

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Mixed Commission established under the Convention concluded between the
United States of America and Mexico on 4 July 1868

**Case of Fernando M. Ortega v. the United States of America,
decision of the Umpire, Sir Edward Thornton, dated 11 July 1876**

Commission mixte constituée en vertu de la Convention conclue entre les
États-Unis d'Amérique et le Mexique le 4 juillet 1868

**Affaire relative à Fernando M. Ortega c. les États-Unis d'Amérique,
décision du Surarbitre, Sir Edward Thornton, datée du 11 juillet 1876**

11 July 1876

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The umpire is therefore of opinion that the Mexican Government can not be held responsible for any pecuniary losses suffered by Dennison in consequence of the seizure of the *Archibald Gracie*.

But although Dennison brought upon himself these losses by acts which were in contravention of United States and international law, the umpire considers that the United States have a right to expect that one of their citizens, even when accused of crime against the laws of Mexico, should receive proper treatment at the hands of its authorities. In the present instance there was unnecessary and illegal delay in beginning and concluding the trial of Dennison, and after his arrest at La Paz he was treated with undue severity and even cruelty.

For the lengthened imprisonment and ill treatment suffered by Dennison and the unnecessary loss of time to which he was forced to submit, the umpire considers that the sum of one thousand dollars (\$1,000) in gold will be a fair compensation; and he therefore awards that this sum, without interest, in gold coin of the United States, be paid by the Mexican Government for Maria J. Dennison, as administratrix for the aforesaid Samuel L. Dennison.

**Case of Fernando M. Ortega v. the United States of America,
decision of the Umpire, Sir Edward Thornton, dated 11 July 1876***

**Affaire relative à Fernando M. Ortega c. les États-Unis d'Amérique,
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Competence of the Commission—question of the *locus standi* of a Mexican claimant arrested by the United States authorities upon accusations of treason against Mexico.

State responsibility—arrest by the United States viewed as a matter of comity towards a friendly government—duty under international law to prevent a breach of neutrality.

Compétence de la Commission—question du *locus standi* d'un demandeur mexicain arrêté par les autorités des États-Unis sur accusation de trahison à l'encontre du Mexique.

* Reprinted from John Bassett Moore (ed.), *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. IV, Washington, 1898, Government Printing Office, p. 4027.

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Responsabilité de l'État—arrestation par les États-Unis considérée comme un acte de courtoisie envers un gouvernement ami—obligation en vertu du droit international d'empêcher une violation de la neutralité.

In the case of *Fernando M. Ortega v. The United States*, No. 560, the claim arises out of the arrest of the claimant by United States military authorities on November 3, 1866, at Brazos de Santiago, Texas, and of his imprisonment till the 10th of December. The arrest and imprisonment are not denied by the defense, and there is no doubt that the arrest was due to information furnished by the Mexican Government through its accredited minister at Washington, which information, as coming from a friendly sovereign recognized by the United States, the government of the latter was bound to believe. The Mexican Government denounced the claimant as a deserter, a traitor, engaged in a dangerous conspiracy to subvert the Mexican Government.

If the military authorities in Texas, then under martial law committed a violation of the laws of the United States, it was in the power of the claimant as transient through that State to appeal to the courts of justice and obtain redress. But when the Republic of Mexico has concluded a treaty with the United States for the settlement of claims of her citizens arising from injuries by the authorities of the United States, it seems to the umpire very questionable whether a person who was denounced as a traitor by the Mexican Government, and was arrested and imprisoned on account of that denunciation, can now present himself to the commission as a Mexican citizen and claim on account of that arrest and imprisonment.

But apart from this question the umpire is of opinion that as a matter of comity towards a friendly government the Government of the United States was not only justified under the circumstances in ordering the arrest and imprisonment of the claimant, but that it was its duty by taking that course to prevent the success of a conspiracy against the Mexican Government, which there was sufficient evidence to prove that the claimant and his companions were endeavoring to carry out under shelter of the neutral territory of the United States. It is also to be observed that the measure of arrest and imprisonment was forced upon the United States military by the refusal of the claimant and his companions to retire to a point in the United States where their object could not so easily have been carried out, and where there would have been less danger of a breach of neutrality. The umpire is of opinion that the Government of the United States can not be called upon to make compensation for the acts of their officers above referred to.