

1862.
Henderson
v.
Gray, &c.

2. The respondent is *cestui que* trust of the property, and none of the appellants has a better equity.
 3. Messrs. *Smith* and *Henderson* accepted retainer on behalf of the respondent, and, by the subsequent ratification and adoption of that retainer, their liability to him was the same as if they had been originally retained by him.
 4. The title conveyed to *Henry Smith* was so conveyed in trust for the respondent, and the other appellants had each of them notice of the trust before they paid the whole of their purchase money and perfected their legal title to the property.
 5. The appellant did not, in the pleadings, set up the case relied upon in their fifth reason of appeal, and ought not to be allowed to set up such a case without Statement. pleading it.
 6. The alleged agreement set up by the *Bryants* does not amount to a defence by them, as they did not complete their purchase within the time in that behalf limited.
 7. The *Bryants* abandoned the contract referred to in the seventh reason of appeal.
- Mr. *Crickmore* for the *Bryants*, *McRorys* and *Barclay*.
- Mr. *A. Crooks* for the *Clarks*.
- Mr. *Eodgins* for *Smith*, *Henderson* and *James Graves*.
- Mr. *Roaf*, for the respondent.
- The judgment of the court was delivered by
- BURNS, J.—The case may be divided in this manner as subject matters of consideration, first, as respects the