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 party entitled to be paid in these Confederate dollars can only receive their actual value at the time and place of the contract in lawful money of the United States.

Chase, C. J—This is a bill in equity for the enforcement of a vendor's lien.

It is not denied that Smith & Hartley purchased Thorington's land, or that they executed to him their promissory note for part of the purchase money, as set forth in his bill; or that, if there was nothing more in the case, he would be entitled to a decree for the amount of the note and interest, and for the sale of the land to satisfy the debt. But it is insisted, by the way of defence, that the negotiation for the purchase of the land took place, and that the note in controversy, payable one day after date, was made at Montgomery, in the state of Alabama, where all the parties resided in November, 1864, at which time the authority of the United States was excluded from that portion of the State, and the only currency in use consisted of Confederate Treasury notes, issued and put in circulation by persons exercising the ruling power of the States in rebellion, known as the Confederate government.

It was also insisted that the land purchased was worth no more than three thousand dollars in lawful money; that the contract price was forty-five thousand dollars; that this price, by the agreement of the parties, was to be paid in Confederate notes; that thirty-five thousand dollars were actually paid in these notes, and that the note given for the remaining ten thousand dollars was to be discharged in the same manner; and it is claimed on this state of facts, that the vendor is entitled to no relief in a court of the United States; and this claim was sustained in the court below, and the bill was dismissed. The questions before us on appeal are these: First, can a contract for the payment of Confederate notes, made during the late rebellion, between parties residing within the so called Confederate States, be enforced at all in the courts of the United States? Second, can evidence be received to prove that a promise expressed to be for the payment of dollars was, in fact, for the payment of any other than lawful money of the United States? Does the evidence in the record establish the fact that the note for ten thousand dollars was to be paid, by agreement of the parties, in Confederate notes?

The first question is by no means free from difficulty. It cannot be questioned that the Confederate notes were issued in furtherance of an unlawful attempt to overthrow the Government of the United States by insurrectionary force. Nor is it a doubtful principle of law that no contract made in aid of such an attempt can be enforced through the courts of the country whose government is thus assailed. But was the contract of the parties to this suit a contract of that character—can it be fairly described as a contract in aid of the rebellion? In examining this question, the state of that part of the country in which it was made must be considered. It is familiar history that early in 1861 the authorities of seven States, supported, as was alleged, by popular majorities, combined for the overthrow of the National Union, and for the establishment within its boundaries of a separate and independent confederation. A governmental organization representing these States was established at Montgomery, in Alabama, first under a provisional constitution, and afterwards under a constitution intended to be permanent. In the course of a few months four other States acceded to this confederation, and the seat of the central authority was transferred to Richmond, in Virginia. It was by the central authority thus organized, and under its direction, that the civil war was carried on upon a vast scale against the Government of the United States. For more than four years its power was recognized as supreme in nearly the whole of the territory of the States confederated. It was the actual government of all the insurgent States, except those portions of them protected from its control by the presence of the armed forces of the national government. What was the precise character of this government in contemplation of law? It is difficult to define it with exactness. Any definition that may be given may not improbably be found to require limitation and qualification. But the general principles of law relating to *de facto* government will, we think, conduct us to a conclusion sufficiently accurate. There are several degrees of what is called *de facto* government. Such a government, in its highest degrees, assumes a character very closely resembling that of a lawful government. This is when the usurping government expels the regular authorities from their customary seats and functions, and establishes itself in their places, and so becomes the actual government of a country. The distinguishing characteristic of such a government is that adherents to it in war against the government *de jure* do not incur the penalties of treason; and, under certain limitations, obligations assumed by it in behalf of the country or otherwise will, in general, be respected by the government *de jure* when restored.

Examples of this description of government *de facto* are found in English history. The statute 11, Henry VII, C. I. (Brit. Stat. at large), relieves from penalties for treason all persons who, in defence of the King for the time being, wage war against those who endeavor to subvert his authority by force of arms, though warranted in so doing by the lawful monarch (4 Bl. Comm. 77).

But this is where the usurper obtains actual possession of the royal authority of the kingdom; not when he has succeeded only in establishing his power over particular localities. Being in such possession, allegiance is due to him as king *de facto*.

Another example may be found in the government of England under the Commonwealth, first by Parliament and afterwards by Cromwell as Protector. It was not, in the contemplation of law, a government *de jure*, but it was a government *de facto* in the absolute sense. It made laws, treaties, and conquests, which remain the laws, treaties and conquests of England after the restoration. The better opinion is that acts done in obedience to this government could not be justly regarded as treasonable, though in hostility to the king *de jure*. Such acts were protected from criminal prosecution by the spirit, if not the letter, of the statute of Henry the Seventh.