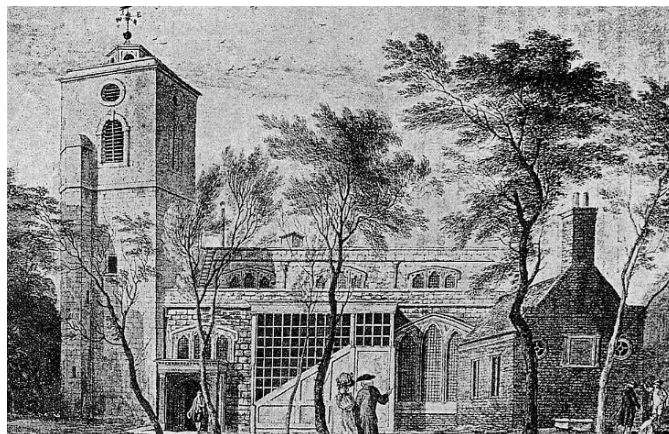


CUMBERLAND -V- BALCHEN

Introduction

On 26 September 1749 a marriage settlement was made between George Cumberland and his future wife Elizabeth Balchen¹ whereby certain stocks were to be held in trust. On the decease of her husband, payments were to be made to Elizabeth during her lifetime and on her decease, any children of the marriage (Richard Dennison and George) would then become the benefactors of the trust.



The executors of the marriage settlement were Henry Balchen who was Elizabeth Balchen's uncle and John Man who was Elizabeth's brother-in-law; he having married Mary Balchen Elizabeth's sister. George Cumberland senior died in 1777 and was buried on November the 21st, 1777, at St Dunstan's, Stepney (see Cumberland Letters, p. 19), although none of the parties in the matter below are able to state when exactly George died. Above is Saint Olave Hart Street where Elizabeth and George were married.

Sometime prior to 1770 John Man left his family. Over seven years after this event, the three remaining parties to the marriage settlement, Elizabeth Cumberland and her two sons, filed a Bill of Complaint in 1778 against Henry Balchen, the surviving trustee, in an attempt to break the trust, based on the fact that there was no more trace of John Man. Seven years is significant because in the 18th century that was the statutory number of years which could elapse before a missing person could be declared dead. The parties to this dispute did not know what had happened to John Man, but today we know that, presumably, to flee his debtors, he had settled in Cardiff where he conducted a flourishing building trade.

Below are *rough* transcriptions made in April and then in July of 2003 of the original Bill of Complaint and the two responses to it. The documents from which these transcriptions were made were obtained from the Public Records Office at Kew Gardens, London, and their and was somewhat degraded. As a result, some words could not be distinguished and where this occurs a _____ or ----- can be found. It is hoped one day to go back over the documents and attempt to fill in the missing gaps. The language is dense and convoluted, as one would expect with a legal document, however because of the gaps and the fact that these documents are over 200 years old making out the argument is often very difficult. Some references to this legal familial spat can be found among the correspondence in the 'Cumberland Letters' which can be found at:

¹ The marriage date for George Cumberland and Elizabeth Balchen that we have is September 21, 1749, since the settlement occurred before the marriage perhaps this marriage date needs to be revised.

http://www.manfamily.org/Man_Cumberland_Balchen_Letters.htm

I have made one correction - throughout the original John Man's name is written as *John Mann*, but I have deleted the extra 'n' in the transcription.

David Man
New York City
July 10, 2003

The Bill of Complaint

To the right honourable Henry Earl Bathurst Lord High Chancellor of Great Britain
February 1778

Humbly complaining show unto your lordship your orators and pratrix Elizabeth Cumberland of Driffield in the county of Gloucester widow heretofore Elizabeth Balchen of the parish of Allhallows Barking London spinster the Reverend Richard Dennison Cumberland of Driffield clerk and George Cumberland of London Gentlemen and being the only children of your pratrix Elizabeth Cumberland by George Cumberland her late husband deceased that by indenture of settlement tripartite(?) and previous to and in -----ation of the marriage of your pratrix Elizabeth Cumberland with George Cumberland her late husband deceased bearing date on or about the twenty-sixth day of September One Thousand Seven Hundred and Forty-Nine and made ----- to be made between the said George Cumberland by his name and description of George Cumberland of the parish of Saint Margaret Pattens Rood Lane London merchant of the first part your pratrix Elizabeth Cumberland by her their name and description of Elizabeth Balchen of the parish of Allhallows Barking London spinster of the second of the part Henry Balchen of Mansfield Street Goodmans Fields in the parish of Saint Mary Whitechapel in the county of Middlesex Gentleman and John Man of the same place carpenter of the third part after reciting that a marriage was intended to be then shortly had and solemnized by and between the said George Cumberland and your pratrix and that in order that such a provision(?) as is those(?) in and hereafter mentioned might be made for your pratrix in case the said then intended marriage should take effect and your pratrix should happen to survive the said George Cumberland her intended husband the sum of Three Hundred pounds in the capital or principal stock of the corporation or body politic called the Royal Exchange Assurance and also One Hundred and Ten pounds in the joint stock of the South Sea Annuities shares on or before the day of the date of the said indenture be transferred into the names of the said Henry Balchen and John Man in consideration of the said then intended marriage and of the portion or fortune(?) which the said George Cumberland was to have and ----- with your pratrix his then intended wife it was

