2015

Cases of Note--Round vs. Flat Characters

Bruce Strauch
The Citadel, strauhb@citadel.edu

Follow this and additional works at: https://docs.lib.purdue.edu/atg
Part of the Library and Information Science Commons

Recommended Citation
Strauch, Bruce (2015) "Cases of Note--Round vs. Flat Characters," Against the Grain: Vol. 27: Iss. 3, Article 28.
DOI: https://doi.org/10.7771/2380-176X.7099

This document has been made available through Purdue e-Pubs, a service of the Purdue University Libraries. Please contact epubs@purdue.edu for additional information.
Klinger instead sued the Estate for a declaratory judgment that he could use the Holmes stories that were out of copyright. Estate defaulted, and Klinger moved for summary judgment. Which he got. Which in turn gave him his declaratory judgment. Estate appealed.

The Appeal

Estate argued that Holmes was a complex character that developed continually through the stories, and therefore copyright protection to Holmes should continue until the last story dropped into the public domain.

Which I think is a pretty good argument, although I turn out to be dead wrong.

Indeed, case law is squarely against the Estate.

Silverman v. CBS Inc., 870 F.2d 40, 49-51 (2d Cir. 1989) is “on all fours” as they say with our current case. Amos and Andy had appeared in long running radio shows with some of the scripts out of copyright, some still in.

“[A] copyright affords protection only for original works of authorship and, consequently, copyrights in derivative works secure protection only for the incremental additions of originality contributed by the authors of the derivative works.” Id. at 49; see Leslie A. Kurtz, “The Methuselah Factor: When Characters Outlive Their Copyrights,” 11 U. Miami Entertainment & Sports L. Rev. 437, 447-48 (1994).

Our Holmes-Watson stories are derivative works, and only their fresh elements are protected. But anyone can now publish a Holmes-Watson story with the new elements protected by copyright.

Hanging in gamely, Estate argued “flat” vs. “round” characters. A flat character, it defined as one fully described in the first story with no later additions. A round character evolves through the stories.

The court replied with a legal equivalent of ooo-kay. And by golly referenced Shakespeare. Sir John Falstaff evolves through Henry IV, Part 1; Henry IV, Part 2; The Merry Wives of Windsor, and finally dies in Henry V. But this has nothing to do with copyright law.

New aspects of Holmes and Watson from the final 10 stories are protected; info on the duo in the prior ones are open for all to use.

Applying my Baker Street Irregular trivia knowledge, The Adventure of the Three Garridebs is among the final ten. In it, Watson is shot and wounded. So a new derivative work could not include reference to his recuperation. But could reference his wound from the Second Afghan War which turns up in Study in Scarlet.

And of further interest, many Holmes afficionados believe the last ten stories were ghost written.

And for more trivia, Doyle played on a cricket team with J.M. Barrie, author of Peter Pan. And he introduced skiing to Switzerland from Scandinavia.