

*EX PARTE* TURNER.

*District Court, D. South Carolina.*

September, 1887.

WITNESS—FEES.

Plaintiff was a witness in a case under recognizance, and also at the same time a grand juror. He was paid his *per diem* as such juror. *Held*, that he was only entitled to the *per diem* of a witness from the time he was discharged as grand juror.

*Thompson H. Cooke*, for petitioner.

SIMONTON, J. A. B. Turner was a witness in this case under recognizance. He was bound over by the government. He was also a grand juror, and served as such until the seventeenth of this month. He resides in Greenville, and has been paid his *per diem* as juror. He now claims *per diem* as a witness in this case from the first day of the term to his discharge as a witness.

It has been ruled in this court that a defendant, under recognizance, who has also been bound over as a witness for the government, is entitled to his *per diem* and mileage as such witness. The ground of that decision was that, inasmuch as the person so summoned as a witness owed no duty to the government in attending court as a defendant, if he were summoned by the government as a witness, he was entitled to *per diem* and mileage as a witness. *In re Addis*, 28 Fed. Rep. 794. This is a different question. The mileage and *per diem* are paid to reimburse the witness for expenses to which he was put by reason of the recognizance or subpoena which brought him here. But when he has already been brought to the court, and maintained here at the expense of the government, this reason ceases. The whole practice and law of these courts of the United States are opposed to double pay for the same services. If one who receives *per diem* and mileage as a juror, at the same time receives *per diem* as a witness, he would receive double pay for the

Ex parte TURNER.

same service. The case of *Edwards v. Bond*, 5 McLean, 300, decides that a juror can also receive pay as a witness. After careful consideration of the opinion in that case, I cannot agree with the learned judge.

It is ordered that the applicant, A. B. Turner, be paid the *per diem* of a witness from the time he was discharged as grand juror, and no longer.