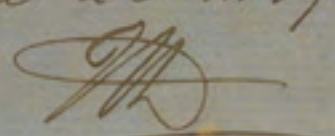


In the Supreme Court
of Queensland.

The
Petition of
William Parish of
for a
Writ of Habeas
corpus.

Filed 26th May 1860


W. F. Roberts
Sol^r
Brisbane.

In the Supreme Court
of Queensland

In the Matter of *THE* Petition
of William Naush
a prisoner in Her Majesty's Goal at
Brisbane for a Writ of Habeas corpus

To
The Honorable Alfred James Peter
Jutwyche Judge of the
Supreme Court of Queensland

His
The Humble PETITION of
William Naush a
prisoner confined in
Her Majesty's Goal in Brisbane in
the Colony of Queensland

Humblly Sheweth

That Your Petitioner was on or about the
seventeenth day of April last committed by C. R. Haly and B. J.
Barker Esq^{rs} two of Her Majesty's Justices of the Peace in and for the
Colony of Queensland at Renango in said Colony for a period of
Three months Imprisonment with Hard Labor in Brisbane Goal
That your Petitioner has been informed and verily believes that
the proceedings before the said Magistrates were altogether
illegal on the grounds following.

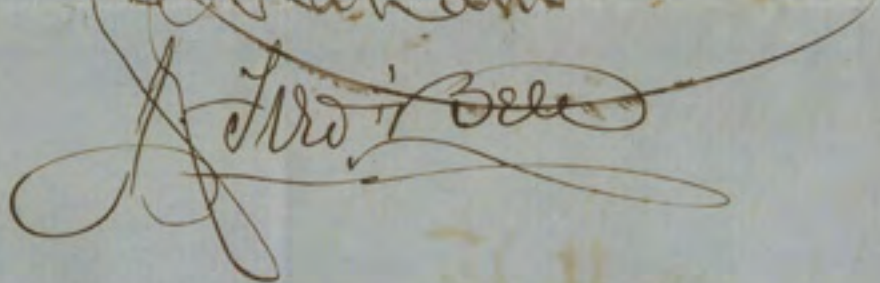
- 1st That the Magistrates had no jurisdiction—
 2nd That the offence was tried under the "Master and
 Servants Act" 1868.—
 3rd That the Warrant of Commitment is bad on the
 face of it.—
 4th That the Section of the "Master and Servants Act"
 under which I am advised I am imprisoned only
 contemplates breaches of Agreement under that Act and
 not breaches of Contract at Common Law. ~~from~~

Your Petitioner therefore humbly
 prays that Your Honor will be pleased
 to grant a Writ of Habeas Corpus to
 bring him before your Honor, to be
 dealt with as your Honor may seem
 meet—

And Your Petitioner will ever pray &c.
 Dated 21st day of May 1860.

William
 his  mark.
 Paul

Signed in the presence of
 (The contents having been first read
 over and Petitioner appearing to
 understand same)

Abraham


In the Supreme Court
of Queensland
criminal jurisdiction

In the matter
of the Petition of
William Parish for a
Writ of Habeas Corpus

Affidavit
in support of application

Dated 26th May 1960

J.W.

D. S. Roberts
Brisbane

In the Supreme Court
of Queensland }

In the Matter of the petition of
William Marsh a prisoner in
Her Majesty's Goal at
Brisbane for a writ of Habeas
Corpus.

On this twenty first day of May A.D. 1860
William Marsh at present a confine
in Her Majesty's Goal at Brisbane
in said Colony being duly sworn
maketh oath and saith as follows

1 I was on or about the seventeenth
day of April last committed by
B. J. Barker and Ch. Daly two
of Her Majesty's Justices of the Peace
in and for said Colony at Nerango
in said Colony to Her Majesty's Goal
at Brisbane in said Colony to undergo
a period of imprisonment of three
months with hard labor.

2 I further say I applied to a
person who was acting as Clerk
of Petty Sessions at Nerango
aforesaid for a copy of the
depositions taken on that



occasion and that he supplied
me with the paper writing
marked A ^{hereto annexed} which I verily believe
is a true copy of the depositions
referred to and that the signature
C. R. Halsey at the foot thereof is the
proper handwriting of C. R.
Halsey one of the committing Justices
— I paid to the acting Clerk of the
Bench at Menango aforesaid the
sum of four shillings and eight pence
— for said copy.

