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THORINGTON V. SMITH & HARTLEY.

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It was held otherwise by the judges by whom Sir Henry Vane was tried for treason (6 State Trials, 119) in the year following the restoration, but such a judgment in such a time has little authority.

It is very certain that the Confederate Government was never acknowledged by the United States as a *de facto* government in this sense, nor was it acknowledged as such by other powers. No treaties were made by it. No obligations of a national character were created by it binding after its dissolution, on the States which it represented on the national government. From a very early period of the war to its close, it was regarded as simply the military representative of the insurrection against the authority of the United States.

But there is another description of government called by publicists a government *de facto*, but which might perhaps be more aptly denominated a government of paramount force. Its distinguishing characteristics are (1) that its existence is maintained by active military power within the territories and against the rightful authority for established and lawful government; and (2) that while it exists it must necessarily be obeyed in civil matters by private citizens, who by acts of obedience rendered in submission to such force, do not become responsible as wrongdoers for these acts, though not warranted by the laws of the rightful government. Actual governments of this sort are established over districts differing greatly in extent and conditions; they are usually administered directly by military authority but they may be administered also by civil authority, supported more or less by military force.

One example of this sort of government is found in the case of Castine, in Maine, reduced to a British possession (the War of 1812). From the 1st of September, 1814, to the ratification of the treaty of peace in 1815, according to the judgment of the court in the *United States v. Rice* (4 Wheat., 253), "the British government exercised all civil and military authority over the place." The authority of the United States over the territory was suspended, and the laws of the United States could no longer be rightfully enforced then or be obligatory upon the inhabitants who remained and submitted to the conqueror. By the surrender the inhabitants passed under a temporary allegiance to the British government, and were bound by such laws, and such only, as it chose to recognize and impose. It is not to be inferred from this that the obligations of the people of Castine, as citizens of the United States, were abrogated. They were suspended merely by the presence, and only during the presence, of the paramount force. A like example is found in the case of Tampico, occupied during the war with Mexico by the troops of the United States. It was determined by this court, in *Fleming v. Page* (9 How., 614), that although Tampico did not become a part of the United States in consequence of that occupation, still having come, together with the whole State of Tamaulipas, of which it was part, into the exclusive possession of the national forces, it must be regarded and respected by other nations as the territory of the United States. These were cases of temporary possession of territory by lawful and regular governments at war with the coun-

try of which the territory so possessed was part. The central government established for the insurgent states differed from the temporary governments at Castine and Tampico in the circumstance that its authority did not originate in lawful acts of regular war; but it was not on that account less active or less supreme, and we think that it must be classed among the governments of which these are examples. It is to be observed that the rights and obligations of a belligerent were conceded to it in its military character, very soon after the war began, from motives of humanity and expediency, by the United States. The whole territory controlled by it was thereafter held to be the enemy's territory, and the inhabitants of that territory were held in most respects for enemies. To the extent, then, of actual supremacy, however unlawfully gained, in all matters of government within its military lines, the power of the insurgent government cannot be questioned. That supremacy would not justify acts of hostility to the United States. How far it should excuse them must be left to the lawful government upon the re-establishment of its authority. But it made civil obedience to its authority not only a necessity but a duty. Without such obedience civil order was impossible. It was by this government exercising its power through an immense territory that the Confederate notes were issued early in the war, and these notes in a short time, became almost exclusively the currency of the insurgent States. As contracts in themselves, in the contingency of successful revolution, these notes were nullities, for except in that event there could be no payer. They bore, indeed, this character upon their face, for they were made payable only "after a ratification of a treaty of peace between the Confederate States and the United States of America." While the war lasted, however, they had a certain contingent value, and were used as money in nearly all the business transactions of many millions of people. They must be regarded, therefore, as a currency imposed on the community by irresistible force. It seems to follow as a necessary consequence from the actual supremacy of the insurgent government, as a belligerent, within the territory where it circulated, and the necessity of civil obedience on the part of all who remained in it, that this currency must be regarded in the courts of law in the same light as if it had been issued by a foreign government temporarily occupying a part of the territory of the United States. Contracts stipulating for payments in that currency cannot be regarded as made in aid of the foreign invasion in the one case, or of the domestic insurrection in the other. They have no necessary relation to the hostile government, whether invading or insurgent. They are transactions in the ordinary course of civil society, and, though they may indirectly and remotely promote the ends of the unlawful government, are without blame, except when proved to have been entered into with actual intent to further the invasion or insurrection. We cannot doubt that such contracts should be enforced in the courts of the United States, after the restoration of peace, to the extent of their first obligation. The first question, therefore, must receive an affirmative answer.

The second question, whether evidence can be