

PUBLIC RECORD OFFICE

CHANCERY PROCEEDINGS

C 12/171/26

Bill of Complaint

Dated 27 Oct 1789

Complainants: James Rogers of Brinscomb co. Wilts, clerk
Catherine his wife

Defendants: Francis Newman the younger, late of North Cadbury co. Somerset, now of
Greenford co. Middx, Esq. [*described throughout this document simply as
Francis Newman to distinguish him from Francis Newman the elder*]

James Rogers claims that Francis Newman pretended to be seised in fee or otherwise entitled to the reversion and inheritance expectant on the death of Francis Newman the elder without male issue of:

The manor of South Cadbury together with the fines, quitrents etc thereof,
The advowson rectory and right of presentation to the parish church of South Cadbury
South Cadbury Farm in the parish of South Cadbury, expectant on Francis Newman
dying without male issue by his present wife

Several manors and estates called North Cadbury and Sparkford from which manor are
held several estates for lives and by copy of the court roll, several of which estates
were held by the complainant, James Rogers, expectant on the death of Francis
Newman the elder dying without male issue

Francis Newman being desirous of disposing of the lands, James Rogers agreed with Francis Newman that he would purchase:

the reversion, remainder, and inheritance expectant on the death of Francis Newman the
elder of North Cadbury without male issue, of the manor of South Cadbury including
lands of Stricklands estate, Inn tenement, Custard's tenements, Mitchell's estate,
Bishop's estate, Ryall's estate, John Slade's estate, Banger's estate, Parker's
tenement, George Slade's tenement, Newman's tenement, the Castle and land thereto
belonging, with several cottages

And also for the absolute purchase of the reversion remainder and inheritance expectant
on the death of Francis Newman dying without issue by his present wife Frances of
South Cadbury Farm, late in the tenure of James Ryall deceased as tenant thereof to
the said Francis Newman, but now in the tenure of James Banger of the real value of
£200 a year lying in the parish of South Cadbury

And also the advowson of the church of South Cadbury

All at the price of £6,922, except the estate for life of the said Francis Newman in the estate
of South Cadbury Farm

It was agreed that in consideration of James Rogers making such a purchase, then Francis Newman would carry out acts as hereinafter mentioned with respect to renewing leases and grants by copy of the court rolls of such estates as were held by James Rogers of the said manors and estates of North Cadbury and Sparkford and conferring a settlement made on Catherine Rogers as hereinafter mentioned

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This agreement was put in writing as a Memorandum dated 3rd December 1788 and signed by James Rogers and Francis Newman as above, showing payment terms to be £6,550 at the time of the execution of the Memorandum, and £3,472 due six months after the execution. It was also agreed in the Memorandum that Francis Newman is to pay all the expenses that may be necessary to establish his title to the lands. It was also agreed in the Memorandum that Francis Newman will consent to any bill necessary to enclose any commons belonging to the manor or estates. James Rogers agree to pay the expenses of the conveyance of the lands from Francis Newman to himself once Francis Newman has satisfactorily established his title.

At the time of signing the Memorandum James Rogers paid one guinea to Francis Newman, and prepared draft conveyances which were given to Francis Newman. Francis Newman now refuses to execute the conveyance and pretends that the conveyance with respect to the renewal of leases and grant by copy of Court roll the estates that James Rogers held of the manors of North Cadbury and Sparkford with respect to the confirmation of the settlement on Catherine Rogers, was without consideration, whereas James Rogers claims that such renewal was part of the agreement as is expressed in letters sent by Francis Newman to James Rogers. Francis Newman now claims that that part of the agreement was waived. On 3rd March 1789 Francis Newman wrote a letter to James Rogers from Conduit Street:

