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Old Francis Austen – The Rich Lawyer of Sevenoaks

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This article is based upon a lecture given at Sevenoaks School to the Kent Branch of the Society on 24 March 2007. It followed the unveiling of the memorial tablet to Elizabeth Weller; Francis Austen's mother and Jane Austen's paternal great grandmother. Although the lecture involved virtually no original research in its preparation, to the best of my knowledge no one has previously identified and brought together the various strains in Francis's private life and public career that make him a figure of importance in a number of spheres – amongst the Austens as a generous benefactor; as a skilled and trusted servant of the Sackvilles; in the history of Kent's county administration; and, on a far wider scale, in the legal history of estate inheritance.

All this was achieved from the humblest of beginnings. In 1704, when Francis was six, his father John Austen died, leaving his mother with seven children and a mountain of debt. This predicament led her to take up the post of matron and housekeeper to Elijah Fenton, the master of Sevenoaks Grammar School – today's Sevenoaks School – in return for free accommodation and education for her sons. At the age of sixteen, Francis left Sevenoaks and in 1714 was apprenticed as a clerk to a London attorney. Five year later, he qualified and around 1722 returned to Sevenoaks to set up his own practice. Thanks to Henry Austen, we have an amusing account of this beginning and the mixture of shrewdness and calculation that led Francis towards his great wealth: 'There [at Sevenoaks] my Father's Uncle, old Francis Austen set out in life with £800 & a bundle of pens, as Attorney, & contrived to amass a very large fortune, living most hospitably, and yet buying up all the valuable land round the Town – marrying two wealthy wives & persuading the Godmother of his eldest son, Motley Austen, to leave her said Godson a mall legacy of £100,000'.¹

He soon established himself as the town's leading lawyer. The evidence of his success, purchased in 1743, was The Red House; it stands today, in a place of prominence and the top of Sevenoaks High Street. All this is well known, and a plaque on the railings records Francis' occupation of The Red House and his connection with Jane. What is less widely known is that Francis also conducted a London practice in Clifford's Inn. From here his reputation as a canny lawyer spread far beyond the boundaries of Kent. His expertise, one which was prized, was in the creation of family trusts, and what were known as 'strict settlements' ('strict' because they were settlements strictly limited to male heirs). Skilled practitioners in this field were highly sought after as their work was vital to the survival of great estates and landed property. In essence, strict settlements were legal arrangements set in place in order to ensure that a landed estate would continue down the successive generations of a family – often an aristocratic and ancient family – passing from father to eldest son, undivided and undiminished. The thinking

behind this was that the eldest son, inheriting his father's title and rank, should also inherit landed property befitting his standing in society; for the family estate 'provided the family not only with its revenue and its residence, but with its sense of identity from generation to generation'.² The strict settlement had the effect of making the apparent owner at any given time only a tenant for life with very limited powers; a temporary custodian, as it were, holding the property for the benefit of his descendants; and as the settlement could only be broken by a private act of Parliament, a procedure which was lengthy, costly and by no means assured of success, it was regarded as being virtually indissoluble. In effect t, the integrity of an estate was protected from attack on all sides, including the demands of needy and spendthrift eldest sons such as Tom Bertram. If there was no son in the family, as we see with the Bennets, the strict settlement, or entail as it was often known, directed the inheritance outside the immediate family to the nearest male heir, in this instance to Mr Bennet's cousin, Mr Collins. It was a situation in which women lost out, and Jane Austen voices their predicament succinctly in Mrs Bennet's protest: 'How any one could have the conscience to entail away an estate from one's daughter I cannot understand and all for the sake of Mr Collins too!' – a complaint that comes with particular force as , with the strong hint of endorsement, Jane Austen placed it in the closing lines of volume one.³

Francis Austen's expertise also included the construction of pre-nuptial and marriage agreements, an area which called for diplomacy and negotiating skills as well as a command of legal instruments. The articles of such agreements dealt with arrangements of some complexity, since they had to anticipate the financial arrangements to a variety of situations. Immediately, there was the marriage portion to be agreed, the dowry that the wife would bring with her on entering the marriage. Then there was the size of her jointure, the allowance she would receive from the estate if she was widowed. Provision also had to be made for the children of the marriage: capital sums and annuities for the younger sons and portions for the daughters, sums to anticipate their need for dowries or their need for an income if they should remain unmarried. These agreements could involve delicate, sometimes contentious, social and financial calculations. At the opening of Mansfield Park we are told that Miss Maria Ward's portion of £7000 was 'allowed' by her uncle, the lawyer, himself ... to be at least three thousand pounds short of any equitable claim' to the benefits conferred by her marriage, these benefits including social elevation: that she was 'raised to the rank of a baronet's lady, with all the comforts and consequences of an handsome house and large income'.⁴ So what did she bring, perhaps of a less tangible nature, to make good this financial shortcoming? Jane Austen leaves this as a hanging question, an intriguing enquiry which she seems to leave unanswered for the duration of the novel, perhaps prompting her readers to supply their own answers.

