Case No: HC 01C04389

Neutral Citation Number : [2003] EWHC 796 (Ch)

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 16 th April 2003

Before:

THE HONOURABLE MR JUSTICE PATTEN

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IN THE MATTER OF THE ESTATE OF B J M Deceased AND IN THE MATTER OF THE FORFEITURE ACT 1982

Between:

D.D.

Claimant

-and -

(1) J.M.L.

Defendants

(2) S.R.N.

(3) P.G.P.

(4) J.S.

(5) A.M.

(6) D.M.

(7) G.K.

(8) J.R.

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P.G.P. & J.S. were originally parties to the

action, before the trial ended they had withdrawn their action

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Jonathan Holmes (instructed by **Martin Cray & Co.**) for the Claimant

Helen Galley (instructed by **Griffith Smith Conway**) for the Fifth to Eighth Defendants

Hearing dates : 4th – 7th March 2003

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Judgment

Mr Justice Patten :

Introduction

1.Either very late on the evening of Saturday 9th December or in the early hours of Sunday 10th December 2000, the Claimant Dominic Dalton killed B.M. by strangling him. He was tried for murder at Lewes Crown Court, but on the sixth day of the trial, following psychiatric evidence, the trial Judge directed the jury to acquit him of murder on grounds of diminished responsibility. He was then convicted on his own plea of manslaughter and sentenced to six years imprisonment.

2.Apart from a small pecuniary legacy, Mr D. was the sole beneficiary of the deceased's estate under a will made in 1996. Under the law as it currently stands, that interest was forfeited under the rule of public policy which precludes those who commit unlawful killings from benefiting from the estates of their victims. The consequences of that rule can, however, be displaced or modified under the provisions of the Forfeiture Act 1982 by an order of the court. But such an order cannot be made unless the court is satisfied that, having regard to the conduct of the offender and of the deceased, and to such other circumstances as appear to the court to be material, the justice of the case requires the rule of policy to be modified.

3.The latest estate accounts show a cash balance of £36,300. To this must be added the single most valuable asset in the estate, which is Mr M.'s former home at 15 Crown Street, Brighton. This was given a probate value of £125,000. Mr D. is likely to be released from prison at the end of this year. He wishes to resume occupation of 15 Crown Street, which he says has been

his home since about 1987, apart from a break of about 2 to 3 years in the 1990's. His application for relief from forfeiture is opposed by members of Mr M.'s family, only some of whom stand to benefit financially on an intestacy. Their evidence has been that they would feel affronted if the person who killed a well-loved brother and uncle were to benefit from his estate. At the end of the hearing, and with the agreement of both sides, I gave my decision and refused relief from forfeiture. I now give my reasons for that decision.

The Forfeiture Rule

4.The forfeiture rule is defined by s.1(1) of the Forfeiture Act 1982 ("the 1982 Act") as "the rule of public policy which in certain circumstances precludes a person who has unlawfully killed another from acquiring a benefit in consequence of the killing". As those words indicate, the rule is of wide application in cases of unlawful killing. It is not limited to cases of murder, but applies also to manslaughter and to cases of assisted suicide. It is sometimes described as a rule which prevents the killer from profiting from his crime, but it is important to observe that it is not limited to cases in which the motive for, or purpose of, the killing was to obtain the benefit on death.

5.In Re Crippen [1911] P. 108, Sir Samuel Evans P refused a grant of letters of administration in respect of Mrs Crippen's estate to the personal representatives of her husband, who by then had been tried and executed for her murder. The President stated that:

"It is clear that the law is, that no person can obtain, or enforce, any rights resulting to him from his own crime, neither can his representative, claiming under him, obtain or enforce any such rights. The human mind revolts at the very idea that any other doctrine could be possible in our system of jurisprudence."

In R.H. [1914] P 1, the Court of Appeal confirmed that the rule applied equally to cases of involuntary manslaughter. Hamilton LJ expressed the view that to distinguish between murder and manslaughter in such cases would be:

“to encourage what, I am sure, would be very noxious - a sentimental speculation as to the motives and degree of moral guilt of a person who has been justly convicted and sent to prison”.

6.This led Sir John Pennycuick V-C, in Re Giles [1972] Ch 544, to reject any attempt to limit the common law rule to cases involving real moral culpability. The case was one in which a wife had killed her husband with a single blow to the head and was convicted of manslaughter by reason of diminished responsibility. She was found to be suffering from a form of mental illness and was sent to Broadmoor under a hospital order made under s.60 of the Mental Health Act 1959. At page 552 of his judgment the Vice-Chancellor said this:

“In the present case, the widow was convicted pursuant to section 2 of the Homicide Act 1957 of manslaughter by reason of diminished responsibility. It is contended, on her behalf, that such a conviction does not fall within the general principle laid down in the cases to which I have referred. On the face of it, it seems to me that such a conviction does plainly fall within the scope of that principle. The principle is, to use a summary expression of Lord Atkin in the Beresford case [1938] A.C. 586, 599 that the ‘courts will not recognise a benefit accruing to a criminal from his crime’. It is accepted that a person convicted of manslaughter by reason of diminished responsibility has indeed been convicted of a crime. Therefore, on the face of it, such a person in the present connection is in precisely the same position as anyone who was convicted of manslaughter under the law as it stood before the introduction of the Homicide Act 1957. And the cases have established beyond question that a person so convicted of manslaughter is disqualified from taking a benefit under the will or intestacy of the person whom he has killed.

Mr Whitehead for the widow, has sought to exclude these cases of manslaughter by reason of diminished responsibility from the scope of the principle. What he contends is that the principle, only applies to crime deserving of punishment or, to use another phrase, crime carrying a degree of moral culpability, and that where the crime does not deserve punishment and carries no degree of moral culpability, then the principle does not apply.

