Neutral Citation Number: [2022] ECC Dur 1

IN THE CONSISTORY COURT OF THE DIOCESE OF DURHAM
IN THE MATTER OF TOW LAW CEMETERY
AND ROBERT DAVID JONES DECEASED

JUDGMENT

1. On the 6th August 2010 the body of Robert David Jones was buried in consecrated land at Durham County Council's Tow Law Cemetery. By a petition dated 9 December 2021 his daughter Mrs Caroline Jones-Renshaw seeks a faculty for the disinterment of Mr Jones' remains and the subsequent re-burial in unconsecrated land owned by the family opposite the family home at Low Butterknowle Farm, Lands Road, Butterknowle, Bishop Auckland. Butterknowle Farm is about 11 miles from Tow Law cemetery.

2. In answer to the standard question attached to the petition asking for the full reasons for the disinterment, Mrs Jones-Renshaw replied:

   "To reinter Dad for a home burial.

   At the time of my father's death we were not aware that he could have been buried on our own private land. Since the loss of my father, for the past four years my mother has been battling with ..... cancer. She's made her wishes clear to me that she wants to be buried on our land. And hopefully with your permission I can make that wish come true for her, also to have my dear father to be back with our family and to be joined back with my mother in the very near future."

3. After the petition was issued, the petitioner's mother Mrs Christine Jones, the widow of Mr Jones, applied to be added as a petitioner. She was duly added as a party.

4. The petition was advertised in accordance with rule 6.6 of the Faculty Jurisdiction Rules, and no objections were received. An email from Mr Tony Johnston, the Bereavement Services Co-ordinator for Durham County Council, confirmed that the local authority had no objections to the petition. Mr Johnston has been helping the petitioners in these proceedings. He informed the registry by email that the grounds for the petition were:

   "...based on a mistake at the time of burial, I think the family at that time, did not know home burial existed, and have recently found out it could happen, if they had known this, I believe a home burial would have taken place..."

5. The principles to be applied are to be found in the case of *Re Blagdon Cemetery* [2002] Fam 299, a decision of the Court of Arches which, by virtue of s 14A of the Ecclesiastical

Jurisdiction and Care of Churches Measure 2018, is treated as if it were a decision of the Chancery Court of York.

6. The Court of Arches in *Blagdon* held that the disturbance of remains which have been placed at rest in consecrated land can be allowed only in exceptional circumstances. There is a general presumption of permanence arising from the initial act of interment. The Court of Arches explained at paragraph 21 of its judgment: *"This presumption originates in the Christian theology of burial. This theology underlies the consecration of land especially for burials, and it is present in every funeral service and burial of a body or interment of cremated remains according to the rites of the Church of England."*

7. The Court made it clear at paragraph 27 that *"permanence of burial is the norm in relation to consecrated land, so that remains are not to be regarded as 'portable' at a later date..."*

8. A copy of the judgment in *Blagdon* was sent to the petitioners by the registry, and their attention was drawn to the requirement that they would need to show exceptional circumstances if they were to succeed.

9. Whether the facts in a particular case warrant a finding that the case is to be treated as an exception is for the Chancellor to determine on the balance of probabilities, and it is for the petitioner to satisfy the Consistory Court that there are exceptional circumstances which justify departing from the norm that a Christian burial is final.

10. The petitioners here rely upon a mistake: if they had known 11½ years ago that Mr Jones' body could have been buried at home on their own private land, then they would not have had it interred in the local authority cemetery.

11. The Court of Arches in *Blagdon* gave the following guidance in relation to mistakes:

> *"…a change of mind as to the place of burial on the part of relatives or others responsible in the first place for the interment should not be treated as an acceptable ground for authorising exhumation…*
>
> *Sometimes genuine mistakes do occur, for example, a burial may take place in the wrong burial plot in a cemetery or in a space reserved for someone else in a churchyard. In such cases it may be those responsible for the cemetery or churchyard who apply for a faculty to exhume the remains from the wrong burial plot or grave. Faculties can in these circumstances readily be granted, because they amount to correction of an error in administration rather than being an exception to the presumption of permanence, which is predicated upon disposal of remains in the intended not an unintended plot or grave. A mistake may also occur due to a lack of knowledge at the time of burial that it was taking place in consecrated ground with its significance as a Christian place of burial. For those without Christian beliefs it may*

be said that a fundamental mistake had been made in agreeing to a burial in consecrated ground."

12. Applying the principles set out in *Blagdon*, the grounds relied upon by the petitioners do not amount to a mistake – there was no error in administration that now needs to be corrected. Instead, the petitioners have had a change of mind; they would now like Mr Jones' to be buried at home, where his widow in due course would also be buried so that they would be together. Not knowing that home burial may have been an option 11½ years ago does not amount to a mistake within the meaning of *Blagdon*.

13. There is a suggestion that the proposed re-burial site would be a family burial plot. In accordance with *Blagdon* family graves are to be encouraged in churchyards and cemeteries where land is scarce, but I note the observation in paragraph 40 of *Blagdon* that: *"…it should not be assumed that whenever the possibility of a family grave is raised a petition for a faculty for exhumation will automatically be granted. ….it is to be expected that a husband and wife will make provision in advance by way of acquisition of a double grave space if they wish to be buried together."* The proposed site for the re-burial is private land, it is not an established family burial plot, and there is no evidence before the court that Mr and Mrs Jones ever discussed, considered, or agreed that they would be buried together.

14. If I had been satisfied that there were exceptional circumstances here that could have justified a departure from the norm of permanence of burial, I would have needed to be further satisfied that proper arrangements were in place to care in perpetuity for the proposed re-burial site. The proposal is to take the body from consecrated land under the protection of the Consistory Court and in the care of Durham County Council, and re-inter it in unconsecrated private land outside the control of the Consistory Court and outside the care of the local authority.

15. In so far as the new proposed burial site opposite Butterknowle Farm is unconsecrated land that is not, in itself, problematic. Section 25 of the Burial Act 1857 would give protection from future disturbance because it provides that remains cannot be removed from unconsecrated land without a licence from the Secretary of State. But questions would arise as to whether and how the proposed burial site would be cared for and properly maintained. As the judgment in *Blagdon* made clear at paragraphs 15 and16:

"15…it can generally be assumed that local authorities carry out their legal responsibilities for care and maintenance of their cemeteries. Thus, if remains are to be removed from the consecrated ground of a churchyard, or the consecrated part of a cemetery, and to be re-interred in the unconsecrated part of the same or another cemetery it is reasonable for the Consistory Court to conclude (certainly in the absence of evidence to the contrary) that the new grave will be cared for in a seemly manner and will be protected in this sense.

16. Re-interment in unconsecrated ground which is not in a local authority cemetery is a different matter. No general inference of the suitability for reinterment in such land can properly be drawn by the Consistory Court. Questions about proper care of the new grave in the future and the prospects for visiting access by future generations would need to be addressed by those involved in such cases, and in turn examined with care by the Consistory Court in deciding whether or not to exercise its discretion to grant a faculty for exhumation."

16. The petitioners have not addressed this issue of proper care of the proposed new grave, but the petition is in any event dismissed on the other grounds set out earlier in this judgment. I realise this will be upsetting for them, but they have not made out a good case in law.

Adrian Iles
Chancellor

2nd March 2022