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## The Adventure of the Norwood Builder A Lawyerly Annotated Edition

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**Authors**

Robert Jarvis, Joshua Cumby, Ross Davies, Geoffrey Fehling, Clifford Goldfarb, Guy Marriott, Ira Matetsky, Albert Rosenblatt, and Julia Rosenblatt



# THE ADVENTURE OF THE NORWOOD BUILDER

A LAWYERLY ANNOTATED EDITION

*A. Conan Doyle*<sup>†</sup>

*introduction by Andrew Jay Peck*<sup>\*</sup>

*annotations by Hadar Aviram,<sup>1</sup> Cattleya M. Concepcion,<sup>2</sup>*

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<sup>†</sup> Arthur Conan Doyle was trained as a physician and practiced medicine for quite a while, but he spent most of his life as a professional writer — an extraordinarily good and successful one. *See, e.g.*, JON LELLENBERG, DANIEL STASHOWER & CHARLES FOLEY, *ARTHUR CONAN DOYLE: A LIFE IN LETTERS* (2007) (hereafter “LELLENBERG ET AL., LIFE IN LETTERS”); ANDREW LYCETT, *THE MAN WHO CREATED SHERLOCK HOLMES: THE LIFE AND TIMES OF SIR ARTHUR CONAN DOYLE* (2007) (hereafter “LYCETT, LIFE AND TIMES”); DANIEL STASHOWER, *TELLER OF TALES: THE LIFE OF ARTHUR CONAN DOYLE* (1999) (hereafter “STASHOWER, TELLER OF TALES”).

<sup>\*</sup> Andrew Jay Peck was appointed as a U.S. Magistrate Judge for the U.S. District Court for the Southern District of New York on February 27, 1995. He graduated from Duke Law School in 1977, and clerked for Judge Paul Rooney in the U.S. Court of Appeals for the Fifth (later the Eleventh) Circuit. He was a litigator at the law firm of Paul, Weiss, Rifkind, Wharton & Garrison until his appointment to the Court. More importantly for this article, Judge Peck is a life-long Sherlockian, and received his investiture in 1973 in the Baker Street Irregulars as “Inspector Baynes of the Surrey Constabulary.” He is recognized in Sherlockian circles as an expert on the Chronological Holmes. “Introduction” copyright © 2014 by Andrew Jay Peck.

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<sup>3</sup> Joshua Cumby is an intellectual property and commercial litigation associate at Venable LLP and a graduate of the University of Texas and the George Mason University School of Law. While in law school, he studied English legal history at the University of Cambridge. He became a devotee of the Holmes Canon in 1991, when he received his copy of *The Complete Sherlock Holmes* from his grandparents.

<sup>4</sup> Ross Davies is a George Mason University law professor and *Green Bag* editor.

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<sup>7</sup> Robert M. Jarvis (jarvisb@nova.edu) is a professor of law at Nova Southeastern University in Fort Lauderdale, Florida. Prior to entering academia, he practiced maritime law with Haight, Gardner, Poor & Havens and Baker & McKenzie in New York. A past editor of the *Journal of Maritime Law and Commerce*, and a past chair of the Admiralty Law Committee of The Florida Bar, he is the author of numerous works on maritime law. His current projects include an article exploring the maritime roots of Sherlock Holmes as revealed in "The Adventure of the Gloria Scott."

<sup>8</sup> Guy Marriott is a retired English Solicitor, who specialized in intellectual property and entertainment law. He graduated from the University of Cambridge (Churchill College) in 1968 with a degree in Law and Economics. A Holmesian for many years, and a former Chairman of, and currently the President of, The Sherlock Holmes Society of London, he received his investiture in 2008 in the Baker Street Irregulars as "Grand Hotel du Louvre." Contributions copyright © 2015 by Guy Marriott.

<sup>9</sup> Ira Brad Matetsky (imatetsky@ganfershore.com) is a partner in the firm of Ganfer & Shore, LLP in New York. He is a lifelong student of the Sherlock Holmes Canon.

<sup>10</sup> Albert M. Rosenblatt, a former Judge of the New York Court of Appeals, now

## EDITORS' PREFACE

We hope that the annotations provided here will educate and entertain you, and draw you further into the world of Sherlock Holmes, Dr. John H. Watson, Inspector Lestrade, et al. These notes are, however, only the beginning, only a sampling, of what there is to know about "The Adventure of the Norwood Builder."

For anyone interested in fully appreciating this story — its characters, plot, context, and so on — two books are essential resources. First, there is *The New Annotated Sherlock Holmes* (2005), by Leslie S. Klinger. Volume II of that work includes "Norwood Builder," and Klinger's notes there are flagged here with citations to "LSK, 2 New Ann. p. \_ note \_." Second, there is *The Sherlock Holmes Reference Library*, also by Klinger. The volume in that series covering *The Return of Sherlock Holmes* (2003) includes "Norwood Builder," and Klinger's notes there are flagged here with citations to "LSK, Ref.: RETUR, p. \_ note \_." If you want to know what his notes say (and you should), you will need to get his books (which you should).

The text of the "Norwood Builder" presented here is from the McClure, Phillips & Co. edition of *The Return of Sherlock Holmes* (1905), which has its quirks, as does every version. The picture of Jonas Oldacre on page 116 above is the frontispiece of that volume.<sup>12</sup>

teaches law at the NYU Law School. He also does national and international mediations, arbitrations, and consulting. He is with McCabe & Mack in Poughkeepsie, NY. He has been a Baker Street Irregular for many years, with the investiture "Inspector Bradstreet," and his Sherlockian writings have appeared in the *Baker Street Journal* and other publications. He is married to Julia Carlson Rosenblatt, whose annotations also appear here.

<sup>11</sup> Julia Carlson Rosenblatt is a former Vassar College professor and a winter-sports newspaper columnist. She has been a member of the Baker Street Irregulars since 1991 with the investiture "Mrs. Turner" and is "Maude Bellamy" in the Adventures of Sherlock Holmes. Among other works, she has written *Dining with Sherlock Holmes* with Chef Fritz Sonnenschmidt.

<sup>12</sup> "Norwood Builder" being a subject of interest to Sherlockians, other interesting, and entertaining scholarly works about it, or at least touching on it, abound. They are too numerous to list and too various to summarize. Conveniently and not surprisingly, a good starting point for exploration of other scholarship is Klinger. See Leslie S. Klinger, *Sifting the Writings upon the Writings*, 52 BAKER STREET J. 47 (Summer 2002).

INTRODUCTION: THE DATING OF  
 “THE ADVENTURE OF THE NORWOOD BUILDER”

*Andrew Jay Peck*

In “The Adventure of the Creeping Man,” Watson says to Holmes: “As to your dates, that is the biggest mystification of all.” What is the mystery here, you may ask? There is no doubt that “The Adventure of the Norwood Builder” (“NORW”) was first published in the November 1903 issue of the *Strand Magazine* (U.K.) and the October 31, 1903 issue of *Collier’s Weekly* (U.S.) under the byline of Arthur Conan Doyle. But to the members of The Baker Street Irregulars<sup>13</sup> and other Sherlockians (or Holmesians, in the parlance of our more formal British colleagues), there is another reality. We play the Grand Game — with tongue in cheek, we believe (or at least pretend) that Holmes and Watson are real people, Watson’s accounts of Holmes’s adventures are historical fact, and Doyle merely was Watson’s literary agent. Sherlockians’ answer to “Sherlock Holmes, fact or fiction?” is “yes.” Or in the words of the Museum of London’s current special exhibition: “Sherlock Holmes: The Man Who Never Lived and Will Never Die.”

Thus, Sherlockians deduce from the stories, and argue about, such topics as Holmes’s university — Oxford or Cambridge? Was Watson wounded in Afghanistan in the arm, or the leg (or possibly in his posterior)? Was John H. Watson’s middle name Hamish? How many times was Watson married? Where was 221B Baker Street? What type of snake drinks milk and climbs a bell pull?

A major area of study, and controversy, deals with the chronology of each of the sixty Sherlock Holmes stories (the “Canon” to Sherlockians). As Vincent Starrett has noted, “Nearly all [of the chronologists] are at variance with one another; indeed, when two Sherlockian chronologists agree, it is an event . . . None of them, although Mr. Brend comes nearest, agree with Dr. Watson.”<sup>14</sup>

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<sup>13</sup> The Baker Street Irregulars (“BSI”), named after the street urchins who assisted Holmes, was founded in 1934 by Christopher Morley.

<sup>14</sup> Vincent Starrett, *Preface* at iii, in ERNEST BLOOMFIELD ZEISLER, *BAKER STREET CHRONOLOGY: COMMENTARIES ON THE SACRED WRITINGS OF DR. JOHN H. WATSON* (Chicago: Alexander J. Isaacs 1953; reprinted, New York: Magico Magazine 1983).

What is the reason for the chronological difficulties? In some stories, Watson is very vague as to the case's date. For example, no information is given for "The Adventure of the Red Circle"; in "The Adventure of the Blue Carbuncle," we know it is December 27, but no year is given; in "The Adventure of Charles Augustus Milverton," it is the winter but the year is "concealed"; and in "The Adventure of the Second Stain," it is a Tuesday in autumn in "a year that shall be nameless."

In other stories, it is not a lack of information but rather conflicting internal statements or disparity between Canonical facts and historical facts, such as the weather. For example, in "The Red-Headed League," the story starts in June and mysteriously jumps ahead to October. As Prof. Christ has said, "With one shining exception ('The Adventure of the Devil's Foot'), whenever a reminiscence gives us (whether specifically or deducibly) the year of action, together with the month, the day of the month, and the day of the week, we are led into confusion, frustration and high glee."<sup>15</sup>

Finally, and importantly, the dating of one story often is dependent on the dating of several others, so a change in dating one case will affect the dating of other cases. This issue particularly arises with the stories that are dependent on Watson's marital status. Putting aside Watson's marriage circa 1903, we clearly have Watson's marriage to Mary Morstan after *The Sign of Four*, but some chronologists also have posited another marriage, shortly before or after the Watson-Morstan nuptials. This "second" marriage — unsupported by any Canonical evidence — was proposed because it solves certain chronological problems (for cases dated as occurring "soon after" Watson's marriage), but in my opinion it creates as

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Starrett never engaged in the chronological game himself — perhaps because of the line in his famous poem, "it is always 1895."

<sup>15</sup> Quoted in ANDREW J. PECK AND LESLIE S. KLINGER, "THE DATE BEING — ?": A COMPENDIUM OF CHRONOLOGICAL DATA at iii n.2 (New York, *Magico Magazine* 1996 Expanded & Revised Ed.) (hereafter, Peck & Klinger, *The Date Being* — ?). Prof. Christ has exaggerated somewhat — in the same category as "The Adventure of the Devil's Foot" (Tuesday, March 16, 1987) of cases on which there is unanimity are "His Last Bow" (Sunday, August 2, 1914), "The Adventure of the Bruce-Partington Plans" (Thursday, November 21, 1895), and "The Adventure of the Creeping Man" (Sunday, September 6, 1903).

many chronological problems as it solves. I therefore join Rev. Folsom<sup>16</sup> in rejecting the second marriage theory and conclude that Watson was married once, and only once, to Mary Morstan.<sup>17</sup>

With that background, I turn to “The Adventure of the Norwood Builder.” What chronological data does Watson give us? As Holmes said in “The Adventure of the Creeping Man,” “Well, now, let us take the dates first.” Holmes refers to the “late lamented Professor Moriarty,” so NORW must occur after Moriarty’s death (in “The Final Problem”) and thus also after Holmes’s return from the dead in “The Empty House.” “The Empty House” occurred “in the Spring of the year 1894,” according to Watson.<sup>18</sup> Indeed, in NORW Watson states that “Holmes had been back for some months.” More specifically as to the month, in describing his investigation, Holmes said that he “crawled about the lawn with an August sun at my back.”

The date of NORW thus would appear clear: August 1894, and that is the date chosen by Blakeney,<sup>19</sup> Christ,<sup>20</sup> Brend,<sup>21</sup> Zeisler,<sup>22</sup> Folsom<sup>23</sup> and Dakin,<sup>24</sup> among others.<sup>25</sup>

<sup>16</sup> HENRY T. FOLSOM, *THROUGH THE YEARS AT BAKER STREET: A CHRONOLOGY OF SHERLOCK HOLMES* (Revised Edition. Washington, New Jersey: Privately printed 1964).

<sup>17</sup> Again, I am not considering Watson’s possible 1903 marriage, because whatever views one has about it, it does not create any chronological problems.

<sup>18</sup> Most of the major chronologists date “The Empty House” as occurring in April 1894. See Peck & Klingler, *The Date Being — ?*, at 13.

<sup>19</sup> T.S. BLAKENEY, *SHERLOCK HOLMES: FACT OR FICTION?* (London: John Murray 1932; Reissued, The Baker Street Irregulars, Inc. 1954; Reprinted, New York: Otto Penzler Books 1993).

<sup>20</sup> JAY FINLEY CHRIST, *AN IRREGULAR CHRONOLOGY OF SHERLOCK HOLMES OF BAKER STREET* (Ann Arbor, Michigan: The Fanlight House 1947; Reprinted, New York: Magico Magazine 1985).

<sup>21</sup> GAVIN BREND, *MY DEAR HOLMES* (London: George Allen & Unwin, Ltd. 1951; Reprinted, New York: Otto Penzler Books 1994).

<sup>22</sup> ERNEST BLOOMFIELD ZEISLER, *BAKER STREET CHRONOLOGY: COMMENTARIES ON THE SACRED WRITINGS OF DR. JOHN H. WATSON* (Chicago: Alexander J. Isaacs 1953; Reprinted, New York: Magico Magazine 1983). Zeisler, however, dates NORW as July 2, 1894, and says that the “August sun” reference was an expression for a hot summer sun.

<sup>23</sup> HENRY T. FOLSOM, *THROUGH THE YEARS AT BAKER STREET: A CHRONOLOGY OF SHERLOCK HOLMES* (Revised Edition; Washington, New Jersey: Privately printed 1964).

