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What is the Art Law on Authenticating Works by Old Masters?

Ronald D. Spencer, Sunday, August 9, 2015



This essay addresses the process by which experts determine an Old Master painting to be an autograph work or a copy by another hand. This process is described here, not by an art historian, but by an English judge, who felt herself called to combine legal analysis with her impressive level of art historical understanding. Her opinion is a model for judicial writing about art.

In 2015, a High Court justice in London wrote a 50-page decision, brilliantly and densely reasoned, articulating the process by which connoisseurs arrive at an

opinion about the authenticity of a work of art. In coming to her decision, Justice Rose was obliged, in effect, to become the deciding expert, utilizing expert testimony from connoisseurs provided at trial, but finally, having to articulate her informed visual perception (not a usual exercise for a judge). The result is an all-too-rare, in-depth view of the authentication process—a process which often leaves many art owners confused and unhappy.

Art historian Bendor Grosvenor, writing in *The Art Newspaper* describing this important court decision, asked, “How much does it cost to prove that a painting is not by [Caravaggio](#)? Answer: £6 [million] (at least)”—the legal fees for Sotheby's and the owner of the putative Caravaggio—perhaps the “most expensive Old Master trial ever . . .”¹

Authenticating a work of art is often difficult, and more difficult when the art is four or five hundred years old, and at least one tool for the expert, to wit, provenance, is often limited or non-existent. And, science (materials analysis) does not get us very far since many of the problems for Old Masters come right out of the artist's studio (think Rembrandt). Thus, for Old Masters at least, the expert is left to rely almost entirely on expert opinion concerning the quality of the art, that is to say, is the quality of the art being examined of the quality expected of a painting by the artist—in this case, Caravaggio.

And then, when the experts have come to their conclusion, and that conclusion is challenged in court, (as opposed to the marketplace or in critical writing), a judge must decide that the experts were right or wrong. As in all civil trials (as opposed to criminal trials, requiring proof beyond reasonable doubt) the standard of proof to be met is “more likely than not” or, with the same meaning, “on the balance of the probabilities”—a fairly low bar. In the English court decision described below concerning the auction gallery, Sotheby's, and a painting said by a leading Caravaggio expert to be created by Caravaggio, Justice Rose had to decide whether, on the balance of the probabilities, Sotheby's was negligent in refusing to catalogue and sell the painting as an autograph work by Caravaggio.

Most English and American judges are reluctant to decide questions of art authenticity, in large part, because it is an unfamiliar area for judges and, in no small part, because scholarly practice, and certainly the art market, apply standards closer to beyond-a-reasonable-doubt. (No one would pay full price for art that was more-likely-than-not or, on-the-balance-of-probabilities, created by Picasso).

But the question presented to Justice Rose was whether Sotheby's had been negligent in its decision that the art was a later copy of Caravaggio's art by another

hand, and therefore, had breached its consignment contract with the claimant, its consignor. Since deciding negligence is a usual task for judges, Justice Rose, in effect, found herself making an authenticity decision usually made by art historians, other experts, the art market, or all three. Her decision, while relying on expert testimony is not simply an automatic weighing of the experts' opinions; rather, she actually looked carefully at the Painting, guided by experts, used her visual ability, and drew conclusions supported by her own reasoning and what she saw. The result is a brilliant description of the authentication process while cutting through the competing claims of technical analysis.² And of course, there was no real provenance at all to be considered, whether for or against the Painting.

The High Court Decision

Since 1987, the Kimbell Art Museum in Fort Worth, Texas, has owned a painting called *The Cardsharps* by Caravaggio, depicting three men around a table, playing cards. In 2006, Sotheby's sold at London public auction another painting (the "Painting") of the same scene for £42,000 to a lifelong Caravaggio scholar of great renown, Sir Denis Mahon. The next year, Sir Denis announced, after extensive investigations, cleaning, and restoration that the Painting was an "autograph replica" (that is to say, intended, and painted *by Caravaggio himself*, to be virtually identical to his earlier, or first, original version) of the Kimbell *Cardsharps*. (Such replicas, or copies, made by painters of their own works were not uncommon, but the majority of scholars do not believe that Caravaggio painted replicas of his works.) Then, the auction seller sued Sotheby's for negligence and breach of contract, alleging that Sotheby's failed to adequately research the Painting and so failed to realize that the Painting might be by Caravaggio and so could have been sold for many millions.

