

IN THE CONSISTORY COURT OF MANCHESTER

RE IRIS DEAN DECEASED

JUDGMENT

1. Iris Dean [‘the Deceased’] died on 29 December 2010, over 10 years ago, and on 1 April 2011 her cremated remains were interred in grave A136 at Blackley Cemetery Manchester. By her petition dated 21 October 2020 her daughter Anne Elizabeth Croasdale [‘the Petitioner’] seeks a faculty to exhume such remains and to re-inter them in grave A12 at Blackley Cemetery. Her sister Barbara Legg supports the petition. There are no other children of the Deceased.

2. Some brief explanation of the background facts is necessary.

3. At the date of her death the Deceased was 83 years old. She had expressed the wish to be cremated and that her cremated remains should be interred in grave A12 with her parents, brother and sister. However, on her death the Deceased’s husband did not wish to be interred with his in-laws and accordingly a new grave, A136, was purchased, being the nearest available to grave A12 and the Deceased’s cremated remains were interred in grave A136. At that time the settled intention of the Deceased’s husband was that in due course he should be interred in such grave.

4. However, in December 2020 the Deceased’s husband, who was then aged 97 years, indicated that he did not wish to be cremated and that he wished to be buried with his parents in a churchyard in Droylsden. Accordingly, in accordance with his wishes, following his death in September 2019 he was interred with his parents in Droylsden.

5. The application thus derives from the fact that at the insistence of the Deceased’s husband, the Deceased’s cremated remains were interred in a grave in which he had originally intended should also be the Deceased’s husband’s final resting place, that he subsequently changed his mind so that the Deceased’s wishes as to the place of her burial, to join other immediate family members in a family grave. were not fulfilled.

6. Manchester City Council Bereavement Services, who are responsible for the management of Blackley Cemetery, have no objection to the proposed exhumation.

7. The funeral directors who carried out the Deceased’s funeral confirm that the Deceased’s cremated remains were interred in a solid wooden casket and they believe that, subject to ground conditions, the casket should remain in a fairly good condition. Since no other remains are interred in grave A136, any exhumation will not disturb any other remains.

8. Rule 14(1) of the Faculty Jurisdiction Rules 2015, as amended by the Faculty Jurisdiction (Amendment) Rules 2019, proves that I may order that any proceedings should be determined on consideration of written representations instead of at a hearing if I consider it is expedient to do so. In a letter dated 9 March 2021 the Petitioner was advised by the Diocesan Registrar that I was minded to determine this application on the basis of written representations and on 14 March 2021 the Petitioner responded that she would agree thereto.

9. I thus determine this application on the basis of written representations.

10. Having set out the factual background I turn to the legal principles which I must apply.

11. I have a discretion as to whether I should grant a faculty. The starting point for the exercise of such discretion was conveniently explained by Steel Ch in *Re Matheson (Decd)* [1958] 1 WLR 246, at 248, when he stated:

‘From the earliest times it has been the natural desire of most men that after death their bodies shall be decently and reverently interred and should remain undisturbed. Burial in consecrated ground secured this natural desire, because no body so buried could lawfully be disturbed except in accordance with a faculty obtained from the church court. As all sorts of circumstances which cannot be foreseen may arise which make it desirable or imperative that a body should be disinterred, I feel that the court should always be slow to place any fetter on its discretionary power or to hold that such fetter already exists. In my view there is no such fetter, each case must be considered on its merits and the chancellor must decide, as a matter of judicial discretion, whether a particular application should be granted or refused.’

12. However, there is a presumption against exhumation. This derives from the Christian theology of burial that the disposal of the dead, whether by way of burial or cremation, has an aura of permanence about it. So, in *‘Theology of Burial’* the then Bishop of Stafford, the Rt Revd Christopher Hill, wrote:

‘The permanent burial of the physical body / the burial of cremated remains should be seen as symbolic 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 the ultimate destination, with us, in 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 a human life rather than a giving back to God. ... In general, therefore, the reluctance to agree to faculties for exhumation is well grounded in Christian theology and eschatology. It is also right generally from the point of view of the mourner, who must learn to let go for their psychological and spiritual health`.