<sup>24</sup> D. MARTIN DAKIN, *SHERLOCK HOLMES COMMENTARY* (Newton Abbott: David & Charles, Ltd. 1972, and New York: Drake Publishers, Inc. 1972).



Two of the major chronologists, however — Bell<sup>26</sup> and Baring-Gould<sup>27</sup> — date NORW a year later, in August 1895. Baring-Gould based this on meteorological data. He explains that in NORW, Holmes describes the weather as “very warm these past few days,” with a drought that made the ground hard. But according to meteorological data, “there was no period in August of that year [1894] in which the weather was both dry and hot. In August, 1895, on the other hand, there was no rain from Wednesday, August 14 . . . to Tuesday, August 22,” and the temperature rose from 64.8 degrees on August 13 to 82 degrees on August 19. Baring-Gould adds that the “selection of 1895 over 1894 is strengthened by the fact that Watson did not include ‘The Adventure of the Norwood Builder’ in his list of important cases of 1894 (‘The Adventure of the Golden Pince-Nez’).” Bell also based his 1895 date on the omission of NORW from the list of 1894 cases in “The Adventure of the Golden Pince-Nez.”

Brend and Dakin respond that the reference in NORW to Holmes being back for “some months” would hardly be appropriate if Holmes had been back for sixteen months, *i.e.*, from the April 1894 date of “The Empty House” to August 1895.<sup>28</sup> Dakin and Zeisler note that the list of 1894 cases in “The Adventure of the Golden Pince-Nez” are non-exclusive and are of unpublished cases (which tantalize Sherlockians), and since NORW was published only a few months before “The Adventure of the Golden Pince-Nez,” there was no reason to list NORW. Moreover, Watson referred to “three massive manuscript volumes” of 1894 cases, further indicating that the list was examples and was not exclusive.

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<sup>25</sup> See Peck & Klinger, *The Date Being* — ?, at 14.

<sup>26</sup> H.W. BELL, *SHERLOCK HOLMES AND DR. WATSON: THE CHRONOLOGY OF THEIR ADVENTURES* (London: Constable & Co. 1932; Reissued, The Baker Street Irregulars, Inc. 1953; Reprinted, New York: Magico Magazine 1984).

<sup>27</sup> WILLIAM S. BARING-GOULD, *THE CHRONOLOGICAL HOLMES* (New York: Privately Printed 1955). Also, WILLIAM S. BARING-GOULD, ED., *THE ANNOTATED SHERLOCK HOLMES* (New York: Clarkson N. Potter 1967).

<sup>28</sup> To make his March 1894 date for “The Adventure of Wisteria Lodge” (because the reference in NORW to “the case of the papers of ex-President Murillo” appears to be a reference to that case) fit between “The Empty House” and the August 1894 date of NORW, Brend dates “The Empty House” as February 1894 instead of April 1894.

My opinion: The weather was not significant to the plot of NORW. The list of (unpublished) cases in “The Adventure of the Golden Pince-Nez” clearly was not exclusive — it also did not mention “The Empty House,” which is unanimously dated by the major chronologists as occurring in 1894. The references in NORW to August (by Holmes) and to Holmes being back for “some months” since “The Empty House,” convince me that NORW occurred in August 1894. Readers are invited to come to their own conclusion.

To learn more about the chronological game, read Peck & Klingler, “*The Date Being — ?*”



## THE ADVENTURE OF THE NORWOOD BUILDER

*Arthur Conan Doyle*

“From the point of view of the criminal expert,” said Mr. Sherlock Holmes, “London has become a singularly uninteresting city since the death of the late lamented<sup>29</sup> Professor Moriarty.”<sup>30</sup>

“I can hardly think that you would find many decent citizens to agree with you,” I answered.

“Well, well, I must not be selfish,” said he, with a smile, as he pushed back his chair from the breakfast-table. “The community is certainly the gainer, and no one the loser, save the poor out-of-work specialist, whose occupation has gone. With that man in the field, one’s morning paper presented infinite possibilities. Often it was only the smallest trace, Watson, the faintest indication, and yet it was enough to tell me that the great malignant brain was there, as the gentlest tremors of the edges of the web remind one of the foul spider which lurks in the centre. Petty thefts, wanton assaults,

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<sup>29</sup> LSK, REF.: RETUR, p. 47, note 1; LSK, 2 NEW ANN. p. 829, note 2.

<sup>30</sup> LSK, REF.: RETUR, p. 47, note 2; LSK, 2 NEW ANN. p. 829, note 3.

purposeless outrage — to the man who held the clue all could be worked into one connected whole. To the scientific student of the higher criminal world, no capital in Europe offered the advantages which London then possessed. But now —” He shrugged his shoulders in humorous deprecation of the state of things which he had himself done so much to produce.

At the time of which I speak, Holmes had been back for some months, and I at his request had sold my practice and returned to share the old quarters in Baker Street.<sup>31</sup> A young doctor, named Verner,<sup>32</sup> had purchased my small Kensington practice, and given with astonishingly little demur the highest price that I ventured to ask — an incident which only explained itself some years later, when I found that Verner was a distant relation of Holmes, and that it was my friend who had really found the money.<sup>33</sup>

Our months of partnership<sup>34</sup> had not been so uneventful as he

<sup>31</sup> LSK, REF.: RETUR, p. 47, note 3; LSK, 2 NEW ANN. p. 830, note 4.

<sup>32</sup> LSK, REF.: RETUR, p. 47, note 4; LSK, 2 NEW ANN. p. 830, note 5.

<sup>33</sup> LSK, REF.: RETUR, p. 47, note 5; LSK, 2 NEW ANN. p. 830, note 6.

<sup>34</sup> CLIFFORD S. GOLDFARB: Watson and Holmes describe their relationship as a partnership on multiple occasions. See “The Adventure of Charles Augustus Milverton” (published 1904) (“Dr. Watson is my friend and partner.”); “The Adventure of the Three Garridebs” (published 1924) (“... in my position of partner and confidant I am obliged to be particularly careful to avoid any indiscretion.”); and “The Red-Headed League” (published 1891) (“This gentleman . . . has been my partner and helper in many of my most successful cases . . .”). It is to be noted that “Norwood Builder” and two of the other three cited cases were published after Holmes’s 1894 return. “Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.” *Partnership Act*, 1890, 53 & 54 Vict, c.39 (henceforth the “PA”). There is no doubt that an active detective agency constitutes a business. Watson’s contributions as an assistant in investigations, revolver-toting bodyguard, recording secretary and publicist are well-documented. As to a view of profit, while Holmes could be cavalier about his fees, he certainly approached the subject in a business-like manner: “My professional charges are upon a fixed scale . . . I do not vary them, save when I remit them altogether.” See “The Problem of Thor Bridge” (published 1922). While it is likely that the relationship between Holmes and Watson was a partnership prior to the events of 1891, when Holmes faked his death at the Reichenbach Falls, we will concern ourselves here only with their business arrangements from 1894. At that point, the original partnership, which had not been dissolved by the supposed death of Holmes (PA, s.33), was either revived, or a new partnership was formed. The fact that both Holmes and Watson hold each other out as partners is convincing evidence of the existence of a partnership (PA, s.14(1)), although not conclusive. *Re Stanton Iron Co.* (1855) 21 Beav

had stated, for I find, on looking over my notes, that this period includes the case of the papers of ex-President Murillo,<sup>35</sup> and also the shocking affair of the Dutch steamship *Friesland*, which so nearly cost us both our lives.<sup>36</sup> His cold and proud nature was al-

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164. Since Watson had given up his medical practice and was enjoined from publishing accounts of Holmes's cases in the *Strand Magazine* until 1903, clearly he had to be looking to Holmes for financial support. Suggestions that he might be living off his capital or a share of royalties from earlier stories are purely speculative. MARTIN DAKIN, *A SHERLOCK HOLMES COMMENTARY* 166 (The Battered Silicon Dispatch Box, Shelburne, Ontario, 2002; originally published 1972). It is clear that his participation in the new cases coming in after Holmes's return entitled him to an equal share in the profits of the partnership, unless otherwise agreed. PA, s.24(1). Likely Watson agreed to accept a less than equal share in the circumstances. Even if Holmes, as senior partner, chose not to share the profits, but only to give Watson an allowance, that does not preclude a partnership. The receipt of profits is not conclusive and the court will look at the entirety of the arrangements between the parties. *Davis v. Davis* [1894] 1 Ch 393. Only Holmes is mentioned in the firm name of "Sherlock Holmes, Consulting Detective." Again, that does not belie the existence of a partnership. Leslie Klinger, in his very useful annotations to "The Norwood Builder" (LSK, REF.: RETUR, p. 47, note 3), advises that the words "as a Junior and insignificant member of the firm" have been deleted from the manuscript, no doubt removed on the advice of Watson's solicitor. A junior partner would not expect his name to be part of the firm name. Another issue is the revenues of the firm. These would include fees paid by clients, royalties from publishing the stories and royalties from sales of Holmes's monographs on tobacco, secret writings and many other topics. The partnership would have terminated when Holmes retired to keep bees on the Sussex Downs. See "The Adventure of the Second Stain" (published 1904). A fuller analysis of this partnership relationship is beyond the scope of this note.

<sup>35</sup> LSK, REF.: RETUR, p. 48, note 7; LSK, 2 NEW ANN. p. 830, note 7.

<sup>36</sup> ROBERT M. JARVIS: As has been pointed out elsewhere, the real-life *Friesland* was a Belgian carrier built for the Red Star Line in 1889 and later chartered to her sister company (the American Line). See LSK, 2 NEW ANN. p. 831, note 8. Doyle's description of the vessel as Dutch normally is treated as a minor mistake not worth mentioning. See, e.g., James Donahue, *Red Star Liner Friesland Singled Out by Famed British Author*, at [perdurabo10.tripod.com/ships/id294.html](http://perdurabo10.tripod.com/ships/id294.html).

It seems doubtful, however, that Doyle would have made such an obvious error, given that the *Friesland* was still trading at the time "The Norwood Builder" was published (1903) and Doyle was well-acquainted with maritime matters. See, e.g., "The Adventure of the Gloria Scott" (1893) (learned discussion of the penal transport trade). Moreover, the *Friesland* was a run-of-the-mill freighter that had an unremarkable career, which came to an end in 1912 when, as the *La Plata*, she was scrapped by her Italian owners. See *S/S Friesland, American Line*, at [www.norwayheritage.com/p\\_ship.asp?sh=frie5](http://www.norwayheritage.com/p_ship.asp?sh=frie5). It therefore strains the imagination to think of her as being part of a "shocking affair . . . which so nearly cost us both our lives."

Perhaps then Doyle meant to draw attention to the ship's nationality rather

than her name. Given that “The Norwood Builder” is set in 1894, this raises an obvious question: was there a recent Dutch voyage significant enough to require Holmes and Watson’s attention, dangerous enough to threaten their existence, and familiar enough to both English and U.S. readers that they would have understood that Doyle was sending them a clue?

One candidate that springs to mind is the *Spaarndam* (ex-*Arabic*), a ship built in 1881 for the White Star Line that was purchased by the Holland America Line in February 1890. See *Spaarndam*, at [www.halpostcards.com/unofficial/ships/spaar.html](http://www.halpostcards.com/unofficial/ships/spaar.html) (explaining that the ship’s name was changed following the sale). Within just a few months of joining the Holland America fleet, the *Spaarndam* found herself in a trans-Atlantic race upon which numerous fortunes were riding:

In 1890 a most peculiar situation occurred which turned into a financial windfall. The USA government had decided that on 1 Oct[.] of [that] year higher tariffs (import taxes) would be levied against the import of prepared [t]obacco. This was a major export from the Netherlands and this protectionist measure caused great concern among the Dutch businessmen involved. Thus with great haste as much tobacco as possible was shipped to the States to avoid these higher import taxes. The *Spaarndam* was on a schedule . . . that would see [her] arriv[e in New York] just inside the deadline. The Dutch business community offered Captain Bonjer a bonus of \$ 5000 [] if he would make it on time with the ship. He did and to the amazement of most, the bonus was indeed paid.

Albert J. Schoonderbeek, *Bonjer, Frederik Hendrik*, at [www.hollandamericablog.com/captains-from-the-past/bonjer/](http://www.hollandamericablog.com/captains-from-the-past/bonjer/). The 1890 tariff act, commonly known as the McKinley Tariff, increased the duty on numerous foreign agricultural products, with the levy on imported tobacco rising from 35 cents a pound to \$2 a pound. See S. REP. 456, REPLIES TO TARIFF INQUIRES: S. COMM. ON FINANCE, 53D CONG. (1894). Blamed by many for helping to bring about the Panic of 1893, the statute was repealed in 1894. See PAUL STUDENSKI & HERMAN EDWARD KROOSS, FINANCIAL HISTORY OF THE UNITED STATES 213-14 (1952) (Beard Books reprint 2003).

The *Spaarndam* arrived in New York on September 30, 1890, with 6,500 bales of Sumatra tobacco valued at \$1.5 million. See *Brought by the Spaarndam*, N.Y. TIMES, Sept. 30, 1890, at 5 (reporting that there was “cheering in the various tobacco merchants’ offices [when they were told] over the telephone of the *Spaarndam*’s arrival.”).

In present-day terms, the *Spaarndam*’s cargo was worth \$38 million. See S. Morgan Friedman, *The Inflation Calculator*, at [www.westegg.com/inflation/infl.cgi](http://www.westegg.com/inflation/infl.cgi). By beating the government’s October 1 deadline, the shippers were able to corner the American market. See *A Prize for a Cargo*, PHIL. TIMES, Oct. 3, 1890, at 4 (“It is said that the eight firms that now practically control the leaf tobacco here will combine, keep the supply from the market and force buyers to pay extravagant prices. This is sustained by the fact that little fine leaf is offered for sale.”). For a further discussion, see PETER HOCHSTEIN, CIGARS AND OTHER PASSIONS: THE BIOGRAPHY OF EDGAR M. CULLMAN 30-32 (2010).

