeas corpus*. His Excellency had then and there told Mr. Spilthorn that ample time would be allowed to Lamirande for the purpose of submitting his case as mentioned in the said petition.

(Signed) "Joseph Doutre.
"Montreal, September 11, 1866." "C. L. Spilthorn.

To this the following acknowledgment was received:—

"Sir, "Quebec, September 12, 1866.

"I have the honour to inform you that I have laid the paper which you inclosed to me in your letter of the 11th instant before the Governor-General, and I am to acquaint you that it is therein correctly stated that his Excellency told Mr. Spilthorn that ample time would be allowed to Lamirande to obtain a writ of *habeas corpus* before the execution of the warrant for his extradition.

(Signed) "Denis Godley, Governor's Secretary."

His Honour said he had seen this official acknowledgment before bringing it as a fact before the Grand Jury.

Mr. Doutre said he presumed the reference in the charge was founded on that document. It was, however, matter of notoriety that notwithstanding all these precautions Lamirande was carried off. The facts connected with this case would have to come before this or some other tribunal. He had asked his Excellency's permission to lay the whole of the documents before the public, so that it might be seen what influence had been brought to bear to induce his Excellency to sign the warrant on the morning after the decision had been come to by the Police Magistrate. His Excellency, however, had himself expressed a desire that they should not be published, so that he felt relieved from the necessity of explaining how the warrant of extradition had been signed so hurriedly, notwithstanding the solemn promise of the Governor-General. In the case of persons remaining in gaol no prejudice could arise from the twenty-four hours' rule, but in this case it was very different. He had prepared a petition to abrogate this rule, which was in substance

that the case of Lamirande, forming part of the record of this Court, had shown that the notice of twenty-four hours for a writ of *habeas corpus* had been subversive of the effects of that writ in matters of extradition, and prayed that the rule should be abrogated for the future in cases of this kind.

Mr. Ramsay said that notice ought to be given before anything be done, so that the Attorney-General might take cognizance of it. It was a petition proposing a change of the whole practice of the Court, which had existed for years. It proposed to shorten the time which existed even in England, and the time here is not twenty-four hours, but one day. It would be better that the practice of giving no notice be adopted, and let the writ issue at once on application.

His Honour said that this was an error, and that a very serious mistake was committed on this point. The writ of *habeas corpus* was a writ of right, but did not issue as a matter of course. Most unjustifiable attacks had been made upon a Judge of this Court because he had not issued a writ of *habeas corpus*. The Judges took the law from the books, and not from scribblers in the newspapers. The opinion of Chief Justice Wilmot was worth more than that of men who had pronounced an opinion without having seriously studied the question. Of course the change would not be made without due consideration. There was much to be said on both sides, but care ought to be taken that no opportunity should be afforded of entrapping and carrying off men under plea of a legal difficulty. The petition would be considered, but he did not contemplate that there would be any change in the rule, except after due consideration by all the Judges of the Court.

From the "Montreal Herald" of October 18, 1866.

Presiding:—Mr. Justice DRUMMOND.

PRACTICE IN HABEAS CORPUS.

HIS Honour said that, seeing Mr. Doutre in Court, he wished to inform him that they all appeared to have been under a mistake regarding this matter, the petition stating that there was a rule of practice which he wished altered. There was, he found, no rule of practice in issuing these writs. After consultation with his colleagues, he would now say, that while there was no rule, yet that the Judges would follow the course hitherto pursued unless where a case was shown requiring haste, in which case the writ would at once issue, due notice being given to the Attorney-General as usual before any decision would be given.

Mr. Doutre said he had stated there was a practice which had the force of a rule. He would wish to be heard before any decision on the petition was given.

Mr. Ramsay said, we do not care about notice before the issue of the writ. He had always advocated the issuing of the writ immediate. There was a financial reason for the Crown desiring this.

COURT OF QUEEN'S BENCH.—SEPTEMBER TERM.

Present:—Their Honours Justices DRUMMOND, BADGLEY, and MONDELET.

October 20, 1866.

PRACTICE IN HABEAS CORPUS.

MR. DOUTRE, Q.C., applied to have a decision rendered on his petition to change the rule of proceeding in application for a writ of *habeas corpus*.

Their Honours severally stated that no rule existed on the subject further than that the writ might issue at once or notice be previously given in the discretion of the Judge before whom affidavits were laid. The practice of giving notice to the Crown had always been in existence, but whether the notice should be given before or after the issuing of the writ was in all cases matter for consideration. Each case must be judged by its merits. Mr. Doutre would therefore take nothing by his motion.

No. 4. No. 4.

Copy of a DESPATCH from Viscount Monck to the Right Hon. the Earl of Carnarvon.

(No. 174.) Quebec, October 25, 1866.

My Lord, (Received November 7, 1866.)

I HAVE the honour to transmit to your Lordship a copy of a letter which I have received from Mr. Doutre, who was Counsel for Lamirande in the legal proceedings that have lately taken place, together with a copy of the reply which I caused to be returned to it. All the documents in Lamirande's case are easily accessible to Mr. Doutre, except the opinions and reports of the Law Officers of the Crown; and in declining to communicate to him those opinions and reports, I believe that I have followed the invariable practice under similar circumstances, both in England and in Canada.

I have, &c.

The Right Hon. the Earl of Carnarvon, &c. &c. &c. (Signed) MONCK.

Inclosure 1 in No. 4. Inclo. 1 in No. 4.

Mr. Doutre to Viscount Monck.

My Lord, Montreal, October 24, 1866.

SINCE my letter of the 22nd instant, I have received through my agents in London an official notice of the request made to your Excellency by the Secretary of State for the Colonies, concerning the Lamirande extradition case. The absence of my client imposes upon me the duty of adopting measures of protection both in England and France; and I feel that I am quite inadequate to the discharge of that duty if I do not procure copies of the official documents which are sent or about to be sent to the Secretary of State for the Colonies. It will be obvious to your Excellency that I have no idea of asking copies of any remarks, reports, or communications from your Excellency to the Secretary of State; but I humbly submit that it would be an act of justice to my client to let me have copies of the other documents sent to England, in compliance with the request of the Secretary of State for the Colonies.

I have, &c.

To his Excellency the Governor of Canada, Quebec. (Signed) J. DOUTRE.

Inclosure 2 in No. 4. Inclo. 2 in No. 4.

Mr. Godley to Mr. Doutre.

Sir, Quebec, October 25, 1866.

I AM directed by the Governor-General to acknowledge the receipt of your letter of yesterday's date, and in reply I am to inform you that his Excellency is quite prepared to forward to the Secretary of State for the Colonies any statement which you may desire to place before him.

The documents in the case of Lamirande, which are records of the Court, can be obtained by you without any intervention, but the Governor-General must decline to give copies of any opinion given to his Excellency, or reports made by the Law Officers of the Crown.

I have, &c.

J. Doutre, Esq., Q.C., Montreal. (Signed) DENIS GODLEY.

No. 5.

No. 5.

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

(No. 175.) Quebec, October 25, 1866.

MY LORD, (Received November 7, 1866.)

I HAVE the honour to transmit herewith, at the request of Mr. Doutre, a letter which he has addressed to your Lordship, mentioning the documents which he believes are necessary to be laid before you, in order to enable you to form a correct opinion on the whole of Lamirande's case. All the papers marked in Mr. Doutre's letter with an asterisk, have already been sent to your Lordship in triplicate, and I now enclose, also in triplicate, copies of the other documents to which Mr. Doutre refers. The affidavits alluded to in the French Consul-General's application for Lamirande's extradition, which application is termed by Mr. Doutre a Requisition from the French Government, and marked 1 in his letter, will be sent to your Lordship by the next mail.

I have, &c.

The Right Hon. the Earl of Carnarvon, &c. &c. &c. (Signed) MONCK.

Inclosure in No. 5.

Inclosure in No. 5.

Mr. DOUTRE to the Earl of CARNARVON.

MY LORD, Montreal, October 22, 1866.

HAVING heard that our Colonial Authorities had been requested to transmit to the Colonial Office in England copies of papers connected with the Lamirande's extradition case, I beg leave to inform your Lordship that the record of the case to be complete, should include the following documents:—

1. Requisition from the French Government to his Excellency the Governor-General, for the extradition of Lamirande. Page 67.

2. Warrant of his Excellency, dated 26th July, 1866. Page 68.

3. Warrant of Police Magistrate, William H. Bréhaut, Esq., in obedience to the Governor-General's warrant. Page 69.

4. Petition of Felix Gastier, arrested under the name of Ernest Sureau Lamirande, to his Excellency the Governor-General, dated 3rd August, 1866. Page 70.

5. Letter of Denis Godley, Esq., under date 4th August, 1866, acknowledging the receipt of Petition No. 4 above. Page 70.

*6. Complaint of E. J. Melin, before Police Magistrate. Page 38.

*7. Deposition and cross-examination of the same Melin before the same. Page 39.

*8. Deposition and cross-examination of Abel F. Gautier before the same. Page 47.

*9. Deposition and cross-examination of Frédéric Coudert, before the same. Page 44.

*10. Deposition and cross-examination of Louis Léonce Coudert, before the same. Page 46.

*11. Deposition of Dubois de Jancigny, made in France. Page 34.

*12. Translation of a pretended *arrêt de renvoi*, issued out. Page 30.

*13. *Procès-verbal de saisie de pièce à conviction*, made in France. Page 37.

*14. Petition of E. S. Lamirande to his Excellency the Governor-General, dated 15th August, 1866. Page 70.

*15. Letter of H. Cotton, Esq., from the Governor-General Secretary's Office, acknowledging the receipt of petition No. 14 above. Page 72.

16. Deposition and cross-examination of C. L. Spilthorn, before the said Police Magistrate. Page 52.

17. Deposition and cross-examination of E. B. Morel, before the same. Page 59.

18. Voluntary examination of the prisoner. Page 60.

19. *Demande d'élargissement* "of release" by prisoner, 15th August, 1866. Page 71.

20. Commitment of E. S. Lamirande for extradition, by Police Magistrate, dated 22nd August, 1866. Page 72.

21. Petition of E. S. Lamirande for *habeas corpus*, dated 23rd August, 1866, with notice to T. K. Ramsay, Esq., of presentation, on the 24th August, 1866. Page 73.

22. Writ of *habéas corpus*, and return of the gaoler, 25th August, 1866. Page 75.

23. Warrant of extradition of his Excellency the Governor-General, dated 23rd August 1866 Page 76.

24. Affidavit of J. Doutre, before Judge Drummond, 24th August, 1866. Page 77.

25. Order left at the Montreal Gaol by the Honourable L. T. Drummond, one of the Judges of the Court of Queen's Bench, the 24th August, 1866. Page 77.

26. Warrant of Surrender by Deputy-Sheriff Sauborn, to the Gaoler, founded on his Excellency's Warrant of 23rd August, 1866, dated 24th August, 1866. Page 77.

27. Judgment of the Honourable L. T. Drummond, Judge of the Court of Queen's Bench, on the above petition for *habeas corpus*. Page 78.

28. Telegram from J. Doutre to his Excellency, from Montreal to Quebec, dated 30th August, 1866. Page 80.

29. Second telegram from the same to the same, 30th August, 1866. Page 81.

30. Third telegram from the same to the same, 30th August, 1866. Page 81.

31. Telegram from Denis Godley, Esq., to J. Doutre, from Quebec to Montreal, 30th August, 1866. Page 81.

32. Joint report of Messrs. J. Doutre and C. L. Spilthorn, of their interviews with his Excellency on the 29th August, 1866, said report dated 30th August, 1866, and sent in duplicate to his Excellency on the 8th September, 1866, with a letter of the last date from J. Doutre to D. Godley, Esq. Page 81.

33. Letter from D. Godley, Esq., acknowledging receipt of said report and letter No. 32 above. Page 84.

34. Second report of Messrs. J. Doutre and C. L. Spilthorn, of their interviews with his Excellency, dated 11th September, 1866, sent in duplicata to his Excellency, with letter from J. Doutre to D. Godley, dated 11th September, 1866. Page 84.

35. Letter from D. Godley to J. Doutre, acknowledging receipt of report and letter No. 34 above. Page 85.

36. Letter from J. Doutre to D. Godley, of the 13th September, 1866. Page 85.

37. Charge of L. T. Drummond, Judge of the Court of Queen's Bench, at the opening of the September term of the Court of Queen's Bench (Crown side), to the Grand Jury. Page 86.

38. Presentment of the Grand Jury to the same Court, on the 10th October, 1866, with papers accompanying said presentment. Page 88.

39. Motion of E. S. Lamirande by J. Doutre, his Counsel, to obtain copies of papers accompanying said presentment, with affidavit of J. Doutre, in support of that motion. Page 90.

I do not mention in the above list the petition of G. S. Cherrier, Esq.,* and others, to Her Majesty, and the papers accompanying it, as I suppose they have reached your Lordship in due time.

I have, &c.
(Signed) JOSEPH DOUTRE.

Lord Carnarvon, Secretary of State for
the Colonies, London.

No. 1.—Requisition from the French Government for the Extradition of Lamirande.

Monsieur, Quebec, le 18 Juillet, 1866.

