

# REPORTS OF INTERNATIONAL ARBITRAL AWARDS

## RECUEIL DES SENTENCES ARBITRALES

American-British Commission established by Article XII of the Treaty of Washington of 8 May 1871 to deal with claims arising out of acts committed against persons or property during the American Civil War

**Case of John H. Hanna v. the United States of America,  
decision of 25 September 1873 and separate opinion**

Commission américano-britannique de requêtes, établie par l'article XII du Traité de Washington du 8 mai 1871 pour traiter des requêtes émanant d'actes commis contre des sujets ou des biens pendant la Guerre de sécession américaine

**Affaire concernant John H. Hanna c. les États-Unis d'Amérique,  
décision du 25 septembre 1873 et opinion individuelle**

25 September 1873

VOLUME XXIX, pp.143-145



NATIONS UNIES - UNITED NATIONS  
Copyright (c) 2012

Case of John H. Hanna v. the United States of America,  
decision of 25 September 1873 and separate opinion\*

Affaire concernant John H. Hanna c. les États-Unis d'Amérique,  
décision du 25 septembre 1873 et opinion individuelle\*\*

State liability—no liability arising for the State from acts performed by rebels in arms against the State, as the State could not exercise control over them or prevent their acts.

*Separate opinion*

Effect of recognition of the rebel authority as a belligerent—recognition by a government is deemed conclusive upon the nationals of the State concerned.

State liability—principle of liability of a government for wrongs committed upon foreign subjects—possible liability for acts of a government *de facto* having displaced the government *de jure*—absence of liability of the lawful government existing under the Constitution for lawless and criminal acts of rebels having failed to establish a government *de facto*.

Responsabilité de l'État—absence de responsabilité de l'État pour des actes accomplis par des rebelles armés alors que l'État ne pouvait contrôler ceux-ci ni empêcher leurs actes.

*Opinion individuelle*

Effet de la reconnaissance de l'autorité rebelle comme belligérant—une telle reconnaissance par un gouvernement est considérée comme irréfutable par les nationaux de l'État concerné.

Responsabilité étatique—principe de responsabilité du gouvernement pour les fautes commises à l'égard de sujets étrangers—responsabilité envisageable pour les actes d'un gouvernement *de facto* ayant remplacé le gouvernement *de jure*—absence de responsabilité du gouvernement légal existant en vertu de la Constitution pour les actes illégaux et criminels commis par des rebelles ayant échoué dans l'établissement d'un gouvernement *de facto*.

\* \* \* \* \*

---

\* Reprinted from John Bassett Moore (ed.), *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. III, Washington, 1898, Government Printing Office, p. 2985.

\*\* Reproduit de John Bassett Moore (éd.), *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. III, Washington, 1898, Government Printing Office, p. 2985.

The commission unanimously sustained the demurrer in the following award:

The claim is made for the loss sustained by the destruction of cotton belonging to the claimant by men who are described by the claimant as rebels in arms against the Government of the United States.

The commissioners are of opinion that the United States can not be held liable for injuries caused by the acts of rebels over whom they could exercise no control, and which acts they had no power to prevent.

Upon this ground, and without giving any opinion upon the other points raised in the case, which will be considered hereafter in other cases, the claim of John Holmes Hanna is therefore disallowed.

This was among the earliest of the decisions of the commission, and it is understood that in consequence of it a large number of claims of similar character awaiting presentation were never presented to the commission.

### Separate Opinion

Mr. Frazer, the United States Commissioner, read the following separate opinion:

This is a claim for the destruction of 819 bales of cotton belonging to the claimant by rebels in arms against the United States. The property was destroyed in Louisiana and Mississippi in 1862 by the Confederate forces with the concurrence of the rebel authorities of Louisiana, one of the Confederate States so-called. Her Britannic Majesty had recognized the so-called Confederate States as a belligerent and the contest of arms then prevailing as a public war. After such recognition by the sovereign, the subject of such sovereign can not, in his character as such subject, aver that the fact was not so. The act of his government in that regard is conclusive upon him.

Aside from this recognition by Her Majesty, it is public history of which this commission will take notice without averment or proof, that the Confederate forces were engaged at the time in a formidable rebellion against the Government of the United States. It may not be important to the question in hand, therefore, that Her Majesty had taken the action already stated.

It should be further observed that the particular "State of Louisiana," which, concurred and participated in the destruction of the claimant's property was a rebel organization, existing and acting as much in hostility to the Government of the United States as was the Confederate States, so called. It was in form and fact a creature unknown to the Constitution of the United States, and acting in hostility to it. It was an instrumentality of the rebellion. Its agency, therefore, in the spoliation of this cotton can not be likened to the act of a State of the American Union claiming to exist under the Constitution; and any argument tending to show that under international law the national government is liable to answer for wrongs committed by such a State upon the subjects of a foreign power, can have no application to the matter now

under consideration. The question presented is simply whether the Government of the United States is liable to answer to a neutral for the acts of those in rebellion against it under the circumstances stated, who never succeeded in establishing a government. It is not deemed necessary in this case to inquire whether the claimant, having a commercial domicile in Louisiana at the time, is to be deemed a "subject of Her Britannic Majesty" in the sense of Article XII of the treaty which creates this commission. That question is argued by counsel, but it is thought better to meet the question above stated for the reason that the case will thereby be determined more distinctly upon its merits.

The statement of the question would seem to render it unnecessary to discuss it. It is not the case of a government established *de facto*, displacing the government *de jure*. But it is the case merely of an unsuccessful effort in that direction, which, for the time being, interrupted the course of lawful government without the fault of the latter.

Its acts were lawless and criminal, and could result in no liability on the part of the Government of the United States.