TO THE PRESIDENT.

Mr. Bridges utterly denies that he has, in any instance, violated the laws in question, and alleges that the process of the court was improperly obtained, irregular in form, and illegal in substance.

It is obvious to observe, that whether the process in question be a lawful or an unlawful one, it belongs to the courts of the Territory, in the first instance, to decide upon it; and if it be unlawful, the party has his remedy at law.

I do not perceive anything in the case, therefore, which calls for, or can receive, the special interposition of the President.

I am, very respectfully,

C. CUSHING.

PASSENGER LAWS.—PARDONING POWER.

Vessels propelled by steam, and employed in the transportation of passengers by sea between Panama and San Francisco, are within the provision of the acts of Congress regulating the transportation of passengers in merchant vessels.

The pardoning power of the President extends to all cases of penalties and forfeitures, as well as other punishment, provided by those acts.

In certain cases, under those acts, forfeitures may be remitted by the Secretary of the Treasury.

ATTORNEY GENERAL'S OFFICE,
March 24, 1854.

SIR: The Secretary of State referred to me some time since for my opinion the petition for a pardon presented by Mr. J. W. Raymond, owner of the steam vessel "New Orleans," libelled for breach of the laws to regulate passenger vessels, which presents two questions of law:

First,—whether the steam vessels, actually employed in the transportation of passengers from the Isthmus of Panama to San Francisco, and from that port to Panama, are within the provisions of the acts of Congress to regulate the carriage of passengers in merchant vessels: and

Secondly,—has the President power to pardon the offences, which have been committed by the masters or owners of steam
vessels, in violation of the statutes for regulating the conveying of passengers in merchant vessels?

1. Whether these acts apply to steam vessels.

These acts are the following, namely:

1. An act to provide for the better security of the lives of passengers on board of vessels, propelled in whole or in part by steam, approved July 7th, 1838. (v Stat. at Large, p. 394.)

2. The act approved February 22d, 1847, entitled "An act to regulate the carriage of passengers in merchant vessels." (ix Stat. at Large, p. 127.)

3. "An act to amend an act entitled 'An act to regulate the carriage of passengers in merchant vessels, and to determine the time when said act shall take effect,'" approved March 2d, 1847. (ix Stat. at Large, p. 149.)


5. "An act to provide for the ventilation of passenger vessels, and for other purposes," approved May 17th, 1848. (ix Stat. at Large, p. 220.)

6. "An act to extend the provisions of all laws now in force relating to the carriage of passengers in merchant vessels and the regulation thereof," approved March 3d, 1849. (ix Stat. at Large, p. 399.)

7. "An act to amend an act entitled, 'An act for the better security of the lives of passengers on board of vessels propelled in whole or part by steam, and for other purposes,'" approved August 30th, 1852. (Acts of 1851-2, p. 61.)

The act of July 7th, 1838, although composing a part of the system for securing the health and lives of passengers to and from the United States, need not be recited, because it contains no regulation as to the number of passengers to be taken on board, and the libel against the "New Orleans" is not founded on any breach of that statute.
TO THE PRESIDENT.

The libel is founded on breaches of the statute of February 22d, 1847, amended by subsequent acts.

This act enacts (sec. 1) "That if the master of any vessel, owned in whole or in part by any citizen of the United States of America, or by a citizen of any foreign country, shall take on board such vessel, at any foreign part or place, a greater number of passengers than in the following proportion to the space occupied by them, and appropriated for their use and unoccupied by stores or other goods, not being the personal baggage of such passengers, that is to say, on the lower deck or platform one passenger for every fourteen clear superficial feet of deck, if such vessel is not to pass within the tropics on such voyage; but if to pass within the tropics during such voyage, then one passenger for every twenty such superficial feet of deck; and, on the orlop deck (if any) one passenger for every thirty such superficial feet in all cases, with intent to bring such passengers to the United States of America, and shall leave such port or place with the same and bring the same or any number thereof within the jurisdiction of the United States aforesaid, or if any such master of vessel shall take on board of his vessel, at any port or place within the jurisdiction of the United States aforesaid, any greater number of passengers than the proprietors aforesaid admit, with intent to carry the same to any foreign port or place, every such master shall be deemed guilty of a misdemeanor, and, upon conviction thereof, before any circuit court or district court of the United States aforesaid, shall, for each passenger taken on board beyond the above proportions, be fined in the sum of fifty dollars, and imprisoned for any term not exceeding one year: provided, this act shall not be construed to permit any ship or vessel to carry more than two passengers to five tons of such ship or vessel.

