

vent ; because he is in that condition in which his creditors must lose by him (j)

A release, provisional or final, under the bankrupt or insolvent laws, furnishes at least, *prima facie* evidence of this condition of insolvency which gives to the creditor a right to demand satisfaction from the estate of the surety ; and to one surety to claim contribution from his co-surety. It has been said, however, that in the absence of such proof as this, the creditor must shew, that he has brought suit against the principal, and has been unable, by execution, to extract satisfaction from him. The return of *nulla bona*, however, to a *fieri facias*, proves no more than that the sheriff, if he has done his duty, has been unable to find any property of the defendant within his county ; and yet the defendant may be wealthy, and have a large amount of property elsewhere ; or of a kind not within reach of the *fieri facias*. (k) But if proof of this description were required, then, as it is of a kind which the creditor can only put together and create by due course of law, it would seem to follow as a necessary consequence, that he should be allowed time thus to fabricate it. If so, it would be enough, at least, for this purpose, that he should bring his suit before his claim had been barred by the statute of limitations ; and that may be when he files his claim in this court. There may be, and often are, many creditors whose claims are founded on joint and several obligations ; and which will, therefore, require some proof. Now if the final distribution of the deceased's estate were to be suspended until full proof of this kind, by judgment and execution, could be fabricated ; the delays might be almost interminable. Proof of this description, however, where it actually exists, shewing a failure to obtain satisfaction by an execution, running over a county where the debtor resides, or within which, if at all, he must be presumed to have some property, may be received as sufficient *prima facie* evidence of insolvency, to found the creditor's claim upon the deceased's estate ; but such proof never has been, nor ever ought to be held to be indispensably necessary. (l)

In the great majority of cases it would be impracticable, or exceedingly tedious and expensive, to procure any other proof of insolvency, than that of general reputation in that part of the country where the debtor resides, and is known. Where the debtor

(j) Kames' Pri. Eq. b. 3. c. 5.—(k) Goodall v. Stuart, 2 Hen. & Mun. 105.—
 (l) Spurrier v. Spurrier, 1 Bland, 476.