It is true that sentence of detention for hospital treatment under section 60 of the Mental Health Act 1959 is not in the nature of a punishment but is a remedial order. The answer, certainly in this court, is that neither the deserving of punishment nor carrying a degree of moral culpability has ever been a necessary ingredient of the crime the perpetrator of which is disqualified from benefiting under the will or intestacy of the person whom he has killed. That is an entirely new conception and it is actually contrary to the words used by Hamilton LJ in In re H. [1914] P.1, 7."

7.A similar approach was taken by Vinelott J in Re K, decd [1985] Ch 85,where a wife had pleaded guilty to the manslaughter of her husband. In that case relief was granted to the wife under s.2(2) of the 1982 Act and upheld on appeal ([1986] Ch 180), but the learned Judge held that the forfeiture rule did apply, notwithstanding that the killing occurred when a shotgun was discharged during a quarrel in which the husband had used physical violence towards his wife. Both these decisions are consistent with the judgment of the Court of Appeal in Gray v. Barr [1971] 2 QB 554, where it was held that a husband who accidentally shot and killed his wife's lover after threatening him with a shotgun was not liable to be indemnified by his insurers for the losses claimed against him by the deceased's estate as a result of the shooting. However, in the course of his judgment (at page 581) Salmon LJ said this:

"Although public policy is rightly regarded as an unruly steed which should be cautiously ridden, I am confident that public policy undoubtedly requires that no one who threatens unlawful violence with a loaded gun should be allowed to enforce a claim for indemnity against any liability he may incur as a result of having so acted. I do not intend to lay down any wider proposition. In particular, I am not deciding that a man who has committed manslaughter would, in any circumstances, be prevented from enforcing a contract of indemnity in respect of any liability he may have incurred for causing death or from inheriting under a will or upon the intestacy of anyone whom he has killed. Manslaughter is a crime which varies infinitely in its seriousness. It may come very near to murder or amount to little more than inadvertence, although in the latter class of case the jury only rarely convicts. H.'s case [1914] P. 1 may seem to be an authority for the

proposition that anyone who has committed manslaughter, in any circumstances, is necessarily under the same disability as if he had committed murder. The facts however are not stated in the report and they are of vital importance in order to understand the decision. They have now been ascertained from the record A man named J.H. kept a woman named J.B. and had made a will in her favour. They had had many quarrels. He had promised to marry her but had not done so. On April 13, 1913, she took his revolver and, whilst he was in bed, shot him dead with four or five shots. She was acquitted of murder but convicted of manslaughter. It is small wonder that the court held that, on grounds of public policy, she could not take under H.'s will. The only surprising thing about the case is that she was acquitted of murder, apparently for no reason - except, perhaps, that she was defended by Mr Marshall Hall."

8.In Dunbar v P. [1998] Ch 412, the Court of Appeal had to consider whether the rule of public policy applied to forfeit the interest in various policies of the survivor of a suicide pact. It held that it was not confined to murder and manslaughter, but did also apply to the offence of aiding and abetting suicide contrary to s.2(1) of the Suicide Act 1961. Mummery LJ (referring to a submission based on the judgment of Geoffrey Lane J at first instance in Gray v. Barr [1970] 2 QB at page 640) rejected the notion that actual or threatened violence was necessary in order for the rule to apply. His analysis of the authorities was that (page 425):

"It is sufficient that a serious crime has been committed deliberately and intentionally. The references to acts or threats of violence in the cases are explicable by the facts of those cases. But in none of those cases were the courts legislating a principle couched in specific statutory language. The essence of the principle of public policy is that (a) no person shall take a benefit resulting from a crime committed by him or her resulting in the death of the victim and (b) the nature of the crime determines the application of the principle. On that view the important point is that the crime that had fatal consequences was committed with a guilty mind (deliberately and intentionally). The particular means used to commit the crime (whether violent or non-violent) are not a necessary ingredient of the rule. There may be cases in which violence has been used deliberately

without an intention to bring about the unlawful fatal consequences. Those cases will attract the application of the forfeiture rule. It does not follow, however, that when death has been brought about by a deliberate and intentional, but non-violent, act (e.g. poison or gas) the rule is inapplicable."

9.Phillips LJ (after referring to the dictum of Salmon LJ in Gray v. Barr quoted above and to the more rigid application of a general rule in Re Giles) said this (at page 435):

"It is time to pause to take stock. Thus far, apart from the motor cases, there has been no instance of the court failing to apply the forfeiture rule to a case of unlawful killing. So far as the rule is concerned, it is hard to see any logical basis for not applying it to all cases of manslaughter. Lord Denning MR himself in Gray v. Barr [1971] 2 QB 554, 568: 'In manslaughter of every kind there must be a guilty mind. Without it, the accused must be acquitted. . .'

In the crime of manslaughter, the actus reus is causing the death of another. That actus reus is rendered criminal if it occurs in one of the various circumstances that are prescribed by law. Anyone guilty of manslaughter has, ex hypothesi, caused the death of another by criminal conduct. It is in such circumstances that the rule against forfeiture applies.

However, the harshness of applying the forfeiture rule inflexibly to all cases of manslaughter in all circumstances is such that I do not consider that, absent the statutory intervention which occurred, the rule could have survived unvaried to the present day. The obiter dicta of Salmon and Phillimore LJJ in Gray v. Barr [1971] 2 QB 55 and Lord Lane C.J. in Ex parte Connor [1981] QB 758 were straws in the wind. The rule is a judge-made rule to give effect to what was perceived as public policy at the time of its formulation. I believe that, but for the intervention of the legislature, the judges would themselves have modified the rule. Furthermore, it seems to me that the only logical way of modifying the rule would have been to have declined to apply it where the facts of the crime involved such a low degree of culpability, or such a high degree of mitigation, that the sanction of forfeiture, far from giving effect to the public interest, would have been contrary to it. Alternative suggestions that the rule should be restricted to

cases of deliberate killing, or deliberate violence leading to death, do not cater for cases of diminished responsibility or provocation, where the mitigating features may be such as to render it particularly harsh to apply the forfeiture rule."

