

## William Burnside. 6820, (10049 & 10479 Colonial)

### “The Case of Burnside” or “Burnside in a Case.”<sup>i</sup>

On the first day of October 1885 a wooden crate was slung from the wharf at Fremantle into the hold of the s.s. *South Australian*. It measured about 1 metre long by 60cm broad by 60cm high. Eight days later it was delivered onto the wharf at Port Adelaide. The landing waiter at the port became suspicious of the crate’s contents and on opening it was astonished when

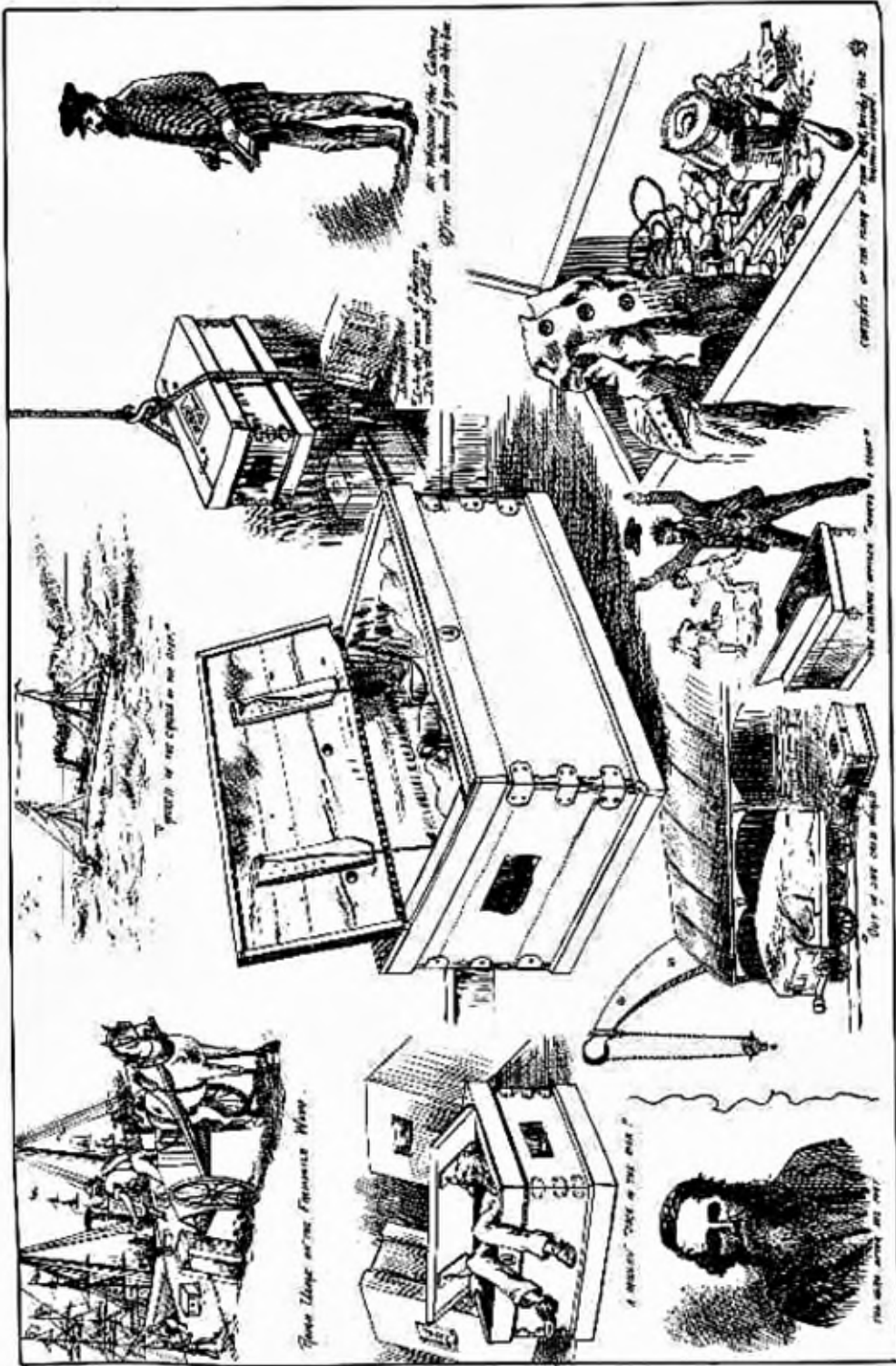
... out jumped a tall, lanky and grizzly bearded man. His first words were “Give me a drink!”

