



Faculty – Exhumation – Exhumation of cremated remains to facilitate second burial in existing grave – Re-interment in coffin for second burial - Faculty granted

Petition No: 10842

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: Sunday, 13 June 2021

Before:

THE WORSHIPFUL DAVID HODGE QC, CHANCELLOR

In the matter of:

St Mary, Beenham Valence

THE PETITION OF MRS VICKI LANGHAM

Unopposed petition determined on the papers and without a hearing.

The following cases are referred to in the Judgment:

Re Blagdon Cemetery [2002] Fam 299

Re Christ Church, Alsager [1999] Fam 142

Re Mitcham Road Cemetery, Croydon [2021] ECC Swk 2

Re St Andrew, Leyland [2021] ECC Bla 1

Re St Saviour's Cemetery, Hungerford [2021] ECC Oxf 3

JUDGMENT

Introduction and background facts

1. This is an unopposed faculty petition, dated 6 June 2021, seeking permission to exhume the cremated remains of Mrs Valerie Iris Watt (‘the deceased’) from a grave plot in the churchyard of St Mary, Beenham Valence. The petitioner, Mrs Vicki Langham is the deceased’s daughter. She seeks to exhume her late mother’s cremated remains from the grave plot to enable the last remains of the deceased’s husband (and the petitioner’s father), Mr James Watt, to be laid to rest in the grave plot, with the deceased’s cremated remains being placed in his coffin so that the married couple can at last be reunited in death and be able to rest in peace together.

2. The deceased died unexpectedly on 30 July 1994, aged only 45, and on 4 August 1994 her cremated remains were interred in a grave plot in the churchyard of St Mary, Beenham Valence. Her husband was then aged 47 and they had been married since 1968. They had purchased a double grave plot together so that they could be reunited in death and rest in peace together. Mr and Mrs Watt were very much in love and Mr Watt never remarried. He used to visit his late wife’s grave every day until his health deteriorated in 2016 when he became unable to continue to live by himself and moved in to live with the petitioner. Apparently, he could be heard talking to his late wife most nights in his bedroom, demonstrating the strength of his love for her. Mr and Mrs Watt had four children, who are all now adults. The court has received letters from all four of Mr and Mrs Watt’s children, and from the deceased’s two surviving siblings, all supporting this petition.

3. Apparently the church records do not identify precisely where in the grave the cremated remains are located or the type of container they are held in; and the family are unsure about this. Whilst fully understanding the family’s wishes, the rector of the benefice has expressed concern about the present state of the ashes after so many years in the ground and whether they could be exhumed in a respectful manner. Sharing the rector’s concerns as to the present condition of the deceased’s cremated remains, and the practicability of exhuming them for re-interment in the coffin of her recently deceased husband, I caused the Registry to write to the petitioner asking if she could establish from the funeral directors who are to be responsible for the re-interment – or those who acted on the original interment – what the position is likely to be with the ashes. The funeral directors have responded that they will look after the exhumation of the deceased’s cremated remains, liaising with the church about opening up the grave, and they will place the cremated remains into a larger wooden casket and bring it back to the office for placing in Mr Watt’s coffin.

4. I am satisfied that all the near relatives of the deceased who are still living consent to the proposed faculty being granted and I therefore dispense with the giving of public notice under FJR 6.6 (3). Having regard to the overriding objective, I consider that it is expedient to determine this petition on consideration of written representations instead of by way of a hearing.

The applicable law

5. The principles which the court has to apply when dealing with an application for an exhumation from consecrated ground are well known and were laid down by the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299. I recently reviewed some of the authorities that have followed on from that decision in my judgment (as the Chancellor of Blackburn) in *Re St*

Andrew, Leyland [2021] ECC Bla 1, to which reference should be made for a fuller exposition of the law in this sensitive, and often emotionally charged, area. In summary, the court has a discretion to permit such an exhumation; but the presumption is that the burial of human remains in consecrated ground is permanent. This is the starting point when dealing with the discretion. The presumption arises from the Christian theological tradition that burial or, as here, the interment of cremated remains, is to be seen as the act of committing the mortal remains of the departed into the hands of God. Thus it is that the court can only depart from the principle of permanence if the petitioner, on whom the burden of proof lies, can establish, on the balance of probabilities, special circumstances which would allow an exception to that principle. The courts have helpfully identified certain factors which may assist in deciding whether exceptional circumstances exist which would enable the burden to be discharged so as to permit human or cremated remains to be exhumed. One such factor is whether there has been a mistake as to the place of burial, although it has also been said that a mere change of mind as to the place of burial on the part of the relatives, or others responsible for the interment, should not be treated as an acceptable ground for authorising exhumation. Another relevant factor is whether the proposed exhumation is to facilitate the re-interment of the remains in a family grave. This is something to be encouraged because family graves express family unity and are environmentally friendly in ensuring an economical use of land for interments.

