said John Neff prior to the said agreement, - That no consideration passed from the said John Neff to these defendants, or either of them, nor dis any other reason or inducement exist why they should grant to said Neff a right to enter upon their soil and dig for coal without restriction as to time, place or quantity - These Defendants further State, that in or about the last of October 1828, the said Josiah Frost Junior and John Neff were in treaty for the lands of the said Josiah, when these defendants understanding that the said Josiah Frost Junr. and John Neff had gone up to Benjamin C Vaughan's the Defendants followed them up to the said Vaughans and there informed the said John Neff, that these defendants owned each one third of the coal in the lands, which the said Josiah Frost was about to sell to him, and that the said Josiah Frost had promised to let these defendants have three acres of land at the mouth of the coal pit, or at the mouth of any other opening which these defendants might choose to make, and that the said Josiah Frost Junr. had promised to allow these defendants to make other and different openings from the opening then on the land, and which was the only coal opening or coal pit on the said lands devised by the said Josiah Frost Senior by the will aforesaid - The said John Neff replied that these defendants had come up for the purpose of interfering or undermining him the said John Neff in his contract with the said Josiah Frost. These defendants replied, that the said Neff, after he purchased, might sell to some one who would give these defendants trouble in working their coal and that the land was as much the land of these defendants as it was the land of the said Josiah Frost Junior, but that if Mr. Neff did not choose to carry out the undertaking, which these defendants had with the said Josiah Frost that these defendants could and would purchase the interest of the said Josiah Frost junior - Whereupon the said John Neff agreed, that if he purchased from the said Josiah, who was present at the whole of this interview he would give these defendants the privilege of building at the mouth of the coal mine for miners or coal diggers and the privilege of taking out coal at any other opening which they might choose to make, These defendants insisted on the agreement being put in writing when Benjamin C Vaughan was requested to draw the writings, and to carry out this understanding was the only object of the said agreement drawn by Vaughan - It was so done, and a few days thereafter the said Josiah Frost Junior sold and conveyed his interest in the land to the said John Neff - And these Defendants insist, that even by the copy of the articles of agreement filed by the complainant, it is expressly confined to Josiah Frost Junr's part of the land devised to him by his father, or "Josiah Frost's part now sold to John Neff," and these Defendants aver that if they had understood the agreement as extending to the lands which these defendants held under the will of their father, they never would have signed or executed it, That there was no consideration passed between the parties for any such a contract - and these Defendants aver that John Neff never pretended that the said agreement gave him any such

rights or privileges or any interest whatsoever in the lands which were devised to these Defendants by their father until about seven years after said agreement had been entered into - Nor do these defendants believe that the said John Neff would even then have set up any such an unfounded claim, if it had not been, that he had sold a large portion of these lands so purchased from Josiah Frost Junior to Charles Williams and Orlando Harryman, and promised to make them a title in fee for the same, which he was unable to do, because these defendants held each one third of the coal in said land by the will of their father, and these defendants refused to sell said interest, or join the said John Neff in said conveyance, unless these defendants received a certain portion of the purchase money - Then for the first time these defendants heard of the claim of the said John Neff as now set up in the complainants said bill of complaint, These defendants then or now positively denied the right of the said John Neff to any interest in the coal in the lands of these defendants as devised to them by the will of their father, and they now charge that the complainant knew at the time he purchased, that these Defendants denied any such right in the said Neff, and that the complainant was purchasing a law suit - These Defendants admit that the complainant and these defendants are tenants in common in the coal in that part of the land, which the complainant purchased of the said John Neff as part of the land conveyed to him by the said Josiah Frost, Junr, and which these defendants believe amounts to about 14 to 18 acres - To a division of the coal in this piece of land by measurement, as said complainant proposed, these defendants have not only no objection, but are anxious for said division, because these defendants have about the same opinion of the complainants since that the complainant charges in his bill he has of the skill of these defendants to manage their own business - These defendants aver, that previous to the sale by the said John Neff of his interest in and to the land sold to the said complainant the said John Neff had taken a large quantity of coal out of said coal mine to wit, from four to six hundred thousand bushels with the understanding and agreement that these Defendants should take an equal quantity each whenever they desired to do so, and these defendants aver that neither of them have yet taken out any thing like the amount which the said Neff took out previous to his sale to the complainant - And these Defendants claim to take out as much coal as will make them equal with the said John Neff in that respect - These defendants admit that they placed the said George Layman in said coal mine and authorized him to take coal therefrom as they had a right to do under their agreement with the said John Neff - These defendants also admit that the said Layman has not kept an exact account of the number of bushels taken out by him because the said John Neff kept no accurate account whilst he was taking out coal and the said Layman has not taken out one third of the coal which said Neff took out under the agreement before he sold to the complainant. But these defendants deny that the said Layman has been carrying on the mining of