J'AI l'honneur de vous adresser ci-inclus un affidavit fait par-devant M. le Juge Taschereau, de la Cour Supérieure à Québec, par le Sieur Edme Justin Melin, Inspecteur Principal de Police à Paris, à l'effet d'obtenir l'arrestation et l'extradition ensuite du nommé Ernest Sureau Lamirande, Caissier de la Succursale de la Banque de France à Poitiers, Département de la Haute-Vienne, Empire Français, lequel s'est rendu coupable non-seulement d'un vol de 700,000 francs au préjudice de cette Succursale de la Banque de France à Poitiers, mais aussi du crime de faux en écriture en falsifiant ses livres et son bordereau de situation, et faisant ainsi figurer comme présente dans sa caisse la somme volée de 700,000 francs, crime prévu par les dispositions du Traité d'Extradition conclu entre la France et Angleterre en Février 1843, dont je transcris ici une partie:

"By a Convention between Her Majesty the Queen of Great Britain and Ireland and the then Sovereign of France, signed at London on the 13th February, 1843, the ratifications whereof were exchanged at London on the 13th day of March in the same year, it was agreed that the High Contracting Parties should, on requisition made in their name through the medium of their respective Agents, deliver up to justice persons who being accused of the crimes of murder, forgery, or fraudulent bankruptcy, committed within the jurisdiction of the requiring party, should seek an asylum or should be found within the territories of the other."

* Printed at page 3.

"In order to carry the Convention into effect, the British Parliament, on the 22nd August, 1843, passed the Act 6 and 7 Vict., cap. 75, in which, after reciting the Convention, it is enacted that in case requisition be made pursuant to the Convention to deliver up to justice any person who being accused of having committed, after the ratification of the Convention, any of the above crimes within the territories and jurisdiction of His Majesty the Emperor of the French, shall be found within the dominions of Her Majesty, it shall be lawful for one of Her Majesty's Principal Secretaries of State, or in Ireland for the Chief Secretary of the Lord Lieutenant of Ireland, and in any of Her Majesty's Colonies or Possessions abroad for the officer administering the Government of any such Colony or Possession, by warrant under his hand and seal to signify that such requisition has been so made, and to require all Justices of the Peace and other Magistrates and officers of justice within their several jurisdictions to govern themselves accordingly, and to aid in apprehending the persons so accused and committing such persons to gaol for the purpose of being delivered up to justice according to the provisions of the said Convention."

"It shall be lawful for one of Her Majesty's Principal Secretaries of State, or in Ireland for the Chief Secretary of the Lord Lieutenant of Ireland, and in any of Her Majesty's Colonies or Possessions abroad for the officer administering the Government of any such Colony or Possession, by warrant, &c., to deliver up offenders to the authorities of France."

Je prends donc la liberté, M. le Secrétaire Provincial, de vous prier de vouloir bien requérir de son Excellence M. le Gouverneur-Général, en vertu des pouvoirs que lui confère la susdite Convention, le warrant nécessaire pour arrêter et extrader ensuite le susnommé Ernest Sureau Lamirande.

Je vous serai obligé de me faire parvenir ce warrant le plus tôt possible.

Je crois utile de joindre ici le mandat d'arrêt émané du tribunal civil de Poitiers, et dûment légalisé par le Consul de Sa Majesté Britannique à Paris. Veuillez, je vous prie, me renvoyer cette pièce avec le warrant du Gouverneur-Général.

Je saisis, &c.

Le Consul-Général de France,

A l'Hon. William Mac Dougall, Secrétaire Provincial.

(Signé) FRED. GAUTIER.

No. 2.—Warrant by the Governor-General.

Province of Canada.

(Seal.)

BY his Excellency the Right Honourable Charles Stanley Viscount Monck, Baron Monck, of Ballytrammon, in the county of Wexford, Governor-General of British North America, and Captain-General and Governor-in-Chief in and over the Provinces of Canada, Nova Scotia, New Brunswick, and the Island of Prince Edward, and Vice-Admiral of the same, &c.

To all and singular the Justices of the Peace and other Magistrates and Officers of Justice within their several jurisdictions in the Province of Canada, greeting:—

Whereas one Earnest Sureau Lamirande, late of Poitiers, in the French Empire, stands accused of the crime of forgery, by having, in his capacity of cashier of the branch of the Bank of France at Poitiers, made false entries in the books of the said Bank, and thereby defrauded the said Bank of the sum of 700,000 francs; and whereas a requisition has been made to me by the Consul-General of France in the Provinces of British North America, pursuant to the terms of a Convention between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the King of France, signed at London on the 13th day of February, in the year of our Lord 1843, to issue my warrant for the apprehension of the said Ernest Sureau Lamirande.

Now know ye, that I, Charles Stanley Viscount Monck, being Governor-General of the said Province of Canada, under the authority in me vested by the provisions of the statute passed by the Legislature of the United Kingdom of Great Britain and Ireland, in the session thereof held in the sixth and seventh years of Her Majesty's reign, intituled "An Act for giving effect to a Convention between Her Majesty and the King of the French for the Apprehension of certain Offenders," do by this my warrant require you, and each of you, the Justices of the Peace and Magistrates and officers of ustice within your several jurisdictions in the said

Province of Canada to aid in apprehending the said Ernest Sureau Lamirande so accused and committing him to any one of the gaols within the said Province of Canada, for the purpose of being delivered up to justice, according to the provisions of the said Convention.

Given under my hand and seal at arms at Ottawa, this 26th day of July, in the year of our Lord 1866, and in the thirtieth year of Her Majesty's reign.

(Signed) MONCK.

By command,

(Signed) E. PARENT, Assistant Secretary.

No. 3.—WARRANT of POLICE MAGISTRATE.

Police Office.

Province of Canada, District of Montreal,
City of Montreal.

To all or any of the Constables or other Peace Officers in the District of Montreal.

WHEREAS Ernest Sureau Lamirande, late of Poitiers, in the French Empire, now present in the city of Montreal, hath this day been charged upon oath before the undersigned William H. Brehaut, Esq., Police Magistrate in and for the district of Montreal, with the crime of forgery, by having, in his capacity of cashier of the branch of the Bank of France at Poitiers, made false entries in the books of the said bank, and thereby defrauded the said bank of the sum of 700,000 francs; and whereas a requisition has been made to his Excellency the Governor-General of this province by the Consul-General of France in the Provinces of British North America, pursuant to the terms of the Convention between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the King of the French, signed at London, on the 13th day of February, in the year of our Lord 1843, and the Acts of the Parliament of the United Kingdom of Great Britain and Ireland passed to give effect to the said Convention, to issue his warrant for the apprehension of the said Ernest Sureau Lamirande, accused of having committed the crime aforesaid after the ratification of the said Convention; and whereas, in compliance with the said requisition, his Excellency the Governor-General has, by warrant under his hand and seal, bearing date at Ottawa, in the said province, the 26th day of July, in the year of our Lord 1866, required each and every the Justices of the Peace and other Magistrates and officers of justice within their several jurisdictions in the said Province of Canada, to aid in apprehending and committing him, the said Ernest Sureau Lamirande, to any one of the gaols within the said Province of Canada, for the purpose of being delivered up to justice according to the provisions of the said Convention and the Acts to give effect thereto.

These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said Ernest Sureau Lamirande, and to bring him before me, or some other of Her Majesty's Justices of the Peace in and for the said district, to answer unto the said charge, and to be dealt with according to law.

Given under my hand and seal at the said Police Office, at Montreal, in the said district, this 6th day of August, in the year of our Lord, 1866.

(Signed) W. H. BREHAUT, P. M.

I, the undersigned Nazaire Caron, Constable, duly appointed in and for the district of Montreal, do hereby return, under my oath of office, that on the 7th day of August, 1866, in obedience to the within warrant to me delivered, I did, at the city of Montreal, in the district of Montreal, apprehend the within-named Ernest Sureau Lamirande, and brought him before William Henry Brehaut, Esq., Police Magistrate in and for the district of Montreal, from whence he was committed to gaol for further examination.

Montreal, August 7, 1866.

(Signed) N. CARON, Constable.

No. 4.—Petition of Felix Gastier.

Province of Canada, District of Montreal.

To the Right Honourable Charles Stanley, Viscount Monck, Baron Monck of Ballytrammon, in the county of Wexford, Governor-General of British North America, &c., &c., and Captain-General and Governor-in-Chief in and over the Provinces of Canada, Nova Scotia, New Brunswick, and the Island of Prince Edward, and Vice-Admiral of the same, &c., &c.

The Petition of Félix Gastier, arrested under the name of Ernest S. Lamirande, now detained in the common jail of the District of Montreal.

Respectfully represents,

THAT on Wednesday the 1st August instant your petitioner was arrested at La Prairie by the police of Montreal without any written warrant, at the request, it is said, of some representatives of the French Government, as the petitioner has been informed, upon the charge of embezzling money belonging to the Bank of France, where the said pretended Lamirande was cashier, and the petitioner also understands that the said representatives of the French Government are about to apply for a writ of extradition in order to have him the petitioner sent back to France.

That as the offence styled "embezzlement," with which the said petitioner is charged, is not mentioned in the Treaty between England and France, if any such Treaty is still in force, and does yet exist between the two countries, and as therefore it is impossible for them to obtain his extradition, they have resolved upon employing subornation, force and violence, unlawfully and without any right to kidnap the petitioner, and without any authority to send him to the United States or France. The petitioner has come to that conclusion from the fact that the police officers who arrested the petitioner have been offered several thousand dollars if they would kidnap him, and bring him to the United States, which the said police officers in the full sense of their duty sternly refused to do; and also from the fact that the parties directing the prosecution against the petitioner, have boasted that they would have the petitioner any how, whether lawfully or unlawfully, that they were bound to have him, and that they would have him, no matter by what means.

Upon such a state of facts the petitioner, knowing how jealous your Excellency is of the honour of England, here appeals to your Excellency in order that in this case due precautions be ordered to be taken, so that no unlawful act be committed, and that the law be strictly observed and impartially administered.

And your petitioner as in duty bound will ever pray.

Montreal, August 3, 1866.

For the Petitioner,
(Signed) DOUTRE AND DOUTRE, Attorneys.

No. 5.—Mr. Godley to Mr. Doutre.

Sir, Ottawa, August 4, 1866.

I AM directed by the Governor-General to acknowledge the receipt of the petition, dated the 3rd of August, of Felix Gastier, arrested under the name of Lamirande, and now detained in the gaol of the District of Montreal.

I have, &c.
(Signed) DENIS GODLEY, Governor's Secretary.

Joseph Doutre, Esq.,
&c., &c., &c., Montreal.

[Nos. 6 to 13, inclusive, will be found printed as inclosures to Lord Monck's despatch No. 164 of the 18th of October, page 12.]

No. 14.—Petition of E. S. Lamirande for Release.

Province du Canada, District de Montreal.

A son Excellence le Très Honorable Charles Stanley, Vicomte Monck, Gouverneur-Général de l'Amérique Britannique du Nord, et Capitaine-Général et Gouverneur-en-Chef des Provinces du Canada, Nouveau Brunswick, Nouvelle Ecosse et l'Ile du Prince Edouard, &c., &c.

La requête d'Ernest Sureau Lamirande, actuellement détenu dans la prison commune du district de Montréal,

Expose respectueusement,

QUE votre requérant est détenu dans la dite prison depuis le 1er du courant, en vertu d'un ordre émané sous la signature de W. H. Bréhaut, Ecuyer, Magistrat de Police, dans lequel ordre il est mentionné que le dit Wm. H. Bréhaut, Ecuyer, a émané le dit ordre, pour se conformer à un warrant émané sous la signature de votre Excellence, auprès de laquelle il paraîtrait que l'extradition de votre requérant aurait été sollicitée par quelques personnes prétendant agir au nom du Gouvernement de l'Empereur des Français, sous prétexte que votre requérant aurait commis en France le crime de faux.

Qu'entr'autres raisons dont l'énumération serait ici superflue, votre requérant ne peut être extradé:—

1. Parce que le Traité signé à Londres le 13 Février, 1843, entre l'Angleterre et la France, avait cessé d'exister dès le 4 de Juin dernier, longtemps avant l'arrestation de votre requérant, attendu que conformément à une disposition du dit Traité le Gouvernement Français a notifié au Gouvernement Anglais son désir d'y mettre fin, six mois avant le dit jour 4 Juin dernier.

2. Parce qu'il a été prouvé devant le dit W. H. Bréhaut, Ecuyer, que la seule personne qui ait sollicité et demandé l'extradition du prisonnier est M. Abel Frédéric Gautier, Consul-Général de France, résidant à Quebec, qui, de son propre aveu, ne possède aucun caractère et n'exerce aucune des fonctions d'Agent Diplomatique du Gouvernement Français, et que, d'après le dit Traité, l'extradition du requérant ne pouvait être demandée que par un Agent Diplomatique du Gouvernement de l'Empereur des Français.

3. Parce que d'après la section 3 de la loi passée par le Parlement Impérial (6 & 7 Victoria, cap. 75), pour organiser l'exécution du dit Traité, aucun juge de paix ou magistrat ne pouvait, nonobstant l'émanation du warrant de votre Excellence, ordonner l'appréhension de votre requérant, sans qu'il fût prouvé devant lui, sous serment, que la partie qui poursuivait l'extradition de votre requérant était porteur d'un mandat d'arrêt ou autre document judiciaire équivalent émané d'un juge ou d'une autorité compétente en France, authentiqué de telle manière que ce mandat d'arrêt ou document équivalent pût justifier l'arrestation du requérant, s'il était en France, et que votre requérant a été appréhendé et est encore détenu sans qu'aucun tel mandat d'arrêt ou document judiciaire équivalent ait jamais été en la possession de la partie requérant la dite extradition.

4. Parce que par la même loi (6 and 7 Victoria, cap. 75) il est de plus stipulé que pour que l'extradition soit ordonnée, le crime dont votre requérant est accusé soit clairement défini dans un mandat d'arrêt ou autre document judiciaire équivalent, émané de France, et que n'y ayant aucun tel mandat d'arrêt soumis au dit W. H. Bréhaut, Ecuyer, ce dernier ne peut juger du caractère de l'offense dont le prisonnier est accusé.

