In the Consistory Court of the Diocese of Worcester:

Archdeaconry of Dudley

Belbroughton with Fairfield – Church of Fairfield, St. Mark

Faculty petition 12/27

Proposed exhumation of the cremated remains of Captain K N H Camp

Judgment

Introduction

1. This Judgment concerns a Petition dated 27th February 2012 by Alan Camp ("the Petitioner") of 5 Morecambe Street, London SE17 1DX seeking the authority of the Court for the exhumation of the cremated remains of Captain Kingsley Noel Henry Camp from the churchyard of Fairfield, St. Mark and the removal of the grave and headstone. It is proposed that Capt. Kingsley Camp's remains will be re-interred in grave space C81 in the churchyard of St John the Baptist, Great Amwell, Hertfordshire.

2. The Petitioner is the son of Capt. Kingsley Camp.

3. On 26th April 2012 I issued a Direction seeking answers to a number of questions. As I had formed no view on the Petition and did not wish to pre-determine the outcome, I offered the Petitioner the opportunity of an oral hearing[1]. The Petitioner provided written answers to the questions asked and indicated that he wished to take up the offer of a hearing. Accordingly, the Consistory Court sat in London on 3rd July 2012 at

[1] The Faculty Jurisdiction Rules 2000 rr 17 and 26(1) do not expressly permit a Chancellor to refuse an unopposed petition without a hearing.

which the Petitioner appeared. He was represented by his niece, Ruth, who is a solicitor. The petition was unopposed.

The facts

4. Capt. Kingsley Camp was brought up in the village of Great Amwell in "Filmer Cottage", the house at the entrance to the churchyard, and the Petitioner's family live near Great Amwell.

5. The Camp family lives and has lived in the vicinity of Great Amwell for at least 300 years.

6. Capt. Kingsley Camp died on 18 November 1989. His ashes were interred at Fairfield, St Mark on 30th November 1989. It is believed that they were interred within a plastic container, itself within a wooden casket, in his grave.

7. Capt. Kingsley Camp's father (the Petitioner's grandfather), Capt. Arthur Camp OBE, is buried in a grave at Great Amwell. Capt. Arthur Camp's grave is beside the grave of his own mother and father (the Petitioner's great-grandparents).

8. It is proposed to re-inter the ashes of Capt. Kingsley Camp in his father's grave. The existing gravestone at Great Amwell would not be altered but a flat stone would be placed on the grave with the same words as are on the memorial at Fairfield, St Mark.

9. The Petition was instigated by the Petitioner's brother, the Reverend Brian Camp, but he died before it was entered.

10. The Petition is supported by all the grandchildren of Capt. Kingsley Camp: Simon Camp; Ruth Carole May Camp (the Petitioner's nephew and niece) who have written in support; Ininaa Camp and Ibiye Camp (the Petitioner's children).

11. Mr. Peter Jones, churchwarden of Fairfield, St Mark, in the absence of an Incumbent, confirmed in writing on 6th August 2012 that the Parish had no objection to the Petition[2].

12. The proposed re-interment in the existing grave of Captain Arthur Camp OBE numbered C81 together with an ashes plaque is supported by a letter from the Revd. Anne Donaldson, Vicar of Great Amwell with St. Margaret's and Stanstead Abbots, dated 10th January 2012.

13. Capt. Kingsley Camp's wife, Alma May Camp (the Petitioner's mother) died in 2011 and it is proposed that her ashes, presently un-interred, would also be interred in her father-in-law's grave at Great Amwell.

14. The letter from the Revd. Anne Donaldson, dated 10 January 2012, also supports the interment of Mrs. Kingsley Camp's ashes, together with those of her husband, in the grave of her father-in-law, at Great Amwell.

The grounds for exhumation

15. The Petitioner states that it was always the wish of Capt. Kingsley Camp and his wife that they be buried together. There is no evidence of his giving any written or oral directions as to the place of his burial.

16. The Petitioner's brother had begun to apply for the exhumation and re-interment of his father before he died during 2011.

17. That original purpose, which the Petitioner continues to pursue, was to remove Capt. Kingsley Camp's ashes to a family grave at Great Amwell. This would give the family convenient access to the grave.

[2] There is no prescribed form for a petition seeking exhumation. It would be helpful if such petition included reference to the views of the Parish where the exhumation is to take place as well as those of the Parish where re-interment is proposed.

