

THE CASE OF VINAYAK DAMODAR SAVARKAR

SAVARKAR ARBITRATION.

CASE

PRESENTED TO THE TRIBUNAL CONSTITUTED UNDER AN AGREEMENT SIGNED IN LONDON ON THE 25TH DAY OF OCTOBER, 1910, BETWEEN THE GOVERNMENT OF HIS BRITANNIC MAJESTY AND THE GOVERNMENT OF THE FRENCH REPUBLIC.

CASE

The Statement

PRESENTED ON BEHALF OF THE

GOVERNMENT OF HIS BRITANNIC MAJESTY

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THE SUBMISSION.

App. Nos. 22, 23, p. 52. BY an exchange of notes dated the 4th and 5th October, 1910, Great Britain and France agreed to submit to arbitration on the one hand the questions of fact and law raised by the arrest and restoration to the mail steamer "Morea" at Marseilles on the 8th day of July, 1910, of the British Indian subject Vinayak Damodar Savarkar, who had escaped from that vessel, on board of which he was in custody, and on the other hand the demand of the Government of the Republic of France with a view to the restitution to them of Savarkar.

On the 25th October, 1910, an Agreement was concluded between His Majesty's Government and the Government of the French Republic as to the constitution of the Arbitral Tribunal and as to questions to be submitted to and the procedure to be followed by the Tribunal. The first article of the Agreement provides that the Arbitral Tribunal shall undertake to decide the following question :—

App. No. 1, p. 10. Should Vinayak Damodar Savarkar, in conformity with the rules of international law, be restored or not be restored by His Britannic Majesty's Government to the Government of the French Republic?

App. No. 1, p. 10. Article 2 of the Agreement provides that the Arbitral Tribunal shall be constituted of five

arbitrators chosen from the members of the Permanent Court at The Hague; that Great Britain and France shall settle the composition of the Tribunal, and that each of them may choose as arbitrator one of their nationals. The present Case, together with the documents, official correspondence, and other evidence on which the Government of Great Britain relies, contained in the Appendix, is delivered pursuant to Article 3 of the Agreement.

App., No. 1, p. 19.

The full text of this Agreement is set out in the Appendix to this Case. On the 25th October, 1910, His Majesty's Government and the Government of the French Republic came to an understanding that any questions which might arise in the course of this arbitration which were not covered by the terms of the above Agreement should be determined by the provisions of the International Convention for the Pacific Settlement of International Disputes signed at The Hague on the 18th October, 1907, and that each party should bear its own expenses and an equal share of the expenses of the Tribunal.

App., No. 1, pp. 19, 20.

App., Nos. 2, 3, pp. 20, 21.

The questions to be determined by the Tribunal in this arbitration arise out of the arrest in England of one Vinayak Damodar Savarkar on accusation that he had committed crimes cognisable by the Courts of British India, his conveyance from England to India, and his escape at Marseilles from the mail-ship in which he was being so conveyed, and out of the circumstances under which he was recaptured and restored to British custody on the "Morea."

The questions are (1) of fact, and (2) of international law. Before the question of law can be considered by the Tribunal it is necessary to set forth in some detail the facts of the case, to enable the Tribunal to interpret the facts, and apply the appropriate principles of international law.

THE FACTS.

On the 21st December, 1909, Mr. A. M. T. Jackson (Collector of Nasik, in the Presidency of Bombay, British India) was killed by a pistol shot fired at him while he was attending a theatrical performance in Nasik.

After a legal investigation conducted by the competent judicial authorities in India, with a view to establish responsibility for Mr. Jackson's death, a warrant was on the 8th February, 1910, App., No. 4, p. 21.

issued for the arrest of one Vinayak Damodar Savarkar on a series of charges, including waging war against the King, collecting of arms, and abetment of murder of Mr. Jackson. This person, hereinafter referred to as Savarkar, is a British subject born in India. On the 13th March, 1910, he was arrested in London on a provisional warrant issued by Sir Albert de Rutzen, Chief Magistrate of the Police Courts of London.

App. No. 4, p. 21.

On the 11th April, 1910, a further warrant was issued by Sir Albert de Rutzen, after production of the Indian warrant above referred to. Both the provisional and the second warrants were issued in accordance with the provisions of "The Fugitive Offenders Act, 1881," which regulates the arrest in the United Kingdom of offenders against the Laws of British India. On the arrest of Savarkar a magisterial inquiry was conducted by Sir Albert de Rutzen, in accordance with the law above quoted, to ascertain whether Savarkar ought to be returned to India for trial on the charges of offences against the Indian Penal Code referred to in the Indian warrant, and on the 12th May, 1910, after considering written evidence transmitted from India in accordance with the Act of 1881, and after hearing oral evidence, the learned Magistrate made an order committing Savarkar to prison with a view to his return to India for trial there on the charges above named.

Savarkar availed himself of all legal means open to him under the municipal law of England to contest the legality and justice of this order, by appeal to the High Court of Justice and the Court of Appeal. Both these Courts, after full argument, decided that the Magistrate's order for the return of Savarkar to India for trial was regular and lawful. Should the Tribunal deem it necessary to refer to the opinions of the Judges a full report is available.

26 Times Law Reports, vol. 26, pp. 512, 561, 74 J.P. Rep., p. 417.

App. No. 5, p. 21.

On the 29th June, 1910, after the completion of these judicial proceedings, Mr. Winston Churchill (the Secretary of State for Home Affairs), in exercise of the powers vested in him by the Act of 1881, issued his warrant ordering the return of Savarkar to India, and appointing Charles John Power, Deputy Superintendent of the Bombay Provincial Police, to take Savarkar into custody and convey him to British India.

Arrangements were made to take Savarkar to India by the steam-ship "Morea," belonging to the Peninsular and Oriental Steam-ship Company, which receives a subsidy from His Majesty

anglaise, je n'ai pas saisi exactement quels cris poussaient ces personnes, mais il ne pouvait y avoir aucun doute pour moi : ces personnes étaient à la poursuite de l'homme qui se sauvait ; leurs gestes signifiaient : " Arrêtez-le ! "

" D'autre part, les nombreuses personnes se trouvant sur le quai, dans les parages du navire, ouvriers des quais, pisteurs, marchands, &c., dont l'attention put être attirée par les cris et les gestes des personnes qui descendaient précipitamment du navire, se mirent à crier : " Arrêtez-le. Arrêtez-le ! "

" Je m'élançais aussitôt à la poursuite du fugitif et le rejoignis, après un parcours de 500 mètres environ, à l'extrémité du bassin du radoub ; lorsque je mis la main sur lui, il me posa à deux reprises la question suivante : " Vous policeman français ? " Je répondis, Oui. Je le pris par un bras pour le ramener vers le navire et il me suivit docilement.

" J'avais fait environ 10 mètres, lorsque trois des personnes qui étaient descendues précipitamment du navire arrivèrent en courant, saisirent l'individu par le bras droit, alors que je le tenais par le bras gauche, et nous arrivâmes ainsi à bord du navire sans échanger aucune parole. "

The three persons referred to by M. Pesquié were Slavin, one of the ship's stewards, and the two Indian constables. Slavin, who went on in the " Morea " to Australia, left the ship at Sydney, and is not at present available, but his account of the matter as given to Inspector Parker is given at p. 25 of the Appendix.

APP. No. 8, p. 25.

The British witnesses estimate the distance traversed before the recapture of Savarkar at about 300 yards. But, whatever the distance of the pursuit, it was the French officer who first laid hands on Savarkar, and that officer never relaxed his hold of Savarkar, and took him back to the ship. The ship's steward and constables came up while the French officer was taking Savarkar back to the ship, and they did no more than assist the French officer.

Brigadier Pesquié, after taking Savarkar on board the ship in the manner above described, seems for a time, at least, to have stood guard over him there, with the Indian constables and other persons on the ship.

The " Morea " remained in the port of Marseilles without further incident until the 9th July, when, having taken on mails and passengers, she proceeded on her voyage. On the 17th July the ship reached the British Indian port of Aden, and there Savarkar, with his custodians, was transferred to the P. and O. steamer " Salsette," which on that day left port for Bombay, which port she reached on the 22nd July, and Savarkar then passed into the hands of the judicial authorities in India.

APP. No. 8, p. 25.

It was not until the 18th July, after the "Salsette" had left Aden, that any communication was received by His Majesty's Government from the Government of the French Republic with respect to the incident at Marseilles.

App., No. 12, p. 27. On that day M. Cambon, the French Ambassador in London, communicated to Sir Edward Grey, the Secretary of State for Foreign Affairs, a note intimating that the French Minister of Foreign Affairs had only just been informed of the incident, and suggested that Savarkar, having acquired a right of asylum in France, had by mistake been handed over to British authority on the "Morea."

This note was followed on the 23rd July by a further communication from M. Cambon to Sir E. Grey. A correspondence ensued, in which the views of His Majesty's Government and of the Government of the French Republic as to the facts of the case and the questions of international and municipal law involved were discussed (which culminated in the present submission to arbitration). This correspondence is printed in the

App., Nos. 12-21, pp. 27-32. Appendix, pp. 27-32.

THE MATTERS IN CONTROVERSY.

The differences between His Majesty's Government and the Government of the French Republic on which the Tribunal has to pronounce do not turn so much upon any controversy with reference to the facts attending the escape of Savarkar as on the juridical interpretation of the uncontroverted facts, and the principles ("doctrines juridiques") to be applied.

In a certain sense the Government of the Republic are in the position of plaintiffs and His Majesty's Government of defendants in this arbitration.

It is therefore desirable at the outset to consider what demands have been formulated by the Government of the French Republic. These demands have somewhat varied in form, and to ascertain their substance it will be well to state the different forms in which they have been presented.

App., No. 12, p. 27. In his preliminary note of the 18th July M. Cambon (the French Ambassador in London) suggests that the Hindoo Vinayak Damodar Savarkar—

"possédait le droit d'asile sur le territoire français lorsqu'il a été livré par erreur aux autorités anglaises de la 'Morea.'"

Government for the carriage of His Majesty's mails from the United Kingdom to India and the East.

The "Morea," with Savarkar on board, in custody of Mr. Power, left London on the 1st July, for Marseilles, where she was to call to take in mails and passengers. There were also on the ship Inspector Parker, of the London Criminal Investigation Department, who was travelling to India as a witness at the proposed trial of Savarkar, and two Indian constables under the orders of Mr. Power.

On the 29th June Sir E. Henry, Chief Commissioner of Police of London, wrote to M. Hennion, Chief of the French Police de Sûreté, informing him that Savarkar was being sent to India by the "Morea," and asking M. Hennion to take such steps as he might think necessary to ensure the safety of the prisoner while in port at Marseilles, in view of the possibility of interference with the escort of Savarkar by Indian extremists. To this letter M. Hennion replied under date the 9th July, stating that he had given the necessary instructions "pour éviter tout incident à l'occasion du passage à Marseille du nommé Vinayak Damodar Savarkar embarqué à bord du vapeur 'Morea.'"

Before writing this reply, M. Hennion appears to have communicated (either directly or through the appropriate Department of State) with the Préfet des Bouches-du-Rhône, and to have sent him Sir E. Henry's letter.

On the 7th July about noon the "Morea" arrived at Marseilles with Savarkar on board. At 12:15 M. Leblais, the Commissaire Spécial of the port, came on board the ship and was introduced to Inspector Parker in the purser's cabin in the presence of the purser and an assistant to the Marseilles agent of the P. and O. Company. The Company's agent, finding that Mr. Parker spoke French, went away. Inspector Parker then took the Commissaire to the cabin in which were Mr. Power and Savarkar, and introduced him to Mr. Power and pointed Savarkar out to him. On the way to the cabin the Commissaire showed to Inspector Parker a letter relating to assistance to be given by the French police to the officers in charge of Savarkar. After the introduction to Mr. Power, the Commissaire said: "If you will come ashore, I will introduce you to the officer of gendarmerie."

Mr. Parker then went ashore with the

App., No. 6, p. 22.

App., No. 7, p. 22.

M. Cambon's note,
July 18, 1910, p.
App., No. 12, p. 27.

In his note of the 23rd July, after stating App., No. 13, p. 28. (which is agreed) that no demand has been made for the extradition of Savarkar, he said that it was ascertained—

"qu'il n'existait aucun mandat judiciaire autorisant l'arrestation de cet individu sur le territoire français, que Damodar Savarkar a réussi à atteindre le territoire français, et qu'il jouissait, en conséquence, du droit de séjourner et de circuler librement sur ce territoire tant qu'aucune mesure judiciaire ou aucun arrêté d'expulsion n'aurait été pris à son égard; qu'enfin son arrestation et sa remise aux autorités du paquebot anglais par un agent subalterne sont irrégulières, *aussi bien au point de vue du droit français qu'au celui du droit des gens.*"

In his note of the 2nd August, M. Daeschner, the French Chargé d'Affaires in London, suggests that, as a result of inquiries made by the French authorities, it appeared that—

"les agents anglais ont pris une part active à l'arrestation de Savarkar sur le territoire français, alors qu'ils connaissaient parfaitement l'identité de ce prévenu et l'inculpation dont il était l'objet." App., No. 14, p. 29.

and he goes on to say that—

"cette intervention directe d'agents d'un Gouvernement étranger sur le sol français constitue incontestablement une violation de territoire et une atteinte grave à la souveraineté du Gouvernement de la République."

