the second and third points he expressed views similar to those which I have above stated.

I have not answered categorically the questions put in the letter of the Second Comptroller, because, on studying the case, I came to the conclusion that the questions presented by it were the three that I have above answered, and I think that my answers to these dispose of all the points of law presented. The questions, if there be any at issue between the Quartermaster-General's Office and the accounting-officers of the Treasury, in respect of the power of the latter to change the amount fixed or allowed by the Quartermaster-General's Department in any given case, ought to be presented in a much more explicit form than they are by any papers transmitted in this case, if the opinion of this Department is desired upon them.

I have the honor to be, sir, very respectfully, your obedient servant,

CLEMENT HUGH HILL,
Assistant Attorney-General.

Hon. B. H. BRISTOW,
Solicitor-General and Acting Attorney-General.

Approved:

B. H. BRISTOW,
Solicitor-General and Acting Attorney-General.

EFFECT OF PARDON—REMISSION OF FINE.

Where a person convicted of a crime against the United States was sentenced to fine and imprisonment, and subsequently received an unconditional pardon from the President, but previous thereto had paid the amount of the fine to the marshal, by whom it was deposited in court, where it still remains: Held that the fine was remitted by the pardon, and that the money should now be restored to the person pardoned.

A pardon by the President works a remission of a pecuniary penalty already paid, unless the money has actually passed into the Treasury, (overruling the decision in 10 Opin., 1.)

DEPARTMENT OF JUSTICE,
June 28, 1872.

SIR: District-Attorney Harrington, of the eastern district of Arkansas, asks for instructions as to his course in the
Effect of Pardon--Remission of Fine.

matter of Charles Leoni's fine, and makes the following statement of facts:

Leoni was convicted of passing counterfeit money, and was sentenced to both fine and imprisonment. On the 24th of May last, he received an unconditional pardon from the President. In the meantime the marshal had received the full amount of the fine and costs, and, on the 17th instant, he paid the money into court, where it now remains. The district-attorney has moved that this money be deposited to the credit of the Treasurer of the United States, and Leoni's counsel that it be refunded to him, on the ground that the pardon remitted the fine, and that it is not now too late for such remission to take effect. The action of the court is suspended.

There is an opinion of Attorney-General Stanton (10 Opin., 1) exactly covering this case. Mr. Stanton says, in regard to a similar state of facts, "the money thus paid to the marshal * * * ought to be accounted for, and paid over, by the marshal, as money belonging to the United States. The President's remission of a penalty after it has been paid is of no effect." But this view of the question does not seem to be sustained by the authorities.

The effect of a pardon is to restore the person pardoned, as far as is possible, to the condition in which he would have been if he had never been convicted. (See United States vs. Wilson, 7 Pet., 150; 1 Bishop Crim. L., § 713; The King vs. Greenvelt, 12 Mod., 119; In re Deming, alias Daniels, 10 Johns., 232; 12 Opin., 81.) Such complete restoration must include a restitution of the fine, unless some insurmountable obstacle intervenes. Is there any such obstacle in a case like this? In the opinion of Attorney-General Cushing, there is not. He says, in his opinion of January 1, 1857, (8 Opin., 281,) speaking of a similar case, that, although the forfeiture be consummated, so far as the guilty party is concerned, and the money has passed into the hands of some Government officer, it may still be refunded by executive warrant, in execution of a pardon, as long as the payment was not in such form as to constitute "complete severance from intermediate official custody and absolute entry into the Treasury." He also says: "If this money had actually passed into the Treasury, by a covering warrant or otherwise, it could not, in my
opinion, be refunded without authority of Congress.” This only on account of the constitutional provision “that no money shall be drawn from the Treasury but in consequence of appropriations made by law.”

In the case of Brown vs. The United States, (1 Woolw. C. C., 198,) it was held that where the proceeds of the sale of confiscated property were still in the hands of the marshal they were restored by a pardon. The court, Miller, J., said: “It is my opinion that, until an order of distribution * * * is made, or until the proceeds are actually paid into the hands of the party entitled, as informer, to receive them, or into the Treasury, * * * they are within the control of the court; that no vested right to those proceeds has accrued so as to prevent the pardon from restoring them to the petitioner.”

On the whole, the law seems to be that a pardon by the President restores pecuniary penalties already paid to an officer of the Government, unless the money has actually passed into the Treasury.

It is my opinion, therefore, that the amount of Charles Leoni’s fine and costs must be returned to him as having been remitted by pardon.

Respectfully submitted.

EDWARD ROGERS FRENCH,
Pardon Clerk.

Hon. Geo. H. WILLIAMS,
Attorney-General.

Approved July 2, 1872:

GEO. H. WILLIAMS.

RANCHO “GUADALUPE.”

In this case, (which involves the validity of two patents issued upon a California private land-claim, one in 1866 and the other in 1870—both, however, having been afterward recalled by the Land Department,) upon the facts submitted, held that there was no legal authority for issuing the second patent, and that the first patent should be delivered to the confirmees of the claim.