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ARBITRAL AWARD

RENDERED PURSUANT TO THE COMPROMIS SIGNED AT LONDON, MARCH 4, 1930,
BETWEEN FRANCE AND THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND

IN THE MATTER OF THE CLAIM OF MADAME CHEVREAU AGAINST THE
UNITED KINGDOM ¹

The Hague, June 9, 1931

Great Britain and her Allies were at war with Germany and Turkey, but not with Russia or Persia, and martial law had not been proclaimed in Persian territory occupied with permission of the government by the British troops. The latter, however, met with armed resistance from certain local inhabitants and hostile bands of brigands under Russian Bolshevik leadership. Under these circumstances the British forces in Persia had the right to take the necessary measures to protect themselves against acts harmful to their operations or favorable to the enemy, a right which in general, according to international law, belongs to belligerent forces occupying enemy territory.

The arbitrary arrest, detention or deportation of a foreigner may give rise to a claim in international law; but the claim would not be justified if these measures were taken in good faith and upon reasonable suspicion, especially if a zone of military operations is involved. In cases of arrest, suspicions must be verified by a serious inquiry, and the arrested person given an opportunity to defend himself, and to communicate with the consul of his country if he requests it. If there is no inquiry, or if it is unnecessarily delayed, or if the detention is unnecessarily prolonged, there is ground for a claim. The detained person must be treated in a manner fitting his station and which conforms to the standard habitually practiced among civilized nations. If this rule is not observed, there is ground for a claim.

The Arbitrator holds that there was probable cause for the arrest of M. Chevreau and that there is no foundation for the complaint that he was refused permission to communicate with the French consul. Held further, that a proper inquiry into the suspicions against M. Chevreau, under proper safeguards, did not take place, and that consequently his detention and subsequent deportation, although his charges of ill-treatment were not sufficiently proved, took place under circumstances which justify a claim in international law; that the said acts caused M. Chevreau moral and material damage for which the Government of Great Britain must pay the government of the French Republic, on behalf of the claimant, the sum of £2100.

By a *compromis* signed at London on March 4, 1930, rendered in French and English, the Government of the French Republic and the Government of His Britannic Majesty in the United Kingdom of Great Britain and Northern Ireland agreed to submit to arbitration a claim filed by the French Government in behalf of Madame Julien Chevreau and to request a foreign jurist to act as arbitrator in the case.

The questions submitted to the decision of the arbitrator are, according to the *compromis*:

(a) Did the arrest and detention in Persia of M. Chevreau by the British forces or authorities in 1918, and his subsequent deportation to India and Egypt, take place in such circumstances as to give rise to a claim in international law?

¹ Translated from the French original.—Ed.

(b) In the affirmative, did it cause moral or material damage to M. Chevreau and, if so, what is the amount of compensation which should be paid by the Government of the United Kingdom on behalf of Madame Chevreau?

At the request of the two governments the undersigned, Frederik Valdemar Nikolai Beichmann, member of the Permanent Court of Arbitration and former Deputy Judge of the Permanent Court of International Justice, accepted the functions of arbitrator.

In conformity with the terms of the *compromis*, the parties presented, the French Government on July 4, 1930, its memorial concerning the case accompanied by a certain number of supporting documents, and the British Government, on October 4, 1930, its counter-memorial, likewise accompanied by a certain number of supporting documents, as well as by a French book entitled *The Inside of the English Spy System* by Robert Boucard.

The French Government answered this counter-memorial by a replication filed November 28, 1930, and accompanied also by supporting documents.

Finally, the British Government having, according to a stipulation made in its counter-memorial, completed it on January 12, 1931, by several additional documents, the French Government, on its side, the 20th of the same month, presented a few brief observations in regard to these documents.

The International Bureau of the Permanent Court of Arbitration having placed its offices and personnel at the disposal of the parties for the present case, the meeting provided for in Article 5 of the *compromis* took place at The Hague on the 5th, 6th, 7th and 8th of May, 1931. The parties were represented, the French Government by M. Charguéraud-Hartmann, assistant juriscult of the Ministry for Foreign Affairs, as Agent, the British Government by Mr. M. Shearman, O.B.E., Claims Adviser to the Foreign Office, as Agent, by Mr. John Foster, Barrister at Law, as Counsel, and by Mr. Francis MacCombe, Barrister at Law, as representative of the Treasury Solicitor.

At this session the Arbitrator heard M. Charguéraud and Mr. Foster, the former in his complaint and replication, the latter in his answer and rejoinder. He also heard a witness, Mr. L. F. Lightfoot, offered by the British Government.

The parties came to the following issues:

The Government of the French Republic:

The Agent for the French Government submits that the Arbitrator should decide:

1. That the arrest, detention and subsequent deportation of M. Chevreau were effected in circumstances which give rise to a claim in international law;
2. That by reason of his arrest, detention and deportation, M. Chevreau suffered moral and material damages;
3. That in consequence the sum of £8,680 sterling should be paid by His Britannic Majesty's Government to the Government of the French Republic on account of Madame Chevreau.

His Britannic Majesty's Government submit that the Arbitrator should decide:

1. That the arrest, detention and subsequent deportation of M. Chevreau were effected in circumstances which do not give rise to any claim in international law, and

2. That no sum is payable by His Britannic Majesty's Government to the Government of the French Republic on account of Madame Chevreau.

According to the information given to the Arbitrator, the facts of the case in its principal points appear to be the following:

Early in 1918 a British military force under the command of General Dunsterville ("Dunsterforce") was sent from Bagdad with orders to encamp on the edge of the Caspian Sea and with the purpose of opposing the German and Turkish forces in case they attempted to go through there into Mesopotamia or Persia, in order to prevent the important oil fields of Bakou from falling into the enemy's hands. At that time they were concerned at the attitude of the Soviet authorities. The forces available for the operation in question were small and their progress was hampered by the hostile activity of bands of armed brigands, *Djenguéllis* ("Jangalis"), under the orders of a certain Kuchik Khan. The British troops also encountered much hostility on the part of local political heads of whom the principal one was the Russian, Cheliapine, who did all in his power to discover the plans and the strength of the expedition. The lack of sufficient reserves was a cause of great anxiety to the head of the expedition and it was necessary to take the greatest possible care to prevent information from reaching actual or eventual enemies.

In July, 1918, the expedition had succeeded in establishing itself at Recht despite strong opposition, but it was still threatened by the *Djenguéllis*; it underwent several attacks by the troops of Kuchik Khan, and particularly an assault on Recht on July 20. The attack was repulsed and the *Djenguéllis* retreated to Enzeli and the neighboring country, but their forces were not destroyed and enemy spies continued for a time to menace the safety of the British expedition. A number of these spies were arrested, including several Russians.

Among the persons arrested was also a French citizen, Julien Chevreau. M. Chevreau was born in 1878, in Saint-Marc-La-Brière, Touraine. At the age of 14 he went to Hanover to pursue his studies there. After 1900 he taught at Hanover and lived for a while in England. Ultimately he became professor of languages at Moscow, where he was living at the beginning of the war. During the war he went to Enzeli, Persia, but during the month of July, 1918, he was at Recht and did not return to Enzeli until the end of the month.

He was arrested in the public gardens of the customs office at Kazian, which constitutes the port of Enzeli, in the afternoon of the 8th of August, 1918. Enzeli was at this time the seat of general headquarters of General Dunster-

ville. There was no French consul at Enzeli, the nearest French consular post being at Recht.

After his arrest, M. Chevreau was imprisoned and sent by automobile escort to Bagdad (via Kasvine, Hamadan and Kirmanshah), arriving at Bagdad about September 24, 1918, when he was admitted to the hospital. He remained some time at the hospital at Bagdad and underwent an operation for hemorrhoids. Some time in the beginning of December, 1918, M. Chevreau was in the camp for Turkish prisoners of war at Bagdad, and having manifested his desire to communicate with some French authority, he was brought before Colonel Sciard, military attaché at general headquarters at Bagdad.

After some correspondence between the French and English ministers at Teheran, which continued from October to December, 1918, M. Chevreau, in January, 1919, was sent back to France by way of Bassorah, Bombay and Port Saïd, where he was questioned by the French authorities, and arrived at Marseille in March.

These facts concerning M. Chevreau, his prior career, his arrest and the treatment received by him were expressly admitted by both parties in a declaration made in the course of the oral procedure. It may be added that M. Chevreau limped. He was paralyzed in the left leg so that he could walk only with the aid of an orthopedic brace.

