

1862. event of the ejectment in 1849; and that the convey-
 Henderson an- ce to *James Graves* was made not in fraudulent or
 v. intended violation of their undertaking or duty, but as a
 Graves. supposed compliance with it. The evidence shews that
 when the deed to *James* was made there was no knowledge
 that *George* had been heard of, or was living within
 seven years, while it was known that he had been more
 than twenty years absent beyond seas, *James Graves* is
 his eldest brother, and it is not in evidence that *George*
 had any lawful issue who could have inherited if he had
 been in fact then dead.

It is now clear, however, that in conveying to *James Graves* as the heir of *Adam Graves*, a mistake was committed, for his elder brother was at the time living, though not known to be so.

Judgment. So far as regards any really equitable consideration the propriety or impropriety of conveying to *James Graves* is not to be determined by what was discovered afterwards, but by what appeared, and was supposed to be the fact, when that was done which is complained of as improper. That men must in many cases be held liable to answer for the consequences of errors into which they have ignorantly fallen is undeniable, but that is in cases where some pecuniary injury has been sustained. Here there has been none, for the plaintiff had no right to the land in question that by any act of the defendants was or could be divested or impaired.

Besides, it appears to me that, wherever in the correspondence, or evidence, *Smith & Henderson*, or either of them, speak of the heir of *Adam Graves*, they must reasonably be considered to mean that descendant of his who inherited this property; not merely the person who by affinity was his heir, but the person who while these proceedings were going on was really entitled to this land in Pittsburgh, as his heir, or had at least some colour of right to it.