

**REPORTS OF INTERNATIONAL
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**RECUEIL DES SENTENCES
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Edith Henry (Great Britain) v. United Mexican States

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It seems just and equitable, therefore, that an award be granted him, that will set off, by means of an annuity, the lifelong injury which was the result of the wound.

The Commission have found no guidance in any law or decree for the determination of the annuity, the less so as in nearly all other cases the annuity begins very soon after the accident, whereas in this case sixteen years and probably more will have elapsed before any payment can follow.

The Commission, also taking into account the station in life of the claimant, think an annuity of \$2,000 pesos Mexican gold fair and reasonable, and as, in order to purchase such annuity a man of the age of Mr. Clapham will have to pay about \$20,000 pesos Mexican gold, they fix the award at that figure.

7. The Commission have found no outside evidence of the other losses which the Memorial alleges were sustained by the claimant.

8. The Commission decide that the Government of the United Mexican States shall pay to the British Government, on behalf of Mr. George Henry Clapham, the sum of twenty thousand (\$20,000) pesos Mexican gold.

CARLOS L. OLDENBOURG (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 60, June 23, 1931. Pages 163-165. See also decision No. 11.)

PARTNERSHIP CLAIM. Demurrer to claim of a Mexican partnership *sustained* when it appeared that less than half of capital was held exclusively by British nationals.

(Text of decision omitted.)

EDITH HENRY (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 61, June 23, 1931. Pages 165-169.)

PROCEDURE. MOTION TO DISMISS. The tribunal will not, on a motion to dismiss, determine the status under the *compromis* of revolutionary forces at times not material to the claim.

1. This is a claim for compensation for the murder of the claimant's husband, Mr. Francis Colin Henry, and for loss of personal property at the hands of a band of Zapatistas at Zacualpam on the 3rd January, 1916.

According to the Memorial Mr. F. C. Henry, a British subject, was employed as superintendent of the mine San Miguel Tlaxpampa, and resided at Zacualpam, in the State of Mexico. On the 2nd January, 1916, a force of Constitutionalist soldiers, stationed at Zacualpam, left without warning, and the inhabitants were without protection from the bandits and revolutionaries which were in the neighbourhood. In the afternoon of the 3rd January some 150 men, under the command of Molina, Mora and Pantalón, and some men of the Salgado group under Castrejón, entered the town. It is understood that these

were Zapatistas. Shortly afterwards a small group came to Mr. Henry's house, demanding money, but they were persuaded to leave on being shown a "safe-conduct", which Mr. Henry had obtained shortly before from Molina for the price of 400 pesos. About 4 p.m. a large group of men arrived and started to break down the fence and to enter the patio. Mr. Henry told his wife and children to go to one of the bedrooms, and, taking his pistol, ran to the door to prevent the entrance of the soldiers. Some shots were fired and a few moments later the armed men, including Molina and Pantalon, entered the house and began to sack. They even forced the ring from Mrs. Henry's marriage finger. Finally, Mrs. Henry was able to escape from the house with her children by giving Molina some silver plate that had been hidden. On leaving the house she saw her husband's body lying on the patio. He had been shot in various parts of the body, and there were signs that he had been wounded by the door and flung into the patio, where he had been killed. Mrs. Henry's son had his arm badly damaged by one of the men, who had been wounded, clubbing him with his rifle. Pantalon was seen carrying Mr. Henry's revolver. After hiding for some time Mrs. Henry was able to escape with her three children to Mexico City.

The amount of the claim is 56,585 pesos (silver), composed of 50,000 pesos (silver) for the loss of her husband and 6,585 pesos (silver) for the loss of personal effects looted by the Zapatistas.

The British Government claim, on behalf of Mrs. Edith Henry, the sum of 56,585 pesos (silver).

2. A Motion to Dismiss the claim has been lodged by the Mexican Agent as a means of obtaining from the Commission a decision as to the character of the forces under the command of General Emiliano Zapata, and at the same time as to the character of the forces that followed General Francisco Villa.

