Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☐ Coloured covers/ Couverture de couleur
- ☐ Covers damaged/ Couverture endommagée
- ☐ Covers restored and/or laminated/ Couverture restaurée et/ou pelliculée
- ☑ Cover title missing/ Le titre de couverture manque
- ☐ Coloured maps/ Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black)/ Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations/ Planches et/ou illustrations en couleur
- ☑ Bound with other material/ Relié avec d'autres documents
- ☑ Tight binding may cause shadows or distortion along interior margin/ La reliure serrée peut causer de l'ombre ou de la distortion le long de la marge intérieure
- ☐ Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/ Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- ☐ Additional comments:/ Commentaires supplémentaires:

- ☐ Coloured pages/ Pages de couleur
- ☐ Pages damaged/ Pages endommagées
- ☐ Pages restored and/or laminated/ Pages restaurées et/ou pelliculées
- ☐ Pages discoloured, stained or foxed/ Pages décolorées, tachetées ou piquées
- ☐ Pages detached/ Pages détachées
- ☑ Showthrough/ Transparence
- ☑ Quality of print varies/ Qualité inégale de l'impression
- ☐ Includes supplementary material/ Comprend du matériel supplémentaire
- ☐ Only edition available/ Seule édition disponible
- ☐ Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/ Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	12X	14X	16X	18X	20X	22X	24X	26X	28X	30X	32X
									✓		

CORRESPONDENCE

RESPECTING THE

EXTRADITION OF M. LAMIRANDE

FROM

CANADA.

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

LONDON:
PRINTED BY HARRISON AND SONS.

TABLE OF CONTENTS.

Correspondence respecting the Extradition of M. Lamirande from Canada.

No. 1.

Earl Cowley to Lord Stanley.—(Received September 15.)

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 inclose 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 1843. As Lamirande requests that his letter may be laid before Her Majesty's Government, I inclose it herewith.

I have, &c.
(Signed) COWLEY.

Inclosure 1 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 M. 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 dèslors 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.

(Translation.)

My Lord, *Paris, September* 12, 1866.

I HAVE the honour to transmit to your Excellency a letter which M. Lamirande, formerly cashier of the Bank of France at Poitiers, has sent to me for communication to you.

I have not seen Lamirande, and I can therefore add nothing to the protests which he raises; but if the facts advanced by him are true, they have an importance which will doubtless strike your Excellency, and I confine myself to drawing your kind attention to this letter.

I am, &c.
(Signed) A. LACHAUD,
Avocat de la Cour Impériale.

Inclosure 2 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 frappé-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'entrainait. 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 compartement réservé aux employés de la Compagnie. Je vis passer un de mes avocats à New York, Mr. Spilthora, la seule personne probablement qui ait pu réussir à s'apercevoir de mon enlèvement. Je voulus lui parler; on m'a 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 pusse 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.
(Signé) E. S. LAMIRANDE.

P.S.—La pièce qui manquait aux personnes qui m'enlevaient était, je crois, cette 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, Surreau Lamirande, Charles Constant Ernest.

(Translation.)

Excellency, *Paris, Prison of the Police Prefecture, September* 11, 1866.

I HAVE been carried off from the prison of Montreal, where I had been committed on an unjust sentence to await my extradition, under such circumstances that in making them known to your Government I think it will perceive therein a violation of the English law, and of the Treaty of Extradition between France and England, and that it will be able to authorize you to reclaim me from the Emperor's Government.

The sentence which had committed me for the purpose of extradition was appealed against, and the case, already brought on and argued before a Judge of a higher rank than the first one, was to be concluded the next day at 11 o'clock in the morning by the decision of this Magistrate, when the following facts occurred :—

At 11 o'clock at night, after having been present at the pretended departure of the Montreal train for Quebec, the Magistrate in question came to assure himself that I was safe in prison. Between 1 and 2 o'clock in the morning I received an order from the Governor of the prison to get up and depart. The French Police Officer, who was sent in pursuit of me, took possession of me with the assistance of several other persons, by force, and without being able to show me the order by virtue of which they were carrying me off. I was placed in a carriage, and taken to a station of the Montreal and Quebec Railway (I think the St. Charles Station), and not to the Montreal terminus. For, making a false start, in order to deceive the public and my counsel, as well as the Judge who was to deliver judgment the following morning at 11 o'clock, and the authorities themselves, the train was started at its usual time, 10 o'clock, and was stopped for three or four hours at the above-mentioned station. I was shut up in custody of three men in a compartment reserved for the use of the servants of the Company. I saw Mr. Spilthorn, one of my New York counsel pass by, probably the only person who had succeeded in discovering my abduction. I wished to speak to him ; I was prevented by force. On arriving at Quebec I was put on board the "Damascus," the departure of which had been delayed, and where the counsel of whom I have just spoken, asked by virtue of what order I was thus carried off; the persons who surrounded me replied, that they had no explanations to give him; that they were executing their orders, and had no papers to show. He retired, protesting against this incredible abuse of power.

On arriving at Liverpool, where there was no Magistrate competent to take cognizance of my case, I was taken to London, where I was told such a Magistrate would be found. There I was taken by night to an hotel situated in a street the name of which I do not know, nor yet that of the hotel. Three persons came there ; I was told they were lawyers engaged by a despatch from M. Doutre, my counsel at Montreal. After a conversation, at which I was not present, between these gentlemen and a Canadian who accompanied me from Montreal with the French police officer, these three gentlemen retired without my being able to hold any communication with them. At 6 o'clock in the morning I was taken from the hotel and conducted by railway to Dover, from which place I was embarked for France.

When I tell your Excellency that the sentence of the first Judge makes me answerable for the crime of forgery which I do not consider I have committed, either according to French or English laws; that in the proceedings taken against me at New York this count in the indictment was even abandoned; that the Crown Counsel at Montreal himself acknowledged that I had not committed this crime; that besides I do not at all demand to be given up to England to be set at liberty there, but only in order that the proceedings interrupted by force at Montreal may go on, or that I am ready, if it is preferred, to submit the case to the High Court of England, or it matters not to what other jurisdiction, it appears to me that the Queen's Government may be impressed by these weighty reasons, and may request you to reclaim me from the Government of the Emperor.

I beg your Excellency to be pleased to transmit my letter to the English Government and to acknowledge its receipt.

I have, &c.

(Signed) E. S. LAMIRANDE.

P.S.—The document which those persons who carried me off did not possess, was I

I think that which is required by the Treaty, in virtue of which I could have been legally arrested in France on the charge of the crime for which my extradition was demanded.

I have just now heard that I am about to be transferred to the Poitiers prison (Department of Vienne), where I beg your Excellency to acquaint me with the result of my complaints.

My name and surnames are Surreau Lamirande, Charles Constant Ernest.

No. 2.

Lord Stanley to Earl Cowley.

My Lord, *Foreign Office, September* 26, 1866.

I HAVE referred to Her Majesty's Secretary of State for the Colonial Department your Excellency's despatch of the 14th instant, together with the letter therein inclosed from M. E. S. Lamirande, protesting against his arrest and surrender to the French police authorities at Montreal, as being unwarranted by the terms of the Extradition Convention between this country and France.

I learn from the Colonial Office, in reply, that they are not as yet in possession of any official report from Canada of the facts of this case, and that the Governor-General of that province has accordingly been requested to send home a complete report upon it.

As, however, the circumstances attending Lamirande's extradition, if correctly stated in his protest to your Excellency, afford ground for questioning the legality of his extradition, I have to instruct your Excellency to address a representation to the French Government on this subject, with the view of delaying any further judicial proceedings against the prisoner until Her Majesty's Government are in possession of more authentic information.

I am, &c.
(Signed) STANLEY.

No. 3.

Earl Cowley to Lord Stanley.—(*Received September* 28.)

My Lord, *Paris, September* 27, 1866.

I HAVE had the honour to receive your Lordship's despatch of yesterday's date, on the subject of the arrest and extradition from Canada of M. E. S. Lamirande, under the provisions of the Treaty of 1843, and I inclose a copy of the note which I have addressed to M. de Lavalette in consequence of your Lordship's instructions.

I have, &c.
(Signed) COWLEY.

Inclosure in No. 3.

Earl Cowley to M. de Lavalette.

(Extract.) *Paris, September* 27, 1866.

ABOUT a fortnight ago I received a letter from M. E. S. Lamirande, who has lately been brought from Canada under the provisions of the Extradition Treaty of 1843, protesting against his arrest and surrender to the French police authorities at Montreal, as being unwarranted by the terms of the said Treaty, and requesting me to bring his protest to the notice of Her Majesty's Government.

Although no official information on this subject has as yet reached Her Majesty's Government, there is grave reason to doubt the legality of Lamirande's extradition, and I am instructed by Her Majesty's Principal Secretary of State for Foreign Affairs to request your Excellency to move the proper authority to delay further proceedings against Lamirande until Her Majesty's Government shall be in possession of more authentic information on which to found a further communication to your Excellency.

No. 4.

Earl Cowley to Lord Stanley.—(Received September 28.)

My Lord, *Paris, September 27, 1866.*

I BEG leave to call your Lordship's attention to the inclosed extract from yesterday's evening edition of the "Moniteur," respecting the arrest and extradition of Lamirande, whose case was brought before your Lordship in my despatch of the 14th instant.

I have, &c.
(Signed) COWLEY.

Inclosure in No. 4.

Extract from the "Moniteur" of September 26, 1866.

LES journaux du Canada ont engagé une polémique assez vive, à propos de l'extradition d'un caissier infidèle de la Banque de France, qui s'était réfugié dans ce pays. On sait que toutes les formalités prescrites par la loi ont été observés en cette circonstance. Après enquête et décision du Juge compétent, l'ordre de livrer le prisonnier a été régulièrement donné par le Gouverneur-Général des provinces Britanniques. L'émotion qui s'est produite autour cette affaire, et qui s'attache à des incidents de procédure soulevés en temps inopportun par les avocats du prévenu, semble avoir pris naissance dans un ordre de considérations étranger à la question en elle-même. Les points essentiels ont été exposés avec autorité dans une lettre adressée aux principales feuilles du Canada par le jurisconsulte qui représentait devant le tribunal de Montréal la Couronne Britannique.

(Translation.)

THE newspapers of Canada have begun a somewhat lively discussion respecting the extradition of a fraudulent cashier of the Bank of France who had escaped to that country. It is well known that all the forms prescribed by law have been observed in this matter. After an inquiry and decision by a competent Judge, the order to surrender the prisoner was regularly issued by the Governor-General of the British Provinces. The excitement produced about this case, and which attaches to points of procedure raised inopportunely by the prisoner's lawyers, would appear to originate in a chain of considerations foreign to the question itself. The essential points of the case have been stated with authority in a letter addressed to the principal papers of Canada by the lawyer who represented the British Crown before the tribunal of Montreal.

No. 5.

Earl Cowley to Lord Stanley.—(Received October 10.)

My Lord, *Paris, October 9, 1866.*

I HAVE the honour to transmit herewith copy of a note which I have received from M. de Moustier on the subject of the extradition from Canada of M. E. S. Lamirande, in reply to the one which I addressed on the 27th ultimo to M. de Lavalette, a copy of which was inclosed in my despatch of the same date.

M. de Moustier states that the case has been carefully examined by the Minister of Justice, who considers that there exists no irregularity which could invalidate the extradition of Lamirande, and that it would therefore be desirable that Her Majesty's Government should, before coming to any decision upon the subject, communicate to the French Government the facts complained of.

M. Baroche adds, further, that the trial of Lamirande must take place in due course, but that no measure has been taken to hasten it.

I have, &c.
(Signed) COWLEY.

Inclosure in No. 5.

M. de Moustier to Earl Cowley.

M. l'Ambassadeur, *Paris, le 8 Octobre*, 1866.

VOTRE Excellence, en annonçant le 27 Septembre dernier à M. le Marquis de Lavalette que le nommé Lamirande protestait contre son extradition au Canada, a demandé qu'il soit sursis aux poursuites dirigées contre cet accusé jusqu'à ce que le Gouvernement de la Reine ait obtenu les informations propres à la mettre en mesure d'adresser une communication ultérieure au Gouvernement de l'Empereur.

M. le Ministre de la Justice, à qui M. le Marquis de Lavalette s'était empressé de faire part du désir exprimé par votre Excellence, a examiné avec soin les diverses phases de cette affaire et ne pense pas qu'il existe aucune irrégularité de nature à invalider l'extradition de cet accusé.

Dans cet état de choses il serait désirable que le Gouvernement de Sa Majesté Britannique, avant de prendre aucune décision, nous fît connaître les griefs qu'on allègue, et que des explications loyales feront sans doute disparaître. M. Baroche ajoute, du reste, que, quant au jugement de Lamirande, aucune mesure n'a été prise pour en avancer l'époque. Mais votre Excellence sait trop bien que c'est pour l'autorité judiciaire un devoir de se conformer aux régles qui lui sont tracées, sans y rien modifier arbitrairement, pour ne pas comprendre que le moment approche où il deviendra nécessaire de laisser la loi suivre son cours. J'appelle également l'attention de votre Excellence sur ce qu'il y aurait d'anormal de la part du Gouvernement Britannique, aux vœux duquel nous sommes toujours désireux de pouvoir déférer, à remettre en question une procédure dont le résultat pourrait d'autant moins être contesté qu'il s'agit d'un homme placé sous le coup d'une accusation si publique qu'il y a en quelque sorte flagrant délit.

Agréez, &c.

(Signé) MOUSTIER.

(Translation.)

M. l'Ambassadeur, *Paris, October 8*, 1866.

YOUR Excellency, in announcing on the 27th of September last to the Marquis de Lavalette that one Lamirande protested against his extradition from Canada, requested that the proceedings instituted against the accused might be delayed until the Government of Her Majesty were in possession of such information as would enable them to address a further communication to the Government of the Emperor.

The Minister of Justice, to whom the Marquis de Lavalette hastened to communicate the wish expressed by your Excellency, has carefully examined the different bearings of the case, and does not think that there is any irregularity of a nature to invalidate the extradition of the accused.

In this state of things it would be desirable that the Government of Her Britannic Majesty should, before coming to any decision, communicate to us the alleged grievances which, upon frank explanations, will doubtless disappear. M. Baroche adds, however, that no step has been taken to hasten Lamirande's trial. But your Excellency knows too well that is it the duty of the judicial authority to conform to the rules which are laid down for its observance without any arbitary modification thereof, not to understand that the time is drawng near when it will become necessary to allow the law to take its course.

I ikewise call to your Excellency's attention what an anomalous course it would be on the part of the British Government, to whose views we are always anxious to be able to defer, to bring again in question proceedings of which the result could the less be contested, as they relate to a man who lies under a charge so public that it is in some measure a case *flagrante delicto*.

Accept, &c.

(Signed) MOUSTIER.

No. 6.

Lord Stanley to Earl Cowley.

My Lord, *Foreign Office, October 25*, 1866.

HER Majesty's Government are desirous of knowing, as soon as possible, whether the French Government propose that Lamirande should be brought to trial, and when.—Lord Carnarvon has not received from Lord Monck the particulars of the case, which he has been called upon to supply; and it is, therefore, only upon very meagre

information that I am able to consult the Law Officers, as to the propriety of making any formal communication to the French Government.

It is under these circumstances very desirable that as much delay as possible should take place in bringing the case on for trial.

I am, &c.
(Signed) STANLEY.

No. 7.

Earl Cowley to Lord Stanley.—(Received November 9.)

My Lord, *Paris, November 8, 1866.*

WITH reference to your Lordship's despatch to me, of the 25th ultimo, and to my telegram of 2·25 A.M. yesterday morning, relative to the date to be fixed for the trial of Lamirande, I have the honour to inclose herewith copy of a note which I have received from M. de Moustier, in which his Excellency informs me that the Assizes at which this trial will take place commence upon the 26th of this month.

I have, &c.
(Signed) COWLEY.

Inclosure in No. 7.

M. de Moustier to Earl Cowley.

M. l'Ambassadeur, *Paris, le 6 Novembre, 1866.*

VOTRE Excellence, dans sa lettre du 28 Octobre dernier, m'a exprimé le désir du Gouvernement de la Reine d'être informé de l'époque à laquelle doit avoir lieu le jugement de Lamirande.

M. le Ministre de la Justice me fait connaître que la session des Assises de la Vienne, où doit être portée l'affaire de cet accusé, s'ouvrira le 26 de ce mois.

Agréez, &c.
(Signé) MOUSTIER.

(Translation.)

M. l'Ambassadeur, *Paris, November 6, 1866.*

IN your letter of the 28th of October last your Excellency expressed to me the wish of Her Majesty's Government to be informed of the date when the trial of Lamirande was to take place.

The Minister of Justice acquaints me that the session of the Vienne Assizes, before which the case of the accused is to be brought, will open on the 26th of this month.

Accept, &c.
(Signed) MOUSTIER.

No. 8.

Lord Stanley to Earl Cowley.

My Lord, *Foreign Office, November 10, 1866.*

IT has not been in my power before to-day to furnish your Excellency with instructions respecting the case of M. Lamirande's forcible extradition from Canada. The papers successively received from the Colonial Office on the subject are so voluminous that even now the Law Officers of the Crown, to whom they have necessarily been referred, have been unable to consider them so fully as to admit of their forming a decided opinion on the conduct of the Colonial authorities in the transaction.

But, as regards the question as it affects M. Lamirande personally, I am advised that although Her Majesty's Government could not demand, or claim as of right, that he should be remitted to Canada in order that the question of his liability to extradition might be there legally decided, yet the circumstances of the case are so peculiar that Her Majesty's Government may fairly make a friendly representation to the French Government on his behalf.

I have accordingly to instruct your Excellency to say to M. de Moustier that Her Majesty's Government have ascertained that the warrant for M. Lamirande's extradition was issued by the Governor-General of Canada in ignorance that the prisoner had applied

to the proper tribunal to order his discharge on the ground that the case was not within the provisions of the Treaty. It appears that while this point was actually under discussion before the Judge, who had adjourned the case to the following morning, the warrant was obtained from the Governor-General, who was wholly uninformed of these facts, and who would not have issued the warrant if he had been aware of them.

Your Excellency will further say that, in the opinion of the Judge before whom the matter was pending, the case did not come within the provisions of the Treaty, and that the prisoner ought not to be delivered up; and, moreover, that the prisoner was carried away under the warrant of the Governor-General notwithstanding the personal protest of the Judge. Her Majesty's Government are advised that there is good reason to believe that the opinion of the Judge was well founded in law, and that the prisoner ought not to have been surrendered.

Your Excellency, while carefully abstaining from making any claim or demand as of right, will say that, under these circumstances, Her Majesty's Government hope that the French Government will consent to the prisoner being replaced in that position from which he was improperly removed.

I am, &c.
(Signed) STANLEY.

No. 9.

Earl Cowley to Lord Stanley.—(*Received November* 14.)

(Extract.) *Paris, November* 13, 1866.

I SAW M. de Moustier yesterday afternoon, on the subject of your Lordship' despatch of the 10th instant, relating to the case of Lamirande.

While carefully abstaining, in pursuance of yonr Lordship's instructions, from making any demand or claim as of right that Lamirande should be remitted to Canada, I also avoided committing Her Majesty's Government to the expression of any opinion that such right did not exist; because, should the French Government be found willing to meet the wishes of Her Majesty's Government by the surrender of Lamirande, it might become necessary, in order to justify that surrender, that some claim as of right should be put forward by Her Majesty's Government.

I confined myself, therefore, to stating to M. de Moustier the circumstances attending Lamirande's arrest and extradition, and the doubts which prevailed in the mind of Her Majesty's Government of the legality of those proceedings; and I asked whether the French Government would not be disposed to meet the wishes of Her Majesty's Government, which I was desired to express, that Lamirande, in consequence of these doubts, should be replaced in the position from which he had been improperly removed.

M. de Moustier did not give me much encouragement to hope that my appeal would be favourably listened to. His Excellency said that he did not see, Lamirande being now in the hands of justice, by what process he could be delivered from them except by a trial.

His Excellency added that although no blame could in any way attach to the French Government in these transactions, he was personally most anxious to meet the wishes of Her Majesty's Government. He might add that such was also the Emperor's desire. But he must confess he did not see his way to it. If, however, I would give him a written statement of the position of Her Majesty's Government in this matter, he would see the Minister of Justice upon the subject, and bring it before the Council of Ministers at its next meeting. He would also cause inquiries to be made whether any similar case had ever occurred before, that is, whether any Government with which France had an Extradition Treaty, had ever recovered an individual surrendered illegally, and, if so, what had been the course followed.

I gave M. de Moustier a statement compiled from the third and fourth paragraphs of your Lordship's despatch alluded to above.

No. 10.

Lord Stanley to Earl Cowley.

My Lord, *Foreign Office, November* 15, 1866.

I HAVE received your despatch of the 13th instant, reporting a conversation with M. de Moustier respecting the case of M. Lamirande; and I have to acquaint

you that Her Majesty's Government entirely approve the language which you held on that occasion.

It appears from what M. de Moustier said to your Excellency that the French Government are not disposed to replace M. Lamirande in the same position in which he was before he was made over to the French Police Officer in Canada; doubting, on the one hand, their power to do so, as the law stands, and hesitating, on the other, as to the effect which their doing so might have on public opinion in France.

The case is, indeed, beset with difficulty. It is quite clear, at least in the opinion of the Judge in Canada before whom the case was pending, and which is adopted and confirmed by the Law Officers of the Crown in England, who have now had the opportunity of examining all the documents connected with the transaction, that the charge on which M. Lamirande was given up did not come within the provisions of the Treaty, and that he therefore ought not to have been surrendered.

The French Government appear to hold that, having got the prisoner into their possession, certainly, as they say, without any blame attaching to them in regard to the manner in which they did so, they cannot let him go without a trial. But your Excellency may point out to M. de Moustier that however free from blame the French Government itself may be, the French authority in Canada, who set the matter in motion, can hardly stand acquitted of having done so without warrant, and, in fact, in excess of the Treaty engagements between England and France. For the stipulation of the Ist Article of the Treaty of 1843 expressly provides that requisitions for extradition shall be made through the medium of a Diplomatic Agent, which a Consul is not, and therefore the application of the French Consul to the Governor-General in Canada was one wholly unauthorized by Treaty, should never have been made by the Consul, and should never have been listened to by the Governor-General.

Lord Monck, apparently not adverting to the special terms of the French Treaty, and being doubtless anxious to meet the requisition of the French Consul, authorized the apprehension of M. Lamirande; but his Excellency may probably have been led to accede to the requisition of the French Consul without strictly scrutinizing the authority under which it was made, by imagining that the terms of the Treaty between England and France on this point were identical with those of the Treaty between England and the United States, with which, from the proximity of the two countries, he was more familiar.

But the two Treaties are widely different in this respect. The former expressly requires the intervention of a "Diplomatic Agent;" the latter stipulates in more general terms that the requisitions of extradition may be made by the "Ministers, officers, or authorities" of the Contracting Parties.

Accordingly, the French Government may fairly be asked, in dealing with this question as regards M. Lamirande, to consider that their own Consul has been party to the error which in its results has placed that person in the hands of French justice.

Her Majesty's Government, however, would not think it right, while requesting the French Government to redress the wrong which, from mutual misapprehension of their respective authorities, has unquestionably been done to M. Lamirande, to conceal from them, what, however, they doubtless must be fully aware of, that the effect of the prisoner being remitted to Canada would most likely be that he would obtain his release; and the same result would probably attend an application to the Courts of England in the event of his being brought to this country on his way to Canada, inasmuch as a writ of habeas corpus might be obtained from the Courts or from a Judge in England, with a view to his discharge from custody.

It would seem, therefore, superfluous to attempt to send him to Canada, which could hardly be effected without his passing through this country.

The circumstances of the case, however, are so peculiar that it is well deserving of the attention of the French Government whether the difficulties with which it is surrounded may not be indirectly obviated.

The French Government may not be disposed to send the prisoner back to Canada with the certainty of his being set free, not by any act of grace on their part exercised there, but by the ordinary process of law. They might be as little disposed to send him to this country, and then to apply in the usual manner through the French Embassy for his extradition, with the knowledge that the legal authorities here consider the case not to come within the provisions of the Extradition Treaty. But it may be possible for the French Government, by their own action, to place the prisoner practically in the same position in which he would have stood if the legal proceedings in Canada had not been so strangely interrupted. In that case M. Lamirande would indeed have been set free, but he would not have been acquitted of the crime laid to his charge. He must have

remained an exile from his country, and the French Government will probably not contend that such would be no real punishment, although it would not be the precise punishment which the law would have awarded to him if he had been tried in France.

Could not the French Government, looking to all the circumstances of the case, waive a formal trial, on the condition that M. Lamirande forthwith quits France never to return, leaving the prosecution to stand over as a guarantee for his observance of the condition, or for his submitting to a trial if he disregarded it?

It appears to Her Majesty's Government that by some course of this kind the French Government might set at rest the question between the two Governments arising out of the case; and your Excellency will accordingly suggest it for their consideration. The ends of justice, so far as the punishment of the criminal is concerned (supposing him to be such), would at all events be partially satisfied by its adoption; while the error, for so it must be considered, both of the British Colonial authorities and of the French Consular authority, would have been redressed, and the position of the prisoner left as it would have been if no such error had been committed.

I am, &c.
(Signed) STANLEY.

No. 11.

Lord Stanley to Earl Cowley.

(Extract.) *Foreign Office, November* 15, 1866.

WITH reference to my despatch of the 10th instant, to your despatch of the 13th, and to my despatch of this day, and also to my despatch of the 13th instant, and to your telegram and my reply of yesterday, I have to state to your Excellency that Her Majesty's Government approve of your having refrained, in conversation with M. de Moustier, from disclaiming any right to demand the surrender of M. Lamirande; but the opinion of the Law Officers of the Crown is so decided on that point that I must again caution you, without further instructions, not to advance any such claim.

No. 12.

Lord Stanley to Earl Cowley.

My Lord, *Foreign Office, November* 15, 1866.

I SHOULD have wished to furnish your Excellency with a copy of the "Mandat d'Arrêt" on which the extradition of M. Lamirande was demanded by the French Consul-General in Canada, but as the document does not appear to have been sent home by the Governor-General, it is probable that it was returned to the Consul-General according to his request, stated in the inclosed copy of his letter to the Provincial Secretary.

The crime, however, with which M. Lamirande stood charged, is described by the Consul-General in the same letter in the following terms:—

"Lequel" (Ernest Surreau Lamirande) "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 la caisse la somme volée de 700,000 francs, crime prévu par les dispositions du Traité d'Extradition conclu entre la France et l'Angleterre en Février 1843, dont je transcris ici une partie."

To the same effect, Melin, the French police officer charged with the execution of the warrant, deposes on the 18th of July:—

"Que de plus le dit Charles Surreau 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 présente dans la caisse de la 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 chargeant et falsifiant son bordereau de situation, et qu'ainsi il tombe sous dispositions du Traité existant entre l'Angleterre et la France pour l'extradition des criminels."

I am, &c.
(Signed) STANLEY.

Inclosure in No. 12.

M. Gautier to Mr. Mc Dougall.

Monsieur, *Québec, le 18 Juillet,* 1866.

J'AI l'honneur de vous adresser ci-inclus un affidavit fait pardevant 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 Surreau 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 l'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.

"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, 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-Genéral, en vertu des pouvoirs que lui confère la susdite Convention, le warrant nécessaire pour arrêter et extrader ensuite le susnommé Ernest Surreau 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,

(Signé) FRED. GAUTIER.

(Translation.)

Sir, *Quebec, July* 18, 1866.

I HAVE the honour to inclose to you herewith, an affidavit made before Judge Taschereau, of the Superior Court of Quebec, by Edme Justin Melin, Chief Inspector of Police at Paris, with the object of obtaining the arrest and subsequent extradition of one Ernest Surreau Lamirande, cashier of the Branch of the Bank of France at Poitiers, in the Department of Haute Vienne, in the French Empire, who has been guilty not only of a robbery of 700,000 francs to the loss of that Branch of the Bank of France at Poitiers, but also of the crime of forgery, in having falsified his books and his bank return, and in

having thus represented the stolen sum of 700,000 francs as still included in his cash, a crime within the purview of the stipulations of the Extradition Treaty concluded between France and England in February, 1843, from which I here transcribe an extract:—

"By a Convention." &c.

I therefore take the liberty, Mr. Secretary, to beg that you will be so good as to request his Excellency the Governor-General, in virtue of the powers conferred on him by the above-mentioned Convention, to issue the necessary warrant for the arrest and subsequent extradition of the above-mentioned Ernest Surreau Lamirande.

I shall be obliged by your sending me the warrant as soon as possible.

I think it well to inclose herewith the warrant issued by the Civil Tribunal at Poitiers, and duly legalized by Her Britannic Majesty's Consul at Paris. Be good enough, I beg, to return me this document, together with the Governor-General's warrant.

I avail, &c.

(Signed) FRED. GAUTIER,
French Consul-General.

No. 13.

Lord Stanley to Earl Cowley.

My Lord, *Foreign Office, November* 16, 1866.

I THOUGHT it desirable that the Law Officers should be apprized of the language held to you by M. de Moustier in the Lamirande case, as reported in your despatch of the 13th instant; and I have now to acquaint your Excellency that the Law Officers consider that it is impossible to deny the force of M. de Moustier's reasoning.

It must indeed be admitted that if the situations were reversed, and the restoration of a French subject, given up under the Extradition Treaty, and about to undergo trial before an English Tribunal, were demanded or requested by the French of the English Government, the latter would be constrained to reply that the Executive Government had no power to remove a prisoner from the judicial authority to which he had been submitted, or in any way to stop the course of justice with respect to him, by whatever error on the part of the French Government he might originally have been placed within the jurisdiction of the Court.

Her Majesty's Government, looking at the question in this light, could not consider the refusal of the French Government to give up M. Lamirande as affording any ground whatever of offence to this country.

Your Excellency will understand that I make this communication for your private information only.

I am, &c.

(Signed) STANLEY.

No. 14.

Lord Stanley to Earl Cowley.

My Lord, *Foreign Office, November* 16, 1866.

THINKING it desirable that your Excellency should be informed as to what is considered in this country a legal definition of the crime of forgery, I have asked the Law Officers to supply me with it, and also to state the bearing of that definition on the words as used in the Extradition Treaty with France, and on the statements of the French Consul-General in Canada and of the French police officer Melin, of which I sent you copies in my despatch of yesterday, setting forth the crimes of which Lamirande was accused.

I have now to acquaint your Excellency that I am advised that forgery, by the common law of England, may be defined to be the fraudulently counterfeiting any written document in whole or in part, or altering or adding to it, or making it falsely to appear to be the genuine writing or instrument of some other person, with intent to defraud or prejudice another; and that by one of the statutes for consolidating the Criminal Law, namely, the 24 and 25 Vict., cap. 98, a variety of cognate acts are defined and classed under the general head of forgery; and by various special statutes the counterfeiting or falsification of various public acts and other documents is also declared to be forgery.

The term "forgery" in the statute for giving effect to the Extradition Treaty with France would, I am advised, include all the above cases.

But a mere false statement in writing, which does not purport to be the writing of another person, is not forgery: for instance, if a man fraudulently signs the name of A. B., without authority, to a bill of exchange, it is forgery; but if he fraudulently signs the bill in his own name, "per procuration of A. B.," having no authority, it is only a false statement and a fraud, but not a forgery. So, if a person makes a false entry in a banker's pass book, as if it were, and purporting to be, the banker's entry, with a view to defraud, it is forgery; but if he makes a false entry in his own book, and purporting to be his own entry, with the like intent, it is a fraud, but is not a forgery.

According to the opinion of the Court of Queen's Bench, a forgery, to come within the French Extradition Treaty and Statute, must be what would be considered forgery according to the law of England as well as of France; but I am informed that this opinion is rather questionable.

But as regards the question now at issue, it would appear from the statements made in the letter of the French Consul-General and in the deposition of the French police officer, that Lamirande was not charged with or guilty of forgery, or counterfeiting the entry of any other person; but that he was charged with embezzlement and with making fraudulent and false entries in his own books, which would not be forgery according to the law of England within the meaning of the Extradition Statute.

I am, &c.
(Signed) STANLEY.

No. 15.

Lord Stanley to Earl Cowley.

My Lord, *Foreign Office, November* 19, 1866.

I HAVE thought it desirable to obtain the opinion of the Law Officers on the question whether the charge made against Lamirande by the French Consul-General in Canada, being that of falsifying his books and *bordereau*, if these books are the ledgers of the Bank of France entrusted to his keeping and not M. Lamirande's private accounts, would that bring him within the accusation of forgery; and I have to state to your Excellency that I am informed that this would not be forgery according to the laws of England.

I am, &c.
(Signed) STANLEY.

No. 16.

Earl Cowley to Lord Stanley.—(Received November 21.)

My Lord, *Paris, November* 20, 1866.

I HAD the honour to receive on the 16th instant your Lordship's despatches of the previous day, and on the 18th instant your despatches of the 16th, all relating to the case of Lamirande.

In execution of your Lordship's several instructions, I wrote a letter to M. de Moustier on the 18th, inclosing a Memorandum of the points on which exception could, in the opinion of Her Majesty's Government, be taken with reference to the legality of Lamirande's arrest, and I told his Excellency that I was ready to wait upon him to discuss these matters with him whenever it would suit him to receive me.

A copy of this Memorandum is inclosed, for your Lordship's information.

His Excellency appointed this afternoon to see me, and I give your Lordship the result of our interview.

M. de Moustier said, that since we had last met he had examined thoroughly with the Minister of Justice the question of the possibility of surrendering Lamirande now that he was in the hands of justice, and that he could authorise me to inform Her Majesty's Government that it had been decided that, inasmuch as Lamirande had been placed in his present position by the administrative act of the Minister for Foreign Affairs, that Minister could recover him from the hands of justice, provided that he was satisfied of the right of Her Majesty's Government to claim his surrender, and this recovery might be made now or even after Lamirande's trial, and, if found guilty, after his conviction.

The question, then, which he had to consider was, how far Her Majesty's Government had right on their side, and for this purpose he must decide on the two points raised in my Memorandum, and he really had not had sufficient time to examine them; there certainly would not be time to discuss them thoroughly with Her Majesty's Government before the day fixed for Lamirande's trial; the trial, therefore, must proceed. In the meantime the discussion between the two Governments might go on, and he could assure me most positively that he had no other wish than to examine with the utmost impartiality all the bearings of the case, and should Her Majesty's Government satisfy him that the provisions of the Treaty of 1843 had not been complied with, no difficulty whatever would be made in surrendering Lamirande, even should he have been convicted in the meantime.

Referring again to the points raised in my Memorandum M. de Moustier observed that, as at present advised, he must take exception to the doctrine contained in the first point; that the French Consul-General in Canada was not competent to make the demand for Lamirande's extradition. If this were the case, his Excellency said, if this doctrine were to hold good, the Treaty would become inoperative in all Her Majesty's colonies; moreover, according to French custom, Consular Agents holding under no diplomatic authority, as was the case in Her Majesty's colonies, were always considered to possess the diplomatic character necessary to enable them to exercise such diplomatic functions as the welfare of French subjects required.

As to the other question whether the crime of which Lamirande was accused amounted to forgery or not, he really was not in a position at this moment to discuss it with me. If he was to trust to those who were more conversant with the subject, he must suppose that there was good reason to believe that it would be shown that Lamirande's acts amounted to forgery according to British law.

I replied that Her Majesty's Government would receive with great satisfaction the assurances which M. de Moustier had given me of his desire to examine this matter with impartiality, and to surrender Lamirande should it be seen that his extradition had been irregularly obtained. I needed hardly to assure him, on the part of Her Majesty's Government, that there was no desire to shield a man accused as was Lamirande; but they were guardians of a Treaty which had been sanctioned by Parliament, and were bound to bring any infractions of it to the notice of the French Government. As yet I had been instructed to do no more. The communications which had passed between the two Governments might be considered to have amounted to an exchange of opinions only, and I would lose no time in informing your Lordship of the intentions of the Imperial Government, and of asking for further instructions.

M. de Moustier rejoined that such was the light in which he wished the discussion should be continued, and that it should not be made a question between Government and Government.

I then said that with regard to Lamirande's trial Her Majesty's Government had hoped that it might have been dispensed with, and that Lamirande might, perhaps, have been set at liberty without being formally surrendered to the British Government, under the condition of quitting France for ever. M. de Moustier replied that such a course would be impossible; the trial could not be avoided. He was, moreover, of opinion that the facts which must be elicited at the trial, and which were now imperfectly known, would throw light upon the whole subject, and would enable the two Governments to mature their judgments.

It seemed to me that under the instructions which I have received from your Lordship, I could not with propriety press the matter further, and I let it drop.

I have, &c.

(Signed) COWLEY.

Inclosure in No. 16.

Memorandum.

HER Majesty's Government are desirous of submitting the following observations for the consideration of the Imperial Government:—

Her Majesty's Government, while freely admitting that no responsibility attaches to the Imperial Government in the proceedings which have led to the present dilemma, cannot but hold the opinion that the French authority in Canada, who set the matter in motion, can hardly stand acquitted of having done so without warrant, and, in fact, in excess of the Treaty engagements between England and France,

For the stipulation of the Ist Article of the Treaty of 1843 expressly provides that requisitions for extradition shall be made through the medium of a Diplomatic Agent,—which a Consul is not,—and therefore the application of the French Consul-General at Quebec to the Governor-General in Canada was one wholly unauthorized by Treaty, and should never have been made by the Consul-General.

No doubt the application of the Consul-General should never have been listened to by the Governor-General of Canada, and Her Majesty's Government do not seek to exonerate the Canadian authorities from the responsibility which belongs to them; but Her Majesty's Government submit that the Imperial Government may fairly be asked, in dealing with this question, to consider that their own Consul-General has been party to the error, which in its results have brought Lamirande within the jurisdiction of French Tribunals.

Again, the crime of which Lamirande is accused is thus described in the letter of the Consul-General to the Provincial Secretary of Quebec:—"Lequel "(speaking of Lamirande) "s'est rendu coupable non-seulement d'un vol de 700,000 francs au préjudice de la 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 l'Angleterre en Février 1843."

It would appear, then, by this letter, that the offence with which Lamirande is charged is one of embezzlement, and making false entries in his books, and it is supposed that the Consul-General assumes that these offences come within the legal meaning of the term "forgery," the only crime mentioned in the Treaty of 1843 at all applicable to the present case.

It may be as well to state here the definition of "forgery," according to the common law of England.

Forgery by the common law of England may be defined to be the fraudulently counterfeiting any written document, in whole or in part, or altering or adding to it, or making it falsely to appear to be the genuine writing or the statement of some other person, with intent to defraud or prejudice another.

By one of the statutes for consolidating the criminal law, a variety of cognate acts are defined and classed under the head of forgery, and by various special statutes the counterfeiting or falsification of various public acts and other documents is also declared to be forgery. But a mere false statement in writing, which does not purport to be the writing of another person, is not forgery.

As regards the question at issue, it does not appear Lamirande is charged with counterfeiting the entry of any other person, which would be forgery, but that he is charged, as has been stated above, with embezzlement, and with making fraudulent entries into his own books, which would not be forgery according to the law of England.

No. 17.

Earl Cowley to Lord Stanley.—(*Received November* 24.)

My Lord, *Paris, November* 23, 1866.

THE trial of Lamirande is fixed for Monday, the 3rd December.

Your Lordship may like to know more precisely of what he is accused.

Lamirande was cashier to the branch of the Bank of France established at Poitiers. As such he had considerable sums to receive and to pay, and consequently a deposit of a large amount was continually in his hands. The gold is tied up in bags containing a certain number of napoleons, which are liable to be visited from time to time by inspectors, who open them and see that their contents are correct; but these inspectors generally content themselves by opening one or two bags, and by weighing some of the others. Lamirande seems to have been in the habit of taking a few napoleons at a time from some of these bags, which he took care should never come into circulation, giving them the proper weight by the addition of lead, and placing them where there would be the least chance of their being opened. His books at the same time were kept as if the the proper amount of money was in his hands. Something having occurred to excite suspicion, Lamirande determined to abscond, taking with him a large sum of money in addition to those already stolen.

I have, &c.

(Signed) COWLEY.

No. 18.

Lord Stanley to Earl Cowley.

My Lord, *Foreign Office, November* 28, 1866.

AS in any discussion with the French Government which may hereafter take place on the subject of M. Lamirande's case much may turn on the precise nature of the charge against him, and of the evidence that may be adduced in support of it, I think it desirable that your Excellency should employ some competent person to watch the trial and to report fully upon it; taking care, however, in doing so not to appear to manifest any doubt as to the propriety of the manner in which the proceedings are conducted.

I am, &c.

(Signed) STANLEY.

No. 19.

Earl Cowley to Lord Stanley.—(Received December 3.)

My Lord, *Paris, December* 2, 1866.

IN compliance with the instructions contained in your Lordship's despatch of the 28th ultimo, I have desired M. Treite to proceed to Poitiers to be present at the trial of Lamirande, and to report to me full particulars for your Lordship's future information.

I have cautioned M. Treite not to express any opinion upon the proceedings at the trial.

I have, &c.

(Signed) COWLEY.

No. 20.

Lord Stanley to Earl Cowley.

My Lord, *Foreign Office, December* 4, 1866.

