



Season 2 - Episode 8

The Mark's Murders

Law and Order - Take 1

Greg: [00:04](#) From 'Today's Stories' - this is 'The Mark's Murders' – a story of murder and mayhem told one episode at a time by myself, Greg and by Peter.

If you haven't listened to this series from Episode 1, we suggest that you stop listening now and go back to the very beginning.

Also, a warning. This series of podcasts discusses the murders of indigenous and non-indigenous people. It contains the names of Aboriginal people who have died. Whilst quoting original historical material, this series also contains:

- racist language,
- some language that would be seen as inappropriate today, and
- historical ideas that are offensive.

Peter: [01:01](#) Previously on the "Mark's Murders" It's 1847 – about 50 km north-west of modern-day Goondiwindi.

John Watts: [01:15](#) *"Marks was a splendid shot, and the blacks were very much afraid of him, and from information I obtained from the Beebo people, they had long been watching to kill him."*¹

Richard Bligh: [01:26](#) *"The Blacks it appears took away both the boy and the sheep and upon search being made for them the upper half of the boy's body was discovered hanging among the branches of a tree. The lower portion of the body seems to have been carried away and has not yet been discovered."*²

Denise: [01:49](#) *Young described Marks's frenzied response, calling him 'a hater of all Aboriginals', 'shooting every native in sight'*³.

Daniel McLean: [02:02](#) *"Billy was looking about and found a gin concealed by the fence, and he pulled her out. She escaped from his grasp and ran. Someone called out "shoot her," and the whole party fired at her, and she fell by the slip panel. Martin then struck her once or twice on the head with a pistol he carried."*⁴

Peter: [02:22](#) The murder of Mark's son and the subsequent murder of Aboriginal people started in 1847, around the modern-day town of Goondiwindi. We know the bare bones of the story from the *Personal Reminiscences* of John Watts, an early squatter on the Darling Downs, and from other historical accounts. But these accounts don't provide any context as to why the murders occurred, what actually happened, and their aftermath. We want to tell the truth of what happened. In previous episodes, we have discussed the background, and, in the last two episodes, we went through the series of murders that occurred from August 1847 until May 1849.

Greg: [03:05](#) We've mentioned that the Native Police eventually arrived on the McIntyre to establish law and order but shouldn't something have been done to prevent some of the murders? After all, in the second episode, we discussed the Myall Creek Massacre where Europeans were hanged following the murder of Aboriginals. Did that happen here? What did the police and the legal system do about these murders?

Peter: [03:25](#) Well, firstly, we need to talk about the legal system at the time and how law and order was administered.

Greg: [03:31](#) Okay, so how was the law enforced?

Peter: [03:34](#) Essentially, each district on the frontier had a Commissioner of Crown Lands. The Commissioner was a government official, who was appointed to administer the Crown Lands Act in their district. But I don't really understand the role of the Commissioner. Let's talk to Maurice again. Welcome, Maurice. So, in 1836, I believe it is that the Crown Commissioners for Land were first appointed. What was the full role of the Crown Commissioners then?

Maurice: [04:03](#) Their role was always poorly defined. Their first requirement was to collect the annual licence fees and make an assessment of how much stock was there so the annual assessment fee could be paid, and to do that, they had to determine, you know, the carrying capacity of runs and the amount of stock on the runs and so on, and what area they are occupying. They also, before the appointments of magistrates or JPs, they acted as in a magisterial capacity carrying out investigations. Within a few years, they also had a detachment of Border Police. These were mounted troopers usually, two or three at most. And they were called Border Police because they had to patrol the borders. That is, they were essentially a forerunner of the Native Mounted Police, but not quite as vicious or atrocious or murderous. Many of them were ex-convicts. Some good; some, you know, brutalized, shall we say. They had a revenue function. They had a police function. They had a magisterial function in the sense that they had to conduct inquiries into deaths, including massacres of Aboriginals.

Peter: [05:12](#) So, in a sense, whilst notionally they started off administering land, they effectively became the government's representative for the area.

Maurice: [05:21](#) Oh, absolutely, yes. Until the appointment of magistrates and a more complex authority system. On the Downs, it wasn't until late 1848, anyway.

Peter: [05:32](#) Yup.