18. The precise grounds supporting the Petition are:

> "My brother Reverend Brian Camp, sadly passed away in September, and (it) is of great importance to both Reverend Camp's family and myself that the family should be united. Captain Kingsley Camp's wife, and our mother, who passed away last year, will also be buried in the family grave in Great Amwell. It was their wish to be buried together.
>
> My brother Reverend Brian Camp had been suffering from severe clinical depression, which in part, had been connected with the matter of our father's burial. He had begun making an application into the exhumation and reburial of Captain Kingsley Camp's ashes in the family grave in the months prior to his death and it was one of his chief concerns. Although we understand it is not a valid reason in itself for an exhumation, it is important for our whole family to be able to have convenient access to the grave, and to be able to visit the family, united, and in one location. It also happens that the family now reside near to Great Amwell."

19. These grounds were developed in evidence at the hearing. In particular the reasons for the ashes being interred at Fairfield, St. Mark on 30th November 1989 were explained in detail.

20. Captain and Mrs Kingsley Camp had moved to Worcestershire in late 1989 to be near their son's parish following the death of Mrs Camp's mother on the 18th July 1989. She had lived with them. This coincided with Captain Kingsley Camp being diagnosed as having a serious illness. Within a short time of arriving in Worcestershire, Captain Kingsley Camp had entered a rapid decline and within a week he had died. He was interred 12 days later. I was informed that the plaque on his grave was considered to be a temporary measure, as evidenced its having a Tudor ship etched on it which was quite inappropriate for a Captain and Pilot of the Merchant Navy and was of an unattractive, glossy, black marble appearance. His ashes were buried in what was described as a "full and higgledy-piggledy" area of the churchyard. A photograph was submitted which confirmed this.

21. I was told that the Revd. Brian Camp made the arrangements on a temporary basis always believing that he would remove his father's remains to Great Amwell where they could be interred, in due course, with those of his mother. His mother moved nearer to her son Brian before she died during 2011. Brian died in September 2011

after he had begun the process of applying for a faculty to reunite his parents in Great Amwell. The petitioner, who was seeking probate of his parents' estate at the time, took over responsibility for this Petition.

22. Following local tradition, the Revd. Brian Camp was buried along with previous Incumbents in the grounds of his parish church: St Giles, Sheldon, Birmingham.

23. I was given family records and evidence which showed the connection of the entire family with Great Amwell and its surrounding area and detailed explanation as to why and where any family members not buried in that vicinity were buried elsewhere (e.g. the Petitioner's brother in his parish; an uncle in Canada and his divorced grandmother in Hertford Cemetery, which was near her old home Sele Farm and which is also near Great Amwell).

24. In the light of these expanded Grounds, it may be helpful to consider the approach to exhumation at the time that Revd. Brian Camp made his decision to inter his father's remains temporarily at Fairfield, St Mark on 30th November 1989.

Exhumation: the general law of the Church of England

<u>The law on 30th November 1989</u>

25. *In Re: St. James' Churchyard, Hampton Hill*[3] was decided on 28th October 1982. Exhumation was sought some 59 years after burial, to remove the remains of Lieutenant Colonel J W Boyle. He was to be interred "in or near to the Boyle family plot in the long established and well maintained Presbyterian cemetery at Woodstock, Ontario where the remains of Colonel Boyle's parents already are". It was opposed on the ground that "… nothing should be dug up from our churchyard and removed to another place of burial."

[3] (1982) 4 Consistory and Commissary Court Cases 25 Newsom QC Ch.

26. The Petition was allowed by the Chancellor:

> "… Orders for exhumation are in fact quite often made, where a family wishes to gather the remains of its deceased members at one place. Indeed, by Rule 4(2) of the Faculty Jurisdiction (Amendment) Rules 1975, the judge has power to grant such an order without any previous citation if he is satisfied that the petition is consented to by "any near relatives of the deceased person still living and any other person who in the opinion of the judge it is reasonable to regard as being concerned with the matter."
>
> No question of desecration arises and of course there are always conditions, corresponding to those of the Home Office licence, to prevent any public nuisance or offence ….
>
> The general rule is that, while there is no property in a dead body, the personal representatives have a duty to inter it and have custody of it until interment, and that once it has been interred in consecrated land it ought to remain there, under the Ecclesiastical Court's protection, unless the Court for some good reason allows it to be transported to other consecrated land: see *Williams v Williams* (1882) 20 Ch.D 659 and *Re Dixon* [1892] P.386[4], a case in this Court. ….
>
> One reason for allowing the remains to be exhumed and transferred is the wish of the surviving near relatives. Here we have the wish of the only surviving near relative….. There is thus no difficulty about this part of the case…."

