

“ I took a note of the day, not date, that McGeorge left the hut. I remember the 17th October, when I was at Gregg’s. I took a note of it. This is in depositions. It was true I took a note of it. The night the sheep were taken it was not a very dark night. Might have rained some time in the night. I never said it was the 17th.”

I submit it clearly must mean the night the sheep were taken. He says, “ I never said 17th; on or about.” There surely is no possible question of calendar confusion. He is still satisfied he was at Gregg’s on the 17th, but it was only on or about that date that he saw the sheep stolen. That, I submit, is perfectly plain. So that he is actually throwing over Gregg and turning him into an hostile witness because Gregg proves it was the night he went to Gregg’s; so that now there is a difference between them. The possibility of the calendar error, I submit, does not intervene at all. On the 17th the substantial point—the means of identification of Meikle—was absolute, and I submit, your Honours, it was so in fact. Then in 1895, in the Supreme Court, there were other important variations; and it is exceedingly intricate to keep them in mind, because there are slight variations—it is a sort of smudging. When giving evidence on his trial in 1895 (page 45), Lambert stated,—

“ When I was giving the evidence, the 17th was mentioned. I had a note of the day, but not of the date. It was day I went to Gregg’s for matches, and I had asked Gregg the date. I always thought it was a Wednesday, but was not sure. From what Gregg told me before I went into Court, I thought it was the 17th. I saw skins produced in Court. They were good skins—merino ewes. They were butcher’s skins. I should say they might be ten or twelve days old. I gave evidence in the Supreme Court. I fixed date in the Court as about time McGeorge left the hut.”

There is a contradiction of both his previous statements. He has upset the identification of the night he was at Gregg’s with the night of the crime. Here he goes back to that statement, but on the other hand blurs the date of McGeorge’s departure. He says that if the night he was at Gregg’s was the 17th, then it was on the 17th he saw the sheep stolen; but he is not quite certain as to the identification of the calendar. He is not certain that the identification with McGeorge’s departure is correct. The he says, in cross-examination,—

“ I produced a note in the Supreme Court and referred to it. The day, and not the date. It was either the day or the day after I saw Barclay that Meikle took the sheep.”

It is a curious thing that he takes note of the day and not he date, and yet it is the date and not the day he has sworn to; and he is absolutely wrong as to the day, because he states it was a Wednesday, while it is an undisputed fact as to McGeorge’s departure that it was on Monday. It is very difficult to make the matter absolutely plain, but it seems to me the best way of doing it is by means of a table which I will submit to my friend and your Honours for the purpose of distinguishing. Though I have made it up with as grave a responsibility as if I was on oath, I do not wish to be charged with perjury if there is any mistake in it. I have taken “ 17th ” as the calendar date, “ G ” to represent interview with Gregg, with the character “ C ” for crime, and “ McG ” for McGeorge. You will find that these start as a perfect equation, and which materially varies, as I submit, in the three versions given by Lambert:—

$$\begin{aligned} 1887, 17 &= G = C = McG \\ 1894, 17 &= G = C(\text{abt.}) = McG(\text{abt.}) \\ 1895, 17(\text{abt.}) &= G = C = McG(\text{abt.}). \end{aligned}$$

If that stands in 1887 it simply means that the equation was absolute. At the start there was Gregg—

Dr. Findlay: Cannot you extract an x to prove the stolen sheep as well?

Mr. Atkinson: My friend may extract that x . I have got y to prove my client is innocent. We accept the chronology of Lambert and Gregg at the trial, and say that ours harmonizes with the statement of both of them. On Meikle’s side Waters’s sale stood out, and appears all through in the notes at the original trial as the event which fixes the 17th. We accept the identification of the 17th with the day that Lambert was at Gregg’s, with the day McGeorge departed, with the day Arthur Meikle was ill, with the day Waddell and McGeorge proved Lambert was at Matura; so that it runs right through. So that taking “ W ” to represent Waters’s sale, and “ AT ” Arthur Meikle’s illness, Mr. Meikle’s chronology is brought into line with Lambert’s in the following equation:—

$$17 = W = G = McG = A1.$$

That was the equation in 1887, and I have already admitted that the last essential link snapped. It would have been A1 if it had held, but the extraordinary thing is that the proof was insufficient, although the equation was a true one. In 1895, however, the proof was supplied, and Lambert was also proved to be at Matura on the same night, and therefore the occurrence which he states he witnessed at Meikle’s could not have been seen by him. Might I add just the one point as to this which I omitted yesterday, and it might come in here. I put it that Lambert had sworn to seeing the sheep driven off between 9 and 10 o’clock; but I ought to call attention to the fact that he was in Matura that night between 8 and 9 o’clock, and that Lambert in his cross-examination (page 20) says he was at Meikle’s house between 8 and 9 o’clock the same evening. Fraser saw him at Matura—about sixteen miles distant by road—between 8 and 9 o’clock the same evening. Of course, it is impossible to cover that distance in the time which would leave him at Meikle’s house at the hour he stated, and the estimates on the point, I think I am correct in stating, for ordinary travelling were not less than two hours, and Waddell gives it at from two hours and a half to three hours, and apparently he was not referring to extraordinary conditions. Your Honours have it from Muir that he gave up travelling that night partly from the fatigue of his horse, and partly from the nature of the night and his distance from home. Thus, in 1895, not only was the original equation ($17 = G = McG = A1$) established, but the further term, “ = LM ” (*i.e.*, Lambert at Matura) was also added. When time has been fixed by circum-