

INDEMNITY GUARANTEE BAILMENT

**M. S. RAMA RAO B.Sc., M.A., M.L.
Class-room live lectures edited, enlarged
and updated**

INDEMNITY, GUARANTEE & BAILMENT

Indian Contract Act Sns 124 to 181

1. Contract of Indemnity Sns. 124,125
Contract of Guarantee Sns. 126,127
2. Surety's Liability Sn. 128.
Continuing Guarantee, Revocation, Discharge of Surety-
Co-sureties-Sns. 129 to 147.
3. Bailment-Bailer-Bailee.
Lien-Pledge-Pawnor-Pawnee Sns. 141 to 181.

GUARANTEE, BAILMENT & PLEDGE

1. Explain & Distinguish contract of Indemnity from Contract of Guarantee. What are the rights of the Indemnity holder ?
2. What is a Continuing Guarantee ? Illustrate. How is such a Guarantee revoked ?
3. What is Bailment ? What are the duties of a bailor and a bailee ?
4. What are the rights of a finder, of goods ?
5. What is Pledge ? Discuss the rights and duties of pawnee and pawnor
6. 'The liability of the surety is co-extensive with that of the principal debtor' Discuss.
7. What is a Lien ? Distinguish a Particular Lien from a General Lien.

CONTENTS

Chapters	Pages
1. Indemnity & Guarantee	
1. Contract of Indemnity	1
2. Comparison	2
3. Rights of Indemnity Holder	2
4. Continuing Guarantee	3
2. Bailment and Pledge	
1. Bailment	5
2. Finder of goods	7
3. Pledge	
4. Pledge by non owner	8
5. Lien	9
6. Bailor's duties	10
3. Discharge of surety	
3.1 Discharge	12
3.2 Rights of surety	13
3.3 Co- Sureties	15

CHAPTER-1

CONTRACT OF INDEMNITY & GUARANTEE

Ch. 1-1. Contract of Indemnity : (Sn. 124)

It is a contract by which one party (promisor) promises to save the other, from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person.

A contracts to indemnify B, against the consequences of any proceedings which C may take against B in respect of a claim of Rs. 12,000/-.

A is the indemnifier; B is indemnified in respect of the consequence of the suit.

Contract of Guarantee : (Sn. 126)

It is a contract to perform the promise or discharge the liability of a third person in case of his default. The guarantee is given by the surety to the creditor in respect of the principal debtor.

S becomes a surety to A (seller) in respect of goods given on credit to B. B fails to pay, S becomes liable.

The essentials of a guarantee are

1. There must be a principal debt.
2. There must be consideration: This may be anything done or any promise made. e.g. "A" giving credit of goods to "B" is a sufficient consideration for "C" to stand as surety.
3. The guarantee should not be obtained by misrepresentation or concealment.
4. Writing is not essential.

Ch.1-2. Comparison :

Contract of Indemnity

1. There are two parties.
(The Indemnifier and the person indemnified).
2. There is the direct and original engagement
3. There is direct liability, for eg., Landlord to indemnify tenant of the municipal taxes paid by tenant on behalf of Land lord.
4. The promisee may recover from the promisor
 - a) All damages which he may be compelled to pay.
 - b) All costs
 - c) All sums paid under an authorised compromise.

Contract of Guarantee

- 1 There are three parties. (Creditor, Principal Debtor and Surety).
- 2 There are 3 separate contracts. Contracts between Creditor & Principal debtor, Creditor and Surety, Principal debtor and Surety.
- 3 Surety becomes liable on failure of principal debtor.
- 4 Surety need not pay if the debt is barred by limitation. If the principal debtor is discharged, the security is also discharged.

3 Ch. 1-3. Rights of the Indemnity holder : Sn. 125

The rights of the indemnified (Indemnity holder) when used are as follows. He is entitled to recover :

i) All damages which he is compelled to pay in the suit. ii)

All costs, he incurs, as a prudent man.

iii) All sums paid under any compromise reasonably made under authority.

