Neutral Citation Number: [2012] EWHC 370 (Ch)

Case No: HC 10 C 03335

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/03/2012

Before :

HIS HONOUR JUDGE PELLING QC
SITTING AS A JUDGE OF THE HIGH COURT

- -

Between :

WILLIAM DUKE COLERIDGE **5th BARON COLERIDGE OF OTTERY ST MARY**	**Claimant**
- and -	
SOTHEBY'S	**Defendant**

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- -

Mr Joshua Munro and Mr Nicholas Pilsbury (instructed by Michelmores) for the Claimant
Mr Richard Edwards (instructed by Wragge & Co) for the Defendant

Hearing dates: 7 -10 and 13-14 February 2012

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HIS HONOUR JUDGE PELLING QC SITTING AS A JUDGE OF THE HIGH COURT

HH Judge Pelling QC:

Introduction

1. In these proceedings, the claimant ("Lord Coleridge") claims damages for losses alleged to have been suffered by him as a result of an alleged breach of a *Hedley Byrne* duty by the defendant ("Sotheby's") by advising him to sell a judicial Collar of Ss belonging to him ("the Coleridge Collar") to a private buyer for a price of £35,000.

2. Lord Coleridge's case at trial was that he ought to have been advised that the collar was or was probably manufactured prior to 1576 and was likely to achieve £300,000 - £400,000 at auction and that it had a value of up to twice the lowest auction figure for a sale by private treaty. In the alternative Lord Coleridge alleges that Sotheby's acted in breach of duty by advising him to sell the Collar for £35,000 even if (contrary to his primary case) it was correct to advise him that it was manufactured in the late 17th Century. He claims as damages for negligence the difference between the true value of the Coleridge Collar in November 2006 when it was sold by him and £35,000 being the price at which he sold it. Sotheby's deny liability and maintain that a reasonably competent auctioneer would have advised Lord Coleridge that the collar concerned was manufactured in the late 17th Century and was worth £35,000 on the material that was available to, or which could reasonably have been obtained by, its expert staff.

3. The trial took place between 7-10 and 13-14 February 2012. I heard oral factual evidence on behalf of the Claimant from Lord Coleridge, his daughter, the Hon. Tania Harcourt-Cooze, Mr Duncan Campbell, an specialist dealer in antique silverware who initially advised Mr and Mrs Norris in relation to the Coleridge Collar and Mr Christopher Walne, the senior assayer employed by the Goldsmiths Company. After Mr Walne had given his evidence, an issue arose as to whether the tests performed by him on the Coleridge Collar would have revealed certain trace elements in the metal from which it is manufactured. I gave permission for him to be recalled but in the event he was not recalled. I heard oral evidence on behalf of the Defendant from Mrs Elisabeth Mitchell, Lord Dalmeny, Dr Ogden who is the Chief executive of the Gemmological Association, Ms Marian Campbell, an Honorary Senior Research fellow at the Victoria & Albert Museum ("V&A") and Mrs Philippa Glanville, formerly Assistant Keeper of English Silver at the V&A. It is important to remember that whilst each of these last three witnesses are apparently distinguished experts in their field they were not called as such. They were called to give evidence of fact.

4. Expert evidence was given on behalf of the Claimant by Professor Sir John Baker QC., LL.D., Ph.D (whose evidence was in substance unchallenged) and by Mr Wynyard Wilkinson FSA Sc., an expert in Early British and Irish Silver and on behalf of the Defendant by Mr Charles Truman FSA, formerly a director of Christie's employed in its Silver Department.

5. *The Relevant History*

   Prior to the Judicature Acts 1873 and 1875, the principal courts of common law were the courts of (a) Kings Bench, (b) Common Pleas and (c) Exchequer. The Courts of Queens Bench and Common Pleas were each presided over by a Chief Justice and the Court of Exchequer was presided over by the Chief Baron. Originally each court

exercised different jurisdictions. The Court of Common Pleas was concerned with actions between subjects particularly concerning Land and debt issues. The Court of Kings Bench was concerned with matters in which the Crown was interested and the Court of Exchequer was concerned at any rate initially with fiscal issues between the Crown and its subjects. However by the end of the 17th Century all these courts had similar jurisdictions with broadly similar processes.

6. By the middle of the 19th Century it was recognised that these arrangements could no longer be justified and the Judicature Act 1873 was passed. Its effect was to create a single post of Lord Chief Justice (which in the event was filled by the then Chief Justice Queens Bench) and one High Court of Justice with a number of divisions which, initially, included Kings Bench, Common Pleas and Exchequer Divisions. The creation of three common law divisions was necessary only because it was by then regarded as constitutionally unacceptable to force retirement or demotion on those Chiefs then in post who did not become Lord Chief Justice.

7. John Duke 1st Baron Coleridge ("Lord Coleridge CJ") was the last Chief Justice Common Pleas. He held office from 1873 until 1880. In 1880 Sir Alexander Cockburn CJ (formerly the Chief Justice Queens Bench and from 1875 the first Lord Chief Justice) and Sir Fitzroy Kelly (then the Chief Baron) both died in office. Following these events, by an Order in Council made on 16th December 1880, the three common law divisions were merged into one Queens Bench Division, which thereafter assumed the work of all three former divisions. The then Chief Justice Common Pleas (Lord Coleridge CJ) was appointed Lord Chief Justice. He held that office until his death in 1894.

8. Part of the regalia of the Chief Justices and Chief Baron was a gold livery collar known as a Collar of Ss or "esses". This nomenclature derives from the form of the links in the chains which appears as, or similar to, the letter "S". The Coleridge Collar was the Collar worn by Lord Coleridge CJ while he was Chief Justice Common Pleas.

9. *The Coleridge Collar*

By no later than last quarter of the 16th Century[1] judicial collars of Ss were accepted as being the personal property of the office holders concerned rather than being an "office-loom". Lord Coleridge CJ, being the last holder of the office of Chief Justice Common Pleas, retained his collar, which then passed to each Baron by succession until 1962, when it was given to Lord Coleridge by his father.

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[1] There are earlier references to office holders disposing of collars by will in a manner that suggests they were regarded as the personal property of the office holders concerned but those wills do not identify the collars concerned specifically as collars of Ss. Sir Edward Saunders, Chief Baron of the Court of Exchequer, died in 1576 leaving his "*Coller of esses*" to his son in law on his death in 1576. The first known will by which a collar of Ss was left by a Chief Justice of the Court of Common Pleas was that of Sir James Dyer who died in 1582 leaving his collar to Queen Elizabeth I in terms that suggest it was a gift rather than the return of an office-loom. Sir Christopher Wray, a Chief Justice of the Court of Queens Bench left his Collar of Ss to his son when he died in 1592.– see Paragraph 15 of the Report of Professor Sir John Baker. By the 19th Century it had become the usual but not universal practice for collars to be passed to succeeding holders of the relevant office, usually on payment being made by the succeeding office holder to his predecessor or his predecessor's estate. Where a collar was not passed on to a successor, the succeeding office holder commissioned the manufacture of a replacement. The current Collar of Ss worn by the Lord Chief Justices of England and Wales was commissioned by Sir Alexander Cockburn in 1859 because his predecessor Lord Campbell decided to keep his collar on becoming Lord Chancellor.

10. The Coleridge Collar is 172.5 cm in length, weighs 20.5 Troy ounces and consists of 27 S links interspersed with 26 wrought knots with a Tudor rose at its centre flanked by two portcullises. Although described by Mrs Mitchell in the draft auction entry for the Collar prepared by her as being of 22 carat gold, it is now common ground that all the elements of the Collar save the Tudor Rose are manufactured of 20 carat Gold. It is common ground that the Tudor Rose is manufactured of 22 carat Gold.

11. The Ss links of the Coleridge Collar were manufactured using a casting technique. Which technique was used is controversial between the parties, as is its materiality to an attempt to date the Coleridge Collar. Lord Coleridge's case is that the Ss links were made using a "slush" casting method, that this method of casting was the or the predominate method used in England during the Tudor period but had ceased to be so by the last half of the 17th century and thus makes it probable that the chain or at any rate the SS links within it were manufactured at some unknown date during the Tudor period. It is also Lord Coleridge's case that it became illegal to manufacture items of gold of less than 22 carats of fineness from 20th April 1576 (something I explain in more detail below). Lord Coleridge's case is that the fineness of the gold used to manufacture the Tudor Rose (and the absence of any enamel embellishment) (both points which would tend to support a late 17th Century date for manufacture of the Collar) is because the Rose is a later addition.

12. Lord Coleridge's case is that these factors (the method of manufacture, that the Ss links are of gold of 20 carats of fineness and the imposition of a 22 carat gold standard from 20th April 1576) that the Coleridge Collar was or was probably manufactured prior to 1576, and that if Sotheby's had acted in accordance with its duty of care it would have so advised Lord Coleridge. At an earlier stage in the proceedings it was Lord Coleridge's case that Sotheby's ought to have dated the collar to the period known as the "Great Debasement" – that is the period between 1st April 1546 and October 1551 when Henry VIII devalued the currency by debasing the gold content of coin from 22 carats to 20 carats of fineness. That case was abandoned at a late stage however, following an amendment to the Particulars of Claim in December 2011.

13. Sotheby's case is that (a) the Ss links were manufactured using an open mould casting method which was still in use in the post restoration part of the 17th century, (b) the statutory gold standard relied on by Lord Coleridge was widely breached from the time when it was enacted at any rate by jewellers and thus (c) neither the fineness of the gold nor the method of manufacture provide a sound basis for arriving at a judgment as to the age of the Coleridge Collar. Sotheby's do not accept that the Tudor Rose was manufactured any later than the rest of the Collar and maintain that the absence of enamel embellishment of the Rose establishes that it and the Collar is more likely to have been manufactured in the post restoration part of the 17th Century. It maintains that this view is supported by the evidence to be derived from an examination of the relevant portraits available at the time, by such historical information as is available concerning the Coleridge Collar and is consistent with what can be ascertained from an examination of the only other extant 17th Century Collar of Ss – an artefact known as the Gilbert Collar because it was acquired by the late Arthur Gilbert, a well known collector of antique gold artefacts. It is common ground that the Gilbert Collar dates from 1660 and was that of the Chief Baron of the day.

14. *The Circumstances Leading to The Sale of The Coleridge Collar*

Until 2006, the Coleridge family home was the Chanter's House in Ottery St Mary. It had been greatly expanded by Lord Coleridge CJ. In 1998, Lord Coleridge transferred the Chanter's House to the trustees of a discretionary trust known as the Tania Coleridge 1998 Settlement ("the Trust") to be held by them subject to the terms of the Trust, and his daughter became its life tenant.

15. By 2005 the cost of maintaining the Chanter's House had become unmanageable and the trustees of the Trust decided to sell it and such of its contents as formed part of the trust estate. Three firms of auctioneers were approached for proposals as to how the sale would be handled. The Defendant ("Sotheby's") was chosen by the trustees of the Trust to conduct the sale.

16. A small number of chattels at the Chanter's House remained the personal property of Lord Coleridge. He wished to sell them at the same time. He was also considering selling the Coleridge Collar. Lord Coleridge approached Sotheby's with a view to appointing them to act on his behalf in the sale by auction of those items in the Chanter's House that belonged to him. A contract to this effect was entered into shortly before the auction. The Collar was not included because by then Lord Coleridge had entered into a conditional contract for its sale with the individuals who ultimately purchased the Chanter's House at a value to be provided by Sotheby's and he had sought and had been given a value at which to sell the Collar privately of £35,000. Sotheby's allege that a contract came into existence earlier than this on the basis of a draft supplied by them to Lord Coleridge and that the valuation of the Collar for private sale purposes came within the scope of that contract and thus was subject to the various exclusion and restriction of liability provisions contained in Sotheby's standard terms. Lord Coleridge denies that the contract applied to anything other than those items auctioned by Sotheby's on his behalf. Following an amendment his claim in these proceedings is formulated exclusively in tort. I return to the contract issue in the next section of this judgment.

17. Mrs Elizabeth Mitchell, who is now retired, carried out the appraisal on behalf of Sotheby's at a time when she was employed as a senior specialist in the Defendant's Sculpture and Works of Art Department. She valued the Collar for auction estimate purposes at between £25,000 and £35,000, taking the view that the chain was probably manufactured in the late 17th Century. Her dating opinion is accurately set out in the draft catalogue entry prepared by her and was in these terms:

> "… the present collar does not date from the 15th Century but from the end of the 17th Century. Before the Civil War the Tudor Rose would have been jewelled or at least enamelled; furthermore the portrait by Van Dyck of Lord Chief Justice Littleton created 1640 Justice of the Common Pleas shows a collar with a pearl and jewelled Tudor Rose …
>
> The earliest record of the present collar appears to be 1714 when it was handed by Lord Trevor to his successor Sir Peter king. According to Riches (op.cit.) there is proof of succession from this

> date until the collar passed into the possession of Lord Coleridge in 1873
>
> £25,000-35,000"

Aside from the portrait referred to in the quotation set out above, the literature relevant to the collar that is identified by Mrs Mitchell is a book written by Dr Purey-Cust entitled "*The Collar of SS, a History and a Conjecture"* published in 1910, two Law Journal articles appearing respectively in September 1939 and December 1942 and the article by R.A.Riches that was published in the Law Quarterly review in April 1943. Mrs Mitchell also described the Collar as being of 22 Carats. However she told me and I accept that in doing so she was merely repeating what she had been told on behalf of Lord Coleridge. She did not independently test the fineness of the metal. It is accepted that to describe the collar as being of 22 carats was an error. Mr Wilkinson and Mr Campbell criticise the apparent reliance on one portrait and also criticise reliance on the literature quoted on the basis that none of it consists of or quotes from primary sources, and in some cases is demonstrably wrong.