27. That was a case of a transfer to the location of an existing family grave. It is the only case concerning transfer to an existing family grave referred to in the later decision of the Arches Court *In re Blagdon Cemetery*[5] and was not criticised.

28. *In re Church Norton Churchyard* (also reported as *In Re Atkins*)[6] was decided on 9th November 1987. It concerned the Petition of a widow who wished, some 12 years after interment, to exhume the cremated remains of her husband from the unkempt part of the churchyard of a parish into which they had moved and to re-inter the ashes in a new plot in a cemetery where other family grave or graves were situated and near where she intended to return to live. A faculty was granted.

29. The Chancellor reviewed the approach of the Courts to exhumation over the preceding 150 years. The principle was identified:

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[4] In which Dr Tristram Ch. said at p.391 that a court would ordinarily grant a faculty for the removal of remains from one part to another of a churchyard, or from one churchyard to another churchyard in deference to the wishes of members of the family, unless there was a contrary direction in the will.

[5] [2002] Fam 299 at p. 310H, para. 38.

[6] [1989] Fam 37; 3 WLR 1394; [1989] 1 All ER 14, Edwards QC Ch.

> "The court then should begin with the presumption that, since the body or ashes have been interred in consecrated ground and are therefore in the court's protection or, in the words of *Wheatley on the Book of Common Prayer*, 'safe custody', there should be no disturbance of that ground except for good reason. There is a burden on the petitioner 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. The finality of Christian burial must be respected even though it may not be absolutely maintained in all cases. The court should make no distinction in this between a body and ashes and should be careful not to give undue weight to the undoubted fact that where ashes have been buried in a casket their disinterment and removal is simpler and less expensive than disinterment of a body and is unlikely to give rise to any risk to health.
>
> The Court should resist a possible trend towards regarding the remains of loved relatives and spouses as portable, to be taken from place to place so that the grave or place of interment of ashes may be the more easily visited.
>
> Notwithstanding these general principles cases occur in which the discretion to grant a faculty should be exercised….. Some instances may, nevertheless, be mentioned…. A family mausoleum or group of graves may be overlooked…
>
> The wish of the personal representatives or next of kin of the deceased to remove the body or ashes from one part of a churchyard to another or from one churchyard to another for reasons which appear to the Court to be well founded and sufficient is, on the authorities, a ground for the grant of a faculty….. In every case the arguments for the grant of a faculty must be weighed against the general principles already mentioned … "

This case was also referred to in *Blagdon*.[7]

<u>The law post 30th November 1989</u>

30. In *Re St Mary Magdalene, Lyminster*[8], Edwards QC Ch applied his previous decision *In re* Church *Norton Churchyard* to an application concerning portability of remains (and not to an existing family grave). He posed the question: "has the petitioner shown that there are sufficient special and exceptional grounds for the disturbance of two churchyards". He did not express this test to be any different from "reasons which appear to … be well founded and sufficient" in his earlier decision.

[7] *Blagdon* at p.307, para.34.
[8] (1990) 9 Consistory and Commissary Court Cases 1

31. In both *Re Christ Church Alsager*[9] and *Re Blagdon Cemetery*[10], the appeal courts have emphasised that exhumation does not involve a question of doctrine, ritual or ceremonial, but that the normal rule is that burial in consecrated land is permanent, and that a faculty will only exceptionally be granted for exhumation.

32. In particular, the Court of Arches in *Blagdon* commented on "the variety of wording … used" as demonstrating a difficulty in identifying appropriate wording for a general test in what is essentially a matter of discretion.

33. The Court expressed the normal rule as follows:

> "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" … 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. …
>
> 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."[11]

34. Since 30th November 1989 there has, therefore, been a re-formulation of the test for the discretion to grant a faculty to exhume remains. It has changed from 'good reason' to 'exceptional circumstances' – although at para. 35 the Court in *Blagdon* reverted to "special circumstances". However, it has not gone further than requiring reasons for providing an exception. There is no requirement to show *very* special circumstances. In the present context the words used mean no more than reasons "forming an exception" to the expectation of finality or permanence of burial.

[9] [1999] Fam 142, decided on 10th July 1998..
[10] [2002] Fam 299, decided on 16th April 2002.
[11] *Blagdon at pp. 306-7,* paras, 33-35.

