proxy director in 1916 he was asked at a meeting of the board if Mrs. Hubbard was a client of his, and he said yes, telling at the same time what matters he had in hand for her. He was then told the Company wished to buy these properties, and at the request of the Company said he would do his best to acquire the properties for the Company. Arthur G. King, a Solicitor, a director and assistant secretary of the Company, was directed by the Managing Director to purchase the properties for a sum within $5,000. He wrote to Humphrys offering $3,000 for them. This offer was submitted by Humphrys to Mrs. Hubbard who refused ir. Subsequently $5,000 was offered and submitted by Humphrys to "his client" and refused by her. 10

The Respondent Emory, who had been employed by the Appellant Company as Manager, came to the Colony as representing certain other persons in America interested in bauxite. He approached Humphrys with a view of his acting on his behalf in bauxite matters. Humphrys said he would, but would have to resign his directorship. On 13th February 1919 Emory retained Humphrys, who thereupon resigned his directorship. Humphrys was fully aware from Emory that he (Emory) was on the look-out for bauxite propositions. Emory was told by Humphrys that the last offer for these properties by the Bauxite Company was $5,000. Emory admitted that properties were not worth more than $5,500, but the value 20 to the Company was the fact that they lay between their lands. Emory asked Humphrys to get him an option for $5,500. Humphrys said he couldn't, as he had promised the Company the refusal of the highest offer. Humphrys said he would get an option from Mrs. Hubbard for $5,500, and would tell the Company, and ask if they intended to spring on their offer. Humphrys then got an option from Mrs. Hubbard for $5,500 for the consideration of $25. Subsequently Humphrys wrote exercising his right under the option and sold the properties for $11,200 to the Company, as Emory had said he was prepared to take an option for $11,000. Humphrys agreed to pay $2,700 to Emory as he (Emory) said he had put 30 a lot of money in Humphrys' way.

It appears that nasty remarks were made as to Humphrys' conduct in the matter, and, as far as I understand the evidence, he saw Mrs. Hubbard and undertook to see she got her $5,500 free from all deductions. In July 1919 Mrs. Hubbard wrote asking Humphrys to cancel the option, but he said he could not as the Appellant Company declined to cancel the sale by him to them. In December 1919 Mrs. Hubbard wrote declining to transport to Humphrys. Subsequently Mrs. Hubbard sold to Emory for $12,000.

I have dealt very briefly with the facts as they are fully set out in the 40 judgment of the learned Judge in the Court below. I agree with his finding on the facts therein set out.

Humphrys brought an action against Mrs. Hubbard for specific performance of the option given; that action was dismissed, it is stated "without any prejudice to any rights or liabilities of the Demerara Bauxite Company." The Appellants thereupon brought the present actions,

claiming that specific performance was to be granted of the option to Humphrys and of the sale by Humphrys to the Company.

It seems difficult to understand how the Appellants can ask for specific performance by Mrs. Hubbard of the option to Humphrys. Humphrys has already brought his action against Mrs. Hubbard for specific performance and that has been refused: to make the decree as now asked would be to set aside the judgment of the Court in *Humphrys* v. *Hubbard.* How can the Company sue for specific performance of the option? There is no privity between Mrs. Hubbard and the Bauxite Company. Specific 10 performance cannot be decreed against Humphrys when he has been unable to get specific performance from Mrs. Hubbard; the Court has declined to make such a decree in his action against Mrs. Hubbard. It appears to me that all the Appellant Company could obtain is damages from Humphrys for breach of his agreement for sale. From what was said at the Bar I come to the conclusion that the Company do not wish to get damages from Humphrys; they wish to get the land. It is stated on Appellants' behalf that it was understood that this matter should be proceeded with as if the judgment in *Humphrys* v. *Hubbard* did not exist; otherwise the Respondents would have pleaded *res judicata.* Whether 20 that is so or not, it does not change the legal aspect of the case.

I now proceed to deal with what may be called the merits of the case. The first point to be decided is whether the relationship of solicitor and client, or other fiduciary relationship, existed between Mrs. Hubbard and Humphrys.

In *Allison* v. *Clayhills* (97 L.P. 709) it is laid down that although the relationship of solicitor and client in its strict sense has been discontinued, the principle relating to such a relationship applies as long as the confidence naturally arising from such relationship is proved or may be presumed to continue. When the relationship does not impose on the solicitor any duty towards his client in the particular transaction then the principle 30 has no application. The test is whether in the particular transaction he owes his client any duty in the contemplation of a Court of Equity. If he owes any duty, the equal footing on which the parties to any bargain should stand is impaired or destroyed, and the solicitor is solicitor *in hac re* within the meaning of the decisions, although not retained to act in the transaction or in any pending transaction. In considering whether in any particular transaction any duty exists, all the circumstances of the individual case must be weighed and examined. Looking at the circumstances of this case, I have no doubt that the confidence of Mrs. Hubbard in Humphrys, arising from his acting as her solicitor, 40 still continued at the time he obtained the option. He conducted all her affairs, he took part in her purchase of the undivided half of these properties, he carried on all the negotiations for the sale of them to the Appellant Company before he obtained the option for himself. From the very beginning, when Humphrys was appointed director and the subject of the purchase of these lands was mooted, Humphrys himself admitted that Mrs. Hubbard was his client; his letters show that he looked on Mrs. Hubbard as his client. I cannot at this stage admit any argument that in this