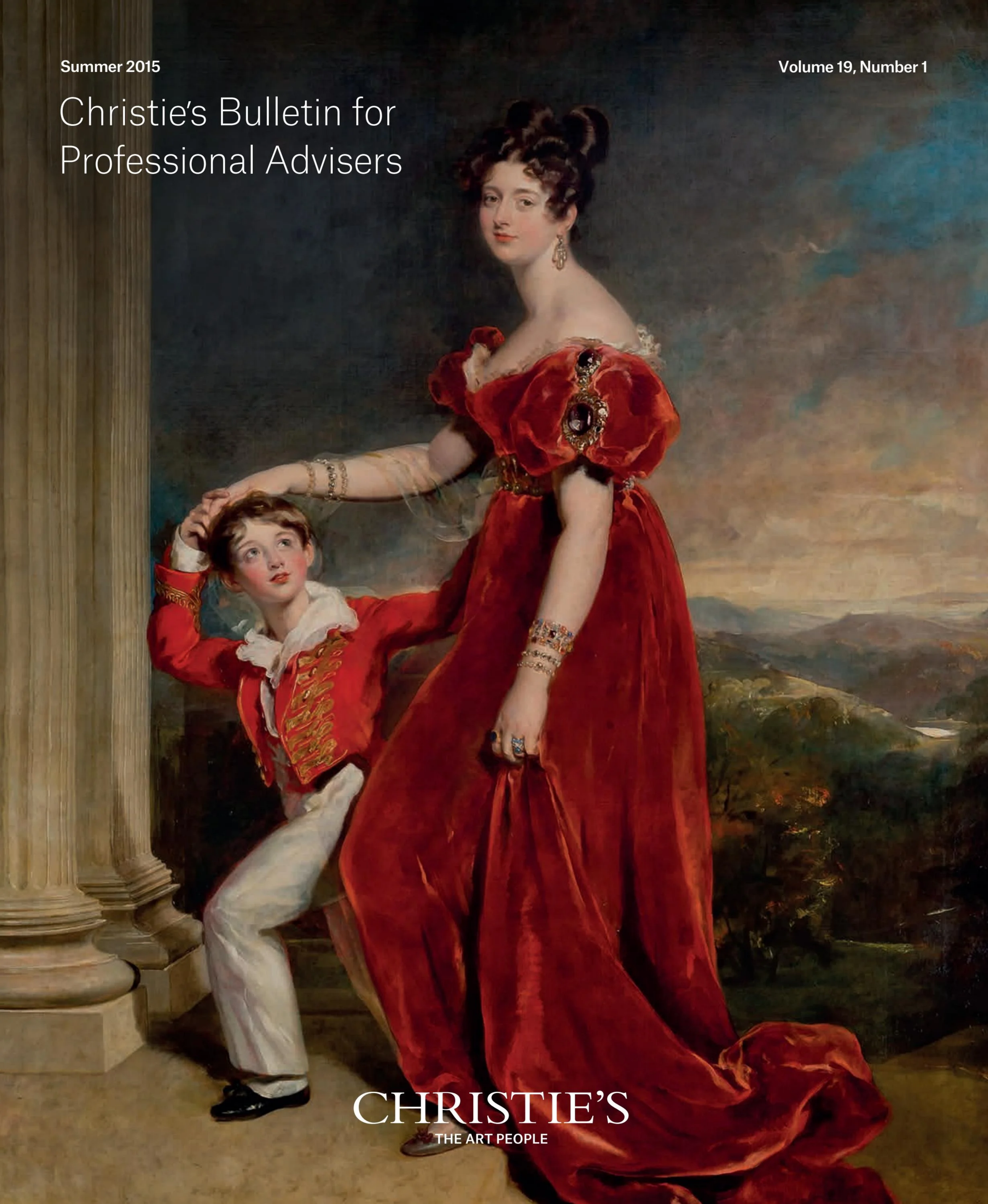
Summer 2015

Volume 19, Number 1

Christie's Bulletin for Professional Advisers



CHRISTIE'S

THE ART PEOPLE

Heritage & Taxation Advisory Service

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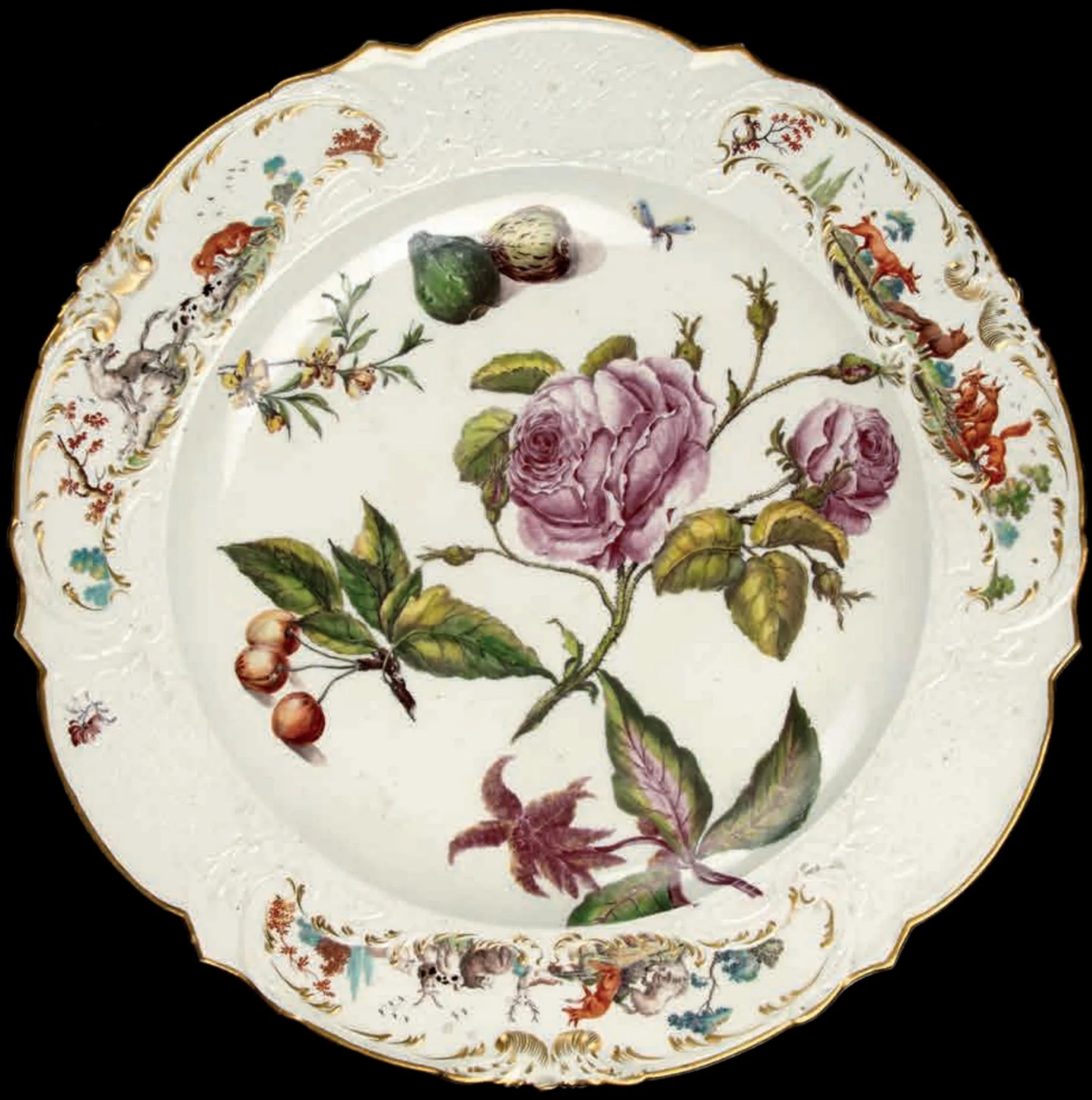
CHELSEA PORCELAIN FACTORY, ROUND SERVING DISH
circa 1755, gold anchor mark · 37 cm. diameter
WA2015.8 Chelsea Porcelain Factory, Round Serving Dish
© Ashmolean Museum, University of Oxford.

Negotiated by Christie's and accepted in lieu of tax; allocated to the Ashmolean Museum, Oxford



Negotiated Sales · Heritage Exemptions · Lease of Objects · Cultural Gifts Scheme
Pre- and Post-Sale Tax Advice · Other Tax Valuations

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The Art People christies.com/heritage

Frances Wilson
Christie's Heritage & Taxation Advisory Service

Index

Editorial

This year marks two significant anniversaries in the heritage world. The first is the 30th anniversary of the exhibition *The Treasure Houses of Britain: 500 Years of Private Patronage and Art Collecting*, which was held at the National Gallery of Art in Washington DC from November 1985 to April 1986. Including 700 objects from more than 200 country houses in England, Scotland, Wales, and Northern Ireland, the exhibition celebrated 500 years of British collecting.

It is also the 40th anniversary of the landmark exhibition *The Destruction of the Country House 1875–1975* at the Victoria and Albert Museum, commissioned by its then-director Roy Strong. The exhibition included illustrations of some of the thousand country houses that had been demolished since 1875 – victims of rising costs, death duties, and damage caused by government requisitioning during the Second World War. The success of the exhibition inspired the formation of the campaigning group SAVE Britain's Heritage in 1975.

In recognition of these anniversaries, this issue of the *Bulletin* features articles on the theme of Britain's historic houses. Simon Kirsop of HMRC reviews the history of public access to Britain's privately owned heritage; Richard Harwood QC discusses works of art in relation to historic buildings, specifically the issues involved in removing art from buildings with statutory protection; and Demelza Williams describes the National Trust's project at Mount Stewart in Northern Ireland, the ancestral home of the Londonderry family. Finally, Adrian Hume-Sayer of Christie's Private Collections and Country House Sales department summarises his department's contribution to the Mount Stewart project.

We also have an article by Nicola Saccardo and Alberto Brazzalotto on the new EU Regulation No. 650/2012 on jurisdiction and applicable law in matters of succession, which will be applicable as of 17 August 2015. Although the UK is not party to the Regulation, practitioners with clients who own property in multiple jurisdictions will need to be aware of the new regulation.

Regular readers of the *Bulletin* will recall that our last issue included an article by Robert Suttle on the taxation of gallantry awards. No sooner had the issue gone to press than the government announced in its Autumn Statement to Parliament that the exemption was to be extended to all decorations and medals awarded in recognition of public service. In this issue Robert provides an update on the new legislation to be read in conjunction with his previous article. For those of you who missed it, that article is available in the *Bulletin* archive on our website christies.com/heritage.

Frances Wilson

Cover
SIR THOMAS LAWRENCE, P.R.A. (BRISTOL 1769–1830 LONDON)
Double portrait of Frances Anne, Marchioness of Londonderry (1800–1865), wife of Charles, 3rd Marquess of Londonderry, with her son George, Viscount Seaham, later 5th Marquess of Londonderry (1821–1884), full-length, on the steps of Wynyard Park
oil on canvas
100 x 60 in. (254 x 152.4 cm.)
Image courtesy of Mark Asher Photography

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Ruth Cornett
Christie's Heritage & Taxation Advisory Service

Heritage News

In my last news round-up I commented on a number of heritage issues which had recently been resolved. Since writing in the autumn the heritage world has seen a number of new developments, the key elements of which are summarised below.

The end of the road for 'Omai'

In March the coalition government presented its last budget of the fixed-term parliament. As widely anticipated, the 'Omai' tax exemption for chattels was closed following the defeat of HMRC's arguments in the Court of Appeal. This is perhaps the most significant change to the taxation treatment of chattels in the last 10 years. As a result of the budget, the widely-known but comparatively rarely used exemption for capital gains tax on the disposal of chattels used in a business is now restricted to those who both own the asset and carry on the trade. While the change, following the defeat of HMRC's case, may not have surprised practitioners, it does demonstrate very strikingly HMRC's intolerance for using tax reliefs and exemptions in any way that it considers to be provocative. Whether there will be further changes to the tax treatment of chattels and heritage property following the general election remains to be seen.

