1862.

Henderson v. Graves.

and it would be a hardship upon him to say that because the mortgagor is a solicitor he is therefore to be treated as the mortgagee's solicitor." In the same case, upon appeal, before Lord *Chelmsford*, (*a*) the Lord Chancellor, though approving of *Hewitt* v. *Loosemore*, yet says: "I find it very difficult to accede to the proposition, however high may be the authority from which it proceeds, that where a mortgagor is himself a solicitor and prepares the mortgage deed, the mortgagee employing no other solicitor, the mortgagor must be considered to be agent or solicitor of the mortgagee in the transaction. I think there ought to be some consent on the part of the mortgagee to constitute this relation between them."

Judgment.

There is one proposition which should not be overlooked in dealing with those parties who purchased, and to which, perhaps due weight was not attached, and it is this, that up to the time of the answers of the defendants Messrs. *Smith & Henderson*, to the first bill filed in this matter on 25th of August, 1856, and the evidence taken upon it on the 31st October, 1856, there was nothing whatever in writing in any way upon which the court could enforce a trust for the heir of Captain *Adam Graves*. It is true that in 1850 Mr. *Smith* conveyed to the defendant *James Graves* all the land, with the exception of one lot, and as to that lot he took a conveyance to himself, and, as we can readily suppose and believe, this was done on the supposition that *James Graves* was the heir; but there is nothing on the face of the deeds which would shew such to any purchasers to have been the case. Every thing, so far as the evidence discloses, rested in parol until Messrs. *Smith & Henderson* put in their answers. Mr. *Smith* had answered the first bill, altogether denying his character of trustee, and alleging and claiming that he had bought the estate from *Bridge* on his own account, and with his own money. I am not prepared to say that it might not have afforded

(*a*) 3 DeG. & Jones, 547.