

**REPORTS OF INTERNATIONAL  
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES  
ARBITRALES**

**Christina Patton (Great Britain) v. United Mexican States**

8 July 1931

VOLUME V pp. 224-229



NATIONS UNIES - UNITED NATIONS  
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CHRISTINA PATTON (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 76, July 8, 1931, dissenting opinion by British Commissioner, July 8, 1931. Pages 215-222.*)

RESPONSIBILITY FOR ACTS OF FORCES.—BRIGANDAGE COMMITTED BY REVOLUTIONARY FORCES—FAILURE TO SUPPRESS OR PUNISH.—NECESSITY OF NOTICE TO AUTHORITIES. No responsibility *held* to exist for acts of four soldiers of revolutionary force when such acts were not of public notoriety and no evidence was shown that the authorities were notified.

*Cross-reference*: Annual Digest, 1931-1932, p. 213.

*Comments*: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission," *Law Q. Rev.*, Vol. 49, 1933, p. 226 at 239.

1. This is, as the Memorial sets out, a claim for losses suffered by the late Mr. Patrick Thomas Patton on the 11th March, 1915, when his house was attacked and looted by armed Zapatista soldiers of General Barona's brigade. Mrs. P. T. Patton's interest in the claim is as follows:

Mr. P. T. Patton, a British subject, formulated this claim on the 5th March, 1919. Mr. Patton died in 1924 disposing of his property by a will made on the 26th March, 1920, and a codicil to this will made on the 4th March, 1921. This will and codicil, after disposing of 130 shares in the Patton Company, S.A., appoints his wife, Christina Patton, sole heir and executrix of the will.

On the 11th March, 1915, the late P. T. Patton was residing at Calle de la Reforma 22, San Angel, D.F. About 8 o'clock on the evening of that day four Zapatistas of General Barona's brigade, commanded by Salgado, forced the front gate of the house by shooting off the padlock. They shot at and smashed eighteen windows, killed a valuable Airedale terrier, and then entered the house. The late Mr. Patton, his wife and other members of the family made their escape through a side door and took refuge with some friends for the night. The soldiers took complete possession of the house for a few hours and systematically looted the place. In their search for articles of value they scattered about the rooms the furniture and other objects therein. On the following day Mr. (now Sir Thomas) T. B. Hohler, British Chargé d'Affaires at His Majesty's Legation, Mexico City, visited the house, and on the 7th April wrote a letter detailing the condition in which he had found the house on the 12th March, 1915. On the 12th April, 1915, the late Mr. P. T. Patton, with witnesses, appeared before a notary public, Heriberto Molina, and executed before him a document in Spanish, verifying and substantiating the facts and giving a list of the articles and specifying their values.

The amount of the claim is £321 0s. 6d., the details of which are given in one of the annexes to the Memorial. A certificate of the rate of exchange ruling on the 1st and the 13th March, 1915, is also given in one of the annexes.

The British Government claim on behalf of Mrs. Christina Patton the sum of £321 0s. 6d.

2. The British Agent drew attention to the date on which the attack on, and looting of, Mr. Patton's house had taken place. It was the 11th March, 1915, and those responsible were Zapatista soldiers. He found himself, therefore, faced by the question raised by his Mexican colleague in the discussion

on the motion to dismiss filed by him in Claim No. 26 (*Mrs. Edith Henry*).<sup>1</sup> The Mexican Agent had on that occasion drawn a distinction between three periods in the military career of Generals Emiliano Zapata and Francisco Villa.

3. According to that historical division the acts, upon which the present claim was based, fell within the second period. He, the British Agent, held the view that during that period the Zapatistas must be regarded as coming within the terms of subdivision 4 of Article 3 of the Convention. Their movement was a "rising" or an "insurrection" and in many cases their acts were those of brigands. For this reason Mexico was to be held financially responsible in case it could be established that the competent authorities had omitted to take reasonable measures to suppress the insurrection, rising, riots or acts of bri-

<sup>1</sup> See sections 2 and 3 of Decision No. 61:

"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.

"That 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 claim 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."

gandage, or to punish those responsible for the same, or that they were blamable in any other way.

In the case of the looting of Mr. Patton's house, there could, in the Agent's submission, exist no doubt as to the negligence of the authorities. At that time the Zapatistas had a camp at San Angel and the act committed by a party of them must have been of public notoriety. There was not the slightest indication of any action undertaken to punish them.

4. The Mexican Agent upheld the view, put forward by him when his Motion to Dismiss in the claim of Mrs. Edith Henry was being discussed. Acts committed by Zapatistas and Villistas during the second period fall altogether outside the Convention. As there was no Government, there could be neither mutiny, nor rising, nor insurrection. Neither could their acts be classified as acts of brigandage, because their aims were of a political nature, not less so than those pursued by General Carranza. The character of the two factions was, during that period, identically the same. The fighting between them was a contest on equal footing, not a rising nor an insurrection of one against the other.

But even assuming, for the sake of argument, that the acts of the Zapatistas were covered by subdivision 4 of Article 3, the Agent reminded the Commission that, at the time of the alleged attack, the centre of the Carrancista movement was established at Veracruz. He failed to see how acts, committed by Zapatistas in the Capital, could be suppressed or punished by the opposing faction, when it was so far away.

