

BUFFALO INS. CO. v. PROVIDENCE & STONINGTON STEAM-SHIP Co.

*Circuit Court, S. D. New York.*

December 16, 1886.

WITNESS—MILEAGE—HOW TAXED AS COSTS.

The traveling fees of a witness residing out of the district can only be taxed to the extent of 100 miles.

Appeal by the plaintiff from taxation of the clerk disallowing traveling fees for more than 100 miles of a witness residing in Buffalo, who attended the trial of this cause in the Southern district of New York.

*Carpenter & Mosher*, for plaintiff.

*Miller, Peckham & Dixon*, for defendant.

COXE, J. The taxation by the clerk is correct. The law is well settled in this circuit that the traveling fees of a witness residing out of the district can only be taxed to the extent of 100 miles. *Anon.*, 5 Blatchf. 134; *The Leo*, 5 Ben. 486; *Beckwith v. Easton*, 4 Ben. 357. It is true that this rule may work injustice in some instances, but still greater injustice might ensue from the establishment of a rule permitting the successful party to tax the fees of witnesses brought from the remote corners of the Union to testify upon a collateral or inconsequential issue, when their testimony could as well have been taken by commission. Taxation affirmed.