

MSA SC 5463-4-3

George W Bennett

is

The warden of the jail
of Baltimore City and
County

Habeas Corpus

The United States of America
District of Maryland, to wit
To the warden of the Jail of Baltimore City and County
Greeting -

You are hereby enjoined and Comanded
to be and appear before the District Court
of the United States in and for the
Maryland District on Wednesday
Morning 12th June instant, at 11 o'clock
and that you then and there have with you the body
of George W Bennett now in your Custody, and that
you certify and make known the day and cause of
the capture and detention of the said George W Bennett,
and that you then and there do submit to and receive
whatsoever the said Court shall determine upon con-
-cerning you in this behalf, according to law, and have
you then and there this writ. Witness the Honorable
W. S. Heath Judge of our said District Court the first
Tuesday in June in the year of our Lord one thousand
eight hundred and fifty.
36th St. Spued 11th June 1850

J. O. Spier

In obedience to the above writs I herewith
produce the body of Geo W Bennett, together with
the warrants upon which he was placed in prison
until the return day by the officer having him in charge,
which shews the "day & cause of his capture & detention"
and respectfully awaits the action of the Honorable Court
J. O. Spier, Warden

and surrendered to the proper
Officers of the U. S. to perform
the duties of a Seaman in
the service of the United States

G. L. Collins Lee
Esq. Atty in
Cholpy Geo W Bennett
Baltimore June 11 1850,

In the matter of the application by Petition of George W
Bennett for a Habeas Corpus &c

The Court being satisfied that at the time the warrant
was issued against the said George W Bennett he was and
had been several days previously thereto regularly enlisted
in the Naval Service of the United States; It is therefore
this 12th day of June 1850 ~~advised~~ adjudged and ordered
by the Court that the said George W Bennett be and he is
hereby discharged from Confinement in the Jail of Baltimore
City and County under and by virtue of a warrant issued
in a plea of Debt at the Suit of Joseph Keaton by J. B.
Warrington Esq one of the Justices of the Peace of the State
of Maryland,

W. H. South
D. Judge

The Return to the Habeas Corpus on the above
was made on the morning of the 12th day of
June, just as the Court was about to have a
jury sworn in the Case of the United States
vs Catharine Lynch. The officer with the
document to prove the enlistment, it
was stated, was in Court - not wishing
to detain him took the Case up. The
proof of enlistment was full & satisfactory
and I discharged the Party. This was done
without giving attention to the fact of his
being in Jail. Believing I have no right
to discharge in such Case where the Party
was in Prison under process from a State
tribunal I have uniformly declined
acting, and have recommended an
application should be made to ^{the} State
tribunal. It would seem that where
a Man was taken from the service of
the United States, in which he had been
legally & properly enlisted, the Court of the
Union ought to have the power to
discharge such Person & protect the rights

and interests of the Government; yet I find no statute to that effect where the Party is in Prison, unless he be there under or by order of authority from the United States. In all other cases, the Judges are prohibited from discharging the Prisoner from Jail (Act of 1789 c 20 §14.)

The Act of 1799 c 48 §4. extends the powers of the District Judges in the case of Prisoners arrested in the actual service of the United States. That Act would seem however to be confined to the Army of the United States. Be that as it may it may be doubted whether the section enlarging their powers be not truly repealed by the Act of 1802 c 9 §29

This is put on the record not as a justification or apology for the action of the Court on the occasion referred to. There is no justification for it - It is placed here to prevent such action of the Court being drawn into precedent

W. S. Heath

June 13th 1850

Petition of
Geo: W Bennett by
I Collins Sec Dist.
-ally
for writ of
Habeas Corpus
Filed 11th June 1850 -
Writ issued and issued
returnable at 11 o'clock
tomorrow morning -

June 12th 1850

Dis charged by the Court

To the Honble Sth District Judge of
the United States

The petition of Geo W Bennett
respectfully states, that he is an
enlisted Seaman in ^{the} service
of the United States, having
signed the Shipping Articles at
the Baltimore Consignee's office for
such service on the 7th June
1850. and was to have reported
himself on board the U.S.
Receiving Ship, Ontario; but
he alleges that he has been arrested
& is now imprisoned on civil pro-
-cess ^{in the Jail of Baltimore} wrongfully & illegally, and
he therefore prays, he be released
by the writ of Habeas Corpus, to
be returned, at once before
your Honor: setting forth the
causes of his arrest & imprisonment
so that he may be released