CASE

presented at the

Court of Arbitration

Hague

on behalf of

Mr. Vinayak Damodar Savarkar

by Jean Longuet

Attorney in the Court of Appeal, Paris

To the Distinguished Members

Court of Arbitration at The Hague

The undersigned attorney at the Court of Appeal of Paris, acting on behalf of his client Mr. Vinayak Damodar Savarkar, the defense of the interests of whom he was committed by Mrs Rustom Cama Bhikaiji, herself authorized and in full possession of powers of Attorney signed and sealed by the said Savarkar on 3 and 4 November, 1910, in Bombay, registered and certified according to British law by Mr. Vajubhai Chandulal Divan, public notary in Bombay, in the presence of two witnesses MM. Joseph Baptista, a lawyer in Bombay and Sahiar, first Cleric MM. Divan Ferreira and has the honor to present the following facts:

In the form,

Whereas the first question that arises is that of Intervention by the debate, and the very defense of the interests of Vinayak Damodar Savarkar who is before the high court that you represent;

That in a conflict resolved by the principles of Public International Law, no text precludes the private person who should benefit from the decision of the Intervention or be directly affected by it, to be heard or make present the defense of its interests to the Court established to deal with them, according to the permanent arbitration treaty between France and Great Britain October 14, 1903, and the Convention of 18 October 1907, regulating the functioning of the Court of Arbitration;

That if articles 62, 77, 89, of the Convention do not seem to stipulate the intervention of agents of the parties and appear to hear only those of the sovereign States;

Article 71 states that "the Tribunal has the right to make

"Procedural orders for the conduct of the case to determine,

"Forms, order and time in which each party should take,

"its final submissions and will undertake all the formalities involved,

"The taking of evidence."

That the ability of intervention of any interested party is essentially a natural right and it is impossible to imagine that any nation,

whatever the rules of its domestic law, admits that a court decision can be made outside of the person whose interests, freedom and life itself are, as in this case, involved.

It is impossible, based on these fundamental principles, to assume that the mere fact that the trial is taking place between nations is a reason to justify the removal of a natural and inalienable right to defend recognized by the law of all nations, of which your High Court is the highest authority.

That, indeed, any legal developments is in the modern sense a growing expansion of private international law, alongside and parallel to the development of public international law and ever carried out by the strong community of nations, humane in nature in its material and moral interests.

That, moreover, it is the two nations, in themselves, to be the first to benefit of that intervention by the information that only the principal applicant may provide the Court and that his lawyer was able together with a thorough examination of the facts of the case by collecting highly accurate statements of Vinayak Damodar Savarkar himself, as also the testimonies of those who, in any capacity, have been involved in incidents that are causing the dispute. For these reasons that the Court may accept his statement.

At the bottom.

July 8, in the port of Marseille, Mr. Vinayak Damodar Savarkar, a young lawyer and writer Hindu prosecuted for various crimes and political crimes, fled the British steamer Morea, on which he was held to be transported to India to stand trial, it was almost immediately arrested on the docks and brought on board the ship, without further ado. The question immediately arose as to whether the most certain rules of international law had not been violated in his person. This is what we would consider. But we must first recall briefly the conditions under which Mr. Savarkar was on board the Morea.

Savarkar's past

Born into a family of Chitpavan Brahmins, the highest caste, in Nasik, a city of the Presidency of Bombay, about 200 km of this town. Mr. Savarkar took, from an early age, an active part in the agitation of the Hindu nationalist party, his two brothers, who were no less militant than he was, were sentenced, one to life imprisonment and one to several months imprisonment for their participation in the Nationalist movement, are currently imprisoned. From the age of 22, a law student at the University of Bombay, he became the assistant of the famous Hindu, Tilak, and formed about the same time, in his native city, in Nasik. a national association known as the Mitra Mela, which like so many similar organizations, was engaged in an active propaganda throughout the Deccan, forming gymnastic societies, organizing meetings, where were read the biographies of the great national revolutionaries such as Shivaji and Ramdas and foreign ones such as Mazzini, whose memoire was fervently worshipped by Mr. Savarkar. With his elder brother Ganesh, Sarvarkar was preaching everywhere with passion, the gospel of national independence, advocating armed uprising of his countrymen, according to the teachings of the founder of Italian independence. The rallying cry of the young nationalist was the cry which has since become famous throughout India ‘Vande Mataram '. (Hooray for the fatherland! ").

In 1906, Mr. Vinayak Damodar Savarkar came to reside in England to complete his legal studies and be admitted to the bar in London, Gray's lnn section. He was 24 years old and filled with passion for revolutionary agitation in the colony of the great Hindu city, grouped around the lndla House, an institution created by a rich fellow. Mr. Krishnavarma, a former minister of one of the native states of Bengal, founded a chair at Oxford, dedicated to Herbert Spencer. Upon his arrival in the "India House" Savarkar wrote the preface to a translation into Marathi of the "Life of Mazzini." Soon after, he began and finished a complete history of the "War of Independence" in 1857, called by the British writers the "Great Mutiny." (This book, a real scientific value, was translated into English by several residents of India House and was published under the anonymous signature "A Nationalist

