UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
DISTRICT OF MARYLAND

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Reply to Northern Division Address

September 25, 2002

This document is to acknowledge receipt of the court file in *Lincoln v. Taney* (known as the Merryman case) by Dr. Edward Papenfuse. The file will be returned to the Court within 60 days.

Dr. Edward Papenfuse

Felicia C. Cannon

United States of America.
District of Maryland to wit

Before the subscriber a commissioner appointed by the Circuit Court of the United States in and for the Fourth Circuit and District of Maryland to take affidavits &c personally appeared this 25th day of May A.D. 1861. George H. Williams of the City of Baltimore and District aforesaid, and made oath on the Holy Evangels of Almighty God that the matters and facts stated in the foregoing petition are true to the best of his knowledge information and belief and that the said petition was signed in his presence by the said petitioner, and never have been known to by him said petitioner, but that he was all the time and still is in close custody at Fort McHenry, and all access to him denied except to his counsel and his brother in law, this deponent being one of his said counsel. —

Sworn to before me
this 25 day of May A.D. 1861
John Hanson
Ct Cir Ct

United States of America District of Maryland to wit
Before the subscriber a commissioner appointed by the Circuit Court of the United States in and for the Fourth Circuit and District of Maryland to take affidavits &c personally appeared this 26th day of May A.D. 1861 George H. Williams of the City of Baltimore and District aforesaid and made oath on the Holy Evangels of Almighty God that on this 26th day of May he went to Fort McHenry with the preceding affidavit mentioned, and obtained an interview with General George Cadwalader then and there in command, and deponent was one of the counsel of said John Merryman in the foregoing petition named and at his request, and declaring himself to be such counsel requested and demanded that he might be permitted to see the written papers, and to be permitted to make

copies thereof, under and by virtue of which he, the said General detained the said Newman in custody; and that to said demand the said General Cadwalader replied that he would neither permit the deponent through officially represented and demanding as such counsel to read the said papers, nor to have or make copies thereof. —

Sworn to this 26 day of May A.D. 1861
Before me Jno Hazard
Recorder of Deeds

Petition of John Newman for Habeas Corpus.

Filed 26 day May 1861
Writ issued returnable
May 27. 1861 at 11 o'clock
A.M. at the United States
Court Room.

Affidavit of the petition of John Newman
for writ of habeas corpus

Personally appeared before me, a Justice of the Peace in and for said County, John Newman, who being duly sworn according to law, doth depose and say that he is a citizen of the United States, and a resident of Philadelphia County, Pennsylvania, and that on the morning of the 24th day of May instant, he was arrested by Brevet Major General Cadwalader, Commanding the Military Forces of the United States, and detained in custody in the City of Philadelphia, Pennsylvania, in the City & County aforesaid, by the said General Cadwalader, and that he was not charged with any violation of the laws of the United States.

J. J. Comly

the Constitution and laws of the United States [redacted] of which he is a citizen

That your petitioner has been informed that by some order purporting to come from one General [redacted] of Pennsylvania, to this petitioner unknown, directing the arrest of the Captain of some Company in Baltimore County of which Company this petitioner never was and is not Captain was the pretended ground of his arrest and is the sole ground as he believes on which he is now detained

That the person now so detaining him and holding him at said Fort is Brigadier General George Cadwalader the Military Commander of said post proposing to act in the premises under color of the authority of the United States

Your petitioner therefore prays that the writ of Habeas Corpus may issue to be directed to the said George Cadwalader commanding him to produce your petitioner before your Judge as aforesaid with the cause, if any, for his arrest and detention, to the end that your petitioner be discharged and restored to liberty. and as in duty

John Merryman

Fort McHenry 25th May 1861.

To the Honorable Roger B Taney
Chief Justice of the Supreme Court of the
United States ~~and Judge of the Circuit~~
~~Court of the United States in and~~
~~for the District of Maryland~~.

The petition of John Merryman
of Baltimore County and State aforesaid
respectfully shews that being at home
in his own domicile he was about
the hour of 2 o'clock A.M. of the 25th May AD 1861
arrested
forcibly by an armed force
pretending to act under military
orders from some person to your
petitioner unknown — That he
was by said armed force deprived
of his liberty by being taken into
custody, and removed from his
said home to Fort McHenry near to
the City of Baltimore and in the District
aforesaid, and where your petitioner
now is in close custody.

That he has been so imprisoned
without any process or color of law
whatsoever, and that none such
is pretended by those who are
thus detaining him, and that no
warrant from any Court magistrate
or other person having legal
authority to issue the same exists
to justify such arrest. But to the
contrary the same, as above is
stated, has been done without
color of law and in violation of

The United States of America
District of Maryland, to wit

To General George Cadwalader Greeting

You are hereby commanded to be and appear before the Honorable Roger B Taney Chief Justice of the Supreme Court of the United States at the United States Court Room in the Masonic Hall in the City of Baltimore, on Monday the 27th day of May 1861 at 11 O'Clock in the morning, and that you have with you the body of John Merryman, of Baltimore County, and now in your Custody, and that you certify and make known the day and cause of the Caption and detention of the said John Merryman, and that you then and there do submit to and receive whatsoever the said Chief Justice shall determine upon concerning you in this behalf according to law, and have you then and there this Writ. Witness the Honorable R. B. Taney Chief Justice of our Supreme Court the first Monday in December, in the year of our Lord one thousand eight hundred and sixty.

