

by holding the land as exempt from taxes, and thereby a higher rent would be obtained from a tenant. But an increased rental would hardly ever equal the amount of annual assessment derivable from the land in its improved state on a yearly valuation."

LAW OF EVIDENCE.

There appears to be some misconception abroad as to whether wives can give evidence for their husbands in suits brought in Division Courts.

As a general rule, the Law of Evidence is the same in Division Courts as in the Superior Courts. There are some changes made in favor of admitting certain evidence in the former which would not be allowed in the latter; and the question arises whether there has been any change in this respect as to the evidence of a wife in behalf of her husband.

It is quite clear that in the Superior Courts a wife is precluded, and the only reason which would appear to suggest itself to found a contrary rule in Division Courts, is the wording of section 101 of the Division Courts' Act, that "on the hearing or trial of any action or in any other proceeding, the parties thereto and *all other persons* may be summoned as witnesses and examined either on behalf of the plaintiff or defendant, upon oath (or affirmation), to be administered by the proper officer of the Court; provided always, that no party to the suit shall be summoned or examined except at the instance of the opposite party or of the judge."

Now the words "all other persons" do not, in our opinion, include the wife of either party to this suit. The provision is simply intended to empower parties to subpoena and examine all lawful witnesses (including, *in certain cases only*, the parties to the suit. The section does not, we think, operate to make any change in the general rule of law.

It has even been held in *Van Norman et ux. v. Hamilton*, 25 U. C. Q. B. 149, and that apparently without any shadow of a doubt, that when a husband and wife are co-plaintiffs (in this case being joint claimants in an interpleader issue), the wife, though in fact a party to the suit, could not be called as a witness by the opposite party. The wording moreover, of sec. 2 of ch. 32, of Con. Stat. U. C. is very distinct against the admissibility of any such evidence, and that section would appear to apply to Division Courts.

The judgment in *Hammond v. McLay*, given on the first day of this Term in the Court of Queen's Bench, decides that the dismissal from office of the plaintiff by the John Sandfield McDonald administration was illegal, and that Mr. Hammond is, notwithstanding, entitled to the fees of the office. It is not likely that the office will be given up without a further struggle, and the decision will doubtless be carried to the Court of Appeal.

SELECTIONS.

Some of our readers might be edified by the discussion of the knotty point presented to them in a case taken from an old volume of Reports, entitled,

STRADLING V. STILES.

Le report del case argue en le common banke devant tous les justices de le mesme banke, en le quart. An du raygne de roy Jacques, entre Matthew Stradling, plant. and Peter Stiles, def. en un action propter certos equos coloratos, Anglice, pied horses, post. per le dit Matthew vers le dit Peter.

Sir John Swale, of Swale Hall, in Swale Dale, fast by the river Swale, knt. made his last will and testament; in which, among other bequests, was this, viz.:

"Out of the kind love and respect that I bear unto my much honored and good friend, Mr. Matthew Stradling, gent., I do bequeath unto the said Matthew Stradling, gent., all my black and white horses." The testator had six black horses, six white horses, and six pied horses.

The debate therefore was, whether or no the said Matthew Stradling should have the said pied horses by virtue of the said bequest.

Atkins apprentice pour le pl. moy semble que le pl. recovers.

And first of all it seemeth expedient to consider what is the nature of horses, and also what is the nature of colors; and so the argument will constantly divide itself in a twofold way; that is to say, the formal part and the substantial part. Horses are the substantial part, or thing bequeathed; black and white the formal or descriptive part.

Horse, in a physical sense, doth import a certain quadruped or four footed animal, which by the apt and regular disposition of certain proper and convenient parts, is adapted, fitted and constituted for the use and need of man. Yea, so necessary and conducive was this animal conceived to be to the behoof of the commonweal, that sundry and divers acts of Parliament have from time to time been made in favor of horses.

1st Edw. VI. makes the transporting horses out of the kingdom no less a penalty than the forfeiture of forty pounds.