

12099

No. _____

Supreme Court of Illinois

Young.

vs.

Keeler, et al.

71641  7

State of Illinois
Formerly sixth, now the
Fourteenth Judicial Circuit
Joel Camp County

Pleas in the Circuit
Court began and held within and for the
County of Joel Camp aforesaid on the first
Monday of October in the year AD 1850 before
the Judge of said present Fourteenth Judicial
Circuit to wit the Hon Benjamin R Sheldon.

James Loring Plaintiff

vs
James Keeler & Adam Brown } Defendants

Be it remembered that
heretofore to wit on the twenty sixth day of September
AD 1850 the said Plaintiff James Loring by his
attorneys Hays & Wilson sued out of the Office of
the Clerk of the Circuit Court in Joel Camp County
aforesaid a writ of Summons against the
said defendants wherein Summons is in
the words and figures following to wit

State of Illinois
Joel Camp County } et

The People of the State of Illinois
To the Sheriff of Joel Camp County Greeting
We Command you to Summon James Keeler
& Adam Brown to appear before the Circuit Court
of Joel Camp County at the next term to be holden
at Galena on the 1st Monday of October next
to answer James Loring in a plea of Trespass
on the case upon Promises damages Two Tho-

-unsaid dollars.
this writ.

Seal

and have you then there
Witness William H Bradley Clerk
of the Circuit Court of Jackson's County
Missis at Galena this 26th day of
September AD 1850

Attest William H Bradley Clerk

Endorsed.

Executed this writ by reading
to the within named James Keeler
& Adam Brown this 3^d day of October
AD 1850. W B Pierce Sheriff

And afterwards went on the 27th day of
September AD 1850. the said Plaintiff by his
Attorneys filed in the Clerk's Office of said Court
his declaration against the said defendants
whom said declaration, together with an
amendment made therein by leave of Court, in
the fifth Court term, April 26th 1852, is in
the words and figures following to wit.

State of Missis. Jackson's County ss

James Conny

vs
Adam Brown &

James Keeler

Circuit Court 3^d October Term
AD 1850.

The said Plaintiff by his Attorneys
1st Count Douglas & Hoge & Wilson, complains of the said Defendants
in a plea of Assumpsit for that whereas heretofore to wit
on the twenty first day of July A.D. 1846, at the County
aforesaid, William B. Green of said County & State, was the
owner & proprietor of a certain tract & parcel of land sit-
uate lying & being in the said County & State, consisting of

Two certain divisions or Tracts known & described as follows
to wit: The North West Quarter of Section Number Twelve (12)
Township Number Twenty Eight (28) North Range One (1) West
of the fourth principal Meridian. And the following part
of the North East Quarter of said Section Number Twelve (12)
in said Township & Range, bounded as follows, commencing
Seven chains & Twenty Nine links (729) South of the quarter
Post on the North boundary of said Section Twelve (12) thence
South on the West line of said North East Quarter, Twelve
chains & seventy One links (12.71) thence East nine (9) chains &
seventy three (73) links. thence North ten (10) chains & seventy
Five (75) links. thence East Eight chains & seventy Seven (8ch.
77.75) links. thence North One (1) chain, ninety Six links; thence
West Eighteen chains & fifty links (18ch. 50 links) to the place
of beginning. Containing fourteen & eight one hundredths acres
(14.80). And so being the owner & proprietor, and believing
and expecting that said land contained lead mineral or ore,
and valuable ranges or crevices of said ore or mineral, &
being desirous of proving the same, then & there gave out
publicly and offered to each and every person full right &
permission to enter upon said land or any part or portion
thereof for the purpose of mining for said lead mineral or
hereinafter set forth. And that if any person or persons would
enter on the same and "prospect" or mine thereon, he or
they should be entitled to all of the lead mineral or ore
they might discover & raise to the surface of the ground, except
one fifth part of said mineral or ore, which said one
fifth part should be reserved for him, said Green & paid
to him from time to time, in cash, to wit: the value
in cash of the one fifth part of each & every lot or quantity
of said mineral ore as should be from time to time raised
from said ground, within a reasonable time after the said
lots or quantities should be sold, or disposed of. Which sale or
disposition should be within a reasonable time after the said

Mineral ore should be raised from said ground.

And said Green further gave out & promised that any such person so mining or "prospecting" upon said land as aforesaid should have the right & power to trace up & pursue through & upon said land, each & every range, or crevice of lead mineral or ore, which they might "strike" & discover, in any part thereof, & to use, control & possess the same together with the appurtenances, according, & subject to certain well known rules & customs of miners, which had long prior thereto, at that time, & since have prevailed, & been observed & followed by the miners & diggers of said County & in the neighborhood of said land until said lead mineral or ore should be exhausted or said crevice cease.

And the said Plaintiff avers that then & there to wit: on the day & year aforesaid he entered upon said land by reason of the said permission of said Green & for the purpose of prospecting & mining thereon for lead mineral & subject to & in accordance with the said stipulations of the said Green so as aforesaid given out & offered, & subject to & in accordance with the said rules & customs of said miners as aforesaid, & the said Plaintiff did then & there "prospect" & mine upon said land & afterwards to wit: on the tenth day of November A. D. 1876 did then & there strike & discover a certain range or crevice of lead mineral or ore on said land situated, which said range or crevice crosses the Eastern line of said North West quarter section, at the distance of seventeen chains, seventy seven links from the North East corner of said North West quarter section, running in a South Easterly & North Westerly direction. North Westerly to & beyond a certain shaft on said North West quarter section, which said shaft is on said crevice, North Eighty degrees West, one chain and fifty nine links of said East line of said North West Quarter & was sunk by said Plaintiff. & said crevice runs

South Easterly into said part of said North East quarter adjoining said North West quarter Section, for the space of feet & beyond to a certain Shaft or near to a certain Shaft sunk by said Defendants. The said last named Shaft lying twelve links North of said Crevice.

Which said Shafts are about West of diggings known as "Horsehead diggings" and North West of diggings known as "Crumbaker's diggings"

And the said Plaintiff avers that having so struck & discovered said range or Crevice of lead mineral, & so having the said rights, privileges, powers, & possession thereby according to the said stipulations & subject to the said terms, rules & customs aforesaid, he the said Plaintiff afterwards, to wit: on the thirtieth day of September, A.D. 1848. at the special instance & request of the said Defendants & in consideration of the promises & undertakings of the said Defendants hereinafter set forth, did sell, transfer, & assign to said Defendants all his said rights, privileges, powers, interest, claim & possession in and to said range or Crevice, and the appurtenances thereunto belonging; & then & there authorized & empowered said Defendants to enter upon & enjoy the same, & the benefits & profits thereof in every respect as the said Plaintiff had & otherwise could have, done. And the said Defendants then & there upon the day & year aforesaid, in the County aforesaid in consideration of the said sale, transfer & assignment, & said authority & power to enter upon & possess & enjoy as aforesaid said range or Crevice, did undertake & promise to pay to the said plaintiff the one fifth part of the lead mineral or ore that said Defendants might extract & raise from said range or Crevice, and also reserving a like fifth part of said mineral or ore to be paid to the proprietor of said lands on which said Crevice was situated. Which said parts

or portions were respectively to be paid in cash in the same manner & at such times & out of such quantities as is herein before alleged of & concerning the payment of said first mentioned fifth part to be paid to said Queen.

And said Plaintiff avers that said Defendants then & there in pursuance of said sale & agreement between said Plaintiff & said Defendants, entered upon said range or crevice & the appurtenances & then & there took the charge control & possession of the same, & after the said transfer & sale, & taking of possession & between that time & the commencement of this suit, extracted & raised from & out of said range or crevice a large amount of lead mineral or ore, as follows, to wit: on the first day of November 1848. One Hundred Thousand pounds. On the 1st December 1848. 100,000 pounds. On the 1st Jan'y 1849. 100,000 pounds. On the 1st February 1849. 100,000 pounds. On the 1st March 1849. 100,000 pounds. On each of the next following months on the seventh days thereof 100,000 pounds of said mineral of great value, to wit: of the value of Five thousand dollars, all of which said mineral or ore, was long prior to the commencement of this suit. To wit: on the days & years last aforesaid. sold & disposed of by said Defendants. And a reasonable time, after said sale & disposition, had long since expired before the commencement of this suit. To wit: on the day & year aforesaid.

Yet the said Defendants regardless of their said promises & undertakings have wholly neglected & refused to deliver & pay to the said Plaintiffs the said One fifth part thereof, or any part thereof, (although requested so to do) as in manner and form, they as aforesaid promised to do: nor in any other manner or way have paid the same or any part.

2nd Count

And also for that whereas heretofore, to wit, on the twentieth day of August A. D. 1846, the said Plaintiff struck & discovered a certain other range or crevice of lead mineral or ore situated on the said tracts & parcels of ground in the said first Count set forth & described situate, lying & being in the County & State aforesaid. Which said range or crevice was of like kind, and, description, distances & directions, having on or near it like shaft all as in said first Count set forth & described.

Which said tracts & parcels of land were then & there owned by one William B. Green of said County & State, & said Plaintiff then & there had good right to the use & benefit of said range or crevice & to the possession & control thereof & of the said lead mineral & ore therein contained according & subject to certain & well known rules & customs, that then & there & long prior thereto, did prevail, & had prevailed among miners in said County & in the neighborhood of said range or crevice, yielding & paying to the owner of said tracts of land, the one fifth part of the said mineral ore that might be extracted & raised to the surface of the ground from said range or crevice, to be paid & delivered to said owner of said tracts at certain times & in a certain manner between the said Plaintiff & said owner, fixed & agreed upon.

And the said Plaintiff avers that afterwards, to wit: on the tenth day of October, A. D. 1848, for and in consideration of the promises and undertakings of the said Defendants, as hereinafter set forth, ^{he} the said Plaintiff, sold, transferred, & assigned to the said Defendants, all his right, title & interest in & to the said range or crevice & to the use, benefit, control, & possession thereof, & of the lead mineral or ore therein contained. And the said Defendants then & there, to wit: on the day & year last aforesaid, at the County aforesaid, in consideration of said sale, transfer,

& apportionment undertook & promised to pay to the said Plaintiff, the one fifth part of all lead mineral or ore, that said Defendants might & should obtain from said range or crevice, to be paid to said Plaintiff from time to time, out of the different amounts raised, to wit: one fifth of each & every lot of such mineral, when the said lots should be sold or disposed by said Defendants, payable to said Plaintiff in cash.

& said Defendants further undertook & promised, then & there in consideration aforesaid, to pay to the owner of said tract of land as aforesaid, the said fifth part so as aforesaid to have been paid by said Plaintiff & at the times & in like manner as said Plaintiff was bound to pay the same.

And said Plaintiff avers that in pursuance of said sale, transfer & apportionment the said Defendants, afterwards, to wit: on the day & year aforesaid, entered upon the possession of said range or crevice & took the use, control & benefit thereof, to wit: on the day & year last aforesaid, & afterwards, from time to time, between the said last named day, & the commencement of this Suit, the said Defendants obtained & raised from said crevice or range a large quantity of lead mineral or ore, as follows to wit: On the 1st April 100,000 pounds - 10th May 100,000 pounds - 20th June 100,000 pounds - 25th July 100,000 pounds - 30th September 100,000 pounds - all in the year 1848 - and also to wit: on the 10th February 100,000 pounds, on the first days of each, every month of the year 1849, 100,000 pounds each, of great value, to wit: Five thousand Dollars, the one fifth part of which was worth in cash One thousand dollars. And that said Defendants afterwards, to wit: on the day & year last aforesaid respectively, sold & disposed of said lots of mineral.

Yet the said Defendants regardless of their said promises & undertakings, have not paid & delivered to said Plaintiff the one fifth part of said lead mineral or ore, in cash or otherwise, nor any part or portion of the same (although frequently requested) but have hitherto wholly neglected & refused so to do.

3rd Count.

And also for that, whereas, heretofore, to wit: on the Nineteenth day of October A.D. 1846 the Plaintiff was the owner & proprietor of a certain leasehold interest, for the purpose of mining, in & to a certain range or crevice of lead mineral or ore, situate on the following described lands, to wit: The said tracts & parcels of land in the said first Count mentioned, to wit: The said range or crevice in the fifth Count hereafter mentioned.

Subject to the payment of a certain rent & entitled to mine the said range or crevice & to extract & raise the lead mineral therefrom for his own use & benefit subject to the rules & customs of miners in and about the neighborhood of said range or crevice. And the said Plaintiff for & in consideration of the promises & undertakings on the part of the said Defendants hereinbelow set forth, assigned to said Defendants, & at their special instance and request the remainder of his said leasehold interest, then to come & unexpired therein, with all the rights & privileges connected therewith.

And in consideration of the premises, the said Defendants then & there undertook & promised to pay to the said Plaintiff the one fifth part of all lead mineral or ore that said Defendants might obtain & raise from said range or crevice to be paid to the Plaintiff, in cash, from time to time to wit: the one fifth part, in cash of each lot of said mineral as might be raised & obtained, payable when the same should be sold & disposed of.

And the Plaintiff avers that the said Defendants, since the said sale & assignment, & prior to the commencement of this suit has raised & obtained from said crevice, & sold, & disposed of to Ralph S. Morris a large amount of said mineral or ore as follows, to wit: The like quantities at said times as in said first & second Counts mentioned & also afterwards, to wit on the first day of January 1850. Two Hundred Thousand pounds of said lead ore, of great value, to wit: of the value of Five Thousand dollars. The one fifth of which was worth incash One Thousand dollars when the same was sold, at the said times aforesaid. But the said Defendants regardless of their said promises & undertakings have not paid & delivered to said Plaintiff the said one fifth part of said mineral, in cash, or otherwise, nor any part or parcel thereof (although often requested) but have hitherto wholly neglected & refused so to do.

4th Count. And also for that whereas, heretofore, to wit: on the tenth day of January A.D. 1848. the said Plaintiff for and in consideration of the promises & undertakings on the part of the said Defendants hereinafter set forth, did let & lease for the purpose of mining for lead ore or mineral, to the said Defendants a certain range or crevice of said lead ore or mineral, situate, lying, & being on the following tracts of land in the County & State aforesaid, to wit: on the said tracts & parcels of land in said first Count mentioned; which said range or crevice was & is the same mentioned & described in the said first Count: To have & hold from the said time of making said lease, until the said lead ore, or mineral should become exhausted or said crevice end, to wit:

upon the said tracts & parcels of land aforesaid.
And the said Defendants then & there in consideration
of the premises, undertook & promised the said Plaintiff
to pay & deliver to him, as rent $(\frac{2}{5})$ Two fifth parts of
all said lead ore or mineral that said Defendants
might or should obtain from said crevice or range, as
aforesaid, to be paid & delivered to said Plaintiff in cash
from time to time, that is the said parts of each &
every of said lots or quantities of said mineral, at such
time & times as the same should be sold by said Def-
endants.

And said Plaintiff avers that since the said leasing &
prior to the commencement of this suit, the said Defen-
dants have obtained & raised from said range or crevice
divers large amounts of said lead ore, or mineral, as
follows, to wit: on the 1st day of June A.D. 1848. 100,000
pounds. And on the first days of each & every mo-
nth thereafter until the 1st day of September A.D. 1850—
100,000 pounds. The two fifth parts of which amount to a
large sum, to wit: Two Thousand pounds. Which said lots
& quantities were respectively on the said days & years
last aforesaid sold by said Defendants.

But the said Defendants regardless of their said
promises & undertakings have not paid & delivered to said
Plaintiff, in cash or otherwise two fifth parts of said lead
ore or mineral, nor any part or portion thereof; but
to do so have hitherto wholly neglected & refused, (although
frequently requested)

5th Count. And also, for that whereas heretofore, to wit: on the
first day of October A.D. 1848, there was a certain range or
crevice of lead ore, or mineral situate, lying, & being on the
said tracts and parcels of land in the said first Count

first mentioned, which said crevice runs in a South Easterly & North Westerly direction, generally called a quartering East & West range, or crevice, and has upon it a certain shaft Seventeen (17) chains & Seventy Seven (77) links South & North 80 degrees, West One (1) chain Fifty nine links (59) of the North East corner of the said North West quarter Section, from which said shaft, said crevice runs about South, Eighty (80) degrees East, Two (2) chains Fifty nine (59) links, or very near that distance to within twelve links of a certain other shaft, lying North of & leading into said crevice. Which said last named shaft has diggings known as Moreheads on the North East, and diggings known as Crumbackers on the South East, & which said last named shaft is distant from said first named shaft, from the centre of one shaft to the centre of the other Two chains (2chs) and Fifty nine (59) links, on a line running from the first to the last, South, Eighty Three & One half degrees East (or thereabouts) Which said crevice had been before then to wit: on the day & year aforesaid struck & discovered by said Plaintiff, and into which the said Plaintiff on the day & year aforesaid had partially worked & drifted & excavated to some distance, to wit: Twenty feet in and upon said North West quarter Section, and of which said portion of said crevice so worked, drifted & excavated, the said Plaintiff then & there had possession & control. And the said Plaintiff avers that on the day & year last aforesaid at the County aforesaid, the said Plaintiff and said Defendants made and entered into a certain agreement as follows, to wit:

The said Plaintiff, for and in consideration of the said promise & undertaking, on the part of the said Defendants, hereinclosed set forth, transferred, assigned & set over to said Defendants the said possession & control of said drift & excavation, and of his rights and title & interest

in & to said range or crevice & the appurtenances.

And the said Defendants then & there in consideration of
(amendment in brackets) said transfer, assignment & letting over as aforesaid, prom-
ised to pay & deliver to said Plaintiff, the (one fifth $\frac{1}{5}^{th}$)
amended Apr of all the lead mineral or ore, that said Defendant should
26th 1852, obtain & procure from & out of said crevice, to be paid as
follows, to wit: The (one fifth $\frac{1}{5}^{th}$) of each & every lot or quan-
-tity of said lead mineral, or ore, so obtained & procured, in
Cash, whenever said lead ore or mineral should be sold by
said Defendants.

And said Plaintiff avers that afterwards, to wit: on the
day & year aforesaid the said Defendants in pursuance
of said agreement, entered upon the said possession of
said portion of said crevice, so as aforesaid, worked, drilled,
& excavated, & took the control thereof: And afterwards, to wit:
on the days & years following, obtained & procured from said
Crevice, in & upon that part thereof, lying in said North East
quarter Section, large quantities of said lead ore or mine-
-ral, to wit: Two Hundred thousand pounds, as follows, to wit:
on the day & year last aforesaid 100,000 pounds. On the
1st day of October 1848. 100,000 - & on the first days of
each & every month thereafter until the first day of Septem-
-ber A.D. 1850. 100,000 pounds. Of great value, to wit: of the Cash
value of Five Thousand Dollars, and of which the cash value
of (one fifth $\frac{1}{5}^{th}$) would be a large amount, to wit: Two Thous-
-and dollars. Which said lots & parcels of mineral lead or ore
were respectively sold by said Defendants, on the days &
years aforesaid.

Yet the said Defendants did not & has not, paid to
the said Plaintiff, the said fifth, in Cash or otherwise, of said
lots or quantities, nor of any of them or any part thereof
(Although requested). but to do so, have hitherto wholly
neglected & refused, to the damage of the said Plaintiff.

Two Thousand dollars. & thereupon he sues, by

Douglas } atty for
Hoge & Wilson } Plaintiff

Copy of account sued on.

To value of 30,416 pounds lead ore or mineral	\$ 784.15
" do 60,822 do do	\$ 1568.20
" Rent of Crevice of lead mineral or ore	1000.00
" Share or part of mineral raised from Crevice of lead ore	2000.00

Endorsed, Filed Sept 27th 1850.

Wm. H. Bradley Clerk

By C. C. Ripley Deputy

And afterwards to wit on the 26th day of August
A.D. 1851. the said Defendants by their Attorneys filed
in open Court with the clerk thereof their Pleas to
The Plaintiff's declaration which are in the words and
figures following. to wit:

Adam Brown, } To Daviess County Circuit Court
James Keeler } To the August Term A.D. 1851.

als
James Young

And the said Defendants come
& defend the wrong & injury where-
And say that they did not undertake & promise in man-
-ner & form as the said Plaintiff hath above thereby com-
-plained against them, and of this they put themselves
upon the Country.

Pluff likewise. Hoge & Wilson Pluff

Attys.

2nd Plea

And for a further plea in this behalf the said Defendants as to the first, second, & third Counts of said Plaintiff's declaration say actio non, because they say that the several supposed promises, & undertakings in the said Counts mentioned, were made upon consideration of a contract for the sale of an interest in land and that no agreement in respect of or relating to said contract or supposed causes of action in the said declaration mentioned, nor any memorandum or note thereof was or is in writing, or was or is signed by the said Defendants, or by any other person or persons by them thereunto lawfully authorized according to the form of the Statute in such case made & provided, & this the said Defendants are ready to verify. Wherefore they pray judgment if the said Plaintiff ought to have or maintain his aforesaid action against them.

3rd Plea

And for a further plea in this behalf, the said Defendants, as to the fourth & fifth Counts of said Plaintiff's declaration say, actio non, because they say that the several supposed promises, and undertakings in the said Counts mentioned, were made upon consideration of a contract for the sale of an ^{interest} in land, and that no agreement in respect of, or relating to said contract or supposed causes of action in the said declaration mentioned, nor any memorandum or note thereof was, or is in writing, or was or is signed by the said Defendants or by any other person, or persons, by them, thereunto lawfully authorized, according to the form of the Statute, in such case made & provided, & this the said Defendants are ready to verify. Wherefore they pray judgment &c.

4th And for a further plea in this behalf, The said Defendants say, Actio non, because they say that the said Plaintiff did not demise, lease, sell, transfer, apportion or convey any right, title, interest or possession of, in or to the said part of the North East quarter of said Section Number Twelve (12) Township No. 28, North of Range No One West of the 4th principal Meridian. And that all of the mineral in said declaration mentioned as having been raised by said Defendants, was raised upon, & taken from the said North East quarter Section. And this, the said Defendants are ready to verify. Wherefore they pray Judgment &c.

5th And for a further plea in this behalf, The said Defendants say, Actio non, because they say, at the time of the supposed sale, apportionment, transfer, or demise aforesaid in the declaration mentioned, the said Plaintiff had nothing in the tenements aforesaid whereof he could make the demise aforesaid. And this the said Defendants are ready to verify. Wherefore they pray Judgment &c.

