at the edge of said Town, but cannot remember the time, whether before or after the agreement of 1828. He thinks it was before the agreement of 1828 but cannot be certain. Fielding R. Shepherd afterwards took the lot off his hands. Whereupon the Counsel for the Complainant exhibited his Cross interrogatory to be put to said Witness, which is herewith returned and the said Witness being examined thereon Deposes and says.

To the 1st Cross Interrogatory that he still heard talk of the sales sometimes before and sometimes after they were made. There being no other Witnesses to be examined and neither party desiring further time for the production of his evidences the Commissioner closed the said Commission, and herewith returns the same under his hand and seal this first day of November Eighteen hundred and forty Eight.

Amelius Steele (Seal)

The Commissioner hereby certifies that he was engaged two days in the execution of the annexed Commission. Cost of same $8.00 Amelius Steele.

Afterwards, to wit: on the same day, the Commissioners herein before named file in the Cause the following Report and Petition, in form as follows. viz.

John Young vs. Frosts & Layman

To the Honorable the Judges of Allegany County Court Sitting as a Court of Equity.

Your Commissioners appointed by your Honorable Court beg leave respectfully to report, that they have proceeded in the execution of the Commission directed to them by your Honorable Court, so far as to have taken the testimony of several Witnesses, deemed properly to be examined both on the part of the Complainant and of the defendants. All which testimony together with interrogatories, exhibits, plats &c make a part of this their report. Your Commissioners have discovered that the lands occupied by the Town of Frostburg and which is a part of the lands devised by the Will of Josiah Frost, Senior, has been laid out in town lots and that of these the lots coloured lake on the plat marked "J. A" contain about seven acres were sold previous to the date of the agreement of October 27th 1828. And your Commissioners further report that the lots indicated on the plat aforesaid by a green colour containing about thirty three acres were sold subsequent to the date of the aforesaid agreement and previous to the filing of the bill namely February 17th 1845: and that the Lots coloured blue on the plat aforesaid have been sold subsequent to the date last named all of which will more fully appear on reference to the accompanying extracts of deeds.

And the Undersigned further report to your Honors, that the Complainant in said cause insist upon a division of the Coal in said lands, as if the division were to be made immediately after the date of the agreement aforesaid, then to give to said Complainant his share, being one third of all the Coal of which the parties were seized at the date of said agreement, clear of all incumbrance and outside of the Lots aforesaid. And your Commissioner further report that the defendants in said cause, insist that they should look at the property as it stood on the day of the filing of the said bill of Complaint and divide said Coal as the parties were seized of the same at that time. The Undersigned refer your Honors to all the papers, plats, and evidence taken in the case, and considering that it is now presented to your Commissioners in such an aspect, as was not in the view of the Honorable Court on the issuing of their Commission — they respectfully request your Honors to take the same into Consideration and to pass such order and give such instruction as the law, Equity and rights of the parties require, and to grant such other

order and give such other instruction as the Equity and justice of the case and our duties may demand.

Th: Ch: Atkinson. J. L. Patterson. James Prey. Elisha Coombs. John Folck.

Which being read and heard and by the Court here fully understood, the Court thereupon passed the following Order, to wit.

John Young vs. Meshack Frost Isaiah Frost and Others.

In Allegany County Court as a Court of Equity. October Term 1848.

The Application of the Commissioners heretofore appointed by the Court to make partition, among the parties in the above Cause of the Coal in the lands belonging to them, and the petition of the Complainant the answer thereto with the Exhibits and proofs, having been after full argument, considered by the Court, it is the opinion of the Court, that the power to compensate the Complainant in Kind for the Coal under the lots covered by the Town of Frostburg is very doubtful, but if the power were clear, they do not consider, under the proofs accompanying the said application that this is a case for its exercise. They therefore this second day of November 1848 order and direct the following instructions for the guidance of the Commissioners.

First. The said Commissioners will make partition among the said Complainant and the defendants, Meshack Frost, and Isaiah Frost, of the Coal in the lands held by them respectively at the date of the filing of the bill in this cause to wit. the 17th day of February 1845.

Secondly. That in making said partition the said parties are each to have one third part of all the Coal in the lands held by them at the date aforesaid, to be designated by surface delineations on said lands, regard being had in the division to quality, quantity and accessibility of said Coal, and in such division the said John Young's portion may be laid off on such part of the lands as are contiguous to the lands held by him under his assignment, from John Neff, and so as to include all the Coal in said Young's land, if such division can be made so as to put all the parties upon an equal footing as it respects quality, quantity and accessibility. But if the lots sold by said Meshack and Isaiah prior to the filing of said Bill, form, in the judgment of the Commissioners, a barrier of access to the Coal in the lands lying South of said town of Frostburg then the Commissioners may divide the Coal in this part of the lands, by superficial designation in said land itself separate and apart from the division on the rest of said lands in three equal portions, regard being had to the quality, quantity and accessibility thereof.

It is further Ordered that a copy of these instructions be furnished to said Commissioners.

Afterwards, to wit: on the Eleventh day of December, in the year last aforesaid the Complainant aforesaid by his Solicitors aforesaid files in Court here his petition in the words and of the tenor following to wit.

To the Honorable the Judges of Allegany County Court sitting as a Court of Equity. The petition of John Young respectfully sheweth; That on the seventeenth day of February in the year Eighteen hundred and forty five, Your petitioner filed his Bill of Complaint in Allegany County Court as a Court of Equity against Meshack Frost, Josiah Frost George Layman and others therein setting forth and alleging among other things, that your petitioner on the 22d day of August, in the year Eighteen