

MILITARY OCCUPATION OF FOREIGN SOIL

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The German army is now in full occupation of Belgium and the news has just come (to Manila, August 29) that Field Marshal von der Goltz has been appointed Governor. Where a nation is not entirely subdued, the holding of conquered territory is considered as a mere military occupation, until its fate is determined at the treaty of peace. (*American Insurance Company v. Canter*, (1828), 1 Peters 511.)

This kind of occupation is nothing new. Germany occupied the greater part of France in 1871, the British occupied a part of the State of Maine in 1814, the United States occupied a part of Mexico in 1846 and Manila in 1898. Upon the occupation of the foreign territory the sovereignty of the nation occupying immediately attaches thereto. In *United States v. Rice*, 4 Wheaton 246, the question arose whether goods imported into Castine, Maine, while in the military possession of the British forces, were liable to the duties imposed by the revenue laws upon goods imported into the United States. On September 1st, 1814, Castine was captured by the British and remained in British possession, under the command and control of the British military and naval forces, until after the ratification of the treaty of peace in February, 1815. During this period, the British government exercised all civil and military authority over the place; and established a custom-house and admitted goods to be imported, according to regulations prescribed by itself, and, among others, admitted goods upon which duties were afterwards demanded by the United States. These goods remained at Castine until after the evacuation by the British, and upon the reestablishment of the American government, the Collector of Customs claimed a right to American duties on the goods. It was held that while Castine was in the military possession of the British forces, it was not a part of the United States, within the meaning of the revenue laws, and that after the evacuation of the place, the United States could not collect duties on goods imported into it during the occupation.

But, on the other hand, the territory thus occupied is regarded as foreign territory to that of the nation occupying until some further act on the part of the occupying nation to incorporate it as a part of that nation. Hence, goods imported from territory thus occupied into the country of the occupier are subject to duty as goods from a foreign port.

On November 15th, 1846, Commodore Connor, of the United States Navy, took military possession of Tampico, in Mexico, and from that time until the treaty of peace it was garrisoned by the United States forces and remained in their military occupation. Justice was administered there by courts appointed under military authority, and a custom-house was established there, and a collector appointed, under the military and naval authority. It was held in *Fleming v. Page*, 9 Howard 603, that goods imported into the United States from Tampico, while in the military occupation of the United States forces, were to be considered as importations from a foreign country. Chief Justice Taney said, p. 616: "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," (i. e. by act of Congress) "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 a mode of exacting 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."

During the military occupation the local laws of the territory occupied continue in force until they are repealed or altered, and this continues even after a conquest or cession of the territory. During the military occupation of various departments of France, by the German army, in 1870-71, the German authorities therein caused the trees in the forests of the state to be cut down and sold, deriving therefrom a certain revenue. A French citizen engaged in the traffic in these trees, purchasing them from the Germans. After the war he was prosecuted for a breach of the forestry laws of France. The *Case of Guerin*, Court of Appeal of Nancy,

1872, Daloz, 1872, II., p. 185, (Snow's Cases, Int. Law, 375) held that the occupation of a department of France by the troops of the enemy did not suspend therein the civil and criminal laws of France; which continued obligatory upon all Frenchmen, so long at least as they had not been expressly and specifically abrogated by the exigencies of the war.

In *Villasque's Case*, 1812, Ortolan: *Diplomatie de la Mer*, 2d Ed. I., 324, (Snow's Cases, Int. Law, 380) the French Cour de Cassation held that a crime committed by a French citizen in Spanish territory, occupied and administered by the French army, was committed in a foreign country. It was said in the judgment that "the occupation and administration by the French troops and authorities had not communicated to the inhabitants of Catalonia the character of Frenchmen, nor to their territory the character of French territory; that that condition could not come about except by an act of incorporation passed by the law making power, which had not yet been done."

