

land to *James Graves* again, to secure the purchase money. The transaction is therefore not closed. The money appears to have been past due when suit brought. The money remains to be paid on the one side; and on the other, there must be either a release of the estate given, or a certificate registered under the statute, in order to re-vest the legal estate in *Charles Clark*. We cannot admit that he shall be protected *pro tanto* for such payments as he may have made without notice of plaintiff's claim, and compel the plaintiff to accept the residue unpaid of the purchase money, for independent of other considerations, that would amount to saying, that under the circumstances of this case, either that *James Graves* holding the legal estate, had an equitable right to dispose of the plaintiff's equitable interest, and a right to take a security for the purchase money, or that notwithstanding it is admitted that *Clark* has not yet paid, that he may be excused giving up the estate conveyed to him under the circumstances of this case. No English or American decision supports such a proposition, though it is quite true that new decisions must constantly take place whenever a new state of facts occurs calling for the establishment of what, perhaps, at first sight appear to be new principles.

1862.
Henderson
v.
Graves.

Judgment.

As to all the other defendants, they stand precisely in the same situation as *Charles Clark*. But with respect to them, there is this consideration, which in a case like this ought not to be overlooked, viz.: that in and after October, 1850, they acquired the legal estate and thought they were the true owners without being affected by any trust, which would deprive them of that. They were making improvements upon the property, without supposing the plaintiff had any right to enjoy the fruits of their labour. The plaintiff himself had no idea for years that he had any claim, and in truth he had none until Mr. *Smith* purchased on the 3rd of July, 1849. Even then the plaintiff, and for some years after, did not