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## The Game is Afoot!: The Significance of Donative Transfers in the Sherlock Holmes Canon

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# **THE GAME IS AFOOT! THE SIGNIFICANCE OF DONATIVE TRANSFERS IN THE SHERLOCK HOLMES CANON**

Edited by Stephen R. Alton\*

*Synopsis: I am pleased to present, with some relevant annotations, a manuscript written by John H. Watson, M.D., late of Her Majesty's Army Medical Department in Afghanistan. I found this manuscript in a Victorian-era trunk that my wife and I purchased at an antique shop in the Cotswolds town of Winchcombe during our recent visit to England. I am sorry to say that the manuscript is merely a fragment—albeit a rather extensive one—of an adventure of Dr. Watson and his great friend, the renowned consulting detective Mr. Sherlock Holmes. I have transcribed this felicitous discovery verbatim except for conforming its spelling and punctuation to modern American usage.*

*This manuscript confirms something that I have long known: issues relating to donative transfers—inheritances, wills, and trusts involving present possessory estates and future interests—permeate many of the great cases that Mr. Holmes solved. Given the prominence of these issues in the adventures of Mr. Holmes and Dr. Watson, perhaps no one should be surprised to learn that there came a day on which they discussed these issues in their rooms at 221B Baker Street in London. What a fortunate occurrence it was for me to find this document, which contains the lengthy and thorough dialogue between the good doctor and his great friend about these matters. For me, the most unexpected and congenial discovery in this manuscript is Dr. Watson's more-than-passing familiarity with these subjects. That Sherlock Holmes was well acquainted with the field of donative transfers is not particularly surprising, given his vast store of knowledge in so many diverse areas. But Watson's knowledge in this field is a revelation.*

*A brief explanation is in order about the citations and annotations that I have added to this manuscript. Where Watson refers to specific matters that appear elsewhere in his published writings, I have cited to those writings. Those matters to which he refers in the present manuscript for the first time and that have not been previously published do not, of course, bear any citations to Watson's prior writings. As the reader will see, Watson's previously published writings do not report much of what Watson has written here about Holmes's adventures.*

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*As for my own annotations herein, when I first read this manuscript it occurred to me that some analysis of certain relevant legal issues might be useful to the reader as a means of better elucidating some of the events that Dr. Watson has described. Therefore, I have supplied citations to and appropriate discussion of pertinent authorities—primarily treatises (some contemporaneous and some modern).*

*My great hope in publishing this fragmentary manuscript is that some reader may be able to supply the missing portion hereof, thus bringing to the many devotees of the stories of Sherlock Holmes and the writings of John Watson yet another tale of their exploits. My discovery of this manuscript raises the possibility that still others written by Dr. Watson may be extant outside his famous "dispatch box" in the vaults of Cox's Bank in London,<sup>1</sup> and that such other manuscripts will be unearthed in due time and presented by their discoverers to an eager and waiting public.*

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## **I. MR. SHERLOCK HOLMES, UNDISGUISED**

"I say, Holmes," said I one gray and foggy winter's morning in late February. "Where have you been at this rather early hour?"

It was not yet quarter-past seven o'clock, and Holmes had just reentered the rooms that we shared at 221B Baker Street. It was immediately apparent that my friend had been in disguise or, at the very least, incognito, for he did not wear his customary cape-backed coat of the Inverness style and his deerstalker hat. Instead, he wore a somewhat shabby gray frockcoat, spec-

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<sup>1</sup> See Christopher Morley, *In Memoriam Sherlock Holmes*, preface to ARTHUR CONAN DOYLE, *THE COMPLETE SHERLOCK HOLMES* 7, 7 (Doubleday & Co., n.d.) (1930) [hereinafter *COMPLETE*]. *The Complete Sherlock Holmes* contains all the published cases of Sherlock Holmes.

tacles, and a black bowler, all of which he began to remove as soon as he entered our rooms. He also removed the false moustache, which an instant before had been affixed firmly to his upper lip and which, until such removal, had given him a rather seedy mien.

"You know my methods, Watson. Why not use them to answer your own question?" he rejoined.

"Well, I daresay that you have been engaged in spying or observation of some sort."

"That, my dear Watson, is elementary. I would expect that you would be able to venture a bit farther than that. For example, I am able to state most emphatically that you yourself already have been out this morning. Indeed, I deduce that you walked to the telegraph office to send a wire to your stock broker."

"How on earth did you know that, Holmes?" I cried. "I must admit that you are entirely correct."

"Why, it is simplicity itself, Watson. I know that for the past several days you have been considering the purchase of some shares in an East Indian venture. You have alluded to this matter on more than one recent occasion. When I see that the financial page of *The Times* has been manhandled by you and that you clearly have been out earlier this morning—for there stand your hat and coat in their usual place near the door to these rooms with the moisture of this morning's fog still glistening upon them—I infer that you have quite made up your mind to make the purchase today. As the hour is too early to pay a call upon your broker in person, for he has not yet arrived at his office, I deduce that you must have arisen early, walked to the telegraph office, and from there sent a wire with instructions that he make the purchase immediately upon his arrival. That you walked, rather than rode, to the telegraph office I infer from the small bits of mud caked upon your shoes."

"Well done, Holmes," said I. "Once again, you have forged perfectly every link in your chain of inference. But, I must confess to remaining completely at sea on the matter of where you have been and whom you might have been observing at this hour."

By now, Holmes had discarded the frockcoat, spectacles, bowler, and false moustache, resulting in a not overly tidy heap of these items on the floor near the door to our rooms. He was sitting, surprisingly calmly and contemplatively given his auroral activities, on the divan. His high forehead and sharp nose were set off by his pipe, which he had lit and was now contentedly smoking.

"Ha, Watson!" he exclaimed, after a brief hiatus in the conversation. "Not *whom* so much as *what*. When four millions of living souls jostle in such proximity in this great sewer, this cesspit of a city, there is an excitement, an uber-life to it all."

"Surely, Holmes, you are, as you are wont to be, a bit too harsh in your judgment of our great city. Dr. Johnson said that when a man is tired of London, he is tired of life."

"Dr. Johnson also observed that when a man knows he is to be hanged in a fortnight, it concentrates his mind wonderfully." I simply shook my head in reply while Holmes tried to conciliate in his peculiar way. "Watson, I am pleased to have found in you my very own Boswell who most kindly—if not always entirely accurately—reports the little scientific criminal problems which I regularly encounter."<sup>2</sup>

"You are decidedly pawky this morning, Holmes. At the very least, you are rather philosophical, are you not? Has this philosophical vein something to do with your morning's perambulations?"

"Once again, Watson, I should say that you ought to be able to venture a bit farther than that. But, I shall no longer keep you in suspense. No doubt you will recall that late yesterday I received a telegram, the subject of which I failed to mention to you."

"Yes, I do."

"The telegram was from my old college acquaintance, Reginald Musgrave. Sir Reginald received a small amount of notoriety upon publication of your story, not very inventively entitled, *The Musgrave Ritual*."<sup>3</sup>

I overlooked Holmes's deprecation of my publication effort, for such depreciations are—as my regular readers know—relatively common. I arose

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<sup>2</sup> In *A Scandal in Bohemia*, Holmes says to Watson, "I am lost without my Boswell." ARTHUR CONAN DOYLE, *A Scandal in Bohemia*, in COMPLETE, *supra* note 1, at 161, 164.

<sup>3</sup> See ARTHUR CONAN DOYLE, *The Musgrave Ritual*, in COMPLETE, *supra* note 1, at 386 [hereinafter *The Musgrave Ritual*]. This interesting and historically based case, though not raising an issue directly relating to donative transfers, is a case of treasure trove. In the case, some Musgrave ancestor, who was a Royalist during the English Civil War, hid the golden crown of Charles I on the family estate. With the passage of time, this treasure was forgotten until one day in the second half of the nineteenth century Holmes provided the information that led to the crown's rediscovery. According to Holmes, the Musgrave family was able to retain possession of the crown, "though they had some legal bother and a considerable sum to pay before they were allowed to retain it." *Id.* at 397. Treasure trove is personal property of great value, such as gold, silver, money, or jewels, that is intentionally buried for later recovery; "[i]n England, ownership of a treasure trove was historically given to the Crown." JOSEPH WILLIAM SINGER, PROPERTY 802-03 (3d ed. 2010). Ironically, the subject of the Musgrave treasure trove that, under English law, would have belonged to the Crown of England was itself a royal crown of England.

from my chair and walked across the room to a shelf on which rested a rather small, wooden box. Sliding open the lid of the box, I extracted a rusty metal disc, which still bore a considerable greenish patina despite several attempts having been made to remove the same.

"Ah, yes, a fragment of the crown of Charles I," said Holmes, without bothering to raise his eyes from the point on the carpet on which they were fixed.

"What were you engaged in at this hour of the morning on behalf of Sir Reginald Musgrave, Holmes?"

"As you have said, Watson, I was engaged in observation on his behalf. Please allow me to explain, as it is clear that you will not venture far enough to discover the answer for yourself. I hasten to state at the outset that it is too early to say whether any crime has been committed in this matter, although almost certainly one is under contemplation.

"You will recall that Reginald Musgrave and I were students in the same college, where we became somewhat acquainted, though scarcely boon companions.<sup>4</sup> Sir Reginald is a scion of one of the oldest families in the realm.<sup>5</sup> Centuries ago, the Musgrave family split into two branches, and Sir Reginald was a member of the southern branch—the cadet branch—which had its seat in the manor house of Hurlstone in Sussex.<sup>6</sup> He became the lord of the manor upon the untimely death of his father and has remained the lord ever since.<sup>7</sup> Sir Reginald is the last of the Musgrave line; the northern branch completely ceased to exist when its last survivor died intestate several years ago. Although by that time the two branches were only very distantly related, Sir Reginald was the northern Musgraves' only heir at law; thus, he inherited their remaining lands. In this way, the two strands of the ancient Musgrave family have been rewoven in the person of Sir Reginald.

"Last week, I received a letter from Sir Reginald seeking my advice on a delicate and potentially dangerous matter. An individual who calls himself John Roland has written to Sir Reginald, claiming that he, rather than Sir Reginald, is the true heir at law of the northern Musgraves. This man Roland claims that he is more closely related by several degrees of consanguinity to the last northern Musgrave lord than is Sir Reginald. Specifically, this Roland claims to be the fourth cousin twice removed of the late north-

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<sup>4</sup> See *The Musgrave Ritual*, *supra* note 3, at 388.

<sup>5</sup> See *id.*

<sup>6</sup> See *id.*

<sup>7</sup> See *id.*

ern Lord Musgrave. It is an undeniable fact that Sir Reginald is the late lord's fifth cousin thrice removed. Obviously, this is a matter of grave concern to my college acquaintance, both emotionally and financially."

"Does this John Roland threaten to take legal action against Sir Reginald?" I asked.

"As of the moment, any such threat is merely veiled, Watson. But, if anything were to happen to Sir Reginald—perhaps an unfortunate accident that took his life, may heaven forbid!—it is becoming increasingly clear that this man John Roland would make a claim upon all of Sir Reginald's estate, for Roland also purports to be Sir Reginald's sole heir at law."

"Does not Sir Reginald have a will, Holmes?"

"I myself have inquired of Sir Reginald on this point, Watson, and have learned that while he does possess a will, there may be some question as to the will's validity. In order to be valid under our English Wills Act, the testator must sign his will, or acknowledge his signature thereto, in the presence of two witnesses who must subscribe the will in the presence of the testator and in the presence of each other.<sup>8</sup> It appears that the manner of the execution of Sir Reginald's will may not have complied strictly with our Wills Act, and, therefore, the instrument may not be valid when the inevitable day dawns on which it must speak.<sup>9</sup> I have advised Sir Reginald to consult his solicitor posthaste for advice on this point, but, as is sometimes the case, the press of his business has prevented him from doing so. In the meanwhile, I have made some inquiries about Mr. John Roland and have found that the waters surrounding him are deep—deep and murky."

## II. THE ENTAILMENT OF THE BASKERVILLES

Elsewhere, in my work entitled *A Study in Scarlet*,<sup>10</sup> I noted that Holmes possessed a "good practical knowledge of British law."<sup>11</sup> Since those early days with Holmes, his detailed knowledge of our law has often amazed me, such that I now must amend my prior statement and declare that his knowledge of British law not only is excellent but also is both broad

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<sup>8</sup> See Wills Act, 1837, 7 Will. 4 & 1 Vict., c. 26, § 9 (Eng.).

<sup>9</sup> See generally *In the Goods of Gunstan*, [1882] 7 P.D. 102 (Eng.) (a contemporaneous English case holding that a will not executed in perfect compliance with the Wills Act of 1837 is invalid and therefore not admissible to probate.)

<sup>10</sup> See ARTHUR CONAN DOYLE, *A Study in Scarlet*, in COMPLETE, *supra* note 1, at 15 [hereinafter *A Study in Scarlet*].

<sup>11</sup> *Id.* at 22.

and deep.<sup>12</sup> His knowledge of English criminal law is thorough, and he possesses a first-rate knowledge of such useful areas of our law as inheritances,

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<sup>12</sup> More than half a century ago, in an article in the *American Bar Association Journal*, an attorney named Albert Blaustein concluded that, given his knowledge of the law, Sherlock Holmes most likely was a lawyer. See Albert P. Blaustein, *Sherlock Holmes: Was Conan Doyle's Famed Detective a Lawyer?*, 34 A.B.A. J. 473 (1948). According to Blaustein, Holmes "talked like a lawyer." *Id.* at 474. Blaustein's evidence was based in part on Holmes's use of some legal terms, as Watson reported in his writings; according to Blaustein, these terms included *depose* and *reversion*. See *id.* Blaustein's evidence also included seven citations to situations in which Holmes arguably acted like a lawyer or a judge. See *id.* This evidence is a flimsy foundation on which to base the conclusion that Holmes was a lawyer.

In *A Study in Scarlet*, perhaps indicative of his legal bent, while waiting for a person to answer an advertisement that he had placed, Holmes passed time by glancing at a seventeenth century legal treatise, *De Jure inter Gentes*, that he had purchased the day before; he commented that its owner must have been some "pragmatical seventeenth century lawyer, I suppose." See *A Study in Scarlet*, *supra* note 10, at 38. In his 1948 ABA Journal article, Albert Blaustein did not cite this passage from *A Study in Scarlet* in support of his thesis that Holmes was a lawyer. See generally Blaustein, *supra*, at 473-74. Certainly, this fact would have provided at least some additional evidence for Blaustein's conclusion.

