No. 13350

Supreme Court of Illinois

Brillhart

---

vs.

McConnell

71641 7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 212.

Brickhurst
vs
McConnell

Supreme Court State of Illinois

Third Grand Division

Jacob S Bullbrat }
}
vs }
}
Robert McConnell }

No inference of ~~any~~
authority from Robert McConnell to Joseph A
McConnell to sell the land in Question is to be drawn
from the Execution & delivery of a deed of said
land to Joseph A McConnell and the possession
of such deed by Joseph A McConnell under
such delivery and the clause in the certificate
of testimony signed by Judge ~~Stating the~~ Superseding
of that portion of the Deposition of McKeen ~~stating~~
is to be understood accordingly

U D Meadows
Sol for complaint
J. M. Bailey
Sols for Defendant

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State of Illinois

Supreme Court-

Jacob S Brillhart-

vs

Robert- Mcdonnell

Stipulation as to Proof

Filed April 24, 1861

L. Lebaron

Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

JACOB S. BRILLHART
vs.
ROBERT McCONNELL.

The bill in this cause was filed praying for the specific performance of a contract made by the appellee through his agent, Joseph A. McConnell, to sell the land described in the bill to appellant.

The contract is embraced in the letters of Joseph A. McConnell, found on the first and second pages of the abstract, the first written to Dr. Michener and the other written to appellant, and in the letters in reply written by the appellant to McConnell, found on the 2d and 3d pages of the abstract.

This Court has already held that this correspondence between Brillhart and Joseph A. McConnell constitutes, as between them, a good and binding contract.

See *McConnell* vs. *Brillhart*, 17th Ill. 354.

The only question in this case is, has the appellant proved that Robert McConnell authorized Joseph A. McConnell to write those letters?

Joseph. A McConnell testifies, "That his brother, Wilson McConnell, returned from Illinois in the month of May, 1853. He informed *us* that Dr. Michner had a friend who wanted to buy the land." Again he says, "Before writing the letter of May 17th, 1853, had a conversation with father; we had a talk and thought we would offer the land for sale." Again he rays, "The conversations we had were likely to be embodied in the letters." Again, "the conversation I had with father, in regard to selling the land, was embodied in the letter of May 17th, 1853. Wrote it from information received from brother, Wilson McConnell." Again he says, "Conversed with father in regard to selling the land; the conversation was embodied in the letter." Again he positively says, "I was acting for myself and so far as is found in the letter for my father, Robert McConnell. Again he says, "After receiving the letter from Michener, I and father had a conversation about the price of the land. The price fixed upon by *us* was $1,000 for the half section. Then again, he says in the next sentence, "I think as near as I can remember, after receiving the letter from Dr. Michener, father and I had a conversation. I said I would sell my land and he said he would sell his. The price was fixed, and then I wrote this letter.

From the foregoing, the proof would be conclusive, that Joseph A. McConnell had authority from Robert, his father, to sell the land.

But it will be contended, on the other side, that it was a conditional authority to sell the land, and in proof of this counsel will rely upon the following statement in the testimony of J. A. McConnell, which follows the quotations above made:

"Do not recollect of but one conversatson with father; he said he guessed the patent was at Dixon; unless it was at Dixon or Freeport, he would not make a sale.

Again he says, "that the conversation was this:—I said I would sell my land, and he said he would sell his, provided the patent was at Dixon; we then fixed the price."

The two last statements were called out on the cross examination of the witness, and flatly contradict the former ones I have quoted.

If there had been a condition attached to the authority to sell, the witness could have stated it in the direct as well as in the cross examination.

At one time, witness states, that conversation was embodied in the letters, and then afterwards he states that the letter is not a transcript of the conversation. The statesments are contradictory, and the Court will have to decide which of the contradictory statements are the most reliable.

The letters show on their face that J. A. McConnell was acting for himself and father, and they do not show that Robert McConnell attached any condition to the sale.

The second letter shows that J. A. and Robert McConnell knew at the time of writing the letter, that the patent was not at Dixon. The last clause in the letter says that "Perhaps you are aware that my father has not received his patent for his part, but no doubt it is at Dixon at this time." The patent being at Dixon is not made a condition of the sale. See 2d page of Abstract.

J. A. McConnell came to Illinois about 1st of August, and said nothing about there being a condition to the sale. After he came here, he learned that the patent had not arrived, and yet offers to deliver the deeds in case Michener will pay his expenses from Ohio to Freeport.

If there had been a condition to the sale, he would have stated it to Michener after he made up his mind not to deliver the deeds.

J. A. McConnell refused to deliver the deeds, but did not put it on the ground that his father's deed was not at Dixon.

3d page of Abstract, Michener's testimony.

Even in cases of special agents, the principal cannot reserve secret conditions and limitations to the authority he confers upon the agent.

The tender was sufficient; McConnell expressed himself satisfied with it.

U. D. MEACHAM,
Sol. for Appellant.

212.

Bullard
v
McConnell
Appellants
Pomeroy

For Defendant

STATE OF ILLINOIS, } SS. Third Grand Division,
SUPREME COURT. APRIL TERM, 1861.

JACOB S. BRILLHART,
Appellant,
vs.
ROBERT McCONNELL,
Appellee.

