EARLY HISTORY OF THE OFFICE OF THE ATTORNEY GENERAL
OF THE UNITED STATES

A Thesis
Presented to the Faculty of
The Rice Institute in Partial Fulfillment
of the Requirements of the Degree of
Doctor of Philosophy

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I. THE FEDERALIST ATTORNEYS GENERAL.

Washington's choice of Randolph as Attorney General was not based upon the latter's supremacy in the legal field. The President, it is true, wanted a lawyer of the first class but in Randolph's case his selection took place because Washington had known him for many years, had been on terms of intimacy with him and wanted an old friend among his advisors. Randolph was a good lawyer with one of the most profitable practices in Virginia, so profitable, in fact, that it was a real sacrifice to give it up and go to New York, but it would be stretching the truth to say that he was the best lawyer in the country at the time.

The office of the Attorney General dates from 26 September 1789 when Washington sent Randolph's name to the Senate along with those of Thomas Jefferson as Secretary of State and Samuel Osgood as Postmaster General. While these nominations were promptly confirmed it was not until 2 February 1790 that the office began to function. Randolph did not receive notice of his appointment until early in October. He accepted immediately and made preparations for leaving his home and his law practice.

This appointment did not surprise the politically minded people of the country or of Virginia especially. His close friendship with Washington was well known and he was a member of one of the best families of the state. When he urged the adoption of the Constitution after being one of the two members of the Convention who had refused to sign it, it was said by Randolph's enemies that he had changed his mind because he was to receive some office under the new government.

Randolph was born in Williamsburg, Virginia in 1753. After his graduation at William and Mary college, he began the study
of law in the office of his father, John Randolph and was soon admitted to the bar. All the circumstances were favorable to his success in his chosen profession and in the allied field of politics. In his father's home he met all the prominent men of Virginia and soon numbered among his friends Washington, Wythe, Pendleton, Jefferson, Henry Tucker and Lee.

The struggle which resulted in the American Revolution caused a division in the Randolph family. John Randolph maintained his loyalty to the British Crown while his son was an active patriot. The fact that Edmund Randolph, at the risk of being disinherited by his father, opposed the mother country gained many friends for him among those of the patriot party.

Randolph enlisted in the army and went to Cambridge, the center of military activity at the time. General Washington appointed him an aid-de-camp, in which position he served until the death of his uncle, Peyton Randolph, called him back to Virginia. While he nominally maintained his position on Washington's staff he actually saw no more military service.

Randolph was expected to maintain the important place in Virginia politics which his uncle had held. This required considerable effort for a young man not yet out of his twenties. His first office was that of member of the famous Virginia Convention of 1776 and he was the youngest man to occupy a seat in that body which controlled the destinies of the colony as the royal government was a thing of the past. A government was established, delegates to the Continental Congress were elected and the war was carried on. But everything was done in a safe and conservative way so that the apprehensions of the timid were quieted.
Wythe, Jefferson, Nelson, R. H. Lee and T. L. Lee were elected to the Continental Congress, Patrick Henry was made governor and Randolph became the first Attorney General of the new state. While holding this office he was elected to Congress where he served for two years, performing the duties of both positions.

After he had been elected governor in 1786 he became much interested in the plans for strengthening the national government with the result that he was elected as one of the Virginia delegates to the Constitutional Convention which met in Philadelphia in 1787. There he submitted the "Virginia Plan" and in other ways played an important part. But because he saw so many defects in the Constitution he was among the few who refused to sign it.

Randolph, however, could not resist the efforts of Washington in behalf of the new form of government and when the Constitution came before the Virginia Convention he voted for it. This is one of the evidences that Randolph changed his mind frequently, argued on one side and voted for another. There is little doubt but that there is much truth in that contention, though Randolph's biographer, M. D. Conway, goes to great length to disprove this.

Randolph denied the charges of Patrick Henry and the other opponents of adoption, that he was expecting an office under the new government and there is no evidence to show that any offer of the kind had been made. In addition the new government could offer no office which would bring him anything except honor and that at a great financial sacrifice. His leadership of the bar of Virginia was established and his income from this source great. In addition moving to the national capital would mean
that he would be unable to manage his business affairs in person. His manner of conducting his affairs required his presence if the business was to remain profitable.

An example of this is shown in the way he managed his slaves. Unlike many Virginia slave owners, Randolph refused to sell any of his slaves' children. Being unable to use them all he hired them out to other plantation owners. To do this profitably required his personal attention which he could not give if he accepted any position requiring his absence from the state.

The "Union or No Union" argument which influenced many members of the Virginia Convention to vote for the adoption of the Constitution was not really a valid one if the truth had been known. When the Virginia body met, eight states had ratified and one more ratification would mean that the new government would be established. However, four days before Virginia approved the fundamental law New Hampshire had swung into line. If this fact had been known it is doubtful whether the efforts of Washington and Marshall would have been successful. In spite of the fact that Virginia was not the ninth state to ratify, her action was important because the Old Dominion was one of the largest and most influential states in the Union at the time. Her action helped the cause of the Constitution in other states where her influence was an important factor.

A number of circumstances delayed Randolph in accepting the office of Attorney General. His uncle, Peyton Randolph, had bequeathed him some property but it was heavily mortgaged. The necessity of paying these debts took most of Randolph's ready money. He had also purchased some land which had decreased in value after he bought it. He also wanted to remain in the
Virginia legislature until the revision of the state laws was completed, a work on which he spent much labor. In order to obtain enough money for his immediate needs he was forced to mortgage one of his farms to William and Mary college for twelve hundred pounds, Virginia currency.

The salary of the Attorney General was only fifteen hundred dollars. The Senate had fixed it at two thousand but the House of Representatives had reduced it in order to punish Randolph for his Federalism. In spite of the fact that Randolph reduced his expenses to as low a figure as possible he found that he could not live on his official income. In March 1791 Congress increased his salary to nineteen hundred dollars and Randolph made small amounts from law students who studied with him.

One of the objections to the Constitution was that of Mason who called attention to the lack of a "constitutional council" for the President. Washington created such a council by calling together the heads of departments, though the name "cabinet" was not commonly given to it until the time of Andrew Jackson. Washington consulted his department heads frequently on questions of importance and sometimes took their advice even when they disagreed with him.

In this group at first Hamilton had the most influence. This was due to the fact that he was very free in expressing his opinions while Jefferson was timid. Knox always agreed with Hamilton. Randolph soon developed a boldness which was a match for that of Hamilton. He sometimes changed his opinions while the discussion was in progress. This gave rise to Jefferson's complaint that Randolph argued on one side and voted on the other, which meant that he argued on Jefferson's side and voted for the Hamiltonian contention. When he did Hamilton's side had the majority. As time went on this complaint of Jef-
ferson's became more and more frequent and bitter, as is shown in his diary. He remarks that with Randolph, "one side gets the oyster and the other the shell", which he says meant that the "Republicans and the French got the shell".

The law which established the Supreme Court and the various district and circuit courts also provided for the appointment of an Attorney General. His qualifications were described as "a meet person, learned in the law". His duties were to prosecute and conduct all suits in the Supreme Court, in which the United States should be concerned and to give advice and opinions upon questions of law, "when required by the President of the United States" or, "when requested by the heads of the executive departments", touching any matter which might concern their departments.

With this general instruction to guide him, Randolph had to create his office. He was well equipped for the work in hand. He had a thorough knowledge of both English and French law. His friend, Jefferson, had sent him many books from Paris during the stay of the latter in that city.

Randolph had also to adapt the entire Judicial system to its work. The Judiciary act, introduced by Ellsworth, had been passed in 1789 but it had not been tested and needed much adjustment before it would run smoothly. It had already created enough friction to cause Congress to request Randolph to revise it. In his report he made several suggestions for changes in the Act, some of which were adopted.

In regard to the appeal of cases which involved questions in regard to the Constitution, federal laws or treaties, from state courts to the Supreme Court, Randolph in his report to Congress said he doubted the constitutionality of such action.
In its place he recommended that such cases be heard first in the federal circuit courts and that appeals should be made from them. In the event that the case had been started in a state court it could be transferred to the proper federal court. This suggestion was not acted upon but later in the cases of Martin vs. Hunter's Lessee (*Wheaton* 305) and Cohens vs. the state of Virginia (*Wheaton* 604), the Supreme Court held that appeals from state courts were allowed by the Constitution.

Another of Randolph's suggestions which was not acted upon at the time but which was taken up later, was that the judges of the Supreme Court should not be forced to sit as Circuit judges. He also proposed that Congress should provide the federal courts with a law code which would include a uniform practice and procedure in the administration of justice and a body of law which would constitute a rule of decision upon the rights of litigants. Randolph said of the proposed code, "It would probably be pointed to the following leading subjects: first, the provisions which already exist by the Constitution and the federal laws; second, such laws as may still be necessary for the further execution of the Constitution and the completion of the federal policy; third, the common law and the statutes; and fourth, the laws of the several states as involved in questions arising therein". No action, however, was ever taken on this suggestion.

To many Americans the collection of debts owed to British citizens before the Revolution was a matter of vital importance. According to the Treaty of Paris in 1783 British merchants were to be allowed to collect these debts but under the Articles of Confederation the national government had been too weak to
assist in carrying out this provision.

With the advent of the federal government the British creditors renewed their efforts to recover their money. If they succeeded it meant financial ruin to their American creditors. Several states, in their efforts to obstruct this work of collection, had passed laws which conflicted with the provisions of the treaty and in this way became parties to suits which by this time were coming before the Supreme Court for judgment.

It was a case of this kind in which the Supreme Court's decision caused great excitement and later an amendment to the Constitution. This was Chisholm vs. Georgia (2 Dallas 419).

Randolph knew that he was on the unpopular side but he went into the matter deliberately. He had the case postponed so that he could not be accused of undue haste; but, by this course, he gave the opposition time to stir up public sentiment against the right of an individual to sue a state.

When the case was argued Randolph contended that, under Article III, Section 2 of the Constitution, states could be sued. He asked: "Are states, then, to enjoy the high privilege of acting thus eminently wrong without control? The Common Law has established a principle that no prohibitory act shall be without its vindicatory quality, or, in other words, that the infraction of a prohibitory law, although an express penalty be omitted, is still punishable". He then pointed out that other prohibitions in the Constitution, such as that against the passage of ex post facto laws, would be useless unless the states could be sued. Justice demanded that the
citizens of one state should be allowed to use the federal courts in order to secure satisfaction for injuries inflicted by another state. If this was not done, said Randolph, it invited the settlement of such cases by force.

He then cited the law of nations showing that the prince of one state could be summoned before the court of another, if he owned property there. This showed that calling a state before the bar of justice would not compromise its dignity or interfere with its sovereignty.

Randolph's final point was that this amenability of a state was not weakened by the want of a special provision in the Constitution for execution since there was no such provision even where states were in litigation. He admitted, however, that after judgment was rendered against a state the execution of the decision would rest with the governor.

Randolph's reasoning was adopted by the court and it was established that a state could be sued. Chief Justice Jay, in his opinion, used much the same language as had Randolph and in some places the exact words. He added that at the same time that Chisholm vs. Georgia was being argued the state of Georgia was suing two citizens of South Carolina and pointed out the correlation between the right to sue and the liability to be sued.

This decision, however, did not end the affair. The Eleventh Amendment to the Constitution was the direct result of Randolph's success in this case. By this amendment suits started by individuals against states were forbidden except when the states gave their consent. In the February, 1794 term of court judgment was rendered for the plaintiff and a writ of enquiry awarded. The writ, however, was not sued out and executed, so that this case, along with all other suits against states; was
swept from the records of the court by the unanimous decision of the judges in the case of Hollingsworth et al vs. Virginia, which was handed down in the February term, 1798.

Randolph's influence in Washington's council was considerable. In several instances his opinion was preferred by the President over those of the other heads of departments. An instance of this preference was that of the case of Citizen Génet, the French minister. Génet had fitted out privateers in American ports and the British minister had complained. He also demanded the restitution of some ships which had been captured by the French but which were at the time in the harbor of Philadelphia. Washington asked all his advisors for their opinions but preferred Randolph's.

In this paper Randolph said that if it were a question of prize or no prize, our treaty with France disposed of that when it prohibited officers of the United States from "making an examination concerning the lawfulness of such prizes". In other words, he said, neutral nations closed their courts to such cases. He added that if a privateer's commission was suspended while he was in an American port, it became good as soon as the ship reached the high seas. If the commission was defective, that fact was to be determined by the rules of the British admiralty, not by the United States courts. The extent of the action demanded of the United States would be to remonstrate with Genet and to punish American citizens who became members of the crew of the privateers. The United States, he said, could not allow foreign nations to impose upon her rules for the handling of such cases.
Due to the fact that Randolph alone of Washington's council had no political ambitions he was given all the work in which there was a risk of unpopularity. Jefferson especially wished to avoid doing things which would alienate any portion of the people from his support. Hence Randolph was commissioned to write what is known in history as Washington's Neutrality Proclamation, but which did not contain the word "neutrality". Jefferson was supposed to write this state paper, as it was in the province of the Secretary of State, but he turned the work over to Randolph.

Following soon after came Hamilton's circular to all Treasury agents, warning everyone against infractions of our neutrality. This led to the arrest of two men, one of whom was brought to trial, for serving on a French privateer. Randolph maintained that this man, Henfield, should be punished. Henfield, however, was acquitted due to his claim that he was ignorant of the fact that he was committing an illegal act. His service in the American army during the Revolution also assisted him with the jury. The court, however, declared that such conduct was a violation of our treaty with Great Britain. As treaties, according to the Constitution, were part of the supreme law of the nation, citizens were warned that such offenses would be prosecuted. Genet was much annoyed by Henfield's arrest and had demanded his release.

Jefferson later criticised Randolph's draft of the Neutrality Proclamation, calling it "pusillanimous", though he had given it his approval at the time of its issue. He claimed that he had read it over carelessly, only to make sure
that it did not contain the word "neutrality". This statement, according to Randolph's biographer, M'DiConway, does not sound true, as the proclamation was brief and could have been read carefully without much time or trouble. This statement, however, was made at a time when Jefferson was busily engaged in weakening Randolph's influence with his Virginia friends.

This effort on the part of Jefferson went further than just criticising the Proclamation. He wrote that Randolph was not fitted for the position he occupied, that he lacked stability of character. Randolph, on the other hand, never answered these statements and perhaps never knew of them. On the surface, at least, he remained a friend of Jefferson's.

Few of Randolph's official opinions have been preserved. This statement applies to all the Attorneys General up to the time of William Wirt, who collected all the opinions of his predecessors which were in existence. With these for a beginning he started a series which is quite complete after 1817. However we know that Randolph gave more opinions than those in the official collection. The diaries of Washington and Jefferson mention some which are not included.

Another reason may be assigned for the scarcity of Randolph's opinions. In a large number of instances in the early days of his administration Washington consulted John Jay, the Chief Justice of the Supreme Court, on legal questions instead of the Attorney General. In other words, the Chief Justice was the first Attorney General as far as opinions were concerned. In 1793 Washington appealed directly to the federal judges for advice but they declined to answer the questions submitted to them. The opinions of Jay, as well as many of those of Randolph, were given verbally and no record made of them.
Randolph, however, conducted the legal work of the government before the courts.

Even in the opinions which have been preserved there is a lack of completeness which we find in the later ones. No account of the circumstances of the case, on which legal advice was asked, is given in the record. If the correspondence of the office had been preserved this deficiency could have been remedied; but when William Wirt became Attorney General he reported that he found no record of the opinions rendered and no letter books. Hence we have only the bare statement of what the Attorney General believed to be the law on the subject.

Financial affairs were the subject of several of Randolph's opinions. He was asked by the Secretary of the Treasury to determine the extent of the powers of the commissioners in charge of the subscriptions of stock for the first Bank of the United States. He ruled that the commissioners had no power to superintend the election of the bank directors or to interfere with the election in any way. Their duties ended, he said, when the required $400,000 had been subscribed and a meeting of the stockholders called. (I, 19)

Randolph also ruled against the payment of interest on certificates issued in accordance with the act of Congress passed 4 August 1790 but refused to discuss the wisdom of the act. He added, "It is not for me to estimate the merit of any scheme of finance; my office is to ascertain the sense of Congress". The courts would uphold his view of the law, he said, because to do otherwise would embarrass the entire financial system. (I, 17)
According to the provisions of the Funding Act by which the debts of the states were assumed by the national government, subscriptions for the loan, which the act authorized, could be made in state securities, both the principal and the interest being counted towards the subscription. When some enterprising financiers tried to use state securities which had been redeemed, for that purpose, Randolph decided against the practice. The securities for which the act provided were evidences of a state's indebtedness to the individuals presenting them. Those which had been redeemed, said Randolph, had been paid and were no longer useful for that purpose. (1,25)

Foreign affairs brought forth several written opinions from Randolph though most of this kind seemed to have been given orally. The most important of those included in the bound volumes of the Opinions of the Attorneys General is that of the case of Thomas Pagan. Randolph's attention was called to this case by Jefferson, who sent him a letter which he had received from George Hammond, British minister to the United States.

Pagan's privateer had captured 25 March 1783, an American merchant ship, the Thomas, owned by Stephen Hooper of Newport. Pagan took his prize to a Nova Scotia port where a prize court ordered it restored to its original owner on the grounds that it had been captured after an armistice had been signed. He then appealed his case to the Lords of Appeals in England who reversed the decision of the Nova Scotia court.

In 1788 when Pagan was living in Massachusetts Hooper sued him in the courts of that state and won a judgment of thirty-five hundred pounds, which the state supreme court affirmed. When he refused to pay Pagan was thrown into prison from which he appealed to the British minister. Hammond asked that Pagan
be released on the grounds that the Massachusetts supreme court refused to grant an appeal to the United States Supreme Court.²

Randolph refused to grant the request of the British minister. He said that it was not proper to appeal to the executive department of a nation until the case had been carried on to the highest court. It was not necessary for the Massachusetts court to allow an appeal, it could have been taken in spite of its refusal. The fault in the case rested with no one except Pagan or his lawyer. Randolph added that Pagan's case was weak as was shown by the decision of the prize court in Nova Scotia against him. His appeal was successful because the English court did not understand the facts. If Pagan still thought he had not obtained justice, he could get a writ of appeal from the Federal Supreme Court, which would hear his case. (1, 25, 30)

A definition of what constituted neutral waters was included in an opinion which arose because of the seizure of the French ship Grange by an English warship. The capture took place in Delaware Bay. Randolph maintained that all of this bay which was inside of the capes, Henlopen and May, was under the jurisdiction of the United States in spite of the fact that part of these waters was more than five miles from shore. This was due to the fact that Delaware Bay was a "closed sea" because it was virtually surrounded by the territory of the United States. Therefore, in as much as the Grange had been captured in the waters of the United States, a neutral nation, it should be restored to its former owners. (1, 32)

One opinion in regard to slaves was included in Randolph's work. In it he maintained that carrying away slaves from some place outside of the United States might be piracy or it might be only a violation of the municipal law in regard to theft.
The status of crime depended upon the place from which the slaves were taken. If they were stolen from their owner while he was on land, the crime depended on the local laws but if they were taken from the owner while on the seas it was piracy. The facts, as cited by Randolph, were not clear on this point. This case arose when Captain Hickman brought to Savannah some slaves which were the property of citizens of Martinique. Randolph advised that the United States attorney for the District of Georgia should be instructed to start criminal proceedings against Captain Hickman but, if he found the evidence insufficient to convict, to resort to a civil suit. The main object of the action, said Randolph, was to cause the slaves to be returned to their owner.

In 1794 Jefferson resigned as Secretary of State and Randolph was appointed to fill the vacancy. He held the office less than a year but it was a period full of excitement both for himself and the country. Jay's treaty had been completed and when brought back to America, it met with violent opposition led by some of the most prominent men of their communities. Randolph was opposed to the ratification of the treaty but before the matter was settled he had retired from the cabinet under circumstances which were far from favorable.

Randolph's reputation was seriously attacked in a communication sent by the British minister to the Secretary of the Treasury, Wolcott. This attack consisted of a letter from the French minister, Fauchet, to his government, possession of which had been gained when a British warship captured a French merchant ship carrying official correspondence. This letter contained an account of a conversation between Randolph and the French minister which was improper in the extreme. Wolcott gave the letter to Washington as soon as he returned from Mt. Vernon, from which place he had
been hastily summoned. Washington gave Randolph a copy of this letter and asked for an explanation. Without a word of explanation Randolph sent in his resignation.

Following his retirement from the President's council Randolph returned to Virginia where he spent the rest of his life practicing law and writing. He held no other political office. He died 12, September 1813.

WILLIAM BRADFORD.

When Randolph was promoted to the position as Secretary of State, President Washington appointed William Bradford of Pennsylvania, who had attracted the President's attention when he was a justice on the Supreme bench of Pennsylvania. Aside from this change the cabinet was the same as at the beginning of the administration with the exception of the appointment of Timothy Pickering as Postmaster General in place of Samuel Osgood. While the office of Postmaster General was not considered important, the introduction of Pickering marked the beginning of his connections with the national government which did not end until near the end of Adams' administration when he was dismissed from the office of Secretary of State.

Bradford was born in 1755, the great-grandson of the William Bradford who introduced printing into the middle colonies and the son the "patriot printer of 1776". He was educated at Princeton where he received his A. B. degree in 1772 and his master's in 1775. The following year he also spent at Princeton listening to Dr. Witherspoon's lectures on theology in order to familiarize himself with the lecturer's logical method.

Bradford then began the study of law under the direction of Edward Shippen, afterwards chief justice of Pennsylvania.
These studies were interrupted by the war. While not inclined towards a military life he enlisted along with his father in the Continental army. From the rank of private he was soon promoted to be major of brigade under General Roberdeau and later was made captain in Colonel Hampden's continental regiment. On April 10, 1777 Congress elected him muster-master general of the army with rank of the/colonel. He saw service at Valley Forge, White Plains, Fredericksborough and Raritan but poor health compelled him to resign his office in April, 1779.

He then resumed his legal studies and the same year was admitted to the Pennsylvania bar. He located at Yorktown but had practiced only a year when, through the efforts of Joseph Reed, president of the state, he was appointed attorney general of Pennsylvania. He held this office for eleven consecutive years through several administrations.

Associated with Joseph Reed, James Wilson, and J. D. Sergeant he represented Pennsylvania in a dispute with Connecticut over the Wyoming valley lands before the Congressional Commission. Pennsylvania won the decision. In 1791 he was appointed justice of the state Supreme court by Governor Mifflin from which position he was appointed to office under the national government.

One of the most important matters entrusted to Bradford during his short term as Attorney General was the settlement of the trouble in western Pennsylvania in regard to the tax on whiskey. He was a member of the commission sent to Pittsburgh in an attempt to make a peaceful settlement of the affair. When this mission failed to accomplish its object, Washington issued his proclamation calling for the use of the army to enforce the laws.

Bradford was ill at his home when Randolph's indiscretions with the French minister first became known, but his presence was
considered so necessary by Wolcott, newly appointed Secretary of the Treasury, and Pickering, that he was summoned to the capital. There he assisted in writing the letter to Washington telling him of the discoveries concerning his Secretary of state. The letter caused Washington to cut short his visit to Mt. Vernon in order to take charge of affairs.

Bradford's illness was increased by this journey and the work which he was compelled to do at the time and his death followed shortly after.

Bradford's most permanent legal work was a report on the criminal code of Pennsylvania in 1793, which was made part of the records of the state senate and led to the passage of the act of 22 April 1794 which substituted "imprisonment at hard labor" for the death penalty in all capital crimes except first degree murder. This report was later published and had much influence in the similar revisions of the criminal codes of other states.

During Bradford's short occupancy of the office of Attorney General, judging from the small number of opinions which have been preserved in the official records, foreign affairs took most of his attention. Neutrality, the rights of consuls, and the authority of our courts over citizens of foreign countries, were some of the subjects on which Bradford gave opinions.

Acts of hostility against nations with whom the United States enjoyed friendly relations, were offenses against the laws of this country if they were committed within our borders or on the high seas but not if they were committed within the territorial limits of some other nation. In the latter instance the offender, having forfeited the protection of the United States, would be subject to the courts of the country in which the offense
was committed. This opinion was given by Bradford as the result of an appeal by some American citizens who, together with some French subjects, made an attack upon a British settlement on the coast of west Africa. As this place was neither in the United States nor on the high seas, these American citizens could not expect assistance from our government.

Bradford's opinion in regard to the power of American courts over foreign warships was later overruled by Caleb Cushing, who ruled that such ships possessed extraterritoriality. Bradford, on the other hand, ruled that a writ of habeas corpus could be served on the commander of a British warship, which was at that time in New York Harbor, for the purpose of securing the possession of an American citizen who claimed that he was being unlawfully detained. The Attorney General admitted that he was unable to find the record of a case where this right had been exercised by the British courts, but quoted Bourn's case, in which a British court decided that a writ of habeas corpus was "agreeable to all persons and places". He especially stated that warships did not possess extraterritoriality, such as had ministers' homes, but he added that even ministers were not allowed to shelter criminals or to imprison innocent persons. (1, 47)

When an American citizen used the courts of another country he must abide by the rules of those courts and the United States could not interfere with their actions. This opinion was given in the case of a Mr. Green, a British subject, who had become a naturalized American citizen. Green had entered into a contract with some British merchants of Ostend. When they failed to perform their part of the contract, he brought suit against
them in the Court of the King's Bench, where his case was thrown out of court on the grounds that such contracts could not be legally entered into by British subjects. Green, being an American citizen, objected to the decision and appealed to the United States government. Bradford said that Green, as plaintiff, had selected the court in which the case was to be heard and must abide by the decision. (1,53)

Suits against foreigners did not call for the intervention of the federal government and unless the alien failed to receive justice, he could not expect the government to interfere and stop the legal proceedings. Such a situation arose when the former French governor of Guadaloupe, while on his way to Europe, was held by the order of a Pennsylvania court because he had, while governor, seized a ship belonging to an American citizen. This American was suing him for the value of the ship. Bradford ruled that the former governor had no more rights than any other foreigner in regard to suability. If the seizure of the ship had been an official act, he could prove this fact to the court, with the assistance of the French minister, and, without doubt, the court would decide in his favor. If after the case had been decided, he thought he had not obtained justice, his appeal would be investigated. (1, 45) Bradford made the same ruling in the case of Captain Cochran, who was sued by a man named Moss for carrying away a slave. The fact that Captain Cochran had a good defense was no bar to legal action but it would be of great assistance to him in winning the decision of the court. (1, 49)

A consul of foreign country was not a public minister, said Bradford, and was not entitled to the privileges of such an officer. Therefore rioting in front of the house of a consul
and forcing him to surrender certain persons was not an offense against the United States and could not be punished by the federal courts. Bradford advised that the offenders be brought before the state courts. (1, 41)

United States marshals were not required by law to execute the sentences of French consuls arising out of the treaty between France and the United States. This opinion had been given by federal district attorney but was approved by Bradford. (1, 43) The British minister was subject to many attacks by American newspapers of which he complained bitterly to the government. He claimed that Greenleaf's New York Journal had published libellous material concerning him and Bradford was called upon for an opinion in regard to what was legally libellous. He defined such publications as any which tended to make a person ridiculous or which would expose him to contempt and hatred. He added that in case of public ministers the law of nations would strengthen the municipal law in the prosecution of persons guilty of such an offense. The Journal had referred to Hammond as "the British Solomon" and "incendiary jack-in-office". (1, 52)

Public land had not yet become an important question with the national government during Bradford's time as we find only one opinion in regard to it. In this Bradford called attention to an omission in the land law of 3 March 1791. In an opinion concerning land which had been granted to the inhabitants of Vincennes, he said the law directed the governor of Indiana territory to survey the tracts of land to be given but made no provision for the issue of the patents. Until this was provided for the patents could not be issued. (1, 44, 45)

Bradford gave one opinion which was reminiscent of his efforts to avert the Whisky Insurrection. After the rebellion had been suppressed it was suggested by General Morgan that
one of the insurgents, John Mitchell, be pardoned before his trial took place. Bradford admitted that this could be done but advised against it. He said that Mitchell had been one of the leaders of the revolt, had assisted in the burning of the house of General Neville, and had robbed mails. He had a bad reputation in his community. Bradford recommended that Mitchell be tried and convicted even if clemency was extended later. He said it would have a good effect on the neighborhood in which Mitchell lived. (V, 687)

CHARLES LEE.

If we are to judge by the number of prominent men who declined such positions, the offer of even a high office under the federal government in the early days of the Republic was not considered a great honor. The result was that Washington was compelled to appoint men who were not prominent and in many instances were not satisfactory. His first cabinet was made up of the foremost men in the country but, when it broke up, Washington was forced to offer cabinet positions to several men before he could obtain an acceptance.

One important reason for these refusals was that the salaries paid were so low and living expenses so high that cabinet members found it difficult to balance their personal budgets unless they had independent incomes. Few of the desirable men were so fortunate and accordingly many of these important positions were vacant or occupied by men holding ad interim appointments, usually other cabinet officers.

The original cabinet of Washington had all resigned by the time that Charles Lee was appointed Attorney General. Jefferson had been succeeded by Randolph as Secretary of State and he
in turn was followed by Timothy Pickering, who accepted the office much against his will as he correctly estimated that he was not fitted for the position. Hamilton had relinquished his place to Wolcott and Henry Knox had wearied of public life and the burden of years, being followed first by Pickering and, when he was promoted to the State Department, by James McHenry. No one would call a cabinet composed of Pickering, Wolcott, and McHenry a group which represented the highest ability available in the country; and the addition of Charles Lee did little to strengthen it.

Lee was certainly not an outstanding lawyer. In fact for the five years previous to his appointment he had served as the naval officer for the Potomac district and therefore had practiced law.

Lee was not Washington's first choice for the position. It was offered to John Marshall and probably to several other men, all of whom refused it. The salary was at that time $1,900 a year but before the end of Lee's career in the office it was increased to $3,000. This action was taken by Congress in 1799, but with the limitation that the increased salary was to be continued for only three years.

Lee was born in Fauquier county, Virginia, in 1758, the son of Henry Lee. There is no record of his education other than that he studied law in Philadelphia in the office of Jared Ingersol. He was admitted to the bar in that city but soon after returned to his native state where he developed a fair practice. He entered politics but received little recognition. He served several terms as a member of the Virginia assembly but when the Constitution went into effect, he was appointed to a naval position which he held until 1795 when Washington
made him Attorney General.

In this office he seems to have given satisfaction as he not only served during the rest of Washington's administration but all of Adams' and after Pickering's dismissal as Secretary of State carried on the duties of that office until Marshall arrived.

His experience as Attorney General and the additional legal reputation it gave him, seems to have assisted his law practice. After he retired from office in 1801, he resumed his legal practice and was one of the lawyers representing Justice Chase when he was impeached. Henry Adams says that he had two advantages for this position in that he was not only a lawyer but a politician.

Politically, however, he soon saw the error of his ways and joined Jefferson's party. Jefferson, who believed in rewarding converts, offered Lee several positions under the federal government but all were respectfully declined. Jefferson is said to have offered him the position of Chief Justice of the Supreme Court, if and when Marshall was removed. At the time it was expected that Marshall's days on the federal bench were numbered. Lee died in 1815.

Charles Lee was Attorney General for more than five years but the number of opinions given by him, which have been preserved, is small. The most important subjects included in this number are foreign relations, especially with England and France and the rules for the disposal of prizes captured at sea.

According to Lee, the United States and France were at war in 1798 while the trouble between the two nations was at its height. (1, 84)

Lee agreed with Bradford and disagreed with Cushing that
it was lawful to serve legal processes on persons who were aboard foreign warships in American harbors. This opinion was given as the result of an attempt to serve a legal document on Captain James of the British ship Chesterfield. Captain James not only refused to accept service but attempted to throw the legal officer into the water by removing the gang plank while he was leaving the ship. Lee said that both the laws of the United States and international law provided that legal processes could be served on foreign warships while in port. He quoted Vattel and Martens in regard to international law and the act of 5, June 1794 which expressly stated that legal processes could be served on persons aboard foreign warships and authorized the use of the army and navy to enforce such service. (1, 47, 87)

British creditors were having trouble collecting money from their American debtors and the British ministers complained of the obstructions being placed in the way of such efforts. He said that local officials had refused to allow the creditors to have official documents which were necessary to prove their claims. The treaty between the two nations had provided that these creditors should have every opportunity for collection. When the matter was placed before Lee, he wrote that he was greatly surprised that such conditions existed and suggested that a law be passed compelling officials to furnish the necessary documents and forcing witnesses to testify in civil actions for the collection of the debts. (1, 82)

The rough-and-ready character of American newspapers continued to annoy foreign ministers who complained to the federal officials. The Spanish minister, Yrujo, was the offended person in the instance which called for Lee's advice.
He claimed that some letters written by Philip Yatio, published in William Cobbett's newspaper called Porcupine's Gazette had reflected on the King of Spain and his representative in the United States. The letters had charged that the Spanish minister had committed some offense against the law. Lee agreed that the publication was libellous and added that it was the duty of the government, not individuals, to take action in case these charges were true. (1, 71)

Yrujo also got into trouble later when he sent a copy of his letter to the president to the proprietors of Porcupine's Gazette for publication. Lee said that in doing so he was guilty of contempt of the United States and should be called to account for it. A foreign minister, said Lee, must confine his official dealings to the proper officers of the federal government. If he had anything to communicate to the people of the United States, it must be done through the State Department, and not directly through the newspapers. While, in Lee's opinion, Yrujo's letter should not have been published, he did not think the editors of the journal were guilty of any offense in doing so. (1, 74)

The right of a neutral nation to sell supplies to belligerent nations was affirmed by Lee. The neutral nation, however, could close its markets if it saw fit, it was not compelled to sell to belligerents but if it sold to one, it must sell to both countries at war. Otherwise the nation would cease to be neutral. A citizen of a neutral country, serving on the ship of the same country, which was engaged in transporting contraband goods, was not liable to punishment at the hands of either of the belligerents but he could be punished by his own country if her laws forbade such transportation. Seamen might be considered to be citizens
of the world, said Lee. They served on ships of various nations because they must work where they could and they should not be punished for something which was part of their occupation. (1, 61)

During the World War this argument was quoted because due to the military and naval situation United States manufacturers could only sell to the Entente powers. It was argued, on the other hand, that Germany had a perfect right to buy goods in this country, a right which did them little good as virtually nothing could be delivered. The merchant submarine Bremen did succeed in transporting a small cargo at one time, showing that our markets were open to both sides in the war.

Lee was inclined to be lenient with ships which brought prizes into American ports. In the case of the French vessel bringing a prize into Charleston harbor, where the French consul proceeded to hold court and condemn the captive, Lee ruled that while the consul had been guilty of highly improper conduct and the captain of the ship had deceived the collector and the naval officer, nevertheless officers of the ship should be allowed to sell enough of the cargo of the prize to pay for refitting and then be permitted to proceed on their way. (1, 67) In another opinion Lee held that a captured ship could not be legally condemned except within the jurisdiction of the country to which the captor belonged. (1, 78)

Friction between the people of Georgia and the Spanish authorities in Florida was already causing trouble. The Spanish minister had protested in regard to the attempt of William Jones and some associates to recover some property in Florida which they claimed belong to Jones. The attempted recovery was by force, not by legal action before the Florida courts. Jones and his friends were unsuccessful in accomplishing their purpose but they managed to escape into Georgia. The Spanish minister
had demanded that they be surrendered. Lee held that Jones and his friends were liable to arrest but that while the Spanish authorities had a right to demand their delivery for violation of the law, there was no federal statute which prescribed the manner by which they should be delivered. Lee recommended that such a law be passed immediately as such a refusal to deliver prisoners might be considered as a just cause of war.

The Spanish minister had also complained on account of the arrest of the governor of Amelia island, who, while travelling through Georgia, had been arrested and prosecuted before the state courts. The minister asked the President to interfere and have the governor released. The information given in the complaint was not sufficient to indicate the character of the case, said Lee. If it were a criminal case, the President might interfere. In civil cases he could do nothing unless the plaintiff was either the United States or the state of Georgia. In civil suits, foreigners stood on the same grounds as citizens of the United States in regard to suability, said Lee. (1, 68)

Public land was mentioned but twice in Lee's opinions. The first was an explanation of the act of 9, June 1794. According to Lee, under this act patents for land could not be issued until the claimants had complied with the Virginia statute to which the act referred. This statute required that the patentees present a survey which was agreeable to the laws of Virginia. The Secretary of War was to be the judge as to whether the patentees had complied with the law. The act had been passed in order to reward soldiers who had fought in the Revolution. (1, 79)

The other public land opinion was in regard to the certification of some land claimed by Colonel Anderson, who was a land surveyor, and some of his deputies. General Morgan had alleged
that the laws of Virginia were being violated and asked that the
certification be suspended. Lee wrote that since making his com-
plaint, General Morgan had done nothing to substantiate his
charges which were made more than six months before, and there¬
fore, he suggested that Colonel Anderson's title to the land be
certified. (V, 688)

Extradition is an important subject in the opinions of the
Attorneys General but Lee mentioned it but once. In that ruling,
he insisted that in order to secure the possession of the person
accused of a crime, it was necessary under the provisions of the
treaty of 1794 with Great Britain to show that the alleged crime
was committed within the borders of the demanding nation. (I, 83)

The first of a long series of opinions in regard to patents
for inventions was given by Lee. Elisha Perkins had applied for
a patent on a devise for curing "pains and inflamations" by the
application of metallic substances. He failed to state, however,
whether all metals would produce the desired effect, the shape
or size of the instrument to be used or the exact manner of appli-
cation. Lee ruled that in order to secure a patent the inventor
must file specifications which were sufficiently exact to make
the nature of the invention clear to all who read them. Lee
added that there might be danger of misunderstanding the directions
for the use of this devise and "if misused, the instrument may
be very mischievous". Dr. Perkins was asked to remove these doubts
by submitting more complete specifications. (I, 64)

When the provisions of a document were explicit, Lee refused
to attempt to read another meaning into it. Asked to interpret
the Fifth Article of the treaty with Great Britain, he said that
it provided that each nation should appoint a commissioner and
that the two were to name the third. In case of a disagreement,
the third commissioner was to be chosen by lot. It was also necessary that all the commissioners agree on the decisions made and they must be signed and sealed by all of them. The treaty, he said, was explicit in these directions and nothing had been left to the discretion of the commissioners. (1, 66)

The phrase, "under the authority of the United States", as used in an act of Congress authorizing the appointment of commissioners to make a treaty with the Indians, meant the constitutional authority and therefore the consent of the Senate was necessary before the appointment was complete. (1, 65)

The most important opinions of the three Attorneys General of the administrations of Washington and Adams deal with foreign affairs, especially the problems of neutrality. Upholding the dignity and prestige of the new nation was a problem which all the officers of the government had to face. To give foreign nations justice but not to allow them to tyrannize over the United States required all their efforts.

Hence the disposal of prizes, the rights of sailors, the privileges of foreign ministers occupy a much more prominent place than they do in the opinions of the later Attorneys General. We also see the beginning of a problem of the public lands showing its head, with each of the Federalist legal advisors being called upon to rule on at least one case dealing with it.
II. ATTORNEYS GENERAL UNDER JEFFERSON.

Levi Lincoln and John Breckenridge.

The election of 1800 resulted in the first great over¬
turn in American politics. The Federalists lost their grip
on the affairs of the nation never to regain it and the party
of Jefferson took charge. While the inferior officers of the
government only feared that they might be displaced, the cabinet
of Adams knew that they would be replaced by friends of the new
President.

The uncertainty which Jefferson felt in regard to his elec¬
tion by the House of Representatives made him reluctant to name
the members of his cabinet. It was not until after 17 February
1801, that the new President made known any of the appointments
which had been determined upon. The result was that on the day
the new administration took charge, there was only a cabinet mem¬
bers present in Washington.

This member was Levi Lincoln, the new Attorney General, but
his presence was due to the fact that he had been elected to Con¬
gress and was attending its sessions. Lincoln resigned his seat
in Congress and entered on the duties of his new position. He
occupied a prominent place in the affairs of the new administration.
Not only were none of the other members of the cabinet in Wash¬
ton but within a few weeks, Jefferson himself went to Monticello.

This left the conduct of affairs in the hands of Lincoln and
Samuel Dexter, Secretary of the Treasury under Adams, who had been
allowed to hold office until the nomination of Gallatin had been
confirmed and the new Secretary could come to the capital. This
gave Lincoln an important start in his official life and served to
not introduce him to the country. His appointment was due to his great
ability or his legal standing. It was largely due to the fact
that Jefferson wanted a cabinet member from New England and
important members of his party in that section were not num-
berous. Lincoln had held a few offices in his state.

Lincoln was born 15 May, 1749 in Hingham, Massachusetts,
of an old family; the first members of which came to the col-
onies in 1637. Having access to very poor education facili-
ties, he prepared himself for college, and graduated from
Harvard in 1772. He had intended to study for the ministry,
but after hearing John Adams argue a case in a Boston court,
decided to study law instead. He read law in the office of
Joseph Hawley in Northampton, but upon being admitted to the
bar, moved to Worcester where, with brief intermissions caused
by official duties, he lived the rest of his life.

When news of the battle of Lexington arrived in Worcester,
Lincoln went with the Minutemen of the town to Boston where
he took part in the siege of that city. After Gage left Boston,
Lincoln returned to his home where he became a member of the
committee of correspondence. He also wrote a series of papers
which were known as "A Farmer's Letters". He was elected in
turn to the offices of county prosecutor, clerk of court, and
judge of the probate court. In 1781, he was made a member of
the state constitutional convention and in the same year
refused an election to the Congress of the Confederation. He
was a member of the Massachusetts General Court in 1796 and the
State Senate from 1797 to 1800.

His service in the national House of Representatives, to
which he was elected in 1800, was very brief as his selection
by Jefferson to be Attorney General caused him to resign from
his seat in Congress.

As Attorney General, he seems to have had a considerable
influence even after the first few months when he and Dexter had entire charge of affairs at Washington. He was consulted along with Madison and Gallatin in regard to constitutional difficulties which arose out of the Louisiana Purchase. Jefferson was in favor of having a constitutional amendment ratified, making the purchase legal but this suggestion met with little favor from his advisors. Lincoln suggested that the treaty of session might be so framed that it would seem only a change in boundaries, not as an addition of territory. Gallatin disapproved of the idea when the President showed him Lincoln's letter. None of the suggestions, however, were acted upon and the purchase was made without any change in the fundamental law.

Lincoln was one of the commissioners appointed by the President, the others being Madison and Gallatin, to meet with the Georgia representatives in an effort to settle the famous Yazoo dispute. Georgia had agreed to cede to the United States, the land which now comprizes the states of Alabama and Mississippi, then inhabited by Indian tribes. Title to this land depended on getting rid of the Indians; but in 1795, the Georgia legislature sold twenty million acres to four land companies for a half million dollars. While it is doubtful if the land was worth more than the purchase price, the fact that all the members of the legislature, with one exception, were financially interested in the companies created a great stir. The result was that the next legislature repealed the act granting the land to the companies and made the repeal part of the constitution of the state. Then no one could tell who owned the land as the companies had in the meantime, sold many land warrants; the Indians had possession and Georgia claimed the right to undo any act of the legislature which had been passed by corrupt methods. The commission was to
untangle the difficulty.

According to the terms of the settlement made by the commissioners, Georgia was to get the boundary line for which she contended, an immediate cession of the land was to be obtained from the Indians. The United States was to extinguish all Indian claims in Georgia and $1,250,000 was to be paid to Georgia from the land sales in the ceded territory. The legality of the Yazoo sale was denied, but a compromise was made by which five million acres was set aside for the purpose of satisfying those who brought land from the four companies. While Gallatin did most of the negotiating, Lincoln and Madison were of some assistance.

Like most of the early Attorneys General, Lincoln spent a larger part of his time outside of Washington. This was shown by the letters written to him by Jefferson asking him to investigate political affairs while he was in Massachusetts. In one of these letters he told Lincoln that he was not putting Federalists out of office because of their party affiliation. If they were abusing their privileges, however, or not attending to business they must go. He said that the Federalist presidents should have done this before. He added, "from the clergy, I expect no mercy. They crucified their Savior who preached that their kingdom was not of this world". On another occasion again paid his compliments to the New England clergy in a letter to Lincoln, concluding with this sentence, "but the advocate of religious freedom is to expect neither peace or forgiveness from them."

Jefferson asked Lincoln to read an address which he intended to issue and change it so that it would suit a northern audience.
"At present," he said, "it is seasoned only for a Southern taste". He also asked the Attorney General to investigate charges which had been preferred against a federal office holder in Massachusetts.

LINCOLN'S OPINIONS.

International relations, especially as regards naval affairs and public ministers were among the important subjects on which Lincoln gave opinions. The Napoleonic wars which were taking place at that time, resulted in the capture of many ships and the legality of these actions was frequently in doubt.

The first case arose because of the capture of the vessel Mercator, alleged to be Danish property, by the American schooner Experiment, the captain of which being of the opinion that it was a French ship. Shortly after the capture the British ship General Simcoe came on the scene and took the Mercator away from the American ship. She was taken to Jamaica where she was condemned as a prize. The owners of the Danish ship claimed damages from the United States.

Lincoln ruled that the Mercator had not been in the possession of the Experiment for a sufficient time to find out that it was not a French ship, and therefore any claim which the owners might have would be against the British government, not that of the United States. He also said that the United States was not responsible for the capture by the British ship and, in addition, the government was not responsible for the unlawful captures by its citizens. (1, 106)

The demand of the French minister for the restoration of, or salvage for a Portuguese ship which had been captured by a French privateer, was based upon a treaty between the United
States and France. The captured ship had been taken away from the privateer by the United States ship Maryland. The Portuguese ship had been taken to St. Kitts where the admiralty court had ordered it restored to its owners on payment of salvage. The French minister claimed that the treaty provided that all ships properly captured and not yet definitely condemned, were to be restored. Lincoln ruled that the treaty applied to captures but not to recaptures, as in this case, that this ship never had been condemned as a prize and that therefore, the French were entitled to neither the ship nor the salvage. (1,111)

The United States was not liable for the money paid to the captors of a French ship, even if the Supreme Court had decided that the captured ship should be restored. This opinion of Lincoln's was given as a result of the capture of the French schooner Peggy during the naval war between France and the United States. The ship had been condemned by a prize court before the signing of the treaty of 1800 between the two nations and the proceeds were in the hands of the clerk of the court at that time. Later half of the money was paid into the United States Treasury and the other half to the crew of the captor ship. When the Supreme Court had decreed that the ship should be restored the Treasury refunded the half that had been paid in. Then a demand was made upon the government for money which had been paid to the crew. Lincoln ruled that the government should not pay this amount and he made it very evident that he did not approve of the court's decision in the case. (1, 114)

The capture of the slave in the garden of a foreign minister by an agent of the owner was not a violation of diplomatic rights and immunities, in the opinion of Lincoln. The seizure took place
in the garden of Anthony Merry, British minister, who protested
to the Secretary of State and asked that the agent be punished.
Lincoln, whose opinion was sought, ruled that, while immunity
from arrest included not only a minister but his servants as well,
the slave in question was not a servant of Merry's because, being
the property of his master, he had no right to make such arrange-
ments. Therefore the owner's agent should not be punished under
the act of 30, June 1790, which provided for the protection of
the rights of public ministers. (1, 141)

The Spanish minister, Yrujo, also had a complaint. He was
greatly offended because a mob in Philadelphia had insulted the
Spanish flag. Lincoln, however, wrote to the Secretary of State
that there were no provisions in the laws of the United States
or international law, which is considered part of the law of
every country, covering affairs of this kind. He approved of the
Secretary's suggestion that the governor of Pennsylvania should
be asked to initiate legal steps for the punishment of the offen-
ders. He added that while there was no need for a proclamation
offering a reward for information in regard to the offenders, as
they were well known, it might be well to issue such a procla-
mination because the Spanish minister asked that it be done. It
might also warn against a repetition of such an affair. (V, 691)

The subject of public lands was becoming more and more im-
portant during Jefferson's administration. In the early part
Lincoln's opinions concerned land in the Northwest Territory but
later the new Louisiana Purchase became the subject of several
rulings. The first opinion in regard to public land which Lin-
coln gave concerned the confirmation of grants in Indiana Terri-
tory at the request of the governor but sent to the Attorney
General by the Secretary of War.
For the purpose of clearing up the situation Lincoln made several rulings in regard to public land in Indiana. The governor, he said, was not justified in confirming any of the unauthorized grants unless actual improvements had been made on the land previous to 3 March 1791. There were, however, other classes of land grants. One consisted of citizens of the United States or those who had declared their intention of becoming citizens, who had settled there previous to 1783 and had been granted land by the government which existed there at that time. Another class consisted of families who had lived in certain villages in the territory. Each family was to have four hundred acres but title to the land was not to be given nor the sale of the land permitted until they had lived in the district for three years. Still another class consisted of heads of families who had lived either at Vincennes or Illinois in 1783 and had moved from one place to the other. They were also entitled to four hundred acres. If any of the men in the last class had moved out of the territory after 1783 and had returned within five years, they were entitled to the same amount of land as those who had moved from one place to another.

The reason for these grants was that these men moved from one town to the other in order to give military assistance where it was most needed. The men in the four classes were clearly entitled to their land, according to Lincoln, but there was still another class of settlers, those who under a supposed grant of land from a governor, commandant or territorial court, had actually cultivated and improved land either at Vincennes or Illinois. They could have their claims confirmed for not more than 400 acres, provided they could show evidence of both the grant and the improvements. Lincoln was doubtful on the question of these sett-
lers paying the fee of four dollars for each grant because they served in "the double capacity of military defenders and agricultural subduers of the soil of the frontier". The fee was not required of military grants. (1, 95)

In regard to those settlers who had moved outside the Indiana territory after 1783 but had returned with five years, Lincoln made a supplementary ruling. Those who had moved to locations near Detroit were to be considered as having been outside the territory as the British had control there. In addition, Lincoln said, the return to their former homes inside the territory within five years was the most important part of the requirements necessary to secure land. (1, 124)

Grants of land in Louisiana made by the Spanish government must have been delivered to the grantees before 30. April 1803; the date on which the territory was ceded to the United States if they were to be considered valid, said Lincoln. While the date of the patent was presumed to be that of the delivery, this presumption could be removed by evidence. The occasion for this opinion was that the Spanish governor of Louisiana had issued a number of land patents after the sale to the United States, but he had dated them previous to that time. Lincoln said that to void these grants it would only necessarily show that the patents had not been delivered previous to the date of the cession. (1, 108)

The law which provided a government for the Northwest Territory was far from clear. While the President had been appointing the three judges having common law jurisdiction, the right to do so came by implication, not from the specific provisions of the act of Congress. There was no reason, however, said Lincoln,
to employ implication any further. The act stated that all officers, whose appointment was not otherwise provided for, were to be named by the governor. Hence Lincoln ruled that all officers who had not yet been appointed, should be selected by the governor. (1, 102)

Lincoln made a ruling in regard to the liability of the government in legal actions brought against its agents. Unless the property, for which suit had been brought, came into the defendant's hands as an agent of the government the latter was not bound to pay any damages which might be assessed. The reason for this opinion was that many of the government's agents were in business for themselves. If Lincoln could have been induced to rule otherwise than the way he did, it would have made the government responsible for their private affairs. (1, 99, 127)

While it was very doubtful whether the federal government had the authority to arrest a ship captain for barratry (breach of trust) while he was outside of the United States, and bring him to this country for trial, there was no doubt, said Lincoln, that such a person would be liable to prosecution in the federal courts if he were present inside of our borders. He advised that the persons who had been defrauded be notified of such a ship master's presence so that they could start civil action against him. (1, 123)

Seamen who were discharged while in a foreign country, were entitled to three months' pay. This rule could not be applied in the case of a ship which had become stranded and for that reason had to be sold, Lincoln ruled. The proceeds of the sale did not have to be applied to paying the expenses of the seamen to their home port. (1, 148)

Lincoln gave one opinion in regard to patents on inven-
tions, one which we find repeated many times in the rulings of other Attorneys General. It was that patents could only be granted to citizens of the United States. (1, 110)

Lincoln resigned from the cabinet in 1805 and returned to Massachusetts where he remained prominent in public affairs. He served three terms as member of the state Executive Council and in 1807 was elected lieutenant governor. When Governor James Sullivan died, he held the office of governor for a few months.

In 1811 he was forced to decline President Madison's offer of a place in the federal Supreme Court because he was almost totally blind at the time. However, he later recovered his sight to such an extent that he could manage his farm and even do a small amount of reading. He died in 1820.

Lincoln is perhaps the first cabinet officer appointed on a geographical basis. Jefferson wanted a man from New England, partly because he wished to have that section of the country represented in his councils and partly in order to keep in touch with public sentiment there.

While Lincoln was not a great lawyer, he was satisfactory to Jefferson in that he followed the policies of the party in power and made no serious errors. On the other hand no large problems were presented to him for solution.

JOHN BRECKENRIDGE.

Jefferson maintained his cabinet more nearly intact than any other President. Madison, Gallatin, Dearborn, Granger and Smith occupied the State, Treasury, War, Postoffice and Navy departments for the entire term of their chief, but not so with the Attorney General. Three men held that office during the eight years between 1801 and 1809. The first, Lincoln, was appointed because of the fact that Jefferson wanted the section
in which he lived represented in the cabinet. The second, John Breckenridge, was appointed for the same reason.

Breckenridge, however, was not the first man to whom the office was offered. When Jefferson was entering his second term Lincoln resigned. Robert Smith asked to be transferred from the Navy Department, to which Jefferson agreed and appointed Jacob Crowninshield as Secretary of the Navy. The two nominations were sent to the Senate and were confirmed but Crowninshield refused to accept the office. Smith performed the duties of both offices for a time but there is no record of any opinions given by him.

Despairing of getting a suitable Secretary of the Navy, Jefferson offered the post of Attorney General to John Julius Pringle of South Carolina. When he declined it was offered to John Thomas Mason. Upon his refusal it was offered to Breckenridge who accepted. This left Smith in a curious position. He had resigned as Secretary of the Navy and was never reappointed but nevertheless he continued to serve in that position until 1809, when he was made Secretary of State by Madison.

Breckenridge was beyond question the most important man in the country west of the Alleghenies. The people of the West admired him partly because he supported the projects in which they were most interested. The opening of the Mississippi was one of the important objects of his work and he did not think that the federal government had put for any great effort in bringing it about.

He therefore looked with favor on the plottings of George Rogers Clark with Citizen Genet which had for their object the capture of the mouth of the Mississippi. Brekenridge even went so far as to promise a sum of money to assist in the undertaking.
His influence was Jefferson aided in bringing about the efforts which ended in the Louisian Purchase.

Jefferson wrote many letters to Breckenridge especially during the time of the passage of the Kentucky Resolutions and also at the time of the Louisiana Purchase. At the latter time, he wrote that the Constitution did not warrant the acquisition of territory and that therefore it would be necessary to "appeal to the nation for an additional article to the Constitution". Soon after this letter was written Jefferson again wrote asking Breckenridge to say nothing about the proposed amendment as France was becoming alarmed about the delay and it might interfere with the sale.

After the purchase was completed Breckenridge was a leader in the debates on the subject. He defended the Purchase and opposed the Federalist argument that the newly acquired land could not be made into states. He later introduced a bill, which was probably written by Jefferson and Madison, dividing the Louisiana Purchase into the Territory of Orleans and the District of Louisiana and providing a government for each.

Breckenridge was born in Tide-water, Virginia; but his parents moved to one of the western counties of the state soon after his birth. After very scanty preparation he entered William and Mary college where he studied for two years. His first election to political office took place during that time. His district elected him to represent them in the legislature in spite of the fact that he had not yet attained his majority.

The reason for this election was not his great popularity but because he was present at the seat of government and thus the district could save the travelling expenses of their representative. He was not allowed to take his seat in the legislature because he was under the legal age but this fact did not
prevent his district from re-electing him twice. It was only after his second re-election that he was finally seated.

Having studied law and being admitted to the bar, he was elected to Congress but he gave up the office and moved to Kentucky. There he built up a flourishing law practice made up principally of land suits. He was soon in politics. After being defeated as a candidate for United States Senator, he was appointed by Governor Isaac Shelby to be Attorney General of the state. In 1797 he was elected to the lower house of the Kentucky legislature, to which he was re-elected until 1801. The last two years he held the position of speaker.

In 1801 he was elected to the United States Senate where he served until 1805 when he resigned to accept Jefferson's appointment to be Attorney General. During his service in the Senate, he was a strong supporter of the President's policy, taking an especially active part in the debates on the Louisiana Purchase. However, he had been a friend and supporter of Jefferson for many years. He had presented the first Kentucky Resolutions, written by Jefferson, to the legislature of 1798 and the following year had presented another set written by himself.

Breckenridge was the first western man to be appointed to the President's cabinet and it made a most favorable impression on the people in that part of the country. His term of office was, however, brief as he died the year following his appointment.

Breckenridge's principal legal work consisted of remaking the penal code of Kentucky. In this he eliminated all capital offenses except murder. He was also the author of the second constitution adopted by his state.
OPINIONS OF BRECKENRIDGE.

Very few of the opinions of Breckenridge have been preserved in the official records. Perhaps he gave no more as he was in office for little more than a year and at a time when the opinion of the Attorney General was not very frequently sought. Only three opinions were recorded in the volume which was supposed to include those of the early Attorneys General. Later two more were found and added to a later volume.

In the case of a group of men whose claims against Great Britain were made jointly with no indication as to how much was due each man Breckenridge ruled that the United States could not be called upon to decide the question. It was a matter for the courts to decide but any evidence which the United States had, such as commissioner's reports, might be used. (1, 153)

Anthony Merry, British minister, complained about the duties on goods imported from Canada, tonnage charged at the Great Lakes ports, and restrictions placed upon Canadians who traded with Indians who lived in the United States. The complaint was made to the Secretary of State who asked Breckenridge for his opinion on the legal questions involved.

Goods brought in from Canada, whether overland or across the Great Lakes, paid the same duties that goods from other countries paid. As to tonnage on British or Canadian ships navigating the Great Lakes between Canadian and American ports, Breckenridge could see no ground for Merry's complaint that the treaty forbade such charges. They had been charged before and the treaty made no mention of them.

All traders who had dealings with the Indians were compelled to secure licenses. This applied to Canadians as well as citizens
of the United States. Because the treaty gave British subjects the right to trade with the Indians it did not, according to Breckenridge, imply that the United States surrendered all rights to the regulation of this trade or give to British traders privileges not possessed by Americans. He added that if federal agents in the western territory were charging British traders a fee of six dollars for their licenses, the practice should be stopped. (1, 155)

The courts should not be used for political purposes and men accused of crime should not be allowed to "wound the administration" said Breckenridge on the case of Samuel G. Ogden, William S. Smith, and John Fink. These men in defending themselves against a charge in the federal courts claimed that they had been induced to commit the act, for which they were arrested, by General Miranda. The General, they claimed, had communicated the plan to the President and the Secretary of State, both approving of it. Breckenridge ruled that such statements should not be admitted as evidence and urged the attorney for the government to use every effort to have such statements excluded. He said that if such evidence was allowed in the courts in this case, other offenders would do likewise and thus force the high officials of the national government to defend themselves against the charges. (V, 695)
III. DURING THE WAR PERIOD.


The death of Breckenridge made it necessary for Jefferson to appoint his third Attorney General. Realizing that there was little work to do and that the salary was small, he decided to appoint a man who lived near Washington so that he could live at his home, continue his private law practice and at the same time give opinions to the Presidents and the heads of Departments with little delay. For that reason Caesar Augustus Rodney of Wilmington, Delaware was appointed.

Rodney spent little time in Washington. Most of his opinions are dated at Wilmington, to which place requests were sent, when rulings were required. This could not have been done if the Attorney General had lived in Georgia, Kentucky or even in Massachusetts.

Rodney was born in 1772, a nephew of one of the signers of the Declaration of Independence. He graduated from the University of Pennsylvania, studied law and was admitted to the bar, starting his legal career in Wilmington.

He soon entered politics and in 1803 was elected to Congress as a Democrat, where he served only one term. One of his chief activities while in Congress consisted of being one of the managers of the impeachment of Judge Samuel Chase. He was associated in this work with Joseph H. Nicholson and John Randolph. Rodney and Nicholson were the most prominent and able of the managers but they were out-classed by the array of defense counsel, Luther Martin, Robert Goodloe Harper, Charles Lee, Joseph Hopkinson and the defendant, Judge Chase.

Rodney was not satisfied with Nicholson's theory that impeachment was limited to "treason, bribery and other high crimes
and misdemeanors" but insisted that the Constitution imposed no limit on impeachment. He said that the judges held their offices during good behavior and the Senate was to be the judge as to whether any judge conducted himself correctly. Rodney's argument failed to impress a sufficient number of senators and Judge Chase was acquitted on all the counts.

Rodney and Nicholson were the leaders of the forces in the House of Representatives which defended the purchase of Louisiana.

The arguments they used sounded strangely like those of the Federalists in earlier days. He appealed to the "general welfare" clause of the Constitution, which had been regarded by the Republicans as treason. He said he could not see why "within the fair meaning of this general provision is not included the power of increasing our territory if necessary for the general welfare or the common defense". He also brought forward the "necessary and proper" clause to aid him in his argument.

He also defended the bill organizing the Louisiana territory. The Federalists said that the powers conferred upon the President by the bill were unconstitutional. Rodney answered them by saying that Congress had power in the territories which it could not exercise in the states and that the limitations found in the Constitution were applicable to the states and not to the territories, which is simply a paraphrase of the statement made after the Spanish American war, that the Constitution does not follow the flag.

Rodney also conducted the prosecution in the impeachment trial of the Pennsylvania judges, opposing Dallas who was leader of the defense counsel. Here as in the Chase trial, he was unsuccessful.

The Burr trial had just started when Rodney entered the
office of Attorney General but he took but little part in it. He appeared for the preliminaries and then turned the case over to the district attorney, George Hay, who was assisted by William Wirt, then a young lawyer much given to florid oratory. Poor health prevented his further participation in the trial.

The opinions of Caesar A. Rodney were neither numerous or important. He decided that land patents, which had been issued by mistake for land which was already located by others, were void; that a commandant of naval yard was entitled to receive the pay of an commodore and should therefore received his house rent free; that the owners of a vessel, chartered to carry supplies to Malta and Syracuse which was captured by the Spanish fleet, were not entitled to be paid for their ship by the United States; that the President had the right to remove by force, if necessary, persons who had settled on some public land near New Orleans; that the President had the right to nominate the bri-gadier general to command the territorial militia; that when officers or soldiers in the army thought themselves wronged and complained to the commander, the latter should call a court martial to enquire into the complaints but being only a court of inquiry the rules of such courts must be followed; and that a contract made by the proper officers with a person who, during the term of the contract, was elected to Congress, was not affected by the election. If the contractor was not a member of Congress at the time the contract was made its legality could not be questioned. (V, 697; I,159-168)

Rodney was continued in his position by President Madison but he resigned in 1811 because he thought he was entitled to appointment to the Supreme Court when Gabriel Duvall was selected to take the place of Judge Chase.
His part in the war of 1812 was to command a rifle company which was later changed to a light artillery company. He also served as a member of the Delaware committee of safety.

After being defeated for Congress he was elected to the state senate for the New-castle district in 1815. In 1817 he was sent to South America as a member of a committee to investigate and report on the desirability of recognizing the South American republics. On his return he strongly urged such recognition.

In 1820 he was elected to Congress and two years later to the Senate, being the first Delaware Democrat to be so honored. He served until 27, January 1823, when he was appointed minister to the United Provinces of La Plata (Argentina). He died in Buenos Ayres the following year. His only published work is "Reports on the Present State of the United Provinces of South America", with John Graham as co-author.

WILLIAM PINKNEY.

The sudden resignation of Rodney, caused by his failure to be elevated to the Supreme Court, made it necessary to find a successor. This was not difficult because it was not then considered necessary for the Attorney General to reside in the capital if he lived a reasonable distance away. Hence William Pinkney of Baltimore was the ideal man. Living close at hand and one of the foremost lawyers in the country, he had just returned from a diplomatic mission to England and was familiar with the policies of the Madison administration.

Pinkney was born in Annapolis, Maryland, 17 March 1764 and was old enough during the Revolution to mount guard with the soldiers at the fort in his native town. His father, an Englishman by birth, was a Tory but this did not prevent the son from
being an ardent patriot. His early education was intermittent due to the straitened financial condition of the family and the lack of educational facilities.

His first intention was to be a doctor but he soon learned that he was mistaken in his profession and changed to the law. He began his legal studies in the office of Judge Samuel Chase in 1783 and three years later was admitted to the bar.

His entry into politics took place in 1788 when he was elected a delegate from Harford county to the convention which ratified the Constitution and the same year he was also chosen member of the House of Delegates, holding that office until 1792. In 1790 he was elected to Congress but his election was contested on the ground that he did not live in the district from which he was elected, as required by the Maryland laws. The state Executive council ruled that the election was legal on the grounds that a state had no right to require other qualifications than those enumerated in the Constitution. Pinkney, however, declined the office.

In 1792 he was elected to the Executive Council, where he served three years, being president the last year. In 1795 he was again elected to the legislature but none of these state positions took much of his time from the practice of law in which he had distinguished himself to the extent that he was recognised as the leader of the Maryland bar.

His legal work was interrupted, however, in 1796 when President Washington appointed him as one of the commissioners under the seventh article of Jay's treaty to examine and settle claims. This work took him to England where he also secured a settlement of the claims of the state of Maryland against the Bank of England.
He was forced to remain in England longer than he expected when he accepted his appointment. In fact the work continued until after the election of Jefferson to the Presidency. Pinkney had been a Federalist previously but when he heard of the success of the Republicans he wrote to a friend that he was not opposed to the new President, and while he was not anxious for public office, he would not decline for party reasons. This showed that Pinkney was about to change his party affiliations.

He returned from England in August, 1804 but he was destined to remain at home less than two years. The trouble with England in regard to restrictions on neutral trade and the impressment of seamen was getting under way. Monroe was in England attempting to obtain a treaty which would clear up these matters and better satisfy American shipping men. His success, however, had been small.

Jefferson and Madison decided that Monroe needed help and in April, 1806 Pinkney once more sailed for England holding a joint commission with Monroe as minister to Great Britain. Monroe was not pleased with Pinkney’s appointment as he expected to obtain a treaty soon and knew that the new minister would get most of the credit as had been the case with himself in the negotiations which culminated in the Louisiana Purchase.

From an American standpoint the negotiations which Pinkney and Monroe carried on were not successful. The English government wanted to conciliate the United States if possible but thought the defeat of the French was of primary importance. Hence the treaty which the two ministers signed was considered so unsatisfactory to Jefferson that he sent it back for revision without submitting it to the Senate.

Monroe returned to the United States soon after and Pinkney
remained as minister until 1811 during which time he had a difficult job, one which subjected him to much criticism because of the tameness of his protests but he was only carrying out the peace policies of Jefferson and Madison.

Pinkney was anxious to return. His salary as minister was not sufficient to pay his expenses and he feared that if he stayed much longer he would be too old to resume the practice of law. His request for his recall was finally heeded. Early in 1811, he returned to Baltimore and once more resumed his old life. He was not destined to remain out of politics long, however.

In December of the same year Madison appointed him Attorney General. This appointment did not interrupt his law practice. He remained in Baltimore, sending his opinions to the President or the heads of departments when they were requested and going to Washington only when necessary to appear before the Supreme Court either on behalf of the government or some other client.

While offices were provided for the other members of the cabinet none was given to the Attorney General and no money provided for that purpose. The salary remained the same that it had been, three thousand dollars, which was not sufficient to get the full time services of a lawyer of Pinkney's calibre.

Pinkney's term of office ended when Madison insisted on his removal to Washington. A bill had been introduced into Congress requiring the presence of the Attorney General at the seat of government. Pinkney could not afford to leave Baltimore as most of his legal practice came from that city. Hence he resigned.

In the first term of the Supreme Court after his appointment as Attorney General, Pinkney appeared in an important case,
that of the ship Exchange. This vessel, originally the property of an American citizen, had been seized by Napoleon under the Rambouillet degree under the pretext of retaliating for our Non-Intercourse act. The ship had been armed by the French and sent to carry dispatches. Due to a storm it had been compelled to put into a port of Philadelphia. There it was proceeded against by its former owners who sought to recover their property. This was opposed by the French minister who claimed that this was no case for the courts but one which should be settled by diplomatic negotiations between the French and American governments. The case had been appealed to the Supreme Court.

Pinkney supported the French contention with such force and skill that even Justice Washington who decided against the French when the case was before the Circuit Court, approved of Marshall's decision restoring the vessel to the French.

During the war of 1812 he assisted in laying the foundations of a system of law in regard to prizes which was erected by the Supreme Court. One of the important cases decided during this period to which Pinkney took an active part was concerning the ship Nereide. The court decided against him but at about the same time a British court presided over by Sir William Scott upheld the contentions of Pinkney.

The case of the Nereide had its origin when Manuel Pinto, a native of Buenos Ayres, engaged an English ship, the Nereide, to transport goods from London to South America. This ship was armed and flying the British colors. It was captured by an American privateer the Governor Tompkins and taken to New York. There the ship and the British goods on board her were condemned without any claim being made by the owners but Pinto claimed that
his goods, being those of a neutral, should not be condemned. The district court ruled otherwise and the Circuit court upheld the decision. On a writ of appeal it was brought before the Supreme Court where Pinkney appeared as attorney for the captors.

The court ruled that while "Free ships make free goods" the converse was not necessarily true. In other words enemy ships did not make enemy goods. The treaty with Spain did not contain such a stipulation, either expressly or by implication. It also ruled that the principle of retaliation or reciprocity was not a rule of decision of the courts of the United States and that a neutral could employ an armed vessel of an enemy nation to transport his goods without having such goods lose their neutral character. Resistance by such armed vessel, provide the neutral did not aid in the armament, did not affect the case. (9 Cranch 388)

PINKNEY'S OPINIONS.

The opinions of Pinkney as recorded in the official records are not numerous. Naval affairs, patents, and Indian affairs were the subjects of these efforts. Enlistments in the naval service were specified as being for two years "from the time when the ship shall last weigh anchor for sea" and, in Pinkney's opinion, were legal for that period even though the seamen had spent some time in service while the ship was being fitted for its voyage. (1, 169) Seamen who had committed some offense against the naval regulations were to be kept in the custody of that service which was to try them for the offense. (1, 172) Pinkney did not think that John Kent, an American who had been a British pilot, was a spy for the reason that there was no evidence of criminal intention or conduct. (1, 172)

In regard to patents Pinkney did not think that they should
be refused on moral grounds if the applicant had complied with the regulations of the patent office. He could also see no reason for refusing applicants copies of the specifications, drawings, or models of any patented invention. It was not necessary for the applicant to give a good reason for his request. In England such information is published regularly in a periodical issued by a private individual. Giving out information of this kind, Pinkney thought, would aid those who wish to avoid infringing on patents. (1, 171)

In regard to Indians, Pinkney ruled that the act of 30 March 1802 which authorized the use of military force to expell intruders from Indian land applied only to that which the Indians held in common and not to their individual holdings. The law was passed to promote peace on the borders where intrusion on the lands of a tribe of Indians might cause an uprising but where an individual Indian could and would do nothing. Therefore this act did not apply to the reservations mentioned in the treaty concluded with the Cherokees on 7, June 1806. He said laws which concerned the use of military force should always be construed strictly. (V, 699)

During the war, Pinkney commanded a body of Baltimore volunteers and took part in the battle of Bladensburg where he was severely wounded. This ended his military service.

After his retirement from the office of Attorney General in 1814, he was elected to Congress the following year and took part in the discussion as to whether the House of Representatives could take any action in regard to treaties. Pinkney contended that after the treaty had been signed by the President and ratified by the Senate it became part of the supreme law of the land over which the House had no control.
In March, 1816 President Monroe appointed Pinkney special minister to the Kingdom of Naples and envoy to Russia. In Naples he was to negotiate with the King in regard to settlement of claims for losses during the reign of Murat. After seeming to conclude these negotiations in a satisfactory manner he continued on his way to Russia. But Neapolitan king never paid the claims. Pinkney stayed a year in Russia and then resigned from the diplomatic service.

Resuming his law practice he took part in several important cases, being attorney for the plaintiff in error in the case of McCulloch vs. Maryland and the same side in Cohens vs. Virginia. He was successful in both cases. He was engaged to make an argument in the case of Dartmouth college vs. Woodward when it was rumored that the judges had not agreed and wished to have it re-argued. However, the first appearance in this case was on the day when Marshall read the decision of the court. His death of 1822 prevented him from appearing for Ogden in the famous case of Gibbons vs. Ogden.

RICHARD RUSH.

When Pinkney resigned because of the introduction of a bill into Congress requiring the Attorney General to reside in Washington, a bill which had the approval of President Madison, Richard Rush of Pennsylvania was appointed to the position. This bill had also included an increase in salary for the Attorney General but it failed to be enacted into a law.

Before his appointment Rush had been comptroller, and when Gallatin resigned, to go abroad as one of the peace commissioners, Rush had been offered the headship of the Treasury. This he declined and George W. Campbell of Tennessee was appointed
Pinkney had a high opinion of Rush's legal attainments, believed him to be the best lawyer in the United States, but in the opinion of Henry Adams, the cabinet suffered when Pinkney and Gallatin left.

The first year of service in the cabinet was full of excitement for Rush. True to his promise to the President, he lived in Washington and accompanied Madison on his journey of three days when the British captured the capital. When the army fled from the field, Madison, Monroe and Rush crossed the Potomac in a small boat and started for Madison's Virginia home. They returned to Washington when they heard that the British had abandoned the city.

Rush was born in Philadelphia in 1780, the son of Benjamin Rush, one of the signers of the Declaration of Independence. Educated at Princeton, he studied law and was admitted to the bar. His first important case was the defense of William Duane, publisher of the *Aurora*, charged with libelling Governor Thomas McKean.

He soon entered politics and held many offices, among them were solicitor for the Guardians of the Poor of Philadelphia and Attorney General of Pennsylvania. His first office under the national government was that of comptroller, from which he promoted to be Attorney General.

**RUSH'S OPINIONS.**

Most of the opinions of Richard Rush were concerning the War of 1812 and affairs growing out of it, such as pensions, bounties, courts martial, and conduct of privateers.

The rights of the crew of a ship which captured a prize were upheld in the case where the captured ship was taken by
the commodore of the squadron and placed in the service of the United States. The valuation of the ship, as fixed by the commodore, was to be paid to the crew of the captor vessel. (1, 186)

According to Rush, a marine when on land was to be treated as part of the army but when on the sea as part of the navy. Several marines were to be tried for deserting their ships which offense according to the navy regulations was punished by whipping, that form of punishment having been abolished in the army. Rush decided that this form of punishment could be administered to the marine deserters. (1, 187)

The act of 1814 which increased the pay of officers and men in the Navy was intended to include boatswains, gunners, carpenters and sailmakers even though they were not mentioned. It was evident, said Rush, that Congress intended to include them since the act included seamen. (1, 195) Navy agents were supposed to be paid $2,000 a year and in addition to receive office rent, clerk hire and stationery. (1, 188) When a former purser in the navy was re-appointed, he was required to furnish a new bond. (1, 175)

The crews of privateers were to be considered civilians as long as they were in the territorial waters of the United States but when they were on the high seas they were to be treated as members of the navy. Such a conclusion can be drawn from an opinion given by Rush on the subject of punishment for offenses committed on such ships. He advised the Secretary of the Navy that such offenses if committed on the high seas were to be tried by courts martial but otherwise the civil courts should be used. (1, 177)

If a privateer commissioned by an officer of the United States was transferred to another owner intentionally the original owner was liable to a suit on his bond and the new owner,
61.

if he used the original commission, was liable to arrest for piracy. (1, 179)

If a merchant vessel owned by a citizen of neutral nation was captured but later adjudged an unlawful prize and returned to the original owner, duties must be paid on the goods the ship carried which were brought into the United States. The President had no right to remit the payment. (1, 176)

United States Marshals were entitled to a commission of one and one-quarter percent of the value of captured goods which they sold but Rush ruled that they were not entitled to this commission where the cargo consisted of specie. (1, 178)

Pensions were first mentioned in 1815 when Rush ruled that not only the men who had been wounded in service were entitled to payment but those who have become disabled while in the "line of duty" so that they were unable to perform their duties. All officers and enlisted men were to be considered in "line of duty" if they were in full commission and not on furlough even though no duty has been assigned them. (1, 181)

The pension system of the United States started even before the Revolution when several of the colonies provided for the support of soldiers who had been injured in the Indian wars. The first national pension law was passed in 1776 when Congress promised half-pay for life for every soldier, sailor or marine who lost a limb in the service. Later half-pay for life was promised all officers who served until the end of the war but because of popular indignation it was changed in 1783 to five years' full pay. This proved unsatisfactory and Congress finally granted full-pay for life to all officers who were surviving in 1828.

In addition to the service-pensions already mentioned
the federal government assumed in 1789 the payment of all Revolutionary invalid-pensions and arrears. By the act of 28 February 1793 invalid commissioned officers were allowed half-pay and privates were given five dollars a month which was increased in 1816 to eight dollars.

By the act of 18 March 1818 the extent of the Revolutionary service pensions was increased. It granted to all needy veterans who had served until the end of the war or for at least nine months, amounts ranging from twenty dollars a month for officers to eight dollars a month for privates.

Abuses which arose under this act caused legislation in 1820 which removed thousands of names from the pension rolls. In 1832, however, another Revolutionary service-pension act was passed which granted full-pay for life for all those who had served two years and proportionate amounts for shorter periods of not less than six months.

Pensions for soldiers' dependents started in 1780 when half-pay was given to widows and orphans of officers of the Revolution. Nothing more was done along this line until the act of 4 July 1836. This was followed by a long list of acts which enlarged and extended the scope of such relief.

Invalid-pensions for soldiers in the regular army started in 1790. Later other acts were passed granting this type of assistance to soldiers of the War of 1812, the War with Mexico and the several Indian wars. Many years later service-pensions for veterans of these wars were also allowed.

The navy pension-fund was established by the acts of 1789 and 1790 made up of the government's share of prize money. Large additions were made to this fund during the War of 1812 but it was exhausted by 1842. It was replenished during the
Civil War.

In addition to money paid out to ex-service men bounty land was given away in large quantities as an inducement to enlistments and as a reward for services. The amount ran into the millions of acres.

Another echo of the war was the refusal to allow John Jacob Astor to send a ship to Michilimackinac for the purpose of getting a cargo or furs. The reasons given was that the British were in possession of the island at the time. (1, 175) The traders at Michilimackinac were heavily in debt to Astor at the time. He conceived the idea of sending Ramsay Crooks up the Great Lakes to collect these debts in furs of which he was in great need.

While Rush refused to sanction the giving of permission in April 1814, Secretary of State James Monroe consented to such an expedition in May of the same year without consulting Rush. The reason for this change was that Astor had suggested that he, together with Stephen Girard and David Parish, would loan the government between eight and ten million dollars.

Monroe's consent to this request was conditioned on gaining the guarantee of protection from General Prevost. Astor obtained the desired guarantee but the venture did not prove profitable. Delay caused by bad weather and a scarcity of furs at Michilimackinac made the expedition too expensive.

The British government complained because the American ship Peacock attacked the British ship Nautilus after the peace treaty was signed. The British minister charged that it was an unwarranted attack but Rush advised a court of inquiry. He said this might be another case like the President and the Little Belt pre-
vious to the War of 1812, when the British minister claimed that the President had made an unwarranted attack on the Little Belt but upon investigation it was found that the American ship was abundantly justified.

Rush said that he could not outline any defense for the captain of the American ship because he knew nothing of the circumstances except what was included in the British minister's letter and the deposition of the captain of the British ship. He noticed, however, that the two statements of the affair differed and advised a thorough investigation of the affair before any action was taken by the government. (V, 703)

Land was granted as bounties for enlistment with a lavish hand during the war. Rush ruled that all non-commissioned officers and soldiers who enlisted either after December 10, 1814 or before that date were entitled to 320 acres of land. Minors who enlisted were also entitled to this amount of land. (1, 184) The child of a non-commissioned officer or soldier must have been under 16 in order to commute the bounty land for half pay. If the child was above that age he must take the land. (1, 195)

Rush held the opinion that the settlers on lands near Shawneeetown must be intruders because they had settled there before any land had been sold in that section. He said they were to be moved and if the United States marshal was unable to remove them the President should call upon the federal troops for that purpose. (1, 180) There was no federal statute which made cutting timber on public land a specific offense and according to Rush, it could not be prosecuted as robbery. The facts, he said, might warrant action for trespass. (1, 194)

Prosecutions for piracy should take place where the offender
was captured or the home port of the captor as such acts were always committed outside the jurisdiction of any state. (1, 185)

While there was no law which would prevent an American ship owner from selling his vessel to a resident of Buenos Ayres, it was contrary to law to sell an armed ship to a person who intended to use it against a country at peace with the United States. The same law applied to the sale of an armament for a ship to be similarly used. (1, 180) The courts of the United States were always open to subjects of any country with whom the nation was at peace. This is especially true in cases of fraud. In the case being considered a French citizen wished to start action against a man who had shipped goods from France in order to defraud his creditors. (1, 192)

Rush wrote a long opinion on the subject of the negotiations for the release of American prisoners of the crew of the ship Edwin, held by the ruler of Tunis. The effort had been very expensive, much more so than was expected and several claims against the United States had not yet been satisfied. Rush ruled that the employment of an agent to carry on negotiations was permissible even though he were not a citizen of the United States and that the payment of the full maximum amount of $3,000 for each captive might be approved. He could not sanction, however, the payment of a large sum for the services of the agent or the payment of the ransom of four men who were not part of the crew of the Edwin who claimed but failed to prove that they were American citizens and who were not held in slavery. Rush concluded that if the men whose financial claims had been refused, felt aggrieved they still had recourse to courts to establish their claims. (1, 196)

Rush's only opinion in regard to patents was concerning
a man who filed a written description of his invention in regard to the manufacture of salt and then did nothing more about it. Several years later another man, without any knowledge of the first invention, filed a similar description with the patent office. Then the first man claimed that he had prior right to the patent. Rush ruled that it was a case of interfering applications and must be submitted to arbitrators. (V, 701)

Rush served as Attorney General during the last part of Madison’s and a few months of Monroe’s administrations, resigning in 1817. He acted as Secretary of State for a short time after which he was appointed minister to Great Britain. There he negotiated several important treaties, among them those relating to fisheries, the northwest boundary and slaves which had been carried away by British ships, contrary to the treaty of Ghent.

