CHRISTIE'S BULLETIN FOR PROFESSIONAL ADVISERS

Summer 2019
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CHRISTIE'S

OLD MASTERS
EVENING SALE

Part of

CLASSIC WEEK

AUCTION
4 July 2019

VIEWING
29 June – 4 July 2019
8 King Street
London SW1Y 6QT

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CLAUDE DE JONGH (C.1605–1663)
Old London Bridge, 1650
oil on panel
17 ⅛ x 40 in. (43.4 x 101.5 cm.)
£400,000–600,000

Dominic Thurlow-Wood
Christie's Estates,
Appraisals and Valuation

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Cover

JACOPO AMIGONI (1685–1752)
Portrait of William Augustus, Duke of Cumberland, K.G. as a boy, three-quarter-length, with the Chain and robes of the Order of the Garter, a plan in his left hand, against a draped column with men-o'-war beyond

Negotiated by Christie's and accepted in lieu of tax; temporarily allocated to Historic Royal Palaces

Editorial

The height of summer is generally a synonym with rest and relaxation, yet with Theresa May's departure and the ensuing political confusion, it's set to be another busy period for the House of Commons. It's also full steam ahead for the art world, as July signals the start of Classic Week at Christie's. In this summer's Bulletin, we aim to cover a variety of topics which have had a significant impact on the art and taxation worlds in recent months.

As I write, the United Kingdom is about to celebrate the 75th Anniversary of the D-Day landings with commemorative events organised to take place across the country. This year is certainly popular for anniversaries, with 2019 also marking 200 years since Queen Victoria's birth. In honour of the former monarch, there is a distinctly Victorian theme in this edition of the Bulletin.

Peter Brown, International Specialist in Victorian, Pre-Raphaelite and British Impressionist Art, provides a report on the continuing appeal of Victorian art and new curating ideas which help to add a robustness to this collecting field.

In keeping with the bicentennial theme, there are numerous events taking place this summer to celebrate the 200th anniversary of the birth of John Ruskin, who is almost an exact contemporary of Queen Victoria. Earlier in the year, I visited London's Two Temple Place museum to see *John Ruskin: The Power of Seeing*. This summer's Bulletin includes my insight into a thought-provoking exhibition, which provides a fascinating glimpse into the life of one of Britain's most talented thinkers and art critics.

In recent times, it's been very unusual for a publication to go to print without a reference to the dreaded B (rexit) word and the Bulletin is certainly no different. However, with Brexit delayed until October, we have decided to focus on the current legal position of certain issues and the resulting implications, rather than attempting to predict Brexit, which will no doubt be discussed in forthcoming editions.

We are pleased to continue to have a Scottish flavour to the Bulletin, provided in this summer edition by Alasdair Johnstone from Anderson Strathern law firm. In a previous 2016 edition, Alasdair's colleague Martin Campbell reviewed existing rules regarding the distribution of an individual's estate and considered proposals for reform. In this update, Alasdair discusses the ongoing journey towards reform and the impact of any amendments which were made in the Succession (Scotland) Act 2016.

Elsewhere, Bethan Waters of Farrer & Co considers the ramifications of shelving a Goods Mortgages Bill which was set to challenge the historically uncomfortable English law position relating to secured lending on art that remains 'on the Borrower's walls'.

Regular readers of the Bulletin will have noted that I have taken over the editorship from Ruth Cornett, our Director of the Heritage and Taxation department. I'd like to thank Ruth for her ongoing efforts and reassure the readership that Ruth will continue to provide her regular insight into the heritage world.

Dominic Thurlow-Wood
Editor

Comments and Suggestions
If you would prefer to receive future Bulletins by email or in PDF format, or if you have any comments or suggestions regarding the publication, please email: bulletin@christies.com

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Heritage news

Ruth Cornett
Director, Christie's Heritage and Taxation Advisory Service

Since the last edition of this Bulletin, we have seen several significant developments in the heritage world. We had expected that with the Brexit timetable, by the time of publication, much of the uncertainty about the movement of works of art would have been resolved, but at this moment (June 2019) the rules remain uncertain. Export of works of art outside the EU is unaffected by Brexit from either a licensing or tax perspective, but the rules for export to the EU are still unclear.

At the same time, the consultation and review of the export licensing process undertaken by Sir Nigel Carrington has made suggestions for modification of the process. In addition, the Ivory Bill is due to become law in 2020 and is already having an impact on the art world, and finally there has been considerable discussion between advisers and HMRC's chattels' valuation team as to the appropriate level of rent that should be paid for the use and enjoyment of chattels. I have focused on these three issues as the most pressing concerns to owners and advisers alike in the commentary below.

Review of the export licensing system

The UK licensing system for export of works of art is distinguished by its requirement to service the needs of commerce and the wish of many taxpayers to retain works of art, which are found to be national treasures, in the UK. These ambitions are not easy bedfellows and occasionally these objectives generate tension between the commercial sector and the heritage sector. This is the case particularly with regard to the willingness of exporters to accept a fair matching price in the event of a successful fundraising bid by a UK institution.