Dear Sir,

Having received a letter from Mr Payne this morning in which he evidently shows and unwillingness to join in the conveyance and as the mortgage he has on the estate of South Cadbury (which however appearances may be against me does not exceed £1,100) is almost entirely for business done and as Mr Payne and myself are by no means agreed with respect to the justness of the debt to its full extent which may and indeed of course will cause a dispute between us, I should be sorry to do any act that might confirm anything already done, I therefore beg leave to propose to you in case he should be refractory to take an indemnity on some other part of the estate for the mortgage in question or such sum as may appear to be due to him, I propose this in the utmost confidence of its meeting your approbation as the arrangement in question cannot last longer than 18 months for in that time I shall have it in my power fully to settle with him with my best respects etc. I have the honour etc F. Newman

He wrote another letter to James Rogers dated 9th April 1789 in which amongst other things he expressed himself as follows:

I have received the draft of the conveyance from Mr. Hull and am ready to send them for your inspection with the alterations made on them by my attorney that the whole business may be settled at once being determined to adhere to the alterations therein adopted so this tedious affair may either go on or drop in which latter case I am ready to enter into a new treaty on a larger scale or modify the present. It is however necessary to declare that whatever is done must be done quickly in the first place my affairs requiring decision and despatch and secondly having a treaty on the carpet which waits only for your answer to be confirmed or relinquished. One proposal more I beg to offer you let a friend of yours

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meet one of mine and should there be any difference in settling the drafts of the conveyance let those friends adjust the treaty or finally break it off and in the latter case should you according to Mr. Hull's language be inclined to compel the fulfilling the contract signed let nothing that may pass when these friends meet prejudice your supposed pretension or my defence wishing and cordially that this treaty may be amicably settled believe me, dear sir, your faithful and most humble servant Fr. Newman

James Rogers responded by writing:

Cadbury House, 15th April 1789,

Dear Sir, I received your letter enclosing one from Mr. Alves to you the contents of which are altogether unfounded in facts. All I can say in answer to your letter is that as there is one contract already existing let that be first completed before we provide for another. I have repeatedly declared to you and Mr. Alves that I would not invalidate the original contract by any new treaty we might afterwards open, if Mr. Hull in his drafts has inserted what does not appertain to the contract he will readily erase it, till I have seen the drafts tis not in my power to say whether he has or not.

And by letter and otherwise he acknowledged the said agreement and promised to complete the same but under divers other pretences refuses to convey the said estate and premises to James Rogers.

Francis Newman now pretends that he has made previous mortgages on the estate, but he will not disclose by what deeds or instruments he has done this.

James Rogers requests now that Francis Newman sets out:

whether or not he was seized in fee of or otherwise and how entitled to the reversion remainder and inheritance expectant upon the death of the said Francis Newman the elder of the manor of South Cadbury

whether he was desirous of disposing the same, whether James Rogers did not agree with Francis Newman for the absolute purchase by James Rogers of the reversion remainder and inheritance expectant upon the death of Francis Newman the elder without issue male and also for South Cadbury Farm in the tenure of John Royall decease and now in the tenure of John Banger for the price of £6,922

whether it was agreed that in consideration of James Rogers making such a purchase Francis Newman would so such other acts already mentioned with respect to the renewal of leases and grants by copy of court roll of such estates so held by James Rogers of the said manors and estates of North Cadbury and Sparkford and to confirming a settlement made on Catherine Rogers as hereinbefore mentioned

whether the said agreement was not in the words and figures set out, whether the agreement was put in writing and signed by Francis Newman and James Rogers before witnesses, whether James Rogers paid Francis Newman the sum of one guinea,

whether Francis Newman did not cause James Rogers to draw up a conveyance to reflect the terms of the agreement, whether Francis Newman has refused to pursue the agreement

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whether the renewal of leases and grants by copy of court rolls of the estates held of the said manors of North Cadbury and Sparkford was not part of the treaty, whether the letters quoted passed between Francis Newman and James Rogers
James Rogers also requests that Francis Newman be made to abide by the terms of the treaty

Answer by Francis Newman to the Bill of Complaint by James Rogers

Dated 5 Feb 1790

Agrees that he was seized in fee of and well entitled to the reversion remainder and inheritance expectant upon the death of Francis Newman the elder of the manor of South Cadbury

He also admits that being much distressed for money he was desirous of disposing his right title and interest in and to the said premises in order to raise money to supply his then occasions

He also admits that he agreed with James Rogers for the absolute purchase of the said reversion remainder and inheritance expectant on the death of Francis Newman the elder without issue male all other his estate right and interest in the same, and also for the absolute purchase of the reversion and inheritance expectant upon the death of Francis Newman with out issue by Frances his present wife of South Cadbury Farm, for the price of £6,922
But Francis Newman entered into this agreement on a supposition on the part of Francis Newman that the rental of the whole of the said premises including the Castle did not exceed the sum of £450 p.a.

