

IN THE CONSISTORY COURT OF THE DIOCESE OF CARLISLE

RE GORDON THOMAS ANDREWS, DECEASED

Determined on papers and without a hearing

JUDGMENT

Delivered on 16 January 2023

A. Introduction

1. This Judgment concerns the petition of Jean Bell, by which she seeks a faculty authorising the exhumation of the remains of her late husband, Gordon Thomas Andrews. The petition is unopposed.
2. For the reasons set out below the court will grant a faculty for the exhumation of Mr. Andrews' remains, so that the depth of his grave may be increased in depth before he is reburied in it.

B. History

3. Mr. Andrews died on 31st July 1961 and was buried on 3rd August 1961 at Wigton Cemetery, in Section O, Ward 2, Grave number 35. He was survived, by his wife, Jean, who is the petitioner, and by their two daughters, Karen and Christine.
4. No other burials have since taken place in this grave, which was dug to the depth of a single grave.
5. So far as the basis for the present position is concerned, I can do no better than repeat what Ms. Bell writes at paragraph 15 of her petition:

“I wish to remove my husband from the grave as he was buried in 1961 in a single grave. He died at a very young age and I was too upset at the time to make an informed decision. Over the years have become more and more distressed about this situation as I wish to be buried with him.”

Ideally I would like to remove him from the grave, have the grave dug deeper and then return him to the same grave. If this is not practically possible I would like to have him removed and buried in a new double grave within the same cemetery.

I understand this is an unusual request but it would be wonderful if this could happen and we could ultimately be laid to rest together.

Our daughters are in total agreement with myself.”

6. Mr. Andrews’ parents are no longer alive; he has no surviving children other than Karen and Christine (who have each given their written consent to what is proposed); and he has no surviving siblings.
7. The graveyard is administered by the Wigton Burial Joint Committee. A letter from the Acting Chair of that committee dated 14th April 2022 gives its written consent to what is proposed, and specifically to the deepening of this grave.
8. I have also seen a letter dated 5th September 2022 from Paul Hill, of J. Hill & Sons, Joiners and Funeral Directors. He records that his firm acted in the burial in 1961. His view is that the coffin was most probably made of Elm, being the material his firm then favoured, on account of its durability and water resistance. Having inspected the grave in question with his firm’s grave diggers he considers that the coffin in this instance is likely still to be in good condition, given the dry ground at this cemetery. Nonetheless, he explains that if the exhumation proceeds he will arrange for a new coffin to be available on site to place Mr. Andrews’ remains in it, if so required.

C. Law

9. The relevant legal principles are set out the judgment of the Court of Arches in *Re Blagdon Cemetery* [2002] 3 WLR 603. From that decision it is clear that the starting point in every case where exhumation is sought is (paragraph [33]) “...*the straightforward principle that a faculty for exhumation will only be exceptionally granted.*”
10. The reason for this is that “*The disturbance of remains which have been placed at rest in consecrated land has only been allowed as an exception to the general presumption of permanence arising from the initial act of interment*” (paragraph [20]). The presumption of permanence of Christian burial 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 (paragraph [21]).

11. While the Court of Arches identified various categories of exception, it stated [33] that *“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”*.
12. This is essentially a matter of discretion, and it is always (paragraph [35]) *“... 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, that is burial of a body or cremated remains in a consecrated churchyard or consecrated part of a local authority cemetery, is final.”*
13. One recognised exception concerns the case of family graves. The law encourages the use of double and triple graves, in which the remains of members of the same family can be buried together. The bringing together of family members’ remains in a single grave may provide a special reason for permitting exhumation despite the passage of a long period of time since the burial.

D. Analysis

14. In my judgment there are good and proper reasons for granting this petition. The proposal is for the creation of a family grave by deepening the grave in which Mr. Andrews’ remains are already buried. This is something about which all surviving, close family members are in agreement.
15. Furthermore, there is the reassuring advice from Mr. Hill as to the practical aspects of the exhumation, even allowing for the relatively significant passage of time.
16. I have considered whether the length of time since burial is a factor that should lead me to a different conclusion. I have reminded myself of what the Court of Arches held in the *Blagdon* case (at paragraph 36(ii), on that point). In my judgment, on the particular facts of this case, and for the reasons just stated, the passage of time since burial is not determinative of the matter and is simply one factor to be taken into account in reaching my decision.

E. Direction

17. Accordingly, the court grants a faculty for the exhumation of Mr. Andrews' remains so that the grave may be increased into a double depth before his remains are reinterred in it. It shall be a condition of the faculty that the exhumation and reinterment shall be carried out within six months of the date of the faculty.
18. The petitioner must pay the costs of this petition, but I charge no fee for this written judgment.

James Fryer-Spedding

Chancellor of the Diocese of Carlisle

16 January 2023