

Meikle's land was poor pasture. There was some slight evidence, as I shall put to your Honours, to the contrary, and this was obtained from the witnesses for the prosecution, because it was hardly likely for counsel for the prisoner to anticipate a point like that being laid stress upon to take away any man's liberty, assuming the evidence otherwise to be fairly balanced. The position is this: We have the company's turnips with the gap in the fence, and then the company's tussock land, and then on the southern and eastern boundaries we have Mr. Meikle's land which was ploughed. Ploughed land is clearly not a direct inducement for sheep to break through that fence, though these witnesses to whom I have already referred show that, without any direct and immediate inducement, sheep, like other creatures, both man and animals of the lower orders, do certain things without any immediate obvious inducement. They have some scheme of life we cannot fathom, and they wander off. Let it be conceded, your Honours, that Meikle's land was ploughed there and there was tussock on the other side, but there is not a syllable to show that the land is poor. Now, I think I can prove by independent statements elicited from witnesses for the prosecution that Meikle's land, or a great deal of it, was in excellent order to attract sheep. Stuart says, on page 21 of the evidence, at the beginning of the cross-examination,—

"I went back to prisoner's land on the 3rd. Two more sheep found there on rough ground. Others found there on English grass."

That, I take it, your Honours, is a judicial abbreviation for "the others," otherwise the investigation would have been pursued to see if there was any of the remainder, and where that remainder was found. However, I shall put the point beyond doubt by direct evidence. But Mr. Stuart makes it plain that there was English grass on some of Meikle's land, and that that was where the twenty-five sheep were found in one paddock. Turnips, I suppose, may be the best feed in the world for sheep, but there is such a thing as satiety in the case of sheep, I suppose, as in the case of men, and in wet weather, I understand, sheep will leave turnips habitually because they prefer a better camping-ground in such circumstances. But I need not worry your Honours with the opinion of sheep experts on a point like that. Your Honours will take notice of the fact that English grass is about the finest that could be desired for the food of sheep, yet His Honour Judge Ward has formed the idea that Meikle's land is very poor pasture, on which sheep could not possibly fatten. There is a further point in the evidence of Constable Leece, who was called in Lambert's defence in 1895, and I think his statement alongside of that of Mr. Stuart will surely settle the matter, because they are not witnesses prejudiced in favour of my client at all. Constable Leece says:—

"The sheep were rounded up and brought in. I think the total number was below fifty. It was a large paddock; I should say over 200 acres."

Well, I submit, putting that statement alongside the evidence of Mr. Stuart, it is a fair inference to say there were 200 acres in English grass on Meikle's property, and that paddock is the very place where these sheep were found. Well, that estimate of 200 acres was, I think, substantially correct. I put it to your Honours in opening, it was estimated at that time that there were 250 acres in grass and 200 acres in oats. Then I shall call direct testimony to prove that what I say as an inference is a fact. Then your Honours will find that Urquhart, in his evidence in the depositions on the original information against Lambert in 1895, at page 5, refers to Meikle's land as being in English grass. Then Connor refers in the same depositions to Mr. Meikle's land in the same year as he left being in young oats and English grass; and Mr. Meikle himself will give direct testimony now. Well, if the company's land was undoubtedly the best, it seems none the less astonishing that any prosecution for a criminal purpose could possibly be based on the fact that sheep had wandered from good pasture on to bad. Nevertheless, I do not want to lose anything, and I shall prove that the pasture was excellent, and that taking the land as a whole it was picked land. Now, your Honours, where do we come to on the actual results of the case for the prosecution, excluding Lambert's testimony? To sum it up, there is the turnip-field on the company's ground; there is the English grass on Meikle's land to the south. There is a gap of several chains in the south boundary of the turnips; there is a creek with good feed in sight of the gap at a very short distance; lower down the creek there is good feed along its course; and there is a gap wide enough for a dray to enter Meikle's land, and that is the obvious course for sheep to take. There is also the fact that the sheep were seen getting through sheep-proof fences by witnesses who were employed by the police to report upon it. Well, you may say it is a sheep-proof fence with a big hole in it, a sheep-proof fence where sheep could get through, and a hole where a dray or other things a good deal larger than sheep could get through, and it is all in the way of sheep wandering from one run to another. I suppose if there is anything left in the case after Lambert's evidence is excluded it simply means this: if my friend has the misfortune to have me for a neighbour—I may be dangerous in some circumstances—and my fowls are found in his garden, and the experts swear that the fence is fowl-proof, and that my bulbs and seeds are more attractive than his and better worth scratching up than his, then there is a case to answer as to whether or not he has stolen those fowls. Your Honours, it is surely farcical that criminal law should be administered in that way; and I can assure my friend that whatever dangers there may be in having me as a neighbour there is no danger in that respect. I would not even suspect him of the crime. Well, your Honours, I prefer to leave the matter in that way instead of speaking in more directly disrespectful terms of this report. I come now to the case for Meikle's defence. The main points were these: First of all, there was Arthur Meikle's illness. He was a lad of seventeen—a sickly lad who was suffering from pleurisy at the time. The defence was that on the 17th October he was seriously ill with pleurisy, and that he was not out on that night at all. Even his recovery was doubtful, and for days, if not weeks, on either side of the 17th for him to be out at night, and especially out on a wet night, as this night proved to be, was impossible. There was the evidence of various persons that it was a dark and stormy night. It is a fortunate thing, dates being difficult to fix, especially in the country, that there are two time-marks by which the respective witnesses are able to fix upon what happened on the 17th. From