

DIOCESE OF SHEFFIELD
In the Consistory Court

Her Honour Judge Sarah Singleton QC
Chancellor

In the matter of David Bell deceased

Interim Judgment

1. The facts

The Petitioner in this matter is the daughter of David Bell and his widow Cristina Bell. She is Carol Ann Swift and she brings this Petition with the support of her sister Alison Maynard. They are the only children of the Bells.

Mr. Bell was Scottish and moved to South Yorkshire from Kirkcaldy in search of work as a miner in the 1960s. He died in 1976 in circumstances that are not set out in the Petition or in the correspondence and was buried in the cemetery at Edlington. His burial plot is in the consecrated Anglican portion of the cemetery, hence the jurisdiction of the Consistory Court over what is now sought. It is said in the Petition that during his lifetime it was his wish to return to Scotland. The family had a large number of relatives in Scotland and would visit there very frequently.

At the time of his death his widow was unable to afford to arrange for his burial in Scotland which was his wish. At the time of his death the Petitioner was 18 years old; she was not consulted about the arrangements.

Mrs. Bell survived her husband by forty years. She never remarried. During the last 14 years of her life she suffered from vascular dementia. She was however consistent and coherent in expressing a wish that her remains and her husband's should be taken to Scotland and buried together. She died on May 6th this year. I infer from the documents that her body has been cremated and that her daughters have postponed making arrangements for her remains until the question of their father's possible exhumation has been determined. Their approach to the Registry was made promptly after they discovered that their father's interment had been in the Anglican consecrated part of the cemetery. They believe this to have been a mistake; although both sisters are now, as adults, baptised members of the Church of England their father was a Baptist and they attended a Methodist Church as children where his funeral was held.

A number of the family's Scottish relatives are buried in Dysart Cemetery in Kirkcaldy. I glean from the papers that the Petitioner and her sister intend, if this Petition is granted, to arrange for the cremation of their father's remains at Rose Hill

Crematorium in Doncaster and then for their mother and father's remains to be buried together at Dysart Cemetery.

The Petition is supported by a strongly worded letter from Reverend Andrew Platts who is a Member of the Institute of Civil Funerals. He recommends my granting the wish of the daughters "without let or hindrance" and records that he is "unaware of any legal or ecumenical reason that permission should not be granted"

2. The Law

I have the advantage of a large number of decisions of chancellors demonstrating how they have exercised their discretion in these matters. That is a discretion delineated in the leading case of *Re Blagdon Cemetery* [2002] 3 WLR 603, a decision of the Court of Arches which overturned a first instance decision to refuse permission for exhumation apparently on the grounds of the passage of time alone.

The crucial reasoning of the *Re Blagdon* decision can be found at paragraphs 33 and 34 and reads as follows:-

33. We have concluded that there is much to be said for reverting to the straightforward principle that a faculty for exhumation will only be exceptionally granted. Exceptional means "forming an exception" (Concise Oxford Dictionary (8th Edition, 1990)) and guidelines can assist in identifying various categories of exception. 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.

34. The variety of wording that has been used in judgments demonstrates the difficulty in identifying appropriate wording for a general test in what is essentially a matter of discretion. We consider that it should always be made clear that it is 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. It will then be for the chancellor to decide whether the petitioner has so satisfied him/her.

One source of the Court's "norm" was the work of the Right Reverend Christopher Hill, then the Bishop of Stafford:- *The Theology of Burial* which was referred to in the judgment. The work makes clear that burial is symbolic of entrusting the person to God and commending, saying farewell and entrusting them to rest in peace. These concepts, the work explains, are inconsistent with an idea that human remains can be portable. The principles found in *The Theology of Burial* are repeated in later Church guidance. In addition to the Anglican Christian sources of these principles it is right to say that there is a similar presumption of permanence to be found in English secular civil law.

One of the Blagdon categories of possible exception is exhumation in order to place remains within a “family grave”. Petchey Ch., in his 2012 decision Re a Petition by Mrs. Bernadette Peter, set out extensively and exhaustively dicta from a number of family grave cases since Re Blagdon in an effort to determine the weight to be accorded to an aspiration to create a “family grave”. In that case Petchey Ch. suggests, at paragraph 51 that in resolving the practical problem of the right weight to be attributed to this aspiration, a Chancellor should examine the reasons why the remains were not interred in the first place in a family grave and whether there are any other factors that would justify a departure from the norm of permanence.

