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The perils of portraiture: the case of Mrs Payne

The life of the peripatetic portrait painter in the mid-nineteenth century is one that is largely lost to us. Brief insights into this uncertain and competitive world are given in the following account of a court case which centred on the professional competence of a young painter, James Stewart. The charge of incompetence was brought by Thomas Pibble Payne, a successful surgeon-dentist and in 1871/2 mayor of Southampton, who sought to recover £10 10s for a portrait of his wife. He was a formidable adversary. His obituary in the *Southampton Times*, 10 April 1897 recalled “the blunt way in which at times he gave vent to his convictions” and referred specifically to his conduct on the magistrates’ bench. “It was in his nature to be outspoken, and he unburdened his heart in a way that did not always meet with the approval of his brother magistrates; but one might as well have tried to pump the sea dry as to repress his uppermost feelings”. His wife, Martha, was baptized at All Saints Church on 24 May 1818, the daughter of George Ingram, an innkeeper. She was nearly three years older than Thomas and at the time of their marriage – 4 November 1840 – was a milliner living in the High Street. She was clearly a domesticated lady, with seven children under the age of twelve at the time of the sitting. The defendant, James Stewart, is so far unknown outside this court case.

The case was heard before C J Gale in Southampton County Court on Friday, 7 April 1854. Mr Sharp, junior acted for the plaintiff (Stewart) and Mr Pocock for the defendant (Payne). The account is taken from the *Hampshire Independent*, 8 April 1854.

Mr Sharp, in opening the case, said his client appeared before them with great reluctance, as an artist, to sue for the price of a picture painted for the defendant; but he had no other alternative than to do so, when he was told that he was not to be paid except on certain conditions which the defendant chose to dictate. The defendant was a dentist, and, as all gentlemen had their hobbies, some fishing, others boating, and others shooting, he had his, and that was litigation, for in it he was frequently involved in some way or other. Mr Stewart was an artist of considerable reputation, who had painted the life-like portrait of Mr Warner, which had been presented to the Botley Farmers’ Club. He had also painted the likeness which had gained so much admiration of Mr J I Ekless, of Bursledon, and those of the Rev Dr Wilson, General Blunt, Col Wilkins, and others, and that of Mr R H Perkins, the auctioneer, in his box. In December last Mr Payne heard of Mr Stewart, and on their being introduced some conversation took place about Mr Payne having his likeness taken, and Mr Payne remarking that so many had tried to paint him, but on account of some peculiar expression in his face could not succeed. Mr Stewart, who was anxious to get all the portraits he could, did, in this instance, remark that if it was not a likeness he would not ask Mr Payne to take the picture, but this observation did not also apply to the likeness of Mrs Payne. The likeness of Mr Payne gave the most perfect satisfaction, and the regular charge of ten guineas was paid for it – indeed so much pleased was Mr Payne with it that, although he had three or four other portraits of his wife, he expressed a wish to have another. Mrs Payne was spoken to, but she was averse to being taken – it was a great annoyance to have to sit for a portrait, and she was

