

Neutral Citation Number: [2023] ECC S&N 2

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWELL AND NOTTINGHAM

The Deputy Chancellor

In the matter of the Church of the Holy Rood, Edwalton

In the matter of the petition of Mr Jason Slaney

In the matter of a the petition of Rev Mark Fraser

JUDGMENT

1. In this matter, Mr Slaney seeks a faculty for the exhumation of his father's ashes from a plot of land which is adjacent to the Church of Holy Rood, Edwalton. An issue which I have to determine is whether that land falls within the jurisdiction of this Court. Throughout the papers before me, the land has been referred to as the church garden. Without suggesting that anything flows from that description, it strikes me as a convenient label for the purposes of this judgment.
2. Rev Mark Fraser has also sought my determination as to whether the church garden falls within the jurisdiction of this Court and the identity of the person in whom it is presently vested.
3. Mr Peter Slaney's ashes were interred in the church garden in April 2003 following his death on 1 December 2002. This happened with the apparent consent of the then incumbent. Mr Slaney's mother died on 1 December 2020, her firm wish being that her ashes be interred with those of her late husband. Permission for this has not been granted by the present incumbent as he takes the view that the land is not in fact consecrated. Mr Slaney seeks a faculty for the removal of the ashes of his late father. In the alternative, if in the reasonable opinion of a reputable undertaker exhumation of his father's ashes is not possible, Mr Slaney seeks a faculty for the ashes of his mother to be interred alongside those ashes. Mr Slaney is the sole executor of each of his parents' estates.
4. I have considered a witness statement from Mr Jason Slaney. I have been provided with statements from Rev David Bignell, who was the incumbent when the ashes of Mr Slaney's father were interred, and also Rev Mark Fraser, the present incumbent. On 26 September 2022, the PCC for the Church of the Holy Rood resolved as follows:

“That as long as such works would be done lawfully.

1. It agrees to the exhumation of Peter Slaney’s ashes from within the plinth under the statue;

2. If such a direct exhumation were not reasonably possible, it agrees to an exhumation of Peter Slaney’s ashes by way of removal of the plinth and the excavation of the soil beneath (on condition that the plinth and statue be reinstated afterwards);

3. If neither of the above were reasonably possibly, it agrees to the interment of Pat Slaney’s ashes in the plinth under the statue.”

The issues raised by the petitions

5. The petition of Mr Slaney raises three issues with which I shall deal in turn: whether the land in which the ashes were laid to rest is within the jurisdiction of this court; if so, whether it is consecrated and whether either faculty should be granted.
6. His petition was filed with the Registry on 13 December 2022. This followed the withdrawal of an earlier petition which had been filed in July 2022 following correspondence between its officers and Mr Slaney. After my appointment as Deputy Chancellor at the end of January 2023, the matter was referred to me for my determination.
7. The petition of Mr Fraser was filed with the Registry on 9 January 2022. It raises the issue of jurisdiction and the identity of the person in whom the garden land is vested. It was convenient for this matter to be referred to me as well.
8. I visited the site on 22 July 2023 when the petitioners were present. Unfortunately, this was the earliest date which was convenient to all those who expressed a wish to attend. I did not take representations from any person present. As this was not a church I had visited before, I took a number of photographs to serve as an aide memoire when it came to considering submissions. These were sent to the petitioners and those who attended shortly after the visit. Having considered the matters raised in the petitions, I was of the preliminary view that this was a matter which could be determined by way of written representations. I gave notice of this and having received the consent of each petitioner, now proceed to consider the matter on the basis of those representations in the light of what I saw during my site visit.

The history of the garden land

9. It is helpful first to consider the history of the garden land, so far as it has been made known to me, before considering its present state and the use to which it has been put. It lies adjacent and to the south of the churchyard of Holy Rood. A Deed of gift dated 16 February 1960 provided as follows:

“We George Smalley Limited whose registered office is situate at the Wholesale Fruit Market in the City of Nottingham under the authority of the Consecration of Churchyards Act 1867 do hereby freely and voluntarily GIVE GRANT AND CONVEY unto the person or persons or corporation sole or aggregate in whom the churchyard or burial place in the Parish of Edwalton in the County of Nottingham is now vested and his or their successors ALL THAT piece of parcel of land comprising part of Fields Numbers 57 and 98 on the Ordnance Survey Map for the Parish of Edwalton aforesaid containing by admeasurement Three thousand seven hundred and twenty square yards or thereabouts (including all boundaries on all sides thereof) and more particularly described for identification purposes only on the plan annexed hereto and thereon edged red which said piece of land lies on the Southern side of the existing churchyard and has a depth therefrom on the Eastern side of One hundred and twenty five feet or thereabouts on the Western side One hundred and sixty feet or thereabout and width of Two hundred and two feet or thereabout at the Southern extremity thereof And all right title and interest in the same and every part thereof to be held for ever as part of the said churchyard or burial place SUBJECT to the said person or persons or corporation sole or aggregate and his or their successors erecting within one month from the date hereof and for ever thereafter maintaining good and substantial stockproof fences all along the Southern and Western boundaries of the said piece or parcel of land ..”

