

**“a very bad business”:
Henry Dangar and the Myall Creek Massacre 1838**

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Introduction

The Myall Creek massacre is widely regarded today as one of the most shameful incidents in Australian colonial history. Carried out by 12 armed, mounted stockmen on 10 June 1838 at Henry Dangar’s pastoral lease at Myall Creek in north western New South Wales, it is usually cited as an example of the lawlessness that prevailed on the colonial frontier at this time. The men rode into the station late on a Sunday afternoon, tied up and then deliberately shot and decapitated 28 unarmed Aboriginal men, women and children and afterwards burnt their bodies to escape detection. But, unlike other massacres in the region, this incident was reported to the authorities by Henry Dangar’s overseer. All but one of the perpetrators were apprehended, charged with the murder of an Aboriginal man and brought to trial, but there was insufficient evidence to secure a conviction. Seven of the perpetrators were then charged with the murder of an Aboriginal child and following another trial were convicted and then hanged. The lead up to the trials and the determination of the attorney general to secure a conviction created a sensation in the colony and placed the government under severe pressure for appearing to support Aboriginal people at the expense of the colonists.ⁱ

While the massacre and the trials which followed have been the subject of considerable scholarly attention, little is known about Henry Dangar and his relations with his employees at Myall Creek. This paper offers a fresh assessment of the men at Myall Creek in relation to the massacre and of Dangar’s testimony in the two court cases which indicate that he abandoned his workers to protect his own interests.

Henry Dangar receives news of the massacre

Towards the end of July 1838, Henry Dangar, a well-respected settler on the Hunter River, received a letter from William Hobbs his overseer at Myall Creek station, his pastoral leasehold run on the upper Gwydir River. It

contained details of a massacre of 28 unarmed Aboriginal men, women and children that had taken place at the station during Hobbs' absence on Sunday 10 June. The letter was probably delivered by settler Frederick Foote, who had already reported the incident to the police magistrate Edward Denny Day at Invermein [present day Scone].ⁱⁱ

A week or so later, Dangar heard that magistrate Day had briefly visited Myall Creek, more than 320 kilometres to the north, and after delivering a preliminary report to the Colonial Secretary in Sydney, had been authorised to take a detachment of eight troopers from the mounted police led by Lieutenant George Denis Pack to the region and conduct an exhaustive investigation into the incident. In late August, Dangar heard that Day had arrested and charged eleven stockmen, including his assigned convict servant, Charles Kilmeister with the awful crime, but that the ringleader, the settler, John Fleming, had escaped arrest. He also heard that Day had largely relied on the evidence of another of his assigned convict servants at Myall Creek, hut-keeper George Anderson, to make the arrests and that another of his men, the Aboriginal man known as Davy, or Yintayintin, had witnessed the massacre, and might be called to give evidence.ⁱⁱⁱ

Dangar was shocked by the news. He immediately set out from his home in Singleton to visit Myall Creek station and find out for himself, the details of the massacre. He would then decide what he should do about the forthcoming trial.

Then aged 42, Henry Dangar, a surveyor by profession, was one of the most prominent landholders in New South Wales. He had arrived in the colony with his young family from Cornwall 17 years earlier and had quickly found employment with the Survey Department. After surveying the town of Newcastle and the Hunter River region, both of which were opening up to free settlers, he was sacked by Governor Darling for misappropriation of land. Undeterred, he returned to England where he published a widely acclaimed map of the new region. He then returned to New South Wales to survey the huge land grants made to the Australian Agricultural Company from which he published another widely acclaimed map. By 1833 he had accumulated enough experience and sufficient capital to strike out on his own. He settled with his ever increasing family on his land grant near Singleton, which he called Neotsfield after his birthplace, St Neots, in Cornwall and began looking for suitable grazing land beyond the Liverpool Plains to run his ever increasing herds of cattle and sheep. By the end of

1836, along with other wealthy settlers from the Hawkesbury and Hunter River regions, he had a cluster of grazing leases, one of which was at Myall Creek, a tributary of the Gwydir River, and had employed William Hobbs, a free man and an experienced stock-keeper, to manage it. ^{iv}

William Hobbs and the workers at Myall Creek station

Hobbs appears to have commenced employment with Dangar in October 1836 at one of his runs on the Peel River. We know very little about him, except that he was a young man, single, and sufficiently reliable for Dangar to appoint him as overseer at the new station at Myall Creek. Dangar possibly also told him to select from his own assigned servants, the men who would like to work with him. They were all in their twenties. The first was George Anderson, who was serving a life sentence, and who had found life as a shepherd on one of Dangar's Peel River runs too lonely. Hobbs appears to have offered him the chance to work as a hut-keeper. The other employees were the assigned convict stockmen Andrew Burrows and Charles Reid who were serving seven year sentences and Charles Kilmeister who was serving a life sentence. ^v He may also have arranged for two Aboriginal brothers from the Peel River who had been associated with Dangar since the early 1830s to join him. They were Davy or Yintayintin aged 18 and Billy or Kwimunga aged 14. His responsibilities were to manage the men and to regularly move the cattle between Myall Creek and the other Dangar station at Ponds Creek, further down the river, to preserve the grass which had become scarce following the onset of drought. He placed considerable trust in all the men, relying on Anderson to look after the huts and food supplies, Kilmeister to attend to the cattle at Myall Creek and Burrows and Reid to assist him in moving the cattle from one station to the other. From all accounts, Hobbs had the confidence of his employer and enjoyed a very good working relationship with the men.

