

Re Robin Hood Cemetery Birmingham [2006] Martin Cardinal Ch.

Re Eric Pearson deceased

By a petition dated 5th October 2006 I am asked to consider the exhumation of the deceased's ashes from their burial place in the consecrated ground at Robin Hood Cemetery so that they may be scattered together with those of his late wife Barbara Florence Mary Pearson off Beachy Head. A request for such an exhumation is impliedly made in the will of the late Mrs Pearson and her Executor William Darby has understandably felt obliged to seek a petition for the exhumation of Mr Pearson's ashes. In that will Mrs Pearson requests the scattering of her husband's and her ashes as I have described.

In the questionnaire filed with the petition Mr Darby speculates that perhaps the late Mrs Pearson did not fully appreciate the consequences of burial in the consecrated part of the Cemetery. Whilst I note that I am sure that she will have been told of the meaning of Christian burial by the clergyman ministering to her at the time.

Exhumation petitions seem not only to be increasingly frequent but also increasingly contentious. I have had to deal with a number over the last year, and several recent ones. But the principles as to their being granted or refused remain the same.

The general principle is that exhumation will only be granted in exceptional circumstances. 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.

I remind myself as I have in other recent judgements of the theology of the matter. It is well set out by the former Bishop of Stafford, the Right Reverend Christopher Hill, in a paper entitled 'The Theology of Burial' of September 2001. In it he wrote this: *'The permanent burial of the physical body/the burial of cremated remains should be seen as a symbol of our entrusting the person to God for resurrection. We are commending the person to God, saying farewell to them (for their 'journey'), entrusting them in peace for their ultimate destination, with us, the heavenly Jerusalem. This commending, entrusting, resting in peace does not sit easily with 'portable remains', which suggests the opposite: reclaiming, possession, and restlessness; a holding on to the 'symbol' of human life rather than a giving back to God.'*

This is the principle underlying in my judgement the decisions of the court. The burial of a body or its ashes is intended to be the final resting place on this earth. Further, as a mark of respect for and consideration of the sensibilities of others with loved ones buried nearby, it is not appropriate in most cases for a body or its ashes to be removed, not least because of the distress this may well cause to such people and to the general public. Indeed such an exhumation can be deeply offensive.

I note in this petition I am not told whether inquiry has been made of the families and friends of the loved ones buried in nearby plots nor of their reactions to such an exhumation. Although I am told that the Cemetery authorities do not object to the exhumation I am not told of what inquiries they or the Petitioner have made of the relatives and friends of loved ones buried nearby. This is a vital and significant gap in

the evidence before me. I cannot think that such people would happily agree to the course urged on me by the Petitioner

What are the general legal principles underlying these applications?

In *Re Atkins* [1989] 1 All ER 14 the court said it should bear in mind that:

- i. The intention in burying the ashes was to commit the deceased to the safe custody of the church
- ii. The court should be '*always mindful that consecrated ground and human remains committed to it should, in principle, remain undisturbed.*'
- iii. '*There is therefore a burden on a petitioner seeking leave to disinter remains to show that the presumed intention of those who committed the body or ashes to a last resting place is to be disregarded or overborne.*'
- iv. '*...a prompt application is stronger than one made where remains have been undisturbed for many months or years.*'
- v. As a general principle a churchyard should remain undisturbed as a place of peace, prayer and recollection.

Although this case applied to a churchyard clearly there are similar principles in a case about consecrated ground in a Cemetery.

In *re Christ Church Alsager* [1999] 1 All ER 117 the Court set out the following principles:

- i. Once ashes have been interred there should be no disturbance save for good and proper reason.
- ii. Where a mistake had been made a court was likely to find in favour of a petitioner who applied promptly after discovery of the facts.
- iii. In other cases it will not normally be sufficient to show a change of mind in the part of the relatives of the deceased or that the spouse or other close relative has been buried etc elsewhere.
- iv. The passage of time [especially when this turns into years] makes it less likely that a Faculty should be granted.

The most recent case which assists is that of *In Re Blagdon Cemetery* [2002] Fam 299 which has made it clear that one must primarily look for exceptional reasons to justify an exhumation. Are there any exceptional circumstances in this case that apply? In the *Blagdon Cemetery* case the Court of Arches moved away from the 'good and proper reason' criteria advanced in *Re Christ Church Alsager* and simply looked at the issue of exceptionality. I shall do the same though I find that a request made in a will cannot of itself amount to an exceptional reason.

Lapse of time

Does the time that has passed between Mr Pearson being laid to rest and the present day (20 years) count against this application? The law is that long delay with no credible explanation for it may well tip the balance against the grant of a faculty but lapse of time alone is not the test. Yet in this case the delay *is* of considerable importance. This is not a case where the late Mrs Pearson had problems bringing a petition- it is simply made by her Executor following *her* demise. I do not consider

that this good enough to surmount the exceptionality test. It is a number of years since the burial and the death of the Petitioner is insufficient reason to justify exhumation.

Mistake

Has a genuine mistake been made ab initio in the location of the grave? That is not the case here. Mrs Pearson plainly chose a place of burial for Christians as the location for her late husband

Local support

In the *Blagdon* case that was found to be not a helpful test to apply so I do not consider that save that I consider it significant that there is no such apparent support with the petition.

Precedent

Whilst it is true that the court looks at each individual case nonetheless I bear in mind that were I to grant this petition there would be many others that inevitably might follow. As George QC Ch said in *In re West Norwood Cemetery* (unreported) 6 July 2000 "*Whilst the focus must be on the particular circumstances of the individual petition, the court's approach has to take account also of the impact its decision is likely to have on other similar petitions.*" That view was endorsed in the *Blagdon* case where the court said '*In our view, precedent has practical application at the present day because of the desirability of securing equality of treatment, so far as circumstances permit it, as between petitioners.*' In other words I cannot grant such a petition as in doing so I would invite many others doubtless to the distress of many

In the circumstances therefore the Petitioner has not shown sufficient reason to justify the grant of this Faculty and I shall refuse it.

M.J. Curran

CHAPMAN

11/11/06