

In the Consistory Court of the Diocese of Worcester

Archdeaconry of Dudley: Dudley, St John the Baptist:

Faculty petition 08-61 relating to exhumation of cremated remains of George Edward Robinson

Judgment

Introduction

1. This is a petition submitted by Mrs Rita Short, who now lives in Lincolnshire, to authorise the exhumation of the cremated remains of her father Mr George Robinson from the churchyard at St John's Church, Kates Hill, Dudley, in order that they may be buried along with the body of her mother Mrs Brenda Robinson in the Queen's Cross Cemetery, Dudley.

Factual background

2. Towards the end of 1995, Mrs Short's brother David died of cancer, at the age of 40. His body was buried in Queen's Cross Cemetery, in accordance with the normal custom in his mother's family.
3. Sixteen weeks later, in January 1996, Mr Robinson died, rather suddenly – Mrs Short suggests that his death may have been partly a reaction to the loss of his son. She assumed that his body would also be buried in Queen's Cross Cemetery, in a double plot – not least because she knew that Mrs Robinson, her mother (who was then still alive), loathed the idea of cremation. But the matter had not been discussed within the family.
4. However, after his death, Mrs Robinson told the family that their father's wish had been that his body should be cremated. That was duly done; and Mr Jim Knight, the then Vicar of St John's Church, Kates Hill pointed out that, although there was no space for the interment of bodies in the Churchyard, there was space for the interment of cremated remains. Mr Robinson's cremated ashes were accordingly buried in the churchyard at St John's.
5. Mrs Robinson died in May 2008. Her body was buried, also in Queen's Cross Cemetery, in accordance with the family practice.

6. It was apparently the dearest wish of Mr and Mrs George and Brenda Robinson that their mortal remains be interred together – even though they disagreed as to the desirability of cremation.
7. With the wisdom of hindsight, Mrs Short now realises that she should have either had her father’s cremated remains buried at Queen’s Cross. Alternatively, she should have kept them unburied until after her mother’s death – although she suspects that her mother might not have wanted that.
8. She is now very distressed, and seeks the necessary authorisation for the exhumation of her father’s cremated remains, so that they can be re-interred along with the body of her mother, and in the same graveyard as that of their son.
9. She first contacted the present vicar at St John’s in 2007. The PCC considered the matter in 24 October 2008, and resolved that they were content to accept the ruling of this court, subject to a proviso that the cremated remains should be exhumed only if they were positively identified as being those of Mr George Robinson. There appears to be no doubt whatsoever on that score.
10. Dudley Council, as the owner of Queen’s Cross Cemetery, is content for the cremated remains of Mr Robinson to be re-interred there, along with the body of Mrs Robinson.
11. The petition is supported by Mrs Short’s brothers Michael and Kevin Robinson and her sister Mrs Jean Clark. A letter has been sent to their brother John Robinson at his last known address, also in Dudley, informing him of the petition, but no response has been received; however, he has been estranged from the family, apparently at his own wish, for around thirty years, and did not attend the funeral of either of his parents or that of his brother David in spite of having been informed of them.

The law

12. The Court of Arches in *re Blagdon Cemetery* [2002] Fam 299 – a decision that is binding on this court – made it clear that “it is for [a person seeking a faculty for exhumation] to satisfy the consistory court that there are special circumstances in his or 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, is final. It will then be for the chancellor to decide whether the petitioner has so satisfied him or her.”
13. The Court in *Blagdon* looked at various possible exceptions:
 - (1) Medical reasons
 - (2) Lack of delay in seeking a faculty
 - (3) Mistake at the time of the initial burial
 - (4) Local support for the proposal
 - (5) Precedent
 - (6) Creation of a family grave.

14. In relation to the last of these possible exceptions, the Court in *Blagdon* noted that “it should not be assumed that whenever the possibility of a family grave is raised, a faculty for exhumation will automatically be granted. As in this case, it is to be expected that a husband and wife will make provision in advance by way of acquisition of a double space if they wish to be buried together.”

Application to the present case

15. It seems to me that the present case arguably comes within two of the *Blagdon* exceptions.
16. I can understand why the then Vicar of St John’s suggested the interment of Mr Robinson’s cremated remains in the Churchyard there; and I can well imagine that it would have been all too easy for the family simply to go along with that suggestion, especially so soon after the loss of their brother. But with the wisdom of hindsight it was a mistake. The opposition of Mrs Robinson to cremation was known, as was the lack of space at St John’s for the interment of bodies. It could – and should – have been predicted that the present difficulty would inevitably arise. The correct course would have been to inter the ashes at Queen’s Cross, so that Mrs Robinson’s body could be buried at the same place in due course.
17. It is unprofitable now to analyse whether the mistake was the fault of the Vicar or of the family. But the suggestion of the Vicar – albeit doubtless made entirely in good faith – will probably have been at least in part to blame. It therefore seems to me that the present petition offers an opportunity to rectify that error. This case thus comes within exception (3).
18. Secondly, the result of allowing the present petition would be that the remains of the three family members who have died – father, mother and their son David – will now be together. And it may be supposed that other family members may also in due course seek to be interred at Queen’s Cross. This case thus comes within the spirit, at least, of exception (6).
19. Nothing in this judgment should be taken as in any way undermining the strong general presumption against exhumation, which has been laid down by the Court of Arches and by this court and other consistory courts on many occasions.
20. However, I am persuaded that for the reasons given above, a faculty should exceptionally issue in this case to authorise the proposed exhumation.

Charles Mynors

Chancellor

24 February 2009