

Archaeologia Cantiana

A NEW ROMNEY MAYORAL DISPUTE

By FRANK W. JESSUP, F.S.A.

ANYONE who examines the early eighteenth century Corporation records of New Romney will find that in the years 1734 and 1735 there is a good deal of confusion. The confusion in the records reflects a very real confusion in the town's affairs. An idea of what was happening during those two years can be pieced together from the records themselves; from the verbatim accounts of the trials of *R. v. Gibbon* and *R. v. Elles* which, by a fortunate chance, were included in certain Collections of State Trials¹; and from a manuscript book now in the ownership of our President, Major M. Teichman Derville, O.B.E., D.L., M.A., F.S.A. (himself a Freeman and for twelve years Mayor of New Romney), which contains copies of the pleadings in those two actions, of the instructions to counsel, and of the pleadings in a related action of *Doe v. Roe*. A little further light is cast on the matter by a few entries in another manuscript book in the President's possession, being the diary of Thomas Miller, an eighteenth century schoolmaster of New Romney. I am much indebted to him not only for permission to examine and make use of these MSS. but also, in common with all students of the history of New Romney, for valuable help and advice readily given from his intimate knowledge of the town's records. I am grateful also to Mr. Walter Lamacraft, the former Town Clerk, for his courteous assistance in making it easy for me to refer to the Corporation books and documents.

The confusion which persisted through the greater part of 1734 and much of 1735 sprang from an event which is succinctly, although ungrammatically, described in the following entry in Thomas Miller's diary for 1734:

25 March. Mr. Elles and Mr. Wightwick was both chused Mayor from Mr. Jno. Coates. Mr. Wightwick acted as Mayor had Clerk and Sergent but was in no force in whatsoever he or there side did.

For upwards of a year there were, in fact, two Mayors acting in New Romney, for part of the time two Town Clerks, and indeed something

¹ 4th edition (1779), Vol. X, Appendix, pp. 118 et seq. The account in Howell's *State Trials* (1813), Vol. XVII, pp. 802 et seq. is slightly fuller and more coherent.

like two rival and independent administrations. It must, of course, be remembered that the main functions of an eighteenth century municipal corporation were to return burgesses to Parliament, to spend the corporation property, and to feast its members; this duality of administration would, therefore, be less inconvenient to the townspeople than it would to-day. Still, the situation must have been an awkward one, although not without its piquancies.

To understand the dispute it is necessary to go back to Queen Elizabeth's charter granted to New Romney in 1563, and to the town's custumal. The charter provided that on Lady Day in each year the Jurats and Commonalty (i.e. the freemen) should chose one of their Jurats to be Mayor for the year. The custumal recorded the conditions under which a man might become free of the town; either as "a straunger of good name and conversacion" residing in the town he might purchase his freedom, or as a child of a freeman he might claim his freedom as of right. In 1728, on Lady Day, the customary day for claiming freedom of the town, John Gibbon made a claim based on his having married Elizabeth, the daughter of William Smith, a freeman. However, the Common Assembly decided unanimously that the marrying of a freeman's daughter did not confer any title to freedom. There the matter rested for six years, until in the early part of 1734 it became evident that the Mayoral election, in which the candidates were Wightwick and Elles, would be a close thing, and that the addition of two votes to either side would determine the poll. So, in 1734, John Gibbon and John Darby, supporters of Wightwick (whether from affection or for value is not clear) raised their claim again, and threatened to bring writs of *mandamus* against the Corporation if their claim was denied. According to an entry in the Common Assembly Book for 1st March, 1734, it was unanimously resolved to defend any proceedings that might be commenced by Gibbon and Darby. Wightwick and his supporters were present at the meeting, and if the decision was really unanimous it is surprising; perhaps Loftie, the Town Clerk, who wrote up the record and who firmly adhered to the Elles faction, was allowing himself a little licence in introducing the word "unanimously," or perhaps Wightwick was still hopeful of success at the election by other means—it is significant that the instructions to counsel for Elles contain the statement, admittedly unsubstantiated, that "Wightwick . . . tryed all Methods to get himself Elected by a Majority of the then Freemen and offered one Longden a 100 guineas for his vote and also Coates offered Mr. Loftie the Town Clerk 1000 guineas but could not succeed, thereupon Mandamuses were issued . . ."