Ch.1-4. Continuing Guarantee :

If the guarantee is for a single transaction, it is called a specific guarantee. A guarantee which extends to a series of transactions is called a 'Continuing Guarantee'. According to Sn. 126 a Contract of guarantee is a Contract to perform the promise or discharge the liability of a third person, in case of his default.

1. A in consideration that B will employ C in collecting the rents of B's lands, promises B, to be responsible up to Rs. 5,000/- This is a continuing guarantee.

2. B is tea-dealer. S stands as a surety to B for supply of tea to C from time to time for Rs. 10,000/- B supplies up to Rs.15,000/- S is liable only upto Rs.10,000"/-

3. S is surety to B for 5 bags of flour to be supplied to C. B supplied to C, 5 bags. Later he supplies 2 more bags. This is not a continuing guarantee. Ordinarily a guarantee is in respect of a particular transaction, whereas a continuing guarantee extends to a series of transactions. The intention of the parties is relevant to decide whether a continuing guarantee subsists.

Termination:

1. Revocation : Revocation may be made at any time by the surety as to future transactions by notice to the creditor.

In a contract of continuing guarantee, there are a series of distinct and separate transactions ; the consideration is divisible. The revocation can be made only when consideration is divisible, in respect of future transactions. However, if the consideration is indivisible, the surety cannot revoke.

This does not apply to a special contract which is entered into by a surety to an administration bond or to a surety bond given in case of a guardian of a minor's property.

A in consideration of B's discounting at A's request, Bill of Exchange for C, guarantees to B for 12 months, the due payment of all such bills to the extent of Rs. 50,000/- B discounts Bill for C to the extent of Rs. 20,000/- Afterwards, at the end of 3 months, A revokes the guarantee.

This discharges A from all liability, but he is liable up to Rs.20,000/-

2. Death :

The death of the surety operates as revocation of a continuing guarantee, so far as regards future transactions. (This is subject to agreement).

No notice of death is necessary.

Revocation is effective on death.

Where parties agree for a special notice of revocation on death of the surety, "the estate of the deceased becomes subject to the continuing guarantee.

CHAPTER-2

BAILMENT AND PLEDGE

Ch. 2-1. Bailment: Sn. 148.

Bailment is the *delivery of goods* by A to B on a contract that he shall, when the purpose is accomplished, be returned or otherwise disposed of, according to the directions of A. A is called the bailor and B is the bailee. The leading case is *Coggs Vs. Bernard*.

A person who is already in possession of goods may contract to hold them as bailee and the owner in such a case becomes bailor. Delivery of goods may be constructive or symbolic. Bailment may be gratuitous or non-gratuitous.

The essential feature of bailment is that goods are delivered for a temporary purpose. There is no transfer of title to goods delivered. Only possession is given under a contract. Deposit, Hire and Pawn are examples.

Duties of bailee :

Law fixes certain duties on the bailee :

The bailee must take care of his goods as a man of ordinary prudence. Under such circumstances the standard of care is that of a prudent man, i.e., what care he would have taken in respect of his own property. Duties have been fixed on bailees like, Common Carriers, Railways, Shipping companies, hotels, bank's safety vault etc. In Martin's case, the hospital authorities were bailees to take care of the jewels of the inpatient, they were held liable when the jewels were lost. In Nichol's case, the hotel which was the bailee of the "Coat" of customer C, was held liable, when the coat was stolen.

The bailee is not liable for any loss or destruction of property, if he has taken the standard of care as a prudent man.

Use : The bailee should not make use of the goods bailed. But

he may use it according to contract. If any damage arises to the goods from such use the bailee is liable.

E.g. (i) A lends his horse to B for riding only. B allows his son C to ride. C rides with due care but due to accident C falls and horse is injured. B is liable to A for injury to horse.

ii) A lends his horse to B for riding to reach place P. B rides to place D and accidentally horse is injured. B is liable.

Mixing of goods : (Sns. 155 to 157) :

If the bailee without the consent of the bailor, mixes his own goods with that of the bailor the title to goods will be in proportion to their shares ;

But, when the bailee mixes without the consent of the bailor, and if the goods can be separated, then bailee is bound to meet the expenses for separation and also to pay damages, if any.