Hindu". The last paragraph of his conclusion is characteristic of the thinking behind it: "The Revolution of 1857, he wrote, is the test that showed how far India was in the path of unity, independence and popular force. Its failure was caused by men without energy, effeminate, selfish traitors who helped the enemy. But those who, bearing the sword, stained with their blood still warm, walked cheerfully to the fire and the battle to the death---not even a single voice rises to criticize these heroes! They were not fools, they were not reckless and they are not responsible for the defeat and that is why we cannot blame them. It is their call that has awakened Mother India from her deep sleep to march forward to overthrow slavery. But while with one hand she dealt a terrible blow to tyranny, her other arm plunged a dagger into her own heart.[1]"

And Savarkar finished his book, with the fall of the last Mughal Emperor Shah Bahadur, under the walls of Delhi, crying out "as long as there is the slightest trace of love of country in the heart of our hero, the sword of 'Hindustan will be further sharpened. It will shine one day even at the gates of London." Savarkar's book is animated by the ardent patriotism, which, without any possible doubt, reflects his deepest feelings, to say that it shows - in parentheses - how much he has the character of an " anarchist ", which was often written by the conservative British press, is absurd and contrary to the most superficial examination of the facts.

In the years 1907 and 1908, Hindu meetings were organized in London, by Savarkar who, after the departure of Mr. Krishnavarma to Paris, had taken charge of the India House. It celebrated the anniversary of the "Great Mutiny." In July 1909, a meeting of "loyalist Hindus " was held in Caxlon Hall "to express the feelings of horror and indignation" to gain support against the "criminal" Dhingra, a Hindu who had killed two senior English civil servants--- Savarkar wanted to speak, to protest against the qualification of criminal attributed to a man whose actions the justice system had not so assessed. He was expelled from the Bar by the "bench" of Gray's Inn, at a time when his internship had ended, and he would be on the roll. Finally, according to the testimony of Mr. Chatterbhuj, cook of the India House, a former member of the Hindu party, on whose accusations all charges against Savarkar are based, Savarkar put him in charge,

[1] Indian War Of Independence, 1857, p. 443

when he left for Bombay in 1908, of transporting to India of a box of 20 Brownings pistols, bought in Paris and destined for the execution of terrorist attacks. If we are to believe this charge, it is with these weapons that were meant to strike the tax collector, Jackson, who was killed Dec. 21, 1909, by a Hindu nationalist in the theater of Nasik.

Shortly after the death of Mr. Jackson proceedings were decided against Savarkar, at the end of December 1909. He was then at Paris. The British government knew this perfectly. BUT IT MAKES NO EXTRADITION REQUEST FOR SAVARKAR, *knowing full well it would have no chance of it being granted by the French government.* The young writer remained four months in Paris without the authorities giving any signs of life. Only on his return to London in March 1910, was he arrested when he landed at Victoria Station.

The first trial of Savarkar in London

Anglo-Indian justice claimed his transfer to India to be tried by a judge in Bombay. Savarkar asked to be tried in London where he had lived steadily for four years and where only the political crimes or crimes alleged against him had been committed. Successively, all levels of courts were exhausted by him to achieve that he not be transported to India.

The final decision was made on June 4 by the Court of King's Bane. It was preceded by discussions of particular interest and on which it is necessary to draw all of the kind attention of the Court of Arbitration.

The Court of King's Bane consisted of Lord Alverstone, the Lord Chief Justice of England and eminent judges Pickford and Coleridge. The Solicitor-General Sir Rufus Isaacs and MM. Rowlatt and Bodkin represented the crown, MM. Powell and Parikh, defense.

Early in his indictment, the Attorney General recollected the charges against an accused. They are:

a) For making and inviting a war against the King, to have aided and abetted in this war;

b) conspiring to make this war;

c) Having collected weapons with the intention of using them in this war;

d) is guilty of sedition:

e) Being an accomplice to the murder of Mr. A. Jackson. Collector of Nasik in the theater, 21 December 1909.

The Attorney General then read a number of excerpts from nationalist speeches given by Savarkar in India, in 1906, and noted that during these meetings the cries of "Bande Mataram! "(Hooray for the fatherland!) were pushed by his assistants.

At this point, the eminent Judge Coleridge, interrupting Sir Rufus Isaacs, exclaimed: "Is there something wrong with that? "The Sollicilor-General replied," No, not unless it is meant to be used to gain independence by force ".

The speaker, Lord Chief Justice, then observed: "The mere discussion of independence is not seditious." Continuing his argument, the representative of the crown read out the accusations against Savarkar made by

his renegade former co-religionists, the cook of the India House, Chatterbhuj, about the violent and terrorist speeches in various meetings chaired by him. Finally, Chatterbhuj said that Savarkar had given him 20 for Browning pistols to be sent to a correspondent in India. The Attorney-General added that they had found that the pistol with which Mr. Jackson was killed, was one of those weapons. He concluded, based on the "Fugitive Offenders Act" (Act 1881 of fugitive offenders, according to which when a person "who committed a crime in any part of Her Majesty' Empire, was then found in another part, it was liable to be arrested and brought back, according to the indicated regulations of the part from where he had fled. "

The attorney argued that Savarkar had committed crimes in 1906 in India, after which he left for England.

In fact, it seemed strange that a student coming freely, with the knowledge and in full view of all, completes his studies in England and against whom essential charges relate acts committed by him in England after leaving India, should be considered a fugitive while no prosecutions were brought against him in Bombay for the crimes of speech or press of which he is accused. This is what the lawyer of Savarkar, Mr. Powell, contended, arguing that "it would be a harshness to return Savarkar to India, for a case that could perfectly be held in London."