By June 1838 Myall Creek station was beginning to show signs of semi-permanent occupation. The men had built at least three wooden huts, one for Hobbs, another for themselves and the two Aboriginal youths and the other for a store. They had also completed a well and a fence around the home paddock and the stockyard. ^{vi} In this more familiar environment, the four young convict men could engage more confidently with the more complex world around them.

The Kamilaroi, and the conflict with the colonists for possession of the Gwydir River

The Gwydir River lay in the country of the Kamilaroi, the Weraerai and Kwiambal Aboriginal tribes. While the former were associated with the lower Gwydir and Namoi Rivers, the latter were associated with the upper Gwydir River, Myall Creek and the Macintyre River to the east. The Kamilaroi had already contested the land on many stations in their region between 1835 and 1837 and according to evidence given to a Select Committee of the New South Wales Legislative Council in 1839, had been 'repeatedly pursued by parties of mounted and armed stockmen, assembled for the purpose, and that great numbers of them had been killed at various spots, particularly at Vinegar Hill, Slaughterhouse Creek, and Gravesend, places so called by the stockmen, in commemoration of the deeds they had done'.^{vii}

The government had also despatched mounted police to pacify the region, first in June 1836 when they 'cleared out' about 80 Kamilaroi from the area between Barraba and the Gwydir River and then in the summer of 1837-38, when, after a six week campaign in which had killed many Kamilaroi, on 26 January 1838 they massacred at least 40 others at Waterloo Creek, between the Namoi and the lower Gwydir Rivers.^{viii}

Henry Dangar, like his Hunter River associates, Robert Scott and James Glennie, had firmly supported these actions. But unlike his associates, he preferred to avoid this kind of conflict by employing experienced free men like Hobbs as overseers on his stations and relying on 'naturalised Aborigines', like Davy and Billy, to work as intermediaries between the Aborigines and his own men. This approach appeared to work. Unlike most other stations along the Gwydir, where former convicts and ticket of leave men were usually employed as overseers, attacks from the Kamilaroi were frequent occurrences, at Myall Creek station the men enjoyed peaceful relations with the main Aboriginal group in the region, the Kwiambal.

The Kwiambal

The Kwiambal regarded the upper Gwydir as their country with important ceremonial grounds near Myall Creek. They traditionally came to the area in summer, accompanied by some of the Weraerai and Kamilaroi people but in winter, they remained in the Macintyre river area. Daniel Eaton, overseer at Peter Macintyre's run, Byron Plains, near present day Inverell, was a good friend to the Kwiambal, sometimes sharing his hut with them. He had given

their most senior man, “King Sandy”, a breastplate to wear, declaring him friendly and trustworthy and had previously brought the Kwiambal to Myall Creek, ‘for the purpose of making them friends with Mr Dangar’s men’. They had also camped at other nearby runs at Keriengobeldie, Keera and Tainoga.^{ix}

But the drought in the Macintyre region had changed all that. Towards the end of May a group of about 40 to 50 Kwiambal arrived at Myall Creek, possibly at the invitation of Billy or Davy, or even Charles Kilmeister. At first Hobbs had wanted to move them on, but Kilmeister, whom Hobbs considered was a ‘quiet, friendly humane man’, persuaded him to let them stay. Davy had taken a Kwiambal woman for himself and then arranged for the Kwiambal men to cut bark for the station in exchange for rations and for another young woman, ‘Impeta’ to ‘visit’ hut-keeper George Anderson. Kilmeister also encouraged ‘the children to dance and some of the women to sing’. The Kwiambal appeared well used to British ways and many had taken English names, which they used among themselves. King Sandy’s three year old son, Charley, was already fluent in frontier lingua franca and soon became a general favourite.^x

Lead up to the massacre

On Tuesday 5 June William Hobbs despatched Andrew Burrows and Charles Reid, to drive a mob of bullocks to Ponds Creek, four days journey down river. Two days later, he followed, chasing for stray cattle. He expected to return to Myall Creek the following Wednesday and left George Anderson in charge of the huts and Charles Kilmeister, assisted by Davy and Billy, in charge of the remaining cattle.^{xi}

On Saturday afternoon 9 June, William Mace and Thomas Foster, overseers of Keriengobeldie and Tainoga stations about 30 kilometres to the west, arrived at Myall Creek, hoping to hire some Kwiambal men to cut bark. Foster, the only other free overseer in the region, admired the Kwiambal and with Mace, contracted ten of the men, led by King Sandy, to do the work. They remained overnight to avoid the rain and the party set off for Tainoga at ten o’clock the following morning, Sunday 10 June.