The current system has been in place since 1952, following the publication of the Waverley Report and the Reviewing Committee of Export of Works of Art and Objects of Cultural Interest (RCEWA) considers applications for export against the Waverley criteria. This has been a generally successful arrangement, as only objects which meet at least one of the three Waverley criteria are subject to a temporary export bar, thus allowing time to raise funds to keep the object in the UK. The Carrington report has proposed that if an object is found to be a national treasure, the exporter should be obliged to sign an option agreement providing an institution which has made a serious expression of interest in acquiring the object, with the right to enforce the sale. The consultation on this change in the process has received significant comment and the final decision of DCMS on the subject is awaited, but the proposal has met with objections across the art market. We are watching and waiting for the final announcement from DCMS later in the year.

In addition to the review of the export licensing process, on 30 March, the Arts Council published guidance on the implications of a 'no-deal' Brexit. On a practical level, it is important to bear in mind that if it is intended to take works of art out of the UK or to import to the EU in the longer term, that arrangements for shipping should be made as soon as possible. The EU has agreed to extend special arrangements for shippers of works of art and luxury goods until the end of the year should there be a no-deal Brexit, but this also requires a permit, and post Brexit there may be import taxes imposed on works of art entering the EU and each EU member state sets its own rates. The implications of a no-deal Brexit are far from certain but in the meantime if any shipping is contemplated, applying for any licences and booking shippers well in advance is highly recommended.

Ivory Act 2018

On 20 December 2018, Royal Assent was granted to the Ivory Bill which became the

Ivory Act 2018. The Act is expected to come into force later this year. The Act is the most comprehensive legislation in the world, designed to protect wildlife and extinguish the illegal trade in ivory, and received support across parliament. There are some exemptions to the ban on the trade and these are important for owners and collectors alike. Exemption is granted for the following:

- Items with only a small amount of ivory: Such items must be comprised of less than 10% ivory by volume and have been made prior to 1947.

- Musical instruments: These must have an ivory content of less than 20% and have been made prior to 1975.

- Portrait miniatures: A specific exemption for portrait miniatures – which were often painted on thin slivers of ivory – made before 1918.

- Sales to and between accredited museums: This applies to museums accredited by Arts Council England, the Welsh Government, The Scottish Government or the Northern Ireland Museums Council in the UK, or, for museums outside the UK, The International Council of Museums.

- The rarest and most important items of their type: Items of outstanding artistic, cultural or historic significance, and made prior to 1918. Such items will be subject to the advice of specialists at institutions such as the UK's most prestigious museums.

It is important to remember that even after the ban, it will not be illegal to own objects made of ivory, or to inherit them, but it will be illegal to sell or trade in such objects if they do not fit into one of the categories above.

Rent for the use of chattels

Annual meetings of professionals with HMRC's Shares and Assets Valuation Team (SAV) are always interesting and offer an opportunity for discussion on current issues surrounding valuations of chattels. In recent meetings, the issue of the payment of rent for the use of chattels has received particular attention.

The history of the rate of rent for market purposes is interesting; in December 2006, at the meeting of the same forum, HMRC indicated that a rate of 1% of the capital value of the chattels subject to a gift and lease back, would satisfy the test of market value rent, so that full consideration was accepted as having been paid. Since that meeting, the issue has become more acute, with HMRC taking the view that a blanket 1% rental rate of the gross capital value is no longer full consideration or representative of the market rent. The position is that every rental should be considered on its own merits and that the terms of the lease must be carefully considered. The terms typically include provisions for security, insurance payments and care, especially environmental care. These issues are of course going to dictate the appropriate rental payment and the more onerous obligations, the greatest level of care, will lead to a higher tax charge.

HMRC have expressed the view that there must be extrinsic evidence of the market rate for chattels, but many of the examples in the public domain are for inappropriate hire arrangements, such as hire of props for filming or jewellery for celebrity events. The views expressed by HMRC seem to stem from the need to demonstrate a market for the use of chattels; this is inherently difficult to prove, as so much of what may be agreed is confidential and reflective of the unique circumstances of each case. The negotiation of market rent is a process dependent on the expertise and experience of the parties, knowledge of rates paid in similar situations and an assessment of the burdens and obligations imposed on each party to the agreement.

Over the last 18 months, the heritage world has also generated significant acquisitions for the nation under the AIL and cultural gifts scheme. At the end of 2018, the same year as the centenary of the foundation of the RAF and through the work of this department, the archive of the 1st Viscount Trenchard was acquired. We are fortunate that the UK legislation allows the tax system to be used for cultural acquisition and that the whole nation is the beneficiary of these arrangements.

While there is much uncertainty in the professional and political world now, it is important to remember those who fought to maintain our freedoms. In this context, the *aphorism ars longa, vita brevis* is perhaps more relevant than ever. Often this is readily translated as 'art endures; life is short', but in the context of the heritage world adviser, the more accurate translation 'it takes a long time to learn one's craft but one has a short time in which to do it', is preferable; learning one's craft is unending, while the time available is finite.

Succession in Scotland: Where are we now?

Alasdair Johnstone
Anderson Strathern

Alasdair, a senior associate at Anderson Strathern, is a member of the Society of Trust and Estate Practitioners and a true specialist in all areas of succession planning. He works with high-net-worth families on tax planning, the use of trusts, partnerships and other tax-efficient structures.

In Act 4 of Shakespeare's Scottish play, Macduff asks 'Stands Scotland where it did?' If this had been on the subject of the Scottish law of succession, and not life in Scotland under Macbeth's reign, Ross may have been tempted to provide the former Prime Minister Theresa May's answer of 'Nothing has changed'. But that would be a little unfair.