The steward of the ship kindly supplied him with brandy, which so exactly suited his palate that he immediately asked for “more.”<sup>ii</sup>

William Biles, who had travelled with the steamer, and to whom the crate was addressed, looked surprised. He claimed no knowledge of the contents other than that it was to be delivered to a butcher at Bowden and was dispatched by a Mr Burnside at York in Western Australia. On inspection of the crate there was found a layer of crumbled biscuits, an old jacket rolled up as a pillow, a revolver and cartridges, a small saw, pannikin, screwdriver, auger and bits, chisel, matches, a candle, tobacco, a small bottle of oil and several other articles. Inside the lid were two strings which could be used for holding it down. On questioning, the stowaway gave his name as Aldersun.<sup>iii</sup>



A MODERN “JACK IN THE BOX.”



A WOODEN-FULL VOYAGE.

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The full story began to unfold in the Police Courts at Port Adelaide in the second week of November. Walter Biles was charged with having unlawfully concealed one William Burnside, a convict illegally at large, in a box purporting to be passenger's luggage. William Burnside (alias Aldersun) was charged with being a ticket-of-leave convict illegally at large.<sup>vi</sup>

Before a crowded court Burnside's council argued that the defendant had not enjoyed passenger's comforts and was therefore not liable for passenger's fare. The magistrate fined him £1 and costs of 30s. There was much popular sympathy for the unorthodox traveler: "... both of the (Adelaide) dailies took occasion to say that it really seemed rather hard to inflict a fine and costs upon the poor wretch who had voluntarily brought upon himself such frightful torment as he must have endured during a period of seven or eight days in that coffin-like abode."<sup>vii</sup>

Great interest was generated by the affair and the newspapers across the colonies were abuzz with the story. One waggish lawyer dubbed it "The case of Burnside, or Burnside in a case." The felon was escorted to Perth on the s.s. *Franklin*. In Perth prison Burnside related his whole story to a journalist from the *Morning Herald*.

He told me he was tried at Durham on the 18th July, 1857, on a charge of shooting at a policeman, and was sentenced by Baron Watson to 14 years imprisonment. After the usual probation at Milbank and Pentonville, he was sent to Portland, and thence to Western Australia in the "Merchantman," an ill-fated vessel which we have just heard has foundered. He ultimately received a ticket of leave in this colony, and in November, 1871, was arrested at Guildford on a charge of stealing a horse, the property of Miss Phillis Hardey, of Grove Farm. She declined to prosecute, but the police summoned her father, Mr. John Hardey, who said the horse belonged to his daughter, it ran in his paddock, and had his brand on. He was not aware that any one had had permission to take it out of his paddock, and the magistrate refused the request of Burnside that Miss Hardey should appear as a witness. Burnside lived in his employ at the time. He was sentenced to 10 year's imprisonment, and but for that, which he considered an unjust sentence, he would have been free years ago. Very recently a petition had been sent to the Governor, signed by 20 gentlemen, headed by Mr. K. Keane, praying for a certificate of freedom, but the reply came that he would be free on the 13th of June, 1887.