18. Until Sotheby's appraised the Collar in the terms I have described, the family's understanding had been that King Henry VII had given the Coleridge Collar to the first Chief Justice of Common Pleas during his reign between 1485 and 1509 and that it had passed from office holder to office holder thereafter. Ms Mitchell's appraisal and auction estimate was a bitter disappointment to the family, and not least to Lord Coleridge's daughter who had hoped that the value of the Collar would be such as to enable the sale of her home to be avoided or postponed.

19. Mr and Mrs Norris wished to purchase the house but only on condition that they could also purchase the Coleridge Collar, for which they offered the top end of the defendant's "valuation", and a portrait of Lord Coleridge CJ that was in the Hall of the Old Chanter's House. Lord Coleridge accepted this offer and sought a private sale valuation of the Collar from Sotheby's. Sotheby's, acting by Lord Dalmeny, its vice-chairman, advised Lord Coleridge to sell the Collar at a price of £35,000 and when Mr and Mrs Norris succeeded in purchasing the Chanter's House, that was what Lord Coleridge did. The precise timing and terms of Lord Coleridge's agreement with Mr and Mrs Norris concerning the collar and the timing of the advice given by Lord Dalmeny is something that I return to and make findings about later in this judgment.

20. Mrs Mitchell's oral evidence was that it was the invariable practice at Sotheby's to arrive at a private treaty sale value for a piece that was the subject of an auction estimate by doubling the lower auction estimate figure. Lord Dalmeny agreed that the practice described by Mrs Mitchell was one recognised way to derive an arms length private treaty sale price from an auction estimate. His evidence was however that this was not an appropriate course to adopt in the circumstances of this case. Mr Truman's evidence was that he would have arrived at an auction estimate that was higher than that arrived at by Mrs Mitchell but in any event he would have arrived at a private treaty sale price by taking the top end of the correct auction estimate and adding buyer's premium and VAT thereon.

21. On 6th November 2008, Mr and Mrs Norris sold the Coleridge Collar at an auction conducted by Christie's for £260,000. Christie's gave an auction estimate of between

£200,000 and £300,000 and opined that the Coleridge Collar dated from the Tudor period. The Christie's catalogue [C1/3/9-11] for the sale was elaborate. Under the heading "*Provenance"* it said:

> "Possibly given by Henry VIII to Sir Edward Montagu between 1546-7.
>
> Almost certainly with Sir Edward Montague by 1551 and then passed to every subsequent Lord Chief Justice of Common Pleas until acquired by Lord Coleridge in 1873.
>
> Thence by descent until acquired by the present owner."

Various works of literature were identified as relevant including Dr Purey-Cust's book mentioned by Mrs Mitchell in her draft catalogue notes, a work by C.E.Challis entitled *The Tudor Coinage*, a work published by the V&A entitled *Princely Magnificence – Court Jewels of the Renaissance 1500-1630*, a work by C.J.Jackson entitled *Jackson's Silver and Gold Marks of England Scotland and Ireland* and a work by R.W.Lightbrown entitled *Medieval European Jewellery*. In the detailed text, [C1/3/11] it was asserted that the use of 20 carat gold in all but the Tudor Rose justified a conclusion that the date of manufacture of the collar was between 1546-1551 being the duration of the Great Debasement. Although the catalogue does not say so, it is the case that this theory depends upon an assumption (for which there is no evidence at all) that the collar was manufactured on the orders of Henry VIII from coin, and that the Collar was passed from office holder to office holder continuously thereafter. As I have said already, though Lord Coleridge adopted this theory initially in these proceedings it was abandoned. The theory that he now relies on (that it is to be inferred that the Collar was manufactured prior to 1576 because thereafter until 1797 items could be lawfully wrought from gold only if gold of no less fineness than 22 carats was used) is not mentioned by Christie's. The Christie's catalogue advances the theory that the Rose was manufactured either before 1546 or after 1551. No evidence to support this theory is identified other than deduction from the fineness of the metal used. The text concludes:

> "There can be no doubt that the Coleridge Collar is truly an historic and incredible survival of 16th century English goldsmith work. It is even more remarkable that by using a combination of art historical and scientific analyses, one can convincingly date the collar to between 1546 and 1551."

The text ends with the statement that Christie's are "*… grateful to Duncan Campbell for his assistance in preparing this catalogue entry"*.

22. *The Issues In These Proceedings*

There is no dispute that Sotheby's owed a *Hedley Byrne* duty to Lord Coleridge. This concession is correctly made for the reasons identified by Mr Munro in Paragraph 49(a) of his written opening submissions.

23. An enormous amount of technical evidence has been deployed in the course of the trial that has focussed on whether the Coleridge Collar was manufactured in the late (that is

post-restoration) 17th century (as is Sotheby's position) or on a date unknown prior to 1576 (as is now Lord Coleridge's case). However, in my judgment much of this is immaterial to the issues that I have to resolve.

24. In relation to breach, the sole question to be answered is whether Lord Coleridge has proved that the advice that he was given and which he acted upon was advice that no reasonably competent appraiser or valuer working for an international auction house at the date when the advice was given could have arrived at having regard to the material that was in the circumstances reasonably available to such an appraiser. If a respectable body of such professionals would have reached the conclusions passed to Lord Coleridge by reference to that material then the claim must fail even if there were others who would have reached a different conclusion – see Bolam v. Friern Hospital Management Committee [1957] 1 WLR 582 applied in the context of auctioneers valuations and appraisals by the court of Appeal in Luxmoore – May v. Messenger May Baverstock [1990] 1 WLR 1009 and Thomson v. Christie Manson & Woods Limited [2005] PNLR 38.

25. If breach is established then subject to proof of causation Lord Coleridge is entitled to recover damages. How much depends on the basis on which liability is established but in each case is to be measured by the difference between the true value of the Collar when properly appraised and £35,000. Thus even if the Collar was properly described as being late 17th Century but £35,000 represented an undervalue that falls outside the ambit of proper professional disagreement, Lord Coleridge is entitled to recover the difference between its true value so appraised and £35,000 if any. At the end of the trial, Mr Munro indicated (as he had in opening Lord Coleridge's case) that it was advanced on two alternative bases – that Sotheby's ought to have appraised and valued the Collar on the basis that it certainly dated from before 1576 and alternatively that it might possibly have done so. This last mentioned alternative way of formulating the claim is only relevant if it leads to the conclusion that a different auction estimate, and thus a different private treaty value, ought to have been arrived at. I address this issue in more detail later in this judgment.

26. In addition, there is an issue as to whether Sotheby's standard terms were incorporated into a contract with Lord Coleridge and if they were whether the effect of those terms is either to exclude liability or limit it to the sum of £35,000. No issue concerning the effect of the Unfair Contract Terms Act 1977 has been pleaded on behalf of Lord Coleridge and when I enquired about this at the start of the trial I was told by counsel for Lord Coleridge that it was not intended to rely on that legislation.

27. I remind myself at the outset that the onus of proof in relation to each of the factual matters that I mention above, other than the contract issue, rests on Lord Coleridge who must prove his case on the balance of probabilities. In relation to the contract issue the onus rests upon Sotheby's to prove its contract case on the balance of probabilities.

The Contract Issue

28. This issue depends upon evidence that is not or is not materially in dispute. It depends upon whether Sotheby's have proved the existence of a contract between the parties that, as a matter of construction, applied to the advice that is the subject of this claim.

29. Sotheby's pleaded case on this issue is that under cover of an email dated 15th February 2006, Lord Dalmeny sent a draft contract to Lord Coleridge. For the "… *auction sale of the Claimant's personal property (including the Collar) also incorporating the Conditions"*. It is common ground that Lord Coleridge did not sign any contract until 13th October 2006 [C1/34/83-96]. That contract was for the sale of the items of property identified in Schedule 1 to the contract he signed. The schedule did not include the Coleridge Collar because by then Lord Coleridge had agreed with Mr and Mrs Norris that if they were successful in acquiring the house he would sell them the collar at the top end of Sotheby's valuation.

30. The letter sent to Lord Coleridge dated 15th February 2006 refers in terms to an instruction to Sotheby's "… *to offer for sale at auction …"*. The letter is exclusively concerned with the conduct of the proposed auction. The letter refers to the provision of auction estimates but not private treaty sale valuations. It does not refer to advice given in the context of a sale being negotiated by Lord Coleridge with a third party. This is not surprising because no such sale was in contemplation at that date. The letter incorporated Sotheby's standard conditions. It was submitted that the conditions incorporated were those referred to in the agreement between Sotheby's and the Trustees. There do not appear to be any standard terms attached to the letter of 15th February but Lord Coleridge's counsel appeared to accept that these were the terms referred to – see Paragraph 5 of the note concerning the contract issue submitted by way of closing submission.

31. The clauses within the standard terms relied on by Mr Edwards are clauses 3(c) and 4(b) which he submits, correctly, are to be read as one and in the factual matrix in which they came to be provided. Although some of the opening words of the terms are sufficiently wide to be capable of applying the terms to valuations other than in the context of an auction sale, the terms of the covering letter show that at that time nothing other than a sale at auction was in contemplation. Indeed no question of a private treaty sale of any of Lord Coleridge's property had even arisen at that date. That only arose in June 2006. It is thus difficult to see how it could be said that the parties intended that these terms should apply to a situation that simply was not in contemplation at the time. Clause 3(c) provided that any estimate evaluation or report could not be relied on as a value of the item. In my judgment there is no proper basis for saying that this clause was intended to the provision of a valuation for a private treaty sale for the reasons I have identified already. Clause 4(b) of the terms contemplates a sale and only a sale by auction as being the circumstance in which its provisions would apply. It limits liability to "*Net Sale Proceeds with regard to a relevant lot …"*. The Phrase "… *Net Sale Proceeds …"* is defined expressly by reference to the hammer price obtained. This could only apply to goods that have been auctioned.

32. Sotheby's case thus fails in my judgment even on the assumption that they establish their case that the parties operated on the terms of the draft agreement. However I do not accept that to have been established. The fact that a contract was signed only in October 2006, just ahead of the auction, suggests that neither party considered that there was any contract in place before that date. The document that was sent to Lord Coleridge in February appears to be a draft with various incorporated documents missing. It is described as being a draft for his consideration in the email under cover of which it was sent [D1/77-78]. It does not appear to have been followed up and Lord Coleridge's oral evidence does not support the contention that he considered that his

relationship with Sotheby's was governed by the draft. There is nothing in the conduct of either party that unequivocally suggests the existence of a contract prior to the date when Lord Coleridge signed his agreement with Sotheby's. He recalled only the contract that he signed in October.

33. In those circumstances, I conclude that Sotheby's have not established the existence of a contract with Lord Coleridge before October 2006 and in any event if there was a contract as suggested, on proper construction, its terms did not apply to the provision of advice concerning the private treaty sale of the collar. Thus I conclude that Sotheby's has not established an entitlement to rely on its standard conditions as an answer to this claim.

The Breach of Duty Issue - Appraisal

34. At the outset, Mr Munro submitted that I ought to make findings of fact concerning what happened when Mrs Mitchell travelled to the Chanter's House in order to inspect the Coleridge Collar. There is a dispute as to what happened between Mrs Mitchell and Mrs Harcourt-Cooze. Mrs Harcourt-Cooze maintains that Mrs Mitchell appeared rushed, that she undertook a short physical inspection of the piece and gave an oral appraisal to the effect that the piece was late 17th century and had the value subsequently attributed to it. Mrs Mitchell did not accept that was so. She maintained that she was present for about an hour; that she inspected the piece, took some photographs of it and did not then express any views as to the piece. She says that she was not introduced to Mrs Harcourt-Cooze, went as far as to say she thought she was the housekeeper and asserted that she would not express a view on the issues I am concerned with (a) to people she did not know and (b) in any event because she wanted to do some further research.

35. In one sense these issues are not centrally important because it does not matter whether Mrs Mitchell carried out an examination that Mrs Harcourt-Cooze considered hurried or expressed a view at the inspection either as to the age or value of the piece. I say that because (a) no reliance was placed on anything said at the meeting and (b) the issue is not how quickly the inspection was carried out but rather whether the attribution and valuation based on that attribution subsequently supplied to Lord Coleridge was one that was negligent applying the test already identified.

36. I find that Mrs Mitchell did arrive late. I accept that this was in all likelihood because the train that she was travelling on was delayed. The reason for the delay is immaterial. I find that Mrs Harcourt-Cooze was extremely busy that day. She operated the Chanter's House commercially as a party, and in particular a wedding party, venue. Such a party was due to take place the following day. Mrs Harcourt-Cooze was heavily engaged with the preparation of the house for the wedding party. Mrs Mitchell's visit was a distraction from that activity that was heightened by Mrs Mitchell's late arrival. I think that given the circumstances that I have outlined Mrs Harcourt-Cooze was likely to remember Mrs Mitchell's visit very clearly and in my judgment did so rather more clearly than did Mrs Mitchell. On this issue I prefer the evidence of Mrs Harcourt-Cooze over that of Mrs Mitchell.

37. I find that Mrs Harcourt-Cooze was deeply distressed at the prospect of the sale of what was her home and the place from which she conducted her business. She clearly

harboured a hope that the collar would prove of sufficient value to enable it to be sold and for the sale of the house to be postponed or avoided. I consider that in those circumstances she would be acutely interested in the likely value of the chain though perhaps less interested in its provenance other than to the extent that it impacted on its value. In those circumstances I consider it highly likely that she would remember anything said by Mrs Mitchell concerning value if she said anything about it. I find that Lord Coleridge was an honest witness whose evidence was in every respect fair and objective. He confirmed that his daughter had reported back to him concerning Mrs Mitchell's visit. His evidence confirms that Mrs Harcourt-Cooze told him that (a) Mrs Mitchell arrived late and (b) her views as to value. I consider that this provides corroborative support for Mrs Harcourt-Cooze's evidence on the issue I am now considering.

