

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Commission for the Settlement of Claims under the Convention of 7 August 1892
concluded between the United States of America and the Republic of Chile

**Case Frederick H. Lovett *et al.* v. Chile, No. 43,
decision of 10 April 1894**

Commission pour le règlement des réclamations en vertu de la Convention du 7 août 1892
conclue entre les États-Unis d'Amérique et la République du Chili

**Affaire concernant Frederick H. Lovett *et al.* c. Chile, No 43,
décision du 10 avril 1894**

10 April 1894

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That commission decided that the Le Mores, two French citizens, were not chargeable with giving aid and comfort to the enemies of the United States, although the evidence proved that they had delivered 609 bales of gray cloth to the Confederate authorities under a contract with the Quartermaster's Department to supply the cloth for the army of the Confederate States. This is a very important decision, rendered by an international tribunal under a convention containing the same provision in regard to aid and comfort and should be accepted as strongly persuasive authority in these cases.

In view of the facts and circumstances, I feel convinced that the dismissal of these cases will operate as a great hardship upon the claimants. They have done nothing that good faith did not require in the fulfillment of their contract with Peru, made before the commencement of hostilities with Chile; they have done nothing in violation of the laws of nations which prescribe the duties of neutrals toward belligerents; they have made no discrimination whatever in their dealings with Chile and Peru, and have treated both belligerents alike. If Chile thought proper to declare war against Peru she had the right to do so, but she had no right to interdict legitimate trade between Peru and a neutral American citizen, she had no right to stop the wheels of commerce and thereby inflict loss upon an unoffending neutral. The rights of neutrals should be respected as well as those of belligerents.

If the views of my honorable colleagues are correct, a neutral can only deal with a belligerent at his peril. A declaration of war by one nation against another involves not only the destinies of the two belligerents, but the rights and interests of the rest of mankind. No trade can be carried on with one belligerent without giving aid and comfort to enemies of the other. According to my understanding, such is not a fair construction of the phrase "aid and comfort" used in the first article of the treaty; and I feel constrained to dissent from the decision which has been rendered.

**Case Frederick H. Lovett *et al.* v. Chile, No. 43, decision of
10 April 1894¹**

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Government responsible for the offense committed in its territory only when the claimant government can furnish the proof that that government was able to prevent

¹ 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. 2990.

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the act which caused the damage, but intentionally neglected to do so—governments not liable for acts committed by persons in rebellion against the government or who have broken their relation of allegiance.

Gouvernement responsable d'une infraction commise sur son territoire uniquement lorsque le gouvernement plaignant peut fournir la preuve que le gouvernement défendeur était en mesure de prévenir l'acte à l'origine du dommage, mais a intentionnellement négligé de le faire—les gouvernements ne répondent pas des actes commis par des personnes se rebellant contre le gouvernement ou qui ont rompu tout lien d'allégeance.

It appears that Benjamin G. Shaw was the owner of the American bark *Florida*, under command of Captain Charles H. Brown, and that this vessel was chartered by the Republic of Chile to convey about seventy prisoners, together with Chilean officers and soldiers, to the penal colony at Sandy Point, in the Straits of Magellan. The Government of Chile agreed to pay the sum of \$1,600 for the transportation of the convicts and their guards. On the morning of November 27, 1851, Captain Brown prepared to disembark the prisoners and sent a boat with six men ashore to see the governor of the colony, Muñoz Gamero. Immediately after landing, the men were seized and made prisoners by the convicts on shore, who had, before the arrival of the vessel, revolted and were in the possession of the colony. These convicts seized the vessel, made prisoners of Shaw, Brown, and others and thrust them into prison. Subsequently Shaw, with several others, was shot. On the 2d of January 1852, one Cambiaso, the leader of the revolted convicts, compelled Brown, under threat of death, to navigate the vessel, and ordered him to sail westward. Subsequently Captain Brown, with some of the American sailors, succeeded in obtaining control of the vessel and a large amount of treasure that Cambiaso had taken from an English vessel, the *Eliza Cornish*, and placed on board of the *Florida*. Brown then sailed for Valparaiso, and on the 14th of February 1852 anchored his vessel in the harbor of San Carlos, Chile, where the prisoners were turned over to the Chilean authorities.

On the 23d day of February, Captain Brown, having arrived at Valparaiso, abandoned his vessel to the Chilean authorities, as is alleged, but subsequently, as stated, he sold her for money to pay the expenses that had been incurred. It is alleged, further, that the treasure carried by the *Florida*, and which had been taken from the British vessel *Eliza Cornish*, was seized in the port of San Carlos by a British steamer.

The question is, Is the Government of Chile to be held answerable for the acts complained of, committed by persons who were in rebellion against the authority of the Government of Chile and had killed the governor and garrison, at Sandy Point? All the authorities on international law are a unit as regards the principle that an injury done by one of the subjects of a nation is not to be considered as done by the nation itself. (Vattel II. 73.)

Calvo (Dictionnaire, Responsabilité, II. 172) expresses himself in the same sense and sustains the principle that a government is answerable for the offense committed in its territory only when the claimant government can furnish the proof that the other government was able to prevent the act which caused the damage, but intentionally neglected to do so (. . . que l'État devait ou pouvait l'empêcher et a volontairement négligé de le faire).

Also Martens (Volkerrecht, I. 428) is of the same opinion.

But also in case a government fails to prevent its citizens or subjects from causing damage to citizens of foreign countries, in which case a government would be answerable, Rutherford (Confere Calvo, Droit International, sec. 363) avers that even such a failure does not make the nation answerable for the acts committed by those of its subjects in rebellion and who have broken off their relation of allegiance. In such cases, and the case of the convicts on Sandy Point is in line therewith, those citizens cease in part to be under the jurisdiction of their government.

In the case of the *Florida* the memorialist admits that a rebellion against the Chilean Government had taken place, and had been successful; that the Chilean Government and also the Chilean citizens suffered great damage in consequence of said rebellion, as the governor and the garrison at Sandy Point had been killed by the convicts. At the time these events occurred the Chilean Government had no power to prevent, in the interest of the bark *Florida*, the consequences of a rebellion entirely unknown to it, and did, therefore, in no way fail to perform its international duties for the protection of foreign citizens residing in Chile or landing at Sandy Point.

Therefore the Chilean Government can not be held responsible for acts committed by revolted convicts, and the demurrer of the respondent government should be, and is, sustained.