

Re Holy Rood, Edwalton

Southwell & Nottingham Consistory Court: Murch Dep

Ch, 4 October 2023

[2023] ECC S&N 2

*Consecration of Churchyards Act 1867 – exhumation –
unconsecrated ground*

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Adjacent to, and connected to, the churchyard was an area known as the ‘church garden’. The land had been given to the church in 1960 for the purpose of adding to the churchyard, the deed of gift conforming with the formula set out in section 5 of the Consecration of Churchyards Act 1867. After a long period of disuse, the land was used to create a garden, separated from the churchyard by a hedge. The garden was never consecrated. As well as containing amenities such as a lawn, trees, flower beds, benches and a ‘fairy grotto’, the garden had been the site of various scatterings and interments of cremated remains. No authority had ever been sought for such interments.

The petitioner’s parents had been instrumental in the work to create the garden. In 2003, his father’s ashes were interred in the garden by the then-incumbent, by being poured into a brick void under a statue. It was apparently understood that his mother’s ashes would join them in due time. However, following his mother’s death and cremation, the present incumbent had declined to permit such interment, the land not being consecrated. After a breakdown in pastoral relations, the petitioner by this petition sought determination of whether the court had jurisdiction over the unconsecrated garden; and if it did, permission for the exhumation of his father’s ashes so his parents’ remains could be interred together, elsewhere. The petition was supported by the incumbent and the PCC.

In *Re Ordsall Churchyard* [2019] ECC S&N 1, the court had identified a bright-line distinction, following the amendment of the Burial Act 1857 by section 2 of the Church of England (Miscellaneous Provisions) Measure 2014: exhumation from consecrated land required a faculty, whereas exhumation from unconsecrated land required a licence from the Secretary of State. However, under section 56 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018, the jurisdiction of the consistory court applies to every churchyard appertaining to a parish church in the diocese. The land having been added to the churchyard by the terms of its gift, the garden was accordingly, and notwithstanding its lack of consecration, subject to the faculty jurisdiction.

The petitioner submitted that in such a case, the court should exercise its jurisdiction by applying the test that would have been applied by the Secretary of State in the ordinary course of an exhumation from unconsecrated land: that is, that it should be granted as a matter of course, subject to the consent of the landowner (here, the incumbent). The court disagreed, concluding that the involvement of the then-incumbent in the original interment brought about the presumption of permanence on which the principles in *Re Blagdon Cemetery* were based.

Applying the *Re Blagdon* principles, the court concluded that there had been a misunderstanding as to the status of the garden at the time of interment; the petition had been issued promptly on discovering the misunderstanding; and exhumation would permit the creation of a family grave. A faculty would, therefore, issue for the exhumation as sought. If exhumation were not practically possible, the faculty would permit in the alternative the interment of the petitioner's mother's ashes alongside those of his father.

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Re Removal of a Commemorative Plaque for Safeguarding Reasons

Oxford Consistory Court: Hodge Ch, 8 October 2023
 [2023] ECC Oxf 9
Removal of commemorative plaque

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This unopposed petition was for the removal of a commemorative plaque, installed without a faculty, on the windowsill of the south wall of the nave of the Grade II* listed church. In order to protect the privacy of any person affected by the judgment, the names of the church and the people involved were anonymised.

The plaque had been installed, without a faculty, to commemorate a previous (and by then deceased) churchwarden's years of service to the church. The PCC were alerted years later that the individual concerned had been convicted of sexual abuse in the 1950s. The individual's children were informed of the faculty application. They had been unaware of their father's conviction and were understandably upset. They did not want the plaque back and did not withhold consent to the faculty.