Sec. 2. "That if the passengers so taken on board of such vessel and brought into, or transported from, the United States aforesaid, shall exceed the number limited by the last section to the number of twenty in the whole, such vessel shall be forfeited to the United States aforesaid, and be prosecuted and distributed as forfeitures are under the act to regulate duties on imports and tonnage."
"Sec. 3. If any such vessel as aforesaid shall have more than two tiers of berths, or in case, in such vessel, the interval between the floor and the deck or platform beneath, shall not be at least six inches, and the berths well constructed, or in case the dimensions of such berths shall not be at least six feet in length, and at least eighteen inches in width, for each passenger as aforesaid, then the master of said vessel and the owner thereof, severally, shall forfeit and pay the sum of five dollars for each and every passenger on board of said vessel on such voyage, to be recovered by the United States as aforesaid, in any circuit or district court of the United States where such vessel may arrive, or from which she sails.

"Sect. 4. That for the purposes of the act, it shall in all cases be computed that two children, each being under the age of eight years, shall be equal to one passenger, and that children under the age of one year shall not be included in the computation of the number of passengers.

"Sec. 5. The amount of the several penalties imposed by this act shall be liens on the vessel or vessels violating its provisions; and such vessel may be libelled and sold in the District Court of the United States aforesaid, in which such vessel shall arrive."

The third act, that of March 2d, 1847, chap. 34, repeals the provision that two children, each under the age of eight years, shall be equal to one passenger.

The fourth act applies only to vessels employed by the American Colonization Society in carrying negroes to the coast of Africa from the United States.

The fifth act, that of May 17th, 1848, provides for ventilation, victualing, windows, cooking-stoves, &c., &c., for health and accommodation of passengers, and in sect. 7, that "the collector of the customs at any port of the United States at which any vessel so employed shall arrive, or from which any such vessel shall be about to depart," shall cause inspection and examination to be made as to the compliance with the provisions of the first, second, third and fifth sections of this act.

"Sec. 8. That the first section of the act, entitled 'An act to regulate the carriage of passengers in merchant vessels,' ap:
proved February 22d, 1847, (ix Stat. at Large, p. 127,;) be so amended that "when the height or distance between the decks of the vessels referred to in the said section shall be less than six feet and not less than five feet, there shall be allowed to each passenger, sixteen clear superficial feet on the deck instead of fourteen, as prescribed in said section, and if the height or distance between the decks shall be less than five feet, there shall be allowed to each passenger twenty-two clear superficial feet on the deck; and, if the master of any such vessel shall take on board his vessel in any port of the United States, a greater number of passengers than is allowed by this section, with the intent specified in said first section of the act of 1847, or * * * shall take on board at a foreign port, and bring within the jurisdiction of the United States a greater number of passengers than is allowed by this section, said master shall be punished in the manner provided for the punishment of persons convicted of a violation of the act aforesaid. And in computing the number of passengers on board such vessels, all children under the age of one year, at the time of embarkation, shall be excluded from such computation."

Sec. 10. Repeals the limitation of two passengers to every five tons, contained in the act of 1847.

