to him. This Respondent has never yet been informed that any application was at any time made by John Young for a statement of the amount of Coal mined. But this Respondent believes that your Honors can ascertain the amount of Coal mined with a good deal of accuracy from the evidence filed in the cause. The petition also states that by the mining of the Coal as stated in the said petition the partition is thereby rendered more difficult and impracticable every day. This Respondent denies that this is true and this Respondent cannot but believe that your Honorable Court will, upon examination of the papers and evidence filed in the cause be satisfied it is not true. But the most extraordinary statement in said petition is as follows. "That if the said mining of Coal is suffered to continue for any length of time, the rights of your petitioner therein will be irreparably injured if not rendered wholly valueless." This Respondent denies also that this statement is true. On the contrary this Respondent insists that a division - a fair and equitable division of the lands or of the Coal in said lands can be made by the commissioners giving the said John Young his portion of the said Coal, having due regard to quantity, quality and accessibility without interfering with the mining operations of said Company leaving the portion of said John Young separate from and untouched by any of the mining operations of said Company. This Respondent is satisfied this will also appear manifest to your Honors by an examination of the papers and evidence filed in the cause.

This Respondent denies also the truth of the charge contained in said petition that the said parties would be unable to pay what would reasonably be due on an account taken between the said parties on the contrary this Respondent believes, nay is thoroughly satisfied that the parties named as defendants in said petition are able and have every reasonable prospect of being amply able to pay any account which your Honorable Court will ever decree that they or either of them shall pay to the said John Young. This Respondent will here state that from the said deeds referred to in the said petition notwithstanding the said decree the said Frostburg Coal Company is the owner of two thirds of the Coal in the lands in controversy, saving that part which has been sold by the said Meshack Frost & Isaiah Frost prior to the filing of said bill, and the whole of the Coal in the other coal lands thus conveyed to said Company and two thirds of the Coal in that part where the said John Young owns the surface. That the said Company has also constructed a rail road from its mines to Mount Savage at a great expense. built depot and houses for miners and has put a large number of coal cars on said road in all costing said Company a large sum of money. From the evidence filed in the cause which this respondent believes to be as accurate as it can well be, Your Honors will find the number of acres of Coal broken is from 12 to 14 acres. If the Court should decree that the said Company shall pay the said John Young the one third of the Coal mined out - to wit four acres or 4 3/4 acres. This Respondent is satisfied the property of the Company is more than sufficient to pay twice as much as could reasonable be expected Your Honorable Court would decree to said John Young.

This defendant therefore prays to be hence dismissed with his reasonable costs and charges in this behalf most unreasonably and wrongfully sustained and that the said Injunction may be dissolved.

Thomas F. McKaig

State of Maryland. Allegany County to wit.

On this Ninth day of February 1849 before me the Subscriber a Justice of the peace of the State of Maryland in and for Allegany County personally appears



Thomas F. McKaig and makes oath on the Holy Evangely of Almighty God that the above answer is true according to the best of his knowledge and belief.

Sworn before. William Taylor J.P.

The Separate answer of the Frostburg Coal Company to the petition of John Young praying for an Injunction against the said Company in Allegany County Court sitting as a Court of Equity. This defendant saving and reserving to itself all benefit of exception to the many inaccuracies and errors in the said petition contained. For answer thereto or unto so much thereof as this defendant is advised it is material or necessary for him to make answer unto, he answering says that this defendant by its agents and servants has been mining Coal in the lands subject to partition under the decree of the Court of Appeals referred to in the petition of John Young and that its said mining operations up to the issuing of the injunction at the instance of said Young, have never been interrupted. This defendant further states that the opening made by the said Company and the mining operations which it has carried on, are not as stated in said petition in the most accessible and least encumbered portion of the lands subject to partition between the parties. That other portions of said lands and equally accessible and that one portion of the said lands is as much incumbered as another and not more so. That the Coal under the lands lying contiguous to the lands held by the said John Young under his assignment from the said John Neff if not equally accessible is sufficiently so for all practicable purposes and it appears from evidence taken before the commissioners appointed to make partition between the parties, that a good safe and convenient opening may be made into the Coal in said land so lying contiguous to the land of the said Young and if the cost should exceed what it might be at other parts, the said difference can be easily compensated by a small increase of the quantity of Coal to be assigned to the said John Young in the said partition. This defendant further states, that its books are so kept as to show at any and at all times the exact quantity of Coal which has been taken out from the commencement of its operations. And that the said John Young has never demanded of this defendant any account of the said coal, under the decree of the Court of Appeals is not as stated in the petition of the said John Young, rendered more difficult and impracticable by the mining operations of this defendant, on the contrary the said petitioner is not in the slightest degree interfered with by the mining operations aforesaid as they have been conducted by this defendant.

This defendant further states that it is not true as stated in the petition of the said John Young that the mining operations of this defendant injure the rights of the said John Young in the said premises, on the contrary this defendant states that this defendant in conducting its said operations has purposely left a full third part of the said Coal lying to the south of its opening and next to the land of the said Young as aforesaid, in order that his full share of the said coal could be set a part for him whenever he might demand it. And the defendant avers that the mining operations aforesaid will not, no matter how long they may be continued injure or impair in the slightest degree, the rights and interests of the said John Young. This defendant is advised and so insists that being a tenant in common with the said John Young of all the Coal subject to partition; this defendant may lawfully excavate, mine, get out and vend the said coal without the let, interruption or hindrance of its said co-tenant John Young. And that this defendant is amply able to account with the said John Young and to pay him any sum or sums that may appear to be due in upon