There is a further glimpse of these matters in *Pride and Prejudice*. The Longbourn estate brings in an income of £2000 per annum. But, as Jane Austen tells us, Mrs Bennet and the five daughters are not well provided for: 'Five thousand pounds was settled by marriage articles on Mrs Bennet and the children',⁵ a sum, inadequate to provide Elizabeth with a dowry sufficient for a good marriage. As one legal commentator has put it: 'In the novelist's imagination she married a great landowner. In real life she would probably have had to settle for Mr. Collins'⁶ – or more likely, a Mr Collins, ie a clergyman, a catch of no particular worth.

It was for his mastery of this complex area of law that Francis was a lawyer sought after in counties far from Kent, and strict settlements, marriage contracts and other trusts of his construction are to be found in archives across the country. It was this side of his legal practice that Francis conducted from Clifford's Inn. Unlike the four other Inns of Court, by the eighteenth-century Clifford's Inn no longer held any professional role, as formerly it had, in the

training and qualifying sets of chambers. George Tilden, the attorney to whom Francis was articled, held chambers there, and it was only natural that Francis too was admitted to membership. ‘This was in 1719, the year he concluded his articles. With the growth in his reputation, he was elected to the governing body of the Inn, and from 1761 to 1764 served as Principal, the Inn’s highest office.

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Setting up his practice in Sevenoaks, Francis soon came to the notice of Lionel Sackville of Knole, the 7th Earl and 1st Duke of Dorset. The Duke was a notable Whig grandee. A courtier, close to the King, and thus politically powerful, he held a string of high offices: twice Lord Lieutenant of Ireland (1730-37, 1750-55); a Privy Councillor and in 1745, Lord President of the Council; Master of the Horse (1755-57); Lord Warden of the Cinque Ports; Groom of the Stole (amongst other duties, responsible for seeing that ‘the house of easement be sweet and clean’); First Lord of the Bedchamber; and as Lord High Steward of England he carried the St Edward’s crown at the coronation of George II. These ancient titles formerly belonged to the closest and most trusted servants of the King . Their continuance into the eighteenth century may have a smack of quaintness and antiquity. But we should not be deceived. The holding of these offices uniquely signified Sackville’s proximity to the sovereign, his trusted position as a close adviser and the great political power that came from this – an eminence that rubbed off, to some degree, on Francis and provided him with a springboard to his own career.

Very soon, he was acting for the Duke in legal matters: He was appointed agent for the Knole estate and served as the Duke’s parliamentary agent in the county elections of 1734 and 1754. Most important of all, in his office of Lord Lieutenant of Kent – to be precise, as Custos Rotulorum (literally, Keeper of the Rolls, the rolled up documents on which the names of the Justices of the Peace were enrolled; more broadly, it referred to the keeping of the county records) – the Duke nominated Francis for the office of Clerk of the Peace for Kent (today, Clerk of the County council), a post he held for twenty-seven years, from 1746-73, running into the time of John Frederick Sackville, the 3rd Duke. Francis was also Clerk to the Lieutenancy, having charge of the Lord Lieutenant’s administration and correspondence, which included receiving returns of militia personnel for each parish, muster rolls, list of deputy lieutenants and militia officers – all this arising from the Lord Lieutenant’s command of the county militia. Moreover, these official connections with the 1st Duke were strengthened with bonds of friendship and loyalty; and Francis felt able to invite the Duke to be godfather to both the sons of his second marriage, the elder of whom carried Sackville as his Christian name.

Francis was able to combine his official posts with his flourishing legal practice by appointing a deputy (like himself, a solicitor) to carry out the routine business, most of which arose from his work as Clerk of the Peace. It was a profitable arrangement. Not counting fees and other perks of office, Francis received about £400 a year for the Clerkship, whilst paying his deputy in the region of £50. The one official duty he carried out in person was at the Quarter Sessions, advising the justices of the peace – lay magistrates – on points of law; while out of court, he was able to promote his interest, relaxing socially with the justices, who were drawn from the gentry of east and west Kent. This socialising brought considerable benefit both to his own legal practice and to the campaigning he undertook on behalf of the Duke’s Parliamentary candidates, Beyond his regular attendance at Quarter Sessions, the Clerk of the Peace was the statutory custodian of the county records – a host of documentation to be maintained and kept available for rapid consultation. These records included conveyancing deeds, Enclosure Awards, Gamekeepers’ Deputations (a lord of the manor could appoint not more than one

gamekeeper with the power to kill game, ‘for the better preservation of game’, Act of 1710), jurors’ lists, plans for navigations and canals, statements of religious oaths and declarations, oaths of allegiance to the Crown (Act of 1722), turnpike trust accounts, removal orders for vagrants (Act of 1744) and so on and so on.⁷ Much of this work Francis left to his deputy and clerks.

