

**Fleming Vs. Page**

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**Court :** US Supreme Court

**Decided On :** 1850

**Appeal No. :** 50 U.S. 603

**Appellant :** Fleming

**Respondent :** Page

**Judgement :**

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**Fleming v. Page**

**50 U.S. (9 How.) 603**

*ON CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE  
CIRCUIT*

*COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF  
PENNSYLVANIA*

**SYLLABUS**

During the war between the United States and Mexico, the port of Tampico, in the Mexican State of Tamaulipas, was conquered, and possession of it held by the military authorities of the United States, acting under the orders of the President.

The President acted as a military commander prosecuting a war waged against a public enemy by the authority of his government, and the conquered country was held in possession in order to distress and harass the enemy.

It did not thereby become a part of the Union. The boundaries of the United States were not extended by the conquest.

Tampico was therefore a foreign port within the meaning of the Act of Congress passed on 30 of July, 1846, and duties were properly levied upon goods imported into the United States from Tampico.

The administrative departments of the government have never recognized a place in a newly acquired country as a domestic port from which the coasting trade might be carried on unless it had been previously made so by an act of Congress and the principle thus adopted has always been sanctioned by the circuit courts of the United States and by this Court.

This was an action brought by Fleming and Marshall against Page, collector of the port of Philadelphia, in one of the state courts of Pennsylvania in 1847 to recover back certain duties on goods, wares, and merchandise imported into the port of Philadelphia from Tampico, in Mexico, in March and June of that year. The case was afterwards, in 1848, taken into the Circuit Court of the United States for the Eastern District of Pennsylvania and was tried May term, 1849, when the jury found for the plaintiffs. A motion was thereafter made on

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behalf of the United States to set aside the verdict and for a new trial on the grounds:

1st. That the learned judge erred in charging the jury that, in the year 1847, Tampico was not a portion of a foreign country within the meaning of the first

section of the Act of Congress of the United States passed 30 July, 1846, entitled "An act reducing the duties on imports, and for other purposes."

2d. That the learned judge erred in charging the jury that in the year 1847, Tampico was so far under the dominion of the United States that goods, wares, and merchandise imported from that port into Philadelphia in March and June of that year were not subject to the payment of duties.

3d. That the learned judge erred in charging the jury that upon the facts in evidence, the plaintiffs were entitled to a verdict for the amount of duties paid under protest on 15 June, 1847, on merchandise imported in the schooner *Catharine*, from Tampico, into the port of Philadelphia in March and June, 1847.

And the following case was stated for the opinion of the court:

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"This action is brought by the plaintiffs, merchants, residing in the City of Philadelphia, the defendant, the late collector of the port of Philadelphia, to recover the sum of one thousand five hundred and twenty-nine dollars, duties paid on 14 June, 1847, under protest, on goods belonging to the plaintiffs, brought from Tampico while that place was in the military occupation of the forces of the United States."

"On 13 May, 1846, the Congress of the United States declared that war existed with Mexico. In the summer of that year, New Mexico and California were subdued by the American armies, and military occupation taken of them, which continued until the treaty of peace of May, 1848."

"On 15 November, 1846, Commodore Conner took military possession of Tampico, a seaport of the State of Tamaulipas, and from that time until the treaty of peace it was garrisoned by American forces and remained in their military occupation. Justice was administered there by courts appointed under the military authority, and a custom house was established there, and a collector appointed, under the military and naval authority."

"On 29 of December, 1846, military possession was taken by the United States of Victoria, the capital of Tamaulipas,

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garrisons were established by the Americans at various posts in that state, and at the period of the voyages from Tampico of the schooner *Catharine*, hereinafter mentioned, Tamaulipas was reduced to military subjection by the forces of the United States, and so continued until the treaty of peace."

"On 19 December, 1846, the schooner *Catharine*, an American vessel chartered by the plaintiffs, cleared coastwise from Philadelphia for Tampico."

