Neutral Citation Number: [2021] ECC Bla 1

Faculty - Exhumation - Family Grave - Mistake - Lapse of time - Faculty Granted

Petition No: 11 of 2021

IN THE CONSISTORY COURT OF
THE DIOCESE OF BLACKBURN

Date: Saturday, 13 March 2021

Before:

HIS HONOUR JUDGE HODGE QC, CHANCELLOR

In the matter of:

SAINT ANDREW, LEYLAND

THE PETITION OF MRS BARBARA HILL

Determined on the papers and without a hearing

The following cases are referred to in the Judgment:

Re Bingham Cemetery [2018] ECC S&N 1
Re Blagdon Cemetery [2002] Fam 299
Re Christ Church, Alsager [1999] Fam 142
Re Clayton Cemetery, Bradford [2019] ECC Lee 2
Re Hither Green Cemetery [2018] ECC Swk 3, [2019] Fam 17
Re Lambeth Cemetery [2020] ECC Swk 4
Re Newton, Deceased [2018] ECC She 1
Re St. Mark, Winshill [2020] ECC Der 4
Re St. Mary, East Leake [2021] ECC S&N 1

JUDGMENT

Introduction and background facts

1. This is a petition dated 10 January 2021 by Mrs Barbara Hill for a faculty authorising the exhumation of the cremated remains of her late husband, Mr Kenneth Roland Hill, from the churchyard of St Andrew's church, Leyland and their re-interment in an existing family grave in the churchyard of St Nicholas's church, Wrea Green, near Kirkham in the County of Lancaster. The late Mr Hill died on 13 June 2007, aged 76, and his cremated remains were interred in his existing cremated remains plot on 31 August 2007. The memorial headstone of the family grave at St Nicholas's church presently commemorates four members of the late Mr Hill's family who have been laid to rest there: his brother, John Hill, who died on 2 March 1940, aged 14 days; his mother, Ethel Hill, who died on 13 February 1956, aged 58 years; his father, Thomas Charles Hill, who died on 28 April 1960, aged 60 years; and his brother, Thomas David Hill, who died on 17 July 2001, aged 64 years. The image of the headstone shows a well-tended and apparently well-loved gravespace, with both flower holders bearing freshly placed flowers. The ministers of both churches have given their permission for the exhumation and the re-interment of the late Mr Hill's cremated remains. The vicar of St Nicholas's church has confirmed that it would be possible for Mr Hill's cremated remains to be interred in the family grave; and that there is also sufficient space to accommodate the burial of the petitioner's cremated remains, and those of her daughter, as and when this becomes necessary.

2. The petitioner has suffered from leukaemia for several years and she is currently in hospital where she suffered a suspected stroke on 9 March 2021. She is being supported in her petition by her granddaughter, Mrs Donna Coupe. Mrs Coupe has confirmed that the petitioner and her late husband had only the one child who is Mrs Coupe's mother, Christine Worrall, and that she supports the petition (as does Mrs Coupe). In these circumstances, the conditions of FJR 6.6 (3) are satisfied; and given the delicacy and the sensitivity of this matter, and also the potential urgency as a result of the petitioner's poor health, I dispense with the need for public notices. I also consider that as the petition is unopposed, it is appropriate to proceed to determine the petition on the papers and without a hearing.

3. In her petition, the petitioner states her reasons for seeking the exhumation and reburial of her late husband's remains to be as follows: The late Mr Hill had said in conversation that his preferred resting place would be the Hill family grave at St Nicholas, Wrea Green. However, when he passed away suddenly in 2007, with no *"official wishes"* in place, the petitioner feels that she acted in haste in deciding to place his ashes at St Andrew's churchyard in Leyland. The reason Mrs Hill made this decision was *"purely based on personal convenience at the time"* as Mrs Hill could get the bus to Leyland whereas, being unable to drive, Wrea Green was not practical. In recent years Mrs Hill's mobility has decreased and she has suffered with leukaemia for several years. She is due to move into a care home shortly and, as such, Mrs Hill feels that it is *"only right that I should make right Roland's wishes whilst I am still able to try to do so. It is my wish that my ashes should also be placed with Roland's in the Hill grave in Wrea Green"*. The petitioner goes on to relate that prior to Christmas, her granddaughter was laying flowers at the Hill grave in Wrea Green – something she regularly does – when, by chance, she started chatting with Mr Chris Danby, the preferred memorial sculptor for St Nicholas. Mr Danby coincidentally referred to a meeting with the late Mr Roland Hill and he recalled him ordering the new headstone for the grave following the death of his brother, Mr Thomas David Hill. Mr Danby enquired how Roland was and when

