

IN THE CONSISTORY COURT AT LINCOLN

In the matter of All Saints, Barrowby

Judgment

1. This is an application for a faculty to exhume the body of the late Charles Henry Marchant who was interred at Saxilby cemetery on 25th March 2013. The cemetery has been consecrated therefore I have jurisdiction over it.
2. Mr Marchant was interred in what was then believed to be a double depth grave (RD20) with the intention that when the time came for his wife to be interred, she would be placed within the same grave.
3. In October 2018 Mrs Marchant died and it was then the intention of the family to honour their parents' wishes and inter Mrs Marchant's remains in the same grave as her late husband. Regrettably when RD20 came to be re-opened, that grave was found to be too shallow to accommodate a second interment. In those circumstances, it was agreed that Mrs Marchant's body would be interred in a new single depth grave as close to Mr Marchant as possible (Grave RF12) but this was still some rows away.
4. This application brought by the 3 sons of Mr and Mrs Marchant is for the exhumation of Mr Marchant from RD20 and his reinterment in grave RF13 which is the neighbouring grave to that of his late wife.
5. The Parish Council have given their written agreement for this to be done. The Funeral Director, Ms Swain, confirms that they are prepared to undertake this exhumation and reinterment in a discreet

and safe manner. I assume that the exhumation can be professionally completed notwithstanding the passage of time.

Principles

6. The principles which are to be applied to an exhumation of a body after a Christian burial are well known and set out in the case of In Re Blagdon Cemetery 2002 Fam p299.

7. The presumption is that burial of human remains in consecrated ground is permanent. This presumption arises from the Christian theology of burial which was set out at para 23 of the judgement in Blagdon in the quotation from The Bishop of Stafford's paper on the 'Theology of Burial':

"The funeral itself articulates very clearly that its purpose is to remember before God the departed; to give thanks for their life; to commend them to God the merciful redeemer and judge; to commit their body to burial/cremation and finally to comfort one another."

He went on to explain:

"The permanent burial of the physical body/ the burial of the cremated remains should be seen as a symbol of our entrusting the person to God for resurrection. We are commending the person to God, saying farewell to them (for their 'journey'), entrusting them in peace for their ultimate destination, with us, to the heavenly Jerusalem. The commending, entrusting, resting in peace does not sit easily with 'portable remains' which suggests the opposite: reclaiming, possession, and restlessness; a holding onto the 'symbol' of human life rather than a giving back to God"

8. The principle of permanence can only be departed from if there are special circumstances which justify an exception to the principle that Mr Marchant was laid to rest in 2013 and his remains should not now be disturbed.

9. The Court of the Arches in Blagdon identified various factors which may support a submission that special circumstances have arisen which permit the remains to be exhumed. These factors include medical reasons supported by necessary psychiatric evidence (which do not apply here), or a mistake in the administration of the burial so that an important error in location is made. I must also consider the effect of precedent in granting the application because of the desirability of securing equality of treatment as far as possible. The Court emphasised that family graves would always be encouraged as they express family unity as well as being environmentally friendly in demonstrating an economic use of land for burial.

Application

10. In this case it was Mr Marchant's intention that there would be a family grave for himself and his wife thus demonstrating both family unity and an economic use of land which is to be encouraged. However, through no fault of Mr Marchant's family it became clear at the time of Mrs Marchant's interment that this desired result would not be possible. This was because Mr Marchant's interment was insufficiently deep to accommodate a second interment. If this had been known at the time in 2013, no doubt Mrs Marchant would have sought to reserve a plot adjacent to the grave her late husband was

buried thus maintaining a shared sense of family unity in their interments.

11. This application was made after Mrs Marchant's interment in October: there has been no delay.
12. I am quite satisfied that this is a situation where the presumption of the permanence of the burial may be displaced by the circumstances of what has occurred. There has been a 'mistake' in that the interment of Mr Marchant was too shallow to accommodate a second interment. I do not know if this was an oversight or a practical impossibility. If the latter the mistake was not to communicate this to the family in 2013 so that they could take other steps, rather than the problem only emerging in October this year.
13. Underlying this application is the desire of the family to honour the wishes of their parents to be buried together thus displaying family unity. The mistake that has occurred should not prevent this from being honoured by their graves being beside each other.
14. I grant the faculty to exhume the remains of Mr Marchant from RD 20 and reinter into grave RF13. The conditions of this are:
 - i. The undertakers are to conduct this exhumation and reinterment discreetly and reverently at a suitable time and with screens, so that no distress or anxiety is caused to visitors to cemetery
 - ii. The local environmental health department are to be notified of the time of the exhumation and reinterment

iii. The reinterment is to follow on immediately after that exhumation.

15. I am concerned to understand how this error occurred. Was it because the grave was simply dug too shallow? Or was there a practical difficulty of digging it deeper? In which case why was the family not told? If the same undertakers were involved in the grave digging arrangements for Mr Marchant's funeral I would welcome their explanation so that I can give consideration to the question of the costs of this exhumation and reinterment. If another undertaker was involved they should be notified of what has occurred and be asked for their explanation.

The Reverend and Worshipful Chancellor His Honour Judge Mark Bishop

1st January 2019