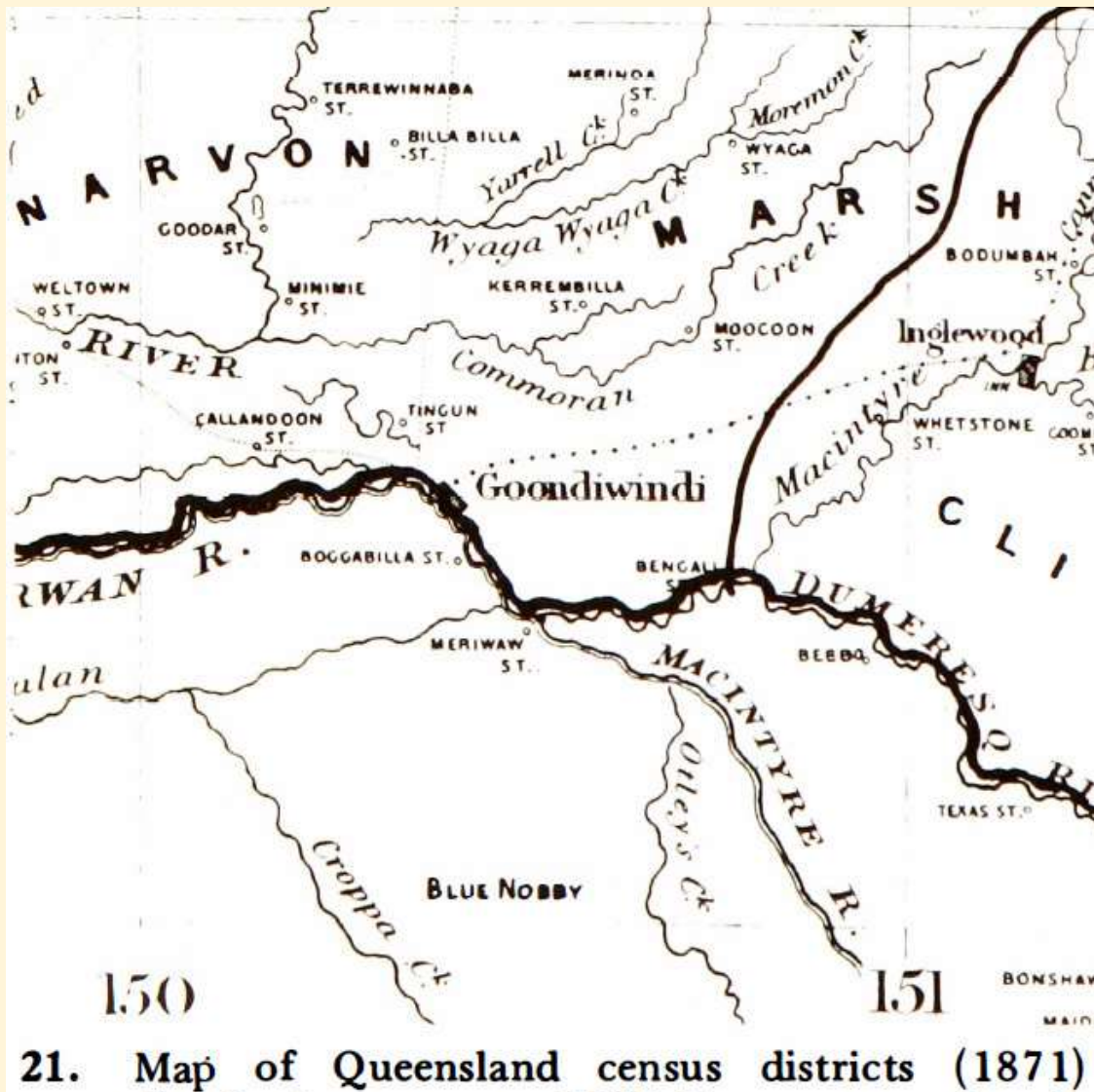
Greg: [05:33](#) OK. It seems that the local Commissioner should have been taking action here. Who was the Commissioner for the district where the Mark's Murders occurred and what did he do?

Peter: [05:42](#) The murders occurred in the Gwydir District and the Commissioner at the time was Richard Bligh. He played a big part in bringing the rule of law and public administration to this northern region. Richard had recently married to Maria Fennell at Scone⁵ where he had been a clerk at the local court. He was appointed in October 1846 as Assistant Commissioner of Crown Lands for the Liverpool Plains District and was to be based in Warialda. On 21 December 1847, he was promoted to be Commissioner for the newly-created district of Gwydir⁶ maintaining his base at Warialda. So, Bligh was appointed just a few months after the murder of James Mark's son. The Gwydir District⁷ extended from Collarenebri in the west to the Great Dividing Range in the east, and from about Narrabri in the south, north to the McIntyre River. This is a huge area – about 200 km E-W and 250 km N-S - and connecting roads at the time were non-existent. Bligh had to enforce government regulations across the district, look after Aboriginal people and distribute blankets to them, maintain records on assigned servants, settle disputes between squatters, chase runaways and keep law and order generally. *Goodar* and *Umbercollie*, where the murders occurred, were about 170 km north of Warialda – not overly close and on the edge of the district. Bligh had control of the local section of the Border Police Force⁸. These constables were recruited from 'Ticket-of-Leave' men and just about anybody else the authorities could entice or conscript. Some were successful officers, but it was a very uneven force, so far as discipline and effectiveness of its policing was concerned. The force had been established in 1839 by Governor Gipps after the trials of the Myall Creek murderers with the aim of controlling violence against Aboriginal people and maintaining law and order. The two constables that Bligh had initially were Chief Constables McGee and Hancock. During Bligh's time there, Warialda became the administrative and focal point of the region. In December 1846, Warialda was listed as a place where Courts of Petty Session was held. In 1848, a Court House, Police Office and Lock-up were erected.

Peter: [08:17](#) It seems that Warialda was an unruly place when Bligh arrived with his new bride. In late 1846, a police constable refused to obey the Commissioner's orders and struck Bligh several times before he absconded⁹. Bligh chased him for fifty miles and caught him without help. The mutinous policeman was sentenced to six months in irons and afterwards was sent to Hyde Park Barracks in Sydney. This display of mettle by Richard Bligh is consistent with his family history. His maternal grandfather (now I should note that both his parents had the surname, Bligh, because they were third cousins) Richard's maternal grandfather was Vice-Admiral William Bligh¹⁰. William Bligh had command of HMS Bounty in 1789 when the first mate - Fletcher Christian - led a mutiny near Tahiti. William Bligh and eighteen of his men were cast adrift in an open boat with a small stock of provisions and no chart. They reached Timor on 14 June, having travelled almost 5,500 km across the Pacific Ocean. A truly magnificent feat! Bligh was later Governor of NSW and was imprisoned by the mutinous soldiers during the Rum Rebellion of 1808-10. He was exonerated of all blame and retired in 1811. So, Bligh came from a distinguished family and had a lot to live up to. When the murder of Bootha happened on *Umbercollie*, Bligh was just 29 years old and had a young wife and a new daughter¹¹, Elizabeth, who was just 6 months old.