With so much at stake, it is easy to believe that there were many parties who would have gone to great lengths to keep Captain Bonjer from making his deadline

ways averse, however, from anything in the shape of public applause, and he bound me in the most stringent terms to say no further word of himself, his methods, or his successes — a prohibition which, as I have explained, has only now been removed.<sup>37</sup>

Mr. Sherlock Holmes was leaning back in his chair after his whimsical protest, and was unfolding his morning paper in a leisurely fashion, when our attention was arrested by a tremendous ring at the bell, followed immediately by a hollow drumming sound, as if someone were beating on the outer door with his fist. As it opened there came a tumultuous rush into the hall, rapid feet clattered up the stair, and an instant later a wild-eyed and frantic young man, pale, dishevelled, and palpitating, burst into the room. He looked from one to the other of us, and under our gaze of in-

— and even greater lengths to cover up their involvement when their plot failed. Needless to say, bringing these perpetrators to justice would have required Holmes's unique abilities while placing him and Watson in mortal danger.

Of course, whether Doyle was referencing the *Spaarndam* is unknown due to the fact that he never wrote *The Shocking Affair of the Dutch Steamship Friesland*. Others, however, have done so. See, e.g., Peter Calamai, *The Strange Affair of the Steamship Friesland*, in *GASLIGHT GRIMOIRE: FANTASTIC TALES OF SHERLOCK HOLMES* (Jeff Campbell & Charles Prepolec eds. 2008) (ghost story); Mary Robinette Kowal, *The Shocking Affair of the Dutch Steamship Friesland*, in *THE IMPROBABLE ADVENTURES OF SHERLOCK HOLMES* (John Joseph Adams ed. 2009) (assassination plot); "Jaelijn," *The Shocking Affair of the Dutch Steamship Friesland*, at [www.fanfiction.net/s/10029274/1/The-Shocking-Affair-of-the-Dutch-Steamship-Friesland](http://www.fanfiction.net/s/10029274/1/The-Shocking-Affair-of-the-Dutch-Steamship-Friesland) (political thriller); "Cthulhu," *The Shocking Affair of the Dutch Airship Friesland RP*, at [wayfinderexperience.com/forums/index.php?topic=748.0](http://wayfinderexperience.com/forums/index.php?topic=748.0) (steampunk tale). In addition, the 1945 Basil Rathbone film *Pursuit to Algiers*, which finds Holmes guarding a foreign prince, takes place on a Swedish ship called the *Friesland*. See RON BACKER, *MYSTERY MOVIE SERIES OF 1940S HOLLYWOOD* 81 (2010) (concluding that Leonard Lee, the screenwriter, "was trying to provide his version of [the] adventure . . . which Dr. Watson never had the time to immortalize in print."). See also LSK, REF.: RETUR, pp. 48-49, note 8.

<sup>37</sup> IRA BRAD MATETSKY: According to the Canon, Holmes disappeared (Watson believed him to have been killed at Reichenbach Falls) in 1891 ("The Final Problem") and reappeared in 1894 ("The Adventure of the Empty House"), but Watson did not begin publishing his accounts of Holmes's 1894 cases until 1903. Watson explains in "The Empty House" that "[o]nly now, at the end of nearly ten years, [was he] allowed to" publish his account of Holmes's role in that case. "The Norwood Builder" was the first story that Watson published after "The Empty House" (i.e., for modern readers, it is the second story in *The Return of Sherlock Holmes*). See also Cattleya M. Concepcion, *The Adventure of the Elusive Postcard*, in 2015 GREEN BAG ALM. 442; LSK, Ref.: RETUR, p. 49, note 9.

quiry he became conscious that some apology was needed for this unceremonious entry.

"I'm sorry, Mr. Holmes," he cried. "You musn't<sup>38</sup> blame me. I am nearly mad. Mr. Holmes, I am the unhappy John Hector McFarlane."

He made the announcement as if the name alone would explain both his visit and its manner, but I could see, by my companion's unresponsive face, that it meant no more to him than to me.

"Have a cigarette, Mr. McFarlane," said he, pushing his case across. "I am sure that, with your symptoms, my friend Dr. Watson here would prescribe a sedative. The weather has been so very warm these last few days. Now, if you feel a little more composed, I should be glad if you would sit down in that chair, and tell us very slowly and quietly who you are, and what it is that you want. You mentioned your name, as if I should recognise it, but I assure you that, beyond the obvious facts that you are a bachelor, a solicitor, a Freemason, and an asthmatic, I know nothing whatever about you."<sup>39</sup>

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<sup>38</sup> THE EDITORS: A spelling rare now but common at the time.

<sup>39</sup> GUY MARRIOTT AND JOSHUA CUMBY (authors of two excellent annotations merged by the Editors): Holmes identifies Mr. McFarlane as a lawyer who practices as a solicitor in England and Wales. The professional body regulating solicitors both in Mr. McFarlane's time and today is The Law Society, which was founded in 1825 and incorporated shortly thereafter. *See generally* J.H. BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 164 (4th ed. 2007); THOMAS LUND, A GUIDE TO THE PROFESSIONAL CONDUCT AND ETIQUETTE OF SOLICITORS (1960). The organization became known colloquially as The Law Society although its first formal title was "The Society of Attorneys, Solicitors, Proctors and others not being Barristers, practising in the Courts of Law and Equity of the United Kingdom." The Law Society, *Our history*, available at [www.lawsociety.org.uk/about-us/our-history/](http://www.lawsociety.org.uk/about-us/our-history/) ("Law Society Website"); *but see* BAKER at 164 (noting that a "Society of Gentleman Practisers in the Courts of Law and Equity" was formed in the eighteenth century and that the Law Society is its "descendant"); EDMUND B.V. CHRISTIAN, A SHORT HISTORY OF SOLICITORS 120 (1896) (stating that "there was in existence an association of London attorneys and solicitors . . . in which lay the germ of the present Law Society, bearing the title of 'The Society of Gentlemen practisers [sic] in the Courts of Law and Equity'."). In 1903 the Society changed its official name to "The Law Society," and women were first admitted as solicitors in 1922. *Id.*

Distinguishable from barristers (and the older branches of the legal profession in England, serjeants and attorneys), solicitors first appeared in the fifteenth century, became a separate branch of the legal profession in the seventeenth, and became

“not only tolerable but even respectable” by the early eighteenth and “as respectable as . . . barrister[s]” in the early nineteenth. BAKER at 162-64; Law Society Website (noting that from the mid-sixteenth century there had developed two branches of the legal profession — “barristers” and “attorneys and solicitors” — and that gradually, “attorneys and solicitors” combined and the name “solicitor” was adopted). From the beginning, solicitors did just what their name suggests, “soliciting causes” by “helping clients through the jurisdictional jungle [and] giving general advice.” BAKER at 163; *see also* Law Society Website (noting that traditionally attorneys advised parties in lawsuits and solicitors dealt with landed estates). Solicitors could, if they chose, practice in partnership with other solicitors, and solicitors’ offices were to be found in London and in every city and every market town throughout the country. Members of the general public with legal issues, such as wills, estates, real property transactions or other civil or criminal legal matters, could only retain a solicitor to give them advice, the solicitor in turn retaining a barrister for advice on the more complicated or important matters, or to appear in court on behalf of the client. *See* BAKER at 163 (noting that “specialist” barristers left “preliminary dealings with clients, and the preparation of briefs” to solicitors); L. RAY PATTERSON & ELLIOTT E. CHEATHAM, *THE PROFESSION OF LAW* 15 (1971) (“It is the solicitor who deals with and is chosen by the layman . . . who does the office work as client guide and caretaker, and in litigated matters it is he who does most of the preparatory work as gathering the evidence.”). There remains today in the legal profession in England and Wales the distinction between “barristers” and “solicitors” although the distinction is more blurred than it was in Mr. McFarlane’s time. *See* BAKER at 164 (noting that “[t]he social and educational differences between the two classes have withered away, and the professional differences are in function and expertise rather than in education or ability.”). Solicitors and not barristers served as the model for the organization of the legal profession in the United States. ROSCOE POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES* 97 (1953); *see also* PATTERSON & CHEATHAM at 15 (“In the matter of professional organization, The Law Society, rather than the Inns of Court, seem closer to the bar associations in the United States.”). Given the division of labor between solicitors and barristers and the fact that only the first would have come in direct contact with a client like Mr. Oldacre, it is unsurprising that Conan Doyle chose to make the subject of Oldacre’s designs a solicitor rather than a barrister; indeed, the plot depends on it.

Unlike solicitors, until recent years, barristers had to practice independently, and could not practice in partnership, although they would often share “chambers” with other barristers in London or in major cities outside London. In London, these barristers’ chambers would be situated in one of the four Inns of Court — Gray’s Inn, Lincoln’s Inn, Inner Temple, or Middle Temple. To emphasize barristers’ “superiority over the purely ministerial practitioners,” solicitors, attorneys, and other “men of law” were historically excluded from membership in the Inns and the professional training they provided. BAKER at 163; *see also* CHRISTIAN at 120 (reporting that the Law Society was “formed, it is said, as the immediate result of the exclusion of attorneys from the Inns of Court”). Baker also notes that “most distinguished English lawyers between about 1850 and 1950 were either not university graduates at all or were men who had read subjects other than law.” BAKER at 171.



Familiar as I was with my friend's methods, it was not difficult for me to follow his deductions, and to observe the untidiness of attire, the sheaf of legal papers, the watch-charm, and the breathing which had prompted them. Our client, however, stared in amazement.

"Yes, I am all that, Mr. Holmes; and, in addition, I am the most unfortunate man at this moment in London. For Heaven's sake, don't abandon me, Mr. Holmes! If they come to arrest me before I have finished my story, make them give me time, so that I may tell you the whole truth. I could go to gaol happy if I knew that you were working for me outside."

"Arrest you!" said Holmes. "This is really most grati— most interesting. On what charge do you expect to be arrested?"

"Upon the charge of murdering Mr. Jonas Oldacre, of Lower Norwood."<sup>40</sup>

My companion's expressive face showed a sympathy which was not, I am afraid, entirely unmixed<sup>41</sup> with satisfaction.

So we know that, as a solicitor, Mr. McFarlane would have been excluded from membership in the Inns. We do not know, however, whether he was a university graduate or — if he was — what he "read" there (or, for that matter, whether he qualifies as a "distinguished English lawyer"). It is reasonable to infer, then, that Mr. McFarlane received his legal training from another source. Whether or not a university graduate, McFarlane would have received his practical training by being articulated to a solicitor, and learning on the job under supervision from that solicitor. McFarlane could well have been articulated to Graham, but that is speculation. After a period of years as an "articled clerk" McFarlane would have been able to apply for admission as a solicitor. Or perhaps (or in addition), Mr. McFarlane availed himself of the lecture courses the Law Society began providing in the 1830s. See BAKER at 171 n.55. In either case, it may be that by 1894, regulation of the profession included the requirement that a solicitor "take and pass a Preliminary Examination as to his general education and then serve as an articled clerk in the office of a Solicitor for a specified number of years." Hollis R. Bailey, *Admission of Barristers and Solicitors in England*, 14 MASS. L.Q. 60-69 (Nov. 1928) (reprinted in FREDERICK C. HICKS, ORGANIZATION AND ETHICS OF THE BENCH AND BAR 148 (1932)). The period of service "under articles" depended on a prospective solicitor's education: three years "for graduates in Arts, Laws or Science of certain universities and for certain others" and five years for the rest. *Id.* Given that Mr. McFarlane "may have been about twenty-seven," and that by that time he was called a "solicitor" and not a "clerk," his legal education likely began sometime in his early twenties, depending (again) on whether he attended university or not.

<sup>40</sup> LSK, REF.: RETUR, p. 50, note 10.

<sup>41</sup> LSK, REF.: RETUR, p. 50, note 11.

“Dear me,” said he, “it was only this moment at breakfast that I was saying to my friend, Dr. Watson, that sensational cases had disappeared out of our papers.”

Our visitor stretched forward a quivering hand and picked up the *Daily Telegraph*,<sup>42</sup> which still lay upon Holmes’ knee.

“If you had looked at it, sir, you would have seen at a glance what the errand is on which I have come to you this morning. I feel as if my name and my misfortune must be in every man’s mouth.” He turned it over to expose the central page. “Here it is, and with your permission I will read it to you. Listen to this, Mr. Holmes. The head-lines are: ‘Mysterious Affair at Lower Norwood. Disappearance of a Well-known Builder. Suspicion of Murder and Arson. A Clue to the Criminal.’ That is the clue which they are already following, Mr. Holmes, and I know that it leads infallibly to me. I have been followed from London Bridge Station,<sup>43</sup> and I am sure that they are only waiting for the warrant to arrest me. It will break my mother’s heart — it will break her heart!” He wrung his hands in an agony of apprehension, and swayed backwards and forwards in his chair.

I looked with interest upon this man, who was accused of being the perpetrator of a crime of violence. He was flaxen-haired and handsome, in a washed-out negative fashion, with frightened blue eyes, and a clean-shaven face, with a weak, sensitive mouth. His age may have been about twenty-seven, his dress and bearing that of a gentleman. From the pocket of his light summer overcoat protruded the bundle of indorsed papers which proclaimed his profession.<sup>44</sup>

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<sup>42</sup> LSK, REF.: RETUR, p. 50, note 12.

<sup>43</sup> LSK, REF.: RETUR, p. 50, note 13.

<sup>44</sup> GUY MARRIOTT: Lawyers’ “indorsed papers” (perhaps more usually “endorsed papers”) refers to the practice of making a note on papers relating to a particular issue, the note perhaps relating to the settlement terms of the matter, or other terms of importance in the case. If the papers are a written brief sent by a solicitor to a barrister, for the purpose of instructing the barrister to appear in court on behalf of the solicitor’s client, then the brief will be endorsed with the name of the court in which the action is to be tried, the title of the action, and the names of counsel and of the solicitor who delivers the brief. The barrister’s agreed fee is also endorsed on the brief. When concluded, the result of the action is endorsed on the brief by counsel, or if the action is compromised, the terms of the compromise are endorsed on each brief and signed by counsel on each side.

