

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Frank Scribner Merrow (Great Britain) v. United Mexican States

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Part IV.—On the 20th May, 1914, forces under the command of General Gustavo Mass arrived at Venegas Station and carried off articles and furniture which the claimant had placed in passenger cars and freight cars.

The total amount of the claim is 50,750.00 pesos Mexican gold.

2. *Part I.*—As regards the taking of the \$165, the Commission have not been enabled to determine to which forces Julián García belonged. They are not, therefore, in a position to decide whether the loss is covered by the Convention.

The sacking of the hotel was done by a group of Federal volunteers, who at the time served the Huerta Régime. The revision of the Convention has excluded the acts of this régime from the jurisdiction of the Commission.

The burning of the hotel was most probably due to the fact that drunken soldiers set fire to a train, which fire spread to the hotel. Even if it happened as a consequence of their commanders setting fire to the wagons of the train containing liquor, as suggested by some witnesses, such an act was highly dangerous, and calculated to set fire also to the immediately contiguous Hotel and Restaurant. As the soldiers were under the command of Jesús Dávila, and as it is known that this leader belonged to the Constitutionalist Army, Mexico must be regarded as bound to compensate the loss.

3. This loss affected the claimant only in so far as the items set down in the inventory of that place were his property and not that of the Railway Company.

The Commission find that considerable portions of the articles burned belonged to the claimant, and have found sufficient evidence to fix an amount of \$2,000 as a fair and reasonable compensation for this loss.

4. *Part II and Part III.*—The Commission regard the occurrences, referred to in these parts of the claim, as the consequences of a popular demonstration of a violent nature. They cannot view them as revolutionary acts, nor as a mutiny, a rising, an insurrection, nor as acts of banditry. The movement was not directed against the Government or against public authorities, but against the foreigners residing at Saltillo. Regrettable as the events were, they cannot, under the wording of the Convention, justify the granting of compensation.

5. *Part IV.*—The damage recorded under this heading was done by Gustavo Mass, a Huertista leader. It falls, therefore, outside the Convention, as last modified.

6. The Commission decide that the Government of the United Mexican States is obligated to pay to the British Government, on behalf of William J. Russell, the sum of \$2,000 (two thousand pesos) Mexican gold, or an equivalent amount in gold.

FRANK SCRIBNER MERROW (GREAT BRITAIN) *v.* UNITED
MEXICAN STATES

(*Decision No. 117, August 6, 1931. Pages 343-346.*)

DEATH OF CLAIMANT.—PURSUANCE OF CLAIM. As since filing of Memorial claimant died, claim pursued on behalf of widow as executrix of claimant's will.

DAMAGES, PROOF OF.—NECESSITY OF CORROBORATING EVIDENCE. Claim for loss of furniture and other movable property in the sum of 177,026 pesos, uncor-

roborated by outside evidence, *allowed* in the sum of 3,000 pesos Mexican gold.

1. This is a claim for the looting of property by Zapatistas under the command of Lieutenant-Colonels Mauro Neri and Vicente Rojas in the town of Miraflores, district of Chalco, State of Mexico, after their entry into that town on the 12th August, 1914.

