

of such items. The fact that what was permitted did not accord in all respects with what the petitioner and her family might have wished did not amount to a ‘mistake’ of the sort that would justify an exception from the presumption against exhumation. To grant a petition based on an objection to the enforcement of the churchyard regulations would not only undermine the principle of the permanence of burial but would also risk undermining the role of those responsible for enforcing the regulations. The deputy chancellor declined to grant a faculty. He went on to hold that, even if a case for exhumation had been made out, he would have been loath to grant a faculty permitting the exhumation of the remains when it was clear that the petitioner had no intention of arranging for them to be immediately re-interred elsewhere. The deputy chancellor went on to consider the application of various articles of the European Convention on Human Rights and associated case law and held that the relevant ecclesiastical law was consistent with the applicable articles of the Convention. [Alexander McGregor]

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Re Streatham Park Cemetery

Southwark Consistory Court: Petchey Ch, February 2011

Exhumation – exceptional circumstances – circumstances of original interment

The petitioner’s father had been buried in the consecrated part of Streatham Park Cemetery in 1961 in the same grave as a stillborn child of his parents. The petitioner’s mother had been buried in the Roman Catholic part of the same cemetery in 1958. The petitioner sought a faculty to exhume the remains of his father in order that they should be reinterred in a cemetery in Belgium together with the remains of his mother, whose remains it was also proposed to exhume. The petition was advanced on the ground that the petitioner’s father had wanted to be buried with the petitioner’s mother and that his burial in the grave of the stillborn child of his parents had not been in accordance with his wishes. The proposal that re-interment should be in Belgium arose because the petitioner’s parents had met there during the Second World War and there remained numerous family members in Belgium. The petitioner was not content that his parents should be re-interred together in Streatham Park Cemetery because of concerns he had about standards of maintenance there. The Roman Catholic authorities supported what was proposed, so far as they related to the exhumation of the petitioner’s mother. The chancellor concluded that, after such a lapse of time, it was difficult to conclude on slender evidence

that the manner of the petitioner's father's burial had been contrary to his wishes. Nevertheless, the chancellor held that the petitioner's belief that that was the case was a reasonable one, having an objective basis in fact. Faculties for exhumation were for the benefit of the living rather than the dead. Justification for what was proposed should, therefore, ultimately rest on what the petitioner believed on reasonable grounds. That did not necessarily mean that the court should grant the petition as sought: it would be possible for what the petitioner believed to represent his father's wishes to be fulfilled by his parents being re-interred together in the same cemetery. But the chancellor concluded that the court ought to facilitate 'the best possible solution' and that was represented by what the petitioner proposed. Following *Re Blagdon Cemetery* [2002] Fam 299, it was no longer necessarily objectionable to grant a faculty authorising re-interment in unconsecrated ground: it would depend on the facts of the particular case. The chancellor was prepared to assume that the re-interment in Belgium would be in land that would be suitably maintained and would be permanent. A faculty would be granted accordingly.

A further proposal contained in the petition involved the exhumation and cremation of the remains of the stillborn child in whose grave the petitioner's father had been buried and their interment in Kent, where the ashes of the child's father were interred. Subject to giving the petitioner the opportunity to request a hearing in open court on the question, a faculty would be refused for that aspect of the petition as there had been no mistake or misunderstanding surrounding the burial of the stillborn child and an exceptional circumstance had not been established. [Alexander McGregor]

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Re All Saints, Ockbrook

Derby Consistory Court: Bullimore Ch, February 2011

Interment – cremated remains – closed churchyards

In granting a faculty for the interment of the cremated remains of the petitioners' parents (who had been resident in the parish) in a closed churchyard, the chancellor reviewed the law in relation to interments and closed churchyards. The petition was opposed by the incumbent and PCC because previous requests for interments had been refused on the basis that the churchyard was closed and therefore full. The chancellor held that the parish had been operating in ignorance of section 3(1) of the Church of England (Miscellaneous Provisions) Measure 1992. He further held that the petitioners had established