

In the Consistory Court of the Diocese of Worcester

Archdeaconry of Dudley: Parish of Kingswinford St Mary

Faculty petitions relating to the erection of memorial stones:

- A. for the retention of the existing memorial to Michael Fradgley**
- B. for the removal of the existing memorial to Michael Fradgley**
- C. for the erection of a memorial to Enoch John Jones and Vera Maud Jones**

Judgment

1. This concerns three petitions relating to headstones in the churchyard of St Mary, Kingswinford. For reasons which will become apparent, they should never have reached the stage of a court hearing; and it is much to be regretted that the bereaved families have had to suffer prolonged stress and anxiety (and expense) through no fault of their own.
2. The first petition ("the Fradgley Petition") was submitted on 29 November 1998, and seeks retrospectively to authorise the memorial stone that was erected on 18 November 1996, commemorating Michael Fradgley, who died on 9 July 1996. The petitioners are Mrs B A Fradgley (the widow of Michael Fradgley) and Mr and Mrs K Fradgley (his son and daughter-in-law).
3. By the second petition ("the Archdeacon's Petition"), dated 9 December 1998, the Archdeacon of Dudley sought authorisation for the removal of that stone. This was necessary solely as a procedural device since, once a memorial has been introduced into a churchyard, with or without authorisation, it may only be removed under the authority of a faculty or as a result of a restoration order.
4. The third petition ("the Jones Petition") was submitted on 14 January 1999. It seeks authorisation for a memorial stone, that has not yet been erected, to commemorate Enoch John Jones and Vera Maud Jones. The petitioners are Mr C Jones, the son of the deceased, and his wife.
5. Each of the memorials in question is in the form of an opened book, at an angle of approximately 60 degrees to the horizontal. The Fradgley memorial is in black granite, and is described as having an "eggshell polish, non-reflective"; the Jones memorial is to be "black granite, all polished".

6. The PCC passed a resolution on 19 January 1999 supporting the Archdeacon's Petition, and I treated the notice of that resolution as being also a Notice of Objection to the Fradgley Petition. In its Particulars of Objection (to the Fradgley Petition), dated 30 March 1999, the PCC explained that it objected to the open book shape of the memorial, on the grounds that:

- (i) it is contrary to the Chancellor's standards;
- (ii) it is contrary to the wishes of the PCC;
- (iii) it would create an undesirable legal precedent that many would want to follow.

The PCC also objected to the Jones Petition, on precisely the same grounds. It thus became a formal objector (in the terms of the Faculty Jurisdiction Rules, a "party opponent").

7. There were no other objectors to either the Fradgley or the Jones petitions.

Procedure

8. The Fradgleys indicated that they wished to be heard at an oral hearing. However, even if such a view had not been expressed, I would not have considered that it was expedient to deal with the matter solely on the basis of written representations, in view of the allegations that were made relating to the conduct of the memorial mason who erected the stone that is the subject of the Fradgley Petition, to which I shall refer in due course. In those circumstances, it also seemed appropriate to determine the other two petitions only after an oral hearing.

9. I accordingly held a Court in the Church Hall at Kingswinford, on Thursday 2 December 1999. Evidence was given on behalf of the Fradgleys by Mrs K Fradgley and Mrs B Fradgley, and on behalf of the Joneses by Mr C Jones and his daughter Victoria Jones. The Incumbent appeared on behalf of the PCC. The Archdeacon appeared in person. I also heard evidence from the Secretary of the Diocesan Advisory Committee (DAC). The memorial masons involved were also invited to attend - W H Tinsley, of Oldbury, who had erected the memorial to Michael Fradgley; and Wombourne Funeral Services, who had been acting on behalf of Mr and Mrs Jones. Each declined to do so.

10. I also saw the Fradgley memorial, since it had already been erected and I inspected the Churchyard generally.

Decision

11. For the reasons I explain below, I have decided to authorise the retention of the Fradgley memorial, and the erection of the Jones memorial. It follows that I refuse the Archdeacon's petition.

The factual background

12. The way in which these petitions came before me is not entirely straightforward, and I should therefore perhaps set out reasonably fully my findings as to the facts which led up to the need for these petitions to be before me for determination. I have incorporated the factual and other evidence presented on behalf of the Fradgleys and the Joneses, which was not contested at the hearing - although it is significant that, as I have noted, Mr Tinsley, the mason responsible for the Fradgley memorial that has been erected, was not present or represented.

