

No. **12290**

Supreme Court of Illinois

McConnell.

VS.

BRILLHART
~~Bullart~~

71641  7

State of Illinois
Fourteenth Judicial Circuit
Stephenson County

Pleas before the Hon^{ble}. Benjamin
R. Sheldon presiding Judge of the Fourteenth Judicial Circuit
of said State at a Term of the Circuit Court begun and
held at the Court house in Freeport in said Judicial
Circuit & in the County and State aforesaid on Monday
the 7th day of April A.D. 1856.

Present the Hon^{ble}. Benjamin R. Sheldon Judge

Isaac Kleckner Sheriff

Attest. Joseph S. Smith, Clerk

Jacob S. Brillhart

Joseph A. McConnell

In Chancery

Be it remembered that heretofore
to wit: on the 17th day of August A.D. 1853 Jacob S.
Brillhart the Complainant in this suit by his Solicitor
appeared and filed in the said Court his Bill of Complaint
in the said suit of Jacob S. Brillhart against Joseph A.
McConnell, in the words and figures following to wit

"In Chancery

In the Circuit Court of Stephenson County
of the September Term A.D. 1853 in
Chancery sitting.

To the Hon. Benjamin R. Sheldon Judge of the 14th Judicial
Circuit of the State of Illinois, in the Stephenson County Circuit

Court in Chancery sitting.

Complaining sheweth unto your honor your orator Jacob S Brillhart of the County of Stephenson and State of Illinois, that on the 1st day of July A.D. 1853 at said County of Stephenson, one Robert McConnell in consideration of the written undertaking and promise of your orator to pay him and one Joseph A. McConnell the sum of one thousand dollars by the 1st day of August A.D. 1853 for the North East quarter of Section twenty five and the South East quarter of said Section twenty five in Town Twenty Six North of Range Seven East of the 4th principal meridian in the State of Illinois, the said South East quarter belonged to said Robert & North East quarter to Joseph McConnell did on or about the 16th day of July A.D. 1853 make and execute under his hand and seal with a proper acknowledgment thence a deed to your orator for the said South East quarter of land above described and, and at the time last aforesaid the said Robert McConnell placed the said deed in the hands of one Joseph A. McConnell and at the same time directed and instructed the said Joseph A. McConnell to deliver the said deed to your orator upon his paying to him the said Joseph A. McConnell said sum of \$1000. for the said land, \$500. to Robert McConnell & \$500. to the said Joseph A. McConnell that your orator is informed and verily believes that the said Joseph A. McConnell is now in possession of the said deed.

That on the third day of August A.D. 1853, at the said County of Stephenson your orator tendered to the said Joseph A. McConnell the said sum of one thousand

3. dollars in the gold and silver coin of the United States for the use of the said Robert McConnell & Joseph A McConnell and in payment for the said land, and then and there demanded of the said Joseph A McConnell the said deed, but to receive said money and ^{to} deliver said Deed to your orator the said Joseph A McConnell, then and there refused. And your orator further sheweth unto your honor that the said Joseph A McConnell the defendant hereinafter named on the second day of July A.D. 1853. at said County of Stephenson being then and there well possessed in fee simple of the following described land to wit. the North East quarter of said Section entered into an agreement in writing to and with your orator to sell to him said land, and the land last above described of Robert McConnell for the sum of one thousand dollars and that he would on the first day of August A.D. 1853 on the payment to him of the said one thousand dollars by your orator, five hundred dollars for the land of the said Robert & five hundred for Joseph A. make execute and deliver to your orator a good and sufficient deed for the same which said agreement ready to be shown to your orator honor on the hearing of this cause will more fully and at large appear. And your orator further sheweth unto your honor that on the said 1st day of August A.D. 1853 your orator tendered to the said Joseph A. McConnell the said sum of one thousand dollars for the said land according to the terms of their said agreement in the gold and silver coin of the United States and then there requested the said McConnell to make execute and deliver to him a deed of said land, and the said Joseph A McConnell

then and there refused to do the same and still refuses to do it.

And your orator further sheweth unto your honor that he has been at all times ^{is still} ready to pay to the said Joseph A McConnell the said sum of one thousand dollars for said land. And your orator well hoped that the said defendant would have delivered to him said deed as he was by the said Robert McConnell instructed to do, and that he would have made executed and delivered to your orator a deed of the said North East quarter of said section as in good conscience and equity he was bound to do.

But now so it is may it please your honor that the said Joseph A McConnell combining and confederating with divers persons at present unknown to your orator whose names when discovered your orator prays he may be at liberty to insert herein with apt words to charge them as parties defendants hereto and contriving how to wrong and injure your orator in the premises, he the said Joseph A McConnell absolutely refuses to comply with such request, and he at times pretends that the said Robert McConnell cannot make a good title to the said land first above described, and that he had not agreed to convey the tract secondly above described, whereas your orator charges the truth to be that the said Robert has made out a good and sufficient deed of said land and the same now is in the hands of the said defendant, and that the said Joseph A McConnell has in fact agreed to convey the said tract secondly above described to your orator. And your orator has good reason to fear and does fear that the said

5 Joseph A McConnell will redeliver said deed to the said Robert McConnell and that he will sell the said piece of land secondly above described unless he be restrained by an Injunction out of this Hon. Court.

All of which actings and doings and pretences of the said Joseph A McConnell are against equity and good conscience and tend to the manifest wrong and injury and oppression of your orator in the premises. In consideration whereof and for as much as your orator is entirely remediless in the premises at and by the strict rules of the common law, and can only have relief in a court of equity where matters of this nature are properly cognizable and relievable, to the end therefore that the said Joseph A McConnell and the rest of the confederates when discovered may upon their several and respective corporeal oaths full true direct and perfect answer make to all and singular the matters hereinafter before stated and charged as fully and particularly as if the same were hereinafter repeated, and he thereunto distinctly interrogated and that not only as to the best of his knowledge and remembrance but also as to the best of his information hearsay and belief, and more especially that the said Defendant may answer and set forth whether he did or not address a letter to Dr. Michener of Freeport Illinois dated McConnell's Hill Ohio May 17th A.D. 1853 in which you informed him that the lands above described would be sold for \$1000. and that your offer to sell said land for that price would not hold good until

6 the 1st of July 1853, whether he did not in a short time thereafter and at what time receive a letter from the Complainant in this case agreeing to pay the said \$1000. for said Land.

Whether he did not receive a letter from the said Complainant on or about the 1st of July A.D. 1853 asking for the Extension of the time to pay for said land until the 1st of August 1853 and whether the said Joseph A McConnell did not inform the said Brillhart by letter that the time might be extended, if said Complainant would hold himself in readiness to pay for said land and let you know that he held himself in readiness to pay for the same on the said 1st of August A.D. 1853. — Whether the said Brillhart Complainant in this suit did not inform the said defendant Joseph A McConnell by letter that he would be in readiness ^{on the said} 1st of August to pay for said land and that the said Defendant might come to Freeport prepared to make the Deeds. — And that the said Joseph A McConnell may be decreed to deliver to your orator the said Deed so as aforesaid left in his hands by the said Robert McConnell and that he be decreed specifically to perform his said agreement to convey to your orator the said tract of Land secondly above described, and that your Orator may have such further and other relief as to your honor shall seem meet and agreeable to Equity & good conscience, May it please your honor the premises considered to grant unto your honor Orator the writ of Ne exeat Regni of this State issuing out of and under the seal of this honorable Court directed to the said Joseph A McConnell restraining him from departing out of the jurisdiction of this Hon. Court.