35. It is now for the Petitioner in each case to demonstrate that, on the balance of probabilities, there is an exception to the norm that the burial, whether in a churchyard or in the consecrated part of a cemetery, is final.

Possible exceptions to the presumption that burial is permanent

36. Whilst the general rule is that burial in consecrated ground is final, that is not an absolute rule; and there will be exceptions. The Chancery Court of York in *Alsager*, some four years before the decision of the Court of Arches in *Blagdon*, expressed this principle as follows:

> "The chancellor will need to bear in mind that the Petitioner must prove the good and proper reason to the usual standard applicable in faculty cases, namely on a balance of probabilities. Various factors will help him in deciding whether or not this has been done. It is not possible to list all the factors which may be relevant. However, experience has shown that some factors recur frequently, some arguing for a faculty and some against.
>
> Although mistaken advice by a funeral director or anyone as to the likelihood of a successful petition in itself is unlikely to carry much weight a mistake by the Petitioner or by a third party, such as an incumbent, churchwarden, next of kin, an undertaker, or some other person, e.g. as to locality, may be persuasive to the grant of a faculty. Other matters which may be persuasive are medical reasons relating to the Petitioner; that all close relatives are in agreement[12]; and the fact that the incumbent, the parochial church council and any nearby residents agree. That there is little risk of affecting the sensibilities of congregations or neighbours, may be persuasive although in practice this is not likely to apply to municipal cemeteries.
>
> The passage of a substantial period of time will argue against the grant of a faculty. Public health factors and improper motives, e.g. serious unreasonableness or family feuds will be factors arguing against the grant. If there is no ground other than that the Petitioner has moved to a new area and wishes the remains also to be removed this is likely to be an inadequate reason. In normal circumstances if there is no intention to re-inter in consecrated ground this will be a factor against the grant of a faculty. If the removal would be contrary to the intentions and wishes of the deceased; if there is reasonable opposition from members of the family; or if there is a risk of affecting the sensibilities of the congregation or the neighbourhood, these will be factors arguing against the grant of a faculty.

[12] Not supported *In Re Blagdon*; see below.

> The chancellor will need to weigh up all the relevant pointers, for and against, whether illustrated here or not, and then answer the question which we have stated."[13]

37. The list of factors was not intended to be an exclusive list. The general approach then advocated was that the chancellor must weigh up all the relevant pointers, for and against, "whether illustrated here or not".

38. The words requiring a simple balancing exercise are not repeated in *Blagdon* for a good reason. There is a difference between the question being considered in *Alsager* (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?[14]) and that in *Blagdon* ("Are there special circumstances which justify the making of an exception from the norm that Christian burial is final?[15]).

39. The task is now, therefore, one of identifying exceptions and no longer one of merely balancing different considerations[16]. For example, the mere fact that no one objects; or that all close relatives are in agreement; or that the incumbent, the parochial church council and any nearby residents agree; or that there is little risk of affecting the sensibilities of congregations or neighbours are all neutral circumstances rather than special circumstances justifying an exception. Such matters do not amount to an exception, whether considered singly or together. Whilst they would weigh in any balance to achieve a simple 'acceptable' or 'not acceptable' answer, that is not the balance to be achieved when one is searching for something special or exceptional. For example, I do not consider that it could be said that a lack of objection was in any way a special or exceptional circumstance.

40. I have considered the differences of approach between the two decisions in some depth because I have re-visited the decision of the Chancellor of this Diocese not to grant Faculty 99/20 relating to the exhumation of the cremated remains of Stanley

[13] *Alsager* at pages 149H-150B
[14] *Alsager* at page 149C
[15] *Blagdon* at page 307D, para.35
[16] *In Re Blagdon* reverted from the approach set out *In re Christ Church, Alsager* to the approach that exhumation will only be exceptionally granted: *Blagdon* pages 306H-307A, paras. 32-33.