Jacob S. Brillhart, the Plaintiff in Error, filed his Bill in the Stephenson County Circuit Court against the Defendant in Error, for the specific performance of a contract to convey land, made, as it is alleged by the Defendant in Error, by his agent Joseph A. McConnell to the said Brillhart.

2 The Bill in this cause, among other things, alleges that on the tenth day of July, A. D., 1853, the Defendant in Error and one Joseph A. McConnell were the owners of the following described land, to wit:

The South East quarter and the North East quarter of section twenty-five in Town 26 North of Range seven east, in Stephenson County, Illinois, the said Robert McConnell owning the first mentioned and the said Joseph A. McConnell the last named tract of land.

That the said Robert McConnell, on the day last aforesaid, through his agent Joseph A. McConnell, and the said Joseph A. McConnell entered into a written contract with Brillhart to sell him both of said tracts of land for one thousand dollars. That they, the said McConnells, would be ready to make conveyances on the first of August, A. D., 1853, at which time the money was to be paid.

The Bill avers a tender of the money at the time agreed upon by the complainant, and that he demanded a deed for the land, and that Defendants refused to convey

The cause was heard before Sheldon, Judge, at the September Term of the Stephenson County Circuit Court, on Bill, answer, replication and proof.

The following are the material parts of the testimony.

The complainant first introduced the following letters. The first written by the said Joseph A. McConnell to one Dr. Michener, and the other written by the said Joseph A. McConnell to Brillhart.

McConnellsville, O., May 17, '53.

7 Dr. Michener—Sir: My brother arrived home last week in good spirits, and 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 lands 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 am troubled with the "chills and fever" occasionally, but will endeavour 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 consequence. Andthis agreement will hold good until the first of July.

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

Yours, &c.

JOSEPH A. McCONNELL.

Dr. B. Michener.

McConnellsville, O., July 2, '53.

8 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 effect 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 August, and if you will hold yourself in readiness, and let us know accordingly, I will go prepared to make conveyance, &c. Perhaps you are aware my father has not received his patent for his part, but no doubt it is at Dixon by this time. Please write.

JOSEPH A. McCONNELL.

The Plaintiff next offered in evidence the following letters written by the complainant to the said Joseph A. McConnell.

Stephenson House, Freeport, June 22d, '53.

91 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 New York to get indorsed, and as soon as they will be returned to me (which will be in about two weeks) I will be there ready to fulfill 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 let me hear from you soon, and also if I can send a telegraph dispatch to you, as it takes some time for a letter to go there. Yours, &c.

J. S. BRILLHART.

Freeport, Ills., June 24th, 1853.

92 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 first 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 me a deed. 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 Respectfully,

J. S. BRILLHART.

Freeport, Ill., July 9, '53.

93 Mr. McConnell—Sir: Yours of the 4th was received 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 Dr. Michener, and then he could made a deed. I want a warrantee deed. By so doing you would save the expense of coming out to Illinois. 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 Michener 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 Dr. Michener can get it. Please and answer soon.

Yours Respectfully,

J. S. BRILLHART.

61 The Complainant next introduced the deposition of Barak Michener taken in this cause, who among other things deposed as follows, that is to say:

I was requested by the complainant Brillhart to correspond with Robert McConnell and Joseph A. McConnell in relation to some land the said McConnells owned in Stephenson County, Illinois, the said Brillhart being desirous of purchasing the same; and that some time in the Spring of the year A. D., 1853, I wrote to the Defendants to know if those lands were for sale and at what price. I had information previous to writing, from Wilson McConnell,

a brother of Joseph A. McConnell, that Robert McConnell and Joseph A. McConnell were desirous of selling said lands.

The lands refered to is the East half of section No. twenty-five in Township 26 North of Range seven east, in the County of Stephenson, Illinois.

I received the letter marked " A" (meaning the letter dated May 17, 1853) from Joseph A. McConnell. Said letter was written by Joseph A. McConnell to myself. The lands refered to are the same as described in interrogatory fourth.

I did write for Brillhart to one or both of the McConnells, and do not now recollect whether it was before the above letter of May 17, but my impression is that I wrote previous to the date of that letter, and that the letter of May 17th is in reply to my letter.

I cannot state which of us (Brillhart or myself) replied to said letter marked " A." and cannot give the language or substance of said reply, except that the offer made by McConnell to Brillhart was accepted by Brillhart.

Joseph A. McConnell came to Freeport, Stephenson County, Illinois, on or about the first day of August, A. D., 1853, and on hearing that he had arrived, I immediately called upon him and informed him that Brillhart was absent and had left me his agent to pay for the land, about which we had negotiated, and receive the deeds. McConnell answered that he had just arrived and was weary, but would call upon me in my office. The next day, or very shortly, he did call at my office. He asked me if Brillhart was aware that his father had not received his patent for his quarter of the land. I told him that Brillhart was aware of that fact, but was willing to take his father's deed for said land. I then told him I would show him the funds which Brillhart had left with me for him. I took out a draft for five hundred dollars which he looked at and said it was right. I told him the other five hundred was deposited in Taylor & Bronson's Bank, and asked him to go with me to the Bank and see if the funds were satisfactory. I stated to said Bankers the object of our call, and they said that Brillhart's deposi ts with them was currency. McConnell said he would prefer specie. They told him they could give him currency on Banks on which he could call as he returned home and receive specie for it. He then expressed himself satisfied with the funds.

