parties had a right, personally or by counsel, to place their case before him, as well as the other two arbitrators. The award is a joint judicial act. The judgment of the three arbitrators was not the result of hearing the parties, for that of the third arbitrator was based on what the other two told him, in the absence of the applicant, and without his being notified that the third arbitrator was called in to deliberate on the subject. It is impossible to say what the parties would have done, or what course they might adopt to bring their case before the third arbitrator. If the case had been reheard they might have suggested a new view of the case, as said by Littledale, J., in *Salkeld* v. *Slater*, 12 A. & E. 767.

The general rule is, that an umpire to whom a case is referred by arbitrators must hear the evidence over again, and in the case cited Lord Denman says—"It is important to have it understood that the umpire, as well as the arbitrators, ought to hear and see the witnesses." And so in this case, the third arbitrator should have seen and heard the statement of the case from the parties themselves, or any witnesses they might produce. The parties are entitled to have their case, as made by themselves, put directly to the arbitrators, and are entitled to the benefit of the judgment of all three on the case, as made. Two of the arbitrators heard the case, apart from the third arbitrator, and the third heard it at second-hand and apart and in the absence of the parties, (as said by Coleridge, J., in *Plews* v. *Middleton*, 6 Q. B. 845)—"whereas it ought to have been considered by the arbitrators and umpire jointly, in presence of the parties." There is no imputation on the motives or conduct of the arbitrators; it is only the irregularity of the proceedings that invalidates the award; and the Court, in such a case, sends back an award to the same arbitrators, where there is no reason to believe that they are not to be trusted. I think that this is a case in which I ought to exercise that power, and that it should go back with an intimation that the third arbitrator should have an opportunity of hearing the parties and considering the evidence with the other two arbitrators.

CHANCERY.

In re Nelson.

Witness fees.

A public officer who has charge of documents for which he is responsible, and attends as a witness in his public capacity and in relation to matters connected with his office, will be allowed professional witness fees of $4 a day.

VanKoughnet, C.—Mr. Cayley, Registrar of the Surrogate Court, declined to produce the original will of the testator, unless he should be paid a larger fee than the 3s. 9d. given to ordinary witnesses. Looking at the responsibility with which a person in Mr. Cayley's position is charged, in keeping, searching for, and producing original documents, which it is of the greatest moment should be in proper custody: at the trouble and loss of time, in addition, which often occur in searching for and producing such documents: that Mr. Cayley is an officer and paid by fees, and that in the progress of a case he may be kept waiting in court for hours before he is called as a witness I think, $4 a day a reasonable allowance to him. I am told by the Clerk of the Crown 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.

Houck v. Town of Whitby.

Purchase by Municipal Corporation.

The name of the seller or his agent must appear in a contract of purchase by a municipal corporation.

Where a municipal corporation contracted for the purchase of some land for a market site, and afterwards a by-law was passed with the sanction of the ratepayers, which recited the purchase but did not name the seller, and there was no other evidence under the corporate seal, and possession had not been taken, it was held that the contract could not be enforced by the vendor against the corporation.

[14 Chan. Rep., 71.]

Hearing at Whitby, at the Spring sittings, 1868.

S. Blake, for the plaintiff.

Roaf, Q.C., for the defendants.

Mowat, V. C.—This is a bill for payment of the purchase money of certain land, which the plaintiff alleges that he sold and conveyed to the corporation of the town of Whitby for a market site.

There is no doubt that a contract was deliberately entered into to the effect alleged by the plaintiff; that in August, 1867, it duly received the sanction of the ratepayers in the manner required by the Statute; that, in pursuance of the contract, the plaintiff, on the 18th of November, 1867, in good faith, executed a conveyance, which was prepared by a Solicitor employed by the Council for this purpose; and that he left this conveyance with the Solicitor to be given up to the corporation on the purchase money being paid to certain incumbrancers on the property.

It seems that the ratepayers have, since August last, changed their minds in regard to the policy of the purchase, and do not wish to take the property. The plaintiff's bill was filed on the 27th of February, 1868, and the corporation resist the relief prayed. They allege, amongst other things, that the Solicitor had no authority under seal; that the authority he had, besides not being under seal, did not in terms authorize him to accept a conveyance, but only to prepare one; that the corporation had never become bound to the plaintiff, by any act under seal; and that they never accepted the conveyance, or authorized any one to accept it for them. It appears also, that they never entered into possession of the property. The objection which seems to me to be fatal to the plaintiff's case is the want of the corporate seal.

It was not contended on behalf of the plaintiff, that, in a case of this kind, the rule which requires a corporation to contract under seal was not as obligatory on this Court as on a Court of Law. I have looked at the cases cited, some of which were cases at Law, and some were cases in Equity, and I am clear that a seal was necessary to bind the corporation. Now, while several important resolutions of the Council were put in evidence, the only document in evidence to which the corporate seal was attached, is the by-law which was submitted to