Greg: [10:08](#) So Bligh had a large area to administer and a wide range of duties and, of course, a young wife and child. Seems like a heavy workload. Do we know what his

attitude was to the Aboriginal people? After all, he was appointed ten years after the Myall Creek Massacre which happened just 20 km south of Warialda. He must have known that some of the Europeans involved in the massacre there were tried, convicted and hanged.



Locality Map from 1871 showing Stations

<u>Station Name</u>	<u>Owner / Manager (1847)</u>
Texas	Howe – Dight Family
Beebo	Tinker Campbell
Bengalla	Captain Scott
Meriwaw (Merawa)	Howe – Dight Family ¹²
Boggabilla	Yeomans and Baldwin
Tingun (Umbercollie)	Jonathan & Margaret Young
Callandoon	Augustus Morris
Minimie	Part of Ellangabba
Goodar	James Mark

Peter: [10:34](#) One role of the Commissioner was to write an Annual Report. When Bligh first arrived, he was overwhelmed by complaints from the squatters about the savagery of the local Aboriginal groups. Those accused were more often the Bigambul on the McIntyre rather than the Kamilaroi on the Namoi and Gwydir. Bligh wrote, in his first Annual Report in January 1848¹³, angrily accusing the Aboriginal people of - and I quote - *“savage and murderous outrages”*. But over the next 12 months – this is when the Mark’s gang was active - Bligh began to investigate these “outrages” more carefully, and in his report of January 1849¹⁴ – one year later, he admitted that he had been misled by squatters’ accounts. He now believed that the Aboriginal’s actions had all been carried out in retaliation after European attacks, and that the blame for *“injury and crime”* had to be laid -and I quote - *“fearfully against the white population”*. Most of the Europeans who were responsible, were James Mark and his gang.

Greg: [11:49](#) Okay. So, what did he do?

Peter: [11:51](#) The first involvement, that we know that Bligh had, was to conduct the coroner’s inquest¹⁵ into the brutal murder of James Mark’s son. We discussed this in an earlier episode. So, initially, in October 1847, when Bligh believed that the Bigambul were the cause of the problem, he sent Chief Constables McGee and Hancock to the McIntyre. They were instructed to join with the group of squatters already in pursuit of the Aboriginal warriors but were told not to use – quote - *“unnecessary violence”*¹⁶. It’s unclear what happened here but there are suggestions that McGee and Hancock were quite sympathetic to the squatters and may have done more than just turning a blind eye to the continued killings that we have previously discussed.

Greg: [12:38](#) So, the initial contribution by the police from Warialda was probably to continue the revenge attacks that were started by James Mark. This doesn’t sound too productive?

Peter: [12:46](#) True, but at this stage, Bligh believed that the Aboriginal people were the savages and he needed to protect his innocent squatters.

Greg: [12:57](#) Okay. You said that Bligh's attitude changed? What happened?

Peter: [13:01](#) Nothing seems to have happened in regard to any arrests until the incident when the two Aboriginal women were randomly killed at *Umbercollie*. One, Bootha (or Maisie as Margaret Young remembers her) was a close friend of Margaret and this was very upsetting to the Young family. Jonathan Young wrote to Bligh. Jonathan later said.

Jonathan Young: [13:26](#) *“On the 2nd July last, I sent a letter to Mr Commissioner Bligh apprising him of what had occurred. My brother Richard Chapman carried the letter to ‘Merrawa’ Mr Howe’s Station and delivered it to Crampton his stockman. I have been informed that that letter never reached its destination.”*

Peter: [13:48](#) Perhaps the letter did arrive or someone else sent another letter. Nevertheless, the result was that Richard Bligh and his Border Police went up to *Umbercollie* to investigate the murder of these Aboriginal women.

Greg: [14:02](#) What happened when Bligh was at *Umbercollie*?

Peter: [14:06](#) On 26 August 1848, Bligh, as acting coroner, held an inquiry into the death of Bootha, at *Umbercollie*, being the place at which the murder was committed. The body of Bootha was disinterred by the direction of Bligh and identified by Jonathan Young. They inspected the body and concluded that she died due to a fracture of the skull. Bligh took depositions from Jonathan and Margaret Young as well as from some of the Aboriginal people who were present at the time. These testimonies confirm what we have already discussed in previous episodes. Here are a few comments from Jonathan.

A

(Copy)

Umbercollie
Macintyre River
26th August 1848

Enquiry
Touching the cause
of Death of
"Bootha"
an Aboriginal Female
of the "Picchamboul"
tribe

Before Richard Bligh Esq^r JP
Acting Coroner.

Mr Jonathan Young of Umbercollie
being duly sworn deposes
I am Superintendent for Mr John
Brown of Singleton and reside at
this place - on the night of Saturday
the 10th of June last a party of
the natives were encamped in my
paddock at a distance of about
eighty yards from my door. They
were peaceable natives under my

Section of Jonathan Young's deposition

Jonathan Young: [14:50](#) "I am Superintendent for Mr John Brown of Singleton and reside at this place – on the night of Saturday the 10th of June last a party of the natives were encamped in my paddock at a distance of about eighty yards from my door. They were peaceable natives under my protection who had been in the habit of living with me and acting as Stock Keepers and Shepherds for the last two years."

