

1856 – 53 001

Inventory of Precogn  
Henry Nisbet P.F.  
agt  
John MacKinnon  
1856

1856 – 53 002

Inventory of Precognition Henry Nisbet P.F. Tobermory  
agt  
John MacKinnon Housebkg & Theft of a Sheep

1. Copy petition & Warrants
2. Declaration of accused
3. Precognition of Witnesses
4. Extract Conviction
- Xd 5. Schedule
6. Piece of mutton }
7. A piece of Suet } not sent

1856 – 53 003

No 3  
Precognition of Witnesses  
Henry Nisbet P.F.  
agt  
John MacKinnon  
1856  
Housebg & Theft of  
a Sheep  
~~~  
Tobermory  
~~~

1856 – 53 004

Precognition of Witnesses  
Henry Nisbet P.F. Tobermory  
agt  
John MacKinnon Tyree  
accused of  
Housebreaking or Theft  
of a Sheep  
1855

Tyree 25 decemr 1855

Compeared John MacDougall Shepherd to John Campbell Chamberlain to the Duke of Argyll and residing at Island House Tyree in the united parishes of Tyree & Coll and shire of Argyll who says I am 25 years of age - The sheep that I herd are on the farm of Crosspoll on the said Island. There are 400 Hogs, about 300 Wedders, and 300 aged sheep - In the end of last month ~~~

1856 – 53 005

month I began to have these sheep smeared and in the Evenings I separated a number of the sheep averaging from 20 to 40 and put them into the Barn at Island House to be ready for work on the following morning - on

Monday evening the 3d December

1855

I separated

31 Wedders

and put them into this Barn so as to be ready for the workmen in the morning who usually began before daylight - I am quite sure of the above number. I counted them carefully immediately before I left the Barn and I did not do so till about ½ past 8 P.M. I had five men Engaged Smearing that day but they left the Barn before me - There are two doors in the Barn - one to the front ~~~

**1856 – 53 006**

3

John Macdougall

front and the other to the Back - Both doors have an upper and lower half - The Back door is seldom opened and is well secured by bars in the inside, both in the upper and lower leaf - This door was well secured on the night in question - I examined it just before I left the House. On going out I shut the lower half of the front door and barred it by reaching my hand over from the outside - It was a single wooden bar which was secured by a strong wooden staple nailed to the Post - I then drew the upper door over it and secured it with a padlock and staple on the outside. I locked the doors and made them quite secure - I kept the key in my own possession - on the ~~

**1856 – 53 007**

4

John Macdougall

the following morning

Tuesday 4 december 1855

I got up before 6 o'clock and went direct to the Barn. It was dark and I carried a lighted lantern with me - I was the first person there, - none of the Smearers had arrived - When I got to the door I found the lower half standing half open. The upper half was shut and locked as I had left it. On examination I found that the door had been forced open from the outside, - the wooden staple which secured the bar having been driven from the post to which it was nailed. I found it laying on the floor of the barn near the door broken in three pieces - Just at this time Hugh MacInnes one of the Smearers came in - I told him that ~~~

**1856 – 53 008**

5

John Macdougall

that the door had been broken up and I shewed him the broken piece of the Bar - Before he came I counted the sheep and missed

One of the Wedders

a two year old - We counted them together after MacInnes came and found that there was only 30 - There having been 31 the night before when I locked the door - I am quite certain of the numbers on both occasions - The sheep are the property of Mr Campbell. I went immediately to Mr Lachlan Macquarie Mr Campbell's clerk & who resides near the Barn and told him what had taken place - I examined about the door of the Barn for footmarks - The ground was sandy and a good deal of rain had fallen ~~~

**1856 – 53 009**

6

John Macdougall

fallen during night - I found the marks of a sheep on the ground as if it had been dragged away - I could make nothing of the footmarks of a man as the rain had nearly obliterated them. The sand is loose and soft and does not retain an impression long. John McKinnon Kilmoluag who has been convicted of Theft & bears the character of a convicted thief was strongly suspected both by Mr Macquarie and myself - at 10 o'clock am. I started along with Dugald McCallum Constable to search

for the stolen sheep - Mr Macquarie directed us to go to the House of MacKinnon - We searched a house at Helipol belonging to Donald McLean cottar but found nothing - We also searched one or two ~~~

