

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

ST MARY, ST GILES, & ALL SAINTS: CANWELL

ON THE PETITION OF CATHERINE CURRAN

JUDGMENT

- 1) Catherine Mary Smith died in 2013 and her remains are interred in the churchyard of St Mary's church in Canwell. The point of interment is marked by a memorial to Mrs. Smith and that memorial has space for a further inscription. The Petitioner, Catherine Curran, is Mrs. Smith's daughter. She intends that in due course her remains will be interred in the same plot and that the space on the headstone be used to record a memorial to her.
- 2) Mrs. Smith was a widow. Her husband, Herbert Smith, had died in 1989. At that time Mr. and Mrs. Smith had been living in Burnley. Mr. Smith's was cremated and his remains interred in the grounds of Burnley Crematorium. Mrs. Curran refers to them having been scattered in those grounds though she also talks of a spot at which they were interred and I suspect the remains were in fact placed in the ground at that spot. The difference is immaterial for present purposes.
- 3) A memorial to Mr. Smith was placed on the memorial wall at Burnley Crematorium. The memorial took the form of a 9" square plaque of grey slate bearing the following inscription:

"Treasured memories of
Herbert F. Smith
Died 17th September 1989
Aged 69 years
A devoted husband
Father and Grandad
Deeply loved
Forever in our hearts"

- 4) Mr. Smith was an active freemason. His daughter explains that Freemasonry was a large part of his life and that in due course he became a Grand Master. It is doubtless for that reason that the memorial bears in its left hand corner the

Masonic symbol of a set square and compass. This symbol stands alongside and is of the same height as the last two lines of the inscription.

- 5) Space on the memorial wall at Burnley Crematorium is limited and Burnley Borough Council, who run the crematorium, have a policy of moving memorials after 25 years. It appears that there is a degree of flexibility in enforcing that time limit and that payment can be made for an additional period of time but I accept that in due course the memorial will be removed even if payment is made for an extension of time.
- 6) It is in those circumstances that Mrs. Curran petitions seeking a faculty authorising the installation of the memorial plaque from Burnley Crematorium at the foot of the headstone which is already in place at the point of Mrs. Smith's grave.

The Procedural History.

- 7) The petition has the support of the incumbent and the Parochial Church Council of Canwell and the Diocesan Advisory Committee have recommended approval.
- 8) I concluded that it was expedient to determine the matter on the basis of written representations. The Petitioner agreed to that course and has provided short written submissions in addition to those which accompanied the Petition. Those are expressed in restrained but eloquent language and speak strongly to the love between Mr. and Mrs. Smith; to their lives of Christian witness; and to the love which Mrs. Curran and her brother bear to them.
- 9) Two issues arise in respect of this petition. First, whether it is appropriate to permit a memorial to Mr. Smith in this churchyard notwithstanding the fact that his remains were interred elsewhere. Second, whether this particular memorial bearing the symbol of a set square and compass should be permitted.

Should there be a Memorial to Mr. Smith when his Remains are elsewhere?

- 10) The starting point is that a memorial or inscription will not normally be permitted unless the body or cremated remains of the person commemorated are interred in the churchyard in question. However, such a course can be permitted exceptionally. I do not need to consider the limit of the exceptional circumstances which can justify such a memorial. It suffices for present purposes that I am satisfied that the absence of a memorial elsewhere can justify the installation of a

memorial even though the person commemorated is not buried in the churchyard in question at least where the memorial or inscription is to be combined or associated with one to a spouse who is buried in the relevant churchyard. However, where such a memorial is permitted care is needed to guard against creating the misleading impression that the person commemorated is also buried in the churchyard. That can be done by use of appropriate wording on the memorial either in the body of the relevant inscription or potentially in discreet lettering on the edge of the memorial. I derive those principles in large part from the approach taken in two cases in the Southwark diocese: the decision of Petchey Dep Ch in *St Peter, Limpsfield* [2004] 1 WLR 2504, a decision which notes the provisional view of George Ch to the same effect, and *St Peter & St Paul, Nutfield* [2018] Ecc Swk 1, a decision of Ellis Dep Ch.

- 11) In the circumstances here Mr. Smith's remains are not in Canwell but the memorial to him at Burnley Crematorium will be removed in due course. The consequence of that is that there will be no memorial to him at the place of interment of his remains or elsewhere. Mrs. Smith is buried in Canwell and it is entirely appropriate for there to be a commemoration of Mr. Smith at the site of her grave. That is particularly so given that the inscription on her memorial records Mrs. Smith has having been reunited with her devoted husband.
- 12) As I have explained above it is desirable that where a memorial is installed to a person whose remains do not lie in the relevant churchyard some way is found of noting that in order to avoid creating a misleading impression. The memorial plaque currently at Burnley Crematorium gives no such indication and so if it were to be installed at Canwell there would be a risk of creating the impression that Mr. Smith's remains are also in Canwell churchyard. That is unfortunate but the plaque already exists and if the plaque were in otherwise acceptable terms then I would not regard that as a compelling factor against the grant of a faculty. The risk of creating a misleading impression would in those circumstances be outweighed by the waste and expense of requiring a fresh memorial to be created.

Should the Memorial be permitted in this Form?

- 13) The wording of the plaque currently at Burnley Crematorium is unexceptionable. However, it does bear the Masonic set square and compass.