When John Quincy Adams became President, Rush was recalled from London and made Secretary of the Treasury. He held this office for four years and in 1829 was the candidate for Vice President on the Adams ticket.

Rush had been a strong Adams man but in 1834 he wrote a report criticising the United States Bank. Thereafter he cooperated with the Democratic party and received several appointments at the hands of Jackson.

He was named a member of a commission to settle the boundary dispute between Ohio and Michigan and in 1836 he was appointed by Jackson as a commissioner to secure the funds which James Smithson had bequeathed to the United States to found the Smithsonian Institute. The Smithson will was then in litigation before the British chancery court but Rush succeeded in getting the full amount, over five hundred thousand dollars, returning
with the money in 1838.

During the period between 1847 and 1849, Rush served as United States minister to France and in 1848 he was the first diplomatic representative to recognize the Second French Republic, acting in advance of instructions from his government. He died in 1859. His published works include a "Codification of the Laws of the United States" and a number of books concerning his experiences abroad.
When Rush resigned as Attorney General, President Monroe wished to appoint a Western man to the office but was unable to find one who possessed the necessary qualifications. He consulted the western leaders, including Clay, on the subject but they were unable to recommend anyone. He then offered the position to William Wirt of Virginia, an old friend and a prominent lawyer.

John Quincy Adams in his Diary says that Monroe told him that he was afraid that Wirt would not accept the office but they were pleasantly disappointed. He not only accepted the appointment but came to Washington immediately and entered enthusiastically into the work of the office.

There he entered into intimate association with the other members of the cabinet, one which remained intact during Monroe's two administrations. John Quincy Adams, as Secretary of State; William H. Crawford, Secretary of the Treasury; John C. Calhoun, Secretary of War; and B. W. Crowninshield, Secretary of the Navy; were prominent members. Adams in his Diary says that Crawford always made it a point to disagree with him, Wirt and Crowninshield always agreed with the President but that Calhoun formed his own opinions and defended them with "powerful eloquence".

This opinion of the cabinet was written in the early days of their association. He also mentions the fact that Wirt was working hard to get an increase in salary, which he needed because of his large family, and that he wanted a clerk and an office. Wirt talked about resigning at the time and Adams was of the opinion that he would not remain in office long, and added "Though he has opinions and prejudices not very appropriate to
an Attorney General of the United States, the President would not easily fill his place. He has two faults which may have an influence in the affairs of this nation--an excessive leaning to State supremacy, and to popular humors."

Adams' opinion of Wirt changed and he retained him in his cabinet when he became President. Adams was in the House of Representatives when Wirt died and delivered a short eulogy on his great work and character. In his diary Adams elaborated on this speech showing how he came to better appreciate his old associate.

Wirt holds the distinction of having held the office of Attorney General longer than any other man. Appointed in December of the first year of Monroe's administration he served more than seven years under Monroe as well as the four years under the second Adams.

Not only does Wirt hold the distinction in regard to length of service but he also caused many improvements to be made in the office which he held for almost twelve years. When he entered the office of Attorney General he was surprised to learn how meagre was the equipment with which he was to work. In a letter to the chairman, Hugh Nelson, of the Judiciary committee of the House of Representatives, he described the situation. No records had been kept of the opinions given by previous incumbents, there was no library either of the laws of the United States or of the states, no letter books of the previous occupants of the office were in existence. This is not to be wondered at, inasmuch as no office had been provided for the Attorney General. Probably each man who held the office took with him, when he left, all of the records that he con-
sidered valuable but it made it difficult for those who took up the work.

The result of these complaints and the combined efforts of Wirt and Monroe was that Congress in 1818, provided one thousand dollars for a clerk and five hundred dollars for office room, stationary and other expenses. The following year the salary of the Attorney General was increased to $3,500 but even at that rate the office was not on the par with the other positions as the heads of the State Treasury, War and Navy departments received $6,000 and even the Post-master General was paid $4,000.

The old idea still lingered that the Attorney General could increase his income by private practice and even Wirt held that opinion. He had an understanding with Monroe that there was nothing in the duties of his office which would prevent him from carrying on general practice in Washington or from making occasional calls to Baltimore, Philadelphia and New York or perhaps even Boston. He realized, however, that the government had the first call on his services. We find that Wirt did succeed in adding materially to his income by his private practice. His appearances before the Supreme Court were numerous, remunerative and popular. In those days, large audiences heard the arguments before the Court and Wirt was one of the great drawing cards though it cannot be said that he ever excelled William Pinkney in that regard.

Some of Wirt's appearances before the highest court were part of his private practice. One of these was on behalf of the defendant in the case of Dartmouth College vs. Woodward. Wirt was exhausted by the work of re-organizing his department that his
that his preparation suffered and made the poorest argument of his entire legal career. A brighter page in his history is the case of Gibbons vs. Ogden, in which, with Webster as a colleague, he made one of the best efforts and won the decision of the court.

The most important case in which he represented the government was that of McCulloch vs. Maryland, where he appeared with Pinkney on behalf of the United States Bank winning a notable victory.

Wirt's early career is full of interest. Born in 1772 near Bladensburg, Maryland, of Swiss and German parents, he became an orphan at an early age and was put in charge of an uncle. Never having the opportunity to attend college, he studied law in the office of W. P. Hunt in Montgomery Court House. He remained there about a year and then moved to Culpepper Court House, Virginia, where he was admitted to the bar in spite of the fact that he had not completed the residence requirements for such admission. How it was done has never been explained.

In spite of his short period of preparation and his lack of any kind of a law library, he prospered in his profession. Through his marriage with the daughter of Dr. George Gilmer, he came into the circle of his father-in-law's friends which included Jefferson, Madison and Monroe. He established himself in Richmond where he was elected clerk of the House of Delegates. This brought him into contact with all the prominent men of the state, including Patrick Henry, whose biographer he later became.

After holding his clerkship for three sessions of the legislature he was elected one of the Chancellors of the state.
Previous to this time Virginia had had but one chancellor but as the work had become so extensive, the state was divided into three districts with a chancellor over each. The eastern district was assigned to Wirt.

Finding that the office of chancellor was one of great honor but of little profit as it took all of his time with the result that his law practice almost disappeared, Wirt resigned. He first located in Williamsburg but later moved to Norfolk. There his practice increased by leaps and bounds, causing him to move to Richmond in order to be at the center of the state's legal activities. He even considered moving to Kentucky during the period when so many bright and enterprising young men were going west but came to the conclusion that legal opportunities were not as great in the new state as in the more settled communities.

Wirt was also indulging in literary work. He had written a series of political letters which had attracted attention and were later collected under the title of "The British Spy". He now decided to write a series of biographies of famous Virginians, such as Patrick Henry, Edmund Pendleton and Richard Henry Lee. He soon decided that Henry alone was enough to occupy his time and after twelve years' labor he finally published his "Sketches of the Life of Patrick Henry". This book was regarded as a creditable work though severely criticised for its attitude of hero-worship.

The most important case in the early part of Wirt's career was the trial of Aaron Burr. His part as one of the attorneys for government caused him to be more widely known even though Burr was acquitted. Wirt's speech at this trial was regarded
for years as a model of eloquence and became one of the most popular of declamations.

His activities in the Burr trial brought Wirt to the attention of Jefferson but he refused the President's request that he become a candidate for Congress. In the same year, 1808, he held for the only time in his life an elective office, member of the Virginia House of Delegates. He held this office for one term and refused to be a candidate for re-election.

In spite of his friendship for Monroe, he refused to take part in an effort to put the latter forward as a presidential candidate in order to hurt Madison's chances for the presidency. When Rodney resigned, Wirt was mentioned as a possible selection by Madison for the office of Attorney General because of this assistance but no offer of the position was made, Pinkney being appointed.

Madison offered Wirt a commission in the army during the War of 1812 but it was declined for the reason that his private affairs needed his attention. He did organise a volunteer company later when there was danger of invasion by the British.

Upon the resignation of George Hay, Madison appointed Wirt to the office of United States attorney for the district of Richmond. Wirt made his first appearance before the federal Supreme Court at this time, having for an opponent William Pinkney. He held this position until Monroe appointed him Attorney General.

Starting with Wirt, we have full reports of the opinions given by the Attorneys General. Wirt collected all the opinions of which he could find a record, given by the previous occupants of the office and kept copies of all his own opinions. This
practice has been followed ever since that time.

WIRT'S OPINIONS.

Prominent among the subjects which appear among the opinions of Wirt are public lands, Indian affairs, the army and navy and pensions. All these subjects were discussed from a purely legal standpoint as Wirt was a lawyer and not a politician, and there was very little evidence of political opinion in them. When he discovered that he had made a mistake in an opinion, he hastened to send another to the same officer correcting his error but he did not eliminate the incorrect opinion from the records as he could have easily done.

The duties of the Attorney General were sufficiently arduous that Wirt refused to give opinions unless the questions were submitted by the President or the heads of the departments. There was one exception to that rule when charges were brought against his office in the House of Representatives. In one occasion he declined to make an award as an arbitrator between the government and an individual. (1, 210) At another time he informed a subordinate officer that requests for opinions must come through the head of his department, (1, 211) and soon after refused to investigate, at the request of the Speaker of the House, the truth of some charges against the Army quartermaster. (1, 253)

Wirt was also quick to inform cabinet officers that it was not the duty of the Attorney General to go outside the provisions of the law relating to his office even when the request was made by the proper officer. Instances of this tendency are found in Wirt's refusal to give an official opinion concerning infringements of patents by manufacturers of patented articles. It was
of patents or to inform patentees of their rights. (1, 575) He also declined to instruct United States district attorneys in the discharge of their duties or to draw pleas and direct the course of action to be followed in cases before the district or circuit courts.

Wirt and several of his predecessors had recommended that the district attorneys be placed under the control of the Attorney General and until this was done he refused to go outside of his legal duties in assisting them. If any case, in which the government was concerned, came before the Supreme Court, he would then give it his attention. (1, 608)

With the policy of the government in regard to public land, Wirt refused to have anything to do, his job was to answer questions concerning the legal side of such transactions. There was plenty of work to be done answering such questions. Much uncertainty prevailed in regard to the public land and while Wirt answered the legal questions whenever possible, in several instances he recommended addition legislation to clear up misapprehensions. (1, 290)

The right of pre-emption given by the act of 12 April 1814, applied only to those who had settled on the land which had been set aside by the act of 6 May 1812, as military bounty lands previous to its survey but not to those who settled there subsequently. After the survey all the unsettled land belonged to the soldiers.

Wirt also ruled that the President should not appoint registers and receivers of public land offices in districts where no public land had been surveyed because there was no work for officers in such districts. (1, 290)

Bounty land was given to all soldiers who enlisted for five
years or the duration of the war and who served out their enlistment period. In the case of a soldier who made the proper enlistment but who was promoted to the rank of commissioned officer and then resigned before the end of the war, Wirt ruled that he was entitled to his land. (1, 273)

In the "military reserve of Ohio" there were instances where the same land was claimed by two men, one holding a grant from the state of Virginia and the other having a patent from the United States. In such a case, Wirt maintained that the Virginia claimant must start proceedings in chancery if he wished to dispossess the holder of the patent. In case he was successful the government must pay back the purchase price of the land with interest and the improvements must be paid for by the successful party to the suit. (1, 300)

When the law in regard to public land was explicit, Wirt insisted that it be followed exactly. The law provided that in the case of fifty quarter-townships they were to be divided into one hundred acre lots to be numbered progressively. The Attorney General ruled that no patent could be legally issued until these lots had been numbered and that the title to the land did not pass unless the patent contained the number of the lot. (1, 323)

Most land warrants were transferable but those issued to Canadian volunteers were not as they did not contain the words, "and his assigns". Hence the patent could only be issued to the man who received the warrant. These volunteers, however, were allowed to locate the lands, for which the warrants had been issued, by attorney as others had been permitted to do. (1, 325, 424). As there was no mention of the color of the volunteers who
were to receive bounty land, negroes could not be barred from receiving it. (1, 602)

The laws passed for the purpose of assisting the residents of New Madrid who had suffered losses due to the earthquakes of 1811 and 1812 required much interpretation both by Wirt and succeeding Attorneys General. These residents according to the act of 17, February 1815, were entitled to locate elsewhere in the Missouri territory a tract of land, the amount depending on their holdings in New Madrid but it must be between 160 and 640 acres. If a man lost less than the minimum his holdings in his new location would be increased to that amount and if he held more than 640 acres of land in New Madrid, his new holdings would be decreased. These warrants were not assignable, according to Wirt, and the land which the earthquake sufferers took must follow the rectangular scheme which had been started by the Land Office. If a man took a fractional section he should not be allowed to take all of the natural advantages so that the rest of the section would be valueless. (1, 373)

Later Wirt ruled that the persons from New Madrid could not locate on land which had not been authorized for sale. If such locations had been made the persons, who did so, would have to locate elsewhere in the territory. (V, 727)

Salt springs were of great value at this period in the history of the West and special provisions were made in regard to the land on which they were located. In the act of 18, May 1796 concerning the sale of land in the Northwest territory these springs were first mentioned and as each separate territory was organized provision was made for the setting aside and the working of these springs. In Illinois, it was not re-
quired that the President set aside all the salt springs, together with land enough for the working equipment, but only those which they thought were necessary, according to Wirt's opinion. When Illinois was admitted to the Union the state took the place of the President in having control of these concessions. (1, 420)

In regard to the lessees of the Wabash Saline, it was Wirt's opinion that the President had the power to affect a settlement with them in regard to the property which had left to subsequent lessees. The only property for which they were to be paid consisted of permanent improvements and did not include pipe and other equipment which they found there. (1, 352) He also ruled that the President could lease lead mines for periods not to exceed three years. (1, 593)

Intruders on public land could be moved by force, Wirt told the Secretary of the Treasury and the Secretary of War, if peaceful means had been tried and failed. Until title to the land passed from the United States settlers were considered as having no rights there. (1, 471, 475)

Persons having possession of land under a Spanish grant which had been reported by the register of the land office in the proper district to the Secretary of the Treasury and who were contesting their titles with other claimants, were not to be considered as intruders in the meaning of the act of 3, March 1807. This act had been passed to prevent unauthorized settlements in Louisiana. (1, 703)

Ohio was to get the net receipts, not the gross receipts from the public land sold within that state according to the act of 3, March 1803 as interpreted by Wirt. According to the act, Ohio was to receive three percent of the money received
for land but it was ruled by the Attorney General that the
cost of the surveys must be deducted from the receipts before
the three percent was computed. He admitted that this was
not expressly stated in the act but that such compacts must be
construed with reference to the subject matter and the nature
of the cases on which they were to operate. (1, 640)

Surveyors of public land had extensive powers and were
important persons in their communities. This caused them to
have enemies who were desirous of finding some reason for their
dismissal. One of these men, General Rector, was accused in the
Senate of letting by contract the work of his office. Wirt
approved of the method of getting the work done as the surveyor
had the power of fixing the compensation of his assistants. If
he wished to do so by contract, Wirt not only could see no ob¬
jections to it but thought it an especially good system because
it enabled the surveyor to be sure of the services of these men
for a specified time. The work of General Rector was approved
both to the quality of the work done and the expense connected
with it. (1, 661)

Dealing in public land patents seems to have been dis¬
couraged due to the difficulty of keeping the titles clear and
the necessity of guarding against fraud. When some land in
the Virginia Military Reserve had been located and surveyed in
the name of the original patentee though the title to the patent
had already passed to another person, Wirt ruled that the land
must be granted to the former because no act of Congress recog¬
nised the sufficiency of the proof of the transfer of title.
(11, 25)

On the other hand, when the law was followed closely the
transfer of title in public land seems to have been easy. In
another case, Wirt ruled that the owner of a land warrant might locate this land in as many parcels as he pleased and he could assign any part of his warrant to a third person who could make entry in his own name, thereby receiving a grant of land. This case arose when the ten children of the owner of a land warrant were given sections of it. Four of them had sold to third parties. All these transactions were declared legal. (11, 86)

No pre-emption claims could be allowed to land secured from the Indians before the treaty securing it had been ratified. The language of the act ratifying the treaty was in the present tense and therefore could not refer to land not then under the control of Congress. (11, 42) A land patent issued for an entire section when the patentee was only entitled to a quarter section was declared illegal even though the patentee had sold the land. Wirt advised starting suit immediately because if all the purchase money had not been paid it would deprive the purchaser of the defense of having bought the land without notice of its illegality. (11, 53)

When land was sold, which had been excepted from sale by Congress, the patent for it should not be issued. Even if a court had since declared invalid the claims which caused Congress to pass the act, the law was in force until repealed. If the tract sold was composed partially of the land which had been excepted, then the purchaser had the option of cancelling the entire contract or receiving a patent on the part which could be legally sold. (11, 186)

That Wirt believed in protecting the rights of the Indians is clearly shown by his ruling in regard to the Senaca lands. By the treaty of Canandaigua this tribe had been given possession
of lands, which were clearly defined, to be held until they voluntarily gave them up. The settlers from Massachusetts had no right to enter this territory until the Indians, after clearly understanding the case, gave their consent. (1, 465)

While land given to the Indians by treaty should be protected, Wirt did not allow his sympathy for the noble redman to go to extent of permitting the Cherokees to tax traders who entered their territory. No treaty made with them permitted this tax and they were not to consider themselves as independent even if the United States had made agreements with them. Trade with the Indians was regulated by an act of Congress. (1, 645)

Grants made in Louisiana and Florida by Spanish officials continued to annoy the federal land officers. Wirt disposed of them by stating that if the grants were made before the date of treaty of cession they were valid, if after that date, they were of no value. It was a question of fact, not of law, he said. In this instance the grant had been made by the King of Spain to the Catholic church.

In another case grants made by the King of Spain previous to date of session were questioned by Wirt. In regard to the first, he said, the grant was illegal because it was made on the basis of false representations to the King. If the territory had remained under the control of Spain and the King would have cancelled it because he did not approve of land speculation. In another case the grant was made subject to certain conditions which had not been fulfilled. These conditions could not be cancelled or altered because the person with whom the agreement was made, no longer had possession of the land.

The Yazoo claims constituted a matter of "very serious
consequence to the United States," according to Wirt, who outlined the defense to be used in a suit brought by one of the claimants. He recommended that the strictest proof be required of the plaintiff, that every document be subjected to the most severe test of the technical rules of evidence. If this was done, Wirt predicted that the claimant would be unable to prove his case. If this plaintiff was one without notice of the corruption in the Georgia legislature that argument could not be used because the Supreme Court in the decision in Fletcher vs. Peck had invalidated it. In case, however, this purchaser brought his land after it became generally known that the state of Georgia had repudiated the acts of its lawmakers, then the Fletcher vs. Peck decision would not help him.

Even if this claimant was a purchaser without notice Wirt called attention to two other lines of defense. These were, first, the cession of the lands by Georgia to the United States, and, second, the acts of Congress tendering the holders of Yazoo lands a financial compromise to all those who appeared at the land office before a certain day and declaring void the titles of all those who failed to appear. (II, 35)

In the period immediately following the passage of the act suppressing the slave trade in 1808, the need for the enforcement of the law was not pressing. Slavery was not as profitable in the South as it became after the invention of the cotton gin and in addition enough slaves were produced in the United States to supply all the demands for labor.

As the use of the cotton gin made the growing of the staple profitable, the area devoted to it spread and the need for an additional supply of cheap labor was felt. This caused a revi-
val of the slave trade which is reflected in the opinions of the Attorneys General.

It is scarcely mentioned previous to the time of Wirt but no less than a round dozen opinions were given by him showing how suddenly the trade had revived. Then it was discovered that the laws which had been on the statute books for almost ten years, needed interpretation.

The first opinion given by Wirt on the subject was in regard to the bond which might be required of ship masters who suspected of intending to engage in the traffic. Wirt insisted, however, that before such bond be required it was necessary to have the oath or affirmation of some citizen, other than the collector of customs, that such suspicion existed. (1, 312)

Intention to engage in the slave trade was cause for the seizure of a vessel, said Wirt. If the ship was fitted in such a way as to be adapted exclusively for such trade, was sufficient proof of intention, especially if the master and crew were known to have engaged in the trade previously and the destination of the ship was to Africa or some port on the recognized route which slave traders took. (V, 724)

When a ship engaged in the slave trade it became forfeited to the United States, and this forfeiture could be applied at any time that it could be seized. Even if such ship was sold and later, while in possession of its new owners, came into a port of the United States it could then be seized. Therefore, said Wirt, it behooved buyers of ships to investigate the history of the craft they intended to purchase in order to be sure that it had not formerly been a slaver and subject to forfeiture. In this case the new owners had appealed to the President in an effort to avoid losing their ship but Wirt advised the President
In order to stimulate enthusiasm for the capture of slave ships, the law provided that half the value of their cargo should be paid to the crew making the seizure. In the case of the ship which captured the *Carmelita*, the district court of Georgia had refused to allow this amount to be paid to the crew because the capture took place near the Georgia coast, not on the high seas, but Wirt ruled that the law applied to seizures made anywhere and the crew should get their reward. (V, 718, 721)

When slaves were imported the persons bringing them in had no title to them or their services. The disposal of the slaves was in the hands of the authorities of the state into which they were brought. Wirt said that it was the duty of all good citizens on hearing of a violation of the slave importation law, to seize the slaves and notify the governor of the state who should make arrangements for taking care of them. Therefore, the Georgia law which provided for such contingencies was not unconstitutional. (1, 446)

The funds for the support of such seized slaves could be provided out of the fund for suppression of the traffic. However, in the case where such slaves were used in carrying out some public work their support could be paid for out of the funds appropriated for the work. (V, 728)

Wirt did not think that funds appropriated for the suppression of the slave traffic should be used for the purchase of land in Africa on which to settle free negroes who should be sent there, or for other expenses necessary for the establishment of a colony there. The African Colonization society evidently
brought pressure to bear on the Attorney General because in a later opinion he weakened somewhat, saying that the act gave the President power to make arrangements for the removal of slaves who came under his control beyond the limits of the United States and for their settlement in Africa. He still maintained, however, that the money should not be used for the transportation and settlement of free negroes. (1, 314, 317)

The law against the slave trade did not apply either to free negroes who came into the United States or to slaves who were taken out of the country for a short time by their masters. Such negroes could enter the United States without violation of the law. (1, 503; V, 736)

When a French ship having slaves on board who have been taken from Africa, was captured by an American vessel, the French minister claimed the slaves with the object of restoring them to their former homes. Wirt ruled that they should be given to him as it was contrary to French law to hold slaves or to take part in the slave trade. In the case of a slave who escaped from his owner in the Danish West Indies by concealing himself on board an American ship, Wirt ruled that he should be handed over to the Danish minister who would restore the slave to his master. As long as Denmark allowed slavery in her American possessions, slaves should be considered as property and therefore be restored when stolen. (1, 566)

Wirt declared that the South Carolina Police bill was unconstitutional. This law provided for the seizure and imprisonment of all free negroes who came into any of her ports until the ships on which they came were ready to leave. Wirt said that this law was contrary to the Constitution, treaties and
laws of the United States and was incompatible with the rights of nations who were at peace with us.

Von Holst says that after this opinion given the South Carolina authorities did not notice negro sailors on English ships but the law was enforced in regard to free negroes on American ships, no attention being paid to Wirt's opinion. Berrien later disagreed with Wirt and declared the South Carolina law valid. (1, 659)

In regard to the army, navy and marines, Wirt's opinions range all the way in importance from the rank of one certain officer to questions which involved the welfare of the entire national defense.

The President had the right to order a new trial before the court martial in spite of the section of the Articles of War which provided that "no officer shall be tried a second time for the same offense". This provision, borrowed from the Common Law, did not prevent a second trial if it was on the motion of the accused, as in the case in question. The court martial could not refuse a new trial if one was ordered by the President. (1, 233)

The governor of a state could not demand the surrender of a naval officer for trial in the state courts and the President should not order him arrested and then surrender him to the state authorities. The proper course to be followed, according to Wirt, was for the Navy Department to order the officer to surrender himself to the state officials. (1, 244)

The rules in regard to the responsibility of army contractors in furnishing supplies to army posts were laid down by Wirt. If a deficiency of supplies occurred, the commanding general or
some officer appointed him, was allowed to obtain supplies, which must be paid for by the contractor. If, on the other hand, the commander anticipated a deficiency, he could secure supplies, but these would be charged to the contractor only in the case, the deficiency was realized. If the supplies had to be transported through the country of the enemy, the commander of the post was required to furnish an escort if the contractor requested one. If the requested escort was not furnished the contractor was not responsible for the failure of the army post to receive supplies. (1, 260) The contractor was not required to pay for rations ordered by anyone except the commander or some officer appointed by him for that purpose. (1, 270)

The claim of officers in the Marine Corps for payment as brevet majors could not be allowed because, since the passage of the act of 3, March 1817, the rank of major of Marines did not exist. As there were no majors there could be no brevet majors. (1, 489) However, the rank of Generals Gaines and Scott as brevet major generals of the army was recognized as the act of 6, July 1812 was still in force and both officers held commands which corresponded with their brevet rank. (1, 525) In case of General McComb, Wirt said that the information which he had was not sufficient for him to decide whether he was entitled to the pay of brevet brigadier general, it depended on the kind of command he held. (1, 547)

Since the rank of major in the Marines had been abolished the question arose as to the reward to be given a captain who had served ten years and, according to the act of 16, April 1814, was entitled to brevet promotion. Wirt wrote that the captain might be made a brevet major in the army or, if the President did not
consider such action expedient, the only alternative was to make him brevet lieutenant colonel in the Marine Corps. (1, 578) The granting of brevet rank was the reward either for serving ten years in one grade or for gallant conduct and the same rules of promotion applied in both kinds of cases. (1, 653)

In regard to pensions Wirt was inclined to be as lenient in his interpretations as the law would permit, but not to the extent of allowing the express provisions of the Pension acts to be overlooked or set aside. Where it was evident, however, that former soldiers, sailors and their dependents were actually entitled to pensions under the acts of Congress, he never allowed technicalities to interfere with their receiving them.

Soldiers, who lost their health while performing their duties in the army, were entitled to pensions if they were incapacitated, even though they were not wounded. This applied to all soldiers who were in commission and not on furlough even if they were not assigned to any particular duty. (1, 181) The pension laws applied to the cadets at West Point as they were considered non-commissioned officers in the army. (1, 348)

The act of 18, March 1818, which granted pensions to indigent veterans of the Revolution, required a verification of the amount of property owned by the applicant for a pension, made before a court of record of the state in which he lived. The definition of a court of record was that provided by the laws of that state but it must be one "which proceeds according to the course of the common law with jurisdiction unlimited in point of amount, keeping a record of its proceedings, and which has the power of fine and imprisonment". Before such a court it was only necessary to prove that the applicant had inadequate means for his support. (1, 356)
The end of the Revolution, according to the Pension act, was
the date of the ratification of the treaty of peace.

The act of 11. January 1812 regulated the pensions to which
soldiers were entitled according to their pay while in the army
and made no special provisions for aids-de-camp. Hence, said
Wirt, such officers should receive pensions to which their com-
missions entitled them. (1, 413)

A seaman, who had been disabled because of punishment in-
flicted by an enemy for endeavoring to escape after having been
captured, was entitled to take advantage of the provisions of
the act of 23. April 1800 which granted pensions to seamen dis-
abled in the line of duty. (1, 461) Widows and children of men
who lost their lives while in service on a public or private
armed vessel between 18, June 1812 and 22. January 1825, were
entitled to pensions. This included men who had been transfered
from an armed vessel to a prize which was later lost at sea or
those who lost their lives while members of the crew of a boat
sent out by an armed vessel. (1, 709)

The amount of pension due to widows of naval officers was
half the pay of the deceased husbands. This amount was to be
paid as long as the widow remained unmarried. With her remar-
riage the pension stopped and her children were not entitled to
a continuance. But in case a widow did not apply for her pension
until after her remarriage, she was entitled to it until the
date of her second marriage. (1, 95)

The opinions of Wirt in regard to the accounting officers
were largely advice in regard to the method of handling special
cases which had come before them on which they needed legal
advice.

Unless a claim against the United States was in such con-
dition as called for immediate payment it could not be allowed as an offset to another claim owed to the government. That a jury in Kentucky allowed a claim against the United States was not sufficient proof that it was valid. \(^1\, 589\) The accounting officers were allowed to adopt the report of a committee of Congress, upon which the law was passed, for the principles which were to govern the settlement of accounts under that law. Wirt also ruled that depositions could be accepted as proof of items in an account. \(^1\, 596\)

It was not the duty of the President to enforce the laws, he was to see that they were enforced. In other words, it was not the duty of the President to audit the accounts of the government but to see that they were audited. As long as the auditors and comptrollers performed their duties efficiently it was not the duty of the President to interfere. Therefore, the settlement of an account by the proper officers was final and conclusive as far as the Executive department was concerned. If the claimant still held the opinion that he had been injured his recourse was to the courts or to Congress. \(^1\, 624\)

Some of the decisions of the accounting officers had to be submitted to the President for his approval but his power was only appellate and therefore could only be exercised after the accounting officers had first made their decision. \(^1\, 596\) If, after a case had been settled by the proper officers, new evidence should be discovered, such as would be received by a court of justice, the officers could re-open the case to give the claimant the benefit of it. \(^1\, 598\)

The United States was not allowed to make itself the creditor of one of its officers without his consent, Wirt ruled. In
other words an officer’s salary could not be detained in settle-
ment of debts alleged to be due the government. (1, 676) An
army contractor’s account was to be settled by the accounting
officers. If any legal question arose it should be referred to
the head of that department who might seek the advice of the
Attorney General, but that officer could not examine into the
account. It would also be illegal for the President to inter-
fere in the settlement. (1, 676) When Congress directed a
sum of money to be paid to certain persons, it would be illegal
to retain part of it in settlement of an account. The direc-
tions of Congress must be carried out and the money paid with-
out any deductions. (1, 700) The Secretary of the Treasury
could not correct an error supposed to have been made by a
court of the United States in order to refund a sum of money
which was said to have been improperly paid. Congress was the
only source of redress in such a case. (1, 405)

Wirt was very guarded in his opinion concerning the payment
of interest on a claim against the government. He said that
there was no reason why interest should not be paid if the money
due a man had been withheld but if the delay had been caused by
the failure of the claimant to present his bill the interest
should not be paid. (1, 288)

Wirt differed with Pinkney in regard to publicity for patent
specifications, saying that they should not be given to anyone
who applied for them nor should the records of the office be open
to the public. He ruled, however, that a person, who was sued
for infringement, was entitled to a copy of the specifications of
the patent he was accused of copying so that he could provide for
his defense. He was also allowed to use this document in open
court as it would be necessary to properly establish his conten-
Wirt became rather technical in ruling in regard to a patent applied for by a Mr. Duplat. The law required that the applicant take oath that, to his knowledge, the invention had not been previously in use in this or any other country. Duplat admitted that while he had invented the devise it had been used for several years in France. For that reason Wirt ruled that he could not properly take the required oath and recommended that the patent be refused. (1, 332)

The capture of a devise, patented both in England and the United States, on board a British warship did not give American ships the right to use the invention even though it had not yet been introduced into America. The invention in question was a fire-hearth invented by a Mr. Lamb, to be used on board ships for the purpose of producing fresh water from sea water. (V, 725)

Wirt disapproved of assisting in misrepresenting articles which would be offered for sale and therefore advised refusing patents on medicines which would bear the names of other remedies, whose names were well known, (11, 109)

No law of the United States existed which made fraud by forgery, perjury or the corruption of a justice of the peace punishable by criminal prosecution and no act could be made an offense against the United States except by a law passed by Congress, said Wirt. Forgery under federal law was confined to certain subjects such as certificates, public securities, bank notes and checks. Perjury was limited to depositions taken in carrying out some law of Congress while bribery of a justice of the peace was not included in the federal criminal code. There-
fore no criminal action could be taken under such circumstances but Wirt recommended that a civil suit be started for purpose of recovering the money fraudulently obtained. (1, 209)

The Attorney General was frequently useful to the President in assisting him in avoiding difficulties. When the Chief Executive was asked to do something which he wished to avoid but did not like to refuse because, perhaps, of the political power of the person making the request, it was useful to have the Attorney General rule that the President had no power to perform the act which had been requested.

A case of this kind was that of Samuel Pease, who was being prosecuted for defrauding the government and who had applied to the President for an order to be released on his own recognizance. Wirt ruled that the President lacked the power to do this. Such a release could only be obtained from the court. (1, 332)

Another case of this kind occurred when Wirt ruled that the President lacked the power to refund money which had been paid into the Treasury when a bond had been forfeited. When the funds were paid into the Treasury only an act of Congress could cause the money to leave it. (11, 189)

The pardoning power of the President, as interpreted by Wirt was broad but there was some limitations on it. A pardon could be granted before or after conviction but when granted before it presumed an offense had been committed. A pardon could be absolute or conditional. In the latter case, the condition must be one which could be legally enforced by the President. One which required the re-arrest of the offender, in case of non-fulfillment of the conditions, could not be granted as the President lacked the power to order an arrest. The sentence of an offender could be changed in kind or in duration provided the change meant
a mitigation of its severity. (1, 327, 341)

While the President had an almost unlimited power over pardons he did not, according to Wirt, have the right to set aside laws. When a ship from the West Indies, driven by a storm, put into an American port, part of the cargo of Jamaica rum was sold in order to pay the wages of the crew. The captain applied for permission to sell the remainder of the rum but Wirt ruled that the law, which forbade the importation of rum from the West Indies, could not be suspended by executive order. (1, 460)

The President had the power to stop any suit started by the United States at any stage of the proceedings but Wirt advised that this power be used with great care. This, he said, applied to both civil and criminal cases. (V, 729; II, 53)

While the President had general supervision over the affairs of the city of Washington, Wirt maintained that the Corporation was supposed to attend to the details, such as the draining of stagnant pools. In regard to the appropriation of the public grounds the President had control and if the Corporation wished to build a city hall the executive approval should be provided the land asked for was sufficient for the purpose. (1, 615, 368)

The city of Washington had the power to conduct a lottery, with the approval of the President, provided the amount raised did not exceed ten thousand dollars annually. The city had not conducted such an enterprise for four years and asked permission to raise $40,000 by that method. This, Wirt refused to approve. He said that if in any year no lottery was drawn the right to do so that year expired and could not be revived because if it were permitted it would be asking one President to approve of something which his predecessor should have passed upon. (1, 270)
The only limitation on the power of the President over the fund for foreign intercourse was that the cost of an outfit for a foreign minister must not exceed the amount of a year's salary. If he wished to advance to a minister part of his salary, providing it would assist him in his official duties, it could be properly done. (1, 454, 620)

The power of the President to fill vacancies which occurred during a recess of the Senate included that of filling vacancies which existed during such a recess. The Senate had failed to confirm the nomination of a man to fill a vacant office and hence after Congress adjourned the vacancy still existed. Wirt maintained that a second recess appointment was necessary in order to carry on the work of the office and hence was within the meaning of the Constitution. (1, 631) The bond given by an officer not holding a recess appointment did not hold good after his nomination had been confirmed by the Senate and a new commission issued. An officer received a recess appointment and during this term fell into arrears to the government. He received a regular appointment when the Senate confirmed his nomination, secured a new bond, and continued his duties. During the latter period, he paid some of the money which he owed to the government from his term of office under the recess appointment even though he continued in arrears during his regular term. Wirt, however, ruled that the money paid to the government during his regular term should be credited against the balance for which his first sureties were bound. (1, 637)

The judiciary had no more right to interfere with the executive branch of the government in the performance of its duties by the use of injunctions than it had to attempt to prevent Congress from passing laws. There were times, however, when the courts could
be of service to the executive in solving questions and it was proper to use such assistance. Such a case was that when the government was stake-holder with several claimants for the money involved. Then it was proper for the courts to decide the rightful owners and the executive should follow and carry out the decision. (1, 681)

The history of American neutrality began with Washington’s proclamation in 1793. It was followed by legislation in the following year. The most important of the neutrality acts, however, was that of 1818, during the period when the South American colonies of Spain and Portugal were in a state of chronic revolt.

By this act the enforcement of neutrality and the punishment of violators of the law was placed in the hands of the district attorneys. The trials of offenders against the law were held before federal judges instead of juries. In this way the American law was more effective than that of Great Britain passed in 1819, which placed the enforcement in the hands of the collectors of customs.

The sympathy of the American people for the revolutionists in South America caused many attempts to be made, many of them successful, to assist the new republics. This caused them to run afoul of the neutrality laws.

One case of this kind was that of the ship Corony, which was fitted out with an armament and allowed to sail from Savannah, Georgia. Later this ship, under the name Felix was found to be preying on Spanish vessels. Still later the Felix once more entered Savannah harbor where she was seized and her officers and crew charged with violating the act of 3, March 1817, which was passed for the purpose of preventing violations of our neutrality.
Wirt advised a refusal of the request of the captain of the *Felix* that his ship be released. He told the President that it was a case for the courts to handle. (1, 231)

The neutrality laws, however, were not enforced with any undue severity. Wirt ruled that ships belonging to the Republic of Columbia could make repairs in the ports of the United States but they were not allowed to enlist men while thus engaged. He also decided that Mexican ships could bring their prizes into American ports if in need of repairs. After being repaired they should be allowed to return to Mexican ports.

A neutral country had the right to allow prizes to be sold in her ports, but in Wirt's opinion, it was not a right which should be exercised and it would be a breach of neutrality to allow our ports to be used as a base for cruising against the ships of friendly nations. (II, 4, 86)

An opinion given 26, July 1828, which included the same principle as stated by Chief Justice Taney in the Charles River Bridge case, was that of Wirt's in regard to the bridge over Will's creek in the Northwest territory. The legislature of that territory had given the right to build a bridge over Will's creek to Zaccheus Briggs and Zaccheus A Beatty. Later other persons applied for the privilege of building bridges across the same watercourse, to which Briggs and Beatty objected. Wirt ruled that the right given to Briggs and Beatty was not an exclusive one and that other persons could be given the right to build other bridges. (II, 107)

Wirt laid the foundation for the improvement and development of the office of the Attorney General. Not only was he the first Attorney General to spend most of his time at the capital but he
succeeded
in getting Congress to provide an office, and an assistant but
most important of all, he started the collection of the opinions
of the men who had held his office.

Previous to Wirt the Attorney General was not really part of
the President's council but after that time, he was and if any
incumbent of the office had special ability he could and several
of them did become the most influential members of these groups.
William Pinkney would have been an important part of the federal
government if Wirt's reforms had been made before he became
Attorney General. Without these reforms, Taney, Cushing, and
Black would have been of little importance.

In his opinions, Wirt was careful to make plain the limits
of the duties of the office he held. He evidently foresaw the
vast amount of work which would come of his successors and there¬
fore refused to go beyond the limit set by the laws of Congress
on the work to be done by the legal department.

He maintained that the district attorneys should be under the
control of the Attorney General but as Congress had refused to
pass a law giving that power, he refused to assist them in any
way. By doing so he hoped to bring about the reform he had ad¬
vocated. It was finally done but long after Wirt retired from
office.

That he was progressive in his ideas is shown by many of his
rulings in regard to public lands and especially by his opinions
in regard to Will's creek case.

After his retirement from office in 1829 he continued his
extensive practice of law and never expected to take much part in
politics. In 1832, however, he was nominated for President on
the Anti-Masonic ticket in spite of the fact that he was a Mason.
He received the electoral vote of but one state, Vermont.
He retired from politics but continued to practice law with great success until his death in 1834.
V. JOHN McPHERSON BERRIEN.

John McPherson Berrien's appointment was due to a combination of geography and politics. Jackson needed a representative of the extreme South in his cabinet, Berrien lived in Georgia. He wanted a strong Jackson Democrat and strong opponent of Adams and Clay. Berrien could qualify on both counts. Adams in his "Diary" says that Berrien was "among the meanest of my persecutors in the Senate."

His legal qualifications were not such as to recommend him to be the advisor to the President and the heads of the departments. His experience both as a lawyer and judge had been limited and he was not considered a great legal light even in his own state. Von Holst says that if the old practice had been in vogue, Wirt would have been asked to continue in the office. The old practice, however, was not in vogue. There was to be a clean sweep in the offices and no friend of either Adams or Clay was allowed to remain.

In spite of his lack of ability Berrien was considered, next to Van Buren, the most important man in the cabinet. The Little Magician had distinguished himself at that time only as a clever politician. Samuel D. Ingham at the head of the Treasury was a clever business man and useful member of Congress but his chief claim to elevation was the fact that he had been first to charge a "trade" between Clay and Adams, a cry which had no little influence in electing Jackson. Eaton had been a Senator, like Berrien, but of no particular importance but he was a boon companion of Jackson and had been very useful in the campaign. Branch according to Von Holst, owed his position to his wealth and social position.
Adams devoted a paragraph to the group in commenting on the fact that none of them called on him though he had entertained all of them. He said that they had all withdrawn from all social intercourse with him from the old impulse, "they hate the man they have wronged". He added, "Ingham was among the basest of my slanderers, Branch and Berrien had been among the meanest of my persecutors in the Senate. Among them all, there is not a man capable of a generous or liberal sentiment towards an adversary, excepting Eaton; and he is a man of indecently licentious life".

In spite of Berrien's supposed lack of ability, important changes were made in the office of the Attorney General during the time, he occupied the position. Jackson, with Berrien's advice, recommended to Congress a reorganization of the office placing the Attorney General on the same footing in all the respects as the heads of the other departments. He wanted the legal officer of the government paid enough so that he would not need to carry on his private practice but could spend all his time and energy in doing the legal work of the United States. He did not think it proper that the Attorney General should be summoned away from the capital on anything but federal business. He should be charged with the general superintendence of the government's legal work.

In 1830 a bill was introduced into the Senate which provided for the reorganization of the office of the Attorney General so as to make it an executive department, for the transfer to it from the State Department of the Patent Office, to give the Attorney General charge of the collection of debts due the government and to increase his salary to six thousand dollars, the same as paid the heads of the other departments.
It was presumed by the supporters of the bill that the Attorney General would abandon any private law practice that he might have and give his entire time to his office. It was argued that this arrangement would do away with the necessity of creating, at least for some time, a Home (or Interior) Department.

These arguments, however, did more than anything else to kill the bill. Daniel Webster opposed it vigorously. He did not wish to forestall the formation of a Home Department. He thought it a good idea for the Attorney General to have some private practice, the experience assisted him in performing his official duties and the fees he received more than made up for the difference in salary.

After the failure of this bill, a law was passed, largely through Webster’s efforts, which provided a new officer known as Solicitor of the Treasury who was to assist the Attorney General in all suits in regard to Treasury claims. Because the latter officer had to advice and direct the Solicitor his salary was increased to four thousand dollars.

Jackson was not satisfied with this compromise and sent one more message to Congress asking for reform but that body evidently thought that enough had been done. Jackson had many other important problems and never referred to the Attorney General’s office again.

Berrien was born in New Jersey but his parents moved to Georgia when he was one year old. He returned to the North for his education, going to a New York preparatory school and later graduated at Princeton. He then studied law in the office of Joseph Clay, a federal judge in Savannah.

He soon entered politics, his first public office being that of solicitor of the eastern district of Georgia to which he was
elected in 1809. The following year, he was made judge in the same district, holding that office until 1821.

He then served one term as state senator and in 1824, he was elected to the United States Senate. He held this office until appointed Attorney General. In the Senate he held the usual Georgia views in regard to the settlement of the Creek land session. At that time he was opposed to a protective tariff and presented the protest of the Georgia legislature against the tariff of 1828, the so called "Tariff of Abominations". His attitude on the tariff changed later when he allied himself with the Whigs but that was long after his retirement from the cabinet of Old Hickory.

BERRIEN'S OPINIONS.

The sale of public land was a matter of the extreme importance at the time both from the standpoint of the government and of the settlers. The object of the government was to get the largest amount possible from its sale while the settlers wished to buy it at the lowest figure. One method used by the purchasers for securing land at a low price was the subject of an opinion by Berrien given at the request of the Commissioner of the General Land Office. This method consisted of buying land at a public sale where the price was high but failing to pay for it. Then if the land was declared unsold it could be entered for private sale at the minimum price allowed by law. This would save a considerable sum for the purchaser.

Berrien decided that this was illegal. He said that if the land had been sold it could not be listed as unsold. If the land had not been paid for it became reverted land and had to be offered at the next public land sale. It could not be sold at a private sale. This opinion put an end to this practice of getting public land at the minimum figure provided anyone was willing to pay more.
Conflicting land claims were evidently not uncommon. One of Berrien's opinions dealt with pre-emption claims to the land in Ohio which was included in the Virginia military reserve. The Attorney General said that Congress never intended to pass any law conflicting with the terms of the cession of that land to the United States and hence no pre-emption claims could be allowed there. (II, 246) In another instance the prior claim of a man to land which was later included in the military reservation of Fort Gratiot, near Detroit, was overruled because his claim was never approved by Congress from which body came all power to confer land. While the claim had been entered, nothing had been done about it until after the fort had been located there. (II, 207)

According to two acts of Congress three percent of the money collected from the sale of public land in Illinois was to be paid to the state to be used for the encouragement of education there. It was evident from the statements of the state officers, that the money already paid had been used for the ordinary state expenses but the state promised in the future to repay the amount to the school fund and to use all the federal money for the purpose it was intended.

Berrien ruled that according to the laws, no more money could be paid until the state showed that the funds already paid had been used for the purposes stated but that the Secretary of the Treasury was made the judge as to whether the state had fulfilled its promises. He made the suggestion that in view of the difficulties of administering the law, it might be best that money be paid to the state and allow it to use the funds as it saw fit. He
said that "it would be more consistent with a proper respect for state sovereignty" to do so. (II, 268)

The policy in regard to public lands went through a number of well-defined stages in the period between the settlement of the colonies and 1860.

In the royal and proprietary colonies the disposal of public land was for the double purpose of encouraging settlement and getting revenue. In order to accomplish the latter purpose, quitrents were charged, which, while small, were collected with difficulty. They were not given up until the Revolution in most states and not until 1840 in New York.

In New England a different system was used. Here the most prominent feature was the town grant, that is, land given to the town to apportioned among the settlers. Quitrents were rarely charged and land was seldom sold by the colonies. Therefore at the end of the Revolution there was no uniform land system.

The public lands were first looked upon by the United States as a source of revenue and the land laws were drawn up with that end in view. As the first land to be disposed of was north of the Ohio, the New England system was used in the Ordinance of 1785, because it was thought that New England people would largely occupy it.

The land was to be divided into townships, six miles square, half to be sold intact and the other half in sections, one mile square at a minimum price of one dollar an acre, plus the costs of the survey. One section in each township was reserved for education. The retangular system of surveys was started with this act which was continued in the later acts. This did much towards doing away with conflicting claims and land disputes.
The New England system was not adapted to the West and the first development was the reduction in the size of the minimum lot. In 1800, half-sections were offered; 1804, quarter-sections; in 1820, 80 acre tracts; and in 1832, 40 acre tracts. Little land was sold under the Ordinance of 1785, its only importance being the system of surveys which was started.

The first important sales were to companies, of which two actually completed their purchases though many more applied for land. This method of selling land was discontinued.

Next in the history of the public land was the credit sale period, from 1800 to 1820. During this period much land was also given away in the form of bounties for military services in the Revolution, though later the same system was used in getting soldiers for the War of 1812 and the Mexican War. Educational and religious institutions also received large quantities of land.

With the minimum price increased to two dollars an acre by an act of 1796, the act of 1800, started the credit period which lasted for 20 years. By the latter act it was provided that one-fourth of the purchase price must be paid within forty days and five years' credit was allowed on the balance with interest at six percent.

In spite of the high price of land, the sales rapidly increase and the four offices which were started in 1800 had to be augmented by many more. The result was that by 1820, land buyers in the West owed the federal government over $24,000,000, this large amount being due to land speculation which had swept the country.

In 1820 Congress abolished the credit system and reduced
the minimum price to $1.25 an acre and the minimum tract to eighty acres. The main evil of the credit system was that the government could not enforce penalties for non-payment. This encouraged recklessness. The result was that the delinquents benefitted and between 1821 and 1832 Congress passed no less than eleven acts which granted the debtors further credit, a discount for cash or a relinquishment of part of their lands.

From 1820 to 1841, the Cash Sale period, public lands were the football of politics. The West had become powerful at Washington and used its influence in favor of a sympathetic land policy. The western representatives sought pre-emption, gifts of land to settlers and to states.

After several special pre-emption acts had been passed Congress in 1841, passed Clay's Distribution bill which included general pre-emption. After that time the old auction sale method of disposing of land was of little importance as all the best land was taken up under pre-emption at the minimum price.

The government having become prosperous revenue from public land ceased to be considered important with the result that during the period from 1841 to 1862, the Land Grant period, Congress gave away land with a lavish hand. Grants for all kinds of improvements, which had started before this time for the encouragement of roads and canals, were now continued and enlarged with railroads receiving some of the benefit. The price of land to settlers was also decreased and the movement for a Homestead law was started. In this period the struggle was between the North and South, the North favoring liberal terms for settlers and the South opposing it.

The land acts passed in the years 1790, 1800, 1812, 1815, 1818, 1823, 1826, and 1831 make up a curious collection of
statutes, according to an opinion given by Berrien to the Secretary of the Treasury who wished to have them interpreted. According to this opinion the certificate of the Secretary of War was necessary in order to authorize patents under the acts of 1790 and 1807 but by the act of 1812, the General Land office was established and to it was transferred the supervision of all military land warrants. The act of 1815 revived the act of 1807 in making the certificate of the Secretary of War necessary and the acts after that time continued to confer that authority. The act of 1826 seemed to require the most interpretation and Berrien ruled that it applied not only to those persons whose warrants were to be issued after the passage of the act but to those issued before that time because it seemed to embrace three classes; those who had not yet obtained their warrants at the time of the passage of the act; those who had previously obtained their warrants but who had not yet completed their locations, therefore had not returned their surveys and warrants and obtained their patents; and those who had received their warrants and completed their locations but had not at the time returned their warrants and surveys and obtained their patents. (11, 280)

The pre-emption rights to settlers on public lands under the act of 1830 were not clear to the Secretary of the Treasury, In order to learn the meaning of the law, he asked Berrien a number of questions. The first was in regard to settlers who rented the improvements which they had made on the land. Did the pre-emption rights belong to the landlord or the tenant? Berrien said that the landlord was the person to whom such rights belonged because he had made the improvements, incurred the expense or had performed the labor which caused them. In regard
to the question as to whether more than two persons could get pre-emption rights by settling on a quarter section, Berrien said that the law expressly provided that such rights were conferred upon the first two settlers, who were also entitled to pre-emption rights on eighty acres each elsewhere. The other later settlers were entitled to nothing.

The other questions were in regard to the time limit in which the pre-emptioner must exercise his right or give notice of his claim. Berrien stated that no notice of the claim was necessary, proof of settlement and of cultivation together with payment of the minimum price were the only requirements. There was no time limit for this except the duration of the act which expired May 1831, unless the President included lands, on which there were pre-emption rights, in his proclamation of the sale of public land. The the pre-emptioner must perfect his title before the date when the sale was to begin. He advised land officers not to permit entries nor receive purchase money from persons not claiming pre-emptive rights without first learning whether there was a settler on the desired land. (II, 367)

In case settlers had made the required improvements on more than one tract of land, had leased the improvements on one of them and claimed pre-emption rights on the other, the renter was not entitled to pre-emption for the tract on which he had rented the improvements. (II, 383)

Land script issued upon the surrender of warrants for bounty lands granted by the United States or the state of Virginia for service in the Revolution, should be given to the persons named in the warrants or to their heirs. In order to assign these warrants it was necessary that all the heirs unite in this action
and the legal documents must include proof of identity, of heirship and of assignment. The script must be issued to either heirs or assigns but not to executors or administrators because it was considered to be real estate. (II, 385)

A receipt for money from the holder of a Virginia land warrant was not sufficient evidence of assignment. Unless better evidence was produced the land patent should be given to the heirs or assigns of the holder of the warrant who had better proof of their right to the land. (II, 276)

Berrien was asked by the Secretary of the Treasury to revise one of Wirt's opinions in regard to land given the settlers in Arkansas territory. Wirt had decided that the donation of two quarter-sections to each head of the family should be only to those who had been deprived of their land when the Cherokees were moved beyond the Mississippi. Berrien extended the operation of the law so that it also covered those who lived on the land which had been given to the Choctaws. In other words it included all settlers south of the Arkansas river, west of the territorial line of Arkansas who were forced to move to the part east of the same line. (II, 305)

MILITARY AND NAVAL AFFAIRS.

Berrien was called upon for a large number of opinions in regard to the navy and army. Only the barest outline is here given. When in the acts of Congress referring to the pay of various ranks in the army, no mention was made of the branch of that service, it was presumed to be the infantry. When an order of the Secretary of War conflicted with an act of Congress, it was of doubtful validity.

Berrien made several rulings in regard to courts martial.
In such a court the judge advocate had the right to make a reply and in case of a private prosecution, the accuser also had that right but their comments must be confined to comments on the evidence already introduced. If the prosecution was allowed to introduce new evidence at that time, the defense must also be accorded the same right. When a body of judges was to try several cases, it was not necessary that they be sworn for each separate case. Dismissal from service was one of the penalties of a court martial could inflict. Contemptuous conduct to an officer in the performance of his duty or disobedience to orders could be punished with death or any penalty the court wished to inflict. Non-combatant officers, such as chaplains or surgeons, were not competent to be members of a court martial. (II, 297)

The judge in the trial of an officer of the Marine Corps on shore duty must be from his own branch of the service or an army officer. (II, 311)

A member of a court martial who had been absent during part of the trial should not be allowed to participate in the verdict and five judges was the minimum number for such a court. Failure to comply with these requirements made the trial of John H. Clark illegal, according to Berrien. Only five officers were present when Clark's trial started and one did not hear all the evidence. This left but four who could legally take part in the verdict, less than the required number. Before Clark could make any protest, however, he had been dismissed from the service by the President. Berrien ruled that the only way to undo the work of the court martial was to re-appoint him and have his new commission carry the same date as his previous one. (II, 414)

Discharges from the Marines before the term of enlistment had expired, could only be granted by the President or according
to regulations made by him. They could not be given by a lieutenant colonel, as had been attempted. (II, 353) Lieutenants of the artillery and the Marines could be interchanged, with their own consent, provided that the ranks of other officers would not be interfered with by the transfer. The process of the change would be, to have each officer resign his commission and then be appointed to the new branch of the service by the President.

West Point cadets were not considered commissioned officers and even after they had been graduated they were not officers until some vacancy occurred which they could fill. Until that happened they were only graduated cadets, privileged by virtue of their degree, to become commissioned officers. (II, 251) If, however, some of these graduated cadets were employed in the office of the assistant adjutant general they were entitled to receive the additional rations which were allowed commissioned officers in the army. (II, 318)

When the government agreed to furnish a suitable storehouse for army supplies to be provided by an army contractor and to see that these supplies were not injured while storage, but only provided temporary storage facility in a place where floods came and damaged the goods, then the government was liable for the damage. The goods to which this opinion referred were stored at Fort St. Philip. (II, 408) All supplies for the Navy had to be purchased either by or under the direction of the Secretary of the Navy and proposals must be advertised for in advance, unless the need for the material was so pressing that the public service would suffer by the delay. In such cases the supplies were to be purchased in the open market. (II, 257)

As it was the duty of the President to have the ships of the
As it was the duty of the President to have the ships of the Navy fitted out and to direct their movements, he had the right, when Congress had failed to provide the money which was indispensable for the proper performance of this branch of the service, to make additional allowances to officers who were performing duties of higher ranks than those authorized by their commissions, (II, 284).

While the President did not have the power to appoint permanent navy agents, aside from those provided for in the act of 3 March 1809, except during a recess of the Senate, in case it became necessary to provide the Navy with supplies at some point where no permanent representative was located, either the President or the Secretary of the Navy could appoint a special agent at that point to perform the necessary duties and the payment of such agent would be legal. (II, 320) Navy agents, appointed during a recess of the Senate, held their offices until the end of the next session of Congress unless their regular appointment was confirmed before that time. Their term of office dated from their regular appointment, confirmed by the Senate, and the bonds which they had given for their recess appointment were no longer in effect but had to be replaced by new ones. (II, 333)

Berrien disagreed with Wirt in regard to paying officers who were in debt to the United States. In regard to naval officers, who were public debtors, he ruled that they should receive their rations or the amount for which they would be commuted but not their pay. That was to be detained as security against their debt. (II, 420)

Berrien was inclined to be more strict than Wirt in his interpretations of pension laws. He said that if a pension had
been granted but was not for the proper amount, Congress would have to make the change. (II, 309) Pensions in arrears could be paid out of current appropriations provided no money had been provided during the years that the pension was supposed to have been in force. (II, 342) In the case of the widows and orphans of the crew of the sloop Hornet, who had each been granted an amount equal to six months' pay of their relatives, Berrien ruled that any pay which members of the crew had received in advance should be deducted from the sum and that half-blood relatives could participate in the benefits in the case there were no relatives of full-blood. (II, 345, 399)

Berrien ruled that the provisions of the Pension act of 31 May 1830 were entirely prospective and therefore did not authorize the repayment of deductions which had been made from pension money paid to invalids previous to the date of the act. (II, 350)

Under the act of 1819 the widows and children of officers, seamen and marines, who had died since the war of 1812, as a result of wounds received during that war, were entitled to a renewal of their pensions. (II, 371)

The pardoning power of the President, said Berrien, was equal to the power to punish. It was general and unqualified except in cases of impeachment and proceedings for contempt. It also included the power of remission of fines, penalties and forfeitures had been paid into the Treasury, the President could not order them restored. Only Congress could do that. (II, 329)

The President could pardon a man before he had been tried but Berrien advised that this power be used sparingly. He could not release a debtor from prison before judgment had been rendered. In the case under consideration the release of a man could be
accomplished if he would confess judgment. (II, 286)

The common council of Alexandria, not the President of the United States, had the power to establish a quarantine in that city. It had full power to provide for the preservation of health and the removal of nuisances. To enable the council to do this it had been given jurisdiction over the harbor of Alexandria and all the ships at anchor there. (II, 263)

Copies of depositions taken before a magistrate of whose authority where was no proof, were not considered sufficient evidence by Berrien for the arrest of an American ship captain, accused of murder on the high seas. The evidence had been submitted by the British minister, Vaughn, who requested the arrest of Captain French for the murder of a British subject while on board the American ship Chance. If the original depositions had been submitted and the authority of the magistrate certified by the governor of the island (Antigua), where they were taken, the President would have been warranted in ordering the arrest. (II, 266)

Berrien agreed with Wirt that a recess appointment made by the President continued until the end of the next session of Congress even if confirmation was refused. He also said that the acceptance of a new commission after confirmation by the Senate of a recess appointment put an end to the old commission.

The President evidently did not like to sign death warrants as we find Berrien sending letters to the federal Circuit judges telling them that the President had decided that the execution of the sentences of the law should be in the hands of the court with the provision that sufficient time should elapse between the sentence and the execution for an appeal for Executive clemency. (II, 344)
In an opinion in regard to the Cherokee lands, Berrien outlined the relationship between the United States and the Indians. The Indians were not to be treated as equal parties to a treaty but as a conquered people who should receive as much as their conquerors felt inclined to give them. This was the unlying principle of the first treaty with the Cherokees: negotiated at Hopewell. The land given to them was not given as an absolute right but was assigned to them for their use. They had admitted that they were under the protection of the United States and stated that they would accept the protection of no other nation. The lands allotted to them were to be for hunting grounds and conferred on them no permanent interest in the soil. Other later treaties with the Cherokees always stated that they were based upon the provisions of that at Hopewell.

When the Cherokees separated, one part wished to engage in agricultural and other civilized pursuits and the other wished to remain hunters, they asked for land west of the Mississippi. This was granted on terms which were fair to the Indians. They were to be allowed to use land west of the Mississippi and in addition were to be paid for any permanent improvements which they had made on the land which they then occupied. In this way whatever title the Cherokees had to the land east of the Mississippi was cancelled. The question arose as to whether this land belonged to the United States or to the state of Georgia. Barrien maintained that it belonged to Georgia because the United States could not acquire land within a state except with the consent of the state. However, following out Berrien’s argument in the first part of this opinion, it might be contended that the Indians never owned this land therefore it belonged to the United States all the time. In other words it was public land which had only
been loaned to the Indians. Therefore when the loan expired the land reverted to the federal government. (II, 321)

Under the provisions of the treaty with Great Britain and an act of Congress passed in 1799, goods for the use of the Indians were to come into the United States free of duty. Therefore Berrien ruled that goods which were being held by the collector at Detroit should be released but that a careful watch be kept to ascertain whether or not the claim that the goods were intended for the Indians was fraudulent. If it was found that the goods were not intended for the Indians prosecution should be started against the importer. (II, 340)

Berrien decided that the claim of the assigns of Peter Johnson was invalid because the land which they claimed had been designated by a treaty to be for the use of the Cherokee Indians. Peter Johnson was a negro slave, which would bar him even though he was married to an Indian woman, but not a Cherokee. In addition to these reasons the grant was for a life lease which meant on the death of the Cherokee claimant the land reverted to the United States. (II, 360)

The trade with the Indians was regulated by laws passed by Congress and no citizens of the United States could make himself exempt from them by entering the territory of the Indians, located in the United States, and being adopted by some tribe. (II, 402)

Resignations of directors of the Bank of the United States were not considered to have taken effect until they had been formally accepted by the President or presumptively by the appointment of a successor. The sending of the resignation did not finish the act. If the sender wished to withdraw his resig-
nation he could do so and continue in office without a new com-
mission. His functions were suspended when he resigned but they
might be either resumed or ended. (II, 406)

An inspector of customs continued to hold office after the
death, resignation or removal of the collector by whom he had
been appointed and until a successor had qualified to act. If
an office was held during the pleasure of some designated officer
it was at the pleasure of the holder of the office not of the in-
dividual. If this designated officer vacated his office without
officially ending the term of his appointee such person held
office until his superior's successor was appointed and had been
vested with similar power. (II, 410)

Berrien rejected the request of the United States agent in
Liberia for arms for the defense of the negroes who had been trans-
grouped to Africa. According to the act of 1819, the federal
government only agreed to pay for their transportation and their
support while on the way. There was no mention of support after
their arrival in Africa or their defense while there. (II, 272)

The difficulties which arose in the effort to suppress the
slave trade were illustrated by the case of the Grampus and the
Phoenix. The Spanish merchant ship Phoenix carrying a cargo of
slaves was seized by the United States warship Grampus, and brought
into New Orleans. The question as to what do with the crew and
the slaves was placed before Berrien, who decided that the case
did not come under the provisions of the act of 1819, for the
suppressing of the slave trade. The reasons for this were that
it was not an American ship, was not in American waters at the
time of her capture and American courts could not enforce the
laws of another country. He refused to give an opinion as to the disposal of the slaves. It had not been settled in the previous case of the Antelope and Berrien suggested that the slaves be detained until the Supreme Court should decide on their disposition. (11, 365)

Berrien disagreed with the opinion of William Wirt in regard to the validity of the South Carolina Police act which provided that all free negroes who came into the ports of the state should be imprisoned while the ship was in port but were to be released when the ship departed, upon payment of the cost of keeping the prisoners. Wirt had decided that this law was in conflict with the federal laws and the treaties in regard to commerce with foreign nations. Berrien went into the matter very thoroughly, basing his opinion upon the Constitution, the interpretations by the framers and the decision of the Supreme Court in the case of Gibbons vs Ogden.

If the subject of the law was something over which the state had power then the state law was valid if it did not go beyond that power. The states had the power to control the police regulations within their borders as was shown in their right to pass quarantine laws, which sometimes conflicted with federal regulations and treaties with foreign nations but nevertheless, they were valid. Therefore, they also had the right to pass laws of the kind which South Carolina had passed, which had for its object the regulation and government of free negroes within the borders of the state. Laws of the United States regulating commerce which interfered with this police power were void and the federal government should not make treaties which interfered with it.
In the specific case before him, that of Daniel Fraser, a free negro, who came to Charleston on a British ship, it was illegal, according to the federal laws, to bring him to the United States because the law forbade the entry of any person of color, who was not a citizen or a registered seaman of the United States. Fraser, being a British subject, was forbidden entry for that reason. (II, 426)

The power of the President over diplomatic intercourse allowed him to advance money to foreign ministers in any amount he thought necessary for their properly carrying out their public duties. Therefore if the President saw fit, he could advance money to a minister over and above the cost of his outfit. (II, 204)

A minister from a foreign country continued to exercise his diplomatic functions even if the government, which sent him, had been changed by revolution or otherwise. The recognition of the new government by the United States would have to be accomplished and a new representative appointed before the former minister's authority would be considered ended. This opinion was given in the case of Mr. Barrozo Perira, Portuguese charge d'affaires under the government of Don Pedro IV, when the latter government was overturned by Don Miguel. Berrien decided, with some reluctance, as he said that this question was outside the legal field, that Mr. Pereira should be considered the Portuguese representative until the government of Don Miguel should be recognised and a new Charge appointed. (II, 290)

The claim of the French consul at Savannah to criminal jurisdiction over French vessels in that port was rejected by Berrien on the grounds that the rights of such officers were regu-
lated by treaties and when the treaties between two countries failed to mention certain consular rights, they did not exist. According to the treaty in force at the time between the United States and France the consuls' power to arrest was limited to seamen, who had deserted. Hence the claim of the French official to jurisdiction over all crimes committed on board French vessels could not be allowed. (II, 378)

Berrien's opinions in regard to the accounting officers were largely confined to the explanation of how certain cases should be handled by them. After the Third Auditor of the Treasury department had certified an account to the Second Comptroller and that officer had certified it to the Secretary of War, the decision of the case was final as far as the accounting officers of the government were concerned. After that the only way to have the account changed by action of the Secretary acting under the direction of the President. A decision by the Second Comptroller upon a claim which was properly brought before him could not be questioned by any other accounting officer. The Secretary of War, however, had the power to review before he issued a requisition for the amount of the claim. This opinion was the result of a claim of General Parker who maintained that he was entitled to an allowance for fuel and shelter which he had not received. Berrien said that during this time, the general received double rations, to which he was not entitled except that it was given in place of an allowance for fuel and shelter, and for that reason the government owed him nothing. Another reason why Parker could collect nothing legally, he had allowed his claim to remain inactive for too long a time. (II, 302)

Until the Fourth Auditor certified an account to the Sec-
ond Comptroller together with the vouchers and other records, 
the latter officer was not supposed to act on any claim. Purser 
Clarke had complained that his account had not been acted upon 
but Berrien placed the blame for this inaction on the former 
Fourth Auditor, who had failed to certify it to the proper of¬
official. A letter from the former Secretary of the Navy did not 
help the case unless, because of this letter, the Fourth Auditor 
had acted. (II, 352)

The claim of William Tharp, formerly a sutler in the army, 
to payment was incorrectly based upon his having been appointed 
administrator of the estates of deceased soldiers, according to 
Berrien, who maintained that his claims should have been based 
upon the fact that he was their creditor. His accounts should 
be examined by the accounting officers, and if it were found that 
the deceased soldiers were in debt to him, the money should be 
deducted from their accounts and paid to Tharp. (II, 209)

A Norfolk firm which had failed in business owing the United 
States more than $10,000, received a shipment of specie amounting 
to $7,200. This specie arrived in 1821 but due to legal action 
on the part of other creditors of the bankrupt firm, was not 
paid to the United States until 1824. The trustees for Norfolk 
firm claimed that they should not be forced to pay interest on 
the amount of the specie after 1821. This contention was over¬
rulled by Berrien on the grounds that the detention of the specie 
was not the fault of the United States and as the money had not 
been paid until 1824, the interest was due. (II, 214)

Entry of goods to be entitled to the benefit of drawback? 
could be made by the owner through an attorney. In fact the 
entire transaction could be carried on in the absence of the
owner of the goods if he was properly represented. Berrien said that the law without doubt meant to allow this because, if it were not allowed, foreign merchants would be barred from such entry of goods. (II, 260)

Money which had been appropriated to the War Department, and still remained in the treasury at the end of two years, passed into the Surplus fund without any action on the part of the Secretary of War. On the other hand, money which had been appropriated and was still in the hands of the Treasurer, as an agent of the War Department, but which had not been expended, must be reported by the Secretary of War and placed in the surplus account. Money could, however, be placed in the surplus account before the expiration of two years if it was reported by the Secretary that the object, for which the appropriation had been made, had been accomplished. (II, 442)

Berrien gave three brief opinions on the subject of the merchant marine. When an American ship was sold in a foreign country, the United States consul was to withhold from the money paid to the owner, an amount equal to three months' pay for the crew. (II, 256)

In case of a shipwreck, on the other hand, this was not to be done but the entire amount which was received as salvage was to be paid to the owner of the vessel. (II, 418) The rule concerning the three month's pay did not apply to foreign owned ships on which American sailors were employed. What they received depended on the laws of the country under whose flag the vessel sailed. (II, 448)

The law in regard to any particular action was the one in force when the action was performed. Duties to be levied on
imports were those which were in force when the goods arrived in port. The law, prescribing a penalty for making a fraudulent invoice, to be enforced was the one which was in force when the invoice was made. Berrien's opinion was given in response to an inquiry from the Secretary of the Treasury in regard to a quantity of goods, entered at the port of New York, for which the invoice was much less than the value placed upon the goods by the appraisers. The importation took place while the act of 1823 was in force but the invoice was made after the act of 1830 went into effect. Hence, according to Berrien, the penalty under the latter act should be enforced. The penalty according to the act of 1835, was a fine of fifty percent of the value of the goods and according to the act of 1830, it was forfeiture. (II, 358)

Following Berrien's retirement as Attorney General, he spent the next ten years in private life, practicing law in Savannah, Georgia, in which he prospered due to the enhancement of his legal reputation caused by the fact that he held an office in the President's cabinet. In the meantime he had changed his political affiliation.

In 1841, he was elected to the Senate as a Whig and served until 1852. During this time, he supported the Whig measures in regard to the United States Bank, the protective tariff, territorial expansion and a compromise on slavery. At first, he opposed the annexation of Texas, but when the question came up for the second time he changed his stand. He voted against the Mexican war and later tried to prevent the acquisition of more territory on the grounds that the Northern states would attempt to bar slav-
very therefrom and thus prevent the Southern people from enjoying equal rights. He was always in favor of excluding slavery from national politics.

In 1849 Berrien issued an address to the people of the United States asking for a compromise on slavery, but the following year he refused to support the Compromise of 1850. His attitude on the subject of slavery, however, did not please his constituents and he was defeated for re-election in 1852. He later joined the Know-Nothing party. He died in 1856.
Roger Brooke Taney came into the cabinet of Andrew Jackson at the time of the great shake-up which caused the entire membership of his first group to resign. Van Buren, Ingham, Eaton, Berrien and Branch gave way to Livingston, McLane, Cass, Taney and Woodbury, leaving Barry, the Postmaster General as the only survivor and this for reason that he was a weak man and of little importance.

The cause of this political upheaval was the Eatons. John H. Eaton, the Secretary of War had married Peggy O'Neil, daughter of a Washington inn-keeper, Mrs. Eaton's past had been such that the other cabinet wives did not wish to associate with her and the result was that she was snubbed by all. President Jackson, however, insisted that Mrs. Eaton should be treated with respect. He defended her against her slanderers, saying that Mrs. Jackson had liked her, and that was sufficient to prove to Old Hickory that the wife of his Secretary of War had a character which was above reproach.

The only member of the cabinet who was not dragged into the Eaton affair was Van Buren. This was because he was a widower and had no wife to cause trouble by refusing to associate with Mrs. Eaton. But he also had troubles, it being charged that he was preparing the way for his succession to the presidency. For that reason he suggested to the President a way out of his difficulties.

This solution was to ask for the resignations of the entire cabinet, including himself. It took some time to convince Jackson of the wisdom of this course, but he finally succeeded and it was arranged that Van Buren was to go to England as minister from which place he would more available to succeed Jackson.
Edward Livingston, formerly of New York but at the time living in Louisiana, was named a Secretary of State. This appointment pleased both New York where the Livingston family was prominent and the southwest where the new Secretary then lived. He was a man of ability, giving satisfaction for the two years which he held the office and was then sent as minister to France.

Louis McLane of Delaware took Ingham's place at the Treasury and had an exciting time trying to keep his office in spite of his unwillingness to obey Jackson's orders. Lewis Cass of Michigan as Secretary of War was a representative of the northwest while Woodbury of Vermont was the New England man of the group.

Some of the displaced members of the cabinet were glad to leave; but such was not the case with Berrien. He liked the position, the best he had ever held, and he believed that he was giving satisfaction. Others believed the same thing as is shown by the efforts of many of the President's advisors to have him retain his Attorney General. Jackson's mind, however, was made up to make a clean sweep of the cabinet offices and therefore Berrien must go. He also wanted to be sure that no Calhoun influence remained, and Berrien was regarded as being tainted by friendship with the great South Carolinian.

When it was decided to ask for Berrien's resignation, Jackson began considering his successor. It was reported that George M. Dallas had been offered the position, but if the offer was made it was declined. One of the men consulted by Jackson on the subject was Dr. William Johas of Washington who suggested Taney.

At that time it was probable that Jackson had scarcely heard the name of the man who was to become his chief advisor but he
investigated and received favorable reports in regard to Taney. He then consulted Francis Scott Key, Taney's brother-in-law and a prominent lawyer, known to Americans of our day as the author of the national anthem. Key urged the President to retain Berrien; and Taney, when he was consulted, did the same, but Jackson's mind was made up and could not be changed.

The reports which Jackson received of Taney's ability and reputation were evidently favorable for he told Key that the position need not interfere with Taney's Baltimore law practice and that the new Attorney General did not have to live in Washington. When Taney accepted the appointment Berrien's resignation was called for. Adams said that Berrien was the only member of Jackson's cabinet who resigned with some dignity and added that he also "treated the laws of grammar with some respect."

Taney was born in 1777 in Calvert county, Maryland, of a Roman Catholic family which had been in the state since the days of the proprietors. Graduated from Dickinson College, he studied law in the office of Jeremiah Townley Chase, one of the judges of the General Court of the state. Taney's father had great political ambitions for his son and persuaded him to return to Calvert county in spite of the fact that there was no prospect of legal advancement there. He was soon elected on the Federalist ticket to the House of Delegates but when he was defeated for re-election, moved to Frederick in the western part of the state. There he remained for twenty-two years and built up a large and lucrative law practice.

Taney left the Federalist party in 1812, when he supported the war with England while his former party opposed it. In 1816 he was elected as a Democrat to the Maryland Senate, where he did
little, not even attending the sessions with any regularity on account of his large law practice which extended to all the courts of the state. He ranked along with Luther Martin, William Pinkney, Robert Goodloe Harper, Phillip Barton Key and Francis Scott Key as one of the leaders of the Maryland bar. In 1823 he decided to move to Baltimore, the most important city of the state.

From the beginning of his residence there he was considered a leading citizen as well as a prominent lawyer of Baltimore. He became a stockholder and soon after a director of the Union bank which accounts for some of the bitterness with which he fought the United States bank, which had established a branch in Baltimore and was regarded with hostile eyes by the banking fraternity.

In 1824, due to his fear that Adams would look with disfavor upon former Federalists, Taney voted for Jackson. He also supported Jackson in 1828, and was considered one of the leaders of the party in Maryland.

Taney's dislike for the United States Bank was intensified by a case in which he took part in 1826 as attorney for Solomon Etting. James McCullough, who had been cashier of the Baltimore branch, had speculated with the bank's funds with the result that he owed that institution over three million dollars. Keeping the fact secret the Bank directors induced sixteen Baltimore merchants, of whom Etting was one, to become bound to the Bank as McCullough's security for $12,500 each. They then moved the cashier and demanded payment from the securities. Etting refused to pay but the courts in spite of the efforts of his attorneys, Webster and Taney, decided against him.

In 1827 Governor Kent, a Federalist, appointed Taney Attorney General of the state, which position he held until his appointment to the President's cabinet.
The fact that Taney had been a Federalist did not please some of the old time Democrats but they were delighted when they saw evidences that he had what they considered correct views on important measures. In fact it was remarked at one time that "Taney was the best Democrat" in the cabinet. The issue of nullification came up while Taney was absent from Washington and he had no hand in the drawing up of the Proclamation, which, however, he approved, though he said later that he would have worded it differently.

The fight over the re-charter of the United States Bank was the most important matter that came up during Taney's term as Attorney General. Though it was not strictly in line with the duties of that office, Taney gave advice to the President whenever it was called for and a number of times voluntarily. He was without doubt the most important member of the cabinet during this struggle because he took a bold stand and did not recede from it even when much influence was brought to bear to induce the administration to change its position.

Taney's views concerning the Bank had not been formed on the spur of the moment. He had observed the activities of that institution for a long time and with no favorable eye. As stockholder and director in the Union Bank of Baltimore, he viewed the activities of the Baltimore branch with suspicion and as attorney for Solomon Etting, he had an opportunity to observe what he considers the sharp practices of the men in charge of the Bank. He had long held that the charter of the Bank was unconstitutional on the grounds that the bank was not "necessary" because the duties performed by that institution could be carried on just as well by the state banks thus giving more people the benefit of the profits which accrued. That these profits were enormous was shown by the
large amount the Bank was willing to pay for a renewal of its charter.

The application of the Bank for a renewal two years before the old charter expired was considered a clever move and it almost succeeded. In fact, according to Taney's biographer, Steiner, it would have succeeded but for the efforts of the Attorney General. The friends of the Bank thought that Jackson would not dare to veto the re-charter bill because he would fear the effect on people just before the presidential election. If he did veto the bill it would make a good campaign argument for Jackson's defeat. When the bill was presented to Jackson all the members of his cabinet favored signing it except Taney who wrote a 54 page letter stating his reasons for opposing the re-charter.

He said that this bill was unconstitutional because it granted away some of the power of Congress for a term of 15 years, and that one congress has no power to bind its successors. The bill bound Congress not to establish any other bank during the next 15 years. This was not right because before the end of that time another bank might be needed. It was not necessary to grant great powers to the "fiscal agent" of the government, this work could be done without such grant. It was an abuse of power to grant such special and valuable privileges to a small body of individuals, it would be much better to spread such valuable rights among a greater number of people. Taney said in his letter that he was following the same line of reasoning that Chief Justice Marshall used in his decision in the case of McCullough vs. Maryland but most readers of the two papers have been of the opinion that his arguments were directly opposite to those of the chief justice.

Taney added that if the bill was constitutional it should be vetoed on the grounds that it was not expedient, that
the bank if allowed to continue would in a few year become more powerful than the national government. It would be able to ruin cities or individuals by its power over financial affairs and it would be able to control Congress and the President. Congress would not be able to do anything to curb the Bank's power during the term of the charter. He also commented on the application for a re-charter so long before the old charter expired and charged the Bank with meddling in politics on the side of the Whigs, with using money and financial pressure to influence the election which was about to take place.

Jackson vetoed the bill and the main issue of the campaign of 1832 was the question of the re-charter of the Bank. When Jackson was triumphantly returned to office, he took this vote to be the popular approval of his stand in regard to the Bank. From that time, he relied upon Taney more than ever to supply advice and ideas for his fight with that institution because the Attorney General had been the only member of the cabinet to approve his action in that regard.

In his first message after the election of 1832, Jackson recommended the sale of the shares of stock owned by the federal government in the Bank, and at the same time asked Congress to investigate the affairs of the Bank especially the part played in the election which had just taken place. This the House of Representatives, in which the Whigs had a majority, refused to do. In March, Jackson had a long conference with Taney in regard to withdrawing the national funds from the Bank. Taney said that the Secretary of the Treasury had sole control over the deposits and could therefore withdraw them from the Bank and place them where ever he saw fit if he could find a safe place for them else-
where. Jackson doubted the financial stability of the Bank and wanted to withdraw the government funds but he did not know where to put them.

Jackson then sent a letter to each member of his cabinet in which he not only expressed his views but asked each of them for a statement of his views on the subject of the Bank. The President wrote that he did not think the charter should be renewed, that the federal government had no right to establish a bank outside of the District of Columbia nor that such bank be allowed to establish branches without the consent of the states in which they were located and such branches should be under such restrictions as the states wished to impose, that the President and a sufficient number of directors should be appointed by the government, that Congress should retain the right to modify the charter from time to time as circumstances dictated, that even such a bank should not be established until the experiment had been tried of carrying on the financial affairs of the government without any national bank.