In 2002, the University of Minnesota Law Library mounted a special exhibition entitled "Sherlock Holmes and the Law." The exhibition acknowledges as its inspiration an earlier 1988 exhibition by the Harvard Law Library, also entitled "Sherlock Holmes and the Law." Among the books in the University of Minnesota Law Library's exhibition was *Juris Et Judicii Feialis, Sive Juris Inter Gentes*, which was published in 1650 in Oxford. This book, by Oxford University Professor Richard Zouche, was an early treatise on international law. Apparently, it was this treatise that Holmes thumbed through while waiting for the answer to his advertisement in *A Study in Scarlet*. The checklist of the Minnesota Law Library's exhibition notes that "[p]rior to Holmes's discovery of the 1642 edition, it was thought that the Oxford 1650 edition was the first printing of this classic in international law." ARTHUR C. PULLING RARE BOOKS COLLECTION, UNIV. OF MINN. LAW LIBRARY, A SHERLOCK HOLMES GALA: SHERLOCK HOLMES AND THE LAW, AN EXHIBITION, SELECTIVE CHECKLIST OF THE EXHIBITION (2002), available at <http://library.law.umn.edu/uploads/Xo/KW/XoKWqTaKZ6MC2NsbLTpjw/holmes-exhibition-brochure.pdf>.

As for Blaustein's assertion that Sherlock Holmes was a lawyer, one wonders how much firmer his claim would have been if Blaustein had had the benefit of the present manuscript. This manuscript provides a great deal of evidence for such a conclusion. Nevertheless, nowhere in Watson's writings (including this manuscript) does Watson ever clearly state—or even strongly imply—that Holmes was a lawyer. Despite the discovery and publication of the present manuscript, one still is left to speculate about whether Holmes in fact might have been a lawyer. The most one can conclude is that Holmes had a good deal of knowledge of some parts of the law and that he may have learned at least some of this knowledge in the course of his studies at his unnamed British university. If Holmes were a lawyer, this situation would raise some interesting—but sadly, unanswerable—questions, such as: Was Holmes a barrister or solicitor? Did he ever directly engage in the private practice of law? Did he pursue an articled clerkship as part of his legal training? Alas, the published writings of Dr. Watson do not answer any of these questions.



wills, trusts, and possessory estates in land and their related future interests. How often, in the course of his investigations, has his knowledge of the law relating to these matters, specifically, and to donative transfers, generally, proven to be of the utmost importance to the solution of a case? How often, I thought, had the miscreant's motivation for his crime arisen from a desire for an ill-gotten inheritance or bequest or for a quicker succession to a future interest either for life or in fee simple or fee tail?

"You are correct, Watson," replied Holmes, reading my thoughts. "My knowledge of British law—in particular, that of the estates of deceased persons, trusts, and present possessory estates in land and future interests—has proven most useful on many occasions in our adventures. Indeed, I pursued a number of courses in the law during my years at the university, and I found the field of donative transfers to be one ripe for plowing."

I did not pause to ask Holmes how he had read my mind. Instead, I continued my part of the conversation—this time, aloud. "Your most celebrated case in which such knowledge proved more than useful—it proved decisive—was *The Hound of the Baskervilles*."<sup>13</sup>

"Quite so, Watson. As you will recall, Sir Henry Baskerville was not the last of the Baskerville line. In point of fact, he merely was the penultimate heir to the family title and fortune. Therein lay both the motive for, and the solution to, the mystery. The man who so cunningly tried to murder Sir Henry—and who came so devilishly close to succeeding in his endeavor by his brilliant use of the old legend of the fiendish hound as a starting point for his plot—called himself 'Stapleton.' This man Stapleton was in reality the son of Rodger Baskerville, the same Rodger Baskerville who was the youngest brother both of Sir Charles Baskerville and of Sir Henry's deceased father."<sup>14</sup> You know how Stapleton earlier had succeeded, through his use of a savage hound, in scaring Sir Charles to death.

"On the day we met Sir Charles Baskerville's friend and physician, Dr. James Mortimer, who was both the executor of Sir Charles's will and the trustee of his trust, Dr. Mortimer averred that Sir Henry was 'the last of the Baskervilles.'<sup>15</sup> According to Dr. Mortimer, Rodger Baskerville, the young-

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<sup>13</sup> See ARTHUR CONAN DOYLE, *The Hound of the Baskervilles*, in COMPLETE, *supra* note 1, at 667 [hereinafter *The Hound of the Baskervilles*].

<sup>14</sup> See *id.* at 681, 761.

<sup>15</sup> *Id.* at 681. Readers of *The Hound of the Baskervilles* will recall, perhaps with a smile, Dr. Mortimer's first reaction on meeting Sherlock Holmes. Mortimer commented with surprise and delight on the appearance of Holmes's head. Said Mortimer,

I had hardly expected so dolichocephalic a skull or such well-marked supra-orbital development. Would you have any objection to my running

est of the three Baskerville brothers, had 'made England too hot to hold him, fled to Central America, and died there in 1876 of yellow fever.'<sup>16</sup> This Baskerville, who fled Great Britain with 'a sinister reputation,' was thought to have died both unmarried and childless.<sup>17</sup> In fact, as I discovered in the course of my researches into the Baskerville tragedy, Rodger Baskerville had married in Central America and had produced one son, the man who called himself Stapleton, but who in fact was the younger Rodger Baskerville and indeed was the last of the Baskerville line.<sup>18</sup>

"This younger Rodger Baskerville had made researches of his own and had discovered that only his uncle, Sir Charles Baskerville, and his first cousin, Sir Henry Baskerville, stood between himself and the inheritance of the considerable Baskerville fortune.<sup>19</sup> Initially, Stapleton-cum-Rodger may have erroneously believed that only Sir Charles's life intervened, but he soon learned of Sir Henry's existence from none other than Dr. Mortimer, who also told Stapleton about the arrival of Henry Baskerville from Canada.<sup>20</sup>

"My first clue in the chain of inferences that led to the solution of the Baskerville mystery was that Sir Charles, who himself had never married and was indeed childless, had died testate; the baronet's will left almost all of his quite considerable estate to our friend Sir Henry Baskerville, the son of Sir Charles's late younger brother who had borne the same name.<sup>21</sup> As you may recall, Watson, I inquired of Dr. Mortimer who the beneficiaries of Sir Charles's will might be.<sup>22</sup> Dr. Mortimer informed me that Sir Charles did not keep secret the terms of his will and that there were a number of beneficiaries, among whom were more than a few charitable institutions.<sup>23</sup>

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my finger along your parietal fissure? A cast of your skull, sir, until the original is available, would be an ornament to any anthropological museum. It is not my intention to be fulsome, but I confess that I covet your skull.

*Id.* at 672.

Watson described Holmes's immediate reaction: "Sherlock Holmes waved our strange visitor into a chair. 'You are an enthusiast in your line of thought, I perceive, sir, as I am in mine,' said he." *Id.*

<sup>16</sup> *Id.* at 681.

<sup>17</sup> *Id.* at 761.

<sup>18</sup> *See id.*

<sup>19</sup> *See id.* at 762.

<sup>20</sup> *See id.* at 763.

<sup>21</sup> *See id.* at 694.

<sup>22</sup> *See id.*

<sup>23</sup> *See id.*

Dr. Mortimer himself, Mr. and Mrs. Barrymore—the couple who took care of Baskerville Hall—and some other individuals also received relatively minor bequests in Sir Charles's will.<sup>24</sup> However, the main portion of Sir Charles's estate was the residue, which amounted to almost three quarters of a million pounds and which was left in its entirety to Sir Henry.<sup>25</sup> At the time, I commented that that this vast sum was 'a stake for which a man might well play a desperate game.'<sup>26</sup>

"So you see, Watson, even at the outset of my investigation into the Baskerville problem, I realized that the death of an intervening legatee or heir might be a strong motivation for an evil man to do away first with Sir Charles and then with Sir Henry. But, who might be this ultimate legatee or heir? Ah, therein lay the key to unlocking the door to this mystery! Stapleton had the advantage of me, for he could see my hand while, at first, I could not see his.

"In time, my efforts changed this situation. On the day in this very room on which Dr. Mortimer, in the presence of Sir Henry and in response to my interrogatories, related his knowledge to us, the good doctor imparted further information that was of great use to me. As you may remember, I asked Dr. Mortimer another question: 'Supposing that anything happened to our young friend here [by whom I meant Sir Henry Baskerville]—you will forgive the unpleasant hypothesis!—who would inherit the estate?'<sup>27</sup> To this question, Dr. Mortimer responded that 'the estate would descend to the Desmonds, who are distant cousins' and that the Desmond heir, Mr. James Desmond, was 'an elderly clergyman in Westmoreland' and 'a man of venerable appearance and of saintly life.'<sup>28</sup> Probing only slightly further, I learned that Mr. Desmond would inherit the estate because it was entailed and that Desmond also would inherit the Baskerville fortune in the event that Sir Henry were to die intestate.<sup>29</sup> A moment later, Sir Henry told me that he had not yet made his will and that, on any account, he felt that the money, the title, and the estate should all descend together, for '[h]ow is the owner [of Baskerville Hall] going to restore the glories of the Baskervilles if he has not money enough to keep up the property? House, land, and dollars

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<sup>24</sup> *See id.*

<sup>25</sup> *See id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 694-95.

<sup>28</sup> *Id.*

<sup>29</sup> *See id.*

must go together.’<sup>30</sup> You will notice, Watson, that Sir Henry referred to ‘dollars’ rather than to pounds sterling, reflecting his colonial upbringing in Canada.

“Watson, you would hardly call me naïf in matters of human nature. Instantly, I saw the grave temptation to murder. This clergyman of venerable appearance and saintly life might well not have been what he seemed to be. In the alternative, there might be some other man of a closer degree of consanguinity who might profit from Sir Henry’s demise. I began my investigation with the working hypothesis that the man who might profit from the death of both Sir Charles and Sir Henry was behind the reappearance of the family’s cursed canine, although not for a moment did I believe the outlandish tale of a ghostly hound. I knew that the hound must be made of flesh and blood and must have been trained, kept, and loosed by some person with murderous intentions. The elderly and saintly clergyman, Mr. Desmond, was unlikely to have either the malignant character or the required expertise in the handling of dogs to be the man behind this canine. Ironically, Sir Charles had sealed his own doom by relating to this Stapleton the legend of the hound, thus placing in the hands of this clever and treacherous villain a murder weapon which would be most difficult to trace.”<sup>31</sup>

Continued Holmes, “thus, put in mind of these matters, I commenced by consulting the public records and there encountered Sir Charles’s will, which expressly stated that his two younger brothers, Henry and Rodger, had predeceased him and that only Henry had left issue. The will was in all details just as our friend Dr. Mortimer had said, with the estate’s residue being left to the younger Henry Baskerville. My inquiries also confirmed that Baskerville Hall and the surrounding lands were indeed entailed in the male line—that is, a fee tail male.”<sup>32</sup> So title, money, and lands had come to

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<sup>30</sup> *Id.*

<sup>31</sup> *See id.* at 762.

<sup>32</sup> Readers familiar with the law of property, in particular the common law system of present possessory estates and future interests, will recognize the fee tail male. In England, the fee tail male was an estate that the male line inherited according to the English rules of primogeniture, with the eldest son of the eldest son inheriting what, to the rest of the world, seemed to be more like a life estate in the entailed land. *See* A.W. BRIAN SIMPSON, A HISTORY OF THE LAND LAW 90-91 (2d ed. 1986). The early English common law judges held that the tenant in tail could not alienate his interest in the entailed land beyond his own lifetime because the entailment had the “peculiar characteristic of descending to a limited class of heirs indefinitely [i.e., the male issue of the tenant in tail through primogeniture].” *Id.* at 84.

Indeed so far as powers of management and the rest of the world were concerned, the tenant in tail was treated as a mere life tenant . . . In a

Sir Henry upon Sir Charles's death and would descend to the elderly clergyman Mr. Desmond upon Sir Henry's death, were the latter to die intestate and without issue. That is, unless there might be a closer Baskerville heir than the saintly Mr. James Desmond.

"We already knew that Rodger Baskerville, the youngest brother of Sir Charles, had died of yellow fever, reportedly unmarried and childless, in Central America in 1876, for so Dr. Mortimer had informed us.<sup>33</sup> Thus, did Rodger predecease his brother Charles. But, Central America is far away from Great Britain, Watson, and facts may easily be hidden in that considerable distance and further shrouded by the transatlantic mists and tempests. Perhaps Rodger Baskerville had married, but left no surviving descendants. Or, perhaps he never married but had fathered a male bastard. As you probably are aware, Watson, our English laws of inheritance would not recognize a bastard as the heir of either Sir Charles or Sir Henry.<sup>34</sup> Thus, neither of these alternatives would alter the current state of affairs and furnish a closer heir than Mr. Desmond.

"But, suppose—just suppose—that Rodger Baskerville, upon expiring of yellow fever in the wilds of Central America, had not died unmarried *and* childless? Suppose that he had married and left legitimate male issue who would succeed to the entailed Baskerville estate and inherit the Baskerville

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sense entailed lands were treated as family property, not the property of any individual, but the theory of the law did not explicitly recognize the family as an entity capable of owning. So an underlying conception of family ownership had to be expressed in terms of individuals holding estates in land.

*Id.* at 90.

A fee tail was a way for the grantor or donor of the entailed estate to ensure that land indefinitely stayed in the grantee's or donee's family—perhaps for centuries: "As long as there was a lineal heir to take, the estate in fee tail could go on indefinitely." THOMAS F. BERGIN & PAUL G. HASKELL, PREFACE TO ESTATES IN LAND AND FUTURE INTERESTS 30 (2d ed. 1984). According to Professor Moynihan, "estates in tail male were an integral part of the English family settlement and were, therefore, very numerous in the eighteenth and nineteenth centuries." CORNELIUS J. MOYNIHAN, INTRODUCTION TO THE LAW OF REAL PROPERTY 40 (1962).

<sup>33</sup> See *The Hound of the Baskervilles*, *supra* note 13, at 681.

<sup>34</sup> See, e.g., 1 WILLIAM BLACKSTONE, COMMENTARIES \*447. According to Blackstone, "[t]he incapacity of a bastard consists principally in this, that he cannot be heir to any one, neither can he have heirs, but of his own body; for, being *nullius filius*, he is therefore of kin to nobody, and has no ancestor from whom any inheritable blood can be derived." *Id.*; see also 1 HERBERT BROOM & EDWARD A. HADLEY, COMMENTARIES ON THE LAWS OF ENGLAND \*564. Broom and Hadley recite, virtually verbatim and without specific attribution, the rule found in Blackstone on this point. Thus, this rule remained unchanged in England, even in the second half of the nineteenth century—Holmes's own day.

fortune if Sir Charles's legatee, Sir Henry, were himself to die intestate and without issue? Might this ultimate yet unknown Baskerville heir be living in England? Might he be residing close enough to Baskerville Hall to keep watch over Sir Henry Baskerville, who was his cousin and the Hall's latest lord? These were the questions that I continued to ponder as my researches proceeded."