Justice Rose began her analysis with a review of the history of the *Cardsharps*, and its many period copies by other hands:

There is no doubt, . . . that the instant popularity of the composition of the *Cardsharps* led to the making of high quality copies by other hands shortly after Caravaggio completed the work and over the centuries thereafter. There are several dozen copies known to exist. Sotheby's annexed to its Defence a print out from [a]rtnet which records paintings sold at auction worldwide. About 30 versions of this composition other than the Painting are listed as having been offered for auction between 1988 and 2012, over half of them by either Christie's or Sotheby's. They appear of varying quality and sold for a wide range of prices. Indeed during the first week of the trial of this action, two copies of *The Cardsharps* were sold at auction in London, one at Bonhams for £1,250 and one sold at Christie's as 'After Caravaggio' for £10,000 (over an estimate of £2,000–£3,000).³

Based on its own expert pre-auction assessment, Sotheby's attributed the work to a "follower" of Caravaggio, painted "after" the Kimball original. As described by Justice Rose:

Sotheby's prepared a catalogue entry for the auction. The catalogue defines the term 'follower' as meaning a work by a painter working in the artist's style, contemporary or nearly contemporary, but not necessarily his pupil. The catalogue included a double page spread for the Painting with a colour illustration on one side and a description of the Painting on the other. The catalogue described the Painting as FOLLOWER OF MICHAELANGELO MERISI DA CARAVAGGIO THE CARDSHARPS. The entry says that it is a 17th century copy after the Kimball original and again describes the card game being played. It contains an additional note about the provenance of the Painting:

'Surgeon Captain W.G. Thwaytes was a very keen and important collector of compositions by Caravaggio, and indeed sold Caravaggio's original of *The Musicians* to The Metropolitan Museum of Art, New York.

Provenance

Surgeon Captain W.G. Thwaytes, . . . and thence by descent.'⁴

In describing the Painting as by a "FOLLOWER," Sotheby's intended to convey its opinion that the Painting was a work by a painter working in Caravaggio's style painted within about 50 years of the Kimball *Cardsharps*. So as to contextualize Sotheby's opinion, Justice Rose described Sotheby's auction sale catalogue texts, which indicate Sotheby's varying degrees of certainty of artist attribution, as follows:

For every auction sale, a catalogue is produced describing each painting to be sold. Every entry indicates the certainty with which Sotheby's is prepared to attribute it to a particular artist. The catalogue entry may describe a painting in the following ways:

- i) Simply putting the name of the artist, for example, 'Giovanni Bellini,' means that, in Sotheby's opinion, the work is by Bellini.
- ii) *Attributed to* Giovanni Bellini means that, in Sotheby's opinion, this is probably a work by Bellini, but there is less certainty expressed as to authorship than in the preceding category.
- iii) *Studio of* Giovanni Bellini means that, in their opinion, this is a work by an unknown hand in the studio of Bellini, and it may or may not have been executed under his direction.

iv) *Circle of Giovanni Bellini* means that, in their opinion, it is a work by an as yet unidentified but distinct hand, closely associated with Bellini but not necessarily his pupil.

v) *Style/Follower of Giovanni Bellini* means that, in their opinion, this is a work by a painter working in Bellini's style, contemporary or nearly contemporary, but not necessarily his pupil. 'Contemporary or nearly contemporary' means that it was painted within about 50 years of Bellini's work.

vi) *Manner of Giovanni Bellini* means that in their opinion, this is a work in the style of Bellini and of a later date.

vii) *After Giovanni Bellini* means that in their opinion, this is a copy of a known work of Bellini. ⁵

Key Issue for Determination of Authenticity of Old Master Paintings is Quality. And Determination of Quality is Made by Application of Connoisseurship.

