and all claims upon the estate in the hands of the assignee were withdrawn.

By this course of dealing, the defendant, as surety, had not been discharged.

The bank, a creditor for a large amount, held, as security for all its claims, a mortgage upon the company's factory and its contents. The bank also held, as security for the ultimate balance due to it upon advances made after the date of the guaranty, the defendant's bond for $2,500. When the assignment was made, the bank became entitled to share in the property which should come to the hands of the assignee for distribution according to the terms of the deed of assignment and the statute.

When the bank's claim was filed, and its security was valued at the amount of its claim, the bank was shewn to have no right to share in any money or property which the assignee might receive. The abandonment of the right to rank as an unsecured creditor, or the release of any claim against the estate in the hands of the assignee, was something which did not prejudice the defendant, the surety. When a creditor holds other security which he is bound to retain for the benefit of the surety, he does not discharge the surety by improper dealing with or by releasing the security. All that the surety is then entitled to is a credit upon the account of the true value of the security improperly released: Taylor v. Bank of New South Wales (1886), 11 App. Cas. 596, 603. Here there was no damnification of the surety, because the bank had no right to share, and there was no estate in which it could share.

The valuation of the bank's securities did not extinguish the debt or release the debtor, the company. Bell v. Ross (1885), 11 A.R. 458, distinguished.

The assignee's relinquishment of the right to redeem did not interfere with the right of the bank, the creditor, to sue the mortgagor, the company, nor, a fortiori, did it deprive the creditor of its rights against the surety: Rainbow v. Juggins (1880), 5 Q.B.D. 422.

Where the right against a surety may be preserved by express reservation, this reservation may be implied: Gorman v. Dixon (1896), 26 S.C.R. 87.

No merger would be implied from the conveyance of the equity of redemption: Thorne v. Cann, [1895] A.C. 11.

Upon the issue presented, the finding is, that the defendant has not been discharged from her liability as surety for the indebtedness of the company to the plaintiff bank by reason of any payment or satisfaction of such indebtedness; the defendant to pay to the bank the costs of the motion which resulted in the order directing the trial of the issue and the costs of the issue.