

Origin and Persistence of a *tòpos* about de Chirico

**De Chirico-Sabatello-Il Milione Gallery. The first trial (1947-1956)
concerning a false de Chirico, has come back in the news**

by
Paolo Picozza

1. The trial de Chirico – Sabatello – Il Milione Gallery had significant impact on the life of Giorgio de Chirico.¹ It is an absolute first in legal history where a lawsuit was brought against the de Chirico to obtain a legal opinion as to the authenticity of a painting, which in this case was a sort of *Piazza d'Italia*: an oil on canvas, measuring 79 x 30.5 cm, signed on the lower right “G. de Chirico 1913”. In other words, the very same painting which the de Chirico declared “absolutely fake” back in 1946.²

The importance of this case goes beyond the specific question of the trial, since it is with this case – despite full recognition of Giorgio de Chirico’s reasoning in the matter – that this highly damaging commonplace to the study of works by the de Chirico would form and take root.

This is the cliché reputed that de Chirico would declare any metaphysical painting presented to him as a fake, based on the belief that he had repudiated the metaphysical paintings.³

¹ The case is narrated with considerable irony by Giorgio de Chirico himself, who, in his *Memoirs*, dedicates some five pages. *Memoria della mia vita, (Memories of My Life)* Milan, Bompiani, 1988, pp. 212-217. The entire transcripts of the trial are on file at the Archives of the Giorgio and Isa de Chirico Foundation.

² Maurizio Fagiolo is in agreement with the data: “Perhaps his readers should know once and for all that the issue of the false de Chiricos started in 1946 at a precise moment (today, recreated). The generally aggressive Giorgio himself was not even talking of the fakes in 1940 either, so it’s a bit of a tall story to imagine that de Chirico would have attacked one in that setting.” On the basis of his knowledge of the era, Maurizio Fagiolo sustains that it was the year 1946 (the legal case) that saw the beginning of the production of de Chirico fakes, and not the year in which there was mass diffusion of them. M. Fagiolo, *Falso quel de Chirico? Mi dispiace Calvesi: nel '29 era in casa Doucet*, (A Fake de Chirico? I’m sorry Mr. Calvesi, but in 1929 it was in the Doucet house) in *Il Giornale dell’Arte*, Turin, June 1988, no. 57, p. 6.

³ G. de Chirico, *Memorie*, op.cit. pp. 217, 221.

⁴ W. Schmied in his preface to the show *Giorgio de Chirico –*

Betraying the Muse – de Chirico and the Surrealists: recounts the following: “In 1970, I collaborated on the organization of the first complete retrospective of Giorgio de Chirico’s work at the Palazzo Reale of Milan and at the Kestner-Gesellschaft in Hannover. At this Show we displayed many exemplar paintings from all of his periods, from the first metaphysical phase to his ‘neo-metaphysical’ canvases of the 1960’s, including some of his famous masterpieces from the Museum of Modern Art in New York. The Hannover show introduced two more paintings than the one in Milan: two of his “Ferrara” paintings that belonged to the Museums of Wuppertal and Hannover. These were two paintings that de Chirico, immediately upon seeing them, declared to be fakes. I spoke about this to Dr. Harold Seiler, a man of great culture and integrity, and who was, at that time, the Director of the Museum of Hannover. Before that, he had been the Director of the Museum of Wuppertal. On that occasion he told me how he had acquired the de Chirico through a Parisian dealer (whose name he also mentioned) who had guaranteed the painting’s ‘authentic origins’. But the same dealer also warned: ‘Rest assured that the artist will not hesitate in declaring it a fake.’ The very idea caused

This cliché still stands as dogma in present times and it is useless to discuss it as such. But this leads to the inevitable consequence that the de Chirico's official disowning of the fakes acquires the exact opposite meaning, that such declarations actually authenticated these fakes, especially with regards to the earlier paintings.⁴