Justice Rose recognized that connoisseurship determined the issue of quality and set about describing this process, while quoting (below) Sotheby's Alexander Bell:

Sotheby's accept that the specialists who examined the Painting . . . assessed the Painting by applying their connoisseurs' eye to a consideration of its quality. A number of the witnesses tried to describe what is meant by the connoisseurs' eye. Mr. Bell said:

"Our main consideration in assessing a painting is quality. In the case of a painting suggested to be a copy of a work by a known artist, we will consider whether the painting being viewed is of the quality expected of a painting by that artist. The ability to determine quality is gained by experience in the profession, from looking at all sorts of pictures from the low quality end of the spectrum right up to works by the greatest artists. From that, one develops an 'eye" for quality. It is not something that I can reduce to words easily and, if I were to do so, it would be misleading, as it would then appear to be a mechanical exercise of looking at various aspects of a painting, which is definitely not the case. On the contrary, it is necessary to take into account all aspects of a painting together to determine whether overall it is painted with the skill, finesse, and energy that might be expected of the particular artist under consideration. In the case of an artist like Caravaggio, this will involve consideration of, for instance, the anatomy of the figures and whether this is convincingly rendered or looks awkward in any way, how the figures relate to each other spatially, and how convincing the artist's use of light and shade is in creating a powerful image."⁶

Justice Rose continued her analysis of the connoisseur's determination of the quality of the Painting by addressing the Claimant's contention that *quality* is a *subjective standard* by which to judge authenticity:

. . . [Mr. Bell of Sotheby's] recognized that [although] Caravaggio's technical ability might be variable, this did not detract from the impact of Caravaggio's early work. Various accepted works by Caravaggio were then put to Mr. Bell as illustrating infelicities, in particular, the lack of accurate perspective in some instances. One was the comb on the table in the Detroit *Magdalene* which I consider later. Another was the shoulder of the Borghese *Ailing Bacchus*. Mr. Bell did not accept that there was anything wrong with this shoulder but rather thought that it was beautifully modeled giving a sense of its volume and form. Both Mr. Bell and Professor [Richard] Spear accepted that assessment of quality is subjective and that scholars of Caravaggio differed in their views of the quality of some works. But they did not accept that this devalued the usefulness of quality as a means of assessing the Caravaggio potential of a work. Mr. Bell's evidence, with which I agree, is that any technical shortcomings in Caravaggio's work in no way diminish the overwhelming impression that one is looking at a masterpiece of composition and craftsmanship when one looks at Caravaggio's paintings of this period. A good example is one that was put to Mr. Bell, namely the fact that the hands of the figure with outstretched arms on the right side of the *Supper at Emmaus* in the National Gallery are out of perspective and that the foreshortening is not correctly done. Mr. Bell's response was that that did not affect the visual impact of the painting which he described as 'absolutely stunning' and 'extraordinary.' He said that a passage in a painting, such as a hand, can be very convincing and powerful even if it is not anatomically correct or in perfect perspective. The same point was made by Professor Spear when he was asked about the variable quality of Caravaggio's accepted works. He [Professor Spear] accepted that there were anatomical mistakes in his early work but went on to refer to Caravaggio's "... uncanny ability to represent natural forms in light and the glistening surface or the nature of fruit, the what I think of as the thingness of things, he doesn't slip, and that's where the connoisseur sees the difference."⁷: Notwithstanding many controversial Caravaggio attributions, and a well-known dispute among scholars as to whether Caravaggio ever painted any replicas of his work, Justice Rose accepted that Caravaggio was no more difficult to attribute than many other Old Masters:

[Claimant's] chief reason why Sotheby's should not have tackled the assessment of the Painting themselves is that Caravaggio raises particular problems as regards attribution. Mr. Sainty's [Claimant's expert on auction house practice] report described how there have been many disagreements in the past about whether a particular work was by Caravaggio or not; that eminent scholars have disagreed with each other and that scholars have changed their minds about a particular painting over time. Ms. Kaminsky [Sotheby's expert on auction house practice] accepted that there are many Caravaggio attributions that are controversial and that

an auction house specialist would be expected to know this—Mr. Bell's evidence was that he was aware of this. Allied with this aspect of Caravaggio scholarship is the fact that the question whether Caravaggio ever painted replicas of his own works is also hotly debated. A minority of scholars adhere to the view that he did paint more than one version of the identical composition. But there are some scholars who do not accept that any of the proposed replicas are really autograph. Mr. Bell's evidence was that he was aware of these academic controversies but that he did not regard Caravaggio as more difficult to attribute than other artists such as Velasquez, Rubens, van Dyck, or Titian. Professor Spear also said that Caravaggio was not particularly difficult. He referred to another Baroque artist Guido Reni who is difficult because he ran a studio where pupils painted copies of his works, some of which were retouched by the master. Caravaggio did not have a studio so there is no problem with these different degrees of autograph status.⁸

Justice Rose continued her analysis of connoisseurship as applied to the Painting, by addressing the difficulty of identifying a particular painting technique typical of Caravaggio:

As regards Caravaggio features, of course, when one is considering whether a copy of a well-known work is by Caravaggio or not, there is no point relying on features of the composition of the image as being typical of Caravaggio; that is what the copyist has tried to reproduce. So Caravaggio features here are features to do with the construction of the Painting and the techniques used. The difficulty however with identifying a particular technique with being characteristic of Caravaggio—at least as regards a period copy—is that it is accepted that there is very little research into copies that enables one to say that Caravaggio produced his paintings in a particular way which none of his contemporaries used.

Auction House Catalogue Practice

Justice Rose described the experts' evidence presented to her at trial concerning auction house cataloging practice. Of course an auction house will wish to be very careful in its catalogue description since it is giving the auction buyer a contractual warranty of its opinion:

The evidence also established the following facts as regards consultation of outside experts. Sotheby's tend to rely on the view taken by their own specialists rather than deferring to the outside experts who are consulted. If Sotheby's are confident that a painting is right then they will catalogue the painting accordingly though they will refer to contrary views expressed by others. Similarly if they are convinced that a painting is not right they will not catalogue it more optimistically unless the positive views they receive cause them to change their minds. Mr. Bell was also

clear that Sotheby's will take however long is necessary to build academic support for a painting if they think it is right. He referred to a painting by Vermeer that they were convinced was right but it took 11 years for them to gain sufficient support to move the cataloguing from 'attributed to Vermeer' to 'by Vermeer'.⁹

The Justice Examines and Rejects Allegations Against Sotheby's of Negligence (that is, a breach of its contract obligation to its consignor)

Justice Rose agreed with Sotheby's approach to assessing the authenticity of the Painting; to wit, applying a connoisseur's eye to a consideration of the Painting's *quality*. The question for Justice Rose: "Was Sotheby's assessment of the poor quality of the Painting unreasonable?," that is, negligent.¹⁰

Sotheby's defense to this action is and always has been that the quality of the Painting is obviously inferior to anything that Caravaggio would have produced.¹¹

The Justice viewed her task as having to decide whether Sotheby's was negligent in that "no reasonable leading auction house would have concluded on the basis of quality that the Painting could not be by Caravaggio." She bore in mind a warning by another English court about "substituting my own assessment of quality for that of experts. However, it seems to me that the task is inescapable here, given the issues in this case."¹²

Based on Expert Testimony at Trial from Connoisseurs, the Justice Sees for Herself, a Lack of Painting Quality Expected of Caravaggio's Art

Using very direct language, based on *her own informed visual perceptions*, Justice Rose described various images rendered in the Painting such as: "The feather in the young sharp's hat, the clothing, and the lace cuffs":

. . . if one is looking at whether the depiction of the feather in the Painting is as convincing a representation of the softness and fluffiness of an ostrich plume as the feather in the Kimbell *Cardsharps*, then it is clear to me that it is not. The feather in the Painting has a shininess that is inappropriate because it suggested a waxiness that ostrich feathers do not have. The artist of the Painting has not captured the barbs of the feather extending over the hat. I accept Professor Spear's assessment that the depiction of the feather in the Kimbell *Cardsharps* is greatly superior to that in the Painting.¹³

"The clothing":

. . . Professor Spear . . . pointed out that the artist of the Painting had not taken the same pains to convey the nature of the fabric as Caravaggio had done in the Kimbell *Cardsharps*.

