

In the Consistory Court of the Diocese of Lincoln

In the matter of the late Robert Somers and the late Maureen Hayward and Gainsborough General Cemetery

Judgement

1. An application for a faculty dated 5 April 2016 has been made by Mark Hayward, the son of Maureen Hayward (deceased) who was the daughter of Robert Somers (deceased). The application is for a faculty to permit the exhumation of the cremated remains of Robert Somers so that a full burial of Maureen Hayward (deceased) may be made above the burial of her husband George Hayward (deceased) who was buried at triple depth.
2. It is accepted that this part of the Gainsborough General Cemetery is consecrated land and therefore a faculty is required from this court.
3. The grave in question is a triple depth grave. The first burial was a full interment of George Hayward on 11 March 1976 at triple depth. The second interment was of cremated remains of Robert Somers on 16 June 1999. Unfortunately his interment was not immediately above that of George Hayward, but only 2 feet from the surface and also 2 feet from the head of the grave. Maureen Hayward (deceased) has died recently. Her religious beliefs were such that she wished to have a full interment (and not a cremation). She also wanted to be buried above her husband at level 2.
4. It is impossible for Mrs Hayward's burial to take place without disturbing and temporarily removing the cremated remains of Mr Somers. The applicants seek a faculty for the removal of Mr Somers' cremated remains into a secondary container whilst the full interment of Mrs Hayward can be achieved at the required depth. Mr Somers' cremated remains can then be replaced into the grave at the head end.
5. All the relevant family members have been consulted and have indicated their written agreement to this. Written consent has been provided by Philip Somers, Patrick Somers, Catherine Somers-Bradley and Patricia Somers who are the children of Robert Somers and siblings of Maureen Hayward. The District Council have raised no concerns save to request that the Environmental Health Department are notified of the exhumation. The managers of the cemetery, Gainsborough Town Council, have no objections but wish to see all the permissions in place.

The law

6. In considering this Petition it is important that the petitioner understands the law that I must apply, which is founded upon a Christian understanding of what burial of the body signifies. The principles by which an exhumation from consecrated ground is permitted are

well known and set out in the case of In Re Blagdon Cemetery 2002 Fam p299 a copy of which the Registrar has sent to the Petitioners .

8. The presumption is that burial of human remains in consecrated ground is permanent. This presumption arises from the Christian theology of burial which was set out at para 23 of the judgement in Blagdon in the quotation from The Bishop of Stafford's paper on the 'Theology of Burial'. He wrote:

“The funeral itself articulates very clearly that its purpose is to remember before God the departed; to give thanks for their life; to commend them to God the merciful redeemer and judge; to commit their body to burial/cremation and finally to comfort one another.”

He went on to explain:

“The permanent burial of the physical body/ the burial of the cremated remains should be seen as a symbol of our entrusting the person to God for resurrection. We are commending the person to God, saying farewell to them (for their 'journey'), entrusting them in peace for their ultimate destination, with us, to the heavenly Jerusalem. The commending, entrusting, resting in peace does not sit easily with 'portable remains' which suggests the opposite: reclaiming, possession, and restlessness; a holding onto the 'symbol' of human life rather than a giving back to God.”

9. The principle of permanence can only be departed from if there are special circumstances which justify an exception to the principle that Mr Somers was laid to rest in 1999 and his remains should not now be disturbed.

10. The Court of the Arches in Blagdon identified various factors which may support a submission that special circumstances have arisen which permit the remains to be exhumed. These factors are:

- (i) medical reasons: these do not apply to this case.
- (ii) lapse of time: the Court held that the passage of a substantial period time before an application for exhumation was made could not be

determinative of the application in itself. However, it would be a factor in assessing the genuineness of the Petitioners case.

In this case although Mr Somers's cremated remains were interred in 1999 it is only very recently that the practical problem created by the position in which those cremated remains were interred, has been realised. I am quite satisfied that this application has been brought speedily as soon as the problem was known about.

(iii) mistake: where there has been a simple error in administration, such as burial in the wrong grave, the Court held that faculties for exhumations could readily be granted.

In this case there has been an error in 1999 in placing the cremated remains of Mr Somers in such a position that the triple depth grave could not be accessed for a further burial above Mr Hayward.

(iv) precedent: the Court held that consideration of the effect of precedent by the grant of the application is properly made because of the desirability of securing equality of treatment, so far as circumstances permit between petitioners.

I take this issue into account.

(v) family grave: the Court held that the use of family graves are to be encouraged because they both express family unity and they are environmentally friendly in demonstrating an economical use of the land for burials. The Court held:

“The concept of a family grave is, of course, of long standing. In a less mobile society in the past, when generations of a family continued to lie in the same community, it was accepted practice for several members of the family to be buried in one grave...Burials in double or treble depth graves continue to take place at the present time. They are to be encouraged. They express family unity and they are environmentally friendly in demonstrating an economical use of land for burials.”

The family of Mr Somers and Mrs Hayward are practising the use of a family grave to express their family unity and also no doubt with a sense of an economic use of the land which is friendly to the environment.

Decision

11. I am entirely satisfied that faculty can be granted in this case and that the presumption of permanence in respect of the interment of Mr Somers's cremated remains can be displaced.

My reasons are:

- (i) the cremated remains of Mr Somers were placed too high and insufficiently close to the head end of the grave in 1999. This error will defeat the purpose of a triple depth grave by preventing the burial above Mr Hayward at level 2, unless this faculty is granted.
- (ii) the use of a triple depth grave as a family grave is to be encouraged for the reasons that the Court of Arches has explained.
- (iii) the application has been brought speedily.
- (iv) I have taken into account issue of precedent. Any application for an exhumation is always highly fact sensitive. I do not think that precedent could in itself and alone justify a refusal.

12. I therefore grant the application for a faculty to exhume the cremated remains of Mr Somers before reintering them in the position indicated in the helpful cross section plan in my papers. Conditions of the Faculty are:

- (i) the Environmental Health Department of West Lindsey District Council are informed in writing that this faculty has been granted and any requirements they may have for the exhumation are conditions of the Faculty
- (ii) the proposed deployment of the full interment of Mrs Hayward (deceased) and Mr Somers (deceased) is to be that set out in the cross section plan in my papers which I have initialled.

13. It may be that it is now not known who was the person/company responsible for the burial of the cremated remains of Mr Somers at so shallow a depth in a triple depth grave. However,

if the undertakers responsible for that burial are known, there may be merit in approaching them to raise what has happened with them. It may be that too much time has elapsed since 1999 for that to be worth pursuing. I leave that to the Petitioner; however the person who was responsible for the position of the cremated remains of Mr Somers plainly made an error in placing them where he did, and that error has directly led to the need for this Faculty and costs caused thereby.

Mark Bishop.

Chancellor

13 April 2016