HER Majesty's Government have had under their consideration your Excellency's despatch of the 20th ultimo, inclosing a copy of a memorandum which you had communicated to the French Government, founded upon the instructions and observations contained in my despatches in regard to the pending trial of M. Lamirande, and the question of his surrender to the British Government.

Her Majesty's Government are glad to receive the assurance of the French Government as reported in your Excellency's despatch, that the trial and its result, if such result should be a conviction, will not bar the surrender of M. Lamirande.

Her Majesty's Government will await, though not without anxiety, the decision of the French Government on the representations made to them; and in the meanwhile they are quite content that the discussions on the subject should be carried on in the confidential form in which they have hitherto been conducted.

In conclusion I have to express to your Excellency my approval of your language to M. de Moustier, as reported in your despatch above referred to.

I am, &c.

(Signed) STANLEY.

No. 21.

Earl Cowley to Lord Stanley.—(Received December 7.)

My Lord, *Paris, December* 6, 1866.

M. TREITE returned to Paris this morning from attending the trial of Lamirande. I had the honour to inform your Lordship by telegraph that Lamirande had been found guilty of forgery ("faux") and sentenced to ten years' reclusion. He has appealed in Cassation, and the whole question will be gone into before that Court.

M. Treite will furnish me with a full report of the proceedings on the trial, but it

cannot be ready for a few days. I reserve all remarks until I have sent it to your Lordship.

I will only observe that the punishment of reclusion is more severe than imprisonment, and carries with it the penalty of the loss of all civil rights.

I have, &c.
(Signed) COWLEY.

No. 22.

Lord Stanley to Earl Cowley.

My Lord, *Foreign Office, December 7, 1866.*

IT is stated in a daily paper that a few weeks since a criminal whose capture or surrender had been improperly obtained in Switzerland, was, after conviction and sentence in France, sent back to Switzerland by order of the Imperial Government, on the ground of the antecedent irregularity.

I have to instruct your Excellency to make immediate inquiry into this matter, and, if the statement is correct, you will not fail to call M. de Moustier's attention to it as furnishing a strong precedent for giving up M. Lamirande.

I am, &c.
(Signed) STANLEY.

No. 23.

Earl Cowley to Lord Stanley.—(Received December 14.)

(Extract.) *Paris, December 11, 1866.*

I HAVE the honour to inclose herewith copy of a letter from M. Treite, transmitting a compte-rendu of the trial of Lamirande, and containing observations upon the proceedings. This letter does not throw much light upon the matter.

The case is certainly a curious one. Lamirande was arraigned in the acte d'accusation for having stolen 700,000 francs from the Bank of France, of which he was the cashier at Poitiers, and of having concealed this robbery by means of false accounts rendered to his superiors. At the trial the charge of theft was abandoned, and Lamirande was tried on the charge of "faux." Probably this was done with a view of bringing the crime within the meaning of the Extradition Treaty of 1843.

Your Lordship will observe that the Court declared itself incompetent to decide the question whether the extradition of Lamirande was accomplished according to the stipulations of that Treaty. The legality of this decision will be disputed before the Court of Cassation.

Inclosure 1 in No. 23.

M. Treite to Earl Cowley.

Milord, *Paris, ce 10 Décembre, 1866.*

CONFORMEMENT au désir exprimé par votre Excellence, je suis allé à Poitiers, assister aux débats du procès de Lamirande, ramené du Canada, et livré au Gouvernement Français.

Ces débats, disait-on généralement, présenteraient les plus intéressantes discussions au point de vue du droit international de l'extradition.

Effectivement, les défenseurs de l'accusé avaient préparé tout un système d'attaques contre l'extradition de Lamirande, en fait et en droit; ils devaient démontrer que les circonstances qui ont accompagné cette extradition constituaient des actes de surprise, de fraude, de violence, et d'outrages aux lois Anglaises. L'on devait surtout argumenter de la déclaration publique de M. Drummond, Juge à la Cour du Banc de la Reine, lequel avait, le 25 Août, 1866, déclaré l'extradition illégale; bref, on devait plaider que Lamirande avait été volé au Gouvernement Anglais. Le mot du reste a été dit à l'audience; votre Excellence le trouvera à la page 7 du compte-rendu* des débats, que j'ai

* Page 27.

l'honneur de lui remettre ci-joint. Aussi, l'attention publique était-elle vivement excitée; mais elle a été totalement trompée.

En effet, l'Avocat-Général, en vertu d'instructions indubitablement émanées du Ministère de la Justice, s'est opposé à l'admission des conclusions posées par les défenseurs sur la question d'extradition. Ces conclusions (page 3 du compte-rendu*) sont très-explicites; l'Avocat-Général a soutenu que la question d'extradition ne pouvait pas être discutée devant le pouvoir judiciaire, dès que le pouvoir exécutif avait déclaré que l'extradition était légale et en bonne forme; que l'extradition était le fait du prince dans ses relations internationales, relations qui ne peuvent, en aucun cas, tomber sous l'appréciation de l'autorité judiciaire, &c., &c. Les développements donnés à la discussion de cette question dans les plaidoiries sont aux pages 5 et 6 du compte-rendu.†

Malgré les efforts de la defense, la doctrine soutenue par M. l'Avocat-Général a été consacrée par un arrêt de la Cour d'Assises. Cet arrêt me paraît bien fondé en droit. Sa doctrine est du reste conforme à l'avis légal que j'ai eu l'honneur de soumettre à votre Excellence le 17 Novembre dernier touchant l'extradition de Lamirande.‡

*. Page 24. † Page 25.

‡ *M. Treite to Lord Cowley.*

Milord, *Paris, le 17 Novembre*, 1866.

CONFORMEMENT au désir que m'a exprimé votre Excellence, j'ai fait des recherches très minutieuses dans les recueils et les auteurs pour voir s'il n'y était pas question d'un cas où un Gouvernement, après avoir extradé un criminel, aurait demandé que ce criminel lui fût rendu par le motif que les formes légales n'auraient pas été observées lors de l'arrestation ou de l'extradition.

Je n'ai trouvé aucune trace d'un cas semblable et je doute qu'il en existe, car une pareille réclamation serait contraire aux règles qui président à l'indépendance respective des Etats.

En effet, l'Etat auquel un criminel a été livré ne saurait être compétent pour apprécier les formes procédurières de la loi étrangère, et ne saurait surtout soumettre sa propre juridiction criminelle à l'observation des formes légales chez une autre nation.

L'extradition est un acte de Gouvernement à Gouvernement; celui qui a livré un criminel en dehors des formes protectrices de la loi, encourt une responsabilité ou bien la rejette sur ceux de ses agents qui ont violé la loi et même les en punit; mais il n'a aucune réclamation à adresser, à ce propos, au Gouvernement à qui le criminel a été livré, à moins que l'extradition n'ait eu lieu par suite de mensonges ou de manœuvres frauduleuses.

Ce dernier Gouvernement exerce son droit de souveraineté en gardant le criminel qui a enfreint les lois du pays.

D'ailleurs, dès que le criminel est rentré sur le territoire, il n'appartient plus au Gouvernement, mais au pouvoir judiciaire, dont l'action est indépendante du pouvoir exécutif.

Le pouvoir exécutif n'a pas le droit de suspendre le cours de la justice vis-à-vis d'un individu poursuivi; il ne peut que faire grâce après la condamnation, car le droit d'amnistie individuelle avant le jugement est denié au Prince.

En appliquant ces principes à l'affaire Lamirande, que je ne connais que par les récits des journaux, je crois que le Gouvernement Anglais n'est pas en droit de demander la restitution de cet homme.

Le Gouvernement Français la refuserait à coup sûr, car à moins de violer les droits du pouvoir judiciaire il ne peut pas même disposer d'un accusé, qui n'appartient qu'à la justice.

N'ayant vu aucun document officiel, j'ignore les complications que l'affaire Lamirande peut récéler, mais je m'empresse d'informer votre Excellence que Lamirande va prochainement comparaître devant la Cour de Poitiers.

Devant la Cour d'Assises, les défenseurs souleveront probablement des incidents et des difficultés relatifs à l'arrestation et à l'extradition de l'accusé.

Il est de ces incidents que le Gouvernement Anglais pourrait être intéressé à connaître et à faire apprécier.

Ne serait-ce pas le cas de faire assister à l'audience un légiste, chargé de suivre la procédure et d'en examiner les phases et la portée légale? C'est une réflection que j'ai pris la liberté de soumettre à votre Excellence en la priant d'agréer mon respectueux et complet dévoument.

(Signé) TREITE.

(Translation.)

My Lord, *Paris, November* 17, 1866.

AGREEABLY with the desire expressed to me by your Excellency, I have made very careful research in works of reference and writers in order to ascertain if I could find there any mention of a case where a Government, after the surrender of a criminal, had demanded his rendition because the legal formalities had not been observed in the arrest or extradition.

I have found no trace of such a case and I do not think there is one, for such a claim would be contrary to th erules which are observed in regard to the independence of different States.

In fact, the State to which a criminal has been surrendered cannot be competent to appreciate the legal procedure of a foreign code, and assuredly cannot subordinate its own criminal jurisdiction to the observance of legal forms in another country.

Extradition is an act between Governments; that which has surrendered a criminal without regard to the precautionary forms of law incurs a responsibility, or indeed casts it upon those of its agents who have broken the law, and even punishes them for it; but it has no claim whatever to make, on this account, to the Government to whom the criminal has been surrendered, unless the extradition has been brought about by falsehood and fraudulent manœuvres.

This latter Government exercises its rights of sovereignty by retaining the criminal who has infringed the law of the land.

Moreover, as soon as the convict has returned into the territory, he belongs no longer to the Government, but to the judicial power, whose action is independent of the executive.

The executive power has not the right of suspending the course of justice with reference to the individual prosecuted; it can only grant pardon after conviction, for the right of pardoning an individual before trial is denied to the Prince.

Il faut cependant dire que les principes posés par "l'arrêt-Lamirande" (ce nom lui restera) ne sont pas acceptés unanimement dans la jurisprudence et la doctrine des auteurs. Mais la Cour de Cassation va prochainement être appelée à formuler un arrêt-principe sur cette matière si peu éclaircie, puisque Lamirande, dit-on, se pourvoit en Cassation, ainsi que cela a été annoncé.

Ainsi la comparution de Lamirande en justice n'a pas fait avancer la question d'extradition entre les deux Gouvernements Anglais et Français, si ce n'est que le Jury a déclaré Lamirande coupable de faux, conformément aux chefs d'accusation, transcrits dans l'acte d'accusation sous les numéros 3, 4, 5, et 6, et que j'ai reportés manuscrits aux pages 19 et 20 du compte-rendu,* les journaux ne les ayant pas reproduits.

Il faut s'incliner devant le verdict du Jury, quoiqu'il y ait divergence dans les opinions sur la question de savoir si les écritures mensongères que faisait journellement Lamirande constituaient légalement le crime de faux Français, et surtout le crime de faux Anglais, dit *forgery*.

Par la lecture des débats, votre Excellence verra que le Président de la Cour d'Assises a demandé à l'accusé si, quoique le vol et l'abus de confiance ne fussent pas compris dans le Traité d'Extradition de 1843, il consentait à être jugé sur ces deux chefs. L'accusé espérait probablement être acquitté sur le chef de faux, et il a refusé d'être jugé sur les deux autres chefs, et l'accusation n'a plus porté que sur le crime de faux.

Dans mon opinion, la demande de M. le Président avait une portée politique, car, si l'accusé avait consenti à être jugé sur les chefs de vol et d'abus de confiance, il renonçait *ipso facto* à se prévaloir du Traité d'Extradition, ainsi que l'en a averti l'Avocat-Général. Le conflit tombait de lui-même, car le Gouvernement Anglais n'avait plus à s'occuper de la réclamation d'un individu qui avait renoncé à se prévaloir de la loi Britannique.

La déclaration du Juge Drummond n'ayant pas été lue à l'audience n'a pu être publiée par les journaux Français. Cette publication eut pu les exposer à des poursuites pour infidélité dans les comptes-rendus des débats judiciaires; les feuilles étrangères ont publiée cette déclaration par extraits. Sur la première feuille du compte rendu† ci-annexé votre Excellence en trouvera une analyse, imprimée dans une feuille Belge.

Agréez, &c.

(Signé) TREITE.

(Translation.)

My Lord, *Paris, December* 10, 1866.

AGREEABLY with the desire expressed by your Excellency, I went to Poitiers to attend the trial of Lamirande, who has been brought back from Canada and given up to the French Government.

These proceedings, it was generally said, would present most interesting discussions in regard to the international right of extradition.

Indeed, the defenders of the accused had prepared quite a system of attacks upon the extradition of Lamirande, both as regards the facts and the law of the case.

They had to show that the circumstances attending this extradition constituted acts of deceit, of fraud, of violence, and of outrages on the English laws. They were above all to argue on the public declaration of Mr. Drummond, Judge of the Court of Queen's Bench, who had, on the 25th of August, 1866, declared the extradition to be illegal; in short, it was to be pleaded that Lamirande had been stolen from the English Government. The expression, moreover, was made use of in Court; your Excellency will find it at page 7‡ of the Report of the proceedings which I have the honour to inclose herewith. Public attention was also much excited, but it has been altogether disappointed.

In fact the Avocat-Général, in virtue of instructions without doubt emanating from the Ministry of Justice, opposed the admission of the motions submitted by the

On applying these principles to the case of Lamirande, which I only know through the newspaper reports, I think that the English Government is not in a position to demand the restoration of this man.

The French Government would most certainly refuse it, for without violating the right of the judicial power, it cannot even dispose of an accused person who belongs to justice alone.

Having seen no official document, I am ignorant of the complications which may lurk in the case of Lamirande, but I hasten to inform your Excellency that Lamirande will shortly appear before the Court of Poitiers.

Before the Court of Assize, the Counsel for the defence will probably bring forward some circumstances and raise some difficulties relative to the arrest and the extradition of the accused.

The English Government might be interested in learning and forming a judgment on these points.

Would it not be advisable to have a lawyer present at the trial, instructed to watch the proceedings and to examine their phases and legal bearing? This is an idea which I have taken the liberty of submitting to your Excellency, begging you to accept, &c.

(Signed) TREITE.

* Page 23. † Page 20. ‡ Page 47.

defenders on the question of extradition. These motions (page 3 of the Report*) are very explicit; the Advocat-Général maintained that the question of extradition could not be discussed before the judicial authority, since the executive authority had declared that the extradition was legal and regular; that extradition is the business of a Prince in his international relations; relations which cannot in any case fall within the cognizance of the judicial authority, &c. &c. The arguments adduced in the discussion of this question in the pleadings are in pages 5 and 6 of the Report.†

In spite of the efforts of the defence, the view upheld by the Advocat-Général has been ratified by a decision of the Court of Assize. This decision appears to me to be well founded in law. His view is, besides, in agreement with the legal opinion which I had the honour to submit to your Excellency on the 17th of November last, respecting the extradition of Lamirande.

It must, however, be said that the principles laid down by the Lamirande decision (by which name it will always be known) are not unanimously accepted in jurisprudence and in the tenets of writers. But the Court of Cassation is about to be called upon to lay down a definite rule on this matter, which is so obscure, since Lamirande, it is said, has appealed to the Court of Cassation, as has been announced.

Thus the appearance of Lamirande in a Court of Justice has not advanced the question of extradition between the English and French Governments, with the exception that the jury has declared Lamirande guilty of forgery agreeably to the heads of accusation transcribed in the indictment in Nos. 3, 4, 5, and 6, and which I have reported in manuscript at pages 19 and 30 of the Report,‡ the newspapers not having reproduced them.

We must bow to the verdict of the jury, although there may be a difference of opinion on the question whether the false statements made by Lamirande legally constituted the French crime of falsification ("faux"), and especially the English crime of falsification called "forgery."

On reading the discussions, your Excellency will see that the President of the Court of Assize asked the accused whether, although theft and abuse of confidence might not be within the scope of the Extradition Treaty of 1843, he would consent to be tried on these two charges. The accused probably hoped for an acquittal on the charge of forgery: he refused to stand his trial on the two other charges, and the prosecution only relied on the crime of forgery.

In my opinion, the question of the President had a political bearing, for if the accused had consented to be tried on the counts of theft and abuse of confidence, he would have renounced *ipso facto* his advantage arising from the Extradition Treaty, as the Advocate-General pointed out. The dispute would naturally have fallen to the ground, for the English Government could no longer have to occupy itself with the reclamation of an individual who had renounced the advantage arising from the British law.

The declaration of Judge Drummond not having been read at the trial, could not be published by the French newspapers. Such a publication might have exposed them to a prosecution for inaccuracy in a report of judicial proceedings. Foreign papers have published extracts from this declaration. On the first page of the Report§ your Excellency will find an analysis of that declaration printed in a Belgian paper.

Accept, &c.

(Signed) TREITE.

Inclosure 2 in No. 23.

Report of the Trial of M. Lamirande.

Analyse de la Déclaration du Juge Drummond, publiée par un Journal Belge.

CE document n'ayant pas été lu à l'audience du procès Lamirande n'a pas été publié par les feuilles Françaises. Celles-ci en l'imprimant, s'exposaient à des poursuites pour infidélité dans les comptes-rendus judiciaires.

"Nous rappellerons ici ce document un peu bizarre du Juge Drummond de Montreal. Ce document précise en effet toute la question relative à l'extradition.

"En France, nous ne saurions, à vrai dire, quel nom donner à ce document qui ne ressemble ni par la forme ni par le fond à l'idée que nous nous faisons d'une sentence juridique. D'abord l'honorable Juge Canadien reconnaît que l'accusé—ou plutôt le

* Page 44. † Page 45. ‡ Page 43. § Page 40.

pétitionnaire, comme il l'appelle dans un langage plein de déférence, ne pouvant être amené devant lui étant en pleine mer, enlevé par une des plus audacieuses et jusqu'à présent heureuses entreprises contre la justice dont on ait jamais entendu parler au Canada, il n'a plus d'ordonnance à rendre.

"Malgré cette déclaration quelque peu candide, l'honorable Juge Drummond se livre à une très-longue dissertation qui tient plus du plaidoyer ou de la polémique que de l'austérité d'un document juridique.

"Ce qui ressort de ce plaidoyer c'est l'opinion un peu irritée du Juge soutenant que l'extradition n'aurait pas été accordée par lui, si la cause fût restée entière, et cela par plusieurs motifs qu'il énonce fort compendieusement, à savoir: 1. Que le Consul-Général de France à Montréal n'avait pas qualité pour requérir l'extradition, n'étant pas agent diplomatique accrédité, comme l'exige le Traité de 1843; 2. Parce qu'on ne justifie pas un acte authentique de la mise en accusation de l'accusé; qu'au lieu du titre original et régulier on ne produit que la copie traduite dudit document et faite par un inconnu (on sait qu'à New York l'arrêt de renvoi fut détourné du dossier par l'un des avocats de Lamirande, auquel ce document avait dû être communiqué); 3. Parce que le fait imputé à l'accusé Lamirande ne contient pas l'imputation d'un des actes qualifiés crimes par les lois Anglaises et devant, aux termes du Traité, autoriser l'extradition.

En effet, en Angleterre, le crime de faux n'est, en réalité, que dans la fabrication infidèle d'un document destiné à être ce qu'il n'est pas; ce n'est pas la fabrication d'un document destiné à être ce qu'il est. En termes autres et plus clairs, un mensonge par écrit n'est pas un faux.

"Puis le Juge Drummond rappelle qu'il a donné l'ordre d'amener devant lui le pétitionnaire (Lamirande), et il ajoute:—

"'La réponse du geôlier à mon ordonnance d'habeas corpus fut qu'il avait remis le prisonnier à Edme-Justin Melin, Inspecteur de Police à Paris, dans la nuit du 24 courant, à minuit, en vertu d'un ordre signé par le Député Sheriff sur un documeut signé par M. le Gouverneur Général.

"'Il paraît, dit-il encore, que le pétitionnaire ainsi livré à un agent de police Français, est maintenant en route pour la France, quoique son extradition fût illégalement demandée, quoiqu'il ne fût accusé d'aucun des crimes pour lesquels il eût pu être légalement livré et malgré que je fusse informé d'une manière certaine que son Excellence le Gouverneur-Général avait promis—comme il y était tenu par honneur et par justice—de donner au pétitionnaire une occasion de faire juger de sa pétition par le premier tribunal du pays avant d'ordonner son extradition.'

"D'après ces impufations dirigées par un Magistrat contre le Gouverneur du pays, on peut s'expliquer la violence des polémiques dans lesquelles la presse Américaine s'est engagée. Il est vrai que le Magistrat Canadien ajoute que s'il y a une fausse date dans l'arrêt du Gouverneur du Canada, il voit là la preuve que la religion du Gouverneur a été surprise."

Compte-Rendu du Procès Lamirande, tiré de la "Gazette des Tribunaux," et du Journal "Le Droit."

JUSTICE CRIMINELLE.—COUR D'ASSISES DE LA VIENNE.

(Rédaction particulière de la "Gazette des Tribunaux.")

Présidence de M. AUBUGEOIS DE LA VILLE DU BOST, Conseiller à la Cour Impériale de Poitiers.

Audience du 3 Décembre.

Affaire Lamirande.—Soustraction Frauduleuse.—Détournement de 704,000 francs de Caisse de la Succursale de la Banque de France à Poitiers.—Faux en Ecriture de Banque.

LE nom de Lamirande a, depuis quelques mois, acquis une telle notoriété qu'il suffit de le rappeler pour remettre en mémoire tous les faits qui s'y rattachent. Caissier à la succursale de la Banque de France de Poitiers, il disparaît, laissant dans sa caisse un déficit considérable; il fuit, il traverse les mers; il se réfugie d'abord en Angleterre, puis en Amérique. Des agents Français le suivent à la piste, le font arrêter, mais avant qu'il leur soit livré, des conflits s'élèvent entre les diverses autorités d'Amérique, d'Angleterre, et de France sur la question d'extradition, et ce n'est que récemment qu'ils ont été vidés et que Lamirande a été rendu à la justice de son pays. Tel est le sommaire, bien abrégé,

des longs préliminaires de cette grave affaire, mais qui, ce nous semble, doit suffire, au moment où les débats s'engagent, pour la signaler à l'attention publique.

Une foule considérable se presse aux abords du Palais de Justice, dans l'espoir d'assister à ces graves débats. Il ne pouvait en être autrement dans la ville où l'accusé a été si longtemps connu, et où, en même temps qu'il avait conquis une position toute de confiance, il avait su gagner l'estime d'un grand nombre de ses habitants.

Le siége du Ministère Public est occupé par M. Gast, premier avocat général. M. le Procureur-Général Damay assiste à l'audience.

Me. Lachaud est chargé de la défense de Lamirande, qui a aussi pour avocat Me. Lepetit, ancien bâtonnier du barreau de Poitiers.

Au moment où l'accusé est introduit dans le salle d'audience, un vif mouvement de curiosité se manifeste dans toutes les parties de l'auditoire ; toutes les têtes se dressent, tous les regards le cherchent, et un long temps s'écoule avant que soit calmé ce premier élan de la curiosité publique.

Lamirande, dont la tournure et les manières annoncent un homme distingué, est de taille moyenne ; il a les cheveux bruns, le front haut, le teint pâle ; ses traits réguliers annoncent la finesse et la vivacité. Ceux des habitants de Poitiers qui l'ont connu, disent avoir de la peine à le reconnaître, tant ils le trouvent changé et amaigri ; cependant il n'est pas abattu et il semble n'avoir rien perdu de son énergie.

Après que le jury a pris siége et que l'identité de l'accusé a été constatée, lectu e est donnée, par le greffier de la Cour, de l'arrêt de renvoi et de l'acte d'accusation ; ce dernier document est ainsi conçu :—

"Le lundi, 12 Mars 1866, M. Bailly, Directeur de la Succursale de la Banque de France à Poitiers, prévint Lamirande, caissier du même établissement, qu'un million en or devait être immédiatement expédié à la succursale d'Angoulême, et que le lendemain, Mardi, 500,000 francs en espèces d'argent devaient être envoyés à la même destination. Lamirande fit, dans la journée, les préparatifs nécessaires pour l'envoi d'un million en or. Le soir, il quitta furtivement son poste, monta en chemin de fer, et gagna ensuite la frontière. Avant de partir, il avait laissé une lettre à l'adresse de M. le Directeur Bailly, dans laquelle il annonçait qu'il était obligé d'aller à Châtellerault inopinément, qu'il laissait ses clefs au Sieur Queyrieux, Chef de Comptabilité, et qu'il serait de retour assez tôt pour faire la caisse. En même temps, il avait écrit au Sieur Queyrieux, qu'étant forcé de partir pour Châtellerault, il le priat de tenir la caisse le lendemain et de faire opérer l'envoi d'argent par les garçons de la Banque ; il ajoutait qu'il arriverait à temps pour faire la situation. Ce billet fut remis par un commissionnaire au Sieur Queyrieux, avec les clefs qui ouvraient les compartiments inférieurs de la caisse courante.

"Le départ subit de Lamirande ne put pas paraître tout d'abord suspect, puisqu'il avait eu la précaution d'annoncer mensongèrement, à diverses personnes, que son neveu était très malade à Châtellerault, et que l'état de cet enfant lui inspirait les plus vives inquiétudes.

"Le 13 Mars, les employés de la banque procédèrent à l'enlèvement des 500,000 francs qu'il fallait expédier à Angoulême. Les sacoches étaient prêtes ; on les remplit au nombre de cinquante, en retirant de la cave 500 sacs de 1,000 francs, et les cinquante sacoches, qui devaient peser chacune 50 kilogrammes, furent placées sur un camion, accompagné d'un employé et d'un garçon, et transportées au Bureau des Messageries. Là, elles furent pesées, et aussitôt, on constata que le plûpart d'entre elles avaient un poids inférieur indiquant un déficit d'environ 2,000 francs par sacoche. M. le Directeur en fut informé ; il fit rentrer sur-le-champ l'expédition à la banque, ouvrit les sacoches, en tira les sacs et les compta. On en trouva 310 auxquels il manquait uniformément 200 francs, à une pièce de cinq francs près.

"L'un des censeurs, M. Grétry, et l'un des administrateurs, M. Pavie, furent avertis ; ils descendirent dans la cave d'où avaient été extraits les sacs altérés, et ils reconnurent que la même altération existait sur un grand nombre d'autres sacs d'argent. Ils reconnurent, en outre, que plusieurs sacs, qui devaient contenir chacun 10,000 francs en pièces d'or de 20 francs, ne contenaient, sous le même volume, que des pièces de 2 francs, et de 50 centimes. Enfin, par la vérification qui fut opérée le 13 Mars et les jours suivants, on constata que les sommes soustraites dans la cave s'élevaient au chiffre de 219,000 francs.

"Cependant, Lamirande n'avait pas fait remettre au Sieur Queyrieux la clef qui ouvrait le compartiment supérieur de la caisse courante ; or, ce compartiment devait contenir une somme très considérable, soit en billets, soit en or. Un ouvrier, mandé de Paris, arriva le lendemain avec un inspecteur de la Banque, et pratiqua l'ouverture du compartiment. Tous les billets de 1,000 francs avaient disparu ; il ne restait que 400 billets de 100 francs, dont la liasse avait paru sans doute trop volumineuse pour

être enlevée. On constata, de plus, l'existence de deux sacs paraissant remplis de pièces d'or, et étiquetés 20,000 francs; mais on ne tarda pas à s'apercevoir que les rouleaux de pièces d'or avaient été remplacées, dans le fond des sacs, par des cartouches de pièces de 2 francs et de 50 centimes, enveloppées d'abord de papier blanc et ensuite de papier bleu, de manière à avoir un poids parfaitement égal, à un centigramme près, à celui d'une somme de 20,000 francs en monnaie d'or. Une vérification exacte et minutieuse démontra que les détournements opérés dans la caisse s'élevaient à la somme de 485,000 francs.

"Ainsi donc, soit dans la cave, soit dans la caisse, en espèces métalliques ou billets, une somme totale de 704,000 francs avait été soustraite au préjudice de la banque.

"Devant ces constatations, aucun doute n'était possible; la fuite du caissier était la preuve de sa culpabilité.

"Il était d'ailleurs manifeste que le caissier seul avait pu commettre cette immense spoliation. D'une part, Lamirande avait exclusivement la gestion de la caisse courante, qui avait été vidée dans la journée du 12 Mars; d'autre part, lui seul avait pu opérer, soit l'altération d'un grand nombre de sacs d'argent, soit l'enlèvement des sacs d'or. Il lui était facile de les soustraire dans la cave, où il présidait aux dépôts et aux envois de fonds, pendant qu'il s'y trouvait seul, en profitant de l'absence du directeur et des employés chargés du transport des sacs.

"La fuite de Lamirande fut tout à coup précipitée par l'ordre imprévu d'expédier 500,000 francs à Angoulême, car il devint évident pour lui que l'envoi d'une somme aussi forte, entamant les réserves en espèces d'argent déposées dans la cave, devait nécessairement comprendre les sacs altérés et amener la découverte de la fraude.

"Lamirande n'a pas à répondre seulement devant la justice des soustractions énormes dont il s'est rendu coupable. Ses fonctions de caissier l'obligeaient à remettre chaque jour à la direction un bordereau de situation dans lequel il certifiait l'état des diverses caisses de la Banque, en indiquant, par nature de valeurs, les sommes ou les effets qui s'y trouvaient déposés. Il a commis une série quotidienne de faux, en énonçant chaque jour dans le bordereau une situation qui avait cessé d'être exacte par suite de ses propres détournements. Le jour même de son départ, il remettait encore à son directeur un bordereau de situation certifié et signé par lui, dans lequel il attestait mensongèrement, que la totalité de l'encaisse s'élevait à la somme de 11,443,000 francs, tandis qu'en réalité, par les soustractions qu'il avait accomplies, cet encaisse était diminué de 704,000 francs dont il s'était emparé.

"Lamirande a commis aussi des faux en écriture de banque et il a fait usage, sciemment, de pièces fausses en remettant des bordereaux de situation qui dissimulaient les soustractions frauduleuses et les détournements dont il s'était rendu coupable.

"En conséquence Lamirande est accusé :—

"1. D'avoir depuis moins de dix ans à Poitiers, soustrait frauduleusement diverses sommes en espèces d'or ou d'argent dans la serre ou cave de la succursale de la Banque de France, et au préjudice de cet établissement. D'avoir commis ces soustractions frauduleuses, avec cette circonstance qu'il était alors caissier salarié ou homme de services à gages de la dite Banque de France.

"2. D'avoir à Poitiers, depuis moins de dix ans, et notamment le 12 Mars, 1866, détourné ou dissipé au préjudice de la Banque de France qui en était propriétaire des fonds et billets placés dans la caisse courante ou de service de la succursale de Poitiers, qui ne lui avaient été remis et confiés qu'à titre de dépôt ou de mandat, à la charge de les rendre ou de les représenter ou d'en faire un usage ou un emploi déterminé. D'avoir commis les détournements ci-dessus spécifiés avec cette circonstance qu'il était alors caissier, ou commis salarié de la dite Banque de France.

"3. D'avoir à Poitiers, le 12 Mars, 1866, sur le bordereau de situation signé par lui, qu'il était chargé de dresser et de certifier chaque jour en sa qualité de caissier de la succursale de la Banque de France, pour constater l'encaisse de la dite succursale, frauduleusement inséré la fausse déclaration, que l'encaisse était le dit jour, de 11,443,556 francs 84 centimes, tandis qu'il était en réalité inférieur à ce chiffre de toutes les sommes par lui soustraites ou détournées et d'avoir ainsi frauduleusement altéré les déclarations et les faits que ce bordereau de situation avait pour objet de recevoir et de constater.

"4. D'avoir le même jour, au même lieu, fait usage de cette pièce fausse, sachant qu'elle était fausse, en la remettant au Directeur de la Succursale de la Banque de France à Poitiers, pour établir la situation de la caisse de cet établissement au 12 Mars, 1866.

"5. D'avoir à Poitiers, depuis moins de dix ans et antérieurement au 12 Mars, 1866, dans divers bordereaux de situation signés par lui qu'il était chargé de dresser et de

certifier chaque jour en sa qualité de Caissier de la Succursale de la Banque de France, pour constater l'encaisse de la dite succursale, frauduleusement inséré la fausse déclaration que l'encaisse s'élevait à une somme supérieure à celle qui existait en réalité, laquelle était inférieure au chiffre indiqué, et de toutes les sommes par lui soustraites ou détournées, et d'avoir ainsi frauduleusement altéré les déclarations et les faits que ce bordereau de situation avait pour objet de recevoir et de constater.

"6. D'avoir aux mêmes époques et au même lieu fait usage de ces pièces fausses, sachant qu'elles étaient fausses, en les remettant au Directeur de la Succursale de la Banque de France à Poitiers, pour établir la situation de la caisse de cet établissement aux jours indiqués.

"Fait au parquet de la Cour Impériale de Poitiers, le 23 Septembre, 1866.

"L'Avocat-Général,

(Signé) "CAMOIN DE VENCE."

Pendant la lecture de l'acte d'accusation, que l'auditoire a écouté dans le plus religieux silence, l'accusé a paru profondément ému; presque constamment il a tenu la tête baissée, appuyée sur une main, passant fréquemment son mouchoir sur son front et sur ses yeux.

Nous devons mentionner qu'au moment du tirage du jury, Me. Lachaud, au nom de Lamirande, a demandé acte de ce que sa présence et celle de l'accusé à ce tirage ne devait préjudicier en rien aux conclusions exceptionnelles qu'il lui plairait poser avant d'engager le débat au fond. Acte a été donné de cette réserve, et M. le Président a ordonné que mention en serait faite au plumitif de l'audience.

M. le Président rappelle à l'accusé les divers chefs d'accusation relevés contre lui, au nombre de six soustractions frauduleuses et faux.

L'accusé ne fait aucune observation.

Me. Bourbeau, avocat, se présente, assisté de Me. Pinchot, avoué, qui donne lecture de conclusions tendantes à ce que la Banque de France soit admise à intervenir comme partie civile et à ce qu'il lui soit donné acte de ses réserves de conclure, dans le cours des débats, à tels dommages-intérêts, qu'il lui plaira fixer.

M. le Président.—La parole est à M. le Premier Avocat-Général.

Me. Lachaud.—Pardon, M. le Président, je demande la parole pour poser les conclusions suivantes:—

Attendu qu'il est de principe que les Cours d'assises sont compétentes pour apprécier si l'extradition des accusés a été régulière, ou si, au contraire, elle n'a pas été le résultat de la fraude ou de la violence; que ce principe a été reconnu par la Cour de Cassation, notamment dans son arrêt du 9 Mai, 1845;

En fait:

Attendu que Lamirande, caissier de la succursale de la Banque de France à Poitiers, renvoyé par arrêt de la chambre des mises en accusation devant la Cour d'Assises de la Vienne, sous diverses inculpations, s'était réfugié au Canada (possession Anglaise);

Qu'une demande d'extradition avait été formée contre lui, en vertu du Traité passé entre la France et la Grande Bretagne, à la date des 18-21 Mars, 1843;

Que ce Traité, qui indique les formes nécessaires à observer dans les deux pays pour arriver à l'extradition, porte textuellement, Article Ier, § 2, en ce qui concerne la Grande Bretagne:

"En conséquence, l'extradition ne sera effectuée, de la part du Gouvernement Britannique, que sur le rapport d'un juge ou magistrat commis à l'effet d'entendre le fugitif sur les faits mis à sa charge par le mandat d'arrêt ou autre acte judiciare également émané d'un juge ou magistrat compétent en France et énonçant également d'une manière précise les faits."

Attendu qu'il résulte que pour que l'extradition soit accordée par le Gouvernement Anglais, il faut, avant tout, que le juge compétent en ait déclaré la légalité, que ce n'est donc pas seulement une décision administrative, mais aussi une décision judiciare;

Attendu que Lamirande ayant été traduit d'abord devant le juge de paix Bréhaut, celui-ci avait rendu une sentence permettant l'extradition, mais que presque aussitôt cette décision fut attaquée devant le juge supérieur du Banc de la Reine, M. Drummond, et que, dès lors, elle se trouvait frappée d'un véritable appel;

Attendu que le juge Drummond a donné audience le 24 Août, 1866, que toutes les parties y ont comparu par leurs représentants respectifs, que la demande d'extradition y a été soutenue, contredite et discutée;

Qu'en cet état, après une longue audience, et alors que le débat avait été accepté par tous, le juge Drummond, au moment de rendre son jugement, dut, sur la demande de

M. Pomainville, avocat de la Banque de France, lequel voulait présenter de nouvelles observations, renvoyer, vu l'heure avancée (7 heures du soir), au lendemain 25, pour reprendre l'audience et prononcer sa sentence;

Attendu que, dans la soirée du 24 Août, avant la décision du juge, qui seul avait qualité pour statuer définitivement, des agents de police vinrent violemment arracher Lamirande de sa prison, qu'il fut conduit en France, et remis, malgré ses protestations, à la police Française;

Attendu que tous ces faits ne sauraient être contestés, qu'ils sont prouvés par le jugement qu'a rendu M. Drummond le 28 Août, 1866;

Qu'il résulte encore de cette décision que M. Drummond a déclaré n'y avoir lieu à extradition, par plusieurs motifs consignés dans son jugement, et tirés, soit de la forme de la demande, soit du fond, en ce que les faits précisés ne constituaient pas l'un des crimes pour lesquelles l'extradition peut être accordée;

Attendu qu'en l'état, la Cour d'Assises est appelée à apprécier si l'extradition de Lamirande peut être déclarée légale;

Qu'il est évident qu'elle ne saurait l'être, alors que le juge régulièrement saisi par toutes les parties, et qui devait en connaître définitivement, a prononcé qu'il n'y avait pas lieu de l'accorder;

Qu'un acte de violence, dont il est impossible que l'Angleterre ne demande pas compte à ses agents, ne saurait prévaloir contre une décision judiciaire et placer la force et la subornation au-dessus du droit;

Que quelles que soient les fautes et le crime dont est accusé Lamirande, ce ne peut être un motif pour violer, en sa personne, les règles les plus ordinaires du droit; que les Traités internationaux d'extradition n'ont pas pour but de profiter aux accusés, mais surtout de répondre aux intérêts les plus élevés des rapports et de la liberté des nations entre elles;

Attendu qu'on objecterait vainement que Lamirande a été livré aux agents Français en vertu d'un ordre signé le 23 Août, 1866, par le Gouverneur de Canada; qu'il résulte de la sentence de M. Drummond que la date portée dans cet ordre n'est pas réelle, qu'elle a été donnée postérieurement au 23 Août, que la signature du Gouverneur n'a pu être obtenue que par surprise;

Attendu, au surplus, que les termes mêmes du Traité de 1843 ne permettent pas au Gouverneur-Général de livrer un accusé par suite d'extradition avant que la décision judiciaire ait été prononcée par le juge compétent; que le 24 Août M. le juge Drummond avait été saisi; que le Gouvernement Anglais, représenté par M. Ramsay, avocat de la Couronne, la Banque de France, représentée par M. Pomainville, avocat, Lamirande lui-même représenté par M. Doutre, avocat, avaient été entendus et avaient débattu devant ce magistrat la question légale de l'extradition;

Que, dès lors, jusqu'après la décision du Juge Drummond il était impossible de disposer de Lamirande sans violer à la fois la loi et la justice;

Par ces motifs et autres qu'il plaira à la Cour suppléer, prononcer la nullité de l'extradition.

Et, très-subsidiairement, attendu que si, par impossibilité, la Cour se déclarait incompétente pour prononcer la nullité de l'extradition, en raison du caractère diplomatique de cet acte, elle ne saurait méconnaître que les circonstances au milieu desquelles l'extradition s'est produite peuvent être de nature à entraîner sa nullité: qu'il y aurait, dès lors, à la soumettre à l'examen attentif des deux Gouvernements de la France et de la Grande Bretagne, et, en ce cas, d'accorder un sursis jusqu'à ce qu'il ait été statué par qu'il appartiendra, sous toutes réserves.

Après la lecture de ces conclusions, M. l'Avocat-Général Gast demande immédiatement la parole pour les combattre:—

Messieurs, dit-il, nous avons à opposer à ces conclusions des conclusions préjudicielles; nous venons demander à la Cour de ne point en autoriser le développement. Ces conclusions ne sont point une surprise pour nous. Dès son premier interrogatoire, l'accusé prétendit que l'on ne pouvait pas le juger en France.

L'honorable défenseur nous avait fait connaître ces conclusions, qui ressemblent à une plaidoirie et tendant à ce que la Cour se déclare compétente pour appécier l'extradition et subsidiairement prononcer un sursis.

Pour discuter la compétence de la Cour à cet égard, nous examinerons les règles applicables à l'extradition, les pouvoirs de l'autorité judiciaire, les droits de l'extradé et les priviléges du Gouvernement Français.

Les lois pénales sont exclusivement territoriales; ce principe est incontestable; au-delà des frontières de chaque Etat les lois pénales sont paralysées et c'est derrière ce principe que s'abritent les malfaiteurs fugitifs; en conséquence, ces malfaiteurs ne

saurient critiquer la puissance des mesures qu'on leur a appliquées, en dehors de notre territoire.

Comment les Magistrats Français jugeraient-ils de la légalité de ces actes? Ils ne le pourraient ni au point de vue de la loi Française, ni en appréciant la loi étrangère.

