

be reimbursed for such of its expenditures "as may be approved or ratified by the contracting officer."

We have decided that the parties to the contract can so provide and that the decision of the officer is conclusive upon the parties. *Kihlberg v. United States*, 97 U. S. 398; *Martinsburg & Potomac R. R. Co. v. March*, 114 U. S. 549; *United States v. Gleason*, 175 U. S. 588; *Ripley v. United States*, 223 U. S. 695. This is extending the rule between private parties to the Government.

There were such decisions, and settlement, and payments, in consequence of them, as we have seen. Over the effect of these the Comptroller of the Treasury has no power. They were the acts and duty of the officer in charge, in the expression of which there was no ambiguity, and were, therefore, conclusive in effect.

Judgment affirmed.

UNITED STATES *v.* NORTHEASTERN CON-
STRUCTION COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

No. 122. Argued November 24, 1922.—Decided December 4, 1922.

Decided on the authority of *United States v. Mason & Hanger Co.*,
ante, 323.

56 Ct. Clms. 492, affirmed.

APPEAL by the United States from a judgment of the Court of Claims. See the per curiam decision of April 9, 1923, to be reported in volume 261, reaffirming the judgment after rehearing.

Mr. Alfred A. Wheat, Special Assistant to the Attorney General, with whom *Mr. Solicitor General Beck* was on the brief, for the United States.

Mr. George A. King, with whom *Mr. William B. King* and *Mr. George R. Shields* were on the brief, for appellee.

MR. JUSTICE MCKENNA delivered the opinion of the Court.

Judgment in this case was rendered at the same time as that in *Mason & Hanger Co. v. United States*, just decided, *ante*, 323.

The amounts only are different. In that case it was \$2,500—in this case it is \$150. In both, the amounts represented premiums on bonds and depend upon the same considerations. On the authority of the *Mason & Hanger Co. Case* the judgment of the Court of Claims in this case is

Affirmed.

PORTSMOUTH HARBOR LAND & HOTEL COMPANY ET AL. v. UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 97. Argued November 15, 1922.—Decided December 4, 1922.

1. The petition alleged that the United States, after having several times in the past discharged its battery over petitioner's land, reinstalled its guns with the intention of so firing them and without intention or ability to fire them otherwise, established a fire control and service upon that land, and again discharged all of the guns over and across it. A taking by the United States was alleged as a conclusion of fact from these specific acts, and damages were claimed. *Held*, that the taking of a servitude, and an implied contract to pay, might be inferred; and that a demurrer to the petition should not have been sustained. P. 328.
 2. Where acts amount to a taking of property by the United States, without assertion of an adverse right, a contract to pay may be implied whether it was thought of or not. P. 330.
- 56 Ct. Clms. 494, reversed.

APPEAL from a judgment of the Court of Claims dismissing a petition on demurrer.

Mr. Chauncey Hackett, with whom *Mr. John Lowell* was on the briefs, for appellants.