Jonathan Young: [15:25](#) *“About three o’clock on the morning of the 11th (Whitsunday) I and my household were aroused by the sound of a gunshot. We then heard other shots to the number of I think at least thirty.”*

Jonathan Young: [15:39](#) *“I then heard the men put up the slip rails and leave the paddock. In two or three minutes afterwards I heard the tramp of several horses going towards the road to ‘Minimee’ station of Messrs Campbell and Smith.”*

Jonathan Young: [16:02](#) *“I then went out at the slip rails and in so doing I fell over the dead body of a native female – I looked at the body and from the paint on the face I knew it to be ‘Bootha’ the deceased. I then called out for two native boys ‘Jimmy’ and ‘Yaggai’ who had always been living in the house with me but were sleeping a short distance from the camp that night. After a short time they answered me and came to me – They told me they had seen all that happened having been concealed in the bush about one hundred and twenty yards from the camp.”*

Jonathan Young: [16:47](#) *“I then went to look for the tracks of the horses belonging to the persons whom I had seen in the night I found the tracks of five horses near a little scrub a short distance from the camp I found their tracks hitherwards running along the side of the road from ‘Minimee’ and returning in the same direction.”*

Jonathan Young: [17:06](#) *“I have been in great danger and alarm from the Natives ever since this outrage although I was formerly on the best possible terms. They are now spearing my cattle which they never did to my knowledge before.”*

Peter: [17:25](#) It is interesting that Bligh also took depositions from three of the Aboriginal people who were attacked¹⁷. We discussed these depositions in the last episode. This is particularly interesting as Bligh must have known that these depositions were largely useless. At that time, Aboriginal people could not testify in court.^{18,19}

Greg: [17:47](#) Do you know why Aboriginal people could not testify?

Peter: [17:50](#) As far as I can tell, Aboriginal people couldn't testify simply because they couldn't swear on a Bible²⁰. They were not Christian; therefore, they could not testify! This situation arose during the trials following the Myall Creek Massacre where there was the difficulty of calling as a witness - the Aboriginal stockman Davey - who had seen the massacre and could probably have testified to the degree of culpability of each of the eleven men there. Nevertheless, the depositions end with Bligh stating:

Richard Bligh: [18:24](#) *“having examined the remains of the deceased and heard the above evidence and statement, I find that the deceased “Bootha” was wilfully murdered by certain white persons to me unknown”*

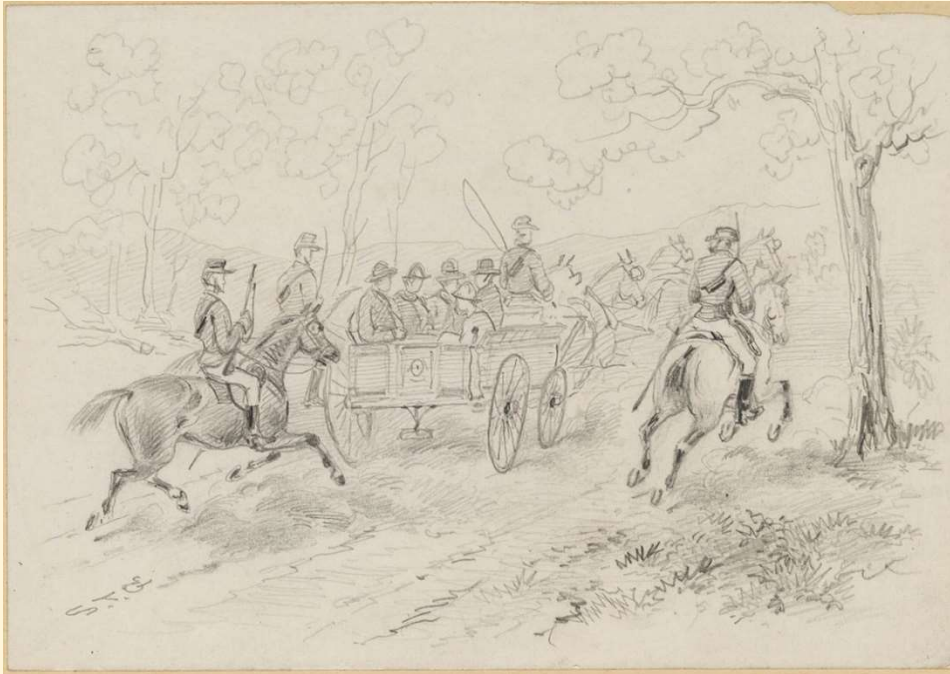
Peter: [18:41](#) However, he did believe that he knew who was responsible. It was the gang of James Mark that we described in a previous episode.

Greg: [18:50](#) So, were arrests made?

Peter: [18:52](#) Yes. Bligh arrested Daniel McLean straightaway and left his constables there to arrest the others. Bligh then returned on 2 September 1848 to Warialda. But, on the night when Bligh left *Umbercollie* and before the troopers had arrested the

others, the gang struck again, at Augustus Morris's *Callandoon* station. They killed Isabella and her son and Mary. Bligh concluded –

Richard Bligh: [19:23](#) *“I have much reason to suspect that he (James Mark) and some of those now in custody were with the others concerned in the murders now reported by Mr Morris.”*



Police escorting prisoners for trial from country districts to Metropolitan gaol²¹

Greg: [19:35](#) So how did the constables go in arresting the rest of the gang?

Peter: [19:40](#) At a later court session in Warialda, Chief Constable McGee deposed that he apprehended the prisoners, that is Stephen Holden, a black boy of the Port Macquarie tribe named Billy, John Reardon, and Knight. Cummins and Jones were not found. He also apprehended James Mark at *Goodar*, but Mark said he would resist being taken, and would not leave his wife and child to be killed by the blacks. Fearing that if a struggle ensued, he might risk the loss of the other prisoners, McGee consented to Mark's remaining at his station, on his undertaking to give himself up at Warialda that day. Mark had not, however, kept that promise.

