

**IN THE CONSISTORY COURT OF THE DIOCESE OF LIVERPOOL
IN THE MATTER OF THE EXHUMATION OF THE CREMATED REMAINS OF
THE LATE JEAN HOUGHTON JACKS**

JUDGMENT

1. In this petition, Mr Andrew Jacks seeks a faculty to exhume the cremated remains of his late mother Jean Houghton Jacks which are interred in a wooden casket in a consecrated grave number 1650 (section C2) at Widnes cemetery. The deceased passed away as recently as July of this year and the interment took place on 22nd July. The petition is supported by the cemetery manager and a letter from the funeral director within two weeks of the funeral, indicating that the casket would be in a more or less perfect condition if exhumation and reinterment took place within a short timeframe. The circumstances of this application are somewhat unusual.

2. Although there is a limited amount of material made available to me as to the precise circumstances, it would appear that a family grave had been in existence for some time within this cemetery, (since 1952) in which the late Mrs Jack's parents and sister had been buried (or at least their ashes interred). Prior to her passing, and with the knowledge of the deceased, the reserved grave had been reconfigured with edging stones put in place, and the grave upgraded to allow the inclusion of her mortal remains at the appropriate time. A photograph has been supplied depicting the grave, which has a modest headstone and appears to be surrounded by marble edging stones. Although this is not stated, on the basis of the cemetery plan it is reasonable to assume that the plot itself would extend to the pathway which is adjacent to the grave, although as it is now configured, the grave is set some way back from the path.

3. For reasons which are not altogether clear, the interment of the casket of ashes was outside the enclosed grave, and between the rear edging stone and the path. It is perhaps surprising that this was not noted during the funeral, but of course at a time of grief and emotion it may be that the finer details of the interment are not considered by the grieving family.

4. It has subsequently come to their attention that despite the wishes of the deceased to be interred with her family, her mortal remains have in effect been "cast adrift" and the casket is not set within the grave. This application is to exhume the casket and to put it in its rightful place within the grave.

5. The registrar in his helpful letter to the petitioner has set out the principles which apply where an application is made for the exhumation of cremated remains. These principles respect the permanence of Christian burial, whether the remains are buried or cremated, and raise a presumption of finality. The guidance given by the appellate court in **Re Christ Church Alsager [1999] Fam 142** reinforced the position that exceptional circumstances are required for the grant of a faculty for exhumation, and if the discretion of the court is to be exercised, it should only be for a good and proper reason. Such a good and proper reason might arise in the circumstances where a mistake was made in the initial interment but will usually be refused where there has been a significant passage of time or if the only basis for the exhumation is that the spouse or other relative has been buried elsewhere.

6. In another appellate case, **Re Blagdon Cemetery [2002] Fam 299**, the court again emphasised the permanence of Christian burial, quoting in its judgment the paper from the Bishop of Stafford on the “*Theology of Burial*”. The court also made it clear in **Re Blagdon** that a number of different factors might provide special grounds to justify that application of exceptional circumstances. The list was not intended to be exhaustive or exclusive of other matters which might be taken into account. Amongst those factors, a situation was identified where a family grave had been established, and the use of such graves was encouraged because of the expression of family unity as well as the efficient and economical use of land for burials.

7. I have given this matter careful consideration, and have little difficulty in coming to the conclusion that this is such an exceptional case arising from an error or a misunderstanding, and where a family grave had been established in the full expectation that the interment was going to take place therein. As I have indicated, normally I would expect to see a far fuller explanation as to how such a situation had been allowed to arise, but bearing in mind that the application for a petition for exhumation was made only a matter of days after the mistake came to light, it appears to me that it would be both disproportionate and insensitive to require further details in a case where exhumation is clearly appropriate.

8. In the circumstances, the faculty can issue, and the exhumation can take place, with the only condition being that it is carried out within three months of the faculty grant.

His Honour Judge Graham Wood KC

Chancellor of the Diocese of Liverpool

29th November 2022