

owners of the land, whoever they might be. The portion of land which each received, and the further fact that they procured from *James Graves* assignments of the mortgages to him which the purchasers of other portions of the property had given for the purchase money, goes very far to shew that although the purchasers took their title from *James Graves*, the sales were in fact respectively made on behalf of Messrs. *Smith & Henderson*, or of one or the other of them. There is evidence tending to shew that all this was upon an arrangement made between *James Graves* and them in consideration of their services and expenses, and money paid or advanced by them, but the testimony on that point appears to me to be very loose. I would therefore not give them their costs on dismissing the bill, but to the other defendants I would give costs.

1862.

Henderson
v.
Graves.

ESTEN, V. C.—I have perused the pleadings and evidence as regards the *Bryants*, and think they are entitled to no relief whatever, as to their covenant. Looking to their own answer, it does not state enough to entitle them to a specific performance, and the sale to them by *James Graves* cannot operate as an execution of the covenant, being for little more than half the land, and at a less price. Then the money has never been received by *George O. Graves*: they do not pretend that they tendered the money within the time. They would have now to take the remainder of the land, and pay cash for it, if a specific performance were decreed. An enquiry can end only in disappointment, for we must take the answer as stating the case as strongly as the facts warranted: and the master must report that they are not entitled to specific performance. A bill in the shape of the answer would be demurrable. Their purchase money not being fully paid they could not avail themselves of the plea of purchasers for valuable consideration, without notice.

Judgment

Charles Edward Clarke has not paid his purchase