

Case No. 8,252.
[5 Ben. 486.]¹

THE LEO.

District Court, E. D. New York.

Jan. Term, 1872.

WITNESS FEES—TRAVEL FOR MORE THAN A HUNDRED MILES.

Travel fees for a witness subpoenaed out of the state can only be taxed for a hundred miles.

[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; *Burrow v. Kansas City, Ft. S. & M. R. Co.*, 54 Fed. 282; *Pinson v. Atchison, T. & S. F. R. Co.*, Id. 465.]

[This was a libel by the owners of the schooner Saxon against the steamship Leo for damages on account of collision. There was a decree in favor of the libelants. Case No. 8,251. The case is now heard upon the question of witness fees.]

BENEDICT, District Judge. The appeal from the clerk's taxation of witnesses' fees in the case raises the question, whether, as against the adverse party, traveling fees of a witness subpoenaed out of this state for a greater distance than one hundred miles can be taxed. The point has been decided by Mr. Justice Nelson, and the practice in the Southern district, in conformity with that decision, is to tax traveling fees for no greater distance than the subpoena would run, which is a distance of one hundred miles from the place of trial out of the district. The practice in this district must conform to the same decision, and accordingly the appeal in this case is sustained, and a retaxation must be had in accordance with this opinion.

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