New comer in German writing to the assignment on Exhibit J. F. No 1. is in the proper handwriting of the said Henry New comer and the signature of Andrew New comer at the same paper is in the proper handwriting of Andw New comer. Deponent looking upon Exhibit marked J. F. No 2. and says the signature in German writing is in the proper handwriting of the said Henry New comer.

(The Solicitor for the Defendants objects to the receipt marked Exhibit J. F. No 2. as Evidence in this Cause.)

Samuel Funk a Witness of lawful age having been duly sworn and Examined to the Interrogatories in Chief deposes and says.

To the First Interrogatory. Knows the parties to this suit. So the son of the Complainant.

To the Second Interrogatory. Knew Andrew New comer he was Deponents Grandfather. He lived on the place where Christian New comer now lives and died in 1847.

To the Third Interrogatory: Andrew New comer lived on Beaver Creek in Washington County on a farm adjoining John Doub. Peter New comer. David J. Funk. Swavely, Martin and others. He owned about 22 or 23 years ago when Deponent first knew anything about the property. the fourth acre of the farm on which he resided and also the same proportion in the mountain tracts. He owned also the right of the timber in part of the Sylvester tracts. which was mountain part of the Sylvester tracts.

To the Fourth Interrogatory. Had a conversation with Andrew New comer about 20 years before his death in which he said the fourth acre (Spoken of in the above answer) was willed to him by his father and he then said that John Funk and Christian New comer had a Deed for the other three fourths of the same farm or land and that they had to pay his debts. This conversation occured at John Funk's house Had frequent conversations with Andrew New comer relative to the farm from that time up to within 18 months previous to his death. Often heard him say that the farm belonged to John Funk and Christian New comer. that they had ~~agreed~~ he never agreed to let him live on it as long as he lived. just as he had always lived there before. Heard him often say that they (meaning the said Funk and New comer) ought to straighten the Creek running thro the meadow on this farm as it was theirs and for their benefit. Heard also say in the presence of Aunt Katy Rice to John Funk and Christian New comer that if they would sell their interest in the farm, he sell his and go with them to the West. This was a few years before his death and was on the occasion of Aunt Katy Rice's visit here from the Western Country. About 18 months before his death heard Mr Andw New comer say to Andw New comer and in the presence of John Funk that he ought to give Christian New comer as much land as John Funk had. Andw New comer replied that he had it not to give away. That they (Funk and New comer) had a Deed for it. And all his interest in the farm was the 4th Acre. He said also at the same time that John Funk had to pay all the debts and that Christian New comer could make no money. Often heard

him say at other times that the farm belonged to John Funk & Christian New comer excepting the fourth acre. John Funk had been in the habit when he wanted a choice piece of timber of getting such timber on Andw New comers farm. The timber was cut with the knowledge of Andrew New comer: and about ten years previous to his death. he also often cut fire wood on the same farm; he cut timber also upon the mountain tract with the knowledge of Andw New comer who made no objection; neither did he receive any share of the timber that was cut. Christian New comer attended the farm. before the death of Andrew New comer on the shares. Andrew New comer said he had the place to live on during his lifetime. John Funk and Christian New comer had agreed to let him live on the farm just as he had done before for the term of his life. John Funk moved the meadow and gave Christian New comer shares which was about one half. Remembers in regard to the fruit. Before the death of Andrew New comer this deponent and his brother would pick one apple tree for their father and Christian New comer's family would pick another. making choice in this way and so on until they had got thro the orchard. Then each would give Andrew New comer a share. John Funk giving him a share of what he had picked and Christian New comer giving him a share of what he had picked. The division was one out of three. So they all had alike. This practice was continued up to within a few years before Andrew New comers death as Deponents fathers Orchard had then grown up.

Cross Examined by Solicitor for Defendants.

Question. How much fire wood did your father (John Funk) cut upon this farm? Answer. When a piece was cleared on the farm he cut as much as he needed for his use and took it away. Cant say how much he cut at other times. Question. How large was the clearing? Answer. Over five acres. But cant say how much over five acres; it was not all cleared off in one year, but it was called the clearing for some years. they went there for timber as they wanted it. Question. Where were the choice pieces of timber obtained? Answer. Not on this clearing particularly, but from the woods generally. Question. Do you know whether your father paid for this timber? Answer, I know he did not. Question. How do you know he did not? Answer. I was present at nearly all the settlements between them, and I have no recollection of any timber being in the accounts. I was not present at the last settlement between them. Question May not this timber have been settled for in some other way? Answer. Not without my knowledge as I knew all my fathers business, and I never heard Andrew New comer say any thing about it. Question What were the choice pieces of timber got for? Answer. For pump stocks to be used on the farm of my father.

Interrogatory by Solicitor for Complainant.

Question. In your answer to the Cross Interrogatory you have stated certain settlements were made by your father and Andrew New comer. State what you mean by these settlements and what was embraced in them? Answer. They always kept a little Book account in which they kept an account of little matters between them