

C. P. CARPENTER v. PARKER. November 12, 13.
Eviction what amounts to—Molestation and disturbance—Amendment.

Land is mortgaged, and is subsequently let to a tenant who is not aware of the mortgage until he receives notice of it from the mortgagee. The tenant being advised that he cannot resist the mortgagee's claim, goes out and allows the mortgagee to take possession. This amounts to an eviction.

Per WILLIAMS, J.—At all events it is a molestation and disturbance.

EX. DAVIS v. UNDERWOOD. November 20.
Landlord and tenant—Covenant to repair—Measure of damages.

The measure of damages in an action for breach of covenant to repair, is the sum necessary to put the premises in repair, notwithstanding before action the reversion of the plaintiff has been extinguished by an entry of the superior landlord.

C. C. R. REGINA v. THOMAS CROSS. November 14, 30.
Forgery—Cheat at Common Law—False token or mark—Passing off a copy as an original picture by painting artist's name in the corner.

Forgery must be of some document or writing, therefore the painting an artist's name in the corner of a picture, with the intention to pass it off as the original production of that artist is not a forgery.

If a person in the way of his trade or business put or suffer to be put a false mark or token upon any article, so as to pass off as genuine that which is spurious, if such article be sold by such false token or mark, the person so selling may be indicted for a cheat at Common Law, but the indictment must allege that the article was passed off by means of such false token or mark.

Where an indictment alleged that the prisoner being a picture dealer, knowingly kept in his shop a picture whereon the name of an artist was falsely and fraudulently painted with intent to pass the picture off as the original work of the artist whose name was so painted, and that he sold the same to H. F. with intent to defraud and did thereby defraud him, but without stating that the picture was passed off by means of the artist's name being so falsely painted.

Held that such painting of the artist's name was putting a false token on the picture, and that the selling by means thereof would be a cheat at common law, but that the want of such last averment was fatal.

REVIEW OF BOOKS.

THE LOWER CANADA JURIST. John Lovell, Montreal. \$4 per annum.

The number for February and March of this useful publication is received. It contains the remainder of *Wilcox v. Wilcox* noticed in our issue for February. The judgment of Mr. Justice Aylwin is, as we expected, very able. The learned Judge appears to have made use of all the powers of his mind in the determination of the legal questions involved, and, though in the minority, his judgment deserves the greatest respect. The Court, consisting of Sir L. H. Lafontaine, and Justices Dural and Caron, decided that before the British Act 6 Geo. IV. cap. 57, commonly called the Lower Canada Tenures Act, became the law of Lower Canada, the customary dower of the custom of Paris was claimable on lands in Lower Canada held in free and common socage. From this judgment Mr. Justice Aylwin dissented. The majority of the Court was of opinion that the laws of Lower Canada, at the time of the conquest, i. e., the French laws so far as relates to real estate, were not changed either by the conquest, or by anything which transpired between the conquest and the passing of the Imperial Act of George the Fourth. Mr. Justice Aylwin, on the contrary, has given it as his opinion that the laws of England were introduced at the time of the conquest, and that their introduction has been recognised in ordinances

of the Province of Quebec, in statutes of Lower Canada, and of Canada passed since the conquest. It is not a little remarkable that whenever this vexed question presents itself for adjudication in a Court of Justice composed of Judges of French and British origin, that the former take one side, and the latter the other.

The case under consideration is well reported. In a note the editors state that "for the arrangement, and for many of the materials forming the appendix to the case they are under obligations to the President of the Court (Sir L. H. Lafontaine, Bart.,) who has also had the goodness to revise the entire report."

The number before us contains besides an elaborate judgment of Chief Justice Lafontaine on the effect of Statute 16 Vic. cap. 80, intitled "An Act to modify the Usury Laws." This Act, which applies to the whole Province, enacts that no contract to be made in any part of the Province for the loan or forbearance of money or money's worth, at any rate of interest whatsoever, shall make any party to such contract liable to any loss, forfeiture, penalty, or proceeding, civil or criminal, for usury; but provides that every such contract, and every security for the same, shall be so far void, and so far only as relates to any excess of interest thereby made payable above the rate of six per cent. The Court of Appeals in Lower Canada has decided that any excess of interest above six per cent. is usurious and illegal, and that in any action brought by the creditor for interest the excess may be set off by the debtor as a reduction of the creditor's demand *pro tanto*: (Nye, Appellant, and Malo, Respondent, p. 43.) We do not know of any reported case decided in Upper Canada on the construction of this statute, and in the absence of such the case before us, though not of absolute authority, is not without positive value. An Upper Canadian lawyer while reading it must bear in mind that the mode of procedure in our Courts greatly differs from that adopted in the Courts of Lower Canada.

APPOINTMENTS TO OFFICE, &C.

JUDGES.

DAVID LOCKWOOD FAIRFIELD, Esquire, to be Judge of the Surrogate Court for the County of Prince Edward, in the room of the Honorable Simon Washburn, deceased.—(Gazetted 9th March, 1858.)

COUNTY ATTORNEYS.

Lambton.....	JOSEPH FREDERICK DAVIS.
Perth.....	DANIEL H. LIZARS.
Welland.....	LORENZO D. RAYMOND.
Wellington.....	JOHN J. KINGSMILL.
Northumberland and Durham.....	JOHN D. ARMOUR.
Milton.....	GILBERT T. BASTEDO.

(Gazetted 6th March, 1858.)

SHERIFFS.

LAWRENCE W. MERCER, Esquire, to be Sheriff of the County of Norfolk, in the place of H. V. A. Rapelle, Esquire resigned.—(Gazetted 13th March, 1858.)

CORONERS.

WILLIAM EGGERT, Esquire, to be an Associate Coroner for the County of Perth.—(Gazetted 6th March, 1858.)
GEORGE C. COOPER, M. D., and WILLIAM HALLOWELL, M. D., Esquires, for the City of Toronto.

ROBERT NICHOLSON, JOHN RAPELJIE and SAMUEL S. SMADES, Esquires, for the County of Welland.

FRANCIS BULL, M. D., BEAUMONT W. DIXIE, M. D., and SAMUEL A. HARVEY, M. D., Esquires, for the United Counties of York and Peel, and JIRA SKINNER, Esquire, M. D., for the County of Brant.—(Gazetted 9th March, 1858.)

THOMAS JOHN GRAFFE, of Mount Forest, Esquire, to be an Associate Coroner, for the Counties of Wellington and Grey.—(Gazetted 13th March, 1858.)

RYERSON HUTLEDGE, Esquire, to be an Associate Coroner for the United Counties of Huron and Bruce.

JOHN MAHAFFY, Esquire, M. D., to be an Associate Coroner for the United Counties of York and Peel.—(Gazetted 27th March, 1858.)

NOTARIES PUBLIC.

HENRY FREDERICK DUCK, of Chatham, Esquire, Attorney at Law.—(Gazetted 6th March, 1858.)

JAMES ALEXANDER CARROLL, of Stratford, Esquire, Attorney at Law, and THOMAS ROBINSON BUCKHAM, of Orangeville, Gentleman.—(Gazetted 9th March, 1858.)

CHARLES E. ANDERSON, of Port Credit, Esquire.—(Gazetted 15th March, 1858.)

WILLIAM HENRY STEVENSON, of Port Rowan, Gentleman.—(Gazetted 27th March, 1858.)