resort to that indemnity which the law would have raised," p. 104. The latter said: "Now, why does the law raise such a promise? Because there is no security given by the party. But if the party choose to take a security there is no occasion for the law to raise a promise. Promises in law only exist where there is no express stipulation between the parties; in the present case the plaintiffs have taken a bond, and, therefore, they must have recourse to that security. It has been objected by the plaintiffs' counsel that this bond could not be proved under the commission of bankrupt, but there would have been no difficulty in that. First, it is said that there is no consideration for it, but clearly as a question of law there is a sufficient consideration, for the surety binds himself to pay the debt of another, who afterwards becomes a bankrupt. The consideration is, therefore, good in law. And it is not unreasonable, for the surety may say he will only lend his credit for three months, and if the money be not paid at that time he will call on the principal for his indemnity," p. 105.

The liability of the principal upon the bond in that case was terminated by his discharge in bankruptcy, but the surety having paid the money in discharge of his liability after the bankruptcy proceedings, it was sought to raise an implied promise to repay it by operation of law from the relation of principal and surety. The case is decisive of the question that that could not be done because of the express contract of indemnity. The principle of that case, so far as it deals with the question of proof in bankruptcy, has been departed from or modified, but on the point which I regard as applicable here it is good law to-day.

The plaintiff, as I have already pointed out, was under no liability as between him and the defendant to retire these notes, but was liable to the holders of course. The defendant could not do anything by reason of any right he possessed to enforce or accelerate their payment by the plaintiff, at all events prior to the giving of the note sued on.

By the arrangement then made the plaintiff, the surety, in consideration of what I regard as the equivalent of an express contract to save himself harmless against the payment he undertook, contracted with the defendant to pay the notes and to relieve the defendant from that obligation. The express contract in that behalf—the note—then made for the first time between them, was the consideration for the plaintiff's promise. The relation of principal and