McConnell told me that his father Robert McConnell, had executed a deed of his quarter section of land to Brillhart, which he had there in his pocket, but he said he did not know whether Brillhart could compel them to deed him the land or not. But he said he had remained at home, I think about the first of July, to meet him "there, and for that inconvenience he thought Brillhart ought to pay his expenses from McConnellsville to Freeport ; that if I would pay him one thousand for the land, and in addition pay his expenses out, he would deliver the deeds. I told him I was not authorized to pay more than one thousand dollars. He then said he would not deliver the deeds but wait till Brillhart should return.

He Joseph A. McConnell told me he was authorized by Robert McConnell to act for him.

I did write one or more letters to the defendants; the contents were concerning the purchase of their lands by Brillhart. I do not recollect the language.

85 Joseph A. McConnell testified as follows: In the summer of 1853 resided with my father at McConnellsville, Ohio. I received a letter purporting to come from Dr. Michener. The letter came through the post office. Left it with Mr. Clark. Had a brother out in Illinois, in the Spring of 1853. After he returned home resided with my father. Brother returned home in the month of May, 1853. His name was Wilson McConnell. I wrote letter of May 17th, 1853, now in the deposition of Dr. Michener. My brother informed us that Dr. Michener had a friend who wanted to buy the land.

Before writing letter of May the 17th, 1853, had a conversation with father. Best of my recollection, my father and I had a talk and thought we

would offer the land for sale. This was about the time of writing the letter of May the 17th 1853. The conversations we had were likely to be embodied in the letters; meaning the conversation with father. The word "we" in the leters refers to father and myself. The word "father" refers to Robert McConnell, the defendant in this suit.

The conversation I had with my father in regard to selling the land was embodied in the letter of May 17th 1853. Wrote it from information received from brother Wilson McConnell. Conversed with father in regard to selling the land. The conversation was embodied in the letter. I was acting for myself, and so far as what is found in the letter, for my father Robert McConnell.

I wrote a letter to Michener and after I wrote one to Brillhart. I wrote to Brillhart in answer to the one he wrote to me; the one I wrote Brillhart was dated about July 1st, 1853. After receiving the letter from Dr. Michener, I and father had a conversation about the price of the land. The price fixed upon by us was one thousand dollars for the half section.

I think as near as I can remember, after receiving the letter from Dr. Michener, father and I had a conversation; I said I would sell my land and he said he would sell his. The price was fixed and then I wrote this letter.

Do not recollect of but one conversation with father in reference to the sale of the land. He said he guessed the patent was at Dixon. Unless it was at Dixon or Freeport he would not make a sale.

I have no recollection that my father saw the letter I wrote to Dr. Michener; my impression is he did not tell me to write any letter. I do not remember he has any knowledge of my writing that letter. The conversation was this: I said I would sell my land, and he said he would sell his land, provided the patent was at Dixon. We then fixed upon the price; that letter was not a transcript of the conversation. About the first of August that season I came to Illinois, and ascertained my father's patent had not arrived at Dixon or Freeport. The reason why it was not sent on by the Government was there was a mistake in the assignment of the land warrant with which this land was entered. It was returned by the Government and corrected and sent back.

U. D. MEACHAM,
Solicitor for Appellant.

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Jacob S Bullard

vs

Robert McDonell

Appeal from Stephenson

Filed Apr. 23rd 1861

L. Leland

Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

JACOB S. BRILLHART
vs.
ROBERT McCONNELL.

The bill in this cause was filed praying for the specific performance of a contract made by the appellee through his agent, Joseph A. McConnell, to sell the land described in the bill to appellant.

The contract is embraced in the letters of Joseph A. McConnell, found on the first and second pages of the abstract, the first written to Dr. Michener and the other written to appellant, and in the letters in reply written by the appellant to McConnell, found on the 2d and 3d pages of the abstract.

This Court has already held that this correspondence between Brillhart and Joseph A. McConnell constitutes, as between them, a good and binding contract.

See *McConnell* vs. *Brillhart*, 17th Ill. 354.

The only question in this case is, has the appellant proved that Robert McConnell authorized Joseph A. McConnell to write those letters?

Joseph. A McConnell testifies, "That his brother, Wilson McConnell, returned from Illinois in the month of May, 1853. He informed *us* that Dr. Michner had a friend who wanted to buy the land." Again he says, "Before writing the letter of May 17th, 1853, had a conversation with father; we had a talk and thought we would offer the land for sale." Again he rays, "The conversations we had were likely to be embodied in the letters." Again, "the conversation I had with father, in regard to selling the land, was embodied in the letter of May 17th, 1853. Wrote it from information received from brother, Wilson McConnell." Again he says, "Conversed with father in regard to selling the land; the conversation was embodied in the letter." Again he positively says, "I was acting for myself and so far as is found in the letter for my father, Robert McConnell. Again he says, "After receiving the letter from Michener, I and father had a conversation about the price of the land. The price fixed upon by *us* was $1,000 for the half section. Then again, he says in the next sentence, "I think as near as I can remember, after receiving the letter from Dr. Michener, father and I had a conversation. I said I would sell my land and he said he would sell his. The price was fixed, and then I wrote this letter.