5. The Commission feel satisfied that the attack on and the looting of Mr. Patton's house have been committed as they are described in the Memorial. They find sufficient corroboration of the affidavit of Mr. and Mrs. Patton in the letter of the British Chargé d'Affaires, and in the declarations made by several witnesses shortly after the events.

The Commission feel equally satisfied that those responsible for the losses were four soldiers of the Zapatista Army, and the question before them is whether Mexico is, in this case, obliged to pay compensation.

6. The Commission accept in its general lines the distinction drawn by the Mexican Agent between the various periods of the Zapatista and Villista movements, reserving, however, their liberty as to the determination of the dates on which such periods must be assumed to begin and to end.

They are equally of opinion that during the second period, the two contending factions were fighting with the same character for political aims, and that as neither of the two had been able to establish a Government, neither of them could be regarded as being in mutiny, rising or insurrection against the other. From that point of view their acts are not covered by the Convention, since by the last revision, the words "*or by revolutionary forces opposed to them*" have been eliminated. The Commission wish it, however, to be clearly understood that this opinion of theirs goes only to those acts, which were of a political or a military nature, or directed towards political or military aims. While acts of that description seem to have been excluded when the Treaty was amended, this cannot be maintained as regards acts of brigandage.

Both factions—or greater or smaller parties of them—may, as well as other independent groups, have become guilty of brigandage in special instances, and, as the Commission read subdivision 4 of the amended Article 3, they cannot admit that all those cases fall outside the financial liability of the respondent Government.

7. Even when a country passes through a period of anarchy, even when an established and recognized Government is not in existence, the permanent

machinery of the public service continues its activity. The Commission share the view expressed in this regard in Decision No. 39 of the General Claims Commission between Mexico and the United States of America (page 44).<sup>1</sup>

"4. The greater part of governmental machinery in every modern country is not affected by changes in the higher administrative officers. The sale of postage stamps, the registration of letters, the acceptance of money orders and telegrams (where post and telegraph are Government services), the sale of railroad tickets (where railroads are operated by the Government), the registration of births, deaths, and marriages, even many rulings by the police and the collection of several types of taxes, go on, and must go on, without being affected by the new election, Government crises, dissolutions of Parliament, and even State strokes."

They might add that the Police continued to function, that it continued to regulate traffic in the capital, to investigate crimes and to arrest criminals, as also that the Courts continued to administer justice.

This means that public authorities that were obliged to watch over and to protect life and property continued to exist, although it is not denied that the performance of those duties will often have been very difficult in those disturbed times of civil war.

The respondent Government have, in the opinion of the Commission, undertaken to grant compensation, for the consequence of the omissions of this permanent organization of the public service, also when Zapatistas or Villistas are involved. If, therefore, in the case now under consideration, such omissions were proved, the Commission would feel themselves bound to render a judgment in favour of the claimant.

8. But no such proof has been shown. The attack took place at San Angel, a suburb located at a considerable distance from the centre of the town. The time was the 11th March at 8 o'clock in the evening, after darkness had fallen. The guilty parties were four soldiers. The event could not therefore be considered as being of public notoriety, no more as in the case of any other burglary in a private dwelling.

Furthermore, nothing has been produced to prove that the competent authorities were informed. Although Mr. Patton, very soon after the event, swore an affidavit before the Acting British Consul-General, although he made, a few days later, several witnesses depose before a notary public, and although the British Chargé d'Affaires visited the house the day after it had been broken into, there is no indication that either the claimant or any of the British Representatives approached the police, or any other authority, with an account of the occurrences.

The Commission have more than once declared that, to find negligence on the part of the authorities, it is necessary to prove that the facts were known to them, either because they were of public notoriety or because they were brought to their knowledge in due time.

In this case they adhere to that same view.

9. The claim is dismissed.

The British Commissioner does not agree with the decision in this case.

*Dissenting opinion of British Commissioner*

There is so much in the majority judgment of the Commission in this case with which I am in accord generally, that I regret to have to sound a dissentient note as regards the conclusions and decision. I will endeavour as briefly as

<sup>1</sup> See Reports, Vol. IV, p. 43.

possible to express my opinion and the reasons therefor. Accepting the distinction drawn by the judgment between acts of revolutionary forces of a political or military nature or directed towards political aims, and, on the other hand, acts which do not come under that category, such as acts of brigandage, burglary or robbery, and agreeing entirely as I do with the finding of the majority of the Commission that the occurrences giving rise to this claim fall within the category of brigandage, I am not in accord with the decision relieving the Government of Mexico from financial responsibility on the ground that no blame attaches to the authorities.

