

Neutral Citation Number: [2020] ECC S&N 1

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWELL AND NOTTINGHAM

Before: the Chancellor

IN THE MATTER OF EPPERSTONE CHURCHYARD

and

IN THE MATTER OF THE PETITION OF SUSAN PAYNE

JUDGMENT

1. By this Petition the petitioner, Susan Payne, seeks the exhumation of the ashes of her father Edwin Rufus Trembath from the churchyard of the Church of the Holy Cross, Epperstone, where they were buried after his death in 2004.
2. I expressed the view that it was expedient to determine this Petition by written submissions and the petitioner and her siblings have agreed to that procedure.
3. Mr Trembath and his wife Clementine Mabel Trembath lived in Nottinghamshire for forty years or thereabouts. They were members of the church congregation, and the choir, in Epperstone. When Mr Trembath died it was no doubt natural for his remains to be interred in the churchyard there. His daughter the petitioner apparently lived with or near her parents; but when her father died she moved to Bradford-on-Avon in Wiltshire to be near her own children: she still lives there. The Trembaths' other children live respectively in Sussex and Oxfordshire. Mrs Trembath remained in Nottinghamshire until 2013, when she moved to a nursing home in Bradford-on-Avon, where she died in the summer of 2018. Despite her increasing age and disability she was able regularly to make the journey from Nottinghamshire to Bradford-on-Avon until she moved there.
4. Mrs Trembath wanted to be buried with her husband, and her children will carry out that request. As things stand at present, that will mean that she will be buried in Epperstone. The Petitioner says that it will be inconvenient for her to travel regularly between Nottinghamshire and Bradford-on-Avon to visit the grave, and she therefore seeks to have her father's remains moved to Bradford-on-Avon, so that her mother and father can lie together close to her own home. This will also be close to her immediate family; and her siblings say that they will find it easier to visit the grave if it is at Bradford-on-Avon. The idea of moving Mr Trembath's remains is said to have originated with Mrs Trembath.
5. I invited the petitioner and those close to her to look at the judgment of this court in Re Bingham Cemetery [2018] ECC S&N 1, in order to have some idea of the relevant legal principles, and to make any further submissions they wished in the light of it. They have done so. In addition, the Revd Anthony Giles, Vicar of Epperstone says, without reference to law or theology, that he 'supports the desired outcome' and there is consent from the managers of

the relevant burial ground in Bradford-on-Avon, where there is a consecrated portion in which the ashes could be reburied.

6. I do not need to set out in full the law, derived from the custom of the church and the theology of burial, in full: for details, reference can be made to the Bingham judgment. The starting-point is that Christian burial is to be seen as permanent, because it is the act of committing the remains or the ashes of the departed into the hands of God by their burial. There is therefore a presumption against exhumation. It follows that where there has been a burial in consecrated ground, accompanied as it will have been by the rites of the Church with the words of commendation of the departed to God and committal of the person's remains to burial or cremation, permission for exhumation is not given by the Court on demand, even when, as here, there is no expressed opposition. It is for the Chancellor to decide whether an exhumation should be permitted. The Chancellor will make that decision by considering whether it is right to make an exception to the presumption of permanence.
7. The factors said to favour exhumation in the present case are that the petitioner and other members of the deceased's family, committed as they are to burying his widow with him, would like the deceased's ashes to be nearer the petitioner's present home, and that the deceased's spouse favoured a measure of this sort. The wishes of the petitioner and other living members of her family derive from the fact that they are in various parts of the country: they do not live where their parents lived for such a substantial part of their lives: probably, none of them now has any real connexion with Epperstone.
8. I am afraid there is simply nothing here that would begin to merit the disapplying of the presumption of the permanence of the burial of Mr Trembath's remains in Epperstone. The fact that one's parents died and were buried in a place far from one's own home is perfectly ordinary. The need to travel a distance to visit the grave of even a close relative is, though obviously not a universal experience, as near to being unexceptional as anything that might be imagined. And it is clear that Christian burial does not in any general sense admit the possibility of remains becoming portable, to be moved for the convenience of living family members from time to time.
9. Mr Trembath's ashes must remain where they are, and it is good to know that his widow's ashes will be buried in the same plot. Their children and other descendants will know that their souls are in the hand of God, and the earth above their remains is cared for in the name of God by the church authorities at Epperstone. Mr and Mrs Trembath have left us; their family can and should celebrate their lives and their memories, without attachment to their earthly remains or to a fragment of God's acre.

C M G Ockelton MA BD

Chancellor

1 June 2020