Joseph Mingham from the same churchyard as presently under consideration. That judgment set out the *Alsager* decision in detail. I now have to consider the present Petition against the more recent judgment *In Re Blagdon.*

41. The Court of Arches in *Blagdon* set out matters that had been considered in *Alsager*, as follows:

> "The Chancery Court of York in *Re Christ Church Alsager* considered various factors which can arise in connection with a petition for a faculty for exhumation. Many of these have arisen in this appeal and we have had the benefit of argument upon them. We consider them in turn."[17]

42. *Blagdon* then listed and considered six specific categories of circumstances that had been weighed in the balance, for and against, when determining the question in *Alsager*:

(i) Medical / Change or residence	(in support)
(ii) Lapse of time	(not determinative)
(iii) Mistake	(in support)
(iv) Local support	(not determinative)
(v) Precedent	(for or against)
(vi) Family grave.	(in support)

43. This list was not accepted as being determinative. For example, (iv) local support was rejected as being a determining factor and was said to normally be irrelevant when looking for special justification[18]; (ii) lapse of time was not considered as itself being capable of being determinative; nor could it count as something that could be a special or exceptional circumstance.

44. Nevertheless, I have considered each item listed but not in the order that they were listed.

[17] *Blagdon*, at page 307E, para.36.
[18] *Blagdon*, at page 309F, para.36.

(vi) Family grave.

45. The most relevant factor considered in *Blagdon* is that of the family grave. The Court *In Re* Blagdon commented, in allowing the exhumation, that:

> "… it should not be assumed that whenever the possibility of a family grave is raised a petition for a faculty for exhumation will automatically be granted. As in this case it is to be expected that a husband and wife will make provision in advance by way of acquisition of a double grave space if they wish to be buried together…."

46. McClean QC Ch., *In re Arthur Mallinder, deceased*[19], said that "the *Blagdon* case does not establish any special rule in 'family grave' cases". That case was considered to be a 'change of mind' case. The same Chancellor, *In re Alan Brown (deceased)*[20], when granting a faculty on a petition which did not turn on the issue of 'family grave', referred to *Blagdon*:

> "… the Arches Court attached some importance to the proposal in that case to create a "family grave", evidenced by the purchase of a triple-depth grave. In common with some other Chancellors, I do not find this part of the *Blagdon* judgment very clear……"

47. A "family grave" may be:

(a) an existing family grave or adjacent graves of more than one family member

(b) the existing grave of a single family member

(c) the creation of a new family grave

48. A decision as to whether a proposal to exhume from one grave and to re-inter in another grave, described as a family grave, constitutes a special or exceptional circumstance is likely to differ from category to category.

49. This petition is not concerned with categories (b) or (c) which may involve different considerations and which were analysed in *In re Mrs Bernadette Peters*[21]. In that case

[19] 2006.
[20] April 2008.
[21] (May 2012) Petchey Ch.

numerous exhumation decisions were analysed in order for the Chancellor to conclude that:

> "51. Absent authority and as a matter of principle it seems to me that the weight attaching to this factor should be much the same in all cases. The way I would approach the matter is to say that:
>
> - if there are reasons why the remains were not interred in the family grave in the first place or why the family grave was not established at the time of the burial; and/or
> - there are other factors justifying a departure from the norm of permanence
>
> then the fact that the exhumation is to a family grave counts as an additional factor in its favour, i.e. as being economical in the use of grave space and as expressive of family unity."
>
> …
>
> 54. It seems to me that, although the approach I set out at paragraph 51 may be novel in its articulation, it does generally fit the decisions that Chancellors have actually reached…"

50. I have re-visited the decisions referred to in that Judgment (and give the paragraph numbers where they were considered in his judgment).

Category (a): Transfer to the existing grave or adjacent graves of more than one family member

In re St James Churchyard, Hampton Hill 1982 [para. 45] - allowed

In re Arthur Mallinder, deceased 2006 [para. 25] - refused

In re Frederick Randall, deceased 2011 [para. 34] - allowed[22]

In re St Mary's Churchyard, Goring by Sea 2009 [para. 42] - allowed

Category (b): Transfer to the existing grave of a single family member

In re Joanne Lyndsey Martin 2004 [para. 21] - refused

In re St Andrew (Old Church), Hove 2005 [para. 23] - refused*

In re Graham George Marston, deceased 2012 [para.36] - allowed

In re Harold Greaves, deceased 2010 [para. 42] - refused*

In re Allen Godfrey Rodley, deceased 2011 [para. 42] - refused*

[22] Recorded by Petchey Ch. as refused, but subsequently allowed by Jordan Ch. after further submissions.

Category (c): Transfer to a newly created family grave

In re Blagdon Cemetery 2002 [paras. 9-20]	- allowed
In re Hither Green Cemetery 2008 [para. 28]	- allowed
In re Maurice William Egerton 2008 [para. 32]	- allowed
In re St John the Baptist, Dudley 2009 [para. 33]	- allowed
In re Doreen Oxley, deceased 2012 [para. 42]	- refused*
In re Mrs Bernadette Peters (May 2012)	- allowed

In the decisions marked with an asterisk, there was no express reference to justification as a 'family grave'.

