

1862.

Henderson
v.
Graves.

It has not been proved that either Mrs. or Miss Graves gave to Messrs. *Smith & Henderson* any instructions or information respecting the title to this land, or had any information to give; and it is not shewn or asserted that between this plaintiff and *Smith & Henderson*, or either of them, there was any communication whatever, either personal or by writing. Whether under such circumstances the relation of attorney and client could be said to be existing between *Smith & Henderson* and the plaintiff, in such a manner that it could be held that a confidence was reposed by the plaintiff which should bring this case under the general principle on which the plaintiff relies, is a question which would have required to be carefully considered, if the case had depended wholly upon the fact that the attorneys had taken upon themselves to bring ejectments in this plaintiff's name, but without his authority or knowledge, and without authority from any one empowered to act for him. If indeed the plaintiff had been aware of the proceedings, and had in any way sanctioned them, or taken the benefit of them, or had suffered them to proceed without objection, then the effect would have been the same as if he had employed *Smith & Henderson* in the first instance; and though nothing of that kind has been proved, yet, if the plaintiff could shew that he has suffered any injury by Messrs. *Smith & Henderson*, having assumed to sue in his name, without his authority or knowledge, I have no doubt he could recover damages from them for such injury.

Judgment.

But there is more to be considered in this case—Messrs. *Smith & Henderson* admit throughout in their answers, and in their statements made as witnesses, that in what they did they were acting as the attorneys for the heir of Adam Graves, and under a sense that they were bound in what they did to consult his interests. They do not deny the responsibility or seek to evade it on the ground that they had not been previously retained,

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