My colleague Martin Campbell's previous article 'Succession in Scotland – Future Law Reform' in the Autumn 2016 edition of the Bulletin reviewed the existing rules governing the distribution of an individual's personal estate where they are domiciled in Scotland at the time of their demise. The article also considered proposals for reform that the Scottish Government had put forward in 2015, some of which were enacted in the Succession (Scotland) Act 2016 ('the 2016 Act').

Whilst the 2016 Act introduced some welcome technical measures, it remains the case that Scottish succession law remains largely governed by common law and the Succession (Scotland) Act 1964 ('the 1964 Act'). The existing rules have been criticised as no longer reflecting current social attitudes nor catering adequately for the range of family relationships that are common today.

The journey towards reform is, however, continuing. In October 2018 the Scottish Government published its response to its 2015 consultation on substantive change of the law of succession (https://www2.gov.scot/Resource/0054/00542136.pdf). This response set out areas where the law would be changed, aspects which would remain the same, and issues which would be subject to further consultation as a result of lack of consensus. This further consultation process ran from 17 February to 10 May 2019.

The response to the consultation addressed three major themes: the law of intestacy; protection against inheritance (the Scottish concept of 'legal rights'); and the rights of cohabitants where a deceased dies without a will.

Intestate succession

The current position

Previous Bulletin articles on succession law in Scotland have set out in detail the statutory rules contained in the 1964 Act which determine who inherits the estate of person who was domiciled in Scotland.

By way of reminder, an intestate estate will be distributed in accordance with a set order. Firstly, in satisfaction of the prior rights of a surviving spouse/civil partner. Secondly, in meeting the legal rights of a surviving spouse/civil partner and children. Finally, in accordance with entitlement to the remainder of the estate after satisfaction of prior rights and legal rights.

The prior rights of a surviving spouse/civil partner give an entitlement, after settlement of debts, to: the deceased's interest in the family home up to a value of £473,000; furniture up to a value of £29,000; and a cash sum of £50,000 where there are surviving children (£89,000 where there are no children). These value limits have not changed since February 2012.

After the satisfaction of prior rights, the deceased's surviving spouse/civil partner and children (whom failing surviving descendants) are entitled to legal rights. Legal rights are in the nature of a debt against the estate and are calculated on and payable from the deceased's moveable property only. A surviving spouse/civil partner is entitled to a capital sum equal to one-half of the deceased's net moveable estate where there are no surviving issue and to one-third where there are surviving issue. Issue are entitled to share between them one-half of the deceased's net moveable estate where there is no surviving spouse/

civil partner and one-third where there is a surviving spouse/civil partner.

What remains after satisfaction of prior and legal rights is distributed in accordance with the order of precedence set out in the 1964 Act. Interestingly, a surviving spouse/civil partner ranks behind all of the deceased's surviving children, parents and siblings.

Reform

In its November 2018 response, the Scottish Government confirmed that fundamental change would be implemented in future succession legislation so that:

- a spouse/civil partner should inherit the whole estate if there are no issue

- if there is no spouse/civil partner, issue should inherit the whole estate.

This will be a welcome simplification, and will remove how the types of assets in the estate affect the outcome. The distinction between moveable property, which will include works of art, and heritable property, which will include the family home, will no longer be relevant.

The Scottish Government is seeking further views on the division of an estate where the deceased was survived by both a spouse/civil partner and children. This division is particularly difficult where the deceased left a spouse/civil partner and children by a previous relationship. The objective is to arrive at a default system that delivers outcomes that individuals and families expect.

The Scottish Government, drawing inspiration from other jurisdictions (British Columbia, Canada and Washington State, United States), has outlined two potential alternatives: a 'threshold' system and a 'community property' approach.

The Government's most recent consultation period ran from February to May 2019

The introduction of a threshold system would see the surviving spouse/civil partner receive a share of the deceased's whole estate up to a set value with the children being entitled to the remainder. A threshold system is somewhat similar to the existing law and it should be relatively easy to put into practice as it simply requires assets to be divided depending on their value. The potential difficulty of this approach is determining where to set the threshold? If it is too low, the surviving spouse/civil partner may not receive a large enough share of the estate, whereas if it is too high, children are at risk of being disinherited entirely.

A community property approach, however, would see the adoption of a concept similar to that of 'matrimonial property' which features in the law of separation and divorce. This would see a spouse/civil partner entitled to receive a larger share of the property acquired during

the course of the marriage, but a smaller share of any other assets. The adoption of a matrimonial property-type model in a succession context will be a considerable change compared with the current rules. This approach could be more flexible and could remove some of the unfairness which can exist in the present system, especially where the deceased's children may be from a previous marriage. It is likely, however, that this approach may be more difficult to implement as the origin of each asset in an estate needs to be determined before it can be passed to the appropriate beneficiary. This could lead to uncertainty, disputes over the ownership status for succession purposes of works of art, and costs.

It goes without saying that these difficult situations can be avoided and the best outcomes for succession planning are achieved by having a well thought-out will in place.

Testate succession

The current position

Scots law provides protection from disinheritance of a surviving spouse/civil partner and children through the concept of legal rights, outlined above. As things stand, spouses/civil partners and children have an entitlement to a share in the estate left behind by their spouse/civil partner parent irrespective of what a will provides.