"On 13 February, 1847, she was cleared at the custom house at Tampico, on her return voyage to Philadelphia, under a coasting manifest, signed by Franklin Chase, United States acting collector."

"The *Catharine* brought back a cargo of hides, fustic, sarsaparilla, vanilla, and jalap, the property of the plaintiffs, which was admitted into the port of Philadelphia free of duty. The *Catharine* cleared again coastwise from Philadelphia for Tampico, on 18 March, 1847, and in June, 1847, brought back a return cargo of similar merchandise, owned by the plaintiffs, which the defendant, acting under the instructions of the Secretary of the Treasury, refused to admit unless the duties on the merchandise brought by the *Catharine* on her former voyage were paid, as well as the duties on the goods brought by her on this voyage."

"Thereupon the plaintiffs, on 14 June, 1847, paid under protest the duties on both voyages, amounting to \$1,529, and brought this action to recover back the money so paid."

"The question for the decision of the court is whether the goods so imported by the *Catharine* were liable to duty. If the court are of opinion that they were not so liable, then judgment is to be entered for the plaintiffs, for the sum of \$1,529, with interest from 14 June, 1847."

"If they are of opinion that they were liable to duty, then judgment is to be entered for the defendant."

"It is agreed,"

"that all instructions from the several departments of the government to any of its officers, and all documents of a public nature, touching the war with Mexico or our relations with that country, which either party may desire to bring to the attention of the court, shall be considered as if made part of this case."

"Mc CALL, *for Plaintiffs* "

"ASHMEAD, *for Defendant* "

The cause having come on to be argued on the case stated, the judges of the circuit court were opposed in opinion on the following point:

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"Whether Tampico, in the year 1847, while in the military occupation of the forces of the United States, ceased to be a foreign country within the meaning of the first section of the Act of Congress passed 30 July, 1846, entitled, 'An act reducing the duty on imports, and for other purposes,' so that goods, wares, and merchandise of the produce, growth, and manufacture of Mexico, or any part thereof, imported into the port of Philadelphia from Tampico during said military occupation were not subject to the payment of the duties prescribed by the said act, but entitled to be entered free of duty as from a domestic port."

The first section of the Act of 30 July, 1846, above referred to, is as follows:

"That from and after the first day of December next, in lieu of the duties heretofore imposed by law on the articles hereinafter mentioned, and on such as may now be exempt from duty, there shall be levied, collected, and paid, on the goods, wares, and merchandise herein enumerated and provided for, imported from foreign countries, the following rates of duty,"

&c.;, Session Laws, Stat. 42.

Upon the above certificate of division in opinion, the case came up to this Court.

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MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

The question certified by the circuit court turns upon the construction of the Act of Congress of July 30, 1846. The duties levied upon the cargo of the schooner *Catharine* were the duties imposed by this law upon goods imported from a foreign country. And if at the time of this shipment Tampico was not a foreign port within the meaning of the act of Congress, then the duties were illegally charged, and, having been paid under protest, the plaintiffs would be entitled to recover in this action the amount exacted by the collector.

The port of Tampico, at which the goods were shipped, and the Mexican State of Tamaulipas, in which it is situated, were undoubtedly at the time of the shipment subject to the sovereignty and dominion of the United States. The Mexican authorities had been driven out, or had submitted to our army and navy, and the country was in the exclusive and firm possession of the United States, and governed by its military authorities, acting under the orders of the President. But it does not follow that it was a part of the United States, or that it ceased to be a foreign country, in the sense in which these words are used in the acts of Congress.

The country in question had been conquered in war. But the genius and character of our institutions are peaceful, and the power to declare war was not conferred upon Congress for the purposes of aggression or aggrandizement, but to enable the general government to vindicate by arms, if it should become necessary, its own rights and the rights of its citizens.