At all events, at ten o'clock in the morning of Lady Day, 1734—the Mayoral election being due to take place at two o'clock in the afternoon—John Coates, the then Mayor, having required the Town Clerk

to produce the keys of the Court House, adjourned there with Wightwick and Bacheller, two of the Jurats, and in spite of the decision of the Common Assembly proceeded to swear Gibbon and Darby freemen of New Romney. This was hopelessly irregular, because whilst the freeman's oath could properly be administered before the Mayor and two Jurats, the swearing should have been a ceremony ancillary to admission to freedom by the commonalty. The proceedings were not entered in the Common Assembly Book at the time, but were written up subsequently, probably by Wightwick himself when he got possession of the book; Gibbon's and Darby's subscriptions to the entry were not obtained until later; and Darby's certificate of freedom, still to be seen in a bundle of certificates at New Romney Town Hall, is on paper and unsigned, whereas at that time they were normally on parchment and signed by the Town Clerk. The proceedings were so patently irregular that it would be hard to understand Coates's participation in them were it not for one or two remarks that he let fall to the effect that he was to be indemnified (presumably by Wightwick) for swearing Gibbon and Darby.

At mid-day the whole of the commonalty assembled at Coates's house to enjoy the Mayor's usual outgoing dinner—although it had been resolved in 1733 that for the future the Mayor should not make a dinner on the day of going out of his Mayoralty—and afterwards the company went together to the Parish Church of St. Nicholas to elect the new Mayor. It must have been an odd dinner party, and an odd procession, made even more curious by the behaviour of two of the freemen, Papillon (M.P. for the town) and Wellard. Although they dined with the rest, they lagged behind, so that when they arrived at the church, after two o'clock, they found the door shut against them. They both belonged to the Wightwick faction, but it seems fairly clear that they were not entitled to vote because they were non-resident. However, finding themselves excluded from the church they severally "sent in" letters to Coates, as presiding officer, acquainting him that they were at the door, and desiring him to take notice that if they were denied admittance, they voted for Wightwick. When this came out in evidence in the subsequent trial of Elles, and the letters were produced in Court, it was found that they were identical. Moreover, Papillon and Wellard had to admit that their letters were not "sent in" at all, but had been given in advance to Wightwick for him to produce to the Mayor at the right moment. Coates refused to accept the letters, and took the strange course of endorsing them to that effect before returning them to Wightwick. Evidently there was collusion here, or, in the Judge's words to the jury, "Mr. Papillon's (I would not insinuate) sending the letters is attended with odd circumstances." Serjeant Darnell was more direct: "Please, gentlemen, to observe how this

affair has been cooked up between Mr. Papillon and Mr. Wellard." Plainly the sole purpose of their actions was to embarrass Elles, however the election went.

Including Gibbon and Darby there were twenty-three Jurats and freemen present in the church. According to the entry for 25th March, 1734, in the Election Book of Mayors, Jurats, etc., "Humphrey Wightwick, Esq., was elected Mayor . . . and did now take his oath for the due execution of his said office and the other Oaths appointed by Law. Ordered that he be allowed the usual Mayoral salary of 14 l. for the year." This entry, however, was not made by the proper person, namely Loftie, the Town Clerk, but by Wightwick himself, and gives an incomplete account of what happened. Loftie took the poll, and produced a list which gave Elles eleven votes and Wightwick ten, ignoring the votes of Gibbon and Darby. At Coates's direction he then made another list, including Gibbon, Darby, Papillon and Wellard, which gave Wightwick fourteen votes against Elles's eleven,¹ but believing the second list to be an improper one he refused to enter Wightwick's election in the book. Coates thereupon declared Wightwick elected Mayor, gave him the insignia, and ordered Loftie to administer to him the oath of office. But Elles, determined not to be excluded, also laid *his* hand on the Bible as Loftie was reading the oath, although Coates twice shoved his hand off the book. Wightwick, meanwhile, had laid the staff of office, which he had received from the outgoing Mayor, on a tombstone,² and when, at the conclusion of the proceedings, it was carried home with him, Elles walked as close to it as he could. Truly the procession to the new Mayor's home must have been even more comical than the procession of the Commonalty to church.

