R. 164 (F. 13)

21.—On the 18th February Humphrys wrote to Mrs. Hubbard informing her that he exercised the option and enclosing a cheque for $250 on account of the purchase price of $5,500. Such letter also stated that he had agreed to sell to the Company (though the price was not mentioned) and suggested that he should prepare the necessary papers for effecting the transport of the properties. It was enclosed in a letter from him to Burrowes dated the 19th February requesting the latter to hand it to Mrs. Hubbard.

R. 166 (F. 14)

R. 22 (12-33)

22.—Humphrys did not see Mrs. Hubbard afterwards until 7th April 1919. At his request she called on him accompanied by Burrowes on that day. He told her that Joseph King and others had been making nasty remarks as to his buying from her for $5,500 and selling to the Company for $11,200 and that if she was dissatisfied he would give her the whole purchase price but that this would put him in a very uncomfortable position as he had arranged to give another gentleman $2,700 out of it. Mrs. Hubbard said he could have the profits. This was the first intimation to Mrs. Hubbard or Burrowes of the price agreed to be paid by the Company and the latter was surprised at the amount.

R. 58 (28-41)

R. 22 (44) to R. 23 (2)

23.—Humphrys did not see Mrs. Hubbard again during 1919 except at the hearing of the action of Hubbard *v.* Hubbard's Executors about May 1919 when no reference was made to the properties.

R. 172 (G 1)
R. 173 (G. 2)
R. 174 (G. 3)

24.—On the 29th July 1919 Mrs. Hubbard wrote to Humphrys asking him to cancel the option as she had received a better offer. He wrote to Arthur King on the 5th August enclosing a copy of her letter and received a reply from him dated the 7th August stating that his clients did not see their way to cancel the sale and looked to Humphrys to give them transport for the properties. Humphrys communicated this to Mrs. Hubbard in a letter dated the 23rd August.

R. 174

R. 176 (G. 4)
R. 176 (G. 5)

25.—On the 1st December 1919 Mrs. Hubbard wrote to Humphrys declining to pass transport of the properties to him and stating that she refused to consider herself bound by his option and on the 3rd of the same month she wrote to him again to the same effect stating also that she had sent him on that day by messenger a cheque for $275 being a refund of all money paid by him to her on account of the option.

R. 177 (G. 6)
R. 179 (G. 7)
R. 57 (8-14)
R. 26 (14) to R. 27 (26)

26.—Copies of these letters were sent by Humphrys to the Company in a letter of 6th December in which he referred to Mrs. Hubbard as his client. Arthur King on behalf of the Company replied by a letter of 9th December insisting on the sale to them being carried out. Other letters followed and several interviews took place in January or February 1920 but they did not produce any change in the position.

R. 40 (17)
R. 10 (36-42)

27.—Emory returned to the Colony about May 1919 and some time afterwards Mrs. Hubbard being advised that Humphrys' contract was unenforceable agreed to sell the properties to him for $12,000.

28.—In February 1920 Humphrys brought an action in the Supreme Court of the Colony against Mrs. Hubbard for specific performance of his alleged contract with her which was dismissed on the 29th June 1920.

R. 43 (23)
R. 39 (27-30)

29.—The present action was commenced on the 30th June 1920 and was heard before his Honour Mr. Justice Berkeley on several days when both oral and documentary evidence was adduced on the part of the Plaintiffs which is set out in the Record. No evidence was given on the part of the Defendants but Humphrys was called as a witness by the Plaintiffs. In cross examination he stated that it never occurred to him to tell Mrs. Hubbard that Joseph King had asked him to inform him (King) if she decided to sell because he was not conscious of the law relating to solicitor and client and did not bring his mind to bear on the fact that he was dealing with a client. He further stated that if he had had as her lawyer to advise her as to the method of sale and assuming that he had the knowledge which as a fact he possessed at the time he took the option he would have advised her (1) to find out from the competing parties what each could offer and if the higher offer was a fair price to accept it or (2) a sale at auction or (3) call for tenders and that when exercising the option he never told her that he had sold for $11,200 as at that time he did not think it was any business of hers.

R. 3 (6)
R. 15 to R 61
R. 105 to R. 191
R. 66 (30-33)
R. 31 (7-13)
R. 66 (41) to R. 67 (1)
R. 39 (1-14)

30.—On the 9th April 1921 Mr. Justice Berkeley delivered judgment dismissing the present action with costs as against Mrs. Hubbard and Emory and without costs as against Humphrys. The reasons for his judgment are set out in the Record to which reference is made. He held (in effect) that the alleged contract with Humphrys was not binding on Mrs. Hubbard and the findings of fact on which this conclusion was based may be shortly summarised as follows. He found (1) that Humphrys was regarded as legal adviser in all matters connected with Hubbard's estate and that from 1915 to 1920 no other lawyer did any legal work for Mrs. Hubbard (2) that he did not give any advice against himself or at all when obtaining the option from her and that if he had been advising her in reference to a proposed sale to a third person he would have suggested other modes of selling (3) that the transaction was not so manifestly fair that an independent person would have advised in favour of it (4) that the knowledge obtained by him as solicitor or counsel for Mrs. Hubbard led him to think that he would make a profit on the option (5) that at the time when he obtained the option he was Mrs. Hubbard's solicitor in *hac re* but that in any case he had a duty towards her which he failed to carry out (6) that the offer by Humphrys at the interview of 7th April 1919 to hand over the whole of the profits to Mrs. Hubbard was not a *bona fide* offer (7) that at the time of that interview and of her letter of 29th July 1919 Mrs. Hubbard was ignorant of the fact that the contract was unenforceable and that there was not any confirmation of the contract on her part (8) that Humphrys did not sell to the Company as agent for Mrs. Hubbard and (9) that the Company had full notice of the facts and consequently were not purchasers for value without notice.

R. 61 to R. 73
R. 63 (33-37)
R. 67 (25-29)
R. 67 (34-35)
R. 67 (42-44)
R. 68 (16-19)
R. 72 (37-44)
R. 72 (44) to R. 73 (22)
R. 73 (22-26)
R. 73 (26-33)