

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

**RE: LONGTON CEMETERY**

**THE PETITION OF JUNE UNDERWOOD**

**JUDGMENT**

- 1) On 15<sup>th</sup> April 2015 the body of the late Josephus Underwood was buried in plot Blossom 9 in the consecrated portion of Longton Cemetery. That is a cemetery operated by Stoke on Trent City Council. June Underwood, the widow of Josephus Underwood, petitions with the support of Mr. Underwood's children and siblings for a faculty authorising the exhumation of his remains. It is proposed that the coffin be re-interred in the cemetery at Spring Garden Road. That cemetery adjoins the Council's cemetery but is owned and operated by the private company, Garden of Remembrance Ltd. The Petitioner consented to the matter being determined on the basis of written representations. I have concluded that is an expedient course although as will be seen I caused further information to be obtained.
- 2) For the reasons set out below I have concluded that the faculty should be granted.
- 3) In support of the Petition Mrs. Underwood explained that there had been an error at the time of Mr. Underwood's interment. Some of the cemeteries operated by Stoke City Council provide the option of burial in a "garden grave". That is a plot which in addition to a headstone has a defined area measuring 6' by 2' which can be planted up and tended by the family of the person buried in the plot. It does not appear that this option was available at the Longton cemetery. There the interments are in "lawn graves" in which the headstone stands in a grassed area. Mrs. Underwood and her family believed that Mr. Underwood was being buried in a "double garden plot" that is a double width garden grave. It was anticipated that in the course of time Mrs. Underwood would also be buried in the plot and it was intended that the plot would be tended by her children and grandchildren. However, the plot was in fact a double lawn grave. As such it was a plot which could accommodate two interments but there was no scope for cultivation of the

plot by family members. My understanding is that a garden grave is not an option available in respect of burials at Longton.

- 4) Mrs. Underwood and her family discovered the true nature of the plot a couple of days after Mr. Underwood had been buried. Mrs. Underwood explains that the misunderstanding had been caused by the funeral directors whom she had engaged. They had told her that the burial was to be in a double garden grave. I have been provided with copies of correspondence from the funeral directors in which they make a full apology to Mrs. Underwood and accept their responsibility for the misunderstanding. I note that the funeral directors have very properly remitted the cost of their services. In those circumstances it is clear that Mrs. Underwood is correct and that at the time of the burial she and her family believed through no fault on their part that the burial was to be in a double garden grave.
- 5) The Petitioner says, and I accept, that learning of the true position has caused her and her family distress. Mr. Underwood was not buried in a grave of the kind envisaged and intended by his family. In addition Mrs. Underwood is in the position of knowing that if she is to be buried alongside her husband, as she wishes, it will be in a grave of a different kind from that which she and her family originally hoped and intended.
- 6) The funeral directors have confirmed that the coffin in which Mr. Underwood was buried is likely still to be structurally intact so that exhumation is practicable and can be undertaken in a seemly manner. Stoke on Trent City Council has confirmed its consent to the exhumation both in its capacity as the owner of the cemetery and in that of the relevant public health authority although in the latter capacity it stipulates that the exhumation should not take place until at least six months after the burial.

#### **The Principle of Exhumation.**

- 7) The approach which I am to take is that 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 and exhumation is to be regarded as something which can only be justified

in exceptional circumstances. However, that presumption does not preclude exhumation where there has been a mistake in the original interment. At paragraph 36 the Court said:

“Sometimes genuine mistakes do occur, for example, a burial may take place in the wrong burial plot or in a space reserved for someone else in a churchyard ... 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 remains in the intended not an unintended plot or grave.”

- 8) I am satisfied that the current case is one where there was an error in administration. The late Mr. Underwood’s family believed that he was being buried in a garden grave. They intended him to be buried in such a grave and it was only because they believed that Blossom 9 was such a grave that they caused him to be buried there. In the light of the true nature of that plot it was effectively the wrong burial plot and not that in which it had been intended that Mr. Underwood’s remains should be buried. In those circumstances it is appropriate in principle to permit the exhumation of those remains and their reinterment in a suitable location.

#### **The Intended Location for Reinterment.**

- 9) My initial perusal of these papers satisfied me that exhumation was appropriate but I had more reservations about the proposed site of reinterment.
- 10) When considering whether to permit exhumation the Court needs to be satisfied that the remains will be moved to a location where they will be kept in a seemly manner with a proper concern for the permanence of interment. If the reinterment is to be in consecrated ground then the Court need have no concerns because the remains will continue to be under the protection of the Church as exercised by the ecclesiastical courts. In *Re Blagdon Cemetery* the Court of Arches set out the approach which should be taken in considering proposals for a reinterment in an unconsecrated site. At paragraphs 14 and 15 the Court said that if reinterment in a local authority cemetery is proposed then the Consistory Court should readily conclude that “*the new grave will be cared for in a seemly*

*manner...*". The Court then addressed the position of private cemeteries at paragraph 16 saying:

"Reinterment in unconsecrated ground which is not in a local authority cemetery is a different matter. No general inference of the suitability for reinterment in such land can properly be drawn by the consistory court. Questions about proper care of the new grave in the future and the prospects for visiting access by future generations would need to be addressed by those involved in such cases, and in turn examined with care by the consistory court in deciding whether or not to exercise its discretion to grant a faculty for exhumation."

- 11) The cemetery at Spring Garden Road is unconsecrated and is privately owned. In the light of the need for special care in such cases I requested further information from the Petitioner and also caused the Registry staff to make enquiries about the cemetery.
- 12) The Petitioner has provided me with a copy of the 2015 Terms and Conditions of Garden of Remembrance Ltd. These indicate that proper arrangements are in place for enabling visits to be made to graves and also for the seemly maintenance of the site.
- 13) In addition I have been given markedly helpful information from Revd Paul Bennett. Fr. Bennett is the Priest in Charge of Meir and Longton. He is able to say from his own knowledge that the cemetery at Spring Garden Road is well-maintained. In addition he confirms that he has conducted a number of interments at the cemetery. In my judgement that is a very significant factor. The fact that Fr. Bennett has conducted a number of interments in this cemetery demonstrates that he regards it as a suitable location for Christian burial. The assessment of the local incumbent must carry considerable weight with the Court and in the light of Fr. Bennett's approach I am able to be satisfied that the cemetery is a suitable location for the reinterment of Mr. Underwood's remains.
- 14) In those circumstances a faculty authorising the exhumation of the remains of Josephus Underwood and their reinterment in the Garden of Remembrance Ltd cemetery is to be issued. In addition to the usual conditions governing exhumation that faculty will be subject to a condition providing that the

exhumation is not to take place until 16<sup>th</sup> October 2015 so as to meet the public health concerns of the City Council.

A handwritten signature in black ink, appearing to read 'S Eyre', written in a cursive style.

STEPHEN EYRE  
HIS HONOUR JUDGE EYRE QC  
CHANCELLOR  
16<sup>th</sup> August 2015