7
And may it please your honor to grant unto your
Orator the writ of Injunction issuing out of and under
the seal of this Court directed to the said Joseph A McConnell
to restrain him from parting with or delivering to any
person whatever other than your Orator the said Deed so
as aforesaid placed in his hands by the said Robert McCon-
nell and further to restrain him from selling conveying
or disposing of the tract of land secondly above described
to any person other than your Orator until the further
order of this Court. May it please your Honor to grant
unto your Orator the writ of Summons issuing out
of and under the seal of this Honorable Court directed to the
said Joseph A McConnell Commanding him by a certain
day and under a certain penalty therein to be inserted
personally to be and appear before this Honorable Court and
then and there to answer all and singular the premises
and to stand to, perform and abide such order and decree
therein as to your honor shall seem and agreeable to
equity and good conscience -

And your Orator shall ever pray &c.
W. D. Meacham Sol. J. S. Brillhart
S. J. Turner of Counsel

State of Illinois
Stephenson County *J. S.* On this 11th day of August A.D. 1853
before me personally appeared the
above named Jacob S Brillhart and made oath that
he has heard read the above bill subscribed by him and
knows the contents thereof, and that the same is true of his

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own knowledge except as to the matters which are therein stated to be on his information or belief and as to those matters he believes it to be true

A. W. S. Brawley, Master in Chancery
in and for said County

State of Illinois
Stephenson County } p.

Hon. Benjamin R. Sheldon presiding
Judge of the Circuit Court of said County being absent
from said County, upon the filing of the above and
forgoing Bill of Complaint, let a writ of injunction
issue in accordance with the prayer of said Bill

To Joseph B. Smith
Clerk Cir. Court of
said County

A. W. S. Brawley Master in
Chancery for said County
August 11th 1853

Which said Bill has the following endorsement to wit:
"Stephenson Co. Cir. Court", "Jacob S. Brillhart vs
Joseph A. McConnell" "Bill" "Filed August 17th 1853
Joseph B. Smith Clerk"

"Turner & Meacham Atty for Campst."

And on the same day to wit, on the said 17th day of August
A.D. 1853 there issued out of said Circuit Court a writ of
Injunction directed to the Sheriff of Stephenson County
to execute in the words and figures following to wit:

State of Illinois

Stephenson County } p.

The People of the State of Illinois
of Jo Joseph A. McConnell

and to his Counsellors, Attorneys, Solicitors
and agents and each and every of them
Greeting:

Whereas it has been represented to us in our Circuit Court
of Stephenson County sitting in Chancery, on the part
of Jacob S Brillhart Complainant that he has lately
exhibited his Bill of Complaint in our said Court sitting
in Chancery before the Hon. Benjamin R Sheldon Judge
of our said Court against you the said Joseph A McConnell
to be relieved touching the matters and things therein
Complained of. In which Bill it is stated among other
things, that you are combining and confederating with
others to injure the said Complainant touching the matters
set forth in said bill, and that your actings and doings in
the premises are contrary to Equity and good Conscience.

We therefore in consideration thereof, and of the partic-
ular matters in the said bill set forth do strictly Comm-
and you the said Joseph A McConnell and the persons
before mentioned, and each and every of them under the
penalty of ten thousand dollars to be levied upon your
lands, goods and chattels to our use, that you do absolutely
desist and refrain from disposing of or parting with in
any manner whatever to any person or persons other
than to said Jacob S Brillhart the Complainant, of a
certain Deed of Conveyance made and executed by Robert
McConnell to said Jacob S Brillhart, Complainant for
the North East quarter of Section No. Twenty five, in
Township No. Twenty Six North of Range Seven, East
of the fourth P. M. Which said Deed of Conveyance was

placed in your hands by said Robert McConnell on or about the 16th day of July 1853 with instructions to deliver the same to said Jacob S Brillhart as we are informed. And in consideration of other and particular matters in Complainant's Bill of Complaint set forth. We do strictly command & enjoin you the said Joseph A McConnell defendant and the persons hereinbefore mentioned and each and every of them under the penalty aforesaid, that you do absolutely desist and refrain from selling conveying or disposing of the South East quarter of said Section No Twenty five in Township and Range aforesaid, until you the said Joseph A McConnell shall have put in your answer in this cause and our said Court shall have made further order thereon.

To the Sheriff of said County to execute.



Witness Joseph B Smith Clerk of our said Court and the seal of said Court at his office in Freeport this 17th day of August A.D. 1853.

Attest: Joseph B Smith, Clerk

Which said writ has the following endorsement to wit.

"Jacob S Brillhart vs Joseph A McConnell"

"Injunction". "Executed the within by reading the within to the within named Joseph A McConnell. August 23rd 1853. Geo. Reitzell Shff

per Wm Glover Deft.

Serving 50. Copy 50 Milage 35 Return 10 = \$1.45"

11 And on the same day to wit: on the 17th day of August A.D. 1853, there issued out of said Court a summons in the words and figures following to wit:

State of Illinois

Stephenson County

} Sect. The People of the State of Illinois, To the Sheriff of said County Greeting:

We Command you that you Summon Joseph A McConnell if he be found in your County, personally to be and appear before the Circuit Court of said County, on the first day of the next term thereof, to be holden at the Court House, in the town of Freeport, in the said County on the Second Monday in the month of September next to answer ^{unto} Jacob S Brillhart upon a certain Bill of Complaint filed in said Circuit Court by said Jacob S Brillhart on the Chancery side thereof against him, and have you then and there this writ, with an Endorsement thereon in what manner you shall have executed the same,

Witness Joseph B Smith, Clerk of our said Circuit Court, and the seal of said Court at his office, in said County, this 17th day of August A.D. 1853.



Joseph B Smith, Clerk

Endorsed as follows to wit:

"J. S. Brillhart vs J. A. McConnell. Ch. Summ."

"Executes the within by reading the within ^{to the within} named Joseph A McConnell & gave him a true Copy August 23rd 1853,

Geo. Reitzel Shff. per Wm Glover Deft.

And afterwards to wit: on the 15th day of September in September Term A.D. 1853 of said Circuit Court the said Defendant by his Solicitor appeared and filed in said Court his answer to said Complainants Bill, in the words & figures following to wit:

"In Stephenson County Circuit Court, In Chancery of September Term A.D. 1853.

The answer of Joseph A. McConnell
Defendant to the Bill of Complaint of
Jacob S. Brillhart Complainant

This Defendant now and at all times, saving & reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the Complainants said bill of Complaint contained for answer thereunto or unto so much or such parts thereof as this Defendant is advised is material for him to make answer unto doth answer and say that it is not true that Robert McConnell placed in the hands of this Defendant a Deed for the North East quarter of Section twenty five in Township twenty six North of Range Seven East of 4th principal Meridian to said Complainant with instructions to deliver said deed to said Complainant, upon the payment to this Defendant for the use of said Robert McConnell of five hundred Dollars.

This Defendant further answering saith it is not true that this Defendant had any such Deed

as is above mentioned from said Robert McConnell in the possession of this Defendant or under his control at the time of the commencement of this suit or since that time.

This Defendant further answering saith that it is not true that said Complainant did on August 3^d 1853 tender to this Defendant for the use of said Robert McConnell five hundred dollars in gold and silver coin to be applied in payment for said last above described tract of Land.

This Defendant further answering denies that he did on July 2^d 1853 enter into an agreement in writing with said Complainant to sell him the South East quarter of said Section 25 for five hundred Dollars as set out in the Bill herein, or that a tender of five hundred dollars was on August 1st 1853 made by Complainant to Defendant in payment for said last tract in gold & silver coin.

This Defendant further answering admits that he did write a letter to Dr. Michener of Freeport Illinois dated as defendant believes McConnells-ville May ^{17th} 1853 in which as near as this Defendant can recollect the language he informed Dr. Michener that his & father's ^{lands} lying contiguous to his (Micheners) Lands would be sold for one thousand dollars and that said offer would hold good till July 1st 1853, that said Letter contained no description of the Lands referred to.

