

saw or had any communication with the plaintiff until long after the conveyance made to *James Graves*? And can any one doubt, after reading the answers and evidence of Messrs. *Smith & Henderson*, that if the plaintiff had so come to this country, that they would not voluntarily have transferred the estate so acquired to the plaintiff? I feel quite sure that they would neither have denied their position to him, nor would they have denied his right to claim the property. Then if that be so, does the fact that Messrs. *Smith & Henderson* became the solicitors of *James Graves*, under the belief that the plaintiff was dead, and acting upon that belief, having conveyed the estate to *James*, absolve them from accountability to the plaintiff? Looking at the facts and circumstances of this case, I do not think they have any right to claim such an exemption.

1862.

Henderson
v.
Graves.

In *Kelsall v. Bennett*, (a) Lord *Hardwicke* held a plea of being a purchaser for valuable consideration without notice bad, under the following circumstances: A. being possessed of property in England, made his will, and devised to B. in tail, and in the event of that failing, then over to C. in fee. B. was living in Virginia, and he died there, but left a son. C. supposing that the estate tail was exhausted, sold the estate to D., and furnished him with an affidavit of the death of B. without issue. When B.'s son afterwards filed a bill for a discovery of the title deeds and possession of the estate, D. answered he was a purchaser for value without notice; but it was held no defence, for inasmuch as he derived title also under the same will, it was his duty to see that the estate tail was exhausted, and that under the circumstances the denial was not a denial of title, but a denial of the person in whom the estate was, and that would not do. Now, so here in this case, Messrs. *Smith & Henderson* do not, and cannot deny that at one time the plaintiff had a right in equity to the equitable interest

Judgment.

(a) 1 Atk. 522.