I will only, therefore, say, in conclusion, sir, that with the utmost deference to the contrary opinion of two of the Judges of the Supreme Court of the Territory, I entertain a clear conviction that the act of the Legislative Assembly of New Mexico, requiring the Judges, respectively, of the Supreme Court, to hold semi-annual district courts in the several counties of their districts, is a valid legislative act, and to be respected and obeyed as the law of the Territory.

I have the honor to be, very respectfully,

J. J. CRITTENDEN.

Hon. D. WEBSTER, Secretary of State.

PARDONING POWER OF THE PRESIDENT.

It is not competent for the President, in the exercise of the pardoning power, to remit pecuniary penalties attached to an offence, unless those penalties accrue to the United States.

The punishment in the District of Columbia, for the unlawful transportation of slaves, by the laws of Maryland applicable to the District, is by fine, which the statute appropriates, and cannot be remitted by the President.

ATTORNEY GENERAL'S Office,
April 22, 1852.

SIR: In answer to your letter respecting the case of Daniel Drayton and Edward Sears, I state:

That these persons were severally indicted for numerous offences against a statute enacted by the General Assembly of the State of Maryland, at November session, in the year 1796, (Ketty's ed. of the laws of Maryland, chap. 67, sec. 19,) in these words:

"That any person or persons who shall hereafter be convicted of giving a pass to any slave or person held to service, or shall be found to assist, by advice, donation or loan, or otherwise, the transporting of any slave or person held to service from the State, or by any other unlawful means, depriving a master or owner of the service of his slave or person held to service, for every such offence, the party aggrieved shall recover damages in an action on the case, against such offender or offenders, and such offender or offenders also shall be triable, upon indictment and conviction, verdict, confession, or otherwise, in this State, in any county court where such offence shall
happen, be fined a sum not exceeding two hundred dollars, at
the discretion of the court, one half to the use of the master or
owner of such slave, the other half to the county school, in case
there be any, if no such school, to the use of the county."

The act of Congress concerning the District of Columbia,
approved 27th February, 1801, (2 Stat. at large, p. 104, ch.
15,), enacted in section the first, "that the laws of Virginia, as
they now exist, shall be, and continue in force, in that part of
the District of Columbia which was ceded by said State, to
the United States, and by them accepted for the permanent seat
of government. And that the laws of the State of Maryland,
as they now exist, shall be, and continue in force, in that part
of said District which was ceded by that State, to the United
States, and by them accepted as aforesaid."

By the second section, the District was divided into two
counties, Washington and Alexandria, the county of Wash-
ington to contain "all that part of the said District which lies
on the east side of the river Potomac, together with the islands
therein," the other county of Alexandria, to contain "all that
part of said District which lies on the west side of said river;"
and the said river in its whole course through the said district,
shall be taken and deemed to all intents and purposes to be
within both of said counties.

By an act supplementary to the act entitled "An act con-
cerning the District of Columbia," approved 3d March, 1801,
(2 Stat. at large, p. 115, ch. 24, sec. 2,) it is enacted, "that
all indictments shall run in the name of the United States, and
conclude against the peace and dignity thereof: and all fines,
penalties and forfeitures, accruing under the laws of the States
of Maryland and Virginia, which, by adoption, have become
the laws of this District, shall be recovered with costs, by in-
dictment or information in the name of the United States, or by
action of debt in the name of the United States and of the in-
former: one half of which fine shall accrue to the United States,
and the other half to the informer; and the said fines shall be
collected by or paid to the marshal, and one half thereof shall,
by him, be paid over to the board of commissioners hereinafter
established, and the other half to the informer; and the marshal
shall have the same power regarding their collection, and be
subject to the same rules and regulations as to the payment thereof, as the sheriffs of the respective States of Maryland and Virginia are subject to, in relation to the same."

The boards of commissioners so alluded to in that second section, are established by the fourth section of that act:

"The magistrates to be appointed for the said District shall, and they are hereby constituted a board of commissioners within their respective counties, and shall possess and exercise the same powers, perform the same duties, receive the same fees and emoluments, as the levy courts or commissioners of the county, for the State of Maryland, possess, perform, and receive; and the clerks and collectors, to be by them appointed, shall be subject to the same laws, perform the same duties, possess the same powers, and receive the same fees and emoluments as the clerks and collectors of the county tax of the State of Maryland, are entitled to receive."