The Court decision was then made. The Lord Chief Justice decided in favor of the accused being returned to the Hindu court. His main argument was that in the interest of the accused himself, as in the interest of the accusation, it seemed preferable that Savarkar was not considered by judges "who could not appreciate what had been the real effect produced by his speeches." It might be that they did not include incentives and patriotic expression of his hope for the future, and things like that, he did not think an English court was sufficiently qualified to judge these matters in the interest of the accused as of the prosecution.

Judge Pickford concluded the same.

On the other hand, the magistrate of the Court of the Bench of the King Lord Coleridge, led to an evaluation different from these by facts of reason. It is necessary to name these words word for word:

The speeches of 1906, on which said proceedings are engaged, are filled with allusions to gods and heroes, the boycott of British trade, to reminiscences of the fall of the Mughal Empire and

deeds of those who liberated their country from the yoke of the oppressor. All these words though being known at the time to the authorities, yet no steps were taken to initiate proceedings against the accused, fell into silence.

Four years have passed and the authorities now produce these old speeches, demanding that the accused be returned in 1910 to India to face charges of making seditious speeches in 1906. Apart from any other reason, one must see that the speeches are now old and outdated. If they were the only elements of the charge, he could not imagine any judge could, under these circumstances, order sending of the prisoner to India.

His Lordship could not understand furthermore how the mere fact that the speaker having come to another country in 1909 and there having committed another offense, a different character could be attributed to the language used by him in India in 1906. The only question was whether the language at that time was calculated to cause public disorder. Lord Coleridge then addressed the issue of legal guarantees to the accused in India and he spoke in this regard in remarkably strong terms:

In India, the trial will be judged by a specially constituted court of three judges. This is a consequence “the terms of the "Indian Criminal Law Amendment Act of 1908." Under this statute, a few of the rights of a subject are definitely suspended in India. He did not intend to express any opinion on the need for such an act of the state, but its existence indicates a state of something that was not normal and its application suspended the rights of citizens to ordinary legal process[2]

Despite these strong reservations, Lord Coleridge ultimately concluded in the same direction as his two colleagues, for the reason alone that it seemed impossible to hold the responsibility thrown upon the courts of India in suspicion, by assuming their judgment of Savarkar would be "unfair and oppressive." Which would have to result in the rejection of the extradition request. The trial decision of Sir Albert de Rutzen was therefore confirmed altogether.

[2] All quotes the words spoken at the trial of Court
of King's Bench, were borrowed from the comprehensive reports published in the Times and the Morning Post, 2 to 6 June 1910.

The Escape Of Savarkar in Marseilles

We come now to the elements essential to the trial, on which only your High court has in fact to decide, since they alone are the real dispute and the jurisdiction of the Court in Hague. It was nevertheless necessary to take things from their origin, to expose them in their logical sequence, in order to better understand the facts of the case themselves.

On July 6, 1910, Vinayak Damodar Savarkar was taken aboard the Morea, a ship belonging to the "Peninsular Oriental Co., in plymouth to sail to India. He was closely watched by several English and Hindu police officers.

On the morning of Thursday, July 8 the Morea calling at the port of Marseille, where it docked in mole C. It had been there just moments that Savarkar addressing his captors asked them to set him free. Entering French territorial waters, the Morea was, in his view in the territory of France and the British Empire jurisdiction *de facto* lost all rights to it.

This is a thesis that was often supported by several international jurists and eminent statesmen who can lay claim to previous knowledge. It was particularly in favor among a number of English writers, which explains what was familiar to Savarkar, himself a lawyer and an intern at Gray's Inn. Suffice it to recall that in the case of Mexican refugee Gomez, the U.S. Secretary of State Bayard said:

"As a merchant ship visits the ports of a foreign country in order to do business, it must obey temporarily *and is subject to the jurisdiction of this country:* it is the rule of the laws that govern port it visits during its stay, unless the contrary is stated in a treaty.[3]".

Another precedent is still more characteristic is that of the Minister Sotelo who, transported by a French vessel in the port of Alicante, was claimed by the Spanish authorities and finally removed by force by them. They were based on the fact that the ship in Spanish waters should be subject to their jurisdiction. After an exchange of diplomatic notes,

[3] Journal of International Law, private and public, by E. Gluner, 1896, pg 786

France, finally admitted that the authorities in Alicante had acted strictly within their rights.[4]

However, Webster is in favor of a very different argument and his point of view seems to us, in fact, more in line with current jurisprudence. He sums up:

"It is natural to consider the vessels of a nation as part of its territory, even at sea, since the state retains its jurisdiction over them and according to the commonly accepted practice, the jurisdiction remains of the vessels, even when they are in the seas subjected to foreign domination. This is the doctrine of international law, clearly stated by writers and in any authorized consistent with the practice of modern nations ... It is true that the jurisdiction of a nation on a ship is no longer belonging to it, while stationed in the port of another nation, necessarily exclusively."[5]

Allowing precisely this latest update that Webster brought to his thesis, Savarkar could argue that the jurisdiction of England in the Morea is not exclusive in the port of Marseilles; he could avail himself of a higher law - the right to asylum which he felt could no longer be deprived to him once he had entered French waters. English lawyers, moreover, it is important to note, are no less affirmative about it. In a study published in the October 15, 1910 issue of the Journal of Law, London, an international lawyer who signs M. B. wrote in particular:

The situation of a prisoner consigned for trial abroad and on board a ship anchored in a foreign port is not quite clear. If he is on board a vessel, public or state, the continuity of his detention could certainly be questioned, because a vessel of this character is considered to be a floating part of the territory a nation, that has on this individual a right of exclusive jurisdiction.