Issued 26 May 1861

Thos. Spicer Clk
Cir. Ct. Md

Phila. 27 March 1851

(1)

John Merryman

v

Genl George Cadwalader

Habeas Corpus.

To the Honorable the Circuit Court of the United States for the fourth Circuit in and for the Maryland District.

I hereby certify that on the 26th day of May 1861 at half past five o'clock P. M. I delivered to General George Cadwalader a writ of Habeas Corpus commanding him to be and appear before this Court on this monday 27th May 1861 at 11 o'clock A.M. and that he then and there bring with him the body of John Merryman of Baltimore County and the cause of the caption and detention of the said John Merryman

Washington Bonifant
U S Marshal

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Filed 27 May 1861

7

Head Quarters Department of Annapolis
Fort McHenry May 26th 1861

To
The Hon. Roger B. Taney
Chief Justice of the Supreme Court
of the United States Baltimore Md.

Sir

The undersigned to whom the annexed writ of this date signed by Thomas Spicer Clerk of the Supreme Court of the United States is directed, most respectfully states, that the arrest of Mr. John Merriman in the said writ named was not made with his knowledge or by his order or direction, but was made by Colonel Samuel Yohe acting under the orders of Major Genl. Wm. H. Keim both of said officers being in the Military Service of the United States, but not within the limits of his Command. The prisoner was brought to this Post on the 25th Instant by Adjutant James Mittmore and

Lieut. Wm. C. Abel by order of Colonel Yoke, and is charged with various acts of treason, and with being publicly associated with and holding a commission as Lieutenant in a Company having in their possession arms belonging to the United States and avowing his purpose of armed hostility against the Government. He is also informed that it can be clearly established, that the prisoner has made open and unreserved declarations of his association with this organized force as being in avowed hostility to the Government and in readiness to co-operate with those engaged in the present rebellion against the Government of the United States. He has further to inform you that he is duly authorized by the President of the United States, in such cases to suspend the writ of Habeas Corpus for the Public Safety. This is a high and delicate trust and it has been enjoined upon him that it should be executed with judgment and discretion, but he is nevertheless also instructed that in times of Civil strife errors, if any, should be on the side of loyalty to the Country.

He most respectfully submits for your consideration that those who should co-operate in the present trying and painful position in which our Country is placed, should not by reason of any unnecessary want of confidence in each other increase our embarrassments.

He therefore respectfully requests that you will postpone further action upon this case untill he can receive instructions from the President of the United States, when you shall hear further from him

I have the honor to be

With high respect

Your Obdt. Servt.

Geo. G. Meade

Bt. Major General

U. S. Army

Comdg.

Ordered that an attachment issue against General George Cadwalader for a contempt in not having to produce the body of John Merryman according to the command of the writ of Habeas Corpus returnable before me today and that said attachment be returned before me at 12 o'clock tomorrow at the room of the circuit court

Monday May 27. 1861

R. B. Taney

Filed 27 May 1861

I hereby Certify to the Honorable Roger B. Taney Chief Justice of the Supreme Court of the United States — That by virtue of the within Writ of Attachment to me directed on the 27 day of May 1861. I proceeded on this 28th day of May 1861. to Fort McHenry for the purpose of Serving the said Writ, I sent in my name at the outer Gate — The messenger returned with the reply "that there was no answer to my Card" and therefore could not Serve the Writ, as I was commanded. I was not being permitted to enter the Gate. So answers.

Washington Bonifant
U.S. Marshal
for the District of Md

The United States
3
Gen'l
George Cadwalader
atta for Contempt

5

Marshal's return

6

The United States of America
District of Maryland, to wit:

To the Marshal for the Maryland District — Greeting.

We command you that you attach the body of General George Cadwalader, and him have before the Honorable Roger B Taney Chief Justice of the Supreme Court of the United States on Tuesday the 28 day of May 1861 at 12 o'clock M. at the Circuit Court Room of the United States in the City of Baltimore, to answer for his Contempt by him committed in refusing to produce the body of John Merryman of Baltimore County, according to the command of the Writ of Habeas Corpus returnable and returned before the said Chief Justice this 27 day of May 1861. Hereof you are not to fail at your peril, and have you then and there this Writ. Witness the Honorable Roger B Taney Chief Justice of our Supreme Court the first Monday in December in the year of our Lord one thousand eight hundred and sixty.

Issued 27 May 1861

Jno. Spicer, Clk
in C.C.

I ordered the attachment yesterday upon
decision upon the face of the return the detention
of the prisoner was unlawful upon two
grounds.

1. The President under the Constitution & Laws
of the United States cannot suspend the privilege
of the writ of Habeas Corpus - nor authorize any
military officer to do so

2. A military officer has no right to arrest
& detain a person not subject to the rules and
articles of War - for an offence against the laws
of the laws of the U. States - except in aid of the
judicial authority & subject to its control -
and if the party is arrested by the military - it is
the duty of the officers to deliver him over
immediately to the civil authority to be dealt
with according to law

It is therefore very clear that John Merryman the Petitioner is entitled to be set at liberty and discharged immediately from his imprisonment

Filed 25 May 1861

I forbore yesterday to state orally the provisions of the Constitution of the United States which make those principles the fundamental law of the Union — because an oral statement might be misunderstood in some portions of it: and I shall therefore put my opinion in writing & file it in the office of the Clerk of the ~~Supreme~~ Circuit Court in the case of this week.