6. In my earlier judgment in *Re St Andrew, Leyland* [2021] ECC Bla 1, I explained (at paragraph 10) why I find it helpful to consider the decisions of consistory courts in earlier cases, not as precedents slavishly to be followed, or even as tramlines guiding my way forward, but as affording potentially helpful indications as to how the particular circumstances of other, similar, but not identical, cases have been viewed when considering whether it is right to make an exception to the principle of permanence. I reminded myself of the desirability of securing equality of treatment, so far as circumstances should permit, as between petitioners, and of treating similar cases in similar ways, avoiding over-fine distinctions; but also that ultimately the duty of this court is to determine whether the circumstances of the present case, properly considered and evaluated, are such as to justify making an exception to the presumption of the permanence of Christian burial.

7. In *Re Mitcham Road Cemetery, Croydon* [2021] ECC Swk 2, the petitioners had applied for the temporary exhumation of the cremated remains of their brother, Cedric, from their father's grave, so that their mother could be buried in the same grave. The brother's cremated remains would then be returned to the father's grave immediately after the mother's burial. Chancellor Petchey (in the Diocese of Southwark) granted a faculty permitting this. He explained that the petitioners had discovered that the position of the ashes within the grave obstructed the burial of their mother's remains. At paragraph 5 Chancellor Petchey said this:

“Permanence is the norm of Christian burial and permission for exhumation is granted only exceptionally. However this is a case where a mistake has occurred through no fault of the Petitioner or her family; I note moreover that Cedric's ashes are to be removed only temporarily before being returned to the same grave from which they are to be exhumed. I rather doubt in these circumstances if the rigour of the inhibition on exhumation has application. If exceptional circumstances are required, I hold that they exist and accordingly I direct that a faculty should issue.”

8. In my contemporaneous judgment in *Re St Saviour's Cemetery, Hungerford* [2021] ECC Oxf 3 I stated that I had no doubt that the approach of Chancellor Petchey involved a principled

application of the law governing exhumation from consecrated ground which I should be prepared to follow. I share Chancellor Petchey's doubts as to whether in such a case the rigour of the inhibition on exhumation has any application; but if exceptional circumstances are required, they clearly exist in a case of temporary exhumation with a view to facilitating a further burial, with the exhumed remains being returned immediately to the same grave from which they are to be exhumed. I have no hesitation in granting a faculty permitting the temporary removal of the deceased's ashes to facilitate the burial of Mr Watt on the basis that they are immediately re-interred in the same grave by being placed in his coffin. I do not consider that, by allowing this petition, any undesirable precedent will be, or will be at risk of being, created. For what it is worth, I also consider that the alternative test, formerly laid down and applied in *Re Christ Church, Alsager* [1999] Fam 142, of the existence of a good and proper reason for exhumation which most right-thinking members of the Anglican church would regard as acceptable, is also satisfied. My only concern has been as to the present state of the deceased's ashes after so many years in the ground and whether they can be exhumed in a respectful manner. However, from the very fact of the purchase of a double grave plot, it was clearly contemplated by both Mr and Mrs Watt that the grave would have to be disturbed to accommodate the interment of the second of them to pass away. To the extent that the cremated remains may no longer be identifiable, they will no longer be capable of being exhumed; but this should not prevent the interment of Mr Watt's last remains in accordance with the mutual intentions of Mr Watt and his late wife.

Conclusion

9. For these reasons, the court grants a faculty for the exhumation of the cremated remains of the late Mrs Watt from their existing grave in the churchyard of St Mary, Beenham Valence, in order to facilitate the interment of Mr Watt's remains, and their re-interment in that grave within Mr Watt's coffin to the extent that this is practicable. The exhumation and the re-interment are to be conducted with all due reverence, and in a seemly manner, by a qualified funeral director. The re-interment is to follow as soon as reasonably practicable after the exhumation, and it is to be conducted in accordance with the rites and practices of the Church of England. The period allowed for the exhumation to be carried out will be six (6) months from the date of the grant of the faculty.

10. For pastoral reasons, I waive any fee for this written judgment.

David R. Hodge

The Worshipful Chancellor Hodge QC

The Second Sunday after Trinity, 2021