A little later (at page 436H) he concluded:

"The Forfeiture Act 1982 has given the court a greater degree of flexibility than could have been achieved by judicial modification of the rule. That modification had been foreshadowed but had not taken place when the Act was passed. I can see no reason now for the court to attempt to modify the forfeiture rule. The appropriate course where the application of the rule appears to conflict with the ends of justice is to exercise the powers given by the Act."

Hurst LJ agreed with the judgment of Phillips LJ, and that must now be taken to be a binding statement of the law as to the application of the rule of public policy. It applies to all cases of unlawful killing, including manslaughter by reason of diminished responsibility or by reason of provocation. The only possible exception is where the Defendant is found to be criminally insane, which leads to an acquittal: see Criminal Procedure (Insanity) Act 1964 s.1. In the light of the decision in Dunbar v. P., Mr Holmes realistically accepted (without formally conceding) that I should proceed on the basis that the forfeiture rule does apply in the present case, and the real issue before me has been whether I should grant relief under the 1982 Act.

Relief from Forfeiture

10.The 1982 Act resulted from a Private Member's Bill. It was introduced to deal with what was perceived to be the injustice which existed in a case where a widow who had killed her husband without the mens rea necessary for murder was deprived by the forfeiture rule of her right to social security benefits: see R v. Chief National Insurance Commissioner ex p. Connor [1981] QB 758. The Act has two important features which circumscribe the scope of the discretion it confers. The first is that it does not apply to cases of murder: see s.5. The second is that under s.2(2):

“The court shall not make an order under this section modifying the effect of the forfeiture rule in any case unless it is satisfied that, having regard to the conduct of the offender and of the deceased and to such other circumstances as appear to the court to be material, the justice of the case requires the effect of the rule to be so modified in that case.”

I have therefore to be positively satisfied that the justice of the case requires the forfeiture rule to be modified.

11.The 1982 Act gives no further guidance as to the basis upon which the discretion should be exercised, but in Dunbar v. P. the Court of Appeal did address this issue. In that case the Judge had modified the forfeiture rule so as to allow the survivor of the suicide pact to take her deceased fiancé’s share of the house they owned jointly, together with the proceeds of an insurance policy charged on the property. He declined to modify the rule so as to allow her to take the benefit of a free-standing life insurance policy on the deceased. This split in the deceased’s estate was based on the Judge’s view that his task was to do justice between the parties instead of deciding whether it was right in all the circumstances to relieve M.P. from the consequences of the forfeiture rule. The Court of Appeal held that this was the wrong approach. In his judgment (at page 438) Phillips LJ said that:

“The first and paramount consideration must be whether the culpability attending the beneficiary’s criminal conduct was such as to justify the application of the forfeiture rule at all.”

But this is clearly not the only factor to be taken into account. At page 427 Mummery LJ gave some indication of the other matters which the court may consider when deciding whether to grant relief:

“The court is entitled to take into account a whole range of circumstances relevant to the discretion, quite apart from the conduct of the offender and the deceased: the relationship between them; the degree of moral culpability for what has happened; the nature and gravity of the offence; the intentions of the deceased; the size of the estate and the value of the property in dispute; the financial position of the offender; and the moral

claims and wishes of those who would be entitled to take the property on the application of the forfeiture rule."

Ultimately, of course, each case will turn on its own facts.

The Present Case

12.Mr M. was born in Dublin in 1922. In 1948 he moved to London with his partner, J.K., and opened a ladies' hairdressing salon. The evidence is that it was a very successful business and was patronised by a number of show business customers. In 1969 Mr M. and Mr K. sold the hairdressing business and moved to Brighton, where they purchased the Abbacourt Hotel. Again this was successful. But in 1984 Mr K. died, and Mr M. sold the hotel and retired. He then moved into the house at 15 Crown Street which he had purchased a few years earlier. The proceeds from the sale of the hotel were used to purchase a flat in Brunswick Square, Hove, which was rented out to provide an income. The balance of the monies was invested. I heard evidence from Mrs Gill Merlin, who is a Customer Service Clerk at the Western Road branch of HSBC Bank in Brighton. She has known Mr M. and Mr D. since about June 1997. Her evidence (which is not contested on this point) is that at that time Mr M. had substantial amounts of cash, amounting to £165,000, deposited with the Portman Building Society. On the advice of the bank (then, of course, the Midland Bank) some £90,000 was invested in a Midland Bank Investment Account designed to give Mr M. an increased income. A further £50,000 was invested in two Post Office Pensioner Bonds. The remaining £25,000 was kept on deposit with the Portman Building Society. Mr M. also had his state pension.

13.The picture which comes from the evidence of his family (most of which is not challenged) is that Mr M. was extremely sociable and highly gregarious. He greatly enjoyed going out. He was a keen and accomplished ballroom dancer and he cultivated a close circle of friends on whom he relied for his social life, particularly after Mr K.'s death. The sale of the hotel had left him comfortably off. Like all retired people in his position, his problem was to turn capital into income without endangering the security that the capital provided, but he appears to have been able to live within his

means and to have accommodated his social life without in any way being ostentatious or extravagant.

14.His nephew, A.M. (whose evidence I accept), lives in Brighton and stayed with his uncle for about a year, between 1991 and 1992, while he was looking for a house. The picture he paints of his uncle is of a man of regular habits who liked to plan his days around his friends and his social interests. He had women friends who would accompany him to the theatre and to dances, and he received regular invitations out to dinner and to parties. He obviously liked to be smart and well turned out. This impression of Mr M. was confirmed by one of his longstanding friends, Mr P.G.P.. Mr P. is a retired actor and some of his evidence was both exaggerated and rather theatrical. He also has an obvious and perhaps justifiable dislike of Mr D., whom he described as vulgar and uncouth. I shall come to that later. I have therefore approached his evidence with some caution, but much of it ties in with that of the other witnesses. Mr P. said that Mr M. was generous, but was not a big spender on himself. He was refined and hated ostentation. His home was furnished with antiques acquired during his working life. In short, he was an accomplished and cultivated man.