Holmes shifted his position on the divan and relit his pipe. He shut his eyes momentarily, then opened them and continued his narration. "Dr. Mortimer, when first we met him, gave me a valuable clue—really, the key—that might have gone unnoticed amid so much other information. Mortimer said that he had heard that Rodger Baskerville 'was the very image' of the family picture of Sir Hugo Baskerville, the Baskerville ancestor of ill repute who first encountered the hellish hound.<sup>35</sup> This key unlocked the door when I first met Stapleton, whose strong family resemblance to the Baskervilles was unmistakable; as I told you when we last discussed this case, 'the family portrait did not lie.'<sup>36</sup> It was in this way that the basis for the solution of the Baskerville mystery was formed in my own mind."

"Incidentally, Watson," said Holmes, "I wonder whether you are aware of the fact that Sir Henry married Stapleton's widow, who had passed for Stapleton's sister both at the time of the murder of Sir Charles and the subsequent attempt on the life of Sir Henry."<sup>37</sup>

"Indeed, I was ignorant of this most agreeable outcome," I exclaimed. "I remember that Sir Henry was most saddened by her deception, for he had developed a deep and sincere love for this woman."<sup>38</sup>

"Quite correct, Watson," continued Holmes. "You may remember that the putative Mrs. Stapleton—who in reality was Beryl Garcia, one of the great beauties of Costa Rica<sup>39</sup>—had refused to participate in her husband's plan to murder Sir Henry,<sup>40</sup> just as she had not been directly complicit in her husband's earlier plot against Sir Charles.<sup>41</sup> For her refusal to participate in

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<sup>35</sup> *The Hound of the Baskervilles*, *supra* note 13, at 681.

<sup>36</sup> *Id.* at 761.

<sup>37</sup> *See id.* at 761-66. Watson reported earlier that Stapleton's wife had passed as his sister, but this marriage of Sir Henry and Stapleton's widow had been previously unreported. I believe that the myriad fans of *The Hound of the Baskervilles*, who will remember how Stapleton met his own death in the mire on the moor at the case's denouement, will be pleased to learn of this marriage.

<sup>38</sup> *See id.* at 765.

<sup>39</sup> *See id.* at 761.

<sup>40</sup> *See id.* at 765-66.

<sup>41</sup> *See id.* at 761-63.

Stapleton's scheme against Sir Henry, whom she had tried to warn without implicating her husband, this great beauty suffered at the hands of her violent husband.<sup>42</sup> I am pleased to say that all of this is behind Sir Henry and Lady Baskerville, who now live happily at Baskerville Hall with their two young sons, whose fortunate birth has secured the Baskerville succession."<sup>43</sup>

### III. OTHER ENTAILMENTS, OTHER INHERITANCES

"Well, Holmes," said I, after my friend had finished his disquisition, "the matter of the Baskervilles and their hell-hound is certainly not the only mystery in which an inheritance, a legacy, or some similar donative transfer provided the motivation for a crime that you have investigated and solved, nor wherein your knowledge of the law in these areas was indispensable to your solution in the matter. Take, for instance, the problem of the disappearance of Lord Saltire from the Priory School."<sup>44</sup>

"Ah, yes. Watson, you refer to the kidnapping of the son of the Duke of Holderness from the Priory School, which, at the time, was under the headmastership of Dr. Thorneycroft Huxtable."<sup>45</sup> The young Lord Saltire was the only legitimate child of the Duke; however, his grace had previously secretly fathered a son by a woman to whom he never was married.<sup>46</sup> The Duke kept this illegitimate elder son, Mr. James Wilder, close to him by appointing Wilder as his secretary; the Duke did so, by his own admission, because he 'could see his mother's face' in Wilder.<sup>47</sup> Wilder envied the Duke's legitimate son, bearing the young Lord Saltire an 'unreasoning and fanatical' hatred.<sup>48</sup> Wilder designed a plot to kidnap Lord Saltire; as his agent in this scheme, Wilder employed one Reuben Hayes—a thoroughly depraved individual who was a former tenant of the Duke and who bore his grace great ill-will.<sup>49</sup> What Wilder did not foresee was that Hayes would commit murder, beating to death one Heidegger, the unfortunate German master of the Priory School, who had attempted to halt the kidnapping.<sup>50</sup>

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<sup>42</sup> See *id.* at 763, 766.

<sup>43</sup> Doubtless, this fact too will be welcome news to *The Hound of the Baskervilles* devotees.

<sup>44</sup> See ARTHUR CONAN DOYLE, *The Adventure of the Priory School*, in COMPLETE, *supra* note 1, at 538 [hereinafter *The Adventure of the Priory School*].

<sup>45</sup> See *id.* at 538-40.

<sup>46</sup> See *id.* at 556.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 557.

<sup>49</sup> See *id.* at 556-57.

<sup>50</sup> See *id.*

While Wilder himself took no part in the murder of the German master, he had devised the kidnapping scheme and thus he became an accessory to the murder.

"As you will recall, Watson, Wilder's motivation for the kidnapping was more than merely his envy or even his hatred for his young half-brother, Lord Saltire. No, Wilder's motivation was more pecuniary than that, and the Duke recognized this motivation. His Grace's estate was entailed, and as the Duke's only legitimate heir apparent, Lord Saltire stood to inherit the estate upon his father's death.<sup>51</sup> Wilder kidnapped his young half-brother in an effort to force their father, the Duke, to 'break' the entailment.<sup>52</sup> According to the Duke, Wilder was 'of opinion that it lay in my power . . . [to disentail the estate]. He intended to make a bargain with me—to restore Arthur [i.e., Lord Saltire] if I would break the entail, and so make it possible for the estate to be left to him [i.e., Wilder] by will.'<sup>53</sup> Wilder never secured the opportunity to make this bargain with his father because 'events moved too quickly for him';<sup>54</sup> the murder of Herr Heidegger intervened. It is unlikely in the extreme that the Duke would have yielded to Wilder and barred the entailment. So, as you see, Watson, here is another instance in which an entailment—or, in this case, the desire for disentailment—of an estate provided the motivation for crime: here, a kidnapping and a concomitant murder."

"Holmes, it comes to my mind that the disappearance of Lady Frances Carfax, who was the sole survivor of the family line of the late Earl of Rufton, was occasioned, at least in part, by the fact that the estate of the late

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<sup>51</sup> See *id.* at 557.

<sup>52</sup> See *id.*

<sup>53</sup> *Id.* The Duke's reluctance to bar or disentail the entailment was purely a matter of personal choice, for "[b]y the middle of the fifteenth century a variety of methods had been found which enabled entails to be barred." SIMPSON, *supra* note 32, at 91. Thus, by the end of the nineteenth century, the Duke—should he have chosen to do so—would have had several ways to disentail his entailed estate. Although a discussion of the various methods for disentailing an estate is far beyond the scope of this note, those readers who have an interest in learning more about such devices are referred to Professor Simpson's thorough treatment of the subject in *A History of the Land Law*. See generally *id.* at 122–37. As discussed above, illegitimate children could not inherit land at this time in England. See *supra* note 34. Thus, the only way for Wilder to have succeeded to his father's entailed estate would have been for the Duke first to bar the entailment and then to change his will to devise the estate to Wilder. While the Duke easily could have accomplished this as a matter of law, he obviously chose not to do so. Even if the Duke had yielded to any quid pro quo that Wilder demanded in return for Lord Saltire's safety, it is likely that a court would have found that Wilder coerced the Duke's actions and were thus void.

<sup>54</sup> *The Adventure of the Priory School*, *supra* note 44, at 557.



earl descended in the male line, leaving Lady Frances both landless and friendless.<sup>55</sup> However, the lady had some remarkable jewelry, which provided not merely the source of funds for her extensive travels but also the motive for a most unfortunate attempt on her life.<sup>56</sup> Perhaps the late Earl's estate was entailed?"

"Your memory is flawless in this matter, my dear Watson. And, indeed, you are correct when you surmise that Lord Rufton's estates had been entailed in the male line, which explains the relative poverty of Lady Frances."<sup>57</sup>

"Furthermore, Holmes, I recall that an inheritance was behind the disappearance of Mr. Godfrey Staunton, the celebrated three-quarter."<sup>58</sup>

"Well, I think it more proper to say that a disinheritance was to blame for Mr. Staunton's disappearance on the eve of the match between the Cambridge Varsity and their arch rivals from Oxford.<sup>59</sup> Mr. Staunton was the heir apparent and the presumed beneficiary of his uncle, Lord Mount-James.<sup>60</sup> However, young Staunton had secretly been married to a lovely young woman whom the miserly old lord regarded as being far below his own class; so she was, but solely as to the nobility of her lineage and not as to the nobility of her beauty, intelligence, or goodness—in all of which the young lady was by far the baronet's superior.<sup>61</sup> Staunton feared that disclosure of his marriage would enrage his uncle and furnish the crabbed old nobleman with a reason to disinherit the three-quarter.<sup>62</sup> Tragically, his young wife died of consumption."<sup>63</sup>

It was now half-past eight o'clock, and our colloquy was interrupted by a knock upon our door. "Ah, Mrs. Hudson," cried Holmes upon the entrance

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<sup>55</sup> See ARTHUR CONAN DOYLE, *The Disappearance of Lady Frances Carfax*, in COMPLETE, *supra* note 1, at 942, 942-43.

<sup>56</sup> See *id.* at 942-54.

<sup>57</sup> See *id.*

<sup>58</sup> See ARTHUR CONAN DOYLE, *The Adventure of the Missing Three-Quarter*, in COMPLETE, *supra* note 1, at 622 [hereinafter *The Adventure of the Missing Three-Quarter*]. For those who are unfamiliar with the game of rugby, a three-quarter—also known as a "three-quarter back"—is a "player . . . whose regular position is between the standoff half and the fullback." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2382 (1968).

<sup>59</sup> See *The Adventure of the Missing Three-Quarter*, *supra* note 58, at 623.

<sup>60</sup> See *id.* at 624.

<sup>61</sup> See *id.* at 635.

<sup>62</sup> See *id.*

<sup>63</sup> See *id.*

of our landlady into our rooms, “how good of you to anticipate both our hunger and its remedy.”

Mrs. Hudson neatly and efficiently laid our breakfast upon the table, exiting quietly after she had completed her work. Holmes and I retired to the breakfast table, where we began to dispatch our repast of boiled eggs, ham, toast, and orange marmalade. In the midst of our meal, Holmes’s encyclopedic memory brought forth another example of an inheritance having furnished the motive for criminal activity.

“Watson, in the matter which you imaginatively entitled, *The Adventure of the Solitary Cyclist*,<sup>64</sup> a most dastardly abduction was undertaken in an attempt to force a marriage between Miss Violet Smith and the blackguard Woodley.<sup>65</sup> And, for what purpose? Why, it was on account of an inheritance. Miss Smith’s long-lost uncle, Mr. Ralph Smith, had gone to Africa, there made his fortune, and there died intestate; Miss Smith was to inherit that fortune.<sup>66</sup> Carruthers, the conspirator who had fallen in love with Miss Smith and who, ultimately, helped to foil the plan, admitted that he and Woodley knew that Uncle Smith had not made a will and that Miss Smith was her uncle’s only heir at law.<sup>67</sup> Fortunately, Miss Smith’s story ended happily: she inherited her uncle’s large fortune and married her true fiancé.”<sup>68</sup>

I concurred that Miss Smith’s story, which for her had begun in the terror of an abduction and a forced marriage, had ended happily. For some reason, it brought to my mind *The Adventure of the Devil’s Foot*.<sup>69</sup> This particular mystery did not, strictly speaking, involve a donative transfer. However, the motive for the crime—the method of which was poisoning by an extract of the so-called devil’s-foot root (*radix pedis diaboli*)—was provided by the murderer’s desire to control the fortune of his sister and his two brothers.<sup>70</sup> The culprit, one Mortimer Tregennis, was one member of a

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<sup>64</sup> See ARTHUR CONAN DOYLE, *The Adventure of the Solitary Cyclist*, in COMPLETE, *supra* note 1, at 526.

<sup>65</sup> See *id.* at 526-38.

<sup>66</sup> See *id.* at 537-38.

<sup>67</sup> See *id.* at 537. Specifically, Holmes had posited to Carruthers that the motive for the scheme was that Miss Smith “was next of kin, no doubt, and you were aware that the old fellow would make no will,” which Carruthers did not deny, stating simply, “[Mr. Smith] [c]ouldn’t read or write.” *Id.*

<sup>68</sup> See *id.* at 538.

<sup>69</sup> See ARTHUR CONAN DOYLE, *The Adventure of the Devil’s Foot*, in COMPLETE, *supra* note 1, at 954.

<sup>70</sup> See *id.* at 968-69.

family of four siblings; the family had sold its tin-mining operations, apparently at a considerable profit.<sup>71</sup> In Tregennis's own duplicitous words, which he had uttered intending to shake Holmes from his trail, "there was some feeling about the division of the money and it stood between us for a time, but it was all forgiven and forgotten, and we were the best of friends."<sup>72</sup> Nothing of the sort was true, as we subsequently learned from Dr. Leon Sterndale, the African explorer and the lover of the sister, Miss Brenda Tregennis.<sup>73</sup> In Sterndale's words, "I was convinced that Mortimer Tregennis was the murderer; that for the sake of money, and with the idea, perhaps, that if the other members of his family were all insane he would be the sole guardian of their joint property, he had used the devil's-foot powder upon them, driven two of them out of their senses, and killed his sister Brenda."<sup>74</sup> As Sterndale told Holmes, Mortimer Tregennis's crime against his siblings, motivated simply by Tregennis's own greed, set the stage for Sterndale's revenge, which was the murder of Tregennis by the same method that Tregennis had used on his three siblings—the devil's-foot powder.<sup>75</sup>

#### IV. SOME TESTAMENTARY DISPOSITIONS OF NOTE

After we had finished our breakfast, Holmes returned to the divan. There, with his eyes shut, he smoked his pipe for many minutes before resuming our discussion. "You know, Watson, when I was firmly convinced that I was going to the Continent to meet my death at the hands of the late Professor Moriarty, I made my own will."<sup>76</sup>

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<sup>71</sup> See *id.* at 958.

<sup>72</sup> *Id.*

<sup>73</sup> See *id.* at 966-70. Sterndale referred to Miss Tregennis as "the one human being whom I have ever loved or who has ever loved me." *Id.* at 969.

