

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

ST. BENEDICT BISCOP: WOMBOURNE

ON THE PETITION OF JAMES ALLEN-JONES

JUDGMENT

- 1) In May 1953 a faculty was issued pursuant to the permission of Ashworth Ch granting Alfred Allen the right to erect a vault in the churchyard. The application had been triggered by the death in March 1953 of Mr. Allen's wife, Annie. The actual faculty has been lost but archival searches have revealed the petition and various drafts with sundry accompanying documents making it clear what was granted. The faculty permitted the erection of a memorial and the creation of a vault reserving to Mr. Allen "and the members of his family" the right of burial in the vault.
- 2) Annie Allen was buried in the vault as in due course was Alfred Allen. Annie and Alfred Allen's two daughters, Brenda (the Petitioner's mother) and Daphne (who died without children), were also buried in the vault. Alfred and Annie Allen also had a son, Edwin, his cremated remains are interred with those of his wife and daughter elsewhere in the churchyard of St. Benedict Biscop.
- 3) The Petitioner, James Allen-Jones, is a grandson of Alfred and Annie Allen and is the sole child of Brenda. Mr. Allen-Jones is engaged to be married to Suzanne Papp. He had three cousins being the two daughters and one son of Edwin Allen. One of these cousins, Edwina Watkins, has two daughters of her own but there are no other great-grandchildren of Alfred and Annie Allen. Another of those cousins, Anne Allen, sadly died in 2015. The final cousin, Adrian Allen, has taken no part in these proceedings but I am satisfied that the Petitioner has taken reasonable and proper steps to draw this matter to his attention and that Adrian Allen has chosen not to participate in the proceedings.
- 4) There are six shelves for coffins in the vault. Four of those are occupied by the interments which have already taken place. By his petition Mr. Allen-Jones seeks

a faculty reserving the exclusive right of burial on the remaining two shelves to himself and Suzanne Papp though as will be seen he puts forward a modified version of that proposal by way of compromise.

- 5) The churchyard was closed by Order in Council in July 2003 but that order permitted burials in existing vaults and in the graves of family members elsewhere in the churchyard.

The Procedural History.

- 6) Mrs. Watkins has written objecting to the petition but has chosen not to become a party opponent.
- 7) There was no response to the public notice. The incumbent and the Parochial Church Council have stated that they have no objection of their own to the proposal provided it is acceptable to the other family members.
- 8) I concluded that it was expedient to determine this matter on the basis of written representations and the Petitioner consented to that course. I have received submissions from Mr. Allen-Jones and correspondence from Mrs. Watkins.

The Submissions.

- 9) Mr. Allen-Jones says that he bears the sole cost of maintaining the vault and memorial without assistance from other family members. In that regard he has provided details of recent expenditure on cleaning the memorial and says that he intends to make provision, by way of a letter of wishes to be attached to his will, for such contribution to the upkeep of the memorial to be maintained. The Petitioner points out that he is the sole child of Brenda and wishes his remains to be with hers. He suggests that if Mrs. Watkins or other family members wished to be interred in the churchyard then he would expect that they would wish to be interred near the remains of Edwin and his wife.
- 10) Mrs. Watkins makes a number of points in opposition to the petition. She accepts that the Petitioner has spent money on the cleaning of the memorial but contends that this should not give him any form of priority in respect of the vault. Although Mrs. Watkins does not live close to the church she does live rather closer than does Mr. Allen-Jones. She says that she visits the churchyard and tidies up round

the memorial when this is necessary. Mrs. Watkins points out that although her parents are not buried in the vault the plot in which their remains were interred is limited to cremated remains and that the churchyard is closed to burials. So that if she or other descendants wished to be buried in this churchyard the vault would be the only place where this could happen. Mrs. Watkins believes that the right to be buried in the vault is limited to the “direct descendants” of Alfred and Annie Allen and does not extend to those married to such descendants. Accordingly, Mrs. Watkins contends that even when Miss. Papp marries the Petitioner she will not be entitled to be buried in the vault. Mrs. Watkins would accept an order reserving one of the remaining two spaces to the Petitioner but resists the reservation of the other space for Miss Papp on the footing that this would grant the last remaining space to a person who would not otherwise be entitled to it and would thereby prevent its use by those entitled to be buried in the vault.

