

Syllabus.

Albany to New York, more canal-boats in one tow than can be safely handled in the waters of New York, they must see that the large amount of property intrusted to their care is not placed in jeopardy, through the want of preliminary caution and foresight on the part of the officers of their steamers.

It is objected that the libel does not specifically charge this antecedent negligence as a fault. This is true, and the libel is defective on that account, but in admiralty an omission to state some facts which prove to be material, but which cannot have occasioned any surprise to the opposite party, will not be allowed to work any injury to the libellant, if the court can see there was no design on his part in omitting to state them.* There is no doctrine of mere technical variance in the admiralty, and subject to the rule above stated, it is the duty of the court to extract the real case from the whole record, and decide accordingly. It is very clear that the libellant had no design in view in omitting to state the failure to stop as a fault, and equally clear, that the proof on that subject, coming, as it did, from the opposite party, could not have operated to surprise them.

JUDGMENT AFFIRMED.

HANDLIN *v.* WICKLIFFE.

The appointment by Brigadier-General Shepley, during the late rebellion, of W. W. Handlin as judge of the Third District Court of New Orleans, then occupied by the government troops and under a military governor appointed by the President, was an appointment purely military, authorized only by the necessities of military occupation, and subject to revocation whenever, in the judgment of the military governor, revocation should become necessary or expedient.

It was accordingly revocable by Governor Hahn in his capacity of military governor (which he was by appointment of the President), in case the adoption of the constitution (which some asserted was adopted), during the war under military orders, and the election of Hahn as governor, did not affect the military occupation; and in case it did, and

* The Quickstep, 9 Wallace, 670; The Clement, 2 Curtis, 365.

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bring a civil constitution of the State into full operation, independent of military control, then the authority derived from the appointment of Brigadier-General Shepley ceased of necessity, and the office became vacant.

ERROR to the Supreme Court of Louisiana; the case being thus:

During the late civil war, when the State of Louisiana was occupied by the troops of the United States, Brigadier-General G. F. Shepley, who had been appointed military governor of the State, commissioned W. W. Handlin as judge of the Third District Court of New Orleans. Handlin took the prescribed oath and entered upon the duties of his office. Subsequently, while the war was yet flagrant, a constitution was adopted for the State, under military orders, by a portion of its citizens, and Michael Hahn was elected governor, and was also appointed military governor in place of Shepley by the President. Handlin, who remained judge after the election and appointment of Hahn, was removed from office by him on account, as it appeared, of a decision to the effect that slavery still existed in the parish of New Orleans, which had been exempted by President Lincoln from the operation of the Proclamation of Emancipation. Asserting that, notwithstanding this removal, he remained of right in office and was entitled to its salary, Handlin, after the final suppression of the rebellion and reconstruction of the State, sued out a writ of mandamus in one of the inferior State courts of Louisiana against Wickliffe, the auditor of public accounts of the State, to compel payment. The judgment of the court was against him and the mandamus was dismissed. An appeal having been taken to the Supreme Court of the State and the judgment affirmed, Handlin now brought the case here by writ of error.

Messrs. W. W. Handlin, C. Cushing, and J. T. Drew, for the plaintiff in error; Mr. T. J. Durant, contra.

The CHIEF JUSTICE delivered the opinion of the court.

It is too clear for argument that the appointment of the relator as judge was purely military, authorized only by the

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necessities of military occupation, and was subject to revocation whenever, in the judgment of the military governor, revocation should become necessary or expedient. The adoption of the constitution during the war, under military orders, and the election of Hahn as governor, did not affect the military occupation, in the judgment of the national authorities, for Hahn was appointed military governor by the President. If the situation was not changed, Hahn, as military governor, had the same right as his predecessor to revoke the appointment of judge. If it was changed and the civil constitution of the State was in full operation, independent of military control, the authority derived from the appointment by the military governor designated by the President ceased of necessity. The office became vacant, and Hahn had whatever authority the State constitution conferred to enforce the vacancy by removal, and to fill it by a new appointment. We are unable to approve the reasons assigned for removal, but we cannot doubt the power. The judgment of the Supreme Court of Louisiana is therefore

AFFIRMED.

UNITED STATES *v.* CRUSELL.

1. A continuance granted on an appeal from the Court of Claims, there having been a motion made there by the appellant, and yet undisposed of, for a new trial on the ground of after-acquired evidence. But the court declares that it must not be understood as giving any sanction to the idea that indefinite postponement of final hearing and determination can be obtained by repeated motions for continuance here.
2. The court below, not this court, must determine whether the application for a new trial is seasonably made.

THIS was an application by *Mr. Bristow, the Solicitor-General, and Mr. Hill, the Assistant Attorney-General, in behalf of the government*, for the continuance of an appeal from the Court of Claims, founded upon the fact that evidence had been newly discovered on which a motion in behalf of the United States had been made for a new trial, under the act