

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

TRENTHAM: ST. MARY

PETITION OF DAVID JOHN SHENTON

RE: THE CREMATED REMAINS OF ALBERT WILLIAM SHENTON

JUDGMENT

- 1) On 9th June 2011 the cremated remains of Albert Shenton were interred in the churchyard of St. Mary's Trentham. Mr. Shenton's son, David Shenton, petitions for a faculty authorising the exhumation of those remains. The cremated remains had been conveyed to the site of interment in a casket. However, they were then placed loose into the ground. This was in accord with proper practice but appears to have been done after the mourners left the graveside and David Shenton only learnt that this had happened when he began to seek exhumation.
- 2) Albert Shenton's death left his widow after a marriage of 57 years. In January 2012 Mrs. Shenton died. In accord with her previously expressed wishes Mrs. Shenton's remains were placed in a plot in Trentham Cemetery containing the remains of her parents (that plot being consecrated ground). David Shenton explains that at the time of his father's death "*it never occurred*" to him or to his mother that his father should be interred in that grave. Mr. Shenton explains that this was probably because at that time his relationship to those whose remains were in the grave was simply that of son in law. Mr. Shenton now wishes his father's remains to be exhumed and placed in the same grave as those of Mrs. Shenton the effect being that the grave would then contain the remains of both Mr. & Mrs. Shenton and those of Mrs. Shenton's parents.
- 3) The Petitioner is the only son of Mr. & Mrs. Shenton. His petition is supported by the PCC of St. Mary's and by the Vicar, Rev. Everton McLeod. Trentham Cemetery is a municipal cemetery and Stoke on Trent City Council has confirmed that the rights to the plot are owned by David Shenton and that it will be possible to inter Albert Shenton's remains

therein. The Petitioner has confirmed that he is content for the matter to be determined on the basis of written representations.

- 4) There are two questions to be addressed. First, that of whether the exhumation is potentially permissible in principle. Second, whether there are questions of practicability or seemliness which in this case preclude exhumation. I had particular concerns in respect of the latter aspect when the papers first came before me and I then directed that further information be provided. I have been provided with answers which I am informed by Mr. Shenton come in turn from Mr. McLeod. These amount to assurances that it will be possible to remove a volume of soil in circumstances where it can be guaranteed both that no other remains will be disturbed and that the entirety of Albert Shenton's remains will be removed.

The Approach in Principle.

- 5) I have recently in the case of *Re Kenilworth Cemetery* (Coventry Consistory Court June 2012) set out my understanding of the approach to be taken in considering whether to allow an exhumation proposed with the purpose of the removal of remains to a family grave. That approach is applicable here.
- 6) I summarised the starting point and the general approach thus:

“8. 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.

9. I have a discretion but the starting point in exercising that discretion is the presumption of the permanence of Christian burial. 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 as represented by His Holy Church.

10. It must always be exceptional for exhumation to be allowed and the Consistory Court must determine whether there are special circumstances justifying the taking of that exceptional course in the particular case (the burden of establishing the existence of such circumstances being on the petitioner in the particular case).

11. In my judgment the kernel of the approach laid down in *Re Blagdon Cemetery* is found at paragraph 35 where the Court of Arches said:

“... We consider that it should always be made clear that it is for the petitioner to satisfy the consistory court that there are special circumstances in his/her case which justify the making of an exception

from the norm that Christian burial ... is final. It will then be for the chancellor to decide whether the petitioner has so satisfied him/her."

12. The application of that approach to a particular case requires what is essentially a two-stage process addressing the factors being put forward as justifying exhumation. At each stage the Consistory Court must have regard to "the straightforward principle that a faculty for exhumation will only be exceptionally granted" (see paragraph 33 of *Re Blagdon Cemetery*).

13. First, the Consistory Court must consider whether the matters raised are capable in law of amounting to special circumstances. In doing so the Consistory Court must take account of the guidance of the Court of Arches in identifying certain matters which can and others which cannot of themselves amount to such circumstances. When the factors relied upon are included in the categories considered by the Court of Arches in *Re Blagdon Cemetery* that will often be a relatively straightforward exercise (though as will be seen below there is real scope for question about the approach to the creation of "family graves"). However, the list of potentially relevant factors considered in that case was not exhaustive. When addressing a factor other than those considered there the Consistory Court has to assess it in the light of the approach laid down therein. Thus the Consistory Court has to determine whether it is a matter which is something sufficiently out of the ordinary so as to be capable in appropriate circumstances of justifying the Court in taking the exceptional course of ordering exhumation. This first stage in the process derives from the ruling in *Re Blagdon Cemetery* that there are categories of factors which can be identified as being either capable or incapable of justifying exhumation.

14. However, the mere presence of a factor which is capable of being a special circumstance for these purposes does not necessarily mean that exhumation should be ordered in any particular case. The Court has a discretion and the second stage of the process requires the Court to consider whether exhumation is justified in the light of all the circumstances of the particular case and in the context of the presumption in favour of the permanence of interment. This stage derives from the existence of the Court's discretion and from the knowledge that the presence of a factor which is of a kind which can justify exhumation does not necessarily mean that exhumation is justified in the actual circumstances of a particular case."

7) I then proceeded to consider the particular approach to be taken in respect of those petitions seeking a faculty for exhumation on the footing that the exhumed remains were to be moved to a family grave. At paragraph 18 I pointed out that:

"In *Re Blagdon Cemetery* the Court of Arches referred to the creation of a family grave as a potentially relevant factor. It said (paragraph 36) that they were to be encouraged as expressive of family unity and as being 'environmentally friendly in demonstrating an economical use of land for burials'."

