

126 Revoking a Guaranty.

Notice of Revocation of Guaranty where such power exists:

Whereas, by a written agreement of guaranty dated the day of 19 .., I became surety to you for (name) of (address). I, the undersigned (surety) in pursuance of a power for that purpose reserved and contained in the said agreement (if that were done), now give you notice that I hereby revoke and determine the said agreement from the day of next ensuing; and that my liability thereunder shall from and after that, the said last date, wholly cease and be determined.

Dated the day of 19 ..

To (person to whom the guaranty was made). (Signature.)

128 Rights Among Sureties.

When several persons unite in a guaranty each one is required to contribute equally to the satisfaction of the claim should the debtor make default. If one were found to be insolvent the others would be bound to bear the burden equally. In case one paid the whole amount he could recover from his co-sureties their equitable share of the loss.

This proportional distribution of the liability holds unless there is an agreement among the sureties that changes it. If the last surety (as with indorsers on a note) were to add to his signature, "surety for the above names," or words of similar import, he would not be a *co-surety*, but would merely be liable in case the others fail.

The respective liabilities among indorsers on notes and acceptances are given in the chapter on Indorsement, which see.

130 Merging Securities.

The higher security merges the lower. Where one person would be owing another on a book account or note, and then gives a mortgage for the same debt, the mortgage, being under seal, is a higher security, and thus the book account or note is merged into the mortgage, hence would be no longer binding. If there were an indorser on the note he would be relieved. If it is desired that the mortgage should not merge the note, it must be stated in the mortgage that it is given as *collateral security*; then the note would still be binding, and the payment of either one discharges both.

If a note contains a statement on its face that it was given as collateral security it is not a promissory note, but merely a written promise, and is not negotiable, except by assignment.

Where collateral security is given with a note the right to such security goes with the note, and may still be held, even after the note may be outlawed.