5. Parce qu'il est statué par la même loi que pour justifier le Juge de Paix ou Magistrat d'ordonner la détention (to commit) de votre requérant, il devra être fait devant lui une preuve suffisante pour justifier l'arrestation et la détention (apprehension and committal) de votre requérant s'il eût commis le crime dont il est accusé dans les limites des domaines de Sa Majesté le Souverain de la Grande Bretagne; qu'outre les moyens ordinaires de preuve résultant de la déposition de témoins qui connaîtraient personnellement les faits, la dite loi admet comme preuve les dépositions qui seraient faites en France et certifiées par le juge de qui serait émané le mandat de France pour arrêter le prévenu, et votre requérant met en fait qu'aucun témoin connaissant personnellement les faits n'a été entendu devant le dit W. H. Bréhaut et qu'aucune déposition assermentée et certifiée, tel que l'exige la dite loi, n'a été soumise au dit W. H. Bréhaut, Ecuyer.

6. Parce qu'en supposant que la procédure et les formalités exigées par le dit statut auraient été suivies et remplies, ce que votre requérant nie, il ne peut ressortir des faits irrégulièrement dévoilés devant le dit W. H. Brehaut, aucune accusation

de faux, soit selon les lois de France, soit selon celles de la Grande Bretagne, soit selon celles du Canada.

7. Parce que ceux qui sollicitent l'extradition de votre requérant ne pouvant faire loyalement usage du Traité susmentionné pour ramener votre requérant en France, attendu qu'il ne couvre pas l'offense que votre requérant aurait commise si les faits de l'accusation étaient vrais, ils tentent de faire un usage abusif et déloyal du dit Traité, en donnant ou essayant à donner aux faits reprochés à votre requérant la couleur d'un faux, tandis que tous ces faits ne pourraient constituer que l'offense désignée, en ce pays, sous le nom d'embezzlement.

8. Parce que les tentatives d'abuser ainsi des Conventions internationales et spécialement du Traité en question ont invariablement été condamnées et déjouées par les plus hautes autorités judiciaires de la Grande Bretagne, ainsi que le témoigne une décision récemment rendue en Angleterre par son honneur le Juge-en-Chef Cockburn, assisté de deux autres juges de son tribunal, *in re* Windsor (10, part ii, Cox's Criminal Cases, p. 118).

9. Parce que nonobstant tout ce qui précède, votre requérant a raison de croire que non-seulement la détention (committal) de votre requérant sera arbitrairement ordonnée, en violation de la loi, mais que des efforts seront faits pour surprendre la religion et bonne foi de votre Excellence pour obtenir un ordre d'extradition, avec une telle précipitation que votre requérant serait privé de l'occasion de soumettre sa cause à l'examen d'un tribunal supérieur au moyen d'un bref de *habeas corpus*.

A ces causes, votre requérant supplie votre Excellence de prendre les faits qui précèdent en votre sérieuse considération dans le cas où l'ordre de détention (committal) serait notifié à votre Excellence, dans le but d'obtenir de votre Excellence l'ordre de livrer (surrender) votre requérant au Gouvernement Français, et dans ce cas votre requérant supplie qu'il plaise à votre Excellence donner le temps et l'opportunité de soumettre les faits et le droit de sa cause à un juge ou tribunal compétent à juger de l'instance d'une manière satisfaisante, tant pour la dignité du Gouvernement de Sa Majesté la Reine de la Grande Bretagne et de cette colonie, que pour les intérêts de votre requérant.

Et votre requérant ne cessera de prier.

Montreal, 15 Août, 1866.

(Signé) DOUTRE AND DAOUST,
Avocats du Requérant.

No. 15.—Mr. H. Cotton to Messrs. Doutre and Daoust.

Governor-General Secretary's Office,
Sir, Ottawa, August 17, 1866.

I AM directed by his Excellency the Governor-General to acknowledge the receipt of the Petition of Ernest Sureau Lamirande, 15th August, and to inform you that it has been transferred to the Attorney-General for Lower Canada.

(Signed) H. COTTON,
For the Governor's Secretary.

Messrs. Doutre and Daoust, Montreal.

[Nos. 16 to 19, inclusive, will be found printed as inclosures to Lord Monck's despatch No. 164 of the 18th of October, 1866, page 12.]

No. 20.—Commitment of E. S. Lamirande.

Police Office.

Province of Canada, District of Montreal,
City of Montreal.

TO all or any of the constables or other peace officers in the said district of Montreal, and to the keeper of the common gaol at the said city of Montreal, in the said district of Montreal.

Whereas Ernest Sureau Lamirande, late of Poitiers, in the French Empire, now present in the city of Montreal, in the district of Montreal aforesaid, was this day charged before me, William H. Brehaut, Esquire, Police Magistrate in and for the district of Montreal, on the oath of Edme Justin Melin and others, with the crime of forgery, by having in his capacity of cashier of the branch of the Bank of France at Poitiers, on the 12th day of March, 1866, made false entries in the

book of the said bank, and thereby defrauded the said bank of the sum of 700,000 *francs*.

And whereas a requisition has been made to his Excellency the Governor-General of this province by the Consul-General of France in the Provinces of British North America, pursuant to the terms of the Convention between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the King of the French, signed at London on the 13th day of February, in the year of Our Lord 1843, and the Acts of the Parliament of the United Kingdom of Great Britain and Ireland, passed to give effect to the said Convention, to issue his warrant for the apprehension of the said Ernest Sureau Lamirande, accused of having committed the crime aforesaid after the ratification of the said Convention.

And whereas, in compliance with the said requisition, his Excellency the Governor-General has, by warrant under his hand and seal, bearing date at Ottawa, in the said province, the 26th day of July, in the year of Our Lord 1866, required each and every the Justices of the Peace and other Magistrates and officers of justice within their several jurisdictions in the said Province of Canada, to aid in apprehending and committing him the said Ernest Sureau Lamirande to any one of the gaols within the said Province of Canada, for the purpose of being delivered up to justice, according to the provisions of the said Convention and the Acts to give effect thereto.

And whereas it appears to the said Police Magistrate that the acts charged against the supposed offender are clearly set forth in a warrant of arrest or other equivalent judicial document issued by a competent Magistrate in France; and whereas divers persons have been examined upon oath before me touching the truth of the said charge; and whereas copy of a deposition taken in France touching the said charge duly authenticated has been produced and filed before me; and whereas such evidence would be, according to the laws of Canada, sufficient to justify the apprehension and committal of the said Ernest Sureau Lamirande, if the offence of which he is accused had been committed in Canada; and whereas the said Ernest Sureau Lamirande by himself and his Counsel has had full opportunity to cross-examine the said witnesses, and to adduce such evidence as he deemed advisable in his own defence.

And whereas the said Ernest Sureau Lamirande has not shown any good cause why he should not be committed for extradition according to the requirements of the said Convention and the laws passed to give effect thereto.

These are therefore to command you, the said constables or peace officers, or any of you, to take the said Ernest Sureau Lamirande, and him safely convey to the common gaol, at the city of Montreal aforesaid, and there deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said common gaol to receive the said Ernest Sureau Lamirande into your custody in the said common gaol, and there safely to keep him until he is delivered pursuant to the requisition aforesaid or by process of law.

Given under my hand and seal the 22nd day of August, in the year of Our Lord 1866, at the said city of Montreal, in the district aforesaid.

(Signed) W. H. BREHAUT, P.M.

No. 21.—Petition of E. S. Lamirande for Habeas Corpus.

Province du Canada, District de Montreal.

AUX honorables Juges de la Cour du Banc de la Reine siégeant dans le district de Montréal.

La requête d'Ernest Sureau Lamirande, actuellement détenu dans la prison commune du district du Montréal.

Expose respectueusement:

Que votre requérant est actuellement détenu dans la prison commune de ce district, en vertu de l'ordre de William H. Bréhaut, Ecuyer, Magistrat de Police, duquel ordre copie est ci-jointe et dans lequel il appert que votre requérant est détenu sur la demande qui a été faite de son extradition sous prétexte que votre requérant aurait commis en France le crime de faux.

Que la détention de votre requérant est illégale et arbitraire pour entr'autres raisons les suivantes:—

1. Parce que le Traité passé le 13 Février, 1843, entre les Gouvernements de France et Angleterre, et mis à exécution par l'Acte Impérial 6 et 7 Victoria,

chap. 75, a cessé d'exister le 4 Juin dernier, en conséquence de la signification faite par le Gouvernement Français au Gouvernement Anglais de son désir d'y mettre fin, plus de six mois avant le dit jour (4 Juin dernier) ainsi que pourvu dans le dit Traité.

2. Parce qu'il est prouvé que l'extradition du requérant n'a été demandée par aucun Agent Diplomatique du Gouvernement Français.

3. Parce que le Magistrat qui a ordonné l'appréhension et la détention (committal) de votre requérant n'a reçu aucune preuve que ceux qui poursuivent l'extradition du requérant sont porteurs d'un mandat d'arrêt ou autre document judiciaire équivalent émané d'un Juge ou autorité compétente de France.

4. Parce qu'en supposant que ceux qui poursuivent l'extradition du prisonnier requérant soient porteurs d'un tel mandat d'arrêt ou document équivalent, tel mandat ou document n'est pas authentiqué de manière à justifier l'arrestation du requérant s'il était en France.

5. Parce qu'en supposant que tel warrant ou mandat d'arrêt eut été prouvé être entre les mains de ceux qui poursuivent l'extradition du prisonnier et qu'il fut authentiqué de manière à justifier l'arrestation du requérant en France, la détention du requérant en vue de son extradition ne peut être légalement ordonnée, à moins qu'il ne soit fait devant le Magistrat ou Juge de Paix ordonnant telle détention, une preuve suffisante pour justifier l'appréhension et la détention ou emprisonnement du requérant, pour subir son procès, si le crime dont il est accusé avait été commis en Canada, et qu'aucune telle preuve n'a été faite.

6. Parce qu'en l'absence de preuve faite par des témoins qui connaîtraient personnellement les faits, la dite loi (6 et 7 Vict., chap. 75) autorise de recevoir en preuve les dépositions ou copies des dépositions prises en France, si elles sont certifiées par le Juge qui a émané le mandat d'arrêt en France, et si elles sont prouvées être de vraies copies par la personne que les produit, et qu'il n'a été produit aucun témoin connaissant personnellement les faits dont le requérant est accusé, non plus qu'aucune déposition certifiée par le Juge qui aurait émané tel mandat d'arrêt, si tel mandat existe, ce que nie le requérant, ni certifiée ou prouvée vraie copie par la personne produisant telle déposition.

7. Parce qu'en supposant que l'extradition de votre requérant eut été demandée par un Agent Diplomatique, et que toutes les formalités de la loi eussent été remplies, ce que nie votre requérant, les faits portés à la charge de votre requérant ne constitueraient pas, et ne peuvent constituer l'offense ou crime de faux, et que ces faits n'ont été qualifiés de faux que pour obtenir sous des prétextes simulés l'extradition du requérant, la loi de France, d'Angleterre et du Canada ne qualifiant en aucune manière les dits faits comme comportant un faux.

A ces causes votre requérant conclut à ce qu'il plaise à vos Honneurs, ou à l'un de vos Honneurs ordonner, qu'il émane sous l'autorité de vos Honneurs, ou de l'un de vos Honneurs, un writ d'*habeas corpus* enjoignant au geôlier de la prison commune de ce district de produire devant vous la personne de votre requérant, soit élargi et mis en liberté.

Et ferez justice.

Montréal, 23 Août, 1866.

(Signé) JOSEPH DOUTRE,
Avocat du Requérant.

A T. K. Ramsay, Ecr., Représentant le Procureur-Général.

Monsieur,

Avis vous est donné que la requête ci-dessus sera présentée en Chambre à tels Juges de la dite Cour du Banc de la Reine qui se trouveront là et alors présents, le 24me jour d'Août courant, à 1 heure de l'après-midi, au Palais de Justice, à Montréal.

Montréal, 23 Août, 1866.

(Signé) JOSEPH DOUTRE,
Avocat du Requérant.

Let Her Majesty's most gracious writ of *habeas corpus* issue, returnable immediately, at the Judges' Chambers before me.

Judges' Chambers, Montreal, August 25, 1866.

(Signed) LEWIS T. DRUMMOND, J.Q.B.

I, the Undersigned, one of the sworn bailiffs of Her Majesty's Court of Queen's Bench for Lower Canada, appointed and acting in and for the district of Montreal,

do hereby, under my oath of office, certify and return that I did, on the 23rd day of August, 1866, between the hours of 11 and 12 of the clock in the forenoon, serve the within original *requête* and *avis* on T. K. Ramsay, Esquire, Représentant le Procureur-Général, by speaking to and leaving true and certified copies thereof with Alfred De Beaumont, Esquire, Deputy Clerk of the Crown, at the office of the Clerk of the Crown, in the Court-house of the City of Montreal, where the said T. K. Ramsay, Esquire, keeps his office for the purpose of the object of said requête.

Montreal, August 23, 1866.

(Signed) JOHN HOOLAHAN,
Bailiff, Queen's Bench.

No. 22.—Writ of Habeas Corpus.

Province of Canada, District of Montreal.

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the Keeper of our Common Gaol for the District of Montreal, or to his Deputy or Deputies, and to each of them, greeting:— (Seal of Court of Queen's Bench, Lower Canada.)

WE command you that you have before the Honourable Lewis Thomas Drummond, one of the Justices of our Court of Queen's Bench for Lower Canada, at his chambers in the court house in our city of Montreal, immediately after the receipt of this writ, the body of Ernest Sureau Lamirande being committed and detained in our prison, under your custody (as it is said) together with the day and cause of the taking and detaining of the said Ernest Sureau Lamirande, by whatever name the said Ernest Sureau Lamirande be called in the same, to undergo and receive all and singular such things as our said justice shall then and there consider of him in that behalf, and that you have then and there this writ.