The correspondence between the ministers on the subject of M. Chevreau's arrest began with a letter dated October 30, 1918 (annexes, part I, to the French memorial), in which the French Minister, having learned through public rumor of the disappearance of M. Chevreau and informed by the French consul at Recht that M. Chevreau had been arrested and was at Bagdad, requested his English colleague at Teheran for information about the arrest, so as to be in a position to furnish the French Government with such explanations as it might demand of him on this incident. The British Minister answered, November 4, that he had no knowledge of the measures taken by the military authorities against M. Chevreau, but that he would make the necessary inquiries to obtain such information. (Annexes, part I, to the French memorial.) Accordingly, it appears that he first approached the British consul at Recht, who, however, responded that he could not secure any information because all the military authorities had changed, and later by a telegram of the 3rd of December, the Civil Commissioner at Bagdad, Sir Arnold Wilson. The latter inquired at general headquarters for information. (Annexes to British counter-memorial, p. 91.) The staff officer charged with this duty, Major R. S. Duncan, on December 11 and 12, informed the Civil Commissioner that M. Chevreau was at that time in the hospital at Bagdad and would probably soon be returned to France, that he had been arrested in August at Kazian and sent to Bagdad by "Dunsterforce" as an "undesirable," that he had been caught examining the British stores of oil and the Russian radio station, that there had been found among his papers a certifi-

cate of exemption from French military service, a portrait of the Kaiser and the Kaiserin, and a letter indicating that he had had connections with the *Comité d'Alliance Islam*, and that he was considered by "Dunsterforce" as a German sympathizer and perhaps an enemy agent. Major Duncan also mentioned that M. Chevreau's declarations as to his prior movements had been at variance. He added that now M. Chevreau wished to return to France, and that the French military attaché, Colonel Sciard, had seen him and telegraphed M. Roux (the French consul) at Bassorah concerning his case, to have him sent back, but that M. Roux was of the opinion that M. Chevreau's case ought to be submitted to the French Minister at Teheran. He therefore requested that the case be submitted to the latter. (Annexes to the British counter-memorial, pp. 92-93.)

On December 12, through the offices of the Civil Commissioner, the content of this information was telegraphed to the Minister of Great Britain at Teheran, who, in turn, informed the French Minister of it. The latter answered December 24 by letter, in which he declared the following:

I don't think that the French law gives us the power to prevent his repatriation, whatever undesirable it may look, but the French Consul ought to send a few days before his departure a report to our government so that when he arrives in France the authorities there should know what he is worth. (Annexes to the French memorial, part I.)

Subsequently the Civil Commissioner at Bagdad on January 6, 1919, informed general headquarters that the French Minister had no objection to the return of M. Chevreau to France, and on the 10th of January the order was given to this effect by the commander-in-chief of the expeditionary forces in Mesopotamia. (Annexes to the British counter-memorial, pp. 94-95.)

Taken through Bassorah and Bombay, as mentioned above, and always under guard of British authorities as an "*evacué* from the enemy camps," M. Chevreau arrived at Port Saïd on March 7, 1919, where he was handed over to the officials of the French base there.

After having been questioned by the French officer in command (annexes to the French memorial, part I), on March 11 he was put on board an English ship bound for Marseille, where he arrived March 17. From Marseille he went, according to his expressed wish, to his native town where he arrived on the 21st.

A few days after his arrival, April 5, 1919, M. Chevreau addressed to the Minister for Foreign Affairs a long letter in which he complained of his arrest, the reason for which he said he still did not know, of not having been able, in spite of his request, to communicate either orally or in writing with the French consul at Reht, and of having been subjected to maltreatment at Enzeli as well as while en route to Bagdad. He also complained that during his confinement his home at Enzeli had been robbed: "money, clothes and other things with the exception of a few pieces of furniture." He asked that an inquiry be made, and formulated several demands, insisting, among other

things, that they inform him of the proceedings in his case, that they restore to him all the papers and documents seized following the search of his effects, that they return to him all that had been stolen from him during his detention, or its value, and that they award him a sum equal to the damage caused him by the arrest "subsequently admitted to be unjust and illegal by the general staff at Bagdad." (Annexes to the French memorial, part II.)

The French Minister for Foreign Affairs having approached the British Government in regard to this complaint, the War Office in London by telegram dated June 21, 1919, requested explanations of the commanding general in Mesopotamia, which were furnished by a telegram of July 2. (Annexes to the British counter-memorial, pp. 79-81.) On the basis of the explanations furnished, the British Foreign Office informed the French Ambassador at London, by a note dated July 18, 1919, that they had made a careful inquiry into the circumstances under which M. Chevreau had been arrested and deported in Egypt and had established the following facts:

M. Chevreau was arrested in August 1918, having been detected by the military authorities in examining the British petrol dump and Russian wireless apparatus at Kazvin. When cross-examined he failed to furnish the authorities with a satisfactory explanation of his conduct.

Among his papers was found a letter associating him with the *Comité d'Alliance Islam*, also a picture of the Kaiser and Kaiserin. He was transported to Bagdad under escort. Owing to the radical changes which have taken place in the establishment of the Army in Persia since that date, it has been unfortunately found impossible to verify the truth of M. Chevreau's ill-treatment during the journey. It is, however, noteworthy that he made no complaint while in Persia, and the fact that many other foreigners were deported along this route and are known to have received satisfactory treatment from their guards at least argues a strong presumption that M. Chevreau's charges are ill-founded. He was interviewed by Commandant Sciard, French Military Attaché, on his arrival at Bagdad, and the particulars of his case were telegraphed to the French consul, then absent on leave at Basrah. The latter declined to intervene and referred to the French Minister at Teheran, who agreed to M. Chevreau's repatriation.

While at Bagdad M. Chevreau was admitted into hospital suffering from influenza where he underwent an operation to facilitate which it was found necessary to remove his orthopedic splint. He was placed in the ordinary ward without guard and appears to have been treated with every consideration, receiving full diet for a man doing full work. His assertion that his residence at Enzeli was broken into and robbed is not understood, as his property was handed over, at his own request, to the French consul at Recht, and no record exists of anything having been stolen. (Annexes to the French memorial, part II.)

Following this note from the Foreign Office, of which M. Chevreau had become informed, M. Chevreau, on September 23, 1919, wrote another letter to the Ministry for Foreign Affairs. He denied the charges made against him, pointed out some inconsistencies in the information of the note, maintained his charges of ill-treatment, at the same time adding others, and in-

sisted that his claims should be allowed. (Annexes to the French memorial, part II.)

There is no indication from the documents presented what immediate effect was given this letter by the French Government. But steps taken in October, 1922, by the French Government to secure another inquiry failed, the Foreign Office declaring that it could not reopen the question, and, finally, could add nothing of importance to its note of July 18, 1919. (Annexes to the French memorial, part II.)

Meanwhile M. Chevreau died at Asnières May 3, 1925, leaving as his widow a woman he had married some time after his return to France in 1919.

As the survivor of her husband, Madame Chevreau renewed attempts to secure damages for the injury suffered by M. Chevreau. Accordingly she addressed, October, 1925, the British Minister for Foreign Affairs, who replied by letter of November 18, 1925, that he was not inclined to reopen the question. He explained to her, however, that in the correspondence exchanged in 1919 between the Foreign Office and the French Embassy, there had occurred a copyist's error. It was now agreed that the place of arrest of M. Chevreau had from the beginning been shown to be Kazian, the port of Enzeli, and not Kasvine, where M. Chevreau had never been. (Annex to the French memorial, part III.)

Further attempts to obtain an amicable settlement having failed, on March 4, 1930, it was finally agreed between the two governments to submit the case to arbitration, as stated above.

Persia, where M. Chevreau was arrested by the British military authorities, was a neutral state which did not participate in the war. But, according to what was explained during the oral hearings, the Allied Governments being convinced that Persia could not enforce her neutrality in the face of an invasion of German-Turkish forces, each had obtained from the Persian Government permission to establish a military force in the zone of influence accorded it by an agreement of 1907, that is, Russia in the northwest, Great Britain in the southwest. Later, after the Russian revolution in 1917 and the coming into power of the Bolsheviks, the Russians had shown an intention to withdraw their troops from Persia, and it was to take the place of the Russian forces that the Dunsterville expedition was undertaken.

Great Britain and her allies were at war with Germany and Turkey, but not with Russia or Persia, and martial law had not been proclaimed in the territory occupied by the British troops. The latter, however, at the time M. Chevreau was put under arrest, met armed resistance from the *Djenguélis* under the command of Kuchik Khan, whose strength was considerable, around 5,000, and fairly well organized.

Under these circumstances, the Arbitrator deems he cannot deny that the British forces in Persia had the right to take the measures necessary to protect themselves against the acts of the civilian population which were of a kind harmful to their operations or favorable to the enemy, a right which in

general, according to international law, belongs to belligerent forces occupying enemy territory.

It also appears that the French Government does not deny that, under the circumstances, the British forces in Persia were in a situation in which it was necessary to exercise this right. It restricts itself to the observation that the authorities who proceed in an arrest or deportation have more latitude and greater liberty of action when martial law is in force. Such a rule is so vague that it needs to be clarified by a more precise indication of the differences which it suggests. At any rate, the differences, if there are any, have no place in the opinion of the Arbitrator, in the present case.

The principles involved in the present case which, among others, have been applied by different international commissions, may be briefly stated as follows:

(1) The arbitrary arrest, detention or deportation of a foreigner may give rise to a claim in international law. But the claim is not justified if these measures were taken in good faith and upon reasonable suspicion, especially if a zone of military operations is involved.

