35TH CONGRESS, 2d Session. } SENATE. { MIS. DOC. No. 32.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1859.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

SAMUEL F. HOLBROOK *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Brief of the United States Solicitor.
3. Opinion of the Court refusing an order to take testimony.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this 3d day of February, A. D. 1859. [L. S.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable the Judges of the Court of Claims:

The petition of Samuel F. Holbrook respectfully represents: That in the year 1847 the American brig Sabine sailed from the port of Boston, Massachusetts, for the port of San Francisco, California, laden with American goods belonging to your petitioner; that on the 21st of April, in the year 1848, said brig arrived at the port of San Francisco; that at the time of her arrival a treaty of peace had been made with Mexico, and San Francisco had become a portion of the United States; that the person acting as collector of said port, not knowing of the existence of said treaty, compelled your petitioner (who was represented at said port by his son) to pay duties on said cargo, the cargo consisting of goods the growth and manufacture of the United States, sent from one American port to another American port.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Your petitioner alleges that he so paid duties illegally exacted to the amount of three thousand six hundred and thirty-three dollars and eighty-three cents to the collector of San Francisco, between the 26th of April, 1848, and the 14th day of December, 1848; that he has repeatedly requested of the Secretary of the Treasury to refund the said duties so illegally exacted, but he declines so to do.

Your petitioner therefore prays your honorable Court to report a bill to Congress for his relief.

Your petitioner further represents that he is the sole owner of the above claim.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss.*

On this —— day of December, A. D. 1855, personally came before the subscriber, a justice of the peace in and for the county and District aforesaid, C. K. Green, and made oath that the facts as set forth in the above petition are true, according to the best of his knowledge and belief.

IN THE COURT OF CLAIMS.

ON THE PETITION OF SAMUEL F. HOLBROOK.

Brief of the United States Solicitor.

This is a claim for three thousand six hundred and thirty-three dollars and eighty-three cents, alleged to have been paid to the collector of customs at San Francisco, between the 21st April, 1848, and the 14th of December, 1848, as duties on American goods, which were shipped at Boston, Massachusetts, in the previous year. The only proof of payment offered is the deposition of a witness who professes to have derived his information from the books of the collector. This is incompetent evidence. If the petitioner shall hereafter file the proper evidence, however, I shall not object to its being considered by the Court as if presented before the hearing.

This claim is put on the ground that the treaty with Mexico of 1848, which was ratified on the 30th May, took effect with respect to California on the 2d February, the date of the signature, the United States being then in possession of that country; whence it is inferred that California is to be deemed to have been a part of the United States on the 2d February, 1848, and open to American goods without the payment of the duty imposed by the government *de facto* of California, and therefore the taxes imposed in the intermediate time between the 2d February and the 30th July, as these were, must be refunded.

The questions in this case are all decided by the Supreme Court of the United States in the case of Cross *et al. vs.* Harrison, 16 Howard, 164, where, at p. 190, the Court say: "San Francisco had been conquered by the arms of the United States as early as 1846. * * * Early in 1847 the President * * authorized the military and naval