"During the Crimean War, the United States government had decided that its courts had no jurisdiction to grant a writ of Habeas corpus to get back some Russian prisoners on board of a English '*capteur*' which had touched San Francisco (Case Sitkat). *But this doctrine is not, is it presumable, applied to the passengers of a private nature, when you are on board a merchant vessel*. It was decided in England

[4] Ibid pg 788

[5] Webster Works, volume VI, pg 309,306

that habeas corpus would be established to examine the legality of the detention of prisoners, under arrest in Canada, who had been brought to an English port by a ship of this sort (*Canadian prisoner's Case 1839 Case 1896 London, 31 law Journal 252*).

"The former Canadian prisoners were on their way to be transferred to Tasmania and *their detention was ruled illegal here* (in England). In the second case, a German extradited from Canada, was brought to Liverpool: *it was found necessary that a fresh warrant was issued for his extradition from England to Germany*.

"Our Mail Ships Act of 1891 (54 and 55 Vit. C. 31 s. 4) contains provisions *limiting the possibility of enforcement procedures on board ships foreigners in English ports*. "

It is true that the collaborator of the Law Journal, thinks to answer the objection that the detention of Savarkar in the port of Marseille was irregular and contrary to international law even before his escape, noting that "it seems that in the case of Savarkar the British government had informed the French authorities the presence of prisoners on the ship in question, which was to receive in Marseille, and no objections were raised."

He concludes that "the British mandate *was valid by consent* while Savarkar was on board."

It is further necessary to establish that the British government had warned the French government that the prisoner on the Morea was *not any ordinary prisoner, but one with a political indicment*. Moreover, as discussed below, according to "the authorities of Marseilles, the British consul had asked just that practiced routine monitoring to ensure the police boat and prevent desertions, but without the slightest allusion to the presence on board of Vinayak Damodar Savarkar.

Nevertheless, when Savarkar asked his captors to be released because he was "on French territory", his captors refused. It was then that he resolved to escape. He asked to take a bath. Once in the bathroom he opened a porthole, and being thin and flexible managed to squeeze through the narrow opening and jump into the sea, swimming to the quay. Then the Indian police watching helplessly, rushed in pursuit.

In an interview he had on September 14 with his lawyer in Bombay, Mr. Baptista, Savarkar has told the whole scene and incidents that had preceded it. The story which has been transmitted honourably by the Bombay lawyer was published partly in French and English press.

The text in-extenso as it is in the letter that Mr. Baptista sent us on September 17:

"As soon as the Morea entered the French port, Savarkar said he was in French territory. He also demanded to be land and be free to do what he pleased. In other words, he argued that his detention was now illegal and criminal, an arbitrary detention.

Two officers (of the port) came on board the French Morea but Savarkar was not allow them to converse with them. He decided to take the first opportunity to escape. He did so. He ran while being pursued by two officers of the crew of the Morea. He ran for about half a mile. But perceiving that the pursuers were gaining on him, he demanded the assistance of a French gendarme, Savarkar asked the policeman to take him before a magistrate.

"Meanwhile the pursuers came upon him. One grabbed him by the neck, another by the hand and by force they brought him back to the ship. There he was put in irons and placed in complete isolation. "The Morea remained in the port after the incident for about 24 more hours ....

"There was no formal call from the British police to the French police, nor was there a formal surrender of the prisoner by the gendarme. In fact, as the facts are presented, it appears that the British police actually took him by force from the custody of French police officer in which he was placed, which was equivalent to a criminal abduction and arbitrary detention in the French territory.

Savarkar was not allowed to communicate with anyone after that. While he was in the harbor, both before and after this episode, he was not allowed to communicate with French officials. "

On November 26, in another letter, M Baptista completed the story thus:
"I had omitted, when sending you the version of Savarkar, the following passage:

After he swam to shore, he arrived in an enclosed space. He exited through the door of the enclosure, then crossed the road and came to a railway line. He ran for some distance until he reached an artificial fountain or reservoir. This is where he came alongside the policeman.

On the other hand, a few days after these incidents, a thorough investigation made by a journalist in Marseille, Gabriel M. Bellin, we find the following version of the facts:

The steamer belonging to the Peninsular Oriental Co. was moored at mole C. Thursday, July 8 last, in the morning, the Indian student escaped. Damodar Savarkar formulated the wish, which was immediately granted, to take a shower. The policemen took him into the bathroom while they remained the entrance.

But the porthole was open. Without hesitation, the student crosses deftly and jumped into French waters. Swimming, he reached the quay, and after having gained a foothold, fled just wearing shorts and a light shirt.

So he passed along the shed across the tracks, the pier and spread to the dry docks. This is where, exhausted, he was joined by the British police and maritime police who grabbed him and brought him back to the Morea, which must be reaching Aden today.

This unexpected flight was immediately followed by cries of "Thief!" urging behind the prisoner. Soon hundreds of dockworkers and the curious, assisted at the taking of one they took for a criminal.[6]

And Mr. Bellin added this information interesting:

The Maritimes police are, at the arrival of each foreign vessel, requisitioned by the consul of the power to which it belongs. Set by the administration of the district of Marseille at the disposal of the captain, the police are responsible to prevent desertion of the crew on board and respond.