John Wall Hardey was a farmer and Methodist layman who had, with his brother Joseph, chartered the *Tranby* and arrived at the Swan River Colony in 1830. They settled on the penninsular at Maylands. He appeared keen (this was January 1872) to distance his ticket-of-leave employee with a violent record from his twenty one year old daughter.<sup>viii</sup>

"Knowing the uncertainty of the Comptroller's Department," said Burnside, "I determined to free myself. I therefore conceived the idea of escaping in a box, and for this I requited a confederate. I was at the time ganger on the railway, and I found a confederate in Walter Byles, one of my mates. I made myself a box, the inside measurement of which was 3 feet 4 inches long by 1 foot 10 inches in depth, and 1 foot 10 inches in width. This box was sent to Perth on the 11th of September through W. Byles, to evade suspicion among the other men. On Saturday, 26th of September, I went to Perth and made arrangements for my departure, returning on the following day by the special goods train. Every point was not settled, but the arrangements I referred to were the paying of the passage money of Byles, in order to get away

myself. I remained with the gang until the 30th September, and then complained of being ill, and asked to go to York to see a medical man. This was a ruse on my part. Instead of a ride to York I started for Perth. I there met Byles and we had several consultations as to the best method to get sway. It was thought best that I should proceed to Fremantle in a cart, as the luggage van would be close and suffocating. I took some biscuits, water, a pannican, screw driver, auger, a revolver and ammunition which I loaded, and got into the box, which was fastened inside by a lock, and the lid of which was also secured by a stout cord. This was at 11 o'clock on the morning of the 1st of October. I was taken to the shore end of the jetty where I remained three or four hours, which I considered excessively long. After this I was rolled about pretty roughly, and when at last I felt at rest, many persons walked over me as if the box was a stepping stone; they had little idea a living man was inside. I next felt myself being turned over and over, and thump, thump, went my body as I descended the steps to be put on board the steam launch; this I ascertained by feeling the motion of the vessel, and hearing the noise of the steam; I since found out that I was on board Captain Fothergill's steam launch, the Cleopatra; after a while the launch stopped and slings were put round the box; I felt myself elevated in the air and through the interstices of the box I could see daylight, almost for the last time; I was lowered into the hold, and then all was dark, Two small boxes were placed over me and ten minutes afterwards the hatch was closed; I heard the whistle give the signal to start and felt myself ploughing the sea, and then I thought of the words "Praise the sea, but keep on land." We reached Bunbury and the Vasse; at Albany the steamer remained seven or eight hours; two men came into the hold and took out some luggage; I heard one of them speak of mailbags; after the vessel had left Albany, I felt myself free, and tried to free myself; I forced the lock of the box with a screw driver, and after a deal of exertion I managed to get the box partly open, sufficient only to allow me to stretch my legs; this was a great relief for I was in much pain and cramped. I remained in this position all night after leaving Albany, and on the following day. I was not sea sick, and I breathed freely, but the vessel rolled very much and I felt compelled to draw in my legs and enter the box again. Thirst then came upon me, and I suffered such agonies that I had to drink my own urine; but a worse fate was in store for me; during the night a big box rolled over me, and I was then as fast as in a coffin until I got to Adelaide four days afterwards. I retained my senses all the time, but I was very exhausted and had no energy; in fact, I felt so desperate that I searched for my revolver, intending to put an end to my life, but the vessel had so rolled about that I could not find it. I had previously been three days in the bush without food or water and was nearly dead, and now I gave myself two days more to live. At last the vessel came alongside at Port Adelaide. I was carefully slung, and I felt myself once more in daylight, and elevated. I was placed upon the jetty and, as fate would have it, head downwards; the sensation was not a pleasant one, as remnants of biscuits clothing, tools, and other things nearly suffocated me, and almost took my senses away. I heard voices around me and someone said to Byles, "Shift your luggage out of this." I recognised his voice when he answered, "If you think there's anything wrong with my luggage search it and pass it." A few minutes afterwards the lid was forced open by two men. I was too weak to keep it down with the cord. The Custom House Officer, Wardlaw, and the truckster, then gazed upon me, Wardlaw exclaiming "Oh !" and raising his arms, I saw him go to Captain Calder who came to me and said, "You are a stowaway." I replied, "No my passage has been paid as baggage. I'm no stowaway." There were then about 20 land and water policeman about. Captain Calder said I ought not to have done what I had done, and that it would be his duty to come and charge me on the following morning. I was taken to the water police station, having to be assisted to walk, owing to my exhausted state, and was remanded several times. I was carefully tended by the medical officer, had all that was necessary, and was kindly treated. I was brought up, tried on a charge of