A war, therefore, declared by Congress, can never be presumed to be waged for the purpose of conquest or the acquisition of territory; nor does the law declaring the war imply an authority to the President to enlarge the limits of the United

States by subjugating the enemy's country. The United States, it is true, may extend its boundaries by conquest or treaty, and

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may demand the cession of territory as the condition of peace, in order to indemnify its citizens for the injuries they have suffered, or to reimburse the government for the expenses of the war. But this can be done only by the treaty-making power or the legislative authority, and is not a part of the power conferred upon the President by the declaration of war. His duty and his power are purely military. As commander-in-chief, he is authorized to direct the movements of the naval and military forces placed by law at his command, and to employ them in the manner he may deem most effectual to harass and conquer and subdue the enemy. He may invade the hostile country, and subject it to the sovereignty and authority of the United States. But his conquests do not enlarge the boundaries of this Union, nor extend the operation of our institutions and laws beyond the limits before assigned to them by the legislative power.

It is true that when Tampico had been captured, and the State of Tamaulipas subjugated, other nations were bound to regard the country, while our possession continued, as the territory of the United States, and to respect it as such. For, by the laws and usages of nations, conquest is a valid title, while the victor maintains the exclusive possession of the conquered country. The citizens of no other nation, therefore, had a right to enter it without the permission of the American authorities, nor to hold intercourse with its inhabitants, nor to trade with them. As regarded all other nations, it was a part of the United States, and belonged to them as exclusively as the territory included in our established boundaries.

But yet it was not a part of this Union. For every nation which acquires territory by treaty or conquest holds it according to its own institutions and laws. And the relation in which the port of Tampico stood to the United States while it was occupied by their arms did not depend upon the laws of nations, but upon our own Constitution and acts of Congress. The power of the President under which Tampico and the State of Tamaulipas were conquered and held in subjection was

simply that of a military commander prosecuting a war waged against a public enemy by the authority of his government. And the country from which these goods were imported was invaded and subdued, and occupied as the Territory of a foreign hostile nation, as a portion of Mexico, and was held in possession in order to distress and harass the enemy. While it was occupied by our troops, they were in an enemy's country, and not in their own; the inhabitants were still foreigners and enemies, and owed to the United States nothing more than

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the submission and obedience, sometimes called temporary allegiance, which is due from a conquered enemy, when he surrenders to a force which he is unable to resist. But the boundaries of the United States, as they existed when war was declared against Mexico, were not extended by the conquest; nor could they be regulated by the varying incidents of war, and be enlarged or diminished as the armies on either side advanced or retreated. They remained unchanged. And every place which was out of the limits of the United States, as previously established by the political authorities of the government, was still foreign, nor did our laws extend over it. Tampico was, therefore, a foreign port when this shipment was made.

Again, there was no act of Congress establishing a custom house at Tampico, nor authorizing the appointment of a collector, and consequently there was no officer of the United States authorized by law to grant the clearance and authenticate the coasting manifest of the cargo in the manner directed by law where the voyage is from one port of the United States to another. The person who acted in the character of collector in this instance acted as such under the authority of the military commander and in obedience to his orders, and the duties he exacted, and the regulations he adopted, were not those prescribed by law, but by the President in his character of commander-in-chief. The custom house was established in an enemy's country as one of the weapons of war. It was established not for the purpose of giving to the people of Tamaulipas the benefits of commerce with the United States or with other countries, but as a measure of hostility, and as a part of the military operations in Mexico; it was a mode of

exact contributions from the enemy to support our army, and intended also to cripple the resources of Mexico and make it feel the evils and burdens of the war. The duties required to be paid were regulated with this view, and were nothing more than contributions levied upon the enemy, which the usages of war justify when an army is operating in the enemy's country. The permit and coasting manifest granted by an officer thus appointed, and thus controlled by military authority, could not be recognized in any port of the United States, as the documents required by the act of Congress when the vessel is engaged in the coasting trade, nor could they exempt the cargo from the payment of duties.