The act to extend the provisions of all laws now in force relating to the carriage of passengers in merchant vessels, and the regulations thereof, approved 3d March, 1849, enacts:

"That all vessels bound from any port in the United States to any port or place in the Pacific Ocean, or on its tributaries, or from any such port or place in the United States on the Atlantic, or its tributaries, shall be subject to the provisions of all the laws now in force relating to the carriage of passengers in merchant vessels, sailing to and from foreign countries, and the regulations thereof, except the fourth section of the act to provide for the ventilation of passenger vessels, and for the purposes, approved May 17th, 1848, relating to provisions, water and fuel.

Sec. 2. "That the act entitled 'An act to regulate the carriage of passengers in merchant vessels,' approved February 22d, 1847, shall be so far amended as that a vessel passing into, or
through the tropics, shall be allowed to carry the same number of passengers as vessels that do not enter the tropics.

Sec. 3. "This act to take effect on and after the 15th day of March, 1849."

The seventh act, approved August 30th, 1852, entitled "An act to amend an act entitled 'An act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam and for other purposes,' (Session Acts, p. 61, chap. 106,) requires (sec. 9, par. 4, p. 65,) that the master of every steam vessel, employed in carrying passengers, shall obtain a certificate in the form and manner therein described, in which certificate, among other things, the inspectors are to state 'the number of state-rooms, the number of berths therein, the number of other permanent berths for cabin passengers, the number of berths for decks or other classes of passengers, the number of passengers of each class for whom she has suitable accommodations, and, in case of steamers, sailing to or from any European port, or to or from any port on the Atlantic or the Pacific, a distance of one thousand miles or upwards, the number of each she is permitted to carry; and, in case of a steamer sailing to any other port, a distance of five hundred miles or upwards, the number of deck passengers she is permitted to carry, also the number of boilers,'" &c., &c.

Sec. 25 of this act makes it the duty of the collector or other chief officers of the customs to give to the master or owner of the vessel two certified copies of the original certificates, required by the ninth section, one of which the master or owner shall place "in some conspicuous place in the vessel, where it will be most likely to be observed by passengers and others, and there kept at all times."

The obvious policy and intent of these statutes are to secure the passengers, and the communities with which they are to be associated, from the diseases to be contracted on board of vessels overladen, in which passengers are compelled, awake and asleep, to inhale a concentrated, impure, noxious atmosphere,—in confined spaces and small berths, without sufficient ventilation, tending to engender ship-fever and other maladies of an infectious or a contagious character, or otherwise endangering
life. Such diseases are engendered as well in vessels propelled by steam and overladen with passengers, as in vessels propelled by wind acting on sails.

The expression "merchandise vessels," used in the titles of the acts, is, in the bodies of the acts, explained as meaning vessels owned by individuals and intended for the transportation of passengers for reward, to the exclusion of vessels owned by the Government of the United States, or by foreign governments, designed for the purposes of war, or other national purposes, such as the transporting of troops, or military stores or provisions, the revenue service, or other objects of public use.

The expressions "from which she sails," and "sailing to and from foreign countries," and "sailing from ports," used in the 3d section of the act of February 22d, 1846, (ix Stat. at Large, p. 128,) in the 9th section of the act of May 17th, 1848, (ix Stat. at Large, p. 220,) and 1st section of the act of March 3d, 1849, cannot be confined to one sense only of the verb "to sail," that is, driven by the wind acting on sails, to the exclusion of the other equally well established meaning of the same verb "to sail," that is, to pass by water,—moving on the water,—conveyed by water.

"Sailing from a port" is used to express the commencement of a voyage; "sailing to a port," signifies the destination of the vessel, or the termination of the voyage, whether the vessel be propelled by wind or by steam. Accordingly, in the act of August 30th, 1852, "for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam, (Sess. Acts, chap. 106, sec. 9, p. 65,) we find: "And in case of steamers sailing to or from any European port," and again—"and in case of a steamer sailing to any other port," the number of passengers she is permitted to carry, and the number of boilers, &c., &c., are to be contained in the certificate and license to such steam vessel.

