

which has no notice or knowledge, when it makes the contract, that the time of its fulfillment is material, no notice or knowledge that it has been ordered to replace old machinery, no knowledge or notice that such old machinery is worn, weak, or liable to break, or that thereby the income of the railway company is liable to be decreased by its delay,—how can it be said that such a manufacturing company could anticipate the loss of the income of a railway company as the result of a delay in the fulfillment of its contract, or that such a loss flows naturally from the breach? The question is its own answer. The loss of a part of the profits of a railroad company or of a manufacturing company is not the natural or probable effect of a delay in filling a contract with it to furnish machinery suitable to operate its railroad or manufactory, because it would not ordinarily follow such a delay; it would not be as likely to follow it as it would to fail to follow it, and it would not be contemplated by the parties when the contract was made. Our conclusion is that the loss of the income of the cable company from the delay in the fulfillment of the contract to furnish it a gear wheel and pinion could not have been in the contemplation of the parties, and could not have been reasonably anticipated by them, when the contract was made; was not the natural and probable effect of the breach; and was too remote and inconsequential to form a basis for its allowance.

The conclusion already reached renders it unnecessary for us to consider the objection that the damages which the appellants sought to prove are so speculative and contingent in their nature that they may not form the basis for a recovery.

The objections of the appellee to the consideration of this case on the merits have not been considered, because the result we have reached is the same we should have attained if these objections had been considered and sustained. The decree below must be affirmed, and it is so ordered.

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UNITED STATES v. FREEL et al.

(Circuit Court, E. D. New York. February 15, 1899.)

1. PRINCIPAL AND SURETY—RELEASE OF SURETY—ALTERATION OF CONTRACT.

Where the release of a contractor's surety from the obligation of a building contract on account of subsequent changes therein, without his consent, is involved, the true meaning and intent of the contract should be ascertained according to usual rules of construction; but, when the expressed intention of the parties has been determined, the obligation of the surety is *strictissimi juris*, from which he is discharged by any alteration of the substantial terms of the contract, whether the same be harmful or beneficial to him. Where the contract authorizes the parties to enter into auxiliary contracts for alterations of the work from that shown in the plans and specifications, without invalidating the primary contract, the parties may stipulate, without releasing the surety, for such enlargement or extension of the work as, in nature, magnitude, and expense, would be consistent with, and bear a reasonable and subsidiary relation to, the work first undertaken.

2. SAME.

Under such a provision, the alteration of the plans and specifications of a contract for the construction of a dry dock for the United States,

in consideration of \$612,000, so that its length should be 670 rather than 600 feet, with an increased payment of \$45,566, and an extension of the time of performance for three months, was within the contemplation of the parties and sureties to the original contract, and the latter were not released thereby. But a supplemental contract changing the location of the entire dry dock from the water side, as provided in the initial contract, to a location 64 feet inland, and requiring the contractor to make all necessary excavations and connections with the water at an increased payment of \$5,063.18, and with an increased time for performance, released the sureties, inasmuch as all consent of the sureties anticipating changes in the contract related to alterations in the attached plans and specifications, of which the location of the structure was no part.

(Syllabus by the Court.)

This is an action by the United States on the bond of a contractor for the construction of a dry dock at the Brooklyn navy yard. On demurrer to complaint.

George H. Pettit and Robert H. Roy, for the United States.  
James R. Soley and Howard A. Taylor, for defendants.

THOMAS, District Judge. The question presented on this demurrer is whether the sureties of a contractor, who undertook by contract concluded with the United States, on the 17th November, 1892, in consideration of \$612,000, to build a dry dock, "to be located at such place on the water line of the navy yard, Brooklyn, N. Y., as shall be designated," are relieved from liability by reason of a change of such contract by a supplemental agreement concluded between the contractor and the United States, on the 16th day of June, 1893, whereby it was stipulated that the dry dock should be extended to the length of 670 feet, which was 70 feet in excess of the length as originally provided, at an agreed price of \$45,556, whereby also "the time fixed in the original contract for the completion of the said dry dock shall be extended three (3) months, on account of the extra labor," etc., or are relieved from liability by reason of an agreement concluded on the 17th of August, 1893, between the contractor and the United States, whereby, in consideration of \$5,063.18, to be paid the contractor, it was stipulated to "change its location to one sixty-four (64) feet further inland than that laid down and staked out when the said contract was entered into," and whereby the contractor undertook that "he will perform all the additional excavation necessary at the entrance of the dry dock in consequence of the said change of location; also, all the additional work necessary to lengthen the suction pipes provided to be laid down from the present pump house, including the piping, round piles, sheet piles, timber, iron work, excavation, and back filling, etc., and all other work incident to said change of location, supplying all the labor and materials therefor," whereby also "the time limited by the said contract for the completion of the dry dock shall be extended for a period of eight (8) weeks." The plaintiff answers the contention that the supplementary contracts effect the discharge of the sureties by the claim that such contracts were made pursuant to the seventh article of the contract, whereby the sureties anticipated such contracts, and consented there-