The Fradgley memorial

13. Michael Fradgley died on 9 July 1996, and his funeral arrangements were handled by a local firm of undertakers. His widow was subsequently sent an unsolicited letter by Mr Tinsley, a monumental mason in Oldbury, together with a brochure outlining the services he offered. That brochure referred to the different regulations that applied in different cemeteries and churchyards. Mrs Fradgley, the widow, chose from Tinsley's catalogue a memorial in the form of an open book (pattern B4), together with kerb to enclose the whole burial plot. Mr Tinsley pointed out to her that the kerb would not be allowed, other than (possibly) by going through the full faculty procedure, but apparently said nothing similar with regard to the fact that the memorial was to be in the form of an open book. Mrs Fradgley did not want to undergo the trauma of the faculty procedure, and so compromised, instructing Tinsley to erect the book-shaped memorial but without the kerb. A quotation was duly provided for that memorial, dated 30 August 1996, and the memorial was erected on 18 November 1996 and paid for, in cash, the following day.
14. The memorial stands on a base 3 ft (approximately 91 cm) wide and 2 ft (61 cm) deep; the book itself is approximately 2 ft (61 cm) wide) and 18 in (46 cm) high; the overall height above the ground is approximately 2 ft (61 cm). As to the choice of a memorial in the form of a book, Mrs Fradgley (senior) told me that she chose it simply because she liked it. Further, if she had known that books were not included in the

- guidelines, she would have been disappointed, but would have chosen something else - as indeed she did in the case of the kerb.
15. Both Mrs Fradgley senior and her daughter-in-law insisted that neither of them had ever seen any form applying for permission from the incumbent, nor any other document either from the Diocese of Worcester or the Diocese of Lichfield in all of their dealings with the mason. However, a copy of the Worcester application form was sent to Canon Lungley. I was shown the form he received.
 16. I consider below in more detail the procedure that applies in this Diocese; but the relevant form requires a sketch of the proposed memorial to be produced on a separate sheet. In this case, the "design" was shown, on a yellow "Post-iff" note, in the form of a crude sketch of the side view of a standard upright slab memorial. The description on the form says nothing about a memorial in the form of a book, but describes a "vertical headstone", of height 2 feet and width 1 ft 6 in. As it happens, the height of the book that forms part of the stone actually erected is 1 ft 6 in, and the width 2 ft; and the overall height of the memorial is 2 ft. But I consider that any coincidence of measurements to be fortuitous. I note too that the dimensions are slightly odd for a standard vertical headstone, in that a stone 2 ft high by 1 ft 6 in wide would be significantly smaller than most standard memorials; indeed, the "Rules" specify a minimum width of 1 ft 8 in. Be that as it may, it seems to me that the application, taken as a whole, contemplated an altogether different memorial to that which was erected.
 17. In the space on the form for the signature of the "applicant" was a signature purporting to be that of "B. Fradgley", and the date 30 August 1996. In the space for the signature of the mason was the standard signature of Tinsley's firm, that appeared to have been produced with a rubber stamp, and the date 18 September 1996; precisely the same signature appears on the standard letter that was originally sent to Mrs Fradgley soliciting her custom. I was shown the passport of Mrs B Fradgley, and I also saw her sign a piece of paper in my presence. In both cases she signed "B. A. Fradgley" in a clearly legible script; the signature on the form is in a wholly different script, and significantly less legible. I am in no doubt that the signature on the form is not that of Mrs Fradgley. I also note that the script of her purported signature is very similar if not identical to that in which are written the two dates on the form, "30.8.96" and "18.9.96".
 18. I therefore conclude that the form (which referred to a vertical stone) did not describe the memorial (in the form of an open book) that was in fact proposed and that had formed the basis of the contract between Mr

Tinsley and Mrs Fradgley. Further, whoever signed the form, it was certainly not Mrs Fradgley. In addition, although I have not heard from Mr Tinsley, it seems to me probable that, when he submitted the form for approval, he must have known that he had no authority to propose the memorial shown on the Post-it note attached to the form; and that the signature on the form was not hers.

19. Canon Lungley in any event duly authorised the proposed memorial as described on the form. He did not however check what was actually put up; as he put it, he assumed that it was not necessary to check on the integrity of the stone mason; and he was the only priest serving a parish of 20,000 people, and had many other tasks to attend to. Indeed, his attention was only drawn to the unauthorised memorial when another similar one was proposed for the plot next door.