38. There is one final point that persuades me that Mrs Harcourt-Cooze'e evidence on this issue is to be preferred. As she is the first to admit, she is not an expert on medieval Collars. However she says in her statement that Mrs. Mitchell commented on "… *the lack of a Tudor Rose …"* I think this is likely to be a reference to the lack of enamelling because there was self evidently a Tudor Rose on the Coleridge Collar albeit one that is not enamelled. Mrs Mitchell says in her statement (Paragraph 10 [B76]) that she would have expected the rose to be enamelled if the collar had been Tudor. I think it is almost certain that Mrs Mitchell articulated that thought and that is what Mrs Harcourt-Cooze is recalling. Thus, contrary to what Mrs Mitchell says there must have been some conversation concerning at least the provenance of the Collar in Mrs Harcourt-Cooze's presence. I am sure that if Mrs Mitchell discussed that level of detail she would have expressed a view as to the effect on value of the Collar not being Tudor.

39. In those circumstances, I reject Mrs Mitchell's evidence that she thought Mrs Harcourt-Cooze was the housekeeper as inherently improbable. I reject her evidence that she did not mention value to the extent asserted by Mrs Harcourt-Cooze because it is inconsistent with the evidence of both Mrs Harcourt-Cooze and her father, and because it is inconsistent with the discussion concerning the Tudor Rose element of the Collar and therefore unlikely to be correct. I accept however that any views concerning value expressed by Mrs Mitchell were provisional even if that was not made clear. Had they not been then Mrs Mitchell would not have continued with her researches following her return to London. I reject the notion that her examination was hurried. Mrs Harcourt-Cooze was not qualified to make that judgment and, as Ms Campbell showed, she needed only about 10 minutes in order to arrive at a provisional view, which in my judgment was all that Mrs Mitchell was doing at that stage. The time required to arrive at such an assessment depended on knowledge and experience and Mrs Mitchell was knowledgeable and experienced in her field.

40. *The Expert Witnesses*

As I have mentioned already each side relied on expert evidence to advance or rebut the allegations of negligence made by Lord Coleridge against Sotheby's. Professor Sir John Baker and Mr Wynyard Wilkinson were called on behalf of the Claimant and Mr Charles Truman on behalf of the Defendant. Both Mr Wilkinson and Mr Truman were subjected to sustained attack both in cross-examination and in closing submissions. Before I turn to the breach issue in detail, it is necessary at this stage that I set out my

views concerning each expert and the degree to which I could safely rely on the evidence given by that witness.

41. Professor Sir John Baker is an eminent expert on English Legal History. His evidence was not challenged in any material particular. His report is comprehensive, comprehensible, balanced and objective. I can safely rely on its contents without qualification and do so to the extent necessary to resolve the issues that now matter. No one suggests that all the material set out by Sir John was or ought to have been known to or was accessible by Sotheby's in general or Mrs Mitchell in particular. Thus while the report is required reading for an understanding of the surrounding historical context, and may provide added support for conclusions reached by Mrs Mitchell on the material available to her at the time she carried out her work, it would be wrong to conclude that Sotheby's advice was negligent by reference to the material referred to by Professor Baker to the extent that Mrs Mitchell did not have access to that material and could not reasonably be expected to have access to it.

42. Mr Wilkinson describes himself as being a scholar and merchant of 40 years standing dealing in early English Scottish and Irish silver. He has written two books on Hallmarks, three on colonial Indian silver and various articles. He is a fellow of the Society of Antiquaries of Scotland, he lectures regularly to organisations concerned with antique gold and silver and he has in the past provided consultancy support for museums both here and abroad in connection with the acquisition and presentation of their silver collections. He says of his skills acquired over the years that "*… it is this knowledge, gained over decades through first hand examination and handling of countless hundreds of previous pieces, the likes of which have ceased to appear in the market place, enhanced by the commentary of [Mrs G.E.P. How] the foremost expert on the subject, which makes me uniquely qualified to offer my opinion on early English silver and gold objects.*". It is worth observing at this stage that Mr Wilkinson does not have, or claim to have, any experience working as an appraiser employed by an international auction house specialising in fine arts and antiques. This may be a significant omission given the test that has to be applied in deciding whether Lord Coleridge has proved a breach of duty.

43. Mr Charles Truman was employed at the V&A until 1984, when he was appointed head of Christie's Silver department. In 1985, he was appointed a director. In 1990 he left Christie's to head Asprey's antiques department. Since 2000, he has traded on his own account as a dealer and consultant in antique gold and silver amongst other things. He is a past chairman of the British Antique Dealers Association, a Fellow of the Society of Antiquaries, a liveryman of the Goldsmith's company, a former member of the Antique Plate Committee of the Goldsmith's Company, and a past chairman of the Silver Society. He has written extensively including an edition of a Concise Encyclopaedia of Silver published by Sotheby's. He was cross-examined about his connections with Sotheby's. He told me and I accept that his only connection (aside from his appointment in connection with this case) is in relation to the Encyclopaedia. He was cross-examined on the basis that he was an advocate for auction houses. He denied it, there is no evidence that supports such an assertion (other than his evidence where it differs from that of Mr Wilkinson) and I reject it. As will be apparent from what I have said already, unlike Mr Wilkinson, Mr Truman does have extensive knowledge and experience of international auction house specialising in fine arts and antiques. It was

put to him that he ceased to work in that area of activity in excess of 20 years ago. He agreed. He maintained that nothing of substance relevant to this case had changed.

44. Neither Mr Wilkinson nor Mr Truman were entirely satisfactory witnesses and each party's counsel attacked the credibility of the other's expert with vigour. Mr Edwards went as far as to describe Mr Wilkinson's evidence as a "*disaster"* and Mr Munro attacked the evidence of Mr Truman both in the manner I have described already and in particular by reference to a matter of detail concerning a petition by a goldsmith to the Crown for relief from the effects of the gold standard legislation passed in 1575.

45. Mr Truman had a tendency to make debating points rather than confining himself to giving answers that could be supported by reference to his knowledge and experience. This is bound to undermine to a degree the confidence that I can safely place in everything that he said. He was not always willing to make concessions as and when they should have been made. I do not intend to describe the evidential issue that arose concerning the 1575 legislation at this stage. I return to the issue when I consider the substantive point below. However subject to these caveats I conclude that Mr Truman is a knowledgeable expert in his field who did his best to assist me to resolve the issues that arise whilst at the same time being to some extent at least indignant at what he regarded as a clearly unmaintainable allegation. On occasion he expressed himself in slightly intemperate terms in relation to propositions put to him by counsel but in my judgment he did so largely because he regarded the particular proposition being advanced as absurd. A particular example concerned what Mr Munro referred to as "market research". I return to that issue later in this judgment.

46. Mr Wilkinson is extremely experienced in his field but in my judgment his evidence in this case was confused and contradictory at least in part, and on occasion was indefensible. A clear illustration of the difficulty concerns the Great Debasement theory to which I have referred already. It was the basis on which Christie's offered the Coleridge Collar to the market on the basis primarily of assertions to that effect on behalf of Mr and Mrs Norris by Mr Duncan Campbell who had been engaged by them for a fee and commission to advance that case. It was the sole basis on which this claim was advanced on behalf of Lord Coleridge until December 2011, when the emphasis changed to a new theory based on the 1575 statutory gold standard. Mr Wilkinson apparently supported the claim based on the Great Debasement theory in each of his written reports. In paragraph 25 [B/164] of his initial report, Mr Wilkinson appears to support this theory. He did not abandon it but sought to extend his evidence on the issue in Paragraph 2 of his Responses to Rule 35.6 Questions submitted to him [B/191]. He did so notwithstanding that he was aware that Sir John Baker's evidence was that there was no evidence to show whether or not collars of Ss were given to judges by the crown [B/192] and in terms that implied that he disagreed with Sir John. Finally he returned to this issue in his most recent report dated 30th January 2012, where he says *"…that it was normal practice for the King to order collars as gifts and that in my opinion is how the Coleridge Collar first became the property of a chief Justice of the Common Pleas"*. At trial, Sir John maintained his position on this issue as is clear from this exchange:

> "Q. So it would not be right, would it, to say that the collars were ordered by the King and sums of money and coin were ordered from the mint in order to forge new collars for the chief justices?

> A. I have know of no evidence of that. It is not inconceivable that the earliest collars were gifts from the crown, but there is no evidence that I am aware of.
> Q. Would you agree that the evidence is that in the 16th Century the chief justices regarded their chains as personal property to be disposed of as they pleased? In fairness, you have referred to a number of wills, have you looked at wills for all of the judges where wills were available or a selection?
> A. I would say quite a lot. I would not say every one but a large number"

When Mr Wilkinson came to be cross examined on this issue he said this:

> "Q:You were told by Mr. Campbell about his theory that this linked it with the debasement of the coinage at the time of Henry VIII?
> A. Yes. I said at the meeting that I thought that was a little bit hare-brained.
> Q. So you do not agree with that theory.
> A. There is no need to agree with it. 20 carat has been used probably from 1478 to 1576. The argument that the Collar has to have been made during the period that the coinage was debased simply because it coincides with the purity of the coinage that was used for that short period I think is a non-starter quite honestly. I told Duncan that."

The averment that the collar dated from between 1546 and 1551 was deleted from the Particulars of Claim by an amendment made in December 2011 – that is more than a month before Mr Wilkinson signed his supplementary report. An expert witness giving evidence in a CPR compliant manner ought to have made clear in the body of his report that he did not subscribe to the Great Debasement theory. The concession that Mr Wilkinson made in his oral evidence ought to have been made much earlier and in any event ought to have been made clear before cross examination commenced, at the point at which he was given an opportunity to alter or amend his reports. Given the central importance of this issue for much of the history of this litigation, I regard this as having a very serious impact on Mr Wilkinson's credibility as an expert witness on whom I could safely rely.

47. A similar concern arises from Mr Wilkinson's treatment of the manufacturing techniques issue. As will be apparent from what I have said already, this is not in any sense a peripheral issue. It is one of the main planks of Lord Coleridge's case as it is now advanced. Mr Wilkinson says in Paragraph 26 of his initial report that the Coleridge Collar was manufactured using "*… a sixteenth century manufacturing technique …*". His evidence concerning the various methods of casting is contained in Paragraphs 37-39 of his initial report [B/169-170]. He describes what he calls "slush" casting as being the standard method of mass production of metal objects during the medieval period and throughout the 16th Century. He says that this was replaced by sand casting, which he says was common in England from 1600 before it was superseded by the lost wax method from circa 1685. Lord Coleridge's case was opened on this basis – see Paragraph 13 of his written opening submissions.

48. Mr Wilkinson maintained that the lost wax method replaced sand casting and was a Huguenot driven improvement – see Transcript, Day 4, page 531, line 17 and following. However he accepted only a few lines later that the lost wax method had been used in the 16th Century albeit with less impressive results. This differs from what is said in the report where the implication is that the technique had been used and then disappeared in Roman times and only returned in or about 1685. This is not a careful and accurate expression of opinion in a difficult area of central importance in this case.

49. In relation to the Tudor Rose Mr Wilkinson's evidence was equally unsatisfactory. It is common ground that the Tudor Rose is made of gold of 22 carats of fineness. This has to be explained in light of the case now advanced by Lord Coleridge based on the fineness of the gold used to manufacture the remainder of the Collar. It is Lord Coleridge's case that the Rose is a later addition. It is said that this explains why it is made of 22 carat gold and probably explains the absence of enamelling. It is common ground that the Tudor Roses on judicial collars of Ss were enamelled in red and white prior to the restoration. This is apparent from portraits of judges wearing such collars to which I refer in more detail below. Thus the absence of such enamel has to be explained. The explanation relied on now is that the Rose is later than the rest of the collar.

50. Mr Wilkinson's evidence in his report was that the surface of the Rose had been carved and chased and then "*… the field was prepared to receive enamel. This was an altogether later process and may indicate that the rose was a 17th century addition or replacement …"*. The effect that Mr Wilkinson was referring to was the stippling effect that appears on the surface of the rose petals. It appears most clearly from the photographs at C1/10 and 12. However in his oral evidence he said that such stippling first appeared towards the end of the reign of Elizabeth I and was continuously used into the 18th Century – see transcript Day 4/596-7. Thus I am not able to see how the opinion expressed in the report can be supported by the effect to which Mr Wilkinson refers, particularly given the view he expressed to me [T4/498] that "his view of the Rose was "*… I think it has to be later at the very earliest it is going to be sort of 1600."*. In any event others considered the stippling to be decorative and Mr Wilkinson was unable to explain to me why such ornate stippling would be undertaken simply for the purpose of providing a key for the application of enamel. In the end he asserted that it would be more effective that other techniques previously used but there was no academic material produced by him that supported any of this.

51. This confusion worsens in relation to the significance of enamel. It would appear now to be accepted that Tudor roses on judicial collars were enamelled down to the restoration in 1660. Sir John Baker gave evidence concerning what could be discerned from the portraits of judges. At paragraph 14 of his report [B/212] he shows that enamelling of the rose element of judicial collars had disappeared from portraits after 1660. This analysis is supported by the material contained in the bundles of copies of portraits produced in the course of the trial. It is not necessary or appropriate to mention each portrait. However, that of Sir Edmund Anderson (CJCP 1582-1605) clearly shows an enamelled rose on the collar warn by him [Portraits Bundle, p.8]. That is also the case in relation to the portrait of Sir Henry Hobart (CJCP 1613-1625) [Portraits Bundle, p.13]. It would appear to be so for Sir Edward Coke (CJCP 1606-1613) – see the Portraits Bundle p.10-11. It appears to be the case in relation to Sir Robert Heath (CJCP 1631-1634) [Portraits Bundle p.20] and is certainly so in relation to the portrait of Sir

John Finch (CJCP 1634-1640) – see the Portraits Bundle, p.22. Whilst the position is not entirely clear in relation to the portrait of Sir Edward Littleton my view is that the portrait of him included in the bundle shows him wearing a collar that has an enamelled rose [Portraits Bundle, p.24]. Mr Wilkinson's evidence was all focussed on a suggestion that the Rose on the collar could be dated to a period prior to the civil war because it had been made in a manner designed to receive enamel. However that was not Lord Coleridge's case at trial which was the collar save for the rose dated back to at least the early 17th Century and that the rose had a separate history having been made out of different gold using a different technique – see Paragraph 18 of the Claimant's written opening submissions.

