

The Consistory Court of St Asaph

A Note on the Principles to be applied in considering applications for Faculties that involve the exhumation of human remains from Consecrated Ground.

For the assistance of those considering making such an application it might be of assistance if I set out the principles that will be applied by the Court when exercising judgement in such a case. Clearly these are highly sensitive cases and I hope that this will assist in understanding the approach that the Chancellor is likely to take.

The clear presumption is that the burial of human remains in consecrated ground is permanent. The presumption arises from Christian theology and tradition that burial or the interment of human 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.

This clear presumption may be departed from if the petitioner, on whom the burden of proof lies, can prove that special circumstances exist to allow an exception to that principle. The possibility of *exceptional circumstances* is set out in a leading authority from the Church of England - *In re Blagdon Cemetery* (2002) Fam 299. There the Court of Arches made it clear that permanence in Christian burial may only be departed from if grounds exist that amount to the existence of a possible exception to the norm. Whether the facts in a particular case warrant a finding that the case is to be treated as an exception is for the Chancellor to determine on the balance of probabilities. It is for a petitioner to prove that there are special circumstances which constitute good and proper reason for making an exception to the norm that Christian burial is final. The approach and the reasoning in the *Blagdon Cemetery* case has always been accepted within the Church in Wales and its principles will be applied by Chancellors here.

What then may amount to an exceptional circumstance? A mistake such as burial in the wrong grave is likely to be an exceptional circumstance, as to allow the mistake to continue uncorrected would be clearly wrong. A decision would depend on each set of circumstances. Clearly if the error was acted upon

without delay that is likely to support a Faculty. Some may seek a Faculty on grounds essentially of convenience. However if advancing years and deteriorating health, and change of place of residence were to be generally accepted as a reason for permitting exhumation then Faculties might be seen as encouraging further applications on that basis. Chancellors have long taken the view that the regular granting of such applications would make unacceptable inroads into the principle of permanence of Christian burial and needs to be firmly resisted. Generally a mourner moving to a new area is not to be seen on its own as an adequate reason. Once again I emphasise that every application is to be treated on its own particular facts.

There are always exceptions to permanence of Christian burial but they are rare and exceptional.

I trust that this short note on the principles will help those contemplating such applications to understand the approach that the Court is likely to take.

His Honour Roger Dutton DL.

Chancellor of the Diocese of St Asaph.

5th January 2024.