Museum and gallery directors to step down

Following the announcements last year that Christopher Brown, Sandy Nairne and Nicholas Penny were to step down from their posts as directors of major institutions, this year sees Neil MacGregor step down as director of the British Museum and Penelope Curtis resign as director of Tate Britain for a new post as director of the Calouste Gulbenkian Museum, Lisbon. At the time of writing, the names of their successors have not been announced. Meanwhile, Gabriele Finaldi has been appointed as the new director of the National Gallery, London, succeeding Nicholas Penny, and takes over in August. Immediately prior to his appointment at the National Gallery Mr Finaldi was deputy director of the Prado in Madrid and a curator at the National Gallery, London, before that. We wish every success to the appointees in their new roles and to Neil MacGregor a long, happy and without a doubt active retirement.

English Heritage reorganisation

With the reorganisation of English Heritage's functions the former CEO Simon Thurley has retired from his post and been replaced by Kate Mavor, who was previously in charge of the National Trust for Scotland. The split between the functions carried out by English Heritage took effect from 1 April and the new name for the body handling the statutory functions is Historic England. The name 'English Heritage' now applies only to the charity arm which cares for and administers the historic buildings and sites. The new head of Historic England is Duncan Wilson who was the head of Alexandra Palace and Park in London prior to this appointment.

As previously reported, the Government made £80 million available to the new English Heritage in order to address the backlog of property repairs; the intention is that the historic properties will become self-supporting in due course. The launch of English Heritage was announced at Eltham Palace, London, which has had some of the restoration funding allocated to it. Visitor numbers at Eltham Palace since the re-opening in early April are reported to have increased five-fold compared with last year, demonstrating the popularity of visits to historic properties and the publicity that the new organisation has received.

A response to de-accessioning by museums

Following the de-accessioning of objects by a number of museums, particularly those museums which are managed by local authorities, an announcement has been made by some of the national cultural organisations. It follows a 'collections at risk summit' to discuss approaches and responses to sales from collections. The Museums Association, HLF, National Museum Directors' Council, National Archives and Arts Council England (ACE), among others, have announced that sanctions will be brought to bear on museums which do not follow the agreed protocol for de-accessioning. In general, de-accessioning is not supported by any of these organisations and many of the national museums are prohibited from doing so by their founding charter or deed. Others are permitted to de-accession in limited circumstances and, where there is capacity, some museums have chosen to do so.

Following the summit, it was agreed that a joint statement would be issued to clarify the position for the sector. Both ACE and the Museums Association are opposed to the exercise of this power and have announced that any museum which does de-accession without the support of the Museums Association will no longer be accredited and therefore would be ineligible for cover for any loans it receives under the Government Indemnity Scheme. It would also be expelled from the Museums Association. There has also been discussion about the production of a register for those collections which are felt to be at risk of de-accessioning. It has been suggested that any such list would be similar to those produced by English Heritage and UNESCO. So far this proposal has not been taken forward. The penalties for de-accessioning are, of course, intended to deter other museums from pursuing the same path, but the question must be raised as to who will suffer the most from this approach.

European Court rules on the availability of heritage reliefs

The European Court of Justice (ECJ) has recently handed down its preliminary ruling in a case concerning the availability of gift tax relief in the Netherlands for real property situated outside it (Q (Judgment) [2014] EUECJ C-133/13 (18 December 2014)). The key question was whether the taxpayer had established that the refusal by the Netherlandish tax authorities to grant tax relief on the gift to her son of property situated in another member state constituted a restriction of the free movement of capital. The ECJ held that this restriction was compatible with that principle, although recognising that it was a limitation to it.

The details of the case make for interesting reading. The real estate was located in the UK and comprised a listed building and land, but would it have qualified for gift relief from tax in the Netherlands? In its judgment the ECJ considered the details of the tax relief in the Netherlands, where gift relief is given for landed estates which form part of the cultural and historical heritage of the Netherlands and which otherwise might have to be broken up to pay the tax due. The type of landed estate which qualifies for gift relief in the Netherlands is specific to the Dutch landscape. The ECJ held that since the reliefs available in the UK and the Netherlands were not comparable, the refusal of the Netherlandish tax authorities to grant gift relief on the transfer did not constitute a restriction on the free movement of capital. In its judgment the ECJ went on to comment that if the land had been of cultural or historical significance to the Netherlands, despite being in the UK, the situation might have been different. The ECJ's judgment could lead to UK taxpayers arguing that land or property situated outside the UK should qualify for conditional exemption from inheritance tax provided that it is of UK national interest. In the year of the bicentenary of the Battle of Waterloo, this seems more pertinent than before, although the application of the relief may have limited use.

Minton archive

The fate of the Wedgwood collection and the national campaign to keep it intact received significant press coverage last year. That case concluded with the acquisition of the collection by The Art Fund and it is now under the care of the V&A. This spring the archive of the ceramics manufacturer Minton has also been acquired for the nation. The recognition of the importance of this archive for the history of ceramic manufacturing and development in the UK is welcomed.

Conservation of archives

In previous editions of the Bulletin we reported that HMRC is considering asking for a contribution towards the cataloguing of archives which are on loan to local authority record offices. It is rumoured that this opportunity has been taken up by some record offices, but more evidence of the current approaches being adopted is needed to confirm the position.

New Culture Secretary

Following the result of the 2015 election Sajid Javid has been replaced as Secretary of State for Culture, Media and Sport by John Whittingdale. Mr Whittingdale was Chair of the Culture, Media and Sport Select Committee from 2005 to 2015 and a shadow Culture, Media and Sport Secretary under the last Labour administration.

Heritage Counts – and now we know it's good for us

The annual report on the state of the historic environment, *Heritage Counts,* was released at the end of 2014. It included the results of a study commissioned specifically for the report, which came to the conclusion that heritage is good for well-being. Having examined the effect of various types of engagement with heritage, such as visiting historic houses, historic towns, and industrial and archaeological sites, the study found that visiting historic towns and buildings has the greatest impact on the well-being of visitors. Perhaps the biggest surprise is that the effect of this well-being can be quantified and is believed to be £1,646 per person per year for the average visitor, and that the beneficial effect was found to be the same as, or greater than, that of participating in other activities such as sports. What else than engaging with heritage can simultaneously enrich the mind, benefit the body and support our history?

Ruth Cornett

Medals and Other Awards: Exemption from Inheritance Tax

Robert Suttle
HMRC
Inheritance Tax Office

Robert joined HMRC's Inheritance Tax Office in 1992, spent 15 years as a specialist in the Heritage team and graduated from Southampton Institute (now Southampton Solent University) with a BA (Hons) in Fine Arts Valuation. He currently spends his time examining inheritance tax returns.

Introduction

The Treasury's Autumn Statement in December 2014 contained a proposal to extend the inheritance tax exemption for gallantry awards to all decorations and medals awarded by the Crown, or other country or territory outside the UK, to the armed forces, emergency services personnel and to individuals in recognition of their achievements and service in public life. The operative date is 3 December 2014 for deaths or other transfers of value made or treated as made on or after that date. The changes, contained in Finance Act 2015, were enacted on 26 March 2015.

The new exemption

The legislation to amend the Inheritance Tax Act 1984 (IHTA 1984) is as follows:

(1) In section 6 of IHTA 1984 (excluded property), for subsection (1B) substitute –

(1B) A relevant decoration or award is excluded property if it has never been the subject of a disposition for a consideration in money or money's worth.

(1BA) In subsection (1B) "relevant decoration or award" means a decoration or other similar award –

(a) that is designed to be worn to denote membership of –

(i) an Order that is, or has been, specified in the Order of Wear published in the London Gazette ("the Order of Wear"), or

(ii) an Order of a country or territory outside the United Kingdom,

(b) that is, or has been, specified in the Order of Wear,

(c) that was awarded for valour or gallant conduct,

(d) that was awarded for, or in connection with, a person being, or having been, a member of, or employed or engaged in connection with, the armed forces of any country or territory,

(e) that was awarded for, or in connection with, a person being, or having been, an emergency responder within the meaning of section 153A (death of emergency service personnel etc.), or

(f) that was awarded by the Crown or a country or territory outside the United Kingdom for, or in connection with, public service or achievement in public life.

(2) The amendment made by subsection (1) has effect in relation to transfers of value made, or treated as made, on or after 3 December 2014.

Changes

The main change, of course, is extending the exemption to include most, if not all, other official decorations and awards in addition to gallantry awards. The Order of Wear is published in the London Gazette and may be found online at thegazette.co.uk. It provides advice on the physical order in which orders, decorations and medals should be worn in the United Kingdom, certain countries of the Commonwealth and

in the Overseas Territories. Remarkable in its scope, it lists the relevant awards ranging from the Victoria Cross and George Cross to awards under the following headings: British Orders of Knighthood; Decorations; Medals for Gallantry and Distinguished Conduct; Campaign Medals and Stars; Polar Medals; Police Medals for Valuable Service; Jubilee, Coronation and Durbar Medals; Efficiency and Long Service Decorations and Medals; Honorary Membership of Commonwealth Orders; Other Commonwealth Members' Orders, Decorations and Medals; and Foreign Orders, Decorations and Medals.

This will do much to remove the often expressed perceived unfairness felt by those who have had to pay inheritance tax (IHT) on awards other than gallantry awards, for example campaign medals, which may well have been earned in very difficult and dangerous circumstances.

To take an example, the illustration shows a group of medals awarded to someone in the RAF who served before, during and after World War II. Under the old legislation, only the two awards on the left, the Distinguished Service Order and the Distinguished Flying Cross, would have qualified for exemption; now all would qualify.

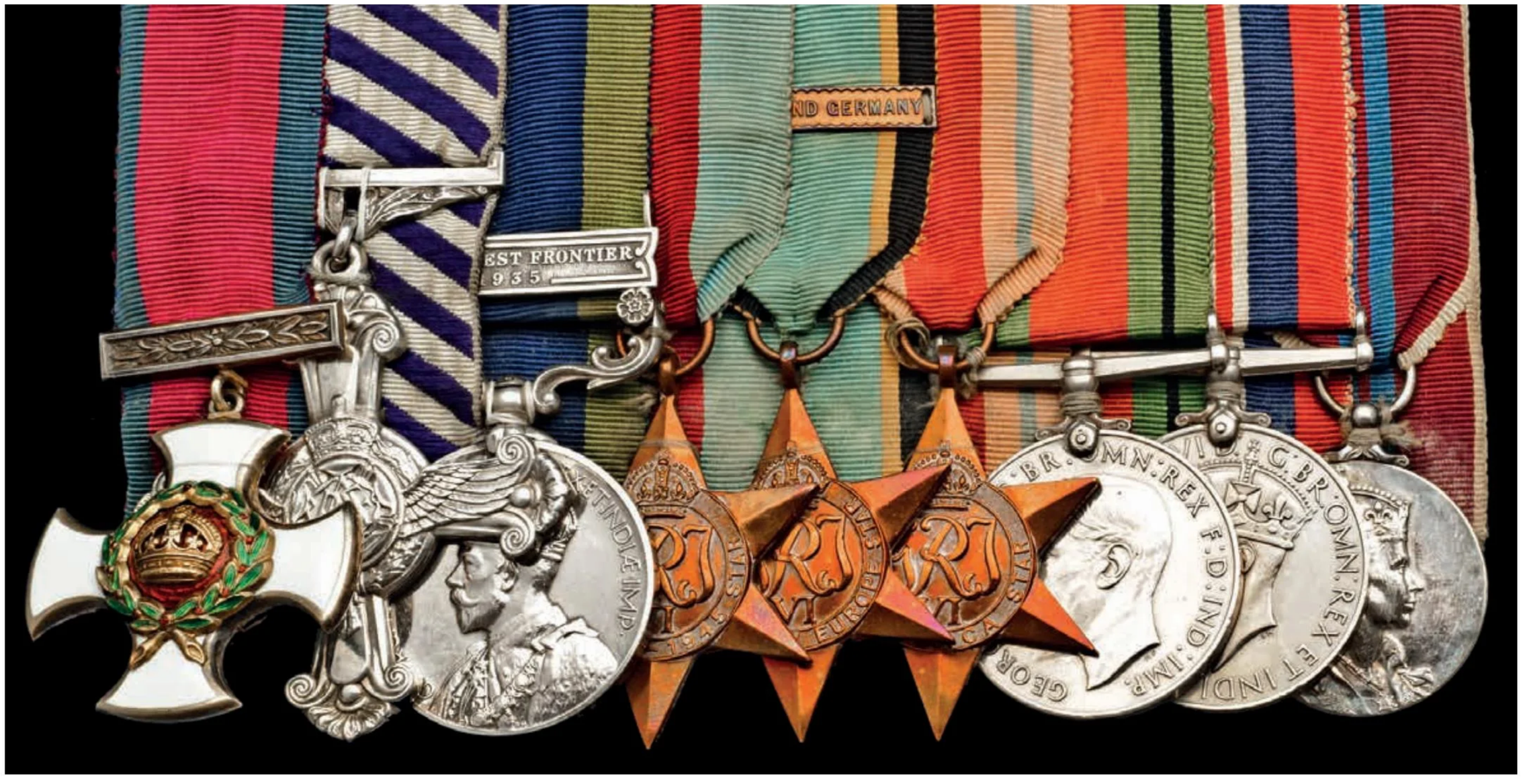
Extending the scope of the exemption also removes one of the trickier problems associated with the gallantry exemption. This is where a group of medals awarded to an individual contains a mixture of gallantry and other awards. When only the gallantry awards are exempt, there could be significant problems in arriving at the value, for IHT tax purposes, of part of the group when the value of the whole group is generally greater than the sum of its individual parts. Although in practice, where the remaining medals in a group were of modest value, HMRC would not generally seek the tax on them. But, on occasion, the remaining medals might themselves have a significant value, perhaps by virtue of relating to a notable recipient or military action.