By virtue of chapter 95 of the Consolidated Statutes for Lower Canada, and *per statutum tricesimo primo Caroli Secundi Regis.*

(Signed)
Lewis T. Drummond,
J.Q.B.
(Low Stamp.)

In witness whereof we have caused the seal of our Court of Queen's Bench for Lower Canada to be hereunto affixed at our city of Montreal, this 25th day of August, in the thirtieth year of our reign.

(Signed) C. E. SCHILLER,
D. E. Clerk of the Crown.

The Return to the within writ appears by the Schedule hereunto annexed.

Montreal Gaol, this 25th day of August, 1866.

(Signed) LOUIS PAGETTE, Gaoler.

Province of Canada, District of Montreal.

Honourable Lewis T. Drummond, one of Her Majesty's Judges of the Court of Queen's Bench.

In answer to the writ of Her Majesty the Queen of this 25th day of August, commanding me to bring before your honour the body of Ernest Sureau Lamirande.

I beg to state that the above-named prisoner was by me delivered over to Edme Justin Melin, Inspecteur Principal de Police of Paris, last night at twelve o'clock, by virtue of an order signed by M. H. Sanborn, Deputy-Sheriff, grounded on an instrument granted by his Excellency the Governor-General, which order is in the words following, viz.:—

"To Louis Pagette, Gaoler of the Common Gaol of the District of Montreal, greeting:—

"By virtue of an instrument granted by his Excellency the Governor-General to deliver Ernest Sureau Lamirande, now confined in the said common gaol, to such person or persons as may be authorized in the name and on the behalf of the French Empire, to receive the same, and addressed to the Sheriff of the said district of Montreal, under date of the 23rd of August instant.

"You are hereby commanded and required to deliver the said Ernest Sureau Lamirande to Edme Justin Melin, Inspecteur Principal de Police of Paris, as being so authorized to receive the same, taking his receipt.

"Provided always, that the said Ernest Sureau Lamirande be detained for no other cause, matter, or thing than the crime of forgery committed by him at Poitiers, in the said French Empire, as specified in the said instrument.

"Hereof fail not at your peril.

"Given at Montreal, this 24th day of August, in the year of our Lord 1866.

(Signed) T. BOUTHILLIER,
Sheriff.
M. H. SANBORN,
Deputy Sheriff.

(Signed) LOUIS PAGETTE, Gaoler.

No. 23.—WARRANT of Extradition.

Province of Canada.

(Seal)

(Signed) MONCK.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, &c., &c.

To the Sheriff of the District of Montreal, in our province of Canada, greeting:—

WHEREAS Ernest Sureau Lamirande, late of Poitiers, in the French Empire, labourer, is now detained in the common gaol of our said district of Montreal, upon and by reason of a certain charge on oath, to wit, on a charge of having on the 12th day of March last, at Poitiers aforesaid, committed the crime of forgery by having, in his capacity of cashier of the branch of the Bank of France at Poitiers aforesaid, made false entries in the books of the said bank, and thereby defrauded the said bank of the sum of 700,000 francs.

And whereas the said Ernest Sureau Lamirande, not being one of our subjects, but being an alien, has, since the commission of the said crime, come into this province from the said French Empire, and the said crime of which he is accused, having been committed in the said French Empire, it is fit and expedient the said Ernest Sureau Lamirande may be made amenable to the laws of the said French Empire for the crime aforesaid.

We therefore command you that the body of the said Ernest Sureau Lamirande under your custody as aforesaid, you deliver to such person or persons as may be authorized in the name and on behalf of the said French Empire, to receive the same; provided always, that the said Ernest Sureau Lamirande be detained under your custody aforesaid, for no cause, matter or thing other than the crime aforesaid. And this you are not to omit at your peril.

In testimony whereof we have caused these our Letters to be made Patent, and the Great Seal of our said Province to be hereunto affixed, witness our right trusty and well-beloved cousin the Right Honourable Charles Stanley, Viscount Monck, Baron Monck of Ballytrammon, in the county of Wexford, Governor-General of British North America, and Captain-General and Governor-in-Chief in and over our Provinces of Canada, Nova Scotia, New Brunswick, and the Island of Prince Edward, and Vice-Admiral of the same, &c., &c., at Ottawa, this 23rd day of August, in the year of our Lord 1866, and in the thirtieth year of our reign.

By command,
(Signed) WM. McDOUGALL, Secretary.

Endorsed in the margin,

Recorded in the Office of the Registrar of the Province of Canada, this 23rd day of August, 1866, in lib. 15th of Pardons, &c., folio 212.

(Signed) GEO. H. LANE,
Deputy Registrar of the Province.

Endorsed on the back,

Received 24th August, 1866, and acted upon immediately.

(Signed) M. H. SANBORN,
Deputy Sheriff.

No. 24.—AFFIDAVIT of Mr. DOUTRE.

Dans l'affaire d'Ernest Sureau Lamirande, détenu pour Extradition.

Province du Canada, District de Montréal.

JOSEPH DOUTRE, Ecuyer, Avocat et Conseil de la Reine, étant assermenté, dépose et dit: Que dans le cours de la présente soirée, vers huit heures et demie, deux personnes sont venues trouver le déposant et l'ont informé que des faits qu'ils considéraient comme certains et consistant dans les préparatifs de départ de Justin Edme E. Melin, Officier de Police de Paris, et dans les déclarations de ce dernier, les avaient convaincus que le dit Ernest Sureau Lamirande allait être amené ce soir même par le dit J. E. Melin, par le chemin de fer du Grand Tronc, à Quebec, et de là sur le steamer en partance demain pour l'Europe; que l'élargissement du dit prisonnier est actuellement demandé aux Honorables Juges de la Cour du Banc de la Reine, sur divers motifs démontrant l'illégalité de la détention du dit prisonnier et que cette demande est pendante devant l'Honorable L. T. Drummond, l'un des dits honorables Juges; que si le dit prisonnier est enlevé en ce moment à la garde du geôlier de la prison de Montréal, le déposant est convaincu que c'est au moyen d'un procédé illégal et dans le but d'empêcher que justice soit rendue au dit prisonnier. En conséquence le déposant demande l'intervention des pouvoirs judiciaires pour empêcher que le dit prisonnier soit enlevé à la juridiction des juges saisis de cette affaire et a signé, lecture faite.

(Signé) JOSEPH DOUTRE.

Assermenté devant moi, à Montreal, le 24 Août, 1866.

(Signé) LEWIS J. DRUMMOND, J.B.R.

No. 25.—ORDER of JUDGE DRUMMOND.

To the Gaoler of the City of Montreal.

I HEREBY require and order you to give no obedience to any warrant or order which may be given to you by any Justice of the Peace, or any other authority, to deliver up or release from custody the prisoner Ernest Sureau Lamirande, until I shall have given my decision upon the demand for a writ of *habeas corpus* now pending before me in relation to the above-named prisoner.

Montreal, August 24, 1866.

(Signed) LEWIS T. DRUMMOND, J.Q.B.

No. 26.—WARRANT of Surrender by the Deputy Sheriff.

To Louis Pagette, Gaoler of the common gaol of the District of Montreal, greeting,

BY virtue of an instrument granted by his Excellency the Governor-General to deliver Ernest Sureau Lamirande, now confined in the said common gaol, to such person or persons as may be authorized in the name and on the behalf of the French Empire to receive the same, and addressed to the Sheriff of the said district of Montreal, under date of the 23rd day of August instant.

You are hereby commanded and required to deliver the said Ernest Sureau Lamirande to Edme Justin Melin, Inspecteur Principal de Police of Paris, as being so authorized to receive the same, taking his receipt, provided always that the said Ernest Sureau Lamirande be detained for no other cause, matter, or thing, than the crime of forgery committed by him at Poitiers, in the said French Empire, as specified in the said instrument; hereof fail not at your peril.

Given at Montreal, this 24th day of August, in the year of our Lord 1866.

(Signed) T. BOUTHILLIER,
Sheriff.

M. H. SANBORN,
Deputy Sheriff.

No. 27.—JUDGMENT of JUDGE DRUMMOND.

Province of Canada, District of Montreal.

In Chambers.—Friday, August 24, 1866.

Before the Hon. Mr. Justice Drummond.

In the matter of Ernest Sureau Lamirande for Writ of Habeas Corpus.

MR. DOUTRE, on behalf of Ernest Sureau Lamirande, presents a petition for Her Majesty's most gracious writ of *habeas corpus*, and is heard.

Mr. Ramsay on behalf of the Crown is heard.

This case is adjourned until the hour of eleven in the forenoon to-morrow.

Saturday, September 25, 1866.

Before the Hon. Mr. Justice Drummond.

In the matter of Ernest Sureau Lamirande.

On motion of Mr. Doutre, writ of *habeas corpus* issued, returnable in Chambers immediately.

At 3 o'clock P.M., Mr. Pagette, the gaoler, makes his return, which is received and filed. Mr. Schiller, Deputy-Clerk of the Crown, reads the writ of *habeas corpus* and return, likewise an order given to the keeper of the common gaol by the Honourable Mr. Justice Drummond, before the warrant of the Sheriff founded upon the last warrant of extradition had been served upon him, and before any knowledge thereof had been given to the judge.

This case stands until Monday, at the hour of eleven in the forenoon.

Monday, August 27, 1866.

Before the Hon. Mr. Justice Drummond.

In the matter of Ernest Sureau Lamirande.

This case stands adjourned until the hour of eleven in the forenoon to-morrow.

Tuesday, August 28, 1866.

Before the Hon. Mr. Justice Drummond.

In the matter of Ernest Sureau Lamirande.

The Honourable Mr. Justice Drummond pronounced the following judgment:—

On the 26th July last a document under the signature of his Excellency the Governor-General, purporting to be a warrant for the extradition of the petitioner, issued under the authority vested in his Excellency by the provisions of the statute passed by the Legislature of the United Kingdom of Great Britain and Ireland, in the sixth and seventh years of Her Majesty's reign, intituled, "An Act to give effect to a Convention between Her Majesty and the King of the French for the apprehension of certain offenders," setting forth that the said petitioner stood accused of the crime of "forgery, by having, in his capacity of cashier of the Branch of the Bank of France at Poitiers, made false entries in the books of the said bank, and thereby defrauded the said bank of the sum of 700,000 francs;" that a requisition had been made to his Excellency by the Consul-General of France in the Province of British North America, to issue his warrant for the apprehension of the said petitioner, and requiring all Justices of the Peace and other magistrates and officers of justice within their several jurisdictions, to aid in apprehending the petitioner, and committing him to gaol.

Under this document the prisoner was arrested, and after examination before William H. Brehaut, Esq., Police Magistrate and Justice of the Peace, was fully

committed to the common gaol of this district on the 22nd day of the current month of August.

On the following day, between the hours of 11 and 12 o'clock in the forenoon, notice was given in due form by the prisoner's counsel to the counsel charged with the criminal prosecutions in this district, that he (the said counsel for the prisoner) would present a petition to any one of the Judges of the Court of Queen's Bench who might be present in chambers at 1 o'clock in the afternoon of the following day (the 24th) praying for a writ of *habeas corpus* and the discharge of the prisoner.

At the time appointed this petition was submitted to me.

Mr. J. Doutre appeared for the petitioner, Mr. T. K. Ramsay for the Crown, and Mr. Pominville for the private prosecutor.

A preliminary objection, raised on the ground of insufficient notice, was overruled.

Mr. Doutre then set forth his client's case in a manner so lucid, that I soon convinced myself, after perusing the statute cited in warrant of extradition that the warrant itself, the pretended warrant of arrest alleged to have been issued in France,—*arrêt de renvoi*,—and all the proceedings taken with a view to obtain the extradition of the petitioner, were unauthorized by the above cited statute, illegal, null and void, and that the petitioner was therefore entitled to his discharge from imprisonment. But as Mr. Pominville, whom I supposed to be acting as counsel for the Bank of France, wished to be heard, I adjourned the discussion of the case until the following morning. I would have issued the writ before adjourning, had the counsel for the prisoner insisted upon it. But that gentleman was no doubt lulled into a sense of false security by the indignation displayed by the counsel for the Crown, when Mr. Doutre signified to me his apprehension that a *coup de main* was in contemplation to carry off the petitioner before his case had been decided.

On the following morning (Saturday, the 25th of this month), I ordered the issuing of a writ of *habeas corpus* to bring the petitioner before me, with a view to his immediate discharge.

My decision to discharge him was founded upon the reasons following:—

1st. Because it is provided by the first section of the Act of the British Parliament, to give effect to a Convention between Her Majesty and the King of the French, for the apprehension of certain offenders (6 and 7 Vic., cap. 75); that every requisition to deliver up to justice any fugitive accused of any of the crimes enumerated in the said Act, shall be made by an ambassador of the Government of France, or by an accredited diplomatic agent; whereas the requisition made to deliver up the petitioner to justice has been made by Abel Frederic Gautier, Consul General of France, in the Provinces of British North America, who is neither an ambassador of the Government of France, nor an accredited diplomatic agent of that Government, according to his own avowal upon oath.

2nd. Because, by the third section of the said statute, it is provided that no Justice of the Peace or any other person shall issue his warrant for any such supposed offender until it shall have been proved to him, upon oath or affidavit, that the person applying for such warrant is the bearer of a warrant of arrest or equivalent judicial document, issued by a judge or competent magistrate in France, authenticated in such manner as would justify the arrest of the supposed offender in France upon the same charge, or unless it shall appear to him that the act charged against the supposed offender is clearly set forth in such warrant of arrest or other judicial document; whereas the Justice of the Peace who issued his warrant against the petitioner, issued the same without having any such proof before him, the only document produced before him, as well as before me, in lieu of such warrant of arrest or equivalent judicial document, being a paper writing alleged to be a translation into English of a French document made by some unknown and unauthorized person in the office of counsel for the prosecutor at New York, and bearing no authenticity whatever.