52. Aside from that there were other aspects of Mr Wilkinson's evidence that undermined the confidence that I consider can safely be placed in it. In answer to virtually the first question in cross examination [Transcript, p/382] he was unable to explain which judge he had been referring to even though he had made a mistake in referring to the copious writings of Lord Trevor. There were other parts of his evidence that were incoherent and incapable of being understood – a classic example is that relating to the knowledge he claimed to have obtained from carrying out metallurgical testing of an object he was appraising – see Transcript, p.404-5. Although at an early stage in his evidence, Mr Wilkinson was anxious to impress upon me how seriously he took the role of an independent expert, in my judgment he more accurately expressed his true understanding of his role when in an unforced remark he commented that *"…I am here to express one side of an argument in a courtroom …"*

53. I have concluded that on balance Mr Truman is the expert on whose evidence I can most safely rely on where the two experts' assertions differ and are uncorroborated by contemporaneous or academic material. Where there is such material, I have tested the evidence of each against such material as there is and resolved such differences by reference to that material. Whilst I have acknowledged the deficiencies of Mr Truman's evidence in relation the effect of the statutory gold standard imposed in 1575, I do not regard his failure to concede that point as quickly as he ought to have done as being of the same importance as the deficiencies I have identified in the evidence of Mr Wilkinson. Those deficiencies were much more fundamental. Further, in relation to auction house practice I consider that Mr Wilkinson was not able to give any first hand expert evidence because he had never worked as an appraiser for such an organisation.

54. *The Claimant's Allegations Concerning Sotheby's Appraisal*

The Claimant's case is that no reasonable Appraiser in the position of Mrs Mitchell would have given an unqualified attribution of manufacture in the late 17th Century on the basis of the material available. At best she ought to have acknowledged the possibility of the collar being manufactured before 1576, that she ought to have advised that before a conclusion could be reached the piece ought to be assayed and that a proper reading of the literature ought to have led her to at least acknowledge the possibility that the chain was Tudor in origin. In the end it was the gold content and method of manufacture issues that it was submitted were of critical importance and which had been negligently ignored. As Mr Munro put in his closing submissions [Transcript D5/785] " … *what she should have known was the gold content. What she should have known was the method of manufacture* … [which ought to have led her to say that the collar was] …*probably Tudor"*. It was submitted that the method of

manufacture was obvious on a proper examination of the Collar, as was the fact that the Rose was likely to be of a different age to the rest of the Collar.

55. It was submitted that on a proper review of the literature it was apparent first that no reliance should have been placed on the article written by Mr Riches, which it was submitted, was what led her into error in combination with reliance on one portrait alone. No expert of reasonable skill would have relied on Mr Riches's article [E/44] because (a) as Mrs Mitchell knew or ought to have known this to be the only article that he had written, (b) he was not an antiquarian or a historian, (c) some of the points made in the article were wrong on their face and (d) because the views expressed in the article were based on one portrait and the premise that the collar had not been altered. It was submitted that had Mrs Mitchell considered the views of Mr Claude Blair (someone described as being one of the foremost experts in the field who was alive in 2005 and 2006 but has since died) then she was bound to have acknowledged at least the possibility that the Coleridge Collar was Tudor. Finally, it was said that Mrs Mitchell failed to compare the Coleridge Collar with the Gilbert Collar, which it is common ground dated from 1660. Had she done so, it is asserted that she would have discovered that the Gilbert Collar was better and more finely manufactured and thus that it was likely that the Coleridge Collar had been made earlier.

56. Specifically in relation to value, it was said that no appraiser of reasonable skill and competence would have arrived at a value without undertaking what was described by Mr Munro as "market research" – which it was alleged would have involved showing or describing the Coleridge Collar to expert dealers and canvassing their opinion as to its value and seeking information from private purchasers of comparable works or those who had sold them as to the prices at which those articles had been bought and sold or their insurance value. I return to this issue when I turn to the question of valuation later in this judgment.

57. As I indicated earlier, Mr Munro indicated that in the alternative to his case that Sotheby's ought to have concluded conclusively that the Coleridge Collar was Tudor in origin, it ought to have concluded that such was either probably or possibly the case. I pressed Mr Munro to set out precisely the terms in which he alleged Sotheby's ought to have appraised the Collar. He was markedly reluctant to do so and in the end only did so in his submissions in reply in these terms:

> "She should have put forward two possible views. One possible view is that the Collar post-dates the Restoration, and this is what my learned friend had to say about that. He said that the only points which justify that are a 1701 date. That was not actually referred to by Mrs. Mitchell. In her catalogue entry sticks with the 1714 date. The 1701 date, apparently, derived from Foss. "No enamelling", and that is it. So that is the possible view as to post-Interregnum. The view as to the "Tudor period", in summary, is as follows. There is a long-standing legal tradition referred to in all the scholarly literature, save for Riches, that this Collar is the oldest of all known judicial collars of esse and dates back to the Tudor period. She could have referred expressly to Bonner and Purey-Cust in that regard. It is, however,

> impossible to date the Collar using current scientific processes. Science is not sufficiently advanced to date this Collar. No historical record exists proving this Collar's provenance before it came into the possession of John Duke Coleridge in the late 19th century. The dating is, to a certain extent, uncertain. However, there are many reasons why the tradition may well be true. The gold content of 20 carats of the esses, knots and portcullis means that it would have been illegal to make those parts of the Collar between 1576 and 1798, when the minimum gold standard was 22 carat. It is unlikely that those elements of the Chief Justice's Collar were produced illegally and sub-standard. The rose is 22 carat and unenamelled. It may well be a post 1660 edition to the Collar. The esses, knots and portcullises appear to be significantly older. Those of a similar 1660 collar, that of the Chief Baron of the Exchequer in the Gilbert Collection, are made of a higher standard and by a more sophisticated method of manufacture.
>
> …
>
> The date of manufacture is, to a certain extent uncertain but the Collar is believed to be "probably Tudor" rather than dating from any other period, for the reasons set out above. Auction estimate, if you are interested in this:
> £200,000 to £300,000"

Given the point at which this formulation emerged, it necessarily follows that it was not put to any of the witnesses in these terms with the result that none of them and in particular neither Mrs Mitchell or Mr Truman was given a fair opportunity either to consider it or comment upon it and it also follows that there was no evidence from which any conclusions can be drawn as to what value ought to have been attributed to a piece so described. In any event, I accept the evidence of Mr Truman that a description of an item as being "possibly" Tudor would not inspire potential purchasers to bid at auction on the basis that the piece so described was or was probably Tudor. It was certainly not the basis on which bids were invited by Christie's for the Coleridge Collar for example. In my judgment if Lord Coleridge is to succeed on his primary case he must prove on the balance of probabilities that no reasonable appraiser in the position of Mrs Mitchell would have appraised the Coleridge collar other than on the basis that it was or was probably manufactured before 1576.

58. Sotheby's case is that Mrs Mitchell's appraisal was one that a respectable body of appraisers in her position would have arrived at given what could be discerned from an examination of the collar, from such literature as was available to her, the effect of the pictorial record and her assessment of the chances of a pre Civil War collar surviving that conflict and the interregnum that followed. It is submitted that her analysis is supported by the lack of any original evidence of continuity in the handing down of a Collar of Ss from Chief Justice to Chief Justice before the end of the 17th Century at the earliest, by the positive evidence of a lack of continuity of transmission during the Tudor period, by the fact that there was a period between 1644 and 1648 when there was a vacancy in the office of Chief Justice Common Pleas and by the fact that there is

evidence of new collars (the Gilbert Collar) and other regalia being made after the Restoration.

59. It is submitted by Sotheby's that the claim that no reasonable appraiser in Mrs Mitchell's position would have failed to advise that the Collar should be assayed before a final conclusion as to the date of manufacture was arrived at should be rejected because at least a reasonable body of experts in the field would have regarded any conclusions to be derived from such an examination as an unsound basis for reaching any conclusions concerning the age of the Collar.

60. In relation to manufacturing technique Sotheby's case is that at least a respectable body of relevant experts would have concluded that the method of manufacture used was one that was used throughout both the 16th and 17th Centuries (in common with others at various stages during that period) and thus of itself or in combination with other evidence would not have assisted in arriving at a date for the piece. In this regard Sotheby's maintain that had a comparison between the Gilbert Collar and the Coleridge Collar been carried out it would have revealed that the same method of manufacture had been used.

61. The conclusion reached by Mrs Mitchell is submitted to be consistent with the evidence to be derived from the portrait evidence when reviewed as a whole. If and to the extent that all the relevant portraiture was not reviewed by Mrs Mitchell it does not assist the Claimant because such a review has been carried out by Sir John and there is nothing he has been able to comment on that leads to any different conclusion.

62. If and to the extent that her reliance on the article by Mr Riches and/or the writing of Mr Edward Foss, on which it was submitted Mr Riches based his views, was misplaced, that is nor relevant or helpful to resolving this case because even if that had been left out of account it would not have led to any different conclusion.

63. Overall, it is submitted on behalf of Sotheby's that the conclusions reached by Mrs Mitchell as to the age of the Collar was a view that a respectable body of professionals in the relevant field would have arrived at and Lord Coleridge's assertions to the contrary ought to be rejected.

64. *Irrelevant Material*

There is some material to which the parties referred in the course of the trial which in my judgment does not assist in deciding whether Sotheby's acted in breach of duty as alleged or assists only to a narrow or limited extent for the reasons I set out below.

i) *The Interregnum Portraits*

a) Sotheby's placed some reliance on the fact that the pictorial evidence showed that during the Interregnum, the Chief Justices of the Upper Bench (as the Kings Bench was called during the Interregnum) wore Collars of Ss that were significantly different from those that had been worn before the Civil War. Whilst the factual premise of the suggestion is true – see the copy portraits at Pages 74-5 of the Portraits Bundle compared with those of the pre Civil War CJKBs for example at p.70 – I do not consider direct assistance can be obtained from this material. The

position of the Upper Bench may have been different given its previous particular association with the Crown and there are no portraits of which I am aware that show a CJCP in robes during the interregnum period. The chain worn by Sir John Bankes (Portrait Bundle, p.27) shows him wearing a collar of conventional design and that of Oliver St John does not show that judge wearing robes (Portrait Bundle, p.28). Sir Orlando Bridgman became CJCP on 22nd October 1660. The only portrait of him available to me (Portrait Bundle, p.29) shows him wearing a conventionally designed collar.

b) It is worth noting however, that the portraits of the judges of the Upper Bench that are available (Portraits Bundle pp.73-75) appear to show roses that were enamelled whereas that of Sir Orlando Bridgman appears to show him wearing a collar that is un-enamelled. This provides support for the notion that it was only after the restoration that the Tudor Rose element of judicial collars ceased to be enamelled.

ii) *The Claude Blair Article*

a) The Claimant relies on the terms of this article as justifying an assertion that no reasonably competent appraiser would have failed to suggest in an appraisal that the Coleridge Collar was "*possibly Tudor"*. This is based on the contents of an article in the Journal of the Society of Antiquaries published in 2008. However the article does not support such a construction and in any event post dates by of the order of two years the appraisal of the collar by Mrs Mitchell. Even if it could be said that Mrs Mitchell should have contacted Mr Blair and that if she had he would have told her what he says in the article that still does not assist in establishing Lord Coleridge's case.

b) The cause of the article is the offer of the Coleridge Collar at auction by Christie's in the terms set out earlier in this judgment. Mr Blair is reported as rejecting the notion that the Collar could be dated so accurately but more generally in relation to the assertion that the Collar is Tudor says only that "… *since* [Lord Coleridge CJ] *would have received the Collar from his predecessor, who would have done likewise, and so on, it is perfectly possible that it is Tudor in origin but since it is made to a standard pattern it is impossible to date it by examination alone."*. Mr Blair said that he had examined the Collar in 1978.

c) As to this (1) the article is nothing more than light weight commentary on something that was of current interest to antiquaries at the time, (2) the article does not assert in any meaningful way that the Collar is Tudor in origin, (3) the assertion that it might be is not seriously credited, and (4) is advanced only as a theory on the mistaken premise that a single collar was passed from office holder to office holder from some undefined date in the Tudor period. It is clear that such an assertion cannot be justified as a consistent practice for any period prior to the 19th Century. The theory that was the stimulus for the comment was that set out in the Christie's catalogue namely that the Collar was made between

1546 and 1552. That theory was based on the assumption that the collar was manufactured during that period out of smelted gold coin provided by the mint pursuant to an order issued by or on behalf of Henry VIII during the period of the Great Debasement. That theory was the basis of this claim only down to December 2011 when it was abandoned by amendment of the Particulars of Claim. It is the theory that Mr Wilkinson described in the course of his oral evidence as "*hare brained*". Finally, there is nothing in the article that supports the theory now relied on by the claimant in these proceedings.

d) In my judgment, the suggestion that a reasonably competent appraiser would base an appraisal (even in part) on the contents of this article (whether as a result of reading the article or from a conversation to similar effect with Mr Blair) is wholly unsustainable.

65. *The Assay of the Collar*

One of the key elements of Lord Coleridge's case is his contention that the Collar should have been assayed, or he should have been advised that it should be assayed, before a conclusion could be arrived at as to its date of manufacture. There are three issues which arise being (a) what such testing would have revealed (b) what conclusions relevant to the date of manufacture could properly be derived from the results of assay testing either of itself or in combination with other factors and (c) whether no reasonably competent appraiser would have arrived at a conclusion concerning the date of manufacture of the Collar without first arranged for it to assayed. Although in some ways the last question is the only question that matters, it cannot be answered without first considering the first two.

