of January, 1892, were to be taken by the defendants for commission, whether they should then be due or not.

The plaintiffs sued the defendants as guarantors of the payment of a certain promissory note taken for goods sold in 1891. The defendants denied the alleged guarantee, and also pleaded that their signatures to the agreement for 1891 were obtained by fraud.

Evidence was given on the part of the defendants, to show that in the course of negotiations for the contract for 1891, the defendants expressly stipulated that they were not to be responsible for notes to be taken, except that the plaintiffs were to be allowed a period ending on the 1st of January, 1892, to investigate the quality of notes taken by the defendants who were to accept on account of commission any which were objected to within that period, after which their responsibility was to cease, and that this was agreed to by the plaintiffs. Further that the contract was prepared and produced to them by one of the plaintiffs, and was signed by them without reading it over, and without knowing that it contained the clause relating to a guarantee of notes. On the other hand, one of the plaintiffs gave evidence in denial of all this.

The Judge of the County Court found in favour of the defendants upon the issues of facts thus raised, but did not find whether the plaintiffs had been guilty of any fraud or misrepresentation in procuring the defendants' signatures to the contract.

Held, that in order to reform an instrument purporting to contain the agreement of the parties, the evidence to vary the language must be of the clearest and most satisfactory character, and the party seeking the rectification must also establish that the alleged intention to which he desires it to be made conformable continued in the minds of all parties down to the time of its execution, and as the County Court Judge, in giving his reasons for the decision, did not state that in his opinion the evidence was overwhelming and perfectly clear and satisfactory, the verdict should have been set aside or a new trial granted, but for the other objection to the plaintiff's recovery.

The defendants' undertaking, as proved in evidence, was that they agreed to guarantee any notes taken by them, but no demand was ever made upon them to sign any guarantee of any particular note, and the claim in this action was found as upon an alleged guarantee of the particular note in question.

Held, that the proper construction of the agreement was, that it provided for the execution of some further instrument, and was not one of present guarantee of the notes to be given in future, and as this was not an action for damages for neglect or refusal to enter into a guarantee, the plaintiffs were not entitled to a verdict or to have the judgment in favor of defendants set aside to enable them to change the form of the claim.

Appeal dismissed with costs.

Howell, Q.C., for plaintiffs.

Martin, for defendants.