In the Consistory Court of Sheffield

The Worshipful David McClean CBE QC DCL LittD FBA
Chancellor and Official Principal

In the Matter of
SAINT THOMAS KILNHURST CHURCHYARD

J U D G M E N T

Introduction

1. This case concerns two headstones which have stood in the churchyard of the parish church of St Thomas, Kilnhurst, over the grave of Frederick Howitt who died on 11 May 1946. The first ('Headstone 1') was placed there within a year or two of his death. It was replaced by a memorial of a different and more elaborate design ('Headstone 2'), with a different inscription, in 2002. Mr John Howitt, the son of the deceased, petitions for a faculty permitting the removal of Headstone 2 and its replacement with a replica of Headstone 1. The parochial church council unanimously agreed a resolution recording that it had no objection to the work being carried out and supporting Mr Howitt's application. The diocesan advisory committee issued a certificate recommending the proposed work. The petition is opposed by Mrs Kennedy, who is both a cousin of the petitioner and his sister-in-law, Mrs Kennedy's sister Alice being married to the petitioner.

2. The parties are divided by a family feud which has lasted for some decades. The correspondence file contains material which reflects the feud, with allegations and counter-allegations of assault, theft, criminal damage, and the sending of hate-mail; some allegations are denied, others are admitted. The behaviour described is disgraceful, but mercifully little of it is directly relevant. I made it clear that I was not prepared to hear evidence on anything other than the issues relevant to the petition and I was for the most part successful in securing that limitation. Clearly the feud has coloured the perceptions of the parties.

3. There was a considerable volume of material in the court bundle, made up for the most part of a number of detailed statements by Mrs Kennedy. They formed a coherent and at first sight persuasive account of events. At the hearing it soon became clear that Mrs Kennedy's account (derived in part from her late aunt, Mrs Marshall) was not wholly accurate. I did not find her as reliable a witness as Mr Howitt. Although the tensions in the family relationships sometimes showed themselves in his interventions, his evidence was measured and was not shaken in cross examination.

The petition and the issue of the lodging fee

4. A faculty petition includes a Schedule of Works or Proposals in which the petitioner sets out what he seeks permission to do. It is not uncommon to find that the Schedule includes not only the expected list of works but also some elements of justification,

more properly set out in a separate Statement of Need. For example, a petition to replace pews with chairs might well say 'in order to create greater flexibility in the use of the available space'. That causes no difficulty. Here the Schedule contains specific allegations. I set it out in full:

> To remove the existing headstone shown in photo (1). This stone was placed there in 2002 by my Aunt, Edith Marshall, replacing a stone put there in 1946 on my father's death, photo (2). The inscription on the new stone makes no mention of my mother or myself, this was done illegally by Edith Marshall claiming to the then Vicar, Revd Nigel Elliott that she was next-of-kin to my deceased father and that my mother and I were dead. I would like to replace the stone to be as near as the original as is possible.

5. When the petition was received in the registry, the registrar sought clarification on one point (what proposal was Mr Howitt making about the fate of Headstone 2?) and asking for payment of the fee prescribed by law as payable on lodging a petition. Mr Howitt was, for some reason, unwilling to reply directly to the registrar. Instead, he spoke to the current vicar, the Revd Andy Brewerton, who recorded that Mr Howitt was upset by the question and was angry that he was being asked to pay a fee. Mr Howitt argued that the church authorities should put right their own mistake. In the vicar's words, Mr Howitt was 'trying to use the appropriate system to get the appropriate permission simply to reinstate what his cousin did without permission'. After some conversations involving the vicar, the registrar and the diocesan secretary, it was agreed that half of the fee would be paid by the parochial church council of this parish and half by the Diocesan Board of Finance.

6. I had no knowledge of these negotiations and I think the outcome was most unfortunate. The PCC and the DBF were financing a private petition, and took the decisions they did in reliance on Mr Howitt's statements in his petition, not considering the possibility that the truth of those statements could be challenged. As will be seen, some of the allegations were in fact incorrect. Although that did not prove fatal to Mr Howitt's case, it does illustrate that the diocese could find itself in a false position. I think the PCC and DBF should not have acted as they did. If a private party wishes to have recourse to the consistory court, he or she should pay the prescribed fee. If the intending petitioner refuses to pay, no action should be taken on the petition. Once the facts are established by the court, different considerations may apply.