(2) In cases of arrest, suspicions must be verified by a serious inquiry, and the arrested person given an opportunity to defend himself against the suspicions directed against him, and particularly to communicate with the consul of his country if he requests it. If there is no inquiry, or if it is unnecessarily delayed, or, in general, if the detention is unnecessarily prolonged, there is ground for a claim.

(3) The detained person must be treated in a manner fitting his station, and which conforms to the standard habitually practised among civilized nations. If this rule is not observed, there is ground for a claim.

As to the foregoing principles, there do not seem to be any serious differences between the parties. But it may be stated that the French Government in its oral pleading maintained that "in a country of capitulations (as Persia still was in 1918) particularly, one must guard closely and with more than ordinary care, the observance of the principle that the person arrested should be provided with a means of communicating with his consul." According to the explanations given, the French Government does not pretend to assume in this case that the existence of a régime of capitulations in Persia had the effect of imposing upon the British authorities a strict obligation to inform *proprio motu* the French authorities of the arrest of one of their nationals in war time. What it does claim is that, according to common international law, there is a duty to give the accused, if he demands it, an opportunity to communicate with his consul, and that there is likewise an international obligation to give information concerning the arrested person to the national authorities, if they request it.

The French Government declared it did not ask the Arbitrator to resolve the question of the competence of the respective military jurisdictions in a country of capitulations; it considers, relying upon a holding of the arbitral

sentence, rendered May 22, 1909, in the case of the Casablanca deserters, that this question is open, and it requests the Arbitrator to so state. Considering, however, that after what has gone before, such an admission does not seem to have any practical significance in the present case and that it is not the function of the Arbitrator to pronounce upon questions lacking such an aspect, the Arbitrator is of the opinion that he should limit himself to stating that there is no occasion for him to decide the question of competency mentioned above.

As to the rule put by the French Government, it constitutes a consideration which, perhaps, should be taken into account in the appraisal of the facts, but the Arbitrator does not think it presents the characteristics of a rule of law.

The reasons for which the French Government thinks that the circumstances in which the arrest and detention of M. Chevreau by the British authorities and his deportation to India and Egypt took place give rise to an international claim, may be stated briefly as follows:

The facts relied upon in the charge against M. Chevreau are not of a nature to create suspicions grave enough to justify the measures taken against him. Even if the aforesaid facts had formed a reasonable ground for his arrest, the suspicions would have been proved groundless at a hearing accompanied by the usual safeguards of civilized nations. But there was no inquiry with such safeguards, at least at the proper time. In particular, M. Chevreau, in spite of his request, was not allowed to communicate with the French consul at Recht; it was not until four months after his arrest that he was able to converse a few minutes with the French military attaché at Bagdad, who, however, had no authority to protect his fellow citizen. The detention of M. Chevreau lasted much longer than was necessary, and the treatment accorded him during his imprisonment and while being taken to Bagdad was not that which was due a man of his nationality and station.

Before beginning an examination of these various grievances, the Arbitrator deems it his duty to make some statements concerning the burden of proof. While the British Government asserts that this burden is upon the French Government as the plaintiff, the latter maintains that in the present case there is neither plaintiff nor defendant. On this subject it calls attention to an order issued August 15, 1929, by the Permanent Court of International Justice, where it was said that, the case involved having been brought up by a *compromis*, there was no plaintiff nor defendant. But on that point, in the opinion of the Arbitrator, there is a misunderstanding. The order only refers to a question of procedure and decides nothing in regard to questions relative to the burden of proof. The matter is complicated, and if Article 3 of the *compromis* imposes upon both parties the duty of "determining to the satisfaction of the Arbitrator the authenticity of all points of fact offered to establish or disprove responsibility," that provision, in the Arbitrator's opinion, is not intended to exclude the application of the

ordinary rules of proof. It only shows that there can also be a duty to prove the existence of the facts alleged in order to deny responsibility.

Mention has already been made of the facts alleged concerning M. Chevreau in the memorandum from Major R. S. Duncan to Sir Arnold Wilson in December, 1918, the contents of which were communicated to the French Minister at Teheran, *viz.*, of having been caught examining the British oil supplies and the Russian wireless installation, of having been found in possession of a picture of the Emperor and Empress of Germany, and of a letter indicating that he had had dealings with the *Comité d'Alliance Islam*, of having given different answers, when questioned, concerning his previous residing places and of having been considered by Dunsterforce as a German sympathizer and perhaps an enemy spy. These are the same charges contained in the telegram sent by the "G. O. C. Mesopotamia" July 2, 1919, to the War Office and in the note of the Foreign Office to the French Ambassador dated the 18th of the same month, not taking into account the erroneous information contained in the latter indicating Kasvine as the place where M. Chevreau had been taken examining the oil supplies and the wireless installation.

Are these facts sufficient to prove that M. Chevreau was a German sympathizer and even an enemy agent? The Arbitrator does not think so. The act of looking over the oil supplies and the wireless station may be perfectly innocent, and the possession of a portrait of the Emperor of Germany with the Empress is very little ground for a suspicion of German sympathies. As to the letter purporting to show connections with the *Comité d'Alliance Islam*, it was not produced—it is probably no longer in existence—and the British Government could not furnish any definite information as to the contents of the letter. It is true that, in the note from the Foreign Office, it is said that "when cross-examined he failed to furnish the authorities with a satisfactory explanation of his conduct." But no further explanation was given, and the source of this allegation, which is not in the telegram from the "G. O. C. Mesopotamia," was not indicated.

The Arbitrator believes, however, that he must hold that, on the basis of the facts in question, M. Chevreau was liable to arrest. But it then became the duty of the British authorities to proceed without delay to an inquiry in which M. Chevreau, having been informed of the suspicions about him and of the acts charged to him, might have explained these facts, as he did in 1919 after having been informed of the note from the Foreign Office. According to these explanations, the picture, about the size of a five franc piece, gotten from a box of chocolate of German origin, belonged to a pupil who had lost it at M. Chevreau's house; the latter had found it and was going to return it to him. Concerning the letter, he said it had no connection with the strategic operations of the British army in Persia or with the English policy; it was written for the sole purpose of answering the solicitations of the Provincial Director of Persian customs at Enzeli, who asked him to make an official

application for a position in his department to replace another Frenchman who was returning to France. It is a little vague, but a letter dated December 27, 1923, from M. Nouri, then Provincial Director, confirms the fact that there had been received from M. Chevreau a request for employment in the customs bureau, which in April, 1918, had been sent to the *Comité "Etéhadé Islam,"* but which had not been returned to the office of the Director and from which nothing had resulted. Regarding the charge of having been caught examining the oil depot and the wireless installation, M. Chevreau simply denied that he had been at Kasvine, the town which had been indicated instead of Kazian in the British note as the place where this act had taken place. The error on this point was not admitted by the British Government until November, 1925, after M. Chevreau's death. But, relying upon the two declarations of Persian customs officials at Enzeli, one dated April 18, 1926, the other dated September 10, 1927 (annexes to the French memorial, part III), the French Government maintained that the garden of the customs office at Kazian where M. Chevreau was arrested, was a public garden open to everybody and that there was no oil reservoir there. There were, about 800 meters away, some cans of stored gasoline, but soldiers kept the public away from this place. It therefore concluded that this ground of suspicion could not be maintained.

It also recalls that the British authorities in Bagdad, in December, 1918, when they examined the case of M. Chevreau, came to the conclusion that the acts charged against M. Chevreau could not be sustained. In fact, in a telegram (undated, but at any rate prior to December 17, 1918), sent by the French military attaché at Bagdad, Colonel Sciard, to the French consul at Bassorah, it was stated: "The General Staff informs me that one named Julien Chevreau has just arrived camp prisoners of war.—General Staff asks what it should do with this man against whom no accusation is lodged. He requests repatriation." On the other hand, in the telegram sent by the "G. O. C. Mesopotamia" to the War Office, July 2, 1919 (British counter-memorial, p. 81), this allegation is contradicted; it is there stated: "Arrest was not unjust and no admission was made, he was a Germanophile and possibly enemy agent." However that may be, it is certain, nevertheless, that no prosecution was instituted against M. Chevreau.

It is proper to add that, during the questioning at Port Saïd, M. Chevreau asserted that he had done several favors for the English, "particularly by his knowledge of foreign languages and by certain information relative to the geography of the country," and that the Rev. Murray, who had known M. Chevreau at Recht, where the latter gave him French lessons at the Presbyterian mission school in 1918, said in a letter of February 27, 1922, that he believes that M. Chevreau conferred with the political officer and the captain who was head of the "intelligence department" at Recht, in order to give them certain information. (Annexes to the French memorial, part 5.) It also appears that M. Chevreau enjoyed a good reputation at Enzeli as well

as in his native town in France. (Annexes to the French memorial, parts 5 and 6.)

