

**IN THE CONSISTORY COURT
OF THE DIOCESE OF MANCHESTER**

RE QUOC TRU TRAN DECEASED

**JUDGMENT
delivered on 21 May 2016**

Introduction

1. Quoc Tru Tran [‘the Deceased’] died on 24 August 1994 and was buried in a solid wood casket in grave numbered 628 in section JJ of Southern Cemetery Manchester on 2 September 1994.
2. By his Petition dated 16 March 2016 Tony Van Hon Tran [‘the Petitioner’], his son, seeks a faculty to exhume his father’s remains so that they may be cremated and re-interred in a private vault in the Buddhist Temple of Manchester Fo Guan Shan. He makes the application for a faculty with the express consent of each of his five brothers and four sisters.
3. The rationale for the Petition may be summarised thus:
 - 3.1 Although the Deceased was diagnosed with lung cancer he died suddenly on the first night he was admitted to hospital.
 - 3.2 At the time of his death in 1994 there was no identifiable burial ground for those of Chinese descent in Manchester and the service of cremation ashes storing was not available at the Manchester Fo Guan Shan. Therefore the only option available to the Deceased’s family was for the Deceased to be interred near to some Chinese graves. The family did not realise that the interment was in the Church of England consecrated section of Southern Cemetery and explain that there were language barriers, they were new immigrants in this country and had very little understanding of its practices and customs.
 - 3.3 Both the Deceased and his wife were practising Buddhists.

3.4 The Tran [the Deceased's wife] died on 4 February 2016. She wished her cremated remains to be stored at the Manchester Fo Guan Shan and for the Deceased's remains to be cremated and stored next to her cremated remains at the Manchester Fo Guan Shan. In keeping with her faith her cremated remains are stored there and the International Buddhist Progress Society Manchester have confirmed that a place has been reserved for the Deceased's cremated remains next to hers at the Manchester Fo Guan Shan.

3.5 All the children of the Deceased and the Deceased's wife wish their father's remains to be exhumed, cremated and thereafter stored as aforesaid at the Manchester Fo Guan Shan

4. Manchester City Council who are responsible for Southern Cemetery confirm that the Deceased is the only burial in the grave and that his remains can be removed without disturbing any other human remains and consent to the exhumation.

5. Since I determined that it was expedient for this application to be dealt with on consideration of written representations pursuant to Rule 14 of the Faculty Jurisdiction Rules 2015 and the Petitioner has consented to such a procedure, I determine this Petition on the basis of written representations.

The legal principles to be applied

6. I have a discretion as to whether I should grant a faculty. The starting point for the exercise of such discretion was conveniently explained by Steel Ch in *Re Matheson (Decd)* [1958] 1 WLR 246, at 248, when he stated:

'From the earliest times it has been the natural desire of most men that after death their bodies shall be decently and reverently interred and should remain undisturbed. Burial in consecrated ground secured this natural desire, because no body so buried could lawfully be disturbed except in accordance with a faculty obtained from the church court. As all sorts of circumstances which cannot be foreseen may arise which make it desirable or imperative that a body should be disinterred, I feel that the court should always be slow to place any fetter on its discretionary power or to hold that such fetter already exists. In my view there is no such fetter, each case must be considered on its merits and the chancellor must decide, as a matter of judicial discretion, whether a particular application should be granted or refused.'

7. However, there is a presumption against exhumation. This derives from the Christian theology of burial that the disposal of the dead, whether by way of burial or cremation, has an aura of permanence about it. So in *'Theology of Burial'* the then Bishop of Stafford, the Rt Revd Christopher Hill, wrote :

'The permanent burial of the physical body / the burial of cremated remains should be seen as symbolic 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 the ultimate destination, with us, in the heavenly Jerusalem. This commending, entrusting, resting in peace does not sit easily with 'portable remains', which suggests the opposite : reclaiming, possession, and restlessness ; a holding on to the 'symbol' of a human life rather than a giving back to God. ... In general, therefore, the reluctance to agree to faculties for exhumation is well grounded in Christian theology and eschatology. It is also right generally from the point of view of the mourner, who must learn to let go for their psychological and spiritual health'.

8. The question thus arises : in what circumstances should a court allow the disturbance of remains as an exception to such presumption of permanence.