therefore covenanted and agreed by and between the said pratrix to the said indenture severally and prospectively(?) and for their several and prospective Heirs Executors and administrators and it was officially to ----- to be the ---- intent and meaning of the said parties that they this said Henry Balchen and John Man or the survivor of them and the Executors and administrators of such survivors should stand and be possessed of the said sum of Three Hundred pounds and One Thousand and Ten pounds upon the ----- trust and two and for this ----- also intends and ----- therein and hereinafter mentioned and declare of and concerning the same that is to say in trust for your pratrix her executors administrators and assignees until the said intended marriage should take effect and after the solemnization of thereof Upon Trust that they the said Henry Balchen and John Man and the ----- of them and the executors and administrators of such survivors should from time to time and at all times during the life of the said George Cumberland pay or cause to be paid the interest dividend – profits produce and process therefore unto him the said George Cumberland and his assignees or permit and suffer him or them to ----- the same to his and their own use and uses and from and immediately after the decease of the said George Cumberland in case he should depart this life in the lifetime of your pratrix his then intended wife upon trust that they the said Henry Balchen and John Man or the survivor of them and the executors and administrators of such survivors should from time to time and at all times during the natural life of your pratrix pay or cause to be paid the interest dividends profits produce and process them – unto your pratrix and your assignees or remittance(?) suffer her or them to receive the sums to her and their own also and ---- and from and immediately after the decease of the said George Cumberland and your pratrix his then intended wife or the survivor of them on trust that they the said Henry Balchen and John Man or the survivor of them and the executors and administrators of such survivor should assign and transfer the said sum of Three Hundred pounds and One Hundred and Ten pounds unto and amongst all and every the child and children of the said George Cumberland by your pratrix his then intended wife if more than one share and share alike at their respective ages of twenty-one years and in the meantime and until they should respectively attain their said ages of twenty-one years upon trust to apply the interest and dividend profits produced and procured(?) through of for and ----- for their maintenance and education in such manner and in such proportions as they the said Henry Balchen and John Man and the survivors of them and the executors and administrators of such survivors should think most proper and expedient but in case there should be only no child of the said George Cumberland by your pratrix his then intended wife who should survive them then upon trust that they the said Henry Balchen and John Man and the survivors of them and the executors and administrators of such survivors should assign and transfer the said sum of Three Hundred pounds and One Hundred and Ten pounds unto such only child at his or her age of twenty-one years and should in the meantime and until he or she should have attained his or her said age of twenty-one ----- years pay and apply the interest dividends profits produced and proceeds thereof for and towards his or her maintenance and education but in case there should be no child or children of the said George Cumberland by your pratrix his then intended wife or being such all of them should die before they should have attained their ages of twenty-one years then upon trust that they the said Henry Balchen and John Man or the survivor of them and the executors and administrators of such survivor should assign and transfer said sum of Three Hundred pounds and One