Taney replied to Jackson's request with another long letter, this time the length was 26 pages, on the subject of the government deposits in the Bank. The Ways and Means committee of the House had investigated the safety of the Bank and had reported that it was safe to continue the deposits in that institution. This report was adopted by the House. There had also been a minority report of the committee against the bank which Taney said took the correct view of the matter. The judgment of the House was not such as to command the President but left the question of the deposits open. He called the President's attention to Article 16 of the Charter which gave the Secretary of the Treasury the power to remove the deposits. He then went
on to say that the conduct of the Bank had been such that it could no longer be relied upon, that it had been guilty of "gross and palpable violations of duty to the public," giving as an instance, that the Bank in July 1832 had postponed a payment of $6,000,000 on the public debt for three months when it had over nine millions loaned out at interest at that time.

He also claimed that the Bank had made a large increase in its loans in 1831 which he characterized as "overtrading" and that the loans made a further increase of seven millions between January and June, 1832 when the re-charter bill was pending.

The Bank had also been using its money to influence the press.

Taney next took up the part which the Bank played in the last election when it had done its best to defeat Jackson. This, he said, was enough to cause a refusal of a new charter even if the constitutional objections could be surmounted. Finally Taney recommended that the State Banks be used both as government depositories and for the purpose of providing a currency. He advised Jackson to select the banks that he intended to use and to make arrangements with them. Then he could discontinue making deposits with the United States Bank, making a report to Congress after the change was accomplished. He predicted that the Bank would make a fierce fight but that the people would support him. The officers of the Bank might seek to make trouble for the communities in which they are located but an institution with such great power for evil should not be allowed to exist.

Jackson determined to remove the deposits but the Secretary of the Treasury, McLane, was opposed to this step, so he was transferred to the State Department whose secretary, Livingston, had resigned and been appointed minister to France.
William J. Duane, of Philadelphia was appointed head of the Treasury. Why Duane was appointed to the position without learning his views on the most important question before the government at the time is not clear. It is evident that McLane had the most to do with his appointment and McLane was opposed to the removal of the deposits. Duane was opposed to the re-charter of the bank but he soon showed that he was also opposed to the action that Jackson and Taney had in mind. The president, while on a trip wrote Duane from Boston that he wished him to make arrangements with the state banks to receive the deposits and to act as fiscal agents for the government but Duane preferred to wait for Congress to meet which would postpone any action from June, when Jackson's letter was written, until December. Before going on his summer vacation in Virginia, Jackson discussed the bank affairs with Taney who advised him then and later by letter to have the work of removal done before Congress met. Then all that body could do would be to criticise the action but it could not be undone. Jackson was still doubtful as to the ability of the state banks to perform the duties which had been done by the United States Bank but finally allowed himself to be persuaded.

September 15, Jackson asked Taney to prepare a paper on the removal of the deposits which was ready two days later. Jackson adopted this paper as his own and on the following day read it to his cabinet. It fixed, 1 October as the date when the change was to be made. As Duane refused to execute the order and refused to resign he was dismissed. Taney was then appointed to the office of Secretary of the Treasury.
In his opinions Taney showed two marked tendencies, first to temper justice with mercy when dealing with humanity, and to stick closely to the letter of the law in regard to business dealings. The first quality was shown in his interpretations of pension laws, and the second in dealing with corporations, persons having business with the government, patents and public lands.

In regard to pensions for invalids, the law required that the pensioner should submit proof of his condition every two years. In case the pensioner neglected to do this Taney ruled that the omission did nothing more than suspend payment until this proof had been given. He added that if a long period had elapsed it might excite suspicion and call for a more rigorous investigation. (II, 478)

He did not, however, carry his sympathy so far that he wanted the government to support people who did not need help. In an opinion given to the Secretary of War, he stated that if a person on the pension roll had acquired so much property that he no longer needed the assistance of the government, then the basis on which the pension rested failed and he should be dropped from the rolls. (II, 502)

The amount which should be paid to an invalid depended on the degree of his incapacity and that was a question which the President should decide. If a pensioner was able to hold some civil office he might still draw a pension, if the President's regulations allowed it. The law placed this power and responsibility entirely in the hands of the Executive. (II, 519)

Taney's human sympathy was also shown in his treatment of
the widow of a consul who died abroad. He advised the President that the widow should receive three months' pay, just as the consul would have, had he lived and resigned his office. Taney, who hated to see public money paid out without some return, excused the seeming laxity by saying that a consul would have been paid that amount when he was performing no service so that it was no more than just that the widow should receive what her husband would have if he had lived. He also allowed the bill for funeral expenses, as such had been the custom in the past when foreign representatives died in service. The former consul's son had performed the duties of his father's office, and though he had not been regularly appointed, his payment was recommended. (II, 521)

While Taney was willing to interpret pension laws and regulations with a liberal mind, he would not allow the direct violation of the law in this regard. An attempt had been made to extend the pension regulations under the act of 1831 to include officers and men who had served on privateers but Taney called attention to the words "in the naval service" and ruled that privateersmen were not included. (II, 531)

Taney's liberality in pension matters probably reached its high point in an opinion given to the Secretary of the Navy in the case of the widow of Captain John M. Gardner. Mrs. Gardner had been given a pension, on account of the death of her husband, under the Pension act of 1817 and it had been continued under the acts of 1819 and 1824, in spite of the fact that she never had been entitled to one. Taney said, however, that she should not be required to pay back the money she had received nor was it to be charged to the pension to which she was legally entitled under
the act of 1832, for the reason that widows were not "debtor
to the public for what they might have erroneously received
under the decisions of the tribunals established to decide on
their rights." (II, 532)

In interpreting several of the Pension laws, Taney made
a number of rulings which evidently cleared up some misunder-
standings. He ruled that foreigners who served in the American
army with the exception of officers, were entitled to pensions,
that as the pensions were graded according to the rank which
the pensioner held in the army, if a man had served in several
different ranks, the time he served in each should be calculated
in determining the pension to which he was entitled; that the
new pension act of 1832 did nothing more than repeal that of
1819 by not requiring proofs of continued disability but did
not restore anyone to the pension rolls who had been dropped
from them. He also made a ruling in regard to pension certifi-
cates which had been pledged for debat. He said that the law
intended to prevent the pensioners from selling or mortgaging
their pensions and hence, in case a creditor had possession of
the certificate and refused to surrender it, the pensioner
should be allowed to draw his pension if he could produce evi-
dence that one had been issued to him. (II, 532)

In two opinions, Taney gave his idea of the meaning of the
word "disabled", as it applied to persons who were candidates
for pensions. This word did not mean the same as incapacitated
but meant "any degree of personal disability which renders the
individual less able to provide for his subsistence". The
degree of this disability was to determine the amount of the
pension and was to be decided by the Secretary of the Navy.
(II, 542, 545)
In regard to widows Taney ruled that they were entitled to pensions under the Act of 1832 until they remarried. As the act provided for widows only, the children were not entitled to draw the pension after their mother remarried. (II, 548)

The Pension laws of 1828 and 1832 did not conflict with each other, according to an opinion of Taney given at the request of the Secretary of War. The Act of 1832, being more liberal, granted pensions to persons, who had been excluded from the provisions of the Act of 1828. (II, 569)

Seamen discharged from the navy in foreign ports were to have their passage paid back to the United States, according to an opinion given to the Secretary of the Navy, both in order to help the seaman to return to his home and so that the nation would not be deprived of the services of the sailor in time of war. In case the ship, on which the discharged mariner took passage, did not bring him all the way back the master of the vessel would not receive full passage money. The reason for this ruling, which, according to Taney, involved only a small amount of money, was that if the entire passage was paid, even if the passenger came only part way, such laxity would furnish an inducement for ship captains to persuade these sailors to stop in other countries. (II, 468)

White men encroaching on Indian lands or lands which the Indians had ceded to the United States were to be removed by force of arms at the hands of the United States, according to an opinion given to the Secretary of War. The Creeks had ceded some land in Alabama to the federal government and by the terms of the cession, after a survey had been made, certain parts of the lands were to be reserved for ninety of the chiefs. Before
this survey had been completed white men had settled on some of
the former Creek land, claiming it because of permission given
by Indians, who were not authorized to do so. Taney said that
the federal government had a right to use military force to re-
move these intruders even if the land was included in the state
of Alabama. This action would not cause any conflict of juris-
diction between the United States and Alabama as it would only
be protecting the property of the federal government. (11, 574)

In regard to the laws passed by Congress Taney favored
adhering to them to the letter except in a few cases where long
continued practice had been to the contrary. One example of
this tendency is found in his refusal to allow office rent to
the minister to Spain. Alexander H. Everett, former minister
to Madrid, had included this item in his expense account, claim-
ing that while the act of Congress did not mention this it had
been the practice to allow it. Taney replied to this argument
that while office rent had been allowed to our diplomatic re-
presentatives in Paris and London it had not been allowed else-
where. (11, 453)

Patents and the patent office received considerable atten-
tion. The patent office acted "rather ministerially than
judicially in granting patents" according to Taney. The rights
that a patentee gained when he secured a patent was a matter for
the courts to decide, not the patent office. If the patentee of
an invention caused that patent to be cancelled and another
issued with an improvement on the original devise the second
patent could bear the date of the original. Another patent could
be issued on the improvement alone taking the date of the second
patent, but Taney refused to express an opinion as to the rights
the patentee would have over the patent on the improvement after the original patent had expired. The record of the first patent should be retained in the patent office together with the record of its surrender. No person was to be allowed to take away any of the records from the office but copies of specifications could be made by the proper officer and fees for such service paid into the Treasury. (11, 454) Patents could only be granted to American citizens or aliens who had lived in the United States for more than two years. (11, 511) A patent which was on the joint invention of two men could not be granted to one of them who had an assignment of the rights of the other but all who were concerned in the invention must join in the petition. (11, 571) Regulations as to what constituted a "power of Attorney" should be formulated by the Patent office before such instruments could be used in place of the actual presence or signature of one of the inventors. An assignee of a patent could not surrender it and take out in its place a new one with additional specifications unless he could prove that he was the inventor of the new features, or the original inventor would co-operate with him. Otherwise the assignee could not take the oath required of a patentee. (11, 572)

The many questions concerning the accounting officers, which were submitted to Taney, gave him the opportunity to show that he believed in adhering closely to the laws, rules and regulations. He insisted that the duties of the accounting officers were not judicial, when his opinion was asked as to the propriety of paying to a Mr. Goodman a proportionate share of the money collected from trust funds held by a Mr. Wyman. Part of the money owed by Weyman had been paid but it had all been applied to accounts in which
Goodman had no interest. He asked that a proportionate part of this money be paid to him. Taney advised against doing so on the grounds that Goodman's remedy was in the courts where it could be decided how much Goodman should get and who should pay it. It was not a question for the Treasury to settle. (11, 457, 473)

No law existed which prevented the accounting officers from paying interest on accounts past due, said Taney, but such cases seldom arose as the government was always able and willing to pay its debts. If the Secretary of War, however, thought interest should be paid, he could order it done. Long lapse of time in settling a claim was no proof that it was not a just one but raised a strong presumption against its justice. If a claim had been rejected by the accounting officers and the Secretary of War, the claimant could appeal to the President or to Congress but he should not be allowed to present his claim to the next Secretary of War. If this practice was allowed, claims would never be permanently settled. (11, 463)

Accounting officers were not allowed to refund money paid as a forfeit for non-fulfillment of contract. Only Congress could do so. Contracts could not be changed nor contractors released from some of the stipulations of their contracts. (11, 481)

The decision of the Comptroller was final as far as the Executive branch of the government was concerned and the President did not have the power to inquire into the correctness of an account. An appeal to Congress for relief was the only remedy. (11, 507)

When items of an account were rejected by the accounting officers, then were presented to Congress and there rejected in part, the rejected items could not again be presented to the accounting officers, even if new evidence had been found. The consideration
of these items was closed but those which Congress re-opened could be re-examined. (11, 515)

Sale by barter was not allowed by law, ruled Taney, and therefore the agreement sanctioned by the head of the Ordinance Office by which new gun-skidding was exchanged for old cannon could not be approved. The government paid for everything it bought with money not goods. (11, 580)

The diamonds of the Princess of Orange occupied a considerable amount of the time and attention of the various departments of the United States government, especially of the Attorney General. These jewels had been stolen from the Princess and brought to America where they were seized by the collector of customs for violation of the revenue laws. It is quite evident that pressure had been brought to bear upon Taney in regard to this affair because he changed his mind quite radically between his first and his later opinions. The Dutch minister, Huygens, had been very active in his efforts to secure possession of the jewels. In his first opinion, Taney was firmly of the opinion that the diamonds could not be handed over to the Dutch minister, the ownership would have to be settled in the courts and the thief could not be extradited because we had no extradition treaty with Holland.

In his second opinion, further elaborated by succeeding ones, he said that the real owner of the diamonds had done nothing which would subject her possessions to forfeiture and that there was enough evidence to prove that they really belonged to the Princess. Therefore the President could order the district attorney to discontinue the prosecution and the marshal could deliver the diamonds to the Dutch minister. (11, 452, 477, 482, 496)
Slavery did not occupy a very important position in the opinions of Taney but there are a few on the subject. An English ship owner had asked the Secretary of State if the master's right in the possession of slaves would be protected in the United States. Taney replied that there was no express stipulation in the treaties between the two nations and as the British government had never protected the rights of American slave owners but on the contrary had claimed that a slave became free as soon as he landed on British soil, the English slave owners could expect no better treatment in the United States. Therefore if an English ship should enter a port of any free state, he could expect that his slaves would be freed. (11, 475)

While the importation of slaves was illegal, a citizen of the United States could take his slaves with him to a foreign country and bring them back, provided he intended to return. If, however, he intended to stay in some foreign country (in this case Texas), and later changed his mind the slaves could not be legally returned. If they were their owner was liable to prosecution for violation of the law forbidding the slave trade. (11, 479)

In his opinions concerning courts martial, Taney aimed at securing substantial justice and was not particular about technicalities. In the matter of whether the officers of a court martial which was trying several cases, should take the oath before each separate trial he was of the opinion the ordinary custom in such trials should be followed. (11, 460) According to the law in regard to naval courts-martial, the number of officers must be not less than five nor more than 13 therefore any trial was legal which conformed to that law. (11, 534)

The disputes between President Jackson and Congress found an echo in one of Taney's opinions, this one in regard to filling
of a vacancy while the Senate was not in session. In this case
the nomination of a register of a land office in Mississippi, who
had been appointed by the President during the recess of the Sen-
ate, had been rejected but Jackson sent in the nomination of the
same man. This time the Senate did not act upon his recommenda-
tion. Taney maintained that the President could make another
recess appointment because the office became vacant again after
Congress adjourned, in fact, immediately after. (11, 525)

In regard to the government's dealings with companies Taney
insisted on precision and accuracy. When it was proposed that the
government buy the property and rights of the Norfolk Drawbridge
Company closing both the bridge and the road leading to it, Taney
insisted that it could not be done without the consent of the
state of Virginia because the state had rights in the road and
bridge which it would have to surrender. When this had been done
Taney agreed to the legality of the purchase. (11, 512)

In regard to treaties with Indians concerning land, Taney
said that these documents should be construed liberally in order
to give the Indians every chance to move and become established
elsewhere. Sometimes a strict interpretation of a treaty might
cause much hardship (11, 465)

Public land was mentioned but few times. Soldiers of the
War of 1812 were entitled to the land promised in the Act of
1812 even if they hired a substitute after serving part of the
time (and the substitute deserted). (11, 470) Land warrants
for bounty lands were to be considered as real estate and in
the event of the death of the owner the land was to be conveyed
by the government to the heirs designated either by law or by
a will. (11, 506)
In cases where Indian treaties concerned individual white men, Taney insisted on a strict enforcement of the documents. In a treaty with the Ottowas the United States had promised to pay a certain man ten thousand dollars. Some doubt existed in the minds of the federal officers as to the desirability of paying such an amount but Taney ruled that it must be paid without any investigation because the treaty expressly provided for such payment. (11, 562) In a treaty with the Miamies it was provided that certain individuals were to receive quarter-sections of land to be located under the direction of the President. Those persons had proceeded to locate their own land but Taney insisted that the land they had taken did not belong to them. They must take what was granted by the President. (11, 563)

One of the last opinions given by Taney was in regard to the removal of deposits from the Bank of the United States. He said that in case the government removed the deposits from the National bank and placed the money in the state banks these banks should be required to give security for the safety of the funds just as securities were required for officers of the government who handled money. To prove his point, he quotes at length from a decision by Justice Story. (11, 584)

Taney's opinion in regard to the criminal jurisdiction of federal circuit and district judges was given as the result of the attempted assault upon President Jackson by Robert B. Randolph, a naval officer who had been dismissed because of irregularity in his accounts. The attempted assault took place in the cabin of a steamboat at the Alexandria dock and consisted of Randolph's trying to pull the President's nose.

The opinion was in answer to a question as to whether the judge of the Supreme Court or a district judge could issue a
warrant for the arrest of man who had committed a crime in the District of Columbia. Taney ruled that the power to arrest for any offense against the United States was given by Congress in general terms and federal judges were not confined to their district in regard to warrants issued. These warrants could be served anywhere in the United States. (11, 564)

Taney believed that in accepting the position of Secretary of the Treasury, he was giving up all chance of achieving the ambition of his life—to be a judge of the United States Supreme Court. At least, according to Amos Kendall who wrote the account long after it was supposed to have happened, Taney made the statement that he accepted the position because he had advised the removal of the deposits from the National bank and believed it his duty to see that it was done.

In addition to stirring up the enmity of all the Bank's friends and all those who opposed the transfer of funds he also had to endure the accusation that he was nothing more than the pliant tool of Jackson in carrying out the President's policy instead of being the originator and instigator of it. This idea in regard to Taney persisted for many years and it has only been in recent years that the actual facts have come to light.

The difficulties only started when it was decided to remove the money from the National bank. The next thing was to find a good and safe place for them. Taney placed them in selected state banks, the so-called "pet banks" because they were supposed to be favored with federal funds because of the political affiliations of the men who directed the. One of these banks was the Union Bank of Baltimore, of which Taney had been attorney and director and was, even at the time, a
stockholder. This fact later became known to Congress which investigated and criticised the Secretary for his action. He was still further embarrassed by the way the funds deposited with this bank were handled as Ellicott, president of the Union bank and a trust friend of Taney, cashed two drafts totaling $200,000 on the Bank of the United States long before it was supposed to be done and then used the money for some stock speculation. Ellicott, who of course had been a strong enemy of the National Bank, now that that institution was almost a thing of the past, became frightened at what had been done and wrote to Taney urging that the re-charter be granted. Ellicott claimed that he feared the power of the bank to injure the other banks as the reason for his change. Taney however insisted on pursuing his policy and said that a renewal of the charter would be the "betrayal of the best and dearest interests of the country".

The financial policy of the administration was already causing trouble and a panic ensued with the usual results of such things. But this did not shake Jackson's or Taney's determination to carry through their plans. They claimed that the panic was caused by the failure of the commercial classes to sustain their state banks but, when Congress met, the Whigs had a majority in the Senate which was anxious to start trouble. Jackson's message told of the transfer of the Federal funds from the Bank of the United States to the state banks selected by the Secretary of the Treasury and promised that the Secretary would soon give them an account of the action. He approved of the transaction and had urged, he said, the removal of the deposits in order to prevent the bank from using government money in order to strengthen its political power.
Taney's report, received by Congress the day after the President's message, told of the financial changes. He wrote that as the charter would not be renewed it was necessary to make arrangements for the deposits before March 1836, and as serious inconvenience would result if the funds were left until the last day. If it had depended on his judgment, the deposits would have been withdrawn at a still earlier date. The time which the charter yet had to run was "not more than was proper to accomplish the object" of withdrawing the bank's notes with safety to the business community. He also told Congress of refusing to pay the claim for damages presented by the National bank due to a draft which the government had drawn on France under an award made by Commissioners under a treaty. The French Chamber of Deputies had refused to appropriate money for paying the awards and the draft was protested. The bank very properly asked its charges be paid but this claim was rejected by Taney. He also stated the charges that the bank had used its money in order to secure enough political power to have its charter renewed. This conduct, Taney maintained, had "been such as would induce a prudent man, in private life, to dismiss his agent from his employment". In the selection of state banks to perform the work of the government's fiscal agent there had been no loss of efficiency or safety and these banks would not seek political power.

Much criticism has been directed at this report, both at the time it was issued and since then, much of it justified. Taney was more of a lawyer and a politician than a financier and when he plunged into financial discussion he was not at his best. Bolles in his Financial History of the United States says that Taney gave as a cause for removing deposits that the bank had
curtailed discounts and then by removing the deposits, he would cause the retirement of the bank's notes and thereby cause still further curtailment of discounts. "He compelled the institution to curtail discounts and then most unjustly blamed them for so doing."

Clay in his speech delivered in the Senate criticised Taney severely for his action and charged that throughout his entire career, Taney had been opposed to democracy, citing as proof, his vote in regard to the Missouri Compromise in the Maryland legislature. The Kentucky senator claimed that the Secretary of the Treasury was only a representative and agent of Congress, who could only act and then submit his action to Congress for its approval or rejection. This, however, is not the modern view of the position of the head of the Treasury. Clay concluded with some sneering remarks about the "modern Turgot".

Taney, however, had friends in Congress and outside of it. The New Jersey legislature instructed the state's senators and representatives in Congress to support him. The House of Representatives, where there was a Democratic majority, approved of his report and expressed a hope that it might lead to the substitution of a metallic currency for all kinds of bank paper. John Quincy Adams, who had prepared a speech against Taney's report, was not permitted to deliver it and later published his views.

On 23, September 1834, Jackson sent Taney's nomination as Secretary of the Treasury to the Senate, where it was promptly rejected, the first instance of its kind in American history. Taney immediately resigned, though under the Constitution, he could have continued in office until the end of that session of
Congress. He left Washington soon after for his home in Baltimore where he intended to resume the practice of his profession.

When Gabriel Duvall resigned as judge of the United States Supreme court, Jackson named Taney to fill the vacancy but as the Whigs still had a majority in the Senate this nomination was not confirmed though Chief Justice Marshall, who thoroughly disliked Jackson and his policies, used his influence in favor of confirmation. Taney, however, continued to be on intimate terms with Jackson who wrote for his opinions on many important questions especially those concerning the bank, which, according to Taney, had not yet given up hope of getting a re-charter.

When Chief Justice Marshall died in 1835, there was considerable speculation as to who would be his successor. Story, if ability among the judges was considered, was the logical candidate but Jackson thought that he must vindicate Taney for the assaults which had been made upon him. Accordingly, on December 28, he sent Taney's name to the Senate for confirmation as Chief Justice of the Supreme Court.

The Democrats now had a majority in the Senate, and though Clay and Webster led a vigorous opposition, the nomination was confirmed March 15, 1836 by a majority of 14 votes. Thus began the career of a head of the highest court which lasted until 1863 and which was characterized by many important and far reaching decisions.
VII. BENJAMIN FRANKLIN BUTLER.

After Taney had been transferred to the Treasury Department there was a vacancy in the office of the Attorney General from September to November 1833. This was caused by the refusal of Peter V. Daniel of Virginia to accept Jackson's appointment. After this delay it required some time for Van Buren to convince Butler that he should take the position.

The new Attorney General was Benjamin Franklin Butler of New York. Butler wished to continue his practice of law which centered in the courts of New York and it was only after Van Buren assured him that he could still carry on his private practice that he gave his reluctant consent. Van Buren told Butler that the time required for the trip from Washington to New York would be greatly lessened the following year when the railroad was opened. Butler held the office until 1838 but his refusal to accept any other cabinet appointments showed that he did not enjoy the trips which he was compelled to make.

Butler's appointment was of course suggested by Van Buren, whose law partner and political intimate he had been for years. Many of Butler's acts were charged to the influence of the Little Magician perhaps justly but of their connection we have little evidence. But without doubt Butler was one of the strongest men in the cabinet at the time. At least he was a good lawyer.

Butler's associates included Louis McLane of Delaware and John Forsyth of Georgia as Secretary of State, Levi Woodbury of New Hampshire, as Secretary of the Treasury, Lewis Cass of Michigan as Secretary of War, Mahlon Dickerson of New Jersey as Secretary of the Navy and Amos Kendall of Kentucky holding the chief political position as Postmaster General.
When Butler was appointed to the cabinet it was noted in
the newspapers at the time that he had been associated with the
anti-Masonic movement. *Niles Register* mentioned the fact that
he had presided at the state convention of that party *held* in New
York in 1823.

Butler's political life shows the increasing importance of
the slavery question in American politics. In his early career
he was associated with men of the same political party but
differing with him on this question. This subject caused them
to gradually draw apart until at the end Butler's last vote was
cast for the Republican candidate for President.

Benjamin Franklin Butler was born in 1795 in New York and
after a meagre education he took up the study of law. After be¬
ing admitted to the bar he formed a law partnership in 1821 with
Martin Van Buren. Butler's first public office was that of dis¬
trict attorney of Albany county. In 1825 he, along with John
Duer and John C. Spencer, were appointed to revise the statutes of
the state of New York.

From 1827 to 1833 he was a member of the New York legislature. During this period he refused an election to the United States
Senate because he wished to continue the practice of law. He
also declined an appointment at the hands of Governor Marcy to the
state Supreme Court and it required all the pressure that Van
Buren could bring to bear to induce Butler to leave New York even
to accept the position as legal advisor to the President.

**BUTLER'S OPINIONS.**

In his opinions in regard to his own office Butler insisted
upon limiting the scope of the work performed, refusing to give
rulings on matters of facts or on matters which did not concern
the government but only officials in their personal capacity.

In other lines he followed certain broad principles. He believed in protecting the Indians against unscrupulous white men but insisted that treaties should be enforced. In regard to public lands he believed in justice both to the government and the settler. Frauds should not be protected or perpetuated, no matter how far they had gone. Favoritism on the part of the land officers was not allowed to exist when the Attorney General could prevent it.

Politically Butler was a good Jackson Democrat and therefore assisted in the fight against the United States Bank, ruling that the bank could not retain government records or withhold dividends which should have been paid, even in order to satisfy claims against the United States. With the beginning of the connection of the government with the state banks we find Butler doing his best to protect the federal interests by insisting that the banks live up to their agreements and refusing to sanction the placing of government funds in institutions which had failed to comply with the regulations.

He would not agree to attempted encroachment by the Senate on the President's power of appointment by adding conditions to their confirmations. He insisted that the nominations either be confirmed or rejected. He also resisted the efforts of the courts to exercise control of the executive departments by the use of the writ of mandamus.

Inclined to fairly generous in regard to pensions he drew the line at granting money to grandchildren of war veterans. He attempted to devise means of satisfying foreign residents of American cities, who had been badly treated, in spite of the fact that the United States lacked the power to force states to make amends.
Butler's rulings in regard to Indians can be summed up briefly. Technicalities were never to be allowed to defeat the main purpose of a land grant to members of a tribe. Such grants took precedence over pre-emption rights or any other land claims. Indians, as a general rule, did not hold land in fee simple but occupied it subject to the right of the United States to extinguish their title by treaty. Land agents were not to be allowed to interfere with an Indian's selection of land. Gifts of valuable property, especially land, to white men were to be regarded with suspicion. All schemes to defraud Indians should be suppressed as rapidly and thoroughly as possible. Treaties were to be as binding upon the Indians as on the government and they should not be allowed to count their children more than once in order to increase their land claims. Wives were to be considered the heads of families in tribes which allowed polygamy as each wife maintained a separate establishment. Indian courts were limited by treaty to jurisdiction over members of their own tribe. Sovereignty over Indians by the United States was only partially relinquished and white men could not divest themselves of allegiance to the United States by becoming members of a tribe. Money received from the sale of Indian lands to be used for their benefit was under the control of the President. (II, 517, 631, 693; III, 33, 34, 41, 46, 49, 56, 107, 113, 114, 170, 207, 230, 238, 255, 259, 322, 365.)
Butler's only opinion in regard to slavery was concerning the surrender of fugitive slaves who had taken refuge among the Indians. He ruled that the President did not have power to order them delivered by federal officers to their owners. This could not be done as there was no law of Congress authorizing such action. While Congress had the power to pass such a law, it had not been done and therefore the slaves could not be surrendered. (Ill, 370)

The opinions of the Attorneys General did much to clarify the public land policy of the United States. While Congress had passed many laws on the subject many occasions arose where legal advice was necessary. Butler's opinions over many phases of the subject and give a good idea of the problems which confronted both the settler and the government.

Pre-emption was not limited to citizens of the United States, except in states which forbid aliens to own land. The laws in regard to pre-emption stated that it could be exercised by "every settler or occupant" of the public lands which, in Butler's opinions was sufficiently wide to include aliens. (Ill, 91)

Pre-emption certificates could be assigned but the assignee took them subject to the equities subsisting between the settler and the United States and the legal title to the land was in the United States until the patent was issued. The assignee was also without protection in case of a failure of title in his assignor because, being only a owner of an equity, he was unable to bring suit to protect his rights. (Ill, 91)

While the decisions of the registers and receivers on facts in regard to pre-emption were final, the issue of patents depended upon the Commissioner of the General Land Office. The registers and receivers acted in a judicial capacity in deciding on the
sufficiency of evidence offered in regard to occupation and cultivation, and though they were compelled to observe the rules laid down by the Commissioner, their decision was final. Wirt in an opinion given in 1827, first stated the reasons for not compelling the issue of patents by the Commissioner and this opinion was quoted by Butler. In any case where the Commissioner was satisfied that the decision of the register and receiver had been secured by fraud or was founded on material error of fact or law, he could suspend the execution of the letters patent. This, however, should only be done in exceptional cases, Butler added. (III, 93)

A pre-emption float, that is, land in addition to that on which settlement and improvements were made, which was located on lands to which others had the right of preference, could be shifted to some other tract, provided it had been properly located before the date of the public sale of the latter tract. (III, 133)

A similar opinion was given by Butler in the case of a man who had built a house on a sand bar in the Mississippi river near St. Louis and claimed pre-emption on the land, which claim had been allowed by the register and receiver of the district land office. The people of St. Louis objected and their views were presented by their representatives in Congress. Butler advised that the patent be suspended until the case could be settled by the courts. (III, 102) Pre-emption could not be allowed on Indian land to which the Indian title had not been extinguished. (III, 106)

The conflicting claims of Adams and Lapsley were the cause of an interpretation by Butler in regard to the proofs necessary for pre-emption. The law of 1830 had required the affidavit of
the interested claimant together with corroborative testimony. While the Commissioner of the General Land Office was to formulate rules for the proof of settlement, he was not allowed to make them such as to render such corroboration unnecessary. The proof required was to be of the kind which courts of law would recognize and could not be allowed to include the oath of the claimant or any other interested party.

Butler said that he realized that in a sparsely settled country it was sometimes difficult to get corroborative evidence and for that reason some registers and receivers had recognized the pre-emption rights of some men who had not submitted the proof for which the law called. In cases where this had been done the proceedings of the registers and receivers were not void but only erroneous and voidable. In all cases where certificates had been so granted they must be held good against all parties except the United States. Even against the United States until it had been vacated by regular judicial authority.

In case a new land district had been carved out of one already existing the officer in the original district was not to exercise the power of sale over lands in the new district after the date of the passage of the act creating it, except where the sale had been substantially made. Then the transaction could be completed. This practice had been established in the decision of the Supreme Court in the case of Matthews vs. Zane's lessee. (5 Cranch 92) The conditions in the Danville district, carved from the Vandalia district, in which the claims of Adams and Lapsley were located, did not differ from those in the Zanesville district, which had been carved from the Marietta district.
Adams' claim was in the Danville district. He filed his proofs more than three months after that office was established but he filed them at the Vandalia office. Butler said that he could not allow the sale to Adams to be considered as substantially made when the new district was created. Hence he decided that Adams should have filed his proofs at the Danville office and that they could not be received at the Vandalia office. He added that if any injustice had been done, Congress could retify it. (Ill, 126)

Adams took Butler's advice and in answer to his appeal Congress passed a law which confirmed the claims of those persons who had started the pre-emption process at one office before the district served by that office was divided. This law, Butler ruled, confirmed Adams' claim. In this opinion, however, he contradicted his previous statement when he said that the sale to Adams had been substantially completed when the new office was established. (Ill, 182, 309)

Settlement of land in order to gain pre-emption rights could not be done by proxy, Butler ruled. Even if the claimant had cultivated the land and had possession for the proper time, he could not gain pre-emption rights unless he was a settler of occupant. (Ill, 126)

In a second opinion Butler, while claiming to re-affirm his former opinion, explained away the original meaning. He said that the words "settler" and "occupant" were synonomous in the meaning of the law and that a man could become a settler or occupant by either of two methods; by personally cultivating and residing on the land, or by personally cultivating, using and managing the land. The latter method would be occupying it by
proxy, which in his former opinion, Butler said, could not be done legally. In his later opinion he said that a single man could gain pre-emption rights by cultivating land even if he lodged and boarded elsewhere and a head of a family could have the land cultivated by the labor of his family under his personal direction. In this case the family would include domestic servants and hired men or, where slavery was allowed, by slaves.

Butler did not agree with Berrien in regard to the question as whether the landlord or the tenant should have the pre-emption rights but as Berrien had made the rule and the Land Office had been following it since its announcement, Butler refused to overrule it. The case of Brown and Reynolds brought up some points upon which Butler was asked an opinion. These men had an acknowledged right under the pre-emption law to a quarter section by reason of joint cultivation and occupation. Because of this right each of them had a right to a float of 80 acres elsewhere. As the plats of the survey were not ready, their claim was registered with the district land office but later the officers of the office discovered that the amount of land in the floats exceeded 80 acres each and refused to permit the entries. Brown and Reynolds refused to pay for their quarter sections unless their claims for the floats were recognised but they offered to pay immediately for all the land they claimed. This, however, was refused by the land officers. Therefore this land which had not been purchased by Brown and Reynolds, nor sold at a public sale was sold at a private sale to a man named Lewis, and the land which had been claimed as floats was also sold under the pre-emption law.
Butler said that Brown and Reynolds were taking a chance when they insisted on their rights to both their original tracts and their floats because if their right to either was defective they would lose both. There was no dispute about their joint right to pre-emption on their quarter section. If, however, their claim to the floats was rejected then they would lose all. He then considered their title to the floats.

While the law provided that these floats were to consist of 80 acres, many of the claimants in order to be on the safe side in the absence of definite surveys, took less than that amount. Hence if some other claimant took a few more than the 80 acres to which he was entitled, it made no substantial difference. In the meantime, the Commissioner of the General Land Office had written Butler that while Reynolds' float might have been a few acres in excess of 80 acres, Brown's was surely less than the maximum amount so that the total amount claimed by the two men was not in excess of 160 acres. Therefore, each tract could be entered as a half-quarter section without injustice to anyone.

The objection made by officers in the district land office that there were two claimants ahead of Brown in entering for his tract was found to be unsound because one of the men found that his improvements were on an adjoining tract and elected to take that. The other failed to pay for the land in the proper time. Hence he ruled that both Brown and Reynolds were entitled to their land. He failed to outline any method of disposing of the men who had been allowed to purchase the land of Brown and Reynolds. Probably he considered that the work of the land officers. (111, 211)

At a land office in Mississippi, Hough and Fisk applied to enter on certain lands in that district but they were unable to
to comply with the rules of the Land Office. Hence the sale was not made but the district land officers marked the lands which Hough and Fisk desired with their names on the plat. When subsequently Dr. Taylor applied for this land his application was refused. Later Hough and Fisk returned, complied with the rules of the office, made payment and received a certificate of purchase. Dr. Taylor insisted on securing this land and Butler was asked by the Secretary of the Treasury how the United States, having already parted with its title to the land, could give a title to the land/anyone else. Butler replied that if the United States had parted with its title to the land then it would be impossible to sell it to anyone else. In this case, however, the title had never passed because no patent for the land had been issued. Hence all that was necessary was to give back to Hough and Fisk the money which they had paid and allow Dr. Taylor to buy the land without forcing him to resort to suit against the land officers. (111, 240)

The intent of the grantors of land should be ascertained when there was any doubt as to the meaning of the grant. This could be done, said Butler in an opinion in regard to the meaning of grant made in 1815 to one of the earthquake sufferers of New Madrid, by consulting other documents, issued at the time of the grant, which were on file in the various government departments. These New Madrid grants were made in large numbers and were similar so that when the rule had been established it could be made to apply to each grant. In the case before him, Butler decided that the patent issued to Raphael Lesieur was not void because it said that the grant was to be made "unto the said Raphael Lesieur, or to his legal representatives, and to his or their heirs and assigns forever".
This phrase meant that the grant was to Lesieur and his heirs, if he was then alive, and if not alive at the time, then to his legal representatives and their heirs. (111, 111)

When any public lands had been withheld from private sale, public notice must be given of the removal of the cause of the withholding before any of the land can be entered upon. That was for the purpose of giving all persons an equal opportunity of buying the land. This rule did not apply, however, in case application for the purchase of the land had been made before the suspension of private sale took place. (111, 274)

The power of the President over mineral lands was wide. He could allow them to be sold, except those which were excepted in the act of 26 June 1834, he could lease them or he could withhold them from sale. In case he had made no reservation of such lands before the day of a sale, he could do it then because the land put no time limit of his actions in this matter. (11, 277)

The federal government, operating through the land office, tried to divide the public land in regular plots containing sections, half sections, and quarter sections, and half-quarter sections but sometimes this was impossible, part of a section being taken away by private claims or natural causes, so that some other method had to be divided to prevent small areas of land being left after the land divided according to the regular arrangement had been disposed of.

In the case on which the Secretary of the Treasury asked Butler's opinion, the part of the section which remained contained 203 acres. If the regular arrangement had been followed of using the quarter or half-quarter section lines it would have left two small irregular and inconvenient tracts which would have been
part of three fractional quarter sections. In order to prevent this the surveyor ran a line due north from the half-quarter section post thus dividing it into two parts, one containing about 92 acres and the other 110 acres, which under their pre-emption rights were granted to James Etheridge and W. D. Stone. The former claimed that as there was an entire quarter section and that he was the only settler on it, he was entitled to the entire 160 acres, that he had taken the proper steps to secure this land and that the survey which disregarded the quarter-section lines was illegal.

Butler in his opinion said that he had examined all the land laws up to the time when this claim was made and found that under the law of 24. April 1820, the Secretary of the Treasury had issued orders to divide fractional sections in just the way that had been done in this case. Since that time this method had been used and after all the years in which it had been practiced it would take strong reasons to overturn it. It was evident that Congress intended that some such method should be used because the law of 1820 provided that fractional sections of less than 160 should not be divided at all but sold entire. Therefore Etheridge was entitled to his 92 acres and not to 160 as he claimed. (lll, 281, 284)

Some of the Creeks who were assigned land under the treaty of 1832 had sold their holdings to white men and the sale was approved by the President. Butler ruled that it was proper to issue the patent for this land directly to the purchasers. (lll, 288)

After having given the Cherokees reserved land and pre-emption rights it was finally decided that all of them should be moved across the Mississippi. Their lands, the treaty provided
as interpreted by Butler, were to be paid for by the United States but their pre-emption rights were lost because it was only permission to buy land which they had not yet exercised and would not then be allowed to exercise. The first expense which was to be deducted from the money provided was that of the transportation to their new homes. The rest of the $600,000 provided was to be spent paying for the lands which the Cherokees had in states of North Carolina, Tennessee and Alabama. In case there was a deficiency it should be charged to the general fund of $5,000,000 which had been appropriated for dealing with the Indians. (Ill, 297, 304)

The question of what constituted a navigable stream was considered by Butler in his opinion in the case of Francis Surget who had entered on some "back lots in Louisiana. These back lots were lands in the rear of those which fronted on some river, creek, bayou, or watercourse. Surget's claim was rejected by the land office because it was fit for cultivation and fronted on a bayou. Surget claimed that this bayou was never navigable and was nearly dry in summer so that his land should be considered a back lot. Butler upheld this contention, referring to the Roman law on the subject, which maintained that a perpetual flow of water was necessary in order to constitute a watercourse. (Ill, 336)

Innocent purchasers of fraudulent land grants should apply for assistance to Congress or to the courts, not to the land office, was the substance of an opinion by Butler in the case of men who had brought part of the De Feriot claim. De Feriot had produced a grant from Spain which he presented to the American commissioners who confirmed it. It later developed that the grant
was fraudulent and the evidence by which he induced the commis-
sioners to confirm it was of the same nature. In the meantime,
however, he had sold part of the land and the purchasers applied
to the land office for a survey and a certificate which request
was referred to the Secretary of the Treasury and by him to
Butler.

In his opinion, Butler said, that it was not the duty of the
land office to perpetuate a fraud and if the innocent purchasers
wanted redress they must appeal to Congress or the courts for it.
(III, 343)

Grants of land could be made by law just the same as they
could be made by patents issued under a law. This was Butler's
opinion concerning some land grants in Missouri made by the act
of 4. July 1836, in which he cited a ruling of the Supreme court
in the case of Strother vs. Lucas (12 Peters 410). In cases of
this kind patents for the land were unnecessary though as a gen-
eral rule the land of office required patents for all land grants.

When a grant of land was made, it did not necessarily have
to be in one tract but it should be in the same land district
and conform to the legal divisions and subdivisions. When a
land grant was assigned to another person the confirmation should
be in the name of the assignee. (III, 350)

Several of the earthquake sufferers of New Madrid who were
granted land made trouble for themselves by failing to exactly
obey the law. The act of 17. February 1815, which authorized
them to locate other land in Missouri provided that these loca-
tions were made on land "the sale of which is authorized by
law". Several of them located on land before the survey had been
made and as a result lost their holdings. They were, however,
allowed to locate an amount of land equal to their loss in any land district in Missouri. This happened in 1836 when the Supreme court confirmed the claims of the heirs of James MacKay to a tract which was found to include the lands of two of the New Madrid holders. (III, 354)

The act of 25, April 1812 put the General Land Office under the control of the Secretary of the Treasury but the act of 4, July 1836, provided that the administration of the public land should be in the hands of the "Commissioner of the General Land Office, under the direction of the President of the United States" Butler ruled, however, that the Secretary of the Treasury was still in charge but in order to eliminate all doubt, he advised the President to issue a formal order to the latter authorizing him to superintend and direct affairs of the Land Office as he had in the past. (III, 157)

Land script which had been issued for the relief of certain officers and soldiers of Virginia who fought in the Revolution should be made out in the names of the persons entitled to it or in that of their heirs. However, according to Butler, there could be assignees who had acquired rights to this script. If such was the case and the Treasury Department knew of these persons, delivery of the scripts should be suspended until they could apply to a court of equity for an injunction, after which the rights of the various parties could be settled in a legal manner. (III, 97)

The Treasury Department was allowed to withhold part of all of the script claimed on a land warrant, if there was any reason for the belief that it called for more land than was really due, until the true amount could be ascertained. (III, 103)
Virginia land script could be considered as money, according to Butler, and as such could be used to pay debts due to the government because of frauds practiced against it. A certain Holman Rice employed T. Triplett to secure for him all of Virginia land script he could obtain. For his services Triplett was to receive one-third of the script secured, which amounted to over 900 acres. Later Triplett, through the use of forged papers secured over $13,000 from the Treasury Department for which he was prosecuted and sentenced to the penitentiary. Suits were then started in order to recover the money. The only property which Triplett had consisted of this Virginia land script. (111, 35)

Butler ruled that when the law in regard to the payment of claims did not prescribe how they were to be paid the President could use his own judgment in the matter. This opinion was given in regard to the payment of claims to citizens of Georgia under the treaty with the Creeks. Butler told the President that he could pay the money to the state of Georgia and allow the state officials to settle the claims. (11, 691) An echo of the trouble which President Jackson had with the bank of the United States is found in an opinion of Butler in regard to the transfer of the funds, books and papers of the pension agency from the bank of the United States to the Girard Bank of Philadelphia. This order of the Secretary of War had been the subject of a protest by the President of the National Bank, in which he said that his bank had been made the disbursing agent of the pensions by an act of Congress and this work could not be taken away without the authority of that body. For the bank to surrender the books and funds of the pension agency, he said, without legislative authorization would make the bank liable for the money which had been intrusted to it.
This argument Butler proceeded to demolish by saying that the payment of pensions and other money to former soldiers had been intrusted to the President and through him to the Secretary of War and the Secretary of the Treasury. These officers could select the disbursing agency and therefore if they wished to make a change in this department of their activities they could do so.

This bank had claimed that as disbursing agent, it became an officer of the government, to which Butler replied that if it was an officer it was a subordinate one which took orders from superiors in the executive department and therefore had no right to set itself up as a power which could interpret or refuse to obey orders from superiors. The officers of the bank were not allowed to look beyond the orders which they had received and question the validity of them or to inquire into the manner in which their superior was going to dispose of the funds which they had formerly held in their possession.

The contention of the bank officials that it was dangerous for them to turn over the funds to the Girard Bank because they might not receive credit at the Treasury for the amount, was dismissed by Butler as almost unworthy of notice. The order from the Secretary of War directing them to transfer the money would be their voucher. He pointed to similar instances where paymaster were ordered to surrender their offices and turn over the funds to a successor. (11, 593)

The quarrel with the Bank of the United States continued and in November, 1834 Butler was again called upon by the Secretary of the Treasury for an opinion in regard to the action of the Bank in withholding the dividends which were due on stock held by the
federal government because the failure of the latter to make
good a claim against is. This claim arose from the failure of
the French Government to pay a draft drawn against it by the
United States the previous year.

The President of the Bank, in a letter to the Secretary
of the Treasury, had stated his reasons for withholding the
dividends. They were two-fold; Because he thought the claim
a just one, and second, in order to bring the matter before the
courts who would decide whether or not the United States should
pay the money the Bank claimed.

In answer to the first contention Butler said that he knew
of no law which would allow a creditor to keep property which
belonged to a debtor without his consent except where the law
gave the creditor the benefit of a lien. A lien was never per¬
mitted, said Butler, where it would be inconsistent with legal
relations or would violate the agreement or understanding of the
parties. Such a claim also implied suability and the United
States could not be sued without its consent because suability
is incompatible with sovereign power. When the United States
chartered the bank it did not give up its rights nor did it do
so when it subscribed for stock in the bank. Hence the lien
could not exist. There was also a section of the law, by which
the Bank was charted, which expressly stated that dividends could
only be withheld from a stockholder who failed to pay any part of
the sum which he had subscribed to the capital stock.

Money could only be secured from the United States after it
had been appropriated by Congress. The dividends which had ac¬
crued on the stock belonged to the government even if the officer
of the bank had not credited the money to the government's accou
Therefore it could not be taken away without any appropriation and any officer who paid out money under such conditions was guilty of violating the law. If the bank could deduct from the federal funds in its possession, the amount of any claim which it might have against the government without that claim being approved and the money appropriated by Congress, it would seriously embarrass the financial arrangements of the government. Butler admitted that the amount of this claim so small that it would not cause any serious annoyance but he added that the President of the bank had stated that his institution had another claim against the government which was "reserved in full force, to be asserted at such time and in such manner as may hereafter be deemed expedient". The result might be that the bank would withhold other money belonging to the government or even the stock which it owned. If the Bank as a financial agent could do such things there was no reason why other receivers and depositories of public funds should not do the same.

The law provided that every officer who received money which he was not authorized to keep as salary, must make an accounting to the government every three months, together with vouchers, within three months of the end of that period, thus, by necessary implication, excluding all pretence for retaining the public money for any outstanding demand, however just. The law provided that any officer, who failed to do so, was to be promptly dismissed from his position. Butler put the words "promptly dismissed" in italics, probably indicating what he thought should be the fate of the bank as a financial agent of the government. He dismissed the idea that a financial agent should be allowed to appropriate for his own use any of the public money as
He also had little use for the contention that courts should be allowed to decide as to the validity of the bank's claim for damages, on account of the failure of France to honor the draft against it. If the government allowed that contention then the legislative control of finances would disappear and the financial affairs of the government would pass into the control of the federal courts, which would be a plain violation of the constitution which provided that Congress shall have control of expenditures.

This opinion was an elaborate statement of the powers of the legislative department of the government in regard to financial affairs in which he proved his points by citing opinions of the Supreme court, especially decisions given by such strong opponents of the Jackson administration as Marshall and Story. (11, 663)

Later the bank offered to pay part of the dividends and in answer to a query from the Secretary of the Treasury, Butler said that the rights of the United States in the affair would not be impaired if this payment was accepted. (11, 710)

Butler gave no more opinions in regard to the bank of United States after 1835, but we find him being asked to settle legal questions in regard to the state banks or "deposite banks" as he termed them. According to the act of Congress which authorized the use of these banks as government depositories, the amount on deposit in any one institution was not to exceed three-fourths of the paid-in capital but any bank which had for one entire quarter of the fiscal year government deposits exceeding one-fourth of the paid-in capital was to pay two percent interest. The question arose as to whether any bank which had ever the maximum amount for a time should be compelled to pay interest on the excess.
Butler ruled that the bank must pay interest on such an amount until it could be transferred. The sole test in regard to interest paying was the question as to whether the bank being considered, had a deposit in excess of one-fourth the paid-in capital. If it had such an amount then it owed interest on all money over the stated amount. It did not concern the government whether or not the bank used the money. It presumed that the bank would use it profitably but must be able to meet any draft made upon it by the government.

Should the interest stop while the funds were being transferred from one bank to another, was a question which Butler was asked to settle. While it probably would be more just to suspend the payment of interest during such period, he said, the law left them no choice. In the agreement between the banks and the government it had been agreed that the transfer of money would be without cost or risk to the United States and the law provided that the bank from which the money was transferred must pay interest until the funds were placed to the credit of the government in the bank which was to receive them.

The agency for a state bank must be considered as part of that bank and the date on which money came into the hands of the agency was that from which the deposit dated. The total amount of government funds held by any bank and its agencies was the amount on which interest was to be calculated. (Ill, 141)

In order to make a bank liable for interest on government funds it was necessary that an amount exceeding one-fourth of the paid-in capital be on deposit therein for the entire period of one-quarter of the fiscal year. If the amount fell below the required mark for even one day then interest could not be
collected under the law. (111, 156)

The weakness of the state banks began to be shown by 1837 and in the last opinion which Butler gave to President Jackson, on 3 March of that year, it is evident that these institutions had become a matter of great concern. The opinion was given in regard to a bill which had passed Congress and was before the President for his consideration. He wanted to know what effect the bill would have upon the finances of the government before he signed it.

Butler wrote that this act would forbid the receipt of any bank notes except those of specie-paying banks who complied with regulations of the government in not issuing bills of a smaller denomination than five dollars and would prevent the Secretary of the Treasury from making any discrimination in this respect between the different branches of the public revenue. In other words money which could not be accepted for the payment of import duties could not be accepted in payment for public lands.

It did not interfere with the power of the Secretary of the Treasury to refused to accept notes from certain banks, provided that he did not discriminate between the branches of the public revenue and it allowed him to direct what particular notes allowed by law, should be received provided he could find a bank which would receive them as cash. In case a bank should refuse to receive these state bank notes as cash he was to deposit them with some other bank which would do so. The banks were, however, to be the sole judges of the notes to be received by them from any receiver of public money and are not bound to receive the notes of any bank which they choose to reject provided they treated the United States the same in this regard that they did their other depositors.
Butler admitted that there was considerable uncertainty about the bill and that some members of Congress did not put the same interpretation on it that he did. He also said the House of Representatives had voted down an amendment to the bill which would have made clear the interpretation which he gave the act. He did not specifically advise the President to veto the bill but he did by inference when he concluded his opinion with these words: "Under these circumstances, it may reasonably be expected that the true meaning of the bill, should it be passed into a law, will become the subject of discussion and controversy, and probably remain involved in much perplexity and doubt, until it shall have been settled by a judicial decision." (III, 172)

The disbursing officers of the government seemed to be having difficulty finding safe places in which to deposit the funds entrusted to their care. Butler informed the Secretary of the Treasury that they could keep the money in any of the banks designated by the Treasury, that is, specie-paying banks or they could deposit it in bank not paying specie, if such banks would receive special deposits. These special deposits must be paid in specie, if it was demanded. Any bank which was not forbidden by its charter, state law or judicial process from receiving special deposits could be used. Payments made by these officers to the credit of the United States must be made to the Treasury of some specie-paying bank. (III, 233)

The Treasury should pay the interest and costs on a draft which, when presented at the bank on which it was drawn, was refused payment. This draft was drawn by the Treasury of the United States on the branch of the Bank of the State of Alabama at Mobile, in favor of Thomas Easton, navy agent at Pensacola. The
bank refused payment and later it came into possession of the
Bank of the United States at Philadelphia. Easton sold the draft
to raise money for the necessary expenses of his office, and But¬
er presumed that the Bank of the United States received it for
value and in good faith. (Ill, 320)

The qualifications of banks to receive government deposits
included a rule that such institutions would not issue or pay out
any bill of a smaller denomination than five dollars. That, ac¬
cording to Butler, meant not only bills of their own issue but
those of others banks and corporations. The object of the rule,
he said, was to prevent the circulation of bills of the small
denominations. (Ill, 341)

The power possessed by the President and Senate in regard to
appointments was discussed by Butler in an opinion given at the
request of the Secretary of the Navy. President Van Buren had
sent the nomination of John R. Coxe, Jr. as lieutenant in the
navy to the Senate. That body then adopted a resolution in which
it was specified that Coxe's nomination was confirmed to take
rank next after Lieutenant Peck. Butler was asked if the Senate
had the right to make this change in the nomination as it placed
Lieutenant Coxe on the register above 162 lieutenants who had
been appointed before him.

Butler ruled that the Senate could not originate an appoint¬
ment, its action was confined to confirmation or rejection of the
President's nomination. If this confirmation disagreed with the
nomination it amounted to a rejection. The Senate might suggest
conditions or limitations to the President but it could not vary
those submitted by him.

In the case before him Butler decided that no commission
could be issued to Lieutenant Coxe unless the President should
send a new nomination and the Senate confirm it in the same form that it was sent. (III, 188) This case came up several times later when it was considered by other Attorneys General.

The money which the United States had deposited or loaned to the states should not be called for except to meet the needs of the Treasury under appropriations made by Congress. It should not be called for until needed in order that the state should have ample notice that the money would be called for, requisitions should be issued before the Treasury was entirely exhausted. It should be arranged so that the time of payment would be approximately the time that the available money of the federal government would be exhausted. (III, 227)

Until money deposited in the banks by customs collectors to the credit of the Treasurer of the United States was put into the Treasury by means of warrants issued by the collector, it could be withdrawn without an appropriation by Congress for the purpose of paying bills which were properly chargeable to the receipts of the customs office. It was only after the money was actually in the Treasury that it could not be recalled. (III, 244)

Collectors of customs could remove their subordinates without reporting their reasons for such action to the Secretary of the Treasury. Butler said the power of the collectors over their subordinates was the same as that of the President over officers which he had appointed. While they could remove their subordinates without giving reasons or getting anyone's consent, in the case of the collectors they must get the consent of the Secretary of the Treasury to an appointment, just as the President must get the consent of the Senate. (III, 325)
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The subject of pensions occupied a large amount of space in the opinions of Butler. Most of these consist of applying laws to particular cases where the amount of money to be paid was in doubt. Inclined to be liberal with former service men Butler did not believe in allowing money to be paid to persons whose claims to pension were remote if not actually non-existent. However, he never allowed technicalities to prevent a deserving man from receiving what was his due.

Most of the opinions were in regard to individual cases but they were important to the Pension Office because they could be applied to similar instances. Hence, while the following opinions may seem to be trifling they are really outlined a pension policy.

A soldier, injured by a guard, while passing the limits of a camp with a written permit to do so, was entitled to an invalid pension, provided that he could prove his contentions. (11, 589)

Invalid pensioners who relinquished their pensions in order to take advantage of the act of 18 March 1818, which granted them lump sums, could not have their names put back on the pension rolls in order to receive the benefits of the act. of 19
February 1833. The latter act included only those men whose names were on the pension rolls when the act was passed and there was no legal provision which authorized the transfer of names after that date. (11, 612)

In case of deceased pensioners leaving widows who also died before demanding their pensions only the representatives of the widows could demand this money. In case there were several children of a pensioner but no widow, these children were entitled to the money. In case some of the children had died previously then the money should be paid to their legal representatives. If there were neither widows or children then the money should be paid to the legal representatives of either or both. (11, 613)

The widow of a sailing-master, who died in 1813 but not in consequence of injury received or disease contracted while in the service, was not entitled to be placed on the pension list. (11, 662)

When the law provided that a widow of a naval officer was entitled to one-half of her husband's pay, it was to calculated as including only his salary and one ration but without the other allowances that the officers had been receiving. (11, 712, 724)

The second husband of the widow of a man, who served on a privateer during the War of 1812, was not entitled the arrears of pension which his wife could have obtained if she had applied during her lifetime. The pension, said Butler, was intended for the benefit of the widow and therefore should not be paid unless it would help her. She had no children. (111, 36)

Butler in a later opinions withdrew the above opinion and ruled that while the pension to the widow ceased on her remarriage, the amount owed to her before, was a vested right and should be paid to her heirs. Whether it was to be paid to the surviving
husband or someone else depended on the laws of the state in which the widow lived. (III, 68)

The widow of Benjamin White, master-at-arms in the navy, was entitled to a pension consisting of five years' half-pay under either the act of 13 February 1813, or that of 3 March 1817. It was only necessary that she prove that she was the widow of a man who had been killed while serving in the navy. The pension was right a vested/which could only be terminated by her death or remarriage during the five-year period. The other pension acts passed since 1817, did not apply to her, as they concerned men who had been slain during the war while White was accidently killed after the war was over. (III, 71)

Under the act of 4 July 1836 which provided for pensions for widows and children of soldiers, in case a widow having children, remarried, she was not entitled to any of the benefits of the act but the children were to get the pension. (III, 147, 200)

Children were to be paid the money due to a widow at the time of her death and the debts of the pensioner were not to be paid out of this money. (III, 151)

The pensions to widows and orphans, under the first section of the act of 4 July 1836, were to start with the date on which the act was approved by the President, provided the death of the soldier or sailor had taken place before that time. If it had not then the pension was to date from his death. The act also provided pensions for widows and orphans whose husbands and fathers died after the date of the passage of the act. (III, 152)

Widows of officers, seamen or marines who had remarried before the passage of the act of 3 March 1837 were not entitled to pensions but the children of such men were entitled to the half-
pay granted by it until they reached the age of 21 years. (Ill, 194)

Widows of Naval agents were not entitled to pensions under the act of 1834 because such agents were neither officers, seamen or marines, these designations being the only ones used in the act. (Ill, 196)

Catherine A. Grennell, daughter of a deceased sailingmaster, had been paid a pension under the act of 3 March 1817, which provided that pensions should be paid to the orphans of men who died in the service, until the beneficiaries reached the age of sixteen. The act of 3 March 1837, however, raised this age limit to 21. Butler ruled that Miss Grennell was entitled to the additional five years' pension even though she was more than 21 at the time the act of 1837 was passed. (Ill, 197)

In the case of a naval officer's widow who died before the passage of the act of 3 March 1837, her representatives were entitled to no pension inasmuch as no right to a pension was vested in her. (Ill, 199)

A joint resolution for the relief of Mrs. Susan Decatur and an act for a more equitable distribution of the navy pension fund were passed the same day. Butler ruled that Mrs. Decatur must elect the act of which she would take advantage but she was not allowed to benefit by both. (112, 200)

Grandchildren were not included in the law for the more equitable distribution of the navy pension fund. This opinion was given because of a claim by the son and granddaughter of Commodore Samuel Barron. The two children of the widow, who was entitled to the pension under the law, were to receive equal amounts until they reached the age of 21. In this case one of the children was died before that time. Butler ruled that the other child was
entitled to the entire pension during the remainder of the time. (Ill, 201)

The act of 4 July 1836 which granted half-pay to widows or orphans, whose husbands or fathers died of wounds received in the military service of the United States, did not apply to widows of men who had died since the passage of the act but it did apply to widows of officers who were living when the act of 7 June 1832 was passed. The right of a widow to a pension was a vested interest which was not defeated by the failure to apply for it and it went to her legal representatives upon her death.

The act of 3 March 1837 for the more equitable distribution of the navy pension fund should not be construed to include cases in which the death occurred before the passage of the law by which the fund was established. (Ill, 246)

The second section of the act for the more equitable distribution of the navy pension fund adopted the pay of the navy as it existed on January 1, 1835 as a standard for all cases coming within the provisions of that section. (Ill, 291)

Butler ruled that in the case of Peter Gordon, under the act of 20 January 1813, it was necessary to show that the death took place while in service in order for the widow to receive the bounty which she claimed. (Ill, 324, 338) Widows who were on the pension roll and receiving pensions under the act of 4 July 1836 were not entitled to pensions under the act of 7 July 1838. (Ill, 367)

MILITARY AND NAVAL AFFAIRS.

Butler’s opinions in regard to the army and the navy cover a wide range of subjects. The purchase of supplies, the rank of certain officers, rewards for meritorious service, and the pun-
ishment of offenses against military and naval law were among the most important subject discussed.

The necessary expenses of pilotage, maintenance of the crew etc. should be paid out of the public treasury in the case of ships captured and condemned for piracy and not out of the proceeds of the sale of such ships, according to Butler. The law provided that such ships should be sold and half the proceeds go to the captors and half to the navy pension fund. No provision was made in the law for the necessary expenses of bringing the ship to port and having it condemned. Butler said that if such expenses were paid out of the proceeds of the sale there would be little left and thus the object of the law would be defeated which was to encourage the capture of such ships by giving liberal rewards. This decision was given in the case where the Grampus captured the Montezuma. (11, 648)

In the case of a charter-party between a navy agent and a Mr. Faulac which provided that Faulac was to take a quantity of naval stores to Valparaiso where he would receive orders either to discharge the goods there or to proceed to Lima for that purpose, the commander at Valparaiso ordered him to discharge part of the cargo at that port and take the rest to Lima. Butler decided that the charter-party contemplated only one port of delivery. Therefore Faulac could elect which was to be the port and could collect extra charges for carrying and delivering the goods to the other port. (11, 697)

Naval and administrative officers held office until their successors were duly appointed and qualified. In this they differed from elective and judicial officers who could not exercise the functions of their offices after their terms of office had expired.
Midshipmen were not exempt from arrest under the provisions of the act of 11 July 1798 which provided for the establishing and organizing of the marine corps because they were neither officers, non-commissioned officers, nor enlisted men. As the law did not name them they could not claim such exemption. (Ill, 119)

A letter from a navy surgeon acknowledging the receipt of an order and expressing a willingness to obey it, could be considered as an acceptance of a position and thus entitle the surgeon the increased pay under the act of March 2, 1835. (Ill, 198)

Officers in the marine corps previous to 30 June 1834 were entitled to the same pay as officers of the same rank under the same circumstances in the army. (Ill, 265)

The Secretary of the Navy should, in the opinion of Butler, satisfy the claims of the heirs of John Harris against Commodore Elliott for damages because acts done in the line of his duty. This case had been defended by the federal district attorney, the Solicitor of the Treasury and the Attorney General and when the case was decided against Elliott, the United States should pay the amount assessed provided the Secretary had sufficient funds at his control. (Ill, 306)

The adjutant general of the army was allowed to hold that office with the rank of colonel of cavalry and at the same time hold the position of major in an artillery regiment under the act of 2 March 1821. Butler showed that it had previously been done with the approval of the Senate and was therefore not considered illegal.

Generals by brevet were not authorized to appoint aides-de-
camp because the law, while it granted them the same pay and em-
oluments as generals, did not confer upon them any of the other
rights of generals. (11, 644)

A brevet major who was in command of a fort, according to
his brevet rank, was detailed to sit as a judge in a court mar-
tial as a major. Butler ruled that he was entitled to the pay
of his brevet rank during the trial if at the same time, he was
in command of the fort. (11, 646)

The act of Congress 3 March 1835 to prohibit extra pay to
army officers, did not, in the opinion of Butler, prohibit the
payment of travelling expenses to army officers who were employed
in the removal of Indians, nor the usual allowances for fuel,
quarters and transportation to officers who had formerly been
allowed such things. Where allowances for such items had been
commuted and paid to the officers in money Butler saw no objec-
tions to the continuance of the practice. (11, 701)

The district paymasters of the United States army who were
employed in making payments to the militia of the various states
were paid a commission not to exceed one percent of the money
only on the money actually paid to the militia not on the total
amount which they received and paid out. (11, 621) The pay of
military officers should commence with the date of their accept-
tance of the office because they were liable to duty from that
date. (11, 638) A brevet brigadier general in order to get
the pay for his brevet rank must be in command of a brigade reg-
ularly consisting of two regiments. (111, 83) According to
the act of 16 April 1818 officers of the Ordinance department
were excluded from the benefits of their brevet rank. (111, 83)

Captain Bonneville was stricken from the rolls of the army
but later re-instated by the President with the advice and con-
sent, of the Senate. Butler ruled that he could not claim pay for the time he was off the army rolls but from the date of his re-instatement. (Ill, 105)

The additional pay of ten dollars a month which was allowed by the act of 2 March 1827 to captains because of the care and responsibility for the clothing, arms and accoutrements of their commands should be paid to officers of the same rank in the militia and volunteer companies if they were charged with any responsibility in regard to these articles. (Ill, 136)

Justice to an able and efficient army officer triumphed over the strict letter of the law in the case of Major Trueman Cross, acting quartermaster general of the army. General Thomas S. Jessup had been quartermaster general, which position, according to law, carried the title and pay of a brigadier general. By virtue of ten years' service in that rank, he was promoted to that of brevet major general and assigned to duty in Alabama where he was suppressing the hostilities of the Creek Indians. As this necessitated his removal from Washington and made his performance of the duties of quartermaster general impossible, the President appointed Major Cross to the position of acting quartermaster general.

Major Cross performed the duties of his position in a most efficient manner but the Second Comptroller was in doubt as to the pay he should receive as the act of 4 July 1836 stated that while the President was authorized to appoint some one to act in the position of an absent officer it stated "that no additional compensation be allowed therefore" Butler, however, decided that Major Cross was entitled to the pay of the office of quartermaster general because he did not believe that Congress intended
the law to apply to such absences as that of General Jessup. He also stated that the words "additional compensation" did not mean that the acting quartermaster general should receive only the pay of his old rank while he was performing arduous additional work. (Ill, 261)

The act for the payment of claims for property loss during the war with the Indians on the frontiers of Illinois and Michigan territory did not authorize the payment to anyone who was not in service during that war. It was not necessary for the furnishers of material to show absolute property rights in the goods lost. If they could show that they had had possession of the goods, for which they were responsible, they were regarded as owners. Allowances for horses were authorized if the owners could show that they were lost for some other reason than their own negligence, that the loss was due to injury in battle, to having been abandoned or lost while in the public service due to being ordered to perform military duty on foot at a detached station. Allowance should also be authorized for the equipment which was lost with the horses. (11, 658)

If a third person received in the course of business, a draft on the treasury for which he gave valuable consideration and was without suspicion that the bearer had come into possession of it illegally or improperly then he had a just claim on the government for the amount of the draft. If this person, however, had notice that the draft had been issued for a public purpose and had been given to a man to present to a bank for the purpose of getting money for the use of the army but instead had used it to pay his gambling debts, then such notice defeated his claim upon the government.
This decision was given by Butler in the case of Lieutenant Johnson, assistant quartermaster of the army, who while taking some treasury drafts to New Orleans, fell in with some gamblers who won from him about $12,000. In payment of these debts he gave them the army drafts which he had in his possession. Payment of them was stopped and when L. C. Morrill of Arkansas presented them for payment, it was refused. He then asked the government to make them good on the grounds that he received them without knowing how they were obtained and that he had paid the full amount in return for them. Butler made the above general statement of the case but refused to express a definite opinion until he learned more of the details of the transaction by which Morrill gained possession of the drafts. (Ill, 30)

The risk of supplies purchased for the army followed the title, was the substance of one of Butler's decisions. In the case of some pork bought by army officers from Hubbard & Co. and destroyed by the fire the night after the purchase, the loss should be borne by the government. If the transaction had not been complete, Hubbard & Co. would have been the losers. (Ill, 115)

The superintendent of the United States Military academy at West Point was having trouble in regard to civilians, living at the post, and those who had charge of the hotel and public wharf located within the limits of the post. The proprietor of the West Point hotel, W. B. Cozzens, claimed that "the hotel, public wharf and post office, located as they are now, confer upon all persons the right to come within the public boundary, and to remain there during pleasure." To this view the superintendent refused to agree.
A certain Mr. Avery, who was in possession of a part of the public land which he had been allowed to occupy by a Mr. McClelland during his lifetime, claimed that the land belonged to him as the son-in-law of McClelland, and had cut down and sold much of the timber which had grown on this land. Avery also claimed that he had the right to go to the post office or hotel whenever he saw fit in spite of orders to the contrary issued by the superintendent.

Butler ruled that Avery had no right to remain on the land which was part of the post as no acknowledgement of his right of possession had ever been made. He recommended that possession of this land be obtained by action of ejectment and in the meantime an injunction be secured to prevent Avery from disposing of any more of the timber. No persons should be allowed to visit the post office unless connected with the military post or having permission from those in authority. The same rule should apply to the hotel.

As to the persons who had rented houses on government land, Butler held that they had rights similar to persons who had rented from private individuals. They could not be ejected as long as their leases were in effect but if they interfered with the discipline of the post, they could be forbidden to live their premises.

If any person, who had ordered to leave the grounds of the post, refused to do so after a reasonable time he should be ejected by force. (Ill, 268)

Butler was asked to interpret the law of 1819 which provided for the sale of military sites when they had become worthless for that purpose. He ruled that the law applied to
only such sites as were in the possession of the United States at the time the law had been passed, not to those which had been acquired since that time. It not only applied to sites which were worthless at that time but to those which became worthless later and to sites located in territories as well as in states.

The inquiry was especially in regard to Fort Armstrong on Rock Island and Fort Dearborn at Chicago, to which he simply applied the rulings he had made, that if these two forts had belonged to the United States when the law was passed the sites could be sold when the forts become worthless for military purposes. He quoted the decision of the Supreme Court in the case of Mitchell and others vs. the United States (9 Peters 761, 762) in support of his opinion. (111, 108)

Another example of the effect of the dictum of the Attorney General's office that money once paid into the Treasury could not be paid out without the order of Congress, was the experience of Major Campbell who was commissioned to collect from John Boles a debt owed to the United States. Boles was the lessee of the lead mines at Galena and the holder of a smelting license. He had failed to pay the amount of lead that was due as rent on the mines. Campbell, instead of simply collecting for the government, attempted to collect a private debt which Boles owed him. He secured an assignment of all of Boles' property, which he thought would cover both debts and therefore paid to the government all that Boles owed. Later he found that instead of getting his money, he had paid the government more than he had received from Boles and asked to have some of the money refunded. This, according to Butler's rule, was refused.
In another opinion in regard to lead mines, Butler ruled that the only restriction upon the power of the President in regard to them was that the leases could not run for more than three years, according to one law, or five years, according to another. He could make any other rules which he saw fit. In this opinion Butler only followed the ruling of William Wirt made in 1822. (11, 708)

The difficulties which our system of government put in the way of the nation enforcing her treaty obligations to foreign countries is shown in the affair which developed out of some disorder in New Orleans. The French charge'd'affaires, Alphonse Pageot, complained to the President of the ill treatment of two French citizens living in that city. One, according to the statement of the French diplomat, was injured physically and the other had his property damaged. The President was asked to interpose to help them obtain justice.

Butler, when his opinion was asked, said that while it was duty of the President to see that residents of a foreign country, with whom the United States was at peace, should be treated well, in the present instance there was nothing that could be done except on appeal to the courts. The criminal action would have to take place in the state courts of Louisiana and the only action the federal officials could take would be to ask the Louisiana officials to prosecute the offenders. The civil action, however, would be before the United States circuit court and in both actions the federal district attorney could be asked to assist. The other means of redress which could be afforded would be to ask Congress to vote special compensation to the aggrieved persons. (111, 253)
Foreign consuls did not enjoy other privileges or immunities than those enjoyed by foreigners coming to this country in their private capacity except that they must be sued or prosecuted in the federal courts, this being provided for in the Constitution. If any consul should be guilty of illegal or improper conduct, he could be deprived of his exequatur and be punished by the federal courts or he might be sent back to his home country. The choice lay entirely without government. Butler quotes from Chancellor Kent's "Commentaries on American Law" as proof of his opinion. (11, 725)

ACCOUNTING OFFICERS.

The accounting officers needed much advice. At times this took the form of informing them as to the method of handling certain accounts but more often and in more important instances, of deciding by ruling on the legal points involved whether certain bills should be paid.

Butler doubted the power of the Secretary of the Treasury to remit fines after the money had been paid into the Treasury and he ruled that any part of such fine, which had been paid to the informer in the case, could not be refunded. In the case under consideration half of the fine was paid to the collector, as informer, and he had used it as a credit in his accounts with the Treasury. Butler said that remission of the half which the government received, might be allowed but the collector could not be deprived of his reward. (111, 237)

The Second Comptroller of the Treasury was authorized by law to revise the accounts submitted to him by the auditors. He could direct them, in cases where delay would be injurious to the government, to submit accounts to him so that he could pass
The accounting officers could make settlements of accounts which were not final and in case errors were discovered they could be corrected, not by opening the accounts, but by making new entries which would make the proper correction. Even after accounts were finally closed as far as the auditors were concerned they could be corrected by the Second Comptroller or the head of the department if errors or frauds were found. After they had passed beyond the reach of all the executive officers, accounts could be corrected by appeal to the courts.

Accounts presented for settlement in the ordinary course, under the general laws, and long since examined and finally not settled, could be reopened and further evidence received in regard to them. Where accounts were presented for settlement under special acts of Congress, the powers and duties of the accounting officers depended principally on the terms of the acts themselves and varied according to the variations of the special acts from the general law. (11, 625, 639, 650; III, 148)

In spite of the fact that the accounting officers had disapproved the claim of General Parker for $2,416 in place of quarters and fuel, the Secretary of War had approved the claim. Butler ruled that this approval was sufficient to allow the claim unless it had been reversed or countermanded by other Secretaries of War. (11, 652)

When there was a conflict between the executor of an estate and his assignees concerning an award of money to be paid by the government, the Third Auditor should order the money be paid to the executor because he was the legal representative. Where assignments in proper form, however, were presented and there
was no objection to the rights of the assignee, the money could be paid to him. (Ill, 29)

A merchant vessel owned by John O'Sullivan had been seized at Buenos Ayres by John M. Forbes, agent of the United States at that place. It had been sent to the United States and later Congress had passed an act in which it was ordered that the actual damages be ascertained and paid. The Fifth Auditor examined the claim of O'Sullivan and refused to allow certain items.

Butler ruled that the owner was only entitled to payment for the actual loss sustained and proceeded to lay down rules for determining this amount. The loss of the use of the vessel during her detention was the first and most direct consequence of the act of the federal agent. The damage occasioned thereby was not constructive but actual and real. The Auditor could adopt the principles of difference in value or of demurrage as the standard of his action, making such additional allowances as would meet the actual loss of the owner. Where the difference in-value system of valuation was adopted, interest and other expenses were to be added. Where demurrage was the standard, all necessary expenses, not related to the use or management of the ship, were to be allowed in addition. These necessary expenses were to include those of the owner in his effort to regain possession of his property. (Ill, 216)

Interest on a demand against the United States was allowable, according to Butler, where a suit in court had been decided against the government and the act of Congress, which provided for the payment of the claim, was passed with the knowledge that interest had been allowed. The law required the accounting
officers to recognize the decision of the court as settling the true construction of the contract which required the payment of interest. (Ill, 294)

The accounts of United States marshals, when they have been certified by a federal court or one of the judges of the court, were conclusive upon the accounting officers except in cases where the charges allowed by the court were for some service not mentioned in the Act of Congress or were higher than was allowed by the act. In the case before the Attorney General the accounting officers had objected to a fee of two dollars for serving a writ of subpoena, which Butler said was the legal charge. (Ill, 316)

In another case Butler refused to approve extra allowances for government witnesses in the trial of persons on the charge of burning the Treasury buildings, in spite of the fact that the amounts had been certified by the circuit court because no act of Congress had authorized the payment of charges for this purpose. The difference between this and the preceding case was, that here the service was not authorized by law. (Ill, 31

Charles J. Ingersol, formerly United States district Attorney for the eastern district of Pennsylvania, had been sued by the United States for various bonds placed in his hands for collection and collected by him, the suit being brought at his request in order to have the matters determined by judicial action. Later he presented an account against the United States which the court, in which the suit was heard, had refused to allow him to present as a set-off against the amount claimed by the government. The accounting officers asked Butler whether this account could be allowed if it proved to be a just one in view of the fact
that the government had a judgment against him.

Butler ruled that the account could be allowed just as if it had been presented before the suit was brought as the account was separate and distinct from the subject matter of the suit and as he had not had the right to present his counter claims to the court nor could he bring a counter suit against the United States because the government was not suable. (Ill, 345)

General Sam Houston's assault on Representative Stanberry of Ohio was the cause of one of Butler's rulings. Houston had been brought before the House of Representatives charged with contempt and breach of the privileges of that body and there sentenced to be reprimanded by the Speaker. He was later indicted, convicted and fined by the criminal court of the District of Columbia on the charge of assault. He maintained that he should not have been punished by the latter court because the Fifth Amendment to the Constitution provided that no person "shall be subject, for the same offense, to be twice put in jeopardy of life and limb".

Butler maintained, however, that punishment by the House was no bar to indictment and conviction by the district court for the same act. The punishment by the House was for breach of privilege, by the court for violation of public law. (II, 655)

After Jackson had received this opinion, he remitted the fine of five hundred dollars which had been assessed against Houston, ending the affair.

An American ship carrying supplies to the Mexican army in Texas was captured by a Texan armed schooner, taken to Galveston where the supplies were unloaded for the use of the Texan army.
After this was done the ship was released. As soon as the facts were known to Commodore Dallas, commanding the fleet in the Gulf of Mexico he ordered ships to search and seize the Texan ship which had made the capture. When this had been done the commander and crew were charged with piracy.

Butler said that they could not be charged with piracy unless it could be proved that the principal actors in the capture were American citizens. If they were, then they could be prosecuted under the act of 30 April 1790, which prescribed the punishment of death for such actions. The ship, however, was protected by the Texan flag, as the United States, while it had not recognised the Republic of Texas, had recognised the existence of a civil war between the residents of Texas and the Mexican government. This recognition had been given in November 1835 (this opinion was given in May 1836) and it had been repeated in several acts of the President since that time, several of them before the capture of this armed schooner. Therefore the schooner could not be held nor the members of the crew charged with piracy. (111, 120)

The first opinion in regard to railroads was one given by Butler in 1835 in which he interpreted the rights of the Baltimore and Ohio railroad in the city of Washington. The company sought to build their road through some of the land reserved for public use and in case they were allowed to use this land, to follow the route which they considered the most advantageous.

Butler maintained that the Act of 2 March 1831, gave the company the right to use only the streets and alleys of the city and specially forbid the use of any lots either public or private. In other parts of the District of Columbia the company
was authorized to use the lands of individuals with their consent or, if they were unable to secure rights in that way, by purchase after an appraisal by a jury. The act of 4 March 1835 authorized the company in building the road to use to certain squares in the city which were specially enumerated in the law. Hence, according to Butler, it meant to forbid the use of any other lots in the city of Washington. The intention of the makers of the law was quite clear from its context and it is not necessary to take evidence from the members of the Congress which passed the act. (11, 715)

In this last contention Butler differed from Black who maintained that the words of the law should contain the entire meaning and that supplementary evidence could not be taken to make it clear.

The squabbles between the governors and the territorial legislatures was cleared up to some extent by Butler in his opinion concerning the quarrel in the Arkansas territory.

The governor of Arkansas territory, according to his letter to the Secretary of State, had been petitioned by various meetings held there to call a special meeting of the territorial legislature for the purpose of calling a convention to frame a state constitution. He had declined to do so but was of the opinion that the action stated would be taken at the next regular meeting of the legislature and that a state government will be set up without the authority of Congress. He also stated that in his opinion no measures could be taken by the citizens of Arkansas to form a state government or frame a constitution without first securing the authorization of Congress.

Butler in reply to this request for information as to the
power of a territorial legislature to form a constitution and a state government, and the right and power of the citizens of a territory to take measures for such a purpose, said that the legislature had not such right unless Congress passed an act authorizing this action but that the people of the territory did have the right to petition Congress for the redress of grievances. If they wanted to request the formation of a state government and with this request presented a proposed constitution, there was nothing in the constitution or laws of the United States which prevented them from doing so. He added that any design to subvert the territorial government and to put into the force a state government without the consent of Congress would be unlawful. The laws establishing the territorial government would continue to force until abrogated by Congress and until that time it was the duty of the governor and other territorial officers to see that they were faithfully executed. (11, 726)

POSTOFFICE DEPARTMENT.

The extent to which Postmasters General were bound by the arrangements made by their predecessors was discussed by Butler in an opinion concerning mail contracts.

The mail contract of Stockton and Stokes, and L. W. Stockton for the route between Washington, Baltimore and Wheeling, West Virginia had been made during the term of a predecessor of the postmaster general, who was then in office. This contract called for a certain rate of pay and a specified speed. Later the speed was increased with more pay and still latter additional service was provided because of the fact that the contractors claimed that the former equipment was not sufficient to carry which Butler the increased amount of mail. The question was called upon
to settle was /to what extent the decisions of former holders of the office were binding upon their successors.

