

IN RE THOMAS.

[1 Dill. 420.]¹

Circuit Court, D. Kansas.

1871.

WITNESS FEES—ATTACHMENT—MILEAGE.

1. A witness in a civil cause in the United States courts, who, at the time of the service of the subpoena, demands his traveling fees and his fee for one day's attendance, cannot be attached for contempt, if he fails to obey the writ.
2. Mileage of witness. See note, *infra*.

Mr. Fenlon, for the witness.

Mr. Lecomte, *contra*.

DILLON, Circuit Judge. Thomas was subpoenaed as a witness in a civil cause pending in this court, and demanded of the marshal at the time of the service of the writ upon him, his traveling fee and his fee for one day's attendance as a witness, which the marshal did not pay. A motion is made to attach the witness. By the statute of the state, a witness who makes such a demand, is not obliged, if his fees are not paid, to obey the subpoena Gen. St. 1868, p. 693. So far as applicable, and when not inconsistent with the constitution and laws of the United States, these statutes have been adopted to regulate the practice in this court:

Under these circumstances, as well as upon general principles, the attachment must be refused. Attachment refused.

NOTE. In *Holmes v. Sheridan* [Case No. 6,644], at the same term, the court ruled that witnesses living within the district, but more than one hundred miles from the place of trial, who attended in obedience to a subpoena, and gave testimony, were entitled to mileage for the whole distance actually traveled. See *Prouty v. Draper* [Id. 11,447]; *Anderson v. Moe* [Id. 359]; Greenl. Ev. 309, 310, note; *Dreskill v. Parish* [Case

No. 4,076] Whipple v. Cumberland Cotton Co. [Id. 17,515]; Hathaway v. Roach [Id. 6,213]; Conk. Prac. 404, 406.

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