66. I am content to assume for present purposes that had Mrs Mitchell advised that assay testing be undertaken before a formal valuation was given then that would have been facilitated and that if it had been undertaken, it would have revealed the metallurgical information set out in the report that is attached to Mr Walne's witness statement [B/120] namely that the portcullises were of 20 carat 2 grain fineness, that the Ss links were of 20 carat 1 grain fineness and the Tudor rose was of 22 carat fineness. It is common ground that the age of the gold used cannot be dated by scientific examination and even if it could be that would not assist materially because of the age old practice of melting down gold and using it to manufacture new articles. Put very simply if a pair of gold candlesticks manufactured in 1540 were melted down and used to cast the elements of a Collar in 1680, the fact that the gold was first used in 1540 does not lead to a conclusion that the collar so manufactured should be dated to that year, even if the factual premise could be demonstrated. Thus any benefit from an assay examination depends on deduction from the information that is revealed. The process will be vital to hallmarking new products. Its value for dating old ones is limited for this reason.

67. I am also content to assume that it would not have been possible to ascertain what trace elements were present in the metal by undertaking such testing. This is significant because by the end of the evidence it was common ground that gold used in the manufacture of products after 1703 tended to have significant trace quantities of Palladium in it. The reason for this is that in that year Britain established very strong trade links with Brazil and imported a substantial quantity of gold from that country.

Gold from Brazil has significant quantities of Palladium in it but the gold used in Britain before then did not. Thus if it could be demonstrated that the gold used in the Coleridge Collar did have significant quantities of Palladium within it, it could be said with some confidence that the Collar probably dated from after 1703 even though the absence of such material would not support the conclusion that it was manufactured before that date for reasons already identified. The assay report in respect of the Coleridge Collar produced by Mr Walne contained the statement that "*It was not possible to determine any trace element content due to the limitations of the test method"*. It was in relation to this issue that Lord Coleridge sought and obtained permission to recall Mr Walme. As I have said, in the end, Mr Walme was not recalled. I conclude therefore that there is no evidence that assaying the Collar other than invasively would have revealed the existence of trace elements. In any event, the point is of no practical significance in this case since neither party contends that the Collar was manufactured after 1703. There was some discussion in the course of the evidence to the effect that Cadmium in gold is indicative of 19th century manufacture. The point is entirely is entirely irrelevant because it is not suggested by either party that the Coleridge Collar was manufactured in the 19th Century.

68. The Claimant's case is that the information that would have been and was obtained from assaying would have enabled Mrs Mitchell to say with confidence that the Collar or at least all of it other than the Rose was or was likely to have been manufactured prior to 1576. The basis of this assertion was what was said to be the effect of the Marking Plate Act 1575.

69. Gold and silver are soft metals and in order to make them useable for practical purposes it is necessary to alloy them with other metal elements. During the period prior to 1700 only two metal elements were used for these purposes when making gold alloy – silver and copper. The need to create a gold alloy as a precursor to manufacturing a gold item created the obvious risk that either a dishonest goldsmith or jeweller might defraud a customer by claiming an object was made of gold of a greater purity than was in fact the case or that such a goldsmith might conspire with a customer to create such objects. Such a risk was one that not only gave rise to the risk of private fraud but also created risks to sound administration throughout the period I am concerned with because the value of Emglish currency was based on the value of gold which in turn was premised on the gold concerned being of defined purity. This risk was perceived from at least the mid 13th century.

70. The minimum statutory level of purity from 1477 was 18 carats by operation of a statute to that effect promulgated in that year by Edward IV. There is some evidence that the Goldsmiths Company imposed a higher standard of 20 carats for some years prior to 1564. However that standard was widely ignored and a sample test by the Goldsmiths Company in 1572 suggested that 11 out of 53 workshops were working at a purity level that was below the statutory minimum of 18 carats.

71. The Marking Plate Act 1575 provided that with effect from 20th April 1576, "*…no goldsmith … shall work sell exchange or cause to be wrought sold or exchanged any plate or other goldsmith wares of gold less in fineness than that of two and twenty carrects …and that they shall take not above the rate of 12 pence for the ounce of Gold besides the fashion more than the buyer shall be allowed for the same at the Queen's exchange or mint …"*. The 1575 Act remained law until 1797.

72. The effect of the 1575 Act is relied on by Mr Wilkinson as one of the factors, and the most important single factor, that point to the Coleridge Collar having been manufactured prior to 1576. His evidence is that it is fanciful to suggest either that a Chief Justice would conspire with a goldsmith to produce a chain of less than lawful purity or that a goldsmith would defraud such an office holder by manufacturing a chain of less than lawful quality. He fortifies this submission by a suggestion that it was common practice for the wealthy of 16th and 17th Century England to test gold and gold items by use of what is known as a touchstone. The method is described in *Hallmark – a History of the London Assay Office* by JC Forbes in these terms:

> "The gold or silver article is rubbed on a smooth black stone to produce a narrow streak of the metal. Then a similar streak was made alongside using an alloy of known purity called a touch needle. The colours of the two streaks were compared. Quite small differences could be detected …"

Mr Wilkinson's point was that the prevalence of touchstone testing of gold items meant that the risk of discovery was a high one. However that has to be balanced against the probability that a piece as monumental as the Collar would be manufactured to order using gold supplied by the commissioner of the piece as was common practice in the 16th and 17th Centuries. That being so it is unlikely that the Collar would be tested unless the person commissioning the piece suspected he had been the victim of fraud. Since the person commissioning the piece was likely to the Chief Justice of the day this is of itself inherently improbable.

73. At the time when Mrs Mitchell was carrying out her appraisal, and for some years before, fineness could be determined without physical damage being inflicted on the object being tested by X-Ray Fluorescence Spectroscopy – the method adopted by Mr Walme. It is this method that was described by Mr Duncan Campbell as quick easy and cheap [B/34] and by Mr Walme as being a UKAS accredited method that was fully traceable to certified standards thus ensuring the accuracy of any results [B/51]. As he points out however the test does not enable gold to be dated. It is this method that Mr Wilkinson maintains that Mrs Mitchell should have advised be carried out in this case.

74. Mr Wilkinson says that he has checked the records maintained by the Goldsmiths Company of Wardens' searches between 1576 and 1696 and has been unable to find any instance of below standard gold that is *"… much more than one carat below the required standard"* [B/164]. The examples referred to by Mr Wilkinson suggest that even products that were less than ½ carat off the relevant standard were seized and destroyed. These records were not produced in copy, nor were they the subject of detailed analysis save to a limited extent in his supplemental report where he refers to entries for goods that were seized for being below the relevant standard and either defaced or broken up – see B/359. This material even if taken at face value suggests that some debasement occurred after the Act came into effect.

75. Mr Truman did not dispute most of this evidence – see Paragraphs 76-81 of his first report [B/241]. His evidence was however that the *"… Act was deemed unworkable for gold …"*. He was asked by whom such was deemed to be the case. He answered variously the Goldsmiths Company or goldsmiths generally. There would not appear to be any evidence to support the former assertion. As I have said what evidence there is

suggests that the Goldsmiths Company was assiduous in condemning pieces that it found to be only marginally less fine than the statutory requirement. As I noted when considering Mr Truman's standing as an expert he is a liveryman of the Goldsmiths Company and a former member of its Antique Plate Committee. If he had wanted to check what Mr Wilkinson said concerning the records of the Goldsmiths Company subsequent to 1576 he was well placed to do so. Thus I infer that he accepts what Mr Wilkinson says concerning their contents to be an accurate summary. In those circumstances I conclude that the Goldsmiths Company enforced the 1575 Act in relation to pieces that were only marginally less than the statutory level of fineness. However for reasons that are set out below I also conclude that enforcement was sporadic and depended upon either complaint by customers or detection by pieces purchased for testing by the Goldsmiths Company.

76. I now come to why Mr Truman considers the information relating to purity to be in essence unhelpful to an appraisal of the Collar. When setting out my conclusions concerning the weight that could safely be attached to the evidence of Mr Truman I referred to him being unwilling always to make concessions as and when they should have been made. One of the points he makes in purported support of the proposition that the 1575 Act was "*… deemed unworkable for gold"* [B/242] concerned a petition to the Crown for relief from the effect of the 1575 Act by a John Mabbe, which was granted. The clear implication of what Mr Truman said in his report is that the effect of the grant of relief sought by Mr Mabbe was that he was exempted from the effect of the Act prospectively. That is not the case. The terms of the Petition make it clear that the pieces in respect of which relief was sought were made before not after the coming into effect of the Act. Thus the presentation of the Petition does not support the proposition advanced by Mr Truman. Mr Truman did not concede this point as soon as either he could or should have – see Transcript, p.649-654.

77. Notwithstanding that I do not accept Mr Truman's analysis of the effect of the Mabbe Petition, I do accept that there is a significant amount of evidence that suggests that even significant pieces were manufactured of gold that was below statutory standard after the 1575 Act took effect.

78. Mr Truman refers to a gift made to the Queen in 1587 of two chains each of which was less than 22 carats of fineness. His point is that this showed that gold below statutory standard was being made and that the Crown knew such to be the case. Mr Wilkinson suggested various possible explanations. First he says that it is only under standard pieces where the fineness was noted in the records. That may well be so but does not provide an answer to the point being made by reference to the gifts concerned. Secondly he says that the pieces could have been made aboard. There is no evidence to support such a theory. Thirdly he says that the items could have been made before the coming into effect of the Act. There is no evidence to support that speculation either. The date of the gift (1587) suggests it is unlikely to be correct.

79. The final example relied on by Mr Truman as supporting the proposition of widespread disobedience to the 1575 Act concerns the Cheapside Hoard. In my judgment this provides strong evidence supporting the proposition that after 1575 items were manufactured using gold that was less and on occasion significantly less that the statutory minimum standard of fineness. The Cheapside Hoard was a large quantity of pieces manufactured using gold silver and precious stones. Cheapside was the centre of

the goldsmith and jewellery trade in the 16th and 17th Centuries. It was close to Goldsmiths Hall and many of the properties located there were owned by the Company and leased to goldsmiths.

80. Mr Truman's evidence at Paragraph 64 of his initial statement concerning the fineness of the gold used in the products constituting the Hoard is not in dispute. He makes the point that 161 items from the Hoard were tested, of which only 2 were of 22 carats with the rest being as to 73 pieces, 19 carats, as to 9, below 19 carats and the remainder a variety below 19 carats. This is said by Mr Truman to demonstrate that *"…the standard of gold sold by a single goldsmith suggests that the metal used came from a number of different sources …"*.

81. Although Mr Wilkinson attempted to explain this material away on the basis that the items concerned were either of foreign or pre Act manufacture, that analysis does not accord with that of the published expert on this find Ms Hazel Forsythe who Mr Wilkinson accepted described the Hoard as being of London manufacture based on her analysis of the style of the pieces and the craftsmanship although some pieces were imported. I prefer this analysis to that of Mr Wilkinson where the two differ. Ms Forsythe described the Hoard as consisting of the stock in trade of a working goldsmith. I prefer this conclusion over that of Mr Wilkinson. This accords with Ms Glanville's published analysis, as Mr Wilkinson (reluctantly) accepted – see Transcript, p.424, line 7 -427, line 2.

82. Ms Forsythe considered that many of the pieces were 17th Century. Mr Wilkinson did not disagree – see Transcript, p.427. Mr Wilkinson accepted in the course of his cross examination that if the Cheapside Hoard had been tested, the results (namely that most of the pieces were beneath the relevant standard) ought not to have led to the conclusion that the pieces were made before 1576. When this point was put to Mr Wilkinson he said first that the pieces were foreign and then that they might have been buried because the Wardens of the Goldsmiths' Company were banging on the door – see Transcript, p.431. This was queried by Mr Edwards on the basis that it had not been suggested before – to which Mr Wilkinson replied, *"I have only just thought it up"*. This is yet another illustration of why Mr Wilkinson's evidence cannot safely be accepted. The point put to him and which he was unable to answer sensibly was in my judgment a telling one.

83. The impression to be gained from a consideration of the Cheapside Hoard is consistent with some information that is noticed at p.89 of one of the standard works in this area – *Scarisbrook: Jewellery in Britain* – where the author refers to a goldsmith (or as Mr Wilkinson maintains, a pawnbroker) who died in 1593 leaving an inventory of stock consisting of items manufactured of gold of 11 different degrees of fineness. Mr Wilkinson was keen to explain this away on the basis of it being old stock or items acquired from foreigners or manufactured overseas. All of this may be true but there is no evidence to support it. The date of the inventory is some 16 years after the 1575 Act took effect. In the nature of things at least some of the objects are likely to have been manufactured in England after the Act. Further even if it is correct to describe Mr Herrick as being a pawnbroker (and there is an issue about that because there is an alternative view that in common with many goldsmiths of the period he was both), it is of the essence of that trade that ultimately the broker may have to sell the items

concerned. If the items were of less fineness than prescribed by law, to sell them would involve a breach of the 1575 Act.

84. Not surprisingly, Sotheby's place significant reliance on this material as demonstrating that jewellers working in London significantly later than 20th April 1576 routinely made and sold pieces that were made in breach of the 1575 Statute and that such activity was not confined to minor and small pieces. Although it was submitted that the inferences to be drawn from the Cheapside Hoard are limited in scope to the practices applicable to the manufacture of small pieces, and that whatever might have occurred in that area, it is of no application to the manufacture of a piece commissioned by or for a Chief Justice for use as part of his official regalia, in my judgment this point was not made good.

