

Neutral Citation Number: [2024] ECC S&N 1

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWELL AND NOTTINGHAM

Before: the Chancellor

IN THE MATTER OF BINGHAM CEMETERY

and

IN THE MATTER OF THE PETITION OF JEAN COX

JUDGMENT

1. Roland Cox died on 26 August 2014 and his cremated remains were interred in plot 310 at Bingham Cemetery. That plot is, it is now clear, in the consecrated part of the municipal cemetery, and so is subject to the Faculty jurisdiction. By this Petition his widow, Jean Cox, seeks a Faculty for the exhumation of his remains and their reburial in Stoke Bardolph churchyard. She also seeks to move Mr Cox's memorial from his existing grave to his new resting-place, failing which she would like to leave the memorial where it now is in Bingham Cemetery.
2. The reason Mrs Cox gives for her request is that she finds it difficult to visit and tend the grave where it is, and would find it easier if the remains were removed to a different place. Bingham Town Council, as the Burial Authority for the Cemetery, has given its permission for the exhumation; but the incumbent of Stoke Bardolph does not support the Petition. She writes as follows: 'While it is correct that there is space in the Church Yard at Stoke Bardolph for ashes to be interred I have some concerns. I am uncomfortable about removing human remains from their final resting place as we understand from the Church of England funeral rite; as well as the future implications of this decision. I wouldn't want to encourage the movement of human remains to become common place.' Thus the position is that as matters stand there is consent from the place where the remains are currently buried, but not from the place where it is proposed to rebury them.
3. The incumbent's concerns are soundly based. The starting-point is that Christian burial is to be seen as permanent, because it is the act of committing the remains or the ashes of the departed into the hands of God. There is therefore a presumption against exhumation. That is the clear consensus of all the English cases, of whatever age and of both Provinces. This starting-point remains the law as set out by the Court of Arches in Re Blagdon Cemetery [2002] Fam 299, as well as in the leading authority in this Province, Re Christ Church Alsager [1999] Fam 142, a decision of the Chancery Court of York. In Blagdon the Court had the advantage of a memorandum provided specifically for the case by the Bishop of Stafford, expressing, amongst other sentiments to the same effect, the view that 'a reluctance by the Consistory Court to grant faculties for exhumation is well grounded in Christian theology'. It follows that where there has been a burial in consecrated ground, accompanied as it will have been by the rites of the Church with the words of commendation of the departed to God and committal of

the person's remains to burial or cremation, permission for exhumation is not given by the Court on demand, even if all required consents are in place. That has never been the case: see Blagdon at [20] and Re Smith [1994] 1 All ER 90 at 93. Rather, it is for the Petitioner in each case to establish some special circumstances that merit an exception from the general rule of the finality of Christian burial.