“We must use what time we have,” said Holmes. “Watson, would you have the kindness to take the paper and to read the paragraph in question?”

Underneath the vigorous head-lines which our client had quoted, I read the following suggestive narrative:

Late last night, or early this morning,<sup>45</sup> an incident occurred at Lower Norwood which points, it is feared, to a serious crime. Mr. Jonas Oldacre is a well-known resident of that suburb, where he has carried on his business as a builder for many years. Mr. Oldacre is a bachelor, fifty-two years of age, and lives in Deep Dene House,<sup>46</sup> at the Sydenham end of the road of that name.<sup>47</sup> He has had the reputation of being a man of eccentric habits, secretive and retiring. For some years he has practically withdrawn from the business, in which he is said to have amassed considerable wealth. A small timber-yard still exists, however, at the back of the house, and last night, about twelve o'clock, an alarm was given that one of the stacks was on fire. The engines were soon upon the spot, but the dry wood burned with great fury, and it was impossible to arrest the conflagration until the stack had been entirely consumed. Up to this point the incident bore the appearance of an ordinary accident, but fresh indications seem to point to serious crime. Surprise was expressed at the absence of the master of the establishment from the scene of the fire, and an inquiry followed, which showed that he had disappeared from the house. An examination of his room revealed that the bed had not been slept in, that a safe which stood in it was open, that a number of important papers were scattered about the room, and, finally, that there were signs of a murderous struggle, slight traces of blood being found within the room, and an oaken walking-stick, which also showed stains of blood upon the handle. It is known that Mr. Jonas Oldacre had received a late visitor in his bedroom upon that night, and the stick found has been identified as the property of this person, who is a young London solicitor<sup>48</sup> named John Hector McFarlane, junior partner of Graham

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<sup>45</sup> LSK, REF.: RETUR, p. 51, note 14; LSK, 2 NEW ANN. p. 833, note 9.

<sup>46</sup> LSK, REF.: RETUR, p. 51, note 15.

<sup>47</sup> LSK, REF.: RETUR, p. 51, note 16.

<sup>48</sup> JOSHUA CUMBY: In England in 1894, there were only two classes of legal professional: solicitors and barristers. Medieval “attorneys” were abolished together with the Court of Common Pleas (where they practiced) by the Judicature Act of 1873. BAKER, *supra* note 39, at 164 n.30. Baker notes that “[i]n the United States the older title lives on as a generic term for all legal practitioners, although the Supreme

and McFarlane, of 426, Gresham Buildings, E.C.<sup>49</sup> The police believe

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Court ordered in 1790 that attorneys should not practice as counsellors." *Id.* Baker is referring to an order of the Supreme Court that "declared and established" certain rules when the justices first convened in New York in 1790. *See* Appointment of Justices, 2 U.S. (2 Dall.) 399-400 (1790) (ordering "[t]hat counsellors shall not practise as attornies, nor attornies as counsellors in this court" and prescribing the oath for those admitted to practice before the Court: "I do solemnly swear, that I will demean myself as an attorney (or counsellor) of the court, agreeably and according to law; and that I will support the constitution of the United States.").

<sup>49</sup> GUY MARRIOTT: As already noted, solicitors could, if they chose to do so, practice in partnership, and the article in the *Daily Telegraph* advises the reader that McFarlane is in partnership with a Mr. Graham. Traditionally, partners would each take the same annual sum out of the profits of the partnership, although by noting that McFarlane is a "junior partner" we are to understand that, in this case, Mr. Graham takes a larger share of the partnership profits than does Mr. McFarlane. Partnerships existed at common law in England, and the Partnership Act, 1890, remains largely unchanged today as the statutory basis for partnership law in Great Britain. The Act generally applies in the absence of any express contrary agreement between the partners. *See* GEOFFREY MORSE, PARTNERSHIP LAW (7th ed., 2010, Oxford University Press).

The post code "E.C." indicates that the solicitors' office is in the "Eastern Central" area of London, such post codes being introduced during 1857 (see the website of the British Postal Museum and Archive at [www.postalheritage.org.uk](http://www.postalheritage.org.uk)). Gresham Buildings stood in Basinghall Street in the City of London, and the City of London's ancient Guildhall is adjacent. The *London Gazette* issue of August 5, 1870, notes a Mr. Chatteris in practice as an accountant at number 1 Gresham Buildings, Basinghall Street, and the issue of February 25, 1908, notes Potheary & Co. in practice as solicitors, also at number 1 Gresham Buildings, Basinghall Street London E.C. It perhaps seems unlikely that offices in Gresham Buildings were numbered as high as "426." The building no longer exists. Basinghall Street suffered severe aerial bomb damage during the Second World War, and the whole area has been extensively redeveloped. We must assume that it is only a coincidence that Macfarlanes (note spelling) is today one of London's largest and respected firm of solicitors — their website at [www.macfarlanes.com](http://www.macfarlanes.com) notes that the firm was founded in the City of London in 1875 by George Watson Neish, who was joined in partnership by John Embleton Macfarlane in 1894, whose sons and grandsons continued the firm which, in 1962, adopted its current name of Macfarlanes. *See also* LSK, Ref.: RETUR, p. 51, note 17; LSK, 2 New Ann. p. 834, note 10.

CATTLEA M. CONCEPCION: Guides to Sherlock Holmes's London have identified Gresham Buildings as Gresham House on Old Broad Street, and Gresham House on Holborn Viaduct. *E.g.*, ARTHUR M. ALEXANDER, HOT ON THE SCENT 193 (1999); THOMAS BRUCE WHEELER, THE NEW FINDING SHERLOCK'S LONDON 130 (2009). Elsewhere in this *Almanac*, the editors have suggested two additional possibilities: the building of the Gresham Life Assurance Society in the Poultry, and Gresham Buildings on Basinghall Street. *See* Ross E. Davies & Cattleya M. Concep-

that they have evidence in their possession which supplies a very convincing motive for the crime, and altogether it cannot be doubted that sensational developments will follow.

Later. — It is rumoured as we go to press that Mr. John Hector McFarlane has actually been arrested on the charge of the murder of Mr. Jonas Oldacre. It is at least certain that a warrant has been issued. There have been further and sinister developments in the investigation at Norwood. Besides the signs of a struggle in the room of the unfortunate builder it is now known that the French windows of his bedroom (which is on the ground floor) were found to be open, that there were marks as if some bulky object had been dragged across to the wood-pile, and, finally, it is asserted that charred remains<sup>50</sup> have been found among the charcoal ashes of the fire. The police theory is that a most sensational crime has been committed, that the victim was clubbed to death in his own bedroom, his papers rifled, and his dead body dragged across to the wood-stack, which was then ignited so as to hide all traces of the crime. The conduct of the criminal investigation has been left in the experienced hands of Inspector Lestrade, of Scotland Yard, who is following up the clues with his accustomed energy and sagacity.

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cion, *Scenes from a Young Lawyer's Salvation*, in 2015 GREEN BAG ALM. 1, n.5. The buildings on Basinghall Street were most likely the inspiration for the location of John Hector McFarlane's law practice. Not only did they share the name of McFarlane's office block — Gresham Buildings, rather than some other variant — they were notable offices during Holmes's time. According to a contemporary source on London, "several of the great blocks of offices and warehouses, which [had] become so marked a feature of City architecture, [had] been erected in [Basinghall Street], notably Gresham Buildings, which contain[ed] a hundred distinct offices." 1 HENRY B. WHEATLEY, LONDON PAST AND PRESENT 122 (1891). Situated on the east side of Basinghall Street at Nos. 1 and 2, they were near the junction with Gresham Street, on the side opposite of Gresham College and Guildhall. *E.g.*, HENRY A. HARBEN, A DICTIONARY OF LONDON 278 (1918) (providing P.O. Directory No. 1 for Gresham Buildings); THE POST OFFICE LONDON DIRECTORY 1210 (1891) (listing, for example, solicitors Myers & Co. at 2 Gresham Buildings). Gresham Buildings must have been impressive edifices to call one's office. They "[rose] comparatively high" against the surrounding "'houses,' 'chambers,' and 'buildings.'" 8 WALTER BESANT, SURVEY OF LONDON 68 (1910). "[F]aced with dark-coloured stone," the "ground-floor walls on the exterior [were] covered with the most elaborate stonework representations of flowers and foliage." *Id.*

ROSS E. DAVIES: On the other hand, Conan Doyle's profitable association with the Gresham Life Assurance Society early in his career might weigh in favor of its offices. *See, e.g.*, LELLENBERG ET AL., LIFE IN LETTERS at 5, 186-236.

<sup>50</sup> LSK, REF.: RETUR, p. 52, note 18.

Sherlock Holmes listened with closed eyes and finger-tips together to this remarkable account.

"The case has certainly some points of interest," said he, in his languid fashion. "May I ask, in the first place, Mr. McFarlane, how it is that you are still at liberty, since there appears to be enough evidence to justify your arrest?"

"I live at Torrington Lodge, Blackheath,<sup>51</sup> with my parents,<sup>52</sup> Mr. Holmes, but last night, having to do business very late with Mr. Jonas Oldacre, I stayed at an hotel in Norwood, and came to my business from there.<sup>53</sup> I knew nothing of this affair until I was in the train, when I read what you have just heard. I at once saw the horrible danger of my position, and I hurried to put the case into your hands. I have no doubt that I should have been arrested either at my city office or at my home. A man followed me from London Bridge Station, and I have no doubt — Great Heaven! what is that?"

It was a clang of the bell, followed instantly by heavy steps upon the stair. A moment later, our old friend Lestrade appeared in the doorway. Over his shoulder I caught a glimpse of one or two uniformed policemen outside.

"Mr. John Hector McFarlane?" said Lestrade.

Our unfortunate client rose with a ghastly face.

"I arrest you for the wilful murder of Mr. Jonas Oldacre, of Lower Norwood."

McFarlane turned to us with a gesture of despair, and sank into his chair once more like one who is crushed.

"One moment, Lestrade," said Holmes. "Half an hour more or less can make no difference to you, and the gentleman was about to give us an account of this very interesting affair, which might aid us in clearing it up."

"I think there will be no difficulty in clearing it up," said Lestrade, grimly.

"None the less, with your permission, I should be much interested to hear his account."

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<sup>51</sup> LSK, REF.: RETUR, p. 52, note 19.

<sup>52</sup> LSK, REF.: RETUR, p. 52, note 20.

<sup>53</sup> LSK, REF.: RETUR, p. 52, note 21.

“Well, Mr. Holmes, it is difficult for me to refuse you anything, for you have been of use to the force once or twice in the past, and we owe you a good turn at Scotland Yard,” said Lestrade. “At the same time I must remain with my prisoner, and I am bound to warn him that anything he may say will appear in evidence against him.”<sup>54</sup>

“I wish nothing better,” said our client. “All I ask is that you should hear and recognise the absolute truth.”

Lestrade looked at his watch. “I’ll give you half an hour,” said he.

“I must explain first,” said McFarlane, “that I knew nothing of Mr. Jonas Oldacre. His name was familiar to me, for many years ago my parents were acquainted with him, but they drifted apart. I was very much surprised, therefore, when yesterday, about three o’clock in the afternoon, he walked into my office in the city. But I was still more astonished when he told me the object of his visit. He had in his hand several sheets of a note-book, covered with

<sup>54</sup> GEOFFREY B. FEHLING: Doyle’s works referenced *Miranda*-like warnings as early as the late nineteenth century, *see, e.g.*, DOYLE, *THE SIGN OF THE FOUR* 48 (House of Stratus 2008) (1890) (“Mr. Sholto, it is my duty to inform you that anything which you may say will be used against you. I arrest you in the Queen’s name as being concerned in the death of your brother.”), but their actual use in England during this time is less than clear. Indeed, despite the Inspector’s insistence that he was duty-bound to provide certain warnings to prisoners, no formal rules governing investigations by police existed until the formative Judges’ Rules were codified in 1912. *See* T.E. St. Johnston, *Judges’ Rules and Police Interrogation in England Today*, 57 *J. CRIM. L. & CRIMINOLOGY* 85, 85 (1966):

Prior to 1912 the problems of investigation and interrogation were not so profound as they are today. No rules governed investigations by the police, and indeed, it was not until 1912 that some form of guidance was given to them when questioning persons suspected or charged with crime. This is not to say that the police in the nineteenth century were allowed unlimited scope when carrying out their investigations. As far back as 1870 Lord Chief Justice Cockburn said at the Central Criminal Court:

“You may ask a man a question with an honest intention to elicit the truth and ascertain whether there are grounds for apprehending him; but with a foregone intention of arresting him, to ask him questions for the main purpose of getting anything out of him that may afterwards be used against him, is very improper proceeding.”

No doubt it is possible to go back still further. The point is, however, that there has been some form of guidance for many years, although it was not generally known to police officers and not enforced to any great extent.

scribbled writing — here they are — and he laid them on my table.

“‘Here is my will,’ said he. ‘I want you, Mr. McFarlane, to cast it into proper legal shape. I will sit here while you do so.’

“I set myself to copy it, and you can imagine my astonishment when I found that, with some reservations, he had left all his property to me. He was a strange little ferret-like man, with white eyelashes, and when I looked up at him I found his keen, grey eyes fixed upon me with an amused expression.<sup>55</sup> I could hardly believe my own senses as I read the terms of the will; but he explained that he was a bachelor with hardly any living relation, that he had known my parents in his youth, and that he had always heard of me as a very deserving young man, and was assured that his money would be in worthy hands. Of course, I could only stammer out my thanks. The will was duly finished, signed, and witnessed by my clerk. This is it on the blue paper, and these slips, as I have explained, are the rough draft.<sup>56</sup> Mr. Jonas Oldacre then informed me

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<sup>55</sup> LSK, REF.: RETUR, p. 53, note 22; LSK, 2 NEW ANN. p. 837, note 11.