10. I did not take measurements of the land. The plan attached to the Deed is however readily identifiable on the ground today from features which I shall describe below. I am satisfied that it is more likely than not that the church garden forms the entirety of the land conveyed by the Deed of Gift in 1960.
11. I have a helpful statement from the former incumbent of Holy Rood, Rev David Bignell. He set out how until about the end of the last century, the church garden was derelict. Following an extension to the north of the church which had the effect of removing that which had previously been set out as lawn and used for wedding photographs and the like, that which he described as a group of talented and enthusiastic parishioners decided to carry out work to the church garden. Over a period of years, they created the garden which one sees in place today. It is important to record that Mr Slaney’s parents were each keen supporters of the project, making what Mr Bignell described as

generous donations to it. They bought the small statue to which I shall refer below and under which Mr Peter Slaney's ashes were interred.

12. Mr Bignell stated that as far as he was aware, the land was never consecrated. He referred to a hedge which separated the church garden from the churchyard such that it was never considered to be a part of it. Once the church garden took its present form, requests were made for ashes to be placed in it. Usually, he stated, this was when a tree or shrub was planted in memory of someone. In his statement, Mr Bignell stated that he told family members that he could not guarantee that ashes would not be disturbed. He had not taken the view however that a faculty had been required for the interment of ashes in the land. Mr Bignell stated that as parish priest he was involved in the disposal of cremated remains in many ways. He had not thought that Churchyard Regulations, as he put it, might apply or that a faculty might be required. When Mr Slaney and his mother asked whether Mr Peter Slaney's ashes might be interred under the statue in the garden, Mr Bignell had no hesitation in agreeing. He did not believe at the time that there would be an impediment to Mr Slaney's mother's ashes being interred at the same location in due course.
13. I have also seen a statement from Rev Mark Fraser the present incumbent. He had seen a copy of the Deed of Gift. He stated that although it referred to the church garden being an extension to the churchyard, this status seemed long to have been forgotten. It was generally believed, he stated, to be different in status to the churchyard. He referred to a parishioner remembering that in the 1970s, a hedgerow separated the land from the churchyard, albeit that there was a gap allowing open access at the eastern side for the disposal of soil after burials in the churchyard. He has also stated that the gate to which I refer below at the southernmost part of the church garden is permanently padlocked and never open. He expressed the view that the only way to get to the church garden is from the churchyard at the three points to which I refer below. He described how the land had for many years become overgrown but that by the early 1980s people from the church worked together to create what he described as "the church garden". People in the church and village valued the garden, appreciating its natural beauty and peaceful, reflective atmosphere.
14. Importantly Mr Fraser noted that the garden land appeared never to have been consecrated. He explained that there have been no bodies buried in the land and no applications made to set aside any area for that purpose. He did mention however that exploration has revealed that there has been a number of what he describes as unauthorised scatterings and interments of ashes over the years. He stated that for many years the PCC had taken the view that as the garden land was not consecrated it was distinct from the churchyard and not subject to the same administrative requirements. It was not until December 2020 that the request was received from Mr Jason Slaney to inter the ashes of his late mother with those of his late father that Mr Fraser consulted

the Archdeacon and concluded that he did not have the authority to give or refuse permission. As a result this petition was made.

15. In his petition, Mr Slaney states that Mr Peter Slaney's ashes were interred by the then incumbent, Mr Bignell, by being poured into the brick-built base under the statue to which I shall refer. He confirmed that no other remains have been interred at that location.