"If divers statutes relate to the same thing, they ought to be all taken into consideration in construing any one of them." (v Bac. Ab., Statute (I) 3, p. 646; Stradling v. Morgan, Plowd. 206; Vernon's case, iv Co. 4.)
Passenger Laws.—Pardoning Power.

The office of a good expositor of a statute is "to make construction on all the parts together, and not of one part only by itself: *Nemo enim aliquam partem recte intelligeret possit, antequam totum iterum atque iterum perlegerit.*" (Lincoln College case, iii Coke R. 59.)

"Where there are different statutes in pari materia, though made at different times, or even expired, and not referring to each other, they shall be taken and construed together as one system and as explanatory of each other. So in the laws concerning church leases and those concerning bankrupts. And so I consider all the statutes providing for the four as one system relative to that subject." (Rex v. Loxdale et al., i Burr. 447; same case iv Bacon Ab., Statute (I), pl. 28, p. 467.)

"For the sure and true interpretation of all statutes in general, be they penal or beneficial, or restrictive, or enlarging of the common law, four things are to be discerned and considered. 1. What was the common law before the making of the act? 2. What was the mischief and defect for which the common law did not provide? 3. What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth? and 4. The true reason of the remedy. And then the office of all the judges is, always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the act, *pro bono publico.*" (Meydon's case, iii Coke R. 7; Magdalen College case, xi Coke R. 71, 72.)

It is not to be assumed that a general act for the advancement of learning or for the relief of the poor, or for preventing the engendering, introduction, or spreading of contagious and infectious diseases, shall be so construed and expounded that a by-path should be left open, through which to evade the necessary and profitable remedy, leaving the great and dangerous mischief unsuppressed.

The construction, by which the owner of the passenger steam vessel "New Orleans" would confine the statutes solely to
vessels propelled by wind acting upon sails, is repugnant to the rules of exposition, established and used by the sages of the law; it is made upon words culled out and separated from the body of the statute; it disregards the sense and meaning of the statute of 1847, and of the other statutes made in pari materia, constituting, together, one system; it would counteract, for the most part, the system of public policy devised by Congress for humanity and the public good; leaving the inhumanities and serious mischiefs, which Congress intended to remedy, unreressed, and continuing pro privato commodo: thus permitting the owners of steam vessels to make inordinate profits at the risk of the health and lives of passengers and others.

The statutes limit the number of passengers to be taken on board in proportion to the capacity of the vessel assignable to each passenger and appropriate to his use; if the height or distance between the decks be less than five feet, then twenty-two clear superficial feet on the deck to each passenger; if the height or distance between the decks be less than six feet, but not less than five, then sixteen clear superficial feet on the deck to each passenger; if the height or distance between the decks be not less than six feet, then fourteen clear superficial feet on the deck to each passenger; children, under the age of one year, at the time of embarkation, not to be taken into the computation. And there is another limitation, that the berths for the passengers shall be well constructed and not less than six feet in length, and not less than eighteen inches in width for each passenger.

Such is the effect of the act of February 22d, 1847, as amended by the eighth section of the act of May 17th, 1848, and the second section of the act of March 3d, 1849.

Vessels propelled by steam and employed in the transportation of passengers are, therefore, in my opinion, within the scope of those acts equally as much as vessels propelled by wind acting on sails.

II. Has the President of the United States the power to pardon the offences, which have been committed by the owners or masters of steam vessels in violation of the statutes before cited?

Vol. VI.—26
By the Constitution of the United States, (Art. II., sec. 2,) it is provided the President "shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment."

This power, whatever may be its nature, being vested by the Constitution in the President, cannot be restrained by any act of Congress.

What is a pardon? What is the extent of the power to grant it, or the cases in which it may be applied?

The Constitution itself contains no answer to these questions, —no explanation of the term "pardon."

To understand the meaning and extent of the power to grant pardons, vested in the President of the United States by the Constitution, we must have recourse to the meaning of pardons, established by common consent, custom, and use, antecedent to the formation of that Constitution.