These legal rights have long been criticised as they apply only to moveable property and not heritable property. Given that the family home is the most valuable asset for the vast majority of Scots, this means that legal rights can often be worth little in practice. Legal rights, however, could have considerable value where important works of art form part of the deceased's estate. In that scenario, difficult practical issues may arise for executors where legal rights have to be satisfied in cash.

Reform

The Scottish Government had therefore considered extending legal rights to cover all of the assets in an estate and remove the distinction between the different types of property. This proposal was proving controversial, especially land-based businesses such as family farms with high asset values but disproportionately low income generation capacity could face break up to meet legal rights claims. Similarly, if the value of an historic house had to be brought into the calculation alongside important contents, the prospects of the ensemble being retained intact could be much reduced where several family members wished to claim their share.

It seems that views on what shares a surviving spouse/civil partner or children should be entitled to claim are as diverse as ever. Also, the Scottish Government recognises the potential negative impact to the rural economy from compromising the viability of land-based businesses.

Surprisingly, the outcome of the consultation is that the system of legal rights where someone dies with a will is not to be changed. In particular, the distinction between moveable and heritable property will stay in place. This distinction will also remain for entitlement to shares of an estate where there is no will. The system of legal rights, whilst highly criticised, at least provides a balance between testamentary freedom and limited protection for spouses/civil partners and children.

Cohabitants

The current position

At present, a surviving cohabitant has no claim against the estate of a deceased cohabitant who left a will. Where there is no will, whilst a surviving cohabitant has no automatic right to claim anything from the estate, they have a right to make an application to the Sheriff court to claim a share of the deceased's assets (Section 29 of The Family Law (Scotland) Act 2006).

Reform

Views on change remain mixed and the Scottish Government's February 2019 consultation will look further on how cohabitation is established for succession purposes and on what a cohabitant may be entitled to where the deceased did not leave a will. In the meantime, however, it is proposed to increase the time limit for making an application to the court for an award from the current six month window to a year.

The Scottish Government confirmed that there would be no change to the existing position that a surviving cohabitant has no claim against the estate where a cohabitant dies with a will. Individuals should be free to order their affairs as they please.

What next?

It is perhaps not surprising that, with a lack of consensus surrounding the most controversial areas of the Scots law of succession, the Scottish Government is reluctant to make major changes which could have divided opinion just as much.

That being said, the proposed changes to the rules regarding intestacy where the deceased is survived by only their spouse/civil partner or children are undoubtedly welcome and provide a much needed update to the half century old 1964 Act. A fresh approach to cohabitants' rights on intestacy is also to be welcomed.

In the meantime, whilst future Scottish succession law will never produce solutions that for everyone are a case of 'All's Well That Ends Well', we await with interest the outcome of the February 2019 consultation.

Victorian values

Peter Brown
Christie's

With 20 years' experience in valuing Victorian, Pre-Raphaelite & British Impressionist Art, Peter Brown has overseen sales which have ensured Christie's dominance of this market. As head of department, Peter has led a team which has achieved many world auction records for Victorian artists including those for Burne-Jones, Rossetti, Millais, Holman Hunt and Leighton.

Pre-Raphaelite imagery has been firing the imagination recently. Last year's spring campaign by Gucci featured a model stepping through a picture frame to rouse Ophelia from her watery brook. Clad in the season's most sumptuous apparel, she didn't drown as in Millais' retelling of Shakespeare's tale, but rose instead to seduce her rescuer.

Such romantic, escapist imagery seems to be engaging contemporary audiences as an antidote to bleak headlines and unpalatable realities. This can potentially be seen as an explanation for the record numbers at the recent Burne-Jones exhibition at Tate Britain. Morning or evening, the crowd was often three deep, with visitors entranced by the artist's vision and versatility in a number of different media. The rooms most admired by visiting patrons were those containing his drawings, where an astonishingly assured line gave fullest expression to the beauty of his sitters. Elsewhere, the artist's brushwork and subject matter appeared both timeless (with its echoes of the Renaissance) and yet contemporary, striking an immediate chord with those

Sir Alfred James Munnings, P.R.A., R.W.S. (1878–1959)
Langham Mill Pool, 1923
Sold for: £368,750
London, November 2017

attuned to his near cinematic vision. Vivid colour, endless detail, and a narrative that is often tantalisingly beyond comprehension ensured that viewers were left uplifted and inspired. The record-breaking *Love Among the Ruins*, sold by Christie's for £14.8 million in 2014, exemplified this. Two lovers, dressed in a mesmeric shade of blue, sit among Escher-like tunnels in a ruined city. What is the message here? That love alone remains, when earthly things fail? As with much of Victorian Art, the viewer is invited to project his or her own interpretation.

By contrast, the 200th anniversary of Ruskin's birth, commemorated at Two Temple Place, celebrates the tangible. Ruskin urged the Pre-Raphaelites to look intently at the natural world, and his own drawings, whether of rocks, or foliage, or the *Stones of Venice*, are consummate pieces of draughtsmanship. This reverence for the natural world, care for the built environment, and concern for the lives of those who live and work in cities, is clearly resonant today. Ruskin's prescience remains impressive.

The admiration and enthusiasm shown at these exhibitions has spilled over into the salerooms in recent months, with 2018 a record-breaking year for the Victorian, Pre-Raphaelite & British Impressionist Art Department at Christie's. Significant prices were achieved, but as is often the case in the auction market, vendors need to be canny in when and how they consign. Sir Edward Coley Burne-Jones' great-great-grandchildren judged the December sale, which coincided with the aforementioned Tate exhibition, the correct moment to bring their portion of the family collection to market. Christie's had been advising the family for two decades before the sale, and the Heritage and Taxation department worked closely with the Victorian department to advise on how to best maximise the family's return.