85. First, it is to be noted in passing that a number of the pieces within the Cheapside Hoard were of high quality being described by Ms Forsyth in her book on the Cheapside Hoard as *"… articles of great rarity and value which would have been acceptable royal gifts"*. Secondly, there is evidence that establishes that pieces of the finest quality were manufactured from gold that was below statutory standard in the post restoration part of the 17th Century and in circumstances that suggest fraud on the part of the goldsmith is a unlikely explanation. Two have been drawn to my attention. One is known as the Bowes Cup. It was manufactured during the reign of Charles II and has been dated to 1675-6. The maker was a leading German goldsmith working in London under the jurisdiction of the Goldsmiths' Company. Unusually it has a full set of hallmarks. It is noteworthy that the V&A notes in relation to this item record that "*in 1675 there were many complaints about plate of low standard gold and silver …"* This was put to Mr Duncan Campbell in the course of his evidence and he agreed with this summary – see Transcript, p.139. Significantly, in an article written by Mrs Philippa Glanville, she records that the Cup is just under the minimum standard of 22 carats even though it had been hallmarked. She also says in her piece that *"… the early 1670s saw a series of complaints about the use of 'course gold'"*. She refers to two other items that date from about the same period in the same article – the Heneage Finch Snuffbox in the V&A collection and a 1680s spoon in the possession of the Goldsmiths' Company. She notes that both these items are below 19 carats. Both the cup and the snuffbox were given a firm provenance without prior assaying having been carried out. Heneage Finch was the Lord Chancellor of the day at the date when the box was manufactured for him [Transcript, p.451]. Mr Wilkinson sold it to the V&A. He did not have it assayed before doing so. Notably he did not say that was because there was no need to do so. He says because in 1990 he did not have access to such methods [Transcript, p. 452]. It is not clear what conclusion he would have reached had he ascertained that the box was manufactured of gold of 19 carats of fineness.

86. It is to be noted that in the same article, Mrs Glanville says that in " … *1675/76 the Goldsmiths' Company issued an ordinance requiring all working goldsmiths to register their marks at the Hall in an attempt to identify those 'misworking' with substandard alloy, noting that 'many of the offenders seem to be incorrigible'"*. This is contemporaneous evidence that supports the conclusion that working with gold of less that statutory purity was rather more than a minor or isolated problem.

87. I now turn to what is the critical question – whether Lord Coleridge has proved that no reasonably competent auction house appraiser would have reached a conclusion as to

the date of the Collar without first having it assayed. At Paragraph 6 of her statement Mrs Mitchell noted that it is difficult to prove the date of manufacture of an un-hallmarked item without documented provenance or decorative features distinctive to the period because unmarked gold pieces may be made from earlier pieces that have been melted down. The implication of this statement is that even if she had known that the gold used in the manufacture of the Collar's Ss links was 20 carats she would not have drawn any conclusions from that fact. This is an approach that is consistent with that which appears to have been adopted in relation to the Bowes Cup and the Heneage Finch Snuffbox.

88. This is consistent with at least some of the evidence given by Mr Duncan Campbell. Mr Campbell is a dealer in and appraiser of gold and silver. He was called to give evidence of fact on behalf of Lord Coleridge. He was the person who advised Mr and Mrs Norris to purchase the Collar from Lord Coleridge and he was the person who then acted on behalf of Mr and Mrs Norris in developing the theory concerning the date of the Collar that led to its sale by Christie's. As I have said his contribution to the preparation of the Christie's catalogue entry is acknowledged expressly.

89. Mr Edwards cross-examined Mr Campbell as to the relevance of spectrographic testing. He indicated that it was relevant in order to ascertain whether the Collar was actually made of gold. However that the Coleridge Collar is made of gold is not and never has been in dispute. He said it would have enabled manufacture in the 19th Century to be eliminated. However Ms Mitchell had not suggested that the Collar had been manufactured in the 19th Century. Mr Campbell was asked whether he considered that a test "*… might be useful in order to establish a Tudor date*". His reply was "*No*" – see Transcript, p.109. He was also asked whether when he had the Collar assayed he was thinking that if it came out at less than 22 carats then he would know it was made before 1576. His response was "*No, I was not.*" Mr Campbell accepted that the first mention of spectroscopic analysis was when he went to see Dr Ogden [Transcript, p.125].

90. Later in his evidence, Mr Campbell said that the fact that the Collar is made of 20 carat gold "*excludes the possibility or makes it very very unlikely that the Collar was produced between 157[6] and 1798*". A little later still [Transcript, p.151] he said that the purity of the gold was critical to dating the Collar. If that was his view and if the contrary view was one that no reasonably competent appraiser could hold, it is odd that he did not consider at the outset that the fineness of the gold could lead to a determination of the age of the piece and it is strange too that that there is no academic material that supports such an approach. He impliedly accepted that this was true by avoiding answering the question when it was asked of him – see Transcript p.140, lines 10-17. It is inconsistent with his acceptance of the correctness of what was said by Ms Glanville in her notes concerning the Bowes Cup to which I refer above. If the point was as clear as he suggests it is surprising that this conclusion was not the basis on which he suggested that Christie's proceed.

91. Mr Campbell was not called as an expert witness. It is not necessary that I analyse his skill experience or expertise in the appraisal of gold dating from before 1700. He was a witness who zealously advocated the view that the Collar dated from before 1576 and he did so essentially by reference to the fineness issue I am now considering in combination with manufacturing technique. Given his contribution to the process that

led to the purchase of the Collar by Mr and Mrs Norris and its subsequent sale that is not surprising. However in relation to the issue I am now considering, his evidence does not persuade me that no reasonably competent appraisal would have reached a conclusion as to the age of the Collar without carrying out a spectroscopic analysis of the fineness of the gold used in its manufacture. His initial failure to carry out this exercise demonstrates that to be so as does what he impliedly accepted was an absence of any academic writing which supported such an approach. Although Mr Wilkinson maintained that Mrs Mitchell ought to have carried out her work in accordance with what is set out in a Publication called the Valuer's Guide, Mr Truman maintained that to be a guide for High Street jewellers asked to appraise jewellery. In assessing whether that is correct it is noteworthy that Mr Campbell did not refer to that publication and does not claim to have carried out his activities by reference to it.

92. None of the other witnesses of fact who have expertise in this area suggested that no reasonable appraiser would have reached a conclusion concerning the date of the Collar without first assaying it. Mr Campbell accepted that he had asked Miss Campbell for advice as to how to proceed to establish the date of the Collar [Transcript, p.169]. She did not suggest assaying as a way to proceed. It was Mr Campbell who first mentioned the idea. Having heard Miss Campbell give evidence I am satisfied that had she thought that the Collar could have been dated by assaying the fineness of the gold used to manufacture it she would have been aware of the technique and would have suggested it without prompting. When she was asked about this issue in the course of her evidence, she made it clear that she would not automatically have considered spectrographic analysis of the Collar and that she is not now and never has been persuaded that the results support the conclusion that the Collar was Tudor in origin. There can be no doubt that Miss Campbell is very distinguished and experienced expert in the field. That is apparent not only from her career summary set out in her statement but also by the fact that she was one of the experts to whom Mr Campbell had turned. Miss Campbell is now retired. She worked all her life at the V&A specialising in English medieval plate and jewellery. She is the author or co-author of a number of works on the subject. She is disinterested in the outcome of this litigation despite an enquiry in the course of cross-examination as to whether she did any work for Sotheby's [Transcript, Day 3, p.352, line 15]. It was entirely clear to me that she would not have relied on spectrographic analysis in any appraisal by her of the Collar.

93. Miss Campbell was cross-examined on this issue by Mr Munro. He acknowledged that the effect of her evidence was that "*scientific testing would not be of any use in dating the Collar …"*[Transcript, Day 3, p.352] but then asked her whether she accepted that it would have assisted by enabling the fact that the Rose was made of 22 carat material to be identified. Her answer was that it would not because knowing that one part of the Collar was made of one fineness of gold and other components of a different fineness did not lead to the necessary conclusion that they were made at different times. This point is self evidently correct.

94. There was a subsequent meeting on 22nd May 2008 attended by Mr Campbell at Christie's that was also attended by Mr Wilkinson and Mrs Philippa Granville. By then the results of the spectrographic analysis of the Collar had become available. Mr Campbell says he outlined the theory that the Collar could date from the period of the Great Debasement because it was made of 20 Carat gold. There is a difference between her and Mr Campbell as to what was said. He says that she did not reject the notion but

described it as being just a theory [Transcript, p.180]. Mrs Glanville gave evidence concerning the meeting. She says and I accept that she made it clear at the meeting that her view was that the Collar was not Tudor (Paragraph 8 of her statement). Her view was that it could be late 16th century to early 19th century. She rejected the notion that the Collar could be appraised by reference to the caratage of the metal. It is important to note the argument she was addressing at that stage which was Mr Campbell's great debasement theory. Her answer was that because old gold was recycled the fact that it was 20 carats of fineness did not mean the article was made during the period of the Great Debasement but merely that it was made from metal used to manufacture another object or objects during that time – see Paragraph 10 of her statement. She was not addressing the point now made by reference to the position after 1576. I have no doubt however that had she been asked about the theory that is now the basis of Lord Coleridge's case she would have expressed a view that reflected what she said in the articles written by her concerning the Bowes Cup cited earlier in this judgment. She was aware of the caratage of the Coleridge Collar but she did not take that into account in the views she expressed and did not say even that a consequence might be that it was made prior to 1576 much less that it was probable, near certain or certain that it was. Had she thought that the Collar having been made from 20 carat gold even tenably suggested such an attribution she would have said so. She did not.

95. Mrs Glanville is also a very distinguished expert in the field. She became aware of this litigation but sought to avoid becoming involved in it. She provided a statement only because a statement was served by the Claimant from Mr Moran, the purchaser of the Collar at the Christie's sale that suggested he did so in reliance upon advice provided by her. She strongly denies that this is so. In the event, Mr Moran did not give evidence even though his appearance at the trial had been planned. No explanation was ever offered as to why he did not in the end give evidence. Both parties agreed at the time that his statement could be removed from the bundles and that it would not be relied on. In relation to her conversations with Mr Moran, she says and I accept that Mr Moran told her that he had already decided to purchase the Collar at the date of her conversation with him (Paragraph 14 of her statement) and that if asked about the date of the Collar she would have said it was likely to be circa 17th Century. Where her evidence differs from that of Mr Campbell I prefer hers because she was disinterested in the outcome of the litigation. Indeed if anything her interests would appear to be best served by a finding in favour of Lord Coleridge. This makes her evidence on the issues I am now considering all the more valuable.

96. Dr Ogden expressed the view in his statement that gold analysis seldom provides certain dating results and says that he told Mr Campbell that such was the case when Mr Campbell consulted him in relation to the Collar. He told Mr Campbell that the results of the spectrographic examination of the Collar were intriguing but that it could not on its own provide a date for the Collar. Much more work was required in terms of the method of manufacture before a view could be reached as to the probable date of manufacture.

97. Ms Mitchell's evidence on this issue was in essence that she would only consider spectrographic analysis if she considered an object might be 19th Century because such testing would reveal the existence of Cadmium which if present is synonymous with 19th Century gold – see Transcript Day 2 p.247. Her point which she makes in the clearest terms on that page is that she never considered the collar to be later than the

early 18th Century and thus did not consider an assay test relevant. A little later she was cross-examined on the basis that spectrographic analysis would have revealed palladium. That point is no longer a live issue. However I record the point which she made namely that merely knowing that the gold does not contain Palladium does not assist much because the of the practice of smelting old gold to make new objects. Thus the absence of a particular trace element does not lead to the conclusion that the item was manufactured earlier than the first occurrence of the trace element concerned. It is also fair to say that Mrs Mitchell did not ultimately conclude that the collar was later than the late 17th century.

98. Mr Wilkinson's evidence as set out in his initial report was that "*the very first action a competent appraiser should take when confronted with an unmarked piece of antique metal work is to have the composition of the material scientifically tested*" That remained his view by the time he came to give his oral evidence – see Transcript, p.402. In the course of cross examination he was asked about Paragraph 69 of his report in which he asserts that 20 carat purity proves that the collar was made before 1575. Subject to changing "*proves*" to "*makes it very probable*" he chose to stand by that statement – see Transcript, p.447-448. However in giving that evidence he acknowledged that he was differing from Dr Ogden and he was in fact differing from the other witnesses to whom I have referred already. The only witnesses that subscribed to this view in the end were Mr Wilkinson, Mr Campbell and Dr Ogden. Dr Ogden's views on this issue were appropriately qualified.

99. Reaching a conclusion on the issue I am now considering (whether no reasonably competent auction house appraiser would express a concluded view about the age of the Collar without undertaking spectrographic analysis or advising that it be undertaken) is one I approach with caution because as I have attempted to explain in the preceding paragraphs of this judgment the value to be obtained by an appraiser from such an analysis depends critically upon the question that the tester is seeking to resolve. Aside from that, I remind myself that the question does not in the end turn upon which of the rival contentions I consider the more preferable. If it is shown that a respectable body of practitioners in the relevant field would have expressed a conclusion as to the date of the object without spectrographic analysis then on this issue the Claimant must fail.

100. The evidence in this case satisfies me that a responsible body of appraisers in the position of Mrs Mitchell would have proceeded without seeking an assay of the Collar or advising that it be obtained before expressing a concluded view as to its age. That approach reflects that which at least Mrs Glanville and Miss Campbell would have adopted. It reflects the initial approach of Mr Campbell and it reflects the fact that the information to be derived from an assay was limited. Had the question been whether the Collar was made of gold or was being valued for scrap or if there had been an issue as to whether it was 19th Century and the object had not been hallmarked or if the question was whether the item had been manufactured after 1703 then assaying may have been a step that ought to have been taken before a conclusion was reached. However Mrs Mitchell did not appraise the Collar on the basis that it was not made of gold or on the basis that it had no value other than as scrap. She did not consider it was made in the 19th Century nor did she conclude that it had been made after 1703. If the issue was whether the piece had been manufactured during the period of the Great Debasement, such testing would not have assisted at all. Demonstrating that the piece was made of 20 carat gold would not assist because pieces of that level of fineness could and were made

before and after that period – indeed the Goldsmith's Company sought to enforce such a standard in the years prior to 1575.