This construction of the revenue laws has been uniformly given by the administrative department of the government in every case that has come before it. And it has indeed been given in cases where there appears to have been stronger

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ground for regarding the place of shipment as a domestic port. For after Florida had been ceded to the United States and the forces of the United States had taken possession of Pensacola, it was decided by the Treasury Department that goods imported from Pensacola before an act of Congress was passed erecting it into a collection district, and authorizing the appointment of a collector were liable to duty. That is that although Florida had, by cession, actually become a part of the United States, and was in our possession, yet, under our revenue laws, its ports must be regarded as foreign until they were established as domestic, by act of Congress, and it appears that this decision was sanctioned at the time by the Attorney General of the United States, the law officer of the government. And although not so directly applicable to the case before us, yet the decisions of the Treasury Department in relation to Amelia Island and certain ports in Louisiana after that province had been ceded to the United States were both made upon the same grounds. And in the latter case, after a custom house had been established by law at New Orleans, the collector at that place was instructed to regard as foreign ports Baton Rouge and other settlements still in the possession of Spain, whether on the Mississippi, Iberville, or the seacoast. The department in no

instance that we are aware of since the establishment of the government has ever recognized a place in a newly acquired country as a domestic port from which the coasting trade might be carried on unless it had been previously made so by act of Congress.

The principle thus adopted and acted upon by the Executive Department of the government has been sanctioned by the decisions in this Court and the circuit courts whenever the question came before them. We do not propose to comment upon the different cases cited in the argument. It is sufficient to say that there is no discrepancy between them. And all of them, so far as they apply, maintain that under our revenue laws, every port is regarded as a foreign one unless the custom house from which the vessel clears is within a collection district established by act of Congress and the officers granting the clearance exercise their functions under the authority and control of the laws of the United States.

In the view we have taken of this question, it is unnecessary to notice particularly the passages from eminent writers on the laws of nations which were brought forward in the argument. They speak altogether of the rights which a sovereign acquires, and the powers he may exercise in a conquered country, and they do not bear upon the question we are considering. For

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in this country the sovereignty of the United States resides in the people of the several states, and they act through their representatives, according to the delegation and distribution of powers contained in the Constitution. And the constituted authorities to whom the power of making war and concluding peace is confided, and of determining whether a conquered country shall be permanently retained or not, neither claimed nor exercised any rights or powers in relation to the territory in question but the rights of war. After it was subdued, it was uniformly treated as an enemy's country, and restored to the possession of the Mexican authorities when peace was concluded. And certainly its subjugation did not compel the United States, while they held it, to regard it as a part of their dominions, nor to give to it any form of civil government, nor to extend to it our

laws.

Neither is it necessary to examine the English decisions which have been referred to by counsel. It is true that most of the states have adopted the principles of English jurisprudence, so far as it concerns private and individual rights. And when such rights are in question, we habitually refer to the English decisions, not only with respect, but in many cases as authoritative. But in the distribution of political power between the great departments of government, there is such a wide difference between the power conferred on the President of the United States, and the authority and sovereignty which belong to the English crown, that it would be altogether unsafe to reason from any supposed resemblance between them, either as regards conquest in war, or any other subject where the rights and powers of the executive arm of the government are brought into question. Our own Constitution and form of government must be our only guide. And we are entirely satisfied that, under the Constitution and laws of the United States, Tampico was a foreign port within the meaning of the act of 1846, when these goods were shipped, and that the cargoes were liable to the duty charged upon them. And we shall certify accordingly to the circuit court.

MR. JUSTICE Mc LEAN dissented.

## **ORDER**

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Pennsylvania, and on the point or question on which the judges of the said circuit court were opposed in opinion, and which was certified to this Court for its opinion, agreeably

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to the act of Congress in such case made and provided, and was argued by counsel. On consideration whereof, it is the opinion of this Court that Tampico was a foreign port within the meaning of the Act of Congress of July 30, 1846, entitled "An act reducing the duties on imports, and for other purposes," and that the goods, wares, and merchandise as set forth and described in the record were

liable to the duties charged upon them under said act of Congress. Whereupon it is now here ordered and adjudged by this Court that it be so certified to the said circuit court.

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