commander of our forces in California to exercise the belligerent rights of a conqueror, and to form a civil government for the conquered country, and to impose duties on imports and tonnage as military contributions for the support of the government and of the army, which had the conquest or possession. * * * * No one can doubt that these orders were according to the law of arms, * * or that they were operative *until the ratification* and *exchange* of a treaty of peace. Such would be the case upon general principles in respect to war and peace between nations. * * * *In this instance it is recognized by the treaty itself.* Nothing is stipulated in that treaty to be binding upon the parties to it, from the date of the signature of the treaty, but that commissioners should be appointed by the commander-in-chief of the forces of the United States, with such as might be appointed by the Mexican government, to make a provisional suspension of hostilities, that, in the places occupied by our arms, constitutional order might be re-established as regards the political, administrative, and judicial branches in those places, so far as that might be permitted by the circumstances of military occupation. All else was *contingent* until the ratifications of the treaty *were exchanged*, which was done on the 30th May, 1848, at Queretaro; and there is in the third article full recognition by Mexico of the belligerent rights exercised by the United States during the war in its ports which had been conquered. In that article, besides other things provided for, it was stipulated that the United States, upon the ratification of the treaty by the two republics, should despatch orders to all persons in charge of the custom-houses at all ports occupied by the forces of the United States to deliver possession of the same to persons authorized to receive them, together with all bonds for duties on importations and exportations not yet fallen due, and that an exact account should be made out, showing the entire amount of all duties on imports and exports collected at such custom-houses or elsewhere in Mexico by authority of the United States, *after the ratification of the treaty* by Mexico, with the cost of collection, all of which was to be paid to the Mexican government, subject to a deduction of what had been the cost of collection. The plaintiffs, therefore, can have no right to the return of any moneys paid by them as duties on foreign merchandise in San Francisco up to that date. *Until that time California had not been ceded, in fact, to the United States, but it was a conquered territory, within which the United States were exercising belligerent rights*, and whatever sums were received for duties upon foreign merchandise, they were paid under them. But *after the ratification* of the treaty California became a part of the United States, or a ceded conquered territory." The Court then proceeds to inquire upon what footing collections were to be placed, made after the ratification and before the proclamation of peace in California, and decides that the duties collected under the war tariff were still legally imposed.

It is true that the duties collected from Cross were imposed on foreign goods, and Holbrook's may have been American goods, but that difference was not material at the time when the duties were imposed on Holbrook's goods, according to the decision above quoted. For "until that time," (May 30,) says the Court, "California had not

been ceded, in fact, to the United States, but was a conquered territory, within which the United States were exercising belligerent rights." And the Court also say that "no one can doubt that the orders of the President," under which the civil government was established and duties imposed, "were according to the laws of arms and the rights of conquest." And the whole proceedings of the President are approved and pronounced rightful and legal by the Court.

The United States had dominion over California even prior to the treaty which annexed it permanently, which enabled the commander-in-chief of our army and navy to establish a civil government and impose taxes.

And these proceedings, which were confessedly legal at the time they were adopted, could not become illegal by subsequent events.

The decisions of the Supreme Court in Reynie's case, 9 Howard, 127, and in Davis *vs.* Police Jury of Concordia, ibid., 280, which declare that the treaty of St. Ildefonso took effect on 1st October, 1800, so as to invalidate grants of land made by Spain in Louisiana subsequent to that date, do not deny the right of the Spanish officers in that province to carry on the government till it was actually transferred to the United States; but, on the contrary, these cases assert repeatedly that the right of the government *de facto* continued for municipal and commercial purposes.

No matter, therefore, what the existing government had been in California when the treaty of Guadalupe Hidalgo was signed. Its commercial and municipal regulations continued in force till the treaty was adopted and the government of the United States acted to modify or repeal them. The taxes imposed, therefore, which were collected to carry on this existing government, and which it is admitted were rightfully imposed at the date at which they were collected, did not revert to the citizen by the ratification of the treaty.

Aside from all precedents or authority, it is obvious that the proposition that taxes which were collected by a recognized and lawful local government, for the purpose of maintaining itself and protecting the payers in their civil rights, should revert to them afterwards in consequence of the ratification of a treaty which changed the sovereignty of the province from one distant power to another, could not be maintained. If the title to the taxes levied by the local government after the signature became diverted by the ratification of the treaty, every other act of the local government, or under its authority, must also become illegal. This would, in fact, annul not only the acts of the government respecting its revenue, and the punishment of offenders against it, but it would equally annul every civil transaction between citizens in which the authority of officers or courts was necessary.

M. BLAIR.

IN THE COURT OF CLAIMS.

SAMUEL F. HOLBROOK *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the Court.

This case is now before us on an application for an order directing the taking of testimony. The petitioner states the following case:

In the year 1847 the American brig Sabine sailed from Boston, Massachusetts, for San Francisco, California, laden with American goods belonging to the petitioner. She arrived at San Francisco on the 21st day of April, A. D. 1848. A treaty of peace had then been made with Mexico, and San Francisco had become a portion of the United States. The person acting as collector of the port of San Francisco compelled the petitioner to pay the sum of three thousand six hundred and thirty-three dollars and eighty-three cents for duties on the goods. This the petitioner avers was an illegal exaction. He has repeatedly requested the Secretary of the Treasury to refund the money so paid, but he declines to do so.