Francis was most active politically on behalf of the 1st Duke in the county elections of 1734 and 1754. It happened that both these elections were held while the Duke was in Dublin as Lord Lieutenant. In the normal way, the Duke would have played a central role in the campaign, in socialising with the county gentry and offering patronage to his supporters. It was a process in which the Duke stood at the apex, pulling the strings, or causing the strings to be pulled on his behalf or on behalf of his supporters.

Ducal campaigning amounted to entertaining the landed gentry in person, honouring them with his presence, granting them some degree of intimacy and bestowing his patronage in handing out the offices and sinecures at his disposal. In return, the Duke’s supporters were expected to mobilise the freemen, those qualified to vote. But his duties in Dublin left the Duke unable to take any part in the electioneering and the business of organising the campaign was left to Francis. An added difficulty in 1734 was the behaviour of the candidates. One was Lord Middlesex, the Duke’s son, who was required to perform socially and politically in his father’s place. But he stayed away for most of the time, while his fellow candidate, Sir George Oxenden, spent most of his time in complaining about the burden of entertaining and canvassing that fell to him.

Eight of Francis’s letters to the Duke’s Dublin secretary have survived in the Centre for Kentish Studies at Maidstone. These carry his reports on the progress of the campaign, largely the difficulty he faced in getting Lord Middlesex to take his share of electioneering and in persuading the candidates to work together. To make up for Lord Middlesex’s absence he appointed local agents to canvass on his behalf.

In addition to members of the Whig gentry, he turned to others of the Austen family: his nephew John Austen, of Horsmonden; a cousin, Edward Austen, to take care of Tenterden; and another cousin, Sir Robert Austen, to work on Bexley, Crayford, Erith and Foot’s Cray. Unfortunately, Sir Robert was of little use as he spent the summer indisposed in Tunbridge Wells, and all that Francis could do was not enough to prevent the Tories from getting in.

It was an expensive defeat. In one of his letters to Dublin Castle, Francis reported the expenditure of nearly £500 on what was called a ‘treat’ or ‘entertainment’, one of the main devices of electioneering, even though ‘a piece of roast beef and £5 in punch does completely for a parish and makes them all drunk’.⁸ On another occasion he reported an entertainment at Tonbridge with a large attendance from the surrounding villages and his plans for further entertainments at other villages in the area of Sevenoaks. He also wrote of his plans to give treats in public houses; the neglect of Malling and Birling by the Duke’s friends; improved prospects for Lord Middlesex in Plaxtol; and Lord Romney’s entertainment for his tenants around Eynsford and Farningham.⁹ On behalf of Lord Middlesex alone, Francis laid out over £2300. Much of this sum went on buying votes. It was costly for Francis too: he noted that it was eleven years later, in 1745, before he received the final payment of his account.¹⁰

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The 3rd Duke, John Frederick Sackville, valued Francis as highly as had his grandfather, and relied on him for a host of official and personal services. Continuing the great tradition of his forebears, the 3rd Duke was an active patron of the arts. An omnivorous collector, he added considerably to the existing collection of Knole. The fruits of his Grand Tour were old masters brought back from Italy; and once back in England, he became a patron and friend of many of the leading artists of the time, including Reynolds and Gainsborough. Among the lesser artists he employed was Ozias Humphry, from the 1760s a leading portraitist of the second rank who set himself up in London, with the encouragement of Reynolds, and carried out some private commissions for the royal family. Between 1773 and 1777, he travelled to Paris and Versailles and onwards to Florence and Rome, studying the old masters and making copies, some of these on commission; and it was probably during these years that he first began to work for the 3rd Duke. Eventually, he was represented in the Knole collection by a number of portraits, copies of old masters, miniatures and works in pastel. In 1780, the Duke commissioned Humphry to make a portrait of Francis Austen. This was intended for Knole. It was left to Francis to arrange for the sittings at Sevenoaks and he wrote to Humphry in July. The friendly language and tone of the letter tells us that the two men knew each other well¹¹ – hardly surprising, since by this time Humphry had been in the Duke's employment for a number of years and was a regular visitor to Knole. He was also well-known as a portrait painter amongst the gentry families of West Kent, an introduction he owed to his brother, William Humphry, the rector of Kemsing and Seal, a living which Ozias had persuaded the Duke to grant William in the 1770s.

