section intended, it may well be that a mere translation may fail to answer that purpose, as a certified copy or a duplicate would.

I, therefore, think that the provision will be substanti-
ally complied with, by filing, in place of the originals that may be withdrawn, not translations, but such certified copies or duplicates.

I am, sir, very respectfully,

Your obedient servant,

EDWARD BATES.

Hon. Wm. H. SEWARD,
Secretary of State.

PARDONING POWER OF THE PRESIDENT.

1. The power of the President to pardon offences against the United States does not embrace any case of forfeiture, loss, or condemnation not imposed by law, as a punishment for an offence. He cannot, by virtue of that grant of power, surrender, or give away the pecuniary or proprietary rights and interests of the United States.

2. The powers of the President, in this respect, cannot be enlarged by analogy to the powers of an English king, as the powers of the two have their origin, and mode of existence, in different and opposite principles.

3. In some of the States the Governors have power, by constitutional grant, to remit fines and forfeitures, as well as to grant reprieves and pardons.

4. The condemnation of a vessel and cargo, in a prize court, is not a criminal sentence. No person is charged with an offence; and so, no person is in a condition to be relieved and reinstated by a pardon.

5. After a regular condemnation of a vessel and cargo, in a prize court, for breach of blockade, the President cannot remit the forfeiture and restore the property, or its proceeds, to the claimant.

6. After such condemnation the share apportioned to the captors became a vested right, and the part which belonged to the United States is vested by law in the Navy Pension Fund; and neither can be right-
fully withdrawn from its legal destination, by any Executive act, under authority of the pardoning power.

ATTORNEY GENERAL'S Office,

February 9, 1863.

SIR: As soon as I could, without the absolute neglect of other important business, I have carefully considered
the matter which you propounded to me by your note of January 23, 1863, which is as follows: "Please give me your opinion in writing, whether, after a vessel and cargo are regularly condemned, in a prize court, for breach of United States blockade, I, as President, have any lawful power of remission in the case? and, if any, to what extent?"

There is nothing in the Constitution which confers upon the President the "power of remission" of penalties and forfeitures, unless that power can be found in the words of the Constitution, (article 2, sec. 2, clause 1,) "and he (the President) shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment."

This grant of power to the President is, in its terms, and I think in its obvious sense, limited to offences, to crimes and misdemeanors, against the United States; and does not embrace any case of forfeiture, loss, or condemnation, not imposed by law, as a punishment for an offence. It is the power to pardon, to forgive, to withhold punishment, which, without the exercise of that power, the law would inflict. If a fine, forfeiture, or penalty be prescribed by law as a punishment, in whole or in part, for an offence, then, undoubtedly, the President's pardoning power can reach and relieve it, for he can pardon the offence itself, and when that falls, of course, its legal consequences fall with it.

But that "power to grant reprieves and pardons for offences" does not invest the President with power to grant, surrender, or give away the pecuniary or proprietary rights and interests of the United States. He cannot remit the penal bonds of public officers; nor even cancel recognizances for appearance, taken in course of criminal prosecutions, and for surety of the peace, except only in the District of Columbia, where there is a special law granting the power. (Act June 17, 1812, sec. 1, 2 Stats., 752.)

The condemnation of a vessel and cargo, in a prize court,
is not a criminal sentence. No person is charged with an offence; and so, no person is in condition to be relieved and reinstated by a pardon. In fact, there is nothing upon which a pardon, granted by the President in the terms of the Constitution, can operate. And the Constitution has not given to the President power to remit forfeitures, incurred otherwise than as criminal punishment.