- 11) In response to his cousin’s submissions the Petitioner challenges her view that the right of interment in the vault is limited to the direct descendants of Alfred and Annie Allen and says that the spouses of such descendants should be seen as having a right of interment in the vault. Mr. Allen-Jones puts forward a compromise proposal to address Mrs. Watkins’s concerns about occupation of all the space in the vault. He proposes that he and Miss. Papp should both agree that they should be cremated on their death. He then further proposes that the cremated remains of whichever of them dies first should be retained and that on the death of the survivor the remains of both should be combined in the same container and placed on a single shelf in the vault.

The Relevant Principles.

- 12) I have not been referred to any authority dealing with the question of the reservation of spaces in a vault nor have my own researches revealed any decision precisely on the point. It follows that I must approach the matter by reference to my understanding of the generally applicable principles.
- 13) The court can by faculty supersede or modify rights arising from an earlier faculty although it will be cautious in doing so. The consistory court has no general declaratory jurisdiction. It does, however, have power to interpret its own orders and the faculties granted by the court and to give directions so as to enable the

rights which it concludes flow from such faculties to be enjoyed in accordance with the faculties.

14) I am satisfied that I have power to grant a faculty reserving spaces in a vault to particular persons. That power probably extends as far as reserving such spaces for persons who would not otherwise be entitled to be interred in the vault though, as will be seen, for the purposes of this judgment I need not reach a conclusion on that question. I am satisfied that the power does extend to reserving spaces for persons entitled to be buried in a vault and to giving such a reservation to the exclusion of others also entitled to such burial. The position is akin to that of the grant of the reservation of a gravespace in a churchyard more generally. The court has power to make such a grant even though the grant prevents others who have an entitlement to burial in the churchyard from being buried in the particular plot. However, just as the court's power to reserve a gravespace in a churchyard will not normally be exercised when its effect would be to prejudice the burial rights of parishioners so, in my assessment, the power to reserve a space in a vault is not normally to be exercised when its effect would be to prejudice the rights of others to be buried in the vault. The approach to be taken to reserving a gravespace in a churchyard is in part a matter of fact and degree. Any reservation has the potential for prejudicing the rights of others to be buried in the churchyard in question. The court will, however, look at the practicalities of the number of remaining spaces in a churchyard and the likely level of usage with a view to considering the degree of risk that a reservation would preclude the burial in the churchyard of someone who would otherwise be entitled to be buried there before the interment of the person in whose favour a reservation is made. The greater the risk that the grant of a reservation would mean that a parishioner was prevented from being buried in the churchyard because the reserved plot was being kept vacant and unoccupied awaiting the later death of the person with the benefit of a reservation then the less appropriate it will be to grant a reservation. A similar approach is to be taken with regard to the control of spaces in a vault. Accordingly, regard is to be had to the available space and the degree of risk that the reservation will prevent a person entitled to be interred in the vault from being buried there when there would otherwise be sufficient space.

Analysis.

- 15) I have no doubt that the compromise proposal put forward by Mr. Allen-Jones was put forward as a genuine attempt to address his cousin's concerns. However, that compromise cannot be approved as formulated. It would involve the remains of whoever died first out of the Petitioner and Miss. Papp remaining unburied until after the death of the survivor. That might be some considerable period of time and would be undesirable. Rather it is desirable that interment take place in a reasonable period after death and the court could not sanction a course which contemplated a long interval between death and interment. The proposal does, however, indicate that Mr. Allen-Jones's primary concern is not to monopolise the places in the vault but to have a reasonable degree of assurance that he and Miss. Papp will be able to be interred there in due course. Although as will be seen I am not able to grant the petition either in the terms originally sought or on the modified basis I anticipate that the orders I am able to make will have the effect of giving some of that assurance.
- 16) Mrs. Watkins is incorrect to say that the original faculty granted a right to be interred in the vault solely to the direct descendants of Annie and Alfred Allen. The faculty granted that right to the members of Mr. Allen's "family". That term has to be interpreted in its context and in that context it is to be regarded as including those who have become members of the family by marriage. There are three principal reasons why I have come to that view. The first is that if it had been intended to confine the right to descendants or direct descendants of Mr. and Mrs. Allen then that could have been stated in plain terms. Second, it is apparent that a significant part of Mr. Allen's motivation in seeking the faculty was to ensure that he and his wife could be buried together. That being so it is unlikely to have been intended that his children and more distant descendants should have to choose between burial in the vault and burial with their spouses elsewhere. It is of note that Brenda was divorced at the time of her death and that Daphne predeceased her husband who subsequently remarried and who is buried elsewhere. So it would appear that neither had a spouse who wished to be interred in the vault but who was regarded as not being entitled to be there. Finally, the burial together of spouses is an appropriate and seemly arrangement which the court should seek to facilitate and it should only adopt an interpretation