Butler prefaced his opinion by saying that the statement of the facts in the case given by the attorney for the contractors, Francis Scott Key, and those recited by the Postmaster General differed. As the laws of the United States only require him to give opinions of the law in the cases on which he was consulted, he presumed that the latter statement of the facts was correct and disregarded the other. Otherwise, said Butler, "it would convert an office created for the sole purpose of assisting and advising the executive department on questions of law, into an appellate tribunal for the re-examination of their decisions on matters of fact!"

He maintained that the act of the Postmaster General in making extra allowances to mail contractors because of the changes, made after the execution of the contract, in the speed of carrying the mail or in the frequency of the service or the increased weight was not conclusive on his successor, where the account with the contractor was still open. On the contrary, the head of the Postoffice Department had the authority to look into such allowances and where he found them based on material errors of law or fact to correct them as justice required.

Postmasters General were merely agents of the government, with limited authority, and none of their acts, except those which were found to be within the scope of their authority and conformable to law, were obligatory upon the government. Contractors making contracts with the Postmaster General were presumed to know the law and to be acquainted with the extent of
of his powers in regard to contracts and therefore could not claim any benefit from any acts done contrary to law. Such contracts were void from the beginning and no legal right could be founded on them.

The authorized contracts made by the Postmaster General, which were free from fraud or material error, were binding on his successors. Frauds and material error, however, could be lawfully inquired into either by the Postmaster General who made contracts or by any of his successors.

Contracts to carry the United States mail, without stipulation as to weight, included the entire mail between the places named as termini, or that which came to it from other routes, according to the arrangements made. If the amount of the mail seemed to demand extra allowance, it must be made by Congress, not by the Postmaster General. In the case under discussion the additional allowance had been made by the latter official. If extra compensation had been paid by a Postmaster General without the sanction of the Congress the contractor should be forced to refund it. (111, 1)

Butler advised resistance even to the extent of disobeying an order of a federal court in a case where an attempt was made to extend the power of the judiciary over an executive department, in this case the Postoffice.

William B. Stokes had applied to the United States circuit court for Washington county for a writ of mandamus to compel the Postmaster General to execute a certain act of Congress in the way specified in his petition and the court had commanded the head of the Postoffice Department to show cause of why such a writ should not be issued. Butler ruled that the court had no
right to issue a writ of mandamus to an executive officer of the United States because there were no constitutional grounds for such action and no laws of Congress on the subject. He referred the Postmaster General to two decisions of the Supreme Court as the basis for his ruling. (7 Cranch, 504 & 6 Weaton 598) (111, 236)

Butler discussed the powers and functions of his own office. The Attorney General did not have the power to revise the decisions of Executive Departments which had been deliberately made and were satisfactory to the heads of the departments. Therefore he declined to give an opinion in the case submitted by George W. Walker, which had been settled by the Secretary of the Treasury and on which no further action could be taken. (111, 39)

The Attorney General had no authority to settle questions of fact or to give any opinion on questions of law except for the assistance of the officer who called upon him for his opinion on the points stated. He was obliged to take the facts in the case as stated to him by that officer and he was not allowed to go behind that statement and investigate them for himself. (111, 309)

The Attorney General had no power, said Butler, to give an official opinion at the request of a head of a department, except on matters which concern the official powers and duties of that office. For that reason the opinions given by Butler in regard to claims under the Cherokee treaty were pronounced by him to be extra-official and unauthorized. These claims were to be examined and decided by a commission appointed by the President, confirmed by the Senate and its decisions were to be final.
Hence, the opinions by the Attorney General should not have been given and should be disregarded, (these have been eliminated from the Opinions of the Attorneys General) as the commission was to decide all questions which arose in regard to its work. (III, 367)

Butler's opinions were of the kind expected from a good Jackson Democrat in any case where politics had anything to do with the question but at the same time he knew the law and was fearless in his interpretations. He shared, however, in the ill-will of the enemies of the Jackson administration and was considered a protege of Van Buren, willing to do anything which the Little Magician wished.

Adams in his Diary (IX, 233) says "Mr. Benjamin F. Butler, the present Attorney General, is the pupil, protege and law-partner of Martin Van Buren, Vice President and candidate for the succession of the Presidency". He then commented on an opinion given by Butler on the subject of the boundary between Ohio and Michigan territory, in which the Attorney General favored Ohio (this opinion was given verbally and is not included in the official records), in these words: "Mr. Butler's opinion upon the boundary question is perfumed with the thirty electoral votes of Ohio, Indiana and Illinois".

Much as Butler liked Van Buren, he was not willing to remain in his cabinet, and in spite of the President's offer of his choice of positions he wished to retire from public office and practice law. He returned to New York and once more entered into his chosen work. When Polk became President, he offered Butler the post of Secretary of War but was refused. The only office he did accept was that of United States attorney for the southern
district of New York which he held for two terms, 1838 to 1841 and from 1845 to 1848.

Butler spent the larger part of his time during the last ten years of his life managing a group of corporation cases which involved a large amount of money. In 1838 he organized the law department of the University of the City of New York and was professor of law in that institution.

In politics he remained a strong Jackson Democrat but was opposed to slavery. He supported Van Buren when the latter was a candidate on the Free Soil ticket but he returned to the Democratic party in 1852 and voted for Pierce because he believed that Pierce would uphold the compromise measures of 1850 and keep slavery out of politics. He abandoned the Democratic party, however, when it supported the Kansas-Nebraska bill, becoming one of the anti-Nebraska men. In 1856 he joined the Republican party and cast his last vote for Fremont. He died in Paris in 1858.
VIII. FELIX GRUNDY and HENRY D. GILPIN.

Butler's refusal to continue any longer in the cabinet of Van Buren made it necessary to find a successor. The appointment given to Felix Grundy of Tennessee, who as a member of the Senate had been a strong supporter of the Jackson policies in spite of the fact that he had opposed Eaton when the latter wished to re-enter the Senate after his withdrawal from Jackson's cabinet.

Grundy represented the Southwest in the cabinet of Van Buren. The south was well represented in the persons of John Forsyth of Georgia as Secretary of State and Joel R. Poinsett of South Carolina as the head of the War department. New England furnished the Secretary of the Treasury, Levi Woodbury of New Hampshire, a holdover from Jackson's cabinet, and John M. Niles of Connecticut as Postmaster General. James K. Paulding of New York as Secretary of the Navy completed the group.

None of them was specially well known for his ability nor did any of them ever rise very high in the service of the government, the latter fact due in part to the bad reputation which clings to public men who are in office during periods of depression. Such periods are usually blamed on the men occupying high places and Van Buren and his advisors suffered as many other men have suffered since.

Grundy was born in western Virginia, his parents having come from England and settled in that part of the country. In his infancy his parents moved first to Pennsylvania and finally settled in central Kentucky. There Grundy received his education which included instruction from his mother and a short time at the Bardstown Academy. Studying law under George Nichols he was admitted to the bar in 1797, when he was 20 years old.

His entry into politics took place two years later when he was
elected a member of the convention called to revise the state constitution. In spite of his efforts to get out of politics, he remained active until his death. His next office was that of member of the Kentucky legislature, where he opposed Henry Clay’s efforts to charter a banking corporation.

In 1806 he was appointed associate judge on the state supreme court of errors and appeals. Though he was soon after made chief justice of that court he found that the salary of the office was too small for his needs. He resigned and moved to Nashville, Tennessee, where he hoped to be free from politics and to be able to spend all his time in the practice of law.

His law practice increased by leaps and bounds and he was soon regarded as the foremost criminal lawyer of the Southwest. His services were in great demand in the defense of persons accused of crime. His specialty seems to have been the selection of juries and his manipulation of them with the result that his clients were seldom convicted. He was the Clarence Darrow of his time.

The excitement of the time preceding the War of 1812, was too much for his resolution to stay out of politics and in 1811, he was elected to the state legislature where he successfully advocated the establishment of a state-owned bank or loan office for the relief of the poor debtors who were unable to meet their obligations. Jackson opposed this measure and for some time Grundy and the General were not on the best terms politically. Later, however, Grundy supported Jackson for the Presidency but the two were never intimate.

After six years in the legislature, Grundy retired from office. He was a candidate for Congress in 1827 and in spite of the fact
that he had the support of Jackson he was defeated. Two years later when John H. Eaton resigned from the Senate to become Secretary of War, Grundy was elected to fill the vacancy.

He took an active part in the nullification struggle. Always having been an advocate of states' rights, he showed much sympathy for the South Carolina position but when Jackson's position became clear he became less active and did his best to smooth over the differences between himself and the President.

When Eaton retired from the cabinet Jackson attempted to force his election to the Senate at the end of Grundy's term but after a hard fight Grudy was re-elected. In spite of this opposition, Grundy continued to support Jackson in the Senate and remain in that body until his appointment as Attorney General in 1838.

GRUNDY'S OPINIONS.

Grundy's only original contribution was his opinion in regard to territorial judges, in which he ruled that they were legislative, not constitutional, judges and therefore could not be impeached. In his other opinions he followed closely in the paths of his predecessors. This is proved in his rulings on pensions, the duties of accounting officers and public lands. In fact in some instances he weakened the rulings of the former occupants of the office. Especially was this true in his opinion in regard to the reopening of closed accounts by the accounting officers.

His ruling advising the President to disregard the action of the courts in paying money which had been set aside by a treaty to the Winnebago Indians, followed a similar one by Butler. Some of his opinions in regard to the state banks were also strangely reminiscent of Butler.
One of Grundy's opinion dealt with a new subject, the rights of blockading squadrons over ships captured by them. In this he demolished very neatly the contentions of the French government and showed that they had not the slightest claim to possession of the ship which they had captured but which later had escaped.

In his opinion in regard to the suppression of the slave trade, after establishing the fact that the captain of the ship had no just cause of complaint regarding his treatment by the captor vessel, he advised that the prosecution be discontinued because conviction was unlikely under the laws as they existed at that time. He did advise, in a general way, that legal change be made.

His opinion in regard to L'Amistad had been severely criticised by historians, especial Von Holst (II, 321), not only because it was incorrect but because it was given after a court in Connecticut had taken an exactly opposite view of the question. John Quincy Adams in an eight-hour speech also denounced the action of the Attorney General.

PENSIONS.

In regard to pensions, Grundy made several rulings which were to guide the officials in the performance of their duty. These properly became part of the rules by which the administration of the pension bureau was carried on.

The act of 23, April 1800 did not authorize pensions for wounds received previous to the passage of the act. It provided only for wounds received after the act establishing the navy pension fund. The case on which Grundy gave this opinion was that of Commodore David Porter. (Ill, 373)

The remarriage of widows of Revolutionary soldiers was dis-
couraged by law, according to an opinion by Grundy. He ruled that widows who married Revolutionary soldiers after the expiration of their term of service but prior to 1, January 1794, were entitled to pensions provided they did not re-marry before the date of the passage of the act, 7, July 1838. (111, 376)

Army paymasters were considered as commissioned officers by Grundy and therefore were, in his opinion, entitled to the benefit of the act of 16, March 1802, which provided that the widows and children of men, who had died as a result of wounds received in the military service, should receive pension. Butler had decided that the act referred to was still in force, in which opinion Grundy agreed and as paymasters were considered as officers their widows and children should receive the benefit of the act. (111, 434)

Arrears of a pension which was due to a navy pensioner should be paid to his legal representatives. It was not to revert to the navy pension fund. The pension had been due to the man when he died, therefore it was part of the property which he left to his heirs. (111, 435)

The act of 3, March 1837, and the joint resolution of 7, July 1838, made several changes in the law of 1838 in regard to the widows of Revolutionary soldiers. According to the changes, these widows, if they had re-married and were again widows, were entitled to half-pay, irrespective of the date of the death of their second husbands or whether or not these second husbands were Revolutionary soldiers. This applied to all who were widows on 4, July 1836. In other words the second marriage of the widows no longer counted if they had been widows on the date named. (111, 477)
In spite of the fact that the law of 20, April 1836 provided that pension agents should receive no compensation or allowance without authority of law, Grundy ruled that it did not mean that their expenses were not to be paid. Previous to the passage of this act, he said, pensions had been paid by the United States bank for which service the officer of that institution who had charge of the payment received two percent of the money paid and in addition received his necessary expenses. As this was the custom before the new law was passed Grundy did not believe that Congress meant to change the system completely and therefore approved the items, in the expense accounts of two pension agents which were submitted to him. (II, 481)

ACCOUNTING OFFICERS.

Grundy gave some good advice to the government accounting officers. He told them that it was poor policy to re-open and reconsider the items of an account which had been settled by them, unless specially directed to do so by an act of Congress. If they did so they would be overrun at every change of the accounting officers by a horde of disappointed but persevering claimants who thought themselves entitled to more than they had been allowed. They would cause themselves an immense amount of work in going over former decisions and it would probably result in financial injury to the government. He advised them to refuse to re-open any account which had been considered settled. (III, 461)

Collectors of customs were supposed to pay the money received by them into the Treasury even though some of it had been paid to them under protest by the importers, who had instituted legal proceedings in order to recover it. In case judgments should be obtained
against the collectors for overcharges the Treasury should repay the money and relieve the collectors of that burden. In order to avoid this difficulty, however, Grundy advised the collectors to adjust the duties with the importers at the time of the importation and not leave them unascertained for any considerable time.

(III, 392)

He ruled that the Comptroller was not allowed to suspend the operation of revenue laws even if they did seem to work a hardship on importers. It was the duty of that officer to enforce the revenue laws and neither he nor any other officer of the government was allowed to suspend a law unless Congress had authorized them to do so. (III, 374)

RIGHTS OF BLOCKADING SHIPS.

The case of the vessel Lone, Captain Clarke commanding, presented what Grundy said was a novel view of international law. Captain Clark with his ship had entered the port of Matamoras where French warships were maintaining what they termed a peaceful blockade. He later attempted to leave the port but was captured by a French ship. The prize crew was not strong enough to prevent Clarke regaining possession of his ship, which he brought into the port of New Orleans, from which he had sailed and intended to return. The French government demanded that the President of the United States surrender the Lone to the French fleet.

Grundy said that the nature of the blockage which the French were maintaining was new to him. In international law blockades were always in the nature of warlike acts and were not numbered among the peaceful measures which one nation could use against another for the reparation of an injury. Passing over that element he discussed the rule in regard to prizes. If it was an offense to violate the blockage and a lawful cause for condemnation
it was principle of international law that the offense never travelled with a vessel further than the end of the return voyage. If she had been recaptured while on the return voyage she might have been condemned but when the voyage was ended that liability ceased.

Grundy maintained that it was a well established principle of international law that a capture transferred no property right in a vessel but that the title remained unchanged until it was condemned by some court of competent jurisdiction. Before that was done the French could not properly ask for the delivery of the property. He therefore decided that they had no right of property in the Lone and her liability to condemnation, if it ever existed, ended with the termination of the voyage.

Grundy took up another element, the power of the President in the affair. In order to determine whether or not the Lone should be surrendered the President would have to settle a large number of questions which were properly judicial in their character and which should be settled by a competent court.

Aside from that point Grundy maintained that the President had no constitutional right to deliver up the property of an American citizen, claimed by him, in his possession, and not legally adjudged to belong to anyone else. In case the property was in the possession of the United States and there were no other claimants as in the case of the jewels of the Princess of Orange the President might do so but not under the conditions which existed in this case. He advised the French government to start action in federal courts if they wanted satisfaction. If they had any grounds for action they would get justice there. (111, 377)

PUBLIC LANDS.

Conflicting claims had arisen between the heirs of Thomas
F. Reddick and Marsh and others concerning 640 acres of land which was located on the Mississippi river near the mouth of the Des Moines. The Reddick claim was the result of grant made by the Spanish government to a man named Tesson who had sold it to Reddick. The original grant had been made in 1799. By the act of Congress 1 July 1836 the United States relinquished to Reddick's heirs all claim to the land with the following provisions: that the government would not defend this claim against any prior Spanish claim or pay the Reddick claimants if such claim was discovered. If this property was found to be part of land given to the Indians by any treaty, the Reddick claimants were to be allowed to locate the same amount of land elsewhere.

No prior Spanish claim had been discovered and the treaty with the Sacs and Fox Indians did not interfere with any grant which had been previously made to settlers. Hence the Indians had no claim to the land and Grundy ruled that a patent for the land should be issued to the heirs of Reddick. (Ill, 398)

The treaty with the Creek Indians allowed them to sell their lands under the conditions laid down and for that reason Grundy ruled that, in cases where they had sold their lands, the patents should not be issued to Creeks. The sales should be certified to persons appointed by the President who would examine the transaction to insure that the Indians had obtained justice, then the sale should be approved by the President, this being done, the sale would be legal and binding. (Ill, 413)

The plats of public lands in the General Land Office were presumed to be correct until they were found to be otherwise, and should be accepted in the settlement of pre-emptions and locations. Mistakes in these plats, when detected, should be corrected at once but transactions made before this was done were to be on the basis on the uncorrected plat. (Ill, 420)
Transfers of Creek reservations by assignees, where one of the latter was a firm, were not valid when executed by only one member of the firm unless this member showed authority to sign for all. Were the reservee assigned to a firm, such as "M. W. Perry & Co." and the transfer by the firm was signed in the same manner, the assignment was valid and a patent could be issued to the assignee. In cases where there were two assignors and the names of both were in the same handwriting, the assignment was invalid for one who did not sign unless the signer showed authority to sign for his partner. (I11, 423)

The land in Missouri on which the town of St. Charles was located was claimed both by the inhabitants of that place and by Peter Chouteau. Chouteau's claim was based upon two acts of Congress. The first, that of 9 July 1832, provided that a commission consisting of the recorder of land titles in the state of Missouri and two commissioners appointed by the President, should examine the claims based upon Spanish grants and decide which claims were valid and which were worthless.

The second of these acts, that of 4 July 1836, confirmed a number of claims among them, that of Chouteau. The second section of that same act, however, provided that if it were found that any of the claims, so confirmed, were located on land which had been granted by any previous acts of Congress the owners of these claims could locate the same amount of land elsewhere in the state of Missouri or in the Territory of Arkansas.

In support of the claims of the inhabitants of St. Charles it was found that acts passed in 1812, 1824 and 1831 gave them title to the land on which their town was located, including a certain surrounding territory. Thus the St. Charles people had had their title confirmed before that of Chouteau, whose only recourse was to locate land elsewhere. (I11, 427)
The question of whether a nod on the part of a bidder at a public land auction sale constituted a bid was one which Grundy was called upon to settle. At a sale held at Green Bay the land, which was in controversy, was offered for sale and sold to Daniel Whitney, who paid for the land, received a receipt for his money. Later James D. Doty claimed to the land officers that after Whitney's bid had been made he nodded to the auctioneer, which he meant to indicate a higher bid but that his nod was unnoticed by that functionary.

Upon this evidence the land officers decided to offer this same land at the sale the next day, notified Whitney of their action and offered to refund his money. At the next sale the land was sold to George McWilliams who assigned it to Doty.

Grundy refused to settle the question of how far nodding constituted a bid but contented himself with the statement that Doty did not follow up his nod as energetically as he should if he really intended to bid. Seeing that his nod was unnoticed by the auctioneer, Doty should have immediately called the attention of the land officers to the oversight. This he failed to do and therefore Grundy decided that the sale to Whitney should be confirmed. (111, 448)

Owners of land in Louisiana which fronted on some river, creek or other watercourse had been allowed pre-emption rights on an equal amount in the rear of these tracts, according to the provisions of the act of 15 June 1852, provided they were owners of the land at the time the act was approved. Grundy ruled that individuals who had not located the land, fronting on a watercourse, at the time of the approval of the act could not claim to have perfected their title to the extent of being considered owners.
The opinion was given in the case of John Compton, assignee of Garroges Flaujac, whose claim was not allowed on the ground that in 1852 he was not the owner of any land in Louisiana fronting on a watercourse. (Ill, 452)

Lands subject to pre-emption, were those which were subject to the operation of the general land system and did not include those which, by act of Congress, had been taken out of the class of public lands and appropriated to specific objects.

The land on which pre-emption was claimed by Dr. Glenn and others, had been set aside by an act of Congress passed 3 March 1817, "for the encouragement of the cultivation of the vine and olive". This land, located in Alabama, had been withdrawn from public and private sale and was therefore not open to pre-emption. (Ill, 456)

BANKS.

It was required by the law of 1836 that banks in order to be eligible to receive government deposits must be incorporated in one of the states. (Ill, 385)

The Secretary of the Treasury asked for Grundy's opinion on the power of the Treasury Department to examine into the condition of the banks in Wisconsin territory. Grundy, replied that he would not express any views as to the power of a legislative body to examine into the affairs of a corporation created by it but would content himself by saying that there was nothing in the charter of the banks or in the laws of Congress giving the Treasury Department that power. (Ill, 404)

Because the Bank of America had paid out notes of a smaller denomination than five dollars could not become a depository of the United States, according to Grundy who quoted the law of 23 June 1836 as his authority for the statement. (Ill, 411)
216.

THE SLAVE TRADE.

The seizure of an American vessel in Havana harbor on the grounds that it was suspected of being engaged in the slave-trade was justified under the laws of the United States and if the Captain General at Havana was satisfied there was no cause for complaint on the part of the captain of the seized vessel. Under the laws of Congress a ship of the United States navy had the right to seize a ship on the high seas which he suspected of violating laws. Therefore if the Spanish authorities did not object it was lawful to seize the vessel in a Cuban port. The vessel in question was the Thomas, Captain Howell commanding, which was seized by order of Mr. Trist, the United States consul at Havana. Trist claimed that the ship's papers evidently fraudulent and in addition it carried a crew much larger than usual on vessels of that size engaged in ordinary trade.

While Grundy ruled that the seizure was legal he said that under the laws as they were at that time, it would be impossible to convict Captain Howell, He therefore did not advise proceeding further with the prosecution. He added, "Nothing short of a revision of these acts, with additional penal provisions, embracing cases not foreseen when these laws were passed, will save the American flag from abuse, and from being prostituted to the vilest purposes." (Ill, 405)

The Spanish schooner L'Amistad carrying a cargo which included slaves from one Spanish port to another, was captured by the slaves who overpowered the crew, killing a number including the captain. The slaves were unable to sail the ship without the aid of some of the crew. These men succeeded in steering the ship, so that, instead of going to Africa, where the slaves wished to go, it came near to the coast of the United States
where it was captured by an American war vessel and brought into the port of New London.

The Spanish minister demanded that the vessel be turned over to him as representative of the owners. Grundy ruled that this should be done and that the President should issue orders to the United States marshal who had possession of the ship to deliver both ship and cargo to the persons designated by the Spanish minister to receive them. (111, 484)

The criticism of this opinion was based upon the fact that according to the laws of Spain and of the United States the slaves were free. The charge that the negroes were pirates meant that they had to be both cargo and pirates, which was manifestly impossible.

Pressure was brought to bear by the administration upon the Connecticut court to have it rule along the lines of Grundy's decision, but on the contrary it decided that the negroes were free. The case was appealed and became a subject of national interest. In spite of the efforts of the Van Buren administration the Supreme Court decided that the negroes were free. Later Ingersoll of Pennsylvania introduced a bill to pay the Spanish owners of L'Amistad $70,000 but Giddings opposed it and it never came to a vote.

INDIANS.

In his opinions in regard to the Indians Grundy believed in giving the Redmen the benefit of the doubt. Substantial observance of the law without technicalities seemed to the rule which he followed, as is shown in the interpretation of the Treaty of Dancing Rabbit Creek and in the Pitchlynn and McGilry cases.
The removal by the Creek reservees from their lands without the intention of returning constituted abandonment, in the opinion of Grundy. Any contracts or assignments which they had made were without effect as they had no right to dispose of their land after they had left it. As to the time when the title to this land became vested in the United States Grundy ruled that it dated from the time of the removal of the Indians from the lands. Although the register and receiver of public lands could not act until they had knowledge of this removal, nevertheless the rights of individuals to portions of these lands could legally date from the time the Indians left. (Ill, 389)

The only requisites to a title to reservations under the treaty of Dancing Rabbit creek were that the persons applying must to Choctaws, heads of families and that within six months after the ratification of the treaty they had signified their intention of becoming citizens of the United States. Therefore, according to Grundy's opinion neither improvements nor residence on the land were necessary. (Ill, 408)

The removal of the Cherokees from their lands east of the Mississippi could only have been accomplished peaceably by the employment of John Ross, one of their chiefs, as the removing agent. Before Ross was employed contracts had been made with various firms for the removal of the Indians and for supplies for them while on their journey. These had to be cancelled because Ross had made other arrangements and in consequence the contractors suffered great loss, which Grundy though should be made good. He ruled, however, that the money for this purpose could not be taken from the fund of $600,000 which had been appropriated for the payment of the expenses of the removal and the balance to be distributed among the Cherokees. Congress should make a special appropriation for the purpose of indemnification.
 Names were not important in Indian affairs, according to Grundy. If the identity of the person, to whom a grant of land had been made, was known a slight change in the name or the spelling of a name did not make enough difference to interfere with the granting of the land. Two cases were placed before Grundy, one in which a reservation was made in a treaty with the Choctaws for Peter Pitchlynn, while the title bond was produced by a purchaser signed P. P. Pitchlynn. In the other, a Choctaw head of a family was registered by the agent as John McGilvery and later a patent to land was applied for by John McGilvry. In both cases Grundy ruled the names were near enough alike. (Ill, 467)

ARMY AND NAVY.

A contractor, James Thomas, had entered into a contract to furnish the army in Michigan rations which were to include one gill of whisky, rum or brandy for each man. Later he was asked to furnish an extra gill for every man on fatigue duty. For this extra amount he claimed that he was entitled to a higher price than for that on the regular ration. Grundy did not agree that he was entitled to it but as the district court in New York had decided in favor of Thomas and ruled that he should receive the market price for the additional ration and Congress had passed an act appropriating the money to pay the bill, Grundy said, there was nothing else to do but pay what the court had awarded. (Ill, 463)

It was required that the judge advocate of a navy court martial should be sworn and where the record failed to show that this had been done, it was to be presumed that this was not done. Therefore the proceedings were irregular and void. The accused could be tried again but not before the same officers who made
up the first court. The opinion was given in the case of Peter Clark. (Ill, 396)

All purchases for the Navy Department should be under the direction of the Secretary of the Navy and where the need for material was not such that delay would be dangerous, it was necessary to advertise for proposals before making purchases. In cases where the need is immediate the purchases should be made in the open market. (Ill, 437)

The distribution of prize money voted by Congress for a gallant act performed in 1816 should follow the rule which had been laid down by an act of Congress approved 23 April 1800, according to Grundy. This act provided that three-twentieths should be apportioned to the commanding officers of the fleet or of single ships, of which one-twentieth should go the fleet commander, if the prize was taken by ships under his command, and the other two-twentieths should go the ship commanders. The distribution among the other officers and the crew was not in dispute. (Ill, 451)

An officer of the navy whose trial for homicide was pending not in a civil court could be tried by a navy court martial until his civil trial had ended. The civil authority was never subordinate to the military, was Grundy's opinion. (Ill, 466)

POWERS OF THE PRESIDENT.

Grundy elaborated on the power of the President over pardons in one of his opinions. In the case of a man named Martin who had been convicted of an offense against the law, President Jackson had released him from his sentence in prison on payment of the costs in the case. For this amount Martin had given security that it would be paid within two years. President Van Buren wished to remit the payment of the costs but was doubtful as to
his legal right to do so.

Grundy ruled that the pardoning power of the President extended over fines as well as prison terms. He could remit part of the penalty at one time and a part at another. One President could give the prisoner part of his pardon and another President give him the rest. Hence Van Buren could remit the payment of Martin's fine and release his sureties from the bond. (III, 418)

The President did not have the power to order the transfer of any portion of an appropriation for a specific purpose to another fund. The previous Congress had made an appropriation for the mileage and the pay of members of the House of Representatives and another for the contingent expenses of the House. It was found later that the amount for the contingent fund would not cover the expenses charged to that fund while there was a surplus in the other after paying the salaries and mileage of the members of the House. The President was requested to order the transfer of funds from one appropriation to the other. (III, 442)

According to the treaty with the Winnebago Indians one hundred thousand dollars were to be paid, under the direction of the President, to the relations and friends of these Indians, having not less than one-quarter of Winnebago blood. Being part of a treaty which directed the President to make the payment, Grundy ruled that the judiciary had no right to interfere with the payment by injunction or otherwise. He said that if any writ was issued by the courts in an effort to prevent the payment the agents of the President should disregard it. (III, 471)

POSTOFFICE DEPARTMENT.

If one of the partners to a firm which held a contract to carry mail violated a law governing the postoffice department the contract should be taken away from the firm and re-let ac-
According to law, Grundy ruled the actions of one of the partners bound the entire group and only way to properly punish him was to cancel his contract. (Ill, 433)

When a mail contract had been let without knowledge, on either side, of the condition of the roads and later it was discovered that the roads were impassible for mail coaches, Grundy ruled that the contractors should be released from further obligations under the contract. If the contractor found the roads impassible but carried the mail by steamboat he should be paid for such transportation. (Ill, 492)

The gift of James Smithson to the United States of a large sum of money for educational purposes aroused much interest at the time. J. Q. Adams said in his Memoirs (X, 139) that he was afraid that this fund would be used for party purposes or wasted. He added that none of the cabinet, except Grundy, would help in the proper spending of the money, and that C. C. Cambreleng, administration leader in the House of Representatives, had contrived to nullify Grundy's favorable opinion. The opinion referred to was in regard to the payment of the expenses of transporting the money to the United States. This, Grundy said, should not be deducted from the Smithson fund but should be paid out of the appropriation made by Congress. (Ill, 385)

ROADS AND TERRITORIAL JUDGES.

The act of 2 July 1836 directed that the money voted for the building of the Cumberland road in the states of Ohio and Indiana should be spent in such a way as to build the greatest length of continuous road in those states. The act of 3 March 1837, however provided that the act of 1836 should not apply to expenditures made after the date of the passage of the act. This, in
Grundy's opinion, restored to the Secretary of War the authority he had had before the passage of the first act, doing away with the necessity of building a continuous road. (III, 403)

Judges in the territories were not subject to impeachment according to Grundy, because they held offices established by acts of Congress and not provided for in the Constitution. This is shown by the fact that their term was limited to four years in most cases where regular United States judges served during good behavior. The Supreme Court, in the case of the American Insurance company and others against Contee (1 Peters), said that they were not constitutional judges. If they were not judges in the meaning of the Constitution they could not come under the terms of the four section of the second article of that instrument and therefore could not be impeached. (III, 409)

Grundy's service as Attorney General ended in 1839 when the Tennessee legislature elected him to the Senate and he accepted. He held this office until his death only a year later.

HENRY D. GILPIN.

Van Buren had no general disruption of his cabinet during his one term as President. In fact there were only two changes made during the entire four years. One was in the office of the Postmaster General's when Amos Kendall resigned and John M. Niles took his place. The other was the resignation of Felix Grundy who wished to return to the Senate to which the Tennessee legislature had elected him.

Grundy's place was filled by moving up the next in rank in the legal department, the Solicitor of the Treasury, Henry Dilworth Gilpin of Pennsylvania. Gilpin had been a faithful workder for the cause of Jacksonian Democracy and had given satisfaction as Solicitor, where he appeared as the government's attorney in
the L'Amistad case in opposition to John Quincy Adams. He had also appeared in several cases in connection with the Florida treaty and was thoroughly familiar with the work of the office of the Attorney General.

Gilpin was born in England of Quaker parents who brought him to America a small child. He returned to England for part of his education, which was completed, however, at the University of Pennsylvania. He studied law in the office of Joseph R. Ingersoll, one of the leaders of the Jackson party, and was admitted to the bar in 1822 at the age of 21.

During his study and practice of law he combined business and literary work with his legal activities. He was secretary of the Chesapeake and Delaware Canal company, editor of the Atlantic Souvenir and was a frequent contributor to the American Quarterly Review and the Democratic Review.

Through his friendship with George M. Dallas he made his entry into politics by writing a pamphlet called, "A Memorial of Sundry Citizens of Pennsylvania, relative to the Treatment and Removal of the Indians," in which he defended the policy of the government. When Dallas resigned in order to enter the Senate, President Jackson appointed him as attorney for the eastern district of Pennsylvania. Jackson also appointed him a government director of the United States bank, holding his attorneyship at the same time. His work in the bank was very difficult due to the feeling of resentment in Philadelphia in regard to Jackson's treatment of the bank. Gilpin, however, remained loyal to the President and wrote many articles in defense of the government's position.

The Senate refused to confirm his nomination for a second term as bank director and took the same action when Jackson appointed him governor of Michigan territory. Gilpin continued,
however, to serve as district attorney and in 1837 he published a volume of "Reports of Cases Adjudged in the District Court of the United States for the Eastern District of Pennsylvania, 1828-1836."

His loyalty to his party under difficulties as well as his legal ability caused him to be appointed in 1837 to the position of Solicitor of the Treasury. After three years in this position he succeeded Grundy as Attorney General. The year of his appointment to the latter position he published a three-volume work, "The Papers of James Madison" and the following year, "The Opinions of the Attorney General of the United States," the beginning of the publication of the records of that office.

GILPIN'S OPINIONS.

Some of Gilpin's opinions are interesting in showing the prevailing characteristics of his time. It is evident that the government was having no trouble in disposing of the public land and we find an increasing tendency to insist on the strict letter of the law on the subject of public domain in the rulings of the Attorneys General.

The desire for public land made the protection of the rights of the Indians more necessary and Gilpin insisted that the interests of the original inhabitants of America be safeguarded against the wiles of the white men. Money which belonged to some of the tribes was as carefully guarded as their rights to land. However we also find opinions in which claims of Indians were denied when they asked more than Gilpin thought they should have.

The slave trade was also mentioned, Gilpin ruling that slaves could not be transported in coastwise vessels which went beyond the limits of the territorial waters of the United but that this regulation did not apply to rivers and interior waterways. An
echo of L' Amistad case is heard in the opinion that this vessel, after condemnation, could not be given American registry.

In his opinions in regard to patents Gilpin believed in safeguarding the interests of the public as well as the inventors when he refused to allow patents to be renewed unless the renewal had been applied for a sufficient time in advance to allow persons adversely affected to make a protest.

INDIANS.

Colonel Pepper had been appointed superintendent of Indian emigration for which he received $2,000 a year and later was appointed as a commissioner to negotiate a treaty with the Miami Indians for which he was receive eight dollars per day. His claim for both amounts was rejected by Gilpin because the law of 30 June 1834 forbid any person receiving more than one salary for the same period. (111, 511)

The law contained no provision by which debts could be collected from men living in the Indian country. Gilpin said that no courts had been provided by Congress for those territories and when the debtor was outside the jurisdiction of the courts which had been established there was no way of reaching him for the purpose of collecting money. (111, 514)

The state of Maryland issued stocks which were redeemable at the will of the state. The Maryland legislature after a certain time passed a law providing for the redemption of this stock. According to Gilpin no interest on this stock was due after this time when the money could have been collected. Some of this stock had been purchased by the United States government to be held in trust for the Chickasaw Indians. (111, 495)

While the money which the United States promised the Cherokees under the treaty of 29 December 1835 must be paid to the
Indians, the claim of a lawyer who worked for them and performed useful service should be recognised as giving him an interest in the money and the federal officers should see that he was paid. (111, 504)

The Choctaw treaty of 27 September 1830 in addition to giving certain reservations to Indians whose names were mentioned also provided that no sales of Indian lands would be legal unless they were approved by the President of the United States. One of these reservations was given to an Indian, Jack Pitchlynn, who conveyed his entire holdings to William Downing, in trust, to sell and apply the proceeds to pay Abert and Rasor a debt he owed them. Downing sold part of the land and applied the proceeds to the payment, leaving only a small amount unpaid. At that time Pitchlynn died leaving two children and his father, John Pitchlynn, became their guardian.

John Pitchlynn then made an arrangement with Abert and Rasor that he would pay them the balance owed if they would give to him the benefit of the deed of trust which his son had made. The rest of the land was then sold for an amount much less than its real worth to John Pitchlynn and a partner who promptly resold it for a handsome profit. None of these sales had been approved by the President and none of the money had been paid to the children of Jack Pitchlynn.

The last sale was made to Banks and Lewis who ask the President's approval of the sale, thus bringing the matter to Gilpin's attention. He advised that this sale should not be approved, as the heirs of Jack Pitchlynn were still minors, living in the Choctaw country west of the Mississippi and John Pitchlynn was dead so no legal action could be taken for the benefit of the children. Thus they would lose all the money they should receive from the land which had been granted to their father. Banks and
Lewis had made their purchase in good faith but they also knew that the President's consent was necessary. They might have protected themselves by refusing to pay the entire purchase price until this consent had been obtained. (III, 517)

The contractors for the removal of the Chickasaws were to be paid from the appropriation made by the act of 20 April 1836, even if some of the Indians did not take advantage of the means offered for their removal. The facilities were ready for them and therefore should be paid for. (III, 561)

In cases where the Creek reservees died within the five years that their reserves were to be withheld from public sale, the lawful administrators had sold the land, paying the proceeds, less the expenses, to the Indian widows as the heirs. The purchasers, having paid in full for the land, were entitled to have their purchases confirmed, in spite of the objections of other relatives of the reservees. If the distribution of the proceeds of these sales was illegal, it should not be allowed to affect the purchasers who were ignorant of any illegality. (III, 578)

A dispute arose between two children of a Winnebago Indian, Mauk-nah-tee-see, and some Polish exiles over a tract of land which was claimed by both parties. The claim of the Indians was based upon the treaty made by them and the United States 1 August 1829 which said that title was to be vested in the Indians as soon as they located their land. This had been done.

The Polish exiles had been granted land by Congress by the act of 30 June 1834 and their selections had been made but they had not been approved either by the Secretary of the Treasury or the Commissioner of the General Land Office.

Gilpin ruled that the Indians were entitled to the land in dispute as the treaty stated that their title was complete when they made their locations. As this had been done before the con-
firmation of the selection of the Polish exiles, the land be-
longed to the Winnebagoes. (111, 584)

Heads of Creek families were entitled to patents for their
land if they remained in the east but forfeited them if they mov-
ed west of the Mississippi, was the substance of a ruling of Gil-
pin. Dick Spiller, a Creek, had taken up a tract of land in
Alabama but before the end of the five year residence period moved
to Georgia where he settled. Gilpin ruled that he should re-
ceive a patent for his land because he had stayed east of the
Mississippi, thereby conforming to the provisions of the Creek
treaty of 24 March 1832. (111, 585)

The Choctaws and the Chickasaws made an agreement by which
the former gave the latter tribe the privilege of forming a dis-
trict within the limits of their country. For this right the
Chickasaws were to pay the Choctaws $530,000 of which $30,000
was paid at the time the agreement was made. For the rest it
was suggested that the stocks in which the United States govern-
ment had invested the fund created for the benefit of the Chick-
asaws, be transferred to the Choctaws or as much of it as would
be necessary to pay this debt. According to the law establish-
ing this fund the consent of the President and the Senate was
necessary for this action. As both had consented to the agree-
ment, it might be considered that this transfer could be ac-
complished without further action. Gilpin disagreed, however,
with this view for the reason that the fund was for the benefit
of the Chickasaws and to transfer this stock at the market price
at that time which was very low, would work an injury to the
tribe. He suggested that the stocks might be transferred if they
could be applied on the debt at par value but insisted that the
consent of the President and Senate was necessary for such action.
(111, 591)
Gilpin ruled that the Senecas were entitled to their hunting grounds as well their cultivated land until the time fixed by the treaty for their removal. (III, 624)

ACCOUNTING OFFICERS.

As a matter of regular practice when court costs were allowed by the district judges, these allowances were binding upon the accounting officers. In this case processes of summons and subpoena were served by a marshal on the same witness and there was question as to whether he should receive pay for both. Gilpin ruled that as the judge had allowed it, the marshal should receive the amount he claimed. (111, 496) (536).

Before the President could express an opinion respecting the claim of William Otis, formerly collector of customs at Barnstable, Mass., the accounting officers should pass upon his account and the items in it. It should then be submitted to the President for his opinion. (111, 500). In a later opinion Gilpin ruled that this claim, not having been fully settled, might be re-opened. In cases where accounts were finally adjusted, settled and closed, it was a rule of the accounting officers not to re-open them. (111, 521)

When Congress had directed that money should be paid to any certain person or persons the officers of the Treasury could only pay the money to those persons or their legal representatives. In this instance Congress had voted a sum of money to Robert Milnor and John Thompson for special work they had done as gaugers at the Philadelphia custom house. Soon after the passage of the act G. W. Metz had presented a claim that he had been assigned all of Milnor's real estate and personal property and should therefore receive the share of the appropriation which was voted to Milnor. Later it was alleged that Milnor had gone through
bankruptcy and had assigned his property to Metz for the benefit of his creditors, including a claim against the United States government. Milnor asserted that the claim against the United States which he had assigned was another one, which was pending before Congress at the time.

In spite of the various claims Gilpin ruled that the money should be paid to Milnor and his creditors or assignees could attempt to collect their claims by appeal to the courts. (Ill, 533)

In cases where the United States was the plaintiff the government was liable to the clerks of the courts for fees properly chargeable to the plaintiffs and the accounting officers should allow them even if the marshal had collected them but failed to turn them over. In such cases the United States had recourse against the marshals on their official bonds. (Ill, 575)

MILITARY AND NAVAL AFFAIRS.

Gilpin ruled that there was nothing in the laws of the United States which prevented an enlisted man in the United States army from bringing action in a state court for damages against a non-commissioned officer for an assault committed within a fort. (Ill, 498)

In regard to the army contract in which Grundy had given an opinion Gilpin was asked to interpret the decision of the New York court. He ruled that the contractor should be paid the contract price for the six months' supply at Detroit and nine months' supply at Mackinac together with ten per cent additional for contingencies but should receive the market price for the addition material which he supplied. (Ill, 524)

When the militia was called out for service by state or territorial authority and then discharged before they were mus-
tered into the United States service, no act of Congress provided for the payment of these soldiers. In such cases as they arose, Congress specifically provided for them. An appeal to Congress was the method recommended by Gilpin. (Ill, 528)

It was a fatal error in the proceedings of a court martial to fail to administer the oath to the judge advocate before beginning the trial. (Ill, 545). In another opinion Gilpin gave a list of mistakes which court martial should avoid if they wished to have their decisions stand. One error was to receive evidence after the court had been cleared for deliberation on the verdict. Another was to fail to preserve sufficient records of the case so that the reviewing officer could form a judgement of the justice of the trial. Where the jurisdiction of the court had been called into question on account of the early date of the defendant's enlistment, the record should contain authentic evidence of the terms and period of the enlistment, so that the reviewing officer could judge whether or not the court had jurisdiction. The court should submit the evidence itself on which they based their judgement, not the inferences or conclusions of the courts martial. (11, 545). On the other hand, the proceedings of a court martial should not be set aside because negroes were allowed to testify or because the court made other mistakes if, in the opinion of the President, substantial justice was done. (Ill, 523)

PUBLIC LANDS.

Land script could be issued, said Gilpin, on Virginia land warrants dated after 1 September 1835 only in case it was an exchange warrant, that is, a warrant issued in place of one given to the wrong person. (Ill, 499)
The claims of the Mackay heirs should be upheld, said Gilpin, against those of the New Madrid earthquake sufferers. The land which the Mackay heirs claimed was granted in 1799 and had been occupied since that time without interruption. It had been submitted to the District court and appealed to the Supreme court and had been adjudged a valid grant by both courts.

The claims of the New Madrid people were based upon a grant of land made by Congress which gave them the right to locate land any place in the Missouri territory where the sale of land was authorized by law. The land of the Mackay heirs, however, was not in that class.

Hence Gilpin ruled that a patent for the land should be issued to the Mackay heirs but added that in order to protect any adverse rights, which might exist, a clause should be included in the patent to that effect. (Ill, 505)

Gilpin approved the application of the heirs of Captain Robert Kirkwood for an additional three hundred acres of land on account of the Revolutionary services of their ancestors, in spite of the fact that they had already received four thousand acres. While Captain Kirkwood had enlisted in Delaware, he had been transferred to a Virginia regiment. Under the laws of that State, captains were entitled to four thousand acres and according to the act of Congress passed 16 September 1776, a captain who continued in service until the end of the war was to be given three hundred acres. Captain Kirkwood complied with the terms of the act but his heirs had never received the land. Gilpin ruled that they should be given land warrants for the stated amount. (Ill, 556)

The United States in order to assist in building a canal from the Wabash river to Lake Erie had granted first to Indiana
and later to Ohio half of the land to a depth of five miles on each side of the canal. Gilpin decided that this was to include alternate rows of sections but in case any of the land, which was given to the states, had been sold or otherwise granted the deficiency was to be supplied from the part reserved for the federal government. In case it was needed he decided that the sections which were cut by the line five miles from the canal could be used even if they extended more than the specified distance. Nothing was to be allowed to stand in the way of the states getting the amount of land which had been specified in the agreement. (11, 552).

The claim of George C. Sibley to the fractional section on which his house was located, and the two other quarter sections on which his improvements were located, was overruled by Gilpin who said that he was entitled to pre-emption on the land which contained his house and one of the other tracts but not both. If both the other two tracts had been fractional sections he could have had them but as they were entire the law clearly gave him but one.

Sibley claimed that permissive possession of all this land for twenty seven years should give him some rights. Gilpin advised him to take his complaint to the state legislature which might give him some satisfaction but the federal land laws permitted no such extention of the pre-emption rights. (111, 563)

The claim of Bartholomew Pellerin to 17, 084 arpens of land in Mississippi, based upon a British grant made before 1783 was rejected by Gilpin for the reason that this claim had not been recognised by the commission appointed soon after the United States purchased the Louisiana territory. It was reported by that body as one of the unproved claims on which was granted 1280 acres. A patent for that amount could be issued but no
more. The new evidence submitted did not substantiate the claim for the larger amount. (Ill, 569)

In case pre-emption rights were claimed on lands which had been reserved from sale because it was thought to be part of the grant for the aid of the Milwaukee and Rock River Canal they could be recognized after it had been discovered that the land had not been included in that grant. (Ill, 577).

The President should confirm the sales of Creek reservations where they were made by the administrators according to the orders of courts having the proper jurisdiction, whether the distribution of the proceeds to the heirs was properly made or not. This was only to be done, of course if the purchaser had paid the purchase money to the administrators or their legal representatives. The purchaser had done all that was expected of him and he should not be held responsible for the distribution of the money.

The situation, however, was different in case where any of the purchase money had been withheld or if the administrators themselves were the purchasers and had not accounted for the proceeds of the sales. In such cases the sales should not be confirmed. (Ill, 596)

In case there was a dispute between two assignees of the same pre-emption right, the Commissioner of the General Land Office should issue the patent to the original pre-emptor and allow the courts to settle the dispute. In this case the claimants were G. W. Watterston and Messrs. Millaudon and Hodge. Both had what seemed to be legal assignments of the same floating right of pre-emption. (Ill, 608).

While the confirmatory act of 2 December 1833 gave to the sons of Benito Vasquez an absolute claim to land it was a floating right and in Gilpin's opinion could not be located, without further legislation by Congress. (Ill, 615)
In case there was a dispute between two assignees of the same pre-emption right, the Commissioner of the General Land Office should issue the patent to the original pre-emptor and allow the courts to settle the dispute. In this case the claimants were Gil W. Watterston and Messrs. Milaudon and Hodge. Both had what seemed to be legal assignments of the same floating right of pre-emption. (III, 608).

While the confirmatory act of 2 December 1833 gave to the sons of Benito Vasquez as absolute claim to land it was a floating right and in Gilpin's opinion could not be located, without further legislation by Congress, on any of the public land of the United States. The failure of the act to make suitable provision for the location, which was probably accidental, could only be corrected by Congress. (III, 615)

When the right of a man to land had been confirmed by an act of Congress, the patent should be issued for the tract as located unless a mistake was found in the location. This was the case of Peter H. Bobart, whose land was located on the Bayou Sara in Alabama. (III, 618)

It was a sufficient compliance with the act of 4 July 1836 for the engrossing clerks to write the name of the President on patents for land and for the secretary later to attest them by his signature. The attestation was the only duty in that connection, which was not ministerial, and therefore required the signature of the officer. (III, 623).

The law which directed the payment of three per cent of the money derived from the sale of public land in Illinois for the use of education in that state, required a statement from the state officials showing that it has been spent for that purpose. This statement was to be submitted to the Secretary of the Treasury. Gilpin ruled that this officer, on receiving this statement,
could order further payments to the state, that no other proof was required by the act. (Ill, 567).

THE SLAVE TRADE.

While the slave trade was prohibited not only from abroad but to be carried on by coastwise trading ships, Gilpin maintained that this rule did not apply to inland waters such as that from Ponchartrain through Lake Borgne and Pascagoula Bay to Mobile. The object of the law was to stop the importation of slaves by preventing them from being loaded at sea on board coastwise vessels. This would not be possible in the case of ships on the interior waterways. (Ill, 512) (561).

The Spanish schooner L'Amistad, which was captured and brought into an American port, after the slaves on board had overpowered the crew and had attempted to return to Africa, was condemned and sold under the orders of a federal district court. This condemnation was not caused by any breach of the laws of the United States and therefore, Gilpin ruled, it could not be granted an American register. (Ill, 606).

DISTRICT ATTORNEYS.

While United States district attorneys were not entitled to any extra compensation over their stated salary and fees for any services they had rendered in the prosecution of offenders, they should receive pay for such services as that of discovering criminals and procuring adequate evidence against them. (Ill, 515).

The district attorney for Vermont was likewise entitled to an allowance for expenses incurred in trips for the purpose of securing the payment of money due to the United States and in order to superintend the sale of real estate belonging to the federal government. (Ill, 612).
An applicant for a United States patent who lived in a foreign country was required to make the application under oath. Gilpin ruled that this could not be administered by a consul, for the reason that such officers were not, as a general rule, allowed to administer oaths. Instead the application should be sworn to before some competent magistrate of the nation of which the applicant was a citizen. (11, 532).

Applications for extension of patents were required to be made in sufficient time previous to its expiration in order that the Commissioner of Patents could give notice of such application. He was then to announce when a hearing on the question would be held in at least one newspaper in the city of Washington and others in the part of the country most interested adversely in the granting of the request. In the case of William Gale his application could not be granted as he had not applied in time for this announcement to be made and at the time that Gilpin's opinion was asked the patent had expired. The law expressly stated that no patent could be extended after it had expired. (11, 594).

PENSIONS.

An act of Congress directed that the name of Mary Updegraff, widow of Isaac Updegraff, a Revolutionary soldier, should be placed on the pension rolls for the same amount as had been paid to her husband, this pension to date from 1 March 1831. The act was passed 3 March 1839 and it was later discovered that Mrs. Updegraff died on 17 February 1839 before the passage of the act.

Gilpin ruled that Mrs. Updegraff's name must be placed on the pension rolls and the amount due between 1 March 1831 and the date of her death should be paid to her children. Another question arose due to the fact the Updegraffs had five children,
four of whom were then living in Pennsylvania, the fifth had left home twenty eight years before and had not been heard from since. Gilpin ruled that the share which would properly belong to the missing heir should be withheld until the probate court of the county, in which the other children lived, was satisfied of his death. Then the remaining money could be paid to the four children. (III, 540)

MAIL CONTRACTS AND THE PARDONING POWER.

Gilpin maintained that under the acts of 3 March 1825 and 2 July 1836 no increase in compensation could be made for the carrying of mail when there was no increase of speed and no changes in the route over which the mail was carried. In this case the time of carrying the mail between Fredericksburg and Washington had been changed by the contractors but the speed and frequency of the mail delivery was not increased. (III, 542)

Deputy postmasters, who were required to exercise the functions of public depositories, should be required to give new bonds with sureties which were to be approved by the Solicitor of the Treasury. (III, 574)

The pardoning power of the President extended to the remission of fines imposed for contempt of court. Gilpin based this opinion on the English common law. (III, 622)

When the Whigs won the election of 1840 putting Harrison and Tyler into office Gilpin retired from politics and devoted the rest of his life to literary and classical studies which included an extensive trip to Europe. He served as president of the Pennsylvania Academy of Fine Arts, vice president of the Historical Society of Pennsylvania, director of Girard college and trustee of the University of Pennsylvania.
IX. UNDER HARRISON AND TYLER.

John J. Crittenden, Hugh S. Legare, and John Nelson.

The election of Harrison brought into power a new party, the Whigs. Being newly formed it was composed of many elements, coming from various sources. An important portion of the new party was composed of Democrats, many of them formerly Jackson men who had become opponents due to various causes, such as the withdrawal of deposits from the United States bank and the Specie Circular.

Harrison was not regarded as a strong man politically but his military reputation was necessary to win the election. Hence it was expected that his cabinet would have to be of exceptionally able character as they would have more power than was usual in their respective departments. The comments in the newspapers when these men resigned shows that they were regarded highly, one newspaper saying that it "was the best the country has had in many years".

As was usual geographical elements had their part in its framing, with the west represented by John J. Crittenden of Kentucky as Attorney General, Thomas Ewing of Ohio, as Secretary of the Treasury, and John Bell of Tennessee as Secretary of War. Of course the foremost man of the entire group was Daniel Webster of Massachusetts who, along with Clay, was regarded as the leader of the party. He held the position as Secretary of State and filled that office with great ability.

The other members of Harrison's cabinet were George H. Badger of North Carolina as Secretary of the Navy, and Francis Granger of New York as Postmaster General. Some difficulty was experienced in getting Granger's name confirmed as he had stirred up the wrath of the South by his alliance with John
Quincy Adams in opposing the restrictions placed by the House of Representatives on the right of petition when many anti-slavery petitions were being presented.

While several members of the cabinet had been Jackson men, Crittenden was not one of them. He has been opposed to Jackson since the first time the General's name was presented as a candidate for public office. This was probably due to his allegiance to his fellow Kentuckian, Henry Clay, whom he had supported for President in 1824.

When Adams was elected, however, Crittenden became a firm friend of the administration and his reward was an appointment as federal district attorney for Kentucky. Adam also nominated him for a position on the Supreme bench but the Senate, composed of a majority of Jackson men, refused to confirm the nomination.

John Jordan Crittenden was born in Woodford county, Kentucky. After his graduation from William and Mary college, having studied law during his college course, he was admitted to the bar of his native state. As central Kentucky seemed to be plentifully supplied with lawyers Crittenden moved to the western part of the state, where he soon established himself as one of the leading lawyers. His first office was that of Attorney General for the Illinois territory which he held for a year.

In the War of 1812 he served as aid-de-camp to Sam Hopkins in a few battles with the Indians and later, as a member of the staff of Governor Isaac Shelby, he was present at the battle of the Thames where he received special commendation for faithfulness in carrying out orders.

Crittenden's political career started at the same time. In 1811 he was elected to the legislature and was re-elected
six times, serving as speaker two years. In 1817 he was chosen to fill an unexpired term in the United States Senate. At the close of this term of service he retired from public office and devoted the next sixteen years of his life to the practice of law. He moved to Frankfort, where his legal activities centered and became, like Grundy, famous for his defense of persons accused of crime. In this work he lost few of his cases.

In 1820 he served on a commission appointed to settle a disputed boundary between Kentucky and Tennessee but, due to disagreements, little was accomplished. In 1825 he began another period of service in the legislature which lasted until 1832, serving as speaker four years.

His friendship with Henry Clay brought him again into national politics. He lost his position as federal district attorney when Jackson became President. In 1835 he was elected to the United States Senate, this time for a full term. As senator he opposed all the measure of Jackson and Van Buren and supported those proposed by Clay and Webster.

In 1840 he went "on the stump" for Harrison in the famous "Tippicanoe and Tyler too" campaign. The Kentucky legislature had just re-elected him to the Senate when the new President appointed him Attorney General. He resigned his seat in the Senate and then after six months in the cabinet, with the rest of Harrison's cabinet, he resigned when Tyler broke with the Whigs. His loyalty to his party had caused him to give up a six year term of senatorial service for a brief period as presidential advisor.

Crittenden is the only Attorney General who served two separate terms in that office, as President Fillmore later selected him. On that occasion he was more fortunate, serving three years.
He was the first Attorney General to have the use of the new library which Congress had provided for the office. In 1840 an appropriation of one thousand dollars had been voted for books for the Attorney General's office. Gilpin had purchased them during the last year of his service, adding them to the five hundred dollar library which had been voted in 1831. These two groups form the nucleus for the present Department of Justice library.

On almost the last day of Crittenden's term of office Congress by a joint resolution made the duty of the Attorney General to examine all titles to land which the government expected to purchase for public purposes. Crittenden, however, was not called upon for any such service.

Crittenden's most notable work during his brief period in office was his effort to prevent a breach with England in regard to the McLeod trial. Alexander McLeod, who claimed to have been a member of the Canadian expedition which in 1837 destroyed the Caroline, a ship in the service of Canadian rebels while it was in the United States waters, was arrested in New York and charged with murder.

The British authorities requested McLeod's release on the grounds that he was acting under orders of the Canadian government, but as the case was before the state courts the federal authorities had no control over it. Webster told the British minister that if the case had been before the federal courts it would not be prosecuted. Crittenden was sent to New York where he secured from Governor Seward a promise that McLeod would be pardoned if he should be convicted. McLeod was acquitted, however, having proved an alibi. Crittenden always maintained that he should not have been sent
on this errand, insisting that it was an encroachment upon the
duties of the Secretary of State.

CRITTENDEN'S OPINIONS.

Crittenden's opinions while few in number include some of
interest. He differed with Grundy on several points, notably
on what agency should settle disputed ownership of public land
claims. Grundy had ruled that the Land Office should do this
while Crittenden insisted that such disputes should be settled
by the courts. His ruling on the Florida claims undoubtedly
saved the government a considerable sum of money as the judges
seemed inclined to allow almost everything that was claimed.
His ruling put the final decision in the hands of the Secre-
tary of the Treasury.

PUBLIC LAND.

According to the treaty with the Creek Indians and the
acts of Congress relating the transfer of land and the grant-
ing of patents for it, patents were only to be granted to such
person or persons as were purchasers, owners, assignees or trans-
ferees. Grundy had given a very loose definition of the pow-
ers of the Land Office in regard to these changes of ownership.
Crittenden, however, maintained that only persons who had de-
finite written documents to prove their transferred rights
should be given patents.

Disputed claims of those which had not been proven should
not be left to the jurisdiction of the executive department but
should be settled by the courts. Crittenden did not believe that
the law intended, as Grundy had maintained, that the executive
should settle this type of question. (111, 644)
He rejected the claim of Abercrombie of his land based on the title which he derived from the Columbus Land company but allowed it on the evidence which he submitted of another transaction. The Land company, he said, had not proved that it had title in the land and therefore could not transfer what it did not own. The succession of indorsements on the original deed, he said, if accompanied by satisfactory proof of their genuineness, was sufficient to authorize the issue of a patent.

Congress had agreed to assist the state of Ohio in building a canal from Dayton to Lake Erie by giving a quantity of land equal to half of five sections in width on both sides of the canal. In order that this land might be reserved all the public land in that part of the state had been withdrawn from sale until the line of the canal had been located. After this had been done the land was not offered for sale as the law required by giving notice in a newspaper of the district and by public notices that it was open for entry. Therefore, Crittenden ruled that Governor Shannon of Ohio should not be granted a patent for a tract which he claimed in the section which had been reserved but was not included in the land finally given to the state of Ohio. (Ill, 650).

The execution of a patent for land to a soldier of the War of 1812 by the General Land Office gave title to the land even if the patent was not delivered to the man. The patent was made out to Pierre Mute but never delivered to him. (Ill, 655)
Samuel Mackay contracted to furnish rations to the Creek Indians during the time of their removal to the land assigned them west of the Mississippi. He furnished 482,848 rations for which he was paid by the government. Later he furnished 175,985 rations and then abandoned his contracts, being unable to complete the work. He claimed that this non-performance of the contract was caused by the fact that he was not given sufficient notice of the unexpectedly large number of Indians who were to be moved at a most unfavorable time of the year. For that reason he asked for payment for the rations delivered.

Crittenden said, presuming the facts to be as Mackay's attorney's represented them, and it was not the duty of the Attorney General to investigate the facts in the case but only decide the questions of law, that Mackay should be paid for the rations which he had delivered. (III, 632).

According to an act of Congress passed 26 June 1834 the inhabitants of East Florida, who suffered losses during the campaign of 1812-3, were to be indemnified. The act provided that the cases were the examined by the judges of superior court and then the Secretary of the Treasury was to be paid the amounts awarded if he thought them "to be just." In case of John Wood, the judges of the superior court of St. Augustine decided in his favor to the amount of $39,000 with interest at five per cent from 1813.

Crittenden ruled that the amount to be paid rested entirely with the Secretary of the Treasury because it was his
duty to determine the justice of the judge's decision. Therefore he could pay any amount which, in his opinion, was just. He could not order the judge to re-open the case and have him supply additional evidence but that was unnecessary.

As for the interest which the judge decided Wood should have, Crittenden said that Congress did not mention interest on the damages which were ordered paid and that it was the rule of the government that, unless it was mentioned, none was to be paid. In conclusion Crittenden said, "I feel myself constrained, therefore, to entertain the opinion that, so far as related to the allowance of interests, the decision of the judge is unwarranted and erroneous." (Ill, 635).

Crittenden ruled that a United States marshal should obey an injunction issued by the superior court of a territory. In this case the injunction was issued to prevent the marshal from removing intruders from public reservations in Florida. Crittenden said that the court might have erred in the exercise of jurisdiction but the marshal was no judge of that. It would have to be settled before the courts. In the meantime he should stop the removal of the intruders. (Ill, 643).

HUGH S. LEGARE.

The cabinet of Harrison was continued by Tyler but it was only for a short time. The Whigs soon saw that Tyler was more of a Democrat than one of their number and when he vetoed the bills establishing a federal bank the entire group, except Webster, resigned. Then Tyler had an opportunity to select a group of advisors entirely suited to his taste.

The selection of Hugh S. Legare of South Carolina is hard to account for. Tyler had left the ranks of the Jackson Democrats because he was unable to agree to "Old Hickory's" method
of dealing with South Carolina and nullification. Legare joined the Whigs at the same time because he disagreed with the Democrats of his state who were in favor of nullification. In 1841, however, they were both considered Whigs and it must be said that they worked in harmony until the death of Legare.

The other members of the new cabinet were Walter Forward of Pennsylvania in the Treasury, John C. Spencer of New York as Secretary of War, Abel P. Upsher of Virginia, Secretary of the Navy, and Charles A. Wickliffe of Kentucky as Postmaster General. The Whig newspaper comments at the time were inclined to favorable. The National Intelligencer said that while they were not the best selections that could have been made, on the whole they were better than could be expected, adding "They are all gentlemen of honorable repute, of intelligence and, we believe, of business habits."

The Alexandria Gazette classified the group according to their political tendencies. Legare was a conservative Whig, Forward an ardent Whig (as he soon proved), Upsher a Whig abstractionist and Wickliffe a decided Whig.

Of course the Democratic papers were not as favorable. The New York Evening Post said that Forward was known not to agree with Clay on the banking question and added "he is a high-tariff man and strongly attached to the mischievous protective system."

The Post also had much to say about Legare. It stated that he "holds in politics much the same position that the doctrinaires hold in France. He is eloquent and erudite, perhaps not very practical. His brilliant literary reputation will make his accession to the cabinet ornamental at least." Even John Quincy Adams had a good word to say for him after his sudden
death. In his "Diary" he recorded that Legare was "an able and very amiable man, by far the best of the President's present associates." 2

Hugh Swinton Legare was born in Charleston, South Carolina of Huguenot and Scotch ancestry. After his graduation from the College of South Carolina he studied law for three years and then spent two years in travel and study abroad. Upon his return he tried cotton planting for a short time and then moved to Charleston where he entered the practice of law, in which he had little success.

His entry into politics took place about the same time when he was elected to the state legislature where he served for six years. He was then elected attorney general of the state, holding this position until 1832. He was active in the support of the Union during the Nullification troubles and it was this activity that first attracted notice in the North. He was also interested in literary work, writing many of the leading articles for the "Southern Review". On the death of its first editor, Stephen Elliott, Legare succeeded to that position.

In 1832 he was appointed charge d'affaires at Brussels. He returned home in 1836 when he was elected to Congress as a Union Democrat. His speeches in Congress attracted favorable notice but his opposition to the sub-treasury bill caused his defeat for re-election. He then re-entered the practice of law and had a successful career being regarded as the leader of South Carolina bar. In the campaign of 1840 he supported Harrison and wrote a series of articles for the "New York Review."
LEGARE'S OPINIONS.

Legare's opinions cover a wide range of subjects, with public lands, Indian affairs, military and naval affairs, tariff laws and the postoffice occupying most of the Attorney General's attention. The opinions in regard to public lands were largely settling disputes between rival claimants, indicating that large numbers of persons were still going west. Making new rules and interpreting old ones in regard to pre-emption constitute an important part of the opinions.

Legare was the first Attorney General to devote much time and space to the interpretation of tariff laws. He followed in the steps of several of his predecessors in refusing to allow executive officers to hampered in their work by the courts. In one case he advised officers of the postoffice department to disregard processes of a court which sought to limit their actions.

In another opinion in regard to the postoffice department he stated the qualifications which a publication must have in order to be considered a newspaper and to be entitled to the special postage rates which newspapers enjoyed.

Legare also followed the rules established by those who had previously occupied his office in regard to recess appointments made by the President but on the other hand he differed with Crittenden in regard to paying an officer who was unjustly put out of the naval service, ruling that he could not be paid while not performing his duties. Most of the other Attorneys General who ruled in this question agreed with Legare.

The trouble between Texas and Mexico gave rise to an opinion on the subject of neutrality in which Legare referred to the provisions of the act of 1818. In this ruling he traced the history of the neutrality law together with reasons for its
In a court martial held in Baltimore Captain David Turner, one of the court, became ill and could not sit on the case of Lieutenant Gordon, which was decided in his absence. Before the next case was started Captain Turner recovered. Legare decided that he could resume his place in the court without a new warrant being issued. Wirt had decided a similar case and Legare followed his ruling. (IV, 7).

The effect of a promotion upon a sentence imposed by a court martial was to remove the effect of the sentence, was the substance of an opinion of Legare in the case of Lieutenant Hooe of the Navy. Lieutenant Hooe had been sentenced by a navy court martial to be suspended from the service for two years, on half pay as a passed mid-shipman. This sentence was approved by the Secretary of the Navy 23 July 1840. The following December, however, he was nominated and confirmed as a lieutenant but since the date of his new commission he had drawn half pay of a lieutenant. He later put in a claim for the full pay of his new rank. Legare ruled that he was entitled to what he claimed because the new rank automatically cancelled the sentence he no longer occupied the rank which he held at the time of his trial and sentence. The Attorney General quoted the plea of Sir Walter Raleigh at his trial for treason in the reign of James I. (IV, 8).

The President had the right to refer a decision back to the court martial which gave it, in case he was not satisfied with it. There was no doubt, said Legare, that in the army the commander who called the court martial and who must approve its decision before the sentence went into effect, could refer a
case back to the court. This case was in the navy but the same rule would apply. (IV, 19).

An officer in the army was brought to trial for manslaughter but the sentence of the court was disapproved by the commanding general. The new trial was not held though nearly two years after the first one. In the meantime he was tried on the same charge in a civil court and acquitted. At the time when this opinion was sought he was being brought to trial for conduct unbecoming to an officer and a gentleman.

Legare decided that it was doubtful as to whether the retrial could take place, certainly not if the former court was not available because of the lapse of time since the first one. As to the trial on the new charge Legare ruled that it was permissible. (III, 749).

Legare ruled that the sentence of a court martial which was held thirty five years before could not be reviewed by the President on the plea that there had been irregularities in the procedure. These charges should have been presented before the sentence was confirmed by the President. This case arose as a result of an attempt to have the sentence of Commodore Barron reviewed. (IV, 170).

The pay of an officer in the army or navy was to begin when he actually entered upon the duties of his office, said Legare. If such an officer was out of the service he was not entitled to pay while was out even if he put out for an unjust cause. However, he should be given the rank, in such a case, that he would have had in case his service had been continuous. This was the case of Surgeon Du Barry, who had been retired from the naval service but was restored. He claimed the same rank to which he would have been entitled if the retirement had not taken place. (IV, 123).
The President was not allowed, said Legare to give extra pay to officers of the Navy who were accompanying an exploring expedition unless Congress had voted money for the purpose. It could not be paid out of the Navy funds for the General fund. An appeal, he said, should be made to Congress. (IV, 125,128).

The act of 1837, which provided for the enlistment of boys into the naval service, did not apply to the marines, according to Legare. While according to law a marine on shipboard was considered a sailor, on land he was classed as a soldier. The act, above referred to, was intended to allow boys of 13 and over to become apprentices in the navy but did not intend to put boys of that age in the ranks of the military which included the marines when on shore duty. (IV, 89).

The sureties of a purser were not released from their liability to the government when their principal was ordered to sea but Legare advised that their consent be obtained before it was done. The purser in this case was indebted to the government for more than one thousand dollars. (IV, 119).

The district court of Iowa had jurisdiction over Fort Atkinson in the Indian country and it would require a very clear case to justify the military authorities in resisting a writ of habeas corpus issued by that court. (IV, 119).

The steamboat Dayton, owned by Thomas S. Clarke & Co. had been chartered to take supplies for the army from Pittsburg to Ft. Smith, Arkansas, for which service the government was to pay $250 a day until the boat was discharged. After the goods were delivered and the boat discharged the Dayton was detained at Cincinnati for a number of days on account of low water. Legare ruled that the company was not entitled to any additional pay because the government had nothing to do with the boat after
it was discharged from service. (IV, 83).

The salvage given to the crew of the United States brig Washington for the capture of L'Amistad should be divided not among the members of the crew who were on the records of the brig but to those who were actually on board at the time of the capture. (IV, 17).

Legare refused to sanction the payment of the Florida militia for services which, in his opinion, they did not render. Part of them after being called out, disbanded voluntarily, without authority, and refused to serve. The rest of them were mustered into service and were then ordered to return home but to be ready for service at a moment's notice. The disbanding, said Legare, was a virtual discharge from actual service. During the time of such discharge they were not entitled to any pay. (III, 687).

Legare decided that the claim of Lieutenant Inter for reimbursement of money paid out in experiments for the propulsion of was steamers by "horizontal wheels that will be safe from the balls of an enemy" might be paid if, in the judgement of the War department, the facts in the case supported the claim. (III, 659).

The question as to whether aliens could enlist in the United States army was settled by the act of 1815, according to Legare. This act restored the provisions of that of 1802 which forbid the enlistment of anyone except citizens of the United States. The acts passed since that time by Congress relating to reduction of the army did not affect the passages in the two acts referred to in regard to alien enlistments. They were only allowed during the war of 1812.

In regard to the second question put to him, that of the jurisdiction of state courts regarding the validity of an en-
listment, Legare said that he hesitated to deny to any man im-
prisoned against the law, under color of authority from the govern-
ment of the United States, the protection of the state courts by
means of the writ of habeas corpus. He came to the conclusi
however, that it would avoid unpleasant relations if the state
courts would refuse to entertain cases of that kind and refer
them to the federal courts, which were always at hand. He quot-
ed as denying the state courts this jurisdiction the opinions of
Chancellor Kent (9 John 239) and Justice Story in United States
vs. Bainbridge, (1 Mason 71). (III, 670).

The money in the hands of United States consuls could not
used to assist seamen from warships as it was specially designat-
ed as being for the use of sailors from merchant ships only. The
fund was raised by deduction from the wages of merchant seamen for
their exclusive benefit. (III, 683, 685).

A dispute arose over the amount of damage the firm of Clement,
Bryan & Co. was entitled because of the cancelling of a contract
which government agents had made with it for supplying the Creek
Indians with rations during their journey to their new homes west
of the Mississippi. As soon as it was discovered that the rations
would not be needed the contractors were notified and a few days
later the firm was given another contract for furnishing rations
to a larger number of Indians than were to be supplied by the first
contract.

The contractors claimed that they were entitled to the full
amount of the first contract but Legare insisted that such an ar-
rangment would be very unjust as they would receive not only the
profit they would have made in case the contract had been carried
out but pay for a large amount of material which they did not fur-
nish and for which they did not have to pay.
The act of Congress 3 March 1841 also dealt with the case. In it Congress said that the profits of the second contract should be considered as making good the losses of the first. This Legare took to mean that if the profits of the second contract were sufficient to make up for all the losses entailed by the first the government would owe the contractors nothing in the way of damages.

The decision, said Legare, was entirely in the hands of the accounting officers who could receive the evidence of all parties concerned before making the decision. The entire claim of the contractors should not be paid and then an effort made to collect the overpayment in the courts, as had been suggested. (III, 731).

The commissioners under the Cherokee treaty were not limited in their power except that they were to carry out the terms of the treaty. The expenses of the commission were not to be paid out of the Cherokee fund, said Legare, but should come from an appropriation made by Congress. (IV, 73).

It was not necessary that the names of the assignors be written in full in the assignments of the Creek Indian contracts and the fact that they did not contain any reference to a consideration did not make them insufficient. (IV, 85).

The treaty of Dancing Rabbit Creek with the Choctaws provided that each Indian head of a family, who decided to become a citizen of the United States, was to have 640 acres of land; each unmarried child over ten years of age living with a head of a family was to have 320 acres and each child under ten was to have 160 acres. Before the time of the opinion given by Legare, the land, which was supposed to be given to the children, had been given to the father but Legare ruled that in the future it was to be given to the children and the patents were to plainly indicate that it was given to the children independently of
the father. As to the value of the patents previously issued to the parents for land which should have been given to the children, it was the duty of the courts to decide their value. (IV, 107).

Under the treaty with the Cherokees the heads of families were allowed to choose whether they would go with the tribe to the lands assigned to them west of the Mississippi or stay where they were and become citizens of the United States. Until they had exercised this option, Legare ruled, no title to land was vested in them. As for the ferries owned and operated by the Indians no compensation should be allowed them beyond the time of their residence in the place where the ferry was located. (IV, 116).

The authority of the new commissioners under the treaty with the Cherokees was limited, according to Legare, to cases which had not been disposed of the former board. The claim of Johnson K. Rogers had been disposed of and reported upon by the former board. Therefore it could not be reopened even if it was claimed that a mistake had been made by the former commissioners. This mistake, if made, could only be rectified by an appeal to Congress. If the new board made awards in cases which had not been referred to them, they were not to be paid by the officers of the Treasury. (IV, 175).

PUBLIC LANDS.

Oliver D. Norton and John McDonald assigned to a Mr. Cramer a certificate of purchase upon which they based a pre-emption right. This right was disallowed and Norton and McDonald were arrested for perjury but were acquitted. The claim was then set up that this acquittal should be admitted as proof that the certificate was good as was also the pre-emption right.

Legare said that the acquittal could not be considered evi-
dence in a civil case. It only proved that there was insufficient evidence to convict Norton and McDonald. As for Cramer's claim that he purchased the certificate in good faith and for a valuable consideration, the Attorney General maintained that he bought only an equity and that equity being deemed worthless he had no legal claim to anything. (III, 664).

Legare ruled that free negroes were entitled to pre-emption rights, under the act of 4 September 1841. It was not necessary to determine whether or not free negroes had all the rights of citizenship, he said, The law gave the right of pre-emption" to all denizens," which included all foreigners who had declared their intention of becoming citizens, showing that the pre-emption right was not confined to citizens. (IV, 147).

Pre-emption claims were not to be allowed which dated before the time of the treaty with the Indians which gave the land to the United States. (IV, 89). No claims for pre-emption were to be allowed within the limits of the Houma Grant. These were made void by the provisions of the act of 1811. (IV, 92).

A pre-emptioner under the act of 1834 was prevented from having his land surveyed in the usual way by the acts of 1836 and 1837 which ordered a portion of this land surveyed as part of the towns of Burlington and Fort Madison, Iowa, into lots and streets. He claimed that he was entitled to this land because Congress by its last two acts had interfered with the execution of the contract made by the first one.

Legare decided against the pre-emptioner on the grounds that he had only an interest in the land not an established claim to it. The Executive power of the federal government did not have the right to order Congress to carry out the provisions of one act after another which cancelled the provisions or part of them
of the first. The only way for the pre-emptioner to establish him rights would be to sue the government, with its content, but even in such a case the owners of the city lots might set up a plea of purchase for a valuable consideration without notice. The Executive had no right to bind Congress to abide by any judicial decision which would set one of its own acts aside.

As the lawyers for the pre-emptioner believed that he could get a judicial decision favorable to his client without making the United States a party to the suit Legare advised the Land Office to allow the case to rest for a time in order to give the pre-emptioner a chance to see what action he could get from the courts. (IV, 23).

The approval of the President was only necessary in contracts between the Indian reservees and the men who purchased from them, said Legare. The reason for this provision, which was included in the Treaty of Dancing Rabbit Creek with the Choctaws, was to protect the Indians from being defrauded. After the land had passed into the hands of white men the approval of the President was no longer necessary. Patents, however, were to be issued either to the Indian reservee or to his assignee, allowing subsequent assignees to obtain their rights through the courts. (IV, 371).

Land in Michigan located on the Detroit river and the River Rouge was in dispute between John McDonell, assignee of Thomas Smith, and William Brown. The claims of both were confirmed by the same act of Congress, that of 17 April 1828 but the claims overlapped. Legare ruled that the act must be considered as a whole and if there was not enough land to satisfy all the claims and there was a conflict, the report of the commissioners upon which the act was based should be consulted. If this report did not settle the dispute, then of the two parts of the confirmatory act, the latter provisions must prevail. (IV, 40).
Legare believed in following the opinions of his predecessors as far as possible. In regard to the leasing of lead mines and saline springs he followed the opinions of Wirt and Butler that the President had full authority to make such leases. (IV, 95).

Legare followed the same rule in regard to land certificates which had been decided by Grundy and Crittenden, whose opinions had been made the rule of the General Land Office. In this case a certificate had been issued to A and company, assigned to A and assigned by him to another man. Legare ruled that the patent should be issued to A's assignee and A's partners should seek relief in the courts. (IV, 96)

The proper method of proceeding in order to vacate an erroneous land patent was by bill in equity, according to Legare. A second patent for the land should not be issued until the first one has been legally set aside. (IV, 120, 149).

Legare ruled as all his predecessors had that land claims must follow the established system of land surveys, that of parallelograms of fixed extent and uniform character. The claimant in this case, Samuel Long, a reservee, under the Choctaw treaty of 1830, was entitled to 640 acres but he was forced to take it in such a way as to conform the land laws. (IV, 45).

The states which were granted five hundred thousand acres, the proceeds from which were to be used for internal improvements, were not allowed to take any land to which pre-emption rights existed. (IV, 71).

Sales of Creek lands could be made by administrators and could be approved by the President even if according to the laws of the state in which the land was located, these sales were informal and irregular. Legare first decided that such sales should not be approved by the President but after further investigation reversed his decision. (IV, 75, 77)
If a purchaser of public land failed to get his patent for any other reason than that the United States did not have title to the parcel wanted, he should seek relief from Congress. The Secretary did not have the power to return this money for any other reason, under the laws of 26 March 1804 and 2 March 1805.

The surveyor of the lands south of Tennesse was authorized to have surveys made and his approval of the plats was sufficient authentication of both the survey and the plats. There was no set form for this approval. The surveyor was not only to receive the plats but he was to see that the field notes corresponded to them. Having done this he was to send the plats to the proper office. This act constituted approval of them.

The President could proclaim these lands for sale immediately on being informed that the surveys were completed and that the proper officers had been appointed to sell the land. Purchasers of this land were supposed to know the laws respecting all former grants by France and Spain and also in regard to pre-emptions. No patents should be issued as long as the surveys were confused but the patents might have been suspended until the real facts in the case could be learned. (III, 692).

Legare was called upon to rule on many features of claims in the state of Missouri. He admitted at the start of his opinion that the subject was complicated and that many other men had made rulings on the same subject which were as likely to be correct as his own.

The claimants only wanted what was necessary to complete their title and to be able to convey their property. In this matter the common law could not be considered but only the acts of Congress, especially those of 1824 and 1836. The acts in regard to French and Spanish grants, did not require that these grants be confirm-
ed unless it could be done without unsettling titles in that part of the country. Congress passed the acts with the intention of ending the evils of the public land system not to increase them. From the beginning, however, Congress reserved the right of executing the treaty in good faith and with due regard to the quiet of titles. In order that it should be done they tried to reserve from sale and occupation all the lands subject to claims under foreign grants.

The act of 1836 was a legislative confirmation of all voidable claims under any law of the United States or any sales made by the United States. Prior confirmations, school sections, and ordinary sales made before the passage of the act of 4 July 1836 and the New Madrid locations under the act of 17 February 1815 were valid against any claim confirmed by the act of 4 July 1836.

The individuals who appeared before the commissioners and received their favorable decision were the persons who were to be recognized at the General Land Office as the confirmees under the act of 1836. However claimants who had been interfered with by prior valid claims were allowed to locate the quantity taken from them by such interference in separate tracts provided they conformed to the legal divisions and subdivisions used by the Land Office. All the land in the confirmed private claims which was not interfered with by prior claims could be patented. (III, 720).

