IN THE CONSISTORY COURT OF THE DIOCESE OF LEICESTER

CHANCELLOR BLACKETT-ORD

RE: HUNGARTON, ST JOHN THE BAPTIST

RE: FREDERICK T. KRARUP and EVA D. E. KRARUP DECEASED

Thursday 20th December 2012

JUDGMENT

The Petition

1. There is before me a Petition from Mrs Edith De Lisle which seeks faculty permission for the dis-interment of the cremated ashes of her parents Mr and Mrs Krarup.

2. Mrs De Lisle prefers to be called "Madam de Lisle" and so I shall describe her.

3. The Petition has had a long procedural history which I need not set out here. Suffice it to say that I warned Madam de Lisle in an interim judgment dated 11 October 2011 that the grounds that she had then stated in her Petition were inadequate, and I urged her to take advice on the relevant law on dis-interment. She accepted that advice and her Revised Petition sets out her present case with references to authority.

4. She now accepts that she must obtain the licence of the Ministry of Justice if, as she intends, the ashes are to be moved to non-consecrated ground.

5. She has also accepted that I may deal with her application on paper without a hearing. This was partly my suggestion. Of course it has the advantage that the matter can be disposed of more cheaply, but it has the disadvantage that she was not cross-examined and I have not been able to question any of the witnesses or delve further into the background of this rather curious application.

6. The facts are as follows.

7. Madam de Lisle is the only child of Mr and Mrs Krarup who died respectively in October 1987 in Lima, Peru and in 1995 in Madrid, Spain. Madam de Lisle married and remains married to Mr de Lisle who is known (at least by her) as "Squire de Lisle".

8. They purchased a substantial Elizabeth house with an estate in Leicestershire in l 1972. Quenby Hall is in the parish of St John the Baptist, Hungarton.

9. They had two children, both sons, Frederick and Peter.

10. Squire de Lisle is of the family of Ambrose de Lisle who was an English Catholic convert and was the founder of the Trappist Abbey of Mount St Bernard which is near Coalville in North Leicestershire. I understand that it remains the only Trappist abbey in England. He was survived by eleven children, and I presume (though I do not know) that Squire de Lisle is descended from one of these.

11. I have seen a letter from the present Abbot dated 16 January 2012 which states that the de Lisle family maintain a burial ground at the Abbey, although the land is owned by the Abbey itself. He says that as Abbot he has jurisdiction over this land.

12. Squire de Lisle's own parents were buried at the Abbey. Madam de Lisle tells me in her evidence that the burial ground currently contains the remains of ten members of the de Lisle family and that it is the intention both of Squire de Lisle and herself that they be interred together there. Squire de Lisle gives no evidence on the point but their sons have written in support of the petition and state that they both intend to honour their parents' declared intentions to be buried there.

13. I return to the ashes which are the subject matter of the present Petition

14. Mr Krarup, as I have mentioned, was buried without cremation in Lima in 1987. Mrs Krarup died and was cremated in Madrid in 1995. Her remains were brought back to England to be interred at Hungarton by her daughter. Following this, her daughter was able to secure the exhumation and cremation of her father so that his remains could be reunited with her mother in England in 1998.

15. The petition fails to state the date of the burial at Hungarton (as it ought to have) but as I understand it both caskets were buried at Hungarton in 1998 or soon after.

16. Madam de Lisle's evidence about this in the original Petition is important:

> "Mr and Mrs Krarup died abroad and had their cremated remains removed to England. At the time of their removal the de Lisle family had established what they had hoped to be a permanent home at Quenby Hall in Hungarton. It was the intention of the family that this was to be their home for generations to come.
>
> "Prior to the acquisition of Quenby Hall, the de Lisle family maintained for many years a family burial ground at Mount St Bernard Abbey...".

17. At about the time of the burial of the ashes in Hungarton churchyard, Squire and Madam de Lisle moved out of Quenby Hall to allow their son Frederick to live there, and I think own it. They now live at Bellesdon which is perhaps five miles from Hungarton.

18. Unfortunately Frederick's business at Quenby Hall was unsuccessful and Quenby Hall will have to be sold. It is clear that this has been a great shock to the family. Madam de Lisle stated in her original Petition:

> "The family will have to be uprooted from what they had come to view as their home for generations to come...
>
> "The application is precipitated by a business catastrophe resulting in the forced sale of the family home. ".

19. In my Interim Judgment I commented that the sole reason that was being given why Madam de Lisle's parents should be disinterred, was because she said that Quenby hall is to be sold. I stated that I failed to see why the sale of Quenby Hall should decide the ultimate resting place of Mr and Mrs Krarup. I asked for elucidation.

20. I hope that by putting the matter in this way I did not sound callous. The sale of a family home because of a financial disaster, is often the cause of more deep and genuine grief than is generally supposed.