Careful tax planning in general is proving a growing trend amongst families considering a sale at auction, and Christie's Heritage and Taxation team are well placed to advise, having dealt with numerous collections across recent decades. Capital Gains Tax (CGT) at 20% on the profit when an individual sells an asset which has increased in value since purchase or inheritance often proves to be a surprise to families who inherit impressive collections, while the Acceptance in Lieu scheme continues to allow masterpieces to return to the collections of national museums.

With Edward Burne-Jones' family collection, the combination of impeccable provenance from the artist's family, superb condition (most works had never left their original frames), and freshness to the market enabled Christie's to generate results three or four times the enticing estimates. The works were extremely well received and it was encouraging to see a vibrant atmosphere with activity from a crowded room in addition to keen interest and bidding both on the telephones and online. The sale proved that despite the political and economic uncertainty, which abounded in the final quarter of last year, the market remained both resilient and robust.

Two months earlier, in a pragmatic move to mitigate against market volatility in Brexit-bound Britain, and to provide a fresh platform, the leading works of the season were offered at Christie's alongside other 19th century European masterpieces in a dedicated sale of important pictures in New York. By focusing collectors' attention on a careful selection of the finest pictures available and cross-marketing different collecting categories, the sales generated significant results. Buyers from different continents competed to take, for example, Waterhouse's *Thisbe*, estimated at US$1.8 million to US$2.5 million, for a hammer price of US$3.7 million. Tissot's only allegorical work, *Triumph of the Will – the Challenge*, previously offered at the Art Fair in Maastricht, found an immediate buyer, and Yves St Laurent's monumental *Adoration of the Lamb* by Burne-Jones changed hands again for a comparable price to that achieved in his posthumous but much celebrated sale.

James (Jacques) Joseph Tissot (1836–1902)
Triumph of the Will – The Challenge, c.1877
Sold for: US$2,412,500
New York, October 2018

The Victorian market is changing in its relation to the sentimental. The landscape artists who were widely collected two decades ago continue to prosper, however at its very top end ever stronger prices are being paid for the most imaginative examples of the period that still have contemporary

John William Waterhouse (1849–1917)
Thisbe, 1909
Sold for: US$3,732,500
New York, October 2018

resonance today. Collectors are prepared to compete at auction, but they are also willing to pay strongly to secure pictures offered for sale privately that have been on their `wish list'. In addition to auction, private sales are now an increasing part of the Christie's Victorian department's business.

One interesting development, which has been noted in recent years, is that previously overlooked fields are also attracting new audiences. In 2018, Christie's held its first sale dedicated to British Impressionism. Presented alongside the 20th century British art sale, the auction attracted several new buyers from new countries, notably Asia, and a wide range of bidders who had been previously active in other fields. Bidders were drawn to the freedom and spontaneity of brushwork, shown for example by Munnings painting his much-loved Langham Mill pool. The sense of wind and sun and the freshness of the day are immediately apparent, in a composition that recalls the themes and techniques of both Constable and Monet.

Trends evident from the last two decades are once again being reinforced: the unexceptional is being ignored. But for the rarest examples, prices have taken a leap, as 19th century art is being reconsidered once more.

The shelving of the Goods Mortgages Act: Is the writing on the wall for secured 'art on the walls'?

Bethan Waters
Farrer & Co

Bethan Waters is a partner in the banking & financial services team at Farrer & Co LLP and assists on a wide variety of banking matters. She works with both lenders and borrowers (including charities and institutions) on secured and unsecured banking transactions and also has experience of international syndicated and bilateral lending (both in traditional and emerging markets) and focuses on luxury asset (aviation & yacht), art and property financing.

It was always going to be a big ask.

The Law Commission's proposal to use its fast-track 'special Parliamentary procedure' to replace the Dickensian Bills of Sale Acts of 1878 and 1882 (the Acts) with a whole new goods mortgages regime in the lifetime of a Parliament already struggling to cope with the highly complex, time-consuming and controversial demands of delivering an exit from the European Union was an ambitious plan, largely aimed at providing greater protection to consumers and unwitting purchasers of cars subject to 'logbook loans'.

At first, all seemed to be going smoothly with a draft bill and a recommendation from the Law Commission that such proposed legislation be expedited into law. But, creaking under the weight of Brexit and unconvinced by the extent of the consumer protections to be provided by the possible new regime (as well as the perceived reduction in current need for such selective reform), the government last year announced that it would not be introducing the anticipated changes at this time, but instead would be working with the FCA on a wider review of high cost credit. So where did it all go wrong, and what, if anything, does this have to do with the UK art finance market?

The problem with Victoriana

The Victorian roots of the Acts have long been evidenced in the inflexible, formal, costly and generally unsuitable system required to create, register and maintain a bill of sale (a means of allowing an individual to create security over an asset whilst retaining possession of that asset) (Bill of Sale). The archaic and unworkable nature of the Acts, particularly for consumers, was greatly highlighted by the ten-fold increase in the use of Bills of Sale in the first 15 years of this century. This increase was largely necessary to secure the growing number of 'logbook loans' made to individuals who, in return, offered their cars to lenders as security.