It afterwards transpired that Francis Newman was deceived about the annual value of the estate and so believed that the agreement with James Rogers was null and void.

He agrees that, subject to the condition above, if James Rogers made the purchase of the lands, Francis Newman would renew the leases and grants by copy of court roll of such estates as are held by James Rogers of the manors of North Cadbury and Sparkford and with respect to confirming a settlement on Catherine Rogers

Francis Newman claims that James Rogers greatly imposed on him particularly in respect of these grants and lease, and that this aspect was introduced after the settlement and conclusion of the agreement between for them for the purchase, and without any additional consideration.

He claims that James Rogers took advantage of his situation

He agrees that the agreement was put in writing and signed by them both

He agrees that James Rogers paid him one guinea

He believes that James Rogers did draw up a draft conveyance

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He does not believe he should be held to the agreement if the value of the estate was not sufficient

He does not agree that the terms of the draft conveyance reflect the terms of the agreement, nor does he think it was given to him

He believes that James Rogers was not ever and is still not able to pay the consideration money

He refuses to execute the conveyance

He admits that the renewal of grants and leases was part of the agreement, but that it was introduced after the agreement was closed, and that no further consideration was added, unless the one guinea was intended to be the consideration for these grants, in which case it is clearly insufficient.

He admits that the quoted correspondence did take place

He disclosed his claim to his title to the property to James Rogers a long time ago

He is unable at present to set out any mortgages he may have on the estates
James Rogers had agreed to take Francis Newman's guarantee against any such mortgages

He has not mortgaged or encumbered the estates since the agreement

At the time of the agreement he was unacquainted with the value of the estate and had received from Mr. Payne his agent a mutilate and erroneous Rental. He made the agreement with James Rogers on the understanding that the whole rental of the lands in South Cadbury parish including the castle was £30, and James Rogers knew this

He believes that James Rogers well knew that the estate was really worth as James Rogers had resided near the spot where the lands are situated and had frequent opportunities of knowing the value thereof.

He believes that at the time of the agreement James Rogers had in his possession a rental showing the true much greater value of the lands

He does not think that the amount in the agreement reflects the true value of the lands

The amount of the consideration was settled at the first meeting prior to the agreement, and once this was settled James Rogers then introduced other demands into the contract without increasing the consideration under the pretence that they were of little or no value but which now appear to be of much greater value than the consideration amount agreed, as is set out in the Schedule

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The size and number of leases were stated by James Rogers to be few and supposed by Francis Newman not to exceed £140 or £200 p.a., but it now appears that they are 30 in number and are worth nearer £900 p.a., many of which he believes James Rogers filled up by the present tenant for life contrary to his power in that respect and which is disputed by Francis Newman. In the draft conveyance the leases were stated to be made by the said Francis Newman the elder the uncle of the defendant although the agreement does not state this.

He does not believe that the leases made by Francis Newman the elder were intended to be included as he had initiated a suit in this court against disputing the right of Francis Newman to make any grants, and he therefore believes that any inclusion of these grants in the conveyances is fraud.

