

given by the act.
a contract for the
ld in trust was en-
liance with a reso-
gation, by a mem-
e appointed for the
ing of such lands,
by the purchaser
fic performance, a
t of equity was

McLachlan, 625.

PURCHASE.

l estate conveyed
, receiving back a
conveyance to be
e rents, &c., and
the grantor; and
rved a right to the
s to purchase the
bill filed to set
t as infringing the
uties, and for an
a and profits re-
f even the agree-
the rule it was
e grantee; and
was directed, re-
of costs until after
alleging any ap-
unt.

Dempsey, 584.
performance,"

(SIDE.)

having a mort-
gager of sale on
the sale the mort-
the auction it
tioner that the
e premises was
e the amount of
ge debts against
estate. At the
directors, who
the society, bid
is own name,
appeared that he

SHERIFF.

had acted only as agent for a third party; after the sale the purchaser bought up the interest of the other mortgagees, who had already commenced proceedings to foreclose, carried on the foreclosure suit and obtained a final decree of foreclosure, no notice being taken of the fact of the money having been paid to the mortgagees; before this order was obtained, however, the mortgagor claiming to have the surplus of the purchase money over and above the amount of the mortgage under which the property was sold, filed a bill for that purpose, when the agent of the purchaser swore that he had not intended to bid the sum he did in addition to the amount of the mortgage paid off. The court set aside the sale, and gave the mortgagor leave to redeem: The Chancellor dissenting, who thought the sale already made should be carried out and the surplus of the purchase money paid to the mortgagor.

Montgomery v. Ford, 210.

SECONDARY EVIDENCE.

Where, to let in secondary evidence of the contents of a bond, the attorney of the obligor was called as a witness, and upon being shewn letters written by himself in which a deed and bond were referred to, and the contents of the bond stated, he swore that he had no recollection whatever of the existence of these instruments, although he had no doubt, from reading the letters, that such a bond had existed; the court refused to receive such letters as evidence of an admission by the obligor's agent of the existence of the bond, they not being part of the *res gestæ*.

Clarke v. Little, 363.

SHERIFF,

(SALES BY.)

See "Statute of Frauds." "Parties."

4 s

SPECIFIC PERFORMANCE. 683

SOLICITOR AND CLIENT.

A person in indigent circumstances being entitled to a grant of land from the Crown, had consulted a solicitor with a view of obtaining the patent. In the course of their business transactions the solicitor wrote, "I think I can manage for you so effectually that I can get your deed from Government probably through some assistance on my part." The client having executed an assignment, as he alleged, by way of security to the solicitor, and the patent for the land having been issued, the solicitor set up the transaction as an absolute purchase, in consequence of which the wife of the plaintiff, acting as his agent, took steps to assert her husband's claim, and procured the assistance of her brother in ferreting out the nature of the title held by the solicitor: after repeated applications the solicitor agreed to reconvey upon being paid the sum of £170, asserted by him to be due. This amount the brother advanced, and took a conveyance of the property, said to be worth £800, in his own name, and then alleged he had purchased for his own benefit. The court [*Esten, V. C., dissentiente,*] declared the deed to the solicitor a mortgage only; that his assignee had in fact acted as agent of the plaintiff, and could not purchase for his own benefit: and directed an enquiry as to certain points left in doubt by the evidence before the court, and an examination of the solicitor's books; unless the purchaser would consent to reconvey upon receiving back the amount paid by him to the solicitor.

McIlroy v. Hawke, 516.

SPECIFIC BEQUEST.

See "Will," 4.

SPECIFIC PERFORMANCE.

A vendor executed an agreement to convey certain premises and re.