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Herbert Carmichael (Great Britain) v. United Mexican States

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HERBERT CARMICHAEL (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 35, April 29, 1931. Pages 45-48.)

1. This is a claim for compensation for the losses and damages suffered by Herbert Carmichael on the Hacienda Coacoyolitas, in the State of Sinaloa, and Las Mariquitas o Romeros in the State of Nayarit, during the years 1915-19 inclusive.

The Memorial sets out that in December 1912 Herbert Carmichael purchased through Messrs. Francisco Echeguren y Cia. Sucrs., of Mazatlán, in the State of Sinaloa a property situated in the State of Nayarit, known as Las Mariquitas o Romeros, for the sum of 26,000 pesos Mexican gold. This property was paid for in full by the claimant. Owing to the revolution and the withdrawal of land registry facilities from Acaponeta the claimant was unable to secure the registration of his clear title to the property. At the time of purchase Las Mariquitas contained a large brick hacienda, outbuildings, a sugar mill, agricultural machinery and implements, live-stock and growing crops. The estate was operated for little over a year, when revolutionary parties and bandits overran the country and drove off his major-domo and the peons. The claimant has made many attempts to operate this property without success, and the last man who ventured on the property for purposes of its welfare was murdered. No effort was made by the Mexican Government or its officials to afford protection in this very disturbed area. The claimant sold his property in 1923 for the sum of 5,000 pesos. Loss on this property was therefore at least 21,000 pesos.

On the 15th February, 1913, Herbert Carmichael purchased from Señor Federico Ramirez of Mazatlán a portion of the property known as Coacoyolitos, Pitayas and Laguna Larga in the State of Sinaloa. The purchase price was 35,000 pesos gold, of which 20,000 pesos gold was paid in cash, and interest at the rate of 8 per cent per annum on the balance has been paid up to June

1919. On the 27th April, 1913, Mr. Carmichael purchased from Señorita Lina Hernandez of Chametla in the State of Sinaloa, another portion of the estate of Coacoyolitos, for the sum of 15,000 pesos, of which he paid 10,500 and interest on the balance up to the 29th April, 1914. On these two portions of the Coacoyolitos estate the claimant erected a brick hacienda, installed farm machinery, including a 60 horse-power Holt steam tractor, and purchased live-stock. The total sum expended on improvements amounted to 12,000 pesos gold. This property was the scene of continued conflict between Government forces and revolutionaries. The major-domo of the hacienda was murdered on the property by bandits. In view of the state of affairs, cultivation of the property was impossible, and most of the crops which had been sown were lost. Mr. Carmichael came to an arrangement with Señor Ramirez on the 12th September, 1918, by which the time for the payment of the balance of the purchase price was extended for three years from that date. The interest was paid in full to the end of June 1919, when a revolution again broke out in Mexico. At this time Mr. Carmichael was attached by the Banco Occidental de Mexico in Mazatlán, which placed an embargo on the property in connexion with a debt contracted by some people for business which had no connexion with Mr. Carmichael or his property. The bank took possession of the properties, but after short legal proceedings agreed to withdraw their action. The bank immediately afterwards purchased the interests of Señor Ramirez and demanded immediate payment of the balance of the purchase price, and at once served Mr. Carmichael with foreclosure papers. The bank were unable to obtain a clear title, and later Mr. Carmichael sold the ranch for a small sum.

In April 1913 Mr. Carmichael purchased from Señora Cruz Diaz, of Chametla, for the sum of 1,000¹ paid in cash, a small property near his other properties.

In 1913 the claimant and his representative entered into active working of all the above-mentioned properties, but owing to revolutions he was unable to proceed. He then operated on the Medias system with local Mexicans without success. In June 1919, when conditions appeared settled, Captain William Maurice Carmichael, a son of the claimant, was proceeding to Mexico with the sum of 30,000 United States gold dollars for the purpose of entering into occupation of the properties and paying off all indebtedness of principal, interest and taxes. On his arrival at San Francisco and while waiting for a ship to Mazatlán the revolution broke out and Captain Carmichael was forced to abandon the project. Immediately before leaving for Mazatlán Captain Carmichael had refused an offer from Mr. Luis Bradbury to purchase these properties as it was his intention to live on the properties. After he had been forced to abandon his project Mr. Bradbury declined to renew negotiations for purchase.

The claim was first registered at His Majesty's Consulate-General in Mexico City on the 15th November, 1920. This claim was for the sum of 78,360 pesos Mexican gold, being the purchase price, interest and losses of the claimant on these properties. In addition to this an indemnity, which was not specified, for being driven off the property was claimed. As an alternative it was suggested that the Mexican Government should reinstate Mr. Carmichael as holder of these properties, giving him clear titles and satisfying all outstanding claims against him on account of law suits, arrears and taxes and giving him five years of freedom from taxation in respect of these properties, in return for which Mr. Carmichael would forgo any claim for indemnity for loss of stocks, crops, machinery, implements or improvements. Since the date of this state-

¹ No currency indicated in original report.

ment of claim Mr. Carmichael has disposed of all his properties in Mexico. On the Mariquitas property the claimant has lost at least 21,000 pesos gold. This loss is merely the difference in the purchase price and the selling price. No account has been taken of the loss of interest on this money or of the reasonable profits of working this estate. On the Coacoyolitos property Mr. Carmichael estimates that he has lost about 70,000 pesos gold. The minimum amount of the claim is therefore 91,000 pesos gold, to which should be added compensation for being driven off these properties and the consequent loss of interest and livelihood. Three quarters of the capital for the purchase and improvement of these properties was provided by the claimant. The remaining quarter was provided by a partner.

His Majesty's Government claim on behalf of Robert Carmichael the sum of 68,250 pesos Mexican gold, being three-fourths of the total losses, together with such compensation for the loss of interest and livelihood as the Commission may consider equitable.

2. The Mexican Agent has lodged a demurrer on the ground that Mr. Herbert Carmichael's British nationality has not been established. The Agent does not accept as sufficient proof the certificate issued by a notary public in the Dominion of Canada.

3. The British Agent alleged that this document was sufficient proof to establish the British nationality of the claimant.

4. The Commission do not feel at liberty to attach to the certificate of a notary public the same value in matters of nationality as to a consular certificate. As regards the latter instrument they refer to the following passage of their decision No. 1 (*R. J. Lynch*):

"4. A consular certificate is a formal acknowledgment by the agent of a sovereign State that the legal relationship of nationality subsists between the State and the subject of the certificate. A Consul is an official agent working under the control of his Government and responsible to that Government. He is as a rule in permanent touch with the colony of his compatriots who live in the country to which he is assigned, and he is, by virtue of his post as Consul, in a position to make inquiries in respect to the origin and antecedents of any compatriot whom he registers. He knows full well that the registration of a compatriot entitled to all the rights of citizenship is a step which imposes serious obligations upon the State which he serves. That circumstance in itself is an inducement to him to see that the registration must be attended to with great care and attention."

None of the guarantees which are offered by a consular certificate and which induced the Commission to accept it as *prima facie* evidence are presented by the document on which the British Agent relied.

A notary public, although a public servant, cannot be considered as an agent working under the permanent control of, nor as being in continuous touch with, the Government. The keeping of a register of British subjects does not form part of his official duties. Neither does his normal professional work, nor his previous training therefor, include frequent contact with questions of nationality. His function gravitates in civil law, not in public or international law. To his declarations in matters of citizenship no preponderating value can be attached.

5. The demurrer is allowed, without prejudice to the right of the British Agent to produce further evidence.