7. Given the nature of the correspondence in the file, which showed that the parties had very different accounts of the facts, it was clear to me that the case could not be dealt with by written representations and that a hearing was inevitable, despite the expense involved. I must return to the question of costs at the end of this judgment. I record that Mr Howitt was unrepresented; Mrs Kennedy was represented by a solicitor, Mr Peter Foskett.

The relevant law

8. Before I set out my findings of fact, I must give an account of the relevant law which I must apply to the facts as I find them. I accept the statements of law in Mr Foskett's skeleton argument.

9. It must be said that the law about churchyards and monuments erected in churchyards is arcane, and is not well understood even by the clergy and the parish officers who have to deal with it. Its actual content some find surprising, and certainly the parties to the present dispute sometimes made assumptions as to the content of the law which were mistaken. I say that without suggesting any fault or blame; but it does mean that some of the angry exchanges recorded in the correspondence are examples of heat without light.

10. The first proposition is that the ownership of the churchyard is vested in the incumbent, that is the vicar of the parish. That is clearly the legal position but the vicar's 'ownership' is an unusual and very limited notion. He or she has none of the normal rights of an owner. A vicar cannot sell or let any of the land, or indeed do anything beyond normal maintenance without a faculty from this court. Because the duty to maintain the churchyard is that of the parochial church council, the vicar must necessarily seek the council's agreement to any changes in addition to applying for a faculty.

11. However, it follows from the fact that the vicar is the owner of the land that no-one else can be owner of any part of it. A family may be given the right to use a particular grave-space for burial (either by obtaining a faculty to reserve a space, or by the vicar allocating a space when the need arises), but that does not affect the ownership of the grave. There are a number of references in the correspondence, principally by the petitioner, to his being legal owner of the grave as next of kin or as 'keeper' or 'guardian' of the grave; but there is no legal basis for any of those assertions, as the grave remains part of the land vested in the vicar of the parish.

12. The second issue, or set of issues, concerns a headstone erected over a grave (and that will include in this case the kerbs and other parts of the memorial). It is clear that no monument can be erected without the consent of the vicar, who in that context acts under delegated powers on my behalf and should act within the letter and spirit of a set of Churchyard Regulations which I issue and revise from time to time (and which may be supplemented by local rules consistent with my Regulations).

13. It is also clear that no monument may be removed without authority. The notes to *Corven's case* decided by Sir Edward Coke in 1612 say 'When once a monument is erected, it cannot be removed without the sanction of the Ordinary', which means in modern conditions the grant of a faculty. That is not something that falls within the vicar's delegated powers. I have had several petitions in recent times concerning the replacement of existing headstones (because the original stone was damaged or was too small to house additional inscriptions now desired) and that was the correct procedure.

14. That last proposition needs to be considered alongside the rules about the ownership of a headstone, and it is here that many people are surprised by what those rules say.

15. I take first the position where the person who installed the headstone, the person who commissioned and paid for it, is still alive. He or she is the owner, and continues to be the owner for life. Just as the vicar's ownership of the whole churchyard is a limited notion, and so is this ownership. Even the person who is owner because he or she paid for the headstone in the first place needs permission (usually from the vicar) to add a further inscription to the original one; and should seek a faculty before removing the

headstone. The question of removing a headstone does not often arise, but a petition from such a person – the person who paid for the memorial – would in all probability be granted.

16. What happens when that first owner dies? That question has been addressed in a number of decided cases and in an Opinion of the Legal Advisory Commission of the General Synod (printed at page 231 of the 8th Edition, 2007). The old authorities are clear that ownership passes to the heir-at-law of the person commemorated on the headstone: *Lady Wiche's case* of 1469 and *Colven's case* of 1612. The reforms in property law in the first part of the last century, especially s 45(1)(a) of the Administration of Estates Act 1925, have prompted some fresh consideration because the notion of the heir-at-law was abolished in respect of both 'real estate' and 'personal inheritance'. The consistory courts have held in effect that the old rules about monuments survive, as monuments did not form part of the estate of the person who installed them. It follows that the heir-at-law of the person commemorated takes ownership of the headstone once the first owner is dead.