At the time he signed the agreement it was understood that this would not prejudice his claim against Francis Newman the elder. If James Rogers had any grants from Francis Newman the elder their inclusion in the agreement would certainly prejudice his claim

The conveyance also includes the fact that he should have to agree to all future grants by Francis Newman the elder to James Rogers although nothing about this is included in the agreement

At the time he signed the agreement he was in very pressing circumstances for money and was in fact under bail for several sums of money, particularly £600 for an immediate supply, and James Rogers knew this and took advantage of it by promising to pay him this in a few days and before he left town. However he left town without paying it and evaded doing so for several months under various pretences and then offered to pay it only when the defendant was likely to refuse to fulfil the said contract on his part. James Rogers then continued to refuse to advance the £600 unless the defendant would procure him the reassignment of a certain mortgage for £7500 on the estate called Queens Camel and which James Rogers knew he could not do unless he paid a sum greater than the whole purchase money

He believes that James Rogers always intended to defraud him

He agreed to give up the reversion of South Cadbury Farm of the value of £200 p.a.

At the time that James Rogers signed the agreement he was not in a position to pay the consideration except by mortgaging the estate he was about to purchase, and he is now unable to pay the same as he believes that a person of very small property but who had taken advantage of the his inexperience ignorance and distressed situation to make and induce an unfair bargain, and at the same time intending to raise the money by mortgaging the estate

He therefore asked for half the money to be paid at the time of executing the deed and the other half three months afterward

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Before Christmas 1788 the time fixed for that purpose he satisfied James Rogers of his title to the estates by sending his solicitor such copies of instruments as were required, yet although he accepted the title, James Rogers did not prepare the draft conveyance until the following March although he knew that the defendant needed the money immediately and that time was of the utmost moment

He trusts that in view of the above he will not now be compelled to execute the conveyance

Schedule

Rental of South Cadbury Estate and Manor

Land	Value	Terms
The castle valued at	£30	in hand
Bulls Chapel let for	£35	in hand
Strutland's estate	£90	in hand
C. Newman	£6	in hand
Tayleys late Custards	£7	in hand
One life		
Riddell say Inn Tenement	£15	John Dun aged 60
Parkers	£6	G. Parker aged 50
Mitchell's estate	£45	Mitchel age 60
Miss Slade's	£75	Slade age 50
Bangers	£20	J. Banger age 36
Richard Ryal	£80	Rd Ryall age 70
Two lives		
G. Slades	£6	G. Slade age 40, his wife age 40
Bishops	£50	2 lives each age 50
Barnards	£40	2 lives each age 50
Three lives		
Dawes Tenement	£6	good lives
Cottages and land		
J. Day	£5	in hand
J. Winnow	£3	in hand
Parkere and R Slade	£5	in hand
One piece of ground mill	£10	in hand
One acre pasture	£1 5s	in hand
Once piece of ground	15s	in hand

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Schedule, continued

One life

Holloway	£3	40 years
Days tenement	£6	W Day age 46
One orchard	£7	Earlings age 50
A plot of land	10s	W Day age 46

Two lives

Wilcox	£4	
Brown	£4	
Plot of land and orchard at Washing Pool	£1	
Total	£561 10s	
Rectory about per annum	£150	

Value of South Cadbury Manor and Estate agreeable to the Rental on the other side as this Defendant computes and believes reckoning the fee at 26 years purchase with a deduction of four years purchase for the life of Francis Newman senior, sixteen years purchase where only life subsists and fourteen years purchase where only 2 lives subsist and 12 years purchase there are 3 lives

In hand 22 years	£193 p.a.	£4246
One life 16 years	£257 10s p.a.	£4220
Two lives 14 years	£105 p.a.	£1470
Three lives 12 years	£6	£72
Total	£561 10s	£10,008

Rectory	£800
Total:	£10,808

The leases supposed to be obtained by the complainant from Francis Newman the present tenant for life according to the account delivered by the said complainant and since the contract was signed cannot be exactly ascertained but are supposed to amount to £900 p.a. being 34 in number and if valued at 14 years purchase only though many of the lands must have been in hand or one life only is	£12,600
Total:	£23,408

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Schedule, continued

The renewal of leases for ever on certain conditions as stated in the contract this defendant computes to be worth	£3,600
The cancelling the mortgage in Queen Camel to the Reverend Henry Newman could not be done by this defendant without paying the value for the same, the mortgage is for	£7,500
Total	£34,508