In pursuing that inquiry, we may look, in the first place, to the powers of reprieving and pardoning, as exercised by the respective Governors of the several States, after the declaration of independence and before the formation of the Federal Constitution; and, thence, we shall be referred, in the second place, to the powers, in that respect, which had, upon the declaration of independence, been exercised by the King of Great Britain.

In the case of the United States v. Wilson, (vii Peters, 160,) the Supreme Court of the United States, after quoting the constitutional power vested in the President to grant pardons for offences against the United States, say:

"As this power had been exercised from time immemorial by the executive 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."

"A pardon is an act of grace, proceeding from the power, intrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed."
Legal authorities show that the power of exemption by pardon is limited, 1st, to offences committed, and cannot extend to offences thereafter to be committed, and 2, to those things which belong to the public, so as not to be extended to release and acquit things which are of the private rights and interests of individuals.

As to the first point, it is to be observed that if a pardon could be granted in advance for offences to be committed thereafter, it would include a power to grant indulgences to commit crimes and offences, to license vice, to dispense with the sanction of the laws, without good motive, without reason, but solely by arbitrary will. Whereas the power of pardoning is granted upon a special confidence that the administrator of it will spare those only from punishment, whose case, could it have been foreseen, the legislature may be presumed willing to have excepted out of the general rules, which the wisdom of man cannot possibly make so perfect as to suit the particular circumstances of each special case. (iii Bac. Abr., Pardon (A), p. 802; ii Hawk. P. C. chap. 37, sec. 8, p. 542.)

The mercy of the law may be extended to one who has already suffered a sufficient punishment, or under a belief that, though a part of the penalty of the law be remitted, the purposes of public justice will, nevertheless, have been accomplished.

A pardon is a deed to be accepted, shown, and pleaded by him to whom it is granted, (United-States v. Wilson, vii Peters, 160.) To every deed these things are essential to give it validity and effect: a grantor, a grantee, and a thing to be granted. A deed for a nonenity would be inoperative and void. A pardon for an offence not yet committed would be void. (Hawkins' P. C. Book ii, chap. 37, sec. 8 & 9, p. 542–3; sec. 28, p. 550.)

On the second point, all the books agree that a pardon cannot be made to release and acquit a private right or interest. Coke, in his Third Institute, chap. 105—of pardons—says: "By the ancient and constant rule of the common law, non potuerit rex gratiam facere cum injuria et damnum aliorum; quod autem alienum est, dare non potest per suam gratiam.

"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; and, if the action be given to the party grieved, the King cannot discharge the same.” (Third Inst. of pardons, ch. 105, p. 237-238; ii Hawkins’ P. C., of pardons, ch. 37, sec. 34, p. 558; of information qui tam, chap. 26, sec. 64, p. 392; xvii Viner, Prerogative (U. a. 7); what the King may pardon—(pl. 6, p. 40.)

If a man be bound in a recognisance to keep the peace, and the King pardons him or releases before the peace broken: this is null. (xvii Viner, Prerogative, (U. a. 7,) pl. 7, p. 40; ii Hawkins’, chap. 37, sec. 34, p. 554.)

The King cannot pardon nuisances while they continue unreformed, as not repairing bridges or highways, or diverting water-courses, because the subject has an interest. He may pardon fines for the time past, but not for the time to come. (xvii Viner, Prerogative, (U. a. 7,) pl. 15, p. 42; ii Hawkins’ P. C. 391, chap. 37, sec. 33; Third Inst. 237.)

By the statute of Westminster, 1st chap. 20, it is provided “for trespassers in parks and ponds that, if any be thereof attainted at the suit of the party, great and large amends shall be awarded according to the trespass, and shall have three years’ imprisonment, and, after that, shall make fine at the King’s pleasure, and then shall find surety that, after he shall not commit like trespass,” (Second Inst. 198.) “Thereupon it is adjudged that both damages and imprisonment concern the plaintiff, and therefore the King’s pardon cannot dispense with them; but the ransoms, the finding of surety, &c., are punishments exemplary, and concern the King, and therefore he may pardon them.” (Second Inst. 200, point 6; xvii Viner, Prerogative, (U. a. 7,) pl. 16, p. 42; ii Hawk. ch. 37, sec. 29, p. 551, sec. 39, p. 555.)