21. The "Revised Petition and Further Evidence" which came to me early this year, and obviously benefited from legal advice, put the case for dis-interment upon a rather different footing.

22. But it is hard for me to forget that the original Petition was based squarely upon the fact that the caskets of ashes had been buried in the churchyard at Hungarton because Quenby Hall was in the Parish of Hungarton and Quenby Hall was intended to be the family home "for generations to come", the only thing that has happened to change the picture is that Quenby Hall has come under threat of sale. (I believe that it has not actually been sold.)

23. Before turning to the matters which are relevant for my decision, I can dispose of one or two that are not relevant.

24. First, it is not to be held against Madam de Lisle that her parents were Roman Catholic. If grounds for dis-interment are made out, then dis-interment may be ordered out of consecrated ground of the body of a person of whatever faith: it was ordered in the case of a Roman Catholic in Re Talbot (1901) P 1 and of a person of Jewish faith by Chancellor Hill in Re Durrington Ceremony (2000).

25. Secondly, it makes no difference that we are here dealing with cremated remains rather than a body. The Church of England makes no distinction in canon law between a corpse and the ashes of a cremated body; both should be treated with the same reverence and decency and accorded the same dignity in interment (Re Atkins (1989) 1 AER 14).

26. Probably irrelevant also is the attitude of those descendants or relations of Ambrose de Lisle who are not closely connected to Madam de Lisle. In my

Interim Judgment I suggested that I might benefit from evidence of the attitude of the de Lisle family, although this (I said) is probably only relevant if it is correct that they are the owners of the proposed burial spot.

27. The letter from the Abbot that I have mentioned states that

> "My consent is sufficient to allow Mr and Mrs Krarup's remains to be interred in the de Lisle burial ground".

To my question about the attitude of other members of the family, Madam de Lisle replies:

> "We hope that the Chancellor will agree that the attitude of the de Lisle family is not relevant".

This might be interpreted as a hint that amongst them were people who might be opposed to the arrival of the Krarup ashes. But if anybody opposes this Petition (which I have directed to be duly advertised), they have had ample opportunity to say so, and so I proceed on the basis that the Petition is opposed by nobody.

28. The matters that are relevant, and which are the basis upon which the Revised Petition is advanced are three:

(a) that the interment of the ashes in Hungarton churchyard was a mistake;

(b) that they are intended to join a family grave; and

(c) pastoral reasons, which I think is a reference back to the fact of the probable sale of Quenby Hall.

29. I shall deal with these matters in turn.

The principles

30. The principles to be applied are well known. In Re Smith [1994] 1 AER 90, it was said that disinterment being permitted on the grounds of a family moving house might lead to

> "an unseemly procession of disintegrating corpses and ashes between burial grounds if whenever a petitioner moved from place to place the court were to grant him as a matter of course a faculty for the exhumation of his relative's remains and their re-interment elsewhere".

31. In Re Blagdon Cemetery (2002) Fam 299, the Court of Arches made a similar point at p.307:

> "If advances in 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 pointed out 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 subject to multiple moves".
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> "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".

32. The Chancery Court of York (which is the court of appeal from Consistory Courts in the Northern Province) laid down general guidance in Alsager, Christ Church (1999) 1 AER 117 in the following terms:

> "(1) Once the body or ashes have been interred in consecrated ground, whether in a churchyard or consecrated section of a municipal cemetery,

there should be no disturbance of the remains save for good and proper reason.

"(2) Where a mistake has been made in effecting the burial, for example a burial in the wrong grave, the court is likely to find that a good reason exists, especially when the petition is presented promptly after the discovery of the facts.

"(3) In other cases it will not normally be sufficient to show a change of mind on the part of the relatives of the deceased, or that the spouse or other close relative of the deceased has subsequently been buried elsewhere. Some other circumstances must be shown.

"(4) The passage of time, especially when this runs into a number of years, may make it less likely that a faculty will be granted".

33. The Court of Arches in Re Blagdon itself allowed a dis-internment because the body was that of a young son of peripatetic parents, whose sudden and unnatural death led him to being buried in a place where his parents were temporarily resident only. The absence of any link between him and the community there, his parents' lack of a permanent home at the time, and their subsequent acquisition of a permanent home, and of a single burial plot to bring together the child and the parents into one family grave, were sufficient to justify the removal of the body.

34. There have been recent cases at first instance in the Consistory Courts which disagree with one another on the question of whether the proposed removal of a body to a new family grave is or is not of itself sufficient to justify an order for dis-interment. I do not enter into that debate. In my view it all depends on the circumstances.

A mistake

35. The contention that the choice of Madam de Lisle's parents' burial place was a mistake, seems to me to suffer from the difficulty that

    (a) She specifically tells me that she brought her parents to Hungarton for burial precisely because Quenby Hall at Hungarton had been established as what was intended to be a permanent home for the family and was intended "to be their home for generations to come".