And in his communication of the 21st September, 1910, M. Daeschner says:—

"Dans le cas actuel c'est un principe du droit des gens qui est en jeu, principe que tous les Gouvernements ont un intérêt commun et égal à voir respecter, car il s'agit de la violation de la souveraineté d'un Etat par les agents d'un autre Etat." App., No. 13, p. 30.

From these statements it would appear that France advances three propositions:—

1. That Savarkar on reaching French soil had acquired a "droit d'asile."
2. That British officers violated the sovereignty of France by taking an active part in the arrest of Savarkar after he had reached French soil.
3. That he was handed over to the British authorities by a subordinate official in error, that the act of this official was irregular from the point of view both of French municipal law and of international law, and that for this reason he ought to have been at once handed back to the custody of the French authorities.

Commissaire and found four or five gendarmes in uniform. The Commissaire, addressing the officer in charge, introduced Mr. Parker to him as an English police officer, and then had a conversation with the French officer, showing him a paper of the same appearance as the letter previously shown to Mr. Parker. Mr. Parker then shook hands with the officer in charge of the French police, and the other officers had a good look at him to fix his identity. The Commissaire then left without revisiting the ship.

Early on the 8th July, while the "Morea" was still in the port of Marseilles, occurred the incident which has directly led to the arbitration.

There is usually some difference in details between the accounts of eyewitnesses to a sudden occurrence—a difference arising from the psychological diversity of their powers of observation and expression. But very little, if any, divergence on points of substance will be found between the statements of the French and British witnesses.

App., No. 8, p. 22. About 6.30 A.M. Savarkar asked to be taken to the w.c. He was made over to the charge of the two Indian constables with directions to keep a sharp look-out. Savarkar, after entering the w.c., which was on the lower deck, quietly shot the bolt and made for the porthole ("hublot"), squeezed himself through half naked, leapt into the water, swam ashore, and climbed up on to the quay.

App., Nos. 10, 11, pp. 26, 27. The Indian constables saw Savarkar getting out of the porthole but could not stop him, as the w.c. door was bolted. They at once shouted to call the attention of the French police detached to watch the ship, and ran up on deck and to the gangway.

The French police, as already stated, were on guard on the quay under the instruction of the Commissaire Spécial, and what then occurred is described in detail by Brigadier Pesquisé, who was on duty on the quay. The following is his statement as furnished to His Majesty's Government by M. Daeschner, the French chargé d'affaires in London :—

App., No. 14, p. 28. "Le vendredi, 8 juillet courant, j'étais de service au paquebot "Morea," de la Compagnie Peninsular, lorsque, vers 7 heures du matin, je vis un homme presque nu sortir par un hublot de ce vapeur, se jeter à la mer et gagner le quai à la nage. Au même instant, des personnes du bord se sont précipitées, en criant et en gesticulant, sur la passerelle conduisant à terre pour se mettre à la poursuite de cet homme. Ne connaissant pas la langue

1. *Droit d'Asile.*

Whatever may have been the theories and doctrines of earlier times, it seems now to be a clearly settled principle of modern international law that no foreigner can be said to have a "droit d'asile" in any country in which he has sought refuge. It is an essential element in the sovereignty of the State of refuge that the refugee should be returned if at all to the State whence he fled, by the act of the authorities of the State of refuge. But the question of his surrender depends on the will of the State of refuge, and not on any right vested in the refugee. Many authorities might be cited for this proposition, but it is conceived that the following are sufficient :—

"Wenn ein Staat einen ausländischen Verbrecher nicht ausliefert, so thut er dies daher nicht etwa deshalb weil jener ein Recht hätte von ihm Schutz gegen Verfolgung zu fordern, sondern weil er selbst es für eine Forderung der Gerechtigkeit, der Billigkeit oder der Politik erachtet, in diesen Fällen Asyl zu gewähren. Das Asylrecht ist also nie und nirgends ein subjectives Recht des Flüchtling, welches demselben, abgesehen von positiven Satzungen des Zufluchtstaates, diesen gegenüber zustünde, sondern es ist eine Immunität, welche der Zufluchtstaat dem Flüchtlinge gewährt, welche er ihm aber auch versagen könnte, und so stellen denn heute, nachdem auch Grossbritannien und selbst die Vereinigten Staaten von ihrer früheren, entgegengesetzten Auffassung abgegangen, alle civilisirten Staaten dem Asylrechte eine Auslieferungspflicht gegenüber, und beschränken dasselbe auf die von dieser Pflicht nicht umfassten Fälle. Kein Mensch hat ein Recht, sich einem Staate, dem er nicht durch die natürliche Thatsache seiner Abstammung oder seiner Geburt angehört, aufzudrängen. Jeder Staat mit dem er nicht durch eine dieser Thatsachen verbunden ist, wenn er ihm nicht selbst sein Bürgerrecht verliehen, hat die Befugnis ihm den Aufenthalt auf seinem Gebiete zu verwehren und ihn gewaltsam von demselben zu entfernen."—(Lammasch, "Auslieferungspflicht und Asylrecht" (Leipzig, 1887), pp. 40-41.)

"Ce qu'on nomme le droit d'asile n'est pas un droit de l'étranger de trouver asile dans un pays, mais bien le droit qui appartient à tout État en vertu de son indépendance même de donner asile à qui bon lui semble, d'accueillir, s'il lui faut de le faire, l'étranger, le fugitif, le proscrit. L'État a le droit d'asile et n'a en règle générale aucune obligation de fournir asile."—(Bivier, "Droit International" (Paris, 1896), vol. i, p. 314. The same author at p. 352 describes as "une hérésie anti-juridique" the conception that rights

of asylum is nothing but the competence mentioned above of every State and inferred from its territorial supremacy to allow a persecuted foreigner to enter and to remain in its territory under its protection and to grant thereby an asylum to him."—(L. Oppenheim, "International Law" (London, 1905), vol. i, pp. 371, 372.)

The doctrine above stated by jurists is recognised also by British Courts of the highest authority :—

"One of the rights possessed by the supreme power in every State is the right to refuse to permit an alien to enter that State, to annex what conditions it pleases to the permission to enter it, and to expel or deport from the State at pleasure even a friendly alien, especially if it considers his presence in the State opposed to its peace, order, and good government, or to its social and material interests. . . . The power of expulsion is in truth but the complement of the power of exclusion. If entry be prohibited it would seem to follow that the Government which has the power to exclude should have the power to expel the alien who enters in opposition to its laws."—(Judicial Committee of the Privy Council in *Attorney-General for Canada v. Cain and Gillula*, Law Reports (1906) Appeal Cases, 542, 546, 547.)

This case related to the expulsion and deportation from Canada of two citizens of the United States. The Supreme Court of the United States has expressed similar opinions on the Chinese exclusion cases (*sc.*, *Chae Chan Ping v. United States*, 130 United States Supreme Court Reports, 581; *Fong Yue Ting v. United States*, 149 United States Supreme Court Reports, 698). In 1891, the Judicial Committee of the British Privy Council had to deal with an appeal relating to a claim by Chinese to enter Australia. A Chinaman sued the collector of customs at Melbourne for illegally preventing his entry into Victoria. The Privy Council said :—

"He" (the Chinaman) "can only do so" (maintain the action) "if he can establish that an alien has a legal right maintainable by action to enter British territory. No authority exists for the proposition that an alien has any such right. Circumstances may occur in which the refusal to permit an alien to land might be such an interference with international comity as would properly give rise to diplomatic remonstrance from the country of which he was a native, but it is quite another thing to assert that an alien excluded from any part of His Majesty's dominions by the executive there can maintain an action in a British Court. . . ."—(*Muegrove v. Chua Teong Toy*, L.R. (1891) Appeal Cases, 272, 282.)

of asylum are possessed by individuals independently of State rights.)

"As superstition declined and private vengeance was displaced by the regulated action of judicial tribunals, these places of refuge ceased to exist; but all the ideas with which the practice of asylum was identified did not perish with them. From having been so long accorded, hospitality and protection had come to be regarded as the fugitive's privilege, and in the end each separate state became a refuge for offenders against the laws of other nations. But the term 'right of asylum,' though still used in this relation, gradually lost its ancient fitness. As the administration of justice improved, and the distrust of foreigners abated through familiarity of intercourse and the perception of common social interests, nations came to understand their rights and duties better, and the notion that protection was a right belonging to the fugitive disappeared. In its place was established the right of the state either to extradite or to expel any offender who comes within its jurisdiction." In this relation the so-called right of asylum is simply the right of the government either to grant or to withhold the privilege of residence within its territories. But this right is to be exercised by the government in the light of its own interests, and of its obligations as a representative of social order. The right, therefore, is coupled with the duty, amply acknowledged by the multiplication of extradition treaties, to abstain from asserting the sovereign power for the purpose of shielding individuals charged with crime from trial by the competent judicial authorities. The right of sovereignty is concerned in determining the conditions and limitations under which the fugitive is to be delivered up."—(J. B. Moore, "Digest of International Law" (Washington, 1906), vol. I, pp. 756, 757.)

"The fact that every State exercises territorial supremacy over all persons in such territory, whether they are its subjects or foreigners, excludes the prosecution of foreigners thereon by foreign States. Thus a foreign State is provisionally at least an asylum for every individual who, being prosecuted at home, crosses its frontier. In the absence of extradition treaties stipulating the contrary, no State is by international law obliged to refuse admittance into its territory to such a fugitive, or, in case he has been admitted, to expel him or deliver him up to the prosecuting State. On the contrary, States have always upheld their competence to grant asylum if they choose to do so. Now the so-called right of asylum is certainly not a right of the foreigner to demand that the State into whose territory he has entered, with the intention of escaping prosecution from some other State, should grant protection and asylum. For such State need not grant them. The so-called right

* * This right has been affirmed in the United States by the highest judicial authority. *Ker v. Illinois*, 119 U.S., 436; *in re Angelo de Giacomo*, 12 Blatchford, 391."

2.—The alleged Violation of French Territory.

The second contention of the Government of the Republic is that British officers violated the sovereignty of France by taking active steps to recapture Savarkar after he had reached French soil.

It has not thus far been suggested (and His Majesty's Government submit that it is impossible to suggest) that the detention of Savarkar on board the "Morea" while she lay in the port of Marseilles was illegal under the law of the flag, or constituted any violation of the sovereignty of France over her territorial waters. The only question therefore is whether, after the escape of Savarkar from the ship in the manner already detailed (*ante*, pp. 5, 6, and 7), the sovereignty of France was violated by any act done by a British official on French soil.

Every sovereign State possesses the right to refuse hospitality to an alien, or to prescribe, according to its own uncontrolled discretion, the terms on which any alien shall be allowed to enter its territory. This right is not subject to the forms or principles of extradition, and may be exercised by any administrative agent whom any State thinks fit to employ, whether diplomatic, municipal or police.

The correspondence between Sir Edward Henry and M. Hennion, and the action taken by M. Hennion and the Préfet des Bouches-du-Rhône (stated in detail *ante*, p. 4) constitute an arrangement between competent authorities of Great Britain and France that the detention of Savarkar on the "Morea" should be recognised as legal, and that steps would be taken by France to prevent any incident occurring at Marseilles while Savarkar was in transit between England and India. It is beyond doubt that it was within the competence of Great Britain and France as sovereign States to enter into this arrangement, and it appears to be immaterial, from an international point of view, whether the arrangement was affected by diplomatic communications or by communications between those Departments of State of each country which are specially concerned with police and internal order and administration. And the effect of such an arrangement was that France would deny to Savarkar any right to avail himself during his transit of opportunities to take refuge on French soil.

Particular provisions of municipal law, whether in Great Britain* or France,† may from time to time grant or deny to aliens who have entered or seek to enter the territories of either State special rights, or rights in common with the citizens of the State as to residence, resort to the tribunals, or the like. But these rights depend on municipal law^o ("droit interne"), and do not affect the principle of international law above stated, that it is for the territorial Government if it so wills to grant asylum, and not for the fugitive to claim it as of right. The State in which the fugitive has taken refuge may freely exercise sovereignty by expelling or surrendering him, even if not under any Treaty obligation to do so (see L. Renault, "Annuaire de l'Institut du Droit International," vol. v (1881-2), pp. 74, 76, 99).

The power to exclude or expel aliens has been so rarely used until recent times in His Majesty's dominions that an impression has arisen, created to some extent by the dicta of statesmen and lawyers, that this power does not exist in His Majesty's dominions. Those statements in truth relate not to the domain of international law, but to constitutional controversies, viz., whether the executive Government, in the absence of legislative provision, could exercise the prerogative of the Crown, and do not constitute a denial of the principle of international law that it is an essential prerogative of a Sovereign State to determine who shall be allowed to enter its dominions‡: and as to the existence of this principle of international law Great Britain is in accord with other civilised States.