From the foregoing, the proof would be conclusive, that Joseph A. McConnell had authority from Robert, his father, to sell the land.

Authority to sell may be by Parol

McConnell v Brillhart 17 Ill 354

Eddy v Roberts " 525

Harwell v Lowther 18 Ill 252

Ezzman v Groton 18 Ill 483

Doty v Holden 15 Ill 407

But it will be contended, on the other side, that it was a conditional authority to sell the land, and in proof of this counsel will rely upon the following statement in the testimony of J. A. McConnell, which follows the quotations above made:

"Do not recollect of but one conversatson with father; he said he guessed the patent was at Dixon; unless it was at Dixon or Freeport, he would not make a sale.

Again he says, "that the conversation was this:—I said I would sell my land, and he said he would sell his, provided the patent was at Dixon; we then fixed the price."

The two last statements were called out on the cross examination of the witness, and flatly contradict the former ones I have quoted.

If there had been a condition attached to the authority to sell, the witness could have stated it in the direct as well as in the cross examination.

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The letters show on their face that J. A. McConnell was acting for himself and father, and they do not show that Robert McConnell attached any condition to the sale.

Savage et Dix 9th N Hampshire R 263

The second letter shows that J. A. and Robert McConnell knew at the time of writing the letter, that the patent was not at Dixon. The last clause in the letter says that "Perhaps you are aware that my father has not received his patent for his part, but no doubt it is at Dixon at this time." The patent being at Dixon is not made a condition of the sale. See 2d page of Abstract.

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J. A. McConnell refused to deliver the deeds, but did not put it on the ground that his father's deed was not at Dixon.

3d page of Abstract, Michener's testimony.

Even in cases of special agents, the principal cannot reserve secret conditions and limitations to the authority he confers upon the agent.

Hutch & Sayles 10th N Hampshire R 538 ~~4th East 43 468~~

The tender was sufficient: McConnell expressed himself satisfied with it. Freemans Digest title tender & Cases referred to

Barber & Britton 26 Vermont 112

U. D. MEACHAM,
Sol. for Appellant.

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Millhent
v
Mcconnell

Appellants
Points

For Reporter

STATE OF ILLINOIS, } SS. Third Grand Division,
SUPREME COURT. APRIL TERM, 1861.

JACOB S. BRILLHART,
Appellant,
vs.
ROBERT McCONNELL,
Appellee.

Jacob S. Brillhart, the Plaintiff in Error, filed his Bill in the Stephenson County Circuit Court against the Defendant in Error, for the specific performance of a contract to convey land, made, as it is alleged by the Defendant in Error, by his agent Joseph A. McConnell to the said Brillhart.

2 The Bill in this cause, among other things, alleges that on the tenth day of July, A. D., 1853, the Defendant in Error and one Joseph A. McConnell were the owners of the following described land, to wit:

The South East quarter and the North East quarter of section twenty-five in Town 26 North of Range seven east, in Stephenson County, Illinois, the said Robert McConnell owning the first mentioned and the said Joseph A. McConnell the last named tract of land.

That the said Robert McConnell, on the day last aforesaid, through his agent Joseph A. McConnell, and the said Joseph A. McConnell entered into a written contract with Brillhart to sell him both of said tracts of land for one thousand dollars. That they, the said McConnells, would be ready to make conveyances on the first of August, A. D., 1853, at which time the money was to be paid.

The Bill avers a tender of the money at the time agreed upon by the complainant, and that he demanded a deed for the land, and that Defendants refused to convey

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The following are the material parts of the testimony.

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JOSEPH A. McCONNELL.

The Plaintiff next offered in evidence the following letters written by the complainant to the said Joseph A. McConnell.

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J. S. BRILLHART.

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61 The Complainant next introduced the deposition of Barak Michener taken in this cause, who among other things deposed as follows, that is to say:

I was requested by the complainant Brillhart to correspond with Robert McConnell and Joseph A. McConnell in relation to some land the said McConnells owned in Stephenson County, Illinois, the said Brillhart being desirous of purchasing the same; and that some time in the Spring of the year A. D., 1853, I wrote to the Defendants to know if those lands were for sale and at what price. I had information previous to writing, from Wilson McConnell,

a brother of Joseph A. McConnell, that Robert McConnell and Joseph A. McConnell were desirous of selling said lands.

The lands refered to is the East half of section No. twenty-five in Township 26 North of Range seven east, in the County of Stephenson, Illinois.

I received the letter marked " A" (meaning the letter dated May 17, 1853) from Joseph A. McConnell. Said letter was written by Joseph A. McConnell to myself. The lands refered to are the same as described in interrogatory fourth.

I did write for Brillhart to one or both of the McConnells, and do not now recollect whether it was before the above letter of May 17, but my impression is that I wrote previous to the date of that letter, and that the letter of May 17th is in reply to my letter.

I cannot state which of us (Brillhart or myself) replied to said letter marked " A." and cannot give the language or substance of said reply, except that the offer made by McConnell to Brillhart was accepted by Brillhart.

