particular transaction the relationship of solicitor and client did not exist between Humphrys and Mrs. Hubbard. The parties were not on an equal footing in arriving at this bargain.

Being satisfied that such relationship did exist, the onus lies on Humphrys, the solicitor, to show that the transaction was perfectly fair, that the client knew what she was doing, and that a fair price was given. If he had acquired a knowledge of the value of the property which the client had not, and with that knowledge made a proposal to purchase at a certain value that which he knew to be of much higher value, such purchase would be set aside. He was bound to get the most that could be obtained; the inquiry how much any particular person would choose to give is not an accurate mode of ascertaining the value (*Montesquieu* v. *Sandys*, 18 Vesey 202).

A solicitor may purchase his client's property even when the relationship exists, but such purchases are to be viewed with great jealousy; the onus lies on the solicitor to show that the transaction was perfectly fair, that the client knew what she was doing, that a fair price was given, and that no kind of advantage was taken by the solicitor (*Thomson* v. *Judge*, 106 R.R. 362). The solicitor must establish that the sale was as advantageous to the client as it could have been if the solicitor had used his utmost endeavour to sell the property to a stranger, and the burden of this lies on the solicitor (*Spencer* v. *Topham*, 22 Beav. 573). There are numerous other cases all to the same effect.

In this case it is clear that the sale was not as advantageous as if made to a stranger. Humphrys himself admits he got the option in the expectation of making a few hundred dollars; in fact, if the transaction is carried through he will make a few thousand. He knew that the Company was anxious to buy; the Chairman even went so far as to say he was prepared to go to $20,000, after communication with the Company he knew, from his dealings with Emory, that the price could, and would, be put up beyond $5,500. None of these facts did he communicate to his client but took the advantage to himself. Humphrys himself admits that if he had thought of this question of solicitor and client, and that he was bargaining with a client, he would have found out from the competing parties what each was prepared to pay, and, if he considered the higher offer a fair price, he would have advised his client to accept or he would have put the lands up to auction or asked for tenders. This is a very different case from that of *Edwards* v. *Meyrick* (2 Hare 59) relied on by the Appellant. In that case it was a matter of pure speculation and the parties were in the same situation with reference to the means of forming an opinion upon it; there was no evidence the solicitor had any peculiar knowledge with respect to the estate. In this case the solicitor was director of the Bauxite Company, and in negotiations with Emory he had peculiar knowledge of the value of the estate. The Respondent put himself into what he terms "an awkward position," but I should say it is an impossible position, a position in which he as a Barrister and Solicitor ought never to

have placed himself. In dealing with this phase of the case it appears that I am dealing with facts already dealt with in *Humphrys* v. *Hubbard*, and it makes my opinion all the stronger that the Appellant Company have no cause of action for specific performance as I have already stated.

On the evidence I cannot hold, as contended by the Appellants, that Humphrys made full disclosure of all the necessary and material facts, nor that the transaction was manifestly fair so that there was no need of independent advice. It is said that Mrs. Hubbard had the independent advice of Burrowes. Burrowes was not in a position to give advice in the matter. He was co-executor with Mrs. Hubbard and was in the same position as she was; he appears to have trusted Humphrys; he did not know that Emory was endeavouring to obtain an option or that the properties were sandwiched between lands of the Appellants. It is further contended that if Humphrys did abuse the confidence put in him, the penalty would be the forfeiture of the profits made by him. No authority has been quoted for such a proposition. But taking it to be so, there is no evidence that Humphrys has given Mrs. Hubbard the profits made by him. There is evidence of some conversations in which he expressed his willingness to give her $5,700, the profits to be made by him, and even some talk of giving her the $800 profit over and above to be made by her sale to Emory. I do not think she is bound to accept such sums even if she could. She had made a binding contract (as I understand) with Emory, under which she could be liable, at any rate in damages, if she does not carry out such contract.

The granting of specific performance is discretionary, such discretion is however not arbitrary nor capricious but judicial; the Court has regard to the conduct of the Plaintiff and to the circumstances outside the contract itself. Apart from any other consideration, has the conduct of the Plaintiff, or have the circumstances outside the contract been such as to induce the Court to use its discretionary power? In most if not all the cases quoted the action was to set aside a completed contract. In this case the Appellant Company had instructed one of their directors, Humphrys, whose client they knew Mrs. Hubbard was, to acquire these lands for them; he promises to do his best; then, for the consideration of $25, gets an option on the lands for $5,500; he exercises his option and sells to his Company for $11,200. The Appellants knew quite well of all these transactions.

I don't think any Court of Equity would grant specific performance under these circumstances.

For all these reasons I am of opinion the judgment in the Court below is a right one and that this Appeal should be dismissed with costs.

A. LUCIE SMITH,
Chief Justice of Trinidad and Tobago.
23rd November 1921.