Deceased & Intended

6th And for a further plea in this behalf, The said Defendants say, Actio non, because they say that the said Plaintiff, at the time of the supposed demise, sale, apportionment & transfer aforesaid in the declaration mentioned, had nothing in the said part of the North East quarter of said Section twelve, Township & Range aforesaid, whereof he could make a sale, transfer, apportionment, or demise. And that all of the mineral in said declaration mentioned, which was raised by said Defendants, was raised & taken from the said North East quarter Section, & from lands belonging to James Campbell, & afterwards purchased by J. F. Keeler. And this the said Defendants are ready to verify. Wherefore they pray judgment &c.

7th
"

And for a further plea in this behalf the said Defendants say, Adversus. Because they say that the said Wm. B. Green was not the owner of said lands tenements or premises, at any time during the year A.D. 1846. And that all of said lands belonged to the Government of the United States, & were then & there reserved from sale, as mineral lands, under & by virtue of the act of Congress of March 3rd A.D. 1807. And that said Young had no right or title to the said lands or tenements, either in his own right or through the said Wm. B. Green or otherwise, but that said parties at the time the said Young entered upon the same, were, & each & every of them trespassers upon the mineral lands of the United States which had been reserved from sale as aforesaid. And that the said Young never was in the legal possession of said lot of ground & premises.

Filed Aug. 26th 1851. Wm. B. Bradley Clerk

And afterwards, to wit: on the 24th day of November A.D. 1851. the said Plaintiff, by his Attorney, filed in said Court, with the Clerk thereof, his Answer to the plea of the Defendants. Which said answers are in the words and figures following, to wit:

State of Illinois, So Daviess County ss	
James Young	{ Circuit Court November Term A.D. 1851.
vs	
James Keeler	
& Adam Brown.	

And the said James Young says that the said plea by the Defendants, secondly above pleaded in manner and form pleaded and the matter in the same contained are not sufficient in law

To bar the said Young of his aforesaid action against them, and that he is not bound by law to answer the same. And this, he is ready to verify. Wherefore he prays judgment, and his damages aforesaid to be adjudged to him.

Hoge & Wilson } Atty for
Douglass } Plntff.

And the said Plaintiff, as to the said plea of the said Defendants thirdly above pleaded in manner and form pleaded and the matter therein contained are not sufficient in law to bar the said Young of his aforesaid action against them, and that he is not bound by law to answer the same. And this, he is ready to verify. Wherefore he prays judgment, and his damages aforesaid to be adjudged to him.

Douglass }
Hoge & Wilson } Atty for Plntff

And the said Plaintiff, as to the said plea of the said Defendants fourthly above pleaded, in manner and form pleaded, and the matter therein contained are not sufficient in law to bar the said Plaintiff of his aforesaid action against them, and that he is not bound by law to answer the same. And this he is ready to verify. Wherefore he prays judgment, and his damages aforesaid to be adjudged to him. And for causes of demurrer to said plea fourthly above pleaded the said Plaintiff shows:

- Ist Said plea amounts to the general issue.
- II. It sets up no new matter & does not confess and avoid the matters in the declaration contained.
- III. The said plea purports & proposes to be a plea in bar of the whole action of the Plaintiff.

Nevertheless the said plea contains matter which if true constitutes an answer or defence to part only, of said declaration, to wit: the first, second, third & fourth Counts thereof. And the said plea does not show any matter in denial or confession & avoidance of the residue of the causes of action in said declaration mentioned.

IV. The said plea purports & professes to be a plea in bar of the whole cause of action of the Plaintiff, but said plea if true, constitutes no answer or defence to the first, second, third, or fifth Counts of said declaration.

V. Because the said plea of said Defendants admits the said possession in the first, second and fifth Counts of said declaration avowed to have been taken by Defendants in pursuance of agreements in said Counts mentioned with Plaintiff, and ^{so} is estopped to set up in said plea that any part of said premises in the declaration mentioned were not demise, transferred &c.

VII. Because it does not appear in said third & fourth Counts, nor in said plea fourthly above pleaded but that possession of said premises went to said Defendants & no eviction is avowed & said Defendants are estopped to plead said plea.

VIII. And also That said fourth plea is in other matters insufficient in substance, and uncertain, informal & insufficient in other respects.

Douglas, Hoge & Wilson Atty for Pltff

and the said Plaintiff as to said plea of the said Defendants fifthly above pleaded, in manner & form pleaded and the matter therein contained are not sufficient in law to bar the Plaintiff of his aforesaid action against them, and that he is not bound by law to answer the same. And this he is ready to verify. Wherefore he prays judgment and his damages aforesaid to be adjudged to him.

And for Causes of demurrer the said Plaintiff shows.

Ist. Said plea only traverses the inducement to the first, second, third and fifth Counts. And does not contain any matter in denial or in confession and avoidance of the Causes of action in the declaration mentioned.

II. The said plea avers "that at the time of the said supposed sale, assignment, transfer or demise aforesaid in the declaration mentioned, the said Plaintiff had nothing in the tenements aforesaid whereby he could make the demise aforesaid and such form of averment imports that he could not make the said sale, assignment & transfers in said declaration mentioned.

III. Because said plea professes & purports to be a plea in bar of the whole action of the Plaintiff. Nevertheless said plea contains matter which if true constitutes an answer or defence (if at all) to part only of said declaration. To wit: to the said fourth Count thereof, and does not show any matter in denial or confession and avoidance of the residue of said Causes of action in said declaration mentioned.

IV. Because said Defendants are stopped to plead said plea to said plaintiffs declaration.

V That the said Defendants have not by their said plea in bar, admitted, traversed or denied the said sale, assignment, transfer or demise mentioned in the declaration to have been made by the Plaintiff to the Defendants, but have attempted ~~attempted~~ to introduce a collateral issue that the Plaintiff had not power to demise the premises.

VI. That said plea in other matters of substance is insufficient and is argumentative, insufficient, & wants form.

By Hoge & Wilson } Atty. for Pltff.
Douglass }

And the said Plaintiff as to the said plea of the said Defendants sixthly above pleaded in manner and form pleaded and the matters therein contained, are not sufficient in law to bar the Plaintiff of his ~~said~~ action against them and that he is not bound by law to answer the same. And this he is ready to verify. Wherefore he prays judgment and his damages, to be adjudged to him.

And for Causes of demures to said sixth plea shows

I. said plea only traverses the inducements to the first, second and third Counts. And does not contain any matter in denial or confession and avoidance of the Causes of action in the declaration mentioned

II. Said plea purports and professes to be a plea in bar of the whole cause of action of the Plaintiff, but said plea if true does not show any matter in denial or confession and avoidance of the Causes of action in the fifth Count of said declaration mentioned.

III. Because said plea by not traversing admits the proposition, in the first, second, and fifth Counts of said declaration avowed to have been given to & taken by said Defendants in pursuance of an agreement in said Counts mentioned, with the Plaintiff, and so is estopped to set up in said Plea that the Plaintiff had ^{said} dealing in part of said North East quarter of said Section.

IV. That said Defendants have not by their said plea in bar admitted, traversed, or denied the said sale, transfer, assignment, or demise mentioned to have been made by the Plaintiff, but have attempted to introduce a collateral issue that the Plaintiff had not power to sell, transfer assign or demise the premises.

V. Because said plea seeks to introduce a collateral issue by alleging the ownership of land from which the said mineral was taken, to have been in James Campbell & afterwards in E. F. Keeler.

VI. Because said Defendants are estopped, to aver the ownership of said lands from which said mineral was taken, to have been in said Campbell & Keeler.

VII. The said plea is in other matters of substance & form insufficient, uncertain & informal.

Douglas Hoge & Wilson
for Plaintiff.

And the said Plaintiff as to the said plea seventhly above pleaded, in manner & form pleaded, and the matters therein contained are not sufficient in law to bar the Plaintiff of his aforesaid action against them and that he is not bound by law to answer the same. And this he is ready to verify. Wherefore he prays judgment and his damages to be adjudged to him.

And for causes of demurrer to said seventh plea the Plaintiff shows.

Ist. That said plea amounts to a negation pregnant and is insufficient in this that it is therein pleaded and alleged that at any time during the year 1846 the said Wm B. Green was not the owner of said lands, tenements or premises, but they belonged to the United States & were reserved from sale by said Act of Congress of the 3rd of March 1807: & that said Young had no right or title to the same. And such form of traverse imports that during some year, said Green was the owner & said Young had right & title thereto.

II. Said plea only traverses the inducement to the first, second and third Counts & contains no matter in denial, or confession and avoidance of the Causes of Action in said declaration mentioned.

III. The said plea professes and purports to be a plea in bar of the whole action of the Plaintiff but said plea if true contains no answer or defence to the fourth or fifth Counts.

IV. Because said Defendants are estopped to plead said plea, to the said first, second & third Counts.

V. Because it does not appear in said third & fourth Counts, nor in said plea seventhly above pleaded, but that possession of said premises went to said Defendants & no eviction is averred & said Defendants

are estopped to plead said plea.

VI. Because said Defendants by their said plea in bar have not admitted, Traversed or denied the said sale, transfer, apportionment or demise, mentioned to have been made by the Plaintiff, but have attempted to introduce a collateral issue that the Plaintiff had no right or title in the premises & no right to make said sale &c.

VII. Because said Defendants are estopped by said plea to deny the ownership of said premises to be out of said Plntff.

VIII. Because said plea contains no matter of answer or defence to the said fifth Count of the declaration.

IX. Because said plea neither concludes to the Country nor with a verification.

X. Because said plea by not Traversing admits the leasing in the fourth Count averred, & so is estopped to deny the title to be in the Plntff

XI. And also that said seventh plea is bad in substance and in other matters of form uncertain, insufficient & informal.

Douglas, Hoge & Wilson
Atty for Plntff.

Ernest

Filed

Filed Nov. 24th 1851

Wm H. Bradley Clerk

And afterwards, to wit, on the third day of December as yet of the November Term of said Court A.D. 1851 in the record of the proceedings thereof in said Cause is the following entry, to wit:

James Young
vs
James Keeler &
Adam Brown

Case

The Defendants by their Attorney withdraw their 7th plea. And now came on to be heard the demurrer of the Plaintiff heretofore filed by his Attorney to the Defendants pleas. after hearing the arguments of Counsel, the Court takes the case under advisement.

And afterwards, to wit: on the 8th day of December at yet of said November Term of said Court A.D. 1851, in the Record of the proceedings thereof in said Cause is the following entry, to wit:

James Young

vs

James Keeler and
Adam Brown

Case

The Court having fully considered and being fully advised upon the Demurrer of the Plaintiff heretofore filed by his Attorney to the Pleas of the Defendants as to L. 3 & 5. The Court sustains the Demurrer, and as to 4th & 6th the Court overrules the Demurrer.

And afterwards, to wit: at the same Term, to wit: the November Term A.D. 1851, on the 11th day of December, the said Defendants, by their Attorney, file in open Court with the Clerk thereof, an Affidavit & Motion to rule the Plaintiff to file security for Costs herein. Which said Affidavit and Motion are in the words and figures following. To wit:

James Young

vs

James Keeler & Adam Brown

In the So David Circuit Court
of the Nov Term A.D. 1851.

James Keeler being duly sworn says that he is one of the above named Defendants and that James Young the Plaintiff above named is so unsettled as to endanger the officers of this Court with respect to their fees & legal demands. & that said Young is now about to start for the State of California & that he will leave no property behind him to the knowledge of this Affiant. Wherefore this Affiant asks that said Young may be ruled to give security for costs in this case, or in default, that this suit may be dismissed.

James Keeler

Sworn to & subscribed before
me this 11th day of Dec - 1851
Wm. C. Bostwick J. P.

The Plaintiff in the above case will take notice that on filing the above Affidavit a rule for security for costs will be applied for as soon as counsel can be heard.

James Keeler &

To

Adam Brown

James Young

Endorsed

Filed Dec. 11th 1851

Wm. H. Bradley Clerk.

And afterwards, to wit: on the 12th day of December as yet of the November Term A.D. 1851 of said Court in the Record of the proceedings thereof in said cause, are the following entries, to wit:

James Young

vs

James Keeler and

Adam Brown

Case

Now came on to be heard the motion of the Defendants heretofore filed, to rule the

Plaintiff to file security for costs herein. Which Motion after argument, is sustained by the Court and the Plaintiff is ruled to file security for costs or show cause to the contrary by tomorrow morning.

James Young }
vs }
James Keeler & } Case
Adam Brown }

The Plaintiff by his Attorney comes and files his Replications of Estoppel to Defendants 4th & 6th pleas. (said replications were afterwards withdrawn, Wm. B.)

And afterwards to wit: on the 13th day of December: A.D. 1857, as yet of said November Term of said Court, in the Records of the proceedings thereof in said Cause, is the following entry, to wit:

James Young }
vs }
James Keeler & } Case
Adam Brown }

The Plaintiff comes and files a Bond for costs herein. And the Defendants by their Attorney come & file their amended fifth plea & their rejoinder to the Plaintiff's fourth and sixth replications.

And the Plaintiff by his Attorneys moves the Court to strike from the files the fifth amended plea of the Defendants.

The Bond for costs referred to in said last recited order above, together with the 5th amended plea of the Defendants, The rejoinders of the Defendants to 4th & 6th replications of the Plaintiff, & also the Motion of the Plaintiff to strike out the said amended fifth plea of the Defendants, are all in the words and figures following to wit:

State of Illinois } set In the do Davie's County Circuit
County of do Davie's } Court November Term 1851
James Young Plaintiff

vs
James Keeler and } In Absumpit
Adam Brown } Defendants

I do hereby enter myself security for Costs in this cause, and acknowledge myself bound to pay, or cause to be paid, all costs which may accrue in this action, or that have heretofore accrued in the same either to the opposite party, or to any of the officers of this Court, in pursuance of the laws of this State.

Dated at Galena, this 12th day of December A.D. 1851

Approved } Alex^r Young }
Wm H. Bradley Clerk of }
do Davie's County Circuit Court }
Endorsed

Filed Dec^r 13th 1851
Wm H. Bradley Clerk

5th Amended Plea.

And for a further plea in this behalf the said Defendants say, Petition, because they say that at the time of the said supposed sale, assignment, transfer, authority, power & demise aforesaid in the declaration mentioned, the said Plaintiff had nothing in the said premises whereof he could make a sale, assignment, transfer, authority, or demise of aforesaid & nothing over which he had any power or authority in said premises. & this the said Defendants are ready to verify. Wherefore they pray judgment &c
Johnson, Higgins & Strother

Attorneys for Defendants
Endorsed

Filed Dec^r 13th 1851
Wm H. Bradley Clerk.

James Young
vs
James Keeler
Adam Brown

In the Circuit Court, To the November
Term A.D. 1851.

And the said Defendants as to the
said replications of the said Plaintiff, to the said plea
of these Defendants fourthly above pleaded, says Actus
Non, because they say that they did not on the 30th
day of September A.D. 1848, or at any other time, enter
into or receive the possession of any part of the said
North East quarter of said Section twelve (12) Township
No twenty eight (28) North of Range No One (1) West
of the 4th principal Meridian under or by virtue, or by
reason of any contract with the said Plaintiff And that
these Defendants never made any contract whatever with
the said Plaintiff concerning said North East quarter
Section, nor did they even receive the possession thereof
from him. These Defendants further say that if any
mineral ever was raised, by these Defendants on the said
North West quarter Section in said declaration mentioned
that the portion thereof to which the Plaintiff was en-
titled was paid to him long before the commencement
of this suit, to wit: on the first day of January A.D. 1849.
And this the said Defendants are ready to verify.
Wherefore they pray judgment &c.

And the said Defendants as to the said replication
of the said Plaintiff to the said plea of these Defendants

by them sixthly above pleaded, say Actio non, because they say they did not on the 20th day of September, or at any other time enter into or receive the possession of any part of the said North East quarter of Section No Twelve (12) of or from the said Plaintiff or under or by reason or by virtue of any contract made with the said Plaintiff and that all of said mineral mentioned in said declaration, was raised on said North East quarter Section Twelve. And this the said Defendants are ready to verify. Wherefore they pray judgment &c.

Johnson Higgins & Strother

Attorneys for Defs

Endorsed

Filed Decbr 12th 1851

Wm H. Bradley Clerk

State of Illinois Co Daviess County fs

James Young

vs

James Keeler
& Adam Brown

Circuit Court November
Term A.D. 1851

The said Plaintiff comes, by his Attorneys and moves the Court to strike from the files of this cause, the fifth amended plea of the Defendants filed herein upon the 15th day of December A.D. 1851, because the same was filed after the other pleas of said Defendants and without the leave of Court, and after replications to the other pleas filed.

By Hooge & Wilson
Attys for Plntff

Endorsed

Filed Decbr 13th 1851

Wm H. Bradley Clerk.

And afterwards, to wit on the 15th day of December
as yet of said November Term A.D. 1851 of said Court,
the said Plaintiff by his Attorneys files in open Court,
with the Clerk thereof his demurrer to the rejoinder of the
Defendants to the Plaintiff's 4th & 6th Replications. Which
said demurrers are in the words & figures following, to wit:

State of Illinois. In Daviess County.
James Young }
vs } Circuit Court November Term
James Keeler & } A.D. 1851.
Adam Brown }

And the said Plaintiff as to the
said rejoinder of the said Defendants to the replication of
the Plaintiff to the plea of the Defendant fourthly above
pleaded, saith that said rejoinder and the matters there-
in contained in manner and form as the same are
above pleaded and set forth are not sufficient in
law to bar or preclude him, the said Plaintiff from
having or maintaining his aforesaid action thereof again-
st the said Defendants and that the said Plaintiff
is not bound by law to answer the same, & this the
said Plaintiff is ready to verify. Wherefore for want
of a sufficient rejoinder herein, he prays judgment
and his damages by reason of the non performing of the
said several promises and undertakings in the said
Declaration mentioned, to be adjudged to him &c.

And for causes of demurrer shows the following

1st Because said rejoinder is a departure from the said
plea fourthly above pleaded.

2nd Because said rejoinder does not fortify & sustain
said plea.

3rd Because said rejoinder sets up a denial of matters
and things confessed & admitted by said plea.

4th Because the said Defendants by not denying in their plea the matters & things denied in their rejoinder are estopped to deny the same in said rejoinder.

5th And Because of other substantial & formal defects. & because it does not tender issue on matters alleged in the replication.

6th And That said rejoinder is uncertain & insufficient & because it concludes with a verification

By Hoge & Wilson
Atty for Plaintiff

And the said Plaintiff as to the said rejoinder of the said Defendants, by them rejoined to the said replication of the Plaintiff to the said plea of the said Defendants by them sixthly above pleaded, say that the said rejoinder and the matters therein contained in manner and form as the same are above pleaded and set forth are not sufficient in law to bar or preclude the said Plaintiff from having or maintaining his aforesaid action thereof against them and that he is not bound by law to answer the same. And this the said Plaintiff is ready to verify. Wherefore for want of a sufficient rejoinder in this behalf, the said Plaintiff prays judgment and his damages, by reason of the not performing of said several promises & undertakings in said declaration mentioned, to be adjudged to him &c

And for causes of demurrer shew the following to wit:

1st Because said rejoinder is a departure from said plea sixthly above pleaded.

2nd Said rejoinder does not fortify & sustain said plea.

3rd Said rejoinder denies matter confessed & admitted by said plea

4th Because said Defendants by not denying in said plea the matters & things in said declaration contained, which are denied in said rejoinder, confessed & admitted the same & said Defendants are now estopped to deny the same in said rejoinder.

5th Because of other substantial & formal defects & because it does not tender issue on the matters averred in the replication.

6th And because said rejoinder is in other respects insufficient & uncertain & because it concludes with a verification.

By Hoge & Wilson
for Plntff

Endorsed

Filed Decr. 15th 1851

Wm H. Bradley Clerk

And afterwards to wit: on the 18th day of Decr. as yet of said November term A.D. 1851 of said Court, in the Record of the proceedings thereof in said Cause, is the following entry, to wit:

James Young

vs

James Keeler and
Adam Brown

Now came on to be heard the demurrer of the Plaintiff by his attorney heretofore filed to the rejoinder of the Defendants to the Plaintiff's 4th & 6th replications which after argument by Counsel is taken under advisement by the Court.

And afterwards to wit: on the 20th day of December as yet of said November term A.D. 1851 in the Record of the proceedings thereof in said Cause are the following entries to wit:

James Young

vs

James Keeler and
Adam Brown

The Court having fully considered and being fully advised upon the Demurrer of the Plaintiff heretofore filed by his Attorney to the rejoinder of the Defendants to the Plaintiffs 4th & 6th Replications overrules the Demurrer and on Motion of the Plaintiff by Attorney, the 5th amended plea of the Defendant is stricken from the file.

James Young

vs

James Keeler and
Adam Brown

The Plaintiff by his Attorney asks for leave to withdraw his replication of Badopple to Defendants 4th & 6th pleas, and for leave to reply double directly to said pleas, which was granted by the Court. Said replications to be filed by Tuesday morning next. And leave is granted to the Defendants to file an additional plea by same time.

And afterwards to wit: on the 22nd day of December as yet of the November Term A.D. 1851 of said Court, the said Plaintiff by his Attorneys filed in open Court, with the Clerk thereof his replications to the 4th and 6th pleas of the Defendants. Which said replications (together with the amendment made by leave of the Court in the 2^d replication to the 6th plea, May 15th 1852) are in the words and figures following. To wit

State of Illinois Co. Davis County ss

James Young
vs
James Keeler
& Adam Brown

Circuit Court November Term
A. D. 1851

1st Replication
to 4th Pled } The said Plaintiff as to the said
pleaded, says that the said Plaintiff by reason of any
thing, by the said Defendants, in that plea alleged, ought
not to be barred from having & maintaining his aforesaid
action thereof against them the said Defendants, beca-
use he says that long before, and at the respective
times of the said respective sales, transfers, assignment
demises and leases, in the said several Counts of the
declaration respectively mentioned, the said tracts &
parcels of land, in the said declaration mentioned
to wit: the said North West Quarter Section, and the
said part of the said North East Quarter Section, in
the first Count of the declaration fully & at large described
and upon which said tracts, said Range or Crevice is
situate, were held open by the proprietors & owners
thereof, for mining purposes according to certain rules
& customs of miners, then & long prior thereto prevalent
in said County & among miners & diggers in that
neighborhood, yielding and paying to said owners
& proprietors a certain rent or consideration for the
use, occupation & enjoyment of said lands as aforesaid
& by reason of the premises, all persons mining or
prospecting upon said tracts of land, respectively as afo-
said were authorized and empowered by reason of said
rules & customs, to trace up & pursue upon said
respective tracts of land each and every range or
crevice of lead mineral or ore that they might strike
or discover upon said respective tracts, & to use,
control & possess the same, subject & according to said

rules & customs of miners as aforesaid, and that long prior to said respective sales, transfers, assignments, demise, & leases in the respective Counts of the declaration respectively mentioned, the said Plaintiff had sunk and discovered the said range or crevice and worked, drifted & excavated a portion of the same to a great distance to wit: Twenty feet & had sunk shafts upon the same, which said shafts & drifts, excavations were situate upon said North West Quarter Section of which portion of said crevice so situate on said North West Quarter Section, the said Plaintiff then & there, to wit: at the said respective times of said sales, transfers, demise, lease & assignment in the said Counts of the declaration respectively mentioned, had possession. And the said Defendants were then and there desirous of obtaining the possession thereof from said Plaintiff & whatever right, title, or interest he had therein, and to work up, drift, prove & excavate according to said rules & customs of miners as aforesaid, said range or crevice wherever the same might run or penetrate, as well upon the said portion of the said North East Quarter as upon the said North West Quarter Section.