travelling on board a steamer without paying my fare, and fine twenty shillings and costs 30s. I was then put back to prison to enable the authorities to wire to Western Australia, and three days afterwards I heard that a detective was coming round to fetch me. I was then called up at Port Adelaide Police Court, on the case of Walter Byles, who was charged by Inspector Doyle with aiding and assisting me to escape from Western Australia; the box was labelled with his name, and his personal luggage was similarly labelled. On landing he had said his name was not Byles, and that the baggage was not his, the police thereupon took possession of it, and Byles was good enough to confess his fault and claim his property. He said he had been paid to take charge of the box for a person at Bowden, near Adelaide and further that he could give a good guess what was in the box. This, of course, was subterfuge; the case however was dismissed, and Byles went his way rejoicing.

Burnside was aggrieved with Byles' treatment or lack thereof. Not only had he walked away Scot-free from court but also with £2 he had paid him along with his passage-money of £7 10s., and a present of a single-barrel gun.<sup>ix</sup>

...I was ultimately brought up and charged with being a prisoner of the Crown illegally at large, and remanded to Western Australia. I was very kindly treated while at Adelaide, and when on board the "Franklin." I was not handcuffed. I consider I have been leniently dealt with, but after the agonies I have suffered, and the weak, state of my constitution, I fear a break down. I regret very much what I have done, but it was a rush for liberty, in which I risked my life more than once, and would have taken it had I found my revolver. I hope the authorities will have some sympathy for me, for I have not been a bad character, and I thank those whom you say are taking an interest in my behalf." Such is the plain narrative of one of the most daring men the country has heard of; it was taken down by me in the presence of Corporal Hyde, the gaoler, at the Perth lock, up, who will vouch for its accuracy. That afternoon, (Wednesday) Burnside was transferred to Fremantle prison, where he will serve his term. <sup>x</sup>

At the Perth Police court in November the magistrate imprisoned him with hard labour in irons for a term of one year. Handing down sentence the magistrate felt some compassion and said: "You have been guilty of a very grave offence, but I do not intend to inflict such a punishment as will deprive you of all hope." <sup>xi</sup> Such was the compassion of that era!

To add to the theatre the irons that were riveted upon him were those worn by the famous "escapologist" Moondyne Joe.<sup>xii</sup>

His original sentence of 14 years was for burglary and "shooting with intent" at a police officer.<sup>xiii</sup> He was aged twenty and a veteran of Crimea. To this was added 10 years for horse stealing and another year in irons for his last offence. He received a Remission Certificate on 9 Dec 1887.<sup>xiv</sup>

William's legendary attempt to escape the colony was preceeded in 1879 by an escape from the Fremantle prison. The papers detailed what they called "AN EXCITING ESCAPADE."

A most daring escape from the Convict Establishment at Fremantle was effected by two prisoners, named Burnside and Smith, early on Saturday morning. The first named convict-said to have been a discharged soldier, who conspicuously distinguished himself during the Crimean war-appears to have been the leading spirit in the movement. He and his accomplice were at work in a stone-breaking party, employed within the prison walls, on the morning in question,

