

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

FIELD ROAD CEMETERY, BLOXWICH

PETITION OF PHILIP ARTHUR SNAPE

RE: THE REMAINS OF SYDNEY ARTHUR SNAPE

JUDGMENT

- 1) On 25th March 1985 the body of Sydney Snape was interred in a wooden coffin in Bloxwich cemetery. That cemetery is under the control of Walsall MBC but the plot in question is in the consecrated portion of the cemetery. Mr. Philip Snape is Sydney Snape's son and he petitions for a faculty for the exhumation of his father's body and its reinterment in the cemetery at Strawberry Lane, Cheslyn Hay. For the reasons set out below I am compelled to refuse this petition.
- 2) Mr. Snape has consented to the petition being determined on the basis of written representations and I am satisfied that it is expedient to do so. Walsall MBC have consented to the exhumation. The cemetery at Strawberry Lane is under the control of South Staffordshire Council and does not contain any consecrated portion. South Staffordshire Council have confirmed that a plot will be available for the re-interment of Sydney Snape's body and steps are being taken to obtain the necessary Home Office licence.

The History.

- 3) I have already said that Sydney Snape was buried on 25th March 1985. He had lived in Streets Lane, Cheslyn Hay and had farmed land there since about 1961 (perhaps a little earlier). His widow, Ellen, continued to live there until her death on 22nd April 2014 and his son continued to farm the land. The cemetery in Bloxwich is some way away from Cheslyn Hay but at the time of Sydney Snape's death there was no cemetery in Cheslyn Hay. The cemetery in Strawberry Lane was opened about eighteen months ago.
- 4) Not only is the Strawberry Lane cemetery in Cheslyn Hay but it is on land which was formerly farmed by the Snape family including Sydney Snape. The burial of Ellen Snape has been delayed pending the determination of this petition. Philip Snape wishes to bury his mother's remains in the Strawberry Lane cemetery and

to re-inter his father's remains either in the same plot or in an adjoining one. If the petition is refused then Ellen Snape's remains will be interred in Bloxwich cemetery in the same plot as her late husband.

- 5) The Petitioner says that the opening of the cemetery in Strawberry Lane is an exceptional circumstance justifying exhumation. That cemetery is not only in Cheslyn Hay but it is on land which was farmed by the Snape family for over fifty years. Philip Snape says that it is appropriate for his father's remains to be moved to the cemetery which now exists in his home village on land which his father and his family had farmed. He says that cemetery is the fitting resting place for the remains of both his father and mother.
- 6) I have been provided with a letter from Mr. Ralph Poole of A.J. Sellman funeral directors indicating that the condition of the original coffin in which Sydney Snape was interred is likely to be very poor. The letter does not say that exhumation will be impossible indeed it envisages that it will be possible with Sydney Snape's remains being transferred to a new coffin. However, it does indicate that there may well be difficulties in conducting any exhumation in a seemly manner.

The Applicable Principles.

- 7) The approach which I am to take in considering this Petition was laid down by the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299.
- 8) I have a discretion but the starting point in exercising that discretion is the presumption of the permanence of Christian burial. That presumption flows from the theological understanding that burial (or 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.
- 9) It must always be exceptional for exhumation to be allowed and the Consistory Court must determine whether there are special circumstances justifying the taking of that exceptional course in the particular case (the burden of establishing the existence of such circumstances being on the petitioner in the case under consideration).

10) In my judgment the kernel of the approach laid down in *Re Blagdon Cemetery* is found at paragraph 35 where the Court of Arches said:

“... 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 ... is final. It will then be for the chancellor to decide whether the petitioner has so satisfied him/her.”

11) The application of that approach to a particular case requires what is essentially a two-stage process addressing the factors being put forward as justifying exhumation. At each stage the Consistory Court must have regard to “*the straightforward principle that a faculty for exhumation will only be exceptionally granted*” (see paragraph 33 of *Re Blagdon Cemetery*).

12) First, the Consistory Court must consider whether the matters raised are capable in law of amounting to special circumstances. In doing so the Consistory Court must take account of the guidance of the Court of Arches in identifying certain matters which can and others which cannot of themselves amount to such circumstances. When the factors relied upon are included in the categories considered by the Court of Arches in *Re Blagdon Cemetery* that will often be a relatively straightforward exercise. However, the list of potentially relevant factors considered in that case was not exhaustive. When addressing a factor other than those considered by the Court of Arches the Consistory Court has to assess it in the light of the approach laid down by that Court. Thus the Consistory Court has to determine whether it is a matter which is something sufficiently out of the ordinary so as to be capable in appropriate circumstances of justifying the Court in taking the exceptional course of ordering exhumation. This first stage in the process derives from the ruling in *Re Blagdon Cemetery* that there are categories of factors which can be identified as being either capable or incapable of justifying exhumation.

13) However, the mere presence of a factor which is capable of being a special circumstance for these purposes does not necessarily mean that exhumation should be ordered in any particular case. The Court has a discretion and the second stage of the process requires the Court to consider whether exhumation is justified in the light of all the circumstances of the particular case and in the

context of the presumption in favour of the permanence of interment. This stage derives from the existence of the Court's discretion and from the knowledge that the presence of a factor which is of a kind which can justify exhumation does not necessarily mean that exhumation is justified in the actual circumstances of a particular case.

The Position Here.

14) For the reasons set out at paragraphs 10 – 17 of *Re Blagdon Cemetery* where an unconsecrated cemetery is under the control of a local authority the Court is to proceed on the basis that remains interred there will be cared for in a seemly manner and there will be adequate legal protection for those remains. It follows that the fact that the Strawberry Lane cemetery is unconsecrated is not a relevant consideration here.

