

it was admitted in the argument that a sudden and unforeseen emergency had arisen, requiring prompt action in the interest of humanity. If so, an equitable credit, at least to the extent of the claim made by the defendant, should be allowed, under the act of March 31, 1797. See *U. S. v. Lowe*, 1 Dill. 585.

Judgment is ordered for defendants.

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A provision in an act of congress, prohibiting persons holding office under the United States from receiving compensation for discharging the duties of any other office, does not apply to services entirely unconnected with their official position. *U. S. v. Brindle*, 4 Sup. Ct. Rep. 180.—[ED.]

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ROSE v. STEPHENS & CONDIT TRANSP. Co.

(Circuit Court, S. D. New York. April 8, 1882.)

NEW TRIAL—DAMAGES—PERSONAL INJURY—NEWLY-DISCOVERED EVIDENCE.

In an action to recover damages for a personal injury a motion by defendant for a new trial because of newly-discovered evidence as to the extent of plaintiff's injuries will not be granted where it does not appear that defendant, before the trial, made any investigation as to the character of the injuries received.

Motion for New Trial.

*Chauncey Shaffer*, for plaintiff.

*Thomas E. Stillman*, for defendants.

WALLACE, J. The motion for a new trial upon the ground of newly-discovered evidence should not be granted, because the defendant has failed to show that by the exercise of reasonable diligence the evidence newly discovered could not have been obtained and used upon the trial. The evidence relates to the extent of the injuries received by the plaintiff through the negligence of the defendant. The plaintiff alleged in his complaint that he had sustained severe injuries, and claimed \$5,000 damages. It does not appear that prior to the trial the defendant made any investigation to ascertain the character or extent of these injuries. Its officers seem to have contented themselves, in their preparation for a defense of the action, with accepting the plaintiff's case as it might appear upon the trial, so far as this issue is concerned. If it had been shown, upon this motion, that an effort had been unsuccessfully made upon their part, by inquiry of such persons as would be likely to have knowledge of the facts, to ascertain the character of the plaintiff's injuries, a very different case would be presented, and one which might appeal with some force to the favorable consideration of the court. To grant the motion upon such a case as is made would encourage supineness on the part of defendants. The precedent would encourage defendants

to ignore proper preparation upon one material issue, in order to obtain the chances of a second trial in case of failure upon the other issues.

The motion is denied.

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*In re* Account of ALLEN, Chief Supervisor of Elections, etc.<sup>1</sup>

(District Court, E. D. New York. November 12, 1883.)

ACCOUNTS OF SUPERVISOR OF ELECTIONS—ACT OF FEBRUARY 22, 1875, (18 ST. AT LARGE, 333.)—U. S. REV. ST. § 2031—CERTIFICATE OF JUDGE UNDER § 846.

The effect of Rev. St. § 2031, is not such as to bring the accounts of a chief supervisor of elections within the scope of the act of February 22, 1875, (18 St. at Large, 333,) providing for the passing of accounts of clerks, marshals, district attorneys, and United States commissioners in open court.

Account of Supervisor of Elections.

*Frank W. Angel*, Asst. U. S. Atty., for the United States.

*John J. Allen*, for himself.

BENEDICT, J. The account of John J. Allen, the chief supervisor of elections in this district, was presented to the district judge of the district, and was certified by him pursuant to section 2031 of the Revised Statutes in the manner heretofore adopted with reference to other similar accounts. The same account is now submitted to the district court by the district attorney, for the purpose of having the account passed on in open court, in the manner provided for the accounts of clerks, marshals, district attorneys, and United States commissioners by the act of February 22, 1875, § 1, (18 St. at Large, 333.) This action on the part of the district attorney has raised, among others, the question whether the effect of section 2031 is to bring the accounts of a chief supervisor of election within the scope of the subsequent act of February 22, 1875, which act is, by its terms, limited to the accounts of clerks, marshals, district attorneys, and United States commissioners. Upon this question my opinion is that no such effect can be given to section 2031, and that the act of February 22, 1875, has no application to the accounts of a chief supervisor of election. For this reason, therefore, if there were no other, the court is constrained to decline to enter upon the inquiry tendered by the district attorney in reference to this account, without passing upon the validity of a statute like this of February 22, 1875, which seeks to authorize proving of an account "in open court" before a circuit or a district court, and at the same time provides for the revision of the action of the court by the accounting officers of the treasury. See *U. S. v. Ferreira*, 13 How. 40; *U. S. v. Todd*, Id. note, p. 52; *Ex parte Gans*, 17 FED. REP. 471.

<sup>1</sup> Reported by R. D. & Wyllys Benedict, of the New York bar.