I cannot, therefore, see my way to treat the affidavit either as proper proof under the Winding-up Act or as shutting out other claims recognised by that Act.

The result of holding the sureties entitled to prove, works no injustice. The bond given by them allows compounding with any of the parties to the negotiable securities; and, if that includes the right to compound with the liquidator, the giving up of security of any kind is limited to that taken from the debtor and given up again. This does not include, it seems to me, such a right as that of ranking on the debtor's estate, which is not "taken from" the debtor, but arises by force of law in consequence of the winding-up order effecting a transfer of the debtor's assets to the liquidator: Unitt v. Prott, 23 O.R. 78.

The reservation of rights against the sureties leaves the debt alive, and the surety could sue the debtor: Kearsley v. Cole, 16 M. & W. 128; Green v. Wynn, L.R. 4 Ch. 204. . . .

[Reference to Nevill's Case, L.R. 4 Ch. 43; In re Whitehouse, 37 Ch. D. 683; Newton v. Chorlton, 10 Ha. at pp. 638, 639, 659; Ex p. Rushford, 10 Ves. 409.]

Nor would its valuing its securities too high and proving for too small an amount prevent the sureties, if they paid a larger amount, from having the benefit of the bank's proof, and their own as well, for the additional amount. . . . The guaranty is for the ultimate balance; and, on payment of this balance, the surety becomes entitled to an assignment of everything not realised or not pursued; and the non-receipt of dividends, because the bank agreed to abstain from putting itself in a position to claim them, cannot affect, as it seems to me, the right of the surety to assert his claim so to do. The bond is for the ultimate balance, though limited in amount; and the surety is entitled, in my view, to occupy the position of a creditor—a position of which the bank could not deprive him. See Ellis v. Emmanuel, 1 Ex. D. 157; In re Sass, [1896] 2 Q.B. 12; In re Sellers, 38 L.T.R. 395; In re Rees, 17 Ch. D. 98.

It was argued that the bank's action in agreeing not to rank might discharge the sureties, and that payment by them was voluntary. But this contention was not regarded with favour by Stirling, J., in Badgley v. Consolidated Bank, 34 Ch. D. at p. 557; where it was urged that the payment by the surety was, under the circumstances of that case, likewise a voluntary one.

But the real answer to this contention is, that the sureties agreed to allow the bank to deal or compound with any of the parties to the negotiable securities. If the receipt of part of