The layout of the church garden

16. The church garden is immediately adjacent and to the south to the Church of Holy Rood, Edwalton. It forms a not entirely regular shape. One can identify four sides. Those to the east and west run parallel to one another and at right angles to that at the south. That at the north, that is to say the one next to the churchyard, runs at an angle: from the western side as it runs to the eastern side it slants to the south. From the church building itself one reaches the garden land by passing through an area which has clearly been used for burials for many years. The presence of gravestones makes it apparent that it is the churchyard to which reference was made in the Deed of Gift. The churchyard is delineated from the church garden by a near continuous line of deciduous and evergreen trees. There are however three gaps in that line which enable one to enter into the church garden from that area. One gap is reached from a gravel path which runs from the church into the church garden. It enters the church garden through a gap in the trees which is maintained by a wooden structure which has the appearance of an arch. A second gap is through what might be described as a tunnel in hedging which runs from a gap in the evergreen trees straight onto the lawn of the land. It has a series of paving slabs laid out to make for convenient access. The third runs through another gap in the trees, something of an arch having been created in them. None of these entrances has any form of gate.
17. Once one enters the land, one sees a location which has the appearance of being a garden. Aside from the fact that one had likely entered it from the churchyard, one would not immediately appreciate any connection with a church. The central feature is a maintained lawn, but it is surrounded by a number of borders containing shrubs and flowers. A number of wooden benches have been set out around it.
18. If one enters the church garden by the first means which I have described, one sees a plaque entitled "Edwalton Parish Church Garden" which identifies some of the key features within it. Its presence there is not surprising. Although there are the three means of getting to the church garden from the church, the continuous gravel path from the church perhaps makes this one the most likely to be used. I think it suffices to refer to some of the key features identified on the plaque to give a feel as to how the church garden has been laid out: sensory garden and figure; fairy grotto under 'old' hawthorn trees; gazebo with flowering and scented climbers; woodland glade; Easter garden (in

willow); compost heap and incinerator and central grass area. I do not see that anything turns upon it, but I record that the plaque gives the impression of the church garden having a more rectangular appearance than it in fact does. As I have already set out, the church garden is not rectangular as the northernmost boundary runs at an angle sloping to the south as it runs east. In other respects however, it strikes me that the plaque accurately records what is to be found on the ground. The three entrances to the land are also identified respectively as wooden entrance arch, Hornbeam arcade (over path to garden of remembrance) and short arcade of vines. A further feature which is identified is “iron gate giving access to golf course”. It would, I think, be more accurate to describe this as a pair of gates albeit that they are placed next to one another so as to open to form a single point of entry and exit. They are at the far end of the land as one would see it, having entered from the churchyard.

19. I have already described the northernmost line of the church garden with its three entrances. The remaining three sides of the church garden have borders formed by hedging and sections of iron and wooden fencing. Although not in pristine repair, they form a continuous border around it. The only exception is the gate to which I referred and which I have to assume is capable of being opened. On the day of my inspection, it was secured shut with a padlock. The extent to which this area was overgrown was indicative of the gate not having been used for some time. When closed, it maintains the appearance of a continuous line around the church garden.
20. It is necessary to describe in a little detail the location where the ashes of Mr Slaney’s father are interred. On the plaque to which I have referred one sees a feature identified as Sensory Garden and Figure. It is an area probably 2 meters by 1.5 meters in size. It has the appearance of a raised border created by what might well be railway sleepers. Within that raised border one sees a variety of plants. One’s eye is drawn to a small statue of a youthful figure resting upon a few courses of brick acting as a plinth. It is Mr Slaney’s position that the ashes of his late father are under the statue. I did not touch the statue or the plinth. The statue had the appearance of being attached to the brick plinth rather than simply resting by its own weight. There is a further plaque in the raised border which identifies it as the Sensory Garden, setting out a number of people in whose memory it exists. One of them is Mr Peter Slaney.
21. As one walks around the church garden, one sees other plaques set into the borders marked to the memory of different people. It is not clear from their wording whether ashes have been scattered at those locations or interred nearby. I note however what Mr Fraser had set out regarding such activity.