The Jones memorial

20. The history of that other memorial is more straightforward. Enoch John Jones died on 22 August 1996. His widow discussed the question of a memorial with her son (Clive Jones, one of the Petitioners), and decided on one in the shape of a book, possibly influenced by the Fradgley memorial on the neighbouring plot. Mr Jones at the hearing also drew my attention to a number of similar memorials at Kingswinford and in Pensnett.
21. Unfortunately, however, before her wish could be carried out, she too died - on 5 May 1997. Mr Jones, therefore, in due course approached Wombourne Funeral Services, along with his daughter Victoria, then aged around 8. Mr Jones was aware in general terms of his mother's wish for a memorial in the form of an open book; it was his daughter who, on the basis of conversations with her grandmother, knew what particular design she had wanted - for example, that it should have a gold divider. They accordingly together chose a stone, in the form of an open book with a gold divider, on 30 October 1998 and paid for it on the following day. They also signed a form, completed by the mason, and dated 11 November 1998, to apply for the permission of the incumbent.
22. The form actually used was in fact that issued by the neighbouring Diocese of Lichfield - in which Wombourne lies -but nothing turns on that, since it is in all essentials the same as that used in this Diocese.
23. Mr Jones stated that he had no wish to go against the Diocesan guidelines, but wished that he had been made aware of them at the time when his father had been buried. However, his mother having

chosen the design -because, he thought, "she liked the layout" and because "it was open" he did not want now to go against her wishes. He stated that had he, or his mother, been aware of the guidelines earlier, he might well have chosen something that complied with them.

24. Be that as it may, the incumbent, Canon Lungley, on the day after he received the application form, declined to authorise the proposed memorial, on the grounds that "Book shape memorials not allowed by Worcester Diocese". He returned the form to the mason, who in turn informed the Joneses; and they in due course, by now emotionally committed to the book design, submitted the petition for a faculty, which led to the present proceedings.

The Case for the Objectors

25. At the oral hearing, Canon Lungley, the incumbent, emphasised that he was not appearing in a personal capacity, but on behalf of the Objectors (the PCC). He observed that Diocesan policy appeared to require general conformity in churchyards; that the general requirement was for vertical slabs; and that an open sloping book did not conform to that requirement. He received three or four applications each year for memorials in the shape of books, and usually managed to deflect them; he could not recall any other instances where he had actually had to reject them. He also noted that the earlier book memorials in the churchyard predated his arrival in the Parish (in 1988); his predecessor had not always strictly observed the Rules laid down by Lichfield. The PCC also did not wish to create a new precedent.
26. As to book memorials in principle, ignoring for the moment the Diocesan rules, he was himself indifferent. He noted the local devotion to book memorials, referring in particular to Gornal Wood Cemetery. He could understand opposition to hearts and angels, but had no problems with crosses or books. There is theological justification for books in that they could be taken to echo references in the scriptures to the Book of Life.
27. Canon Lungley further stated that he endeavoured to postpone the consideration of memorials until well after the funeral in question, although he noted that there is a trend towards the earlier erection of memorials. In relation to the finish of the Fradgley stone, he commented that the notion that an eggshell finish is non-reflective is a fiction. He also gave evidence as to various procedural points some of which I have already noted. In particular, he explained that the Churchyard "Rules" were probably not displayed in public; the porch was in any event only accessible when the Church was open. He noted that local masons frequently copied their own stocks of application forms.

The Case for the Archdeacon

28. The Archdeacon relied largely on a helpful memorandum that he had submitted earlier. He noted that, although book memorials are out of line with the Diocesan rules, it was not uncommon for those rules to be departed from over a number of years. In such circumstances, it may be possible for a new start to be made, so that earlier non-conforming memorials are not regarded as precedents to justify subsequent breaches, although that may be difficult pastorally.
29. As to this particular case, in view of the slightly unusual circumstances, not to mention what appeared to be some element of deception, the Archdeacon considered that it might be appropriate to allow these memorials but to implement an exclusion of book memorials from now on or to ease that exclusion. He also commented that the depiction of a book might be to represent the book of life generally, or possibly the book of the particular life of the deceased.
30. More generally, he considered that the rules should be properly publicised; they should be posted in a public place; they should be given to the bereaved at around the time of the burial; and they should be publicised to stonemasons. This view was echoed by others at the hearing - and various suggestions were made as to how greater publicity could be achieved. Further, the Archdeacon expressed a view that newly erected memorials should ideally be checked to ensure that they conformed to the approved specifications, although he recognised that there were practical difficulties in ensuring that this takes place in every case.