6

Dico 28 28 May 1861

Ex parte John Merryman

Sitting at Chambers

June 1st 1861 - Ordered that the Clerk of the Circuit Court of the United States, file in that Court all the papers & proceedings in this case and record the same - and transmit a copy thereof, forthwith to the President of the United States, under the seal of the Court.

R. B. Taney

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Filed 1 June 1861

May 27 - 1861 - Chief Justice Taney
at Chambers

The following papers ~~Papers~~ & proceedings were ~~issued~~ received & read -

(Here insert petition & order & Habeas Corpus - Marshals return - and return of Genl Cadwalader ~~[illegible]~~ - and order of the court for attachment returnable ~~to~~ forthwith at 12 o'clock -

May 28 - (Here insert) return of Marshal - opinion of court filed - ~~[illegible]~~ & statement of the motion of the Court ~~to~~ file hereafter opinion & ~~[illegible]~~ shortly thereafter - ~~[illegible]~~

June 1st - (~~Here insert~~) opinion of court - there issued & order to file proceedings & record in the circuit court & transmit the same to the president)

June 3 - Circuit Court of the U. States for the Maryland District - Papers & proceedings filed & recorded - Were transmitted to president

May 27. 1861

Chief Justice Taney at Chambers
The following papers and proceedings were produced and read (Here insert the Petition order and Habeas Corpus, marshal's return and return of Genl Cadwalader & and rule of Court for attachment

May 28 1861

Here insert marshal's return opinion of the court filed on that day and statement of the intention of the Court to file a written opinion.

June 1. 1861

Here insert the opinion of the court, and order to file and record the proceedings in the Circuit Court

June 3 1861

At a special Circuit court of the United States for the fourth Circuit in and for the Md Dist held at the City of Balto on the 3d day of June 1861 by rule of the Chief Justice of the supreme court of the U.S.

Present The Hon
Roger B Taney Chf Jus Sup. Ct. U.S
Wm Addison Esq atty
Washington Bonifant Esq marshal
Thomas Speer Clerk

Among other were the following proceedings. to wit
Be it remembered that on this 3d day of June in the year aforesaid, the papers and proceedings in the foregoing Case were filed in this Court and recorded and a copy thereof are hereby transmitted

to the President of the United States

In Testimony that the aforegoing is a true copy taken from the proceedings aforesaid,
I have unto subscribe my name &c

D. C. Form No. 106 A

DOCKET

TITLE OF CASE	ATTORNEYS
EX PARTE JOHN MERRYMAN	*For Plaintiff:*
	For Defendant:
Basis of action:	
Jury trial claimed by	
on , *19*	

DATE	PLAINTIFF'S ACCOUNT	RECEIVED		DISBURSED		DATE	DEFENDANT'S ACCOUNT	RECEIVED		DISBURSED	

ABSTRACT OF COSTS			RECEIPTS, REMARKS, ETC.
TO WHOM DUE	AMOUNT		

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS	
1861			
May 25	Petition for writ of habeas corpus of John Merryman (and affidavit)		
May 26	Summons issued to General George Cadwalader to appear before Court on Monday, 27 May 1861 with the body of John Merryman.		
May 26	Return of U. S. Marshal Washington Bonifant.		
May 27	Letter from General Cadwalader to Chief Justice Taney.		
May 27	Order (Taney, Chief Justice) that an attachment issued against General George Cadwalader.		
May 27	Attachment issued by Clerk, Thomas Spicer.		
May 28	Memo opinion of Chief Justice Taney.		
June 1	Opinion of Chief Justice Taney.		
June 1	Order that opinion be filed and recorded in the Circuit Court of the United States for the District of Maryland directing the Clerk to transmit a copy under seal to the President of the United States.		
June 3	Certificate of Clerk.		

Ex parte

John Merryman } Before the Chief Justice of the Supreme Court of the United States.

At Chambers.

The application in this case for a writ of Habeas Corpus, is made to me under the 14th Section of the Judiciary Act of 1789, which renders effectual for the Citizen the constitutional privilege of the writ of Habeas Corpus.
That act gives to the Courts of the United States, as well as to each Justice of the Supreme Court, and to every District Judge, power to grant writs of Habeas Corpus, for the purpose of an inquiry into the cause of commitment. The petition was presented to me at Washington, under the impression that I would order the prisoner to be brought before me there, but as he was confined in Fort McHenry, at the City of Baltimore, which is in my Circuit, I resolved to hear it in the latter City, as obedience to the writ, under such circumstances, would not withdraw

General Cadwalader, who had him in charge, from the limits of his military command.

The petition presents the following case:

The petitioner resides in Maryland, in Baltimore County. While peaceably in his own house, with his family, it was, at 2 o'clock on the morning of the 25th of May 1861, entered by an armed force, professing to act under military orders.

He was then compelled to rise from his bed, taken into custody, and conveyed to Fort McHenry, where he is imprisoned by the commanding officer without warrant from any lawful authority.