13. This was cited in *In Re Blagdon Cemetery* [2002] 3 WLR 603, at 609 : the revised text is at 7 Ecc LJ 447.

14. A similar approach appears in the *Guidance for best practice for treatment of human remains excavated from Christian burial grounds in England* [English Heritage / Church of England 2005] which states:

‘In summary, it is central to Christian theology that, after death, the human body ceases to have any significance for the ongoing resurrected spiritual life of the individual. However, following death, the physical remains should be treated with respect and reverence, even though ultimately it is the fate of the soul, rather than of the physical remains, which matters.’

15. Such presumption also exists in English secular law which provides that there is no ownership of human remains, that it is a criminal offence to disturb human remains without lawful permission and that there is no legal right to exhume human remains. Such reflects a secular culture in which the norm is that the remains of a deceased person should not be disturbed once they have undergone the initial act of interment.

16. The question thus arises: in what circumstances should a court allow the disturbance of remains as an exception to such presumption of permanence.

17. In *Re Christ Church Alsager* [1999] 1 All ER 117 the Chancery Court of York concluded, at 122, that when determining an application to grant a faculty for an exhumation the critical question for a Chancellor is -

‘Is there a good and proper reason for exhumation that reason being likely to be regarded as acceptable by right thinking members of the Church at large? If there is he should grant faculty. If not, he should not.’

18. In *In Re Blagdon Cemetery* the Arches Court of Canterbury observed that there were practical difficulties associated with the test formulated in *Re Christ Church Alsager* and, at 610, concluded thus:

‘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 edn, 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.

35. 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’.

19. The court went on to consider various factors which may be argued in support of an exhumation, including medical reasons, lapse of time and mistake.

20. The guidance confirmed in *Re Blagdon Cemetery* was confirmed in *In Re St Nicholas Sevenoaks* [2005] 1 WLR 1011.

21. Applying the test in *Re Blagdon Cemetery*, I turn to consider the facts of this case. For me to grant this faculty I must be satisfied that it is established by the Petitioner, on a balance of probabilities, that the facts here justify an exception to the general presumption of the permanence of Christian burial.

22. I have no doubt that at the time of the Deceased's death, the Deceased's husband and daughters together decided [although I think it is likely that this was predominantly the decision of the Deceased's husband since he did not wish to be interred in grave A12] to override the Deceased's own wishes for her cremated remains to be interred in grave A12 in favour of them being buried in a new grave, grave A136, which would also in due course accommodate the Deceased's husband. Although this was a conscious decision which cannot be described as a mistake at that moment in time, it proved in retrospect to be a mistake when the Deceased's husband some 10 years later decided that he wished to be buried elsewhere.

23. In these unusual circumstances I think it is appropriate to categorise this case as one of mistake and that it is appropriate that I should, in the exercise of my discretion, grant a faculty for the proposed exhumation. In my judgment it would be wholly unfair, and indeed unconscionable, to deny the Deceased's her choice of her final resting place when the Deceased's husband has had his own wishes met. Additionally, I note that an exhumation of the Deceased's cremated remains would allow her to be re-interred in an existing family grave.

24. If the Deceased's remains had not been cremated, I might have had some difficulty in ordering an exhumation some 10 years after burial, but that potential problem does not arise here.

25. Although in her Petition and subsequent statement the Petitioner describes that the failure to comply with the Deceased's wishes has had a profound effect on her health, in all the circumstances it is unnecessary to set out or adjudicate upon such matters in this judgment.

26. I thus grant the faculty sought. In accordance with the practice of the court, the Petitioner must pay the court fees incurred in relation to the petition.

GEOFFREY TATTERSALL QC

Chancellor of the Diocese of Manchester

19 March 2021