On these considerations it is submitted to the Tribunal that the present controversy cannot be determined by reference to any claim by Savarkar as an individual to enjoy the *droit d'asile* in France, based on the incident of his escape to French territory; and that any contention on the part of the Government of the French Republic in favour of this proposition is not founded on any principle of international law.

* *Ex p.*, "The Aliens Act, 1905" (5 Edw. VII, c. 13), in the United Kingdom.

† Law of the 23rd December, 1849, Article 7, in France. See Clunet, t. 34, 1907, pp. 29-41.

‡ See *Robitson v. Brennan* (1906), 4 Australian Commonwealth Law Reports, 395, 401; Griffith, C.J. The case related to the deportation of Kanaka labourers imported from the South Sea Islands.

safe custody of Savarkar while the "Morea" was in the port of Marseilles.

On the narrative of the circumstances of the escape and arrest (stated *ante*, pp. 5, 6, and 7) and for the considerations above stated, His Majesty's Government submit that there has been no violation, direct or indirect, by any British official of the sovereignty of France with respect to or in connexion with the arrest of Savarkar.

3. *That Savarkar was surrendered to the British Authorities by a Subordinate Official in error and without due regard to French Municipal Law or to International Law, and ought for this reason to have been at once handed back to the custody of the French authorities.*

Thus far the French Government has not indicated with precision the nature of the error said to have been committed by Brigadier Pesquié.

It has not been suggested that he was in error as to the identity of Savarkar or as to the fact of his escape from the "Morea."

He was one of the police detailed in pursuance of the instructions of the Préfet des Bouches-du-Rhône or the Special Commissary of the port to keep special guard against interference with the detention of Savarkar on the "Morea." These instructions, so far as known to His Majesty's Government, are detailed *ante*, p. 4, and in the declarations of Inspector Parker, Deputy Superintendent Power, and the Indian constables.

From what he saw and the shouts which he heard, he drew the irresistible inference that an occasion had arisen on which it was his duty to act under the instructions given by the Commissaire spécial, and on his own initiative, without any request from any British official, or any communication except the shouts from the ship, he pursued and arrested Savarkar. All that passed between him and Savarkar appears to have been that Savarkar enquired whether the brigadier was a French policeman, and that the brigadier replied in the affirmative. The brigadier did not hold any communication with the steward of the ship or the Indian constables, for lack of a common language.

There seems, therefore, to be no error of fact, and no statement or communication made to him

It may be observed that, if the French authorities had intimated that they were unwilling to accede to the request made in the letter of Sir E. Henry, His Majesty's Government would have had an opportunity of making other arrangements, which would have obviated Savarkar's passage through French territorial waters.

The action taken by the Commissaire spécial of the port of Marseilles on the 7th July, under the direction of the Préfet des Bouches-du-Rhône, was taken in accordance with the arrangement above described, which recognised the legality of the custody of Savarkar while at Marseilles. During the stay of the ship at Marseilles, while the British police were concerned to guard Savarkar on the "Morea," the French officers, under the instructions of the Commissaire spécial, were concerned to see that he should not come ashore by his own act or by the acts of Indian extremists.

The capture of Savarkar on French soil on the 8th July was effected by one of these French officers, who saw his escape, and, in accordance with the arrangement, gave chase to and recaptured Savarkar. This action was taken by him and in accordance with the instructions given to him and other French police officers.

By the acts of the ship's steward and the Indian constables no affront to the sovereignty of France was either contemplated or offered. All that they did was to raise an outcry when Savarkar escaped, and to follow up the French officer in his pursuit. When they came up to Brigadier Pesquié, he had already caught Savarkar, and had him in his custody and was bringing him back to the ship, and the acts of the steward and the Indian constables (in holding the right arm of Savarkar, the left being already held by the brigadier) did not constitute any assertion of British authority in France. They did not usurp the right of arrest nor oppose nor supplant the French officer, but simply gave assistance which might have been lawfully rendered by any bystander to the officer who had Savarkar in custody. It is further to be observed that, even if what these men did went beyond the ordinary assistance to a competent officer of the law, it was given in perfect good faith and in reliance on the arrangement already referred to that the agents of the two States should co-operate to secure the

safe custody of Savarkar while the "Morea" was in the port of Marseilles.

On the narrative of the circumstances of the escape and arrest (stated *ante*, pp. 5, 6, and 7) and for the considerations above stated, His Majesty's Government submit that there has been no violation, direct or indirect, by any British official of the sovereignty of France with respect to or in connexion with the arrest of Savarkar.

3. *That Savarkar was surrendered to the British Authorities by a Subordinate Official in error and without due regard to French Municipal Law or to International Law, and ought for this reason to have been at once handed back to the custody of the French authorities.*

Thus far the French Government has not indicated with precision the nature of the error said to have been committed by Brigadier Pesquié.

It has not been suggested that he was in error as to the identity of Savarkar or as to the fact of his escape from the "Morea."

He was one of the police detailed in pursuance of the instructions of the Préfet des Bouches-du-Rhône or the Special Commissary of the port to keep special guard against interference with the detention of Savarkar on the "Morea." These instructions, so far as known to His Majesty's Government, are detailed *ante*, p. 4, and in the declarations of Inspector Parker, Deputy Superintendent Power, and the Indian constables.

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There seems, therefore, to be no error of fact, and no statement or communication made to him

by any British officer which could in any way have misled him as to any matter of fact.

It remains, therefore, to consider whether Brigadier Pesquié made any mistake as to his powers and duties under the municipal law of France or as to international law.

With respect to the municipal law of France as governing the duties and acts of Brigadier Pesquié, His Majesty's Government await the more definite information which the Government of the Republic will doubtless lay before the Tribunal, if they still place any reliance on that law to invalidate the acts of the brigadier. But His Majesty's Government would observe that failure by a French officer to comply with formalities or to discharge duties imposed by the municipal law of France would not afford any justification in international law for repudiating the act of the French officer, nor would it impose any obligation in international law on His Majesty's Government to restore to France a prisoner received by Great Britain in perfect good faith from a French functionary, apparently competent to hand him over, and acting in accordance with the understanding already set forth with respect to the particular prisoner.

In support of the views thus expressed by His Majesty's Government, reliance is placed on the action of France in a case which presents some resemblances to the present case—that of Lamirande in 1866.

Lamirande, a cashier at the Poitiers branch of the Bank of France, was arrested in Canada under an extradition warrant on a charge of forgery. After the prescribed enquiry he was committed to prison for surrender to France. He applied to a superior tribunal to quash the proceedings against him on the ground that the evidence did not establish that he had committed forgery, and that his surrender was not warranted by the Extradition Treaty then in force. While these proceedings were pending, having been adjourned by the judge, an application was made to the Governor-General of Canada to issue the executive warrant necessary to effectuate the surrender of Lamirande. The Governor-General, in complete ignorance that proceedings were pending before the superior tribunal, issued his warrant, and Lamirande was put aboard a French ship and taken to France for trial. In the view of the judge of the Canadian court who was seized of the case, and of the British Law Officers, the

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App. Nos. 8-11,
pp. 22-27.

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offence charged against Lamirande was not within the Treaty, and the surrender was made in error, and, so far as Canadian law was concerned, illegally.

The French court which tried Lamirande for forgery rejected as unfounded in law pleas put before it on behalf of Lamirande that the circumstances attending his surrender ousted the jurisdiction of the court to try him. (Daloz, "Jurisprudence générale," 1867, t. ii, p. 171; Clarke on Extradition, 4th edition, pp. 116, 219.)

His Majesty's Government submitted to the French Government that the extradition was not authorised by the Convention of the 13th February, 1843, which then regulated extradition between Great Britain and France, or the statute (6 & 7 Vict., c. 75), by which it received municipal effect, (1) because the demand was not made through diplomatic channels and (2) because the offence charged was not within the Treaty.

For these reasons they asked the French Government to remit Lamirande to Canada, that the question of his liability to extradition might be there legally decided. This, however, was asked for as a matter of comity, and not as a matter of international obligation.

The French Government were not prepared to accede to this request even as a matter of comity, considering (1) that the error (if any) by which Lamirande had been surrendered did not afford any ground for removing him from the control of the judicial authorities to which he had been submitted, and (2) that the omission to demand the extradition of Lamirande through a diplomatic agent, even if such course were invariably followed, could not after the fact be invoked to annul the extradition.

During the diplomatic discussion of the case Lamirande formally renounced the benefit of any decision which might be come to in favour of his return to Canada; but the principles above enunciated on behalf of the French Government are independent of the act of the accused, and establish a precedent recognised by France, on which His Majesty's Government rely.

His Majesty's Government would also refer to a case which occurred in 1901. A British officer named Keyes was killed in British Nigeria by French subjects, who escaped to French territory. The fugitives were handed over to the authorities of Nigeria by a French officer,

who seems not to have known or to have forgotten that as French citizens they were not liable to extradition, and could not lawfully be removed from French territory. His Majesty's Government restored these men to the French authorities with full knowledge that they could and would be tried by French law for their acts; but this restoration was granted as a matter of comity, and without any admission of obligation under international law.

For these considerations it is submitted that the error, if any, of the French officer in handing Savarkar over to the British authorities does not constitute any ground for demanding his restoration to France.

Conclusion.

His Majesty's Government submit to the Tribunal that, upon full consideration of the facts and contentions set forth in the Case, it is established that, in conformity with the principles of international law, His Majesty's Government are under no obligation to restore Savarkar to the Government of the French Republic.

These Counter-Cases may necessitate replies, which must be presented within a period of fifteen days after the delivery of the Counter-Cases.

The periods fixed by the present Agreement for the delivery of the Cases, Counter-Cases, and replies may be extended by mutual agreement between the High Contracting Parties.

ARTICLE 4.

The Tribunal shall meet at The Hague the 14th February, 1911.

Each Party shall be represented by an Agent, who shall serve as intermediary between it and the Tribunal.

The Arbitral Tribunal may, if it thinks necessary, call upon one or other of the Agents to furnish it with oral or written explanations, to which the Agent of the other Party shall have the right to reply.

It shall also have the right to order the attendance of witnesses.

ARTICLE 5.

The Parties may employ the French or English language. The members of the Tribunal may, at their own choice, make use of the French or English language. The decisions of the Tribunal shall be drawn up in the two languages.

ARTICLE 6.

The Award of the Tribunal shall be given as soon as possible, and, in any case, within thirty days following the date of its meeting at The Hague or that of the delivery of the written explanations which may have been furnished at its request. This period may, however, be prolonged at the request of the Tribunal if the two High Contracting Parties agree.

Done in duplicate at London, the 25th October, 1910.

(L.S.)
(L.S.)

E. GREY.
PAUL CAMBON.

No. 2.

Sir Edward Grey to M. Cambon.

Your Excellency,

Foreign Office, October 25, 1910.
WITH reference to the Agreement which we have concluded this day for the purpose of submitting to arbitration certain matters in connection with the arrest and restitution of Vinayak Damodar Savarkar at Marseilles in July last, I have the honour to place on record the understanding that any points which may arise in the course of this arbitration which are not covered by the terms of the Agreement above referred to shall be determined by the provisions of the International Convention for the Pacific Settlement of International Disputes, signed at The Hague on the 18th October, 1907.

It is further understood that each Party shall bear its own expenses and an equal share of the expenses of the Tribunal.

I have, &c.
E. GREY.

Ces Contre-Mémoires pourront donner lieu à des répliques, qui devront être présentées dans un délai de quinze jours après la remise des Contre-Mémoires.

Les délais fixés par le présent Arrangement pour la remise des Mémoires, Contre-Mémoires, et répliques pourront être étendus par une entente mutuelle des Hautes Parties contractantes.

ARTICLE 4.

Le Tribunal se réunira à La Haye le 14 février, 1911.

Chaque Partie sera représentée par un Agent, avec mission de servir d'intermédiaire entre elle et le Tribunal.

Le Tribunal arbitral pourra, s'il l'estime nécessaire, demander à l'un ou à l'autre des Agents de lui fournir des explications orales ou écrites, auxquelles l'Agent de la Partie adverse aura le droit de répondre.

Il aura aussi la faculté d'ordonner la comparution de témoins.

ARTICLE 5.

Les Parties peuvent faire usage de la langue française ou de la langue anglaise. Les membres du Tribunal pourront se servir, à leur choix, de la langue française ou de la langue anglaise. Les décisions du Tribunal seront rédigées dans les deux langues.

ARTICLE 6.

La décision du Tribunal devra être rendue dans le plus bref délai possible, et, dans tous les cas, dans les trente jours qui suivront la date de la réunion à La Haye ou celle de la remise des explications écrites qui lui auraient été fournies à sa requête. Ce délai pourrait, cependant, être prolongé à la demande du Tribunal si les deux Hautes Parties contractantes y consentaient.

Fait à Londres en double exemplaire, le 25 octobre, 1910.

SAVARKAR ARBITRATION.