But if the goods are of such a nature that it is impossible to separate, the bailee is liable, for the loss of the goods, to the bailor.

i) Bailee B mixes cotton bales of A marked as X with his own goods marked Y. The bailee should pay the cost for separation.

ii) Bailee mixes 25 bags of wheat flour of A with his own 25 bags of maize flour and makes a heap. The separation is impossible. The bailor may treat that his 25 bags of wheat flour, as lost, and may use for value thereof.

The bailee is under a duty to return or deliver the goods bailed, to the bailor on the efflux of time or fulfilment of the purpose, with profit or increase, if any.

E.g. : A gives custody of his cow to B to take care. The cow gives birth to a calf. B should return the cow and calf.

Rights of bailee :

1. The bailee has a right of lien i.e., to retain the goods bailed by the bailor, until his charges (or claims) are paid as per the agreement. The lien is lost when the goods are delivered or handed over to bailor.

2. The bailee has a right to sue any person who causes damage to goods bailed with him.

Ch.2-2. Finder of Goods : (Sns. 168-169)

The finder of goods is a bailee and must preserve the goods and

find out the owner. He has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner. But, he may retain the goods until he receives such compensation from the owner. But, when the owner has offered a special reward the finder may sue for such reward. He may retain the goods until he receives it. He has a particular lien over the goods.

When the owner cannot be found or if found refuses to pay the lawful charges, he finder may sell it. He may sell if :-

1. The goods are of perishable nature, or
2. The charges amount to 2/3rd of the value of the goods.

Leading case : Newman Vs. Bourne. D in his shop found a broach which had been left by customer P. D placed it in the drawer but later found it missing. P sued D. Held : D liable, as he had not taken reasonable care.

Ch. 2-3. Pledge : Sn. 172 :

Pledge is the bailment of goods as security for payment of a debt or performance of a promise. The bailor is the pawnor and the bailee is the pawnee. The subject matter is always movable property. There is the transfer of physical possession and juridical possession to the bailee.

A keeps jewel with B and taken Rs. 2000/- as loan. A is the pawnor and B is the pawnee. The security is the jewel.

Rights and Liabilities of Pawnee :

Right to retain : Pawnee may retain the goods for

- : i) Payment of debts or performance of a promise.
- ii) For payment of interest on debt, and
- iii) All necessary expenses incurred for possession or preservation of the pledged goods.

The pawnee may not retain goods for any other debt or promise. He has a particular lien. The lien may be extended for subsequent advances, if parties agree.

The pawnee is entitled to receive extra-ordinary expenses which may incurred to preserve the pledged goods.

In *Bank of Bihar Vs. State of Bihar*, the Supreme Court held that if sugar bags of C are seized by Government, from the godown of the

Bank, the Govt. was liable to pay amount to the Bank which was a pawnee of customer C.

On pawnor's default of payment or non-performance at the stipulated time, the pawnee may bring a suit against the pawnor on debt or promise. He may retain the goods as collateral security. He may sell

the goods on giving reasonable notice to the pawnor.

If the proceeds of sale are less to satisfy the debt, the pawnee may sue the pawnor for the balance of the amount.

If the proceeds are more, the pawnee should account for the same to the pawnor and pay thereof.

Ch. 2.4. Pledge by non-owners :

The general rule is that only the owner may pledge his goods. However, there are a number of circumstances when a non-owner may make a pledge. Such a pledge is valid.

1. Mercantile agent, who is in possession of goods (or documents), may in the ordinary course of business pledge the goods in good faith and with knowledge of his right.

2. Person in possession of goods, obtained by voidable contract, may make a pledge of the goods, and it is a valid pledge if the pawnee acts in good faith, without any knowledge of defective title. (Pledge of goods made after the contract is rescinded is not valid).

3. . Person with limited interest may pledge his goods and the pledge is valid. His right extends only to his interest.

4. Vendor, who continues to be in possession of goods sold to a vendee (buyer), may make a pledge of the goods with the consent of the buyer. Hence, the pawnee takes the goods in good faith, without knowledge of the previous sale.

Ch. 2-5 General Lien and Particular Lien :

Lien is a right of a person to retain the goods of another until certain demands are satisfied.

