

## **The English Reports, Volume 4; Volume 37**

See <http://books.google.com/books?id=dCMwAAAAIAAJ&pg>

November 14<sup>th</sup> 1822: The case of Newman v. Rogers, makes no alteration in my former opinion, and therefore the appeal must be dismissed.

### ***Newman v. Rogers.***

*[viz: Francis Newman vs. Catherine Rogers]*

*Francis Newman*, being seized<sup>1</sup> in fee simple<sup>2</sup> of the rectory of *Queen Camel*, of several estates called the *North Leaze Park*, the *Sparkford*, and the *South Cadbury* estates, and of other freehold and copyhold<sup>3</sup> estates, by his will dated the 30th of May 1767, devised the same to his nephew *Francis Newman* for life, with remainder<sup>4</sup> to the first and other sons of the said *Francis Newman* in tail male<sup>5</sup>, with remainder to his nephew *Henry Newman* for life, with remainder to his first and other sons in tail male, with divers remainders over, and with a power to the tenants for life<sup>67</sup>, when in possession, to settle any part of the estates not exceeding in value £200 a year, upon any woman they might marry for her life.

The Testator<sup>8</sup> died in 1768, leaving the said *Francis Newman* and *Henry Newman* the devisees<sup>9</sup> him surviving. The said *Francis Newman* had three daughters, but no issue male; and the said *Henry Newman* had issue a son, *Francis Newman* the younger, who was the first tenant in tail male of the devised estates.

In the year 1778, the said *Francis Newman* the younger intermarried with one of the daughters of the said *Francis Newman* the elder; and in the month of *May* 1780, having just attained twenty-one, he concurred with the said *Francis Newman* the elder, in suffering a recovery of the devised estates, and in resettling them, to the use of the said *Francis Newman* the elder for life, with remainder to his first and other sons in tail male, with remainder to the said *Henry Newman*, for life, with remainder to *Francis Newman* the younger in fee.

Shortly after the death of the Testator, and in pursuance of the power given by his will, the rectory of *Queen Camel* (which appeared to be of the yearly value of £200), was limited to *Jane*, the wife of the said *Francis Newman* the elder, for her life; and by Indentures of lease and release<sup>10</sup>, dated the 14th and 15th of Feb 1783, the said *Francis Newman* the younger, in consideration of the settlement after mentioned, conveyed his remainder in fee in the said rectory, and in *North Leaze Park* estate (which was of the yearly value of £120), to *Henry Sampson* and *Simon Payne*, and their heirs; to the use of the said *Francis Newman the elder* for life, with remainder to the use of the said *Jane* his wife for life; with remainder to the use of such of the daughters of the said *Francis* and *Jane*, as the said *Francis* should by deed or will appoint, and in default of appointment, to the uses mentioned in the release. By other

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<sup>1</sup> seize or seise or be seized of: [English Law] to be in legal possession of.

<sup>2</sup> “in fee” or “in fee simple”: to be “seized in fee simple” means to be the rightful owner of a property.

<sup>3</sup> copyhold: (noun) British historical tenure of land based on manorial records.

<sup>4</sup> remainder: [Law] a property interest that becomes effective in possession only when a prior interest ends.

<sup>5</sup> in tail male: the limitation of the succession of property or title to male descendants.

<sup>6</sup> tenant: [Law] a person in possession of real property by any right or title.

<sup>7</sup> “power to tenants for life” implies power to make leases or obtain capital.

<sup>8</sup> testator: [Law] a person who has made a will or given a legacy.

<sup>9</sup> devise

verb: [Law] leave (property) to someone by the terms of a will.

noun: [Law] a clause in a will leaving property to someone.

derivatives: (adjective) devisable; (noun) devisee, deviser and/or devisor.

<sup>10</sup> release: [Law] the action of releasing property, money, or a right to another. Or “[lease and release was the most popular and widespread way to record simple sales of property from the seventeenth century up to 1845](#)”

indentures, of the same date, the said *Francis Newman* the elder, and *Francis Newman* the younger, conveyed the *Sparkford* and *Cadbury* estates (which appeared to be of the yearly value of £520), to *Thomas Watson*, and the said *Simon Payne*, and their heirs (subject to the remainders to the first and other sons of the said *Francis Newman* the elder, and to the remainder to the said *Henry Newman*, during his life). Upon trust, during the joint lives of the said *Francis Newman* the younger, and *Frances* his wife, to pay an annuity of £100 out of the rents and profits to the said *Frances*, for her separate use; and to permit the said *Francis Newman* the younger, to receive the surplus of such rents for his life; and after the decease of both, upon trust for such child or children of the said *Francis Newman* the younger, and *Frances* his wife, as they should by deed appoint; and in default of such appointment, in trust for their daughters as tenants in common in fee, and if only one daughter, in trust for her in fee; and in default of such issue female, in trust for their younger sons, as tenants in common in fee, and in default of such issue, in trust for the eldest son in fee; and in default of all such issue, in trust for the right heirs of the said *Francis Newman* the younger.

It was admitted, that at the period when the last mentioned deeds were executed, *Francis Newman* the younger, was in distressed circumstances, and that *Francis Newman* the elder, was then of the age of sixty-five years, and *Jane Newman* his wife, of the age of fifty-four years.