Greg: [20:27](#) So James Mark wasn't arrested! When was he caught?

Peter: [20:30](#) James Mark was never arrested – we'll discuss that in later episodes!

Greg: [20:36](#) Okay. So, what happened when the prisoners arrived in Warialda?

Peter: [20:40](#) On 4 September, Daniel Maclean, one of attacking party, made a confession implicating seven others, including James Mark. He became an “approver”.

Greg: [20:53](#) What is an approver?

- Peter: [20:55](#) An approver is a legal term. An approver is a participant in, or accomplice to, the crime being tried who gives evidence for the prosecution.
- Greg: [21:05](#) Do we know why McLean became an approver?
- Peter: [21:09](#) I haven't found anything reported on that but, my guess is that he knew that Europeans had been hanged for the murder of Aboriginal people at Myall Creek and that he was complicit in a similar incident on *Umbercollie*. Perhaps he was looking for clemency – or perhaps he was showing some contrition for what he had done? We'll probably never know why he became an approver.
- Greg: [21:34](#) Alright. What evidence did Daniel McLean provide?
- Peter: [21:38](#) Having been cautioned as to any statement he might make, he made a full deposition as to the murderous attack, naming as the parties concerned. He gave the full list of Mark's gang and some of McLean's deposition we have already given in a previous episode.
- Greg: [21:58](#) OK. Well that seems fairly conclusive – one of the perpetrators clearly describes the event and this is consistent with the depositions that Bligh took on *Umbercollie*. A conviction for murder, like in the Myall Creek Massacre, should be easy. What happened?
- Peter: [22:13](#) The events that happened at the Myall Creek trial began to play out again. It is obvious that the Europeans – and in particular, the squatters – did not want James Mark and his gang convicted for murder. Their anger was probably enhanced by the murder on 14 September of Scotchie, the bullock driver and the escape by George Harris. So, on 16 September, the following parties were brought up in custody before the Warialda bench, charged with the murder. They were Richard Knight, Stephen Holden, John Reardon, Daniel McLean, and Billy. All the parties except McLean denied all knowledge of the murder and being concerned in it. James Mark, Jones and Cummins were still on the run. On 21 September, the same prisoners were brought up before the Warialda bench, and Jonathan Young was examined. His evidence was similar to that given by him at the inquest. Daniel McLean was then sworn, and his former deposition read over to him in presence of the other prisoners. He deposed that it was true, and that the prisoners there present were four of those named by him. He was cross-examined briefly by each of the prisoners but persisted in his statements.
- Greg: [23:40](#) Well, that's a bit different – McLean being cross-examined by other members of the gang. It must have been a different legal system in those days.
- Peter: [23:48](#) Yes, it must have been. I don't quite understand this – but this was only at the deposition stage. A formal court case would follow.
- Greg: [23:57](#) Was there any other action taken by the legal authorities?
- Peter: [24:00](#) Yes. As an indication of the seriousness of the situation, rewards were offered for the arrest of anyone involved in the murders of Bootha at *Umbercollie*, Isabella and others on *Callandoon*, and Scotchie, the bullock driver. Here is one of the reward notices.

Denise: [24:20](#) “WHEREAS it has been represented to the Government, that on the morning of Sunday, the 11th June last, a party of Aboriginal Natives, encamped at “Umberiolli,” on the Macintyre River, a station belonging to Mr. John Brown, of Singleton, was attacked by a party consisting of seven white men and an Aboriginal native, who murdered a gin named “Bootha,” His Excellency the Governor directs it to be notified, that a reward of fifty pounds will be paid to any free person or persons not the actual perpetrators of this murder, who may, within six months from the present date, give such information as shall lead to the apprehension and conviction of the guilty parties; and if the person giving such information be a Prisoner of the Crown, application will be made to Her Majesty for the allowance to such Prisoner of the Crown of a Conditional Pardon.”²²

Peter: [25:27](#) Now, £50 is about \$7500 (or one year’s salary for a shepherd). For some reason, the reward for the murderers of Isabella and Scotchie were only £25.²³ I’m not sure why they’re only half the value of Bootha. Nevertheless, no one ever responded to any of these reward notices.

Greg: [25:51](#) Right. So, James Mark was still on the run²⁴ and more murders were happening. Did the police take any action?

Peter: [25:58](#) The Colonial Secretary authorised the Warialda Bench of Magistrates to engage four more constables and sent them to the MacIntyre²⁵ until the arrival of Frederick Walker and the Native Police. We’ll discuss Walker in the next episode. So, in October 1848 - prior to the Native Police being deployed on the MacIntyre – the Colonial Secretary advised Walker - and I quote - of “*certain murders having been recently perpetrated by the whites on the Aborigines at the MacIntyre River*”. Hence, it appears that Walker was sent to arrest James Mark. Mark certainly believed that as he later said to John Watts.

Greg: [26:43](#) You said that events similar to the Myall Creek court case started to play out. What happened?