**1856 – 53 010**

7

John Macdougall

two other houses but found nothing - We reached the house of John McKinnon at Kilmoluag distant from Crosspoll about two miles at 5 P.M. We went into the house and found only two children in the house a boy and a girl both under 8 years of age. Neither MacKinnon nor his wife were in. We searched the house - We found concealed under the Straw of the only bed in the house and wrapped in a towel a piece of

Fresh mutton weighing about Three pounds

which was soft and I am quite sure was part of a sheep killed that very day - It was fat and appeared to be wedder mutton - There was some sand on it - The same color of the sand at Crosspoll barn - We also ~~~

**1856 – 53 011**

8

John Macdougall

also found in the same place about

½ a pound of suet

wrapped in a towel - also fresh and evidently part of a sheep killed that day - The children were crying - neither McKinnon nor his wife came in while we conducted the search - We got concealed in a chest a

piece of boiled mutton

also fresh. About a pound - This was also covered with clothes - It was in the bottom of the chest and it was rather better than half filled with clothes - We made a very careful search but could find nothing farther We could find no wool, skin or head or feet of a sheep. After we had finished the search I left the house first Just as I got out at the door I saw John ~~~

**1856 – 53 012**

9

John Macdougall

John MacKinnon come round the end of the house - McCallum & Hugh MacLean who assisted in the Search came out after me - We spoke to MacKinnon - He was taken by surprise and was much agitated. He told us that he had been at Balevoullin - We told him that we had just searched his house but we did not say what we had found - We did not say to him why or what we had been searching the house for. He made no reply but he shook & trembled violently - This all occurred outside the house - McCallum instructed McLean to remain & watch the house both outside and inside till we would return. We were going to inform Mr Macquarie of what we had found. We then ~~~

**1856 – 53 013**

10

John Macdougall

then left & McLean remained behind as instructed - Before we had got more than 10 yards from the house MacLean called after us that MacKinnon had ran off - we turned and came round by the back of the house but we did not get a sight of him. The night was dark - We again left McLean with instructions to remain till our return and we went to consult Mr Macquarie - We saw Mr Macquarie who instructed us to find MacKinnon and to watch the house - we returned & remained in and about MacKinnon's house till next morning but neither he nor his wife returned - We searched the Island for MacKinnon but could not find him - He was in hiding for five days - Hugh Mac ~~~

**1856 – 53 014**

11

John Macdougall

MacLean was employed during these days Keeping a look out for him but he could not be found - I cannot write -

**1856 – 53 015**

12

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**1856 – 53 016**

13

Dugald McCallum

Tyree 25 decr. 1855

Compeared Dugald MacCallum Constable residing at Kilmoluag on the Island of Tyree aforesaid who says I am 45 years of age . I was called early on the forenoon of

Tuesday 4<sup>th</sup> December 1855

to search for a

Wedder

which had that morning or on the previous night been stolen from Crosspoll barn. I was accompanied by John MacDougall & Hugh MacLean. We searched a number of houses on the Island without any success before we came to the house of John MacKinnon at Kilmoluag who was strongly suspected of the theft - He is a common habite & repute thief ; doing no work & having no means of living except by plunder -

**1856 – 53 017**

14

Dugald McCallum

plunder - We reached McKinnon's house about 5 P.M. no one was in the house except MacKinnon's two children both under 8 years. We made a very careful search of the whole house and found concealed in the bed under the straw & next to the Boards wrapped in pieces of cloth about

three lbs of mutton &

half a pound of suet

both fresh and nearly warm - It was quite soft and appeared to have been part of a sheep not many hours killed. The Suet appeared to have been only an hour or so taken from the inside of the beast. the mutton was slightly covered with sand. In a chest nearly full of clothes we found

a piece of boiled mutton

in a cup covered with a piece of ~~~

**1856 – 53 018**

15

Dugald McCallum

of cloth - The cup was placed at the bottom of the chest and was covered with clothes - We found nothing else - we could get no trace of the head, wool, skin feet or any other of the parts of a sheep -

