

1862. money down; but had they not bought during the twelve years, they would have had no right after to do so. The plaintiff has never had any thing more as against them than an equitable right, and in my opinion he has no more equitable right to the legal estate itself than the *Bryants* have, and they ought to be allowed to retain it. The question, I think, with regard to them, is confined to the title to the purchase money. The *Bryants*, as it appears to me, have acted in good faith, and ought not to be subject to pay again what they have paid, and I think the plaintiff's bill as against them should be dismissed with costs.

The only thing which can be urged against them by the plaintiff is this, that before he should be concluded as to them, whether the court would order an enquiry, that is to say, whether they purchased under such circumstances, that is, from *James Graves* as to terms of payment and price, that the plaintiff should be held bound. We must remember that their right to purchase was altogether paramount to any right the plaintiff acquired. The plaintiff had no right whatever to the property except such as he obtained through Mr. *Smith*, having bought as his solicitor, to all of which the *Bryants* were strangers. The *Bryants* set out in their answer the manner in which they claimed the right to hold the property, and which was, that having the agreement to sell to them, and the legal title coming to *James Graves*, they completed the purchase. The plaintiff was apprised of this by their answer; but instead of admitting the truth of the *Bryants* holding an agreement from the person who at the time held the legal estate, and could transfer it to them, and amending his bill thereupon, and asking an enquiry upon the subject, he traversed their answer, and puts them to prove it. They have proved it, and after that I think it would be too much to direct an enquiry into circumstances with a view of ascertaining whether the plaintiff is to be bound by a contract undoubtedly made with a person, that is.

Henderson
v.
Graves.

Judgment.