And the said Plaintiff avers that the said Defendants did obtain said possession of said drift & excavation as aforesaid from said Plaintiff and all his right title and claims to any & every part of said range or crevice, under, by virtue & in pursuance of the said respective sales, transfers, assignments, demise & lease in the respective Counts of the said declaration respectively set forth. And by drifting on & excavating still farther the said portion of said range, so obtained from this Plaintiff, the said Defendants entered upon said portion of range or crevice so as aforesaid lying & situate on said portion of said North East

Quarter Section and obtained therefrom & upon said part of said North East Quarter, the said Mineral in the said respective Counts of the declaration mentioned. And this the said Plaintiff is ready to verify. Wherefore he prays judgment and his damages by him sustained on occasion of the non performance of the said several promises in the said declaration mentioned, to be adjudged to him together with his costs &c.

By Roger Wilson for Plff.

2nd Repr

to 4th plea

decreed sustained
25 August 1852
(2 Ann. & R. filed 30 Aug 1852)
(See Amended Rep.)

And the said Plaintiff for a further replication to the said fourth plea of the said Defendants, by leave of Court first had and obtained, says precludes now because he says he did demise, lease, sell, transfer, assign & convey respectively of, in & to the said part of said range or crevice so as aforesaid situate upon said part of said North East quarter Section, the said right, title interest, and possession respectively, in said respective Counts of the declaration in ~~the~~^{behalf} said sales, demise, lease, transfer & conveyance alleged respectively, and of this he puts himself upon the Country.

By Roger Wilson his Attly

1st Repr

to 6th plea

And the said Plaintiff as to the said plea of the said Defendants by them sixthly above pleaded says precludes now because he says that long before, and at the time of the said respective sales, transfers, assignments, demise & lease in the said several Counts of the declaration respectively mentioned, the aforesaid tracts & parcels of land, to wit: The said North West Quarter Section and said part of said North East Quarter Section (both of said tracts being fully & at large described in said first Count of said declaration) were held open by the proprietors and owners

thereof to all persons for mining purposes according to certain rules and customs of miners then and long before prevalent in said County and in the neighborhood, yielding & paying to said owners & proprietors a certain share on consideration for the use, occupation & enjoyment of said lands as aforesaid and by reason of the premises all persons mining or prospecting upon said respective tracts as aforesaid were authorized & empowered by reason of said rules & customs, to trace up & pursue, upon said respective tracts, each and every range or crevice of lead mineral or ore that they might strike or discover upon said respective tracts, & to use, control and possess the same, subject and according to said rules and customs of miners as aforesaid, and that long prior to said respective sales, transfers, assignments, demise & lease in the respective Counties of the declaration respectively mentioned, the said Plaintiff had struck and discovered the said range or crevice and worked, drifted & excavated a portion of the same to a great distance, to wit: twenty feet, in and upon said North West Quarter Section, and upon the same had sunk a shaft of which portion of said crevice is situate on said North West Quarter Section the said Plaintiff, then & there, to wit at the said respective times of said sales, transfer, assignment, demise & lease in the said Counties of the declaration respectively mentioned, had possession. And the said Defendants then & there were desirous of obtaining the possession thereof from said Plaintiff and a release of said Plaintiff of his interest therein and of said entire range, with intent on the part of said Defendants, to work up, drift, prove & pursue, according to said rules & customs of miners as aforesaid, the said range or crevice, wherever the same might run, or penetrate, as well upon said portion of said North East Quarter, as upon said North West

Answer sustained
& leave to demand rep. see amended Rep.

Quarter Section. And the said Plaintiff avers that said Defendants did obtain said possession of said drift and excavation as aforesaid from said Plaintiff, and a release of all his right, title, & claim to any and every part of said range or crevice, under, by virtue of, and in pursuance of, the said respective sales, transfers, assignment, demise, and lease in the respective Counts of the said declaration, respectively set forth, and by drifting on, and excavating still farther, the said portion of said range so obtained from this Plaintiff, the said Defendants entered upon said portion of said range so as aforesaid, lying and situate on said portion of said North East Quarter Section, and obtained therefrom in said portion last aforesaid, the said Mineral in the said respective Counts of the declaration mentioned. And that the said Plaintiff is ready to verify. Wherefore he prays judgment and his damages, by him sustained on occasion of the nonperformance of the said several promises in the said declaration mentioned, to be adjudged to him &c.

By Hoge & Wilson
his Atty.

2nd Repⁿ }
to 6th plea }
of the said Defendants by them sixthly above pleaded,
by leave of Court first had & obtained, the said Plaintiff
says, precludi non, because he says that at the said
times of the said sales, demise, assignment, & transfer
respectively in the declaration mentioned, the said Plaintiff
had, in the said part of said crevice, so as aforesaid
situate on said portion of said North East quarter
the rights, claims, interest & possession in that behalf
alleged, in the (fifth Count), of said declaration, of which
he could make said respective sales, demise, lease
& transfer respectively, & of this he puts himself upon
the Country.

Amendment
in brackets
15th 11 1852.
[12099-26]

By Hoge & Wilson. his Atty.

Amended
to 1st amended
1st & 2nd amended
by Aug 1852

Endorsed,
Filed December 22nd 1851
J. H. Bradley Clerk.

And afterwards, to wit: on the 8th
day of March A.D. 1852 in March Term of said Circuit
Court A.D. 1852 in the Record of the proceedings of said
Court in said Cause, is the following entry, to wit:

James Young }
vs } Case
James Keeler }
Adam Brown }
The Defendants by their Attorney,
file their demurrer to the first and
second Replications to the 6th plea, & also to the 1st
and 2^d Replications to the 4th plea. & the Plaintiff, by
his Attorney moves the Court for leave to amend & file
double Replications, & also to amend his declaration
by inserting in last Count 13th in place of 2/5th in setting
out contract. And the Court grants leave to
the Plaintiff to amend, and also to file two Replica-
tions to the fifth amended plea of Defendants, or to
any plea which may be filed. And on Motion of the
Defendants, by Attorney leave is granted to file an addi-
tional plea. And the Cause is continued at the
Plaintiffs Costs.

The said demurrers of the Defendan-
ts, & the said fifth amended plea of the Defendants referred
to in said last recited order above, are in the word and
figures following, to wit:

Demurrer to 1st & 2^d Replications to sixth plea.
James Keeler & Adam Brown } In To David's Circuit Court,
ad } March Term 1852.
James Young }

And the said James Keeler and Adam Brown come and say that the said James Young ought not further to have his action aforesaid against them, because they say that the first replication to the sixth plea aforesaid and the matters therein contained are not sufficient in law to maintain the action aforesaid, and that they are not bound by law to answer the same. Wherefore they pray judgment and that the said James Young may be barred of maintaining his said action further against them. And for causes of demurrer the said James Keeler & Adam Brown shew to the Court here the following, to wit:

- 1st Said Replication does not aver that Defendant had any interest in said North East Quarter section, otherwise than argumentatively. Because said replication is double.
- 2^d Because it does not show any particular custom or refer to any, which the Court can judicially notice & because if there was such a custom, it would be contrary to and in conflict with the Statute of Frauds.
- 3^d It does not show that Plaintiff had anything in the North East Quarter section.
- 4th It does not appear that Defendants got possession from Plaintiff of any part of the North East Quarter, but only that they entered thereon from the said North West Quarter.
- 5th Because the said Replication does not sufficiently confess and avoid said plea.

Wiggins & Strother for Defts

Demurrer to 2^d Replication to sixth plea.

And the said James Keeler & Adam Brown come and say that the said James Young ought not

further to maintain his action aforesaid against them because they say that the said second replication to said sixth plea and the matters therein contained are are not sufficient in law to maintain the action aforesaid, and they are not bound by law to answer the same: Wherefore they pray for judgment, and that the said James Young may be barred of his said action against them. And for causes of demurrer the said James Keeler and Adam Brown show the following to wit:

1st Because said 2^d replication to said sixth plea does not sufficiently confess and avoid said plea.

2^d Because it is argumentative and does not allege positively that the Plaintiff had any interest in said North East Quarter section.

Higgins & Brothers
for Defts.

Demurrers to 1st & 2^d replications to fourth plea.
James Keeler & Adam Brown }
ad. } In So David Circuit Court
James Young } March Term 1852.

And the said James Keeler & Adam Brown come and say that the said James Young ought not to have further his action aforesaid against them because they say that the first replication to the fourth plea aforesaid, and the matter and things therein contained are not sufficient in law to maintain the action aforesaid, and that they are not bound by law to answer the same: Wherefore they pray judgment, and that the said James Young may be barred of his said action against them. And for causes of demurrer the said Adam Brown and James Keeler show to

The Court here the following.

1st It does not appear that Defendants got possession of the North East Quarter, from said Plaintiff, but only that they entered upon the North East Quarter by digging on & excavating further a portion of said range.

2^d The fourth plea is a denial of a portion of the declaration. It traverses that part of the declaration relating to the North East Quarter Section. The only new matter set up in the plea is that the mineral was raised on the North East Quarter, and that is the only matter they can reply to.

3^d The replication does not confess and avoid the plea. The matters averred do not amount to an avoidance.

4th The replication is argumentative. It does not aver directly that Defendants did demise on the North East Quarter aforesaid.

5th For other manifold & sufficient reasons apparent on the face of said replication.

Higgins & Strother for Defs

And for demurrer to the second replication to said fourth plea, the said Defendants say that the said James Young ought not to have his aforesaid action against them, because they say that the matter contained in said second replication to said fourth plea, and that said second replications are not sufficient in law to maintain the action aforesaid, and that they are not bound by law to answer the same: wherefore they pray judgment, and that the said James Young may be barred of his said action against them. And for causes of demurrer, the said James Keeler & Adam Brown

show to the Court here, the following, to wit:

1st Because said second replication does not sufficiently confess & avoid said fourth plea, or deny the same.

2nd Because it is argumentative and does not meet the facts stated in said pleas.

3rd For other and sufficient reasons.

Higgins & Strother

Endorsed

Filed March 8th 1852.

Wm H. Braley Clerk

5th Amended Plea.

And for a further plea in this behalf the said Defendants say Actio non because they say that at the time of the said supposed sale, assignment, transfer, authority, power & demise aforesaid in the declaration mentioned, the said Plaintiff had nothing in the said premises whereby he could make a sale, assignment, transfer, authority or demise aforesaid & nothing over which he had any power or authority in said premises, & this the said Defendants are ready to verify. Wherefore they pray judgment &c.

Johnson Higgins & Strother

Attorneys for Defs.

Endorsed

Filed March 8th 1852.
Wm H. Braley Clerk

And afterwards, to wit on the 27th day of March A. D. 1852 in said March Term 1852 of said Circuit Court, in the Record of the proceedings of said Court in said Cause, is the following entry, to wit:

James Young

v2

James Keelen & Adam Brown

Case.

On motion of the Plaintiff by his Attorney leave
is granted him by the Court to open the deposition
of William Young on file herein.

And afterwards to wit: on the 10th day of
May A.D. 1852 in May Term A.D. 1852 of said Court is
the following entry to wit:

James Young

vs

Case

James Keeler &

Adam Brown

The Plaintiff by his Attorney comes
and files his joinders to the Defendant
demurrers to the 1st replication to the 5th plea and to
1st and 2^a replications to the 6th plea, and also his
replication to the fifth amended plea of the Defendant.

The said joinders of the Plaintiff to the Defendant
demurrer and also his replication to the fifth amend-
ed plea of the Defendant last above referred to (together
with an amendment in said first replication to said
5th amended plea of May 15th 1852) are in the words
and figures following, to wit:

James Young

vs

Circuit Court May Term 1852

James Keeler et al

The said Plaintiff that said
first replication to said sixth
plea and the matter therein contained, in manner
& form pleaded, are sufficient in law to have & main-
tain the aforesaid action. & this he is ready verify
Wherefore he prays judgment & his damages &c
Rogers & Wilson Pltffs.

And said Plaintiff says that said second replication
to said sixth plea and the matters therein contained
in manner & form pleaded, are sufficient in law to
have & maintain the aforesaid action. & this he is ready
to verify. Wherefore he prays judgment & his damages &c
Hoge & Wilson for Plntff

And said Plaintiff says that said first replication
to the fourth plea and the matters therein contained
in manner & form pleaded, are sufficient in law to
have & maintain the aforesaid action. & this he is ready
to verify. Wherefore he prays judgment & his damages &c
Hoge & Wilson
Attys for Plntff;

Endorsed

Filed May 10th 1852
Wm C. Bradley Clerk

State of Illinois Co Daviess County ss

James Young

vs

James Keeler

et al

Circuit Court May 5 1852.

1st Rep. { The said Plaintiff as to the said plea
to 5th plea } of the said Defendants, by them fifthly
above in their amended plea pleaded says precludi
non because he says that at the time of the said sales,
apportionment, transfer, authority, power & demise aforesaid
in the respective Counts of the declaration mentioned,
the said Plaintiff had in said tracts & parcels of land
in the said declaration mentioned, whereof he could
make a sale, apportionment, transfer, authority & demise
as aforesaid, & over which he had power & authority
a right interest & possession to wit the rights,

Amended in back, interests, power & possession in the (Second Count) of
Amended May 15th 1852. the declaration mentioned in that behalf. And this
he prays may be enquired of by the Country &c
Hoge & Wilson for Plaintiff

2nd Rep
to 5th plea } And for a further replication to said 5th amended
plea, the said Plaintiff says precludi non, because he says
at the said respective times of said sale, assignment, trans-
fer, authority, power and demise aforesaid in the respective
Counts of the declaration mentioned, the said Plaintiff had
in said premises whereof he could make respectively said sale,
assignment, transfer, authority and demise & over which he
had a power & authority, a right, title, power, authority &
possession & interest, to wit: the possession & control of all that
part of said range lying & being on said North West Quarter
of said Section twelve, & the right & authority to dig, pursue
& excavate the same & extract the lead mineral therefrom,
yielding & paying therefor, as in the respective Counts of the
declaration respectively alleged, & with the right & authority
to pursue & drift said range, through & in, and upon, that
portion of said said North East Quarter in said declaration
described, & to extract lead mineral therefrom on said last
named tract, in case no discovery of said range, in & upon
said last named tract, by some other person ^{were} made before said
excavation & drift penetrates said last named tract. (The exact
part & portion of the same into which said range might
run, & its course not being then proved & discovered) yielding
& paying to one James Campbell the grantee of said William B.
Green a certain portion of said mineral, as found & raised
in & upon said part of said North East Quarter in said
range or crevice. And this the ^{said} Plaintiff is ready to verify, wherefore
he prays judgment & his damages by him sustained, by reason of the
non performance of the said several promises & undertakings
in said declaration mentioned to be adjudged &c.

Hoge & Wilson for Plaintiff.

Endorsed

Filed May 10th 1852
& Filed as amended May 15th 1852
Hm H. Bradley Clerk.

And afterwards, to wit on the 11th day of May, in said May Term A.D. 1852 of said Court in the Record of the proceedings therein in said Cause is the following entry to wit:

James Young

vs

Case

James Keeler

Adam Brown

The Defendants by their Attorney file their demurrers to the first and second replications to the fifth plea of the Defendants.

The said demurrers of the Defendants last above referred to are in the words and figures following, to wit,

James Keeler &

Adam Brown

as

James Young

In the Circuit Court of St. Davids County Of the May Term A.D. 1852.

And the said Defendants say that the first replication to Defendants fifth amended plea as above pleaded in manner & form as the same is pleaded and the matters & things therein contained, as the same are pleaded & set forth are not sufficient in law to entitle the said Young to have, or maintain his aforesaid action thereof against them. And this they are ready to verify. Wherefore they pray judgment be.

And for cause of demurrer these Defendants shew that the said replication does not sufficiently

admit or deny the facts stated in the plea.

2^d That it merely affirms what is stated in the declaration, without showing any new matter.

3^d Because it is argumentative in not averring what right the Plaintiff had.

4th Because the replication does not allege the facts in a positive & plain manner so that the Defendants can take issue upon them.

5th Because it does not state what interest Plaintiff had in the land.

6th Because it states evidence and not facts, is argumentative & not positive.

And as to the 2^d replication to Defendants fifth amended plea, the said Defendants say that the same and the matters & things therein contained, as the same are therein pleaded and set forth are not sufficient in law to entitle the said Young to have or maintain his aforesaid action there against them, and that by law they are not bound to answer the same. And this they are ready to verify. Wherefore they pray judgment &c.

And for cause of demurrer said Defendants show that the said replication does not sufficiently admit or deny the facts stated in the plea.

2^d That it merely affirms what is stated in the declaration, without averring any new matter & concludes with a verification.

3^d Because it is argumentative in not averring what right the Plaintiff had.

4th Because the replication does not allege the facts in a positive & plain manner so that the Defendants can take issue upon them.

5th Because it does not show what interest Plaintiff had in the land, not referring to any custom

which is legal, on which the Court can take judicial notice.

6th Because it states evidence and not facts. Is argumentative & not positive.

Higgins, Strother & Johnson
Attys.

Endorsed

Filed May 11th 1852
Wm H. Bradley Clerk

And afterwards, to wit: on the 12th day of May in said May Term A.D. 1852 of said Court in the Record of the proceedings therey in said Cause, is the following entry, to wit:

James Young

vs

Case

James Keeler &

Adam Brown

Now came on to be heard the demurrers of the Defendants heretofore filed, to replications of the Plaintiff to the Defendants pleas, which after argument by counsel are taken under advisement by the Court.

And afterwards, to wit: on the 14th day of May in said May Term A.D. 1852 of said Court in the Record of the proceedings therey in said Cause is the following entry, to wit:

James Young

vs

Case

James Keeler &

Adam Brown

The Court having fully considered and being fully advised upon the demurrers of the Defendants filed by their Attorneys, to the replications of the Plaintiff, overrules the demurrers to

the second replication to the fifth plea of Defendant, and sustains the Defendants demurrers to the first replication to the fifth plea to the first replication to Defendants fourth plea to the first replication to Defendants fifth plea, and also to the first and second replications to Defendants sixth plea. To which ruling and decision of the Court in sustaining said demurrers to the Plaintiffs replications, the said Plaintiff, by his Attorney excepts.

And afterwards, to wit on the 18th day of May in said May Term A.D. 1852 of said Circuit Court in the Record of the proceedings thereof in said Cause is the following entry, to wit:

James Young }
vs } Case
James Keeler &
Adam Brown }
On motion of the Plaintiff by his Attorney, leave is granted him by the Court to file his amended first replication to the fifth plea of the Defendants. And also his amended first and second replications to the Defendants sixth plea. And the Plaintiff by his Attorney abides by his first replication to the fourth plea of the Defendants.

The said replications of the Plaintiff last above referred to are as follows, except the replication to 5th amended pleas, which has been copied as amended in this transcript of Record of the date of May 10th A.D. 1852
(said amended 2^d replications are not among the files of my office WAB)

State of Illinois Co Duwies County ss
James Young }
vs } Circuit Court May Term 1852
James Keeler &
Adam Brown }
The said Plaintiff comes and for an amended replication to said plea of the

Defendants, by them sixthly above pleaded, says precludi non
because he says, at the said respective times of said demise,
sale assignment, and transfer aforesaid in the declaration men-
tioned, The said Plaintiff had in said premises in said
plea mentioned, wherof he could make a sale, transfer,
assignment, and demise, a right, title, interest, power &
authority, to wit: the right and authority to pursue &
drift said range or crevice through, and in and upon,
said premises in said plea mentioned, & to extract, lead
mineral therefrom in said premises, in case no previous dis-
covery of said range or crevice in & upon said premises
by some other person, were made, before said excavation &
drift penetrated said premises, (The exact part & portion
of the same into which said range might run, and
its course, not then having been proved or discovered).
yielding & paying to the owner of said premises, a certain
share or proportion of said lead mineral, so found and
raised in and upon said range or crevice, upon said
premises in said plea mentioned. & This said Plaintiff
is ready to verify. Wherefore he prays judgment & his
damages by him sustained by reason of the non-
performance of the said several promises & undertak-
ings in said declaration mentioned, to be adjudged
to him &c. Hoge & Wilson for Pltff.

Endorsed.

Filed May 18th 1852
Wm H. Bradley clk

And afterwards to wit on the 21st day of August
A.D. 1852 in the Record of the proceedings of said Court in
said Cause in said August Term thereof A.D. 1852 is the
following entry, to wit:

James Young }
 vs } Case
 James Keeler &
 Adam Brown }

The Defendants by their Attorney come and file their demurrer to the first & second replication to Defendants sixth plea & also their demurrer to the first replication to the fifth plea and also their rejoinder to the second replication to the fifth plea. And the Defendants by their Attorney move the Court for leave to withdraw the similar to the second replication to the fourth plea of the Defendants. Which motion is sustained by the Court & leave is granted & the Defendants by their Counsel are ruled by the Court to file their rejoinder immediately. And the Defendants by their Attorney file their demurrer to the second replication to the fourth plea of the Defendants.