All claims made under the treaty with France in regard to public land were valid up to the extent of a league square. All claims of a larger amount were not to be confirmed and stood in every respect as if the acts of Congress of 1807 and 1816 had not been passed except that because Congress did not confirm them it meant to deny their justice. The executive was required to re-
gard the claim as having been satisfied by the square league of land. (III, 737 & 715).

The Baptist Board of Missions and the Catholic clergy both had interests in land in Michigan along the Grand river. Both had made improvements on the land and, according to Attorney General Butler, they had interests proportionate to the value of their improvements in the proceeds of the sale of 160 acres of land. Legare followed Butler's decision, in spite of the fact that he disagreed with it, in allowing the Catholic clergy their interest and ruled that, if the Catholics could be induced to accept payment in money for their interest then a patent to the land could be granted to Baptist board. Otherwise the land would have to be sold to satisfy the claims. The improvements of the Baptists were appraised at $6,000, those of the Catholics at $300. (IV, 153).

The lands of the Chickasaws were to be placed upon the same footing as the public domain, according to an article in the treaty of 1834, and were therefore not subject to private entry until they had been proclaimed to be in the market. This opinion was in answer to an inquiry from the Commissioner of the General Land Office and from Senator Robert J. Walker of Mississippi.

The reason for this rule was to allow the government to reserve any part of it before offering it for sale. The rule concerning the gradual decrease in the price of the land meant that this decrease should date from the time of its being offered for sale. If any public land had been offered for sale for a year with no purchaser then the price would be lowered. This did not mean, however, according to Legare, that the date from which the decreases should start would be that of the Treaty with the Chickasaws. (IV, 167).
A contractor for carrying the mail in Georgia and Florida, William T. Stockton, had drawn several drafts on the Post Office Department for the benefit of his creditors. Payment was stopped on one of them and the holder took the matter to the Circuit Court of the District of Columbia. The court issued an injunction forbidding the Auditor of the Post Office Department from paying any money to Stockton under a further order was issued by the court. The Auditor wished to know if that order prevented Stockton from collecting money from the postmasters, which money was applied on the compensation he received from the government.

Legare ruled that the Auditor should pay no attention to the order of the court, that the court had no right to interfere with the operations of the executive department. If such a thing was allowed, he said, it would interfere with the administration of affairs so as to hopelessly muddle things. It would only be one step further to have the court appoint receivers who would carry on the affairs of the executive department thus putting all of its affairs in the hands of the judiciary. (III, 667).

Legare advised the Postmaster General not to reopen any case of forfeiture which had been settled by one of his predecessors. It would cause great inconvenience and loss of time if such a practice was started. He also ruled that a mail contractor should have time to present his defense even if the charge had been brought before the attention of Congress. (III, 684)

Legare was called upon for his opinion as to what constituted a newspaper under the postal regulations. The Shipping
and Commercial List and New York Price Current had once been ruled upon by the Postmaster General and declared not eligible for the one-cent postage to which newspapers were entitled. Other papers of the same kind had since been classed as newspapers and the proprietors of the New York publication had applied for a change in their rating.

Lagare outlined the requisites of a newspaper to be: that it be published for everybody's use, excluding papers sent out by commercial houses for the use of their customers; that they be published in large numbers with something approaching regularity; that they contain news, excluding mere discussions or literary works; that they be published in sheets, that is, in rather cheap form.

Under this classification he said that the New York publication could not be considered a newspaper. (IV, 10).

Legare decided that the Postmaster General had the right to change the time, frequency and manner of carrying the mail on the route on which J. F. Caldwell had the contract. This contract specified that the postoffice department could discontinue the route at any time by giving the contractor one month's extra pay. When it was decided to partly discontinue the route, decreasing the frequency of carrying the mail the contractor renounced could have/renounced his contract entirely. As he did not do this he was entitled to payment only for the services which he had rendered. (IV, 140).

Adams and company's express company had been carrying letters and packages over the same route which the mail followed. Legare ruled that this company did not have the right to do this and said that the offenders should be prosecuted. He concluded his opinion by saying, "It is manifest that either the post
office monopoly ought to be abolished for all, or the laws, which protect it from invasion, be indiscriminately enforced." (IV, 159).

**POWER OF THE PRESIDENT.**

The Constitution gave the President power to fill all vacancies which occur during a recess of the Senate even if a session of Congress had taken place since the vacancy occurred. Legare also ruled that the President's power of removal was complete and absolute, as stated by President Madison and so recognized ever since. (III, 673).

The President should not allow the courts to make the government accountable as a stakeholder or garnishee for creditors of men who are employed by it. He ruled that the paymaster at the Navy yard in Norfolk should pay the sailors their wages in spite of any order of the court. He reiterated his opinion stated in the Stockton case. (p. 215) (III, 718).

The President had the power, according to Legare to remove an officer of the army from his position without a trial by court martial and in spite of the fact that a court of inquiry ordered for the investigation of his conduct had reported in his favor. This decision had its origin in the case of Robert B. Randolph, who had attempted to assault President Jackson. (IV, 1).

J. Washington Tyson had been nominated Commissary of Purchases for the army by the President but the Senate had refused to confirm the appointment. The Secretary of War declined to pay Tyson any money until he had the opinion of the Attorney General as to whether or not Tyson's sureties could still be held responsible. Legare ruled that the recess appointment of the President held good until the end of that session of Congress and that therefore the sureties could be held. (IV, 30)
The power of the President to transfer appropriations from one object to another was discussed by Legare in an opinion regarding the construction of Fort Moultrie and Fort Johnson. Some of the funds designated for the latter were desired for the former.

Legare discussed the various laws which had been passed on this subject. The act of 3 March 1809 gave the President the power to transfer funds as long as they devoted to the same branch of the service for which they were appropriated. The act of 3 March 1817 changed the rule so that money appropriated for one class of work, such as fortifications, could only be used for that kind of work but inside of that class the funds could be transferred. The act of 1820 narrowed the field by naming the various departments in which funds could be transferred. It also provided that money specially designated for one object could not be used for another.

The act of 2 July 1836 authorized the President to make transfers from one head of appropriations to another for a like object. Legare insisted that this act applied to the case under discussion and for that reason the money appropriated for Fort Moultrie could be used for the construction of Fort Johnson. (IV, 110).

Legare ruled that the money appropriated for sending freed slaves back to Africa could not be used for the purpose of erecting buildings for them after they had arrived. He said that the question had been decided many times before and always that the President had no right to use the funds any purpose except that set forth in the law. (IV, 139).

The President did not have the power to remit the forfeiture of a bail bond. He likewise had no power to prevent the exhi-
bition of Indians, which was to take place in Philadelphia. (IV, 144).

The President had the power to make original appointments of a justice of peace for the District of Columbia during a recess of the Senate. Legare based his opinion on the act of 27 February 1801. (IV, 174).

CUSTOMS DUTIES AND OFFICERS.

When imported goods were manufactured of two or more materials Legare ruled that the duty should be that of goods made exclusively of the material which bore the highest duty. (IV, 14).

When a collector of customs was removed by the President his deputy should also cease to exercise any authority. This rule, said Legare, did not apply to cases of death or disability of collectors because the law did not contemplate any interregnum but when the President thought the collector unworthy to any longer perform the duties of the office, it meant that his administration of the customs office should cease. (IV, 26).

The compromise tariff of 1835 provided that on and after 30 June 1842 "the duties required to be paid by law on goods shall be assessed under such regulations as may be prescribed by law." In the meantime, however, no laws on the subjects had been passed and the Secretary of the Treasury was in doubt as to whether the law could be enforced without further legislation.

Legare answered that the tariff act of 1833 should be considered along with other tariff laws and that the provisions of the former laws on the subject were still in force except where they had been altered by the new act. Therefore the Compromise Tariff act of 1833 could be enforced without further legislation. (IV, 56, 63).

Legare ruled that the act of 2 March 1799 did not force the
Secretary of the Treasury to use sailing vessels for revenue cutters but allowed him to use steam boats provided he stayed within the financial limits allowed him for that service. (IV, 145).

Inspectors of customs could not be appointed to permanent positions by the collectors of customs, Legare ruled. This should be done by the Secretary of the Treasury. Congress could not by law give the collectors that power because under the Constitution, such power can only be exercised by the President, the heads of departments or judicial tribunals. Congress had given that part of the appointing power to the Secretary of the Treasury. The collector could recommend a man for the position or even appoint one temporarily but not permanently. The collector could/ remove an inspector, permanently appointed, from his position but the Secretary of the Treasury could make such a removal without the consent of the collector. It had been custom, however, to ask the collector's opinion before making these appointments and also in making removals. He quoted decisions of Wirt and Berrien and Marbury vs. Madison (1 Cranch 137, 155) (IV, 162, 165).

ACCOUNTING OFFICERS.

Interest was not to be paid upon accounts even if the payment of the claim was refused due to mistakes of the accounting officers. The government did not pay damages because of these mistakes though individuals would have to do so. The claim was one of Pearson Cogswell, marshal of New Hampshire. This was an established rule of all governments, said Legare. (IV, 14). The pay of officers, who were found to be in default to the government, could be withheld provided the time for an accounting had passed. Otherwise their pay must be given to them. (IV, 33).

Interest on a claim could be allowed if there was an act of Congress providing that this should be done. In the case of
William Otis Congress by the act of 2 March 1829 decreed that his claim, with interest should be paid. The case being closed Legare ruled that it could be opened, correctly stated and paid but that this case was different from ordinary accounts. (IV, 79, 136).

No allowance could be made for any commission or court of inquiry except those of the army or navy without an appropriation by Congress. In this case it was a commission to investigate the damage done by some Indians when they emigrated. (IV, 106).

In the case of C. F. Sibbald, who asked damages of the government because, through the activities of a government agent, his lumber mill was destroyed, Legare decided that only the actual damages, as they had been determined by the Third Auditor, should be allowed. These might have included in addition to the value of the property destroyed, the loss which Sibbald sustained by reason of not being able to fulfill his contracts. No vindictive or exemplary damage was to be included, however, (IV, 112).

Commodore David Porter drew $40 a month pension. He was also United States minister at Constantinople for which he drew a salary. Legare ruled that he was entitled to both amounts as the pension act only forbid a pensioner from holding a position in the navy. (IV, 39)

Congress by a resolution had declared that the pension law of 1838 should apply to widows whose husbands were alive in 1832. This overruled a previous opinion of Legare's. He, therefore, ruled that these widows were entitled to five years' pension dating from 1836. (IV, 91, 46).

NEUTRALITY SLAVES AND EXTRADITION.

In an opinion called forth by the building of two ships for the use of the Mexican government in 1841, Legare stated the position of the United States government in regard to neutrality.
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A nation, he said, could follow either of two policies and still be neutral. One was to allow both parties to a war freedom to buy war materials and the other to forbid both the use of our markets for such purposes. The first policy was more profitable but the latter was the safer and the more just.

The act of 1818 followed the policy of forbidding the use of our facilities for the purpose of obtaining warlike material and that law was still in force. Therefore the building of warships in any port of the United States or the equipping of any ship with an armament for use against any nation at peace with this nation was a violation of the act of 1818 and made those responsible for such work liable to a fine and imprisonment and the ships liable to forfeiture.

In a later opinion Legare weakened somewhat his former opinion because the two ships being built for the Mexican government, then at war with Texas, were not to be equipped with an armament in our ports. He insisted, however, that if these ships were armed by citizens of United States, even if it were done outside of our jurisdiction, it was still a violation of the neutrality law. If the ships were allowed to sail the builders should be forced to give bond to insure their peaceful conduct after they left our ports. (III, 741).

The ship Creole, on which some slaves were being carried, was driven by force of necessity to take refuge in a British port where the authorities seized the slaves and declared them free on the grounds that slavery was forbidden in British possessions. The affair was negotiated by Lord Ashburton and the Secretary of State who called upon Legare for an opinion on the question of the rights of the Creole.

Legare ruled that the slaves should not have been inter-
pered with because the municipal regulations of a port did not apply to a ship which had been driven into the port and forced to take refuge there. He quoted English authorities, especially Coke, Chitty and Sir William Scott, to prove his points and showed by British precedents that such had been the custom in England. (IV, 98).

No state, said Legare was allowed to enter into any agreement, express or implied, with a foreign government to deliver up fugitives from justice who might be found within her borders, unless the consent of Congress was first obtained. Even the President was not allowed to deliver these fugitives from justice unless there was a treaty which covered the offense which the fugitive was alleged having committed. This was covered by the Supreme court in the case of Holmes vs. Jennison (14 Peters 540) (III, 661).

Legare wrote his last opinion 7 June 1843 and left soon after for Boston, accompanying President Tyler who was going there to be present at the unveiling of the Bunker Hill monument. His body weakened by the strain of attending to both the officers of Attorney General and Secretary of State, was unable to withstand an attack of acute indigestion. His death took place in Boston.

JOHN NELSON.

Tyler had much trouble with his cabinet and made more changes during his administration which lasted less than four years than many Presidents were served two full terms. Deaths and party troubles caused many vacancies. In addition the Senate was none too friendly and in some cases refused to confirm appointments which the President had made.
Legare's death was the first visit that the grim reaper had made to the cabinet but it was followed not long after by the explosion of a gun on the Princeton which killed Secretary of State Upsher. To fill Legare's place John Nelson of Maryland was appointed. Nelson's legal and political experience had been limited.

When Nelson was appointed Upsher was still Secretary of State having been promoted from the Navy Department when Webster resigned. After Upsher's death John C. Calhoun of South Carolina took his place. This showed Tyler's real preference for Democrats instead of Whigs. He had quarreled with Forward, who resigned. John C. Spencer, Secretary of War, was then promoted to the Treasury, after Caleb Cushing had been nominated by the President and his nomination rejected by the Senate. Cushing had been a Whig but he had parted company with his party leaders, Webster and Clay, and definitely allied himself with Tyler.

The only office whose occupant remained during the rest of Tyler's term was Wickliffe, the Postmaster General. The War department had two secretaries, James M. Porter and William Wilkins, both of Pennsylvania and the Navy Department had three occupants, David Henshaw of Massachusetts, Thomas W. Gilmer and John Y. Mason both of Virginia.

John Nelson was the son of Roger Nelson, a soldier in the Revolution and later a judge. He was born in Frederickstown, Maryland and after his graduation from William and Mary College he studied law, being admitted to the bar two years later.

Previous to his appointment as Attorney General Nelson had held but two positions of importance. He served one term in the House of Representatives, 1821-3 and was appointed by President Jackson as minister to Naples where he remained two
years, returning in 1832.

NELSON'S OPINIONS.

Public lands figure largely in the opinions of Nelson. Means for the prevention of looting of such lands under the pretense of buying were devised by him. Regulations to prevent land officers from receiving unfair advantage from their offices were also formulated. The difficulties of refunding money paid to the government were outlined and the land laws were so interpreted that claimants were unable to get more than it was intended to grant them.

Nelson also gave opinions in regard to the appointment and reappointment of naval officers. The same process had to be followed in the case of a re-appointment as in an appointment. The payment of military and naval officers started with their service not with the date of their commission, in which he differed with Crittenden.

By his interpretation and application of the laws concerning the slave trade Nelson made it more difficult to enforce them. His opinion in regard to the Neutrality act of 1818 made the subject more clear and easier to enforce.

PUBLIC LANDS.

Nelson ruled that according to the act of 1 June 1840 the residence requirement was limited to the date of the law and did not need to have continued for the four months preceding it in order to secure pre-emption. (IV, 198).

The rights of settlers on the public lands of East Florida especially in regard to the cutting live-oak timber was settled by Nelson in an opinion given to David Henshaw, Secretary, of the Navy. It appeared that the settlers were using settlement
as an excuse for cutting and selling of large amounts of this timber. This alarmed the head of the navy as that department would have need for it.

Nelson recited the requirements which settlers had to fulfill before they could receive patents for their land. These were five years of residence, building of a house suitable for human habitation and the clearing and inclosing of five acres. Until they had received their patents these settlers, said Nelson, were not entitled to cut any timber except that of the five acres which they were required to clear, unless they possessed a patent. Cutting of other timber would be waste of natural resources and Nelson advised the use of an injunction to prevent it. (IV, 221).

Registers of land offices were forbidden by law, according to Nelson, from entering on their books any application for lands in their own names or in the name of any other person in trust for them. If they wished to buy any public land they were required to make application to the surveyors general, who could make the proper entries and returns.

Receivers of the public land officers were allowed to purchase land in the same manner that other citizens employed. The reason for this distinction, which was made in the land laws, was that while the registers had the power to receive bids, make entries, give certificates, the receivers simply were custodians of the money received from such sales and therefore had no power to favor themselves in the transactions necessary to secure land.

The President or the Secretary of the Treasury could make regulations for the enforcement of the law in regard to the registers of land officers, but they were not allowed under the law to forbid the purchase of land by the receivers. (IV, 223).
Repayment of money paid for public land could only be made when the title to the land did not reside with the United States according to act of 12 January 1825, and therefore if the money was paid to the United States for any other reason it could not be refunded. Nelson admitted that the money paid by Wilson Shannon did not belong rightfully to the United States but he maintained that there was no legal way to repay it except by an act of Congress. (IV, 253).

The "Missionary Lot" in Michigan caused much trouble. It had been sold to the Baptist Mission but the terms of the sale were unsatisfactory to the Catholic Mission. Therefore Nelson ruled that the sale must be rescinded and the property placed in the same position as it was before the sale was made. It could be re-sold but it must be done in a manner which would be satisfactory to both parties. (IV, 255).

When a parcel of public land had been purchased by two men the patent could not be issued to one of them nor could a patent for part of it issued unless the claim had been divided between them. (IV, 319).

The Commissioner of the General Land Office was not allowed to change the date on land patents when such a change was requested by the holder of the patent. If the date was wrong the grantee of the patent should have refused to accept it, then it could have been changed before its issue. (IV, 329).

Nelson rejected the claim of H. L. Thistle, live-oak agent in East Florida, for one-half the value of the live-oak which had been taken from government land. He said that this timber was government property and should be restored to the proper owner. The informers were then entitled to only half of the penalties assessed against the persons who cut the timber and half the value of ships which had been forfeited for transporting this
stolen wood. (IV, 339). Nelson refused to rule on the Choctaw land claims because that matter had been settled by the Commissioner of Indian Affairs, the Secretary of War and the President and there was no reason for reopening the case. (IV, 341)

Under the Treaty of Dancing Rabbit Creek if any portion of the land, on which a claimant lived at the time of the treaty, had been sold by the government before the passage of the act of 1842, script should be given only in case it was impossible to give him land in the neighborhood of that which contained any part of his improvements. If a claimant, who had complied with the terms of the treaty, had been defrauded out of his land by the government or its agents and kept out of possession by a sale by the government he had not forfeited his rights. If two grants for the same land had been made to the same person he was only entitled to the amount of the larger grant and could not locate the amount of the other claim elsewhere. (IV, 344).

All assignments or agreements to assign claims under the Treaty of Dancing Rabbit Creek made within five years from the signing of the treaty, were causes of forfeiture of the claim, according to Nelson, who also held that the decisions of the commissioners appointed under the treaty, were final. (IV, 346)

Nelson followed the same line in his rulings in regard to the Florida as the preceding Attorneys General, that the decisions of the judges of the superior court of Florida were not conclusive but that the Secretary of the Treasury could pay any amount which he thought just whether it was more or less than the amount named by the judges. He also agreed that interest should not be paid on these claims when they were allowed. (IV, 286.)
John R. Coxe, Jr. who had been a lieutenant in the navy previous to his resignation in 1857, was having a difficult time getting back into the navy. He was nominated as a lieutenant in the Navy by President Jackson, confirmed by the Senate, with the condition that he was to take rank next after Lieutenant Peck but Jackson never signed the commission, probably on account of an adverse on the part of the Attorney General, who ruled that such a confirmation was illegal.

Lieutenant Coxe was nominated for the same position by President Van Buren but the appointment was not confirmed by the Senate. President Tyler again nominated him "to be a lieutenant from 28 April 1826, to take rank next after Lieutenant Peck" but again the Senate rejected the nomination. Nelson ruled that he was not a lieutenant in the meaning of the Constitution and the laws. Since President Jackson had failed to issue a commission to Lieutenant Peck, the succeeding presidents could not do so without their nominations having been confirmed by the Senate. An appointment was not completed until the commission was signed and delivered. The President could change his mind in regard to an appointment at any time before the commission was actually delivered. Therefore Nelson decided that a commission could not be issued at that time to Lieutenant Coxe. (IV, 217).

Since the passage of the act of 31 August 1842 the President had no power to transfer funds of the Navy Department from one branch of expenditure to another, as could have been done before the passage of that act. (IV, 266). Nelson ruled that the act of 31 August 1842 did not prevent the President from transferring funds in the Navy department from any general head of appropriation to another provided that these heads were
not included in the list of those from which no transfers could be made. The law applied only to specific and local objects. (IV, 310).

Since the passage of the act of 3 March 1843 the Secretary of the Navy was not allowed to renew contracts, without advertising for new bids, nor was he allowed to pay to contractors, who forfeited their contracts, the ten per cent reserved as collateral security. (IV, 283).

By the act of 4 August 1842 the number of midshipmen in the Navy was to be reduced to the number in the service 1 January 1841 by the process of not appointing new officers of that rank until in number reached that point. Therefore the President did not have the power to appoint any new officers of that rank. Nelson also ruled in the same opinion that an officer out of the Navy could not brought in again except by a new appointment. (IV, 306).

A midshipman, dismissed from service but reappointed from the date of his dismissal, was not entitled to pay while he was out of the service, according to Nelson who quoted the decision of Legare in regard to Surgeon Du Barry, 29 Nov, 1842. (IV, 318)

The chief clerks of the Bureaus of Yards and Docks and of Construction, Equipment and Repair were entitled to the pay of the chiefs of those bureaus while they were acting as such, under the authority of the President but they were not entitled to pay both as chief clerks and heads of the bureaus. (IV, 320).

The question arose as to how many pursers were in service in the Navy on 1 January 1842, the point being whether or not Theodore Paine was a purser at that time. He had been given a recess appointment before the meeting of the Congress of 1841. His nomination was sent to the Senate during that session but was evidently not confirmed. However, he continued to hold
office, according to Nelson, until the end of that session which occurred on 31 August 1842. Therefore he was in office on 1 January 1843. (IV, 321).

Contracts made by the Navy department with persons under the legal age were valid and obligatory unless such persons took legal steps to have the contract set aside. Even then the sureties to such a contract were bound for its faithful discharge. Even if the contractor should excuse himself because of his being under the legal age, that privilege was personal to himself and could not be made a defense by the bondsmen. (IV, 333).

The Navy Department was not allowed, said Nelson, to change the terms of a contract after it had been awarded to the lowest bidder, in regard to the time of delivery or any of its essential elements. The advertisement calling for bids should contain all such essential elements which could not be changed after they were published. Such practice would tend to give favored contractors the advantage and defeat the purpose in advertising the bids. (IV, 334).

The provisions in the acts of Congress which stated that persons in the public employ whose salaries were fixed by law, could not receive any addition allowance, except for travelling expenses, for the performance of duties at a distance from their stations or their homes, applied to officers of the Navy as well as other public officers. Nelson said that a case would not be presented in which a public officer, whose salary was fixed by law, could be entitled to extra pay for performing a public service. (IV, 342).

Nelson again stated his opinion that when a commission given to a naval officer was ante-dated, the pay should start when the service began, not with the date of the commission. He quoted his own previous opinion, that of Legare and disagreed with
that of Crittenden in the case of Lieut. Drane. (IV, 348).

Aliens could be enlisted in the Navy or the Marine Corps and when so enlisted, were bound to serve their entire term, just as citizens were. A person under the legal age was not bound by his contract of enlistment after he attained his majority. He might then repudiate his contract even though it had received the assent of his legal guardian because the authority of the guardian ceased with the minority of his ward. (IV, 350).

Navy agents were not allowed to purchase for themselves articles which they sold as agents of the Navy Department. All such sales were constructively fraudulent, said Nelson. (IV, 351).

Pursers were liable for all public goods in their charge even if such stores were destroyed by an unavoidable accident and the accounting officers could not allow credits to such officers for public goods thus destroyed. The only relief they could receive must come from Congress. (IV, 355).

When a sentence of dismissal from the Marine Corps following a court martial, had been approved by the President there was no way of annulling the sentence. The dismissed officer could be restored to his rank in the Marine Corps by a new appointment by the President, which must be confirmed by the Senate just as in the case of a new appointment. This rule applied even if it could be proved that the proceedings of the court martial were irregular. (IV, 274).

SLAVES AND THE SLAVE TRADE.

Nelson recommended the pardon of a slave, Daniel Jenkins, who had been convicted of robbery in the District of Columbia for the second time. This meant a prison term of five years
and Nelson said it would deprive Jenkins' owner of his services for that length of time. The law in regard to robbery made no distinction between free men and slaves. (IV, 237).

The interpretation of the laws in regard to vessels used in the slave trade, given by Nelson, made them rather difficult to enforce. The United States consul at Rio Janeiro inquired concerning the law on the subject with special reference to an American ship purchased there by a slave trader to be delivered to the new owner on the coast of Africa. Nelson ruled that this sale was not of itself an aiding or abetting of the slave trade but the seller must not lend assistance to the slave trader by taking the ship to the coast of Africa as the outbound slave-trade voyage. If he did he was assisting in such trade. What other reason the buyer would have in having the ship delivered there is hard to see!! Nelson concluded, however, by saying that if it were a bona fide sale of the property deliverable on the coast of Africa or elsewhere, the seller did not incur any responsibility...

Nelson also ruled that chartering a ship which was later used in the slave trade was not a violation of the law providing the owner did not charter it for that purpose. From which opinions it is easy to see that purchasing or chartering of American ships for slave-trading purposes was not difficult. (IV, 241).

NEUTRALITY

Repair of warships of a nation at war with another was a violation of the Neutrality Act of 1818 but to increase the fighting force by enlistment or the changing of guns to those of greater calibre or adding to the number of guns which the ships carried was a violation of the act and should be prosecuted. Commanders
and officers of vessels of other nations, who were found to have violated the act of 1818, were within the criminal jurisdiction of our courts and, according to Nelson, should be prosecuted. The vessels referred to were those of Mexico. (IV, 336).

PENSIONS AND THE PRESIDENT'S POWER.

Nelson ruled that the pension money, which was due to Commodore David Porter but which was not paid to him during his lifetime, should be paid to his estate that is to the executor if there was a will or to the administrator if he died intestate. The money was a debt of the government due Porter. (IV, 238).

The widow of Captain Elijah L. Weed of the Marine Corps had applied for the pension which, according to law, she was entitled. This pension amounted to half of the pay which the husband had received at the time for his retirement. While Weed's rank in the marines had been that of captain, he was also quartermaster, regularly appointed by the President, confirmed and commissioned. The act of 2 March 1821 provided that quartermasters in the marine corps were to have the "rank, pay and emoluments of majors of cavalry," which was sixty dollars per month. Therefore, according to Nelson, Mrs. Weed should receive thirty dollars per month. A former Secretary of the Navy, however, had ruled that Weed was a captain and therefore his widow was only entitled to half of a captain's pay. This ruling had been adopted by the Senate and for that reason Nelson refused to recommend that his ruling be adopted. He urged instead that the matter be referred to Congress again for a ruling. (IV, 279).

The President, being charged with duty of seeing that the laws were enforced, had the authority to appoint commissions and agents to make investigations required by acts of Congress. He
could not pay them, however, except after an appropriation had been made for that purpose. (IV, 248).

The power of the President to grant pardons and reprieves was sufficient, according to Nelson, to authorize him to remit a fine levied upon a citizen for neglecting to serve as a juror. (IV, 317).

THE POSTMASTER GENERAL.

Nelson pronounced legal a letter of instruction issued to contractors for the carrying of mail. It included the following: mail could not be carried on stage coaches or on packet-boats, except such mail as related to the cargo which such stage or packet-boat carried; no person except those authorized by the Postmaster General could carry mail on the post-roads; the term "packet" as used in the acts of Congress on the subject, included newspapers and therefore they could not be carried on any post road except by authorized mail carriers. These carriers could not carry newspapers unless authorized by the Postmaster General and in pursuance of a contract to do so. (IV, 276).

The costs of suits for the collection of debts and penalties due to the Postoffice Department had to be paid out of the funds of that department and could not be charged to the judiciary fund. They should be settled by the Auditor of the Treasury for the Post Office Department, said Nelson. (IV, 301). The costs of criminal prosecutions started by the Post Office Department should be paid from the Judiciary fund, according to Nelson, thus differing from civil suits. (IV, 328).

It was not permissable to charge postage on letters transported along mail routes by private carriers nor to detain a carpet-bag containing letters found on a mail route contrary to law. The only remedy which Nelson could find in the situation was to
prosecute the unauthorized carriers of letters. He said that this might be an ineffective remedy but it was only one permitted by the law. (IV, 349).

Any person who aided, abetted, procured, advised or assisted in the violation of the 19th section of the act of 3 March 1825, was liable to the penalty incurred by owners of stages or persons having charge of stages or packet-boats for carrying mail without authorization of the Post Office Department. Nelson also ruled that any person who paid for the transportation of a letter by these unauthorized stages or packet-boats, was an aider and abetter under the terms of the act. (IV, 311).

The New York Bank-Note List should be charged postal rates as a pamphlet, not as a newspaper, because it was a number of sheets stitched together but not bound. (IV, 302).

It was not necessary to make preliminary demands on postmasters for money which was due, but not paid, in order to put into default such postmasters. No proof of such demand was necessary before starting suit against them. (IV, 304).

INDIANS.

The question of what court should try Lovely Rogers for an assault upon David Vance, treasurer of the Cherokee nation, committed in the territory of the Cherokees, was submitted to Nelson. He ruled that if Rogers was a citizen of Georgia, living as a trader, by permission, within the limits of the Cherokee courts but the law provided that citizens of the United States living with the Indians should have the benefit of the courts of the United States.

The proceedure by which the custody of Rogers could be secured was either to have the Indian agents deliver him to the state authorities of Arkansas or to apply for writ of habeas cor-
pus in federal court. (IV, 258).

The lands reserved for orphans, under the Treaty of Dancing Rabbit Creek, could be sold by President, Nelson decided, and patents for these lands could be issued. Upon the applications of these orphans the proceeds from these sales could be applied to some purpose beneficial to them. The sales of this land, which had already been made, were legal. (IV, 326).

THE MERCHANT MARINE.

Captain Theodore Perry of the brig Phillip Hone refused to transport some destitute seamen from Valparaiso to the United States because his voyage did not take him directly to any American port. Nelson ruled that he was not bound to take these men on board if he was not making a direct voyage. The act of 28 February 1803 only required that masters and commanders of vessels belonging to citizens of the United States to transport destitute seamen when they were going directly from the port where such seamen were to some port of the United States. Nelson said that to require more than that would work a hardship on the masters and the owners of the ships. (IV, 185).

The coasting trade was reserved for vessels of American ownership, according to the act of 1817, and, according to Nelson, applied to ships built in foreign countries provided they were entirely American-owned. The only difference between the rights of ships built in the United States and those built abroad was that the latter had to pay tonnage duties from which the former were exempt. He also ruled that there was no distinction between the towing of boats which carried merchandise and carrying the goods on the ship itself. As the act of 1 March 1817 did not mention passengers Nelson ruled that foreign owned ships could carry them between American ports. (IV, 270).
While it might be permissible for an American war vessel to seize an American merchant vessel on the high seas for violation of its revenue or navigation laws, it would be a violation of the territorial authority of a foreign power to do so in one of the ports of that nation. (IV,285)

DISTRICT ATTORNEYS AND CIRCUITS COURTS

Nelson rejected the claims, which the representatives of Francis Scott Key presented on behalf of Key's estate, for extra pay because of services rendered while he was district attorney for the United States. The claims were based upon the alleged extra services in a mandamus proceeding brought by W. B. Stokes and others against Amos Kendall, Postmaster General of the United States, for refusing to allow credit settled and adjusted by the Solicitor of the Treasury and for assisting the Attorney General in arguing the case the Supreme Court. Nelson said that both services were part of his duty as district attorney and his salary for that office had been paid. Nelson added that even if these claims were allowed they could not be paid because no money had been appropriated for the purpose. (IV,191)

When a district attorney acted as the attorney for a collector of customs, who was suing for money paid to the government under protest and the court ruled that he should receive his fees and expenses from the United States, he was not allowed to include that money in his official record return of fees, because such compensation was received as private counsel, not as district attorney. Nelson recommended that Congress pass a law to this effect. (IV,308)
be paid fees to be fixed by the courts. The rule for such payment, said Nelson, should be the local law for the payment of commissioners appointed by state courts for similar services. (IV, 233)

FOREIGN RELATIONS

The diplomatic representatives were to receive certain salaries and were not responsible for the failure of the government or some officer to provide for the honoring of drafts, which they had been directed to draw. In case drafts were at a premium the diplomatic representative was not to receive the profit. Both of these things happened to James Semple, United States charge d'affaires to New Grenada. Nelson ruled that in case of the premium on the draft which he drew on Baring and Brothers of London the money was held by Semple in trust for the United States, and the costs of the suit brought because one of Semple's drafts had been protested for non-payment together with the interest on it, were to be paid by the federal government. (IV, 295, 299)

The procedure for the extradition of criminals, under the treaty of Washington with Great Britain, was outlined by Nelson in his opinion in regard to the case of Christiana Cochrane, who was charged with murdering her husband in Scotland.

Nelson said that the first step was making a complaint before a magistrate, a commissioner appointed by the circuit court being a magistrate under the law and the Treaty of Washington. The magistrate would then issue a warrant for the arrest of the person against whom the complaint was filed. The evidence of criminality was then to be presented and if, in the opinion of the magistrate, it was sufficient to sustain the charge, he
should certify the prisoner to the President or the Secretary of State, with a request that a warrant for the surrender of the accused be issued. A requisition for a fugitive was not necessary said Nelson, in order to hold the preliminary examination. Mrs. Cochrane should be surrendered to the British authorities as all the essential steps had been taken. (IV, 201)

Nelson considered the extradition treaty with France in another opinion. He said that while the provisions of the English treaty were more full the principles involved were the same and referred the Secretary of State, John C. Calhoun, to his opinion in the case of Chriitana Cochran. This principle was that the evidence had to be of such nature that it would convict the prisoner had the crime been committed where the hearing was held. (IV, 330)

TARIFF.

Goods imported under one tariff act were to be treated as if provided for in that act even if another had been passed in the meantime. Goods imported before the passage of the act of 20 August 1842 were entitled to drawback when they were re-exported without any deduction, but according to the latter act, two and a half percent duty was to be charged on them. The goods in question had entered a port of the United States before the passage of the act of 1842 and therefore, according to Nelson, did not have to pay the new tax. (IV, 198)

When collectors of customs were also acting as keepers of light-houses, they were entitled, as extra compensation, a commission on their disbursements in their additional position. (IV, 249, 272)

Coffee imported from Brazil in Danish vessels was duty-free, just as the same commodity was in American vessels. This
was according to the reciprocity treaty with Denmark, said Nelson. (IV, 300)

Nelson said that the regulation of the Treasury Department which provided that old bonds of collectors of customs, should not be surrendered when new ones were executed, was a good one and should be continued. The law, he said, provided that these bonds should be filed in the office of the Controller and were not to be removed except for purposes of legal action. (IV, 312)

The United States could not be held liable for the acts of some citizens of Arkansas who invaded a custom-house in Texas and took goods therefrom under the claim that it belonged to them. The government, said Nelson, could not be held responsible for the acts of private trespassers, who must be punished by the criminal courts or sued for the recovery of the goods or their value. (IV, 332)

ACCOUNTING OFFICERS AND PATENTS.

A treasury warrant, which had been paid to the wrong person, did not discharge the debt and the correct person could collect his money at any time without having new warrant given him. (IV, 298)

The treasurer, having made the mistake was chargeable with the amount and the true owner of the warrant could not be made to wait for a new appropriation by Congress. (IV, 306)

When a disbursing agent of the government was in default in respect to funds entrusted to his care but there was a sufficient amount due him from the government, Nelson ruled that it was proper to apply this money in payment of his debt. If there was a balance in favor of the officer, however, it should be paid to him. (IV, 316)
The accounting officers had no right to adjust the claims of contractors with the government for damages unless they have been given special authority to do so by Congress. (IV, 327)

Fees paid to the Patent Office could only be repaid to the person who paid them originally or to his legal representative. In this case, a creditor of a Mr. Mohur, to whom some repayment was due appeared and claimed this money on account. (IV, 268)

Alterations in the date of a patent could be made provided the mistake in the date arose from no fraudulent intention. The patentee wanted the date of his United States patent to be of the same as the one granted to him by the King/Bavaria. (IV, 335)
John Y. Mason, Nathan Clifford, and Isaac Toucey.

Tyler, disowned by the Whigs and realizing that he was a Democrat in spite of his opposition to Jackson and Van Buren, tried to get the Democratic nomination in 1844. He had prepared the way and strengthened himself with the Democrats by appointing leading men of that party to public office. After trying to conciliate the Whigs and finding it hopeless he filled his cabinet with Democrats and was regarded as a Democratic president.

Polk, however, won the Democratic nomination and election. It was expected that he would appoint many of the members of Tyler's cabinet to their old positions. In fact Mason was the only man to be a member of both. He had been Secretary of the Navy under Tyler while Polk made him Attorney General.

Polk's failure to re-appoint John C. Calhoun to the State Department caused much comment at the time. John Quincy Adams, who knew most everything that was going on in politics, said that he was unable to account for it. He also said that an entire change of cabinet with no change of party in power was "a novelty under the present Constitution".

The South Carolina Democrats were greatly disgusted because Calhoun was not re-appointed. The Charleston Mercury said that the reason was that New York could be gained by sacrificing Calhoun and that Calhoun's "friends were justly indignant". The Washington correspondent of the same journal wrote a description of the new cabinet which was far from complimentary, calling them all "Old Hunkers".

The most important man in the cabinet was the Secretary of
Treasury, Robert J. Walker of Mississippi, who had engineered the nomination of Polk and who was his principal advisor during his entire administration. James Buchanan of Pennsylvania was Secretary of State and William L. Marcy of New York was head of the War Department. These men and Cave Johnson of Tennessee, as Postmaster General were confirmed without any opposition, much to the general surprise. The only opposition which developed was against the Secretary of the Navy, George Bancroft of Massachusetts, but his did not amount to much and after a short delay the cabinet was complete.

With two exceptions this cabinet went through the four years without change. After a year in the Navy Department, Bancroft was sent as minister to Great Britain, and Mason took his place, holding it until the end of Polk's administration.

John Young Mason was born in Virginia in 1799. After graduating at the University of North Carolina, he studied law in Litchfield, Connecticut, but he returned to Virginia where he practiced law with great success in Southampton county. He soon entered politics and served as a member of the Virginia Legislature, the constitutional convention of 1829 and the national House of Representatives from 1831 to 1837. His most important service in the House was in the capacity of chairman of the committee on foreign affairs. Later he was judge of the circuit court of Virginia and of the United States district court. He held the latter position until his appointment by President Tyler as Secretary of the Navy.

MASON'S OPINIONS.

Mason believed in protecting the interest of slave owners and in keeping slaves in their original condition. This is shown
in two opinions. One in which he ruled that slaves belonging to men who had illegally cut timber from public land, should not be taken away from their owners until the case which involved the owners had been tried. The other was his action in overruling the order of a general in the army freeing some slave which had belonged to an Indian tribe.

Mason was useful to the President in freeing him from the annoyance of having to make unpopular decisions. He did this by ruling that the Chief Executive did not have the power to review pension cases which had been decided by the officials of the proper department. In other ways he followed in the footsteps of his predecessors.

In regard to Indian affairs, Mason seemed to favor of enforcing the laws but he wanted to do so in a way in which would give substantial justice to all concerned.

Persons with claims against the government were not to be as many allowed to present them to officers as they wished in hopes of having them finally approved. He ruled, for instance, that after having appealed a decision of the accounting officers to Congress and failing to get the claim approved, the claimants could not again present their cases to the accounting officers.

PUBLIC LAND.

Collectors of customs in Mississippi, Lousisiana, and Florida could withhold clearance papers from ships which were loaded with live-oak or cedar which they had reason to believe had been cut from public land. Mason ruled that they were bound to prosecute men who were guilty of this offense. (IV, 403)

Mason followed the same lines in his opinion in regard to cutting of live-oak on the public land in Florida that Nelson
did. He ruled that the pre-emptioners were only allowed to cut
the live-oak on their land that was required in order to estab-
lish their title. After five years when their title to the land
was complete they could cut all the timber but not before. All
the lands in Florida were open to pre-emption except that within
two miles of a permanent military post of the United States,
which was garrisoned at the time the settler made his location
there. In case slaves cut timber on public land they could not
be seized until the case had been tried and such slave property
forfeited. (IV, 405)

No location could have been made on the Wyandot lands befor
they had been surveyed for the reason that such locations must
follow the sectional lines which did not exist before the survey.
These lands were not subject to pre-emption or private entry be-
cause the act of 3 March 1843 provided that they were to be sold
at price not less than two dollars and fifty cents an acre. The
certificates which had been authorized by the act of 1840 could
not be used for the purchase of the Wyandot lands as the certifi-
cates were to be used for the purchase of lands which were open
to pre-emption and lands which sold for a minimum of one dollar
and twenty-five cents an acre. (IV, 442)

The certificates which were issued under the third section
of the act of 23 August 1842 to provide for the satisfaction of
the claims under the treaty of Dancing Rabbit Creek with the
Choctaws could be received in payment for pre-emption lands.

These certificates were issued to Indians who had failed
to take advantage of the provisions of the treaty, which entitle
them to reserved land of which they had not obtained possession.
Only half of these certificates were to be given them before the
moved to their new homes across the Mississippi and therefore, in the opinion of Mason, the government did not expect the Indians to use the certificates themselves but were made so they could be readily assigned. Hence the assignee was entitled to their value in the purchase of public land. (IV, 472)

Abel Shawk and others had applied to the Secretary of War for leases on some public land located on Isle Royale in Lake Superior for mining purposes. The Secretary had refused to give the lease and an appeal had been made to the President, who asked Mason for his opinion on the subject. Mason replied that neither the President nor any member of his cabinet had the right to dispose of any public land without authority of law and by law the right to lease mineral lands was limited to salt springs and lead mines. As Isle Royale contained large deposits, in which the principal minerals were copper and silver, Mason ruled that the President was without authority to lease the land or cause it to be leased. (IV, 480)

In order to avail themselves of the privilege of pre-emption settlers must have complied with the law on the subject, said Mason. This meant that they must have given written notices of their settlement and intention to claim the the right of pre-emption within thirty days of their entry upon the land. They must also have inhabited, improved, built the required buildings paid the money required and furnished proof of what they had done within twelve months in order to secure preference over those who have made an entry on the same lands at the land office. If they had failed to perform all the duties required they were to receive no preferential treatment. (IV, 493)

It had been the practice of the government to allow the
leasing of lead mines, the practice receiving the approval of Attorneys General Wirt, Butler and Legare, Mason ruled that the President should continue the practice, especially as the lead mining was going on without leases in Iowa Territory, from which the government could receive large sums if they were legally leased. (IV, 499)

INDIAN AFFAIRS.

The law provided that when an account had been adjusted, it could not be re-opened without the authority of Congress. That law, said Mason, applied to the trust-fund kept at the Treasury for the benefit of the Chickasaw Indians. He did not doubt that mistakes had been made in regard to this trust-fund but nothing could be done about them without first appealing to Congress for authority to act in the matter. (IV, 369)

By the act of 23 August 1842 a board of commissioners was authorized to carry into effect the treaty of Dancing Rabbit Creek with the Choctaw Indians. This board had been given very extended powers in regard to gathering evidence by the Indians themselves. Any claim or part of a claim, which had been assigned or an agreement made to assign was not to be recognized.

Charles Fisher, an attorney for North Carolina, appeared before the board representing some of the Indian claimants but refused to testify, though his testimony was requested by the commissioners, on the ground that, as an attorney, he was privileged not to testify because his knowledge came from confidential communications with his clients, that he was interested in all the cases which he had presented as well as some others yet to be heard. Mason said that the rule of law excused attorneys from testifying, was for the protection of the client, not the
attorney, that Fisher could at least be questioned on the names of his clients and his interest in the claims. Two other witnesses testified that he had been given powers of attorney or contracts, by which he was receive half the land which the Indian clients received. Mason ruled that in the absence of Fisher's testimony the information given by the other witnesses was to be received which meant that these Indian claimants would receive only half of the land claimed because the rest had been assigned. The power of attorney was in effect an assignment, he said. (IV, 381)

Mason admitted that the Choctaws were entitled to $5,000 more in their deal with the Chickasaws but insisted that, as the consent of the Senate was necessary for the first transaction, it also necessary before the matter could be finally settled. The Chickasaws agreed to pay the Choctaws $500,000 in stocks, in addition to the amount they had paid in cash. The stock of the state of Alabama which was transferred, was not worth par on the market at the time and the Chickasaws only had to pay $495,000 for the stock of which the par value was $500,000. The Choctaws claimed the additional $5,000, which Mason thought they should have, if the Senate consented. (IV, 419)

The Cherokees, who did not emigrate across the Mississippi, were not entitled to any share in the fund which was to pay for their transportation and a year's maintenance after they arrived at their new homes, said Mason. The statement which, it was alleged, the Commissioner of Indian Affairs made to them on the subject, could not be considered as evidence. (IV, 435)

The same Indian could not claim benefits under both the 14th and 19th articles of the Treaty of Dancing Rabbit Creek because one article dealt with Indians who were going to emigrate across
the Mississippi and the other with those who going to remain in the state where they were living at the time. The fraudulent acts of an agent of the United States, however, could not be allowed to operate in such a manner as to cause one of the Choctaws to lose his rights under the treaty. (IV, 452) If he had lost his claim he could get it back. (IV, 513)

A Creek reservee, Cottie Hadgo, had contracted to sell the land reserved for him to James Hall, who paid $100 of the total of $800. He allowed Joseph Hall to occupy the land. Soon after this transaction James Hall died but Joseph Hall claimed that it was his money which James Hall had paid and asked that he be allowed to complete the payment and receive a patent for the land. This having been proved, Mason ruled that it was legal and should be allowed. (IV, 491)

The President's consent to sales of land, reserved for the Pottawatomies, was only necessary when the sales were made by the Indian reservees. Later sales could be made without his consent. The law was made to protect the Indians from sharp dealing in the sale of their lands. (IV, 529)

MILITARY AND NAVAL AFFAIRS.

The beginning of the use of steam on war vessels caused some difficulty in regard to the pay of the officers. The question, on which Mason was called upon for his opinion was in regard to the pay of the purser of the war steamer Missouri. He ruled that the officers of war steamers should receive the same pay as those on frigates of the same rating. If the Navy Department rated the war steamers as frigates then they were to be considered so in regard to payment.

Mason admitted that he was doubtful on this point and added that, if his ruling produced any embarrassment in the outfit or
allowances of steam vessels, it might be done away with by arranging all steam war vessels in two classes, based upon their tonnage and armament. (IV, 387)

The act of 17 June 1844 took away from the executive departments the right to transfer appropriation from one head of expenditure to another and therefore, said Mason, money given for the expenses of the hydographical office could not be used to build a house for the superintendent of that office. (IV, 428)

The sentence of a naval court martial which involved dismissal from the service could not go into effect without the approval of the President, who could pardon the offender or reduce his sentence. In case the sentence was dismissal from the service, he could change it to suspension without pay for time, that being a less severe sentence than dismissal. (IV, 432)

Mason gave a more extended opinion in regard to the power of the President over courts martial in his ruling on Commander Ramsey's case. The court martial had suspended Commander Ramsey from all rank and command in the navy for the period of five years. President Tyler had changed the sentence to suspension without pay for six months. Later Ramsey had demanded his pay for the time of his suspension.

Mason ruled that he was entitled to because the sentence of the court did not mention pay and the President had no right to change the sentence except to lessen it along the same lines which the sentence indicated. As the court had not taken away Ramsey's pay, the President's order could not. Mason said that the President could dismiss an officer without a trial or suspend him from duty by arrest, but while he retained his commission and was not sentenced by a court martial to that effect, the President could not take from him the pay which the law gave him.
The President's power of changing the degree of a sentence was only limited in the case the sentence was death. In such a verdict, Mason said, there was no degree, either the entire sentence of the court must be carried out or no part of it could be. Mason was commenting on the rulings of a President of a different political party than his own. (IV, 444)

Purchases in the open market, without advertising for bids, could only be made by the Secretary of the Navy when the need was so immediate as not to allow time for the usual process. This, said Mason, did not apply to water-rotted hemp which was usually contracted to be furnished for terms of three years and where the hemp was usually enough for the present wants of the naval service. (IV, 475)

The navy agent at New York had made a contract with A. G. and A. W. Benson for piles to used in building the dry-dock at Brooklyn to be delivered after Congress had made further appropriations for the project. Mason ruled that the contract was not binding on the government as the act of 1 May 1820 prohibited the making of contracts in advance of appropriations. (IV, 490)

Paymasters, surgeons and assistant surgeons were each entitled to forage for only one horse, according to the act of 2 March 1845. Mason ruled that as they were not general field officers nor officers of the dragoons and therefore came under the classification of "other officers entitled to forage" in the act. (IV, 415)

The authorities of the Republic of Texas attempted to charge duties on the goods imported by the sutlers attached to the United
States army under General Taylor, which stationed at Corpus Christi, and forced the sutlers to post duty-bonds for the goods they brought for the use of the officers and soldiers. Mason ruled that the army had been sent there with the consent of the Texas government and for protection of the people of that region. Duties should no more be charged on the sutlers' supplies than on the powder and cannon which the army brought. He advised that the President ask the Texas government to cancel the duty-bonds. (IV, 462)

The appropriation for repairs, improvements and new machinery for the arsenal at Harper's Ferry, passed 8 September 1846 could not be used for additional land for the arsenal. While money had been requested to purchase more land, Congress had specified the purpose for which this money should be spent and it could not be changed. (IV, 533)

Mason ruled that it was not necessary for American Merchant vessels to deliver their papers to consul except in cases where it was necessary to make an entry at the custom-house. If the ship simply came into the harbor without the intention of trading it was not required that its officers have any dealing with the consul. Such a requirement, said Mason, might add to the fees of the consul but it would embarrass the interests of navigation. (IV, 350)

POWER OF PRESIDENT.

Mason ruled that the President could not appoint district judges, attorneys, and marshals for the newly admitted states of Florida and Iowa during a recess of the Senate when the offices had been created during the session of that body. If the vacancies were known to exist during the session of the Senate and the nominations were not made during that time, the Executive could
not make them during the recess. This did not mean, said Mason, that the new states were to be without the means for administering the law because the territorial judges could still do that and the district attorney appointed while the states were territories could and should continue to perform his duties. (IV, 361)

The President could not appoint a new commission to examine claims under the treaty of New Echota with the Cherokee Indians, without plainly disregarding the will of Congress, said Mason. The act of 17 June 1844 had put an end to the President's authority and an appropriation to carry the treaty into effect. (IV, 418)

The pardoning power of the President, except in one case mentioned by the Constitution, was co-extensive with the punishing power, said Mason. Therefore he had the power to remit any punishment which might be given by the courts. This included the power to remit fines imposed upon defaulting jurors. He quoted the opinion of Gilpin, 27 February 1841 and case of United States vs. Wilson, (7 Peters 160) (IV, 458)

The President had the power to appoint postmasters, under the act of 2 July 1836, to fill vacancies which occurred during a recess of the Senate. This power also applied to vacancies which occurred during a session of the Senate, if that body had failed to confirm the President's nominations. Mason ruled that expediency was reason enough for such a ruling. Otherwise the postoffice would not be able to function. In support of his opinion, he quoted Wirt, Taney and Legare. (IV, 523)
ACCOUNTING OFFICERS.

The act of 3 March 1845 provided that accounts with the government which had been adjusted by the accounting officers could not be re-opened except in cases where special acts had been passed by Congress for the relief of individuals. The accounts of Clements, Bryan & Company, who had been providing the Cherokee Indians with provisions during their migration to lands across the Mississippi, had been adjusted and closed. After this had been done the company requested that they be re-opened on the grounds that a mistake had been made in the former accounting. This, Mason ruled, they were entitled to because the act for their relief was a special one which would not come under the provisions of the act of 1845. (IV, 378)

If a contractor had two contracts, one which he carried out and the other he failed to complete, the accounting officers were allowed to balance the two accounts and pay him only the difference if any. In the case, on which Mason made this ruling, the army contractor had furnished the tobacco according to his contract but he had failed to furnish the beef. The loss which the government sustained by reason of his failure should be charged against him and taken out of the money which he supposed to receive for the tobacco. (IV, 380)

The Third Auditor, under the terms of the act of 24 March 1834 for the relief of Phillip Hickey, was ordered to ascertain the value of the timber taken from Hickey's land by the United States soldiers, for which he claimed damages. The act, however, did not state from what land the timber had been cut. Mason ruled that he should consult the report of the committee which accompanied the bill and the documents which the committee used. If this did not give the desired information, he must require Hickey
to give proof of identity and ownership. (IV, 479)

FOREIGN RELATIONS.

The Imaum of Muscat had given a present to the President and in return the President had some old cannon recast for the purpose of giving them to the Imaum. The question arose as to what funds should be used for this work. Mason said that it had been the custom to exchange presents with the semi-civilized rulers of Asia and Africa for many years. In fact presents had been exchanged with Imaum of Muscat twice before. It was regarded as the best method of remaining on friendly terms with these rulers and for that reason the expense of these presents should come from the appropriation for the contingent expenses of foreign intercourse. This appropriation had always been placed at the disposal of the President, who was charged with the management of our foreign relations. (IV, 358)

Mason ruled that extra pay could not be given to Mr. Thompson for carrying dispatches to Mexico City because Thompson was a salaried officer but he could be given his travelling expenses. (IV, 372)

Mason followed the rule made by Taney in regard to diplomatic representatives who were relieved of their position while they were in the United States. William M. Blackford, charge d'affaires to Bogota, was displaced while he was on the visit to the United States. In his settlement with the government, he claimed the extra three months' pay which was usually given diplomatic representatives when they were relieved of their duties. Mason gave the same reason for the refusing this claim that Taney had in the case of Shaler, that the extra pay was for the purpose of paying the expenses of the representative on his homeward journey, which in this case was unnecessary as he was already
It was the duty of the government to provide a way of paying our foreign ministers their salary and expenses and if the method used involved the minister in extra expense he should be repaid, said Mason. Mr. Wise, Minister at Rio Janeiro, was directed to draw upon London for his salary and expenses but when he did so he was obliged to take a loss on the sale of his bills of exchange. The amount of this loss, Mason ruled, the government should pay. (IV, 506)

A number of negro slaves, owned by the Seminole Indians, went west with their masters but later left them and went to the military reserve at Fort Gibson, where they were protected by the general in command. General Jessup who had been in command in Florida had promised them qualified freedom, that is, that they would be allowed to settle by themselves in some portion of the public land. Mason ruled that they could not be given their freedom because the Indians living where it was proposed to allow them to settle, had objected. He said that they should be restored to the condition in which they were when they left Florida and that the military authorities should execute the order.

**POSTOFFICE DEPARTMENT.**

The act of 3 March 1845, which reduced the postage on letters and other articles sent through the mails, also provided for the payment of the expenses of the mail service which might be embarrassed by a deficiency of revenue. Mason explained the act by saying that it provided a fund of four and a half million dollars, which was to be used, if necessary, in paying the expenses of the department, exclusive of the salaries of the employees of the
General Post Office. This fund was not to be used unless the revenues of the department were insufficient to meet the expenses, as was anticipated when the rates of postage were reduced. (IV, 391)

Mason gave an opinion at the request of the Postmaster General in which he stated the characteristics of newspapers and magazines. The contents of the publication should be of more influence in this classification than its form. A newspaper should have as its main purpose the spreading of news of passing events, must be issued in numbers of not more than two sheets, the area of which should not exceed 1900 square inches, issued at short stated intervals of not more than a month.

Mason quoted Webster's definition of a magazine, "a pamphlet, periodically published, containing miscellaneous papers or compositions". From these definitions he came to the conclusion that the Living Age was not a newspaper but a magazine and therefore must pay postage as such. (IV, 407)

In regard to a dispute over the payment of a mail contract Mason ruled that when a claimant, who after an unsuccessful attempt to obtain money from a department, appealed to Congress, he must abide by the decision of Congress, being favorable or otherwise, and no longer had any right to appeal to the department. (IV, 429)

PENSIONS.

Pensions granted to widows by the naval pension act of 3 March 1845 started, according to Mason, on the date when their pensions under the previous acts stopped. These acts were those of 1834, 1837 and 1841. This new law extended their pensions for five year
This pension act provided that accounts adjusted by the accounting officers should not be re-opened without the authority of the law and that no account should be acted on at the Treasury unless presented within six years of the date of the claim. Mason ruled that this part of the law did not affect applications under the general law in regard to pensions. Pensions, he said, were not claims but were gratuities. When the names were placed upon the pension rolls, however, they became claims to semi-annual payments. Therefore, if after a name had been placed upon the rolls, no claim for the money was asserted within six years, the account could not be audited without the authority of Congress. (IV, 366)

The act of 30 April 1844 provided that after 23 January 1845 widows of revolutionary soldiers should only receive that part of the five years' pension, which had not been paid to their husbands. Mason ruled that the widows who filed their declaration of pensions before 23 January 1845 and who had made these declarations before the date of the passage of the law were entitled to the entire five years' pension. (IV, 376)

The act of 7 May 1846 was passed for the purpose of making it easy for widows to get their pensions. It provided that it was only necessary to prove that their husbands had been on the pension rolls and that they had been married to them. Mason said that these men might have had their names on the pension rolls and still not have been entitled to pensions. The burden of proof, however, was on the government. General reputation and cohabitation were in general sufficient proof of marriage but it might be rebutted by proof if the government could produce it. Mason said that the law should be construed liberally and favorably in
regard to the applicants. (IV, 496)

Arrears of pensions due to the widows of Revolutionary soldiers at the time of the death of widows should not be paid to the executors or administrators said Mason. It should not be used to pay the debts of the deceased woman. In case she left any children it should be paid to them. If there were none the arrears should not be paid to anyone. (IV, 504)

The President was required to see that the laws were enforced, said Mason, but he was not required to enforce them himself. The pension law provided an officer to decide upon applications for pensions but provided for no appeal to the President from the decisions of that officer. Therefore Mason ruled that the President would not undertake to revise the decisions of the Commissioner of Pensions. Mrs. Esther Johnson, widow of Colonel John Johnson, who served four months and eighteen days during the Revolution, had applied for an increase of pension, presenting a voluminous mass of evidence to support her claim. The Commissioner of Pensions had refused her request and she had appealed to the President to revise this decision. (IV, 515)

**PATENTS.**

Patents for inventions could not be issued to the inventors and the assignees of a partial interest jointly but they might be issued to assignees of the entire interest. No provision had ever been made, said Mason, for the issuing of a patent for a part of an invention to the inventor and for the other part of his assigne. (IV, 399)

Mason served as Secretary of the Navy until the end of Polk's administration when he retired from public life and took
up the practice of law in Richmond, Virginia. In 1850 he was elected to the Virginia constitutional convention and three years later President Pierce appointed him minister to France. He was continued in the same office by Buchanan and remained abroad until his death which took place in Paris 3 October 1859. While abroad he took part in the framing and publishing to the world of the "Ostend Manifesto".

NATHAN CLIFFORD.

When Bancroft resigned and Mason was made Secretary of the Navy, Polk offered the Attorney Generalship to Franklin Pierce who declined it. Nathan Clifford had been recommended to the President by some of his Maine friends but Polk had never heard of him. For that reason he consulted the members of his cabinet. Several members knew him as good Democrat but none knew anything of his legal attainments.

An inquiry established the fact that Clifford had a sufficient knowledge of the law and the appointment was offered and accepted. Clifford became a very useful member of the group which advised Polk. He was not a great lawyer and lacked self confidence but he did have the gift of diplomacy which enabled him to bring about harmony in the cabinet.

At this time Polk and Buchanan were in the midst of a quarrel in regard to the war with Mexico which promised to harm the career of both. Clifford succeeded in healing the breach with the result that both men were grateful to him.

Polk showed a great interest in the office of the Attorney General. He was the first President after Jackson to mention the office in his messages to Congress. In his first message, sent in 1845, he urged that the Attorney General be placed on the same
footing with the heads of the other executive departments. He said, "The official duties of the Attorney General have been much increased within a few years and his office has become one of great importance. His duties may be still further increased with advantage to the public interests. As an executive officer his residence and constant attention at the seat of government are required. Legal questions involving important principles and large amounts of public money are constantly referred to him by the President and Executive Departments for his examination and decision".

Polk had required that the Attorneys General under his administration reside and spend all of their time in Washington, just as he required this of the other members of the cabinet. He strongly disapproved of long absences from the seat of government on the part of his advisors because it greatly interfered with the efficiency of the administration. Polk exacted this condition from Mason and Clifford, but there is no record of such action in regard to Toucey.

During Clifford's term Congress authorized the Attorney General to provide a seal for his office. Just when it was devised and adopted is not certain. It was first used, however, during the time of Cushing.

Nathan Clifford was born in Rumney, New Hampshire in 1803. After receiving a meagre education he studied law in the office of Josiah Quincy. After being admitted to the bar, he began to practice in Newfield, Maine.

His political career started in 1830 when he was elected to the Maine legislature, where he served three terms. In 1832 he was a delegate to national Democratic convention and two years later he was elected attorney General of the state. In 1837
he failed to receive the caucus nomination as United States Senator but the following year he was elected to the national House of Representatives where he served two terms.

In 1843 Maine was restricted for congressional representation with the result that Clifford failed to receive the nominations in his district. This caused him to become disgruntled and the Democratic leaders in Maine, not wishing to lose his valuable political services, used their influence with the President to have him appointed Attorney General. Their efforts met with success, helped by the fact that New England had no representative in the cabinet after Bancroft retired.

Polk in his "Diary" tells of Clifford's lack of self confidence. A few days before he was to make his first appearance before the Supreme Court he offered his resignation to the President who told him that such action would ruin him as a public man. Clifford withdrew his resignation and, after he had won his first case, regained his self confidence. He continued in the office until Polk appointed him as one of the commissioners to secure Mexico's consent to the amendments of the Treaty of Guadalupe Hidalgo.

Clifford's opinions contain none of major importance. In spite of the fact that he was Attorney General during the Mexican War there are few rulings dealing with that struggle. Indian affairs and public land occupied most of his time.

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claimants were allowed the exact amount of the grant but no more. The boundaries of these grants were so indefinite that such a policy was necessary if they were to be prevented from taking the entire Louisiana Territory! Claimants of bounty lands were only allowed to take the cheap land.

The slave trade is considered in several opinions. The President had the power to provide for the support and removal of slaves taken from a slave-trading ship. The costs of prosecution of a violation of the act stopping the slave trade, were to be paid from federal funds.

MILITARY AND NAVAL AFFAIRS.

Clifford ruled that enlistments in the regular army must be for the term of five years and it was not permitted to enlist for five years with the condition that they were to be discharged at the end of the war with Mexico. The power to raise armies had been vested by the Constitution in Congress, which body had made this rule. (IV, 537)

The act of 1838 giving three months' extra pay to all privates, musicians and non-commissioned officers who enlisted for another term of five years did not apply to those who enlisted for duration of the war with Mexico. The object of the act, said Clifford, was to induce experienced soldiers to continue in the service for another full enlistment term. (IV, 538)

M. B. Mason entered into a contract with the navy to furnish sugar and tea for a year. He failed to furnish any sugar but supplied the tea by turning over his contract to S. T. Nicoll & Co. of New York. When the latter firm sent the bill for the goods delivered payment was refused because of the damage caused the government by Mason's failure to live up to the rest of his
contract. Clifford ruled that the Navy Department had the right to do this as no contract had been made with S. T. Nicoll & Co. except the one which Mason had with them. It was Mason to whom they must look for payment. (IV, 551)

Neither the Secretary of the Navy nor other officer of any of the executive departments was allowed to make contracts except in cases where there was a law authorizing such work and making appropriations for it. Therefore, Mason ruled, that the Secretary of the Navy could not lawfully contract for the building of dry docks at Kittery, Philadelphia and Pensacola and for such work bind the government to pay an amount in excess of the appropriations made for it. Mason said, however, that as this work was necessary and very important that they should be constructed with all the speed possible. He advised that the money appropriated be spent for sites and materials and an appeal be made to Congress for additional appropriations for constructing the dry docks. (IV 600)

Surgeon Du Bary was a persistent man. He had been dismissed from the service in 1829 but he was renominated for the same position in 1837. The Senate in confirming his nomination placed a condition on the confirmation which made it null and void. In 1842 DuBarry was again nominated and confirmed by the Senate with the provision that his appointment should date from the time of his original commission. He then claimed pay for the time that he had been out of the service. This, Clifford ruled, he should not have because he did not perform the services for which he asked payment. There was no doubt, said Clifford, that the President had the power to dismiss an officer from the public service without the consent of the Senate. This right was affirmed by Congress soon after the Constitution was adopted and had since been
approved by every department of the government. (IV, 603)

PENSIONS.

The act of 3 March 1845 which authorized the renewal of pensions to widows of officers, seamen and marines, applied only to those widows, whose pensions had expired. Widows, whose husbands had died less than five years before the passage of the act or who had not yet exhausted their five years' pension period, were not provided for.

Clifford changed his opinion in the case of Lieutenant Brownell and ruled that an officer of the navy, who was waiting orders, on leave or on furlough, could receive as much of his pension as would make up the difference between what he was receiving and what he would have received had he been on duty. This rule, of course only applied to officers who had been in service long enough to entitle them to pensions. (IV, 587)

Lieutenant Churchill Gibbs served in a Virginia regiment during part of the Revolutionary war and the rest of the time in the continental establishment. During his lifetime he obtained a judgement against the state of Virginia for a commutation of five years' full pay in place of half pay for life. This was paid to Lieutenant Gibbs in 1792. His descendents applied for further pay on account of the war services of their ancestor. This claim was first made and rejected in 1833 on the grounds that it had been paid. Clifford ruled that it could not then be allowed except in case Congress should give the War Department special authority. (IV, 590)

Clifford ruled that the act of June 1834 which granted pensions to the widows of officers, seamen and marines, who died while in the service or because of diseases or injuries received there, did not include the widows of engineers whose appointment
was authorized by the act of 31 August 1842. The latter act said Clifford, provided for their appointment, duties and the division of the prize money which they should receive but did not mention pensions. They could not have been mentioned in the pension act because it was passed before the appointment of engineers was authorized. The pensions to widows of officers, seamen and marines started with the passage of the act (1834) in case the death took place before that time otherwise it dated from the death of the husband. (IV, 631)

INDIAN AFFAIRS.

Alexander Anderson and others presented a claim, based upon a contract to move the Choctaw Indians from the state of Mississippi to their new homes in the West, to the Commissioner of Indian affairs who failed to prove it. They then presented it to the Second Auditor and the Second Comptroller who had it referred to Clifford, who decided that the accounting officers had no right to pay it.

While Anderson and his partners had agreed to move the Indians they failed to appear when the Indians had been collected. The Indian agent, knowing that, if they were not moved soon, they would scatter and all the work of collecting them would have to be done over again, decided to move them without any help from the contractors. While he was engaged in doing this an agent of the contractors appeared and wanted to finish the work, which offer the Indian agent refused. Nevertheless the contractors presented their claim for the full amount which they were to receive $7,099.33. Clifford understood, however, that they were willing to accept the difference between that amount and that it cost the Indian agent to move the Indians. Clifford was of the opinion
that the contractors were entitled to nothing because they had done none of the work. Their only claim, he said, was a dubious one of damages because of broken contract because the Indian agent refused to accept their services. Their only hope was to submit their claim to Congress. (IV, 626)

Clifford ruled that the claims of the Cherokees for the value of their pre-emption rights should not be allowed because they had no such rights. The part of the treaty of 1835-6, which mentioned such rights, was annulled by mutual consent when the treaty was ratified by the Senate. It was provided that the Cherokees were to be moved to lands west of the Mississippi and would therefore be unable to establish pre-emption rights. (IV, 560)

Reservees under the treaty with the Cherokees, who disposed of their land, were not entitled to compensation for their improvements from the government, said Clifford, because the improvements passed from their possession with the land. (IV, 580)

Betsey McIntosh of the Cherokees had been received an award under the thirteenth article of the treaty with her tribe because she had been forced to abandon a claim which she had owned. She later appealed to the Cherokee commissioners asking that she be allowed to benefit by the third supplemental article of the same treaty. The two commissioners disagreed on the question which, according to the treaty, was to be settled by the Attorney General Clifford ruled that Betsey McIntosh, having been awarded damages under one section of the treaty, could not claim anything under any other article. (IV, 597) Clifford followed the same line in his ruling concerning Messrs. Barrow and Irwin, who entered a claim for legal services rendered the Cherokee nation. He said that all such claims had been settled by the first board of
commissioners and could not be considered by the later boards. (IV, 613)

PUBLIC LANDS.

James Slaughter had pre-emption rights on a quarter-section of land by reason of settlement but on the first day of the public sale refused to pay for it unless he could also have another quarter-section adjoining which the land officers refused to allow. The sale then started and the quarter-section on which Slaughter had pre-emption rights was sold. Later he applied, through an agent, for a rehearing on his pre-emption rights. Clifford ruled that he was not entitled to anything as he forfeited all his rights when he refused to pay for the land on the first day of the public sale. (IV, 637)

When a discharged soldier, who had a choice between receiving treasury scrip or bounty land, chose the former he was not allowed to change his mind later. The act of 11 February 1847 gave these soldiers but one election. (IV, 642)

Concessions of crown lands to individuals in Louisiana, which were made by the Spanish authorities while Spain owned that territory and which were recognised in the treaty between the United States and France in 1803, were to be limited to the surveys and descriptions of such lands. Land beyond such boundaries belonged to the United States. The title of Maurice Conway to the lands known as the "Houmas Tract", on the east bank of the Mississippi river above New Orleans, once owned by the Boyou Goula and Houmas Indians, which had been granted with the consent of the Indians, by Governors Unzaga and Galvez, was, according to Clifford, valid for the length of the survey on the river and for a distance of forty-two arpens in depth. He further ruled that the patents is-
sued in 1844 by the President Tyler on the Donaldson, Scott and Clarke claims were unauthorized by law and were therefore void. (IV, 643)

The bounty lands, which had been granted to the soldiers of the Mexican war, did not include those which were for sale at the price of two dollars an acre. The act of 11 February 1847 was intended, said Clifford, to apply to lands which were for sale for the minimum price. Some of the soldiers wanted to locate on lands in Indiana. (IV, 714)

Soldiers, who enlisted in the army during the war with Mexico for a period of twelve months but were honorably discharged before the end of that time by General Taylor without having been incapacitated by wounds or injury, were not entitled to bounty lands under the act of 11 February 1847. (IV, 718)

SLAVE TRADE.

The brig Malago had been captured by the United States warship Boxer and sent as a prize to the United States on the charge of participating in the slave trade. Clifford settled the question of paying the expenses of libelling the ship by ruling that they should be paid out of the appropriation for defraying the expenses of the federal courts. The costs of the prosecution, where the United States was concerned, did not depend upon the result of the proceedings. In this case, the ship was not condemned. (IV, 565)

When slaves were captured on board vessels engaged in the slave trade the President had power, according to Clifford, to make all the regulations and arrangements for their safe-keeping and removal beyond the limits of the United States. All such slaves, which were in the keeping of United States marshals, were subject to his orders. Therefore the two slaves, which were
found on the brig *Titi*, and according to the verdict of the jury, belonged in that class, were under the control of the President. (IV, 566)

Congress had provided for the publication of a "Documentary History of the American Revolution" and Clifford ruled that it was the duty of the Secretary of the State to tell the publishers what documents should be included or at least approve of the materials which were to be included. This approval could be made at any time previous to the publication. (IV, 584)

Clifford ruled that the resolution of the legislature of the State of Missouri, authorizing the governor to receive the state's share in the funds arising out of the act of Congress of 4 September 1841, was not valid because it had not signed by the president of the state senate. The act of Congress referred to was to distribute the proceeds of the sales of the public lands. (IV, 716)

After completing his work as commissioner in Mexico, Clifford was appointed United States minister to that country where he performed the difficult work of starting friendly relations between the two nations. He retired from public office in 1849 when Taylor was elected and the Whigs came into power. He returned to Maine where he practiced law, without great success, for the next eight years. In the meantime he was an unsuccessful candidate for the United Senate in 1850 and 1853.

When Buchanan became President, Clifford was appointed to the federal Supreme Court where he served the remaining twenty-three years of his life. During this time he wrote the decision of the court in 398 cases, eight concurring and forty-nine dissenting opinions. He presided over the court as a senior justice after the death of Chief Justice Chase until the appointment of
Chief Justice Waite.

In 1877 he presided over the Electoral Commission which canvassed the votes in the disputed Hayes-Tilden election. He favored the Tilden side and wrote one dissenting opinion. When he saw that the vote was a strictly party affair, with the Democrats being outvoted, he wrote no more. He always regarded Hayes as a usurper and refused to enter the White House while the latter was President. He died in 1881.

ISAAC TOUCEY.

When Clifford was first sent to Mexico Polk considered the work temporary and of short duration. For that reason no appointment was made to the Attorney General's office, John Y. Mason performing the necessary duties of the office. When it was seen that Clifford would be absent for a considerable time Polk consulted his cabinet as to a permanent occupant of the office.

He suggested to the cabinet the names of Isaac Toucey of Connecticut, John Anderson and Judge Shepley of Maine and Governor Vroom of New Jersey. All these men were considered to be satisfactory by the cabinet except that Buchanan wanted to be sure that none of them were in favor of the Wilmot Proviso. Accordingly final decision was postponed until this information could be obtained.

When the matter was again discussed the field had narrowed to Toucey and Vroom. Polk preferred Toucey but the cabinet favored Vroom because no appointment had been made from New Jersey while several had been made from Connecticut. The geographical argument won and the appointment was offered to Governor Vroom, who declined. Toucey was then appointed.

Isaac Toucey was born in Newtown, Connecticut, 5 November 179 After receiving a private education, he studied law and was ad-
mitted to the bar. He began his law practice in Hartford but soon drifted into politics. His first office was that of state's attorney for Hartford county to which he was elected in 1822. He held this office for three years and then served one term in Congress. In 1842 he was again elected state's attorney.

In 1845 Toucey was defeated for governor of Connecticut. The following year, however, neither candidate received a majority vote with the result that the legislature elected Toucey to the office. The following year Toucey was defeated for re-election.

TOUCEY'S OPINIONS.

The influence of the War with Mexico is clearly shown in the opinions of Toucey. Rulings in regard to pensions and bounties fill a considerable space, as many individual cases had to be considered.

The most important case Toucey decided was in regard to the jurisdiction of federal courts over offenses committed by soldiers while in foreign countries. His ruling that there was no such thing as common law respecting crimes, touched a new subject in the opinions.

Toucey refused to allow contractors furnishing war materials of service during time of war to be paid more than the law and common sense dictated, though some of the tried to secure pay for services which were not performed, as in the case of the Emily Bourne.

Outside the military cases, Indians provided the largest number of opinions. Rulings had begun to appear in regard to the payment of claims agents for the Indians. Toucey showed a tendency to restrict their payment though not to the extent shown by later Attorneys General.
MILITARY AND NAVAL AFFAIRS.

During the Mexican war while the American forces occupied the city of Perote, Captain Foster of the Georgia volunteers killed Lieutenant Goff of the Pennsylvania volunteers. During the military trial which was held in the Mexican city, Captain Foster escaped from his guard and fled to Georgia. Nothing further was done about the case at the time. The war ended, Perote was restored to the Mexican authorities and the volunteer forces were mustered out of service.

Toucey ruled that Captain Foster could not be tried by a federal court because the crime was committed in a foreign country, that federal courts had only such jurisdiction as was conferred by law, that there was no common law in respect to crimes, that a crime was an offence against a law and therefore there could be no crime where there was no law. As the United States army no longer occupied Perote, Foster could not be tried there and as the volunteer forces had been mustered out of service the former court could not be convened. Hence nothing could be done about the case. However, Congress could provide against cases like this one happening in the future. (V, 55)

Major Craig was entitled to extra pay for his services as superintendent of the armory at Harper's Ferry because Congress had made an appropriation for that purpose. Mason had decided a similar case in regard to Major Ripley at the Springfield arsenal which Toucey quoted. (V, 61)

In a correspondence between the Secretary of the Navy and the owner of some lots on Wallabout Bay the former had suggested that the offer in regard to the lots be left open until the adjournment of Congress. He also said that he would recommend an appropriation for the purchase of the lots with the understanding
that the owner would furnish a perfect title. Between the time of this correspondence and the voting of the appropriation, the city of Brooklyn, in which the lots were located, levied an assessment but Toucey said that without the payment of this money by the owner of the lots he could not furnish a clear title.

The Secretary of the Navy had no right to contract for the purchase of the lots without the authority of Congress, said Toucey, and he had no right to pay any sum in excess of the amount appropriation. Therefore the owner of the lots would have to pay the assessment. (V, 15)

Former Secretary of the Navy: Badger entered into a verbal contract with A. G. and A. K. Benson for the transportation to the Pacific of all naval stores which the government would have occasion to send. The Bensons claimed that the government had violated this contract by sending some naval stores on public vessels. For this reason they claimed damages.

Toucey ruled that one Secretary of the Navy did not have the right, under the law, to supervise the acts of his predecessors and there was no law authorizing the payment of damages for their alleged misconduct. In addition Toucey said that this claim had been submitted before to a former Secretary of the Navy, Bancroft who after a conference with the President rejected it. Hence it was to be regarded as settled. (V, 28)

The question of the power of the President in mitigating sentences of courts-martial again came up for Toucey's consideration. Assistant Surgeon Charles F. Guillon of the navy was sentenced to be dismissed from the service for disobedience of orders, neglect of duty and disrespect to his commanding officer. The President
committed the sentence to twelve months' suspension without pay. Later it was claimed that Guillon should receive his pay during the period of his suspension on the grounds that the President had exceeded his powers in substituting suspension for dismissal.

Toucey ruled that Guillon was not entitled to his pay during the time that he was suspended for the reason that the President had the right to change the sentence in the manner it had been done. This dismissal deprived the officer of his pay forever, said Toucey, therefore the suspension for a year without pay was a milder degree of the same kind of punishment. The case of William Ramsey, decided by Mason, did not cover the same kind of a case. (V, 43)

The owners of the schooner Emily Bourne certainly did not lack nerve in their business transactions with the government. This ship had been chartered by the War Department to carry freight to the island of Lobos in the Gulf of Mexico at a certain sum per month for a period of a year or longer if it was needed. The Emily Bourne left Philadelphia with her cargo but only got as far as the Delaware breakwater where she sunk and her cargo lost. Later she was raised and offered to the government agent for the purpose of fulfilling her charter-party. The owners had been paid for carrying freight between the date of leaving Philadelphia and the sinking of the ship, by the decision of the Second Comptrolle but then they asked payment for carrying freight during the rest of the year. Toucey ruled that the claim could not be allowed. He asked, "How can a vessel earn freight without performing the service of transporting goods?" There was no cargo to take after the Emily Bourne had been wrecked and the two months' delay in time of war, when the utmost dispatch was necessary, was not a reasonable delay. A ship should not be paid for service which
The question of whether a patent should be granted for land for which a previous patent had been issued arose when Alexander McDougal applied to the land office in New Orleans for a patent on some back lots adjoining some land owned by him in the Territory of Orleans. A patent for this land had previously been issued to William B. Robertson.

Toucey ruled that McDougal should be granted his patent because he had complied with the law of 16 February 1811 which granted pre-emption rights on the back lots to owners of the land in front who delivered to the register of the land office a notice of what he owned and of what he wished to claim together with the payments required. When this was done Toucey maintained that this land was forever exempted from general sale and therefore should never have been sold to Robertson.

An agreement had been made between Elijah Hicks, a Cherokee and John F. Gillespy, his attorney, that the latter should have the former received on his claims which ten percent of the amount which were being considered by the Cherokee commissioners under the treaty of 1835-6. As the claims were settled and paid Gillespy failed to take his share. When the last one was allowed, however, he put in his claim for the entire amount to be paid. Toucey ruled that he could not do that, that he had waived his rights to the ten per cent of the preceding claims when he failed to get his share at the time when it was allowed. All Gillespy could receive from the last amount paid was ten per cent of the one claim. (V, 13)

The Menomonee Indians claimed some land which the United States purchased from the Sioux, Winnebago and Chippewa tribes.
In investigating this claim Toucey examined the treaties which had been made between the various tribes and with the United States. As a result he maintained that the Menomonies had no claim to the land west of the Black River because, in the treaty of 1825 between the United States and the Chippewas, Sac and Foxes, Menomonies, Iowas, Sioux and Winnebagoes, that river had been agreed on as a boundary. The treaty of 1831 still further cut down their claims. They also made a treaty with the Chippewas in which they surrendered the land which the United States later bought from that tribe. Toucey recommended that another treaty be made with the Menomonies establishing their boundary on the north. (V, 31)

Payment of awards made by the board of Cherokee commissioners could only be made to the claimants, their executors, administrators or to some persons who had a warrant authorizing them to collect the amount awarded. Neither the agent nor the attorney who prosecuted the claim was entitled to receive the money unless he had such a warrant from a claimant. In this case it was John H. Eaton who represented the attorney for Betsey McIntosh. (V, 36)

Toucey advised the President not to pay the money, amounting to $141,055,91, to representatives of the Creek nation until that tribe executed a full discharge of the principal and interest of an alleged debt of $250,000. He ruled that the instructions which the Creek delegation then in Washington had in their possession did not authorize them to issue the proper kind of a receipt. He also stated that this claim had been paid once before to the State of Georgia and for that reason Congress put such stringent regulations on this payment. Congress evidently did not want to pay the money the third time. (V, 46)
PENSIONS.

