A. B. Cunningham, for the plaintiffs.
Alexander MacGregor, for the defendant.

SUTHERLAND, J. (after setting out the facts) :—I am of opinion that the notes, when given, were the notes of the defendant, and not given in any representative capacity for the committee. Neither were the notes given, I think, for the accommodation of the plaintiff company or of Mr. Pense, but because the plaintiff company, through Pense, was pressing for payment of an account which at that time was the defendant's account and incurred in substantial part by him. Neither in the letter of the 13th December, 1905, written to Mr. Pense, the admitted agent of the plaintiffs, nor in the letter to the plaintiffs' solicitor on the 3rd March, 1911, did the defendant specifically put forward the claim that the note had been given for the accommodation of the plaintiffs or Mr. Pense, even if, under our Bills of Exchange Act, R.S.O. 1906 ch. 119, that would have availed him, under the circumstances disclosed in evidence.

In the earlier letter he expressed his thanks for leniency extended, and asked Mr. Pense to be good enough to bear with him for a few days longer. In the letter to the solicitors, while he says that he told Pense that he did not consider himself liable for the balance of the Quarterly indebtedness, he also states that Pense threatened to sue him for the accounts and notes at that time, apparently considering him liable. He also says in this letter that in equity Chown should pay the balance of the account. It may be that, as between the defendant and the committee, the contract between them having been put an end to, and the committee having taken over the assets in whole or great part, and assumed the debts, or at all events some of them, the defendant is entitled to look to them for payment of the notes if held liable therefor in this action. I am not trying that question, and have not the facts before me on which to determine it.

I am of opinion that he is liable upon the notes sued on unless the plaintiffs' remedy is barred by the Statute of Limitations.

The plaintiffs rely on the letter of the 13th December, 1905, as an acknowledgment made within six years of the date of the issuing of the writ on which a presumption to pay can be implied so as to rebut the statutory presumption of payment at the end of that period.

A leading case is Tanner v. Smart, 6 B. & C. 603: "In assumpsit brought to recover a sum of money, the defendant