15) I accept that if the Strawberry Lane cemetery had been open at the time of Sydney Snape's death in 1985 it would have been a more fitting resting place for his remains than the Field Road cemetery in Bloxwich. The Strawberry Lane cemetery is in the village where Mr. Snape lived and was, moreover, on land which he had farmed. It would have been appropriate in such circumstances for Mr. Snape's body to have been interred there.

16) The factual position, however, is that the Strawberry Lane cemetery was not available in 1985. It follows that the stark question which I have to address is whether the creation since the time of interment of a new cemetery which would provide a more appropriate (arguably a markedly more appropriate) resting place for the remains than the current resting place is a special circumstance capable of justifying exhumation. The narrowness and starkness of the question can be seen by noting factors which are not capable of being prayed in aid here. Thus this is not a case where the current resting place is in any way unsuitable or inappropriate. There is no suggestion that the consecrated portion of the Bloxwich cemetery is in any way not a fitting resting place for Mr. Snape's body. Similarly, exhumation and re-interment are not necessary in order for the remains of Sydney and Ellen Snape to be interred together. Mrs. Snape's remains can be interred in the plot in Bloxwich cemetery which already contains those of her husband. The point simply is that there has been a new development since Mr.

Snape was buried and this, the creation of a more appropriate resting place, is said to be a special circumstance.

17) It is clear that events after the relevant interment can be special circumstances and can be capable of justifying exhumation when those events affect the grave where the interment took place and mean that it is no longer a suitable resting place for the deceased person's remains. Thus in my decision in *Radford: St. Nicholas* (Coventry 2011) and in Walford Ch's decision of *Re Coultous* (Bradford 2011) the changing circumstances were such that the original grave was no longer an appropriate place for the deceased person's remains to rest. However, the changes in those cases were extreme and in any event there has been no such change here. Bloxwich cemetery remains an appropriate resting place for Sydney Snape's remains.

18) In *Re Miresse deceased: Lambeth Cemetery* (Southwark 2003) George Ch authorised an exhumation to enable interment in a mausoleum which had not existed at the time of the original interment. That case might be thought to have some similarities with the current situation. However, it is to be noted that the parents of the young woman whose remains had been buried in that case had always intended the remains to be moved at some point and had not intended Lambeth Cemetery to be her final resting place. George Ch approached the matter on the footing that there had been a mistake at the outset because the original interment had been made with an intention that it should not be permanent. The fact that the mausoleum had been built after the original interment does not appear to have been a material factor in the decision and so it does not assist me in the present case.

19) I have considered whether the decision of Bursell Ch in *Re Royal Burial Ground, Frogmore* (Oxford 2013) throws any light on the approach to be taken. It might be said that the decision of the Serbian government in that case to allow reinterment in the family crypt of the Royal House of Karadjordjevic was an instance of a more appropriate resting place becoming available than had been the case at the time of interment. On that basis the case might be seen as an instance of such a subsequent change being a special circumstance justifying exhumation. However, it is my judgment that there are marked differences

between that case and the present circumstances. In that case the family crypt was a paradigm example of an existing family grave and the reason Queen Maria's remains were not originally interred there was not through choice of those conducting the interment but because such interment was precluded by a political decision over which her family had no control. That was not, when properly analysed, a case of new resting place becoming available after interment but of an obstacle being removed where that obstacle had precluded interment in the resting place which already existed and which was the desired resting place from the outset.

- 20) However, I have been able to derive assistance from the approach taken by Tattersall Ch in the case of *Re William Radcliffe* (Carlisle 2008). In that case the deceased was interred in a churchyard. Shortly after the interment a Garden of Remembrance was created in a different part of the same churchyard and the deceased's widow petitioned for exhumation and reinterment in that Garden of Remembrance. Part of the argument she put forward was that the Garden of Remembrance would be a more fitting resting place of her husband's remains than the part of the churchyard in which those remains had been interred. Although Tattersall Ch allowed the petition he did so on the basis that there was an intention to create a new family grave. Tattersall Ch made it clear that he would not have allowed exhumation if the argument in favour had solely been the argument that the newly created Garden of Remembrance would be a more fitting resting place for the deceased's remains.
- 21) I have concluded that the fact that a new cemetery or the like is created after the interment in circumstances where that new cemetery is thought to be a more fitting resting place for the remains in question than the place where they are interred will not, save in the most extreme of cases, be capable of being a special circumstance justifying exhumation. I have already explained the importance of the permanence of interment. Provided that the deceased is interred in a location which is and which continues to be suitable for the interment of his or her remains then the creation or the becoming available of an arguably more suitable location does not carry sufficient force to outweigh the presumption of permanence. The creation of a cemetery at Strawberry Lane is not a special circumstance justifying

the exhumation of Mr. Snape's remains even though it is in his home village and on land which he farmed.

22) Even if the preceding view is wrong and the creation of the Strawberry Lane cemetery is capable in law of being a special circumstance it would be my conclusion that exhumation would nonetheless not be justified on the facts of this case. This is because Bloxwich cemetery remains a suitable resting place for human remains; Sydney Snape's remains have been in that cemetery for twenty-nine years; it is possible for Ellen Snape to be buried at Bloxwich in the same plot as her late husband; and the likely condition of the coffin in which Mr. Snape was buried means that it may well not be possible to conduct the exhumation in a seemly manner.

23) In those circumstances I must refuse this petition.

STEPHEN EYRE
CHANCELLOR
18th May 2014