Il y a encore un motif plus saisissant qui repousse la compétence; les mesures prises par l'étranger l'ont été sur la demande du Gouvernement Français, et d'ailleurs, les actes coupables commis à l'étranger sont complétement indifférents, et ils échappent entièrement à notre appréciation.

Lamirande a si bien connu l'acte d'accusation sur lequel était fondée l'ordonnance de prise de corps, que son Avocat Américain a été accusé d'avoir volé cette pièce, et cet ordonnance lui a été signifiée sans protestation de sa part.

M. l'Avocat-Général demande à quel texte de loi on pourrait avoir recours pour appuyer cette prétention de faire reconduire Lamirande à la frontière.

Maintenant, nous avons à nous demander quels sont les droits de l'extradé; a-t-il le droit de dire que l'on a violé en sa personne les Conventions conclues entre la France et l'Angleterre? Les conclusions le prétendent, mais est-ce que l'extradé a été partie dans ces Conventions; l'un ou l'autre des Gouvernements peut seul revendiquer ces droits. Pour l'extradé, il redevient depuis sa rentrée sur le territoire, un simple accusé qui doit être jugé.

M. l'Avocat-Général cite à l'appui Dalloz ("Traité International," page 184); un Arrêt de Cassation, 1852 (Morin, page 502).

Mais si les actes commis à l'étranger sont indifférents pour la justice Française, il n'en est pas de même pour le Gouvernement étranger. S'il y a eu fraude, violation de territoire, dans l'extradition, il peut en résulter même un *casus belli*.

Supposons qu'un Gouvernement étranger ait à se plaindre d'un pareil grief; à qui s'adressera-t-il pour le redresser? A une Cour d'Assises? Poser cette question, c'est la résoudre. C'est directement que le Gouvernement étranger viendra demander réparation au Gouvernement Français, et remarquez que c'est là le seul plaignant qui puisse être accepté par l'intermédiaire de ses Agents Diplomatiques, l'extradition n'ayant aucune espèce de droit.

Vous dites que le Traité a été violé; mais, pour cela, il vous faut interpréter le Traité; les Tribunaux le peuvent-ils?

Voici ce que je lis dans Dalloz, "Traité International," No. 152:—"L'interprétation des Traités Diplomatiques est en dehors de la compétence des Tribunaux soit judiciaires soit administratifs," &c.

Nous avons à nous demander maintenant ce que fera le Gouvernement Français saisi d'une réclamation de cette nature. S'il trouve les griefs fondés, il viendra devant la justice et dira par l'organe de son Excellence le garde des sceaux:—"Cet homme, je l'enlève à votre juridiction en vertu du droit des gens, supérieur aux droits des particuliers."

En effet, l'Empereur ayant le droit de former des Traités avec les nations étrangères, a le droit de faire tout ce qui est nécessaire pour l'exécution de ces Traités.

Il y a plus, lorsque le Gouvernement Français a obtenu une extradition, il peut encore venir dire au jury: Vous ne jugerez cet accusé que sur les faits de faux, parce que c'est sur ces faits seulement que j'ai obtenu l'extradition.

Devant cette intervention seulement la justice s'abstiendra.

Mais si, au lieu de tenir ce langage, le Gouvernement garde le silence, si ces griefs ne lui paraissent pas fondés, la justice suivra son Cours, ne connaissant que les règles légales du droit positif. Les conséquences possibles ne regardent en rien la justice. Nous mettons cette opinion peut-être un peu hasardeuse, sous l'égide de la doctrine et de la jurisprudence.

Il s'agissait d'un individu poursuivi pour faux et détournement de mineure (1845). Il fut extradé de Toscane seulement pour crime de faux. La Cour de Besançon apprécia qu'il n'y avait pas crime de faux, mais au contraire des présomptions très graves d'enlèvement de mineure. La Cour dit que cet individu ne serait mis sous prise de corps que pour enlèvement de mineure seulement et qu'il ne serait jugé que par contumace. Le Procureur-Général se pourvut contre cet arrêt, que la Cour de Cassation blâma dans les termes que vous allez voir.

(Arrêt, Cassation 1845.)

M. l'Avocat-Général donne lecture de cet arrêt et des observations de Dalloz:—"La mise en jugement peut être une violation du Traité, mais la justice fait son devoir; ce sont là des questions à débattre de Gouvernement à Gouvernement."

Cette doctrine, peut-être un peu trop absolue, est combattue par deux décisions dont je vais vous donner lecture ; il en résulte que si une extradition a été faite sans qu'aucun des deux Gouvernements y ait coopéré, la justice aurait le droit de demander au Gouvernement s'il avoue cette mesure, s'il la tient pour régulière ; voila, Messieurs, la seule réserve à faire. Voilà selon nous quelle est la doctrine qui se dégage des deux seules décisions que l'on puisse nous opposer, vous allez en juger :—

M. l'Avocat-Général donne lecture du procès de l'affaire Dermenon (Dalloz, "Traité International," page 597.)

Ne voyez-vous pas dans ces faits la confirmation de la doctrine que nous vous exposions tout à l'heure. Il est certain que, dans cette extradition, le Gouvernement était resté complètement étranger, et c'est pour cela que la justice interpelle le Gouvernement et lui demande s'il avoue la mesure prise.

M. l'Avocat-Général cite un arrêt de la Cour d'Assizes de l'Ariége du 17 Février, 1845. (Affaire Laugé.)

Me. Lachaud.—C'est l'arrêt que j'invoque dans mes conclusions ; il est du 9 Mai, 1845.

M. l'Avocat-Général après avoir donné lecture de cet arrêt en tire les mêmes conséquences que du précédent document. Le Sieur Laugé, ex-desservant, poursuivi pour tentative de viol, s'était réfugié dans le Val d'Andorre ; il avait été arrêté par un juge de paix Français, avec l'autorisation du Syndic de la République d'Andorre. La Cour Royale ordonna un sursis pour savoir si cette arrestation était avouée par le Gouvernement qui n'y avait pris aucune part. La Cour de Cassation appréciant les droits de Suzeraineté de la France sur le petit territoire neutre d'Andorre, jugea que l'arrestation était légale.

Ce point établi, si, au lieu de garder l'inaction, le Gouvernement vient vous dire, c'est moi qui ai obtenu cette extradition et qui en assume la responsabilité, la justice doit suivre son cours et n'a pas à demander si les actes de l'extradition ont été conformes aux Traités, et elle ne peut même admettre aucun débat sur ce terrain, qui n'est pas le sien.

Nous n'avons reçu aucun mandat pour suivre la défense sur ces faits nombreux qu'elle nous a énumérés, à notre grande surprise, et auxquels nous ne serions sans doute pas embarrassés de répondre, si telle était notre mission ; mais il y a pour nous quelque chose qui dépasse tout, c'est une prérogative gouvernementale à laquelle nous n'avons rien à voir.

M. le premier Avocat-Général donne lecture de plusieurs documents officiels établissant que le Gouvernement Français a pris une part active et directe à l'instance en extradition contre Lamirande, et entre autres, d'une lettre de son Excellence le Garde des Sceaux.

Dans cette lettre, dit M. l'Avocat-Général, la partie des faits est purement gracieuse pour la justice ; mais ce qu'il faut considérer surtout c'est l'acte gouvernemental revendiquant pour le Gouvernement Français la responsabilité de la mesure d'extradition vis-à-vis des Gouvernements étrangers.

Nous aurions fini si, à raison de cette lettre, nous ne devions vous faire remarquer que M. le Garde des Sceaux déclarait que Lamirande ne devait être jugé que sur le fait de faux seulement, à moins qu'il n'acceptât, de sa pleine volonté, la décision du jury sur les faits d'abus de confiance et de vol.

Ceci semblerait nous mettre en contradiction avec nous-mêmes, qui avons soutenu que l'extradé ne pouvait avoir aucun droit à invoquer. C'est là une formule de respect pour le Gouvernment étranger qui n'a admis extradition que sur ce chef de faux ; mais le consentement de l'accusé peut éteindre cette prohibition fondée sur le respect des droits internationaux.

M. l'Avocat-Général cite les arrêts de 1851 (arrêt Virmaître), 1852 (arrêt Darreau), et 1865 (arrêt . . .), arrêts qui décident que les actes d'extradition échappent à tout contrôle de l'autorité judiciaire.

Les conclusions sont donc non-recevables, et il y a lieu de la part de la Cour de prononcer son incompétence et d'ordonner qu'elles ne sont pas développées.

M. le Président : Me. Lachaud, vous avez la parole.

Me. Lachaud : Messieurs de la Cour, les conclusions que j'ai prises ne sont pas l'œuvre de Lamirande, elles sont l'œuvre de ses conseils. Ses conseils ont décidé de vous les soumettre parce qu'ils ont pensé que l'homme qu'on poursuit peut être indigne, que son crime peut être odieux, mais que derrière lui, il y a la loi. Or, quand la loi est scandaleusement violée, j'ai le droit de me plaindre et je me plains. L'homme que je viens ici défendre a été volé à l'Angleterre.

M. le Président : Me. Lachaud, je ne puis laisser passer ce mot ; vous ne plaidez pas

pour le jury, vous plaidez pour la Cour, et sur la compétence seulement. Veuillez vous le rappeler.

Me. Lachaud: Je ne l'ai pas oublié, M. le Président. Je disais que cet homme a été volé à l'Angleterre, parce que j'ai là une pièce qui le prouve, une sentence d'un juge Anglais, que je ne lirai pas, par déférence pour la Cour, mais qui n'en existe pas moins et qui, pour moi comme pour tous, quand elle sera connue, prouve ce que j'ai avancé; je n'en dis pas plus sur ce point, et je m'empresse de répondre à M. l'Avocat Général.

Le défenseur donne lecture de divers arrêts de cassation, qui, réfutant ceux indiqués par M. l'Avocat Général, posent en principe, dit-il, que l'accusé a toujours le droit de poser des exceptions devant la Cour d'Assises. Ces arrêts, ajoute le défenseur, sont corroborés par l'opinion de M. Faustin Hélie, qui pense que les exceptions peuvent porter soit sur la légalité de l'acte d'extradition, soit sur les conditions restrictives du Traité qui lie les deux Gouvernements.

M. Faustin Hélie soutient qu'en cette matière, la Cour d'Assises a un pouvoir discrétionnaire; il accepte complétement mon droit de réclamation. Seulement, comme il prévoit qu'il peut y avoir lieu à certain débats diplomatiques, il dit qu'en certains cas il peut y avoir lieu à accorder un sursis. Enfin, comme M. Faustin Hélie ne touche jamais à une matière sans l'épuiser: il ajoute que, tout en accordant le droit de réclamation, il faut que l'exception soit sérieuse et de nature à suspendre le jugement du fond.

Je crains qu'on ne voie dans Lamirande que le criminel, qu'un homme qui inspire peu de sympathie. Que fait ici le personnage? oubliez l'homme; au lieu d'un crime de cupidité, que demain vous ayez à juger un crime de passion, et la thèse de M. l'Avocat Général n'a plus d'appui; que serait-ce donc s'il s'agissait d'un procès politique?

Je ne veux pas insister davantage; mais, ne l'oubliez pas, messieurs: dans cette affaire, tout est grave; un peuple voisin, un grand peuple pèse en ce moment nos paroles; il faut qu'il les trouve à la hauteur des respects dont il a l'habitude d'entourer ces deux grandes bases de la société, la liberté de tous et la loi pour tous. Je persiste dans mes conclusions.

Me. Bourbeau, avocat de la partie civile, déclare s'associer au ministère public et repousse les conclusions au point de vue de l'annulation de l'extradition et au point de vue du sursis.

Me. Lepetit, l'un des défenseurs de l'accusé, réplique, et dans une argumentation vive et pressée, appuyée de l'opinion de MM. Dalloz et Faustin Hélie, et de la doctrine de l'arrêt de la Cour de Cassation de 1845, soutient que la Cour d'Assises est compétente pour connaître de l'exception de la nullité de l'extradition, non pas en ce sens que la justice aurait le droit de critiquer les actes diplomatiques, mais en ce sens qu'elle peut examiner si les formes édictées par les conventions internationales ont été observées, en d'autres termes, s'il y a eu fraude à la loi.

La Cour se retire dans la chambre du conseil pour délibérer sur l'incident.

A trois heures et demie, l'audience est reprise.

M. le Président prononce l'arrêt, ainsi conçu:—

" Attendu que par un arrêt de la Cour impériale de Poitiers, chambre des mises en accusation, en date du 29 Mai 1866, le Sieur Sarreau, dit Lamirande, a été renvoyé devant la Cour d'Assises de la Vienne, sous la triple accusation de vols qualifiés, abus de confiance qualifiés, et faux en écriture de commerce ou de banque;

" Attendu, qu'en conséquence dudit arrêt, il a été rédigé par le procureur général un acte d'accusation en date du 23 Septembre 1866;

" Attendu que ces deux pièces ont été signifiées à l'accusé par exploit du 24 Septembre, et que le 24 du même mois le dit accusé a été interrogé par le Président des Assises, conformément aux Articles 293, 294, 295 et 296 du Code d'instruction criminelle;

" Attendu, dès lors, que l'affaire se trouve en l'état et qu'elle a été régulièrement portée au rôle de la présente session;

" Attendu, néanmoins, que, par des conclusions posées à l'audience, les défenseurs de Lamirande ont demandé à la Cour de prononcer la nullité de l'extradition dont l'accusé a été l'objet, et, très-subsidiairement de surseoir au jugement de la cause jusqu'à ce qu'il ait été statué par qui il appartiendra sur la validité de cette extradition;

" Attendu, en fait, qu'il résulte des documents de la cause et, notamment de la dépêche ministérielle du 25 Novembre 1866, que, sur la demande du Gouvernement Français, Lamirande, placé dans les liens d'un arrêt de mise en accusation, comprenant des faits de faux en écriture de commerce ou de banque, a été remis par le Gouvernement du Canada, où il s'était réfugié, à la disposition de l'autorité Française;

" Attendu que, à la suite de cet acte d'extradition, le Gouvernement Impérial a lui-même remis cet accusé entre les mains de la justice, pour qu'il eût à répondre devant la juridiction compétente des crimes de faux en écritures de commerce ou de banque qui ont motivé son extradition;

" Attendu, en droit, que les Traités d'extradition sont des actes de haute administration intervenus entre deux puissances, dans un intérêt général de moralité et de sécurité sociale ; que les formes et les conditions en sont réglées, non au profit des accusés, qui ne peuvent, par leur fuite à l'étranger, se créer un privilége contre la justice de leur pays, mais au point de vue des nécessités internationales ou des convenances réciproques des Gouvernements ;

" Attendu que le principe fondamental de la séparation des pouvoirs s'oppose à ce que la justice Française puisse s'immiscer dans l'interprétation et l'application des actes du Gouvernement qui livrent les accusés à sa jurisdiction ;

" Attendu que, par le fait même de la remise d'un accusé à ses juges naturels, le Gouvernement Impérial consacre la régularité de son extradition, et que cette décision, qui rentre dans la compétence exclusive du pouvoir exécutif, ne peut être l'objet d'aucun recours ;

" Par ces motifs, la Cour rejette les conclusions tant principales que subsidiaires formulées par la défense de Lamirande, et ordonne qu'il soit passé outre aux débats."

M. le Président : Accusé, vous avez entendu ; vous pouvez ne répondre que sur les faits relatifs aux crimes de faux. Etes-vous disposé à répondre à toutes les autres charges consignées dans l'acte d'accusation ?

Lamirande : Je suis prêt à répondre sur tous les faits.

Me. Lachaud : Je ne puis laisser engager mon client sur ce terrain. Je soutiens que la lettre du Garde des Sceaux n'a pu faire renvoyer Lamirande devant les assises que pour crime de faux. Il ne peut appartenir à personne, pas plus à M. le Garde des Sceaux qu'à tout autre, de violer la loi.

M. le Président : C'est pour cela que j'ai consulté Lamirande, lui laissant toute sa liberté d'agir.

Me. Lachaud : Je persiste dans ma protestation, M. le Président, et, s'il le faut, je poserai des conclusions très concises pour la bien déterminer. Lamirande ne comprend pas les conséquences de son acquiescement ; il appartient à ses défenseurs de les lui faire comprendre. Je ne demande qu'une suspension de cinq à six minutes pour rédiger mes conclusions.

Me. Lepetit : Je m'associe complétement aux observations de Me. Lachaud, et je me joins à lui pour demander le temps d'écrire nos conclusions.

Après quelques minutes de suspension, l'audience est reprise.

M. le Président : Accusé Lamirande, je vous répète ce que je vous ai déjà demandé : consentez-vous à être jugé sur tous les chefs de l'accusation dirigée contre vous ?

Lamirande : Je n'ai ni à consentir ni à ne pas consentir.

Me. Lachaud : Voici les conclusions que je prends au nom de Lamirande :—

" Attendu que Lamirande est renvoyé devant la Cour d'Assises de la Vienne, sous la triple accusation de détournements, de vols qualifiés et de faux en écriture de commerce ou de banque ;

" Que l'arrêt lui a été signifié et qu'il comparaît devant le jury sous cette triple accusation ;

" Attendu qu'il ne saurait être au pouvoir de personne de diviser ou de supprimer une partie de ces divers chefs d'accusation ;

" Que Lamirande n'a pas à consentir ou à ne pas consentir à être jugé sur les crimes relevés contre lui, d'abus de confiance et de vols qualifiés, mais qu'il a intérêt à ce que le jury soit appelé à vider toute l'accusation ;

" Que s'il est vrai, comme vient de le décider la Cour, que les Traités d'extradition ne peuvent jamais être interprétés par les tribunaux, il n'est pas acceptable que, devant la justice saisie régulièrement, on puisse, a leur sujet, modifier une accusation ;

" Attendu que la lettre de M. le Garde des Sceaux ne renferme que des instructions données à M. le Procureur-Général et ne saurait en aucune manière empêcher l'exécution d'un arrêt de la Chambre des Mises en Accusation ;

" Par ces motifs, dire que tous les chefs d'accusation seront soumis au jury."

Me. Lachaud, après avoir lu ces conclusions, demande à les développer.

M. le Président : M. l'Avocat-Général a peut-être aussi des réquisitions à prendre.

M. le Premier Avocat-Général : En effet, nous requérons qu'il plaise à la Cour disjoindre les faits relatifs aux soustractions frauduleuses et aux détournements, et ordonner que Lamirande ne sera jugé que sur les faits relatifs aux faux.

Après que Me. Lachaud a développé ses conclusions et que M. le Premier Avocat-Général a soutenu ses réquisitions, la Cour délibère de nouveau et rend un second arrêt qui repousse les conclusions de la défense et fait droit aux réquisitions du Ministère Public.

M. le Président : Ici, Messieurs les jurés, votre rôle va commencer : jusqu'à présent

vous n'avez pas eu à vous préoccuper des divers incidents qui ont surgi dans les débats ; il appartenait exclusivement à la Cour d'en connaître et de les apprécier. Maintenant, Messieurs, c'est à vous de décider sur la suite de ces débats, en vous rappelant que, conformément à l'arrêt que vient de rendre la Cour, vous n'avez à apprécier et à juger que les charges exclusivement relatives aux crimes de faux en écritures de commerce ou de banque ; toutes les autres étant écartées par l'arrêt.

La parole est donnée au Ministère Public.

M. le Premier Avocat-Général : Messieurs les jurés, la gravité de cette affaire, les circonstances non moins graves qui s'y rattachent, m'obligent à prendre la parole pour vous en présenter l'exposé.

Lamirande avait été renvoyé devant vous pour répondre de six chefs distincts d'accusation ; mais, comme M. le Président vient de vous l'expliquer, et cela en conformité de l'arrêt que la Cour vient de rendre, vous n'aurez à connaître que des charges qui se rattachent aux faux. Cependant, vous le comprenez, bien que vous ne soyez pas appelés à statuer sur l'ensemble des charges primitives de l'accusation, il est nécessaire que je vous fasse un exposé complet des faits.

M. l'Avocat Général, après avoir fait connaître que la succursale de la Banque de France, à Poitiers, a été créée en 1858, et que, dès cette époque, Lamirande fut choisi pour en tenir la caisse, reproduit, en les développant, les faits indiqués par l'acte d'accusation. Il donne des détails sur la tenue de la caisse courante ; il décrit la cave où on enfermait les espèces en argent, les sacs qui contenaient ces espèces par sommes de 1,000 francs, leur dimension, leur forme, comme aussi celles des sacoches dans lesquelles on les entassait quand on avait un envoi considérable à faire en argent.

L'organe du Ministère Public fait connaître ensuite comment Lamirande a pu opérer des fraudes considérables tant en espèces d'argent qu'en espèces d'or. Il soutient que les fraudes n'ont pu être opérées par Lamirande que dans son bureau, où il se trouvait souvent seul et sans contrôle. En effet, pour les espèces en argent, il n'aurait pu frauder après qu'elles auraient été descendues dans la cave par sacs de 1,000 francs, car il n'allait jamais seul à la cave ; il y avait trois clefs pour l'ouvrir, et trois employés de la banque étaient nécessaires pour que l'ouverture en fût pratiquée. C'est donc dans son bureau que Lamirande enlevait 200 francs sur le sac de 1,000 francs, en prenant soin de diminuer la dimension des sacs ; puis, quand ces sacs étaient descendus à la cave, que les portes en étaient fermées, il devenait impossible de deviner de quelle main était partie la fraude. Lamirande avait agi avec beaucoup d'habileté dans cette manière d'opérer ; il mettait la banque dans l'impossibilité de découvrir le coupable, et s'il ne se fût pas fait connaître lui-même par sa fuite, on ne sait, à l'égard des espèces d'argent renfermées dans la cave, qui on aurait pu soupçonner. Pour les espèces d'or, dit M. l'Avocat-Général, on sait que c'est par du papier qu'il remplaçait le poids des pièces qu'il enlevait. M. l'Avocat-Général termine en rappelant que c'est pour masquer ces soustractions, tant en argent qu'en or, dont le total s'élève à plus de 700,000 francs, qu'il a commis tous les faux que lui impute l'accusation.

Après l'appel des témoins, au nombre de neuf, l'audience est renvoyée à demain.

Audience du 4 Décembre.

L'audience d'hier, qui a été consacrée tout entière à des incidents sur des questions de droit, devait peu intéresser l'auditoire, et néanmoins l'ardeur du public ne s'est pas refroidie et la foule n'est pas moins considérable aujourd'hui pour s'assurer des places dans la salle des assises, un peu exiguë. Le premier rang des banquettes de la tribune élevée au-dessus de la porte principale, exclusivement réservée aux dames, est au grand complet. Des places réservées à droite, à gauche et derrière les siéges de la Cour sont occupées par des magistrats, des fonctionnaires publics et des officiers supérieurs.

Il est procédé au réappel des témoins, au nombre de neuf, qui sont conduits dans la salle à eux destinée.

Interrogatoire de l'Accusé.

M. le Président : A quelle époque avez-vous été nommé caissier de la succursale de la banque, à Poitiers?

Lamirande : Dix-huit mois avant la création de cette succursale, qui a été créée en Août 1858.

D. Dites-nous en quoi consistaient vos fonctions?—*R.* A recevoir, à payer ce qu'on appelle la caisse courante. Le trop-plein de la caisse courante allait dans la caisse auxiliaire et de là dans la cave.

D. Vous n'aviez pas seul les clefs de la cave et de la caisse auxiliaire !—*R.* Non, j'avais une de ces clefs ; le directeur avait l'autre.

D. A quelle époque avez-vous commencé à prendre des fonds dans les serres (la cave) ?—*R.* Je crois que c'est au commencement de 1862.

D. Il y a eu aussi des détournements dans la caisse courante ; à quelle époque les avez-vous commencés ?—*R.* Le 12 Mars, 1865, et j'ai continué depuis ; mais j'espérais toujours remplacer les sacs d'or de la caisse courante, par des sacs d'argent que j'aurais fait porter à la cave.

D. Mais remplacer, ce n'était pas restituer ?—*R.* Je le sais ; je n'espérais pas restituer ; mais je voulais retarder le plus possible le moment où je pourrais être découvert, et c'est pourquoi je cherchais toujours à éviter le déficit dans la caisse courante, qui pouvait d'un jour à l'autre être vérifiée ; tandis que le déficit n'existant que dans les espèces déposées à la cave, je pouvais espérer que ma fraude aurait pu durer éternellement.

D On a remarqué que les sacs altérés de la cave étaient placés sous les autres. Cela est si vrai, qu'on a trouvé des sacs dont la toile était pourrie, ce qui fait supposer qu'ils y étaient depuis longtemps ?—*R.* Je n'avais pas pris cette précaution ; les sacs pourris peuvent l'avoir été en peu de temps, par suite de la température de la cave.

D. Enfin, vous reconnaissez que depuis trois ans ou trois ans et demi, vous preniez dans les réserves de la serre, et que depuis Mars 1865 vous avez pratiqué aussi des détournements dans la caisse courante ?—*R.* Je le reconnais.

D. Pour les rouleaux d'or, vous pratiquiez ainsi : vous brisiez un rouleau, vous en enleviez plusieurs pièces d'or, et vous remplaciez le poids de ces pièces par du papier. De cette sorte, si l'on eût pesé les rouleaux sans les ouvrir, on eût trouvé le poids, à un centigramme près. Cela indique une grande habitude. Combien vous fallait-il de temps pour altérer ainsi un sac d'or contenant 20,000 francs ?—*R.* A peu près dix minutes.

D. Cela paraît impossible ; vous avez dû y consacrer plus de temps ?—*R.* Si j'y mettais plus de dix minutes, je n'y mettais pas un quart d'heure.

D. Quel est le nombre des billets de banque que vous avez détournés dans la caisse de service ?—*R.* Je ne me rappelle pas bien si c'est 465,000 ou 485,000 francs.

D. Je vais vous adresser une question très importante, à laquelle je vous engage à répondre avec franchise. Qu'avez-vous fait des sommes que vous avez emportées avec vous ?—*R.* Je les ai dépensées d'abord en voyageant. J'ai acheté des habillements. En Angleterre, j'ai donné 7,000 francs à un interprète ; puis j'ai eu des dépenses de voyage se montant à 3,000 ou 4,000 francs. J'ai dépensé beaucoup à Londres, passant des nuits sans dormir, neuf nuits de suite. Il m'est impossible de dire ce que j'ai dépensé d'argent pendant ce laps de temps. Dans ma traversée d'Angleterre en Amérique, j'ai prêté 6,000 francs à un Canadien qui retournait dans son pays. Cette somme, il l'a restituée à la banque.

M. le Président.—Ne parlons pas de ce qui a été restitué. Qu'avez-vous fait du reste de ces 465,000 ou 485,000 francs que vous avez emportés en partant ?—*R.* A New York j'ai donné 191,000 francs à mes avocats.

Me. Lachaud.—Ce ne sont pas des avocats.

M. le Président.—Des avocats de New York.

Me. Lachaud.—Il ne faut pas leur donner ce nom ; ce sont des complices de vol.

M. le Président.—Que sont devenus ces 191,000 francs ?—*R.* Ils devaient me garder 135,000 francs pour réserve dans le cas où j'aurais plaidé l'extradition, ou me les rendre ; ils ont rendu 25,000 francs, et le reste est demeuré entre leurs mains.

D. Qu'avez-vous fait du reste des sommes emportées ?—*R.* J'ai donné 10,000 francs à des femmes ; j'ai dissipé, j'ai joué, j'ai payé des dettes considérables.

D. Qui vous a volé ?—Je ne puis pas le dire ; pour arriver aux voleurs, il faudrait traverser des innocents.

D Pourquoi jouer, puisque vous aviez à votre disposition des sommes considérables ?—*R.* On savait que je n'étais pas riche ; je dépensais beaucoup ; j'ai joué pour faire croire que je gagnais beaucoup et que je trouvais dans le gain du jeu de quoi satisfaire à mes dépenses.

D. Vous dites que vous avez payé vos dettes, et cependant elles sont loin d'être éteintes.—*R.* Cela est vrai ; mais si j'ai encore des dettes pour environ 30,000 francs, j'en ai payé pour des sommes bien plus considérables.

D. Pour couvrir vos détournements, reconnaissez-vous avoir, depuis près de trois ans, fait des bordereaux de situation de caisse inexacts ?—*R.* Les bordereaux ne sont pas inexacts. Ces bordereaux devaient servir plutôt à me perdre qu'à déguiser la vérité.

D. Je le sais ; ce n'est pas là la question que je vous adresse. Je vous demande si,

sur le vu de ces bordereaux, on pouvait soupçonner le déficit des caisses?—*R.* Non, sans doute ; mais la situation indiquée dans mes bordereaux serait exacte s'il ne manquait rien dans les caisses. Pour moi, le crime a commencé aux détournements, mais non quand j'ai fait mes bordereaux de situation.

D. Qui, cependant, servaient à masquer vos détournements?—*R.* Ce n'est pas mon avis. J'ajoute qu'en dressant ces bordereaux de situation, je ne crois pas avoir commis un faux ni en écriture de commerce, ni en écriture de banque.

D. C'est là une discussion de droit qu'il faut laisser à vos défenseurs. Appelez un témoin.

Me. Lachaud.—Pardon, M. le Président... Voulez-vous me permettre un mot?

M. le Président.—Je ne crois pas que ce soit le moment, Maître Lachaud.

Me. Lachaud.—J'insiste, M. le Président, je dois insister. Ce que j'ai à dire est très-grave.

M. le Président.—Votre client a été interrogé sur un fait auquel il n'a pas voulu répondre. Nous ne pouvons permettre à son avocat de répondre pour lui.

Me. Lachaud.—Je ne veux pas me charger de répondre pour lui. Ce que j'ai à dire ne peut nuire ni à lui ni à personne. J'ai là 110,200 francs (Maître Lachaud pose devant lui un paquet dans une enveloppe de papier). Je veux les donner, je les donne, et en attendant qu'ils arrivent à leur destination à titre de restitution, je les dépose entre les mains de Maître Bourbeau, avocat de la partie civile. (Applaudissements dans le fond de la salle).

Me. Bourbeau.—Je n'ai pas qualité pour les recevoir. Il faut les remettre plutôt entre les mains de M. le Directeur de la Banque, qui en donnera reçu.

Me. Lachaud.—Il n'est pas besoin de reçu.

(M. le Directeur de la Banque ouvre le paquet et accepte les billets de banque qui y sont renfermés.)

M. le Président, à Lamirande.—Il manque encore environ 120,000 francs. Qu'avez-vous fait de cette somme?

Lamirande.—Je ne puis que répéter ce que j'ai déjà dit : je ne puis pas le dire.

Me. Lachaud.—Je dois ajouter quelques mots pour expliquer cette restitution de 110,200 francs. On nous a dit un mot, à Maître Lepetit et à moi. Nous avons couru au-devant du vol ; on a cherché partout, même sur les toits. Nous avons demandé à Lamirande s'il voulait nous nommer la personne à laquelle il avait confié cette somme : "Non! non!" a-t-il dit, "plutôt la mort. Cette personne a été volée elle-même, je ne veux pas qu'elle soit compromise."

Alors nous nous sommes attachés à cette mission, et nous avons retrouvé ces 110,200 francs que je viens de donner. J'ajoute que Lamirande n'a jamais eu cette somme en sa possession et que, s'il nous l'eût demandée, nous ne la lui aurions pas donnée. (Mouvement dans l'auditoire.)

M. le Président.—Appelez un témoin.

Audition des Témoins.

Le premier témoin entendu est M. Dubois de Jancigny, Inspecteur de la Banque de France, celui qui a accompagné l'ouvrier mécanicien appelé à Poitiers pour ouvrir le compartiment supérieur de la caisse courante, dont Lamirande avait emporté la clef.

Ce témoin confirme tous les détails donnés dans l'acte d'accusation sur les contestations du déficit trouvé à la suite du départ de Lamirande.

M. le Président.—Le bordereau quotidien de la situation de la caisse est-il une pièce obligatoire pour le caissier?

Le témoin.—Tout ce qu'il y a de plus obligatoire; c'est sur le vu de ces bordereaux des succursales que la Banque de France fixe le taux de l'escompte. Le double de ce bordereau est consigné dans un livre de la succursale.

Me. Lachaud.—Les instructions de la Banque sont-elles les mêmes pour toutes les succursales, pour l'établissement en double de la situation quotidienne?

Le témoin.—Les mêmes, depuis trois ou quatre ans, je crois; avant la transcription du bordereau sur un livre relié n'était pas obligatoire, quoique dans plusieurs succursales les directeurs l'exigeassent.

M. le Président, au témoin.—Il est reconnu, par les aveux de Lamirande, que vos prévisions étaient exactes, en ce sens que les premiers détournements remontaient à plus de trois ans. Maintenant, dites-nous s'il a pu consommer ces détournements sans passer de fausses écritures.

Le témoin.—C'était une conséquence nécessaire des détournements; sans les

bordereaux fausses, on se serait aperçu tout de suite d'un désordre dans la caisse; on eût contrôlé, on eût découvert la fraude, et Lamirande aurait été arrêté.

D. Lamirande prétend ceci: il dit que les bordereaux de situation, loin de faciliter ses détournements, en rendaient la découverte plus facile, car, ajoute-t-il, en rapprochant les bordereaux de l'état de la caisse, on pouvait se rendre compte; un simple pesage suffisait.—*R.* Ce raisonnement serait juste si on avait eu des soupçons; mais les bordereaux masquant le déficit ne pouvaient qu'aider à la fraude.

D. Lamirande avoue les détournements, cela se comprend, il n'est pas poursuivi sur ces chefs, mais il nie les faux pour lesquels il est poursuivi; on comprend sa tactique.—*R.* Dans mon opinion, les deux faits, celui de détournement et celui de faux, ne peuvent se séparer; l'un est venu en aide à l'autre.

D. Expliquez-nous quelle est la responsabilité du caissier, et quant à la caisse courante, et quant à la caisse des réserves?—*R.* Pour la caisse courante, celle qui est dans le bureau du caissier, la responsabilité lui incombe personnellement et uniquement. Il n'en est pas de même pour la caisse des réserves (cave ou serre); ici la responsabilité se divise entre deux personnes, le directeur de la succursale qui a l'une des clefs, et le caissier qui en a une autre.

D. N'est-ce pas par suite de cette responsabilité divisée que l'ancien directeur, M. Bailly, a été remplacé?—*R.* Oui, M. le Président.

M. Bailly, cinquante-deux ans, propriétaire à Angers, ancien directeur de la succursale de Poitiers, est appelé à la barre.

M. le Président.—Dites ce que vous savez.

M. Bailly.—Messieurs les jurés, le 11 Mars dernier, j'ai reçu l'ordre de la Banque de France de faire des envois à la succursale d'Angoulême, l'un de 1,000,000, l'autre de 500,000 francs. Le jour même je prévins Lamirande, mon caissier, de faire pour le lendemain 12, l'envoi de 1,000,000 francs, et de préparer, pour le Mardi 13, celui de 500,000 francs. Ces ordres donnés, nous arrivons au Mardi 13, où dans la matinée je reçois une lettre de M. Lamirande, qui me prévient qu'il a été obligé d'aller subitement à Châtellerault, laissant ses clefs à M. Queyriaux, chef de comptabilité, et le soin d'opérer l'envoi à Angoulême des 500,000 francs.

Ici, le témoin entre dans les détails donnés par l'acte d'accusation sur la découverte des fraudes opérées sur les sacs d'argent à destination d'Angoulême, et, plus tard, sur les sacs d'or. Dans les sacs d'argent il manquait régulièrement 200 francs par sac; dans les sacs d'or, le poids des pièces enlevées était remplacé par un poids égal de pièces d'argent et de papier. Ces fraudes n'auraient jamais pu être commises ni dans la cave, ni dans la serre; ça a dû être nécessairement dans son bureau qu'il opérait ce travail, et quand les sacs étaient ainsi transformés, mais pesant leur poids légal, les garçons les portaient dans la caisse ou dans la serre, et, une fois les portes fermées, Lamirande se trouvait à l'abri, car dès ce moment la responsabilité était divisée entre lui et moi. Jamais je n'ai confié mes clefs de la réserve à M. Lamirande, en qui j'avais, du reste, la plus grande confiance.

M. le Président.—Ainsi, le caissier répondait personnellement de sa caisse courante, et pour les caisses de réserve vous partagiez la responsabilité avec lui?

Le témoin.—Oui, Monsieur le Président, cela est ainsi dans toutes les succursales; j'ai été moi-même longtemps caissier d'une succursale, et je répondais de ma caisse courante.

D. Comment se fait-il que Lamirande ait pu continuer ses détournements pendant plus de trois ans, ce qui est constaté par ses aveux d'abord, et par la vétusté d'un certain nombre de sacs trouvés dans la cave?—*R.* Le caissier a la direction du mouvement des fonds. Quand nous descendions dans les réserves, c'est lui qui indiquait dans quelles cases il fallait prendre les sacs qu'on avait à expédier; il était tout naturel qu'il se gardât d'indiquer de prendre les sacs altérés. Il aurait fallu avoir des soupçons sur lui pour contrecarrer ses indications.

M. le Président.—Accusé, qu'avez-vous à dire sur cette déposition?

Lamirande.—Rien, Monsieur le Président, que de témoigner à M. Bailly mon profond regret des conséquences que ma conduite a eues pour lui.

D. Ces regrets sont venus bien tardivement. Le 13 Mars, alors que vous avez si bien préparé votre fuite, en emportant de votre caisse plus de 400,000 francs, vous n'avez pas songé à la responsabilité qui allait tomber sur lui.—*R.* Je n'ai pas préparé ma fuite; je l'ai subie avec nécessité; il fallait me tuer ou fuir.

D. Mais pas avec 400,000?—*R.* Je pouvais prendre 5,000,000. (Mouvement dans l'auditoire.)

D. Ainsi, il faut louer votre discrétion?—*R.* Je ne cherche pas de louanges, mais je

veux dire que, dans l'extrême nécessité où je me trouvais, je ne pouvais partir les mains vides; mais que si j'avais été un voleur, j'aurais pris tout ce que je pouvais prendre.

M. Bailly confirme que les faux bordereaux de situation de la caisse à lui remis chaque jour par Lamirande n'ont pu qu'endormir sa confiance et venir en aide à la continuation des détournements.

M. de Grétry, trésorier payeur général à Poitiers.—Je suis receveur de la Vienne depuis 1865 et censeur de la succursale de Poitiers. C'est en cette dernière qualité que j'ai eu occasion d'avoir quelques relations avec Lamirande. Je ne connais ni sa personne ni ses antécédents.

Le 13 Mars dernier, je fus appelé à la succursale par M. le Directeur. Là on m'apprit, qu'à propos d'un envoi d'argent à Angoulême, de 500,000 francs, on avait reconnu qu'un grand nombre de sacs ne contenaient pas les sommes qu'ils devaient contenir, et que le caissier Lamirande avait écrit le matin au directeur qu'il était parti subitement pour Châtellerault et avait laissé les clefs de sa caisse à M. Queyriaux, chef de comptabilité, en le priant de faire l'envoi des 500,000 francs à Angoulême. J'engageai aussitôt M. le Directeur Bailly à aller faire sa déclaration à M. le Procureur Impérial, où je l'accompagnai. On adressa aussi une dépêche à la Banque pour envoyer un inspecteur et un ouvrier pour ouvrir le compartiment supérieur de la caisse courante dont Lamirande avait emporté la clef.

Le reste de la déposition de ce témoin ne repose que sur des faits déjà connus.

M. Lambert, Administrateur de la succursale, à Poitiers, ancien magistrat, est appelé à la barre.

M. le Président.—Déjà plusieurs témoins ont déposé des faits à propos desquels vous êtes appelé à faire votre déclaration. Nous vous engageons à la résumer en aussi peu de mots qu'il vous sera possible.

M. Lambert, en effet, ne fait que confirmer ce qui a été dit par les précédents témoins, tant sur le mécanisme de la comptabilité de la succursale, du mouvement des fonds, que sur la responsabilité incombant au caissier et sur les circonstances qui ont amené la découverte des fraudes.

M. le Président.—Etes-vous depuis longtemps administrateur de la succursale?

Le témoin.—Depuis sa création, Monsieur le Président.

M. le Président.—Avez-vous fait quelquefois des vérifications de la caisse?

Le témoin.—Jamais, M. le Président, excepté celle faite le 13 Mars, à laquelle j'ai été appelé après la fuite de Lamirande.

D. En quoi consistent les fonctions d'administrateur?—*R.* Uniquement à s'assurer de la solvabilité des personnes qui présentent des effets à l'escompte.

M. Queyriaux, ancien chef de comptabilité de la succursale, banquier à Poitiers, est appelé.

M. le Président.—Vous êtes appelé devant nous, monsieur, pour nous donner des détails sur la comptabilité de la succursale.

M. Queyriaux, après avoir rappelé les faits qui ont précédé et suivi la fuite de Lamirande, ajoute: Relativement à la comptabilité voici ce qui se passait: M. Lamirande, comme caissier, me donnait les pièces; j'en passais les écritures sur mes livres, et le soir je contrôlais mon solde avec celui de son livre de caisse. Il fallait que les deux soldes fussent d'accord, et ils l'ont toujours été.

M. le Président.—Mais pour que le solde de Lamirande fût d'accord avec le vôtre, il fallait qu'il fût mensonger?

M. Queyriaux.—Sans doute, mais j'ignorais le mensonge.

D. Quelle était la conduite de Lamirande à Poitiers?—*R.* Je l'ignorais complétement; ce n'est que depuis sa fuite que je sais qu'il faisait de grandes dépenses.