Hundred and Ten pounds unto such person or persons for such use interest and purposes and in such proportions as your pratrix notwithstanding her said then intended ----- should by any ---- or writing or by her last will and testament in writing which she was thereby empowered to make duly executed in the presence of two or more credible witnesses give direct ----- or appoint and default of such gifts direction and appointment then in trust that they the said Henry Balchen and John Man or the survivor of them and the executors and administrators of such survivor should assign and transfer the said sum of Three Hundred pounds and One Hundred and Ten pounds ---- to the said George Cumberland his executors administrators and assignees in which said indenture of settlement was contained a covenant or promise that it should be lawful ---- for the said Henry Balchen and John Man or the survivor of them and the executors and administrators of such survivor at any time thereafter causing the joint ----- of the said George Cumberland and your pratrix his then intended wife and by and with their p----ly and covenant to be testified by writing under their hands for that purpose to sell assign and transfer the said sum of Three Hundred pounds and One Hundred and Ten pounds and out of the monies arising by sale thereof to purchase any land or tenement or government securities in the name or names of them the said Henry Balchen and John Man or the survivor of them and the executors and administrators of such survivor which said lands or tenements or other government securities when purchased and the rents and profits and dividends thereof should be paid applied assigned and conveyed and the said Henry Balchen and John Man and or the survivor of them and his executors and administrators should stand seize and possess and show of ---- and for such person and persons for such use and uses intents and purposes as was therein before declared with respect to the said sum of Three Hundred Pounds and One Hundred and Ten pounds and the interest and dividend profit and produce thereof and in which said indenture was also contained a provisio that in case one or other of them the said Henry Balchen and John Man should die in the lifetime of said George Cumberland and your pratrix or the survivor of them it should be lawful to and for the said George Cumberland and your pratrix by writing either his or their hands respectively to be signed by them in manner-- -- mentioned to appoint --- trustee in the place and stead of such of them so dying as aforesaid and so as after as any or other such trustees should die and that they --- and be seized and possessed of the said trust ----- is upon the trust therein and herein before mentioned as in and by the said ---- indenture relation being thereunto had ----- more at large appear and your prator and your matrix further show that the said then intended marriage was had and solemnized and the said Henry Balchen and John Man with the consent and at the direction and appointment of your pratrix and the said George Cumberland her late husband since deceased in pursuance of the power in the said marriage settlement for that purpose given solo out part of the said trust estate and land the same out upon some security and the remaining part of the said trust estate was laid out in the names of the said Henry Balchen and John Man in the purchase of Two Hundred and Twenty pounds South Sea annuities upon the trust in the said settlement and mentioned and the same is now standing in the joint names in the books of the governor and company of merchants of Great Britain trading to the South Seas and other parts of America and for encouraging the fishery and your matrix and pratrix further show unto your lordship that the said George Cumberland departed this life sometime in or about the year of our Lord One Thousand Seven Hundred and Sixty saving your pratrix his widow

and his orators his only children by the said marriage hereby and by virtue of the said marriage settlement your pratrix ----- to have and receive the dividends of the said Two Hundred and Twenty Five pounds South Sea annuities for her life and your orators to have the said annuity divided between them upon the decease of your pratrix their mother and your orators and your pratrix further show that your pratrix hath from time to time received the dividends of the said South Sea annuities as the same became due and payable and your orators and pratrix further show that the said John Man one of the trustees of the said marriage settlement ---- is dead or alive is gone abroad or does live or reside beyond the seas and out of the reach of the powers and jurisdiction of this honourable court or if he is not dead or gone abroad ----- your pratrix and orators cannot find out or discover where he is or what is gone with him he having been absent from his wife and family for the space of seven years last past and upwards during all which said him and it not being constantly known whether the said John Man be dead or living the trusts and said marriage settlement contained cannot be carried into execution or any new or other trustee appointed of the said trust promise in the --- of the said John Man pursuant to the provision in the said marriage settlement for that purpose contained without the ---- and ----- of their ----- and your orators and pratrix further show unto your lordship that your ----- and ----- have frequently applied to the said governor and company and corporation ----- to permit the said Henry Balchen to make a transfer of the said annuities so and in such manner as that the same may become ----- in him the said Henry Balchen and some other trustee to be appointed upon the trust in the said marriage settlement combined and your pratrix and your orators have also applied to the said Henry Balchen and ---- him to transfer such stock and the other trust securities so as to vest the same in himself and some other proper trustee upon the ----- of the said settlement and your pratrix and orators were in ---- hope that such that there request would have been complied with but now so it is may it please your Lordship that the said governor and company have absolutely refused to permit or suffer to permit the said Henry Balchen to make any transfer of the said annuities and he refuses to make any such transfer or to assign the said transfer promised to any other trustee or trustees without the ----- of this honourable court and the said governors and company and the said Henry Balchen ----- that the said John Man is still living and that therefore the said Henry Balchen cannot make any transfer or assignment of the trust previous without having the said John Man join with him the said Henry Balchen ---- who as your lord and ----- humbly insists that although they cannot positively prove the death of the said John Man having ---- been so long gone away and no intelligence having been had of him he ought to be considered as dead and the said Henry Balchen ought to be permitted to transfer and assign the said trust stocks and provisios as surviving trustee named in such settlement intend consideration thereof and for as much as your orators and pratrix ---- life in the promise but by the ---- and ----- now of this honourable court who in this matter of this lord ----- only ----- and ----- to the end therefore that the said governor and company and the said Henry Balchen and the cost of the ----- when discover he may according to the ----- of ----- the ----- information and belief ----- and ----- make to all and singular the matter and things in and by ----- and ----- complaint charged alleged or mentioned and that as fully and particularly in every respect is if the same ----- have ----- and they theronto particularly interrogate ----- whom provisions and in consideration of the said