Strangely, the portrait, destined for the 3rd Duke, fine as it is, seems never to have entered the Knole collection – that is, going by its absence from the records. Instead, it remained in Sevenoaks, on the walls of the Red House, which is where Jane's brother Henry saw it. Many years later, he recalled his Sevenoaks visit and compared his recollection of the portrait with the appearance of the old gentleman himself: 'All that I remember of him is, that he wore a wig like a Bishop, & a suit of light grey ditto, coat, vest and hose. In his picture over the chimney the coat & vest had a narrow gold lace edging, about half an inch broad, but in my day he had laid aside the gold edging, though he retained a perfect identity of colour, texture & make to his life's end – I think he was born in Anne's reign, and was of course a smart man of George the First's. It is a sort of privilege to have seen and conversed with such a model of a hundred years since.'¹² These comments are very much to the point since in the portrait Francis's dress and his wig (technically known as a Bob wig, made up of short curls) are in the style of forty or fifty years earlier. We know this as the picture remained in the Austen family, passing to Francis's son, Francis Motley Austen, and to his descendants, until its purchase in 1931 by J.G. Graves, the benefactor for the Graves Art Gallery in Sheffield.

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Finally, we have Francis as the principal benefactor in Jane Austen's branch of the family, Jane's father, George Austen, suffered the loss, first of his mother and then his father – a surgeon in Tonbridge – who re-married, but died very soon after, leaving the boy of six a penniless orphan. His stepmother felt no obligation towards her three stepchildren, and their uncle Stephen, to whom they went in London, is said to have treated them 'with neglect, if not with positive unkindness'.¹³ At what point uncle Francis intervened, we cannot be sure, but it was thanks to his support that George was able to attend Tonbridge School; and then, when he was 16, to go to St John's College, Oxford, where he remained for seven years as a student, tutor and an assistant proctor in the University. In 1755, George was ordained, and through his uncle's influence in the neighbourhood obtained the living of Shipbourne. And in 1761 it was again through uncle Francis that he was presented to the Hampshire living of Steventon.¹⁴ In

addition, Francis also purchased the livings of Ashe and Deane, both adjacent to Steventon, offering George the choice of which ever became vacant first. Throughout this time, Francis was also acting as the good uncle to George's sister Philadelphia, promoting her marriage prospects with a passage to India. And then in the next generation I think we can take it for granted that Francis was a source of assistance in helping his great-nephews James and Henry through Oxford and Francis through the Portsmouth Naval Academy.

Unfortunately, the record of direct contact between Francis at Sevenoaks and the Austens of Steventon is very sparse indeed. According to one family source, great-uncle Francis was a frequent visitor of the Rectory.¹⁵ But this seems most unlikely, given his age – he was already 77 in 1775, the year of Jane Austen's birth – and it would be a long day's journey. But there must have been visits made the other way, when George Austen paid his respects to his uncle and benefactor; and it is safe to assume that over the course of time, he introduced his growing family.

One such family visit we do know about was paid in July 1788. On this occasion, Mr and Mrs Austen brought with them Cassandra, by then a girl of fifteen and a half, and Jane, three years younger. Although Francis was now ninety, and living alone – his second wife, Jane Austen's godmother, having died six years earlier – he was fully *compos mentis* and quite capable of hosting a large family gathering.¹⁶ A large gathering because we can suppose that Francis's eldest son, Francis Motley Austen, was there together with at least some of his eleven children. Francis Motley was now running the legal practice and had inherited his father's post as Clerk of the Peace of Kent. And there were other cousins too. One of these was Philadelphia Walter, a woman of 26. Thanks to her we have one of the earliest appraisals of Cassandra and Jane. Of the two girls, she preferred Cassandra, possibly because she thought the girl 'very pretty' and the one to be most 'generally reckoned a most striking resemblance of me in features, complexion & manners'. Jane, on what she admitted to be a 'hasty judgement', she thought 'not at all pretty & very prim, unlike a girl of twelve'. Having spent the next day with her Hampshire cousins, Philadelphia concluded her rapid verdict 'the more I see of Cassandra the more I admire [her] – Jane is whimsical & affected'.¹⁷

But there could be other views. Their great-uncle Francis, for one, may have thought very differently because it is around this time that he is likely to have commissioned Ozias Humphry to make portraits of both girls. The portrait of Cassandra is last known to have been in the possession of a member of the family who died in the south of France in 1983 at the age of ninety and there is an ongoing enquiry to establish its present whereabouts. The portrait of Jane Austen, long known to us as the Zoffany or Rice portrait, is a picture bathed in controversy. In the absence of documentary evidence identifying its subject beyond dispute, the arguments over its authenticity will be never-ending. But if this is Jane Austen, a painting alive with youthful charm and telling us of the amusement with which, even then, she viewed the world around her. Undoubtedly, this would be Francis's most precious and enduring legacy.