3rd. Because, supposing the said document purporting to be a translation of an *acte d'accusation* or indictment, accompanied by a pretended warrant for arrest, and designated as an *arrêt de renvoi*, to be authentic, it does not contain the designation of any crime comprised in the number of the various crimes for or by reason of the alleged commission of which any fugitive can be extradited under the said statute.

4th. Because, by the first section of the said act, it is provided that no Justice of the Peace shall commit any person accused of any of the crimes mentioned in the said Act, to wit, murder, attempt to commit murder, forgery, and fraudulent

bankruptcy, unless upon such evidence as, according to the laws of that part of Her Majesty's dominions in which the supposed offender shall be found, would justify the apprehension and committal for trial of the person so accused, if the crime of which he shall be accused had been there committed. Whereas the evidence produced against the petitioner upon the accusation of forgery brought against him before the committing magistrate would not have justified him in apprehending or committing the petitioner for the crime of forgery, had the acts charged against him been committed in that part of Her Majesty's dominions where the petitioner was found, to wit, in Lower Canada.

5th. Because the said warrant for the extradition of the petitioner, as well as the warrant for his apprehension, does not charge him with the commission of any one of the crimes for which a warrant of extradition can be issued under the statute, inasmuch as in both of the said warrants the alleged offence is charged against the petitioner as "forgery by having, in the capacity of cashier of the branch of the Bank of France at Poitiers, made false entries in the books of the bank, and thereby defrauded the said bank of the sum of 700,000 francs."

Whereas the said offence as thus designated does not constitute the crime of forgery according to the laws of England and Lower Canada, for, to use the words of Judge Blackburn when he pronounced judgment concurrently with Chief Justice Cockburn and Judge Shee, in a case analogous to this (*ex parte* Charles Windsor, Court of Queen's Bench, May 1865),—"Forgery is the false making of an instrument purporting to be that which is not, it is not the making of an instrument purporting to be that which it is; it is not the making of an instrument which purports to be what it really is, but which contains false statements. Telling a lie does not become a forgery because it is reduced to writing."

The gaoler's return to this writ of *habeas corpus* was that he had delivered over the prisoner to Edme Justin Melin, Inspecteur Principal de Police de Paris, on the night of the 24th instant, at 12 o'clock, by virtue of an order signed by Mr. H. Sanborn, Deputy-Sheriff, grounded upon an instrument signed by his Excellency the Governor-General.

It appears that the petitioner thus delivered up to this French policeman is now on his way to France, although his extradition was illegally demanded, although he was accused of no crime under which he could have been legally extradited, and although, as I am credibly informed, his Excellency the Governor-General had promised, as he was bound in honour and justice, to grant the petitioner an opportunity of having his case decided by the first tribunal of the land before ordering his extradition.

It is evident that his Excellency has been taken by surprise, for the document signed by him is a false record, purporting to having been signed on the 23rd instant at Ottawa, while his Excellency was at Quebec, and falsely certified to have been recorded at Ottawa before it had been signed by the Governor-General.

In so far as the petitioner is concerned I have no further order to make, for he whom I was called upon to bring before me is now probably on the high seas, swept away by one of the most audacious and hitherto successful attempts to frustrate the ends of justice which has yet been heard of in Canada.

The only action I can take in so far as he is concerned is to order a copy of this judgment to be transmitted by the Clerk of the Crown to the Governor-General for the adoption of such measures as his Excellency may be advised to take to maintain that respect which is due to the Courts of Canada and to the laws of England.

As to the public officers who have been connected with this matter, if any proceedings are to be adopted against them they will be informed thereof on Monday, the 24th day of September next, in the Court of Queen's Bench, holding criminal jurisdiction, to which day I adjourn this case for further consideration.

No. 28.—Telegram from Mr. Doutre to his Excellency the Governor-General.

Montreal, August 30, 1866.

MR. DOUTRE has the honour to submit the name of the Solicitor he intends intrusting with the case of Lamirande in London: Mackenzie, Treherne and Trinden, 77, Gresham House, Old Broad Street.

(Signed) JOSEPH DOUTRE.

No. 29.—TELEGRAM from Mr. DOUTRE to his Excellency the GOVERNOR-GENERAL.

Montreal, August 30, 1866.

MR. DOUTRE has the honour to ask your Excellency if it would please your Excellency to cause the following telegram to be sent at public expense through the Atlantic Cable, and favour Mr. Doutre with an answer.

"MACKENZIE, TREHERN, and TRINDER, Solicitors, London.

"Montreal, August 30, 1866.

"Ernest Sureau Lamirande, kept by E. Justin Melin and Joseph Sipling, on steam-ship 'Damascus,' Somers Watts, master, due Londonderry, 3rd September. Stop him by *habeas corpus;* have his rendition suspended, as illegal papers mailed. I perhaps going.

(Signed) "JOSEPH DOUTRE."

No. 30.—TELEGRAM from Mr. DOUTRE to his Excellency the GOVERNOR-GENERAL.

Montreal, August 30, 1866.

MR. DOUTRE has the honour to ask your Excellency to have the following words added at the end of his telegram to Mackenzie and Co., in case it should be transmitted as asked by previous telegram:—

"See Lord Carnarvon."

(Signed) JOSEPH DOUTRE.

No. 31.—TELEGRAM from Mr. GODLEY to Mr. DOUTRE.

Quebec, August 30, 1866.

LORD MONCK cannot send message at public expense.
He has already notified the Colonial Secretary by telegraph.

(Signed) DENIS GODLEY.

No. 32.—Mr. DOUTRE to Mr. GODLEY.

Sir, Montreal, September 8, 1866.

ENCLOSED you will find the joint report of Messrs. Doutre and Spilthorn, of their interviews with his Excellency on the 23rd August last in Quebec. You will oblige by submitting it to his Excellency for remarks, if necessary. I intend sending a duplicate of that report to England, and to publish it in Canada, as some newspapers persist in qualifying as a fabrication the report made by Mr. Spilthorn of his Excellency's promise in Ottawa of allowing to Lamirande the time necessary for applying to higher tribunals. Considering that Lamirande might suffer from the doubts expressed by some newspapers about that promise, you will please submit to his Excellency that I cannot, for the sake of minor considerations, let my client suffer from my silence.

I intend sending that report to England on Wednesday next. If I do not receive any observations upon it before then, I will consider that there are none to expect.

If there was no objection to communicate to me the telegram of his Excellency to the Colonial Secretary, in relation to Lamirande, I would be exceedingly obliged for it.

I have, &c.

Denis Godley, Esq., (Signed) JOSEPH DOUTRE.
&c., &c., &c., Quebec.

JOINT REPORT from Messrs. J. DOUTRE, Q.C., and C. L. SPILTHORN, Attorney and Counsellor-at-Law, of their Interviews with his Excellency the GOVERNOR-GENERAL of CANADA on the 29th of August, 1866, in Quebec.

Montreal, August 30, 1866.

THE 29th of August, 1866, being a very stormy day, and their being no probability that his Excellency would come to his office in town, where Messrs. Doutre and Spilthorn had enquired for him in the morning, Messrs. Doutre and Spilthorn started for Spencer Wood, where they were received by his Excellency about 12 o'clock.

On meeting them, his Excellency said, that he understood the object of their visit, that no man had felt more aggrieved than himself at the wrong he had been instrumental in inflicting upon Lamirande.

Mr. Doutre then observed, that if the warrant of his Excellency surrendering Lamirande to France, had been the result of deliberation on the part of his Excellency, there would have been an immediate end to the interview, as their object in coming from Montreal was neither to blame his Excellency nor to discuss his action in the matter. But in such case he, Mr. Doutre, would be in the painful necessity of doubting the word of Mr. Spilthorn, when he reported that his Excellency had given him the verbal promise of allowing to Lamirande the time required for submitting his case on *habeas corpus* to higher tribunals.

His Excellency there interrupted to say that Mr. Spilthorn had correctly reported the result of their interview in Ottawa, and that his Excellency had really promised to act as required in the petition of Lamirande.

"Then," continued Mr. Doutre, "I will feel at liberty to state the series of facts which have induced me and my companion to disturb your Excellency in his private residence. We have come from Montreal to see if there would be any means of redressing the effects of the execution of your Excellency's warrant, which had brought a deplorable conflict between the executive and judicial powers of the State."

"I saw that too late, unfortunately," said his Excellency, "to prevent that conflict, but it was far from being premeditated on my part. I will tell you, frankly, how the thing happened. Although the matter rested almost entirely with me, you understand that I would not undertake to decide upon a matter of law without acting under the advice of my constitutional legal advisers. On the 23rd day of this month, Mr. Solicitor-General Langevin brought me that warrant to have it signed. I told Mr. Langevin that I had promised the Attorney of the prisoner ample time to submit his case under a writ of *habeas corpus*, that if the warrant tendered for my signature should have the effect of interfering in the least with the application for *habeas corpus*, I would certainly not sign it. Mr. Langevin told me that the warrant would not interfere with or prejudice the proceedings adopted or to be adopted by the prisoner; that the warrant was only intended to be used when the application for *habeas corpus* would be disposed of, and in case it would not be granted. I have not seen Mr. Langevin since, but I must hear what he has to say. He is responsible to me for his advice, and he must explain how he has brought me into this painful and false position. If it would not inconvenience you, meet me at my office at 2 o'clock. I will be pleased to see you. In the meantime if you can suggest any practical means of redressing the wrong I have been instrumental in inflicting upon the man, I will be very much obliged to you."

When Mr. Doutre related how it had been ascertained that the Attorney-General's partners in business had been connected with the execution of the plan which had resulted in the taking away of Lamirande, pending the demand of release under *habeas corpus*, the participation of the Deputy-Clerk of the Crown and of the Crown Prosecutor in the execution of the plan, every one of them knowing the existence of the proceedings for *habeas corpus*, the preparation of a draft of his Excellency's warrant by the Crown Prosecutor, and the copying of it on parchment by the Deputy-Clerk of the Crown, even before the decision of the Police Magistrate had been rendered, the receiving of the fees from the prisoner on the petition for a writ of *habeas corpus* by the same Deputy-Clerk of the Crown, the Presence of the same Deputy-Clerk of the Crown, and of the Crown prosecutor at the presentation of the petition on the 24th August; the participation of both of them in the proceedings for *habeas corpus*, and after all this the visit of the same Deputy-Clerk of the Crown at the residence of the Deputy-Sheriff during the night of the 24th and 25th of August, with the Attorney-General's partner, the High Constable, and French detective Melin, to

obtain an order grounded on his Excellency's warrant; the whole showing that all and every one of them had conspired together to bring his Excellency in disrepute, by treacherously causing his Excellency to commit a breach of his royal promise, and to set at defiance the authority of the Court of which they, the Deputy-Clerk of the Crown, the Crown Prosecutor, and the High Constable, were servants in their respective sphere of action. Mr. Doutre observed, moreover, that knowing the antecedents of three of the parties concerned in this disgraceful transaction, knowing that the Police Magistrate and the Deputy-Clerk of the Crown had already been dismissed from office for malversation in and breach of public trust, and that the Crown Prosecutor had also been dismissed from office for disobedience and insolence to his superior officers, knowing that the same parties had been reinstated in office without having in any way removed the causes of their respective dismissal, and exclusively through the influence of the Attorney-General; he knew from the first that each and all of them would be subservient tools in the hands of the Attorney-General's partners, and from the beginning he anticipated that nothing short of the fair dealings of his Excellency could protect his client from all kinds of attempt to evade law and justice on the part of the Attorney-General's partners, aided and abetted by those officials. The result has proved that this anticipation did not yet reach the full height of the conspirators' knavery, since the high and regal position of his Excellency did not stop them in their nefarious designs. This will not be the last his Excellency would hear from the doings of the same parties. A few weeks ago the same Crown Prosecutors had abused his Excellency's warrant in another case of extradition. A man of the name of Merrit having been committed for extradition, the nullity of his commitment was raised under a writ of *habeas corpus*, while his Excellency's warrant was asked for upon this same commitment. When his Excellency's warrant arrived at Montreal the commitment was quashed, and the release of the prisoner ordered; but another commitment was secretly obtained, and upon this second commitment his Excellency's warrant, which must have been anterior in date, was used to extradite the prisoner.

"Having thus shown to your Excellency," continued Mr. Doutre, "how justice is administered in Montreal, I will now state to your Excellency the practical object of our visit. We intend telegraphing to London through the Cable, to some solicitors to take proceedings to suspend the rendition of Lamirande if he is landed in England. But there our agents will have to fight against your Excellency's warrant without any paper to show why that warrant should not be fully executed, since your Excellency has been deceived. We would humbly submit that your Excellency should help us in preventing that violation of the law. As to the form under which your Excellency might help us, we would leave your Excellency to decide."

Then his Excellency told us that he would be willing to telegraph immediately to Lord Carnarvon, the Secretary for the Colonies, informing him of the illegality of Lamirande's extradition, and praying him to give to our solicitors all help in his power.

This closed the first interview. In the afternoon we met his Excellency at his office in town, when he told us that he was ready to telegraph, and that he was only waiting for the names of our solicitors in London. As we had not yet determined whom we would intrust with the case, it was agreed that we should send their names by telegraph from Montreal the next morning.

His Excellency then told us that he had seen Mr. Solicitor-General Langevin, and that in justice to him he desired to communicate to us the explanation he had given of his conduct. "Mr. Solicitor-General Langevin says," continued his Excellency, "that when I asked him if my warrant would interfere with the proceedings on *habeas corpus*, he understood me to ask him if a writ of *habeas corpus* had been issued, and that he answered no."

"Mr. Langevin," remarked Mr. Doutre, "knew then what was going on, and what he was doing himself, and whether his explanation is true or plausible or not, it does not alter the case as to the *animus* of his advice to your Excellency, but we have nothing to do with that."

