

yet there were in truth discoveries in the month of November, and that it was in respect of these that the application was made for the issue of the leases, and that the statement as to the discoveries in December was a mistake. (That is, a case to be established by the appellants, in respect of which the onus was upon them. And it would be quite sufficient to dispose of it, to find that the appellants failed in their effort to establish it, that the evidence upon which they sought to prove the fact of discoveries in November could not be relied on, and was insufficient to convince. The Chancellor came to this conclusion, not merely, as I understand him, acting upon a rule of evidence as to the onus of proof, but upon the whole testimony, and having regard to all the facts and circumstances. Viewed with or without regard to the question of onus, the testimony fully sustains the Chancellor's conclusions.

Having regard to the circumstances connected with the manner in which the application for the issue of the leases was made, and supported by and through the intervention of the appellant Hargrave and his solicitor, and the fact that the leases were issued to him along with his co-defendants in this action, Rutherford and Williams, there is no room for the argument that the appellant Hargrave stands in any better or stronger position as purchaser for value or otherwise as a defendant in the action, than any other party to it. He dealt directly with the Crown for the issue of the leases, and he is one of the parties named as lessees. It is true, he says that this was done at the suggestion of an official of the Crown lands department, and was not the result of his action, but that does not alter the fact that the impeached instruments issued to him. He has never been in the position of a person who could, under the ancient practice of pleading the defence of purchaser for value without notice, have maintained that character, even if the defence is open as against the Crown, a point which it is not necessary to determine in this case.

In procuring the issue of the leases he had necessarily to avail himself of the affidavits and other material laid before the department, and it was obligatory upon him to satisfy himself that they truly represented the facts. Nor can he relieve himself of this position by endeavouring to