marriage has between your pratrix and the said George Cumberland her late husband
 conceived such indenture settlement of such ----- to such purpose effect before ----
 forth was not only made executor whether any ----- what other settlement was made and
 what those was whether of such ----- and to such purpose or effect as how in before
 to that purpose mentioned or if any and of what her marriage intended between your
 pratrix the said George Cumberland did not afterwards take effect and was duly had and
 solemnized and whether he said ----- of money in the ----- was mentioned
 were not accordingly laid out in the Manner therein also mentioned and whether some
 and what part thereof was not afterwards ----- when sold out and transferred -----
 -- -- - what other securities and whether the remainder ----- and what part thereof was
 not afterwards and when ----- or invested in the purchase of Two Hundred and Twenty
 Five pounds ----- annuity or any and what other capital --- of South Sea annuities or
 in any and what other security and ----- the said George Cumberland in the said
 settlement ----- did not long since and when he departed this life leaving your pratrix his
 widow ----- your ----- his only children by their marriage and whether your pratrix hath
 not since from time to time ---- the dividends of the South Sea annuities as the -----
 income due and payable on ----- whether the said John Man is not dead or if he is alive
 whether he does not live or resides in some ----- abroad or beyond the seas and whether
 he hath not ---- him from his wife and family for the space of seven years of -----
 upwards or for a time --- long and whether the said Henry Balchen hath during the said
 him said when heard from the said John Man whether the said Henry Balchen --- ---
 known or confirm any belief what is become of him the said John Man and whether your
 praxis and orators have applied to the said governor and company and together with them
 to permit and suffer the said Henry Balchen to transfer the said annuities to the same now
 or other trustee for the purpose in the said settlement contained and whether they have
 not ----- so to do and why and for what reason they refuse the same and that the said
 Henry Balchen may be directed to transfer and the said governor and company directed to
 permit the said Henry Balchen to transfer the said sum of Two Hundred and Twenty Five
 pounds South Sea annuities in the joint names of himself the said Henry Balchen and
 some other trustee to be appointed and may also sign and ----- the other securities to some
 other person as a trustee with him so ----- in such manner as that the said Henry Balchen
 and such new or other trustee may become possessed of such trust stock and securities to
 for and upon ----- trust ----- and purpose in the said marriage settlement contained
 concerning the same and that your orators and matrix may have ----- further and other
 relief in the promises as the nature of their case and may require and ----- your lordship
 shall as it may please your lordship to grant unto your orators and pratrix his majesty's
 most gracious ----- to be directed to the said governor and company of merchants of
 Great Britain trading in the South Seas and ----- the ----- and the said Henry Balchen ----
 ----- at a certain day and under a certain penalty therein to be -----
 personally to be and appear before your Lordship in the honourable court then and the ---
 -- and the ----- and he and ----- therein to your Lordship -----