- 8) I then considered the decision of Petchey Ch in the case of *Re Plumstead Cemetery* (10th May 2012) concluding with regret that I was unable to agree with the learned Chancellor of Southwark's analysis and setting out my view as to the applicable approach thus at paragraph 27:

"I have concluded that the Court of Arches was indicating that the creation of a family grave was a matter which was capable of justifying exhumation but that it would not necessarily do so. This is the approach which I intend to adopt in this case. The matter is to be considered in the light of the inherent two-stage process identified above. The creation of a family grave is a factor which can justify exhumation but careful consideration will be needed as to whether it does so in the circumstances of any particular case. In each case all the circumstances must be considered in the light of the presumption in favour of the permanence of interment and the requirement that exhumation be exceptional. I believe that such an approach is also consistent with that shown to have been taken by other chancellors in the reported cases: the mere assertion of a desire to create a family grave cannot be the end of the matter but in an appropriate case such a desire can justify exhumation."

- 9) I will apply that approach to the circumstances of this case. Subject to questions of practicability and seemliness is this a case where exhumation would be justified? The following are the factors of particular relevance in support of the petition:
- a) There is an existing family grave which contains the remains of Mrs. Shenton and her parents. This is not a case where the creation of a family grave is simply an aspiration or where there is no more than an assertion that a family grave will be created.
 - b) The movement of Mr. Shenton's remains to the grave which contains his wife's remains would mean that the remains of husband and wife were in the same grave together with those of the wife's parents. This (particularly given the length of the marriage) is strongly expressive of the family unity which was said by the Court of Arches to be one of the reasons why family graves are to be encouraged.
 - c) In addition the interment of Mr. Shenton's remains occurred comparatively recently.

10) On the other side of the balance stands the important and powerful factor of the presumption that interment is to be permanent and that exhumation is to be exceptional. Moreover, it is also to be noted that the family grave existed at the time when Mr. Shenton's remains were interred but a decision was made to inter those remains elsewhere. The Petitioner explains that it did not occur to him or to his mother that Albert Shenton's remains could be placed in the same grave as the latter's parents in law notwithstanding the fact that Mrs. Shenton wished to be buried in that grave in due course. The fact of that decision is a relevant matter. However, the Court is very conscious of the stresses which exist at times of bereavement and how those involved are often dealing with a situation for which they are unprepared and which is new to them. In those circumstances there is a real possibility of decisions being made which would not have been made if those involved had been able to engage in fuller, better-informed, and stress-free reflection. Although the decision to inter Albert Shenton's remains in the churchyard of St. Mary's amounted in practice to a decision not to inter those remains in the family grave in Trentham cemetery I am prepared to accept that it was not seen in that light by either the Petitioner or the late Mrs. Shenton.

11) It follows that this is a case where there is an existing family grave containing the remains of Albert Shenton's wife of 57 years and where interment of his remains would consolidate the interment of two generations of a family. In those circumstances subject to questions of practicability and seemliness it would be an appropriate case for exhumation.

Seemliness and Practicability.

12) This aspect of the matter has caused me considerable pause for thought. Even if a particular exhumation might be in principle appropriate a faculty cannot be granted if the circumstances are such that exhumation is not practicable or such that it would not be possible for the exhumation to be effected in a seemly manner.

13) My initial view was that exhumation would not be practicable here given that Albert Shenton's cremated remains were poured into the ground and were not confined in a casket. My concern as to the practicability of exhumation caused me to require further information to be provided. I have now been provided with that information and I must consider the matter in the light of the material before me. In particular I have to proceed on the basis that the information which has been provided by the Vicar of Trentham St. Mary has been provided with a due consciousness of the seriousness of this matter and of the presumption against exhumation. The information from Mr. McLeod amounts to an assertion that it will be possible to effect an exhumation which moves all the remains of Albert Shenton and which disturbs no other remains. Moreover, Mr. McLeod has set out the basis for that assertion by reference to the practice of the gravedigger and the circumstances of the churchyard. I am bound to give significant weight to the considered views of the incumbent and in those circumstances I am able to be satisfied that it will be possible for there to be an exhumation and for it to be effected in a seemly manner and without disturbing other remains.

Conclusion.

14) This is a borderline case both in relation to the questions of principle and to those of practicability and seemliness. On balance I have concluded that exhumation is both appropriate and practicable. Accordingly, I direct that a faculty be issued for the exhumation of the cremated remains of Albert Shenton and their reinterment in plot 2108 at Trentham Cemetery.

15) I impose the following conditions:

- a) The disinterment shall take place in the presence of Rev Everton McLeod.
- b) The disinterment shall only commence if Rev Everton McLeod is satisfied at that time that it remains practicable to remove the entirety of the cremated remains of Albert Shenton and to do so in a seemly manner and without the disturbance of other remains.

- c) If Rev Everton McLeod is not so satisfied then the exhumation shall not commence and the matter shall be referred back to this court with a short report from Mr. McLeod setting out his reasons for believing that a seemly or effective exhumation is no longer practicable.
- d) The reinterment of the cremated remains of Albert Shenton shall take place in a seemly manner as soon as is reasonably practicable after the exhumation of the same.

STEPHEN EYRE
CHANCELLOR
10th June 2012