

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Mixed Commission of Peru and the United States of America
established under the Convention of 12 January 1863

Case of Sartori v. Peru, award of the Umpire, General Herrau, dated 24 November 1863

Commission mixte entre le Pérou et les États-Unis d'Amérique
établie par la Convention du 12 janvier 1863

**Affaire relative à Sartori c. Pérou, sentence du Surarbitre, General Herrau, datée du
24 novembre 1863**

24 November 1863

VOLUME XXIX, pp.91-96



NATIONS UNIES - UNITED NATIONS
Copyright (c) 2012

PART VI

**Mixed Commission of Peru and the United States
of America established under the Convention
of 12 January 1863**

**Commission mixte entre le Pérou et les États-Unis
d'Amérique établie par la Convention du 12 janvier 1863**

MIXED COMMISSION OF PERU AND THE UNITED STATES
OF AMERICA ESTABLISHED UNDER THE CONVENTION OF
12 JANUARY 1863

COMMISSION MIXTE ENTRE LE PÉROU ET LES ÉTATS-UNIS
D'AMÉRIQUE ÉTABLIE PAR LA CONVENTION DU 12 JANVIER 1863

**Case of Sartori v. Peru, award of the Umpire, General Herrau, dated
24 November 1863***

**Affaire relative à Sartori c. Pérou, sentence du Surarbitre, General
Herrau, datée du 24 novembre 1863****

Laws of war—obligation of neutrality of foreigners during civil war—right of governmental army to arrest a foreigner suspected of assisting rebels and to bring him to justice.

Breach of treaty obligations—delay of judicial process and denial of justice.

Responsibility of government—any non-compliance with treaty obligations shall entail responsibility—responsibility principle ensures confidence in the good faith of the parties.

Reparation—equitable and reasonable reparation ought to be made in cases where responsibility is incurred, however small it may be—no reparation for loss resulting from claimant's voluntary actions.

Lois de la guerre—obligation de neutralité des étrangers lors d'une guerre civile—droit de l'armée gouvernementale d'arrêter un étranger suspecté d'assistance aux rebelles ainsi que de le traduire en justice.

Violations des obligations d'un traité—retard dans la procédure judiciaire et déni de justice.

Responsabilité du gouvernement—toute inobservation des obligations du traité engage la responsabilité—le principe de responsabilité garantit la confiance en la bonne foi des parties.

Réparation—une réparation équitable et raisonnable devrait être accordée, aussi minime soit-elle, dans les cas où la responsabilité est engagée—aucune réparation pour la perte résultant d'actions volontaires du demandeur lui-même.

* 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. 3122.

** Reproduit de John Bassett Moore (éd.), *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. III, Washington, 1898, Government Printing Office, p. 3122.

Whereas, the mixed commission of Peru and the United States has not been able to decide the claim of Edmund W. Sartori, a citizen of the United States, against the Peruvian Government for injuries and damages which he alleges to have suffered by his imprisonment, and the said commission not having been able to decide the said claim, it has been submitted to me in the following terms: "Were the stipulations of the treaty between the United States and Peru of 1851 respected in reference to the proceedings of the authorities, in the case of Edmund W. Sartori? If not, in what amount is the Government of Peru responsible for indemnification of injuries and damages sustained by Edmund W. Sartori?"

The town of Arequipa being besieged by the Peruvian Government in consequence of its being occupied by the principal portion of the forces then at war with the government; Sartori passed from the town to the besieging army and demanded a passport to continue his journey to Chile, *via* the port of Islai, a town in the hands of the party at war with the government. He was asked whether he was the bearer of dispatches from the enemy, and having answered in the affirmative, he immediately gave up the papers in his possession, together with \$100,000 in bonds, payable to the bearer, issued by the revolutionary government. Sartori was placed in confinement and brought to trial, but four months later, without judgment having been passed on his case, he was set at liberty.

The honor and interests of the two republics represented in the joint commission require them to give proofs of the good faith with which each of the two countries fulfills the stipulations of the public treaty that binds them and requires that neither government shall allow the citizens so to abuse the protection and guarantees conceded to them by the treaty as to consider them a species of immunity under which they may infringe the laws.

Such are the rules I must observe in deciding the claim, which embraces three cardinal questions.

1st. Whether the general in chief of the besieging army had a right to arrest Sartori.

2nd. In the subsequent proceedings were the stipulations of the treaty between the United States and Peru observed; and,

3rd. Whether the Peruvian Government is responsible for the injuries and damages for which the claimant demands indemnity.

