the "surety" sign the note jointly with the maker, but was glad enough to get the signature in any form, and hence did not return it to have his own intention complied with, supposing that by regular demand and notice of protest he could fix the liability as indorser and save his debt, not knowing till the matter came into the hands of the lawyers that there was difficulty in that treatment of the transaction. On the other hand, Ridgely was just as ignorant as Miller of the true legal effect of what he was actually doing. He does not pretend that he did anything but indorse the note, and nothing was further from his intention than becoming a maker jointly with Bond. He had been informed by Bond that Miller had agreed to extend further banking facilities for a year to enable him to pay the note, and that Miller had promised not to call on him for payment unless Bond should die without paying it. He indorsed in the belief that he had made that contract; an anomalous one, to be sure, but the defendant is just the man to make it and to refuse any other. The mistake he made was in not writing it over his signature.

The suspicions urged against this testimony, like those against the plaintiff's, may be disposed of in the same way. It is unfortunate that the correspondence between Ridgely and his nephew, by which this transaction was carried on, is not produced. But the defendant accounts quite satisfactorily for the loss of the letters he received. He is one of a firm of merchant tailors; these letters did not go upon the files of the firm, for they had no business there. His habit was to place his individual letters in the "button-drawer" of the table at which he worked, and in cleaning up they were thrown into the fire, the importance of keeping them not occurring to him; and Bond, in his numerous removals, since he left Texas, has lost or mislaid the letters to him. He fully corroborates his uncle as to the contents of the letters, but as to negotiations with Miller, he is contradicted by wholly disinterested witnesses, who heard what occurred. He seems to have produced at the bank one of the letters from his uncle, and to have stated its contents. It was not read by Miller, or those present, and only in part by Bond. These witnesses testify that neither in the negotiations between Miller and Bond about the note, nor in his report about his uncle's letters, was anything said of Ridgely's not being liable, except in case of Bond's death, or about an extension of bank facilities for another year, but only, in a general way, that his uncle would "go security" on his note. None of the other witnesses in this case is contradicted, or otherwise impeached; and, while those offered to support his character all swear it was good, and that they would believe him on oath, there are indications that before this transaction, and while he lived in this city, his reliability as a witness was talked about, if not questioned, by those who had occasion to speak of it. At the time this note was given, he was in very straitened circumstances, caused by speculations in cotton futures, some of which were concealed from his bankers, and was very anxious

to continue business, and hopeful of doing this if he could secure the old balance. It is a fair inference, from all the circumstances, that he deceived both his uncle and Miller, by misleading the former as to his own understanding with Miller and as to his promises, and the latter by concealing from him the conditions which his uncle attached to his agreement to indorse the note. On no other theory can the testimony of witnesses, whom the court is not authorized to doubt, be reconciled, and by this it is entirely harmonized. At all events, the court cannot, on Bond's uncorroborated testimony, say that the defendant has answered the burden of satisfactorily proving that Miller, when he took this note indorsed by the defendant, knew of the conditions he attached to that indorsement, or of his intention not to be bound by it, except in case of Bond's death.

As to the agreement by Miller to extend further banking facilities for a year, a circumstance exists tending to corroborate Bond and excite some suspicion that Miller was fruitful of promises; or, at least, encouraged hopes of indulgence as long as these were necessary to assure the coveted indorsement of Ridgely as security for the old balance. He swears positively he did not agree to extend further facilities for the next season, but he did extend Bond's account to August 30, 1882, and the latter now owes him on these transactions, in addition to the note, a further sum of $2,809.15, only $376 of which can be connected with the old account, because of losses on cotton on hand at date of the note. Bond's complaint is that Miller "shut down on him" in violation of his agreement to give him a chance to work out the note; and in view of the facts that this account, from May 12, 1881, aggregates over $300,000, and that Miller trusted Bond so largely, I have a strong suspicion that this complaint is well founded. But it may have been a hope rather than a promise. Miller says he made no *agreement*, but was willing to indulge Bond in the hope that he would work out, until he found it imprudent to further trust him. This is a reasonable explanation, consistent with the ordinary course of business, and, in the absence of more satisfactory proof, the court must accept it as true. Bond converted his and Miller's expectations into promises in negotiating with his reluctant uncle, and no doubt the creditor, while he had hope of securing an old balance, was not very discriminating between great expectations and promises. With this general commentary upon the main features of the evidence, made necessary by the peculiarities of this case, it remains to formulate the result of my deliberations by stating the essential facts upon which the rights of the parties must depend:

(1) The defendant indorsed in blank, a few days after its date, the note sued on, which, a few days later, was delivered to the plaintiffs by C. H. Bond & Co., and accepted in payment of a balance then due by said C. H. Bond & Co. to the plaintiffs on an open account of dealings between them as merchants and bankers. The note is as follows:

"$2,500. BELTON, TEXAS, February 1, 1882.

"Twelve months after date we promise to pay to the order of Miller Bros. twenty-five hundred dollars at their office in Belton, Texas, with interest at the rate of eight per cent. per annum from maturity until paid, value received.

"C. H. BOND & Co.

"Indorsed: S. E. RIDGELY."

(2) When the note was due, it was protested for non-payment, and notice was sent to the defendant at Memphis, Tennessee, where he resided.

(3) There was no other consideration for the note than the balance due the plaintiffs, as bankers, from C. H. Bond & Co., merchants, on an account arising out of dealings previously had between them, and the extension of the debt for the 12 months the note had to run to maturity. The defendant in no way participated in that consideration, or received any benefit from it.

(4) C. H. Bond was a nephew of defendant, and doing business in Texas as a cotton merchant. At the date of the note he owed the plaintiffs a balance of $2,500 on a banker's account, aggregating some $300,000, from May 12, 1881, to the date of the note, which balance plaintiffs had demanded that he should secure before any further facilities would be extended. He expressed the belief that his uncle at Memphis "would go on a note" at 12 months, and thereupon opened negotiations with him by mail. He informed the plaintiffs, just previous to the date of the note, that his uncle "would go his security on the note," and thereupon the plaintiffs, in their banking office, on the day of its date, prepared the note sued on, and it was signed by Bond in the name in which he did business, and by him sent in the mail to his uncle at Memphis, where it was indorsed and returned by mail to Bond, who, about February 11, 1882, delivered it to the plaintiffs.

(5) The plaintiffs expected and intended that the defendant would sign as maker, jointly with C. H. Bond & Co., but they had no distinct understanding with Bond or the defendant to that effect. Their only agreement with Bond was that they would take a 12-months note with his uncle "as security." They accepted the note, as it was handed to them by Bond, without complaint as to its form, and subsequently, in their correspondence and otherwise, treated it as an indorsement by Ridgely.

(6) The defendant at first refused his aid to his nephew, but being assured by his letters that "he had received a sacred promise from plaintiffs that he should never be called on for payment, except in case of Bond's death without paying it, and that their only purpose was to provide against that event, as he had made arrangements to continue business with plaintiffs, who promised to extend all necessary facilities," he indorsed the note with no other intention than to make that contract.

(7) Bond did continue business with plaintiffs until August 30,