directed against the inferior claims No. 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16, must be entirely overruled.

It is a rule of this Court, that in all cases where any one is chargeable under a creditor's suit as a surety, the creditor must prove the insolvency of his principal debtor before he can be allowed to obtain any satisfaction from the proceeds of the estate of the surety then about to be distributed; and it is enough, as in this instance, that the parties do, in fact and in equity, stand in that relation towards each other; although the contract may not have that aspect, according to the strict and technical rules of the common law. *Watkins* v. *Worthington*, 2 *Bland*, 509. Upon this ground the claim of George Neilson, administrator of James Neilson, deceased, No. 6, must be rejected, there being no proof of the insolvency of the principal debtors.

An express and distinct acknowledgment of the debt by the debtor himself has, in most cases, been deemed sufficient to prevent the operation of the Statute of Limitations. Under a creditor's bill, and in cases of that kind, as this is, although the Court will not deny to any one the benefit of any such acknowledgment for the purpose of resuscitating his claim; yet such an acknowledgment will not be permitted to have any such effect where there is just ground to believe, that there has been any collusion in procuring it to be made with a view to injure or lessen the dividends of other creditors. But here, this claim of Eli Balderson, No. 11, is not taken out of the Statute of Limitations, which has been relied on, as against it, by the plaintiffs, by Lechleitner, and by others, by a mere acknowledgment; but by materials or testimony in its support furnished by the debtor company themselves; and, therefore, this claim must be allowed.

It sufficiently appears from the deed of the 25th of September, 1813, and the proofs referred to by the auditor, that Lechleitner and Troost were the partners, of the second part, of those who constituted the association of Richard Caton, John Gibson and others;

674 *and that the partnership, so formed was, by the express stipulation of that deed, to continue for the term of ten years; which term, therefore, did not expire until the 25th of September, 1823, after the 5th of April, 1819, the day on which those who constituted the association of Richard Caton, John Gibson and others were regularly organized as a body politic, by the name of the Cape Sable Company, under their Act of incorporation. 1818, ch. 195.

It is true in general, that where a partnership is formed for a definite period of time, it can only be dissolved by the consent of the parties, or by the effluxion of the specified period of time. *Collyer Part.* 57. But if one of the contracting parties refuses to continue the partnership, or does an act which renders its further