Mrs Coupe advised that he had passed away some years ago, Mr Danby asked if the stone would need updating to add Roland's details to it. Mr Danby went on to explain that (as appears from the image produced to the court) the space at the lower section of the headstone had been left for Roland following his wishes at the time of ordering the stone. The petitioner concludes: *"After 53 years of being happily married to Roland, I do not wish to go to my grave knowing that I have not adhered to his wishes. I therefore would like to request that Roland can be placed at St Nicholas in Wrea Green which [sic: surely 'with'] his much loved family, in the village where he lived as a boy."*

4. Acting at my direction, the Diocesan Registry wrote to the petitioner (care of Mrs Coupe) on 2 March 2021 requesting the following further information before I could determine the petition:-

1. *The Chancellor would like a photographic image of the headstone ordered following the death of the deceased's brother Thomas David Hill showing the space for the deceased's details.*

2. *Do all of the deceased's children know of, and support, the petition?*

3. *Is the deceased's existing grave capable of accommodating the petitioner's own ashes and if so, why she would not wish them to be laid to rest there?*

4. *How were the deceased's ashes laid to rest – in an urn, a box or some other container and if so, of what type?*

5. *After some 13 ½ years, is it considered likely that any container would still be intact and capable of being exhumed and re-interred elsewhere?*

6. *Is there any information the petitioner would wish to reply upon in support of her petition or which would tend to show that this is a case where, exceptionally, exhumation should be permitted?*

7. *Is the Petitioner content for the Chancellor to deal with the petition on the basis of written representations or would she want there to be a hearing (even if only virtually by Zoom, Teams or some other virtual digital medium, due to the pandemic).*

The letter stressed that I was not seeking the above information in order to be difficult in any way; rather that I might be satisfied that there were exceptional circumstances that would justify exhumation and that this had the support of the deceased's close family members. I was merely seeking to ensure that the petitioner put forward the fullest possible case and so that I could be satisfied that exhumation was practicable.

5. Having spoken to her grandmother in hospital the previous weekend, Mrs Coupe responded by email on 10 March 2021 as follows:

> *"1. Image of headstone is attached.*
>
> *2. My grandma and grandad have one child, my mum, Christine Worrall, I can confirm she supports this application.*
>
> *3. The plot at St Andrew's could take another set of ashes but that wouldn't address my Grandma's wish to have my grandad placed at St Nicholas with his family as per his wishes. As per the original letter from St Nicholas the Hill family grave could accommodate both my grandma and my mum (who is single) as well as my grandad.*

4. I have spoken with the undertaker Ian Wilde of Station Road, Bamber Bridge, who dealt with the laying to rest of my grandad's ashes and they have confirmed that the ashes were placed in a mahogany box.

5. Continuing from point 4, Ian Wilde confirmed that although the casket will have partially decayed, the ashes could definitely be gathered for placing at St Nicholas.

6. My grandma believes that when she took the decision to place my grandad at St Andrew's, shortly after his death, she was in shock (he died suddenly) and therefore did not act rationally or upon his wishes. I'm sure you'll appreciate the loss of my grandad was immense. Given the grief she experienced and her inability to make sound decisions at the time, she feels that these are exceptional circumstances as this is her last opportunity to make things right for him. Just for reference, my grandma's health has deteriorated since the weekend, she had a suspected stoke yesterday. We are awaiting confirmation and an update on her condition.

7. Referring to point 6, given my grandma's health (and age) it probably isn't viable for her to attend a virtual meeting but if you feel it would help the application, I am happy to attend on her behalf."

