

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

DAWLEY: HOLY TRINITY

RE: JOHN ROBERT SMART

JUDGMENT

- 1) John Robert Smart died in late 2012 and a casket containing his cremated remains was interred in the churchyard of Holy Trinity, Dawley. The grave already contained the remains of Mr. Smart's parents and several generations of both Mr. Smart's family and of his widow's are buried in the churchyard.
- 2) By her petition of 15th August 2013 Mrs. Pauline Smart, Mr. Smart's widow, seeks a faculty for the exhumation of the casket containing Mr. Smart's remains and for its reinterment in a double plot in the Garden of Remembrance in the same churchyard. The intention is that in the fullness of time Mrs. Smart's remains would also be interred in that double plot. The Petition is supported by the other members of Mr. Smart's immediate family.
- 3) Mrs. Smart has consented to the Petition being determined on the basis of written representations and I am content that it is appropriate to do so.
- 4) Mrs. Smart explains that the decision to bury Mr. Smart's remains in his parents' grave was taken when she was distressed at his death and she now believes that it was the wrong decision and that the location was not an appropriate one. Mrs. Smart makes the following points:
 - a) She says that the grave and its surrounding area are encroached on by overgrown laurel bushes and brambles. Mrs. Smart explains that this is particularly upsetting as Mr. Smart was a keen and successful gardener.
 - b) The grave and its surrounding area are uneven (possibly as the result of movement of the ground) and Mrs. Smart does not feel safe walking unaided in that area. Accordingly, Mrs. Smart is not able to visit the grave alone.
 - c) Mrs. Smart says that she is concerned as to whether the condition of the grave will be such as to enable her remains to be interred in it after her

death and thus she is worried that she will not be able to be buried with her husband.

- 5) Mrs. Smart writes movingly of the distress she is suffering. She talks of the feelings of “*guilt and remorse*” affecting her because she now believes that she let her husband down by burying his remains in this location.
- 6) Prebendary Pippa Thorneycroft is the Acting Team Rector of Central Telford. In a helpful letter Revd Thorneycroft sets out her considerable reservations about the proposed exhumation but explains that she is prepared to support it for pastoral reasons by which I understand her to be indicating the desirability of a compassionate response to Mrs. Smart’s distress.
- 7) The approach which I am to take in considering this Petition was laid down by the Court of Arches in *Re Blagdon Cemetery [2002] Fam 299*.
- 8) I have a discretion but the starting point in exercising that discretion is the presumption of the permanence of Christian burial. That presumption flows from the theological understanding that burial (or the interment of cremated remains) is to be seen as the act of committing the mortal remains of the departed into the hands of God as represented by His Holy Church.
- 9) It must always be exceptional for exhumation to be allowed and the Consistory Court must determine whether there are special circumstances justifying the taking of that exceptional course in the particular case (the burden of establishing the existence of such circumstances being on the petitioner in the case in question).
- 10) The circumstances here are that there has been no material change in the surroundings or condition of the grave since Mr. Smart’s remains were interred in it. What has happened is that Mrs. Smart and her family have come to the view that they made the wrong decision in December 2012. The distress felt by Mrs. Smart is genuine and the decision made in December 2012 is now bitterly regretted. However, this is an instance of a kind of case which was expressly considered by the Court of Arches in *Re Blagdon Cemetery*. Thus at paragraph 36 (iii) the Court said “*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.” I have reflected on whether there could be said to be any other factor constituting an exceptional circumstance in this case and have concluded that there is not. This is a case of a change of mind on the part of those who caused the first interment. I do not doubt the genuineness of that change of mind but this is not an exceptional circumstance of a kind which can justify an exhumation going against the principle of the permanence of Christian burial and accordingly I must refuse this petition.

STEPHEN EYRE
CHANCELLOR
25th September 2013