Peter: [26:48](#) Well, the first thing that happens is George Harris, a hut-keeper on Minimee provides an alibi for the gang. Clearly, this is a false alibi, but it does need to be taken into account by the Crown. You will remember that George Harris was attacked by the Bigambul on 14 September 1848 - when Scotchie the bullock driver was killed - so he gives this alibi after he was almost killed by the Bigambul. So, on 5 October, the prisoners were again brought up, and George Harris was examined.^{26,27}

Peter: [27:26](#) He deposed that he couldn’t remember Jones and McLean being out all night in the beginning of June, or at anytime; they could not have been out without his knowledge. He remembered their going to Mr. Mark’s, and to another station further on, and returning with Mr. Mark, who assisted them to brand cattle at *Minimee*; this was in May or early in June; he couldn’t remember the prisoners being at *Minimee*; never saw Knight there; when Mr. Henderson was moving the cattle some of the prisoners were there; this must have been the first or second week in July. Jones first arrived at the station on the 18th June, having been engaged about the 30th May. He knew nothing about the prisoners or others going out for the purpose of shooting blacks; never happened; never loaded arms for that purpose. Jones and McLean were never absent from the hut all night together, or at twelve o’clock at night; they could not have left the hut with three or four armed men without his knowledge. Harris

deposed that Mr. Henderson having moved the station, told him in July to go and remain at Mark's place, and he did so. A great number of questions were then asked as to the reasons for this, and what passed at Mark's station, as well as to the witness's former life. In cross-examination Harris deposed that Mark told him of Daniel McLean having killed a calf belonging to him, and on his (Harris) telling McLean this. McLean said he would be revenged on Mark before long; and that McLean uttered a similar threat against Reardon. Harris was cross-examined by McLean at some length but adhered to his statement. So, Harris is clearly here trying to paint McLean as the baddie in all of this. So, in the end, George Harris came forward and gave a statement stating that he had never seen an armed party leave *Minimee* for *Umbercollie* in June 1848. Bligh informed the Attorney General that he believed that Harris was perjuring himself but the flimsy defence was good enough for the Attorney General who concluded – and I quote - “*The contradiction of the approver by Harris is important... and weakens very considerably the case against them.*”²⁸

Greg: [29:54](#) Did anything else happen to disrupt the chances of a trial?

Peter: [29:58](#) The MacIntyre River squatters and their employees went to extraordinary lengths to prevent the investigations of Commissioner Bligh. Similar to the Myall Creek case, local squatters helped provide funds to defend the *Umbercollie* killers. In November of 1848, two police horses were stolen and three of Bligh's personal horses were driven fifty miles from the MacIntyre River. Local squatters refused to sell or give police food as well as despatching messengers warning all residents when the police were in the district. After months of inquiry Richard Bligh concluded, - and I quote - “*I feel justified in stating that could these miserable savages give evidence in a court of justice or even support their case with a little of the eloquence employed against them, the balance of injury and crime would be fearfully against the white population. During the past year, a system of assassination has been pursued by the whites which has been now first discovered (though it is impossible to say how long it may have existed).*” Also, at this time, a man and woman had been committed for trial, but allowed bail, for attempting to bribe Daniel McLean into changing his evidence.^{29,30}

Greg: [31:21](#) So it seems that actions were being taken to corrupt the legal process – and there were two of the gang being Cummins and Jones, still not captured. What happened there?

Peter: [31:31](#) Well, Bligh and some of the constables went back up to the McIntyre to investigate. Here is a newspaper article³¹ about that.

Peter: [31:41](#) “*Mr. Commissioner Bligh and party lately visited the McIntyre in pursuit of the blacks who murdered Mr. Yeomans's man, but did not succeed in capturing them. Mr. Bligh, it is said, wounded one of them. It appears that the savage was armed with a large knife, which he kept concealed under some rude clothing that covered him, and he appears to have been a desperate villain. A constable and three ticket-of-leave men are now stationed at Mr. Morris's station, on the McIntyre, and will remain there, I believe, until the black police are sent up. It is a pity that this was not long since done, as the settlers there are almost ruined by the Aboriginal marauders continually driving the cattle from the runs. It is hoped the plans now adopted and in progress will ultimately quieten the district.*”

Greg: [32:41](#) OK. Was Cummins captured?

Peter: [32:43](#) Yes. On 10 November, Martin Cummins was brought before the bench, and McLean's deposition read over, and McLean swore to its truth, Cummins was also committed for trial.³² Cummins, of course, denied all knowledge of the deed.

Greg: [33:02](#) So, they kept looking for James Mark. Did they find him?

Peter: [33:06](#) No. It is generally agreed that the Constable McGee was sympathetic to James Mark. Mark was never arrested – as John Watts noted - and no historian has ever reported what happened to James afterwards. There're some vague reports that James ended up in the Upper Dawson in Queensland. However, we have traced James Mark's life after the murders at Goondiwindi. We'll detail his lifestyle afterwards in a later episode.

Greg: [33:36](#) OK, so summarising. You said that five of the eight were arrested. What about the others?

Peter: [33:42](#) Martin Cummins, as I've just said, was eventually arrested and indicted. That was seven months after the murder of Bootha. But James Mark and Jones were never captured.

Greg: [33:55](#) That's very disappointing. Nevertheless, most of the gang was arrested. Were they actually tried for murder?

Peter: [34:02](#) The Solicitor General said that he was not prepared to go to trial in this case, largely due to Harris' false alibi but as the prisoners had been committed since the last Circuit Court, and the charge was so serious, he would leave them in his Honor's hands, i.e. the local judge. His Honor asked for the depositions in the case, and having perused them, he directed the prisoners be admitted to bail if they could procure it. On Feb 1849, the following was part of a list of the prisoners for trial at the Maitland Circuit Court, which will commence on Monday next, before his Honor the judge, Mr. Justice Dickinson.³³ So, this list of prisoners included Richard Knight, Stephen Holden, John Reardon, Billy (an Aboriginal), and Martin Cummins, for the murder of Bootha. Daniel McLean was not listed for trial, presumably being an approver, he was already guilty, I guess.