The Consecration of Churchyards Act 1867

22. It is convenient first to consider the relevant provisions of the Act. Section 5 of the Act sets out the form of words to be followed for the purpose of adding lands to an adjoining churchyard or burial place. I do not set it out here. It suffices to note that they were employed in the Deed of Gift in 1960.
23. Section 7 provides as follows:
- “From and after the expiration of five years after the conveyance of any lands or hereditaments for such addition to any churchyard or burial place and the inclosure of the same within one boundary fence, although the same shall not have been consecrated and although no burial shall have been had within the same during that period of time, the said lands and hereditaments shall, for the purposes of this Act, become and be and remain absolutely vested in the person or persons or corporation in whom the churchyard or burial place to which they are added is vested, free from all demand or claim of any person or persons or corporation whatsoever, and without being thereafter subject to any question as to any right, title, or claim thereto, or in any manner affecting the same.”
24. It strikes me that sections 5 and 7 of the Act address different matters. Section 5 deals with the circumstances in which land can be added to a churchyard. If the prescribed words are used, it has that effect. Section 7 declares in whom land will vest after certain conditions have been satisfied. The land then vests in the relevant person irrespective of whether it has been consecrated or used for burials. I accept the submission of Mr Slaney that section 7 requires two states of affairs: the elapse of five years after conveyance and the enclosure of the land with the churchyard with one boundary fence. It is not sufficient that just one or the other has occurred. What is less clear is the time at which each has to occur. The Act is not perhaps worded with the clarity one might expect today. I note that the draftsman did not choose to state in terms that section 7 has its effect five years after the fact of enclosure. I conclude however that this is the most natural meaning of the section. The section provides that it has effect five years after the conveyance of the lands and the act of enclosure. It cannot have been intended that the land be enclosed on the date of conveyance. Quite aside from it having been open to the draftsman to make that clear, one only has to consider the difficulty in it having to be enclosed on the same day as the conveyance took effect (and no later) to realise that it cannot have been Parliament’s intention. I conclude that the requirement for one fence is met by it being a continuous line. It can vary in its nature along its path as the circumstances of the land in question might require. It suffices if that fence then joins that which forms the boundary of the churchyard to which it relates. I do not conclude that it was the intention of the section that a new single fence be erected around both churchyard and the land conveyed. I conclude that the effect of the section is that after the elapse of five years from the date of enclosure as I have defined it, the

deeming provision takes effect. It can in all likelihood only have been enclosed after the date of conveyance because until then, the lands albeit adjacent to one another would be in different ownership.

25. Turning then to the application of the sections to the facts before me. As I have already stated, I conclude that the Deed of Gift had that effect set out in section 5 of the Act as it adopted the form of words prescribed. It therefore had the effect of adding the church garden to the churchyard. It having been so added, this court then has jurisdiction over the matter. This is because section 56 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 provides:

“For the avoidance of doubt and without prejudice to the jurisdiction of consistory courts under this Measure or under any other enactment or any rule of law, it is hereby declared that the jurisdiction of the consistory court of a diocese applies to every parish church in the diocese and every churchyard and article appertaining to it.”

26. Section 7 on the other hand deals with the question of title to land, making clear in whom the land is vested once certain conditions have been met.
27. I have not heard evidence as to the date on which the fencing which forms the boundary to the garden land was put into place. I note of course that the Deed of Gift required the transferee to erect stock-proof fence within one month of it being executed. No point has been taken as to its age. Certainly it has the appearance of having been in place for some time. Mr Slaney submitted that the land is not enclosed within one boundary fence with the churchyard. He further submitted that on the contrary, the two remained separated, both physically by a substantial boundary (both hedge and fence) and also by its development and amenity. Mr Slaney’s position has much to commend it. In support of his submission that there is separation from the churchyard as a result of material differences in the nature of the two parts, he asks rhetorically whether the presence of a fairy grotto is consistent with the land being part of the churchyard. A moment’s reflection provides the answer to that specific question but I do not think that incongruity of itself provides the answer. Enclosure connotes the bringing together of two pieces of land. The fact that taken together they are of such size that different parts can be put to very different use does not of itself mean that they are not enclosed although it may be of some relevance to the test.
28. I see slightly more force in the observation that there is a hedge between the garden land and the churchyard. This has to be weighed against the fact that there are three clear means of entering the garden land from the churchyard. None of them has any form of barrier: one having the sense of being able to move from one to the other freely albeit that there is a difference in the use to which the two parts have been put. There is of course the gate to the southern-most part of the land. It was locked when I saw it and

I have already set out why it had the appearance of not having been used as a means of entry or egress. Mr Fraser's evidence that the gate is always locked explains why it would have that appearance. In my judgment, only so much weight can be attached to its description on the plaque to which I have referred as "giving access to the Golf Course". To the extent that the gates are capable of being opened, there appeared to be no obvious impediment to them being used as a means of entering the land. Against that, the fact that the three entrances to the north flow from the churchyard and have no physical impediment, add to the sense of connection between the two.

