

[3,000 word extract]

PARABLE OF THE TWO SONS

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Chapter 1

The Hon. Mr Justice Errol Roberts, AM DFC, impassive and ramrod straight, waited with an air of paternal patience. The principal actors shuffled papers and murmured and cleared throats and nodded the myriad of tics which precede a major performance. He must have known what they were going through. Their nervous energy would have taken him back to his days in the bear-pit of any temple of justice, preparing to fight someone else's battle. His eyes, flickering behind lids long since collapsed at the corners under the weight of countless testimonies and convoluted legal arguments, glazed over. Then his countenance eased from benign overlord to the trance of a Hindu holy man focussed on the afterlife, despite their feverish clatter and chatter.

But it was, it has to be said, a transitory lapse. After fifteen or twenty seconds the old gentleman with the silver pilot's moustache resumed the mantle of the proud umpire determined to take control of all that was to be played out over the coming week in the matter of *Brent Leland Fiske versus Fabian Aloysius Wainwright and Augustus Julian Wainwright as Executors of the Estate of the late Kendrick Linton Wainwright*.

It gave Augie Wainwright a sense of reassurance knowing that the fellow in whose hands the memory of their father, indeed their father's reputation, was to be judged, looked and sounded like the kind of man their father would have approved of. The softly-spoken war-hero-turned-judge was to spend that week, the most memorable of Augie's life, deciding whether all that was alleged against Ken Wainwright – teacher, classical scholar, widower and father – was true. That week would see decided whether the whole case was no more than a story concocted by a desperate man hungry to usurp the inheritance of Ken Wainwright's sons. It was an inheritance which included not merely the worldly goods and property of their father but that most valuable of things any man can bequeath his sons: himself in their mind's eye.

The case that was about to unfold before Augie and Fabe Wainwright was all about the living memory of Ken Wainwright. It was about the words and actions of a lifetime which kept the embers of the love of his two sons aglow in their hearts, as if his memory were a bellows blowing a constant draught on those glowing embers.

Ken Wainwright was no ordinary man, just as the judge was not. Ken Wainwright would have been alive to the judge's extraordinary qualities as a man outside the law as he looked down from his vantage point in the classics section of the library Augie was so sure their father was now posted to. Their father would surely be wondering how all this came about in the aftermath of his untimely death a year ago that week.

It was, after all, Ken who brought up Augie and his older brother, Fabe, after their mother died, when Augie was eight and a half and Fabe a month shy of his tenth birthday. He must have known that was the stuff of real character, true grit: raising two young sons as a single parent without a word of complaint. Their father would surely be smiling from his desk at the knowledge his boys had drawn a man's man, an old fashioned fellow cut from the same bolt of cloth as he. Lloyd Evans, Ken's old school friend and solicitor for the estate, said the judge won his DFC for shooting down five MIGs over North Vietnam and saving a regiment of Australian infantrymen from annihilation in open country from rocket fire and strafing. There was sure to be a place for him and a glass of aged Grange Hermitage at Ken Wainwright's table in the scholars' common room when it came the judge's turn to meet his maker.

Kevin Sullivan QC, Senior Counsel for Brent Fiske, stumbled to his feet. Elliott Macmillan QC, the Wainwright's Senior Counsel, referred to Sullivan as "the enemy" in his conferences with the Wainwright boys that first morning of the trial. Sullivan rose like a man trying to get his balance after two bottles of red wine, clutching at the lectern with his right hand and at the bar table with his left and straightening out his back in a rehearsed movement, as though it were in a plaster cast he needed to break.

Sullivan may have stood only five feet eight, to be generous to him, but there was no mistaking his arrival at centre stage.

The fluorescent light caught the flap of heavy black silk on the back of his gown and made it shimmer, while the tassels on his sleeves flapped of their own free-will, long black stockings on a clothesline signalling the calm before the storm.

Augie knew damned well that a storm was brewing alright. The dark clouds forming on the brow of Elliot Macmillan stood as a reliable barometer of all that was about to be visited on Augie and his brother by the leader of the probate bar. Augie closed his eyes and prayed to

the same God he prayed to a year ago. He had asked for the repose of their father's soul and made a heartfelt plea that their father be finally reunited with the wife who was taken from him twenty-six years before by a God who loved her more than he did, or so he surmised in the months and the years following her death.

Augie knew in his heart of hearts that if there was to be salvation at the end of that week, it lay in the hands of two individuals: Elliot Macmillan QC and God above. Touch wood, God was listening to Augie's rare communion with Him and moving round the pieces on the chessboard, probably with Augie's father looking over the Creator's shoulder with helpful tips on how to achieve a win without fanfare. But Augie asked himself whether it was improper to pray, for all prayer is worth, for salvation from the bonds of a usurper to their father's estate? Was it indecent to pray for mammon rather than good health or alleviation of world poverty and disease or an end to enslavement of children or the empowerment of women in third world countries? He asked that question many times in the months that preceded the trial.