Under these statutes, Daniel Drayton and Edward Sears were severally indicted, in the criminal court for the District of Columbia and county of Washington, in many cases, for transporting various slaves, the property of persons residing in the City of Washington, Georgetown, and the county of Washington, to the number of fifty or sixty slaves or more. The slaves were transported in a vessel which was pursued by some of the inhabitants of the District, overtaken in the Chesapeake Bay, and the vessel, slaves, and the offenders, were brought back to the City of Washington. Upon the convictions on the several indictments, the court pronounced judgments for fines in various sums, under two hundred dollars each and costs; amounting in all the several convictions of the two offenders, to upwards of $18,000.

In each case, the judgment is, that one half of the said fine is to the use of the owner of the slave named in the indictment and judgment, "according to the act of Maryland of 1796, chapter 67," "and that the said offender be committed to the county jail until the fine and costs are paid."

Upon writs of error into the circuit court of the United States, for the District of Columbia and county of Washington, the judgments of the criminal court of the United States for the said district and county were affirmed.
TO THE PRESIDENT.

Pardoning power of the President.

Although the judgments are in the name of the United States, yet, by the law constituting and defining the offence, and by the judgments of the court, one half of the respective fines belongs to the respective owners of the slaves unlawfully and clandestinely transported from the District of Columbia by the offenders, Drayton and Sears; and, by law, the other half of the fines belongs to the board of commissioners of the county of Washington, in the District of Columbia, for the use of the county. The costs are adjudged, and belong to the United States.

These are the cases referred to in your letter of the 17th of this month, in which application is again made to you for pardons; and upon which you require my advice and opinion on the constitutional power of the President of the United States to grant a pardon, which shall release these convicts from their liability to pay these fines.

The Constitution of the United States declares that the President "shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment."

But use is the law and rule of speech. There is no natural connection between words and the things or ideas they are intended to signify. Language is a system of articulate sounds, whose signification is established by common usage among those who speak the same language. Before men can converse intelligibly one with another, the sign, and the thing signified by articulate sounds, must be agreed and mutually known and understood. Names, words and terms mark and signify particular ideas, only by established practice and general usage of those, who speak the language of each particular nation or province.

To understand the things, subjects, or cases, to which reprieves and pardons are properly to be applied, their utility, effects and consequences, as intended by the Constitution of the United States, we must look to the common law, as we do for the meaning of the other terms and phrases of law employed in that Constitution; such, for example, as grand jury, trial by jury, felony, ex post facto law, bill of attainder, &c.

The power of pardoning is not an absolute unlimited power of dispensing with the operation of laws which vest an interest
or right in a private citizen, or which are designed to secure to
him the enjoyment of his property, or give him damages against
a wrong-doer.

To convert the power of mercy and grace by pardon, into a
power releasing and acquitting or abrogating private vested
rights, would be a distortion of the power from its true meaning,
spirit, and purpose.

The British Constitution has vested the power of granting
pardons, except in cases of impeachment, in the Crown, as a
branch of the royal prerogative, as completely and as amply,
as that power is vested in the President of the United States,
by our Constitution. Accordingly, we find in Coke's Reports,
(part 12, case of non obstante, or dispensing power, p. 18, 19,)
"No act of Parliament can bind the king from any prerogative
which is sole and inseparable to his person, but that he may
dispense with it by non obstante. * * * * And so the
royal power to pardon treasons, murders, &c., is a prerogative
incident solely and inseparably to the person of the king: and
an act of Parliament to make the pardon of the king void, and
to disable him to whom the pardon is made, to take or plead it,
shall not bind the king but that he may dispense with it: and
this is well proved," &c.

To understand the meaning of a pardon, and the extent to
which the power of pardoning may be rightfully exercised by
the President of the United States, we must look to the books
of authority respecting the prerogative power of pardoning
rightfully belonging to the King of Great Britain, to the com-
mon law of the people of England, whose principles of juris-
prudence the people of the United States brought with them as
colonists and established here, in so far as they were of a gen-
eral nature, not local to that kingdom and not repugnant to the
American institutions.

In commenting upon the power of granting pardons, given
in general terms to the President of the United States, the Su-
preme Court, in an opinion delivered by Chief Justice Marshal,
(United States vs. Wilson, 7 Peters, 160,) say: "As this
power has been exercised from time immemorial by the execu-
tive of that nation whose language is our language, and to
whose judicial institutions ours bear a close resemblance, we
adopt their principles respecting the operation and effect of a pardon, and look into their books for the rules prescribing the manner in which it is to be used by the person who would avail himself of it."