    (b) The inference from the original Petition is that the threat to the de Lisle's ownership of Quenby Hall was the only reason that cast any doubt upon the desirability of Hungarton remaining the Krarup's resting place.

36. I have no doubt that Madam de Lisle is truthful in her statement dated 1 February 2011 that she was ignorant of the legal position:

> "until the commencement of this Petition I had no idea that the remains, by being placed in Hungarton churchyard, would be subject to the jurisdiction of the Consistory Court in perpetuity, nor was I aware of the presumption of permanence in relation to burial in Anglican churchyards. Indeed I had no suspicion of the presumption as I had already managed to have my father's remains moved. Had I been aware that by burying them at Hungarton I would be subjecting their remains to the jurisdiction of the Consistory Court then (with the greatest respect to the Court) I would never have had my parents interred at Hungarton".

37. But I do not understand the reasoning. If Madam de Lisle had made any enquiries, she would have discovered that a burial in English soil, whether consecrated or secular or indeed in an abbey cemetery, would be subject to a presumption of permanence, whether the jurisdiction was that of the Consistory Court or what is now the Ministry of Justice. It seems that her only complaint

about the existence of the jurisdiction of the Consistory Court is that this jurisdiction may discourage disinterment. It is this restraint upon movement that she objects to, rather than the jurisdiction. But permanence of burial was what she avowedly sought when she had her parents buried in Hungarton churchyard, and is avowedly what she seeks at Mount Bernard.

38. Madam de Lisle does not particularly claim that she seeks to move the ashes because of a devout desire (in herself or her parents) that they should be buried in soil belonging to a Roman Catholic organisation. Her revised Petition says that her "family are strongly committed to ecumenism and… are as a matter of conscience opposed to the pursuit of any line of argument that seeks to capitalise on or further any division between the churches." To her the attraction of Mount Bernard is more because of the family connection than because of the religious one. It must have been perfectly plain to her when her parents were buried in Hungarton Church, that they were being buried in an Anglican churchyard and not a Roman Catholic one. What "mistake" was being made is unclear.

39. She also states that she was mistaken in her belief that her parents could be moved "should a more appropriate place of interment be found". She said that she was mistaken in allowing her parents

> "to be interred in consecrated ground not only whilst being ignorant of the presumption of permanence that applied in these cases but holding an almost entirely contrary view".

The "contrary view" is evidently a view that burial is very far from being permanent, and is or ought to be subject to reconsideration when "a more appropriate place of interment" for the remains can be found. She says in relation to her parents' ashes,

> "the presumption against portability has already been broken in this case as the remains are already well travelled."

I am sure that she sincerely holds this belief, but I do not believe that a doctrine of peripatetic burials is one to which any religion subscribes and I do not accept that it can be called an article of faith rather than opinion.

40. I do not accept that Madam de Lisle made a mistake when she buried her parents where she did over a dozen years ago. I consider that she has simply changed her mind.

Family grave

41. Secondly Madam de Lisle prays in aid the considerable body of cases (particularly recent cases) where dis-interment has been permitted in order to keep a family together in death either in a single family grave, or near or beside one another.

42. Madam de Lisle's claim that she wishes to bring her parents to the de Lisle family burial place is superficially an attractive one but I wonder whether we are not allowing ourselves to be influenced by the de Lisle surname, which makes too plausible a link between Madam de Lisle's parents and her husband's forbears at Mount Bernard.

43. We are not here dealing with a case in which parents wish to be reunited with their child, as in Re Blagdon. We are dealing with the suggestion that Mr and Mrs Krarup should join Squire de Lisle's parents. There is no evidence that they

knew each other well, or even met one another. Their kinship is not as close as the "family" mentioned in the dis-interment cases.

Pastoral considerations

44. Finally I turn to the "pastoral" argument. I must say at once that the examples of cases in which dis-interment had been allowed, and which we find in the reported authorities, are only examples; there seems to me to be no doubt that new exceptional cases will arise in the future, in circumstances which no-one has previously imagined, where the court may allow dis-interment notwithstanding the strong presumption against the disturbing of buried remains.

45. But the difficulty in our case is that the ashes with which we are concerned seem to have been buried with care and consideration by Madam de Lisle in the consecrated churchyard where they now lie. Indeed she must have gone to very considerable lengths to procure their removal to Hungarton from Peru and Spain. What has really changed is the unfortunate probability that Quenby Hall will not survive as the centre of the lives of her descendants. I have to say that I consider that this is a bad reason for justifying the removal of the ashes.

46. I regret that I do not consider that Madam de Lisle's other reasons are sufficiently good to justify the removal of her parents' remains.

47. I regret that I must dismiss the Petition.

Mark Blackett-Ord
Chancellor
Date: 20 December 2012

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