

WITNESS FEES TO REGISTRARS.

DIARY FOR JUNE.

1. Thur. Open Day.
2. Frid. New Trial Day, Q. B. Open Day, C. P.
3. Sat. Easter Term ends. Open Day.
4. SUN. *Trinity Sunday.*
5. Mon. *St. Boniface.*
6. Tues. Last day for notice on trial for County Court
8. Thur. *Corpus Christi.* [except York.
11. SUN. *1st Sunday after Trinity. St. Barnabas.*
13. Tues. General Session and County Court Sitting in each County except York.
14. Wed. Last day for Court of Revision finally to revise Assessment Roll.
15. Thur. Last day for service of summons, County Court.
18. SUN. *2nd Sunday after Trinity.* [York.
20. Tues. Accession of Queen Victoria, 1837.
21. Wed. Longest day.
24. Sat. *St. John the Baptist.*
25. SUN. *3rd Sunday after Trinity.*
26. Mon. Last day to declare for County Court, York.
29. Thur. *St. Peter.*

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WITNESS FEES TO REGISTRARS.

Registrars of titles are as a class exceedingly tenacious of their rights. By united efforts they have succeeded at different times in moving the Legislature to action, and we have had amendment of the Registration laws following upon amendment thereof. But these functionaries seem to have left unprovided for the matter which constitutes the heading of this paper.

By the late Ontario Act, 31 Vic. c. 20, s. 21, it is enacted that no Registrar shall be required to produce any paper in his custody unless ordered by a judge, upon which order a subpoena is to be issued in the usual way. This is in effect a statutory repetition of the rule of court: *Reg. Gen. T. T. 1856, No. 31.* But the act says nothing about the fees to which the officer shall be entitled upon the service of such subpoena, and to our certain knowledge no small squabbling has arisen at various trials to determine whether 75 cents 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 regarded; (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