



Neutral Citation No. [2016] ECC Oxf 2

**IN THE CONSISTORY COURT OF
THE DIOCESE OF OXFORD**

Date: 21st March 2016]

Before :

**THE REVEREND AND WORSHIPFUL ALEXANDER McGREGOR
CHANCELLOR**

In the matter of :
THE PETITION OF KATHRINE TOLLIS

Determined on consideration of written representations

JUDGMENT

The Chancellor:

1. Mrs Kathrine Tollis has submitted a petition for a faculty to authorise the exhumation of the cremated remains of her late husband, Bruce Hamilton Tollis, from the churchyard of St Peter's Wootton, Boars Hill, Oxford with the intention of re-interring them in Antibes.
2. The facts are set out in Mrs Tollis's petition. Her husband, Bruce Tollis, died on 19th September 2013 and the interment of his cremated remains took place on 26th November 2014. Mrs Tollis is a practising Roman Catholic.
3. Mrs Tollis states that as a committed Christian she understands the importance attached to the non-disturbance of remains once buried. But she asks that her case be considered as an exception to the rule. Her late husband was baptized but was not a practising member of the Church or of any other religion. Following the interments she "came to realise quite quickly that [she] had made a serious error of judgement." She feels very strongly that she "should have taken her husband's remains to rest in France where he had a home and spent the greater part of his time and to which country he was firmly attached." He was born and brought up in Australia but had lived in Europe since he was a young man. Mrs Tollis and her children visit their home in Antibes frequently and the children support her wish to have their father's remains transferred there.
4. There is no memorial marking the burial place at St Peter's Wootton and Mrs Tollis describes having "an acute and distressing feeling of incompleteness and a very real need to have a sadly mistaken decision put right." Her conviction has grown stronger as time has passed.
5. Mrs Tollis has agreed to her petition being determined on consideration of written representations and has submitted a letter of her own in which she refers to an earlier letter sent to the Registrar, the substance of which was subsequently embodied in the petition. She has also provided supportive letters.
6. There is a letter dated 9 December 2015 from the Reverend Jon Williams, Priest in Charge of St Peter's Wootton. He refers to a service having been held in the parish church and conducted by Mrs Tollis's brother who is a priest in the Roman Catholic Church. Following that service, Mr Tollis's cremated remains were interred in the churchyard. Mr Williams says that prior to the interment Mrs Tollis was "in some doubt as to where to bury her husband's remains. These concerns have persisted and Mrs Tollis now wishes to bury her husband's ashes elsewhere." While Mr Williams supports the principle of buried remains not being disturbed, he has said that in this case he is not opposed to their reburial.
7. There is a letter from Mrs Tollis's brother, the Reverend David Standley. He reports his having officiated at the interment. He states that Mr Tollis had shown no concern where his remains should be interred, "only leaving it to his wife to do what she felt best and most comfortable with." Mrs Tollis prevaricated for some time before she chose the churchyard at St Peter's Wootton, a decision with which her children concurred. Very soon after the interment, Mrs Tollis became agitated and "in part she felt that we had superimposed our own Christian faith on Bruce's own religious detachment. He had no connection with that church or any other." His property in

France was where he felt most at peace. Fr Standley acknowledges that exhumation is “a serious matter, and rightly rare. Our mortal remains should rest where they have been laid, awaiting resurrection.” But he goes on to point out that peace of mind is also important for the bereaved. His sister’s conviction that her late husband’s remains should rest in France seems much more settled than her previous, hesitant decision. “It is not just a change of mind, but a recognition that this is a choice that they would share, and feels peaceful between them.” He supports the petition as “a serious response to a serious matter”.

8. Letters of support have also been sent by Richard Tollis and Julia Harries, Mr and Mrs Tollis’s son and daughter. Mrs Harries describes her mother as being extremely distressed about her decision to have Mr Tollis’s remains interred at St Peter’s Wootton and that it was taken at “a time of high stress and disorientation”. Consideration was given to the idea of taking Mr Tollis’s remains back to Australia or to the South of France but “the overriding factor for my mother at that point, however, seemed to be physical proximity to her in Oxfordshire”. Mrs Harries “own personal feeling has always been that Antibes would be the most fitting place for [her] father’s remains” and she describes him as having had a “spiritual connection to the place”. He made the effort to travel there a few weeks before he died despite being seriously incapacitated. She concludes that it would bring great peace of mind to her mother and considerable comfort to her and her brother if their father’s remains could be laid to rest there.
9. Richard Tollis mentions the “debilitating effect” the situation is having on his mother. The decision about where to inter Mr Tollis’s ashes was a difficult one and although it had at the time of the interment seemed best for that to be near where Mrs Tollis lives, she has become increasingly distressed that St Peter’s Wootton “had very little relevance to my father in his life and that it is really not the right resting place. The family would unanimously agree with this perception.”
10. Mr Tollis has a surviving brother in Australia. Mrs Tollis has been in touch with him to inform him of her husband’s illness and then of his death. She received a acknowledgment from him. She has however said that she is “reluctant to involve him in this situation from which he will feel very remote”. Accordingly, his views on the proposed exhumation are unknown.
11. The Court of Arches – the appeal court from the diocesan courts in the Province of Canterbury – established the principles of law governing exhumation from consecrated ground in the case of *In re Blagdon Cemetery* [2002] Fam 299. It also issued guidelines as to how the law should be applied. The Court of Arches’ decision – so far as it settled the relevant law – is legally binding on this court, as it is on all other diocesan courts in the Province of Canterbury.
12. In *Blagdon* the Court of Arches held that there was a presumption that Christian burial was permanent, that remains should not be portable, and that a faculty for exhumation would only exceptionally be granted. According to the Court of Arches, “Exceptional means ‘forming an exception’ (Concise Oxford Dictionary, 8th ed (1990)) and guidelines can assist in identifying various categories of exception. Whether the facts in a particular case warrant a finding that the case is to be treated as an exception is for the chancellor to determine on the balance of probabilities.” It is for a petitioner to satisfy the court on the balance of probabilities that there are special circumstances