17. That is the effect of decisions by Fitzwalter Butler Ch in *Re St Andrew's Thornhaugh* [1976] Fam. 230 (though there is some internal inconsistency in the judgment) and by Mynors Ch in *Re St Mary Oldswinford* (1998), and there are dicta to the same effect from Briden Ch in *Re St Michael's, Orchard Portman* [2001] Fam 302 and in *Re Keynsham Cemetery* [2003] 1 WLR 66. It was one of two possible interpretations of the law offered by Bursell Ch in *Re St Mary, Berrow* in 1992, an interpretation he favoured in his 2011 edition of the relevant title of *Halsbury's Laws of England*, vol 34, para 1085. I have not overlooked the case of *Re St Mary's Broadwater* [1976] Fam 222, but I find it unhelpful and would not follow it on the relevant point.

18. I should perhaps say that what at first sight seems an odd rule about the heir-at-law of the person commemorated has a possible advantage: if anyone needs to identify the owner, the headstone itself gives a name from which research can begin. It may be quite impossible to discover who paid for the memorial and who inherited his or her estate.

19. The position of the owner, whether the original owner or a successor under the rules I have just set out, is again a qualified one. It has been said in two cases (*Re St Andrew's Thornhaugh* and *Re St Mary Oldswinford*) that at common law the consistory court could not permit the moving, demolition, alteration or execution of any other work to a memorial if the owner did not consent. I must admit that I am not sure that the early authorities clearly support that limitation on the power of the court. It is, however, the case that the court can now act where the owner refuses his or her consent (or the owner cannot be found) as a result of section 3 of the Faculty Jurisdiction Measure 1964, a provision which also defines the owner in line with the rules as to the heir-at-law I have already mentioned.

20. The rules which identify the heir at law follow what is known technically as the principle of male primogeniture, the rules which at present govern succession to the Crown. A male child ranks before an older female child. In the case of the Howitt family, the petitioner, John Howitt, is clearly heir at law to both his grandfather, Arthur Howitt, and his father Frederick Howitt.

21. The views of the owner of a memorial are not necessarily conclusive. It has been said in some of the cases that the courts will act against the wishes of the owner only in exceptional circumstances. I am not sure that the practice shows the courts applying that rather strict test. Or, at least, it is clear the 'exceptional circumstances' include the sort of intra-family dispute that lies at the heart of the present case. In *Re St Mary Oldswinford* the headstone commemorated a young man who died in his twenties. It identified his mother and her husband as his parents, and a petition to change the wording was presented by the natural father of the deceased. The faculty was granted despite the opposition of those who were owners of the headstone. The same principles were, it seems, applied by Henty Ch in *Re St John the Baptist, Bishop's Castle* (1999) which unfortunately is not fully reported.

Findings of fact: headstone 1

22. I must now set out my findings as to the facts. When Frederick Howitt died, the petitioner, Mr John Howitt, was not quite three years old; the party opponent, now Mrs Kennedy, was one year old. Clearly they have no personal recollection of events. Mr Howitt relied upon accounts given by his mother (who died in 1986) and of an aunt, his mother's sister, who is still alive; Mrs Kennedy relied on the account given by her aunt, Mrs Marshall (who died in 2010 and with whom Mrs Kennedy lived during the last part of Mrs Marshall's life). Headstone 1 was a simple headstone of unpolished stone. Mrs Kennedy's written statement said that it spoke of the deceased as 'a dear father, son and brother'; Mr Howitt's evidence was that the relevant wording was 'dear husband and daddy' and the photograph he produced confirmed his account. That casts some light on the differing accounts.

23. Mrs Kennedy's account is that it was Mrs Marshall who had Headstone 1 erected, and that she paid £26 for it. She says that after Frederick Howitt's death his grave was for a time unmarked, to the distress of his mother. Mrs Marshall asked Frederick Howitt's widow (who was not herself interested in providing a headstone or could not afford to do so; she re-married a year or so later) if she, Edith Marshall, could provide one. That permission was given and the stone duly bought. Mrs Kennedy says that Mr Howitt was well aware that Edith was the original purchaser of headstone 1. Mr Howitt does not accept this account. He believes that the relationship between his mother and Mrs Marshall was so bad that there could never have been the agreement Mrs Kennedy describes. He told me that his mother paid for a 'funeral package', including a simple headstone, from a well-known local firm of funeral directors.

24. On Mrs Kennedy's original (and incorrect) account of the inscription, it was puzzling that no reference was made to the widow who was supposed to have agreed to the headstone. Given the actual inscription, it seems clear that the wording was that which a widow with a young child might select. Although I cannot be certain, it seems very probable that Mr Howitt's account is the correct one.

25. In the course of the hearing Mrs Kennedy offered a new point, not in her earlier statements. She suggested that the flower container shown in the photograph might have been paid for by the widow but the headstone by her aunt. I cannot give much weight to this suggestion.