Greg: [35:03](#) Okay. So, what happened?

Peter: [35:06](#) Well, they were discharged by proclamation,³⁴ but Cummins and Holden were detained in custody. If you remember, Cummins and Holden were ticket-of-leave convicts and their ticket-of-leave was taken from them.³⁵ Daniel McLean, the approver, was discharged. So, despite all the evidence and depositions against the men that were arrested, no convictions were recorded.

Greg: [35:36](#) So what does "discharge by proclamation mean?"

Peter: [35:38](#) "Discharged by Proclamation" meant that the prisoner was released without trial or verdict (although they could be recalled again later to face the charges again). This was typically because no evidence was presented against the accused, or no witness was able to testify against the accused. So essentially, what it means here is we all know they're guilty but the system is such that nobody will present convincing evidence and they can go away.

Greg: [36:12](#) So, despite the depositions from several people, an admission from one of the perpetrators and other evidence, they got off – no one was convicted. Doesn't sound like justice!

Peter: [36:21](#) No. Unlike the Myall Creek Massacre, 10 years before, no one here was held accountable.

Greg: [36:29](#) And what happened on the McIntyre then? Did the killings continue?

Peter: [36:33](#) Yes, and many of the squatters were unhappy about this – simply cause it was bad for business. People like Jonathan Young and Augustus Morris needed Aboriginal workers to shepherd sheep and do other tasks. They wanted peace on the McIntyre. Given that Commissioner Bligh and his Border Police Force couldn't deliver law and order, they sought another solution – Frederick Walker and the Native Police. We will discuss their activities in our next episode.

Greg: [37:04](#) OK. Well, we would like your views on this topic. Do you have a similar story in your family tree? If so, please contact us on email or comment on our Facebook - contact details are on our webpage – www.todaysstories.com.au . Full details of this story are available on our website and please remember to subscribe to our podcast.

For this podcast:

- Your hosts were Greg and Peter
- Research by Peter
- Voice actors were Mark, Denise and Mick
- Original music and Sound Engineering by Pete Hill
- IT solutions by Shelly

Thank you for listening

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Citations

- ¹ John Watts, *Personal Reminiscences*, Allendale, Wimborne, 1901. OM Box 10937, ACC 5823, John Oxley Library, Brisbane, p. 40.
- ² Commissioner of Crown Lands at Warialda, Richard Bligh to Sydney. letter dated 30 September 1847.
- ³ Lydon, Jane, 1965- & Ryan, Lyndall, 1943- & EBSCOhost (2018). *Remembering the Myall Creek massacre*. Newsouth Publishing, Kensington, NSW, p.102.
- ⁴ Enquiry touching the cause Macintyre River of Death of “Bootha” 26th August 1846 an Aboriginal Female of the “Tuchamboul” tribe Before Richard Bligh Esq. J.P. Acting Coroner, Mitchell Library, State Library of New South Wales, Sir William Dixson - documents relating to Aboriginal Australians, 1816-1853, Pages 167-177.
- ⁵ Family Notices (1847, February 25). The Sydney Morning Herald (NSW: 1842 - 1954), p. 3. Retrieved November 26, 2019, from <http://nla.gov.au/nla.news-article12891749>
- ⁶ CROWN LANDS. (1847, December 21). New South Wales Government Gazette (Sydney, NSW: 1832 - 1900), p. 1405. Retrieved November 26, 2019, from <http://nla.gov.au/nla.news-article230423874>
- ⁷ PROCLAMATION. (1848, November 7). New South Wales Government Gazette (Sydney, NSW: 1832 - 1900), p. 1643. Retrieved November 26, 2019, from <http://nla.gov.au/nla.news-article230150674>
- ⁸ Border Police of New South Wales - https://en.wikipedia.org/wiki/Border_Police_of_New_South_Wales
- ⁹ Maitland. (1846, December 30). Sydney Chronicle (NSW: 1846 - 1848), p. 2. Retrieved November 26, 2019, from <http://nla.gov.au/nla.news-article31749599> . COMMERCIAL AND MARKETS. (1846, December 26). The Maitland Mercury and Hunter River General Advertiser (NSW: 1843 - 1893), p. 2. Retrieved November 26, 2019, from <http://nla.gov.au/nla.news-article686664>
- ¹⁰ https://en.wikipedia.org/wiki/Border_Police_of_New_South_Wales , <https://www.wikitree.com/wiki/Bligh-126>
- ¹¹ Family Notices (1847, December 18). The Sydney Morning Herald (NSW: 1842 - 1954), p. 3. Retrieved November 26, 2019, from <http://nla.gov.au/nla.news-article12899044>
- ¹² CLAIMS TO LEASES OF CROWN LANDS BEYOND THE SETTLED DISTRICTS. (1848, September 16). The Maitland Mercury and Hunter River General Advertiser (NSW: 1843 - 1893), p. 1 (Supplement to the Maitland Mercury and Hunter River General Adve). Retrieved November 30, 2019, from <http://nla.gov.au/nla.news-article709122>
52.—HOWE JAMES. Name of run, *Merawa* Estimated area 64,000 acres. Estimated grazing capabilities 2300 cattle. Eight miles frontage, on the south side of river by ten back, and ten miles frontage, on the north side by two back, and remainder being a thick scrub. The lines are supposed to run at right angles with the river, bounded on the east by the run of Messrs George and S B Dight, on the west by Mr G. Yeoman's; and on the south by Mr John Browne, the lines between the two last mentioned persons were confirmed by Commissioner Mayne, in January, 1843.
- ¹³ CCL Bligh to CC, Report for 1847 (Jan 1848), cited in CCL R. Bligh to CC, 8.1.1849; CCL Letters Sent, Gwydir, 1849 to 1852, SA 2/7635. Cited in Goodall, Heather (2008). *Invasion to embassy: land in Aboriginal politics in New South Wales, 1770-1972* ([New ed.]). Sydney University Press, [Sydney]
- ¹⁴ Bligh to CC, 8.1.1849. Cited in Goodall, Heather (2008). *Invasion to embassy: land in Aboriginal politics in New South Wales, 1770-1972* ([New ed.]). Sydney University Press, [Sydney]
- ¹⁵ New South Wales, Australia, Registers of Coroners' Inquests, 1821-1937, State Archives NSW; Series: 2921; Item: 4/6613; Roll: 343
- ¹⁶ Warialda Letterbook C.P.S. Justices 1847 – 1855, 2 October 1847 (NSW State Archives, 4/5681) cited in Copeland, Mark (2000). *The Native Police at Callandoon: a blueprint for forced assimilation?*. In *Policing the Lucky Country*. 83-95.
- ¹⁷ Dixson, William, Sir. Documents Relating to Aboriginal Australians, 1816-1853 (1816). Web, p. 175.
- ¹⁸ LEGISLATIVE COUNCIL. (1849, June 29). The Sydney Morning Herald (NSW: 1842 - 1954), p. 2. Retrieved November 26, 2019, from <http://nla.gov.au/nla.news-article12912959>
- ¹⁹ Hazel King, *Problems of the police administration in NSW, 1825-1851*. Royal Australian Historical Society, Vol. 44, Part 2, 1958.
- ²⁰ LEGISLATIVE COUNCIL. (1849, June 29). The Sydney Morning Herald (NSW: 1842 - 1954), p. 2. Retrieved November 26, 2019, from <http://nla.gov.au/nla.news-article12912959>
- ²¹ Police escorting prisoners for trial from country districts to Metropolitan gaol - http://digital.sl.nsw.gov.au/delivery/DeliveryManagerServlet?dps_pid=FL3238508&embedded=true&toolbar=false
- ²² FIFTY POUNDS REWARD, OR A CONDITIONAL PARDON. (1848, October 13). New South Wales Government Gazette (Sydney, NSW: 1832 - 1900), p. 1461. Retrieved February 21, 2019, from <http://nla.gov.au/nla.news-article230150188>

