for his services and disbursements, when he should know what had been done, and when he saw that it had opened the way to him to take possession. 1862. Henderson v. Graves.

Of all this it appears that *George Graves*, wherever he was living, knew nothing at the time; and it is therefore clear that if he had returned to Canada while the ejectment was pending, or had otherwise become aware of the use that had been made of his name, he might have disclaimed the whole proceeding, and refused to sanction it. This indeed as an honest man he must have done, if he had known what we now see, and what is not very likely he could have been ignorant of, that he had in fact no claim to the land, because his grandfather had in his life-time conveyed it away in exchange for other lands, which his family had enjoyed till they sold them. There is no doubt that this plaintiff could have refused to pay any portion of the costs of this ejectment that had been brought in his name, without his authority; though I take it to be equally clear that if, while the proceedings were going on, he had in any manner sanctioned or acquiesced in them, the case would be different. But so long as he was wholly ignorant of what had been done, and had in no manner deprived himself of the right to treat it all as unauthorised, *Smith & Henderson* had, I think, as clear a right to decline going on further with the action which they had brought of their own accord, and at their own risk as to costs. Judgment.

As soon as they discovered either that this plaintiff *George Graves* was never seised of the land, or that there was reason on legal principles to presume that he was no longer living, they were at liberty, I think, either for such reason, or indeed without any reason, to drop the proceeding. And if all we knew of the matter was that they had done so, and had commenced another suit at the instance of any one whom they took to be the true owner, then there would have been no pretence for looking upon a fiduciary relation as existing between them