- 14) In giving directions for the determination of this matter on the basis of written representations I caused Mrs. Curran to be provided with a copy of the decision of Tattersall Ch in *Re St Oswald, Dean* [2016] Ecc Car 5.
- 15) The submissions which the Petitioner made in the light of that decision were to emphasise her father's Christian commitment which stood alongside the large part which Freemasonry played in his life. Mrs. Curran also contends that the Masonic symbol is only small and points out that the proposal is for the plaque to be placed to lie flat on the ground with the consequence that it will only be visible to those looking down on it from above.
- 16) I take account of the fact that the plaque will not be in a prominent position but it will be readily visible to those passing in that part of the churchyard. Although the Masonic symbol is not large it extends as I have already noted to the height of the last two lines of text. It follows that it is readily noticeable on the plaque and so I must address the question of whether it is appropriate for such a symbol to be on a memorial in a churchyard.
- 17) In his judgment at [28] – [37] Tattersall Ch set out the approach of various Christian denominations to Freemasonry. He made it clear that he was not purporting to make any judgment as to whether Christianity and Freemasonry are compatible but he did note, at [37], that “there is clearly some debate and doubt as to whether the two are compatible” and it was in the light of that debate that he concluded that “the addition of a Masonic symbol on a memorial in a Church of England churchyard is likely to be controversial.”
- 18) Tattersall Ch expanded on that point at [39.5] saying that “the Masonic symbol of a set square and compass is considered to be un-Christian by some Christians.” He also noted, at [39.7] that
- “when it last discussed the subject the General Synod of the Church of England, by a very sizeable majority, by accepting the last paragraph of the Report *Freemasonry and Christianity : Are they compatible?*, decided that there were a number of very fundamental reasons to question the compatibility of Freemasonry and Christianity. Moreover this approach seems to be shared among other Christian denominations.”
- 19) It was in those circumstances that Tattersall Ch declined to permit the set square and compass symbol to be included on the proposed memorial. It is important to

be clear as to the basis for that decision. Tattersall Ch was not making any decision about any compatibility or incompatibility between Christianity and Freemasonry. However, he was noting that there was controversy and debate about that issue with a number of Christians taking the view that the two were incompatible and that the General Synod of the Church of England had concluded that there were serious questions about the issue. It was in the light of that controversy that Tattersall Ch declined permission for the inclusion of the symbol doing so because of the principle that it was not appropriate that an inscription or symbol on a memorial in a churchyard should be a source of controversy or contention.

- 20) The decision of Tattersall Ch in the Carlisle Consistory Court is not binding on me but it is of considerable persuasive weight. I find the reasoning set out in *Re St Oswald, Dean* compelling. Like Tattersall Ch I am not determining the question of the compatibility of Freemasonry and Christianity. I note that the late Herbert Smith was an active and committed Christian while also being an active and engaged Freemason. There are many others who also engage with conviction in the life of the Church and in Freemasonry. However, it is clear that there is an issue about the compatibility of the two activities. Moreover, the nature of the controversy is not simply that some individual Christians happen to believe the two are incompatible but that the Church of England through its official structures has confirmed that there are fundamental questions in that regard.
- 21) It follows that the memorial bearing the Masonic symbol has the potential to be a source of controversy and offence in this churchyard. I am conscious that the Parochial Church Council is supportive of the petition but that does not remove the potential for controversy. It is important that the wording of inscriptions and the form of the symbols used on memorials in churchyards is not a source of controversy or of offence to others. That is not because churchyards should be places of bland characterless uniformity but because they are the resting place of the remains of persons other than the particular individual commemorated on any given memorial. Those visiting the churchyard en route to the relevant church or attending to mourn their loved ones are entitled to find the churchyard a place of solace and comfort. That important purpose will be jeopardised by memorials which are potentially offensive or controversial. It does not mean that a memorial

will not be permitted just because of the possibility that a person of unusual sensitivity or idiosyncratic views would find it offensive or upsetting. However, it does mean that wording or symbols which give rise to a real risk of offence or upset to a significant body of those visiting the churchyard will not be permitted.

- 22) It is in the light of their potential to be a source of controversy or to cause offence to a significant body of Christians that it is not appropriate to permit memorials which bear Masonic symbols. If the memorial to Mr. Smith were not already in existence I would have no hesitation in concluding that it was in an inappropriate form. The fact that the memorial already exists cannot make a difference. If it is inappropriate for a memorial bearing such a symbol to be introduced then it is inappropriate even if the introduction comes through the transfer of an existing memorial from elsewhere.

Conclusion.

- 23) It follows that I must refuse permission for the introduction into Canwell churchyard of the memorial plaque which was previously installed at Burnley Crematorium.
- 24) However, I have already said that it is appropriate for there to be a memorial to Mr. Smith at the site of his wife's grave. I have also said that but for the proposed Masonic symbol the wording on the memorial is unexceptionable. In those circumstances while dismissing this petition I permit the incumbent of St Mary, St. Giles, and All Saints to authorise the installation of a memorial to Mr. Smith on this grave. The memorial is to be of substantially similar dimensions to the current plaque and bearing the current or substantially equivalent wording. However, that is to be subject to the addition of an appropriate short note, potentially around the edge of the memorial, recording that Mr. Smith's remains are interred elsewhere. The later requirement flows from the principles set out at [10] above and given there is to be a new memorial then the objective of avoiding others being misled should prevail.

STEPHEN EYRE

HIS HONOUR JUDGE EYRE QC

CHANCELLOR
18th January 2020