The Killers arrive at Myall Creek

About three o’clock that afternoon, the remaining Kwiambal, including ‘Big Daddy’, probably the oldest in the group, were already camped for the night and Anderson, Kilmeister, Davy and Billy were in their hut a few meters

away, sharing a smoke. Suddenly they heard the thud of horses' hooves from the south and then men's shouts. Eleven armed men on horseback swung into view and then divided and galloped towards the camp from different directions. As they approached, most of the Kwiambal ran for protection into Anderson's hut.

Three of the stockmen dismounted and called to Anderson and Kilmeister to come outside. They recognised many of their unwelcome visitors, in particular the leader, settler John Fleming, overseer at Mungie Bundie station, further down the Gwydir. The rest were either serving or former convicts, armed with sawn off muskets, swords and pistols.

They were George Russell, free by servitude who was overseer at Archibald Bell's station at Bengari and his mate, George Palliser was also free by servitude; James Lamb, a ticket-of-leave man, who was overseer at James Cobb's run, Gravesend; John Johnstone, a black African from Liverpool, free by servitude who was overseer at George Bowman's run at Moree; John Blake and Charles Toulouse who were assigned convict stockmen at James Glennie's run, Gineroi; William Hawkins, ticket of leave man who was a stockman at Andrew Blake's run, Mosquito Creek; James Oates, who was a convict stockman at Thomas Simpson Hall's run, Bingara; James Parry, who was a convict stockman for Daniel Eaton at Binguy; and Ned Foley, who was a convict stockman to John Fleming's older brother, Joseph at Mungie Bundie.

Most of the men were in their late twenties or early thirties and had been in the colony for at least five years working as stockmen on the colonial frontier for absentee landholders along the Hawkesbury and Hunter Rivers. At least one of them, James Lamb, had joined the mounted police parties in their recent punitive expeditions in the area. But it was John Fleming who took the initiative. The confident colonial born grandson of Hawkesbury River settlers and the veteran of many skirmishes with the Kamilaroi, he knew how to make this group of horsemen intimidate Aborigines and convicts on remote stations like Myall Creek and to get what he wanted.

The Massacre

When George Russell began to uncoil a long tether rope from his horse's neck, Anderson asked him what they were going to do with the blacks and he replied, 'We are going to take them over the back of the range, to frighten them'. Then Russell, James Lamb and another man, strode into the hut with

the rope and Fleming told them what to do while his convict servant, Ned Foley, stood at the door with his pistol drawn.

Inside the hut, the Kwiambal men, women and children called out to Kilmeister and Anderson for help. But the two men knew they were outnumbered. Kilmeister stood outside talking to the other stockmen and Anderson was ordered to fetch them a drink from the well, some distance away. When he returned he saw that most of the Kwiambal women and children had been taken out of the hut, where they had been roughed up and tied together by their wrists to Russell's long tether rope. Two very old men, Joey and Daddy, were left untied because they made no resistance and followed the others, tears streaming down their faces. According to Anderson, the Kwiambal were 'moaning the same as a mother and children would cry'.

The children upset Anderson most. He would later recall that there were two or three small ones not able to walk, and 'the women carried them on their backs in opossum skins'. Toddlers who were not tied followed their mothers; 'they were crying, in and out of the hut, till they got out of my hearing'. He saved one little child by stopping it at the hut door. To appease Anderson, and perhaps also to compromise him, one of the confederates untied 'a good-looking gin' and gave her to him; it was not Impeta. To keep Davy quiet they allowed him to keep the woman of his choice. These two women, the small child, and two young boys who had hidden in the creek when the party arrived, were the only Aboriginal people to escape the roundup.

The Kwiambal were then led off by the mounted stockmen towards the setting sun, with stockmen in front and behind, leaving footprints and hoofprints in the mud. At that point Kilmeister found his pistols, saddled his horse and went with them. Anderson numbly watched them go. About fifteen minutes later he heard two shots in rapid succession and then saw smoke.

Davy followed the party at a safe distance and remained hidden behind a tree until dusk when the killers, including Kilmeister, rode off, taking a 'good-looking gin' with them. Davy then approached the site and saw piles of bodies, lying in pools of blood. Many had been decapitated, including most of the children. Heads had been thrown far from the bodies and all had been dreadfully slashed by sword and cutlass. One man had been killed by being

held down on a log fire. Davy then returned to the Myall Creek huts and told Anderson all he had seen.

