

**IN THE CONSISTORY COURT OF THE DIOCESE OF YORK
PARISH OF SLEDMERE
CHURCH OF ST MARY**

IN THE MATTER of a private petition to exhume the bodies of Sir Mark Sykes (Baronet) and Lady Edith Violet Sykes, his widow, from the sealed lead coffins in which they were buried in the churchyard at Sledmere in 1919 and 1930 respectively.

1. This petition arises in the following circumstances: in 1919 Sir Mark Sykes died in Paris during the second wave of what was known as the Spanish Flu pandemic. He was brought back to Sledmere where he was buried in a lead lined coffin. Subsequently Lady Edith Sykes was buried in the same grave when she died in 1930. If Sir Mark's coffin is to be opened then it will be necessary to remove Lady Edith's coffin first.
2. The Petitioner is Professor John Oxford, who is the Professor of Virology at St Bartholomew's and the Royal London Hospital, Queen Mary's School of Medicine and Dentistry. The European Commission website describes him as That influenza pandemic of 1918-19 was responsible for the death of some 50 million people. He has published work on this subject. He is also the Scientific Director of Retroscreen Virology Ltd, a leading virology research company. He has now formed a team consisting of Sir Colin Berry (a pathologist), Professor Armine Sefton (a consultant medical microbiologist) and Dr Rod Daniels (a molecular virologist). The purpose of their research is to "unravel the genetic structure of the virus". They have obtained lung material from frozen coal miner victims in Spitsbergen, from a victim in Alaska and from 2 victims in London. The material so far available to the team has provided only low quality samples which have been of insufficient quality to enable the necessary scientific experimentation to take place. Consequently they have for some time been searching for victims of the virus who were buried in sealed iron or lead coffins. They believe that such bodies may be better preserved than those so far made available to them. They have identified Sir Mark Sykes as someone who was so buried and so whose body may provide material of the quality they seek.
3. In 1919, Sir Mark was in Paris assisting the British team in the post-war peace negotiations. It is well documented that he died in his hotel room on the 16th February 1919 during the second wave of this deadly virus. His body was taken back to Sledmere where he was buried.
4. Professor Oxford has contacted the surviving members of the family of Sir Mark and Lady Edith Sykes, namely their 6 grandchildren informing them of the nature of his proposed research and seeking their consent to the exhumation of their grandparents' bodies and the obtaining of tissue samples from the body of Sir Mark for research. He has received letters of consent from all of them.
5. The importance of the work at the current time and the aspirations of his team are set out by Professor Oxford as follows:

6. Firstly they hope to gain an understanding of the spread of the virus to the organs of the body including the possibility of its spread to the brain. This might provide some evidence in support of the deduction that the outbreak of encephalitis lethargica in 1920 was triggered by the influenza.
7. Secondly they hope to gain an understanding as to how victims of the flu died – whether from an overwhelming virus infection, a combined virus and bacterial infection or a cytokine storm wherein the patient’s own immune system overwhelmed the tissue of the lung.
8. The significance of this second matter is that the 1918 virus was an avian influenza “A” virus. At the present time there is much concern about the avian H5N1 virus. Answers to questions about how the 1918 virus operated could have a profound impact on the approaches to the clinical treatment of avian influenza and the use of immune suppressive drugs.
9. Clearly the potential value of Professor Oxford’s team’s research is very significant.
10. The question that arises for me is whether the long held presumption against the exhumation of human remains is overcome in this case.
11. The principle has been examined recently in two cases, one a decision of the Court of Arches.
12. Firstly *In re Holy Trinity, Bosham* [2004] Fam 125. In this case, Chancellor Hill had to deal with a petition whereby the petitioners sought a faculty to carry out a detailed archaeological investigation of two grave sites in the nave of the church, involving the opening up of the putative coffin of the Saxon King Harold Godwinson for visual examination and the removal of a sample of bone from that coffin for destructive DNA testing.
13. He summarised what he said was the proper approach in such a case as follows at paragraph 31 of his judgment:

“**31.** As I read the authorities, the following approach would appear to be appropriate in cases such as these: (1) as a matter of Christian doctrine, burial in consecrated ground is final and permanent; (2) this general norm creates a presumption against exhumation; (3) exhumation in this context comprises any disturbance of human remains which have been interred; (4) departure from such presumption can only be justified if special circumstances can be shown for making an exception to the norm; (5) an applicant might be able to demonstrate a matter of great national, historic or other importance concerning human remains; (6) an applicant might also be able to demonstrate the value of some particular research or scientific experimentation; (7) only if the combined effect of evidence under (5) and (6) proves a cogent and compelling case for the legitimacy of the

proposed research will special circumstances be made out such as to justify a departure from the presumption against exhumation.”

14. That approach was specifically approved by the Court of Arches in the case of *In re St Nicholas Sevenoaks* [2005] 1 WLR 1011. This was a case where the appellant, George Locock, had at first instance been refused a faculty to exhume the remains of his great grandfather to extract a sample of bone from the remains to enable DNA testing to be carried out to establish whether there was scientific support for the long held belief in the petitioner's family that the deceased was the illegitimate son of L, a daughter of Queen Victoria. The Chancellor had refused the petition on the ground that the petitioner had failed to prove on the balance of probabilities that there were special circumstances justifying the grant of a faculty.
15. Giving the judgment of the Court, The Dean of Arches said:

“24. However, it is accepted within the Church that human osteology (the scientific study of human skeletal remains) is capable of benefiting the public by contributing to medical history and to forensic science. In theological terms "there may be every justification for arguing that a corpse has no more eternal significance than an empty shell, but it continues to be the vestiges of a once loved and loving human being": see (*Church Archaeology Human Remains Working Group*) report, para 153. Consistent with this approach is the essential requirement that skeletons made available for investigation are treated with respect and reburied in a dignified manner at the conclusion of the investigation. It has been said that "A society that cares for its dead demonstrates that it values life": see report, para 153.

32 An example of the correct approach to assessment of evidence in a case involving the proposed use of modern scientific techniques is to be found in the full and clear judgment of Hill Ch in *In re Holy Trinity, Bosham* [2004] Fam 125 which was cited to this court. In that case the petitioners sought a faculty to open a coffin under the floor of the church with a view to taking a sample of bone in order to ascertain whether the remains were those of King Harold. The chancellor examined the evidence in support of the theory that King Harold might be buried at Holy Trinity, Bosham and then went on to conclude that the proposal was doomed to failure for several reasons. He said, at p 137, para 32:

"it is a matter of conjecture whether any human remains will be found in the coffin; such remains as may be found are highly unlikely to be those of King Harold since the vast preponderance of academic opinion points to his having been buried at Waltham Abbey."

He then went on to point to the weaknesses in relation to the prospect of recovering material for DNA testing and the lack of any comparator. He continued, at p 138, para 33:

"Whilst I am sympathetic to the continuing quest for knowledge concerning our nation's history, the prospect of obtaining a meaningful result is so remote in this instance that the presumption against disturbance is not displaced. The evidence led by the petitioners fails to come near to the standard required. This aspect of the petition therefore fails."

It is to be noted that in relation to the possibility that the remains of King Harold might be found in the church the chancellor commented, at p 132, para 17, that the proponent "finds himself in a minority of one. His imaginative theory does not bear academic scrutiny". The venture was therefore highly speculative, and the question is whether Mr Locock's case is more persuasive."

16. The matter that concerns me is that the very nature of the proposal which I have to consider is to an extent speculative. It has not been possible for Professor Oxford to put percentages of likely success either on the chances of the human remains being of sufficient quality to yield material that will be of any greater use than those so far made available to his team, or on the chances of his research providing significant steps forward in the efforts to combat the avian H5N1 virus.
17. The second problem in relation to the speculative nature of the proposal is easier to overcome than the first. The whole point of research is to carry out experiments against a theory, the result of which experiments either on the one hand may support the validity of the theory or on the other hand may disprove it. It is not the likely truth of the theory that represents the justification for the exhumation, it is the fact that it is a step in a piece of bona fide scientific research to test the theory.
18. As to the first problem it seems to me that this is a classic case of the chicken and the egg. Without opening the coffin there can be no real way of knowing whether the remains are likely to yield samples of tissue of the quality being sought, yet it is a well established principle that the exhumation should not take place unless there is good evidence that the public will benefit from the exhumation. So in 1958 in *In re Parish of Caister-on-Sea, Norfolk County Council v Knights* [1958] 1 WLR 309, Ellison Ch was not persuaded

