

File No. 7937 Continued.

OPINION.

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In other words such extension does not vary the contract, but is made under the express terms and authority of the contract.

Under these circumstances, I am quite clearly of the opinion that an extension of time by the Sewerage Commission, under either Section 27 or Section 28 of the specifications, will, in no way, invalidate the bond, and that the consent of the surety is in no way necessary to such extension.

It is, of course, well settled that any dealing between the obligator and the obligee, whereby the contract is varied, or changed, without the consent of the surety, operates to discharge the surety.

George vs. Andrews, 60 Md. 26.
Schaeffer vs. Bond, 72 Md. 501.
Mayhew vs. Boyd, 5 Md. 102.
Smith vs. State, 46 Md. 617.
Basscer vs. Young, 6 G. & J. 243.

The first question then is, whether the granting by the city of an extension of time to the contractor is such a change, or variation, in the contract, as would discharge the surety, unless he consented to it.

I have been able to find no case in which the surety upon a construction, or building contract, has contended that he was discharged because of an extension granted in the time for doing the work, but in 27 Ency. p. 495, it is stated, that the principles of law governing the liability of sureties upon building contracts are exactly the same as those which govern the liability of any other kind of sureties.

The cases in which an extension of time has been relied on as discharging the surety have all been cases of guaranteed debts, and it is there held that an agreement whereby the debtor grants an extension of time to his creditor, without the surety's consent will not release the surety, unless such extension is made (1) Before the maturity of the debt; (2) Is for a definite time; and (3) Is upon a valid consideration.

Hayes vs. Wells, 34 Md. 512.
Gott vs. State, 44 Md. 319.
State vs. Carleton, 1 Gill 247.
Dixon vs. Spencer, 59 Md. 246.
Glagett vs. Salmon, 5 G. & J. 314.

In view of these authorities, I, therefore, think that in the present case an extension of time granted by the Commission to the contractor could not result in discharging the surety, because to effectuate such result it is necessary that such extension should be granted upon a valid consideration, and if the Sewerage Commission grants an extension

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