3 I further say the paper
writing hereto annexed marked
B is the original agreement between
Gordon Sandeman and myself more
particularly mentioned and referred to
in the summons depositions
conviction and warrant of
commitment made and taken
before said Justices.

4 I further say I have
been informed and verily
believe that the proceedings
under which I am at
present confined are altogether
illegal on the grounds
following

- 1st. That the magistrates had no jurisdiction
2. That the offence was tried under the Master and Servants Act 1838.
3. That the Warrant of Commitment and conviction are based on the face of them
4. That the section of the Master and Servants Act under which I am advised I am imprisoned only contemplates breaches of Agreement under that Act and not breaches of contract at Common Law
5. That the whole proceedings are perfunctory —

~~Sworn by deponent before me~~
~~at Brisbane aforesaid this day~~
~~and year first above written~~
 Sworn by the deponent on the
 day and year first before mentioned
 (deponent having heard the contents read
 and appearing to me to understand the
 same) at Brisbane.

William
 his J. mark.
 Parish

Abraham
 Comr. for Opposers

This is the paper writing mentioned in the annexed Affidavit
of William Parish referred to. Sworn before me this
21st day of May A.D. 1860.

Copied
Nanango, 17th April 1860.
Before C. R. Waly Esq. J. P. and
B. T. Barker Esq. J. P.

William Parish is summoned by Alexander Galbraith Esq. for nonfulfilment of an agreement entered into by him on the 9th day of January 1857 - which agreement is still in force. -

Pleads. He has not failed in ^{performing} his agreement.

A Commissioner for Affidavits

Alexander Galbraith states on oath - on the 9th of January 1857. I was then Superintendent for M. Sandeman, at that time, I sold to William Parish - Two Teams of Working Bullocks - gearing complete - for the Sum of (£.320.) Three hundred and Twenty pounds Sterling, on the conditions that he should carry for the said Gordon Sandeman Wool and other produce, and supplies mentioned in the agreement
Namely,
Supplies from Ipswich or Wide Bay at the rate of Ten Shillings per One hundred pounds of Flour, and one hundred and twelve pounds of other Supplies, - and five shillings per hundredweight of wool and other produce from the Station - it being understood that Thirty hundred weight should be the Quantity of Loading on each Tray up from the above mentioned places. - And it was further agreed that the said William Parish should

break

break in two Teams of Working Bullocks consisting of Four Leaders, Four Polers and twelve body bullocks, all perfectly broken in and quiet - the said to be delivered to Gordon Sandeman within Eighteen months from date of Agreement - That William Parish also agreed not to carry any goods nor do any kind of Work with the said Teams or Drays or either of them for any other party or parties until the whole of the Work required of him by Gordon Sandeman or his Agents should have been performed - The said William Parish further agrees and binds himself not to Carry nor cause to be carried any Spirituous or other Liquors for any party or parties except for the said Gordon Sandeman or his Agents during the time of Eighteen Months - I produce the agreement to the Bench - and - Trust - By the terms of his agreement he was bound to break in, and deliver to me as M^r. Sandeman's Agent - Twenty head of Working Bullocks on the 9th day of July 1858. which he has failed to do. Secondly - That he has carried for other parties without my Sanction - his work for us not being completed - and Thirdly that he has carried Spirituous Liquors or other Liquors against the tenor of the agreement.

Question from the
Defendant.

Did I object to signing the agreement, stating that I could not break in the bullocks by the time specified?

No. -

Signed A. Galbraith

Edward Sparke having been called, and duly sworn - States in answer to Questions put to him by the Complainant, -

You are aware that we sold him Parish-Tems on the Terms mentioned in the agreement?

Yes. -

Do you consider that he has fulfilled these Terms of Agreement?

Not so far as I know - that is for the time I have been at the Station - he has not fulfilled the Terms. -

I have been acting as Assistant Superintendant at the Head Station for the last Two years I have seen Parish yoke up young bullocks. I know that he brought Grog on the Station not for the use of the parties he had engaged with - I also know that he was summoned to Gayndah to answer a Charge for Selling Grog on the Station - which lapsed in consequence of there not being any Magistrates present at the time in Gayndah. - I saw one keg of Rum about half full, which was found in the Creek which I am certain was brought by Parish to the Station. -

(Signed) Edward Sparke

John Carson having been called, and Sworn States in answer to Questions put by the Complainant - I know the tenor of the agreement between Mr. Sandeman and William Parish -