101. The issue was whether the Collar was Tudor in origin. The evidence before me does not establish that no reasonably competent appraiser would have answered that question without obtaining a spectrographic analysis or advising that it be obtained. I say this because there is no academic writing of any sort that justifies such an approach to such a question or a conclusion that items manufactured of 20 carat gold (without more) should be regarded as of or probably of pre 1576 manufacture. To the contrary, the evidence establishes a conventional view, held by a manifestly respectable body of those who are expert in the field, which is soundly based as I have explained, that the 1575 law was regularly departed from throughout the period from 1576 to 1700, even by those concerned in the manufacture of the finest pieces destined for the most prominent and well connected patrons and thus that fineness does not provide a basis on which a conclusion can be reached as to the date of manufacture of a piece. The reality is that a responsible body of appraisers in the position of Mrs Mitchell would have appraised the Collar as she did by reference to the historical context, the portraiture and literary evidence and by the craft techniques used in its manufacture if and to the extent that could provide assistance.

102. *The Method of Manufacture*

This case was opened on behalf of Lord Coleridge on the basis that the Coleridge Collar had been manufactured using slush casting, and that this method of casting "*… was obsolete in England by 1600 when it was replaced by double mould sand casting …"* which was then " *… itself replaced by the more accurate lost wax casting method in c1685 …"* If the evidence demonstrated that to be so and if no reasonably competent appraiser in the position of Mrs Mitchell could have come to a contrary view then no doubt Lord Coleridge would be entitled to succeed. However in my judgment that is not the effect of the evidence and the proposition in any event ignores the other material that it is common ground no reasonable appraiser could ignore – that is the historical context, the portraiture, the truly comparable objects and the literature.

103. I turn first to the evidence concerning the methodology. Aside from an ultimately arid debate concerning whether the Ss links of the Coleridge Collar were manufactured using slush casting or open mould casting, the point that Mr Duncan Campbell considered relevant was that they had been made using a open mould technique rather than what has been called sand casting or lost wax casting because if either of those methods had been used then the hollow indentations at the back of the Ss links would not have been visible and instead the backs would themselves have been moulded – see Transcript p.111, line 23 - p.112, line 11. Mr Campbell accepted that there was no clear dividing line between the dates when the various methods were in use. As he said in his oral evidence [Transcript, p.112-3]:*"There is no hard and fast period or time when the techniques change from one to the other"*.

104. Christie's clearly did not consider that much assistance could be obtained from the method of manufacture. That issue is not mentioned at all in the catalogue description of the Collar even though if what is contended on behalf of Lord Coleridge is correct, the method of manufacture would have provided valuable corroboration of the theory being maintained in that entry. It is clear that at an early stage Mr Campbell considered

that the piece was likely to be mid 16th Century because of the design of the piece. However at that stage he had done no research into judicial collars and therefore was not aware that from at least the middle of the 16th Century they were manufactured to a conventional design and in particular that the Gilbert Collar (dated to 1660 and the only true comparable) was of a very similar form to the Coleridge Collar – see transcript, pp117-119. It was this that caused Mr Campbell to focus on the method of manufacture and specifically the manufacture of the Ss links because the techniques used in the other elements were consistent with a wide period of manufacture – see Transcript pp. 122-123.

105. The only source of evidence for the proposition of cut off dates of the sort described in the opening of this case comes from Mr Wilkinson. That element of Mr Wilkinson's evidence emerged in a report prepared by him and served on 1st December 2011. As I have already explained earlier in this judgment, Mr Wilkinson's evidence in relation to this issue was unsatisfactory for at least the reasons I have identified above. The evidence simply does not establish that one method stopped at one date when another method started. Very sensibly, even Mr Campbell did not assert the contrary.

106. In any event, Mr Wilkinson's evidence concerning the dates when the various techniques were in use changed in the course of his evidence. I have already noted what he said in his report. However in the course of cross examination, he accepted first that both the slush and sand casting methods were being used as late as 1600 [Transcript, Day 4, p.524] then that the change from one to the other took place gradually between about 1580 and 1680 with lost wax moulding taking over after that[Transcript, p.530]. There is no academic material that supports these suggestions, nor any sort of detail that enables the very general assertions that he made to be tested. Thus there is nothing in this point that assists in dating the Coleridge Collar either by reference to metal content or otherwise.

107. Aside from the points that I have considered earlier in this judgment in relation to this issue, in my judgment the comparison of the Coleridge Collar with the Gilbert Collar does not support the case advanced by Mr Wilkinson. I am assuming for this purpose that as the claimant contends Mrs Mitchell would have been able to obtain sufficient access to the Gilbert Collar to make a worthwhile comparison. The claimant's evidence assumes that to be so without distinctly proving that to be so. It would have been possible to adduce evidence from the curators of the collection or the trustees as to when and where the Gilbert Collar could have been inspected but no evidence of that sort has been adduced. However, even assuming that Mrs Mitchell could reasonably have obtained the necessary access, a comparison does support the claimant's case because it has not been proved that the Gilbert Collar was manufactured using a closed back moulding technique essentially for the reasons identified by Mr Duncan Campbell that I have referred to above. This is significant because Mr Wilkinson's evidence as to how sand casting was carried out involved creating a flat backed mould. If such a technique is used then it is to be expected that what has been made using this method will have a moulded patterned front and a flat back. This appeared to be what Mr Wilkinson said he had produced using such a method. It accorded with what Mr Campbell had said in the course of his evidence. However there are indentations on the back of the Ss links in the Gilbert Collar that are indented albeit differently from those that appear on the Coleridge Collar. In my judgment no reasonably competent appraiser

would have concluded that either collar was manufactured in the 16th century on the basis of the method of casting used to create the Ss links.

108. *Mrs Mitchell's Appraisal*

Mrs Mitchell arrived at her conclusions as to the age of the Collar by reference to the literature, her consideration of the pictorial record and the historical context. What material is available that she did not consider supports the conclusions that she reached and I am not satisfied that it has been proved to the requisite standard that no reasonably competent appraiser in her position would have reached the conclusion reached by her. My reasons for reaching that conclusion are set out below.

109. First Mrs Mitchell was entitled to take account of the great rarity of gold items that survived the Civil War. It was in the end common ground that there are only very few items made of gold that survived this conflict as most such items were melted down in order to pay for the costs of the war. I am satisfied by the evidence before me that a respectable body of expert appraisers would take that into account when considering the Collar whilst being astute to note anything deriving from the other factors that I have mentioned in the previous paragraph that might lead to a different conclusion.

110. Secondly she was entitled to take account, or would have been entitled to take account, of the fact that there was no settled practice of passing judicial collars of Ss from office holder to office holder prior to the 19th Century but on the contrary there was some evidence that during the 16th and 17th Centuries the items concerned were regarded as personal property. She was or would have been entitled to take account of the fact that as Professor Baker says in his report Sir James Dyer who was CJCP from 1559 to 1582 apparently bequeathed his chain of Ss to Queen Elizabeth I on his death (together with a ring belonging to his wife) in circumstances that suggested that it was a personal gift and that there was no evidence of the Queen presenting that chain to anyone else.

111. Aside from that the effect of Sir James Dyer's will, his collar as shown on a contemporaneous portrait (Portraits Bundle, p.5) at the National Portrait Gallery to be markedly different from the Coleridge Collar. This is significant because the portrait is contemporaneous (painted 1575). As Sir John Baker says in his report this form of collar is consistent with an engraving taken from a contemporaneous portrait. This suggests that the Coleridge Collar could not date to a period earlier than Sir James' death in 1582 – that is, incidentally, after the date when the 1575 Act took effect.

112. The Civil War was a period of great upheaval. There was a four-year vacancy in the office of CJCP between 1644 and 1648, during which time the previous holder (Sir John Bankes) was impeached, his estates sequestered and his widow put to enormous cost in recovering them. There is no evidence that Sir John's collar was passed on to any subsequent officeholder. Given the circumstances it is inherently unlikely that it would have been.

113. Sir John Baker has not been able to find an authentic (by which in context he means a contemporaneous) portrait of a CJCP wearing a collar of the style of the Coleridge Collar before the 17th Century. No portrait of a post restoration Chief Justice or Chief Baron showed a Collar of Ss with an enamelled Tudor Rose but those prior to the Civil War and those that are available of the Interregnum judges show Tudor Roses that are enamelled. Aside from the evidence of Mr Wilkinson, there is nothing that suggests that

no reasonable appraiser could have arrived at the conclusion arrived at by Mrs Mitchell on the basis of the portraiture material available to her. Although there was a suggestion by both Mr Campbell and Mr Wilkinson that there was some evidence of enamel on the face of the rose, that was not in the end proved much less was it provided that no reasonably competent appraiser would have failed to see such evidence or conclude that the Collar was pre-civil war in consequence.

114. There is no primary literary material that allows the piece to be dated back further than the last few years of the 17th Century. I say that because all that can be said is that it is probable the CJCB who took office in 1701 (Lord Trevor) obtained his Collar from his predecessor. His predecessor held office between 1692 and 1701. The pictorial record prior to that is incomplete.

115. *The Riches Article*

Mrs Mitchell has been criticised for taking account of this article. It is fair to say that Mr Riches was not a professional historian or an antiquary. It is also fair to say that he does not refer to any original sources to support any of the views that he expresses. It is not fair to say that he adopts as his own an opinion of an earlier writer (Edward Foss) as his own. He recites what Mr Foss says (50 LQR 120) namely that the Coleridge Collar can be traced to 1714 when Lord Trevor received it from his predecessor but then identifies the error made by Mr Foss at the start of the next paragraph where he points out that Lord Trevor ceased to hold office in 1714. He expresses the view that this may mean that the Collar can be traced only to Lord Trevor's successor Sir Peter King in order to fit in with the date given by Foss. This is one rationalisation of what Mr Foss says. Others are possible including dating the receipt of the Coleridge Collar by Lord Trevor to 1701 when he was appointed CJCP. If so then the Collar could have been manufactured c.1692.

116. Had Mrs Mitchell arrived at her conclusions solely by reference to this article, and had she concluded that the collar could not safely be dated to earlier than 1714, it might have been difficult to justify her conclusions by reference to the test I identified earlier in this judgment. However she did not adopt such a course. She did not date the Collar to 1714. She did look at other materials available to her and did come to a view based on all the material available to her and on the basis of her many years experience in this area.

117. *The Finish of the Collar*

It was at one stage suggested by Mr Wilkinson that no reasonable appraiser could have reached the conclusion that Mrs Mitchell had reached having regard to the quality of manufacture and finish of the piece. He said that in the nature of things more finely executed pieces were likely to be manufactured later and since on any view the Gilbert Collar is a finer object it follows that the Coleridge Collar ought to have been dated to an earlier period than it was. This point was in the end an argument that was not supported by any academic or other material that supported such a general assertion. Even on what is available it is clearly wrong. It is common ground that the finest collar still extant is that of the Lord Mayor of the City of London, and even Mr Wilkinson was constrained to accept that it was finer that the Coleridge Collar yet it is also common

ground that it dates from the reign of Henry VIII. So finish provides no safer a basis for reaching a conclusion that does design as was reportedly observed by Claude Blair.

118. *Conclusions Concerning Attribution*

I have identified the test that has to be applied in considering an allegation of breach of duty in this area. In my judgment Mrs Mitchell was entitled to conclude that the Collar was post restoration 17th century for the reasons she identifies. There is no evidence that I am able to accept that supports the conclusion that no reasonable appraiser in Mrs Mitchell's position would have attributed the Coleridge Collar to the post restoration 17th century.

The Valuation Issue

119. It is common ground that Lord Coleridge entered into an agreement in or about June 2006 by which he agreed to sell the Collar to Mr and Mrs Norris for a price at the high end of a valuation by Sotheby's of the Collar. Lord Coleridge's case is that on or about the 27th June 2006 he sought from Lord Dalmeny advice as to the price that he ought to sell the Collar for outside the auction. It is common ground that the advice given was that the price that ought to be sought was £35,000. It is Lord Coleridge's case that even on the assumption that the Collar was post restoration 17th century he should have been advised that the Collar was worth £275,000. Even if that is wrong his case is that in any event Sotheby's auction estimate was so low that no reasonably competent auctioneer could have arrived at. In any event, Lord Coleridge submits that Sotheby's was negligent by advising him to sell privately at the top end of the auction estimate. He should have been advised to sell for double the bottom end of the correct auction estimate.

120. *The Private Sale Liability Issue*

The advice that Lord Coleridge had asked for was a price at which he could sell the Collar privately. Lord Dalmeny's evidence was that he did not consider it appropriate to advise Lord Coleridge of a figure that would otherwise be appropriate for a private treaty sale because to do so might have an adverse effect on the sale of the house. In my judgment there was no basis for him adopting that course. Technically, Lord Coleridge was not selling the house. The trustees were Sotheby's client in relation to the house sale. No doubt it might be assumed that Lord Coleridge would be interested to ensure that the house sale was not disrupted. However, that did not justify Lord Dalmeny adopting the course he did without obtaining informed agreement from Lord Coleridge. In fact he not discuss this point in terms with Lord Coleridge, nor did he enquire about and was not told of the terms of the agreement with Mr Norris and in consequence did not know and had not been told that Mr Norris had agreed to purchase the Collar for the valuation advised by Sotheby. He did not inform Lord Coleridge that a higher price than the sum of £35,000 might be sought from a private buyer who was purchasing independently of a purchase of the house. Accordingly I reject Lord Dalmeny's analysis as the correct basis for advising Lord Coleridge on the price he ought to have sought from Mr Norris. Lord Coleridge should have been given clear advice as to the appropriate private treaty value of the Collar. Had he been, I conclude that he would have accepted it and in all probability would have been able to sell the Collar to Mr and Mrs Norris at such a level. Mrs Mitchell said and I accept that had she been asked for a

private treaty price she would have advised a price of double the low end of her auction estimate – that is £50,000. Her evidence, which I accept on this point, is that she was not asked to provide such a price. She said, and Lord Dalmeny did not dispute that this was standard practice at Sotheby's at the relevant time. Mr Truman did not give evidence that this approach was itself negligent although his evidence is that he would have advised taking the top end of the appropriate auction estimate and adding to it the sum otherwise payable as buyer's premium (20%) and VAT thereon, which assuming that Mrs Mitchell's top end figure was correct would give a private treaty price of £42,822.50 – say £42,850. It necessarily follows from these conclusions that Sotheby's was negligent in advising Lord Coleridge to sell the Collar to Mr and Mrs Norris for £35,000. The next question is what advice ought to have been given to Lord Coleridge. This involves considering whether the auction estimate given by Sotheby's was itself negligently arrived at because neither party suggests that the private treaty value should have been arrived at other than by extrapolation from an otherwise correct auction estimate.