The said demurrers & rejoinders of the said Defendants refused to in said last above recited order & entry are in the words and figures following, to wit:

James Keeler et al } In the Po Lawce Circuit Court of
 ad } the August Term A.D. 1852
 James Young }

And the said Defendants come & say that the said Plaintiff ought not further to have & maintain his action aforesaid against them because they say that the first replication to the sixth plea (as amended) aforesaid & the matters therein contained are not sufficient in law to maintain the action aforesaid & that these Defendants are not bound by law to answer the same: wherefore they pray judgment & that the said James Young may be barred from having or maintaining his said action further against

these Defendants. And for cause of demurrer shows that the said replication does not show any right or interest in said ground whereof said Plaintiff could make a sale, transfer, demise or assignment.

2^d. Said replication is vague, indefinite & uncertain, in this that it does not state what interest the said Plaintiff had in & to the said tract of land in said sixth plea mentioned, at the time of said supposed sale, transfer, assignment &c to said Defendants.

3^d. Said replication does not aver that the Plaintiff was possessed of any definite interest, in said tract of land in said sixth plea mentioned, at the time of said sale, assignment, transfer, authority, power & demise aforesaid whereof he could make a valid sale, assignment, transfer or demise, & over which he had power or authority or to do, or any right, interest or possession.

4th. The said replication is argumentative & inferential only, & does not aver positively what interest said Plaintiff had in said tract of land, whether by lease, license, or otherwise, & does not aver what authority he had to assign, sell, demise or transfer the same.

5th. The said replication merely reaffirms the matter contained in the Count of the declaration, & does not show any interest which could be assigned, transferred, demise, or sold by said Plaintiff.

& for other goods & sufficient reasons

Johnson Huggins & Another
Attorneys for Def.

Demurrer to second replication to sixth plea.
And the said Defendants come and say that the said James Young ought not further to maintain his action aforesaid against them, because they say that the said second replication to said sixth plea, and the matter therein contained

are not sufficient in law to maintain the action aforesaid; & these Defendants are not bound by law to answer the same. And this they are ready to verify. Wherefore they pray judgment & that the said James Young may be barred of his said action against them, and for cause of demurrer show the following.

First, Because said second replication to said sixth plea does not sufficiently confess & avoid said plea.

2^d Because said replication is argumentative & does not allege positively that the Plaintiff had any interest in said North East quarter Section.

Because said replication fails to show that said Plaintiff had at the time of said supposed sale, assignment, transfer, demise & aforesaid any power, authority, interest, estate, right, right, possession, power or control whereby he could make a sale, transfer, assignment, demise or other disposition whatsoever, & Because no particular estate or interest is set out or shown by Plaintiff. & For other good & sufficient reasons

Higgins & Strother
Attys for Defn.

Endorsed

Filed Aug 21st 1852
Wm W. Bradley Clerk

James Keeler et al

vs

James Young

In Jo Davies Circuit Court,
August Term 1852.

And the said Defendants come and say that the said Plaintiff ought not further to have and maintain his action aforesaid against them, because they say that the first replication to the fifth plea (amended) aforesaid and the matters therein contained are not sufficient in law

To maintain the action aforesaid, and that they are not bound by law to answer the same. Wherefore they pray judgment, and that the said James Young may be barred of maintaining his said action further against them.

And for cause of demurrer the said Defendants show to the Court here the following:

1st Said replication is vague, indefinite and uncertain in this, that it does not state what interest the said Plaintiff had in and to the tract & parcels of land in said replication mentioned, at the time of said supposed sale, assignment, demise, or transfer to said Defendants.

2^d Said replication does not aver that the Plaintiff was possessed of any definite interest in said tract & parcels of land, at the times of the said sale, assignment, transfer, authority, power & demise aforesaid whereby he could make sale, assignment, transfer, authority or demise, and over which he had power & authority, a right, interest and possession.

3^d Said replication is argumentative and inferential only and does not aver what interest said Plaintiff had in said supposed premises, or what authority he had to sell assign, transfer, demise or bargain premises.

4th Said replications does not show by what authority, or what right said Plaintiff had to sell, assign, transfer, demise or lease said tract or parcel of land or any interest therein.

5th For other manifold good and sufficient causes

Johnson Higgins & Brother
for Defts.

And the said Defendants as to the said second replication of said Plaintiff to said fifth plea (amended) say that said Plaintiff ought not by reason of anything by them in that replication alleged to have or maintain their aforesaid action thereof against them; because they say that at the

said respective times of said supposed sale, assignment, transfer, authority, power & demise aforesaid, the said Plaintiff had not anything in said premises whereby he could make respectively said supposed sale, assignment, transfer, authority and demise, and over which he had a power and authority, a right, title, power, authority, possession, interest as in manner and form is in said replication alleged. And of this they the Defendants put themselves upon the Country.

Johnson Higgins & Strother
for Defs.

And Plaintiff doth the like.

By Hoge & Wilson
Attys for Plaintiff

Endorsed

Filed August 24th 1852
Jm H. Bradley Clerk

James Keeler et al
vs
James Young

In St. Louis Circuit Court
August Term 1852.

And the said Defendants come and say that the said Plaintiff ought not further to have and maintain his action aforesaid against them, because they say that the second Replication to the fourth plea aforesaid and the matters therein contained are not sufficient in law to maintain the action aforesaid, and that they are not bound by law to answer the same. Wherefore they pray judgment and that the said James Young may be barred of maintaining his said action further against them.

And for causes of demurrer show to the Court here the following:

1st Said replication is vague, indefinite and uncertain in this that it does not state what interest the said

Plaintiff had in and to the tract and parcel of land and premises in said plea mentioned, at the time of said supposed demise, lease, sale, transfer, apportionment or conveyance.

2^a Said replication does not aver that said Plaintiff was possessed of any definite interest in said tract or parcels of land or said premises at the time of said supposed sales, demise, lease, transfer, apportionment or conveyance, as in said replication alleged.

3^a Said replication is argumentative and inferential only, and does not aver what interest said Plaintiff had in said supposed premises, or what authority he had to demise, lease, sell, transfer, apportion or convey any interest in the same.

4^a Said replication does not aver what interest said Plaintiff had in said range or coveice in said replications mentioned, or what right he had to demise, lease, sell, transfer, apportion or convey any right, title, interest or possession in said range or coveice, or said premises, in said replication mentioned.

5th For other good and sufficient reasons.

Higginbotham & Brother & Johnson
For Defs.

Endorsed

Filed Augt 24th 1862

Wm H. Bradley Clerk

And afterwards, to wit on the next day to wit on the 25th day of August A.D. 1862 in the Record of the proceedings therey in said cause is the following entry to wit:

James Young

vs

Case

James Keeler

Adam Brown

The Plaintiff by his attorney files his exceptions to the depositions of James Campbell on file, and also files his demurrer to the rejoinder to the second Replication to the fifth plea (amended) of the Defendants also his joinder in demurrer to first replication to fifth amended plea. Also to second Replication to fourth plea. Also to first and second replications to the sixth plea.

The Exceptions of the Plaintiff to depositions, his demurrer to rejoinder & also his joinders in demurrers referred to in last recited entry, are each in the words and figures following, to wit:

State of Illinois ss Davis County ss

James Young

vs

Circuit Court May Term

A. D. 1852

James Keeler

Adam Brown

The said Plaintiff comes & moves the Court to strike out & suppress the following portions of the deposition of James Campbell taken herein, for reasons set forth, to wit:

1st To answer in chief 7th because the question is leading & because matter of argument & opinion & irrelevant & inadmissible & not responsive to the question.

2nd To all that part of answer in chief 7th beginning at the words "but as Mr Young" and ending with "that labor" because not responsive to the question - (mere argument & reasoning, because the mere private views & judgment of the witness because he assumes in argument that Young never worked the land, without so testifying,

because irrelevant, improper, & inadmissible.

3rd In answer 8th & each part thereof because the question is leading, because it assumes facts not proven. because a private rule of the witness is asked for. because witness gives his understanding of the customs of mining without showing himself acquainted with them, & because in another part of the deposition the witness testifies that he is not acquainted with the rules of mining, because he gives his judgment & decision (on the facts assumed) of the forfeiture in stead of showing the rule or custom & the acts of said Keeler & Brown. because argumentative considerations of witness. Because not responsive to the question, & irrelevant & improper, and for other reasons.

Hoge & Wilson for Plaintiff

Endorsed

Filed Augt 25th 1852.

Wm H. Bradley Clerk.

State of Illinois for Daviess County

James Young
vs

James Keeler &
Adam Brown

Circuit Court, August Term
A. D. 1852

And the said Plaintiff comes and says that the said rejoinder of the said Defendants to the said second replication of said Plaintiff to said fifth plea (amended) in manner & form pleaded, and the matters therein contained are not sufficient in law to bar the said Plaintiff of his aforesaid action against him and that he is not bound by law to answer the same, & this he is ready to verify. Whereupon he prays judgment and his damages aforesaid to be adjudged to him.

And for causes of demurrer the said Plaintiff shows
1st That said rejoinder is but a substantial copy of
the said fifth plea (Amended).

2nd said rejoinder does not traverse or take issue upon
said replication nor confess and avoid the same.

3rd Because said rejoinder is not responsive to the
said replication.

4th Because said rejoinder does not take issue upon
said replication.

5th And for other good and sufficient reasons.

Hoge & Wilson

Attys for Plaintiff

Endorsed

Filed Augt 25th 1882

Wm H. Bradley Clerk.

James Young { Circuit Court for Daviess
vs { County August Term 1882
James Keeler {

And said Plaintiff says that
said 1st Replication to said 5th plea (Amended) is suf-
ficient in law & that he is ready to verify the same.
Wherefore he prays judgment & his damages aforesaid to
be adjudged to him.

Hoge & Wilson Attys for Plaintiff

And said Plaintiff says that said 2nd Replication
to said 4th plea is sufficient in law & that he is ready
to verify the same. Wherefore he prays judgment & his dam-
ages aforesaid to be adjudged to him. Hoge & Wilson.

And said Plaintiff says that said first
replication to said 6th plea is sufficient in law
and that he is ready to verify the same.

Wherefore he prays judgment & his damages aforesaid
to be adjudged to him.

Hoge & Wilson.

And the said Plaintiff says that said 2nd Replica-
tion to said sixth plea is sufficient in law, And
that he is ready to verify the same. Wherefore he prays
judgment and his damages aforesaid to be adjudged
to him.

Hoge & Wilson

for Plaintiff

Endorsed

Filed Aug. 25th 1852
Wm. H. Bradley Clerk

And afterwards, to wit on the 26th
day of August, in said August Term of said Court,
A.D. 1852 in the Record of the proceedings therein in
said Cause, is the following entry, to wit:

James Young }
vs } Case

James Steeler & }

Adam Brown }

Now at this day came on
to be heard the demurrers of the
Defendants heretofore filed by their Attorney to the
first and second Replications to the sixth plea, to
the first replication to the fifth plea, and also to
the second replication to the fourth plea. Which
after argument by Counsel is taken under Advice-
ment by the Court.

And afterwards, to wit on the 27th day of August
in said August Term 1852 of said Court, in the Record of the
proceedings therein in said Cause is the following entry to wit:

James Young }
 James Keeler } Case
 Adam Brown }

The Court having fully considered and being fully advised upon the demurrer of the Defendants heretofore filed herein sustains the Defendants demurrer to the second replication to the fourth plea, and also sustains the Defendants demurrer to second replication to the sixth plea of the Defendant, and overrules the Defendants demurrer to first replication to fifth amended plea, and also overrules the demurrer to the first replication to the sixth plea of the Defendants. And the Defendants by their Counsel move the Court for leave to file double rejoinders to two of the Replications of the Plaintiff which motion for leave, is denied by the Court.

And afterwards, to wit: on the 30th day of August in said August Term A.D. 1852 of said Court in the Record of the proceedings therein in said Cause is the following entry, to wit:

James Young }
 vs } Case

James Keeler and
 Adam Brown }

The Plaintiff by his Attorney moves the Court for leave to amend his 2nd Replication to the 4th plea of the Defendant, which motion is sustained by the Court and leave granted. And the Defendants by their Attorney move the Court to file double rejoinders to the same, which motion is granted by the Court, and the Plaintiff by his Attorney excepts to the ruling and decision of the Court heretofore made in sustaining the Demurrer to the 2nd Repln to the 6th plea. And the Plaintiff abides by his said Replication

And the Plaintiff by his Attorney files his Amended 2nd Replication to the Defendants 4th plea, And on Motion of the Defendants by their Attorney leave is granted them by the Court to withdraw the demurrer to 1st Reper to 6th plea And to rejoin the Defendants rejoinders to be filed within four days

The amended 2^d Replication of the Plaintiff to the 4th plea refers to in said last recited entry. is in the words & figures following to wit:

State of Illinois vs. Jarvis County
James Young }
vs } Circuit Court August Term 1852.
James Keeler & al }

And for an amended 2^d replication to said fourth plea of said Defendant by the leave of Court first had & obtained, the said Plaintiff says preeludi now because he says he did transfer, assign and convey certain rights, title & interest in and to said portion of said range or crevice so as aforesaid, situated upon said North East quarter of said Section Twelve, to wit: the right and authority to pursue and drift said range or crevice through and in and upon said premises in said plea mentioned, and to extract & carry away & convert to his own use lead mineral therefrom on said premises, in case no previous discovery of said range or crevice in and upon said premises by some other person were made, before said excavation & drift penetrated said premises, - The exact part & portion of the same into which said range might run and its course not then having been proved or discovered - yielding and paying to the owner of said premises a certain share or proportion of said lead mineral, so found

And raised in and upon said range or crevice upon said premises, on said plea mentioned & this the Plaintiff is ready to verify. Wherefore he prays judgment & his damages by him sustained, by reason of the nonperformance of said promises in said declaration mentioned to be adjudged to him &c

Woge & Wilson for Pltffs

Endorsed

Filed Aug. 30th 1852
Wm. H. Bradley CLK

And afterwards, to wit on the 31st day of August, in said August term A.D. 1852, the said Defendants by their Attorney filed in open Court, with the Clerk thereof their rejoinder to first replication to 6 Amended plea, and the first replication to 5th Amended plea & their rejoinders to 2^d replications to 4th plea. Which are in the words and figures following to wit:

James Yiring
vs

James Keeler
& Adam Brown

In the 3^d District Circuit Court of
the August Term A.D. 1852.

And the said Defendants as to the matters & things in the first replication to the sixth plea as Amended. The said Defendants say Actis non because they say at the said respective times in said declaration alleged, the said Plaintiff had nothing in said North East quarter Section whereby he could make a sale, transfer, assignment or demise, & had no right, title, interest, power or authority to pursue or drift into said North East quarter Section & extract mineral therefrom, and could not & had no power to make a sale or assignment of the said right, interest or demise. And of this they put themselves upon the Country
Johnson Higgins & Atcher.

And Pltff likewise

Woge & Wilson.

And the said Defendants as to the said first replication to
to the 1st Amended plea say Actio non because they say that
the said Plaintiff, at the said respective times in the said
declaration declaration mentioned did not have in said
premises any right title, interest or possession whereby he could
make a sale, assignment, transfer, authority or demise, & had
no power to make any sale, authority or demise. And of
this said Defendants put themselves upon the Country

Higgins, Johnson & Brother
Attorneys

Endorsed

Filed Aug³¹st 1852

Wm H. Bradley Clerk

James Young

vs

James Keeler &

Adam Brown

In the U. S. District Court of
the August Term A.D. 1852

And the said Defendants as to the
Amended second replication to the fourth
plea says Actio non, because they say, that the said Plain-
tiff did not transfer, assign, or convey any right title, or
interest in or to said North East quarter Section, or in
any range or crevice of mineral, situated thereon.

And of this the said Defendants put themselves upon
the Country

Johnson Higgins & Brother
Attorneys for Defendants

& the Plaintiff likewise

Koege & Wilson for Plaintiff

2nd

And for a further rejoinder in this behalf, the
said Defendants say as to the said second replication to
said Defendants fourth plea Actio non, because they say
that the said supposed transfers, assignments & conveyances

in said replication mentioned were for the transfer, assign-
ment, conveyance, & sale of an interest in land, & that
no agreement in respect of or relating to said contract, trans-
fer, assignment, conveyance or sale, or the supposed cause
of action in said declaration mentioned, nor any memo-
randum or note thereof was or is in writing, or was, or
is signed by said Defendants or by said Plaintiff, or
by any other person or persons, by them or him thereunto
lawfully authorized according to the form of the Statute
in such case made & provided. & this the said Defend-
ants are ready to verify. Wherefore they pray judgment &c.

Johnson Higgins & Brother
Attorneys for Defs.

Entered

Filed Aug²¹ 31st 1852
Wm H. Bradley Clerk

And afterwards, to wit: on the 22nd day
of November in November term A.D. 1852 of said
Circuit Court in the Record of the proceedings therein in
said Cause is the following entry, to wit:

James Young

vs

James Keeler &
Adam Brown

Case

The Plaintiff by his Attorney comes
and files his demurrer to the rejoinder
of the Defendants to the first replication & the fifth
amended plea of the Defendants and also files his
demurrers to the second rejoinder to the second
replication to the fourth plea of the Defendants.

The said demurrers of the Plaintiff referred to
in said last recited entry above, are in the words & figures following, to wit:

State of Illinois St. Charles County

James Young

vs

James Keeler

et al.

Circuit Court

And the said Plaintiff comes & says
That the said Rejoinder of the said
Defendants to the 1st Replication of the Plaintiff to the
said Defendants 5th amended plea, in manner & form
pleaded and the matter in the same contained are
not sufficient in law to bar the said Plaintiff of his
aforesaid action against them, and that he is not bound
by law to answer the same. Whereupon he prays judg-
ment and his damages aforesaid to be adjudged to him
vs
Hoge & Wilson for Plaintiff.

Defendants say said rejoinder to said
first replication of Plaintiff to Defendants 5th amended
plea is sufficient. Wherefore they pray judgment.

Johnson Higgins & Brother

Attorneys for Defendants

Endorsed

Filed Nov 32^d 1852

Wm H. Bradley Clerk.

State of Illinois St. Charles County

James Young

vs

James Keeler

et al.

In Circuit Court

And the said Plaintiff comes & says
That the said 2nd Rejoinder of the
said Defendants to the said 2nd Replication of the
Plaintiff to the said Defendants 4th plea in manner &
form pleaded and the matter in the same contained,

are not sufficient in law, to bar the said Plaintiff of
his aforesaid action against them & that he is not
bound by law to answer the same. Whereupon he prays
judgment & his damages aforesaid to be adjudged to
him.

And for cause of demurrer sheweth.

1st

That said rejoinder is insufficient in law.

2nd

Is a departure from the plea and sets up a
new & distinct defense.

3rd

Is uncertain, informal and insufficient in
substance & form.

Kuge & Wilson
Attys for Pltffs

Joinder in demurrer said Rejoinder to said 2^a
Replication to said 4th plea is sufficient. & of this
Defendants pray judgt.

Johnson Higgins & Brother
Attorneys for Defendants

Endorsed

Filed Nov 22^a 1852
Wm H. Bradley Clerk

And afterwards to wit: on the 23^a day of Nov-
ember A.D. 1852 in said November Term of said Court in
the Record of the Proceedings thereof in said Cause is the
following entry. To wit:

James Young

vs

James Keeler &

Adam Brown

Case

Now at this day came on to be
heard the demurrers of the Plaintiff
heretofore filed by his Attorney to the rejoinder of the
Defendants to the first replication to first amended plea

of the Defendants And also his demurrer to second rejoinder to second replication to fourth plea of the Defendants. Which after argument by Counsel are taken under advisement by the Court.

And afterwards to wit on the 24th day of November in said November term A.D. 1862 in the Record of the proceedings thereby in said Cause is the following entry, to wit:

James Young
vs
James Keeler
Adam Brown } Case

The Court, having fully considered and being fully advised upon the demurrer of the Plaintiff heretofore filed to rejoinder of the Defendants to the first replication to fifth amended plea of the Defendants overrule the same. And the Plaintiff by his Attorney elects to abide by his demurrer. And the Court having also fully considered and being fully advised upon the demurrer of the Plaintiff to the second rejoinder to second replication to fourth plea of the Defendants sustains the same

And afterwards to wit: on the first day of December at yet of the November term A.D. 1862 of said Court in the Record of the proceedings thereby in said Cause is the following entry, to wit:

James Young
vs
James Keeler
Adam Brown } Case

Now at this day came on to be heard the exceptions of the Plaintiff heretofore filed by the Plaintiff by his Attorney to the depositions of James Campbell on file. And also the exceptions of the Defendants by Attorney

to the depositions of William Young on file. Which
after argument by Counsel are taken under advisement by
the Court.

And afterwards, to wit: on the 2^d day of
December as yet of the November term A.D. 1852 of said
Court, in the Record of the proceedings there in said Cause
is the following entry, to wit:

James Young	{	Case
vs.		
James Keeler & Adam Brown		

The Court, having fully considered
and being fully advised upon the ex-
ceptions of the Plaintiff heretofore filed to the depositions
of James Campbell on file herein, sustains the same in
part and overrules the same in part. And also sustains
the exceptions of the Defendants heretofore filed to the third
answer to the third interrogatory of William Young's
deposition on file. To all which rulings and decisions of
the Court herein adverse to the parties moving the
exceptions, each of the parties respectively by their Attor-
neys except.

And afterwards, to wit: on the sixth day of
December as yet of the November term A.D. 1852 of
said Court in the Record of the proceedings there in
said Cause is the following entry, to wit:

James Young	{	Case
vs.		
James Keeler & Adam Brown		

Now at this day came the parties
by their Attornies And upon issue joined

Thereupon came a jury of good and lawful men, to wit: Charles Keeler, Malon Coleman, Zephaniah Bell, Samuel Martin, Thomas Bond, William L. Kope, William Townsend, Hachariah Darling, Adam Telford, Thomas Wilford, Benjamin Cowg and Benjamin C. St. Cyr, who were duly elected, tried and sworn, and after hearing the evidence, and receiving instructions from the Court, the jury retired to consider of their verdict. And it is ordered by the Court by agreement of the parties by their Attorneys that the jury when they shall have agreed upon their verdict may sign and seal the same and disperse and meet the Court at 9 O'clock tomorrow morning.

And afterwards, to wit: on the 7th day of December a/yet of the November Term A.D. 1852 of said Court, in the Record of the proceedings therein in said Cause is the following entry, to wit:

James Young }
 ve } Case
James Keeler & }
Adam Brown } The jury yesterday empaneled in
 } this Cause, this day returned into
Court with the following verdict, to wit: We the jury
find for the Defendants. And the Plaintiff by his Att-
orney moves the Court for a new trial.