15.I need to say something at this stage about Mr M.’s relations with his family. I do so, not because they have competing claims or are in any sense on trial in these proceedings, but because it is relevant to a consideration of Mr M.’s relationship with Mr D.. Mr M.’s homosexuality was known to, and accepted by, his family. It was apparent to me during the hearing that some of them were more comfortable with it than others, but they all accepted it. It was also clear that his relationship with Mr K. was a close and enduring one, and that the family were genuinely fond of them both. Mr M. had therefore no reason to distance himself from his family, and all of his relatives who gave evidence spoke of having visited him at one time or another. In some cases the visits were infrequent. Some, like his niece, Mrs R., live in Ireland and were only able to visit him about twice a year up to the late 1990’s. She last saw him in 1998. Another niece, M.B., visited him once or twice a year on average, but again last visited in 1998. Others saw him less often and some hardly at all. But birthdays and Christmas were remembered with cards.

16.There is nothing unusual in this. They had their own lives to lead and Mr M. had his. He was in no sense antagonistic towards his family, but inevitably they were not the closest people to him. After Mr K.'s death his life revolved around his friends, and it is therefore no surprise that Mr P. was the principal beneficiary under two wills made between 1985 and 1996. But Mr Kennedy's death obviously left a considerable void in Mr M.'s life. They had been together for almost 40 years. It was in these circumstances that his relationship with Mr D. began.

17.The Claimant's pleaded case, and his evidence, is that he first met Mr M. in about 1987. He was then 29 years old and was working as a hairdresser in Brighton in a shop called Fellas. Mr M. was 65. Mr D. used to cut his hair and the two struck up a friendship. In his witness statement Mr D. described Mr M. as very lively and pleasant. He says he was smart and intelligent and, having been a hairdresser, they had something in common. Mr D. says that he was not looking for a serious relationship at the time and that he had had a number of short-term relationships with different people, some of which he described as no more than "flings". He was, however, comfortable with that sort of life. It is neither necessary nor possible to decide with any precision what the attraction of Mr D. was for Mr M., but it was clearly in part sexual. Mr D. said that they had a sexual relationship for about a year, and that shortly after first meeting, Mr M. invited him to go on holiday to Spain. He says that he then started to live at Crown Street and to help run the house. He continued to work at the hairdressers in the day, but spent most evenings and nights at Crown Street.

18.There is some dispute as to whether Mr D. can properly claim to have occupied Crown Street as his home during this time. Mr P.'s evidence was that Mr D. retained a bed-sitting-room in Kemptown and did not permanently reside with Mr M.. But nothing I have to decide really turns on this. I accept Mr D.'s evidence that his relationship with Mr M. ceased to be sexual after about a year, and that when he stayed at Crown Street overnight, he used the spare bedroom in the house. There is nothing really to suggest that they did not remain on good terms at this time, but I do not accept Mr D.'s evidence in his witness statement that they had then what might be described as a normal husband-and-wife relationship. Although

they spent a reasonable amount of time under the same roof, everything indicates that Mr D. continued to have a life of his own, which included having sexual relationships of a casual kind with a number of other men. Mr M. was prepared to tolerate this, and his own social life remained unaffected by his relationship with Mr D..

19.What is not in dispute is that in 1991 or 1992 Mr D. left Brighton and returned to Wales where he was born. His evidence is that someone came into the hairdressers' shop and asked him to look after some drugs. He says that he was concerned and went to the police and handed the drugs over to them. He was then threatened by the drug-dealers with a gun, because they wanted to be paid for the drugs. The police were not providing him with protection, and he felt that he could only escape danger by leaving Brighton. He was away for about 2 years.

20.Mr P. was adamant that Mr D. was dealing in drugs, and Mr M. said that his uncle confirmed this to him at the time. His evidence was that his uncle said that Mr D. had spent all the money he had made from selling drugs and could not afford to pay the supplier. This is what led him to leave Brighton. If I had to decide this matter, I would be inclined to accept the evidence of Mr M. in preference to that of Mr D.. Mr D.'s account seems to me implausible. Again nothing really turns on this. But the fact that Mr D. became involved with the drug-dealers, even in the manner he suggests, is perhaps a good indication of the very different kind of lifestyle he and Mr M. enjoyed. During his absence in Wales there appears to have been little or no contact between them, and there is no indication that Mr M. was concerned about Mr D.'s departure in the way one might expect if in truth they had a close relationship akin to a marriage. It was during this period that A.M. lived with his uncle in Crown Street. He recalls his uncle continuing to enjoy an active social life and being generally at ease with himself. His evidence is that Mr D. rang his uncle only about twice while he was away, and Mr P. confirmed this. Both were surprised when Mr D. eventually returned. On one occasion Mr M. asked his uncle whether he missed Mr D., and was told that their relationship was not like that.