D. Soixante à quatre-vingts mille francs par an, dit-on?—*R.* C'est ce que j'ai entendu dire, mais toujours depuis sa disparition.

D. Et de quelle nature étaient ses dépenses?—*R.* On m'a dit qu'il jouait beaucoup.

D. Soixante mille francs en une seule fois, dit-on, à Angoulême ou à Angers?

Lamirande.—Je n'ai jamais été à Angers, et nulle part, pas même à Angoulême, je n'ai perdu 60,000 francs.

Me. Lachaud.—Peu importe. Ce qui est certain, c'est que vous avez beaucoup joué et beaucoup perdu.

Lamirande.—Je l'avoue.

M. Maréchal, commis aux écritures à la succursale, est l'employé qui a été chargé d'acompagner au chemin de fer l'envoi à Angoulême des 500,000 francs. C'est lui qui, en pesant les sacs, a constaté qu'il devait manquer de 55,000 à 60,000 francs. Il confirme ces constatations.

Le sieur Sarrault, garçon de caisse à la succursale, et Barry, concierge, ont accompagné également l'envoi des 500,000 francs. Tous deux confirment les faits déclarés par le commis Maréchal. Le sieur Sarrault, qui, en même temps qu'il est garçon de caisse, était le domestique particulier de Lamirande, ajoute que, le lendemain de sa fuite, entrant dans la chambre de celui-ci, il a remarqué dans la cheminée que des papiers avaient été brûlés.

M. le Président.—Lamirande, quels étaient ces papiers ?

Lamirande.—J'avais anéanti des reçus d'argent que j'avais prêté.

M. le Président.—Je ne comprends pas ; brûler des reçus d'argent prêté ?

Lamirande.—J'avais perdu complétement la tête.

M. le Président.—Pas trop ; tous les préparatifs que vous avez faits pour votre fuite prouvent le contraire.

Lamirande.—Je déclare que j'avais la tête perdue ; toute ma conduite, après ma fuite, l'a bien prouvé.

La parole est donnée à Me. Bourbeau, avocat de la Banque de France, partie civile.

Me. Bourbeau.—Je viens devant vous, pour la Banque de France, défendre de grands intérêts, des intérêts moraux et des intérêts matériels, auxquels, pour ces derniers, il a été donné un commencement de réparation.

C'est une déplorable histoire que celle de Lamirande ; en lui vous n'avez pas à punir un écart, un moment d'oubli, mais une longue suite de méfaits, une persévérance dans le mal qu'on pourrait dire inexorable. Chez lui, aucun remords, aucun éclat de la conscience pour l'arrêter ; en trois années il a dilapidé 219,000 francs, et cela par des manœuvres journalières. Il les explique, comment ? par la passion du jeu. Le jeu n'est pas une excuse, il ne peut être qu'une explication. Un jour arrive où il ne peut plus continuer ses détournements, et il fuit, sans penser qu'il laissait derrière lui des familles désolées, celle de son malheureux directeur et la sienne. Il part ; ce n'est pas aux siens qu'il va faire ses adieux, mais il va les adresser à deux femmes de cette ville, sur lesquelles il fait tomber la pluie de Damoclès. Suivons-le un moment : il quitte Poitiers, se rend d'abord en Angleterre, puis dans l'Amérique Anglaise, au Canada. Là, il est l'objet d'une demande d'extradition de la part du Gouvernement Français. Survient un incident. . . .

M. le Président : N'abordez pas la question d'extradition ; vous connaissez l'arrêt rendu hier par la Cour.

Me. Bourbeau : Je n'en voulais dire que deux mots.

M. le Président : Pas même deux mots, maître Bourbeau, veuillez passer.

Me. Bourbeau : Eh bien, ne parlons pas de l'extradition ; ne parlons pas non plus des vols, des soustractions frauduleuses, des détournements, et puisqu'il ne peut désormais être poursuivi que pour des faux en écritures de commerce ou de banque, discutons la question de faux.

Ce crime est-il douteux après les explications qui sont le résultat des débats ? Nous n'hésitons pas à déclarer que, pour nous, il ne saurait faire l'ombre d'un doute. Il a fait de faux états de la situation de sa caisse ; cela est constaté, il l'avoue. Dans quel but ? dans un seul but, celui de chercher une protection de ses détournements, dans l'altération de ses écritures. Ainsi, quand il annonçait par ses écritures la présence de tant de sacs de 1,000 francs, alors qu'un grand nombre de ces sacs ne contenaient chacun que 800 francs, ne commettait-il pas un faux ? Voyez-le dans son bureau, soit prélever 200 francs sur des sacs de 1,000 francs, soit transformer des rouleaux d'or en rouleaux d'argent, et faire transporter toutes ces valeurs dans les caves, voilà le vol, voilà le détournement ; mais après, que fait-il ? Il prend la plume et mentionne sur son livre de caisse et sur ses bordereaux de situation des sommes qui n'existent plus, puisqu'il les a détournées. Et cela ne s'appellerait pas un faux, et pourquoi ? est ce que la Banque de France n'est pas une société commerciale ? est-ce qu'elle ne fait pas le commerce des valeurs d'or et d'argent ? Est-ce que Lamirande n'était pas le commis d'une société commerciale ? A toutes ces questions, on ne peut répondre que par l'affirmative. Non, il ne peut pas être dit que pendant trois ans un caissier aura pu écrire un encaisse mensonger et en déficit, et qu'il ne sera pas un faussaire.

Voyez quelles ont été les conséquences de ces faux. A l'aide de ces faux, il a pu faire passer de la caisse courante, dont il avait seul la responsabilité, dans la caisse de la réserve, dont la responsabilité était partagée avec lui par le directeur, un chiffre de plus de 200,000 francs ; et voilà comment M. Bailly, l'honnête directeur, demeure moralement responsable de cette somme qu'il n'a jamais reçue.

Entrant dans la question de droit, l'avocat cite un arrêt de cassation de 1841, qui proclame que les mentions fausses faites par un commis sur des livres de commerce constituent un faux en écriture de commerce. Dans l'espèce citée, il s'agissait d'un commis qui, sur les livres de son patron, avait porté comme vendues des marchandises qu'il avait

dérobées. La Cour de Cassation a décidé que cela constituait un faux, par cette considération que les mentions fausses cachaient la vérité, et, de plus, pouvaient induire en erreur le négociant sur sa véritable position commerciale. Dans cette circonstance, comme dans celle où nous place le débat, le faux est un moyen de protéger un vol commis ou à commettre.

J'ai fait ma démonstration, messieurs, et j'ai montré les préjudices que peuvent causer les fausses écritures en matière de commerce. Lamirande était un voleur, il fallait nécessairement qu'il devînt faussaire. Par ces faux, il a causé un triple préjudice à la banque, un préjudice d'argent d'abord, puis un second préjudice en lui laissant ignorer la situation vraie de sa succursale de Poitiers, ignorance qui l'empêchait de répartir ses fonds là où ils pouvaient être utiles, et enfin un troisième préjudice, celui-là causé à un employé supérieur de la banque, à l'honorable M. Bailly, qui, même après la perte de ses fonctions de confiance, reste sous le coup de la responsabilité morale d'une partie des méfaits de son caissier infidèle.

J'ai terminé ma tâche. La probité proverbiale de ce beau pays du Poitiers a reçu une cruelle atteinte. Pendant trois ans un homme a pu travailler dans l'ombre à lui faire cette cruelle injure ; mais, comme toujours, il est arrivé que la justice, appuyée par l'opinion publique, a découvert le coupable, et aujourd'hui il vous est livré. Vous le jugerez bien, messieurs, car je sais que votre décision sera guidée par la conscience du juge et l'indignation du citoyen.

L'audience est renvoyée à demain dix heures et demie.

Audience du 5 Décembre.

L'audience est ouverte à onze heures, au milieu de l'émotion suscitée par l'incident qui a amené la restitution de la somme de 110,200 francs.

M. le Premier Avocat Général Gast a la parole, et s'exprime ainsi :

Rarement, dans une affaire criminelle, le jour de la justice a été plus vivement désiré, plus impatiemment attendu, que dans celle qui est en ce moment soumise à votre appréciation. Ce n'est pas que cette affaire renferme un de ces forfaits qui jettent dans les populations la consternation et l'épouvante ; mais, sans offrir cette horrible gravité, cette cause a le triste privilége d'avoir excité au plus haut point l'indignation publique. Hâtons-nous de le dire, cette indignation honore le cœur humain. Il est, en effet, de ces spectacles contre lesquels le cœur humain se soulève avec véhémence. Les attentats de Lamirande ont soulevé l'opinion publique. A l'âge où la raison est arrivée à toute sa maturité, Lamirande avait été placé dans un poste de confiance qui lui livrait la garde d'immenses richesses. La probité de sa gestion semblait garantie, non-seulement par les précautions les plus sévères, mais aussi par les sentiments d'honneur et de délicatesse qu'il avait puisés dans sa respectable famille.

Qu'est-il arrivé ? Lamirande s'est trouvé placé, un jour, entre le désir de satisfaire ses ignobles instincts et le devoir de respecter les trésors confiés à sa garde : il est arrivé que la cupidité l'a emporté sur le devoir. Lamirande a franchi l'abîme ouvert devant lui, et après avoir porté une main criminelle sur le trésor dont il était le gardien, il s'est fait faussaire. Une fois engagé dans cette voie criminelle, l'accusé y a persisté jusqu'au moment où ses crimes ont été découverts, et Lamirande a couronné tous ses crimes par un crime plus énorme encore ; il a voulu s'assurer une grasse opulence sur une terre étrangère, pour continuer les débauches auxquelles il était habitué.

Mais le Gouvernement a compris qu'il était indispensable de demander l'extradition de Lamirande. Ah ! s'il suffisait de franchir la frontière, ce serait l'impunité sociale accordée aux plus grands criminels. Aussi l'extradition se propage de jour en jour. Notre homme d'Etat le plus éminent l'a dit ; "L'extradition, c'est l'assurance mutuelle contre l'ubiquité du mal."

Vous savez cependant le scandale qui a éclaté sur la terre étrangère où Lamirande s'était réfugié. Vous savez comment, avec l'or qu'il avait volé à la Banque de France, Lamirande a soudoyé toute une légion de suppôts qui se mirent à chicaner sur les conditions de l'extradition. Réfugié au Canada, il fut enfin livré à la France, et aujourd'hui Lamirande attend le juste châtiment qu'il a encouru. Ce n'est pas une œuvre de vengeance que nous voulons, c'est une œuvre de justice.

Vous le savez, Lamirande ne peut être jugé par vous que pour le crime de faux. On vous a dit que la grâce du repentir a subitement touché ce criminel ; on vous promet que s'il est acquitté sur le chef de faux, il viendra s'offrir en holocauste quant aux autres chefs de l'accusation.

Supposons que ce ne soit pas là une stratégie d'audience, supposons qu'il veuille plus tard se faire juger pour les crimes de vol et d'abus de confiance, ce ne serait pas une

raison pour l'acquitter sur la question de faux. En effet, pour nous, le crime de faux est de toute évidence.

Comment ! il n'y a pas de crime de faux dans cette affaire ? Voici un caissier qui commet tous les jours des soustractions dans sa caisse, qui vient tous les jours certifier à son chef, dans ses écritures, que tout est exact ; l'accusé faisait dans sa caisse des opérations criminelles qui n'étaient pas reproduites dans les écritures. Les écritures sont et doivent être la photographie de la caisse. Voilà ce que dit le bon sens.

A votre audience d'hier, vous avez entendu une démonstration magistrale de l'existence du faux. Il y a d'abord une considération qui a une valeur sérieuse. Une procédure criminelle, avant d'arriver aux assises, subit une double épreuve : la première est celle de l'instruction ; puis, si le fait constitue un crime, la procédure est soumise à la Cour impériale, chambre des mises en accusation. Cette marche a été suivie dans l'affaire Lamirande.

Après avoir passé en revue toutes les phases de la procédure, M. l'Avocat Général examine quels sont les caractères du faux, en droit, et il applique les principes aux faits de la cause. Il fait remarquer ensuite quelle a été l'énormité du préjudice causé à la Banque de France.

Lamirande a précipité son père dans le plus affreux désespoir ; il a déshonoré son nom. Mais le châtiment ne s'est pas fait attendre. Il a été frappé de réprobation même par cette ignoble créature qu'il entretenait, qui vivait de prostitution, et qui, en apprenant son arrestation, a dit : " Cet homme n'a pas de cœur ; je croyais qu'il aimait son père et sa mère : il n'aime personne."

Jamais accusé ne s'est présenté devant le jury avec une pareille accumulation d'attentats. Il a accompli ses crimes avec une assurance, avec une intrépidité sans égales. Son calme ne l'a jamais abandonné, et tout dans l'affaire démontre la préméditation de l'accusé.

Quel est donc le mobile qui l'a fait agir ? C'est le mobile le plus vil, la soif des plus basses jouissances, des plus ignobles voluptés. Sans parler des plaisirs de la chasse, il lui fallait les émotions du jeu ; il lui fallait les raffinements de la luxure la plus effrontée. A ce débauché émérite, il fallait deux concubines richement entretenues.

S'expliquant sur l'incident relatif à la restitution des 110,200 francs, M. l'Avocat Général dit qu'on a voulu faire un coup de théâtre. Cette restitution, c'est le fait d'un voleur qui, se sentant poursuivi, abandonne une partie de son butin pour sauver le reste. Lamirande a voulu se ménager des circonstances atténuantes, mais l'accusé en est indigne, et le jury sera pour lui sans pitié ! Les crimes de l'accusé ont eu un retentissement immense ; le châtiment doit tomber sur lui de tout son poids. Vous assurerez à la société, à la conscience publique, la réparation qui leur est due.

Me. Lachaud, avocat de Lamirande, s'exprime ainsi :—

Nous n'avons jamais méconnu au banc de la défense tout ce que cette affaire a de grave. Un caissier qui oublie son devoir, qui méconnait la confiance qu'on lui accorde, rien n'est plus grave. Nous ne serions pas dignes d'être des avocats Français si nous n'étions pas d'accord avec les magistrats sur tout ce qui touche à l'honneur, à la probité, et à la loyauté. Mais pour que la justice soit juste, il faut qu'elle apprécie tout, qu'elle pèse tout avec le plus grand soin. La justice, c'est la plus grande chose du monde, c'est la justice de Dieu. Mais, après avoir reconnu l'énormité du crime, il faut que vous connaissiez l'accusé, sa vie, ses faiblesses, ses souffrances inouïes. Si vous ne teniez pas compte de tout cela, ce ne serait plus qu'une justice d'indignation, dont M. l'Avocat Général ne veut pas plus que moi.

Le malheureux homme que je défends a quarante-deux ans. De sa famille, je ne veux rien dire. Qui ne sait ici que tout le monde plaint, estime, aime son vénérable père que Dieu a laissé vivre trop longtemps, puisqu'il assiste au déshonneur de son nom ? Je ne vous parlerai pas de sa sainte mère et de son frère, l'homme le plus estimable. Le malheureux Lamirande est devant vous sous le poids d'une accusation terrible. Qu'il accepte cette humiliation nouvelle et que ce soit pour lui le plus inexpiable des malheurs. Quand l'orage a grondé sur cette malheureuse famille, on a été bon pour elle ; je le dis à la gloire de ce pays. Hélas ! Lamirande n'a pas su être le digne enfant de ces braves gens. Sa jeunesse a eu des entraînements, des folies, des dépenses, et lorsqu'en 1858 on en faisait un caissier, il devait plus de 50,000 francs. Le désir d'être utile à ce jeune homme faisait peut-être commettre une imprudence.

Le caissier doit être un homme aux habitudes modestes, vivant de peu ; c'est le représentant le plus parfait, il doit l'être, de l'exactitude et de la modestie. Celui-là qui verra devant lui les trésors ouverts de la Banque de France, il luttera longtemps ; le jour où il succombera, vous lui direz que c'est un criminel. Ah ! il ne fallait pas lui confier ces trésors.

Jusqu'en 1862 Lamirande a été irréprochable. Ses petites dettes ont augmenté. Il ne se donnait pas le luxe, mais bien la honte de deux concubines. Il y en a une que je plains; il y en a une autre dont je ne parle pas, et que je laisse à M. l'Avocat-Général le droit de mépriser tout à son aise. Un jour, alors qu'il était harcelé de toutes parts, au milieu de ses préoccupations, il y a un déficit, il lui manque 5,000 francs. Ce n'est pas beaucoup dans une comptabilité comme celle de la Banque. Eperdu, n'osant plus imposer à sa famille un sacrifice nouveau, il a volé. L'abime était ouvert. Quand on a fait le premier pas dans cette voie, la perversité marche; le mal nous pousse, nous devenons son esclave. C'est ce qui est arrivé à ce malheureux. Après avoir comblé le déficit, il a payé ses dettes, il a joué; il a compté sur la fortune, il a perdu, et, après avoir perdu 100,000 francs, de faute en faute, de chute en chute, il en est arrivé à ce départ que vous savez.

Cette terrible affaire sera pour tous les caissiers une grande lumière. Les faits vous disent que les précautions de Lamirande étaient dérisoires. Il coupait les sacs, il changeait l'or en argent; mais on pouvait vérifier. Il était à la discrétion de la première visite sérieuse.

Vous vous rappelez la fuite de Lamirande, allant, dans le trouble de sa conscience, chercher un asile au Canada, trahi par tous. C'est une agonie si cruelle que je me demande s'il ne vaut pas mieux être sur ce banc d'ignominie. Quand on l'a arrêté au Canada, savez-vous ce qu'il lui restait? Dix-huit francs, à lui qui avait emporté d'ici un demi-million. Et quand il a écrit à ces hommes, que je n'appellerai pas, moi, des avocats, pour avoir une petite somme, il n'a pas reçu de réponse.

Voilà les misères qu'il a subies. Quand il est revenu en France déguenillé, l'agent de police a dû lui prêter des vêtements pour le faire monter sur le bateau qui le ramenait en France. Ah! quelle leçon!

Je pourrais parler de l'incident d'hier. Nous pourrions nous demander, mon confrère et moi, ce que nous a rapporté la restitution faite à l'audience. Si les défenseurs n'étaient pas d'honnêtes gens (ce dont nous ne remercions personne), il y aurait du danger à se conduire comme on le doit. Non, non, M. l'Avocat-Général, ce n'est pas un coup de théâtre que nous avons voulu faire. Nous avons remis cet argent à l'audience, parce qu'il ne nous a pas paru opportun de le faire plus tôt. Si nous avons restitué cet argent, c'est parce que c'est nous, et non Lamirande, qui avons retrouvé cet argent. Qu'il me soit permis de le dire à mes confrères de ce barreau, ce que nous avons fait avec notre cœur et notre honneur, vous l'eussiez fait comme nous, mais vous passeriez bien des nuits sans sommeil. Voilà le fait: moi, messieurs, je m'en honore, et mon confrère Lepetit s'en honore comme moi. Nous ne sommes pas en France des avocats Américains.

Trois chefs d'accusation ont été reprochés à Lamirande—vol, détournement, et faux. L'avocat, après avoir écarté les deux premiers chefs, examine les caractères juridiques du faux.

L'Article 147 punit (pourquoi ne le dirais-je pas? rien ne le défend, que je sache)—l'Article 147 du Code Pénal punit des travaux forcés à temps le crime de faux. Mais où rencontrez-vous l'altération de la vérité? Ce livre de caisse est sincère; les bordereaux de situation comprennent l'état du capital dans toutes les caisses de la banque. Or, vous savez qu'il y avait trois caisses. Seulement les pièces de comptabilité servaient à faire la déclaration de situation. Quant à la comptabilité du caissier, elle a été vraie. Mais où est l'obligation, la décharge? Montrez-moi l'engagement pour ou contre quelqu'un?

On vous a dit qu'il y avait là une décharge implicite, faisant peser la responsabilité sur quelqu'un qui ne devait pas l'avoir. Cette prétendue décharge dont on vous a parlé ne peut donc vous arrêter. Mais, où donc est le préjudice? J'en appelle à Me. Bourbeau, qui est mon confrère, et avec qui je peux me permettre plus de latitude qu'avec M. l'Avocat-Général. Est-ce parce qu'il peut y avoir un préjudice moral qu'on pourra dire qu'il y a un véritable préjudice, comme l'entend la loi? Ah! mais, dit-on, vous avez trompé la Banque. Je réponds qu'avec un million de plus ou de moins la Banque n'en est pas moins riche, tant qu'elle n'est pas atteinte dans son crédit. Oui, j'ai trompé la Banque, je l'ai trompée en le volant, mais non pas en faisant un faux.

La Banque de France a des comptes courants. Si le compte courant n'est pas sincère, il peut y avoir grief, altération de la vérité. C'est là un faux. Mais il ne suffit pas d'avoir altéré la vérité et d'avoir causé un préjudice moral. Le mensonge écrit ne suffit pas. Cela peut être une escroquerie, ce peut être une manœuvre frauduleuse. Eh bien! le livre du caissier, mon livre à moi, n'a pas été altéré. Ce que vous attaquez, c'est la comptabilité intérieure de la Banque. Mais le malheureux qui est là, tout coupable qu'il soit à vos yeux, au point de vue de la morale n'est pourtant pas un faussaire.

Avant tout, les jurés ont leur serment qui les lie. Il faut juger cet homme coupable de faux, si le faux a été commis. Rassurez-vous, je ne veux pas l'impunité pour cet homme. Il ne s'en ira pas, il ne le veut pas, et je ne le veux pas, moi. Voilà la déclaration que j'a reçu mission de vous lire au nom de Lamirande, et j'engage pour lui ma parole :—

"Je soussigné, Surreau-Lamirande (Ernest-Charles-Constant), déclare solennellement que si le verdict du jury qui doit statuer sur les fautes qui me sont reprochées, et que je proteste n'avoir jamais eu l'intention de commettre, est négatif, je n'entends en aucune manière profiter du bénéfice du Traité d'Extradition avec l'Angleterre ; que je demande, au contraire, dans cette hypothèse, à être jugé par la Cour d'Assises de la Vienne pour les faits de détournements et de vols qui sont relevés contre moi par l'arrêt de la Chambre des Mises en Accusation.

"Je suis donc prêt à me constituer prisonnier, et je prie mes défenseurs de déposer cette déclaration entre les mains de M. le Procureur-Général.

"*Poitiers, 4 Décembre*, 1866.

(Signé) "LAMIRANDE."

Ah! M. l'Avocat-Général, est-ce que vous n'avez pas compris ma situation dans cette affaire? Nous n'avons pas voulu nous embusquer derrière des Traités d'Extradition. Arrière! arrière! nous n'avons pas recours à de tels moyens. Comme les magistrats, nous portons la robe aussi. La couleur n'y fait rien, c'est la conscience qui fait tout.

Dans trois mois Lamirande sera ici, et vous le jugerez, vous ou d'autres. Je veux qu'il ait le bénéfice de son courage ; je veux qu'après le verdict du jury il soit libre de par la loi, mais qu'il soit prisonnier de par la justice et par sa volonté. Nous autres, avocats, nous comprenons avant tout la miséricorde. Le défenseur d'un accusé le soutient, le relève devant tous ; il lui parle du remords, de Dieu, de l'expiation. Nous sommes les médecins de l'âme, heureux et fiers de l'être. Cet homme sera acquitté, mais justice sera faite dans trois mois. J'ai plaidé mon procès comme je l'entends : j'ai dit la vérité. Dans trois mois nous ne dirons pas que la loi est pour nous, mais qu'elle est contre nous ; nous chercherons, sans doute, à attendrir le jury dans une certaine mesure pour tant de souffrances.

Ah! le malheureux, si vous saviez ce qu'il a souffert! Oui, avant d'arriver sur ce banc, il a trouvé hier dans sa prison ces trois lettres que je veux vous lire. En lisant ces lignes, j'étais ému au fond de l'âme, et vous partagerez mon émotion.

Voici d'abord la lettre de la sainte mère de Lamirande :—

"Trop cher et malheureux enfant,

"Je n'avais pas attendu le cri de ton cœur pour te pardonner ta faute ; mon âme est remplie pour toi d'une immense compassion en songeant au sort que tu t'es fait et aux souffrances que tu t'es attirées.

"J'adresse au Ciel une ardente prière pour que tes juges soient indulgents, et que Dieu te pardonne comme ta mère t'a pardonné.

(Signé) "A. S. LAMIRANDE."

Voici la lettre du vieillard à son fils :—

"Je savais bien que l'heure du repentir viendrait avant l'heure de la justice, et mon pardon, malheureux enfant, t'était acquis du jour où tu reconnaîtrais ton erreur. J'ai souffert plus que toi des misères qui devaient être la suite de ta honte et de ta fuite. Je souffrirai encore des affreuses souffrances qui vont t'être imposées. Je ne m'en plaindrai pas si tu sais supporter avec dignité ta misère et persister dans ton repentir.

"Je n'ai pas besoin de te dire que nous faisons tous des vœux pour que tes juges soient indulgents et te tiennent compte d'une vie honorable jusqu'au jour où tu as manqué à l'honneur et à la probité.

"Sois repentant et Dieu te viendra en aide.

"Ton malheureux père,

(Signé) "S. LAMIRANDE."

Le frère de Lamirande, enfin, lui écrit ce qui suit :—

"Mon pauvre frère,

"Tes souffrances passées, tes souffrances aujourd'hui bien plus poignantes encore, remplissent notre âme de pitié pour toi ; mais ce n'est pas à cause d'elles que nous te pardonnons. C'est à cause de ton repentir que nous croyons sincère et complet ; c'est là qu'est ton refuge, c'est par là seulement que tu peux retrouver la paix avec toi-même. C'est par là que plus tard à force de courage, de patience, et d'abnégation, tu peux te

refaire une dignité. Nous te soutiendrons de tout notre pouvoir dans l'accomplissement de cette œuvre qui te serait impossible aujourd'hui, mais qui ne l'est pas. Courage donc; notre affection ne te fera pas défaut, si tu as la ferme volonté d'en être digne. Elle t'aidera à reconquérir notre estime.

(Signé) "C. LAMIRANDE.

"P.S.—Mathilde est de moitié dans les sentiments que je t'exprime."

Je ne veux rien ajouter à ces lettres. Pour le monde Lamirande est mort. Il sera un condamné de Cour d'Assises, dans trois mois; mais, si les hommes sont sévères, Dieu sera pour lui miséricordieux. Il y a dans ces lettres que je lui rends tout un avenir d'amour. Ses parents vivront encore pour lui pardonner et pour l'aimer. Voilà la cause. L'heure va venir, elle est proche: mais ne faisons pas sans nécessité une violation à la loi. Je compte sur vous, Messieurs, parce que vous êtes des hommes de cœur et de conscience, et que vous ne frappez que lorsqu'il faut frapper.

L'audience est suspendue à 2¼ heures.

Après des répliques de Me. l'Avocat-Général et de Me. Lepetit, M. le Président résume les débats; le jury se retire ensuite pour délibérer. Au bout de trois quarts d'heure il rapporte un verdict affirmatif sur les questions de faux et d'usage de pièces fausses.

Il reconnaît qu'il existe en faveur de l'accusé des circonstances atténuantes.

La Cour, après en avoir délibéré, condamne Sureau de Lamirande à dix années de réclusion.

Lamirande paraît atterré.

(Translation.)

Report of the Trial of M. Lamirande.

Analysis of the Declaration of Judge Drummond, published by a Belgian Paper.

THIS document not having been read during the sittings of the Lamirande trial has not been published by the French papers. By printing it they would have rendered themselves liable to prosecution for inaccuracy in the judicial reports.

"We will here recall that somewhat strange document of Judge Drummond of Montreal, which, in fact, sums up the whole question of the extradition.

"Indeed, in France we should be at a loss to give a name to this document, which corresponds neither in form nor in substance with our idea of a judicial sentence.

"In the first place, the Honourable Canadian Judge acknowledges that he has no further orders to give, it being impossible to bring before him the accused, or rather the petitioner, as he calls him in deferential language, he being on the high seas, carried off by one of the most audacious and up to this time happy enterprizes against justice which have ever been heard of in Canada.

"Notwithstanding this somewhat candid declaration, the Honourable Judge Drummond launches forth into a long dissertation better suited to pleadings or polemics than to the impartiality of a judicial document.

"What results from this harangue is the rather impassioned opinion of the Judge, maintaining that the extradition would never have been granted by him if the case had remained intact, and that for several reasons, which he enumerates very concisely, viz.—

"1. That the French Consul-General at Montreal was not qualified to demand the extradition, not being an accredited Diplomatic Agent, as required by the Treaty of 1843.

"2. Because the original instrument of indictment against the accused was not authenticated; that in lieu of the original and regular document only a copy thereof, translated by some unknown individual, was produced (it is known that at New York the warrant was abstracted from the rest of the papers by one of Lamirande's advocates, to whom this document had to be communicated).

"3. Because the act imputed to the accused Lamirande does not contain the imputation of any of the acts characterized as crimes by the English laws, and which would authorise his extradition according to the terms of the Treaty.

"In fact, in England, the crime of forgery only consists in the deceitful fabrication of a document intended to be what it is not, not in the fabrication of a document intended to be what it is; in other and clearer terms, a lie in writing is not a forgery.

"Then Judge Drummond recollects that he ordered the petitioner (Lamirande) to be brought before him, and adds:—

"'The answer of the keeper of the prison to my writ of *habeas corpus* was, that he had handed over the prisoner to Edme-Justin Melin, Inspector of Police at Paris, on the night of the 24th instant, at midnight, by virtue of an order signed by the Deputy-Sheriff upon a document signed by the Governor-General.

"'It appears, he continues, that the petitioner, thus delivered to a French Agent of Police, is now on his way to France, although his extradition was illegally demanded, although he was accused of none of the crimes for which he could have been legally delivered up, and notwithstanding that I was positively informed that his Excellency the Governor-General had promised, as he was bound to do in honour and justice, to give the petitioner an opportunity of having his petition decided by the first tribunal of the land before ordering his extradition.'"

"After these imputations levelled by a magistrate against the Governor of the country, one can understand the polemical violence of the American press. It is true that the Canadian magistrate adds, that if there is a false date in the Governor-General's warrant, he sees therein a proof that the good faith of the Governor has been abused."

Report of the Trial of Lamirande, taken from the "Gazette des Tribunaux," and the Journal "Le Droit."

COURT OF CRIMINAL JUSTICE.—ASSIZES OF VIENNE.

(Especially drawn up for the "Gazette des Tribunaux.")

Under the Presidency of M. AUBUGEOIS DE LA VILLE DU BOST, Judge of the Imperial Court of Poitiers.

Sitting of December 3.

In re Lamirande.—Fraudulent Abstraction.—Embezzlement of 704,000 francs from the Branch Bank of France at Poitiers.—Forgery in Bank Accounts.

The name of Lamirande has for some months acquired such notoriety that it is sufficient to mention it to recall all the facts with which it is connected. Cashier at the Branch Bank of France at Poitiers, he disappears, leaving a considerable deficit in his cash; he flies, he crosses the seas; he first takes refuge in England then in America. French police agents follow on his track, have him arrested, but before he is delivered up to them, disputes arise between the different authorities of America, England, and France upon the question of extradition, and it is only lately that they have been settled, and that Lamirande has been handed over to the justice of his country. Such is the summary, much abridged, of the long preliminaries of this serious affair, but which, it appears to us, ought to be sufficient, now that it is coming to trial, to bring it to the notice of the public.

A large concourse of people thronged the approaches to the Palace of Justice in the hope of being present during this important trial. It could not be otherwise in the town where the accused has been so long known, and where, whilst he acquired a position of confidence, he was enabled to gain the esteem of a large number of its inhabitants.

The Magistrates' Bench was occupied by M. Gast, first Avocat-Général. The Procureur-Général Damay was present.

Maître Lachaud was charged with the defence of Lamirande, who had also as Counsel, Me. Lepetit, formerly senior advocate of the bar at Poiters.

Upon the accused being introduced into Court, a quick movement of curiosity was apparent on all sides; all heads were raised; all eyes directed towards him, and a long period elapsed before the first burst of public curiosity subsided.

Lamirande, whose carriage and demeanour announce him to be a man of superior breeding, is of middle height; he has brown hair, a high forehead, a pale complexion; his regular features announce shrewdness and vivacity. Those of the inhabitants of Poitiers who knew him, say that they can hardly recognize him, he is so changed and emaciated; nevertheless, he is not depressed and he seems not to have lost any of his energy.

After the jury had taken their places and the identity of the prisoner had been proved, the warrant of arrest and the act of indictment were read by the Clerk of the Court; this last document is couched in these terms:—

"On Monday March 12, 1866, M. Bailly, Director of the Branch Bank of France at Poitiers, informed Lamirande, cashier of the same establishment, that a million in gold would have to be immediately forwarded to the branch at Angoulême, and that the day

after, Tuesday, 500,000 francs in silver would have to be sent to the same place. Lamirande made, during the day, the necessary preparations for the dispatch of a million in gold. In the evening he clandestinely left his post, took the railway, and reached the frontier. Before starting he had left a letter addressed to the director M. Bailly, in which he stated that he was unexpectedly obliged to go to Châtellerault, that he had left his keys with M. Quérieux, chief accountant, and that he would return soon enough to make up his cash account. At the same time he had written to M. Quérieux that being obliged to leave for Châtellerault he begged him to act as cashier on the morrow and to superintend the dispatch of the money by the attendants of the bank; he added that he would arrive in time to draw up the daily report. This letter was taken by a messenger to M. Quérieux with the keys which opened the lower compartments of the current cash ('caisse courante'). Lamirande's sudden departure could not at first appear suspicious, for he had taken the precaution of telling several people the falsehood that his nephew was very ill at Châtellerault, and that the state of the child caused him great anxiety. On the 13th of March, the employés of the bank proceeded to remove the 500,000 francs which had to be sent to Angoulême. Sacks were ready; they were filled to the number of 50, by taking from the cellars 500 bags of 1,000 francs each, and the 50 sacks, which ought each to have weighed 50 kilogrammes, were placed upon a truck accompanied by a clerk and an attendant, and taken to the Bureau des Messageries. There they were weighed and it was immediately found out that most of them were under weight, showing a deficit of about 2,000 francs per sack. The director was informed of this; he immediately had the whole taken back to the bank, opened the sacks, took out the money bags and counted them. 310 of them were found to be uniformly deficient of 200 francs, within about a five-franc piece.

"One of the Inspectors (censeurs), M. Grétry, and one of the Managers, M. Pavie, were informed of this; they went down into the cellar from which the deficient bags had been taken, and discovered that the same difference existed in a great many more bags of money. They discovered, besides, that many bags which ought to have held each 10,000 francs in gold of 20-franc pieces, only contained in the same bulk 2-franc 50-centime pieces. In a word, it was proved by the examination which took place on the 13th of March and the following days, that the sums abstracted from the cellar amounted to 219,000 francs.

"Lamirande had not however, sent to M. Quérieux the key which opened the upper compartment of the current cash; now, this compartment ought to have contained a very considerable sum, whether in notes or in gold. A workman, sent for from Paris, arrived the next day, together with a Bank Inspector, and opened the compartment. All the 1000-franc notes had disappeared; there only remained 400 notes of 100-francs, of which the bundle had no doubt appeared too bulky to be carried off. It was moreover found out that there were two bags apparently filled with gold and labelled 20,000 francs, but it was at once perceived that the rouleaux of gold pieces had been replaced, at the bottom of the bags, by paper rolls of 2-franc 50-centime pieces, wrapped first in white and then in blue paper, so as to equalize the weight to within about a centigramme with that of a sum of 20,000 francs in gold. An exact and minute investigation proved that the embezzlements effected from the cash amounted to the sum of 485,000 francs.

"Hence, from the cellar and from the cash-box, in specie or in notes, a sum total of 704,000 francs had been abstracted to the loss of the bank.

"In face of these discoveries no doubt was possible; the flight of the cashier was the proof of his guilt.

"It was moreover manifest that the cashier alone could have perpetrated this immense spoliation. In the first place Lamirande had the exclusive management of the current cash, which had been exhausted in the course of the day of March 12; secondly, he alone could have effected either the abstraction from a great number of bags of silver or the removal of the bags of gold. It was easy for him to abstract them whilst alone in the cellar, where he superintended the depositing and the despatching of moneys, by taking advantage of the absence of the director and employés charged with the conveyance of the bags.

"Lamirande's flight was suddenly precipitated by the unexpected order to send 500,000 francs to Angoulême, for it became clear to him that the dispatch of so considerable a sum trenching upon the reserves of silver deposited in the cellar would necessarily include the deficient bags, and lead to the discovery of the fraud.

"Lamirande is not answerable to justice for the enormous abstractions of which he is guilty alone. His duties as cashier required him to remit daily to the Board a return in which he certified to the state of the different coffers of the Bank, by showing, according to their value, the sums and effects that were there deposited. He has committed

a daily series of forgeries by announcing each day in his return a state of affairs which had ceased to be correct owing to his own embezzlements. The very day of his departure he still transmitted to his director a return of the state of the Bank, certified and signed by himself, in which he falsely attested that the sum total in the coffers of the Bank amounted to the sum of 11,443,000 francs, whilst in reality, through his abstractions, the amount in hand was diminished by the 704,000 francs of which he had possessed himself.

"Lamirande has committed forgeries in banking accounts ("faux en écriture de banque"), and he has knowingly made use of false papers by remitting returns which concealed the fraudulent abstractions and embezzlements of which he is guilty.

"Consequently Lamirande is accused :—

"1. Of having at Poitiers, within less than ten years, fraudulently abstracted divers sums in gold or silver coin from the safe or cellar of the Branch Bank of France, to the loss of that establishment. Of having committed these fraudulent abstractions, under this circumstance, that he was then the salaried cashier, or servant at wages, of the said Bank of France.

"2. Of having at Poitiers, within less than ten years, and especially on the 12th of March, 1866, embezzled or made away with, to the prejudice of the Bank of France, the proprietors thereof, funds and notes placed in the current cash of the branch at Poitiers, which had only been remitted and confided to him for purposes of deposit and demand, on the understanding of his returning, or producing, or making some appointed employment or use of them. Of having committed the above specified embezzlements, under this circumstance, that he was then cashier or paid clerk of the said Bank of France.

"Of having at Poitiers on March 12, 1866, in the return signed by him, which it was his duty to draw up and certify each day as cashier of the Branch Bank of France for the purpose of showing the amount in hand at the said branch, fraudulently inserted the false declaration that the amount in hand consisted that day of 11,443,556 francs 84 centimes, whilst in reality it was less by all the sums abstracted or embezzled by him, and of having thus fraudulently changed the declaration and facts which it was the object of this report to receive and verify.

"4. Of having the same day, at the same place, made use of this fictitious paper, knowing that it was fictitious, by remitting it to the Director of the Branch Bank of France at Poitiers, in order to show the state of the cash at that establishment on the 12th of March, 1866.

"5. Of having at Poitiers, within less than ten years, and anterior to the 12th of March, 1866, in several returns signed by him—which it was his duty to draw up and certify each day as cashier of the Branch Bank of France, in order to show the cash in hand at the said branch—fraudulently inserted the false declaration that the cash in hand amounted to a sum larger than that which existed in reality; which amount was less than the figures recorded by all the sums abstracted or embezzled by him, and of having thus fraudulently changed the declarations and facts which it was the object of this report to receive and verify.

"6. Of having at the same period and at the same place made use of these fictitious papers, knowing that they were fictitious, by remitting them to the Director of the Branch Bank of France at Poitiers, in order to establish the state of the cash at that establishment on the days indicated.

"Given at the bar of the Imperial Court of Poitiers, the 23rd of September, 1866.

(Signed) "CAMOIN DE VENCE, Avocat-Général."

During the reading of the indictment, which was listened to by the audience in the most profound silence, the accused appeared to be deeply moved; he almost always kept his head down, resting on his hand, frequently passing his handkerchief over his eyes and forehead.

It ought to be stated that on the jury being empanelled, Maître Lachaud, in the name of Lamirande, requested that note might be taken so that his presence, and that of the accused, at this empanelling should not in any way prejudice the motions in exception ("conclusions exceptionnelles") which he might choose to submit before entering upon the actual proceedings. Note was taken of this reservation, and the President ordered that it should mentioned in the minutes of proceedings.

The President then recapitulated to the prisoner the different heads of accusation brought against him, to the number of six fraudulent abstractions and forgeries.

The prisoner made no observation.

Maître Bourbeau, advocate, came forward, attended by Maître Pinchot, attorney, and read motions to the effect that the Bank of France should be allowed to appear as

prosecutor, and that record should be made of their reservations to fix during the course of the debates such damages as they should think fit.

The President.—It is for the first Avocat-Général to speak.

Maître Lachaud.—Pardon me, M. le President, I request permission to speak in order to submit the following motions :—

Seeing that it is established as a principle that Courts of Assize are competent to judge whether the extradition of accused persons has been conducted in a regular manner, or whether, on the contrary, it has been the result of fraud or of violence; that this principle has been recognized by the Court of Cassation, especially in its Decree of the 9th of May, 1845;

In point :—

Seeing that Lamirande, cashier of the Branch Bank of France at Poitiers, sent by order of the Court of Indictment before the Court of Assize of Vienne, on several accusations, took refuge in Canada (an English possession);

That a demand for his extradition had been made by virtue of the Treaty concluded between Great Britain and France on the 18th-21st of March, 1843;

That this Treaty, which indicates the forms necessary to be observed in the two countries in cases of extradition, reads textually, Article I, Section 2, in so far as concerns Great Britain :—

"Consequently, on the part of the British Government, the surrender shall be made only on the report of a Judge or Magistrate duly authorized to take cognizance of the acts charged against the fugitive in the warrant of arrest, or other judicial document likewise issued by a Judge or competent Magistrate in France, and likewise clearly setting forth the acts."

