

## Sec. 2—Powers, Duties of the President

## Cl. 1—Commander-In-Chiefship

Justice asked, “we could conjure up in our minds a President willing to paralyze courts by pardoning all criminal contempts, why not a President ordering a general jail delivery?” Although, he added, “[t]he power of a court to protect itself and its usefulness by punishing contemnors is of course necessary,” in light of the fact that a court exercises this power “without the restraining influence of a jury and without many of the guaranties [sic] which the bill of rights offers[,] . . . [m]ay it not be fairly said that in order to avoid possible mistake, undue prejudice or needless severity, the chance of pardon should exist at least as much in favor of a person convicted by a judge without a jury as in favor of one convicted in a jury trial?”<sup>265</sup>

**Effects of a Pardon: *Ex parte Garland*.**—The leading case on this subject is *Ex parte Garland*,<sup>266</sup> which was decided shortly after the Civil War. By an act passed in 1865, Congress had prescribed that, before any person should be permitted to practice in a federal court, he must take oath asserting that he had “never voluntarily borne arms against the United States,” had never given aid or encouragement “to persons engaged in armed hostilities” against the United States, and so forth.<sup>267</sup> Garland, who had “taken part in the Rebellion against the United States, by being in the Congress of the so-called Confederate States,” and so was unable to take the oath, had, however, received from President Johnson “a full pardon ‘for all offences by him committed, arising from participation, direct or implied, in the Rebellion,’”<sup>268</sup> The question before the Court was whether, armed with this pardon, Garland was entitled to practice in the federal courts despite the act of Congress just mentioned. Justice Field wrote for a divided Court: “[T]he inquiry arises as to the effect and operation of a pardon, and on this point all the authorities concur. A pardon reaches both the punishment prescribed for the offence and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence. If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching; if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity.”<sup>269</sup>

<sup>265</sup> 267 U.S. at 121, 122.

<sup>266</sup> 71 U.S. (4 Wall.) 333 (1867).

<sup>267</sup> 71 U.S. (4 Wall.) at 334–35.

<sup>268</sup> 71 U.S. (4 Wall.) at 336, 375.

<sup>269</sup> 71 U.S. at 380–81.