

R.S.C. 1906 ch. 144. The liquidator, however, had notice from it that there were parties secondarily liable; and, when the settlement was made, he had express notice in the reservation made by the bank that there were guarantors liable for the debt. These guarantors had the right of proof under sec. 69, see also sec. 2 (j): *In re Blackpool Motor Car Co.*, [1901] 1 Ch. 77; *Wolmerhausen v. Gullick*, [1893] 2 Ch. 514.

I do not see what there is in the mere filing of the affidavit of claim with the liquidator to give the bank the right to defeat the plain language of the Winding-up Act. . . .

[Reference to secs. 36, 37, 76, 77, 78, 82, 83 of the Act; *In re Paine*, [1897] 1 Q.B. 122; *In re McMurdo*, [1902] 2 Ch. at p. 699; *Ex p. Good*, 14 Ch. D. 82; *Re Beatty*, 6 A.R. 40; *In re Deerhurst*, 8 Mor. B.C. 258; *In re Atree*, [1907] 2 K.B. 868.]

It is not, as I understand it, double proof in the sense of asserting claims in different rights that is objectionable; but it is double ranking, or effective proof, so as to compel payment of two dividends in respect of the same debt: *In re Oriental Commercial Bank*, L.R. 7 Ch. 99.

Notice to the liquidator is beneficial to him in view of his duty under secs. 73, 77, and 82: see *Argylls Limited v. Coxeter*, 29 Times L.R. 355; as well as protective of the various classes of creditors; while the statutory procedure of contestation is aided and simplified by reading the Act as requiring proof by every claimant, and that in the form containing the information directed to be included by secs. 69 and 76.

Looking at it in another aspect, the settlement may be treated as an election by the liquidator, under secs. 76 and 82, to give up the securities. . . .

If it can be treated as an election, then the liquidator, unless he secures himself in the settlement, as he is required to do in certain cases (see secs. 80 and 81), must be taken to run the risk of claims arising out of the creditor dealing with his securities; and if, before distribution, a creditor proves either a contingent claim or becomes entitled to prove as a direct creditor, having paid upon his guaranty, it is a claim which comes in "when the business of a company is being wound up" (sec. 69); and the liquidator is bound to deal with it: secs. 74, 75, 79; *In re Northern Counties Fire Insurance Co.*, 17 Ch. D. at p. 340; *In re Blackpool Motor Car Co.*, [1901] 1 Ch. 77.

Even if there can be no double proof, the estate is not wound up; and, as the creditor has been paid in full, the sureties can prove for the amount of the debt paid by them. See remarks of North, J., in *In re Binns*, [1896] 2 Ch. at p. 588.