This Defendant also admits that on or about July 1st 1853 - he received a letter from the Defendant herein which letter was in words as follows,

Stephenson House Freeport June 22 / 53

Mr. McConnell Esq

I have been to Ohio last week but could not arrange my matters so that I could come and see you before I left. I did not get my money as I expected but got checks which I had to send to N.Y. to get them endorsed and as soon as they will be returned to me (which will be about two weeks) I will then be ready to fulfil my agreement for this land. ^{This} delay was unavoidable on my part and hope you will extend the time about two weeks from the first day of July, as soon as I will be ready I will let you know please and let me hear from you soon and also if I can send a telegraph despatch to you as it takes some time for a letter to go there.

Yours &c J. S. Brillhart

Said Defendant further answering admits that soon after receiving the letter above set out he did receive from said Complainant a letter which was in words as follows.

Freeport Ill. June 24. 1853

Mr. McConnell. Sir I wrote to you a few days ago that I would not be ready to pay you that money for your Land by the 1st of July. But my business has made a turn so that I can pay you at any time if you will come out and make a deed to me. I would like to hear from you to know what time you will be out so that I will be here when you come. I would like to know soon for I want to build on it this fall and would also like to get some broke in July or as soon

as I can hear from you. Yours Resp J. S. Brillhart

Said Defendant admits that he wrote a letter in answer to the first of said letters above recited, stating that if said Complainant would be ready by August 1st first-1853 perhaps this Defendant would be out to Illinois prepared to make Deeds for Lands.

This Defendant further answering saith that to the best of the knowledge & recollection of this Defendant no agreement in writing has been made between this Defendant & said Complainant as set out in Complainants bill & said Defendant so charges the truth to be, and this Defendant claims the benefit of the Statute of Frauds and Perjuries of this State herein as fully and completely as if the same were specially pleaded & ruled upon alone as a defense herein & hereto.

This Defendant further answering saith that besides the letters above set out he received but one letter from the Complainant herein, which letter is in words and as follows to wit: — Freeport Ill. July 9. /53.

Mr. McConnell Sir yours of the 4th was Rec. this morning and in reply I would say that I am ready at any time. I should think the best way would be for you to send a power of Attorney to Doctr. Michener and then he could make me a Deed. I want a Warranter Deed. By so doing you would save the expense of coming out to Ill. I am selling our Tavern (or lease and furnature) to day, I intend to go to Iowa in a week or ten days. If I will go I will leave the money here for you and if Meachener will make me a Deed I will

give him a Draft on any bank you may direct. I would like to improve the Land this Fall or build a house at least. it is more than likely that I will come to Ohio in five or six weeks but if I will I shall leave the money so that Doctor Meachener can get it. please
and answer soon - Yours respectfully

J. S. Brillhart

This Defendant further answering saith that beside the letters above set out he has received no letters from said Complainant - And this Defendant denies all unlawful combinations or confederacy in the said bill charged without that any other matter or thing material or necessary for this Defendant to make answer unto and not herein or hereby well or sufficiently answered unto confessed or avoided traversed or denied is true to the knowledge or belief of this Defendant. all which matters and things this Defendant is ready to aver maintain and prove as this Honorable Court shall direct and humbly prays to be hence dismissed with his reasonable costs & charges in that behalf most wrongfully sustained.

Jo^s A. M^cConnell

W. A. Clark Sol for Deft.

State of Illinois
Stephenson County $\int$ On this 12th day of September
A. D. 1853 before me personally appeared the above named
Joseph A. McConnell and made oath that he had
read the above answer subscribed by him and

Knows the contents thereof and that the same is true of his own knowledge except as to the matters which are therein stated to be of his information & belief & as to those matters he believes it to be true

Joseph B. Smith, Clerk of Cir.
Court Stephenson Co.

Which said answer is endorsed as follows to wit:

"J. A. McConnell ats J S Brillhart, answer"

"Filed Sept. 15th 1853 Joseph B Smith, Clerk"

And afterwards to wit: on the 20th day of September in September Term A.D. 1853 of said Circuit Court in the records of the proceedings thereof in said entitled cause is the following entry to wit:

Jacob S Brillhart

"} Chancery - Injunction
Joseph A McConnell }

And now at this day comes the said Complainant by his Solicitor and files a Replication to Defendants answer.

Which said Replication is in the words following to wit:

"In the Circuit Court of Stephenson
County in Chancery sitting."

The Replication of Jacob S Brillhart Complainant to the answer of Joseph A McConnell Defendant. This repliant saving and reserving to himself now and at all times hereafter all and all manner of benefit

and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer for replication thereunto says that he will aver maintain and prove his bill of Complaint to be true certain and sufficient in the law to be answered unto, and that the said answer of the said Defendant is uncertain untrue and insufficient to be replied unto by this repliant without this that any other matter or thing whatever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby will and sufficiently replied unto confessed and avoided traversed or denied is true all which matters and things this repliant is and will be ready to aver maintain and prove as this honorable Court shall direct and humbly prays as in and by his said Bill he has already prayed.

Turner & Meacham

Solicitors for Complt.

Which said Replication is endorsed as follows to wit:
 Stephenson Co. Cir. Court. Jacob S Brillhart vs
 Joseph A McConnell — Replication"

Filed September 20th 1853 Joseph B Smith, Clerk

And afterwards to wit: on the 30th day of January in Jan'y. Special Chancery Term AD 1854 of said Court. the said defendant by his Solicitor appeared & filed in said Court an affidavit & motion in the words following to wit:

State of Illinois

Stephenson County

In Circuit Court. In
Chancery of January Special
Chancery Term 1854

Joseph A McConnell

at

Jacob S Brillhart

Stephenson County ss.

Charles A Clark being first
duly affirmed saith that he is solicitor in said above
entitled suit for Defendant. That he is informed
& verily believes that Jacob S Brillhart said Compl-
ainant is at present residing with his family out of
the State of Illinois that he has no property in this
State, that he is heavily involved in debt and that the
officers of this Court are endangered in their legal de-
mands for costs and the Defendant is endangered
in any demand he may have for costs herein against
said Complainant unless he be held to give security
for costs herein & further saith not &c

Charles A Clark

affirmed to & subscribed before me
this 30th day of January A.D. 1854

Joseph B Smith, Clerk

And now at this day comes said Defendant
by Clark his Solicitor & moves the Court that said
Complainant be ruled to give security for Costs
herein. Endorsed "Filed Jan'y 30. 1854 Joseph B Smith, Clerk"

And on the same day to wit. on the 30th day of
January in January Special Chancery Term A.D.

1854 of said Court in the record of the proceedings thereof is the following entry to wit:

Jacob S Brillhart
" } In Chancery
Joseph A McConnell

And now at this day comes the said defendant by Clark his Solicitor & moves the Court that said Complainant be ruled to give security for costs herein - And after hearing the arguments of Counsel, the Court being fully advised upon the motion - order that said Complainant be ruled to give security for costs herein by Wednesday morning next or show cause to the contrary

And on the same day to wit: on the 30th day of January in January Special Chancery Term A.D. 1854 of said Court the said Complainant by his Solicitor ^{files} an affidavit in the words following to wit:

Stephenson Co. Cir. Court
Jacob S Brillhart
" } In Chancery
Joseph A McConnell
State of Illinois, Stephenson County ss.

