

Citations for the Petitioner.

of the oath of allegiance is the pivotal fact which changes the status from that of civilian to that of soldier; that the enlistment was a deliberate act on the part of the petitioner; and that the circumstances surrounding it were not such as would enable him, of his own volition, to ignore it, or justify a court in setting it aside.

The judgment of the Circuit Court will be

Reversed and the case remanded with instructions to reverse the decree of the District Court and take such further proceedings as shall be in conformity with the opinion of this court.

In re MORRISSEY, Petitioner.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF MISSOURI.

No. 931. Submitted October 21, 1890. — Decided November 17, 1890.

This case is rightfully brought here by appeal, and not by writ of error.

The provision in Rev. Stat. § 1117, "that no person under the age of twenty-one years shall be enlisted or mustered into the military service of the United States without the written consent of his parents or guardians: *Provided* that such minor has such parents or guardians entitled to his custody and control," is for the benefit of the parent or guardian, and gives no privilege to the minor, whose contract of enlistment is good so far as he is concerned.

The age at which an infant shall be competent to do any acts, or perform any duties, civil or military, depends wholly upon the legislature.

THE case is stated in the opinion.

Mr. Henry W. Putnam and Mr. Daniel Noyes Kirby for the petitioner, cited the following cases in their brief: *Ex parte Mason*, 1 Murphy (N. C.) 336; *Shorner's Case*, 1 Carolina Law Repository, 55; *United States v. Anderson*, 1 Cooke (Tenn.) 143; *Commonwealth v. Harrison*, 11 Mass. 63; *Commonwealth v. Cushing*, 11 Mass. 67; *S. C. 6 Am. Dec.* 156; *Commonwealth v. Callan*, 6 Binney, 255; *Lewis' Case*, 2 Carolina

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Law Repository, 47; *Carleton's Case*, 7 Cowen, 471; *Commonwealth v. Downes*, 24 Pick. 227; *Keeler's Case*, Hempstead, 306; *Commonwealth v. Fox*, 7 Penn. St. 336; *Kimball's Case*, 9 Law Rep. 500; *United States v. Wright*, 5 Philadelphia, 296; *In re McDonald*, 1 Lowell, 100; *In re McLave*, 8 Blatchford, 67; *Commonwealth v. Blake*, 8 Philadelphia, 523; *In re McNulty*, 2 Lowell, 270; *United States v. Hanchett*, 18 Fed. Rep. 26; *In re Baker*, 23 Fed. Rep. 30; *In re Chapman*, 37 Fed. Rep. 327; *State v. Dimick*, 12 N. H. 194; *S. C.* 37 Am. Dec. 197; *Telegraph Co. v. Davenport*, 97 U. S. 369; *United States v. Cottingham*, 1 Rob. (Va.) 615; *S. C.* 40 Am. Dec. 710; *Seavey v. Seymour*, 3 Cliff. 439; *In re Tarbell*, 25 Wisconsin, 390; *Tucker v. Moreland*, 10 Pet. 58; *Conroe v. Birdsell*, 1 Johns. Cas. 127; *S. C.* 1 Am. Dec. 105; *Merriam v. Cunningham*, 11 Cush. 40; *Dew's Case*, 25 Law Rep. 538.

Mr. Solicitor General opposing.

MR. JUSTICE BREWER delivered the opinion of the court.