The requirement that the subject award(s) must never have changed hands for money or money's worth is retained from the gallantry award exemption. This ensures that collectors of such items, or those wishing to purchase them in order to reduce an IHT bill, cannot benefit from the extended exemption. Also retained is the lack of any requirement that the deceased, or anyone transferring the award to another, is the person who originally received the award. This means that awards passed down a family or given to non-family members may still benefit from the exemption.

Making a claim

When a transfer made during life or a deceased's estate includes an award falling within the scope of the legislation, the open market value of the award under section 160 IHTA 1984 should be included as an asset on the inheritance tax return. The claim for exemption should be made on the return and the open market value of the award(s) left out of account when calculating IHT. HMRC's Inheritance Tax Office will then consider the claim. It would help if claimants provided a full description of the award(s) along with, if available, a good quality, good-sized colour photograph.

While most claims are likely to be straightforward, there may be occasions where it is unclear if an award falls within the definition of 'a relevant decoration or award'. Such claims will be considered on an individual basis as they arise.



A group of medals awarded to someone in the RAF for service before, during and after World War II.

Left to right
Distinguished Service Order; Distinguished Flying Cross; India General Service Medal 1908–1935; 1939–45 Star; Air Crew Europe Star; Africa Star; Defence Medal; 1939–45 War Medal; 1953 Coronation Medal.
Image courtesy of Spink and Son Ltd.

Information and advice

For those completing an inheritance tax return, advice on whether an award might qualify for exemption from IHT may be obtained from the author.

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Historic Buildings and Works of Art

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Richard specialises in planning, environmental and public law, advising the art market, owners, regulators and interest groups on heritage law and export issues. He is a case editor of the *Journal of Planning and Environment Law* and the author of several books including *Historic Environment Law* (Institute of Art and Law, 2012; supplement 2014). Appointed Queen's Counsel in 2013, Richard was awarded an OBE in 2014 for services to planning and environment law decision-making.

Historic buildings and works of art do go together, but being able to remove art may be more complicated if the building has statutory protection. Whether a work of art is part of a building or land, or remains a chattel, is important in a variety of circumstances:

- in determining ownership, if the ownership of land and chattels is separated;
- on the intended sale of the artwork;
- whether it passes with the sale of the land;
- for the valuation of the artwork and, sometimes, the land and its contents;
- the ability to use the artwork as security;
- whether subsequent dealing with the object, such as export, is lawful.

Where land and chattels are in the same ownership then further dealings should be straightforward purely as a matter of private law. The owner of the mural would be able to sell it, even if the plaster had to be carefully cut from the wall. When selling a house, the contract should deal with anything which might be part of the building, so that the vendor and purchaser both know what should stay and what should go. In modern cases the issue usually arises because historic environment law requires a public authority's consent to works to historic buildings and monuments.

The protection of historic buildings and monuments

A listed building is one which is listed by the relevant minister as being of special architectural or historic interest: section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ('the Listed Buildings Act'). By section 1(5) the listed building includes:

(a) any object or structure fixed to the building;

(b) any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before July 1, 1948.

The demolition of a listed building or the carrying out of works which affect its special interest requires listed building consent. Separately, monuments, which can include buildings, may be scheduled if they are of national importance under section 1 of the Ancient Monuments and Archaeological Areas Act 1979. Any works to a scheduled monument require consent from the minister. Carrying out works without the requisite consent is a criminal offence. A cultural object removed from a listed building or scheduled monument in breach of these controls will be tainted under the Dealing in Cultural Objects (Offences) Act 2003 and it will be impossible to deal with it, including obtaining an export licence.

There are around 500,000 listed buildings in England and Wales, and some 24,000 scheduled monuments. Many listed buildings contain important and valuable works of art. Whether land includes a listed building or scheduled monument can be readily checked online, for England at: historicengland.org.uk/listing/the-list.

When is art part of a building?

The listed building cases have sought to follow the private law distinction between land and chattels. In *Debenhams plc v Westminster City Council* [1987] A.C. 396 Lord Mackay of Clashfern said: 'the word "fixed" is intended... to have the same connotation as in the law of fixtures and... the ordinary rule of the common law is applied so that any object or structure fixed to a building should be treated as part of it'.

However, the common law cases are mostly very old and are difficult to reconcile. Moving beyond points of principle, they provide a difficult guide. There are also two potential private law principles. The first is whether an object is part of the land or building. The second is the landlord and tenant exception whereby 'tenant's fixtures', including trade, agricultural or ornamental fixtures, can be removed by the tenant even if they are part of the building. Case law has not considered whether the tenant's fixtures exception applies to the meaning of listed building.

The leading private law case is *Berkley v Poulett* [1977] Real Property and Conveyancing 754. The question was whether pictures, prints, a 10 cwt statue and a sundial were fixtures or chattels in a claim by a sub-purchaser. Scarman LJ considered that the test 'whether objects which were originally chattels have become fixtures, that is to say part of the freehold, depends upon the application of two tests: (1) the method and degree of annexation; (2) the object and purpose of the annexation'.

Scarman LJ considered that all the objects were chattels. He rejected the view that the pictures 'were not to be enjoyed as objects in themselves but as part of the grand architectural design of the two rooms', having posed the question whether there were 'panelled walls with recesses for pictures to be enjoyed as pictures, or rooms having walls which were a composite of panelling and pictures'. Stamp LJ agreed, saying that 'framed oil paintings in my judgment are, and remain, chattels'. Goff LJ dissented on most of the items, interpreting previous cases as determining what was a removable fixture.

Paintings were part of the design of a room in *re Whaley* [1908] 1 Ch. 615 where a room was constructed in a Tudor style.

In *Holland v Hodgson* L.R. 7 C.P. 328 Blackburne J gave this example: 'Thus blocks of stone placed one on the top of another without any mortar or cement for the purpose of forming a dry stone wall would become part of the land, though the same stones, if deposited in a builder's yard and for convenience sake stacked on the top of each other in the form of a wall, would remain chattels.'

The term 'intention' is to be assessed objectively and not subjectively, being judged from the circumstances. This may involve detailed examination of how objects were acquired (often on the Grand Tour in the 18th century) and whether that was related to works on the building.

This 'objective' approach to intention prevents an agreement altering whether the object is actually part of the building; however, the object of annexation does involve a consideration of the circumstances, which may include the intention of persons involved. A determination as to whether an object has a role in the design of a room is assisted by an understanding of how the room was designed. If a building is in use as a museum or a gallery, this may indicate that works of art are likely to be moved periodically. Similarly, in *Leigh v Taylor* [1902] A.C. 157 it was relevant that the installation of valuable tapestries was by the tenant for life.

The issue of whether objects were part of the building first arose in the listed building regime in *Corthorn Land and Timber Co v Minister of Housing and Local Government* [1965] 17 P. & C.R. 210. A building preservation order had been confirmed in respect of Scarisbrick Hall, a 19th century Pugin mansion. The order required that 27 portrait panels of Tudor and Stuart Kings and Queens, various carved wood panels and doors, a very large wood carving of the Crowning with Thorns and large wooden medieval equestrian figures should not be removed without consent. Russell LJ held that 'all the items would properly be described as fixtures as that phrase is commonly applied in law', having asked whether they were part of the Hall.

In *R v Secretary of State for Wales ex parte Kennedy* [1996] 1 P.L.R. 97 the applicant had removed a carillon clock from a Grade II listed building without listed building consent. On appeal the inspector upheld the local authority's listed building enforcement notice. It was agreed that the definition of 'fixture' was the same for the purposes of the listed buildings legislation as for any other area of the law. The High Court held that when applying *Berkley* the planning inspector had not erred in reaching his conclusion on the facts he found.

In *Debenhams v Westminster City Council* Lord Keith of Kinkel emphasised a need for the object or structure fixed or within the curtilage to be ancillary to the listed building: 'the word "structure" is intended to convey a limitation to such structures as are ancillary to the listed building itself, for example the stable block of a mansion house, or the steading of a farmhouse, either fixed to the main building or within its curtilage. In my opinion the concept envisaged is that of principal and accessory'.

Government guidance in the *Principles of Selection for Listing Buildings* gives as examples of fixtures a panelled room, a fireplace and over-mantel and a plaster ceiling. It refers to furniture and paintings as examples of items which are not fixtures. These examples should not be seen as definitive: an over-mantel might not be a fixture and occasionally paintings are fixtures.

Two planning decisions have focused attention on this issue: *Time and Life Building* [1999] J.P.L. 292 and *Noseley Hall*. [1999] J.P.L. 1145. In *Time and Life Building*, Westminster City Council had served listed building enforcement notices requiring the reinstatement of a Henry Moore bronze *Draped Reclining Figure*, a Ben Nicholson painting *Spirit of Architecture*, a Christopher Ironside clock *Astrolabe* and a Geoffrey Clarke sculpture *The Complexities of Man* in the 1950s New Bond Street building. Following a quashed appeal decision where the inspector considered the purpose of annexation test at the date of listing rather than construction [1995] J.P.L. 241, the Secretary of State considered that all the objects were fixtures having regard to the degree of annexation and the fact that all the works were specifically designed to fit into particular spaces as part of an overall architectural design.

Noseley Hall concerned the removal of nine paintings which had been installed in the study and the Stone Hall at the time of the rebuilding of the Hall in the 1730s. The inspector found that all the paintings had a sufficient degree of annexation. While seven Paninis (from his school or copies) were found to fit into a carefully designed Italianate room, and so were fixtures, the two paintings of a horse, Ring Tail, and a groom were not installed for the purpose of creating a beautiful room as a whole and had no greater connection with the property than a family portrait. These last paintings were not therefore fixtures.

A curiosity (in all senses) is a 2013 appeal of listed building consent for the removal of cabinets containing a taxidermy collection of birds from the main hall of the Grade II* listed Osberton Hall, Worksop. Intended at the time as a personal museum for the then-owner, a remodelled main hall included oak cabinets screwed to the walls. Displayed in the cabinets was a large collection of stuffed birds. The inspector said that the birds were attached by wires to blocks on shelves which were themselves fixed to the cabinets. As a collection, the birds were of great value and interest, arranged by an 'eminent taxidermist'. The owners and the local authority had initially considered that the cabinets were part of the building but the birds were not as they were freestanding. Later advice from the local authority and English Heritage was that the birds were covered by the listing. To the dismay of the owners, and their children who found the birds frightening, listed building consent was refused.

Curtilage structures

There are four elements in deciding whether an object or structure is listed as a curtilage structure under section 1(5):

(i) being within the curtilage of the listed building;

(ii) forming part of the land;

(iii) having been part of the land since before 1st July 1948;

(iv) being ancillary to the listed building.

The term 'curtilage' covers land and buildings which are 'part and parcel' of the land comprised with a building. Where a house has a relatively modest garden, or a commercial building has a yard, the curtilage is likely to be drawn up to the boundary of the site. However, it is important to have in mind that curtilage is a concept relating to a building rather than the occupation of land. A large estate may well have the main house with a curtilage defined by the extent of formal gardens or a ha-ha wall, and parkland or grazing outside the curtilage.

