

In the matter of St Nicholas, Pevensey  
And in the matter of Elsie Howard, deceased

Judgment

1. By a petition dated 26 January 2002, Mr Stanley Howard seeks a faculty for the exhumation of the created remains of his late wife, Elsie Howard. They were interred in grave number 20A in the churchyard of St Nicholas, Pevensey in June 1995. Mr Howard wishes that they be re-interred in the churchyard of All Saints, Gurnard on the Isle of Wight. The petition is opposed by Mr Philip Anthony Howard, the son of Stanley Howard and of his late wife, Elsie.
2. When the matter was first referred to me in February of this year, I indicated that I was not prepared to deal with it until the Court of Arches had delivered its judgment in the appeal of Mr and Mrs Whittle in *Re Blagdon Cemetery*. Legal argument was heard on 6 October 2001 but judgment was not handed down until 16 April 2002. At my direction a copy of that judgment was sent to Mr Howard and to his son. I also indicated that I would be willing to deal with this matter on written representations pursuant to rule 26 of the Faculty Jurisdiction Rules 2000 (SI 2000/2047). Both Mr Howard and his son have consented in writing to me so doing by letters dated respectively 22 April 2002 and 4 May 2002.
3. I have had the advantage of considering the following documents.
  - i. the petition dated 26 March 2002;
  - ii. a manuscript statement from Mr Stanley Howard setting out his reasons for the proposed exhumation which is annexed to the petition;
  - iii. a letter from the secretary of the PCC of the parish of St Nicholas Pevensey, annexed to the petition;
  - iv. a letter from Mr Philip Anthony Howard dated 10 October 2001, annexed to the petition;
  - v. a letter from the Reverend Graham Morris, vicar of Gurnard, dated 26 November 2001, annexed to the petition;
  - vi. letters from Mr Stanley Howard dated 27 November 2001, 26 January 2002, and 11 February 2002;
  - vii. two further letters from Mr Philip Anthony Howard both dated 13 February 2002.Mr Howard and his son have each framed their written representations in frank and forthright terms.
4. The background to this matter appears from Mr Stanley Howard's manuscript statement. He suffered a heart attack in October 1990. Both he and his wife, to whom he had been married for some forty years, were registered disabled and they moved

into sheltered accommodation on the Isle of Wight the following December. Fearful of leaving his wife alone were he to have a further and fatal heart attack, Mr Howard and his wife moved to Pevensy Bay in 1993 to be near their son.

5. Elsie Howard died on 31 March 1995 after a long and painful illness. Following a cremation at Eastbourne, her remains were interred in the churchyard of St Nicholas, Pevensy.
6. In October 1996 Mr Howard re-married. His third wife, Bobbie Sellors, lived on the Isle of Wight and she and her late husband, Albert, had become friends with Stanley and Elsie Howard. Mr Sellors died in 1991. His ashes are interred in the Garden of Remembrance at All Saints Church in Gurnard. Mr Howard and his wife tend his grave. They also tended the grave of Elsie Howard in Pevensy where for some time Mr Howard retained a home. However, failing health on Mr Howard's part forced the sale of the home and now renders visits to the grave less easy. Mr Howard therefore wishes to exhume his late wife's remains so that they may be reinterred in Gurnard proximate to those of Mr Sellors in the expectation that his remains and those of his present wife, Bobbie, may in due course also be buried there.
7. The PCC of All Saints, Gurnard supports Mr Howard's application. That of St Nicholas, Pevensy takes the view – quite properly in my opinion – that in the light of the disagreement between Mr Howard and his son, it is unable to endorse Mr Howard's request. It does not object to the exhumation as such.
8. Mr Howard's son does not wish his mother's remains to be disturbed. He also states that he and his children would be inconvenienced were they to have to travel to the Isle of Wight in order to visit her grave. He is sceptical as to his father's intentions and suggests that his marriage to Bobbie may not last.
9. I have not been assisted in this case by the cross-allegations made by son against father and by father against son. I deprecate the personal attacks made in the correspondence. They are both hurtful and irrelevant.
10. This court, in common with all consistory courts in the Province of Canterbury, is bound by the judgment of the Court of Arches in *Re Blagdon Cemetery* (16 April 2002, unreported). That Court received evidence in the form of a written submission from the Right Reverend Christopher Hill, Bishop of Stafford, on the theology of burial. It contained the following:

The permanent burial of the physical body and the burial of cremated remains should be seen as a symbol of our entrusting the person to God for resurrection. We are commending the person to God, saying farewell to them (for their 'journey'), entrusting them in peace for their ultimate destination, with us, the heavenly Jerusalem. This commending, entrusting, resting in peace does not sit easily with 'portable remains', which suggests the opposite: reclaiming, possession, and restlessness; a holding on to the 'symbol' of a human life rather than a giving back to God.
11. The Court of Arches approved the approach of my distinguished predecessor, His Honour Quentin Edwards QC Ch in *Re Church Norton Churchyard* [1989] Fam 37 at p 43 where he said in reference to ground in which a Christian burial had taken place:

there should be no disturbance of that ground except for good reason.

In the later decision of *Re St Mary Magdalene, Lyminster* (January 1990, unreported) the same Chancellor used somewhat different language in saying:

the question may be thus stated: has this petitioner shown that there are sufficient special and exceptional grounds for the disturbance of two churchyards?

12. In paragraph 35 of the judgment in *Blagdon*, the Court of Arches stated as follows:

The variety of wording which has been used in judgments demonstrates the difficulty in identifying appropriate wording for a general test in what is essentially a matter of discretion. We consider that it should always be made clear that it is for the petitioner to satisfy the Consistory Court that there are special circumstances in his/her case which justify the making of an exception from the norm that Christian burial (that is, burial of a body or cremated remains in a consecrated churchyard or the consecrated part of a local authority cemetery) is final. It will then be for the Chancellor to decide whether the petitioner has so satisfied him/her.
13. In considering what may or may not amount to special circumstances, the Court of Arches in *Blagdon* examined various scenarios, one of which is of particular relevance in this case. The Court at paragraph 36 said as follows:

Mr Hill [counsel for the appellants] argued that this Court should take account of the fact that Mr and Mrs Whittle's petition is supported by Steven's closest relatives and also by the Rural Dean of Stowmarket. In so arguing he was relying upon *Re Christ Church, Alsager* [1999] Fam 142 where it was suggested that persuasive matters may be 'that all close relatives are in agreement; and the fact that the incumbent, the parochial church council and any nearby residents agree'. We differ from the Chancery Court of York in this respect. We consider that the views of close relatives are very significant and come in a different category from the other categories mentioned by the Chancery Court. We do not regard it as persuasive that there is particular support for an unopposed petition any more than support for a contested petition of this nature would affect the decision on the merits of the petition. It is the duty of the Consistory Court to determine whether the evidence reveals special circumstances which justify the making of an exception from the norm of the finality of Christian burial, as we have already said earlier in this judgment. The amount of local support, whether clerical or lay, should not operate as a determining factor in this exercise and will normally be irrelevant. (emphasis added)
14. In this instance I consider the absence of unanimity amongst the deceased's nearest relatives, namely her husband and her son, is a powerful – if not overwhelming – factor which militates against the granting of a faculty. In such circumstances it is incumbent on the petitioner to demonstrate some special reason for disturbing the *status quo*. I am not satisfied that Mr Stanley Howard has shown such a special reason. As was restated in the *Blagdon* judgment, the fact that a surviving relative has moved to a new area, or is precluded by deteriorating health from visiting a grave, is not sufficient justification for departing from the guiding principle that once bodily remains have been committed to consecrated ground they should rest undisturbed. Equally, although there is an expressed intention that at a future time Mr Howard's remains may be buried near or alongside those of his late wife, in my opinion this does not come within the category of 'accumulation' cases discussed in *Blagdon*. Furthermore, the difference of view between Mr Howard and his son puts this case at a further step removed from the family grave which was the object of Mr and Mrs Whittle in the *Blagdon* appeal.
15. For these reasons I am compelled to dismiss the petition. The petitioner will be responsible for the costs.

16. This case has not made happy reading. I derive some comfort, however, from the concluding sentence of Mr Stanley Howard's letter of 27 November 2001 in which he stated that he would accept whatever decision is made, remarking that he and his wife, were together for 45 years, in business and in pleasure, and loved each other dearly and we shall be together interred wherever.

Such a view chimes with the theology articulated by the Bishop of Stafford as recorded earlier in this judgment. With the heavenly Jerusalem very much in mind, Elsie Howard's remains will lie undisturbed where they were entrusted in 1995 to God's care and safe keeping.



The Worshipful Mark Hill  
Chancellor of the Diocese of Chichester

21 May 2002