

The plaintiff claimed specific performance of the following contract:—

“Ohio City, Cal., July 14th, 1911.

This agreement made in duplicate this 14th day July, 1911, between T. Clark, of Kingsville, Ont., and Darius Wigle of same place. I hereby agree to sell two thousand shares of Sandy Hook to Darius Wigle, Mining Stock, *Wigle agrees to take said stock*, which mine is located on the Ohio Creek, Gunso County, Cal., at seventy-five cents per share, the same to be transferred three months from this date without interest, the parties hereto set their hand and seal in the presence of

Norman Peterson,

Witness.

(Sgd.) Thos. Clark,

(Sgd.) Darius Wigle.”

At the trial plaintiff's counsel put in a few questions from the cross-examination of the defendant admitting his signature to the document, and closed his case. The defendant, being called on his own behalf, testified that the writing was drawn up by the plaintiff in a tent at the mine in California, in presence of one Norman Peterson. He swore that the writing was not in the same condition as when he signed it; that the italicized words “*Wigle agree to take said stock*,” had been inserted since he signed it, and he produced the paper which he said was written and signed at the same time. It was also in plaintiff's writing, but did not contain these words. This he said was the real agreement “as near as possible;” that he never heard of the alteration until last winter, about February, or perhaps just before the issue of the writ (11th of January, 1912).

Norman Peterson was called by the defendant, having heard the evidence of both plaintiff and defendant. He said that defendant said something about, if everything went as he calculated, he would take it, i.e., the stock, or be able to take it. He said he paid very little attention to what was going on. He could not say if the writing was in the same condition, or whether the two writings were just alike. And on cross-examination he said, “he thought it was a sale in the tent, the way they talked.”

Plaintiff was then called in reply. He said defendant dictated this agreement, and he, plaintiff, wrote it out. That he, plaintiff, said it ought to have those words in it. That