The first legal proceedings after the Second World War had a remarkable influence on de Chirico's career, through the orchestrated strategies of Breton and the Surrealists: "The floodgates opened and the invasion of fake de Chiricos came soon after the end of the Second World War, (especially in Italy).⁵ Psychological preparation began many years before, indeed right back to the First World War, when the Surrealists had acquired my metaphysical phase paintings at very low prices in Paris. They attempted to copy the same manoeuvre carried out by collectors and dealers against Henri Rousseau, known as Le Douanier (customs official). As a matter of fact, when the Surrealists in Paris started their campaign to up (the prices, obviously) the paintings they owned, I was in Italy where I stayed until the end of 1925. The Surrealists thought I would not be returning to Paris and in this way they created a 'de Chirico myth' that they, in complete nonchalance, referred to as 'Le Cas Chirico'. They cancelled the 'de' and pronounced it 'Sheerycoh'. This certain 'Sheerycoh', in due course, was speculated on for material interests by the 'band' led by Breton, and was described, by the same 'band', as a person with hallucinations, a visionary, and even in a certain sense, an idiot. During those few years spent in Paris, from 1911 to 1925, he painted a series of 'illuminations' over which they, the Surrealists, had complete and exclusive control".

2. Indeed, after the Second World War, three important events occurred that would confirm the de Chirico's official complaints.

In 1946, there was the de Chirico-Sabatello-Il Milione Gallery case, the focus of the present article. In June of the same year, at the Galerie Allard in Paris, some 20 false de Chiricos were displayed, as realized by Oscar

both men to burst out laughing while repeating the words 'Rest assured, rest assured'. The Director continued by saying that if de Chirico declared the painting a fake, then we can be certain that it is authentic. This was the reputation of the artist at the time. After meeting with de Chirico and having had several discussions together, Dr. Seiler became very thoughtful. The doubts as to the authenticity of the painting made him very circumspect. If the painting was indeed false, he would say, then a lot more of the other paintings must be false too, especially those obtained from the same source. If it were demonstrated that a painting had been supplied by one of the Surrealists, along with showing the artist's 'ack of ability to discern' and his tendency to refute his very 'children', then it would be possible to deceive an expert and exacting art historian. Moreover, there is no doubt that someone with lesser credentials would be even more easily deceived." In P. Baldacci, *Betraying the Muse-de Chirico and the Surrealists*, New York - Milan, 1994, p. II. The Hannover show, in fact, displayed five fake paintings. On file at the Giorgio and Isa de Chirico Foundation Archives, there is a copy of the registered letter sent to de Chirico on 30/03/1971 with the following tone: "Dear Doc-

tor Schmied, with reference to the reprint of your new catalogue for my show at the Kestner-Gesellschaft in Hannover, I want the following paintings, which are absolutely false, to be removed: n. 35 'Metaphysisches Interieur mit Piazza d'Italia'; n. 36 'Metaphysisches Interieur'; n. 38 'Die Rückker des Hekter'; n. 67 'Die Schule der Gladiatoren'; n. 202 'Mannequin'. For those paintings that are catalogued and numbered as follows: n. 14 'Der gross Turm'; n. 22 'Das Rätsel des Politikern'; n. 23 'Piazza d'Italia'; n. 24 'Piazza d'Italia', the dates must be re-examined and documented correctly because the information in the present catalogue is not to be considered anywhere near accurate. In anticipation of your co-operation, I send you my sincerest greetings, Giorgio de Chirico. P.S. Even the drawing catalogued as no. 213 is of dubious authenticity and as for the two paintings catalogued and reproduced as no.s 84 and 85, the dates in the catalogue are completely wrong. Att. 6 photographs."

⁵ The phrase "especially in Italy" has been cancelled out, which goes to confirm that, for de Chirico, the phenomenon was already to be considered widespread. (Archives of the Giorgio and Isa de Chirico Foundation).

Dominguez, the surrealist painter and intimate of Paul Eluard.⁶ Then in 1948, there was the “notorious Meta-physics Exhibition, organized and put on by the Venice Biennial”⁷ where “an obvious fake” (a *Trovatore*) was on display. De Chirico had this to say: “this is a such a fake that you would need not just slices of ham, but slabs of cement covering your eyes in order not to see what a fake it is.”⁸ Italo Faldi reproduced this painting in his 1949 monograph on de Chirico’s first metaphysical paintings.⁹

3. We need an explanation however concerning de Chirico’s declaration that implied that the counterfeits had already started being produced in the period between the two world wars. Recent studies and new archival acquisitions¹⁰ support de Chirico’s declarations, giving him due credit for the disowning of “his own works”, despite the fact that there are still wrongly attributed works that scholars continue to retain authentic and which appear in books and magazines. This is an authenticity that is based on the paintings’ origins rather than careful examination of the paintings themselves.¹¹