All civil officers hold office until others are appointed in their places. This is true of collectors of customs, judges of the courts and all officers of the former established government. The syllabus to *Cross v. Harrison*, 1853, 16 Howard 164, contains the following, regarding the military occupation of California by the United States forces:

"In the war with Mexico, the port of San Francisco was conquered by the arms of the United States, in the year 1846, and shortly afterwards the United States had military possession of all of Upper California. Early in 1847 the President of the United States, as Constitutional Commander-in-Chief of the Army and Navy, authorized the military and naval commanders of the United States forces in California to exercise the belligerent rights of a conqueror, and to form a civil and military government for the conquered territory, with power to impose duties on imports and tonnage for the support of such government, and of the army, which had the conquest in possession.

"This was done, and tonnage and import duties were levied under a war tariff, which had been established by the civil government for that purpose, until official notice was received by the civil and military Governor of California, that a Treaty of Peace had been made with Mexico, by which Upper California had been ceded to the United States.

"Upon receiving this intelligence, the governor directed that import and tonnage duties should thereafter be levied in conformity with such as were to be paid in the other ports of the United States by the Acts of Congress; and for such purpose he appointed the defendant in this suit, collector of the port of San Francisco.

"The plaintiffs now seek to recover from him certain tonnage duties and imports upon foreign merchandise paid by them to the defendant as collector between the 3d of February, 1848 (the date of the Treaty of Peace), and the 13th of November, 1849, (when the collector appointed by the President, according to law, entered upon the duties of his office), upon the ground that they had been illegally exacted.

"The formation of the civil government in California, when it was done, was the lawful exercise of a belligerent right over a conquered territory. It was the existing government when the territory was ceded to the United States, as a conquest, and did not cease as a matter of course, or as a consequence of the restoration of peace; and was rightfully continued after peace was made with Mexico, until Congress legislated otherwise, under its constitutional power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

"The tonnage duties, and duties upon foreign goods imported into San Francisco, were legally demanded and lawfully collected by the civil governor, whilst the war continued, and afterwards, from the ratification of the Treaty of Peace until the revenue system of the United States was put into practical operation in California, under the Acts of Congress passed for that purpose."

Although the inhabitants of territory under military occupation or territory conquered or ceded, owe allegiance at once to the new sovereign, titles to private property are not affected. One Percheman held a tract of land in the territory of Florida by virtue of a grant of the Spanish governor of that province made in 1815. After the cession of Florida to the United States by the treaty of 1819, this claim was rejected by the United States Commissioners appointed to settle claims to territory in Florida. When the question came before the United States Supreme Court for decision, Percheman's title was upheld. (*United States v. Percheman*, 7 Peters 51). Chief Justice Marshall said, p. 86: "It is very unusual, even in cases of conquest, for the conqueror to do more than to displace the sovereign and assume dominion over the country. The modern usage of nations, which has become law, would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged, if private property should be generally confiscated, and private rights annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other, and their rights of property, remain undisturbed."

The military occupant must maintain order. The power to protect the inhabitants is fundamental in the matter of allegiance to their own

government. This power having ceased, the duty of maintaining order necessarily devolves upon the military occupant, whose authority displaced the one that formerly existed. The inhabitants are no longer required to take an oath of fidelity or allegiance to the invader. That was the practice prior to the middle of the eighteenth century, and they were even required to render active services in the invader's army. Articles 44 and 45 of the Hague Convention forbid forcing the inhabitants of occupied territory to take part in military operations against their own country or constraining the population to recognize, by the taking of an oath, the power of the enemy.

The military occupant takes possession of all public property, although the title does not pass until the treaty of peace. If the occupied territory is ceded to the occupant, by the treaty, the title vests as of the time of the beginning of the occupation. In *Titus v. United States*, 1874, 20 Wallace 475, Chief Justice Chase said, pp. 481-2: "In war the public property of an enemy captured on land becomes, for the time being at least, the property of the conqueror. No judicial proceeding is necessary to pass the title. Usually the ultimate ownership of real property is settled by the treaty of peace; but so long as it is held and not surrendered by a treaty or otherwise it remains the property of the conqueror. This well settled principle in the law of war was recognized by this court in *United States v. Huckabee*, 16 Wallace 434, as applicable to the late civil war. At the close of that war there was no treaty. When the insurrection was put down, the government of the insurgents was broken up and there was no power to treat with. Hence the title to all captured property of the Confederate Government then became absolute in the United States."

