

PARKER v. CARTZLER.

[5 McLean, 4.]¹

Circuit Court, D. Ohio.

Oct. Term, 1849.

WITNESS FEES—SUMMONED IN SEVERAL CAUSES.

A motion was made by Mr. Mason, to re-tax the costs of a witness summoned in eleven cases, and charged for an attendance in each. Cited 1 Stat. 73 (Act 1789); 3 Stat. 21 (Act 1813).

This motion was opposed by Mr. Noble, who cited 5 Mass. 313; 10 Mass. 174; Crosby v. Folger [Case No. 3,421]; 1 Pick. 452; 1 Wend. 68.

OPINION OF THE COURT. The court have generally followed the practice of the state court, in allowing witness fees. In perhaps all the states in this circuit, each witness is allowed to claim his per diem in all the cases in which he has been summoned. But this in some cases would give a witness in the circuit court of the United States from ten to twenty dollars each day. Such cases require the alteration of the rule, and we, therefore, adopt a rule, "that where a witness shall be summoned in several causes, he shall be allowed a per diem and mileage only in one case; and such allowance shall be distributed and charged equally among the cases in which he shall be summoned."

¹ [Reported by Hon. John McLean, Circuit Justice.]