

IN THE CONSISTORY COURT OF THE DIOCESE OF MANCHESTER

Re John Albert Corry Deceased

-and-

In the Matter of an application for a faculty by Sylvia Hill

JUDGMENT Delivered on 27 July 2012

Introduction

1. By her Petition dated 29 September 2011 Sylvia Hill ['the Petitioner'] applies for a faculty authorising the exhumation of the remains of John Albert Corry ['the Deceased'] who died on 10 September 1993 from a grave numbered 700 in section MM of Southern Cemetery Manchester in which they were interred on 15 September 1993 and that such remains be re-interred in grave numbered 2638 in section MF of Mill Lane Cemetery Stockport.

2. Mrs Hill is the foster daughter of the Deceased. Both Carl and Andrew, the Deceased's two adopted sons, have consented to the application and I am satisfied that all appropriate persons have been given notice of the application.

3. The grounds in support of such application are expressed thus :

'When my mother was alive she was very unhappy with the way Southern Cemetery had been allowed to become uncared for. On visiting the cemetery she was very unnerved by the lack of security and disgusted by the lack of upkeep to the surrounding grounds. Since my father died my mother expressed her wish to be buried at Mill Lane Cemetery Cheadle which opened shortly after my father died in 1993. Her wish was that when she passed away it would be possible to move her husband to join her. My elder sister who is disabled and owns the grave has also stated that when she visits she feels very threatened in that particular area of the cemetery and struggles to walk the distance from the entrance as this is not always open for vehicles, when visiting the grave. As my sister is the legal owner of the grave, she feels obliged to carry out my mother's wishes. This has been discussed with all members of our surviving family and everyone is in agreement with the proposed move of my father to Mill Lane Cemetery Cheadle.'

I add that I suspect that such grounds were written by either Carl or Andrew and that the reference to an elder sister is a reference to the Petitioner herself.

4. The Deceased was interred in Southern Cemetery almost 19 years ago.

5. In a letter dated 16 December 2011 George Ball & Son ["the funeral directors"] advise that they believe that the Deceased's coffin should be intact as the ground conditions in the section of the cemetery where the Deceased is interred are dry and sandy which leads them to believe that the Deceased's remains will be intact within the sealed coffin.

6. Since I determined that it was appropriate for this application to be dealt with by written representations under Rule 26 of the Faculty Jurisdiction Rules 2000 and the Petitioner has consented to such a procedure, I determine this Petition on the basis of written representations.

7. Having considered the Petition, I directed that there should be a full statement from the Petitioner, setting out all matters relied upon in support of the application and in particular identifying when the Deceased's wife died and why no application to exhume the remains of the Deceased had been made since 1993.

8. Having considered the information provided by the Petitioner I indicated in April 2012 that on the basis of such information I was not currently minded to grant the application for a faculty but indicated that if the Petitioner wished to put further information before me I would consider such information before reaching a final decision.

9. Further information was subsequently produced by the Petitioner.

The relevant facts

10. The Deceased was married to Mrs Elizabeth Corry ['Mrs Corry'] who herself died on 7 August 2011. They remained married for 42 years.

11. The Petitioner says that at the time of the death of the Deceased Mrs Corry was upset that the Deceased could not be interred at Stockport Borough Cemetery which had closed for burials and thus went along with the suggestion made by the Deceased's family that he should be interred at Southern Cemetery. Mrs Pesticcio, the daughter of a lifelong friend, observes 'it was not truly a cemetery of choice'.

12. The Petitioner described Mrs Corry going to visit the grave alone and feeling threatened for her own safety. She criticised the state of the cemetery and the widespread use of weed killer, observing that it was not 'a restful place for anybody to go and pay their respects to a loved one'. Mrs Pesticcio relates that Mrs Corry 'hated what she saw as a bleak and dangerous place to visit'.

13. By contrast when Mrs Pesticcio's own mother died in 2002, she was interred at Mill Lane Cemetery and Mrs Corry determined that she would be buried there. This was at a time before Mrs Corry had contemplated the exhumation of the Deceased from Southern Cemetery.

14. The Petitioner refers to the fact that in about 2009/2010 Mrs Corry received compensation for an asbestosis claim which seems to have been the 'trigger' for her to enquire as to whether it was possible for there to be an exhumation of the Deceased. It seems to be common ground that before such time she had not contemplated the exhumation of the Deceased.

15. The Petitioner says that Mrs Corry made her views plain her family at Christmas 2010.

16. In their letter dated 18 April 2012 the funeral directors confirm that they were first contacted in May 2011 by Carl about Mrs Corry's wish to exhume the Deceased's remains from Southern Cemetery and re-inter them at Mill Lane Cemetery but that as Mrs Corry's health deteriorated rapidly no further action was taken until after her death.

17. The Petitioner adds that:

'however much mum was upset at the idea of being interred at Southern Cemetery, she would still have wanted to be buried with dad, they were always together. Mum went to her death thinking that she and dad would be together. I cry at the situation we are in now. We buried mum at Mill Lane thinking the same as mum, that dad would be with her soon.'

