TO THE PRESIDENT.

Effect of President's Pardon.

EFFECT OF PRESIDENT'S PARDON

A pardon by the President will restore an officer whose rank has been reduced by sentence of a court-martial to his former relative rank according to the date of his commission.

ATTORNEY GENERAL'S OFFICE,

January 22, 1869.

SIR: The question submitted for my opinion by your direction under date of the 30th ultimo I understand to be this: Whether, where a captain in the army has been sentenced by a court-martial to reduction in rank by having his name placed lower down on the list of officers of the same grade, a remission of the penalty by the President, in the exercise of the pardoning power, will have the effect of restoring the officer to his former relative rank and position on the roll?

By the rules prescribed for the government of the military service, the relative rank of officers of the same grade in the army is ascertained and fixed by date of commission or appointment, (Army Reg., art. 2;) and as all vacancies to the rank of colonel are required to be filled by promotion according to seniority, cases of disability or incompetency excepted, (ibid., art. 4,) the order in which officers under that rank stand in their several grades on the army rolls is important, not only in connection with points of precedency and command, but as determining their respective rights to advancement upon the happening of vacancies in grades above their own, and it is hence called the line of promotion.

Regularly, then, the law of the service assigns to each officer a rank in his grade and in the line of promotion corresponding with the date of his commission, and when this order or disposition is interrupted, as in the case under consideration, through the intervention of a court-martial proceeding, it can only remain so by the continuing operation of the penalty imposed, which may be said to act as a punishment from day to day, so long as the officer affected is excluded from the enjoyment of his previous status.
Taking this view of the nature of such a penalty, I am led to the conclusion that a remission of the same by pardon necessarily carries with it the restoration of the officer to his pre-existing capacity and right, under the law of the service, to occupy a place on the list of his grade appropriate to the date of his commission—the officer losing, of course, such opportunities for promotion as may in the meantime have occurred.

The case of an officer who has been thus reduced in rank differs essentially from that of an officer who has been dismissed from service by sentence of a military court. After the latter is duly confirmed and executed, the dismissed officer cannot be reinstated by means of a pardon, or in any other manner than by a new appointment and confirmation by the Senate. (10 Opinions, 22.) This is because the execution of the judgment in effect abrogates the officer's commission, and entirely dissolves his connection with the service, placing him in exactly the same situation relatively thereto which he occupied previous to his original appointment; and, moreover, a pardon, it has been said, does not operate to restore an office forfeited. (4 Wall., 381.)

But no such consequences ensue upon execution of sentence in the former case. The officer's relations to the service are not thereby dissolved, so that when released from the penalty inflicted there is no occasion for the exercise of the appointing power to replace him. Already clothed with a commission, he is clearly entitled to the rank which it bestows.

In connection with this matter, I have examined the opinions of several of my predecessors, to which my attention has been directed, respecting the restoration of officers from the reserved to the active list, their transfer from one regiment to another, and kindred subjects; (see 2 Opinions, 355; 5 ibid., 259; 8 ibid., 223; 9 ibid., 20; 10 ibid., 107,) which have been thought to throw some light upon the question presented, but in none of them have I been able to dis-
cover anything that supports a different conclusion from the one above expressed.

But without pursuing the subject further, I may state it as my opinion, that a pardon by the President, in the case proposed, will have the effect of restoring the officer to his former relative rank, according to the date of his commission.

I am, sir, very respectfully,
Your obedient servant,
WM. M. EVARTS.

The President.

CASE OF THE NATIONAL BANK OF THE METROPOLIS

The Treasurer of the United States cannot retain, as security for a claim due the United States, the bonds deposited with him by a national bank, under section 16 of the act of June 3, 1864, to secure its circulation.

ATTORNEY GENERAL'S OFFICE,
January 28, 1869.

SIR: Your communication of the 14th instant, enclosing a letter from the Treasurer of the United States of a previous date, in which a claim is alleged against the National Bank of the Metropolis for interest upon its average indebtedness to the Government on deposits formerly made with the bank for above two years from the 11th of September, 1866, proposes for my opinion the question whether that officer may retain, as security for such claim, certain bonds which were deposited with him by the bank to secure its circulation?

According to my understanding of the case, these bonds were deposited by the bank with the Treasurer in compliance with the 16th section of the national currency act of June 3, 1864, (13 Stats., 104,) which requires every association, preliminary to the commencement of banking business, and before it shall be authorized to commence business, to "transfer and deliver to the Treasurer of the