We found in the chest a bundle of Keys which I am of opinion were kept for the purpose of

depredation - on coming out of the house we found MacKinnon near the end of his own house - I

said that it was a fine night - He said that it was, much taken by surprize faltering in his speech and

trembling in his limbs - He told us that he had been at Balevullin. I told him that we had just finished a search of his house - He made no answer ~~~

**1856 – 53 019**

16

Dugald McCallum

answer, he appeared so confounded - I did not tell him why we had searched the house or what we had found. Macdougall & I left MacLean in charge of the house till we would return from seeing Mr

Macquarie, and we had scarcely got ten yards from the house when Maclean called after us that

MacKinnon had ran off - We returned immediately running but did not succeed in getting given a blink of him - The night was dark and we did not pursue him far. We again went away and left Maclean to

watch the premises - We saw Mr Macquarie who instructed us to search for & find MacKinnon - we

returned to his house about 9 P.M. & found Maclean ~~~

**1856 – 53 020**

17

Dugald McCallum

Maclean still there Keeping watch we remained with him till day light next morning watching the premises & then set out a search of MacKinnon - We could get no trace of him - He was in hiding for five days & it was currently reported in the Island that he had committed suicide by drowning, I have delivered the mutton and suet found in the house to Allan Cameron.

Dugald McCallum

**1856 – 53 021**

18

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**1856 – 53 022**

19

Hugh Maclean

Compeared Hugh Maclean residing at Cornaigbeg in the Island of Tyree aforesaid who says I am 51 years of age - I assisted Dugald McCallum constable, & John Macdougall to search for a

Wedder stolen from

Crosspoll on the Evening of the 3d or morning of the 4<sup>th</sup> December 1855. I went at the request of Mr MacQuarie - We made the search

on Tuesday 4<sup>th</sup> december

We searched four or five houses before we came to the House occupied by John MacKinnon at Kilmoluag. We had special instructions to search McKinnon's house as he was strongly suspected of the Theft - He has no means of livelihood & he bears the character of a common thief - on reaching MacKinnon's

**1856 – 53 023**

20

Hugh Maclean

Kinnon's house we found neither him nor his wife in - There was only two children in the house both young - We searched the house and I concur with Gilbert McCallum as to the result - I was left by McCallum and John McDougall to watch the premises and they had no sooner turned to go away than McKinnon ran off in an opposite direction and was out of sight on a minute - The night was dark and as he was much quicker in the foot than me I did not follow him - I remained at the house all night having been joined by McCallum & McLean [sic] about 9 P.M. who remained with me. McKinnon did not return & I kept searching for him for four days but could get no trace ~~~

**1856 – 53 024**

21

Hugh Maclean

trace - It was reported that he had drowned himself - on the fifth day he returned home but refused to give an account of his absence - This is truth and I cant write.

**1856 – 53 025**

22

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**1856 – 53 026**

23

Lachlan Macquarie

Island House Tyree

25 December 1855

Compeared Lachlan Macquarie who says I am clerk to Mr John Campbell Chamberlain to His Grace the Duke of Argyll and reside at Helipoll on the Island of Tyree - I am 37 years of age - My house is

within five minutes walk of the Barn at Crosspoll in which Mr Campbell's sheep were being smeared - John Macdougall the Shepherd had charge under my directions and instructions - Part of these instructions was that he should count the sheep left in the Barn every night, and that he should afterwards secure the doors by barring and locking them. On the morning of