In this case, they saw a man whom they took to be a sailor, or a hot native, escaping plus heard shouting: "An thief! ". hastening the footsteps of the fugitive. Not for a moment, after catching Savarkar, along with the English police, did they think they were committing an illegality. On the contrary, believing they were executing their orders on time and performing their duty in the fullness of their rights, they gave up the student.

Since, Damodar Savarkar, pursued for political offenses, was on French soil, it is apparent that first of all, he should have been entrusted to a French magistrate, better informed about the thorny issues of international law than the police. They did not think of it, it seems, and from there arose the incident. "[7]

Thus, from the version of Savarkar himself, his arrest had been made only by the English police. According to the story "M. Bellin, it was made jointly by French gendarmes and police English.

English authorities, however, contended at first that the arrest was made entirely by the French coastguard. Anglo-Hindu police had only taken delivery of the prisoner returned on board by the French police. It does not seem, however, that the British government can hold on to this version, which contradicts all the evidence collected. The Indian police on the Morea, have since, themselves, destroyed the interpretation of the facts in the official account they gave of the incident wherein they strongly emphasize the part they had played in the arrest of Savarkar.

[6] Petit Provencal of July 17, 1910
[7] Petit Provencal of July 17, 1910

It seemed that under these conditions a personal investigation of the scene of the events would be of great interest and it is in these conditions that we went, on 13, 14 and 15 January, to Marseille.

Firstly, we had the opportunity to meet at the barracks, the coastguard, Sergeant Pesquié who it is indicated is deemed to have arrested our client. During the conversation we had with this honorable sergeant in the presence of Mr. Charles Baron, a civil engineer, and Mr. Reaux, general secretary of the Sailors Union of Marseilles, he confirmed, supplementing the terms of official report he sent to his superiors and which has already been communicated.

He pointed out to us in particular that on the eve of the arrival of the Morea, the British consul in Marseilles had requested the Commissioner Leblé, his supervisor, to monitor the ship under ordinary conditions stated above by Mr. Bellin per the convention between France and Britain for the investigation and prosecution of deserters sea, with no allusion was made to the presence on board of a political prisoner Morea.[8]

Brigadier Pesquié was thus along the quays keeping watch that had been recommended, when he saw running toward him a man wearing a simple bathing suit. The man approached him, asked him: "You French policeman?" On the affirmative answer of Mr. Pesquié the futgitive did not run away.

At the same time came three individuals who were in pursuit of him, seized him. Meanwhile, a considerable crowd had gathered and was running toward the group formed by Mr. Pesquié, Savarkar and the Anglo-Indian police.

[8] Here is the text of the convention July 4, 1854
The government of His Majesty the Emperor of the French and the Government of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, desiring to further the search and the arrest of deserting merchant marine seament of both countries, in the interests of French commerce and UK trade and on the basis of full reciprocity, agreed that: it is mutually agreed that whenever a sailor or a novice (apprentice) is not slave desertion from a ship belonging to a subject of one of the two contracting parties, in a port in the territory or possessions or colonies of the other Contracting Party, the authorities of this port and possessions of the territory or settlement will be required to lend any assitance in their power to arrest and surrender aboard all similar deserters, on demand, which will be sent to this effect by the consul. It is understood that the preceding provisions shall not apply to areas of the country or the desertion takes place. Each Contracting Party reserves the right to terminate this arrangement by denouncing one year in advance.
London, June 23, 1854 signed: A WALEWSKI

Signed: CLARENDON

At the same time ---and here I how the statement of Mr. Pesquié puts it;---- although the detail was not recorded in his report to the Ministry of Interior - ***Shouts of "Stop thief! "rose from the crowd and on the bridge of English ships.***

No longer doubting that he had to deal with a criminal, Mr. Pesquié took Savrkar's left arm, the two Indian police grabbed him, one by the right arm and the other by the neck - and escorted to the Morea. Never, at any time, did he then question the issue of the politics of the fugitive.

All these details were then more or less confirmed by officials involved in one way or another with the matter, barring only the reservations imposed on them by their official position. We must also mention the version collected from various people by Mr. Reaux. Secretary General of the Union Seamen's Union of Marseille and is strictly consistent with the story of Savarkar.

In a letter Mr. Reaux addresses of Marseille on 19 January, he claims that the maritime police say the same, "WAS THE BRITISH POLICE attached to the ship that had docked who were the only ones to catch SAVARKAR on the docks "

But even assuming that Mr. Pesquié was involved in the arrest, a key question arises, of which, all including the English lawyers who have handled these incidents, have rightly pointed out the extreme importance. Did this simple police sergeant had jurisdiction and standing as a representative of the French state?

In an important article in the Law Magazine and Review in November devoted to this case, the problem was clearly stated and the author stated that he had taken into consideration the rank and authority of the officers who conspired to act. He added later: Of course, it cannot be argued that any act or acquiescence of a "local policeman" would result in the binding of his government, but the deliberate action of the responsible authorities in the port, can at least have the effect of preventing the government from a claim for an act in which the authorities say took part. The decision in the Savarkar case will ride roll over the rank of police officers, who acted in the French case.

And another important English periodical, the Journal of Law, in its issue of November 13, still posed the question, "was the officer, who we brought back the runaway to the English ship, a person of official authority

or a person whose consent could not be considered as known to imply the abandonment of the Right to asylum?