The foregoing argument rests on the presumption that the arrest of M. Chevreau was due to no other causes than those indicated by Major R. S. Duncan in his memorandum. But, in its counter-memorial the British Government offered statements which add considerably to the facts leading to M. Chevreau's arrest. They are especially the statements of former Capt. Lightfoot, the arresting officer, former Capt. Keighley, who took part in a search of Chevreau's home in Enzeli, and of former Capt. McKay, who had, while he was on duty at Bagdad as an officer of the general staff (intelligence duties) in December, 1918, secured information from Enzeli concerning M. Chevreau. Mr. Lightfoot was also heard as a witness at the request of the British Government. According to his statement, M. Hunin, a Belgian who was at that time Provincial Director of Customs at Enzeli, called his attention to the fact that M. Chevreau, who lived in the native quarter in Enzeli, was obtaining from the English troops information concerning their number and equipment and that he was giving this information to Kuchik Khan. Following this accusation, Mr. Lightfoot watched M. Chevreau and had seen him several times in the vicinity of the depots and the British truck parks questioning the soldiers and the drivers, and was then convinced that when a transport arrived, M. Chevreau endeavored to secure important tactical information by talking with the men. He had also twice observed M. Chevreau listening to the wireless apparatus. He had warned M. Chevreau several times and told him to keep a reasonable distance away from the wireless. But M. Chevreau only smiled. Finally Mr. Lightfoot, from a hiding place, caught M. Chevreau red-handed in the act of questioning a subaltern in the transport service about the troops en route for Kazian and about their equipment. The subaltern having admitted that he had been questioned, Mr. Lightfoot arrested Chevreau and ordered the subaltern to take him to general headquarters. M. Chevreau did not protest. Then, Mr. Lightfoot, accompanied by another English captain, went to Chevreau's home to make a search. They found there a quantity of letters in various languages which Mr. Lightfoot gave over to a major whom he thought he recalled was Major Browne of the Indian Army. After such a length of time Mr. Lightfoot says he does not remember the contents of the papers found; he knows, however, he says, that the contents were of a nature to convince him that the arrest of M. Chevreau was justified and that the latter was, no doubt, in the service of Kuchik Khan. In his statement Mr. Lightfoot also says he remembers vaguely that he had accompanied Major Browne to see M. Hunin after the arrest of M. Chevreau, that Major Browne had questioned M. Hunin on what he had seen and heard of the activities of M. Chevreau, that M. Hunin was perfectly sure that Chevreau was in the pay of Kuchik Khan and that Major Browne and Mr. Lightfoot were convinced that it was true and that Chevreau should be sent to Bagdad as a person whom it would be dangerous

to let remain in the neighborhood because of the military operations taking place there. On the other hand, he declares he never learned what happened to M. Chevreau after he had been sent to station headquarters.

Mr. Lightfoot's recital is confirmed in several points by the statement of Mr. Keighley of June 29, 1930. The latter says he remembers M. Chevreau, who was pointed out to him as having always questioned the drivers of the motor convoys from Kasvine to Kazian and as having attempted to find out the number of the British forces in Persia, the number of troops en route to Kazian, etc. That was reported to Major Browne who was the commanding officer at Kazian. It is my impression, says Mr. Keighley, that Major Browne was in communication with M. "Hunon" concerning the good faith of the scholarly activity of M. Chevreau in Enzeli; the result was that Major Browne ordered the arrest of the latter on August 7, 1918, and that Mr. Keighley was ordered to go with Capt. Lightfoot to search the lodgings of M. Chevreau in the Bazaar of Enzeli, which they did the same night as there was some danger in going there during the day because of the presence of Kuchik Khan's agents in this part of the port. They gathered together a quantity of correspondence and were surprised at the absence of French letters and at the presence of a great number of German books, notably, of dictionaries, all in German and other languages. The seized papers were sent to Major Browne's office. Personally Mr. Keighley had the impression that M. Chevreau was spying for someone.

Mr. McKay, whose statement is dated September 24, 1930, reports that one day in the middle of December, when he had gone to the camp of Turkish prisoners at Hinaidi, near Bagdad, he was approached by a person who said he was French and asked to see the French consul. After having consulted his colonel, Capt. McKay sent to Enzeli for information. After an answer had been received, M. Chevreau was arrested and sent to Kasvine and from there to Bagdad under suspicion of being an agent of the forces which were opposing the advance of the British troops towards the Caspian Sea. Mr. McKay remembers, he says, that it was alleged that M. Chevreau lived in the native quarter in Enzeli—which was in itself a reason for suspecting him,—that it was believed that he sympathized with the *Comité d'Alliance Islam* and the Bolsheviks, who then had control of Enzeli, or even that he was in their pay, that he had shown too much attention to the British wireless apparatus and that it was believed he had obtained information as to the strength and distribution of the British troops. It was reported that when he was arrested, they had found on him the names of British officers and units, and Mr. McKay recalls, he says, that in one report it was stated that if M. Chevreau had not been a Frenchman, he might have been shot. After having received these reports, Mr. McKay had again seen M. Chevreau, who made a lengthy statement concerning his history and activities, after which Mr. McKay had sent his report with this statement to General Headquarters.

When examined as a witness, Mr. Lightfoot confirmed, among other statements, his declarations as to the denunciation of M. Chevreau by M. Hunin, the warnings he had given M. Chevreau at least six times in three weeks, and as to what happened after the arrest. He also said that the first time he saw M. Chevreau the latter was coming from a meeting of the leaders of the Kuchik Khan movement at Enzeli, a movement which had for its purpose "Persia for Persians."

On the other hand, M. Hunin, then Inspector General of Customs at Teheran, in a letter dated June 21, 1930 (British counter-memorial, p. 76), declared he had "no knowledge of the acts of Julien Chevreau" and was not "in a position to express an opinion on the facts concerning him." Is this a denial of Mr. Lightfoot's allegations or only a statement that he is unable either to confirm or contradict these allegations? That is a question on which the Arbitrator considers he should not stop.

He also thinks he need not stop to find out whether the facts reported by Mr. Lightfoot should be considered as exact and whether they have been correctly interpreted. It appears sufficient to state, on the one hand, that the aforesaid facts were of a nature to create against M. Chevreau suspicions justifying his temporary arrest, and on the other, that when in December, 1918, at Bagdad, an inquiry was begun in order to answer the request for information concerning M. Chevreau, no other charges against him were mentioned except those contained in Major Duncan's memorandum.

According to the statement of Sir Arnold Wilson (British counter-memorial, p. 76), some particulars had been telegraphed from Enzeli and Kasvine. They were, in all probability, the same facts mentioned by Mr. McKay in his statement. The interview between Colonel Sciard and M. Chevreau took place prior to the memorandum of Major Duncan; on the other hand, according to Mr. McKay's declaration, it was not until after the receipt of the particulars requested by him that the interview took place. The general staff in Bagdad and also Sir Arnold Wilson must therefore be presumed to have acted with knowledge of the said information when they confined themselves to mentioning the charges contained in the said memorandum and in the telegram sent December 12 by Sir Arnold Wilson to the Minister of Great Britain at Teheran. At any rate, if they had no knowledge of the documents found by Mr. McKay until later, no correction seems to have been made concerning the charges against M. Chevreau.

Under these conditions, the Arbitrator thinks that in the present case, account should be taken only of the charges made by the authorities at Bagdad. It is not certain that M. Chevreau had been able to give any explanation of the charges made against him in the course of the proceedings, several years after his death, and which, it appears, were not thought worth pressing. But the Arbitrator desires to add that there is no reason for doubting the sincerity or good faith of Mr. Lightfoot, whose recital was affirmed by him on the witness stand, as well as in several points by the statements of

Mr. Keighley and Mr. McKay. Even if the facts are admitted to be true, a different interpretation of the alleged acts seems possible.

It has already been said that the facts alleged against M. Chevreau would justify his arrest, but only as a provisional measure, and that it was the duty of the British authorities to initiate without delay an inquiry in which M. Chevreau, informed of the suspicions lodged against him and of the acts charged to him, might have furnished explanations of these acts and defended himself against the charges of which he was the object. They should also have allowed him to get in touch with his consul if he had so requested.

The question is, then, whether the British authorities performed these duties, and at the proper time.

As to their obligation to allow M. Chevreau to communicate with the French consul if he had demanded it, the British Government denies that M. Chevreau made any such request prior to the time when, in December, 1918, at Bagdad, he expressed to Capt. McKay his desire to see the French consul, and, the consul being absent, he was allowed to converse with Colonel Sciard. On the other hand, according to what M. Chevreau said, at the time of his examination at Port Saïd and which he repeated in his letter of April 5, 1919, he had asked to be permitted to see the French consul as soon as he was arrested. He had, he stated in his letter, protested against the arrest and demanded immediately to see the consul, which was refused; he had then asked permission to write and notify him of his arrest, without, however, receiving any answer. But the French Government could not show any proof of these allegations, and Mr. Lightfoot, who arrested M. Chevreau, contradicted them. He declared, and repeated in his testimony, that M. Chevreau said nothing when he was arrested; he only smiled. Also, among other things, General Dunsterville declared (British counter-memorial, p. 36) that if M. Chevreau had so expressed his desire, his case would have been submitted to the French consul in Recht, M. Sempé, and that, if a person who claimed French nationality had presented a request to that effect, they would have immediately arranged for him to see either M. Sempé or the French military attaché, M. Poidebard. He also said that if M. Chevreau had claimed special treatment as a French national, his case would have been referred to him, General Dunsterville, because he was then in Enzeli. Other superior officers expressed the same views.