quite sure nobody could make a good likeness of her. Mr Stewart said it would be impossible for any artist whatever to make so good a portrait of Mrs Payne as he had been enabled to take of her husband, but he had no doubt he should be enabled to succeed. The result was that Mrs Payne was persuaded to sit for her portrait, and it was completed, but, unfortunately, the lady showed herself on every occasion averse to it. "Oh", she said on one occasion, "Oh, dear, Mr Stewart, I wish you would not come here taking up my time; I want to go down and make my puddings". Another time she wished to go and make her cakes, and she never sat with that calm and placid expression which she ought to have exhibited at such a time. The task was finished on the 21st of January, and when Mr Stewart went, as usual, for payment, complaints were for the first time made. Mr Payne came into the room in a manner not the most gentlemanly, and declared that the portrait was not worth 5s; that it was a perfect daub; and that the application for payment was an attempt to extort money before the paint was dry. Mr Stewart said he was going to leave the town, and required payment, and Mr Payne said that Mr Andrews and some of his friends were coming, and he should submit the portrait to them, for it was no more like his wife than he was like his friend Mr Pegler. Mr Stewart then placed the matter in the hands of his solicitors, whose proceedings Mr Sharp detailed at considerable length. Mr and Mrs Payne called upon them, and made many complaints, one of which was, that a great wen was put upon her neck, where she did not possess anything of the sort; but the Jury must acknowledge that light and shade were shown by light and dark colours, and what was represented to be a wen was nothing more nor less than a shadow cast on a part of the neck. Perhaps she did not understand light and shade and shadow, and she declared that the wen must be painted out. Then she declared that there was no animation thrown into her eyes, no expression in her face, and no likeness whatever – that the nose was too long, and that there were no eyebrows. Having detailed the particulars of the various communications which had taken place between the parties, he remarked that it was a delicate subject to touch upon a lady's beauty. He was far from saying that the countenance of the lady was devoid of beauty – it might be of that description to almost baffle art; but he had no doubt, when he heard the complaint that there was no animation in the eye – no expression in the face, that she possessed all those domestic virtues for which the women of England were so justly famed, and which made their homes and hearths so happy. Mr Payne saw this animation and expression in every feature of her face, blinded by love, believed them to exist, although they were not found to be portrayed upon the canvas. There was no question as to the amount for which the picture was to be painted; the artist had devoted his time, labour, and materials upon it, and it was hung up in Mr Payne's drawing-room for three months, and he contended that on the whole he was entitled to a verdict.

The portrait was then brought into Court and exhibited, and Mrs Payne was placed by its side in the witness box for a short time.

The plaintiff was then examined, and his evidence entirely bore out the statements of Mr Sharp in his opening address. He said the success of the artist depended greatly upon the features, and a gentleman was generally more easy to paint than a lady. Mrs Payne was adverse [*sic*] to sitting for her portrait, and always complained of the trouble it occasioned her, her countenance not expressing that pleasing expression which he wished to put upon the

canvas. He had to talk to her, and try to get her into a pleasant mood, but she was more anxious to go to her domestic duties than enjoy the pleasure of his company. When the picture was finished Mr Payne said it was a perfect daub, and not worth 5s, distorting [her] face into a grimace, and saying that that was what he had done. Witness spent an immense amount of time about it – he had painted it as like the lady as possible, and any alteration he could make would not be an improvement.

In cross-examination, witness said he had painted Mr G L Marshall's portrait, and upon payment he asked him to lengthen his waistcoat, which he promised to do at his leisure. The objection was made to Mrs Payne's portrait that there appeared as if there was a swelling in the chin. He had painted other ladies who had difficult countenances. Mrs Payne said it was Christmas time – that her children were home for the holidays, and it was exceedingly inconvenient to sit for her portrait when she had to prepare for parties.

Mr Pocock was particularly anxious to ascertain what the plaintiff said to Mrs Payne, in order to get her into a good humour, but he declared he couldn't recollect what he did say, and wondered what Mr Pocock talked about under such circumstances. His Honour supposed the plaintiff talked what was commonly termed "tom nonsense"; and, in re-examination, he said that he always tried to talk the ladies into a good humour, for such a proceeding was perfectly natural and desirable.

Mr Edward Harrison, solicitor for the plaintiff, proved the correspondence which had taken place on the subject, and said that when Mrs Payne called upon him she said that the picture was no likeness at all; that she had no wen on her neck, but that Mr Stewart had made one, and that he also made the corners of her mouth hang down in a manner the most disagreeable.

Mrs Payne was then placed in the witness box, and said she was present occasionally when Mr Stewart was painting Mr Payne, who wished to have her likeness taken. She was neither adverse to it, nor particularly anxious to have it done. She had two likenesses before, one taken by a friend and the other by an artist. Mr Stewart ridiculed the one he saw, calling it the old salmon-coloured picture. Very likely her children had called it so too. She had, of course, very great objections to the portrait before her. She did not see the slightest likeness anywhere, nor did she know who it was like. The whole thing was utterly unlike her, particularly about the eyes, mouth, and neck. The face was very much too large.

Mr Sharp suggested that the portrait was of a life-like size, and that it ought to be measured by some one competent to give an opinion.

Mr J White said he had seen the portrait, and considered it a likeness, although he made objections to it.