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- ²³ Government Gazette. (1848, October 11). The Maitland Mercury and Hunter River General Advertiser (NSW: 1843 - 1893), p. 1. Retrieved December 21, 2019, from <http://nla.gov.au/nla.news-article708687>
- ²⁴ Hunter River District News. (1849, January 17). The Maitland Mercury and Hunter River General Advertiser (NSW: 1843 - 1893), p. 2. Retrieved January 6, 2019, from <http://nla.gov.au/nla.news-article706270>
- ²⁵ Colonial Secretary to Commandant (4 Oct 1848) NSW 4/3860, reel 2818.
- ²⁶ WARIALDA. (1848, October 21). The Sydney Morning Herald (NSW: 1842 - 1954), p. 3. Retrieved November 26, 2019, from <http://nla.gov.au/nla.news-article12910356>
- ²⁷ Hunter River District News. (1848, December 20). The Maitland Mercury and Hunter River General Advertiser (NSW: 1843 - 1893), p. 2. Retrieved November 26, 2019, from <http://nla.gov.au/nla.news-article706970>
- ²⁸ Maitland Circuit Court Depositions, March/April 1849 cited in Copeland, Mark (2000). *The Native Police at Callandoon: a blueprint for forced assimilation?*. In Policing the Lucky Country. 83-95.
- ²⁹ Hunter River District News. (1848, November 29). The Maitland Mercury and Hunter River General Advertiser (NSW: 1843 - 1893), p. 2. Retrieved September 9, 2019, from <http://nla.gov.au/nla.news-article707404>
- ³⁰ SUMMARY OF GENERAL NEWS. (1848, December 16). The Moreton Bay Courier (Brisbane, Qld.: 1846 - 1861), p. 3. Retrieved December 29, 2018, from <http://nla.gov.au/nla.news-article3712130>
- ³¹ Hunter River District News. (1848, November 29). The Maitland Mercury and Hunter River General Advertiser (NSW: 1843 - 1893), p. 2. Retrieved November 30, 2019, from <http://nla.gov.au/nla.news-article707404>
- ³² MAITLAND CIRCUIT COURT. (1849, February 24). The People's Advocate and New South Wales Vindicator (Sydney, NSW: 1848-1856), p. 5. Retrieved November 26, 2019, from <http://nla.gov.au/nla.news-article251537887>
- ³³ THE MAITLAND CIRCUIT COURT. (1849, February 7). The Maitland Mercury and Hunter River General Advertiser (NSW: 1843 - 1893), p. 2. Retrieved August 31, 2019, from <http://nla.gov.au/nla.news-article705701>
- ³⁴ Maitland Circuit Court. (1849, September 19). The Maitland Mercury and Hunter River General Advertiser (NSW: 1843 - 1893), p. 2. Retrieved November 26, 2019, from <http://nla.gov.au/nla.news-article700162>
- ³⁵ "Advertising" The Sydney Morning Herald (NSW: 1842 - 1954) 12 May 1849: 2. Web. 26 Nov 2019 <http://nla.gov.au/nla.news-article12905433>