

1862. *Smith's* position as a trustee in any way. The question they were seeking information upon was, whether *James Graves* was the proper person to purchase from. No one at that time knew that Mr. *Smith* was only a trustee for the heir of Captain *Adam Graves*, neither *Bryant's* solicitor nor any one else, and it seems that *James Graves* held then the legal estate quite irrespective of his being the heir.. Relying upon what Mr. *Smith* told them as to *James Graves* being the heir, and upon the information they had from the solicitor they consulted, they bought. Mr. *Henderson* swears that Messrs. *Smith & Henderson* were not solicitors for the *Clarks*, and therefore it is reduced to the mere fact of their having prepared the conveyances and the *Clarks* paying them, to establish constructive notice. I shall never bring my mind to think that so meagre an act as that shall cause a person the forfeiture of an estate, and to assume that it was the duty of Messrs. *Smith & Henderson* to have informed the *Clarks* that Mr. *Smith* was only a trustee himself, having bought the estate for the benefit of the heir of Captain *Adam Graves*. Therefore as *John Richard Clark* has paid all of the purchase money he was to pay before he had notice of the plaintiff's equitable claim, he should, I think, be free.

Judgment.

With respect to the other *Clark*, he has not yet paid up the mortgage which he gave to secure the purchase money, and as to him, I feel myself compelled to say, I think he must hold subject to the plaintiff's claim. The question with respect to him is, under what circumstances a person may be considered as a purchaser for valuable consideration without notice. It has been held in the American courts that a purchaser giving promissory notes negotiable, which may find their way into other than the vendor's hands, and so the purchaser lose both money and land, he may be considered as such purchaser, the vendor having taken money's worth for the land. But here *Charles Clark* immediately reconveyed the

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