Under these conditions, and as the burden is upon the French Government to prove, in case it is denied, that M. Chevreau had in fact presented the request as he alleges he did, the Arbitrator must consider as without foundation the complaint on this point made against the British authorities.

This point disposed of, the information upon which the Arbitrator must base his answer to the question whether the British authorities discharged their duties in the proper time is very meager. The papers in the case which, in 1918 and probably also in 1919, were in the archives of the British General Staff in Bagdad and also, perhaps, in other British military archives, could

not be found; it appears that they were destroyed, a proceeding which, according to the explanations given by the British, would have been regular because it was a question of a "temporary force."

However, as to whether a hearing took place while M. Chevreau was still at Enzeli, it can be stated that there was not at Enzeli any inquiry appropriate to the circumstances. M. Hunin, in his letter mentioned above, said that M. Chevreau was never questioned in his presence, and Mr. Lightfoot testified that he had not been called to give any explanations in the presence of M. Chevreau and that he did not know whether he had been examined at Enzeli.

It is also known that M. Chevreau was questioned at Kasvine, where, according to Mr. Lightfoot, there must have been a military court and where, according to Brigadier-General H. C. Duncan, who was Assistant Quartermaster General of General Dunsterville's forces (British counter-memorial, p. 41), they were accustomed (a custom which, however, was not always observed) to question suspects sent there from Enzeli. But all that is known of this interrogatory is what M. Chevreau says about it in his letter of April 5, 1919, that is, that having found out that a search had been made of his home in Enzeli, he had asked what had become of his belongings—money, clothes, books and other articles—and that the officer had answered that he need not worry, that everything would be sent to him at Bagdad (Annexes, part II, to the French memorial). However, concerning the character of the questionings usually conducted at Kasvine, some information was furnished by Brigadier-General M. Saunders who, up to November, 1918, had been an officer on the general staff ("intelligence") at the headquarters of the British forces in southern Persia. He said, in a letter dated February 11, 1930 (British counter-memorial, p. 64), that all cases were carefully examined, first by the commanding officer of the place and then at general headquarters of the said forces, and, that, if from this examination "definite proofs"—in another letter, of August 23, 1930, he said "satisfactory proof"—were obtained, the suspects were sent to Bagdad with a complete report in the case of each prisoner. At Bagdad the cases were reexamined and the prisoners sent to India for internment, if it appeared necessary because of their guilt and their importance.

These several examinations might give guarantees to the suspects against errors in the statement or the evaluation of the facts, but they also imply the danger that at Kasvine they might have contented themselves with a less searching examination and relied too much on the inquiry which was to take place at Bagdad to eventually correct the errors made.

M. Chevreau constantly maintained that he did not know why he had been arrested and sent to Bagdad. He made the allegation not only after his return to France, but, according to the declaration of Lance Corporal Pointer (British counter-memorial, p. 53), also during his transportation from Kasvine to Bagdad. He also made the statement when he spoke to Capt. McKay in the camp of Turkish prisoners in Bagdad. Certainly these allega-

tions are not sufficient to prove that in fact he had not had an opportunity to become acquainted with the suspicions held against him and the acts charged to him. But neither has the contrary been proved, and as the British Government could not produce the only documents which could bring any light to bear on this point, the very possibility that they might have neglected to inform M. Chevreau of the suspicions against him and of the acts charged, constitutes an element of a nature which makes the Arbitrator hesitate to consider the questioning at Kasvine as fulfilling the conditions necessary for the inquiry which was incumbent upon the British authorities.

All that is known of the result of the examination at Kasvine is that M. Chevreau was sent to Bagdad as an "undesirable"—a vague enough term that might include cases in which suspicion is slight—and that when they examined his case in Bagdad in December, 1918, they judged it necessary to look up additional information. The said examination seems therefore to have been summary. In the opinion of the Arbitrator the inquiry as to the suspicions against M. Chevreau should have taken place, if not in Enzeli, then in Kasvine, and as the evidence does not justify the statement that a hearing with the proper safeguards took place at Kasvine, the Arbitrator finds that the deportation of M. Chevreau to Bagdad and his detention there as a prisoner for several months is sufficient upon which to base a claim in international law.

Is this also the case in the ultimate transfer of M. Chevreau to Port Saïd by way of Bassorah and Bombay? The British Government denies it because it was with the consent and even at the request of M. Chevreau that the transfer was made. The French Government is of the contrary opinion. It asserts, in particular, that the *compromis* must be understood as having established the fact that M. Chevreau had been "deported"—in the French sense of the word—to India and Egypt. There follows a discussion regarding the meaning of the French word "déportation" and that of the English word "deportation." The conclusion seems to be that the latter can be used to signify the simple transfer from one place to another without the obligatory or forced character which appears to be a necessary element in the meaning of the French word. The Arbitrator, however, thinks there is no need to dwell on the question of what is the sense in which the words in question have been used in the *compromis*. It suffices for him to state that the repatriation of M. Chevreau was not executed as a measure dependent upon his will alone; it was not until at Port Saïd that he was released, or rather taken in charge by the French authorities. There is nothing to indicate that they would have allowed him to remain in Mesopotamia or to take another route to return to France if he had so desired. And, according to the statement of Sir Arnold Wilson (British counter-memorial, p. 61), neither would they have permitted him to go back to Persia. But that does not imply that the fact that M. Chevreau himself asked to be sent back to France is without importance in the question of the damages which must eventually be awarded.

As was stated before, M. Chevreau, in his letter of April 5, alleged that he was subjected to mistreatment during his detention and deportation. The facts alleged in this letter are as follows:

As soon as he was arrested at Enzeli he was imprisoned in a guard house where he received nothing to eat for three days and where he had to sleep on the floor on nothing but the clothes he was wearing when arrested; he was also left without food on other occasions for two, three, and once for four days; at Kirmanshah he had to sleep on wet or damp ground; between Kasvine and Hamadan, not being able to get out of the automobile as quickly as one of the guards wished, the latter kicked him in the stomach, so that, M. Chevreau said, it might cause him to suffer perhaps all his life, and hit him in the mouth with the butt of his gun which broke seven or eight teeth; in the hospital for Turkish prisoners of war in Bagdad he was obliged to sleep on rotten mattresses with foul smelling covers, filled with vermin, which had been used by Turkish soldiers, some sick with dysentery, others with contagious diseases. These mattresses and covers were never disinfected, but only dried in the sun, and he was given no bed linen; having a paralyzed left leg so that he could not walk without a brace, to add to his humiliation they took away his brace so that he could not walk within the inclosure of the camp as the other prisoners did; one day, December 11, 1918, when he complained to the head doctor of the hospital of the almost inedible food and of the small amount given him, the doctor answered that the food he was receiving was good enough for any Frenchman, especially for him, who was getting more than he deserved.

In his letter of September 23, 1919, answering the allegations made in the note from the Foreign Office of July 18, 1919, M. Chevreau framed several more complaints about his treatment. He said, among other things, that he had attempted several times to lighten his lot and that of the other prisoners by speaking to the captains accompanying the convoys, but they would not listen to him, and at Kirmanshah, when he tried to tell his troubles to the captain in charge of the camp (September 17, 1918), the latter struck him in the back of the head with his fist, knocking him to the ground.

He also alleges that in the hospital he had had two guards beside his bed up to the day before the operation and that they had only been taken away on the order of the surgeon, Mr. Talbot, who first demanded that he should not try to escape.

As to the taking away of his orthopedic brace, he adds that in spite of his requests and the demands of the surgeon, it was not returned to him until the eve of the day when the French mission on the way to Bagdad was to visit the camp (the hospital of the camp for Turkish prisoners of war) where he was and from which he was removed in order not to attract the attention of the French officers to the pitiable state he was in.

Concerning the poor food of which he complained, he also narrates that an officer of the general staff had to remonstrate on this subject, December 10,

with Doctor "MacReady," a hospital doctor, who, he said, tried to make him swallow a glass of arsenic, December 8,* and then with Colonel Whelan, head doctor of the hospitals at Bagdad, who, on the next day, December 11, had expressed himself to M. Chevreau in the offensive terms related in the letter of April 5.

Can the serious charges thus made be sustained? The British Government denies them all as entirely unfounded. It has not limited itself to deny them, but it has also offered a great number of statements which contradict M. Chevreau's allegations on various points. The Arbitrator will restate hereafter the most important of these statements. But first he feels he ought to make it clear that the burden of proof is on the French Government, and that, conformably to a principle adopted in analogous cases, the allegations of M. Chevreau in his letters of April 5 and September 23, 1919, can not be considered as sufficiently proved if not supported by other evidence. It is true that it is difficult to explain how M. Chevreau could have been led to make his accusations if they did not have some truth in them, and on the other hand, he would have found it hard to prove his allegations exactly. But this consideration cannot, in the Arbitrator's opinion, prevail over that which requires that an accusation be proved, and that, failing sufficient proof, it be rejected rather than accepted. Especially concerning the value of allegations of a person alleged to have been the victim of ill-treatment, that person may present his own testimony as proof of the facts he alleges, under the safeguards secured by judicial procedure, safeguards which are not evident from M. Chevreau's letters.

