

MSA SC 5463-4-11

Nicholas Gorman

v
Capt Francis B Schaeffer

Writ of Habeas Corpus.

Swartout
Maloy

The United States of America
District of Maryland to wit
To Captain Francis D Schaeffer Greeting
You are hereby Com manded and Enjoined
to be and appear before the Honorable
Upton S Heath Judge of the District
Court of the United States in and for
the Maryland District at the Clerks Office of the said
District at four o'clock P. M. this day, and that you
have with you the body of Nicholas Gorman now
in your custody, and that you certify and make
known the day and cause of the Caption and detention
of the said Nicholas Gorman, and that you then and
there do submit to and receive whatsoever the said
Judge shall determine upon concerning you in this
behalf according to Law, and have you then and there
this writ. Witness the Honorable Upton S Heath Judge
of our said District Court, the first Tuesday in September
in the year of our Lord one thousand eight hundred
and forty seven.

Given 5 Oct 1847

Thos. Spier
Clerk


- The above named Nicholas Gorman, is held in the service,
he having enlisted under an assumed name.

Geo. Mulloy
Lieut Col.

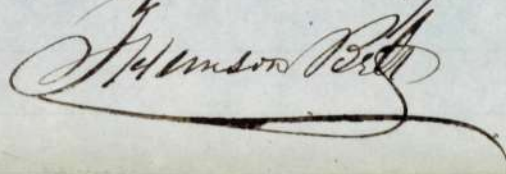
To the Hon. W. S. Heath,

Judge of the United States Court for the
District of Maryland.

The petition of John Murphy sheweth that
his Apprentice, Nicholas Gorman, has enlisted in
the Service of the United States, without his Con-
sent, or the Consent of his Father or Guardians,
that he is a minor, and not yet, eighteen years
of age - that he is now in illegal Confinement
at Fort M'Henry, attached to the Company
under the Command of Capt J. B. Schaeffer
wherefore he prays the Writ of Habeas Corpus
may be issued to the said Schaeffer, to be directed
Commanding him to be and appear before your
Honor, at a day and time to be therein named
with the body of the said Nicholas Gorman
and the Cause of his Captivity, and detention
to be dealt with, as the law directs and he
prays he may be discharged, and he will

ever pray for


Sworn Subscribed to before
me a Justice of the Peace of the
State of Maryland in & for the City
of Baltimore on the 5th October 1847



In the matter of the Petition within
it appearing that Nicholas Gorman
was a Minor under ~~guard~~ age
and bound to Mr Murphy by his
Parent & that he had enlisted without
the consent of his Parent Master
or Guardian the said Gorman
was discharged from his enlistment
this ~~5th~~ day of October

W. S. Heath
J. S. Judge

Nicholas Gorman, an
apprentice of his Master
John Murphy

Capt Francis B. Schaeffer

Filed 5 Oct. 1847

but spent, returnable

this Afternoon 4 of Oct

such as to, from the Service

of the United States, he being

a Minor, and enlisted

without the Consent of his

Parents

W. S. Heath
J. S. Judge

Mr. Spicer, will issue the Habeas Cor-
pus as prayed directed to F. D. Schaffer
or the commanding officer at Fort
McHenry - I make the same return
- ^{this Day} at 4 o'clock P. M. at the Office of
the Clerk of the District Court,

W. Heath
D. Judge

By the Act of Congress of 1798 C 89. 55. (Story's
Edition) § 542 - now commissioned
officers, Messengers, Seamen and
Marines, who have enlisted in the
Service of the United States, are de-
clared to be exempt, during their
Term of enlistment, from personal
arrest and confinement, for any
debt or contract entered into by
them. It appears that the Party now
before the Court had enlisted into
the Service - that he has since been
arrested and is now in confinement
under & by virtue of an execution
issued by one of the Justices of the Peace
of the State of Maryland - that the
same was issued upon a Judgment
rendered by such Justice
in a plea of debt at the Suit of a
Citizen of the State of Md. The Court
does not doubt but such confine-
ment is illegal, and that the Party
ought to be discharged therefore and
delivered to the Officer from whose
Command he was taken by the State
authorities. Upon this subject, the Court
has no doubt.

The question however occurs, has

this Court the power to discharge the Party
from his present confinement? I think
not. This Court derives its power to issue
the writ of Habeas Corpus, as it does its
other powers, principally from the
Act of 1789. C. 20. The 14 Sec. of that Act
expressly authorises the Court to issue
the writ, and effectually too, in all
cases, where the party is in prison by
virtue or under colour of authority
from the United States, or committed
for trial before some Court thereof, or ~~is~~ ^{is necessary}
~~to be brought~~ ^{to be brought} before the Court for trial. If in Law
no authority is given by the Act to discharge
in any other Case - This Case does not fall
within either alternative and the power
is not given by this Act. The Court knows
of no Act applicable to the Case that entitles
the power & as it can only exercise it
in Cases where the authority is given it
must decline acting in the present
Case. In the Case of Barbera, in 1st Wash. Cir:
Court Reports, the course now pursued
will be found to be fully sustained by
the opinion of Judge Washington, and also
by the proceedings of the Court for the N. D. of N. Y.
in a Case referred to in a Note in Cookling's
Digest. W. H. W. H.

In the matter

of the application of John Murphy
for the discharge of his apprentice
Nicholas Gorman and in the
Army of the United States, it ap-
pearing that the said Nicholas is
~~a minor under age and bound~~

by his Parents to said Murphy & that
he had enlisted without the consent
of Parents, Master or Guardians
it is this 5th day of October 1847
adjudged & ordered that the said
Nicholas be discharged from the
Service of the United States. ~~and that~~
~~he be sent to the office~~