51. This analysis does not confirm a particular or uniform approach.

52. Whatever the correct approach to categories (b) and (c), I am unable to agree with the approach set out by Petchey Ch. in his paragraphs 51 and 54 quoted above, in respect of category (a). *Blagdon* recognises the need for guidelines in para. 33. Those guidelines are described as factors and set out in para. 36. Each of those factors does not have to be satisfied in each case. As expressed, they are capable of being freestanding.

53. My understanding of *Blagdon* paras. 36 (vi) and 38 is that transfer of the remains of a family member to an existing and established family grave or graves is capable of being an exception and of constituting a special circumstance sufficient to outweigh the presumption of permanence of burial, without more. A credible explanation will be required for any lapse of time but that is not a determinative factor.

54. I am reassured in my understanding by the actual decision in *Blagdon* at para. 39 to allow the appeal on the ground that the Chancellor had not addressed the petition "specifically in terms of the bringing together of parents and child in a family grave".

55. I also note that Eyre Ch. during June 2012 delivered two judgments: *In re Kenilworth Cemetery (Coventry)* and *In re Albert William Shenton (Lichfield).* The first case related to the removal of the cremated remains of the petitioner's mother and father from their adjacent plots to a new plot, also reserved for the petitioner and his wife, which lies next to the plot in which the petitioner's grandparents are buried and which is in close proximity to the plot in which his mother's sister is buried. The second case related to the moving of the remains of one of four deceased family members to join those of the other three in one plot. Both would fall within my category (a).

56. In *Kenilworth,* the chancellor states:

> "I regret that I am unable to agree with Petchey Ch's analysis of the reasoning in *Re Blagdon Cemetery.* I do not believe that either the language used or the outcome reached in that case can properly be seen as identifying the creation of a family grave as being simply a potentially relevant factor but one which is, of itself, incapable of justifying exhumation. I do not see how such an analysis can stand with the Court's assertion at para. 38 that:
>
> > "our decision is not a novel one. Faculties have been granted in the past for the bringing together, or accumulation, of family members in a single grave after many years provided special reasons were put forward for the lapse of time since the date of burial."
>
> Nor is such an analysis consistent with the warning given at paragraph 40 that:
>
> > "it should not be assumed that whenever the possibility of a family grave is raised a petition for a faculty for exhumation will automatically be granted." "[23]

57. *Shenton* applied the same approach. In both cases exhumation was allowed. The creation of a family grave was found to be capable in law of amounting to a special circumstance and, in each case, was found on the facts, as a matter of discretion, to outweigh the presumption in favour of the permanence of interment.

58. I also note that Bishop Ch. in *In re Alan Peglar, deceased*[24] granted an application for the exhumation of ashes for the sole reason of transfer to a family grave and: "on the basis that Mr. Peglar's ashes be placed in a family plot together with Mrs. Peglar's ashes".

[23] paras 25-26.
[24] 2012.

iii) Mistake

59. Although a genuine mistake as to location of a grave or the status of the land (consecrated or not and the significance of this) can be a ground for exhumation,

> "Change of mind as to the place of burial on the part of relatives or others responsible in the first place for the interment should not be treated as an acceptable ground for authorising exhumation."[25]

60. Mistake relates to a decision made at the time of burial or interment.

61. The evidence is that no change of mind has occurred in this case. It was always the intention of the Revd. Brian Camp to re-inter Capt. Kingsley Camp at Great Amwell.

62. However, it could be said to have been a mistake that Revd. Brian Camp relied upon the prevailing law as expressed in the decisions of Chancellors at the time he made his decision in November 1989. As a priest he could be expected to have known the view then being taken or to have known where to have found out what the view then being taken was. The view he took at that time was correct. It would seem reasonable for me to find, today and on the balance of probabilities, that a mistake shared by all on the date of original interment constitutes sufficient reason for an exception to the finality of burial to be identified as having been made at that time. Subject to lapse of time, the pre-1990 law as set out above would have suggested that:

> "The wish of the personal representatives or next of kin of the deceased to remove the body or ashes from one part of a churchyard to another or from one churchyard to another for reasons which appear to the Court to be well founded and sufficient is, on the authorities, a ground for the grant of a faculty"[26].

