

or \$4 was properly claimable for the *per diem* allowance.

The matter must be settled by reference to the rules of court regulating the allowance to witnesses. At common law the tariff fixed by the judges in pursuance of the Common Law Procedure Act, governs the practice. By that tariff the only persons entitled to receive \$4 a day are, (1) barristers and attorneys, physicians and surgeons, and then only when called upon to give evidence in consequence of any professional service rendered by them, or to give professional advice; and (2) engineers and surveyors, and then only when called upon to give evidence of any professional services rendered by them, or to give evidence depending upon their skill or judgment. In all other but these exceptional cases witnesses are entitled to no more than 75 cents if residing within three miles of the court house, and \$1 if residing over three miles therefrom. These rules are binding upon individual judges, and nothing short of a rule of the full court either special, in the particular suit, or general, regulating the whole practice, can entitle any person to a larger allowance. We find it stated in *Re Nelson*, 2 Chan. Cham. Rep. at p. 253, that in a case of *Bennet v. Adams* in 1859, Richards, C.J., ordered \$4 to be taxed to a clerk of Assize who attended to give evidence in that capacity as a witness. So far as we can judge this order if appealed against would have shared the fate of the orders made by one judge for extra counsel fees, as determined by the full court in *Ham v. Lasher*, 27 U. C. Q. B. 357.

In Chancery the practice has been, both in England and Canada, to follow the Common Law tariff in the allowance to witnesses,—a matter of some surprise, considering the independent position which this court usually occupies (see *Clark v. Gill*, 1 K. & J. 19). We find, however, in the case already referred to, *Re Nelson*, that the Common Law tariff is departed from. Special reasons are given by the late Chancellor for making a \$4 allowance per day to the Registrar of the Surrogate Court.

This case is the stronghold of all public officers attending court under subpoena, and we shall therefore advert to the several reasons given for the extraordinary allowance. It is said (1) that the responsibility of the officer's position in keeping, searching for, and producing original documents should be re-

garded; (2) the trouble and loss of time in addition, which often occurs in searching for and producing such documents; (3) that in the case of an officer paid by fees, as he may be kept hours waiting in court before being called, he should be remunerated by a larger fee than is paid to ordinary witnesses. Now we do not doubt the power of the Court of Chancery, or a single judge of that court, to make special orders for the allowance of extra witness fees, but we submit that it would be beyond all measure better so to regulate the tariff that all occasion for making special orders should be done away with. By this means also the proper sum would be taxed or paid in the first instance, and the trouble and expense of an appeal from taxation, or of an application for a special allowance, would be avoided.

We do not quarrel with extra compensation being made to all public officials who attend as witnesses, if the courts think fit to alter the tariff in that respect, but while there is a tariff it should be adhered to. Now we do not see that, in principle, *Re Nelson* is sustainable as laying down a general rule, applicable, for instance, to registrars of titles. Apart from rules of court, the practice here would be governed by the old Statute 5 Eliz. c. 9, s. 12, and under that the principle is that the witness is not entitled to any thing for loss of time. He is entitled to travelling expenses, and if he is away from home for some time he is entitled to his expenses for maintenance during that time: *Collins v. Gregory*, 1 B. & Ad. 950; *Collins v. Godfrey*, 1 B. & Ad. 950; *Nokes v. Gibbon*, 3 Jur., N. S., 282; s. c. 26 L. J. Ch. 208; *Loneragan v. Royal Exchange*, 7 Bing. 731.

In this country there is no Chancery tariff for witness fees; the Common Law tariff is against the special allowance we have been considering, and in the old law underlying the tariffs, responsibility, trouble and loss of time, and loss or diminution of official fees form no ground for compensation.

Again we say that if the judges decide that public officers should receive the fees awarded to professional witnesses when called to give professional evidence, we shall be the last to object to such a scale of compensation. But one cannot fail to see that the whole force of the reasoning in *Re Nelson* would warrant the payment of extra fees to every professional or scientific man called as a witness upon any