It is stated in the Memorial that Mr. F. S. Merrow was employed as Chief Dyer of the Blanket and Spinning Factory at Miraflores, the property of the Industrial Company of San Antonio Abad (Limited), and was living in a house, within the property of that factory, with his wife and two children. On the 10th August, 1914, orders were given to the federal troops commanded by General Vasconcelos to evacuate the towns of Ozumba, Amecameca and Chalco. This order was given without previous notice to the population of these towns. On that day the last train to leave Miraflores was used for carrying troops and, therefore, no opportunity was given to the inhabitants to leave the place or to save their property. On the 12th August, 1914, the Zapatistas first entered Miraflores and they offered full guarantees in respect of life and property. Later in the day the Zapatistas began drinking liquor in the shop and ransacking the warehouses of the factory. Mr. Merrow felt that there would be no security of life and property, and he therefore spent the night with his family at the house of a Mr. Felipe Robertson. On the following day, however, their hiding place was discovered and they were forced to hide in a field of lucern grass for a whole day. At night they went to the house of an old employee of the factory, Agustin Parra, and from there went by way of the mountains towards Puebla. On the way they were assaulted and robbed of all the money they possessed. They then decided to go to Presa, a place belonging to the Miraflores factory, where they stayed hidden for several days. While endeavouring to escape through the mountains, Mr. Morrow's son, Francis, was injured in the leg, and, as a direct result of this injury, he died at the American Hospital at Mexico City on the 6th July, 1920. Finally, through the help of a Mr. J. Robertson (Junior), of "El Nuevo Mundo, S.A." Clothing Store, Mexico City, they obtained a pass from the Zapatista General Juan Banderas to proceed to Mexico City, which journey occupied two days. In May 1915 Mr. Merrow, with a passport issued by His Majesty's Consul at Mexico City, proceeded to Miraflores to discover whether his property was still intact. On his arrival, Lieutenant-Colonel Fernando Almaraz told Mr. Merrow that he could not see his house because, for the time, it was being occupied by a family named Gadea. Lieutenant-Colonel Almaraz told Mr. Merrow frankly that they were making packing cases in order to take away his furniture, adding these words: "You must lend your furniture, piano, etc., to the revolution". In February 1916, as soon as the Carrancistas had taken possession of Miraflores, Mr. Merrow proceeded to that place on a visit of investigation with a view to making a report as to the condition in which the Zapatistas had left the factory. He found that practically all his furniture and effects had been taken away. Those that were too heavy to move had been destroyed beyond repair. On the 11th August, 1914, Mr. Merrow had taken a small safe, in which his wife's jewellery and other valuables had been placed, to the ranch house belonging to Mr. Robertson and buried it beneath the floor of Miss Fergus Robertson's dressing room. This hiding place was discovered and the safe robbed of all its contents.

The amount of the claim is for 177,026.00 pesos (Mexican), at the exchange of 2 Mexican pesos equal to 1 United States dollar. A detailed inventory and valuation of the effects looted by the Zapatistas is attached to Mr. Merrow's affidavit.

The British Government claim, on behalf of Mr. Frank Scribner Merrow, the sum of 177,026.00 pesos (Mexican) at the rate of 2 Mexican pesos equal to 1 United States dollar.

2. As since the filing of the Memorial the claimant has died, the claim is now pursued on behalf of his widow, Mrs. Annie Merrow, as executrix of the will of the late Mr. Frank Scribner Merrow.

3. The British Agent pointed out that the looting had been committed by followers of Zapata, at a time when this leader had joined forces with the Constitutionalist Army of Carranza. As this last Army was to be considered as a revolutionary force which had, after the triumph of its cause, established a Government, the facts on which the claim was based fell within the meaning of subdivision 2 of Article 3 of the Convention, and had consequently to be compensated for by the Mexican Government.

4. The Mexican Agent alleged, in the first place, that no proof had been shown of the contention that Mr. Merrow had been compelled to leave his house, and he argued in the second place that the time when the looting was done was uncertain. It could just as well have been committed much later, when the Zapatistas evacuated Miraflores, as when they first occupied it. In the second case, the argument of his British colleague did not hold, because by that time the Constitutionalist forces and the forces of Zapata had already separated and were fighting each other. Besides that, the Agent described the amount claimed as extravagant, considering that Mr. Merrow, who was an employee with a monthly salary of 150 pesos, could certainly not have had in his house property of the value of 177,026.00 pesos.

5. The Commission have, in the documents as well as in the depositions of the witnesses who were heard, found sufficient evidence of the facts on which the claim is based, and they are also satisfied that the looting was done by Zapatista forces during the period when they were nominally united with the Constitutionlists. Their acts are, therefore, covered by subdivision 2 of Article 3 of the Convention.

6. Mr. Frank Scribner Merrow was the Chief Dyer of the Factory at Miraflores. The evidence as regards his salary is of a conflicting nature, the highest estimate being 400 Mexican pesos a month, expressed in the value of the then circulating medium. It was, however, alleged that Mr. Merrow had acquired much property when formerly in South Africa, and that the quantum of his salary in Mexico did not in itself dispose of the question. But it was admitted that after leaving South Africa Mr. Merrow had been obliged to assist financially his father to a considerable extent.

At the same time a claim for 177,026.00 pesos, as the value of his furniture and other portable property, uncorroborated by any outside evidence, and moreover admitted by Mrs. Merrow in the course of her oral evidence to have been overstated in many particulars, appears to the Commission to be fantastically exaggerated, and it does not find the slightest confirmation in any of the depositions. To the Commission an amount of 3,000 pesos seems a nearer approach to the truth.

7. The Commission decide that the Government of the United Mexican States is obligated to pay to the British Government, on behalf of Mrs. Annie Merrow, the sum of \$3,000 (three thousand pesos) Mexican gold, or an equivalent amount in gold.