The commander of the Fort, General George Cadwalader, by whom he is detained in confinement, in his return to the writ, does not deny any of the facts alleged in the petition. He states that the prisoner was arrested by order of General Keim of Pennsylvania, and conducted as aforesaid to Fort McHenry by his aide, and placed in his (Gen. Cadwalader's) custody to be there

detained by him, as a prisoner.
A Copy of the warrant, or order, under which the prisoner was arrested, was demanded by his Counsel, and refused. And it is not alleged in the return that any specific act, constituting any offence against the laws of the United States, has been charged against him upon Oath; but he appears to have been arrested upon general charges of treason and rebellion, without proof, and without giving the names of the witnesses, or specifying the acts, which, in the judgment of the Military officer, constituted these Crimes. And having the prisoner thus in custody upon these vague and unsupported accusations, he refuses to obey the writ of Habeas Corpus, upon the ground that he is duly authorized by the President to suspend it.
The case, then, is simply this. A Military Officer, residing in Pennsylvania, issues an order to arrest a citizen of Maryland, upon vague and indefinite charges, without any proof, so far as appears. Under this

order his house is entered in the night, he is seized as a prisoner, and conveyed to Fort McHenry, and there kept in close confinement. And when a Habeas Corpus is served on the commanding Officer, requiring him to produce the prisoner before a Justice of the Supreme Court, in order that he may examine into the legality of the imprisonment, the answer of the Officer is, that he is authorized by the President to suspend the writ of Habeas Corpus at his discretion, and, in the exercise of that discretion, suspends it in this case, and on that ground refuses obedience to the writ.

As the case comes before me, therefore, I understand that the President not only claims the right to suspend the writ of Habeas Corpus himself, at his discretion, but to delegate that discretionary power to a military Officer, and to leave it to him to determine whether he will or will not obey Judicial process that may be served upon him.

No official notice has been given to the courts of justice, or to the public, by proclamation or otherwise, that the President claimed this power, and had exercised it in the manner stated in the return. And I certainly listened to it with some surprise. For I had supposed it to be one of those points of constitutional law upon which there was no difference of opinion, and that it was admitted on all hands that the privilege of the writ could not be suspended, except by act of congress. When the conspiracy of which ~~[illegible]~~ Aaron Burr was the head, became so formidable, ~~[illegible]~~, and was so ~~[illegible]~~ extensively ramified, as to justify, in Mr Jefferson's opinion, the suspension of the writ, he claimed, on his part, no power to suspend it — but communicated his opinion to congress, with all the proofs in his possession, in order that congress might exercise its discretion upon the subject, and determine whether the public safety required it. And in the debate which

took place upon the subject no one suggested that Mr Jefferson might exercise the power himself, if, in, his opinion, the public safety demanded it.

Having therefore regarded the question as too plain and too well settled to be open to dispute, if the commanding Officer had stated that upon his own responsibility, and in the exercise of his own discretion he refused obedience to the writ, I should have contented myself with referring to the clause in the constitution, and to the construction it received from every jurist and statesman of that day, when the case of Burr was before them. But being thus officially notified that the privilege of the writ has been suspended under the orders, and by the authority of the President, and, believing as I do, that the President has exercised a power which he does not possess under the constitution, a proper respect for the high Office he ~~holds~~ fills requires me to state plainly and fully the grounds of my opinion, in order to show

that I have not ventured to question the legality of his act without a careful and deliberate examination of the whole subject.

The clause of the Constitution, which authorizes the suspension of the privilege of the writ of Habeas Corpus, is in the 9th section of the first Article.

This Article is devoted to the Legislative department of the United States, and has not the slightest reference to the Executive department.

It begins by providing "that all legislative powers therein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." And after prescribing the manner in which these two branches of the Legislative Department shall be chosen, it proceeds to enumerate specifically the Legislative powers which it thereby grants, ~~and, the Legislative powers which it expressly prohibits,~~

And at the Conclusion of this specification a Clause is inserted giving Congress "the power to make all laws which may be necessary and proper for carrying into Execution the foregoing powers; and all other powers vested by this Constitution in the Government of the United States or in any Department or office thereof."

The power of legislation granted by this latter Clause is by its words carefully confined to the specific objects before enumerated. But as this limitation was unavoidably somewhat indefinite it was deemed necessary to guard more effectually certain great cardinal principles essential to the liberty of the citizen and to the rights and equality of the States by denying to Congress in express terms any power of legislation over them. It was apprehended, it seems, that such legislation might be attempted under the pretext that it was necessary and proper to carry into Execution the powers granted;

and it was determined that there should be no room to doubt where rights of such vital importance were concerned. And accordingly this Clause is immediately followed by an Enumeration of certain subjects to which the power of legislation shall not extend; and the great importance which the framers of the Constitution attached to the privilege of the writ of Habeas Corpus to protect the liberty of the Citizen is proved by the fact that its suspension except in Cases of invasion and rebellion is first in the list of prohibited powers, and even in these Cases the power is denied and its exercise prohibited unless the public safety shall require it. It is true that in the Cases mentioned Congress is of necessity the Judge of whether the public safety does or does not require it, and their judgment is Conclusive. But the introduction of these words is a standing admonition to the Legislative body of the danger of suspending it, and of the extreme caution they should

Exercise before they give the government of the United States such power over the liberty of a citizen.