And afterwards, to wit: on the 9th day of December a/yet of the November Term A.D. 1852 of said Court in the Record of the proceedings therein in said Cause is the following entry, to wit:

James Young }
 ve } Case
James Keeler & Adam Brown }

The Plaintiff by his Attorney comes and files his reasons & motion for a new trial of this Cause.

The said motion and reasons filed as last above recited are in the words and figures following to wit:

State of Illinois for Daviess County &c

James Young

vs

James Keeler &

Adams Brown

Circuit Court November

Term A.D. 1852

The said Plaintiff comes & moves the Court to set aside the verdict of the jury in this Cause & to grant a new trial herein for the following reasons to wit:

1st Because the verdict is contrary to the Evidence

2nd Because the verdict is contrary to the law.

3rd Because the verdict of the jury is contrary to the instruction of the Court which were given as prayed for by the Plaintiff

4th Because the Court refused to give or refuse certain instructions asked for by the Plaintiff to wit instructions, 2nd 3rd 7th 11th & 20th & 9th

5th Because the Court qualified instructions asked by Plaintiff contrary to the consent of said Plaintiff & his Attorney to wit: the 2nd 3rd 7th 11th 9th & 20th instructions.

6th Because of the refusal of the Court to give certain instructions asked by the Plaintiff to wit: The 1st 8th 10th 14th 15th 16th & 17th

8th Because the Court gave each of the instructions which were given at the request, and on the part of the Defendants

9th Because the Court permitted the instructions which

were refused, to go to the jury & to be taken with them on retiring to consider of their verdict.

10th Because the Court, permitted the Defendants to introduce evidence of title in the lands described in the declaration, in James Campbell & James F. Keeler.

11th Because of the instructions which the Court, gave on the part of the Defendants.

12th Because of the instructions which the Court, gave on the part of the Defendants, as to the joint liability of the Defendants.

13th Because of the instructions which the Court, gave on the part of the Defendants, as to the testimony of Wm Young, & as to the testimony of James F. Keeler.

14th Because the Court refused to instruct the jury that if the Plaintiff proved his case as set forth in the pleadings, he was entitled to recover.

15th Because of other good reasons.

Hoge & Wilson for
Plaintiff

Endorsed

Filed Dec^r 9th 1852

Wm H. Bradley clerk

And afterwards, to wit, on the 10th day of December, at apt of the November term A.D. 1852 of said Court, in the Record of the proceedings there, in said Cause is the following entry, to wit:

James Young }
vs } Case

James Keeler &
Adam Brown }

Now came on to be heard the motion of the Plaintiff heretofore filed by his Attorney for a new trial of this Cause which is submitted to and taken

under advisement by the Court.

And afterwards, to wit: on the 15th day of December, as yet of the November Term A.D. 1852 of said Court in the Record of the proceedings therey in said Cause is the following entry, to wit:

James Young

vs

Case

James Keeler &

Adam Brown

The Court having fully considered and being fully advised upon the motion of the Plaintiff heretofore filed by his Attorney for a new trial of this Cause overrule the same. To which ruling and decision of the Court, the Plaintiff by his Attorney assents. It is thereupon concurred by the Court that the Plaintiff take nothing by his writ and that the Defendants go hence without day, and that execution issue against the Plaintiff for the costs of this suit.

And afterwards, to wit: on the 20th day of December, as yet of the November Term A.D. 1852 of said Court in the Record of the proceedings therey in said Cause is the following entry to wit:

James Young

vs

Case

James Keeler &

Adam Brown

Now comes the Plaintiff by his attorney and prays an appeal to the Supreme Court, which is granted by the Court conditioned that he enter into bond in the sum of Three hundred dollars, with Alexander Young as his surety, within thirty days from this date

And the said Plaintiff afterwards to wit: on the 12th day of January A.D. 1853 filed in the Clerk's office of said Court a certain writing obligatory commonly called an appeal Bond which is in the words and figures following to wit:

Know all men by these presents that we James Young and Alexander Young, the former of California, and the latter of St. David's County Illinois are held and firmly bound unto ~~the~~ James Keeler & Adam Brown in the penal sum of Three hundred dollars lawful money of the United States for the payment of which well and truly to be made, we hereby bind ourselves, our heirs, executors and administrators jointly, severally and firmly by these presents, as witness our hands and seals this twelfth day of January A.D. 1853.

The condition of the above obligation is such that whereas the said James Keeler & Adam Brown did on the 15th day of December A.D. 1852 in the Circuit Court in and for the County of St. David's and State of Illinois recover a judgment against the said James Young for the sum of Forty one dollars and eighty cents costs, from which said judgment of the said Circuit Court the said James Young had prayed for and obtained an appeal to the Supreme Court of said State. Now if the said James Young shall duly prosecute his said appeal with effect and shall moreover pay the amount of the judgment, costs, interest and damages, rendered and to be rendered against him in case the said judgment shall be affirmed in the said Supreme Court then the above obligation to be void, otherwise, to remain in full force and virtue.

Taken and entered into before me this 12th day of January 1853
Wm H. Bradley Clerk

James B. Young ^{per my} ~~per~~ ^{seal}
By L. M. Wilson his atty
Alexr. Young ^{per my} ~~per~~ ^{seal}

Endorsed

Filed January 12th 1863
Wm H. Bradley Clerk

The following exceptions made on the trial
of said cause were allowed, filed and
are in the words and figures following
Verdict.

(Bill of Exceptions)

State of Illinois So Davie's County ss.
James Young
vs
James Keeler
& Adam Brown

Circuit Court November
Term A. D. 1852.

Be it remembered that at this
Term came on to be heard the exceptions of the
Plaintiff to the deposition of James Campbell taken
on the 27th day of October A. D. 1851 at Springfield
Illinois before Benjamin Talbot Clerk of the Circuit
Court of the County of Sangamon, which said ex-
ceptions were filed on the 25th day of August 1852.
& are in words & figures following to wit:

State of Illinois So Davie's County ss.
James Young
vs
James Keeler
& Adam Brown

Circuit Court May Term
A. D. 1852.

The said Plaintiff comes & moves
the Court to strike out & suppress the following
portions of the Deposition of James Campbell taken
herein, for reasons set forth to wit:

1st To answer in chief 7th because the ques-
tion is leading & because matter of argument
& opinion & irrelevant & inadmissible & not resp-
onsive to the question.

2nd To all that part of answer in chief 7th beginning at the words "but as Mr Young" and ending with "that labor", because not responsive to the question - mere argument & reasoning - because the mere private views & judgment of the Witness - because he assumes in argument that Young never worked the land without so testifying - because irrelevant, improper & inadmissible.

3rd To answer 8th & each part thereof because the question is leading - because it assumes facts not proven - because a private rule of the Witness is asked for - because Witness gives his understanding of the customs of mining without showing himself acquainted with them & because in another part of the Deposition the Witness testifies that he is not acquainted with the rules of mining - because he gives his judgment & decision (on the facts assumed) of the forfeiture instead of showing the rule or custom & the acts of said Keeler & Brown - because argumentative, "considerations" of Witness - because not responsive to the question & irrelevant & improper, and for other reasons.

Hoge & Wilson for Plffs.

Endorsed

Filed August 25 1852

Wm H Brady Clerk

Which Exceptions were argued by Counsel & the same taken under advisement by the Court & afterwards at the same term the Court, the Court excluded & suppressed all of answer to question 8th and the last two lines of answer to question 7th as follows to wit: "being unwilling where I had the control of ground that one man should perform all the labor and another reap the profits of that labor" provided the Plff desired them to be suppressed. But the Court refused to suppress the following portion of said answer 7th or any part of said portion to wit: "But as Mr Young never worked the ground while I held it. I did not consider his claim valid" and overruled the Exception to the same. To which ruling & decision of the Court as to said portion of said answer 7th the last aforesaid, the Plaintiff by his Attorneys then & there excepted.

And the Defendants by their Attorneys orally excepted to the following part of the deposition of William Young taken before William C. Bodwich on the 3rd & 4th days of February A.D. 1852. To wit: ^{here copy} all of answer to Question third in Chief. Which Question & answer are in the word & figures following to wit:

Question 3rd Do you know of any application made by said Defendants, or either of them, to said James Young, or any other person, for the purchase or leasing of the said diggings, or any interest in the same. if yea. State what, with all the particulars

(Answer to Question 3rd. Said Abram Brown met me at Mr Chase's in the street before Chase's, supposing that I had an interest in them, or believing me to be my brother, I suppose, asked me on what terms he could have said diggings to work:

Excluded

I told him that I had nothing to do with said dig-
gings; that he must see my brother James; that I had
nothing to do about them. The above portion of the

Answer objected to. He said he would like to work
the diggings, and I had some general conversation with
him, at the time, in relation to the character of the
diggings. I told him that I thought the diggings
promised to be pretty good, and he said he thought fair
wages might be made working them. And had consid-
erable of such conversation in relation to them.

I think in the Fall of 1846 or Spring of 1847. It was
that I had this conversation. My impression is that
it was in the Fall of 1846, it may have been in the
Fall of 1847. But it was at any rate after the Spring of
1846. I know it was before the Spring of 1848.

All of the foregoing answer objected to.

I don't fix any precise period for such conversation.
(Objected to.)

And moved the Court to exclude &
suppress the same. Which Exception & motion was sust-
ained & the said answer to Question 3rd suppressed.
To which ruling & decision of the Court in allowing
said Exception & suppressing said Answer, said Plaintiff
by his Attorneys then & there excepted; And prayed that
this his Bill of Exceptions might be signed, sealed & made
part of the Record. Which was accordingly done this
1st day of December A.D. 1852.

Benj R. Sheldon (Seal)
Clerk

Filed December 6th 1852.

Wm. H. Bradley Clerk.

Concluded

(Bill of Exceptions)

State of Illinois vs David County &c.

James Young { Circuit Court November
vs { Term A.D. 1852.

James Keeler {
Adam Brown { In Appumpst.

Be it remembered that on the trial of this Cause before the Jury at this Term the following exceptions were taken and reserved by the said Plaintiff on the ruling & decisions of the Court in the various matters hereinbelow set forth & shown to wit:

The said Plaintiff to maintain & support the issues on his part, introduced William B. Green a witness who being duly sworn, testified, that he was well acquainted with the Tracts of land in the declaration described & had known them about 17 years. That they came into market for sale by the Government of the United States in the year 1847 - that said witness had been & was the owner & claimant of said Tracts of land for several years before said Government sale & since about the year 1834. - That part of the said North West quarter was used for farming purposes but that the Eastern part of said quarter & the said tract on said North East quarter were and had been since he knew them and owned them been mining lands & wholly used for mining purposes & digging for lead mineral.

Said Green further testified that during his claim & ownership of said Tracts he had held the same open for prospecting & mining according to the

general rules of Mining - That he gave no special lead-ings or permissions to mine on the same, but held the same out for Mining purposes & gave general permission to all persons to go upon any part of the said tracts not in Cultivation, & mine for lead mineral according to the general rules & customs of miners & required a payment to him of the one fifth of the value of the lead mineral that any person so mining might take, & sell from said land. That the price understood as to said land was the $\frac{1}{5}$ share -

That said Young never had any written Lease or Authority to enter on said lands but he had a verbal permission to mine on the same from Witnep.

Witnep was a claimant on the Public lands.

That he was well acquainted with ~~the~~ ^{said} Crevise on said tracts in controversy: That the same was "struck" or discovered by said Plaintiff James Young. That he thought the same was about the year 1845, or 1846, thought it was early as 1845. That said Young went into the lands under said Witnep as a Miner under the above named general permission & rules of Mining & that at that time the said Witnep claimed & owned the land as such lands were then claimed & owned in this Country before the Government sale.

That said Young mined & dug on said lands & sunk a shaft on the said Crevise & opening into it, & by which the Crevise or range was discovered, on the said North West quarter Section about or near 100 feet from the line between the two tracts of land. & said Young & his men drifted Eastward in said Crevise.

That afterwards Young & his men sunk another shaft

partly down on said crevice on the side of the hill, Eastward of the discovery shaft, about 60-70- or 80 feet, but that the said second shaft coming down upon hard rock was abandoned; that said second shaft was probably sunk for air; that it was customary for miners who drifted a crevice some distance to sink a new shaft ahead, down on the crevice for air. That this second shaft was about twenty feet from the Eastern boundary line of said North West quarter section.

That said Young mined on said crevice about one season, a year or may be more, himself & took out some lead mineral, but the same was so small an amount that he did not require any rent or share; that about the next year said Young made an arrangement with two Englishmen who went into the prospect or crevice under him & worked it a while & got out & raised about from 1000- to 2000 pounds of mineral, but that they begged off from him the paying of any rent or share, that he released them from paying anything - that said Englishmen drifted the crevice still Eastward & Witness thought that there had been no drifting Westward except a small distance worked afterwards by Keeler & Brown the defendants. That said Englishmen worked the crevice till about a year before Keeler & Brown commenced working on the same. That said Green did not know of any other persons working on said crevice except said persons above named.

That said Green further testified that in about the year 1848 as he thought (but that he was not certain as to the exact time) that Keeler & Brown the defendants told him that they had taken the prospect of Young & were to pay him Young the $\frac{1}{5}$ share or rent of the mineral raised & sold independent of the general rent to the land owner, which they were also to pay.

That these statements were made to Witness at different times by the defendants, and at one time in the diggings spoken of the defendants were talking with the Witness about the diggings and complained that the rent was too high.

At another time these statements were made when they came to pay Witness his share or rent & they then said that they had paid Young his share the same as Witness, the $\frac{1}{5}$ - That they knew Witness's share was correct as they had paid Young the same amount of money - which was about twenty dollars.

That the Crevice runs expressly from Young's discovery shaft, 200 - or 300 feet from it Eastward, when the shaft was commenced, & is a clear, well-defined crevice throughout from Young's shaft - That near Young's discovery shaft there was a thin layer of mineral, & Keeler said that the Englishmen in drifting had drifted down instead of up & had thus wiped the mineral, but that he & Brown had drifted up & followed the thin layer of mineral & that within about 15 feet of the line between the two tracts, that the mineral began to get good and got better as it got nearer to the East

line of the North West Quarter Section.

Said Green further testified that he sold the mineral lot described on the North East quarter to James Campbell in the year 1847. That he thought he had not sold the same before the Defendants Keeler & Brown commenced to dig on said Crevice - but that the sale was long after Young had discovered & worked on the same - That said Witness as the land proprietor never settled any difficulties or controversies between Miners on said lands but let them make their own arrangements & settle their own controversies. & That he so informed Plaintiff.

That in the winter of 1848 & 1849. about the time the crevice or drift got within fifteen feet of the line between the North West quarter and the mineral lot, said Witness, bought out Young on his land, that is on the North West quarter Section - That the Defendants had complained of the rent being too high, that said Witness bought out Young on the North West quarter, with the intention of reducing the rent or shares, hoping to thereby induce the Defendants to drift the Crevice Westward on the witness's quarter Section. & They promised to do so if Witness would reduce the rents. That the Crevice is a clear well defined crevice from Young's discovery shaft & that Keeler & Brown worked the Crevice by going in & coming out of the discovery shaft sunk by Young - That at the time the Witness went into the digging, there was no entrance but by Young's shaft for Keeler & Brown.

That unless a miner has been in a crevice underground he cannot tell when on the surface of the

ground, the precise course or direction of the crevice. Except the general course of the crevice which would not vary much from due East & West, if it were known to be an East & West, & not a North & South crevice.

That the term "rent" is a general term among miners for the pay for working mineral lands. — On sale where a share of mineral is reserved it is called rent as well as where there is a lease.

Said Green further stated on cross examination — that he could not say positively when he first saw Young on the lands but thought in 1844 or 5, but that it was a couple of years before the land sales. — That Young's discovery shaft was pretty deep. — That it was about fifty feet deep, & was sunk down until it came to water. That he could not say certainly how long Young first worked it but it was at least one summer. That Young had some Englishmen working it the next season afterwards. — That they worked a few weeks probably — not a great while & took up so little mineral that they begged off from paying rent: — That after the Englishmen quit he knew of no other person working Young's crevice till Keeler & Brown commenced. That his impression was he had sold the mineral lot on the North East quarter to Campbell in 1847 & that Keeler & Brown commenced working the crevice the next year.

That Young had no written lease from said Green, but he only gave the general permission to mine according to the rules & customs of miners. — That Young spoke to him frequently about the drift and crevice & that he intended to work it out — That said Britner told him he would take no advantage

of the ground lying idle, himself, but that he Young must look out for others, that witness would not answer for others - that he witness sold the Mineral lot on the North East quarter to Campbell after the land sale by the U.S.

That he had talked frequently with both parties in the suit - but that there was no doubt of his hearing from Keeler the defendant what the witness had before stated, as coming from him - Remembered of his complaining of the rent being so high -

That Keeler was speaking of the diggings when he spoke of Young's fifth - that he heard him mention no particular ground -

That witness bought out Young on witness tract when the drift was within fifteen feet of the line - that the shaft of Young was sunk in his Green's field. That the dividing line is East of the fence, maybe 25 or 26 feet - That he did not know of Young's working on the East side of the line -

That the two tracts of land described in the declaration join each other -

That he thought Keeler & Brown commenced working the crevice about a year after witness sold the Mineral lot on the East, to Campbell.

That after the witness bought out Young on the North West Quarter Sec Keeler & Brown paid him the witness the money for the one sixth share of the Mineral raised & sold, as land owner & for the one sixth as the working interest purchased of Young. The witness having reduced the rent from the two fifths to the two sixths - which two sixths they paid him -

That at the time Keeler & Brown commenced working in the crevice he seen had no interest in the Mineral lot on the North East quarter Sec -

That when Keeler & Brown commenced digging Young's discovery shaft was caved in some. but that Keeler & Brown got some lumber & cribbed it up. that they worked the crevice during the winter of 1848.—

that they worked up through under the line & sunk a shaft over the line on the East side.

That may be a year might have elapsed from time Keeler & Brown commenced until they sunk the second shaft. That there were two winters up to the sinking of the second shaft.—

In Keeler's mentioning the working he spoke of the prospect generally, & not of any body's land in particular. That this was 1848 & when within about fifteen feet of the line dividing the two tracts.

That the crevice up to where he Witnep bought from Young, paid him the Witnep rent of about nineteen dollars & from that up to the Eastern line it turned out about seventeen thousand & odd pounds of Mineral & that Keeler & Brown paid him the rent on that of the two sixths in money.—

That he could not say exactly when he bought out Young as above mentioned. but that if Keeler & Brown were two winters working up to the line, it was the second winter.—

that he thought it was the winter of 1848-9. & that Keeler & Brown had then sunk one shaft ahead of the discovery shaft.

On re-examination he stated that when Young commenced work he witnep owned or claimed both tracts of land that when he bought out Young it embraced only Young's interest on the North West quarter section & at that time the witnep was not

owner of the mineral lot East.

The Plaintiff then introduced Hugh Kearney who being duly sworn testified that he knew the lands spoken of & the crevice, but did not know them by their numbers...

That in the winter of 1843-4 he first mined on these tracts & that Young was also mining on them with one Matthews & that afterwards Young sent a black man there to mine for him - and afterwards some Englishmen mined there under Young - that the witness knew the mineral lot East of Green's field - that he knew Young's discovery shaft on the crevice in controversy - that Young before sinking the discovery shaft had been mining on the mineral lot & drifting up a diagonal crevice when the mineral in the diagonal crevice gave out & the crevice run into a tight seam, and that from that indication, Young went over & sunk his discovery shaft on the crevice in controversy - that he had seen Young working in the shaft & was in the drift with Young in 1845 or it might be in 1846 - that he knew of the Englishmen working under Young & that he the witness once rented the crevice of Young but did not go on & work it - that he thought the Englishmen worked it in 1846 - that Young found the crevice on which the discovery shaft was sunk by working on the diagonal crevice - that he had been on the ground but not since Keeler & Brown worked it.

That Young worked & drifted the crevice about thirty feet -

That the diagonal crevice was worked up on the mineral lot ^{East} of Green's field & adjoining it

That he had agreed once with Young to work the crevice on which the Englishmen worked after they had worked it, in the fall of 1846-7- but did not work it.

And on cross examination the said Kearney testified that he had seen Young work on the Mineral lot East that he had seen Young working on it from the North East to the South West- that the mineral lot was fractional & he did not think it contained ten acres.

That from Youngs discovery in Green's field to the line on the East he thought it was sixty feet.- That he knew that Young worked on the Eastern Mineral lot, in 1843 or 1844 about 100 or 150 feet from the line. That the diagonal crevice ran from the North East to the South West- That the diagonal crevice was commenced on Whitesides land & Young & Matthews worked it & sometimes Garrett a Blackman worked under Young- That he could not tell how many acres were in the mineral tract.

That he knew where Keeler & Brown sunk their shaft- That Young worked in the Mineral lot may be sixty feet from where Keeler & Brown's shaft is- that he knew Young to work on the Mineral lot in 1843- or 1844.- but dont recollect as to his working on it after that. That did not recollect particularly as to dates.- That there were not many miners working about there East of where Young worked: That Witteps worked there and another man after Young did: That Matthews & Young worked on the East lot as partners: That he saw Keeler & Brown working

on the East lot long afterwards: that he remem-
bered seeing one Higgins working on the East lot
after 1843-4 & his partner afterwards: that they
worked a crevice that the witness had worked & left.
did not remember of seeing any one else there since
but Keeler & Brown: The last work Young did
on the Eastern tract was in 1844. All the work done
after 1844 was inside of the fence.

And on Re-examination said Kearney testified
that from the point of the Diagonal drift where Young
worked to the discovery shaft of Young was about
one hundred feet a little more or less.

That he never worked on Youngs Crevice: his Wit-
ness Crevice was a different Crevice from either of Youngs
crevices. That he never knew of any body
working Youngs Crevice but him or his men under
him, and Keeler and Brown. who worked the
Crevice that was discovered in 1845 by Plaintiff &
Matthews. did not see Young or any of his men
on the North East quarter after 1844.

The Plaintiff then offered & read in evi-
dence the following deposition of William Young
except answer to interrogatory. Which had been pre-
viously suppressed by the Court.

Deposition of William Young, a witness
produced, sworn, and examined before me William
C. Brewster, a Justice of the Peace in and for the
County of Jo Daviess in the State of Illinois, at my
Office in Galena in said County, on the third day

of February 1852 between the hours of 8 O'clock A.M. and 6 O'clock P.M. To be used as evidence in a certain Cause now depending, in the Circuit Court of said County. Wherein James Young is Plaintiff and James Keeler & Adam Brown are Defendants on the parts and behalf of the Plaintiff, and taken in pursuance of the annexed notice.

