25, and specially to his answer as stated, to the 8th interrogatory because the same is impertinent incompetent & inadmissible evidence.
26, and specially to his answer as stated, to the 9th interrogatory, because the same is inadmissible incompetent and irrelevant.
And the said complainant excepts to the 9th interrogatory and to the answer to the 9th interrogatory of the examination of Josiah Frost as a witness before George W Devermon Esq. &c.
27, To the 9th int, the said complainant excepts because the said interrogatory relates to matters not admissible in evidence in the cause but illegal and impertinent.
28, To the answer to said 9th int, because the said interrogatory is exceptionable for the reason stated in the 27th exception.
29, and because said answer to said 9th interrogatory is illegal impertinent and incompetent evidence.

George A Pearce, Solr. for Complainant

And the defendants also by their solicitor filed in this cause their exceptions to the testimony in the words following, to wit.

John Young vs. Meshack Frost & others. — In Allegany County Court sitting as a Court of Equity. The defendants by their counsel except to the testimony of the plaintiff in the following particulars, viz.

1, Defendants except to the third interrogatory last commission No 6, to I. L. Skinner as leading and illegal & to the answer thereto, the declaration of John Neff therein referred to, not being evidence.
2, Defendants except to the answer of I. L. Skinner to the first interrogatory commission, marked last commission No 4, because the declarations of Isaiah Frost Meshack Frost not being present are not evidence against them, and because the declarations of Isaiah cannot influence, much less determine the construction of either the will of Josiah Frost, senr. or the agreement of 1828, being complainants exhibit, marked E, and because the declarations of John Neff as deposed to by said Skinner are not evidence in the cause.
3, Defendants except to the said Skinners answer to the second interrogatory same commission, because the declarations or conduct of the said Neff are not evidence.
4, Defendants except to the evidence of James L Armstrong wherein he gives the admission of Meshack Frost of a certain point in the county as the beginning of Lot No 3626 the said declarations being no evidence against Isaiah Frost. — Wm Price, for Defts.

Which being read and heard, the opinion and decree of the Court was afterwards filed in this cause, to wit, on the 9th day of October 1846, which said opinion and decree of the Court is in the words following to wit.

John Young, vs. Meshack Frost, Isaiah Frost & George Layman. — In the examination of this case several questions of interest were raised by the counsel and discussed with ability; but the construction which I have placed on the agreement of the 27th of October 1828, renders it unnecessary to express an opinion

of those points. I am satisfied from an examination of the evidence, that the paper referred to in the testimony of George M'Culloh, and designated as number 4, is the true copy of the original agreement, mentioned in the proceedings, and as it corresponds with the agreement described in the bill, I can perceive no reason for any just exception to the pleadings; either on the ground of variance, between the contract charged and that which was proved, or because the contract is not set out with sufficient distinctness and precision. It is certainly an undoubted proposition, that the contract charged in the bill must accord with that which is verified by the evidence, but when that is accomplished, I am aware of no principle of law, which could deprive a complainant of the specific execution of a contract, unexceptionable in other respects, because he was mistaken in the accuracy of a paper referred to, as a supposed copy of a lost agreement. If there had been created any real doubt, as to whether the paper referred to, as Exhibit E, or the paper, numbered 4, was the representative of the original agreement, the case would have presented a different aspect, as there is a marked discrepancy between them, and the Court could not have pronounced which was to be enforced. But this difficulty is removed by the evidence, and the objection is indeed at once silenced by the answer of the defendants, in which they admit that the paper E is not an exact copy of the agreement. The agreement is in these words, "Articles of agreement made and agreed on this 27th day of October, 1828 between Isaiah Frost, Meshack Frost and John Neff, heirs and representatives of Josiah Frost deceased, have and do hereby fairly agree to and with each other, that they and their heirs and assigns shall hereafter have and enjoy free and equal intercourse, that is to say to each one undivided third part of all the coal in and on our lands, that is to say, Josiah Frosts part now sold to John Neff. And the said Isaiah Frost doth agree to let John Neff and Meshack Frost have free intercourse to the coal mines on his property left him by his father and he further agrees to let Meshack Frost and John Neff have the privileges of coals on his land and the privilege of building a house at the mouth of the pit, such a house as suits for the convenience of coal diggers, and also the said Meshack Frost doth agree to give to Isaiah Frost and John Neff the same privilege as above, and also the said John Neff doth agree to give unto Isaiah Frost and Meshack Frost the same privileges as above in coal, building houses, and making repairs, and to share alike and alike. And the said Isaiah Frost and Meshack Frost doth agree to give unto Josiah Frost, and his heirs the privilege of the interest of their two shares of coal, that he will haul with his own teams or his heirs by digging the coals for himself or themselves, for which the said Josiah Frost doth agree to keep the banks in complete order so as not to injure them by digging to destroy the banks."

It appears that Josiah Frost, Senior, by his will dated the 30th of March 1813, after having given portions of his estate to his three sons made the following devise to Josiah Frost.
"Also, The whole of a tract of land called "This or none", nevertheless the saw mill, and the coal mine situate and being on