# GEORGE W. COOK (U.S.A.) *v.* UNITED MEXICAN STATES

*(October 8, 1930, concurring opinion by American Commissioner, October 8, 1930. Pages 61-68.)*

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*Commissioner Fernández MacGregor, for the Commission:*

In this claim filed by the United States of America on behalf of George W. Cook, an American citizen, it is sought to recover from the United Mexican States the sum of $137.70 Mexican currency and interest thereon from June 7, 1918, on the ground that this sum which represents a tax upon property of the claimant, which was exempt from such taxation, was collected illegally by the Municipal Authorities of Guadalajara.

The facts upon which both Agencies agree are as follows:

In 1905, Mr. Cook, the owner of a parcel of real estate in the city of Guadalajara, in the state of Jalisco, having the intention of erecting a building thereon, obtained from the Governor of the State an offer to the effect that if he, the claimant, would erect a modern building, he would recommend to the state legislature that the said property be exempted from the payment of the corresponding real estate tax (*Contribuciónes prediales*). The claimant, in the years 1906 and 1907, constructed the edifice in question and on April 29, 1909, the State Congress enacted the following legislation:

"Sole Article.—The building designated with numbers 172, 176 and 182 of the Calle de San Francisco situated on the east sidewalk of block number four, District 1 of this City is hereby exempted from the payment of the corresponding real estate tax *(Contribución predial)* for a period of twenty years."

Later by Act of December 29, 1917, the State Legislature of Jalisco added to the budget of the Municipality of Guadalajara by creating, for one semester, a tax of two per thousand annually upon urban property. This tax according to the said Act, was to be collected only for the first semester of the year 1918.

Pursuant to this later Act the Municipal Authorities proceeded to collect the tax upon the property of Mr. Cook, the payment of which being refused, the Agent of the Municipal Treasury placed an embargo upon the property, in view of which the claimant, under protest, paid the tax, $137.70 Mexican currency, which is the amount of this claim.

The American Agency avers in its briefs: (a) that the exemption in the Act of 1909 was enacted as compensation for the obligation incurred by the claimant to construct an edifice which would constitute an improvement to the City; (b) that the said Act included all classes of taxes which could be imposed upon the said property whether by the State or Municipality, and finally, (c) that the Municipality of Guadalajara acted unlawfully in requiring the payment of the sum which is claimed herein, since the Act of 1909 could not have been repealed by the Legislative Act of 1917, in accordance with the principle that a general act cannot repeal a prior special act unless it is evident from the text of the act itself that such was the express intention of the legislature.

The Commission is of the opinion that the first argument presented by the Agency of the United States cannot be sustained since the claimant constructed the edifice prior to the Act of April 29, 1909 and, therefore, it cannot be said that the building was erected upon the basis of a legislative exemption which at that time did not exist. The mere promise of the Governor to recommend exemption to the local legislature cannot in itself be conceded to have the force of an exemption; neither can it be said to have created any right in favor of the claimant. Consequently the theory that the exemption granted by the Legislature in 1909 invested it with a contractual character cannot be accepted. It appears to the Commission that the said exemption was simply an act of liberality on the part of that branch of the State. In that connection it is proper to examine the essentials of the question which consist in the determination of the extent of the exemption granted to the claimant. To do this the language used in the Act must be clearly understood. It provides that the edifice in question is exempt "from the payment of the corresponding real estate tax". This phrase has been interpreted by the American Agency in the sense that it refers to all real estate tax, present and future, thus giving to it the greatest extension of which it is capable, and consequently, the greatest effect. Against that interpretation there is the employment of the definite article which precedes the words "real estate tax", and the addition of the adjective "corresponding" (*correspondiente*); the article limits, according to grammatical usage, the extension of the substantive to which it applies; the question is not one of any real estate tax or of all real estate tax, but one of a particular real estate tax. Of which? Of the "corresponding" (*correspondiente*). This adjective discloses the meaning of the phrase "real estate tax" (*contribución predial*) must be understood to include. It can be only one excluding naturally the idea of the general character of the exemption. The interpre-

tation would be different if the Act had stated "there is exempt from the payment of real estate tax" or "the real estate taxes" or even "of all real estate tax" or other equivalent phrases. It would then have been necessary to give to the Act a broader meaning. From the foregoing it will be seen that it is necessary to look for a definite real estate tax to which the said Act could refer, the solution being the fact that in 1909 real estate paid only a general percentage tax to the State, which is the "*correspondiente*"; from this tax and from this only is the edifice of the claimant exempt for twenty years. Therefore any other class of real estate tax was an incumbrance against the same property. Now the tax provided for by the same Congress of Jalisco on December 29, 1917, is of a different nature; in the first place it is for the Municipality of Guadalajara, and not for the State of Jalisco; in the second place it is a special tax,—one of emergency and not general. The text of the Act of 1917 is as follows:

"Number 1868—The Congress of the State decrees: Article 1—There is added to the estimate of revenues which shall be in force in the Municipality of Guadalajara from January 1 to June 30 of 1918, the following: I. Section 35—Tax of two per thousand on country and city property which will be in force only for the period of a semester within the months of January and March. II. Section 35 Bis. Tax on mercantile and industrial firms monthly, from 25 cents to 100 pesos. Article 2—Authorization is granted to the common council of Guadalajara to convert the tax mentioned in Article II of law 74 and the fines to which Articles 7, Sub-section 8 and 16 of law 93 refer, corresponding to the period from January to July, 1918, to meet the demands of the Public Service of the said Municipality.

"Chamber of Sessions of the State Congress, Guadalajara, December 29, 1917, Carlos Galindo, D. P.—Ramon Delgado, D. S.—V. L. Velardo, D. S."

It is clearly seen that this tax is not included in the exemption of 1909 and that the Municipality therefore, could collect it without infringing upon the privilege of the claimant who continued to enjoy his exemption, having to pay the special tax only, while other tax payers had to pay the two taxes.

Further the same conclusion is obtained by the application of legal principles.

In all cases relative to tax exemption it is necessary to bear in mind the generally accepted standards of construction. The right of the State to levy taxes constitutes an inherent part of its sovereignty; it is a function necessary to its very existence and it has often been alleged, not only in Mexico, but in the United States and other countries that legislatures, whether of states or of the Federation cannot legally create exemptions which restrict the free exercise of the sovereign power of the State in this regard. The Supreme Court of Mexico has held on several occasions this class of exemption to be illegal. (*Semanario Judicial de la Federación*. 5ª epoca, Vol. 4, pp. 982-987.) In the same sense, and in line with numerous decisions rendered at various times by courts of the United States of America, vigorous dissenting opinions to the doctrine approved by the majority have been filed in the highest court of this country. (*Corpus Juris*, Vol. 12, Par. 668.) And even in those cases in which the said majority of the Supreme Court of the United States has held that that right inherent to the sovereignty of a State might be the subject of a contract, it has also ruled that the exemptions should be strictly construed in favor of the State.

"If the point were not already adjudged it would admit of grave consideration, whether the legislature of a State can surrender this power, and make its

action in this respect binding upon its successors any more than it can surrender its police power or its right of eminent domain. But the point being adjudged, the surrender when claimed must be shown by clear, unambiguous language, which will admit of no reasonable construction consistent with the reservation of the power. If a doubt arise as to the intent of the legislature, that doubt must be solved in favor of the State." (*The Delaware Railroad Tax*, 18 Wallace, 226.)

*Corpus Juris* likewise sets forth the rule of construction generally accepted with regard to this point by American Jurisprudence.

"In determining whether there is a valid contract and whether by its terms an exemption from taxation is granted, every presumption will be indulged in favor of the power of the State to tax and against the existence of the exemption." (*Corpus Juris* Vol. 12, par. 607.)

It may be added as a corollary that the liberality of a State in granting an exemption is essentially revokable for the reason that it creates no vested rights in him who enjoys it. It is well established that an exemption granted merely for reasons of policy, where the state and the citizen have no agreement to their mutual advantage, must be regarded only as an expression of the pleasure of the said state and of the citizen; and the law which grants it, as all general laws, is subject to amendment or repeal at the option of the legislature, and it is immaterial whether during the time it has been in force the parties in interest have acted in reliance thereon (Cooley, *On Taxation*, p. 69).

"An exemption from taxation does not confer a vested right, and it may therefore be modified or repealed by the legislature unless it has been granted under such circumstances that its repeal would impair the obligation of a contract." (*Corpus Juris*, Vol. 12, Par. 536.)

For the reasons stated the Commission decides that the claim of George W. Cook must be disallowed.

*Nielsen, Commissioner:*

I agree with the conclusion to disallow this claim, although with respect to certain points I have not the same feeling of certainty that is expressed in the opinion written by Commissioner Fernández MacGregor.