The email concluded:

> *"Many thanks for your support with this application and please be assured that in no way do we feel that the Chancellor is being difficult in any way regarding the above questions. We completely understand that the fuller a picture that can be given in the application process the better for all concerned."*

6. That email was forwarded to me the following day (11 March 2021). Having carefully considered all the papers, and having reminded myself of the applicable law, I immediately directed the Registry to inform Mrs Coupe that I would try to produce my reasoned judgment over the coming weekend; but, in view of the recent deterioration in her grandmother's condition, the Registry were to inform Mrs Coupe that I would be granting the petition and that she could tell her grandmother that so that her mind could be at rest. That was (I hope) done on Thursday 11 March 2021. My reasons for my decision follow.

The applicable law

7. Authoritative guidance on the proper approach to the disposal of a petition seeking the exhumation of human or cremated remains from consecrated ground is to be found in the decision of the Court of Arches (the Church of England's ecclesiastical appeal court in the Southern Province of Canterbury) in *Re Blagdon Cemetery* [2002] Fam 299. Although I would not necessarily view the two appellate judgments as being in conflict with each other, as was recognised by Chancellor Hill QC (in the Diocese of Leeds) in *Re Clayton Cemetery, Bradford* [2019] ECC Lee 2 at [14], and for the reasons later explained by Chancellor Petchey (in the Diocese of Southwark) in *Re Lambeth Cemetery* [2020] ECC Swk 4 at [13]-[28], *Blagdon* should now be taken as effectively revisiting and reframing earlier guidance from the corresponding appeal court for the church's Northern Province of York in the earlier case of *Re Christ Church, Alsager* [1999] Fam 142 where (at p 149) the Chancery Court of York had applied the following test*: "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?"* Reiterating that the norm of Christian burial was permanence, in *Blagdon* the Court of Arches decided (at [33]) that the appropriate approach to deciding whether to grant a faculty to permit exhumation was to ask the question whether an exception should be made to

that norm. In its judgment, the Court helpfully identified various matters which might be relevant to a judgment as to exceptionality and it expressed its views about them. One of the matters that it considered relevant (at [36(iii)]) was *"a mistake as to the location of a grave"*, although the Court emphasised *"that a 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"*. Another relevant matter was whether the proposed exhumation was to facilitate re-interment of the remains in a family grave. The Court said (at 36 (vi)] that family graves were *"… to be encouraged. They express family unity and they are environmentally friendly in demonstrating an economical use of land for burials. Normally the burial of family members in the family grave occurs immediately following the death whereas in this case Steven's remains will have to be disturbed after many years in order to inter them in a new family grave."*

8. A helpful summary of the law is to be found in the recent judgment of Chancellor Ockelton in Re St. Mary, East Leake [2021] ECC S&N 1 (in the Diocese of Southwell and Nottingham). At [4] the Chancellor said:

> *"I do not need to set out in full the law, derived from the custom of the church and the theology of burial, in full: for details, reference can be made to the judgment of this court in Re Bingham Cemetery [2018] ECC S&N 1. 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 or cremation, permission for exhumation is not given by the Court on demand, even when 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."*

In that case the petitioner's late father's ashes had been interred in a cemetery in Loughborough in 1980. In 1985, the ashes had been exhumed and reinterred in the churchyard at East Leake. The petitioner now wished to have his father's ashes re-exhumed and reinterred in another part of the churchyard, with the ashes of the petitioner's mother, who had recently died. Chancellor Ockelton determined that there were exceptional factors to justify the grant of a faculty for exhumation. The canopy of a cypress tree had grown over the grave, leaving only one metre clearance above the grave; the area around the grave was overgrown; and the grave was likely to be affected by the tree's roots. Those factors have no application to the instant case.