The Case for the Diocesan Advisory Committee

31. The Secretary of the Diocesan Advisory Committee (DAC) gave oral evidence on behalf of the Committee. He explained that the DAC had last considered memorials in general terms some five years ago, but that he had discussed this case with the Chairman. However, the DAC would wish to take an overall view, including a consideration of pastoral matters; it was conscious of the emotional and financial investment in memorials by all concerned. He too noted that there was an unfortunate lack of clarity in the wording of the current rules.
32. He emphasised that memorials should have a common dignity - the basic dignity that is shared by all in life and, hopefully, in the hereafter. In addition, memorials should harmonise with a churchyard, in which

there should in general be an absence of discord. They should also form an appropriate setting for the church in its midst; hence the preference for sandstone over granite; dark granite memorials in particular clash with the texture and colour of buildings in the Diocese. And granite does not weather gracefully, as sandstone does; and a polished surface can be disconcertingly reflective.

33. As to book memorials, he felt that a representation of a book in stone is unnatural; the stone is itself a record of the life commemorated, and there is no need to represent in stone a natural object, whether a book, a heart or anything else.

The law

Diocesan "Rules"

34. Any memorial to be placed in a churchyard must be duly authorised - either by this Court or by anyone to whom this Court delegates its authority. In practice, in the vast majority of cases, the erection of a headstone is authorised by the incumbent who has the responsibility for the churchyard concerned, under the terms of the delegated authority given to all incumbents in the Diocese by this Court. However, that only entitles an incumbent to authorise memorials that comply with certain standards, commonly but erroneously referred to as churchyard "rules" or "regulations". It follows that anyone wishing to erect a memorial that does not comply with those standards is perfectly entitled to seek authority to do so, but in such a case the necessary authority has to be given by this Court directly rather than by the incumbent on its behalf.
35. The reason for this procedure is that the general standards are intended to encompass all of the types of headstone that are commonly found and which are in the great majority of cases unobjectionable. And in practice, the great majority of proposals perhaps, at least from some points of view, regrettably are indeed for headstones of a broadly similar kind, and raise no issues that are likely to cause controversy. It would clearly be unsatisfactory, not least from the point of view of those seeking to erect such memorials, if each proposal had to be individually approved by the Chancellor - possibly involving a site inspection, and almost certainly leading to considerable delay and greater expense. The incumbent is for that reason empowered to give the necessary authorisation in each such case.
36. But it should not be thought that the issue of such standards means that all memorials that come within their scope will necessarily be

automatically permitted by the incumbent or by this court or that those which fail to come within with their scope must inevitably be refused. I have considered this issue and, in particular, the question of the incumbent withholding approval for a memorial that comes within the standards in my judgment last year in the case of *re Hagley, St John the Baptist*.

37. As to memorials outside the scope of the general standards, it is true that some will be refused, as being unsuitable for the particular churchyard for which they are proposed. Examples would be, in most if not all cases, those of unsuitable materials (such as white marble, as in *re St Paul, Hanging Heaton*¹ and *re St Peter, Kineton*²) or those with photographs of the deceased (as in *re St Mary's, Fawkham*³). Many types of memorials which are commonly seen in municipal cemeteries, either in this country or elsewhere, are thus unsuitable for English country churchyards.
38. However, at least some non-standard memorials will be approved. This is likely to be for one of four reasons. The first is where a proposal is for a specially designed memorial which may be non-standard, but which is a fine work of art in its own right. Such proposals are indeed to be positively encouraged. The second is where a proposal relates to a category of memorial that may be suitable in some churchyards but not in others, so that it would be inappropriate to issue a general authorisation. There are after all some variations between churchyards in different parts of the Diocese; and such regional variations are not to be either ignored or suppressed. The third situation where a non-standard memorial may be allowed is where it is of a type, which may or may not be desirable in itself, of which there are so many examples in the churchyard concerned that it would be unconscionable to refuse consent for one more. The fourth reason for approval is where a stone might be aesthetically or otherwise unsatisfactory, but where there are compelling personal or other circumstances suggesting that a faculty should nevertheless be granted.