C A S E

PRESENTED ON BEHALF OF THE

GOVERNMENT OF HIS BRITANNIC MAJESTY

TO THE

TRIBUNAL CONSTITUTED UNDER AN AGREEMENT SIGNED IN LONDON ON
THE 25TH DAY OF OCTOBER, 1910, BETWEEN THE GOVERNMENT OF HIS
BRITANNIC MAJESTY AND THE GOVERNMENT OF THE FRENCH REPUBLIC.

LONDON:
PRINTED AT THE FOREIGN OFFICE
BY HARRISON AND SONS,
PRINTERS IN ORDINARY TO HIS MAJESTY.

1910.

THE CASE OF VINAYAK DAMODAR SAVARKAR.

APPENDIX TO THE BRITISH CASE.

No. 1.

Agreement between the Government of His Britannic Majesty and the Government of the French Republic for submission of the Savarkar Case to an Arbitral Tribunal.—Signed in London, October 25, 1910.

THE Government of His Britannic Majesty and the Government of the French Republic having agreed, by an exchange of notes dated the 4th and 5th October, 1910, to submit to arbitration, on the one hand, the questions of fact and law raised by the arrest and restoration to the mail steamer "Morea," at Marseilles, on the 8th July, 1910, of the Indian, Vinayak Damodar Savarkar, who had escaped from that vessel, on board of which he was in custody; and on the other hand, the demand of the Government of the Republic with a view to the restitution to them of Savarkar;

The Undersigned, duly authorized to this effect, have arrived at the following Agreement:—

ARTICLE 1.

An Arbitral Tribunal, composed as hereinafter stated, shall undertake to decide the following question:

Should Vinayak Damodar Savarkar, in conformity with the rules of international law, be restored or not be restored by His Britannic Majesty's Government to the Government of the French Republic?

ARTICLE 2.

The Arbitral Tribunal shall be composed of five Arbitrators chosen from the members of the Permanent Court at The Hague. The two Contracting Parties shall settle the composition of the Tribunal. Each of them may choose as Arbitrator one of their nationals.

ARTICLE 3.

On the 6th December, 1910, each of the High Contracting Parties shall forward to the Bureau of the Permanent Court fifteen copies of its Case, with duly certified copies of all documents which it proposes to put in. The Bureau will undertake without delay to forward them to the Arbitrators and to each party: that is to say, two copies for each Arbitrator and three copies for each Party. Two copies will remain in the archives of the Bureau.

On the 17th January, 1911, the High Contracting Parties will deposit in the same manner their Counter-Cases, with documents in support of them.

[855]

LE Gouvernement de Sa Majesté britannique et le Gouvernement de la République française s'étant mis d'accord, par un échange de notes en date des 4 et 5 octobre, 1910, à l'effet de soumettre à l'arbitrage, d'une part, les questions de fait et de droit soulevées par l'arrestation et la réintégration, à bord du paquebot "Morea," le 8 juillet, 1910, à Marseilles, de l'Indien, Vinayak Damodar Savarkar, évadé de ce bâtiment, où il était détenu; d'autre part, la réclamation du Gouvernement de la République tendant à la restitution de Savarkar;

Les Soussignés, dûment autorisés à cet effet, sont convenus du Compromis suivant:—

ARTICLE 1^{er}.

Un Tribunal arbitral, composé comme il est dit ci-après, sera chargé de décider la question suivante:

Vinayak Damodar Savarkar doit-il, conformément aux règles du droit international être ou non restitué par le Gouvernement de Sa Majesté britannique au Gouvernement de la République française?

ARTICLE 2.

Le Tribunal arbitral sera composé de cinq Arbitres pris parmi les membres de la Cour permanente de La Haye. Les deux Parties contractantes se mettront d'accord sur la composition du Tribunal. Chacune d'elles pourra désigner comme Arbitre un de ses nationaux.

ARTICLE 3.

Le 6 décembre, 1910, chacune des Hautes Parties contractantes remettra au Bureau de la Cour permanente quinze exemplaires de son Mémoire, avec les copies certifiées conformes de toutes pièces et documents qu'elle compte invoquer dans la cause. Le Bureau en assurera sans retard la transmission aux Arbitres et aux Parties: savoir, de deux exemplaires pour chaque Arbitre, de trois exemplaires pour chaque Partie. Deux exemplaires resteront dans les archives du Bureau.

Le 17 janvier, 1911, les Hautes Parties contractantes déposeront dans la même forme leurs Contre-Mémoires, avec pièces à l'appui.

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These Counter-Cases may necessitate replies, which must be presented within a period of fifteen days after the delivery of the Counter-Cases.

The periods fixed by the present Agreement for the delivery of the Cases, Counter-Cases, and replies may be extended by mutual agreement between the High Contracting Parties.

ARTICLE 4.

The Tribunal shall meet at The Hague the 14th February, 1911.

Each Party shall be represented by an Agent, who shall serve as intermediary between it and the Tribunal.

The Arbitral Tribunal may, if it thinks necessary, call upon one or other of the Agents to furnish it with oral or written explanations, to which the Agent of the other Party shall have the right to reply.

It shall also have the right to order the attendance of witnesses.

ARTICLE 5.

The Parties may employ the French or English language. The members of the Tribunal may, at their own choice, make use of the French or English language. The decisions of the Tribunal shall be drawn up in the two languages.

ARTICLE 6.

The Award of the Tribunal shall be given as soon as possible, and, in any case, within thirty days following the date of its meeting at The Hague or that of the delivery of the written explanations which may have been furnished at its request. This period may, however, be prolonged at the request of the Tribunal if the two High Contracting Parties agree.

Done in duplicate at London, the 25th October, 1910.

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(L.S.)

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PAUL CAMBON.

Ces Contre-Mémoires pourront donner lieu à des répliques, qui devront être présentées dans un délai de quinze jours après la remise des Contre-Mémoires.

Les délais fixés par le présent Arrangement pour la remise des Mémoires, Contre-Mémoires, et répliques pourront être étendus par une entente mutuelle des Hautes Parties contractantes.

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Le Tribunal se réunira à La Haye le 14 février, 1911.

Chaque Partie sera représentée par un Agent, avec mission de servir d'intermédiaire entre elle et le Tribunal.

Le Tribunal arbitral pourra, s'il l'estime nécessaire, demander à l'un ou à l'autre des Agents de lui fournir des explications orales ou écrites, auxquelles l'Agent de la Partie adverse aura le droit de répondre.

Il aura aussi la faculté d'ordonner la comparution de témoins.

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Les Parties peuvent faire usage de la langue française ou de la langue anglaise. Les membres du Tribunal pourront se servir, à leur choix, de la langue française ou de la langue anglaise. Les décisions du Tribunal seront rédigées dans les deux langues.

ARTICLE 6.

La décision du Tribunal devra être rendue dans le plus bref délai possible, et, dans tous les cas, dans les trente jours qui suivront la date de la réunion à La Haye ou celle de la remise des explications écrites qui lui auraient été fournies à sa requête. Ce délai pourrait, cependant, être prolongé à la demande du Tribunal si les deux Hautes Parties contractantes y consentaient.

Fait à Londres en double exemplaire, le 25 octobre, 1910.

No. 2.

Sir Edward Grey to M. Cambon.

Your Excellency,

WITH reference to the Agreement which we have concluded this day for the purpose of submitting to arbitration certain matters in connection with the arrest and restitution of Vinnyak Damodar Sivarkar at Marseilles in July last, I have the honour to place on record the understanding that any points which may arise in the course of this arbitration which are not covered by the terms of the Agreement above referred to shall be determined by the provisions of the International Convention for the Pacific Settlement of International Disputes, signed at The Hague on the 18th October, 1907.

It is further understood that each Party shall bear its own expenses and an equal share of the expenses of the Tribunal.

I have, &c.

E. GREY.

M. Cambon to Sir Edward Grey.—(Received October 25.)

M. le Secrétaire d'Etat,

Ambassade de France, Londres, le 25 octobre, 1910.

J'AI l'honneur d'acuser réception à votre Excellence de la note de ce jour relative à l'Arrangement que nous avons signé aujourd'hui en vue de soumettre à l'arbitrage certaines questions concernant l'arrestation et la restitution de Vinayak Damodar Savarkar à Marseille le 8 juillet dernier. Je suis autorisé à constater avec votre Excellence l'entente d'après laquelle toutes les questions qui pourraient s'élever au cours de cet arbitrage et qui ne seraient pas prévues par le susdit Arrangement seront réglées conformément aux stipulations de la Convention pour le Règlement pacifique de Conflits internationaux, signée à La Haye le 18 octobre, 1907.

Il est également entendu que chaque Partie supportera ses propres frais et une part égale des dépenses du Tribunal.

Veuillez, &c.
PAUL CAMBON.

No. 4.

Warrant of Arrest.

To Charles John Power, Deputy Superintendent of Police,

WHEREAS Vinayak Damodar Savarkar, otherwise known as Taty, of Nasik, stands charged with the offences of—

1. Waging and abetting the waging of war against the King (Indian Penal Code, 121).
2. Conspiracy to wage war against the King (Indian Penal Code, 121 A).
3. Collecting arms with intent to wage war against the King (Indian Penal Code, 122).
4. Sedition (Indian Penal Code, 124 A).
5. Abetment of murder (Indian Penal Code, 302 and 109).*

You are hereby directed to arrest the said Vinayak Damodar Savarkar and to produce him before me. Herein fail not.

Dated this 8th day of February, 1910.

(L.S.)

A. MONTGOMERIE, a Magistrate of the First Class for Nasik District, and as such having authority to issue Warrants in the Bombay Presidency for the apprehension of persons accused of offences.

Sealed with my official seal this 28th day of February, 1910.

(L.S.)

J. H. DE BOULAY,

Secretary to the Government of Bombay in the Political Department.

I, the undersigned Sir Albert de Rutzen, Chief Magistrate of the Metropolitan Police Court in Bow Street, in the United Kingdom, being satisfied that the signature "A. Montgomerie" to the within warrant subscribed is of the handwriting of Alexander Montgomerie, a person having lawful authority to issue such warrant, do therefore hereby authorise the person to whom such warrant was originally directed, and all constables and peace officers of the United Kingdom, to execute the same in the United Kingdom by apprehending the said Vinayak Damodar Savarkar and bringing him before some Magistrate in the United Kingdom.

Given under my hand at Bow Street Police Court this 11th day of April, 1910.

A. DE RUTZEN.

(G.R.)

No. 5.

Warrant of the Secretary of State for Home Affairs for the return of Savarkar to India.

(189,349/7.)

WHEREAS a warrant has been issued in that part of His Majesty's dominions known as the Empire of India for the apprehension of Vinayak Damodar Savarkar on charges of—

1. Waging and abetting the waging of war against the King;
2. Conspiring to wage war against the King;
3. Collecting arms with intent to wage war against the King;
4. Sedition; and
5. Abetment of murder.*

And whereas the said Vinayak Damodar Savarkar having been apprehended and brought before a magistrate at Bow Street Police Court in accordance with the provisions of Part I of

* I.e., of the murder of Mr. A. M. T. Jackson at Nasik on the 31st December, 1900.

"The Fugitive Offenders Act, 1881," was on the 12th day of May, 1910, committed to His Majesty's Prison at Brixton to await his return to the said part of His Majesty's dominions:

Now I, the Right Honourable Winston Leonard Spencer Churchill, in virtue of the powers vested in me by the aforesaid Fugitive Offenders Act, do hereby order that the said Vinayak Damodar Savarkar be returned to the Empire of India.

And for this purpose I authorise you, Deputy Superintendent Charles John Power, Bombay Provincial Police, to take him into custody and convey him to the said part of His Majesty's dominions there and then to be dealt with in due course of law;

And for so doing this shall be your sufficient warrant.

WINSTON S. CHURCHILL,
[Secretary of State for Home Affairs].

Whitehall, June 29, 1910.

No. 6.

Sir E. Henry to M. Hennion.—(Communicated by Home Office.)

(Confidential.)

Dear Sir,

New Scotland Yard, London, June 29, 1910.

I HAVE the honour to inform you that the British Indian, Vinayak Damodar Savarkar, who was arrested in London, and is being sent to India to take his trial for abetment of murder, &c., will be on board the steam-ship "Mores," which calls at Marseilles on the 7th or 8th July.

Some of the Indian extremists now on the continent may proceed to Marseilles for the purpose of making a demonstration there or interfering with the escort.

I shall therefore be thankful if you will take such steps as you may consider necessary to ensure the safety of the prisoner while in that port.

I have, &c.

E. R. HENRY.

No. 7.

M. Hennion to Sir E. Henry.

Paris, le 9 juillet, 1910.

Cher Monsieur,

EN réponse à votre lettre du 29 juin dernier, j'ai l'honneur de vous faire connaître que j'ai donné les instructions nécessaires en vue d'éviter tout incident à l'occasion du passage à Marseille du nommé Vinayak Damodar Savarkar, embarqué à bord du vapeur "Mores."

Agrérez, &c.

Le Directeur de la Sûreté générale,
HENNION.

No. 8.

Declaration of Mr. Edward John Parker.