Seeing that it results that in order that the English Government may grant the extradition, it is necessary before all that a competent Judge should have declared its legality, that consequently it is not only an administrative, but also a judicial decision;

Seeing that Lamirande having, in the first instance, been brought before M. Bréhaut, Justice of the Peace, the latter adjudged the surrender, but that almost immediately that decision was attacked before the Superior Judge of the Queen's Bench, Mr. Drummond, and that from that time a regular appeal was lodged against the decision;

Seeing that Judge Drummond heard the cause on the 24th of August, 1866, that all parties appeared through their respective representatives, that the demand for extradition was supported, opposed, and discussed;

That at that stage, after a long sitting, and when the trial had been accepted by all, on the request of M. Pomainville, counsel for the Bank of France, who was desirous of making some further observations, Judge Drummond, when about to give judgment, in consideration of the lateness of the hour (7 o'clock in the evening), postponed the remainder of the hearing and his decision till the next day the 25th;

Seeing that during the evening of the 24th of August, before the decision of the Judge, who alone was qualified to give a definitive decision, police agents dragged Lamirande forcibly from prison, that he was brought to France, and notwithstanding his protests handed over to the French police;

Seeing that all these facts cannot be contested, that they are proved by the Judgment delivered by Mr. Drummond on the 28th of August, 1866;

That it results, moreover, from this decision that Mr. Drummond has declared that there were no grounds for an extradition, for several reasons, given in his Judgment, and founded either on the form of the demand, or on the main issue, in that the acts cited constituted none of the crimes for which extradition could be granted;

Seeing that at present the Court of Assize is called upon to judge whether the extradition of Lamirande can be declared legal;

That it is evident it could not be so, since the Judge before whom the case had been duly brought by all parties, and whose duty it was to decide definitively upon it, has declared that there was no reason for granting it;

That an act of violence, for which England cannot fail to call her Agents to account, ought not to prevail over a judicial decision, and thus make force and subornation superior to right;

That whatever may be the faults and the crimes of which Lamirande is accused, they can form no reason for violating the most ordinary rules of justice; that the aim of international Treaties of Extradition is not to give advantage to accused persons, but above all, to respond to the highest interests of the reciprocal relations and liberty of nations;

Seeing that it is in vain to object that Lamirande was handed over to the French Agents of Police by virtue of an order signed on the 23rd of August, 1866, by the

Governor of Canada; that it results from the sentence delivered by Mr. Drummond that the date borne by this order is not the real one; that it was given after the 23rd of August; that the Governor's signature could only have been obtained by underhand means;

Seeing, moreover, that the very terms of the Treaty of 1843 do not permit the Governor-General to deliver up an accused person for extradition before the judicial decision has been pronounced by the proper Judge; that on the 24th of August the case came before Judge Drummond; that the British Government, represented by Mr. Ramsay, Queen's counsel, the Bank of France, represented by M. Pomainville, advocate, Lamirande himself represented by Mr. Doutre, advocate,—were heard, and that they argued the question of the legality of the extradition before that Magistrate;

That from that moment until after the decision of Judge Drummond, it was impossible to dispose of Lamirande without violating at once both law and justice;

That it may please the Court, for these reasons and for others which it may think fit to add, to pronounce the extradition null.

And, quite collaterally, seeing that—to suppose an impossibility—the Court should declare itself incompetent to pronounce the extradition null by reason of the diplomatic character of that act, it cannot ignore the fact that the circumstances attending this extradition may be of a nature to render it null; that it would then have to be submitted to the attentive examination of the two Governments of France and Great Britain, and in that case to grant a postponement until it shall have been decided, with all reservations, by those to whom it shall belong.

After the reading of these motions, M. Gast, the Avocat-Général, immediately asked for permission to speak in order to oppose them:—

Gentlemen, he said, against these motions we have to bring some interlocutory motions. We come forward to ask the Court not to allow them to be argued. These motions do not take us by surprise. From his first examination the accused asserted that he could not be tried in France.

The prisoner's honourable counsel had informed us of these motions, which are like pleadings, and the object of which is that the Court should declare itself competent to judge of the legality of the extradition, and collaterally grant a postponement.

In order to discuss the competency of the Court in this respect, we will examine the laws relating to extradition, the powers of the judicial authority, the rights of the individual delivered up, and the privileges of the French Government.

Penal laws are exclusively territorial; this principle is incontestable. Beyond the frontiers of each State penal laws are paralysed, and this is the principle behind which fugitive criminals shelter themselves: consequently, these criminals cannot criticize the force of the measures which have been applied to them beyond the limits of our territory.

How could French Magistrates judge of the legality of these acts? They could not do it either from the point of view of French law, nor in judging of foreign laws.

There is another reason still more conclusive, which disposes of the question of competency. The measures taken abroad were at the request of the French Government; and, moreover, culpable acts committed abroad are quite indifferent to us, and they are quite beside our judgment.

Lamirande was so well aware of the indictment upon which the warrant for his arrest was founded, that his American advocate has been accused of having stolen that document, and he made no protest when the warrant was served on him.

The Avocat-Général asked to what rule of law could recourse be had to support the claim to have Lamirande reconducted to the frontier.

Now we have to ask what are the rights of the individual delivered up? Has he a right to say that in his person have been violated the Conventions concluded between France and England? The motions pretend that he has; but was he a party to these Conventions? One or the other of these Governments can alone vindicate these rights. As for the individual person given up, from the moment he again sets foot in his country, he becomes simply an accused man who has to be tried.

The Avocat-Général quoted in his support Dalloz ("Traité International," page 184); "Decree of the Court of Cassation," 1852 (Morin, page 502).

But if acts committed abroad are matters of indifference to French justice, it is otherwise with the foreign Government. If in the extradition there has been fraud or violation of territory, even a *casus belli* may be the result.

Let us suppose that a foreign Government had cause to complain of such a grievance, to whom would it apply for redress? To a Court of Assize? Simply to ask the question is to answer it. The foreign Government will come direct to the French Government

to ask for redress; and take notice that this is the only Plaintiff which can be recognized through the medium of his Diplomatic Agents, extradition having no kind of right.

You assert that the Treaty has been violated; but for that you must have the Treaty interpreted. Can the tribunals do so?

Here is what I read in Dalloz, "Traité International," No. 152:—"The interpretation of Diplomatic Treaties is beyond the competency of tribunals, whether judicial or administrative," &c.

We have now to ask ourselves what the French Government will do if a claim of this nature is preferred. If it finds that there is foundation for the grievances, it will go before the Courts, and say through his Excellency the Keeper of the Seals, "I withdraw that man from your jurisdiction by right of the law of nations, which is superior to the rights of individuals."

In fact the Emperor, possessing the right of making Treaties with foreign nations, has the right of doing all that is necessary for the execution of those Treaties.

Moreover, when the French Government has obtained a surrender, it can go and say to the jury, "You will only try the accused on the charge of forgery, because we have obtained his surrender only on that charge."

In presence of that intervention alone justice will refrain.

But if instead of holding this language Government is silent, if these grievances appear to it without foundation, justice will take its course, recognizing but the legal rules of positive right. Possible consequences have no influence on justice. We place this perhaps rather bold opinion under the ægis of doctrine and jurisprudence.

An individual was prosecuted for forgery and the abduction of a girl under age (1845). He was delivered up from Tuscany only for the crime of forgery. The Law Court of Besançon decided that there was no case of forgery, but, on the other hand, that there were very grave suspicions of abduction of a minor.

The Court ordered that the individual should be arrested only for abduction, and that he should only be judged by default. The Procureur-Général filed an appeal against this decision, which was reversed in the Court of Cassation in the following terms:—

(*Decree, Court of Cassation*, 1845.)

THE Avocat-Général read that Decree and Dalloz' observations:—

"The indictment may be in violation of the Treaty, but the law takes its course; those are questions to be discussed between Government and Government."

This doctrine, a little too absolute perhaps, is contested by two decisions which I am going to read to you; and from which it follows that if an extradition has taken place without the intervention of either of the two Governments, the Law Courts would have the right of asking whether the Government recognized that proceeding and considered it regular. That, gentlemen, is the only reservation to be made. That according to our opinion is the doctrine which results from the only two decisions which can be brought against us. You shall judge for yourselves.

The Advocate-General then read an account of the Dermenon trial. (Dalloz, "Traité International," page 597.)

Do you not see in those facts a confirmation of the doctrine which we just now explained to you. In that case the Government had certainly nothing whatever to do with the extradition of the accused, and it was on that account that the Law Courts appealed to the Government and asked it whether it recognized the measures which had been taken.

The Avocat-Général quoted a Decree of the Court of Assize of Ariége of the 17th February, 1845 (Laugé case).

Me. Lachaud: That is the Decree which I refer to in my motions; it is of the 9th May, 1845.

The Avocat-Général, after having read that Decree, drew from it the same results as he did from the preceding document. The Sieur Laugé, ex-officiating priest, prosecuted for attempted rape, fled for refuge into the Val d'Andorre; he had been arrested by a French Justice of the Peace under the authority of the Syndic of the Republic of Andorre. The Cour Royale ordered a postponement to find out whether that arrest was recognized by the Government, which had taken no part in it. The Court of Cassation, in consideration of the suzerain rights of France over the small neutral territory of Andorre, decided that the arrest was legal.

That point settled, if, instead of remaining inactive, Government were to say to you, we have obtained the extradition of that man and assume the responsibility thereof, the law must take its course and is not to ask whether the extradition proceedings were in

conformity with Treaties, and it cannot even allow any debate on that subject, which is not within its province.

We have not received any instructions to follow the Counsel for the defence in regard to those numerous facts which they have enumerated to us to our great surprise, and which we should doubtless have no difficulty in answering if such were our business. But for us there is something that overrides all—a prerogative of the Government with which it is not for us to meddle.

The first Avocat-Général read several official documents proving that the French Government took an active and immediate part in obtaining the extradition of Lamirande, and amongst others a letter from his Excellency the Keeper of the Seals.

In that letter, said the Avocat-Général, the part communicating the facts is purely voluntary as far as the law is concerned; but what must be considered above all is the Governmental Act claiming for the French Government the responsibility of the extradition as against foreign Governments.

We should have finished if we were not bound, on account of that letter, to remind you that the Keeper of the Seals has declared that Lamirande should only be tried on the charge of forgery, unless he accept of his own free will the decision of the jury on the charges of breach of trust and theft.

This would seem to put us in contradiction with ourselves, since we maintained that the person surrendered in extradition could have no rights whatever to appeal to. That is a form of respect towards the foreign Government which only allowed the extradition of the accused on this charge of forgery; but the consent of the accused may do away with that prohibition, founded on respect for international rights.

The Advocate-General quoted the Decrees of 1851 (Virmaître decree), of 1852 (Darreau decree), and of 1865 (. . . decree), decrees which decide that measures of extradition are beyond all control of the judicial authorities.

The motions are therefore not admissible, and it is for the Court to declare its incompetency, and to order that no further proceedings be taken thereon.

The President: Maître Lachaud, it is for you to speak.

Me. Lachaud: Gentlemen of the Court, the motions which I have drawn up are not the work of Lamirande, they are the work of his Counsel. His Counsel decided to submit them to you, because they thought that though the defendant may be unworthy, though his crime may be odious, yet that behind him there is the law. Now, when the law is scandalously violated I have the right to complain and I do complain. The man whom I come here to defend has been stolen from England.

The President: Maître Lachaud, I cannot let that word pass. You are arguing, not for the jury, but for the Court, and upon the question of competency only. Please to recollect this.

Me. Lachaud: I have not forgotten it, M. le Président. I said that this man had been stolen from England because I have there a document which proves it, a decision of an English Judge, which I will not read out of deference to the Court, but which nevertheless exists, and proves to me as it will do to all when it becomes known, the truth of what I have advanced. I shall say no more on this point, and I hasten to answer the Avocat-Général.

The Counsel for the defence then read various Decrees of Cassation, which, refuting those pointed out by the Avocat-Général, lay down the principle, he said, that the accused always has the right of taking exceptions before the Court of Assize. Those decrees, added the Counsel, are corroborated by the opinion of M. Faustin Hélie, who thinks that the exceptions may have regard either to the legality of the Act of Extradition, or to the restrictive conditions of the Treaty which binds the two Governments.

M. Faustin Hélie maintained that in this matter, the Court of Assize has a discretionary power; he acknowledges completely my right of objection. Only as he foresees that there may possibly be grounds for diplomatic discussion, he says that in certain cases it may be necessary to suspend the proceedings. And since M. Faustin Hélie never touches on a subject without exhausting it, he adds that in granting the right of objection, the exception taken must be important, and of such a nature as to suspend judgment on the main points.

I am afraid that Lamirande is only looked upon as the criminal, as a man who inspires little sympathy. What has the individual to do with the question? Forget the man; instead of a crime of cupidity, to-morrow you may have to try a crime of passion, and the position of the Avocat-Général can no longer be maintained,—what would it be then if a political trial were in question?

I do not wish to press my argument any further; but do not forget, gentlemen, that

in this matter everything is important; a neighbouring people, a great people, are at this moment weighing our words; they should not find them falling short of that respect with which they are accustomed to surround those two grand bases of society, the liberty of all and the law for all. I persist in my motions.

Maitre Bourbeau, Advocate for the prosecution, declares that he took the side of the Law Officers, and rejects the motions with regard to annulling the extradition and with regard to the adjournment of the trial.

Maître Lepetit, one of the Counsel for the defence, replied, and in a warm and animated argument grounded on the opinion of MM. Dalloz and Faustin Hélie, and on the doctrine of the Decree of the Court of Cassation of 1845, maintained that the Court of Assize is competent to entertain the exception as regards the nullity of the extradition, not in the sense that the law would have the right to criticise diplomatic acts, but in the sense that it may inquire whether the forms laid down by international conventions have been observed, in other words, whether the law has been imposed upon.

The Court retired into the Council Chamber, to deliberate on the point.

At half-past 3 the sitting was resumed.

The President pronounced the decision, couched in the following terms:

"Seeing that by a Decree of the Imperial Court of Poitiers, Chamber of Indictments, dated the 29th May, 1866, the Sieur Surreau, called Lamirande, has been sent before the Vienne Court of Assize, under the triple accusation of aggravated theft, aggravated breach of trust, and forgery in commercial or in banking accounts;

"Seeing that in consequence of the said decree, an indictment has been drawn up by the Procureur-General, dated September 23, 1866;

"Seeing that those two documents have been communicated to the accused by the summons of the 24th of September, and that on the 24th of the same month the said accused was examined by the President of Assize, in conformity with the Articles 293, 294, 295, and 296 of the Code of Criminal Procedure;

"Seeing that from that time the case was in a proper form to be tried and has been regularly set down for trial at this session;

"Seeing, nevertheless, that the Counsel for the defence of Lamirande have by the motions submitted at the sitting, demanded of the Court to pronounce the extradition of the accused invalid, and quite collaterally, to put off the trial of the case until a decision be come to by the competent authority as to the validity of that extradition;

"Seeing, that in the matter of fact, as follows from the documents in the case, and especially from the ministerial despatch of the 25th November, 1866, that on the demand of the French Government, Lamirande, put under arrest on an indictment comprising charges of forgery in commercial or in banking accounts, was placed by the Government of Canada, where he had fled for refuge, at the disposal of the French authorities;

"Seeing that immediately after the extradition had taken place, the Imperial Government itself delivered the accused into the hands of justice, in order that he might answer before a competent tribunal for the crimes of forgery in commercial or in banking accounts, the crimes upon which the demand for his extradition were founded;

"Seeing, that in the matter of law, Treaties of Extradition are high administrative acts agreed upon between two Powers in the general interest of morality and social security, that the forms and conditions thereof are regulated not for the advantage of the persons accused, who cannot by taking refuge abroad obtain impunity for themselves from the law of their own country, but by the consideration of the international requirements or of the mutual observances of the Governments;

"Seeing that the fundamental principle of the separation of authorities is opposed to the possibility of the French Courts of Law interfering in regard to the interpretation and the application of the acts of the Government which gives up the accused to their jurisdiction;

"Seeing that by the very fact of delivering an accused person into the hands of his natural judges, the Imperial Government confirms the regularity of his extradition, and that that decision, which lies within the exclusive jurisdiction of the Executive authority, cannot be the subject of any appeal;

"For these reasons, the Court rejects the motions, both principal and collateral, drawn up by Lamirande's Counsel, and decrees that the trial be proceeded with."

The President.—Prisoner, you have heard what has been said. You need only answer as to the facts relating to the forgeries. Are you willing to answer to all the other charges recorded in the indictment?

Lamirande.—I am ready to answer as to all the facts.

Me. Lachaud.—I cannot allow my client to commit himself on that ground. I

maintain that the letter of the Keeper of the Seals could only cause Lamirande to be sent before the assizes for the crime of forgery. No one can have a right, the Keeper of the Seals no more than anybody else, to violate the law.

The President.—It is for that reason that I consulted Lamirande, leaving him his full liberty of action.

Me. Lachaud.—I persist in my protest, M. le Président, and, if necessary, I will make some very precise motions in order to define it clearly. Lamirande does not understand the consequences of his acquiescence; it is the business of his Counsel to make him understand them. I ask only for a delay of five or six minutes in order to draw up my motions.

Me. Lepetit.—I entirely concur in and adopt the observations of Maître Lachaud, and I unite with him in asking for time to write out our motions.

After being suspended for a few minutes, the sitting was resumed.

The President.—Prisoner Lamirande, I repeat what I have already asked you, do you consent to be tried on all the charges brought against you?

Lamirande.—I have neither to consent nor not to consent.

Me. Lachaud.—Here are the motions, which I submit in Lamirande's name:—

"Seeing, that Lamirande has been remitted to the Vienne Court of Assize for trial on the triple charge of embezzlement, of aggravated theft, and of forgery in commercial or in banking accounts;

"That the Decree has been communicated to him, and that he appears before the jury on that triple charge;

"Seeing that it cannot be in the power of any one to divide or to suppress a part of these several counts of indictment;

"That Lamirande has not either to consent or not to consent to be tried for the crimes brought against him of breach of trust and aggravated theft, but that it concerns him that the jury should be called on to settle the whole charge;

"That if it is true, as has just been laid down by the Court, that Treaties of Extradition can never be interpreted by Courts of law, it is inadmissible that there should be, on their account, the power of modifying a charge before the Court of Law where the case has been regularly brought;

"Seeing that the letter of the Keeper of the Seals contains only the instructions given to the Attorney-General, and could not in any way impede the carrying out of a decree of the Chamber of Indictments;

"For these reasons that it be ruled that all the counts of the indictment be submitted to the jury."

Maître Lachaud, after having read these motions asked leave to argue them.

The President: The Avocat-Général, perhaps, has also some requisitions to make?

The First Avocat-Général: In fact, we require that the Court may be pleased to separate the facts relating to the fraudulent abstractions, and to the embezzlements, and to order that Lamirande shall only be tried on the facts relating to the forgeries.

After Maître Lachaud had argued his motions, and the first Advocate-General had maintained his requisitions, the Court deliberated again and passed a second decree which rejected the motions of the defence, and decided in favour of the requisitions of the Law Officers.

The President: Here, gentlemen of the jury, your part begins, hitherto you have had nothing to do with the various points which have arisen during the discussions; they were within the exclusive cognizance of the Court. Now, gentlemen, it is for you to decide on the rest of the arguments, bearing in mind that in conformity with the decree which the Court has just passed, you have but to consider and determine, exclusively, the charges relating to the crime of forgery in commercial or in banking accounts: all the other charges having been set aside by the decree.

It is the Law Officers' turn to speak.

The First Avocat-Général: Gentlemen of the Jury—the importance of this matter, and the circumstances no less important which are connected with it, make it necessary for me to address you in order to explain how the case stands.

Lamirande had been sent before you to answer six distinct counts of indictment; but as the President has just explained to you, and that in conformity with the decree just passed by the Court, you will only have to take cognizance of charges relating to the forgeries. You understand, nevertheless, though you may not be called upon to decide on the whole of the original charges of the indictment, that I must give you a complete statement of the facts.

The Avocat-Général, after having explained that the branch of the Bank of France at Poitiers was founded in 1858, and that from that time Lamirande was appointed cash-

keeper, reproduced, with remarks thereon, the facts alleged in the indictment. He gave some details respecting the way in which the current cash account was kept; he described the cellar where the silver specie was locked up, the bags which contained this specie in sums of 1,000 francs, their size and shape, as well as those of the sacks in which they were stowed when a large remittance of silver had to be made.

The Counsel for the prosecution explained afterwards how Lamirande was able to purloin considerable amounts of silver as well as of gold specie. He maintained that the purloining could only have been effected by Lamirande in his own office, where he often found himself alone and without control. In fact, that he could not have purloined any of the silver specie after it had been taken down into the cellar in bags of 1,000 francs, as he never went alone into the cellar; there were three keys to open it, and three employés of the bank were necessary to effect the opening. It was, then, in his own office that Lamirande abstracted 200 francs out of each 1,000 francs bag, taking care to reduce the size of the bags; afterwards, when these bags had been taken down into the cellar, and the doors were shut, it became impossible to guess by whose hands the fraud had been committed. Lamirande acted with great skill in thus conducting his operations; he made it impossible for the bank to discover the guilty party; and if he had not discovered himself by his flight, no one knows who might have been suspected in regard to the silver specie locked up in the cellar.

With regard to the gold specie, said the Avocat-Général, it is known that he replaced by paper the weight of the coin which he abstracted. The Avocat-Général finished by recalling to mind that it was to conceal these defalcations, both in silver and gold, the total of which amounted to more than 700,000 francs, that he committed all the forgeries which the indictment imputed to him.

After calling over the witnesses, to the number of nine, the sitting was adjourned to the next day.

Sitting of 4th December.

Yesterday's sitting, which was entirely occupied by points affecting questions of law, could but little interest the audience; nevertheless the public excitement had not subsided, and the crowd to-day, desirous of securing places in the Hall of the Assizes—a rather small one—was not less considerable. The first row of seats in the gallery over the principal entrance, reserved exclusively for the use of ladies, was quite full. Reserved places on the right, on the left, and behind the seats of the Court, were occupied by magistrates, public functionaries, and officers of rank.

Proceedings were commenced by calling over the names of the witnesses, nine in number, who were conducted to the room set apart for them.

Examination of the Accused.

The President.—At what date were you appointed cashier of the Branch Bank at Poitiers?

Lamirande.—Eighteen months before the creation of that branch, which was established in August 1858.

Q. Tell us in what your functions consisted.—*A.* To receive into and to pay out of what is called the current cash; the surplus of the current cash went to the auxiliary chest, and thence to the cellars.

Q. You were not the only person who held the keys of the cellars and the auxiliary chest?—*A.* No; I had one of the keys, the director had the other.

Q. When did you begin to abstract funds from the safes (the cellar)?—*A.* I think it was at the beginning of 1862.

Q. There were also defalcations in the current cash; when did you begin them?—*A.* On the 12th of March, 1865, and I have carried them on since; but I was always hoping to substitute for the bags of gold of the current cash, bags of silver, which I should have had taken to the cellar.

Q. But to substitute is not to restore?—*A.* I know that; I had no hope of restoring, but I wished to delay as much as possible the moment when I could be found out, and that is why I was always endeavouring to cover the deficit in the current cash, which might be checked any day, whilst so long as the deficit only existed in the specie deposited in the cellar I could hope that my deception might last for ever.

Q. It has been remarked that the bags in the cellar which had been tampered with were placed under the others; that is quite certain, for bags were found with the stuff rotted, which leads to the supposition that they had been there a long time?—*A.* I did not take that precaution; the rotten bags may have become so in a short time on account of the temperature of the cellar.

Q. In short, you acknowledge that for the past three years or three years and a-half ou used to take from the reserves in the safe, and that since March, 1865, you have also embezzled from the current cash?—*A.* I acknowledge it.

Q. With regard to the rouleaux of gold, you went to work in this manner: you opened a rouleau, you took out several pieces of gold, and you replaced the weight of these pieces by paper in such a way that if these rouleaux had been weighed without being opened, the weight would have been found correct within about a centigramme. That shows long practice. How much time did you require to tamper in this way with a bag of gold containing 20,000 francs?—*A.* About ten minutes.

Q. That appears impossible, you must surely have devoted more time to it?—*A.* If I took more than ten minutes, I did not take a quarter of an hour.

Q. What number of bank notes did you abstract from the cash in use?—*A.* I do not clearly remember whether it was 465,000 or 485,000 francs.

Q. I am about to ask you a very important question which I beg you to answer frankly. What have you done with the sums of money you carried off with you?—*A.* I spent them first of all in travelling. I bought some clothes. In England I gave an interpreter 7,000 francs. Then I had travelling expenses amounting to 3,000 or 4,000 francs. I spent a great deal in London, passing whole nights without sleep, nine nights running. It is impossible for me to say how much money I spent during that period. On my passage from England to America I lent 6,000 francs to a Canadian who was going home. This sum he has restored to the bank.

The President.—Let us not speak of what has been restored. What have you done with the remainder of the 465,000 or 485,000 francs you took with you on your departure? —*A.* I gave 191,000 francs to my lawyers at New York.

Me. Lachaud.—Those fellows are not lawyers.

The President.—New York lawyers.

Me. Lachaud.—They do no not deserve the name. They are complices in the robbery.

The President.—What has become of those 191,000 francs?—*A.* They were to keep 135,000 francs as reserve for me, in case I had put in the plea of extradition, or to return them to me. They have returned 25,000 francs and the rest has remained in their hands.

Q. What have you done with the remainder of the sums carried off?—*A.* I spent 10,000 francs among women. I squandered, I gambled, I paid heavy debts.

Q. Who robbed you?—*A.* I cannot say. The thieves could not be got at without affecting innocent persons.

Q. Why gamble, since you had large sums of money at your disposal?—*A.* It was known that I was not rich. I had large expenses. I gambled in order to induce the belief that I was winning a great deal, and that I found in my gains at play the means of meeting my expenses.

Q. You say that you paid your debts, and yet that they are far from being got rid of? —*A.* That is true; but if there still remain debts amounting to about 30,000 francs, I have paid away on this account sums of much greater amount.

Q. Do you acknowledge that for nearly three years, with the object of concealing your defalcations, you have falsified the bank returns?—*A.* The returns are not incorrect. These returns would rather serve to ruin me than to disguise the truth.

Q. I know that; but it is not the question I put to you. I ask you whether on inspection of those returns, the cash deficit could be suspected?—*A.* Certainly not. But the state of affairs shown in my returns would be correct were nothing missing from the coffers. My crime commenced with the defalcations, but not when I drew out my returns.

Q. But which, nevertheless, served to conceal your embezzlements?—*A.* That is not my opinion. I add that, in making up these returns, I do not consider that I committed forgery either in commercial or in banking accounts.

President.—That is a question of law which you must leave to your Counsel. Call a witness.

Me. Lachaud.—I beg your pardon, M. le Président. Will you allow me to say a word.

President.—I do not think this is the right time, Me. Lachaud.

Me. Lachaud.—I insist, M. le Président; it is my duty to insist. What I have to say is very important.

President.—Your client has been examined on a point to which he would not reply. We cannot allow his advocate to reply for him.

Me. Lachaud.—I do not wish to undertake to reply for him. What I have to say can do no harm to him or any one else. I have here 110,200 francs (Me. Lachaud placed before him a packet in a paper envelope). I wish to give them up. I do give them up,

and until they can reach their destination by way of restitution, I place them in the hands of Me. Bourbeau, counsel for the prosecution. (Applause in the body of the hall.)

Me. Bourbeau.—I am not empowered to receive them. They had better be placed in the hands of the Director of the Bank, who will give a receipt for them.

Me. Lachaud.—There is no need of a receipt.

(The Director of the Bank opened the parcel and took charge of the bank notes inclosed in it.)

The President to Lamirande.—There is still missing about 120,000 francs. What have you done with that sum?

Lamirande.—I can only give the same answer as before; I cannot say.

Me. Lachaud.—I should add a few words in explanation of this restitution of 110,200 francs. A hint was given us, to Me. Lepetit and to myself. We followed up the tracks of the robbery. Every place was searched, even the house-tops. We asked Lamirande if he would give us the name of the woman to whom he had entrusted this sum: "No, no," said he, "I will die first. That person has herself been robbed, and I will not have her compromised."

We then devoted ourselves to this object, and we recovered the 110,200 francs which I have just given up. I must add that Lamirande never had this sum in his possession; and that if he had asked us for it, we should not have given it to him. (Sensation in Court.)

The President.—Call a witness.

Examination of Witnesses.

The first witness examined was M. Dubois de Jancigny, Inspector of the Bank of France, the same who accompanied the workman who was sent to Poitiers for the purpose of opening the upper compartment of the current cash, the key of which Lamirande had carried off.

This witness confirmed all the details given in the indictment as to the verification of the deficit discovered after the departure of Lamirande.

The President.—Is it obligatory on the cashier to furnish a daily Return showing the state of the cash?

Witness.—Nothing is more obligatory; it is by these branch Returns that the Bank of France fixes the rate of discount. The duplicate of this Return is entered in a book kept at the Branch Bank.

Maître Lachaud.—Are the instructions of the Bank the same for all the branches as far as relates to making a duplicate of the daily Return?

Witness.—I think they have been the same for the last three or four years; formerly copying the Return into a bound book was not obligatory, although it was required by the directors in several branches.

The President to the Witness.—It is shown by the confessions of Lamirande that your anticipations were well founded, inasmuch as the first embezzlements go back for more than three years. Now tell us whether he could have effected these embezzlements without rendering false accounts.

Witness.—It was the necessary consequence of the embezzlements; without the falsified Returns in would soon have been discovered that there was something amiss in the cash; there would have been an examination, the fraud would have been discovered, and Lamirande would have been arrested.

Q. Lamirande pretends that the daily Returns, far from facilitating his embezzlements, made discovery more easy; for, he adds, by comparing the Returns with the state of the cash, an account might have been taken—simply weighing the money would have been sufficient.—*A.* This argument would be valid if suspicion had been entertained; but the Returns by concealing the deficit, could not but aid the deception.

Q. Lamirande acknowledges the embezzlements—his reason is apparent; he is not prosecuted upon those counts, but he denies the forgery for which he is prosecuted—his tactics are understood.—*A.* In my opinion the two facts, that of embezzlement and that of forgery, cannot be separated; the one came to the assistance of the other.

Q. Explain to us the nature of the responsibility of the cashier, both as regards the current cash and as regards the money in reserve.—*A.* With regard to the current cash, which is in the cashier's office, the responsibility falls personally and solely upon him. It is not the same as regards the funds in reserve (in the cellar or the safe); here the responsibility is divided between two persons, the director of the branch, who has one key, and the cashier, who has another.

Q. Is it not in consequence of that divided responsibility that the late Director, M. Bailly has been replaced?—*A.* Yes, M. le Président.

M. Bailly, who has been for fifty-two years a landowner at Angers, late Director of the Branch Bank of Poitiers, was called to the bar.

The President.—Tell us what you know.

M. Bailly.—Gentlemen of the Jury, on the 11th of March last, I received an order from the Bank of France to dispatch to the Angoulême Branch, first 1,000,000 and then 500,000 francs. The same day I gave directions to Lamirande, my cashier, to dispatch on the next day, the 12th, the 1,000,000 francs, and to make preparation for the dispatch of the 500,000 francs on the 13th of March. The issue of these orders brings us to the 13th of March, on the morning of which day I received a letter from M. Lamirande, informing me that he had been suddenly obliged to go to Châtellerault, leaving to M. Queyriaux, Chief-Accountant, his keys, and the duty of dispatching the 500,000 francs to Angoulême.

Here the witness entered into the details given in the indictment, of the discovery of the frauds perpetrated in the bags of silver destined for Angoulême, and, at a latter period, in the bags of gold. In the bags of silver 200 francs were uniformly missing per bag; in the bags of gold, the weight of the abstracted coin was replaced by an equal weight of silver coin and paper. These frauds could never have been committed either in the cellar or in the safe; it must necessarily have been in his office that this operation was performed and when the bags were thus altered, but weighing their proper weight, the attendants carried them into the cellar or to the safe, and the doors once closed Lamirande was out of danger, for from that moment the responsibility was divided between him and me. I never intrusted my keys of the reserve to Lamirande, in whom, however, I had the greatest confidence.

The President.—The cashier then was personally responsible for his current cash; and as regards the reserves you shared the responsibility with him?

The Witness.—Yes, M. le Président, this is the case in all the Branch Banks. I was myself for a long while cashier in a branch, and was responsible for my current cash.

Q. How is it that Lamirande was able to continue his embezzlements for more than three years, which is proved in the first instance by his confessions, and secondly by a certain number of the bags found in the cellar being so old?—*A.* The cashier has the superintendence of the movement of all funds. When we went down to the reserves he it was who pointed out the divisions from which the bags to be sent away were to be taken. It is quite natural that he should take care not to point out for removal the bags which had been tampered with. To have interfered with his directions suspicions must have been entertained of him.

The President.—Prisoner, what have you to say on this deposition?

Lamirande.—Nothing, M. le Président; except to express to M. Bailly my profound regret for the consequences which have been entailed upon him by my conduct.

Q. These regrets have come very late. When on the 13th of March you had so well prepared your flight, you did not think of the responsibility which would fall upon him by your carrying off more than 400,000 francs from your cash?—*A.* I did not prepare for my flight, I yielded through necessity; I had the choice of suicide or flight.

Q. But not with 400,000 francs?—*A.* I might have taken 5,000,000. (Sensation.)

Q. So your discretion is to be praised then?—*A.* I do not look for praise, but I wish to state that in the dire necessity in which I found myself, I could not leave with empty hands; but that if I had been a thief, I should have taken all that I could lay hands on.

M. Bailly gave evidence in confirmation that the falsified returns of the state of the cash delivered to him each day by Lamirande, could not but lull him to confidence and aid in the continuance of the embezzlement.

M. de Grétry, Treasurer and Paymaster-General at Poitiers.—I have been receiver at Vienne since 1865, and inspector ("censeur") of the branch bank of Poitiers. It is in this latter character that I have had occasion to have some relations with Lamirande. I do not know him personally, nor am I aware of his antecedents.

On the 13th of March last, I was sent for to the bank by the director. There I was informed that owing to the dispatch of 500,000 francs in silver to Angoulême it had been discovered that a great number of bags did not contain the sums which they ought to have held, and that the cashier, Lamirande, had written in the morning to the director to say that he had left suddenly for Châtellerault, and had left the keys of the cash with M. Queyriaux, chief accountant, at the same time begging him to undertake the dispatch of the 500,000 francs to Angoulême. I at once got M. Bailly to go and make a declaration before the Procureur Impérial, where I accompanied him. An express was also sent to the bank requesting them to send an inspector and a workman to open the upper compartment of the current cash, the key of which Lamirande had carried off.

The remainder of this witness's deposition only refers to what is already known.

M. Lambert, manager ("administrateur") of the branch at Poitiers, formerly a magistrate, was called to the bar.

The President.—Several witnesses have already deposed to the facts of which you are called to make your declaration. We request you to sum it up in as few words as possible.

M. Lambert, in fact, only confirmed what had been said by the previous witnesses, as well upon the working of the accounts of the branch, and the removing of funds, as upon the responsibility incumbent on the cashier, and the circumstances which led to the discovery of the frauds.

The President.—Have you been long manager of the branch?

The Witness.—Since its formation, M. le Président.

The President.—Have you sometimes verified the cash?

The Witness.—Never, M. le Président, except on the 13th of March, when I was called upon to do so after the flight of Lamirande.

Q. What are the duties of the manager?—*A.* Solely to assure himself of the solvency of persons who present bills for discount.

M. Queyriaux, late chief accountant of the branch, banker at Poitiers, was called.

The President.—You are called before us, Sir, to give us some information on the management of the accounts of the branch.

M. Queyriaux, after having referred to the facts which preceded and followed the flight of Lamirande, added: With regard to the accounts this was the arrangement: M. Lamirande, as cashier, gave me the papers; I entered the accounts in my books, and in the evening I checked the balance of my account by that of his cash-book. It was necessary that the two balances should agree, and they always did so.

The President.—But in order that Lamirande's balance should correspond with yours, it must necessarily have been false.

M. Queyriaux.—Doubtless, but I was not aware of the falsity.

Q. How did Lamirande conduct himself at Poitiers?—*A.* I was perfectly ignorant on the subject. It is only since his flight that I have become aware that he spent a great deal of money.

Q. It is said from 60,000 to 80,000 francs a-year?—*A.* That is what I have heard said, but only since his disappearance.

Q. And of what nature was his expenditure?—*A.* I have been told that he gambled away a great deal.

Q. Sixty thousand francs, it is stated, at one time, either at Angoulême or at Angers?

Lamirande.—I have never been at Angers; and nowhere, not even at Angoulême, did I ever lose 60,000 francs.

Me. Lachaud.—It matters little. What is certain is, that you have played and lost a great deal.

Lamirande.—I own it.

M. Maréchal, a clerk at the branch bank, who had to go to the railway with the 500,000 francs dispatched to Angoulême, and who, on weighing the bags, found out that from 55,000 to 60,000 francs must be missing, confirmed these facts.

M. Sarrault, attendant in the cash department of the Branch Bank, and Barry, the doorkeeper, likewise went with the 500,000 francs. Both confirmed the facts stated by the clerk Maréchal. Sarrault, who besides being an attendant in the Cash Department, was at the same time Lamirande's private servant, added that the day after Lamirande's flight, on going into his room, he remarked that papers had been burnt in the grate.

The President.—Lamirande, what papers were those?

Lamirande.—I had destroyed acknowledgments for money which I had lent.

The President.—I do not understand; what! burn acknowledgments for money lent?

Lamirande.—I was completely bewildered.

The President.—Not so completely; all the preparations you made for your flight prove the contrary.

Lamirande.—I declare that I was bewildered; the whole of my conduct after my flight leaves no doubt of it.

Maître Bourbeau, counsel for the Bank of France, was called on to speak for the prosecution.

Me. Bourbeau.—I appear before you on the part of the Bank of France, to defend great interests, interests moral and material, for which, as regards the latter, some reparation has been commenced.

The story of Lamirande is a sad one. You are not called upon to punish in him a mere deviation, a moment of forgetfulness, but a long series of misdeeds, a perseverance in evil which might be called incorrigible; no remorse, no twinges of conscience, ever hindered him; in three years he has squandered 219,000 francs, and that by means of daily tricks. How does he explain them? By his passion for play. Gambling is not an excuse, it can be but an explanation. A day arrives when he can no longer continue his embezzlements, and he takes flight, without considering that he leaves behind him disconsolate families, his own and that of his unhappy Director. He departs; it is not to his own family that he goes to bid farewell, but to two women of that town, upon whom he rains down Danae's golden shower. Let us for a moment follow him: he leaves Poitiers; he goes first to England, then to English America—to Canada. There he becomes the subject of a demand for extradition on the part of the French Government. An incident happens——

The President.—Do not touch upon the question of extradition. You are aware of the decision passed by the Court yesterday.

Me. Bourbeau.—I only wished to say two words.

The President.—Not even two words, Maître Bourbeau. Be good enough to pass that over.

Me. Bourbeau.—Well, let us say nothing about the extradition; let us also be silent on the subject of the robberies, fraudulent abstractions, and embezzlements; and since henceforth he can only be prosecuted for forgeries in commercial or in banking accounts, let us discuss the question of forgery. Can there be a doubt as regards this crime after the explanations which have resulted from these discussions? We do not hesitate to declare that, as far as we are concerned, there cannot be the shadow of a doubt. He made false returns of the state of his cash; that is proved, and he confesses it. With what object? With the sole intent of seeking protection from the consequences of his embezzlements by falsifying his accounts. When, therefore, he showed by his accounts the existence of so many bags of 1,000 francs, whilst a great number of those bags only contained 800 francs each, did he not commit forgery? See him in his office, whether abstracting 200 francs from bags of 1,000 francs each, or transforming rouleaux of gold into rouleaux of silver, and having these effects taken to the cellars, there is the robbery, there is the embezzlement. But afterwards, what does he do? He takes his pen, and enters in his cash-book and his returns sums which exist no longer, since he has embezzled them. And shall not that be called forgery, and why? Is not the Bank of France a commercial Company? Does it not trade in the value of gold and silver? Was not Lamirande the clerk of a commercial Company? To all these questions the answer can only be in the affirmative. No, it cannot be said that for three years a cashier can have written a false account of a deficient balance in hand, and yet not be a forger.

See what were the consequences of these forgeries. By the aid of these forgeries he was enabled to pass from the current cash, of which he had the sole responsibility, to the cash in reserve, the responsibility of which was divided between him and the director, a sum of more than 200,000 francs, and this is how the upright director, M. Bailly, rests morally responsible for that sum which he never received.

Entering upon the question of law, the Advocate quoted a decree of the Court of Cassation of 1841, which declares that false entries made by a clerk in commercial books constitute a forgery in commercial accounts. The case cited, relates to a clerk who entered as sold, in his master's books, goods which he had stolen.