which constitute good and proper reason for making an exception to the norm that Christian burial is final.

13. The guidelines provided by the Court of Arches can be summarised as follows:
 - a. Advancing years, deteriorating health and moving to a new area are not in themselves adequate reasons for permitting exhumation. Any medical reasons relied upon by a petitioner have to be very powerful indeed to create an exception to the norm of permanence, for example, serious psychiatric or psychological problems where medical evidence demonstrates a link between that medical condition and the question of location of the grave of a deceased person to whom the petitioner had a special attachment.
 - b. The passage of a substantial period of time since burial will not in itself be fatal to a petition, although it might be potentially relevant in assessing the genuineness of the petitioner's case.
 - c. Since double and triple graves in which the remains of members of the same family could be buried together were to be encouraged, the bringing together of family members' remains in a single grave can provide special reasons for permitting exhumation despite the lapse of a long period of time since burial. But where no burial had yet occurred in a family grave clear evidence as to the existence of a legal right to such a grave would be required to justify exhumation.
 - d. Although mistake as to the location of the grave or, in certain circumstances, as to the significance of burial in consecrated ground could be a good and proper reason, mere change of mind as to the place of burial by those responsible for the interment could not.
 - e. Although the views of close relatives were a very significant factor, the amount of local support for the petition would normally be irrelevant.
 - f. In view of the desirability of securing equality of treatment between petitioners so far as circumstances permitted, the court has to take into account the impact its decision is likely to have on other similar petitions. The Court of Arches referred to "the desirability of securing equality of treatment, so far as circumstances permit it, as between petitioners."
14. I accept that Mrs Tollis has found, and still finds, this to be a stressful situation and that she has serious concerns about the choice she made in 2014: all of the letters in support make that clear. But her state of mind (for which she has my sympathy) does not approach the sort of "serious psychiatric or psychological problems" identified by the Court of Arches as potentially amounting to reasons for permitting exhumation.
15. I note the clear support from the other members of Mrs Tollis's family, although the attitude of Mr Tollis's brother is unknown. While support for exhumation from family members is a significant factor, it cannot of itself amount to a good and proper reason for making an exception to the norm that Christian burial is permanent.
16. Over a year had passed between Mr Tollis's death and the interment of his cremated remains. I accept that despite the passage of time, the decision as to the place of

interment was taken when Mrs Tollis was still distressed by the loss of her husband. It is nevertheless clear from the totality of the evidence that the decision taken was a considered one with which the rest of the family concurred. It is not, for example, suggested that Mrs Tollis was incapable of taking a rational decision or that anyone exerted undue influence on her to take the decision she did.

17. Although Mr Tollis clearly had strong connections with Antibes, he had not expressed any particular wishes as to the place where his remains should be laid to rest, being content to leave it to his wife to do as she thought best. This is not therefore a case where the wishes of the deceased have not been complied with and where a family are trying to put matters right. I accept that Mr Tollis was not a practising Christian and that, therefore, the church and churchyard of St Peter's Wootton may not have had any particular significance for him. But there is no evidence to suggest that he would have objected to being buried there and the decision taken by Mrs Tollis to inter is remains there cannot be criticised.
18. Looking at the entirety of the evidence put forward by Mrs Tollis and by others in support of her petition, I am unable to distinguish this case from what the Court of Arches categorised as a change of mind on the part of those responsible for the interment. I am also bound to take notice of what the Court of Arches said about the desirability of securing equality of treatment, so far as circumstances permit it, as between petitioners. In the absence of special circumstances which would constitute good and proper reason for making an exception to the norm that Christian burial is final, it would be unfair to other petitioners or potential petitioners to permit exhumation in Mrs Tollis's case. Others in an equivalent position would not, under the framework established by the Court of Arches, be granted permission and the decisions of the ecclesiastical courts as much as any other court must be taken on a principled and consistent basis.
19. I regret to say that despite my considerable sympathy for her, Mrs Tollis is not in a position to satisfy the court, on the balance of probabilities, that there are special circumstances which constitute good and proper reason for making an exception to the norm that Christian burial is final. Accordingly the petition must be dismissed.