2. As I understand the majority judgment it absolves the Mexican Government on the ground that the permanent civil authorities which must be regarded as functioning at the time notwithstanding political changes and unrest were unaware of the act of brigandage, because it was not an event of public notoriety so that they could be deemed to be cognizant of it, and that nothing had been produced to show that they were informed thereof. But assuming this to be so, though I am not in agreement, as I will explain presently, that the event was not of public notoriety, this does not conclude the matter. The question of negligence also arises, and the general question of blame, not merely blame for not punishing the guilty parties, but also for non-prevention of the occurrences. Further, whether responsibility or blame does not attach to the military authorities. What were these about that it was permissible for four private soldiers to emerge from the barracks or camp fully armed at about 8 o'clock in the evening and boldly commit in their neighbourhood acts of burglary and sabotage lasting for a considerable period of time? Acts committed not in the heat of battle or during its immediate aftermath, but just as an evening's profitable diversion, and with entire impunity. The outrage was committed by force of arms, the perpetrators forced the front gate of the house by shooting off the lock. They shot at and smashed eighteen windows and killed a dog and then entered the house. All this took place in a street leading out of a main street in San Angel and only a few doors away from it. Moreover, the soldiers were in complete possession of the house for a few hours, systematically looting it and scattering the furniture about the rooms. There must also have been an entire lack of police supervision or patrol in San Angel, which is not really strictly a suburb, but a town with its municipality, and in continuous frequent communication with the City by means, *inter alia*, of a tramway service which the Government were at that time operating and using for military as well as civil purposes. The time was not late in the evening, and it seems inconceivable that the events could have taken place without considerable notoriety. Mr. and Mrs. Patton were in the house at the time, and had to seek refuge with neighbours, who must have given full publicity.

3. The Mexican Agent in answer to my question whether these four private soldiers had no superior officer over them in charge of the barracks and camp, who should punish them, countered this question with a remarkable observation, "what, the Captain of bandits!" almost as if it were a matter of appealing from sin to Satan. It is difficult to reconcile this suggestion with his general line of argument as to the position of the Zapatista and Villista forces during the period November 1914 to October 1915, and I cannot believe this to be the attitude of the military authorities and officers of a redoubtable military force (General Barona's Brigade) in control at that time of the City of Mexico, and recognized as an important component part of revolutionary forces having a definite military and political status, by their leaders promulgating decrees, and carrying on administration, and all this with the potentiality of establishing a Government *de jure*. I think the Commission must assume that there were

at the time competent military as well as civil authorities on whom functions of discipline and the prevention and punishment of crimes by their forces rested.

4. The fact that it is not shown that the British Chargé d'Affaires or other British representatives approached the police or any other authority with an account of the occurrences, seems capable of explanation. The most obvious one is that it was a matter of such common notoriety that they thought it superfluous.

For all the above reasons I dissent from the decision of the majority of the Commission, and am of opinion that an Award should be given in favour of the Claimants.

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GEORGE CRESWELL DELAMAIN (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 77, July 10, 1931. Pages 222-226.)

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**AFFIDAVITS AS EVIDENCE.** An affidavit of claimant supported only in most general terms by affidavit of another person *held* insufficient evidence. An affidavit of claimant supported by a letter of his brother, which corroborated claimant's statement in great detail, *held* sufficient evidence.

**RESPONSIBILITY FOR ACTS OF FORCES.—FAILURE TO SUPPRESS OR PUNISH.—DUTY TO PROTECT IN REMOTE TERRITORY.—NECESSITY OF NOTICE TO AUTHORITIES.** Claimant was taken prisoner by bandit forces on an isolated ranch and not released until ransom was paid. Since no proof was furnished that the public authorities were advised and since the crime, being committed in a remote territory, was not of public notoriety, claim *disallowed*.

1. The Memorial sets out that in March 1891, Mr. G. Creswell Delamain entered the Republic of Mexico, and he resided there continuously until August 1915. During the whole of his residence in Mexico, Mr. Delamain was engaged in ranching. During the years 1912-15 he was living on a ranch known as Mesa de los Fresnos, where he owned horses, cattle and goats. In 1912 General Caraveo, with about 900 soldiers, camped on his ranch for eleven days, during which time he took from Mr. Delamain sixty head of cattle. From the year 1913 to the end of September 1915 an additional 500 head of cattle were taken by Carrancista officers and their soldiers stationed at Boquillas, Mexico. Some of these cattle were taken under the direction of Sebastian Carranza, who was the Jefe Politico at Boquillas, and who usually sent Captain Ernesto Garcia or Sergeant Lazaro Morelos for the cattle. The balance of the 500 head of cattle were taken by Major Felipe Musquiz Castillo, Major Ferino and Colonel Peralde, all of whom were army officers. In 1914 Captain Garcia, under the direction of Sebastian Carranza, took 18 head of saddle horses, and during the years 1914 and 1915, 400 head of goats were taken by the order of the commanding officer at Boquillas. No receipts were ever given to Mr. Delamain for his property; his protests were generally answered by the usual "Por la causa." On the 5th July, 1915, Mr. Delamain was taken prisoner by Major Felipe Musquiz Castillo, and held by him for ten and a half days in the mountains on the Enfiante Ranch, near the La Babia ranch. The claimant was not released until a ransom of 4,000 pesos gold had been paid. Mr. Delamain was harshly treated during his imprisonment, and it was with difficulty that he persuaded Major Castillo to spare his life.