Four days later, on the 29th March, at a Common Assembly over which Wightwick presided as Mayor, John Edwards, Nicholas Coates, and Thomas Bayley were elected freemen, although the customary day for the election of freemen was the 25th March. At this meeting the entire Wightwick faction was present and the entire Elles faction absent. At the same meeting it was ordered that, for the future, the key of the box of books belonging to the Corporation should be kept by the Mayor. Previously, no doubt, it had been in Loftie's custody, and the significance of this order became apparent at the trial. To

¹ For Wightwick: Humphrey Wightwick, John Coates, Edward Bacheller, Isaac Rutton, John Bassett, Joshua Coates, Odiam Coates, Thomas Wilson, William Haffenden, John Dray, John Gibbon, John Darby, David Papillon, and Charles Wellard. For Elles: Richard Elles, Robert Mascall, Thomas Norman, Bartholomew Tookey, Jeremiah Smith, John Mascall, George Weeden, Robert Langdon, Robert Loftie, Benjamin Cobb, and William Gray.

² Doubtless Richard Stuppeny's tombstone: see *Arch. Cant.*, XIII, p. 475; *Saint Nicholas Church, New Romney*, by Canon Scott Robertson.

have Loftie, a staunch supporter of Elles, as Town Clerk, must have been embarrassing to Wightwick, and it is not surprising to find that on the 13th September, 1734, it was ordered that "Mr. Loftie not appearing and having several times before refused to act in his office of Town Clerk, Mr. Robert Tournay¹ elected Clerk to the Common Assembly from Michaelmas to Lady Day at the salary usually given to Mr. Loftie."

But before Loftie was relieved of his office both sides had commenced legal proceedings. In Trinity Term, 1734, an information in the nature of a *quo warranto* was filed against Richard Elles, yeoman, alleging that on the 19th April, 1734, and since he had used and exercised the office of Mayor ("a publick office and an office of great Trust and preheminance") without legal warrant, Royal grant, or right, "and upon the Lord our King has usurped the liberties, privileges, and franchises of the office, to the prejudice of the Royal prerogative, and against the King's Crown and Dignity." On the other side informations were filed against Wightwick for unlawfully exercising the office of Mayor, against Gibbon and against Darby (Darby to stand the event of Gibbon's trial) for exercising the office of freeman, and against Edwards, Coates, and Bayley (the two latter to stand the event of Edwards' trial) for exercising the same office. Edwards' case did not come before a jury, judgment being given against him on the pleadings; no real attempt was made to defend the prosecution, and his plea failed to answer the information on three out of the four issues.

As for the other cases, the Court, seeing that the fundamental issue was whether a right to freedom was acquired by marriage with a freeman's daughter, ordered that Gibbon should be tried first. It was not, however, to be so simple as that. The pleadings in *R. v. Gibbon*, dragging their prolix length through the stages of information, plea, replication, rejoinder, and surrejoinder, eventually arrived at three questions for determination:

- (1) whether Gibbon, by marrying a freeman's daughter, became entitled to his freedom;
- (2) whether the sole right of admitting and swearing a freeman is in the Mayor and all, or any two, of the Jurats;
- (3) whether Gibbon was in fact sworn and admitted on the 15th March, 1734, by Coates, Wightwick and Bacheller.

But, as the instructions to Elles's counsel deplore, Gibbon has prevented the first question from coming to trial by demurring, i.e. by alleging

¹ Presumably an ancestor of, and not the same person as, the Robert Tournay of whom T. H. B. Oldfield wrote in 1792: "The corporation of Hythe are under the absolute direction of Mr. Robert Tournay, an attorney, who is every other year chosen Mayor; and, in spite of legal incapacity, unites with the office of chief magistrate that of town clerk." (*History, Political and Personal, of the Boroughs of Great Britain.*)

that the matters contained in the information under that heading, even if true, are insufficient in law to convict him. So that becomes a question of law, to be settled by the Court, leaving only the second and third questions, as issues of fact, to go to a jury. These two issues, and the case against Elles, came before a jury at Maidstone Assizes on the 6th August, 1734.

The Assizes were taken by Sir Robert Eyre, Lord Chief Justice of the Common Pleas. According to Fosse's *The Judges of England* he had a deservedly high reputation as a judge, although his haughtiness seems to have been almost proverbial. The verbatim account of the trials of Gibbon and Elles contained in *State Trials* gives the impression that Eyre was irascible, impatient of listening, and having but a very confused idea of the issues involved. It is anything but an attractive picture of the administration of justice during the eighteenth century.