Whether the object is part of the land depends upon the degree and purpose of attachment. A structure erected in connection with the listed building will be ancillary to it, conventional examples being stable blocks and boundary walls. A rare example of a structure within a building's curtilage which was not ancillary was a World War Two pillbox close to a now-listed farmhouse.

Any object which is part of the land within a defined scheduled monument is subject to control, including post-1948 structures.

The need for consent

The removal of an artwork that is part of a listed building is likely to affect its special interest and so need consent. A display in a museum or art gallery which by its nature may change is unlikely to be part of a building. A recently installed work, unrelated to the architectural interest of the building, might not need consent even if part of the building. Consent tends to be required for long established works integral to a design or redesign.

Obtaining consent by museums

There is a strong presumption against causing harm to the significance of listed buildings and scheduled monuments, partly in legislation (see Listed Buildings Act, section 66 for listed buildings) and partly in policy (in England, in the National Planning Policy Framework, section 12). Any harm can only be outweighed by public benefit from the change. The contribution of the artwork to the heritage asset needs to be assessed, along with the details of any replacement or making good of the works, and public benefits – particularly towards heritage – identified.

Granting consent is a matter for the discretion of the local planning authority or, on appeal (or scheduled monument application), a planning inspector or minister. There is inherent uncertainty in the process and it would usually be dangerous to assume for valuation purposes that consent would be granted.

An example of consent being obtained is the removal of an 18th century gilt-wood chandelier which had been in the Grade I listed Chapel at Sir William Turner's Hospital, Kirkleatham for over 200 years. On appeal, the planning inspector found that its ornate Baroque style was out of kilter with the predominant simplicity of the chapel's Palladian architecture. The removal of the chandelier would not harm the preservation of the listed building provided it was replaced, as proposed, by a brass chandelier of a design and age contemporary with the mid-18th-century remodelling of the chapel. He also gave some weight to the benefits of avoiding the cost of repair of the chandelier and funding the almshouses. The chandelier was sold at Christie's in 2008.

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Public Access to the Privately Owned Heritage

'There is a lofty hall and good pictures.' [1]

Introduction

Curiosity has always been a major part of the makeup of the human character and a curiosity about different people and places has played a major role not only in global exploration but in causing people to leave their homes and set off on journeys. In the Middle Ages those journeys might well be pilgrimages; however, particularly in the 17th century and after, they could take the form of journeys undertaken purely for the joy of exploration and seeing new sights.

In Britain this desire to travel would like as not have as its goal major points of interest, be they scenic or, more probably in the earlier times of such travel, towns and the principal houses in an area. One of the earliest manifestations was the appearance of a road map in Ogilby's *Britannia* of 1675 which set out in cartographical form the major roads of England with all the important towns along the way. To be sure, it wasn't a road map in the modern sense of the word in that it illustrated the roads with little to either side, rather like ancient itineraries. It was, however, a manifestation of a growing desire to travel for the purposes of seeing things and visiting notable sights, of which the major houses owned by the nobility and gentry were a significant part. With the growth of art collecting the contents of the houses added interest for such visits and the practice of making these collections available to visitors was an incentive.

Of the notable travellers of this early period who left descriptions of what they saw, perhaps one of the best known today is Celia Fiennes. She was born in 1662, the daughter of Colonel Nathaniel Fiennes who had fought for Parliament in the Civil War. An intrepid explorer of England, her lively and immediate accounts provide details of, among other things, many of the great country houses including Wilton near Salisbury – her comment on that house stands at the head of this article. She started her journeying in the mid-1680s and continued into early in the next century. In her accounts she described all aspects of the houses and was not above the occasional censorious comment; for example, speaking of Verrio's frescoes on a visit to Burghley at Stamford in 1697: 'but they were all without Garments *[sic.]* or very little, that was the only fault, the immodesty of the Pictures *[sic.]* especially in my Lords apartment.' [2]

The way in which such access was arranged is demonstrated by the celebrated passage in Jane Austen's *Pride and Prejudice* in the account of the visit to the fictitious Pemberley, home of Mr Darcy. Published in 1813, the novel takes for granted that it would be entirely acceptable for Elizabeth Bennet and her uncle and aunt to ask to see round the house: 'On applying to see the place, they were admitted into the hall [and] waited for the housekeeper'. [3] It was usually the housekeeper who had responsibility for showing visitors the house and contents and would usually receive a tip for doing so.

The growth of the rail network during the course of the 19th century opened up travel to a much wider audience and perhaps the most notable of the century's

guides to rail travel, those produced by George Bradshaw, went from merely supplying information on timetables in its 1839 first edition to becoming *'Bradshaw's Handbook for Tourists in Great Britain & Ireland'* by the 1850s, providing details of the sights at destinations on the railway network including castles and country houses.

The fiscal imperative

The introduction of first estate duty, to be succeeded by capital transfer tax and inheritance tax, would see many of these arrangements put on a more formal footing.

Estate duty was first introduced by the Estate Duty Act 1894 and while it extended to claim duty on land, buildings and works of art, it did not include any form of exemption for those types of property. Exemption for objects was introduced in section 20 of the Estate Duty Act 1896 which allowed an exemption for 'such pictures, prints, books, manuscripts, works of art, scientific collections, or other things not yielding income as appear to the Treasury to be of national, scientific or historic interest'.

Initially the exemption was only for property held on trust but that was later amended by section 63 of the Finance Act 1909–1910. The exemption was to last until sale. A combination of a fall in agricultural rents and the burgeoning market in the United States for Old Master paintings, and particularly British 18th century portraiture, meant that many works were being sold abroad and this provision was in part meant to stem that tide. However, the intention was to merely retain the works in Britain and no provision for the allowing of public access was included nor exempting them from the deferred estate duty if sold to the state. When Lady Carlisle sold *The Adoration of the Kings* by Jan Gossaert to the National Gallery in 1911, though she generously accepted a price below the market value, estate duty still had to be paid, though this was met by the Treasury. [4] The exemption of land and buildings was not included within the categories of exemptible property.

The concept that some form of public access, however limited, might be added as a condition to the granting of exemption from estate duty was first introduced in section 48 Finance Act 1950 which allowed those authorised by the Treasury to inspect the exempted property. However, no provision was included to allow for the advertising either of objects which had been accorded exemption or of the availability of access and consequently it was a dead letter from its introduction. It remained in force, however, and continued to be included in the undertakings which all those claiming exemption had to give until 1975.

With the Finance Act 1975 not only was exemption from capital transfer tax which replaced the earlier estate duty introduced, it now covered, in addition to the previously exemptible objects, land and buildings and objects associated with those buildings. The concept of more meaningful public access was also introduced. Initially land and buildings could only be exempt if they were held in a 'body not established or conducted for profit' (schedule 6 paragraph 13 Finance Act 1975); so an element of open public access would probably have been axiomatic. The legislation was quickly revised in the Finance Act 1976 to allow for the granting of conditional exemption, as the relief was now termed, for land and buildings in private hands.

It was originally envisaged that objects which were accorded the new conditional exemption would be on public show in museums and galleries or in other buildings open to the public. However, the terms of the undertaking that the new owner was to sign in order to secure conditional exemption stated, in respect of the allowing of public access, that 'reasonable steps' (section 76(2)(b) Finance Act 1976) were taken for its provision, with no mechanism to require the specifics of those steps to be set out. As the requirement for public access was something new for both applicants and the Inland Revenue (as it was called at the time) and its advisers, access by appointment for land and buildings was considered suitable for some of the very earliest cases. This was amended by the Finance Act 1985 and for all claims on events after 1 March of that year the specific steps were to be set out in the undertakings and an element of open access was mandatory for land and buildings.

Given the quantity of objects considered appropriate for conditional exemption in their own right being put forward, for which the standard was that they be suitable for a national or indeed local collection, access by appointment was in many cases the norm. In the pre-internet age this necessitated a list being kept that the public could consult. This was held at the National Art Library at the Victoria & Albert Museum, and became known as the 'V&A List'.

The current practice

There was a further change to the rules surrounding access together with a number of other changes relating to conditional exemption introduced by the provisions of the Finance Act 1998. These new provisions required that for any undertaking given after 31 July 1998 'the steps agreed for securing reasonable access to the public must ensure that the access that is secured is not confined to access only where a prior appointment has been made' (section 31(4FA) Inheritance Tax Act 1984).

Another important change covered the advertising of that access:

'where the steps that may be set out in any undertaking include steps for securing reasonable access to the public to any property, the steps that may be agreed and set out in that undertaking may also include steps involving the publication of

(a) the terms of any undertaking given or to be given for any of the purposes of this Act with respect to the property; or

(b) any other information relating to the property which (apart from this subsection) would fall to be treated as confidential' (section 31(4FB) Inheritance Tax Act 1984).

Allied to which, the quality of objects that could be claimed as exempt due to their intrinsic quality under section 31 (1)(a) Inheritance Tax Act 1984 was raised so they needed to be of pre-eminent importance, though a new category was introduced of the pre-eminent group or collection.

While access to land, buildings and objects historically associated with them had for many years been required on an open basis, the effect of these changes was to require that for access to pre-eminent chattels there must be an element of open public access as well as access by appointment other times.

In addition, although the steps included in the undertaking which owners gave to secure conditional exemption required the giving and advertising of access of some sort before the changes introduced in 1998, the fact that the property concerned was exempt from tax was covered by confidentiality rules. The new provision enabled HMRC to advertise the access and the reason it was being given. In addition, the use of the HMRC website to promote details of when and how public access was to be given to property with conditional exemption meant that a greater degree of transparency was brought to the scheme. This allows taxpayers who underwrite the scheme to see what they are assisting in preserving.

In order to ensure that the access being given in exchange for temporary tax remission remained appropriate, the new legislation also allowed for the reviewing of the arrangements and their amendment, if necessary, through the agency of the First-tier Tribunal of HMRC (section 35(A) Inheritance Tax Act 1984).

In all cases it is HMRC who are the arbiters of what constitutes reasonable public access, though those claiming conditional exemption are expected to propose how access is to be given. Advice is of course taken from the relevant expert body on those proposals, be it one of the built heritage agencies for buildings and objects associated with them and historically important land, or the natural environment agencies for land of scenic or scientific interest. When considering what would be appropriate there are a number of different aspects to consider and the access given must never be to the detriment of the claimed property. This can lead to the restricting of access at particular times if, for example, the claim is in respect of a Site of Special Scientific Interest, or the way that access is managed for a fragile historic environment. Though public access is an important element of conditional exemption, of equal importance is the maintenance of the exempted property and its preservation. Access which undermines these two objectives would defeat the purpose of the scheme.