The act of Congress passed 11 August 1848, which renewed certain naval pensions, divided the beneficiaries into two classes: those widows and orphans who received pensions under acts passed before 1 August 1841 and those who first received their pensions within five years of the passage of the act of 11 August 1848.

In the latter act it was provided that these widows and orphans should continue to receive the amount of pension which they had been receiving "under any special act". "Special" meant in this case the same as "particular" and not the same as "private" because, if the latter meaning had been taken, it would bar from consideration most of the widows and orphans who were supposed to be benefitted. As second lieutenants in the marines were not mentioned, the act only referring to "lieutenants of marines", he ruled that Congress intended to treat the widows of all Marine Lieutenants the same. (V, 24)

The explanatory act of 27 May 1848 concerning the act of 11 February 1847, which granted bounty lands for those who enlisted in the army for the Mexican war, provided that the term "relatives in the original act should be considered as extending to brothers and sisters of the soldiers, if deceased. Toucey ruled that half-brothers or half-sisters were entitled to share equally with brothers and sisters of whole-blood, as the explanatory act did not distinguish between them. (V, 26)

The pensions of disabled officers, seamen and marines were to be determined by the degree of their disability but not to exceed one-half of their monthly pay. According to the first act passed on the subject the amount and the conditions of these pensions were to be determined by the commissioners of the naval pension
fund but later this power was transferred to the Secretary of the Navy. Therefore, said Toucey, it was the duty of that officer to determine when any certain pension was to start. He added, however, that it was the settled rule of the department that a pension should start at the time when the proofs of the injury were completed and it would be very difficult to depart from it. (V, 41)

David S. Townsend lost a leg during the war of 1812 and as a consequence was mustered out of the service and given a captain's pension. Later he was appointed battalion paymaster for which he received the regular pay of that office but continued to receive his pension. Toucey ruled that he was entitled to receive both under the act of 30 April 1844 which provided a man receiving a pension could be employed and receive pay in some lower rank than the one he had held and in "some civil branch of the service". (V, 51)

The act of 10 August 1848 placed officers of the Marine corps in the same class with army officers of like rank in regard to pensions which they were to receive because of injuries inflicted during the land fighting in the Mexican War. As they both fought together in the same battles they were to receive the same treatment. The case in question was that of James Orr, a sergeant in the Marine Corps who was wounded at Chapultepec. If the old rule had been followed he would have received a pension of six dollars and fifty cents a month but if ranked with the army officers, he would get eight dollars per month. (V, 59)

Toucey ruled that the power of commissioners of the navy pension fund to make rules and regulations concerning that fund did not extend to an enactment of a statute of limitations and there-
fore they had no right to make a rule that no application for a pension could be received more than twenty-five years after the disability had been incurred. Hence the Secretary of the Navy, who then had charge of the fund, was not forced to abide by the rule. (V, 62)

PATENTS AND DIPLOMATIC REPRESENTATIVES.

Inventors, who applied for patents in the United States on devises which had been invented in foreign countries but for which no patent had been granted in this or any other country or a description of which had not appeared in any printed publication, should be allowed to have their patents granted. Toucey maintained that there was no need for construction in regard to this point because the law of 4 July 1836 expressly provided for such situations. Foreigners were not allowed to present evidence concerning the dates of their inventions which would antedate some American's work and thus prevent him from obtaining a patent. The American, he said, had worked out the invention independently and as far as the world was concerned he was the inventor because he first brought the devise to the knowledge of the people. Hence he should have the reward which, in such cases, took the form of a patent. (V, 18)

Mr. Bryan, charge d'affaires to Peru, had drawn a bill of exchange on the treasury to pay for his outfit. This bill was not honored for some time and interest on it was charged to Mr. Bryan which he asked the government to pay. Toucey ruled that the government was not responsible for the interest because Mr. Bryan had not been authorized to draw the bill in as much as no appropriation had been made to cover this expense. There was no remedy for it except an appeal to Congress. (V, 27)
Toucey, like all the Democratic office holders, retired to private life when Taylor became President in 1849. He served two terms in the Connecticut legislature and in 1852 he was elected United States Senator. He held this office until 1857 when Buchanan appointed him Secretary of the Navy. He served in this capacity for the four years of Buchanan's administration. He was later accused of favoring the cause of the Confederacy by sending the warships of the United States to foreign ports so that they would not be ready for service against the South. This charge he always denied but he was considered a "Copperhead" during the Civil War. He continued to practice law in Hartford until his death in 1869.
XI. WHIG ATTORNEYS GENERAL.

Reverdy Johnson and John J. Crittenden.

REVERDY JOHNSON.

The Whigs had bad luck in regard to their Presidents. Both of them died after a brief time in office. Members of the cabinets of both Harrison and Taylor remained in their positions but a short time after the death of the President who appointed them.

Reverdy Johnson of Maryland was Taylor's choice as Attorney General in a cabinet which was not specially noted for its ability. John M. Clayton of Delaware, as Secretary of State, William M. Meredith of Pennsylvania, as Secretary of the Treasury, George W. Crawford of Georgia, Secretary of War, William B. Preston of Virginia, Secretary of the Navy, Jacob Collamer of Vermont, Postmaster General and Thomas Ewing of Ohio, Secretary of the Interior made up the list of men who remained in office about sixteen months.

Of this group Johnson was not the least able member. He had the reputation of being one of the leading lawyers of the country. This reputation did not deteriorate in the period which followed his occupancy of the office of Attorney General.

Reverdy Johnson was born in Annapolis, Maryland in 1796. After his graduation at St. John's college he studied law with his father, John Johnson, then chancellor of the state. After practicing law for some time in St. George county he moved to Baltimore where he soon became recognized as one of the leaders of the bar.

His first public office was that of state senator to which he was elected in 1821. He was re-elected but resigned before the end of his term. In 1845 he was elected as a Whig to the United States Senate but resigned in 1849 to become Attorney
While Johnson occupied the office of Attorney General but a short time he made several notable contributions in his opinions. His ruling in regard to nature of the opinions rendered by his office was the first statement of the kind. He said that while the law did not require heads of departments to follow such opinions it had been done in the past and he recommended it as good policy.

His opinions in regard to Indian affairs showed a clear knowledge of the law and the conditions under which they operated. The influence of the Mexican War was still powerful as shown by the number of opinions in regard to military and naval affairs, pensions and bounty lands.

Another war, that of Prussia and Austria against Denmark, was also mentioned by Johnson, in interpreting the Neutrality Act of 1818. Fitting out warships in time of war was a violation of that act and should be stopped.

Public lands is also an important subject. The value of such property had increased with the result that powerful influences are engaged in securing as large tracts as possible. Johnson interpreted such laws in such a way as to reduce large claims. On the other hand he was inclined to be generous in regard to grants to states.

The Attorney General also believed in cutting down the commissions of claim agents, especially where the latter were to receive a large part of the money paid by the government. In one case he ruled that the agent must collect from the claimant,
the government should pay him nothing.

Johnson also advised the federal prize agents to disregard the orders of a court which were contrary to an act of Congress. He said that the law ordered them to pay the money in their hands to the Secretary of the Navy and that they should do so in spite of judicial orders to pay it to other persons.

THE ATTORNEY GENERAL.

Johnson said that the act of Congress, which defined the duties of the Attorney General, did not state what effect his opinions were to have but it had been the practice of the various departments invariably to follow them. This, he said, had been done from the great advantage and almost absolute necessity of having uniform rules of decision in all questions of law in analogous cases. In his opinion this practice should be considered as law. The case which gave rise to this opinion was that of a Second Auditor, who according to a previous act of Congress and the opinion of the Attorney General at that time, was to be the absolute authority in a certain type of cases. Therefore, said Johnson, his successor must consider the decisions made by his predecessor as correct and he had no right to disregard them. (V, 97).

INDIAN AFFAIRS.

Johnson ruled that the release which the Creek Indians submitted in order to receive the appropriation which Congress had made by the act of 12 August 1848, was incorrect form. The only question was whether the chiefs and headmen of the tribe, who signed the release, were real chiefs and headmen and if they constituted the majority of the council of the Creek nation. If the officials of the Indian department were satisfied on that point then the money should be paid. Johnson also ruled that the
power of attorney which Joseph Bryan presented authorizing him to collect $23,000 as his fees for presenting the Indians' claim before Congress, was in proper form and this amount should be deducted from that paid to Creeks and paid to Bryan. (V, 79).

The money, which had been appropriated in execution of the treaty with the Creeks 24 January 1826, could be paid to the chiefs and headmen of the tribe when they signed a release in full for all claims for principal and interest on account of the emigration of thirteen hundred Indians, said Johnson. It was not necessary to have the release signed by the individual Indians, as Toucey had ruled. Johnson said that if Congress had intended to demand releases from the individual Indians, such a provision would have been included in the act. (V, 98).

Previous to 1773 George Galphin was trader among the Creeks and Cherokees in what was then the colony of Georgia. In the treaty Great Britain made with the Indians in that year, by which a large amount of land was ceded to the British government, the latter agreed to pay the debts owed by the Indians from the proceeds of the lands ceded. The commissioners appointed by Great Britain to examine and pay these debts gave Galphin a certificate for the amount which he claimed but, due to his disloyalty to the mother country during the Revolution which followed soon after, he was never paid.

Later his heirs presented their claim to the state of Georgia and still later to the United States. In 1848 Congress ordered it paid and the Secretary of the Treasury then paid the principal. Galphin's heirs then claimed that they were entitled to the interest on the claim.

Johnson ruled that this claim was a charge on the land ceded by the Indians and the charge remained after it became a part of the United States. Therefore the interest should be paid from
the date of the certificate issued by the British commission. (V, 227).

MILITARY AND NAVAL AFFAIRS.

The act of 9 February 1849, which provided for the payment for horses and other property lost or destroyed while in the military service of the United States, applied to all branches of the army whether they were officers or soldiers, infantry or cavalry just so they were engaged in the military service since 18 June 1812. (V, 80).

Johnson ruled that the claim of Colonel J. M. Cresey for money which he had expended in raising a regiment during the Mexican war could not be allowed. The act of 2 June 1848 allowed only claims for money spent after the regiments were mustered into the service. Johnson said, however, that Col. Cresey's claim was so meritorious that it should be presented to Congress, who would, without doubt, pay it. (V, 102).

While the United States did not, as a general rule, pay interest on money which was owed, said Johnson, because it was always willing and able to pay its debts, it was sometimes done and he recommended it in the case of the claim of Henry de la Francia. This man had in 1810 sold some munitions of war to the provisional government of West Florida, these munitions being taken later to Baton Rouge and later used by General Jackson in the defense of New Orleans. He presented his claim for this material, was refused payment and then appealed to Congress. After many failures to receive payment he was finally successful when in 14 August 1848 Congress passed an act directing the payment of this claim under the provisions of the act of 18 April 1814. Johnson ruled that interest at the rate of six per cent from the date of the sale to 14 August 1848 should be allowed. (V, 105).
This money was to be paid to the legal heir or heirs of Henry de la Francia. Joseph de la Francia was proved to be the sole heir. He had given a power of attorney to collect the money. According to that document, which was given to James Bowie, the latter was allowed to substitute another attorney in his place but, according to Johnson, further substitution could not be allowed. Hence Isaac Thomas could receive the money but Thomas' power of attorney to William C. Johnson was void. (V, 135, 137).

The dismissal of General Gratiot from the service by President Van Buren was final, according to Johnson. His offense was defalcation, from which charge he could not clear himself by giving quarterly statements. Payment of the money, which he owed the government, should have accompanied the statements in order to escape the charge.

When the Secretary of War reported this case to the President the latter had the right to exercise his discretion of dismissing him or not. Having dismissed the general, Johnson said, he was as much out of the service as he had never been in it. Hence the order of President Van Buren ended the matter. (V, 234).

Johnson ruled that naval vessels of the United States were entitled to salvage when ships were saved through the efforts of the officers and crew and that this money should be paid to these men. In this case the French ship Eugenie was on the rock of El Bison, where, but for the efforts of the crew of the United States steamer Iris it would have been wrecked and entirely lost.

Johnson quoted French and English legal decisions as well as those of the United States Supreme Court as proof of the soundness of his contention. He added that it was good public policy to allow salvage as it would have a tendency to make the crews of warships more willing to help ships in distress. (V, 116).
The claim of A. G. and A. K. Benson was ordered paid by the act of Congress of 3 March 1849, according to Johnson who ruled that the word "settle" meant not only adjusting the claims but satisfying them as well. This resolution also meant that all the claims of the Bensons should be settled whether they had been presented before the act was passed or afterwards. The money should be paid out of the appropriation of that year for contingent expenses for transportation. (V, 126, 131).

While a second lieutenant of the navy, who had been dismissed and later reappointed, could be given a commission dated from the time of his first appointment, he could not be paid for the time that he was out of the Navy. This could not be done except if Congress passed a special act to that effect. (V, 132).

The act of 3 March 1849, which abolished the office of prize agent, ordered all such officers to pay the funds in their possession into the hands of the Secretary of the Navy. Hence any order of a court, which directed any prize officer to pay money to persons, was not to be obeyed and such agent would not incur any liability by such action. The district court of Louisiana had ordered Robert S. Rogers to pay some of the money in his possession to Charles T. Stewart as special attorney for the parties alleged to be entitled to it. Johnson ruled that he should disobey the order of the court and pay the money to the Secretary of the Navy. (V, 142).

When bids were received for American water-rotted hemp for the use of the Navy for a period of five years some of the bids, instead of submitting an average price for the entire period, gave a price for each of the five years and that of the fifth year was much lower than that of any of the other years. Johnson said that such a system of bidding should not be allowed because it made an exercise of bad faith profitable. The contractor might fulfill the
contract
/for four years at the higher price and then fail to furnish the hemp for the fifth year, thus making it cost the government more than if some of the other bids were accepted. (V, 158).

Johnson rejected the claim of John Strahan, a sailor of the Cheasapeake who was impressed into the British service by the Leopard, as not embraced by the act of 23 April 1800. The United States was at peace with England at the time and the act of the Leopard was disavowed by the British government so that the term "enemy" could not be applied to Great Britain. Omissions in the petition of Strahan would also work against his claim because he failed to state what his conduct was during the engagement or after he was taken prisoner. He should at least prove that "he had done his utmost to preserve and defend the ship." (V, 185).

PENSIONS.

Pensions for disabled officers, seamen, and marines were to date from the time when the proofs of disability were completed, not from the date of the disability, according to the rule made by the commissioners of the navy pension fund and continued in effect by the Secretary of the Navy when he was given charge of this fund. It had the approval of several Attorneys Generals including Taney and Toucey, and should not be changed for any but the weightiest reasons. Therefore the claim of James Lewis for a pension from the date of his disability could not be allowed. (V, 133).

According to the act of 4 February 1847 soldiers who enlisted in the army and served out their term were entitled to bounty lands. John Hasson enlisted for five years and served one year as surgeon in the general recruiting service. In consequence of a general reduction of the army at the end of the war he was honorably discharged against his will. Johnson ruled that he was en-
titled to his bounty land, in spite of the fact that the Pension Office had ruled that Hasson was not entitled to it.

Johnson then proceeded to explain the law. It applied, he said, to those who enlisted in the regular army for twelve months or a longer period, volunteers who were regularly mustered into a volunteer company, served during the war and were honorably discharged, those who were killed or died of wounds or sickness during the war, and those who were discharged before the end of the war because of wounds or sickness, incurred during their service. (V, 147).

Johnson ruled that all the members of the Marine Corps who served during the Mexican war whether on land or sea were entitled to bounty lands but if they had received any prize money while serving at sea it should be given to the government. (V, 155).

Johnson refused to allow interest to be paid to the representatives of Thomas Armstead, a Virginia soldier of the Revolution. In this case the state of Virginia had paid $2,400 as commutation and later half-pay for the time that Armstead was supernumerary and now his representatives/interest on the amount which had been paid. Johnson ruled that the United States did not have the right to enlarge Virginia's obligations. The legislature of Virginia granted the claim without interest and thus it must stand. (V, 164).
ACCOUNTING OFFICERS.

The decision of the head of a department directing the payment of a claim was binding upon all subordinate officers, who were to audit and pass upon it. Johnson said that this had always been the rule of the government. The decision was the result of the approval by Secretary of the Interior, Thomas Ewing, of a claim by H. Lassell for $2,224.95 against the Miami Indians. (V, 87).

When Congress appropriated money for the purpose of paying a man, there was no discretion left the accounting officers. They could not disallow it, in whole or in part. This case arose from an appropriation made by Congress to pay the "balance" due Ebenezer Warner for construction a lighthouse at White Fish Point on Lake Superior. During the building of this structure, lighting had damaged it to such an extent that it had to be rebuilt. While the entire contract price had been paid to Warner this additional appropriation was to cover the damages caused by the lighting. (V, 94.)

Disbursing officers were not allowed to charge the government with insurance taken out for the safety of funds being transported by them, said Johnson. Only the cost of transportation could be allowed. When they accept their offices they assumed the risk of exchanges and the transportation of funds. If the funds were lost in transit they were responsible and therefore to protect themselves they might insure their safe delivery. The charges for such insurance must be paid by the officers. (V, 103).

The payment of a claim to the wrong person or persons did not relieve the government from the responsibility of making payment to
the proper claimant. The accounting officers, who made the mis-
take, were agents of the government, not of the claimant and the loss must be borne by the United States. (V, 183).

PUBLIC LANDS.

The claimants under what was known as the Arredondo Grant were too rapid in attempting to get possession of lands in Florida, according to Johnson. They had started legal proceeding under the act of 26 May 1824 to establish the validity of their claim. The lower court, confirmed later by the Supreme Court, ruled that if certain locations, which were named in the grant, could be found at or near the places named in the grant, its validity would be established. The surveyor general of the General Land office investigated and reported that the locations had been found. The claimants insisted that this survey established the validity of their title, that they had the right under the act of 26 May 1824 to declare a location and to take a like quantity of land in parcels anywhere in Florida from the public lands of the United States which had been offered at public sale. Johnson ruled that they did not have this right as the survey of the Land Office did not establish their claim. The courts must approve of this survey before the claimants have any further rights over Florida land. (V, 110).

The funds in the federal treasury derived from the sale of public lots in the city of Washington must be used in the payment of certain expenses incurred by the corporation in making certain improvements, as Congress provided that this should be done in the act of 15 May 1820. This was to be done in spite of the act of 17 May 1848 which amended the charter of the city of Washington. Johnson said that Congress could not have intended to use this money for other purposes after having pledged it for the improvements.
Even though the state of Indiana failed to comply with the conditions under which the United States granted her ninety feet of land on each side of the Wabash and Erie canal, nevertheless, the land belonged to her because the acts of 2 March 1827, 27 February 1841, 3 March 1845 and 9 May 1848 all recognized the efficacy of the original grant and waived the cause of forfeiture. Johnson also ruled that navigable feeders of this canal should be regarded as parts of the canal and that the state was entitled to ninety feet of land on both sides of such feeders as well as the main part of the canal. (V, 179).

Johnson ruled that Alabama was entitled to five per cent of the net proceeds of the public land sales made within her borders, before as well as after 1 September 1819 because similar decisions had been made in regard to the state of Ohio, Indiana and Illinois. All the cases were similar and the states should be therefore treated alike. (V, 186).

The land given to the soldiers in the Mexican war could not be disposed of by will and neither could the land scrip. The law, said Johnson, provided that in case a soldier died before receiving his land the warrants should be issued in favor of their families or relatives according to rules which the law stated. It also stated that this land could not be charged with any debts which had been incurred previous to the date of the issuing of the warrants. (V, 237).

The grant of alternate sections of land on both sides of the Des Moines river, by the act of 8 August 1846, extended the entire length of the stream even though the object of the grant was to provide funds for improvement of navigation from the mouth of the river to Pocahontas Fork. Johnson said, however, that the question had been settled by a former Secretary of the Treasury when the
office belonged to his department and therefore needed no further ruling. (V, 240).

CLAIMS.

Charles F. Sibbald and his claims against the United occupied the attentions of three Attorneys General before Johnson. By the act of 23 August 1842 the Third Auditor, under the direction of the Attorney General, was instructed to ascertain the damages which Sibbald had suffered and which he would be entitled to recover, upon principles of law applicable to such cases, because of the interference by agents of the United States with the use of his lands in East Florida. Legare instructed the First Auditor in his duties in this case, especially in regard to the law governing it. The Auditor after an examination reported that Sibbald had no claim which the United States should pay.

In 1844 Nelson reviewed the claim and concurred, except in regard to one item, with the Auditor in computing the damage to be $27,152.64. This was reported to the Secretary as the amount which should be paid.

When Mason became Attorney General an attempt to reopen the case was made by Webster, Sibbald's attorney, but Mason refused to consider it, claiming that it had been settled. Congress, however, took a hand 10 August 1846 and as a result the Secretary of the Treasury ordered the First Comptroller to examine the claim with the result that $26,029,70 was paid to Sibbald.

Johnson refused to consider the case. He said that the acceptance of the previous award ended the case and that it could not be re-opened unless Congress directed such action. (V, 122,176).

Satterlee Clarke had a claim against the United States and executed a power-of-attorney to A. Fuller authorizing him to prosecute the claim and to employ another man to assist him. For these
services each of the attorneys was to receive one-fourth of what was recovered from the government. Fuller employed J. H. Eaton and together they succeeded in inducing Congress to vote on 3 March 1849 the sum of $15,632.61. Fuller and Eaton then presented their power of attorney and asked that half of the sum voted be paid to them.

In the meantime Clarke had died, leaving a will which appointed his wife and J. H. Smith as administrators of his estate. Johnson ruled that this money could not be paid to Fuller and Eaton unless they could produce a power of attorney from Clarke which was executed after Congress voted the money, or from the administrators of his estate, because the act of 29 July 1846 provided against such payment. As this act was passed before the execution of the power-of-attorney by Clarke, Johnson ruled that it impaired no existing contract and interfered with no vested right. Hence the payment of the entire amount must be made to the administrators of the estate of Satterlee Clarke, to whom Fuller and Eaton must look for payment. (V, 85).

FOREIGN RELATIONS.

The purchase and fitting out of a war steamer by the German government during the time when it was at war with Denmark was a violation of the act of 20 April 1818, according to Johnson. There was no doubt of the intention of the acts as a warship in time of war would certainly commit acts of hostility against the ships of the enemy nation if it should chance to meet any. (V, 92).

Johnson ruled that A. J. Donelson was entitled to an outfit when he was appointed as minister to the Germanic Confederation even though he was not in the United States at the time of his
appointment. By the act of 1810 a diplomatic representative of the United States was entitled to the cost of an outfit when he was appointed to his position. The only restriction on this outfit was that it was not to cost more than the amount of a year's salary. The provision of the law which caused the doubt in this case was that the outfit was to be for a minister "going from the United States to any foreign country."

Johnson quoted numerous instances of ministers, who did not go from the United States to their locations, being given outfits. In one case the diplomat stayed in the same place but was given a new office but nevertheless he was paid the cost of an entire outfit, that is an extra year's salary. The question was also decided by William Wirt when he was Attorney General. (V, 139) Johnson made a similar ruling in regard to Nathan Clifford when he was appointed minister to Mexico and was not in the United States at the time of his appointment. He had been sent to Mexico to get the consent of the Mexican government to certain changes which had been made in the treaty at the end of the Mexican war. While there he was appointed minister to Mexico. (V, 163).

The Commissioner of Patents had the authority to satisfy himself concerning the inventions submitted to him and in spite of opinion which he might have been given in the meantime, the subject remained under his control until the patent was issued. His authority included examination and final decision. Therefore in the case of Wade and Mathews, the former applied for a patent for the applying of rosin oil in the manufacture of printing-ink but before it was issued, the latter applied for a similar patent. The commissioner declared an interference, set a day for a hearing. Neither applicant appeared at the time set and the Commissioner decided to give the patent to Wade because the priority of his application and gave notice that if no appeal was made the patent would be granted.
Before the date of the expiration of the time of appeal Mathews withdrew his application but filed another. The Commissioner again declared an interference and named a day for a hearing. This Wade claimed should not be allowed but Johnson refused to allow his contention on the grounds that, until the patent was granted, the Commissioner had full control of the proceedings. (V, 220).

Johnson was of the firm opinion that the act passed by the Congress which ended its session 4 March 1849, in regard to money received from customs, did not apply to goods imported before the act was passed. If these goods were entitled to drawback when they were imported the owners retained that right and the money should be returned when the goods were exported. The act, however, did apply to all goods imported since the passage of the act. (V, 81).

Johnson ruled that a valid transfer of the coupon stock of the United States issued by the act of 31 March 1848, could be made by an endorsement in blank. He said that the object of the part of the law, which provided for this issue, was to have them pass by delivery but that it would have been better to issue them to bearer and recommended that it should be done in the future. This omission however, did not make it necessary to have the coupons stock transfered on the books of the Treasury department. (V, 100).

When Fillmore became President, all of Taylor's cabinet resigned. During the following twenty years Johnson had one of the most extensive law practices in the country, appearing in important cases in all parts of the nation. One of his cases in 1854 took him to England where he became well acquainted with the celebrated English lawyers.

His dislike for the Know Nothings, with whom the Maryland
Whigs were closely associated, let him to support the Democratic ticket in 1856. In 1860 he supported Douglas and was a member of the Peace Congresses of 1861 and 1862. He supported the war measures of the Lincoln administration but with the advent of peace he was in favor of allowing the Southern states to return to the Union without delay. During this time he was a member of the Senate and supported the policies of President Johnson.

He resigned from the Senate in 1868 to accept the appointment as minister to England. While there he negotiated the Johnson-Clarendon treaty which was rejected by the Senate due to party jealousy. The terms which Johnson obtained in the treaty were those later accepted by the United States. In 1869 he was recalled by President Grant. He resumed his law practice which he continued until his death in 1876.

JOHN J. CRITTENDEN.

When Fillmore succeeded Taylor to the Presidency he accepted the resignations of all of the former President's cabinet and selected his own advisors. They were all men who favored the compromise measures which were before Congress at the time. Daniel Webster once more was given charge of the State Department, an office which he had held under the last Whig President, William Henry Harrison. Crittenden had also been a member of that cabinet. The others were new but all good Whigs. Thomas Corwin of Ohio was Secretary of the Treasury, Charles M. Conrad of Louisiana, Secretary of War; William A. Graham of North Carolina and John P Kennedy of Maryland were Secretaries of the Navy; Thomas M. T. McKennan of Pennsylvania and Alexander H. H. Stuart of Virginia held the newly created office of Secretary of the Interior, while Nathan K. Hall of New York and Samuel D. Hubbard of Connecticut served as Postmaster General.
After Crittenden left the cabinet of John Tyler the Whigs of Kentucky sent him back to the Senate. There he opposed the annexation of Texas and the warlike agitation in regard to Oregon. In 1844 he supported Clay for the Presidency and opposed the joint resolution by which Texas was added to the United States. He opposed the actions which led to the War with Mexico but once the hostilities started he supported it with men and money even though he considered it an unjust war.

In the campaign of 1848 Crittenden supported Taylor which led to a break with Clay. This unpleasantness did not end until the reconciliation of the two men when Clay was on his deathbed. When Taylor became President he offered Crittenden his choice of cabinet positions but he refused them all because of Clay's attitude.

When Fillmore succeeded to the office Crittenden accepted his offer to become Attorney General and served until the end of Fillmore's term. During this time several changes were made in the office. The salary was increased $6,000 a year and all the work of investigating applications for pardons was given to the Attorney General. It had formerly been done jointly with the Secretary of State with the latter officer keeping the records. In 1851 the official publication of the opinions of the Attorneys General was started and his staff was increased to two clerks and a messenger. The headquarters of the legal department was moved to its third home, an old yellow brick building on the southeast corner of 15th and F streets, where it remained until 1861 when it was moved to the south wing of the new Treasury building.

CRITTENDEN'S OPINIONS.

Crittenden's opinion as to the constitutionality of the Fugitive Slave law of 1850 followed the same lines that were later pur-
sued by the Supreme Court in its decisions, that it was constitutional because it went no further than the Constitution pointed out. In addition the provisions of the new act went no further than the Act of 1793 which the Supreme Court had approved in Prigg vs. Pennsylvania.

In regard to public lands Crittenden was called upon to decide several cases in regard to the newly acquired territory of California. The race for free land had become so intense that men had been trying to take possession of land reserved for public purposes. Of such claims Crittenden disapproved. He reversed the ruling of Johnson in the question of how much land Iowa should have for the improvement of the Des Moines river. While he approved of granting land for the purpose of encouraging the building of railroads he insisted that they not be allowed to extend their claims by construction. States were not to be allowed to pay their debts to the United States in land when money was specified in the contract.

When claims against the government had been allowed to rest without any action for many years Crittenden refused to sanction their payment without further action by Congress. This type of ruling was made necessary because of the activities of claim agents among them, John H. Eaton, who had evidently been busy unearthing old claims. Public works which were unsuccessful in operation because of mistakes of government officials, should be paid for, if the contractor had done his part in their construction. Officers and crews of the navy should receive additional pay when engaged in scientific expeditions, when such pay had been voted by Congress.

His rulings in regard to Indians were inclined to be generous especially in taking cognizance of their ignorance. If an Indian had substantially obeyed the law, his claims were upheld.

Subordinates in any department could not appeal to the Pre-
ident for the purpose of having their superior officer's decisions overruled. The President was also spared the work of overseeing the details of the work of the members of the cabinet. Following in the footsteps of Wirt, Taney, Legare and Butler, Crittenden refused to enlarge the work of the Attorney General's office by deciding questions which he regarded as outside of his province.

SLAVERY.

President Fillmore before signing the Fugitive Slave bill, one of the Compromise Measures of 1850, submitted it to Crittenden for his opinion as to its constitutionality, especially in regard to its alleged interference with the writ of habeas corpus. He especially called attention to the section in the Constitution that said that the writ of habeas corpus should not be suspended except in cases of rebellion or invasion, when public safety demanded it.

Crittenden answered that there was nothing in any part of the act which suspended the privilege of the writ of habeas corpus or was in any way in conflict with the Constitution. He quoted the second section of the fourth article of the Constitution on the subject of fugitive slaves to show that the makers of that document intended to allow slave owners to recover their lost property and the decision of the Supreme Court in Prigg vs. Pennsylvania to show that it was the duty of the federal government through the federal courts to accomplish this purpose and that the power to recover fugitive slaves was exclusive in the federal government. Therefore finding that the act of 12 February 1793 was not efficient Congress had the right to pass another law making the means of recovering lost slave property more effective.

The law under consideration did not interfere with any constitutional rights because it put the entire process in the hands of one court without appeal. Congress had the right, said Crittenden,
"to ordain and prescribe for what causes, to what extent, and in what manner persons may be taken into custody, detained and imprisoned." The exercise of this power by Congress was never regarded as an encroachment upon the privilege of the writ of habeas corpus. This writ was never intended to free persons who had violated the law, it was for the purpose to protecting those persons who were being unjustly imprisoned. The fugitive slave still had the right of using the writ of habeas corpus but he must apply for it to the proper court, the one designated by the act of Congress. The judgment of this court, as of every court of exclusive jurisdiction, would be conclusive upon all other courts.

The part of the act which said that the slave after being returned to his master should not be molested by any process issued by any court, did not mean anything further than the certificate granted according to the act of 1793 which gave the master the right to remove the slave to the place from which he had escaped. It had no bearing on the writ of habeas corpus because that writ was not intended to free prisoners who were under the sentence of a court. (V, 254). Crittenden refused to recommend the removal from office of Charles Devens, marshal of the Massachusetts district, on charges of neglect of duty in failing to execute a warrant for the arrest of William Crafts, a fugitive slave. He said that Devens might have been more energetic than he had been but when Willis H. Hughes, agent for the owner of the slave, said that he had no complaint to make against the marshal, Crittenden decided that the charges had not been sustained. (V, 272).

The marshal of the southern district of New York asked that in view of the difficulties in enforcing the fugitive slave law, counsel should be employed at public expense to advise, protect and defend him in cases arising under that law. President Fillmore asked Crittenden for his opinion on the subject.
Crittenden replied that it was the best policy as well as the most consistent with the forms and spirit of our institutions for the President to refrain from interfering with the functions of the subordinate public officers and leave them to discharge their proper duties under all their legal responsibilities. All that the President should do would be to remove them in case they neglected their duties. He said that this would best promote a faithful execution of the law. In cases where the United States was a party counsel should be employed but not in cases where only a marshal was concerned. He concluding by saying that the President had no authority to comply with the marshal's request and added that he thought it inexpedient to do so. (V, 287).

Americans who participated in the slave trade in foreign ports could be indicted in any district of the United States in which they were found. Captain Joshua M. Clapp and Captain Frank Smith were reported by Captain William S. Anderson as having brought slaves to Rio Janiero. They were in the United States at the time and could be prosecuted. (V, 454).

PUBLIC LANDS.

Public lands containing iron ore were not to be classed as mineral lands and were not to be disposed of according to the rules which governed such lands, said Crittenden. They were considered the same as other public lands. (V, 247).

Crittenden ruled that the accretion of over 50 acres at the mouth of the Chicago river, formed from the earth washed there by the waters of Lake Michigan and deposited against a pier built by the United States for the improvement of the harbor, belonged to the federal government. Robert A. Kinzie had purchased over a hundred acres from the government which also adjoined this new land. He also claimed the land as riparian proprietor. (V, 264)
Crittenden ruled that land owned by the federal government purchased with the consent of the state in which it is located, could not be taxed by the state. After the United States purchased the land the state had no control over it. (V, 316).

Crittenden disapproved of the ruling of Johnson in regard to the amount of land to be granted to Iowa for the improvement of the DesMoines river. Johnson had ruled that the Territory of Iowa should receive half of the public land on both sides of the river for a distance of five miles back from the source to the mouth even though the improvements were only to extend as far as Raccoon Fork. Crittenden ruled that only the land as far as Raccoon Fork should be given to Iowa.

Crittenden also said that the opinions of the previous Secretary of the Treasury and the Attorney General were only advisory and need not necessarily be followed. (V, 390).

Crittenden ruled that the land, claimed by James McMaster under a Spanish grant to Madame Lecompte and on which the United States had erected a fort, was not part of the Lecompte grant and really belonged to the United States. He advised that the Solicitor of the Treasury start suit for the purpose of establishing the true ownership of the land, as McMaster could not start suit against the United States. The land which included thousands of acres, was located at the mouth of Bayou Desprez and Lake Borgen. (V, 402).

The title which the United States had to the land inside the city of San Francisco, known as the government reserves, appeared to be valid, according to Crittenden. The authorities of that city derived their title to their land from an official deed given them by General Kearney, who had been civil and military governor. In this deed the government reserves were specified. Crittenden said
that if the deed was valid, the government's title was good and if the deed was not valid, they, under the treaty of Guadalupe Hidalgo, all the land in and around San Francisco belonged to the United States. He advised, however, that a deed be secured from the authorities of the city of San Francisco, relinquishing all claims to the government reserves. (V, 447).

The commissioners who were appointed under the act of 16 July 1790 to purchase or accept a site for the seat of government, had no power to sell any of the land which had been appropriated as a public reservation for the use of the United States and therefore the sale of some of this land to the Portuguese minister on behalf of his government was illegal even though the President approved of the transaction. The fact that this land was not used by the Portuguese authorities for a period of more than 50 years supported the inference that the want of authority to make such a grant was known to and acquiesced in by them. (V, 464).

An appeal from the decision of the United States district court in a land case had to be prosecuted within a year, otherwise the decree of the district court became final. A decree of the district court of Louisiana in the case of the land claims of Thomas Curry and Richard Garland was not prosecuted by the United States inside of the time limit and the Supreme Court dismissed the appeal which the District Attorney had made. Therefore, Crittenden ruled that patents should be issued to Curry and Garland. (V, 475).

Crittenden ruled that the fractional section of public land in Ohio, which Rudolph Coyle had applied for, should be sold to him. This land was included in a public sale and, while there was no evidence on the subject, it was to be presumed that the auctioneer offered this particular land for sale. Such proof Crittenden
ruled, was not necessary. Coyle later entered on this land at a private sale and his application was rejected by the Register. Later Coyle tendered the purchase money to the Treasurer of the United States who refused it. Crittenden ruled that Coyle’s failure to appeal to the General Land Office did not mean an abandonment of his application and that a patent for the land should be given to him. The city of Cincinnati could be settled in the courts after Coyle’s patent had been issued. (V, 475).

Congress, by the act of 20 September 1850, had granted to the state of Illinois alternate sections of land six sections deep along the right of way of a railroad which was to connect Chicago and Mobile. The grant was the assistance given by Congress in building this railroad. Crittenden was called upon to decide whether the location of the road was according to the law. He said that, in spite of some objections, it conformed to the law. One of the objections was that the road extended a long distance in the direction of Chicago before the branch to Dubuque began, thus making the road longer than it needed to be. As the law did not specify where the Dubuque branch was to begin, the objection was not valid.

The state claimed that it was entitled to six sections of land for every mile of railroad built but Crittenden refused to sanction the claim. Where the railroad did not follow a straight line the state could only claim the land which joined the right of way extending six miles back. This would materially decrease the amount which would be given to the state. (V, 518).

While Congress granted land to the states of Alabama, Mississippi and Illinois for the purpose of aiding in the building of the Mobile to Chicago railroad, it provided for no land nor even the right of way through the states of Tennessee and Kentucky, though the road was compelled to pass through these states.
The right of way through each state was under the control of that state but each state controlled no further than its borders. The state of Mississippi could claim none of the Chickasaw lands but if the railroad passed through them, the state might claim an equivalent in land located elsewhere. (V, 603)

Pre-emption rights were not to be denied persons because they were aliens. Crittenden did not quote the opinions of previous Attorneys General in support of this contention but he could easily have done so. (V, 551).

In 1833 Congress granted to the state of Wisconsin, 158,996 acres of land, the proceeds from the sale of which were to aid in the building of a canal from Lake Michigan to Rock River. One of the provisions of this grant was that if the canal was not finished inside of ten years the state would be liable to the United States for the proceeds of the land sold at a rate of not less than $2.50 an acre.

The canal was never finished but the state sold all the land except 13,564 acres. In the meantime the state had given up the idea of finishing the canal. By the act of 1841 the United States granted Wisconsin 500,000 acres. Crittenden ruled (and the state agreed) that the 13,564 acres should be deducted from 500,000 acres granted in 1841 but the money which Wisconsin owed the United States because of the land sold on the canal project, should not be offset with more of the land. Crittenden said that Wisconsin owed the money to the United States but this debt could not be cancelled by withholding part of the half million acres. (V, 574).

Lands which had been purchased or reserved by the United States for lighthouses, barracks, navy yards or other similar purposes were not to be included in the designation of "public lands." Such lands were, said Crittenden, in law and in fact
severed from the public domain and no law or warrant which au-
thorized the appropriation of "public lands," could be construed
to embrace lands which the United States held by such purchase
or reservation. (V, 578).

If a volunteer was mustered into the service during the
war with Mexico according to the act of 16 May 1846, but was
honorably discharged before marching to the seat of war, Crit-
tenden ruled that he was entitled to bounty land under the act
of 11 February 1847. (617).

PENSIONS.

The representatives of a widow of a Revolutionary soldier
who had received a pension from the date of her husband's death
until her own, claimed more money because the pension should have
started at an earlier date, according to their contention. This
claim Crittenden overruled because the pension was a personal
bounty to the widow and she had agreed to the date of the begin-
nung. All that the representatives were entitled to was the a-
mount of money which had accrued to the widow before her death
but which at that time, was unpaid. (V, 248).

John Rush, a sailing-master in the navy, became insane while
in the service and was placed in a hospital in Philadelphia where
he remained until his death in 1837. During this time he was on
half pay. This money was paid to his father until the latter's
death in 1813, after that time it was not paid and John Rush's
name was dropped from the naval register. In spite of this fact
Crittenden ruled that Rush's estate was entitled to the half-pay
until 1837 and that he was in commission as sailing master until
that time because he was in a condition in which he could not be
legally suspended or discharged. As there was no appropriation
from which payment could be made, Crittenden recommended that an
estimate of the amount owed to Rush be made, presented to Congress and an appropriation asked to cover it. (V, 237).

MILITARY AND NAVAL AFFAIRS.

Crittenden ruled that a Mr. Espy was not entitled to the pay of a professor of mathematics because the law required that to draw such pay he must be attached to some vessel in service or in some navy yard. Professor Espy was only entitled to pay for service performed by him at the depot of charts and nautical instruments. He had asked for both salaries. (V, 250).

Several midshipmen had been court martialed and the sentence was approved by President Taylor but later he agreed to reconsider and restore them to their former rank. He was prevented from so doing by his sudden death. Crittenden ruled that President Fillmore could restore them provided that it could be done without increasing the number of midshipmen beyond the limit allowed by law. (V, 259).

A prize agent, Charles T. Stewart, refused to comply with the law of 3 March 1849 which required such officers to deposit all the prize money held by them in the Treasury, on the claim that the law did not apply to him. Crittenden quoted the case of Robert S. Rogers and advised bringing action against Stewart for the purpose of obtaining the money. (V, 266).

Crittenden interpreted the act of 3 March 1851 to mean that if the individuals who were parties to the alleged contract of 17 January 1851 were still willing to enter into a contract as modified by the act, that is the floating dock alone without the basin or railway, and were willing to do the work at the estimates made by the Navy Department, then the Secretary of the Navy could enter into contract with them without re-advertising for bids. If not, they were then bids must again be advertised for. (V, 311)
Commodore James Barron claimed that he was entitled to the pay of senior captain in the navy from 1801 until 1838 when he began to draw the pay of senior captain. This claim was based upon supposition that Commodore John Rodgers was dismissed from the Navy in 1801 and never re-appointed. He served in the Navy during those years but Barron claimed that this service and the pay he received were illegal. Barron submitted letters to prove his case but Crittenden maintained the proof was insufficient. The letters failed to show that Rodgers was dismissed, they only showed that he was threatened with dismissal and that soon afterwards he was given command of the frigate John Adams. Crittenden also said that after so great a lapse of time no question should be considered. (V, 365).

When suits were brought against naval officers for personal injuries inflicted under color of office and in which the United States had no financial interest the costs of the case including the attorneys' fees should be paid by the officers themselves. In cases where the United States had a financial interest the government should pay the proportion of the fees corresponding to such interest. In the case of the ship Admittance, which was condemned as a prize, one-half of the proceeds to go to the United States for the navy pension fund and the other half to the crew of the captor ship, a suit had been brought against the commander of this ship, Commander J. B. Montgomery. Crittenden ruled that half the costs should be paid by the United States and half by the crew of the captor ship. (V, 397).

Samuel D. Dakin and Rutherford Moody had built, under contract with the Navy Department, a floating dock, basin and railroad at the Philadelphia Navy yard. After it was built the experiment of docking a vessel there failed because of insufficient depth of water. Crittenden ruled that the contractor should be
paid the entire amount stipulated in their contract because the lack of water was not their fault. (V, 407).

The Secretary of the Navy had the power to approve the sentence of a court martial convened by him when the sentence of the court did not extend to loss of life or to the dismissal of a commissioned or warrant officer. This power had its origin, said Crittenden, in the act of 23 April 1800, which reserved to the President the power to approve of the heavier sentences but gave to the officer calling the court martial the right to approve the milder sentences. (V, 508).

In his opinion concerning the pay which Lieutenant Wilkes should receive as commander of the exploring expedition to the Pacific Ocean and the South Seas, Crittenden gave a complete history of the trouble in regard to this matter. He concluded by allowing Lieutenant Wilkes the amount which had been given him originally by the regulation of the Secretary of the Navy when the expedition sailed but which the accounting officers of the Treasury had refused to allow.

This regulation allowed all the officers of the expedition their regular pay as officers of the Navy and in addition extra pay equal to that received by those men engaged in the coast survey when they were employed in scientific duties. This extra pay having been called into question by the accounting officers, several Attorneys General had given their opinions thereon, among them, Legare and Mason, confirming the opinions of the accounting officers. Congress passed the remedial act of 3 March 1843 in order that the officers might receive the extra pay because the expedition had been a great success in conferring great benefit to navigation and other scientific causes. This act, Crittenden maintained, should be interpreted liberally, not as the account-
The act of December 1814 allowed the enlistment of minors without the consent of the parents or guardians. This act remained in force until the passage of the act of 1851 which repealed that part of the act of 1814. The question then arose concerning the discharge of those minors who enlisted without the consent of their parents or guardians. Crittenden ruled that the Secretary of War was not required to discharge all minors who, at the time of their enlistment, were without parents or guardians. Those minors who had such relatives must have them join in the application for discharge before it could be considered. Unless this was done they could not claim their discharge until they attained their majorities. (V, 313).

The decision of the Secretary of War that certain officers held commands according to their brevet rank must be considered by the accounting officers as final. They were not allowed to conduct any collateral investigation as to the correctness of the Secretary's decision. (V, 386).

Soldiers who received extra pay at the rate of two dollars a month because they had received certificates of merit were to receive that extra pay during all their enlistments in the army and did not stop with the term during which the certificate was granted. Crittenden said that it was the policy of the government to encourage re-enlistments and cutting the pay of these men would have a tendency to discourage such men from continuing in the army. (V, 400).
Volunteers who enlisted for the Mexican war in Council Bluffs, Iowa, and were discharged in Los Angeles, California, were to receive mileage computed for the overland route not by way of Panama, according to Crittenden, who maintained that the law specified the most direct route to the place of their enlistment. The volunteers might return by way of Panama but their mileage must be computed by the overland route. (V, 516).

Crittenden ruled that the armory at Harper's Ferry was to be considered a military site, according to the act of 3 March 1819 and that part of the land of the armory might be sold if found useless for military purposes. (V, 549).

Colonel D. D. Mitchell had been sued on account of some actions while an officer in the army and Congress had passed an act indemnifying him for his losses on that account. Crittenden ruled that this amount did not include the money Mitchell spent in getting the relief act passed or the amount which he estimated as his loss of credit due to the suit. (V, 622).

Dr Carmichael had a contract with the United States government to furnish cannon shot. He assigned this contract to S. R. Anderson who claimed that he purchased this contract for valuable consideration, without notice. Crittenden ruled that a contract was not assignable and that Anderson had no claim upon the United State. (V, 502).

INDIAN AFFAIRS.

Abbah Hotiah, an Indian woman, claimed a reservation of land under the Choctaw treaty of Dancing Rabbit Creek. As a head of a Choctaw family she was entitled to such reservation. She gave notice, made claim to the agent, as required by the treaty but the agent failed to make an entry of her claim in his register. Shortly after this the agent died but another agent, authorized by the
government, approved of the facts of the case as stated. He made
a location of her claim which was certified and returned to the
General Land Office.

The objection to her claim was that President Jackson had ruled
that the register of the first agent should alone be received
as evidence of such claims. Crittenden ruled that this case was
not one intended to be excluded by Jackson's order and as the
Indian woman had complied with all the terms of the treaty, such
as living on the land for five years, she should be given a pa-
tent for her land. (V, 251).

The claim of W. G. and G. W. Ewing against the Pottawato-
tomies had been allowed by the preceding Secretary of the In-
terior and for that reason Crittenden ruled that the claim should
be confirmed and the decision of the former cabinet of-
officer be considered conclusive. As there was a dispute as to
what persons were legally entitled to the money Crittenden ad-
vised that payment be suspended until this question had been
decided by the courts. He also said that if the Indians felt
that the claim was unjust they could also appeal to the courts.
(V, 284).

Crittenden ruled that all treaties with the Indians after
the passage of the act of 27 February 1851 must have been ne-
gotiated by agents and officers of the Indian department who
were designated by the President and that the act applied to
treaties which were being negotiated as well as those in re-
gard to which the negotiations started after the passage of the
act. This ruling was made as a result of a treaty with the
Mississippi and St. Peter Sioux Indians and half-breeds for the
extinguishment of the title to their lands on the Red river of
the North in Minnesota. The commissioners who were to nego-
law referred to but the treaty had not been concluded at that time. Neither of the commissioners were agents or officers of the Indian department. Therefore Crittenden ruled that these commissioners could not continue their negotiations. (V, 305).

ACCOUNTING OFFICERS.

The head of a department was authorized by the act of 26 August 1842 to transfer the surplus of one appropriation to make up a deficit in another provided it was in the same department or office. This part of the act was intended to be permanent, according to Crittenden, and limited the power of the department heads to the surplus of appropriations while the power of the President in this regard extended to entire appropriations. (V, 273, 274).

The President, said Crittenden, could not entertain appeals in matters of accounts either on the application of the Commissioner of Customs, the Comptroller, Auditors, or individuals claimants. The jurisdiction of the Commissioner of Customs was not final and exclusive of the jurisdiction and authority of the Secretary of the Treasury. The duty of the Commissioner to countersign warrants did not authorize him to revise or supervise the decision of the Secretary of the Treasury.

This opinion was the result of an appeal to the President by the Commissioner of Customs in regard to some warrants which the Secretary of the Treasury had signed but which the Commissioner did not think were legal and which he refused to sign. He said that he wanted the decision of the President on them. Crittenden quoted the opinions of several Attorneys General, among them Wirt, Taney, Butler and Johnson, on similar cases which they decided in the same way. (V, 630).
Crittenden ruled that a man could hold a position as clerk, to aid in the supervision of the Coast Surveys, salary $400 per year and, at the same time hold the office of clerk in the Treasury Department, salary $1,400 per year. He said that the acts of 3 March 1939, 23 August 1842 and 30 September 1850 did not forbid a person holding two compatible offices at the same time but were intended to prevent arbitrary extra allowances in each particular case. In this case the salaries of two offices were fixed by law. (V, 765)

Crittenden ruled that interest should be paid from the date the money was paid by the claimants until the time that they received payment at the Treasury provided they did not withhold their evidence to repay an unreasonable time. This was according to the act of 2 June 1848 to refund expenses incurred for subsistence or transportation furnished for the use of volunteers during the Mexican war. The question was whether interest should only be paid to the date of the passage of the act or to the date when the claim was presented. (V, 399)

THE PRESIDENT.

The President was not supposed to settle disputes such as the disputed question of how much land the state of Iowa was to receive on account of the improvement of navigation on the Des Moines river, or to interfere in the matter of the memorial of Fellows and company who asked his assistance in compelling the Secretary of War to file the report of the Arbitrators between the Seneca Indians and themselves. The President was supposed to have general supervision over the Executive department but he could not spend his time correcting errors and supplying commissions. This, Crittenden said, would take all his attention
The President had the power to remove the Chief Justice of the Territory of Minnesota and Crittenden said that it was his duty to do so if the Chief Justice was incompetent and unfit for the office. The President could remove any of the officers whom he had appointed except those whose term the Constitution provided should be during good behavior. This question, Crittenden said, had been long since settled and had ceased to be a subject of controversy or doubt. (V, 288)

In considering the application for the pardon the See-see-sah-ma, and Indian sentenced to be hung for murder, Crittenden discussed the President’s pardoning power. The general power to pardon included the power to pardon conditionally or to commute the sentence to a milder form of punishment. If the condition was such that the government could not enforce it, then the pardon amounted to an unconditional one. The Indian’s sentence had been commuted to imprisonment for life in the Missouri penitentiary, where he was to be treated as a prisoner of the state except that the United States was to pay the expenses. (V, 370, 368)

CLAIMS.

The claims for injuries sustained by Spanish officers and Spanish inhabitants of Florida under the Treaty of 1819 were to be settled first by the judges of the superior courts of Florida and then approved by the Secretary of the Treasury. The Secretary was the tribunal of revision and could not only inquire into questions of jurisdiction but could go into the merits of the questions. In fact the claims could not be paid until the Secretary finally decided on the amount.

Crittenden answered the claim that the acts of Congress
were in conflict with the treaty by denying that they were but added that if it were true then the treaty must yield to the laws. He said that if the Secretary's revisory power could not be used lawfully then his authority to pay the claims was invalid also. He could not pay interest on the claims, a long series of opinions and decisions had established that custom. (V, 333)

According to the records of the Treasury of the United States had owed D. Ross $19,667 since 2 April 1781 but no effort was made to collect until John H. Eaton presented the claim by the children of Ross. Crittenden, in his opinion, said the claim was barred by the act of 9 July 1798 and in addition he did not think claims, which had stood for that length of time, nearly seventy years, should be paid because so long a delay created a strong presumption against it. It should not be paid unless Congress should take further action in regard to it. (V, 250)

POST OFFICE DEPARTMENT.

A contract had been made with E. K. Collins and his associates for the building of five steamships for the mail service which contained a provision that money should be advanced to the builders on the launching of each ship. At the time this opinion was given four had been launched and the advances made but Collins wanted another advance. This, Crittenden at first ruled, should not be given but in a later opinion, he said that this advance might be made because the four ships already built were equal in power and tonnage to the five ships originally contracted for and would be adequate for the mail service. He left it to the judgment of the Secretary of the Treasury. If he thought it proper to pay this money for the purpose of aiding
The "great and noble enterprise", it would not be improper. (V, 245, 255)

The claims of mail contractors for one month's extra pay when their contracts were annulled and the service discontinued, were to be decided by the Postmaster General or the Auditor of the Treasury for the Post Office Department and their decision was conclusive. The opinion of the attorney General could be asked but it need not be followed, according to the act of 2 July 1836. (V, 246)

The compensation which was to be paid to A. G. Sloo for the transportation of mail in steam vessels, should be in proportion to the service performed, for the reason that Congress had appropriated the money and directed that it should be paid. In spite of the fact some advances had been paid to Sloo, Crittenden ruled that the entire amount should be paid and the refunds left to the action of Congress. (V, 271)

The acts of Congress which regulated the compensation of postmasters gave the Postmaster General the right to allow them a commission on all money received by them. When this was done it was to include the commission on foreign, as well as domestic postage but the amount due to Great Britain for postage on British letters could not be lessened because of the money paid to the postmasters as commissions. (V, 300)

Advertising for the Post Office Department must be placed in three Washington papers, the two having the largest circulation and one other selected by the President. The number of papers receiving this advertising could not be increased, said Crittenden. (V, 315)

The franking privilege of Senators and Representatives began, said Crittenden, with their term of office, not with the
time of their taking the oath of office or taking their seat. (V, 358)

Crittenden in interpreting the act of 3 March 1851 in regard to the transportation of mail, ruled that weekly newspapers could only be carried free of postage inside of the country where they were published. Postage charged on papers sent outside the country should be computed from the place of their publication. He also stated that the term "periodical" as used in the act did not include newspapers. (V, 371)

Crittenden refused to give an opinion on the question of whether Littell's Living Age was a newspaper or a periodical. He said that the Attorney General gave opinions only on questions of law and to decide what was submitted would require an opinion on question of fact. In deciding whether a publication was a newspaper or a periodical it was necessary to consider its size, time of publication, and its contents. The Postmaster General must decide the questions. (V, 375)

Several cities, including Jersey City, had passed ordinances regulating the speed of railroad trains inside the limits of the corporation, the limit in Jersey City being six miles per hour. These ordinances were objected to because they retarded the transportation of the mails which were carried by the trains. Crittenden ruled that the cities had the right to pass and enforce such rules and they could not be called into question under the act of Congress passed 3 March 1825, which forbid under penalty of a fine the willful obstruction of mail carriers. (V, 554)

Money which had been regained from mail robbers should be returned by the Postmaster General to the owners, provided there was evidence, either direct or circumstantial, which established
the true ownership to a reasonable certainty. (V, 557)

Letters in the custody of the postal service could not be attached by processes issued by a state count. (V, 560)

**DISTRICT ATTORNEYS AND MARSHALS.**

The district attorneys of Louisiana and Florida were not entitled to extra pay for attending to certain suits instituted against the United States within their districts, said Crittenden. According to the acts of 24 September 1789, 26 May 1824, 18 May 1842 and 17 June 1844 the district attorneys were supposed to represent the United States in all suits brought against the government. The salaries of the district attorneys might have been inadequate but they could not be increased except by an act of Congress. (V, 261, 567)

Crittenden ruled that Logan Hunton, district attorney for Louisiana, was entitled to extra pay for services which he performed for the State Department in regard to the Cuban expedition. These services were entirely outside of his official duties and being difficult and long continued to such an extent that Crittenden thought that $1,500 or $2,000 a reasonable amount to pay. However he advised that the matter be referred to the State Department for the purpose of having the amount of compensation estimated. The money should be paid out of the appropriation for the contingent expenses of foreign intercourse. (V, 577)

**THE TARIFF.**

The authority which was given to the Secretary of the Treasury by the act of 3 March 1797 to remit penalties and forfeitures in certain cases, did not authorize him to remit under conditions which would expose the customs officer to danger of being
sued for damages on account of the seizure.

When the district judge before whom a case of the violation of the revenue laws was brought decided in favor of the defendants and refused to give the arresting officers a certificate that there was a reasonable cause for the seizure, the case should be appealed to the Supreme Court.

The case was that of the British ship Baron Renfrew, whose officers were accused of violating the revenue laws in California (V, 658)

OREGON TERRITORY.

The governor and the legislature of Oregon territory were having a dispute and the matters which caused it were submitted to Crittenden who sent the papers to the President. Fillmore in turn referred them to the Attorney General for his opinion.

Congress had passed two acts in regard to Oregon territory. The first established the government of the territory and did not give the governor the veto power over the acts of the legislature. The second appropriated money for the building of the capitol and the penitentiary, and gave the governor equal rights with the legislature in spending of this money.

The legislature and the governor had disagreed on the location of the capitol and the latter attempted to veto the measure. This, Crittenden ruled, he had no right to do, as the act of Congress specifically gave the legislature the exclusive right of passing laws. However in spending of the money appropriated for the building of the capitol as well as the penitentiary the governor's consent and agreement was necessary.

This act of the Oregon legislature was pronounced null and void by Crittenden because it violated the provision of the act
of Congress, establishing the government there, which stipulated that no act of the legislature should "embrace more than one object" while the law in question included more than one. (V, 359, 525)

MERCHANT MARINE.

Three American sailors who shipped aboard a British ship, wrecked on the Bahama Banks, applied to the United States consul at Nassau for relief. The consul required the services of an American ship to bring them to Baltimore. There the master of the ship received a certificate for the passage money from the customs house and sent it to the Fifth Auditor, who refused payment on the grounds the sailors had shipped on a British vessel.

Crittenden ruled that the master of the ship was entitled to the passage money because the act of 28 February 1803 for the relief of destitute mariners and seamen of the United States applied to the three men in question. They were American seamen even though they were working on a British ship. He added that the master of the ship which brought them to Baltimore was entitled to the passage money in any case because he had merely obeyed the orders of the United States consul at Nassau. (V, 547)

The act of Congress passed 23 December 1852 provided that American registry could be given to foreign built ships, wrecked in the waters of the United States, purchased and repaired by American citizens, provided the cost of the repairs should be equal to three-fourths of the value of the vessel when repaired. Crittenden ruled that the expenses of floating the vessel and getting it into port should be counted as part of the cost of repairs. (V, 674)
DUTIES OF THE ATTORNEY GENERAL.

Crittenden refused to advise a committee of the House of Representatives in regard to a claim pending there. He quoted an opinion of Ward to show that the Attorney General did not have the authority to give such opinions. (V, 561)

Crittenden wrote the Secretary of the Navy, J. P. Kennedy, that it was not the duty of the Attorney General to give advice on questions of fact or to review the proceedings of the court martial in search of questions of law. (V, 626)

When the Democrats returned to power in 1855 Crittenden returned to Kentucky and resumed the practice of law. He was not destined to remain long in private life for the next year he was elected to the Senate. Being opposed to the extension of slavery he voted against the Kansas-Nebraska act. He favored the retention of the Missouri Compromise and allowing slavery to die a slow death. In the struggle concerning Kansas he regarded the Topeka constitution as illegal and the Lecompton constitution as a fraud.

With the downfall of the Whigs Crittenden became a Know Nothing, advocating restrictions on aliens especially in regard to public land. In 1860 he supported the Bell-Everett ticket in spite of his improved opinion of Douglas due to the latter's opposition to the Lecompton constitution. He opposed secession and made a determined effort to reconcile the differences between the North and the South. He disagreed with Buchanan that the President had no power to deal with the seceded states. He introduced into Congress the "Crittenden propositions" which included restoring by constitutional amendment the Missouri Compromise line and guaranteeing the protection of slavery in the District of Columbia from congressional action. When these pro-
positions were defeated he supported the program of the Washington Peace Conference.

Having failed in all these efforts he turned his attention to Kentucky where he was successful in preventing the secession of his home state. He introduced into Congress resolutions stating that the war was not for conquest, the subjugation of the South, or the interference with the established institutions in any state but for the preservation of the Union. He opposed the dismemberment of Virginia, the confiscations acts, the enlistment of negro soldiers, the Emancipation Proclamation and the military control of Kentucky. He died in 1863.
XII. CALEB CUSHING.

Robert J. Walker engineered the nomination and election of James K. Polk and Caleb Cushing was the master mind behind the elevation of Franklin Pierce to the Presidency. Both Cushing and Pierce belonged to the group known as "northern men with southern principles" but Cushing was too well known and too well hated to be available as a candidate. Pierce, on the other hand, was comparatively unknown, handsome, a war hero with no political past to injure his chances of election.

When Pierce was elected it was expected that Cushing would be made Secretary of State. That office, however, was given to William L. Marcy, Polk's former Secretary of War but it failed to carry with it the leadership in the cabinet. It is probable that Cushing could have had the headship of the State Department had he wanted it. He preferred to be Attorney General and from that position to be the power behind the throne.

Cushing shared the leadership of the cabinet with the Secretary of War, Jefferson Davis of Mississippi. Davis intended to retire from politics after his attempt at secession in 1815, and according to H. S. Foote, he would have remained in retirement had it not been for Cushing's advice that he be brought into the Pierce cabinet. Davis' health had been poor but it improved to such an extent during his four years with Pierce that he continued his political career.

Cushing's usefulness was not confined to giving opinions to the President and the heads of the departments on questions of law, though his opinions fill over two thousand pages in the official records, more than any Attorney General before his time. His advice was sought by the President on all the important questions which arose. He looked "eye to eye" with Pierce and the
other members of the group which was in control at the time. He had no hand in the framing of the Kansas Nebraska bill but he helped in pushing it through Congress and advised the President to use the power of the patronage to bring support to it.

The other members of cabinet were of secondary importance. They were James Guthrie of Kentucky as Secretary of the Treasury, James C. Dobbin of North Carolina as Secretary of the Navy, Robert McClelland of Michigan as Secretary of the Interior and James Crawford of Pennsylvania as Postmaster General.

The appointment of Cushing brought down the wrath of many prominent men of both parties on the head of the President. Benton said in speaking of the members of the cabinet, "Of all these, the Attorney General is the master mind. He is a man of talent, of learning, of industry, unscrupulous, doubled-sexed, double-gendered and hermaphroditic in politics— with a hinge in his knee, which he often crooks, 'that thrift may follow fawning' . He governs by subserviency; and to him is deferred the master's place in Mr. Pierce's cabinet. When I heard that he was to come into the cabinet I set down Mr. Pierce for a doomed man, "*I had known Mr. Cushing as an abolitionist, voting against Arkansas because she was a slave state, and backing Slade of Vermont in an attempt to abolish slavery in the District of Columbia. I had known him as a Whig, attacking the Democracy and all their measures; as a Tylerite, auctioneering offices for Tyler as long as he had an office to go to the hammer".

Cushing was the first Attorney General to spend his entire time performing the duties of his office. He gave up his entire law practice. He considered this to be his duty, as Congress had, just before he took office, increase the salary of the position to $8,000, the same as paid the other members of the cab-
They were required to give their entire time to their offices and, while the law did not expressly require it, Cushing thought the rule should apply to the Attorney General.

Caleb Cushing was born in Massachusetts in 1800. He graduated at Harvard and spent an additional year in the Harvard law school. He then returned to Newburyport where he completed his legal studies and was admitted to the bar. His entry into politics was in the party of John Quincy Adams in the campaign against Andrew Jackson. He became a strong Whig and a favorite of Webster and Edward Everett. During his first term as a member of the House of Representatives he supported Adams in his effort to maintain the right of petition.

Cushing's break with the Whigs took place during Tyler's administration. When Webster, Clay and the other leading Whigs deserted the President, Cushing supported him. He was classed as a renegade by the Whigs and accused of standing by the President in order to get political perfermant. During one of his campaigns for governor of Massachusetts James Russel Lowell mentioned him in the following stanza; of the Biglow Papers:

"General C. is a dreffle smart man;
He's ben on all sides that give places or pelf;
But consistency still wuz a part of his plan,-
He's been true to one party--an' that is himself".

If Cushing's course was shaped in order to obtain office he was greatly disappointed. Tyler tried to reward him by appointing him Secretary of the Treasury but the Senate refused to confirm the nomination. Later he was sent to China as a commissioner to negotiate a commercial treaty with that country. That he was successful in this endeavor was due in part to the fact that he
had mastered the Chinese Language to such an extent that he could use it in carrying on the discussions with the Chinese officials.

His separation from the Whigs threw him into the Democratic party. He belonged to the section that favored a large army and navy and wished to annex Texas, Oregon and Cuba. He supported Polk, and when the War with Mexico broke out, raised a regiment, which he commanded, at a cost of $12,000 of his personal funds.

On his return from Mexico he ran for governor of Massachusetts but was defeated. He served as mayor of Newburyport and occupied for a short time a seat on the bench of the Massachusetts Supreme Court before his appointment to the cabinet.

CUSHING'S OPINIONS.

Much additional work had given the Attorney General. Investigation of applications for pardons, legal and judicial appointments and extradition problems had been transferred from the State Department and doubled the amount of work expected of the legal department. Cushing, however, was a diligent worker. He was frequently at his office at 6 in the morning while noon was the regular time for the other cabinet officers to start their daily labors. His industry was shown by the tremendous volume of opinions which he rendered. Not content with answering the queries which came to him from the President, heads of the departments, and Congress, he did not allow the rule laid down by Wirt that the Attorney General should not give advice to the latter, he made an exhausting review of the history and duties of his office which he submitted to the President after he had been in office for a year.

This document is well worth examination, stating as it does, the working of the federal government as it concerned the legal adviser. Cushing traced the functions of government from the
beginning. While the Constitution did not mention the cabinet as a body it did recognize the existence of the heads of the various departments and said that the President could ask for their opinions on any matter relating to their departments. Carrying out the provision of the Constitution Congress established first the Department of State, then the War Department, the Treasury Department and later in the same session made provision for the offices of the Attorney General and Postmaster General. Later during the administration of John Adams the Navy Department was started. During Washington's administration the heads of the State, War, Treasury Departments and the Attorney General met together to discuss matters of importance, acted together and "adopted joint rules which were signed by them, as to the political and military questions pending between the United States and France". It was not until Jackson's administration that the Postmaster General was included in the cabinet discussions. During Polk's administration the Department of the Interior was established, transferring to it some of it some of the duties of the other cabinet members, particularly the Secretary of State.

The two functions of the Attorney General were to conduct all suits before the Supreme Court in which the United States was concerned and to give advice. This advice, says Cushing, was the same in kind, if lesser in degree, as the decisions of the courts of justice. These opinions were in many cases final and conclusive because he took the responsibility for them from the shoulders of the other officers. In many instances he heard arguments on both sides before making a decision thus forming another resemblance to the courts. The Attorney General, how-
ever, did not have to make an award, to determine questions of fact nor could anyone appeal a case to him after it had been settled in another department, nor would he give advice even to heads of departments in regard to matters in which the United States has no interest. He should not give advice to individuals in regard to any case pending between them and the Federal government.

While the law of 1789 establishing the office only made it the duty of the Attorney General to appear in cases before the Supreme court the President could instruct him to appear in other courts where his presence was deemed necessary. Even Washington on one occasion did this. Other duties had been added, some of them temporary and some permanent, some legal and some administrative. For a time, for instance, he, together with the Secretaries of State and War had charge of the patent office. He was also for a time on the board which inspected the assay of gold and silver for coinage. He had been called upon to appear before commissioners who were appointed under a treaty when legal advice was necessary and on one occasion he acted as a commis-

sioner to settle claims between the United States and Peru. The most serious of the incidental duties of the Attorney General was the supervision of the legal disputes arising out of the additional territory gained by the United States from France, Spain and Mexico.

Another addition to his duties, this one permanent, was the investigation of the titles of land purchased by the Federal government for public buildings, forts, navy yards, etc. In this work, it might be added her that Cushing refused to recom-

mend the purchase of any land until the title was entirely without flaw, for the reason that the government's investment was
to large to be later endangered by title disputes. He refused to relax his rules in spite of one instance where the land was very desirable and the price very low. (VI, 432) Together with the Secretary of the Interior his approval was necessary for the final settlement of all suspended entries for public lands.

He also has supervision of the activities of the Solicitor of the Treasury in the collection of money due the government. The official seal of the department was likewise in his care and like all officers of the same class had the appointment of clerks and other assistants. While such were the regular duties of the Attorney General Congress could call upon him to perform others if it so wished.

In regard to some departments the acts of Congress establishing them designated the nature of the duties to be performed, in others they were left to the discretion of the President. In the latter class was the office of the Attorney General but in all the departments considerable latitude was left because the operation of the various branches of the government could not be worked out in detail before they were established.

There was considerable question as to the relationship of the President and the heads of the departments with the chiefs of the bureaus especially the accounting officers of the Treasury. It had been decided by William Wirt that an auditor when he made a decision could not be overruled by the President. This, it was found, did nothing but cause confusion because the auditor was under the direction of the secretary of his department and that secretary was a subordinate of the President, yet this auditor could overrule his superior. This decision was con-
traded as being contrary to principles of government. It was announced in the first place in order to free the president from numerous appeals from persons who considered themselves unjustly treated by the accounting officers.

After reviewing the duties of the Attorney General he recommended that he be required to make periodical reports to the President and through him to Congress and that three additional duties be given to his department. These were: suits in which the United States, though not a party of record, would ultimately be concerned, pardons and commissions of public officers of a judicial character. This recommendation was soon after enacted into law.

Cushing concluded his report to the President by commenting on the recent increase in the Attorney General's salary putting him on an equal footing with the other cabinet officers and added that while the law did not require him to give all his time to the office as it did in the case of the others he understood it to infer that he should. Previous Attorneys General had been expected to add to their official income by private practice and for that reason had not been paid as much as the other members of the cabinet. (VI, 326-355)

In other opinions Cushing put some limits on the advice which he would give. He refused to give advice to the directors of the Smithsonian Institute (VI, 24) or to the local officers of the Treasury Department. To the later who had submitted a list of hypothetical questions he wrote that to perform duties of that kind would overtax the energies of any man. (VI, 21) He also declined to fix the amount of compensation which special counsel
engaged by the Secretary of State should receive. (VI, 635)
The relationship of the Attorney General's office to the other
departments of the government was that of lawyer to client,
the former to decide points of law and to conduct the legal
work before the courts but the latter to determine whether they
wanted suits started and if started, how far they wished them
to be carried. (VII, 550, 576) In such matters the heads of
the other departments were much better fitted to judge that the
Attorney General.

Caleb Cushing had an idea that his opinions were in the
nature of judicial decisions and for that reason made them more
elaborate than any of the preceding Attorneys General. Not
only did he state the questions which were submitted to him and
make his rulings thereon but he traced the history of the sub-
ject, stated and gave reference to any preceding opinions which
had been given and to decisions of the courts bearing on them.
For that reason they are more valuable to lawyers, government
officials and historians than any of the works of his predeces-
sors. Readers might disagree with his conclusions but at least
it could easily be seen on what basis his decision rested and
by investigating his references form their own opinions.

THE PRESIDENT.

As in the case of most of the Attorneys General the Presi-
dent required a large amount of advice. In the case of the Exe-
cutive under whom Cushing served this was more true than usual ir
as much as Cushing was the man who was instrumental in making
him president and was the most consulted of all the cabinet mem-
bers with the possible exception of Jefferson Davis. The ques-
tion had risen as to who should appoint the Assistant Secretary
of State as the law establishing the office had not made this
provision. According to the Constitution (Art. 2, Section 2) all officers, whose appointments are not otherwise therein provided for, were to be appointed by the President, of course with the confirmation of the Senate. (VI, 1)

The legality of a "System of Orders and Instructions" for the Navy issued in 1853 by President Fillmore was overruled by Cushing. Congress, he said, was given the power by the Constitution to make rules and regulations for the Army and Navy. While the law made provision for the revision, within certain limits, of the regulations in the regard to the Army by the Secretary of War there was no such provision in regard to the Navy. The President had power to make some regulations in regard to the Army and Navy but they should be for the purpose of carrying out the provisions of the statutes passed by Congress. On the other hand they could not repeal or contradict the provisions of the statutes. Hence President Fillmore's "System" was void as it was contrary to the Constitution and the laws of Congress. (VI, 11)

While the President had complete pardoning power and could pardon before a trial and conviction, Cushing wrote that it was most unwise to do so except in most exceptional cases. The statement made in behalf of a prisoner should never be the sole basis for such a pardon but an inquiry, into the circumstances of the case should be made and a report called for from the District Judge. (VI, 21)

The building of the wings of the Capital required much money and legislation. It also required some legal advice in regard to the power of the President to make contracts for carrying on the work. The first law provided that the extension was to be made according to a plan and under the direction of an architect ap-
proved by the President. It also appropriated $100,000 for the purpose. This sum of money, however, was insufficient for the work and the question arose as to whether the President could legally make contracts when the money to satisfy them had not been appropriated. Cushing gave his opinion to the effect that when Congress authorized the President to do a thing which required the spending of money he could lawfully do it even if no appropriation was made and the cost became a legal debt of the government. If the appropriation was made but was too small for the object he could complete the work expecting Congress to vote the additional money. This was done every year as the deficiency appropriations proved. (VI, 24)

The case of Lund vs. Ogden had its origin during the Mexican War when Lund started a ferry across the Rio Grande, the operation of which Ogden, an officer in the army stopped, acting under orders of General Taylor. Lund had sued Ogden in the courts of Texas for damages because of the loss of ferry fees. Cushing ruled that Lund had no cause for action and, as Ogden did not live in Texas, had no property there and no legal papers had been served him the courts could not legally find a judgment against him which would be effective outside of that state. However as Ogden was an officer in the army it was the duty of the government to provide him with legal counsel. (VI, 75) The President was to be the judge as to whether the acts of the officer were in the line of his duty.

The President was the only person who could pardon or commute a sentence of a court martial, the general commanding the army in the field had no such power. After a sentence was pronounced the general could either execute it or suspend it and take the direction of President. In the case of Lieut. Devlin of the
Marine Corps Cushing ruled that he had received a constructive pardon because while his case was still pending he was granted a new commission. (VI, 123) Lieut. Devlin seemed to have an infinite capacity for getting into trouble. He was tried by a court martial after the time of his second commission and sentenced to be dismissed. This sentence was approved by the President but the attorney for Devlin asked that the proceedings of the trial be opened and set aside because of errors made during the trial. This, according to Cushing, could not be done legally after the decision of the court has been approved. The attorney's contention that the court was illegal because it consisted of only nine members was one which was only pertinent if brought up at the time of the trial in order to determine whether more members could have been secured without detriment to the service. The law provided that a court could consist of not less than five nor more than 13 members. (VI, 369)

In his opinion in regard to the violation of laws regulating passenger traffic between Panama and San Francisco Cushing gave a complete, not to mention exhaustive, description of the pardoning power of the President. There was no limit on this power except in cases of impeachment and it could not be taken away or limited by Congress. It could be exercised before, after or during a trial but not before the offense was committed. It was limited to things which belonged to the public and could not be used to release person from private debts. It applied both to fines and imprisonment. It could be conditional, in which case the person pardoned could refuse the pardon if the conditions were more unsatisfactory than the punishment. Cushing did not add the limitations to this conditional pardon that Wirt did. (VI, 488, 615)
All offenses committed in forts or other property of the federal government were to be tried in the United States courts and in regard to such crimes the President alone had the power to pardon the criminals. The death warrants were to be signed by the judges but sufficient time was to be allowed for an appeal to the President for clemency. When an offense was committed in a territory the pardoning power could rest with the President or with the governor, depending on whether it was federal or territorial law which had been violated. (VII, 561) The President, however, could not relieve by his pardon the political or legal disabilities imposed by a state on the convict. (VII, 760)

While the pardoning power of the President could not be controlled or limited by Congress, being constitutional in its nature, it is limited in two ways by the Constitution. The first limitation was in regard to impeachment and the second in regard to fines which have already been paid into the Treasury. This money could not be refunded except by an appropriation made by Congress. (VIII, 281)

No act lawfully performed by a President could be revised by any of his successors. The only question which could arise in regard to the acts of the former Presidents was whether or not they had been legal. (VI, 603, 711) The President could not issue a proclamation putting into effect a treaty until all the other parties had fulfilled their obligations. In this case a reciprocity treaty had been signed with Great Britain, which had to be ratified by the various governments in Canada, before it could take effect. These ratifications had not all been made and therefore, said Gushing, the proclamation should not be is-
sued. (VI, 748)

The President did not have the power to give force and effect to the acts of a foreign state when the consent of the United States was necessary for the accomplishment of that purpose. The British colony of New South Wales had passed a law for the punishment of deserting seamen of foreign countries but this law was not to take effect in regard to the seamen of any particular nation until its consent had been given. While Cushing agreed that the law was one which would be beneficial, he said that the consent of the United States could not be given except by treaty or an act of Congress. (VI, 204)

The President did not have the power to release sureties on bonds given by officers of the United States even if the person under bond was willing to furnish other sureties. (VII, 62)

When Congress passed an act which was defective the President had the option of obeying the law as passed or of waiting until Congress could correct the mistake. In the case in question, an act had been passed voting a sum of money to R. W. Thompson according to a contract between him and the Menomonee Indians. This contract had included the phrases, "Provided the same be paid with the consent of the Menomonees" but the act as it appeared in the records omitted that phrase. However it was quickly settled because Thompson agreed to get the consent of the Indians to the payment. (VII, 166)

In response to a series of questions submitted by William L. Marcy, Secretary of State, Cushing gave a history of the diplomatic service from its very beginning down to and including an act of Congress, passed during the preceding session. The appointing power over the foreign ministers of the United States
was entirely in the hands of the President, with, of course, the advice and consent of the Senate. The only power which the House of Representatives had in the matter of foreign relations lay in its power over appropriations. In the first years of the government under the Constitution the funds for diplomatic services were voted to the President in a lump sum to be expended as he saw fit. Ministers were nominated without any designation as to what country they were going or what salary they were to receive. This continued during the administrations of Washington, Adams, and Jefferson. The change to the present system took place during the time of Madison. During this time there was no mention in the acts of Congress of ministers of a specified rank.

The power to appoint such officers came from the Constitution not from laws, and therefore Congress could not take it away or make conditions which would tend to limit it. Appointments could be made during a recess of the Senate which were valid until that body convened just as in the case of other officers appointed by the President and he could also, during a recess, change the designation of a diplomatic officer either from a higher to a lower or a lower to a higher rank.

Therefore Congress did not have the power to order the President to make removals or reappointments on a certain day and, in the opinion of Cushing, did not intend to imply such power in the act passed in 1855 for the purpose of remodeling the diplomatic system of the United States. This act provided that at the end of that fiscal year the President shall appoint envoys extraordinary with secretaries of legation at all courts in Europe, Asia or America where the United States had a diplomatic representative. The word "shall" in the act did not require him to
make these appointments. It only fixed the salaries in case he did appoint such officers or in case he had already done so. If it did require these appointments to be made at the time designated all the diplomatic representatives of the United States would be serving under recess appointments because the end of fiscal year happened at a time when Congress was not in session. "Shall" was a word which occurred many times in acts of Congress and was meant to indicate the time at which something was to be done and was never meant as a command.

The act referred to did not repeal the previous acts of Congress in regard to the diplomatic service and therefore the President could not only retain ministers of other ranks than that of envoy extraordinary but he could appoint others without giving them that rank. The law which fixed the salaries of the ministers resident and chargés-d'affaires was not affected by the new act but if the President saw fit to appoint an envoy extraordinary in place of a representative of any other rank then the new law fixed his salary. In other words the act provided for the prospective creation of new offices which could or could not come into being depending on the will of the President, who could on the date specified appoint new envoys and secretaries to all the countries indicated and he should do so, said Cushing, whenever the public service required it. It would not be wise, however, to raise the rank of the entire diplomatic service during a recess of the Senate just because the law allowed him to do so.

Cushing called attention to a defect in the law as it applied to the minister to China. According to the act he was in the same position with the same duties as other ministers, where in fact he was not only a diplomatic representative but a judicial
officer as well under the treaty with China and the laws of
the United States. Therefore he held two commissions while
the law provided for only one. (VII, 186)

Congress passed an act remodeling the Consular system at
about the same time and Cushing's rulings in the case of the
diplomatic representatives applied to the consuls as well with
some additions applying only to them. It was not necessary for
the President to appoint new consuls or re-appoint the old ones
to the places mentioned in the act but on the date on which the
act went into effect the salaries provided by it became opera-
tive.