<sup>74</sup> *Id.* at 969. Mortimer Tregennis stole the devil's-foot powder from Dr. Sterndale, which Tregennis then used to cause the death of Miss Tregennis and the madness of the other two Tregennis brothers. This case seems on the very edge of the subject of the present manuscript, but perhaps Sterndale used the word *guardian* in its technical, legal sense. A guardian is "[o]ne who has the legal authority and duty to care for another's person or property, esp[ecially] because of the other's infancy, incapacity, or disability." BLACK'S LAW DICTIONARY 774 (9th ed. 2009).

<sup>75</sup> See *id.* at 968-70. Sterndale stated that he acted "both as judge and executioner." *Id.* at 970.

<sup>76</sup> See ARTHUR CONAN DOYLE, *The Final Problem*, in COMPLETE, *supra* note 1, at 469, 480. In fact, Holmes's exact words, written in a note to Watson that the latter found near the scene of the apparent death of his great friend, were as follows: "I made every disposition of my property before leaving England and handed it to my brother Mycroft." *Id.*

"Never was I happier to have been mistaken as I was on the day that you entered my study in Kensington, apparently having returned from the dead.<sup>77</sup> Though I must confess, Holmes, that even at present it rankles a bit that you had entrusted your brother Mycroft with the disposition of your property rather than entrusting that task to me."<sup>78</sup>

"For this, Watson, I beg your forgiveness even to this day. However, as I told you at the time, 'it was all-important that it should be thought I was dead, and it is quite certain that you would not have written so convincing an account of my unhappy end had you not yourself thought that it was true.'"<sup>79</sup>

"If I do not intrude too much upon our friendship, Holmes, might I inquire whether your will still stands and whether I might now be honored with the execution of that instrument?" I asked.

"The disposition which I made lo those many years ago does indeed still stand, Watson, for I have had no reason to make any changes, save for one: A number of years ago, I executed a codicil naming you as my executor. This appointment should demonstrate, beyond cavil, the trust which I repose in you, my great and dear friend.

"Incidentally," continued Holmes, "you might find it of at least passing interest to know that the brilliant Professor Moriarty made a will which settled all his ill-gotten gains on the several lunatic asylums throughout England. Thus, in death, has the late professor of mathematics atoned at least in part for his many crimes and misdemeanors committed in life.

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<sup>77</sup> See ARTHUR CONAN DOYLE, *The Adventure of the Empty House*, in COMPLETE, *supra* note 1, at 483, 485-88.

<sup>78</sup> See *id.* at 487-88.

<sup>79</sup> *Id.* at 488. As readers of *The Adventure of the Empty House* will recall, Holmes saw a great opportunity in the plausible but erroneous report of his death in *The Final Problem*. Holmes explained to Watson that while wrestling with Professor Moriarty in hand-to-hand combat, he was able to maintain his balance while Moriarty plunged to his death at Reichenbach Falls in Switzerland. As Holmes recounted the deadly contest between himself and his great rival:

We tottered together upon the brink of the fall. I have some knowledge, however, of baritsu, or the Japanese system of wrestling, which has more than once been very useful to me. I slipped through his [i.e., Moriarty's] grip, and he with a horrible scream kicked madly for a few seconds, and clawed the air with both his hands. But for all his efforts he could not get his balance, and over he went. With my face over the brink, I saw him fall for a long way. Then he struck a rock, bounded off, and splashed into the water.

*Id.* at 486.

"And, Watson, while we are on the subject of wills, I wonder whether you will instantly recall the will that formed the basis for the evil doings in the problem which you called *The Adventure of the Norwood Builder*."<sup>80</sup>

I nodded in assent, as Holmes relit his pipe. After a deep draw on the meerscham, he proceeded.

"At the outset of that adventure, I lamented that London had become 'a singularly uninteresting city since the death of the late lamented Professor Moriarty.'<sup>81</sup> No sooner had I expressed that sentiment to you than we were visited in these very rooms by the unfortunate young solicitor, John Hector McFarlane, the junior partner of the firm of Graham and McFarlane.<sup>82</sup> Even as McFarlane was recounting the terrible predicament in which he found himself, Inspector Lestrade of Scotland Yard arrived at our door to arrest the young solicitor, just as McFarlane had feared would happen."<sup>83</sup>

"As your Boswell, there are relatively few of your adventures which I do not instantly recall, Holmes. This one, in particular, impressed itself upon my mind, given the fiendish scheme devised by Jonas Oldacre to frame young McFarlane for murder."

"Quite right you are, Watson. Mr. Oldacre had once been a suitor of McFarlane's mother, but the good woman had rejected the blackguard's suit, opining that Oldacre was 'more like a malignant and cunning ape than a human being.'<sup>84</sup> Incidentally, I believe that her pronouncement defames the family of great apes, for it has been my experience that these beasts are neither malignant nor cunning but are—at least in captivity in our zoological parks—rather benign creatures, in spite of their considerable size. Would that the same could be said for the human members of this family!"

After another draw on his pipe, Holmes languidly blew several interlocking smoke rings and resumed his narration. "I told our friend Lestrade that this ancient injury inflicted by Mrs. McFarlane had rankled Oldacre 'in his wicked, scheming brain, and all his life he has longed for vengeance, but never seen his chance.'<sup>85</sup> Oldacre was a builder in Norwood; he had previously achieved a good measure of financial success but had lately fallen

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<sup>80</sup> See ARTHUR CONAN DOYLE, *The Adventure of the Norwood Builder*, in COMPLETE, *supra* note 1, at 496 [hereinafter *The Adventure of the Norwood Builder*].

<sup>81</sup> *Id.*

<sup>82</sup> See *id.* at 497-98.

<sup>83</sup> See *id.* at 497, 499.

<sup>84</sup> *Id.* at 503.

<sup>85</sup> *Id.* at 510.

upon difficult times.<sup>86</sup> He hit upon a scheme to kill two birds with one stone, as it were: to swindle his creditors and at the same time to wreak vengeance upon his erstwhile love, Mrs. McFarlane.<sup>87</sup> Oldacre began the execution of his plan when he visited McFarlane in the solicitor's offices and engaged the young man to draw his will, which left to McFarlane almost all of Oldacre's estate.<sup>88</sup> McFarlane was astonished to see that this 'little ferret-like man, with white eyelashes,' desired to make such a will.<sup>89</sup>

"Upon completing the assignment and securing Oldacre's execution of the will, the elder man asked the young solicitor to come to his home in Norwood that evening to review other pertinent documents, but he exhorted the younger man not to tell his parents about this matter."<sup>90</sup> Oldacre's expla-

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<sup>86</sup> See *id.* at 497, 510.

<sup>87</sup> See *id.* at 510.

<sup>88</sup> See *id.* at 499-500.

<sup>89</sup> *Id.* at 499. Oldacre said that he would wait while McFarlane "cast it into proper legal shape." *Id.*

<sup>90</sup> See *id.* at 500. Some explanation is appropriate with respect to Jonas Oldacre's execution of the will that John Hector McFarlane drafted. McFarlane tells Holmes that "[t]he will was duly finished, signed, and witnessed by my [i.e., McFarlane's] clerk." *Id.* McFarlane appears to be saying that his clerk was the only subscribing witness to Oldacre's will, for he does not indicate that there were any other witnesses. This is odd, as the English Wills Act requires two subscribing witnesses. See Wills Act, 1837, 7 Will. 4 & 1 Vict., c. 26, § 9. Therefore, this will would not have been valid if only one witness subscribed it.

Was McFarlane himself the other witness? We are not told, but even if he were the second witness, he would be an "interested" witness—that is, one who receives a benefit under the will he is witnessing. By this time in England, the law would have deprived an interested witness of any benefit under the will. See Wills Act § 15. If McFarlane were himself the second subscribing witness to the will he drafted for Oldacre, he could not have taken any interest under that will. Thus, on closer inspection, Oldacre's plan to frame McFarlane by the use of this bequest apparently would not have worked.

This unusual situation is of more than passing interest. Was McFarlane simply ignorant of the English Wills Act's requirements for due execution of the will or ignorant of the Act's provision that would have invalidated any interest he took under the will if he were the second witness? That is, was he simply negligent? This seems rather unlikely, because the execution requirements of the Wills Act and the purging of an interested witness's interest under the will are clear and should have been well-known to anyone who had ever drafted and overseen the execution of a will.

Alternatively, was McFarlane actually quite clever here? After all, his client Oldacre was likely to be ignorant of the relevant English law. By providing only one subscribing witness, McFarlane's clerk, or by himself acting as the second subscribing—but interested—witness, McFarlane might have intentionally sabotaged the validity of both the will and his interest under it while appearing to follow Oldacre's instructions. Incidentally, this would have been unethical on many counts.

Why would McFarlane have engaged in such conduct? Perhaps he was wary of Oldacre and wanted to provide himself with a defense should events unfold as they in fact did.

nation both for the unexpected legacy and for the secrecy surrounding it was to the effect that he had known Mr. and Mrs. McFarlane in his youth and had heard of their son as 'a very deserving young man'; the scoundrel insisted that the young McFarlane promise to keep this matter 'as a little surprise' for his parents.<sup>91</sup>

"When McFarlane appeared at Oldacre's house in Norwood that same evening, he was admitted by the housekeeper, who was a confederate of Oldacre in this scheme against McFarlane.<sup>92</sup> McFarlane departed the house several hours later, leaving behind his walking stick, which Oldacre had arranged to be hidden, in order to use it as evidence to implicate the young man in the events that were about to transpire.<sup>93</sup> In addition to the walking stick, Oldacre had managed to get McFarlane to place his thumb on a wax seal on one of those documents which Oldacre was so insistent that McFarlane should inspect that evening.<sup>94</sup> The next day, Oldacre made a wax impression of the seal bearing McFarlane's thumb-mark, dipped the impression in his own blood, which was drawn with a pin-prick, and put the mark on the wall of the home's front hall.<sup>95</sup> With the incriminating evidence of McFarlane's walking stick and his bloody thumb-mark in the home, Oldacre simply vanished in an attempt to convince the world that McFarlane had murdered him; the motivation for the purported crime was the legacy left to McFarlane in the will that the young solicitor had drawn for Oldacre earlier that very day.<sup>96</sup>

"Thus, in one fell swoop, Oldacre—had his little gambit succeeded—would have rid himself of his creditors and revenged himself upon the

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However, there is no indication either in McFarlane's narrative of the matter or in Holmes's resolution of the case that McFarlane did this intentionally. Certainly, it would have required an extraordinary amount of farsighted, quick thinking on McFarlane's part had he intentionally made the will invalid. This leaves McFarlane's professional malpractice as the sole explanation of his actions relating to the witnessing of the will. McFarlane's negligence is less puzzling, however, than is Holmes's failure to notice McFarlane's malpractice and to make it his first clue in the case. An oversight this basic—this elementary—casts some doubt on the claim that Holmes himself might have been a lawyer. *See supra* note 12. Were Holmes an attorney familiar with the due execution of wills and the purging of the legacies of interested witnesses, he should immediately have realized that McFarlane's negligence was an important clue. Rather inexplicably, Holmes failed to do so.

<sup>91</sup> *The Adventure of the Norwood Builder*, *supra* note 80, at 500.

<sup>92</sup> *See id.*

<sup>93</sup> *See id.*

<sup>94</sup> *See id.* at 509.

<sup>95</sup> *See id.* at 506-07, 509-10.

<sup>96</sup> *See id.* at 509-10.

woman who had jilted him so many years ago.<sup>97</sup> As a builder, Oldacre had designed and constructed a hiding place behind a false wall on the upper floor of his house.<sup>98</sup> There he hid, aided by his loyal housekeeper, until, as you remember, I quite literally smoked him out of his hiding place, first to the annoyance and then to the astonishment and delight of our friend Lestrade.<sup>99</sup> When confronted with his malfeasance, the sniveling Oldacre claimed that he had merely intended his actions to be a practical joke and that he had done no harm.<sup>100</sup>

“Certainly, the thumb-mark—which had not been there the previous day when I examined the house so thoroughly—indicated that the odious Oldacre was a vindictive and malicious man, who would stick at nothing in his scheme, which was ‘a masterpiece of villainy.’<sup>101</sup> The entire plot was initiated with the will, which seemed to provide a clear motive for the crime.<sup>102</sup> One thing which struck me immediately—and which I did not mention at the time—was this unusual will. It indeed would be a rare thing for a solicitor to agree to draw a will that names him as the primary legatee. I look forward to the day when such a practice by a solicitor will be viewed as unethical or when this practice will invalidate the gift entirely; I also look forward to the day when a legatee or heir who slays a decedent in whose estate the slayer would otherwise share will be barred by the slayer’s own wrong-doing from so sharing in the decedent’s estate.<sup>103</sup> In the Oldacre mat-

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<sup>97</sup> *See id.*

<sup>98</sup> *See id.* at 509.

<sup>99</sup> *See id.* at 507-08.

<sup>100</sup> *See id.* at 508.

<sup>101</sup> *See id.* at 508-10.

<sup>102</sup> *See id.*

<sup>103</sup> In holding this perceptive and forward-looking opinion, Holmes anticipated the practice in most modern-day American states. For example, under the American Bar Association’s Model Rules of Professional Responsibility, it is an unethical practice for an attorney to “prepare an instrument giving the lawyer” or certain persons related to the attorney “any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.” MODEL RULES OF PROF’L CONDUCT R. 1.8(c) (1983). Under such a rule, John McFarlane’s drafting of Jonas Oldacre’s will would be unethical.

The Texas Probate Code entirely prohibits (i.e., makes void) all devises or bequests of property to an attorney—or certain persons related to the attorney—who prepares or supervises the preparation of the will, unless the attorney bears a certain relationship to the testator, such as a spouse, ascendant, or descendant. *See* TEX. PROB. CODE ANN. § 58b (Vernon 2003). Under such a rule, the legacy to Mr. McFarlane in the will which McFarlane drafted for Mr. Oldacre would be void. *See id.* at § 58b(a)(1).

As for barring succession by a person who slays an intestate decedent from whom the slayer would inherit under state law or who slays a testator under whose will the slayer



ter, however, it sufficed that my evaluation of the character and sincerity of McFarlane indicated to me that he had performed his duties at Oldacre's request with no ill intent or undue influence, as the young solicitor had never before met the Norwood builder. My starting point was that something had to be amiss in this affair, as it certainly proved to be."

## V. OF RED-HEADS, GARRIDEBS, AND PERPETUITIES

Having finished his exposition, Holmes evidently felt the need to change his mode of ingesting tobacco, for he laid his pipe upon the side table, arose from the divan, and proceeded to the coal-scuttle, whence he withdrew a cigar. Holmes rolled the cigar between his fingers for a brief time and then produced his pocket-knife, which he used to cut off the end. Thereupon, he lit the cigar and took several puffs on it. He then chose a seat on the well-worn armchair near our hearth and was silent for several minutes, his eyes closed in thought. During these moments of silence, Holmes continued to draw on his cigar, the blue-grey smoke from which hung in the air around and about his head, gradually obscuring his face as if he were in the midst of a London fog. His hawk-like nose was the only facial feature which remained clearly visible through this haze.