This power of granting pardons does not confer an unlimited power, whereby, in extending mercy to offenders against the laws, to break the laws in relation to private rights and interests, and to cause loss and damage to unoffending citizens. It is not an unlimited, absolute, despotic power resting in the mere will and opinion of the Executive. It has limits within which it is as free from the control of the Congress of the United States, as the prerogative of the crown of Great Britain is, in that respect, free from the control of the British Parliament: Out of its legitimate sphere a pardon is void.

A pardon is a deed. To the efficacy of this deed (as in all other deeds) it is essential that there be a grantor, capable of granting, a grantee, a thing to be granted, the right of the grantor to the thing to be granted, and a willingness of the grantee to accept the grant, for a pardon may be granted upon a condition, and the person pardoned upon a condition, may be unwilling to abide the condition.

A pardon operates by way of release and acquittance: And the grantor of a pardon, cannot release, acquit, and abrogate a private right and interest vested in a third person.

The king cannot, by his deed of pardon, release and acquit that which is not his, but is belonging to another as of his particular and private right. Accordingly, Coke tells us, in his third Institute, (of Pardons, ch. 105, p. 236,) "by the ancient and constant rule of law, the king cannot make a pardon to the injury and loss of others; that which belongs to another the king cannot give away. (Non potuerit rex gratiam facere cum injuria et damno aliorum, quod autem alienum est dare non potest per suam gratiam."

Again, (3 Inst. p. 238,) "after an action popular brought tam pro domino rege quam pro se ipso, according to any statute, the king cannot discharge but his own part, and cannot discharge the informer's part, because by the bringing of the action, he hath an interest therein, but before action brought, the king may discharge the whole, because the informer cannot bring an action
or information originally for his part only, but must pursue the statute; and if the action be given to the party grieved, the king cannot discharge the same."

Again, (of Pardons, 3 Inst. ch. 105, p. 238,) "if one be bound in a recognizance, &c., to the king to keep the peace towards another by name, and generally all other lieges of the king; in this case before the peace be broken, the king cannot pardon or release the recognizance, although it be made only to him, because it is for the benefit and safety of his subjects."

Again, (3 Inst. p. 236,) "in an appeal of murder, robbing, &c. the king cannot pardon the defendant, for the appeal is the suit of the party, to have revenge by death; and whether the defendant be attainted by judgment, &c. or by outlawry, the pardon of the king shall not discharge defendant."

In Hawkins' Pleas of the Crown, (vol. 2 of Pardon, chap. 37, sect. 33, 34, p. 553,) we are told "the king may prevent any popular action on a penal statute by a pardon of the offence before any suit commenced by an informer."

"I take it to be a settled rule that the king cannot, by any dispensation, release, pardon, or grant whatsoever, bar any right, whether of entry or action, or any legal interest, benefit or advantage whatever, vested in the subject before such pardon; and upon this ground it seems clear that the king can in no way bar any action on a statute by the party grieved, not even a popular action commenced before his pardon and release; and that he cannot discharge a recognizance for the peace before it is forfeited."

The same doctrine is held in 11 Coke, 65 b. 66 a, (Fosters' Case,) in which is cited Stretton qui tam vs. Taylor, Trinity term, 31 Elizabeth.

In the case of Jones vs. Shores' Exor's, (1 Wheat. 471.) The Supreme Court of the United States says: "By the common law a party entitled to a share of a thing forfeited, acquires, by the seizure, an inchoate right, which is consummated by a decree of condemnation, and when so consummated it relates back to the time of the seizure. This principle is familiarly applied to many cases of forfeitures to the crown; even in respect to private persons entitled to forfeitures, the interest which is acquired by seizure, has been deemed a sufficient title to sustain
Pardoning power of the President.

an action of detinue for the property." Again, (p. 474,) "The same reasoning which has been used in respect to forfeitures in rem, applies to personal penalties; and it is unnecessary to repeat it. The court are clearly of opinion that the right of the collector to forfeitures in rem attaches on seizure, and to personal penalties on suit brought, and in such case, it is consummated by judgment; and it is wholly immaterial whether the collector died before or after judgment." Therefore the court awarded to the executors of John Shore the share of the penalty, upon a seizure by said John Shore, whilst collector, who died pending the proceedings upon which judgment of forfeiture to the United States was pronounced, which penalty, the law required to be distributed, the one moiety to the United States, and the other to the several revenue officers of the district.