26. It seems therefore that the owner of headstone 1 was probably the deceased's widow, Mrs Alice Howitt, later Mrs Alice Shaw, until her death and that title then passed to Mr Howitt, the petitioner.

After headstone 1 was installed

27. Headstone 1 remained in place for some 55 years. Mrs Kennedy asserted in the correspondence that Mr Howitt had 'to her knowledge never visited any of the family graves' and she told me that when she and her aunt began the process of replacing the headstone they said as much to Butterfields, the firm that was to do the work. In fact Mrs Kennedy lived for much of her life in Scotland or Oxfordshire, so was in no position to prove the negative. She did agree that Mr Howitt had at one stage repaired headstone 1; he told me that the upright section had worked loose and he cleaned the holes into which the metal connecting rods fitted and used new adhesive to effect the repair. I am satisfied that Mr Howitt did visit the graves, and he spoke movingly of the fact that the grave was his one link with the father of whom he had no memory. I fully accept his evidence on this matter.

28. I might add that the family as a whole seem more attached to the graves than is now often the case; Mrs Marshall in particular spent much time and indeed money tending them.

Headstone 2

29. The central issues in this case concern the events in 2002, when Headstone 1 was removed and replaced by Headstone 2. Headstone 2 is a full kerb set in polished black granite, with green chippings and a container for flowers. The inscription reads:

In Loving Memory Of
A DEAR SON AND BROTHER
FRED HOWITT
PASSED AWAY 11TH MAY 1946
AGED 28 YEARS
FOREVER IN OUR THOUGHTS

30. It will be seen that the deceased's name is here given as FRED rather than FREDERICK, a matter of complaint on Mr Howitt's part. I think the different parts of the family used different terms, but the change is nonetheless noteworthy.

31. Mrs Kennedy has made various statements recorded in the court file. In a telephone call to the registry in August 2011, she said that her aunt, Edith Marshall, thought that a black and green headstone would require less maintenance and remain in good condition after she died (or was no longer able to continue her regular visits to maintain the grave). In a later document she set out a longer account:

> Nearing her 80th birthday Edith said she never expected to live much longer, she expressed her concerns that when she was no longer here, that the graves would look a mess .... Edith said she was thinking of getting the 3 family graves done up.
>
> Around Fred's grave there was a great deal of subsidence, in fact it was quite dangerous, the headstone that Edith placed on the grave was now badly dis-figured, the elements had not been kind to it, she also wanted to replace this headstone.

> Edith decided to consult Butterfields Undertakers who had done all previous work. David Butterfield advised on what would be suitable for low maintenance on all the graves long term.
>
> Mr. Butterfield was aware that Edith was the original purchaser of the headstone on her brother Fred Howitt's grave. The words that Edith had inscribed on the original headstone were 'In Loving Memory of a dear Father, Son and Brother' [that is not actually correct]. Edith now had a dilemma, John Howitt, Fred's son, never visited his father's grave. He gave the reason that his stepfather had brought him up from the age of 3 yrs old. Edith accepted this, but was concerned that if she included John's name on the new stone he would be angry.
>
> David Butterfield said he would apply for permission for this work to be carried out. The Rev. Thomas was the vicar at this time. [In fact it was the Revd Nigel Elliott]
>
> Neither Edith or myself had anything to do with this application. Permission was granted to go ahead with this work and new headstones were erected. I told my Aunt that I would help with the costs of this work to be done. David Butterfield was instructed to bill me for the work and I would get the money back from Edith. When the bill arrived it was well over £4,000. I paid for this with my credit card.

32. In court she confirmed this account. It became clear that in fact Mrs Marshall and Mrs Kennedy each paid half of the eventual bill, which means that Mrs Kennedy as the survivor is the owner of headstone 2. It also came to light that the £4,000 was for work to three graves: one other headstone was, it seems, replaced and another refurbished. Issues about those graves were not before me. I have already indicated that ownership is not a conclusive factor: the court may, especially in cases of family conflict, exercise an independent discretion.

33. Mr Howitt, apart from noting the factual errors in that account, makes a number of substantial points, which I consider below.

34. On these events we do have some information from persons other than the two principal parties. David Butterfield of Butterfield and Sons, the funeral directors, confirmed (in a message to the registrar which is not strictly evidence) that his firm undertook the work and sent the usual form to the vicar. I also have a copy of that application form which accurately describes the proposed Headstone 2 and bears the signature of the Revd Nigel Elliott.