21.In about 1994 Mr D. returned to Brighton. He had nowhere else to stay in the town and he seems to have moved back into Crown Street almost from the start. By then Mr M. had moved into his own home, but he continued to meet his uncle two or three times a week. He was told by Mr M. that Mr D. had returned. A few months later he was invited to Crown Street for dinner. His evidence (which I accept) is that there were a number of changes. The most obvious was the presence of a large drinks tray, with a number of bottles of spirits. Mr D. had obviously been drinking and was very loud. When Mr M. had lived alone, there was much less alcohol around. He says that Mr D. behaved in an aggressive manner, breaking into any conversation he tried to have with his uncle and ordering his uncle about. During the same visit Mr D. told Mr M. of his plans to install a shower-room downstairs for his uncle to use. His evidence is that Mr D. gave every sign of his presence at Crown Street being a permanent arrangement. Consistently with this, his behaviour exhibited little or no concern that he might be removed by Mr M., and he obviously felt able to speak to Mr M.'s family and friends as he thought fit It is common ground that by about 1998 he had persuaded Mr M. to build a conservatory onto the back of the house and had refurnished his own room. The antiques were sold. I mention these changes primarily because they illustrate that, for whatever reason, Mr D. did become a fixture. He says that when he returned in 1994, a sexual relationship resumed with Mr M. for a while and then ceased again. Thereafter he felt free to indulge in various sexual liaisons although he says that he tried to be discreet and not to cause Mr M. offence. He insists, however, that this was a close and loving relationship and remained so until the serious onset in about 1998 of senile dementia on the part of Mr M.. Thereafter Mr M. is said to have suffered mood-swings and to have often become violent towards the Claimant. At the same time Mr D.'s own mental condition deteriorated. He was already prone to depression, and this was exacerbated by excessive drinking. In October 2000 he attempted suicide, but did not report the matter to his doctor. On the night in question he says that he snapped after a row with Mr M. and killed him.

22.A number of matters were examined in evidence in relation to the period after 1994.

(i) The 1996 Will

23.In November 1996 Mr M. made a will in favour of Mr D.. Apart from a small legacy of £1,000 in favour of M.B., the entire estate was left to the Claimant. The will was prepared by Mr M.'s solicitor, Mr Griffiths, and I have been shown an attendance note taken by Mr Griffiths at the time, which sets out Mr M.'s instructions. At the commencement of the hearing the Defendants gave notice that they wished to seek permission to amend their Defence by adding an allegation that the will was obtained as a result of improper pressure exerted on Mr M. by the Claimant. This allegation was to be based on evidence from Mr P. that Mr D. had said to Mr M. that he was unhappy about not having any security and would leave unless a will was made in his favour. In the end the allegation of undue influence was not pressed, but I did give the Defendants permission to plead and raise in evidence the incident I have described.

24.Mr P.'s evidence in fact fell short of establishing anything which could properly be described as a threat. What does emerge from his and the evidence of other witnesses (and I accept) is that Mr D. did feel some considerable insecurity in his position in the period after he returned. He had no claim of any kind on Mr M.'s assets and could only continue to live at Crown Street with Mr M.'s consent. As already indicated, they were very different people with different tastes and attitudes. There was also a considerable age difference between them. Mr M., though sociable and outgoing, was clearly what one might term genteel. He had good taste and took pride in his appearance and his home. Mr D., by contrast, had no such characteristics. He had what people like Mr P. regarded as bad taste in matters of appearance and decoration. This included a penchant for gold jewellery, including earrings and chains. Unlike Mr M., he was loudmouthed and, when drunk, could be threatening and abusive. Swear words were a common part of his vocabulary. Mr P. said that he liked to spend time at home drinking, smoking and watching television, whereas Mr M. liked to go out. He also listened almost continuously to loud music. Much of this evidence was confirmed by other witnesses. Mr M. said that the relationship between Mr D. and his uncle seemed very strange. They had nothing in common and appeared unable to converse together at anything but a fairly

mundane level. One of Mr M.'s friends is said to have described Mr D. as "B.'s bit of rough".

25.Yet, for all these differences, there was clearly some bond between them, sufficient to lead Mr M. to make the 1996 will in Mr D.'s favour. At the time of the 1996 will Mr M. had made from some cufflinks two rings which he and Mr D. wore. They were described to visiting relatives and friends as engagement rings. J.R., one of Mr M.'s nieces, told me of a visit in about 1996 when she was shown the rings. She said that Mr D. was pleased to see her and made an effort to entertain her. But on later visits he was less accommodating and was sometimes aggressive. Visits became confrontational. Mr D. seemed to feel insecure in her presence and often drank too much. She said that her uncle disliked the confrontation and tried to avoid it. On another occasion in 1998 Mr D.H., one of Mr M.'s nephews, who is an artist, asked for the return of some of his pictures which he had lent to Mr M. some years earlier. The pictures had originally been displayed for sale in the Abbercourt Hotel. Mr H. had an opportunity to sell them in 1998 and asked for them back. When he came to collect them, there was a confrontation involving Mr D., who told Mr H. to take all of his pictures and to get out.

26.What emerges from the evidence is that Mr D. suffered from a deep sense of insecurity and compensated for it by resorting to drink. This caused him to become aggressive and overbearing, and obviously provided him with a means of coping with social occasions which he found difficult. Mr M. had family and friends with whom Mr D. shared no real interests or common outlook. Friends like Mr P. obviously looked down on him as socially inferior. He responded by being rude and antagonistic towards them, and on occasions this spilt over into his treatment of Mr M.. I am satisfied, on the evidence, that Mr D. was anxious to preserve the comfort and security which living with Mr M. provided. I am also satisfied that Mr M. preferred to live with him rather than to live alone. In short, they provided each other with a measure of company and presumably were prepared, for those reasons, to overlook differences of age and background which otherwise separated them. I am not persuaded that Mr D. used any actual coercion to obtain the 1996 will in his favour, but I am satisfied that he did express concerns to Mr

M. about, his position in the event of Mr M.’s death, and that Mr M. was prepared to avoid any confrontation with him by making the will in his favour. Mr D. accepted in cross-examination that he raised the question of a new will with Mr M. in 1996. I do not exclude the possibility that, particularly in the early period after his return from Wales, there was a measure of affection, including physical affection, between them, although Mr D. denied this in one of the police interviews. But all the evidence indicates that the relationship quickly became one of dependence on Mr M.’s part. By 1996 he was 74 years old. He wanted to be able to continue with his life as it had been before. As he often told friends and relatives, he did not want to go into a home. His chances of starting a serious personal relationship at that time were obviously low. Nor could he reasonably expect his relatives to step in. Mr D., for all his faults, enabled Mr M. to carry on living at home and to do what he wanted. Of all the alternatives, however imperfect, it gave Mr M. most of what he wanted. But there was a price to pay.

