3 *Bos. & Pul.* 363; *Gould* v. *Robson*, 8 *East*, 576; *Wood* v. *Repold*, 3 *H. & J.* 125.

Hence, it is clear, that these principles of this Court apply as
**539** * strongly to a case of this kind in favor of a drawer or endorser, as to the case of a common money bond, where the deceased was bound as one of the obligors, and was, in fact, only a surety.

Considering these rules as established, and as applicable to this case, the next inquiry is as to the kind of proof which may be received and deemed sufficient in cases of this description, in explanation of the nature of the contract, and as to the insolvency of any of the obligors; that is, whether the deceased, whose estate the Court is about to administer, was principal or surety, or, if a surety, then whether the principal or co-surety be insolvent or not.

It is well settled as between principal and surety, that parol proof may he admitted to shew, that, by a written contract, according to the literal terms of which two or more are equally bound as principals, the one is, in fact, a principal, and the others no more than mere sureties; because such proof does not purport to interpret or expound the written instrument, but merely to establish a circumstance connected with the contract in relation to which the writing did not profess to speak. *Craythorne* v. *Swinburne*, 14 *Ves.* 170; *Smith* v. *Tunno*, 1 *McCord*, 451.

The fact of insolvency is, from its peculiar nature, involved in much obscurity. The equity on which a surety claims contribution of his co-surety, is founded upon the fact of the principal being really in a condition of insolvency; not on the mere circumstance of his having been declared a bankrupt, or having applied for the benefit of the insolvent laws. A man, according to the English law, may have been declared a bankrupt, and yet be able to pay thirty shillings in the pound; and so too, in this State, a person may have been driven, or indeed, from sinister motives, induced to apply for the benefit of the insolvent laws, and yet be not in a condition of insolvency. But it is that actual condition alone of the principal or co-surety, without regard to any movement under the insolvent laws, which, according to these principles of this Court, can authorize the creditor to claim satisfaction from the deceased surety's estate. A man, while he carries on trade or has any business that affords him a prospect of gain, is not an insolvent, though his effects may not be sufficient to pay his debts; for he has it in view to pay all, and may be enabled to do so. But if his business fails, and leaves him no prospect of paying his debts, he is then, in the common sense of mankind, insol-
vent; **540** * because he is in that condition in which his creditors must lose by him. *Kames' Pri. Eq. b.* 3, *c.* 5.