referring to others, whether they be the most practised attorneys or the most experienced counsel.'' The defendant in that case had ''deposed that he believed that the direction in the corner of the bill was in the plaintiff's handwriting'' (p. 687); and, so far as appears, there was nothing else to connect the plaintiff in any way.

It is to be observed, first, that the Chief Justice was not laying down any opinion as to the law (proper). ''What is reasonable and probable cause in an action of malicious prosecution . . . is to be determined by the Judge. In what other sense it is properly called a question of law I am at a loss to understand:'' Lord Chelmsford in Lister v. Perryman (1870), L.R. 4 H.L. 521, at p. 535, ''The existence of 'reasonable and probable cause' is an inference of fact:'' Lord Westbury, in the same case, at p. 538. We are, therefore, not at all bound by Lord Denman's opinion.

Again it must be remembered that Lord Denman was one of the school of Judges who withstood the admission of evidence of this character. A very careful and comprehensive history of the course of decision will be found in Dr. Wigmore's exceedingly valuable work on Evidence, paras. 1991 sqq. . . .

[Reference to Doe dem. Mudd v. Suckermore (1836), 5 A. & E. 703, 749.]

Moreover, the learned Chief Justice speaks only of ''similarity of handwriting.'' . . .

If the meaning of the language used in Clements v. Ohrly be more than what I have indicated, and Lord Denman intended to lay down a rule of law, he should not be followed. We cannot abjure our common sense at the bidding of any person, however eminent and able, Judge or not, English or otherwise.

While more similarity of handwriting may in many cases be no reasonable cause, the opinion of experts that the handwritings are not merely similar but identical is or may be of very great value, and furnish most reasonable and probable cause. Just as mere similarity of feature, etc., may not be much or any evidence of identity, such a similarity as convinces a competent observer of the identity is most cogent. Many a man has been convicted, and rightly convicted, of forgery on just such evidence, and indeed on less evidence than is to be found in this case. Had the criminal jury found the plaintiff guilty of forgery, no appellate tribunal would have thought of setting aside the verdict.

It may not be amiss to add that more than one member of