William Young being first duly sworn, on his oath says, in answer to Question 1st: Are you acquainted with the parties in the Suit the title of which is in the foregoing caption named, or either and which of them, if yes, how long have you known them, or either and which of them.

Answer. I am acquainted with all of the parties to said suit. I have, said James Young ever since his infancy, upwards of twenty years. I have known Adam Brown, for about seven years, and said Keeler about the same period, seven years.

Being unable to complete the taking of said deposition to day, I adjourn the further taking of the same until to morrow 4th inst.

Dated this 3^d day of February 1852

Wm C. Postwick J.P.

In pursuance of the adjournment above noted I proceeded on this 4th day of February 1852, at the same place, and between the same hours mentioned in the annexed notice, in the taking of said

deposition as follows viz:

The said William Young in continuation of his said deposition, answers as follows. To

Ques. 2. Are you acquainted with certain diggings, or crevice, discovered and worked by James Young, the Plaintiff in this Cause, on lands at that time owned or claimed by Wm B. Green, and situated near to diggings known as Moreheads or Crumbacker's diggings, in the County of St Davids, if yea, when did you first know the same, and state anything you may know in reference to the working of the same by the said James Young.

Answer. I know said diggings, worked by the said James Young but don't know any thing particularly of the crevice, was never down in the diggings. It must have been as early as the year 1845, that I knew of said James Young commencing to work on said diggings. Frequently in hunting stock I was in that vicinity, about that time and since, & I saw him at work there frequently.

Ques. 3. Do you know of any application made by said Defendants, or either of them, to said James Young, or any other person, for the purchase or leasing of the said diggings, or any interest in the same. If yea, state what with all the particulars.

Answer to 3^d Question Excluded by The Court.

Answer to 3^d Interrogatory excluded by the Court. Wm H. Hadley Clerk

James 4. Do you know anything of any payments by said Defendants or either of them, of any moneys, at any time or times, to said James Young, if you state what, and for what purpose, why paid, and all the circumstances, and particulars connected with the same, so far as you know.

Answer. I and my brother James Young were at the residence of Mr Whitesides in Franklin Street in Galena. I heard a person knock at the door in the morning. I being most convenient to the door, went myself. Said Adam Brown was the person who was there. I asked him to walk in and sit down, and he then asked for my brother James. My brother James came in, and Mr Brown and he passed the time of day, and commenced talking about the said diggings, and Mr Brown after some conversation about the diggings told him that he had come to pay him some rent for the diggings, and I wrote a receipt, at the request of my brother, for the money, and said Brown paid to my brother James, the money for said rent. The amount I cannot state certainly, but it was between Eighteen and Twenty five dollars, and I think it was a little rising of Twenty dollars, but I am positive it was between Eighteen dollars, and Twenty five dollars. And the receipt for said money, whatever the amount was, was then delivered to said Brown. Said receipt was signed "James Young", or "James B. Young", to the best of my recollection, by me, at the request of my brother James. I cannot state the date of this payment, but think it was in the Spring of 1848.

or the fall of 1847. I do not know of any other payments.
(The foregoing answer objected to?)

Ques⁵. State whether any further conversation was had, in your presence between said Brown and James Young during said interview after giving of said receipt, if yea. state the same fully.

Answer. They talked in the ordinary way that men talk about diggings. And Mr Brown observed that he thought it was a pretty high rent, but that he would still work the diggings. That he thought they would probably get better. My brother James in answer to that, said that he wouldnt take any thing less, that he would rather hire men and put them there to work, himself. That there were other men he believed would take the diggings at the same rate, and then Brown said he thought one sixth would be a fair rent, and my brother replied that there was no use in talking about it, if he did not wish to work them, at that rate he could let them alone; And Brown said he would try them, or work them a little longer. And during the same conversation, something was said about the diggings running upon ground belonging to somebody else, & that if it did run on to other ground, Mr Brown asked my brother James, if he thought he, Brown could get the privilege of working at the same rent of Mr Green, or of the person who owned the ground.

I know the conversation was, as to the probability of the lead passing a certain line and as to whether, in such case the ground beyond said line could be obtained on the same terms, as to ground rent, from the owner of the ground. And my brother

answered him, as near as I can recollect in this way. Mr Brown said he you know our contract. And I suppose you can obtain the ground on the same terms. All I want is my fifth, or my interest, as agreed upon. And you know you was to pay the ground rent. Brown complained, that if he had to pay more, it would be hard on him, unless the diggings got better. This was about the substance of said conversation. I am not familiar with mining operations, and the conversation as to the direction of the crevice and working of the diggings was not so intelligible to me as to a person better acquainted with it. My brother promised to assist said Brown to get the privilege of working the ground beyond the line about which they had been talking, if Brown wished him to do so.

Ques. 6. Was anything said during said interview spoken of by you in your last answer by said Brown as to satisfying the said James Young of the correctness of the amount of rent paid or of the payments thereafter to be made to said James Young, on account of said diggings, if you, what was said by either of the parties commencing the same.

Answer. Said Brown referred my brother James to the man to whom he Brown sold the mineral; that my brother could ascertain from them the amount of mineral sold from said diggings, or then he proposed another way. He said he would pay the rent in anyway my brother wanted it; he would either leave the rent with the men he sold the mineral to, or pay it in mineral or money; he would make it satisfactory to my brother

They then separated on good terms. the best of terms.
(Answer objected to)

Cross Interrogatories

Question 1st How much work was done in said dig-
gings. how long would it take to do the same.
and when did you see said James Young last work-
ing on said diggings. And how many times did
you see him working there, either by himself or his
men.

Answer. I don't know what amount of work had
been done, when Brown went on to said diggings.
I don't know of more than two shafts being sunk.
It runs in my mind there were two shafts sunk in
said diggings. One shaft certain was sunk, and they
talked of sinking another for air. And my impression
is that it was done, or partly done, at least.
I knew that they were working some time at the same
my brother James and a man of the name of Matthews
but I cannot say how long it would take to do said
work. I can't recollect when I last saw him at work
on said diggings. I did not see him at work there
since the 1st of January 1846. I have seen him at
work there as much as fifteen or twenty times I should
think.

Question 2^d. How deep were said shafts sunk, and had
any drifting been done.

Answer. One of said shafts might have been forty
feet or thirty feet. It was a pretty deep shaft. My impres-
sion is that the other shaft was sunk or partly sunk
for air. I do not know whether any drifting had
been done.

Ques 3. What was the condition of said diggings at the time said Brown took them. Were they caved in or not. Whose land were they on.

Answer. I know nothing as to the condition of said diggings at the time Brown took them, as to drifting or caving I know nothing about that.

I cannot tell whose land they were on. I suppose it was Mr Green's land. It was called Mr Green's land. The shafts were started on what was called Mr Green's land any way, or Mr Green's field. It was near the sod fence, a few rods, not a great way, and I understood the sod fence is near the line, but I do not know where the line is.

Ques 4. Do you know, or did you ever hear said James Young say how much rent said Brown had paid him, and how many times he paid him rent.

Answer. Never but once. Brother James told me that he never paid him but the one time, when I wrote the receipt. I know of no other payment myself.

Ques 5. are you sure that this money was paid and this receipt written, at Whitesides house on Franklin Street. How long was Brown there at that time.

And did all the conversation which you have detailed, occur at the time of writing that receipt.

Are you sure ^{that} that receipt and the signature thereon is in your hand writing.

Answer. I am sure that said money was paid, and said receipt written at said Whitesides house on Franklin Street. I suppose Brown was there from half an hour to an hour. All the conversation I have detailed occurred at that time except that

which occurred by Chase's. I am sure that said receipt and the signature thereon were in my handwriting.

Ques 6. If said receipt was signed by you, was it signed in the name of "James Young" or "James B. Young".

Was it dated of the time, at which it was executed, and what time in the day was it that said Brown was at Whitesides? Did said Brown require said receipt to state on whose ground the mineral was raised. And did said receipt state on whose ground said mineral was raised. If so, whose. (Objected)

Answer. I signed said receipt to the best of my recollection in the name of James B. Young. That is my impression. I may have been careless and only signed it James Young, but think I signed it James B. Young or may have signed it J. B. Young. It was dated at the time at which it was executed. It was intended to be so dated, if it was dated. It may not have been dated at all. But I think it was dated, and that it was dated correctly. It was in the morning between 7 & 9 O'clock that said Brown was at Whitesides. I don't think K. said Brown required said receipt to state on whose ground said mineral was raised. Although he may have done so. I do not recollect whether the receipt stated on whose ground said mineral was raised. And do not recollect anything about the form of the receipt, only that there was the name, amount, and date if it was dated.

Ques 7th. Have you stated the conversation precisely as it occurred, or have you stated it as you understood it. Have you stated the precise words of the parties

Answer. A portion of it is the precise words. And a portion, the substance as near as I can now recollect it, but I think the greatest portion of it is in the precise words as near as words can be repeated over again. I think

Ques 8. State the exact words of Brown as near as you can remember, when he spoke of the range crossing the line.

Answer. He said he supposed or thought that he could obtain the ground beyond the line they were speaking of, on the same terms as to rent, that he had been paying or was paying. And said he thought it would be hard for him to pay more than one fifth for ground rent, and one fifth to him, my brother. That it would be pretty high. I think that Brown asked my brother if he would not assist him to get the ground beyond the said line, on the best terms he could, if it should be necessary, that is if the owner of the ground beyond the line should charge more than Brown was then paying.

Ques 9th Have you any interest in the subject matter of this Suit. And are you related to the Plaintiff, if yes, how.

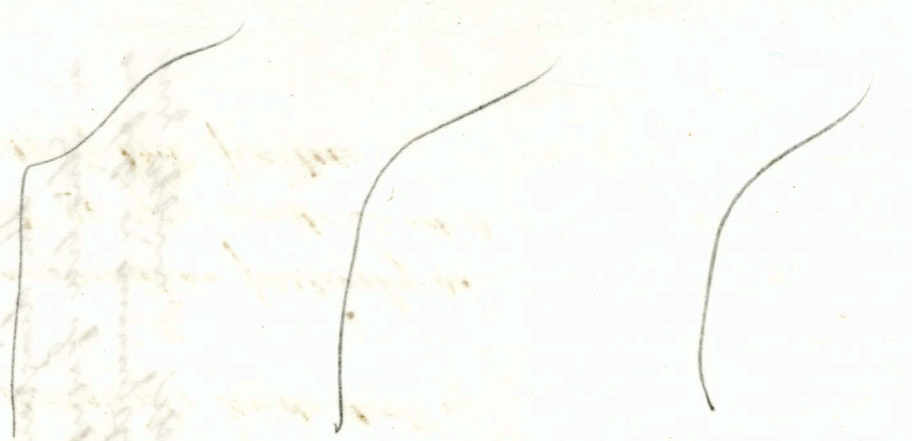
Answer. I have no interest in the subject matter of this Suit. I am a full brother of the Plaintiff.

William M. Young.

State of Illinois }
Co. Daviess County } I the undersigned Justice of the
Peace, in and for said County, do
certify that the foregoing deposition of William Young
was taken by me on the 3^d & 4th days of February 1852,
at the place and between the hours mentioned in the
caption thereof, and in the annexed notice, that said
Witness was first duly sworn, that the same was carefully
read to said witness, and signed by him, and that he
was then again finally sworn thereon.
Witness my hand this 4th day of February 1852.
J. C. Postwick J. P.

The Plaintiff then introduced John
C. Garner who being sworn testified that he was the
County surveyor of Co. Daviess County -
that he had surveyed the land & crevice & made a di-
agram of the same, which he identified & produced &
which is as follows to wit

The diagram referred to
in this bill of exceptions is not
on file or among the papers in
my office. Mrs. Bradley etc



that the diagram may not be exactly right as
to links, but it is nearly correct, that he saw no
other shafts on the crevice but the two marked
- that all the mineral must have come out of
one of these two shafts - that he and plaintiff
went out together at the time of the survey.
- that he did not make a survey in the crevice
under the ground but surveyed on the surface.

- that if there was any variation in the
diagram from the fact it was in running
down to the shaft from the quarter corner
- that he thought the survey was right, but
that he had not been as particular in the
survey as in others - that the only differ-
-ence there could be was in a few links.

- that he thought he made a few more
links in the survey, than in the declaration
of surveying down & thought he measured
to the center of the shaft.

The Plaintiff then introduced Ralph S. Norris who, being duly sworn testified that he knew the lands and had been on the surface of the ground, but never down in the diggings; that he had bought mineral off of these lands from the Defendants. hauled from the wash place about half a mile or three quarters from the diggings;

That on 5th May 1849, he bought of them 17,170 pounds at twenty two dollars & fifty cents per thousand pounds. & on the day of April 1850 he made a contract for One hundred thousand pounds of mineral at twenty six dollars & seventy five cents a thousand. & that they commenced hauling to his furnace on the 15th April 1850 & got it all in by the 18th or 25th May 1850.

Norris swore that he made the contract with Jas Keeler the owner of the ground, and paid him for the same.

That in July he contracted with them for fifty thousand pounds of mineral at twenty four dollars per thousand & that they delivered to him in July 1850. Fifty two thousand and eighty pounds: that these amounts were rec^d from & paid for to Keeler & Brown.

That the mineral was all wash mineral, that he rode up to the land & saw the wash-dirt on the ground & from which they were hauling to the wash place.

That Keeler & Brown had no other mined ground: That the mineral was peculiar in its formation & came from these grounds, which said witness knew because he was & had been for years engaged in the business of smelting Lead Mineral & was experienced in mineral.

And on Cross examination said Morris testified that he thought that every instance he had bought the mineral of James F. Keeler the son of said James Keeler the Defendant: that he thought he had been once at the diggings and twice at the wash place, thinks it was the second time of going up that he went to the shaft of Defendants outside of the field that he thought the wash dirt was raised from both shafts, but that he could only swear from his impression: that the second time he went up in April 1850: And in May 1849 was at the ground: that he bought from James F. Keeler & paid him: that he did not know whether he got all of the mineral that came out of both shafts but thought he did get it all: that the first lot he bought, in 1849 came out of the West shaft: that the East or second shaft was dug before he bought the big lot of mineral: that at the time he went up to the ground he followed the sideling road from the West shaft to the wash place, down which they hauled the wash-dirt:

That when he said Defendant Brown hauled mineral they were hauling mineral from the west shaft or W. W. 1/4 section.

And on reexamination said witness stated that in every instance of the purchases of the mineral he made the bargain with James F. Keeler: that at the time he went up to the diggings he went up with one of the Defendants to see the shaft.

The Plaintiff then Produced Samuel Houghton a witness who being duly sworn testified that he had lived in So Davis County near Galena about twenty years

That he was a smelter & digger and acquainted with digging & the rules & customs of mining: That he knew the lands & diggings in controversy & had been near the diggings:

That he purchased of Keeler & Brown on the 16th Nov 1848. Five thousand two hundred and forty pounds of lead mineral at nineteen dollars per thousand and paid young Keeler for it in the store on the next day: That the teamster who hauled the mineral told him to call at Keeler's store & that he did & that young Keeler came & got the pay.

That the rule in this section of the Country among miners is that where land is held open for mining or prospecting by the owner or proprietor and a miner goes on the land and strikes a crevice that he has a right to work the crevice on the land through, over all land open for prospecting and miners generally concede it to him. if the owners make no objection on the land he runs through. That is on the adjoining tracts. it is conceded to him: And that where two adjoining tracts are open for prospecting, the miner has the right to trace up & work his crevice through both tracts originally open for prospecting, by virtue of his discovery: paying to the land owner his share of the mineral or its value as it may be established by the land owner: & that on the tract where he makes the discovery he has the full right to work out the crevice, paying up the agreed or accustomed rent:

& that by the rules the seller of the range or crevice sells his right subject to the ground rent & the buyer has the same privileges as the seller had unless the owner of the land makes an objection at the time of the sale

And on cross examination said
Huggett testified that by the rule ^{if the owner objects to mining} of mining on his
land the miner must go & make a contract with the
owner, where the owner has reserved it from mining
purposes: but that if the lands are held open for
prospecting them, the discoverer of the lead or crevice
goes clear through the lands open for prospecting or
mining and that this is & has been since he lived in
this section of the country, the general usage & custom
of mining & miners: & the right to penetrate or run
clear through is where at the time the range or crevice
is struck, the land is open for mining & continues
open afterwards, and it makes no difference whether
the owner says he is willing or not, if the lands are
held generally open for prospecting.

That since the entry of the lands there has
been a little more closeness on the part of land owners
in holding lands open for mining, but that he only
knew of three tracts where mineral lands were reser-
ved from mining in this section of country:
that since the lands have been entered he knows of no
change of custom where lands are open for prospecting
that he speaks of the general rule: that no code of
rules have ever been drawn up: & that different rules
prevail in different neighborhoods: that different owners
in different sections of country sometimes make different
rules.

That if a land owner wishes to change a rule or custom
once established about the diggings he must publish it,
that being the custom: and that if a man purchases lands
he must give notice of a change of the rules that have pre-
-vailed by other: but that the land must be free from

mining privileges at the time of the change:
That if a digger goes off from his diggings and says
nothing about it & takes off his tools & mineral he
abandons his claim: But where he makes a feasible
excuse to the owner he still holds his diggings. As
sickness or damps in the diggings or such like excuse
But if he sets up no ownership, & does not work it he
abandons it if he furnishes no excuse.

Olaid Houghlett on Reexamination stated that
where lands have been held open for prospecting or min-
ing since the land sales the same rules of mining have
prevailed: That these diggings in controversy are
in this section of country about a mile and a half from
Galena: That these rules are unwritten & prevail among
the mining community.

Which was all the evidence offered by the Plaintiff, &
upon which he read his case.

The Defendants then introduced James F. Keeler, who
being first sworn was at the request of Plaintiff's Counsel
called on to testify as to his interest in the suit, & testifi-
ed that he had no interest in the event of the suit:
That he was under no guaranty to Defendants: That
not a word had passed between the witness & Defendants
as to indemnity: That all the rent due witness from
Defendants for diggings on said mineral tract on the
North East quarter had been paid him & closed up,
and that he was not bound to restore anything to the
Defendants, if the Plaintiff succeeds: That his rent
paid by Defendants on said land was the one fifth
of the mineral: That that was due him: That by
his bargain with the Defendants, he was to have

one fifth to a certain point, and one sixth after that.
That he is son of Defendant Keeler.

Said Keeler being then, being examined by Defendants Counsel testified that he had had a conversation and several talks with Plaintiff about this matter in dispute. That it had been so long ago he could hardly tell when it was: That the conversations grew out of the fact that Plaintiff said he was going to commence a law suit against Brown for the rent or share of mineral: That witness told him his father was mining with Brown & that he supposed the suit must come against the two & that he preferred settling rather than have the old man sued: That this was the reason of the talk: That Plaintiff said Brown agreed to pay him rent on Green's ground one sixth or one fifth or whatever he had agreed to give (witness did not remember what share) on Green's ground & that they had surveyed up to the line. That Plaintiff said he did not know at the time of leasing to Brown or previous to that time that Green had sold the ground ahead: That Plaintiff expected his interest would run through the ground that Green originally owned: Still he said in his bargain with Brown, his bargain was, he was to pay him through Green's ground and that he was ignorant of the sale of the land eastward: That Plaintiff said he had rented to Old man Brown: That witness stated to Plaintiff, that his father was digging in it & Plaintiff said he did not know him, witness farther from the devil in the transaction: That witness supposed there was a great deal of conversation, and that it was a long time ago: That witness remarked to

Plaintiff there must be a misunderstanding, as he knew of their leasing of Campbell the ground ahead of him.

That he did not think he could remember of the payment of rent by Brown, but he remembered of seeing the receipt: That Brown came in & laid it down on the counter. That witness filed it & put it away. The receipt being produced to witness he identified it as the same.

The defendant then read to the jury the said receipt in words & figures following to wit:

The said receipt is not among the files & is not in my office. I have never seen it since it was produced on the trial. Wm. Keeler cllk

Said Keeler then further testified that the conversations must have considerably after the date of the receipt.

Said Keeler further testified on Cross examination, that these conversations spoken of by him with Plaintiff was after some large sale of mineral, of which Young complained that he had not got his rent; and the same was reiterated shortly before he went to California: That Mr Young always claimed in his conversations with witness to have the right to the whole range or crevice on the lands originally owned by Green, or his lands when the crevice was struck.

That witness knew nothing of the mineral ^{lot.} nor what it was called until about the time Keeler & Brown commenced mining upon it.

That Young stated in the conversations that he did not know at the time of his agreement with Brown of Green's sale to Campbell.

That Keeler & Brown mined together as partners, as witness understood from both of them: That they did not tell him of a bargain existing between them: They were working in mining together.

On Recross examination Keeler stated he did not know of Keeler & Brown's being partners from his own knowledge.

J. F. Keeler stated that he did not know of Keeler & Brown's being partners: He had heard them both speak of their mining together, but knew nothing of any partnership.

The Defendants then offered in evidence the Certificate of entry from the Registers of the Land Office at Dixon Illinois & the Patents from the United States showing the entry of said North East Quarter Section including said Mineral lot thereon to John Wenner on the 13th April 1847. To the admission of which the Plaintiffs objected because improper & inadmissible & that said Defendants having entered under Young was precluded from showing title under him & other objections but the Court overruled the objections & admitted the evidence to go to the jury. To which ruling & decision of the Court the Plaintiffs Counsel then & there excepted.