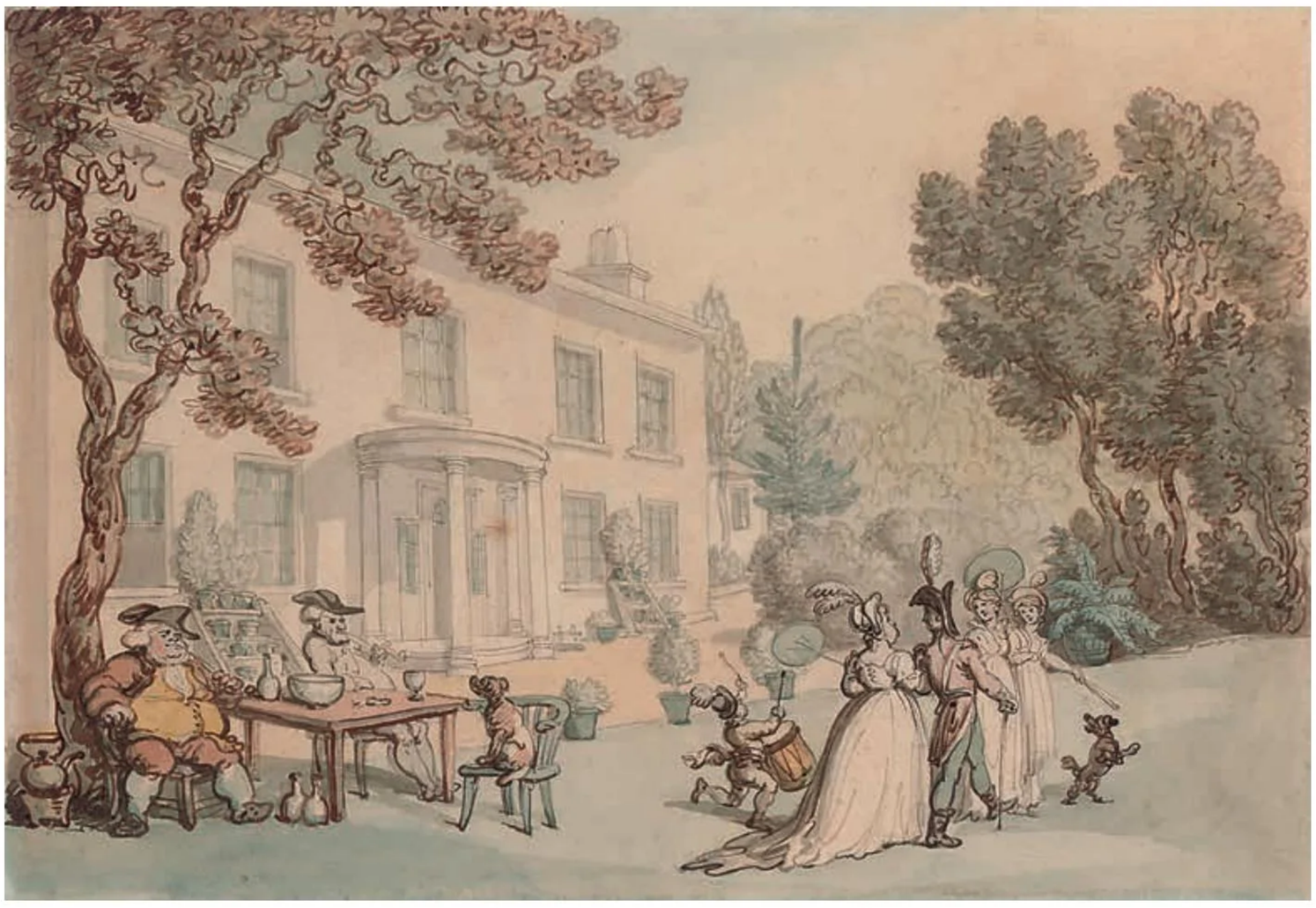
As outlined above HMRC would seek advice from the relevant expert and there is not a template to which all cases are expected to conform. There are, however, a number of basic tests which are applied to ensure that the proposed access meets the necessary criteria. These may be briefly summarised as follows:

1. For objects which are individually pre-eminent or part of a pre-eminent group or collection open access would be required for, on average, around a month a year or three months in any three year period. Access at other times by appointment would be required for individuals as well as a willingness to lend for special public exhibitions. The venue for such access would be expected to be:

- at the owner's home, if it is already open to the public or it would be suitable for displaying the items; or
- at another suitable building that opens to the public; or
- at a suitable public museum, gallery or other similar institution or concern.

2. For land and buildings (where that building is historically or architecturally important) and chattels associated with such buildings, open access is required for at least 28 days a year (25 if in Scotland or Wales) though

Thomas Rowlandson
(1756–1827)
An officer and ladies promenading outside a country house
pencil and watercolour with brown and grey ink
7 ¾ x 11 in. (19.4 x 27.9 cm.)



access is not required on a by appointment basis. All the chattels exempted as associated with a building would have to be on show on open days.

Archives, it is appreciated, are something of a special case as access to them will have to be arranged differently. Those deposited with public record offices must be in a condition which would allow them to be produced to members of the public and be catalogued so that people know what is available. Those seeking conditional exemption may well be asked to contribute to the cost of any remedial work which is needed. For archives which are kept in a private muniment room, notice may need to be given by those wishing to consult them and an exhibition of interesting documents from such an archive would also be expected. A reasonable charge can be made for all access to conditionally exempted property.

Failure to agree terms of open access would mean that a claim for conditional exemption would fail, and of course the breaching of the access terms could bring the deferred charge to tax down.

Conclusion

As can be seen, the introduction of a requirement for public access in return for a temporary exemption from capital tax is in a tradition of opening heritage properties to members of the public. To be sure, from the introduction of capital transfer tax there was no longer the element of volition. Of course, the purpose of conditional exemption is wider than just access; it also includes the requirement for the maintenance and preservation of the exempted property. However it must, I think, be seen as entirely reasonable that in return for conditional exemption members of the public are entitled to view not only objects but also land and buildings which are, in effect, being underwritten by the UK taxpayer. Indeed, public access is the visible benefit to the layman that the scheme is viable and worthy of support.

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1. *The Journeys of Celia Fiennes,* ed. Christopher Morris (London: Cresset Press, 1949) p. 8.
2. *Ibid.,* p. 69.
3. Jane Austen, *Pride and Prejudice* (Harmondsworth: Penguin Books, 1988) p. 267.
4. HC Deb 20 March 1912, vol 35, cc 1870–1

UK-Italy cross-border successions after the EU Regulation No. 650/2012 of 4 July 2012

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Introduction

The EU Regulation No. 650/2012 of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (hereinafter 'Brussels IV Regulation') will change the conflict of law rules to be applied by Continental European courts to determine the applicable succession law. This article will comment on some selected UK-Italy cross-border situations.

While the Brussels IV Regulation may broaden the scope of the option for English succession law for UK national individuals owning immovable properties situated in Italy or domiciled (under English law) in Italy by introducing the option for the succession law of the state of nationality, it may on the other hand restrict the possibilities for Italian nationals resident in England to opt out of Italian succession law and therefore prevent the operation of Italian forced heirship rules. However, opportunities for Italian nationals resident in England are provided by the transitional provisions laid down by the Brussels IV Regulation. Taking advantage of such opportunities might require opting for English succession law prior to 17 August 2015, as better explained below.

Italian succession law and current conflict of law rules under Italian law

The choice of the applicable succession law (when available) is crucial in estate planning. Indeed, the legislation of many continental European jurisdictions provides for very thorough forced heirship rules, which may limit the tax planning opportunities. As an example, pursuant to Italian succession law:

(i) The application of forced heirship rules prevents an individual from freely disposing of a certain proportion of his estate, which is reserved for certain close relatives (the 'forced heirs'). The reserved share of the estate depends on the composition of the family of the deceased upon death. For instance, if the spouse and two (or more) children survive the deceased, 50% of the estate of the deceased is the reserved quota for the children, to be divided in equal shares, while the reserved quota for the spouse is equal to 25% of the estate of the deceased;

(ii) The amount of each heir's reserved share is calculated on the value of the deceased's estate. This is calculated by pooling together the value of the deceased's assets at the time of his/her death with the value of all disposals for no consideration made by him/her during his/her lifetime;

(iii) The forced heirs have a discretionary right to claw back the transfers made by way of gifts or will that prejudiced their reserved share. This claw back action, if exercised, is aimed at making ineffective the transfers in excess of the disposable share.

The contribution of assets into a charitable or family trust is considered to be a gratuitous transfer and therefore included in the calculation of the estate for the purpose of computing the reserved share; and

(iv) Succession agreements are generally null and void under the Italian law, so that an individual cannot waive, or in any other way dispose of, his or her rights, including forced heirship rights, under a future succession.

Italian domestic provisions on conflict of law provide that succession is governed by the national law (i.e. the law of the state of nationality) of the individual at the time of his or her death (Article 46 of Law No. 218/1995).

Italian international private law (Article 13 of Law No. 218/95) further provides that even the conflict of law rules of the foreign law of the state of nationality may apply. In particular, if these provisions make a *renvoi* to the law of another state, the latter state's law will apply, provided that: (a) the law of this state accepts to regulate the matter; or (b) this state is Italy.

However, according to Article 46(2) of Law No. 218/1995, the individual may choose that his/her whole succession be governed by the law of the state where he/she is resident – i.e. where he/she has his/her habitual abode – upon the exercise of the option. The choice is effective only if at the time of death the individual is still resident in that state. If the choice is effective, then no *renvoi* applies (Article 13(2)(a) of Law No. 218/1995). If the deceased is an Italian national, the choice of applicable law does not affect the rights granted by Italian law to forced heirs who are resident in Italy on the death of the deceased.

The impact of the Brussels IV Regulation on the conflict of law rules

The provisions of the Brussels IV Regulation will replace those laid down by the Italian Law No. 218/1995, with effect for deaths on or after 17 August 2015.

Article 21(1) of the Brussels IV Regulation provides the general rule whereby the law applicable to the succession as a whole shall be the law of the state of habitual residence of the deceased at the date of death (or, in limited circumstances, the law of the state the deceased was manifestly more closely connected to at the date of death). However, if the state of habitual residence is a third state, its domestic provisions on conflict of law may apply, leading to the application of a different succession law. Indeed, Article 34(1) of the Brussels IV Regulation stipulates that 'the application of the law of any third State specified by this Regulation shall mean the application of the rules of law in force in that State, including its rules of private international law in so far as those rules make a *renvoi*: (a) to the law of a Member State; or (b) to the law of another third State which would apply its own law'.

It is unclear whether the UK qualifies as a third state for the purpose of the Brussels IV Regulation, taking into account that the UK chose not to opt in to the Regulation. The analysis of this complex matter is outside the scope of this article. Suffice it to say that the preferable interpretation is that the UK should qualify as a third state. The following comments are based on this preferable interpretation.

Article 22(1) further stipulates that an individual can choose, as the law to govern his/her succession as a whole, the law of the state whose nationality he/she possesses either upon the exercise of the option or upon death and that, in case of multiple nationalities, the individual can choose the law of any of the states whose nationality he possesses (either at the time of making the choice or at the time of death). If the choice is made, then no *renvoi* applies.

Finally, the transitional provision provided by Article 83(2) of the Brussels IV Regulation stipulates that *'where the deceased had chosen the law applicable to his succession prior to 17 August 2015,* that choice shall be valid if it meets the conditions laid down in Chapter III or *if it is valid in application of the rules of private international law which were in force, at the time the choice was made,* in the State in which the deceased had his habitual residence or *in any of the States whose nationality he possessed'* (italics added for emphasis).

As mentioned above, it is worth illustrating the impact of the Brussels IV Regulation by addressing three common cases:

(i) a UK national individual, domiciled (under English law) and resident in England and owning an immovable property situated in Italy;

(ii) a UK national individual, domiciled (under English law) and resident in Italy and owning movable assets wherever situated; and

(iii) an Italian national domiciled (under English law) in Italy, resident in England and owning movable assets, wherever situated.

i) UK national, domiciled and resident in England and owning immovable property situated in Italy

In such a case, for deaths occurring prior to 17 August 2015, according to Italian private international law (Article 46 of Law No. 218/95) the applicable succession law is, in the first place, the national law of the deceased at the time of his/her death and therefore English law. However, under

English conflict of law rules, succession to immoveable property is governed by the law of the place where the property is situated – the *lex situs*. Thus, English law makes a *renvoi* back to Italy and, pursuant to Article 13 of Law No. 218/95, Italian succession law, including forced heirship rules, would apply to the succession to the Italian real estate. The individual may opt for English succession law under the current Italian private international law, subject to the condition of being resident in the UK also upon death.

For deaths occurring as from 17 August 2015, under the regime laid down by the Brussels IV Regulation, lacking an option, Italian succession law would apply due to the *renvoi* back to the law of the state of *situs* (Italy) made by the law of the state of habitual residence. However, in order to prevent the application of the Italian succession law, the UK national individual might opt (pursuant to Article 22(1) of the Brussels IV Regulation) for the English succession law (being the law of the state of nationality) as the law to govern his/her succession as a whole. The option for English succession law will prevent the application of the system of *renvoi* which would otherwise lead to the application of Italian succession law to the immovable property situated in Italy.

ii) UK national, domiciled and resident in Italy and owning movable assets

In this scenario, for deaths occurring prior to 17 August 2015, according to Italian conflict of law rules the applicable succession law is, in the first place, the national law of the deceased at the time of his/her death and therefore English law. However, under English conflict of law rules, succession to moveable assets wherever situated is governed by the law of the intestate's domicile at the time of his death, the *lex domicilii*. Thus, English law makes a *renvoi* back to Italy and, pursuant to Article 13 of Law No. 218/95, Italian succession law, including forced heirship rules, would apply to the succession of the movable assets, wherever situated. The individual may not opt for English succession law under the current Italian private international law, being resident in Italy.