29. A point not expressly taken by Mr Slaney was the reference in the Act to "inclosure of the same within *one boundary fence*" (emphasis added). It is certainly the case that there is a continuous line of a physical boundary around the land which is in turn attached to the boundary of the churchyard. Parts of it are made of wood while other parts are made of metal. The gate at the southern end is made of metal. When closed, it forms that continuous line.
30. On balance, I conclude that the church garden is presently enclosed for the purposes of the Act. The continuous line along the western, southern and eastern boundaries meet that requirement. I conclude further that it is more likely than not that this happened shortly after the time of the conveyance. I have no reason to doubt that the incumbent at the time of the grant would not have complied with the obligation to provide stock proof fencing. I do see that it can affect the test that the fence is replaced over time if indeed that has happened. I am not able to determine the age of the fencing in place now, although it has the appearance of having been in place a considerable time. If I be wrong in my assessment that it happened shortly after the time of the conveyance, then I am satisfied that it is more likely than not that it happened more than 5 years ago. Having seen it for myself and having noted its condition, I am satisfied that this is the case. I do not see that the presence of trees and hedging between the churchyard and church garden affects my conclusion. The fact that it is so easy to pass between the two through clearly defined and maintained gaps gives that feeling of them being connected to such an extent that they are enclosed.

Is the church garden consecrated?

31. There is no evidence before me of the land having been consecrated. I have identified no evidence of it having happened or seen record of it having happened. I do not see that this affects the question of jurisdiction. I have set out my reasoning above and do not repeat it here. I accept that it might affect the way in which the discretion to allow exhumation should be exercised.
32. Mr Slaney submits that an instrument would have had to be signed for there to have been consecration of the church garden and there is not at any stage since 1980 evidence of this having happened even though it is apparent that ashes have been interred under

it. Mr Slaney in my view is correct when he points out that the use to which the land has been put, namely as a garden, is consistent with the understanding that it has not been consecrated. Finally he referred to another petition recently filed for the laying of a new gravel path along the churchyard into the land, a distinction was drawn between the former being consecrated while the latter was not. Both Mr Bignell and Mr Fraser have approached the church garden on the understanding that it has not been consecrated.

33. Reviewing such evidence as has been put before me. I conclude that it is more likely than not that the land is not consecrated.

If the church garden is not consecrated, how should the court approach a request for exhumation?

34. Mr Slaney refers in his submissions to *re Orsdall Churchyard* [2019] ECC S&N 1, a decision of the Chancellor in which he examined the difference in approach between exhumation from land which is consecrated against land which is not. In that case, the Chancellor said:

“If the place where the remains are buried is consecrated ground, “the site is under the exclusive control of the Ecclesiastical Courts, and no body there buried can be removed from its place of interment without the sanction of a Faculty” (Re Dixon [1892] P 386 at 393 per Tristram Ch). For these purposes there is no difference between a body and cremated remains: both are entitled to the same dignity and the same protection (Re Atkins [1989] 1 All ER 14).”

In that case, the burial had taken place in consecrated land.

35. In the light of section 25 of the Burial Act 1857 as inserted by s 2 of the Church of England (Miscellaneous Provisions) Measure 2014, where a burial has taken place in consecrated land, a faculty is required. Where, on the other hand, it has taken place in unconsecrated land, a licence is required from the Secretary of State. Applications are to be made to the Ministry of Justice. These are two exclusive states of affairs. The Licence procedure has no application to an exhumation from consecrated ground.

36. As the Chancellor set out, an exhumation from land which is consecrated is a matter of the discretion of the court to be exercised in accordance with the decided cases. I shall refer to *re Blagdon* [2002] Fam 299, Arches Court of Canterbury, below. For present purposes, it suffices to note that permission is not granted as a matter of course. When however, the land is not consecrated, the position is different as the Chancellor observed:

“The principles under which a Licence for exhumation will be granted are very much more relaxed. As there has been no committal, there is no strong

presumption against exhumation; and if in secular law there remains any duty of respect to human remains it does not appear to be promoted by the operation of the Licence system. For the most part, exhumation is permitted on (proper) demand. As the Ministry of Justice says on the application form, each application will be considered on its merits, but ‘applications made for private family reasons on behalf of the next of kin will, subject to any other necessary consents, normally be considered sympathetically’.”

The Chancellor continued:

“If (but only if) the remains are not in consecrated ground a Licence is required. The Licence procedure has no application to an exhumation from consecrated ground.”