I, EDWARD JOHN PARKER, do hereby solemnly and sincerely declare as follows:—

1. I am a detective inspector, Criminal Investigation Department, New Scotland Yard, London.

2. Acting on the instructions of the Commissioner of the Metropolitan Police, I obtained a provisional warrant on the 22nd February, 1910, at the Bow Street Police Court, London, for the arrest of Vinayak Damodar Savarkar on charges of sedition and abetment of murder in India, and on the 16th March, 1910, I accompanied Chief Inspector McCarthy, of New Scotland Yard, to Victoria Station, London, where we arrested Savarkar on this warrant on his arrival by the continental boat train from Newhaven.

3. On the 14th March, 1910, Savarkar was brought before Sir Albert de Rutzen, Chief Magistrate of the metropolis, sitting at Bow Street Police Court aforesaid, and was remanded from time to time pending the arrival of the documents from India in support of the charges set out in the warrant granted in India on the 8th February, 1910.* On the arrival of these documents (including the Indian warrant of arrest), the Indian warrant was endorsed in the usual way by the Chief Magistrate on the 11th April, 1910.†

4. In due course Savarkar appeared before the Chief Magistrate, and after the charges set out in the warrant had been fully investigated, an order was made by the Chief Magistrate on the 12th May, 1910, for the surrender of Savarkar to the Indian Government as a fugitive offender, under "The Fugitive Offenders Act, 1881," upon all the charges set out in the warrant of the 8th February, 1910. I was present throughout the proceedings before the Chief Magistrate.

5. After the order for the surrender was made, the prisoner, through his counsel, availed himself of his rights under "The Fugitive Offenders Act, 1881," and took proceedings in the King's Bench Division of the High Court of Justice, and later in the Court of Appeal, to contest the legality of the order of the Chief Magistrate. I was present throughout the

* Appendix, No. 4, p. 21.

† Appendix, No. 4, p. 21.

the side near to the quay. The water reached within 9 feet of the top of the quay, and, in my opinion, it was quite easy for any person in the water to get on to the quay by means of the iron rings. The width of the quay I should estimate to be from 20 to 25 feet, and running alongside the quay, parallel with the ship, and immediately opposite the gangway, was the customs shed, the entrance of which was immediately opposite the gangway. After leaving the gangway, and proceeding to the right, parallel with the ship, a person would come to a number of open gates, which lead to railway lines, a pavement, tramway lines, another pavement, and then to a narrow roadway, out of which a gate opened to the docks. The railway and tramway lines are at right angles to the quay. After leaving the gangway and proceeding to the left, parallel with the ship and the customs shed, a person would come to the wall of the quay, facing the harbour. The customs shed is a building extending from the gates referred to up to some distance to the left, considerably longer than the ship's length.

16. Shortly after the ship was moored, on the 7th July, 1910, I was standing at the gangway, as already arranged, when a steward of the ship, named Slavin, told me that the purser of the ship wanted to see me in his cabin. I went at once with Slavin to the purser's cabin, where I saw (amongst other persons, whom I judged by their uniforms to be P. and O. officials) two gentlemen in plain clothes. Slavin said to one of these (whom I subsequently knew as the assistant agent of the P. and O. Company at Marseilles, but whose name I do not know, and have not since ascertained), "This is Mr. Parker, one of the police officers." The assistant agent then said to me, "Can you speak French?" I replied, "Un peu, monsieur." The assistant agent then said, in English, pointing to the other gentleman, "This is M. le Commissaire Leblais." M. Leblais and I then exchanged greetings in French, whereupon the assistant agent said, in English, to me, "I see you can speak French," to which I assented. The assistant agent then said, in English, "Well, I'm going," and did so. M. Leblais and I then left the purser's cabin and went into the passage, where we had an opportunity of speaking alone.

17. In the passage M. Leblais produced a letter, saying, "Voilà une lettre que j'ai reçue de Paris," which he handed me to read. It was in French. I scanned this through, and, to the best of my recollection and belief, I saw that it referred to Savarkar being on board the "Morea," and that he was being conveyed to India to be tried for abetment of murder. The letter also proceeded to ask that assistance should be rendered, and that steps should be taken to prevent any demonstration on the quay by Indian extremists; also to prevent any Indian individual from interviewing Savarkar, or assisting him to escape. I did not take any notice as to where the letter came from, as I knew it was intended by the Commissioner of Police in London to send a letter to the Chief of Police in Paris, informing him of Savarkar being a passenger on board the "Morea," and of the circumstances under which he was being conveyed to India.

18. I then took M. Leblais into Mr. Power's cabin, where we found Mr. Power and Savarkar. I said to Mr. Power, in English, in the presence of Savarkar, "This gentleman" (indicating M. Leblais) "is a French commissaire of police." I then said to M. Leblais, "Voici Mr. Power, l'officier de police des Indes qui est chargé du prisonnier." Mr. Power and M. Leblais shook hands, and I then said to the latter, pointing to Savarkar, "Voici le prisonnier, Savarkar." Savarkar did not take any part in the conversation.

19. M. Leblais then invited me to go to the quay with him, saying, "Voulez-vous venir sur le quai et je vous ferai faire la connaissance de l'officier de gendarmerie?" We then proceeded on to the quay, and at the entrance to the customs shed M. Leblais addressed a uniformed officer. I was behind M. Leblais, and did not hear what was said. M. Leblais then turned round, and said to the uniformed officer in a casual way, indicating me, "C'est un monsieur de la police anglaise." I then shook hands with the officer; his name was not mentioned. He appeared to be a lieutenant of gendarmes. M. Leblais then drew a paper out of his pocket, which was of the same colour (i.e., white) and appearance as the letter he had previously shown to me and carried on a conversation with the officer in an undertone. M. Leblais then, by gesture, seemed to me to indicate something to about four or five other subordinate gendarmes, who were in the immediate vicinity, in consequence of which they seemed to look at me carefully, with a view to being able to know me again. I believe that amongst these gendarmes was one whom I subsequently knew as Brigadier Pesquié. M. Leblais then wished me "Bonjour, Monsieur." I immediately returned to the ship, and took up my position at the gangway for the rest of the day, until about 10-30 P.M., as arranged, and during that time I observed that four or five gendarmes were patrolling the quay, and in the customs shed. I observed that one of them was at the entrance to the shed, whilst the others patrolled the quay.

20. During the remainder of the day (7th July, 1910), I had no further conversation whatsoever with M. Leblais, or any other French police officer.

21. On the night of the 7th July, 1910, Mr. Power, myself, and Savarkar occupied Mr. Power's cabin as usual.

22. On Friday morning, the 8th July, 1910, Savarkar got out of his bunk, and I then asked him what the time was. He told me it was about 6 A.M., and then went back to his bunk.

23. At 6-30 A.M. Savarkar asked me for permission to go to the lavatory. Mr. Power was asleep at the time. I got up, and told Savarkar to "Come on." He was already wearing his vest, and he then put on his pants, dressing-gown, and slippers, and accompanied me along the passage towards the lavatory, where I saw the native constables, to whom I beckoned, and who were already dressed. They came running towards me, and I handed Savarkar to them. I followed them to the lavatory, and pointed to the w.c. No. 2 (one of the three w.c.s. selected by Mr. Power for use), which Savarkar entered. The native constables took up their duties, Sing standing on the step of the urinal, in front of the w.c. door, and Sedick standing against the door, which was ajar. Sing from the step of the urinal could see Savarkar's head, and also the part-hole, whilst Sedick would be in a position to see the outline of Savarkar through the

proceedings, which ended in decisions by both Courts that the Chief Magistrate's order was legal.

6. Steps were then taken to carry out the order of the Chief Magistrate, and accordingly, on the 29th June, 1910, a warrant* was issued by His Majesty's Secretary of State for Home Affairs, directed to the Governor of Brixton Prison, to hand over Savarkar to Charles John Power, Deputy Superintendent of Police for the Bombay Presidency, for conveyance to India.

7. On the afternoon of the 30th June, 1910, Mr. Power, accompanied by Chief Inspector McCarthy and myself, went to Brixton Prison, and, upon production of the warrant mentioned in paragraph 6 Savarkar was handed over by the governor of the prison to Mr. Power and conveyed to Cannon Row Police Station, where he was detained until the morning of the 1st July, 1910.

8. On the morning of the 1st July, 1910, Savarkar was taken to Tilbury Dock by Mr. Power, and from there to the P. and O. Company's steam-ship "Morea," then lying in the River Thames. Steps had been taken to bring over to England two native Indian constables named Amar Sing, of the Nasik police force, and Mahomed Sedick, of the Poona police force, to form an escort to assist Mr. Power to take Savarkar to India in the event of an order for his surrender being made. These two native constables were passengers on the "Morea," and were immediately under the direction of Mr. Power.

9. The following languages only were known to the following persons:—

(a) Mr. Power could speak English, as well as the Indian dialect spoken by the two native constables and Savarkar.

(b) I could speak English and conversational French.

(c) Amar Sing could make himself readily understood in his native Indian dialect to Mr. Power, his colleague Sedick, and Savarkar. In addition, he had a slight, but very imperfect, knowledge of English.

(d) Mahomed Sedick could only make himself understood in his native Indian dialect to Mr. Power, his colleague Sing, and Savarkar.

(e) Savarkar could make himself understood in some native Indian dialect to Mr. Power and the two native constables, and to Mr. Power and myself in English. To the best of my belief Savarkar could not speak French.

10. Before arrangements had been made for conveying Savarkar to India I had been directed by the Commissioner of the Metropolitan Police to proceed to India at the same time as Mr. Power, in consequence of a request made by the Indian Government that I should be present at the trial of Savarkar in India to give evidence of his arrest, of the property found upon him, and as to certain acts done by him in England. As Mr. Power was returning to India with a second-class passage I volunteered to travel as a second-class passenger with him, in order to keep him company, and to render him any assistance that might be necessary. A cabin had been allotted to Mr. Power on the second deck of the "Morea." It was an inside cabin, and was artificially lighted. The cabin had four sleeping bunks, one of which was allotted to Mr. Power, one to myself, one to Savarkar, and the fourth was vacant.

11. I understood from Mr. Power at the commencement of the voyage that he had given directions to the two native constables to accompany Savarkar to the lavatory when necessary, and that with this object Mr. Power had selected three water-closets in the lavatory, which was at the stern end of the ship, to one of which w.c. Savarkar was to be taken when occasion arose. Each of these w.c. had a door, on which were four panels of frosted glass, by means of which the outline of any person inside the w.c. could be seen by any person remaining outside the door; a bolt was fixed on the inside of the door. There were two spaces, one above and the other below the doorway, by means of which any person from the upper space could, by standing on a step of the urinal, which was facing the w.c. door, see the head of the occupant of the w.c., together with the port-hole, which was immediately facing the door; and, by means of the bottom aperture, the occupant's feet could be seen. I am informed that the diameter of the port-hole is 12 inches. During the voyage it was the practice, when Savarkar expressed his desire to go to the lavatory, for the native constables to be called to Mr. Power's cabin to take him accordingly.

12. During the voyage Savarkar, when not in the lavatory and in charge of the native constables, was invariably either with Mr. Power or myself, or both of us, whether in the cabin, or at meals, or when he was taken for exercise.

13. The "Morea" sailed from the Thames on the 1st July, 1910, at 2 P.M., bound for Australia, the first port of call being Gibraltar.

14. The "Morea" arrived at Marseilles on Thursday, the 7th July, 1910, about noon, and was berthed alongside the quay, in a basin which I am informed is the exclusive property of the P. and O. Company. Previous to this, Mr. Power had taken the prisoner into his cabin and the native constables were stationed outside, and, by arrangement with Mr. Power, I was to keep observation at the gangway immediately after the ship was moored, in order to see what persons came on board, as I knew by sight several of the Indian extremists resident in France.

15. When the "Morea" was alongside the quay, one gangway was placed to connect the ship with the shore. The quay is constructed of stone, and attached to the side of the quay, at various points, are large iron rings, which I should estimate to be at least 2 feet in diameter; these are inset into the side of the quay and are used to fasten the ropes from the vessels when moored to the quay. One of such rings could be seen opposite the port-holes of the ship on

* Appendix, No. 5, p. 21.

32. On the 22nd July, 1910, the "Salsette" arrived at Bombay. Savarkar was then handed over to Mr. Kennedy, Inspector-General of Police, and to Mr. Guider, the Assistant Inspector-General of Police, at Bombay.

33. I remained in India until my evidence had been taken in the Nasik Magistrate's Court and before the High Court at Bombay, where Savarkar was charged with thirty-seven other prisoners. I then returned to England, where I arrived on the 30th October, 1910.

Declared at 46, Parliament Street, in the City of Westminster, this 30th day of November, 1910.

Before me:
THOMAS GALE,
A Commissioner for Oaths.

EDWARD JOHN PARKER.

No. 9.

Declaration of Mr. Charles John Power.