For deaths occurring as from 17 August 2015, under the regime laid down by the Brussels IV Regulation, lacking an option, Italian succession law would apply, being the law of the state of habitual residence. However, the UK national individual might opt (pursuant to Article 22(1) of the Brussels IV Regulation) for the English succession law (being the law of the state of nationality) as the law to govern his/her succession as a whole. The option for English succession law will prevent the application of the system of *renvoi* which would otherwise lead to the application of Italian succession law to movable assets.

iii) Italian national, domiciled (under English law) in Italy, resident in England and owning immovable property in Italy and movable assets

In this scenario, for deaths occurring prior to 17 August 2015, according to the Italian conflict of law rules the applicable succession law is the Italian one, being the law of the state of nationality. However, the Italian national resident in England can currently opt (pursuant to Article 46(2) of Law No. 218/1995) for English succession law to apply to his/her whole succession, subject to the above conditions (residence in England upon the option and on death) and limits (the rights of forced heirs who are resident in Italy on the death of the deceased are not affected by the option). The option for English succession law, if effective, would allow avoiding the application, by Italian courts, of Italian forced heirship rules (only in case of non-Italian resident heirs), which may otherwise jeopardise the typical UK inheritance tax planning hinged on either the use of excluded property trusts or the transfer of assets by way of will to the spouse (in order to qualify for the spouse exemption from UK inheritance tax).

The new regime laid down by the Brussels IV Regulation, applicable to deaths occurring as from 17 August 2015, provides that the law of the state of habitual residence (English law) governs the succession. However, to the extent that the UK is a third state (see above), the English private international law rules will be relevant and make a *renvoi* back to Italy (as the law of the state of *situs* for the immovable property or as the law of the state of domicile for movable assets). This *renvoi* will lead to the application of Italian succession law to the Italian immovable property and to the movable assets. Furthermore, the only option available in the future under the Brussels IV Regulation for the applicable law will be that of the state of nationality: an Italian national will therefore be prevented from opting for English succession law. However, the above-quoted transitional provision laid down by Article 83(2) of the Brussels IV Regulation may help in the above circumstances. Indeed, this transitional provision should allow opting prior to 17 August 2015, pursuant to the current Italian private international law rules (namely, the aforementioned Article 46(2) of Law No. 218/1995), for English succession law with effect beyond 17 August 2015. Such option is subject to the above conditions (residence in England upon the option and on death) and limits (the rights of forced heirs who are residents of Italy upon the death of the deceased cannot be affected). Such option will no longer be available as

The present article is a revised version of the article titled 'The impact of the EU Regulation No. 650/2012 on successions for Italian nationals residing in Third Countries (including the UK)' and published by Nicola Saccardo in *Trusts and Trustees*, 2014

		Applicable succession law (lacking option)	Available option
UK national, domiciled and resident in England and owning Italian immovable property	Deaths prior to 17 August 2015	Italian succession law (*renvoi* back to Italy)	Option for English succession law (subject to residence in England on death)
	Deaths as from 17 August 2015		Option for English succession law (law of nationality)
UK national, domiciled and resident in Italy and owning movable assets wherever situated	Deaths prior to 17 August 2015		No option available
	Deaths as from 17 August 2015	Italian succession law	Option for English succession law (law of nationality)
Italian national, domiciled in Italy, resident in England and owning Italian immovable property and movable assets wherever situated	Deaths prior to 17 August 2015		Option for English succession law (subject to residence in England on death and subject to the rights of forced heirs resident in Italy)
	Deaths as from 17 August 2015	Italian succession law (*renvoi* back to Italy)	Option for English succession law (subject to residence in England on death and subject to the rights of forced heirs resident in Italy) under transitional provision

from 17 August 2015 and must therefore be exercised prior to that date.

Conclusion

The change in the conflict of law rules set forth by the Brussels IV Regulation may broaden the possibility to opt out of the Italian succession law for UK nationals owning immovable property situated in Italy or for UK nationals domiciled in Italy.

However, from 17 August 2015 the new provisions may eliminate the possibility for Italian nationals resident in England to opt out of Italian succession law. Yet, in such a case, the transitional provisions of the Brussels IV Regulation should allow opting before 17 August 2015 with effect beyond such a date. It is therefore imperative to analyse whether such an option should be exercised by clients. If the option is exercised, it will also be vital to ensure that as from 17 August 2015 the option will not be inadvertently revoked by a subsequent will, since at that time the exercise of the option will no longer be allowed. The above table summarises the regime applicable to the three scenarios.

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Mount Stewart, Home of the Londonderrys

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Mount Stewart in Co. Down is the Irish residence of the Stewarts, Marquesses of Londonderry and is the most visited house and garden in Northern Ireland.

The house, collection, garden, demesne buildings and landscape represent a rare survival of an historic entity. Its importance is all the greater for the Londonderry family's national and international role in Irish and British politics, life, arts, and industry since the purchase of the estate in 1744. Following the disposal of the Londonderrys' other properties during the 20th century, Mount Stewart has now become the focus of the family's history and heritage.

For many years the presentation of the house had fallen a long way from the great days of the 1920s to 1950s when it was home to Charles Vane-Tempest-Stewart, 7th Marquess of Londonderry, and his wife Edith Chaplin. The couple had made it their principal family home, and Lady Londonderry was the guiding spirit and chief creator, meticulously redesigning the house with vibrant decorative schemes and bold planting in the internationally renowned gardens, which she gave to the National Trust in 1956.

Over the last three years the house has undergone an £8 million refurbishment and conservation programme to ensure its structural stability and improve conservation conditions. The project was funded by the National Trust with support from partners including the Wolfson Foundation, the Northern Ireland Environment Agency, Royal Oak Foundation, the B.H. Breslauer Foundation, the Lauritzen Foundation, the Friends of the National Libraries, Northern Ireland Museums Council and individual National Trust supporters. This has resulted in the opening of additional rooms and the enhancement of the interior, with every room carefully repainted in accordance with the colour schemes known to have been used by Edith, Lady Londonderry in the 1950s.

Concurrently, the Trust was also the fortunate recipient from HM Government of a generous allocation in lieu of inheritance tax of chattels which formed part of the settlement of the Estate of Lady Mairi Bury, youngest daughter of Charles, 7th Marquess and Lady Londonderry, and donor of the house in 1976. Much of the contents has been conserved and restored, although there is still much to do, such as the Congress of Vienna chairs for which we are now fundraising.

Guided by our Acquisitions and Disposal Policy, we have always endeavoured to keep the collection at Mount Stewart together; acquiring items that historically formed part of the collection, including items that may have been at Mount Stewart for a brief period or which are associated with the Londonderry family. Our long-term vision for Mount Stewart is that it should be a vibrant, rich and lively place which captures the essence of a house built in the 18th century, extended in the 19th and redecorated and designed for entertaining by one of the foremost families of the early 20th century.

We were therefore delighted when the 10th Marquess of Londonderry and the Executors of the Londonderry Estate approached the National Trust with the offer of an extensive loan of additional family-owned works of art and memorabilia. This was following the death in 2012 of the 9th Marquess, who had already loaned Mount Stewart the family State Coach in 2010. The Executors had also offered three paintings by Sir Thomas Lawrence to the nation via the Acceptance in Lieu Scheme. They have recently been accepted and have also been allocated to the National Trust by the government.

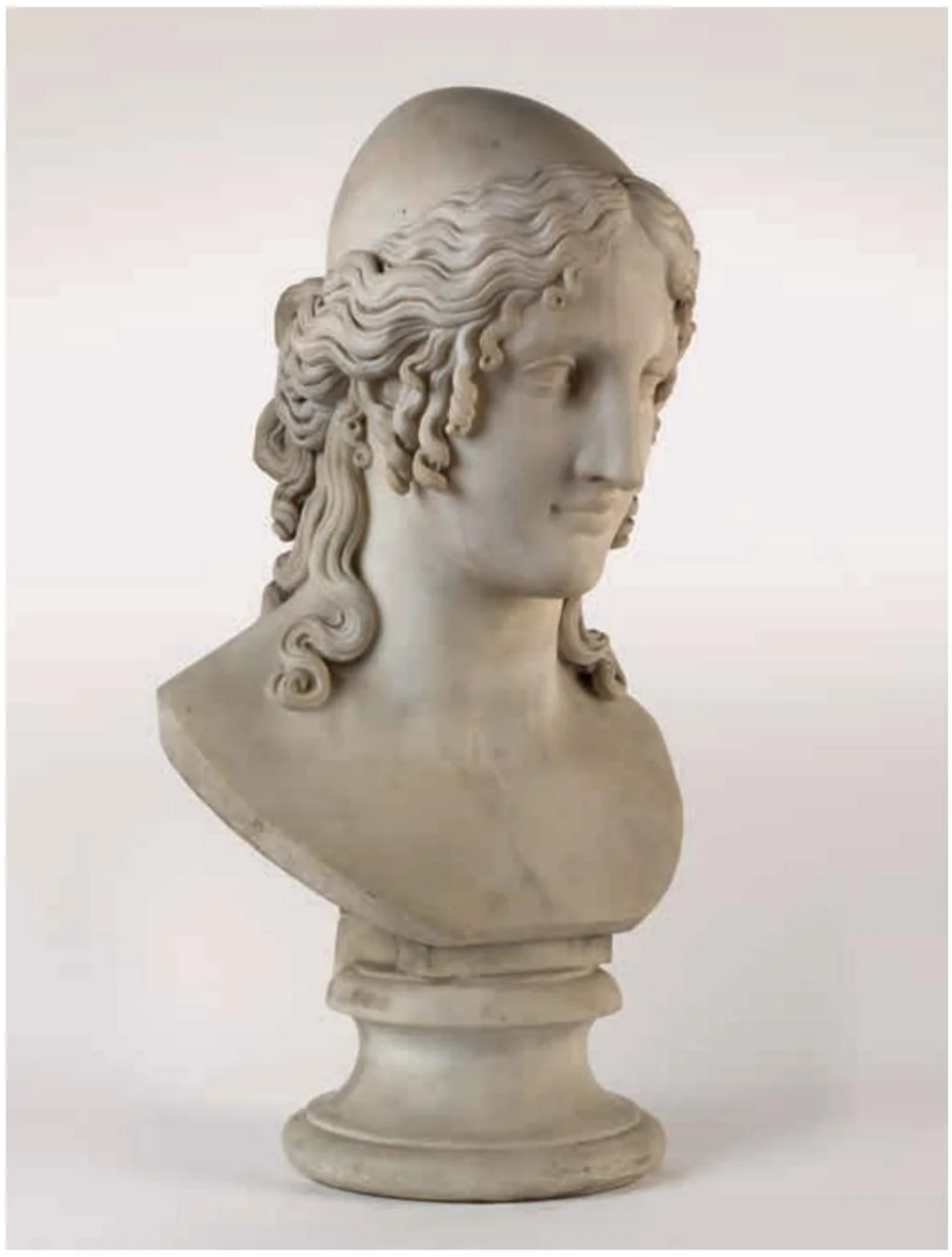
In terms of establishing the provenance for the loan items, much of the work had already been done by Christie's Heritage & Taxation department. This information was widely shared with specialists in the National Trust, as well as key members of the family, all of whom helped to establish the relevance and historical context of the collection. Where the National Trust was able to offer additional help was in the commissioning of specialist surveys to determine condition and conservation requirements. The majority of the loaned objects were in excellent condition but there was also a need for some specialist cleaning and light-touch conservation work. This was generously paid for by the family who were keen to see all the pieces returned to their former glory. The National Trust was asked to commission and supervise the work which was undertaken by Cliveden Conservation, Rupert Harris Conservation and Belfast based furniture conservator Fergus Purdey.

The collection, which we accepted in full, is now on loan and on display at Mount Stewart. It includes 27 paintings, 23 of which are family portraits including no fewer than nine by Sir Thomas Lawrence; a Canova bust and 11 other pieces of statuary; *objets de vertu*; a collection of furniture including the Congress of Vienna desk; a large collection of silver including one of Hambletonian's racing trophy cups (Hambletonian is the subject of Stubbs's late masterpiece which has been newly framed as part of the project), pieces of the 3rd Marquess' ambassadorial plate, and a collection of Berlin plates; two clocks; 16 pieces of arms and armour; and an important collection of gallantry medals.