I have

I have been at the Station about six Months (from 1st October last) I do not consider that he William Parish has fulfilled his agreement - I know that he has not delivered the young bullocks alluded to in the agreement - I know this from the fact of there being no receipts or entries in the Books to that effect - the first instance of his breaking his agreement was by carrying down Wool for Mr. Thom of Darah - I know that he remained a considerable time at Ipswich although having the complement of loading for his employers - until he could get other loading the drays having then Thirty hundred weight on each his reason for doing so, was, that it would not pay - he loaded from Ipswich on 3rd December and did not return to the Station until the 6th April - I have not seen him yoke any young bullocks since I have been on the Station - nor ever handed any over to me. -

Answers to Question
by William Parish. -

I am not aware that Sundaway has any young bullocks that you have broken in - or that he has any bullocks that have been broken in by you, and were sold to him by Mr. Galbraith

I am aware that Sheepskins and loading went down by Moore's drays from Bannadocan at the time you went to Mr. Thom's

I was not aware that you were going to Ipswich at that time - I had only arrived at the Station about that time. -

Signed John Carson

(5)
Defence.

William Parish having been duly sworn -
- states - I acknowledge to the agreement
produced - I have not fulfilled the agreement
by breaking in all the working Bullocks -
I have got about four to break in - I
remained at Ipswich waiting for loading -
I had at the time - Three Tons on the two
drays, but I wanted more, in consequence of
loading having been sent down with other
drays, - and I also acknowledge to have
brought down, two Gallons to a man named
Young on the Station - In answer to a Question
from the Bench - I never gave Mr Galbraith
notice that the agreement was broke - or
was at an end - neither did I deliver over
the Bullocks to Mr Galbraith

Witness. ^{his} Will^m. William Will^m. + Parish
Dist^{ct} Constable.

The Bench having considered the Evidence
adduced - are of opinion that you William
Parish have grossly failed in performing
the agreement entered into by you - and do
therefore now award you a punishment of three
Months Imprisonment with Hard Labour in
Brisbane Gaol - and the agreement Cancelled.

J^d/C. R. Haly J.P.

J^d/Bryce J. Barker J.P.

Certified to be
a true Copy. (J.H.M.)

W. P. Smith
Agreement.

This is the paper writing marked B in the annexed Affidavit of William Parish referred to, sworn before me this 21st day of May A. D. 1860

Memorandum of Agreement made and entered into this day between Gordon Sandeman of Punanduan on the one part and William Parish of the same place on the other part.

The said Gordon Sandeman agrees to sell the said William Parish, Two teams of working Bullocks consisting of Ten each also Two Drays, two tarpaulines, ten yokes twenty Poles, and eight chains, for the sum of Three hundred and twenty pounds, holding the said sum to be worked out in carriage of goods for the said Gordon Sandeman, from Newton Bago or Wide Bay, and carriage of Wool or other produce to the above named places.

In consideration of the above, the said William Parish agrees to break in for the said Gordon Sandeman, and to deliver to him within eighteen months, Two teams of working Bullocks, consisting of Four leaders, four poles, and twelve body bullocks, all perfectly broken in and quiet, also to carry for him at the rate of 10/- (ten shillings) — 1st 100 lb of Flour and 112^{lb} of all other supplies and Five shillings per Cwt of Wool or other produce; it being understood that Thirty hundred weight shall be the quantity of loading on each dray, up from the above mentioned places.

A born missionary for Affidavits

And it is also agreed that the said
William Parish shall not carry any goods
nor do any kind of work with the said Teams
or Drays or either of them for any other party
or Parties until the whole of the work required
of him (by them) by the said Gordon Sandeman
or his Agent, shall have been performed -

And the said William Parish further
agrees and binds himself not to carry
nor cause to be carried any spirituous or
other Liquors for any party or parties,
except for the said Gordon Sandeman, or
his Agent, during the said term of
Eighteen months.

Dated at Bunadoman
this 9th day of Jan^y
1857.

Alfred Smith
per G. Sandeman.

In the Supreme Court
Of Queensland
Criminal Jurisdiction

In the matter
of the Petition of William
Parish at present a convict
in Her Majesty's Goal at
Brisbane.

Affidavit
verifying Warrant of Commitment
This 26th May 1860
J. M.

L. S. Shubb.
by his agent
Charles P. Roberts

In the Supreme Court,
of Queensland — }

In the matter of the petition of
William Parish a prisoner in Her
Majesty's Gaol at Brisbane for a
Writ of Habeas Corpus.