Joseph A. McConnell came to Freeport, Stephenson County, Illinois, on or about the first day of August, A. D., 1853, and on hearing that he had arrived, I immediately called upon him and informed him that Brillhart was absent and had left me his agent to pay for the land, about which we had negotiated, and receive the deeds. McConnell answered that he had just arrived and was weary, but would call upon me in my office. The next day, or very shortly, he did call at my office. He asked me if Brillhart was aware that his father had not received his patent for his quarter of the land. I told him that Brillhart was aware of that fact, but was willing to take his father's deed for said land. I then told him I would show him the funds which Brillhart had left with me for him. I took out a draft for five hundred dollars which he looked at and said it was right. I told him the other five hundred was deposited in Taylor & Bronson's Bank, and asked him to go with me to the Bank and see if the funds were satisfactory. I stated to said Bankers the object of our call, and they said that Brillhart's deposits with them was currency. McConnell said he would prefer specie. They told him they could give him currency on Banks on which he could call as he returned home and receive specie for it. He then expressed himself satisfied with the funds.

McConnell told me that his father Robert McConnell, had executed a deed of his quarter section of land to Brillhart, which he had there in his pocket, but he said he did not know whether Brillhart could compel them to deed him the land or not. But he said he had remained at home, I think about the first of July, to meet him there, and for that inconvenience he thought Brillhart ought to pay his expenses from McConnellsville to Freeport; that if I would pay him one thousand for the land, and in addition pay his expenses out, he would deliver the deeds. I told him I was not authorized to pay more than one thousand dollars. He then said he would not deliver the deeds but wait till Brillhart should return.

He Joseph A. McConnell told me he was authorized by Robert McConnell to act for him.

I did write one or more letters to the defendants; the contents were concerning the purchase of their lands by Brillhart. I do not recollect the language.

85 Joseph A. McConnell testified as follows: In the summer of 1853 resided with my father at McConnellsville, Ohio. I received a letter purporting to come from Dr. Michener. The letter came through the post office. Left it with Mr. Clark. Had a brother out in Illinois, in the Spring of 1853. After he returned home resided with my father. Brother returned home in the month of May, 1853. His name was Wilson McConnell. I wrote letter of May 17th, 1853, now in the deposition of Dr. Michener. My brother informed us that Dr. Michener had a friend who wanted to buy the land.

Before writing letter of May the 17th, 1853, had a conversation with father. Best of my recollection, my father and I had a talk and thought we

would offer the land for sale. This was about the time of writing the letter of May the 17th 1853. The conversations we had were likely to be embodied in the letters; meaning the conversation with father. The word "we" in the leters refers to father and myself. The word "father" refers to Robert McConnell, the defendant in this suit.

The conversation I had with my father in regard to selling the land was embodied in the letter of May 17th 1853. Wrote it from information received from brother Wilson McConnell. Conversed with father in regard to selling the land. The conversation was embodied in the letter. I was acting for myself, and so far as what is found in the letter, for my father Robert McConnell.

I wrote a letter to Michener and after I wrote one to Brillhart. I wrote to Brillhart in answer to the one he wrote to me; the one I wrote Brillhart was dated about July 1st, 1853. After receiving the letter from Dr. Michener, I and father had a conversation about the price of the land. The price fixed upon by us was one thousand dollars for the half section.

I think as near as I can remember, after receiving the letter from Dr. Michener, father and I had a conversation; I said I would sell my land and he said he would sell his. The price was fixed and then I wrote this letter.

Do not recollect of but one conversation with father in reference to the sale of the land. He said he guessed the patent was at Dixon. Unless it was at Dixon or Freeport he would not make a sale.

I have no recollection that my father saw the letter I wrote to Dr. Michener; my impression is he did not tell me to write any letter. I do not remember he has any knowledge of my writing that letter. The conversation was this: I said I would sell my land, and he said he would sell his land, provided the patent was at Dixon. We then fixed upon the price; that letter was not a transcript of the conversation. About the first of August that season I came to Illinois, and ascertained my father's patent had not arrived at Dixon or Freeport. The reason why it was not sent on by the Government was there was a mistake in the assignment of the land warrant with which this land was entered. It was returned by the Government and corrected and sent back.

U. D. MEACHAM,
Solicitor for Appellant.

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Jacob S Bullhen

vs

Robert McConnell

Filed apr. 23 - 1864

L. Leland

Clerk

STATE OF ILLINOIS, } SS. SUPREME COURT,
THIRD GRAND DIVISION. APRIL TERM, A. D. 1861.

JACOB S. BRILLHART,
Plaintiff in Error,
vs.
ROBERT McCONNELL,
Defendant in Error.

POINTS FOR DEFENDANT.

This was a Bill filed in the Circuit Court of Stephenson County by the plaintiff in error, against the defendant in error, and one Joseph A. McConnell, to compell a specific performance of a certain alleged contract for the sale of lands. The Bill sets forth that the defendant in error and Joseph A. McConnell, were the owners of a quarter section of land each, in said county, and that the defendant by his agent Joseph A. McConnell, and the said Joseph A. McConnell, entered into a written contract with the plaintiff to sell him both of said quarter sections for the sum of $1000, and that said contract consists of the two letters written by Joseph A. McConnell, dated May 17, 1853, and July 2, 1853. The Bill further sets forth a tender by the plaintiff of the purchase money and a refusal by the defendant to convey the quarter section belonging to him.