Too 'sick with dread' even to fetch wood for the fire, Anderson, Davy, Billy and the remaining Kwiambal locked themselves up for the night inside the hut. Two or three hours later, they heard coo-ees and upon opening the door, Anderson saw the Kwiambal men, 'frightened, out of breath with running'. They had heard, on their arrival at Tainoga that afternoon, that the killers had gone to Myall Creek and had hurried back as fast as they could, taking a short cut over the ranges. Anderson, the Kwiambal women and Davy told them what had happened. The men wanted to bury their dead, but Anderson, who expected the killers to return, persuaded them to leave at once, taking the remaining women and children and seek refuge with their friend Andrew Eaton at Macintyre's run, 40 kilometres to the east.

That night the killers 'camped' on the creek between Myall Creek and Tainoga where they took it in turns to rape the 'good-looking gin'. A little after sunrise, they galloped into Tainoga looking for the Kwiambal men. The overseer, Thomas Foster, received them stonily, refusing any information. He was especially angry with Kilmeister, whom he had often seen playing with the Kwiambal children. While Foster was then unaware of the extent of their crime, he knew from their appearance, that these men must have killed at least some Kwiambal women and children. 'Well Kilmeister', he challenged, 'are you after the blacks?' Kilmeister replied: 'They rushed my cattle yesterday.' But Foster did not believe him. He refused to allow the killers to leave the 'good looking gin' at Tainoga and the party rode on to Keriengobeldie, five kilometres down the river. There they had breakfast and told John Bates the hut-keeper that 'they had settled the blacks' but were looking for others and asked him to keep 'the good looking gin' until they returned.

As Anderson had predicted, late that afternoon the killers returned to Myall Creek in search of the Kwiambal men. Realising they had run away, the killers decided to stay the night in Anderson's hut and search for the men the next day. Anderson later recalled that 'they were talking about the blacks all night, about a black gin they had in the camp with them the night before'. The following morning, Tuesday 12 June, he asked Russell whether he was going to bury the bodies and he replied that 'he would bury them with a good fire'. Fleming, Russell and Kilmeister then took firesticks from the hut and with all the other men went to the site leaving Ned Foley to stop

Anderson from seeing them at work. Foley 'entertained' him by exhibiting his bloodied sword. When Anderson asked him if any of the blacks had made their escape from the massacre site, he said, none that he saw and that they were all killed except one woman.

Davy again crept behind a tree and saw them drag great logs down to the site. Once the fire was lit they returned to the hut and after a while Fleming ordered Kilmeister to go back to the site and 'put the logs together, and to be sure that all was consumed'. Kilmeister remained there all day trying to burn the rotting flesh. When he returned to the hut he told Anderson that he had been trying to catch his horse.

Early next morning, Wednesday 13 June, the killers took Billy as hostage. They threatened to kill him unless he showed them a quick way over the ranges to Bryon Plains, promising two Kwiambal women for his efforts. They then galloped off, leaving behind a broken sword.

The Kwiambal had arrived at Byron Plains the previous afternoon and had told Eaton that 'soldiers' had massacred their people. On Wednesday morning they heard horsemen in the bush and Eaton, alone and powerless against so many, directed them to hide in the ranges. But the killers, including Kilmeister, went after them and shot a little boy and up to twelve others and recaptured some of the women. Afterwards Eaton helped King Sandy to bury the little boy, probably the child that Anderson had saved a few days before.

On Thursday the party dispersed, well satisfied with their work. But they kept their word with Billy, sending him back to Myall Creek with two Kwiambal women.

Hobbs returns to Myall Creek

Late the previous day, returning from Ponds Creek, Hobbs called first at Keriengobeldie and then Tainoga and heard from Mace and Foster and others about the massacre. That evening he and Foster as the only two free overseers in the region, discussed what would be 'the best method of making the circumstances known to the authorities'. Early Thursday morning, Hobbs rode back to Myall Creek and immediately questioned Anderson who reluctantly told him all he knew. But he was too frightened to divulge any names. A few minutes later Kilmeister galloped in, but said nothing. Davy however, lost no time in taking Hobbs to the scene of the crime, about half a

mile west of his hut. They had no difficulty following the tracks left in the mud by the naked feet of the Kwiambal in the middle and the traces of the horsemen on each side, but there were no traces of Aborigines returning from the site. Arriving at the spot, Hobbs was visibly shaken by the sight and stench of mangled and half-burnt bodies which had already been disturbed by native dogs, with hawks and eagles and other birds of prey circling overhead. Fighting waves of nausea, he saw 'a great number of bodies and among that of a very large black whom I am satisfied in my own mind I had left at the Station when I went away he used to be called "Daddy" and was the Doctor of the tribe'. He tried several times to count the decapitated bodies and heads and eventually decided that there were ten or twelve children and that in all twenty eight Kwiambal had been killed.

Hobbs then questioned Kilmeister who repeated Anderson's story almost word for word and said that he had nothing to do with the killings. He admitted that he had been seen at Tainoga the following morning with the rest of the killers, but claimed that he was searching for stray cattle. At first Hobbs believed him, knowing his attachment to the Kwiambal, but he soon realised that Kilmeister had joined the killers.