It is plain from a perusal of the authorities set out by Petchey Ch. in his Peters judgment and of those decided since that the variety of outcomes to be found in exhumation cases tend to a conclusion that in this difficult and sensitive area the facts of each case must be carefully considered and that apart from the broad principles to be gleaned from Blagdon there are not any easily gleaned rules about particular situations.

3. Reasoning in this case

1. In this case the Petitioner faces not only the general presumption that a burial place is to be permanent but also the difficulty that just over 40 years have passed since her father was buried. The passage of time is not determinative but does prompt questions to which I have not yet got the answers as to the feasibility of what is proposed. I do not have evidence (as required by the Petition form) from an undertaker or funeral director as to whether the exhumation proposed from this site after 40 years is feasible or decently possible having regard for the ground conditions and the materials used for the coffin. I can understand that it may be impossible to secure the undertakers’ records from 1976 (although an attempt should be made to do so) This does not obviate my need for evidence as to the feasibility of what is proposed from a professional. This petition simply could not succeed unless I am persuaded that what is wanted is achievable in a way which treats the deceased’s remains with decency and dignity.

2. The Petitioner’s case

1. Her father had a strong cultural and familial connection with Kirkcaldy.
2. Her father had expressed a desire to return to Scotland in life and in death.
3. Her mother’s impecuniosity as a young widow with dependents prevented his wishes being fulfilled at the time of his death.
4. It was a mistake for her father to have been buried in Anglican consecrated ground; he was an observant Baptist who worshipped at a Methodist church.

5. Her mother had a strong cultural and familial connection with Kirkcaldy and she had also expressed a desire to return to Scotland in death and to be united with her father.
6. This petition has been presented as soon as practicable after the petitioner's mother's death.
7. The petitioner wishes to arrange the interment of her parents' remains together at Dysart Cemetery in Kirkcaldy where most of their siblings and other family members have been interred.
8. This is thus a family grave case which is reinforced by the strong desire expressed in life by the deceased to have his remains in a particular place, a desire which was not able to be fulfilled at the time by reason of impecuniosity.

4. The evidence necessary to resolve the issues in this matter

In addition to a report from an undertaker to address the issues I have set out under paragraph 3.1 above I invite the Petitioner to provide the following evidence:-

- A) Confirmation from the Crematorium at Rose Hill in Doncaster that it is possible and practical for her father's exhumed remains to be cremated there in the particular circumstances of this case, namely after an exhumation following his having been buried for 40 years.
 - B) Confirmation from Dysart Cemetery in Kirkcaldy that the remains of her father and mother can be buried there together and/or at all.
 - C) Information from the authorities at Edlington Cemetery about whether her mother's remains could be buried in Edlington Cemetery together with those of her father.
 - D) Further details about the circumstances death of her father. In inviting the Petitioner to provide these I do hope not to cause her distress. I have rather assumed that her father died at a relatively young age and would like to take into account any difficulties in addition to those already set out, that it is likely her mother and his surviving family would have had in dealing with this at the time.
 - E) Further details about her mother's life after her father's death, where she lived and worked, whether she considered returning to Scotland etc.
5. I fully appreciate that the Petitioner and her sister will want the resolution of this difficult matter as soon as possible but I hope that they understand that what they want is unusual and exceptional and that the burden of justifying it lies on the Petitioner. I propose to issue a directions order adjourning consideration of it until they have had the opportunity of providing the additional evidence as set out in this judgment. I will use my best endeavours to return a decision as soon as possible after my receipt of the additional evidence.

6. I consider it expedient, proper and the right application of the overriding objective of the Faculty Jurisdiction Rules 2015 for this matter to be dealt with by written representations without a hearing. I invite the petitioner to agree to disposal accordingly. I dispense with the need for public notices in this matter pursuant to Rule 6.6 (3)

Sarah L Singleton QC, Chancellor

4th September 2016