(ii) Expenditure

27.Mr D., by his own admission, is extravagant, with a penchant for jewellery and expensive holidays. At the time he returned to Brighton, he was not aware of the extent of Mr M.’s means, although he must have appreciated that he was comfortably off. In about 1996 Mr M. lent him £6,000 as a deposit to assist him in buying a sauna business. The purchase did not go ahead and the money was lost, but it obviously confirmed to Mr D. that Mr M. had capital at his disposal. Then in May 1997 Mr D. learnt about the money in the Portman Building Society and, to use his words, the real spending began. Over a two-year period beginning in 1998, £156,000 of Mr M.’s money was spent on holidays, jewellery and improvements to the house. Until then Mr D. and Mr M. went on holiday to Spain once a year. In 1998 alone there were Mediterranean cruises and trips to Las Vegas, Bangkok and Hong Kong.

28.Mr D. admits that this expenditure was his idea. He says that Mr M. told him that the house and money would be his one day. He said that he told Mr M. that, rather than keep the money invested, they should spend it on

themselves and enjoy it. Mr M. did not want his relations to benefit and had no other commitments. Mr D. says in his witness statement that the £100 per week he earned from hairdressing was not enough to finance his lifestyle. He received cash payments from Mr M. as well as expensive jewellery which on occasions he pawned. To quote from his witness statement: “We had a great life and I make no apologies for it”.

29.The evidence of Mrs Merlin, confirmed by HSBC’s internal records, is that on 26th June 1997 a joint account was opened in the name of Mr M. and Mr D.. Interest from investments and various cash deposits were paid into the account. Within a few months, in November 1997, the joint account was closed on Mr M.’s instructions and a sole account opened in his name. Mrs Merlin said that Mr M. was concerned at the amount of money which was going out of the joint account. Much of this was expenditure by Mr D. using a switch card. The bank statements for November 1997 show (and Mr D. admits) that from 11th to 17th November Mr D. was in South Wales visiting his family. During that time he withdrew £900 in cash, spent over £500 on jewellery, and a further £400 on a Christmas present for his mother.

30.Mr D. claims that Mr M. consented to this, but the closure of the joint account on Mr M.’s instructions in November 1997 is inconsistent with this. These were, in my judgment, random purchases by Mr D. on an extravagant scale for the benefit of himself and his family. I do not believe that Mr M. was happy about them or had any control over them, short of closing the account.

31.The joint account remained closed until 24h March 1998. It was then reopened, but this arrangement lasted only until 20th May 1998. It was then closed once again on Mr M.’s instructions and the account in his sole name was reactivated. Even with the only account being the one in Mr M.’s name, the rate of expenditure did not decline. There were a number of large cash withdrawals, as well as the expensive holidays I have already referred to. It is clear from the accounts that these could not be financed out of income, and the current account received regular injections of capital derived from Mr M.’s savings and other investments, which were cashed for this purpose. No thought was given by Mr D. to the fact that if the expenditure continued

at this rate, Mr M. would be left destitute, and eventually it took the intervention of the bank before some measure of restraint was imposed on this reckless spending. In January 2000 Mr D. came into the branch asking to withdraw £16,000 from one of Mr M.'s investments in order to pay for improvements to the house. This led to an investigation of the account by the bank, and it was discovered that some £70,000 of Pensioner's Bonds had already been spent, together with at least £10,000 from the monies remaining in the building society. The bank arranged a meeting. There was a meeting with Mr M. alone, as a result of which the account was frozen pending confirmation from a doctor that Mr M. was capable of managing his own affairs. Mrs Merlin said that at the meeting with Mr M. which was held on 19th January 2000 he was unable to explain what the money was needed for or had been spent on. He denied having been on holidays which he had in fact taken. There is a file note taken by the bank of this meeting. It confirms that at that time only £61,000 remained invested. By then £156,000 had been spent since 1997. Mr M., when unable to explain what the money had been used for, told Mrs Merlin that they needed to ask Mr D.. At the end of the meeting Mr D. was asked to join them. He was told of the bank's concerns and that they were unwilling to allow further funds to be released until a doctor's certificate was obtained. Mr D. expressed his unhappiness about this and said that he needed £4,000 to get back some jewellery he had pawned. The bank declined to release the money. Mr D. said that he would take Mr M. to see a doctor. About ten minutes after Mr D. and Mr M. had left the bank, a call was received from Mr D., saying that he would arrange for Mr M. to see a doctor that evening and asking what the bank required. He was told that the bank needed a medical certificate confirming Mr M.'s mental capacity. In the meantime the account remained frozen.

32.On 3rd February 2000 the bank received a letter from a Doctor Jenkinson. She said that she had found Mr M. to be "moderately severely confused with disorientation in time but not place and having poor short-term memory recall with a reasonable long-term memory recall". The doctor added that Mr M. was aware that money had been withdrawn from his account, but not how much. He was, however, willing for money to be spent on holidays and on his house. The doctor concluded that she was not sure

that Mr M.’s condition justified making him a patient under the control of the Court of Protection and had arranged for further tests. She suggested that the account should be overseen by the bank and was sending a copy of the letter to Mr M.’s solicitors. The regime which was put in place was that on 4th April 2000 a joint power of attorney was executed, under which the account came to be controlled by Mr D. and Mrs L., Mr M.’s solicitor. She was required to countersign cheques, and a limit of £100 per week was placed on the amount of cash which could be withdrawn. As part of the same arrangements a policy of £25,000 was surrendered and £4,000 used to pay off Mr D.’s debt to the pawnbrokers.