The plaintiff afterwards dismissed his bill as to Joseph A. McConnell.

The defendant answered, among other things, denying the execution by him of any written agreement with the plaintiff for the sale of said land, and denying the authority of Joseph A. McConnell to execute such agreement for him; also averring that the letters in question were written by Joseph A. McConnell, without his knowledge, authority or consent; and also setting up the *statute of frauds*.

I

The letters in question are not a contract to which the defendant is a party, or upon which he is in any manner liable.

He does not sign the contract, nor does the party signing purport to do so for him, or as his agent. Joseph A. McConnell is one of the contracting parties and as such he signs the contract and is bound. The defendant does not sign it and is not bound. The use of the plural "we" only shows that the party drafting the contract expected it to be executed by two vendors, but one vendor not having signed it, is not bound. A promissory note in the words "we promise to pay," and signed by only one promisor binds only the party signing. This Court, construing this identical contract, 17 Ill. 362,) has held substantially the same language. They say, "as his father never signed the letters he did not become a party to the contract. The plaintiff [Joseph A. McConnell] stands alone as the vendor of both tracts." This view is entirely in harmony with the conversation between the defendant and witness Joseph A. McConnell, before the writing of the letter of May 17th. The witness says: "I will sell my land;" defendant says: "I will sell my land;" the price is then fixed and the witness drafts a contract, in which he and his father are to be joint grantors. He signs the contract; his father does not sign it, and in fact *does not know of its existence.* True the witness testifies, that "so far as what is found in the said letter," he was acting for the defendant, but the letter does not present him acting in any such capacity.

II

All the evidence adduced by the parties upon the hearing of this cause below is embraced in the certificate of testimony signed by the Judge, the answer of the defendant, and those portions of the deposition of Barak Michener, offered in evidence by the complainant's Counsel. The deposition of Andrew Kahler, which the Circuit Clerk has copied into the record, not having been used as evidence by either party at the hearing below cannot be regarded by this Court.

See records pages 46. 61. 85. & Certificate of Judge page 94

III

There is no proof in the case of any authority from the defendant to Joseph A. McConnell to sell the land in question.

1. There is no pretense of a general agency. If Joseph A. McConnell was the defendant's agent at all, he was such merely for the purposes of this individual transaction. It is not pretended that he ever acted for the defendant in respect to any other matter. His authority then cannot be inferred from his mere statements or acts. His letters, and his transactions, and conversations with Dr. Michener, are not evidence in any way tending to establish the *fact* of the agency. That must be shown by independent proof.

2. In proof of such agency the plaintiff relies upon a conversation between the defendant and Joseph A. McConnell, prior to the letter of May 17, 1853, appearing in the testimony of Joseph A. McConnell. The following is the testimony of the witness in regard to this conversation :

" Before writing letter of May the 17th, 1853, had a conversation with father. Best of my recollection, my father and I had a talk and thought we would offer the land for sale. This was about the time of writing the letter of May the 17th, 1853. The conversations we had were likely to be embodied in the letters; meaning the conversation with father. The word "we" in the letters refers to father and myself. The word "father" refers to Robert McConnell, the defendant in this suit. 87

"The conversation I had with my father in regard to selling the land was embodied in the letter of May 17th 1853. Wrote it from information received from brother Wilson McConnell. Conversed with father in regard to selling the land. The conversation was embodied in the letter. I was acting for myself, and so far as what is found in the letter, for my father Robert McConnell.

* * * * * * * * *

" After receiving the letter from Dr. Michener, I and father had a conversation about the price of the land. The price fixed upon by us was one thousand dollars for the half section. 88

" I think as near as I can remember, after receiving the letter from Dr. Michener, father and I had a conversation ; I said I would sell my land and he said he would sell his. The price was fixed and then I wrote this letter.

* * * * *

" Do not recollect of but one conversation with father in reference to the sale of the land. He said he guessed the patent was at Dixon. Unless it was at Dixon or Freeport he would not make a sale.

* * * * * * * *

" I have no recollection that my father saw the letter I wrote to Dr. Michener; my impression is he did not tell me to write any letter. I do not remember he had any knowledge of my writing that letter. The conversatio

was this: I said I would sell my land, and he said he would sell his land, provided the patent was at Dixon. We then fixed upon the price; that letter was not a transcript of the conversation." 89

This conversation fails to show any authority from this defendant to the witness to sell the land in question. It only shows that defendant and witness had concluded to offer their respective tracts of land for sale at a certain gross sum. When the witness announces his determination to sell his land, defendant does not say, "you may also sell my land," but "that he would sell his land."

The statement that this conversation "was likely to be" or "was" embraced in the letter of May 17th, does not aid the plaintiff, as that letter contains no words which can be tortured into *conferring* of authority.

And even if it be true that the conversation was embodied in this letter, it is not therefore true that all the matters contained in the letter were embraced in the conversation.

But it cannot be true that the conversation was embodied in the letter as the witness details statements in the conversation not appearing in the letter, and also swears that "the letter was not a transcript of the conversation."

