

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

CHESWARDINE: ST. SWITHUN

PETITION OF SIMON GUMERY

JUDGMENT

- 1) On 28th February 1993 the cremated remains of Kenneth Gumery were interred in the churchyard of St. Swithun's. Those remains were contained in a wooden casket.

- 2) Mr. Gumery's widow died in June 2014 and their son, Simon Gumery, now petitions for the exhumation of Mr. Gumery's remains. Mr. Gumery proposes to scatter Mr. Gumery's remains and those of his mother at Skerray in northern Scotland. Mr. Gumery explain that the years after his father's death passed his mother came to the view that she had made a mistake in interring her husband's remains in Cheswardine. Instead she came to the view that it would be better for those remains together with her own to be scattered at Skerray. This was a place which they knew well; where they had been happy; and where they had felt at peace and closest to God. The Petition is supported by Simon Gumery's brother, Fraser, who is the only other surviving child of Mr. and Mrs. Gumery. Cheswardine Parochial Church Council also supports the application. Moreover, it has confirmed that although care will have to be taken the exhumation is likely to be practicable.

- 3) Mr. Gumery has consented to the determination of this matter on the basis of written representations. I am satisfied that it is expedient to determine the Petition on written representations.

- 4) I have no doubt that Mr. Gumery is seeking loyally to carry out his mother's wishes nor that the late Mrs. Gumery had genuinely come to desire the scattering of her cremated remains together with those of her late husband in Skerray. Nonetheless, for the reasons set out below I am compelled to dismiss the Petition.

- 5) The approach which I am to take in considering this Petition was 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. That presumption flows from the theological understanding that burial (or the interment of cremated remains) is to be seen as the act of committing the mortal remains of the departed into the hands of God. Accordingly, I can only permit an exhumation if I am satisfied that there are particular circumstances such as to justify the decision in the particular case to take the exceptional course.
- 6) The Court of Arches identified circumstances which were capable in an appropriate case of being exceptional such as to justify an exhumation and also identified those circumstances which were not to be regarded as being exceptional for those purposes. The Court expressly considered the case of a change of mind on the part of the relatives who had brought about the original interment and stated that this “*should not be treated as an acceptable ground for authorising exhumation*” (at paragraph 36 (iii)).
- 7) There is a further factor which comes into play in this case. The Court is concerned not just with the permanence of interment but also with the fact that remains which have been interred in consecrated land have been committed to the protection of the Church. Exhumation can only be permitted even in exceptional circumstances if the Court can be satisfied that appropriate arrangements are in place for the continuing protection of the remains. This concern was articulated in the context of a proposal for the scattering of cremated remains by McLean Ch in *Re Stocks* (1995) 14 CCCC 21 , 5 Ecc L J 527. In this decision in the Sheffield Consistory Court the learned chancellor explained that the Court would not allow remains once interred to be lightly disturbed and that it would require reinterment to be in a location where there would be equivalent protection. This was because the Court had to be concerned to ensure the continuing security and safe custody of the remains which had been committed to the care of the Church. McLean Ch refused an application for the exhumation of cremated remains with a view to scattering them in the Hope Valley in Derbyshire

(even though he accepted that such scattering was what the deceased person in that case had wished). In so doing he said that *“To allow disinterment in order that the ashes be scattered would ... strike at the root of the principles of security and safe custody”* .

- 8) The Court of Arches did not address this point in terms in *Re Blagdon Cemetery* but it did make it clear that the continuing security and safe custody of the remains in question was a very important consideration when a Consistory Court was deciding whether or not to allow exhumation. Thus at paragraphs 13 – 16 the Court explained that re-interment in land which was neither consecrated nor under the control of a local authority (where similar protection would be given) would be problematic because of concerns as to the permanence of the protection which was to be provided to the remains in question. Such concerns apply with even greater force where what is proposed is the scattering of cremated remains which are currently interred in consecrated land. It follows that the approach of McLean Ch remains applicable and that it is difficult to envisage circumstances in which it will be appropriate to allow remains to be exhumed for the purpose of their subsequent scattering.
- 9) It follows that notwithstanding Mr. Gumery’s loyal desire to fulfil his mother’s wishes this is not a case in which exhumation can be permitted. What happened was that at some point after Mr. Gumery’s remains were interred his widow changed her mind as to the appropriate form of disposal of those remains. That change of mind is not an exceptional circumstance nor does it mean that there was a mistake at the time of the original interment. In addition the fact that the intention is for the remains, if exhumed, to be scattered is a further reason why exhumation cannot be permitted.

STEPHEN EYRE
CHANCELLOR
10th January 2015

