

In the Consistory Court of the Diocese of Leeds

16-98C (2016-002089)

In the matter of St Michael and St Lawrence, Fewston
And in the matter of the 'Fewston Assemblage'

Judgment

1. Although these proceedings are unopposed, the matter is somewhat unusual and its procedural history has caused me some unease: hence, this brief judgment.
2. By a petition dated 10 June 2016, the incumbent and churchwardens of the parish of Fewston with Blubberhouses seek a faculty for the following works at the church of St Michael and St Lawrence, Fewston:
 - i. the reinterment of some 154 sets of skeletal remains (the 'Fewston Assemblage') which were removed from the graveyard during excavation for the erection of the Washburn Heritage Centre;
 - ii. the erection of a number of grave markers;
 - iii. the retention and display of certain artefacts by way of a permanent exhibition;
 - iv. the installation of an interpretation board.
3. I would ordinarily have expected matters such as these to have been provided for in the faculty which authorised the exhumation. Accordingly I called for the relevant file, and with the assistance of the Registrar, I have sought to piece together the background.
4. On 25 September 2008, a faculty was issued out of the Consistory Court of the Diocese of Bradford under the authority of the then Chancellor. It made provision for the Washburn Heritage Project which comprised the demolition of the hearse house, the erection of an extension to the church and various ancillary works. A letter from the statutory forerunner of the CBC dated 16 May 2008 stated:

The only concern which the Council wished to raise with the parish and the Chancellor was the likelihood of finding potentially many more than the estimated 40 graves in the area of the new build.

The response to this concern seems to have been a 'light touch' condition that a named individual be consulted on all archaeological aspects of the project and his advice be heeded. The original faculty was silent on exhumation.

5. On the application of the Washburn Heritage Project Group, the faculty was later varied in that the time for completion was enlarged from 24 months to 36 months, expiring on 30 September 2011. The completion date was apparently extended (on an unspecified date) to 31 October 2013; and on 28 October 2013 there was a further extension to 31 October 2018.

6. On a date unknown (which the Registrar recalls was some time in 2011) there was a further amendment to the faculty whereby two additional items were added to what had originally been an eight-part proposal. They were:

9. Re-establish the headstone memorials as per the report and graveyard layout plan;
10. Exhumations and re-interment to be dealt with as per the report.

There is no indication on the faculty as to which report condition 10 refers. The Registrar informs me that the exhumations (comprising some 154 sets of human remains) had taken place in April and May 2009. Thus item 10 is (in part at least) of a confirmatory nature.

7. There is no explanation within the papers as to why human remains had been unlawfully exhumed nor a judgment or other note giving reasons for authorising wholesale disinterments on an *ex post facto* basis. The faculty jurisdiction is not some limpid simulacrum of the secular planning system, which it predates by many centuries. It is a vibrant functioning expression of the ecclesiology of the Church of England which helps to facilitate its mission and witness as the church of the nation. A key function of the consistory court is the maintenance of Christian doctrine. If there is to be a departure from the theology of the permanence of Christian burial, it should only be after careful consideration, which should invariably precede any disinterment: see *Re Christ Church, Alsager* [1999] Fam 142, and its development in the southern province in *Re Blagdon Cemetery* [2002] 4 All ER 482.

8. Even though these circumstances are highly unusual, the faculty (as varied) is not, in my opinion, a nullity. The court had power to authorise the exhumations, even retrospectively, and the presumption of regularity applies. Compare, for example, *Re Christ Church, Spitalfields* (London Consistory Court, 14 December 2014) where the chancellor purported to grant a faculty for works which were arguably in breach of the statutory prohibition then to be found in the Disused Burial Grounds Act 1884. See the judgment of the Court of Arches, 24 September 2015. The proposal in this instance, I assume, was not caught by the statutory prohibition (since repealed) since it came within the proviso being an extension to an existing church building.

9. However, that is not the end of the story. I was unable to locate in the papers any reference to a Ministry of Justice licence; and the registrar informs me that he is unaware of one having been obtained. Section 25 of the Burial Act 1857 (in its form as at March and April 2009)¹ provides:

25. Bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State

Except in the cases where a body is removed from one consecrated place of burial to another by faculty granted by the ordinary for that purpose, it shall not be lawful to remove any body, or the

¹ Section 25 was substituted with a differently worded provision in consequence of section 2 of the Church of England (Miscellaneous Provisions) Measure 2014 with effect from 1 January 2015. The provision is not retrospective.

remains of any body, which may have been interred in any place of burial, without licence under the hand of one of Her Majesty's Principal Secretaries of State, and with such precautions as such Secretary of State may prescribe as the condition of such licence; and any person who shall remove any such body or remains, contrary to this enactment, or who shall neglect to observe the precautions prescribed as the condition of the licence for removal, shall, on summary conviction before any two justices of the peace, forfeit and pay for every such offence a sum not exceeding [level 1 on the standard scale.]