37. In his submissions, Mr Slaney stated that the court need not strain to find jurisdiction in this case, because a finding that the matter is outside its jurisdiction simply means that an alternative, statutory scheme of permission applies. Having so concluded, Mr Slaney submits that I should allow the question of exhumation to be dealt with by the Secretary of State for Justice.
38. I conclude however that as this court does have jurisdiction, it must determine the question of whether there should be exhumation. Having concluded that the church garden is not consecrated, Mr Slaney invites me not to apply the approach in *re Blagdon* arguing that I should instead adopt the approach taken by the Secretary of State. Mr Slaney suggests that I should grant the application as a matter of course, subject to the consent of the landowner, that is to say the incumbent.
39. While I see the force of that submission, I conclude that it overlooks the fact that Mr Slaney’s position is that the ashes were interred by the then incumbent, Mr Bignell, by being poured into the brick-built base. I conclude that this brings about the presumption of permanence to which *re Blagdon* refers.

The application of *re Blagdon* to the present case

40. There is now a wealth of decisions to consider on the principles to be applied when considering applications for exhumation from consecrated land. Such applications are not unusual. The fact sensitive nature of each case means that greater assistance is likely derived from the key authority which they seek to apply. Mr Slaney drew my attention to *re Blagdon*. In the case, the point was made that permission to exhume is not, and has never been, given on demand by the consistory court. The disturbance of remains which have been placed at rest in consecrated land has only been allowed as an exception to the general presumption of permanence arising from the initial act of interment. While I accept that I have concluded that the garden land is not consecrated, in my judgment the principles in *re Blagdon* should inform the approach which I take

given the involvement of the then incumbent in the process of interment. Among the factors identified in *re Blagdon* as to whether to grant permission which Mr Slaney said were relevant to the present case were: lapse of time, mistake, local support, precedent and the desire for a family grave. I shall consider each in turn.

Lapse of time

41. Mr Slaney makes the point that once he discovered that his mother's ashes could not be interred with those of his father, he acted promptly. I agree.

Mistake

42. In *re Blagdon*, a distinction was drawn between a mistake at the time of burial and a change of mind on the part of the deceased's family. While the former might provide grounds for the grant of a faculty, the latter would not. Mr Slaney drew that distinction, stating that he was not suggesting that his father's remains were to be considered "portable". Mr Slaney's argument was that there was a mistake in this case in believing that at the time his father's ashes were laid to rest in the church garden, that those of his mother might later be interred in the same place. He pointed out that exhumation has been allowed in cases where the remains of people not of the Christian faith have been buried in consecrated land. He suggested that this case is perhaps a parallel situation in that remains have been buried in that there has been burial in the mistaken belief that the land was not the subject of this court's jurisdiction. Whether it be a parallel or a corollary of the situation raised by those cases, I think it correct to suggest that they are all forms of a mistake.
43. I can see the force of Mr Slaney's position. While my conclusion on the issue of enclosure differs from his, one can see how legitimately the view might be taken that the church garden was separate from the churchyard such that different considerations might apply to it.

Local Support

44. I have already recorded that the PCC has made its resolution last year. I accept what Mr Slaney set out in his witness statement that there are no other relatives whose views should be considered. He is the only child and heir-at-law of his parents.

Precedent

45. Mr Slaney states that he is not aware of any other case where ashes have been placed in the land in a manner by which they might be exhumed. It strikes me that in any event, each case will turn upon its own facts.

Family Grave

46. It is Mr Slaney's position that the ashes of his parents will be interred together in a new location. He points to the importance of his parents' wishes that their remains be interred together. He stated that his mother's wish will be frustrated if it be the case that his father's remains cannot be exhumed and yet hers cannot be interred alongside his. I agree.
47. Given the apparent involvement in the then incumbent at the time of the interment of the ashes, I conclude that the test in *re Blagdon* must guide me. I conclude however that this is a case where permission should be granted. There was clearly a misunderstanding at the time of the interment. When it became apparent, Mr Slaney acted sufficiently promptly.
48. Accordingly, in the specific facts of this case, I grant a faculty for the removal of the ashes. I record the consent of the PCC and present incumbent to this. In the event that it proves impractical to remove his father's ashes, I would grant the alternative faculty for those of his mother to be interred alongside them.
49. I conclude further that the church garden falls within the jurisdiction of this court and that it is now vested in the person or corporation in whom the churchyard is vested.
50. The usual fees will apply to the consideration of these petitions.
51. If an application is to be made for costs, it must be filed and served on the person against whom it is sought within 21 days of being served with this judgment.

HH Judge Murch

Deputy Chancellor of the Diocese of Southwell and Nottingham

4 October 2023