“that such weighty reasons exist on the grounds of danger, past, present, or potential, or for that matter any sufficiently weighty ground which would justify my granting a faculty to permit the large upheaval which would follow” (from the removal of 400 sets of human remains to create a road widening scheme based on alleged traffic danger).
19. It seems to me that in drawing the threads together from these cases I am entitled when balancing these matters to have regard to the significance of the public benefit that might ensue from proposed research. Then, applying principles of proportionality: the greater the public benefit that might ensue,

the less weighty the ground that is required to tip the balance in favour of permitting the proposed exhumation.

20. So if the public benefit is only in terms of increased historical knowledge, such as in the Bosham and Sevenoaks cases, then grounds that are very weighty and have a high likelihood of success are required; whereas if the public benefit is in terms of possibly providing answers about and advances in the treatment of dangerous diseases, then grounds of less weight and with perhaps an uncertain chance of success may suffice.
21. Applying that approach to this case I am satisfied:
 - (i) That this petition is presented as part of a piece of bona fide medical / scientific research.
 - (ii) That there are strong grounds for believing that the human remains of Sir Mark Sykes might provide sufficient tissue samples of a quality that will enable Professor Oxford's team to carry out research that they have until now not been able to carry out for want of tissue samples of adequate quality.
 - (iii) That there is a real prospect that the research they wish to carry, whether by proving or negating the theories advanced by Professor Oxford, will advance the capability of others to combat the H5N1 virus.
 - (iv) That in order to exhume the remains of Sir Mark it will be necessary to remove, without otherwise disturbing its contents, the coffin of Lady Edith.
22. In all these circumstances I am satisfied that this is an exceptional case, and that the exceptionality displaces the presumption against permitting exhumations.
23. I therefore direct that a faculty pass the seal to permit the exhumations prayed for. I will allow 12 months for completing the said work.
24. There will be conditions on the issue of the faculty as set out in the Appendix to this judgment.

Peter Collier QC
Chancellor

10th January 2007

Appendix

Public notice shall be dispensed with.

The Chancellor is satisfied that all close relatives have given their consent.

The incumbent shall be asked whether she consents to the said exhumation.

If she does not consent then the matter shall be referred back to the Chancellor for further directions.

Upon her indicating her consent:

A Faculty shall issue forthwith for the exhumation of the body and its re-burial subject to the following conditions:-

1. The grave shall be shielded from view by appropriate temporary screening during the exhumation.
2. No prior publicity or notice shall be given.
3. The exhumation and re-burial shall be done by a competent person, approved by the incumbent.
4. The exhumations and re-burials shall be carried out at a date and time set by the relevant incumbent of the churchyard, and under her supervision.
5. All arrangements are to be made and undertaken with due care, with due respect for the human remains and the grave, and as expeditiously as possible, and in accordance with any advice given to the Petitioner or his agents by the Health and Safety Executive
6. The exhumations and re-burials shall be carried out within twelve months of the date of the faculty and the Applicant shall inform the Registrar upon completion of the re-burials.
7. A report by the Petitioner on the outcome of the exhumation shall be filed in the Registry within 3 months of the exhumation having taken place.
8. The faculty fees of £243.63, payable under the current Ecclesiastical Judges and Legal Officers (Fees) Order, are to be paid by the Applicant.
9. As more Court and Registry time and attention have been spent on this matter than would be usual for an unopposed private petition for an exhumation, the petitioners will pay some additional fees after the amount has been assessed by me on receipt of details from the Registrar.
10. There shall be liberty to apply generally.

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