U. D. Meacham being duly sworn upon his oath says that he is one of the Solicitors of the Complainant in this Cause that the said Complainant cannot safely proceed to the hearing of this cause at this Term for the reason of the absence from this

State of one Dr. Michener who is a material witness in this cause for the said Complainant that the said Dr Michener left this State some time last Summer and has gone to some place to your affiant unknown, that diligent enquiry has been made of those who are supposed to know as to the said Michener whereabouts and this affiant has not been able to learn where the said Dr Michener now is any further than that he the said Dr Michener is supposed to be in the State of Texas but where is not known. that he expects to prove & believes can prove by the said Dr. Michener that Defendant admitted to him that he had in his possession a Deed from Robert McConnell mentioned in the Bill of the Quarter Section of Land alleged in the Bill to be the land of the said Robert McConnell, and that the said Robert McConnell had instructed him the said Defendant to deliver the said Deed to the Complainant when the Defendant should pay to him the sum of five hundred dollars and that the Complainant did tender the said five hundred dollars to the said Joseph A McConnell and this affiant believes and expects that if this cause is continued until next Term, Complainant can the testimony of the said Michener to be used on the hearing of this cause.

Subscribed & sworn before me
 this 30th day of Jan'y A.D. 1854 } U. D. Meacham
 Joseph B Smith, Clerk }

Endorsed Filed Jan'y 30th 1854

Joseph B Smith, Clerk

And afterwards to wit: on the 6th day of February as
yet of the January Special Chancery Term A.D. 1854 of
said Court in the record of the proceedings thereof in said
entitled cause is the following entry to wit:

"Jacob S Brillhart
" } Chancery - Injunction
Joseph A McConnell }

And now at this day comes the said
complainant by his solicitor and files security for costs
herein:

Which security for costs is in the words following to wit:

"In Chancery. In the Circuit Court of Stephenson
County. January Special Term 1854

Jacob S Brillhart

" }
Joseph A McConnell }

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 either to the opposite party or to any of the
officers of this Court in pursuance of the Laws of this
State -

Dated this 6th day of February 1854

John Black

Endorse "Filed February 6th 1854

Joseph B Smith, Clerk

And afterwards to wit: on the 9th day of February in
January Special Chancery Term A.D. 1854 of said Court

in the records of the proceedings thereof in said entitled cause is the following entry to wit:

Jacob S Brillhart

"

Joseph A McConnell

} Chancery - Injunction

On motion of the said Complainant it is ordered by the Court that this cause be continued to the next Term of this Court at the cost of the said complainant. It is therefore considered & adjudged by the Court that the said Defendant have and recover of the said Complainant his costs by him about his suit at the present term of this Court in this behalf expended and that execution issue therefor

And afterwards to wit: On the 11th day of April in April Term A.D. 1854 of said Court in the record of the proceedings thereof in said entitled cause is the following entry to wit:

Jacob S Brillhart

"

Joseph A McConnell

} Chancery - Injunction

And now at this day comes the Complainant by Meacham his Solicitor and files his motion and affidavit for a continuance of this cause.

Which said motion & affidavit is in the words following to wit:

Jacob S Brillhart

"

Joseph A McConnell

} In the Circuit Court of Stephenson
County In Chancery

3 April Term A.D. 1854

State of Illinois }
Stephenson County } p.

U. D. Meacham being duly sworn upon his oath deposes and says, that he is one of the Solicitors for the Complainant, in this cause, that the said Complainant, cannot safely proceed, to the hearing of this cause, at this time on account, of the absence from the State of Dr B. Michener, who is a material witness for the Complainant in this cause. That the said Dr. Michener is now as he is informed in Dallas County, Iowa, that he learned his whereabouts, about three weeks ago, and as soon as he learned where he was he caused a letter to be written, to get the name of some one, before whom, his deposition in this cause could be taken, and received a reply from him about one week ago, since which time he has not been able, to take the deposition of the said Dr. Michener, to be used on the hearing of this cause at this time of this Court. That this suit is brot to compel the Defendant to deliver to the Complainant a deed placed in the hands of the defendant by his Defts. farther in AD 1853, of a certain piece of land, described in the bill in this cause to be delivered to the Complainant, when he the Complainant should pay to him the defendant for the use of his farther, the sum of five hundred dollars and likewise to compel the defendant to specifically perform a contract by him made to and with Complainant for the sale of some land described in the bill in this cause, and therein alleged to belong to the defendant to the Complainant - And this affiant

Expects the Complainant can prove by the said Dr. Michener that his the Defendant father, had placed in the hands of the Defendant a deed of the land first above mentioned, with instructions to deliver the same to the Complainant when he (Complainant) paid to defendant the sum of five hundred dollars, and that said five hundred dollars was tendered to the said defendant by the said Dr. Michener, as the agent of Complainant and the Complainant further expects to prove by Dr. Michener that he was in A.D. 1853. the agent of Complainant to purchase the land of the defendant, in the bill in this cause alleged, to belong to him that he opened a written Correspondence with Deft. concerning the purchase of the said Land, that the said Dr. Michener as agent aforesaid wrote to Defendant offering him the sum of five hundred dollars for the said land and that the Deft. replied to the said Dr. Michener that he would take the \$500. if the money could be ready at a time by the defendant mentioned, and that the said money was ready at the time and place agreed upon, and the deft then and there expected expressed himself satisfied with the money then and there offered to him, and this affiant knows of no other witness by whom he can prove these facts & believes if a continuance be granted he can have the testimony of the said Dr. B. Michener to be used on the trial of this cause.

U. D. Meacham

Subscribed & sworn before me this 11th day of
April A.D. 1854 - Joseph B. Smith, Clerk

Which Affidavit has the following endorsement
to wit: Steph Co. Cir. Court

Jacob S Brillhart vs Joseph A McConnell,

Aff. for Continuance. Filed April 11th 1854

Joseph B Smith, Clerk

And afterwards to wit: on the 15th day of April in April
Term A.D. 1854 of said Court in the record of the proceedings
thereof in said entitled Cause is the following entry to wit:

17 Jacob S Brillhart

"
Joseph A McConnell

} Chancery - Injunctions

On motion of the complainant by
his Solicitor it is ordered by the Court that this Cause be
continued to the next term of this Court at the Cost of
the said Complainant - It is therefore considered and
ordered by the Court that the said defendant have and
recover of the Complainant his Costs by him about
his suit at the present term of this Court in this behalf
expended and that Execution issue therefor

And afterwards to wit: on the 4th day of September in
September Term A.D. 1855 of said Court in the record of
the proceedings thereof in said entitled Cause is the follow-
ing entry to wit:

5 Jacob S Brillhart

"
Joseph A McConnell

} In Chancery

By Consent of the parties by their Solicitors it is ordered by the Court that the clerk open depositions on file in this cause.

And afterwards to wit: on the 25th day of December in December Term A.D. 1855 of said Court in the Record of the proceedings thereof in said entitled cause is the following entry to wit:

4 Jacob S Brillhart
" " } Chancery - Injunction
Joseph A McConnell

And now at this day came the said parties by their Solicitors. and this cause came on upon a final hearing upon the bill, answer, pleadings and proofs both written & oral, and after hearing the evidence and arguments of Counsel the Court takes time to consider of the same.