Tuesday 4<sup>th</sup> December 1855

McDougall came to me about 7 o'clock and informed me that the above Barn door had been broken  
~~~

**1856 – 53 027**

24

Lachlan Macquarie

broken open during the preceding night and that

a two year old Wedder

had been stolen - I immediately went and saw that the barn had been forcibly entered by breaking the bar and staple which secured the lower half of the door - The upper half was still shut and the padlock and chain which secured it still intact. The lower half of the door was open and McDougall informed me in the same position as when he went to it in the morning. I sent for the Constable Dugald McCallum and procured a Warrant to search - I gave particular instructions that the house of John MacKinnon Kilmoluag should be searched as I was very suspicious of him being the depredator, - from the fact that he was previously convicted of Theft, and that besides having ~~~

**1856 – 53 028**

25

Lachlan Macquarie

having no means of earning a living his character throughout the Island was that of a common thief - All which is truth -

**1856 – 53 029**

26

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**1856 – 53 030**

27

Allan Cameron

Tobermory 5th Jany 1856

Compeared Allan Cameron Sheriff Officer Tobermory in the united parishes of Kilninian & Kilmore Island of Mull & Shire of Argyll who says I am 33 years of age - I apprehended John McKinnon on the present charge in Tyree on the

24<sup>th</sup> December 1855

He denied all Knowledge of the theft and refused to give an account of the Mutton & Suet found in his house by Dugald McCallum who delivered it to me & it is now in my possession MacKinnon was convicted for Theft on

9 September 1852

before the Sheriff Substitute at Tobermory & Sentenced to 30 days Imprisonment which he suffered - The Extract conviction bearing the above ~~~

**1856 – 53 031**

28

Allan Cameron

above date now shewn me applied to him - I was in Court & heard sentence pronounced - all which is truth

Allan Cameron

**1856 – 53 032**

Index

|                   |    |
|-------------------|----|
| Dugald McCallum   | 13 |
| Hugh Maclean      | 19 |
| Lachlan Macquarie | 23 |
| Allan Cameron     | 27 |

1856 – 53 033

4  
 Extract Conviction  
 agt  
 John MacKinnon  
1852  
 9 September  
Theft  
  
 6 Jany 1856  
 Referred to by  
 Allan Cameron

1856 – 53 034

Extract  
 CONVICTION AND SENTENCE  
 against  
 John MacKinnon

At Tobermory the ninth *day of* September – *eighteen Hundred and fifty two years* -----  
**Sitting in Judgment**, William Robertson, - *Esquire, Sheriff* Substitute of Northern Argyll *ANENT the Criminal Libel, at the instance of* Henry Nisbet Writer in Tobermory Procurator Fiscal *for the public interest, against*

John MacKinnon Crofter residing at Kilmoluag in the  
 Island of Tyree in the united parishes of Tyree & Coll & Shire of Argyll accusing him of the crime of  
 Theft or of the crime of Reset of Theft  
*in manner mentioned in the said Libel raised and executed against him there anent, and ~~~~~~*  
*The said Sheriff substitute, FOUND, and hereby FINDS, the said* John MacKinnon Guilty of Theft as  
 libelled and therefore ~~~~~~

*DECERNED and ADJUDGED, and hereby DECERNS, and ADJUDGES him to be imprisoned in the prison of Tobermory for the period of Thirty days from this date and there after ~~~~~~*

*to be set at liberty, and for these purposes GRANTED and hereby GRANTS Warrant to all concerned.*

*Extracted from the records of the Sherriff Court of Argyllshire*  
 this fifth January Eighteen hundred & fifty six by me  
 Dugald Campbell  
 Dpt Clk

1856 – 53 035

1856  
 Edin 10 / 13 JAny  
 Crown Agent  
 Returning Precognition  
 agt  
 John McKinnon  
no Proceedings

1856 – 53 036

John McKinnon

Crown Office  
Edinburgh 10 Jany 1856

Sir

I return this Case Crown Counsel being of opinion that there should be no further proceedings. Crown Counsel see no ground for the charge & are somewhat astonished that the case should have been reported.

I am

Sir

Your most ob Ser

Robert Chapman

For the Crown Agent

To

The Procurator Fiscal  
Tobermory