In regard to the mistreatment M. Chevreau says he suffered at Enzeli, Mr. Lightfoot declared that the guard room where M. Chevreau was imprisoned was adjacent to general headquarters, where there was always an officer, and that it was absolutely impossible for a person to have been left there three days without food; he would have been constantly under the eyes of Major Browne, a very scrupulous officer, and he would have had the same food as the British soldiers. Major Browne's statement, although he does not remember M. Chevreau, conforms substantially with that of Mr. Lightfoot.

As regards the transfer of M. Chevreau to Bagdad, the British Government was able to produce the declarations of two subalterns, Lance-Corporal Pointer, and Sergeant Harris. The former, whose statement is dated August 9, 1930, stated he had been ordered to return in August, 1918, from Kasvine to Hamadan with some prisoners. Among these was a man who spoke perfect English. Mr. Pointer did not know at this time the name of the prisoner, but it was the same man as shown in a photograph of "Professor Julien Chevreau," which was shown to him. The man, as far as Mr. Pointer remembers, was dressed in black and was "well groomed." He wore a straw

* It may be remarked that the French Government, in its reply, declared it did not wish to make a point of this accusation, and that, in general, it seems to have admitted that the allegations made in the letter of September 23 might be exaggerated.

hat and carried a few pieces of luggage. He appeared to be "quite happy." The trip from Kasvine to Hamadan took around fourteen hours. During the trip Mr. Pointer spoke several times with the prisoner, who did not complain and whose only observation of importance was that he could not understand why he had been arrested. On arriving at Hamadan, the prisoners were sent to headquarters and Mr. Pointer did not see them after they went into the guard room. He declares positively that M. Chevreau did not receive any mistreatment during the trip from Kasvine to Hamadan. Mr. Pointer himself was in the rear of the column and saw nothing untoward happen to M. Chevreau.

Mr. Harris, whose statement was made in New South Wales, August 27, 1930, says that he knew M. Chevreau, who was put in his charge as a prisoner at a place called Menjil, between Recht and Kasvine. It was at Hamadan that Mr. Harris made a more intimate acquaintance with M. Chevreau, the latter having been placed immediately in the guard room and under close arrest in the quarters of the American mission. He was treated in accordance with army orders and was visited every day by an officer in the presence of Mr. Harris; he did not complain of being badly treated, but only of being kept a prisoner. Mr. Harris asserts that M. Chevreau was never brutally treated, either in the guard room or en route between Menjil and Hamadan. He appeared to Mr. Harris to be a "very refined type of a man" and was consequently treated with the consideration that status required. M. Chevreau remained under the surveillance of Mr. Harris for about a month. He left Hamadan by automobile destined, the latter believes, for Bagdad.

As to the rest of the trip from Hamadan, via Kirmanshah, to Bagdad, the British Government could not produce any declarations contradicting the accusations made by M. Chevreau. On the other hand, the French Government could not offer any document supporting these charges, unless it be an affidavit, dated March 31, 1930, by a M. Desprez, Deputy Director of *La Commerciale de France*, where M. Chevreau worked for a while after his return to France. M. Desprez declares that M. Chevreau complained on various occasions of the bad treatment he received from the English military forces during the war and that he had a scar on his forehead caused, according to him, by a blow received during his captivity.

Concerning his treatment in Bagdad, the British Government produced the statements of Lieutenant-Colonel (Medical Corps) J. F. Whelan, head doctor of Hospital Station No. 23 at Bagdad (dated August 21, 1930), of Capt. Talbot, surgeon in the same hospital (not dated), of Mrs. Newcombe, nurse in the hospital, officers' section (dated September 20, 1930), of Sir Arnold Wilson, Civil Commissioner at Bagdad (undated), and of Capt. McKay (September 24, 1930), as well as letters of Miss E. E. Burns, nurse in the same hospital (of January 13, 1930), of Miss M. G. Gilmore, head nurse in that hospital (of January 20 and 24, 1930), of Lieut.-Col. J. F. Whelan (of September 23, 1930), and of Doctor Meeredy (of August 27, 1930).

Mr. J. F. Whelan does not remember M. Chevreau; he has only a vague remembrance of having heard the name. He is certain that if such things as M. Chevreau alleges had been brought to his knowledge, he would have recalled them. He denies having put guards at M. Chevreau's bedside or having refused to listen to a complaint from him. He ridicules the charge that Dr. Mecredy tried to poison him, and he declares he is certain that, during his stay at the hospital under his command, M. Chevreau was treated with kindness and sympathy and received the best of care. In his letter, Col. Whelan adds there were never any guards in the officers' section (where, according to the statement of Mrs. Newcombe, M. Chevreau was treated), except some unarmed Indian soldiers employed to transport the sick and their effects. The only guards employed in the hospital were in a separate section for Turkish prisoners of war, which was about 200 yards away from the officers' section.

Mr. Talbot kept an account of the operations performed by him at the hospital in 1918, and found that on October 21, he had operated on M. Chevreau for "ligature and removal of hemorrhoids." If the latter had an orthopedic brace, the brace would have had to be removed before the operation. He said he was certain that if M. Chevreau had complained to him of the removal of his brace, he would have remembered it. The fact that he remembered M. Chevreau only with the aid of the register shows that his case presented nothing out of the ordinary and that he did not complain of injustice or mistreatment while he was under the care of Mr. Talbot. The latter also ridicules the charge against Dr. Mecredy and he praises highly the devoted services of the nurses.

Mrs. Newcombe *née* Nash ("Sister Nash") remembers M. Chevreau as a patient who had been treated in the section of the hospital reserved for officers. She believes she recalls he was admitted as suffering from sciatica. She also believes he was operated on by Dr. Talbot. She does not recall that M. Chevreau complained of the treatment. He received the same food and the same care as the officers. He was, the whole time he was in the hospital, under the surveillance of a guard stationed outside one of the doors of the room, and she remembers that M. Chevreau often went out by another door so that it was necessary to send the guard to call him back. As far as she remembers, M. Chevreau was never without his brace, although it is possible that it was removed at the time of the operation.

Mr. Mecredy, in his letter, declares he was not in charge of the section of the British hospital station at Bagdad reserved for officers and did not remember having treated a Frenchman in December, 1918. He was at that time an X-ray specialist, and as far as he could remember, "was still looking after" the section of the hospital under tents, reserved for Turkish prisoners, of which 1,300 passed through his hands in the weeks following the last attack against the Turks. He denies as ridiculous and groundless the accusation of having tried to poison M. Chevreau.

The nurses, Miss Burns and Miss Gilmore, do not recall M. Chevreau, but have nothing but praise for Drs. Whelan and Talbot.

As for Sir Arnold Wilson and Capt. McKay, they do not recall that M. Chevreau complained of bad treatment. If, said Sir Arnold Wilson (annex to the British counter-memorial, p. 61), a serious complaint had been made by a prisoner about the conduct of an officer or of a British soldier, he would have known of it and an inquiry would have been made by him or by his orders. Neither does it appear that M. Chevreau complained of bad treatment at the time he was examined at Port Saïd, where, on the other hand, he seems to have alleged that several personal belongings were taken from him. On the contrary, Colonel Sciard, in his declaration of June 1, 1930, said he remembered that when he interviewed M. Chevreau, the latter complained of the manner in which he had been treated. But M. Sciard said that after the lapse of so many years he could not recall the exact grievances enumerated by M. Chevreau.

The statements of Lieut.-Col. Whelan, Capt. Talbot and Mrs. Newcombe refer to the treatment of M. Chevreau in the section of the military hospital for English officers, while the complaints of M. Chevreau relate, at least in part, to his treatment in another section of the hospital, used by Turkish prisoners.

It also appears certain that M. Chevreau, after the operation he underwent October 21, was transferred to the latter section.

During the examination at Port Saïd, M. Chevreau testified that this transfer took place November 7 and that, later, he was transferred to the camp at "Hamidieh" (error for "Hinaïdi"). According to Major Duncan's letter, he was still in the hospital on December 12, while the parties are agreed that M. Chevreau was in the prison camp for Turks at Bagdad in the early part of December. It is probably an error, but not important; the point is that M. Chevreau was interned for a long time with the Turkish prisoners, and it was not until after January 11, 1919, that he was able to leave the camp for Turkish prisoners at Hinaïdi to return to France.