<sup>56</sup> GUY MARRIOTT: McFarlane had been retained by Oldacre to take Oldacre’s draft notes (“these slips”) of the will, which he had written on “several sheets of a notebook” and then to “cast it in to proper legal shape.” McFarlane would have written the will in draft on the blue paper then used for drafts, and the engrossment of the will for signature would be written on white paper, and presumably retained by Oldacre after execution of the will. As noted by S.J. Bailey, author of *The Law of Wills* (2d ed., 1940, London, Sir Isaac Pitman & Sons), “there is no rule which compels the body of a will to be written by the testator, or in his presence; for although the testator is free to draft his own will if he so desires, it is usually advisable to instruct a solicitor to prepare it for him.”

However, the issues arising from the witnessing of the will, as reported by Dr. Watson apparently quoting McFarlane, have engaged the attention of lawyers for many years. Only one witness — “my clerk” — is noted as witnessing Jonas Oldacre’s signature, but the Wills Act, 1837, had created a uniform set of rules whereby all wills (with one exception only, in favour of wills disposing of personalty made by soldiers in actual military service, or by sailors at sea) were required to be in writing, signed and attested by two or more witnesses. The 1837 Act was the relevant act at the time of the Oldacre will, and much of the Act is still the law today. Section 9 of the 1837 Act provides that “no Will shall be valid unless it shall be in Writing and executed in manner hereinafter mentioned (that is to say) it shall be signed at the Foot or End thereof by the Testator, or by some other Person in his Presence and by his Direction; and such Signature shall be made or acknowledged by the Testator in the Presence of Two or more Witnesses present at the same Time and such Witnesses shall attest and shall subscribe the Will in the Presence of the Testator.”



We may assume that the soldiers-and-sailors exception is of no application in this case. So where were the required two witnesses? Some commentators on the matter have assumed that McFarlane himself was the second witness. But, by section 15 of the 1837 Act, “. . . if any Person shall attest the Execution of any Will to whom . . . any beneficial Devise, Legacy, Estate, Interest, Gift, or Appointment, or affecting any Real or Personal Estate (other than and except Charges and Directions for the Payment of any Debt or Debts) shall be thereby given or made, such Devise, Legacy, Estate, Interest, Gift, or Appointment shall, so far only as concerns such Person attesting the Execution of such Will . . . be utterly null and void.” So if McFarlane was the second witness to attest Oldacre’s signature, he could take no benefit under the will. As we must assume McFarlane (and indeed, his clerk) would be very familiar with the law on the attestation of wills, some commentators have taken the view that Dr. Watson failed to record that McFarlane stated to Holmes that there had been another witness besides McFarlane’s clerk — Graham’s clerk, for example — and that Oldacre’s will was indeed validly executed.

We may perhaps note here that when it was clear that the remains in the fire were not those of Jonas Oldacre, but for some reason Oldacre thereafter failed to reappear, the presumption in English common law (and enacted into statute law only as recently as 2013) is that persons who have been absent, unheard of, for seven years are dead, and the will (assuming properly executed with two witnesses) could then have been proved in favour of McFarlane’s inheritance. On the other hand, note also that at common law at this time, it was not clear whether or not a body was required to secure a murder conviction — and without Holmes’s intervention in the case, McFarlane could perhaps have been tried and convicted for murder. The point is uncertain because of the *Campden Wonder* case of 1660 (three persons hanged for the murder of William Harrison of Chipping Campden in Gloucestershire, no body found, and Harrison himself returned from abroad in 1662). To avoid such a miscarriage of justice occurring again, the “no body, no murder” rule is said to have originated. The rule was definitively abolished by Lord Chief Justice Goddard only as late as 1954 in the case of *R v. Onufrejczyk*, Goddard LCJ noting on the appeal, which upheld the murder conviction of Onufrejczyk, that “*things have moved on since the days of the Campden Wonder*” and “. . . it is equally clear that the fact of death, like any other fact, can be proved by circumstantial evidence, that is to say, evidence of facts which lead to one conclusion, provided that the jury are satisfied and are warned that it must lead to one conclusion only.”

If McFarlane had been convicted of murder, it was not clear at the time whether or not he could inherit under the will (assuming properly executed with two witnesses). The Forfeiture Act, 1870, had abolished the previous common law rule that a conviction for felony led to the automatic forfeiture of all of the felon’s possessions (both real and personal) to the Crown, and murder was a felony. But for reasons of public policy, the Courts in England subsequently developed the rule that no person found guilty of the murder or manslaughter of the testator could benefit from the deceased’s will. This was so stated by the Court of Appeal in 1892 in *Cleaver v. Mutual Reserve Fund Life Association* and applied in *Re Crippen* by the High Court in 1911, when the court determined that the notorious murderer Dr. Crippen could take no benefit under the intestacy of his murdered wife Cora. (It will be

that there were a number of documents — building leases, title-deeds, mortgages, scrip,<sup>57</sup> and so forth — which it was necessary that I should see and understand. He said that his mind would not be easy until the whole thing was settled, and he begged me to come out to his house at Norwood that night, bringing the will with me, and to arrange matters. ‘Remember, my boy, not one word to your parents about the affair until everything is settled. We will keep it as a little surprise for them.’ He was very insistent upon this point, and made me promise it faithfully.

“You can imagine, Mr. Holmes, that I was not in a humour to refuse him anything that he might ask. He was my benefactor, and all my desire was to carry out his wishes in every particular. I sent a telegram home, therefore, to say that I had important business on hand, and that it was impossible for me to say how late I might be. Mr. Oldacre had told me that he would like me to have supper with him at nine, as he might not be home before that hour. I had some difficulty in finding his house, however, and it was nearly half-past before I reached it. I found him —”

“One moment!” said Holmes. “Who opened the door?”

“A middle-aged woman, who was, I suppose, his housekeeper.”<sup>58</sup>

remembered that much of the notoriety of the Crippen case arose from the use of wireless telegraphy by the Captain of the *SS Montrose* to alert the British authorities that Crippen had fled London for the United States, and was on board this ship, and the ability of Chief Inspector Dew, of Scotland Yard, to then catch a faster ship, *SS Laurentic*, and arrest Crippen when the *SS Montrose* arrived in the St Lawrence River.) The *Cleaver* and *Crippen* cases were murder, and the court reached the same conclusion in the manslaughter case of *Hall v. Knight and Baxter* in 1914. However, in *Re Houghton* in 1915 the court determined that this rule did not apply if the murderer was insane when he killed the deceased. See also LSK, REF.: RETUR, p. 53, note 23; LSK, 2 NEW ANN. p. 837, note 12.

IRA BRAD MATETSKY: Watson had previously displayed ignorance of the requirement that a valid will under British law requires two independent witnesses in at least one earlier case (“The Five Orange Pips”); query whether this increases the likelihood that Watson here simply mis-recalled or misreported what he regarded as a minor detail of the will execution rather than a potentially dispositive one. For further discussion of the issues surrounding Jonas Oldacre’s will, citing additional authorities, see Stephen R. Alton, *The Game Is Afoot!: The Significance of Donative Transfers in the Sherlock Holmes Canon*, 46 REAL PROP., TRUST & EST. J. 125, 144-48 (Spring 2011).

<sup>57</sup> LSK, REF.: RETUR, p. 54, note 24.

<sup>58</sup> LSK, REF.: RETUR, p. 54, note 25; LSK, 2 NEW ANN. p. 837-38, note 13.

"And it was she, I presume, who mentioned your name?"

"Exactly," said McFarlane.

"Pray proceed."

McFarlane wiped his damp brow, and then continued his narrative:

"I was shown by this woman into a sitting-room, where a frugal supper was laid out.<sup>59</sup> Afterwards, Mr. Jonas Oldacre led me into his bedroom, in which there stood a heavy safe. This he opened and took out a mass of documents, which we went over together. It was between eleven and twelve when we finished. He remarked that we must not disturb the housekeeper. He showed me out through his own French window, which had been open all this time."

"Was the blind down?" asked Holmes.

"I will not be sure, but I believe that it was only half down. Yes, I remember how he pulled it up in order to swing open the window. I could not find my stick, and he said, 'Never mind, my boy, I shall see a good deal of you now, I hope, and I will keep your stick until you come back to claim it.' I left him there, the safe open, and the papers made up in packets upon the table. It was so late that I could not get back to Blackheath, so I spent the night at the Anerley Arms, and I knew nothing more until I read of this horrible affair in the morning."<sup>60</sup>

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<sup>59</sup> JULIA ROSENBLATT: The frugal supper that Oldacre provided should not be confused with a dinner. Dinner would have been consumed earlier in the evening. This post-9:00 p.m. repast provided some nourishment for the two or three hours of intensive work ahead, and its frugal nature should have been a clue as to Oldacre's miserly nature. The evening's business was not the act of generosity that McFarlane perceived. Such a meal would be served cold, all the more so because this was a hot summer's evening. It would have consisted of bread, cheese and, perhaps, some cold leftover meat, and some seasonal fruit.

<sup>60</sup> ROSS E. DAVIES: McFarlane's decision to spend the night at the Anerley Arms is a puzzler:

Lower Norwood and Blackheath, Christopher Morley estimates, are only four miles from each other. "It has always bothered me," he comments in "Clinical Notes by a Resident Patient," "why could not the unhappy John Hector McFarlane get back from Lower Norwood to Blackheath that night?"

LSK, 2 NEW ANN. p. 838, note 14; *see also, e.g.*, ALISTAIR DUNCAN, CLOSE TO HOLMES 176-78 (2009); THE OXFORD SHERLOCK HOLMES: THE RETURN OF SHERLOCK HOLMES 341 (1993) (Richard Lancelyn Green, ed.). Leslie Klinger considers and is quite rea-

sonably skeptical of McFarlane's own rationale for this odd choice of overnight arrangements:

McFarlane mentions later in his narrative that he and Jonas Oldacre completed their business "between eleven and twelve." It is possible that McFarlane may have thought this "very late," but considering the short distance to his parents' house, spending a night in a hotel seems like an unnecessary exercise and expense.

LSK, 2 NEW ANN. pp. 838-39, note 14; *see also* LSK, REF.: RETUR, p. 55, note 26. As a practical matter, Morley and Klinger are correct. Trains ran at that hour, making the trip from Lower Norwood to Blackheath short in both distance and time. *See, e.g., BRADSHAW'S GENERAL RAILWAY AND STEAM NAVIGATION GUIDE, FOR GREAT BRITAIN AND IRELAND 118-19* (Dec. 1895). Besides, the distance is short enough to walk, even for a young man with a bit of asthma, nighttime being a cooler alternative to what Holmes describes as the "very warm . . . past few days."

Another possibility — one that might account for both McFarlane's opting for Anerley over Blackheath and his failure to give a plausible reason for that choice — hinges on McFarlane's age and living arrangements. He is, says Watson, "about twenty-seven," with the "dress and bearing . . . of a gentleman." And yet he lives at home with his parents. As a partner in a city law firm, McFarlane surely has the means to live independently. But he is staying under the same roof as his mom and dad, perhaps nobly sharing living expenses and paying rent to his parents in order to preserve their dignity while propping up their feeble finances. (As Holmes soon learns from McFarlane's mother, she broke her engagement with Oldacre to "marry a better, if poorer, man.") It is not difficult to imagine someone of McFarlane's age and situation leaping at (perhaps even contriving) an opportunity to spend a night on the town, and then expecting (or at least hoping) that what happened in Anerley would stay in Anerley.

Indeed, McFarlane may be keeping quiet about his night at the Anerley Arms because whatever he did during that time was not anything he had intended or expected to ever disclose to anyone. Consider, for example, the business model of another 19th-century Anerley Arms — this one in Portsmouth:

In fact, it is likely that beerhouse profits might have hinged upon prostitution, and as the solicitor for the Anerley Arms, Somers Road [in Portsmouth], argued in 1866, "It was almost impossible for beerhouse keepers to live unless they applied their houses for immoral purposes."

R.C. RILEY & PHILIP ELEY, *PUBLIC HOUSES AND BEERHOUSES IN NINETEENTH CENTURY PORTSMOUTH 12* (1983) (citing the *Hampshire Telegraph*, Sept. 8, 1866). Perhaps not coincidentally, Arthur Conan Doyle spent the last years of his bachelorhood — when he, like McFarlane here, was in his mid-20s — in Portsmouth, where he did some carousing of his own, including escapades that he could not recall because he was drunk at the time. *See* LYCETT, *LIFE AND TIMES* ch. 6; STASHOWER, *TELLER OF TALES* ch. 5. In any event, if the Anerley Arms near Lower Norwood operated on the same business model as did its namesake in Portsmouth, McFarlane could be in a real bind: He might have an alibi for the time of the alleged murder of Oldacre, but an alibi that involves confessing to immoral or perhaps even criminal acts is

“Anything more that you would like to ask, Mr. Holmes?” said Lestrade, whose eyebrows had gone up once or twice during this remarkable explanation.

“Not until I have been to Blackheath.”

“You mean to Norwood,” said Lestrade.

“Oh, yes, no doubt that is what I must have meant,” said Holmes, with his enigmatical smile. Lestrade had learned by more experiences than he would care to acknowledge that that razor-like brain could cut through that which was impenetrable to him. I saw him look curiously at my companion.

