

CHANCERY PROCEEDINGS C12/629/31

Bill of complaint dated 23 Nov 1786, amended by order dated 24 January 1789, amended by order dated 14 January 1790

Complainants were:

Frances Newman, the wife of Francis Newman the younger

Frances Charlotte Newman daughter of Francis and Frances Newman

Francis Newman the elder of North Cadbury

Defendant appears to have been:

Francis Newman the younger.

The Complainants' Case

The case seems to have concerned an agreement that had been reached in February 1783 (when Francis and Frances were still together) whereby her father Francis "the elder" gave over some 400 acres of lands in Sparkford and 200 acres in South Cadbury to his son-in-law Francis "the younger" in order that he could make provision of £100 per annum for the sole and separate use of his wife Frances Newman.

The agreement was made on 14th and 15th February 1783 between

1. Francis Newman the elder
2. Francis Newman the younger
Frances Newman his wife
3. Thomas Watson of Cheriton co. Somerset, clerk
Simon Payne of Bridgwater co. Somerset, gent

It appears that the latter two were granted a lease over the lands to generate funds for the annuity, but this is not entirely clear.

Sometime after the execution of the agreement, it was claimed Francis Newman deserted Frances his wife and went abroad [*to France*] leaving her without any other provision than her annuity of £100. Furthermore, it was claimed that Simon Payne was at the time employed as agent by Francis Newman the younger and was responsible for the management of his affairs.

According to Frances, Simon Payne collected the rents from the land but paid her only some of her annuity and pretended that the annual rents and profits from the estates were not sufficient to pay her the full annuity. She further claimed that Payne had caused to be cut down a large number of trees growing on the lands, which he had sold, keeping the money for his own use, and that the unsold timbers were now lying on the estate and causing considerable damage and destruction to the estates.

The case becomes increasingly complex with various other players entering the argument including a John Lamb Cooke, brother-in-law of Simon Payne who it is claimed paid £500 to Francis Newman, Thomas Watson and Simon Payne under pretence of the agreement of 14th and 15th February 1783 (or the 28th and 29th of September 1783 - it is not clear which), in return for which Francis and his wife Frances conveyed the lands within the estates of Sparkford and South Cadbury to John Lamb Cooke for a term of 500 years or until repayment of the £500 loan plus interest.

It is further claimed that the defendants also pretended that Francis and his wife Frances “levied a fine of the said messuages and premises to the uses in such indenture of 29th September 1783” and that “the said term of 500 years by some lawful assignment in 1785 became vested in one Samuel Norman subject to redemption on payment of the sum of £1,200 and interest and is now vested in the said John Tucker by assignment from the said Samuel Norman for securing £1,200 and interest” (presumably implying that further loans were raised on the security of these lands). It was further claimed that Simon Payne had prepared all the legal documents associated with these undertakings.

It is then claimed that John Lamb Cook did not pay the £500 to Francis Newman in cash, and that the indentures of 28th and 29th September 1783 were a fraudulent contrivance of Simon Payne and Francis Newman devised to defeat Frances Newman of the benefit of her £100 per annum settlement. [This implies that the couple were already having marital difficulties at this time.] Thomas Watson is further accused of telling Frances that her annuity would not be affected.

The complainants then claimed that this mortgage should be deemed void particularly against Frances Newman or failing that, the rents and forfeits of the lands should be applied in paying Frances’s annuity, leaving the remainder to be applied to redemption of the mortgage.

As to the £1,200 supposedly loaned to Francis Newman by John Tucker, it was claimed that if he did make such a loan, he would have known about the earlier agreement of 14th and 15th February 1783. In any case it was claimed that John Tucker obtained the mortgage at the insistence of Simon Payne and that he did not pay the full sum of £1,200 to Samuel Norman but that John Tucker was in partnership with Simon Payne and divided the profits from the transfer the mortgage with Simon Payne and was prevailed upon by Simon Payne to take an assignment of the said mortgage in the expectation that Simon Payne and John Tucker might soon be able purchase the estates for a trifling amount from Francis Newman who was “in very distressed circumstances and in great want of money”.