And afterwards to wit: On the 26th day of April in April Term A.D. 1856 of said Circuit Court in the record of the proceedings thereof in said entitled cause is the following entry to wit:

3 Jacob S Brillhart
" " } In the Circuit Court of Stephenson County Illinois in
Joseph A McConnell } Chancery sitting. April
Term A.D. 1856

This cause having been brought to a hearing upon the pleadings and proofs filed herein & upon

oral testimony introduced at the hearing and the Counsel
 for the Complainant & the defendant having been
 heard and the Court having been fully advised as to
 the premises. It appears upon the proofs made in this
 cause that the defendant can make to the Complainant
 a good title to a part of the land described in the Bill
 of Complaint to wit: the North East quarter of Section
 twenty five in Township twenty six North of Range
 seven East of the fourth principal meridian in the
 County of Stephenson and State of Illinois, and it app-
 earing to the Court that the said defendant did agree
 to convey the said land to the said Complainant
 as is stated in the Bill of Complaint in this cause,
 and it further appearing that the said defendant
 agreed to convey or cause to be conveyed the land
 above described together with the North South East
 Quarter of said Section belonging to one Robert Mc,
 Connell for the sum of one thousand dollars, and it
 appearing that the said Defendant was to have five
 hundred dollars from Complainant for the land
 first ^{above} described and that the said Complainant has in
 all things complied with the terms of the agreement on
 his part - It is therefore ordered adjudged and decreed
 by the Court now here that the Complainant within
 thirty days from the rising of this Court pay to the
 Clerk of this Court for the use of the defendant the sum
 of five hundred dollars with interest thereon from
 the 1st day of August A.D. 1853 also the further sum

of thirty dollars, the taxes assessed upon the said North East quarter since the 1st of August A.D. 1853 the latter sum to be applied by the said Clerk in payment of said taxes upon said land in case the taxes are not paid and that the defendant shall within said thirty days provide said sums of five hundred dollars and interest as aforesaid and the said sum of thirty dollars shall have been first paid to the Clerk to his use as aforesaid make execute and deliver to the Complainant a deed of the land first above described

It is further ordered adjudged and decreed that if the said Joseph A. McConnell shall within thirty days from the rising of this Court file herein his election in writing to cause a conveyance of both said Quarter Sections of Land to be made to the Complainant for the sum of one thousand Dollars with interest thereon from the first day of August A.D. 1853 & the said sum of thirty dollars to be applied in the payment of the said taxes on said land and shall within such time cause conveyance or conveyances of said land to be delivered to the Clerk of this Court for the use of the said Complainant on his paying such sums, then and in that case event the Complainant shall within thirty days pay to said Clerk for the use of the Defendant the said sum of one thousand dollars with interest thereon from the said 1st day of August 1853. & the said sums of thirty dollars to be applied by the said Clerk in paying the said taxes on said land & in default of so doing shall not be entitled to any

Conveyance hereunder, and it is further ordered that the Defendant pay the Costs of this Suit.

"Upon the rendition of the foregoing Decree the said Defendant by his Solicitor prays an Appeal to the Supreme Court, which appeal is allowed by the Court upon Condition that the said defendant enter into and file with the Clerk of this Court within twenty days his Appeal Bond to the said Complainant Conditioned according to law with John A Clark as security in said Bond in the penalty of three hundred dollars"

(Certificate of Testimony)

Jacob S Brillhart

"

Joseph A McConnell

In the Circuit Court of Stephenson
County in Chancery

The following oral & documentary evidence was introduced and ^{was} read by the Complainant on the hearing of this Cause.

The Complainant first introduced in evidence a letter purporting to be written by Joseph A McConnell and directed to Dr Michener Dated McConnellsville O May 17th/53. The signature of the said Deft was admitted to be genuine by Counsel for Deft. which letter was read in evidence and hereto attached marked "A".

The Complainant next introduced & read in evidence another letter from the said Joseph A McConnell directed to the Complainant which is dated McConnellsville O. July 2/53

and which is hereto attached marked "B" the signature of the Defendant to said letter was admitted to be genuine.

The Complainant next introduced & read in evidence with the consent of the Defendants Counsel a certificate of Hugh Wallace Register of the land office at Dixon in the State of Illinois, dated January 19th 1854 running to the Defendant for North East Quarter of Section twenty five in Township twenty Six North of Range Seven East of the 4th Principal Meridian and which is hereto attached.

The Complainant next introduced & read in evidence the Deposition of Barak Michener which deposition is on file in the papers of this cause.

Which said Deposition, the Caption and Certificate thereto is in the words and figures following to wit:

Jacob S Brillhart	}	Clerks Office, Dallas County
"		State of Iowa
Joseph A McConnell		August Seventh day A.D. 1855
Stephenson County Circuit Court	}	
State of Illinois		

The deposition of Barak Michener of the County of Dallas in the State of Iowa a witness produced, sworn and examined before Judah Loring Clerk of the District Court of Dallas County in the State of Iowa on the seventh day of August A.D. 1855 at the office of the said Clerk at Adel in said County in pursuance of a Commission issued out of and under the seal of the Circuit Court of Stephenson County Illinois bearing date the 19th day of July

A.D. 1855 and to the said Judah Leming directed, to be read as evidence in a certain suit in Chancery now pending and undetermined in the said Circuit Court wherein Jacob S Brillhart is Complainant and one Joseph A McConnell is Defendant on the part and behalf of the said Complainant.

The said Barak Michener being duly sworn according to Law the truth to speak in relation to the matter in controversy between the parties aforesaid in answer to the several interrogatories enclosed in the said Commission on the part of the said Complainant deposed as follows to wit:

First Interrogatory - What is your name, age occupation and where do you reside,

Answer - Barak Michener, age 55 years, A Physician, in Dallas County State of Iowa,

Second Interrogatory - Do you know the parties Complainant and defendant in the title of these interrogatories names and either of them, which of them and how long have you known them or either of them or either and which of them is

Answer - I am acquainted with them both. Been acquainted with defendant about two years personally and a longer time by Correspondence. Plaintiff about two years & a half personally.

3^d Interrogatory - State whether you have ever acted as an agent of the said Complainant, Brillhart in negotiating with the Defendant in the purchase

of some Land by the Complainant of the Defendant and of one Robert McConnell situated in the County of Stephenson and State of Illinois?.

Answer - I have. I was informed by a Brother of the Defendant that the Defendant and his father would sell 320 acres of land adjoining my farm in Stephenson County Illinois and knowing that the Plaintiff wished to purchase a farm. I suggested to the Plaintiff to purchase it. The Plaintiff requested me to write to the owners. I directed a letter to one or both of them, requesting to know whether they would sell said land and at what price. By due course of mail I received a letter from Joseph A McConnell, dated McConnellsville Ohio May 17th 1853 acknowledging the recd. of mine & stating as follows. "That if any person sees fit to give one thousand dollars for the half Section and informs us accordingly, one of us will go out immediately with full power to convey the same to the purchaser; terms cash in hand. Should this seem too steep for the buyer we will hold on and if to low on our part we will abide the consequences, And this agreement will hold good until the first of July." I handed the above mentioned letter to Plaintiff and he corresponded with the defendant. About the last of July or the first of August of the same year 1853, the Plaintiff informed me that he must be absent on business and having agreed to pay one thousand dollars for the above mentioned half section of land, and he, the Plaintiff, was expecting the

defendant daily to arrive, the Plaintiff left with me a thousand dollars to pay the defendant when said defendant should deliver the deeds to me for said half section of Land. In a short time the defendant arrived. I saw him at the "Stephenson house" in Freeport, and informed him that I was left as agent for Brillhart, and was prepared to pay him the money for said land and receive the deeds, this was on Saturday I think, He said that he had just arrived and would see me on Monday, on Monday he called at my office, he said that he had his Father's deed in his pocket for Brillhart, and he did not know whether his Father's patent had arrived at the Land office or not, he further stated he did not know whether he was now bound by his contract. He had lost some time at home waiting for Brillhart, but if I for Brillhart would pay his expenses from home to Freeport, he would deliver the deeds and take the money, I answered that I had no instructions to pay more than one thousand dollars for the Land, I told McCounell that I would show him Brillharts funds, I showed him an eastern draft of five hundred dollars to which he made no objection, I told him that the other five hundred was deposited in Taylor & Bronsons Bank, and asked him to walk over and see if that also would suit him. We stated our business to Mr. Taylor who informed McCounell that they would pay —

Currency, McConnell had objections. Mr. Taylor said that they would give him paper for which he could certainly receive specie in Chicago on his return to Ohio. The defendant said that he was satisfied with the funds.

