

Case No. 1,212.
[4 Ben. 357.]¹

BECKWITH v. EASTON.

District Court, E. D. New York.

Nov. Term, 1870.

COSTS—WITNESS' FEES—DEPOSITION—COMMISSIONERS' FEES—DOCKET PEE.

1. The fees of witnesses who actually attend a trial are taxable, if it appear that they have been actually paid.

[Cited in *Jerman v. Steward*, 12 Fed. 276; *Burrow v. Kansas City, Ft. S. & M. R. Co.*, 54 Fed. 280.]

2. Travel fees for witnesses who live out of the district may be taxed to the extent of one hundred miles, but no more.

[Cited in *U. S. v. Sanborn*, 28 Fed. 304; *Buffalo Ins. Co. v. Providence & Stonington S. S. Co.*, 29 Fed. 237; *The Vernon*, 36 Fed. 116; *Pinson v. Atchison, T. & S. F. R. Co.*, 54 Fed. 465.]

3. If a witness is examined de bene esse and also attends the trial and is examined, his fees are taxable, as is also the proctor's fee for taking his deposition, if it is admitted in evidence.

4. A party is entitled to a detailed bill of commissioner's fees which are to be taxed against him, showing the items, and that they are legally chargeable under the act of July 26, 1853, [Act Feb. 26, 1853; 10 Stat. 161.] with an oath attached that the services have been actually and necessarily performed.

5. No docket fee is allowable on exceptions to a commissioner's report.

[Cited in *Re Trundy*, 18 Fed. 608; *Central Trust Co. v. Wabash, St. L. & P. Ry. Co.*, 32 Fed. 686.]
[Suit by Rufus K. Beckwith against James T. Easton.]

This case came before the court on an appeal from the clerk's taxation of costs.

BENEDICT, District Judge. The fees of witnesses who actually attended are taxable, and the affidavit must show that the sums charged have been actually paid. The statute only permits the taxation of "the amount paid witnesses." *The Highlander*, [Case No. 6,474.] Travel fees of witnesses living out of the district may be allowed for 100 miles travel, but for no greater distance. Witnesses living out of the district who do not live at a greater distance than 100 miles from the place of trial, may be reached by subpoena out of this court, [Act March 2, 1793, 1 (1 Stat. 335, [c. 22,]) and traveling fees to a witness are allowable only to the extent a subpoena will run. 5 *Blatchf.* 134, [Anon., Case No. 432.]

The fact that a witness was examined de bene esse does not prevent allowance of his fees for attending the trial in person. If he attended the trial in good faith, and was examined, his fees are taxable; and also the proctor's fee for his deposition, if the same was taken and admitted in evidence.

The respondents are entitled to a detailed bill of the commissioner's fees, showing the

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items, and that they are legally chargeable under the act of July 26, 1853, [Act Feb. 26, 1853; 10 Stat 161,] and it must have, attached, an oath that the services charged therein have been actually and necessarily performed. No docket fee can be allowed upon exceptions to a commissioner's report. The bill of costs will be referred back to the clerk for retaxation in accordance with these views.

¹ [Reported by Robert D. Benedict, Esq., and here reprinted by permission]