Gibbon's case was the first to come on. Serjeant Darnell, who with Serjeant Baynes, Smith, Knowler, and Wynne appeared for the prosecution, opened by arguing that Gibbon, by demurring, had waived the very foundation of his claim. The judge refused to accept that submission, and then began a long and confused argument between judge and counsel whether "swearing and admitting is the same thing." It is by no means certain that it ever became clear to Eyre, C.J., that swearing and admitting were separate and distinct ceremonies. Lacy, who appeared for Gibbon, produced the Common Assembly Book (Wightwick, it will be remembered, now had the key of the box of Corporation books), and, amidst interruptions from the judge who seems to have found the recital tedious, entries were read, beginning in the year 1679, with the purpose of showing that the right of swearing and admitting is in the Mayor and Jurats. Darnell contended that the entries did not bear that interpretation but showed that whereas the Mayor and Jurats, as a matter of course, swear a newly admitted freeman, the right of admission is in the freemen as a whole. The judge, failing to understand the point, cut Darnell short, and insisted that the real question is "who administers the oath?", adding (gratuitously) "I don't understand the customs of the Cinque Ports." Darnell argued that the real question was whether "the whole Body [has the right] to elect and admit; or the Court of King's Bench will think this matter not tried." "The Court of King's Bench" retorted the judge, "would think me a trifling fellow to try the right of the election." So much for the judge's understanding of the issues before him.

At this point Serjeant Darnell wished to put in evidence certain of the Corporation books, but the Wightwick faction refused to part with possession of them, and even after Eyre, C.J., had ordered them to be given in evidence "a great Discourse arose about the Corporation-Books between Mr. Wellard and Mr. Knowler, Mr. Wellard being in

fear he should lose them." Finally, at the judge's peremptory order, the books were handed in and at Darnell's request the Associate began to read out one of the sixteenth century entries, but found the writing more than he could master ; " when the Chief Justice took the Book out of his Hands

C.J. EYRE. Give me the Book. I can read it. (*Attempts to read, but does it very indistinctly and with great Difficulty : and then throws down the Book, not being able to go on.*)" Fortunately for the Court, Mr. Wellard was able to read the entries.

On the other side, counsel for Gibbon produced the town's custumal (evidently the 1497 copy) and got Wellard to read the entry about the admission of freemen : " The Jurats may grant the franchises, paying to the Commons as they may accord," an entry which counsel contended showed that the Jurats are to grant the freedom, and the Commons to set the price. Then he wished to give in evidence proceedings at a Court of Brotherhood and Guestling. " We'll have no Brotherhood and Guestling," exclaimed the Judge : " I know nothing of it. Let Mr. Town Clerk explain it." It seems charitable to assume that what Eyre, C.J., really meant was that Acts of Guestling were not to be judicially noticed, like the proceedings of the superior courts, but must be proved by evidence. The Act relied upon was one of the 8th July, 1603, to the effect that a man elected to be a freeman of a Cinque Port by the Mayor, Jurats and Commonalty, and refusing to take the freeman's oath, should forfeit the sum of £10 to the town. The entry does not seem to support Gibbon's case at all, but in any event counsel had to admit that Acts of Guestling extend to the Ports " in point of Example, Influence, and Power, if not of Authority "—in other words they were not binding.

Then the Court passed on to the next issue to be tried—whether Gibbon was admitted in due manner and form. But, in spite—or, perhaps, because of—lengthy argument in which Eyre, C.J., freely joined, no one seemed clear whether this was in fact a separate issue or another aspect of the first issue. Finally the judge, apparently becoming impatient, abruptly began his charge to the Jury, opening with the cryptic words : " I shall leave it upon my own Sense of the Matter ; I shall not lump it." All that can be said of his summing up is that whereas before it the jury can have had only a confused idea of the issues they were being called upon to decide, after it confusion must have been worse confounded. However, they found for the King on both issues. Upon this verdict judgment was subsequently entered up against Gibbon in the Court of King's Bench, and as he had failed on the issues of fact which had been left to the jury it became unnecessary for the Court to give any opinion on the question of law, whether a title to freedom was acquired by marrying a freeman's daughter.