Even more pointedly, the complainants charged that Simon Payne and John Tucker contrived the schemes described above “for the purpose of getting the said estates and premises in their own hands in order to derive to themselves the benefit of the said annuity of £100 per annum payable to Frances Newman and to deprive her of the same”. Frances Newman further charges that Simon Payne refused to pay her the arrears of her annuity because she refused to make an affidavit on behalf of Simon Payne against her father Francis Newman, and that when she refused to make such affidavit Simon Payne had refused to pay her annuity.

The complainants went on to charge that Simon Payne had acted improperly and that Thomas Watson and Simon Payne “ought to be discharged from the trusts of the said Indenture of Release and other persons ought to be appointed to act in their stead and a receiver ought to be appointed of the said estates to apply the rents and profits thereof as the Court shall direct and the said John Tucker ought to be compelled to resort to the said Francis Newman the younger for payment of his demands”.

They further charged that Francis Newman (the younger) was now living abroad [*in France at this time*] and out of the court’s jurisdiction, and that both he and John Tucker give countenance to the “unfair transactions of Simon Payne” and permitted him to “remain in possession of the said messuage and premises and to commit waste and spoil therein”.

Francis also claimed that Simon Payne has taken for himself considerable property belonging to Francis Newman and household goods, furniture, clothes and other effects of both Francis and Frances Newman which he had sold or otherwise disposed of.

Francis’s response

In September 1789, Francis signed a response to the complaint. His response begins by accusing his uncle Francis (Frank) Newman of transgressing the terms of the will of his uncle (Francis Newman d.1767) which left his estate to his nephew Francis (Frank) Newman for life with the remainder being passed on “in tail male” – i.e. on Frank’s death, being passed to his brother Henry and thence to his sons (i.e. Francis) since Frank had no sons of his own. He further claimed that in his will, Francis Newman (d.1767) allowed his inheritor(s) to grant any part of the estates not exceeding the value of £200 a year to his wife for life, but that Frank Newman had settled part the estates (namely the rectory of Queen Camel¹) with a the yearly value £250 on his wife, Jane Newman (since deceased).

Francis went on to claim that since his uncle Frank Newman had no male heirs and now aged 72 years, he was in line to become the inheritor of the entailed estates and implied that as a consequence, in 1779 he had married Frances Newman, eldest daughter of Frank Newman, when he was still under the age of 21 (viz the age of 20 years), having for some time beforehand lived with Frank Newman who had “encouraged and approved” his addresses to his daughter and the resulting marriage.

He went on to claim that his uncle agreed to give the 200 (not 600) acres of land from the Sparkford and Cadbury estates as part of the marriage settlement, but that shortly after the marriage his uncle had postponed the settlement until the defendant attained his age of 21, and that he believed that his uncle Frank had instructed his attorney to prepare the necessary deeds for this to take place. However when the day came (in May 1780), the deeds had not been completed and

¹ This settlement by Frank Newman of the Rectory of Queen Camel on his wife Jane became the subject of a later dispute between Francis Newman and James Rogers in 1807 – see <http://books.google.com/books?id=dCMwAAAAIAAJ&pg>

that subsequent appeals were put off with promises and excuses until about the beginning of the year 1783 when young Francis “became greatly distressed in his circumstances”.

Francis went on to admit that he “was under the necessity of contracting debts” and claimed that his uncle “knowing of this defendant’s distress and that this defendant was in want of immediate support and relief”, agreed to release and deliver up the Sparkford and South Cadbury lands having a rental value of £520 per annum (other properties at Queen Camel and North Leaze Park having an additional rental value of £400 per annum being also mentioned).

By this time, Francis was aged 23, “and in great distress and want of support and relief” and so was “obliged or induced to submit to the terms and conditions of [his uncle] Francis Newman in order to obtain an income” whereupon his uncle executed the necessary indentures of Lease and Release on 14th and 15th February 1783 (perhaps with conditions applied but which cannot be deciphered).