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Afterword

Francis set his heart on wealth and succeeded in collecting properties almost as rapidly as the Dukes collected pictures. But did he ever go too far, crossing the shadowy line where shrewd opportunism and hard bargaining shades into sharp practice and beyond, into dishonesty? I raise this question because the biography of Jane Austen by David Nokes, drawing upon family

papers, suggests this possibility in relation to Francis's handling of the affairs of Tysoe Saul Hancock, the surgeon and trader whom George Austen's sister Philadelphia married in India.¹⁸ Francis acted as Hancock's attorney, receiving the consignments of diamonds and gold he sent back to England, managing Hancock's financial affairs, and on his instructions paying over money to support Philadelphia and her daughter on their return from India. Hancock suspected Francis of deception and of mishandling moneys entrusted to him. However, as Hancock was himself not wholly reliable on financial matters and suffered periods of depression and fantasies of persecution, the truth of the matter remains uncertain.¹⁹

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Notes and References

¹ Le Faye (1989), pp. 16-17.

² Habakkuk (1975), p. 98.

³ *Pride and Prejudice*, p. 130.

⁴ *Mansfield Park*, p. 3.

⁵ *Pride and Prejudice*, p. 308.

⁶ Habakkuk (1994), p. 167.

⁷ A good, brief account of the variety of county records can be found in Emmison (1948). The Appendices are outdated. However, for our purposes, the main text has the advantage of being written before the title and role of Clerk of the Peace was changed to Clerk of the County council.

⁸ Phillips (1930), vol. 2, p. 42.

⁹ See Centre for Kentish Studies, documents U269/C148/11,22,39,41,46,49.

¹⁰ *Ibid.*, U269/O109/112. Phillips, vol. 2, pp. 199-200.

¹¹ Marsh (1989), p. 351.

¹² Austen-Leigh (1942), p. 17: from undated letter from Henry Austen (1771-1850) to his nephew James Edward Austen-Leigh (1798-1874), author of the 1870 Memoir. There is a mystery here. In the British Library printed lists of the Knole pictures there is no mention of the Francis Austen portrait. In addition to the portrait at Sheffield, there is a copy in The Red House, in the offices of Knocker and Foskett (the solicitors' practice directly descended from Francis Austen's). I have not seen that picture, nor, unfortunately, did Knocker & Foskett respond to my enquiry as to the artist and date. In the absence of further information, we have to assume that it is a later copy of Humphry's original.

In 1792, Humphry recorded that among the benefits he gained through his connection with the duke was his payment for a picture of 'Francis Austin [sic] or Mrs Bates £26 4s 0d' (in Knocker & Foskett papers kindly sent to me by Henry Rice).

¹³ Le Faye (2004), p. 3, quoting a family manuscript.

¹⁴ In helping his nephew, Francis Austen is likely to have approached his niece Jane Monk, now married to Thomas Knight of Godmersham, patron of the Steventon living, occupied since 1759 by Francis's nephew Henry Austen (1725-1807, son of his brother Thomas). Francis, having purchased the living of West Wickham, presented it to Henry in 1791. Henry resigned the Steventon living and Thomas Knight duly presented it to George Austen. Since 1754, the curate had been Revd Thomas Bathurst, another Austen cousin and George left the care of the parish to him until he took up residence in 1764.

¹⁵ Hubback (1935), p. 1. John Hubback, a grandson of Jane's sailor brother Francis (1774-1865), spent his boyhood years in the Admiral's home. But the old sailor was then in his eighties; and Hubback (1844-1939), in turn, in his eighties when he set down his recollections. So there could have been some mis-recollection, given that great-uncle Francis (b. 1698) was already 75 at the time of sailor Francis's infancy, and that Seven oaks to Steventon was a hilly cross-country run, a long day's journey in good weather.

¹⁶ Le Faye (2004), p. 64

¹⁷ *Ibid.*, an extract from Philadelphia Walter's letter to her brother written a few days after meeting the Austen daughters.

¹⁸ See Nokes (1997), pp. 13, 47-48.

¹⁹ Keith-Lucas (1983), p. 98, n.7.