It is alleged in the petition that the payment was made between the 26th day of April and the 14th day of December, A. D. 1848; but in the argument it was stated on both sides that the question now designed to be submitted to this Court is, whether the duties, if paid after the signing of the treaty with Mexico, but before its ratification, were legally exacted.

In the case of Cross *vs.* Harrison, 16 How. R., 164, 190, the Court say: "California, or the port of San Francisco, had been conquered by the arms of the United States as early as 1846. Shortly afterward the United States had military occupation of all of Upper California. Early in 1847 the President, as constitutional commander-in-chief of the army and navy, authorized the military and naval commander of our forces in California to exercise the belligerent rights of a conqueror, and to form a civil government for the conquered country, and to impose duties on imports and tonnage as military contributions for the support of the government and of the army which had the conquest in possession. We will add, by way of note to this opinion, references to all of the correspondence of the government upon this subject, now only referring to the letter of the Secretary of War to General Kearney, of the 10th of May, 1847, which was accompanied with a tariff of duties on imports and tonnage, which had been prepared by the Secretary of the Treasury, with forms of entry and permits for landing goods, all of which was reported by the Secretary to the President on the 30th of March, 1847.—(Senate Doc. No. 1, 1st session 30th Congress, 1847, pp. 567, 583.) No one can doubt that these orders of the President, and the action of our army and navy commanders in California in conformity with them, was according to the law of arms and the right of conquest, or that they were operative until the ratification and exchange of a treaty of peace. Such would be the case upon general principles in respect to war and peace between nations. In this instance it is recognized by the treaty itself. Nothing is stipulated in that treaty to be binding upon the parties to it, or from the date of the signature of the treaty, but that commissioners should be

appointed by the general-in-chief of the forces of the United States, with such as might be appointed by the Mexican government, to make a provisional suspension of hostilities, that, in the places occupied by our arms, constitutional order might be re-established as regards the political, administrative, and judicial branches in those places, so far as that might be permitted by the circumstances of military occupation. All else was contingent until the ratifications of the treaty were exchanged, which was done on the 30th of May, 1848, at Queretaro; and there is in the third article of the treaty a full recognition by Mexico of the belligerent rights exercised by the United States during the war in its ports which had been conquered. In that article, besides other things provided for, it was stipulated that the United States, upon the ratifications of the treaty by the two republics, should despatch orders to all persons in charge of the custom-houses, at all ports occupied by the forces of the United States, to deliver possession of the same to persons authorized by Mexico to receive them, together with all bonds and evidences of debts for duties on importations and exportations not yet fallen due, and that an exact account should be made out showing the entire amount of all duties on imports and exports collected at such custom-houses or elsewhere in Mexico by the authority of the United States after the ratification of the treaty by Mexico, with the cost of collection, all of which was to be paid to the Mexican government, at the city of Mexico, within three months after the exchange of ratifications, subject to a deduction of what had been the cost of collection.

"The plaintiffs, therefore, can have no right to the return of any moneys paid by them as duties on foreign merchandise in San Francisco up to that date. Until that time California had not been ceded, in fact, to the United States; but it was a conquered territory, within which the United States were exercising belligerent rights, and whatever sums were received for duties upon foreign merchandises, they were paid under them.

"But after the ratification of the treaty California became a part of the United States, or a ceded, conquered territory."

The tariff under which the duties in this case were collected is the same which was mentioned by the Court in the case of Cross *vs.* Harrison. It levied duties alike upon foreign and domestic goods.—(Ex. Doc. No. 1, 1st session 30th Congress, p. 567.) Its validity has not been questioned. The only ground on which it has even been suggested that, in this case, the duties were illegally exacted is, that California became a part of the territory of the United States immediately upon the signing of the treaty with Mexico. But this ground is wholly untenable. In the case of Cross *vs.* Harrison the Supreme Court, in effect, declare that California did not become a part of the territory of the United States till the ratifications of the treaty were exchanged.

The petitioner's claim is for duties paid after the signing, but before the ratification of the treaty. We are of the opinion that it is not well founded.

No order will be made directing the taking of testimony in this case.