

SIR J. B. ROBINSON, BART., C. J.—It appears from the evidence that Mr. *Smith*, now Sir *Henry Smith*, one of the defendants, a partner in the firm of *Smith & Henderson*, attorneys, having been informed that there were persons occupying this property, or small parts of it, without title, and having heard that the heir of *Adam Graves*, to whom the Crown had granted the land in 1797 by patent, was supposed to be the real owner, he did either of his own accord, or at the suggestion of one *George Graves*, a relation of the family, formerly living in Pittsburg, near Kingston, but now deceased, make enquiry of the family of *Graves*, still living at Sorel, in Lower Canada, (where the patentee *Adam Graves* had lived and died,) in order to find in whom the title was vested.

1862.
Henderson
v.
Graves.

He was led, it seems, to believe from what he then heard in 1846, from Mrs. *Agnes Graves*, the mother of the plaintiff, that her eldest son, the now plaintiff, whose father, *George Graves*, then deceased, was the eldest son and heir-at-law of the patentee Captain *Adam Graves*, must, from all that appeared, be the legal owner of this property, if he was living, but that he had been more than twenty years absent from Canada, and that it was uncertain at the time of the enquiry whether he was alive or not.

Judgment.

It is fair to consider that the object of Mr. *Smith* was not merely to ascertain who was the heir in a general sense to *Adam Graves*, the patentee, but rather to find, if he could, who the person was that inherited this land. If Mr. *Smith* had been told that this plaintiff, if living, was the lineal heir of *Adam Graves*, but that he could have no claim to this land in Pittsburg, because his grandfather *Adam Graves* had sold and conveyed it away in his life-time, we cannot suppose that he would have volunteered to act as attorney for this plaintiff in endeavouring to recover the land in his name by actions of ejectment.