CHARLES JOHN POWER, Deputy Superintendent of Police attached to the Criminal Investigation Department, Poona, states on oath:—

I escorted the prisoner Vinayak Damodar Savarkar from Tilbury to Bombay in the month of July 1910. We travelled by the P. and O. Company's "Morea." She touched at Marseilles on the voyage out on the 7th July, 1910. Savarkar escaped from my custody on the morning of the 8th July, 1910. Savarkar did not ask to be landed at Marseilles as soon as the "Morea" arrived, nor did he make any such request at any time while the "Morea" was at Marseilles. The "Morea" sailed from Marseilles at noon on the 9th July, 1910. Savarkar did not ask before his escape from the ship to be taken before any official, French or otherwise. A French police officer came on board at Marseilles on the 7th July as soon as the ship was moored, and with him was the agent of the P. and O. They came into my cabin with Inspector Parker and were introduced to me. Savarkar was in the cabin at the time, but did not speak to either, though he might easily have done so had he chosen to. When Savarkar was brought on board, and the cabin door was opened, Savarkar was standing in front, the French gendarme behind him holding him and the two Indian constables, one on either side, also holding him. The gendarme there and then told Inspector Parker that it was he who had first arrested Savarkar, and this was confirmed by the steward Slavin; but the two constables each claimed to have caught him first and said the gendarme arrived simultaneously. I also questioned Savarkar, and he said that it was the gendarme who first arrested him, and that the Indian police and steward came seconds later. Savarkar said that as he ran away he passed some dock labourers and cried, "Police! police!" and they pointed in the direction of a man who was coming up in uniform, and Savarkar ran to him and was arrested. Neither then nor at any time before we sailed did the French police ever allude to the idea of handing Savarkar over to the French authorities. The French commissaire came in the afternoon and asked to see the water-closet, &c. We showed him everything, and he left after giving me his card.

C. J. POWER.

Before me:
J. W. S. DRACUP,
Sol. Presidency Magistrate, Bombay.

November 4, 1910.

(Seal.)

No. 10.

Declaration of Amarsingh Sakharamsingh.

AMARSINGH SAKHARAMSINGH, 24, Head Constable, Nasik Police, states on oath:—

I was one of the escort accompanying V. D. Savarkar who was sent from England in custody. We travelled by the P. and O. Company's steam-ship "Morea." We arrived at Marseilles on the 7th July, 1910. The following morning the prisoner Savarkar escaped from the steamer through a port-hole. I pursued him on to the quay.

When I got to the quay leading ashore Savarkar had just clambered up to the top of the quay and was beginning to run along it; he was 60 or 70 yards from me then. I ran across the gangway first, followed by Mahomed Sidick and the steward, and gave chase. Savarkar ran first across the railway line, then over the tram line, and there a French constable was standing a little to the left. Seeing Savarkar running and hearing the shouts, he made for Savarkar, who turned towards him, and the French constable stopped Savarkar, while Savarkar grasped the constable's arm. We were about 10 yards distant only when the French constable stopped Savarkar, and when we got up we also laid hands on him, and all of us immediately brought

Savarkar back to the ship, the French constable grasping one hand, the steward the other, and we holding his neck and arm. It was the French constable who actually first arrested Savarkar. Had the French constable not arrested him he might have got clean away. The French constable ran up about 20 yards before he caught Savarkar. Savarkar cried out to the French constable both at the time he was caught and when he was being taken back to the ship, "Take me before a magistrate in your custody," but the constable would not stop, and brought him back with us and handed him over to Mr. Power. Savarkar was in the charge of the French constable up to that moment, we assisting. One of the French constables joined us on the way back to the ship.

AMARSINGH,
Head Constable, Nasik.

Before me:
J. W. S. DRACUP,
3rd Presidency Magistrate, Bombay.

November 4, 1910.

(Seal.)

No. 11.

Declaration of Mahomed Sadik.

MAHMAD SIDIK, son of Sardar Naerat Jankhan, age 28, Head Constable, Bombay District, Police, states on oath:—

I was one of the escort accompanying V. D. Savarkar, who was sent from England in custody. We travelled by the P. and O. Company's steam-ship "Morea." We arrived at Marseilles on the 7th July, 1910. The following morning the prisoner Savarkar escaped from the steamer through a port-hole. I pursued him on to the quay.

When I ran up on deck and got to the gangway Savarkar, was already running along the quay; he was about 30 yards past the end of the steamer when I crossed the gangway, and the gangway was nearly amidships; so that he must have been more than 100 yards ahead of me. He ran right along the edge of the quay, across, first, the railway siding lines and then across the tramway line, and it was about 30 or 40 yards on the other side of the tram line that he was stopped. A French constable was standing there, and seeing Savarkar approaching ran up and seized him. Of the men from the "Morea" I was up first, and was just about 5 yards behind Savarkar at the exact moment that he reached the French constable. Behind me, quite close, was the deck steward, and some way behind him was the other Indian constable Amarsingh. And then we proceeded back towards the ship, the French constable holding Savarkar's one hand, the deck steward the other, and I holding him from behind by the neck. From the time the French constable seized Savarkar up to our return back to the ship the French constable continued to have a hold on him. At no time after the arrest did the French constable give any indication that he wished to take Savarkar anywhere except back on board ship. He kept his grip on Savarkar the whole time from the moment of arrest until he handed him over to Mr. Power. I am positive that the arrest was affected by the French constable catching hold of Savarkar, and then we three from the ship coming up also caught hold of Savarkar. I swear positively that the French constable arrested Savarkar before any of us seized him.

MAHOMAD SADIK.

Before me:
J. W. S. DRACUP,
3rd Presidency Magistrate, Bombay.

November 4, 1910.

(Seal.)

No. 12.

Note communicated by M. Cambon, July 18, 1910.

PAR un télégramme du 29 juin dernier, le Surintendant de la Police de Londres avait directement annoncé à la Direction de la Sûreté générale à Paris que le paquebot anglais "Morea" faisant escale à Marseille le 7 ou le 8 juillet, transporterait deux Hindous, Asevahindou et Vinayak Damodar Savarkar, prévenus de provocation à l'assassinat et renvoyés dans l'Inde pour y être jugés; Sir Edward Henry demandait que des mesures de police fussent prises à Marseille afin d'éviter des troubles possibles.

La Sûreté générale prévint le Préfet des Bouches-du-Rhône, et lui donna des instructions à l'effet d'empêcher l'évasion du prisonnier; les agents à terre avaient reçu pour consigne d'empêcher tout Hindou non muni d'un billet de passage de monter à bord de la "Morea." L'ordre ne fut pas troublé à terre; mais, le 8 juillet, à 6 heures du matin, Vinayak s'échappa par un hublot, gagna la terre à la nage et prit la fuite; il fut rattrapé par un brigadier de gendarmerie, qui le ramena à bord de la "Morea"; ce navire quitta Marseille le 9 juillet emmenant le prisonnier.

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frosted glass, and his feet through the bottom aperture. Both officers were in their positions when I left the lavatory immediately afterwards.

24. About ten or fifteen minutes later I was in Mr. Power's cabin, and heard a knock at the door. I shouted, "Come in." The door was thrown open, and Savarkar walked in alone, followed into the cabin by the two native constables. A gendarme in uniform, the steward Slavin, who was in dark blue uniform, and one or two other stewards, whose names I do not know, were standing immediately outside the cabin door. To the best of my belief the gendarme was one of those whom I had seen the previous day, and was the man whom I now know to be Brigadier Pesquié. The native constables were the first to speak, and said something to Mr. Power, in Hindustani. Mr. Power told me, in English, that Savarkar had escaped through the port-hole of the w.c., and had swum to the quay, and was making his escape, when he was arrested, and brought back to the ship. Savarkar was wet through, and was exhausted. He was dressed in his pants and vest, and had nothing on his head or feet. He did not make any observation whatever when Mr. Power spoke to me.

25. I then went into the passage to speak to the gendarme, who up to then had said nothing, leaving Savarkar in the cabin with Mr. Power and the two native constables, and having given Mr. Power a pair of handcuffs. I saw the gendarme, and said to him, "Qu'y a-t-il, Monsieur?" He replied, "J'ai vu cet homme" (meaning Savarkar) "courir sur le quai suivi par un steward et deux autres personnes criant, et j'ai couru après lui et je l'ai arrêté." (The French word which Pesquié used was "arrêté.") "Cet homme" (meaning Savarkar) "a dit, 'You are policeman.' J'ai dit, 'Oui,' et je l'ai ramené ici." I asked the gendarme, "Quel est votre nom, Monsieur?" He said, "Brigadier Pesquié." I said, "Veuillez vous écrire pour moi, s'il vous plaît, Monsieur?" He replied, "Oui, Monsieur," and, on paper which I handed to him, wrote a document which is in the following terms: "Pesquié, brigadier de gendarmerie maritime, requis par M. le consul général d'Angleterre à Marseille pour la garde et le maintien de l'ordre à bord du 'Morea' par M. le consul général d'Angleterre sur la part de la compagnie." Pesquié did not refer to the native constables, and in my opinion he did not know that they were police officers, as there was nothing to distinguish them from other coloured persons on board the ship. Moreover, they were not in uniform, but in plain clothes. The steward, however, was in uniform, of dark blue cloth, and in my opinion would be easily recognisable by Pesquié as a steward. I was alone with Pesquié when the above conversation took place, Slavin and the other stewards having gone away. Pesquié did not understand English, and I believe Slavin did not understand French. Pesquié made no statement as to why he had arrested the prisoner, and I did not ask him for one. The conversation above referred to took place between Pesquié and myself almost immediately after Savarkar was brought back to the ship and secured. I believe, but am not certain, that Pesquié was one of the officers I had seen on the previous day.

26. Later in the day, about 8 A.M., after Brigadier Pesquié had left the ship, Slavin, the steward, told me that he heard the Indian constables shouting, and, being near the gangway at the time, saw these men coming out of the entrance near by. He (Slavin) then ran up to the gangway, and saw Savarkar on the quay, commencing to run in the direction of the tramway lines; almost immediately afterwards he saw the gendarme giving chase to Savarkar, and also saw him bring back Savarkar, but did not, I think, see the actual capture, owing to the interception of the tram lines. In the meantime he (Slavin) gave chase, and he said that he ran right up to Savarkar, and that the latter was then in the custody of Pesquié, and that he (Slavin) walked alongside of the prisoner. Slavin did not tell me how far off he was when Savarkar was arrested by Pesquié. I made enquiry on board the "Salsette," on my return journey from India, and I was informed that Slavin was paid off the "Morea" upon her arrival at Sydney, Australia, and that he is now coasting in a ship with another company, off Australia. I am not certain whether Mr. Power was present when Slavin made this statement to me, but I informed him of what Slavin had said, and Mr. Power informed me later that Slavin had made a similar statement to him.

27. M. Leblais came again on board the ship, about 3 P.M., on the 8th July, 1910, accompanied by the assistant agent of the P. and O. Company. He saw both Mr. Power and myself. The prisoner was at the time in Mr. Power's cabin, in the custody of the two native constables. M. Leblais, addressing me, said, "Qu'y a-t-il arrivé?" I told him, "Savarkar s'est évadé par un sabord du 'water closet,' et il a été arrêté sur le quai et ramené à bord." M. Leblais, Mr. Power, and I then proceeded to the lavatory, and Mr. Power and I pointed out the condition of the door of the w.c., and the port-hole, so that the officer could see for himself how Savarkar had escaped. M. Leblais said, "Il faut que je fasse un rapport à mon administration."

28. M. Leblais asked Mr. Power and myself for our cards. I handed him my card, which bore the words "Inspector Edward Parker, Criminal Investigation Department, New Scotland Yard, S.W." I saw M. Leblais receive an official card from Mr. Power, which I think specified his official rank. M. Leblais then gave me his card, which was as follows: "Henri Leblais, Commissaire adjoint de l'Émigration, 37, Boulevard des Dames, Marseille." We then parted.

29. The "Morea" left Marseilles at about 11 A.M. on the 9th July, 1910. I then noticed that there were some gendarmes still on duty on the quay.

30. After the ship sailed from Marseilles I still occupied the cabin with Mr. Power and Savarkar, but the latter did not make any statement to me, nor to Mr. Power in my presence.

31. On the 17th July, 1910, the "Morea" arrived at Aden, and, as the ship was not proceeding to Bombay, Mr. Power, myself, the two native constables, and Savarkar were taken on board the "Salsette." Aden is policed by the Indian authorities, and Deputy Superintendent Clifford came alongside the "Morea" in a cutter, and transferred us and our baggage to the "Salsette," which put to sea for Bombay at 8:30 P.M. on the same day.

Cette affaire n'a fait l'objet d'aucune démarche officielle du Gouvernement britannique, et M. Pichon vient seulement d'en être informé; il la fait étudier au point de vue du droit international; mais, en attendant qu'il ait formé son opinion à ce sujet, il a chargé l'Ambassadeur de France de demander au Secrétaire d'Etat pour les Affaires Etrangères qu'aucune mesure ne soit prise à l'égard de l'Indou Vinayak, qui possédait le droit d'asile sur le territoire français lorsqu'il a été livré par erreur aux autorités anglaises de la "Morea."

