

receipt of any reference to the single bill is very significant. It cannot be supposed that a man of ordinary prudence would not only, when paying his bond or note, omit to take it up, but leaving it in the hands of his creditors, he would take his receipt, making no allusion whatever to it.

I cannot in this case impute such indiscretion to George R. Spalding, and therefore am of opinion that his debt to his brother has not been paid. The next question has reference to the amount of this debt.

According to the award of the arbitrators, dated the 18th of March, 1835, his proportion of the real and personal estate of his father, to be paid by his brother George R. Spalding, was ascertained to be \$2,516 65, but the single bill of his said brother to him is for \$2,163 27, with interest from the 29th of January, 1835. This latter paper has no date, and we are left to conjecture the period of its execution; and I think it quite reasonable to presume, it was executed and delivered on the day of the date of the receipt of the 2d of March, 1836. It is not at all improbable that between the date of the award and of the receipt, a settlement of accounts had taken place between these parties, and that the sum ascertained to be due by the arbitrators had in some way been reduced to the amount stated in the single bill. Indeed, the record furnishes evidence that there were dealings between them, and that George R. Spalding, who was *quasi* guardian to his brother, had made advances to and supplied him with necessaries. Under these circumstances, we may well suppose that the note was given for the precise balance then due, and I therefore am of opinion, that the amount therein expressed must be taken as the extent of the indebtedness of George R. Spalding, and that Basil must be regarded as his creditor for that sum, and no more.

Being then of opinion, for the reasons briefly stated, that Basil D. Spalding is a creditor of the estate of his brother, George R. Spalding, and having fixed the amount of his claim, the only remaining question to be decided at this time, relates to the character of the claim.

It is insisted by his counsel that he is an unpaid vendor of