9. In the earlier referenced case of Re Bingham Cemetery [2018] ECC S&N 1 the petitioner had wished to exhume the remains of her baby daughter (who had died in 1948) and of her husband (who had died in 1989) from Bingham Cemetery, a few miles from her home in the nearby village of Gamston. At the time of the interments, Bingham had been the place where people from Gamston were normally interred. The petitioner and her daughter and son-in-law had purchased two plots in Wilford Hill Cemetery, about one mile away from Gamston. The intention was for the petitioner's daughter and son-in-law eventually to be buried in one of the plots at Wilford Hill and for the remains of the petitioner's husband's and infant daughter to be transferred to the other grave, in which the petitioner herself would in due course be buried. Chancellor Ockelton considered that there were no exceptional circumstances to justify the exhumations, and he therefore refused to grant a faculty. He rejected arguments founded upon the creation of a family grave and mistake. The usual case where exhumation was sought on the basis of the creation of a family grave involved the exhumation of the remains of one person, to be re-interred in a place where other members of the family were, or would be, buried. The instant case was not one of wishing to move human remains to a family grave, but rather of

exhuming human remains from a family grave in which it was possible for the petitioner's remains to be interred in due course. Nor was there any question of a mistake having affected the choice of resting-place of either the baby daughter or the petitioner's husband. If any decisions had been made at the times of their deaths, they were unrecorded; and so there was no evidential basis for saying that the petitioner (or, in the case of the baby daughter, both of her parents) had made a choice that they would not have made had they been better advised.

10. In the course of his judgment in *Re Bingham Cemetery* Chancellor Ockelton had considered the relevance of precedent. He said this (at [15]):

> *"It is perhaps inevitable that those trying to put together a case for exhumation should be tempted to do so by reference to the facts and the apparently successful factors in other cases; and it is, I think, fair to say that the submissions in the present case have been formulated by reference to the facts of Blagdon. The temptation to treat other cases, even Blagdon or Alsager, as a pointer to what is likely to be regarded as exceptional is to be resisted. Like cases are no doubt to be decided alike, and the decided cases offer guidance on the determination of the issues, which ought to be applied in the interests of consistency. But precedent operates in the area of law, not of fact. The facts of every case are different. The question is whether the circumstances as a whole establish the exceptionality. Whether an individual factor can be given the same headline description as a factor in another case is unlikely to be of very great assistance. It cannot even be said that if factors capable of bearing the same descriptions as all the factors listed (i)-(v) in the previous paragraph could be identified in another case, an exhumation would be allowed, especially if the ages, the distances or the history of the parents' occupation were different; and an analogy would be more dangerous still if one of the factors was absent. What is worse, an attempt to fit factors within the descriptions used in other cases may cause some matters to be regarded as unimportant or unlikely to be influential, when in truth they are not. Even the clear and general guidance that can be found in such decisions as Alsager and Blagdon cannot be regarded as comprehensive: as has been said in a number of contexts, guidelines are not to be treated as tramlines. The only fixed principle is that the circumstances as a whole, properly evaluated and considered, will need to establish that it is right to make an exception to the presumption of permanence."*

In *Re Hither Green Cemetery* [2018] ECC Swk 3, [2019] Fam 17 Chancellor Petchey commented on this passage (at [13]) as follows:

> *"I think that this is a salutary reminder that each case needs to be decided on its merits and on its own particular facts. However I think that it is looking at the matter too narrowly to say that precedent does not operate in the realm of fact; the desirability of securing equality of treatment between petitioners was described by the Court of Arches in In re Blagdon Cemetery [2002] Fam 299 as the practical application of precedent. It would make the lot of a chancellor much easier if all he or she had to do in an exhumation case were to apply the test of exceptional circumstances with reference to the guidance in In re Blagdon Cemetery, but without reference to any other decided case. However, if I am to be confident that equality of treatment is being secured, I need to consider other decided cases. In this context, it should be noted that petitioners are usually unrepresented and will have no idea that there exists a large corpus of decided cases, let alone that the facts of some of them may be relevant to his or her own case. It falls to the consistory court to identify and consider the relevant cases. This is particularly important as what has happened, over time, is that in the cases the courts have identified a large number of circumstances which they have considered exceptional. The issue that then arises is to how properly to distinguish one set of facts which are exceptional from another which are potentially not. It is comparatively easy to distinguish one case from another; as Chancellor Ockelton emphasised, the facts of no two cases are identical and even if the same relevant factors are identified in two different cases, that does not necessarily mean that they will be decided in the same way. However it is important that the distinctions drawn should be intellectually defensible and not subject to the criticism that they are too fine to be justifiable."*

So, I find it helpful to consider the decisions of consistory courts in earlier cases, not as precedents slavishly to be followed, or even as tramlines guiding my way forward, but as affording potentially helpful indications as to how the particular circumstances of other, similar, but not identical, cases have been viewed when considering whether it is right to make an exception to the principle of permanence. I remind myself of the desirability of securing equality of treatment, so far as circumstances permit, as between petitioners, and of treating similar cases in similar ways, eschewing over-fine distinctions; but also that ultimately the duty of this court is to determine whether the circumstances of the present case, properly considered and evaluated, are such as to justify making an exception to the presumption of the permanence of Christian burial.

