

In the Consistory Court of the Diocese of Lincoln

In the matter of the London Road Cemetery, Louth

and in the matter of Mr Frank Wells, deceased

Judgement

1. The Petitioner brings an application for a faculty to exhume the casket in which is contained her late father's ashes. The casket was interred in compartment 305, Gravespace 35 of the London Road Cemetery, Louth. The interment took place on 21 April 2015. At the time of this interment it was believed that the ashes were being interred into the grave of the previously interred Mrs Wells (who died in 1991) but in fact the remains were being interred into an adjacent occupied space. That latter grave had received the full body interment of Mrs Turner, also in 1991.
2. This application is both to exhume the cremated remains of Mr Frank Wells and then to reinter them in the correct grave with Mrs Wells, which is adjacent.
3. This part of the cemetery is consecrated land and therefore the faculty jurisdiction applies.
4. This error only came to light when a friend of Mr Wells noted that his memorial had been erected not over the grave in which Mrs Wells was buried but over an adjacent grave (that of Mrs Turner). The cemetery authorities have accepted that an administrative mistake has been made and also accept that they are liable for all the fees that have been incurred to put the matter right.
5. It is of great concern that such an administrative error could be made in a well regulated cemetery. I would expect that record keeping would be such that an error of this kind could not be made. I note that there has been no explanation as to how this error was made nor what steps have been put in place to ensure that such an error could not be repeated. This is something that I would expect the Louth Town Council to investigate. Those using the services of this cemetery are entitled to be able to rely upon good record keeping and careful decisions about interments.
6. I have been concerned to know what steps have been taken to bring this unfortunate situation to the attention of the family of Mrs Turner. The Town Clerk, Mrs Linda Blankley, has confirmed in her email dated 30 March 2016 that there has been no evidence of any recent visit activity at Christmas or Mothers Day to the graves of Mr or Mrs Turner. Enquiries have been made with the successor funeral company who have little information. Both Mr and Mrs Turner were residents of nursing homes when they died and there are no other next of kin addresses in the records.
7. The siblings of the Petitioner have all given their written consent for their father's cremated remains to be exhumed. The Environmental Health department have been notified and have no concerns.

The Law

8. It may be helpful for the cemetery authorities and the Petitioner to know the legal principles that I must apply in respect of exhumations from consecrated ground. The principles by which an exhumation from consecrated ground is permitted are set out in the case of In Re Blagdon Cemetery 2002 Fam p299.

9. The presumption is that burial of human remains in consecrated ground is permanent. This presumption arises from the Christian theology of burial which was set out at para 23 of the judgement in Blagdon in the quotation from The Bishop of Stafford's paper on the 'Theology of Burial'.

"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"

10. The principle of permanence can only be departed from if there are special circumstances which justify an exception to the principle that Frank Wells was laid to rest in 2015 and his remains should not now be disturbed.

11. The Court of the Arches in Blagdon identified various factors which may support a submission that special circumstances have arisen which permit the remains to be exhumed. These factors are:

- (i) medical reasons: no such reason applied to this application.
- (ii) 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. Plainly here the Petitioner has acted as soon as the situation was known about. There has been no delay.
- (iii) 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. This is the situation here.
- (iv) precedent: the Court held that consideration of the effect of precedent by the grant of the application is properly made because of the desirability of securing equality of treatment, so far as circumstances permit between petitioners. However in this case I would not regard the doctrine of precedent alone should prevent an exhumation when there has been a mistake which has been quickly acted upon to put right.
- (v) family grave: the Court held that the use of family graves are to be encouraged because they both express family unity and they are environmentally friendly in demonstrating an economical use of the land for burials. This application falls within this category. The proposal is that the cremated remains of Mr Wells should be exhumed and reinterred with his late wife.

Decision

12. I am satisfied that a faculty to exhume the casket containing the ashes of the Mr Wells can be granted and the principle of permanence to his interment can be displaced. There has been a mistake made which has been quickly acted upon and the family wishes the ashes to be reinterred in a family grave in the adjacent plot.

13. In so far as it is necessary this faculty also authorises the reopening of the grave of Mrs Wells so that the exhumed remains can be reinterred.

14. The exhumation should be executed so that the interred remains of Mrs Turner are undisturbed as far as this is possible. Her interment must be respected. Some record of this exhumation should be kept on the administrative records for Mrs Turner's grave so that a family member could see what has happened if they asked for information.

15. I remain concerned that such situation as this has arisen. I therefore request the Town Clerk to write to the Registrar explaining how the error occurred and what steps have been taken to ensure that such a mistake could not happen again. A copy of this judgement must be provided to Louth Town Council.

16. I understand that all the fees will be paid by the Louth Town Council.

17. Conditions of the exhumation are:

- (i) the interment of Mrs Turner must be respected and as undisturbed as possible
- (ii) the environmental health department are informed of the date of the exhumation so if necessary they could attend.
- (iii) the Town Clerk gives written explanation to the Registrar as to how the error was made and what steps have been instituted to ensure that the mistake does not occur again
- (iv) the exhumation takes place discreetly and away from the public gaze.

Mark Bishop

Chancellor

15 April 2016