discharged, the plaintiff undertaking to enter a *nolle prosequi* on the counts for a malicious prosecution. The costs were then taxed and paid together with the damages for the libel. In 1855 the plaintiff commenced a fresh action against the defendant for malicious prosecution upon the same facts, and upon a rule obtained by the defendant to stay all further proceedings on the ground of the action being brought against good faith, the Court made such rule absolute.

C.C.R. REG. *v.* SMITH. *Nov.* 24.

Shooting with intent to murder—Mistake as to person shot at.

If A., intending to murder B. shoots at and wounds C., supposing him to be B., he is guilty of wounding C., with intent to murder him, for he intends to kill the person at whom he shoots.

C.C.R. REG. *v.* DIXON. *Nov.* 24.

Larceny—Finding lost note—Means of discovering owner—Prisoner's belief that the owner could be traced.

Upon an indictment for stealing a note, was found by the Jury that the note was lost by the prosecutor and found by the prisoner. There was no evidence that the note had any name or other mark upon it indicating to whom it belonged, nor was there evidence of any other circumstances which would disclose to the prisoner at the time when he found it, the means of discovering the owner.

Held, that he could not be convicted of larceny, although the Jury, being asked whether at or after the time of finding, he believed that there was not a reasonable probability that the owner could be found, had answered that he did believe the owner could be traced.

Q.B. (Ireland.) HAUGHTON *v.* MORTON.

Contract—Statute of frauds—Constructive signature.

A sale-note for absolute delivery of the goods is made at the time of sale, but not signed by the party. The sale is referred to in a letter written before action brought, signed by the party to be bound in which he alleged that the sale was conditional.

Held, (dissentiente, LEFROY, C. J.) that there was no note in writing under the Statute of Frauds.

Q.B. REG *v.* COYLE. *Dec.* 6 & 7.

(Sittings after Term, at Westminster, before ERLE, J.)

Presumption against a prisoner from conduct of counsel at former trial between the same parties.

On the second trial of an indictment for perjury, fresh witnesses for the defence were called to prove facts confirming the prisoner's alleged false statement. A witness called by the prosecutor to contradict a fact deposed to by them, was allowed to prove that on the former trial a particular question was put to him on his cross-examination by the prisoner's counsel, in order to show that at that time the prisoner's counsel had notice of the testimony now given, but did not venture to call the witnesses.

CHANCERY CASES.

M.R. DIXON *v.* GAYFERE. *Nov.* 10 & 11.

Vendor and purchaser—Purchase in consideration of annuity—Charge on land.

Where an agreement was made for the purchase of a property in consideration partly of an annuity to be granted, payable for the life of the vendor and two other persons, and the survivor of them to be secured by bond.

Held, that the form of the agreement showed an intention to discharge the land from a lien in respect of an annuity, and that the annuity was therefore a personal annuity only.

The case of *Winter* v. *Lord Anson*, 3 Russ. 488, noticed.

V.C.W. WOOD *v.* SCARTH. *Nov.* 12.

Vendor and purchaser—Specific performance—Omission of a term of the stipulation—Mistake.

The owner of a public house stated in a letter to brewers that the terms of letting were at a certain rent and for a stated time. The brewers, after sending an agent to look at the house and discuss the terms, agreed to take it according to the letter. Subsequently the owner required a premium of £500. The brewers filed a bill to enforce specific performance, and the owner adduced a memorandum made by the brewers' agent to shew that the £500 formed part of the bargain, and called evidence to prove that in a previous offer to another brewer, that sum was mentioned. The former evidence failed, but the latter was confirmed. The brewers had commenced alterations in the premises.

Held, that the offer to the plaintiffs omitting the £500 was clearly a mistake, and that specific performance should not be decreed.

C. *of* A. MORLEY *v.* MORLEY. *Nov.* 13, 14 & 17.

Tenant for life paying off bond debts—His right to charge the inheritance considered—Distinction between a tenant for life paying off bond debts and incumbrances, or charges on the inheritance considered—Costs.

F., being tenant for life of an estate with remainder to his sons in tail male, pays off bond debts created by the devisor; he takes no steps to make such payments legal charge on the inheritance. Twenty years elapse from the date of the securities. A bill filed by the personal representatives of F., seeking to have the amount of the bond debts, which he had paid, declared charges upon the estate, was, on appeal affirming the decision of the V. C., dismissed with costs.

DIVISION COURT.

(*Reports in relation to*)

MOSSOP *v.* GREAT NORTHERN RAILWAY COMPANY.

C.B. *Nov.* 21, 1855.

Prohibition—Co.C.—Power of Judge to grant a new trial—9 & 10 Vic., ch. 95, sec. 89, and the 141st rule of practice in the Co. Courts.

The Judge of a Co. C. having refused upon the day of the hearing to grant a new trial, cannot grant one at the next court.

The plaintiff in prohibition brought an action in the Co. C. against the defendants, and obtained a verdict. Immediately after the trial the defendants applied to the Judge for a new trial; that application was opposed by the plaintiff, and the Judge refused to grant it. At the next court, the application being renewed in consequence of an intimation from the Judge himself, the Judge granted a new trial:

Held, that, the Judge having once determined the matter, and refused to grant a new trial, that judgment was final.

This was a demurrer to a declaration in prohibition. The original action was tried in the Co. C., and a verdict was found for the plaintiff, damages £8 4s. An application was then made by the defendant's advocate for a new trial, which was opposed by the advocate for the plaintiff and refused by the Judge, and the judgment was entered and the damages and costs paid. The Judge afterwards at another place told the advocate for the defendant that he had reconsidered the matter and was dissatisfied with the verdict and his own refusal of a new trial, and that if he would apply again for a new trial at the next court for the place where the trial took place, he would grant it. The application was accordingly made, and a new trial was granted. There was then a declaration in prohibition, and issue taken as to whether the Judge refused a new trial on the first occasion, and it was found that the Judge had decided to refuse it.