

THE MICHIGAN.

PRINGLE *et al.* v. THE MICHIGAN.

(Circuit Court, E. D. Michigan. June 14, 1892.)

WITNESSES—PER DIEM FEES.

Witnesses attending federal courts are not entitled to the *per diem* fee of \$1.50, in addition to their mileage, for time spent in coming to and returning from the place of trial, or for time occupied previous to the day of trial in conference with counsel or proctor.

In Admiralty. On motion to correct taxation of costs. For opinion on the merits, see 52 Fed. Rep. 501.

H. C. Wisner, for libelants.

R. T. Gray and *F. H. Canfield*, for respondents.

JACKSON, Circuit Judge. This cause is now before the court on motion or appeal to correct the taxation of costs made herein against respondent. The question presented relates to the proper taxation of witness fees in favor of libelants, and arises upon the following stipulated facts, viz.:

"(1) That the case occupied two days in its trial. (2) That all of the time taxed by the libelants for their witness fees, over and above the two days occupied in the trial of the case, was the time used by such witnesses in traveling to and from the trial of the cause, excepting that some of the witnesses, at the request of libelants' proctor, arrived one day before the trial of the cause, for the purpose of conferring with libelants' proctor in regard to the case. (3) That all of said witnesses, excepting Thomas L. Pringle, were actually paid the amounts stated in the bill of costs. (4) That the affidavit attached to the bill of costs, in which it is stated that the witnesses attended the number of days therein stated, refers to the time used by the said witnesses, as above stated, and not that they were in the court for that number of days."

It is conceded that the taxation of costs is correct, if libelants' witnesses are entitled to fees while coming to and returning from the trial, but that, if their fees are to be determined by the time they were in attendance upon the court or trial, then the taxation in libelants' favor is too much, by the sum of \$25. The statute provides that the witnesses shall receive for each day's attendance in court, pursuant to law, \$1.50, and 5 cents a mile for coming from his place of residence to the place of trial or hearing, and five cents a mile for returning. We think it clear, from the language of the statute and from the provisions for mileage, that witness fees cannot be properly taxed for the time or number of days occupied in coming to the place of trial and in returning. The mileage allowed is intended to cover that time.

It is equally clear that the time occupied by a witness in conference with counsel or proctor before the day fixed for trial or his attendance cannot be taxed as a "day's attendance in court." Witnesses, un-

der the statute, are not entitled to a *per diem* for the time occupied in traveling to and from the place of trial. The excess of the *per diem* taxed, amounting to the sum of \$25, will accordingly be corrected. No direct adjudication on this question having heretofore been made in this circuit, it may be proper to state that the conclusion above reached is concurred in by Circuit Justice BROWN and Associate Circuit Judge TAFT, and is intended to prescribe the rule for the proper taxation of witness fees in such cases.

THE JAMES BOWEN.

THE GEO. E. WEED.

TITUS v. THE JAMES BOWEN.

MURPHY v. THE GEO. E. WEED.¹

(District Court, E. D. Pennsylvania. September 27, 1892.)

1. COLLISION—CUSTOM OF PORT.

The established custom of the port of Philadelphia that on the Delaware river, between League island and Walnut street wharf, at ebb tide, vessels passing up shall keep inshore, and vessels passing down shall keep in channel, supersedes regulations prescribed by the sailing rules prescribed by the act of 1855.

2. SAME—NEGLIGENCE—SIGNALS.

A vessel signaling that she is going westward of a vessel meeting her head on, which is answered by the latter with a signal that she will go to the eastward, is not negligent, although her proper course originally was to the eastward.

3. SAME.

A vessel meeting two vessels which are substantially together, and which must necessarily both pass to the same side of her, may announce her intended course to both by one signal.

In Admiralty. Libel by W. H. Titus, master of the tug Geo. E. Weed, against the steamer James Bowen, to recover damages for collision, and cross libel by Augustus Murphy, master of the tug James Bowen, against the tug Geo. E. Weed. Decree against the Bowen.

Lewis & Tilton, for the Geo. E. Weed.

Biddle & Ward and *Rocheport & Stanton*, for the James Bowen.

BUTLER, District Judge. The suit is for collision. The material facts are as follows: On the afternoon of September 20, 1891, the Weed, a small tug, was passing up the western side of the Delaware river (well over) from League island to Walnut street wharf in company with another tug, the Ben Hooley. The latter was a few yards behind, probably a length, and slightly nearer the shore. The tide was ebb. When passing Greenwich piers the Bowen was seen coming down, about three

¹Reported by Mark Wilks Collet, Esq., of the Philadelphia bar.