11. In *Hither Green Cemetery*, Chancellor Petchey (in the Diocese of Southwark) granted a faculty which enabled a mother to exhume the body of her child from a consecrated part of a cemetery so that she could have it cremated and keep the ashes at home. Although burial in consecrated ground gave rise to a presumption that the burial would be permanent, and a mere change of mind would not justify displacing that presumption, there were held to be exceptional circumstances justifying the exhumation. The mother had agreed to the burial arrangements at a time of profound grief and they were now causing her considerable distress. She had not known that the ground was consecrated, she had not understood the legal effects of burial in consecrated ground, and she would not have arranged for burial there had she known. At [25] Chancellor Petchey said this:

> *"I am very aware that, at root, this is a 'change of mind' case. If Ms Hardwick had been content with the arrangements that were made at the time that Owen died, then obviously there would have been no petition. Yet change of mind as an inadequate justification for exhumation was emphasised in In re Blagdon Cemetery [2002] Fam 299. I am also aware of the recent case In re Newton, decd [2018] ECC She 1 where Chancellor Singleton QC decided that a widow had made a mistake in arranging for the ashes of her husband to be buried in the churchyard of the church of the place where he had lived until he was 11, rather than in the grounds of Rotherham Crematorium (nearer to Rotherham where he had lived and spent his married life). The chancellor concluded that the widow had made the mistake because she was confused by grief; exceptional circumstances accordingly arose. It is not a criticism of that decision to suggest that the facts seem to be weaker than those of Ms Hardwick's case, even though the mistake that occurred in that case was an operative one—evidently the initial decision as to the interment was rational, if mistaken. There will be similar cases where a petitioner may accept that the initial decision cannot be categorised as the result of an operative mistake but none the less, with the benefit of hindsight, was a mistake. He or she may, like the widow in In re Newton, decd , have come profoundly to regret the initial decision. The distinction is a fine one. It does occur that the stricture in In re Blagdon Cemetery about change of mind cases is capable of being applied too rigidly. Experience suggests that, although 'portable remains' cases do occur from time to time, the justification for exhumation is rarely simply because those who visit the grave have moved or are experiencing difficulty visiting, the circumstances at which the strictures in In re Blagdon Cemetery are principally aimed. For present purposes, all I need say is that, although I recognise that the present is a change of mind case and that this matter sounds against the identification of exceptional circumstances, my conclusion … is unaltered."*

I respectfully agree with, and would endorse, these observations.

12. In *Re Newton, Deceased* [2018] ECC She 1, the petitioner, whose mother had recently died, wished to exhume his father's cremated remains from the parish where his father had spent his early childhood, and to inter the cremated remains of both his parents in a plot in the grounds of Rotherham Crematorium, opposite which his parents had lived for 45 years. During her lifetime

the petitioner's mother had regretted her decision to have her husband's remains interred in the parish where he had lived as a boy and she had expressed the wish that her remains, and those of her husband, should be buried together in the cemetery they both knew so well. Chancellor Singleton QC (in the Diocese of Sheffield) decided that this was a case where an exception should be made to the general rule against exhumation, and she granted a faculty. At [2.3] the Chancellor recognised that:

> *"One of the Blagdon categories of possible exception is exhumation in order to place a deceased person's remains within a family grave. The question of what does and does not constitute a justifiable family grave case has been exhaustively considered in a number of cases by my fellow chancellors. I derive from them the need to avoid permitting an approach which renders the remains of deceased persons 'portable' and therefore offending against both the theological concept of a burial representing a final entrustment of the deceased to God and equally against the secular assumption of permanence. It is also clear from the decisions of my colleagues that in this difficult and sensitive area the facts of each case must be carefully considered and that apart from the broad principles to be gleaned from Blagdon there are not any easily gleaned rules about particular situations."*