“I think I should like to have a word with you presently, Mr. Sherlock Holmes,” said he. “Now, Mr. McFarlane, two of my constables are at the door, and there is a four-wheeler waiting.” The wretched young man arose, and with a last beseeching glance at us walked from the room. The officers conducted him to the cab,<sup>61</sup> but Lestrade remained.

risky. The recently enacted Criminal Law Amendment Act of 1885 (48 & 49 Vict. c.69) was the culmination of a quarter-century of increasingly broad legislation criminalizing not only prostitution-related abuses, but also sexual (including same-sex) activity itself. Oscar Wilde was famously convicted of violating the 1885 Act. See MICHAEL S. FOLDY, *THE TRIALS OF OSCAR WILDE: DEVIANCE, MORALITY, AND LATE-VICTORIAN SOCIETY* (1997); see also, e.g., JUDITH R. WALKOWITZ, *PROSTITUTION AND VICTORIAN SOCIETY: WOMEN, CLASS, AND THE STATE* 211-51 (1980; 1999 prtng.); Laura I. Appleman, *Oscar Wilde’s Long Tail: Framing Sexual Identity in the Law*, 70 MD. L. REV. 985 (2011). Conan Doyle was a supporter of regulation of that sort. See LYCETT, *LIFE AND TIMES* at 101. So, disclosing details of his night at the Anerley Arms might expose McFarlane to prosecution (or at least opprobrium), and might not carry much weight with a jury (Holmes would certainly advise McFarlane not to rely on jurors!) or even be allowed into evidence. It would still be a dangerous maneuver in the modern United States. See, e.g., *State v. Via*, 704 P.2d 238, 251-52 (Ariz. 1985); *U.S. v. Williams*, 738 F.2d 172, 177-78 (7th Cir. 1984) (citing *U.S. v. Evans*, 635 F.2d 1124, 1125-26 (4th Cir. 1980)).

<sup>61</sup> GUY MARRIOTT: London’s horse-drawn cabs at this time were of two types — the two-wheeler and the four-wheeler. The two-wheeler was the famous “Hansom Cab” which could take two passengers, and where the driver was placed behind the body of the cab. Prime Minister Benjamin Disraeli called these cabs “the gondolas of London.” The four-wheeler was officially called a “Clarence” but was universally known as a “growler” from the supposed noise of its wheels on the London cobblestones. The four-wheeler could take four passengers, plus luggage on the roof, and so was commonly found at railway stations for passengers with luggage, or used by families, or old ladies who thought a Hansom was too dashing for them — or by Scotland Yard taking prisoners away.

Holmes had picked up the pages which formed the rough draft of the will, and was looking at them with the keenest interest upon his face.

"There are some points about that document, Lestrade, are there not?" said he, pushing them over.

The official looked at them with a puzzled expression.

"I can read the first few lines, and these in the middle of the second page, and one or two at the end. Those are as clear as print," said he, "but the writing in between is very bad, and there are three places where I cannot read it at all."

"What do you make of that?" said Holmes.

"Well, what do *you* make of it?"

"That it was written in a train. The good writing represents stations, the bad writing movement, and the very bad writing passing over points. A scientific expert would pronounce at once that this was drawn up on a suburban line, since nowhere save in the immediate vicinity of a great city could there be so quick a succession of points. Granting that his whole journey was occupied in drawing up the will, then the train was an express, only stopping once between Norwood and London Bridge."

Lestrade began to laugh.

"You are too many for me when you begin to get on your theories, Mr. Holmes," said he. "How does this bear on the case?"

"Well, it corroborates the young man's story to the extent that the will was drawn up by Jonas Oldacre in his journey yesterday. It is curious — is it not? — that a man should draw up so important a document in so haphazard a fashion. It suggests that he did not think it was going to be of much practical importance. If a man drew up a will which he did not intend ever to be effective, he might do it so."

"Well, he drew up his own death warrant at the same time," said Lestrade.

"Oh, you think so?"

"Don't you?"

"Well, it is quite possible, but the case is not clear to me yet."

"Not clear? Well, if that isn't clear, what *could* be clear? Here is a young man who learns suddenly that, if a certain older man dies,

he will succeed to a fortune. What does he do? He says nothing to anyone, but he arranges that he shall go out on some pretext to see his client that night. He waits until the only other person in the house is in bed, and then in the solitude of the man's room he murders him, burns his body in the wood-pile, and departs to a neighbouring hotel. The blood-stains in the room and also on the stick are very slight. It is probable that he imagined his crime to be a bloodless one, and hoped that if the body were consumed it would hide all traces of the method of his death — traces which, for some reason, must have pointed to him. Is not all this obvious?"

"It strikes me, my good Lestrade, as being just a trifle too obvious," said Holmes. "You do not add imagination to your other great qualities, but if you could for one moment put yourself in the place of this young man, would you choose the very night after the will had been made to commit your crime? Would it not seem dangerous to you to make so very close a relation between the two incidents? Again, would you choose an occasion when you are known to be in the house, when a servant has let you in? And, finally, would you take the great pains to conceal the body, and yet leave your own stick as a sign that you were the criminal? Confess, Lestrade, that all this is very unlikely."

"As to the stick, Mr. Holmes, you know as well as I do that a criminal is often flurried, and does such things, which a cool man would avoid. He was very likely afraid to go back to the room. Give me another theory that would fit the facts."

"I could very easily give you half a dozen," said Holmes. "Here, for example, is a very possible and even probable one. I make you a free present of it. The older man is showing documents which are of evident value. A passing tramp sees them through the window, the blind of which is only half down. Exit the solicitor. Enter the tramp! He seizes a stick, which he observes there, kills Oldacre, and departs after burning the body."

"Why should the tramp burn the body?"

"For the matter of that, why should McFarlane?"

"To hide some evidence."

"Possibly the tramp wanted to hide that any murder at all had been committed."

“And why did the tramp take nothing?”

“Because they were papers that he could not negotiate.”

Lestrade shook his head, though it seemed to me that his manner was less absolutely assured than before.

“Well, Mr. Sherlock Holmes, you may look for your tramp, and while you are finding him we will hold on to our man. The future will show which is right. Just notice this point, Mr. Holmes: that so far as we know, none of the papers were removed, and that the prisoner is the one man in the world who had no reason for removing them, since he was heir-at-law, and would come into them in any case.”

My friend seemed struck by this remark.

“I don’t mean to deny that the evidence is in some ways very strongly in favour of your theory,” said he. “I only wish to point out that there are other theories possible. As you say, the future will decide. Good morning! I dare say that in the course of the day, I shall drop in at Norwood and see how you are getting on.”

When the detective departed, my friend rose and made his preparations for the day’s work with the alert air of a man who has a congenial task before him.

“My first movement, Watson,” said he, as he bustled into his frock-coat, “must, as I said, be in the direction of Blackheath.”

“And why not Norwood?”

“Because we have in this case one singular incident coming close to the heels of another singular incident. The police are making the mistake of concentrating their attention upon the second, because it happens to be the one which is actually criminal. But it is evident to me that the logical way to approach the case is to begin by trying to throw some light upon the first incident — the curious will, so suddenly made, and to so unexpected an heir. It may do something to simplify what followed. No, my dear fellow, I don’t think you can help me. There is no prospect of danger, or I should not dream of stirring out without you. I trust that when I see you in the evening, I will be able to report that I have been able to do something for this unfortunate youngster, who has thrown himself upon my protection.”

It was late when my friend returned, and I could see, by a



glance at his haggard and anxious face, that the high hopes with which he had started had not been fulfilled. For an hour he droned away upon his violin, endeavouring to soothe his own ruffled spirits. At last he flung down the instrument, and plunged into a detailed account of his misadventures.

“It’s all going wrong, Watson — all as wrong as it can go. I kept a bold face before Lestrade, but, upon my soul, I believe that for once the fellow is on the right track and we are on the wrong. All my instincts are one way, and all the facts are the other, and I much fear that British juries have not yet attained that pitch of intelligence when they will give the preference to my theories over Lestrade’s facts.”

“Did you go to Blackheath?”

“Yes, Watson, I went there, and I found very quickly that the late lamented Oldacre was a pretty considerable blackguard. The father was away in search of his son. The mother was at home — a little, fluffy, blue-eyed person, in a tremor of fear and indignation. Of course, she would not admit even the possibility of his guilt. But she would not express either surprise or regret over the fate of Oldacre. On the contrary, she spoke of him with such bitterness that she was unconsciously considerably strengthening the case of the police for, of course, if her son had heard her speak of the man in this fashion, it would predispose him towards hatred and violence. ‘He was more like a malignant and cunning ape than a human being’ said she, ‘and he always was, ever since he was a young man.’<sup>62</sup>

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<sup>62</sup> HADAR AVIRAM: It is no coincidence that Doyle chooses the ape simile as part of Mrs. McFarlane’s description of her old suitor. “The Adventure of the Norwood Builder” is one of the later stories in the Sherlock Holmes canon, and at the time of its publication in 1903 Darwin’s *The Origin of Species* (1859) had already been a popular and familiar scientific work for several decades. The interest in science and in evolution was very central to the emerging field of criminology. In 1865, Cesare Lombroso, an Italian doctor, published *L’Uomo Delinquente* (Criminal Man), establishing the positivist school of criminology. CESARE LOMBROSO, CRIMINAL MAN (2006 [1865]). In this book and other works he analyzed skulls, facial expressions, body types and other physical features of criminals of all kinds, attributing their criminality (and sometimes their particular criminal occupation) to their essential biological makeup. According to Lombroso, who was strongly inspired by Darwinism and some of its then-accepted implications, some of the common physical fea-

“‘You knew him at that time?’ said I.

“‘Yes, I knew him well, in fact, he was an old suitor of mine. Thank Heaven, that I had the sense to turn away from him, and to marry a better, if poorer, man. I was engaged to him, Mr. Holmes, when I heard a shocking story of how he had turned a cat loose in an aviary, and I was so horrified at his brutal cruelty that I would have nothing more to do with him.’ She rummaged in a bureau, and presently she produced a photograph of a woman, shamefully defaced and mutilated with a knife. ‘That is my own photograph,’ she said. ‘He sent it to me in that state, with his curse, upon my wedding morning.’<sup>63</sup>

“‘Well,’ said I, ‘at least he has forgiven you now, since he has left all his property to your son.’

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tures he found among criminals were evidence of atavism, and the people exhibiting them were evolutionary “throwbacks” who reverted to a primitive state. Doyle was well aware of Darwinism — biological and social — and many of his Sherlock Holmes stories exhibit, in the physical descriptions of criminals and their actions, a strong adherence to positivist criminology. See generally DAVID HORN, *THE CRIMINAL BODY: LOMBROSO AND THE ANATOMY OF DEVIANCE* (2003); NICOLE HAHN RAFTER, *CREATING BORN CRIMINALS* (1998).

<sup>63</sup> HADAR AVIRAM: Stalking and domestic violence were not topics of research in the early twentieth century, but they were widespread and well known to readers at the time. In fact, one of the main reasons for the Women’s Christian Temperance Union’s advocacy for alcohol prohibition was the prevalence of domestic violence against women, which they linked, with considerable justification, to excessive drinking. DANIEL OKRENT, *LAST CALL: THE RISE AND FALL OF PROHIBITION* (2011). Indeed, many heroines in Sherlock Holmes stories, criminals and victims alike, are portrayed as victims of physical and emotional abuse by their partners. Hadar Aviram, *Dainty Hands: Perceptions of Women and Crime in Sherlock Holmes Stories*, 22 *HASTINGS WOMEN’S L.J.* 233 (2011). The behavior that Mrs. McFarlane identified as so frightening and off-putting is classic stalking by a former partner. Recent research on stalking identifies several common traits among stalkers of former partners: a history of substance abuse, criminal involvement, violence, mental health problems, difficulty in forming relationships, and reacting with inappropriate emotion and jealousy. K.A. Roberts, *Stalking following the breakup of romantic relationships: characteristics of stalking former partners*, 47(5) *J. FORENSIC SCIENCES* 1070 (2002); K.A. Roberts, *Women’s experience of violence during stalking by former romantic partners: factors predictive of stalking violence*, 11(1) *VIOLENCE AGAINST WOMEN* 89 (2005). Mrs. McFarlane was very lucky (and prescient) to have chosen a different man for a husband; stalking is a common part in the cycle of domestic violence. Frances Coleman, *Stalking Behavior and the Cycle of Domestic Violence*, 12 *J. INTERPERSONAL VIOLENCE* 420 (1997).

“Neither my son nor I want anything from Jonas Oldacre, dead or alive!” she cried, with a proper spirit. “There is a God in Heaven, Mr. Holmes, and that same God who has punished that wicked man will show, in His own good time, that my son’s hands are guiltless of his blood.”

“Well, I tried one or two leads, but could get at nothing which would help our hypothesis, and several points which would make against it. I gave it up at last, and off I went to Norwood.

“This place, Deep Dene House, is a big modern villa of staring brick, standing back in its own grounds, with a laurel-clumped lawn in front of it. To the right and some distance back from the road was the timber-yard which had been the scene of the fire. Here’s a rough plan on a leaf of my note-book. This window on the left is the one which opens into Oldacre’s room. You can look into it from the road, you see. That is about the only bit of consolation I have had to-day. Lestrade was not there, but his head constable did the honours. They had just found a great treasure-trove. They had spent the morning raking among the ashes of the burned wood-pile, and besides the charred organic remains they had secured several discoloured metal discs. I examined them with care, and there was no doubt that they were trouser buttons. I even distinguished that one of them was marked with the name of ‘Hyams,’ who was Oldacre’s tailor.<sup>64</sup> I then worked the lawn very carefully for signs and traces, but this drought has made everything as hard as iron. Nothing was to be seen save that some body or bundle had been dragged through a low privet hedge<sup>65</sup> which is in a line with the wood-pile. All that, of course, fits in with the official theory. I crawled about the lawn with an August sun on my back, but I got up at the end of an hour no wiser than before.

“Well, after this fiasco I went into the bedroom and examined that also. The blood-stains were very slight, mere smears and discolorations, but undoubtedly fresh. The stick had been removed, but there also the marks were slight. There is no doubt about the stick belonging to our client. He admits it. Footmarks of both men could be made out on the carpet, but none of any third person,

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<sup>64</sup> LSK, REF.: RETUR, p. 58, note 27; LSK, 2 NEW ANN. p. 845, note 15.

