

**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 Joseph Cooper & Co. v. Mexico,
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 Joseph Cooper & Co. c. Mexique,
décision du Surarbitre, Sir Edward Thornton**

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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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hands of Mexican troops during an attack upon Bagdad in Mexico, where the claimants resided and were engaged in business. It appears that Bagdad was occupied by French, or Imperialists, troops when on the 5th of January 1866 it was attacked by a Mexican force, or at least by a force which was acknowledged by the Mexican military chiefs to be acting under their orders. During the disorder and confusion which is almost always consequent upon an attack of this nature, a quantity of property belonging to the claimant was robbed and carried off by some of the attacking force, or at least by armed men.

According to the strict rules of war, a belligerent can not be held responsible for the value of property belonging to residents, whether natives or foreigners, which has been seized or destroyed in a place previously occupied by and captured from the enemy; and though it is more in accordance with the rules of modern and more civilized warfare to respect the property of private persons, whether natives or neutral foreigners, it is doubtful whether an international claim can be sustained on account of the violation of these rules. In the present instance the umpire is of opinion that the principal portion of the claim arises from the inevitable cause of war. The pillage and destruction were general and seem to have been directed against natives as well as foreigners. Neither is the umpire of opinion that there is any proof of the charge that the commanders and officers of the force countenanced or participated in the plundering of the claimants' property. On the contrary, it would appear that there was no discipline whatever and that the plunderers were under no control. One of the claimants, Joseph Cooper himself, declares that he went to his office in the morning of the attack and "on entering the yard he saw a crowd of soldiers and civilians, all armed." At that time no officer seems even to have been present. He subsequently returned to his house and found it in possession of a number of soldiers under the command of Captain St. Clair, "who claimed to be an officer of the army of the Republic of Mexico." But there is no proof that this officer countenanced or encouraged the work of destruction. The plundering, however, and destruction of claimants' property seems all to have been done during a few hours immediately succeeding the capture of the town. It is also to be observed that the greater part of the plundered property was carried across in vessels belonging to the claimants to the Texas side of the river, and that, though a force of United States troops was stationed there, they did not interfere to save the property from the plunderers nor prevent it from being carted away from the store, so that it would seem to be partly owing to their nonintervention that the property was lost.

The umpire is of opinion that, however deplorable it may be for the sufferers, and however much to be regretted that such proceedings should not be prevented, the Mexican Government can not under the circumstances be made responsible for the losses to which the claimants were subjected. With regard to the seizure some time after the capture of Bagdad of 42 bales of hay and 98 bales of India bagging belonging to the claimants, which it was said were to be used for purposes of defense, the facts are not sufficiently proved

to justify the umpire in making an award for their value. There is only the evidence of one of the claimants to show that they were taken for that purpose by the order of the Mexican officer in command.

One of the claimants, Joseph Cooper, swears that he was born in New Orleans, but he has not complied with the rule of the commission by stating the date of his birth, nor does he bring any other proof that he is a citizen of the United States.

For the above-mentioned reasons the umpire considers that the Mexican Government can not be held responsible for the losses suffered by the claimants, and he therefore awards that the claim be dismissed.

Case of Charles J. Jansen v. Mexico, opinion of the Commission delivered by the United States Commissioner, Mr. Wadsworth*

Affaire relative à Charles J. Jansen c. Mexico, opinion de la Commission rendue par le Commissaire américain, M. Wadsworth**

State responsibility—principle of responsibility of the successor government for wrongful acts committed by a former government *de facto*—absence of responsibility for wrongful acts committed by a so-called empire resulting from foreign intervention and never recognized as a government *de facto*.

Government *de facto*—popular support and possession of territory viewed as imperative for the recognition of a government *de facto*—government *de facto* not created by a temporary interference of foreign authorities—government *de facto* viewed as equivalent to government *de jure*, outside of the field of moral considerations.

Responsabilité de l'État—principe de la responsabilité du gouvernement successeur pour les faits illicites commis par un gouvernement *de facto* précédent—absence de responsabilité pour faits illicites commis par un soi-disant empire résultant d'une intervention étrangère et jamais reconnu comme gouvernement *de facto*.

Gouvernement *de facto*—soutien populaire et possession du territoire considérés comme impératifs pour la reconnaissance d'un gouvernement de fait—un gouvernement *de facto* ne se constitue pas par l'interférence temporaire d'autorités étrangères—un gouvernement *de facto* est considéré comme équivalent à un gouvernement *de jure*, en dehors de toutes considérations morales.

* 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.2902.

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