

## SCHOTT ET UX. V. BENSON.

[1 Blatchf. 564;<sup>1</sup> 8 N. Y. Leg. Obs. 294.]

Circuit Court, S. D. New York. Oct. Term, 1850.

## CONTINUANCE—COSTS OF TERM—WITNESS FEES.

1. Where, at the opening of the term, both parties in a case were ready for trial, and their witnesses were in attendance, but the court was adjourned over for several weeks, and, at the adjourned day, the plaintiffs' witnesses were in attendance, but, the defendant not being ready for trial, the case, on his motion, went off for the term on payment of costs, on grounds which did not exist at the opening of the term, *held*, that the fees of the plaintiffs witnesses for actual attendance, as well at the opening of the term as at the adjourned day, were chargeable as part of the costs of the term.

[Cited in *Spill v. Celluloid Manuf'g Co.*, 28 Fed. 870.]

2. Witnesses from a distance are entitled to fees for attendance on Sunday when they are detained over that day.

[Cited in *Rowe v. Shaw*, 56 Me. 307.]

This was an appeal from the clerk's taxation of costs under the following circumstances: At the opening of the term both parties in the case were ready for trial, and their witnesses were in attendance, but the court was adjourned over for several weeks. At the adjourned day the plaintiffs' witnesses were in attendance, but, the defendant [Neal Benson] not being ready for trial, the case on his motion went off for the term, on payment of costs, on grounds which did not exist at the opening of the term. The points on the appeal were, whether the plaintiffs [James Sehott, Jr., and wife] were entitled to attendance fees for their witnesses at the opening of the term, and whether their witnesses from a distance were entitled to fees for attendance on Sunday when detained over that day.

Archibald C. Niven, for plaintiffs.

Ambrose L. Jordan, for defendant.

THE COURT held that the fees of the witnesses for actual attendance, as well at the opening of the term as at the adjourned day, were chargeable as part of the costs of the term; and that the fees for attendance on Sunday were allowable.

<sup>1</sup> [Reported by Samuel Blatchford, Esq., and here reprinted by permission.]

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