

The contract of guarantee is also known as the Contract of **Suretyship**. Section 126 of the Indian Contract Act, 1872 defines the Contract of guarantee - a "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety". Surety is also known as Guarantor.

### **Rights of Surety :**

#### **1) Rights of surety on payment or performance :**

According to Section 140 of the Indian Contract Act 1872, 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.

## **2) Surety's right to benefit of creditor's securities (Section 141) :**

**According to Section 141 of the said Act, 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 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 existence of such security or not; and if the creditor loses, or without the consent of the surety, parts with such security, the surety, the surety is discharged to the extent of the value of the security.**

## **Illustrations**

**(a) C, advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees 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.**

**(b) 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**

## **Liability of the Surety**

The liability of the surety is laid down in Section 128. It says that the surety's liability is co-extensive with that of the principal debtor unless the contract of guarantee provides otherwise. In ***Central bank of India v. C.L. Vimla***[1], the court held that: "The liability of the guarantor is co-extensive with that of the debtor. The only exception to the nature of the liability of the guarantor is provided in the section itself, which is only if it is stated explicitly to be otherwise in the contract."