33.These measures did not, however, prove adequate to deter Mr D.’s attempts to spend Mr M.’s money. The bank had no means of preventing Mr D. writing out cheques on Mr M.’s account to cash, unless questioned by a cashier at the time. Unless the cheque was in a large amount, the mandate on the account would not be checked each time a cheque was presented for cash, and it seems that Mr D. continued to obtain cash in this way. He was unable to keep within the limits set by the bank. For example in November 2000 he used cheques drawn by him on Mr M.’s account totalling some £850 to pay the rent on his hairdressers’ shop. The cheques were made out to cash and were not countersigned by Mrs L.. But expenditure on the scale of earlier years had at least been prevented. Mr D. said that he got frustrated and depressed by these restrictions, and Mr M. was upset by being told by the bank that he had no money.

34.It is, I think, a matter of real regret that Mr M.’s affairs were not placed into the hands of the Court of Protection. If ever there was a case of a vulnerable old man being exploited, this is it. I can easily accept Mr D.’s suggestion to Mr M. that they might spend some of his capital on improvements to the house and additional holidays. But a balance needed to be kept between enjoying such additional benefits and preserving Mr M.’s only capital and source of income. As it was, Mr D. obtained improvements to the house, most of which benefited him rather than Mr M., and persuaded Mr M. to go on a series of holidays which were needlessly extravagant and placed Mr M.’s future security at considerable risk. Until 1997 Mr M. had lived contentedly in Brighton and taken annual holidays in Spain. There is

nothing to suggest that he needed or desired to go on expensive trips to the Far East, or that such trips were suitable for someone of his age and condition. In 1998 Mr M. was 77 years old. That year he accompanied Mr D. on a visit to Hong Kong which Mr D. had arranged. When the plane landed in Dubai, Mr M. was involved in some kind of outburst or panic attack when he was told that he could not have a drink. He refused to go on to Hong Kong, and Mr D. arranged for him to travel back to England alone, while he (Mr D.) continued to Hong Kong. This seems to me to be a very clear indication as to who was intended to benefit from these arrangements. Notwithstanding this incident, Mr D. arranged a trip to Thailand the following year, and there were other similar holidays. In my judgment, none of this was truly for the benefit of Mr M.

(iii) Mr M.'s condition

35.It is clear from the bank statements that the problems about short-term memory loss which the doctor diagnosed in early 2000 had been present several years earlier. Mr P. was telling everybody in about 1995, or even earlier, that Mr M. was suffering from senile dementia, but it is accepted by most of the witnesses that this was an exaggeration. As in most of these cases, the first signs of a problem came with loss of short-term memory, and the bank statements from 1997 indicate that Mr M. would often visit store such as Waitrose several times on the same day. Doubtless the progression of his condition was gradual, but there is continuing evidence of confusion from 1998 onwards. Mr D. said in cross-examination that by that year he had become frustrated with Mr M.'s loss of memory and found it embarrassing to be out with him. On one occasion in 1998 they had a row, which led to Mr D. dangling Mr M. by his ankles over the banisters at Crown Street, breaking all of Mr M.'s crystal and smashing windows. In papers prepared for the criminal trial Mr D. said that eventually even holidays became stressful.

36.It is therefore clear that by 2000 Mr M.'s health was declining. He was still able to go out and to find his way about, but in 1999 he had a mild stroke and the loss of his short-term memory left him confused and at times agitated. This did not mean that he was unable to recognise friends and

family or to have meaningful conversations with them. Mr M. spoke of meeting and talking to his uncle right up to his death. But there were obvious problems and Mr D. found them difficult to cope with. As already indicated, he found it embarrassing to be with Mr M. when he became forgetful and confused. There were also occasions when he found the house in a mess, and instances such as taps left running. These can obviously be stressful for anyone, but they had a greater than normal effect on Mr D., who reacted badly to such situations. There was the banister incident in 1998 I have referred to, and there were other arguments on a regular basis.

37.The evidence at the criminal trial was that Mr D. suffered from a predisposition to stress and anxiety. Prior to September 1998 he had drunk heavily. He went to see his doctor at that time and was prescribed some anti-depressants, which he took until about two months before Mr M.'s death. During that time he gave up alcohol, and the evidence is that this greatly improved his behaviour and general attitude. But they had the side-effect of making Mr D. impotent. In October 2000 Mr D. said that he attempted suicide by taking two months' worth of tablets at once. He was in bed for three days, but recovered without medical assistance. He did not tell his GP what he had done, but as a result of the suicide attempt had run out of pills. He said he decided to wait until his next prescription was due, which was the day after Mr M. was killed. In the meantime he resumed drinking.

(iv) Mr M.'s death

38.Mr D. was cross-examined at length about the killing of Mr M.. At times the cross-examination veered towards challenging the verdict of the jury that Mr D. was guilty of manslaughter by reason of diminished responsibility. Subsequently Miss Galley confirmed that her clients accepted the verdict of the jury, but wished me to be aware of the wider picture.

39.What Mr Dalton accepts is that on 9th December (a Saturday) he returned from work to Crown Street at about 4.45pm with a Mr D.O., a young man with whom he was having a sexual relationship. Mr M. was at home, but was not dressed. Mr D. says that Mr M.'s bedroom was in a mess and that this made him very angry. Mr M. then went to his room for a sleep. Mr D. poured a drink for himself and Mr O., and the two of them went to Mr

D.’s room, where they had sexual intercourse. At about 7.00pm Mr D. and Mr O. dressed and went downstairs. Mr M. was up by now and they had a drink together. Mr O. then left. Mr D. said that Mr M. knew about his relationship with Mr O. and accepted it. Soon after Mr O. left, Mr M. also went out. Mr D. stayed at home and watched television. He also had a number of drinks.

