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.

15,366; Grant v. Smith, 46 N. Y. 93, 97; Paine v. Jones, 76 N. Y. 274, 279; Page v. Krekey, 137 N. Y. 307, 314, 33 N. E. 311; Dobbin v. Bradley, 17 Wend. 422; Bangs v. Strong, 7 Hill, 250; Livingston v. Moore, 15 App. Div. 15, 44 N. Y. Supp. 125; Mackay v. Dodge, 5 Ala. 388; Bethune v. Dozier, 10 Ga. 235; Taylor v. Johnson, 17 Ga. 521; Plow Co. v. Walmsley, 110 Ind. 242, 11 N. E. 232; Mayhew v. Boyd, 5 Md. 102; Brigham v. Wentworth, 11 Cush. 123; Bank v. Cole, 39 Me. 188, 193; Simonson v. Grant, 36 Minn. 439, 31 N. W. 861; Beers v. Wolf, 116 Mo. 179, 22 S. W. 620; Ryan v. Morton, 65 Tex. 258; Wylie v. Hightower, 74 Tex. 306, 11 S. W. 1118; Bonar v. MacDonald, 3 H. L. Cas. 226, 239; Rees v. Berrington, 2 Ves. Jr. 540. (a) While the authorities state that the surety is relieved, whether the alteration is material or not (Paine v. Jones; Page v. Krekey; Livingston v. Moore, supra), yet it is probable that trivial or very minor changes, relating to detail, and not effecting any substantial change in the terms of the contract, will not release the sureties. Grant v. Smith, 46 N. Y. 93, 96; U. S. v. Tillotson, 1 Paine, 305, Fed. Cas. No. 16,524; Mayhew v. Boyd, 5 Md. 102; Plow Co. v. Walmsley, 110 Ind. 242, 11 N. E. 232. (b) Changes in the specifications of building contracts fall within this rule. Evans v. Graden, 125 Mo. 72, 28 S. W. 439; Beers v. Wolf, 116 Mo. 179, 22 S. W. 620.

6. A variance in the agreement, without the sureties' consent, by a modifying contract, releases the sureties, although the alleged liability is incurred under the original contract. Bonar v. MacDonald, 3 H. L. Cas. 226; Pybus v. Gibb, 38 Eng. Law & Eq. 57.

7. A contract for new work, by which no new terms are added to the original contract, and whereby the prior contract is in no way embarrassed by greater difficulties of fulfillment, does not release the sureties. Ryan v. Morton, 65 Tex. 258; Barclay v. Deckerhoof, 151 Pa. St. 375, 24 Atl. 1067, where the contract for additional work was indorsed on the original contract. See, also, Warden v. Ryan, 37 Mo. App. 467. (a) The construction by a contractor engaged to build a sewer, of 15 additional feet, is not a modification of the original contract discharging his sureties, but is a new and additional contract. Fitzpatrick v. McAndrews, 12 Pa. Co. Ct. R. 353.

8. If the primary contract contemplate changes in the work, either in nature or extent, similar to that stipulated in the supplemental contract, the performance whereof will be obligatory upon the contractor, the surety's consent to the secondary contract will be deemed to have been anticipated by his placing himself in the relation of surety to the original contract. Wehr v. Congregation, 47 Md. 177; Village of Chester v. Leonard, 68 Conn. 495, 37 Atl. 397; De Mattos v. Jordan, 15 Wash. 378, 386, 46 Pac. 402; Northern Light Lodge v. Kennedy (1897; N. D.) 73 N. W. 524; Beers v. Wolf, 116 Mo. 179, 22 S. W. 620; Stewart v. McKean, 10 Exch. 675; Hayden v. Cook, 34 Neb. 670, 52 N. W. 165. (a) It is immaterial that the primary contract does not make the execution of the changes obligatory upon the contractor, provided it empower him to make a subsidiary contract for the performance thereof, or contemplate that he may make voluntarily such contract. Lodge v. Kennedy (1897; N. D.) 73 N. W. 524; Beers v. Wolf, 116 Mo. 179, 185, 22 S. W. 620.

9. Where the original contract provides that the agreement for changes shall be in writing, alterations made pursuant to verbal agreements or directions, without the consent of the surety, release him. Eldridge v. Fuhr, 59 Mo. App. 44; Killoren v. Meehan, 55 Mo. App. 427; Beers v. Wolf, 116 Mo. 179, 22 S. W. 620. But see Smith v. Molleson, 148 N. Y. 241, 42 N. E. 669. (a) When the contract is to be agreed upon between the superintendent and the parties of the second part, the sureties must be parties to the supplemental agreement if they are formal parties to the first contract. Beers v. Wolf, 116 Mo. 179, 22 S. W. 620.