There are two types of liens :

General Lien : entitles the person, in possession of goods, to retain the goods, until all claims and accounts are satisfied against the owner, i.e., detaining is for general balance of accounts.

Eg : Bankers, Factors, Attorneys, Advocate etc. A bank has a general lien and hence if 'C' has two accounts : deposit account and loan account, the Bank may transfer deposit to loan account, without 'C' s instructions.

Particular Lien : is attached to specific goods for the unpaid price of carriage or for work or labour.

Eg : Finder of goods

Bailee's lien.

Pawnees' lien.

Agent's lien.

Seller's lien.

Partner's lien.

The bankers lien is only for the general balance of account. Hence, when a depositor sued for the return of the jewels pledged by him to the Bank, the bank claimed general lien over all accounts and the jewels.

The deposit may be for a specific purpose, customer C deposited Rs.8000 with his bank B to make telegraphic transfer to his firm at place P. B claimed general lien and adjusted to Cs loan account. Held, specific purpose accepted was for transfer. Hence no general lien.

The bankers, factors wharfingers, attorneys, high court or policy agents may exercise general lien. In all other cases there is only a particular lien. The intention of the parties is relevant in such cases.

Ch. 2-6. Bailor's duties :

i) To disclose faults in the goods :

The bailor should disclose to the bailee any faults in the bailed goods, if the bailor is aware of them. This disclosure is necessary when the faults are of such a nature as to materially interfere with the use of them or expose the bailee to extraordinary risks.

If the bailor does not disclose, he becomes responsible for any damage or loss resulting therefrom.

a) A lends his horse which he knows to be vicious, to B. He does not disclose this fact. The horse runs away, B is thrown and injured. A is responsible to B.

b) A hires a carriage of B. The carriage is unsafe, though B is not aware of it. A is injured. B is responsible to A.

ii) To repay expenses to the bailee : (Sn. 158) "

If according to the agreement the bailee is gratuitous, the bailor should pay the necessary expenses incurred by the bailee.

iii) To account for loss incurred from defective title :

a) For loss arising from any defect in the title to the goods bailed, the bailor should bear the loss.

b) If the bailor has defective title, and the bailee, in good faith, delivers them back to the bailor or to any person directed by him, the bailee is not responsible. The real owner may obtain a court order preventing the bailee from delivering the goods to the bailor.

Bailor's rights :

1. Right to restoration of goods : /

The bailor; has a right to the restoration of the goods bailed by him.

2. Right to be compensated :

The bailor has a right to compensation if the goods bailed are damaged or he suffers a loss due to negligence of the bailee. If the goods or chattel, bailed increase in value bailer is entitled to it. A gives his cow for custody of C. Cow gives birth to a calf. A is entitled to cow and calf.

CHAPTER-3

DISCHARGE OF SURETY

Ch. 3., Discharge of surety :

The general rule is that "the liability of the surety is coextensive with that of the principal debtor". However, the surety's liability is only secondary and he becomes liable only when the principal debtor fails to pay.

In regard to the discharge of a surety, provisions, are made to protect the interests of the surety. The general principle is that the "discharge of the debtor, automatically discharges the surety".

Variation :

Any variation made, without surety's consent, in the terms of the contract, discharges the surety in respect of all subsequent transactions.

A is a surety to C for B's conduct in C's Bank. Later B and C contract, without A's consent, to raise B's salary and B's liability in case of overdraft loses. Held, that 'A' was discharged. Polak V Everett, Homes V Brunkskill are the leading cases. The reason for this rule is that the variation is done behind the back of the surety.

Release of Principal Debtor :

If by a contract, between the principal debtor and the creditor the Principal debtor is released by act or omission the surety is also discharged.

A contracts with B for Rs.50,000/- to build a house for B within a stipulated time. C is the surety. B is to supply the necessary timber. B omits to supply. C is discharged.

Discharge by granting time :

If the creditor, under a contract, agrees for a compromise or to

grant time or not to sue the principal debtor, then the surety is discharged.

The exception is that if the surety accepts to such a contract, he becomes liable and is not discharged.