63. Accordingly, and in so far as it is necessary for me to do so, I find, on a balance of probabilities, that Revd. Brian Clamp understood and was entitled to understand that he had good reason for the action he took in November 1989. I consider that such a commonly shared but now considered to be mistaken view is sufficient to constitute an exception to the norm of permanence of burial on the facts of this case.

[25] *Blagdon*, at page 308G, para. 36(iii)
[26] see para.29 above of this Judgment

i) Medical reasons and change of place of residence

64. Advancing years, deteriorating health, and change of place of residence are not special or exceptional circumstances:

> "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."[27]

65. The Court of Arches endorsed the decision of the present Dean in *Re South London* Crematorium[28] and went on to state:

> "Such a practice would make unacceptable inroads into the principle of permanence of Christian burial and needs to be firmly resisted. We agree (with *Alsager*) that moving to a new area is not an adequate reason by itself for removing remains as well."[29]

66. No medical reasons or change of place of residence are raised in the present petition.

ii) Lapse of time

67. Lapse of time is not determinative, if it is clear that the steps could not have been taken earlier. It is a factor that may weigh against any special or exceptional circumstance. It is the actions taken or not taken during the lapse of time and the reasons for any delay in taking action that will determine the weight to be given to any delay.

68. In the absence any particular explanation the lapse of in excess of 20 years in the present case, whilst not determinative, would weigh against an exception being made. However, the lapse of time is considerable less than in *Re: St. James' Churchyard, Hampton Hill*[30], where the period was 50 years. On the evidence I heard, there was a credible explanation for the lapse of time. The arrangement made by the Revd. Brian Camp was for temporary interment of his father during his mother's lifetime whilst she lived near his parish and for re-interment/interment of both parents in the family grave at Great Amwell on her death.

[27] *Blagdon* at page 307H
[28] 27 September 1999.
[29] *Blagdon*, at page 308A
[30] (1982) 4 Consistory and Commissary Court Cases 25.

iv) Local support

69. Local support is not determinative and is normally irrelevant:

> "The amount of local support, whether clerical or lay, should not operate as a determining factor in this exercise and will normally be irrelevant"[31]

70. In *Blagdon* the Court expressly states that it differs from the approach in *Alsager* in this respect.

71. In the present case there are letters in support from the Vicar of the receiving church; from the Churchwarden of the present host church and from the Petitioner and his family. I do not consider them to be so significant as to constitute special or exceptional circumstances.

72. However, *Blagdon* does recognise that the views of close relations are "very significant".[32]

v) Precedent

73. The Court of Arches held in *Blagdon* that:

> "… 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"[33]

74. No argument based upon precedent has been put forward by the Petitioner.

75. Nevertheless, I have considered precedent in the following ways:

(a) available decisions at the time of interment;

(b) previous decision in respect of Fairfield, St Mark;

(c) previous decisions within the Diocese;

[31] *Blagdon*, at page 309D and F, para. 36(iv)
[32] *In re Alan Brown deceased 2008; Blagdon* at page 309E, para. 36(iv)
[33] *Blagdon* at page 310B, para. 36(v)

(d) available decisions since *In Re Blagdon*; and

(e) creation of precedent for the future.

76. a) I have already considered (under "Mistake") the precedents available at the time that the decision to inter Capt. Kingsley Camp was taken in November 1989. I consider it relevant to give weight to equality of treatment to petitioners themselves over time as well as to have regard to equality of treatment between petitioners.

77. b) I have already referred to a previous refusal to allow a petition relating to a proposed exhumation at Fairfield, St Mark, in a judgment issued before the decision *In Re Blagdon*. That case concerned the creation of a new grave in a National Memorial Arboretum in a different County. The determinative factor in that case was "change of mind". I see no parallel between that case and the present request to transfer the ashes to an existing established family grave. On the facts, the present case is not one of portability resulting from change of mind. It does not conflict with the approach adopted in that case when read against the revised test to be applied following the judgment *In Re Blagdon*[34]. There was no argument that a different approach had been understood and applied at the time of burial.

78. c) I have considered the judgments in respect of the other petitions within this Diocese that have been given since the decision *In Re Blagdon*. They do not relate to facts similar to those under consideration on this Petition.

79. d) I have read a large number of exhumation Judgments filed in the Middle Temple Library and/or on the Ecclesiastical Law Association website. I have not found many that relate to an established family grave.

80. I have re-considered the exhumation cases reviewed in *Peters*, and have concluded above that they are inconclusive of the current approach to be adopted in respect of exhumation and re-interment in a family grave.