At length, Holmes began again. "Watson, the celebrated Rule against Perpetuities has provided an important clue in two particular cases. Does your memory serve to bring one or both to mind?"

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would take, most states have statutes that prohibit—to one degree or another—such a slayer from inheriting or taking under the will. *See generally* WILLIAM M. MCGOVERN, SHELDON F. KURTZ & DAVID M. ENGLISH, *WILLS, TRUSTS AND ESTATES* 80-88 (4th ed. 2010). The *Restatement (Third) of Property: Donative Transfers* provides that "[a] slayer is denied any right to benefit [by will, inheritance, or trust] from the wrong." *RESTATEMENT (THIRD) OF PROP.: DONATIVE TRANSFERS* § 8.4(a). The Uniform Probate Code provides that a person "who feloniously and intentionally kills" the decedent forfeits all benefits under the UPC's provisions for intestacy, wills, and donative transfers. *UNIF. PROB. CODE* § 2-803(b) (1993). Additionally, the UPC makes a general provision that "[a] wrongful acquisition of property or interest by a killer not [otherwise] covered by this section must be treated in accordance with the principle that a killer cannot profit from his or her wrong." *Id.* at § 2-803(f). Section 2-803(g) of the UPC deals with how a person is determined to have feloniously and intentionally killed the decedent. Thus, under section 8.4(a) of the *Restatement (Third) of Property* and section 2-803 of the UPC, if McFarlane were convicted of murdering Oldacre, he would not take under Oldacre's will. Of course, in late Victorian England, had McFarlane been convicted of murdering Oldacre, the forfeiture of his testamentary gift would have been among the least of McFarlane's worries; foremost among those worries would have been the health of his own neck.

"I would guess that one of these cases to which you refer—and which readily comes to mind—is the matter of the Red-headed League."<sup>104</sup> However, I am just now at a loss to provide a second such example, Holmes."

"It is the matter of the three Garridebs, Watson."<sup>105</sup> The violation of the celebrated rule was rather similar in both cases. The lesson which I learned in the prior case—that of the Red-headed League—provided, in no small part, the clue to solving the later case involving the Garridebs."

"Ah, yes, the Garrideb case, Holmes. But, exactly how did the perpetuities doctrine enter into that matter?" I asked.

"Permit me to explain, Watson, although I fear that this explanation will take some more of your time, a great deal of which I have already occupied this morning. Is not your time too valuable for further discourse?"

"No, indeed, Holmes!" I exclaimed. "I have no plans for the rest of this day, now that I have sent the wire to my stock broker. I am all yours, and I am all ears."

"Splendid! Then I shall begin my little explication of these two perpetuities problems by stating the legal rule, with which I would not expect you to have too much familiarity. As expressed so simply and eloquently by the eminent American professor of law, Mr. John Chipman Gray of Harvard University in Cambridge, Massachusetts, '[n]o interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest.'<sup>106</sup> And, now, for the application of this rule, first to the Garrideb matter and then to the matter of the so-called Red-headed League.

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<sup>104</sup> See ARTHUR CONAN DOYLE, *The Red-headed League*, in COMPLETE, *supra* note 1, at 176 [hereinafter *The Red-headed League*].

<sup>105</sup> See ARTHUR CONAN DOYLE, *The Adventure of the Three Garridebs*, in COMPLETE, *supra* note 1, at 1044 [hereinafter *The Adventure of the Three Garridebs*].

<sup>106</sup> JOHN CHIPMAN GRAY, *THE RULE AGAINST PERPETUITIES* 174 (3d ed. 1915). Watson tells us that *The Adventure of the Three Garridebs* took place at the end of June in 1902. See *The Adventure of the Three Garridebs*, *supra* note 105, at 1044. This helps to determine that the earliest possible date of the present manuscript would be sometime after June 1902. As the present manuscript is undated but discusses a number of Holmes's later cases, a reasonable inference is that this manuscript was written significantly later than 1902 and that Holmes might well have consulted a later edition of Professor Gray's celebrated monograph on the Rule against Perpetuities, the first edition of which was published in 1886. Holmes's knowledge of the Rule against Perpetuities and his knowledge of Gray's monograph on the subject lend some support to the conclusion that Holmes may have been a lawyer. See *supra* note 12. How serendipitous it is to find Holmes explaining this well-known rule to Watson! Holmes's analysis will no doubt be of great interest—and, perhaps, even greater amusement—to professors of property law and to their students.

"In the problem of the three persons named Garrideb, please bear in mind that the bequest in the fictitious will which lay at the heart of this case left the entire and supposedly considerable fortune of one Alexander Hamilton Garrideb in three equal shares, one each to three adult males who also bore Mr. Garrideb's unusual surname; however, there was a condition precedent to these legacies, which was that there must be found three men who possessed this surname.<sup>107</sup> The reason given for this extremely unusual bequest was that Mr. Alexander Hamilton Garrideb, who purportedly was an American man without kith nor kin, wanted to benefit men with his unique surname and had hoped that three living persons bearing such name would be found after his death.<sup>108</sup> The man who told this preposterous and implausible lie—for from the very start it clearly was a lie, Watson—called himself John Garrideb and claimed to be a lawyer from a town named Moorville in the American state of Kansas.<sup>109</sup> As you and I later learned to our mutual regret, this dangerous man went by several names—James Winter, alias Morecroft, alias 'Killer' Evans.<sup>110</sup> Solely for his present criminal purposes, this man adopted the name Garrideb. Evans was indeed a killer, having served time in a penitentiary in America.<sup>111</sup> However, I am getting a bit ahead in my story."

"I certainly remember this matter, Holmes. The affair cost me a small blood-letting when Evans drew his revolver and fired, striking me superficially in the thigh.<sup>112</sup> I was deeply touched by the concern you showed me on that day."<sup>113</sup> No sooner had I spoken these words than I realized that I had made a grave mistake; I had embarrassed Holmes by recalling this aspect of the episode to his memory. Human emotions are anathema to the

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<sup>107</sup> See *The Adventure of the Three Garridebs*, *supra* note 105, at 1046.

<sup>108</sup> See *id.*

<sup>109</sup> See *id.* at 1045.

<sup>110</sup> See *id.* at 1051-52.

<sup>111</sup> See *id.*

<sup>112</sup> See *id.* at 1044, 1053.

<sup>113</sup> See *id.* at 1053. Watson described Holmes's reaction to his injury as follows: "You're not hurt, Watson? For God's sake, say that you are not hurt!" Watson replied that, "[i]t's nothing, Holmes. It's a mere scratch." But, Watson confided to his readers:

[i]t was worth a wound—it was worth many wounds—to know the depth of loyalty and love which lay behind that cold mask. The clear, hard eyes were dimmed for a moment, and the firm lips were shaking. For the one and only time I caught a glimpse of a great heart as well as of a great brain. All my years of humble but single-minded service culminated in that moment of revelation.

*Id.*

reasoning machine that serves as Holmes's brain. Further discussion of Holmes's reaction on that day only would have served to prolong his embarrassment, so I decided that silence was the best course for the present.

Several moments passed during which time no words were exchanged between us. After a few more puffs on the cigar which he had succeeded in relighting, Holmes continued. "The false John Garrideb, this man Evans, had found an innocent and harmless man whose real surname was in fact Garrideb—Mr. Nathan Garrideb. To distinguish the two Garridebs, I shall refer to the false one as Evans, and the true one I shall call Garrideb, for of course that was Nathan Garrideb's real name. Evans had visited Garrideb and filled him with the ridiculous tale of this legacy; Evans had convinced Garrideb that the only thing standing between the latter man and a vast fortune was the discovery of a third man named Garrideb."<sup>114</sup> Evans told Garrideb that he had searched in vain throughout America for two more men with this unique name and that he finally left Kansas to come to what he called 'the old country' to continue his search.<sup>115</sup> By use of this outlandish and fanciful story, Evans convinced the naïf Garrideb of his great good fortune, for the two men seemed to be two-thirds of the way toward their fabulous legacy. They lacked only a third Garrideb. In reality, the clever Evans had concocted this tale as a device for luring the real Garrideb from his rooms—from which he seldom ventured—so that Evans would be free to secure the fortune in counterfeit bank notes which he knew to be hidden beneath the house."<sup>116</sup>

"How did the Rule against Perpetuities enter into this case, Holmes?"

"The rule—or, should I say, its violation by the putative bequest—was a further early clue that Evans's entire story was false. Are you at least somewhat familiar with our system of possessory estates in land, including their related future interests, Watson? Certainly, you must be familiar with the life estate and the reversion or remainder which follows it, are you not?"

I nodded, and Holmes proceeded. "The Rule against Perpetuities simply states that certain future interests—those which are created in someone other than their creator himself—may not remain 'contingent' for too long a time."<sup>117</sup> In order to avoid running afoul of the rule, the contingent future interest, from the outset, absolutely must be certain either to fail entirely or to become a vested interest before the end of the permitted perpetuities pe-

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<sup>114</sup> See *id.* at 1046-47.

<sup>115</sup> *Id.* at 1046.

<sup>116</sup> See *id.* at 1051-54.

<sup>117</sup> See GRAY, *supra* note 106, at 1-2.

riod—either as a ‘vested’ future interest or as a present (and therefore vested) possessory estate.<sup>118</sup> According to Professor Gray of Harvard, vested interests are not subject to the Rule against Perpetuities.<sup>119</sup> Hence, reversions and vested remainders are vested future interests and thus are not subject to the application of the rule.<sup>120</sup> However, certain other future interests which are created in someone other than the grantor or donor himself, such as contingent remainders and executory interests, are not treated as vested and therefore are subject to the rule.”<sup>121</sup>

“I am generally aware of this rule, Holmes, and I believe that I follow what you are saying, although the matter is rather abstruse for anyone who is not possessed of an education in the law.”

“True enough, Watson. But, I pray you, please be so good as to continue to listen to my explanation, which I am confident will clarify everything. Professor Gray also stated that when a remainder is given to a class of persons, even though the remainder may be vested in certain members of the class, yet if it not be vested as to all class members but is subject to open and to let in other members who may be born afterwards or who may afterwards fulfill the condition, then such a gift is subject to the rule and may be obnoxious to the selfsame rule.<sup>122</sup> The rule applies not merely to future interests in land, but also to future interests in personalty.<sup>123</sup> Not incidentally, the rule applies to interests held in trust,<sup>124</sup> the relevance of which will become clear when we speak—as soon we shall—of the rather fantastic matter of the Red-headed League.

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<sup>118</sup> See *id.* at 184-85.

<sup>119</sup> See *id.* at 176.

<sup>120</sup> See *id.* at 176-77.

<sup>121</sup> See *id.*; see also W. BARTON LEACH & OWEN TUDOR, *THE RULE AGAINST PERPETUITIES* 12-13 (Little, Brown & Co. 1957). Leach and Tudor explain that a remainder is vested “when the persons to take it are ascertained and there is no condition precedent attached to the remainder other than the termination of the prior estates.” LEACH & TUDOR, *supra*, at 12. They state that an executory interest is not vested, but the law treats a possibility of reverter and a right of entry for condition broken as vested future interests, at least under the American cases. See *id.* at 13.

<sup>122</sup> See GRAY, *supra* note 106, at 178-79. Leach and Tudor express the class gift rule more succinctly and intelligibly: “[A] class gift is not ‘vested’ [for purposes of the Rule against Perpetuities] until the exact membership in the class has been determined.” LEACH & TUDOR, *supra* note 121, at 13. Put another way, “a class gift is still contingent if any more persons can become members of the class or if any present members can drop out of the class.” *Id.*

<sup>123</sup> See GRAY, *supra* note 106, at 175-77, 302-03.

<sup>124</sup> See *id.* at 175.

"Now, Watson, because of my knowledge of the Rule against Perpetuities, it immediately struck me that the Garrideb bequest violated this rule. According to the false Garrideb—Evans—the bequest was left to him on the condition that he find two other persons named Garrideb to share the bequest; otherwise, the bequest would be void and never would vest in possession.<sup>125</sup> As you see, the bequest was not presently vested in possession in the false Garrideb; hence it was a future interest. And, because the bequest of this future interest was contingent upon finding two more Garridebs, the interest was not a vested future interest and was therefore subject to the application of the rule. In this case, the future interest was an executory interest, which would vest or spring into possession—if ever—only upon the discovery of the third Garrideb. When a future interest such as this one might either vest or fail too remotely—that is, when it might remain contingent or uncertain of vesting for more than the period permitted by the rule—then that future interest is void *ab initio* and is struck out.<sup>126</sup> What is vesting 'too remotely?' you might ask. It is vesting more than twenty-one years after the death of some person who was alive—that is, a life in being—at the time the interest was initially created.<sup>127</sup> Armed with this knowledge of the famed rule, Watson, are you able to see how the purported Garrideb bequest violated the rule by possibly vesting too remotely?"

"Yes, I am, Holmes. Had this fictional bequest been a genuine legacy in a valid will, it is not certain that the false Garrideb—or any other person named Garrideb—would have been able to find a second or third Garrideb within his or anyone else's lifetime plus twenty-one years. The bequest would have remained contingent—unvested—for too long under the Rule against Perpetuities; therefore, it would have been void *ab initio*."<sup>128</sup>

"Bravo, Watson! You are an excellent pupil, a fast learner! You are precisely correct. While it certainly is not unheard of for a solicitor—or an

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<sup>125</sup> See *The Adventure of the Three Garridebs*, *supra* note 105, at 1046. Evans's exact words were that none of the three Garridebs could "lay a finger on it until we all three stand in a row." *Id.*

<sup>126</sup> See LEACH & TUDOR, *supra* note 121, at 123; see also GRAY, *supra* note 106, at 229, 185-91.

<sup>127</sup> See GRAY, *supra* note 106, at 174; see also LEACH & TUDOR, *supra* note 121, at 12-13. Holmes's thorough, lucid, and professorial explication of the Rule against Perpetuities does furnish some further evidence for the claim that he might have been a lawyer. See *supra* notes 12, 106.

<sup>128</sup> As Professor Gray famously stated, "It is not enough that a contingent event may happen, or even that it will probably happen, within the limits of the Rule against Perpetuities; if it can possibly happen beyond those limits, an interest conditioned on it is too remote." GRAY, *supra* note 106, at 185.

American lawyer—to draft a will or a trust creating a gift which violates the rule, I nonetheless began my investigation into the Garrideb matter with not merely the absurdity of this bequest but also its invalidity under the famed Rule against Perpetuities having raised my suspicions.”