9. In *Re Christ Church Alsager* [1999] 1 All ER 117 the Chancery Court of York concluded, at 122, that when determining an application to grant a faculty for an exhumation the critical question for a Chancellor is -

'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 ? If there is he should grant faculty. If not, he should not.'

10. In *In Re Blagdon Cemetery* [2002] Fam 299 the Arches Court of Canterbury observed that there were practical difficulties associated with the test formulated in *Re Christ Church Alsager* and, at 610, concluded thus :

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

...

35. The variety of wording that has been used in judgments demonstrates the difficulty in identifying appropriate wording for a general test in what is essentially a matter of discretion. We consider that it should always be made clear that it is for the petitioner to satisfy the consistory court that there are special circumstances in his/her case which justify the making of an exception from the norm that Christian burial (that is burial of a body or cremated remains in a consecrated churchyard or consecrated part of a local authority cemetery) is final. It will then be for the chancellor to decide whether the petitioner has so satisfied him/her`.

11. The court went on to consider a number of factors which could potentially arise in connection with a petition for exhumation. Such factors included mistake and on this issue the court stated:

`36. ... A mistake may also occur due to a lack of knowledge at the time of burial that it was taking place in consecrated ground with its significance as a Christian place of burial. For those without Christian beliefs it may be said that a fundamental mistake had been made in agreeing to a burial in consecrated ground. This could have been a sufficient ground for the grant of a faculty to a humanist *In re Crawley Green Road Cemetery, Luton* [2001] Fam 308 and to orthodox Jews in *In re Durrington Cemetery* [2001] Fam 33, without the need for recourse to the Human Rights Act 1998. The need for greater clarity about the significance of consecrated ground in cemeteries, in particular, is demonstrated by these examples and we reiterate our plea for more readily available information so as to reduce the chances of such mistakes occurring again in the future.`

12. So it was that in *In Re Crawley Green Road Cemetery, Luton* where a humanist had been buried in the consecrated part of Crawley Green Road Cemetery, Luton, and the deceased`s wife had been unaware that the place where her husband`s remains were interred was consecrated ground, Bursell Ch granted the exhumation sought on the ground of mistake.

13. In *In re Durrington Cemetery* where a member of the Jewish faith had been buried in consecrated ground Hill Ch granted the exhumation sought by reference to the Human Rights Act 1998.

14. I note that in *In Re South London Crematorium Streatham* [2002] and *In Re Lambeth Cemetery* [2003] George Ch granted faculties for the exhumation of each of the deceased who were Roman Catholics as did Petchey Ch in *In Putney Vale Cemetery [Guadagno]* [2010] and that in *In Putney Vale Cemetery [Hong]* [2014] Petchey Ch granted a faculty in respect of the remains of a Buddhist of Chinese origin and for their cremation and reburial in an unconsecrated Garden of Remembrance.

15. These cases can be clearly distinguished from decisions I have made in *Re John Albert Corry* [2012] and *Re Marjorie Kennedy* [2014].

Determination of the Petitioner`s application

16. I recognise that it is over 20 years since the Deceased was interred at Southern Cemetery Manchester.

17. Although the principles I have cited above relate to the Christian theology relating to death I cannot ignore the fact that the Deceased was a Buddhist and although buried in the Church of England consecrated part of Southern Cemetery was buried there because he died suddenly and his relatives did not understand the customs and practices of the Church of England or that he was buried in the Church of England consecrated part of Southern Cemetery. Moreover at that time there was no facility for the storage of cremated remains in accordance with the Buddhist faith at the Buddhist Temple of Manchester Fo Guan Shan. In such circumstances I am satisfied that it would be extraordinarily harsh for me to apply such Christian theology to a practising Buddhist where the sole purpose is to exhume the Deceased, cremate his remains and have them stored with those of this wife at the Buddhist Temple of Manchester Fo Guan Shan.

18. I am thus wholly satisfied that this is an exceptional case where, pursuant to the principles set out in *In Re Blagdon Cemetery* I should grant the faculty sought on the basis of mistake and in the exercise of my general discretion as to the granting of a faculty

Conclusion

19. For these reasons the faculty sought is granted. In accordance with the usual practice the Petitioner must pay the court fees.

GEOFFREY TATTERSALL QC

Chancellor of the Diocese of Manchester