The Court of Cassation ruled that that constituted a forgery, in as much as the false entries concealed the truth and, moreover, were calculated to mislead the merchant as to the true state of his affairs. In this case, as well as in the one which we are discussing forgery is a means of concealing robbery, either committed or about to be committed.

Gentlemen, I have ended my address, and I have demonstrated the injury which may be caused by false accounts in commercial business. Lamirande was a thief, he was necessarily obliged to become a forger. By these forgeries he has been the cause of a triple injury to the bank: first, an injury in regard to money, then a second injury in leaving it ignorant of the true state of the Poitiers branch, ignorance which hindered it from apportioning its funds where they could be of service, and lastly a third injury, that caused to a superior officer of the bank, the upright M. Bailly, who, even after the loss of his confidential employment, rests under the stroke of the moral responsibility of part of the misdeeds of his faithless cashier.

I have accomplished my task. The proverbial honesty of fair Poitiers has experienced a cruel blow. For three years an individual has laboured secretly to inflict upon it this cruel injury; but as is invariably the case, justice, supported by public opinion, has discovered the criminal, and to-day he is handed over to you. Gentlemen, you will do him justice,

for I know that your decision will be guided by the conscience of the judge and the indignation of the citizen.

The sitting was postponed till the next day at half-past ten.

Sitting of December 5.

The sitting commenced at 11 o'clock amid the excitement caused by the incident which led to the restitution of the sum of 110,200 francs.

M. le Premier Avocat-Général Gast commenced and expressed himself as follows:—

Rarely in a criminal case has the day of trial been more anxiously desired, more impatiently looked for than in this one which is now submitted to your judgment. It is not that this case involves one of those atrocious crimes which spread consternation and terror through society; yet without possessing this fearful importance this case has the sad privilege of having raised public indignation to the highest point. Let us state at once that this indignation does honour to the human heart. It is, in truth, one of those spectacles that are revolting to the feelings of our nature. Public opinion has been outraged by Lamirande's crimes; at an age when the powers of his mind had reached their full maturity, Lamirande was placed in a confidential position which entrusted immense riches to his care. The severity of the precautions as well as the sentiments of honour and delicacy which he had imbibed in his respectable family, seemed to be a guarantee for the fidelity of his conduct.

What has happened? Lamirande found himself one day hesitating between the desire of yielding to his ignoble instincts and the duty of respecting the treasures entrusted to his care. It so fell out that avarice prevailed over duty. Lamirande crossed the abyss that lay open before him, and after having laid a guilty hand upon the treasures of which he was the guardian, he became a forger. Once engaged in this criminal course, the accused persisted in it up to the time when his crimes were discovered and Lamirande crowned them all by one yet more heinous. He wished to assure himself a rich independence abroad in order to continue the debaucheries to which he was accustomed.

But the Government felt that it was indispensable to seek the extradition of Lamirande. Ah! If to cross the frontier were sufficient, the greatest criminals might count on social impunity. Hence the principle of extradition is daily gaining ground. Our most eminent statesman has said "Extradition is a reciprocal guarantee against the ubiquity of evil."

You are, however, aware of the scandal which has arisen in the foreign country where he took refuge. You know how Lamirande, by means of the gold which he had stolen from the Bank of France, was enabled to hire a whole host of instruments who set about quibbling over the conditions of the Treaty. Having taken refuge in Canada, he was at length delivered up to France, and now Lamirande awaits the just chastisement which he has incurred. We do not ask for vengeance, but for justice.

You are aware that Lamirande can only be tried by you for the crime of forgery. You have been told that this criminal has been suddenly touched with the spirit of repentance. You are promised that if he is acquitted upon the charge of forgery, he will come and offer himself up as holocaust on the other heads of accusation.

Let us suppose that this is not a forensic stratagem; let us suppose that he may be willing to be tried hereafter for the crimes of robbery and abuse of confidence, that would be no reason for acquitting him upon the question of forgery. In fact, in our eyes, the crime of forgery is clearly proved.

What!—there is no crime of forgery in this case? Here is a cashier who every day abstracts money from his cash—who daily certifies to his Chief in his accounts that all is correct; the accused was carrying on criminal operations in his cash without reproducing them in his accounts. The accounts are and ought to be a photograph of the cash. This is dictated by common sense.

During yesterday's sittings you heard a magisterial demonstration of the existence of the forgery, There is, first of all, a consideration which is of serious importance. A criminal procedure previously to its coming before the assizes has to undergo a double test: first, the preliminary examination; then, if the deed amounts to a crime, the procedure is submitted to the Imperial Court, the Chamber of Indictment. This course has been followed in Lamirande's case.

After having passed in review all the different phases of the procedure, M. l'Avocat-Général examined into the character of the forgery as regards the law, and applied its principles to the facts of the case. He then drew attention to the enormous injury occasioned to the Bank of France.

Lamirande has precipitated his father into the depths of despair; he has dishonoured his name. But chastisement was not long in overtaking him. He received reproof even

from that shameless creature whom he kept, who was living by prostitution, and who, on learning his arrest, said: "That man has no heart; I thought he loved his father and mother: he loves no one."

Never has a prisoner appeared before a jury with such an accumulation of crimes. He has accomplished these crimes with unrivalled intrepidity and assurance. His coolness never abandoned him, and everything shows the premeditation of the accused.

What was his motive of action? His motive was the most vile, a thirst for the basest enjoyments, the most ignoble lusts, not to mention the pleasures of the chase, the excitement of the gaming-table was necessary to him; he required the refinements of the most shameless luxury. This finished debauchee must needs have two expensively kept mistresses.

Expatiating on the circumstances attending the restitution of the 110,200 francs, M. l'Avocat-Général said that it was meant for theatrical effect. That restitution was the act of a thief who, finding that he is pursued, abandons a portion of his booty in order to save the rest. Lamirande would fain contrive to reap the benefit of extenuating circumstances, but the accused is unworthy of it, and the jury will show him no pity. The crimes of the accused have resounded everywhere; the penalty should fall on him in all its weight. You will assure to society, to public conscience, the reparation which is their due.

Me. Lachaud, Lamirande's counsel, expressed himself as follows:—

We, on the side of the defence, have ever recognized the gravity of this case. A cashier who forgets his duty, who betrays the confidence reposed in him,—nothing is more serious. We should not deserve to be French advocates if we did not agree with those who administer the laws on all that touches honour, probity, and loyalty. But in order that justice may be impartial, she must take every thing into consideration; she must weigh everything with the greatest care. Justice is the most important thing in the world, for it belongs to God. But after having acknowledged the enormity of the crime, you must take account of the accused, of his life, his weakness, his unheard-of sufferings. Unless you take all this into account, it will be not justice, but vengeance, which M. l'Avocat-Général desires no more than I do.

The wretched man whom I defend is 42 years of age. Of his family I will say nothing. Who is there here who does not know that everybody pities, esteems, and loves his venerable father, whom God has allowed to live too long, since he witnesses the dishonour of his name? I will not speak to you of his pious mother, nor of his brother—a most worthy man. The wretched Lamirande stands before you under the weight of a terrible accusation. Let him accept this new indignity, and let it be to him the most ineffaceable of misfortunes. When the storm lowered over this unhappy family, people were considerate towards them; I mention the fact as an honour to the country. Alas! Lamirande knew not how to be a son worthy of those good people. His youth was marked by deviations, by follies, by prodigality; and when, in 1858, he was made a cashier, he owed more than 50,000 francs. The wish to benefit this young man led, perhaps, to the commission of an imprudence.

The cashier should be a man of unassuming habits, of frugal life. He is the most perfect representative—he ought to be so—of accuracy and modesty. That man who will see open before him the treasures of the Bank of France, he will struggle for a long time; when he shall succumb you will call him a criminal. Ah, these treasures ought not to have been entrusted to him.

Up to 1862 Lamirande's conduct had been irreproachable. His small debts increased. He did not, indeed, indulge in the luxury, but in the disgrace of two mistresses. One of them I pity; of another I do not speak, and for her I leave to M. l'Avocat-Général the right of expressing all his contempt at his ease.

One day when he was harassed on all sides in the midst of his engagements, there was a deficit; he was short of 5,000 francs. That is not much in accounts such as those of the Bank of France. Distressed, not daring to impose a new sacrifice on his family, he committed a theft: the abyss was opened. When the first step in this path has been taken, wickedness strides on, evil urges us forward, we become its slave. That is what happened to this wretched man. After having provided for the deficit, he paid his debts; he gambled, he reckoned on good luck, he lost, and after having lost 100,000 francs, from fault to fault, from fall to fall, he at last took to flight, as you know.

This terrible affair will serve as a great example for all cashiers. The facts of the case show that Lamirande's precautions were ridiculous. He cut open the bags, he replaced gold by silver, but examination was possible; he was at the mercy of the first serious inspection.

You recall to mind Lamirande's flight; going in his uneasy conscience to seek a refuge in Canada, betrayed on all sides. His sufferings were so severe, that I ask myself

whether it be not preferable to stand at that bar of infamy. When he was taken into custody in Canada, how much think you he had left? Eighteen francs; he who carried off half a million. And when he wrote to those men, whom I certainly shall not call lawyers, for a small sum, he received no answer.

These are the miseries which he has experienced. When he came back to France in rags, the Police Agent was forced to lend him clothes to enable him to embark in the boat which brought him into France. Alas! what a lesson! I might speak of yesterday's incident. We might ask ourselves, my colleague and I, how we have been benefited by the restitution made in Court yesterday, if the Counsel for the defence were not men of upright character (for which we thank nobody), there might be danger in acting as is right. No, no, M. l'Avocat-Général, we did not want to produce a theatrical effect. The money was handed into Court because we did not think it proper to give it up sooner. If we restored that money, it was because we, and not Lamirande recovered it. Let me say to my colleagues at the bar, that which we have done with heart and honour, you would have done likewise; but many sleepless nights you would have passed in consequence. These are the facts: I, gentlemen, am proud of them, and my colleague Lepetit is as proud of them as I am. We in France are not Yankee lawyers. Three heads of accusation have been laid to the charge of Lamirande—theft, embezzlement, and forgery.

The Counsel, after having laid aside the two first heads, examined the legal character of forgery.

Article 147 punishes (why should I not say so? there is nothing that I am aware of to prevent it), Article 147 of the Penal Code punishes the crime of forgery with penal servitude for a term. But where do you find perversion of the truth? The cash-book is correct; the returns include the amount of capital in all the coffers of the Bank. Now, you are aware that there were three divisions of the cash. The Accountant's documents alone served to make out the return. As to the cashier's accounts they were right. But where is the obligation, the discharge? Show me the engagement in favour of or against any one. They have told you that there was therein a complete discharge imposing the responsibility upon one who ought not to have borne it. This pretended discharge, of which you have been told, cannot then impede you. But where then is the injury? I appeal to Maître Bourbeau, who is my colleague, and with whom I can allow myself greater latitude than with the Avocat-Général. Is it because there may be a moral injury that it can be said that there is a real injury, as the law understands it? Oh! but it said, you have imposed on the Bank. I answer that the Bank is not the less rich for a million more or less, so long as its credit is not affected. Yes, I have imposed on the Bank, I have imposed on it by robbing it, but not by forgery.

The Bank of France has current accounts. If the current account is not correct, there may be a wrong, a perversion of truth. That is a forgery. But to have perverted truth, and to have caused a moral injury, is not sufficient. The lie in writing is not sufficient. That may be a swindle, it may be a fraudulent scheme. Well, the cashier's book, my own book, has not been falsified. What you attack are the internal accounts of the Bank. But the unhappy man there, however guilty he may be in your eyes in a moral point of view, is nevertheless not a forger.

Above all, the jury are bound by their oath. If forgery has been committed, that man must be judged guilty of forgery. Be assured, I do not seek impunity for that man. He will not get off, he does not wish, and I do not want it.

Here is the declaration which I have been commissioned to read to you in the name of Lamirande, and I pass my word for him:—

"I, the Undersigned Surreau Lamirande (Ernest Charles Constant), solemnly declare that, if the verdict of the jury who have to determine on the crime of which I am accused, and which I protest I never intended to commit, is in the negative, I do not intend to avail myself in any way of the privilege of the Treaty of Extradition with England; that, on the contrary, I ask in that case to be tried by the Court of Assize of Vienne for the acts of embezzlement and theft which are laid to my charge by order of the Court of Indictment.

"I am, therefore, prepared to surrender myself as a prisoner, and I request my Counsel to place this declaration in the hand of the Attorney-General.

"*Poitiers, December* 4, 1866."

(Signed) "LAMIRANDE."

Ah! M. l'Avocat-Général, did you not understand how I was situated in this matter? We did not wish to shelter ourselves behind Treaties of Extradition. Away! Away! We do not have recourse to such means. We wear the long robe as well as magistrates. The colour is of no consequence; conscience is everything.

In three months Lamirande will be here, and you will try him,—you or others. I

wish him to have the benefit of his courage; I wish him, after the verdict of the jury, to be free before the law, but to be a prisoner before justice and by his own free will. We advocates appreciate above all things compassion. The advocate for an accused man sustains and raises him; he speaks to him of remorse, of God, and of atonement.

We are physicians of the mind, happy and proud to be so. That man will be acquitted, but justice will be done in three months. I have pleaded my cause according to the view I have taken of it; I have spoken the truth. In three months we will not say that the law is for us, but that it is against us; no doubt we shall endeavour, in a certain measure, to soften the hearts of the jury towards so much suffering.

Alas, for the unhappy man! if you only knew what he has suffered! Yes, before taking his place on that bench he found yesterday in his prison these three letters, which I wish to read to you. Whilst reading these lines I was deeply moved, and you will share my emotion.

Here is, first, the letter of Lamirande's pious mother:—

"Dearest, unhappy child,

"I did not wait for your cry of lamentation before forgiving your crime; I feel an intense compassion for you in thinking of the lot which you have prepared for yourself, and the sufferings which you have brought upon yourself.

"I fervently pray Heaven that your judges may be indulgent, and that God may forgive you as your mother forgives you.

(Signed) "A. S. LAMIRANDE."

Here is the old man's letter to his son:—

"I well knew that the hour of repentance would precede the hour of justice; and, unhappy child, I forgave you from the day in which you acknowledged your error. I have suffered in a deeper degree than you the miseries which are the inevitable consequences of your shame and of your flight. I shall suffer still from the terrible penalties which will be inflicted on you. I shall not complain if you can support your sufferings with dignity, and continue in your repentance.

"I need not tell you that we all pray that your Judge may be indulgent, and give you credit for an honourable life till the day in which you failed in honour and probity.

"Repent and God will aid you.

"Your unhappy father,

(Signed) "S. LAMIRANDE."

Lastly, Lamirande's brother wrote as follows:—

"My poor brother,

"Your past sufferings, your present sufferings, infinitely sharper, fill us with compassion for you; but it is not on their account that we forgive you. It is on account of your repentance which we think sincere and complete. There is your refuge; there alone can you recover peace with yourself. It is only by repentance that hereafter, by dint of courage, patience, and denial, you can regain self-respect. We will support you with all our might in the accomplishment of that work which is impossible at present, but will not always be so. Have courage then, our love will not fail you, if your will is firm enough to be worthy of it. It will aid you in regaining our esteem.

(Signed) "C. LAMIRANDE."

"P.S.—Mathilde joins in the sentiments which I express."

I will add nothing to these letters. Lamirande is dead as regards the world. In three months time he will be condemned by the Court of Assize; but if men are severe, God will be compassionate to him. A future of love exists in those letters which I return to him. His parents will still live to forgive and to love. There stands the case. The hour approaches; it is nigh at hand; but do not without necessity violate the law. I reckon upon you, gentlemen, because you are men of feeling and of conscience, and because you will not strike till it is necessary to do so.

The sitting was suspended till a quarter past 2 o'clock.

After the replies of the Avocat-Général and of Maître Lepetit, the President summed up the arguments; the jury then retired to deliberate. At the end of three-quarters of an hour they brought in a verdict of guilty upon the charge of forgery and of the employment of falsified papers.

They acknowledged that there were extenuating circumstances in favour of the accused.

The Court after deliberation condemned Surreau de Lamirande to ten years' imprisonment (réclusion).

Lamirande appeared overwhelmed.

No. 24.

Earl Cowley to Lord Stanley.—(Received December 15.)

My Lord, *Paris, December* 13, 1866.

IN compliance with the instructions contained in your Lordship's despatch of the 7th instant, to inquire into the correctness of the statement of a daily paper that, a few weeks since, a criminal whose capture or surrender had been improperly obtained in France was, after a conviction and sentence in France, sent back to Switzerland by order of the Imperial Government, I desired M. Treite to make inquiries, and I now inclose copy of a letter which I have received from that gentleman, from which your Lordship will perceive that he has not been able to find any trace of such a case having occurred recently.

M. Treite considers that the newspaper refers to the case of Dermenon, in 1840, of which he gives a summary, and which turned less on the irregularity of the extradition than on the principle that an accused person can only be tried on the charges upon which the extradition had been granted.

M. Treite also states that the only point in this precedent which has any bearing on Lamirande's case is, that it follows from it that, when the Executive declares an extradition not to have been made according to law, it can waive it, and give up the individual.

I have, &c.
(Signed) COWLEY.

Inclosure in No. 24.

M. Treite to Earl Cowley.

Milord, *Paris, le* 11 *Décembre,* 1866.

VOTRE Excellence a bien voulu me faire une communication relative à un criminel que le Gouvernement Français, d'après d'un journal, aurait rendu, il y a quelques semaines, à la Suisse, par le motif que l'extradition n'aurait pas été régulière—fait qui constituerait un précédent pour la restitution de Lamirande.

Je m'empresse de répondre à votre Excellence que, malgré mes recherches, je n'ai pu trouver trace d'un pareil fait qui se serait passé récemment. Et, à moins qu'il n'ait été profondément enseveli dans les arcanes de la Chancellerie, je ne crois pas qu'il existe.

Il y aura eu confusion dans l'assertion du journal. Le précédent auquel il a été fait allusion se rapporte évidemment au procès d'un Sieur Dermenon, jugé en 1840, et dans lequel ce fut moins l'irrégularité de l'extradition qui fut en jeu que le prineipe qui veut qu'un accusé ne puisse être jugé que pour des causes ou chefs d'accusation pour lesquels l'extradition a été effectuée.

Voiel l'espèce : Un criminel, nommé Dermenon, s'était refugié en Suisse. Il avait été mis en accusation pour crime de banqueroute frauduleuse devant la Cour d'Assises du Département de la Côte d'Or à Dijon. L'arrêt de renvoi devant la Cour d'Assises portait que, ultérieurement, Dermenon serait traduit devant le tribunal de police correctionnelle pour les délits de banqueroute simple et d'abus de confiance, s'il était acquitté du chef de banqueroute frauduleuse. L'extradition de Dermenon fût demandé pour ce dernier chef d'accusation, et accordé par le Canton de Génève ; mais le jury acquitta Dermenon.

Le Procureur-Général près le Cour de Dijon demanda alors au Ministre de la Justice s'il fallait faire juger Dermenon pour les délits de banqueroute simple et d'abus de confiance. Le Ministre répondit que l'accusé, n'ayant été livré que pour le crime de faux, ne pouvait être mis en jugement pour d'autres causes, et qu'il fallait le reconduire à la frontière. Mais le Canton de Genève refusa de le recevoir, et Dermenon fut ramené à Dijon, où il fut traduit en Police Correctionnelle pour abus de confiance et banqueroute simple. Le prévenu excipa de son état de fugitif, de l'irrégularité forcée de sa présence en France, &c. Le Tribunal de Police Correctionnelle admit les exceptions de Dermenon, et ordonna qu'il serait ramené à la frontière. Mais le Procureur-Général fit appel contre ce jugement, et la Cour, reformant le jugement du Tribunal de Première Instance, ordonna, par arrêt du 14 Août, 1840, qu'il fut procedé aux débats, parce que, "si les Français poursuivis en France pour crimes et délits sont protégés par l'inviolabilité du territoire étranger, il ne sauraient se prévaloir de cette inviolabilité quand le pays étranger les repousse."

Dermenon se pourvut en Cassation contre cette décision, et la Cour Suprême, par arrêt du 4 Septembre, 1840, a cassé la sentence de la Cour de Dijon, par le motif qu'elle aurait dû surseoir, vû que la question à décider était celle de savoir si le refus de Genève

de recevoir l'accusé équivalait à une extradition régulière, et que le Gouvernement seul était compétent à cet effet. Le pouvoir exécutif décide en effet qu'il n'y avait pas lieu de juger Dermenon, vû l'irrégularité de son extradition, et il le fit reconduire à une frontière.

Ainsi qu'on le voit la doctrine principale qui se dégage tout d'abord de ces faits, c'est que le Gouvernement Français n'a pas voulu que Dermenon fut jugé sur des chefs d'accusation autres que ceux sur lesquels l'extradition avait été demandée et obtenue. Le Gouvernement Français a toujours observé ce principe; il y a de nombreux exemples, parmi lesquels on peut citer celui d'un individu qui en 1815 avait été condamné par contumace pour crime. Plus tard le même individu fut accusé de complicité dans la tentative d'assassinat du Duc de Wellington. Le Gouvernement obtint l'extradition pour ce chef d'accusation, mais l'individu fut acquitté par le jury et put s'en retourner à l'étranger.

Mais en second lieu, il résulte aussi des faits-Dermenon que le Gouvernement Français n'a pas voulu considérer comme régulière une extradition basée seulement sur le refus d'un Gouvernement étranger de recevoir un inculpé qui déjà avait trouvé antérieurement un refuge sur son territoire. Il en résulte encore que quand le pouvoir exécutif ne trouve pas une extradition conforme aux lois, il peut ne pas s'en prevaloir et rendre l'extradé. C'est là le seul point de contact que le précédent Dermenon ait avec l'affaire de Lamirande.

C'est à cet arrêt-Dermenon que faisait allusion l'Avocat-Général dans le procès Lamirande, quand il soutenait que l'autorité judiciaire était absolument incompétente pour statuer sur des faits d'extradition, excepté dans un seul cas, celui où l'extradition avait eu lieu sans que le pouvoir exécutif y eut pris part, et alors le Juge devait surseoir jusqu'à ce que le Gouvernement se fût prononcé sur la régularité de l'extradition.

C'est là du reste la doctrine proclamée dans la fameuse circulaire de la Chancellerie du 5 Avril, 1841, laquelle met en relief tous les points de la pratique de l'extradition en France.

Ainsi s'il y a doute sur la légalité de l'extradition, l'autorité judiciaire accordera un sursis, et pour conserver intacte la distinction du pouvoir judiciaire et du pouvoir exécutif, attendra la décision de ce dernier pouvoir, qui seul peut interpréter les Traités internationaux. Dans le procès Lamirande, il n'y avait pas lieu à accorder un sursis, puisque le Gouvernement avait trouvé l'extradition régulière, et avait renvoyé l'extradé devant les Juges.

Ces doctrines sont généralement adoptées par les publicistes Français, mais généralement aussi l'on regrette le conflit résultant de l'extradition de Lamirande. S'il est vrai que cet accusé, régulièrement livré par l'autorité compétente, l'ait été cependant en dehors des prescriptions de la loi Anglaise, et dans des circonstances insolites, le Gouvernement Français ne devrait pas se prévaloir de cette extradition. Ce serait le seul moyen de préparer les voies à un bon Traité, qui est une indispensable nécessité des deux côtés de la Manche.

Agréez, &c.
(Signé) TREITE,
Avocat de la Cour Impériale.

(Translation.)

My Lord, *Paris, December* 11, 1866.

YOUR Excellency has been pleased to communicate with me respecting a criminal whom, according to a certain newspaper, the French Goverment had a few weeks ago sent back to Switzerland on account of the irregularity of the extradition, a fact which would constitute a precedent for the restitution of Lamirande.

I hasten to inform your Excellency, in reply, that, notwithstanding my researches, I have not been able to trace any such case of a recent date; and unless indeed it has been deeply buried in the secret recesses of the Chancery, I do not think that such a case exists.

There must have been a misapprehension in the newspaper's assertion. The precedent to which allusion has been made, evidently relates to the case of one Dermenon, tried in 1840, and in which it was less the irregularity of the extradition that was in question, than the principle that the accused can only be tried for the reasons or charges on account of which the extradition had been effected.

This is the case: A criminal named Dermenon had taken refuge in Switzerland. He had been indicted for fraudulent bankruptcy before the Court of Assize of the Department of the Côte d'Or at Dijon. The commitment of the Court of Assize provided that Dermenon should be eventually arraigned before the Tribunal of Correctional Police for the misdemeanour of simple bankruptcy and breach of trust, if he were acquitted on the

charge of fraudulent bankruptcy. The extradition of Dermenon was demanded on account of this latter charge, and was granted by the Canton of Geneva, but the jury acquitted Dermenon.

The Procureur-Général of the Dijon Court then inquired of the Minister of Justice whether Dermenon should be tried for the misdemeanours of simple bankruptcy and breach of trust. The Minister replied that as the accused had only been surrendered on the charge of forgery, he could not be put on his trial for other reasons, and that he must be reconducted to the frontier. But the Canton of Geneva refused to receive him, and Dermenon was brought back to Dijon, where he was taken before the Tribunal of Correctional Police on the charge of breach of trust and simple bankruptcy. The accused alleged his status as a refugee; the enforced irregularity of his presence in France, &c. The Police Tribunal allowed Dermenon's objections, and ordered him to be taken back to the frontier. But the Procureur-Général appealed against this decision, and the Court revising the judgment of the Tribunal of First Instance, decided by a Decree of August 14, 1840, that the case should be tried, on the ground that "if Frenchmen prosecuted in France for crimes and misdemeanours, are protected by the inviolability of a foreign territory, they cannot avail themselves of that inviolability when the foreign country rejects them."

Dermenon appealed to the Court of Cassation against this decision, and the Supreme Court, by a Decree of the 4th of September, 1840, quashed the sentence of the Court of Dijon, because it ought to have suspended the proceedings, considering that the question was whether the refusal of Geneva to receive the accused amounted to a regular extradition, and that the Government alone was competent to decide the point. The Executive Power, in fact, decided that Dermenon could not be tried on account of the irregularity of his extradition, and ordered him back to the frontier.

As you will perceive, the principal doctrine which results from these facts is, that the French Government would not allow Dermenon to be tried on charges other than those on account of which his extradition had been demanded and obtained. The French Government has always observed this principle, of which there are numerous instances, amongst which may be cited that of an individual who in 1815 had been condemned for crime through contempt of Court. The same individual was subsequently arrested of complicity in the attempt to assassinate the Duke of Wellington. The Government procured his extradition on this charge, but he was acquitted by the jury, and was able to go abroad again.

But in the second place, it results from the Dermenon case that the French Government would not consider as regular an extradition founded merely on the refusal of a foreign Government to receive an accused person who already had previously found a refuge in its territory. It further results, that when the Executive Power finds that an extradition is not according to law, they can decline to take advantage of it, and give up the person surrendered. This is the sole point in which the Dermenon precedent affects the case of Lamirande.

It was to this Dermenon decision that the Avocat-Général made allusion during the Lamirande proceedings, when he urged that the judicial authority was altogether incompetent to decide upon the facts of extradition, with the single exception of a case in which the extradition had been effected without the intervention of the Executive power, and then the Judge ought to suspend the proceedings until such time as the Government had pronounced a decision on the regularity of the extradition.

Besides, this is the principle enunciated in the famous Chancery Circular of April 5, 1841, which brings clearly out all the points of extradition practice in France.

Thus, if any doubt arises respecting the legality of the extradition the Judicial authority will grant a delay, and in order to preserve intact the distinction between the Judicial and Executive powers, will await the decision of the latter authority, which alone can interpret international Treaties. There was no occasion in the Lamirande proceedings to grant a delay, for the Government had decided that the extradition was regular and had sent the person surrendered for trial.

These doctrines are generally adopted by French publicists, but the dispute arising from the extradition of Lamirande is also generally regretted. If it be true that this prisoner, regularly surrendered by the proper authority, was so surrendered in a manner not within the provisions of the English law, and under unusual circumstances, the French Government ought not to take advantage of that extradition. This would be the only means of preparing the way for a good Treaty, which is indispensably necessary for both sides of the Channel.

Accept, &c.

(Signed) TREITE,

Avocat de la Cour Impériale.

No. 25.

Earl Cowley to Lord Stanley.—(Received December 20.)

My Lord, *Paris, December 19, 1866.*

IN taking leave of M. de Moustier this afternoon, I recommended to his attention the last communication which I had made to him on the subject of Lamirande's extradition.

His Excellency replied that the French Government could do nothing more; that if Her Majesty's Government had any claim to make upon the Imperial Government in consequence of the infraction of the Extradition Treaty, it should be put forward officially and supported by proofs. The Imperial Government would be quite ready to consider a demand of the kind, and to examine it upon its merits; and he could assure me that if Her Majesty's Government could make out a case, Lamirande should be surrendered to them.

I observed that it would be, in my opinion, preferable to make this question the subject of a confidential, rather than of an official inquiry. M. de Moustier rejoined that, under any circumstances, it must partake of an official character.

I have, &c.
(Signed) COWLEY.

No. 26.

Lord Stanley to Admiral Harris.

Sir, *Foreign Office, December 20, 1866.*

IN the second leading article of the "Daily News" of the 7th instant, it is stated "it is only a few weeks since that a criminal whose capture or surrender had been improperly obtained in Switzerland was, after conviction and sentence in France, sent back to Switzerland by order of the Imperial Government on the ground of the antecedent irregularity."

I have referred to Her Majesty's Ambassador at Paris on this subject, but I have not been able to obtain any information of a case answering the above description, and of so recent a date as is stated in the "Daily News."

I have therefore to instruct you to furnish me with any particulars of which you are in possession, in explanation of the statement above referred to.

I am, &c.
(Signed) STANLEY.

No. 27.

Admiral Harris to Lord Stanley.—(Received December 30.)

My Lord, *Berne, December 28, 1866.*

IN accordance with the instructions contained in your Lordship's despatch dated the 20th instant, I have obtained the details of a case, doubtless the one alluded to in an article of the "Daily News" of the 7th instant, in which it is stated that "a criminal, whose capture and surrender had been improperly obtained in Switzerland, was, after conviction and sentence in France, sent back to Switzerland on the ground of the antecedent irregularity." The following are the correct details supplied to me by the Swiss Government:—On the 25th of last June the French Ambassador demanded the extradition of two Frenchmen, André Balmont and Ferdinand Courtès, commercial travellers, arrested at Geneva on charges of "crime de faux et usage de pièces fausses," in accordance with the terms of the existing Treaty of Extradition between France and Switzerland. The Federal Council acceded to the request, and the prisoners were handed over to the French authorities on the 5th of July. On examination before the Juge d'Instruction at Lyons it was found that the original charges could not be sustained; nevertheless, they were remanded to prison and summoned before the Tribunal Correctional at Lyons on a charge of "abus de confiance et escroquerie." This being in legal classification a "délit" and not a "crime," is not included in the terms of the Extradition Treaty; consequently the prisoners' counsel protested, and would not allow them to plead. They were withdrawn from the bar, but the trial proceeded and they were

condemned "en contumace." They appealed through their counsel to the Swiss Government, who instructed their Envoy at Paris, M. Kern, to make a reclamation on the subject.

In a note dated the 31st August, M. Kern informs the Federal Council that previous to applying to the French Minister of Foreign Affairs he had made inquiries of the Minister of Justice, who informed him that instructions had already been issued on the 23rd of August to the authorities at Lyons to convey the two prisoners to the Swiss frontier and release them. The Minister of Justice further told M. Kern that incorrect statements had been published in a pamphlet in London respecting this case, which would be refuted in the "Moniteur."

I have, &c.
(Signed) E. A. J. HARRIS.

No. 28.

Lord Stanley to Mr. Fane.

My Lord, *Foreign Office, January 9, 1867.*

HER Majesty's Government have been awaiting with some anxiety the observations which, as reported by Lord Cowley in his despatch of the 20th of November, M. de Moustier proposed to offer on the communication made to his Excellency by Lord Cowley on the 18th of that month respecting the case of M. Lamirande.

M. de Moustier, in the conversation recorded in that despatch, showed a disposition to demur to the view taken by Her Majesty's Government in regard to demands for extradition not being properly made by a Consular officer, and spoke of being unable then to discuss the question whether the crime of which M. Lamirande was accused was or was not forgery.

Since that conversation M. Lamirande has been tried and convicted, and is understood to have appealed against the decision of the Court; but little more has been elicited from the French Government than an expression of readiness to meet any official demand which might be addressed to it with a view to effect the release of M. Lamirande.

Although the Law Officers of the Crown, at an earlier stage of the discussion, expressed their opinion, as stated in my despatch to Lord Cowley of the 10th of November, that Her Majesty's Government could not demand, as of right, the surrender of M. Lamirande, I have nevertheless submitted the question to them again, on the strength of what passed between Lord Cowley and the French Minister, as reported in his Excellency's despatches of November 13 and 20, and of the 19th of December.

I have also placed before them the case of surrender of a prisoner many years since on account of defect in regard to his extradition, as well as the still more recent case which occurred last summer, to which Admiral Harris refers in his despatch of the 28th of December, in order that they might consider whether such cases afforded any grounds on which a demand for the release of M. Lamirande could be supported.

I have not yet received the opinion of the Law Officers on these later references, and I am still expecting from you the particulars respecting the Swiss case of last year, into which you have directed M. Treite to inquire.

In the meanwhile, however, I should wish you to remind M. de Moustier of his conversation with Lord Cowley of November 20, and inquire whether his Excellency has so fully informed himself on the points then brought to his notice as to enable him to explain the views of the French Government.

Her Majesty's Government are very anxious that any communications between the French Government and themselves on this question should be brought to a close,—favourable, they trust, to M. Lamirande's release,—before the meeting of Parliament, when the case is sure to be publicly discussed, both as regards the proceedings of the Colonial Government in surrendering the prisoner, and the retention of him in custody by that of France.

The latter point is the only one to be considered internationally; but the bearings of it on the general question of extradition are very important: and Her Majesty's Government much fear lest, even though the retention of the prisoner in France may be strictly legal, and not susceptible of any complaint being made on the ground of disregard of international obligations, or even courtesies, the possibility of such a state of things resulting from a Treaty of Extradition may influence Parliament, not only to refuse to renew the Act of last session, but even to require the Government to put an end, at all events, to the Treaty of 1843, if not to all Extradition Treaties whatever.

Such a course would be fraught with much injury to the commercial interests of both countries, and it is in the hope that the necessity for taking it may not arise that, without waiting for the opinions of the Law Officers, as to making a formal demand, I have to instruct you again to see M. de Moustier on the subject, and, in the same confidential form in which the question has hitherto been treated, endeavour to persuade him to recommend that M. Lamirande should be set at liberty.

I should wish to be informed, as soon as possible, in what state M. Lamirande's appeal now is, and when it may be expected to be decided.

I am, &c.
(Signed) STANLEY.

No. 29.

Mr. Fane to Lord Stanley.—(Received January 12.)

My Lord, *Paris, January 11, 1867.*

WITH reference to my despatch of the 4th instant, I have the honour to inclose herewith copy of a Report addressed to me by M. Treite on the Franco-Swiss extradition case referred to in your Lordship's despatch of the 31st ultimo, and on its bearing on the case of M. Lamirande.

I have now directed M. Treite to inquire into the exact state in which M. Lamirande's appeal is, and when a decision upon it may be expected, and to furnish me immediately with a report embodying the result of his inquiries.

I expect to have an opportunity to-morrow of bringing the case of M. Lamirande once more before the Marquis de Moustier, in obedience to the instructions conveyed to me in your Lordship's despatch of the 9th instant.

I have, &c.
(Signed) JULIAN FANE.

Inclosure in No. 29.

M. Treite to Mr. Fane.

M. le Ministre, *Paris, le 11 Janvier, 1867.*

VOUS avez bien voulu me charger de prendre des informations sur un cas d'extradition intervenu entre la France et la Suisse, cas qui aurait eu lieu dans le courant de 1866, et qui pourrait être un précédent pour le fait de Lamirande.

Ce cas était resté enfoui dans les cartons des Chancelleries des deux pays ; mais, grâce à la référence que vous m'avez donnée, M. le Ministre de la Confédération Helvétique m'a mis au courant de toute l'affaire, et le voici.

En Juin 1866 deux Français, André Balmont et Ferdinand Courtis, refugiés en Suisse, ont été, sur la demande de l'Ambassadeur Français à Berne, arrêtés dans le Canton de Genève et extradés. Ces deux individus étaient accusés de faux et d'usage de pièces fausses, crimes prévus par le Traité d'Extradition. Les accusés Balmont et Courtis ont été traduits devant la Cour d'Assises du Rhône, siégeant à Lyon. Ils furent acquittés par le jury des chefs de faux.

Le Procureur-Général voulut les traduire devant le Tribunal de Police Correctionnelle pour délites d'escroquerie et d'abus de confiance, deux chefs de délit, dont ils étaient également inculpés.

Mais ils résistèrent á la prétention du Procureur-Général, et réclamèrent tant auprès des autorités Fédérales Helvétiques qu'auprès du Ministère de la Justice. Ayant refusé de comparaître devant le Tribunal de Police Correctionnelle, ils furent condamnés par défaut ou par contumace.

Le Conseil Fédéral écrivit le 24 Août au Ministre de la Suisse à Paris en le chargeant de rappeler au Gouvernement Français que l'extradition n'ayant eu lieu que pour le crime de faux, il n'y avait pas lieu de juger Balmont et Courtis pour d'autres délits, à moins que les prévenus n'y consentissent.

M. le Ministre de Suisse, avant de saisir officiellement le Ministère des Affaires Etrangères, prit des informations officieuses au Ministère de la Justice ; et on lui répondit que dès le 23 Août, avant même que la lettre du Conseil Fédéral ne fût écrite, le Ministre de la Justice avait spontanément donné l'ordre au Procureur-Général de Lyon de faire reconduire Balmont et Courtis à la frontière.

Le Ministre de la Suisse n'avait dès lors plus de réclamation à faire, et le 31 Août il renvoya les pièces à son Gouvernement.

Ainsi en ce cas, il n'y a eu aucune intervention diplomatique, et c'est à tort que le "Daily News" a mentionné ce fait comme un précédent dans l'affaire de Lamirande.

Du reste, le Ministre de la Justice, en faisant, *proprio motu*, reconduire les deux inculpés à la frontière n'a fait que se conformer à une jurisprudence constante dont, dans mes précédentes communications, j'ai déjà cité des exemples et qui est ainsi formulée dans une circulaire ministérielle du 5 Septembre, 1841 :—

"Du principe que l'extradition ne peut être accordée pour un délit, il résulte que si un individu qui a commis un fait qualifié crime en France, est livré au Gouvernement Français pour être jugé sur ce fait, et qu'en même temps il soit prévenu d'un délit, il ne doit pas être jugé sur ce délit.

"L'application du principe est susceptible de quelques difficultés. Il est évident que si le délit est isolé, il sera facile de ne juger l'individu livré que sur le crime, mais dans certains cas le délit est connexe; en outre, il devient souvent, par la connexité, une circonstance aggravante. Quand ces difficultés se présentent vous m'en référerez, et je vous ferez connaître, avec mon avis, les précédents de mon administration."

Tel est le langage que le Ministre de la Justice tient aux Procureurs-Généraux; on ne doit juger les accusés que sur les crimes prévus par les Traités d'Extradition.

Cette circulaire est très importante; elle résume toute la pratique de la matière de l'extradition, telle qu'elle a toujours été exercée par le Gouvernement Français.

Il m'a été impossible d'en retrouver un exemplaire; mais comme elle est très longue, je vais le faire réimprimer, et aurai l'honneur de vous en remettre un exemplaire, ainsi qu'à M. le Ministre de Suisse, qui m'en a prié.

Je crois donc ne pas être téméraire en persistant dans l'opinion que j'ai émise le 10 Décembre dernier, déclarant qu'il n'y avait pas de précédent applicable à l'affaire Lamirande.

Agréez, &c.
(Signé) TREITE.

(Translation.)

M. le Ministre, *Paris, January* 11, 1867.

YOU have been pleased to direct me to make inquiry into a case of extradition between France and Switzerland, a case which had probably occurred during the year 1866, and which might form a precedent for that of Lamirande.

The case had remained buried among the papers of the Chanceries belonging to the two countries, but, thanks to the introduction you gave me, the Minister of the Helvetic Confederation has made me conversant with the whole affair, and here it is.

In June 1866, two Frenchmen, André Balmont and Ferdinand Courtis, who had fled to Switzerland, were arrested in the Canton of Geneva and given up on the demand of the French Ambassador at Berne. These two individuals were accused of forgery and of uttering forged papers, crimes within the purview of the Extradition Treaty. The prisoners Balmont and Courtis were arraigned before the Court of Assize of the Rhône, sitting at Lyons. They were acquitted by the jury on the charge of forgery.

The Procureur-Général wished to try them before the Tribunal of Correctional Police for swindling and breach of trust, two charges of misdemeanour of which they were likewise accused.

But they opposed the attempt of the Procureur-Général, and invoked the aid both of the Swiss Federal authorities and of the Ministry of Justice. Having refused to appear before the Tribunal of Correctional Police, they were condemned through default or through contempt of Court.

