

**IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD**

**CODSALL: ST NICHOLAS**

**RE: THE CREMATED REMAINS OF BRIAN APPLEBY**

**JUDGMENT**

- 1) Ms Caroline Jackson petitions for a faculty authorising the exhumation of the cremated remains of Mr Brian Lawrence Appleby (her father, “the Deceased”) from the churchyard of St Nicholas’, Codsall, to facilitate reinterment elsewhere in the same churchyard. Ms Jackson petitions also on behalf of her elderly mother, Mrs June Appleby, widow of the Deceased. The petition is supported by Ms Iris Richards, sister of the Deceased, and his other daughters, Mrs Jayne Bux and Ms Elizabeth Rawlinson. These persons are the only immediate, adult relatives of Deceased. No more remote relatives contest matters. The family is, therefore, united in this petition. Ms Jackson has consented to this petition being by way of written representations only, and without a hearing.
- 2) The circumstances of the petition are unfortunate. The churchyard is organised with the interment of cremated remains in orderly rows. The policy of the church has been to space the plots for cremated remains with gaps between them of 18 inches. The plots themselves accommodate memorials of a standard size, which comprise plaques set in the grass. The spacing means visitors do not tread on the memorials of others, when attending a grave. By mistake of the grounds staff, in one part of the graveyard the spacing was not respected, and a row of interments is close to, and in part sandwiched between, two rows. Attending the middle row graves, and tending to them, is very difficult without standing on other memorials.
- 3) The Deceased in the period before his death suffered significant illness, which was demanding upon the family. He died at the age of 88 and had been 63 years married.

Ms Jackson dealt with most matters, but his widow dealt with the arrangements for the interment. It appears the precise location for the grave was not identified to her prior to the interment on 29<sup>th</sup> June 2023. It was to be in the confined middle row and surrounded on all sides by other interments. The general location was known, as I am told there was a delay in interment because the family did not want a plot by a hedge or the path. The incumbent believed the family knew what was intended for the interment. In the event, however, it is clear that the precise location and its implications were not understood. The day of the interment was an emotional one and the relative position of grave plots was not apparent to the mourners, as a green carpet was laid around the aperture to receive the mahogany casket.

- 4) After the interment, it became clear how difficult it was to tend the plaque, which was made to accommodate flowers, without treading on other memorials. Further, there was evidence of the plaque also being trodden on. Family members who were already struggling with grief have found these difficulties especially distressing. This is contributed to by the clear intention, evidenced by the space left on the memorial, for the Deceased's widow to be interred with him in due season.
- 5) I note that it was only on 16<sup>th</sup> August 2023 that Mrs Appleby (and later that same day Ms Jackson) took up the issue with the minister. This was notwithstanding that Mrs Appleby is a regular attender at the Church and had seen the minister weekly since the interment. Ms Jackson, in particular, was insistent that the cremated remains should be exhumed and reburied. It appears she thought that interments between the other rows was considered to rectify a mistake in the spacing, but it seems to me that this is to misunderstand the situation. The interment was not part of some sort of intentional rectification, but part of an unfortunate mistake as to spacing. The apparent crowding of memorials does not rectify matters, although it may well be that some people would be happy for interments in these locations (especially, for relatives of those in adjoining plots).
- 6) The Deceased's widow is said by Ms Jackson to have become increasingly distressed and her mental health and well-being are being compromised. She is experiencing difficulty

with sleeping, and anguish concerning what she sees as a mistake on her part. Her self-criticism is, of course, unjustified. She is concerned that the inscription on the plaque will be worn away and has expressed a wish not to be buried in the confined plot, notwithstanding a clear desire to be buried with her late husband. The stress has also been said to have had an impact on the bi-polar disorder suffered by Mrs Bux and the health of Ms Jackson, who has suffered a bout of Bell's Palsy, which can be related to stress.