Their father's best friend was reincarnated as their father's supposed lover, the man he lived with, in a bona fide domestic relationship for the last few years of his life. It was, in truth, endured for the sake of establishing the criteria for the judicial rewriting of their father's will and overturning the gift of his estate in equal shares to his sons.

No allowance was made by the accuser of that egregious allegation over the course of that nerve-wracking week for the impact it would have on the boys' memory of the man it was directed at. Their father could not sit in the witness box and defend himself. He could no longer assert on his oath, oath against oath, that he had proved himself worthy of a higher memory to his sons than that of the homosexual lover of a failed public accountant teetering on the rim of bankruptcy. Ken Wainwright's status as a quietly spoken intellectual, who

successfully raised two primary school boys after their mother was taken from them by a chance blow-out in a twenty five dollar retread on a freeway, would count for less than the price of the bottle of blue fountain pen ink he purchased once a month, even if only a quarter of Brent Fiske's mud stuck to him.

Kevin Sullivan QC started off quietly enough, all matter of fact, as if explaining the shortest route from the courthouse to his golf club. Everything was congenial and the judge was nodding. Every so often the judge smiled as Sullivan cracked one of his old fart jokes that went right over Augie's head. Even Elliott Macmillan was smiling and nodding at the opening of the case for the man who was picking the pocket of their father before their very eyes and counting out the banknotes in full view of everyone.

Augie shifted in his seat at this laid-back approach to the ventilation of the allegation that their father was gay. It was the irresistible inference flowing from it, that their father's marriage to the mother Augie had only the vaguest recollection of, was a sham, a mere façade, a cloak around his real persona that bothered Augie most.

God Almighty, why didn't Elliott stand up and object to the allegations, take umbrage at all that was being woven together in that convincing tissue of lies, jump up and say something, anything to stop the lies? Why not get up the way they do on television in courtroom dramas when the lawyer sitting down wants to interrupt the flow of the fellow on his feet and do all he can to throw a spanner in the works of the other side's case, especially when it's coming across so damned hypnotically?

Christ, even the judge picked up his pen and was noting it all down. He never knew Ken Wainwright. He had no idea what he was like, not who he really was. He had no inkling that none of this story could be even remotely true.

“Your Honour, this is a case about a family. It is a case about a family of six, a man and his partner, I think that’s the operative word people use these days, a man and his partner and two sons of the one man and two daughters of the other,” Kevin Sullivan QC said. He paused to draw breath and assess the reaction to this opening salvo at the flotilla of men-o’-war, the legal representatives and executors of the estate of the late Ken Wainwright, right there beside him. By the look of scepticism on the judicial brow which Augie could discern, it must have given Sullivan cause for concern? It buoyed Augie’s spirits, for he was barely able to contain the broad smile which was busting to get out of his mouth, and it would have too, but for the reconnoitre the sharp judicial eye undertook at the back of the bar table which served to keep the smile right where it was going to do the defence of their case no harm at all.

“Our case, and it is a case we make no bones about, a case we put out in the open and hang our hat on unashamedly, despite what many members of the community might think about the morality, or indeed, the immorality of it all. Our principal case, your Honour, is that these two adult men, after losing their wives in tragic circumstances at the same time, indeed in the very same car accident, fell into the arms, figuratively speaking, of course, of each other. It came about, ever so naturally, irresistibly, we say, because they were old friends, dear friends from boyhood, and they had just lost their wives, and one thing led to another and they took up together in a way they had not done before. They lived separate lives for the next twenty three years until 2005, raising their children in their own homes and turning to each other for friendship, for the support which their departed wives could no longer provide them with,” Sullivan said. He paused again as the judge finished making a brief note of his last point.

Augie started fidgeting as the judge made his copious note. What the devil could he have found so important about that last missive from the enemy? Better ask Elliott.

“But their relationship rose to a new level of care and support, a new level of financial and emotional dependence,” Sullivan said with a look of sternness that was supposed to make his speech seem all the more sincere, “shortly before Ken Wainwright’s younger brother, Jack, died. Jack Wainwright, a confirmed bachelor, had come to live with Ken and the boys after Ken’s wife, Nell, was killed. Jack became the master of the house, the chief cook and bottle washer, as my late father would have called him, raising the two boys as if they were the flesh of his loins. Jack became a mother to those boys. His health declined by 2005, as had the deceased’s, the former suffering from heart disease and the latter from emphysema which the doctors were worried was developing into lung cancer. Both men needed day to day care and support. My client was flat broke, we admit it. He needed something to do with himself, a place to live. He was the deceased’s oldest friend, closer than that even, the evidence will show, and they needed each other. One thing led to another and the rest, as they say, is history. My client was the full-time-carer and constant companion for the last three years of Ken Wainwright’s life and for the last three years of the life of his brother, Jack. Jack died shortly after the deceased a year ago. He could not cope with the death of his older brother, falling into a fit of clinical depression after the deceased died.”

