



A New Pissarro Affair

Dialogue between Sharon Hecker, Art Historian, and Giuseppe Calabi, Lawyer

Prologue

On 1 July 2020, the French Court of Cassation published its decision in the restitution case concerning a work by Camille Pissarro (1830-1903), *La cueillette des pois*, 1887, gouache, cm. 53.3 x 64.4 belonging to Simon Bauer, a successful French industrialist of Jewish origin and owner of an important collection of works of art, including 11 paintings by Pissarro, seized on 10 October 1943 by order of the Commissariat General for Jewish Affairs and entrusted to a collaborationist merchant Jean-François Lefranc. Bauer managed to save himself from anti-Jewish persecution and after the war tried to recover his collection, including Pissarro's work. On the basis of Order 45-770 of 21 April 1945, he obtained that same year a court order declaring the nullity of all acts of sale of the works that made up his collection, with an order for their return. Mr. Bauer died on 1 January 1947, but was unable to recover the painting. The work was meanwhile the subject of several sales, including one in 1966, through Sotheby's in London to an unknown buyer, and one in 1995, through Christie's in New York, where it was awarded to the Tolls, an American collector couple. In 2017 the Tolls accepted a request to borrow the work from the Marmottan Monet Museum in Paris for the exhibition entitled "Pissarro, premier peintre Impressionniste". Camille Bauer's heirs initiated an interim procedure in the course of which the Tribunal de Grande Instance in Paris ordered the seizure of the work. The judge subsequently ordered the return of the painting to the heirs of the collector. The Court of Cassation upheld the judgment by rejecting the appeal by the Tolls.

Giuseppe Calabi:

Immediately after the war, France approved some reparation regulations, including Order 45-770 of 21 April 1945 in favor of those who suffered from 16 June 1940, the fateful date of Pétain's oath as Prime Minister of the State occupied by the German army, acts of plundering, also

because of “so-called laws, decrees, orders, regulations or decisions of the de facto self-proclaimed de facto authority of the French State”. This is wording of Article 1 of the Order, which sanctioned the nullity of all acts of plundering, regardless of their form (seizures, confiscations, forced sales). Once the nullity has been established, the owner has the right to recover his property free from any encumbrances. Article 4 of the Order has provided that the subsequent buyer(s) of the plundered goods shall be deemed to be in bad faith but only in respect of the owner who has been plundered. If the sub-purchaser is in good faith and suffers avoidance under the repair rule in favor of the original owner, he or she may take recourse against intermediaries who have knowingly failed to disclose the illicit origin of the goods. The repair regulation implies that the request to ascertain the nullity of the act of plundering must be initiated within six months of the cessation of hostilities, subject to the demonstration of the material impossibility to act within the term, even outside cases of force majeure. Also in Italy, Royal Lieutenantcy Decree no. 222 of 12 April 1945 provided that for acts of alienation carried out by persons affected by the racial provisions after 6 October 1938 (date of approval of the racial laws) the action of rescission was allowed, up to one year after the cessation of the state of war, but for such action it was necessary to prove that the consideration received was more than a quarter less than the value of the object. The Italian legislation was therefore much less generous than the French legislation because it brought the reparatory measure back to the case of rescission as a result of great disproportion between the value of the artwork and price paid by the seller, i.e. - for example - to the situation in which the person is forced to sell at a price much lower than the value of the property because of a state of need, from which the other party took advantage. On the other hand, there is no provision for a cause of nullity of the acts of plundering, which - if ascertained within the prescribed time frame - can also be asserted after 70 years from the date of plundering even against sub-purchasers who are unaware of the illegal origin.

The Bauer case is also exemplary from another point of view: how is it possible that a work such as *La cueillette des pois* was sold in two auctions without the circumstance that it had been plundered having emerged before the sale? Surely at the time of the first sale (1966), but perhaps also at the time of the second sale (1995) the auction houses had not matured the sensibility, nor did they have the instruments that would have been used to sell the work.

Sharon Hecker:

Serious provenance research is more than a list of names and dates. Each name opens the door to a person, their life stories, their tragedies and successes, and the way art is bound up with their vicissitudes. Every time an artwork passes from one owner to another, a human world emerges, and with this an invitation for the provenance researcher to follow its trail.

Such could have been the case with the string of names of the owners of this beautiful gouache by Pissarro. The artist sold the work to Theo Van Gogh, brother of Vincent and art dealer, who in 1887 wrote to Pissarro about its successful sale. Sometime before 1930, the gouache found its way into the collection of Parisian dealer Paul Rosenberg. By 1930, it is listed in a Pissarro exhibition catalogue as belonging to Simon Bauer, from whom it was seized by the Nazis in 1943.

A thorough art historian would have sought to know more about this name, as with all others on the list of owners. To make it more than a name on a list, the good researcher would have patiently fleshed out the man and his life story and would have understood how the painting was bought and sold. The researcher would have learned about Bauer's tragic internment in Drancy,

his escape from being sent to extermination at Auschwitz, and his relentless search, after the war, to recover the art that had been taken from him.

There were several opportunities to conduct detailed research when the work passed through two auction houses, was bought by the Tolls, and was requested for loan by the Musée Marmottin. There are certain things we can learn from this case that can help buyers in the future. During the court hearing, Mr. Toll lamented that, “I bought the painting in 1995 in good faith at Christie’s...It was sold by Sotheby’s 30 years earlier and before that, it had an export license. In New York, as long as a work is sold in good faith, there is no recourse against the buyer.” This may be true, but risking losing ownership of a painting and seeing one’s investment compromised after a purchase should alert buyers to the fundamental importance of commissioning independent research to verify the information presented.

Had Mr. Toll taken the time to have the provenance verified independently, a thorough researcher would have likely discovered the history of the ownership. Mr. Toll’s researcher would probably have found that following the war, the painting had been placed on the “Répertoire des biens spoliés (Volume II)”, a list published between 1947 and 1949 which included all information regarding stolen property in France including artworks. With the help of a qualified independent expert, Toll could have discovered that the Christie’s sale provenance list included numerous erroneous omissions and additions. The additions and omissions would have raised suspicions about the ownership of the painting and possible doubts regarding Nazi confiscation.

Most significantly, a researcher for Toll would likely have found that in 1965 the painting had been seized in France, another omission in Sotheby’s and Christie’s provenances. Would Toll not have wondered why the painting had been seized and later returned, quickly transferred to London, and sold a year later by Sotheby’s to an anonymous buyer? This confiscation, transfer and the rushed sale would have raised red flags in a good researcher’s mind about possible issues surrounding the work. In sum, the tools for research have always been available, but as with all tools, it depends on who uses them and how they are used.

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English translation provided by the authors.

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