It is the 2nd Article of the Constitution that provides for the Organization of the Executive Department and enumerates the powers conferred on it and prescribes its duties. And if the high power over the liberty of the citizen now claimed was intended to be conferred on the President it would undoubtedly be found in plain words in this article. But there is not a word in it that can furnish the slightest ground to justify the Exercise of the power.

The Article begins by declaring that the Executive power shall be vested in a President of the United States of America to hold his Office during the term of four years, and then proceeds to prescribe the Mode of Election, and to specify in precise and plain words the powers delegated to him and the duties imposed upon him. And the short term for which

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he is Elected, and the narrow limits to which his power is Confined show the jealousy and apprehensions of future danger which the framers of the Constitution felt in relation to that department of the Government; and how carefully they withheld from it many of the powers belonging to the Executive Branch of the English Government which were considered as dangerous to the liberty of the subject - and Conferred (and that in Clear and specific terms) those powers only which were deemed Essential to secure the successful operation of the Government.

He is Elected, as I have already said, for the brief term of four years, and is made personally responsible by impeachment for Malfeasance in office. He is from necessity and the nature of his duties the Commander in Chief of the Army and Navy, and of the Militia when Called into actual service. But no appropriation for the support of the Army can be made by

Congress for a longer term than two years, so that it is in the power of the succeeding House of Representatives to withhold the appropriation for its support and thus disband it, if, in their judgment the President used or designed to use it for improper purposes. And although the Militia when in actual service are under his Command, yet the appointment of the officers is reserved to the states, as a security against the use of the Military power for purposes dangerous to the liberties of the people or the rights of the states.

So far his powers in relation to the Civil duties and authority necessarily conferred on him are carefully restricted as well as those belonging to his military character. He cannot appoint the ordinary officers of Government nor make a treaty with a foreign nation or Indian tribe without the advice and consent of the Senate, and cannot ap-

-point even the inferior officers unless he is authorized by an act of Congress to do so. He is not empowered to arrest any one charged with an offence against the United States, and whom he may from the evidence before him believe to be guilty - nor can he authorize any officer, civil or military, to exercise this power, for the 5th Article of the Amendments to the Constitution expressly provides that no person "shall be deprived of life liberty or property without due process of law" - that is judicial process. And even if the privilege of the writ of Habeas Corpus were suspended by act of Congress and a party, not subject to the Rules & Articles of War, was afterwards arrested and imprisoned by regular judicial process - he could not be detained in prison or brought to trial before a Military Tribunal, for the Article in the Amendments to the Constitution immediately following the one above referred to, that is the 6th Article, provides that - "In all Crim-

-inal prosecution, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and District wherein the Crime shall have been committed, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence"

And the only power therefore which the President possesses, where the "life liberty or property" of a private citizen is concerned, is the power and duty prescribed in the 3rd section of the 2nd Article, which requires "that he shall take care that the laws shall be faithfully executed." He is not authorized to execute them himself or through agents or officers civil or military appointed by himself - but he is to take care that

they be faithfully carried into Execution as they are expounded and adjudged by the Co-ordinate Branch of the Government to which that duty is assigned by the Constitution. It is thus made his duty to come in aid of the judicial authority — if it shall be resisted by a force too strong to be overcome without the assistance of the Executive arm. — But in exercising this power he acts in subordination to judicial authority — assisting it to Execute its process & enforce its judgments.

With such provisions in the Constitution expressed in language too clear to be misunderstood by any one I can see no ground whatever for supposing that the President in any Emergency or in any state of things can authorize the suspension of the privileges of the writ of Habeas Corpus or arrest a citizen except in aid of the judicial power. He certainly does not

faithfully execute the laws if he takes upon himself legislative power by suspending the writ of Habeas Corpus and the judicial power also by arresting and imprisoning a person without due process of law. Nor can any argument be drawn from the nature of sovereignty or the necessities of Government for self defence in times of tumult and danger. The Government of the United States is one of delegated and limited powers. It derives its existence and authority altogether from the Constitution, and neither of its branches Executive Legislative or Judicial, can exercise any of the powers of Government beyond those specified and granted. For the 10th Article of the Amendments to the Constitution in express terms provides that "The powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively or to the people".

Indeed the security against imprisonment by Executive Authority provided for in the 5th article of the Amendments to the Constitution which I have before quoted is nothing more than a copy of a like provision in the English Constitution which had been firmly established before the Declaration of Independence.

Blackstone in his Commentaries (1st Vol. 137) states it in the following words:

"To make imprisonment lawful it must be either by process of law from the Courts of Indicature or by warrant from some legal officer having authority to commit to prison" And the people of the United ~~States~~ Colonies who had themselves lived under its protection while they were British Subjects were well aware of the necessity of this safeguard for their personal liberty. And no one

can believe that in framing a government intended to guard still more efficiently the rights and liberties of the citizen against Executive encroachment and oppression, they would have conferred on the President a power which the history of England had proved to be dangerous and oppressive in the hands of the Crown, and which the people of England had compelled it to surrender after a long and obstinate struggle on the part of the English Executive to ~~retain~~ usurp and retain it.