Chancellor Singleton QC expressed her conclusions thus:

> *"I have decided that this Petition should succeed. I consider that the reasons for granting it satisfy the Blagdon test of being exceptional and the Alsager test of there being a good and proper reason such that most right thinking members of the church would agree. I have cautioned myself against importing or introducing a concept of the remains of a deceased person being generally portable. In this case I conclude that an elderly bereaved woman made an understandable but clear mistake in selecting St Lawrence's churchyard in Tinsley as the proper place for her husband's cremated remains to be laid to rest. Although that location had most connection to her husband's childhood home up to the age of 10, all his life thereafter was rooted in the Rotherham area and in particular the area where the Rotherham Crematorium is located. Mr Newton lived with his wife during their near half century of marriage there. His house for more than 45 years was there. Their friends were there. He walked and enjoyed the countryside there. His friends' funerals were there and, indeed, his own funeral was there. I am satisfied that had he expressed any wish it would have been for his remains to be laid to rest in what was undoubtedly his home area. It is also highly significant and important that, as she approached the end of her own life, Mrs Newton herself realised the mistake perhaps contemplating her own wishes both to be laid to rest with him and to be laid to rest in the place where they had lived their lives together."*

13. In the course of his judgment in Re Bingham Cemetery at [18] Chancellor Ockelton referred to the decision in Re Newton, Deceased and suggested that Chancellor Singleton QC might have adopted a *"perhaps wider sense"* of *"mistake"*, applying the concept to a case where the decision-maker had *"made a choice that they would not have made if better advised"*. It seems to me that another way of characterising the decision-maker's conduct might be to describe them as having realised *"that they had not done right by the deceased"*. At [19] Chancellor Ockelton noted that:

> *"It is sometimes said (and it was said in Alsager) that the passage of time counts against exhumation from consecrated ground, although the decided cases demonstrate many exceptions to that principle, if it is one. In the present case a considerable amount of time has passed, even since [the husband's] burial. I take that into account. I prefer, however, to treat it not as a separate free-standing issue but as confirmation of the lack of any mistake or other factor that might have led to earlier corrective action being taken."*

14. Finally in this recital of the authorities, I should mention the recent decision of Deputy Chancellor Clarke in Re St. Mark, Winshill [2020] ECC Der 4 (in the Diocese of Derby). There

the petitioner had sought a faculty to authorise the exhumation of the cremated remains of his father from the churchyard and their re-interment in the cremated remains section of a nearby cemetery. The reason given was that the deceased's wife had died recently and she had wanted her cremated remains to be interred in the cemetery. The petitioner wished to unite the cremated remains of his father with the cremated remains of his mother in the same grave. In the light of the guidance in *Re Blagdon*, the Deputy Chancellor determined that there were no exceptional reasons to justify the grant of a faculty for the exhumation of the deceased's remains. At [8] he said this:

> *"He is buried in a churchyard which contains other members of his family and, in my judgment, it is entirely appropriate that he should remain there. The fact that his remains have been there for over twenty years is supportive of my decision, as is the fact that it is possible for Mrs Joyce's remains to be laid to rest alongside those of her husband, since her cremated remains have not yet been interred."*

This case resembles *Re Bingham Cemetery*. It was not a case of wishing to move human remains to a family grave, but rather of exhuming human remains from an existing potential family grave in which it was possible for the cremated remains of the petitioner's mother to be interred.