The procedure in this Diocese

39. The procedure in this Diocese, which I understand to be similar to that applying in most if not all other dioceses, is as follows. Any person who wishes to introduce a monument into a churchyard can of course simply submit a petition for a faculty, which would be processed by the

¹ [1968] 1 WLR 1210, Wakefield Consistory Court

² [1966] 1 WLR 347, Coventry Consistory Court

³ [1981] 1 WLR 1 171, Court of Arches

Chancellor as any other petition. In practice, however, except where a proposed memorial is of a very unusual character, the applicant will apply for the consent of the incumbent of the church concerned, on a standard form issued by the Diocese. As already noted, copies of this form are made by undertakers and monumental masons and used as appropriate.

40. The form first requires the applicant to sign his or her name beneath the following statement:

- "1. I/we apply to you [that is, the incumbent or priest in charge] for permission to place in [name] Churchyard, on the grave of the late [name], who died on [date], the monument described below.
2. I/we believe this monument conforms to the Churchyard Regulations issued by the Chancellor of the Diocese, printed overleaf.
3. I/we undertake that if you grant permission, the proposed monument when erected will conform to the description in this application, and also to indemnify you or your successors against all costs and expenses to which they may be put if not so erected.
4. I/we enclose with this application the appropriate fee of £ [amount], and have read the principle [sic] regulations below and agree to abide by them. (N.B. Some churchyard regulations vary)"

Beneath the first of the above questions are to be inserted the details of the monument to be erected (with a sketch to be supplied on a separate sheet), and those of the monumental mason undertaking the proposed works. In addition, the "applicant" must state his or her name, address, and relationship to the deceased person who is to be commemorated. The form then requires the mason to sign his or her name beneath the statement "I/we agree to undertake this work on behalf of the applicant." There is then a space for the incumbent or priest in charge to give his or her consent to the proposed monument, possibly subject to conditions if appropriate. Alternatively, he or she may state "I cannot give consent for this monument as it does not conform to the Chancellor's Churchyard Rules", in which case reasons should be stated in writing.

41. The form also sets out, under the heading "Principal regulations under which the Chancellor permits an incumbent or priest in charge to

sanction erection of a monument without faculty", a series of "notes", including the following:

- "Note 1. No monument may be erected without written permission.
- Note 2. An incumbent may only give consent for such memorials as conform to the Chancellor's approved standards. Monumental masons should note that in certain parishes there are additional approved regulations.
- Note 3. All other types of memorial must be authorised by the Chancellor, under Faculty. He will sympathetically consider any memorial which is well designed and made of appropriate materials ...
- Note 5. The existence of a memorial or memorials similar to the one for which permission is being sought is not of itself a reason for giving permission."

42. Finally, a document was issued, dated June 1995, entitled Diocese of Worcester: Rules for the Introduction of Churchyard Memorials, which is normally issued to undertakers, masons and other interested persons along with the application form described above. This states, in part, as follows:

"STANDARDS FOR MEMORIALS

1. Dimensions of headstones

- a) Headstones should be no larger than 4 ft (1200 mm) high, measured from the surface of the ground, 3 ft (900 mm) wide, and 6 ins (150 mm) thick. They should be no less than 1 ft 8 in (500 mm) high, 1ft 8 in (500 mm) wide, and no less than 3 in (75 mm) thick, except in the case of slate materials, which may be thinner but no less than 1 inches (38 mm) thick.
- b) Horizontal slab stones not exceeding 2 ft (600 mm) wide and 6 ft (1800 mm) length, sunk so that the surface of the whole is level and flush with the surrounding earth.
- c) Simple crosses not exceeding 3 ft (900 mm) in height.

4. Designs

Headstones need not be restricted to a rectangular shape, and carved tops are preferable to straight-edged tops. Memorials in the shape of a book are not permitted, nor are

photographs, portraits, kerbs, railings, chains, chippings or glass shades.

5. Sculpture

Figure sculpture and other statuary can only be authorised by faculty.

6. Epitaphs

Figure sculpture must be simple and reverent, and may include appropriate quotations from literary sources. Inscriptions should be incised, or in relief, and may then be painted. Plastic lettering is not permitted.”