Later that day, Foster arrived at Myall Creek and early Friday morning he and Hobbs 'tracked the Blacks and Horses towards the spot and saw some blood along the way'. Arriving at the spot, Foster 'beheld the body and head of a black man from which the legs had been burned off and the arms also I think'. He also 'saw a head the body having evidently been destroyed by fire' and 'the remains of a large fire in the midst of which were two or three skulls but so much destroyed by fire that I could not ascertain whether they belonged to Men or Women. From the appearance about I concluded a large number of blacks had been destroyed.'

Both men agreed that the massacre was 'a very bad business' and that it must be reported to the authorities. Hobbs prepared a letter to Dangar, but neither overseer dared leave their stations, fearing that the killers would return. A few days later they must have met Frederick Foote, a settler who held a pastoral lease on the track to Barraba and he must have agreed to deliver Hobbs' letter to Dangar for we know that he agreed to 'call on the police magistrate at Invermein [now Scone 240 kilometres to the south] and state the case to him.'

By the time magistrate Day and the detachment of mounted police arrived at the Gwydir on 28 July and had set up their headquarters at Tainoga, Hobbs had a clearer idea of how the massacre had been planned and executed. Burrows and Reid had told him that when they had stayed overnight at Archibald Bell's station at Bengari on Wednesday 6 June, en route to Ponds Creek, that they had told George Russell and five other stockmen who were there, that the Kwiambal were camped at Myall Creek and that Hobbs would be absent from the station for the following week. He realised then that the massacre had been planned to take place in his absence. Armed with this information, Hobbs encouraged Anderson to speak freely to magistrate Day and to identify the killers. Hobbs later realised that Myall Creek was the third

of the same kind; that two former massacres preceded this; and that these last, being more domesticated, were at first intended to let live; but success having attended the first two massacres, the murderers grew bold; and in order that their cattle might never more be "rushed", it was resolved to exterminate the whole race of blacks in that quarter.

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Dangar goes to Myall Creek

Dangar appears to have set off for Myall Creek early in September. On the way he called on magistrate Day at Muswellbrook. Day told him he was impressed by the way that Hobbs managed Myall Creek and Dangar responded that he was 'well pleased with Mr Hobbs'. When he arrived at Myall Creek early September, he found Hobbs, Barrett, Reid and the two Aboriginal boys at the station. Kilmeister was in the cells in Sydney with the other ten stock-keepers and Anderson was in protective custody. It is not known what Dangar said to Hobbs at this time about the 'very bad business' although the suggestion was later made that he had expressed his 'dissatisfaction at his bringing the case forward'. Whatever he said, he did not inform Hobbs that he had decided not to renew his contract.^{xiii} This would suggest that Dangar made this decision on his return to Singleton.

What kind of response could Hobbs have expected from his employer? He knew that Dangar had hired him to prevent his own men from joining other armed convict stockmen and wantonly kill unarmed Aborigines. He might have expected a reprimand for being absent from the station when the killers arrived. He also could have expected that Dangar to congratulate him on reporting the massacre and to support him, as well as Anderson, Barrett and Reid and even Davy in bringing the perpetrators to justice. He might also

have expected that Dangar would assist Kilmeister by arguing that he had been intimidated by the killers to join them.

Whatever he expected, he was probably completely unprepared for Dangar's response. On his return to Singleton, Dangar abandoned Hobbs and decided to support the defendants. He joined the 'Black Association', a syndicate of Hunter River and Liverpool Plains landholders and squatters, established for the purpose of raising money for the legal defence of the eleven accused and to seek their acquittal and subscribed \$5 towards the collection of three hundred pounds to retain three of the colony's foremost barristers, William a'Beckett, William Foster and Richard Windeyer as counsel for the defence.^{xiv}

Then he signed a petition to governor Gipps, organised by Scott, and supported by most of the other 'owners of livestock in the North Western districts', seeking more permanent support against alleged renewed Aboriginal aggression.^{xv} Then he supported Scott's decision to visit the accused men in prison, where he 'advised them not to split among themselves, saying there was no direct evidence against them, and that, if they were only true to each other, they would no be convicted.'^{xvi}

In taking this course of action, Dangar effectively denied Kilmeister the opportunity to argue that he had no hand in planning the massacre and had been forced, at the last moment, to join the other killers. And in abandoning his other workers, as would be revealed in the unfolding drama in the court, Dangar would also jeopardise his own hard won reputation.

The first trial 15-17 November 1838

In the first trial, with chief justice James Dowling presiding and a civil jury, the prosecution was lead by the Attorney General, John Hubert Plunkett and assisted by Roger Therry. The defence was led by the three barristers hired by the Black Association, a'Beckett, Foster and Windeyer. The eleven accused men were arraigned on nine counts of wilful murder. The first four counts named the victim as 'Daddy', while the others simply referred to an unknown male Aboriginal. The defence's case rested solely on the argument that the body could not be identified accurately as that of 'Daddy' for the prosecution had difficulty identifying the Aboriginal remains. It could not be established beyond doubt that the huge headless and armless body which Hobbs had seen was that of 'Daddy'. None of the defendants gave evidence.