Fourth Interrogatory - Give a description of the Land mentioned in interrogatory third?

Answer - The Land in interrogatory 3^d for which I negotiated with McConnell for Brillhart is the East half of Section twenty five in Township twenty six, North of Range Seven East in Stephenson County State of Illinois,

Fifth Interrogatory - Look upon the letter or paper writing now here shown to you marked A, purporting to be a letter written by Joseph A McConnell to Dr Michener and dated McConnellsville, O. May 17th 1853 and state whether you have ever seen said letter or paper writing and if yea, state fully and particularly all you know concerning it, and give a description of the land mentioned in it and by and to whom it was written:

Ans. 5th - I have seen this letter marked A, it was as it purports written by Joseph A McConnell to me and is the letter to which I have referred in my answer to "third Interrogatory". The Land is the same I have described in my answer to Fourth Interrogatory,

Six Interrogatory - State whether before the date of the paper writing mentioned in the fifth interrogatory, you as agent of the said Complainant wrote to the said defendant concerning the land

mentioned in said paper writing and if yea. State fully and particularly what you wrote to the Defendant & if said letter and paper writing was in reply to what you wrote !

Answer. — I did, before the date of the letter mentioned in the third interrogatory, and as agent for the Plaintiff, wrote to the Defendant concerning the purchase of said land and the said letter was written in answer to mine. I wrote to ask whether said land was for sale or not and if for sale, at what price.

Seventh Interrogatory — State whether you or the Complainant and which if either replied to the letter or paper writing mentioned in the fifth interrogatory and if so state the subject matter of the reply, in the language as near as you can and if you cannot give the language, state the substance of the reply as near as you can recollect it?.

Ans. — Mr. Brillhart replied to the letter mentioned in the fifth Interrogatory I saw the letter, I believe, but am not able to state its contents.

Eight Interrogatory — State whether the Defendant came to Freeport Stephenson County Illinois on or about the first day of August A.D. 1853 and if yea state what took place between you in relation to the Complainant paying for the land mentioned in the land mentioned in the third interrogatory particularly state whether any money was tendered by the Complainant or any person acting as his agent to the Defendant for the

land mentioned in the third interrogatory and state fully what the Defendant said in relation to either of those pieces of Land mentioned in the third interrogatory.

Answer - The Defendant came to Freeport near the first of August 1853. As agent for the Complainant I tendered the Defendant the sum of one thousand dollars for the land mentioned in the third Interrogatory, what the Defendant said. I fully have stated in my answer to the third Interrogatory -

Ninth Interrogatory - State whether the Land alluded to in the letter mentioned in the fifth interrogatory is the same described in the third Interrogatory?

Ans. The land is the same.

Tenth Interrogatory - State whether you have ever heard the Defendant say anything in relation to his having in his possession a deed from Robert McConnell to the Complainant of the North East ^{quarter} of Section of ~~Six~~ twenty five in Town twenty six North of Range Seven East in the County of Stephenson and State of Illinois mentioned in the third Interrogatory and if you state what you have heard him say in relation to it and when?

Answer this interrogatory fully and particularly,

Answer - Defendant told me that he had brought his father's Deed along.

Eleventh Interrogatory - State whether you have had Conversation with the Defendant Joseph A McConnell in relation to Robert McConnell placing a deed in the hands of the said Joseph A McConnell

of the North East quarter of Section twenty five in Township twenty six North of Range Seven East in the County of Stephenson, with instructions to deliver the same to the Complainant if aca. State when and what that conversation? answer fully.

Ans. — I had conversation with Joseph A McConnell concerning a deed which was put into his hands by Robert McConnell his Father to Plaintiff. he said the deed was for one of the quarters composing the East half of Section 25 Town 26 Range 7. I cannot say which quarter.

Twelfth Interrogatory — State what you know if any thing in relation to money being tendered by the Complainant or his agent to the Defendant in payment for either of those pieces or parcels of Land and state fully what you know about it and when?

Ans. — I saw no tender of money made by Plaintiff to Defendant or agent of Plaintiff except what I have stated in my answer to third Interrogatory.

Thirteenth Interrogatory — State whether the land above described is contiguous to land of yours in Stephenson County Illinois or was at the date of the letter mentioned in the fifth interrogatory and give a description of your land aluded to in said letter as being contiguous.

Answer — The Land which at that time of my correspondence, with McConnell I owned

contiguous to his, on the east two lots each containing about 88 acres, to two extending along the entire west side of Section 30 in Township 26 Range 8 in Stephenson County, Illinois and East half of the North East quarter of section 36 in Township 26 Range 7.

Tourtenth Interrogatory - State what you know if any thing in relation to the Defendant being the agent of Robert McConnell to sell land as above described as belonging to him? - State fully.

Answer - Defendant told me that his Father had put into his hands a Deed for his Robert McConnell's share of the land, he had bargained to sell to Complainant, but did not state to me his instructions.

Lastly - Do you know any other matter or thing touching the matter in Question that may tend to the benefit or advantage of the said Complainant, If you declare the same fully and at large as if you had been particularly interrogated thereto?

Answer - I recollect nothing further,
Barak Michener

State of Iowa }
Dallas County } I do hereby certify that the
above Deposition of Barak Michener was sworn
to and signed by the Deponent before me and in
my presence, and that the said Deposition was taken
by me on the seventh day of August at my office
in Adel in the County of Dallas State of Iowa

between the hours of ten O'clock in the forenoon
and four O'clock in the afternoon of that day
A.D. 1855.



Given under my hand and seal this
Seventh Day of August A.D. 1855.

Judah Leming Clerk of the District
Court of Dallas County State of Iowa
Per H. C. Rippey, Deputy,

Which said Deposition has the following endorsem-
ent to wit;

Filed Sept. 10th 1855

Joseph B. Smith, Clerk

The complainant next introduced James Michener
as a witness in the Cause who after being first duly
sworn, testified as follows to wit:

That he is acquainted with the parties Complainant
and defendant in this suit. that he first became
acquainted with Defendant in August 1853. Defendant
showed him a Deed of the South East quarter of
Section twenty five in Town twenty six North of
Range seven East of the 4th principal meridian
in the State of Illinois which was made by Robert
McConnell to Complainant & stated that the said
Robert McConnell gave the same to him and
instructed him to deliver the said Deed to Complainant
on his paying five hundred dollars per for the same,
In the month of August A.D. 1853, & before suit was

commenced. My Father Parak Michener and Complainant came where Deft. and I were at work. Father told Deft. that Brillhart had come to tender him the money for that land & demanded a Deed, Had money in a handkerchief. Deft said he was not authorized to sell his fathers quarter, but would take a thousand for his part. but not five hundred, demanded the deed Deft. said he could not do it because his fathers patent had not come. The said North East quarter & the said South East quarter of Section twenty five town 26 & Range Seven adjoins land owned by my father Dr Michener in 1853. Deft. told me that the land above described was all the land owned by Deft. & his father in Stephenson County.

Defendant admitted to me that he had burned the deed above spoken of because the patent had not come he was instructed to deliver if title was perfected. Defendant said he was to have five hundred dollars for his quarter of the land & his father five hundred for his quarter of the land.