The legal principles to be applied

18. 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 (Deed)* [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.'

19. 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".

This was cited in *In Re Blagdon Cemetery* [2002] 3 WLR 603, at 609 : the revised text is at 7 Ecc LJ 447.

20. A similar approach appears in the Guidance for best practice for treatment of human remains excavated from Christian burial grounds in England [English Heritage / Church of England 2005] which states :

"In summary, it is central to Christian theology that, after death, the human body ceases to have any significance for the ongoing resurrected spiritual life of the individual. However, following death, the physical remains should be treated with respect and reverence, even though ultimately it is the fate of the soul, rather than of the physical remains, which matters."

21. Such presumption also exists in English secular law which provides that there is no ownership of human remains, that it is a criminal offence to disturb human remains without lawful permission and that there is no legal right to exhume human remains. Such reflects a secular culture in which the norm is that the remains of a deceased person should not be disturbed once they have undergone the initial act of interment.

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

23. 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."

24. In *In Re Blagdon Cemetery* 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."

25. The court went on to consider various factors which may be argued in support of an exhumation, including medical reasons, lapse of time and mistake. Because mistake may be relied upon by the Petitioner, it is important to note what the Arches Court said as to this. At 612 it stated:

"We agree with the Chancery Court of York that a mistake as to the location of a grave can be a ground upon which a faculty for exhumation may be granted. We also agree that a change of mind as to the place of burial on the part of the relatives or others responsible in the first place for the interment should not be treated as an acceptable ground for authorising exhumation. ... Sometimes genuine mistakes do occur, for example, a burial may take place in the wrong burial plot in a cemetery or in a space reserved for someone else in a churchyard. ... Faculties can in these circumstances readily be granted, because they amount to correction of an error of administration rather than being an exception to the presumption of permanence, which is predicated upon disposal of remains in the intended not an unintended plot or grave. 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"

So it was that in *Re Jean Gardiner Deceased* I granted a faculty for exhumation where the deceased was mistakenly buried in a grave reserved for another.

26. It should also be noted that in some cases faculties have been granted to allow family members to be brought together into a single grave - see *In Re St James" Churchyard, Hampton Hill* (1982) 4 Consistory and Commissary Court Cases, case 25 and the decision in *In Re Blagdon Cemetery*.

27. The guidance confirmed in *Re Blagdon Cemetery* was confirmed in *In Re St Nicholas Sevenoaks* [2005] 1 WLR 1011

My determination

28. Applying the test in *In Re Blagdon Cemetery* I turn to the facts of this case.

29. To grant a faculty I must be satisfied that it is established by the Petitioner, a balance of probabilities, that the facts here justify an exception to the general presumption of the permanence of Christian burial.

30. In my judgment I cannot grant this faculty on the basis of mistake. *In Re Blagdon Cemetery* established a very narrow basis for mistake justifying exhumation : a mistake in the administration of the interment such as interment in the wrong grave or lack of knowledge that the interment was in Christian consecrated ground. Such a narrow basis does not exist here.

31. Whilst noting that it is proposed that the Deceased and Mrs Corry should be interred in the same grave at Mill Lane Cemetery, it follows that I must decide this application upon general principles.

32. On the facts here I am not persuaded that sufficient special circumstances exist to justify my making an exception from the norm that Christian burial is final. My reasons - which essentially are three-fold - may be summarised thus.

33. Firstly, it is now almost 19 years since the Deceased died and was buried. Although Mrs Corry may have regarded his final resting place at Southern Cemetery as unsatisfactory there is no evidence that during her lifetime Mrs Corry or any other family member was dissuaded from visiting his grave. Had Mrs Corry wished to be interred with him after her death, that could have taken place: there was sufficient space in the Deceased's grave at Southern Cemetery to permit this.

34. Secondly, for over 17 years no contemplation was given to the possibility of the Deceased being exhumed. Although I appreciate that it may be said that Mrs Corry did not have sufficient monies to cover the costs of any proposed exhumation and that the receipt of her compensation allowed her to contemplate this, even then it does not seem that she

immediately contemplated such an exhumation, given that the first approach to the funeral directors seems to have been in May 2011, shortly before Mrs Corry's death.

35. Thirdly, before Mrs Corry's death no indication had been given by anyone as to the prospects of success of an application to exhume the Deceased's remains [and indeed any such assessment would have been bound to indicate that there was a presumption against exhumation, particularly when the interment was so many years ago] and thus I do not accept that it can fairly be said that Mrs Corry was buried at Mill Lane Cemetery in any real expectation that the Deceased would be exhumed and re-interred with her at Mill Lane Cemetery.

36. Accordingly, with some regret because I appreciate that my decision will cause distress to the Deceased's family, I dismiss the application.

37. In accordance with the practice of the court, the Petitioner must pay the court fees incurred in relation to the Petition



GEOFFREY TATTERSALL QC
Chancellor of the Diocese of
Manchester

27 July 2012