In Van Ness vs. Buel, (4 Wheat. 74,) the Supreme Court of the United States said; "This case differs from that of Jones vs. Shore's Exor's, in two circumstances; first, that this is a case of a seizure of goods for an asserted forfeiture; and, secondly, that before the proceedings in rem were consummated by a sentence, the collector who made the seizure was removed from office. In our judgment, neither of these facts affords any ground to except this case from the principles which were established in Jones vs. Shore's Exor's. It was there expressly held that the collector acquired an inchoate right by the seizure, which by the subsequent decree of condemnation, gives him an absolute vested title to his share of the forfeiture." Therefore, the judgment which gave to Buel, the removed collector, his share of the forfeiture, was affirmed.

In the case of the United States vs. Lancaster, (4 Washington's Cir. C. Reports, p. 66,) the President of the United States had granted a pardon to Lancaster of all the interest of the United States, in a bond of $4,002, dated February, 1809, given to respond for the value of the Brig Eliza seized by the collector of the District of Delaware, which vessel was ultimately condemned for violation of the embargo law passed in the year 1808, Mr. Justice Washington who tried the case in the circuit court, said—" The question then is whether the pardon of the President remitting the interest of the United States in and to the penalty and forfeiture of the bond on which the action is founded, can affect the moiety of the penalty claimed by the officers of the customs?
"According to the doctrine of the common law of England, the king cannot, in the exercise of his prerogative of pardon, defeat a legal interest or benefit vested in a subject: as, for example, an interest or right of action given by a statute to the party grieved, or even a popular action after suit commenced. (5 Bac. 286, 287; Chitty, C. L., 742, 764; 3 Inst. 236, 238; 12 Rep. 29, 30.) How far this doctrine is applicable to the constitutional power of the President of the United States, has not, I think, been decided, either in the Supreme Court of the United States, or in any of the circuit courts."

Justice Washington then quotes the cases of Jones vs. Shore's Exor's, (1 Wheat. 670,) and Van Ness vs. Buel, (4 Wheat. 74,) and says these cases do not decide the question, "whether the President of the United States can, by his pardon, defeat the inchoate right of a private person, in a case where the remedy for the recovery of the penalty or forfeiture can be prosecuted only by, and in the name of the United States. In such ease, may not the President direct the law officer of the government to discontinue the suit? And if the remedy be within the control of that branch of the government which possesses also, the pardoning power, would not the inchoate right of an individual be necessarily so?"

The judge then proceeds to say that the Secretary of the Treasury, by the power vested in him by the act of Congress of April 3d, 1797, may, by the express words of the act, remit "the interest of an individual in the penalty, not consummated by judgment," by directing, as the act expressly authorizes, "the prosecution to cease and be discontinued on such terms as he may deem reasonable."

But the judge says: "It certainly does not follow from this, that the pardoning power of the President extends to the barring of private inchoate interest; because he derives his prerogative power to pardon under the Constitution, and its extent must be tested by that instrument. Those of the Secretary of the Treasury arise out of the legislative provisions; and in respect of the rights of collectors and others to a part of the penalties, Cujus est dare ejus est disponere."

The judge then proceeds to say, "that by the words of the President's pardon, in releasing all the interest of the United
TO THE PRESIDENT.

Pardoning power of the President.

States in, and claim to, the penalty or forfeiture so far forth as it concerns the said Lancaster," did not release the moiety directed by law to be distributed to the officers of the customs; that it released only the moiety which was to be paid into the Treasury of the United States.

Thereupon he gave judgment for the penalty of the said bond to the United States, "to be discharged by the payment of a moiety of the sum mentioned in the condition to be paid to the collector of the Delaware district for the benefit of the officers of the customs entitled to the same."

It is evident from this decision of Mr. Justice Washington, that he had no doubt that the pardoning power of the President of the United States, does not extend to release the interest of an individual in a part of a penalty or forfeiture not inchoate, but consummated by judgment. The only doubt suggested is, as to inchoate interests: and as to such, whether the President, if he so willed, might not, by ordering the law officer of the government to dismiss a prosecution, or by his exertion of the pardoning power in express language, defeat the inchoate rights of individuals in the prosecution.

