with John Funk he said the estate could be very easily settled up as there were but two heirs or children and that all that Andrew New comer owed was two debts one to him (Funk) for $1100. and one to Christian New comer for $800. and he (Funk also said they had better say as little as possible about it and settle it, for fear the Bank should get to hear it and claim more than they had settled for.

Cross Examined by Counsel for the Complainant.

Question. Have you a distinct recollection that you have detailed all that was said on that occasion by John Funk? Answer. Yes. Question. Did not John Funk say in your presence and in the presence of others who were there that he (Funk) and Christian New comer had a deed for the land? Answer. Heard nothing of that think said Funk did not say so. Witness did not hear any such offer. Question. Can you say on your oath that John Funk did not say he had a Deed for the land? Answer. I do not mind of hearing such a word said.

He Andrew New comer always claimed the land as his own land from the time Witness knew any thing about it until he gave it over to Christian New comer to claim for him. Never heard any body else say any thing to the contrary but he had the control of it himself.

To the Third

Mrs Elizabeth New comer, widow of Witness that John Funk had told her it was better for her to renounce the devises and bequests made to her by the Will of her husband. That he (Funk) told her it was better for her to do it. She said to Witness that she was very sorry she had done it, but through the advice of John Funk she had given it up. She called on Witness two or three times to have it altered and Witness came to town two or three times to have it done but could never get to the Court.

To the Fourth.

Had a conversation with Andrew New comer in the month of may. Witness stayed there all night. Andrew died in August. Asked Andrew how he got through with his things, and he replied that he had got through, that he had settled up every thing and had got clear. That all the debts he owed was one to Christian New comer of $800. and one to John Funk for $1100. Except some small shop bills. Often conversed with his brother Andrew about his affairs as both had lost money by going security.

To the Fifth.

Does not think Christian New comer can write more than his name. Does not think he can read writing. Has tried him. Has asked him to read some writing but he could not read a syllable. He can read print. Reads his testament but very imperfectly. He was subject to fits when he was young. His father took a great deal of pains to educate him. Does not think him capable of keeping accounts. Never saw him write. Does not think he can count interest. Thinks he was never able to learn the multiplication table at school. Often tried him. Does not know whether he is apt to be controlled by others in business transactions. Never saw him doing any business. Never saw him making a bargain.

To Cross Interrogatories by Counsel for the Complainants. herewith returned marked "C.D.N" the Witness deposes and says.

To the First.

Christian New comer is the Nephew of this Deponent.

To the Second.

Deponent lives four miles West of Hagerstown. Has lived there 28 years. Has lived for 46 years in the immediate neighborhood of his present residence which is ten miles from Andrew New comers late residence; has never lived farther way and never lived out of the County. Visited Andrew New comer sometimes 5 or 6 times in the course of a year sometimes 3 or 4 times.

To the Third.

Andrew New comer was a man of strong practical sense and of good business capacity.

Special Interrogatories to be propounded to Andrew New comer a Witness for the Defendants filed this day with the Commissioner by the Solicitor for the Defendants and herewith marked "AN". and the said Andrew New comer having been examined thereto deposes and says.

To the First.

Has no recollection of Peter Cox's cutting wood for fuel or any other purpose for John Funk on the said lands. John Funk did get fruit on the farm but can't say how often, but Witness has no recollection that they ever divided any trees as has been said, but his (Father's (Christian New comer's the Defendants) family picked as many apples as they wanted). Funk could never come and pick apples there when deponents Fathers family wanted them. They never divided trees with Funk, and Witness' Father's family picked such trees as they wanted. Funk never picked apples without permission and when ever he did pick he rendered shares to Andrew New comer. He did not pick apples there for some years before the death of Andrew New comer. Does not remember either Samuel or Andrew Funk cutting wood either on the home tract or the mountain tract during the life of Andrew New comer. They may have cut on the Zyegler tract as many people were in the habit of cutting there. Andrew New comer cleared about four acres on the home place, but Witness has no knowledge or recollection of either Samuel or Andrew Funk cutting in that clearing for their father John Funk. Does not recollect that any one else ever cut in the said clearing for John Funk. There was no other clearing on the farm as far as this Witness remembers. Has no recollection of John Funk's getting a pump stock during the life of Andrew New comer. Witness says he can remember things occurring when he was 12 or 14 years of age. Is 25 years of age at this time. If John Funk or any one else had cut wood on the farm within the period of Witness' recollection, think he would have known it. Was always there and worked on the farm.

Cross Examined by Counsel for the Complainant.

Question. How do you know that John Funk did not pick apples on the farm without special permission from Andrew New comer? Answer. Witness says he knows it because he did not know it. And because Funk never came and picked when Christian New comer wanted them. His father (Christian New comer) always took as many apples as he wanted and his father (Christian) gave Andrew New comer shares.

Solomon Sager a Witness 35 years of age produced on the part of the Defendants having sworn and examined to the Defendants said Interrogatories deposes and says.

To the First.

Knows the parties to this suit.