THE TWO RESPONSES

First Response

12th February 1778

Prepare for by J. Dillon

The answer of Henry Balchen one of the Defendants to the Bill of Complain of Elizabeth Cumberland widow Richard Dennison Cumberland and George Cumberland complainants. This Defendant saving and removing to himself now and at all time hereafter All and all manner of Benefits and Advantages of Exception to be had and taken to the _____ and those _____ said _____ in the Complainants said Bill of Complaint contained for answer _____ to or unto so much therefore as this Defendant is _____ materially _____ him to make answer unto answereth and saith that his _____ it to be known that provisions to and in consideration of a marriage then intended to be had between the said Complainant Elizabeth Cumberland then Elizabeth Balchen spinster with George Cumberland in the said Complainants Bill mentioned such indenture of settlement of such [date?] and to such purport and [contents?] in the said Complainants Bill mentioned was duly made and Executed and that this Defendant and John Man in the said Complainants Bill also mentioned were Trustees therein named for the purpose in the said Settlement mentioned and this Defendant further saith that he believes the said marriage took effect and was duly solemnized and this Defendant further saith that after the said Marriage took effect the defendants and the said John Man in Pursuance of a Proviso in the said Marriage settlement contained did with the consent and by the Direction and appointment of the said Elizabeth Cumberland and George Cumberland her late husband Deceased sell out part of the said trust estate and they laid _____ out upon other Security and the remaining part thereof was laid out by this Defendant and the said John Man in the purchase of Two Hundred and Twenty Five Pounds South Sea Annuity and the Same is now standing in their joint names in the Books of the Governors and Company of Merchants trading to the South Seas in the said Bill mentioned but for Greater certainty as to the Entries in such Books this Defendant _____ leave to _____ to the same whom produced and this Defendant further saith that he believes the said George Cumberland departed this life on or about the time in the Complainants said Bill for that purpose mentioned [having] said the said Complainant Elizabeth Cumberland his widow and the said other Complainants – Richard Dennison Cumberland and George Cumberland his only children by the said marriage whereby the said Elizabeth Cumberland _____ to the Dividends of the said South Sea Annuity during her life and the Complainants Richard Dennison Cumberland and George Cumberland to have the said Annuity divided between them upon the death of their said Mother and this Defendant further saith that he knows not nor can he set forth whether the said John Man the other trustee in the said marriage settlement contained be Dead or Living but this

Defendant believes the said John Man hath absented himself from his wife and Family for the space of Seven years last past and upward during which time the Defendant hath not heard from nor can this defendant form any belief what is become of the said John Man but during the time aforesaid the Defendant alone hath acted in the Trusts in the said marriage contained and this Defendant further saith that he hath from time to time received the dividends of the said South Sea Annuity as the same became due and payable and hath applied the same according to the direction of the said marriage settlement and this Defendant further saith that he is ready and willing to do any act this Honourable court shall direct for carrying the Trusts of the Marriage Settlement into Execution being Indemnified by this Honourable Court for so doing and having his costs of this suit and this Defendant denies all unlawful Combination and Confederacy in the said Complainants Bill Charged without that that _____ is any other matter or thing material or _____ for this Defendant to make answer unto and not _____ and hereby well and sufficiently answered _____ confessed and avoided _____ or denied _____ all which matters and things this Defendant is ready to answer and prove as this Honourable Court shall direct and award and _____ prays to be dismissed with his reasonable costs and charges in this belief sustained.

H. Balchen

John Bicknell

Sworn by me
the Twentieth Day of Feb^{ry} 1778

Wainwright

At the----- River Office
The bottom of Salisbury Court

P. Holford

Second Response

12th February 1778

Prepared for by John D

The several answers of the Governor and Company of Merchants of Great Britain Trading to the South Seas and other parts of America and for Incouraging the _____ory

Defendants to the Bill of Complaint of Elizabeth Cumberland widow Richard Dennison Cumberland and George Cumberland Complainants.

These Defendants saving to themselves all Benefit and Advantage of Exception to the Errors and Insufficiencies in the Complainant's Bill contained answer and say that they have [Caused?] to be inspected and searched the books kept by the Defendants wherein are entered the amounts of the Proportions of the Joint Stock of the South Seas Annuity Company commonly called Old South Sea Annuity Stock and they have found in the Ledger containing the Accounts of the said Old Annuity Stock an Entry or Account standing in the name of Henry Balchen and John Man in the Complainant's Bill _____ and those Defendants say they have caused a true copy of such account to be underwritten by way of a _____ also to this their answers and which they pray may be taken as part thereof and those Defendants admit that the said Complainants did apply to those Defendants and requested them to permit and suffer the said Henry Balchen in the Complainants Bill mentioned and that those Defendants did refuse to permit the sums because no Proof was produced of the Death of the said John Man one of the Trustees in the said settlement named and those Defendants say they are entire strangers to and know nothing of the Other Matters and Transactions of the Complainants said Bill contained but are ready and willing to Act in the Promisor as this Honourable Court shall Direct on being Indemnified and Paid their costs of this suit without that that any other matter or thing in the Complainants said Bill of Complaint contained material or [affect?] in the Law for them those Defendants to make answer unto and not herein and hereby well and sufficiently answered unto confessed or avoided [traversed ?] or denied is true to the Knowledge or Belief of those Defendants are ready to justify and maintain and prove to the Honourable Court shall Direct and Humbly Pray to be _____ dismissed with their reasonable costs and charges in the Law in this Behalf most wrongfully sustained.

The schedule above mentioned and referred unto

Henry Balchen and John Man

April 5 1776 by Bal

225:0:0