. . . I accept Mr. Bell's and Professor Spear's assessment of the realism of the muslin folds that protrude through the slits in the sleeves of the young sharp's doublet. They are much more convincing of the softness of the cloth in the Kimbell *Cardsharps* than they are in the Painting.¹⁴

"The handling of light":

. . . The most testing passage for conveying light and shadow is in the lace cuffs of the dupe's sleeves. This is very well done in the Kimbell *Cardsharps* whereas the lace in the Painting is schematic and stiff looking.

There were many other passages in the Painting that were criticized by Mr. Bell and Professor Spear—the dupe's right ear, the weave of the carpet covering the table, the inside edge of the pewter plate, and the gold stripes on the young sharp's breeches. Having considered all these in comparison with the passages in the Painting that are particularly praised by [the plaintiff's experts] I am firmly of the view that Sotheby's were entitled to come to the view that the quality of the Painting was not sufficiently high to merit further investigation.¹⁵

In my judgment there is nothing disclosed on visual examination which should have counteracted Sotheby's view that the Painting was of poorer quality than the Kimbell *Cardsharps* and did not therefore have Caravaggio potential.¹⁶

The Justice Rejects the Significance of So-Called Scientific Evidence of Creative Alterations (Pentimenti) in the Painting

At the trial, evidence was presented about so-called "non-copy" features of the Painting, chief among these being changes or alterations by the creator of the Painting, called *pentimenti*. As the Justice stated:

Pentimenti suggest that the painter refined and altered the composition as they worked, and, for this reason, they are often cited as evidence that a painting is an original composition (i.e. not a copy after a known composition). If the artist has simply copied an image, one would not expect to see major *pentimento*, for example with one of the figures facing in a different direction or an arm bent instead of straight.¹⁷

But Justice Rose dismissed as unimportant the experts' evidence of various *pentimento*, such as a change in the length of the ribbon dangling from the young sharp's left elbow.

It is entirely consistent with a copyist initially painting the ribbon too short, then later realizing that the image in the original image was longer and so he extended the ribbon in the Painting to make it look more like the ribbon in the Kimbell *Cardsharps*. I do not consider this *pentimento* should have alerted Sotheby's to the existence of some creative mind at work in the composition of the Painting.¹⁸

Counterfactual Analysis of Justice Rose (in the event her decision should be wrong)

The Justice decided on the basis of the above analysis that Sotheby's was *not* negligent in refusing to consult outside experts about the authenticity of the

Painting. But she went on to describe what would follow if her no-negligence conclusion were *incorrect*, that is, (1) which experts Sotheby's would have consulted, (2) how the auction catalog would describe conflicting opinions about the Painting, and (3) how much the Painting might have brought at auction if conflicting expert opinions had been stated in the auction catalogue description. On these three points, the following paragraphs by Justice Rose are well worth quoting extensively for what it tells us about the role of experts in the authentication process, about which experts are consulted and under what circumstances:

The key question so far as this part of the case is concerned is which experts Sotheby's would have consulted. Would they have gone to Sir Denis Mahon and Professor Gregori for their opinions and hence found out before the sale that those two experts thought that the Painting was an autograph replica?¹⁹

It appears to be common ground that the decision which experts to consult would be taken by Mr. Bell. It is also common ground that there is no single ultimate authoritative voice on the attribution of Caravaggio as there is with some artists. Ms. Kaminsky's evidence was that that the ability to navigate the difficult waters of seeking scholarly views on attribution is an important skill for an auction house senior specialist to have.²⁰

The evidence also established the following facts as regards consultation of outside experts. Sotheby's tend to rely on the view taken by their own specialists rather than deferring to the outside experts who are consulted. If Sotheby's are confident that a painting is right then they will catalogue the painting accordingly though they will refer to contrary views expressed by others. Similarly if they are convinced that a painting is not right they will not catalogue it more optimistically unless the positive views they receive cause them to change their minds. Mr. Bell was also clear that Sotheby's will take however long is necessary to build academic support for a painting if they think it is right.

