to B., by sample, certain goods above the value of £10, and that the £4 should go in part payment; and the goods were delivered but refused acceptance, it was held that the contract was void under the statute; but it seems that if there had been an express agreement that A. should pay to B. the £4 and take it back as earnest or part payment, the statute would have been satisfied without proof that the money actually passed.

Note or memorandum in writing of the bargain.—By the word "bargain" is meant the terms upon which the parties contract—and the note or memorandum must express all the terms of the contract. Where a specific price is agreed on and there is nothing said in the written contract as to price, it is imperfect and cannot be given in evidence; but where the price is omitted, and it does not appear that any specific price was agreed upon, a reasonable price may be presumed; but the terms of the written contract cannot be varied by word of mouth evidence—but where the price is ambiguous, as for instance when hops were sold at "100s." this may be explained to mean £5 per cwt. The written demand must be made before the demand is entered for suit.

The making and signing by the parties—A signature by initials is not enough. A printed name is sufficient if recognized by or brought home to the party as having been printed by his authority, and it is immaterial in what part of the agreement his name is signed. But whether the writing of his name by the defendant *in the body* of the instrument for a particular purpose be a sufficient signing, appears to be doubtful. The Statute requires the agreement to be signed by *the party to be charged therewith*, or some other person thereunto by him lawfully authorised. It is good as against him, though only signed by the party to be charged and not by the other party. A correspondence of several letters, if connected together, will form a sufficient memorandum.

ON THE DUTIES OF MAGISTRATES.

SKETCHES BY A J. P.

(Continued from page 222, Vol. II.)

Evidence.—With regard to evidence generally, but little can be said, without exceeding the limits assigned to these sketches. As a general guide, it may be observed that the following principles should be adhered to:—

1. *No evidence ought to be admitted but what is relevant to the question at issue.*

2. *The best evidence, which the nature of the case admits of, ought to be adduced if it can be had, and if not, then the next best or secondary evidence, proof being first given of the impossibility of procuring the former.*

(The impossibility of procuring the *best* evidence may be by its destruction or loss, or its being in the possession of the opposite party, who, on notice to produce it, has failed to do so.)

3. *The burden of proving the charge lies upon the prosecutor.*

4. *The party charged with an offence is presumed to be innocent until the contrary is proved.*

In addition it may be stated, that upon the question of evidence generally, the Justices ought to require the same regularity and strictness of proof, or nearly so, as upon a trial on Indictment in the Superior Courts.

In the absence of counsel for the parties, the examination of witnesses should be conducted by the presiding Magistrates, the parties of course being allowed to put all proper questions to a witness. With respect to the mode of examination, the following remarks from Stone's work on the Petty Sessions, are very appropriate:—

It is very common for gentlemen who have not attended to the principles and rules of evidence, to fall into the error of supposing that the strictness observed in the Superior Courts, with regard to leading questions, &c., savours more of legal technicality than of equity or justice, and has a tendency to smother the truth, rather than promote its fair development; but practical experience readily detects the aptitude and ease with which an ignorant or dishonest witness may establish a series of facts, by merely answering *yes* or *no* to leading questions, when in reality he has no actual knowledge whatever of such facts, but has perhaps *heard* or *supposed* them. In short, the unanimous voice of the most learned urists and philosophers (not to mention the deliberate opinion of the learned Judges of modern, as well as of former ages) has decided that truth and impartial justice alike forbid leading questions to be put to a witness, so as to suggest favorable answers, on his examination-in-chief, *i.e.*, his original examination, on behalf of the party who seeks the benefit of his testimony.

But if Magistrates are careful to prevent *leading questions*, and to repudiate *hearsay* answers, they may be fairly allowed to relax somewhat from the strictness exercised in the Superior Courts, with regard to other rules of evidence which are not of such general force, and which have of late years been qualified to some extent by the learned Judges themselves. At all events, in the administration of justice in their minor Courts, Magistrates ought not to deprive suitors of the benefit of the fullest investigation, by too nice an observance of technicailties.