As we were about leaving, Mr. Doutre observed, that as his Excellency then stood before the public as having acted in violation of his promise to Mr. Spilthorn, he would feel bound to explain the matter in a public way, in justice to his Excellency.

"If you intend to do that, for my own sake," said his Excellency, "I would

rather like that you should abstain from doing it." And his Excellency gave his motives for avoiding being mixed up in newspaper controversy.

Mr. Doutre replied, that his Excellency's desire would be complied with as long as the interest of his client should not suffer from his silence, and we parted.

(Signed) JOSEPH DOUTRE.
C. L. SPILTHORN.

No. 33.—Mr. Godley to Mr. Doutre.

Sir, Quebec, September 10, 1866.

I BEG to acknowledge the receipt of your letter of the 8th instant, enclosing a "Joint report from Messrs. J. Doutre, Q.C., and C. L. Spilthorn, Attorneys-at-Law, of their interviews with his Excellency the Governor-General of Canada, on the 29th of August, 1866, at Quebec."

I have laid this document before the Governor-General, and I am directed by his Excellency to inform you that though he cannot restrain you from publishing anything that you please, he entirely denies the accuracy of the report of the language which in your statement he is made to use, and also disavows the construction which is put upon his conversation, as affecting his relations with the officers of the Crown.

In reply to your request that the telegram of the Governor-General to the Secretary of State for the Colonies should be communicated to you, I am to acquaint you that his Excellency, in his message to Lord Carnarvon, expressed his desire that his warrant for Lamirande's extradition should not be any obstacle to the prisoner's obtaining a writ of *habeas corpus* in England, as his Excellency understood that an application for that purpose would be made in the English Courts.*

I have, &c.
(Signed) DENIS GODLEY,
Governor's Secretary.

J. Doutre, Esq., Q.C.,
&c., &c., &c., Montreal, L.C.

No. 34.—Mr. Doutre to Mr. Godley.

Sir, Montreal, September 11, 1866.

I HAVE the honour to acknowledge the receipt of your letter of yesterday, in which you inform me that his Excellency the Governor-General "entirely denies the accuracy of the report of the language which in our (Mr. Spilthorn and myself) statement he is made to use; and he also disavows the construction which is put upon his conversation as affecting his relations with the officers of the Crown."

You will please express to his Excellency my regret that any portion of that report should be the object of either denial or disapprobation on the part of his Excellency, as we have taken great care to faithfully report the conversations we had the honour to have with his Excellency. Our object in laying down the details of those conversations, was to make a complete record of the facts relative to Lamirande's extradition. But as I never desired to serve any other object than the interest of my client in asking an interview with his Excellency, you will please state to his Excellency that I would very willing forego any intention of making public from these conversations anything else but what is useful to Lamirande. The thing most useful to him was the acknowledgment on the part of his Excellency, that his Excellency had promised to Mr. Spilthorn at Ottawa that Lamirande would be allowed all the necessary time to submit his case for examination to higher tribunals, under a writ of *habeas corpus*. I hope there cannot be any difference between his Excellency on the one part, and Mr. Spilthorn and myself on the other, about that fact.

I beg therefore to submit to his Excellency the enclosed report of Mr. Spilthorn and myself, under date of this day, and I hope that by acknowledging the accuracy

* The telegram referred to will be found printed at page 2.

of the only fact stated in it, his Excellency will give to Mr. Spilthorn and myself the satisfaction of remaining, with no other recollection but that of his Excellency's kindness towards us in our meetings at Quebec.

I have, &c.

Denis Godley, Esq., (Signed) JOSEPH DOUTRE.
Secretary to his Excellency
the Governor-General.

ON the 29th of August, 1866, the undersigned Joseph Doutre, Q.C., and L. C. Spilthorn, Attorney and Counsellor-at-Law, had the honour of meeting his Excellency the Governor-General of Canada, &c., at Quebec, in relation to the extradition of Ernest S. Lamirande, claimed by France as a fugitive criminal.

In that interview his Excellency acknowledged that Mr. Spilthorn, one of the undersigned, having presented a petition from the said Lamirande to his Excellency, about the 17th of August, 1866, in Ottawa, praying his Excellency that in case he (Lamirande) should be committed for extradition by the Police Magistrate then investigating the matter, he (Lamirande) should be allowed the necessary time to submit his case to higher tribunals for examination, under a writ of *habeas corpus*, his Excellency had then and there told Mr. Spilthorn that ample time would be allowed to Lamirande for the purpose of submitting his case as mentioned in the said petition.

Montreal, September 11, 1866.

(Signed) JOSEPH DOUTRE.
C. L. SPILTHORN.

No. 35.—Mr. Godley to Mr. Doutre.

Governor's Secretary's Office, Quebec,
Sir, September 12, 1866.

I HAVE the honour to inform you that I have laid the paper which you inclosed to me in your letter of the 11th instant before the Governor-General, and I am to acquaint you that it is therein correctly stated that his Excellency told Mr. Spilthorn that ample time would be allowed to Lamirande to obtain a writ of *habeas corpus* before the execution of the warrant for his extradition.

I am further to apprise you that the Governor-General expressly declines to sanction any publication of language held by him in reference to the matter, and that any such publication must be understood to be made without his consent.

I have, &c.

(Signed) DENIS GODLEY,
J. Doutre, Esq., Q.C., Montreal. Governor's Secretary.

No. 36.—Mr. Doutre to Mr. Godley.

Sir, Montreal, September 13, 1866.

I HAVE the honour to acknowledge the receipt of your letter of the 12th instant, in which you inform me that you have laid the paper inclosed in my letter of the 11th instant before the Governor-General, and that it is therein correctly stated that his Excellency told Mr. Spilthorn that ample time would be allowed to Lamirande to obtain a writ of *habeas corpus* before the execution of the warrant for his extradition, and that the Governor-General expressly declines to sanction any publication of language held by him in reference to the matter, and that any such publication must be understood to be made without his consent.

In reference to this latter part, I beg leave to remind what I have said in my letter of the 11th instant, and, to avoid misunderstanding on this matter, you will please inform his Excellency that I do not intend publishing anything in which his Excellency might feel some interest, but the paper inclosed in my letter of the 11th instant and the first portion of your letter of the 12th instant relative to that paper.

I have, &c.

Denis Godley, Esq., (Signed) JOSEPH DOUTRE.
Governor-General's Secretary,
Quebec.

No. 37.—Charge addressed to the Grand Jury by the Hon. Lewis Thomas Drummond, one of the Justices of the said Court, at the opening of the Term at Montreal, on the 24th day of September, 1866.

Province of Canada, District of Montreal.

Court of Queen's Bench, Crown side.—September Term, 1866.

Gentlemen of the Grand Jury,

WE must all feel a deep interest in maintaining the purity and efficiency of an institution such as the Grand Jury, which has been established for the twofold purpose of denouncing and bringing to justice all those who violate the law, and of protecting from false accusation all those who respect it.

The usefulness of this great and time-honoured institution (imperfect as it is in some respects, like all human devices) cannot be preserved, its abuse cannot be prevented, unless the men who are summoned to carry it into operation have imbibed a clear conception of their duties, their powers, and their immunities.

To define to you, therefore, these three subjects, to condense them in the most precise and practical manner I can, after a rigorous analysis of the law and the best authorities relating to them, seems to be my first and paramount duty on this as on all similar occasions.

Powers and Duties.

Your powers and duties, Gentlemen of the Grand Jury, may be defined in the following manner:—

You have power, and it is your duty, to inquire into all public offences committed or triable in this district, and to report them to this Court, either by indictment or presentment.

After such inquiry upon an indictment, if you (at least twelve of you) believe the person accused guilty of the offence therein charged against him, you should return the indictment into court after your foreman has caused to be written on the back thereof the words "true bill" or "a true bill," and placed his signature below these words.

If you believe the accusation to be unfounded, or not sufficiently proved to justify a public trial, you should return the indictment into Court as "no bill," or "ignoramus." The latter form has, however, become well-nigh obsolete, at least in Lower Canada.

Having stated that you may return into Court the result of your inquiries either by indictment or presentment, it is due to you that I should explain clearly the distinction to be drawn between these two modes of proceeding.

Indictment and Presentment.

An "indictment" is an accusation in writing submitted to, and after due inquiry, presented by the Grand Jury to a competent Court charging a person with a public offence. A "presentment" is an informal statement in writing, by the Grand Jury, apprising the Court that a public offence has been committed within the district, and that there is a reasonable ground for believing that a particular individual named or described has committed it.

Although Grand Juries have undoubtedly the right to make any such presentment, and although it is the duty of any grand juror, cognizant of every offence not brought up by indictment, to inform his brother jurors thereof, yet the practice usually followed in Lower Canada is to instruct the Crown Prosecutor, or in his absence the Clerk of the Crown, to proceed in the ordinary course. If, however, you deem it proper to make any such presentment, you should annex notes of the evidence taken in support of it, signed by your foreman, and you should not announce, in open Court, the name of the person accused: while the Court, if in its discretion it should order further proceedings, would be bound to prevent publicity being given to the particulars of such a presentment until an arrest had been effected.

Certain Cases Excepted.

Under a recent Statute you are forbidden to inquire into any bill of indictment for perjury, subornation of perjury, conspiracy, obtaining money under false

pretences, or for keeping a gambling-house or a disorderly house, or for any indecent assault, unless the prosecutor has been bound by recognizance to appear to answer such indictments, or unless such indictment be preferred by the direction or with the consent in writing of a Judge of the Court of Queen's Bench, or of the Superior Court, or of the Attorney-General or Solicitor-General of Lower Canada.

Proof Required.

No indictment should be returned as "a true bill," and no presentment should be made without the concurrence of at least twelve jurors. No indictment should be returned into Court as "no bill" until all the witnesses named in it have been heard, if present or accessible; but you are not obliged to hear all such witnesses if you are fully convinced by the evidence of one or more that the accused should be put upon his trial. The safer course, however, is to examine them all.

In the investigation of any charge, either upon an indictment or for the purpose of a presentment you can receive no evidence other than such as is given by witnesses produced and sworn before you, or furnished by confession made upon voluntary examination before a Magistrate, or by other legal documentary evidence.

No affidavits or depositions should be received by you in evidence, except such as contain dying declarations in cases of alleged murder or manslaughter. Even these should not be read as evidence before you without previous consultation with the counsel for the Crown, or in his absence with the Clerk of the Crown, or by permission of the Court.

You can receive none but legal and the best evidence the case will admit of, to the exclusion of hear-say and secondary evidence.

You are not bound to hear evidence for the defence, but it is your duty to weigh all the evidence submitted to you; and when you have reason to believe that other evidence within your reach may alter the character of the charge or explain it away, you should order such evidence to be produced.

You should return "a true bill" against no man unless upon such evidence as in the aggregate would in your judgment, if unexplained or uncontradicted, warrant a conviction upon trial by a petit jury; but in cases where you entertain any reasonable doubt, the protection you owe to the community would seem to require that you should allow that balance to incline against the accused which a petit jury, after a full investigation of the facts, if in the same frame of mind, would reverse in his favour.

An indictment for murder, where the slaying is proved against the accused, may be returned as a "true bill" for manslaughter, if you are fully convinced that the death involved no malice aforethought either direct or implied; but the safer course, in the interest of the public, is to return a true bill for murder, leaving it to the petit jury, under the direction of the Court, to discriminate between these two species of homicide.

Duties apart from Inquiry into Public Offences.

In addition to the duties incumbent upon you in direct relation to public offences, you are also bound to inquire into the condition and management of the public prisons, and into the cause of detention of every person imprisoned on any charge and not indicted.

Assistance Due.

In order to enable you to perform those high functions with efficiency, you are entitled to (at all reasonable times) the advice of the Court, or of the counsel representing the Crown, or in his absence of the Clerk of the Crown, and to obtain the assistance of the latter (or of any other person deputed by him) in the marshalling and examination of witnesses before you; but no other person apart from the witness actually under examination should be allowed to appear in the Grand Jury room while you are engaged in the performance of your duties, except the private prosecutor, in cases not conducted by counsel, and you must allow no person whomsoever to be present in your room while you are expressing your opinions or giving your votes upon any matter before you.

You are also entitled to free access, at all reasonable times, to the public

prison, and to an examination, without charge, of all public records connected with the performance of your duties as grand jurors.

Immunities.

Your immunities consist principally in the protection, with which the law surrounds you, against all responsibility, all liability of being questioned or called to account in any way for anything you may say, or any vote you may give in the Grand Jury room relative to a matter legally pending before you, except in the improbable event of a grand juror committing perjury in making an accusation or giving testimony to his fellow jurors.

Secrecy.

I need not allude to the secrecy you are bound to observe as to all your proceedings, for you have pledged yourselves by the oath you have taken to keep the secrets of your fellow-jurors as well as your own, and that solemn pledge is binding on you, not only while you are fulfilling your duties as grand jurors but for all time thereafter.

Having set forth the rules by which you are to be guided in your deliberations, I come to the consideration of the calendar of offences, which it will be your duty to investigate; it is, I regret to say, a heavy one, comprising some accusations of a most heinous character.

The instructions given to you above will, I trust, assist you in your inquiry; and you may rely upon the determination of the Court to award adequate punishment to all who shall be found guilty of the violations of the law.

But, apart from these vulgar crimes, I deem it my duty to call your attention to a startling violation of law, committed by several persons connected with the administration of justice. I allude to the case of E. S. Lamirande, who, while his petition for a writ of *habeas corpus* was under consideration before one of the Judges of the Court, and after his Excellency the Governor-General had assured him, through his counsel, that he would have ample time to obtain a decision upon his case by this Court before any warrant of extradition should issue, was forcibly and illegally carried off beyond its jurisdiction.