The right of the Subject to the benefit of the writ of Habeas Corpus, it must be recollected, was one of the great points in controversy during the long struggle in England between arbitrary government and free institutions, and must therefore have strongly attracted the attention of the statesmen engaged in framing a new, and as they supposed, a freer government than the one which they had thrown off by the Revolution. For from the earliest history of the Common Law, if a person were imprisoned - no matter by what authority - he had a right to the writ of Habeas Corpus to bring his case before the King's Bench; and if no specific offence was charged against him in the warrant of commitment, he was entitled to be forthwith discharged: and if an offence was charged which was bailable in its character, the Court was bound to set him at liberty on bail. And the most exciting contests between the

Crown and the People of England from the time of Magna Charta were in relation to the privilege of this writ, and they continued until the passage of the Statute of the 31st ~~Chas~~ Charles the 2nd commonly known as the great Habeas Corpus act. This Statute put an end to the struggle, and finally and firmly secured the liberty of the Subject against the usurpation and oppression of the Executive branch of the Government. It nevertheless conferred no new right upon the Subject, but only Se=cured a right already existing. For although the right could not justly be denied, there was often no effectual remedy against its violation. Until the Statute of 13 William ~~the 3rd~~, the Judges held their offices at the pleasure of the King, and the influence which he Exer=cised over timid, time-serving, and partizan judges often induced them, upon some pretext or other, to refuse to discharge the party although entitled by law to his discharge, or delayed their decisions from time to time so as to prolong the imprisonment of persons who were obnoxious to the King for their political opinions, or had incurred his resentment in any other way. The great and inestimable value of the Habeas Corpus Act of the 31st Charles 2nd is, that it contains provisions which compel Courts and Judges and all parties

Concerned to perform their duties promptly in the manner specified in the Statute.

A passage in Blackstone's Commentaries shewing the Ancient State of the Law on this Subject, and the abuses which were practised through the power and influence of the Crown, and a Short extract from Hallam's Constitutional History of England stating the Circumstances which gave

rise to the passage of this statute, explain briefly, but fully, all that is material to this subject. Blackstone, in his Commentaries on the Laws of England (3 vol, 133, 134) says "To assert an absolute exemp= "tion from imprisonment in all "cases is inconsistent with every "idea of Law, and political society, "and in the end would destroy all "civil liberty, by rendering its pro= "tection impossible. But the glory "of the English law consists in clearly "defining the times, the causes and "the extent, when, wherefore, and to "what degree the imprisonment of "the subject may be lawful. This "it is which induces the absolute "necessity of expressing upon every "commitment the reason for which "it is made, that the Court upon "a Habeas Corpus may examine into "its validity, and according to the "circumstances of the case, may discharge,

"admit to bail, or remand the
"prisoner. And yet early in the
"reign of Charles I. the Court of
"Kings Bench, relying on some
"arbitrary precedents (and those per=
=haps misunderstood) determined
"that they would not, upon a Habeas
"Corpus, either bail, or deliver a
"prisoner, though committed without
"any cause assigned, in case he
"was committed by the special com=
=mand of the King, or by the Lords
"of the Priv Council. This drew on
"a Parliamentary inquiry and pro=
=duced the Petition of Right. 3 Chas I
"which recites this illegal judgment,
"and enacts that no freeman here=
=after shall be so imprisoned or
"detained. But when in the follow=
=ing year Mr Selden and others
"were committed by the Lords of the
"Council in pursuance of his Majesty's
"special command, under a general
"charge of "notable contempts, and

"stirring up sedition against the King
"and government," the judges delayed
"for two terms (including also the
"long vacation) to deliver an opinion
"how far such a charge was bailable.
"And when at length they agreed
"that it was, they however annexed
"a condition of finding sureties for
"their good behaviour, which still pro=
=tracted their imprisonment; the Chief
"Justice, Sir Nicholas Hyde, at the
"same time declaring that "if they
"were again remanded for that cause
"perhaps the court would not afterward
"grant a Habeas Corpus, being already
"made acquainted with the cause of
"the imprisonment." But this was
"heard with indignation and aston=
=ishment by every lawyer present,
"according to Mr Selden's own account
"of the matter, whose resentment was
"not cooled at the distance of four-
-and-twenty years."

It is worthy of remark,

that the offences charged against the prisoner in this case, and relied on as a justification for his arrest and imprisonment, in their nature and character, and in the loose and vague manner in which they are stated, bear a striking resem=blance to those assigned in the warrant for the arrest of Mr Selden. And yet even at that day the warrant was regarded as such a flagrant violation of the rights of the subject, that the delay of the time-serving Judges to set him at liberty, upon the Habeas Corpus, issued in his behalf, excited the universal indignation of the Bar. The extract from Hallam's Constitutional History *~~*(volume [illegible], p. 19 & Bl. note to 3 Bl. Com. 133 Wendells Edition)~~ is equally impressive, and equally in point. ~~This is indisputably~~

"It is a very common mistake, "and not only among foreigners, "but many from whom some know=="ledge of our Constitutional Laws

* Here insert (3 Vol. pag. cited also at length in the note to 3 Blackstone 136.137. Wendells Edition)