Mr Pocock, in reply, contended that his client had a right to expect a reasonably correct likeness, and that the one produced did not amount to this, and that the defendant was neither in law nor common sense entitled to be asked for a penny. He endeavoured, at considerable length, to impugn the credibility of the plaintiff, and complained that it was not fair that his client should be held up as a litigious man, and that Mr Sharp should endeavour to make fun

of a gentleman who very naturally wished to have a correct likeness of a wife to whom he was attached. Mr Stewart had not done all which could reasonably be expected of him in producing a correct portrait, and his client was therefore entitled to a verdict.

John Parker, an engraver employed at the Ordnance Map Office, said he looked upon Mr Stewart as a young gentleman of considerable talent, and considered he ought to have produced a better likeness. It was decidedly not a good likeness – one eye was not large enough; there was a defect in the neck, which had the appearance of a swelling; the head was too narrow, and the nose was too straight.

Dr Marshall was next examined, and gave his opinion, as a medical man, that the picture was not like Mrs Payne – that the eye was dropped, and indicated a disease called *tosis*, and there was a swelling and appearance of deformity about the neck.

Mr Stephen Broad, picture dealer, said he thought it was not a reasonably good likeness – the nose was defective, and the forehead appeared like that of a young lady who shaved for the purpose of getting a “point”.

Mr Sharp then called Mr Wiblin to contradict Dr Marshall’s evidence, and he swore that he would defy any anatomist living to point out the slightest appearance of paralysis in the muscle of the eye, and he would stake his reputation, as an anatomist, that there was no anatomical deformity or enlargement of the neck.

The evidence led to a severe cross-examination by Mr Pocock, who put it to the Jury that one or other of the medical gentlemen were either ignorant of their profession or telling a lie.

The Foreman remarked that because they differed it was no reason why one should have told a lie.

Mr Sharp, in reply, commented warmly upon Mr Pocock’s attack upon Mr Wiblin, and contended that his client had complied with all that could reasonably be expected of him, and that the evidence of a map engraver and a picture dealer was not entitled to any weight, whilst that of a professional artist could have been adduced.

His Honour said the question for the Jury was a very simple one, and they would judge it by common sense alone. A man who represented himself as an artist was bound to be a person of competent skill, and if he undertook to paint a portrait he was bound to produce a reasonably good resemblance of the subject. There was not the slightest doubt that the female face was far more difficult to portray on canvas than the male. In Hogarth’s pictures the female face was deficient in expression, and so it was in life. There would be no difficulty in an ugly old woman whose face was full of wrinkles, but with rather youthful and good-looking females, it was more difficult; and it would be for the Jury to say whether there really was such a defect in the picture as that which had been endeavoured to be established.

The Jury returned a verdict for the plaintiff, for the amount claimed.

Thomas Payne took an advertisement in the *Hampshire Independent*, 22 April 1854 in order to counter “a false report [which] has gone abroad as to the grounds on which I objected to pay Mr Stewart for painting the portrait of Mrs Payne”. The following is his version of the affair, “the truth of which I am prepared to prove”.

Mr Stewart called on me the latter end of November or the beginning of December last, and introduced himself by saying he had been recommended to call on me by friends of mine, whose portraits he was taking, and he hoped Mrs Payne and I would honor him with our patronage. I said that we had sat so recently for our portraits that I did not feel disposed to sit again at present. Mr Stewart then offered to make a correct likeness of me and Mrs Payne, and such as would give us satisfaction, or he would not expect us to take them. With this fair offer we consented to sit, and it was a subject of conversation as to which Mr Stewart should commence first. Ultimately it was agreed that he should begin with me, and after my portrait was partly finished Mr Stewart begun Mrs Payne’s, so that he was painting both at the same time. We had no agreement as to price, and although Mr C. R----- had told me that Mr Stewart had painted his portrait for six guineas, I did not object to pay ten for mine three days before it was finished, on being asked to do so by Mr Stewart. I may add that the frames were both ordered of Mr H J Buchan two or three weeks before either of the portraits were finished, and I leave it for the public to judge if I should have ordered handsome frames unless the portraits had been previously ordered.

There follows copies of correspondence between Thomas Payne and the solicitors Sharp, Harrison, and Sharp in which he offers to pay Mr Stewart for the portrait of Mrs Payne on the condition that he makes “the *necessary alterations*” to her portrait.

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