Among the chief witnesses for the prosecution were William Hobbs and George Anderson, Andrew Burrows and Charles Reid. Anderson told the court how he had witnessed the arrival of the killers on that dreadful Sunday afternoon and had talked to them about their intentions to exterminate the Kwiambal before and after the massacre. Hobbs told the court about the behaviour of the Kwiambal at Myall Creek and how they could not have been involved in any of the alleged incidents of cattle stealing at stations on the lower Gwydir River. He also told the court about his reactions when he first visited the site with Davy and how he had tried to identify 'Big Daddy'. Reid recounted how he saw the stockmen at Bengari station preparing for the massacre and Burrows recounted how they had muskets and swords. Hobbs also told the court that 'Mr Dangar has not yet settled with me, but I believe that I shall leave his employ on account of this affair.'^{xvii}

Henry Dangar then testified about the character of his workers. He considered that Kilmeister had been a good and faithful servant but was forced to admit that if he had 'discovered Kilmeister away from his station I would have had him punished'. Rather he had heard that 'he was taken up', that is, Kilmeister had been forced to act against his wishes and he did not believe that Kilmeister had used a sword. He also told the court that he had subscribed to the defence fund because he considered that Kilmeister was 'perfectly innocent'. He also said that he would not believe Anderson on oath because he had already been punished more than once and was 'addicted to lying'. He then assured the court that Hobbs was 'not under his displeasure on account of this case; I swear it; his term is up'.^{xviii}

The hearings were completed in less than two days, and after the judge summed up the jury retired and returned fifteen minutes later, with their verdict of not guilty. Dangar, along with his colleagues in the Black Association, was delighted.

On the following day, *The Australian* delivered a blasting attack on the Black Association whose object seemed to be 'to protect the stockkeepers and shepherds in the elimination of the blacks'. If this were true, the newspaper continued, the organisation should be immediately disbanded and its members deprived of their assigned servants and brought to court. Two days later it took up the same theme, this time remarking on the somewhat incongruous situation where squatters like Dangar were rallying to the cause of accused convicts. The governor, Sir George Gipps was also convinced

that the Black Association's actions had contributed substantially to the verdict, by advising the prisoners to stick together at all costs. ^{xix}

The second trial 27- 30 November 1838

Two days later Plunkett succeeded in having all the men remanded so that a fresh indictment could be prepared. Seven of them – Kilmeister, Hawkins, Johnston, Foley, Oates, Parry and Russell – were then charged on twenty counts with the murder of the child Charley 'or of an Aboriginal child to the Attorney- General unknown'. ^{xx} The information, based on the identification of a child's rib bone, charged 'the murder at having been committed by shooting with a pistol cutting with a sword, and beating, casting into a fire, and keeping the child there until death ensued, to which the prisoners pleaded not guilty.' ^{xxi} In taking this course of action, Plunkett believed that he could split the men and get the other four to turn Queen's evidence. If this were his intention, then he might have succeeded by not including Kilmeister in the group of seven. As it was, none of the men 'split', let alone gave evidence.

On the first day of the second trial on 27 November, only 28 of the 48 citizens called to serve on the jury, turned up and Plunkett believed that those eligible had been 'waited upon' by representatives of the Black Association to ascertain their attitude to the case. More than ten years later, the *Sydney Herald* admitted (29 June 1849) that many were actually intimidated into staying away and according to historian Bob Reece, there seems to have been an attempt both to discredit Hobbs and to prevent him from giving evidence again. ^{xxii}

The second trial finally began on 29 November with a different judge, William Burton, presiding with a new civil jury but with the same prosecution and defence teams. Robert Scott, the leader of the Black Association, seated himself, not in the public gallery, but right next to the prisoners' lawyers. Gipps was convinced that, along with Dangar, Scott was determined to protect the murderers 'to the very last.' ^{xxiii}

The evidence given at the second trial was substantially the same which had been given earlier, with some new twists. For example, magistrate Day who had collected the original depositions and charged the eleven men, revealed that he had remarked to Kilmeister that he more surprised at him than at any of the others because of his great intimacy with the Aborigines. Kilmeister had replied: 'If you knew what they threatened to do to me, you would not

be surprised'. Plunkett seized upon this as proof that Kilmeister, at least, was 'actuated by malice, in the share he took in the matter.'^{xxiv} I would argue that Kilmeister could have been referring to the threatening behaviour of other killers, rather than to the Kwiambal. There is evidence to suggest that he was coerced into joining the killers and was then forced to burn the bodies.

Another twist was the more extensive evidence of Henry Dangar. He knew that he had to undermine the characters of the two key witnesses, his employees Anderson and Hobbs. He told the court he would not believe Anderson 'on account of his being greatly addicted to telling lies, and on account of his general bad character'. He pointed out that Anderson had absconded when employed at his own home at Singleton and that Hobbs 'could make no hand of him as a shepherd' and that 'he did not believe Anderson's story'. Nor did he 'altogether credit Hobbs's evidence that 'he had seen twenty eight bodies'. The prosecution then interrogated Dangar about his own past.

