

THE BUENA TIERRA MINING COMPANY (LIMITED) (GREAT
BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 91, August 3, 1931. Pages 259-266.)

1. The claim is for compensation for the loss of property confiscated or taken by revolutionaries during the period November 1912 to September 1916. According to the Memorial, in November 1912, a quantity of 49,300 kilos of coal, the property of the company, standing in wagon No. 17462, in the National Railway Station in the City of Chihuahua, was confiscated by the Orozquista faction. In November 1913 a quantity of 54,200 kilos of coal which was in a railway wagon at the station at Terrazas was confiscated by Villistas. In January 1915, the so-called Government of Francisco Villa requisitioned coal belonging to the company in seven wagons which were standing in the station of Chihuahua. In February of that year further confiscation of coal belonging to the company was made by the Villa Government. In November 1915, a quantity of coal deposited or stored at the minefield of Santa Eulalia, in the district of Iturbide, was confiscated by Villistas forces, who were garrisoning the place. On the 19th November of the same year, the Villistas took three horses belonging to the company from the mine in Santo Domingo, Santa Eulalia, district of Iturbide. On the 24th December, 1915, a party of Villistas came to the same mine and destroyed an iron case and took from Messrs. W. E. Dwelly and John Brooke, Jr., 100 pesos National gold, belonging to the company. On the 26th of the same month, Villistas took away forty-four bundles of alfalfa belonging to the company. On the 22nd January, 1919, the ex-rebel Francisco Villa came to the minefield of Santo Domingo, ordered the company's safe to be broken open, and took possession of 385 pesos 4 centavos National gold belonging to the Company. In February 1916, a party of Villistas came to the mine in Santo Domingo and took away sixty-four cases of candles, one and a half tins of grease and ten cases of gasolene. On the 13th September, 1919, a party of Villistas assaulted a train belonging to the Chihuahua Mining Company, which was going to the minefield of Santa Eulalia and took the sum of 700 pesos National gold belonging to the Claimant company, which was being taken by Mr. Dwelly in order to pay the company's workmen of Ciudad Juarez.

2. The facts are set out in an Affidavit (Annex to the Memorial) made by Herbert Francis Wreford, Secretary to the Claimant Company, a British company, on the 16th May, 1928, and in a translation (Exhibit "B" to annex) of a certified copy of the Record of voluntary jurisdiction proceedings instituted, before the District Court, Ciudad Juarez, State of Chihuahua, on the 23rd June,

1921, by Mr. Arthur C. Brinker, as Attorney of the Claimant Company, to verify the damages caused by the revolution. Exhibit "C" to the above-mentioned Affidavit of Herbert Francis Wreford is a certificate, dated the 15th May, 1928, under the hand and seal of the Assistant Registrar in London of Joint Stock Companies, of the incorporation of the claimant company on the 10th February, 1912.

3. At the hearing the British Agent dropped the first item of the claim, being the confiscation of coal by Orozquistas in November 1912. As regards the rest of the claim, the acts complained of were those of Villistas and the Government of Mexico were in his opinion undoubtedly responsible for such acts during 1913 as being during the Constitutionalist movement prior to November 1914 and belonging to the period during which the Villistas must be regarded as falling within the category of successful Revolutionaries, as allied to the Constitutionalist cause. That as regards the subsequent acts of the Villistas complained of, the Government of Mexico must be held responsible provided negligence, failure to punish, or blame on the part of the competent authorities was proved, the offending parties being either insurrectionaries or bandits. He claimed that subdivision (4) of Article 3 of the Amended Convention was applicable. He argued further that the effect of the General Amnesty Decree issued by the Carranza Government in December 1915, and the Agreement made by the same Government with Villa on the 28th July, 1920, was to make the Mexican Government financially responsible for non-punishment of the Villistas and Villa respectively as insurrectionaries, or bandits, as the case might be, in respect of these acts.

4. The Mexican Agent in opposing the Claim confined his arguments to the legal issues involved, arising from the dates and the character of the acts complained of, and the applicability thereto of the amended Convention. As regards the legal questions arising on the dates when (and therefore the periods during which) the acts took place, the Commission have already in their decisions in the case of *Mrs. Edith Henry* (Decision No. 61) and in the *Christina Patton* case (Decision No. 76), set out the general arguments, on these points, of the Mexican Agent, which were similar, and it is not necessary to repeat them here. But in the case now under consideration the Mexican Agent dealt also with the effect of the Carranza Decree of Amnesty of December 1915 and the Villa Agreement of 1920. He distinguished between political and criminal offences. It might be an obligation of the State or the authorities to punish criminal or common law offences, but this did not apply to political offences, which only affected the State. It was to the interest of the State to terminate political unrest and civil war, and political amnesties and agreements with this end were in the interest of the State. The Amnesty and Agreement were political acts and the Government of Mexico could not be held responsible merely because of these, but only if negligence or blame were proved against it.