As a result of the Acts however, consumer borrowers were losing vehicles too easily following a default and innocent private purchasers who unknowingly bought cars subject to these Bills of Sale found themselves to be unprotected. Additionally, the increasing number of lenders wanting to lend against art 'on the walls' struggled with the antiquated, inflexible system under the Acts combined with the insufficient coverage and inadequacy of the existing registration and search procedures.

Enter the Law Commission – law nouveau?

As a result of this spike in the use of Bills of Sale, HM Treasury were tasked in 2014 with reviewing existing legislation in this area. Following initial consultations the Law Commission then returned with a plan to create a new, more workable, more consumer-friendly and modern legal framework, which would have allowed individuals and unincorporated bodies to grant security over tangible assets without having to conform to the 19th century peculiarities of the current law.

Various further consultations followed, a draft Bill was produced and the ears of lenders and art collectors pricked up in the hope that the proposed new legislation, while of course improving the lot of consumers in the world of car finance, might also have offered a chink of light on an unsatisfactory English law position in respect of taking security from individuals over other assets, such as art, classic cars, fine wines and watches.

In particular, the art lending market started to believe that perhaps, just perhaps, the age-old English problem of allowing an individual to grant security over a piece of art whilst allowing it to remain on the walls of his or her home, might be on the brink of being in some way resolved. The great new hope was that, along with a repeal of the Acts, the

new 'Goods Mortgages Act' would provide a new mechanism and registration regime, (more akin to the US UCC filing system) by which individuals would be able to create and electronically register charges (with no time limit) over goods on a central electronic register. Re-registration would only be required every ten years and, crucially for the art and luxury goods finance market, high net worth individuals would be exempt from the consumer protections that would otherwise be afforded by the new legislation.

By the time the final report (which included a draft Bill) was published on 24 November 2017, it was clear however that much of the detail required to fully implement the new 'Goods Mortgages Act' would be delegated to secondary legislation and regulations. The most opaque area appeared to be the approach to registration. Outstanding questions in respect of the draft Bill concerned the design and administration of the new register and the details that would be required to complete a registration. If this new system was not fulsome enough, would Lenders actually be convinced by its accuracy, security and coverage and would the consequential expected rise in art financing actually come to fruition?

The end of all hope or the start of a new movement?

...Alas we will never know. The government, having taken further consultations in late 2017, announced in 2018 that the 'Goods Mortgages Act' will not be progressed any further. Reasons cited included insufficient scope of consumer protections in the 'Goods Mortgage Act' and disagreement as to whether or not the subject matter was suitable for the special Parliamentary procedure. The government also considered that, because the number of 'logbook loans' has actually been falling since 2016 in favour of more accessible 'payday loans', its proportionate share of the wider high cost credit market was insufficient to justify a change in the law in itself. Instead, the executive stated that it would focus on the FCA's high cost credit review. Reading between the lines and echoing the sentiments of the Law Commission's Stephen Lewis, the proposals simply seem rather to have been put into the 'too difficult, too time consuming, not now' box by the powers that be.

But all hope is seemingly not lost. The writing may well be on the wall for the Goods Mortgages Act but this may in time prove to have been a blessing in disguise, heralding the start of a new movement towards the creation of more flexible and certain security regime and registration regime in respect of not only chattels but all asset categories.

The reason for such optimism comes from the government itself and one of the additional reasons cited for the shelving of the proposed new law, being the need for a broader reform of securities law generally. The proposed legislation could potentially have paved the way towards the creation of a universal electronic register of security interests. Peculiarly, the abandonment of the 'Goods Mortgages Act' proposals, which largely left the question of registration unanswered, could now actually mean that a wider review of the registration of all security interests is initiated, covering all types of security assets.

Whilst of course this delays the expected surge in growth of art lending for the foreseeable future, a full scale review of the registration of security would undoubtedly be welcomed by many practitioners, consumer groups and certainly by those in (or trying to find a means of entry into) the UK art finance market who, constrained by stifling warehousing or sale and leaseback structures to support their credit, crave a more flexible and satisfactory way to provide credit secured against art, wherever it is located. Since the decision was taken not to proceed with the change in the law, private banks and other lenders have increased the intensity of their attempts to look for creative ways in which they can offer lending services secured against art on the walls, despite the lack of assistance from the legislature. It's definitely a case of watch this (wall) space.

Ruskin 200:
An art critic with a difference

Dominic Thurlow-Wood
Christie's

Dominic joined Christie's in December 2016 and works in the Estates, Appraisals and Valuations Department. Prior to this, Dominic graduated from Durham University in French and Italian, having spent a year working as a journalist in Nice and Rome as part of his studies.

The name John Ruskin (1819–1900) immediately conjures up an impression of a gifted art critic, educator, polymath and architectural theorist. Forming part of the celebration of 200 years since his birth, earlier this year Two Temple Place curated an exhibition, *John Ruskin: The Power of Seeing*, which succeeded in bringing all these attributes to life. Ruskin is perceived to be one of Victorian Britain's greatest eccentrics, set apart from his contemporaries as a traditionalist who valued historical importance, yet was also a visionary. His then radical views on the economy and the environment are very much still influential in today's society.

Part of Ruskin's great mystique revolves around his complicated and often confusing character. It is a sad reality, that for a man who could potentially be described as the pre-eminent Victorian art critic, he is best known in modern times for his dysfunctional relationship with his wife. In 1841, Ruskin met a 13-year-old Scottish family friend called Effie Gray. They were to marry seven years later, yet in 1854 their marriage was annulled with non-consummation provided as the legal reasoning for the split.

