had negotiated the note, and, at his instance and for his benefit, abstained from repudiating it until about four months afterwards. This they did against the advice of their solicitor, and in the belief that their failing to promptly repudiate would make them liable to pay the note. They took the risk in the expectation that the person who had negotiated the note would be obliged to, and would, take it up before maturity, and in order to screen and accommodate him meantime. Under these circumstances the defendants are liable. Scott v. Bank of New Brunswick, 23 S. C. R. 277, Brook v. Hook, L. R. 6 Ex. 89, McKenzie v. British Linen Co., 6 App. Cas. 82, referred to. Whether there could be ratification, and whether there was ratification, the defendants were estopped from denying the making of the note. Ogilvie v. West Australian Mortgage and Agency Corporation, [1896] A. C. 257, 269, 270, and Merchants Bank v. Lucas, 15 A. R. 573, 587, referred to.

Judgment for plaintiffs for amount of note with costs.

BRITTON, J. OCTOBER 9TH, 1902.

TRIAL.

HOLNESS v. RUSSELL.

Deed—Conveyance of Land—Cutting down to Mortgage—Improvidence—Fraud.

Action by Elizabeth Holness to have a deed of certain houses and land in the village of East Toronto, and a bill of sale of certain chattels, which she executed in favour of defendant, John Russell, on the 13th July, 1893, set aside and declared to be a mortgage only, and for an account of the rents and profits of the land, and a return of the chattels, or their value. She also alleged (in the alternative) that the transaction on her part was an improvident one, and that she acted entirely upon the suggestion and recommendation of defendant and without any independent advice. The defendant denied that there was any agreement that he should make a loan upon the security of the property, and asserted that he purchased both land and chattels for a fair price, $1,200, which he paid to plaintiff.

E. Coatsworth, for plaintiff.

E. F. B. Johnston, K.C., for defendant.

BRITTON, J., after reviewing the evidence, held that, having regard to McMicken v. Ontario Bank, 20 S. C. R. 548, it could not be declared that the deed, absolute on its face,