

THOMAS PULLEY MALLARD (GREAT BRITAIN) *v.* UNITED
MEXICAN STATES

(Decision No. 88, August 3, 1931. Pages 250-254.)

1. This is a claim for compensation for the deaths of the wife, Anna Mallard, and the son, Sidney Mallard, of the claimant, who were killed on the 6th June, 1915, during an attack by revolutionary forces on Tuxpam Bar, in the State of Veracruz.

According to the Memorial, the facts are the same as those giving rise to the claims of Mrs. Fanny Grave and of Mrs. Gwladys Amabel Jones. It should be explained that the claimant's birth certificate shows that his real name is Thomas Pulley, but that, owing to the death of his father during the claimant's infancy and his mother's remarriage to Mr. Mallard, the claimant was brought up in the name of Mallard and has used it consistently since. It should be noted that the claimant is described as Thomas Pulley Mallard, the son of James

Pulley Mallard, on the certificate of his marriage to Annie Matilda Patterson. His father's real name was James Pulley.

On the morning of the 6th June, 1915, the *de facto* Government forces stationed at Tuxpam Bar were attacked by revolutionary forces. During the attack and in view of the heavy shooting, and of the fact that the dwelling-houses, being made of wood, afforded no protection for the lives of the occupants, Mr. Mallard, his wife and child, together with a Mr. A. J. Grave and Mr. S. B. Jones, took refuge under one of these houses, which the Mexican Eagle Oil Company, Limited, provided for their employees. While taking refuge under this house, Mrs. Mallard and her son, Sidney Mallard, were, with others, fatally wounded by heavy volleys from the attacking forces. Mrs. Mallard died from her injuries on the next day, the 7th June, 1915, in the Company's hospital at Tanhuijo Camp, to which she had been taken after the fighting had ceased. The son, Sidney Mallard, died on the 6th June, 1915, while being taken to the hospital. Medical certificates given by Dr. T. M. Taylor describing the nature of the injuries and the cause of the deaths of Mrs. Mallard and of Sidney Mallard are contained in Exhibits T.M. 2a and T.M. 2b to annex 1. It is understood that in File No. 121 formed during the year 1915 in the archives of the Civil Registry Office at Tuxpam there is a record of the investigation made by the Court of First Instance at Tuxpam of the incidents which led to the deaths of Mrs. Mallard and Sidney Mallard.

The circumstances of the killing of these two British subjects were reported to His Majesty's Government at the time and urgent representations were made to General Carranza by the United States Agent at Veracruz. The British Vice-Consul at El Paso was instructed to make the strongest representations to General Villa, whose forces, it was afterwards understood, were those concerned in the attack on Tuxpam.

The claim, which amounts to 50,000 pesos Mexican, did at the time and still does belong solely and absolutely to the claimant.

The British Government claim on behalf of Thomas Pulley Mallard the sum of 50,000 pesos Mexican.

2. The British Agent drew the attention of the Commission to the fact that both victims had been killed by volleys from the attacking forces, and that those forces were commanded by General Villa. This leader was at the time of the events up in arms against Carranza, who had succeeded in establishing a Government *de facto*. The acts of the Villistas could not therefore be regarded as acts of lawful warfare, but were the acts of insurrectionaries or rebels, and as, in the Agent's view, no proof had been shown of any punitive action taken by the competent authorities against the perpetrators, the Mexican Republic should be held responsible for the consequences, according to subdivision 4 of Article 3 of the Convention.

3. The Mexican Agent argued that as regards the question of who had committed the particular acts that proved fatal to Mrs. Mallard and her child, the Commission merely had at their disposal the affidavits of the claimant himself. He considered this an insufficient proof of this very important matter. The volleys could just as well have been fired by the Government troops which defended Tuxpam and which, in doing so, performed a lawful act, for the consequences of which no recovery could be claimed from Mexico. Even if the victims had fallen through being struck by bullets from the attacking forces, they had been killed in the course of a battle. Their death had to be attributed to the hazards of war, and a great many judgments of international tribunals had decided that where injury was an ordinary incident of battle, no Government could be held liable. The Agent referred to the jurisprudence

quoted by Jackson H. Ralston (*The Law and Procedure of International Tribunals*) pp. 386 and following.

In case the killing had to be regarded as an act of insurrection or revolt, the Agent denied that any negligence on the part of the Mexican Government had been shown. It was outside the power of the authorities to trace the individuals who had fired the fatal shots; all the Government could do was to suppress the insurrection, and this duty they had certainly not failed to perform.

4. The Commission deem that no doubt can exist as to the facts or as to the forces whose volleys killed the wife and child of the claimant. All the contemporary evidence compels them to lay the responsibility upon the attacking forces, i.e., the Villistas, there being furthermore a greater likelihood that persons residing in a town subjected to attack would be killed by the attackers rather than by the defenders.

The question before the Commission is therefore whether Mexico is, under the Convention, financially responsible for the acts of General Villa and his followers at the time when the events occurred.

5. The time in question is the 6th June, 1915, a date falling within the second period of the Villista and Zapatista movements as described in the Decision of the Commission in the claim of *Mrs. Christina Patton* (Decision No. 76).

The Commission refer to paragraph 6 of that Decision reading as follows: "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 the 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."

6. The Villistas, on attacking a place occupied by the opposite faction, were certainly engaged in the execution of a military act and not of one of those provided for by subdivision 4 of Article 3 of the Convention.

That being so, the Commission must take the same attitude as in the Decision quoted, and they regret that they are not, reading the Convention as amended by the last revision, entitled to grant an award.

7. The Commission disallow the claim.