

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

ST BARTHOLOMEW, HORLEY

PETITION BY MRS JUANITA SHARP

1. This is a petition by Mrs Juanita Sharp which is dated 14 October 2008 (but which was received by the Registry on 22 May 2009). By it she seeks permission to exhume the cremated remains of her late father, Mr Keith Barton, from the Garden of Remembrance in the churchyard of St Bartholomew's Church, Horley and to re-inter them in the grave of her late mother, Mrs Lorna Barton, which is situated in the same churchyard at a distance of about 90 yards.
2. The facts of the case are not in dispute, and I have been able to determine the petition without the need for an oral hearing.
3. This is, nonetheless, a long judgment. This is because although the broad principles governing petitions for exhumation are not in doubt, the particular application of those principles does cause difficulty. Certainly in the present case it was not obvious to me what was the correct answer in the circumstances and I was aware that, if I were to grant a faculty, I would be doing so in circumstances which could be considered not dissimilar to those arising in *Re Christ Church, Alsager*¹ and which I consider below.

¹ [1999] Fam 142.

Since decisions on exhumation are inevitably and, as I consider, properly² considered as precedents, it seemed to me necessary to consider the matter in detail.

The facts

4. Keith and Lorna Barton were married in the 1950s and enjoyed more than 50 years life together. They had three daughters, Juanita, Estelle and Aurelia and a son, Ian. They lived for 45 years in Horley, Surrey, where Mrs Barton was a member of the congregation of St Bartholomew's Church.
5. Mr Barton died on 6 April 2007, aged 73. He had expressed a wish to be cremated, and this wish was honoured, his ashes being interred in the Garden of Remembrance (for cremated remains) in the churchyard of St Bartholomew's church.
6. Shortly after Mr Barton's death, Mrs Barton was diagnosed with liver cancer and she died in May 2008. She had always expressed a wish to be buried and this wish, too, was honoured, her remains being buried in the churchyard of St Bartholomew's church, but not, of course, in the Garden of Remembrance. Accordingly, the remains of Mr and Mrs Barton are interred in the same churchyard but at a distance of some 90 yards.
7. Mrs Sharp's petition is supported by her brother and sisters.

The Petition

8. Mrs Sharp explains the basis of the petition as follows:

When my father died (6 April 2007) and he was cremated rather than buried, our family decided the most fitting place to place his ashes was in Horley Churchyard. If we had any notion that my mother would have died

² See paragraph 24 below.

so soon afterwards (13 months) we would most certainly have opted to retain them in order that both could be buried together.

My mother would most certainly have wished for my father's ashes to be buried with her if she had realised that she was terminally ill.

None of us anticipated that this [might] be the case; no one could have anticipated that my mother's death would occur so soon afterwards in order to advise us otherwise. It did, however, clearly strike all of us assembled as we buried, my mother on 22 May 2008 that my dear parents should be laid to rest together. We therefore began the necessary official process as soon as practically possible thereafter to apply for permission to move my father's ashes.

This is the most sincere and heart-felt wish of our entire family that our dear parents should lie in rest together (as supported by previous correspondence) and is a request supported fully by our minister Steve Davie, the Church and our Funeral Directors, Ray & Maureen Bateman.

Whilst, as Christians, we accept the principle of a final resting place, we all strongly believe that in these very sad and somewhat exceptional circumstances, moving my father's ashes to my mother's gravesite would be the right and truly Christian thing to do.

9. The Reverend Dr Steve Davie, Priest in Charge in the Horley Team Ministry has written in support of the petition in these terms:

I knew Mr and Mrs Barton for several years, Mrs Barton having been a regular and frequent member of my congregation, caring for her sick husband for many years. Sadly he died and was cremated, his ashes [being] interred in Horley Churchyard. Mrs Barton then quite suddenly and unexpectedly fell ill just as her 'new' life was beginning, went to hospital and died. There was a palpable sense of shock, not least among her three daughters who proceeded with her known wish for a burial in Horley Churchyard. It was not until quite literally at the end of her funeral when the daughter went to visit their father's ashes plot, that anyone considered that they could have been laid to rest together.

The immediate shocks of all this having past, it is now my considered opinion that it would help the family enormously for Father's ashes to be removed to Mother's grave. In retrospect, had Mrs Barton realised her illness she would not have had Mr Barton's ashes interred and at the time everything was moving so fast no-one considered long-term implications.

10. I asked for the views of the Archdeacon of Reigate and he helpfully identified a number of relevant matters for me to consider which I shall do in my judgment below. His

conclusion on the material before him is that it would be appropriate for permission for exhumation to be granted in the circumstances arising.

Diocesan Guidance

11. Diocesan Guidance issued by Chancellor George in 2003 provides as follows:

Once a body or ashes have been buried in consecrated ground (whether in a churchyard or in a municipal cemetery) they may not be exhumed save with the authorisation of a faculty granted by the Chancellor, which will never be granted unless there are special circumstances which justify the making of an exception to the norm that Christian burial is final.

12. It will be seen that this reflects the legal position, particularly as set out in *In re Blagdon Cemetery*³, which I consider below.

The law

13. The most authoritative statement of the law relating to exhumation is contained in the judgment of the Court of Arches in *In re Blagdon Cemetery*.

Re Blagdon Cemetery

14. As regards the principles involved, the Court of Arches said:

33 We have concluded that there is much to be said for reverting⁴ to the straightforward principle that a faculty for exhumation will only be exceptionally granted. Exceptional means "forming an exception" (Concise Oxford Dictionary, 8th ed (1990)) 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.

34 The Chancery Court of York in In re Christ Church, Alsager [1999] Fam 142, 148 quoted part of the judgment of Edwards QC Ch in In re Church Norton Churchyard [1989] Fam 37 on the subject of the discretion of the consistory court. In that passage Edwards QC Ch said: "there should be no

³ [2002] Fam 299.

⁴ The Court decided not to apply a different test which had been articulated by the Chancery Court of York in *In re Christ Church, Alsager*: as to that test, see paragraph 37 below.