⁶ P. Baldacci, *De Chirico tradito dai surrealisti* (De Chirico Betrayed by the Surrealists), in *Giorgio de Chirico, Betraying the Muse*, op.cit. pp. 214 on. “A true and proper campaign of falsification for commercial reasons took place in the years from 1939 to 1945, with the surrealist painter Oscar Dominguez taking the lead. It is difficult to establish in this case however what Dominguez’s responsibilities were, or those of Eluard, but it is certain that in this period when the idea was perpetrated and put into action, the two were working very closely together.” (pp. 237-238). Baldacci continues: “In the catalogue edited by Germain Viatte for the 1982 Centre Georges Pompidou show in Paris, there is a photograph taken around 1940 of Eluard in his Rue de la Chapelle apartment. Hanging on the wall is an ‘à la de Chirico’ painting by Oscar Dominguez. The same painting was exhibited in the show as an authentically signed de Chirico. Paul Eluard ‘knew’ that it was a fake: he could not not have known this since he himself owned more than thirty of de Chirico’s best paintings. The surrealist pretence of ‘appropriating’ early de Chiricos was a manoeuvre that went well beyond normal critical skirmishes.” And he goes on: “The Dominguez painting at the Museum of Cleveland, authenticated by J.T. Soby as stated in the 1974 Turin Galleria Galatea catalogue, also came from Eluard. When de Chirico immediately declared the entire show at the Galerie Allard as a fake, Eluard started rumours saying that de Chirico was crazy and that he was no longer able to recognize his earlier paintings, and worse yet, that de Chirico was declaring the earlier works fakes on purpose so as to focus attention on his more recent works. It goes without saying that when de Chirico accused the Venice Biennial of exhibiting fakes, the courts ruled against him in the wake of the international intelligentsia’s opposition (to de Chirico). After almost fifty years, the fakes by Dominguez are still in circulation since it has been impossible to get rid of all of them. Every time that there have been protests, and paintings that have gone to ‘trial’, it has always been said that de Chirico is not credible and that what the Surrealists had to say was more important.” (p. 239). According to W. Schmied, without the surrealists’ placet, who had created through their propaganda a climate favourable to the falsifying of de Chirico’s works, the show at the Galerie Allard would have been impossible. *Die Strategie der Fälscher*, in *de Chirico und sein Schatten*, München, Prestel, 1989, p. 71. But there is more: in the preface to the catalogue of the

above-mentioned show, Schmied writes: “This is how the idea that de Chirico was a man who could not be taken seriously was born. And as such the idea developed of the Surrealists who were guardians of the ‘sacred flame’ and tutors of the ‘true de Chirico’. In doing so they created an atmosphere that was ideal for the promotion of works done in the de Chirico spirit and they were able to ‘baptize’ them as authentic works by de Chirico.”

⁷ G. de Chirico, *Memorie*, op.cit., p. 218.

⁸ *Ibidem*, p. 220. This painting had already been displayed at the Galerie Allard in 1946 (no. 23). “This fake comes from a collection in Milan and it was taken to Paris where it now appears to be owned by the surrealist poet Paul Eluard.” *Ibidem*, p. 221.

⁹ I. Faldi, *Il primo de Chirico* (The early, de Chirico), Venice, 1949. The painting appears in table XXVII. In the exemplar version owned by the Giorgio and Isa de Chirico Foundation, one can see the word “falso” (“fake”) written by hand by de Chirico himself on the reproduction of the work.

¹⁰ See the analysis by Jole de Sanna and the newly-published documentation (letters between de Chirico and Breton) appearing in this issue of the magazine that provide accurate details of this phenomenon. See also the study by P. Baldacci, with its significant title *De Chirico tradito dai Surrealisti* (De Chirico Betrayed by the Surrealists) op.cit., especially, by the same author, at paragraph 7, entitled *Espropriazione, falsificazione ideologica e falsificazione materiale* (Expropriation, Ideological Falsification and Falsification of Materials) (p. 232-240). It is a pity that Baldacci limited his study to Oscar Dominguez and his relationship with Paul Eluard, without going into depth about the existence of other counterfeiters. In Baldacci’s opinion, this so-called “amusement between painters” (for example, Ernst painting a copy of *L’énigme d’un après-midi d’automne*) “is rarely spoken about” so as “not to create problems on the market” (p. 237) and “because it is better to keep this type of amusement a secret... or that this amusement be declared as such” (p. 238). Perhaps it is possible to conclude that this type of amusement was more widespread than originally thought. In the same vein, further study is required on P. Guillaume’s hobby of painting “signed works ‘à la de Chirico for pure amusement’, that then entered into circulation only after many decades following his death” as Baldacci recounts (p. 237).