Kevin Sullivan QC paused to gather his thoughts. The judge unfurled a small white sail with initials in one corner and creases as sharp as Sullivan’s trousers and wiped his nose and folded it with the care of a museum curator folding a rare manuscript.

“My client came home from the shops in the weeks following the deceased’s funeral to find that Jack had hung himself from a beam in the garage. A simple note in Jack’s copperplate handwriting left on the kitchen table said that he had gone to join Ken and their mother in heaven, that they were both waiting for him, that he dreamt that their mother was angry with him for being late, that he had always kept them waiting as a boy, that Ken had gone to join

her and he knew she was waiting for Jack and he was not going to be late any more. They buried him a month to the day after the deceased died. My client has been living alone in the estate home ever since. The defendant executors have graciously allowed him to continue living there pending the determination of his claim for title to the estate home.”

By God, Sullivan was good. He understood the Wainwright’s family history as well as any one of them. Brent Fiske had done a typically thorough job of stitching them up alright. What else would you expect from a public accountant who had spent his whole working life helping his clients avoid their inconvenient taxation obligations?

Augie dabbed at the perspiration that was forming on his brow and longingly eyed off the glasses of water sitting beside the pitcher on the bar table and dreamed that he too could drink greedily. He wanted to quench the thirst which had been building up from the moment Kevin Sullivan rose to his feet to open the account of the Fiske team, doing his level best to paint Brent as a victim and the Wainwright boys as the villains.

“The statute defines a de facto relationship as a relationship between two persons who live together as a couple and who are not married to one another. There can be no dispute about the second criterion. No doubt the estate hotly contests the former. So question one for your Honour, it is rather a threshold issue, I suppose, is whether these two men were indeed a couple for the last three years of the life of the deceased.”

So it had come to that. The old fellow had to spend a solid week of his time, court time, public time paid for by public money, trying to decide whether two elderly men who happened to be best mates were a couple, on account of one of them went broke and lost everything and had nowhere to live and his oldest friend took him in because he had a big house with empty bedrooms and needed the company in his retirement and someone to drive him to the doctor and help him look after his younger brother.

“In assessing whether two people are in a de facto relationship, the court must take into account nine factors,” Kevin Sullivan said, and then he started to rattle off the nine factors matter-of-factly.

But when he got to the third factor, “whether or not a sexual relationship exists,” Augie noticed Fabe murmuring aloud to Elliott, and then he snapped the pencil he was strangling in his right hand and he leant forward and was pulling at Elliott’s gown from behind, telling him to stand up and object or something, to stop the lies being asserted for all the world, and any nosey journalists who happened to come in with their note books, to hear. But it didn’t bother Augie anywhere near as much. How the devil were they going to disprove that? Their father was dead. Elliott would white-ant Brent in cross examination, get him to crack, admit it was all untrue, concede he just made it up to claw the estate away from the boys because he had lost everything with dud investments and taking the bad financial advice he was always giving his clients.

“Finally, your Honour, the court must take account of the reputation and public aspects of the relationship,” Kevin Sullivan said. Then he turned around and smiled a smile of self-satisfaction at his junior, Paddy Maguire, who did not return the smile.

“But Mr Sullivan,” the judge said with the look of an owl eyeing off a far off mouse, his fountain pen poised to note every word in the reply he was working with studied nonchalance to provoke from the leader of the team that bore the onus of proof, “it is common ground, amongst all the witnesses, it seems, based on the outlines of their likely evidence in chief, indeed it seems to be one of the few agreed facts, that no one knew about the existence of this alleged de facto relationship until after the deceased passed away last year and your chap came forward with his de facto relationship allegation to support a claim to have as his own the estate ahead of its rightful heirs.”

The judicial pen was upright and held perfectly still and the judge was, if his expression was to be believed as a reliable signal of his intent, champing at the bit.

Kevin Sullivan QC drew breath and started to speak, mumbling really. He said a word, perhaps a word and the first syllable of the next, and then he stopped, thought the better of it, and started off all over again. The second time he got out three words but then he took them right back with the time-honoured phrase, "I withdraw that", paused and thought again. He moved his mouth to one side, seeking inspiration from the inside of his left cheek that he was gnawing away at with a squint in his eyes.