

Counsel for Parties.

ing rights under the Rarus patent as would be a decree upon any other form of answer."

We concur in the views thus expressed, and the result of the whole case is that the complainant failed to show any jurisdiction in the Circuit Court to try this case, and the order of the Circuit Court dismissing complainant's bill and giving judgment for the defendant is, therefore,

*Affirmed.*

BOSTON AND MONTANA CONSOLIDATED COPPER AND SILVER MINING COMPANY *v.* MONTANA ORE PURCHASING COMPANY.

Error to the Circuit Court of the United States for the District of Montana.

No. 102. Argued December 3, 1902.—Decided February 23, 1903.

The same counsel appeared as in No. 103.

MR. JUSTICE PECKHAM delivered the opinion of the court.

This case arises upon demurrer to the complainant's complaint. The demurrer was sustained and the complaint dismissed, and judgment given for the defendants, and thereupon the circuit judge certified the question of jurisdiction to this court.

The action was brought to recover \$500,000 damages sustained by the plaintiff in error by reason of the wrongful taking of ore of that value from the mining claim of the plaintiff in error. Substantially the same averments are made in the complaint as in the case which immediately precedes and the questions involved are the same, excepting that the former is a suit in equity and this is an action at law.

For the reasons stated in the opinion in No. 103, the judgment in this case is

*Affirmed.*

BOSTON AND MONTANA CONSOLIDATED COPPER AND SILVER MINING COMPANY *v.* CHILE GOLD MINING COMPANY.

Appeal from the Circuit Court of the United States for the District of Montana.

No. 104. Argued December 3, 1902.—Decided February 23, 1903.

The same counsel appeared as in No. 103.

## Syllabus.

MR. JUSTICE PECKHAM delivered the opinion of the court.

This case involves the same questions as that of the *Boston and Montana Consolidated Copper and Silver Mining Company v. The Montana Ore Purchasing Company &c.*, (No. 103, *ante*, p. 632, the only point of difference between the two being that the Chile Gold Mining Company and the other defendants herein are sued as lessees of the Montana Ore Purchasing Company, they having as such lessees attempted to interfere with the complainant's right of property. The complaint was dismissed for want of jurisdiction.

For the reasons stated in the opinion in No. 103, this decree is also

*Affirmed.*

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WINSLOW *v.* BALTIMORE AND OHIO RAILROAD COMPANY.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 125. Argued December 17, 18, 1902.—Decided February 23, 1903.

A lease containing a covenant to renew at its expiration with covenants, terms and conditions similar to those contained in the original lease, is fully carried out by one renewal without the insertion of another covenant to renew. Otherwise a perpetuity is provided for, and this the court will not presume in the absence of plain and peculiar language. Where land is owned by three trustees under a trust requiring an exercise of the judgment and discretion of all the trustees and there is no evidence of authority for one of them to act alone, the execution of what purports to be a lease for five years by one of the trustees does not make a valid lease of the property, nor does it affect the share of the trustee executing it as in the case of ordinary joint tenants; and where all the trustees do not join in the execution of an instrument, the burden is on the grantee to prove the deaths of those not joining therein. Recognition or ratification by the other trustees cannot be assumed unless it is shown to have been founded upon full knowledge of all the facts.

The receipt of rent by the beneficiary under the trust directly from the tenant will not amount to a part performance of the contract in such manner as to make it binding upon the trustees not signing when it appears that the check received for such rent was not endorsed by the trus-