writing in question altered as the defendants allege? the judgment should, I think, be reversed, because there is no finding that it was so altered, and the onus of proof of such is ordinarily upon the party asserting it. In a writing of this character an apparent alteration is ordinarily presumed to have been made before it was signed.

But the case is not one of that single and plain character. The action is for specific performance only, and no attempt to obtain in the alternative damages for breach of contract has been made, nor any evidence given sufficient to support such a claim.

And the case is so full of uncertainties that I cannot doubt specific performance was rightly refused, and if so there was no other course open than to dismiss the action.

The writing is of a slovenly character, in pencil only, illegible and misspelt, and no copy of it was made. A very fit subject for alteration without detection, and, making it still more unsatisfactory, it has been crossed and scored over and many words added, in pencil, so as to make it quite unintelligible, in some respects, without parol evidence. These are not matters entirely irrelevant to the issues in this action for specific performance of the agreement—relief not given *ex debito justitiae*, but resting in the judicial discretion of the Court—nor necessarily in an action for damages. See Moine v. Hendron, 30 Miss. 110; Addison on Contracts, 9th ed., p. 175; and Am. and Eng. Encyc. of Law, 2nd ed., pp. 272-9.

See observations of Martin, B., in Croockewit v. Fletcher, 1 H. & N. at p. 912, which cannot be repeated too often, as to any tampering with or alteration in written documents, referring to Davidson v. Cooper, 13 M. & W. 778. . . . The plaintiffs assume quite too much in taking it for granted that the alteration has left the writing plain and legible—that the changed word is not plainly "ninty," intended for ninety. That is not so, and consequently, the onus was upon them of proving the writing to be that which they allege it to be; quite a different case from one in which the alteration is plain on the face of the document, and there is nothing to prevent the presumption against its having been wrongfully made arising. The plaintiffs have not satisfied this onus of proof. The trial Judge has not found even that the word is "ninty," and if the onus rested upon the plaintiffs of proving that when the writing was signed the word was "ninety," the action was rightly dismissed.

There are also all the other circumstances of the case to be taken into consideration . . . and the fact that upon the evidence it must be found that one lot at least had been sold by the vendor before the date of the writing, and there