43. The above "Rules", which replaced a previous version in broadly similar terms, are similar to those that have been in use in the Diocese of Lichfield for at least the last ten years, and are based on the sample rules included in Appendix II to the Churchyards Handbook, produced by the Council for the Care of Churches⁴. They are also similar to the rules reproduced as Schedule A to the specimen Instrument of Delegation which is itself reproduced as Appendix III to The Faculty Jurisdiction of the Church of England, by Newsom. As I pointed out in my judgment in the Hagley case (see above), neither of the two specimen sets of rules, nor the rules in use in this and the neighbouring Diocese, are satisfactory, in that they contain a curious mixture of prohibitions, preferences, and comment; the sample rules produced by Newsom are more consistent in this regard, but as a result seem to be overly legalistic.
44. In particular, the combined effect of the "Notes" on the application form used in this Diocese and the "Rules" is such that, in my view, it is not sufficiently clear that the "Rules" do not prohibit a memorial that does not come within their terms, but simply require that it must be authorised by the Chancellor rather than by the Incumbent or Priest in Charge. In such a case, therefore, an incumbent or priest in charge is encouraged simply to decline to grant consent, without actually turning his or her mind to the questions of whether in fact the proposed memorial is likely to be a thing of beauty and an asset to the churchyard, whether there are other reasons suggesting that it should be approved, or whether it will be a wholly unsuitable intrusion.

⁴ Third edition, 1988; a new edition is in preparation, but without specimen rules

45. Nor is it made sufficiently clear that PCCs and incumbents may prepare their own "churchyard rules", for approval by the DAC, if they feel that the general diocesan "rules" are for any reason inappropriate. My understanding is that very few, if any, such churchyard rules have in fact been prepared by individual parishes.

Conclusions

Objection on grounds of non-compliance with diocesan standards

46. It follows from the above that the objection in the present case that "book shape memorials not allowed by Worcester diocese" (initially given as the reason for refusing the application for the Jones memorial) is not entirely accurate. Somewhat more accurate, but still unhelpful, is the ground of objection to the two petitions that they are "contrary to the Chancellor's "standards". The essential feature of the procedure outlined above is that the so-called Diocesan rules in effect enable (although they do not require) an incumbent to give permission for a standard memorial; but they do not prevent anyone from seeking a faculty for a non-standard memorial
47. Where someone does seek a faculty for such a memorial, therefore, it is necessary for the incumbent to consider whether he or she is able to support it. As I have indicated above, that is likely to be in one of four situations:
- where a proposed memorial is a fine work of art in its own right.
 - where a proposed memorial is suitable in the particular churchyard concerned, even though it might well be unsuitable elsewhere.
 - where a proposed memorial is of a type, which may or may not be desirable in itself, of which there are so many examples in the churchyard concerned that it would be unconscionable to refuse consent for one more.
 - in any other case, where there are compelling personal or other circumstances suggesting that the memorial should nevertheless be approved.
48. In other words, mere non-compliance with standards can never be of itself the only basis on which to oppose a faculty petition after all, in most cases, the petition would not be necessary if there was compliance. It is thus necessary to consider whether the particular

memorial in question is inherently desirable, or at any rate not undesirable, whether or not it complies with the standards.

49. I was, in particular, not impressed by the comment from Canon Lungley that he was "quite indifferent" on the issue as to whether a book should be allowed. Once a petition has been submitted, an incumbent cannot simply walk away from the problem of whether it is inherently desirable; he or she must reach a conclusion, so as to recommend to me that either that it should be allowed, albeit that it is non-standard, or that it there are no special reasons to allow it.

Objection on grounds of materials, colour and finish

50. There appear to be some reservations on the part of the DAC to the use of granite for memorials. I share those reservations, and strongly encourage the use of sandstone or slate, or other stones used locally. This is partly for aesthetic reasons - granites and marbles rarely blend well with the church itself. But there is another, perhaps more important, reason. Granite, in particular, is a hard, unyielding material that does not age gracefully; whereas a memorial to someone who has died should gradually age and, over the centuries, become worn and indistinct and, eventually, return to become part of the ground from which it was taken - just as the memories of the deceased will also, over that same period, become indistinct and, eventually, fade into the mists of history.
51. However, I realise that granite is a popular material in many areas and that, at least for the moment, it would be unreasonable for its use to be generally forbidden either by incumbents or by me. It may well be of course that in some churchyards it is particularly inappropriate, but that is not the case here.
52. Secondly, there is concern by the DAC as to the black or other dark colour that is chosen increasingly often for memorials; and, on the part of both the DAC and the Incumbent, as to the high gloss finish that is used. As to colour, the Diocesan "rules" authorise the approval by incumbents of granite memorials, but only if they are no darker than Rustenberg grey. In practice, however, in very many churchyards there are numerous recently erected memorials that are, in any normal sense of the word, black. And as to the polished finish, whether it be described as eggshell, reflective, highly polished, or whatever, there are many stones that are in fact very highly polished.
53. For the same reasons as expressed above, I share that concern too; but, again, I do not feel that, in this case, I can refuse to authorise the

memorials on that basis, since there are too many memorials that are black, polished, or both.