A crime of this character, involving a flagrant contempt of the judiciary of our country—an insult to our gracious Sovereign in the person of her representative, our good and noble Governor-General—and a violation of the writ of *habeas corpus*, the foundation of all our liberties as British subjects, demands of you, as the Grand Inquest of this district, a strict and earnest investigation.

You may now retire to your chambers, where, I have no doubt, you will perform the arduous labours which await you, with full satisfaction to your own conscience and to the country you represent.

No. 38.—Presentment of the Grand Jury.

Province of Canada, District of Montreal.

Court of Queen's Bench, Crown side.—September Term, 1866.

May it please the Court,

HAVING terminated the business submitted to us, before seeking our discharge at the hands of the Court, we beg leave to offer our sincere thanks to his Honour the presiding Judge, for the interesting and careful charge he has pleased to deliver to us on the first day of the present term. By the luminous instructions given to us with regard, not only to our rights and duties, but also as to our immunities and obligations, we have been much aided in the long and sometimes difficult investigations in which we have been engaged, and we trust that with the help so given we may have been enabled to discharge our duties with advantage to the country, as well as with comparative ease to ourselves. We cannot, however, fail to express our regret that the work thrown upon us has been so heavy, and it is impossible to conceal the fact, that crime, and that of the most serious description, increases almost in proportion to the material prosperity of this community. In particular, the jurors have seen, with some concern, the alarming increase of the crime of larceny, which is in some measure owing to the facility with which the

plunder is disposed of. Much praise, however, is due to the detectives Cullen and Bouchard for their zeal and ingenuity in finding out the haunts of these depredators and bringing them to justice. On the other hand, it is to be regretted that certain county magistrates send up for trial at a vast expense to the country, cases too insignificant for the consideration of this Court. In a word, we have endeavoured, and we hope successfully, to keep up to the rule laid down in our oath, to present no one from malice, hatred, reward, or hope of reward, and to leave no one unpresented from fear, favour or affection.

The Jurors visited the common gaol, and find that so far as the accommodation goes, every thing is in perfect order; but the Grand Jury think it right to draw attention to the following facts:—

Five and twenty years ago the gaol was constructed to hold 250 prisoners, and on the 6th of October there were 440 inmates, male and female, besides children. On the 9th instant, when the Grand Jurors went there, the actual number was—females 209, males 206, making a total of 415; of whom there were of female lunatics 11, male 4; leaving a balance of criminals, 400.

The Grand Jurors also find that in the year 1845 there were 1313 commitments; in 1865 the commitments amounted to the enormous number of 4424; while the increase in the number of turnkeys has been only two, one man and one woman.

In order to supply room for this increased number of prisoners, the debtors' prison has been taken up, so that we find two debtors occuping the convicts' ward; and a woman sentenced to a fine for selling liquor without licence, which she cannot pay, obliged to keep company with the most abandoned women and idiots. This seems to be a hard measure of justice.

But want of space, which thus prevents any proper classification, is not the only fault of the gaol, it is also very insecure. During the last year there have been seven escapes; one being that of a youth who was twice convicted of larceny on his own confession during this term.

The Grand Jurors feel that their duty would be only half done did they fail to offer any practical suggestions to improve the prison. They therefore beg leave to present that in their opinion there should be constructed forthwith a house of correction for the incarceration of all those convicted before the Judge of Sessions, out of Sessions, and before the Recorder; and that to render the gaol more secure, the enclosure wall should be raised at least four feet, and be furnished with a round stone coping. They also consider that the number of turnkeys and of the armed guard should be increased, and that a house for the gaoler should be constructed in the yard apart from the prison; with these changes, and the addition of a house of correction, the Grand Jury believe the present gaol may be made to meet the requirements of the district for many years to come.

Among the prisoners now confined in the Montreal gaol, are a certain number of those taken during the Fenian raid in June last. The Jurors hope that no unnecessary delay will occur in bringing these persons to trial.

The Jurors have learnt with regret, that the Corporation of Montreal persists in licensing houses which have been made the subject of complaint by the Police, and this in violation of a bye-law of the City Council.

In conclusion, the Jurors desire to express the satisfaction they feel that the excitement consequent upon the invasion of our Provinces in the month of June last, by bands of wicked and lawless men, citizens of a neighbouring country, between whose Government and ours no cause of disagreement existed, have now happily subsided. The good faith of the American Government in maintaining international obligations, together with our own watchfulness and due preparation against any attempt at a repetition of such unholy designs, it is to be hoped will in future allow the inhabitants of this country to pursue their usual avocations in peace.

The Court drew the attention of the Grand Jurors to the extradition of Ernest Sureau Lamirande. They now submit the affidavit of Joseph Doutre, Esq., Q.C., also their answers to a circular letter containing interrogatories for the consideration of the Court.

The whole respectfully submitted.

Grand Jury Room, Montreal, October 10, 1866.

(Signed) J. W. DORWIN, Foreman.

No. 39.—Motion for Copies of Papers by Mr. Doutre.

Province of Canada, District of Montreal.

In the Court of Queen's Bench, Crown side.

Ex Parte Ernest Sureau Lamirande for a Writ of Habeas Corpus.

MOTION on the part of the petitioner, that for reasons mentioned in the affidavit now filed, and on payment of the usual fees, he be allowed to have a copy of the papers filed by the Grand Jury of this district, with their presentment, and of the consultation asked by the said Grand Jury, from the Honourable Judge presiding over this Court, upon which consultation the said Honourable Judge gave the answer filed of record in this matter.

Montreal, October 12, 1866.

(Signed) JOSEPH DOUTRE,
Attorney for the Petitioner.

Province of Canada, District of Montreal.

In the Court of Queen's Bench, Crown side.

Ex Parte Ernest Sureau Lamirande for Habeas Corpus.

JOSEPH DOUTRE, of the city of Montreal, Queen's Counsel, being dul sworn, doth depose and say:—

That on the first day of October instant, the deponent has been summoned to be and appear on the 2nd day of the said present month, before the Grand Jury then sitting in the district for the present term of this Court, the deponent being given to understand that he was so summoned to be examined in relation to the circumstances under which the said Ernest Sureau Lamirande had been removed from the jurisdiction of the Judges of this Court, while his application was pending for his discharge under a writ of *habeas corpus*; that the examination of the deponent was postponed from day to day until the afternoon of the 9th day of this month, when he was requested to attend before the said Grand Jury; that when the deponent was examined, the Crown Prosecutor, T. K. Ramsay, Esq., Advocate, was present in the Grand Jury Room, under the pretence, as expressed by himself, of marshalling the evidence, to be taken by the said Grand Jury on the subject above mentioned.

That the said T. K. Ramsay did in effect take down in writing the evidence given by the deponent, frequently interrupting the deponent, and discussing the relevancy of the evidence then taken down; that after the deponent had terminated what he considered to be the facts inquired into by the Grand Jury, the said T. K. Ramsay expressed the desire of cross-examining the deponent; that the deponent then exposed to the Jury that as long as the facts of the case were unknown to them, they might see no objection in the presence of the said T. K. Ramsay, in their room; that since the deponent had related the facts then written down, it was and should be manifest to them that the said T. K. Ramsay had been one of the prompters and accomplices in the conspiracy which had resulted in the fraudulent removal of the said Ernest Sureau Lamirande; and that if the said T. K. Ramsay was allowed not only to marshall the evidence, but also to control it, as he had attempted to do since the beginning of the deponent's deposition, any person accused of ordinary crimes could claim with as much right as the said T. K. Ramsay the privilege of marshalling and controlling the evidence produced against him; that the said T. K. Ramsay then persisting in remaining in the Grand Jury Room, and taking part in their inquest, the Grand Jury requested both the deponent and the said T. K. Ramsay to withdraw; and shortly after the Grand Jury came in Court, and transmitted to the Honourable Judge then sitting, a paper which was presumed by the deponent to be a consultation with the Honourable Judge, by the character of the answer given in open Court by the Honourable Judge; that after the receipt of that answer, the deponent was again called before the Grand Jury, where he found the said T. K. Ramsay still taking down the evidence given by the deponent, and directing the proceedings of the Grand Jury as heretofore; that in the opinion of the deponent, founded on the above facts, the proceedings of the Grand Jury were brought to an abrupt and unexpected termination by the persistance of the said T. K. Ramsay, in contro'ing the proceedings of

the Grand Jury; that the petitioner, Lamirande, has adopted proceedings in England, and petitioned Her Majesty, in order to obtain Her protection against the consequences of the conspiracy which has resulted in the removal of the petitioner from the jurisdiction of the Judges of this Court; and that the petitioner, in order to show to Her Majesty how justice is administered in this district, and the participation of the Crown Prosecutor in defeating the ends of justice, is entitled to have copies of the papers mentioned in the accompanying motion, and hath signed.

(Signed) JOSEPH DOUTRE.

Sworn and acknowledged before the Court, on the 12th day of October, 1866.

(Signed) DESSAULLES AND ERMATINGER,
Clerk of the Crown.

No. 6. No. 6.

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

Quebec, October 31, 1866.

(No. 182.) (Received November 14, 1866.)

MY LORD, (Answered, No. 110, November 24, 1866, page 100.)

WITH reference to my despatch No. 175* of the 25th October, I have now the honour to transmit to your Lordship the copies of the affidavit therein alluded to. * Page 66.

I have, &c.

The Right Hon. the Earl of Carnarvon, (Signed) MONCK.
&c. &c. &c.

Inclosure in No. 6. Inclosure in No. 6.

AFFIDAVIT of EDME JUSTIN MELIN.

Dans la Cité de Québec.

Province du Canada, District de Québec.

EDME JUSTIN MELIN, Inspecteur Principal de Police, à Paris, France, étant dûment assermenté sur les Saints Evangiles, dépose et dit:—

Que le 11me jour de Mars dernier, la caisse de la succursale de la Banque de France à Poitiers, dans cette partie de l'Empire Français appelée Haute-Vienne, a été volée d'une somme de 700,000 francs, et que ce vol a été fait et commis par Charles Ernest Sureau de Lamirande, dit Lamirande, caissier de la dite succursale de la dite Banque de France à Poitiers, Haute-Vienne susdit.

Que dans ou vers le même temps le dit Charles Ernest Sureau de Lamirande, dit Lamirande, s'échappa du territoire de l'Empire Français, et se rendit dans la Cité de New York, dans l'Etat de New York, l'un des Etats de la République des Etats-Unis d'Amérique.

Que le ou vers le 9me jour d'Avril dernier, le dit Lamirande fut arrêté dans la dite Cité de New York, et que pendant qu'on instruisait son procès d'extradition il est parvenu, le 3me Juillet courant, à s'échapper de la susdite cité et des mains de la justice des Etats-Unis d'Amérique.

Que d'après des informations qui sont en sa possession il a tout raison de croire que le dit Charles Ernest Sureau Lamirande, dit Lamirande, s'est réfugié au Canada, et est encore caché dans une partie quelconque de ses Provinces.

Que de plus, le dit Charles Sureau de Lamirande, dit Lamirande, a falsifié frauduleusement les livres de comptabilité de la dite succursale de la dite Banque de France à Poitiers, Haute-Vienne susdit, en y faisant figurer comme présentes dans la caisse de la dite banque cette somme de 700,000 francs susdits qu'il s'était appropriée, et qu'il s'est aussi rendu coupable d'un faux en changeant et falsifiant son bordereau de situation, et qu'ainsi il tombe sous les dispositions du Traité existant entre l'Angleterre et la France pour l'extradition des criminels.

Cette déposition étant lue le déposant y persiste disant qu'elle contient la vérité et a signé.

(Signé) E. J. MELIN.

Assermenté devant moi, à Québec, ce 18me jour de Juillet, de l'année 1866.

(Signé) J. T. TASCHEREAU, J.C.S.

No. 7.

No. 7.

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

(No. 193.) Quebec, November 10, 1866.

MY LORD, (Received November 26, 1866.)

WITH reference to previous correspondence respecting the case of Lamirande, I have the honour to transmit herewith, for your Lordship's information, three copies of a letter and of its inclosure from Mr. Ramsay, Crown Prosecutor, at Montreal.

I have, &c.

The Right Hon. the Earl of Carnarvon, &c. &c. &c. (Signed) MONCK.

Inclo. 1 in No. 7.

Inclosure 1 in No. 7.

Mr. RAMSAY to Mr. GODLEY.

SIR, Montreal, November 3, 1866.

AT the request of the Attorney-General for Lower Canada, I have the honour to inclose you three copies of a paper filed by me at the request of Mr. Justice Drummond, containing certain admissions on his part which had been previously made by him in open court, in case his Excellency the Governor-General should think it right to forward them to England. The value of these admissions is that by my disculpation by the Judge the alleged conspiracy falls to the ground, for without conspirators there cannot be a conspiracy. Now, previously, Mr. Justice Drummond had openly disculpated the Deputy Sheriff, Mr. Schiller, and the gaoler, and privately he had done as much for Messrs. Pominville and Betournay. who were the only other persons actually employed in the extradition of Lamirande.

I have, &c.

D. Godley, Esq., &c. &c. &c., Quebec. (Signed) T. K. RAMSAY.

Inclo. 2 in No. 7.

Inclosure 2 in No. 7.

Province of Canada, District of Montreal.

Court of Queen's Bench, Crown side.—September Term, 1866.

THE QUEEN v. THOMAS KENNEDY RAMSAY.—On rule to show cause.