The original Bill, which was filed by *Francis Newman* the younger, against the said *Simon Payne* and *Francis Newman* the elder, alleged, that upon the marriage of the plaintiff, the said *Francis Newman* the elder, had agreed to surrender to the plaintiff his life interest in the *Sparkford* and *South Cadbury* estates, as the marriage portion of his daughter; and that it had been agreed that in the deeds for suffering the recovery a power should be given to the plaintiff and to the defendant *Francis Newman* the elder, jointly to grant leases and copies of court roll of the devised estates, for their joint benefit, but that by fraud and imposition practiced by the defendant *Francis Newman* the elder the *Sparkford* and *South Cadbury* estates had not been conveyed in any other manner than by the indentures of the 14th and 15th of *February 1783*; and the power of granting leases and copies of court roll had been reserved to the defendant *Francis Newman* the elder, separately for his own benefit. The Bill also alleged that the plaintiff had been fraudulently induced to execute the several indentures of lease and release of the 14th and 15th of *February 1783*; and prayed that the said *Francis Newman* the elder, might be decreed to account for the rents and profits of the *Sparkford* and *South Cadbury* estates, from the time of the plaintiff's marriage, until the possession was delivered to the plaintiff, and to pay what upon taking such account should be found to be due; that the power obtained by the defendant, for granting leases and copies of court roll of the devised estates, might be set aside for fraud and imposition; and that the defendant might be decreed to deliver up, or procure to be delivered up to be cancelled, all the leases and copies of court roll which had been granted by him under the power; or that a moiety<sup>11</sup> of the fines received by the defendant by virtue of such leases or copies, and a moiety of the rents thereafter to be received therefrom, might be paid to the plaintiff; and that the Indentures of lease and release of the plaintiff's two several reversions obtained by the defendant from the plaintiff might be set aside; and that the defendant might be decreed to join in reconveying the same to the plaintiff; or in case the defendant had conveyed the *North Leaze Park* estate to a purchaser for valuable consideration without notice, that the defendant might make satisfaction to the plaintiff for the full value thereof.

*Francis Newman* the elder died in 1796; and upon his death a supplemental bill was filed against his executors, and against *Catherine Rogers*, one of his daughters, who claimed to be

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<sup>11</sup> moiety noun (plural moieties): formal or technical: each of two parts into which a thing is or can be divided.

entitled to the remainder in fee in the Rectory of *Queen Camel*, as appointee under the power reserved to *Francis Newman* the elder, by the first mentioned indenture of release of the 15th of *February* 1783.

The defendant *Francis Newman* the elder pleaded the Statute of Frauds<sup>12</sup> in bar of the discovery and relief prayed by the bill, so far as it related to the agreement alleged to have been made upon the marriage of the plaintiff; and in answer to the other parts of the bill the defendant denied that he had ever agreed with the plaintiff that the powers mentioned in the bill should be reserved to the plaintiff and the defendant for their joint benefit, or made any such agreement, or that he had practiced any fraud or imposition upon the plaintiff: And he stated that the consideration which he paid for the conveyance of the reversions by the plaintiff was the release of the *Sparkford* and *South Cadbury* estates, which he believed to be a fair consideration. The answer also stated that the *North Lease Park* estate had been settled upon the marriage of *Jane*<sup>13</sup>, one of the daughters of the defendant.

The cause was heard on the 27th, 28th, and 29th of *June* 1809, and was ordered to stand for judgment on the 1<sup>st</sup> of *August* 1811.

The decree directs that the plaintiff's bill, so far as it seeks to charge the late defendant *Francis Newman* the elder with fraud and imposition in obtaining the power of granting leases and copies of court roll of the devised estates, and to have such power set aside, and so far as it seeks to have an account of the rents and profits of the *Sparkford* and *South Cadbury* estates from the time of the marriage of the plaintiff, shall stand dismissed without costs. It then declares that the plaintiff is entitled to have the rectory of *Queen Camel* reconveyed to him, and to have the rents and profits thereof, accrued since the death of the late defendant *Francis Newman*, accounted for and paid to him; and to be paid out of the assets of the said late defendant the value of the estate called *North Lease Park*, and the amount of the rents and profits thereof accrued since the death of the said late defendant. It then directs accounts to be taken of the rents and profits of the *Sparkford* and *South Cadbury* estates, received by the plaintiff in the lifetime of the said late defendant, and of the rents and profits of the rectory of *Queen Camel*, received since the death of the said late defendant by the defendants his executors; and after further directing the value of the *North Lease Park* estate, and the amount of the rents and profits thereof which would have accrued since the death of the said late defendant to be ascertained, and ordering that what shall be coming on account of the rents and profits of the *Sparkford* and *South Cadbury* estates be deducted from the value of the *North Lease Park* estate and the rents and profits thereof, it proceeds to direct, that what shall remain due to the plaintiff after such deduction, and the plaintiff's costs of so much of the suit as relates to the rectory of *Queen Camel* and the *North Lease Park* estate, be answered by the defendants the executors out of the assets of the said *Francis Newman* the elder, and that all proper parties reconvey the rectory of *Queen Camel* to the plaintiff and his heirs.

Reg. Lib. B. 2, 1810. fol. 1471.

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<sup>12</sup> The Statute of Frauds is a collective term describing the various statutory provisions which render unenforceable certain types of contracts unless they are evidenced in writing.

<sup>13</sup> Jane was the middle of the three daughters of Francis Newman the elder.