

ment, made in February, 1901, reciting the previous agreement and default, whereby defendant agreed, in satisfaction of all plaintiffs' claims, to supply them in the autumn of that year with 350 barrels, and in which it was stated that defendant handed over his note for \$100 as a guarantee for the faithful performance of this agreement, and in case of his default the plaintiffs were "to realize the said note for the amount of the same as liquidated damages for such default." The defendant had not delivered the 350 barrels as agreed; the plaintiffs had collected the amount of the note; and defendant now contended that this satisfied all the damages to which they were entitled. The plaintiffs asked reformation of the instrument, if it did not express the true agreement that they were not excluded from their remedy in damages on the first contract. The trial Judge held that it did not do so, and gave judgment for plaintiffs for \$2.25 per barrel for 304 barrels, \$684 in all.

H. D. Gamble, for defendant, appellant.

W. S. Brewster, K.C., for plaintiffs.

The judgment of the Court (MEREDITH, C.J., LOUNT, J.), was delivered by

MEREDITH, C.J.:—It is abundantly clear that the agreement given effect to by the trial Judge was the agreement intended to be entered into by the parties; and if evidence of the correspondence and transactions leading up to it was not admissible to construe the writing, it was admissible for the purpose of reforming it, and it should be reformed. An instrument may be reformed after breach: see *Wood v. Dwarris*, 11 Exch. 493; *Perez v. Oleaga*, ib. 506; *Olley v. Fisher*, 34 Ch. D. 367; *Carroll v. Erie County Natural Gas Co.*, 29 S. C. R. 591. In any event the judgment was right on the proper interpretation of the second agreement as it stood.

Appeal dismissed with costs.

WINCHESTER, MASTER.

DECEMBER 17TH, 1902.

CHAMBERS.

HALLIDAY v. RUTHERFORD.

*Administration—Claims of Creditors—Promissory Note—Interest—Corroboration—Open Account—Statute of Limitations—Work and Labour—Release of Claim.*

Claims of creditors against the estate of Isaac Rutherford, deceased, were sent in under order of 30th October, 1902,