[34] In particular, the Chancellor's expanded guideline in *Fairfield, St Mark (Mingham)* on mistake.

81. e) Generally, I do not consider that precedent assists or hinders this petition. I do not consider that the facts in this case would give rise to any harmful precedent if a faculty were to be issued. None of the judgments I have read concern exhumation followed by transfer, in this country, to an established, quintessential family grave or graves of the type I am considering[35].

Conclusion

82. I conclude that exhumation and re-interment in a grave or graves containing more than one existing family member is capable of constituting an exceptional or special reason outweighing the presumption in favour of permanence of burial.

83. Whether it does so depends upon the strength of the justification being put forward and upon the credibility of the reasons for any delay in seeking exhumation.

84. I accept that, on the balance of probability, the evidence presented to me is sufficient to outweigh the presumption in favour of permanence in this case. In particular, I accept the evidence that:

i) Capt. Kingsley Camp's family has been closely associated with Great Amwell for over 300 years and for many generations;
ii) Capt. Kingsley Camp was brought up and lived at the gate to Great Amwell churchyard;
iii) Capt. Kingsley Camp's father and grand-parents are buried in family graves at Great Amwell;
iv) these graves form a quintessential, established "family grave";
v) the ashes of Capt. Kingsley Camp's wife await interment within the family grave at Great Amwell;
vi) it was always the intention that Capt. Kingsley Camp's ashes be interred with those of his wife and at Great Amwell;

[35] Although faculties were issued in two cases concerning transfer to such graves overseas.

vii) the nature of the plot and plaque at Fairfield, St Mark and the shortness of the period between death and the interment of ashes demonstrate that the arrangement for Capt. Kingsley camp were, at that time, considered to be temporary;

viii) the proposals are strongly supported by all of the family; are indicative of family unity and would be likely to assist in the economical use of the existing plot for interment;

ix) the delay in presenting a petition has arisen from:

a) the gap between Capt. Kingsley's death and that of his wife;

b) their wish to be buried together;

c) their having moved to be near their son, the Revd, Brian Camp;

d) the recent death of Mrs Kingsley Camp; and

e) the timing of the death of Revd. Brian Camp.

85. Accordingly, I consider there to be special circumstances to make an exception from the norm of permanence of burial to allow exhumation, to be followed by re-interment in the family grave at Great Amwell. I also find there to have been credible and good reason for the time that has elapsed in presenting this petition and that, in the circumstances, I am satisfied that steps could not have been taken earlier to inter husband and wife together in the family grave.

86. Should it be necessary to do so, I also find that the there was mistake by the Revd. Brian Camp, constituting exceptional circumstances and contributing credible reason for any lapse in time because:

i) Capt. Kingsley Camp died on 18th November 1989 and his ashes were interred on 30th November 1989;

ii) on both those dates it was commonly understood that transfer to a family grave would be viewed favourably on a request for a faculty;

iii) the Revd. Brian Camp would have been aware of that view or would have discerned that view had he referred to or been referred to the case law determined before 30th November 1989;

iv) to the extent that there has been a change in the law or approach since that date, the mistake was a reasonable one and shared by all those involved in such matters;

v) mistake is capable of constituting an exceptional circumstance;

vi) the mistake lead to any lapse of time in presenting a petition;

vii) the proposed rectification of the mistake is strongly supported by all of the family;

viii) any such lapse of time was entirely reasonable during the period during which Capt. Kingsley Camp's wife was alive and being looked after by Revd. Brian Camp and after his death.

87. Accordingly, for this reason also, whether considered separately or cumulatively with my first finding, I consider there to be special circumstances to make an exception form the norm of permanence of burial to allow exhumation, to be followed by re-interment in the family grave at Great Amwell. I also find there to have been credible and good reason for the time that has elapsed in presenting this petition arising from that mistake and that, in the circumstances, I am satisfied that steps could not have been taken earlier to rectify the mistake.

88. I, therefore, exercise my discretion and direct that a faculty should issue for the exhumation of the cremated remains of Capt. Kingsley Camp. and for the removal of the grave and headstone from the churchyard of Fairfield, St. Mark, on the condition that they will be re-interred in grave space C81 in the churchyard of St. John the Baptist, Great Amwell, Hertfordshire.

Costs

89. I make no order for the costs of the hearing.

Robert Fookes

Deputy Chancellor 31st August 2012