In a letter written to her father after the event Effie noted, 'he [Ruskin] alleged various reasons, hatred to children, religious motives, a desire to preserve my beauty, and, finally this last year he told me his true reason [...] that he had imagined women were quite different to what he saw I was [...] and he was disgusted with my person.'

Shortly after the annulment, the former Mrs Ruskin became Mrs Millais after marrying the artist John Everett Millais. The fact that the couple would go on to have eight children adds another chapter to the tale, but the story only serves to highlight Ruskin's eccentricity and his complicated personality. This year's celebrations and related events look to go further than his unconventional marriage and explore an influence which undoubtedly spans centuries.

The exhibition at Two Temple Place provided a fascinating insight into Ruskin's appreciation for the past and how this linked to his views on morality and social structures. One of the most striking works on view was John Bunney's *Western Façade of San Marco in Venice*. Ruskin first visited the Italian city at the age of sixteen and Venetian art and architecture would go on to play a fundamental role in his writings.

The three-volume *The Stones of Venice* has become known as Ruskin's impassioned defence of Gothic architecture and his arguments formed an important part of the Gothic revival period, which swept through European art in the mid to late 19th century. In this oeuvre, Ruskin maintained that the Gothic style was preferable to the cleaner and more technically perfect lines of the High Renaissance.

In the critic's opinion, Gothic styling, although less classic, demonstrated an emotion and reverence for God. Ruskin argued that Gothic artists and architects created beauty for the right reasons in the moral sense, rather than for personal fame and celebration. Between the years of 1849 and 1853, Ruskin spent weeks painstakingly detailing the designs of Venetian Gothic palazzi including the Doge's Palace and private houses such as the Ca' d'Oro, for fear that future civic renovations would damage or destroy his favourite creations.

Ruskin insisted that art and architecture were the direct results of the social conditions in which they were produced and argued that pleasure could not be derived from a building or work of art that hadn't been conceived by the love of the artist. Whilst clearly an important theorist, Ruskin was

also a pragmatic champion of the arts and in 1871, he founded the Guild of St George, an educational institution which would assist in his collecting of art, books and a vast array of cultural treasures. The Guild would be the precursor to the St George's Museum, which opened in 1875 just outside Sheffield and would house the collection.

Other than having a deep respect for the talent of Sheffield's metalworkers and craftsmen, Ruskin had no other connection with the Yorkshire city. The museum was created as an educational location which the workers could visit and as such, there were extended opening hours and Sunday openings for all. Ruskin hoped that the beauty of the collection alongside the museum's impressive location, which offered views over the Derbyshire landscape, would stimulate creative thought.

Two Temple Place's *The Power of Seeing* exhibition allowed the public to view these treasures as an exhibition once more. In addition to works from Sheffield's Guild of St George Ruskin Collection, works were loaned from locations including the Ashmolean, Fitzwilliam, Tate and Calderdale museums amongst others. Louise Pullen, Curator of the Ruskin Collection at Museums Sheffield, underlined how the collection serves an important purpose for the public:

'Ruskin amassed this collection with a singular purpose – to captivate and inspire its audience, and compel them to action. This exhibition is a visual exploration of the radical, prescient notion at the heart of his

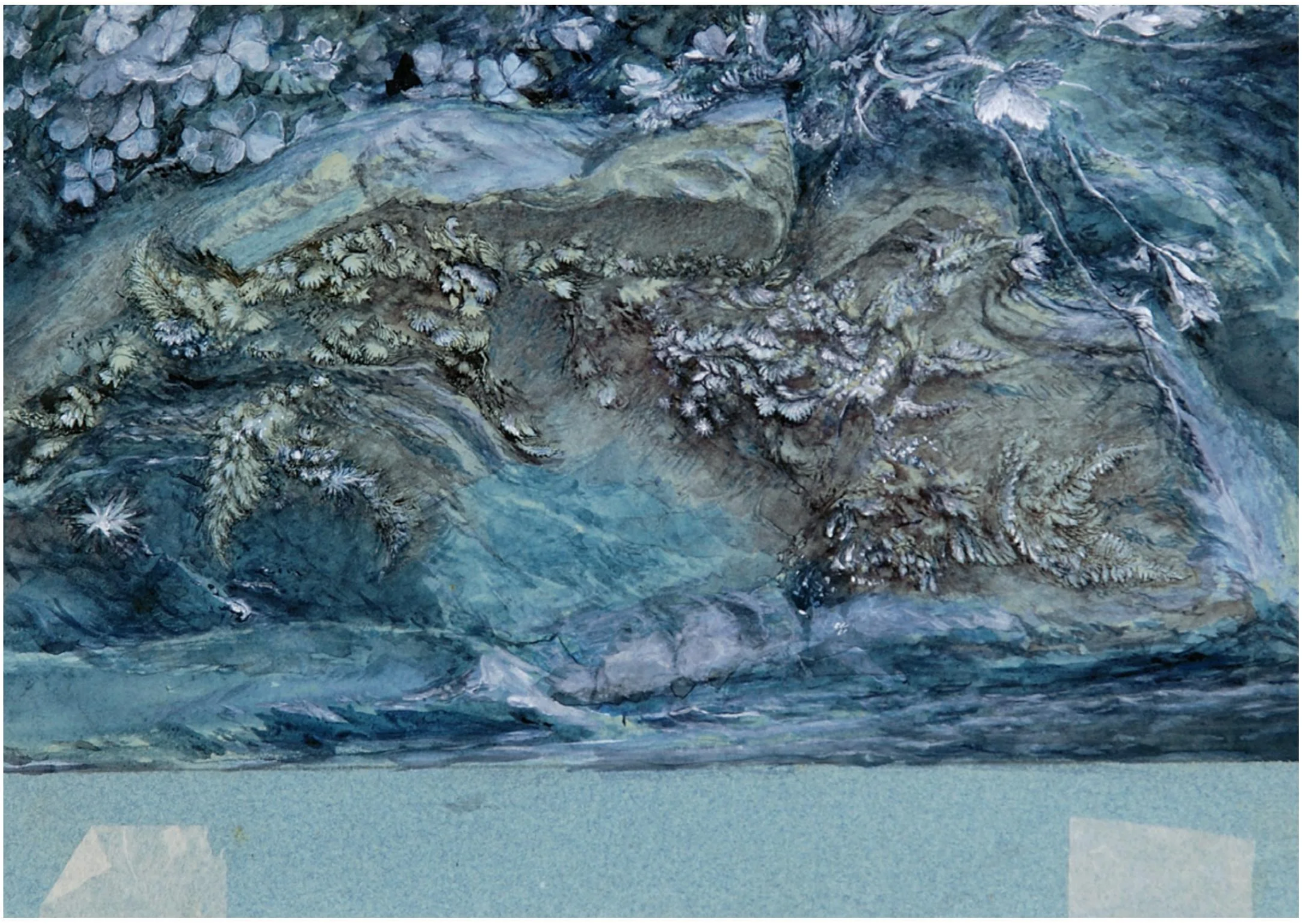
JOHN RUSKIN (1819–1900)
Spray of Dead Oak Leaves, 1879
Collection of the Guild of St George, Museums Sheffield

