

IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY

DUNCHURCH: ST. PETER

RE: GEOFFREY LLOYD PORTER WILLIAMS

JUDGMENT

- 1) The Revd Malcolm Garratt, vicar of St. Peter's Dunchurch, petitions for a faculty to exhume the body of Geoffrey Lloyd Porter-Williams from plot J14-25 in the churchyard of St. Peter's.
- 2) A coffin containing the body of Mr. Porter-Williams was interred in plot J14-25 on 13th March 2008. Almost immediately afterwards his widow, Sheila Porter-Williams petitioned for a faculty to reserve the gravespace in the adjoining plot, J14-26, for her interment. On 7th August 2008 a faculty was granted reserving plot J14-26 to Mrs. Porter-Williams.
- 3) On 15th September 2011 there was an interment into plot J14-26 of wholly unrelated person. Mr. Garratt explains how this error came about. The reservation of plot J14-26 in favour of Mrs. Porter-Williams had been marked on the paper records maintained by Mr. Garratt's predecessor. However, at some point thereafter the records were damaged and the note recording the reservation had been erased or defaced or covered over when the records were repaired. Mr. Garratt converted the paper records into an electronic database. In so doing he did not record the reservation of plot J14-26 because that reservation did not appear from the paper records (because of the effect of the damage just mentioned). Thus at 15th September 2011 the reservation in favour of Mrs. Porter-Williams did not appear on the parish records and the interment into plot J14-26 was made believing it was unreserved.
- 4) On Boxing Day 2012 Mrs. Porter-Williams and her son, Richard, visited Mr. Porter-Williams' grave and discovered the interment in the adjoining plot. They immediately drew this matter to Mr. Garratt's attention by a telephone call made and a letter sent on the day of the discovery. Mrs. Porter-Williams does not wish to be buried in the same plot as her late husband but does wish

to be buried alongside him and expressed a wish for the exhumation of her husband's remains through her son's letter.

- 5) On 2nd January 2013 Mr. Garratt wrote to the Registry seeking guidance and there was a reply on 7th January 2013 enclosing petition forms. Although the Petition was not presented until 3rd June 2013 I am satisfied that all concerned have acted with reasonable promptness.
- 6) Mr. Garratt has apologised on behalf of the parish for this error and he now petitions for the exhumation of Mr. Porter-Williams with a view to the re-interment of his remains in plot J16-20 in the churchyard together with the grant of a faculty reserving the adjoining plot J16-21 for Mrs. Porter-Williams. This petition is supported by the Parochial Church Council, Mrs. Porter-Williams, and the siblings and children of Geoffrey Porter-Williams.
- 7) The approach which I am to take in considering this Petition was laid down by the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299.
- 8) I have a discretion but the starting point in exercising that discretion is the presumption of the permanence of Christian burial. That presumption flows from the theological understanding that burial (or the interment of cremated remains) is to be seen as the act of committing the mortal remains of the departed into the hands of God as represented by His Holy Church.
- 9) It must always be exceptional for exhumation to be allowed and the Consistory Court must determine whether there are special circumstances justifying the taking of that exceptional course in the particular case (the burden of establishing the existence of such circumstances being on the petitioner in the case in question).
- 10) In my judgment the kernel of the approach laid down in *Re Blagdon Cemetery* is found at paragraph 35 where the Court of Arches said:
- 11) "... 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 ... is final. It will then be for the chancellor to decide whether the petitioner has so satisfied him/her."

- 12) The application of that approach to a particular case requires what is essentially a two-stage process addressing the factors being put forward as justifying exhumation. At each stage the Consistory Court must have regard to "*the straightforward principle that a faculty for exhumation will only be exceptionally granted*" (see paragraph 33 of *Re Blagdon Cemetery*).
- 13) First, the Consistory Court must consider whether the matters raised are capable in law of amounting to special circumstances. In doing so the Consistory Court must take account of the guidance of the Court of Arches in identifying certain matters which can and others which cannot of themselves amount to such circumstances. When the factors relied upon are included in the categories considered by the Court of Arches in *Re Blagdon Cemetery* that will often be a relatively straightforward exercise. However, the list of potentially relevant factors considered in that case was not exhaustive. When addressing a factor other than those considered there the Consistory Court has to assess it in the light of the approach laid down therein. Thus the Consistory Court has to determine whether it is a matter which is something sufficiently out of the ordinary so as to be capable in appropriate circumstances of justifying the Court in taking the exceptional course of ordering exhumation. This first stage in the process derives from the ruling in *Re Blagdon Cemetery* that there are categories of factors which can be identified as being either capable or incapable of justifying exhumation.
- 14) However, the mere presence of a factor which is capable of being a special circumstance for these purposes does not necessarily mean that exhumation should be ordered in any particular case. The Court has a discretion and the second stage of the process requires the Court to consider whether exhumation is justified in the light of all the circumstances of the particular case and in the context of the presumption in favour of the permanence of interment. This stage derives from the existence of the Court's discretion and from the knowledge that the presence of a factor which is of a kind which can

justify exhumation does not necessarily mean that exhumation is justified in the actual circumstances of a particular case.

