proper and competent persons to make examination & survey of the same on behalf of the plaintiffs. and of the extent of the workings thereof. and both said Cunningham and Hawkins refusing such permission would not allow the plaintiffs nor their agent to enter said mines to which offer of testimony the defendant excepted and the Court sustaining such exception ruled out such testimony so offered to be proven by said witness Smith & to which ruling of the Court the plaintiffs excepted & now here prays the Court to sign and seal this 2d. bill of exception which is accordingly done this 23d day of November A.D. 1872.

W. Motter (seal)

Plaintiffs 3rd Bill of Exceptions filed November 26th 1872. as follows to wit:

Smith & others
vs
Barton Coal Company

And the plaintiffs on his part further to maintain the issue joined in addition to the testimony given in the plaintiffs preceding bills of Exceptions and which are hereby incorporated as a part of this gave in evidence by Lephas Moore that he was a miner engaged at the defendants mines. and was acquainted with the same that he was on the Survey made by Wm Armstrong the Surveyor in the cause. was with him in the various headings and rooms as located on the platts. was with him in heading located on platts as W. 6. which he pointed out to the Surveyor. and made a close examination of it. & then offered to prove by said witness. that there were excavations of coal & opening from said heading westward into "Ethiopia and the Lake" lying in said heading about 150 feet in a Southerly direction from the boundary line. Maidens Delight. and further and that he pointed out the same to the surveyor and

that such excavations or openings were so filled up with falls of earth that it was impossible to get into them to make an Survey of them but the defendant objected to all said offer upon the ground that said falls of earth were not located on the platts and the Counsel for the plaintiffs stating at the time of the offer. that he asked the question of the witness for the purpose of showing animus on the part of the defendants but sustained the objection and would not allow the same to be given to the Jury to which ruling of the Court the plaintiffs excepted and now here prays the Court to sign and seal this their second bill of exceptions which is accordingly done this 25th day of November A.D. 1872.

W. Motter (seal)

The following Statement of facts together with the 5th Bill of Exceptions taken by the Defendant were filed November 26th. 1872. to wit:

At the trial of this cause the plaintiffs to sustain the issues on their part joined in addition to the evidence contained in the aforegoing bills of Exception (which are made part of this) further offered in evidence testimony showing the death of John A. Smith on the 4th July 1868. in the District of Columbia where he resided at the time of his death. and then offered in evidence a certified copy of the letters testamentary granted to Walter S. Cox and Thomas C. Cox. his Executors. (as follows)

In the Orphans Court of the District of Columbia.
District of Columbia. Washington County to wit;

The United States of America.

To all persons to whom these presents shall come Greeting:
Know ye that the last Will and testament of John A. Smith late of Washington City District of Columbia deceased. hath in due form of law been exhibited proved and recorded in the office of the Register of Wills for Washington County