

shop again into yards. They said (as above). Prisoner said company had had a lot of his sheep, and he didn't see why he should not have some of theirs. When they came with lantern I saw brand, A (with bar above, in red). That is the brand the company have on their sheep now, and had on the sheep then on turnips. After fat sheep were drafted out Arthur Meikle caught one and killed it. Prisoner knew of my presence all this time. Elder prisoner had gone over to house. After sheep dressed he returned, told his son to cut fire brand and ear-mark off, and to cut them up into small pieces. That was done. Ear-mark was two notches, either back or front. That was company's ear-mark. I did not see brand on sheep that was killed. Skin was put on some bags. Head was hung up on wall. Prisoner said he would defy company or any one else. After that I had gone over to Meikle's men's hut for a stick that Harvey had given me. When I came out I met prisoner with lantern, carrying dressed sheep. The brand was on side of nose. I only saw ear-mark on that sheep, but it was one of the mob driven in. I had conversation with prisoner about shearing before this—seven or fourteen days."

What did my learned friend and Mr. Solomon do? First, they established an alibi—or they thought they had—for young Meikle; they established that the night was rough to drive sheep about, and probably if it be true that Lambert had fixed the 17th, or the date on which young Meikle was ill, the conclusion might have been reasonably taken as correct. But when you come to discover that the night was one on which Gregg could walk with Lambert half-way to his hut the whole case takes a different complexion. Nearly all the witnesses assume that the night of the driving of the sheep was the 17th, when all the physical conditions of darkness, rain, and storm were opposed to the driving. But that is the class of evidence that was given. There was the evidence of a boy—doubtless of great experience in the driving of sheep—that this boy drove twenty-seven sheep from the company's land to his father's place. The next point is that he could not drive them through an 18 in. door; but before we come to that my learned friend, Mr. Atkinson, attempted to make a very great deal of capital from the fact that he drove them through an 18 in. door when he might have driven them through a door 4 ft. wide. The answer is easy. The 18 in. door opens off a small yard. Your Honours will see the position of the doors and the yard from the photographs. Mr. Atkinson stated in his opening address that it would be absurd for Meikle to choose an 18 in. door when a 4 ft. door was available; but on looking at the photographs your Honours will see that it bears quite a different complexion when you recognise that by putting them into the yard first they were in a small enclosure from which they could not escape, and they could be forcibly put through the small door. So that your Honours will see that Meikle was not quite as stupid as suggested, nor was the story quite so startling when we find that the little door led off the yard into which the sheep were first driven. Would you not assume this rather *a priori*: would not you assume that they were driven through that door. Lambert was familiar with the building. If he had been concocting a story would he have mentioned the small door instead of the wide door if improbable? The fact that he mentioned that the sheep were driven through the small door is rather in his favour than against him.

Mr. Justice Cooper: He could not select anything but the small door once the sheep were in the enclosure.

Dr. Findlay: It is assumed that he is building up a story. You would have expected him to evolve his story by putting them in through the 4 ft. gate if that were easier. I am not relying on this as a weapon, but as a shield. I say this evidence was not against him, but, in the light of the evidence which we have, that was the better place for Meikle to take in the sheep; that is, if he wished to do what he did do—select one for killing purposes. That is the improbability upon which Mr. Atkinson relied so much and upon which he spoke at such length in his opening address—the improbability of sheep being driven through this narrow door. I think in view of what I have said that the improbability becomes a strong probability. It is also said that the sheep could not have been driven through that door. There is the evidence of Lambert, and from that you will see how easily it could be done. He says,—

"When he (Arthur Meikle) got opposite Meikle's house—there is a white gate there—he put sheep through this gate, took them down a little paddock, and put them into sheep-yards. After they were in yards, his father (prisoner) came with a lantern. They put them all into a blacksmith's shop, and felt which were fat and which were poor. There were twenty fat, seven poor, and ram. They counted them out of the blacksmith's shop again into yards."

We were told that the lantern was put inside the building. We were told by one of my friend's witnesses that if a light were put inside a building at night the sheep will draw. Then it was said that the lantern was put on a bag of lime, or something. Obviously the bag of lime must have been inside, and the lantern was put upon it. You have my friend's own evidence that if a light is put inside a building at night the sheep will draw. Lambert says that one or two sheep were pushed through. It has been explained to me that if one or two sheep are pushed through, the others will draw. So the evidence I have led—I take it the evidence of one of my friend's witnesses also—shows that the sheep could be easily put through that door. Again, is it likely that this would be part of an invented story if it has inherent probability. They say this was so dark and stormy a night that they could not be driven, but that has been disposed of. On the night of the 18th October they could certainly be driven by an expert driver and dog from the pre-emptive right to Meikle's place; then they were taken into the yard; the other difficulties disappear when you look at the circumstances. Where is the improbability in Lambert's story? It is all gone if the date is altered—and it is submitted that the rest is a probable story. That brings one back to the point that this man was convicted on the skilful emphasis Mr. Solomon placed on the date. I am sure the date should be the 18th, and not the 17th. Lambert fixed it honestly enough, because he got it from Gregg. And why should he take a date when he was not there and none of the other actors in this affair were present? Now, another point which my friend made much of was that Lambert did not say Meikle took off the paint brand. It was somewhat