10. It would appear therefore that not only did those responsible for the exhumations proceed without the authority of a faculty, they also committed a criminal offence. As explained in *Re Halifax Minster* [2016] ECC Lee 6, at para 10, a confirmatory faculty does not retrospectively legalise what has been done but for the future brings the matter within the four walls of the law. This court has no power to relieve those responsible from criminal penalty: it will be for the prosecution authorities to determine what, if any, action should be taken.
11. Perhaps mindful of the dubiety concerning past events, the Petitioners elected not to make an application within the original faculty proceedings but to issue a fresh petition. This affords the court the opportunity of addressing some of the less attractive matters which were revealed on turning over this particular stone. It also gives a timely opportunity to note the success of the Washburn Heritage Centre project.
12. The Archbishop of York envisioned the Centre as providing 'hospitality and refreshment' for those visiting the magnificent Washburn Valley, whether for recreation, education or in pursuit of spiritual uplift. The church's engagement with and outreach towards the local community and the many visitors to this area of outstanding natural beauty are to be applauded. The enhanced facilities for the grade II* listed church have helped to equip it to serve the needs of those attending for worship and for a rich variety of complementary secular purposes. I understand the success of the Centre has been marked by a RIBA bronze award and a Duke of York's community initiative award.
13. Significantly, the petitioners have taken considerable care in addressing the issue of reinterment with sensitivity and thoughtfulness. This suggests that the serious matters I have touched on earlier in this judgment were the consequence of inadvertence founded upon ignorance of the law, rather than disrespect for the sacred place of burial and those whose remains were to be disturbed.
14. It is appropriate to record that the original petition dated 18 February 2008 made express reference to interference with graves and stated in answer to question Q(f) that this would be dealt with 'in consultation with the diocesan archaeologist' and further that:

Graves affected are of people who died in 1880s. Enquiries to be made locally and advice to be sought from registry.

The DAC certificate, dated 15 March 2008, made no reference to the exhumations: it described the building works to be undertaken and included amongst its provisos consultation with a named archaeologist. It seems that the faculty adopted the DAC's summary of works and thus was silent on disinterment of human remains. Regrettably,

as was the case in *Re St Philips, Scholes* [2016] ECC Lee 5, the petitioners seem to have acted upon the apparent authority of a faculty, without noticing that it was less extensive than they believed it to be.

15. I turn then to what is now proposed, and for completeness, take each element separately. I note that all of the proposals are recommended by the DAC as appears in its Notification of Advice dated 10 June 2016.

Reinterment of skeletal remains, known as the Fewston Assemblage

16. It is right and proper that these remains are now reinterred in a seemly and dignified manner in the consecrated burial ground from which they were removed in 2009. Some 154 sets of human remains were disinterred and archaeological research was duly carried out by the Universities of Durham and York. Of the totality of human remains, 22 individuals have been positively identified and it is proposed that 15 of these be buried in front of specific headstones, with the reinterment of the remaining 7 being marked by a single new memorial. The remaining 132 unidentified sets of human remains (some comprising nothing more than a few bone fragments) are to be reinterred in a mass grave to be marked by another new memorial. It is also proposed to introduce a copy of a damaged nineteenth century grave marker denoting the final resting place of James and Elizabeth Dibb. There is a further proposal to inter the remains of David Lister in an existing Lister family grave, as requested by his descendents.
17. A service of commemoration is planned for mid-September. Uncovering the troubled history has resulted in this determination taking longer than is the usual practice of the court, and I trust that date can still be met. Whilst I was awaiting the retrieval of the court papers, I invited the petitioners to reconsider the wording to be deployed on the new grave markers. I am grateful to them for submitting, in an email from Pat Anderson, PCC secretary, revised proposals mindful that the grave markers will be read by future generations who will know nothing of the heritage centre project.
18. Having regard to the PCC's helpful observations, and subject to any further suggestions or representations as may be made hereafter, I am content to approve the following wordings for the respective grave markers. The first one, as the PCC suggest, should be fabricated in form and style so as to match the damaged marker which it replaces. The two other new grave markers shall, as proposed, be a rectangular wedged shape of Yorkstone as particularised in the PCC minutes of 8 March 2016.

James Dibb
1811 – 1890
Elizabeth Dibb
1819 – 1892
May they rest in peace

In memory of
[List of individual names and dates]
Whose remains were recovered from unmarked graves
elsewhere in this churchyard during the construction
of the Washburn Heritage Centre
15 September 2016
May they rest in peace

In memory of one hundred and thirty two
unidentified individuals known unto God
whose remains were moved from elsewhere in
this churchyard to allow the construction of the
Washburn Heritage Centre
15 September 2016
May they rest in peace

Retention of various artefacts for a permanent exhibition

19. It is proposed to create a permanent exhibition in the lobby area between the church and the newly completed Washburn Heritage Centre. It is unclear which artefacts are included in this proposal. It may be that I take the view that it would be seemly and appropriate in all the circumstances for certain of these artefacts to be reburied along with the remains.

