

In the matter of Marley Lane Cemetery, Battle

Judgment

1. By a petition dated 21 August 2013, Caroline Edna Rosemary Lacey seeks a faculty for the exhumation of the cremated remains of her parents Patricia June Blanche Lane and John Frederick Graham Lane from their respective plots in the consecrated section of a burial ground variously described in the papers as Marley Lane Cemetery and Battle Cemetery/Garden of Rest in East Sussex, in order that they might be reinterred in Northchapel Church Cemetery, Petworth, West Sussex, close to her home.
2. The petition was referred to me for directions in October 2013 and I indicated that I considered the matter suitable for determination by written representations under rule 26 of the Faculty Jurisdiction Rules 2000. By email dated 5 November 2013, Mrs Lacey indicated that she was agreeable to such a course and, in accordance with direction, lodged representations in the form of a letter dated 8 November 2013. The papers were returned to me from the Registry on 27 November 2013. I have taken into account the content of that letter together with all the paperwork originally submitted with the petition.
3. Mrs Lacey's mother died in 1997. Her father died in 2010. Her brother, Michael, died some 11 months later in April 2011, although it would appear that he had been very ill for some years following a heart attack some years before. Her Aunt, the last remaining member of Mrs Lacey's family, died in May 2011. It is not entirely clear from the papers where Michael's remains are buried.
4. In her letter of 8 November 2013, Mrs Lacey says this:
'For me to have them [my parents' ashes] near would mean that I had a little bit of my brother, father and mother. I think I had never been able to really grieve for them'

This supplements what Mrs Lacey wrote in the petition:

'I have no other family left and no reason to go to Battle other than to see the little grave. I would very much like to go ringing (I ring church bells) on a Sunday and 'visit' my family. It had been a very hard time for me'

An accompanying letter from Mrs Lacey dated 19 April 2013 includes the following:

'I have no relatives left in the Battle area and have not lived there since 1978. I would very much like to be able to "visit" my parents and hope to have something of my brother.'

5. Turning to the relevant law, any disturbance of human remains in consecrated burial grounds requires the authority of a faculty: *The Queen v Dr Tristram* [1898] 2 QB 371. The principles which govern the grant or refusal of any such faculty were revisited in the recent decision of the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299, a copy of which was

supplied to Mrs Lacey in advance of her submitting written representations. The position is summarised in paragraph 20 of the judgment as follows

‘permission is not, and has never been, given on demand by the consistory court. The disturbance of remains which have been placed at rest in consecrated land has only been allowed as an exception to the general presumption of permanence arising from the initial act of interment.’

6. Reference is made by the Court of Arches in its judgment to a paper entitled ‘Theology of Burial’ of September 2001 which was prepared by the Rt Revd Christopher Hill, then Bishop of Stafford, extracts from which are quoted in the judgment including the following at paragraph 23:

‘The permanent burial of the physical body/the burial of 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, the heavenly Jerusalem.’

7. A fuller and slightly revised version of Bishop Hill’s statement was subsequently published in the *Ecclesiastical Law Journal* (2004) 7 Ecc LJ 447. Its concluding paragraph, not reproduced in *Blagdon*, reads:

‘In cases of Christian burial according to Anglican rites, prescinding from cases where there has been a mistake as to the faith of the deceased, I would argue that the intention of the rite is to say ‘farewell’ to the deceased for their ‘journey’; to commend them to the mercy and love of God in Christ; to pray that they may be in a place of refreshment, light and peace till the transformation of resurrection. Exhumation for sentiment, convenience, or to ‘hang on’ to the remains of life, would deny this Christian intention.’

8. The Court of Arches in *Blagdon* stated at paragraph 33:

‘We have concluded that there is much to be said for reverting to the straightforward principle that a faculty for exhumation will only be exceptionally granted’.

This general test has been variously articulated, for example Edwards QC Ch, as ‘good reason’ and ‘special and exceptional grounds’. See *In Re Church Norton Churchyard* [1989] Fam 37, and *In Re St Mary the Virgin, Lyminster* (1990) 9 CCCC 1, respectively, as approved in *Blagdon* at paragraph 34.

9. The Court of Arches in *Blagdon* continued at paragraph 35:

‘The variety of wording which has been used in judgments demonstrates the difficulty in identifying appropriate wording for a general test in what is essentially a matter of discretion. We consider that it should always be made clear that it is for the petitioner to satisfy the consistory court that there are special circumstances in his/her case which justify the making of an exception from the norm that Christian burial, that is burial of a body or cremated remains in a consecrated churchyard or consecrated part of a local authority cemetery, is final. It will then be for the chancellor to decide whether the petitioner has so satisfied him/her.’

10. Having considered with considerable care all the material placed before the Court by Mrs Lacey, I can find nothing pointing to a special or exceptional circumstance. Her application is founded on the sincere wish to have the remains of those she loves and still grieves closer to where she lives. This engages the portability concept and runs contrary to established Christian doctrine. No other ground is advanced.

11. The fact that licences have already been issued for the removal of human remains by the Secretary of State for Justice under the Burial Act 1857 is irrelevant. It is well established that the secular discretion vested in a government minister is separate from and additional to the

requirements of the church authorities where consecrated land is concerned: see *R (HM Coroner for the Eastern District of London) v Secretary of State for Justice & Sutovic* [2009] EWHC 1974 (Admin).

12. Equally, it is of no relevance that there is consent for the reinterment of cremated remains at Northchapel. If the letter from the priest-in-charge enclosing the resolution of the PCC was perceived by Mrs Lacey as creating an expectation in this regard, then this is unfortunate. It may not have been appreciated by the PCC that the remains of Mrs Lacey's parents lay in the consecrated part of the municipal cemetery in Battle, giving rise to the doctrinal considerations outlined above.
13. It therefore follows that this petition must be dismissed. The fees, to include a correspondence fee for the registrar, are to be paid by Mrs Lacey. As Bishop Hill observes, exhumation for sentiment or convenience or to hang on to the remains of life is a denial of the Christian intention of burial. Mrs Lacey must therefore bear her grief with fortitude, knowing that her parents' remains are to lie together undisturbed where they were committed to God's keeping. I hope that the clergy and people of Northchapel will give her any support she may need.

The Worshipful Mark Hill QC
Chancellor of the Diocese of Chichester

9 December 2013