4. In these circumstances the Petitioner's reasons as set out above are not such as could justify interfering with the repose of Mr Cox's remains. The increasing age of family members or their moving to different parts of the country, difficulties with transport or with access to particular parts of a burial ground, are all entirely ordinary features of life. These factors do not amount to circumstances that might constitute an exception to the general rule expressed in the law and based on Christian doctrine. If these were the only factors I should have no hesitation in saying that this Petition could not succeed.
5. In the course of her letter of explanation, however, Mrs Cox refers in passing to a 'family plot' at Stoke Bardolph. Reinterment in a family grave is a well-established exception to the principles to which I have referred: Blagdon at [36](vi) and [38]-[39]. No doubt there is an element of sentiment involved; but a number of the authorities have also referred to the desirability as stewards of God's creation for the Church to encourage the most economical use of land set aside for burials. Where, therefore, the proposal will result in the vacation of a plot for re-use, and interment in a plot already in use for family members, a Faculty may issue if the Chancellor thinks fit to grant one. The mere existence of, or proposal for, a family grave does not guarantee that the exhumation will be allowed, but it is a factor to be taken into account. In the present case none of the other positive factors identified in the cases appear to apply, and I must bear in mind that some years have passed since Mr Cox's burial and that passage of time is often seen as a factor adverse to exhumation.
6. I therefore caused inquiries to be made. There is a grave at Stoke Bardolph that contains the remains of Mrs Cox's father Sydney Everill, who died in 1964, and her brother Sydney Harry Bentley Everill, who died in 2010. What appears in the Petition as a general request for Mr Cox's reburial in Stoke Bardolph churchyard was in fact intended as a request for reburial in this specific grave, and it is intended that when Mrs Cox's time comes, she will be buried there too. Taking these matters together with those that I mention below in relation to reuse of ground and regularisation of memorials, and despite the countervailing factors, the proposal appears to me to be one which in principle the law can properly endorse by the grant of a Faculty and I shall grant it.
7. There are two remaining issues. The first is that I do not know if Mr Cox had the right of burial in Stoke Bardolph churchyard, by being resident in the parish at his death, by being at the date of his death on the church Electoral Roll, or by dying in the parish. If not, his remains can be interred in the churchyard only with the consent of the 'Minister': s 88(4) of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018; and see re Blidworth Churchyard [2021] ECC S&N 2 at [10]-[12] and [39], point 2. It is clear from her words as set out above that the incumbent has not yet given that consent. She may wish to reconsider her position in the light of the paragraphs above, but, unless Mr Cox had the right of burial at Stoke Bardolph, it is entirely a matter for her, not only in the light of the theological position but because the rights of use of the graveyard (except for those with the right of burial) are vested in her. If Mr Cox did not have the right of burial, the reburial, and hence the exhumation, cannot take place without her consent. I must also make it clear that when Mrs Cox' time comes, unless she has

the right of burial in Stoke Bardolph churchyard, her remains cannot be buried there unless the incumbent at that time gives consent, which ought not to be taken for granted.

8. The second issue relates to memorials. It is not appropriate or necessary to have two memorials on a single grave. Nor would it be appropriate to leave the memorial where it is if Mr Cox's remains are removed: it would be misleading, and it would effectively prevent re-use of the space, one partial justification of the family grave exception. Because of the way in which it is made I have no doubt that it could be adapted by a memorial mason for re-use on another grave in the cemetery. The memorial in place on the grave in Stoke Bardolph is another matter. It appears in a number of respects not to comply with the Chancellor's Regulations on which basis alone it could lawfully have been introduced into the churchyard. It ought to be removed, and the need for a new memorial arising from the burial of Mr Cox's remains here and the intention that the same grave should house Mrs Cox in due course provide an opportunity for regularising the position.
9. In the light of these considerations I am therefore making conditions requiring the ceding of all claims to plot 310 at Bingham, and the removal of the memorial there, so that the plot can be reused; and requiring the removal of the non-compliant memorial at Stoke Bardolph. Any replacement memorial at Stoke Bardolph will no doubt be designed to allow additional lettering to commemorate Mrs Cox when her time comes, and will be considered in the usual way in the light of the Regulations for the time being in force.
10. For the forgoing reasons, a Faculty as sought, for the exhumation of the remains of the late Roland Cox from plot 310 at Bingham Cemetery and their reinterment in the grave of Sydney Everill and Sydney Harry Bentley Everill in Stoke Bardolph churchyard, may pass the seal, provided that if Roland Cox did not at his death have the right of burial in Stoke Bardolph churchyard the incumbent of Stoke Bardolph if so minded grants consent for the reinterment as aforesaid (failing which the Faculty shall be of no effect), and subject to the following conditions: (i) before exhumation commences the existing memorial to Sydney Everill and Sydney Harry Bentley Everill must be removed from Stoke Bardolph churchyard; (ii) before exhumation commences the existing memorial to Roland Cox must be removed; (iii) before exhumation commences the Petitioner and any person entitled to any rights in it must arrange for the ceding of all rights in plot 310 to Bingham Town Council so that the plot is wholly available for reuse following the exhumation.

The Worshipful C M G Ockelton MA BD
Chancellor
3 May 2024