and at a signal from the former the two coolly left the party, and proceeded to scale the wall that separates the prison from the outside world. Burnside, it appears, had provided himself with a skeleton ladder, of rope, to one end of which he attached some heavy weight, and, with the aid of this contrivance, he succeeded in scaling the wall. The warder of the party in which they were employed had meantime raised the alarm, and three of the pensioners on guard at the prison fired upon the men as they were in the act of climbing the ladder. Nine shots were fired in all, but none appears to have hit the runaways. No time was lost in communicating with the police, but as the services of experienced native trackers were not available the tracks of the two men could not be followed up, and nothing further was heard of them until Monday morning, when it transpired that they had devoted the greater portion of the intervening Sunday to a critical inspection of the stock at the "colonial warehouse," owned by Messrs. Marmion & Co. at Fremantle. Among other commodities to which they turned their attention were some tinned meats, fish, ham, and other delicacies, which they washed down with a plentiful supply of champagne and other expensive wines—the fellows apparently having graduated in the Epicurean school, as well as in that of Mr. Fagan. Having satisfied the cravings of the inward man they seem to have turned their attention to their sartorial wants, and doffing their convict garb, they attired themselves from top to toe in brand-new suits, of fashionable cut and pattern. They also provided themselves with two new saddles, a dozen pairs of boots, four breech loading rifles, six revolvers, and 1400 rounds of ammunition, which they succeeded in removing out of the building—situated in the principal thoroughfare of the town—unobserved. Overcome by their too copious libations, or feeling inclined to enjoy a siesta, in the afternoon of Sunday, the adventurous pair had, it appears, provided themselves, from amongst the stock at the warehouse, with a mattress each, which, when the building was entered next morning, were discovered spread out on the floor. Information of the burglary was immediately communicated to the police, who, on examining the interior of the building, found the escaped convicts' prison clothing, carelessly, strewn about the place, and a large quantity of valuable goods wantonly destroyed. On the following day two mounted constables (Lawrence and Houligan) who were out tracking the runaways at North Fremantle, came upon tracks which, owing to some peculiarity about Smith's gait or walk, led them to believe were those of the prisoners. Following these tracks along the river side, they came upon the two men, one of whom (Burnside) was engaged in loading a gun, while the other was fast asleep, undressed, but covered with a rug. Approaching them stealthily and unobserved, Lawrence (who was still on horseback) sprang from the saddle upon Burnside and secured him before he had an opportunity of offering any resistance. His more drowsy companion was secured without any trouble by the other constable, and the two were marched into town, where, on their way to the lockup, they received quite an ovation from the admiring crowds who soon collected in the streets to have a look at them. From all we hear, too much credit cannot be awarded to Constable Lawrence for the tact and the skill which he exercised in tracking and arresting the prisoners, both of whom are known to be daring and desperate men.<sup>xv</sup>

Burnside's remission certificate in 1887 was not, however, to be the end of his breaches of the law and it was only by a degree of fortune he was saved him the gallows in what would be his final crime. Again the papers recorded his exploits:

#### ALLEGED ATTEMPTED MURDER.

A man of advanced years, named William Burnside, was presented on an indictment, charging him with having on April 9 feloniously attempted by drawing the trigger to discharge a loaded

gun at Jacob Hawter, with intent to commit murder. There were two other counts in the information, viz., attempting by discharging the gun to maim, also to inflict grievous bodily harm. Prisoner, who was undefended, pleaded not guilty.

The Crown Prosecutor, to opening his case, said that prisoner in attempting to commit the act, which he was charged with, had his mind on taking the life of Hawter, because, from the evidence of the witnesses it would be seen that the distance between the prisoner and Hawter was such, that under the ordinary course of events, Hawter's life would have paid the penalty. Had it not been for a mere mischance, prisoner would probably have had to face a far more serious charge. Mr. Hawter lived at Smiths Mill, near Chidlow's Well, and on the afternoon of April 9, had occasion to leave his house to pursue his avocation in the garden. He kept a loaded gun and revolver in his house, the latter article being loaded in three chambers. Some time after he had been in the garden, Hawter's attention was attracted by a noise emanating from the house. Imagining something was wrong, he proceeded there, and on nearing the place heard a click as though the hammer of a gun had been pulled.

Then he discerned the prisoner, some ten yards off, with a gun aimed straight at him. He called out to him not to shoot, and rushing to him prisoner cried out, ' I'll shoot, you — .' A struggle ensued, during which prisoner broke away. He was soon recaptured, however, and Hawter proceeded to take him to Smith's Mill railway station. On the road prisoner was noticed fumbling with something behind him and Hawter, getting a glance at a revolver knocked him down and secured it. He found that it was his, and subsequently noticed that instead of it being loaded in three chambers as he had left it, it was loaded in five. On arrival at the station, police were sent for, and prisoner was searched. In his pockets were found a number of cartridges. The police examined the gun, and the cartridge that was in it, and found that the cartridge bore the appearance of having been struck by the trigger. Hawter would tell them that the gun was not a first-rate one, and would not fire until perhaps, the trigger had been pulled three or four times. It was only fair to the prisoner to state that he was under the influence of liquor at the time. That was a matter, however, which was treated in different ways by Judges. His Honor, however, would tell them that it afforded no excuse for crime.

