

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 John Friery v. Mexico,
opinion of the Commissioner, Mr. Wadsworth**

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 John Friery c. Mexique,
opinion du Commissaire, M. Wadsworth**

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Conduct of hostilities—any person residing in an enemy place considered as enemy during assault—officers' duty to restrain pillage and protect life and property after the capture of an enemy place.

State responsibility—right of government to assail and capture a town held by its enemies—no responsibility for unauthorized acts committed against enemies' property or persons, which were impossible to restrain—disorders viewed as hazard of war.

Conduite des hostilités—toute personne résidant dans un lieu ennemi est considérée comme un ennemi pendant l'agression—obligation des officiers de limiter le pillage et de protéger la vie et les biens après la capture d'un lieu ennemi.

Responsabilité de l'État—droit du gouvernement d'attaquer et de capturer une ville tenue par ses ennemis—absence de responsabilité pour les actes illicites commis à l'encontre des biens ou personnes ennemis—émeutes considérées comme risques de guerre.

A body of armed men of all nations and colors, acting under the orders of leaders deriving their authority from the Mexican Government, through General Carvajal, instigated by General Escobedo, and assisted by Governor De Leon, assaulted and captured Bagdad on the morning of the 5th January 1866. The town at the time was within the lines of the French and the Imperialists, and garrisoned and held by a body of their troops, which were taken prisoners by the assailants.

As war was raging at the time between the Government of Mexico and the French, and all persons residing in the town of Bagdad were enemies of the Mexican Government, without distinction, they can not complain of injuries received from the assailing party while the assault was in progress. It is true

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that after the capture of the place by the Mexican forces, it was the duty of the officers commanding to restrain pillage and protect life and property so far as in their power.

I am too familiar with the facts attending the scandalous affair not to know that in the earlier hours of the attack it was out of the power of Read and Governor De Leon (who commanded) to restrain the disorders and that this could not be done until Escobedo borrowed from the United States commander, on the opposite bank, a portion of his troops for the purpose.

In the mean time pillaging went on, all parties taking a hand in it—the assailants, the garrison, and the mob. The disorders were disgraceful enough, but just such as are incident to the assault upon a town held by troops, and made in the darkness and crowned with success. I can not deny the right of the Government of Mexico to assail and capture a town held by its enemies, and do not see how the government is to be made responsible for the disorders which accompany a successful assault upon such a town, committed upon persons or against the property of persons who are at the time enemies, when I am sure it was impossible for the parties in command to restrain these disorders.

These were the hazards of war, and claimant, residing in the town where the contest rages, must share the fortunes of the rest of the inhabitants. His small effects were plundered in the earlier moments of the capture of the place, and before the authorities possessed the means or had the time to restore order and preserve discipline. We can not tell who did the mischief; it certainly was not ordered by the officers or countenanced by them, so far as the proof speaks. It would not be just to hold a belligerent responsible for such unauthorized acts committed in an armed town just taken by assault. Claimant's own fellow-townsmen, or his Imperialist defenders may have committed them for aught we know. But even if some of the assailing party made a spoil of his goods it would be going a great way to affirm responsibility on the part of the government.

I think the case must be dismissed, and so it is ordered accordingly.