5. The Commission have already, in the Case of Christina Patton, referred to in the preceding paragraph, enunciated their views as to the general principles applicable during the first and the second periods therein described, and they refer to these as directly applicable to the losses occurring during those periods, that is to say, prior to November 1914, and between November 1914 and October 1915 respectively. But a large proportion of the losses arose on confiscations and takings by Villistas during the third period, when Carranza had established first a *de facto* and later a *de jure* Government. They were then insurrectionaries or bandits, as the case might be, within subdivision 4 of Clause 3 of the Convention. In such cases omission by the competent authorities to take reasonable measures to suppress, or to punish those responsible, or blame

in any other way, must be established in order to make the Mexican Government financially responsible.

6. Acting on the general principles before enumerated they must hold the Mexican Government financially liable for the confiscation complained of in the first period, that is to say, in November 1913, when the Villistas formed part of the Constitutional Army, of 54,200 kilos. of coal which, as well as its value at 262.18 pesos, they find has been proved. As regards the confiscations during the second period, that is to say in January and February 1915, it has not been shown and the Commission do not find that these acts were of other than a political or military nature, and acting on the principles already enunciated in the cases above referred to, and no omission, negligence or blame having been proved against the authorities in regard to the actual occurrences complained of, they must hold that under the Convention as amended the Government of Mexico is not financially responsible.

7. As regards the acts complained of which occurred during the third period, that is to say, between October 1915 and September 1919, it will be convenient to summarize by recapitulation from the Memorial and evidence annexed thereto the specific acts complained of:

1915, November.—Coal confiscated at Santa Eulalia, Iturbide, by Villista forces, who were garrisoning the place.

1915, November 19.—Three horses taken by Villistas at the same place.

1916, February.—Villistas took 64 cases of candles, 10 of gasoline and 1½ tins of grease.

1916, December 24.—Villistas destroyed an iron case and took 100 pesos Mexican gold.

1916, December 26.—44 bundles of alfalfa taken by Villistas.

1919, January 22.—Visit of ex-rebel Francisco Villa to the Minefield at Santo Domingo ordered safe to be broken open and took possession of 385 pesos 4 centavos National gold.

1919, September 15.—Assault by Villistas of train belonging to Chihuahua Mining Company, and robbery from Mr. Dwelly of 700 pesos National gold belonging to the Claimants.

The above facts being taken as proved, as in the opinion of the Commission they were sufficiently, it remains to be considered how far, if at all, the Mexican Government can be held to be financially responsible. During the whole of this period, and indeed up to the date of the Agreement concluded by the Carranza Government with Francisco Villa on the 28th July, 1920, Villa and his followers came under the category of insurrectionary forces, or brigands as the case may be, and the financial liability of the Government of Mexico for their acts depends on whether the competent authorities omitted to take reasonable measures to suppress the insurrections, or acts of brigandage as the case may be, or to punish those responsible for the same, or whether it is established that the authorities were blamable in any other way.

The position of Villistas and also Zapatistas during the third period was described by the Mexican Agent in his arguments before the Commission in the cases of *Edith Henry* and *Christina Patton* referred to in paragraph 4 hereof, and his view of their position may be summarized as follows:

The resistance of the forces of Zapata and Villa continued, though they could no longer be considered as political factors. This period ended when these forces were, at different dates, definitely subdued. The state of affairs during the third period was such that a Government *de facto* existed, and against this Government, mutinies, risings and insurrections could break out and be sustained.

In the decision of the Commission in the *Edith Henry* case, on the Motion of the Mexican Agent to dismiss the Claim (Decision No. 61), they expressed the following opinion:

"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 the Government, must therefore be considered as a mutiny, a rising, or an insurrection, unless they ought, depending on the nature of the acts in certain instances, to be classified as acts of brigandage."

8. The Commission is faced in the present case, in view of the arguments advanced as regards the effect of the Villa Agreement of the 28th July, 1920, with the necessity of considering what was the real nature of the acts during the third period here complained of. It is clear, in the opinion of the Commission, that, speaking generally, the Villista movement and Villa's activities continued as a political factor during the whole of the third period until the conclusion of the Agreement of the 28th July, 1920. In this respect they differ from the view of the Mexican Agent that during the third period Zapata and Villa could no longer be considered as political factors. Therefore, they will have to consider the category within which the various acts complained of in this case fall. In the opinion of the Commission, these acts, with possibly the exception of the train assault and gold taking in September 1919, were *prima facie* of a political or military character, done in pursuance or in aid of political aims, and they can find no evidence sufficient to establish that the acts were pure brigandage. Nor has, in the opinion of the Commission, any negligence or blame for the acts themselves been proved against the competent authorities. On the contrary, the Carranza Government, so far as the Commission can judge, were carrying on continuous warfare and prosecution against Villa and his followers, who were in such strength and activity that the Carranza Government finally found it necessary or expedient to conclude terms with Villa. The Villa agreement, which was referred to in the *Santa Isabel* case (Claims Nos. 22 and 59) and also in this case contains the following preamble:

"In the town of Sabinas, Coahuila, on the 28th July, 1920, at 11 a.m., we, the undersigned, Generals Francisco Villa and Eugenio Martínez, hereby certify that, after holding ample conferences for the purpose of consolidating peace in the United Mexican States, we have arrived at a cordial and satisfactory agreement and that the former accepts, in his own name and that of his forces, the bases which the Executive of the Union proposed to him through the good offices of the latter as follows:—"

It contains also the following important material provisions:

"First: General Villa shall lay down his arms and retire to private life.

