

**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 Bernardino and Francisco Garcia Mugerza v. the United States of America,
decision of the Umpire, Sir Edward Thornton**

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

**Affaire concernant Bernardino et Francisco Garcia Mugerza c. les États-Unis d'Amérique,
décision du Surarbitre, Sir Edward Thornton**

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**Affaire concernant Bernardino et Francisco Garcia Muguerza c. les
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Sir Edward Thornton,****

Conduct of hostilities—intervention of United States force to preserve order after the attack is not viewed as taking part in the attack.

State responsibility—United States not responsible for the fact that some Mexican officers were dressed in United States uniforms—no responsibility for the participation of some American soldiers in the attack, without the knowledge of their officers.

Conduite des hostilités—l'intervention de la force armée des États-Unis pour maintenir l'ordre après l'attaque n'est pas considérée comme une participation à l'attaque.

Responsabilité de l'État—les États-Unis ne sont pas responsables pour le fait que certains officiers mexicains aient vêtu l'uniforme des États-Unis—absence de responsabilité pour la participation de certains soldats américains à l'attaque, à l'insu de leurs officiers.

After a careful examination and study of the voluminous evidence submitted on both sides in the case of *Bernardino and Francisco Garcia Muguerza v. The United States*, No. 139, the umpire is fully satisfied and convinced that the party who on the morning of the 5th of January 1866 attacked and captured the town of Bagdad in Mexico, did so at the instigation primarily of General Escobedo, commander in chief of the Mexican army of the north, and secondarily of R. Clay Crawford, and that in the attack upon the town the party was under the immediate command and leadership of Read, McDonald, Lambertson, and others. It is evident that General Escobedo had on the part of the Government of Mexico authorized Crawford to enlist men in the United States for the service of

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Mexico, and to organize the attack upon Bagdad with men so enlisted, and that Crawford entrusted Read with the preparation and carrying out of the attack.

General Escobedo, in his letter of the same day to General Weitzel, accepted and assumed the responsibility of the act, and stated that "the forces under my [his] command have taken the post of Bagdad." Indeed, it is far from probable that the same general on the same day would have applied to Colonel Moon for a United States force to preserve order in Bagdad if he had supposed that he was entitled to complain that a portion of the same force had attacked and plundered Bagdad.

It is evident that none of the leaders above mentioned were officers of the United States Army they appear to have been dressed in United States uniforms, but that was an act for which the United States Government was in no way responsible. The leaders were in the service and under the orders of the Mexican Government. The umpire can not discover that any United States officer was present or gave any order during the attack and capture of Bagdad.

There is no doubt that there were some colored soldiers in United States uniforms, and belonging to a United States regiment stationed at Clarksville, who took part in the attack, but it is pretty clear that they did so without the knowledge or consent of their own officers, and that as soon as the latter became acquainted with the fact they ordered the arrest of those soldiers. The umpire does not even consider that it is shown that there was a want of due diligence on the part of the United States officers in not preventing these men from joining the expedition. General Escobedo had authorized a violation of the United States laws in encouraging the enlistment of men in the United States to fight against the French, and preparing the attack upon Bagdad from the United States. If there was a want of due diligence on the part of the United States authorities in not discovering that such violations of the law were being committed and in not preventing them, it is possible that the commanders of the French forces might have been justified in remonstrating against it; but certainly the Mexican Government, in whose interest, and by the authority of the commander in chief of whose army of the north, Americans were engaged as Mexican officers, men were enlisted, and the attack on Bagdad was organized in the United States territory and United States soldiers were seduced from their duty was not in a position to protest against the consequences of the infractions committed by its own officers of the laws of the United States.

It does not appear that much plundering, except perhaps of spirituous liquors, was done by the United States armed soldiers. The greater and more valuable part of the goods were undoubtedly carried off by the leaders of the expedition. But whether these acts were committed by the one or the other, the umpire considers that the Mexican Government alone is responsible for the acts of its own officers, and that General Escobedo both knew and assumed the responsibility and for that very reason asked for the assistance of the United States troops to prevent the pillage which was being

committed by persons who must have formed part of “the forces under his command,” which, in the language of his letter of January 5th, 1866, had “taken the post of Bagdad.”

The umpire is therefore forced into the conclusion that the Government of the United States can in no way be held responsible for the above-mentioned claim, and he accordingly awards that it be dismissed.

**Case of Joseph Cooper & Co. v. Mexico, decision of the Umpire,
Sir Edward Thornton***

**Affaire concernant Joseph Cooper & Co. c. Mexique, décision du
Surarbitre, Sir Edward Thornton****

Rules of war—no rule that a belligerent shall be held responsible for the seizure or destruction of property belonging to residents of a place previously occupied by and captured from the enemy—respect of the property of private persons viewed as a mere civilized practice without a binding nature.

State responsibility—no responsibility found for general and indiscriminate pillage and destruction having occurred in the absence of officers—such losses viewed as inevitable consequence of war.

Règles de la guerre—aucune règle ne prévoit qu’un belligérant soit tenu pour responsable de la saisie ou de la destruction de biens appartenant à des résidents d’un lieu préalablement occupé et capturé par l’ennemi—le respect de la propriété de personnes privées est considéré comme une simple pratique civilisée dépourvue de tout caractère contraignant.

Responsabilité de l’État—absence de responsabilité pour pillage général et indiscriminé et destructions qui se sont produits en l’absence d’officiers—de tels dommages sont considérés comme une conséquence inévitable de la guerre.

In the case of *Joseph Cooper & Co. v. Mexico*, No. 565, the claim arises out of alleged losses and destruction of property suffered by the claimant at the

* 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. 4039.

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