

CASE NOTES

EDITED BY RUTH ARLOW

Barrister, Deputy Chancellor of the Dioceses of Chichester and Norwich

AND WILL ADAM

Vicar of St Paul, Winchmore Hill

Re Oxley, deceased

Bradford Consistory Court: Walford Ch, March 2010

Exhumation – special circumstances

The daughter of the deceased sought a faculty for the exhumation of the cremated remains of the deceased from the churchyard. The husband of the deceased had converted to Roman Catholicism and had expressed a wish that his remains and those of his wife be buried together after his death, in another local cemetery. The chancellor found no special circumstances that would warrant a departure from the norm of permanence and the application was refused. [RA]

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Re Putney Vale Cemetery

Southwark Consistory Court: Petchey Ch, April 2010

Exhumation – Roman Catholicism – consecrated ground

The deceased, an Italian Roman Catholic, was interred in the consecrated area of Putney Vale Cemetery shortly after his death. Prior to and at the time of burial the family was not made aware that the relevant plot was in consecrated ground nor of the significance of burial in consecrated ground. After the interment the widow felt that she had made a mistake and the family intended that the deceased should be cremated and that upon the death and cremation of the widow they should both be interred in a mausoleum in Italy with other family members. The deceased's cremated remains would be kept by the widow at home until this could take place. The deceased's widow, supported by her six children, petitioned for a faculty permitting the exhumation of the deceased's cremated remains. The chancellor sought and received evidence from relevant

Roman Catholic diocesan authorities which indicated that consecration of ground had no theological significance or standing in Roman Catholic canon law. There was no objection to the family's proposals as long as the ashes were kept in a dignified manner. After referring to *Re Blagdon Cemetery*,¹ the chancellor decided that as the family did not know that the relevant land was consecrated there had been a mistake which justified making an exception to the norm of permanence of Christian burial. Given the lack of objection by the Roman Catholic authorities to the exhumation the chancellor saw no reason to distinguish between a Roman Catholic and those of other or no faith.² Whilst indicating that he found such special circumstances to exist, the chancellor stated that he would not have been prepared to grant a faculty which would permit the storage of the cremated remains at the widow's home. In light of the chancellor's concerns, the widow agreed to the re-interment of the remains in the grounds of her Roman Catholic parish church and on that basis a faculty was granted. The chancellor emphasised the need for greater clarity about the significance of burial in consecrated ground and took steps to ensure that incumbents, municipal cemetery managers and undertakers were reminded of this. [RA]

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Re St Andrew, Dacre

Carlisle Consistory Court: Tattersall Ch, May 2010

Memorial – heart-shaped – pastoral concerns

The petitioners, a widower and the priest in charge of the parish, sought a faculty to erect a heart-shaped black granite memorial to the former's late wife in the churchyard. The proposed inscription was uncontroversial, but the design of the proposed memorial was contrary to the churchyard regulations. The DAC declined to recommend the proposal but the PCC had given its approval by a 6-5 majority in a secret ballot. The churchyard surrounding the Grade 1 listed parish church contained memorials of a number of styles and materials, but none heart-shaped. The chancellor weighed the general assumption that heart-shaped memorials are not acceptable in a churchyard against the pastoral needs and concerns of the petitioners, not least the claim of the widower that his pastoral needs and those of his family required that the faculty be granted. In conclusion, the chancellor held that to allow such a memorial would in all likelihood create a precedent and, in weighing the pastoral concerns, that

¹ [2002] Fam 299.

² The chancellor referred to the humanist case of *Re Crawley Green Road Cemetery* [2001] Fam 308 and the orthodox Jewish case of *Re Durrington Cemetery* [2001] Fam 33.