"might be expected, to suppose,
"that this statute of Charles II. en-
"-Larged in a great degree our
"liberties, and forms a sort of
"epoch in their history. But though
"a very beneficial enactment, and
"eminently remedial in many cases
"of illegal imprisonment, it intro-
"-duced no new principle nor confer-
"-red any right upon the subject.
"From the earliest records of the
"English law no freeman could be
"detained in prison except upon
"a criminal charge, or conviction
"or for a civil debt. In the former
"case it was always in his power
"to demand of the Court of Kings
"Bench a writ of habeas corpus ad
"subjiciendum directed to the person
"detaining him in custody, by which
"he was enjoined to bring up the body
"of the prisoner with the warrant of
"commitment that the Court might
"judge of its sufficiency, and remand

"the party, admit him to bail, or
"discharge him, according to the
"nature of the charge. This writ
"issued of right, and could not
"be refused by the court. It was
"not to bestow an immunity from
"arbitrary

"imprisonment, which is abundantly pro=
"vided for in Magna Charta (if indeed
"it is not more ancient) that the Statute
'of Charles 2nd was enacted, but to cut off
"the abuses by which the governments lust
"of power, and the servile subtlety of crown
"lawyers had impaired so fundamental
"a privilege".

While the value set upon this writ in England has been so great that the removal of the abuses which embarrassed its enjoyment have been looked upon as almost a new grant of liberty to the subject, it is not to be wondered at that the continuance of the writ thus made effective should have been the object of the most jealous care. Accordingly, no power in England, short of that of Parliament can suspend, or authorize the suspension of, the writ of Habeas Corpus. I quote again from Blackstone (1 Comm. 136) "But the "happiness of our Constitution is, that it is not left to the executive power to determine

"when the danger of the State is so great "as to render this measure expedient. It is "the Parliament only, or legislative power, "that whenever it sees proper can authorize "the Crown, by suspending the Habeas "Corpus for a short and limited time, "to imprison suspected persons without "giving any reason for so doing". And, if the President of the United States may suspend the Writ, then the Constitution of the United States has conferred upon him more regal and absolute power over the liberty of the citizen, than the people of England have thought it safe to entrust to the Crown - a power which the Queen of England cannot exercise at this day, and which could not have been lawfully exercised by the Sovereign even in the reign of Charles the First.

But I am not left to form my judgment upon this great question, from analogies between the English Government and our own, or the Commentaries of English Jurists, or the decisions of

English Courts, although upon this subject they are entitled to the highest respect, and are justly regarded and received as authoritative by our Courts of Justice. To guide me to a right conclusion I have the ~~[illegible]~~ Commentaries on the Constitution of the United States of the late Mr Justice Story, not only one of the most eminent jurists of the age, but for a long time one of the brightest ornaments of the Supreme Court of the United States, and also the clear and authoritative decision of that Court itself, given more than half a century ~~ago~~ since, and conclusively establishing the principles I have above stated.

Mr. Justice Story, speaking ~~[illegible]~~ in his Commentaries of the Habeas Corpus clause in the Constitution, says

"It is obvious, that cases of a peculiar "emergency may arise, which may justify, "~~may~~ Even require, the temporary suspen= "sion of any right to the Writ. But as it

"has ~~had~~ frequently happened in foreign "countries, and even in England, that "the writ has, upon various pretexts and "occasions been suspended, whereby persons "apprehended upon suspicion have suffered "a long imprisonment, ~~sometimes~~ from designs, and ~~because~~ sometimes because "they were forgotten, the right to suspend "it is expressly confined to cases of rebellion "or invasion, where the public safety "may require it. A very just and whole= "some restraint, which cuts down at a "blow a fruitful means of oppression, "capable of being abused in bad times "to the worst of purposes. Hitherto no "suspension of the writ has ever been "authorized by Congress, since the estab= "lishment of the Constitution. It would "seem, as the power is given to Congress "to suspend the writ of Habeas Corpus "in cases of rebellion or invasion, that "the right to judge, whether the exigency "had arisen, must exclusively belong to "that body" (3 Story's Com. on the Con= "stitution, section 1336).

And Chief Justice Marshall, in de=
livering the opinion of the Supreme
Court in the case of Ex parte Boll=
man and Swartwout, uses the ~~same~~
~~and~~ decisive language in 4 Cranch-
95.

"It may be worthy of remark,
"that this act (speaking of the one under
"which Dam proceeding) was passed by
"~~that~~ the first Congress of the United States,
"sitting under a Constitution which had
"declared 'that the privilege of the writ
"'of Habeas Corpus should not be sus=
"'pended, unles, when in cases of rebell=
"'ion or invasion, the public safety might
"'require it.' Acting under the immediate
"influence of this injunction they must
"have felt, with peculiar force, the obliga=
"tion of providing efficient means by
"which this great constitutional privilege
"should ~~receive~~ life and activity; for,
"if the means be not in existence, the
"privilege itself would be lost, although
"no law for its suspension should be enacted.

"Under the impression of this obligation
"they give, to all the courts, the power
"of awarding writs of Habeas Corpus."
And again, in page 101 –
"If at any time the public safety
"should require the suspension of the
"powers vested by this act in the courts
"of the United States, it is for the legis=
"lature to say so. That question depends
"on political considerations, on which
"the legislature is to decide. Until the
"legislative will be expressed, this court
"can only see its duty, and must
"obey the laws"

I can add nothing to these clear and emphatic words of my great predecess=
=or.