One part of the act would be inoperative, according to
Cushing. That was the section making removal from office a pen-
alty for failure to discharge certain duties but the Constitu-
tion provided that such officers were removable by the President.
Consuls who failed to account for the fees received could be pro-
secuted under the act of 1846 which regulated the collection,
safe-keeping and payment of the public funds. The act did not
take away any fees except those which were expressly mentioned.
Those officers who were not mentioned received the same pay col-
lected in the same manner as before the law was passed.

The section of the new law which said that no one except
citizens of the United States who were residing in this country
or who were abroad in public service could be appointed consuls,
was not mandatory on the President. It meant, according to the
Attorney General, that men of that kind were to be appointed if
it was possible to get them. There were instances, however,
where the only man available was an American merchant residing
in the foreign port or even a foreigner who could perform the
consular duties. The act did not mean that citizens of the United States were to be deprived of such assistance as a consul could render just because the act of Congress seemed to forbid the appointment of the only men available.

The duties of consuls in regard to the estates of American citizens dying abroad were limited to the collection of all assets due in the country in which the consul was located and the settling of all accounts due there, in both duties being subject to the orders of the administrator of the estate. The rule to be followed in regard to the distribution of the personal effects of such citizens was the law of state in which the deceased had had his home and this could not be changed by act of Congress. (VII, 242)

The direction of the President was presumed in all orders issued by heads of departments. In some instances the direction was explicitly given and stated in the orders but in all whether or not the direction was given or even where it was not stated, it was presumed to have been given. The President was responsible for all the acts of his department heads. (VII, 453)

The president had power to remove intruders from public lands including those "ceded or secured to the United States by any treaty with a foreign nation or by a cession from any state to the United States". (VII, 534)

In construing the statutes Cushing was inclined to favor the power of the Executive. He said that the word "authorize" did not mean a command but that the act could be done if the executive wished to do it. The words "may" and "shall" were in the same class in not conveying a command from Congress to perform a certain act. When private bills were inserted as amendments into gen
eral bills of appropriation these bills were to be construed according to the sense of the executive. Private bills were to limited as closely as possible by construction. (VIII, 111)

Joint resolutions of Congress had the same effect as laws when they were approved by the President but separate resolutions of either house of Congress except in regard to parlia-
mentary matters had no legal effect on the action of the President or the heads of the Departments. (VI, 680)

Congress did not have the power to make a contract for the transportation of mails or any other administrative matter, that being included in the power of the President as stated by the Constitution. Congress could, however, vote to a contractor an additional sum as compensation which would be in the nature of a bill for private relief. (VII, 135)

The law of Congress, passed for the purpose of assisting in the laying of the Atlantic cable, left the making of the contract with the company as well as the amount of money and other assistance which it should receive, entirely in the hands of the President. The law said Cushing, was permissive, not mandatory, He could pay the company the full amount named for the full time or he could refuse all assistance or he could give a limited amount, depending entirely on the President's judgment. (VIII, 512)

The President could dismiss officers from the Army and Navy without a trial by court martial just as he could dismiss officers in other departments of the government. This ruling was made in the case of the naval officers who were furloughed or put on the Reserve list by the Naval Efficiency Board, the report of which had been approved by the President. While Cushing did not approv
of the manner in which this board had conducted its investigation he held that the demotions made were legal because they had Executive approval. As to restoring the officers he decided that those who had been furloughed, retained their place in the line of promotion and could be placed in active service by executive order but those on the Reserved list could only get back by a renomination by the President and confirmation by the Senate. Lost rank, including seniority, could also be thus restored. (VIII, 223)

PUBLIC LAND.

The disposal of public land was an important matter in the years 1853-1857. Many laws had been passed, providing for the sale of this land, its donation to veterans of the Revolution, the War of 1812, and the Mexican War. The government as time went on became more and more generous with its natural resources. All these laws had to be interpreted and besides there were many individual cases calling for the legal advice of the Attorney General.

The United States had assumed all the outstanding military land warrants issued by the state of Virginia to her Revolutionary war veterans on which land had not been claimed, agreeing to satisfy the holders by issuing land scrip of the federal government. The question arose as to whether officers who were commissioned but did not serve because not enough soldiers could be obtained to give them a command, were entitled to these warrants or this scrip. Cushing decided that they were entitled to them because it was through no fault of theirs that they did not serve. (VI, 243)

The laws of Virginia were to determine the persons entitled to land warrants. If a soldier died while in service then his heirs were
Whether this land script issued by the United States to holders of Virginia land warrants was to be considered real estate or personal property was question to be decided, as it had some of the characteristics of each. A decision became important when a bequest was made by which a script holder gave all of his real estate to one person and all his personal property to another. Gushing decided that this question of the ownership of the land script should be determined by the courts according to laws of Virginia or of the United States. (VII, 32) When there was a dispute in regard to the ownership of land warrants the question must be decided by the courts of Virginia and until this was done the Secretary of the Interior should refuse to issue the script. (VII, 652)

The act of 1855 in regard to bounty lands included in its provisions not only militia and volunteers who performed services under the command of the United States in time of war but also those who rendered military service whether in war or peace times and whether they were under the command of the United States or of some state or territory, just so they were paid for such service by the federal government. (VII, 606)

While pre-emption gave settlers superior rights over others in the purchase of public land it was not allowed to give these pre-emptioners rights over the federal government or over persons having rights from the federal government. In Kansas several tribes of Indians had ceded their lands to the United States by treaty which provided that the part of the land should be held in trust and sold at public auction, the money received to be paid to the Indians. Later an act of Congress opened, to settle-
ment all the lands in that territory to which the Indian rights had been extinguished and made them subject to the pre-emption laws. Cushing, however decided that this act did not apply to the lands which had been reserved to be sold for the Indians' benefit. (VI, 658) In the case of the Hot Springs in Arkansas the various claims based upon pre-emption and location were overruled because the springs had been expressly, by act of Congress, reserved from entry or sale. (VI, 697) Cushing also decided that when land was in dispute it was not subject to pre-emption, as in the case of the contested claim of Maison Rouge in Louisiana. (VIII, 16)

Pre-emption claims were to be allowed for town sites as well as agricultural land if the law had been complied with. The fact that the claimant intended to use this land for speculative purposes did not affect the legality of his claim because the law did not discriminate in regard to the use to which the land was to be put. (VII, 733)

A contractor had a right to take timber and other material for the construction of a road from land claimed by pre-emption but not yet patented. The road ran through this land and, according to Cushing, if it was lawful to take some of the land for the road it was certainly lawful to take the needed material. In the eye of the law this land still belonged to the United States. (VIII, 71)

Registers and receivers in the public land offices were allowed to purchase land but not by pre-emption in their own districts. The reason for this latter provision was that the registers and receivers decided on the pre-emption claims in their district and hence they should not be judges in their own cases. (VII, 647)
Cushing was thoroughly versed in regard to the California land claims as he had made an exhaustive study of them at first hand but they figure very slightly in his opinions. He realized that they were very complicated and therefore advised the Secretary of the Interior not to issue a patent to a private land claimant until the courts had made a final decree in the case. The questions of fact in regard to a claim were not to be determined by the Attorney General. (VII, 491) The claim concerning which an opinion was requested was that of John C. Frémont.

The patents granted by the United States for land in California did not guarantee the title except as it concerned the federal government. They signified that the United States did not have any claim on the land, in other words that it was not part of the public domain which had been ceded by Mexico. It did not, however, settle claims which other persons might have on the land. This should be determined by an appeal to the courts. The patents did not give any rights to mines which might be found on the land, the possession of such things was to be settled according to the laws of the states (VII, 636) The land granted in a patent was described as being between certain limits but the patent also stated that the quantity was to be four square leagues "and no more". Hence Cushing ruled that four square leagues was all the patentee should get notwithstanding there might be more land within the limits stated. (VIII, 681)

A land warrant which had been obtained fraudulently in the name of a person, who died without heirs, could be cancelled by the Commissioner of Public Lands. When the commissioner, however, has issued a military land warrant which was valid on its face and assignable, he could not cancel this warrant after it had been sold to a third party who...
Grants were made many times for the purpose of aiding in the construction of internal improvements. Three examples of this kind of land grant were subjects of opinions by Caleb Cushing. A grant was made to Iowa for the purpose of aiding in the building of a railroad. The ruling was that this grant did not apply to any particular land until the line of the road was located. (VIII, 244) Surveying and marking the right-of-way on which the railroad was to be built gave the state a title to the alternate sections on both sides and this title could be perfect by filing the location-plots in the Land Office. (VIII, 390)

A similar grant had been made to the state of Michigan for the purpose of aiding in the construction of the canal at Sault Ste. Marie. The amount was to be 750,000 acres to be selected by the state with the approval of the Secretary of the Interior. The rights of the state to this land were assigned to the company building the canal and at the same time that the agent of this company filed on one tract of land a private citizen also made application for it. Cushing said that when the agent for the canal company selected that tract of land the transaction was completed whereas the private citizen had only started the process by which he could acquire it. Therefore in all cases of that kind the land belonged to the company as the Secretary of the Interior had already given his approval. (VIII, 247)

Another grant of the same kind was made to the territory of Wisconsin for the improvement of the Fox and Wisconsin rivers and the construction of a canal between them, this to become effective when Wisconsin became a state. As soon as this land had been located even though it had not been surveyed and in spite
of the fact that the Indians still occupied part of it, it be¬
came the property of Wisconsin and therefore neither the Presi¬
dent nor any officer of the federal government could grant pre¬
emption rights on it. (VIII, 255)

The purchase of public land was not allowed only to citizens
of the United States but to aliens who had declared their inten¬
tion of becoming citizens and all of the regulations concerning
prices and terms which applied to citizens were also applicable to
aliens under similar circumstances. (VII, 351)

A large amount of what was supposed to be public land and
on which several government structures had been built was awarded
to a certain Mr. Limantour by the Commissioners of Private Land
Claims in California. The value of the land was estimated by
Cushing at over a million dollars. He told the President that he
believed Limantour's claim, which originated under the Mexican gov¬
erment, to be fraudulent and for that reason recommended that the
decision of the Commissioners be revised in the District court.
Important witnesses lived in Mexico City and he advised that a
competent agent be sent there to secure their presence at the trial
and that special counsel be engaged by the government. (VIII, 474

**MILITARY AND NAVAL AFFAIRS.**

When officers of the navy were being examined for promotion
if some of them were absent performing the duties of their position,
you should be allowed to take the examinations on their return
and, on passing them, should take rank with the others just as
if their tests had been taken at the same time. Those who were
commissioned late, however, were to be paid according their new
rank only from the time of their promotion. (VI, 68)
The question as to whether the increased pay of Lieutenant J. M. Gillis, as superintendent of the Astronomical Expedition to Chile, was to begin and to end was left to the Secretary of the Navy to decide. It did not necessarily have to end when Lieut. Gillis returned to Washington if he was still engaged in the work of the expedition. (VI, 223)

The law in regard to the building a floating dock at Mare Island, in California, commanded the Secretary of the Navy to do the work because the word "directs" in the law was always considered to be mandatory in its effect. (VI, 551) Mare Island was the subject of another opinion by Cushing, this one concerning title to the land. Land titles in California were somewhat complicated but Cushing understood them as well as anyone. He recommended that, before any money was paid for the land, the private claims be extinguished and that the state of California be asked to give up her claim to the part of Mare Island which was sometimes under water, that is, between high and low water marks, which in all the new states belonged to them. (VIII, 422)

The Board of Naval Officers was to examine the competency of the personnel of the Navy with the object of eliminating from the service those men who were no longer fitted for their work. Some were to be dismissed, some were to be put on leave-of-absence pay and still others who were to receive furlough pay. The board was to consist of five captains, five commanders and five lieutenants and the law provided that no officer was to be allowed to consider the case of anyone of a higher rank than his own. Thus, said Cushing, the entire board could only examine officers of the grade of lieutenant and below. When this work was completed the five lieutenants should retire while the rest of board investigated the cases of the commanders after which
the commanders should retire while the five captains completed the examination. However after all this was done the board was to make a report as a unit. (VII, 282)

Later an amendment was passed to this act which was called "An act to promote the efficiency of the Navy" which provided for courts of inquiry to re-examine the cases decided by the Board of Naval Officers in order to decide whether some of displaced officers should be restored to the former rank. The proceedings of these courts were to be governed by a statute and by the military common law. The President was allowed to add to statute regulations in regard to the army but not to the Navy, hence this law.

These courts of inquiry were not to be open courts. Usually the defendants were allowed to be present but they could not demand it as a right. Spectators were seldom allowed.

The President could appoint one or more of these courts, as he pleased and they could go as far back in the matter of time as they cared to. The main reason for these liberal rules was that the finding of the court was not a decision but merely advice to the President who could follow it if he wished. Each case investigated should be on the special order of the Secretary of the Navy and the court should be sworn for each one. It could call experts to testify and could make personal investigation of doubtful points. This act of Congress creating these courts was meant to relieve the President of the duty of investigating the complaints of these displaced officers. (VIII, 335)

After an officer had been promoted because another had been placed on the reserved list there should be a vacancy caused by death, the officer so promoted was entitled to the latter place together with full pay for that rank instead of the modified pay
which he would have received when he replaced the "reserved" officer. (VII, 640)

After the decree of a Navy court martial had been approved by the President and carried out by the Secretary of the Navy, it was a consummated fact and could not be changed. After Captain Downing had been tried, found guilty and dismissed he appealed to the Secretary of the Navy to have the decree of the court martial set aside because of alleged irregularities in the proceedings. While Cushing admitted that these irregularities might have existed he said that the only way for Captain Downing to attain his lost rank would be by reappointment at the hands of the President and confirmation by the Senate. (VII, 98)

The commander of a squadron in the Navy could appoint an acting purser in the absence of one regularly appointed by the President. Even if the appointment was later rejected by the President the acts of that officer were valid until the rejected was made known. The United States, however, could not be responsible for money paid by one purser to his successor if the funds did not belong to the government, even if the receipt given by the receiver did state that he would hold himself responsible to the United States treasury. (VI, 357)

An officer in the Navy, who ordered a purser to pay him more than was due him, was not guilty of embezzlement, as the law on the subject did not cover cases of that nature. (VII, 82)

If an army officer performed an act which was a crime both under military and civil law he was to be tried by the civil courts but no matter what the result of that trial he was still subject to the action of the military courts for his offense against the martial law. (VI, 413,)(VIII, 390)
The nature of martial law was discussed in an elaborate opinion by Cushing which was brought to his attention by the fact that the Governor of Washington Territory had substituted the military in place of the civil authority. It was ruled that the governor of a territory did not have the power to do this as there was no law on the subject. Cushing gave it as his opinion that the writ of habeas corpus could only be suspended by Congress and based this conclusion on the Constitution which, however, did not make this express provision. Extraordinary conditions sometimes called for extraordinary means as in the case of the declaration of martial law in New Orleans by General Jackson. (VIII, 365)

General Scott was made Lieutenant General after the Mexican War, reviving a title which had been dormant in the army since Adam's administration. The question came up as to the salary he should receive in his new rank. Cushing ruled that he should receive the pay which was prescribed in the act which established that grade in 1798 which had never been repealed although the rank in the army had been abolished. (VII, 399)

Certain soldiers were entitled to two bounties, according to an opinion of Cushing, who said that the act of 1838, which provided a bounty for those soldiers who re-enlisted within two months before and one month after the expiration of their term, and the act of 1850 which similarly provided for those soldiers who re-enlisted in the vicinity of the western frontier posts or at remote stations, were to be considered together. Hence a soldier who enlisted inside the time limit specified and near the places named was entitled to both bounties. (VI, 187)

No member of the army or navy was liable to be tried by a court martial for any offense which had been committed more than two years before the calling of the court unless it could be
shown that the trial was impossible by reason of his absence or some other impediment which he had placed in the way of justice. This limitation could not be waived by the accused and he could not be tried even with his own consent. But this limitation did not apply to courts of inquiry whose objects were not confined to investigation as preparatory to a court martial but included those who would lead to a betterment of the service. (VI, 239)

It was proper to enlist aliens in the army of the United States. While some nations refused to admit that any of their citizens could give up their nationality, it was a settled principle under our government that it could be done. The enlistment of aliens had been done since the Revolution when the Continental Congress authorized the enlistment of British soldiers by "inviting" them to desert from that army and encouraged soldiers from other European countries to enter our service. (VI, 474)

Recruiting officers of the army could enlist minors, the act of 1813 specially providing for it. Between the ages of 18 and 50 men could be enlisted and the military rules were no different in regard to minors except that the law provided that no equipment was to be issued or any bounty paid until they had been in the service for four days during which time they would withdraw their enlistment if they wished. It was also permissable to enlist children of aliens and the Secretary of War was not required to discharge such children upon the demand of their parents. (VI, 607)

Persons who lived with the limits of army posts did not have civil and political rights in the states in which these posts were located and they were not subject to taxes and other obliga-
tions imposed by those states on their citizens. This case came up in regard to the Armory at Harpers Ferry. The attempt of state authority to collect taxes by force would be an act of trespass. (VI, 577)

The Chicago and Rock Island Railroad Company could not use any part of the Rock Island Military Reservation for the purpose of building its road. They claimed the right to do so under the authority of the state of Illinois. The act of Congress which gave railroads the right of way through public lands did not apply to military reservations. (VI, 670)

The cadets at West Point were members of the Corps of Engineers in the United States army and were subject the rules and Articles of War. They were not commissioned officers and therefore could not sit as judges in the court martial but they could be tried by one. They were not non-commissioned officers in the meaning of the law because they were neither corporals or sergeants. While the undergraduate cadets held titles in their own organization of officers, non-commissioned officers and privates they did not hold the same relations to each other that those ranks did in the regular army. Upon graduation the cadets became brevet second lieutenants and were then in the same condition as other officers of that rank in the army. (VII, 323)

When the law provided that pensions should be given because of injuries or disease received "in line of duty" it meant that there should be some connection between the injury or disease and the performance of duty on the part of the person who sought the pension. To determine the right to a pension the question was not whether the person was "on duty" or not but to show the connection between the duty being performed and the injury or
FOREIGN RELATIONS.

International law was a subject on which Caleb Cushing was thoroughly at home. Hence his opinions which deal with this subject are complete and comprehensive. During the administration of Pierce the Crimean War took place which led to several differences of opinions between the United States and the warring nations, especially Great Britain. The first instance of this was the protest of J. F. Crampton, British minister to the United States, because Russian merchant ships had been purchased by Americans. This, said Cushing, was not contrary to custom or law. Neutrals could purchase anything from belligerents in time of war and any regulation against this practice by an enemy was contrary to international law. When a ship was purchased by an American it was entitled to the protection of the government and had the right to carry the American flag but could not take out an American register because it was not built in this country. This was not on account of the fact that it had been built in a belligerent country, however. An American register could be obtained for such a ship by act of Congress. Cushing in his opinion classified ships in regard to their relation to American law and showed that ships purchased from foreign owners had the same right of protection as those built in our own ship yards. (VI, 638) (VII, 538)

When the British ship President came into the harbor of San Francisco with a Russian ship which she had captured, lawyers for two men, alleged to be on the prize, petitioned the court for a writ of habeas corpus directed to the commander of the President for the purpose of finding out whether or not these men
were being illegally detained. The writ was delivered to the commander who promptly left the harbor with his two ships. The governor of California asked the federal government to make a complaint to Great Britain because of the failure of the commander to answer the writ. The Secretary of State inquired of Cushing whether this constituted a just cause which he should take up with the British government.

Belligerent ships, said Cushing, together with their prizes, are entitled to temporary refuge in neutral waters in order to make repairs, escape from storms or get supplies unless any country expressly refused to allow this, which it could lawfully do. Unless a nation had given notice of such denial it was presumed that right of asylum existed. While the United States had no treaty with any of the countries taking part in the Crimean War which mentioned this right of asylum, it had never served notice on any of them that this right would be denied. Hence it existed.

Foreign war ships coming into United States ports had the right of exterritoriality and were therefore not subject the jurisdiction of our courts. Hence none of our courts had the right to issue a writ of habeas corpus for a prisoner on board either the warship or her prize. Cushing added that the commander of the President might have had the good manners to reply to the order of the court but he was not legally required to do so. If the prisoners had been taken ashore they would have come under the control of the courts unless arrangements had been made with the local authorities to allow them to remain under the control of the naval officers, such as in case of sickness or injury to the prisoners which required medical attention which could only be obtained on shore. (VII, 122)
ment was a more serious problem brought up by the Crimean War. The lower classes in England were much opposed to the war and recruits were hard to get. Parliament therefore, passed the Foreign Enlistment act which provided for the securing of soldiers in neutral countries. This work was started with great vigor in the United States until Cushing took a hand which resulted not only in stopping this movement but in the dismissal of the British minister, J. F. Crampton.

Cushing's opinion was such a monumental work, covering all phases of the subject, that it became a notable addition to international law and was used against the United States during the Civil War when American recruiting officers were busy in Ireland trying to enlist soldiers to fight for the Union. It was a settled principle of international law, said Cushing, that no beligerent could use the territory of a neutral in any way without the consent of that country. Enlisting soldiers came under that head and if done without the nation's consent became an attack upon her sovereignty.

He admitted that the neutral country could give this permission if he so desired but unless the permission was given to both sides in the conflict it became a violation of the neutrality, which in this case the United States had announced. Therefore the government had refused the right of enlistment to both countries. This was done by the law of 1818 and it was reinforced by a communication which had been addressed by Secretary of State Marcy to Minister Crampton at the beginning of the Crimean War. In spite of this, however, the British government, through her consular and diplomatic officers, had been enlisting soldiers in American cities. This, said Cushing,
constituted an act of usurpation against the rights of the United States and all persons participating on this work, unless protected by diplomatic privilege, were liable to arrest and indictment for the violation of the federal law. This included consuls who were not considered diplomatic officers. If they succeeded in evading the law and escaping conviction they should be deprived of the privileges which they enjoyed by virtue of their offices. In the case of diplomatic representatives who engaged in this work their recall should be requested and, if refused, they should be dismissed. This was exactly what happened to Minister Crampton. In his opinion he supported his contentions largely by references to English sources, especially by the writings and speeches of men who were prominent in English politics at the time. (VII, 367) (VIII, 468)

In the trial of persons for violating the laws in regard to foreign enlistments no letter from a foreign consul could be read. If the consul wanted to testify Cushing ordered the United States attorney to allow him to appear in person for that purpose where he could be cross-examined by the attorneys for the prosecution. The reason for this order was that the British government was trying to secure the acquittal of the offenders by showing that they were acting under orders which, according to Cushing, provided that they were to obey the letter of the federal law but violate its spirit. (VIII, 469)

Cushing later answered the charges made against him in this matter by Minister Crampton after the latter had been recalled. He proved that the British minister did not tell the truth about his actions in this country. (VIII, 476)

The question of how the law was to be enforced on board ships on the high seas and in foreign ports came up as a result of a dis-
agreement between the French authorities at Marseilles and the American consul in that city. An American merchant vessel sailing from the French port to New York had a mutiny while on the high seas. It had been suppressed but the ship had put back into the French port. There part of the mutineers were released but the rest were placed on the ship to be taken to New York. After this was done the French authorities seized the prisoners and put them in jail. The question was whether these men should be tried in France or in the United States.

Cushing said that, while warships enjoyed extraterritoriality in foreign ports as well as everywhere else, merchant ships had it on the high seas but only partially in foreign ports. Crimes committed on the high seas should be tried in the home port of the vessel. In regard to crimes committed on merchant ships in foreign ports they were only be tried by the foreign courts in case they affected the peace of the port. The jurisdiction of the foreign courts did not include crimes committed on the high seas even if the vessel did later come into their port. The citizenship of the offenders made no difference just so they were either members of the crew or passengers on the ship. The local port authorities had the right to go on board the ships to investigate but not to make arrests unless the matter was within the scope of their jurisdiction. (VIII, 73)

In another opinion Cushing says that it was the duty of United States consuls to send home for trial persons who were accused of crimes on the high seas or in ports which were subject to the jurisdiction of the United States courts. They were also to inquire into the facts in the case and send a report of their findings. The trial must take place before a federal court because a consul was not a judicial officer. (VIII, 380)
In the event of a foreigner dying in this country his estate should be settled by the local authorities. The administration of the estate could be placed in the hands of the next-of-kin if he was a resident of the state in which the death took place. The consul of the nation, of which the deceased was a citizen, could oversee the work of settling the estate but he had no power to interfere. If he was of the opinion that the country which he represented should intervene this should be done through the regular diplomatic channels. (VIII, 98)

If a citizen of the United States represented some foreign country as its consul here he was not exempt from military service or jury duty unless the statutes of the state in which he lived so provided. (VIII, 169) The right of expatriation was possessed by American citizens as there was nothing in the Constitution or the laws of the United States to the contrary. The laws of the various states were also silent on the subject. However Congress could pass such laws. Cushing was also of the opinion that the right would be suspended during the time of war. (VIII, 139)

By the terms of the Mesilla treaty the United States was to pay Mexico seven million dollars when the ratifications of the treaty were exchanged and three millions more when the boundary line was surveyed, marked and established. This was to be done by two commissioners, one appointed by each country. The establishment of the line did not mean that the maps and record had to be made. The line was considered established when it was surveyed and marked.

The United States recognised de facto governments and offices. As long as Santa Anna held the power as ruler of Mexico the United States had dealings with his representative but when Carrera suc-
ceded Santa Anna the new government was recognized. In both cases the United States did not investigate the legitimacy of the origin of the power. In Europe with the end of ruler's reign the authority of international commissions ended but such was not the case in America where the executive power was considered as continuous. Reappointments and renewal of commissions were not necessary. (VII, 582)

The first installment of seven million dollars was paid to Santa Anna's government. By the time the survey was completed and the second installment due Alvarez was the Mexican president. But before Santa Anna went out of office he issued drafts on the United States for the rest of the money which had not been paid because it was not yet due. Alvarez, when he became president, notified the United States that the drafts were to be considered as of no effect. In other words he wanted to collect the three millions. Cushing said that this was more a political than a legal question. It was further complicated by the fact that a large number of these drafts were presented by citizens of the United States. (VII, 599)

A Peruvian ship, guided by an American pilot, due to his lack of skill or carelessness, ran aground near San Francisco. The owner, after getting judgment against the pilots' association of California and failing to get any money on this judgment, had the Peruvian minister present claim for damages to the United States government. Webster, who was then Secretary of State, sent the bill to California where the legislature refused to pay it. Marcy then asked Cushing's opinion on it. The governments, said Cushing, both state and national, did their best to get skilful officers but they did not guarantee their skill, neither doctors, lawyers nor pilots. Hence there was no claim against
California. If the marshal did not do all in his power to recover on the judgment gained against the pilots' association the United States could not make good the loss. The federal government could not collect for the owner of the ship if he had been a citizen of the United States and aliens were not entitled to any superior rights. If Mr. Webster thought that this was a just claim he did so on an imperfect statement of the facts. His dispatch of the claim to California did not make the United States liable for the money. The government many times attempted to collect money due its citizens abroad but in case of failure did not pay the debt it failed to collect. Therefore Peru had no just claim either against California or the United States. (VII, 229)

The French minister applied to the United States government for assistance in the execution of a rogatory commission in order to get the testimony of a resident of New York. Cushing upon investigation found that there was no federal law on the subject and therefore advised the minister to wait until Congress to correct the omission. This was done a few days later. (VII, 56)

The attorney, who represented the Princess of Orange in regard to the jewels stolen from her and recovered in this country, had asked the State Department to assist him in the collection of his fees. Cushing ruled that this was none of the governments' business. Even if the claim had been against the Dutch government he did not think that the United States should appoint a commission to determine the amount due the attorney and stillless so when the claim was against a member of the royal family of the country. (VI, 386)

The British minister, Crampton, had complained of the activities of some Irish societies in New York, Boston and Cincinnati; by which they were attempting to stir up a rebellion against Great
Britain in Ireland. Cushing’s opinion as to what course to take in all probability did not give Mr. Crampton much satisfaction but as the Attorney General was admittedly hostile to that gentlemen it was without doubt a pleasing task. He said the organization of such societies with the object of aiding in a rebellion in another country was a violation of friendship and a semi-hostile interference with the affairs of that nation. Having announced that sentiment he added that there were no national or state laws in this country by which such societies could be suppressed, neither were there such laws in England. As long as the United States and England maintained freedom of speech and meeting these organizations could not be done away with and their work could not be stopped until they had actually committed some act of war. Stirring up sentiment against another country could not be stopped, neither could the sending of representatives to Ireland even if they went for the purpose of spreading propaganda.

If they were transporting arms or recruiting soldiers here something could be done. He added that Mr. Crampton’s own acts in recruiting soldiers in the United States had started these societies and that their activities had stopped with the end of the British efforts in this country. Besides the Irish could not be blamed for their sympathy with their fellow countrymen. (VIII, 216) Previously Cushing had issued orders to the Federal attorneys in Massachusetts and Ohio to investigate the activities of the Irish societies in order to prevent them giving any armed assistance to the rebels in Ireland. (VIII, 472)

A treaty between the United States and Prussia provided that citizens of each country in case of death while residing in the other should have the power of disposing of their property without
interference of the government under which they resided. In some of the states, however, the provisions of this treaty had been interfered with and the Prussian Minister had protested against such action. Cushing wrote, in his opinion to the Secretary of State, that the United States had the constitutional right to make such a treaty, the Supreme Court having decided to that effect several times and the treaties of the United States took precedence over state laws. Hence the Prussian citizens, whose property, had been interfered with, should take the matter to the courts where their just rights would be recognized. The President did not have the right to redress a wrong of this kind by proclamation or order, neither did he have the right to take the matter out of the hands of the courts. The United States government, however, was determined to see that the provisions of the treaty were carried out. (VIII, 411)

There was nothing in the Clayton-Bulwer treaty which prevented either Great Britain or the United States from intervening in Central America by alliances, influence or even arms. The treaty provided for the building of a canal between the two oceans and stipulated that neither country should fortify or otherwise control that waterway. Nothing should be done by either country in the way of alliance which would result in the control of the canal but otherwise there were no provisions which interfered with the actions of either in that part of the world. He added that he did not concede that Great Britain had a right to establish a protectorate over the Indians of the Mosquito Coast. These Indians were not a nation but were subjects of Nicaragua and Honduras. Great Britain could not make them a nation by treating with them as one. (VIII, 436)

A man coming from a foreign country was not a diplomatic representative until he was recognized and received as such. Until
such recognition he was entitled to no diplomatic privileges except safety in travelling and even that was not given as a right. If he violated any law he was liable to arrest and punishment. This opinion was given when Parker H. French, claiming to be the minister from Nicaragua, attempted to enlist soldiers in New York for the revolutionary army in the Central American state. He had applied for recognition but it was refused. (VIII, 471) Later an arrangement was made with French by which no criminal prosecution would be started against him if he would leave the United States within a reasonable time. (VIII, 473)

In case the boundary between two countries was a river the bed of it marked the line no matter how much the banks changed. In case the bed of the stream changed the boundary changed with it. (VIII, 175)

In regard to international extradition Cushing followed the rule of only recognizing crimes which were named in the treaty with the nation making the demand. He also insisted that the United States conform to this practice. In the case of Anson Wing, who had been indicted by the state of New York for larceny but who had fled to Canada, he refused to ask the Canadian authorities to surrender Wing because larceny was not one of the crimes named in the treaty. (VI, 85, 431) The procedure which must be followed was stated in Calder's case (VI, 91). (VII, 285) The foreign government seeking an escaped criminal could either apply to the President or to the judge in the district in which the man was located. The entire responsibility, however, was on the judge because the President only authorized the magistrate to investigate the case. After the facts were proven to the satisfaction of the judge the President or the Secretary of State should order the surrender of the accused person. To countries
with which the United States had no extradition treaties no persons were surrendered, not even deserting seamen. This opinion was given when Denmark requested the surrender a sailor who was accused of deserting a Danish ship. The request was refused as our treaties with Denmark made no mention of extradition. (VI, 148)

The courts of a state were not allowed to interfere with the process of extradition. If the federal courts had decided that the prisoner should be surrendered to a foreign country the Secretary of State was required to issue the proper papers disregarding any action taken by the courts of the state in which the man was captured. State officials were not allowed to interfere with the execution of treaties. (VI, 270) In such a case the United States marshal should take the prisoner to the boundary line of the state and there turn him over to the officers of the foreign country, disregarding any legal process of the state court. (VI, 290)

Before asking for extradition the forms described in the treaty must have been complied with. Cushing maintained that a single affidavit was insufficient grounds for such a request because the treaty stated that the demand for extradition required a warrant issued by an officer of the United States. (VI, 486)

Demands for extradition must come from the highest political authority in the demand state, notification by a local officer in the state was not sufficient. (VII, 6) The expenses connected with proceedings in extradition were to be paid by the country making the demand but if there were extra expenses caused by interferences in the country, where the offender was found, the latter nation should bear the additional cost. This opinion was given in the case of Alexander Heilborn, in which the state of New York
tried to prevent extradition being carried out. (VII, 396, 612) Cushing, in an opinion to the Secretary of State stated the theory underlying all extradition treaties and processes—to protect political offenders who might come to the United States but to assist in all possible ways the apprehension of criminals. The administration of the laws should be such that all real criminals could be obtained without undue difficulty by the country, in which their crime had been committed, and that no technicalities should be allowed to interfere with the process. (VII, 536)

The state of California should not be allowed the stretch the terms of the law so that a fraudulent breach of trust by private individuals could be called grand larceny and as such make it an offense which, under the treaty with France, an offender could be extradicted. The correct translation of the French words for crime and misdemeanor would prevent this being done. (VII, 643)

The evidence of forging of checks in Prussia was sufficient to warrant judicial proceedings against a former citizen of that country with a view to his extradition. (VI, 761) On the other hand Cushing refused to allow the French government to stretch the term "public officer" to the extent that it included railroad officials because the companies had been authorized and subsidized by the government. (VIII, 107) In order to begin the extradition process it must have been evident that the alleged crime was committed within the borders of the country making the demand. (VIII, 215)

Any magistrate in the United States could cause the arrest of a fugitive from justice from a foreign country without any application from that country or any order from the President and detain him until the foreign government made its demand for extradition. If no demand was made within two months the prisoner
should be released unless there was some good reason for detaining him longer. There could be no actual extradition however until the proper authorities in the demanding country made requisition on the Secretary of State and its approval by him. This requisition might be made through other than the usual channels if those officers were absent from their posts of duty. (VIII, 24)

In this opinion Cushing made some sharp comments on the condition of the administration of justice in New York city. He says, "As most of the cases of extradition arise in the state, and indeed in the city, of New York, and as the practice of criminal justice there is embarrassed by bar-chicanery to such degree as not only to give comparative impunity to local crime, but also to make that city the favorite resort of foreign felons."

It was not necessary that a man come to the United States as a fugitive from justice in order to order extradition. The treaty with France applied not only to criminals who fled to this country but to persons who were found here after having violated the law in France. (VIII, 306) A clerical error in the letter from the President authorizing the beginning of extradition proceedings made no difference as the document was not a legal paper but only a political commission or license. (VIII)

Extradition is of two kinds. One type, the securing of persons accused of crime who have fled from one nation to another and the other, persons fleeing from one state to another. The second type was covered by Cushing's opinions deal largely with fugitive slaves and the difficulties which their owners encountered in recapturing them, largely through the activities of the people of the Northern states who were opposed to slavery.

In his first opinion in this kind of case Cushing ruled that while in general a United States marshal, who was sued on account of some of his official acts, should pay the expenses of the
legal proceedings, the President could order this work to be undertaken at the expense of the federal government if he considered that doing so was in the line of seeing that the laws were faithfully executed. When there were combinations of citizens whose object was to impede the execution of the laws by annoying the federal officials, especially the marshals, by suits and other legal processes, it was the duty of the President to pay the expenses of the trials of these officials. This case originated in the attempt of some men in Indiana to prevent a United States marshal from recapturing a fugitive slave who had fled from Missouri. After it had been proved that the slave did not belong to the man who claimed him and was released, suit was brought against the marshal for false arrest. (VI, 220)

If a marshal was opposed in carrying out the duties of his office he had authority to summon a posse comitatus, which could consist not only of the bystanders and citizens but the militia of the state and the soldiers, sailors and marines of the United States. The expenses of the posse comitatus were to be paid by the United States. This opinion was given in regard to the attempt to rescue a fugitive slave after he had been arrested in Chicago. (VI, 466)

The episode which finally resulted in the case of Ableman vs. Booth before the Supreme Court was the subject of an opinion by Cushing, in which he stated the same opinion which Taney later did in his decision, that a state court could not issue a writ of habeas corpus discharging a prisoner who was before a federal court, that the Fugitive Slave Act of 1850 was constitutional. He advised that the case he brought before the Supreme Court on a writ of error. (VI, 713) & (VII, 51)
The right of a citizen to reclaim fugitive slaves who had fled from his service extended not only to the states and territories but also to the Indian lands. If no United States commissioner was located there the owner himself could recapture them. Any fugitive from service who had taken refuge among the Indians was there unlawfully and was subject to arrest by anyone representing the Executive authority of the United States. The Indians could not protect the fugitive from extradition because they were not citizens but subjects of the United States and certainly could not exercise power in conflict with the Constitution. As this particular slave had fled to the country of the Cherokees, Choctaws and Chickasaws Cushing informed the owner that these Indians had local laws which provided for the delivery of fugitive slaves. (VI, 302)

When a marshal of the United States was called upon to serve a process for the capture of fugitive slave he had no right to demand a bond of indemnity as a condition of performing the duty. The slave owner could lawfully give such a bond but if he refused to do so the marshal was liable for damages if the slave owner could prove his right to the slave. (VI, 229) The question of the domicil of a slave was settled by that of his master. If a slave owned by a citizen of the United States committed a crime in the Cherokee nation he should be tried by the federal District Court but if he was owned by a Cherokee he must be tried by the Cherokee courts. (VII, 278)

INDIAN AFFAIRS.

All contracts made by individual Indians for the payment of money which was held for them by the United States were void but those made by the tribe were to be judged by the President. If, after examination, he believed that the Indian had received
full value for the money which they wished to be paid he could order the payment of the debt. The legality of the contract was not the only consideration but more important than that was the welfare of the Indians as they were inclined to make contracts by which they could be defrauded. (VI, 49)

Payment could be made to individual Indians if the treaties with the tribe allowed such payment. In regard to Miami Indians this form of payment was allowed, according to Cushing (VI, 440) Contracts made by Indians, the money for the satisfaction of which was to be paid by the Federal government, could only be paid if and when the President allowed the claim. This was another ruling to protect the Indians against greedy traders. (VI, 462) Treaties with the Indians were in a different class from other government documents in regard to publication. The law only required them to published in one newspaper and that was to be in the state or territory to which the subject matter of the treaty belonged. (VI, 627) Money for improvements made on the land ceded by the Cherokees could only be paid after the commissioners had made their report stating the exact amount to be paid to any one person (VII, 54)

Treaties between Indian tribes only became legal after they had been approved by the President and the Senate and they could only be abrogated by the same process. The Choctaws and the Chicasawa nations had made an alliance in which the former tribe received most of the advantages. At least the Chicasaws wanted to dissolve the alliance and the Choctaws refused to agree. This could only be done said Cushing, by another treaty with the approval of the same government agencies. (VII, 142)

The rights of white men who were adopted into Indian tribes received Cushing's attention. Such men did not become subject to the courts of their tribe in criminal cases but in civil cases
the Indians courts had full jurisdiction. From their decision they had no appeal. (VII, 174)

Indians were not citizens of the United States but only domestic subjects. Whether this was the correct public policy to pursue, Cushing was in doubt but it was the law and must be followed. General statutes in regard to naturalization did not apply to Indians and they were also incapable of pre-empting the public lands. Half-breed Indians were considered as Indians as long as they lived with their tribes. Citizenship could only be conferred upon Indians by a special act of Congress or by a treaty and they did not become citizens because some state allowed them to vote. The question of half-breed Indians who had left their tribes and were living in a civilized manner — according to the merits of each case. If the half-breed was no longer receiving the benefits to be derived from his old Indian relationship he might be considered a white man and a citizen. (VII, 746)

Some residents of Oregon were of the opinion that the acts of Congress in regard to Indians did not apply to their territory that they had a vested right in the trade with the Indians with which Congress could not interfere. This was speedily done away with by Cushing in an opinion in which he said that the laws of Congress applied to all parts of the country, in general and where such was not the case, the exception was plainly stated. Therefore the laws on regard to intercourse with the Indians were in full force in Oregon. One idea which seemed to be prevalent in Oregon, but which Cushing pronounced absurd, was that white men could oust Indians from their land before the United States had extinguished the Indian title. (VII, 293)
POST OFFICE DEPARTMENT.

A postmaster or any other officer of the government was not required by law to become, knowingly, the enforced agent of enemies of the public peace by distributing in any state printed matter which would tend to promote insurrection in that state. This case arose because of the refusal of the deputy postmaster of Yazoo City, Mississippi, to deliver a copy of the Cincinnati Gazette, an anti-slavery newspaper which was addressed to a Mr. Patterson of that city.

Cushing discussed the matter of great length, quoting two laws, one of the United States which provided for the punishment of any postal official who unlawfully detained any mail, and the other, a law of the state of Mississippi which provided for the punishment of anyone who circulated anything which would tend to stir up discontent or insurrection among the slave population. He admitted that when a state law conflicted with a federal statute the state law must give way but he put special emphasis on the word "unlawfully" in the federal law. Did the postmaster unlawfully detain this mail. It was not the policy of the United States government to encourage insurrection in any of the states. He dismissed the argument that if this practice was allowed it will make every postmaster a censor of newspapers because anyone who objected to the practice had a remedy in a suit for damages against the postal official.

He said "It may be unpleasant to some person in Ohio to find that he is not free to promote insurrection in Mississippi" but maintained that every state had the right to protect itself from domestic violence. The Postmaster General could decide that the postmaster had or had not make a mistake in refusing to deliver
the paper. That would imply a decision as to the character of publication and the legality of the detention. He could not decide the question of private right between the postmaster and the person to whom the papers was addressed. That would have to be done by the courts. (VIII, 489)

William L. Blanchard had a contract to carry mail on a certain route between Sacramento and Salt Lake City. This contract was rescinded by the Postmaster General, after Blanchard had started to carry mail, for the reason that it was void from the beginning because it had been entered into without previously advertising for proposals. Cushing ruled in a previous decision that Blanchard should receive payment for the time that he had carried mail and one month in addition. The Congress inquired into the matter, asking whether the Postmaster General had violated Blanchard's contract without legal or adequate cause being given by Blanchard and if it had been violated then to how much damages he was entitled. Cushing advised the First Comptroller to whom this opinion was given to hold a hearing and determine just how much the actual damages were to Blanchard and report this to Congress. (VII, 286) 487

When a contract for services had been rescinded by the United States for some other reason than misconduct on the part of the contractor but after the services were partly performed, any claim beyond that of payment for the work done could not be settled by the Accounting Officers of the Treasury. If the contractor claimed damages because of the cancellation of the contract it should be settled by a higher officer, probably the head of the department. (VI, 496)

When the Wilmington and Manchester Railroad was built the government allowed the company to import the rails without payir
duty but made the provision that as soon as the road was built the mails were to be carried and the money supposed to be paid for this service to be charged against the amount due for duty on the rails. Later the Postmaster General proposed to contract with the company for additional service. Cushing held that this addition compensation did not have to be charged on the old debt but could be paid to the company. (VI, 668)

Letters could not be stopped while on the way to the place to which they were addressed and delivered to another person even if he was a member of a firm sending them. There might be some instances, says Cushing, in which this could be done but each case must be considered on its merits and no such general rule could be followed and no such order issued by the Postmaster General. (VII, 76) The death of a mail contractor made no difference as far as his sureties were concerned. They were responsible to the government during the entire term of the contract. (VI, 410)

RIGHTS OF STATES.

An opinion given by Cushing in October, 1855 covers some of the points later decided by the Supreme Court in the Dred Scott decision. The most important of these was that the section of the Missouri Compromise which stated that no slave states should be carved out of the Louisiana Purchase north of the parallel 36° 30' was unconstitutional and would be declared so if it came before the courts.

This decision came as result of a dispute between the United States and the State of Florida as to whether or not the state had municipal jurisdiction over the land included in the Naval station at Pensacola. This land had been part of the public dom-
main which had been withdrawn from sale for use of the Navy department. Cushing ruled that in order that the state should be entirely without jurisdiction and explicit surrender of all rights was necessary such as when a state sold land to the Federal government. This the state of Florida had not done, her still was entitled to municipal rights over the land. He cited an instance in which Pennsylvania had claimed the same rights that Florida was claiming and was upheld by the courts.

The Constitution made little mention of territories and the courts had made few decisions on the question. Until the question rose Cushing said he would not decide whether or not the United States had complete jurisdiction over army posts in the territories but even it had he did not think that this jurisdiction continued after the territory became a state unless the state gave its consent to such jurisdiction. If the jurisdiction continued it would violate the principle of equality between the old and the new states.

A military or naval reservation was land which had been withdrawn by the President, under the authority of the law, from the immediate administration of the Commissioner of Public Lands and appropriated to the use of the government. That did not necessarily exclude the jurisdiction of the state from the land.

The Supreme Court, said Cushing, in its opinion in the case of Pollard vs. Hagan, (5 Howard 212) had decided that the United States never held any municipal sovereignty, jurisdiction or right of soil in the territory out of which the new states had been formed except to execute trusts created by the deeds of cession from such states as Virginia, Massachusetts, and Georgia in regard to the original territory of the United States or by
treaties with France, Spain and Mexico in regard to Louisiana, Florida, New Mexico and California. The Court also ruled that all the provisions of the Ordinance of 1787 were extinguished by the Constitution and if any of its provisions were still valid it was because of compacts of sessions or acts of Congress since the Constitution had been put into operation. This general principle had been applied by the court to questions of master and slave (Strader vs. Graham, 10 Howard 82), to questions of religion (Permoli vs. City of New Orleans, 3 Howard 589) and to navigable waters (Veazie vs. Moor, 14 Howard 568).

From this principle Cushing came to the conclusion that the Missouri Compromise was unconstitutional. That Congress should, without the consent of or a compact with a state, impose on the municipal power of a state or group of states limitations and restrictions which were not imposed on all, would be a violation of the equality between the old and new states.

Cushing then advised as a way out of the difficulty with Florida. The state should be asked to cede jurisdiction over this land to the United States. (VII, 571)

In building the Washington Aqueduct it was necessary to secure land outside the District of Columbia in the state of Maryland. Cushing decided that the United States could use the state's right of eminent domain in securing this land in the state of Maryland. The legislature of Maryland had passed an act empowering the United States to secure the land, which, said Cushing, was not contrary to the constitutions of either the United States or of Maryland. It amounted to the same thing as if the federal government had bought the land from Maryland. (VII, 114)
States had the right to take land from their citizens for public uses on payment of the amount of money fixed by juries or commissions. Public use of land by the United States was a public use by each of the states. Hence if the states gave its consent to the purchase of land by the federal government it conveyed to it the right of eminent domain in that particular property. (VIII, 30)

The governor of California had asked the assistance of the federal government in suppressing the Vigilance committee which was in control of affairs in San Francisco, trying and hanging men who were accused of breaking the law. Cushing was extremely doubtful whether or not the help should be given. In the first place the legislature was supposed to ask for assistance unless it could not be convened. The Governor had made no attempt to call it though six months had elapsed since he made his request. No actual fighting was taking place in California between the state authorities and the Committee. Hence he advised the President to refuse the aid that the Governor requested. (VIII, 15)

A corporation which had been granted a charter by the state could not surrender that charter without the consent of the state. The Merchants' Exchange Company of Baltimore was about to sell its building to the United States, the stockholders and directors having voted in favor of the sale but Cushing maintained that the state of Maryland which granted the Company its charter must also consent to its extinguishment. (VIII, 86) 104 118.)

The President could not lawfully spend money for improve-ments on a site purchased with the consent of the state in which it was situated if the state refused to cede jurisdiction to the
United States. South Carolina had refused to grant this in regard to lighthouse sites. (VIII, 102.)

TEXAS BONDS.

By the act of 1850 Congress had voted to Texas the sum of $10,000,000 in payment for land surrendered to the United States but of that sum only $5,000,000 was paid immediately. An equal amount was reserved until the creditors of Texas, who were secured by the duties levied on imports, had released their claims against the state and these releases were filed with the United States. Cushing in his opinion discussed fully the debts of Texas and said that the President had no right to pay any of the second five millions until all the releases were filed. Texas could either buy up these releases with money or with new state bonds but they must be obtained unless Congress should amend the act of 1850. It was suggested that a sum proportionate to the releases obtained be paid but that, said Cushing, presumed that the debts did not exceed the amount of five millions which he doubted. Nothing could be done in the way of payment until Texas presented proof of the complete discharge of the debt. (VI, 130).

UNITED STATES COURTS.

Cushing in this opinion gave a history and description of the courts of the United States together with recommendations for their improvement. The nation had outgrown the judicial system. When the nation was small it was possible for the judges of the Supreme Court to cover the entire country sitting as circuit judges. At first they travelled in pairs but as the business grew they began to sit singly and soon it became a great burden on them. The United States had then reached an extent that even with their best efforts they could not hold court in
all sections of the country. The outlying parts such as Flori-
da, Texas and California were never visted by a judge of the
Supreme Court and the members of that court were burdened with
work and travel. In addition it was unfair that some parts of
the country should have the benefit of their services while
others did not.

Cushing considered the various plans for improving con-
ditions. One was to increase the number of the Supreme Court
judges so that some of them would stay in Washington while the
others would travel the circuits. The difficulty of dividing
the judges into the two groups caused him to discard this plan.
Another reason for rejection is that it would be impossible for
a judge to go to California as part of his duties. He recommend-
ed that circuit judges be appointed and each be assigned to one
part of the country. This would relieve the members of the
Supreme Court of this work. Cushing even suggested the number
of judges on the Supreme bench might be decreased as members ret-
tire. With these circuit courts justice could be dispensed
easier and quicker than it had been. Nine circuits, he estimated,
would be needed then but the number could be increased as
the judicial business required it. He also commended to the
attention of the President the fact that the courts of District
of Columbia were still under the control of the state of Mary-
land (VI, 271).

State courts could not issue writs of habeas corpus in
order to free persons who were in charge of federal courts.
The issuance of such writs was an act of unlawful interference
with the jurisdiction of the courts of the United States. When
a court, which apparently had jurisdiction in a case, had a per-
son lawfully in custody, no other court was collaterally to take
jurisdiction of the case under cover of the writ of habeas cor-
pus even if they were courts of the same sovereignty or jurisdiction. Federal courts were not to issue such writs for persons in the custody of state courts. Federal courts had the advantage in that they were the judges of their own jurisdiction. The separation of a judicial district into parts did not take away the right from a court to try offenses committed previously in another sub-division of the district and a federal court had jurisdiction over crimes which were committed before the court was authorized by Congress. Laws which modified the courts of the United States did not come within the clause of the Constitution which prohibits the passage of ex post facto laws. This opinion arose from the release of James Collier who had been in the custody of the federal court of California, charged with stealing public money while Collector at San Francisco, by a writ of habeas corpus issued by an Ohio state court. (VI, 103).

The statute law of the United States was incomplete in regard to such crimes as embezzlement of anything except money. In the Army and Navy such crimes could be punished by martial law but in the case of a civilian officer who absconded with maps and collections there was no criminal law by which he could punished. Civil action for the recovery of the articles could be started, however. Cushing recommended an addition to the federal criminal code to cover such crimes. (VII, 9).

When the document giving a man the power of attorney formed part of a contract and was made to secure the repayment of money spent, the power of attorney was irrevocable even if it was not expressly stated to be so in the contract. This opinion was given in regard to a contract with the government where, if the power of attorney had been revoked, there would have been nothing to hold the contractor to his agreement. (VII, 35).
An ordinary letter sent by a man to a lawyer authorizing the latter to transact certain business for him did not constitute a power of attorney. (VI, 79).

When persons who had conflicting claims against the government had put them in the hands of a single lawyer for settlement giving him power of attorney to receive the money due and give a receipt for it to the federal government, this money could be legally paid to the lawyer designated. (VI, 60).

The provisions of the laws of 1853 and 1856 in regard to judicial expenses applied only to the Circuit and District courts of the United States and not to the Supreme Court. The certificate of the Chief Justice of the Supreme court authorizing the payment of money from the contingent fund was not subject to revision by the accounting officers of the Treasury. The printing ordered by the Supreme Court was under its own authority and was not regulated by the statutes which applied to Congress and the Executive department. (VIII, 219).

Public buildings were not legally in the possession of the heads of departments or any other federal officer. They were in possession of the United States and any ejectment proceeding in order to try the title should be against the United States though the officer might be a nominal party to the suit. The United States had control of the legal proceedings. (VII, 44).

Legal actions brought by the United States were not to be started in the name of the officer in charge but in the name of the United States. The form of procedure was to be that of the state in which the proceedings took place with such changes as the federal courts, usually made. (VII, 50). No right of action by the United States was barred by a lapse of time except where there was special provision in the Act of Congress to that effect. (VII, 614).
When a case lost by the United States in a District court was not appealed according to law, that decision should be regarded as final. (VI, 634).

A contract had been entered into by the federal government for the iron-work to be used on the federal building in Charleston, South Carolina, without advertising for bids. Before any of the material had been furnished or even a requisition made for it, Cushing's opinion was requested by the Secretary of the Treasury. He decided that this contract required advertising and therefore as nothing had been done in regard to the fulfillment, it could be rescinded. All contracts, said Cushing, except in cases where the material was urgently needed should only be let after bids were invited by public notice. (VI, 406).

When a federal officer made a contract, which was authorized by law, with a person for their use and benefit the officer was not responsible. If the person with whom the contract was made wished satisfaction he must get it from the government. If however the contract was not authorized by law then recourse might be had from the officer. (VII, 88).

Congress had passed an act authorizing the Secretary of the Navy to purchase hemp by making a contract for such purchase for five years. Later, before any contract was made, another act was passed requiring the same officer to buy hemp in the open market. The Secretary, however, made a contract with Grandison Spratt for hemp. Cushing maintained that this contract was illegal because the law, which was in force at the time the contract was made, required it to be purchased in the open market. No advertisements for bids had been published as required in the act. (VI, 4099).

When the head of a department advertised or bids he was to be the sole judge of matters of fact in regard to the acceptance
or rejection of the bids. When the law confided a matter to the
decretion of the Executive the decision of the President or the
head of the proper department was final and could not be question-
ed by any other authority. (VI, 226).

If a mail contractor, whose contract had been rescinded, ac-
cepted payment for the time that he had fulfilled the contract and
one month additional, it constituted a waiver of all other claims
against the government on that account. (VII, 644).

THE MERCHANT MARINE.

Cushing gave several opinions on the subject of the rights
of seamen and shipmasters. A shipmaster could be punished for un-
lawfully putting a seaman ashore in a foreign port but he was not
criminally liable for an assault committed on his seaman while on
the high seas. The only remedy which the seaman had was to sue the
master for damages after he returned to the United States. (VII,
721).

A consul could call upon a ship captain to transport sailors,
who had been rescued, back to the United States but he could not com-
pel the captain to transport persons accused of crime whether they
were seamen or not. (VII, 722).

An American merchant ship which was registered according to
the law of the United States but which was later sold to a for-
eign owner, was incapable of receiving an American register even if
it were afterwards purchased by an American citizen; except by a
special act of Congress just as in case of foreign built ship which
was purchased by an American. In other words an American ship com-
pletely lost its nationality when it was sold to a foreign owner.
(VI, 383).

A foreign merchant ship was not converted into American pro-
perty because the commander had been given a sea-letter by the cap-
tain of a warship in time of war. Therefore the United States could not indemnify such captain if he was made subject to loss on account of the possession of this sea-letter. A Frenchman living in Mexico during the Mexican war sailed his ship under a letter of this kind. Later he was prosecuted and fined by the Mexican government. His appeal for financial assistance was denied by Cushing. (VI, 650).

**THE PATENT OFFICE.**

The discovery of a method of rendering persons unconscious during an operation was not patentable, according to Cushing, in an opinion in regard to the invention of Dr. Morton and Dr. Jackson, who after a quarrel as to which invented the method, agreed to allow Dr. Morton to have the right to the patent. He was trying to collect from the United States because the process was used in the Army and Navy hospitals. A natural substance, the capacity of a chemical agent to produce any specific effect, a medicine which could be administered in various forms or doses, principles, abstract ideas: none of these things were patentable according to the laws which were in existence at that time. Because the Commissioner had issued a patent on the process did not warrant it and it was open to a question of its validity either by a citizen or by the United States. (VIII, 269.).

When a treaty, which conformed to the Constitution in form and content, was concluded and ratified, it abrogated any laws which conflicted with it. Further, Congress had never failed to pass laws putting into effect any treaties which had not contained provisions contrary to the Constitution. This opinion was given when the copyright Convention with Great Britain was before the Senate for ratification. This convention was contrary to the Act of 1831 which limited the property rights in works of
the nature covered by the Convention to citizens or residents of
the United States. Cushing stated that if the treaty was rati-
fied it abrogated the old law. (VI. 291).

THE TREASURY.

A dispute arose in regard to the property of a certain Ro-
bert Greenhow who had died in California. Some of his creditors
living in Washington sought to be authorized to collect his as-
sets in that city, these assets consisting of money voted to him
by Congress but not yet paid by the Treasury. Cushing ruled that
the United States Treasury had no locality and therefore credits
upon it were not goods located in the District of Columbia. The
other disputed points in the case should be decided by the courts.
(VI, 857).

In general the balance of an appropriation which was un-
expended at the end of two years went into the Surplus Fund in
the Treasury from which it could only be drawn by a new appro-
priation, except in the case of appropriations for objects for
which the law assigned a duration of more than two years. In
such cases it was only when the object of the appropriation was ac-
complished that the balance went into the Surplus Fund. In
the case the appropriation was made for a year on a continuous con-
tract which would last several years, the balance was not returned to the Surplus fund but was spent the next year before the funds, voted for that year were spent. In the case there was a
deficit in some year the surplus of the previous year could be
used. (Vii, 1, 14).

Damages under the Florida treaty could not be made to include
living expenses during the time the persons who lost property
were absent from their former homes. Property loss only could be
allowed. (VI, 530). The awards of the judges of the District
Court of Florida were not final. The Secretary of the Treasury
was to pass on them as well. The decision of former Secretaries that interest on claims would not be allowed was binding on his successors. (VI, 533).

The site for the post office and custom house in Wilmington, Delaware was held by a resident of that city under a 2,000 year lease from the Swedes church which lease he wished to sell to the United States. Cushing thought the title good enough to recommend the purchase. The only possible cloud on the title was that a suit might be brought at the end of the 2,000 years which he did not think was of sufficient moment to prevent the purchase. (VIII, 428).

The nomination of a man for an office held by another did end the term of the incumbent. He must be notified to that effect or else he was entitled to hold office until the nomination of the President was confirmed by the Senate. (VIII, 379).

When the removal for office was not by direct discharge or by an express vacating of the office but merely by a new appointment, the old commission held good until notice of the new commission was given the outgoing officer either by the President or the incoming officer. (VI, 87).

One man could hold two offices under the federal government, Cushing decided in considering the case of L. B. Hardin. The law especially mentioned conditions when this could take place and Chief Justice Taney in a decision came to the same conclusion in United States vs. White. Hardin held two offices in the Navy department, as clerk and as superintendent of the south-western executive building. Two salaries could not be paid the same man, however, if he held one office and was performing the duties of another temporarily without an appointment to it. (VI, 80).
All scientific collections together with field notes and other information of like kind which had been obtained by any public officer, in the line of his duty were the property of the United States government. These officers, however, might lawfully make collections of their own and take notes for their own use provided that it did not interfere with their public duty or cause the government any expense and was not done in violation of the order of a superior officer. (VI, 599).

The archives of any department were the property of the United States, not of any officer of that department, and therefore they were not subject to a writ of replevin against an officer. The former head of the Census Bureau had tried to get possession of the records by legal action. (VI, 7).

The title to the shores of the Great Lakes was in the possession of the states, not the United States, and the improvements made to harbors had usually been made without the purchase of the land from the state. However the United States had the power to protect such improvements from pillage or seizure by corporations or individuals and also to prevent the obstruction of waterways. In case of complaint the Attorney General should take action against the trespassers. (VI, 172). The Topographical Bureau which had charge of the pier and breakwater for the improvement of the harbor of Cleveland, Ohio, had the right to enter into a contract with railroad companies for the use of the pier. (VI, 19). The chief object of the appropriation passed by Congress was the opening of communication between Albemarle Sound in North Carolina and the Atlantic ocean. The method was by means of a breakwater but if the breakwater was not practical the appropriation was not cancelled. In other words the condition was not allowed to defeat or control the general object. (VI, 19).
In 1848 Congress voted money for the purchase from Mrs. Madison of the papers of her husband. This collection was supposed to contain all of Madison's papers but later a certain McGuire in New York was found to have possession of other Madison papers. Cushing was asked whether Mrs. Madison had fulfilled her contract with the government and whether the United States had any cause for action against McGuire. He answered, that Mrs. Madison had fulfilled her contract in as much as she had delivered all the letters written by Madison and some of those which had been written to him. The papers, which McGuire had, were additional letters which Madison had received. Hence there was no cause for action against McGuire. (VII, 104).

Many of Cushing's opinions were of great importance. In several instances he anticipated the decisions of the Supreme Court and followed the same lines. The Dred Scott case and the case of Ableman vs. Both were among them.

Cushing was very active in the defense of slavery and the protection of slave owners. He had many opportunities to do this as the troubles over the enforcement of the Fugitive Slave law of 1850 were at the height during his term of office. Marshals were to be assisted if they got into trouble in their activities in capturing slaves.

In his opinions Cushing expanded the power of the President especially in regard to the expenditure of money but at the same time he upheld the rights of the states. A state could prevent the delivery of anti-slavery papers and federal property in states were not free from municipal regulations unless the state had expressly given up such rights. Even federal property in the territories came under the partial control of the state after it had been admitted to the Union.
His opinions, where slavery and states' rights were not concerned, show great ability and breadth of view. His recommendations for the improvement of the federal courts were the basis for congressional action. His opinion on the diplomatic and consular services show a great knowledge of the subject, as does the one on his own office.

He allowed his prejudices to control his actions in other lines than slavery and states' rights. His dislike for Crampton and Great Britain caused him to go further than necessary in his rulings regarding the Crimean war. Without doubt some of the complaints made by the British minister after his recall were justified though Cushing's answer was a masterful effort.

Cushing was an active in many lines after his retirement from the office of Attorney General. He formed a law partnership with Sidney Webster but the latter did most of the legal work as Cushing was much in demand for addresses both political and otherwise. He also served a term as member of the Massachusetts legislature and wrote editorials for the Boston Post. He considered for some time writing a history of the administration of John Tyler, in which project the former president heartily approved, but Cushing's other activities prevented him from carrying it out.

His political activities were mainly directed against the new Republican party which he called "jumble of freaks and follies, as well as of factions, in which the old Free Soil Party predominates." He also condemned Garrison, Phillips and especially John Brown.

He presided over the Democratic convention in Charleston in 1880 and later the adjourned meeting in Baltimore. When the southern delegates seceded Cushing went with them and assisted
in the nomination of Breckenridge and Lane. Later he went to Charleston as a peace commissioner.

When the Civil war broke out, however, he supported the United States government, did all in his power to assist in the war and later became a Republican. During Grant's administration he was chief counsel for the United States in the arbitration of the Alabama claims at Geneva. On his return Grant nominated him to be chief justice of the United States Supreme court but, when the Senate opposed his confirmation, he asked the President to withdraw the nomination. He was appointed ambassador to Spain where he settled the Virginius affair. After a short period in Spain he retired from public life.

Cushing was a very versatile man, a great linguist, he could speak four languages and could read most of the modern languages. While in China he learned to read and speak Chinese. He was a rapid reader and a fine speaker but was cold, distant, and a poor politician.
The Attorney General was the last cabinet officer selected by Buchanan. He had considered Black for the position but there was much opposition in Pennsylvania to his appointment. This opposition was led by J. Glancy Jones, a congressman and prominent politician, who was of the opinion that Black was controlled by the Philadelphia ring. When convinced of his error in this regard Jones agreed to the appointment.

The cabinet of Buchanan, like that of Pierce, was composed of pro-slavery men. Both North and South were represented, as in all the cabinets, but even the Northern men were friends of the Southern position. The only possible exception to this statement was Lewis Cass of Michigan, who had been made Secretary of State. Cass, however, was of small importance as he was old and inclined to be feeble mentally. He had had a distinguished career both in war and in politics, having been active in the War of 1812 and later a Democratic candidate for President as well as Senator from Michigan. Cass, however, claimed to have been the originator of "popular sovereignty" and therefore was definitely not on the anti-slavery side. Being a Northern man he was anxious to eliminate slavery from political discussion.

The stronger men in the cabinet were Howell Cobb of Georgia, Secretary of the Treasury; John B. Floyd of Virginia, Secretary of War; Isaac Toucey of Connecticut, a former Attorney General, Secretary of the Navy; and Jacob Thompson of Mississippi, Secretary of the Interior. All of them were from the South, except Toucey, and he was as strong a supporter of slavery as could be found in the part of the country where that institution was allowed.
Black's appointment was due to his support of Buchanan during twenty years' political life, as he had held no public office other than that of judge of various Pennsylvania courts. In spite of this judicial training Black had not studied law widely. Indeed he had reduced the law to a number of fundamental principles which he applied to all cases. This habit is plainly to be seen in his opinions as Attorney General.

Jeremiah Sullivan Black was born in Pennsylvania in 1810. After a very sketchy education he studied law in the office of Chauncey Forward, a leader of the bar and a prominent politician. Forward took a great liking to his student and pushed him forward at every opportunity. Soon after Black's admission to the bar Forward was elected to Congress, leaving the young lawyer in charge of his extensive practice. In this situation he was forced to develop his ability and self confidence.

Due to the influence of his patron, Governor Porter in 1842 appointed Black presiding judge of the Court of Common Pleas of the Sixteenth District of Pennsylvania. After nine years' experience he was elected to the state Supreme Court, which position he occupied when Buchanan appointed him to the cabinet.

As Attorney General he had sufficient work in giving opinions, which were requested, but he also took an active part in the political life of the time. He had a controversy which resulted in a pamphlet war with Douglas in regard to Kansas. Black defended the Lecompton constitution and attacked "squatter sovereignty", saying that no state was allowed to violate the Fifth Amendment to the Constitution.

He disapproved of Buchanan's "unofficial" meetings with the commissioners from South Carolina and threatened to resign.
unless they were discontinued. The President, not wishing to lose his services, broke off the negotiations and sent the Star of the West to Fort Sumter. After it was fired upon and forced to return to New York, Black urged further efforts to relieve the distressed garrison and the strengthening of the defenses of Washington. Black, however, was not successful in persuading Buchanan to follow these suggestions. The President preferred to trust to the efforts of the Peace Convention.

BLACK'S OPINIONS.

Of all Black's opinions probably the most important was given 20 November 1860 on the power the President to enforce the laws. In this he advised against the use of military force in opposition to the people of a state even if the law could not be enforced. However he said it was the duty of the President to defend federal property and to protect the courts.

In the field of foreign relations Black's most important statement was that slaves in the employ of diplomatic representatives could be seized by their owners wherever they found them. He also ruled that expatriation was sanctioned by international law and should be recognized by all nations. His opinion in regard to the action of the Peruvian government was directly opposed to the arguments later used by Secretary of State Seward in his controversy with England in regard to belligerency and its recognition.

In his opinions regarding business dealings between the government on the one hand and individuals and companies on the other, Black was insistent that the former should not be cheated. The government should live up to its contracts but nothing more was to be expected. This applied to mail contracts as well as those for the construction of the Washington Aqueduct.
In a financial sense the most important opinion rendered by Black was that in regard to the Castillero claim in California. He was well versed in the subject and did not mince words in describing the crooked work of the Mexican government as well as the claimants. It is interesting to note that the attorney who represented the United States in this suit was Edmund Randolph, grandson of the first Attorney General. Black said of this suit, "In the bulk of the record and the magnitude of the interest at stake, this is probably the heaviest case ever heard before a judicial tribunal". On Randolph's argument, submitted after his death, the government won the case. He had worked four years on it, the effort having the effect of shortening his life.

Black was the fourth Attorney General to rule on the subject of the land granted to Iowa for the improvement of the Des Moines river. He followed the rulings of Crittenden and Cushing and opposed that of Reverdy Johnson.

It might be mentioned that Black's literary style is the most clear of all the Attorneys General. He never left a subject until he had disposed of it in a way which left the reader with a clean cut idea of its meaning, many times enlivened with sly bits of humor.

THE PRESIDENT.

In his opinion to President Buchanan, Black stated his views concerning the power of the President in enforcing the laws where there was forcible resistance to such enforcement. He started by saying that in their respective spheres the federal and state governments were independent and supreme, that the federal government could not pass laws in matters over which
the states had exclusive power and the states could not interfere in exclusively federal affairs. The laws of a state could not absolve its citizens from obeying the just and constitutional requirements of the federal government because the laws of the United States were supreme and binding in so far as they were passed in pursuance of the Constitution. He quoted the decision of the Supreme Court in the case of the United States vs. Booth (21 Howard 506) as proof of his contention.

It was the duty of the President to see that the laws were enforced but he must do so in a legal way. In some cases the law gave the President some discretion as to the method of enforcing it, in others the method was prescribed.

It was the duty of the President to protect public property. This property was purchased with the consent of the state, in which it was located, and on this land the United States had exclusive control. From it force might be used to repel invaders, as at Harper's Ferry in 1859. If the property had been taken it could be recovered by force.

According to the act of 1807 the President could use the armed forces of the United States in seeing that the laws were enforced in all cases where it was lawful to use the militia. In other words, the courts of the United States should be protected and their orders carried out. In states where public opinion was such that the federal officers had resigned and it was improbable that others could be obtained to take their places, there were no officers to aid. To send a military force into such a state would be simply making war on the people of the state.

The laws as they then existed put the federal government
on the defensive. It could only defend federal property and aid the courts in the performance of their duty. If a state should declare her independence the President did not have the right to recognize this act as legal or to absolve her from her federal obligations. He could merely use the defensive measures which the laws provided.

Black, however, did not think that the federal government had the right to make war on a state. The Constitution did not expressly or by plain implication, give that right. Therefore if the federal government did make war on a state, it expelled it from the Union. Being treated as an enemy and an alien the state would be obliged to act accordingly.

Black concluded his opinion with these words, "The right of the general government to preserve itself in its whole constitutional vigor, by repelling a direct and positive aggression upon its property and officers, cannot be denied. But this is a totally different thing from an offensive war, to punish the people for the political mistakes of their state government, or to prevent a threatened violation of the Constitution, or to enforce an acknowledgement that the government of the United States is supreme. The States are colleagues of one another, and if some of them should conquer the rest and hold them as subjugated provinces, it would totally destroy the whole theory upon which they are now connected." (IX,516)

FOREIGN RELATIONS.

A female slave, the property of a Mr. Thornton, had escaped and entered the service of the Chevalier Hülseman, the Austrian minister. Some time later she was recognised and, while walking on the street, she was seized and restored
to her master. The Austrian minister complained that his diplomatic privileges had been violated.

Black denied this, saying that the contract which the foreign minister had made with the woman was illegal as she had no right to make a contract and was therefore not his servant at any time. The complaint that the capture was made without a warrant was unfounded as it was legal to seize escaped slaves whenever they were discovered without any kind of legal process. Therefore the rights of Chevalier Hülsemann had not been invaded and he had no just cause for complaint. (IX,7)

Any citizen of the United States, either native born or naturalized, could remove from this country and change his citizenship provided this was done during times of peace and not for the purpose of injuring the United States. If he moved, together with his family and his property, and took up his residence in some foreign country, taking the obligations of a citizen of that country, Black said that it implied that he had renounced his American citizenship and that no other evidence was necessary. There were no forms of renunciation prescribed by the laws of the United States and it all depended on the laws of the country to which the man went. Some states in the United States, such as Virginia and Kentucky, did require certain forms for the renunciation of citizenship but the laws of these states did not apply in the case under discussion. This opinion concerned the case of Julius Amther, born in Bavaria, who became a naturalized American citizen but later
went back to Bavaria. The Bavarian authorities had asked for the information through the American minister in Berlin. (IX, 62)

Another case which was related to that of Amther, was that of Christian Ernst, a native of Hanover, who came to the United States and became a naturalized citizen. Later he went back to his native country on a visit and, while there, was arrested, carried to the nearest military station and forced into the Hanoverian army. This was a case in which the United States should take prompt and firm action, said Black, in order to protect the rights of our citizens.

The right of expatriation was recognized by all authorities on international law. English common law denied this right but just a short time before Parliament had passed a law establishing a permanent system of naturalization in England. Naturalization made the native and the adopted citizen equal except as the special laws of the country made a difference, as, in the United States, no naturalized citizen could be president and in some states they were barred from the governorship. With these exceptions, however, the naturalized citizen was entitled to the same rights as the native which, of course, included that of protection when travelling even in the country from which he came.

Black cited cases in which naturalization had been recognised by European countries. One was that of Mr. Amther, referred to above, who after being naturalized, went back to his old home and once more became a citizen there. Another was that of Frenchman, who after being naturalized, was seized while in France for an offense against the military
law. He was released immediately when it was proved that he was an American citizen.

Black answered the argument that Hanover should have the right to make her own laws and enforce them in her own way by saying that municipal laws should never be contrary to the law of nations. The right of expatriation did not depend on the consent of the country from which the citizen emigrated. (IX, 356)

Black was called upon to apply the laws of 1855 and 1856 in regard to the diplomatic and consular services to individual cases. Following his usual system he reduced the entire affair to a set of principles and then applied his rules.

Previous to 1855 most of the United States consuls were paid by fees but the law of that year changed the system and provided that after 30 June 1855 they were to receive salaries. This act required some interpretation because of its uncertain phraseology and Cushing's opinion had been required. This opinion was to the effect that no re-appointment was necessary for all these positions where the method of compensation was changed but that the same men held the same positions which they had occupied previous to the date on which the act went into effect. If this interpretation had not been followed the entire consular service would have been upset because all the offices would have been vacant until new appointments had been made.

Black approved of Cushing's opinion in this matter and said that it was evident that Congress did also, because
appropriations had been made to pay diplomatic and consular representatives, previously appointed and not recommissioned, and had ratified treaties negotiated by these same men.

Then came the law of 1856 which further changed the system. By the eighth section of that act it was provided that a consul not only received pay for the time he spent at his post of duty, as in the past, but in addition he was to be paid for the time he spent waiting instructions, travelling to his post and, at the end of his term of office, the time he spent returning home. This act, like the one of 1855, did not apply to those officers already appointed but, as it did not evidently contemplate turning them out, it must have meant that they were to remain in office with the new compensation.

In 1857 Congress provided that the act of 1856 should apply to those consuls appointed after the passage of the act of 1855. Black argued that, by construction and interpretation, the officers appointed before 1855 were put on the same basis as those appointed after that time, therefore all three classes were to be treated alike.

Black said that this legislation meant that previous to 30 June 1855 consuls received fees and nothing else but after that time, if they remained in office, they received salaries. If they held their offices until after the act of 1856 went into operation they received, in addition, pay while returning home. Unless they were appointed after the passage of the latter act they could not be allowed pay while waiting instructions or going to their posts.
Some doubt existed as to the meaning of the eighth section of the act of 1856. It provided that a consul should not receive pay while returning home, "if he shall have resigned, or have been recalled therefrom for any malfeasance in his office". Black ruled that the underscored words qualified "resigned" as well as "Recalled". He said that he could believe that Congress meant to make a resignation from office a penal offense.

While the act of 1857 extended the provisions of that of 1856 to persons appointed under the act of 1855, Black ruled that it did not give them salaries, according to the act of 1856, except for services rendered after it went into operation. (IX, 89)

The salary of a minister should not be stopped because he was absent from his post if he had the President's permission for such absence. The act of 1856 provided that a minister should not be absent from his post for more than ten days without the permission of the President but it placed no limit on an absence with permission. Mr. Seibels, United States minister to Brussels, had been absent for almost a year, with the President's consent. At the end of that time he resigned. Black ruled that he was entitled to his salary to the date of his resignation. (IX, 138)

EXTRADITION.

The extradition laws did not require the proceedings against a foreign criminal or deserting seaman to be carried on, or approved, by the United States attorney for the proper district. The statutes only required a hearing before a judicial officer as a guarantee that no injustice should be done. To require the services of the federal
attorney would tend to obstruct justice and such was not the purpose of the extradition laws. (IX, 246)

The act of Congress in regard to extradition did not require or authorize the issuing of any warrant by the State Department, until the facts of the case were judicially ascertained and certified.

This opinion was given, 8 July 1859, in the case of William H. Tyler who was charged with murder in Canadian waters. Tyler, a deputy marshal of the United States, was attempting to serve a writ of attachment on the American brig Concord and in doing so pursued it into Canadian waters. There Henry L. Jones, master of the Concord, resisted service and, in the fight which ensued, Jones was killed by Tyler. The latter was arrested, and tried in a federal court where he was found guilty of manslaughter. He was sentenced to thirty days in jail and to pay a fine of one dollar.

After he had served this sentence he was arrested by the Michigan authorities of the county in which Jones died. He pleaded that he could not be tried twice for the same offense and this plea was still pending before the Supreme Court of Michigan. In the meantime the British minister had demanded the extradition of Tyler on two grounds: first, that he had violated British territory by pursuing the Concord into Canadian waters, and, second, that he had caused the death of Jones within British jurisdiction. The first ground was no reason for extradition, said Black, because it was not one of the crimes mentioned in the extradition treaty.

The British minister was willing to wait until the Michigan case was settled and Black maintained that the Sec-
retary of State could do nothing until the judicial proceedings started by the British authorities were transmitted to him. (IX, 379)

In the extradition of criminals not only all federal judges but all judges of state courts were bound to assist in any possible way. Federal district attorneys, however, were not required to appear on behalf of foreign countries to assist in bringing fugitive criminals to justice. The foreign government could employ any lawyer it saw fit and would be compelled to pay for his services. In such proceedings federal officers, who received their pay in the form of fees, would also have to be paid as it was a rule that in all extradition transactions all expenses were to be paid by the demanding country.

This opinion was given as a result of some inquiries by the Prussian minister. In Prussia all officials were paid salaries and were required to give assistance in all extradition proceedings without cost the demanding country. (IX, 497)

The Peruvian consul applied at the wrong place for redress of his grievances in the case of the estate of Juan del Carmen Verjel, according to Black. By the treaty between the United States and Peru in 1851 the Peruvian consul at New York was made ex officio administrator of the estates of his deceased countrymen. Juan del Carmen Verjel had died on board an American ship bound from New York to the Pacific. His property had been brought back by the steamship company and turned over to the New York public
administrator, who had disposed of it.

Black admitted that the property should have been turned over to the Peruvian consul but he maintained that the United States did not agree to place the property of deceased Peruvians in the hands of their consul or, in case of a failure to do so, to pay for it. The treaty did give the consul the right of legal action in order to recover this property. In other words, the consul should apply to the courts for redress, not to the State Department. (IX, 383)

Manuel Castro had been arrested at the request of the Spanish consul at Key West, charged with being a deserter from a Spanish ship, after the vessel had left port. He was later released by the judge of a state court on a writ of habeas corpus. The consul applied to a federal court for another warrant of arrest but was refused. He asked that the judge be instructed to give him the warrant.

Black ruled that the judge could not be so instructed. The trial must take place in the state court and all the executive department could do was to provide counsel and direct the course of the trial.

In addition said that he thought that the consul had a poor case. Under the terms of the treaty with Spain it was required that the consul show the ship's register with the deserter's name in it. In this case the register was not shown. Instead the consul produced an extract from the register, certified by himself. This, said Black, did not conform to the treaty. (IX, 96)

An American consul did not have the right to retain the papers of an American ship which he suspected was des
destined for the slave trade. Black said that in the act of Congress, which enumerated the grounds on which a consul could detain the papers of a ship, this one was omitted. He added that if the master and crew were intent on such a voyage stronger measures than detention of the papers would be necessary to stop them. If the consul had evidence of such intention the vessel could be seized and sent to the United States which would not only break up the voyage but condemn the ship and punish the commander and crew. (IX, 426)

The Miramon and the Marquis de la Habana on 6 March 1860 were captured by an American naval vessel, the Saratoga, near Vera Cruz and brought to New Orleans as prizes. President Buchanan asked Black to investigate the affair and report the true facts.

The Miramon was owned by the Miramon government in Mexico, one of the parties in a civil war which was going on at that time. The Marquis de la Habana was owned by a Spanish subject but was under contract to be sold to the Miramon government. The transfer, however, had not yet been made. The American squadron in the Gulf of Mexico, under the command of Captain Jarvis, was there to protect American citizens and their property. The two ships in question had done nothing to injure American commerce or American citizens.

The two ships at the time of their capture were not on the high seas but were about a mile from the Mexican shore. About 11 o'clock at night Captain Turner, in command of the Saratoga, together with two other American ships, approached without showing any flags or signals to indicate their character. Captain Turner ordered the commander of one of the
smaller ships to board the **Miramon**. This officer overhauled the **Miramon** and ordered her to drop anchor. When this order was not obeyed the American ship fired a shot across her bows, upon which the **Miramon** fired a shot which was returned. A battle resulted during which both ships ran aground and the **Miramon** surrendered.

