R. 74-77

R. 102

31.—The Company appealed to the West Indian Court of Appeal against this judgment. Such appeal was heard before their Honours the Chief Justices of Trinidad and St. Vincent and Mr. Justice Dalton and was dismissed with costs on the 1st December 1921.

R. 77-101

R. 78 (40-42)
R. 89 (24-42)
R. 90 to R. 91
R. 97 (29-32)
R. 99 (21-39)
R. 101 (23 to 33)
R. 79 (3-20)
R. 81 (25-38)

32.—The reasons given by their Honours the Appeal Judges for the order so made by them are set out in full in the Record. They all agreed with the findings of fact contained in the judgment of the Trial Judge and on those and other additional grounds mentioned in their judgments concurred in affirming his decision. In particular His Honour the Chief Justice of Trinidad while agreeing with the reasons given by the Trial Judge held further that the Company could not obtain specific performance against Mrs. Hubbard because (1) Humphrys had failed in his action for specific performance against her (2) there was no privity between her and the Company and (3) the conduct of the Company and the surrounding circumstances were such as to disentitle the Company to the equitable remedy of specific performance.

33.—The Respondents Mrs. Hubbard and Emory submit that the judgment of Mr. Justice Berkeley and the order of the Court of Appeal dismissing with costs the appeal from such judgment were right and ought to be affirmed for the following (among other)

REASONS.

1. Because specific performance of the alleged contract between Mrs. Hubbard and Humphrys was refused to the latter in his action against her.

2. Because there never was any contract between Mrs. Hubbard and the Company and the latter were not the assigns of the alleged contract between Mrs. Hubbard and Humphrys and for these reasons could not obtain against her and Emory respectively the relief claimed in the present action.

3. Because the conduct of the Company and the surrounding circumstances as proved by the evidence were such as to disentitle the Company to the equitable remedy of specific performance if otherwise competent to the Company.

4. Because the result of the evidence was to establish that Humphrys stood in a confidential relation to Mrs. Hubbard at the time of the transaction between them and did not discharge the duties of disclosure and advice which he owed to her and that he made use of knowledge obtained by him while acting as her legal adviser for the purpose of obtaining a profit for himself and that the option which he obtained from her was unfair to her on the ground of inadequacy of price and otherwise.

5. Because the result of the evidence was also to establish that Humphrys did not agree to sell to the Company as Mrs. Hubbard's agent and that the Company had full notice of the facts mentioned in Reason 4.

6. Because the result of the evidence was also to establish that the offer made by Humphrys at the interview of 7th April 1919 was not a *bona fide* offer and that at the date of such interview and at the date of Mrs. Hubbard's letter of 29th July 1919 Mrs. Hubbard was ignorant of her rights and the confidential relation between Humphrys and herself was still subsisting.

7. Because all the learned Judges in both Courts concurred in finding the facts mentioned in the Reasons numbered 4, 5 and 6.

8. Because having regard to the facts proved the option given by Mrs. Hubbard to Humphrys and its subsequent exercise by him did not in point of law constitute a contract binding on her and the transaction was never effectually confirmed by her.

9. Because on all relevant issues of fact there are concurrent findings of all the learned Judges in both Courts against the Appellants.

10. Because the judgments of both Courts below are right for the reasons given by the learned Judges and ought to be affirmed.

W. H. UPJOHN.

J. K. YOUNG.