Installation of an interpretation board

20. The final proposal is to erect a board to match one recording the site of the old Fewston vicarage. The PCC needs to satisfy itself that permission is not also required from the local authority under the prevailing advertising regulations. This is an engaging and informative local story which needs to be revealed and explained to those visiting Fewston, desirous of learning about the history of the place and those who formerly lived, including their work patterns, medical conditions and the significance of the church within the community.
21. One feature, as I understand it, which the research into the Fewston Assemblage has revealed is the higher incidence of deceased young adults for a rural burial ground. The remains are of those who worked at West House Mill, Blubberhouses and were brought north from poor areas of London, only to die from diseases associated with appalling factory working conditions.
22. It might however be prudent to exclude from the information to be shared with the public, the various breaches of ecclesiastical law and criminal offending which now comprise the penultimate chapter of this extraordinary tale.

Summary

23. I therefore order that a faculty pass the seal in the following terms:
- (1) That the skeletal remains comprising the Fewston Assemblage be reinterred in the churchyard of St Michael and St Lawrence, Fewston at the direction of the incumbent in accordance with paragraphs 16 to 18 of this judgment;
 - (2) That permission be given for the erection of three grave markers in accordance with paragraph 18 of this judgment;
 - (3) That the petitioners lodge with the registry a list of all artefacts removed from the burial ground which it is proposed will form part of a permanent exhibit at the Washburn Heritage Centre;
 - (4) Save for those items on the list as may be approved by the chancellor for inclusion in the exhibit, all artefacts and other items removed from the burial site be returned to the churchyard and buried in the mass grave along with the remains of the unidentified individuals;
 - (5) That permission be given for the erection of the interpretation board as proposed.

24. In accordance with the practice of consistory courts, the costs of this petition, to include a correspondence fee for the registrar, are to be borne by the petitioners.

The Worshipful Mark Hill QC
Chancellor

17 August 2016

ADDENDUM

1. Pursuant to paragraph 23(3) of my substantive judgment herein, by email dated 17 August 2016, Mrs Sally Robinson, acting on behalf of the petitioners lodge, wrote to the registry in the following terms [the lettering I have added for ease of reference]:
 - a. 1 glass coffin window (Skeleton 186)
 - b. items belonging to George Lister (Skeleton 130, context 131):
 - 1 coffin plate
 - 1 coffin handle
 - c. items belonging to Rowland Marjerrison (Skeleton 101, context 100):
 - 1 coffin plate
 - 1 coffin handle
 - d. Item belonging to Elizabeth Demaine (Skeleton 238, context 237):
 - 1 coffin handle attached to wood
 - e. Skeleton 088 (from research we believe this individual to have been a sailor in the Napoleonic Wars)
 - 1 silver coin
 - buckles
 - f. Other small artefacts
 - 6 buttons, 6 shroud pins, bead etc
 - pottery fragments
 - animal bone
2. I expressed concern that, for the most part, the 'artefacts' comprised parts of coffins and fragments of clothing in which the deceased had presumably been buried. These items, *prima facie* at least had been consigned permanently to 'God's acre' and there they should remain, not on public display. I invited further representations from the petitioners, seeking legal or factual precedents for the display of items disinterred along with human remains following exhumation.
3. Under cover of an email dated 30 August 2016, Mrs Robinson provided a very helpful note setting out more fully the petitioners' wish to retain various items from the Fewston Assemblage. The correlation between the matters mentioned in this note and those in the list is not quite perfect. There is no mention in the note of the buckles (at e above), nor of the buttons, shroud pins, bead etc (at f).
4. Although unable to direct me to any legal precedents, Mrs Robinson's note contains examples of public exhibition of artefacts found during excavations in, *inter alia*, York

Minster, Peterborough Cathedral, Durham, Cathedral, St Paul's Cathedral. Other examples are also given, but it is unclear whether these resulted from exhumations from consecrated ground, with or without authority of a faculty.

5. I am mindful of the proposed reinterment which is imminent. Not without considerable reservations, I am prepared to consent to coffin plates, windows and handles being put on display as well as the silver coin, pottery fragments and animal bone. However I regard the buckle, button, shroud pins and bead to be personal to the deceased. They were consigned to 'God's acre' in perpetuity along with the corpse of the deceased. But for the excavation that is where they would have remained. They should be seemly reinterred with the human remains at the earliest opportunity in a seemly and dignified manner.

The Worshipful Mark Hill QC
Chancellor

5 September 2016