First. From the fact that Sartori had gone out of a city in a state of siege where the chief of the revolutionary government and the greater part of his army were stationed, carrying written communications and \$100,000 in paper money, the property of the enemy of the Government of Peru, toward a port occupied by their troops, the general in chief of the besieged army had the right to prevent Sartori from continuing his journey and to bring him to judg-

ment. In so doing he acted according to the laws of war, and did not violate the guarantees which the citizens of the United States enjoy in Peru, according to the stipulations of the treaty celebrated between the two countries; and it seems to me this opinion is implicitly expressed in the note which Mr. Clay, minister of the United States, addressed, under date of September 13, 1857, to the Government of Peru, where he said "the letters may have been merely recommendatory and the *vales* Mr. Sartori's own property. If so, the destruction of the *vales* and an imprisonment of thirty-five days would seem to me sufficient punishment." (See original document.)

Second. Sartori's declaration ought to have been taken within twenty-four hours from the time of his arrest; and although it appears that when he presented himself in the camp of the besieging army he was verbally examined, the spirit of the treaty requires, as I understand it, that a formal declaration be taken. He ought to have been tried before some judge or tribunal to arrive at some decision, after his defense should have been heard, as to whether the charges brought against him were sustained; but, inasmuch as he was not tried, the charges remained without the sanction of the judiciary, whose province it was to decide if Sartori had violated the neutrality which as a foreigner he ought to have maintained in the country. If this sentence had been in the nature of an acquittal the Government of Peru would not be responsible for his imprisonment and detention, inasmuch as it had the right to bring him to judgment in the same manner as a Peruvian citizen under similar circumstances; and the accused would have had the means of justifying himself, and, had he been condemned, the charges which might have been proved would have become facts, acknowledged as incontrovertible.

I am of opinion, therefore, that the Government of Peru is responsible for the delay of forty-eight hours in taking the formal declaration of Sartori, and for not having brought him to judgment.

There is no circumstance leading to the belief that this omission was intentional on the part of the Peruvian Government. Far from this, proofs exist that they were not influenced by bad will or the spirit of persecution, and that it was their desire to give no cause of complaint to the United States; but on the principle that reparation ought to be made in cases where responsibility is incurred, however small it may be, for noncompliance with the treaty, in order that each government may place entire confidence in the good faith of the other, it seems to me that an equitable and reasonable indemnity ought to be granted to Mr. Sartori.

Third. The sum which Sartori claims by way of damages amounts to \$114,252, and I shall proceed to state the reasons which lead me to believe that the Government of Peru should not pay this sum.

The depositions which have been presented to prove the losses incurred are not based on sufficient evidence, and the causes to which said losses are attributed are in the nature of improbable conjectures. The Government of Peru is not responsible for the rumor which was spread in Valparaiso to the

effect that Sartori had been shot, for his life was not threatened; nor was it likely that, in a country where cases of arbitrary executions during civil wars have been of very rare occurrence, such an outrage should have been committed with a foreigner who had not taken up arms in the strife. One of the items in the claim is \$22,000 alleged to have been lost by Sartori for the dissolution of his copartnership with Robert and John Walker. This claim is against the partners of Sartori, who took advantage of the unfortunate condition in which he was placed to deprive him of his property. The declaration which one of them and other persons have rendered to maintain this charge against Peru would be sufficient ground to condemn said partner to the payment thereof before a righteous tribunal. Another item is for \$33,000, for "losses arising from the absconding of Alijandro Jose Perez, Sartori's agent." Peru is not responsible for the fact that Mr. Sartori should have absented himself from Valparaiso, leaving his affairs in the hands of an agent in whose good faith he could place no reliance. Another item is \$6,000, for "losses of his right to the mines of Santa Rosa de Belezario and of Gallozo, in consequence of not having found himself in Valparaiso in December 1857." Mr. Sartori absented himself from said port of his own will; he went to Arequipa during the time that the city was occupied by revolutionary troops; he remained there while the dangers of the siege approached, and his detention in Sachaca was in consequence of his voluntary act, viz, the receiving of dispatches and *vales* which were delivered to him in Arequipa and of which he became the bearer. For this reason he incurred of his own accord the danger of losing the mines and of suffering the other losses, which without proper proof are attributed to his absence from Valparaiso. Two other items, together amounting to \$38,552, for exchange and interest on the sums above stated, are not valid, inasmuch as the items to which they refer are disallowed. The last item of the claim of Mr. Sartori is \$15,000, for compensation of personal suffering in Sachaca. In my opinion what may be conceded is a compensation for the delay of forty-eight hours in taking his declaration, and for not having passed judgment in his case.

Therefore I decide that the Government of Peru pay to Mr. Edmund W. Sartori the sum of \$5,000 in current money of the country, with interest at the rate of six per cent per annum from the 29th day of September 1857.