121. *The Auction Estimate*

Mr Wilkinson's evidence on this issue is contained at paragraph 51 to 56 of his initial report. His primary point is that no reasonably competent appraiser in Mrs Mitchell's position could have arrived at an estimate without ascertaining that the Gilbert Collar had been purchased for £300,000 some 10 years previously. It is suggested by Mr Wilkinson that this information could have been obtained by a simple phone call as he puts it to S.J. Philips. There are a number of difficulties about this proposition. First, I do not consider that Mr Wilkinson is in a position to give expert evidence as to how an auction house ought to arrive at an auction estimate. He is not and never has been an auctioneer. In any event, the notion that a price paid by a very keen collector (Mr Gilbert) for an item that was being sold by a specialist West End retailer (S.J. Philips) is an indicator of the correct auction estimate of an otherwise comparable item is indefensible for the reasons set out below.

122. Auctions are the places or one of the places at which a retailer will acquire items such as the collar for retail offer. As must be obvious there is bound to be a mark up by a retailer of the price at which the retailer is prepared to sell an item. The retailer will not purchase for resale an item at a price that is in excess of the margin that he needs to make on such products. Mr Duncan Campbell remarked in his evidence that the "*carry costs*" of gold items of this sort is very high. That too must be obvious. The cost of purchasing items of this sort is high in absolute terms. The market for such items is likely to be small and the portion of the market that will be prepared to purchase from a retailer as opposed to at auction will be even smaller. It was this factor that led Mr Truman to say and I accept that retailers in this area would regard auction houses as trade rivals.

123. Two points emerge from this. First, a retail price will be significantly higher than an estimated auction value and thus if a retail price is to be used as a basis for an auction value it will be necessary to devalue from the retail price to reflect the carry cost, retailers fixed costs and outgoings and retailers profit. I have no evidence as to what an appropriate figure for that would be other than from Mr Truman. Subject to the qualifications mentioned above, I consider that I should accept his evidence. In this area he is well qualified to give evidence. Whilst he has not been involved in the auction

business for many years as he accepted in cross-examination, there is no evidence that the fundamentals have altered. He considered that in this particular area, a retailer would expect to make a gross margin of double the price paid for an item such as the Collar. I accept that evidence. Thus aside from any other considerations, it would be necessary to halve a retail price paid in order to arrive at a figure from which assistance in arriving at an auction estimate could be obtained. Thus, assuming that Mrs Mitchell could have ascertained that the Gilbert Collar had been sold at retail for £300,000, her starting point for comparison purposes would have been £150,000. If Mr Truman is correct and the correct method for arriving at a private treaty sale price involves taking the top end auction price and adding buyers premium and VAT thereon it follows from his written valuation evidence that £150,000 figure would have to be further devalued by deducting these sums to arrive at the top end of an auction estimate. If Mrs Mitchell is correct in her view that to arrive at a private treaty value the lowest end of the correct auction estimate should be doubled that would imply that to arrive at that figure it would be necessary to halve the £150,000 figure to arrive at the lowest end of the correct auction estimate. Mr Truman maintained that prices at auction in this area broadly followed inflation but such was not the case with retail sales. I accept that evidence. Thus there would have to be some upward adjustment to reflect this.

124. The other point that arises from the points I have so far considered concerns whether in fact Mrs Mitchell could have obtained such information at all. As I have explained, retailers regard auction houses both as a stock supplier and a trade rival. Neither of these factors would predispose such an organisation to provide commercially sensitive information to someone such as Mrs Mitchell on the basis of a phone call as suggested by Mr Wilkinson. In my judgment to suggest otherwise is at best commercial naivety. Mr Truman's evidence on this issue (which I accept) is that it would be inconceivable that S.J. Philips would reveal the price at which they sold the Gilbert Collar to Mr Gilbert. In my judgment this is almost self evidently so. There are no circumstances in which it would be in the interests of a retailer to reveal information of that sort to an auction house. Similar considerations are likely to apply to the Gilbert Collection staff. It is in the interests of a collector to keep prices down. Had the Claimant wished to prove that such information could have been obtained and that no reasonable auctioneer would have attempted a valuation without obtaining such information then it was open to them to adduce such evidence. An assertion by Mr Wilkinson does not begin to satisfy this requirement.

125. The related point was whether it would be appropriate to contact specialist dealers in order to obtain a view as to value without seeking information that was confidential. Mr Truman's evidence is that it was unlikely that such information would be forthcoming. He described the proposition as being "*absolute insanity*" [Transcript, p. 716]. Whilst I think the language was unduly colourful, it reflects the commercial reality. If contact was made with a dealer, the response that would be received would depend on the circumstances. An offer might be forthcoming from the dealer either on the basis that he had a customer looking for such an item or he considered the price to be one where he could turn the object concerned quickly or at a greater than usual profit. Outside such circumstances, a dealer who might wish to bid at an auction would be unlikely to wish to bid against him or herself as would be the case if he or she was giving a true estimate. All this makes contacting retail dealers unrealistic.

126. The real difficulty is that arriving at a valuation involves a high level of subjective judgment involving an assessment of the attractiveness of the piece to be sold, an assessment of the size of the market for such a piece and the market conditions then applicable to the sale of such an item at auction. It is likely that highly experienced appraisers in auction houses such as Sotheby's will instinctively take these matters into account when arriving at a figure. However it is to be expected that even if that is so, a valuer will be able to identify the factor which he or she took into account if called upon to do so. Mrs Mitchell's figure was £25,000 – 35,000. The only reasoning she has supplied is that contained in Para.22 of her statement. This is limited to saying that she took specialist advice from a specialist auctioneer who told her that the highest price paid for a livery collar was £18,000. What collar that was, what condition it was in and when it was sold has not been identified. She says that she had conversations with two other experts from Sotheby's but does not set out the substance of those conversations. She does not explain what the facts were that caused her to arrive at the value range that she arrived at. Thus whilst it is fair to say that this evidence was not challenged, the evidence does not set out the reasoning that led to her conclusions.

127. Mr Wilkinson's written evidence on this issue is very limited. His oral evidence was more extensive. He accepted that valuation was largely subjective – see transcript p.544. He asserted and I accept that all valuers maintain files of prices obtained for pieces so that comparables can be identified to justify values. He insisted that the value that should have been attributed to the Collar on the basis that it was late 17th century was £275,000. That was a figure that he did not attempt to justify, it could not be justified and I reject it. As was pointed out to him in cross examination, the Christie's estimate on the basis that it was a piece that dated to the period of the Great Debasement was £200,000 – 300,000. Although there was some discussion about a supposed contraction of the market, following the collapse of Lehman brothers, as leading to Mr Moran being able to purchase the Collar for a lower price than might otherwise have been achievable, there is no objective evidence that supports that proposition. In any event the Christie's estimate was arrived at before the Lehman Brothers collapse which is inconsistent with the point being correct. Assuming that the Collar would be worth more as a Tudor item than it would be as a late 17th century item (something everyone agrees) then it is probable that any auction estimate for the Collar on that basis would be significantly less than the figure arrived at by Christie's.

128. There was in truth only one true comparable that has been identified to me and that was the Gilbert Collar. The difficulty about that is it was sold retail so that even if the information could have been obtained an element of devaluation has to be built into any assessment based on the sale price of that item and some regard will have to be had to inflation because inflation affects auction prices even though it does not affect retail prices. On that basis having devalued from a retail price to arrive at a notional top end auction price and having made further adjustments to reflect the buyer's premium and VAT, it would then be necessary to adjust for inflation from the date of sale of the comparable to the date of sale before then further adjusting to take account of the subjective factors to which I have referred. However the real difficulty about all this is that in my judgment no reasonably competent appraiser appraising the Coleridge Collar in 2006 could have been expected to ascertain the sale price paid in 1996 for the Gilbert Collar for the reasons already explained.

129. Mr Truman's evidence is based on the value he attributed to the Gilbert Collar for auction purposes in 2008 when carrying out an insurance valuation of that piece for the V&A. It is noteworthy that he was not told the sale price of that Collar when arriving at his insurance valuation. He arrived at a starting figure for that collar of £100,000 assuming it had been purchased at auction. This devalues to £80,000 together with buyers' premium at 20% and VAT thereon. This figure comes to £98,800, which was rounded (reasonably) to £100,000. Arriving at an insurance value involves attempting to assess the price that would have to be paid retail to replace the piece concerned. Consistently with Mr Truman's view as to the difference between retail and auction prices referred to earlier, he doubled his notional price of £100,000 to arrive at a figure of £200,000. As he points out this figure was accepted by the V&A, the trustees of the Gilbert Collection and the Government for the purposes of the Government Indemnity Scheme as being a proper figure. He was cross-examined on the basis that he would be bound to come to a higher figure now he knows what the retail price that had been paid by Mr Gilbert. He agreed but in my judgment that is wholly beside the point for present purposes. I am concerned with testing whether Mrs Mitchell's figure was too low applying the tests identified. That is a question that can be answered only by reference to the information available to her, or which could reasonably have been obtained by her, at the time. As I have said, the retail price paid for the Gilbert Collar was not publically available information in 2006.

130. Mr Truman used as his starting point for arriving at his valuation of the collar his knowledge of the work he had done concerning the Gilbert Collar in 2008. That was not information that would have been available to him in 2006. However, he told me and I accept that he did not know what the retail price was that had been paid for the Gilbert Collar by Sir Arthur Gilbert and he used as his starting point then an assessment that the Gilbert collar would have sold at auction in August 2008 for £100,000 inclusive of buyer's premium and VAT thereon. This figure is significantly higher than the top end of Mrs Mitchell's figure. Mr Truman considers that it is necessary to devalue from that figure to reflect differences between the two collars. He considers that the correct range was between £40,000 – 60,000. However his written evidence makes clear that he does not criticise the estimate arrived at by Sotheby's as one that no reasonably competent valuer could have arrived at. This point is one that is strongly relied on by Mr Edwards as critical to the outcome of the issue I am now considering.

131. Mr Truman does explain to a degree how he arrives at his auction estimate for the Coleridge Collar but he does so exclusively by devaluing from the estimate he started with for his valuation of the Gilbert Collar and as Mr Edwards points out that figure is no more justified by him by reference to objective criteria than is the range identified by Mrs Mitchell. He maintains that the significant factors that lead to this conclusion included the fact that the Coleridge Collar was lighter. However he accepted in cross-examination that it was only 3 ounces odd lighter. This point would be significant only in relation to the value of the gold used. This difference would be of only marginal significance in a sale of a piece where the main value lies in its historical interest. I consider that to the extent that Mr Truman took this point into account it is likely to have had an overly depressing effect on his estimate. He did not suggest that either weight of the caratage of the gold were factors that were relevant to his figure of £80,000 for the Gilbert Collar. He said that the Coleridge Collar is not as fine a product as the Gilbert Collar. This would appear to be largely common ground. However, the main value of the piece does not lie in its intrinsic beauty but in its historical

significance. Other than inflation, Mr Truman's view, which I accept, was that the market had not moved significantly between 2006 and August 2008.

132. After delivery of this judgment in draft Mr Edwards sought permission (which I granted) for him to make further submissions on the issue that I am now considering. He pointed out that on the evidence as it is, I am not in a position to conclude that the non negligent auction estimate range was as suggested by Mr Truman because he does not suggest that Mrs Mitchell's range was one that no reasonable valuer could have arrived at. I have considered this issue with some care and have concluded that on reflection this is a correct approach. Although Mrs Mitchell does not explain how she arrived at the range she gave, which is what initially caused me difficulty, in reality Mr Truman does not do so either since he does not explain what the factors were that caused him to start with an auction estimate of £80,000 for the Gilbert Collar. It is fair to say as Mr Edwards submits, that Mrs Mitchell was not challenged on the issue I am now considering. In those circumstances, I admit with some hesitation, I conclude that the claimant has not established that the auction estimate that Sotheby's arrived at was one that no reasonable valuer in its position would have arrived at.

133. *The private Sale Value*

There being no dispute between the parties that the private sale value was to be extrapolated from the non negligent auction estimate, the next issue I have to decide is how a reasonable auctioneer in the position of Sotheby's would have arrived at a private treaty figure. In the course of her evidence Mrs Mitchell made it clear that had she been asked for a private sale price she would have followed what she maintained was the standard Sotheby's practice which was to advise a figure of twice the lowest end of the auction estimate – which would on her figures have given a figure of £50,000 [Transcript, p.278]. Lord Dalmeny did not disagree with this proposition. When the point was put to him he said merely that Mrs Mitchell's method was one way of arriving at a figure. Mr Truman as I have explained would have adopted a different method namely to take the top end of the non negligent auction estimate and add to it the sum of the applicable buyer's premium and a sum equivalent to the VAT thereon. However, again he did not describe the method advocated by Mrs Mitchell as wrong. I would not have expected him to do so in his report because be was not asked to consider that issue, but he had the opportunity to say so in the course of his oral evidence. In those circumstances I conclude that had Sotheby's complied with its duties to Lord Coleridge, he would have been advised to sell the Collar privately for £50,000. Thus he is entitled to recover the difference between that sum and the sum of £35,000.

Conclusion

134. Lord Coleridge's primary claim that Sotheby's should have appraised the Coleridge Collar as being a Tudor artefact and valued it as such fails. Lord Coleridge is entitled to recover £15,000 (being the difference between £50,000 and £35,000). I will hear the parties as to whether Lord Coleridge should recover interest on that sum and if so at what rate and for what period, and as to costs, at the handing down of this judgment unless agreement can be reached on those issues before then.