- 15) It is well-established that a mistake can be a special circumstance justifying exhumation. This was expressly stated in *Re Blagdon Cemetery* itself.
- 16) The classic example of a mistake is where a burial has taken place interring a person's remains in a gravespace already reserved by faculty for another person. There have been repeated instances in which consistory courts have remedied such mistakes by authorising the exhumation of the remains which were mistakenly placed in the reserved gravespace. This approach has been taken, for example, in *Re Streatham Park Cemetery* (Southwark 2013), *Re St John Walsall Wood* (2010) 12 Ecc L J 419 (Lichfield), *Re Jean Gardiner* (2004) 7 Ecc L J 493 (Carlisle), and *Re St Luke Holbeach Hurn* [1996] 1 WLR 16 (Lincoln).
- 17) Here there was a mistake of that classic type but what is proposed is not the exhumation of the remains wrongly interred but rather the exhumation of Mr. Porter-Williams as to whose interment in plot J14-25 there was no mistake. The reason why exhumation of the remains mistakenly interred in plot J14-26 has not been sought is that the family of the person buried there are unaware of the mistake. Mr. Garratt and the Porter-Williams family do not wish to cause distress to them.
- 18) The position here is that the mistaken interment in plot J14-26 means that it is not possible for the remains of Mr. and Mrs. Porter-Williams to be buried alongside each other in the location originally intended and as provided for by the reservation of that gravespace. There was no mistake about the interment of Mr. Porter-Williams but I have concluded that it is legitimate to characterise this as a case where there has been a mistake affecting his grave. The mistaken interment in plot J14-26 has changed the anticipated surroundings of plot J14-25 and has made it impossible to carry out the original intentions in relation to that plot and to Mr. Porter-Williams' interment without an exhumation.

19) I bear in mind the presumption that interment is to be permanent.

Nonetheless, I have concluded that this is a case where exceptional circumstances exist justifying an exhumation. The particular factors leading me to that conclusion are:

- a) The longstanding intention for Mr. and Mrs. Porter-Williams to be buried alongside each other. That is a legitimate intention. It does not amount to the creation of a family grave of the kind which would potentially justify an exhumation. It is nonetheless an intention which is to be commended and supported.
- b) The fact that the use of J14-26 for the interment of a person other than Mrs. Porter-Williams was a mistake. It was, moreover, a mistake for which neither Mrs. Porter-Williams nor those whose relative is now interred in plot J14-26 bear any responsibility.
- c) The fact that it would be possible for the mistake to be remedied by the exhumation of the remains currently in plot J14-26. However, that would also involve an exhumation and so operate against the presumption of the permanence of interments. That would be an exhumation nearly two years after the interment and would risk understandable distress to the family of the person now interred in that plot. The fact that Mrs. Porter-Williams and her family wish to avoid causing that distress stands to their credit.

20) In those circumstances I direct that:

- a) The faculty reserving plot J14-26 for Mrs. Porter-Williams be set aside.
- b) A faculty issue authorising the exhumation of the remains of Mr. Porter-Williams from plot J14-25 and their re-interment in plot J16-20.
- c) A faculty issue reserving plot J16-21 for the interment of Mrs. Porter-Williams.

21) When the papers in this matter first came before me I requested further information including confirmation that there are proper grounds for believing that the coffin containing Mr. Porter-Williams' remains is likely still to be in a

condition such as to permit a seemly exhumation. Mr. Garratt replied stating frankly that he was not himself in a position to give such an assurance. Given that the interment was in a coffin and was only five years ago it seems likely that a seemly exhumation will still be possible. However, the position should not be taken for granted. Accordingly, the faculty authorising exhumation will be subject to a condition that before the exhumation take place Mr. Garratt use reasonable endeavours to ascertain the circumstances of the original interment and to obtain from the undertakers who conducted the same or from other competent undertakers an assurance that the coffin is likely still to be in a condition such as to permit a seemly exhumation. If such an assurance cannot be obtained then the matter must be referred back to the Court for further directions.

STEPHEN EYRE
CHANCELLOR
31st July 2013