under the circumstances, a bar to his retirement as an officer under section 11 of that act or under the act of 1906.

The Government having held that he could not be retired as an officer under section 11, but might be, under section 17, upon his own application, I do not think that, by accepting this erroneous decision and acting upon it, he waived or forfeited any legal right which he had to be retired otherwise.

I am of opinion that, as Mate Neilson was entitled to be retired under section 11 of the act referred to, his retirement of March 31, 1899, should be so corrected as to make it show such a retirement and, following the above opinion of April 18, 1908, with the rank and retired pay of a warrant officer with twelve years of service, and from said original retirement. This is giving to this officer, although at a later date, that to which, in law, he was then entitled.

In any event Mate Neilson would be now, under the above opinion, entitled to be retired under the act of 1906 with the rank and retired pay of a warrant officer having twelve years' service. But, since the advancement in such case would be from the date of retirement, this would deprive him, during the intervening years, of the increased pay to which he became entitled at and from his retirement March 31, 1899.

As you inform me that there are on the retired list some other mates whose cases are essentially similar to this one, what is here said will apply to others also.

Respectfully,

CHARLES J. BONAPARTE.

The Secretary of the Navy.

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ENLISTMENT IN THE NAVY—DESERTION—PARDON—REENLISTMENT.

A person who, having enlisted in the Navy, deserts therefrom and is convicted of desertion by a general court-martial and thereafter receives from the President a full and unconditional pardon for such offense and restoration to civil rights, may be permitted to reenlist in the Navy notwithstanding the provisions of section 1420, Revised Statutes.
The effect of a pardon is to obliterate the offense and make him who had been an offender as innocent, in legal contemplation, as if he had never offended, to remove all disabilities incident to the offense charged, and to restore to him all civil rights which he would have had if he had not offended, so far, at least, as it is in the power of the Government to make it so.

DEPARTMENT OF JUSTICE,

June 16, 1908.

Sir: I have the honor to respond to your request expressed in the note of your Secretary of June 8, 1908, for an opinion whether Frank Calbert Arnold can be permitted to reenlist in the Navy, after his conviction and pardon for desertion therefrom.

It appears that this man enlisted in the Navy at Chicago, Ill., on October 7, 1901, for a period of four years. He deserted from the 

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opkins at Philadelphia, May 29, 1905, at which time he held the rating of yeoman, first class. He surrendered himself June 21, 1906, and was convicted July 10, 1906, of desertion by a general court-martial, duly approved, and sentenced to be reduced to the rating of landsman and to be confined for one year, and to be then dishonorably discharged from the Navy.

After serving the term of confinement imposed, and on May 22, 1908, he received and accepted from the President a full and unconditional pardon for his offense and restoration to civil rights, and now desires to reenlist in the Navy, and to redeem himself from the odium of his former desertion. And the Navy Department is willing that he should reenlist, if it can be done consistently with existing law, and your question is, in substance, whether this can be done.

The answer to this question involves a consideration of section 1420, Revised Statutes, and of the effect of the President's pardon.

The section referred to is as follows:

“No minor under the age of sixteen years, no insane and intoxicated person, and no deserter from the naval or military service of the United States shall be enlisted in the naval service.”
This is of course a bar to the reenlistment of the man Arnold if, in legal contemplation, he is a deserter, and this depends upon the effect of the President's pardon.

The Supreme Court has in several cases stated the purpose, office, and effect of a pardon so plainly and completely that we need not go elsewhere for authorities, or, in order to answer the question submitted, look any further. And from this it will be seen that the effect of a pardon is to obliterate the offense and make him who had been an offender as innocent, in legal contemplation, as if he had never offended, to remove all disabilities incident to the offense charged, and to restore to him all civil rights which he would have had if he had not offended.

This is so, as far as it is in the power of the Government to make it so. But this power has its limitations. It can not and does not restore that which is already lost and gone beyond the reach of the Government. But as to the future, it relieves the person from all disabilities and consequences to which he would be subject but for the pardon, so that thereafter nothing can be imputed to him based upon the allegation of his offense. Nothing short of this, nothing that partially pardons or removes only some of the disabilities and not all, can be a pardon in its full sense.