- 7) The petition is neither supported by the Parochial Church Council ("PCC") nor clearly opposed, with more than two-thirds of the members preferring not to express an opinion having been advised that the final decision would be mine. In a vote of the sixteen members present at the discussion, one voted in favour, four voted against and eleven abstained. There are real concerns for the PCC raised in those discussions: firstly that such an exhumation may precipitate further applications, since other plaques show that there are a small number of similarly sandwiched interments; secondly, at least one member of the PCC expressed concern at how the reburial would take place; and, thirdly, there was concern that it might set a broader precedent for moving cremated remains within the churchyard.
- 8) The gravedigger has stated that the soil is sandy and the casket can be removed, carefully and without undue force. A new plot can be readily prepared. A funeral director has stated that a replacement casket can be made available.

### **Relevant Law**

- 9) 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. 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. Exhumation is to be exceptional 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) I note in respect of the discretion, the comments in this Consistory Court of Eyre Ch in Re. St Chad, Pattingham (2015) at [2]:

“The remains of Geraint Jones were interred in a row containing other cremated remains. Those remains had originally been interred too close together with the consequence that memorials commemorating the various deceased persons could not be placed immediately above the point where those persons respectively were interred. Steps were taken to address this by moving the caskets containing the remains so as to increase the space between them and to enable the memorials to be sited immediately above the appropriate casket. I pass over the fact that no thought seems to have been given to the need for this Court’s approval of such movements. *In practice such approval would have been forthcoming because those measures amounted to remedying deficiencies in the original interment arrangements.*” (*Emphasis added*).

11) The same Chancellor had accepted in Re St Mary, Haseley (Coventry, 2009) that distress and conflict arising out of the interment in a particular site could be an exceptional circumstance warranting exhumation, although he declined so to order in that case. Indeed, the cases in which distress is treated as a significant factor appear largely to be in circumstances of a disputed further burial in an existing family plot.

### **Analysis**

12) Before addressing the presumption of the permanence of burial and the material upon which I have to make my decision, two points can be readily put aside:

13) Firstly, I am entirely satisfied that an orderly exhumation and reinterment of the cremated remains is possible. The gravedigger has advised as much and the interment was recent. It is unlikely that a replacement casket will be required.

- 14) Secondly, although some petitions could follow in relation to other interments in the same row, a decision on this case would have features inapplicable in many cases. Indeed, some of the interments in this row have spaces about them making them accessible. Further, a decision on the facts in this case would not be a general precedent for repeat exhumation and reinterment, although it could be relevant to a few cases.
- 15) This is a finely balanced matter, but I have determined that I will allow the exhumation and reburial elsewhere in the same churchyard.
- 16) I consider that there was a relevant mistake in the spacing of the plots and that mistake has resulted in an interment too closely surrounded by other interments to be accessible. This is a very clear departure from the usual arrangement. As already observed, this would be markedly less problematic for plots adjoining vacant spaces, but the Deceased is not interred in one of these. As Re. St Chad, Pattingham demonstrates, some rearrangement of multiple plots could arise lawfully in such circumstances. These will be rare, however, and it may be borne in mind that arguing that floodgates might be opened, tends to forget that floodgates are opened to spare more serious damage or injustice.
- 17) Significant mistakes are exceptional in churchyards, but other factors also support the presumption of permanence being set aside as a matter of discretion: there is natural distress at a memorial being stood upon and the need to stand on other memorials. This impacts significantly upon the family of the Deceased and, no doubt, others tending adjoining graves. It is inevitable in historic graveyards that graves will be walked across, but it is different matter when a memorial has to be stood upon.
- 18) An additional factor is the impact in terms of distress and damage to health. Distress will very rarely be sufficient in itself to justify exhumation, partly because mourning is distressing in any event and the distress felt cannot readily be divided between causes.

In this case, though, it is impossible not to have compassion on a widow who (wrongly) feels responsibility for the events that have taken place and now feels reticent about sharing her husband's resting place. It would be very unfortunate if they may not be buried together because of Mrs Appleby's distress at the confined location.

19) Overall, I consider that the mistake as to the arrangement of the plots, the impact on the tending to this grave, and the consequences for the family members, especially the widow, justify an exhumation and reinterment on this occasion and I will grant a faculty accordingly.

Dr Anthony Verduyn  
Chancellor  
22<sup>nd</sup> December 2023