But Mr. Pesquié, not only is not rank officer, but is hardly a Deputy police officer: He is an ***Executing Agent***, a simple "local policeman", in the words of the Law Magazine and Review. Never was there any such "deliberate actions of the responsible authorities" referred to in the same periodical, to "prevent the government from a claim for an act to which these authorities have been involved "

But something still deserves our attention in the review of the facts. The British legal periodical that we have just quoted, after having asked the question of rank and authority of the French agents involved in the arrest, adds, "and much depends on the method by which their cooperation was assured." It is indeed interesting to know whether the assistance of Brigadier Pesquié that was obtained is *bona fide*.

We have already indicated that nothing in the submissions made by the British Consul to the Commissioner Leblé and by him transmitted to Brigadier Pesquié led to any reason to believe that a political refugee was aboard the Morea. But just when the escape occurred Savarkar, by the statements of Mr. Pesquié, according to the survey made by Mr. Bellin from a number of dockers and sailors who attended the scene, it appears very clearly that cries of "Stop thief!" Were to be heard from all sides and Brigadier Pesquié in our presence, stated that the cries had come not only by the curious present, unaware of the case, but also on the bridge of the boat, that is, from the guards of Savarkar. So we deliberately abused the good faith of Brigadier Pesquié into believing that the fugitive was an offender or an ordinary criminal and not a revolutionary writer and nationalist, against whom weighed only political charges. Only by the deception about the true nature of the prisoner his assistance was obtained --- assuming that this assistance had ever been effective and real.

Examining the overall picture in this matter, the important English magazine The Nation wrote last September:

"One would not much blame the policeman. He was not aware of the problem of international law. He was abused, confused, and in the excitement of the moment, thought he was doing an obvious duty. A much greater blame should go to English official who most likely knew the principles of extradition in who

to retrieve their own carelessness by deception.

In short, the story of the facts, whether we accept Savarkar's version, which is also what Mr. Reaux has gathered from the maritime police, or whether we stick to the evidence, broadly similar, of Sergeant Pesquié and Anglo-Indian police, the following observations come to mind with particular force:

1. The political refugee Vinayak Damodar Savarkar was on Thursday, July 8, 1910 arrested on French territory in Marseille, by English police and forcibly returned by them aboard the British ship "Morea".
2. Assuming that the only representative present from the French authorities, the marine police sergeant Pesquié, was involved in his arrest, his role was minimal and in any case, entirely secondary in fact, merely as if he were a passive adjunct to the actions of the Anglo-Indian police.
3. By virtue of giving this assistance, a very secondary value of acquiescence, it cannot engage in any degree the French authorities; Sergeant Pesquié was merely executing agency.
4. In any case, the contribution made to the arrest by Sergeant Pesquié is flawed in its very essence, as the maritime policeman was misled, on the true nature of the fugitive, as by his instructions to watch over the deserted sea, as by the cries of "Thief! " shouted by the jailers and prosecutors of Savarkar.

The reasons therefore are as numerous as strong----in fact irrefutable, based on the doctrine as well as international jurisprudence that allow us to claim that the refugee Savarkar, who was arbitrarily and illegally, by fraud and error, snatched from French soil on July 8, be returned to the government the French Republic.

The Political Action Against Savarkar

A single question remains to be considered that of the political offenses and crimes alleged against Savarkar, which seems hardly necessary to demonstrate, as it seems indisputable. Moreover, it is a subsequent issue completely, since the Court of Arbitration has in fact to first decide whether the arrest "the Savarkar, on the docks of Marseille, July 8, 1910, s is operated regularly in accordance with the rules of international law.

If, as the thing does not seem questionable, the decision is negative, and Savarkar is returned immediately to France, the French administrative authorities will then have only to decide on the validity of an extradition request if it is then made by England, and therefore to examine the character of offenses and crimes charged to our client. But as we would like to discuss the matter thoroughly and to advocate for all practical purposes, we do leave out any part of the problem.

The definitions given by the lawyers and statesmen of the international political crime are, as we know, quite different, more or less wide or narrow, restrictive or extensive according to the school to which they belong. It seems they can be grouped into three schools, the Russian-German, French and Anglo-American. The latter is by far the largest, the first is closest to the contrary, while French jurists have generally adopted a middle position. First observe that the Franco-English 14 August 1876, on extradition, contains a clause concerning the broad political criminals. It reads:

No accused or convicted person shall be surrendered if the offense for which extradition is requested is regarded by the requested Party as a political crime an act connected with such an offense, or if the person proves to the satisfaction of the Police Magistrate or the Court before which it is brought by habeas corpus or the Secretary of State, that the extradition request was actually made for the purpose of prosecuting or punishing him for an offense of a political character. (Article 5).

The challenge before the Court relating only to England and France

It seems to us of little interest to dwell on the opinions expressed on the matter by the courts Russo-German or Swiss, as reflected in a series of famous precedents, the last was that of refugee Russian Wassilieff. Let us simply recall that in this case, the Swiss Federal Court granted the extradition of the Russian revolutionary, although his crime was a very marked political character, based on a series of considerations stretchinging to the extreme the very definition of political crime and that will absolutely counter to the consistent jurisprudence of France, like England and the United States. In its preamble, the Swiss Federal Tribunal went so far as this highly speculative condition, "that the political murder committed, can certainly bring the realization of political aims pursued" by the party to which the accused belonged.