Francis further claimed that on 5th April 1783 when he was supposed to have taken possession of the lands assigned to him, he was “kept out of the possession of 40 acres of Sparkford Farm through a private agreement of his uncle Francis Newman with a William Welch, the then tenant and that he (Francis the nephew) paid over £30 in a suit with William Welch over the matter. He went on to list various other omissions or deficiencies and costs that that he had suffered in pursuing his benefits from the agreement. As a consequence, Francis claimed that the amount he received from “the premises so delivered up has not been near sufficient to release or extricate this defendant from his distresses and to enable him to live in a proper style”, and that he had continued to have been “much embarrassed and distressed in his circumstances”.

He went on to claim that his uncle knew that he had been obliged to contract debts because he and his wife were about to settle and reside in the county of Devon “and were in great want of money”, and that his uncle Francis Newman had “promised to supply this defendant and his wife with a handsome sum of money in order to answer their necessary occasions to make their lives comfortable”, and that he had several times sought this money but that his uncle neglected to abide by his promise and only supplied a small sum of money “not near sufficient to satisfy their wants or expectations”, claiming that he had no money to spare.

Francis then went on to claim that he was “experiencing such disappointments from [his uncle] and not having money to pay several debts which he had contracted”, he was subsequently “arrested by two or three of his creditors for several considerable sums”.

He and his wife then applied to John Lamb Cook for a loan of £500 on the security of the said premises and that John Lamb Cook accordingly advanced the whole of the sum of £500 and paid part thereof in discharge of debts for which Francis had been arrested, the residue being paid to himself (Francis).

Francis further claimed that his uncle Francis Newman knew or was informed about loan arrangement with John Lamb Cook, and that he “did not make any objection thereto to the best of the knowledge remembrance information and belief of this defendant”.

Francis further claimed that he did not believe that Simon Payne or any other person intimated to his wife Frances, that her annuity would not be affected by the mortgage but that to the contrary it was clearly understood by her, and that she “expressed her approbation of and was very desirous of raising the said sum of £500 and making and giving to such mortgage or security as aforesaid”.

Francis further claimed that the mortgage and mortgaged premises were later transferred to Samuel Norman for securing from him the sum of £1,200 which was thereupon paid by the said Samuel Norman, part to John Lamb Cook in discharge of what was owing to him, and the remainder to himself (Francis). He added that his wife Frances “expressed her approbation of borrowing such further sum on such security”.

Francis further claimed that the mortgage and mortgaged premises were subsequently transferred John Tucker for the securing of £1,400, who thereupon advanced and paid to Samuel Norman the sum of £1,264 10s, covering Francis’s debt to John Tucker.

Francis further claimed that Simon Payne had at his request acted as his agent and had since September 1783 received the rents from the “parts of the said estates and premises in the said bill mentioned” but that before Francis had been paid the whole of the first year’s rents, that Simon Payne spoken with Frances Newman about the £100 annuity during which Frances signified her approbation for her husband to “receive the whole of the rents and profits of the said premises”.

Francis further claimed that on or about the 7th May 1784, Simon Payne, after he had received the rent and profits from the estates, accounted with him (Francis) for the preceding year’s rent ending on 5th April 1784, and with the knowledge of his wife Frances Newman, paid the whole balance of the account him (Francis) for which he had given Simon Payne a receipt in full.

Francis went on to admit that sometime in or about the month of **May 1784, he had left his wife Frances** and had “continued from her until the month of October following when this defendant and his said wife met in London”, and that sometime afterwards at the beginning of 1785 he had, with the consent of his wife, left her and went to France, and that she “promised and agreed to return and reside in the country upon the allowance of £50 a year or less allowance if this defendant could not afford the same”. He also admitted that admits that he had remained in France until October 1787 when he had returned to England.

Francis further admitted that Simon Payne was, at the time Francis went abroad and for a considerable time before that, employed by him as his agent and that Francis had consulted with and advised Simon Payne regarding his affairs. However he denied that Simon Payne had the entire management of or control over him or his affairs as claimed by the complainants bill.

Francis further stated that he had been informed that soon after he had first left his wife, she had applied to Simon Payne for money and although Simon Payne had paid the balance of the preceding year’s rents to Francis as described above, she had prevailed on Simon Payne who accordingly paid to her at different times several sums amounting together to the sum of £100, and that he had given Simon Payne a receipt for this amount bearing date the 7th October 1784. At the same time she

asked Simon Payne to prevail on Francis to allow, if possible, the same payment out of the next year's rents. Accordingly, Francis gave his consent and was informed that Simon Payne made further payment to Frances Newman on his behalf between 7th October 1784 and 19th May 1785 amounting together to the sum of £100, and that Frances Newman gave Simon Payne a receipt bearing date the 19 May 1785 for this amount.

