COCHRANE ADAMS
FINE ART AGENTS

The apocryphal Chinese phrase runs 'May you live in interesting times', and that seems to be what the remainder of this year promises, what with the British EU exit referendum on one side of the Atlantic and the Presidential Election on the other. While the changes and developments in the art market might not affect the general public in quite the same way we would like nonetheless to bring to your attention an important new proviso to the treatment of chattels subject to Estate Duty; and three recent sales to museums that show how vital this part of the market is for the right object. As always do look at our website (www.cochrane-adams.com) for further information.

Chapter 1
Changes to UK Estate Duty

In April 2016, following the budget, there was a change in the treatment of chattels that have been conditionally exempted from Estate Duty (ED) where latent tax rates can be as high as 80% of current value. Previously these latent rates could be brought down to the Inheritance Tax (IHT) level of 40% through probate provided the chattel was of sufficient quality to receive a fresh conditional exemption.

HMRC may now choose between the old ED rate and the new IHT rate if the undertakings agreed after April 2016 are broken. We can only assume HMRC will chose the higher rate although we would be interested to know whether a chattel subject to ED and offered to the nation in lieu of tax (AIL) or sold to a UK museum would be taxed at the IHT rate of 40% or at the old higher rates of ED. In any case, owners of chattels still subject to ED might seek advice.

Chapter 2
Sales to museums – three recent examples

Regardless of the treatment of ED, sales to museums whether in the UK or not can be very beneficial and the lack of funds or delays frequently associated with institutional sales can often be avoided if they are correctly and imaginatively approached. We would like to look at three such sales completed this year.

In March this year we negotiated the sale to the British Library of the musical archive of British composer Giles Swayne who had been a pupil of Harrison Birtwistle and Olivier Messiaen. On the one hand this achieved a cash return on an asset without a clearly defined market and perhaps more importantly from the composer's point of view it ensured that his life's work would be preserved for posterity and be available for public study. The sale took less than six months.

The second acquisition which we negotiated this year illustrates the difference in museum cultures in the Old and New Worlds. It is a sad fact of life that British institutions often require assistance to make a purchase, either through the AIL scheme or through public fund-raising. US museums, aided by much more generous rules relating to tax relief for private and corporate donors and by a correspondingly more sophisticated fundraising culture, are extraordinarily wealthy in comparison with their British counterparts. UK tax breaks have to be weighed against the net returns from foreign institutions.

In January of this year we negotiated the sale, on behalf of its British owner, of the Philadelphia painter Samuel Jennings's 1791 oil study *Liberty Displaying the Arts and Sciences* to the Metropolitan Museum of Art, New York. The clue to picture's importance lies in its secondary title, *The Genius of America Encouraging the Emancipation of the Blacks*: it represents the first reference in American art to the abolition of slavery, pre-dating the Thirteenth Amendment by more than seven decades. We established its importance on behalf of the owner through an exhaustive process of academic and scientific analysis: this groundwork led to a sale which was agreed within one month of our initial approach and in which the museum agreed to the full asking-price. The painting is now a part of the permanent hang of the Museum's American Wing.

The third example this year illustrates that a sale direct to an institution is not the only way of taking advantage of the generosity of the US tax regime towards its museums and their donors. In February we organised the acquisition, by an admirer of George Washington, of one of the very few portraits of the First President painted from life. The portrait was owned by our client and was bought as a donation in kind to his former residence, Mount Vernon in Virginia. As in the previous case, it took a great deal of work to establish the painting's scholarly credentials (only five artists were ever allowed a sitting by Washington, who understandably considered that he had better things to do). The painting, the work of the New Jersey artist Joseph Wright and executed in 1783, six years before Washington became President, now hangs in the Donald W. Reynolds Museum at Mount Vernon.

This sale is interesting for several reasons. It enabled our client to conduct the disposal of a family heirloom in complete privacy, with the reassurance that the painting was going to the best possible home: it allowed us to manage any risk of academic controversy among the notoriously fractious community which makes a speciality of George Washington, which might have prejudiced the painting's performance at auction: and last it shifted the burden of negotiating the donation to the private buyer, who was arguably in a more advantageous position to carry it out in view of her long connection with the institution.

These three acquisitions are, of course, far from being a comprehensive illustration of the possibilities, which museums offer to the owner of an important work of art. They do remind us, though, that there are more museums outside Britain than the Getty. While much media attention is devoted to the financial hardship of British art institutions, there are many other options available if the issue is approached imaginatively and comprehensively. It remains to be seen how the changes in the ED regime will affect owners who are considering selling but museums in the UK or further afield may well provide important options that a well-advised owner should be aware of.

 

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