tract of land called Ethiopia and the Isles and the adjacent tracts called Maidens Delight and Mt. Clare as located on the platte. That he knows well the opening or the mouth of the mines of the Barton Coal Company the defendant in this cause, as he first made it, and knows well all the headings and rooms or excavations made under its land and also all the headings and rooms or excavations extending from "Maidens Delight" into the Plaintiffs lands as well those located on the platte as those not located. That he made a thorough examination of all the excavations of coal made under lands of Plaintiffs in controversy, has surveyed all the headings and rooms extended under it as far as he could without obstructions by falls, and made an accurate calculation of the coal taken out of all the mine, and of the area of land of Plaintiffs so mined. That the headings and rooms from which the coal was taken on Plaintiffs land, were the extended headings or rooms from the defendants land below the tract called Mt. Clare, and had an only outlet at mouth of Defendants Mine as the leading heading to it, and that there was but one mouth to the Defendants mine. That he made the calculation of the quantity of coal taken from Plaintiffs land from those places located upon the platte as well as from those places extended from same rooms or headings not located upon the platte & which extensions are not located. And that he witness was not upon the survey when made by Mr. Armstrong but made a survey & examination himself at the instance of the Balt. & Hampshire Company with the knowledge & consent of the defendants counsel in January 1872. And then asked the witness to state the quantity of coal taken from the Plaintiffs land, and as so calculated by him, to which the defendant by his counsel objected because the said question required the witness to give evidence of the quantity

of coal taken from excavations not located on the platte and the Court sustained such objection and refused such question to be put and answered, but at the same stated that the witness would be allowed to give evidence of the coal taken from the headings and rooms located on the platte and mentioned in the explanation of the Surveyor accompanying the Survey, as the locus in quo of the several trespasses complained of. To which ruling of the Court the Plaintiffs excepted and his prays the Court to sign and seal this his bill of Exceptions which is accordingly done this 22d day of November 1872

H. Motter (Seal)

Plaintiffs 2nd Bill of Exceptions filed November 26th. 1872. as follows to wit;

Smith & Others
vs
Barton Coal Company

And the plaintiff further to maintain the issue on his part joined in addition to the testimony given in the plaintiffs preceding bill of exception, and which is incorporated as a part of this, gave in evidence proof tending to show that the defendant refused to allow the plaintiffs to go into the mines of defendant, and thence to the excavations made by defendant under plaintiffs land for the purpose of examining & surveying the same under the warrant of resurvey, and then further offered to prove by Dr Samuel Smith, that he was acting for the plaintiffs in the prosecution of this cause, that before and after the suit in this cause was brought and before the warrant of resurvey was issued therein he called upon both Messrs Cunningham and Hawkins agents of defendant at the mines and elsewhere and asked permission of them to go into defendants mine & thence into the excavations of coal made on Plaintiffs land with-