In the meantime Captain Turner seeing the **Marquis de la Habana** trying to slip anchor fired a broadside into her, without giving any warning or even displaying his flag. The Spanish ship surrendered and both ships were brought to New Orleans as prizes of war. These facts Black obtained from the statements of American officers and witnesses on board the ships. When there was any disagreement he accepted the statements of the former.

Black said that neither of these ships were pirates nor were they bound on any piratical voyage, they were simply ships in the service of a government which was at peace with the United States. There was not even a suspicion that the ships were of a piratical character.

He said that cruiser of one nation had the right to inquire the nationality of any strange ship it might meet at sea but it was not an absolute right. Before the cruiser made such a inquiry it must either display its flag or tell by word or signal its nationality. If not answered the bow it could fire a blank shot or even a solid shot across, but if the strange ship still refused to answer, the cruiser had no right to go any further. Even this right did not exist when the strange ship was not on the high seas. The cruiser had no right to go into the territorial waters
of another country to make such an inquiry.

In this case Captain Turner went into the territorial waters of another country, did not display his flag, did not make any inquiry but simply made preparations to board the ship without notice or warning. The argument that one of the Mexican ships fired a shot first was of no weight, said Black, because the methods used by the American officers certainly looked like an attack and the Mexicans had a right to resist. He asked what Captain Turner would have done if another ship had approached in the dead of night and attempted to board his ship.

Black maintained that the American ships were not justified by the law of nations in their actions and that the Mexican ships could not be considered prizes of war. He added that Captain Turner had "imposed restraint on the Miramon without any authority, except what he derived from the law of the strongest". (IX, 455)

Black gave a decision in regard to the revolution in Peru, part of which could have been used against the contention of the United States in her quarrel with Great Britain during our own Civil War on the question of the recognition of the belligerency of the Confederacy.

Two American ships, the Georgiana and the Lizzie Thompson, visited the port of Iquique, then under the control of Peruvian revolutionists, discharged their cargoes, received permission to load with guano at places under the control of the same party. While they were taking on these cargoes they were seized by the Peruvian warship Tumbez and taken to Callao on the charge of being engaged
in contraband trade.

Black maintained that the party which held military control of a part of the country was entitled to sovereignty and that foreigners, who came there, must take the law from them. If a revolution broke out and the revolutionists gained possession of the entire country no one would doubt that they had control and could be dealt with by foreigners.

In case of a civil war both sides were to be recognized as belligerents. It would be contrary to the laws of the United States for any of our citizens to assist either side. If the revolutionists gained control of one part of the country, the only government existing there would be the revolutionary government and hence foreigners would have to deal with it. The two parties to a civil war were to be dealt with as distinct political societies, said Vattel, and both were entitled to the rights of asylum, hospitality and intercourse with other nations.

The American ships had violated no laws of the government which had been established in the part of Peru they visited and therefore should not have been detained. (IX, 140)

American consuls had no right, under the act of 28 February 1803, to compel the payment of demands for which suit had been brought by creditors, after the release of the ship on bond by the court. The method of compulsion used was the withholding of the ship's papers. Under the act of 18 August 1856 the consuls had authority to withhold ships' papers only to compel the payment of wages in certain cases and consular fees but it gave them no general powers of de-
ciding all kinds of disputed claims against American vessels. The law gave the consuls the right to recover penalties, incurred by masters who had failed to deposit their papers, by starting suit in any court of competent jurisdiction but otherwise they had no right to enforce the payment of penalties.

This case arose over the actions of the United States consul at Valparaiso, who had made himself, according to Black, not only the plaintiff in a suit against the American ship Independence but the judge as well. (IX, 384)

THE POSTOFFICE DEPARTMENT.

Black received a letter from the Postmaster General asking his opinion in regard to the claim of Edward H. Carmick and Albert C. Ramsey and at the same time a letter from the attorneys for the claimants urging him not to answer the questions submitted by the Postmaster General on the grounds that the Postoffice Department had nothing to do with the case.

Black refused to take the advice of the attorneys for the reasons that it was the duty of the Attorney General to answer requests for legal advice made by heads of departments and because the claim of Carmick and Ramsey did concern the Postoffice Department.

In 1853 James Campbell, Postmaster General under Pierce, had made a contract with Carmick and Ramsey to carry mail from Vera Cruz to San Francisco by way of Acapulco, for which they were to receive $424,000 per year for four years. The contract was to go into effect on the date when Congress
ratified it and appropriated money to satisfy it. The contract expressly stated that it was "to have no force or validity until it shall have received the sanction of Congress, by the passage of an appropriation to carry it into effect".

Congress never passed such an act and, according to Black, the contractors never carried any mail or incurred any expense in preparing to do so. It was not material, however, whether or not they spent any money in preparation because the contract warned against such expense.

Black ruled that the contract was valid and binding. The law, he said, authorized the Postmaster General to make contracts for the carrying of mail from one part of the country to another through the territory of another country. He added, however, that the contract was binding in all its parts, including the one which said that it did not go into effect until Congress ratified it.

He also denied that the contract had been abrogated. The Postmaster General did not bind himself and his successors to recommend its ratification by Congress. He simply expressed his honest opinion about it in his report. The successor of the Postmaster General, who made the contract, did not favor its ratification.

On 18 August 1856 Congress passed an act requiring the Comptroller of the Treasury to adjust the damages to Carmick and Ramsey, on account of the abrogation of this same contract, and award them what should be due, according to law, equity and justice. Black remarked that Congress could give away the money of the United States if it wanted to and in
this case it could give a half million dollars to Carmick and Ramsey but this act of Congress did not give the contractors any specified sum. It only voted the amount due them on account of the abrogated contract.

Black reasoned that, as the contract was never abrogated, there could have been no damage on account of its abrogation. The section of the law which said that Carmick and Ramsey were to have what was found to be due "according to law, equity and justice" meant the amount that a court would award them if the United States was suable. In court, Black said, they would have no case and would therefore receive nothing. That was what Black recommended that they should be paid. (IX, 10)

The act of Congress passed 3 March 1857 provided for the letting of contracts for carrying mail from some point on the Mississippi river to California and allowed the Postmaster General to decide whether this service was to be semi-monthly, weekly, or semi-weekly, fixing a maximum cost for each kind of service. The Postmaster General, under the authority of the act, had made a contract with John Butterfield for semi-weekly service for $600,000 per year.

Most contracts made by the Postoffice Department contained a clause which allowed the Postmaster General to increase or decrease the service with a corresponding change in the pay for delivering the mail but this one did not contain such a clause. In 1859, when this opinion was given, the Department was in financial difficulties and desired to decrease the frequency of the mail delivery to California, thus saving money.
Black ruled, however, that the act of 1857 gave the Postmaster General but one choice, that made when the contract was let. Having decided in favor of semi-weekly service no alteration could be made, as the contract did not provide for any further change without the consent of the contractor.

The omission of the clause in this contract, allowing a change in the service was, without doubt, intentional. To carry out the contract it was necessary for the contractor to provide a large amount of equipment and to transport it to places far removed from the settled part of the country. He would not do this if, at the will of the Postmaster General, a large part of this equipment, purchased and transported at great expense, would be made useless because the service had been decreased. Therefore the contract would have to be carried out as originally intended. Black concluded with this statement, "The unfortunate condition in which the Department has unexpectedly found itself might make us wish to get clear of any many burdens as possible. But the pecuniary interests of the country are not the most important. It has a far deeper stake in doing justice and maintaining the laws". (IX, 342)

A mail contract could be annulled if it was assigned without the consent of the Postmaster General or if the contractor disobeyed the orders of the department. Black said that the Postoffice Department had a right to know what arrangements a contractor had made for the transportation of the mails a reasonable time before they were delivered to him. If he failed to give information on that point
when instructed to do so, it would justify an annulment.

The proper form of annulment would be an order from the Postoffice Department declaring the contract annulled with the reasons for so doing. This order should be promptly sent to the contractor. (IX, 392)

The Postoffice Department had no power to enforce a rule that a bid, once submitted for carrying mail, could not be withdrawn. In order to make such a rule it would be necessary for Congress to pass a law authorizing the Department to do so.

No act of Congress had been passed which required a bid to be signed. The printed instructions of the Postoffice Department stated that bids should be signed but if the proposal was written in the handwriting of the man who submitted it and his name appeared in the body of the document, it was perfectly legal. Black said that unsigned wills, in many cases, had been declared legal. (IX, 174)

Black made a number of rulings in regard to the liability of postmasters for stamps. A postmaster should have credit for stamps which were destroyed through no fault of his own. The printing of stamps cost so little that it was no great loss to the government if they destroyed before they were used. If stamps were stolen or lost through the fault of the postmaster he should be forced to pay for them. Government property in the hands of an official was supposed to be safe from danger of loss. Stamps sent by mail to a postmaster were supposed to have reached him but, if he could submit proof that they never arrived at his office, a credit for the amount of the stamps should be allowed.
In returning stamps which did not arrive at their destination the postmaster must have proved that he mailed them. This proof had to be something stronger than his own oath. (IX, 105)

When the contract of Witherspoon and Saffell to carry mail on a certain route expired, bids were advertised for. The same contractors offered to carry the mail for $2,495 but J.B., D.C., and G.R.R. Dunn offered to do the same work for $1,000. The Dunns were given the contract, which they later transferred to Witherspoon and Saffell. At the time of this opinion the latter firm had asked that either the service be reduced or that the contract be abrogated and new bids asked for. They claimed that the Dunn brothers determined to get the contract and hence bid so low that they were sure to get it. Black ruled that Witherspoon and Saffell knew what it cost to give the service when they assumed Dunns' contract and therefore they would be forced to carry out the agreement which they had made. (IX, 331)

A number of letters, addressed to Emory and company, Baltimore, were sent by the postmaster of that city to the Dead Letter office where they were claimed by E.N. Carr, who stated that he was doing business under that name. The postmaster regarded Emory and company as a fictitious firm and followed the regulations of the Postoffice Department which said that, "letters and packages addressed to fictitious persons or firms, or to no particular person or firm, not being deliverable according to regulations, are to be returned at the end of each month to the Dead Letter office".
Black said that the Postoffice Department had the right to make regulations which would prevent the postal service from being used for fraudulent purposes and therefore any letters which would assist in defrauding persons should not be delivered. The fraudulent intent, however, should be clear as the Postoffice Department did not have the right to inquire into the private affairs of persons who were receiving letters by mail. Therefore before Carr was refused the letters an inquiry should be made into the affairs of Emory and company to see if Carr was using the mail for dishonest purposes. (IX,454)

MILITARY AND NAVAL AFFAIRS.

Black informed John B. Floyd, Secretary of War, that he could not transfer an appropriation from one branch of expenditure in his department to another, except in certain cases which were not under discussion. Floyd had claimed that, unless this was done, the national armories could not make any arms. Black, however, called his attention to an appropriation of $200,000, "for providing arms and equipments for the whole body of the militia, either by purchase or manufacture". Therefore this sum could be used for making arms in the armories. The distribution of these arms, Black said, was an administrative question which the War Department would have to settle later. (IX,16)

Dr. Simons had been an assistant surgeon in the army but was dismissed from the service. Later in the same year he was re-appointed. While he was out of the service Congress, by the act of 16 August 1856, had increased the medical department of the army by providing for four additional sur-
geons and eight assistant surgeons.

When Dr. Simons' re-appointment was confirmed by the Senate, that body considered that he had been unjustly treated when he had been dismissed and recommended that he be given the same rank which he would have had if his service had been continuous. That could not be done, said Black, because if the recommendation was followed, Dr. Simons would be a surgeon instead of an assistant surgeon. All the positions as surgeons were filled and besides Dr. Simons was appointed an assistant surgeon. The best way out of the difficulty, said Black, was to make Dr. Simons ranking assistant surgeon so that he would get the first vacancy as surgeon.(IX,20)

In his opinion on the claims of the representatives of Adjutant General Jones, Black again stated his idea that a law should be taken at its face value, not according to the wishes of the men who passed it. Any meaning not contained in the words of the statute should not be placed there by the interpretation of the Attorney General.

The representatives of General Jones claimed that he had been entitled to more pay than he had received and they were willing to take the difference. Jones had held the office of adjutant general from at least as far back as 1832, the exact date not being given in the petition, until his death in 1852. In 1832 he was made brigadier general by brevet and in 1848 he was made major general by brevet.

The law of 16 April 1818 provided that an officer should not receive the pay of his brevet rank unless he was on duty and holding a command according to his brevet rank.
Adjutant General Jones was on duty but it was admitted that he held no command at all.

The law of 3 March 1839 provided that thereafter the act of 1818 should be construed so as to include the case of the adjutant general. This act, said Black, did nothing except repeat what had already been said. The act of 1818 did include the adjutant general, that is, it prevented him from receiving the pay of his brevet rank unless he held a command according to that rank.

From the time of the passage of the act of 1839 Jones received the pay of a brigadier general, which, Black maintained, was a plain violation of the law, on the part of the accounting officers who allowed it. Because the accounting officers made a mistake was no reason for continuing it. Jones' representatives claimed that if Black's interpretation was accepted, the law of 1839 was unnecessary and redundant, which he admitted. They also claimed that Congress intended to make the adjutant general an exception to the act of 1818, which Black admitted was probably true. Nevertheless the law should be enforced as it stood. The intention of the law makers could not be accepted in place of the law. (IX,114)

A lieutenant in the army had charges preferred against him for disobedience to orders but, before he was tried, he was dismissed from the army for other reasons connected with the condition of his accounts. Later the officer was restored to his old rank.

The question arose as to whether he could be tried on the charges which had been preferred against him. The law
provided that an officer must be tried within two years of
the time that charges were preferred, unless the man absented
himself or "some other manifest impediment" prevented. Black ruled that
while he could not have been tried while he was out of the
army, it was clear that the officer had not caused the delay
in the trial, therefore the lapse of time prevented the
charges from being pressed. (IX, 181)

The words "actual service" in the acts of Congress
were interpreted by Black as the War Department had previ¬
siously ruled. This ruling was that a soldier who, though must¬
ered into service, had not been "marched or sent to the seat
of war, or to positions where service was required of them"
could not be said to have been in actual service.

Black said that the length of time since the adoption
of this rule was a strong reason against changing it by
anything less than legislation but he added, "In a clear
case of error the antiquity of the evil should not be al¬
lowed to make it perpetual; but the present is not such a
case." (IX, 186)

The appointment of a commissioned officer in the
army was not completed and was entirely within the power
of the President until the commission was issued. B.M. Hughes
was appointed captain of a company of mounted riflemen. Be¬
fore he received notice of his appointment he wrote to the
President withdrawing his application. The latter then ap¬
pointed Charles F. Ruff as captain, the appointment was con¬
firmed and a commission issued to him. In the meantime
Hughes had received the notice and accepted the appointment.
It was too late, however, as Ruff had been commissioned.
The legality of Ruff's appointment was also questioned by B.S. Roberts, who was senior first lieutenant of the company. Roberts claimed that Hughes had been "de facto and de jure in full possession and enjoyment of the rights and subject to the obligations and duties of captain". If such was the case, when Hughes declined it made Roberts captain of the company. Black decided against this claim, saying that Ruff's commission was legal. (IX, 297)

By the act of 3 March 1819, was authorized to cause to be sold such reservations as were no longer useful for military purposes. At the sale of the military reservation at Fort Ripley in Minnesota the bids on the land ranged from one cent to twenty cents per acre which was not considered a sufficient price. The Secretary of War then set aside and annulled the sale.

Black ruled that he was entirely within his rights in doing so as he had not been ordered to sell certain military lands but could sell those which, in his judgment, were useless and Congress expected that these lands would bring a reasonable price. The entire proceedings were subject to the approval of the Secretary of War and it was therefore within his power to annul the sale. (IX, 298)

No law existed which authorized a court martial to compel the attendance of witnesses not in military service nor to compel them to make depositions to be used in evidence in such a court. Persons in military service could, however, be forced to attend courts martial. (IX, 311)

The commissioners of the harbor of Portland, Maine, claimed that it was necessary to get their permission in
order to deposit material in and about the harbor to be used for the construction of the fort on Hog Island Ledge.

Black said that whatever authority the commissioners had over the harbor was subordinate to that of Congress in the regulation of foreign commerce and the promotion of the common defense. The Hog Island Ledge fort had been authorized by Congress and the legislature of Maine had ceded to the United States jurisdiction over Hog Island Ledge for that purpose. Therefore the permission of the harbor commissioners was not necessary. (IX, 319)

Black wrote a long opinion on the work of the Navy Retiring Board and followed it with opinions in the cases of two of the officers affected by the report of the Board, Captains Voorhees and Ramsay. In all three opinions he unsparingly denounced the work of the board, both as to its methods and its reports. He concluded by recommending that all the officers, dropped as the result of this report, be reinstated to the ranks they held before the board met.

He also took a slap at President Pierce, who signed the report and ordered it carried out. Black said, "Mr. Pierce signed a wholesale approval in the dark".

The board was organized as a result of an act of Congress passed in 1855 which was intended to increase the efficiency of the navy. The act, said Black, did not mean to say that the navy was inefficient because everyone knew that it had a wonderful record and, considering its size, was the most powerful in the world. The object was to bring the fighting force at sea to a still higher pitch of efficiency. There were probably six or ten cases of incomp-
etency which the board might have eliminated and, if the law had not been ex post facto and had been executed according to its true intent, Black said, it might have been harmless and perhaps useful. "But it was wholly misunderstood, disregarded and perverted".

The board was required to make an investigation, which, according to Black, meant an open and fair trial, not a secret condemnation, without evidence and without an opportunity for defense. The law also said that it was to be a careful investigation but the board spent less than ten minutes, on an average, on each case. It was necessary to have the approval of the President for the findings of the Board but it was expected that the evidence behind the findings would be submitted along with the verdict but this was not done. President Pierce, however, signed the report without knowing anything at all about its justice.

The Board started its work by asking the Secretary of the Navy to send a list of incapable officers with the reasons for their incapacity. Black said that they proved that incapacity was not what they aimed at by the fact that a large number of their victims were the ablest officers in the navy. The proceedings of the Board were full of errors, as well as, what Black called, "the direst cruelty" because they blackened the names of men who had spent their lives in the service of their country while receiving very meagre pay. This was done without a fair trial. All the sessions were secret. The officers, who were condemned, had no chance to answer the charges, in fact, most of them did
not know that charges were being preferred against them.

Congress recognized that a great injustice had been done and to correct it passed the act of 1857. When this failed to remedy the situation the act of 1858 was passed, which had the same object but a different method. Black hoped that President Buchanan would not refuse to see justice done just because someone else had failed to do it previously.

Black then went into the evidence of some of the cases though he had only examined about one-third of them. Those he had examined showed him enough to convince him that grave injustice had been done. Officers, who had good records, were ordered dismissed for trifling reasons. He said, "In very many cases, officers who had performed all their duties in the most perfect manner, to the admiration of their associates during their whole professional lives, were pronounced incapable of performing those same duties". They investigated all the small transactions of these officers such as their board bills, their horse trades and their accounts with shop keepers. The constitutional provision that no citizen should be twice harassed for the same offense was violated by dragging in the proceedings of courts martial on cases against officers which had been settled many years before. One officer had been tried, when still a boy, for the offense of having shut a door behind him "with considerable violence". A number of instances of this kind were given.

One officer was removed because he had not been on sea duty for a number of years. The reason for this, said Black, was that the officer was an expert mathematician and astron-
omer and his services were needed for scientific work, which the average officer could not perform. Yet the Navy Retiring Board would dismiss this man from the navy because he had not been on sea duty. Black recommended that all officers, who had been ordered dismissed by the Board, be restored to their former rank. (IX, 212)

The reports of Black on the cases of Captain Voorhees and Captain Ramsay went into details concerning the charges which the Navy Retiring Board had brought against these officers and proved that they were groundless. He said that both men were exceptionally good officers and recommended their reinstatement. (IX, 223, 234)

Captain Wilkes, while in command of an exploring expedition, had caused one of his men to be punished for insubordination. After their return the man had sued Captain Wilkes for damages but after several trials had finally abandoned the case. Captain Wilkes had spent a large sum of money defending himself and asked the government to reimburse him. Black ruled that when an officer of the United States was sued for doing what he was required to do by law, the government should provide for his defense. If it had failed to do so, it should repay to the officer the money he had paid out. (IX, 51)

Black ruled that there was nothing illegal in the sentence of the court martial in the case of Charles Crowell, charged with striking and disobeying his superior officer, and who had been sentenced to three years at hard labor, to be deprived of his pay and to be marked with the letter D on his right hip. (IX, 80)
Commodore Shubrick's secretary had acted as interpreter of Spanish and French while the fleet was on the coast of California. For these services he had been paid $1,550, in addition to his pay as secretary. The Fourth Auditor, when he audited the purser's accounts, had refused to allow the additional sum and it was therefore charged to Commodore Shubrick.

Black said that without doubt the commodore had ordered this money paid in good faith, thinking his secretary entitled to it. He also said that Commodore Shubrick had collected a large amount of money on the coast, in which transactions the services of an interpreter were invaluable. The payment of this money, however, was against the law but he recommended that an appeal to Congress be made to reimburse the commodore, giving a statement of the financial benefit the government had received by the services of the secretary. (IX, 260)

It became necessary for Black to define the word "cruise" because a naval officer was to receive pay until the end of the cruise of his ship. Black consulted dictionaries and officers of the navy to find that they agreed that a cruise meant the interval between the time of sailing and the time when the ship returned and was put out of commission. Therefore Captain Ringgold was entitled to his pay as commander of the expedition, which was to explore Bering's Straights and the China Sea, until the flagship reached New York. (IX, 375)

In his opinion in regard to the Castillero claim Black gave an account of the vast scheme to defraud the United States out of valuable mineral lands in California
which was carried on by Mexican citizens with the assistance of their government.

The opinion was given as a result of the request of the attorneys for Andres Castillero that the President inter¬
ference in regard to a case pending before the district court of California between Castillero and the United States. The land in dispute consisted of two leagues including the New Almaden quicksilver mine, from which ore to the value of a million dollars a year had been taken for the past eight years and, according to Black, was capable of still larger production.

While Castillero was a Mexican his associates were both Mexican and British but his name was used in the claim which was made before the Land Commissioners. In June 1858 the district attorney, acting under instructions from the Attorney General's office, asked the circuit court for an injunction to prevent Castillero and his associates from working the mine until the case was settled in the district court on the grounds that the title of the persons in possession was "fabricated and fraudulent". The injunction was granted and Black said that he had no doubt but that the district court would reject the claim when the case was heard. The attorneys for Castillero, however, asked the President to do one of five things: direct the lawyers for the United States to consent to the admission of copies of certain papers in the claimant's possession as evidence; order them to adopt some measure which will satisfy themselves that the copies were correctly taken; order them to procure other copies of the same papers; solicit of the Mexican government the original papers concerning Castillero's
grant; ask of Mexico a copy of all such papers, authenticated by the Great Seal of Mexico.

Black then proceeded to demolish each of these requests. He said that the attorneys for the United States could not consent to the admission as evidence of papers which they knew to be false. These papers were not satisfactorily authenticated and the originals were fraudulent fabrications.

As for the second request Black said the attorneys for the government had taken means to satisfy themselves concerning these copies but they were satisfied that the papers were valueless as supports to this claim. The third request Black regarded as unprecedented because it was asking one side to a case to get evidence against themselves. The documents of which copies were asked were not honestly placed in the Mexican archives and of such documents the United States asked for no copies.

The fourth request was also rejected. It was no business of the United States to ask Mexico to furnish documents to assist Mexican citizens in suits against the United States and her citizens. Black said, "My opinion is that the government of the United States should wait until that of Mexico shall make a voluntary tender of the papers which support this title, and then examine into their character with great care, holding Mexico to the full measure of responsibility she will incur by any aid she may wilfully give in the support of a false claim against the United States". The fifth request came under the same head as asking for the originals of the documents.
Black said that his opinion on the five requests would have been the same if he had thought Castillero's claim to be honest but he said that he was convinced that "it was legally and morally destitute to all claim to our respect".

He then gave a history of the negotiations, which ended the War with Mexico, showing that a proviso had been inserted in the treaty that all grants made after 13 May 1846 were to be null and void. The Mexican negotiators, however, objected to this proviso on the grounds that they were sure that no grants had been made after that date. Hence the treaty was changed, putting in a statement that the Mexican government had made no grant after the date named. Yet Castillero's grant was dated 23 May 1846. If it be said that the statement of the Mexican commissioners was a mistake and no private individual should be made to suffer on account of it, Black answered that he should seek redress from the government whose officers made the mistake, not from the United States.

Black said that Limatour's title to the land on which the city of San Francisco was located and to other property of the United States was better authenticated than that of Castillero. It was attested by the Mexican Secretary of State, it was sworn to by a Mexican statesman of high rank, certified to by the President of Mexico and sent by him to the Land Commissioners. Yet it was false and these Mexican officials knew it was false when they signed the papers under oath. It was found that blank grants bearing the signatures of the commandante general and governor of the
Californias, purporting to be dated before the war, and ready to be filled in with the descriptions of lands and mines belonging to the United States, were in the hands of men who were in close relationship with the high officials of Mexico. Many false documents concerning land in California were placed in the Mexican archives by Mexican officials waiting to be "found" when they needed to prove claims. When this evidence was brought before the court it looked with suspicion on all claims of Mexicans and the proofs which came from Mexico.

When Castillero took possession of his grant, he signed a written statement that the land contained no ore, though Black asserted that he knew the statement to be false when he made it.

Black told the President that it was the duty of the government to protect itself and its citizens against foreigners who came with fabricated titles from Mexico and, of course, he advised the President to refuse all the requests made by Castillero's attorneys. (IX, 320)

Some citizens of Butte county, California, had petitioned the Secretary of the Interior, asking that no patents be issued for the ranchos called Flugge and Fernandez. These ranchos were tracts of land granted by the Spanish government before the conquest of California by the United States. They had been declared good by the commissioners appointed to investigate them, had been confirmed by the district court and the Supreme Court had dismissed the appeal from the decision of the lower court.

Black said that a person, who claimed land in California,
was entitled to a patent if he showed that his claim had been confirmed by the commissioners and by the district court or the Supreme Court, provided he accompanied that proof with a survey, certified and approved by the surveyor general of California. As the claimants to the Flugge and the Fernandez had complied with these rules they were entitled to patents. The courts, however, were open to anyone who disputed these claims. (IX, 108)

The act of 9 February 1853 gave to the states of Missouri and Arkansas a tract of land for the purpose of building a railroad from the mouth of the Ohio river, by way of Little Rock, to Fulton on the Texas line, with branches. The amount of land was the even numbered sections on each side of the railroad but the exact sections could not be located until the road was surveyed. When this was done the states would have a fee simple title to the land just as if it had been granted by name, number and description, said Black. Any land which had been sold or to which pre-emption rights were held, were to be excepted from the grant but other land was to be given the states in place of it. (IX, 43)

Congress had made two grants of land to the state of Arkansas which overlapped. The first was by the act of 28 September 1850 by which Arkansas was granted all the overflowed and swamp land in the state. The second, by the act of 9 February 1853 (mentioned above) was the grant for the railroad through Missouri and Arkansas. On 3 October 1856 the surveyor general made a report to the General Land Office in which he designated the swamp and overflowed land in the state. The question to be settled by Black was whether
the first act was so indefinite that the second one super-
ceded it where the two conflicted because the railroad ran
through some of the overflowed and swamp land.

Black ruled that when there was a conflict between
two titles, either of which would be good if it were not
for the other, the first one must always prevail. The first
grant gave title to the state from the date of the passage
of the act because the location of the swamp and overflowed
land was well known. Title passed immediately and did not
have to wait until the surveyor general made his report,
which was after the passage of the second act.

In fact the location of the land granted by the second
act was more indefinite than that by the first, as it could
not be located until the railroad was surveyed, as the land
consisted of even numbered sections on each side of it. In
addition, the state located the swamp and overflowed land
before the railroad was located. Hence the state had the best
title to the land. (IX, 253)

Black ruled that a patent should be issued upon an
entry by the mayor for the town site of Kearney, Nebraska.
The act of 23 May 1844 provided that entry should be made
by the corporate authorities but Black insisted that the
mayor was just as much one of the corporate authorities as
was the council. Besides he did not know whether or not
Kearney, Nebraska, had a council. The presumption was that
the mayor had the authority to make this entry and when
this patent was issued it made the titles of all land
holders in the town good because the mayor was acting in
their name. (IX, 308)
The United States by the act of 8 August 1846 granted to the state of Wisconsin a large amount of land for the purpose of improving the navigation on the Fox and Wisconsin rivers and the building of a canal between the two rivers. The amount was one-half of three sections in width on each side of the Fox river from its mouth to the place where the canal was to start.

This grant encroached on the Stockbridge Indian Reserve and the title of these Indians was not extinguished until 1856. The question arose as to whether Wisconsin was entitled to the land which was granted before the Indian title was extinguished. Black ruled that the state should have this land for the reason that if a person had granted something which they did not own at the time the grant was made but later acquired ownership the benefit should go to the grantee. Therefore if the United States granted to a state land which she did not own at the time but acquired later, that land should become the property of the state. Another reason for this ruling was that, according to Black, the United States did have title in the land even when the Indians occupied it because Indians' title was not absolute but amounted only to a limited use.

Wisconsin, however, was unable to secure all the land which had been granted because some of it had been appropriated by purchasers or settlers. Congress passed the act of 3 August 1854 to compensate the state for these losses.
This act provided that Wisconsin could select an equal quantity of land "out of any unsold public lands in the State subject to private entry at one dollar and twenty five cents per acre and not claimed by pre-emption". The original act gave the state alternate sections and she had selected the odd-numbered ones. After the act of 1854 was passed she demanded the even-numbered sections within the same limits in quantity to compensate for the land she did not get in the original grant. This Black refused to allow as this land sold for more than one dollar and twenty five cents an acre, in fact it was held at double that amount.

The state could not claim that the act of 1854 was unconstitutional because, if it was, that fact would bar Wisconsin from taking any land. Black said that the state could not accept the benefits of the act and repudiate its restrictions. (IX, 346)

The grant of land to the territory of Iowa for the improvement of the Des Moines had been in doubt for twelve years when it was presented to Black for interpretation. It was clear from the words of the act that the improvement was to extend only to Raccoon Fork but the amount of land granted was the doubtful point. Iowa claimed that she was entitled to half of the land of each side of the river, for a distance of five miles back, from the mouth of the river to its source while her opponents claimed that the grant extended only as far as the improvement, that is, to Raccoon Fork. Opinions had been given by several Attorneys General as well as other cabinet members. Johnson had ruled that the grant extended to the source of the river, while
Crittenden and Cushing had maintained that Raccoon Fork was the limit.

Black admitted that the grant was obscure in its phraseology. It must have been to have some many eminent lawyers differ in its interpretation and it must have been easy for anyone having an interest on either side to see that the act clearly upheld this point of view.

Black said he did not have the least doubt about the meaning of the act. "The very obscurity of the grant, in my judgment, makes it clear". He then applied one of his legal rules to the situation, that all public grants of property, money or privileges were to be construed most strictly against the grantee. In other words anything which was not expressly given should be withheld.

The bill, he said, was probably drawn up by someone who was interested in the grant and might have been made ambiguous in order to make passage easy. If they were allowed to reap the benefit of this ambiguity, which they had put into the law, much would be given that Congress never intended. The best way to protect the United States was to let such men know that they would get nothing except what Congress stated in words so plain that their sense could not be mistaken.

Black said that he had no reason for suspecting any bad faith in this case but it came within the rule, which must be followed if general mischief was to be prevented. If Congress had intended to grant land the full length of the Des Moines river it would have been easy to make it clear when the act was being passed. As it was not clear
he was of the opinion that only the land as far as Raccoon Fork had been granted to Iowa. (IX, 273)

The number of patents for land must have been very great judging from the provisions made for signing them. In 1836 the President was authorized to appoint a secretary to sign his name to these documents and 1848 Congress provided for the appointment of an extra clerk to assist as long as necessary to bring up the arrears. No salary was attached to this office. For that reason the President appointed a clerk of the General Land Office to do the work. The President's private secretary drew the pay and did the work, as provided for in the act of 1836.

Later the President was provided with a private secretary, paid by the government, so that, according to Black, another secretary could be appointed to sign the patents and he, in turn, could get the assistance of a clerk from the Land Office when it was necessary. (IX, 17)

When the state of Virginia ceded to the United States her lands in the west, she made provision that her soldiers, sailors and marines, who served in the Revolution should be given portions of it. It had never been doubted, said Black, that claims for this land should be settled according to the laws of Virginia. When the laws of that state gave the power of deciding on these claims to any officer or body of officers their decisions were final and conclusive, as much so as if they had been given by the Supreme Court.

In spite of this, Black maintained that if Congress ordered the Secretary of the Interior to disregard these decisions of the Virginia officers he would be forced to
do so, even if it were "an offense against public morality, an act of perfidy, and a grievous wrong upon the state".

The only act of Congress, which might be construed as interfering with the rights of Virginia, was that of 31 August 1852 which required the Secretary of the Interior to be satisfied that each warrant was "fairly and justly issued according to the laws of Virginia". This provision, however, Black maintained, only required the Secretary to see that the warrant had been issued by the proper officers of the state and did not force or allow him to go back of the warrant and question the decision of the Virginia officers. (IX, 156)

A land warrant issued after the death of the claimant, who left a widow and children, was to go to the widow alone. If the deceased claimant had been a widow with two sets of children, the warrant should go to her heirs or legatees, depending on whether or not she left a will. Who the heirs were depended upon the laws of the state in which the claimant lived.

This opinion, given to the Secretary of the Interior, was in opposition to the contention of the Commissioner of Pensions to which the Secretary was inclined. Black examined the entire system in regard to pension and bounty laws in an effort to reach the same conclusion but he was unable to do it. The latest law passed by Congress plainly stated to whom land of the kind concerned in this opinion, was to go. This law, passed in 1858, changed the rule which had been stated in previous acts. He said that there was no injustice in following the plain words of the act of 1858.
The Commissioner of Pensions had argued that the act of 1858 was unconstitutional because it took away the vested rights of those who would have received the warrant under the preceding acts. Black answered that these persons did not have any vested rights because it was clear that no bounty land law or pension law vested any title to land or money until they had actually received such bounty or pension. He concluded with these words, "It is not worth while now to discuss the vexed question whether Congress has the power to divest a right which has once attached under its own act. If it were unconstitutional, the judiciary might declare it void; but I do not see upon what principle a Department can veto a law which has been passed by both Houses of Congress and received the sanction of the Chief Executive Magistrate". (IX, 243)

The pre-emption entry of James Cage were rejected by Black. The reasons for this act were numerous. In the first place, by the act of 1832 the right of pre-emption on the back-lots had been given to persons who owned land which fronted on some watercourse but this right was not given to those who owned land through which a watercourse flowed. Cage's land was in the latter class.

It was necessary that the watercourse be navigable and the Bayou Caillow, which formed one of the boundaries of Cage's land did not come in that class of streams. The fact that Cage had paid for the land did not give him any title. The money could and should be refunded to him. (IX, 511)

In regard to the back-lot pre-emption claims of Daniel G. Benbrook, Black admitted that the claimant was the owner
of land fronting on a watercourse, Bayou Macon, on 14 June 1836 but the question which determined his pre-emption rights was whether or not he was the owner of this land on 15 June 1832. Black agreed with Grundy that it was necessary to have been the owner of land fronting on a watercourse on the latter date in order to secure pre-emption rights on the back-lots.

Benbrook's grantors were on the date mentioned owners of confirmed Spanish claims but these claims had not yet been located and hence it could not be said that they were the owners of any specific plot of ground. (IX, 513)

In 1856 the Presbyterian church in Baltimore had offered its property to the Secretary of the Treasury for $50,000 and it had been accepted by him. It was understood, however, that in all purchases of land by the government, the title must be approved by the Attorney General and in case the approval was not forthcoming, the contract to buy the land was void.

The title had been submitted to Attorney General Cushing who at first said that, while the property had been given to the church for certain purposes and it was doubtful whether it could be used for any other purpose, he was of the opinion that the long possession by the church would give a safe title to the land. Later, when again consulted by the Secretary of the Treasury, Cushing changed his mind and said that the statute of limitation would not be a sufficient protection. He therefore refused to pronounce the title valid. Secretary of the Treasury Guthrie then wrote to the church officials that the property had been rejected.
Black said that after the head of an executive department had made a decision of that kind he could change his mind within a reasonable time. If he made it, however, and then went out of office, with the decision as a part of the records, it could not be changed by his successor unless upon the production of new evidence sufficient to get a new trial in a court of law.

The lawyers for the church wanted the matter reconsidered because Guthrie's decision had been made just three days before he went out of office but Black said that the acts of the Secretary were just as legal three days before he surrendered his office as they were three months or three years before. He had the same power and authority down to the last hour of his service as he had at any time.

Black, however, discovered a way of the trouble. He said that if Secretary Howell Cobb was perfectly satisfied that the property of the Baltimore Presbyterian church should be purchased he might make a new contract but he could not revive the old one. (IX, 100)

GOVERNMENT CONTRACTS.

Heads of departments were forbidden by the act of 1 May 1820 to make contracts except under a law authorizing them or under appropriations adequate to their fulfillment. In the case under advisement Congress had appropriated $100,000 for the improvement of the Rock River Rapids and the Des Moines Rapids in the Mississippi river. This act, said Black, authorized no contract which called for a greater expenditure than $100,000, as mentioned in the act.

The agent of the War Department made a contract which
called for payment at a certain price per cubic yard. This, said Black, was not a contract which called for more work than the amount appropriated would pay for. The fact that Congress later voted more money for the project did not change the contract and the new appropriation called for a new contract. (IX, 18)

The Postmaster General had advised the Secretary of the Navy to cut $36,000 from the amount which should have been paid to Collins and company for carrying the mail from New York to Liverpool. The reason for this deduction was that the service was inferior and Collins and company had protested against this action.

The first question which arose was whether the action of the Postmaster General and the accounting officers was final to such an extent that the Secretary of the Navy, who actually paid the contractors, was compelled to do as they recommended. Black said that the Secretary could consider this as an open question because the deduction from the amount due the Collins firm was made without giving them a chance for a hearing. They took this money away from the firm without notifying them of what was being done until after it had been completed.

The opinion of the Attorney General had been asked for but, Black said, these opinions were not decisions. They consisted of advice which the heads of the departments were not compelled to follow. He said that while the opinions of the Attorneys General had technically no binding effect it was generally safer and better because it would contribute to the uniformity of decision in the different dep-
aptments on similar subjects. For the same reason he followed the opinions of his predecessors unless he was firmly convinced that they were wrong.

In ordinary mail contracts there was a provision that certain delinquencies could be punished by fines and forfeitures imposed by the Postmaster General but in the contract with Collins and company there were no provisions for fines and the only cause for forfeiture was the omission of one complete trip, which had not been done.

Black then proceeded to take up the contract in detail. Collins and company had agreed to build four steamships within a specified time and a fifth as soon as possible. The four had been built and the fifth was under construction when misfortunes accrued.

The firm lost two of their ships. After the loss of the second vessel they applied to the Postoffice Department for permission to substitute another ship, not built by themselves, until the fifth boat was ready. The permission was granted but the hired ship proved to be slower than the others.

Black maintained that Collins and company had lived up to their contract. They had built the ships which they agreed to build. The losses were not due to them, they had not agreed to insure them against the perils of the sea. The government had agreed to buy these ships for war vessels if they were needed. While the government would get the ships the purchase price had not been paid, so there was no loss on the government's part.

As for the speed of the ship which the firm hired, it
could not be contended that this violated the contract because there was no mention of speed of the ships in the contract. Collins and company had lived up to the letter and spirit of the contract and therefore no deduction should be made from the compensation they were to receive. (IX, 32)

Black ruled that whether the President or some member of his cabinet awarded the contract for the building of the courthouse in Baltimore it would be necessary to invite general competition by advertising for bids for a period of at least sixty days, under the act of 31 August 1852. He admitted that there was some doubt on the question but that the safer method was the one which he had pointed out. (IX, 407)

Gilbert Cameron had a contract to erect some buildings in the District of Columbia. The commissioners, who supervised the work, declared the contract forfeited but the Court of Claims held the forfeiture to be illegal. All this was done under the administration of the preceding Secretary of War. Black ruled that in ordinary occasions a head of a department could not overturn the acts of his predecessors but in this case, where the Court of Claims had decided the predecessor to be wrong, the present Secretary could either reinstate the contract and pay the contractor for the work he had done or he could re-open the case for another hearing. (IX, 422)

In interpreting the act of 25 June 1860 Black used the same principles which he had announced several times previously, that the intent of the law must be gained by consulting the law itself and not by learning the intent which
might have been in the minds of the men who passed it. He also said that it was an established principle of interpretation that every statute must be confined in its operation strictly to the future.

The act referred to was that which reduced the price of public printing forty percent and the question was whether it applied to all bills presented after the date of its passage or to the work done after that date. Following the rule which he had laid down Black decided that the law applied only to the printing done after the date of the passage of the act. (IX, 437)

Majors and Russell had a contract for the transportation of supplies for the army in Utah. According to the terms of the contract they were to receive more for winter and spring hauling than for that which was done in the summer and fall. The contractors complained that many of trips started in the fall but, due to the delays ordered by army officers, were completed during the season when travel was most difficult. They asked that they be paid according to the winter rates for such trips.

This Black decided was just, because the delays were not caused by the contractors and because all contracts should be performed by the parties to them in such a manner as to meet their reasonable expectations. The object of the kind Majors and Russell had was to pay in accordance with the amount and kind of work performed. Therefore when they did winter hauling they should be paid for it. (IX, 444)

Abel Gilbert made a contract with the government for the delivery of one hundred thousand bushels of grain at or near
Camp Floyd between specified dates. He delivered part of it and had the remainder ready when the assistant quartermaster refused to accept it because he had no place to store it. Black ruled that this was a breach of contract on the part of the government.

The assistant quartermaster and Gilbert had, in the meantime, made another agreement that the time of delivery was to be extended to enable the government authorities to care for the grain. Black said that such an agreement was legal and could be carried out. (IX, 509)

The appropriation of a half million dollars, by the act of 25 June 1860 for the completion of the Washington Aqueduct, was applicable to the payment of debts created in carrying out that work and existing at the time of the appropriation. The superintendent of the aqueduct was not authorized to withhold a payment which the Secretary of War or the engineer-in-chief had ordered him to make, even if he differed with his superior officers as to the justice of the debt. The Secretary of War, on the other hand, had no right to review and change the decision of the superintendent, which was made while the latter was chief engineer, on a question arising under a contract which contained a clause which bound both the contractor and the United States to abide by the decision of the chief engineer as final on all questions arising out of or connected with the contract. (IX, 493)

J.W. and J.F. Starr had a contract to furnish cast-iron pipes for the Washington Aqueduct, which provided that all the pipes were to be delivered by 1 March 1858. Ten percent of the entire price was to be retained until the
completion of the contract and the engineer could for
delay, negligence or non-compliance with the contract, de-
clare this amount forfeited.

The Starrs did not complete delivery on the date set
but the government continued to receive pipe until nearly
all were delivered. Then the forfeiture clause was noticed
and Black was asked if it could be enforced. He ruled against
it because the government gave up that right when it continued
to receive pipe from the Starrs. On 1 March 1858, delivery
not being completed, the ten percent might have been for-
feited but it was too late after more pipe had been accepted.
(IX, 210)

Captain M.C.Meigs complained to the President because
the Secretary of War had placed Captain H.D.Benham in the
office of chief engineer of the Washington Aqueduct which,
Meigs claimed, was a violation of the law which appropriated
the money.

Black, in the first place, maintained that an appeal
could not be made to the President in regard to any act
of a member of his cabinet because every act of such a man
was really the act of the President himself. He said that
it was a remonstrance to the President against the Pres-
ident. After making that statement Black then proceeded
to discuss the petition of Captain Meigs in detail.

The first complaint was that the sixty-third article
of war forbade engineering officers from performing any
duties beyond the line of their immediate profession, ex-
cept by the special order of the President. The work on the
Aqueduct was along the line of their profession and, in addition, both Meigs and Benham were acting under an order of the President.

Meigs further claimed that the act of Congress appropriating the money was passed not on any recommendation of the President but upon Meigs' assurance that the amount appropriated was sufficient and that it would be expended under his direction. Black said that Congress never intended to make an army officer superior to the commander-in-chief but, if it did so intend, that part of the act would be unconstitutional and therefore void. He added that Captain Meigs not only claimed the credit of influencing the legislature but he demanded "the right to exercise the judicial function by expounding it, and he demanded the further right as an executive officer to carry it into effect...I submit whether he is not taking too many branches of the Government under his care at one time".

Black said there was no thought of humiliating Captain Meigs in appointing Captain Benham superintendent and that Congress never intended to select Meigs for that position, they only intended the mention of him as a recommendation because of his work in planning and carrying out the plans and estimates of the Aqueduct.

When Congress appropriated a sum of money for the completion of a great public work, to be expended according to the plans of a particular officer and under his superintendence, the law would be fully executed by an order which appointed another officer chief engineer of the work and required it to be constructed under the superintendence of the officer named in the law and according to his plans and es-
The joint resolution of Congress passed 15 June 1860 ordered the Secretary of War to satisfy the claim of W.H. DeGroot because of the failure of the government in a contract with him. Black, in advising Secretary of War Floyd, said that interest should not be allowed on the claim. The act said nothing about interest and nothing of the kind was ever to be given by construction.

In regard to the amount to be paid to De Groot, Black laid down some rules for such cases. Damages for the violation of a contract should be such as to put the injured party in as good a condition as if the agreement had been kept by the other. A person should not be allowed to make money, by breaking an agreement and the other party should not be made to suffer by that act. DeGroot should have the amount which he would have profited had the contract been carried out. Black said that a good measure to be used in this case would be what DeGroot would have taken to transfer the contract to someone else. (IX, 449)

DeGroot got his money so easily in his first effort that he evidently wanted to try again for a larger amount. He claimed that he had a contract with the government for furnishing bricks for the Washington Aqueduct. This contract had been cancelled by the government and he claimed the profits which he would have made if it had been carried out. This, according to DeGroot's figures, would have been $100,000.

Black had made an extensive study of the case. On 3 March 1857 a joint resolution of Congress provided that the
Secretary of the Treasury should settle and adjust with all the parties concerned all damages and losses sustained on account of their contracts for the manufacture of brick for the Washington Aqueduct. This resolution, however, also provided that the parties to the contract should surrender to the United States all the bricks which had been made, together with all the machinery for making brick and that the contracts should be cancelled.

The amount which Secretary of the Treasury Howell Cobb estimated was due to the various persons interested was $29,543.19, of which DeGroot received $7,576. At that time he made no claim for more money. Later, however, he petitioned Congress for justice and more money with the result that on 15 June 1860 Congress passed another joint resolution providing that the Secretary of the Treasury should allow him the amount of money actually expended by him in the execution and to indemnify him for losses, liabilities and damages which, by virtue of the previous resolution he was entitled to receive. The result was that DeGroot was paid $42,338.33.

At the time that this opinion was given DeGroot was claiming an additional one hundred thousand dollars, as profits which he would have made if he had been allowed to carry out his contract to make bricks. Black stated his opinion in regard to broken contracts which was similar to the one given in the first De Groot case. He maintained, however, that it was necessary for DeGroot to prove that he had a contract with the United States to furnish bricks. The reports of the committees of Congress and the speeches of some of its members had been accepted by some persons as suffici-
ient proof that Congress regarded DeGroot as a contractor with the United States. Wirt had ruled that such evidence could be taken and President Monroe had acted on his ruling. Black, on the other hand, refused to accept such evidence. The meaning of the law must be clearly written in the statute books, he said, because a large part of the members of Congress did not express their views except in the law and the President, when he signed the act, knew nothing of the debates and the reports of the committees. Hence it remained to proved that DeGroot had a contract.

Black then traced the history of the transaction. Captain Meigs, with the authorization of the government, had made a contract with Deggies and Smith for between twenty-five and forty million bricks. When this firm was unable to fulfill the contract, the government called upon the sureties, Mechlin and Alexander, to do so. They employed DeGroot as their agent to execute the contract. They gave him a power of attorney to receive the money due them for the bricks. They were receive five percent of these amounts and DeGroot was to keep the remainder. This, according to Black, did not make him a contractor with the government. Mechlin and Alexander did not assign their contract to him because the original contract forbade any assignment. In the agreement with DeGroot, the sole responsibility to the government was acknowledged by both parties. The power of attorney was revokable and, in fact, was revoked later.

DeGroot's attorneys claimed that Captain Meigs had recognized him as a contractor but Black said that the captain's recognition could not make DeGroot a contractor and
besides Captain Meigs had not recognized him in any such way. He only took bricks which DeGroot furnished and ordered payment for them but that did not constitute recognition.

In addition DeGroot did not carry out his agreement, if he had one, to furnish bricks. In fact no one carried out that part of the contract. For that reason, also, DeGroot was not entitled to the profits which would have accrued from the making of bricks.

When DeGroot accepted the $7,576 under the joint resolution of 3 March 1857, he agreed to a cancellation of the contract which he had made, as well as turning over the brick yard to the government.

Black concluded by saying that DeGroot had no valid subsisting contract which the government had repudiated without cause and therefore had no claim for the profits which he would have made under such a contract. The contract which the government made with Mechlin and Alexander had not been fulfilled by that firm or by DeGroot or by anyone else. The government, he said, had paid for all the bricks it received, paid for all the losses "which a set of thriftless men encountered in making them and rescinded the contract with the full consent of all parties concerned". Hence the government owed DeGroot nothing. (IX,479)

TERRITORIES.

According to Black there was no act of Congress requiring a marshal to live in any particular place in a territory. He was as free as the attorneys and the judges to live where he pleased. The act of 1853 evidently expected him to live at a place distant from where the courts were held, as it provided for fees to pay for his journeys from
his home to the court.

For this reason Black told the Secretary of the Interior that he could not issue an order requiring the marshal to reside in the city where the courts were held and that the territorial legislature of Minnesota could not pass a law to that effect. (IX, 23)

The construction of the acts of Congress as they related to territories belonged to the territorial supreme courts. As the Attorney General had no power of review Black refused to express an opinion on the correctness of a decision of such a court. (IX, 292)

The act of Congress passed 14 August 1848 establishing the territorial government of Washington confirmed the title to all mission lands, not exceeding six hundred and forty acres in extent. The St James Mission was in existence at that time and therefore the act establishing a military reserve, which included the mission lands, could not take any land from the mission. (IX, 339)

The act of Congress which organized the Territory of Utah provided that the expenses of the legislature should be paid out of the federal treasury and that the secretary of the territory should disburse the money. Mr. Babbitt had been appointed to that position by the President but he had been killed by the Indians before he reached Utah. As the legislature was about to meet and as it would take a considerable time to have a new secretary sent by the President, the governor appointed W.D. Hooper to the position temporarily. He took the oath of office, gave bond and performed the duties of the office for nearly two years until the
new secretary, appointed by the President, arrived.

The State Department acknowledged Hooper as secretary by allowing him to hold the office for nearly two years and he was paid his salary for that period. He did not, however, receive the money which had been appropriated to pay the expenses of the legislature with the result that Hooper was driven to issue a kind of script for the mileage and pay of the members and for fuel, furniture and other necessary things. Some of this script was still in the hands of Hooper and some was held by other persons, to whom it had been issued. None of it had been redeemed by the federal government.

Black ruled that Hooper was the acting secretary of the territory, although he had not been regularly appointed. The debts which he had incurred would have been binding if done by a regular secretary and the acts of a de facto officer were always held good where the public and third parties were concerned. The legality of his appointment had not been inquired into and could not be except in the courts. "To refuse payment on such grounds after getting the goods and the services, might save money, but it would be a mode of administering the Government much more economical than righteous". The fact that Hooper held some of the script did not change the case. Black thought all the script should be made good. (IX, 432)

The act establishing the territorial government of Kansas provided that unless a bill passed by the legislature was returned within three days, it became a law, unless the legislature by adjourning before the end of
that period prevented its return. The question which Black was called upon the settle was when the three days started. Did it include the day on which the legislature passed the bill and sent it to the governor or did it start on the following day?

Black ruled that, according to all English and American precedents, the day on which the bill was passed should not be counted because it was only a fractional day, but there should be three full days starting with the end of the day on which the governor received the bill. Using this form of computation the legislature adjourned before the end of the three-day period and hence the bill did not become a law. (IX,131)

The territorial legislature of Kansas had no right to change the location of the capital, said Black. Congress had passed two laws, each appropriating twenty five thousand dollars for buildings to be erected at the capital, the money to be paid when the legislature decided on the permanent location. The legislature shortly afterwards decided on Lecompton as the capital city and the money was paid to the territorial government. This occurred in 1855 but on 9 February 1858 the Kansas legislature passed, over the governor's veto, an act removing the seat of government to Minneola. Black ruled that the legislature did not have the right to pass this law and that the act of 1855 could not be repealed as long as Kansas remained a territory. (IX,271)
INDIAN AFFAIRS.

By the act of 3 March 1855 Congress had ordered a certain amount of money paid to R.W. Thompson because of an agreement between the Menomonee Indians and himself. The money was not paid because the officers of the Treasury claimed that a part of the law, as it was passed by Congress, had been omitted from the official copy. This part required the consent of the Indians to this payment.

When payment was refused by the Treasury Thompson agreed to the appointment of an agent who would discover whether or not the Indians would agree to this payment. The agent reported that they had refused to assent but Thompson claimed that the agent had used his influence to bring about this result. Since the passage of the act three sessions of Congress had been held but no further action had been taken.

Black asserted that the acts of Congress as they stood approved by the President and enrolled in the Department of State were conclusive evidence of the written law. The journals of Congress could not be used to add anything to them or to take anything from them. No evidence of any kind could be used for that purpose. When an act was passed, as in Thompson's case, ordering the payment of money from the Treasury such payment could not be refused because a condition, which was supposed to be part of the act, had been omitted. In this case, said Black, it might have been right or wrong to withhold payment until Congress could have a chance to correct the alleged mistake but as Congress had
held three sessions and still made no effort to change the act there was absolutely no reason for refusing to pay the money. The unsuccessful effort of Thompson to get the consent of the Menomonee Indians to this payment did not affect his right to payment. (IX?, 1)

In a treaty made by the United States with the Delaware Indians, by which the title those Indians had in their land was extinguished, it was provided that the Christian Indians could have the land, which they held and on which they had made some improvements, confirmed to them by patent with such restrictions as Congress might make. The questions which were submitted to Black were whether these Christian Indians were entitled to a patent in the usual form; whether they would hold their land under a patent by the usual Indian title; and whether they could alienate this land without the consent of the government.

Black said that the Indians should be given the usual form of patent and, as Congress had made no restrictions, none should be included in it. He also said that they did hold their land under the usual Indian title because their land had not come to them from other Indians. The Delawares had ceded their land to the United States and the title to the Christian Indians came from that source.

The patent, however, gave the land, not to individuals, but to the tribe and hence it could not be sold unless all the members of the tribe consented. If any member refused to consent or was unable to consent, then no title could be conveyed by the Indians. The dealings of any purchaser would have to be with the tribe and no negotiations could be
carried on with them without the consent of the United States. Anyone who did negotiate with the Indians, without first securing the consent of the United States, was liable under the act of 30 June 1834 to a fine of one thousand dollars, and in addition, any sale made as a result of such negotiation would be void. (IX, 24)

By a treaty with the Wyandot Indians it was provided that one hundred thousand dollars should be invested in the stocks of the United States. At the time that Black's opinion was asked, June, 1857, the stocks of the United States commanded such a high premium in the market that he thought the Secretary of the Interior would be justified in not investing the money. Instead he advised waiting until the premium decreased. (IX, 44)

DISTRICT ATTORNEYS AND MARSHALS.

In an opinion in regard to the fees to be paid district attorneys Black said that they should not receive more for their services than was allowed in the fee-bill. This applied to all criminal prosecutions. It had been suggested that the services in some cases be paid for in two parts, first the regular fee as allowed in the fee-bill as attorney and then as much as the case seemed to merit in the capacity of counsel managing the same case. Black, however, could not force himself to agree to that distinction.

In cases in which the United States was not a party but in which the government was indirectly interested, Black followed the words of the law which provided that the district attorneys should receive the amount agreed to
by the head of the department making the request for the
services. This amount could be agreed to either before or
after the case was tried. However, the total amount of fees
which a district attorney was to receive during a single
year could not exceed six thousand dollars. If they did
exceed this amount the excess should be paid into the Treas-
ury.

In cases where suits had been started against col-
lectors by one district attorney but not completed when
he went out of office, it rested with the Secretary of the
Treasury to name the attorney who was to continue the pros-
ecution. He could, if he wished, retain the former district
attorney as an assistant to carry on the work in the cases
he had started. Black thought it a good idea to have the
same attorney continue the prosecution. (IX,146)

THE PATENT OFFICE.

O.T.E. Stewart of Mississippi applied for a patent on
a machine invented by one of his slaves. The Commissioner
of Patents had decided that, under the laws as they stood,
the devise could not be patented, in which opinion Black
concurred. He added that if such a patent was granted it
would not protect Stewart in the courts against persons who
infringed it. (IX,171)

Wilson Ager had invented a machine for the cleaning
of rice and preparing it for the market. The question was
whether the patent should be issued to him or to his assign-
ees, Woolf and Jordan. Black ruled that where the assignment
of the patent was full and complete, as in this case, the
patent should go to the assignees. (IX,403)
THE TARIFF.

The act of 18 August 1856 provided that no money should be spent for customs houses where the receipts did not equal the expenses of collection. Black ruled that this provision was meant in the present tense and if the receipts equalled or exceeded the cost of collection in that particular year, the customs houses could be built.

The Secretary of the Treasury had advertised for a site at Ogdensburg, New York, selected one and notified the owner that the site would be purchased if Congress would amend the law so that it could be done, being under the impression that the receipts at that port were less than the expenses. However the receipts had exceeded the expenses and Black ruled that the site could be purchased immediately as it was not necessary to ask Congress to change the law. (IX, 77)

THE ATTORNEY GENERAL.

"The Attorney General is not required to write abstract essays on any subject" wrote Black, in ruling that his office only gave advice to the executive departments on actual cases where special facts were set forth for his consideration. (IX, 82)

It was not the duty of the Attorney General to give opinions on questions touching the private business of individuals and with which the United States had no present concern. (IX, 355)

RAILROADS.

A railroad company incorporated in Canada but with a charter extending its rights into New York received from that state, was making preparations to lay a track through
the government land adjoining Fort Porter. It was suggested that the company could be kept off the land by an injunction but Black, after some sarcastic remarks about the degeneracy of the government, said that an appeal to the courts was unnecessary. Instead he recommended the use of force on the part of the soldiers at Fort Porter. (IX, 106)

Congress had granted a railroad in Minnesota a large quantity of land but later in the same session had repealed the law. The Commissioner of the General Land Office and the Secretary of the Interior had decided that the railroad company had no claim to the land for which they were asking. The attorneys for the company asked for a hearing on the question before the Supreme Court. Black told the President that he could not see why the government should go out of its way to establish a hostile claim and, as the government still had the land, he could see no reason for going into court. The attorneys wanted the government to start suit against the company but Black argued that there was nothing for which the sue the company. Trespass, which had not been committed, might be charged and the railroad would admit its truth in order to bring the matter before the court but this would make the foundation of the case a mere sham. Black, however, said that he would obey any direct order which the President would give him on the subject but he refused to take the responsibility for any action of the kind asked by the attorneys for the railroad. (IX, 317)

In response to a request from Secretary of State Lewis Cass Black answered that he did not think the two grants of permission to build railroads across the Isthmus conflicted...
with each other. The first grant was an exclusive one for the Isthmus of Panama while the second one to the Chiriqui company was north of the Costa Rica boundary. However Black said that it was a geographical question, not a legal one, and that therefore his opinion was of no more value than that of any other person. He added that the more grants for railroads across the isthmus the better provided they did not conflict. (IX, 391)

The Chiriqui Improvement company, incorporated in 1854 in the state of Pennsylvania, with Ambrose W. Thompson as one of the incorporators, proposed to sell its rights in Chiriqui to the United States. According to the evidence which Thompson produced the company had a right to build a road across the isthmus at that point for which work it was to receive a large quantity of land. Black was asked his opinion in regard to the company's title to the land.

In the first place he pointed out that the company, while incorporated, was never organized and had never elected officers. Its rights to the land were shadowy. The ordinance of the provincial legislature was signed by Roman Luna but there was no indication of his title or of his right to sign such a document. In addition there was no proof that the provincial legislature had the right to grant land to anyone, especially foreigners.

Presuming the grant to be perfectly legal, though Black could not find the province of Chiriqui mentioned in any gazeteer, he maintained that one country could not own land within the borders of another, and therefore the United States could not buy this land even if the title was good,
which he doubted. Further, the grant did not give the right to build a railroad but only a wagon road though Thompson claimed that it could be stretched to include a railroad. (IX, 286)

GUANO ISLANDS.

The President had no right to annex a guano island while a diplomatic question as to jurisdiction was pending between the United States and some foreign nation.

W.J. Kendall claimed to have discovered a guano island in the Caribbean sea and had asked that it be annexed to the United States. Lord Lyons, British minister, claimed that the island belonged to the Bahama group over which Great Britain held dominion and that to remove guano deposits would be trespass. Therefore Kendall was forced to wait until the ownership of the island was settled. (IX, 406)

The opinion in regard to Johnson's Islands was a continuation of that in regard to W.J. Kendall and his guano islands. Black applied the same rules that he announced in Kendall's case. He also pointed out that discovery of an island did not give any right to it unless continuous possession resulted. Even the planting of flags together with crosses showing alleged ownership or the proclamation of the ruling power of the country announcing annexation would not give any title. Vattel said that navigators have paid "as little regard to that empty ceremony as to the regulation of the popes, who divided a great part of the world between the crowns of Castile and Portugal".

The Pacific Guano company had first established possession of Johnson's Islands and were therefore entitled to
give bond as required by the act of 18 August 1856. (IX, 364)

Black ruled that the President could consider an island as belonging to the United States if the following facts were proved to be true: that it contained a deposit of guano; that it was not within the jurisdiction of another country; was not occupied by citizens of another country; that the discoverer had taken and kept peaceable possession of it in the name of the United States and that he had given notice as soon as possible to the State Department together with the latitude and longitude of the island.

After all these things had been done the President could, but was not compelled to, consider the island as a possession of the United States. He could, however, allow the discoverer to remove and sell the guano provided he sold it only to citizens of the United States for use exclusively in this country. The island would then be held by the discoverer at the will of Congress, who could terminate his possession at any time. Congress, however, could not be expected to pass any general laws on the subject. (IX, 30)

MERCHANT MARINE.

The law, before the passage of the act of 23 December 1852, required that a ship be built in the United States in order to secure registry here. The act referred to allowed the registry of ships of foreign origin if, after being wrecked, they had been salvaged and repaired by American citizens. The case upon which Black was asked an opinion was that of an American ship which had been sold to foreign owners, thus losing her American registry. It had been wrecked but later was repaired and put into service. Black ruled that while
this ship did not technically come within the provisions of the law, it should be allowed United States registry. (IX, 423)

ACCOUNTING OFFICERS.

An Indian agent, William Gay, who was behind in his accounts, was robbed and murdered. Congress, taking no notice of the state of the agent's accounts, voted two thousand dollars to his widow as indemnity for the money taken from him and his undrawn salary. Black ruled that the money must be paid to the widow because Congress had so directed. The amount which Gay was short in his accounts should be collected from his sureties but from this amount could be deducted the amount of Gay's unpaid salary. (IX, 43)

The committee on accounts of the House of Representatives had exclusive and final jurisdiction in auditing and settling accounts chargeable to the Contingent fund of the House. Such accounts were not open to inquiry by the Auditor and Comptroller of the Treasury. The committee had allowed the Sergeant-at-Arms pay for summoning witnesses before several committees. The Auditor and Comptroller had objected to its payment but Black ruled that it should be paid. (IX, 167)

The accounting officers had no right to reopen the accounts of Captain S.P. Heintzelman in 1850 without his consent. His accounts had been settled in 1847 and he should not have been charged with a sum of money behind his back and without notice.

The affair started while Captain Heintzelman was quartermaster in the army in Florida. A sum of money, $910, had been left in his care for Captain Skinner. Heintzelman had written Skinner that he should draw on his account at a cer-
tain bank where he kept his private funds. As the funds of that bank were at slight discount Skinner did not do this but made a demand on the War Department for payment in par money. His claim was considered and rejected by the accounting officers on two occasions before the time that Captain Heintzelman's accounts were settled. Later Skinner's claim was again considered and this time passed but it was five years before Heintzelman was notified. He protested but the amount was allowed to stand against him and his pay as an officer was stopped.

Black ruled that this should not have been done, that Skinner's claim should not have been allowed, that the accounting officers were correct in their first two decisions and wrong in their third. "It was charging Heintzelman with money which he did not owe, in order to atone for paying Skinner what he had no claim to". (IX, 505)

The priority of the United States in the matter of debts owed to her did not extend back over any valid lien, whether it was general or specific. This ruling was made in regard to the estate of Jacob Richardson, formerly collector of customs at Oswego, New York, who after mortgaging his real estate to indemnify his sureties, had died insolvent. The mortgage, Black ruled, was valid and effectual against the claims of the United States. (IX, 28)

Black applied his rule that nothing could be claimed from the government except that which had been specifically granted, to the claims of persons for Revolutionary pensions. He said that when a soldier of the Revolution, who had performed services which would have entitled him to a pension,
died without being placed upon the pension rolls, his children and grand-children could not be given the pension which he could have had if he had taken the proper steps while he was alive. The same rule applied to the case of a Revolutionary soldier's widow, who died without being placed on the pension list and whose children and grand-children made application in her right. (IX,83)

The intention of Congress had to be ascertained from the words of the law, without reference to reports of committees or speeches of members. All legislative grants of money or privileges should be strictly construed against the grantees. These maxims occur in an opinion of Black's in regard to the act of 3 March 1857 which provided for the re-examination of an old account between the United States and the state of Maryland. During the War of 1812 the United States became indebted to Maryland for about a half million dollars. This amount was paid between 1818 and 1822 and in 1826 Congress provided for the payment of interest on this loan but Maryland was not satisfied with the method by which the interest was computed.

The act of 3 March 1857 provided that in computing the interest, when any payment was made, it was first to be applied to the interest and what remained to be applied on the principal. If the amount was not enough to pay the interest then the balance became part of the principal and in turn bore interest. Under this rule Maryland claimed that interest should be paid on the remainder of the debt until the passage of the act of 1857.

Black said that without doubt it was intention of the
members of Congress to give Maryland what she claimed but he succeeded in reasoning it out of the law. He said the last payment, made in 1826, did not in the terms of the law of 1857 satisfy the claim. Therefore on the balance interest accrued and should be paid. When an act of Congress authorized the payment of interest without fixing any time when it should cease to be paid, it authorized the payment as long as there was any of the principal unpaid. (IX, 57)

Black reviewed the laws on the subject of extra pay and double compensation running through a period of thirteen years and came to the conclusion that no officer, whose salary was fixed by law or regulation or whose salary exceeded $2,500 per year, should receive extra pay for any services whether they were in the line of his regular duty or not. No officer of the government, watchmen and messengers excepted, could receive the salary of more than one office. (IX, 123)

The clerk of the House of Representatives, Cullom, had paid a number of extra allowances out of the contingent fund of the House to officers and employees. Some of these allowances had been authorized by resolutions of the House and all of them had been passed and approved by the committee of Accounts. They were all rejected by the accounting officers of the Treasury because such payments were expressly forbidden by law.

In order to relieve the clerk Congress passed an act directing the accounting officers to allow credit for all such allowances as were authorized by the House of Representatives. Under this act the clerk insisted on credit for...
all the extra allowances. Black again insisted on the letter of the law and said that if Congress meant to allow credit for all the allowances whether they were authorized by the House or not, it would have said so. He added that "speeches made and letters written by members amount to less than nothing". (IX, 172)

A prosperous business had arisen among the lawyers in Washington of buying claims against the government and then presenting them for payment. In case anything was recovered it all went to the attorneys. The act of 26 February 1853 was passed to prevent this practice and provided that all assignments of claims against the government must have been made after the claim was allowed. This, Black ruled, applied to warrants of attorney, by which money could be drawn from the Treasury, because if such instruments were considered legal then all claims would be handled in that way, thus defeating the purpose of the act. Warrants of attorney executed before the date of the act were exempt from its provisions. (IX, 188)

A Treasury note, after maturity, had been stolen from the owner and sold to a third person who had no notice that it had been stolen. Black ruled that the amount of the note should be paid to the holder as Treasury notes endorsed in blank circulated in much the same manner as bank notes and to insist that the former holders of these notes held equities in them would defeat the purpose of the law which authorized them. (IX, 413)

The Senate did not have the right to direct, by a resolution of its own, the payment of the salary of a de-
cessed member to his assignee. Senator Broderick had died a short time after the beginning of his term of office and the Senate had directed that his unpaid salary be given to his assignee. Black maintained that this salary should be paid to his "heirs-at-law" and that the Senate could not change its destination. (IX, 446)

In 1847 Congress had passed an act for the relief of Joshua Shaw, directing the Secretary of War to investigate his claim and report the amount due him, a sum not to exceed $25,000. The amount which the Secretary reported was to be paid Shaw by the Treasury. Secretary of War Marcy reported that Shaw should receive $18,000 and it was paid. Later a succeeding Secretary of War re-examined the case and awarded an additional $7,000 to Shaw. Black maintained that the second award could not be made as the appropriation had been exhausted. Congress, he said, did not appropriate $25,000 but only the amount which the Secretary of War reported as the proper one. When that amount had been paid the appropriation was exhausted. (IX, 451)

The act of 2 March 1857 authorized the Secretary of War to examine the claims of seventy seven persons who were members of the Edisto Island company in South Carolina during the War of 1812 and settle these claims upon the principles of justice and equity.

After the award had been made it was discovered that three of them were negro slaves and the question arose as to whom the money should be paid. In the case of one of them the problem was especially difficult as he had been owned by one master in 1812 and since that time had been
sold to another. Should the money be paid to the slave, the first master or the present master?

Black ruled that as a slave had no civil rights he could not receive money and that, according to the decisions of the South Carolina courts in regard to bequests to slaves, it could not be paid to either master. The ruling was that "It is as if the donation had been made to a person not in being". In other words no one was to get the money. (IX, 502)

The act of Congress in regard to newspaper advertising required that the advertisements of the Executive Departments be placed in three Washington newspapers, the two having the largest circulations and the third one selected by the President. As all the newspapers in Washington published daily, tri-weekly and weekly papers, a question arose as to which of these papers' circulation should be counted. The States claimed to have the largest daily circulation but Black insisted that when the daily, tri-weekly and weekly papers were published in the same office, by the same man and under the same name, they were not different papers but different editions of one. The combined circulation of all the editions should be counted in determining what two papers had the largest circulation in Washington. When it was called to his attention that the Executive advertisements appeared only in the daily editions, Black said that, if such was the case, then the claim of the States was correct as to having the largest circulation but he maintained that the object of the advertising was not simply to reach the people of the city of Washington, where the daily papers circulated, but the people outside the capital.
where the tri-weekly and weekly papers largely went. Therefore he ruled that the entire circulation of the papers in their three editions should be counted and the advertisements should be inserted in all three. (IX, 54)

Implied repeal of laws was never to be favored, said Black. It was so easy for Congress, in passing a law, to say that some other law was repealed that implied repeals were never to be assumed unless two laws conflicted with each other to such an extent that both could not be executed. Then the later one should be enforced and the former one considered repealed.

In this case the storage of natural history collections was being considered. The act of 10 August 1846 provided that such collections should go to the Smithsonian Institution and the act of 3 March 1857 appropriated funds for cases and the transportation of this material but failed to state where the cases were to erected or to what place the collections were to be transported. Black said that, inasmuch as the act of 10 August 1846 had not been repealed, the place intended was the Smithsonian Institution. (IX, 46)

Black retired from the office of the Attorney General a few months before the close of Buchanan's administration in order to become Secretary of State when Cass resigned. Black's only important act in his new office was to send a circular letter to all United States ministers urging them to use every effort to prevent the recognition of the Confederate States by foreign powers.
In February 1861 Buchanan sent Black's name to the Senate for appointment to the Supreme Court but it was not confirmed. With the inauguration of Lincoln Black retired to private life. His prospects were far from cheerful. He had been comfortably well off but his investments had turned out badly and he had to start all over again. In December 1861 he was appointed reporter for the Supreme Court. Soon after his law practice became very profitable. His knowledge of the California land cases brought him much practice from which the financial returns were large.

He became one of the most prominent lawyers in the country and was engaged by President Johnson as one of his attorneys in the impeachment proceedings. He was always a strong defender of Buchanan and especially during the period when no one else had a good word for the former President. He was also active in answering the attacks of Robert Ingersoll and other agnostics on the Christian religion. His last important legal work was as a representative of Tilden before the Electoral Commission in 1876.

The history of the early Attorneys General can be divided into two periods. The first ended with Rush and the second began with William Wirt. During the first period the Attorneys General were of small importance even when the office was occupied men of the legal ability of William Pinkney. Few spent much of their time in Washington and were therefore not in close touch with the administration. They were not part of the President's council.

Their administration of the office was characterized by
by unbusinesslike methods. They kept no records of what had been done by their office. For this seeming lack of system they may be excused to some extent because they were provided with no permanent office and no assistants. In addition they were poorly paid and forced to depend upon their private practice for the major part of their income.

With Wirt conditions changed. He reformed the office, kept complete records and worked hard to get the proper financial support. With the aid of the President he was successful in his efforts. Succeeding Attorneys General continued the effort until in the time of Caleb Cushing the Attorney General was made the equal of the other cabinet officers in salary and standing.

The opinions of the Attorneys General were of great importance in the ordinary administration of the government by assisting in the correlation of the various departments. While following the rulings of the Attorneys General was not compulsory, they were, as a matter of common practice, followed. In this way the actions of the various departments on similar matters followed the same lines.

On most political questions the Attorney General was not consulted, at least, not officially. Therefore few opinions concern such matters. Many Attorneys General, however were valued advisors of the Presidents on all important affairs whether they concerned their department or not. This especially applied to Wirt, Taney, Cushing and Black.

The Attorneys General passed judgment on several questions which later came before the Supreme Court and invariably the decision of the court agreed with the opinion which had been given previously. Examples of this are the
Charles River Bridge case, Ableman vs. Booth, and the Dred Scott case.

During the period covered, 1789-1860, the office of Attorney General did not reach the importance which it later attained but it was a period of development and progress and paved the way to the creation of the Department of Justice in the years following the Civil War.
FOOTNOTES.

Chapter I.
1. Stat. L. Ch. XX., Sec. 35.
2. Jefferson's Works, VIII, 266; IX, 60.
3. The term "prosecutions", used in the sixth article of the treaty with Great Britain, referred only to criminal actions, because they were the only kind of legal actions over which the United States had control. (I,50)
4. Bradford gave two opinions in regard to rules of evidence. As the United States had no rules in regard to evidence in the cases of captured ships, those of the British Admiralty courts were to be used. (I,40)
5. Lee ruled that conspiring to draw the United States into a war with another nation was an offense against the common law and should be prosecuted. (I, 75)
6. Lee ruled that the President should not interfere in a suit brought by a British commissioner against a Virginia citizen. (I,81)
7. The pardoning power of the President was also mentioned for the first time. The prisoner had the appropriate name of Pardon Smith. Lee recommended that the pardon be granted on condition that Smith tell where the counterfeiting plates and paper were located and the names of his confederates. (I,77)

Chapter 2.
3. General Miranda was an adventurer who had been attempting to promote a revolution in Venezuela. He recruited a force of two hundred men and two ships in the United States in 1805,
FOOTNOTES.

with which he attempted unsuccessfully to overthrow the Venezuelan government. General Miranda was not in the United States when this case was tried and therefore could not testify for these men. See Robertson, Miranda.

Chapter 3.

1. John Jacob Astor was the foremost fur trader in the United States at this time. Beginning in a small way trading for furs in and around New York city he had previous to the time of this opinion made his attempt to establish fur trading posts across the continent to the Pacific. This venture was a financial failure as the War of 1812 forced him to sell his posts at a loss. His fur trading in the Great Lakes region continued and after the war he made another unsuccessful attempt to reach the Pacific. His fortune, while begun with fur trading, was based upon real estate investments in New York city. Kenneth Wiggin Porter, John Jacob Astor.

Chapter 4.

2. Ibid, IV, 36.
3. Ibid, IV, 82-3.
4. Ibid., IX, 97-101.
7. Ibid., I, 209, 245-248; I, 7.
9. The land had been located and surveyed in the name of Albridgeton Jones, after the date of the alleged transfer to a Mr. Avery.
10. Merriwether Lewis was given warrant No.1. for 1600
acres of land, by an act of Congress passed 3 March 1810. (I, 536)
11. No officer of the United States was justified in dispensing with laws against the slave trade. (V, 717)
12. Military punishment could not be administered to any man who was not a soldier on the date when the sentence was pronounced. (V, 735)
13. The law of offsets was limited to mutual debts between the same parties and should be followed by the Treasury. (I, 700)
14. Black disagreed with this opinion.
15. Antedating patents was illegal. If the date was wrong it should be corrected before delivery to the patentee. If already delivered a new one should be issued, giving the mistake as the cause of the re-issue. (V, 722; II, 41)
16. When an act of Congress gave the President power to appoint a certain officer and did not fix the length of his term of office, it was to be made during the pleasure of the President. I, 212).
17. The President was not required to make an investigation of a case, which had been tried and later carried to the Supreme Court, even if the person convicted claimed to have discovered new evidence. Neither was he required to pardon the convicted person. (I, 359)

Chapter 5.

2. Ibid., II, 27-8.
4. Richardson, Messages and Papers of the Presidents, II, 453ff., 527ff.
6. Richardson, Messages and Papers of the Presidents, II, 527.
8. See James, The Raven, for an account of Sam Houston among the Indian tribes.
9. Such goods were entered with the understanding that the duties paid on them would be refunded when they were re-exported.

Chapter 6.
1. Richardson, Messages and Papers of the Presidents, II, 576.
2. Ibid., II, 591.
3. All the letters referred to here are to be found among the Jackson MMS in the Library of Congress. The best account of the struggle over the re-charter of the bank is to be found in Catterall, Second Bank of the United States. Other good accounts are found in J.S.Bassett, The Life of Andrew Jackson and Steiner, Roger Brooke Taney.
4. Richardson, III, 5.

Chapter 7.
1. Pre-emption could be allowed to army officers provided they had complied with the conditions under which such rights were granted. In the case of an officer stationed at Chicago Butler ruled that he had actually occupied and cultivated the land he claimed and therefore had pre-emption rights to it. (III, 303)

Chapter 8.

Chapter 9.
1. Niles'Register, V, 61, pp. 98-100.
Chapter 10.

4. Polk's *Diary*, II, 159.
5. The boundaries of the Conway claim were described as extending "from the lands of John the blacksmith to those of an old Acadian named Peter".
6. Polk's *Diary*, III, 431, 468, 484, 505.

Chapter 11.

2. James S. Easby-Smith, *The Department of Justice, Its History and Functions*.

Chapter 12.

1. Fuess, Caleb Cushing. 2. For a different view, see Nichols, *Life of Pierce*.

Chapter 13.

3. Seibels was following in the footsteps of John Randolph, who in 1830 went on a special mission to Russia. He remained at his post for ten days, spent a year in London and then returned home. His compensation totalled $21,407. Henry Adams, *John Randolph*, p. 294.
4. The documents which accompanied the request for an opinion said that Chiriqui was a province of the state of Panama in New Grenada.
5. In this opinion Black made this statement, "But if Congress has all the money of the United States under its control, it also has the whole English language to give it away with".

This work contains all the opinions of the Attorneys General from the time of Wirt and the few that have been preserved of the earlier occupants of the office.

For the biographical sketches The Dictionary of American Biography, as far as it has been completed, afforded great assistance. Beyond its range Appleton's Dictionary of National Biography affords some assistance.

In the early period, Washington Diary and the Works of Jefferson gave glimpses of the workings of the office of the Attorney General. Conway, Omitted Chapters of History give a good, if somewhat biased, account of Randolph.

During the administrations of Jefferson and Madison the standard source of information is Henry Adams, History of the United States. As the Attorney General was not an important member of the cabinet at the time little is said about the legal department.

From the time of Monroe the Memoirs of John Quincy Adams are useful. Other books on the period are Bassett, Life of Andrew Jackson and Steiner, Roger Brooke Taney. The struggle over the re-charter of the bank is well covered in Catterall, The Second Bank of the United States. Beveridge, John Marshall is also useful for this period.

The two biographies by Fuess those of Daniel Webster and Caleb Cushing are of the greatest value. Polk's Diary, and Moore, The Works of James Buchanan contain much information.

Two short sketches of the Attorney General's office have been written. They are Arthur J. Dodge, The Origin and Development of the Office of the Attorney General and James B. Easby-Smith, The Department of Justice, its History and Functions. Both are brief and spent most of their space
on the recent period since the organization of the Department of Justice. H.B. Learned, The President's Cabinet is also valuable in showing the origin of the various cabinet offices and the relationship between them.

Of the recent works the most important is Nichols, Life of Franklin Pierce. It has a tendency to minimize the importance of Cushing in the work of the Pierce administration.

The setting in which the Attorneys General worked can be seen by reading such standard histories as the American Nation Series, The Chronicles of America, Schouler and McMaster.