On the British side, no information was given as to the conditions which existed, either in the hospital section for Turkish prisoners, or in their camp at Hinaïdi. However, it seems presumable that these conditions were not good and that the prolonged stay under these conditions was a great hardship for a European who belonged to the educated classes as M. Chevreau did. Colonel Sciard gives the following description of the impression M. Chevreau left with him: "His attitude was that of a depressed man and his physical appearance miserable. He was dirty, almost ragged, dressed in a coarse woolen cloak, once white, a sort of *burnous* made by the natives, one of his legs was supported by a brace and he limped. He was covered with dust like a man who has just made a long trip. I believed," he says, "conceding that he expressed himself correctly, that I was in the presence of a sort of outcast, a social undesirable, a vagabond treated without respect by the military

authorities and whom they were getting rid of by the most expeditious means." And to sum up his impression of the manner in which M. Chevreau had been treated, he adds that it "was what would be accorded a vagabond, whose mode of life made him undesirable on the front of an army in the field; if this man had any known means of livelihood, if he enjoyed an honorable reputation among our diplomatic representatives, if they only had indefinite suspicions against him, there is no doubt that he was treated without the respect and consideration that his station demanded."

If one compares this description with that of the subalterns Pointer and Harris concerning the appearance of M. Chevreau at the time of his transfer to Hamadan, the contrast is great. Nevertheless, the description given by M. Sciard is not confirmed by that of Capt. McKay. According to the latter, M. Chevreau was a thick-set fellow, in good health, as far as Mr. McKay could judge, and not a skeleton at all.

It is true, his clothes were in bad condition, but in this regard, he was in the same condition as hundreds of other refugees from the countries around the Caspian Sea seen in the region of military operations. The bad condition of M. Chevreau's clothes and the fact that he had to be taken to the hospital immediately after his arrival in Bagdad can also be explained, at least to a certain extent, by the hardships resulting from the long trip from Enzeli to Bagdad by poor roads and in an unhealthy climate. It is not necessary to add ill-treatment to this.

Under these conditions, the Arbitrator thinks that the charges of M. Chevreau concerning the way in which he was treated during his detention and deportation are not sufficiently proved. Still, one could ask whether the very fact that at Bagdad M. Chevreau was imprisoned for about two months with Turkish prisoners of war should not suffice to establish responsibility in international law. Conceding, however, that the physical and moral suffering which the long detention in the conditions which existed may have caused M. Chevreau, should be taken into consideration in calculating the damages which, from what has gone before, can be claimed, the Arbitrator does not think it necessary to decide that question.

On the first question submitted to arbitration, the Arbitrator has arrived at the following conclusions:

The arrest of M. Chevreau was not arbitrary; it was justified in the circumstances in which it took place, but the verification of the suspicions against him should have been made, at the latest, in Kasvine; a serious examination at that time and in that place would have shown, in the Arbitrator's opinion, that the suspicions were not great enough to justify a more prolonged detention or the deportation of M. Chevreau. A claim on this account, therefore, will be justified. But the Arbitrator does not find enough proof that M. Chevreau, during his transfer or his detention, was the victim of ill-treatment justifying a claim in international law.

The Arbitrator believes he ought to add that if, in this part of the award,

he deemed it necessary to consider not only the detention of M. Chevreau "in Persia in 1918," as the *compromis* states, but also his detention in Bagdad from September, 1918, until the day in January, 1919, when he left that place, the reason is that none of the parties brought out the fact that the *compromis* so limited the task of the Arbitrator as to exclude that last part of M. Chevreau's detention. On the contrary, they discussed the circumstances under which he was detained in Bagdad as well as those in connection with the treatment to which he was subjected in Persia. The Arbitrator, therefore, thinks it was the intention of the parties to submit to his examination the questions relative to the detention of M. Chevreau without excluding those concerning the period in which he was detained outside of Persia, and that it is in consequence of a material error that, in the *compromis*, the parties expressed themselves in terms which, taken literally, appear to limit the Arbitrator's examination to that period only in which M. Chevreau was detained in Persia. In fact, it is hard to understand the reasons for such a limitation.

Having seen the conclusion at which the Arbitrator has arrived in regard to the first of the two questions submitted to him for decision, it is now necessary to examine the last of these questions.

There is no doubt but that the detention of M. Chevreau and his deportation, so far as the Arbitrator has recognized that these acts give rise to a claim in international law, caused M. Chevreau not only moral injury but also material injury; among other things, said acts made it impossible for him to continue or resume his activity as a professor of languages in Persia.

The Arbitrator will again discuss, if it is necessary, the extent of these damages *à propos* of the question of the indemnity to be awarded under this claim.

It appears from the conclusions formulated in behalf of the French Government, that that government demands that the indemnity which the British Government shall pay to the French Government in behalf of Madame Chevreau be fixed at £8,680. This sum, according to the French Government includes:

£4,240 for arrest and detention.
£2,220 for mistreatment during detention.
£2,220 for loss of property in Persia.
<hr style="width: 10%; margin: 0 auto;"/>
£8,680

The first of these sums is calculated at the rate of £20 a day from the 8th of August, the date of M. Chevreau's arrest, to the 7th of March, the date when he was handed over to the French authorities at Port Saïd, that is, 212 days.

The British Government on its part protested the rate, and argued that, even if an indemnity were due for the arrest and detention of M. Chevreau, that indemnity should not be calculated for all the time indicated by the French Government. There must be deducted, according to the British Gov-

ernment, on one hand the days when M. Chevreau was in the hospital in Bagdad, and, on the other hand, the period during which the negotiations and arrangements for his repatriation took place, and finally, the time while M. Chevreau was en route from Bagdad to Port Saïd. In this way the British Government comes to the conclusion that the only period which can be taken into consideration must be that included between August 8 and September 24, 1918.

As to the measure of damages to apply, the French Government cited the fact that Mr. Plumley, umpire in the Venezuelan claims, by virtue of an agreement with Great Britain concluded in 1903, had examined the practice as to the computation of indemnities awarded in the case of claims for arrest and detention, and had found that, in 16 prior cases, arising for the most part out of the war of secession, the average indemnity award was \$161 a day. His conclusion was that a sum not exceeding \$100 a day was not excessive damages; it rather approached the minimum which ought to be allowed when the plaintiff was not guilty of any culpable act toward the defendant state. This rate of \$100 a day had been adopted in America also, in other cases; in one case, decided in 1926, it had even been increased 50 per cent to provide for money depreciation.

On this point the Arbitrator calls attention to the fact that the computation of damages according to a certain daily rate is but a practical means of avoiding an arbitrary assessment. In principle, it is a question of determining, according to the individual circumstances of each case, the global sum which would give equitable compensation for the moral or material injury suffered.

It would not be in accordance with this principle to determine the indemnity to be allowed by simply calculating the number of days taken into consideration and applying to them a rate of assessment which might be considered as equitable in the conditions which existed in America. This rate is, in the opinion of the Arbitrator, too high for the conditions which, at the time in question in the present case, were prevalent in Europe and Persia. It is also necessary to consider the situation of M. Chevreau at Enzeli, who, according to M. Hunin, "earned a scanty livelihood by giving lessons in foreign languages." Also M. Chevreau himself, in his letter of April 19, 1920, only valued at 40,000 francs the indemnity due him for "pecuniary losses" caused during his captivity, as well as for "interest-damages for internment and physical and moral suffering resulting from this internment."

On the other hand, as to the period which should be counted, in the estimate of the indemnity, the Arbitrator does not think the weeks spent by M. Chevreau in the hospital at Bagdad should rightly be excluded. The care which he received during this time may have rendered his captivity less painful for him, but he was still a prisoner.

The Arbitrator also deems it would be unjust not to take into account the period consumed by the negotiations for the return of M. Chevreau to France

and the preparations for his return. During this time, extending up to his departure from Bagdad January 16, 1919, M. Chevreau still remained a prisoner, either at the hospital or at the prison camp for Turkish prisoners. His desire to be returned to France was not granted until after the consent of the French Minister at Teheran had been obtained.

As to the time during which M. Chevreau was on the way from Bagdad to Port Saïd, that is, from the 16th of January to the 7th of March, 1919, there may be room for doubt. It is true that he was not set at liberty until he arrived at Port Saïd. But it must also be considered that he was then, in accordance with his own wishes, about to return to his own country and that conditions during this trip must be presumed to have been perceptibly better than those to which M. Chevreau had been subject during his detention in Mesopotamia.

Finally, in fixing the indemnity, the Arbitrator also had to take into consideration the fact that the provisional arrest of M. Chevreau was admitted to have been justified, and that it is only from the time of his departure from Kasvine that the detention is considered as giving rise to a claim for damages; as a result, there is a reduction of four or five days.

All things considered, the Arbitrator has concluded that a sum of £2000 will constitute a just indemnity, aside from the question whether there ought to be added an additional indemnity for loss of effects in Persia, which will be examined later.

As to the indemnity claimed by the French Government for mistreatment during the detention, the Arbitrator thinks he need not concern himself with it, as no ill-treatment justifying a claim in international law has been proved. The more or less rigorous conditions of the detention were taken into consideration in fixing the indemnity for detention and deportation.

However, it may be added that the Arbitrator does not find it sufficiently demonstrated that the British authorities are responsible for the malady for which M. Chevreau was treated after his return to France, and which is alleged to have prevented him from working for a long time.

The Arbitrator, then, passes to the question of whether an indemnity should be awarded for the loss of effects in Persia, as the French Government demands.

