

word in Meikle's defence that he had any pasture which would induce sheep to come upon them. Why? At that time, in 1887, his farm servants could have gone—any one of them could have gone and examined the pastures there. Then he could have swamped the Court with evidence as to the richness of his pastures; but there is not one word from any of the witnesses he called to show that he had pastures which would attract sheep. Why? The old witness who was in his service for so many years, and who gave evidence yesterday, was not even called; and why?

*Mr. Atkinson:* He was in the hospital, that is the reason.

*Dr. Findlay:* I deny that. But surely there were farmers enough about who could have gone and looked at Meikle's land in 1887 and could have come into Court and said what has been said here. How is it that we have had to wait first for eleven years and then for another eight years before we can discover these Mr. Forsaith's and Mr. Mabin's and get them into the witness-box to tell us Meikle had good pastures. Why this unbroken silence in Meikle's case in 1887 if they had those pastures, for that was exactly in contest, and the company's case was that these sheep could not have left the rich turnip pasture of the company and gone on to this ploughed, poor land of Meikle's. No attempt is made to give the class of evidence we have had called here during the last three or four days. I do say that is a most significant fact. We know that eighteen years afterwards even honest witnesses may recollect or think they recollect the fact. For instance, Mr. Forsaith or Mr. Winter might be quite honest in saying they believe there were pastures there; but why? Here we have a shrewd man like Mr. Meikle, an ex-policeman, who has had experience in preparing perjury cases and assault cases, a man who has shown in the witness-box the expertness with which he can take care of himself—this man had not intelligence enough, had not skill enough, aided by two of the lawyers of Southland, and afterwards by an able lawyer from Dunedin, to put in the box this evidence about the richness of his pastures upon which he now asks your Honours to declare him innocent. And when you remember, as I can show, that on the jury which convicted Meikle there were three or four farmers who knew perfectly well the conditions of farming in Southland, who could tell probably at once whether these stories about a crop in the month of October being 9 in. out of the ground were true or not, he was appealing to a number of jurors who could test and test accurately such evidence as Mr. Forsaith's and Mr. Winter's. But he knew if he brought people to say that his English grass in the year 1887, in the month of October, was able to fatten sheep he would be laughed at; and, further, if any witness had dared to go into that box and declare that this garden of Eden was in such a condition as Meikle now declares, the prosecution could have sent its own witnesses to verify the statements, and they could have come back to refute them. So that your Honours will see the very best reason there is for this unbroken silence about his pastures in 1887, and not a word about it until years afterwards, when it comes to the conviction of Lambert. I ask whether this and other matters must not be viewed with the very gravest suspicion. I ask the Court therefore to infer with me that in 1887 Meikle presented a case in which twenty-seven sheep had gone through those fences, had gone from this rich pasture on to land which would never induce or fatten sheep at all, and that his own witness, Mr. Duncan, giving evidence in 1887 expresses a well-known truth which is that sheep were not likely to leave turnip land for such land as Meikle's, and if they did they would very soon get back again. And I do say in view of that that the presence of these twenty-seven sheep presented an exceedingly grave and suspicious circumstance. If your Honours will look at the evidence which was given in 1887 you will see how entirely convincing is this branch of the prosecution. You will find, on page 27, where Arthur Meikle in giving evidence dealt with the question of the condition of the fences, he said—

“Father keeps his fences in order. There is a corner at Mincham not in order. It never needed to be mended—no stock to go out; some came in.”

The word “Mincham” there should have been “Mimihaui.” That would show, if there were none of his father's stock upon the company's land, which was rich pasture, the land was well fenced. That test is applied, on page 23, by Mr. Fleming. He says—

“If I mustered sheep on a large block and found no stragglers from neighbours I should conclude fence in good order.”

Now, we did muster our flock in the month of October after these thefts, and not one sheep of Meikle's was found on our land. We must therefore assume that the company's pastures were well fenced, and that the fences between them and their neighbours were in good order. And there was the best reason why they should be. The company for a very long time before had been met by the defence, “Oh, yes, some stragglers from your land,” whenever any sheep were discovered on Mr. Meikle's land, and the company had set themselves to answer effectively any such defence; and we will show that special care was taken to make those fences sheep-proof so that this kind of defence should not be available to Meikle. Mr. Troup shows that upon page 23: that the fences were in the condition I suggest. He says—

“Sheep were mustered on leasehold in April and August. Meikle keeps sheep. When we mustered, found no sheep of his among ours. We gave notice of muster, and Arthur attended muster. Both Meikle and I agreed that fence sheep-proof.”

The evidence of Mr. Trotter is to the same effect, on page 22, about these fences, and the evidence of Mr. Stuart also to the same effect. Therefore your Honours will see that before the jury which convicted Meikle there was all this coercive proof that the company's pastures were beyond question better than Meikle's, and that Meikle practically had no pasture to fatten sheep. That was the first test. The sheep would not stray from the company to him; and, next, these fences were so sheep-proof that they could not have upon any honest explanation have got on Meikle's land.

*Mr. Justice Edwards:* You say this mustering was in April?

*Dr. Findlay:* Yes, and one in August and one in October. One was made to count the sheep after the report was received from Lambert.

*Mr. Justice Edwards:* When was this one supposed to be?