35. Mr Elliott gave evidence as a judge's witness. He was vicar of Kilnhurst from 1995 to 2008; it was his first incumbency, the first time he had been responsible for a churchyard. He confirmed that he had received the application form and had signed it to indicate his grant of permission. He had not inspected the existing headstone and indeed had not realised that there was already one in place; the form contained nothing to alert him to that fact. No additional representations were made about the matter and he had no direct dealings with Mrs Kennedy or Mrs Marshall. He conceded that the form identified the grave by number and that that location referred to a part of the churchyard in which burials would have taken place many years ago. He did not go to look at the grave (or indeed at the other two graves which it seems were the subject of similar applications at the same time). I suspect he merely signed the paperwork and put it in the post. Mr Howitt is right when he says that had Mr Elliott been sufficiently diligent to walk the necessary one hundred yards, he would have realised that this was not a routine case and a great deal of trouble and expense would have been avoided.

This is one instance, and I fear more are recorded later in this judgment, of the church authorities failing to give the proper level of care. The churchyard regulations do not in fact allow the kerbs and 'crème de menthe' chippings of the sort associated with headstone 2 so that Mr Elliott was in any event stretching his delegated powers to, if not beyond, the limit. I do recognise that in some churchyards so much has already been allowed that it is difficult to insist on conformity with the regulations; had Mr Elliott taken steps to discover the existence of headstone 1, which does so conform, that issue too would have fallen away.

36. I can set out my own conclusions by reference to the points Mr Howitt made.

37. First, he said that as owner of the grave he should have been consulted; as he put it 'my objection would have stopped her evil scheme in its tracks'. As I have endeavoured to explain, Mr Howitt was not owner of the grave (and the controversy in the papers as to who was 'next-of-kin' rests on a misunderstanding both of that notion and of its supposed relevance to the ownership of the grave). But Mr Howitt was almost certainly the owner of headstone 1. In almost all families, the changes would have been a matter of consultation but such civilised niceties seem to have been long abandoned in this family. In court Mrs Kennedy made a rather strange assertion: had her aunt realised that Mr Howitt had objections, she would have taken the project no further, in effect deferring to his wishes. I find that difficult to believe.

38. Second, Mr Howitt complains that neither Mr Elliott nor anyone else checked the position on the ground. He accepted that the lower part of the churchyard is affected by settlement; this is not uncommon in a former mining area. But he told me that headstone 1 was not affected; it was secure and in no need of replacement. It is agreed that Mr Howitt had done some repair work when the headstone did become loose, and I see no reason to doubt his evidence as to the position in 2002.

39. Third, Mr Howitt complains that the matter was never considered by 'the diocese' or the chancellor. He is correct in those statements. I did not have evidence from Butterfields but it could be said for them that they did use the one form available to them. What they should have realised was that the form was not really appropriate for this type of case and (especially as three graves were to be dealt with) I would have expected at least some sort of covering letter explaining what was involved. That might have alerted Mr Elliott who (I hope) would then have led Mrs Marshall and Mrs Kennedy to the correct faculty process. It is fundamental to Mr Howitt's case that a faculty was needed and that none was obtained.

40. Fourth, Mr Howitt argues that the change in wording demonstrated that the whole operation was a deliberate step to remove any reference to himself and his late mother. Mrs Kennedy told me that in the new inscription, she and her aunt could no longer refer to the deceased's widow as she was now dead; but she could not explain why reference was still made to his parents, also long dead. I find the various explanations offered by Mrs Kennedy about the change in wording unconvincing. Clearly, the family feud was at work. On the other hand I do accept that Mrs Marshall had a genuine concern for the future of the family graves when she was no longer here to tend them, and that was the overall motivation for the three-grave scheme.

41. I should record that Mrs Kennedy offered to allow Mr Howitt to add additional words to headstone 2 to meet his concerns. He refused to accept that offer, and I think he had good reasons for doing so. It would be difficult to change the existing wording without a wholly new headstone; additional wording in the space below the existing inscription would be an odd 'postscript'.

