

Re Clayton Cemetery, Bradford

Leeds Consistory Court: Hill Ch, 29 April 2019

[2019] ECC Lee 2

Exhumation – extra-provincial decisions – re-interment in unconsecrated ground

The petitioner was the sister of the deceased, who died in distressing circumstances during a police operation. His interment was arranged by his widow, who had disappeared with their children in unexplained circumstances shortly after his death, having apparently sold his assets and leaving the funeral director's fees outstanding. His sister wished to move his remains to a plot in a different cemetery where the deceased's father had been buried. That cemetery was not consecrated.

Section 14A(1) of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 provides that

a decision of the Arches Court of Canterbury or the Chancery Court of York is to be treated by the other Court, and by the lower ecclesiastical courts in the province of the other Court, as if it were a decision which the other Court had itself taken.

Thus, in dioceses of the Northern Province, the court no longer needed to consider the test applied by the Chancery Court of York in *Re Christ Church, Alsager* [1999] Fam 142, to the extent that such test was revisited and reframed by the subsequent decision of the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299.

The examples of exceptional circumstances set out in *Blagdon* are not exhaustive. The court was satisfied that the wider family had not discussed the place of interment and that the trauma of the deceased's death gave rise to a febrile situation which denied all concerned the luxury of informed decision-making. The subsequent disappearance of the deceased's widow had created an abandoned and unmarked grave, the rights in relation to which were still vested in her. The desire to create a family grave found favour in *Blagdon*, although was not determinative.

However, the court would not countenance exhumation unless re-interment was in consecrated ground. This was both for doctrinal reasons and to ensure that the new place of burial was under the jurisdiction of the consistory court. The matter had proceeded without involvement of the deceased's widow and, while an application to set aside or amend the faculty was not anticipated, it was imperative that the court's power to do so not be rendered nugatory by the deceased's remains being placed beyond the court's jurisdiction. A faculty would be granted, subject to two conditions. First, the exhumation was not to

be carried out until the registrar had confirmed in writing that the land where the remains were to be reinterred had been consecrated, and the cemetery maps and records amended accordingly. Second, the cremated remains were all to be reinterred in the designated plot and nowhere else. [DW]

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Re Christ Church, Heeley

Sheffield Consistory Court: Spear Dep Ch, 30 April 2019

[2019] ECC She 1

Re-ordering – pews and flooring – CBC guidance

The petitioners sought a faculty for extensive re-ordering works to this mid-nineteenth-century, Grade II listed church, including the removal and disposal of the nave pews and the introduction of upholstered seating. The Diocesan Advisory Committee, to whom the Church Buildings Council (CBC) deferred, recommended the proposals and Historic England did not object. The principal objection was that of the Victorian Society to the seating proposals. The court considered that, of all the proposals, only the removal of the pews would result in any harm to the significance of the church as a building of special architectural and historic interest. Removal of the pews, which were contemporaneous with the building, would largely sever the link between building and fittings, although the pews themselves were not significant in their craftsmanship or decoration. The harm caused by their removal would be moderate.

The court considered the CBC's Guidance Note on Seating and cases in which it has been addressed, most recently *Re All Saints, West Burnley* [2017] ECC Bla 6. The Guidance Note, adopted by the Victorian Society, suggests that generally only un-upholstered furniture should be introduced into listed churches. This is, however, merely guidance; it cannot trump the views and wishes of petitioners, which must be evaluated in each case. In the present case, the chosen chairs were well suited for use for conferences and in the café area; the benefit to be gained from comfortable seating outweighed the small aesthetic advantage that might come from un-upholstered furniture. The court's task was to consider whether a convincing case had been made out for what was proposed, rather than to consider alternatives put forward by amenity societies or any other objector. In the present case, the public benefit resulting from the proposals as put forward would greatly outweigh the harm caused to the significance of the building. Accordingly, a faculty was granted for the proposed scheme in its entirety. [DW]

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