¹¹ This is the case of the painting of 1914 *Composizione metafisica con giocattoli*, now in the De Menil Collection in Houston, which

Scholars of Giorgio de Chirico will need to revise a whole part of their criticism with regards to a part of his works: a revision that will have to be carried out with total intellectual honesty free of market considerations and liberated from every, already mentioned, commonplace. Their studies will have to be exclusively based on an examination of the works with only secondary consideration given to their origins. It seems evident then, at least among more serious scholars that the common refrain that de Chirico got a kick out of declaring his own works from the metaphysical phase of the Twenties and Thirties fakes – done, apparently to spite his enemies – does not hold water (apart from the fact that de Chirico did not have a sufficient number of enemies for all the paintings he declared false); also because these rumours contradict the nature of de Chirico's true personality – if we remember to ignore the clichés about the artist. It will be the scholars' responsibility to explain and reason why de Chirico did not, or could not, defend himself adequately in the period between the two wars against certain behaviour displayed by the Surrealists and against the wholesale falsifying of his works. De Chirico would only take a firm position in 1946 and only when he found the courage to establish the truth, as he would continue to do until the end of his life. Even if it is obvious that de Chirico himself committed errors (especially where judgement had been passed on the sole evidence of photographic reproductions) these errors will have to be considered as exceptions rather than the norm.

4. Passing onto an examination of the case – the object of this present article – it is necessary to give ample space to the treatment of the entire issue and to furnish an overabundance of documentation, along with publishing integrally the 1955 sentence from the Court of Appeals in Rome which pronounced in de Chirico's favour. Because we are considering the first counterfeit of "Pictor Optimus", it is also necessary to reconstruct, as fully as possible, the truth of the facts, also in light of the following considerations.

The whole affair started at the end of 1946 when Mrs. Giuseppina Di Capua presented herself at the painter's studio to get de Chirico's opinion on a *Piazza d'Italia* signed and dated 1913. The legal documents note that immediately upon seeing the painting he declared it a fake, saying that it was "absolutely fake", even before knowing about the painting's origins. His reaction was so strong that he even tried, unjustly, to keep the painting so as to be able to destroy it. On the same day though, in agreement with the Lady, the painting was deposited at a Notary Public of Rome in order to await legal judgement.

As has already been noted, up to that date there had been no trial concerning the so-called "de Chirico fakes", nor had the legend been born that the de Chirico automatically declared any metaphysical painting false as soon as one was shown to him. There was no reason then, when confronted with a declaration stating the absolute falseness of the work, by the presumed author himself, that we should change the usual way in these circumstances are treated. That is, that the false work be given back to the seller and, in turn, the buyer be given back the monies paid, even with legal expenses added on.

The strangeness of this case under examination lies in the very way which the buyer of *Piazza d'Italia*, the dealer Dario Sabatello, was moved to cite in legal action in primis Giorgio de Chirico himself, instead of following the usual practice. Sabatello contested de Chirico's declaration (that the painting was false) and re-

would be the cause of the dispute between Maurizio Calvesi and Maurizio Fagiolo already mentioned (1988). It was retained to be authentic by Maurizio Fagiolo only because it was in Doucet's possession in 1929 (see article cited in note 2). In this case the so-called external evidence documented that that painting effectively was to be found in Doucet's home in 1929, but it is not said that the painting was executed by de Chirico. If we do not take into account all

those valuable considerations directed at examining the painting directly, we will be in the presence, in any case, of a simple assumption that could take on the status of real proof while only being a hypothesis – as has already happened – namely that, all the de Chirico fakes were painted after the Second World War only, or at least this is what Fagiolo implies. There are too many doubts and questions surrounding the examination of the opera.