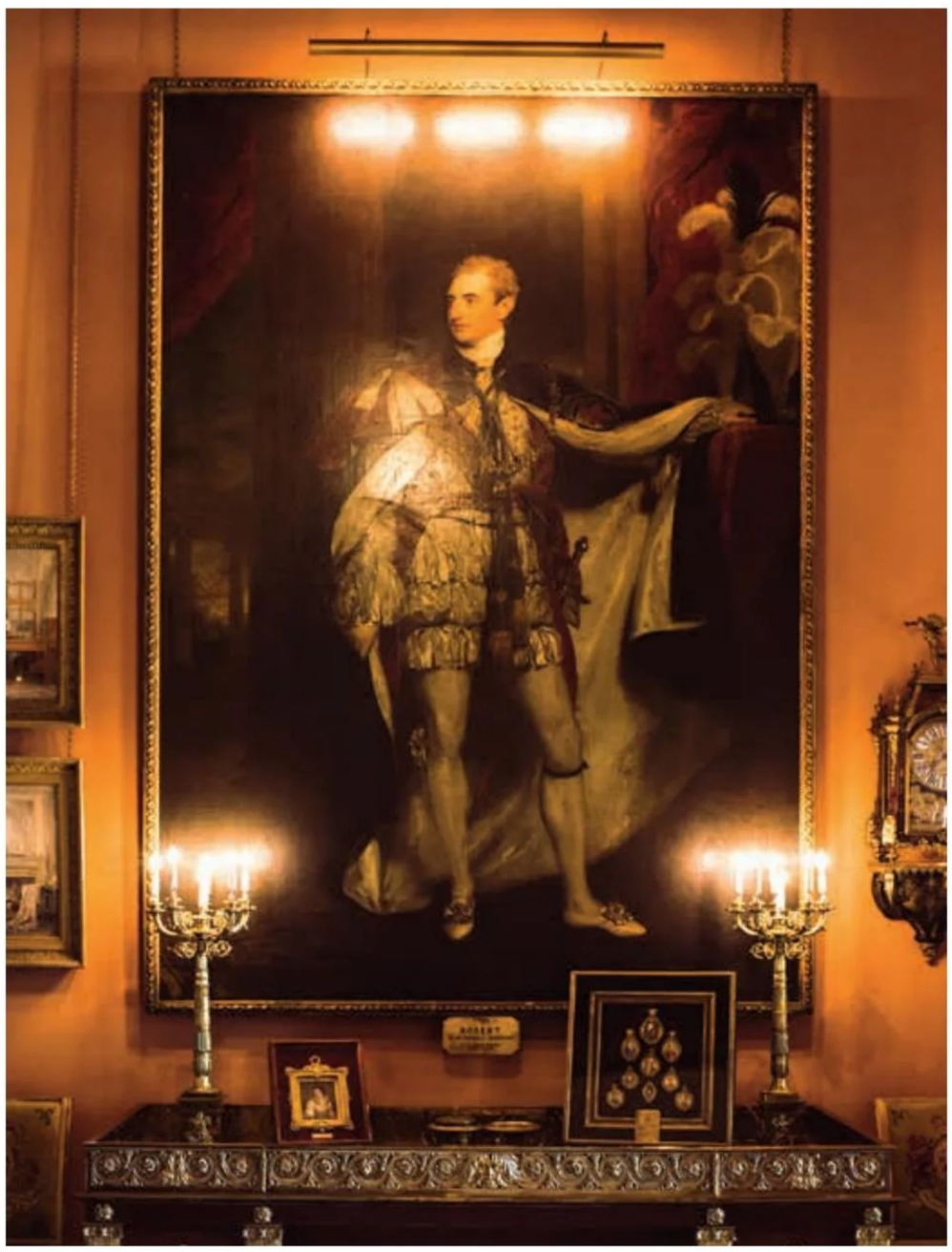
The loan has enabled us to bring to the fore many of the principal figures in the earlier history of the Londonderry family, which spans seven generations. Although many of the paintings and chattels were originally commissioned or intended for the family's other houses, such as Wynyard, Co. Durham (sold in the 1980s) and Londonderry House, London (sold in 1962 and demolished), the acquisition has presented us with an unparalleled opportunity to enrich the presentation of Mount Stewart. There are now three Lawrence paintings of Lord Castlereagh, one of Britain's greatest Foreign Secretaries and a key negotiator at the Congresses of Vienna and Paris, as well as that of his beloved wife Lady Emily Hobart. The magnitude of his performance on the international stage in the years before and after the defeat of Napoleon in 1815 is represented by additions such as the desk on which the Treaty of Vienna may have been signed, according to a contemporary brass plaque, and the *Head of Helen of Troy*, which was presented by its sculptor Antonio Canova, the Pope's envoy, in gratitude for Castlereagh's help with the repatriation of looted works of art from the Louvre to the Vatican. We have also been able to explore the patronage and friendship between Lawrence and Charles Stewart, 3rd Marquess, a distinguished soldier and ally of Wellington, and without whom Lawrence would not have been given his royal commission to paint the allied sovereigns, their ministers and generals destined for the Waterloo Chamber at Windsor Castle. Charles Stewart's wife, Frances Anne Vane-Tempest, the Durham coal-mining heiress, is also fittingly represented, not only by Lawrence (reproduced on the front cover of this *Bulletin*), but also later in her life by artists such as Sir Francis Grant. It was largely through Charles's connections as British Ambassador in Vienna and during his extensive travel across Europe that the couple acquired many of the items now on display, including the ambassadorial silver and many smaller precious works of art which have been incorporated with the extensive collection already at the property in a new Plate Room off the Central Hall. The task of incorporating all these remarkable objects into the display at Mount Stewart was undertaken by the project curator Frances Bailey with the support of the National Trust's curatorial specialists in paintings (David Taylor), furniture (Christopher Rowell) and silver (James Rothwell). The principal portraits are hung in the Drawing Room, Dining Room and on the landing of the West Staircase, and the Congress of Vienna Desk stands, as it did before the Second World War, at the east end of the Drawing Room, under Lawrence's magnificent full-length portrait of Robert Stewart, Lord Castlereagh, 2nd Marquess of Londonderry in his Garter Robes.

Mount Stewart is now a place transformed. As well as being structurally sound and in physical good health, it feels loved and cherished. Throughout the project we have been hugely supported and guided by Lady Rose Lauritzen and her husband Peter. Lady Rose, the daughter of Derek

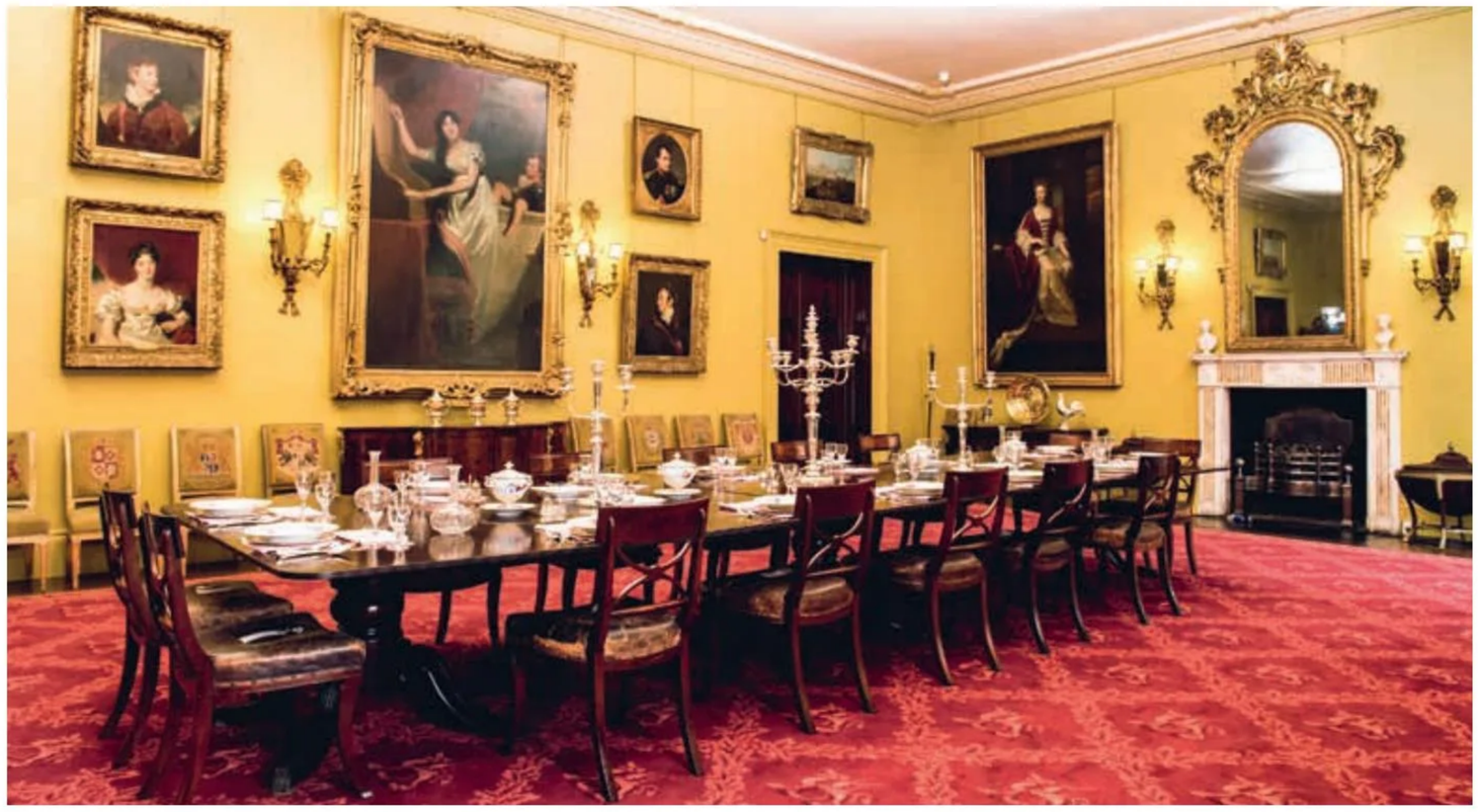
1.
Head of Helen of Troy **by Antonio Canova (Possagno 1757 – Venice 1822), 1814.** Inscribed on the reverse: 'VICECOMITI. CASTELREGHIO. VIRO. PRESTANTISSIMO/ ANTONIVS CANOVA/ FECIT. AC.D.D.' 'To Viscount Castlereagh a most prominent man/ Antonio Canova/ made it. Year of Creation of the Lord God'. This head was presented to Viscount Castlereagh by Canova in thanks for helping to organise the return of art works looted by Napoleon from the Vatican and is the subject of a famous poem by Lord Byron. © National Trust / Bryan Rutledge



2.
The Drawing Room at Mount Stewart. ***Robert Stewart, Lord Castlereagh, 2nd Marquess of Londonderry, KG (1769–1822)*** by Sir Thomas Lawrence, P.R.A. (Bristol 1769 – London 1830), painted in 1921. Robert Stewart wears the robes of a Knight of the Garter as worn at the Coronation of King George IV. Robert had recently succeeded his father as 2nd Marquess of Londonderry. A year later, in 1822, he took his own life while suffering from a mental breakdown. This painting formerly hung here, as it does now, in the 1930s above the Congress Desk; it was later removed to Wynyard Park. The painting has been given to the National Trust through the Acceptance in Lieu scheme while the Desk is on loan from the Estate of the Marquess of Londonderry. © National Trust / Elaine Hill



3.
The Dining Room at Mount Stewart. The picture hang in this room includes part of the new loan from the Estate of the Marquess of Londonderry. A number of family portraits by Sir Thomas Lawrence are shown here, including the striking central double portrait of Catherine Bligh (d. 1812), first wife of Lord Charles Stewart, later 3rd Marquess of Londonderry, as St. Cecilia, with her son, the Hon. Frederick Stewart, later 4th Marquess. This is one of three paintings acquired through the Acceptance in Lieu scheme.
© National Trust / Elaine Hill



4.
The Entrance Front of Mount Stewart, Northern Ireland
© National Trust / Elaine Hill

Keppel, Viscount Bury and Lady Mairi Vane-Tempest-Stewart, Viscountess Bury, and the grand-daughter of Charles, 7th Marquess and Edith, Marchioness of Londonderry, grew up at Mount Stewart and lives there for part of each year. She has been an unfailing source of inspiration and information. She has also had the vision to keep the contents of the house and the demesne lands together so that the Mount Stewart of her youth would not be lost forever. Now one can feast the eye and fill the mind with fascinating objects and stories. The house and gardens are in harmony once more.