Returning to the issue of the Red-headed League, Holmes inquired whether I could determine how the trust disposition in that case also violated the Rule against Perpetuities. I replied that, once again, I believed that I could do so, and I began to recount the history of this adventure.

“When I called upon you on that autumn day many years ago, Holmes, you were engaged in conversation with a pawnbroker, a Mr. Jabez Wilson, who was seeking your advice about an unusual situation<sup>129</sup> which was not entirely unlike that of the unfortunate Mr. Nathan Garrideb. An organization calling itself the ‘Red-headed League’ had assigned to Mr. Wilson the task of copying the *Encyclopedia Britannica* from ten to two o’clock each day, in return for pay of four pounds sterling per week.<sup>130</sup> After eight weeks, during which Mr. Wilson had copied most of the entries under the letter ‘A,’ he arrived one day at the league’s office only to find a posted notice stating that the league had been dissolved, effective immediately.<sup>131</sup> He consulted you in order to learn why he had been subjected to what appeared to him to be such an unusual practical joke.”<sup>132</sup>

“Permit me to add a few details, Watson. Mr. Wilson possessed a flaming head of red hair, which ostensibly was the reason for his admission to the league. The league was reputed to have been established under the will of one Ezekiah Hopkins of Lebanon, Pennsylvania, U.S.A., for the purpose of the maintenance and propagation of red-headed persons.<sup>133</sup> According to Mr. Wilson’s account, he had been informed that Mr. Hopkins was himself a red-headed man who possessed a great deal of sympathy for all red-headed men.<sup>134</sup> Hopkins created a testamentary trust for the benefit of adult red-headed men who lived in London, whence the fictitious Hopkins sup-

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<sup>129</sup> See *The Red-headed League*, *supra* note 104, at 176.

<sup>130</sup> See *id.* at 181.

<sup>131</sup> See *id.* at 182.

<sup>132</sup> See *id.* at 182-83. According to Watson, “the comical side of the affair so completely overtopped every other consideration that we [i.e., Watson and Holmes] both burst out into a roar of laughter.” *Id.* at 182. “‘I cannot see that there is anything very funny,’ cried our client, flushing up to the roots of his flaming head. ‘If you can do nothing better than laugh at me, I can go elsewhere.’” *Id.*

<sup>133</sup> See *id.* at 179-80.

<sup>134</sup> See *id.* at 179.

posedly hailed.<sup>135</sup> Specifically, Wilson was told that Hopkins had ‘left his enormous fortune in the hands of trustees, with instructions to apply the interest to the providing of easy berths to men whose hair is of that colour,’ namely, red.<sup>136</sup> As in the case of Mr. Garrideb, the absurdity of such a bequest immediately struck me. Who would create such a preposterous trust? No, this was too ridiculous to be true. As I later explained to you, it was obvious to me that the sole purpose of this elaborate ruse must have been to secure the absence of this not overly intelligent pawnbroker from his place of business each day between ten o’clock in the morning and two o’clock in the afternoon.<sup>137</sup> He was threatened with forfeiting his berth should he ever fail to be present at his billet during those hours,<sup>138</sup> and so he faithfully appeared every day for eight weeks, until one day on the door he read the notice stating that the league had been dissolved.<sup>139</sup> Wilson’s absence during these hours allowed his assistant, who in reality was none other than the notorious criminal John Clay, to attempt the execution of a fantastic theft from the nearby City and Suburban Bank via a tunnel which he had dug beneath Wilson’s pawnbroker’s shop to the subterranean vaults of the bank.<sup>140</sup> The dissolution of the league was the sign that Clay and his accomplice had completed their tunnel and no longer required Wilson’s absence from his place of business during the assigned hours.<sup>141</sup> But, Watson, how did I know that the trust was entirely fictitious? I knew this because the trust violated the Rule against Perpetuities.”

“Holmes, please allow me to attempt an explanation of this very odd trust’s violation of the rule. The beneficiaries of the trust were to be members of a class—red-headed men of London above the age of twenty-one. As you have said, the rule applies to gifts to persons who are the members of a class.<sup>142</sup> If any persons might become members of the class, or might drop out of the class, too remotely, then the gift to the entire class would be void *ab initio*.<sup>143</sup> Mr. Wilson supposedly was admitted to the class of trust beneficiaries—the League—sometime after its establishment under the will

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<sup>135</sup> See *id.*

<sup>136</sup> *Id.*

<sup>137</sup> See *id.* at 189.

<sup>138</sup> See *id.* at 181.

<sup>139</sup> See *id.* at 182.

<sup>140</sup> See *id.* at 189-90.

<sup>141</sup> See *id.* at 190.

<sup>142</sup> See *supra* note 122 and accompanying text.

<sup>143</sup> See LEACH & TUDOR, *supra* note 121, at 13.



of Mr. Ezekiah Hopkins, and he was warned that if he did not faithfully perform his assigned duties during the appointed hours, he would lose his benefits under the trust.<sup>144</sup> Therefore, the purported trust was one the membership of which was mutable: the class members, the trust's beneficiaries, might be added or dropped at any time into the indefinite future. And, there was nothing to prevent this alteration of the trust's beneficiaries from occurring more than twenty-one years after the death of all persons alive at the time the testamentary trust was created upon the death of Mr. Hopkins."<sup>145</sup>

"Bravo, once again, Watson! My hearty congratulations to you! You have analyzed perfectly the remote vesting possibility under this most unusual trust."<sup>146</sup>

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<sup>144</sup> See *The Red-headed League*, *supra* note 104, at 180-81.

<sup>145</sup> One could hardly expect Watson—or perhaps even Holmes—to have spotted another, more subtle, way that this "very odd trust" (to use Watson's words) might be invalid. The beneficiaries of a trust must not be too indefinite to be ascertainable; if they are, then the trust fails. As Professor Bogert said, "The attempted trust will fail . . . if the description of the beneficiary [or beneficiaries] is vague and indefinite." GEORGE T. BOGERT, *TRUSTS* 121 (6th ed. 1987). To constitute a valid, enforceable trust, every trust must have one or more ascertainable beneficiaries who are entitled to enforce the trust against the trustee. See *id.* at 122. In the example given by Bogert, "a trust to pay the income to any persons in the world, in the discretion of the trustee, is not a valid private trust, the element of vagueness and indefiniteness being considered too great." *Id.* at 123.

The trust in this case reportedly provided that the trustees shall choose its beneficiaries at their discretion from among all red-headed men over the age of twenty-one living in London. This description of the beneficiaries is likely to have been so vague or indefinite as to render the trust unenforceable, given both the great number of potential beneficiaries and the wide latitude vested in the trustees to choose from among them. The relevant contemporaneous English law recognized the rule regarding the indefiniteness of trust beneficiaries. See, e.g., ARTHUR UNDERHILL, *A PRACTICAL AND CONCISE MANUAL OF THE LAW RELATING TO PRIVATE TRUSTS AND TRUSTEES* 155 (London, Butterworths 3d ed. 1888). Mr. Underhill cites, *inter alia*, *Morice v. Bishop of Durham*, which held that the court cannot execute an express trust whose beneficiaries and purpose are too indefinite and therefore the trust fails; the heirs of the testator will receive the trust's corpus under the theory of resulting trust. See *Morice v. Bishop of Durham*, [1804] 32 Eng. Rep. 656 (Ch.) 658-59; *aff'd*, *Morice v. Bishop of Durham*, [1805] 32 Eng. Rep. 947 (Ch.) 954-55.

If Holmes were a lawyer (see discussion *supra* note 12), it is a bit surprising that he did not notice this alternative way in which the trust would be invalid on the grounds of the vagueness or indefiniteness of the beneficiaries. However, this rule regarding the indefiniteness of trust beneficiaries is probably less known to the average practitioner than is the Rule against Perpetuities. Certainly, this indefiniteness rule is much less likely to be known to attorneys (or solicitors) who do not—or did not—make trust drafting a regular part of their law practices.

<sup>146</sup> The fact that Watson so quickly caught on to these two remote vesting scenarios—the bequest, in the case of the three Garridebs, and the trust, in the case of the Red-Headed

## VI. THE PERILS—GREAT AND SMALL—OF LIFE TENANCIES

“While we are on the subject of trusts and their fraternal twin, legal life estates, do you recall others among our adventures in which the benefits of a legal or equitable life estate, or the benefits to be conferred by ultimate possession of the property in the future, provided the motives for certain crimes and furnished the clues for their resolutions?” asked Holmes.

“I am certain that I do indeed recall a good number of these, Holmes, for I have recorded so very many of them. Let me see, there was the matter of the Greek interpreter, who had been kidnapped to provide interpretation for an unfortunate gentleman from Greece who was, himself, held in false imprisonment.<sup>147</sup> The captors of the falsely imprisoned Greek endeavored to make him sign documents of some sort turning over to them his and his sister’s property.<sup>148</sup> However, I do not recall precisely how that particular case implicates trusts or life estates.”

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League—is remarkable. While these two violations of the rule are not too difficult to spot for one with some training in the rule, the fact that a lay person such as Watson—entirely untrained in the rule—could recite the remote vesting scenarios is unusual, for few nonlawyers could do so today. Indeed, a fair number of modern lawyers would be unable to equal Watson’s feat; most lawyers’ eyes glaze over at the very mention of the notorious and dreaded rule. No doubt this is the residuum of the terror that the rule struck in them during their days in law school.

Even Professor Gray admitted that the application of the rule is by no means always simple and that even learned judges sometimes err in its application. See JOHN CHIPMAN GRAY, *THE RULE AGAINST PERPETUITIES*, at v (1st ed. 1886). In the preface to the first edition of his treatise on the rule, Gray contrasted the precision of the reasoning under the Rule against Perpetuities with that in most other areas of the law. See *id.* In most other areas of the law, there is “no exact standard to which appeal can be made,” but in questions of application of the Rule against Perpetuities, “if a decision agrees with it [i.e., the rule], it is right; if it does not agree with it, it is wrong. In no part of the law is the reasoning so mathematical in its character; none has so small a human element.” *Id.* Gray confesses that the application of the rule is difficult for him, as well as for other eminent practitioners:

That I have done all my own sums correctly, I do not venture to hope. There is something in the subject which seems to facilitate error. . . . The study and practice of the Rule against Perpetuities is indeed a constant school of modesty. A long list might be formed of the demonstrable blunders with regard to its questions made by eminent men, . . . and there are few lawyers of any practice in drawing wills and settlements who have not at some time either fallen into the net which the Rule spreads for the unwary, or have not at least shuddered to think how narrowly they have escaped it.

*Id.* at v-vi.

<sup>147</sup> See ARTHUR CONAN DOYLE, *The Greek Interpreter*, in *COMPLETE*, *supra* note 1, at 435.

<sup>148</sup> See *id.* at 446.

"Nor do I, Watson. Perhaps we may safely put aside that case. I think we also may omit from our little survey those cases in which anything so mundane and tedious as marriage for monetary gain provided the motivation for the acts involved, be they criminal or merely fraudulent. Among my cases of this ilk are those which you have entitled *The Adventure of the Illustrious Client*,<sup>149</sup> *The Adventure of the Three Gables*,<sup>150</sup> and *The Boscombe Valley Mystery*,<sup>151</sup> although the latter case is perhaps a closer question.<sup>152</sup> Nor, need we examine the matter of the Agra treasure."<sup>153</sup>

Immediately upon his reference to this last adventure, my mind drifted away from Baker Street to a time, now many years ago, when I was a younger man and very much in love. It was during our investigation of the disappearance of the Agra treasure that I met my late yet still very much beloved wife, Mary Morstan, as she was known at the time.<sup>154</sup> Every day,

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<sup>149</sup> See ARTHUR CONAN DOYLE, *The Adventure of the Illustrious Client*, in COMPLETE, *supra* note 1, at 984.

<sup>150</sup> See ARTHUR CONAN DOYLE, *The Adventure of the Three Gables*, in COMPLETE, *supra* note 1, at 1023.

<sup>151</sup> See ARTHUR CONAN DOYLE, *The Boscombe Valley Mystery*, in COMPLETE, *supra* note 1, at 202.

<sup>152</sup> See *id.* at 216-17.

<sup>153</sup> See ARTHUR CONAN DOYLE, *The Sign of Four*, in COMPLETE, *supra* note 1, at 87 [hereinafter *The Sign of Four*]. For those who have not read this case, its plot is too detailed to attempt any brief overview here. In recounting his story of the Agra treasure, Thaddeus Sholto tells Mary Morstan that he regarded himself and his brother as trustees of her share of the treasure. See *id.* at 104. Perhaps it would have been more appropriate had he referred to himself and his brother as constructive trustees of her share of the ill-gotten treasure. Certainly, there would be no question of the creation of an express trust here. At most, a constructive trust might be impressed on this one share of the treasure for the benefit of Miss Morstan to prevent the unjust enrichment of the two Sholto brothers.

A constructive trust is a remedial device of the court of equity for taking property from one who has acquired or retains it wrongfully and vesting title in another in order to prevent fraud or unjust enrichment. It is not based on intent of the parties, but rather is created by the court in order to achieve an equitable result.

BOGERT, *supra* note 145, at 261; see generally at 286-89.

This discussion of constructive trusts leaves aside the quite debatable question of whether, given the way that the father of Miss Morstan and the father of the Sholto brothers profited from the original theft of the Agra treasure, a court would even be willing to use its equitable powers to grant this remedy were the matter to come before it. After all, the Agra treasure was stolen property, so the thieves would not be able to transfer the title even to innocent third parties.

<sup>154</sup> Watson's description of Mary Morstan, when he first set his eyes on her on the day she sought Holmes's aid, may be found in *The Sign of Four*. *The Sign of Four*, *supra* note 153, at 94. Watson concluded that "[i]n an experience of women which extends over many

even unto the present one, I miss her beauty, her gracious spirit, and her generosity of character.

My reverie must have occupied several minutes before Holmes gently broke the silence. "My dear friend, a thousand apologies do I owe you for even alluding to the matter of the treasure. I am certain that it brings back a mixture of equal parts happiness and sorrow. I beg your forgiveness."

"No—no need for—" I stammered. A moment later I had recovered my composure. "Shall we proceed with our survey, Holmes?"

"Yes, by all means, Watson. Let's do proceed. I recall the investigation in which I feigned a terminal illness in order to trick Mr. Culverton Smith into confessing his murder of his nephew in order to come into the present possession of an estate."<sup>155</sup>

"I, too, recall it, Holmes. In the course of your performance, you were forced to malign my professional qualifications, though happily not my friendship."<sup>156</sup>

"I trust that my little charade in the case, which necessitated those harsh words, is all water under the bridge, Watson."

