

IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY

RE: KENILWORTH CEMETERY

IN THE MATTER OF THE CREMATED REMAINS OF KENNETH CHARLES LEE

JUDGMENT

- 1) On 23rd August 2004 a casket containing the cremated remains of Kenneth Lee was interred in the consecrated portion of the Kenilworth Cemetery at Oaks Road. On 10th August 2016 Mr. Lee's widow died. Stephen Lee is the son of Mr. and Mrs. Kenneth Lee and he petitions seeking to exhume his father's remains. Following exhumation the Petitioner wishes to inter the remains together with those of his mother in the plot in Area for the Burial of Cremated Remains of St. Nicholas, Kenilworth which already contains the cremated remains of Gertrude Clifford, his mother's unmarried sister.
- 2) The incumbent of St. Nicholas and the Bereavement Services Manager responsible for Kenilworth Cemetery have both agreed to the proposed exhumation and reinterment.
- 3) In his submissions supporting the Petition Stephen Lee explained that the Area for the Burial of Cremated Remains at St. Nicholas contains the graves of his mother's parents and of another sister of hers as well as that of Gertrude Clifford. In addition Mr. and Mrs. Kenneth Lee were married in St. Nicholas in 1953.
- 4) When Kenneth Lee died his widow and his son sought to have his remains interred in the Area for the Burial of Cremated Remains at St. Nicholas. They were told that there was no space there for any new interments. It was in the light of that information that the decision to inter the remains in Kenilworth Cemetery was made. The Petitioner says that he and his mother "*felt ... that we had no other option open to us ... despite the fact that both of us were very unhappy about it and knowing full well it was not what my father would have chosen...*".

- 5) It appears that at the time of Kenneth Lee's death the possibility of interring his remains in an existing plot containing the remains of a family member was not explored. It is easy to understand how that came about. The incumbent or parish administrative staff would have said, correctly, that there were no plots available for new interments and the matter was not explored further. It is understandable that the grieving family of Kenneth Lee would not at that stage have thought of asking whether it would be possible to inter his remains in the grave of his sister-in-law with a view to his widow's remains also being placed there in due course. It is regrettable but also understandable that those telling the family that no new plots were available did not explore further by themselves raising the possibility of interment in an existing plot. If the response to the approach from the Lee family had been to say that there were no new plots available but that interment in a plot currently occupied by the remains of a family member could be considered then it is highly likely that an arrangement along the lines of that now proposed would have been adopted.
- 6) In the supporting submissions Stephen Lee criticises the state of care and maintenance of the cemetery at Oaks Road. He goes on to say that his mother had made it clear to him that she did not wish to be buried there but that she also said that she did want her remains to be with those of her husband. It is following his mother's death that Mr. Lee has investigated matters further and discovered that interment in the plot containing Gertrude Clifford's remains would be possible.
- 7) It is apparent from Mr. Lee's detailed and measured submissions that the Petition is the result of careful thought. Indeed, Mr. Lee states in terms that he is not making the request lightly but as a matter to be taken seriously.

The Applicable Principles.

- 8) 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.
- 9) 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 as represented by His Holy Church.

- 10) 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 particular case).
- 11) 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.”

- 12) The Court in *Blagdon* identified a number of matters which are capable of being special circumstances. Those include instances where there was a mistake at the time of the initial interment and those where the purpose of the exhumation is to reinter remains in a family grave. In considering whether such circumstances exist a chancellor must take care to distinguish between cases of mistakes which occurred at the time of interment and those where there has been a subsequent change of mind. The fact that the relatives of a deceased person have subsequently changed their minds as to the appropriate location for interment does not mean that there was a mistake at the time of interment. Similarly, the Court must be vigilant to distinguish between cases where exhumation is genuinely sought to move remains to a family grave and those where this explanation is used to justify an exhumation which is, in truth, sought for other reasons. In that regard it is relevant to consider whether the interment together of the remains of family members can be achieved at the site of the current interment. Even where matters which are potentially special circumstances exist it is for the Court to decide whether on the facts of any particular case the exceptional course of exhumation is justified.

Assessment.

- 13) I must have regard to the facts that the family of Kenneth Lee decided deliberately to inter his remains in Kenilworth Cemetery. There was no mistake as to the location of the plot nor as to the nature of that cemetery. In addition I have regard to the fact that it would be possible for Mrs. Lee's cremated remains to be interred with those of her late husband in the plot at Kenilworth Cemetery currently containing Kenneth Lee's remains. Those are potent factors but each is subject to substantial qualification. The decision to inter Mr. Lee's remains in Kenilworth Cemetery was made only after his family had been told that no new plots were available at St. Nicholas. They believed that it was not possible for his remains to be interred at St. Nicholas. I have already stated that I accept that if further consideration had been given to the matter in 2004 the possibility of the arrangement now proposed would have come to light and would in all probability have been adopted. In short the interment in Kenilworth Cemetery rather than in St. Nicholas came about because of a misunderstanding as to the possibility of interment in St. Nicholas. A misunderstanding which had, in part, been caused by the information given by those responsible for the churchyard at St. Nicholas. Moreover, although it would be possible to achieve a common resting place for the remains of Mr. and Mrs. Lee by interring the remains of Mrs. Lee in the plot in Kenilworth Cemetery that would involve her interment in a place where she had expressly said that she did not wish to be buried. For the Court to say to Stephen Lee that his mother's remains should be interred there if there is a need for those remains to be with those of her husband would be to suggest that he go against her express wishes and that he do so when it is possible to inter her remains in St. Nicholas where she wished to be interred.
- 14) I have concluded that there are exceptional circumstances justifying exhumation in this case. Those exceptional circumstances arise from the combined effect of two matters. The first is that the decision to inter Mr. Lee's remains in Kenilworth Cemetery and the failure to inter them in St. Nicholas was the result of the mistaken belief that interment in St. Nicholas was not possible. The second is that reinterment in St. Nicholas will create a family grave containing the remains of Mr. Lee, his widow, and her sister and will do so in a churchyard which also contains the remains of Mrs. Lee's parents and of her other sister. St. Nicholas is

clearly the appropriate place for the remains to be and the proposed exhumation and reinterment will create a family grave in close proximity to the graves of other family members. Accordingly, I grant the Petition and authorise the issue of the faculty sought.

15) I should add that I have not regarded the Petitioner's assertions as to the state of maintenance of Kenilworth Cemetery as a matter giving any support to the Petition. A deterioration in the condition of a cemetery or churchyard can amount to exceptional circumstances justifying exhumation. However, in my assessment it will only do so in the most extreme of cases where the deterioration is such that the cemetery or churchyard in question is no longer a fit resting place for the remains in question. The material before me does not show that such is the case in respect of Kenilworth Cemetery.

STEPHEN EYRE
HIS HONOUR JUDGE EYRE QC
CHANCELLOR
12th November 2016