I am in accord with the conclusion reached by Mr. Fernández MacGregor that no form of agreement secured to Mr. Cook an exemption from taxation for twenty years. The position of the United States on this point may have been a little uncertain. It is stated in the American brief that the exemption "was in return for an agreement to erect an expensive building of a permanent type". However, any argument along these lines seems to have been abandoned in oral argument, and the United States appears to have taken the position that by the imposition of a tax, Cook was deprived of certain rights secured to him by a State law granting him an exemption from taxes for a period of twenty years. We are therefore not required to pass upon any intricate question of law as to the conditions under which exemptions from taxes may properly be given by competent authorities, or as to the conditions under which an exemption once granted may of may not be revoked. We have not before us any case involving an agreement or some kind of a franchise conferring exemption from taxation.

It is argued in the American brief that "the municipal council of Guadalajara had no authority whatsoever to impose" the tax against which objection is made except such as is granted to it by the State of Jalisco.

Apparently the municipality has no autonomous power to levy taxes, that being a legislative function of the State. Nor does it appear that the municipality did levy the tax in question. I understand that the tax was levied by the Congress of the State for the benefit of the municipality. We therefore have before us no question whether a State law granting exemption was by implication repealed by authority given to a municipality to levy a tax.

The act of the State Congress of 1917 which imposed the tax in question did not in express terms repeal the exemption granted in favor of Mr. Cook by the law of 1909. It seems to me that therefore we have but the simple questions whether the law of 1909 conferred the broad exemption contended for by the United States, and if it did, whether the law of 1917 by implication repealed the law of 1909. It appears to me that, in the light of principles of interpretation generally obtaining under domestic laws of the United States and under the laws of Mexico and doubtless in other countries with respect to repeals by implication, the conclusion can not properly be reached that the law of 1917 effected a repeal.

I understand that the view expressed in the opinion written by Mr. Fernández MacGregor is that the law of 1909 did not confer a broad exemption such as that contended for by the United States; that the key to the interpretation of the law of 1909 is to be found in the word *la* and in the word *correspondiente*; that in these words we have a connotation of the kind of tax from which Cook was exempted; that these words reveal a limitation on the exemption provided for by the law of 1909; and that Cook could only have enjoyed complete exemption if the law had not contained the words *la* and *correspondiente*—if for example, the law had read *las contribuciones prediales*, or *de toda contribución predial* or some equivalent.

The Spanish word *correspondiente* is used at times in such broad and varied senses that there are no literal equivalents in English. But I take it that in the present instance it is used just as the adjective "due" or "payable" might be employed in English. In other words, that Cook was exempted from real estate tax due or payable on his premises; that the exemption was for real estate taxes corresponding to his property, or taxes pertaining to that property.

I could readily agree with the other interpretation in case it were shown that under the tax laws enacted by Congress *la contribución predial correspondiente* was some specific, well defined tax. There is nothing in the record indicating just how often or when the Congress of the State of Jalisco enacts laws with respect to taxation. But I take it that at any time it enacts a measure of taxation, whether it does it in the usual routine of legislation or for some special purpose to meet an extraordinary situation, the tax it imposes on property by such measure, special or general, is *la contribucion predial correspondiente*. It would therefore seem that Cook was entitled to exemption from any such tax imposed during the period of exemption.

The important point to bear in mind is, it seems to me, that we are concerned with a tax on real estate within the meaning of the law of 1909. I think therefore that the words *contribución predial* are of more importance than the words *la* and *correspondiente*. If a measure of taxation had been enacted in 1910, or in any of the following years during the period of Cook's exemption, I do not think that the exemption would have been altered if the legislature had assessed taxes in amounts greater or less than those fixed by the law of 1909, or if any of such subsequent laws had made some new arrangement or application of taxes, either as regards the use by a muni-

pality of taxes or as regards other matters. In other words, whether the Congress considered that the State needed more or less taxes than previously or whether the provision made by the Congress affected a municipality, as in the case under consideration, would have no bearing on the benefits which Cook enjoyed under the law of 1909. Whatever tax was imposed on real estate, irrespective of the purpose for which the tax was to be used, would be at any given time *la contribución predial correspondiente*. However, I think that under the principles which have guided the Commission in the past, the respondent Government should be entitled to the benefit of any doubt as to interpretation.

*Decision*

The claim of the United States of America on behalf of George W. Cook is disallowed.