The Agent distinguished three periods in the military career of both Generals.

The first was when they and their followers formed part of the Constitutionalist Army under General Venustiano Carranza and pursued the common aim of overthrowing the Huerta régime. This object was achieved in August 1914, but the victory initiated dissensions between Carranza on the one hand and Villa and Zapata on the other. The result was that the two parties separated in November 1914.

That was, in the view of the Agent, the commencement of the second period. Both armies, disposing of about equal strength, contended for the supreme power in the Republic until the Constitutionalist Army defeated its opponents in September 1915. Upon this triumph General Carranza established a Government *de facto*, which was, in October of the same year, recognized by the Government of the United States of America and by several other Governments.

This was the end of the second, and the beginning of the third period, during which the resistance of the forces of Zapata and Villa continued, although they could no longer be considered as political factors. This period ended when these forces were, at different dates, definitely subdued.

3. The said Agent held the view that during the first period, Zapatistas and Villistas fell within the terms of subdivision 2 of Article 3 of the Convention, because they then formed part of the Constitutionalist Army, which had, after the triumph of its cause, established a Government *de facto*.

During the second period the position was different. Before the revision of the Convention, subdivision 2 not only mentioned revolutionary forces that had succeeded in obtaining the control of the State, but also "*revolutionary forces opposed to them*". In that description were included both Zapatistas and Villistas. But when the Convention was amended, those words were struck

out, and the Agent had no doubt that this was done in order to release Mexico from any claims arising out of the acts of those forces.

They could not in this period either be made to come within the meaning of subdivision 4, because this was a period of civil war, during which two factions of equal strength were in arms against each other. Neither of them had as yet been able to establish a Government; neither of them had been recognized by foreign Powers; and the United States of America had Agents at the headquarters of both factions. It was a time of anarchy, and as there was no Government, one of the parties could not have the character of an insurrectionary force as mentioned in subdivision 4. As both parties pursued political aims, the acts of none of them could be regarded as acts of banditry.

In the third period, according to the Agent, the state of affairs was such that a Government *de facto* existed. Against this Government, mutinies, risings and insurrections could break out and be sustained. The subdivision 4 of Article 3 could therefore be applied to the acts then committed by Villistas and Zapatistas.

4. The British Agent did not follow his Mexican colleague into the whole length of his argument. He wished to confine himself to the facts then before the Commission. They had occurred in January 1916 at a time when the *de facto* Government of General Carranza had already been established for three or four months, and when the Zapatistas, in arms against that Government, had consequently to be considered as an insurrectionary force, falling within the terms of subdivision 4 of Article 3.

5. The Commission, in adjudicating upon this Motion to Dismiss, do not think it necessary, on this occasion, to commit themselves to the historical divisions made by the Mexican Agent, nor to a determination of the character of the Villista and Zapatista forces in each of the periods of their career. In section 6 of their decision No. 49 (*A. M. Ward*), they have laid down the following opinion:

"It is an equally well known fact that the Zapatistas in August 1914 formed part of the Constitutionalist Army. This is also allowed in a brief filed by the Mexican Agent on the 7th April, 1931. As there is no doubt that the Constitutionalist Army was to be considered as a revolutionary force, which after the triumph of its cause established a Government, first *de facto*, and later *de jure*, the losses caused by this Army, and by the groups forming part of it, are covered by the Convention (Article 3, subdivision 2), even if some of the groups later separated and followed another cause."

6. As regards the present claim, the facts on which it is based are alleged to have occurred in January 1916, i.e., at a time when there was an established Government in Mexico. The acts of General Zapata, then in arms against that Government, must therefore be considered as a mutiny, a rising or an insurrection, unless they ought, depending upon the nature of the acts in certain instances, to be classified as acts of brigandage.

For this reason, when the claim comes up for examination on the merits, it is with subdivision 4 of Article 3 of the Convention that the Commission will have to deal.

7. The Motion is overruled.