Francis further stated that he had been informed that Simon Payne, at the direction of his wife Frances Newman, advanced and paid for her from the 19th May 1785 until 6th April 1786 to Thomas Holloway, her habit maker, the sum of £2 18s 4d, and to Thomas Watson the two several sums of £30 and £50. He had also heard and believed that Simon Payne also paid and engaged to pay other sums on behalf of his wife Frances, and these amounted together to £118 11s 7d or thereabouts. Furthermore, he stated that he had allowed Simon Payne the sum of £100 on account of these sums out of the rents and profits from the estates as received by Simon Payne up until 5th April 1786.

Francis further stated that he had heard and believed that Simon Payne also paid a further sum of £50 to Thomas Watson for the use of Frances on or about the 6th October 1786 which Francis had been prevailed upon to allow Simon Payne out of the rent and profits of the estates.

Francis admitted, however, that he had instructed Simon Payne not to pay his wife any further sums on account of the annuity from the 6th October 1786 because his circumstances "were so very distressed that [he] could not afford any allowance to any such amount". Furthermore, he believed that his wife ought not to have expected any such annuity or allowance from him

Francis claimed that he was informed (and believed to be true) that during the time he was separated from his wife, she had "contracted debts to considerable amounts", and claimed that he had been sued for debts contracted by his wife Frances.

He further claimed that he had been informed (which information he believed to be true) that his wife had "conducted herself in a very improper manner and had a connection with one or more person or persons while this defendant and the said Frances were separated and apart from each other and that she was actually delivered of one or more child or children".

He further stated that he did not believe that Simon Payne had refused to pay the annuity to his wife without Francis's instruction.

He further stated that he believed that at the time of filing the original bill and for some time thereafter, Simon Payne was charged by his clerk, who had accompanied Frances Newman to Wales, the sum of £16 13s 11d which had been paid by him at the request Frances, but that she had since repaid or undertaken to repay the sum. He further stated that he himself had insisted that Simon Payne should not pay any sum on account of any expenses for such journeys into Wales.

Francis declared that Simon Payne had accounted to him for all the rents and profits from the estates up to the 5th April 1789 and had paid the balance of these accounts to him or for his use. Furthermore, Simon Payne had his permission to continue to receive such rents and profits from the said premises.

Francis acknowledged that there had been some trees lying on the estates which had been reserved for repairs but he did not believe that this had done any damage to the tenants as suggested or alleged. Furthermore, he claimed that both Francis Newman (his uncle) and Frances Newman (his wife) were “privy to the cutting and seeing the first lot of the said timber or trees”.

Francis admitted that he received the sum of £25 from the sale of some of the timber, and that £20 from the money arising from the sale of timber was paid by Simon Payne to Frances Newman as part of the first sum of £100.

Francis further stated that he believed that the estates and premises that he was then in possession of were in a much [better state of] repair than they were when first handed over to him by his uncle in or about April; 1783.

Francis went on to confirm that Frances Charlotte Newman was his daughter and only child by his wife Frances Newman.

He further admitted that his wife Frances did take a journey to Wales but denied that it was undertaken on his behalf or that he had requested his wife to make the journey. On the contrary, he claimed that that some time before he went to France, his wife Frances had informed him that she was inclined to live in Wales during his absence, and that she had made the journey to Wales “for or with a view to such residence”.

Francis humbly submitted to the judgement of the Court that for the reasons and under the circumstances he had set forth, that the complainants should not have sought to compel him to make payments of £100 a year “in the said bill, and that they ought not to have any relief on account of or concerning the indentures of Lease and Release in the said bill”.

He further claimed that as to the complaint relating to “cutting of timber or trees and waste pretended to have been done or committed on the said premises, the same is merely vexation” with a view to causing him harassment and distress. Francis denied all “unlawful combination and confederacy wherewith he stands charged and “humbly prayed to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained”.