

Case No. 4,354.
[4 Ben. 101.]¹

THE ELIZABETH AND HELEN.

District Court, S. D. New York.

March, 1870.

COSTS—WITNESS' FEES.

Witness' fees and mileage for the attendance of a party to an admiralty suit, cannot be taxed in his favor against the other party.

In admiralty. This case came up on an appeal from the clerk's taxation of costs. The cause was one of collision, and resulted in a decree dismissing the libel with costs. The claimants sought to tax against the libellant witness' fees and mileage for one of the claimants who had been examined as a witness in the cause. The clerk refused to tax it and the claimants appealed.

R. D. Benedict, for libellant.

W. R. Beebe, for claimants.

BLATCHFORD, District Judge. In view of the provision of the 3d section of the act of February 26, 1853 (10 Stat. 168), that the "amount paid" to witnesses shall be taxed and be included in and form a portion of a decree against the losing party, in cases where costs are recoverable in favor of the prevailing party, such amount being the "witnesses' fees" specified in the same section, and of the provision of the 1st section of the same act, that the compensation specified in that act, and no other, shall be taxed and allowed in the courts of the United States, and of the decision made by the supreme court of the state of New York, at general term, in the sixth district, in January, 1865, in *Steere v. Miller*, 28 How. Pr. 266, and by the court of appeals of that state, in the same case, in June, 1865 (30 How. Pr. 7), upon a section (section 311) of the Code of Procedure of the state of New York, not differing in substance from the provision above referred to in the 3d section of the act of 1853, I do not think that the claimants, in this case, can recover from the libellant as part of the taxable costs on the dismissal of the libel, witness' fees or mileage for the attendance of one of the claimants as a witness in the cause. The deduction of \$104.40, made by that account from the bill of costs, by the clerk, on taxation, was, therefore, proper, and the taxation is affirmed.

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