Scott, without the consent of Freeman, for the extension of the time of payment. In Insurance Co. v. Hanford, 143 U. S. 187–191, 12 Sup. Ct. 437, the supreme court of the United States, by Mr. Justice Gray, declared the law directly applicable, and which controls this case, as follows:

"The case is thus brought within the well-settled and familiar rule that if a creditor, by positive contract with the principal debtor, and without the consent of the surety, extends the time of payment by the principal debtor, he thereby discharges the surety, because the creditor, by so giving time to the principal, puts it out of the power of the surety to consider whether he will have recourse to his remedy against the principal, and because the surety cannot have the same remedy against the principal as he would have had under the original contract; and it is for the surety, alone, to judge whether his position is altered for the worse. 1 Spence, Eq. Jur. 638; Samuell v. Howarth, 3 Mer. 272; Miller v. Stewart, 9 Wheat. 680, 703. The rule applies whenever the creditor gives time to the principal, knowing of the relation of principal and surety, although he did not know of that relation at the time of the original contract (Ewin v. Lancaster, 6 Best & S. 571; Corporation v. Overend, 7 Ch. App. 142, and L. R. 7 H. L. 348; Wheat v. Kendall, 6 N. H. 504; Guild v. Butler, 127 Mass. 386), or even if that relation has been created since that time (Oakeley v. Pasheller, 4 Clark & F. 207, 233, 10 Bligh [N. S.] 548, 590; Colgrove v. Tallman, 67 N. Y. 95; Smith v. Shelden, 35 Mich. 42)."

We are unable to see any force in the contention that as the plaintiff has declared on the common counts, as well as specially upon the notes, although the defense of the surety, Freeman, may be good because of the contract extending the time of payment, yet, as he contends that the original notes given for the loan were simply renewed by giving the notes sued on, therefore the plaintiff below (defendant in error here) can recover the amount of the old notes as upon account stated. There was only one loan, and only one debt. On that debt, Freeman was surety. If, by a contract between the creditor and the principal, without his knowledge, he was discharged as surety, he was discharged for the whole debt. The argument offered in support of this contention would be equally good if Freeman's defense had been payment, or even that he never signed the renewal notes sued on. The authorities cited by defendant in error in support of this contention are not all applicable to the case in hand. The judgment of the circuit court should be reversed, and the cause remanded, with instructions to grant a new trial, and otherwise proceed as the law of the case may require, and in conformity with the views herein expressed; and it is so ordered.

OGDEN et al. v. UNITED STATES.

(Circuit Court of Appeals, Fifth Circuit. December 5, 1893.)

No. 75.

ACTION ON CONTRACT—CONCLUSIVENESS OF ENGINEER'S DECISION.

Where a contract for work to be done for the United States provides that "the decision of the engineer officer in charge as to quality and quantity shall be final, and he shall be the sole referee," a court will not disturb the decision of such officer in the absence of fraud or such gross error as would imply bad faith.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

Suit by James N. Ogden and others against the United States to recover for work done under a contract to construct a levee. Plaintiffs were to be paid 28½ cents per cubic yard, and they had been paid in full, according to the estimate of the work made by Capt. Daniel C. Kingman, the engineer officer in charge of the work. They claimed, however, that they had done more work than that for which they had been paid. Defendant obtained judgment. Plaintiffs appeal.

J. R. Beckwith, for appellants.

F. B. Earhart, U. S. Atty.

Before PARDEE and McCORMICK, Circuit Judges, and LOCKE, District Judge.

McCORMICK, Circuit Judge. We affirm the judgment of the circuit court in this case. The defendant in the circuit court, the appellee here, is not an interested party in the sense in which those terms are used in judicial decisions. The work she proposed to have done was to be done not for any direct benefit to the government as a political corporation. She did not seek to drive a hard bargain with the appellants, or with others who might bid for the work. The proposals furnished all bidders with the means of fully acquainting themselves with the terms of the contract on which the work was to be done. A few extracts from the proposals show this:

"The contract which the bidder and guarantors promise to enter into shall be, in its general provisions, in the form adopted and in use by the engineer department of the army, blank forms of which can be inspected at this office, and will be furnished, if desired, to parties proposing to put in bids. Parties making bids are to be understood as accepting the terms and conditions contained in such form of contract."

"Bidders are requested to visit and inspect the location for levees before bidding for levee work."

"In case of any doubt or disagreement arising under these specifications, the decision of the United States engineer officer in charge shall be final, and he shall be the sole referee."

The specifications of the proposals were attached to the contract as a part of it. The form of contract referred to in the proposals contained this provision:

"All work done under this contract shall, before being accepted, be subject to a rigid inspection by an inspector appointed on the part of the government, and such as does not conform to the specifications set forth in this contract shall be rejected. The decision of the engineer officer in charge as to quality and quantity shall be final, and he shall be the sole referee."

In view of the object and character of the work to be done, and the state of the contracting parties, this provision of the contract is not a hard one. From the nature of the case, an impartial, competent referee, invested with conclusive discretion, was required. The appropriation was to be expended under the direction of the secretary of war. This particular work was in charge of a captain of engineers in the United States army. No referee

more accessible, competent, or impartial could be suggested than such officer should have been. In the absence of fraud, or such gross error or mistake as would imply bad faith, his decisions must be upheld as conclusive on the appellants. The proof does not show fraud or such gross mistake in the action of this referee. That a court acting on the testimony in the record might have decided differently from the referee in the matter of the appellants' claim does not warrant the setting aside the decision of the engineer in charge of the work. The circuit court so held, and its judgment is affirmed. Kihlberg v. U. S., 97 U. S. 398; Sweeney v. U. S., 109 U. S. 618, 3 Sup. Ct. 344; Railroad Co. v. March, 114 U. S. 549, 5 Sup. Ct. 1035; Railroad Co. v. Price, 138 U. S. 185, 11 Sup. Ct. 290.

BRADY v. UNITED LIFE INS. ASS'N.

(Circuit Court of Appeals, Second Circuit. February 27, 1894.)

No. 68.

INSURANCE—CONDITIONS OF POLICY—BREACH.

An application for life insurance, which was agreed to be a part of the contract, warranted the answers of the assured to questions asked therein to be "full, true, and complete," and the policy was conditioned to be void if they were not so. One of the questions demanded the name and address of each physician who had attended the assured within a given period; and the answer gave the name and address of a single physician. As a matter of fact three physicians had attended the assured within the period named. *Held*, that the answer was untrue and, being a breach of the warranty, vitiated the policy and destroyed the right to recover thereunder.

Error to the Circuit Court of the United States for the District of Connecticut.

Action by Mary Brady against the United Life Insurance Association. The trial court directed a verdict for defendant, and plaintiff brings error. Judgment affirmed.

E. F. Cole, for plaintiff in error.

Geo. E. Terry, (Harry Wilber, of counsel,) for defendant in error.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

WALLACE, Circuit Judge. The assignments of error impugn the ruling of the trial judge in instructing the jury to find a verdict for the defendant. If the trial judge correctly instructed the jury to render a verdict for the defendant, upon the ground that there was a warranty by the assured of the truth of the answers made in his application for insurance, and upon the uncontradicted evidence one of the answers was untrue when made, it is unnecessary to consider whether the truth of other representations was, upon the evidence, a question of fact for the jury. The policy was issued October 2, 1891, upon the application of Michael Sinnott, made a few days earlier, and insured his life. It recites that the insurance was made "in consideration of the answers, statements, and agreements contained in the application,