54. It follows that the only remaining ground of objection is that the memorials are in the shape of a book.

Memorials in the shape of a book

55. As to memorials in the shape of a book, I see no reason in principle against them. A book is not inherently an inappropriate symbol. It could be said to represent the book of life, as referred to in the Bible at (amongst other places) Psalm 69, Philippians 4, Revelation 3 and 20 and, possibly, Daniel 12; although at the time those were written, the "book" referred to would in fact have almost certainly been in the physical form of a scroll, rather than a bound volume as we know it today. Alternatively, as pointed out by the Archdeacon, it could represent the book of a particular life (although in that case the symbolism would be more powerful if the book were represented as being closed, rather than open). It could even be to represent the Bible itself.
56. I have only been able to find one decision of a consistory court relating directly to a book memorial - that in *re Ryton on Dunsmore*. The very brief summary of this in the *Ecclesiastical Law Journal*⁵ reads as follows:

A petition for the introduction of a gravestone in the form of an open book, which was not recommended by the DAC and offended against the diocesan regulations, was dismissed. There had to be very strong reasons before the faculty could be granted in respect of such a memorial. It would not as a general rule be a valid reason to make an exception that examples of breaches of the regulations already existed in the particular churchyard concerned. The church had to be vigilant against continuing bad practice.

I have sought out a full transcript of this decision in the Middle Temple Ecclesiastical Law Centre. On the question of whether or not memorials in the shape of an open book are acceptable, the only relevant passage is as follows:

For many years now this and other dioceses have set their face against the open book type memorials. Such memorials have been considered inappropriate for churchyards.

⁵ (1990) 2 Ecc LJ 230, Coventry Consistory Court

Unfortunately, however, the learned chancellor declines to say why they have been considered inappropriate. And to the extent that he is saying that a book memorial should be forbidden solely because it offended against the diocesan regulations, I am unwilling to follow the decision, for the reasons set out above.

57. I can see that there might be some reservation about book memorials on the grounds of their possible instability, especially in the long term, compared to a simple vertical stone which can more easily be securely joined to the foundation slab. However, in this case no objection was raised on those grounds.
58. Overall, then, I find that there is no reason of general principle against a memorial in the form of a book.

Book memorials in Kingswinford churchyard

59. I have noted that there are other memorials in the churchyard that are in the shape of a book, some in black, a few in white; but there are not very many of them, and they all predate the arrival of Canon Lungley. Further, since then three or four applications a year have been turned away, so that there could be said to be a strong local practice of not allowing books - albeit that the policy basis for that practice would not seem to be very strong, particularly bearing in mind that Canon Lungley seems to have no particularly strong feeling against them.
60. It might be reasonable for the PCC to decide that it is willing for book memorials to be introduced into this particular churchyard, bearing in mind the number that have been introduced in the past, and the pressure for them more recently. I do not say that it necessarily would be appropriate and on the basis of the evidence given in this case by its Secretary, the Diocesan Advisory Committee might well be slightly unenthusiastic. But, it would in principle be possible for the parish to seek approval for rules applying specifically to this churchyard - even though, as I have noted, this only happens very rarely if at all. However, that has not been done. I therefore infer that, at least for the moment, book memorials will only be allowed occasionally, and will have to be approved by faculty.
61. I see no other reason in principle why a memorial in the shape of a book should be especially suitable in this churchyard.