* * * * *

"Fourth: The Government shall give to the other persons at present forming part of General Villa's forces, that is, not only those present in this town but also those who are to be found in different places fulfilling commissions entrusted to them by General Villa, a year's pay corresponding to the rank which they hold at this date. They shall also be given tillable lands in places which the interested parties shall designate so that they may devote themselves to work upon them.

"Fifth: The persons who may desire to continue the career of arms shall be admitted into the National Army. General Villa swears on his word of honour that he will not take up arms against the Constitutional Government or his fellow-countrymen.

* * * * *

“*Note:* The General, commanders, officers and troops belonging to the forces commanded by General Francisco Villa are as follows: One General of Division, one Brigade General, seven Brigadier Generals, twenty-three Colonels, twenty-five Lieutenant-Colonels, thirty-three Majors, fifty-two First Captains, thirty-three Second Captains, thirty-four Lieutenants, forty-one Second Lieutenants, thirty-one First Sergeants, thirty-three Second Sergeants, fourteen Corporals and four hundred and eighty soldiers.”

The question with which the Commission is thus faced in the absence of proof of negligence, omission or blame as regards the occurrences complained of, is how far the conclusion of this agreement casts, under the terms of the Convention, financial liability on the Government of Mexico by reason of omission of the competent authorities to punish Villa, or those responsible for the acts complained of (1) as insurrectionary acts, or (2) proved acts of brigandage.

The effect of amnesties is discussed in Borchard's *Diplomatic Protection of Citizens Abroad*, particularly at pp. 238, 239. At page 238 the following passage occurs:

“The effect upon the liability of the Government of an amnesty to the rebels is somewhat uncertain. When the Government has treated the rebels as criminal offenders, and they did not attain the status of revolutionists, an amnesty operates as a pardon and constitutes a failure to punish criminals, a recognized ground of State responsibility.”

Then follow cases with conflicting decisions, on the same page, and on page 239; with the concluding passage:

“As a practical matter, it is not always easy to distinguish between a movement on such a small scale as to amount to a conspiracy or plot against the established Government, punishable by municipal law, and a general movement assuming the proportions of an armed contest against the Government, of which international law takes notice by recognizing a status of insurgency, manifested in various ways, e.g., a warning by foreign Governments to their subjects to abstain from participation. While as a matter of strict right the Government may treat the insurgents as criminals, modern practice tends to regard them as belligerents, with rights as such, provided they observe the rules of legitimate warfare.”

The Commission (on the whole) take the view that the Villa Agreement was an act of political expediency on the basis of the Villistas being regarded as belligerents, and does not in itself involve the Mexican Government in financial liability for acts done by Villistas of a political or military nature in pursuance and in aid of their political aims. The seizure or confiscation of coal, gasoline, and other materials, and even in some instances of cash by forced loans or otherwise fall under this description, and having regard to this factor and to the general circumstances in Mexico, the Commission do not feel that they can necessarily class all such acts as brigandage or criminal acts in the ordinary sense. The Commission desire, however, to make clear that they are not speaking here of acts such as wanton murder or other crimes committed with no possible legitimate excuse or reason of military necessity. Proceeding on the lines indicated above they find that the confiscations and takings in this case, as specified in paragraph 7 hereof, with the possible exception of that on the 13th September, 1919, belonged to the category of military or political acts as before described, and they give the Mexican Government the benefit of the doubt as regards the event of the 13th September, 1919. But in any case as regards this act, it has not been proved that there was any negligence on the part of the authorities, nor that the occurrence was of notoriety, nor that it was brought to the notice of the authorities or that they were informed thereof

in due time, so as to fix responsibility on them for non-punishment. The Commission here refer again to the passages in their judgment in the *Mexico City Bombardment Claims*. Decision No. 12, which have been referred to in other cases and in the *Christina Patton* case, at page 104 of the English Report of Decisions and Opinions:

“But a strong *prima facie* evidence can be assumed to exist in those cases in which *first* the British Agent will be able to make it acceptable that the facts were known to the competent authorities, either because they were of public notoriety or because they were brought to their knowledge in due time.” There is no evidence that this event was of public notoriety, or that it was brought to the knowledge of the authorities in due time. Therefore for all the above reasons the Commission hold that the Government of Mexico is absolved from financial liability for all these acts. The same observations apply generally to the acts in the third period prior to the Amnesty decree of December 1915, which of course does not touch subsequent occurrences.

9. The Commission decide that the Government of the United Mexican States is obligated to pay to the British Government on behalf of the Buena Tierra Mining Company (Limited), the sum of 262.18 (two hundred and sixty-two pesos and eighteen centavos) Mexican gold, or an equivalent amount in gold.