A wave of my hand indicated that the apparent slight had long since been forgiven, and Holmes continued. "Culverton Smith murdered his nephew by poisoning him in a way that was most difficult to trace to Smith.<sup>157</sup> In your report of the case, you stated that I had discovered that Smith's motivation for the murder was the fact that his nephew, Victor Savage, stood between the monster Smith and a reversion."<sup>158</sup>

"Surely, Holmes, you meant a 'remainder' rather than a 'reversion'?"

"Your nuanced knowledge of future interests is a pleasant surprise, Watson. Your implication is correct that there is a difference between a reversion and a remainder. The difference is rather simple: a reversion is what remains in a grantor or donor when he confers on another person a lesser present possessory estate than that with which he was seised.<sup>159</sup> A remainder is a future interest which is not reserved by the grantor or donor but

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nations and three separate continents, I have never looked upon a face which gave a clearer promise of a refined and sensitive nature." *Id.* Watson's readers will recall that it was at the conclusion of this case that Miss Morstan accepted his proposal of marriage. *See id.* at 157.

<sup>155</sup> *See* ARTHUR CONAN DOYLE, *The Adventure of the Dying Detective*, in COMPLETE, *supra* note 1, at 932, 938-41 [hereinafter *The Adventure of the Dying Detective*].

<sup>156</sup> *See id.* at 933.

<sup>157</sup> *See id.* at 941.

<sup>158</sup> *See id.* Holmes used the term *reversion* but he meant *remainder*, as will presently become evident.

<sup>159</sup> *See* BERGIN & HASKELL, *supra* note 32, at 56-57.

created in some person other than the first grantee or donee, which future interest follows the natural termination of the present possessory estate created simultaneously in the first donee.<sup>160</sup> To take a common example, when a donor creates a life estate in *A* and does nothing more than that, the donor has retained a reversion. On the other hand, when the donor creates a life estate in *A* and at the same time provides for the property to be vested in *B* and his heirs upon the death of *A*, the donor has created a vested remainder in fee simple in *B* and has himself retained no reversion. Incidentally, as I previously observed, neither reversions nor vested remainders are among the future interests which are subject to the Rule against Perpetuities."<sup>161</sup>

Holmes continued, "Either my Boswell misquoted me in his report of the case, or in the aftermath of my theatrical performance in the Smith matter, which performance had drained me considerably, I misspoke. Certainly, the future interest for which Culverton Smith murdered Victor Savage was a remainder, rather than a reversion. My investigation into this matter, which you so melodramatically entitled *The Adventure of the Dying Detective*, revealed that Savage's father, in his will, had settled a considerable life estate on his wife, the younger Savage's mother; Mrs. Savage also was Culverton Smith's sister. The elder Savage created a contingent remainder in his son, which was contingent on his surviving his mother. In the event that the younger Savage did not survive his mother, the father's will provided that the remainder would belong to young Savage's descendants, should there be any, and if none, then to this man Smith, the elder Savage's brother-in-law. At the time of his death, young Savage was a single man without any descendants. Smith killed him, thus clearing the way for Smith to take the property upon his own sister's death. No doubt, Smith also would have hastened her death in order to secure possession of this property had I not intervened in the matter and proven his crime, for which he since has been called to account. Given the circumstances of the case, Watson, I believe that it is not too unkind to observe that Mr. Culverton Smith is no longer in any position to come into the possession of any present estate in land nor, for that matter, any future interest—at least not in this world."<sup>162</sup>

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<sup>160</sup> See *id.* at 62-63.

<sup>161</sup> See GRAY, *supra* note 106, at 176-77; see also *supra* notes 119-120 and accompanying text.

<sup>162</sup> Smith tried to murder Holmes by means of the same poison that Smith had used to kill Savage; Smith did this in an attempt to prevent Holmes from revealing his discovery that Smith had murdered Savage. See *The Adventure of the Dying Detective*, *supra* note 155, at 939-40.

A knock on the door interrupted our conversation. It was Mrs. Hudson, who wanted to know our wishes for lunch, as it was approaching noontime. After receiving our orders and removing our breakfast dishes from the table, the good woman departed the room. Holmes and I resumed our discussion.

"It seems, Watson, that you and I are making a rather considerable catalogue of our adventures relating to donative transfers of property. One motive behind a number of our little adventures was the desire of some unscrupulous man to preserve—and to have the use of—the life estate or life income of a woman to whom he was closely related by affinity or consanguinity. The matter which you entitled *A Case of Identity*<sup>163</sup> is one such instance."

"Indeed, I remember it well, Holmes. A Miss Mary Sutherland sought your aid in locating her fiancé, who had disappeared without any trace on the day of their wedding.<sup>164</sup> As it turned out, the putative fiancé was in reality Miss Sutherland's stepfather. The wretch had married her widowed—and much older—mother for the purpose of gaining access to the elder woman's rather small fortune. The young Miss Sutherland had been left an income by her uncle, which consisted of the interest on certain shares of New Zealand stock, payable at the rate of four and one-half percent per annum.<sup>165</sup> Presumably, this meant a life income in the stock, with a remainder to someone else."

"Correct, Watson. Miss Sutherland had only a life income in the shares of stock, which income was left to her in her uncle's will. Upon Miss Sutherland's death, should she leave no surviving descendants, the shares were to be divided among several charities. I was able to confirm this during my investigation of the matter. Pray, please continue your analysis."

"Well, this Mr. James Windibank—Miss Sutherland's stepfather—was not content with the income from his wife's property; he wanted the use of Miss Sutherland's income, as well.<sup>166</sup> Miss Sutherland lived in the house and, as long as she did so, she felt the need to contribute her entire income to the maintenance of the family, which is to say her mother and her stepfather.<sup>167</sup> What does this man Windibank do? He disguises himself as

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<sup>163</sup> See ARTHUR CONAN DOYLE, *A Case of Identity*, in COMPLETE, *supra* note 1, at 190.

<sup>164</sup> See *id.* at 192-96.

<sup>165</sup> See *id.* at 193. It should be noted that Miss Sutherland says that she "can only touch the interest." *Id.* This indicates that her uncle likely left her only a life estate.

<sup>166</sup> See *id.* at 200.

<sup>167</sup> See *id.* at 193. Mary Sutherland told Holmes that "you understand that as long as I live at home I don't wish to be a burden on them, and so they have the use of the money just while I am staying with them. Of course, that is only just for the time. Mr. Windibank draws

another man, one Hosmer Angel, and in this guise pays court to his stepdaughter.<sup>168</sup> Hosmer Angel proposes marriage to the young lady and secures her promise of continued fidelity should anything happen to him before the marriage.<sup>169</sup> Then, in order to keep her at home and to secure the continued contribution of her income to the maintenance of the household, he disappears on the day of the wedding, confident that she will remain true to him—and live at home—for many years to come.”<sup>170</sup>

“All transpired exactly as you have described, Watson. The stepfather did not engage in outright theft of the stepdaughter’s income. Nor did he try to remove or eliminate her as the life tenant, for neither he nor his wife were the remaindermen. Indeed, he had the greatest interest in doing just the opposite—keeping her alive and living at home for as long as possible so that he could, by means of his rather tawdry ruse, practically swindle her out of her life income. The scoundrel! I recall saying that someone ought to whip him, and I made as if to do so but the coward fled before I had taken more than two steps toward my hunting crop.”<sup>171</sup>

“Watson, does any other deception for this same purpose come readily to mind?”

“Yes, Holmes. The case of Mr. Jephro Rucastle, of the Copper Beeches, springs to mind.”<sup>172</sup>

“Hah! Indeed! A tyrannical and thoroughly unpleasant man, who initially hid his true character behind a smiling mask. This was a man who imprisoned Alice Rucastle, his own daughter—not merely a stepdaughter, mind you—in an effort to control the legacy that was left by her deceased mother, Mr. Rucastle’s first wife.”<sup>173</sup>

“Holmes, I never was able to ascertain exactly how the mother’s will provided for Alice.”

“At the time, Watson, I too was ignorant of how these things stood. As you originally and quite correctly reported, Mrs. Toller, the housekeeper who supplied some of the missing details in the case, knew the situation

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my interest every quarter and pays it over to mother.” *Id.* Miss Sutherland’s income also included her earnings as a free-lance typist, which, as she informed Holmes, amounted to “twopence a sheet, and I can often do from fifteen to twenty sheets in a day.” *Id.*

<sup>168</sup> *See id.* at 200.

<sup>169</sup> *See id.*

<sup>170</sup> *See id.* at 200-01.

<sup>171</sup> *See id.* at 201.

<sup>172</sup> *See* ARTHUR CONAN DOYLE, *The Adventure of the Copper Beeches*, in COMPLETE, *supra* note 1, at 316.

<sup>173</sup> *See id.* at 331.

only in the most general way.<sup>174</sup> She told me that as best she could learn, 'Miss Alice'—for Toller called her that—'had rights of her own by will, but she was so quiet and patient, she was, that she never said a word about them, but just left everything in Mr. Rucastle's hands.'<sup>175</sup> While Alice was unmarried and resided at the Copper Beeches, Rucastle 'knew he was safe with her,' as Toller put it.<sup>176</sup>

"However, once Alice Rucastle acquired a suitor whose object was marriage, her father saw the very real possibility that he might lose control over both his daughter and her money.<sup>177</sup> According to Toller, the husband 'might ask for all that the law would give him.'<sup>178</sup> Mr. Rucastle sought to force Alice to execute certain documents in his favor—'sign a paper,' in the words of Toller, 'so that whether she married or not, he could use her money.'<sup>179</sup> The young woman's refusal to accede to her father's demand prompted him to imprison her in the apparently empty wing of the house, in an effort to coerce her signature, which she steadfastly refused to give.<sup>180</sup> When Alice's suitor would not desist in his pursuit, Rucastle hired Miss Violet Hunter, ostensibly as the governess for his son by his second wife, but in reality unwittingly to impersonate Alice from a distance; in this way, Rucastle hoped to drive away Alice's suitor, for the two young women bore a striking resemblance to one another.<sup>181</sup>

"I later learned that Alice's mother had possessed a considerable fortune in her own right. While this first Mrs. Rucastle was married to Mr. Rucastle, she freely shared with her husband all the income which her fortune provided. When she died, her will left to her daughter a bequest of a life estate in the mother's property, with the remainder to several charities in default of Alice leaving issue. Mr. Rucastle would greatly have felt the loss of his daughter's income. While she was unmarried and lived in the house, Alice was content to let her father control her income and use it to make good some of his losses in business. However, Mr. Rucastle's happy state of affairs was threatened when Alice met a man who appeared to be on the verge of proposing matrimony. Rucastle knew that Alice's husband

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<sup>174</sup> *See id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *See id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *See id.*

<sup>181</sup> *See id.* at 332; *see also id.* at 325-26.



would likely take a keen interest in her finances, as Mrs. Toller confirmed.<sup>182</sup> The rest of the story you know: the heartless and greedy Rucastle imprisoned Alice when she refused to execute an agreement assigning her life estate to him in the event of her marriage. Alice married Mr. Fowler, the suitor who would not be deterred and who rescued her from imprisonment at the Copper Beeches.<sup>183</sup> The two now live happily in Yorkshire, whence hails Fowler's family."

Holmes paused briefly and rose to look out of the window. Then he returned to his seat and continued. "A far darker—to say nothing of murderous—affair was that of the Speckled Band."<sup>184</sup>

"Yes," I replied, "I well remember the malefactor Dr. Grimesby Roylott. Dr. Roylott murdered one of his twin stepdaughters and would have murdered the other one had she not the foresight to seek your advice, which action most certainly saved her life."<sup>185</sup>

"In a way, I was indirectly responsible for this fiend's death, although, as I said at the time, 'I cannot say that it is likely to weigh very heavily upon my conscience.'<sup>186</sup> As you will remember, Watson, the two sisters' mother was widowed in India and married Roylott while the girls were only two years old, whereupon the family returned to England.<sup>187</sup> The mother later died, leaving the annual income from her estate to Dr. Roylott for so long as her two daughters resided with him, which they did for a number of years at his family's ancestral house at Stoke Moran in Surrey.<sup>188</sup> In effect, this was a determinable life estate in Dr. Roylott: for as long as these two young women lived with him, he would have the use of the considerable annual income left in Mrs. Roylott's will. As you may know, Watson, a life estate may be made defeasible—that is, terminable upon the happening of some event.<sup>189</sup> In this case, the event was the marriage of the daughters. Miss Helen Stoner, my client, explained that her mother's will provided that, upon the marriage of each daughter, a portion of the annual income—

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<sup>182</sup> See *id.* at 331.

<sup>183</sup> See *id.* at 331-32.

<sup>184</sup> See ARTHUR CONAN DOYLE, *The Adventure of the Speckled Band*, in COMPLETE, *supra* note 1, at 257 [hereinafter *The Adventure of the Speckled Band*].

<sup>185</sup> See *id.* at 257-73.

<sup>186</sup> *Id.* at 273.

<sup>187</sup> See *id.* at 260.

<sup>188</sup> See *id.* at 259-60.

<sup>189</sup> See HERBERT HOVENKAMP & SHELDON F. KURTZ, *THE LAW OF PROPERTY: AN INTRODUCTORY SURVEY* 149 (5th ed. 2001); see also *RESTATEMENT (FIRST) OF PROP.* § 112 (1936).

presumably, one-half—would be diverted from Roylott to the married daughter.<sup>190</sup> If both daughters married, Roylott would be entirely divested of his annual income under his late wife's will. However, her legacy had been written in such a way that Roylott's life income would not terminate if the daughters were to die without having married.<sup>191</sup> Incidentally, the remainder after the defeasible life estate appears to have been left to charity if both daughters died without surviving issue, as so often seems to be the case in these situations.

"Roylott had no income in his own right; as Miss Stoner informed us, the Roylott family—once among the richest in the land—had been ruined by the wanton impecuniousness of several generations of heirs."<sup>192</sup> Roylott, the last of the direct line, had been driven out of India because he had slain his Indian butler in a fit of anger.<sup>193</sup> Without any family fortune, and without the income provided by his medical practice in India, Roylott returned to the family seat an angry and violent man.<sup>194</sup> When one of the two sisters became engaged to be married, the stepfather faced the loss of one-half of his income, a loss which he could ill afford.<sup>195</sup> He devised a dastardly yet clever scheme to murder the young woman before she could be married and before he would lose her portion of the income.<sup>196</sup> When his other step-daughter, my client Miss Stoner, became engaged two years later,<sup>197</sup> he sought to murder her by the same foul method which he had used to dispatch her sister—namely, by the use of a trained swamp adder, the deadliest snake in India, to inflict a virtually undetectable yet lethal bite.<sup>198</sup> Our intervention saved Miss Stoner's life and solved the mystery of her sister's death, both at the cost of Roylott's own life when the addled adder turned upon him.<sup>199</sup>

"By the way, Watson, Miss Stoner married her fiancé, a Mr. Percy Armitage, the younger son of a well-respected family of Crane Water, near

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<sup>190</sup> *The Adventure of the Speckled Band*, *supra* note 184, at 260.