42. Finally, Mr Howitt alleges in the petition, which I have already quoted, that particular representations were made by Mrs Marshall to Mr Elliott: that she was next of kin and that he, Mr Howitt, was dead. Those allegations are not true. I am satisfied that no representations were made directly to Mr Elliott by either Mrs Marshall or Mrs Kennedy. Mrs Kennedy gave evidence about their conversations with Butterfields and I find that the two ladies represented to David Butterfield that they had authority to do the proposed work and that Mr Howitt, despite being a local resident, never visited the graves and so had no interest. In effect those representations, which were untrue, were conveyed to Mr Elliott by Butterfields in sending the form on to the vicar. Although the representations were not in the precise terms alleged by Mr Howitt, I did not understand Mr Foskett to be arguing that Mr Howitt's wording in the petition should be a decisive factor.

Subsequent events

43. I have to record some events subsequent to the work done in 2002. When Mr Howitt discovered what had happened, he spoke to Mr Elliott who was distressed and apologetic. He suggested that Mr Howitt first try to retrieve headstone 1 from Butterfields (it had already been destroyed by them) and start the process to get a faculty to have the matter rectified. He gave Mr Howitt the contact details of the then archdeacon of Doncaster. Eventually Mr Howitt discovered that he needed to start with the DAC and he sent an application to the then secretary, Mr Graham Williams, with a full letter a copy of which was in the court bundle. There was evidence from Dr Julie Banham, the current DAC secretary, that the minutes show that the matter was duly considered by the committee which found the matter 'sensitive' and asked the secretary to seek advice from the then diocesan registrar. Some weeks later Mr Williams did indeed write to the registrar and there is also a copy in the file of a 'holding letter' to Mr Howitt, which he says he never received. Despite repeated efforts to obtain some definitive response, Mr Howitt got none, and the files of the DAC and the registry contain nothing more. This is quite extraordinary and I am at a loss to find any explanation; the DAC could easily have given a 'no objection' certificate and left it to the faculty process to sort out the 'sensitive' issues. Mr Howitt was badly served once again.

44. In 2010 after the death of Mrs Marshall there was some contact between Mr Howitt and the present vicar, the Revd Andy Brewerton. One of the matters discussed was that of the headstones, and Mr Brewerton, like his predecessor, felt that a mistake had been made which could be corrected by the faculty process. In October 2010, Mr Howitt made a second advice application to the DAC. Nothing at all happened for almost a year; in most cases, an application is considered at the next DAC meeting, of which there are nine or ten a year; unless a site visit is needed or some specialist advice is required, a certificate is issued at once. Here there seems to have been no reference of the application to the committee for eleven months, and a certificate of recommendation was issued in September 2011, at what I think was Mr Williams's last meeting as

secretary. Once again there was a failure to provide proper care to an applicant and no-one is able to provide any explanation. I can only say that neither the registrar nor myself had any knowledge of this matter. Mr Howitt feels, not unnaturally, that the church was 'closing ranks' to avoid admitting to any mistake. My knowledge of the composition and working methods of the DAC makes me doubt that very much, but there is something very odd in all this and I ask the committee to review its procedures to prevent any further delays of this sort occurring (and passing unnoticed).

45. I set out these events at some length, partly because they give me cause for great concern, but also because Mr Foskett argued that, whatever the merits may have been, Mr Howitt was barred by laches, the time he had allowed to elapse, from asserting his rights. He tried hard to get Mr Howitt to say in cross-examination that by 2004 he had acquiesced in or accepted what had been done to the headstones. Mr Howitt stoutly refused: he had acted promptly in 2003 and again when a new incumbent suggested that steps could still be taken. I am well aware that those unfamiliar with the church structures find it difficult to sort out the functions of the various office-holders, to know 'which button to press', and Mr Howitt did his level best to get a response to his 2003 application. His failure to get a response cannot be equated with acquiescence. I do not accept that the passage of time prevents him now seeking to remedy the unlawful removal of his headstone and its replacement by the stone now located on the grave.

Conclusion

46. The faculty sought will be granted. Mr Howitt may remove headstone 2 and install a replica of headstone 1. A condition is that he endeavours to secure agreement from Mrs Kennedy and indeed the wider family of the inscription to be placed on the new stone and that he seeks my approval of the wording, telling me of the steps he has taken (successful or not) to secure agreement within the family. It is of course my hope and prayer that relationships may yet be mended.

47. There will be the usual order that the petitioner must pay the court costs, which inevitably will be considerable; Mrs Kennedy will bear her own costs. I add in this context the observation that the archdeacon was present throughout the hearing and will have heard of the wholly lamentable record of neglect and inaction by the diocese and some of its office-holders which came close to denying justice to Mr Howitt and which added to the length and cost of these proceedings.

David McClean Ch

11 July 2012