Evidence in corroboration of the statement was then called, it being adduced that around the shoes prisoner wore were pieces of bagging, tied with string.

The prisoner made comparatively no defence, merely calling the attention of the jury to the fact that there was no corroboration of Hawter's statement that he pulled the trigger.

His Honor, in summing up said the offence with which the prisoner was charged was a serious one. After reviewing the evidence, the jury, he said should be satisfied that he did pull the trigger. They had heard that the prisoner was under the influence of liquor. People who committed any grave crime generally were. They had not the courage to carry out what they intended unless they fortified themselves with liquor. Although prisoner was under the influence, he had muffled his feet, and it was for the jury to say with what object he did that. The jury, after half-an-hour's deliberation, returned into court with a verdict of guilty on the first count, that of attempting to murder. His Honor, in addressing the prisoner, said he did not know what his age was, but it was very strange that at his time of life, and after so many years had passed since he was convicted and sentenced to 14 years penal servitude in '57 for a similar offence, he should repeat it. Taking into consideration his age, he would not pass a sentence so severe as the previous one, but it would have to be severe in order that he should be kept from repeating a similar offence. The sentence of the Court was that he should be kept in penal servitude for eight years.<sup>xvi</sup>

A journalist for the Daily News in 1934, Alec Gollan, revisited his story, writing:

He had surely had experience enough of facing judges and juries, and also of imprisonment and working in convict chain gangs. From the time that he was first sentenced in England, in 1857, until he came out of Fremantle Prison early in the present century, he had been ordered imprisonment for terms aggregating no less than 58 years and six months. Some portions of those periods he had to spend in irons, and for six months he occupied a solitary confinement cell.<sup>xvii</sup>

Burnside's death is not recorded and he seems to have had his final years at Champion Bay now known as Geraldton.<sup>xviii</sup>

From the days of the war in Crimea William Burnside led a life filled with high drama. To what extent his experience at Crimea affected his later behavior can only be speculated on. The results of exposure to highly traumatic events such as hand to hand warfare were not understood until recent times. Most of the recidivists among the "class" community were guilty of minor and petty misdemeanors. His arrest on dubious grounds for horse stealing from the Hardey's farm no doubt alienated him further from a society that accepted him under extreme sufferance.

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<sup>i</sup> Eastern Districts Chronicle (York, WA : 1877 - 1927), Saturday 5 December 1885, p.2

<sup>ii</sup> The Pictorial Australian (Adelaide) 1 Nov 1885.p.194.

<sup>iii</sup> Eastern Districts Chronicle (York, WA : 1877 - 1927), Saturday 5 December 1885, p.2

<sup>iv</sup> Ibid. p.196.

<sup>v</sup> Ibid.

<sup>vi</sup> Adelaide Observer 14 Nov 1885 p.20.

<sup>vii</sup> The Pictorial Australian (Adelaide) 1 Nov 1885.

<sup>viii</sup> Perth Gazette 5 Jan 1872 p.3.

<sup>ix</sup> South Australian Weekly Chronicle 14 Nov 1885 p.12.

<sup>x</sup> Eastern Districts Chronicle (York, WA)5 December 1885, p.2.

<sup>xi</sup> West Australian (Perth) 28 November 1885, p.7.

<sup>xii</sup> Eastern Districts Chronicle (York, WA) Saturday 5 December 1885, p.2.

<sup>xiii</sup> Durham County Advertiser 17 July 1857 p.5.

<sup>xiv</sup> <http://fremantleprison.com.au/history-heritage/history/convict-database/>

<sup>xv</sup> The West Australian Times 1 Aug 1879.

<sup>xvi</sup> Inquirer 12 Aug 1895.

<sup>xvii</sup> Daily News 21 July 1934, p.19.

<sup>xviii</sup> <http://fremantleprison.com.au/history-heritage/history/convict-database/>