If a contract to give time to the principal debtor is made by the creditor with a third person, the surety is not discharged.

Mere forbearance to sue will not discharge the surety.

A owes to C, a debt and S is the surety. The debt becomes payable. C does not sue A, when the debt became payable. S is not discharged from liability.

Co-sureties :

Release of one of the sureties will not discharge the others from their liability. They are also not discharged inter se.

Discharge by impairing surety's right:

When the creditor does any act inconsistent with surety's rights, or omits to do any act which was his duty to do, and, the eventual remedy to the surety is impaired thereby, then the surety is discharged.

Ch. 3-2. Rights of surety :

The surety has certain rights against the principal debtor, the creditor and the co-sureties.

1. Rights against principal debtor :

(i) Right of Subrogation (Sn. 140).

The surety gets the right of subrogation on payment of amounts or performance of a duty.

He actually steps into the shoes of the principal debtor and hence becomes vested with all the rights and remedies which the creditor had against the principal debtor.

The question is whether the surety should pay all that is due, or may sue the principal debtor even before so paying. In a Calcutta Case (Ghose's case), the high court, held that if the principal debtor was disposing of his properties, with the ultimate objective of defeating the rights of the surety, an injunction may be issued not to dispose of the properties.

(ii) **Right to indemnity** (Sn. 145) :

In every contract of Guarantee there is an implied promise by the principal debtor to indemnify the surety. Hence the surety is entitled to all the moneys he has rightfully paid.

But he is not entitled, if he has paid wrongfully e.g. (a) C is the Creditor to P. S is the surety. C sues A and recovers the debt amount, interest and court costs. S can recover not only the debt and interest amounts, but also court costs from P, as the court costs are rightfully paid.

(b) S stands as surety for supply of rice valued Rs. 20,000 by C to P. C supplies less quantity for Rs. 12000/- but recovers Rs. 20,000 from S. S can recover from P only Rs. 12,000 but not the balance as he has paid it wrongfully.

2. Right against creditor :

(i) When the surety pays off to the creditor he gets into the shoes of the creditor, and, becomes entitled to the benefit of all those securities, which the creditor was entitled to, against the principal debtor. The surety may or may not know the existence of such securities.

In Forbes V Jackson, P borrowed £ 200 from C on his life insurance policy and a mortgage. S stood as surety. P borrowed further sums on the same securities, but without knowledge of S.

P. failed. S paid £ 200 and claimed both securities insurance policy and mortgage. Held, S was entitled to both.

The surety may claim reduction or set-off if the principal debtor had such rights against the creditor.

3. Rights against Co-sureties :

(i) Release of one surety; Sn. 138.

Release of one surety will not discharge the other Co-sureties. Further such a surety is not freed from the liability to other sureties.

(ii) Right to contribution :

B contracts to build a ship for C for a fixed sum to be paid in instalments. A is the surety. C without A's knowledge pays two advance instalments. A is discharged.

(iii) Contribution or Liability of sureties among themselves :-

In respect of liability of sureties among themselves, Sns. 146 and 147 have laid down the rules.

According to Sn. 146 where sureties are bound jointly and severally, they become liable to each other for an equal share or for that part which remains unpaid. Hence, they are to contribute equally.

A, B and C are sureties for Rs.3,000/- D is the debtor. D makes default. Hence, A, B and C are liable for Rs.3000/-

In regard to the extent of liability, the above section makes it clear that they are to contribute equally. Hence, A, B and C are to pay Rs.

1,000/- each.

According to Sn. 147, Co-sureties, who are bound in different sums are liable to pay equally as far as their limits allow.

Problem : A, B and C are sureties for Rs. 10,000, 20,000 and 40,000 respectively. Debtor D makes default of Rs.40,000/-

A : B : C : = 10,000 : 20,000 : 40,000

Default is for Rs.40,000/-

Hence A, B and C are liable to the extent of Total Rs. 40,000/-

The extent of their liability is determined according to this section. They are liable to pay equally as far as their limits allow.

Hence, A is liable to the extent of Rs. 10,000 Balance : Rs.