Complainant here rests his cause & the Council of the Defendant signified to the Court that they had no evidence to offer. after arguments of Council the cause was submitted to the Court upon the foregoing oral & documentary testimony,

Said two letters & Registers Certificate of purchase are in the words of figures following. to wit:

McConnellsville O May 17/53

Dr. Michener. Sir

My brother arrived home last week in good spirits & giving in his wild imagination a glowing description of your country. He informs me of the rapid growth continued prosperity, and advancement of that portion of our wide domain. He also wished me to drop you a note informing you whether we would dispose of some land lying contiguous to yours and on what terms, as a friend of yours desired the information. In the first place we are not eager to make sale for I have serious thoughts of commencing improvements thereon the present summer. Had it not been owing to some indisposition I would have arrived as early as this epistle, but cannot tell now how long it will be, as I'm troubled with the "chills and fever" occasionally, but will endeavor to break it up as early as possible. Provided however any person sees fit to give one thousand dollars for the half section and inform us accordingly, one of us will go out immediately, with full power to convey the same to the purchaser, terms cash in hand. Should this seem too steep for the buyer we will hold on, and if too low on our part will abide the consequences. And this agreement will hold good untill the first of July.

We will be pleased to have any communication from you, at any time concerning matters there, provided it is not asking or taxing your time too.

much.

Yours &c Joseph A McConnell
Dr B. Michener "

2'

McConnellville 10 July 2/53

Mr. Brillhart

Sir, We received your note on yesterday and hasten to reply. We feel willing to extend the time you require although it has kept me at home during the past month awaiting your arrival, and do not feel like incurring much expense in order to affect a sale, at this time. And I am unable to tell whether you expect to come again to Ohio, or look for us to go out there. But I think I shall go out to Illinois about the first of Aug. and if you will hold yourself in readiness, and let us know accordingly. I will go prepared to make arrangements &c. Perhaps you are aware my father has not rec'd his patent for his part, but know doubt it is at Dixon by this time, please write

Joseph A McConnell

Certificate of Purchase

No. ^{January 19th 1854} Land Office Dixon Illinois
Hugh Wallace, Register of the Land Office at
Dixon Illinois, do hereby Certify: that Joseph A
McConnell of the County of _____ and State of _____
did on the fourteenth day of May in the year of our
Lord, one thousand eight hundred and forty nine

Purchase of the General Government, at this office, the North East quarter of Section twenty five in Township Twenty Six North Range Seven East of 4th P.M. and that said Land at the time of said purchase was within the District of Lands subject to sale at this office, and rendered subject to sale by law: all of which appears of Record in my office - Given under my hand the day and year first above written

Hugh Wallace. Register

I do hereby certify that the foregoing testimony was introduced & heard upon the hearing of the above entitled cause,

Benj. R. Sheldon
Circuit Judge &c

Which Certificate & testimony has the following endorsement to wit:

"Filed April 26. 1856

Joseph B. Smith. Clerk"

And afterwards to wit: on the 3^d day of May A.D. 1856 the said Defendant filed in said Court his Appeal Bond, which Bond is in the words of figures following to wit:

"Know all men by these presents that we Joseph A. McCune of Henry County and John A

Clark of Stephenson County Illinois are held and firmly bound unto Jacob S Brillhart of the same State in the penal sum of three hundred dollars current money of the United States, for the payment of which well and truly to be made we bind ourselves, our heirs, Executors and Administrators, jointly, severally, and firmly by these presents - Witness our hands and seals this 1st day of May A.D. 1856.

The condition of the above obligation is such that, whereas the said Jacob S Brillhart did on the 26th day of April A.D. 1856 in the Circuit Court, in, and for the County of Stephenson and State of Illinois, recover a judgment and Decree against the above bounden Joseph A McConnell for costs and for specific performance, from which said judgment and decree of the said Circuit Court the said Joseph A McConnell has prayed for and obtained an appeal to the Supreme Court of said State - Now if the said Joseph A McConnell shall duly prosecute his said appeal with effect, and shall moreover pay the amount of the judgment for 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.

Witness

W. W. Turner

H. J. Humphrey

} Joseph A McConnell *Seal*

} John A Clark *Seal*

Which said Bond has the following endorsement
to wit: "Jacob S Brillhart vs Joseph A McConnell
Filed May 3^d 1856 - Joseph B Smith, Clerk

State of Illinois
Stephenson County *J. B. Smith*

I Joseph B Smith Clerk of the
Circuit Court in and for said County do hereby
certify that the foregoing is a true, full and complete
record of and in the Cause of Jacob S Brillhart
against Joseph A McConnell in said Circuit
Court on the Chancery side thereof as the same
appears upon the Books and files in my office.

In testimony whereof I have hereunto
set my hand and affixed the seal of
said Court at Freeport in said County
this 30th day of May A.D. 1856.

Joseph B Smith, Clerk

Record \$10.00

Cost & Seal $\frac{35}{\$10.35}$

Joseph¹¹⁸ A McConnell
Jacob¹⁰¹ Brillhart

Filed June 12 1886
S Leland
CLR

Joseph A McConnell Plaintiff return

Jacob Brillhart Defendant return.

There is no agreement in writing signed by Joseph A. McConnell [or no kind of an agreement by Robert McConnell] as required by the Statute of New York which is relied upon in the answer of Defendant. The law requires that the writing signed by the party should contain "the essential terms of the contract, & framed with such clearness & certainty that they may be understood by the writing itself or some paper or writing to which it refers, without resort to parol proof." Vide 1 Johns Ch. Rep. 274 Parkhurst & Van Cortlandt. 12 Vesey -- 466. 471 Blayden & Brudbear. 1 Atkyns -- 12. Clerk & Wright. 1 Scho & Sepoy 22. Clinch & Cooke. 15 Vermont 685 Smith & Stanton. 13 Johns Rep 297. Abel & Radcliff. 9 Gill M^d - 206 Janey & Bucktall. 6 Ben. Mon. 100 King & Carey & Carl. 3 A. R. Mar 444 Mary-pag. Fowler & Lewis. 4 Burr 466 Ellis & Drachman & Hain.

The pretended contract in this case is
void for uncertainty, as to who are the vendors
~~vendors~~ ~~with me~~ Joseph A. McConnell did not
make this proposition to sell the land
himself, in his own right, but says that you
wished me to inform you whether we
would dispose of the land &c. He says we
are not eager to sell &c. If any one informs
us &c. then one of us, will go out. From
this letter no person could ascertain who
were the vendors this is as necessary as
any part of the contract. - File -

1 New Hampshire	157-Sherburne & Shaw
10 Connecticut	192-Nichols & Johnson
5 New Hampshire	540-Webster & Elda
10 Ohio Rep	399-Anderson & Harvill
4 Bos & Pul	252-Champion & Plumer

The letter or pretended contract is void
for uncertainty in the description of the
premises. "Our land" contiguous to Dr. M." is
not a sufficient description. - ~~then~~ File
9 Gill Maryland Rep 205-Laney & Backett
6 Gill - - - - - 66 Dorsey & Mayman
1 Harr & Gill - - - - - 435-Thomas & Turvey
4 Bibo Kentucky 466-Ellis & Deadman-Kear
1 Humphrey-Tenn-323-Pipkin & James

Now if it were possible to prove
by parol what land "our land"
was - How is it possible to ascertain
what persons are embraced by the term
"our" "we" "one of us" can this be
proved by parol also? what cannot
be so proved, if the names of parties &
the description of the premises can
be supplied by parol? authorities above.

