Case No. 4,075. DRESKILL v. PARISH.[1]

{5 McLean, 213.}[2]

Circuit Court, D. Ohio. April Term, 1851.

{Cited in Woodruff v. Barney, Case No. 17, 986; Spaulding v. Tucker, Id. 13,221.}

{This was an action by Peter Dreskill against Francis P. Parish to recover damages for hindering and obstructing in the arrest of slaves. See Driskell v. Parish, Cases Nos. 4,087–4,089.)

Mr. Parish, in proper person, moved the court in this ease to retax the costs, on two grounds: 1. Because there was no service of a subpoena on Charles L. Mitchell and Andrew J. Dreskill, who appeared several terms, and were examined as witnesses. 2. Because several other witnesses were served with process, more than one hundred miles from the place of holding the court.

BY THE COURT. The second objection is not sustainable. A witness may be summoned if within one hundred miles of the place of holding the court, though his residence be out of the district in which the court is held. But the subpoena runs throughout the district the same as any other writ. The deposition of a witness may be taken who lives more than one hundred miles from the place of holding the court

The first objection, we think, is sustainable.

'The compensation, to a witness' is allowed. If he attend voluntarily or without summons, his fees cannot be charged against the losing party. The attendance, if not summoned, is voluntary. The indorsement of "Accepted" on the subpoena, never placed in the hands of the marshal or his deputy, by a witness, is not sufficient. Such a service would not authorize an attachment against the witness, for non-attendance. The service must be made by the marshal or one of his deputies. As no such service was made on the witnesses above named, their per diem and traveling expenses cannot be charged to the defendant, but must be taxed to the party summoning them.

[1] {See Case No. 4,076, following.}

[2] {Reported by Hon. John McLean, Circuit Justice.}