It further appears from this conversation that the defendant did not in fact determine to sell his land at all except *contingently*—that is, unless his Patent was then in Dixon or Freeport; and if any authority was given to the witness to sell, such authority was dependant upon the same contingency, and the witness testifies that on coming to Illinois he ascertained that the Patent for the land was not at Dixon or Freeport. Such authority, if any existed, thereby entirely failed.

Doubtless a parol authority to an agent to sell land is sufficient, but such authority must be established by clear and convincing proof. The courts will not permit one man to barter away the freehold of another by virtue of an authority resting in doubtful inference or forced construction. The evidence upon which the plaintiff relies in proof of this agency, is vague, indeterminate and unsatisfactory. It is only by distorting the obvious construction of the testimony, that any presumption of authority can be raised.

IV

The agency insisted upon by the plaintiff, is only a *special* agency. The authority is only to sell in case the Patent for the land was at Dixon or Freeport. The person dealing with a special agent is bound to ascertain for himself the character and extent of the agency, and if the agent exceed his authority, the principal is not bound. (1 Parsons on Cont., 40.) The proof shows that the Patent was not at Dixon or Freeport, and the agent by attempting to make a contract to sell the land would have transcended his authority, and could not have bound his principal.

V

There is no sufficient evidence of either a compliance or offer of compliance with the alleged contract by the plaintiff, or a refusal of compliance by the defendant.

The bill alleges a tender of the money by the plaintiff, and a demand for a deed, and a refusal to convey by the defendant.

Dr. Michener swears that he showed Joseph A. McConnell a draft for $500, and took him to the Bank where plaintiff's deposits were, where he was informed that plaintiff's deposits would be paid in currency on banks from which he could receive the specie, and that he expressed himself satisfied with the funds. It does not appear that he was even *shown* the last five hundred dollars. Much less does it appear that any of the money was ever *offered* to him or so tendered that he had any opportunity either to accept or refuse it. (2 Parsons on Cont., 150.)

Nor does it appear that Joseph A. McConnell refused to deliver the deed to Dr. Michener. It only appears that upon certain differences arising between them as to terms, Joseph A. McConnell says that "he would not deliver the deeds, but wait till Brillhart should return."

J. M. BAILEY,
Solicitor for Defendant.

Abstract

STATE OF ILLINOIS, } SS. Third Grand Division,
SUPREME COURT. APRIL TERM, 1861.

JACOB S. BRILLHART,
Appellant,
vs.
ROBERT McCONNELL,
Appellee.

The question was here was there an agency authorizing the Son to write those letters as the agent of the father & were the dates of the first ratified by the father?

These letters were construed in 17 Ill in the Connell case

Jacob S. Brillhart, the Plaintiff in Error, filed his Bill in the Stephenson County Circuit Court against the Defendant in Error, for the specific performance of a contract to convey land, made, as it is alleged by the Defendant in Error, by his agent Joseph A. McConnell to the said Brillhart.

2 The Bill in this cause, among other things, alleges that on the tenth day of July, A. D., 1853, the Defendant in Error and one Joseph A. McConnell were the owners of the following described land, to wit:

The South East quarter and the North East quarter of section twenty-five in Town 26 North of Range seven east, in Stephenson County, Illinois, the said Robert McConnell owning the first mentioned and the said Joseph A. McConnell the last named tract of land.

That the said Robert McConnell, on the day last aforesaid, through his agent Joseph A. McConnell, and the said Joseph A. McConnell entered into a written contract with Brillhart to sell him both of said tracts of land for one thousand dollars. That they, the said McConnells, would be ready to make conveyances on the first of August, A. D., 1853, at which time the money was to be paid.

The Bill avers a tender of the money at the time agreed upon by the complainant, and that he demanded a deed for the land, and that Defendants refused to convey

The cause was heard before Sheldon, Judge, at the September Term of the Stephenson County Circuit Court, on Bill, answer, replication and proof.

The following are the material parts of the testimony.

The complainant first introduced the following letters. The first written by the said Joseph A. McConnell to one Dr. Michener, and the other written by the said Joseph A. McConnell to Brillhart.

McConnellsville, O., May 17, '53.

7 Dr. Michener—Sir: My brother arrived home last week in good spirits, and 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 lands 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 am troubled with the "chills and fever" occasionally, but will endeavour 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 consequence. Andthis agreement will hold good until the first of July.

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

Yours, &c.

JOSEPH A. McCONNELL.

Dr. B. Michener.

McConnellsville, O., July 2, '53.

8 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 effect 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 August, and if you will hold yourself in readiness, and let us know accordingly, I will go prepared to make conveyance, &c. Perhaps you are aware my father has not received his patent for his part, but no doubt it is at Dixon by this time. Please write.

JOSEPH A. McCONNELL.

The Plaintiff next offered in evidence the following letters written by the complainant to the said Joseph A. McConnell.

Stephenson House, Freeport, June 22d, '53.

91 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 New York to get indorsed, and as soon as they will be returned to me (which will be in about two weeks) I will be there ready to fulfill 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 let me hear from you soon, and also if I can send a telegraph dispatch to you, as it takes some time for a letter to go there. Yours, &c.

J. S. BRILLHART.

Freeport, Ills., June 24th, 1853.