If we examine the theory generally accepted by France, we find a complete and synthetic in the study even a member of your Court, Professor Leon Renault, published in an issue of the Journal of Private International Law, 1880,

The eminent jurist first formulated these important preliminary considerations:

"The moral fault of political crimes vary widely, regardless of feelings" of those who commit them, the circumstances under which they occur, the legitimacy or illegitimacy "the powers they attack, their methods of government in the country where they are committed; it is the result which is the judge: that the coup or revolution triumphed, the authors are glorified: they fail, they seem much less criminal than the vanquished. Who will judge definitively the nature of the enterprise? It's history and even its judgments have long been passionate about ...

And M. Leon Renault continued: "Granting or denying extradition of individuals accused of political crimes, it would interfere in the internal affairs of another State, say that they are managed in such a way that the attack against the powers that be do not justify the contrary is excusable, if not legitimate. It is preferable that the issue is not raised...
"I believe that the extradition of political refugees should be rejected, not only in modern times where there is the greatest diversity of constitutional systems, but even if this diversity would be replaced a uniform system. I do not admit any more between two republics or monarchies between between a republic or a monarchy. "

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As for the qualification of political crimes. M. Leon Renault wrote: There are many facts for which there is no serious doubt. These will be irrefutably political offenses: the fact of bearing arms against his country, to maintain correspondence with the enemy and other similar events, the call for insurrection, conspiracy to change the order of things established, the same plot against the life of the sovereign, membership of secret societies, the offense to public authorities."[9]

Note immediately that these are almost all the charges brought against Savarkar, except that he is accused of having borne arms, prepared to insurrection and conspiracy, not against his country, but against the foreign rulers of his country .

Then there is the definition of another French lawyer, Mr. Garraud in his Treatise on Criminal Law. The offense purely political, he says, is "one that not only has the predominant character, but exclusive and sole purpose to destroy, alter or disturb the political order in many of its elements."

But we can not wait to get to the jurisprudence, by far the most interesting in the circumstances, that of England and the United States, which is somewhat similar. It was formulated more than half a century ago with an incomparable vigour in the famous dispatch which lord Palmerston addressed to lord Bloomfield, English ambassador in Pètersbourg, regarding the Hungarian refugees taken refuge in Turkey and claimed by their government:

In this situation, said the British Prime Minister, the question is whether the international practice and the duties of a good neighborhood, call the Sultan to do what he is not obliged by treaty. If it is a rule that currently more than any other has been observed in modern times by all independent states, large and small, of the civilized world, it is the rule not to deliver political refugees, fewer to be forced by the positive stipulations of a treaty and the Government of His Majesty believes that there are few such commitments, if they even exist.

The laws of hospitality, exigencies of humanity, the feelings natural to man meet to dismiss such extraditions, and any government independent of his will, giving like this, would be justly and universally stigmatized as having degraded and dishonored. "

When Lord Palmerston so clearly formulated these principles, the practice in England was for many years already inspired.

In a recent article of an English lawyer Archibald. we find

[9] Journal of International Law, private and public, by Mr. Clunet, 1880, pgs 55 to 71

re-formulated and developed in all their significance, as follows:

"Britain and the United States has always interpreted the term in a political crime in the broadest sense to include certain acts that in view of the audience did not seem necessary or even useful for the goal, but nevertheless, from the point of view of actors, may be considered necessary and useful and be regarded by them at least as political crimes rather than as ordinary crimes."[10]

The famous English jurist. Sir James Fitz Stephens, gave on his side the famous definition of criminal offense of a political nature:

"Crimes that have been an incident or an element of political unrest."[11]

And the illustrious philosopher John Stuart Mill considered all political crime punishable act committed in, or preparing the civil war, insurrection or a political commotion. This definition is found, it is true, too wide, especially by Sir Francis Piggott in the important work he has published in Hong Kong and London: The Law Relating to Fugitive Offenders. Considering the political refugees as belligerents, this author believes that we must demand that they have observed at least the laws of war.[12] But in this regard it is interesting to recall the decision of Justice Hawkins, in the famous case Castioni This Switzerland, Ticino, whose extradition was requested by the federal government for political murder. The eminent English lecture said:

"Everyone knows that many acts of political character are performed without reason, against all reason, but do not look too closely and one cannot weigh in golden scales the acts of the ardent natures, overheated excitement in politics. The boiling blood in the hotheads makes them commit acts contrary to good reason that, once the blood cools, are considered by the authors themselves as deeply regrettable. "

About interprétatlon of the new Aliens Act (the "Alien Act"), Herbert Gladstone, then Under Secretary of State for the Interior, recently declared as strongly as Lord Palmerston, the character inviolable. Inalienable right of asylum is one of the purest glories of England. "Any violation of the right of asylum, he said in the House of Commons, would raise the indignation of the entire country ...

[10] Journal of International Law, private and public, by Mr. Clunet, 1885, pg 1018
[11] Sir Fitzjames Stephens, “Story of English Crimes” vol. II p 71
[12] “The law relating Fugitive Offenders” by Sir Francis Pigott M. A/. L. L. M. (Hongkong, Kelly and Walsh, London: Butterworth).

All foreigners arriving in a country shaken by political turmoil should have BENEFIT OF DOUBT, on the question of whether they are political refugees."
A series of famous precedents have confirmed the case law of England. We have already cited the famous case Castioni. The fugitive Switzerland had requested the extradition had killed a man named Rossi during a demonstration against the government of Ticino.