The Defendants then offered the following
Deed from John Wenner to Wm B. Green. dated April
23rd 1847. To wit:

John Wenner }
To } Deed } This Indenture. Made and entered into
William B. Green } this Twenty third day of April in the year
of our Lord One thousand Eight hundred and forty seven. Between John Wenner of the County
of So Davie and State of Illinois of the first part and
William B. Green of the County of So Davie and State
of Illinois of the second part. Witnesseth: That the said
John Wenner of the first part, for and in consideration of
of the sum of One dollar in hand paid by the said party
of the second part. The receipt whereof is hereby acknow-
-ledged has granted, bargained, and sold, and by these pres-
-ents, does grant, bargain, sell, convey and confirm, unto
The said party of the second part, his heirs and assigns
forever, The following described portion of the North East
quarter of Section Twelve (2) Township Twenty Eight (28)
North of Range One (1) West of the fourth principal merid-
-ian in said County and State, bounded as follows to wit:
Commencing thirty (30) feet South of the quarter post on
North boundary of said Section Twelve (12) thence East par-
-allel with said North boundary eighteen (18) Chains and
fifty (50) links, thence South Ninety five feet (95) thence West
eighteen (18) chains, and fifty (50) links, thence North Ninety
five (95) feet to place of beginning - also a tract comm-
-encing seven (7) chains & twenty nine (29) links, South of said
quarter post, thence South twelve (12) chains seventy one (71)
links, thence East (7) chains seventy three (73) links, thence
North ten (10) chains & seventy five (75) links, thence East
eight (8) chains & seventy seven (77) links, thence North
one (1) chain and ninety six (96) links, thence West eight-
-een (18) chains & fifty links to place of beginning -

Also the undivided one half of a tract commencing one hundred and twenty five (125) feet South of said quarter post. Thence East Eighteen (18) chains & fifty (50) links. Thence South five (5) chains and forty (40) links. Thence West Eighteen chains & fifty links. Thence North five (5) chains and forty links to place of beginning containing in all twenty six acres more or less. Together with all and singular the appurtenances thereunto belonging or in any wise appertaining. To have and to hold, the above described premises, unto the said party of the second part, his heirs and assigns forever. And the said party of the first part, the aforesaid tract or parcel of land, and premises, unto the said party of the second part, his heirs and assigns against the claim or claims of all and every person whatsoever, does and will warrant and forever defend by these presents. In Witness Whereof the said party of the first part has hereunto set hand, and seal. the day and year first above written signed, sealed and delivered in presence of

Asa Haile, Charles E. Thomas. } John Wenner *[Signature]*

State of Illinois } So be it remembered, that on this
Polk County } twenty fourth day of April in the year
of our Lord eighteen hundred and forty seven, before me Charles E. Thomas a Justice of the peace in and for the County aforesaid, appeared John Wenner who is personally known to me to be the identical person whose name is subscribed to the foregoing Instrument, as party thereto, and he acknowledged the said Instrument to be his act and deed for the purposes therein mentioned.

Given under my hand and seal, at Galena, the day and year aforesaid. Charles E. Thomas, J.P. *[Signature]*

Recorded this Twelfth day of May A.D. 1847 at $\frac{3}{4}$ past
Eleven O'clock A.M.

Jeremiah Pettis Recorder.

And also the following deed from Wm
B. Green & Wife to James Campbell dated 18th October 1847
& Recorded 11 Nov^r 1847 as follows to wit:

Wm B. Green & Wife } Know all Men by these presents
To } Deed } That I. William B. Green together with
James Campbell } Sophronia my Wife of the County of
Jo Davis and State of Illinois in the
consideration of six hundred and ninety dollars to us in
hand paid by James Campbell of the same County and State
the receipt whereof we do hereby acknowledge, do hereby give,
grant, bargain and sell, assign, release and convey unto the
said James Campbell his heirs and assigns the following
described portion of the South East fractional quarter of frac-
tional Section nine (9) Township Twenty Eight North of
Range One West of the 4th Principal Meridian, to wit:
Thirty three acres and $\frac{94}{100}$ of an Acre off of the South part
of that portion of the above described quarter Section lying
West of the Kinsinnerra River, the North boundary of the same
to be an East & West line running through said part of said frac-
tional quarter Section so as to leave the said thirty three acres and
 $\frac{94}{100}$ of an acre South of the same. Also the following descri-
bed portion of the North East quarter of Section Twelve in said
Township and Range, bounded as follows, to wit: Commen-
cing seven chains and twenty nine links South of the quarter
post on the North boundary of said Section Twelve, thence
South on West line of said quarter twelve chains and seventy
one links, thence East nine chains and seventy three links,
thence North ten chains and seventy five links, thence East
Eight chains and seventy seven links, thence North one chain and

Sixty six links, thence West eighteen chain and fifty links to place of beginning. Containing fourteen acres and $\frac{1}{2}$ of an acre all in the County of St. David and State of Illinois.

Together with all and singular the rights, privileges and appurtenances to the said above described premises in any wise appertaining or belonging. To have and to hold the above granted premises unto the said James Campbell his heirs and assigns forever.

And the said William B. Green and Sophronia Green for themselves their heirs, executors and administrators do covenant with the said James Campbell his heirs and assigns that they will and their heirs, executors and administrators shall warrant and defend the same unto the said James Campbell his heirs and assigns forever against the lawful demands of all persons, and Sophronia wife of the said William B. Green for the consideration aforesaid doth hereby release to the said James Campbell his heirs and assigns all her right and title of power in the above granted premises.

In Witness whereof we the said William B. Green and Sophronia Green have hereunto set our hands and seals this 18th day of October A.D. 1847.

Signed, Sealed and delivered in presence of { William B. Green (Seal)
William C. Bostwick { Sophronia Green (Seal)

State of Illinois {
St. David County { p Before the undersigned Justice of the Peace of said County personally appeared this day day, William B. Green and Sophronia Green. Known to me to be the identical persons described in and who executed the foregoing deed, and severally acknowledged to me that they had executed and delivered the same freely and voluntarily for the purposes therein mentioned. And Sophronia Green Wife of the said William B. Green, having been by me made acquainted with the contents of said deed, and being by me examined separate and apart from her said husband, acknowledged to me

That she had executed the same, and relinquished her right and title of dower to the lands and tenements therein, conveyed, freely, voluntarily, and without the compulsion of her ^{said} husband.
Witness my hand and seal, this 10th day of October, A.D. 1847.

Wm C. Postwies S. J. ^{Seal}

Recorded this 11th day of November A.D. 1847, at 8 1/2 O'clock, A.M.
Cyrus Aldrich Recorder.

And also the following deed from James Campbell & Wife to James F. Keeler dated March 2nd 1850 as follows to wit:

James Campbell & Wife } This Indenture made this second day
To } Deed } of March in the year of our Lord
James F. Keeler } One Thousand Eight Hundred and
fifty, between James Campbell and
Harriet Campbell of the County of St. David State of Illinois
of the first part and James F. Keeler of the same County and
State of the second part Witnesseth that the said party of the
first part for and in consideration of the sum of Four hun-
dred and five dollars and 5/100 to the said party of the
first part in hand paid by the said party of the second
part the receipt whereof is hereby confessed and acknowl-
-edged have granted, bargained, and sold, and by these
presents do grant bargain, sell convey and confirm unto
the party of the second part his heirs and assigns forever
all the right, title, interest, claim & demand, which the
said party of the first part have in and to the following
described lot or parcel of land situate, lying and being in
the County of St. David and State of Illinois to wit:
That part of the North East quarter of Section Twelve (12)
Town twenty eight North of range one West of the fourth
principal Meridian commencing seven (7) chains and
twenty nine links South on west line of said quarter
Section Twelve chains and seventy one links; thence East

Nine chains and Seventy three links. Thence North ten chains and Seventy five links. Thence East Eight chains and Seventy seven links. Thence North one chain and ninety six links. Thence West Eighteen chains and fifty links. To the place of beginning Containing fourteen Acres and Eight hundredths of an acre more or less (To have and to hold the same together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining. And all the estate, right, title, interest and claim, whatsoever of the said party of the first part, either in Law or equity to the only proper use, benefit and behoof of the said party of the second part his heirs and assigns forever.

And the said party of the first part the aforesaid tract or parcel of land and promises unto the said party of the second part his heirs and assigns against the claim or claims of all and every person whatsoever do and will warrant and forever defend by these presents. In Witness whereof the said party of the first part have hereunto set their hands and seals, the day and year first above written.

Sealed and delivered in presence of } James Campbell 
H. Foster } Harriet Campbell 

State of Illinois }
County of Daviess } ss. I, John Cadwells a Notary Public
do hereby certify that
James Campbell and Harriet Campbell
whose signatures appear to the foregoing deed of
Conveyance and who are personally known to me to be
the identical persons who signed the same. This day appe-
ared before me and acknowledged that they had signed
sealed and delivered the same as their free act and deed
for the uses and purposes therein expressed.

And Harriet wife of the said James Campbell having been by one made acquainted with the contents of said deed and being by me examined separately and apart from her said husband acknowledged that she had executed the same and relinquished her dower to the lands and tenements therein conveyed freely and without the compulsion of her said husband. In Witness whereof I have hereunto set my name and my seal at Galena this second day of March A.D. 1850

 Geo. Edwards Not Pub
Recorded 5th March A.D. 1850 at 2 O'clock P.M.

Wm. F. Bradley Clerk
By Geo. M. Mitchell Depy

To each of which deeds the Plaintiff's Counsel objected for the reasons last aforesaid, but the Court overruled the objections, admitted the said deeds to be read to the jury. To which ruling & decision of the Court the Plaintiff's Counsel then & there excepted.

The Defendants then read to the jury the following deposition of James Campbell, to wit:

Deposition of James Campbell of the County of Sangamon, County and State of Illinois Taken on the Twenty seventh day of October in the year of our Lord One Thousand Eight Hundred and Fifty one, between the hours of Eight O'clock A.M. and six O'clock P.M. of said day at the Office of Benjamin Talbot clerk of the Circuit Court of the said County of Sangamon, and State aforesaid pursuant to the inclosure. To be read in evidence in a Case pending in the Circuit Court of St. David's County, State aforesaid, in the common Law side thereof, wherein James Young is Plaintiff and James Keeler and Adam Brown are Defendants.

James Campbell of lawful age being first duly sworn, doth depose and say.

Question 1st by Defendant. Were you in the summer and fall of 1848 the owner of any portion of the following described land to wit: That portion of the North East quarter of Section Twelve in Township 28. N. of Range One West of 4th pr. Mer. in St. David County & State of Illinois, described as follows Commencing seven chains and twenty nine links South of the quarter post on the North boundary of said Section. Thence South on the West line of said quarter Section 12 chains and 71 links. Thence East 9 chains & 73 links: Thence North ten chains & 75 links. Thence East eight chains & 77 links: Thence North one chain 26 links: Thence West eighteen chains and fifty links. To place of Beginning: containing fourteen acres and 40th.

Answer. The title to the piece of ground described in the foregoing question, was in me, in the summer or fall of 1848 & continued in me, until the Spring of 1850. I was not however the owner. It belonged to the State Bank of Illinois. I was taken in my name for the greater convenience of disposing of it, if opportunity offered to sell.

Question 2^d. Did you in the early part of the fall of 1848 lease said ground or grant permission to any one to dig for lead ore thereon. If yes, state to whom and all the circumstances

Answer. I never gave a written lease to any person, of the ground. I gave verbal permission to James Keller to dig upon the ground, but cannot state positively the time when the permission was granted, though I think it altogether probable that it was as early as the fall of 1848.

Question 3^d How long did said person (if any) work said Grounds?

Answer. I cannot state with certainty how long it was worked. It may have been six months: or it may have been nine months.

Question 4th Was any mineral raised on said ground by the person to whom you leased the same. if yea, state how much was raised. When. and to whom was it sold?

Answer. Up to the Spring or Summer of 1849 I do not think any mineral was obtained. I do not recollect of receiving rent for any. In the Fall of 1849 or winter of 1849 & 1850. there was a quantity of mineral raised in the form of "brash dirt" which lay on the ground at the time I sold it to Jas. F. Keeler. I think there was ^{estimated} ~~admitted~~ to be from 15 to 20,000. But from what I subsequently learned. I am ^{inclined} ~~inclined~~ to think there was more: It was sold to R. S. Norris.

Question 5th Who owned the tract of Land adjoining yours?

Answer. The land on the West was owned by Wm B. Green on the North also I think. I do not ^{know} ~~remember~~ who owned on the East & South.

Question 6th Did James Young ever call upon you to lease any mineral Range upon said ground. If so What Range and who worked the same and when did this take place: State what you did in regard to renting to said Young?

Answer. I have an impression that one of the Messrs Young, I don't know which (not Alexander) conversed with

One about mining on the ground above described. The substance of it, I cannot recall, nor can I state whether it was prior or subsequent to the time that Mr Keeler had permission from me to work it. I know that he had dug on the ground of Mr Green on the West of this & presume he rented to prove the ground East of where he had been digging. & on the ground in my possession.

Question 7. Did you ever recognize Young's right to any mineral range on your said ground, or did he to your knowledge ever do any mining thereon, while it was your property or before?

Answer. I never presumed to interfere in the differences between miners, in regard to their right to certain Ranges, but as Mr Young never worked the ground, while I held it, I did not consider his a valid claim (being unwilling when I had the control of ground, that one man should perform all the labor, & another reap the profit of that labor) ~~Question 8.) last two lines Excluded if desired~~

Question 8. According to your rule of mining was the lease you gave (if any) to Keeler & Brown forfeited by them, in the summer of 1849, or was it forfeited by the custom of mining and was any other lease given them. If so what lease?

(Answer to 8th Question Excluded by the Court.)

Question 9. From whom did you purchase said ground?

Answer. From William B. Green.

Question 10. Did you at the time of purchase know of said James Young having an interest in any mineral range on said ground?

Answer. I do not think I did.

Question 11.th Did said Young ever notify you of an interest he might have in said Land or any mineral range thereon, before Keeler & Brown were in possession of the same as your tenants?

Answer. Not to my recollection.

Question 12. Was said Young to your knowledge ever in possession of said land and mining upon the same?

Answer. Not of the ground embraced in the description in the first interrogatory, while I held it.

Cross Interrogatories by Plaintiff

Question 1st Are you acquainted with the following described piece or parcel of land, to wit: The following part of the North East quarter of Section Number twelve (12) in Township No Seventy Eight (28). North Range One (1) West of the fourth principal meridian bounded as follows. Commencing seven chains and twenty nine links (7.29) South of the Quarter post on the North boundary of said Section twelve (12). Thence South on the West line of said North East quarter, twelve chains and seventy one links (12.71). Thence East nine chains and seventy three links (9.73). Thence North ten chains and seventy five (10.75). Thence East eight chains and seventy seven (8.77). Thence North one chain and ninety six (1.96). Thence West fifteen chains and fifty links to the place of beginning. Containing fourteen & eight one hundredth acres (14 & 80. 100). If yes, how long have you known the same. Who was the owner, possessor or proprietor of it when you first knew.

and who have since then and up to the present day owned, possessed or claimed the same?

Answer. I am acquainted with said tract of land and have been acquainted with it for three or four years. When I first knew it Wm B. Green was the claimant and owner. Wm B. Green conveyed it to me, in the summer of 1848. And I held it until March 1850. When I sold it to James F. Keeler.

Question 2^d by Plaintiff. Had you ever any interest in said premises, if yes. State what, when it first occurred and how, and how long it continued and when it ended and how?

Answer. The title to said land was in me from the summer or fall of 1848 to the Spring of A.D. 1850, but it belonged to the State Bank of Illinois. In the Spring of 1850 I conveyed the said land to James F. Keeler.

Question 3^d by Plaintiff. State what said land has been used for since you first knew it?

Answer. For mining purposes.

Question 4th by Plaintiff. Was the said land held open for prospecting for lead mineral when you first knew it or any time or times since, by the owners, proprietors or claimants, if yes, by whom. On what terms.

Answer. I presume it was open for mining purposes when I first knew it, but cannot state positively.

While I held it, it was open for mining purposes.

While I held it the terms were one sixth rent.

Question 5th by same. State whether the said land was held open for prospecting to miners for lead minerals before your acquiring any interest in the land and if on acquiring any interest in the same, in any way gave notice of any alteration of the ownership or forbid mining thereon at the old rates?

Answer. I cannot state with certainty, but presume it was. I gave no notice of the alteration of the ownership after I came in possession of it nor forbid mining thereon at the old rates.

Question 6th by same. Was said tract ever mined on by any person during the time you owned the same or any part of that time. If yes, was the same with your consent or by your written lease or license, if in writing append the original or a copy to your answer hereto state who the miners were and whether they had entered upon the said tract and mined thereon before making any agreement with you. And how far and much they had mined before making any bargain with you?

Answer. It was mined on while I held it by James Keeler and Adam Brown his partner. It was with my consent. I never gave any written lease. I think they had permission to mine before commencing work.

Question 7th by same. State whether any person ever made any contract or agreement to mine or dig on said tract with you. If yes, state the particulars of said agreement with the dates or if in writing, state where the writing is and append the original or a copy to your answer. State why you made said agreement.

Answer. James Keeler agreed with me to dig on said tract. I cannot recollect the date. It was a verbal agreement. I think the rent was to be one sixth.

Mr Young also conversed with me about digging on said ground, whether before or after my agreement with Keeler, I cannot now recollect. In making agreement with mine to dig my sole object was to obtain rent from the Ground.

Question 8th by same. Do you know whether there is or was a crevice or range of lead mineral on said tract or partly on said tract and partly on the North West quarter of the same section. If yes. When was the same struck or discovered and by whom and by whom was the same worked, or dug at any time or times to your knowledge?

Answer. There was on the tract on the West of that above described an old mineral hole, which was perhaps 100 or 150 feet from the west line of the ground conveyed by Mr B. Green to me. I understood that this had been dug by Mr Young, but when dug and at what time it ceased to be worked, I cannot state nor whether worked by him personally, or by men employed by him.

This I presume was an East and West range, if so it continued Eastwardly it must run across the ground held by me.

Question 9th by same. Did the Defendants ever work by themselves or hands upon said Range or crevice. if yes, state whether they discovered the same or purchased the prospect or crevice of some one else and of whom and on what terms and what became of the mineral and did you receive any, and what part.

Answer. Keeler & Brown themselves worked on the ground held by me. I will not undertake to say whether or not it was the range of Young's diggings. I am not well enough acquainted with the character of mineral ground and the nature and courses of ranges or crevices to give an opinion thereon. I cannot state whether Keeler & Brown considered this an original discovery or a continuation of Young's range. nor do I know whether or not they purchased the range of some other person. nor of whom.

In the summer of 1849. They discontinued working the ground. Up to that time I do not know that they had raised any mineral from the ground above described. I have no recollection of receiving any rent therefrom. In the fall of 1848 & 50. they commenced working again and at the time (March 2. 1850) that I sold the ground to James F. Keeler, there was a quantity of mineral in wash dirt on the ground at their shaft, thought to be by said James F. Keeler 14. or 15. or perhaps 20,000 lbs and in this opinion I think Mr Green coincided, but which I was afterwards led to believe was more. I sold the ground with the mineral on it. Of course received no rent. The mineral was sold I believe to R. S. Norris.

Question 10. When did you first learn of there being a crevice or range of mineral on said tract and what was the occasion of your first knowledge or information respecting the same. Give the particulars of the same.

Answer. I cannot state the time when I first learned that there were ranges or crevices on the ground.

I knew some time before the ground came under my control. That large bodies of mineral had been raised

from some portions of the ground, particularly the Whitesides range. If the question has reference to the digging of Young on the Ground of Mr Green on the West of that held by me, and suppose it has. I cannot state when I first learned that Mr Young had sunk his shaft. Presume I learned it from Mr Green.

Question 11th By same. When you first learned of a crevice or range being on said tract or partly on said tract, had the same then been worked, drifted or excavated to any extent on said tract, if yes to what distance or extent and by whom and what did you then do and how did you learn of the same and from whom?

Answer. When I first knew that the digging on Green's ground was done by or for Mr Young the shaft of Mr Keeler had not been sunk on the ground held by me.

Question 12 By same. If you ever in any form permitted the Defendants to mine or dig on said tract or made any agreement with them respecting the same. State why you did so. Specify the particulars of said agreement, how the same was performed, when it ended and the reason of its end?

Answer. I did permit the Defendants to mine on the tract held by me. There were no other particulars in the agreement than that they were to pay me the rent on the mineral raised by them. Which as I before stated was to be one sixth.

Question 13 by same. State if any amount of mineral or money was paid you by defendant as rent or share for the use of said land or crevice and what share or percentage and when paid & how much in all.

Answer. I did not to my knowledge ever receive any rent from the Defendant from the ground above referred to.

Question 14 by same. Do you know anything at all of the terms of any agreement or bargain. Sale or lease, respecting the said crevice situate in part on said tract in the first interrogatory described between the Plaintiff and Defendants in this suit. If yes. state the same full and particularly and give your reasons of knowledge and the occasion of your learning the facts relating to the same. with time and place.

Answer. I do not know of my knowledge of any agreement between the Plaintiff and defendant relating to the said ground.

Question 15th by same. At the time of any agreement between yourself and said defendant respecting said tract. state whether the crevice had then been drifted or excavated into and upon said tract. Do you know whether it was or not, & how do you know that fact.

Answer. I do not think that at the time of my agreement with the defendant the shaft sunk by Young on Green's ground had been drifted on to the ground held by me. Nor do I recollect whether the shaft sunk by Keeler was ever connected by drifting with that sunk by Young or not.

Question 16 by same. Is the crevice situate on said tract and lately worked by the Defendants or their hands or workmen part of the same crevice, situate on the North West quarter (N. W. $\frac{1}{4}$) of the same section and does the whole crevice penetrate in part both the North West quarter and the aforesaid part of the North East quarter. Who struck and discovered the same. When was it struck or discovered, and when & who then owned, claimed or possessed the said tracts.

Answer. I cannot say whether the crevice worked by the Defendants on the ground held by me is a continuation of the crevice discovered or worked by Young on Green's ground and do not recollect whether or not by drifting between the shafts it has ever been proved to be the same crevice.

As I stated before, I only knew from information derived from others, that Mr Young was the owner or discoverer of the crevice or range on Green's ground.

At the time I first knew or heard of it as Young's it was not worked by any person. When I first heard about it, the ground above described belonged to Mr B. Green.

Question 17th by same. At the time of making any agreement between yourself and said Defendants or either of them, were you informed by said Defendants or either of them, or notified or referred to any claim, right or interest asserted or set up by James Young the Plaintiff, or of any possession, right or claim assigned or conveyed to the defendants by him, if yes. State the same fully.

Answer. I have now no recollection of being told by the defendants or either of them at the time of making any agreement with them to mine on the ground held by me.

that Young had any claim, right or interest, in said ground. I have an impression that Keeler or Keeler & Brown took the diggings of Young on Green's ground and agreed to pay him rent therefor, but whether this impression was received from the Defendants, the Plaintiff or some other person or persons I am unable to state.

Question 18th by same. State as near as possible the exact time you first acquired an interest in said land & when, & also the exact date of any agreement between you and said Defendants.