'The Attorney General – Were you dismissed from your situation? :

Mr Dangar – I was suspended,

The Attorney General – Were you not dismissed. I say sir? You know what I mean.

Mr Dangar – I was suspended.

The Attorney General – Answer me without equivocation, sir! Were you not dismissed, and not suspended, as you want us to believe?

Mr Dangar addressed the Court, to know whether he was bound to answer the question.

Mr Justice Burton replied that he was bound to answer the question.

Mr Dangar (in continuation) - I was a surveyor; I did not ask to be reinstated; perhaps the Secretary of State might have given orders that I was not to be reinstated; perhaps I received a public intimation; it is ten or twelve years ago, and I don't recollect the contents of a letter of so remote a date; I was suspended.

His Honor Mr Burton – Mr Dangar, if you were not dismissed, you can have no hesitation in stating so without equivocation.

Mr Dangar – A suspension was tantamount to a dismissal. The Governor ordered my suspension, and perhaps the Secretary of State might have ordered that I was not to be reinstated; I would dismiss one of my servants for shooting a black man; on my oath I would; Mr Hobbs is not to remain in my service; his time is expired.

Mr Justice Burton –When an answer is given to a question, it is to be fully given without reservation. Was that the only reason for his leaving your service.

Mr Dangar – No your Honor, and I was going to add, he has not given me satisfaction in the case of my property; that is the only cause; I never did express any dissatisfaction at Mr Hobbs' conduct in this case; I expressed my dissatisfaction at his keeping me in town the other day; I never told him nor any one else that I was dissatisfied at his bringing this case forward; if this case had not happened, I would have discharged him; I had an intention, six months ago, of putting an end to his agreement, but I did not state so to him; he has been with me two years; I believe his term expired in October, and I gave him notice in October; I made up my mind six months ago to discharge him; I communicated that determination to my own family, but not to him; when I was going up to my station the last time, I stated to Mr Day that I was well pleased with Mr Hobbs; that was in September, a month before I gave him notice that I would terminate his agreement; I did not tell Mr Day that Mr Hobbs was a man of truth; I said that Mr Hobbs was a respectable young man, and I was very glad Mr Day had found my station so regular; when Mr Hobbs agreed for a year, it was not imperative on me to give him notice; if he had asked me, I should have told him; I did not come into contact with him in the second year as I did the first when I renewed his agreement...^{xxv}

As historian Brian Harrison has pointed out, this evidence demonstrated that Dangar had never given Hobbs any indication that his work was unsatisfactory. 'Given this, it seems much more likely that Dangar had always regarded Hobbs as perfectly competent in his capacity as

superintendent, but realising in October that his contract was up, decided to repay him for his unsolicited “interference” by refusing to renew it.’ ^{xxvi}

More seriously, Dangar had damaged his own reputation. In the summing up, Justice Burton had this to say:

With respect to the evidence of the man Anderson, it has been impeached strongly by Mr Dangar, who from some frivolous cause had stated that he would not believe him on his oath; but if it were allowed that men charged with some trifling disobedience of orders or neglect, were to be incapacitated from giving evidence, he was fearful that many crimes, and murders amongst the number would go unpunished. However, they had heard Mr Hobbs’ character of Anderson, and they had also heard circumstances relative to the misappropriation of land, and they had seen the manner in which Mr Dangar had conducted himself in the box, and it was for them to judge whether Anderson’s testimony had been impeached, or whether Mr Dangar’s testimony had not rather been impeached by himself. At all events, Mr Dangar had shewed the bias of his mind; he had shewn that his opinion had already been formed, and that he came before the Court prejudiced. ^{xxvii}

He then referred to Dangar’s reflections on Hobbs’ character and said that the overseer ‘left the Court without a stain on his character, which was raised, instead of being lowered, by the just part he had taken in the case.’ ^{xxviii}

The second trial ended with the conviction of the seven men. According to Reece, in one of the most devastating judgements handed down in a colonial court, Judge Burton dealt at length on the barbarity of the crime and the circumstances in which it was committed and in what surely must have been a reference to Dangar, noted that testimony for the defence was equivocal.

^{xxix} Following an appeal, which was overturned and a review by the Executive Council, the seven men, including Kilmeister, were hanged on 18 December 1838.

Aftermath

Dangar had one further action to carry out. Attorney General Plunkett then succeeded in having the four other killers, Blake, Toulouse, Palliser and Lamb, remanded until the next session so that there would be enough time to

get hold of Davy and prepare him to take a Bible oath in the witness box. But Davy could not be located and the four stockmen were discharged in February 1839. According to the missionary, Lancelot Edward Threlkeld, Dangar had arranged for Davy 'to be put out of the way' because he was never seen again.^{xxx}

Conclusion

By the end of 1838, Henry Dangar's reputation as a responsible employer and as a respectable settler was in disarray. He had betrayed his overseer, William Hobbs, who had lost his job for acting honourably. He had betrayed his assigned servant George Anderson, because he had told the court what he heard about the massacre. He had also betrayed his other assigned servant Charles Kilmeister, who, in my view, had been needlessly sent to the scaffold. And he had betrayed his Aboriginal employee, Davy, by arranging his 'disappearance' and probable death. It was indeed "a very bad business".