10. Where the original contract provides for making payments to the contractor in certain amounts, a departure from such method of payment may discharge the sureties. Village of Chester v. Leonard, 68 Conn. 495, 37 Atl. 397; Rowan v. Manufacturing Co., 33 Conn. 1; Howard Co. v. Baker, 119 Mo. 397, 24 S. W. 200; Ryan v. Morton, 65 Tex. 258; Evans v. Graden, 125 Mo. 72, 28 S. W. 439; Bragg v. Shain, 49 Cal. 131; Navigation Co. v. Rolt, 6 C. B. (N. S.) 550; Calvert v. Dock Co., 2 Keen, 638. See De Mattos v. Jordan, 15 Wash. 378, 46 Pac. 402; Leavel v. Porter, 52 Mo. App. 632.

The seventh article, to which reference is made above, is as follows:

"Seventh. The construction of the said dry dock and its accessories and appurtenances herein contracted for shall conform in all respects to and with the plans and specifications aforesaid, which plans and specifications are hereto annexed, and shall be deemed and taken as forming a part of this contract, with the like operation and effect as if the same were incorporated herein. No omission in the plans or specifications of any detail, object, or provision necessary to carry this contract into full and complete effect, in accordance with the true intent and meaning hereof, shall operate to the disadvantage of the United States; but the same shall be satisfactorily supplied, performed, and observed by the contractor, and all claims for extra compensation by reason of, or for or on account of, such extra performance are hereby, and in consideration of the premises, expressly waived; and it is hereby further provided, and this contract is upon the express condition, that the said plans and specifications shall not be changed in any respect, except upon the written order of the bureau of yards and docks, and that, if at any time it shall be found advantageous or necessary to make any change, alteration, or modification in the aforesaid plans and specifications, such change, alteration, or modification must be agreed upon in writing by the parties to the contract, the agreement to set forth fully the reasons for such change, and the nature thereof, and the increased or diminished compensation, based upon the estimated actual cost thereof which the contractor shall receive, if any: provided, that, whenever the said changes or alterations would increase or decrease the cost by a sum exceeding five hundred dollars ($500), the actual cost thereof shall be ascertained, estimated, and determined by a board of naval officers to be appointed by the secretary of the navy for the purpose, and the contractor shall be bound by the determination of said board, or a majority thereof, as to the amount of increased or diminished compensation he shall be entitled to receive in consequence of such change or changes: Provided, further, that if any enlargement or increase of dimensions shall be ordered by the secretary of the navy during the construction of said dry dock, that the actual cost thereof shall be ascertained, estimated, and determined by a board of naval officers, to be appointed by the secretary of the navy, who shall revise said estimate, and determine the sum or sums to be paid the contractor for the additional work that may be required under this contract: and provided, also, that no further payment shall be made, unless such supplemental or modified agreement shall have been signed before the obligation arising from such change or modification was incurred, and until after its approval by the party of the second part; and further provided that no

change herein provided for shall in any manner affect the validity of this contract."

A characteristic feature of this article is, as well stated by the demurrant, the statute of fraud which it embodies. Its salient and essential purpose was to guard the government from claims for extra work. This appears repeatedly as the section progresses. The contract is declared to be upon the express condition that the plans and specifications shall not be changed except upon a written order of the bureau of yards and docks, and that, if it shall be found "advantageous or necessary" to make any change "in the aforesaid plans and specifications," the same must be agreed upon by the parties to the contract. This is followed by the proviso that, where the increased cost exceeds $500, a board of naval officers shall determine the sum to be paid or deducted from the contract; and the second proviso states "that, if any enlargement or increase of dimensions shall be ordered by the secretary of the navy during the construction," the same shall be ascertained by a board of naval officers, who shall determine the sum that shall be paid to the contractor for the "additional work that may be required under this contract"; and the third proviso is to the effect that "no further payment shall be made, unless the supplemental or modified agreement shall have been signed before the obligation arising from such change or modification was incurred, and until after its approval by the party of the second part." There is a final proviso that "no change herein provided for shall in any manner affect the validity of this contract."

It is unnecessary to determine whether it would be obligatory upon the contractor to enter into the supplemental contract to which reference is made in this article, however doubtful it may be whether the United States is protected in that regard. Nevertheless, the article does provide a procedure to be observed, should occasion arise, for deduction from, or addition to, the work as prescribed in the plans and specifications; and it is contemplated, at least, that the contractor may enter voluntarily into such a contract, and that such contract shall not affect the validity of the main agreement. Did not the sureties, when reading this provision, discover and understand that such changes might be called for; that the contractor might make a supplemental contract therefor; and that the change stipulated would not invalidate the original contract to which they stood in the relation of parties? Would it be reasonable to hold that the sureties understood, or were fairly justified in understanding, while reading this seventh article, that any changes made pursuant to it would release them from their relation to the original contract, whose continued validity was declared notwithstanding such changes? Finally, would it be consonant with the intention of the parties, including the sureties, to read into the seventh article a provision that the making of an auxiliary contract without the consent of the sureties should release them? It is considered that, although the contractor was not by any specific terms obligated to enter into any subsidiary agreement, yet that he might be asked to do so, and that the article contemplated his assent to modifications of the work, without impairing the main obligation or the