

# **CONTRACT OF GUARANTEE**

## **Rights of Surety against Creditor and Co-sureties**

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# Rights of Surety against Creditor

- Section 141 of the Act provides that a surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.



- *For examples,*
- 'C', advances to 'B', his tenant, Rs. 2,000 the guarantee of 'A'. 'C' has also a further security for Rs. 2,000 by a mortgage of B's furniture. 'C' cancels the mortgage. 'B' becomes insolvent and 'C' sues 'A' on his guarantee. 'A' is discharged from liability to the amount of the value of the furniture.



- 'C', a creditor, whose advance to 'B' is secured by a decree, receives also a guarantee for that advance from 'A'. 'C' afterwards takes B's goods in execution under the decree, and then, without the knowledge of 'A', withdraws the execution. 'A' is discharged.



- 'A', as surety for 'B', makes a bond jointly with 'B' to 'C', to secure a loan from 'C' to 'B'. Afterwards, 'C' obtains from 'B' a further security for the same debt. Subsequently, 'C' gives up the further security. 'A' is not discharged.



# Rights of Surety against Co-Sureties

- Section 146 of the Act provides that where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.



- *For examples,*
- 'A', 'B' and 'C' are sureties to 'D' for the sum of Rs. 3,000 lent to 'E'. 'E' makes default in payment. 'A', 'B' and 'C' are liable, as between themselves, to pay Rs. 1,000 each.



- 'A', 'B' and 'C' are sureties to 'D' for the sum of Rs. 1,000 lent to 'E', and there is a contract between 'A', 'B' and 'C' that 'A' is to be responsible to the extent of one-quarter, 'B' to the extent of one-quarter, and 'C' to the extent of one-half. 'E' makes default in payment. As between the sureties, 'A' is liable to pay Rs. 250, 'B' Rs. 250, and 'C' Rs. 500.





- Section 147 of the Act provides that the co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

