

on 23rd June in the years 1905, 1906, 1907, 1908, and 1909, together with interest to be computed from 23rd June, 1903. This agreement is a very elaborate and carefully prepared instrument, but it is not necessary for my present purpose to refer to any of its provisions other than the following:—

(1) The mining company were not to be given possession of the lands until the judgment for \$4,500 and interest and costs and a further sum sufficient to make \$10,000 had been paid.

(2) Upon the execution and delivery of that agreement the mining company were for all purposes substituted for and in the place of defendant with respect to the first agreement, . . . which was to be deemed merged in the latter agreement, subject to this, that the latter agreement and anything that might be done thereunder should not affect or prejudice the claim of plaintiffs against defendant in respect of the sum of \$24,000 which fell due on 23rd June, 1904, and that maturing on 23rd June, 1905, or upon the interest on the unpaid purchase money up to the date of the assignment, viz., 19th January, 1905, or prejudice the right of defendant with reference thereto, but until the purchasers shall pay the first and second instalments of \$24,000 each, with interest as aforesaid, the rights of plaintiffs and defendant shall remain as then existing in respect of these instalments and interest. That agreement recited that plaintiffs made the claim, as now sued for, and that defendant resisted that claim, asserting that there was not any personal liability on his part for anything beyond the judgment recovered upon his note for \$4,500.

This action is therefore brought to recover the amount due 23rd June, 1904, on principal \$24,000, the part of the instalment due 23rd June, 1905, say 7-12 of 24,000, or \$14,000, and interest for 1 year and 7 months from 23rd June, 1903, to 19th January, 1905, on \$120,000, say \$9,500, in all approximately \$47,500.

The defendant alleges that it was expressly understood and agreed that he was not to be personally liable for any amount beyond the deposit and the promissory note given by him, and he asks, in case there is liability under that agreement as it stands, that it be reformed to make it express the true intention of the parties.

No case has been made upon the evidence for reformation.