

Neutral Citation Number: [2023] ECC Her 1

IN THE CONSISTORY COURT OF THE DIOCESE OF HEREFORD

Before: The Chancellor

IN THE MATTER OF HEREFORD CEMETERY

and

IN THE MATTER OF JOHN PHILIP WILLIAMS DECEASED

### JUDGMENT

1. John Philip Williams died in 1970. His body was cremated, and the remains were interred in the consecrated part of Hereford Cemetery. It appears that they were exhumed in 1997, without the lawful authority of a Faculty, and for a purpose it is now not easy to understand; but they were reinterred in a new casket in the same plot, which is described as 'vaulted'.
2. Catherine Ann Williams, his widow, died on 22 August 2022. Her body was cremated. By this Petition their daughter, Buddug Rhiannon Cass, seeks the exhumation of her father's ashes with a view to their being mixed with her mother's, and the two sets of ashes interred together in the same casket. There will be an addition to the inscription on the memorial stone so that it shows both names. I have made enquiries about some aspects of the Petition, to which I have received answers from the Petitioner through the Registrar. I am satisfied that it is appropriate to determine this Petition without a hearing.
3. I do not need to set out in full the law relating to exhumation after Christian burial, derived from the custom of the church and the theology of burial, in full: for details, reference can be made to my judgment in Re Bingham Cemetery [2018] ECC S&N 1, and to the authorities there cited, particularly Re Blagdon Cemetery [2002] Fam 299. The starting-point is that Christian burial is to be seen as permanent, because it is the act of committing the remains or the ashes of the departed into the hands of God by their burial. There is therefore a presumption against exhumation. It follows that where there has been a burial in consecrated ground, accompanied as it will have been by the rites of the Church with the words of commendation of the departed to God and committal of the person's remains to burial there, permission for exhumation is not given by the Court on demand, even when, as here, there is no expressed opposition. It is for the Chancellor to decide whether an exhumation should be permitted. The Chancellor will make that decision by considering whether it is right to make an exception to the presumption of permanence.
4. Exceptions have been found to be established where there has been an error made either by those who arranged the interment of the person whose remains are to be exhumed, or by the burial authorities, for example where interment has taken place in the wrong plot. Subsequent events may justify exhumation, for example if the burial ground is compulsorily purchased for development, or flooded; and special family circumstances have featured in many of the reported cases, including tragic early deaths and the wish to create a new family grave, so saving the space occupied by burials in a variety of different plots.

5. The only expressed reason for the Petitioner's seeking now to have the remains of her father exhumed is her mother's wish to have her remains mixed with those of her deceased husband. That wish is contained in a document entitled 'Catherine Adams Will Trust – Statement of Wishes' signed and dated in 2009. In that year, according to the Petitioner, her mother 'had decided upon a Christian Science Service'. In a further detailed set of instructions dated 29 January 2017 Mrs Williams confirmed the essential elements of her wishes, including that of the mixing of the ashes. The service was to have readings from 'Science and Health' as well as from the Bible, and hymns from the Christian Science Hymnal as well as hymns that would be well-known to members of the Church of England. So far as concern's officiant, the 2017 instruction says this:

'In the unlikely event than an appropriate Christian Science Practitioner or Reader cannot be located Mrs Williams has said that a Minister of the Church of England can take the service and readings chosen by him/her together with the family members named above.'

6. The funeral service took place at the crematorium, in accordance with Mrs Williams' wishes. It was not conducted by a member of the clergy of the Church of England. Her ashes have not yet been interred, because carrying out her wish would involve exhuming those of Mr Williams. It is with the latter proposal only that I am concerned; but I note in passing that in any event if Mrs Williams' ashes are to be laid to rest in the consecrated part of Hereford Cemetery, that will need to be done in accordance with the teachings and doctrines of the Church of England and with a ceremony and intentions that do not contradict those teachings and doctrines in any respect.
7. I have not been able to discover any decided cases on this or similar proposals. That may be because it is obvious that the mingling of remains is not a good reason to allow an exception to the presumption set out above. There is nothing in Christian doctrine suggesting that any spiritual benefit could follow from such treatment of the remains of the dead; on the contrary, the principle of the permanence of the committal of remains to the earth, the requirement to treat such remains with dignity, and the near-universal Christian practice to maintain the separation and identification of remains where possible, all tend against allowing this Petition. It is also to be noted (although in context this of little additional weight) that there is no suggestion that Mr Williams, whose remains would be those disturbed by the proposed work, had expressed any complementary wish; nor is it said that the burial of his ashes was not intended to be permanent (despite the subsequent disturbance of them, itself a long time ago).
8. For these reasons the Petition for exhumation must be dismissed. Mrs Williams' ashes may be buried, with suitable ceremony, next to those of Mr Williams, without disturbing the latter; and if that takes place a suitable inscription may be added to the present memorial. Under the earth there may be natural mingling of the ashes of husband and wife in the course of time. But whether or not that happens, their two souls are together in the hands of God.

The Worshipful C M G Ockelton MA BD Chancellor  
28 August 2023