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-

to. Before considering the seventh article, a survey of the applicable law may be obtained by summarizing the holdings:

1. The obligation of the surety is coincident primarily with that of his principal. Benjamin v. Hillard, 23 How. 149, 164; McCluskey v. Cromwell, 11 N. Y. 593, 598; Bank v. Dillon, 30 Vt. 122, 126.

2. In estimating the extent of the liability of a surety for the performance of a contract, the true intent, meaning, and fair scope of the contract should be ascertained. U. S. v. Boyd, 15 Pet. 187, 208; Smith v. U. S., 2 Wall. 219, 235; Lee v. Dick, 10 Pet. 482; McCluskey v. Cromwell, 11 N. Y. 593, 598; Gates v. McKee, 13 N. Y. 232, 235; Dobbin v. Gradley, 17 Wend. 422, 425; Crist v. Burlingame, 62 Barb. 351, 355; Lodge v. Kennedy (N. D.) 73 N. W. 524; Wehr v. Congregation, 47 Md. 177, 187; Beers v. Wolf, 116 Mo. 179, 184, 22 S. W. 620; Lionberger v. Krieger, 88 Mo. 160; Locke v. McVean, 33 Mich. 473.

3. In ascertaining its true intent, meaning, and scope, the same rules of construction should be employed as are used in the interpretation of other contracts. The extent of the surety's obligation must be determined from the language used, read in the light of the circumstances surrounding the transaction. But, when the intention of the parties has thus been ascertained, then the courts carefully guard the rights of the surety, and protect him against a liability not strictly within the precise terms of his contract. Leggett v. Humphreys, 21 How. 66, 73; Association v. Conkling, 90 N. Y. 116, 121, 122; McCluskey v. Cromwell, 11 N. Y. 593; Crist v. Burlingame, 62 Barb. 351; Ludlow v. Simond, 2 Caines, Cas. 1; Plow Co. v. Walmsley, 110 Ind. 242, 246, 11 N. E. 232; Irwin v. Kilburn, 104 Ind. 113, 3 N. E. 650; Birdsall v. Heacock, 32 Ohio St. 177; Dobbin v. Bradley, 17 Wend. 422, 425; Gamble v. Cuneo, 21 App. Div. 413, 47 N. Y. Supp. 548; People v. Backus, 117 N. Y. 196, 201, 22 N. E. 759; Smith v. Molleson, 148 N. Y. 241, 246, 42 N. E. 669; Gates v. McKee, 13 N. Y. 232, 237; Belloni v. Freeborn, 63 N. Y. 383; Brandt, Sur. § 54.

4. The liability of the surety cannot be extended by implication. Miller v. Stewart, 9 Wheat. 680; U. S. v. Boyd, 15 Pet. 187, 208; Smith v. U. S., 2 Wall. 219, 234; U. S. v. Boecker, 21 Wall. 652; U. S. v. American Bonding & Trust Co., 89 Fed. 925; Dobbin v. Bradley, 17 Wend. 422, 425; Livingston v. Moore, 15 App. Div. 15, 44 N. Y. Supp. 125; Raney v. Baron, 1 Fla. 327; Field v. Rawlings, 6 Ill. 581; Bank v. Cole, 39 Me. 188; Blair v. Insurance Co., 10 Mo. 559; Henderson v. Marvin, 31 Barb. 297; Grant v. Smith, 46 N. Y. 93, 97.

5. A surety has the right to stand on the very terms of his contract; and if he does not assent to any variation of it, and a variation is made, his liability will be extinguished, even though such alteration be for his own benefit. Miller v. Stewart, 9 Wheat. 680; Id., 4 Wash. C. C. 26, Fed. Cas. No. 5,951; U. S. v. Boecker, 21 Wall. 652, 657; Smith v. U. S., 2 Wall. 219; Martin v. Thomas, 24 How. 315, 317; Reese v. U. S., 9 Wall. 13, 21; U. S. v. Tillotson, 1 Paine, 305, 324, Fed. Cas. No. 16,524; U. S. v. American Bonding & Trust Co., 89 Fed. 925; Earnshaw v. Boyer, 60 Fed. 528; Ludlow v. Simond, 2 Caines, Cas. 1; U. S. v. Hillegas, 3 Wash. C. C. 70, Fed. Cas. No.