

## **Re St. Patrick Earlswood [2006] Martin Cardinal Ch.**

### **Re Ashley Thomas Cook deceased**

By a petition dated 30<sup>th</sup> July 2006 (but only recently forwarded to me) I am asked to consider the exhumation of the deceased's body from its burial place in the churchyard of St Patrick Earlswood so that it can be reinterred in the churchyard at St Molva Magheracloone, Carrickmacross, Co Monaghan.

The petition is by the deceased's Mother Mrs Joy Belson who explains that she has remarried and retired to and settled in Ireland. She explains that unless the body is exhumed and reburied she will have difficulty in tending the grave of her son and that as she gets older regular visits of even some three times a year may prove difficult. I am sure that her motives are genuine and that in making the application that she has she feels she is showing care and love for her son who died in tragic circumstances, having committed suicide in 2002.

Exhumation petitions seem to be increasingly frequent and I am dealing with an increasing number of them. In almost every case there is an understandable reason. The principles as to their being granted or refused however 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 before- 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, to the parishioners and to the general public.

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. I would be most surprised were any such person to support it. Furthermore I am not told if there are any other close relatives who would be distressed by the removal of the deceased's body to a different country.

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

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.

More recently the case of *In Re Blagdon Cemetery* [2002] Fam 299 has made it clear that advancing years, deteriorating health and moving to a new area are not in themselves adequate reasons for permitting exhumation. At pages 307-308 of the judgement the Court stated

*If advancing years and deteriorating health, and change of place of residence due to this, were to be accepted as a reason for permitting exhumation then it would encourage applications on this basis. As George QC Ch pointed out in In re South London Crematorium (unreported) 27 September 1999:*

*"Most people change place of residence several times during their lives. If such petitions were regularly to be allowed, there would be a flood of similar applications, and the likelihood of some remains, and ashes, being the subject of multiple moves."*

*Such a practice would make unacceptable inroads into the principle of permanence of Christian burial and needs to be firmly resisted. We agree with the Chancery Court of York that moving to a new area is not an adequate reason by itself for removing remains as well. Any medical reasons relied upon by a petitioner would have to be very powerful indeed to create an*

*exception to the norm of permanence, for example, serious psychiatric or psychological problems where medical evidence demonstrates a link between that medical condition and the question of location of the grave of a deceased person to whom the petitioner had a special attachment.*

So it seems that as a matter of law Mrs Belson's advancing age and feared infirmity do not assist her petition. Nor does the move to Ireland.

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 have already noted that the age and personal difficulties of this petitioner do not assist her.

What other factors may assist this petitioner?

### **Medical reasons**

For reasons that are I think already clear exhuming the deceased simply in order to visit his grave more easily is not a sufficient reason for exhumation.

### **Lapse of time**

Does the time that has passed between Ashley Cook being laid to rest and the present day (almost 4 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. In this case the delay *is* of importance. This is not a case where the petitioner had problems bringing a petition- it is simply timed to meet her move to Ireland. I do not consider that is good enough to surmount the exceptionality test. It is a number of years since the burial and a move by the Petitioner is insufficient reason

### **Mistake**

Has a genuine mistake been made ab initio in the location of the grave? That is not the case here. When this young man was buried it was intended to be a permanent entrusting of his body to the Lord.

### **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 support with the petition. I am aware moreover (and this does not surprise me) that there is no local support for this highly unusual request. Whilst that support would not therefore be determinative the absence of it concerns me.

## 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 the circumstances therefore the Petitioner has not shown sufficient reason to justify the grant of this Faculty and it is refused.



(Mrs Justice Wilson)

Chancellor

5th November 2006