It is perhaps not too fanciful to think that Charles and Edith, the 7th Marquess and Marchioness of Londonderry, who so loved Mount Stewart, would feel completely at home and would heartily approve of the changes and enhancements that have been made. They would also join us in applauding their descendants, who have worked hard to ensure that Mount Stewart is now the home of so many highly important items which demonstrate the history of this extraordinary family.

Demelza Williams

Private Collections and Country House Sales at Christie's

Adrian Hume-Sayer
Christie's

Adrian is an Associate Director and Specialist in Christie's Private Collections and Country House Sales department.

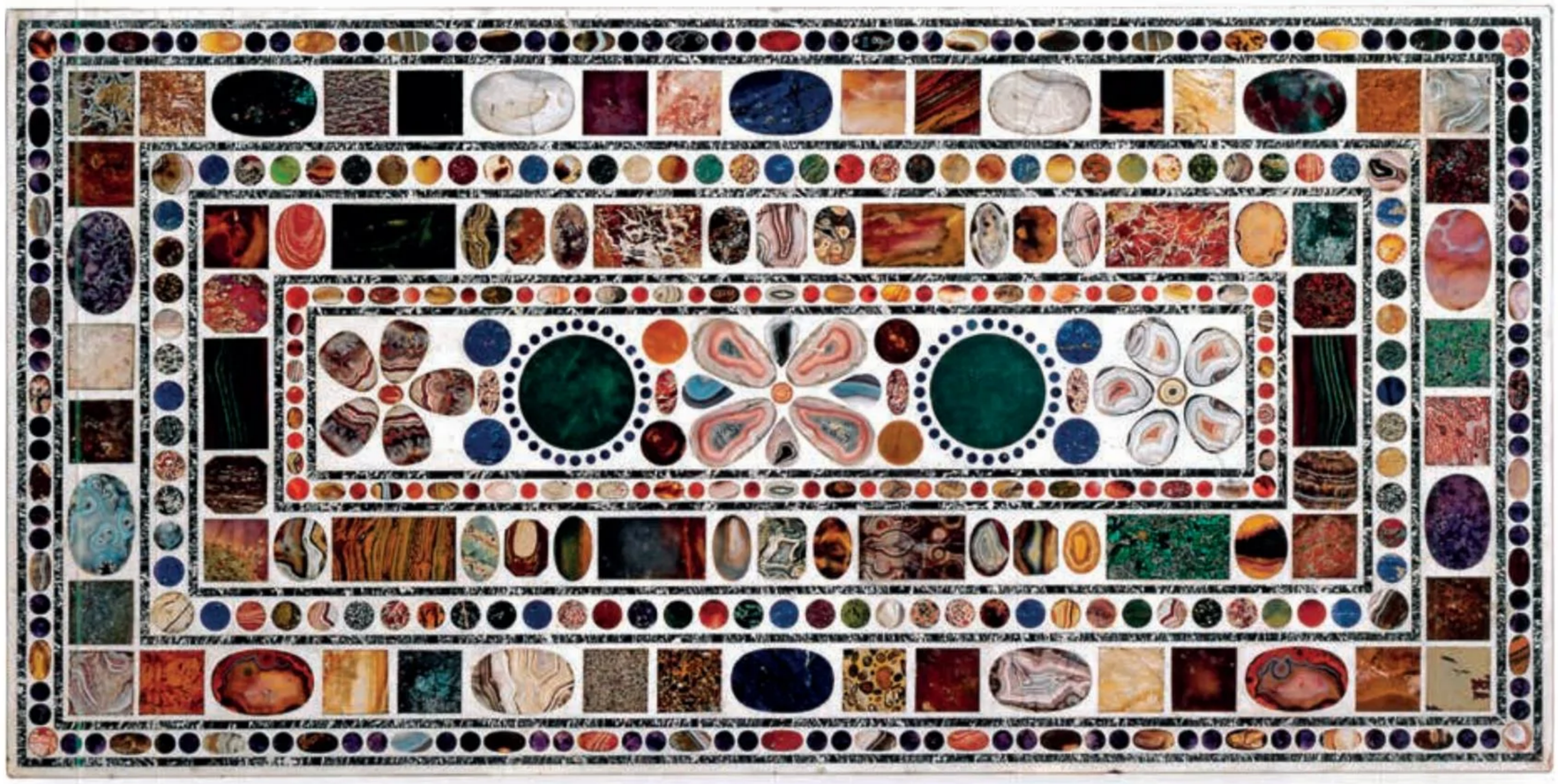
The sale of single owner collections has been at the very core of Christie's since its inception in 1766. As a result, Christie's has long led this coveted market, hosting many of the most important sales ever to have taken place. In 1793 James Christie sold the jewels of Madame du Barry, in 1848 Christie's held the landmark 40-day sale of the contents of Stowe House and in 1882 sold magnificent works of art from Hamilton Palace. More recent sales have included the property of the Viennese Rothschilds, Princess Margaret, Elizabeth Taylor and Yves Saint Laurent – to name but a few. In 2003 Christie's formally established its Private Collections and Country House Sales department to handle these important sales and remains the only major auction house with a large dedicated specialist team.

The presentation of objects in context, with a coherent narrative supported by thorough scholarly research, allows prospective purchasers to understand the motivation behind the creation of each of the very diverse collections Christie's offers for sale, adding both interest and value. Often the research for a particular sale can take unexpected twists, revealing provenances and histories which have been distorted or lost with the passage of time. Our strong relationships with international collectors and advisors ensure unrivalled sale awareness and top client participation. The resultant high levels of client engagement generate far stronger sale results than almost any other sale platform and ultimately deliver outstanding vendor returns.

Last year Christie's was honoured to be entrusted with the sale of a significant group of works of art from the celebrated collection of the Marquesses of Londonderry. The auction took place as part of the arrangements following the death of Alistair Vane-Tempest-Stewart, 9th Marquess of Londonderry (1937–2012) and was exceptionally well received, with the result more than doubling pre-sale expectations.

The most significant single object from the collection to be offered was the magnificent Londonderry table top which had almost certainly been acquired by Charles Stewart (later Vane), 3rd Marquess of Londonderry at the close of the Napoleonic wars. It had graced the interiors of Londonderry House for more than 100 years prior to being used as a very grand coffee table by the 9th Marquess.

Offered in the 2014 Exceptional Sale, this magnificent work of art soared to more than double its pre-sale estimate, realising in excess of half a million pounds. On the basis of close comparison with documented works it was possible to attribute it to the celebrated Roman master mosaicist, Giacomo Raffaelli. Inlaid with a wealth of exotic hard stones laid out in a strict geometric design, it is typical of the output of Raffaelli's renowned workshop, with closely related examples surviving in the Spanish Royal Collection and in the collection of The Hermitage Museum, St. Petersburg.



THE LONDONDERRY TABLE TOP
AN ITALIAN PIETRA DURA TABLE TOP
ATTRIBUTED TO GIACOMO RAFFAELLI
Rome, circa 1800
70 ½ x 35 ¼ in. (179 x 89.5 cm.)

Much information about the 3rd Marquess's artistic patronage and collecting emerged during the research conducted before the auction. For example, a document was discovered detailing the £40,000 of insurance he took out to cover the shipment of his chattels from Trieste to London following his departure from Vienna in 1822. This shipment would likely have contained many precious works of art, such as the celebrated Londonderry ambassadorial plate, sculptures by Canova and the Londonderry table top. It probably also included important Old Master paintings by artists such as Titian and Correggio, which he had purchased from Napoleon's sister, the deposed Queen of Naples Caroline Murat, 13 of which were 'consigned to the hammer of Mr. Christie' and sold at Christie's, Pall Mall, on 12 July 1823, as reported by *The Times*. The 3rd Marquess was also one of Sir Thomas Lawrence's greatest patrons (it is he who is credited with instigating Lawrence's royal patronage) and he commissioned the exceptional works by Lawrence which remained in the 9th Marquess's collection at the time of his death, some of which are now on loan (negotiated by Christie's) to the National Trust at Mount Stewart.

The handling of the Londonderry collection demonstrates the comprehensive service that Christie's is able to offer its clients in dealing with large, diverse and often historically significant estates and collections.

Christie's Private Collections and Country House Sales Department and Heritage and Taxation Advisory Service collaborated to orchestrate the structured dispersal of elements of the Londonderry collection. Through offers to the nation in lieu of tax, loan agreements and public auction it was possible to provide the most expedient and tax-efficient solutions in dealing with the estate. Christie's not only delivered excellent sale results, but also ensured that great works of art were secured both for future generations of the family and for the nation. This marked the most recent chapter in a relationship between auctioneer and client that has lasted for almost 200 years.

Adrian Hume-Sayer

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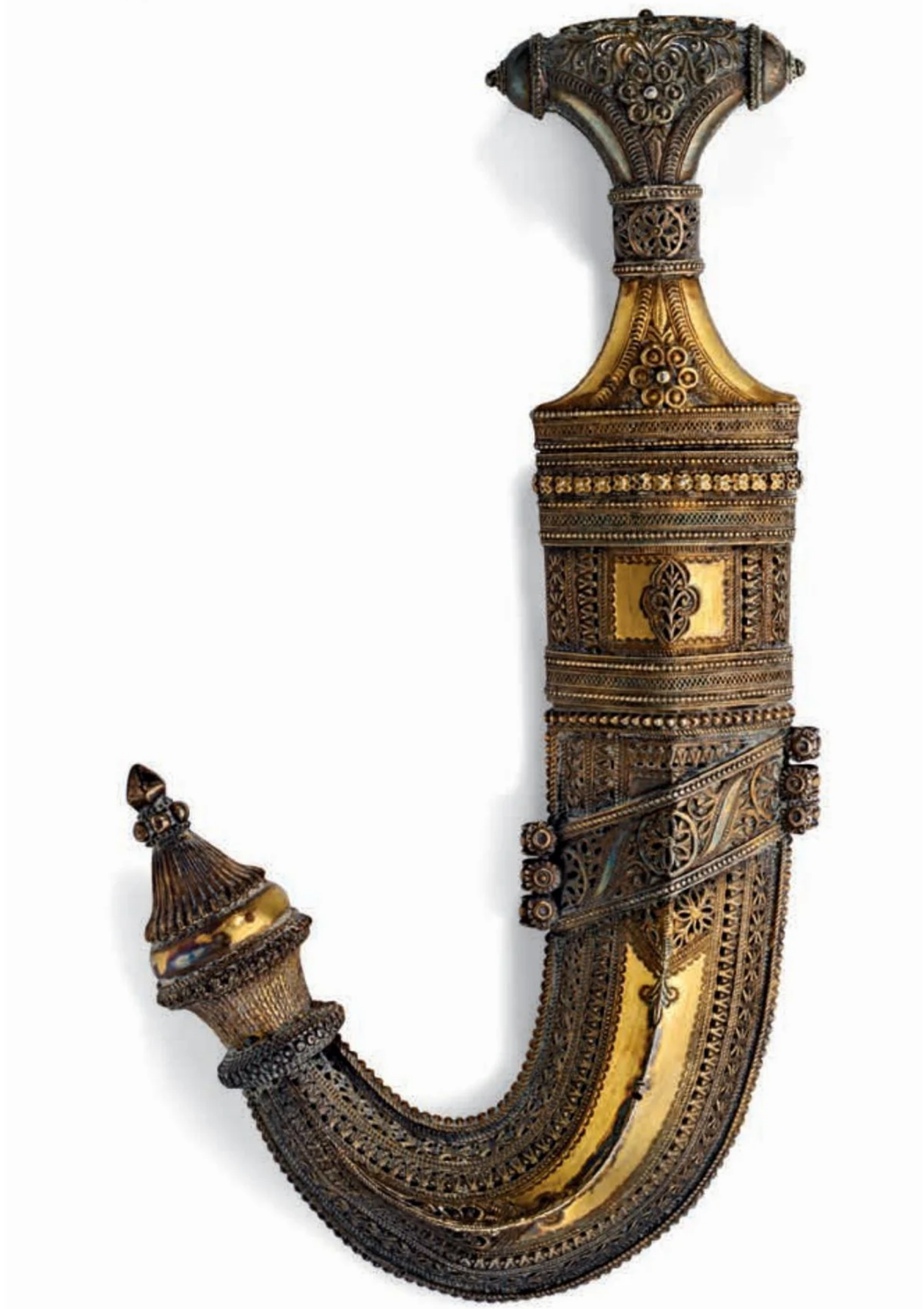

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