

IN THE CONSISTORY COURT OF THE DIOCESE OF NEWCASTLE

In the Matter of an Application to exhume the cremated remains of George NICHOLSON from the Consecrated section of Benton Cemetery and in the Matter of a Petition by Andrea Taylor

JUDGMENT

1. This is a petition by Ms Andrea Taylor, the operations manager of North Tyneside Council's Bereavement Services, to move the cremated remains of the late George Nicholson from the consecrated section of Benton Cemetery (CON-D10-31) and re-inter them nearby in another plot within the consecrated section (CON-D10-33).
2. I have been supplied with the written consent of Mrs Deborah Davidson, the only surviving immediate relative of Mr Nicholson.
3. At my request, I have the benefit of a statement from Ms Taylor given that some of the facts stated in the petition were confused and, as I suspected, erroneous.

The facts

4. George Nicholson died on 12 April 2018. It was his wish for his ashes to be scattered in the grave of his father, George Nicholson senior, a wish his surviving family was anxious to honour. It was thought that this wish had been honoured on 14 June 2018 by the scattering of his ashes (in practice digging down 12 inches, placing the ashes in the ground and recovering) in the grave marked as that of George Nicholson Senior
5. George Nicholson senior, who died in 1945, is buried in CON-D10-33. His grave is positioned within the Commonwealth War Graves section of the cemetery. The neighbouring grave, CON-D10-31, contains the remains of Henry Carnegie, which were interred in 1944. Each grave is maintained by the Commonwealth War Graves Commission ("CWGC").
6. During 2019, George Nicholson's sister died and there was a similar intention for her ashes to be scattered in their father's grave. In preparation for that, on 26 November 2019, it was discovered by North Tyneside Council's Bereavement Services that each of George Nicholson senior and Henry Carnegie's headstones had inadvertently been placed on the grave of the other. The explanation is a simple one: in 2006 the CWGC renewed several memorial stones as part of

routine maintenance and the mistake occurred when they re-installed the headstones.

7. It follows that George Nicholson's ashes had been interred in the grave of Henry Carnegie and not that of his father as intended. Fortunately, the mistake was discovered in time to prevent it from being repeated in the case of his sister. CWGC responded with commendable speed and the headstones were put on the correct graves on 28 November.
8. The statement from the petitioner confirms that the CWGC has accepted that it inadvertently replaced the headstones on the wrong graves, mistakes that have now been corrected by the re-siting of the memorials on the correct graves.
9. It follows, of course, that to correct this unfortunate mistake, Henry Carnegie's grave will have to be disturbed again. The petitioner placed a notice on his grave asking the family to make contact. CWGC checked their records but had no information beyond Mr Carnegie's dates and, specifically, no details of family members other than his late parents. He was just 20 years old when he died in 1944. The local authority asked Finders International to try and trace any surviving relatives. It transpired that Henry had one brother who died in 2017. He had two sons. The younger of the two has been found, confirmed that he is Henry's closest surviving relative and agreed to provide his written consent to the exhumation of George Nicholson's ashes from his uncle's grave.

The law

- a. The law is well established and definitively set out in the judgment of the Court of Arches *In re Blagdon Cemetery* [2002] Fam 299. The presumption of permanence is explained, arising, as it does, from the Christian theology of burial which emphasises, by reference to the Bishop of Stafford's *Theology of Burial*, that the permanent burial of the physical body is to be seen as a symbol of the entrusting the person to God for resurrection, a concept that does not sit easily with the concept of "portable remains". Hence the reluctance of the Consistory Court to grant faculties for exhumation is well supported by Christian theology.
10. Nevertheless, recognising that it was essentially a matter of discretion, the Court indicated the necessity of the petitioner satisfying the Consistory Court that there are special circumstances justifying the making of an exception from the norm that Christian burial is final. In so stating the Court went on to identify various factors which may indeed support such a petition.
11. In the circumstances of this case it is not necessary to look beyond the Court's ruling that a simple error in administration, such as burial in

the wrong grave, the exact circumstances here, can form a ground upon which a faculty for exhumation can be granted. The Court advised that in such circumstances it may be for those responsible for the cemetery to apply for exhumation, as has occurred here. It went to say:

“Faculties can in these circumstances readily be granted, because they amount to correction of an error in administration rather than being an exception to the presumption of permanence, which is predicated upon disposal of remain in the intended not an unintended plot or grave.”

12. Whilst lapse of time is always a relevant factor it is not determinative.

Decision

13. I am satisfied that there was a mistake in this case arising from the unfortunate transposition of the headstones by the CWGC and the failure by it, North Tyneside Council’s Bereavement Services and the families of George Nicholson senior and Henry Carnegie to note the error until November 2019, some 17 months after George Nicholson’s remain were interred.

14. There has been no delay in seeking to right this mistake, the petition being issued on 28 November 2019.

15. The evidence proves conclusively that George Nicholson’s remains were interred in the wrong grave by mistake. The Court is wholly satisfied that the petitioner be granted the relief sought.

16. Accordingly, the faculty will issue forthwith as sought on the following conditions:

- (a) the exhumation from CON-D10-31 be carried out with due care and regard for decency, early in the morning with the plot screened from public view;
- (b) the re-interment in CON-D10-33 be forthwith;
- (c) any terms imposed by the Environmental Health Department of North Tyneside Council are complied with;
- (d) the petitioner must pay the Registry and Court costs of and incidental to the petition.

**His Honour Judge Simon Wood
Deputy Chancellor
21 December 2019**