The Federal Council wrote on the 24th of August to the Swiss Minister at Paris, desiring him to remind the French Government that as the extradition only referred to the crime of forgery, it was not competent to try Balmont and Courtis for other offences, unless indeed the accused gave their consent.

The Swiss Minister, before applying officially to the Minister for Foreign Affairs, made some unofficial inquiries at the Ministry of Justice, and he was told in reply that on the 23rd of August, even before the letter of the Federal Council was written, the Minister of Justice had of his own accord ordered the Procureur-Général of Lyons to cause Balmont and Courtis to be reconducted to the frontier.

The Swiss Minister had, therefore, no further demand to make, and on the 31st of August he returned the documents to his Government.

Thus, in this case there was no diplomatic intervention, and the "Daily News" was mistaken in mentioning this case as a precedent for that of Lamirande.

Besides, the Minister of Justice, in causing *proprio motu* the two accused persons to be reconducted to the frontier, only conformed to the constant rule of law, of which I have already in my preceding communications cited examples, and which is thus laid down in a Ministerial Circular of September 5, 1841:

"It results from the principle that extradition cannot be granted for a misdemeanour ('délit')—that if an individual who has committed an act which is criminal in France is given up to the French Government to be tried for this act, and if at the same time he is accused of a misdemeanour, he must not be tried for that misdemeanour.

"The application of the principle is susceptible of some difficulties. It is clear that, if the misdemeanour stands alone, it will be easy to try the individual surrendered for the crime only. But in certain cases the misdemeanour is connected; besides, it often becomes, by reason of its connection, an aggravating circumstance. When these difficulties arise, you will refer them to me, and I will let you know, together with my opinion, the precedents of my Department."

Such is the language held by the Minister of Justice to the Procureurs-Généraux: the accused persons can only be tried for the crimes that are provided for by Extradition Treaties.

This Circular is very important. It sums up the whole practice in matters of extradition as it has ever been followed by the French Government.

I have found it impossible to get a copy; but, as it is very long, I am going to have it reprinted, and shall have the honour of sending you a copy, as well as one to the Swiss Minister, according to his request.

I think, then, that I am not rash in persisting in the opinion which I gave on the 10th of December last—namely, that there is no precedent applicable to the case of Lamirande.

Accept, &c.
(Signed) TREITE.

No. 30.

Lord Stanley to Mr. Fane.

Sir, *Foreign Office, January* 12, 1867.

HER Majesty's Government have given their best consideration to, and have consulted the Law Officers of the Crown on, Lord Cowley's report, contained in his despatch of the 19th of December, of his conversation with M. de Moustier respecting the case of M. Lamirande, and they gather from it that unless a formal application for the surrender of M. Lamirande is made to the French Government, that object will probably not be effected.

Her Majesty's Government would have much preferred that the question should have been set at rest, as it has hitherto been discussed, by informal rather than by official representation on their part; but as the French Government seem to consider the latter course preferable, I can no longer hesitate to say that although even now Her Majesty's Government are advised that they cannot demand the surrender of M. Lamirande as a matter of right, yet it is their desire that you should at once make an official request for his surrender.

You will observe that Her Majesty's Government contend that the extradition of M. Lamirande was unauthorized by the Treaty of 1843, and by the Statute giving effect to that Treaty, on two grounds:

First, that the demand made for his extradition was not made through the intervention of such a Diplomatic Agent as is contemplated by the Treaty, and the British Statute confirming it: and,

Secondly, that the offence charged against M. Lamirande was not the offence of "faux," or forgery, contemplated by the Treaty.

As regards the first point, M. de Moustier in his conversation with Lord Cowley, reported by the latter in his despatch of the 20th of November, seemed disposed to contend that the French Consul-General was, under the circumstances, an accredited Diplomatic Agent within the meaning of the Treaty and Statute. The Governor-General of Canada by appearing to treat the French Consul-General as an authorized Agent within the meaning of the Act, certainly made himself a party to such a construction.

It is to be observed, however, that the British statute reproduces the term "Diplomatic Agents," which alone appears in the Treaty, and limits to persons so qualified the right to demand extradition under the French Treaty. If a more compre-

hensive significance had then been considered to be attached to that term, there was no reason why it should not have been set forth in the statute; in the same manner as in the statute passed on the self-same day, namely, the 22nd of August, 1843, for giving effect to the Extradition Article of the Treaty with the United States of the previous year, no mention was made of the specific character of the officer who should make the demand for extradition, but only that the requisition should be "made by the authority of the United States," the Treaty specifying in general terms "Ministers, officers, or authorities" as the channels through which requisitions should be made, and not, as in the case of the Treaty with France, defining those authorities as Diplomatic Agents. In the absence, therefore, of a more comprehensive term than that of "Diplomatic Agents" in the British statute, it is impossible for Her Majesty's Government to accede to M. de Moustier's view that for the purposes of demands of extradition a Consular Agent can be recognized as Diplomatic Agent, under the Treaty of 1843.

The Act of Congress of 1848, giving effect generally to Treaties of Extradition concluded or to be concluded with foreign Powers by the United States, merely specifies that requisition shall be made by the "proper authorities" of the foreign Governments, and that term would seem sufficiently large to include others than Diplomatic Agents, although the Treaty between France and the United States specifies Diplomatic Agents alone as the medium of requisition. But the British statute admits of no such comprehensive construction.

As regards the second point arising in the case, Her Majesty's Government consider that the crime with which M. Lamirande is charged does not amount to forgery according to British law, and therefore does not do so according to the mind of the British negotiator of the Treaty, or the intention of the British Legislature when giving effect to it. The French Government are understood to hold that the crime comes within the term "faux," employed in the French version of the Treaty as the equivalent of the term "forgery" employed in the English version. Each Government may be right in their respective contentions as to the import of terms used in the several languages, but when so material a difference exists between the two parties to a Treaty, it may not be unreasonable in the party who will suffer by an adverse construction to press the other party not to insist on its own.

But even admitting, with the French Government (which, however, Her Majesty's Government are by no means prepared to do), that under exceptional circumstances the requisition of a Consular Agent for the surrender of a prisoner under the Extradition Treaty may be accepted in lieu of that of a Diplomatic Agent, Her Majesty's Government must observe that no such exceptional circumstances can be pleaded in the case of M. Lamirande. His crime, whatever it may be, was not committed in a French Colony, nor was the warrant for his apprehension issued by a French Colonial Magistrate, and conveyed direct to Canada without passing through France; but the crime was committed in France, the warrant was issued by a Magistrate in France, and it was probably conveyed by the person who was the bearer of it through England, or at all events might have been so conveyed without inconvenience or sensible delay. There was therefore no necessity for disregarding, in this case, the usual practice of applying to Her Majesty's Government for the extradition of M. Lamirande under that warrant through the French Diplomatic Agent in England.

On all these grounds, therefore, Her Majesty's Government trust that the French Government will be disposed to view with favour the application which I have now to instruct you officially to make to them for the surrender of M. Lamirande.

I am, &c.

(Signed) STANLEY.

No. 31.

Mr. Fane to Lord Stanley.—(*Received January* 14.)

(Extract.) *Paris, January* 13, 1867.

I HAD a long conversation yesterday with the Marquis de Moustier on the subject of the extradition of M. Lamirande.

The result of that conversation was a declaration on the part of his Excellency of the sincere desire of the Emperor and of the Imperial Government to do strict justice in this case, and to prevent its becoming the subject of unpleasant controversy between the two Government.

The views of Her Majesty's Government, M. de Moustier said, had hitherto been

submitted to the Imperial Government in too vague a form to admit of a specific reply being given to them. If these views, together with any application which might be founded on them, were formally submitted in writing to the Imperial Government, they should be considered, with every desire to satisfy scrupulously the ends of justice.

His Excellency added, however, that if the release of M. Lamirande should be demanded as a matter of favour, it would be impossible for the Imperial Government, in view of their responsibility to the law and to public opinion, to accede to it. But if it was based on claims of right and justice, those claims would be examined with every desire to satisfy them if they should prove to be legally admissible.

I received this morning your Lordship's despatch of yesterday's date, instructing me to make an official application for the release of M. Lamirande to the Imperial Government. I have accordingly drawn up a draft of note to M. de Moustier, copy of which I have the honour to inclose.

I shall keep my note to M. de Moustier in my possession till to-morrow evening, in order that your Lordship, should you desire any alteration to be made in it, may instruct me to that effect by the telegraph.

Inclosure in No. 31.

Draft of Note from Mr. Fane to M. de Moustier

M. le Ministre, *Paris, January* 1867.

YOUR Excellency, in conversation with Earl Cowley and with myself, on the subject of the extradition of M. Lamirande, has expressed a desire that the views of Her Majesty's Government upon this case, and any application which may be founded upon those views, should be formally addressed to the Imperial Government in a written statement.

In accordance with that desire, and in obedience to the instructions of Her Majesty's Government, I have now the honour of submitting such a statement to your Excellency.

Her Majesty's Government contend that the extradition of M. Lamirande was unauthorized by the Treaty of 1843, and by the Statute giving effect to that Treaty, on two grounds:

First, that the demand made for his extradition was not made through the intervention of such a Diplomatic Agent as is contemplated by the Treaty and the British Statute confirming it; and,

Secondly, that the offence charged against Lamirande was not the offence of "faux," or forgery, contemplated by the Treaty.

As regards the first point, your Excellency, in your conversation with Lord Cowley, seemed disposed to contend that the French Consul-General was, under the circumstances, an accredited Diplomatic Agent within the meaning of the Treaty and Statute.

It is to be observed, however, that the British Statute reproduces the term "Diplomatic Agents," which alone appears in the Treaty, and limits to persons so qualified the right to demand extradition under the French Treaty. If a more comprehensive significance had then been considered to be attached to that term, there was no reason why it should not have been set forth in the Statute, in the same manner as in the Statute passed on the self-same day, viz., the 22nd of August, 1843, for giving effect to the Extradition Article of the Treaty with the United States of the previous year. No mention was made in that Statute of the specific character of the officer who should make the demand for extradition, but only that the requisition should be "made by the authority of the United States," the Treaty specifying in general terms "Ministers, officers, or authorities," as the channels through which requisitions should be made, and not, as in the case of the Treaty with France, defining those authorities as Diplomatic Agents. In the absence therefore of a more comprehensive term than that of "Diplomatic Agents" in the British Statute, it is impossible for Her Majesty's Government to accede to your Excellency's view that, for the purposes of demands of extradition, a Consular Agent can be recognized as a Diplomatic Agent under the Treaty of 1843.

The Act of Congress of 1848 giving effect generally to Treaties of Extradition concluded, or to be concluded, with foreign Powers by the United States, merely specifies that requisition shall be made by the "proper authorities" of the foreign Governments, and that term would seem sufficiently large to include other than Diplomatic Agents, although the Treaty between France and the United States specifies Diplomatic Agents

alone as the medium of requisition. But the British statute admits of no such comprehensive construction.

As regards the second point arising in the case, Her Majesty's Government consider that the crime with which M. Lamirande is charged does not amount to forgery according to British law, and therefore does not do so according to the mind of the British negotiator of the Treaty, or the intention of the British Legislature when giving effect to it. The French Government are understood to hold that the crime was within the term "faux," employed in the French version of the Treaty as the equivalent of the term "forgery" employed in the English version. Each Government may be right in their respective contentions as to the import of terms used in the several languages, but when so material a difference exists between the two parties of a Treaty, it may not be unreasonable in the party who will suffer by an adverse construction, to press the other party not to insist on its own.

But even admitting with the French Government (which, however, Her Majesty's Government are by no means prepared to do), that under exceptional circumstances the requisition of a Consular Agent for the surrender of a prisoner under the Extradition Treaty may be accepted in lieu of that of a Diplomatic Agent, Her Majesty's Government must observe that no such exceptional circumstances can be pleaded in the case of M. Lamirande. His crime, whatever it may be, was not committed in a French Colony, nor was the warrant for his apprehension issued by a French Colonial Magistrate, and conveyed direct to Canada without passing through France; but the crime was committed in France, the warrant was issued by a Magistrate in France, and it was probably conveyed by the person who was the bearer of it through England, or at all events might have been so conveyed without inconvenience or sensible delay. There was therefore no necessity for disregarding, in this case, the usual practice of applying to Her Majesty's Government for the extradition of M. Lamirande under that warrant through the French Diplomatic Agent in England.

On all these grounds, therefore, Her Majesty's Government trust that the French Government will be disposed to accede to the application which I have now the honour of addressing to your Excellency for the surrender of M. Lamirande.

I avail, &c.

(Signed) JULIAN FANE.

No. 32.

Lord Stanley to Mr. Fane.

Foreign Office, January 14, 1867.

I HAVE to acquaint you, in reply to your despatch of the 13th instant, that I approve of the note which you propose to address to M. de Moustier respecting the case of M. Lamirande.

I am, &c.

(Signed) STANLEY.

No. 33.

Mr. Fane to Lord Stanley.—(Received January 16.)

(Extract.) *Paris, January* 14, 1867.

I HAD the honour of receiving this afternoon your Lordship's telegram, informing me that the draft of note which I proposed to address to the French Government, upon the case of M. Lamirande, was approved; and I accordingly sent my communication to the Marquis de Moustier without delay.

Your Lordship will perhaps be good enough to direct that the date "14th of January" shall be attached to it. It will then be identical with the note which I have addressed to the Marquis de Moustier.

No. 34.

Mr. Fane to Lord Stanley.—(*Received January* 16.)

My Lord, *Paris, January* 15, 1867.

WITH reference to my despatch of the 11th instant, stating that I had requested M. Treite to inquire into the exact state in which M. Lamirande's appeal is, I have the honour to inclose herewith a copy of a report which I have just received from that gentleman.

I have, &c.

(Signed) JULIAN FANE.

Inclosure in No. 34.

M. Treite to Mr. Fane.

M. le Ministre,

JE suis allé hier au parquet du Procureur-Général près de la Cour de Cassation, m'informer si Lamirande avait formé un pourvoi contre l'arrêt qui l'a condamné à dix années de réclusion. La réponse ayant été négative, je puis, à mon retour, répondre avec certitude à la question que vous avez bien voulu me poser, et vous dire que la condamnation de Lamirande est définitive et qu'elle n'est plus susceptible d'aucun recours légal.

Le condamné a donc accepté la peine infâmante dont il a été frappé; il eut pu être condamné à vingt années de travaux forcés, qui sont la peine édictée pour le faux; mais le jury ayant accordé à Lamirande le bénéfice d'une déclaration de circonstances atténuantes, la Cour a été obligée d'abaisser d'un degré l'échelle des peines et de ne prononcer que la réclusion, dont le maximum est de dix années.

Il n'appartient à personne de sonder les motifs qui ont déterminé Lamirande à ne pas se pourvoir en Cassation; mais on peut cependant présumer qu'il a songé à l'avenir. En effet, si, par quelque vice de formes ou même pour fausse qualification des faits coupables, mal à propos qualifiés de faux, ainsi que les défenseurs de l'accusé l'ont plaidé et soutenu, l'arrêt de condamnation avait été cassé et l'accusé renvoyé devant un autre jury, il aurait bien pu ne pas obtenir une seconde fois une déclaration de circonstances atténuantes, et, en ce cas il serait condamné aux travaux forçes et envoyé à Cayenne. Aussi dit-on généralement que Lamirande a été fort bien traité par le jury d'un pays où sa famille a une honorable position.

Quant à la qualification de crimes de faux donnée aux faits reprochés à Lamirande, ils paraissent ne pas entrer dans ce que la loi Anglaise appelle "forgery," qui suppose toujours un fait matériel, une altération palpable et physique. Mais le Procureur-Général a soutenu (et le jury lui a donné raison) que ces faits constituaient le crime de faux, selon la loi pénale Française.

En effet, en France, on distingue deux espèces de faux, le faux matériel et le faux intellectuel.

Le faux matériel résulte d'une falsification ou altération constatée et physiquement démontrée.

Le faux intellectuel résulte seulement de l'altération ou de la falsification dans la substance ou le contenu d'un acte non falsifié matériellement; par exemple, écrire des conventions autres que celles arrêtées par des contractants ou bien constater comme vrais des faits qui sont faux.

Cette distinction dans le crime de faux est fondée sur cet axiome: *Falsitas est fraudulosa veritatis mutatio et in alterius præjudicium facta.*

Cette définition, admise par les criminalistes Français, a passé dans la jurisprudence. La Cour de Cassation a elle-même défini le faux:—"L'altération de la vérité dans une intention criminelle qui a porté, ou a pu porter, préjudice à autrui." (Arrêt du 17 Juillet, 1835.)

Si Lamirande se fût pourvû en Cassation, la Cour de Cassation lui eût probablement appliqué cette jurisprudence et eût rejeté son pourvoi.

Veuillez bien m'excuser si je suis entré dans tous ces détails; je ne vous les ai donnés que pour que vous puissiez vous rendre compte du verdict du jury, qui, malgré l'absence d'une altération matérielle dans les écritures de la banque, n'en a pas moins déclaré Lamirande coupable de faux.

Permettez-moi d'ajouter encore quelques mots. J'ai entendu dire que l'Angleterre pourrait être fondée à réclamer la personne de Lamirande par le motif que les faits reprochés à cet accusé et pour lesquels il a été extradé, ne rentraient pas dans les termes du Traité de

1843, que les crimes prévus dans le Traité doivent avoir les mêmes caractères dans les deux pays, et que Lamirande, selon la loi Anglaise, n'était pas coupable du crime du forgery, mais seulement du crime du vol, puisqu'il n'a pas matériellement altéré les écritures de la banque.

L'argument, s'il était produit, n'a pas de chances d'être admis. On répondrait qu'il faut interpréter les Traités selon la commune intention des Parties Contractantes. Si au moment de la confection du Traité il y avait eu lieu à en faire une interprétation, l'Angleterre eût répondu qu'elle entendait qu'on lui livrat ceux de ses nationaux accusés de forgery, quoique la loi Française ne punisse pas, et ne considère pas comme crime de faux, plusieurs altérations et faussetés matérielles commises dans les passeports, les feuilles de route, et les certificats d'exonération militaire. L'Angleterre n'eût envisagé que les caractères du crime, selon la loi Anglaise ; et elle eût ajouté qu'elle entendait livrer les Français régulièrement accusés du crime de faux, tels que la loi de France qualifie et punit le faux, sans distinguer entre le faux matériel et le faux intellectuel, admis par la théorie pénale en France—distinction qui est une chose de législation intérieure, en dehors de la compétence des Gouvernements étrangers.

La France soutiendra que, malgré ces circonstances anormales qui ont accompagné l'extradition de Lamirande, elle n'a pas à se préoccuper des faits et des lois, qui sont en dehors de sa compétence, et que l'accusé, du moment qu'il était régulièrement accusé du crime de faux, devait lui être livré, et lui a été livré à bon droit. Les Traités d'Extradition ne sont pas faits dans l'intérêt des criminels, mais contre les malfaiteurs. Ceux-ci ne peuvent les invoquer ; les Gouvernements co-contractants ont seuls qualité pour les interpréter et en empêcher respectivement la violation l'un par l'autre. Le Gouvernement Français n'a pas violé ni la loi Française ni la loi Anglaise. Si Lamirande avait été acquitté par le jury sur le chef de faux, il l'eut fait reconduire à la frontière sans le juger pour vol et abus de confiance.

J'ai cru de mon devoir de vous soumettre ces considérations, qui ont cours en France.

Je doute qu'une réclamation fondée sur la violation de la loi Anglaise par des fonctionnaires Anglais soit accueillie.

J'ai, &c.
(Signé) TREITE.

(Translation.)

M. le Ministre,

I WENT yesterday to the Office of the Procureur-Général at the Court of Cassation, to learn whether Lamirande had appealed against the sentence which has condemned him to ten years of solitary confinement ("réclusion"). The reply having been in the negative, I am enabled on my return to give a definite answer to the question which you have been pleased to put to me, and to tell you that the conviction of Lamirande is definitive, and that it is no longer susceptible of any recourse to law.

The convict has, then, acquiesced in the degrading penalty inflicted on him. He might have been condemned to twenty years' penal servitude ("travaux forcés"), which is the penalty for forgery; but the jury having given Lamirande the benefit of a declaration of extenuating circumstances, the Court was obliged to go a step lower in the scale of penalties, and to pronounce sentence of solitary confinement only, of which the maximum is ten years.

It is no one's business to fathom the motives which have determined Lamirande not to appeal, but it may, however, be presumed that he thought of the future. In fact, if through some informality, or even through a false description of the culpable acts improperly defined as forgery, as the defenders of the accused have pleaded and maintained, the sentence had been quashed and the accused sent before another jury, he might perhaps not have been able to obtain a second time a declaration of extenuating circumstances, and in this case he would have been condemned to hard labour and sent to Cayenne. Thus it is generally said that Lamirande very well treated by the jury of a country where his family occupied an honourable position.

As to the definition of crimes of forgery given to the acts imputed to Lamirande, they do not appear to fall within what the law of England calls "forgery," which always supposes a material act, a palpable and physical alteration. But the Procureur-Général has maintained (and the jury have taken the same view) that these acts constitute the crime of forgery according to the penal law of France.

In fact, in France there are two distinct kinds of forgery, the material and the moral ("intellectuel").

Material forgery results from a falsification or alteration proved and physically demonstrated.

Moral forgery only results from the alteration or falsification of the substance or the contents of a document not materially falsified; for example, drawing agreements different from those settled by the contracting parties, or declaring as true things which are false.

This distinction in the crime of forgery is founded upon this axiom: "Falsitas est fraudulosa veritatis mutatio et in alterius præjudicium facta."

This definition, admitted by the French criminal lawyers, has passed into jurisprudence. The Court of Cassation has itself defined forgery:—"Alteration of the truth with a criminal intention which has prejudiced or could have prejudiced another."—(Decree of July 17, 1835).

If Lamirande had appealed, the Court of Cassation would probably have applied this maxim of law to him, and would have rejected his appeal.

Be good enough to excuse me for entering into all these details; I have only given them in order to enable you to form an opinion on the verdict of the jury, who, notwithstanding the absence of an actual alteration in the Bank accounts, did not the less declare Lamirande guilty of forgery.

Allow me to add a few more words. I have heard it said that England might be justified in reclaiming the person of Lamirande on the ground that the acts imputed to the accused, and for which he was surrendered, did not come within the terms of the Treaty of 1843; that the crimes provided for in the Treaty ought to have the same character in the two countries; and that Lamirande, according to the law of England, was not guilty of the crime of forgery, but only of the crime of theft, since he has not actually altered the bank accounts.

The argument, if produced, has no chance of being admitted. It would be replied that Treaties must be interpreted according to the common intention of the Contracting Parties. If at the time of drawing up the Treaty an interpretation had to be made, England would have answered that she understood that her subjects accused of forgery should be delivered up, although the law of France does not punish, and does not consider as forgery, several alterations and material fasifications committed in passports, march routes, and certificates of exoneration from military service. England would only have looked at the character of the crime according to the law of England, and she would have replied that she was prepared to surrender French subjects regularly accused of the crime of forgery, such as the law of France defines and punishes as forgery, without distinguishing between material and intellectual forgery, admitted by the penal theory in France, a distinction which is a matter for internal legislation, beyond the competence of foreign Governments.

France will maintain that, in spite of the abnormal circumstances which have accompanied the extradition of Lamirande, she has nothing to do with acts and laws which are beyond her competence, and that the accused, from the moment that he was regularly accused of the crime of forgery, ought to have been surrendered to her, and has been justly surrendered. Treaties of Extradition are not made in the interest of criminals, but against evil-doers. These cannot appeal to them; the co-contracting Governments alone are qualified to interpret them, and to prevent their violation the one by the other respectively. The French Government has violated neither the law of France nor that of England. If Lamirande had been acquitted by the jury on the charge of forgery, it would have caused him to be reconducted to the frontier, without trying him for theft and abuse of confidence.

I have thought it my duty to submit these considerations to you, which are current in France.

I doubt whether a demand founded on the violation of the law of England by English functionaries would be entertained.

I have, &c.
(Signed) TREITE.

No. 35.

Mr. Mackenzie to Lord Stanley.—(*Received January* 30.)

My Lord, 77, *Gresham House, Old Broad Street, January* 29, 1867.

I AM sorry again to trouble your Lordship on this case, but having sent out to our correspondents and clients at Montreal the particulars of the trial in France, and with all the facts connected therewith, up to the 8th December, I have just received a reply to that communication, and am urgently requested to draw your Lordship's attention to the facts set out in the extract from his letter, which I now inclose.

My attention has been drawn to a paragraph in the "Standard" of Saturday last, to the effect that the "Gazette des Tribunaux" says it is asserted that the English Government has made an application for the surrender of Lamirande. Will your Lordship be kind enough to state whether there is any foundation for this paragraph, and how the matter stands at present?

I have again to urge upon your Lordship the great importance of our Ambassador making a further application to the French authorities for M. Lamirande's release.

I have, &c.

(Signed) J. H. MACKENZIE.

Inclosure in No. 35.

Extract from a Letter of Mr. Doutre, dated December 28, 1866.

I HOPE you have already taken steps for drawing the attention of your Government to the fact that Lamirande has been tried for facts different from those for which he was extradited. The trial has not brought out the shadow of the facts for which extradition was asked. It has never even been attempted to make out that Lamirande had ever made any false entries in the books of the Bank of France. The British Government have as much right to ask his release as if he had been tried for embezzlement or robbery. The trial raises a totally new issue between the two Governments, and the question on which Lord Stanley has abandoned the demand of restoration has in no way prejudiced the ground on which the prisoner may now be claimed.

The doctrine laid down by the Attorney-General before the assizes of Poitiers, viz., that the Court must try the prisoner whom it finds before it, no matter how he has been brought there,—that doctrine is the direct negative of the position taken by the Lord Chancellor before the House of Lords on the 19th July last, when he said, "It has been supposed that the French Government are extremely desirous of continuing the Extradition Treaty for political purposes, because they may, by making criminal charges against particular individuals, get possession of such persons, and then try them in France for political offences. There could not be a more mistaken notion, than that any such law prevails in France. On the contrary, there is a strict law under which no person delivered up, in consequence of an Extradition Treaty, can be tried for any offence other than that in respect of which he was so delivered up. If acquitted, although he may be charged with twenty other offences, he is allowed to leave France, and to return to the country whence he was sent."

This last doctrine has been positively denied by the Attorney-General, though it is true the Court limited the trial to the charge of "faux." But it turns out be upon facts not mentioned at all in the demand of the French Consul-General, in the warrant originating the prosecution, or in the Warrant of Extradition. It seems, then, that there is a clear case for the intervention of the British Government.

No. 36.

Mr. Egerton to Mr. Mackenzie.

Sir, *Foreign Office, January* 31, 1867.

I AM directed by Lord Stanley to acknowledge the receipt of your letter of the 29th instant, and its inclosure, with reference to the case of M. Lamirande; and I am to state to you in reply, that this matter is still under the consideration of Her Majesty's Government, and that, in its present stage, they cannot give you any more detailed reply to your communication.

I am, &c.

(Signed) E. C. EGERTON.

No. 37.

Mr. Fane to Lord Stanley.—(Received February 2.)

My Lord, *Paris, February* 1, 1867.

I HAVE the honour to inclose copy of an article from the "Gazette des Tribunaux," on the case of M. Lamirande.

I have, &c.

(Signed) JULIAN FANE

Inclosure in No. 37.

Extract from the "Gazette des Tribunaux."

L'EXTRADITION DE LAMIRANDE.

NOUS avons annoncé, comme un bruit généralement répandu depuis quelques jours, que le Gouvernement Anglais se disposerait à réclamer à la France la restitution de Lamirande, dont l'extradition a été ordonnée par l'autorité judiciaire de Canada.

La nouvelle est exacte. Le Ministère de la Justice est saisis de la réclamation de l'Angleterre. Et si nous en croyons ce qui a transpiré à cet égard, le Gouvernement Anglais, prétendant que l'extradition n'aurait pas été régulièrement consentie, invoquerait deux motifs à l'appui de sa demande.

Le premier serait que, aux termes du Traité de 1843 entre la France et l'Angleterre, l'extradition ne peut être accordée que sur la demande d'un Agent Diplomatique. Or, la demande d'extradition de Lamirande a été formée par le Consul-Général de France au Canada. Les Consuls sont des Agents Commerciaux et non des Agents Diplomatiques. Selon le Gouvernement Anglais, la demande d'extradition de Lamirande n'aurait donc pas dû être accueillie, à raison de la fonction de l'Agent qui l'avait transmise.

Le second motif invoqué par l'Angleterre, pour établir l'irrégularité de l'extradition de Lamirande, serait que les faits relevés à sa charge, s'ils constituent le crime de faux d'après la loi Française, ne constituent pas le même crime d'après la loi Anglaise, et qu'aux termes du Traité de 1843, l'Angleterre ne s'est engagée à livrer les accusés que lorsque le fait relevé contre eux constituerait, d'après la loi Anglaise, un des crimes énumérés dans le Traité. Or, la loi Anglaise ne reconnaît comme faux que l'altération matérielle d'une écriture. A la différence de l'Article 47 de notre Code Pénal, elle ne qualifie pas crime de faux la fabrication de conventions, dispositions, obligations ou décharges; de sorte qu'en Angleterre Lamirande n'aurait pas été regardé comme coupable du crime de faux. La conclusion que tirerait de là le Gouvernement Anglais, c'est que l'extradition n'aurait pas dû être accordée, et il redemanderait la personne de Lamirande.

S'il est exact que l'Angleterre veuille, en réclamant la restitution de Lamirande, revenir sur une extradition qu'elle a volontairement et librement accordée, il ne nous paraît guère vraisemblable qu'elle puisse fonder sa demande sur les deux moyens qu'on prétend qu'elle invoquerait; car ils ne reposent sur aucune base solide et ne sauraient résister à un examen sérieux.

Le fait de livrer un accusé, réclamé par une Puissance étrangère, est un acte de souveraineté. Cet acte de souveraineté peut être accompli par un Gouvernement, sans qu'il ait au préalable conclu de Traité spécial avec la Puissance qui réclame le coupable. Nous n'aurions pas de Traité avec l'Angleterre pour l'extradition des malfaiteurs, que nous pourrions cependant, si des malfaiteurs Français se réfugiaient dans le Royaume Uni, en demander l'extradition; et l'Angleterre pourrait nous les rendre pour les juger en France; car, le droit d'accorder des extraditions appartient à chaque Gouvernement en vertu de sa souveraineté. Ce ne sont pas les Traités d'Extradition qui confèrent à la Puissance chez qui des malfaiteurs se sont réfugiés, le droit de les rendre au Gouvernement de leur pays. Ces Traités ont seulement pour but, de la part des Puissances Contractantes, pour la facilité de leurs relations, de constater qu'elles prennent l'engagement réciproque d'user, l'une envers l'autre, dans de certains cas et d'une certaine manière, du droit qui leur appartient d'accorder des extraditions.

Mais, parce qu'un Gouvernement aura pris envers une autre Puissance l'engagement de livrer les malfaiteurs accusés de tels ou tels crimes, lorsqu'ils seraient réclamés de telle ou telle manière,—par la voie diplomatique par exemple,—il ne s'ensuit pas que ce Gouvernement ne puisse pas, s'il le juge convenable, consentir l'extradition d'une personne accusée d'un crime non prévu au Traité, même si elle était réclamée par une autre voie que celle qui a été stipulée.

L'Angleterre était donc maîtresse absolue de livrer Lamirande, même pour un crime non prévu par la loi Anglaise, et même si la demande d'extradition était présentée par une autre personne que par un Agent Diplomatique. Lorsque, usant de son droit, elle a accordé une extradition, soit dans un cas prévu par un Traité, soit en dehors des prévisions d'un Traité, peut-elle être recevable à vouloir revenir sur le fait accompli, en modifiant l'acte de souveraineté émané d'elle-même, par lequel elle a opéré l'extradition!

Ce qu'il y aurait de plus singulier dans la réclamation de Lamirande par le Gouvernement Britannique, ce serait la contradiction que cette réclamation établirait entre les principes sur lesquels elle s'appuierait, et d'autres principes, invoqués précédemment par une partie des Membres du Parlement Anglais, et même par quelques publicistes de notre pays.

Par sa réclamation, le Gouvernement Anglais voudrait revenir sur un acte émané de lui ou de ses agents ; il voudrait réformer cet acte par le motif que ceux qui l'auraient ordonné, auraient commis une erreur de droit. Ce serait le Pouvoir Royal, représentation la plus élevée du Pouvoir Administratif, déclarant que ses agents inférieurs se sont trompés, qu'ils ont mal procédé, et voulant substituer une décision nouvelle à celle qui avait été prise d'abord.

Si les Agents Diplomatiques Anglais, agissant au nom de leur Reine, réclament un individu, livré par leur Gouvernement à une Puissance étrangère, en disant que la Reine et son Cabinet—c'est-à-dire, le Pouvoir Exécutif de d'Angleterre—regardent son extradition comme ayant été accordée à tort, et qu'ils ont décidé de l'annuler, c'est que, pour le Gouvernement Anglais lui-même, le fait d'accorder, de refuser ou d'annuler une extradition est un acte de souveraineté.

Cette doctrine n'est pas précisément celle qui a été soutenue jusqu'ici par les Anglais et par les Administrateurs passionnés de la constitution et des lois de la Grande Bretagne. On disait que chez nos voisins l'extradition était une œuvre de justice, et non une mesure administrative.

En réclamant Lamirande, le Gouvernement Anglais porterait le coup de grâce à cette doctrine ; car, si Lamirande a été livré en vertu d'une décision de justice, comment le pouvoir administratif pourrait-il s'arroger le droit de juger, d'apprécier et de réformer cette décision de justice, qui a acquis l'autorité de la chose jugée ?

Ou bien, si le Gouvernement Anglais croit que, dans les pays soumis à sa domination, l'extradition est œuvre de justice, la réclamation, dont on parle, ne s'expliquerait pas.

Car il faut noter, d'après ce qu'on dit de cette réclamation, qu'il n'y serait pas question des moyens qui ont été présentés devant la justice Française, dans l'intérêt de Lamirande. Ainsi, le Gouvernement Anglais ne se plaindrait pas de ce qu'on aurait exécuté une décision de justice, qui n'aurait pas été définitive, au mépris d'un appel, ou du droit d'appel de Lamirande. On comprendrait jusqu'à un certain point le pouvoir exécutif d'un pays, qui donne la force exécutoire aux décisions de justice, venant se plaindre de ce qu'on aurait exécuté une décision à laquelle il n'aurait pas communiqué cette force exécutoire, ou de ce que la force exécutoire, qui ne peut émaner que de lui, aurait été donnée à tort à la sentence d'un Juge. On pourrait répondre à une réclamation basée sur ces motifs, que c'était au Gouvernement réclamant de surveiller l'exécution des actes de ses tribunaux ou de ses agents administratifs sur son territoire ; mais qu'une fois les actes exécutés, il ne peut plus les réformer, alors que les personnes auxquelles ils s'appliquent, ne sont plus dans l'enclave de sa juridiction. Mais, nous le répétons, dans ce cas on pourrait comprendre la réclamation jusqu'à un certain point ; tandis que, dans la réclamation telle qu'elle serait formulée aujourd'hui, l'Angleterre reconnaîtrait qu'en la forme elle n'a pas d'objection à faire contre la décision du Juge qui a ordonné l'extradition ; elle prétendrait seulement que le Juge a mal statué, qu'il n'aurait pas dû accueillir la demande.

Que deviendrait alors ce grand principe de l'autorité de la chose jugée que tous les Gouvernements reconnaissent, proclament et respectent ?

Le Cabinet de Londres voudrait-il prétendre que l'extradition de Lamirande a été accordée au mépris de la loi Anglaise ; que, dans les pays de l'obéissance de la Couronne d'Angleterre, les extraditions ne peuvent être accordées que dans les cas prévus par la loi ; que la loi, qui règle cette matière de l'extradition à l'égard de la France, c'est le Bill qui a approuvé le Traité de 1843 ; et que ce Bill ne permettait pas d'accorder l'extradition sur la demande d'un Consul, pour un crime auquel la loi Anglaise ne reconnaissait pas le caractère du faux.

A cela il serait facile de répondre que les Puissances étrangères, qui demandent et obtiennent l'extradition des malfaiteurs réfugiés en Angleterre, n'ont pas à se préoccuper de la question de savoir si les autorités Anglaises, qui statuent sur les extraditions, ont observé ou non les lois particulières de leur pays.

Le Ministre Anglais ne peut pas, en effet, soutenir qu'il y ait eu violation des principes du droit des gens, car Lamirande n'a pas été arraché par violence ou par surprise du sol Britannique.

On comprend une réclamation diplomatique, à propos d'un fait qui a été accompli contre la volonté et au mépris des droits de la puissance qui réclame. Mais on ne s'explique guère une réclamation d'un Gouvernement à propos d'un acte qui émane de lui. Si l'extradition de Lamirande ne devait pas avoir lieu d'après la loi Anglaise, il ne fallait pas la consentir ; mais une fois cette extradition opérée, il ne doit plus être possible de la rétracter.

Aujourd'hui, la justice Française a prononcé. Elle a frappé Lamirande pour le crime de faux. Si, après la décision du jury Français, il fallait remettre Lamirande en liberté, le renvoyer en Angleterre pour qu'il pût y jouir de l'impunité de ses méfaits, ce serait un scandale public. Ce ne serait qu'en gémissant que le Gouvernement Français pourrait accueillir la

réclamation de l'Angleterre. Heureusement, il n'existe dans les Traités aucune stipulation qui oblige la France à restituer Lamirande.

Mais si, par impossible, la France se trouvait obligée à cette restitution, ce serait la condamnation la plus manifeste du Traité de 1843.

Jusqu'à présent, ce Traité était resté une lettre-morte. Le Gouvernement Français n'avait pu obtenir aucune extradition de l'Angleterre. Voici cependant qu'une extradition est accordée, à raison d'un crime qui avait vivement ému l'opinion publique. Le coupable, livré à la justice Française, est condamné par le jury de son pays, et il faudrait restituer sa personne à l'Angleterre pour l'empêcher de subir sa condamnation!

Ce Traité de 1843 entre la France et l'Angleterre, qui a été dénoncé par notre Gouvernement, et qui depuis n'a été prorogé qu'à titre provisoire, de six mois en six mois, doit être définitivement jugé.

Tout en l'invoquant dans les cas qui y étaient expressément prévus, la France, avant 1866, ne pouvait pas obtenir l'extradition des accusés réfugiés en Angleterre. Des raisons de fait empêchaient toujours les demandes d'extradition des accusés de pouvoir réussir. On ne pouvait pas non plus obtenir l'extradition des condamnés réfugiés dans les possessions Britanniques, par une raison de droit strict, tirée de ce que le Traité ne parlait que des accusés et non des condamnés. De sorte que, soit par des considérations de fait, soit par des considérations de droit, accusés et condamnés trouvaient l'impunité en Angleterre.

Aujourd'hui, il faudrait, si la réclamation était admise, que l'œuvre de la justice Française fût arrêtée dans un nouveau cas encore; car, il en résulterait l'impunité pour les accusés livrés par l'Angleterre et condamnés, après leur extradition, par nos Tribunaux.

N'y aurait-il pas lieu alors de reconnaître que l'épreuve du Traité de 1843 a été assez longue pour la dignité de la France?

(Signé) CH. DUVERDY.

(Translation.)

EXTRADITION OF LAMIRANDE.—WE have announced, as a rumour which has been generally spread about for some days past, that the English Government was about to claim from France the restoration of Lamirande, whose extradition had been decreed by the judicial authority of Canada.

The news is true. The Ministry of Justice has the English claim before it. And if we believe what has transpired respecting this matter, the English Government, alleging that the extradition was not regularly granted, urges two reasons in support of their demand.

The first is that according to the Treaty of 1843 between France and England, extradition can only be granted upon the demand of a Diplomatic Agent. Now the demand for Lamirande's extradition was made by the French Consul-General in Canada. Consuls are Commercial, and not Diplomatic Agents. According to the English Government the demand for Lamirande's extradition should not have been received, on account of the character of the agent transmitting it.

The second reason put forward by England to show the irregularity of Lamirande's extradition is that the acts laid to his charge, even if constituting the crime of forgery according to French law, do not amount to the same crime in English law, and that by the terms of the Treaty of 1843, England has only bound herself to surrender persons accused of what, according to English law would amount to one of the crimes enumerated in the Treaty. Now, English law only recognizes as forgery an actual alteration in anything written. In contradistinction to Article 47 of our Penal Code, it does not consider the fabrication of agreements, directions, bonds, or acquittances to constitute the crime of forgery; so that in England Lamirande would not have been considered guilty of forgery. The conclusion drawn therefrom by the English Government is that the extradition ought not to have been granted, and they demand the rendition of Lamirande.

If it be true that in claiming the restoration of Lamirande, England wishes to recur to the question of an extradition voluntarily and freely granted by herself, it seems to us hardly credible that she can found her demand on the two reasons on which it is pretended she relies; for they repose on no solid basis, and could not resist a serious examination.