quested that the Court of Rome verify the painting's authenticity, and then only after, or rectius, alternatively asking from the seller, the company "I due Forni", owner of the Il Milione Gallery, to give back the price paid, in case the court declared the painting false. Moreover, Sabatello requested that de Chirico pay damages for discrediting the painting, with the sum of the hyperbolic figure (for the times) of 1,000,000, Italian lire. In this way, and for the first time in history, rights recognized by law¹² were taken away from the author, and never before had doubt been attributed to an artist who declared certain works fakes or authentic for that matter. For the first time this decision was to be undertaken by legal authorities. Thus a dangerous road was opened up, where the judiciary, in a civil setting, was called upon to pronounce upon events that had already been documented and proven by the parties involved in the suit. Permission was also given to proceed with so-called "external evidence" (the origins and history of the painting), evidence that was to be given by parties who were, more or less, credible but who had their own interests. This is to say that the evidence was given by experts who were more or less well prepared and authoritative, whereas the author's declarations were discounted (almost as if he himself were on trial), along with his original position as a qualified witness that copyright laws guarantee. In order to provide a full picture of the event, it must also be said that Sabatello's decision to sue the principle party, de Chirico – who, in such a trial should have been the principle witness instead – and then to sue the Il Milione Gallery afterwards, only goes to increase suspicion that would sustain de Chirico's defence.¹³ Namely, that there was collusion between the other parties involved, or more specifically, between the untiring Surrealists and their colleagues from the related Italian scene – a circumstance that was often cited by the artist.

It must also be remembered that throughout the entire trial de Chirico never denied the fact that he had sold a *Piazza d'Italia* to the professional engineer, Mr. Alberto Della Ragione in 1933, similar to the contested painting. However, he decisively stated that the painting under legal discussion was but a poor copy of that which he

¹² See Arts. 20 and 21, Law no. 633, dated 22/04/1941.

¹³ See pp. 2-4 of Giorgio de Chirico's memoirs of his defence, dated 16-01-1956, written for the hearing of 25-01-1956 at the First Civil Section of the Supreme Court of Cassation, with lawyers Michele Grimaldi and Giovanni Persico; "Application Originating Legal Proceedings (citation June 30-July 1, 1947) was served, on behalf of Doctor Dario Sabatello, who proposed by summons two alternatives: a) an order to give back the painting, upon its recognition as being authentic; b) to proclaim null and void the sale, if the painting were to be declared a fake. Up to this point, Sabatello had made no errors, but he would soon stray from the path of justice when, in concerted effort with the company 'I due Forni' he had de Chirico summonsed as well, and against whom he thought he could ask an incredibly high amount of damages by citing de Chirico's defamation of the painting!... It is obvious that at this point Sabatello was in league with the company 'I due Forni' against de Chirico, who, as the presumed author of the painting, should only have been a witness at this trial to attest to the painting's authenticity and during which he should have had to respond to no other issues. If the trial had been against the company 'I due Forni' only, then de Chirico would have only had to confirm his extra-judicial declarations that the painting was a fake. Then it would have been impossible to criticize de Chirico's assertions, whereas now that he had been served a summons directly, he was forced to defend the honour of his art and of his truthful and disinterested

declarations! The collusion that occurred between the company 'I due Forni' and Sabatello obviously originates from the fact that, if Sabatello had lost the legal battle, he would have surely been paid off by the company "I due Forni" all the same. Accordingly, it is reasonable to deduce that there was perfect agreement, as is evidenced simply by reading the adversarial documentation (filed in the first instance), and to which express reference is made. This said, we can see that the only person called into judgement is Sabatello, both formally and in substance. We can also reasonably argue that the company "I due Forni" pushed Sabatello into acting against de Chirico: a suspicion that acquires further substance from the fact that it was the company that took on the role of providing proof of the authenticity of the painting, in the first instance. The judicial position cannot be changed just because of the assertions of the adversaries, and neither can it be said that "it was de Chirico who was being tried, since it was who he sequestered the painting" because, if the truth be told, the claimed "confiscation" took place before sentencing. And it was immediately transformed into "a voluntary bailment mutually agreed upon by all parties, carried out in the presence of Notary Public Pierantoni". De Chirico could not have acted otherwise because when Mrs. Di Capua showed him the painting to see if it was authentic, he had no idea who the owner was!" (Giorgio and Isa de Chirico Archive). The very same Mrs. Di Capua confirmed these circumstances under oath when questioned during the trial.