Bearing in mind the restrictions before mentioned, and others falling within those general principles, it may be laid down as a general rule, conceded in all the books, that the King “may
pardon any offence whatever, whether against the common law or a statute, so far as the public is concerned in it, after it is over; and consequently may prevent a popular action on a statute by pardoning the offender before the suit is commenced; but it seems that he cannot wholly pardon a public nuisance, while it continues such, because such pardon would take away the only means of compelling a redress of it; yet it is said that a pardon will save the party from any fine to the time of the pardon.

"But it seems agreed that he can, by no previous pardon, license, or dispensation, make an offence punishable, which is malum in se, or against the law of nature or the public good; and that a pardon of this kind, tending to encourage the doing of evil, which it is the chief end of government to prevent, is plainly against reason and the common good, and therefore void." (Bac. Ab., Pardon (B), p. 406; ii Hawkins' P. C., chap. 37, sec. 38, p. 550, and sec. 33, p. 553.)

A pardon is an act of mercy, which may be granted before suit, indictment, conviction, or attainder, or afterwards. (Third Inst. chap. 105, p. 233; ii Hawkins' P. C. pardon, chap. 37, s. 9, p. 543; United States v. Wilson, vii Peters, 162.)

A pardon may be conditional. The President may extend his mercy on whatever terms he pleases, and may annex a condition, either precedent or subsequent, on the performance of which the validity of the pardon depends. The offender may accept or not at his option; for "the condition may be more objectionable than the punishment inflicted by the judgment." (ii Hawkins' P. C. chap. 37, sec. 45, p. 557, and sec. 59, p. 559; iii Bac. Ab., Pardon (E), p. 807; United States v. Wilson, vii Peters, 160-161; Coke Litt. 274 b.)

t may be pleaded in bar of an indictment or in arrest of judgment, or after sentence, (iv Blacks. Comm. 347.)

That the President, therefore, has power, by the Constitution, to pardon or remit the fines, penalties, and forfeitures which have been incurred by the master or owners of the "New Orleans," upon such conditions and terms as he may prescribe, is, in my mind, clear of doubt.

If the prosecution, in this case, were for the offence described
Unadvertised Contracts of the Departments.

in the second section of the act of February 22d, 1847, which forfeits the vessel and provides for the distribution of the value as if she had been seized and forfeited under the revenue laws, then it would present the question, whether the President has authority to remit, by pardon, a penalty accruing to individuals, and also whether he should interpose the pardoning power in cases which admit of application to the Secretary of the Treasury. But these questions do not arise here, and it will be time enough to decide them when they shall be distinctly presented for consideration.

I have the honor to be, very respectfully,

C. CUSHING.

The President.

Unadvertised Contracts of the Departments.

Sensible, if the provisions of law which require certain contracts to be advertised are disregarded, that the contracts, while they remain executory, and without commencement of performance, are subject to be rescinded.

ATTORNEY GENERAL’S OFFICE,

March 24, 1854.

Sir: Your letter of the 20th instant presents the following question:

A contract was entered into, on the 25th of May, 1852, between the Treasury Department and Mr. Charles Knap, for the supply of cast-iron and wrought-iron work for the custom house at Charleston, in the State of South Carolina.

The contract provides, that the said iron-work shall be delivered from time to time as ordered. None of it has yet been required or furnished. Of course, the contract was, and remains, wholly executory.

You say “This contract appears to have been made without previous public advertisement,” and inquire: “Are the United States bound by a contract so made?”

I have looked through the successive annual appropriations for the construction of this custom house, beginning in 1847; and terminating in 1853, without finding connected with those