

CONTRACT OF GUARANTEE

Rights of Surety against Principal Debtor

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- Section 140 of the Act provides that where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.



- Thus, when surety performs the promise or discharges the liability of the principal debtor, he stands in the shoes of the creditor and has all the rights against the principal debtor which the creditor had.



- Section 145 of the Act provides that in every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but, no sums which he has paid wrongfully.



- *For examples,*
- 'B' is indebted to 'C', and 'A' is surety for the debt. 'C' demands payment from 'A', and on his refusal sues him for the amount. 'A' defends the suit, having reasonable grounds for doing so, but is compelled to pay the amount of the debt with costs. He can recover from 'B' the amount paid by him for costs, as well as the principal debt.



- 'C' lends 'B' a sum of money, and 'A', at the request of 'B', accepts a bill of exchange drawn by 'B' upon 'A' to secure the amount. 'C', the holder of the bill, demands payment of it from 'A', and, on A's refusal to pay, sues him upon the bill. 'A', not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from 'B' the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.



- 'A' guarantees to 'C', to the extent of Rs. 2,000, payment for rice to be supplied by 'C' to 'B'. 'C' supplies to 'B' rice to a less amount than Rs. 2,000, but obtains from 'A' payment of the sum of Rs. 2,000 in respect of the rice supplied. 'A' cannot recover from 'B' more than the price of the rice actually supplied.