It was put to Mr. Bell that he would have gone to Sir Denis and Professor Gregori first for their views because they had a reputation for taking an 'expansionist' view of Caravaggio's oeuvre (that is of being more willing than some other scholars to accept that proposed works are by Caravaggio). It was suggested that once one reputable scholar has supported the attribution, it might be easier to get other scholars on board and that was a good reason to seek the views of an expansionist scholar first. Mr. Bell denied this.²¹

As to whether he would have consulted Sir Denis, Mr. Bell's evidence was very firm that he would not. As I have said, Mr. Bell—and all the other witnesses in the case—expressed the highest regard and respect for Sir Denis's lifelong devotion to studying and promoting the arts. But Mr. Bell said that in 2006 Sir Denis was already 96 years old and in his opinion and in the opinion of many in the art world,

Sir Denis's 'eye' was no longer reliable so far as attribution of Caravaggio was concerned.²²

On this point, I find on the balance of probabilities that Sotheby's would have consulted Sir Denis Mahon if they had considered that the Painting had Caravaggio potential. Not only was he available in London to look at the Painting first hand but he also had a strong connection with this work because of his publication of both the Kimbell *Cardsharps* and of the *Musicians* from the same collection. That is just the kind of connection which in other instances caused Sotheby's to consult him.²³ It is likely, since he would have given his honest opinion, that Sir Denis would have given the same positive opinion of the Painting if consulted then as he did once he had bought it. I therefore find that Sotheby's would have had at least one positive attribution for the Painting if they had consulted outside scholars.²⁴

My further finding is that if Sotheby's had received a positive opinion from Sir Denis they would have sought to garner support from other experts on Caravaggio but they would have been disappointed. I am satisfied that they would also have consulted Dr. Christiansen and that he would have given a firm contrary view that the Painting was a copy and not a very good quality copy.²⁵

Justice Rose finds that, had Sotheby's consulted outside experts, there would be more *negative* than *positive* expert opinion about the Painting's authenticity: Similarly if Sotheby's had gone further in seeking views of other experts, I find that they would have received many more negative views than positive. I reject the suggestion that the negative views expressed by various Caravaggio scholars for the purposes of these proceedings were the result of some arm-twisting by Professor Spear. From what I have seen in this case of art historianship, the scholars do not hesitate to disagree with each other in forthright terms without generating any apparent ill feeling. I regard the opinions given by the experts who have expressed a view on the Painting as their genuinely held views based on the application of their skilled connoisseurship to consideration of the Painting. I find that the counterfactual world is therefore one where Sotheby's:

i) would have had a positive attribution from Sir Denis asserting that the Painting was by Caravaggio;

ii) would also have received a number of negative views of other eminent Caravaggio scholars saying it was a copy;

iii) would have maintained their own very strong doubts about the autograph status of the Painting. ²⁶

I also find that this state of affairs, given the evidence of the Sotheby's witnesses, would not have been enough for Sotheby's to be prepared to catalogue the Painting

as being "by Caravaggio" or even as being "attributed to Caravaggio." They would still have proposed to Mr. Thwaytes that the Painting be auctioned as by a Follower of Caravaggio, albeit that the catalogue entry may have mentioned the positive view expressed by Sir Denis.²⁷

Justice Rose describes Claimant's counterfactual claim for *damages* if the sale catalogue entry had set forth *competing opinions* of various experts:

Mr. Thwaytes's . . . pleaded case is that if he had been in that counterfactual world, the Painting would have been sold either by auction at Sotheby's or by private treaty with the benefit of a description that reflected the scope of the academic support that existed for the Painting. He then pleads that the quantum of his loss is the difference between the value of the Painting being sold at auction or by private treaty with that description and the amount that the Painting in fact realized at auction. The question now is how to arrive at the value of the Painting with the endorsement of Sir Denis. Any attempt at arriving at a valuation is necessarily speculative.²⁸

Mr. Sainty's [Claimant's expert on auction house practice] evidence gave a number of examples of paintings that were of doubtful status but all sold with catalogue entries which set out the conflicting views of scholars. Most if not all of these instances were where a painting had been sold as 'attributed to' the artist rather than as by a follower of the artist. He said that the prices achieved by those paintings reflected their controversial status because they would have been sold for substantially more if their attribution had been more generally accepted. . . . His evidence is that the Kimbell *Cardsharps* is worth about £55 million and that although there would have to be a substantial discount for the negative views, he considers that £11 million is a realistic estimate of what the Painting would have fetched if it had been sold with the opinion of all those scholars who currently accept the work fully detailed in a well-prepared catalogue.²⁹

Ms. Kaminsky's [Sotheby's expert on auction house practice] evidence was that sometimes even the attribution by a well-respected scholar can be rebuffed by the market.

As to counterfactual *damages*, if the Sotheby's sale catalogue had included both negative and positive expert opinions, Justice Rose stated forthrightly her view as to the small difference this would have made in the price obtained at auction: On balance my conclusion is that the Painting probably would have made slightly more at auction or by private treaty if it had been sold with a catalogue entry detailing the positive and negative attributions of respectable scholars but not a great deal more. I find that the views of those scholars who have expressed a negative view of the Painting would have carried much more weight in 2006 than the views of Sir Denis Mahon and Professor Gregori.³⁰

This counterfactual analysis by the Justice is both brilliantly articulated and interesting for what tells us about authenticating Old Masters and (by extension) much other art, both at auction and in private sale. The analysis tells us how and why experts are consulted. It also tells us how auction sale catalogue entries are created when there is conflicting expert opinion. And, for the art market, there is useful analysis of expected auction sale prices in the context of conflicting scholarly opinion.

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Notes

¹ Bendor Grosvenor, "'Caravaggio' lawsuit dismissed by high court," *The Art Newspaper*, March 1, 2015, sec. 2, p. 9.

² *Id.*

³ *Thwaytes v. Sotheby's, Inc.* [2015] EWHC 36 (Ch) at [8].

⁴ *Id.* at [47].

⁵ *Id.* at [11].

⁶ *Id.* at [81].

⁷ *Id.* at [87].

⁸ *Id.* at [90].

⁹ *Id.* at [171].

¹⁰ *Id.* at IV(b).

¹¹ *Id.* at [97].

¹² *Id.* at [99].

¹³ *Id.* at [102].

¹⁴ *Id.* at [103–104].

¹⁵ *Id.* at [105–106].

¹⁶ *Id.* at [130].

¹⁷ *Id.* at [15].

¹⁸ *Id.* at [144].

¹⁹ *Id.* at [168].

²⁰ *Id.* at [169].

²¹ *Id.* at [170–172].

²² *Id.* at [173].

²³ *Id.* at [176].

²⁴ *Id.* at [177].

²⁵ *Id.* at [179].

²⁶ *Id.* at [181].

²⁷ *Id.* at [182].

²⁸ *Id.* at [183].

²⁹ *Id.* at [184].

³⁰ *Id.* at [187].

Editor's Note

This is Volume 5, Issue No. 3 of *Spencer's Art Law Journal*. This spring/summer issue contains three essays, which will become available on artnet in August 2015. The first essay discusses the process by which Old Master paintings are authenticated in the context of a claim that an autographed Caravaggio replica had been overlooked by a major auction house.

The second essay examines dealer exposure and buyer legal protections for works of art in multiples.

The third essay focuses on a recent court decision valuing fractional interests in art, which may help keep your collection in the family.

Three times a year, this journal addresses legal issues of practical significance for institutions, collectors, scholars, dealers, and the general art-minded public.

—RDS