This case, appealed from the Circuit Court for the Eastern District of Missouri, presents, like that of *Grimley, Petitioner*, just decided, a question arising on *habeas corpus* as to the right of the petitioner, an enlisted soldier, to be discharged from military custody. An effort was made to bring this case here by writ of error; but that was abandoned, and an appeal rightfully substituted. *In re Neagle*, 135 U. S. 1, 42. The facts differ from those in that case, in this: The petitioner was seventeen years of age, and had a mother living who did not consent to his enlistment. Upon his enlistment he drew from the United States his uniform and equipments, and continued in actual service from the 23d day of August to the 13th day of September, 1883, when he deserted. He remained in concealment until February, 1889, at which time he had become of age, and then appeared at a recruiting office and demanded his discharge from the army on the ground that he was a minor when enlisted. In his oath of allegiance he swore that he was twenty-one years and five months

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old. It will be seen that the petitioner was within the ages prescribed by section 1116 of the Revised Statutes, to wit, sixteen and thirty-five years. Section 1117 provides that "no person under the age of twenty-one years shall be enlisted or mustered into the military service of the United States without the written consent of his parents or guardians: *Provided*, That such minor has such parents or guardians entitled to his custody and control." But this provision is for the benefit of the parent or guardian. It means simply that the government will not disturb the control of parent or guardian over his or her child without consent. It gives the right to such parent or guardian to invoke the aid of the court and secure the restoration of a minor to his or her control; but it gives no privilege to the minor.

The age at which an infant shall be competent to do any acts or perform any duties, military or civil, depends wholly upon the legislature. *United States v. Bainbridge*, 1 Mason, 71; *Wassum v. Feeney*, 121 Mass. 93, 95. Congress has declared that minors over the age of sixteen are capable of entering the military service, and undertaking and performing its duties.

An enlistment is not a contract only, but effects a change of status. *Grimley's Case*, *ante*, 147. It is not, therefore, like an ordinary contract, voidable by the infant. At common law an enlistment was not voidable either by the infant or by his parents or guardians. *The King v. The Inhabitants of Rothorford Greys*, 2 Dow. & Ryl. 628, 634; *S. C.* 1 B. & C. 345, 350; *The King v. The Inhabitants of Lytchet Matravers*, 1 Man. & Ryl. 25, 31; *S. C.* 7 B. & C. 226, 231; *Commonwealth v. Gamble*, 11 S. & R. 93; *United States v. Blakeney*, 3 Grat-tan, 405, 411-413.

In this case the parent never insisted upon her right of custody and control; and the fact that he had a mother living at the time is, therefore, immaterial. The contract of enlistment was good so far as the petitioner is concerned. He was not only *de facto*, but *de jure*, a soldier—amenable to military jurisdiction. His mother not interfering, he was bound to remain in the service. His desertion and concealment for five

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years did not relieve him from his obligations as a soldier, or his liability to military control. The order of the Circuit Court remanding him to the custody of the appellee was correct and must be *Affirmed.*

UNITED STATES *v.* TRINIDAD COAL AND COKING
COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLORADO.

No. 774. Argued October 29, 30, 1890. — Decided November 17, 1890.

Officers, stockholders and employés of a private corporation formed a scheme whereby they made entries in their individual names, but really for the benefit of such corporation, of vacant coal lands of the United States. The scheme was carried out, and patents were issued to such individuals, who immediately conveyed the legal title to the corporation, which bore all the expenses and cost of obtaining the lands, and some of the members of which had previously taken the benefit of the statute relating to the disposal of the public coal lands: *Held*,

- (1) That such a transaction was in violation of sections 2347, 2348 and 2350 of the Revised Statutes;
- (2) That it was not necessary to the right of the United States to maintain a suit to set aside such patents as void, that the government should offer to refund to the corporation the moneys advanced by it to the patentees in order to obtain the lands, and which the latter paid to the officers of the United States;
- (3) That the rule that a suitor, asking equity, must do equity, should not be enforced in such a case as this;
- (4) That if the corporation be entitled, upon a cancellation of the patents so obtained, to a return of such moneys, it must be assumed that Congress will make an appropriation for that purpose when it becomes necessary to do so.

A private corporation is an association of persons within the meaning of those sections.

THIS was a suit in equity by the United States against the Trinidad Coal and Coking Company, a corporation created under the laws of Colorado and engaged in the business of mining coal. The defendant held the legal title to six tracts of coal land within the Pueblo Land District, in the county of