

UNITED STATES *v.* STEWART.

*District Court, E. D. South Carolina.*

January 7, 1891.

CRIMINAL LAW—WITNESSES FOR INDIGENT PERSON.

Rev. St. U. S. § 878, authorizing a judge to order witnesses to be subpoenaed In behalf of an indicted indigent person, gives no authority to order subpoenas for one against whom a bill of indictment is pending before a grand jury.

Indictment.

*Samuel J. Lee*, for motion.

SIMONTON, J. This is an application for witnesses on behalf of Stewart, under section 878, Rev. St., as an indigent person. It appears that an indictment has been given out against Stewart, which is now in the hands of the grand jury. The grand jury have not acted on it. The section (878) permits a judge, upon proper affidavit, to order witnesses to be subpoenaed in behalf of a person indicted; that is to say, after indictment found. If a case be not given to the grand jury, or if they find no bill, the person is not indicted. The section does not apply, and the judge has no authority to order subpoenas at the expense of the United States. Motion refused.