On this twenty first day of May.
One thousand eight hundred and sixty
Charles Frederick Bell of Brisbane in the
Colony of Queensland. Articled Clerk to
Mr. Daniel Foley Roberts of same place
Agent for Mr. Charles Frederick Chubb of
Ipswich in said Colony Attorney for the
above named William Parish being duly
sworn maketh Oath and saith as
follows.

I demanded of Samuel Sneyd the
Governor of Her Majesty's said Gaol
a Copy of the commitment under and
by virtue of which he the said Samuel
Sneyd held the said William Parish

I was present at Her Majesty's Gaol at
Brisbane aforesaid on Monday the twenty
first day of May (instant) and ~~said~~ saw
Samuel Sneyd the Governor of the said
Gaol sign the Certificate written at the
foot of the Commitment of William Parish
hereunto annexed marked with the letter
A and that the same Samuel Sneyd
set and subscribed thereto is of the proper
handwriting of the said Samuel
Sneyd.

Sworn by deponent before me
at Brisbane aforesaid the day
and year first above written. J. H. B. B. B.
J. H. B. B. B.
Commissioner for affidavits

P 1 11 & 12 No. Cap 40

Warrant of Commitment on a conviction where the punishment is by imprisonment
to the Chief Justices of New South Wales or all other Peace Officers in the Colony of Queensland and to the Keeper of the Gaol at Brisbane in the said Colony.

Whereas William Parish late of Bundaberg was this day duly convicted before the undersigned two of His Majesty's Justices of the Peace in and for the said Colony of Queensland for that the said William Parish did not fulfil his agreement with Gordon Sanderson of Bundaberg according to the terms of his agreement and it was thereby adjudged that the said William Parish for the said offence should be imprisoned in the Gaol at Brisbane in the said Colony of Queensland for the space of three calendar months There are therefore to command you the said Chief Justices of New South Wales to take the said William Parish and him safely convey to the Gaol at Brisbane aforesaid and there to deliver over to the Keeper thereof together with this precept And we do hereby command you the said Keeper of the said Gaol to receive the said William Parish into your custody in the said Gaol there to imprison him with hard labor for the space of three months from this date and for your so doing this shall be your sufficient warrant

Given under our hand and seal this nineteenth day of April in the year of Our Lord one thousand eight hundred and sixty at New South Wales in the Colony aforesaid
By J. P. Barker J. P. (J.P.)
J. P. Galy J. P. (J.P.)

I certify that the foregoing contains a true copy of the Warrant of Commitment of William Parish as given in His Majesty's Gaol at Brisbane in the Colony of Queensland
Dated 21st day of May 1868.

Samuel M. [Signature]
Gosler.

This is the paper containing the warrant made & in the annexed affidavit of Charles Frederick Reed sworn to before me on this 21st day of May 1868.

Commissioner for Affidavits

Let the prisoner
be discharged.

Walter P. L. J. C.
Judge of the
Supreme Court

21st May, 1860.

The within named prisoner was
committed to my custody on the
5th day of May instant by the
name of William Parish for
not having fulfilled his agreement
with General Vandermar of
Buenos Aires according to the
terms of his agreement.

Dated 21st day of May 1860.

Samuel J. Roberts
Clerk.

In the Supreme Court
of Queensland

In re

William Parish

Habeas.

Corpus.

"per statutum tricesimo
primo Caroli secundi
regis"

26th May 1860

S. J. Roberts
Solicitor
Queen Street
Brisbane

Victoria by the Grace of God of the United
Kingdom of Great Britain and Ireland Queen
Defender of the Faith &c. &c. &c.

To

The Sheriff of Queensland,

Greeting

We command you that you have

the Body of William Narish detained in our prison under your
Custody as it is said under safe and secure conduct together with the
day and cause of his being taken and detained by what soever name
he may be called or known before The Honorable Alfred James Fether
Sutcliffe Judge of our Supreme Court of Queensland at the Residence
of the said Judge situated in Eagle Street Brisbane in the Colony
of Queensland immediately after the receipt of this writ to do and
receive all and singular those things which our said Judge shall
then and there consider of him in this behalf and have you there
this writ.

Witness The Honorable Alfred
James Fether Sutcliffe Judge of our
Supreme Court at Brisbane the twentyfirst
day of May in the year of our Lord
one thousand eight hundred and
sixty.

Alfred Fether Sutcliffe
Judge of the
Supreme Court