had sold.¹⁴ From the official documentation of the trial, now on file at the Giorgio and Isa de Chirico Foundation, we can see that de Chirico, among other things, underlined the fact that the painting he sold was completely finished and “did not have a strip of bare canvas in the lower part as did the painting under question”.¹⁵ The Court of Rome, with a sentence dated 14/04/1950-18/01/1951, declared the painting authentic, basing its decision on both the so-called “external evidence” (origins and the history of the ownership of the work) and on a technical examination that even admitted that the painting could well be a copy of the original. In the end, authenticity was declared on the basis of the painting’s origins and the certified changes of ownership. The trial received a lot of attention in both the Italian and foreign press, as de Chirico would state in his memoirs.¹⁶ It was in this context that the painter Maccari would also publish a ferociously satirical vignette in the magazine “Il Mondo”.¹⁷ After having a team of experts carry out a technical examination, The Court of Appeals of Rome reversed the first judgement, declaring that “the confirmation of authenticity comes from their in-depth consideration – rather than from a technical examination aimed at a stylistic analysis – of persons considered to be witnesses and whose credibility is not within their competency to decide.” The sentence dated 17/01/1955, no. 201/55, judged in favour of de Chirico, confirming the counterfeit nature of the painting and ordered the scratching out of the signature and date, believed (erroneously) by de Chirico to be the only way of preventing future attributions of the work to the artist. The Court of Appeals also ordered the Il Milione Gallery, owned by the company “I due Forni”, to give back the 400,000 Italian lire paid by Sabatello for the counterfeit painting along with legal expenses (30/06/1947), upon his return of the painting. The court also ordered them to pay the painter’s court costs. De Chirico speaks of this in his *Memoirs* making note of the fact that the press almost ignored the sentence: “the decision to my appeal was announced reluctantly in the newspapers and magazines, and the news itself cast a cold front over the modernist scene and among those who were envious.”¹⁸ The long legal battle finally finished with the sentence pronounced by the First Civil Section of the Supreme Court of Cassation which rejected the counter appeals by Sabatello and the company “I due Forni”, and fully recognized as legitimate and correct the judgement from the Court of Appeals of Rome noting that “through

¹⁴ In the legal proceedings before the Court of Appeals of Rome there is a declaration that is authenticated with a signature and the date 31/05/1951 by Notary Public Tito Staderini of Rome, in which the son of the lawyer and famous collector, Rino Valdameri, states: “I remember my father bringing to his Portofino villa, the *Piazza d'Italia* currently entrusted to Notary Public Pierantoni of Rome, and today the object under question. This fact led me to believe that my father did not himself believe that it was authentic or of very much value, since he had his collection in Milan.” It is self-evident that here we are in the presence of a copy. Whoever made the copy and when it was realized were not discussed at the trial, and justly so since these are issues that were not within the court’s civil competencies anyway. Even in the first instance before the Consulente Tecnico d’ufficio (Official Technical Consultant) this truth was emerging, but then was discarded in favour of witnesses’ testimony (of which some were decidedly not disinterested, a fact discussed by de Chirico in his *Memoirs*, p. 215). As we can see, in this case, the evidence based on the work’s origins demonstrated the limits and risks of such evidence.

¹⁵ Testimony and the response by Giorgio de Chirico before the Roman Courts on 20-08-1947 with his lawyer Gino Sotis (p. 3). This is the first defence he wrote in his memoirs and where he also he indicates some eight points that explain why the painting

cannot be considered authentic.

¹⁶ G. de Chirico, *Memorie della mia vita*, op.cit. p. 215.

¹⁷ Satiric Vignette for “Il Mondo”, 1951: de Chirico had been condemned to pay 250 thousand Italian lire for having denied authorship of a painting that, on the contrary, resulted in being his. The vignette shows the painter as a baby being lifted up off the ground by a Judge who is showing the artist some of his paintings. The caption reads “Com’on, try and remember which paintings you did as an adult.”