which precludes that if the language of a particular faculty or provision clearly requires such an interpretation which is not the case here. It follows that I direct that the rights in respect of the vault are to be exercised on the footing that those who are entitled to be buried in the vault include in addition to the descendants of Alfred and Annie Allen any person who was married to such a descendant either at the time of their own death or at the time of the death of the descendant to whom they were married. If it were necessary to do so, which it is not given my interpretation of the faculty, I would on the grounds of seemliness direct a modification of the faculty so as to permit the interment of the spouses of Mr. and Mrs. Allen's descendants in the vault. It follows that upon her marriage to Mr. Allen-Jones Miss. Papp will be entitled to be interred in the vault provided she is still married to Mr. Allen-Jones at the time of either his death or her death. Given that Mr. Allen-Jones has stated in terms that he and Miss. Papp intend to marry I need not rule on the question of whether Miss. Papp is to be seen as a member of the family of Alfred and Annie Allen in the absence of such marriage though my provisional view would be that in those circumstances she would fall outside that definition.

- 17) It is appropriate that I also direct for the avoidance of doubt that the rights of interment given by the faculty extend to the interment of cremated remains. In addition I direct that provided space remains on any given shelf for the seemly custody of the cremated remains of more than one person then it is permissible for there to be such remains of more than one person on each shelf in the vault. Finally in that regard I also direct that the faculty is to be interpreted as permitting the interment in the coffin of a person in the vault of the cremated remains of that person's spouse. Such matters are in my judgement implicit in the rights granted by the faculty but to the extent that they are not I am satisfied that it is appropriate to modify the faculty to the extent of permitting such actions. I am satisfied that such a course would not be contrary to the intentions of the original petitioner, Alfred Allen, or of my predecessor in granting the faculty and that it would be desirable in order to facilitate both the maximum seemly number of interments in the vault and the interment together of the remains of spouses.

18) I anticipate that the effect of those matters of interpretation and direction will be that following their forthcoming marriage Mr. Allen-Jones and his new wife will have a sufficient degree of assurance that their remains will be interred together in the vault. I must nonetheless address the terms of the faculty sought by the petition. That petition sought to reserve the remaining two shelves in the vault exclusively for Mr. Allen-Jones and for Miss. Papp. That would not be an appropriate course. It would have given Mr. Allen-Jones and his wife a monopoly of all the remaining places in the vault and would have excluded Mrs. Watkins and her daughters therefrom. Mrs. Watkins has a right to interment in the vault equal to that of Mr. Allen-Jones and there is no proper basis for giving him priority over his cousin. Mr. Allen-Jones's expenditure on the maintenance of the vault and memorial is to be commended but cannot give him such a priority. It is in this regard that the analogy with the approach to be taken to the reservation of gravespaces in a churchyard comes into play. Such a reservation will not normally be permitted where it creates a significant risk of prejudice to the rights of other persons entitled to be buried in the churchyard. Similarly the reservation of a space in a vault should not be permitted where there is a significant risk of prejudice to the rights of others entitled to be interred there. I am satisfied that there is such a risk here in that if the faculty sought were to be granted there would be a risk of Mrs. Watkins being deprived of the opportunity of being buried in the vault if she were to die before Mr. Allen-Jones or Miss. Papp. There would be no proper basis for imposing such a risk on her or for depriving Mrs. Watkins and her daughters of their rights in that regard.

19) It follows that the petition is dismissed but that I make the directions set out at [16] and [17] above.

STEPHEN EYRE
HIS HONOUR JUDGE EYRE QC
CHANCELLOR
10th March 2019