The military occupant is in the same position in regard to the public land as a tenant for years, and is entitled to the usufruct but must not damage the land itself. In *Mohr & Haas v. Hatzfeld*, Court of Appeals of Nancy, 1872, Dalloz, 1872, II., p. 229; it was held that the military occupation of a territory confers upon the invader the right to the usufruct and revenues only of the public domain; and that the French courts would not recognize as valid the sale of old trees (during the war of 1870-71) on the public domain which were reserved at the time of the annual cutting. They were held to be as inalienable as the soil of the forest itself. (Snow's Cases, Int. Law, 377.)

The military occupant may take personal property, *movables*, just as he may take the usufruct of the Islands. And this right covers all chattels and debts due. Hesse Cassel was conquered by Napoleon in 1806, and remained for about a year under his immediate control, when it was annexed to the new kingdom of Westphalia, and formed a part of that kingdom until after the battle of Leipzig, in 1813. Debts that were owing to the Elector were held to be validly discharged by payment to Napoleon and the receipt from him of a quittance in full. (*Philimore, Int. Law, III, §41; Snow's Cases, 381.*)

The invader may prevent his enemy from using the resources of the occupied territory. He may intercept the produce of the taxes, duties and other money payments, may close commercial access and may forbid the inhabitants from joining the armies of their country. He may apply the resources of the country to his own objects, may compel the inhabitants to supply food, horses and other means of transportation and may oblige them to render services in matters which do not involve military action against their sovereign. But he must make payment either in cash or by acknowledgments of indebtedness which he is bound to honour. Seizure without payment, for military purposes, is not an act of sovereignty but is one of military violence. (*Hall, Int. Law, pp. 477-9.*)

At the close of the war the territory which has been occupied is either ceded to the military occupant or else is restored to the former sovereign. If it is restored to the former sovereign all new laws passed by the military occupant become no longer operative and the old laws revive. Debts created by the military occupant, during the occupation, do not attach to the territory but bind only the sovereign who contracted them. If Germany should negotiate a loan on the revenues of Belgium and after the war is over the sovereignty of Belgium be reestablished, the debt thus created would be that of Germany and not that of Belgium. If Belgium should pass under the permanent sovereignty of Germany, such debt would of course attach to Belgium, or, at any rate, be subject to further legislation by Germany. The rights of the creditors of the former Belgium government would depend upon the nature of the security of their claims. Public debts may be the unsecured obligations of the government or they may be on the security of the revenues. A sovereign ceding a part of his dominions

must still bear his entire public debt. The creditors of a conquered nation, then, lose their claims if they are only upon the general credit. If the debts are secured by the public lands, they are practically mortgages and the liens continue. If they are secured only by the revenue, there is nothing to which the liens can attach. The revenue of the former government has ceased. All revenues can be done away with by the new sovereign and the taxes that are levied are for its benefit and to pay its own obligations. The only burdens that can go with captured property or territory are those that are of the nature of mortgages on land or other tangible property.

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APPRECIATION

When the management came to find time to digest some of the deficiencies of the first number of the Philippine Law Journal, it was thought that a word of apology might be in order. Our friends, however, have most charitably condoned our sins of omission and commission to find undeserved words of praise. Modestly we take the liberty to publish one such communication from the far away province of Misamis.

COURT OF FIRST INSTANCE
PROVINCE OF MISAMIS
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August 24, 1914.

Sir:—

I inclose herewith my check for Five Pesos for one year's subscription to the Philippine Law Journal to begin with Vol. I No. 1.

I received the sample copy of the Journal by mail yesterday and regard Mr. Espiritu's article on "Parts of the Code of Commerce Still in Force and Those Repealed" as worth the price of a year's subscription alone. Very recently in my work as judge of the former First Judicial District I had occasion to examine many parts of the Code of Commerce with reference to ascertaining quickly and definitely what effect recent legislation has had upon various parts thereof, and had I had this article before me at that time it would have saved me a good many hours work.

Wishing the Journal all success, I am

Yours very cordially,
(Signed) C. D. Johnston,
Judge, 25th Judicial District.

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