¹⁸ G. de Chirico, *Memorie della mia vita*, op. cit., p. 218. In an article appearing in “Candido” on 8-04-1961, with the headline *The Grotesque Lies of “Time”*, de Chirico takes umbrage and suspects that the news that Sabatello lost his case never reached the United States: “I spoke to this man of the trials that I had won and, specifically, about that trial over a false *Piazza d'Italia*, purchased in Milan at the Il Milione Gallery in via Bigli by a certain Dario Sabatello, an Italian by birth but I think he became an American citizen. I came to speak about this trial because the interviewer asked me what I had to say about a particular suit over a false painting where there was an American involved. From the look of stupor on the interviewer’s face when I spoke of the trial and of Dario Sabatello, I could tell that the news that I had won had not been published in the United States. Perhaps they had even printed the contrary: that I had lost the trial.”

a precise and exhaustive examination of all the evidence collected (witness' testimonies, declarations from the parties involved and their motivations, technical consultations), the court decided that the painting was a fake, and not because Sabatello and the company "I due Forni" had proven the authenticity of the painting, but because "the evidence gathered proves beyond a doubt that the painting is a fake." The Supreme Court went on to add: "Neither can it be affirmed that the Court's handling of the issue was lacking, or that a synthetic and complete analysis was not effectuated. Instead, the detailed motivation in the challenged sentence shows clearly that the Court of Appeals took it upon themselves to consider not only witnesses' testimonies – which did not favour the company 'I due Forni' – but to integrate this testimony with a consideration of technical analyses, thus giving the court the opportunity to respond to the all observations of the parties involved."¹⁹ After the Court of Cassation's sentence, and thus with the so-called judgement formed, the signature and date on the lower right were scratched out, as per the Judge's orders.

5. The *Piazza d'Italia* declared false in 1955 suddenly reappeared at an auction in November of 2000, at a prestigious Auction House that was unaware of the facts.²⁰

The painting was immediately sequestered by the courts and legal proceedings are still in progress.

The case became public when a well-known jurist who was versed in the problems of the art world, published, in January of 2001, an article carrying the title: *Sentences of Counterfeits: Should It Always Remain That Way?*.

Also significant was the subtitle: Despite unassailable evidence that would reclaim the painting as one of the artist's oeuvre, a painting judged to be counterfeit 50 years ago in a civil case has been sequestered.²¹

Certain arguments of the article can be sustained, in accordance with the Art. 21 of the Italian Constitution, that anyone may dissent with a decision issued by Italian courts and think differently. It would be a terrible legal state of affairs if this were not so. In a democratic country it is normal to be able to criticize and declare one's opposition to a court sentence, but this does not change the fact that the court's decision must be applied, whether in civil or penal matters. In civil proceedings, the painting was declared a fake and as the author of the article himself recognizes, in accordance with Art. 2909 of the Italian Civil Code, the judgement is directed at the parties and all those who would be affected (that is, specific and related heirs of the original parties). Thus it is correct of the author to confirm: "Therefore, whoever has acquired (as in this case, Editor's note) any goods from the litigants who were then in controversy, must submit to the effects of the decision that officially terminated said controversy." Even for the writer of the present article, it is obvious any owner of this work will always be free to declare that he is the owner of an autographed painting and put it on the market, but only on condition that the paint-

¹⁹ Of particular importance to the interpretation of de Chirico's work were both the CTU (Official Technical Consultant) represented by Professors Emilio Lavagnino, Iacopo Recupero and Carlo Ludovico Ragghianti, along with Professor Michele Biancale and Professor Piero Girace in the first instance, and Professors Nicola Ciarletta, Virgilio Guzzi and Welso Mucci in the second trial (Archives of the Giorgio and Isa de Chirico Foundation).

²⁰ Lot 530 Giorgio de Chirico, Volos (Greece) 1888, Rome 1978, *Piazza d'Italia*, 1930 circa, oil on canvas, 30.5 x 79, signed at lower right "G. de Chirico". Origins: Alberto della Ragione, Genoa (1933, Rino Valdameri, Milan; Galleria del Milione, Milan; Luigi Sabatello, Rome. Private collection. Exhibitions: Exhibition of *Modern Italian Art*, Como, Villa Olmo, September 26/October 19, 1936, no. 49 *Professional Engineer Della Ragione*, Genoa edited by A. Sartoris; *Works from the Valdameri Collection*, Rome, Galleria di Roma, January 27, 1942-February 10, 1943, no. 53. On the back: labelled

"(Lawyer) Rino Valdameri Collection, with no. 87; on frame a seal and on the back a label: "Galleria del Milione Milan, with no. 3391." Bibliography: G. Ghiringhelli, *Temperature* Bollettino del Milione, Milan, 1955; M. Fagiolo dell'Arco, *I Tempi della Metafisica Mezzo secolo di approfondimenti 1924-1974*, Milan 2001 (in progress). *Dossier storico artistico*, edited by Maurizio Fagiolo dell'Arco, Rome, June 14, 2000.

