had made any Explorations or Examinations of the mine or any preparations whatever for taking or mining the ore or that they or any agent of theirs had ever visited or taken possession of it or of the premises; that they has expended any money in preliminary preparations or arrangements for that purpose or that they were at the time of the filing of the Bill ready that their servants and agents or with their funds to proceed to mine this ore nor if the one third of this ore formed any part of the inducement that move Gray to make this grant and contract if it was an item in the consideration first and who can doubt that it was the great benefit and advantage that he expected to derive from it that Rider & Trotter have not been as "ready, desirous, prompt and eager" to make this mine yield them his proportion of the ore to be derived from his share of the profit and advantage to accrue from the contract as this Court think they should have been to entitle them to its coercive interposition. If the contract should be executed according to their construction of it, it will depend altogether upon their views of expediency whether he will ever derive any benefit under it, for they ask the Court to enforce it as that Gray and all others under him shall be compelled to stand off until they, Rider and Trotter have taken their ore which it is alleged by them they have a right to take whenever "they deem it expedient to do so." In the case of Crolow vs Ormsby, 2 Schs & Lef 602. The Court says "where "the performance of the contract is sought by the defaulting party, he cannot "enforce it against the person injured by his default." This case further decides that were the object of one of the parties would be defeated by delay in the execution of it, if the other party delay he shall not afterwards be allowed to insist on performance. Lord Chancellor Redesdale refers to many cases in support of this position and says "I remember another case of a "different ~~character~~ description where the same thing was held and then "mentions a case of the precise description as this "A contract was entered "by a Mr Sparrow with persons who were desirous to have their collieries "work and made productive" Sparrow delayed for several years the performance of the contract; and when performance of the contract was afterwards insisted on the Lord Chancellor says, the Court declares in these words, "you cannot have this contract performed because the object "of the parties was to have an immediate income from their collieries" and then proceeds in his own language, "in many other cases of this "description Courts of Equity ought to refuse specific performance where "the delay would be very injurious to the party sought to be charged." 603. The Court has examined this contract carefully and finds it to be a mere memorandum or preliminary agreement; evidently not containing the word of obligation designed to make it mutually binding upon the respective parties; upon its face providing for some other obligation to be given by Rider and Trotter, and stipulating for proper and legal papers to be drawn "as soon as may be and signed by the parties, when it is to be cancelled." For these reasons, and those above set forth this Court cannot consistently with the principles and rules established by Courts of Equity and the well settled decisions of our own Courts, enforce this contract and must therefore sustain the demurrer.

Wm Geo. Krebs

The said cause so standing was continued from term to term until the second monday in May last. at which said term Court; on the second monday of May in the year last aforesaid came again into Court here the parties aforesaid by their Solicitors aforesaid. and afterwards, to wit on the thirteenth day of June in the year last aforesaid the Court passed and filed in said cause the following Decree to wit;

William Rider and Jonathan Trotter vs John B. Gray & others } In the Circuit Court for Baltimore City. May Term 1854.

The above cause having been set down for hearing and having been fully argued by the Solicitors for the Complainants and defendants and the Bill and Demurrer thereto and all the other proceedings having been by this Court read and considered.

It is thereupon this thirteenth day of June 1854. by the Circuit Court for Baltimore City adjudged ordered and decreed that the Bill in this case against all the Defendants so far as it seeks a specific performance of the contract therein alleged be dismissed with costs to be taxed by the Clerk; but that the said Bill, so far as it alleges the payment of money by the said Complainants to the said John B. Gray as the consideration of the contract therein alleged be retained for the purpose of affording to the said Rider and Trotter such relief as they may be entitled to in reference to the money so alleged to have been paid by them. by decree for the repayment of the same or of some part thereof if it should appear that in Equity the same or any part thereof should be decreed by this Court to be repaid with liberty to the said Defendant John B. Gray to answer the said Bill in reference to said allegation and to make such defence as he may be advised to rely upon against the repayment of the said money or any part thereof in the usual manner; Provided that said Bill shall be retained for the purpose of affording said relief to said Rider and Trotter in reference to said money so alleged by them to have been paid upon the condition that said Rider and Trotter within thirty days from the date of this decree shall file in this Court to be cancelled the original agreement between them and said Gray a copy of which is filed as an exhibit with the said Bill otherwise said Bill to stand and be absolutely dismissed against all the Defendants with costs.

Wm Geo Krebs.

And afterwards, to wit, on the twelfth day of July in the year last aforesaid the said Complainants by their Solicitor aforesaid filed in Court here in said cause the following paper writing to wit;

Memorandum of an agreement made this sixth day of April A.D. 1850. by and between John B. Gray of Fredericksburg State of Virginia who represents himself to be the owner of the Abrego Cinnabar ore mine in California of the first part; and William Rider and Jonathan Trotter both of the City, County and State of New York of the second part.

Witnesseth that the said Gray in consideration of Ten Thousand Dollars to him in hand paid by the said William Rider and Jonathan Trotter full power and authority to take from said Cinnabar mines on Thousand Tons of Cinnabar ore of such quality as they or their agents shall select and the