



Introduction:

In the event of a decree in favour of the creditor against the principal debtor the wings of the decree can also be extended against the sureties as their liability is coextensive with the principal debtor. A surety is a person who comes forward to pay the amount in the event of the borrower failing to pay the amount. It means that on a default having been made by the principal debtor the creditors can recover from the surety all what he could have recovered from the principal debtor. For instance, the principal debtor makes a default in the payment of a debt of Rs. 10000/-.

Surety:

A surety is a person who comes forward to pay the amount in the event of the borrower failing to pay the amount. In the event of a decree in favour of the creditor against the principal debtor the wings of the decree can also be extended against the sureties as their liability is coextensive with the principal debtor. But when a suit against the principal debtor was dismissed for default and the decision became final there being no liability surviving against the debtor the surety's liability gets automatically terminated.

Effect of releasing a surety: According to section 138 of Indian contract act "Where there are co-sureties a release by the creditor of one of them does not discharge the others, neither does it free the surety so released from his responsibility to the other." The creditor may at his will release any of the co-sureties from his liability.[11] But it does not mean that the other co-sureties are discharged from his duty towards the creditor and the principal debtor. However, the released co-surety will remain liable to the others for contribution in the event of default.[12] **Right to contribution:** according to section 146 of Indian contract act "where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the

Liability of the Surety when the principal contract is rendered impossible

This question was addressed in *Florence Mabel R.J. v. State of Kerala*[18]. The petitioner had guaranteed a loan taken by the respondent from a co-operative society for the purpose of bee-keeping. The bees died in consequence of a viral infection and there was a total failure of business which disabled the respondent from repaying the loan. The petitioner argued that there was a frustration of contract and he is not liable to pay. The court said that that he cannot take the defence of frustration as he had agreed that in case the principal fails to pay off the instalments, he would be liable jointly and severally.