In *Ex parte Garland* (4 Wall., 333) an act of Congress had provided that no one should be permitted to practice in the Supreme Court or other courts of the United States except upon taking a certain expurgatory oath that he had not given aid or countenance to the rebellion, etc., and one question was as to the effect of the President's pardon in removing this disability. What the court said, page 380, so completely covers the whole ground that it is quoted here at length:

"Such being the case, the inquiry arises as to the effect and operation of a pardon, and on this point all the authorities concur. A pardon reaches both the punishment prescribed for the offense and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never com-
mitted the offense. If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching; if granted after conviction, it removes the penalties and disabilities and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity.

"There is only this limitation to its operation: It does not restore offices forfeited or property or interest vested in others in consequence of the conviction and judgment.

"The pardon produced by the petitioner is a full pardon for all offenses by him committed, arising from the participation, direct or implied, in the Rebellion, and is subject to certain conditions which have been complied with. The effect of this pardon is to relieve the petitioner from all penalties and disabilities attached to the offense of treason committed by his participation in the Rebellion. So far as that offense is concerned he is thus placed beyond the reach of punishment of any kind."

That is precisely the effect of a pardon. "In the eye of the law the offender is as innocent as if he had never committed the offense."

This precise point is reaffirmed in United States v. Padelford (9 Wall., 531, 537).

In Osborn v. United States (91 U. S., 474) the court says, on page 477:

"The pardon of that offense necessarily carried with it the release of the penalty attached to its commission, so far as such release was in the power of the Government, unless specially restrained by exceptions embraced in the instrument itself. It is of the very essence of a pardon that it releases the offender from the consequences of his offense. If in the proceedings to establish his culpability and enforce the penalty, and before the grant of the pardon, the rights of others than the Government have vested, those rights can not be impaired by the pardon. The Government having parted with its power over such rights, they necessarily remain as they existed previously to the grant of the pardon. The Government can only release what it holds."
In *Carlisle v. United States* (16 Wall., 147) the court says, page 151:

"There has been some difference of opinion among the members of the court as to cases covered by the pardon of the President, but there has been none as to the effect and operation of a pardon in cases where it applies. All have agreed that the pardon not merely releases the offender from the punishment prescribed for the offense, but that it obliterates in legal contemplation the offense itself."

And in *Knote v. United States* (95 U. S., 149) the court says, page 153:

"A pardon is an act of grace by which an offender is released from the consequences of his offense, so far as such release is practicable, and within control of the pardoning power or of officers under its direction. It releases the offender from all disabilities imposed by the offense and restores to him all his civil rights. In contemplation of law, it so far blots out the offense that afterwards it can not be imputed to him to prevent the assertion of his legal rights. It gives to him a new credit and capacity and rehabilitates him to that extent in his former position. But it does not make amends for the past. It affords no relief for what has been suffered by the offender in his person by imprisonment, forced labor, or otherwise; it does not give compensation for what has been done or suffered, nor does it impose upon the Government any obligation to give it. The offense being established by judicial proceedings that which has been done or suffered while they were in force is presumed to have been rightfully done and justly suffered, and no satisfaction for it can be required. Neither does the pardon affect any rights which have vested in others directly by the execution of the judgment for the offense or which have been acquired by others whilst that judgment was in force."

It is useless to pursue the subject further. By this pardon the offense of the man Arnold is obliterated, and he is, in legal contemplation, no longer a deserter. His disabilities are removed and, among them, that relating to
re-enlistment in the naval or military service of the United States. And he is restored to his civil rights, including that of enlistment in such service, and it is quite within the province of the Navy Department to permit his re-enlistment.

Respectfully,

CHARLES J. BONAPARTE.

DEPARTMENT OF JUSTICE,

June 17, 1908.

SIR: I have the honor to acknowledge the receipt of your letter of May 28, 1908, inquiring whether a watchman employed at Corregidor Island, Philippine Islands, falls within the designation of a laborer or mechanic within the meaning of the eight-hour law. The duties of this employee are "to supervise all arrivals and to see that no one lands on the island without authority; to investigate such matters as the absence from work of native employees; and to make report of those matters," is not a laborer or mechanic within the meaning of the eight-hour law. Such duties pertain more to those of a clerk or superintendent of laborers than to those of a laborer or mechanic.

I think these services pertain more to those of a clerk or superintendent of laborers and do not bring the person within the class of laborers or mechanics.

Very respectfully,

CHARLES J. BONAPARTE.

The Secretary of War.