

not entitled to pay from the United States for the time they are so confined. The fact that the men were not convicted, does not alter the case. The decision is based on the ground, that no service having been rendered the United States during that time, they, like other employers, are not bound to pay for any."

But Mr. Burnett, with his characteristic diligence as a lawyer, never yielding a point in which he thought he was right, until the last thing possible was done, appealed from this tribunal to the President of the United States, to whom he writes Aug. 28th, 1843, as follows: "I beg leave respectfully to request your examination of the enclosed correspondence. When the matter was submitted to the Hon. Secretary of War, it was expected that he would give it some attention, and not turn it over to the Pay-Master General. *He* had already given his orders in relation to the decision of the 2d Controller, under which Major Street was acting, when he refused to pay the men. If I had wanted a re-iteration of the order, if it could have been of the least imaginable benefit to me or the men for whom I have been acting, and at whose request I am still urging their claims for justice, to have it again promulgated, I should have written to the Pay-Master General direct, without troubling the Honorable Secretary to hand my letters over to him to be answered.

"The Pay-Master General says, that 'the decision of the 2d Controller is based upon the ground, that no service having been rendered the United States during that time, they, like other employers, are not bound to pay for any.' The same principle would prevent the payment of a soldier for the time he might be confined in the Hospital by sickness, or wounds, or while he was a prisoner of war. Why are the men, in either of these cases, paid for the time in which they render no service? Because they have been prevented by circumstances to which they must submit, and have not withheld their services voluntarily. But Mr. Thornton says, 'where the soldier is confined by the civil authority' (an authority to which the highest official is bound to submit, no matter how unjust the confinement may be), the mis-