Conclusion

15. I have previously indicated that I decided to grant this exhumation petition on receiving the further information that I had sought. I considered that the circumstances of the present case, properly considered and evaluated, were and are such as to justify making an exception to the presumption of the permanence of Christian burial and therefore the *Blagdon* test is satisfied. For what it is worth I also consider that the *Alsager* test of the existence of a good and proper reason for exhumation which most right-thinking members of the Anglican church would regard as acceptable is also satisfied. In the present case, there are two special factors which, together, have led me to the conclusion that this is an appropriate case in which to make an exception to the norm of the permanence of Christian burial (as I have explained earlier in this judgment). Either factor, on its own, might have been led to this petition being allowed; but, taken together, they seem to be to be compelling. These factors are, first, that the purpose of the exhumation is to permit the re-interment of the late Mr Hill's cremated remains in an existing, and clearly much loved, family grave, where, in due course, they are likely to be joined by the cremated remains of the petitioner, and possibly also her daughter. This is clearly not a *"portable remains"* case (where the exhumation would be to facilitate visiting a grave when relatives move from the area within which the remains are presently buried), which is something against which the consistory courts have consistently, and quite properly, set their face. Secondly, this is a case of mistake in the wider sense recognised, and acted upon, by Chancellor Singleton QC in the case of *Re Newton, deceased*. I am satisfied, on the evidence, that the deceased himself wished his cremated remains to be interred in the existing family grave plot at St Nicholas, Wrea Green, with the remains of his parents and his two brothers. I am satisfied that, affected by shock and grief at the sudden death of her husband, the petitioner made a choice that she would not have made had she directed herself properly, and in accordance with her late husband's true wishes. As the petitioner's granddaughter explained in her recent email to the Registry (referenced at [5] above):

> *My grandma believes that when she took the decision to place my grandad at St Andrew's, shortly after his death, she was in shock (he died suddenly) and therefore did not act rationally or upon his wishes. I'm sure you'll appreciate the loss of my grandad was immense. Given the grief she experienced and her inability to make sound decisions at the time, she feels that these are exceptional circumstances as this is her last opportunity to make things right for him.*

The petitioner recognises that she has not done right by her late husband; and she rightly wishes to make amends before it is too late for her to do so. I am in no doubt that any right-thinking member of the Anglican church would consider it only right and just, consistently with Christian principles of compassion, forgiveness, and justice, that she should be allowed to do so.

16. I recognise, and I bear in mind, that Mr Hill's cremated remains have rested undisturbed in their existing grave plot for almost 14 years. But the evidence demonstrates that his ashes can definitely be gathered for re-interment in the family grave at St Nicholas's churchyard. Like Chancellor Ockelton, I do not regard the lapse of time as raising a separate, and free-standing, issue. In the present case, given the practicability of exhumation and re-interment, its relevance properly goes to the existence of any mistake or any other factors that might have led to earlier corrective action being taken. In the present case, I am satisfied that the petitioner's decision to present the petition now is due to her realisation that this is her last opportunity to make things right for her late husband, fortified, no doubt, by the account given by Mr Danby (as reported to the petitioner by her granddaughter) that Mr Hill had directed that space be left for his own name and details to be engraved on the family headstone.

17. Without in any way seeking to shoehorn my decision in the instant case into the tramlines of any previously decided authority, I consider that the present case is similar to the cases of *Re Newton, Deceased* and *Re Hither Green Cemetery* (where exhumation was allowed) and very different, in material respects, from the cases of *Re Bingham Cemetery* and *Re St. Mark, Winshill* (where exhumation was rightly refused). I consider that the principle of promoting equality of treatment as between different petitioners who are similarly placed supports my decision to grant this petition.

18. The court grants a faculty for the exhumation of the cremated remains of the late Mr Hill from their existing grave in the churchyard of St Andrew, Leyland and their re-interment in the Hill family grave at St Nicholas, Wrea Green. The exhumation and the re-interment are to be conducted with all due reverence by a qualified funeral director; and the re-interment is to follow as soon as reasonably practicable after the exhumation, and it is to be conducted according to the rites and practices of the Church of England. For pastoral reasons, I waive any fee to which I may be entitled for this judgment.

David R. Hodge

His Honour Judge Hodge QC
Chancellor
Saturday, 13 March 2021

POSTSCRIPT: 23 March 2021

On 23 March 2021 the Chancellor was informed that sadly Mrs Barbara Hill had passed away in hospital following another stroke. Her grand-daughter, Mrs Donna Coupe, has told the Registry that she was able to share the good news of the grant of the faculty with her grandmother who could rest in peace in the knowledge that she would be laid to rest with her late husband. She reports that the court's decision has given great comfort to the family at this painful time.