The surrender of an accused person when claimed by a foreign Power, is an act of sovereignty. This act of sovereignty can be carried out by a Government without having previously concluded a special Treaty with the Power claiming the culprit. Although we might have no Treaty of Extradition with England, yet, were French criminals to seek refuge in the United Kingdom, we could ask for their extradition, and England could give them up to us for trial in France; for the right of granting extraditions belongs to each

Government by virtue of its sovereignty. It is not Extradition Treaties which confer upon the Power of the country where the culprits have taken refuge, the right of surrendering them to their own Government. The only object of these Treaties is to facilitate the relations of the Contracting Powers, and to record that they reciprocally bind themselves to use towards each other, in certain cases and in a certain manner, the right which belongs to them of granting extraditions.

But because a Government shall have entered into an arrangement with another Power to surrender criminals accused of such or such crimes when claimed in such or such manner, by diplomatic means for instance, it does not follow that this Government is unable, should it think proper, to consent to the extradition of a person accused of a crime not provided for in the Treaty, even if the application be made in a manner other than that stipulated.

England had, therefore, full power to surrender Lamirande even for a crime not recognized as such by the English law, and even although the demand for extradition were presented by some one not a Diplomatic Agent. When, therefore, in the exercise of her right, she has granted an extradition, whether in a case provided for by a Treaty, or whether in a case beyond the provisions of a Treaty, is it allowable for her to recall the accomplished fact, and modify the act of sovereignty emanating from herself, by which she has effected the extradition! What is still more singular in the British Government's demand for the rendition of Lamirande is, that that demand would involve the contradiction of those principles on which they rely, and of other principles appealed to previously by one part of the members of the English Parliament, and even by some publicists of our own country.

By their demand the English Government wishes to recall an act which emanated from themselves or from their agents; they wish to revise this act on the plea that those who ordered it committed a legal error. This is for the Royal power, the highest representation of the Administrative power, to declare that its inferior agents have been deceived, that they have taken wrong proceedings, and to wish to substitute a decision different from that which had at first been taken.

If the English Diplomatic Agents, acting in the name of their Queen, demand an individual, surrendered by their Government to a foreign Power, affirming that the Queen and her Cabinet, *i.e.*, the Executive Power of England, regard his extradition as having been improperly granted, and that they have resolved to cancel it, it is because that for the English Government itself the fact of granting, refusing, or cancelling an extradition, is an act of sovereignty.

This is not precisely the same doctrine as that hitherto maintained by the English, and by the enthusiastic administrators of the constitution and laws of Great Britain. It was said that among our neighbours extradition was a judicial act, and not an administrative measure. In demanding Lamirande, the English Government would give the final blow to this doctrine; for if Lamirande has been given up in virtue of a judicial decision, how can the administrative power arrogate to itself the right to judge, appreciate, and revise that judicial decision, which has acquired the authority of a matter adjudged?

Again, if the English Government believes that, in the countries under its rule, extradition is a judicial act, there is no explanation for the talked-of demand.

For, it is to be noticed, according to what is said of this demand, that no question is raised on these points advanced before the French tribunal in the interest of Lamirande. Thus, the English Government does not complain of a judicial decision which was not definitive, having been executed in spite of an appeal, or the right of appeal, by Lamirande. We could understand, to a certain point, the executive power of a country which gives executive force to the decisions of justice, complaining of the execution of a decision to which it has not given this executive force, or that the executive force, which can only emanate from itself, has been erroneously given to the sentence of a judge. We may reply to a demand based on these pleas, that it was the business of the Government which makes the demand to watch the execution of the acts of the tribunals or of the Administrative Agents in its territory, but that, the acts once carried not, they can no longer be revised, since the persons to whom they apply are no longer within its jurisdiction. But, we repeat, in this case the demand might be intelligible to a certain point; whereas in the demand, as it is at present framed, England avows that she has no formal objection to make against the decision of the Judge who ordered the extradition—she only pretends that the Judge has given a wrong decision, that he ought not to have entertained the demand.

What becomes, then, of that grand principle of the authority of an adjudged matter, which is acknowledged, proclaimed, and respected by all Governments?

Does the Cabinet of London wish to pretend that the extradition of Lamirande has

been granted in contempt of English law; that in the country under the sway of the English Crown extraditions can only be granted in cases provided for by law; that the law which regulates this matter of extradition with respect to France is the Bill which approved the Treaty of 1843; and that this Bill does not permit the granting an extradition on the demand of a Consul for a crime which the English law does not recognize as a forgery?

To this it is easy to answer, that foreign Powers who demand and obtain the extradition of criminals who have taken refuge in England are not obliged to trouble themselves with the question whether the English authorities who decide on the extraditions have observed, or not, the spceial laws of their country.

The English Minister cannot, indeed, maintain that there has been a violation of the principles of international law, for Lamirande has not been taken by violence or fraud from British soil.

We can understand a diplomatic demand with reference to an act which has been done against the will or in contempt of the rights of the Power making the demand. But there is hardly any explanation for a demand by a Government with reference to an act that emanates from itself. If the extradition of Lamirande ought not to have taken place, according to the English law, its consent ought not to have been given. But extradition once effected, it cannot possibly be retracted.

French justice has now pronounced sentence. It has condemned Lamirande for the crime of forgery. If, after the decision of the French jury, it should be necessary to restore Lamirande to liberty, to send him back to England, there to enjoy with impunity the fruits of his misdeeds, this would be a public scandal. It is only with great reluctance that the French Government can entertain the demand of England. Happily there exists in the Treaties no stipulation which obliges France to restore Lamirande.

But if, through some impossibility, France found herself forced to make this restitution, this would be the most manifest condemnation of the Treaty of 1843.

Up to the present time this Treaty had remained a dead-letter. The French Government had not been able to obtain any extradition from England.

Here, however, an extradition has been granted, on account of a crime that had strongly excited public opinion. The culprit surrendered to French justice has been condemned by a jury of his country, and now we must restore him to England, in order to hinder him from undergoing his penalty!

This Treaty of 1843 between England and France, which has been denounced by our Government, and which has since only been provisionally prolonged, six months at a time, ought to be definitively adjudged. Even while appealing to it in cases which were expressly provided for in it, France, previous to 1866, was not able to obtain the extradition of accused persons who had taken refuge in England. Matters of fact have always hindered the demands for extradition of accused persons from succeeding. Neither was it possible to obtain the extradition of persons who had taken refuge in British possessions, on account of a strict legal technicality, derived from the fact that the Treaty only mentioned accused and not condemned persons. So that, whether from considerations of fact, or from considerations of law, accused and condemned were able to find impunity in England.

In this instance, were the demand admitted, it would be necessary that the operation of justice should be stopped again on a fresh ground, for the result would be impunity for accused persons delivered up by England and condemned after their extradition by our tribunals.

Would there not, then, be occasion to acknowledge that the Treaty of 1843 has been tried long enough for the dignity of France?

(Signed) CH. DUVERDY.

No. 38.

Mr. Fane to Lord Stanley.—(*Received February* 27.)

(Extract.) *Paris, February* 25, 1867.

THE brother of M. Lamirande called upon me this day for the purpose of placing in my hands two letters addressed to Earl Cowley, copies of which I have the honour to inclose. The one is from M. Lamirande himself, withdrawing the application made by him to Lord Cowley in September last, that Her Majesty's Government would demand his surrender by the French Government; the other, which is signed by the father and brother of M. Lamirande, transmits his letter and approves its contents.

M. Lamirande's brother, in delivering these letters to me, gave expression to the strong desire entertained by his family to put a term to the unhappy notoriety which attached to their name, by causing all further action in his brother's case to be abandoned.

I told him that I would acquaint your Lordship with the contents of the letters he had placed in my hands.

Inclosure 1 in No. 38.

MM. G. C. and C. S. Lamirande to Earl Cowley.

M. l'Ambassadeur, *Châtellerault, le Février*, 1867.

J'AI l'honneur de vous transmettre ci-incluse une lettre de mon fils, Ernest Lamirande, par laquelle il retire la demande qu'il avait adressée en Septembre dernier à votre Excellence à l'effet d'être reclamé par le Gouvernement de la Grande Bretagne.

J'ai voulu me charger moi-même d'adresser à votre Excellence cette déclaration, dans laquelle nous constatons avec satisfaction, ma famille et moi, le désir de mon malheureux fils, de nous éviter la continuation de pénibles émotions, en mettant un terme au bruit scandaleux dont notre nom a été l'objet.

Nous l'eussions vu d'ailleurs avec peine s'éloigner de nous, dont l'influence sur lui ne peut être que salutaire; nous aurions craint que rendu à la liberté, il n'en fît peut-être un emploi qui lui eût interdit pour l'avenir l'espoir de sa réhabilitation.

C'est donc avec notre agrément qu'il retire sa demande et qu'il a renoncé très librement du reste, et d'une manière toute spontanée, je suis heureux de lui rendre cette justice, au bénéfice de la restitution de sa personne que le Gouvernement de la Grande Bretagne eût pu obtenir du Gouvernement Français.

Mon fils le plus jeune, qui signe avec moi cette lettre, s'associe pleinement aux sentiments qu'elle exprime.

Daignez, &c.

(Signé) C. G. LAMIRANDE.
C. S. LAMIRANDE.

(Translation.)

M. l'Ambassadeur, *Châtellerault, February*, 1867.

I HAVE the honour to transmit to you herewith a letter from my son, Ernest Lamirande, in which he withdraws the request which he had addressed in September last to your Excellency, with the object of his surrender being claimed by the Government of Great Britain.

I am desirous myself of addressing this declaration to your Excellency in which my family and I record with satisfaction the desire of my unhappy son to spare us the continuation of painful emotions by putting an end to the disgraceful notoriety of which our name has been the subject.

Moreover, we should with sorrow have seen him separate himself from us whose influence over him cannot be otherwise than salutary. We should have feared that, restored to liberty, he would, perhaps, have turned it to account in such a manner as would have shut out all hope for the future of his reinstatement in his former position.

It is, then, with our concurrence that he recalls his request, and that he, moreover, freely and quite spontaneously (I am glad to do him this justice) gives up the advantages of his restoration to liberty which the Government of Great Britain might have succeeded in obtaining from the French Government.

My youngest son, who signs this letter with me, fully joins in the sentiments which it expresses.

I have, &c.

(Signed) C. G. LAMIRANDE.

Inclosure 2 in No. 38.

M. E. S. Lamirande to Earl Cowley.

M. l'Ambassadeur, *Fontevrault, le 19 Février*, 1867.

A MON arrivée du Canada, dans le courant du mois de Septembre dernier, j'ai eu l'honneur d'adresser de Paris à votre Excellence une demande tendant à obtenir que le

Gouvernement de la Grande Bretagne voulût bien me réclamer au Gouvernement Français et me faire rendre à la liberté.

Décidé à me soumettre entièrement aux décisions de la justice de mon pays, je viens aujourd'hui retirer formellement ma demande, et vous prier de vouloir bien la considérer comme nulle et non avenue.

Cette resolution que je prends, après mûre réflexion, m'est dictée par le repentir de mon crime, et plus encore par mon affection pour ma famille, dont l'intérêt me commande de faire cesser la triste publicité à laquelle j'ai trop longtemps livré son nom.

Veuillez, M. l'Ambassadeur, transmettre la présente déclaration au Gouvernement de Sa Majesté Britannique.

J'ai, &c.
(Signé) E. S. LAMIRANDE.

(Translation.)

M. l'Ambassadeur, *Fontevrault, February* 19, 1867.

ON my arrival from Canada in the month of September last, I had the honour of addressing to your Excellency from Paris a request, with the view of inducing the Government of Great Britain to claim my surrender from the French Government and have me set at liberty.

Having decided to submit in every way to the judicial decision of my country, I now formally withdraw my request, and beg you to have the goodness to consider it as null and void.

This determination, which I have formed after mature reflection, is dictated to me by repentance for my crime, and still more by affection for my family, whose interest bids me put an end to the unhappy notoriety to which I have too long subjected their name.

Have the goodness, M. l'Ambassadeur, to transmit the present declaration to Her Britannic Majesty's Government.

I have, &c.
(Signed) E. S. LAMIRANDE,

No. 39.

Mr. Fane to Lord Stanley.—(Received March 4.)

My Lord, *Paris, March* 3, 1867.

I HAVE the honour to forward herewith to your Lordship copy of a despatch and its inclosures which I received last night from the Marquis de Moustier, in reply to the note I addressed to his Excellency on the 14th of January last, conveying an application on the part of Her Majesty's Government for the surrender of M. Lamirande.

M. de Moustier commences his despatch by recording a formal declaration made by M. Lamirande to the Imperial Government that he voluntarily renounces all claim to his surrender, and that he wishes to remain in France to undergo the punishment awarded to him. His Excellency transmits to me the written declarations which establish this fact, and states that Her Majesty's Government will probably consider that these documents should put an end to the discussion of which M. Lamirande is the object.

M. de Moustier is, however, of opinion that it may be useful to examine the judicial questions raised by Her Majesty's Government, and he proceeds accordingly to a categorical consideration of them. The conclusions at which his Excellency arrives may be thus summarily stated:

1. That the omission to demand the extradition through a Diplomatic Agent, even if such a course were invariably followed, cannot be invoked, after the fact, to annul the extradition. That such demands are in certain cases made by Great Britain herself through other than a Diplomatic Agent.

2. That, if the crime for which Lamirande was surrendered does not constitute "forgery" according to the English law, the doctrine affirming this proposition has not yet been established.

3. That the decision of Judge Bréhaut argues the regular application of the Treaty, and that no argument can be sustained on the pretended right of appeal from his judgment.

4. That Lamirande, before the Court of Assize of La Vienne, accepted in principle the jurisdiction of his country.

His Excellency concludes by expressing the hope of the Emperor's Government that

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

I have, &c.

(Signed) JULIAN FANE.

Inclosure 1 in No. 39.

M. de Moustier to Mr. Fane.

Monsieur, *Paris, le* 1 *Mars*, 1867.

VOUS m'avez fait l'honneur de m'écrire, le 14 Janvier dernier, pour demander, au nom du Gouvernement de la Reine, la restitution du condamné Lamirande, comme ayant été indûment livré à la justice Française.

Au moment où je me disposais à répondre à cette communication, M. le Ministre de la Justice m'a annoncé que Lamirande venait d'écrire spontanément à M. le Procureur-Général de Poitiers pour déclarer qu'il renonçait à toute restitution de sa personne.

Depuis lors il a écrit à M. Baroche pour renouveler la même démarche en termes plus explicites encore, et j'apprends que son frère s'est récemment présenté à l'hôtel de l'Ambassade pour vous confirmer par ses explications la teneur des déclarations du condamné dont il était porteur.

Aucun doute ne peut donc s'élever sur la volonté formelle de Lamirande de rester en France pour y subir sa peine, et les actes qui constatent cette intention seront probablement considérés par le Gouvernement Britannique comme devant mettre fin au débat dont sa personne est l'objet.

Toutefois je ne crois pas inutile d'examiner les questions juridiques soulevées par votre communication.

La réclamation du Gouvernement de la Reine est basée sur deux motifs:

Premièrement, la demande d'extradition concernant Lamirande n'aurait pas été faite par l'intermédiaire d'un Agent Diplomatique, tel que l'exigent le Traité et le statut Britannique qui donne au Traité force de loi.

Secondement, le crime pour lequel Lamirande a été livré ne constituerait pas le crime de faux ("forgery") prévu par le Traité.

Pour ce qui est du premier point, nous reconnaissons volontiers que la lettre du Traité ne mentionne que les Agents Diplomatiques; mais doit-on l'interpréter dans un sens absolument exclusif de la compétence d'agents placés dans les conditions où se trouvait le Consul-Général de France à Quebec? Si une telle interprétation devait prévaloir, elle ne pourrait que révéler une nouvelle et regrettable lacune dans le Traité de 1843; et, à ce sujet, je dois rappeler d'abord qu'en fait, dans le cas actuel, les agents chargés de poursuivre Lamirande et porteurs du mandat lancé contre lui n'auraient pu requérir, à leur passage par l'Angleterre, ainsi que le suppose votre lettre, l'intervention de l'Ambassadeur de France à Londres, attendu que, à ce moment, l'accusé était réfugié non sur le territoire Britannique, mais aux Etats-Unis. Les mêmes agents sont passés ensuite, comme le fugitif, du sol Fédéral, directement au Canada, et la prompte réquisition adressée par notre Consul-Général au Gouverneur de cette Colonie pouvait seule rendre l'extradition possible.

Cet incident montre au contraire combien le concours des Agents Consulaires peut être indispensable dans les cas d'urgence, en même temps que la nécessité d'une interprétation s'inspirant avant tout de l'esprit de conciliation pratique qui doit présider à l'exécution des actes internationaux.

D'autre part l'extradition accordée en dehors d'une demande formulée par la voie diplomatique n'a en elle-même rien de contraire à la pratique suivie dans certaines circonstances par la Grande Bretagne, soit vis-à-vis de la France, soit vis-à-vis d'autres Puissances.

Jusqu'à ce jour l'extradition s'est effectuée entre les Colonies Françaises et Anglaises sur la simple demande des Gouverneurs, sans qu'on aît eu recours à la voie diplomatique et sans que le Gouvernement Britannique aît jamais protesté contre cette manière de procéder.

Récemment, en 1863, l'Angleterre a établi avec l'Italie, relativement à Malte, un accord duquel il résulte que les demandes d'extradition peuvent être formulées par les Agents Consulaires.

Enfin, la clause du Traité Anglo-Américain de 1842, qui a trait à l'extradition entre

les deux pays, laisse supposer, ainsi que vous le reconnaissez, que la faculté de requérir la remise des criminels n'est nullement limitée aux Agents Diplomatiques proprement dits.

Votre lettre, il est vrai, invoque précisément à l'appui de l'opinion qui exclut l'intervention des Consuls Français les termes du Statut passé le 22 Août, 1843, pour la mise à exécution du Traité Anglo-Américain, termes plus étendus que ceux du statut adopté, à la même date, pour donner force de loi au Traité Anglo-Français, et vous inférez des différences de texte qui résultent de ce rapprochement que l'intention des négociateurs des d[ux] Traités aurait été, dans un cas, d'admettre l'intervention des Consuls, et, dans l'autre, d[e] les écarter.

A notre sens, les différences de textes qui existent entre les deux Statuts et les deux Traités s'expliquent par des raisons de nature diverse, mais dont aucune ne permet de supposer que les Parties Contractantes aient entendu admettre les Consuls dans un cas, et les exclure dans l'autre.

En fait, le Traité Anglo-Américain est antérieur de huit mois au Traité Anglo-Français, et, si les deux Statuts, quoique du même jour, diffèrent dans leur rédaction, c'est sans doute parce qu'on a voulu mettre chacun d'eux en harmonie avec les termes du Traité auquel il se réfère. Quant aux différences de texte qui existent entre les Traités mêmes l'Article du Traité Anglo-Américain ne figure pas dans une Convention spéciale d'extradition. Cet Article, occasionnellement introduit dans un Traité de Délimitation avec le Canada, conclu à Washington, désigne, en effet, d'une manière générale, les autorités de chaque pays comme aptes à requérir l'extradition, tandis que tous les Traités spéciaux sur la matière, conclus par l'Angleterre avec d'autres Puissances, France, Prusse, Danemark, emploient l'expression "Agents Diplomatiques." Mais cette formule ne peut avoir qu'une portée indicative; car quelle raison pourrait-on invoquer pour justifier l'admission des Consuls des Etats-Unis tandis qu'on exclurait ceux des autres Puissances?

Mais si l'on suppose même que le Traité de 1843, en se servant du mot "Agents Diplomatiques," ait eu pour but de tracer une règle invariable, il ne s'en suivrait pas que, lorsque la remise de l'inculpé a été effectuée, et surtout après que la justice étrangère a prononcé, l'extradition dût être annulée pour cette irrégularité. En nous plaçant avec le Gouvernement de la Reine sur le terrain de droit strict, il nous est permis de faire observer que, généralement, en matière de procédure, les formalités ne sont une cause de nullité qu'autant que la loi l'a formellement déclaré, ou que l'irrégularité signalée porte atteinte à un principe général de droit reconnu dans un pays. Or, d'une part, le Traité ne contient rien sur les conséquences attachées à l'inobservation de la voie diplomatique, et, de l'autre, cette même inobservation est admise par l'Angleterre avec les Etats Unis, d'une manière générale, avec l'Italie pour Malte, enfin avec la France elle-même dans les rapports des Colonies Françaises et Anglaises.

Le Gouvernement de la Reine allègue, en second lieu, que les faits imputés à Lamirande ne constitueraient pas le crime de faux ou "forgery" prévu par le Traité, en ce sens qu'il n'y a pas faux d'après la loi Anglaise.

Nous n'entendons point affirmer *à priori* que les faux commis par Lamirande soient prévus et punis par la législation Anglaise; mais il y a lieu de considérer que le Gouvernement de la Reine ne produit à l'appui de sa thèse aucun texte ni aucun avis officiel et motivé émanant d'une autorité judiciaire, tandisque, au contraire, il y a chose jugée dans notre sens, la décision du Juge Bréhaut créant une présomption grave et sérieuse en faveur de légitimité de l'extradition.

Au reste, en nous attachant au sens littéral du Traité de 1843, l'extradition de Lamirande nous parait parfaitement régulière.

Que dit, en effet, le Traité? Que l'extradition s'effectuera de la part de l'Angleterre "sur le rapport d'un juge ou magistrat commis à l'effet d'entendre le fugitif sur les faits mis à sa charge par le mandat d'arrêt."

Ce rapport a été fait par le Juge Bréhaut, et c'est sur ce rapport que le Gouverneur de Canada a livré l'accusé. Nous étions donc dans les termes du Traité; on oppose, il est vrai, qu'il y avait appel devant un juge supérieur. Mais, strictement, d'après la lettre du Traité, nous sommes fondés à soutenir que ce droit d'appel n'existe pas, et, en effet, si ce droit existe, faudra-t-il que le Gouvernement qui réclame un accusé à l'Angleterre le suive devant tous les degrés de juridiction qu'admet la procédure Anglaise? Ce résultat n'est point à craindre, sans doute, quand il s'agit d'un coupable sans ressources. Mais mille moyens de procédure sont offerts, Lamirande en est la preuve, à celui qui a trouvé dans son crime même les éléments de richesse propres à faire face à ces dépenses, de sorte que, en fin de compte, par un renversement de toute idée de justice, les chances d'extradition seront parfois en raison inverse de la grandeur du crime.

En tout cas, pour en revenir à l'espèce actuelle, on ne peut alléguer l'avis contraire du Juge Drummond pour l'opposer à celui du Juge Bréhaut, parce que cet avis, rendu

après coup, en dehors de la présence des parties, dépourvu d'impartialité d'ailleurs, s'il faut en croire tous les comptes-rendus publiés à cette occasion, ne saurait avoir la valeur d'une décision de tribunal d'appel.

En présence de la chose jugée, l'opinion des jurisconsultes qui ont été appelés à donner un avis autorisé, pourrait seule nous fixer sur le point de droit, le point de fait n'ayant point été l'objet d'une vérification contradictoire :—Il est pour nous d'une importance majeure de pouvoir vérifier si les falsifications qui en France entrainent une peine criminelle, et que la Cour d'Assises de la Vienne a frappées de dix ans de réclusion, ne constituent pas un crime de faux d'après la loi Anglaise.

Une autorité Coloniale Anglaise s'est crue suffisamment saisie par la réquisition de notre Consul-Général pour délivrer un warrant au juge compétent. Celui-ci a rendu un jugement exécuté par la même autorité administrative avant toute décision contraire d'un autre tribunal dont l'œuvre tardive n'a aucune valeur légale. L'extradé a séjourné sept jours sur un bâtiment Anglais, et trois autres jours sur le sol Anglais de Liverpool à Londres, escorté par des agents Anglais. Des conférences ont eu lieu entre des magistrats, des attorneys et les agents Anglais. Enfin il est certain que des membres du Cabinet Anglais ont été interpellés par dépêches télégraphiques et ont eu à répondre aux réclamations des officieux qui se donnaient la mission d'agir pour Lamirande. Tels sont les précédents après lesquels la restitution de l'extradé est réclamée sous prétexte d'erreurs, soit du Gouverneur-Général du Canada, soit du juge qui a statué.

Il y encore lieu de noter que Lamirande, qui a avoué à l'audience ses vols et ses faux, ne s'est même pas pourvu en cassation contre l'arrêt qui l'a frappé. Enfin Lamirande a accepté le débat sur les faux, ainsi que cela résulte d'une déclaration formelle de sa part déposée publiquement à l'audience de la Cour d'Assises.

Vous trouverez ci-joint une copie de cette pièce. Elle prouve qu'après les contestations de son avocat en date du 3 Décembre, Lamirande a accepté, le 4, le débat sur les faux et, en cas d'acquittement même, sur les vols, de sorte que son acquiescement nous aurait obligés à le garder, s'il eût été acquitté, et à le juger sur les accusations que le respect des Traités nous empêchait de sommettre au jury dès l'ouverture de la session.

En résumé : Le défaut de demande par la voie diplomatique, fût-elle un règle invariable, ne saurait être invoqué après coup pour annuler l'extradition. La règle contraire est d'ailleurs pratiquée dans certains cas par la Grande Bretagne.

Si le faux pour lequel Lamirande a été livré n'est pas un faux d'après la loi Anglaise, c'est une doctrine qui reste à établir.

Il y a, au contraire, chose jugée en faveur de l'application régulière du Traité, et on ne saurait arguer du prétendu jugement d'appel. Lamirande a accepté, en principe, la juridiction de son pays devant la Cour d'Assises de la Vienne.

Le Gouvernement de l'Empereur est donc fondé à espérer que le Cabinet Anglais appréciera cet ensemble de considérations et les reconnaîtra comme justifiées en principe ; car, en fait, Lamirande ayant renoncé formellement au bénéfice de la restitution, la question n'a plus qu'un intérêt théorique.

J'ai l'honneur de vous communiquer ci-annexée une copie certifiée de la lettre adressée le 10 Fevrier, par Lamirande, à M. le Procureur-Général de Poitiers, ainsi que sa seconde lettre du 19 à M. le Garde des Sceaux, et une autre de son père du 20.

Agréez, &c.

(Signé) MOUSTIER.

(Translation.)

Sir, *Paris, March* 1, 1867.

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

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

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

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

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

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

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

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

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

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

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

Lastly, the clause of the Anglo-American Treaty of 1842, which refers to extradition between the two countries, leaves it to be supposed, as you allow, that the power of requesting the surrender of criminals is by no means limited to Diplomatic Agents, properly so called. Your letter, it is true, invokes especially, in support of the opinion which would exclude the intervention of French Consuls, the terms of the statute passed on the 22nd of August, 1843, for carrying into effect the Anglo-American Treaty—terms more comprehensive than those of the statute passed the same date to give the force of law to the Anglo-French Treaty; and you deduce from the discrepancies of text which result from this comparison that the intention of the negotiators of the two Treaties must have been, in the one case, to admit the intervention of Consuls, and in the other to shut them out.

In our opinion the discrepancies in the text which exist between the two statutes and the two Treaties are explained by reasons of an opposite nature, but of which neither admits of the supposition that the Contracting Parties intended to admit Consuls in the one case and to exclude them in the other.

In fact, the Anglo-American Treaty is anterior by eight months to the Anglo-French Treaty, and if the two statutes, although of the same date, differ in their wording, it is doubtless because it was intended to frame each in harmony with the terms of the Treaty to which it refers. As regards the discrepancies of text which exist between the Treaties themselves, the Article of the Anglo-American Treaty does not figure in a special Extradition Convention. This Article, casually introduced into a Boundary Treaty with Canada, concluded at Washington, designates, in fact, generally, the authorities of each country who can properly demand extradition, whilst all the specific Treaties on this subject, concluded by England with other Powers, France, Russia, Denmark, use the expression "Diplomatic Agents." But this form of expression can have but one meaning; for what reason could be invoked to justify the admission of the Consuls of the United States whilst those of other Powers were excluded?

But even if we suppose that the Treaty of 1843 by the use of the words "Diplomatic Agents" intended to lay down an invariable rule, it would not follow, after the accused has been handed over, and above all after foreign justice had pronounced its decision, that the extradition should be annulled on account of that irregularity.

Whilst placing ourselves with the Government of the Queen upon the ground of strict right, we may be allowed to observe that generally, in matters of legal procedure, formalities are only a source of invalidity, in so far as the law has formally declared them

to be so, or when the irregularity in question attacks a general legal principle recognized in the country. Now, in the first place, the Treaty contains nothing upon the consequences entailed by the non-observance of the diplomatic channel; and, in the second place, this same non-observance is sanctioned by England towards the United States, in a general manner towards Italy for Malta, and, lastly, towards France herself in the relations between the French and English Colonies.

The Government of the Queen alleges, in the second place, that the acts imputed to Lamirande would not constitute the crime of "faux," or forgery, as contemplated by the Treaty, inasmuch as there is no forgery according to the law of England.

We have no intention of affirming *à priori* that the forgeries committed by Lamirande are foreseen and punished by English legislation; but we are justified in taking into our consideration that the Government of the Queen brings to the support of its position no reference nor any official opinion originated by or emanating from a judicial authority, whilst, on the contrary, in our opinion the decision of Judge Bréhaut is a settled fact, creating a grave and serious presumption in favour of the legitimacy of the extradition.

Moreover, in adhering to the literal meaning of the Treaty of 1843, Lamirande's extradition appears to us perfectly regular.

What, in fact, does the Treaty say? That the extradition shall be carried out on the part of England "on the report of a Judge or Magistrate duly authorized to take cognizance of the acts charged against the fugitive in the warrant of arrest."

This report has been made by Judge Bréhaut, and it is upon this report that the Governor of Canada has handed over the accused. We were therefore within the term of the Treaty; it is true, that it is argued that there existed an appeal to a superior Judge. But, strictly, according to the letter of the Treaty, we are justified in maintaining that this right of appeal does not exist; and indeed, if this right does exist, is it requisite for the Government which claims an accused person from England to pursue him through all the judicial steps authorized by the forms of English law?

This result, doubtless, is not to be feared when it is a question of a criminal destitute of resources.

But Lamirande is the proof that a thousand ways of procedure are open to him who has found by his crime itself the elements of riches necessary to meet his expences, so that at last by a complete subversion of justice the chances of extradition will some time be in an inverse ratio to the magnitude of the crime.

At all events, to return to the actual case, the antagonistic opinion of Judge Drummond cannot be alleged in opposition to that of Judge Bréhaut, since that opinion given, too late, in the absence of the parties, wanting moreover in impartiality, if all the reports published on that occasion are to be believed, cannot have the force of a decision by a Court of Appeal.

Having before us the matter adjudged, the opinion of the lawyers who have been called upon to consider the question could alone determine us on the point of law, the point of fact never having been the subject of adverse examination. It is of greater importance for us to be able to discover whether the falsifications which in France entail a criminal punishment, and which the Court of Assize of Vienne has chastised by ten years of confinement, does not constitute the crime of forgery according to the English law.

An English Colonial authoritity thought himself sufficiently justified by the requisition of our Consul-General in delivering a warrant to the proper judge. The latter gave a decision which was executed by the same administrative authority before the appearance of any contrary decision of another tribunal, whose tardy proceedings have no legal value.

The person thus given up remained seven days in an English vessel and three more days on English soil, between Liverpool and London, escorted by English agents. Conferences were held between the magistrates, the attorneys, and the English agents. Lastly, it is certain that members of the English Cabinet were questioned by means of telegraphic despatches, and had to answer the objections of the officials who took upon themselves to act for Lamirande.

Such are the antecedents, after which the restitution of the person thus given up is claimed, under the pretext of errors committed by the Governor-General of Canada or by the Judge who gave the decision.

There is, moreover, occasion to remark that Lamirande, who has confessed his theft and forgery, has not even appealed against the sentence inflicted on him. Finally, Lamirande has accepted the trial on the charge of forgery, as appears from a formal declaration on his part, publicly given in the session of the Court of Assize.

You will find annexed a copy of this document. It proves that, according to the statement of his counsel, dated December 3, Lamirande accepted, on the 4th, the trial on the charge of forgery, and, even in the case of acquittal, upon that of theft; so that his

acquiescence would have obliged us to keep him, had he been acquitted, and to try him on those charges which respect for the Treaties prevented us from submitting to the jury from the opening of the session.

To recapitulate: The omission to make the demand through a diplomatic channel, even were it an invariable rule, could not be urged *post facto* to annul the extradition.

The contrary rule is, moreover, practised in certain cases by Great Britain. If the forgery for which Lamirande has been surrendered is not forgery according to English law, it is a doctrine which remains to be established.

There is, on the contrary, a decision in favour of the regular application of the Treaty, and we cannot argue on the pretended judgment of appeal. Lamirande has accepted, in principle, the jurisdiction of his country before the Court of Assize at Vienne.

The Government of the Emperor has, therefore, reason to hope that the English Cabinet will appreciate these various arguments, and will acknowledge them as justified in principle; for, in fact, Lamirande having formally given up his claim to the benefit of surrender, the question has no longer any but a theoretical interest.

I have the honour to transmit to you, herewith, a certified copy of the letter addressed on February 10th by Lamirande to the Procureur-Général of Poitiers, as well as his second letter of the 19th to the Keeper of the Seals, and another from his father of the 20th.

(Signed) MOUSTIER.

Inclosure 2 in No. 39.

Déclaration of M. E. S. Lamirande.

JE soussigné, Surreau Lamirande (Ernest Charles Constant), déclare solennellement que si le verdict du jury qui doit statuer sur les faux qui me sont reprochés et que je proteste n'avoir jamais eu l'intention de commettre est négatif, je n'entends en aucune manière profiter du bénéfice du Traité d'Extradition avec Angleterre; que je demande au contraire dans cette hypothèse à être jugé par la Cour d'Assises de la Vienne pour les faits de détournement et de vol qui sont relevés contre moi par l'arrêt de la Chambre des mises en accusation.

Je suis donc prêt à me constituer prisonnier et je prie mes défenseurs de déposer cette déclaration entre les mains de M. le Procureur Général.

Poitiers, le 4 Décembre, 1866.

(Signé) E. S. LAMIRANDE.

(Translation.)

I, THE undersigned Surreau Lamirande (Ernest Charles Constant), declare solemnly that, if the verdict of the jury who are to decide on the forgery which is imputed to me, and which I protest never having intended to commit, is in the negative, I do not intend in any way to profit by the benefit of the Extradition Treaty with England; that I demand, on the contrary, under this hypothesis, to be judged by the Court of Assize of Vienne for the acts of embezzlement and of theft which have been brought against me by the decree of the Chamber of indictment.

I am, then, ready to constitute myself a prisoner, and I beg my counsel to place this declaration in the hands of M. le Procureur-Général.

(Signed) E. S. LAMIRANDE.

Poitiers, December 4, 1866.

Inclosure 3 in No. 39.

M. E. S. Lamirande to M. Damay.

M. le Procureur-Général, *Fontevrault, le* 10 *Février*, 1867.

J'APPRENDS à l'instant que le Gouvernement Anglais a adressé une demande en restitution de ma personne au Gouvernement Français. Désireux d'éviter la continuation d'une publicité pénible pour ma famille et bien décidé à expier mon crime, en subissant la peine qui m'a été infligée par la justice de mon pays, je déclare renoncer, formellement, dès aujourd'hui, au bénéfice de cette restitution, si elle devait avoir lieu.

Je viens vous prier de vouloir bien transmettre la présente déclaration à son Excellence M. le Garde de Sceaux.

J'ai, &c.

(Signé) E. S. LAMIRANDE.

(Translation.)

M. le Procureur-Général, *Fontevrault, Febrary* 10, 1867.

I HAVE just learnt that the English Government have addressed a demand to the French Government for the surrender of my person. Being desirous of avoiding the continuance of a publicity painful to my family, and quite decided to expiate my crime, by submitting to the penalty which has been inflicted on me by the justice of my country, I declare that I formally renounce, from to-day, benefit from that surrender, if it should take place.

I now beg you to have the goodness to transmit the present declaration to his Excellency the Keeper of the Seals.

(Signed) E. S. LAMIRANDE.

Inclosure 4 in No. 39.

M. E. S. Lamirande to the Keeper of the Seals, Minister of Justice.

M. le Ministre, *Fontevrault, le* 19 *Février*, 1867.

J'AI l'honneur de vous informer que je renonce d'avance et de la manière la plus formelle à la liberté que pourrait me rendre, si elle réussissait, la demande formée par le Gouvernement Anglais en restitution de ma personne.

Ma renonciation a pour mobiles l'intérêt de ma famille, à laquelle je désire éviter la continuation d'une publicité bien pénible pour elle et le repentir sincère et complet par lequel je veux tâcher d'expier mon crime.

Cette détermination est de ma part parfaitement libre et réflective.

C'est donc de mon propre mouvement, indépendamment de toute influence, que je déclare me sommettre aux décisions de la justice Française et en accepter, sans réserve et sans arrière-pensée, toutes les conséquences.

J'ai, &c.

(Signé) E. S. LAMIRANDE.

(Translation.)

M. le Ministre, *Fontevrault, February* 19, 1867.

I HAVE the honour to inform you that I renounce beforehand, and in the most formal manner, the liberty which the demand framed by the English Government for the surrender of my person, if it were successful, might restore to me.

The motives of my renunciation are the interest in my family, for whom I wish to avoid the continuance of a publicity very painful to them, and the sincere and complete repentance by which I wish to try and expiate my crime.

This determination on my part is perfectly free and deliberate.

It is, then, by my own deed, independently of any influence, that I declare my submission to the decisions of French justice, and acceptance, without reserve and without *arrière pensée*, of all its consequences.

(Signed) E. S. LAMIRANDE.

Inclosure 5 in No. 39.

MM. C. G. and C. S. Lamirande to the Keeper of the Seals, Minister of Justice.

M. le Ministre, *Chatellerault, le 20 Février*, 1867.

J'AI l'honneur de vous adresser ci-incluse une lettre de mon fils, Ernest Lamirande, par laquelle il renonce d'avance au bénéfice de la demande du Gouvernement Anglais en restitution de sa personne.

Si quelque chose pourrait réparer le mal que ce malheureux fils m'a fait, ainsi qu'à ma famille, ce serait son repentir. Aussi voyons nous avec satisfaction cette détermination, que je m'empresse de transmettre à votre Excellence.

Elle aura un résultat auquel nous attachons un grand prix, celui de faire cesser enfin le bruit qui s'est produit autour de notre nom.

De plus elle indique un retour à de bons sentiments puisqu'elle a le mérite de la spontanéité et qu'elle est inspirée par l'intérêt de sa famille et par un sincère désir d'expiation. J'ose espérer, M. le Ministre, que le repentir dont fait preuve aujourd'hui mon malheureux fils lui créera pour plus tard un titre à la clémence de Sa Majesté l'Empereur.

Mon plus jeune fils qui signe avec moi cette lettre partage tous les sentiments qui y sont exprimés.

Veuillez, &c.

(Signé) C. G. LAMIRANDE, *Ancien Magistrat.*
C. S. LAMIRANDE.

(Translation.)

M. le Ministre, *Châtellerault, February* 20, 1867.

I HAVE the honour to address to you the inclosed letter from my son, Ernest Lamirande, by which he gives up, in anticipation, all claim to the benefits of the demand by the English Government for the surrender of his person.

If anything could repair the harm which this unhappy son has done to me as well as to my family, it would be his repentance.

Therefore we regard with satisfaction this determination, which I hasten to transmit to your Excellency.

It will have a result to which we attach great value—that of putting a stop at last to the reports which have been circulated in connection with our name.

In addition, it indicates a return to proper feeling, since it possesses the merit of being spontaneous, and of being inspired by interest in his family and by a sincere desire for expiation.

I venture to hope, M. le Ministre, that the repentance of which my unhappy son now gives a proof will create for him at some future time a claim on the indulgence of His Majesty the Emperor.

My youngest son, who signs this letter with me, shares all the sentiments which are expressed therein.

(Signed) C. G. LAMIRANDE, *ex-Magistrate.*
C. S. LAMIRANDE.

No. 40.

Lord Stanley to Earl Cowley.

My Lord, *Foreign Office, March* 20, 1867.

MR. FANE transmitted to me in his despatch of the 25th of February two letters from M. Lamirande and from his family, withdrawing the application that the former had made in his letter of the 11th of September last, for the interference of Her Majesty's Government to obtain his release as having been unduly given up to the French Government under the Extradition Treaty of the 13th of February, 1843.

Mr. Fane further transmitted to me in his despatch of the 3rd instant the answer of the French Government to the application, which, by my instruction of the 12th of January last, he was instructed to make for the surrender of M. Lamirande.

Whatever exception Her Majesty's Government might, under other circumstances, have felt disposed to take to the statements made by M. de Moustier in this answer, with the view of controverting the grounds on which they rested their application, the request now made by M. Lamirande himself, and by his family, that the application should be withdrawn, would render it a matter of great difficulty on the part of Her Majesty's Government to pursue a controversy on the subject with the Government of the Emperor, since the person on whose behalf the controversy was commenced urgently entreats that it should be abandoned.

At the same time, however, Her Majesty's Government must guard themselves from appearing to acquiesce in the doctrine and principles on which the French Government justify their refusal to set M. Lamirande at liberty; and I have accordingly to instruct your Excellency, in acquainting M. de Moustier that Her Majesty's Government no longer insist upon their application for his release, to add that their abstaining from doing so must not be construed into an admission on their part that there were not sufficient grounds for insisting upon it.

I am, &c.

(Signed) STANLEY.

Correspondence respecting the Extradition of M. Lamirande from Canada.

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

LONDON.
PRINTED BY HARRISON AND SONS.