

The defendant Gzowski says he was in and out of Mr. Segsworth's office 6 or 7 times during the 18th, but that he left it to go to his own office after banking hours, which would be after 3 o'clock, to make a deposit in order to get the cheque marked by the bank for \$1,000, which was to be paid to Currie, the owner of the mine, on the closing of the transaction that afternoon. Gzowski said that he was standing by Warren when the conversation with Pitt took place over the telephone, and that during the conversation Warren put his hand over the receiver and said that he (meaning Pitt) wanted 100,000 shares at 10 cents a share, and, after conversing with him (Gzowski), he heard Warren tell Pitt that he could not have them at that, that a syndicate had been formed by which 100,000 shares would be put on the market at 15 cents, but that he would reserve \$2,000 worth of shares in that syndicate for him. He says that there was nothing said about a sixth interest at \$40,000; it was not mentioned at all.

Mr. Segsworth was, I think, in error in supposing that Gzowski was present all the time, from about 3 o'clock until the contract was signed, which was about 6 o'clock. Gzowski gives the reason for his absence from Segsworth's office for some time after banking hours, which I fully credit. His absence from Mr. Segsworth's office was not noticed by the latter.

Loring says that he was present when Warren was conversing over the telephone with the plaintiff. He said that Warren told him that Pitt wanted 100,000 shares at 10 cents, and that his (Loring's) reply was that it was "out of the question" or "we cannot consider it." Loring stated that nothing was said about the one-sixth interest in the mine for \$40,000. He says that the price had been fixed for 100,000 by a syndicate before that at 15 cents, and that the pool had been practically closed before then.

When Pitt says that Warren was to consult his partners before any offer could be accepted, and Warren, Gzowski, and Loring say that after consulting them they refused to accept, and told Warren so, I cannot believe that Warren, who refused to enter into any contract without first receiving the sanction of his partners, deliberately and in their presence told the plaintiff he could have the 100,000 shares for \$10,000.