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## As 1929 case shows, incautious art experts risk disparagement claims

**F**ascinating stories are sometimes tucked away in old, rarely cited court cases, such as *Hahn v. Duveen* (N.Y. Sup. Ct. 1929).

This is the intriguing tale of a painting known as the “American Leonardo.” *Hahn v. Duveen* is a little-known case, but one that continues to have an impact in that narrow space known as “slander of title,” where the law intersects with art connoisseurship.

The story begins with Harry Hahn, a mechanic from Junction City, Kan., who went off to fight in France in World War I.

Harry not only survived that deadly war, he fell in love with and married a French mademoiselle named Andree Lardoux. The newlyweds returned to Kansas in 1919 and Harry became a used car dealer.

The next year, Andree’s aunt, the Comtesse Louise de Montant, brought Andree a wedding gift, a painting that Louise’s grandfather had bought at an auction in France over a half-century earlier in 1847. The painting, titled “La Belle Ferronniere” (the Ironmonger’s Wife), was thought to be by Leonardo da Vinci.

This was a loving gift from Aunt Louise, but let’s be realistic — some wedding gifts are meant to be sold rather than adorn a wall in Junction City, Kan. And so Harry and Andree made a deal to sell “La Belle Ferronniere” to the Kansas City Art Institute for \$250,000, a tidy sum at that time.

We move from Kansas to London to meet our next character. Sir Joseph Duveen was one of the most influential art dealers of the early 20th century. A New York newspaper called Duveen “the greatest living authority on art.”

Realizing that “Europe has a great deal of art and America has a great deal of money,” Duveen would buy art from faltering European nobility and sell it to the rising class of American millionaires, like Mellon, Morgan, Frick, Rockefeller and Huntington. He was known to be flamboyant and supercilious as well as immensely wealthy.

When word spread in the art world that the American Leonardo was about to be sold, a reporter for the New York World newspaper called Duveen for a comment. Without having seen Hahn’s painting, Duveen refuted its authenticity, stating that the original “La Belle Ferronniere” was hanging in the Louvre in Paris.

When Duveen called Andree Hahn’s painting a mere copy of Leonardo’s painting, the Kansas City Art Institute called the deal off and Hahn brought the great Joseph Duveen to court in New York for “slander of title.”

A slander or disparagement of title in the art world refers to a false statement that questions the authenticity of, or title to, an artwork.

To prove her case, Hahn had to prove that Duveen’s statement was false. She had to establish that Leonardo da Vinci did, in fact, paint Hahn’s painting — a heavy burden 400 years after the fact.

At the time, the lawsuit was a cause celebre, as noted in a January 1922 issue of *The Arts* magazine: “Few lawsuits in recent years have aroused so much interest as that of Mrs. Andree Hahn against Sir Joseph Duveen for \$500,000 damages.”

The case dragged on for years and finally went to trial in early 1929. The trial was a novelty for the U.S. courts at the time. How was a jury of ordinary, reasonable New Yorkers to decide whether Hahn’s painting was a real Leonardo?

The trial became a battle of experts. The court thoughtfully explained why this was necessary: “A new situation exists in the world of art. Formerly the church, the state and a few powerful men owned all the fine pictures and statutory. Their experts were men who created [the] canvasses or marbles.”

But as time passed and the owners became impoverished, “it became necessary to sell their art treasures.”

As works passed from owner to owner, authenticity issues arose: “In cases where every witness, as well as the producer, was dead centuries before ... some method of establishing authenticity other

### INSIDE IP LAW

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than the testimony of living witnesses was resorted to.”

Thus, courts came to rely upon the opinions of “men who had studied the materials and methods of old painters.”

The well-connected Duveen assembled a team of the most famous art historians and connoisseurs in the world, including Bernard Berenson, a Harvard man who was at that time the pre-eminent authority on Italian Renaissance art.

The trial was also notable for its use of scientific evidence. For probably the first time in a U.S. court, X-ray technology, previously

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used only for medical purposes, was used to analyze the paintings.

“I have profound respect for critics whose conclusions rest upon facts,” wrote the judge; as for other experts, who rely on “a sixth sense,” they are as “sounding brass and tinkling cymbals.”

His instructions to the jury reflected this; he charged them: “You will be wary in accepting the conclusions of experts when such conclusions are not founded upon knowledge, experience and study ... Because a man claims to be an expert does not make him one.”

Apparently, uncertainty got the better of the jury.

After almost four weeks of trial, 14 hours of deliberation and “every effort on the part of the court to induce them to agree,” the jury announced that it was impossible for them to come to a decision. It was a hung jury; nine favored Hahn, three chose the haughty Duveen.

Rather than endure a retrial, Duveen agreed to settle the case by paying \$60,000 plus court costs.

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The verdict of art experts since then has been far more decisive than the New York jury in 1929.

In 1993, a leading Leonardo expert concluded Hahn’s painting was not by Leonardo or his workshop, but that the painting does have the benefit of age, perhaps dating back to the first half of the 17th century.

The art market has now had the final word on the American Leonardo.

It’s not by da Vinci, but it is a curiosity worth owning. After the painting languished in a bank vault for some 80 years, the Hahns’ 90-year-old daughter auctioned it at Sotheby’s in 2010 for \$1.5 million.

According to art market expert Michael Findlay, that’s less than 1 percent of what Hahn’s painting would be worth today if it were an authentic Leonardo.

Still, not a bad price for a mere copy.