tending to show that the defendant had refused to allow the Sheriff and Surveyor to enter the mines of the defendant to make the survey.

The Defendant then proved by Thomas A. Cunningham. that he is and has been the general agent of the defendant since its organization in 1864. That he bought the tract called Mt. Clare from Thomas S. McKaig as Trustee at public sale on the representations of Judge Dohlom. that it joined Maidens Delight. & was never with him McKaig. on the premises or with any other person prior to the purchase and did not then know of any land of the plaintiffs or of any other person lying between said tract and Maidens Delight.

And also proved by William Hawking that he has been the Superintendent of the mines of the defendant since - July 1865. and knows all its workings that he knows heading No. 2 & No. 3. was with the Surveyor when they were located and knows that no coal was taken from either of them since July 1865. and that said headings and rooms connected with them had the appearance of old workings - when he first knew them. the props looked dangerous and the were all dangerous. And that the rail road & inclined planes as located on the plats. were on the premises as they now are when he went there in 1865. and have not been changed. and that no objection has been made to the use of them by the defendant - since that time. And that he mined out the coal - shown by heading No. 6. and heading No. 5. and the room connected with it were taken out by him in 1870. and not before that time. and that he also mined out the coal in headings No. 1. and No. 4. as shown on the plats and the rooms connected with them in the years 1866 & 1867. extending up to December 1867. That he did not know when mining said several headings and rooms that he was working on the lands of the plaintiffs and had

instructions from Mr. Cunningham the general agent of the defendant when he first went there to be careful not to work over the lines of the lands of the defendant and also that the coal was mined out by the miners who worked for the defendant and after mining the coal put it into the mine cars and run by them to the headings and then carried by the defendant to the mouth of the mine. and that the cars were thus loaded and run out each day.

" The Defendant also gave proof by Thomas A. Cunningham & William Hawkings tending to show that it had no knowledge of any land of the plaintiff. and that it honestly believed that its tract called Maidens Delight - covered all of the coal mined out of the rooms and headings located on the plats. And also gave testimony to show that the coal land of the plaintiffs was not worth more than Three - hundred dollars per acre. And the defendant further gave evidence on cross examination of the plaintiffs witnesses and by witnesses examined by its counsel tending to show that the best mode in which the plaintiffs - could make their coal lands available as coal lands would be by sinking a shaft making a tram road of seven miles in length with inclined plane. a bridge across the Potomac river sidings and other improvements. but that without making such improvements the plaintiffs coal could be made available.

Also gave tending to prove that all the coal of the plaintiffs located on the plats. excepted about thirty one acres

good merchantable quality.

The plaintiffs then prayed the Court to instruct the Jury as shown by their prayers numbered from one to four - inclusive and the defendant prayed the Court to instruct the Jury as shown by its prayers from one to ten inclusive. and the Court granted all the prayers of the plaintiffs.