<sup>65</sup> LSK, REF.: RETUR, p. 58, note 28.

which again is a trick for the other side. They were piling up their score all the time, and we were at a standstill.<sup>66</sup>

“Only one<sup>67</sup> little gleam of hope did I get — and yet it amounted to nothing. I examined the contents of the safe, most of which had been taken out and left on the table. The papers had been made up into sealed envelopes, one or two of which had been opened by the police. They were not, so far as I could judge, of any great value, nor did the bank-book show that Mr. Oldacre was in such very affluent circumstances. But it seemed to me that all the papers were not there. There were allusions to some deeds — possibly the more valuable — which I could not find. This, of course, if we could definitely prove it, would turn Lestrade’s argument against himself; for who would steal a thing if he knew that he would shortly inherit it?

“Finally, having drawn every other cover and picked up no scent, I tried my luck with the housekeeper. Mrs. Lexington is her name — a little, dark, silent person, with suspicious and sidelong eyes. She could tell us something if she would — I am convinced of it. But she was as close as wax. Yes, she had let Mr. McFarlane in at half-past nine. She wished her hand had withered before she had done so. She had gone to bed at half-past ten. Her room was at the other end of the house, and she could hear nothing of what passed. Mr. McFarlane had left his hat, and to the best of her belief his stick, in the hall. She had been awakened by the alarm of fire. Her poor, dear master had certainly been murdered. Had he any enemies? Well, every man had enemies, but Mr. Oldacre kept himself very much to himself, and only met people in the way of business. She had seen the buttons, and was sure that they belonged to the clothes which he had worn last night. The wood-pile was very dry, for it had not rained for a month. It burned like tinder, and by the time she reached the spot, nothing could be seen but flames. She and all the firemen smelled the burned flesh from inside it. She knew nothing of the papers, nor of Mr. Oldacre’s private affairs.

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<sup>66</sup> LSK, REF.: RETUR, p. 58, note 29.

<sup>67</sup> THE EDITORS: This word is “on” in the McClure, Phillips & Co. edition (1905) at 47, on which our annotation is based, and surely a typographical error. It is “one” in both the *Strand Magazine* (1903) at 491 and *Collier’s Weekly* (1903) at 18.

“So, my dear Watson, there’s my report of a failure. And yet — and yet —” — he clenched his thin hands in a paroxysm of conviction — “I *know* it’s all wrong. I feel it in my bones. There is something that has not come out, and that housekeeper knows it. There was a sort of sulky defiance in her eyes, which only goes with guilty knowledge. However, there’s no good talking any more about it, Watson; but unless some lucky chance comes our way I fear that the Norwood Disappearance Case will not figure in that chronicle of our successes which I foresee that a patient public will sooner or later have to endure.”<sup>68</sup>

“Surely,” said I, “the man’s appearance would go far with any jury?”<sup>69</sup>

“That is a dangerous argument, my dear Watson. You remember that terrible murderer, Bert Stevens, who wanted us to get him off in ’87?<sup>70</sup> Was there ever a more mild-mannered, Sunday-school young man?”

“It is true.”

“Unless we succeed in establishing an alternative theory, this man is lost. You can hardly find a flaw in the case which can now be presented against him, and all further investigation has served to strengthen it. By the way, there is one curious little point about those papers which may serve us as the starting-point for an inquiry. On looking over the bank-book I found that the low state of the balance was principally due to large cheques which have been made out during the last year to Mr. Cornelius. I confess that I should be interested to know who this Mr. Cornelius may be with whom a retired builder has such very large transactions. Is it possible that he has had a hand in the affair? Cornelius might be a

<sup>68</sup> LSK, REF.: RETUR, p. 59, note 30; LSK, 2 NEW ANN. p. 846, note 16.

<sup>69</sup> IRA BRAD MATETSKY: The jury in a nineteenth-century criminal trial in England would have consisted of 12 male subjects between the ages of 21 and 60, drawn from within the county or city within which the crime was committed, who satisfied a property qualification (although “working men” started to be included on some juries beginning about 1870). *See, e.g.*, DAVID BENTLEY, ENGLISH CRIMINAL JUSTICE IN THE NINETEENTH CENTURY ch. 10 (1998).

<sup>70</sup> LSK, REF.: RETUR, p. 59, note 31 (citing DONALD A. REDMOND, SHERLOCK HOLMES: A STUDY IN SOURCES 120-21 (1982), for an intriguing connection between Stevens and a couple of prominent 19th-century English lawyers).

broker, but we have found no scrip to correspond with these large payments. Failing any other indication, my researches must now take the direction of an inquiry at the bank for the gentleman who has cashed these cheques. But I fear, my dear fellow, that our case will end ingloriously by Lestrade hanging our client, which will certainly be a triumph for Scotland Yard."

I do not know how far Sherlock Holmes took any sleep that night, but when I came down to breakfast I found him pale and harassed, his bright eyes the brighter for the dark shadows round them. The carpet round his chair was littered with cigarette-ends and with the early editions of the morning papers. An open telegram lay upon the table.

"What do you think of this, Watson?" he asked, tossing it across.

It was from Norwood, and ran as follows:—

"IMPORTANT FRESH EVIDENCE TO HAND. MCFARLANE'S GUILT DEFINITELY ESTABLISHED. ADVISE YOU TO ABANDON CASE. — LESTRADE"

"This sounds serious," said I.

"It is Lestrade's little cock-a-doodle of victory," Holmes answered, with a bitter smile. "And yet it may be premature to abandon the case. After all, important fresh evidence is a two-edged thing, and may possibly cut in a very different direction to that which Lestrade imagines. Take your breakfast, Watson, and we will go out together and see what we can do. I feel as if I shall need your company and your moral support to-day."

My friend had no breakfast himself,<sup>71</sup> for it was one of his peculiarities that in his more intense moments he would permit himself no food, and I have known him presume upon his iron strength until he has fainted from pure inanition. "At present I cannot spare energy and nerve force for digestion," he would say in answer to my medical remonstrances. I was not surprised, therefore, when this morning he left his untouched meal behind him, and started with me for Norwood.<sup>72</sup> A crowd of morbid sightseers were still

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<sup>71</sup> LSK, REF.: RETUR, p. 60, note 32.

<sup>72</sup> JULIA ROSENBLATT: This is the story's second breakfast. In the opening, we met the "unfortunate Hector McFarlane" as Holmes and Watson finished breakfast. The original Sydney Paget drawing illustrating this scene (*Strand Magazine*, 1903) shows a well-set table. The picture does not indicate the morning's menu save that it included bread and a hot dish. This second breakfast was, no doubt, similarly ample.

gathered round Deep Dene House, which was just such a suburban villa as I had pictured. Within the gates Lestrade met us, his face flushed with victory, his manner grossly triumphant.

"Well, Mr. Holmes, have you proved us to be wrong yet? Have you found your tramp?" he cried.

"I have formed no conclusion whatever," my companion answered.

"But we formed ours yesterday, and now it proves to be correct, so you must acknowledge that we have been a little in front of you this time, Mr. Holmes."

"You certainly have the air of something unusual having occurred," said Holmes.

Lestrade laughed loudly.

"You don't like being beaten any more than the rest of us do," said he. "A man can't expect always to have it his own way, can he, Dr. Watson? Step this way, if you please, gentlemen, and I think I can convince you once for all that it was John McFarlane who did this crime."

He led us through the passage and out into a dark hall beyond.

"This is where young McFarlane must have come out to get his hat after the crime was done," said he. "Now look at this." With dramatic suddenness he struck a match, and by its light exposed a stain of blood upon the whitewashed wall. As he held the match nearer, I saw that it was more than a stain. It was the well-marked print of a thumb.

"Look at that with your magnifying glass, Mr. Holmes."

"Yes, I am doing so."

"You are aware that no two thumb-marks are alike?"

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That Holmes spurned it while encouraging Watson to enjoy it does not surprise. Holmes often fasted when intent upon a case. Holmes preferred mealtimes to be relaxed, times to enjoy the food fully. Indeed, he would not discuss an ongoing case over dinner, waiting until the table had been cleared before he satisfied the eager curiosity of his listeners. A full English breakfast typically included eggs. That may have prompted the poultry metaphor when Holmes spoke of Lestrade's "little cock-a-doodle of victory." *See also* JULIA CARSON ROSENBLATT AND FREDERIC H. SONNENSCHMIDT, *DINING WITH SHERLOCK HOLMES: A BAKER STREET COOKBOOK* 186 n.1 (1976).

"I have heard something of the kind."<sup>73</sup>

"Well, then, will you please compare that print with this wax impression of young McFarlane's right thumb, taken by my orders this morning?"

As he held the waxen print close to the blood-stain, it did not take a magnifying glass to see that the two were undoubtedly from the same thumb. It was evident to me that our unfortunate client was lost.

"That is final," said Lestrade.

"Yes, that is final," I involuntarily echoed.

"It is final," said Holmes.

Something in his tone caught my ear, and I turned to look at him. An extraordinary change had come over his face. It was writhing with inward merriment. His two eyes were shining like stars. It seemed to me that he was making desperate efforts to restrain a convulsive attack of laughter.

"Dear me! Dear me!" he said at last. "Well, now, who would have thought it? And how deceptive appearances may be, to be sure! Such a nice young man to look at! It is a lesson to us not to trust our own judgment, is it not, Lestrade?"

"Yes, some of us are a little too much inclined to be cocksure, Mr. Holmes," said Lestrade. The man's insolence was maddening, but we could not resent it.

"What a providential thing that this young man should press his right thumb against the wall in taking his hat from the peg! Such a very natural action, too, if you come to think of it." Holmes was outwardly calm, but his whole body gave a wriggle of suppressed excitement as he spoke. "By the way, Lestrade, who made this remarkable discovery?"

"It was the housekeeper, Mrs. Lexington, who drew the night constable's attention to it."

"Where was the night constable?"

"He remained on guard in the bedroom where the crime was committed, so as to see that nothing was touched."

"But why didn't the police see this mark yesterday?"

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<sup>73</sup> LSK, REF.: RETUR, p. 61, note 33; LSK, 2 NEW ANN. p. 849, note 17; id. at 860 ("Sherlock Holmes and Fingerprinting").



"Well, we had no particular reason to make a careful examination of the hall. Besides, it's not in a very prominent place, as you see."

"No, no — of course not. I suppose there is no doubt that the mark was there yesterday?"

Lestrade looked at Holmes as if he thought he was going out of his mind. I confess that I was myself surprised both at his hilarious manner and at his rather wild observation.

"I don't know whether you think that McFarlane came out of gaol in the dead of the night in order to strengthen the evidence against himself," said Lestrade. "I leave it to any expert in the world whether that is not the mark of his thumb."

"It is unquestionably the mark of his thumb."

"There, that's enough," said Lestrade. "I am a practical man, Mr. Holmes, and when I have got my evidence I come to my conclusions. If you have anything to say, you will find me writing my report in the sitting-room."

Holmes had recovered his equanimity, though I still seemed to detect gleams of amusement in his expression.

"Dear me, this is a very sad development, Watson, is it not?" said he. "And yet there are singular points about it which hold out some hopes for our client."

"I am delighted to hear it," said I, heartily. "I was afraid it was all up with him."

"I would hardly go so far as to say that, my dear Watson. The fact is that there is one really serious flaw in this evidence to which our friend attaches so much importance."

"Indeed, Holmes! What is it?"

"Only this: that I *know* that that mark was not there when I examined the hall yesterday. And now, Watson, let us have a little stroll round in the sunshine."

With a confused brain, but with a heart into which some warmth of hope was returning, I accompanied my friend in a walk round the garden. Holmes took each face of the house in turn, and examined it with great interest. He then led the way inside, and went over the whole building from basement to attic. Most of the rooms were unfurnished, but none the less Holmes inspected them all minutely. Finally, on the top corridor, which ran outside three unten-

anted bedrooms, he again was seized with a spasm of merriment.

"There are really some very unique features about this case, Watson," said he. "I think it is time now that we took our friend Lestrade into our confidence. He has had his little smile at our expense, and perhaps we may do as much by him, if my reading of this problem proves to be correct. Yes, yes, I think I see how we should approach it."

The Scotland Yard inspector was still writing in the parlour when Holmes interrupted him.

"I understood that you were writing a report of this case," said he.

"So I am."

"Don't you think it may be a little premature? I can't help thinking that your evidence is not complete."

Lestrade knew my friend too well to disregard his words. He laid down his pen and looked curiously at him.

"What do you mean, Mr. Holmes?"

"Only that there is an important witness whom you have not seen."

"Can you produce him?"

"I think I can."

"Then do so."

"I will do my best. How many constables have you?"

"There are three within call."

"Excellent!" said Holmes. "May I ask if they are all large, able-bodied men with powerful voices?"

"I have no doubt they are, though I fail to see what their voices have to do with it."

"Perhaps I can help you to see that and one or two other things as well," said Holmes. "Kindly summon your men, and I will try."

Five minutes later, three policemen had assembled in the hall.

"In the outhouse you will find a considerable quantity of straw," said Holmes. "I will ask you to carry in two bundles of it. I think it will be of the greatest assistance in producing the witness whom I require. Thank you very much. I believe you have some matches in your pocket, Watson. Now, Mr. Lestrade, I will ask you all to accompany me to the top landing."

As I have said, there was a broad corridor there, which ran outside three empty bedrooms. At one end of the corridor we were all marshalled by Sherlock Holmes, the constables grinning and Lestrade staring at my friend with amazement, expectation, and derision chasing each other across his features. Holmes stood before us with the air of a conjurer who is performing a trick.

“Would you kindly send one of your constables for two buckets of water? Put the straw on the floor here, free from the wall on either side. Now I think that we are all ready.”

Lestrade’s face had begun to grow red and angry.

“I don’t know whether you are playing a game with us, Mr. Sherlock Holmes,” said he. “If you know anything, you can surely say it without all this tomfoolery.”

“I assure you, my good Lestrade, that I have an excellent reason for everything that I do. You may possibly remember that you chaffed me a little, some hours ago, when the sun seemed on your side of the hedge, so you must not grudge me a little pomp and ceremony now. Might I ask you, Watson, to open that window, and then to put a match to the edge of the straw?”

