

fortune fell on him, and he must bear it. Now in every imaginable case, for every day when the muster-roll does not show the soldier to be present, or absent on duty, no matter what accident, or misfortune may have intervened, the rule, with equal justice and reason, and as much law to support it, would be applied—the soldier must bear his misfortune. The principle will not bear extension; it cannot be sustained by reason and analogy.

“The substance of the position is, that in *every* case, where no service is rendered, there can be no pay demanded, and the Government of the United States is compared to an individual. This rule would exclude every officer of the Government, civil and military, from receiving pay when absent from the appointed place of his duty, or when he fails to render service. To apply it to the army, if an officer is absent on furlough, or imprisoned on either civil or criminal process, we never hear of the rule being applied to him. Is law or reason different when applied from what it is, when, under the same circumstances, applied to a soldier? Is it to be established as a permanent measure of our Government, that one rule of justice is to be applied to the poor soldier, who always needs protection, and a different and more favorable one to officers who are never so necessitous, and who are always more able to protect themselves, and whose pay is of so much more consequence, so far as saving is concerned?”

But the appeal was of no avail until two years after, when the money was paid. It appears from the papers in the case, that this rule of the Controller had lain dormant for ten years, on this frontier, and it was not known to exist either by the Pay Master or officers of the army, until it appeared in this case, and of its injustice no one can reasonably doubt. As an item of history, it is of little importance; but as it involves an important principle of law, and exhibits the glaring injustice of the Government towards the weak and helpless, it is worthy of note.

From the organization of the Supreme Court of the Territory, Mr. Burnett had been the Reporter thereof, and in the winter of