

1862. was a release that could affect nothing, being given by a person who had no interest to release.

Henderson
v.
Graves.

In 1854, I think, it has been stated the present plaintiff made his appearance in this country; and in 1855 brought some actions at law against parties in possession; and in 1857 he filed the present bill.

Upon the whole there are some points in this case which are not made to appear quite clear upon the evidence. If Miss *Graves*, or *James Graves*, or *Thomas Bridge*, or any other witness whom the plaintiff could have called, could have made out a stronger case for the plaintiff, it was for him to consider whether he should not have such witnesses examined. As it is, the case rests upon the deeds and correspondence produced, and upon the explanations given by the defendants *Smith & Henderson*, when called by the plaintiff. It may be surmised that the transactions may not have been in all respects such as stated in the evidence, or conducted in the spirit, or with the views which that would lead us to suppose. But we are not at liberty to imagine facts, or intentions, which are disclaimed, and denied on the one side, and not proved on the other.

Judgment.

As was remarked by Lord *Thurlow* in *Fox v. Mackreth*, (a) a leading case upon the doctrine of equity, which we are now considering: "When once one gets beyond the evidence that is before the court, there is no end of conjecture."

Confining myself, as we must, to what is in evidence, and placing what appears to be a reasonable construction upon it, I think it is not proved that *Smith & Henderson* were retained, as the bill asserts, by the plaintiff's mother "acting on his behalf, as the heir-at-law of Captain *Graves*, to commence proceedings for the

(a) 2 Bro. Ch. Cases, 422.