The powers of the President, in this respect, cannot be enlarged by analogy to the powers of an English king, because the powers of the two have their origin and mode of existence in different and opposite principles. (See Bl. Com., Book 4, c. 31.) "His (the king's) power of pardoning was said by our Saxon ancestors to be derived a lege sue dignitatis; and it is declared in Parliament, by Stat. 27, Hen. 8, that no other person hath power to pardon or remit any treason or felonies whatsoever; but that the king hath the whole and sole power thereof, united and knit to the imperial crown of this realm." And hence, in a former opinion, (of July 5, 1861,) speaking of the pardoning power and some others of that nature, I said: "These belong to that class which, in England, are called prerogative powers, inherent in the crown. And yet the framers of our Constitution thought proper to preserve them, and to vest them in the President, as necessary to the good government of the country." As far as they are so preserved and vested they are legitimate powers in the hand of the President. But they are not prerogatives—they are legal powers vested in, and duties imposed upon the President by the letter of the Constitution; and they are to be exercised and judged of as other granted powers and imposed duties are.

The power to grant reprieves and pardons, is given, in terms, to the President; but the power to remit forfeitures, fines, and penalties (as distinct from the pardon of crimes) is not given. Yet the king had both powers. And necessarily so, in the theory of the English government, in which the king is the only person offended by the
Pardoning Power of the President.

commission of crimes, and the only owner of things forfeited, unless expressly provided otherwise by statute.

This power to pardon and to remit, is very variously treated by the constitutions of the different States, giving to the governors more or less power, in this particular.

In Pennsylvania, Delaware, and Missouri, the governor has power to remit fines and forfeitures, grant reprieves and pardons, except in cases of impeachment.

In New York, the governor has power to grant reprieves and pardons, *after conviction*, for all offences except treason and cases of impeachment. (Nothing said of fines and forfeitures.)

In Connecticut, the governor has no power to pardon, but only to *reprieve*, and that only until the end of the next session of the General Assembly. (Nothing said of fines and forfeitures.)

I am credibly informed that Congress has frequently remitted forfeitures and penalties, by statute, though I cannot now specify the instances; and for many years past (perhaps beginning with the act of 1797) Congress has committed to the Secretary of the Treasury a very large discretion in the remission of forfeitures, fines, and penalties, arising under the laws of revenue and navigation.

These views induce me to believe that after a regular condemnation of a vessel and cargo, in a prize court, for breach of blockade, the President has no lawful power to remit the forfeiture, and restore the property or its proceeds, to the claimant.

That is my opinion upon the general law of the case. And here there is a superadded objection to the granting of the petition. The prize money is already appropriated and distributed by law. The share apportioned to the captors, has become a vested right; and the part which did belong to the United States, is vested by law in the navy pension fund. The part given by law to individual captors, is, avowedly, a bounty, designed to stimulate the zeal and courage of our naval men; and the part reserved
to the nation, is transferred by law, to the navy pension fund, which is only another form of a bounty to the same meritorious class. And, in my opinion, neither portion can be rightfully withdrawn from its legal destination, by any Executive act, under the authority of the pardoning power.

All which is respectfully submitted by
Your obedient servant,

EDWARD BATES.

The President.

BRINDEL'S CASE.

1. A receiver of public moneys is not entitled to an allowance for extra clerk hire, under act of August 18, 1856, in the absence of an appropriation from which it can be paid.

2. A receiver is entitled to mileage for transporting money to a place of deposit, even if the journey be made by his agent, and not by himself.

ATTORNEY GENERAL'S OFFICE,
February 11, 1868.

SIR: I have the honor to acknowledge the receipt of your letter of the 6th instant, calling my attention to the questions submitted by your predecessor on the 13th of August, 1861, in the case of William Brindle, late receiver of public moneys at Lecompton, Kansas.

The main questions submitted by Secretary Smith having been settled by the Supreme Court of the United States in the cases of the United States vs. Babbitt, and Same vs. Coles, I was not aware that my advice was desired on any other points. But I find by reference to the letter referred to, that two questions remain unanswered.

1st. Is receiver of public moneys entitled to an allowance for extra clerk hire under the Treasury order of August 20, 1854, and the act of August 18, 1856, in the absence of an appropriation from which the same can be paid?

I think it perfectly clear from the terms of the 7th section of the act of August 18, 1856, chap. 129, (repealed by