IN consideration of the declaration made this morning in open court by Mr. Justice Drummond to the effect that in his remarks with relation to the extradition of Ernest Sureau Lamirande in Chambers, on Saturday, the 25th day of August last, and on Monday, the 27th day of August last, he did not say nor did he intend to insinuate that the said Thomas Kennedy Ramsay was the party guilty of any conspiracy in the said affair, nor of the falsification of a public document alluded to in the said Judge's remarks, nor of any act of a nature to compromise his character, individually or personally. The said Thomas Kennedy Ramsay withdraws whatever may be personally offensive to Mr. Justice Drummond in two certain letters published in the "Montreal Gazette" on the 28th and 30th days of August last, and bearing the signature of him the said Thomas Kennedy Ramsay, the said letters having been only written in answer to the remarks of the said Judge, as reported in the "Herald" of the 27th and 29th days of August last; and the said Thomas Kennedy Ramsay further regrets that he should have been induced by such reports to misinterpret the words as also the intentions of the learned Judge.

Montreal, November 2, 1866.

(Signed) T. K. RAMSAY.

No. 8.

Copy of a DESPATCH from Lieutenant-General Sir J. Michel to the Right Hon. the Earl of Carnarvon.

(No. 4.) Montreal, January 3, 1867.

My Lord, (Received January 25, 1867.)

I HAVE the honour to acknowledge the receipt of your Lordship's despatch No. 114* of the 14th December, informing me that the Frenchman Lamirande had been tried in France and found guilty of forgery ("faux"), and sentenced to ten years' reclusion. * Page 101.

I have, &c.

The Right Hon. the Earl of Carnarvon, &c. &c. &c. (Signed) J. MICHEL.

DESPATCHES FROM THE SECRETARY OF STATE.

for Colonial Affairs

Despatches from the Secretary of State. (Colonial Affairs)

No. 1. No. 1.

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

(No. 61.)

MY LORD, Downing Street, September 22, 1866.

I HAVE the honour to transmit to you the enclosed copy of a despatch from Her Majesty's Ambassador at Paris, to the Secretary of State for Foreign Affairs, accompanied by a letter from a French subject named Lamirande, complaining of his having been given up to the French Government under the Extradition Treaty, and more especially of the manner in which he was removed from Canada whilst his case was still under the consideration of a Judge of the Court of Queen's Bench in the Province.

I received from you a telegram, stating that Lamirande had been delivered up under your warrant, and that he had sailed in the "Damascus," owing to delay in obtaining a *habeas corpus*, but the telegram contained no further particulars.

The statement made by Lamirande in his present letter, and the accounts which have appeared in the public journals, give an account of the case, which demands full inquiry and explanations. I have, therefore, to request that your Lordship will transmit to me, if you have not done so already, a complete report upon the case. This report will show under what circumstances and upon what advice your Lordship's warrant was issued, and also how it happened that Lamirande was withdrawn after his case was partly heard before a Judge of the Supreme Court, and whether any Officers of Justice or persons in the service of your Government had any share in that proceeding, and if so, what steps have been taken in consequence.

I have, &c.

Viscount Monck, (Signed) CARNARVON.
&c. &c. &c.

Inclosure 1 in No. 1. Incl. 1 in No.

Earl COWLEY to Lord STANLEY.

(No. 249.)

MY LORD, Paris, September 14, 1866.

MAITRE LACHAUD, one of the most eminent members of the French Bar, has addressed me a letter, of which I have the honour to enclose a copy, transmitting a letter from a Frenchman named Lamirande, who appears to have been given up by the Government of Canada to the French Government, under the Extradition Treaty of 1842.

As Lamirande requests that his letter may be laid before Her Majesty's Government, I inclose it herewith.

I have, &c.

Lord Stanley, (Signed) COWLEY
&c. &c. &c.

Incl. 2 in No. 2.

Inclosure 2 in No. 1.

M. LACHAUD to Earl COWLEY.

MILORD, Paris, le 12 Septembre, 1866.

J'AI l'honneur de faire parvenir à votre Excellence une lettre que le Sieur Lamirande, ancien caissier de la Banque de France à Poitiers, m'a envoyée pour lui être remise.

Je n'ai pas vu Lamirande, et je ne saurai dès lors rien ajouter aux protestations qu'il élève ; mais si les faits avancés par lui étaient vrais, ils auraient une gravité qui frapperait assurément votre Excellence, et je dois me borner à appeler sur cette lettre sa bienveillante attention.

Je suis, &c.
(Signé) A. LACHAUD,
Avocat de la Cour Impériale.

Earl Cowley,
&c. &c. &c.

Incl. 3 in No. 1.

Inclosure 3 in No. 1.

M. LAMIRANDE to Earl COWLEY.

Paris, Prison de la Préfecture de Police,
le 11 Septembre, 1866.

EXCELLENCE,

J'AI été enlevé de la prison de Montréal, où j'avais été commis par une sentence injuste, pour y attendre mon extradition, dans des conditions telles que je crois qu'en les faisant connaître à votre Gouvernement, il y verra une violation des lois Anglaises, et du Traité d'Extradition entre la France et l'Angleterre, et qu'il pourra vous autoriser à me réclamer au Gouvernement de l'Empereur.

La sentence qui m'avait commis pour l'extradition était frappée d'appel, et le procès, instruit et déjà plaidé devant un Juge d'un degré supérieur au premier, devait se terminer le lendemain à 11 heures du matin par la décision de ce Magistrat, quand se passèrent les faits suivants.

A 11 heures du soir, après avoir assisté au départ simulé du train de Montréal à Québec, le Magistrat en question vint s'assurer lui-même que j'étais bien à la prison. Entre 1 heure et 2 heures du matin, je reçus l'ordre du Directeur de la Prison de me lever et de partir. L'Agent de la Police Française envoyé à ma poursuite s'empara de moi avec l'aide de plusieurs autres personnes, cela de force, et sans pouvoir me montrer l'ordre en vertu duquel on m'entraînait. On me plaça dans une voiture, et on me conduisit à une station du chemin de fer de Montréal à Quebec (la Station St. Charles, je crois), et non à la gare de Montréal. Car simulant un départ, pour tromper tout le monde et mon défenseur, et le Juge, qui le lendemain matin à 11 heures devait prononcer sa sentence, et l'autorité elle-même, on avait fait partir le train à son heure habituelle, 10 heures, et on l'avait arrêté pendant trois ou quatre heures à la station dont je parle plus haut. On m'enferma, sous la garde de trois hommes, dans un compartiment réservé aux employés de la Compagnie. Je vis passer un de mes avocats à New York, Mr. Spilthorn, la seule personne probablement qui ait pu réussir à s'apercevoir de mon enlèvement. Je voulus lui parler ; on m'en empêcha par la force. Arrivé à Québec, je fus placé à bord du "Damascus," dont on avait retardé le départ, et où l'avocat, dont je viens de parler, demanda en vertu de quel ordre on m'enlevait ainsi. Les personnes qui m'entouraient répondirent qu'elles n'avaient pas de comptes à lui rendre ; qu'elles exécutaient des ordres, et n'avaient aucune pièce à montrer : il se retira, en protestant contre cet incroyable abus de la force.

Arrivé à Liverpool, où ne se trouvait pas de Magistrat compétent pour connaître de mon affaire, on me dirigea sur Londres, où je devais, disait-on, trouver ce Magistrat. Là on me conduisit de nuit à un hôtel, situé dans une rue dont j'ignore le nom, ainsi que celui de l'hôtel. Trois personnes y vinrent ; on me dit que c'étaient des avocats prévenus par une dépêche de M. Doutre, mon défenseur à Montreal. Après une conversation, hors de ma présence, entre ces messieurs et un Canadien qui m'accompagnait depuis Montréal, avec l'Agent de la Police Française, ces trois personnes se retirèrent, sans que je puisse avoir aucune communication avec elles. A 6 heures du matin on me fit sortir de l'hôtel, et on me conduisit au chemin de fer pour Douvres, d'où on m'embarqua pour la France.

Quand j'aurai dit à votre Excellence que la sentence du premier Juge m'inculpe du crime de faux que je crois n'avoir commis, ni selon les lois Françaises ni selon les lois Anglaises; que dans le procès intenté contre moi à New York on avait même abandonné ce chef d'accusation; que l'avocat de la Couronne à Montréal a reconnu lui-même que je n'avais pas commis ce crime: que, d'ailleurs, je ne demande point à être rendu à l'Angleterre pour y être mis en liberté, mais seulement pour que le procès interrompu à Montréal par la force continue, ou que je suis prêt, si on le préfère, à le subir devant la Haute Cour d'Angleterre, ou n'importe quelle autre juridiction, il me semble que le Gouvernement de la Reine pourra être touché de ces graves motifs, et vous priera de me réclamer au Gouvernement de l'Empereur.

Je prie votre Excellence de vouloir bien transmettre ma lettre au Gouvernement Anglais, et de m'en accuser réception.

J'ai, &c.

Earl Cowley, (Signé) E. S. LAMIRANDE.
&c. &c. &c.

P.S.—La pièce qui manquait aux personnes qui m'enlevaient était, je crois, celle exigée par le Traité, en vertu de laquelle j'aurais pû être arrêté régulièrement en France sous l'inculpation du crime pour lequel on demandait mon extradition.

Je viens d'apprendre à l'instant qu'on devait me transférer demain à la Prison de Poitiers (Département de la Vienne), où je prie votre Excellence de me faire connaître le résultat de mes réclamations.

Mes noms et prénoms sont, Sureau Lamirande, Charles Constant Ernest.

E. S. L.

No. 2. No. 2.

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

(No. 67.)

MY LORD, Downing Street, September 27, 1866.

WITH reference to my despatch No. 61* of the 22nd instant, calling for a report on the case of Lamirande, I have the honour to inform your Lordship that the Secretary of State for Foreign Affairs has instructed Her Majesty's Ambassador at Paris to address a representation to the French Government with a view of delaying any further judicial proceedings against the prisoner until Her Majesty's Government are in possession of more authentic information in regard to this case. * Page 97.

I have, &c.

Viscount Monck, (Signed) CARNARVON.
&c. &c. &c.

No. 3. No. 3.

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

(No. 84.)

MY LORD, Downing Street, October 27, 1866.

I HAVE the honour to acknowledge your Lordship's despatch No. 155† of the 6th instant, explaining the circumstances under which a prisoner, named Lamirande, was delivered by the Canadian authorities to the French police while his case was under the hearing of the Court of Queen's Bench at Montreal, and before the writ of *habeas corpus* was issued. I will only now say that I have read with great concern the history of this transaction which is engaging the anxious consideration of Her Majesty's Government. † Page 1.

I have, &c.

Viscount Monck, (Signed) CARNARVON.
&c. &c. &c.

No. 4.

No. 4.

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.

been brought by legitimate means under the cognizance of a Court of Law, and was being effectively prosecuted by the parties interested. You observe that the prisoner has no right to take advantage of his own negligence in obtaining the writ of *habeas corpus*, which would have afforded him the necessary protection; but I think that you here assume a negligence on his part which, as far as the papers before me enable me to judge, has had no existence. For some days you had had reason to anticipate that Lamirande's person would be brought under the protection of the Queen's Bench, and before you authorized his surrender to the French authorities it would have been only a proper exercise of your discretion to have ascertained whether he was or was not under that protection. The omission to take this precaution has led to a most unfortunate abuse of your authority.

The probable, or even, if it were so, the undoubted guilt of the prisoner cannot affect the question. A great scandal has taken place, and an insult has been passed upon the dignity of the law and the regular administration of justice in the Canadian Courts. It is true, as you say, that a person charged with the offences, and arrested under the circumstances of this case, deserves no special favour or indulgence at the hands of the authorities, but he has a right to the protection which every accused person can claim under the humane principles of the English law, and any abridgment of that protection tends to shake the confidence of society in the execution of justice, and inflicts a wrong upon the individual. In this case I am obliged, therefore, with whatever reluctance, to express my decided disapproval of the course which your Lordship was induced to adopt.

With the conduct of those Canadian officers who have taken part in this transaction I am less immediately concerned. As from the course which circumstances have taken in this case there is no question of any demand made by a foreign Power upon Great Britain, and no question of Imperial duty arises, it appears to me a matter which may properly be considered as falling within the province of Canadian administration. The subordinate officers who have had a share in the surreptitious withdrawal of Lamirande are responsible to their superiors, and their superiors to the Parliament, the constituencies, and the public opinion of Canada. Whilst I think that the further investigation into this matter properly belongs to the Provincial authorities, I feel that I should not be discharging my duty if, after taking the best opinion at my command, I did not inform you that the explanations hitherto afforded by your Solicitor-General of his conduct in obtaining the warrant whilst the case was actually under the hearing of the Judge, would not have been deemed satisfactory by Her Majesty's Government.

I am not obliged to express any further opinion on this part of the subject beyond what is implied in the observations which I have addressed to yourself. I shall have performed my duty as the servant of the Queen in communicating to your Lordship, to whom Her Majesty's authority is delegated in one of the most important of her Colonies, the judgment of her Advisers respecting the course which you have adopted in this case, and the principles by which, in any future question of a similar kind, they desire you to be guided.

I have, &c.

Viscount Monck, &c. &c. &c.

(Signed) CARNARVON.

No. 5.

Copy of a DESPATCH from the Right Hon. the Earl of Carnarvon to Viscount Monck.

(No. 114.)

My Lord, Downing Street, December 14, 1866.

I HAVE been officially informed that the Frenchman Lamirande has been tried in France, and that he has been found guilty of forgery ("faux"). He has been sentenced to ten years' reclusion, and from this decision he has appealed to the Court of Cassation, where the whole question will be considered.

I have not yet received a full report of the proceedings on the recent trial.

I am informed that the punishment of reclusion is more severe than that imprisonment, and it carries with it the penalty of the loss of all civil rights.

I have, &c.

Viscount Monck, &c. &c. &c.

(Signed) CARNARVON.

Correspondence with the Governor-General of Canada respecting the Extradition of M. Lamirande.

Presented to both Houses of Parliament by Command of Her Majesty. March 1867.

LONDON:
PRINTED BY HARRISON AND SONS.