and ruling of the Court the defendant excepted, and prays the Court to sign and seal this Bill of Exception which is accordingly done this 22nd November 1872

W. Motter (Seal)

Defendants 4th Bill of Exceptions filed November 26th 1872 as follows to wit:

Defendants 4th Bill of Exception

After the foregoing offer had been made and rejected, as stated in the preceding Bill of Exception the defendant offered to show the costs expenses and charges of removing the coals mined from the rooms in which the coal lay when first taken from the bed of the Barton Coal mines, and the costs and expenses of removing it to the opening of the mines, and the ruling market value thereof after being transported to market and cost of such transportation, and refused the aforesaid offer. To which opinion and ruling of the Court the defendant excepted and prayed the Court to sign and seal this Bill of Exception which is done this 26th of Nov. 1872.

W. Motter (Seal)

Plaintiffs 1st Bill of Exceptions filed November 23rd 1872, as follows to wit:

Smith & others
vs
Barton Coal Co.
} No. 116 Feb. Nov. Term 1872.

The Plaintiff, to sustain the issue on their part joined gave in evidence the title papers showing title in the plaintiffs to the tracts of land called Ethiopia and the Isles, and as located on the plats, and further proved by the Surveyor Mr. Armstrong, the proper and correct location of said tracts of land, and of the adjacent tracts Maidens Delight and Mt. Clare tracts belonging to the Defendant, as

located upon the plats for Plaintiffs and Defendant, and gave in evidence all the following plats and explanations accompanying them.

(For Plats and Explanations see pages 23.34. to 24 of this Record.

of such locations & of all surveys and measurements of Coal taken from the plaintiffs land. And further proved by Armstrong that he made a survey of all the headings and rooms under the Plaintiffs lands and as located on the plats & that he made such survey of all the mines as far as he could without obstruction. That he was prevented from running more by large falls of earth, which rendered further examination impossible one of the falls is located on the plats and there were others not so located.

And further gave in evidence that the coal so taken from the lands of Plaintiffs was taken out by the Defendants, and by the and through the mouth of Defendants Mine, and the various headings as located upon the plats & as leading from the excavations of such coal upon the Plaintiffs land to the Mouth of Defendants mine.

And further gave in evidence the quantity of coal taken from such excavations of coal upon Plaintiffs land, and of the area in acres so taken.

And further proved by Thos. S. McKeag, that the Defendant knew from about the year 1864 or 65, that the plaintiffs land from which said coal was taken belonged to plaintiffs. And further proved by Crawford Shearer, that he has been a practical Miner for 40 years, and in connection with that a Civil Engineer and Superintendent of mines in Allegany County. That he is now & has been for some years past Superintendent of the Belt & Hamilton Mines. That he has lived for thirty years in Allegany County & in the Neighborhood of the Plaintiffs land in controversy. That he knows the -