It appears to be chiefly a question of money, watches and jewels, clothes, books and other articles which, according to M. Chevreau, were in his lodgings at Enzeli when he was arrested, but which were not found on December 24, 1918, when an inventory was made by M. Hunin in the presence of two English officers and of the Director of Customs, M. Malréchauffé. After his return to France, in letters dated May 30, 1919, and April 19, 1920, M. Chevreau furnished a list of the belongings he asserts he had in Enzeli at the time of his arrest, including the articles listed in the inventory and a sum of money he said he had on him. The value of the property is given in Russian rubles ("de Nicolas") in the list which includes:

Russian banknotes and Persian tomans: 41,528 rubles, 5,778 rubles of which were in his pocket;

Russian securities: 23,500 rubles;

Persian gold watches, stickpins, rings, bracelets, necklaces and other women's ornaments, valued at 18,155 rubles;

A violin, valued at 12,000 rubles;

Furniture and articles of personal use, valued at 6,670 rubles;

Clothes and linen, valued at 5,147 rubles;

Books, mostly dictionaries and grammars, valued at 1,134 rubles.

The total value therefore would be 108,134 Russian rubles which, according to the calculation of M. Chevreau, represented 281,148.40 French francs.

With the exception of the books and notebooks, numbering 54, the clothing and effects found at the inventory were, with M. Chevreau's permission, sold at auction in June, 1919, and the net receipts, either 183.65 Persian crans or 202.82 francs, were sent to the French Government to be forwarded to M. Chevreau. The books and notebooks were sent, at the request of the French consul at Recht and during his absence, to the representative of the French consulate, who was then the British consul, Mr. Oakshott. A letter from Mr. Eldred to the Minister of Great Britain at Teheran, dated July 11, 1919, attests that the books were then in the British vice-consulate. Their ultimate fate is not known, but the French Government asserts they were not given over to it.

The French Government asserts, on the one hand, that the British Government ought to be held responsible for the loss of the securities and articles, enumerated in the list of M. Chevreau, which were not found at the inventory of December 24; on the other hand, it asserts that an indemnity is due for the loss of the books and notebooks which were sent to the vice-consul of Great Britain in his capacity as representative of the French consulate. It also alleged that M. Chevreau suffered a loss due to the sale of the other articles because they had an intrinsic value far exceeding the proceeds from the sale and it considers that an indemnity is also due on this account.

Neither of these last two claims can be sustained, the one because the British Government could not be held responsible for a negligence of which its consul, acting as the representative of the consulate of another nation, might have been guilty; the other because, on principle, no account is taken of intrinsic value but only of market value.

There still remains the first claim, which is the only one of importance.

The argument upon which the French Government relies is the following:

The British authorities having, by the arrest of M. Chevreau, made it impossible for him to look after his property after his arrest, the British authorities became responsible for the safe-keeping of this property. Furthermore, they did not do their duty in this respect. For one thing, they should have had an inventory made without delay in the presence of M. Chevreau. On the contrary, an inventory was not made until December 24, 1918, that is,

four months after the arrest. For another, they did not take the necessary steps to prevent unauthorized persons from gaining access to M. Chevreau's room. When the inventory was made the room was locked only by a padlock to which the English officers who had made the inventory had the key, and it was admitted that two little windows facing the next house were not hermetically sealed, so that thieves could have entered.

As to this argument, it may be stated at once that in the opinion of the Arbitrator it is doubtful that the mere fact of the arrest of M. Chevreau was enough to impose upon the British authorities the duty of making an inventory at once of the property in question and of guaranteeing its safe-keeping. It is incumbent on the person arrested, in the first place, to see to the conservation of his property. And the means to be employed for that purpose will depend upon circumstances.

As the British Government did not deny that it was its duty to take proper steps to insure the safety of the property in M. Chevreau's room at Enzeli, there is no need to pursue further the question of its responsibility. It is sufficient to mention that if the British Government alleged that the officers who searched M. Chevreau's room had placed seals there which were found intact at the time of the inventory, that allegation was contradicted by the inventory itself. Also, Mr. Lightfoot, in his deposition, did not allege that any seals were put on. He merely says that the door of the room "would have been nailed up," adding that it would not have been hard to open it.

On the other hand, the British Government vigorously denies that the money, the Russian securities, the watches and jewels, the clothing and other articles on M. Chevreau's list were actually in his lodgings when he was arrested. It considers it unlikely that M. Chevreau possessed all this property, and it called attention to several circumstances which, in its opinion, cast suspicion on M. Chevreau's list.

In this regard, it may be stated at the outset that the allegation made by M. Chevreau is contradicted by the officers who searched his rooms, Captains Lightfoot and Keighley. Mr. Keighley said in his declaration that the value of the contents of the room was practically nothing. As for Mr. Lightfoot, he said that it was his impression that M. Chevreau was a very poor man, possessing nothing valuable and that, according to his recollections, there was no valuable article in his room. As a witness, Mr. Lightfoot added that the room was that of a Persian peasant. There was nothing in it of any importance whatever, "just the necessaries of life." They made a very complete search and saw nothing in the nature of a safe. They did find a trunk, but it contained only "a few articles of clothing, very few" and they were articles of little value. Asked if there had been an overcoat there, Mr. Lightfoot replied in the negative.

It seems also that M. Chevreau varied considerably in his allegations.

In a telegram sent in December, 1918, to the French consul at Recht by Colonel Sciard, the latter informs the consul that M. Chevreau said "he could

not liquidate furniture, effects and carry money amounting to 5,600 paper rubles and 96 tomans specie." He asks him to inform him if he can expect to get possession of them. The sum indicated here is much less than that figured in M. Chevreau's list, that is, 41,528 rubles in Russian bank notes and Persian tomans, of which he had 5,778 in his pocket. And in the interrogation at Port Saïd it is not mentioned that M. Chevreau lost any money. It is said that many personal articles were taken away from him and that the names of these articles were in his diary.

This diary was produced at the request of the Arbitrator, but the pages containing these names were torn out and destroyed by M. Chevreau after his return to France. Instead of these pages there is a list corresponding to that which he presented with the letter of April 19, 1920, and which purports to be a copy of the one on the destroyed pages, which, of course, cannot be vouched for.

On the other hand, in the interrogatory, one finds the following remark: "Among the papers, forwarded by the English authorities, and belonging to M. Chevreau, there are: 1 Armenian check for 4,000 rubles (the ruble equals 2.60 francs); a French savings bank book, a Russian bank book for 1,000 rubles and a Russian bank note for 3 rubles and various insignificant papers."

Aside from this passage, there is no mention either in the telegram or in the interrogatory of any securities or watches and jewelry. Furthermore, it is surprising that, in a telegram of December 28, addressed to the French consul at Reht by Colonel Sciard, and according to which M. Chevreau "requests a sale of his effects, except the violin which would be held temporarily by you along with the money," no mention is made either of the securities or of the watches and jewelry.

In these circumstances the Arbitrator is of the opinion that M. Chevreau's claim for loss of effects in Persia could not be sustained, with possibly one exception. The burden of proof is upon the French Government and the allegations of M. Chevreau cannot be accepted as sufficient proof.

The exception which the Arbitrator thinks can be admitted is in regard to the violin. The telegram just cited and the fact that, among the articles admitted to have been found by the inventory, was an empty violin case, seem to be sufficient proof that M. Chevreau certainly possessed a violin. Moreover, the collector of customs at Enzeli relates, in a letter of November 23, 1923, that an Armenian who was employed by the English became the possessor of M. Chevreau's violin. There is reason, therefore, to believe that this violin was stolen. M. Chevreau, in his list, placed the value of the violin at 12,000 rubles, which appears to be greatly exaggerated. In the absence of any other information regarding this value, the Arbitrator concludes that an additional indemnity of £100 for the loss of the violin may be considered as adequate.

As it appears probable that M. Chevreau had in his rooms more clothing than was indicated in the inventory, the Arbitrator also considered the possi-

bility of awarding an indemnity for loss of clothing. But he had to disregard this consideration for lack of information which would permit him to calculate an indemnity on this ground.

Finally, the Arbitrator calls attention to the fact that the French Government did not ask him to award interest on the sum owed by the British Government to the French Government on behalf of Madame Chevreau. Under these circumstances the Arbitrator concludes that he need not award interest. But, in fixing the said indemnity at £2,000 plus £100 for the loss of the violin, the Arbitrator took into account the fact that twelve years have passed since the events in question.

For these reasons, the Arbitrator decides:

1. That the detention and subsequent deportation to India and Egypt of M. Chevreau took place under circumstances which justify a claim in international law;

2. That the said acts caused M. Chevreau moral and material damage and that in consequence, the Government of his Britannic Majesty in the United Kingdom of Great Britain and Northern Ireland must pay to the Government of the French Republic, on behalf of Madame Chevreau, a sum of 2,100—two thousand one hundred—pounds sterling.

Done in three copies, one of which shall be given to the Government of the French Republic and the second to the Government of His Britannic Majesty in the United Kingdom of Great Britain and Northern Ireland. The third copy shall be deposited in the archives of the International Bureau of the Permanent Court of Arbitration.

BEICHMANN