

defendants deny this and say that the agreement when read and translated into the plaintiff's language and theirs was, as is now set out in English and signed by the parties. The case presents difficulties. The evidence of one party, the plaintiff, against the defendants, three—husband, wife and son—but the circumstances and the manner in which the plaintiff gave his evidence almost compel me to accept plaintiff's evidence as against the others.

As to the clauses by which the plaintiff attorns to the defendants, and which permit the defendants upon giving certain notice to retake possession of the property and to sell it and to have all payments on account of purchase money forfeited to the defendants are not complained of by the plaintiff, but these clauses are harsh and unreasonable all the same. In giving his evidence the plaintiff appeared to me to be truthful and as one who did not desire to state anything other than his objection now being dealt with, but after all and upon all the evidence I cannot say that I am free from reasonable doubt. In an action for rectification or reformation, no doubt jurisdiction must be carefully exercised, 18 Beav. 658.

This is not a question of mistake—wrongdoing is charged on the part of the son of defendants. It is possible that the plaintiff took it as a matter of course, that so comparatively small a change as he desired would be conceded. The defendants now attach much importance to the change and refuse to make any concession.

The language of Lord Thurlow, as quoted by Armour, C.J., in *Clarke v. Joselin*, 16 O. R. at p. 78, that to reform an instrument requires the clearest evidence—irrefragable evidence to be adduced, may be qualified, as stated by the learned Chief Justice, but so qualified, it is, that the writing must stand as embodying the true agreement between the parties until it is shewn beyond reasonable doubt that it does not embody the true agreement between them. I must dismiss the action, but it will be without costs. There will be a declaration that there will not by reason of any past default be a forfeiture of any money paid upon the land under the agreement in question to the defendants, and that the defendants shall not proceed to seize or sell for interest or rent, or for principal in default under the notice given by defendants, until after the expiration of one