philosophy: that in opening ourselves to beauty we can find a more enjoyable and enriching path through our fast-paced and rapidly changing world. Ruskin spoke of "a power of the eye and a power of the mind" that would help us to see, rather than simply look. This exhibition will show exactly how he thought that could be done.'

Through his writings on architecture and art it is clear to see that Ruskin had a deep and complex relationship with the past. However, this rationale behind many of his tomes speaks of a contemporary social philosophy and in many ways Ruskin was a prophetic visionary. Indeed, Leo Tolstoy described him as 'one of the most remarkable men not only of England and of our generation, but of all countries and times.'

This particular attribute is most apparent through Ruskin's art criticism, for which he made is name during the 1840s. It is unlikely to be his primary intention, however Ruskin succeeded in predicting some of the most sought-after artists in recent decades, none more so that Joseph Mallord William Turner (1775–1851).

In a staunch defence of Turner at the tender age of 17, Ruskin replied to an article by the Reverend John Eagles, a then critic for Blackwood's magazine, by commenting 'Turner is the exception to all rules and can be judged by no other standard of art.' These words are an example of the tenacity with which Ruskin argued his opinions and form the precursor to a lifelong defence of Turner and a continued support of the Pre-Raphaelites.



JOHN RUSKIN (1819–1900)
Study of Moss, Fern and Wood-Sorrel, upon a rocky river bank, 1875–79
Collection of the Guild of St George, Museums Sheffield

It is perhaps not surprising that Ruskin was such a devotee of these artists, as the critic was also a passionate admirer of all things natural. Ruskin's publishing of the first volume of his *Modern Painters* in 1843 was intended as a defence of Turner's landscape painting, with the third volume dedicated to the emerging talents of the Pre-Raphaelite Brotherhood. Ruskin used the five-volume work to argue the benefits of devoting art to the accurate documentation of nature. In his opinion, Turner's landscapes, seascapes, clouds and storms did exactly that.

Two impressive works by Turner, *Pass of St Gotthard, near Faido* (c.1842–43) and *Venetian Festival* (c.1845), were shown at *The Power of Seeing* exhibition alongside a number of drawings and watercolours by Ruskin's own hand. Other displays that showcased the importance of the natural world, included studies of botany, geology and a breathtaking collection of minerals including bright amethysts and snow-white quartzes.

The exhibition was open in London between January and April this year, with Two Temple Place an apt location. The building, which was formerly known as Astor House, was designed and opened by William Waldorf Astor in 1895, who was an equally great champion of the arts. Originally used as the Astor Estate Office, the building's eye-catching staircase features carvings of the three musketeers, from William Astor's favourite book, alongside carvings of four scenes, from plays by Astor's favourite playwright, William Shakespeare.

For those who were not able to visit Two Temple Place earlier in the year, *The Power of Seeing* will also be displayed at the Millennium Gallery, Sheffield until September. While the exhibition provides an impressive collection of the art and objects that Ruskin believed brought beauty to our world, its true genius is in allowing the viewer a glimpse into the deep and complex psyche of one of our country's most gifted personalities.

The Power of Seeing *is on at the Millennium Gallery, Sheffield until 15 September 2019, with other exhibitions taking place around the country to celebrate the Ruskin 200 bicentenary.*

JOHN WHARLTON BUNNEY (1828–1882)
Western Façade of St Mark's Basilica, Venice, 1876–82
Collection of the Guild of St George, Museums Sheffield

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