Did Henry Dangar perjure himself to pervert the course of justice? He did not believe so. Historians today might draw a different conclusion. What we do know is that Henry Dangar was prepared to sacrifice the lives of two of his men, Kilmeister and Davy and the reputations of two others, Hobbs and Anderson, to keep his own fortune intact. When he died in 1861, he was one of the richest men in the colony.

ⁱ The best account of the massacre is in Alan Atkinson and Marian Aveling eds. *Australians 1838* (Fairfax, Syme & Weldon Associates, Sydney 1987), pp. 54-60. See also R.H. W. Reece, *Aborigines and Colonists: Aborigines and Colonial Society in New South Wales in the 1830s and 1840s* (Sydney University Press, Sydney, 1974); Brian Harrison 'The Myall Creek massacre' in Isabel McBryde, ed. *Records of Times Past: Ethnohistorical essays on the culture and ecology of the New England tribes* (Australian Institute of Aboriginal Studies, Canberra, 1978), pp. 17-51; and *Push from the Bush*, No.8, 1977, No.9,1978 and No. 20, April 1985, for other articles about the massacre, including the depositions leading to the apprehension of the perpetrators, the background of the murderers and their employers. Accessed from the University of New England, Department of History and Classics, website. For a report of the two trials, see R.v Kilmeister (No.1), 1838 and R. v. Kilmeister (No.2), 1838 (<http://www.law.mq.edu.au/scsw/Cases1838-39>).

ⁱⁱ Reece, op.cit. p.41. Dangar told the court in the second trial that he had received Hobbs' letter 'three or four weeks after the murder'. See R. v Kilmeister (No. 2), p.14.

ⁱⁱ Norma Townsend, 'Masters and Men and the Myall Creek Massacre', *Push from the Bush*, No.20, April 1985, pp.4-32 and Brenda Wilson, 'Edward Denny Day's Investigations at Myall Creek, ibid., pp.35-57

^{iv} See Nancy Gray, 'Henry Dangar', in *Australian Dictionary of Biography*, Volume I, 1788-1850 (Melbourne University Press, Melbourne, 1966), pp. 280-282

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- ^v Atkinson and Aveling, op.cit, p.56
- ^{vi} Russ Blanch, *Massacre: Myall Creek Revisited* (Grah Jean Books, Delungra NSW, 2000), map, p.46
- ^{vii} *Parliament of New South Wales, Votes and Proceeding* 1839, vol. II, p.224
- ^{viii} Atkinson and Aveling, op.cit., pp. 38-45
- ^{ix} *Ibid.* p.56
- ^x *Ibid*
- ^{xi} The information in this and succeeding paragraphs is based on ‘The Evidence of Murder’, *Push from the Bush*, No.20, April 1985, pp.58-87 and from reports of the two trials: R.v Kilmeister (No. 1) 1838 and R.v. Kilmeister (No.2), 1838, http://www.law.mq.edu.au/scnsw/Cases_1838-39
- ^{xii} Harrison, op.cit., p.19
- ^{xiii} See Dangar’s evidence at the second trial, R.v. Kilmeister (No.2), 1838, op.cit., p.15
- ^{xiv} Reece, op.cit., p.147 and R.v Kilmeister (No.2), p.15
- ^{xv} *Colonist*, 22 September 1838
- ^{xvi} Reece, op.cit., p.147
- ^{xvii} R.V Kilmeister (No.1) 1838, p. 6
- ^{xviii} *Ibid.*, p.11
- ^{xix} Reece, op.cit., pp.149-50; *Historical Records of Australia (HRA)*, Series, I, vol. xix, pp.705-6
- ^{xx} Reece, op.cit., p.149
- ^{xxi} R.v Kilmeister (No.2), p.9
- ^{xxii} Reece, op.cit., p.151
- ^{xxiii} *HRA*, op.cit., p.705
- ^{xxiv} Reece, op.cit., p. 152
- ^{xxv} R v Kilmeister (No. 2), pp.14-15
- ^{xxvi} Harrison, op.cit., p.23
- ^{xxvii} R v Kilmeister (No. 2), p.17
- ^{xxviii} Reece, op. cit., p.153
- ^{xxix} *Ibid.*, pp.153-6
- ^{xxx} Neil Gunson ed. *Australian Reminiscences & Papers of L.E. Threlkeld Missionary to the Aborigines 1824-1859* (Australian Aboriginal Studies No.40, Australian Institute of Aboriginal Studies, Canberra 1974), vol. II:, p.275