It was clear that Rossi's death was not necessary for the success of the movement, but the English judges, considered the point of view of Castioni when he shot Rossi, and Judge Hawkins in the said ruling that we have quoted above, refused extradition.

Not much quoted since 1870, we have a case where extradition of a political refugee was asked of Britain. It was in 1889, a German named Myers, claimed by his government and was accused of an alleged breach of trust. His lawyer objected that the offense could be prosecuted only by those who had employed him and his boss had said under oath not to make any complaint against him. He showed that in fact that Myers was wanted under the law against the Socialists. He was detained for five weeks. At the end. in response to a vigorous protest from the English magistrate, the German authorities withdrew the request.

Extremely interesting and a precedent which cannot be overstated is the Radowitz Russian refugee whose extradition was demanded in 1908 of the United States by Russia, which was denied by the federal government in recitals entirely made explicit . The refugee was accused of having participated with other members of the Social Democratic Party Lethon. the murder of several secret police.

The Secretary of State said the Social Democratic Party Lethon, to which belonged Radowitz. "Was not just a band of criminals who arrogated to himself a political nature, for the sole purpose of committing crimes with impunity of a private nature. Instead, the party of Social Democrats had among its members men of high intelligence highly regarded by those who sympathize with the Russian revolutionary movement. "This is the advice of "the party he added, that in Milan and Benen had pronounced the death sentence against the family Leshinsky."

Therefore "the character of the party to which belonged Rudowïtz was assumed a politically motivated rather than criminal acts and would give it a political rather than private chracter."
And after recalling the excesses committed in the suppression by the

government which demanded the extradition, in a district "where several revolutionary leaders were summarily executed and their houses burned, without the formality of a trial." Assistant Secretary of State concluded that "the strength met strength and Leshinskyat the time to be put to death, were informed they were executed as spies." The question of whether the revolutionary council had sufficient evidence to justify the execution of these persons could affect its moral responsibility, but not its legal responsibility ….

"*If the execution of these persons, in accordance with the decision taken by the Revolutionary Council was a crime of common law and political one, it would extremely difficult to find an* ***act involving force*** *and executed by revolutionaries that was a political crime*.[13]"

All of these precedents, the settled case law of England, including the doctrine of all the most qualified authors show that the case of Savarkar, if your high court was required to consider the character, certainly would return a definition of political crime as given in all similar cases. It would be absolutely in vain to argue with the Law Journal of October 15, 1910, which applying the definitions of Sir Fitz James Stephens, claims that the crime of Savarkar is not political "because there was no political turmoil (No political disturbance) in India, at the time that it incited the assassination. Lord Coleridge met in advance to this objection by stating to the Court of King's Bench, in London, on June 4, that the legal status of the Indian Criminal Law Amendment Act indicated "a state of something that was not normal "India.

It would be wrong to refer it the only definition of Sir James Fitz Stephens deemed too narrow by most authors and they interpret the rest, one way abusive. We will not stop even to the objection that "the anarchy is not a political crime," and based in particular on the case of accomplice Ravachol, Francois, having bet the explosion in the restaurant Very, extradition was granted by the English magistrate.[14] Savarkar claim to represent as an "anarchist." There is absolutely no connection between ment doctrines and goals of the Hindu Nationalist Party, which seeks to create in Hindustan a free and independent state while under the general rules of modern law and the purposes

[13] Edwin Maxey in the Greenbag, Apri 1909 pg 147 cited in the Journal of International Law, private, of Clunet 1909 page 1015.
[14] Journal of International Law, private, 1895, pg 179

continued by opponents of any social and political organization of any kind. The clearest evidence of the political nature of the acts alleged against Savarkar lies in the specific policy of the tribunal constituted for Bombav to judge and composed of Chief Justice Scott, Judge Chandavarkar and Heaton. This court, following the definition we find in The Times on Dec. 26. 'Specially for the trial is faster political crimes.[15] "

December 24, 1910, a first decision condemning, among other things, Vinayak Damodar Savarkar to deportation for life, confiscation of his property for having "conspired to bring the war and for this purpose provided weapons and ammunition" was made.

On January 30, 1911, after a new trial which lasted six days. Savarkar was again sentenced to transportation for life, first "crime of conspiracy and inter alia the murder of government officials, for the accomplishment of which he sent 20 pistols Brownings in Bombay, among whom was one with which Kanheri killed M . Jackson, secondly conspiracy to overthrow the government by force criminal, which is why guns were sent to Bombay. Each charge has established the complicity of murder. "

The charges of which he was the object, the character of the prosecution, the composition 'of the court, the nature of the sentences that struck Savarkar, all established that there is crime in its sound. blame, no ordinary character. It is a "political criminal" and nothing else.

As for violent means, if their employment was sufficient to qualify as murderers or those who advocate anarchist, England never would have n'au ¬ boast of having been in the last century the "mother of exiles" the haven of Mazzini, Kossuth and, of Karl Marx, of Garibaldi, refugees from the Commune or the Russian Revolution, as well as French monarchists and dethroned sovereigns after the revolutions of 1830, 1848 and 1870.

[15] Here is exactly what was said by The Grand Journal in a telegram to its correspondent in Bombay: " Although the prisoners were brought before the special *tribunal constituted for the more speedy trial of political crimes*, the proceeding altogether have lasted for a year".