But suppose that proof was supplied
to show that Robert McCounell & Joseph
A. McCounell each owned one quarter
section of land "contiguous to Dr. Michener's
land" Then the complainant must have
known that fact, else he did not buy that
land of them. He may have received the
letter from Dr. Michener & may have accepted
the proposal contained therein. But he
knew the land belonged to Robert & Joseph
& he knew that there was no writing
signed by Robert & that Robert was
not bound by the contract. If Robert
was not bound then Joseph was not
bound. The proposition was an entirety
it was not severable - it was good for
the whole or bad for the whole - Title
7 Matt & Serv 172

13 Wend - 53

15 Pick 159

5 Cowen 142 Van Alstyne & Wrinple

Joseph A. McConnell offered to sell "our land" He does NOT offer to sell his own land but half ~~a~~ section of "our land" and says "we" "inform us" "+ one of us" Now it is entirely uncertain who he referred to, or who owned the land with him. This ~~letter~~ letter does not refer to any other person by name - & is void by the statute - no parol testimony can be given to aid it - authorities above Joseph either meant by the term "we" "our &" himself alone, ~~or that he meant~~ or he meant by that term himself & some other person or persons - In either event the contract is void - Suppose he meant by the terms "we" "our &" only himself - it is shown by the testimony that he owned only one quarter section contiguous to Dr Michener or in that country - Now as he proposes to sell half a section of land contiguous to Dr Micheners. what land was it? The description is clearly void for uncertainty of the premises -

Again suppose he intended by the term "we" "our &" the land of himself & some other person or persons who were they? There is no written evidence to show, & parol proof is not admissible - 1 N. H. 157 - But assuming that he meant himself & his father then the contract is NOT binding because not signed by his father nor is there any writing whatever

signed by his father - If a contract
is void in part, under the Statute of
frauds for not being in writing it is void
as a whole - 18 Wend 33 - 15 Pick - 159 -
7 Wills & Serj 172 3 Cowen 162 =

The letter was addressed to Dr. Mich-
enor on a statement made to the brother
of Joseph that the Dr. wished to know
whether "they" would sell their land.

It cannot be pretended that there is,
or ever was a written instrument of
any kind to aid this letter in regard
to the parties, nor does it refer to any
writing whatever - So that, ^{the proposition} if it had been
accepted in & prop terms by Dr Michenor
or any other person and had been a prop-
osition to sell instead of one "to come out
"with power to convey it would not have
been binding on defendant - Whoever
owned the land in connection with Joseph
he or they did not sign the letter & he or
they of course would not be bound under
the statute of frauds - Suppose that other
person or those other persons had been made
parties [and by the way they are necessary parties]
& they had pleaded the Statute of frauds - What
evidence in writing is there against any
one except Joseph A. McConnell? What
evidence is there that any writing ever
was signed by Robert M. McConnell? Even
if he owned one quarter section of the land
in controversy & was the party referred
to in the first letter? Now the contract

must be signed by all of the vendors,
else it is not complete & is void. The
contract is an entirety & cannot ~~be~~
be apportioned or severed if void in part
it is void in toto; If Robert McConnell did
not sign any contract in writing and he
owned a part of the land and it was
so understood by parties dealing with
them Robert & Joseph A. then the entire
contract was void - 15 Vend 55 =
7 Nully & Seng 172 = 15 Pick 157 = 5 Com 112

Does the letter written by McConnell & the
letters written by complainant together show
a contract; or do they refer to any writing
which makes out the terms of a contract?

We think it is clear they do not; and
that all that is said in the letter of McConnell
of July 2^d is perfectly consistent with a
mere proposal to "come out prepared to
"convey" and does not show a sale nor a
concluded agreement.

The first letter of defendant
is dated May 17th A.D. 1853 & was not addressed
to complainant but to one Dr. Michener,
& certainly was only a proposition to sell
& nothing more; & we think it was only a
proposal "to go out to Illinois immediately
with power to convey -
If an offer of 10000^{ff} was made, ~~with power~~

It was not a proposition to complainant
but a mere written declaration or statement
to Dr. M. that "one of us" would "go out to
"Illinois with full power to convey, in
case any one offered 10000^{ff} cash for one

1/4 section of land - This letter does not state who are the owners of the land but says "we would dispose of it" "We are not eager to sell" But "if any person sees fit to give us it" "One of us will go out with full power to convey"

Now we maintain that if Dr. Michener or any other person had in direct terms written a letter of acceptance to Joseph S. McConnell immediately, stating an unqualified acceptance no contract would have been made - Because first Joseph S. McConnell on that letter did not agree "to sell" the half section of land for 1000\$ - in no place did he agree "to sell" said land.

He says "you wish to know whether we" "would sell it" "We are not eager to make sale, for I have serious thoughts of making improvements this summer." "I should have been and there as soon as this Epistle, but have had the chills & fever & cannot tell how long it will be."

That is he cannot go out immediately. But "if any person will give 1000\$ for our land" "I inform us accordingly [not that we will sell said land] but that "One of us will go out immediately with full power to convey" [that is he would prepare to convey by getting necessary powers of attorney & if any person would offer 1000\$ & the agreement to go out immediately was to hold good until the first of July - after that time it might not be convenient to go out immediately] - He nowhere agrees to sell, but if any person offers 1000\$ that offer will induce him to come

and with power to convey immediately—

And if on Enquiry & on Examination he is willing to sell, then he will be prepared to sell & convey and if the purchaser has made a fair offer then he might expect to get it.

The claim that the letter was not by any fair construction a proposal to sell absolutely but a proposition in case any one offered 1000\$ for the land, that such an offer would induce the writer "to come out to Illinois with full power to convey" and that the statement that the agreement was to hold good until the first day of July, relates to the writers offer "to come out with full power to convey immediately" and not to a matter or thing which he has not expressed or stated. For he has no where said in this letter that he would sell for 1000\$ the land in controversy. The writer has stated "that his brother arrived home from the land giving glowing descriptions of the country & of its rapid growth & continual prospering & therefore it was very natural that he should desire to come and see it before concluding a sale. He would come and proposed to convey if the offer was a fair one he would probably accept it."

But if there had been a proposal to sell we have before shown that it would be void if accepted because signed by only one of the vendors & void for want of a description of premises.

But there is no proof whatever
that complainant ever accepted
the proposal contained in this letter.

We contend that an acceptance
in writing was necessary but there
is no proof of any acceptance &
the defendant swears that he
never received any letters of
complainant other than those
set out in his answer. Nor is there any
proof that complainant ever mailed
any other letters than those set out in
the answer of defendant. It is very
clear they do not accept the pro-
posal in the letter nor state the
terms of any other contract.

To constitute an agreement there
must not only be a mental concurrence
between the parties but they must actually
actually communicate that con-
currence to each other. Paige Ch Rep 434-
Hill's S.C. Rep 117-

Where the Bill states that the agreement
is in writing it cannot be sustained
or aided by parol proof. - 6 Madd. Ch 19-

There is no contract here because the
 complainant never bound himself to
 buy the land at any price, there is
 no evidence of what his agreement
 was - and so there was no contract
 shown - The agreement if any was void
 for uncertainty - & void for want of
mutuality 2 Maryland Ch Dec - 401 -
 Duml H Myers - 4 Shepley 438 -
12 How. U.S. 126 - Dorsey H Packwood -

4 Malt & Seng 221

21 Wend. 159-

2 Biss 98-

1 Barb Ch Rep 499-

4 Lurge — 505

Builey Eg 175-

2 Hunt & Hill 100-

1 Johnson Ch 282

1 Vasey 86

1 Sch & Seftoy 13-

2 Vernon 415-

2 Steep Eg for § 787, 795-

The contract was, (if there was one)
 for half a section of land & there
 is not the slightest evidence of any
 severance of it in writing - & hence for
 half was in vain - Huntin 12 Eg Rep - 41

The allegations & protests do not agree - This is fatal to complainant's case.

Robert M^cConnell was not only a proper party but he was an indispensable party - one of the pretended original parties.

It is confidently believed that each of the foregoing points are fatal to the complainant's case & that either of them would entitle the defendant to a reversal of this decree -

Chicago June 25th 1856

Wm H. Higgins.

McConnell
vs
Brillhart

Filed June 25, 1884
L. Selund.
Clerk

State of Illinois
Supreme Court

Jacob S. Bullard
Appellee

vs
Joseph A. McConnel
Appellant

Joinder in Error

1898
Filed for records

W. Leland
Clerk

117

Joseph M. Donahoe

to

Jacob Brillhart

119

1856

12290

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