Estimated value in Italian lire: 420,000/460,000 (216.912/237.570). It is important to note that the sentence from the Court of Appeal of Rome was never cited, but which we believe was done in the historical-artistic dossier and in the article by G. Ghiringhelli (Galleria Il Milione) which was written specifically to contest the Court of Appeals' sentence, in which he repeats all the defence's line of reasoning that had been considered by the Judges but then ignored.

²¹ F. Lemme, *Sentenza di falsità: è giusta che sia per sempre?* in "Il Giornale dell'Arte", no. 195, January 2001, p. 30.

ing in question does not carry the cancelled signature and date, as ordered by the courts, and that the painting may never be authenticated, in accordance with Law 1062/1971. However, the well-known author of the cited article introduces a problem of great interest: whether the judgement of the courts may prohibit “the carrying out of historical research of art and objective interests for a more complete analysis of the artist.” We would agree that the courts cannot do this. It is not correct that the courts prevent historical research. The very idea is ridiculous. Serious doubts develop however when such a basic principle is used to legitimize certain behaviour that is directed at eluding the judgement. Indeed, it cannot be argued the preclusion of “not even the possibility of allowing the circulation of a painting declared false and allowing reason to reattribute it to the artist’s oeuvre.” Such a reattribution would, according to the same author, be justified as follows: “With regards to this proposal, a precision is in order: the reattribution did not happen purely because of the written data or the elevated quality of the painting: It was totally due to the reconstruction of its ‘external history’. The work was originally purchased (1933) directly from the artist by a collector of historical Italian art. This data alone – and it is incomprehensible why this has been evidently ignored in the civil suit of fifty years ago – is of significant relevance in eliminating all doubt. Moreover, the artist, in 1933, did not have access to ‘slaves’ who could carry out commissioned work for him or that the artist executed works directly himself, while the first certified fakes date to 1946. Hence, it is impossible to ignore the precedent set by the Court of Cassation. The scratched out signature may not be replaced as per the legitimate sentence. But given the fake painting’s history, it may be put into circulation where it might even acquire certain notoriety due to the strange circumstances that surround it. It is perplexing, however, why the Assistant Public Prosecutor, in mentioning only the negative precedent of the Court of Cassation – nor was he comforted by the results of a new analysis – issued the order to sequester the painting as a work of art that is ‘irretrievably false.’” If the reasons for the “justified” recovery are as reported above (and about which we have no reason to doubt), anyone can see that there is nothing new or irrefutable. Indeed, there is absolutely nothing that exists to prove the falseness of the painting, since it was the painting’s “external history” (origins and the history of its ownership) to be analytically examined both in the first judgement (that went against de Chirico) and in the second trial, just as the fact that the written data and the very bad quality of the painting were evaluated negatively. The only new thing to happen is that it has occurred to someone to put another false de Chirico on the market for reasons that are all too easy to guess, and that the signature has been reaffixed (but not the date) and the dissenting opinion against the courts by an illustrious critic has been exploited. I use the term “dissent” in its proper meaning: not to agree with the pronouncements of the courts or the wide-reaching motivations supporting the court’s decision, yet without providing new arguments or new evidence that has not already been seen by the court. No new facts then, but just an illegitimate opinion meant to assume the air of an analysis, in accordance with Law 1062/71, and an opinion that wants to replace the established credibility of a sentence already emitted. It is obvious why the Assistant Public Prosecutor sequestered the painting. In conclusion, it is to be emphasized that the Court of Appeals retained it sufficient that the signature and the date be scratched out, not because they were doubtful of their verdict, but strictly for reasons of civil legislation, since the painting “may eventually acquire a commercial value, independent of its origins. It is sufficient to eliminate the possibility that the painting be once again attributed to de Chirico, and order the cancellation of ‘G. de Chirico 1913’ by scratching the writing out (the only sure technical way).” One can only hope this time with the painting being judged in a criminal court setting in front of judges with greater powers, that the work be ordered confiscated and destroyed so that we can avoid the risk of seeing it reappear in another 50 years.

Paolo Picozza, Lawyer, is Professor of Ecclesiastic Law, Macerata University
English translation by Mark Newman