<sup>191</sup> *See id.*

<sup>192</sup> *See id.* at 259.

<sup>193</sup> *See id.* at 259-60.

<sup>194</sup> *See id.* at 260.

<sup>195</sup> *See id.* at 260-62.

<sup>196</sup> *See id.*

<sup>197</sup> *See id.* at 263.

<sup>198</sup> *See id.* at 270-72.

<sup>199</sup> *See id.*

Reading.<sup>200</sup> I received a letter from her not long after the couple's return from their honeymoon. Mrs. Armitage confirmed something that I had expected: her mother's will had been drafted in such a way that after the death of Dr. Roylott and the death of her own twin sister, Mrs. Armitage should have the entire life income."

"A much less sinister plot to keep hold of the life estate of another was the one which we encountered at Shoscombe Old Place in Berkshire, Holmes."<sup>201</sup>

"Quite right you are, Watson," replied my friend. "The home and the income from the fortune of the late Sir James Falder were left in his will, for life, to his widow, Lady Beatrice Falder.<sup>202</sup> Upon her death, the entire estate reverted to Sir James's brother.<sup>203</sup> Lady Beatrice was particularly fond of her brother, the dashing and slightly dangerous Sir Robert Norborton.<sup>204</sup> Sir Robert was one of the best-known owners of racing thoroughbreds in the realm, but he was quite indebted to his creditors; he badly needed his great champion, Shoscombe Prince, to win the Derby in order to satisfy his debts and free himself from his creditors.<sup>205</sup> Lady Beatrice was most generous and indulgent, both emotionally and financially, with her beloved brother,<sup>206</sup> but if she were to die before the Prince ran for the Derby purse, Sir Robert's creditors would no longer be patient with him, as he would have lost his main source of income.<sup>207</sup> Such an unfortunate turn of events appeared like-

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<sup>200</sup> See *id.* at 263.

<sup>201</sup> See ARTHUR CONAN DOYLE, *The Adventure of Shoscombe Old Place*, in COMPLETE, *supra* note 1, at 1102.

<sup>202</sup> See *id.* at 1103.

<sup>203</sup> See *id.* Holmes used the word *revert* and, possibly, did so correctly in this matter, for it may well have been that Sir James retained a reversion in some way. For example, if Sir James, seised of a fee simple estate, settled only a life estate on his widow, then he would have retained a reversion. If Sir James's will did not provide for a different person to take the reversion, then his brother (who may well have been Sir James's only heir at law) likely would have inherited it. Nothing in Watson's report of this case indicates that Sir James and Lady Beatrice had any descendant who would have inherited in preference to Sir James's brother. On the other hand, Holmes—or Watson—possibly was mistaken in the use of the word *revert* and instead meant that the childless Sir James had left only a life estate to his widow, with a vested remainder as opposed to a reversion in his brother. Either alternative is plausible.

<sup>204</sup> See *id.* at 1102-03.

<sup>205</sup> See *id.* at 1102-04. Sir Robert had placed a huge wager—"everything he could raise or borrow"—on his own horse, at "fine odds." *Id.* at 1103-04.

<sup>206</sup> See *id.* at 1103.

<sup>207</sup> See *id.* at 1103, 1111-12.

ly to transpire, for Lady Beatrice was in extreme ill-health at the time.<sup>208</sup> In fact, the lady did die shortly before the Derby, but this fact was kept secret by means of a clever ruse concocted by Sir Robert.<sup>209</sup> Had her death become generally known, the estate would have reverted to Sir James's brother, and Sir Robert's creditors most likely would have seized his estate, including Shoscombe Prince, which the creditors likely would not have permitted to run in the Derby.<sup>210</sup> Do you recall how the matter turned out, Watson?"

"Indeed, I do, Holmes. Shoscombe Prince won the Derby handily, providing Sir Robert with sufficient funds both to pay his creditors and to continue his lavish life-style.<sup>211</sup> I myself won quite a few pounds that day when I backed the Prince in the Derby."

## VII. HOLMES AND I RECAPITULATE

"Well, Watson," said Holmes, "let us tally the results of our little survey of those adventures of ours which dealt with issues relating to donative transfers of present possessory estates and future interests by means of will, inheritance, or trust. We have mentioned at least two cases which seemed to be on the verge of these matters but never directly raised them. *The Greek Interpreter* is one such case, and—if you please will forgive me for raising it again—*The Sign of Four* is another. Similarly, we noted in passing three other cases in which nothing more than the tawdry and commonplace motive of marriage for money was at issue: *The Adventure of the Illustrious Client*, *The Adventure of the Three Gables*, and *The Boscombe Valley Mystery*. We dismissed all five of these adventures, although the last one—*The Boscombe Valley Mystery*—was, by our own admission, a somewhat closer call. *The Adventure of the Solitary Cyclist*, albeit a case of marriage for money, was at least intellectually challenging because it involved the abduction and forced marriage of an heiress. We may classify this adventure as a case the motivation for which involved a donative transfer—the victim's inheritance."

After the briefest of pauses, Holmes proceeded with his summary of our morning's discussion. "As we said before, Watson, I made my own will in

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<sup>208</sup> See *id.* at 1104.

<sup>209</sup> See *id.* at 1111-12. The ruse involved disguising the actor-husband of Lady Beatrice's maid to temporarily impersonate Lady Beatrice by appearing daily in the lady's carriage. In this way, it would appear that Lady Beatrice still survived to enjoy her life estate. Sir Robert was not implicated in any way in his sister's death, which had resulted from natural causes. See *id.*

<sup>210</sup> See *id.*

<sup>211</sup> See *id.* at 1112.

preparation for my rendezvous with Professor Moriarty in *The Final Problem*, as you subsequently related in *The Adventure of the Empty House*.”

“Holmes, entailments and inheritances lay in the background in several of the problems on which you have been consulted. Most famously, there was the case of *The Hound of the Baskervilles*, but there were others. *The Adventure of the Priory School* was another case of an entailment—more specifically, the illegitimate son’s desire for his father to dock the tail in order to devise much of the family estate to him. As I earlier pointed out, I had guessed that an entailment at least indirectly was implicated in *The Disappearance of Lady Frances Carfax*.”

“Quite true, Watson. I suppose that we can put several of our adventures into the category of miscellany. In *The Adventure of the Missing Three-Quarter*, the eponymous three-quarter disappeared because he feared that his marriage might cause him to be disinherited. In *The Adventure of the Devil’s Foot*, the control of the family fortune was at stake, but no donative transfer was implicated. In *The Adventure of the Norwood Builder*, the villain attempted to frame the young hero for murder by making a will purporting to leave the villain’s estate to the young man, thus providing the apparent motive for the feigned murder. Finally, in what you entitled *The Adventure of the Dying Detective*, I was able to trap the evil-doer into confessing his murder of a prior remainderman for the purpose of taking the remainder himself.”

“Two of your problems,” said I, “you solved, at least in part, because you immediately saw that the putative bequest, in the case of one, and the putative trust, in the case of the other, offended the famous Rule against Perpetuities. In *The Adventure of the Three Garridebs* the offending gift was made by will, while in *The Red-headed League* the offending gift was made in trust—albeit a testamentary trust. I believe that I surprised you—and I certainly surprised myself—by my ability to explicate the perpetuities violation in both of these matters.”

“Indeed you did, Watson! To conclude our little tally, I can state that in four of our adventures the use of another person’s life estate provided the motive for the wrong-doer. *The Adventure of the Speckled Band* involved one murder and one attempted murder aimed at preventing a life estate from shifting to another person. The assignment of another person’s life estate, though without resort to murder, was the motivation for the problem in *The Adventure of the Copper Beeches*. Slightly less malignant, though treating of the same issue, was *A Case of Identity* and—more benign still—was *The Adventure of Shoscombe Old Place*.”

“Holmes, until this very day, I have never considered just how many of the problems which have presented themselves in these very rooms have implicated issues surrounding donative transfers. Matters of decedents’ estates, that is, matters of wills and inheritances, matters of trusts, and matters of present possessory estates in land and their related future interests—particularly, those pernicious entailments—are ubiquitous as motivations to crime in this great realm. So, at least, it would seem, if one were to judge from so many of your cases which I have dutifully reported.”

At precisely this moment, a knock at our door broke the thread of our conversation. “Please do come in, Mrs. Hudson,” said I, expecting her to enter the room bearing our lunch. To my surprise, in stepped none other than Billy, the young but very wise page boy.<sup>212</sup>

“Ah, Billy, what have you for me?” asked Holmes, who appeared to have been expecting Billy.

“I’ve a wire for you, sir,” said Billy, handing the telegram to Holmes.

“Thank you, Billy,” said Holmes, discretely placing sixpence in Billy’s hand. With a tip of his cap to Holmes, Billy departed as swiftly as he had entered.

For a few minutes, Holmes pondered the lengthy telegram. “What do you make of this, Watson?” he at length asked, handing the wire to me. “As you will see, it concerns the Musgrave matter that we discussed as this morning dawned. Surely, this means that—”

Holmes’s words were interrupted by another knock upon the door. “Come in, Mrs. Hudson,” I called, this time confident that the knock came from our dedicated landlady bringing our long-awaited lunch. Again, to my surprise, but evidently not to that of Holmes, it was not Mrs. Hudson who entered at my invitation; rather, it was Inspector Lestrade of Scotland Yard.

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<sup>212</sup> Billy, whom Watson calls “young but very wise” at the beginning of *The Adventure of the Mazarin Stone*, is described in slightly more detail in that case. See ARTHUR CONAN DOYLE, in *COMPLETE*, *supra* note 1, at 1012, 1012-13.

Incidentally, Holmes and Watson omitted *The Adventure of the Mazarin Stone* from their tally of cases made above despite the fact that the case contains one tantalizing hint that a past crime may have been committed for the sake of a legacy. In a verbal duel with the villainous Count Negretto Sylvius, Holmes alludes to knowledge of the count’s having some responsibility for the death of someone who left him a legacy. Referring to an entry in a record book that he has made, Holmes says, “It’s all here, Count. The real facts as to the death of old Mrs. Harold, who left you the Blymer estate, which you so rapidly gambled away.” *Id.* at 1017. Unfortunately, Holmes never said anything more than this about Mrs. Harold’s death. Had he seen fit to confide in Watson about the matter, Holmes might have added another interesting adventure to the present tally.

"Welcome, Lestrade. I have been expecting you, particularly in light of the information contained in the wire which I have just now received," said Holmes. "You had better have a look for yourself. Watson, would you be so good as to hand our friend the inspector the telegram which you currently hold in your hand?" I promptly complied with Holmes's request.

"Ah, Mr. Holmes, this is devilish business, is it not?" inquired Lestrade, after reading the wire. "I fear we may be too late to be of assistance to Sir Reginald Musgrave."

"I very much hope that we are not, Lestrade, although I concede that you may be right. Watson and I were discussing this Musgrave business earlier this morning. Once more, you and I are thrown together on a case of the utmost urgency. It appears to be necessary that we leave immediately. Watson, will you join us?"

"Certainly, Holmes." I replied.

"Splendid! Do you have your revolver in your pocket? We may well have need of it before the sun has set." I lightly patted the pocket of my jacket to indicate the ready presence of my revolver.

"Excellent! Then we must be off. Our lunch will have to wait. Lestrade, you and I shall recite the latest developments in this dreadful affair for the benefit of Dr. Watson. We may do so in the cab on our way to—" but, just at this moment, Holmes was interrupted by a third knock upon our door. This time, Mrs. Hudson entered, carrying our lunch.

"Our apologies, Mrs. Hudson," said I. "We must leave in haste, for the matter appears to be one of extreme urgency. Unfortunately, the nourishment which you so kindly have brought to us must wait." Our good and patient landlady, who had long since ceased to be surprised by our abrupt and inconvenient departures, simply shook her head and left the room before us, never even so much as laying the luncheon tray upon our table. Delayed meals were among the least of the troubles that Holmes and I had caused this long-suffering woman.

As we hurried down the stairs behind her, Holmes began his recitation of the matter at hand. "Watson, this case has every appearance of being one of the most remarkable that you and I have ever encountered. Perhaps more remarkable even than the case of the giant rat of Sumatra, for which the world still is not prepared. Most unfortunately for Sir Reginald, it now appears that

*Editor's Note: The present manuscript ends here. Even more fervently do I hope that someone discovers the missing portion of this manuscript one day and places it before an appreciative public, who doubtless will be curious to know what great calamity might have befallen Sir Reginald*

*Musgrave and whether Mr. Sherlock Holmes arrived in time to prevent the worst from transpiring.*<sup>213</sup>

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<sup>213</sup> By now, the reader will have realized that this entire “manuscript” is fictitious. Sadly, there is no newly discovered Sherlock Holmes manuscript by Sir Arthur Conan Doyle, let alone one by Dr. John H. Watson, M.D.; however, the search continues. Incidentally, in the event that a Doyle manuscript is newly discovered, I can almost guarantee that it will not contain any appreciable analysis of legal issues relating to donative transfers.

In the interest of verisimilitude, I was constrained to provide much of my analysis of the relevant legal issues in the footnotes of this Article rather than in the text, except to the extent that I could make Holmes’s or Watson’s understanding and analysis of these issues seem plausible. Moreover, for the same reason, where I put words in the mouth of Holmes or Watson—either during their discussions of the relevant legal issues or the additional “facts” from their adventures that are mentioned here for the first time—I could not indicate this in any way other than by citation or lack of citation. That is, when a fact actually appeared in a Holmes story as written by Doyle, I specifically cited to Doyle’s writing; on the other hand, when the fact was noted for the first time in this manuscript, there is no citation to Doyle because, of course, I myself have supplied that “fact” (i.e., I have simply made it up). My “synopsis” strongly hinted at these devices. Doubtless, most readers took these initial hints for what they were—an indication that this Article represents a fictitious manuscript. That said, I am reasonably confident that both the legal analysis in which Holmes and Watson have engaged over the course of this Article and the new “facts” that appear for the first time in my text are faithful to the tenor of the Holmes stories and represent reasonable inferences and extrapolations from what Doyle actually wrote. I also am reasonably confident—or, at least, reasonably hopeful—that the literary vehicle that I have chosen to use to convey my analysis of the donative-transfer issues in the Holmes adventures is more engaging and more fun than some dry-as-dust essay on this subject.

This final footnote allows me to thank two of my colleagues, Professor James Hambleton and Professor Paul George, for their useful comments on an earlier draft of this Article. For the reasons stated above in this footnote, I could not acknowledge their generous advice until this ultimate point in my work.