40,000 - Rs. 10,000 = Rs. 30,000 Therefore B and C are equally liable for Rs. 15,000/- each

REFERENCE SECTION

Bailment, Indemnity etc The Indian Contract Act

CHAPTER VIII

OF INDEMNITY AND GUARANTEE

124. "Contract of indemnity" defined.

124. "Contract of indemnity" defined.-A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity". Illustration A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

125. Rights of indemnity holder when sued.

125. Rights of indemnity holder when sued. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor- (1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies (2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit ; (3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not 50 contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

126. "Contract of guarantee", "surety", principal debtor" and "creditor".

126. "Contract of guarantee", "surety", principal debtor" and "creditor".-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"; the person in respect of whose default the guarantee is given is called the " principal debtor ", and the person to whom the guarantee is given is called the " creditor ". A guarantee may be either oral or written.

127. Consideration for guarantee.

127.Consideration for guarantee.-Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee. Illustrations (a) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise. (b) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that, if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise. (c) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

128.Surety's liability.-The liability of the surety is co- extensive with that of the principal debtor, unless it is otherwise provided by the contract. .

129. "**Continuing guarantee**".

129."Continuing guarantee".-A guarantee which extends to a series series of transactions is called a "continuing guarantee".

Illustrations (a) A, in consideration that B will employ C in collecting the rent of B's zamindari, promises B to be responsible, to the amount of 5,000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee. (b) A guarantees payment to B, a tea-dealer, to the amount of pound 100, for any tea he may from time to time supply to C. B supplies C with tea to above the value of pound 100, and C pays B for it. Afterwards B supplies C with tea to the value of pound 200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of pound 100.

130. Revocation of continuing guarantee.

130.Revocation of continuing guarantee.-A continuing guarantee may at any time be revoked by the surety,as to future transactions, by notice to the creditor. Illustrations A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees, on default of C .

131. Revocation of continuing guarantee by surety's death.

131.Revocation of continuing guarantee by surety's death.-The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

132. Liability of two persons, primarily liable, not affected by arrangement between them that one shall be surety on other's default.

132. Liability of two persons, primarily liable, not affected by arrangement between them that one shall be surety on other's default.- Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence

133. **Discharge of surety** by variance in terms of contract.

133.Discharge of surety by variance in terms of contract.-Any variance, made without the surety's consent, in the terms of the contract between the principal 1[debtor] and the creditor, discharges the surety as to transactions subsequent to the variance

134. Discharge of surety by release or discharge of principal debtor.

134.Discharge of surety by release or discharge of principal debtor.- The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. Illustration A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship

135. Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.

135. Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.-A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to

such contract.

136. Surety not discharged when agreement made with third person to give time to principal debtor.

136. Surety not discharged when agreement made with third person to give time to principal debtor. Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged

137. Creditor's forbearance to sue does not discharge surety.

137. Creditor's forbearance to sue does not discharge surety.- Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety. Illustration B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

138. Release of one co-surety does not discharge others.-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 sureties.

139. Discharge of surety by creditor's act or omission impairing surety's eventual remedy.

139. Discharge of surety by creditor's act or omission impairing surety's eventual remedy.-If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged

140. Rights of surety on payment or performance.

140. Rights of surety on payment or performance. 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.

141. Surety's right to benefit of creditor's securities.

141. Surety's right to benefit of creditor's securities.-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. Illustration 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.

142. Guarantee obtained by misrepresentation invalid.

142. Guarantee obtained by misrepresentation invalid. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

143. Guarantee obtained by concealment invalid.

143. Guarantee obtained by concealment invalid.-Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid. Illustrations (a) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid. (b) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

144. Guarantee on contract that creditor shall not act on it until co-surety joins.

144. Guarantee on contract that creditor shall not act on it until co-surety joins.-Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

145. implied promise to indemnify surety.

145. implied promise to indemnify surety.-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. Illustrations 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 .

146. Co-sureties liable to contribute equally.

146. Co-sureties liable to contribute equally. 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

147. Liability of co-sureties bound in different sums.

147. Liability of co-sureties bound in different sums.-Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit. Illustration A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B and C are liable to pay 10,000 rupees.

THE END