A NEW ROMNEY MAYORAL DISPUTE

The trial of Elles immediately followed that of Gibbon at the Assizes. It was an unedifying spectacle of the prosecution doing all that it could to make the defendant's position as difficult as possible. Incidentally some of the difficulties which earlier law-reporters had to contend with can be imagined from the following altercation during the hearing between Eyre, C.J., and Papillon, one of Wightwick's supporters and M.P. for New Romney :

Here the Chief Justice was told by a By-stander that a Person was taking Notes : on which he asked,

C.J. EYRE. Who is it ? Who employed you ? Give me the paper.

On which the Notes were delivered to him : and after turning them over he said with some warmth,

C.J. EYRE. I observe my Name in it ; who was you employed by to take those Notes ?

SHORT-HAND WRITER. My Lord, I was employed by a Gentleman concerned in the Events of these Issues.

C.J. EYRE. Who ?

SHORT-HAND WRITER. *Mr. Papillon* desired me to attend and take Notes.

Then the Chief Justice called across the Court to Mr. Papillon.

C.J. EYRE. *Mr. Papillon*, here is a Man taking Notes that said that you employed him.

MR. PAPILLON. Yes, my Lord, I desired him to attend, and take Notes.

C.J. EYRE. Who is he ? I observe my Name in several places. I suppose, I shall next Week have my Name in Print.

MR. PAPILLON. My Lord, it is no common Short-hand Writer ; it is Mr. . I never knew it was a Crime to take Notes in a Court where your Lordship sat.

C.J. EYRE. Well, I hope you are the better for them.

MR. PAPILLON. I think I am, my Lord ; and on some Occasions they have been of great Use to me.

C.J. EYRE. I am glad to hear that.

MR. PAPILLON. Your Lordship presides here ; so do with the Papers what your Lordship pleases.

C.J. EYRE. No, no. Now I know it is done by Authority, if I see any thing in Print, I shall know where to apply.

MR. PAPILLON. It is no Reason to suppose it should come from me, if your Lordship does ; there are great Numbers now taking Notes, as well as Mr. , and it may sure come as well from any of them. My Lord, I never was a Libeller, nor ever in my Life encouraged a Publication of this Sort. We are all liable to Accusations of this Sort : I have seen many Falshoods printed, but never thought them

worth my Notice. My Lord, I am not answerable : Do with the Notes what you will.

C.J. EYRE. No ; since it is your Writer, let the Man have his Paper and go on.

(The Notes being out of the Short-hand Writer's possession he could not take down what was said.)

C.J. EYRE. There, take down that, and print it too, if you will ; I don't care ; though I don't say it is Law, nor will justify it as such.

MR. PAPILLON. Here, give me the Notes : Let my Lord have them since they give Offence.

C.J. EYRE. No. I will not have them. Let the Man have his Paper again, since it is done by Authority.

MR. PAPILLON. My Lord, pray do what you please with them ; cut them to Pieces, or put them in the Fire.

C.J. EYRE. No, no. Let him go on, since he is your Writer.

MR. PAPILLON. Then pray let him go on, without Reflections.

To return to the trial itself. The first issue which the jury had to determine was whether Elles had been elected Mayor. Evidence was given as to what had occurred in the Church of St. Nicholas on Lady Day, and of the curiously engineered failure of Papillon and Wellard to present themselves at the church until after the door had been closed. It was some time before all the facts emerged—Papillon and Wellard naturally tried to give the impression that they had unlawfully been excluded from exercising their rights—but when the facts were before the Court, Eyre, C.J., summed up by telling the jury to find for Elles, and they did so. On the second issue, however, whether he had been properly sworn, Elles was unsuccessful. It was obvious that he had meant to take the oath, but equally obvious that Coates, the outgoing Mayor, had meant to administer it not to him, but to Wightwick. So a verdict was given for the King, and judgment was entered up against Elles.