Special circumstances

62. It follows from the above that the second and third reasons in paragraph 47 above do not apply.
63. Each of the two memorials in this case is an example of a standard type, chosen from the mason's book of patterns. As such, whilst each is perfectly seemly, neither is a great work of art in its own right nor has any claim been made that it is. It follows that the first of the reasons in paragraph 47 above does not apply either.
64. The only remaining question is thus whether there are any compelling personal circumstances suggesting that a faculty should be granted. It seems to me that in this case there are.
65. I have noted above the unusual, and very unsatisfactory, circumstances in which the Fradgley memorial came to be in the form that it is. I have no reason to suppose that Mrs Fradgley was given any idea that her preferred choice of memorial was likely to cause the problems that have in fact arisen. I thus accept her evidence that, if she had known that, she would have (no doubt reluctantly) chosen another design as she did in the case of the kerb surround. As for the matter of the approval form that was submitted to Canon Lungley, it is of course theoretically possible that she was fully aware, or at any rate that she suspected, that it related to a different stone to that which was in fact erected; but I consider that to be very unlikely - the discrepancy was, after all, likely to come to light sooner or later. It follows that it was not her fault that the only form that was submitted to Canon Lungley was for the authorisation of a different stone.
66. Funeral directors and monumental masons have a particular responsibility to make themselves fully aware of the law and practice relating to burial in churchyards, so that they can be of real assistance to their clients - who, inevitably, are likely to have many other, practical matters to deal with and to be emotionally vulnerable to guide them carefully and sensitively through what may in many cases be a stressful process. It seems that conduct of Tinsleys, the masons who were responsible for the Fradgley memorial, may well have fallen far short of that ideal. I say "may" because Tinsleys did not appear at the hearing, and were not represented. But it certainly appears on the face of it that the form that was submitted by them contained a signature which was not that of Mrs Fradgley, and sought authorisation for a stone which they did not intend to erect.

67. I am also surprised that Canon Lungley was willing to accept a form where the proposed design was indicated in such an informal way, by means of a freehand sketch on a Post-it note. And it was, to say the least, unfortunate, that it subsequently took so long for the discrepancy to be noticed - so that the matter has taken four years to reach this stage. Neither of those matters are the fault of Mrs Fradgley, however.
68. It seems to me, therefore, that in all the circumstances it would be unreasonable to put Mrs Fradgley to the trouble and expense - and possible distress - of having to remove the stone that has been put up, in order to erect a replacement in the form of a vertical slab. I say that with some diffidence since, if the memorial had been of a particularly objectionable kind, the circumstances of this case would not be sufficient to persuade me to authorise what would be a permanent disfigurement to the churchyard. However, the Fradgley memorial is not inherently unsatisfactory; it is at worst non-standard.
69. I therefore grant a faculty for the retention of the memorial to Michael Fradgley, until further order. It follows that the Archdeacon's petition fails.
70. It also seems to me that it would be unreasonable to allow the Fradgley memorial but not to allow a virtually identical memorial to be erected above the neighbouring burial plot. I therefore grant a faculty for the introduction of a memorial to Mr and Mrs Jones, again until further order.

Churchyard rules

71. Finally, I am very mindful of the criticisms of the existing Diocesan "rules" that have emerged during the course of this case particularly in relation to the publicising of them. This judgment is not the place for a detailed consideration of possible changes, but all those involved in the present unhappy saga may rest assured that the whole matter is under active review both within this Diocese and more widely - and that the irritation which they have no doubt felt has thus not been entirely in vain.

Costs

72. I am aware that the Fradgley and Jones petitions were brought about as a result of events that seem not to have been in any way the responsibility, let alone the fault, of the petitioners. In order that the matter could be properly resolved, however, there has had to be a court

hearing, as well as much correspondence. All this has to be paid for even if, as is likely in a case of this kind, all concerned keep their costs to the absolute minimum. I have therefore considered carefully how those costs can most fairly be apportioned.

73. By virtue of the rule laid down by the Court of Arches in the case of St Mary Sherborne⁶, the cost of faculty petitions, including registry and court fees, falls in the first instance on petitioners even where they are successful in obtaining a faculty. Where there are objections to a petition, it is open to the consistory court to make an order that some or all of those fees should be reimbursed by the objectors; but such an order should only be made if there is clear evidence of unreasonable behaviour -which was not the case here.
74. I am aware that one of the petitions was made by the Archdeacon, at the suggestion of the court. This was because, had I found in favour of the objectors, it would not have been satisfactory for there to be a further delay while a petition was submitted for the removal of the stone. The intervention of the Archdeacon, and to some extent that of Canon Lungley, was thus in the interests of ensuring good order generally in this area of the Church's life, and I am grateful for their assistance. In the event, of course, the Archdeacon's petition failed, because of the unusual circumstances of the case but the outcome of this case will be of benefit more widely than just to those directly concerned.
75. It therefore seems wrong that the Fradgleys and the Jones's should pay all of the costs, given that the dispute was not their fault, and that the resulting benefits will assist the wider Church. It therefore seems to me that the right order is that all parties should bear their own costs, but that the court fees and registry costs should be borne equally by the three petitioners.

CHARLES MYNORS

Chancellor

21 February 2000

⁶ [1996] Fam 63, Court of Arches