The train of reasoning of Mr. Justice Washington, the authors cited by him, and his final decision, leave us no room to doubt his opinion, that a premature exercise of the power to order a dismissal of a pending prosecution, or of the pardoning power, whereby to defeat the private inchoate rights of individuals, would be an indiscreet use of the Executive prerogative.

By the doctrines of Hawkins in his Pleas of the Crown (vol. 2, Pardon, chap. 37, sec. 8, p. 542) of Bacon, (Gwilliam's ed. vol. 3, Pardon (A) p. 802,) and of Chief Justice Holt, (the King vs. Parsons, 1 Shower, 284,) the power of pardon is entrusted to the chief executive magistrate for the good of the people, upon a special confidence that he will exercise it for their good; "that he will spare those only whose case, could it have been foreseen, the law itself may be presumed willing to have excepted out of the general rules, which the wit of man cannot possibly make so perfect as to suit every particular case."

The cases of Daniel Drayton and Edward Sears are convictions under a law, which gave one-half of the penalties for its
violation to the parties aggrieved, and the other half to the use of the county. The judgments are so given and recorded. According to the uniform and unbroken current of opinions pronounced by the sages of the common law of England, the prerogative power of pardon, vested in the crown of Great Britain, and exercised from time immemorial, does not comprehend such cases as those of Drayton and Sears.

I have given you a citation of the decisions in the courts of the United States, bearing upon the power of granting pardons, as vested by the Constitution of the United States in the President.

I cannot advise that this power is of greater scope and extent than that vested in the King of Great Britain, as a branch of the royal prerogative, and as understood and exercised in that country from time immemorial.

I cannot advise that your power of pardon, as President of the United States, extends to any portion of the several fines, imposed by the judgments against Drayton and Sears. The imprisonment is to compel payment of the fines, and not to be released by the power of granting pardons, any more than the fines themselves.

If the power of granting pardons had been, in practice, applied to the release of the portion of fines, penalties, and forfeitures, which, by the laws of the United States, are directed to be distributed to individuals, the question of such a power would have been brought before the judiciary, and into the Supreme Court of the United States for final adjudication: the individuals, deprived of their interests by such pardons, would not have suffered their losses to go by default, without seeking the opinion of the judiciary. In the long series of sixty years and more, during which the Federal Constitution has been in operation, that no such question has been brought into the Supreme Court of the United States, leads rationally to the conclusion that no one of your predecessors in office (twelve in number) during the whole operations of the Constitution and laws of the United States, has exercised the power of pardon, by way of remitting or releasing a private right or interest in a fine, penalty, or forfeiture, accrued under the laws of the United States, and consummated by judgment or condemnation. The
TO THE POSTMASTER GENERAL.

Transportation of Foreign Mails.

non-user of such a power in any instance, during such a great length of time, and under such multiplied prosecutions, lays the foundation for rational belief that your predecessors in office have construed the Constitution as not conferring such a power; as limiting and confining the prerogative power of pardon by the principles of the common law; and as not conferring on the President of the United States a more extensive power than the prerogative of granting pardons, vested in the king, by the British Constitution.

Having given my advice and opinion on the question as propounded to me, with the reasons and authorities on which my opinion has been formed, it remains for you, in your highest trust, and better judgment, to decide for yourself this very important question of constitutional law.

I have the honor to be, very respectfully,

J. J. CRITTENDEN.

To the President.

TRANSPORTATION OF FOREIGN MAILS.

The act of March 3, 1845, providing for the transportation of the mail between the United States and foreign countries, is not repealed by the act of 19th of June, 1846.

ATTORNEY GENERAL’S OFFICE,
April 30, 1852.

SIR: In answer to your letter of 27th of this month, my opinion upon the question therein stated is, that the act of Congress of 3d March, 1845, (5 Stat. at Large, 748, ch. 69,) to provide for the transportation of the mail between the United States and foreign countries, which authorizes the Postmaster General of the United States, under the restrictions and provisions of the then existing laws, and upon the terms, conditions, and restrictions in that act, “to contract for the transportation of the United States mail between any of the ports of the United States, and a port or ports of any foreign power, whenever, in his opinion, the public interest, will be thereby promoted,” is not repealed by any thing contained in the act approved 19th June, 1846, entitled “An act making