40.There is a dispute as to whether Mr O. returned to the house later in the evening, but this is not material. Mr D. says he has no recollection of that. During the course of the evening he drank several brandies and made phone calls to his mother and to a friend. At about 10.30pm Mr M. returned home. He had been to two public houses during the evening and is said to have drunk about four pints of beer. Mr D. says that he complained that Mr M. had left the door open when he came in, and an immediate row ensued. According to his evidence Mr M. began to scream at him and then smashed the glasses which he had left in his bedroom. This caused Mr M.’s dog to become very agitated and distressed, which added to the commotion. Mr D. went downstairs and poured a drink of vodka for Mr M. in order to calm him down. He took it upstairs and gave it to him. He says that he cannot remember anything else until he saw blood on his hands. He had strangled Mr M. with his dressing-gown cord and smothered him with a cushion or pillow. In his witness statement he says that he immediately felt relieved, and a huge burden was lifted from him. He assumes that he just snapped and killed Mr M. in his anger. He then rang his mother and aunt, and alerted some neighbours who called the police.

41.Mr D. was charged with murder and tried at Lewes Crown Court before HH Judge Brown and a jury. After six days of prosecution evidence, including the evidence of four psychiatrists, the trial Judge ruled that at the time of the killing Mr D. suffered from an abnormality of mind which had substantially impaired his actions and which was due to an inherent cause. Although Mr D. had been drinking on the night of 9th December, that was ruled out on the evidence as a contributing factor. The abnormality of mind in question was what the experts described as an adjustment disorder which produced a predisposition or inherent vulnerability to stress. All four experts were agreed on the Claimant’s mental condition. The only area of

disagreement was as to whether this was due to an inherent cause, as required under s.2 of the Homicide Act 1957. The Judge ruled that it was. In these circumstances the jury was directed to acquit Mr D. of murder, and he pleaded guilty to manslaughter by reason of diminished responsibility. The Claimant was not therefore required to give evidence. He was sentenced to 6 years' imprisonment

Should Relief Be Granted?

42.As I said when I gave my decision at the end of the trial, this is a tragic case involving an unnecessary death. No-one can doubt the difficulty and stress which is experienced by those who care for people suffering from dementia. Even in its early stages it can lead to irrational behaviour on the part of the sufferer which is hard to control and deal with. Carers have a particularly burdensome task and deserve only respect for what they have to do. In the present case Mr M. was by no means completely senile, but he did suffer from short-term memory loss. His habits had become irregular and on occasions he could doubtless be argumentative. But Mr Dalton had lived at Crown Street from 1996 and was well aware of the problems he faced. Mr M. could have afforded additional care at home and is likely to have benefited more from it than from journeys to Bangkok and Hong Kong. Such sympathy as I have for Mr D.'s position is therefore matched by the knowledge that he chose to spend inordinate amounts of Mr M.'s money for his own benefit, without even considering whether it could be better spent on improving Mr M.'s living conditions at home.

43.I have been left with the very clear impression that Mr D. took advantage of Mr M. and his position, and abused the trust which had been placed in him. However awkward and difficult to deal with Mr M. may at times have been, it must have been clear to Mr D. that he was a vulnerable old man who needed proper care. Although Mr D. may have performed routine household tasks, including cleaning and cooking, he was often aggressive towards Mr M. and at times physically violent. The banisters incident is simply unacceptable, however stressed Mr D. may have been.

44.Much was made at the criminal trial of Mr D.'s mental condition, his history of depressive illness and his tendency to over-react in stressful

situations. But all of this was known to him, and he was more than capable of, and did seek, treatment for it in the past. The full circumstances of Mr M.'s death are likely never to be known, but it is clear, as the trial judge recognised when sentencing him, that Mr D.'s responsibility for his crime was reduced, not extinguished. A person charged with the care of someone like Mr M. needs to exercise patience and to avoid confrontation. If he or she is unable to do that, then alternative means of providing the care should be sought. Mr D. knew of his own inadequacies and predisposition to stress, but continued at Crown Street because, in my judgment, it suited his own purposes to do so. It provided him with a home and some financial security. His ultimate entitlement under the 1996 will also depended on it. I do not accept Mr D.'s portrayal of his relationship with Mr M. in this later period as a close and loving one. The events of the evening of 9th December indicate the contrary. The arrangements continued because they suited Mr D.. The bank's action in relation to the accounts added to the stress on him, but this merely confirms my view of his real motivation.

45.I have to consider whether the interests of justice require the forfeiture rule to be modified in this case. It seems to me clear that they do not. The reforms introduced by the Homicide Act 1957 were designed to preserve certain classes of offender from capital punishment for killings carried out by reason of diminished responsibility or under provocation. But the 1982 Act recognises in terms that cases of manslaughter do not qualify for relief for that reason alone. The case must be one in which an exception to the rule of public policy requires to be made in order to do justice. Had Parliament intended to disapply the forfeiture rule in all cases of manslaughter involving diminished responsibility, it would have enacted the 1982 Act in a very different form. In the present case Mr M. was killed by someone he had befriended and to whom he had only ever been generous. He was rewarded by violence and abuse, both physical and financial. Mr D.'s mental condition may have robbed him of a measure of responsibility for the actual killing, but it does not remove from him the responsibility for allowing that situation ever to arise. He is still, to a significant extent, morally culpable for what he did, and this was recognised by the sentencing Judge in a term of 6 years' imprisonment, which is at the upper end of the band of 2 to 7 years suggested by the Court of Appeal as appropriate for this kind of

case: see Archbold at para 19-81. Mr Holmes asked me to show compassion for Mr D. in the order which I made, but that is not the test. I have to take into account all the relevant factors, including the wider circumstances I have referred to, and these include the position of the deceased's family. I have to decide, against that background, whether the justice of the case requires a modification of the forfeiture rule. I have reached the conclusion that, in the circumstances I have outlined in this Judgment, it does not. The application will therefore be refused.