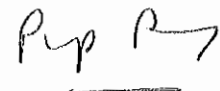


Neutral Citation Number: [2016] ECC Swk 15

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK
IN THE MATTER OF STREATHAM PARK CEMETERY
AND IN THE MATTER OF A PETITION BY MRS PAULINE SMYTH

JUDGMENT

1. This is a petition by Mrs Pauline Smyth for a faculty to exhume and re-inter the remains of Frederick Russell in grave plot 55533 SQ 35 in Streatham Park Cemetery. This plot is within the consecrated section of the Cemetery. I granted the petition as a matter of urgency on 26 September 2016, stating that I would give my reasons later. This judgment gives those reasons.
2. Ernest Russell was married to Beatrice and they had three children, Frederick, Pauline and Linda. Ernest died in 1970 and his remains were buried in a double plot in the consecrated section of Streatham Park Cemetery. Frederick died in 2003. His remains were cremated and his remains were placed in the double plot. Beatrice died on 10 September 2016. At this point, Pauline and Linda were informed that Frederick's ashes had been so disposed within the double plot that it would not, as matters stood, be possible to inter their mother's remains in the grave. However it was possible for them to be lowered within the grave to make room for the interment of Beatrice's remains. This is what happened following the grant of a faculty on 26 September 2016; Beatrice's funeral was on 7 October 2016.
3. Pauline and Linda tell me that Beatrice always planned to be buried with Ernest. It is obvious that she made a mistake when she organised Frederick's funeral in 2003; had she realised that, in order for her own remains to be buried in the grave in due course, it was necessary for Frederick's ashes to be buried at a greater depth (which would have been perfectly possible), she would have made appropriate arrangements. I think this is sufficient to justify the disturbance of Frederick's ashes by their exhumation and re-interment at a greater depth. I note of course that it is not proposed to move the ashes to another grave; accordingly it seems to me that it may not be necessary for Pauline and Linda to show exceptional circumstances as required in where the ashes are so moved: see *In re Blagdon Cemetery*¹. If it were necessary, I think that the mistake in this case would constitute such exceptional circumstances. Pauline points out that, when Beatrice made the arrangements for Frederick's funeral, she was 84 and grieving her son's loss. I think that these matters would, if required, provide additional justification for what was proposed. Accordingly it was appropriate for me to direct in this case that a faculty should issue.



PHILIP PETCHEY
Chancellor
15 November 2016

¹ [2002] Fam 299 (Court of Arches).