M. P. Cambon saisit cette occasion pour renouveler à Sir Edward Grey les assurances de sa haute considération.

*Ambassade de France, Londres,
le 18 juillet, 1910.*

No. 13.

M. Cambon to Sir Edward Grey.—(Received July 25.)

M. le Secrétaire d'Etat.

Ambassade de France, Londres, le 25 juillet, 1910.

J'AI eu l'honneur d'informer votre Excellence, le 18 de ce mois, des circonstances qui avaient marqué l'évasion dans le port de Marseille d'un prisonnier Indou, Damodar Savarkar, détenu à bord du paquebot anglais "Morea." L'arrestation de cet individu, et sa remise aux autorités de la "Morea" par un brigadier de la gendarmerie maritime; et j'avais demandé qu'il fût survis à toute mesure concernant Savarkar en attendant que M. Pichon eût fait étudier l'affaire au point de vue juridique.

Il est aujourd'hui reconnu que le Gouvernement de la république n'avait reçu du Gouvernement de Sa Majesté le Roi aucune demande d'extradition ni d'arrestation provisoire concernant le nommé Damodar Savarkar, qu'il n'existait aucun mandat judiciaire autorisant l'arrestation de cet individu sur le territoire français, que Damodar Savarkar a réussi à atteindre le territoire français et qu'il jouissait en conséquence du droit de séjourner et de circuler librement sur ce territoire tant qu'aucune mesure judiciaire ou aucun arrêté d'expulsion n'aurait été pris à son égard; que, enfin son arrestation et sa remise aux autorités du paquebot anglais par un agent subalterne sont irrégulières—aussi bien au point de vue du droit français qu'à celui du droit des gens.

Dans ces conditions, le Gouvernement de la république estime qu'il est nécessaire de reconnaître et d'appliquer les principes sur lesquels sont fondés les droits souverains des États et la pratique habituelle des extraditions; et je suis chargé de demander à votre Excellence que Damodar Savarkar soit reconduit sur le territoire français, qu'il n'aurait pas dû quitter avant l'accomplissement des formalités exigées en pareilles circonstances par les traités et les coutumes internationales.

Veuillez, &c.
PAUL CAMBON.

No. 14.

M. Doeshner to Sir Edward Grey.—(Received August 3.)

M. le Secrétaire d'Etat.

Ambassade de France, Londres, le 2 août, 1910.

L'ENQUÊTE qu'avait ordonné le Gouvernement français au sujet de l'incident Savarkar vient de révéler certaines circonstances qui n'avaient pu être mentionnées dans le mémorandum remis à votre Excellence le 18 juillet par M. Paul Cambon.

D'après les renseignements que possédait alors le Ministère des Affaires Etrangères, Damodar Savarkar, s'étant échappé du paquebot anglais "Morea," dans le port de Marseille, avait été poursuivi et arrêté par un brigadier de gendarmerie française, qui l'avait ramené à bord du navire britannique. C'est sur ces faits qu'était basée la demande adressée à votre Excellence par M. Paul Cambon le 23 juillet, à l'effet d'obtenir le renvoi dudit Savarkar sur le territoire français.

Or, il est aujourd'hui avéré qu'au moment de l'évasion de Savarkar les agents anglais de la "Morea" ont appelé par leurs cris l'attention des gendarmes français sur cette évasion, que trois de ces agents ont débarqué du paquebot britannique, qu'ils ont pris part à l'arrestation du fugitif et qu'ils l'ont eux-mêmes ramené de force à bord de la "Morea," de concert avec le brigadier de gendarmerie Pesquié.

Voici ce que ce dernier a déclaré au commissaire spécial de police de Marseille, M. A. Borelli, chargé de procéder à une enquête sur cette affaire:—

"Le vendredi, 8 juillet courant, j'étais de service au paquebot 'Morea' de la Compagnie Peninsular, lorsque, vers 7 heures du matin, je vis un homme presque nu sortir par un hublot de ce vapeur, se jeter à la mer et gagner le quai à la nage. Au même instant, des personnes du bord se sont précipitées, en criant et en gesticulant, sur la passerelle conduisant à terre pour se mettre à la poursuite de cet homme; ne connaissant pas la langue anglaise, je n'ai pas saisi exactement quels cris poussaient ces personnes, mais il ne pouvait y avoir aucun doute pour moi; ces personnes étaient à la poursuite de l'homme qui se sauvait, leurs gestes signifiaient: 'Arrêtez-le!'

"D'autre part, les nombreuses personnes se trouvant sur le quai, dans les parages du navire, ouvriers des quais, pisteurs, marchands, &c., dont l'attention put être attirée par les cris et les

I would in the first place observe that on the date of the French Ambassador's first communication with me, namely, the 18th July, when his Excellency called upon me and asked that no further steps should be taken pending a further examination of the question, the ship conveying Savarkar to India had left Aden, which is legally a part of the Presidency of Bombay in British India, a day previously. At the time when I received M. Cambon's note of the 23rd July, asking in terms that Savarkar should be returned to French territory, the ship on which he was being conveyed had actually already reached Bombay itself, and Savarkar had passed into the custody of the Indian authorities for trial on the charge upon which he had been arrested in England on a warrant issued in India, and sent to India. Under the Criminal Procedure Code in force in India the Executive Department of the Government have no power to delay or postpone the trial, nor have they power to remove the prisoner from the custody of the judicial authorities with a view to his surrender. The court before which Savarkar had been brought has granted one adjournment at the request of the officials who are responsible for the prosecution, but such adjournments are limited by the code to a period of fifteen days, and it is by no means improbable that the court would decline to grant any further adjournment. There are several other prisoners to be proceeded against on the same charges, to all of whom the adjournment of the trial must equally apply, and there are also a large number of witnesses who are being detained in order to give evidence. You will therefore readily understand that the court would grant any further adjournment of the trial with reluctance, in view of the grave inconvenience which would be caused to so large a body of persons by their detention in a hot station in India.

The powers of the Executive Government under the Indian Code of Criminal Procedure are limited to suspending or remitting the punishment after the conviction of the accused. I am excluding from consideration the power to grant a free pardon—a course which His Majesty could not be advised to adopt in view of the very serious crimes with which Savarkar is charged. As no power to restore Savarkar to French territory is given to the Governments until after his conviction, it is clear that no advantage will accrue from any further postponement of the trial, even if it could be obtained.

I shall in due course address to you a further note with regard to the main question raised by the escape of Savarkar, and the representations of the French Government that he should be restored to the custody of the French authorities. The Government of the Republic may, however, rest assured that, if as the result of the diplomatic discussion of the subject it should be established that the demands of that Government are well founded, Savarkar shall, after his conviction, be brought back to Marseilles and handed over to the custody of the French police.

I have, &c.
E. GREY.

No. 18.

M. Deveschaer to Sir Edward Grey.—(Received September 22.)

M. le Secrétaire d'Etat.

Ambassade de France, Londres, le 21 septembre, 1910.

MON Gouvernement a examiné avec soin les explications que votre Excellence a bien voulu me donner le 1^{er} de ce mois sur la situation dans laquelle se trouve actuellement le prisonnier Hindou Savarkar; votre Excellence ajoutait à cette occasion qu'une réponse ultérieure me serait faite sur le principe même de la réclamation que cette ambassade avait formulée à son sujet.

J'ai fait part de la communication de votre Excellence à mon Gouvernement, qui a été heureux de prendre note des assurances qui y sont contenues sur le caractère amical des dispositions dont s'inspire le Gouvernement britannique dans l'examen de cette affaire, mais les considérations développées dans la note précitée lui paraissent soulever des objections assez importantes pour qu'il me charge de vous les soumettre, sans attendre la nouvelle communication que vous avez bien voulu m'annoncer.

Mon Gouvernement ne veut pas préjuger de la décision ultérieure à laquelle s'arrêtera le Gouvernement de Sa Majesté, mais il ne peut s'empêcher de faire observer que si elle devait s'inspirer des vues de la note précitée elle aboutirait à invoquer à l'encontre de notre réclamation des dispositions de droit interne; or, il est universellement admis qu'on ne peut opposer des dispositions législatives ou des lacunes de droit interne à des obligations dérivant du droit des gens; il suffirait de rappeler à cet effet l'affaire de l'"Alabama," où le Tribunal arbitral n'a pas admis que l'absence de dispositions législatives pût être invoquée comme une excuse valable.

Dans le cas actuel c'est un principe de droit des gens qui est en jeu, principe que tous les Gouvernements ont un intérêt commun et égal à voir respecter, car il s'agit de la violation de la souveraineté d'un Etat par les agents d'un autre Etat.

Ce point de vue paraît à mon Gouvernement assez important pour qu'à son avis la seule solution qui s'impose soit, ainsi qu'il l'a demandé dès le début, que Savarkar soit ramené au point où il avait pris pied sur le sol français; mais il estime également que la question essentielle de la nature de l'acte à la suite duquel Savarkar a été ramené sur le paquebot d'où il s'était échappé doit être examinée et tranchée avant que l'on fasse produire à cet acte des conséquences irréparables. Dans sa communication du 1^{er} septembre votre Excellence explique que c'est en raison des dates auxquelles lui sont parvenues nos premières réclamations et par suite de l'extension jusqu'à Aden du ressort de la Cour de Bombay que la remise de Savarkar aux autorités judiciaires n'a pu être empêchée; mon Gouvernement ne s'arrête pas à se demander s'il n'eût pas été possible de prévenir son débarquement aux Indes du paquebot qui le transportait,

gestes des personnes qui descendaient précipitamment du navire, se mirent à crier : ' Arrêtez-le ! Arrêtez-le !'

" Je m'élançais aussitôt à la poursuite du fugitif et le rejoignis, après un parcours de 500 mètres environ, à l'extrémité du bassin du radeau ; lorsque je mis la main sur lui, il me posa à deux reprises la question suivante : ' Vous policeman français ? ' Je répondis ' Oui ' . Je le pris par un bras pour le ramener vers le navire et il me suivit docilement.

" J'avais fait environ 10 mètres, lorsque trois des personnes qui étaient descendues précipitamment du navire arrivèrent en courant, saisirent l'individu par le bras droit, alors que je le tenais par le bras gauche, et nous arrivâmes ainsi à bord du navire sans échanger aucune parole."

Les agents anglais n'ont donc pas observé l'attitude passive que leur supposaient les notes de M. Paul Cambon des 18 et 23 juillet ; mais ils ont pris une part active à l'arrestation de Savarkar sur le territoire français, alors qu'ils connaissaient parfaitement l'identité de ce prévenu et l'inculpation dont il était l'objet.

Votre Excellence appréciera l'importance des faits que je suis chargé de porter à sa connaissance et elle reconnaîtra certainement que cette intervention directe d'agents d'un Gouvernement étranger sur le sol français constitue incontestablement une violation de territoire et une atteinte grave à la souveraineté du Gouvernement de la République.

L'attachement inébranlable du Gouvernement de Sa Majesté le Roi aux principes de souveraineté territoriaux et de droit public qui se trouvent violés du fait d'agents ambuleurs ne permet pas à mon Gouvernement de douter que les autorités britanniques ne tiennent à désavouer la conduite des agents embarqués sur la " Morea " et à ramener incessamment Savarkar en France, ainsi que M. Cambon l'a demandé le 23 juillet.

Il appartiendra alors au Gouvernement de Sa Majesté, s'il le juge bon, de formuler une demande régulière d'extradition contre cet individu et au Gouvernement français de donner à cette requête éventuelle la suite qu'elle comportera conformément aux stipulations de la Convention franco-britannique du 16 août, 1876.

Veuillez, &c.
E. DAESCHNER.

No. 15.

Sir Edward Grey to M. Daeschner.

Sir, *Foreign Office, August 6, 1910.*
WITH reference to M. Cambon's communications of the 18th and 25th ultimo and to your note of the 2nd instant with regard to the attempted escape of Savarkar at Marseilles, I have the honour to inform you that the matter is engaging the serious attention of His Majesty's Government.

I have the honour to add that Savarkar is at Nasik, within the jurisdiction of the British Indian courts of justice.

I have, &c.
E. GREY.

No. 16.

M. Daeschner to Sir Edward Grey. — (Received August 9.)

M. le Secrétaire d'État, *Ambassade de France, Londres, le 7 août, 1910.*
J'AI l'honneur d'accuser réception de la note en date du 6 de ce mois, par laquelle votre Excellence veut bien me faire savoir que le Gouvernement de Sa Majesté donne toute son attention aux communications de cette ambassade relatives à l'évasion du nommé Savarkar à Marseille.

Votre Excellence ajoute que Savarkar, actuellement à Nasik, se trouve sous la juridiction des cours de justice anglaises aux Indes.

J'en avise mon Gouvernement, mais je crois devoir sans retard rappeler à l'attention de votre Excellence que lors de son évasion Savarkar se trouvait à bord un paquebot anglais, sous la garde d'agents de la police anglaise, et que la réclamation de cette ambassade a été formée auprès du Gouvernement anglais dès le 18 juillet, alors que le paquebot " Morea " n'est parvenu dans la zone de juridiction des cours des Indes que le 23 du même mois.

