

1862.
Henderson
v.
Graves.

It is positively sworn that neither of the defendants *Smith & Henderson*, knew any thing of *Bridge's* claim to the land, when the action was commenced against the *Bryants* in the name of *George Graves*, as lessor of the plaintiff. There was indeed a conveyance upon record in the county registry, from one *Samuel Doty* to one *Samuel Southby Bridge*, ever since the 7th of January, 1836, which I suppose from the evidence was the earliest deed respecting this land to be found in the registry; and so it might have been known by *Smith & Henderson*, if they had searched the registry before they brought the ejectment, that *Samuel S. Bridge* pretended title to the land. But it is not proved that they had any knowledge of that fact, and they positively deny that they had, until a few months before the action against the *Bryants*, which took place in September, 1849.

I infer from the evidence that that ejectment was brought in *George Graves'* name, under the belief not only that he was the heir of the patentee *Adam Graves*; but also under the belief that his grandfather and father had in succession died seised of the land, not having made any disposition of it by will or otherwise, and that *George Graves*, the now plaintiff, in whose name the ejectment was brought, had become entitled to it as heir.

The evidence shews also, I think, that under that persuasion the defendant *Smith* volunteered without being retained by this plaintiff, whom he made plaintiff in the ejectment, or by any one who had or pretended to have authority to act for him, to commence an ejectment, and to carry it to trial, in order to dispossess the occupant, and that he offered to the plaintiff's mother to conduct the suit at his own expense, without a right to look to any one for his costs; being content to rely upon the expectation that if he gained possession the plaintiff *George Graves*, if he were living, or any one who should inherit from him, if he were dead, would remunerate him satisfactorily