Answer. I have not the deed in my possession now from Mr Green to myself. I forwarded it to Mr Keeler at his request to be used in Court and cannot therefore state the exact time that Green conveyed to me. The deed will show. I think it was in the summer 1848. Cannot state the time when the agreement between the defendant and myself was entered into.

Question 19th by same. To whom or what smelter did the defendant sell the mineral raised from the tract first above described and what amount did they raise. To the best of your knowledge or information from them or either of them.

Answer. The mineral raised by the defendants on the tract referred to above which was on the ground at the time I sold it to James F. Keeler was sold to R. S. Norris. At the time I disposed of it there may have been 15. or 20. or more thousand of pounds

Question 20th by same.

Do you know any other fact of advantage or benefit to the Plaintiff James Young in this suit? If yes state the same.

Answer. I do not.

James Campbell.

State of Illinois }
Sangamon County } I Benjamin Talbot Clerk
of the Circuit Court within
and for the County and State aforesaid, do hereby certify
that James Campbell was by me sworn to testify the
truth, the whole truth and nothing but the truth
as a witness in the foregoing named Cause and
that the foregoing deposition by him subscribed was
reduced to writing by me and taken at the time
and place in the enclosed notice specified.

Recd
C. W.

Given under my hand and
seal of office this 27th day of
October in the year A.D. 1851
Benjamin Talbot Clerk.

Which matters aforesaid were all the evidence offered
by either party or admitted to the Jury by the Court.
And said Plaintiff then, then prayed that this his bill
of exceptions might be signed, sealed & made part of the
Record: Which is accordingly done.

The Plaintiff then asked the Court to instruct the Jury as follows, to wit

If the jury believe from the evidence, that James Young the Plaintiff, struck & discovered the crevice described in the declaration whilst William B. Green was the proprietor of the land, & that by permission and agreement between Green & the Plaintiff, said Plaintiff had the right & power to prove up & work the range or crevice on the tracts of land ^{owned} or claimed by Green at the time of the discovery and that said Plaintiff was to pay said Green $\frac{1}{5}$ of the lead mineral raised in manner alleged in the declaration, & that said Defendants made an agreement with the Plaintiff by which he delivered them the control & possession of the drift or excavation & all his interest in the crevice & said Defendants in consideration of the same, agreed to pay to the land proprietors $\frac{1}{5}$ of the Lead mineral raised & $\frac{4}{5}$ to said Plaintiff in manner alleged in the declaration. Then the jury should find for the Plaintiff the value of the $\frac{4}{5}$ of all mineral raised by ~~Yates~~ in the crevice & not pay him.

2. If the Defendants made an agreement with the Plaintiff in manner and form, as set up in any one of the Counts of the declaration, & the defendants had the full benefit of the contract & obtained from the Plaintiff all that he agreed to give or transfer, & were not disturbed by any person in the enjoyment of the same. Then the jury should find for the Plaintiff Young, the value of his share or proportion as agreed upon, of all mineral raised from the crevice & sold by Defendants.

3. If the jury believe from the evidence that Young had the possession & control of a part of the crevice & claimed the rights to go on & drift through & excavate the whole crevice paying to the land proprietor a certain share or proportion, as in the declaration alleged & that the Plaintiff & defendants made an agreement by which Young transferred his possession & claim to the Defendants

Refused

Given

& That they agreed to pay him the $\frac{1}{3}$ of the mineral in manner alleged in the declaration & a share to the land proprietor & That they obtained the possession from Young & went on & drifted and excavated the same without disturbance & took out & raised & sold from said crevice large amounts of mineral, then the defendants are liable to the Plaintiff for his share of the same according to said Contract & the jury should find for the Plaintiff — Given as to the mineral taken from the parts of the crevice Young delivered possession & Control of, & Refused as to any other parts. —

4 If the jury believe from the evidence that the Defendants made the contract with the Plaintiff as set up in either Count of the declaration, & received from him all that the Plaintiff agreed to give, then the Defendants are bound to pay the Plaintiff all they agreed to pay & it is no defence to show that Campbell or any one else owned a part of the land, if the Defendants were not deprived of anything that said Plaintiff agreed to give or convey.

5 That all admissions or representations or Contracts made by either of said defendants are binding on both & are good evidence before the jury, if relevant to the issues provided both of them made the contract with Young.

6 That it is not necessary for the Plaintiff to prove the making of the original agreement or bargain with the Defendants by any witnesses present at the time of the making of the same, but the jury may infer from the admissions and acts of the Defendants or from the statements of both parties when present together, whether there was a contract & agreement or not, & what the same was.

Given

Given

Given

7. If the jury believe from the evidence that for the consideration set forth in the 5th Count of the declaration that the Defendants promised to pay the Plaintiff the $\frac{1}{5}$ of the value of the mineral they should raise as in said Count alleged & that they have gone on & raised large quantities of mineral & sold the same, then the Defendants are bound to pay said Plaintiff the value of the said share & it is no defence that Campbell or S. F. Keeler owned the land or any part of it, or that any land owner consented to the Defendants working it paying a share for ground rent.
- Given as to the mineral taken from the North West quarter. Refused as to any taken on N. East quarter -

8. If the jury believe from the evidence that any agreement or lease or permission, between James Campbell & the Defendants, as to that part of the crevice lying on James Campbell's land, was expected & contemplated by the agreement between Young & the Defendants, then the agreement between Campbell & the Defendants tends to sustain the Plaintiff & not to defeat him.

9. If the jury believe from the evidence that an agreement was made between the Plaintiff Young and the Defendants as set forth in any Count of the declaration except the fifth & that the Defendants obtained & received from Young all that he agreed to give & that the Defendants had the full benefit and enjoyment of the agreement on their part in the manner expected by parties & by them intended, then the Defendants must pay to the Plaintiff what they agreed to pay, and it is no defence to show that Campbell or any one else owned a part of the land on which the said crevice was, & no agreement between the Defendants, any other person can defeat the

Refused

Given

Plaintiff's right to recover.

10.

If the jury believe from the evidence that Campbell held his land open for prospecting for lead mineral, & that Young had struck a crevice, & that by drifting & working his crevice in & upon the land of Campbell, before any other person struck it on Campbell's land, he Young would have had the right & power to have gone on & drifted & worked the crevice on Campbell's land according to the rules & customs of miners, paying Campbell a share as rent or consideration, & that by an agreement between Young & the Defendants they obtained from Young possession & control of the drift & the right from him to work the crevice just as he could have drifted & worked it, & that in consideration thereof, the Defendants promised the Plaintiff to pay him the $\frac{1}{2}$ as set forth in the declaration & that they did go on & work the crevice & did obtain & sell mineral therefrom on Campbell's ground, then the jury should find for the Plaintiff.

11.

If the jury believe from the evidence that an agreement was made between the Plaintiff & Defendants as set forth in any one of the Counts of the declaration, & in pursuance of the same the defendants obtained from the Plaintiff the possession & control of the drift or excavation on said range or crevice & commenced working out said range or crevice, then it was not in the power of the Defendants without Young's consent or default to rescind or abandon the agreement, by ceasing to work the same for a space of time, and again going on & renewing the work, without restoring to Young the possession & control which they obtained from him.

Given except as to W. & G. quarter
Refused as to that

Refused

12. That in law neither party to a contract, can rescind the contract without the default or consent of the other.

13. That before a party to a contract can rescind it, even when in his power to rescind, he must restore if possible, to the other party all that he obtained from him, & place him in the same position he was in before the making of the contract.

14. If the Jury believe from the evidence that an agreement was made by the Plaintiff & Defendants, as alleged in any one Count of the declaration, & in pursuance of such agreement the Defendants obtained possession of the drifts & excavation made by Young & it was part of the agreement that the Defendants should pay to the land owner or proprietor a share as rent or consideration, then any agreement between the Defendants & James Campbell, by which the Defendants were enabled to carry out their contract with Young & work the crevice paying James Campbell $\frac{1}{6}$ of the mineral is no defence & cannot defeat the claim of Plaintiffs for his share according to agreement between Plaintiff & Defendants.

15. If the Jury believe that the crevice described was struck & discovered by said James Young and that at that time the tracts of land described, were owned or claimed according to the custom of the Country, by Wm. B. Green & that as between Green & Young, the latter had the right & power to drift & excavate the crevice through said lands wherever the same might run & to extract for his own use the lead mineral from said crevice, yielding & paying to said Green the value of the $\frac{1}{5}$ of said mineral in manner alleged in the declaration, & that Young in

pursuance of said agreement, drifted & worked the crevice some little distance on the North West Quarter, & that said Green sold & conveyed to Campbell the said part of the North East Quarter owned by him, & that Campbell held the same open for prospecting & mining purposes according to the customs of miners, & that by those customs the person who should first strike or discover a crevice on said tract on the North East quarter become possessed of the right & power, to drift & work the entire crevice on that tract, yielding & paying to said Campbell the value of a certain share of the lead mineral they might extract & raise from said crevice on said tract & that said Defendants became & were desirous of working said crevice & of obtaining & possessing the said drift & excavation & made an agreement with said Young by which they obtained the full possession of said drift & excavation from said Young & full permission & right to go on & work & drift the said crevice in such manner & on such conditions as said Young could have worked & excavated the same & taken the mineral therefrom, & in consideration thereof agreed to give to said Young the value of 1/5 of the lead mineral they might raise from said crevice, in manner alleged in the declaration & that said Defendants in pursuance of such agreement with said Young entered into the possession & commenced working & drifting the same & from time to time took & raised from said crevice on said North East Quarter & sold large quantities of lead mineral, & that Campbell interposed no objection to the Defendants working out said range or crevice, but only required the payment of the 1/5th as a ground rent or consideration to him. Then the Jury should find for the Plaintiff.

Refused

16. If the Jury believe from the evidence that the range or crevice was discovered by the Plaintiff, on lands owned or claimed according to the custom of the Country by William B. Green, to wit the lands described in the declaration & that as between the Plaintiff and Green, the Plaintiff has the right & authority to drift & excavate the lead mineral from the crevice on said tracts, yielding & paying to said Green the $\frac{1}{5}$ in manner set forth in the declaration & that the Plaintiff drifted & excavated on the North West quarter, a portion of said crevice, & that afterwards said Green sold the part owned by him of the North East quarter to one Campbell, & that said Campbell held the same open for mining purposes in same manner as said Green & for the same or a less consideration, & that said Defendants obtained the possession of said drift or excavation from said Young & entered upon the crevice under said Young & in consideration of the same agreed to pay to said Young the $\frac{1}{5}$ share of the mineral in manner alleged in the declaration & to pay the share to the land proprietor & that the Defendants went on & drifted into the North East quarter, & said Campbell consented to their going on & excavating the same, paying him the $\frac{1}{6}$ in manner agreed upon, & that they did take large quantities from said crevice on said North East quarter, & have sold the same. Then the Defendants are liable to pay to said Plaintiff the value of $\frac{1}{5}$ of all such lead mineral so raised & sold.

Refused

17. That by the laws of Illinois the joint liability of one of the Defendants with the other can only be denied by a plea under the oath of one of the parties & no such plea under oath having been filed in this case the Jury are instructed that if they shall believe either of the Defendants liable, under the pleading, to the Plaintiffs, then both of the Defendants are liable.

18. The contract between the parties is to be construed as the parties themselves understood it.

19. That if the Plaintiff & the Defendants or either Defendant who made the contract understood the contract at the time it was made to extend to the two tracts of land in the declaration described, then the Jury are to construe the contract as so understood by the parties.

20. That if the Jury believe from the evidence that Keeler & Brown were working the ground in partnership or together & that Keeler was a ^{dormant} partner with Brown at the time the contract was made, & the contract made with Brown alone but for the benefit of Keeler & Brown then the Plaintiff may maintain the action against both Defendants, on the contract in case he is entitled to maintain it against either.

Which the Court respectively gave,
refused, and qualified, as marked by the Court,
opposite or under the said instructions—
And the Plaintiff then & there objected to the
qualifications of said instructions that the Court
did qualify & reserve an exception to the action
& decision of the Court in so qualifying said in-
structions & in refusing said instructions refused.

The said Plaintiff then asked the
Court for leave to keep from the Jury the said
instructions so as aforesaid refused, but the Court
refused said leave & sent said instructions so
marked refused to the Jury & permitted them to be
taken by the Jury to their room in their retirement.

To which ruling & decision & acts of the Court
in reference to said refused instructions the
Plaintiff Counsel then & there at the time excepted.

And the said Defendants then & there asked
the Court to instruct the Jury as follows to wit:

Refused

1/ If the Jury believe from the testimony,
that the Plaintiff agreed only, by a verbal agree-
ment, & that there was no contract in writing
with the Defendants, then the law is for the
Defendants. 2 A. R. Mar 33 = 13 Wend 53. 5.
Cow 162. 3 Fairfield 516. 10 Vermont 338.

Refused

2/ If the Jury believe from the testimony,
that the agreement made by the Defendants, was
not reduced to writing & rested only in a verbal
agreement, then there was no consideration for the
promise, & the Jury ought to find a verdict for
the Defendants = same authorities

3rd To make the agreement binding in this case it was necessary for the Plaintiff to produce in evidence some memorandum in writing of the agreement signed by the Plaintiff, or some one duly authorized by him, or at least to show that such a writing had been executed
- 2 A. K. Mar. 33 -

4th The right to enter upon the lands of another and dig mineral is an interest in land, and a sale or transfer of such an interest to be valid must be in writing. And if the Jury believe that the agreement in this case was not reduced to writing, then the Defendants are not liable in this action under the pleading.

5th If the Jury believe from the testimony that the promise to pay rent to Young on the N. E. 1/4 of Sec. 12. was made after Keeler & Brown had possession of the N. W. 1/4 of Sec. 12 - then that promise is not binding for want of consideration, unless Keeler & Brown got the possession or right of possession, or some title to some part of the North East quarter from James Young. And as to the mineral raised on the North East quarter Section 12. the Jury ought to find a verdict for the Defendants, if they believe from the evidence the above facts.

6th This was a contract for the sale or transfer of an interest in land and is not valid unless there was some note or memorandum thereof reduced to writing.

7th If James Young never had the possession or right of possession of any part of the North East quarter of Sec. 12. nor any title thereto. Then the promise to pay by Keeler & Brown was not binding for want of consideration & the Jury ought to find a verdict for Defendants. As to any mineral taken from the North East quarter

8// By sinking shafts or mining holes on the North West quarter of Section Twelve (12) the Plaintiff Young acquired no possession of the North East quarter of Section 12. And even if the Plaintiff struck mineral on the tract (viz North West quarter) where he sunk the holes, that could not give the Plaintiff possession of the North East quarter of Section 12 although the range of mineral might extend to the North East quarter Section & through it -

9// In order to entitle the Plaintiff Young to recover in this case it is necessary as to the mineral which was raised on the North East quarter of Section Twelve, that he should show some title in himself, or that he had possession or right of possession to some part of said North East quarter - And to show title in himself, he must produce some written Evidence of such title - And in order to prove that he had the possession of the North East quarter of Sec 12, it is not sufficient to prove that he sunk a shaft or two on the North West quarter of said Section 12.

And if no written ^{evidence} of title has been produced then an actual possession or right of possession of the premises must be shown by Young. To constitute an actual possession of the North East quarter of Sec 12 it would be necessary for Young the Plaintiff to have improvements on that N. E. quarter, or he must have resided thereon at the time of sale, or had the same enclosed. Merely sinking shafts or holes on an adjoining tract of land would not constitute an actual possession. And if Plaintiff has failed to prove some title or actual possession or right of possession to the North East quarter as to all mineral raised on that quarter section, the jury ought to find a verdict for the Defendants.

10- The Plaintiff is not entitled to recover for the mineral raised on the North East quarter Section of Sec 12 unless he shows that he had some title to the land or that he had the actual possession or right of possession to some part of the North East quarter of Section No 12 =

A right of possession does not exist in the absence of a paper or other title unless the Plaintiff had the actual possession of that part of the land possessed by him or claimed by him.

12 If the Jury believe from the testimony that the Plaintiff has failed to prove that he had the actual possession or right of possession to some part of the North East quarter section twelve and has failed to show any paper or written title to some part of the said North East quarter, then the Jury ought to find a verdict for the Defendants for all of the mineral raised on the North East quarter Section twelve.

13 The Plaintiff is not entitled to recover for the mineral raised on the North East quarter Section of Sec 12 unless he shows that he had some title to the land, or that he had the actual possession or right of possession to the North East quarter, or some part thereof.

If the Jury believe from the evidence that the contract was to pay rent on Green's ground, and that Green was not the owner of the ground, or had any interest in it from which the mineral ^{was} raised, then the Jury should find for Defendants.

If the jury believe from the testimony that William B. Green bought out Youngs interest in the range on his land, some time in the winter of 1848 & 49 - then the Plaintiff in this case cannot recover for any of the mineral raised on Green's land after Young sold to Green his interest in the range.

If the jury believe from the testimony in this case, that Brown contracted with Young to pay him rent on "Green's ground" then Young cannot recover in this case for mineral raised on the North East quarter of Section 12 - if it did not belong to Green at the time of the Contract with Brown - not even if Young supposed at the time that Green's ground extended further & embraced the North East quarter Section.

The receipt offered in evidence in this case, is evidence tending to show who the Plaintiff received rent from, who he regarded as the person indebted to him for rent, & on what land the indebtedness was created, and that the Plaintiff treated Brown as his tenant, alone & not Keeler & Brown as joint tenants.

The Plaintiff in this case cannot recover unless he proves a contract made with the Defendant Keeler as well as Brown. There must be a joint contract proved by the Plaintiff and if the Plaintiff has failed to prove that Keeler & Brown both agreed to pay rent then the jury ought to find a verdict for Defendant.

Given
If the Jury believe from the testimony that the Plaintiff made the contract with Brown alone & not with Keeler & Brown jointly then they ought to find a verdict for the Defendants.

Given
The mere fact that Keeler & Brown worked the diggings together, does not make Keeler jointly liable with Brown in this case, and unless there has been sufficient proof of a joint liability; or unless they have proved that Keeler as well as Brown promised to pay rent, the Jury ought to find a verdict for the Defendant.

Given
If the Jury believe from the testimony that the Plaintiff told P. F. Keeler that he never knew James Keeler the Defendant in the transaction between Brown & himself & that he made the contract with Brown, this is a strong circumstance in favor of the contract not being joint but of its having been made with Brown alone.

Given
If the Jury find that William Young's testimony proves a promise by Brown alone & not by Keeler & Brown; And if they further find that the Plaintiff told P. F. Keeler that he did not know his father from the Devil in the contract, and if they further find that in the receipt given by Plaintiff to Brown, that he Brown is treated as the only party dealing with Young, these are all circumstances tending to show that the Plaintiff contracted with Brown alone, and that he did not recognize Keeler in the transaction nor in the contract.

And if the Jury believe that the contract in this case was made by Brown alone & not Brown & Keeler then the Jury ought to find a verdict for the Defendants.

Given

If Brown contracted alone. he must be sued alone & not with Keeler. They are not liable jointly for Browns contracts made for himself.

Which the Court gave refused & qualified, as appears opposite said respective instructions. To the ruling and decision of the Court in giving said instructions marked "given" the Plaintiff Counsel then & there excepted.

And afterwards at the same term the Plaintiff filed his motion for a new trial & the reasons for the same in the words & figures following to wit:

State of Illinois Co Daviess County ss
James Young }
vs } Circuit Court November Term
James Keeler & } A. D. 1852.
Adam Brown }

The said Plaintiff comes & moves the Court to set aside the verdict of the Jury in this cause & to grant a new trial herein for the following reasons. To wit;

1st Because the verdict is contrary to the evidence.

2nd Because the verdict is contrary to the law.

3rd Because the verdict of the Jury is contrary to the instruction of the Court which were given as prayed for by the Plaintiff.

4th Because the Court refused to give or refuse certain instructions asked for by the Plaintiff.
To wit: instructions, 3rd 5th 7th 11th & 20th & 9th

5th Because the Court qualified instructions asked by Plaintiff contrary to the consent of said Plaintiff & his Attorney, to wit: the 3rd 5th 7th 11th 9th & 20th instructions

6th Because of the refusal of the Court to give certain instructions asked by the Plaintiff, To wit: the 1st 8th 10th 14th 15th 16th & 17th

8th Because the Court gave each of the instructions, which were given at the request and on the part of the Defendants.

9th Because the Court permitted the instructions which were refused, to go to the Jury & to be taken with them on retiring to consider of their verdict.

10th Because the Court permitted the Defendants to introduce evidence of title in the lands described in the declaration, in James Campbell & James F. Keeler.

11th Because of the instructions which the Court gave on the part of the Defendants.

12th Because of the instructions which the Court gave on the part of the Defendants as to the joint liability of the Defendants

13th Because of the instructions which the Court gave on the part of the Defendants as to the testimony of Wm Young & as to the testimony of James F. Keeler.

14th Because the Court refused to instruct the Jury that if the Plaintiff proved his case as set forth in the pleadings he was entitled to recover.

15th Because of other good reasons.

Hoge & Wilson for
Plaintiff

Which motion the Court overruled. To which ruling & decision of the Court the Plaintiff then & there excepted & prayed the Court that this his Bill of Exceptions might be signed sealed & made part of the Record herein. Which was accordingly done this day of December A.D. 1852. at apt of the November Term A.D. 1852.

Witness my hand & seal the day & year last aforesaid.

Benj. R. Sheldon ^{my} Clerk

Endorsed. Filed Dec^r 20th A.D. 1852
Wm H. Bradley Clerk

State of Illinois
Jo Daviess County

I William A. Bradley
Clerk of the Circuit Court in and for said
County, do hereby certify that the foregoing
transcript is a true full and correct copy
from the Record files of my Office of all the
proceedings which were had in said Circuit
Court in the aforesaid case of James
Young vs James Keeler & Adam Brown,
except the second amended replication of the
Plaintiff to the defendant's ^{fifth} plea purporting
to have been filed May 18 1853 as noted in this
transcript, and also excepting a diagram & a
receipt used on the trial & referred to in the evidence
and Bill of exceptions, which I believe have been
mislaid or lost by the Attorneys in the case.

In testimony whereof I have
bracketed set my hand and affixed
the Seal of said Court at my
Office in Galena in said County
this 20th day of May A.D. 1853
Wm A Bradley Clerk

40.300 words

Fees for this Record \$40.30
Certipate Seal 35-
\$40.65-

72
James Young

James Miller Nat.

Reverend

Filed June 16. 1853.
Shelton Ck.

72

James Young

James Kerla stat.

72

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