But the documents before me show that the military authority, in this case, has gone far beyond the mere suspension of the privilege of the writ of Habeas Corpus. It has, by force of arms, thrust aside the judicial au=
thorities and officers to whom the

Constitution has confided the power and duty of interpreting and administering the laws, and substituted a military government in its place, to be administered and executed by military officers. For at the time these proceedings were had against John Merryman, the District Judge of Maryland, the Commissioner appointed under the act of Congress; the District Attorney, and the Marshal, all resided in the city of Baltimore, a few miles only from the home of the prisoner. Up to that time there had never been the slightest resistance or obstruction to the process of any Court, or judicial Officer of the United States in Maryland except by the military authority. And if a military officer, or any other person, had reason to believe that the prisoner had committed any offence against the laws of the United States, it was his duty to give information of the fact, and the evidence to support it, to the District Attorney; and it would then have become

the duty of that officer to bring the matter before the District Judge or Commissioner, and if there was sufficient legal evidence to justify his arrest, the Judge, or Commissioner would have issued his warrant to the marshal, to arrest him; and upon the hearing of the case would have held him to bail, or committed him for trial, according to the character of the offence as it appeared in the testimony, or would have discharged him immediately, if there was not sufficient evidence to support the accusation. There was no danger of any obstruction, or resistance, to the action of the civil authorities, and therefore no reason whatever for the interposition of the military. And yet under these circumstances a military officer, stationed in Pennsylvania, without giving any information to the District Attorney, and without any application to the judicial authorities, assumes to himself the judicial power, in the District

of Maryland, undertakes to decide what constitutes the crime of treason, or rebellion; what evidence (if, indeed, he required any) is sufficient to support the accusation, and justify the comitment; and commits the party, without a hearing even before himself, to close custody in a strongly garrisoned Fort, to be there held, it would seem, during the pleasure of those who committed him.

The Constitution provides, as I have before said, that "no person shall be "deprived of life, liberty or property, "without due process of law." It declares that "the right of the people to be "secure in their persons, houses, papers, "and effects, against unreasonable "searches and seizures, shall not be vio= "lated, and no warrant shall issue, but "upon probable cause, supported by oath "or affirmation; and particularly de= "scribing the place to be searched, and "the persons or things to be seized."

It provides that the party accused

shall be entitled to a speedy trial, in a court of justice.

And these great and fundamental laws, which Congress itself could not ~~cannot~~ suspend, have been disregarded and suspended, like the writ of Habeas Corpus, by a military order, supported by force of arms. Such is the case now before me, and I can only say, that if the ~~power~~ authority, which the Constitution has confided to the Judiciary Department and Judicial officers, may thus, ~~be~~ upon any pretext or under any circumstances be usurped by the military power at its discretion, the people of the United States are no longer living under a government of laws, but every citizen holds life, liberty, and property at the will and pleasure of the army officer, in whose military District he may happen to be found.

In such a case my duty was too plain to be mistaken. I have exercised all the power which the Constitution

and laws confer upon me, but that power has been resisted by a force too strong for me to ~~##~~ overcome.

It is possible, that the officer, who has incurred this grave re[illegible]sibility, may have misunderstood [illegible] instructions, and [illegible] they intended to be given him. I shall, therefore, order all the proceedings in this case, with my opinion, to be filed, and recorded in the Circuit Court of the United States for the District of Maryland, and direct the clerk to transmit a copy, under seal, to the President of the United States. It will then remain for that in fulfilment of his constitutional [illegible] gation to ~~suff~~ "take care [illegible] "faithfully executed", [illegible] measures he will take to cause the civil [illegible]cess of the United States to be respect[illegible]d, and enforced.

R. B. Taney
Chief Justice of the
Supr. Ct. of the U. S.

Ex parte
John Merryman

Petition for Habeas Corpus

Filed 1 June 1861

Ex parte
John Merryman

Petition for
Writ of Habeas
Corpus

D. C. Form No. 106 A

DOCKET

TITLE OF CASE	ATTORNEYS
EX PARTE JOHN MERRYMAN	*For Plaintiff:*
	For Defendant:
Basis of action:	
Jury trial claimed by	
on , 19	

DATE	PLAINTIFF'S ACCOUNT	RECEIVED		DISBURSED		DATE	DEFENDANT'S ACCOUNT	RECEIVED		DISBURSED	

ABSTRACT OF COSTS			RECEIPTS, REMARKS, ETC.
TO WHOM DUE	AMOUNT		

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
1861		
May 25	Petition for writ of habeas corpus of John Merryman (and affidavit)	
May 26	Summons issued to General George Cadwalader to appear before Court on Monday, 27 May 1861 with the body of John Merryman.	
May 26	Return of U. S. Marshal Washington Bonifant.	
May 27	Letter from General Cadwalader to Chief Justice Taney.	
May 27	Order (Taney, Chief Justice) that an attachment issued against General George Cadwalader.	
May 27	Attachment issued by Clerk, Thomas Spicer.	
May 28	Memo opinion of Chief Justice Taney.	
June 1	Opinion of Chief Justice Taney.	
June 1	Order that opinion be filed and recorded in the Circuit Court of the United States for the District of Maryland directing the Clerk to transmit a copy under seal to the President of the United States.	
June 3	Certificate of Clerk.	