Veuillez, &c.
E. DAESCHNER.

No. 17.

Sir Edward Grey to M. Daeschner.

Sir, *Foreign Office, September 1, 1910.*
I HAVE the honour to inform you that the case of the India prisoner Savarkar, which was dealt with in the correspondence terminating with your note of the 7th ultimo, has been engaging the most anxious and sympathetic consideration of His Majesty's Government.

a right of residence and asylum on French soil. If that is the proposition advanced by the French Government, it is negated by the action taken by the authorities at Paris and Marseilles with the specific object of precluding Savarkar from acquiring any such right. The claim cannot, moreover, be sustained on a supposed right of asylum residing in Savarkar himself, since he is not a French citizen.

In the opinion of His Majesty's Government, a claim for the restoration of Savarkar could only be based on some action on the part of the British authorities which constituted an affront to the sovereign rights of France; but the facts cited clearly establish, in the opinion of His Majesty's Government, that no such affront was either offered or contemplated. I need hardly add that nothing could have been further from the mind of the British authorities concerned. A British subject charged with the grave offence of abetment to murder in British territory was simply being conveyed in a British ship to take his trial for the offence alleged against him.

There was no concealment; the fact was notified by the Chief Commissioner of Metropolitan Police to the official occupying a corresponding position in Paris, who in turn issued such directions as he thought right and proper to prevent the escape of the prisoner at Marseilles. As a result of these instructions Savarkar was in fact arrested by a French police officer, and by him replaced on the vessel from which he had escaped. Savarkar would not have been sent to India by a vessel putting in at a French port had not the British police authorities had ground for believing that the French police would be instructed, as in fact they were instructed, "à l'effet d'empêcher l'évasion du prisonnier."

Various authorities and precedents have been searched without discovering any case precisely analogous to that under discussion.

The French Government may possibly have had in mind the case of the men who killed Captain Keyes in Nigeria in 1901. On that occasion it is true that His Majesty's Government restored those men who, through inadvertence, had been handed over by a French officer to be dealt with by the authorities of the British Protectorate. It will be remembered, however, that those men were only restored to the French authorities on a distinct assurance that they would be tried for murder. It was an act of comity solely on the part of His Majesty's Government, who were, moreover, largely influenced by the fact that the men were French citizens, and by the knowledge that they would not escape justice. On that occasion, however, His Majesty's Government never admitted that they were under any obligation to restore them. The circumstances were, in short, wholly dissimilar to those of Savarkar.

A closer analogy is, however, to be found in the attitude of the French Government in the Lamirande case in 1866. A French fugitive criminal escaped to Canada, whence his surrender in extradition was demanded by the French Government. He was handed over through inadvertence to the French consul, and shipped for France before certain legal formalities had been completed. The request of His Majesty's Government that he might be restored as an act of comity, and not of right, to British jurisdiction was not accorded by the French Government.

His Majesty's Government are therefore unable to admit that they are under any obligation to restore Savarkar to French territory, and they sincerely trust that the French Government will, upon further consideration, view the matter in the same light. Should this, however, unfortunately not be the case, His Majesty's Government would be willing, in the special circumstances of the case, and as a mark of their consideration for the wishes of the French Government in the matter, to submit to arbitration the question whether, in accordance with international law, any obligation to surrender Savarkar to French jurisdiction can be held to devolve upon them.

I am, &c.
E. GREY.

No. 21.

M. Cambon to Sir Edward Grey.—(Received October 3.)

M. le Secrétaire d'Etat,

Ambassade de France, Londres, le 3 octobre, 1910.

MON Gouvernement a examiné avec la plus sérieuse attention la note que votre Excellence avait adressée à M. Dachsner le 24 septembre dernier au sujet de l'affaire Savarkar. Il a constaté avec regret les profondes différences que révèlent cette note et les correspondances précédemment échangées entre les doctrines juridiques des deux Gouvernements et leur interprétation des faits concernant l'incident Savarkar; je dois déclarer, ici à votre Excellence que les considérations exposées dans mes notes des 1^{er} et 27 septembre n'ont pas modifié l'opinion de mon Gouvernement et qu'il estime toujours avoir droit à la restitution pure et simple du prisonnier en question. Mais, dans son désir d'entretenir avec le Gouvernement britannique les relations les plus amicales, le Gouvernement de la République consent à accepter le recours à l'arbitrage proposé par votre Excellence en vue de régler l'incident du 8 juillet; il estime toutefois que cette solution ne saurait être adoptée qu'autant que les poursuites actuellement exercées contre Savarkar seront suspendues en attendant la décision du Tribunal arbitral.

Je suis chargé de porter cette décision à la connaissance de votre Excellence; dès qu'elle aura bien voulu me donner l'assurance qu'il est suris au procès actuellement engagé contre Savarkar, je me tendrai à sa disposition afin de régler d'un commun accord les modalités du recours à l'arbitrage.

Veuillez, &c.
PAUL CAMBON.

mais il constate qu'il n'en résulte pas moins que le *status quo* demandé par l'Ambassadeur de France n'a pas été maintenu et qu'en définitive les choses se passent dès maintenant comme si Savarkar se trouvait d'une manière absolument régulière au pouvoir de la justice indienne; et cette conséquence anormale d'une action commise illégalement sur son territoire par les agents d'un Gouvernement étranger soulève de la part de mon Gouvernement les plus vives objections.

En soumettant ces diverses observations à l'attention de votre Excellence je suis chargé d'insister de nouveau auprès d'elle sur l'intérêt qu'il y a à ce que sa réponse sur le principe de notre réclamation ne soit pas retardée. Mon Gouvernement se plaît à espérer, et les assurances amicales dont votre Excellence lui a renouvelé l'expression le confirment dans son espoir, que les vues du Gouvernement de Sa Majesté auront abouti comme les siennes à la seule conclusion logique et équitable que cette affaire lui paraisse comporter.

Veuillez, &c.
E. DAESCHNER.

No. 19.

Sir Edward Grey to M. Daeschner.

Sir, *Foreign Office, September 24, 1910.*
I HAVE the honour to acknowledge the receipt of your note of the 21st instant respecting the case of the Indian criminal Damodar Savarkar.
In a separate note which I am addressing to you this day, the views of His Majesty's Government on the request of the French Government that this man should be restored to French territory are fully set out.

I am, &c.
E. GREY.

No. 20.

Sir Edward Grey to M. Daeschner.

Sir, *Foreign Office, September 24, 1910.*
WITH reference to the concluding paragraph of my note of the 1st instant, I have now the honour to state that His Majesty's Government have further and fully considered the request of the French Government, conveyed in M. Cambou's note of the 23rd July last, that the fugitive criminal Damodar Savarkar, who escaped from the steam-ship "Morea" at Marseilles on the 8th July last, should be restored to French territory ("soit reconduit sur le territoire français").

It may be convenient that I should briefly recapitulate the facts in connection with this case, which happily are not in dispute.

On the 29th June last Sir E. Henry, the Chief Commissioner of the Metropolitan Police, addressed a letter to M. Hennion, the Director of the *Sûreté générale* in Paris, advising him that Savarkar was being sent to India to take his trial for abetment of murder, and asking, as there were some Indian extremists who might make a demonstration at Marseilles or interfere with the escort, that M. Hennion would be so good as to take such steps as he considered necessary to ensure the safety of the prisoner while in that port.

M. Hennion replied, in a note dated the 9th July, to the effect that he had issued the necessary instruction to prevent any incident occurring at Marseilles.

The "Morea" arrived at Marseilles with Savarkar on board about noon on the 7th July, and directly afterwards the commissaire spécial of the port came on board, showed an English police officer, Mr. Parker, a letter (presumably that from Sir E. Henry to M. Hennion) from Scotland Yard, saw Savarkar in the cabin, and then took Mr. Parker ashore and introduced him to the officer in charge of the police on the quay. There were four or five gendarmes in uniform. The commissaire, addressing their officer, said, "Let me introduce to you the English police officer who has an Indian prisoner on board. You must give him any assistance he may require and prevent any strange Indians from assembling on the quay or going on board."

Between 6 and 7 on the following morning Savarkar succeeded in getting through a port-hole of the "Morea" and swam ashore, where he was arrested and conducted back to the "Morea" by a French gendarme. This officer never relaxed hold of Savarkar from the moment he arrested him till he was delivered on board the "Morea." The action of the ship's steward and two Indian constables who, on hearing of the escape of Savarkar, had landed and taken part in the pursuit seems, as a result of the fullest investigation, to have been wholly confined to assisting the French police officer to escort Savarkar back to the "Morea," and it can hardly be contended that there was anything unlawful or irregular in this proceeding. It is a common occurrence in every country for independent individuals to assist police officers, if they think they need it, in the execution of their duties. In any circumstances the action of these persons on this occasion in no way affected the final issue, and being, as it was, co-operation with a French official willingly accepted by him at the time, it cannot be regarded as derogatory to French authority either in fact or intention.

His Majesty's Government understand from the tenor of M. Cambou's note that the French Government base their claim for the restoration of Savarkar on the ground that he had acquired

Sir Edward Grey to M. Cambon.

Your Excellency,

Foreign Office, October 4, 1910.

I HAVE the honour to acknowledge the receipt of your Excellency's note of the 3rd instant respecting the case of the Indian, Savarkar.

I have the honour to explain that, as already pointed out in my note to M. Dueschner of the 1st ultimo and in my conversation with your Excellency on the 30th ultimo, Savarkar is at present in the custody of the competent Indian tribunal dealing with the case, and his trial on the charges on which he was arrested in this country is actually in progress. He has, therefore, passed entirely out of the control of the Executive until his trial is concluded. His Majesty's Government are therefore precluded from meeting the wishes of the French Government in regard to suspending the judicial proceedings pending the decision of the Tribunal of Arbitration.

His Majesty's Government have been advised that, technically, no doubt exists as to their right to maintain the custody of Savarkar, but, as they earnestly desire to maintain the friendliest relations with the French Government and to avoid any inconvenience to which the incident may give rise, His Majesty's Government are willing to undertake that, in the event of the trial resulting in the conviction of Savarkar, the execution of any sentence passed upon him shall be suspended and have no effect beyond his detention in custody given to it pending the result of the reference to arbitration of the facts attending the escape and recapture of the accused as well as the international question involved. Should the Arbitration Tribunal decide in favour of the view held by the French Government, the accused would be surrendered to the French authorities.

It is, perhaps, hardly necessary to add that, should such a contingency arise, any subsequent return of Savarkar to British dominions would render him liable to be dealt with in any manner that His Majesty's Government might deem to be advisable.

I have, &c.
E. GREY.

M. Cambon to Sir Edward Grey.—(Received October 5.)

M. le Secrétaire d'État,

Ambassade de France, Londres, le 5 octobre, 1910.

PAR sa note en date d'hier, votre Excellence veut bien me faire savoir que l'Indien Savarkar étant actuellement placé sous la juridiction du tribunal compétent et soustrait à l'autorité du pouvoir exécutif, le Gouvernement de Sa Majesté le Roi se trouve empêché de suspendre le procès engagé contre cet individu en attendant qu'un Tribunal arbitral ait rendu sa décision sur l'incident survenu à Marseille le 8 juillet dernier; il ne peut donc donner satisfaction au désir exprimé par mon Gouvernement et qu'énonçait ma note du 3 de ce mois. Il se déclare toutefois disposé à prendre l'engagement, dans le cas où le procès actuellement en cours aboutirait à la condamnation de Savarkar, de suspendre l'exécution de toute sentence prononcée contre ce prévenu et de se contenter de le retenir en attendant le résultat de l'arbitrage auquel seraient soumis les faits concernant l'évasion et la réarrestation de Savarkar et la question de droit international soulevés par cet incident. Savarkar serait remis aux autorités françaises si le Tribunal arbitral se prononçait en faveur de la thèse soutenue par le Gouvernement de la République.

Ainsi que M. Dueschner l'avait fait savoir à votre Excellence par sa note du 21 septembre dernier, mon Gouvernement estime que des considérations de droit interne ne peuvent valablement être opposées à des obligations dérivant du droit des gens et qu'il eût été conforme aux principes établis du droit international d'interrompre toute poursuite contre Savarkar aussitôt après la réclamation formulée par mon intermédiaire en juillet dernier. Il tient à affirmer que son opinion n'a pas changé; cependant, afin de donner au Gouvernement de Sa Majesté le Roi une nouvelle preuve de ses sentiments amicaux, le Gouvernement de la République consent à accepter les propositions formulées par votre Excellence dans sa note du 4 courant, étant bien entendu que cette adhésion ne saurait dans l'avenir lui être opposée comme un précédent.

Je suis donc autorisé à prendre acte des déclarations contenues dans votre note d'hier, et je demande à M. Pichon de m'envoyer les instructions nécessaires afin de négocier avec votre Excellence les modalités de l'arbitrage auquel sera soumis l'incident Savarkar.

Veuillez, &c.
PAUL CAMBON.