agreement. Your petitioners further state that the said Frostburg Coal Company has been in actual possession of said lands since the 13th day of March 1845 and is now in possession of said lands. Your petitioners deny the right of the said Complainant to have partition of the Coal in the said lands as against your petitioners who are bona fide purchasers without notice and that the said Complainant has lost his right to have partition of the Coal in said lands as against the purchasers of said lots without notice of the existance of said agreement or as against Your petitioners by his own laches. Your petitioners charge that at the time he filed his said bill he well knew that divers persons had purchased lots in said Town of Frostburg and where in possession thereof and that John Neff the assignee of the said Complainant had purchased some 26 or 28 acres of the land willed by the said Josiah Frost Senr. to his son Meshack Frost and had sold the same to Charles H. Williams and Orlando Harryman as will appear by reference to the papers in said cause and yet the said Complainant made none of the said purchasers parties in said cause. Your petitioners charge that a partition of the Coal under the lands now demanded by the Complainant do great injury to the rights of your petitioners and to grant the prayer of the bill of the said Complainant would be as far as your petitioners are concerned against Equity and good conscience.

In Tender consideration whereof and for as much as your petitioners are remediless save in a Court of Equity, where matters of this kind are properly cognizable, to the end therefore that the said John Young, John Neff, Meshack Frost and Isaiah Frost may upon their corporal oaths answer the matters and things in this petition are particularly as if they were again repeated and they were thereto specially interrogated and that your Petitioners may be let in to defend their rights in the said bill filed by said Complainant and that the execution of the said interlocutory decree may be suspended until the Matter of this petition has been heard and acted on or that the said Commissioners may be instructed by your Honorable Court not to partition off to the said Complainant any portion of the coal in the lands to which your petitioners acquired a right under the said articles of agreement, and that your petitioners may have such other and further relief as the nature of their case may require. May it please your Honors to grant to your petitioners the States writ of Subpoena against the said John Young, John Neff, Meshack Frost and Isaiah Frost commanding them and each of them to be and appear in this Honorable Court by a day to be therein named to answer the matters and things contained in the petitions and stand to, abide by and perform such decree as your Honors may pass in the premises and Your Petitioners will ever pray &c.

Thomas J. McKaig
W. W. McKaig

Exhibit No. 1

The Honorable the Judges of Allegany County Court. By virtue of the annexed writ of Fieri Facias or Scire Facias issued out of Allegany County Court and to me directed, I levied and levied upon the lands and tenements and real Estate of Noah Trimble described as follows: Lots Nos. one and two in the Town of Frostburg in Allegany County with two frame dwelling houses thereon which said property is fully and completely described by reference being had to two deeds of conveyance one recorded in Liber A.B. No. 6 &c. one of the Land Records of Allegany County Folios 121 and 122 executed and made by Jacob Muselman to Noah Trimble the other recorded in the same book above referred to and recorded on Folios 123 and 124 executed and made by Nancy Muselman widow of the late Christian Muselman to Noah Trimble and having caused notice of which that annexed to this return is a true copy to be published at least twenty days before the day

of sale in the Cumberland Civilian a newspaper of the Town of Cumberland and to be set up at two public places near said property, that is to say at the public square in Cumberland and at Wm. Evans Hotel. I exposed to sale at public Auction at the public square in Cumberland on the 18th day of April 1845 – property aforemention – with all its appurtenances for which said property and real Estate so exposed at public out cry, Thomas J. McKaig bid the sum of Six Hundred and twenty Eight dollars and thirty eight cents. cash therefor, which being the highest bid that was offered, I sold the said property to the said Thomas J. McKaig for the said sum of $628.38/100 and now make my return of my proceedings in and about the premises according to law.

True Copy. Test. Normand Bruce. Sheriff.

Henry Bruce Clerk.

"Exhibit No. 2"

Articles of Agreement made and concluded upon this fifth day of January in the year of our Lord. One thousand Eight hundred and forty five by and between Isaiah Frost of Fayette County and State of Pennsylvania of the one part and Thomas J. McKaig of Allegany County and State of Maryland of the other part. Witnesseth that the said Thomas J. McKaig hath agreed to proceed tomorrow morning to the City of Baltimore and to procure for the said Isaiah Frost the sum of Two thousand five hundred dollars on loan for the term of one year. The money shall be borrowed upon the note of said Isaiah Frost endorsed by Meshack Frost and Thomas J. McKaig payable one year after date deducting the years interest. The said Isaiah Frost is to have the option to pay the said note when it falls due or to leave the same to be paid by the said Thomas J. McKaig. If the said Isaiah Frost determines not to pay the said note at Maturity but to require the said McKaig to pay the same, then these articles Witness – that in consideration of said payment of Two Thousand Five Hundred dollars to be thus paid by the said Thomas J. McKaig the said Isaiah Frost hereby bargains and sells to the said Thomas J. McKaig one undivided half part of all that tract, piece or parcel of land which was willed or devised to the said Isaiah Frost by the will of his father Josiah Frost by will bearing date the 13th day of March 1813 Situate on the North side of the Turnpike and on the north of and adjoining the Town of Frostburg containing one hundred and fourteen acres more or less, the said land being described by meets and bounds in the said last will and testament of the said Isaiah Frost being all the lands owned by said Frost on the North side of the Turnpike adjoining the Town of Frostburg. And the said Isaiah Frost on his part covenants and agrees to and with the said Thomas J. McKaig that upon his paying the said sum of Two Thousand Five hundred dollars, he the said Isaiah Frost will make and execute to the said Thomas J. McKaig a deed in fee simple clear of all incumbrances of dower or otherwise for the said undivided half of the aforesaid tract of land but the said Isaiah Frost shall have the privilege of election to pay the said note at its maturity and in that case there shall be no sale of the aforesaid lands. But it is expressly agreed between the said Isaiah Frost and the said Thomas J. McKaig that this instrument shall not be considered as operating as a mortgage but in case the said note is not paid at maturity by the said Isaiah Frost then the sale shall be absolute and the said Thomas J. McKaig shall pay the said sum of Two thousand Five hundred dollars which shall be in full to the said Isaiah Frost of the purchase money of the said one undivided half of the aforesaid lands.

In Witness whereof the parties have hereunto subscribed their names and affixed their seals the day and year first above written.