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 President's Appointing Power.
 

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can see no objection to the payment to the vendors of that portion of the purchase money in excess of the amount to be retained under the agreement.

I am, sir, very respectfully,

Your obedient servant,

EDWARD BATES.

HON. GIDEON WELLES,  
*Secretary of the Navy.*

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 PRESIDENT'S APPOINTING POWER.
 

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The President has lawful power in the recess of the Senate to fill a vacancy on the Bench of the Supreme Court, which vacancy existed during the last session of the Senate, by "granting a commission which shall expire at the end of their next session."

ATTORNEY GENERAL'S OFFICE,

October 15, 1862.

SIR: I have examined the matter which you mentioned yesterday, touching your power to fill a vacancy on the bench of the Supreme Court, now, in the recess of the Senate, which vacancy existed during and before the last session of the Senate.

This is the language of the Constitution: "The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session."

If the question were new, and now, for the first time, to be considered, I might have serious doubts of your constitutional power to fill up the vacancy, by temporary appointment, in the recess of the Senate. But the question is not new. It is settled in favor of the power, as far, at least, as a constitutional question can be settled, by the continued practice of your predecessors, and the reiterated opinions of mine, and sanctioned, as far as I know or believe, by the unbroken acquiescence of the Senate.

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NERAL'S OFFICE,

October 15, 1862.

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Construction of a Cartel.

Deferring to this practice and to these authorities, I give it as my opinion that you have lawful power, now, in the recess of the Senate, to fill up a vacancy on the bench of the Supreme Court, which vacancy existed during the last session of the Senate, "by granting a commission which shall expire at the end of their next session."

And for your better information as to the manner in which this subject has been heretofore treated by my predecessors in office, I add a reference to the opinions of several of them, extending over a period of more than twenty years, viz: of Attorney General Wirt, October 22, 1823, see vol. 1, (of Opinions,) p. 631; Attorney General Taney, July 19, 1832, vol. 2, p. 525; Attorney General Legare, October 22, 1841, vol. 3, p. 673; Attorney General Mason, August 13, 1846, vol. 4, p. 523.

I am, sir, very respectfully,

Your obedient servant,

EDWARD BATES.

The PRESIDENT.

CONSTRUCTION OF A CARTEL.

Union soldiers, made prisoners by the enemy and discharged under parole, but not exchanged, cannot, under the terms of the Cartel of July 22, 1862, agreed to between Major General Dix and General Hill, be employed by the Government in suppressing an insurrectionary war of Indian tribes.

ATTORNEY GENERAL'S OFFICE,

October 18, 1862.

SIR: Following your verbal direction, I have carefully examined the cartel for the exchange of prisoners of war, agreed to by the parties on the 22d of July, 1862, at Haxall's Landing, on James river, Virginia, and signed, respectively, by Major General Dix and Major General Hill, as the same is embodied in "General Order No. 142," issued from the War Department, September 25, 1862.