Elles, therefore, was not the lawful Mayor ; but was Wightwick ? For the action against his supporter Gibbon had also resulted in a verdict for the King. The truth was that counsel had exercised such subtlety and ingenuity that they had made it possible for the various actions to be finished without the real dispute ever having been tried. Therefore yet further subtlety had to be shown to ascertain the truth of the matter, whether marriage to a freeman's daughter was a title to freedom. The question was settled by means of a " feigned issue " tried in the Court of King's Bench before Hardwicke, L.C.J., on the 3rd May, 1735. The fictitious John Doe by his attorney Charles Wellard, brought a bill against the fictitious Richard Roe (who, in order to give the King's Bench cognisance of the action, was alleged to be in the custody of the

Marshal of the Marshalsea), alleging that on the 25th March, 1734, at Westminster, Doe and Roe had had an argument about the New Romney custom of admitting freemen, and that Doe had given Roe 5s. in consideration that Roe would give Doe 40s. if a man who married a freeman's daughter became entitled to his freedom; nevertheless, although such is the custom, as Doe alleges, Roe; "contriving and fraudulently intending craftily and subtilly to defraud and deceive" Doe, refuses to pay the 40s. The Court decided in favour of Roe, and at last the crucial issue was settled. Now it was possible to dispose of the other cases that had been accumulating. It was agreed that judgment should be entered up against Wightwick, Darby, Nicholas Coates, and Bayley; that an information should be filed against Bacheller, who had unlawfully been elected Mayor on Lady Day, 1735, and that he should thereupon disclaim all right in the office; and that a mandamus should be sued out against the Corporation of New Romney to elect a new Mayor.

Thus ended an episode which, judged even by eighteenth century municipal standards, was blatantly discreditable, an attempt, as Serjeant Darnell said, by "many illicit practices to overthrow the Constitutions of the Town." However, with Thomas Miller's aid we can add a footnote in different vein—and incidentally in a language very different from that used by the legal fraternity. This is how he records the receipt in New Romney of the news about the decision in *Doe v. Roe*;

Esquire Furness carried the cause for Mayorship for Romney. Mr. Wightwick, Mr. Edwards, Mr. Darby went of their side, Mr. Finch, Mr. Mascall and Mr. Lofty went of the other side, came home 9th instant with great rejoicing for the victory. Drum foremost, Edw. Sand^{ls} and I with violins, Mr. Gray with couler (i.e. banner) and ye gentⁿ all 2 by 2 after Mr. Mascall in the Coach. A Hogshead of Beer set out at the Dolphin.

There is no official record of the election of a new Mayor, but Miller's diary contains the entry for the 20 June, 1735: "Mr. Richard Elles was sworn Mayor." The Corporation records resume again, after many months of uncertainty and confusion, with an entry in the Common Assembly Book for the 2nd July which strikes a pleasantly amicable note. Humphrey Wightwick takes the oath of assistance to Richard Elles, the Mayor; and Sir Robert Austin and Henry Furness Esquire in consideration for the services lately done for the Corporation are invited to come to the town and partake of an entertainment. It was not necessary to specify the nature of the entertainment; New Romney had returned to normal conditions, and the Corporation was resuming one of its three essential functions—to feast its members.

King GEORGE and
Old England.

Eight Guineas
B O U N T Y,

And One Guinea to the Bringer of a Recruit.

His Majesty having been pleased to augment the

New Romney
Light Dragoons,

To a full Regiment, to be commanded by

COLONEL DERING,

All High Spirited YOUNG MEN,

Who are desirous of shewing their Attachment to their KING and COUNTRY, are invited to serve in this respectable Regiment; where every possible Attention is paid to the Comfort and Happiness of the Dragoons, and where they will be handsomely clothed and mounted upon excellent Horses.

The General Orders commencing April 15th, 1795, communicating his Majesty's most gracious Consideration for his Soldiers, must make every Man anxious to step forward in Defence of the CROWN of GREAT BRITAIN.--By his Majesty's Orders, every Soldier will receive a Loaf of good Bread, weighing six Pounds for Five-pence, whereas they have hitherto, at the present Market Price, paid Eight-pence for a Loaf weighing only four Pounds and six Ounces,-- and whatever the Market Price of Meat may be, it will only cost the SOLDIER Four-pence Halfpenny per Pound, as the Deficiency, in both Articles, will be paid for by Government.

Men from Sixteen to Thirty-two Years of Age, and from Five Feet Five, to Five Feet Nine Inches high, will meet with every Encouragement and good Treatment.

This Regiment is not to go Abroad, and is only to serve during the War.
Neither will any Man be Drafted into other Regiments.

The Head Quarters are at Canterbury,