

Re St Peter, Forncett St Peter

Judgment

1. Mrs Joan Burns has petitioned for the exhumation of the remains of her late husband, Dr Stewart Andrew Burns from the churchyard at St Peter's church, Forncett St Peter for his reinterment in the churchyard of St Patrick and St Bridget's church in Ballycastle, Co Antrim. The grounds for her application are set out in the petition form and in two moving letters.

Background

2. Dr Burns was buried in June 2009 having died after a long illness. At the time of his death the Burns family lived in Forncett St Peter and anticipated remaining there for the foreseeable future. It was Mrs Burns' intention to be buried with her husband at Forncett St Peter when the time came.
3. Unfortunately, for financial reasons, Mrs Burns and her daughter have had to move to be near her family in Co Antrim. This has inevitably meant that they are no longer able to visit and tend to Dr Burns' grave, save for on occasional and very costly visits to Norfolk. They understandably miss their visits to the graveside and Mrs Burns has found it so distressing that she has attended her doctor and been prescribed anti-depressant medication.
4. Fr Brian Daly, the parish priest in Ballycastle, has confirmed that he has agreed in principle that Dr Burns' remains may be reinterred in the parish churchyard there.
5. The Revd Jennifer Cooper, an Assistant Minister from the Upper Tas Valley Benefice (of which Forncett St Peter is part) has, at the request of the Registry, written a letter setting out the views of the local clergy and churchwardens. Revd Cooper knew Dr and Mrs Burns and conducted both a service of thanksgiving for their marriage and later Dr Burns' funeral and burial at St Peter's church. Revd Cooper expresses great sympathy for Mrs Burns' situation on behalf of herself and the local churchwarden. She does, however, mention that other members of Dr Burns' family would be affected by Mrs Burns' request.

The law

6. The law on exhumation is most authoritatively and recently expressed in the decision of the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299. That case restates the strong presumption against

exhumation and in favour of the permanence of Christian burial in consecrated ground. This presumption arises from the Christian theology of burial reflected in a paper from the then Bishop of Stafford which the Court in *Blagdon* considered. The Bishop of Stafford wrote:

“The funeral itself articulates very clearly that its purpose is to remember before God the departed; to give thanks for their life; to commend them to God the merciful redeemer and judge; to commit their body to burial/cremation and finally to comfort one another.”

He went on to explain:

“The permanent burial of the physical body/the burial of the 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, to the heavenly Jerusalem. The commending, entrusting, resting in peace does not sit easily with ‘portable remains’ which suggests the opposite: reclaiming, possession, and restlessness; a holding onto the ‘symbol’ of human life rather than a giving back to God.”

7. Special circumstances must exist before an exception to the principle of permanence can be justified. The Court of the Arches in *Blagdon* identified various factors which, whilst not exhaustive, might give rise to a finding that special circumstances exist which may permit the exhumation of the deceased’s remains. These factors are:
 - a. Medical reasons. The Court of Arches stated that any medical reasons would have to be very powerful indeed to create an exception to the norm of permanence. It identified as an example serious psychiatric or psychological problems where medical evidence demonstrates a link between that medical condition and the question of location of the grave. I know that Mrs Burns has been prescribed anti-depressant medication as a result of the stress and distress she has been experiencing given her present circumstances but I cannot see that this amounts to a ‘serious psychiatric or psychological problem where medical evidence demonstrates a link between that medical condition and the question of location of the grave’.
 - b. Lapse of time. The Court held that the passage of a substantial period of time before an application for exhumation was made could not be determinative of the application in itself. However, it would be a factor in assessing the genuineness of the

petitioner's case. In this case, Dr Burns' remains had been interred for a period of less than four years at the date of the petition and that lapse of time has been explained by Mrs Burns and her move to Northern Ireland.

- c. Mistake. Where there has been a simple error in administration, such as burial in the wrong grave, the Court held that faculties for exhumations could readily be granted. Of more difficulty is where there is a failure to understand or appreciate the significance of burial in consecrated ground. It cannot be said that a mistake was made at the time of Dr Burns' burial. Dr Burns himself asked Revd Cooper if he could be buried in the churchyard at Fornsett St Peter when his time came and Mrs Burns accepts that at the time of the burial it was her intention to be buried with her husband there. It is true that at that time Mrs Burns did not know that financial circumstances would require her to move away from Norfolk, but that cannot be said to be a mistake rather than simply an unfortunate change of circumstances of the type which many bereaved families must experience after the death of a loved one.
- d. Local support. The Court held that although the views of close family members are very significant in determining whether special circumstances exist, the support or otherwise of the local clergy and PCC will normally be irrelevant. Clearly Mrs Burns and her daughter feel strongly that Dr Burns' remains should be exhumed. I am told that there are other members of his family who would be affected by the proposed exhumation, but I do not know their views. In this case the views expressed by the local clergy and PCC are undoubtedly very sympathetic to Mrs Burns but also make reference to the theological position that Christian burial reflects the committing of the deceased into God's hands in the hope of future resurrection. I am grateful for the assistance of Revd Powell in this matter but, in accordance with the decision of *Blagdon*, I attach the greatest weight to the views of Mrs Burns and her daughter.
- e. Precedent. The Court in *Blagdon* enjoins chancellors to have regard to precedent and the need to secure the equality of treatment as between petitioners. I have such regard.
- f. Family grave. The Court held that the use of family graves is to be encouraged. They are both expressive of family unity and environmentally friendly in demonstrating an economical use of the land for burials. Mrs Burns is very clear that it was her desire and intention at the time of the burial of Dr Burns' remains that she should be buried with him. She still holds that desire and in that respect it could be argued that this petition is brought with the intention of establishing a family grave. That said, I can see

no reason why Mrs Burns' remains should not still be buried with the remains of her late husband in Norfolk, should she wish it. If there was space for Mrs Burns to be interred in Dr Burns' grave at the time of his interment then there must be space now. By that means the family grave can still be established.

8. In light of all of the above I am afraid that I find that no special circumstances exist to rebut the presumption of permanence of Christian burial in this case. The Court of Arches in *Blagdon* expressly rejected on more than one occasion the possibility that a change of residence or the need to ensure that a grave could be visited more easily would amount to a 'special reason'. What Mrs Burns seeks is the portability of remains which is contrary to the Christian theology of burial.
9. I know that Mrs Burns and her daughter will be disappointed by this decision but I am unable to find a proper justification for this exhumation. I hope that they will find some comfort in the confidence that Dr Burns has been trusted into the safety of God's hands in the hope of future resurrection.

Ruth Arlow
Chancellor

26 October 2013