

2. Give the guarantor, as soon as he has made good the default, all his rights against the debtor, and if any property of the debtor, or other collateral security is in his hands, turn it over to the guarantor.

The guarantor, after making good the default, takes the place of the creditor, and may recover from the debtor not only the original debt, but also all expenses and costs incurred.

125 Discharge of Guarantor.

Guaranties have been divided into two classes:

One when the "consideration" is *entire*, as guaranteeing payment of a promissory note or the performance of the covenants in a lease. When such lease is granted the guaranty runs on through the duration of the lease, and would not be revoked by the death of the guarantor.

The other is when the "consideration" passes at different times, and is therefore *divisible*, as the guaranty of running account at a banking house, or store. Such guaranty may be revoked by notice to that effect, and would also be determined by the death of the guarantor and notice of that event.

Keeping in view the above distinction it will readily be seen that any one of the following events or acts discharges the guarantor:

1. The expiration of the time, or the completion of the contract.
2. Notice by the guarantor to the creditor if the "consideration" is *divisible* as stated above.
3. Death of the guarantor and notice of that event, if the consideration is *divisible*. As stated above, this could not apply to a negotiable instrument not yet due, or to any contract the time for which to be executed had not yet arrived.
4. Any alteration of the agreement without the knowledge and consent of the guarantor operates as a discharge, even though the alteration may be for his benefit.
5. In guaranteeing the fidelity of a clerk any change of employment from that for which his fidelity was guaranteed, would release the guarantor.
6. An extension of time by *valid agreement* given by the creditor to the debtor on a negotiable instrument or other contract releases a surety or guarantor unless he gives his consent.

A mere voluntary extension of time would not release the surety, neither would a mere *promise* to extend the time, because the promise would not be legally binding.

In order to be a discharge to the surety, the agreement with the debtor must be one that *binds* the creditors to an extension of time for payment, so that they are prevented from proceeding against the debtor themselves during that time, and which consequently prevents the surety from exercising his right of paying the creditors and suing the debtor upon the claim.

7. Fraud, either in respect to the contract itself; or some fraud or deception practised by the creditor himself, or by the debtor with the creditor's consent, by which the surety was induced to guarantee the debt, releases the surety from his obligation.