I did so, and driven by the draught, a coil of grey smoke swirled down the corridor, while the dry straw crackled and flamed.<sup>74</sup>

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<sup>74</sup> IRA BRAD MATETSKY: Did Sherlock Holmes and Dr. Watson commit arson here? Arson was defined long before Victorian times as the malicious setting afire of the dwelling-house of another, whether by day or by night. Here, Watson, at Holmes’s direction, set fire not directly to Oldacre’s house, but to a pile of straw within the house, raising a nice question as to whether this would constitute arson. At common law, it would not unless the burning caused actual damage to the dwelling; damage to personal property within the dwelling, or even to coverings such as carpeting or wallpaper, was insufficient.

Separate from the crime of arson, however, Parliament independently criminalized, as a felony, the act of intentionally setting fire to certain specified types of personal property, primarily agricultural products, including “any stack of . . . straw.” Here, “a quantity of straw” was intentionally set afire, and so it might seem that this was a canonical [*sic*] example of this statutory crime. *But see R. v. Satchwell*, [1873] 2 CCR 21 (quashing conviction for setting fire to a stack of straw piled on a lorry):

The prisoner was indicted for setting fire to a stack of straw, under the 24 & 25 Vict. c. 97 s. 17, and the question reserved was whether the facts proved support an indictment for setting fire to a stack of straw. The statute enacts that whosoever shall unlawfully and maliciously set fire to any stack of . . .

“Now we must see if we can find this witness for you, Lestrade. Might I ask you all to join in the cry of ‘Fire!’? Now, then; one, two, three —”

“Fire!” we all yelled.

“Thank you. I will trouble you once again.”

“Fire!”

“Just once more, gentlemen, and all together.”

“Fire!” The shout must have rung over Norwood.

It had hardly died away when an amazing thing happened. A door suddenly flew open out of what appeared to be solid wall at the end of the corridor, and a little, wizened man darted out of it, like a rabbit out of its burrow.

“Capital!” said Holmes, calmly. “Watson, a bucket of water over the straw. That will do! Lestrade, allow me to present you with your principal missing witness, Mr. Jonas Oldacre.”

The detective stared at the newcomer with blank amazement. The latter was blinking in the bright light of the corridor, and peering at us and at the smouldering fire. It was an odious face — crafty, vicious, malignant, with shifty, light-grey eyes and white lashes.

“What’s this, then?” said Lestrade, at last. “What have you been doing all this time, eh?”

Oldacre gave an uneasy laugh, shrinking back from the furious red face of the angry detective.

straw . . . shall be guilty of felony. . . . Now here, what the petitioner set fire to was not a stack in the ordinary sense of the word, but a quantity of straw. The case does not say whether the straw was brought from a stack or was to be taken to a stack. We think that this was not a stack of straw when it was set fire to, though it may have been once part of one. . . .

Here, Watson describes what was set afire as “a quantity of straw,” not as a “stack” of it — perhaps with the holding of *Satchwell* in his mind — and so he and Holmes would not be guilty of this offense. Watson and Holmes still could, at least in theory, have been charged with a misdemeanor for the non-felonious burning of the property of another. But perhaps the most practical evaluation of the lawfulness of Holmes’s and Watson’s conduct here can be drawn from another of Watson’s accounts, “The Adventure of the Illustrious Client.” Watson concludes his account of that case, in which Holmes entered another man’s house without consent but for what he believed was a very good reason, by reporting that “Sherlock Holmes was threatened with a prosecution for burglary, but when an object is good and a client is sufficiently illustrious, even the rigid British law becomes human and elastic. My friend has not yet stood in the dock.”

"I have done no harm."

"No harm? You have done your best to get an innocent man hanged. If it wasn't for this gentleman here, I am not sure that you would not have succeeded."

The wretched creature began to whimper.

"I am sure, sir, it was only my practical joke."

"Oh! a joke, was it? You won't find the laugh on your side, I promise you. Take him down, and keep him in the sitting-room until I come. Mr. Holmes," he continued, when they had gone, "I could not speak before the constables, but I don't mind saying, in the presence of Dr. Watson, that this is the brightest thing that you have done yet, though it is a mystery to me how you did it. You have saved an innocent man's life, and you have prevented a very grave scandal, which would have ruined my reputation in the Force."

Holmes smiled, and clapped Lestrade upon the shoulder.

"Instead of being ruined, my good sir, you will find that your reputation has been enormously enhanced. Just make a few alterations in that report which you were writing, and they will understand how hard it is to throw dust in the eyes of Inspector Lestrade."

"And you don't want your name to appear?"

"Not at all. The work is its own reward.<sup>75</sup> Perhaps I shall get the credit also at some distant day, when I permit my zealous historian to lay out his foolscap<sup>76</sup> once more — eh, Watson? Well, now, let us see where this rat has been lurking."

A lath-and-plaster partition had been run across the passage six feet from the end, with a door cunningly concealed in it. It was lit within by slits under the eaves. A few articles of furniture and a supply of food and water were within, together with a number of books and papers.

"There's the advantage of being a builder," said Holmes, as we came out. "He was able to fix up his own little hiding-place without any confederate — save, of course, that precious housekeeper of his, whom I should lose no time in adding to your bag, Lestrade."

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<sup>75</sup> LSK, REF.: RETUR, p. 65, note 34.

<sup>76</sup> LSK, REF.: RETUR, p. 65, note 35.

"I'll take your advice. But how did you know of this place, Mr. Holmes?"

"I made up my mind that the fellow was in hiding in the house. When I paced one corridor and found it six feet shorter than the corresponding one below, it was pretty clear where he was. I thought he had not the nerve to lie quiet before an alarm of fire.<sup>77</sup> We could, of course, have gone in and taken him, but it amused me to make him reveal himself, besides, I owed you a little mystification, Lestrade, for your chaff in the morning."

"Well, sir, you certainly got equal with me on that. But how in the world did you know that he was in the house at all?"

"The thumb-mark, Lestrade. You said it was final; and so it was, in a very different sense. I knew it had not been there the day before. I pay a good deal of attention to matters of detail, as you may have observed, and I had examined the hall, and was sure that the wall was clear. Therefore, it had been put on during the night."

"But how?"

"Very simply. When those packets were sealed up, Jonas Oldacre got McFarlane to secure one of the seals by putting his thumb upon the soft wax. It would be done so quickly and so naturally, that I dare say the young man himself has no recollection of it. Very likely it just so happened, and Oldacre had himself no notion of the use he would put it to. Brooding over the case in that den of his, it suddenly struck him what absolutely damning evidence he could make against McFarlane by using that thumb-mark. It was the simplest thing in the world for him to take a wax impression from the seal,<sup>78</sup> to moisten it in as much blood as he could get from a pin-prick, and to put the mark upon the wall during the night, either with his own hand or with that of his housekeeper. If you examine among those documents which he took with him into his retreat, I will lay you a wager that you find the seal with the thumb-mark upon it."

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<sup>77</sup> THE EDITORS: There is no period after "fire" (surely a typographical error) in the McClure, Phillips & Co. edition (1905) at 57, on which our annotation is based. There is in both the *Strand Magazine* (1903) at 495 and *Collier's Weekly* (1903) at 30.

<sup>78</sup> LSK, REF.: RETUR, pp. 65-66, note 36.

“Wonderful!” said Lestrade. “Wonderful! It’s all as clear as crystal, as you put it. But what is the object of this deep deception, Mr. Holmes?”

It was amusing to me to see how the detective’s overbearing manner had changed suddenly to that of a child asking questions of its teacher.

“Well, I don’t think that is very hard to explain. A very deep, malicious, vindictive person is the gentleman who is now waiting us downstairs. You know that he was once refused by McFarlane’s mother? You don’t! I told you that you should go to Blackheath first and Norwood afterwards. Well, this injury, as he would consider it, has rankled in his wicked, scheming brain, and all his life he has longed for vengeance, but never seen his chance. During the last year or two, things have gone against him — secret speculation, I think — and he finds himself in a bad way. He determines to swindle his creditors, and for this purpose he pays large cheques to a certain Mr. Cornelius, who is, I imagine, himself under another name. I have not traced these cheques yet, but I have no doubt that they were banked under that name at some provincial town where Oldacre from time to time led a double existence. He intended to change his name altogether, draw this money, and vanish, starting life again elsewhere.”

“Well, that’s likely enough.”

“It would strike him that in disappearing he might throw all pursuit off his track, and at the same time have an ample and crushing revenge upon his old sweetheart, if he could give the impression that he had been murdered by her only child. It was a masterpiece of villainy, and he carried it out like a master. The idea of the will, which would give an obvious motive for the crime, the secret visit unknown to his own parents, the retention of the stick, the blood, and the animal remains and buttons in the wood-pile, all were admirable. It was a net from which it seemed to me, a few hours ago, that there was no possible escape. But he had not that supreme gift of the artist, the knowledge of when to stop. He wished to improve that which was already perfect — to draw the rope tighter yet round the neck<sup>79</sup> of his unfortunate victim — and

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<sup>79</sup> IRA BRAD MATETSKY: The death sentence, in the form of death by hanging (using the “long drop” method), was the sole authorized punishment on a conviction for

so he ruined all. Let us descend, Lestrade. There are just one or two questions that I would ask him."

The malignant creature was seated in his own parlour, with a policeman upon each side of him.

"It was a joke, my good sir — a practical joke, nothing more," he whined incessantly. "I assure you, sir, that I simply concealed myself in order to see the effect of my disappearance, and I am sure that you would not be so unjust as to imagine that I would have allowed any harm to befall poor young Mr. McFarlane."

"That's for a jury to decide," said Lestrade. "Anyhow, we shall have you on a charge of conspiracy, if not for attempted murder."<sup>80</sup>

murder in nineteenth-century Britain, subject only to the possibility of commutation by The Queen (on recommendation of the Home Secretary; the commutation rate appears to have been about 40 to 50 percent). There were 18 executions (all for murder) in England and Wales in 1894 and 11 in 1895. For very detailed information on the history of capital punishment and executions in the United Kingdom, see [www.capitalpunishmentuk.org](http://www.capitalpunishmentuk.org).

<sup>80</sup> ALBERT M. ROSENBLATT: Faking one's death to avoid apprehension or punishment has not been unknown (e.g., *United States v. Leung*, 360 F.3d 62 (2d Cir. 2004); *United States v. Friedland*, 83 F.3d 1531 (3d Cir. 1996)), nor has faking death to gain government benefits (e.g., *Pepper v. Colvin*, 2013 U.S. Dist. Lexis 101628 (W.D. Mo. 2013)). But faking death to throw creditors off the track is less common and seemingly unique when coupled with the odious goal of framing an innocent person for causing the culprit's supposed death. We do not know whether Clarence Roberts had read "Norwood Builder," but the facts of his case are reminiscent, as summarized in *Malone v. ReliaStar*, 558 F.3d 683 (7th Cir. 2009): "[In] *Roberts v. Wabash Life Insurance Co.*, 410 N.E.2d 1377 (Ind. Ct. App. 1980), . . . firefighters discovered a dead body while extinguishing a fire in a barn owned by Clarence Roberts. The charred remains were initially thought to be those of Roberts himself . . . Further investigation, however, suggested that the body was not Roberts. In fact, the evidence indicated that Roberts might have killed a man and then burned the body in the barn in an effort to fake his own death, with the intent of avoiding creditors and potential charges of fraud." Roberts's crime seems demonstrable enough, and would be covered by various statutes defining fraud, larceny, falsely reporting an incident and the like, and possibly murder. Oldacre's crime, as respects McFarlane as victim, is more complex. Inspector Lestrade said to Oldacre, "You have done your best to get an innocent man hanged." And then, "Anyhow, we shall have you on a charge of conspiracy, if not for attempted murder." As for conspiracy we have a criminal collaboration between Oldacre and his housekeeper, Mrs. Lexington. Attempted murder? I should think that a prosecutor would think twice before bringing that charge, given the variables: Is a trial and jury verdict and execution as sure and direct as the path of a bullet (that misses the mark)? In the meantime if you believe Oldacre had an idea worth replicating, read *Gone Girl*, or see the movie.



“And you’ll probably find that your creditors will impound the banking account of Mr. Cornelius,” said Holmes.

The little man started, and turned his malignant eyes upon my friend.

“I have to thank you for a good deal,” said he. “Perhaps I’ll pay my debt some day.”

Holmes smiled indulgently.

“I fancy that, for some few years, you will find your time very fully occupied,” said he. “By the way, what was it you put into the wood-pile besides your old trousers? A dead dog, or rabbits, or what? You won’t tell? Dear me, how very unkind of you! Well, well, I dare say that a couple of rabbits would account both for the blood and for the charred ashes.<sup>81</sup> If ever you write an account, Watson, you can make rabbits serve your turn.”<sup>82</sup>



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IRA BRAD MATETSKY: Although it may be questioned whether Oldacre could have been charged with attempted murder, Lestrade’s suggestion that Oldacre would be charged with conspiracy was sound, so long as it could be shown that Mrs. Lexington was part of the plot. (If that could not be shown, the conspiracy charge would fail, as the elements of conspiracy include an agreement between two or more persons to do the prohibited act.) British conspiracy law did not require that the act that the parties conspired to bring about must itself be a crime. Indeed, as early as the Ordinance of Conspirators of 1305, 33 Edw. 1, conspiracy was defined by statute as including a “confederation or alliance for the false and malicious promotion of indictments and pleas . . .” — that is, “combinations to indict falsely.” PETER GILLIES, *THE LAW OF CRIMINAL CONSPIRACY* 1 n.1 (1990); *see also* ROBERT WRIGHT, *THE LAW OF CRIMINAL CONSPIRACIES AND AGREEMENTS* 5 (1887). There is little doubt that Oldacre, presumably with Lexington’s assistance, sought to cause McFarlane to be falsely charged with a capital crime that he did not commit. What crime, if any, Oldacre could have been charged with had he acted alone remains an open question.

<sup>81</sup> LSK, 2 NEW ANN. p. 860, note 18.

<sup>82</sup> LSK, REF.: RETUR, p. 67, note 37.