92 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 first 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 me a deed. 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 Respectfully,

J. S. BRILLHART.

Freeport, Ill., July 9, '53.

93 Mr. McConnell—Sir: Yours of the 4th was received 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 Dr. Michener, and then he could made a deed. I want a warrantee deed. By so doing you would save the expense of coming out to Illinois. 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 Michener 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 Dr. Michener can get it. Please and answer soon.

Yours Respectfully,

J. S. BRILLHART.

61 The Complainant next introduced the deposition of Barak Michener taken in this cause, who among other things deposed as follows, that is to say:

I was requested by the complainant Brillhart to correspond with Robert McConnell and Joseph A. McConnell in relation to some land the said McConnells owned in Stephenson County, Illinois, the said Brillhart being desirous of purchasing the same; and that some time in the Spring of the year A. D., 1853, I wrote to the Defendants to know if those lands were for sale and at what price. I had information previous to writing, from Wilson McConnell,

a brother of Joseph A. McConnell, that Robert McConnell and Joseph A. McConnell were desirous of selling said lands.

The lands refered to is the East half of section No. twenty-five in Township 26 North of Range seven east, in the County of Stephenson, Illinois.

I received the letter marked " A" (meaning the letter dated May 17, 1853) from Joseph A. McConnell. Said letter was written by Joseph A. McConnell to myself. The lands refered to are the same as described in interrogatory fourth.

I did write for Brillhart to one or both of the McConnells, and do not now recollect whether it was before the above letter of May 17, but my impression is that I wrote previous to the date of that letter, and that the letter of May 17th is in reply to my letter.

I cannot state which of us (Brillhart or myself) replied to said letter marked " A." and cannot give the language or substance of said reply, except that the offer made by McConnell to Brillhart was accepted by Brillhart.

Joseph A. McConnell came to Freeport, Stephenson County, Illinois, on or about the first day of August, A. D., 1853, and on hearing that he had arrived, I immediately called upon him and informed him that Brillhart was absent and had left me his agent to pay for the land, about which we had negotiated, and receive the deeds. McConnell answered that he had just arrived and was weary, but would call upon me in my office. The next day, or very shortly, he did call at my office. He asked me if Brillhart was aware that his father had not received his patent for his quarter of the land. I told him that Brillhart was aware of that fact, but was willing to take his father's deed for said land. I then told him I would show him the funds which Brillhart had left with me for him. I took out a draft for five hundred dollars which he looked at and said it was right. I told him the other five hundred was deposited in Taylor & Bronson's Bank, and asked him to go with me to the Bank and see if the funds were satisfactory. I stated to said Bankers the object of our call, and they said that Brillhart's deposits with them was currency. McConnell said he would prefer specie. They told him they could give him currency on Banks on which he could call as he returned home and receive specie for it. He then expressed himself satisfied with the funds.

McConnell told me that his father Robert McConnell, had executed a deed of his quarter section of land to Brillhart, which he had there in his pocket, but he said he did not know whether Brillhart could compel them to deed him the land or not. But he said he had remained at home, I think about the first of July, to meet him there, and for that inconvenience he thought Brillhart ought to pay his expenses from McConnellsville to Freeport; that if I would pay him one thousand for the land, and in addition pay his expenses out, he would deliver the deeds. I told him I was not authorized to pay more than one thousand dollars. He then said he would not deliver the deeds but wait till Brillhart should return.

See Stipulation on file

He Joseph A. McConnell told me he was authorized by Robert McConnell to act for him.

I did write one or more letters to the defendants; the contents were concerning the purchase of their lands by Brillhart. I do not recollect the language.

85 Joseph A. McConnell testified as follows: In the summer of 1853 resided with my father at McConnellsville, Ohio. I received a letter purporting to come from Dr. Michener. The letter came through the post office. Left it with Mr. Clark. Had a brother out in Illinois, in the Spring of 1853. After he returned home resided with my father. Brother returned home in the month of May, 1853. His name was Wilson McConnell. I wrote letter of May 17th, 1853, now in the deposition of Dr. Michener. My brother informed us that Dr. Michener had a friend who wanted to buy the land.

Before writing letter of May the 17th, 1853, had a conversation with father. Best of my recollection, my father and I had a talk and thought we

would offer the land for sale. This was about the time of writing the letter of May the 17th 1853. The conversations we had were likely to be embodied in the letters; meaning the conversation with father. The word "we" in the leters refers to father and myself. The word "father" refers to Robert McConnell, the defendant in this suit.

The conversation I had with my father in regard to selling the land was embodied in the letter of May 17th 1853. Wrote it from information received from brother Wilson McConnell. Conversed with father in regard to selling the land. The conversation was embodied in the letter. I was acting for myself, and so far as what is found in the letter, for my father Robert McConnell.

I wrote a letter to Michener and after I wrote one to Brillhart. I wrote to Brillhart in answer to the one he wrote to me; the one I wrote Brillhart was dated about July 1st, 1853. After receiving the letter from Dr. Michener, I and father had a conversation about the price of the land. The price fixed upon by us was one thousand dollars for the half section.

I think as near as I can remember, after receiving the letter from Dr. Michener, father and I had a conversation; I said I would sell my land and he said he would sell his. The price was fixed and then I wrote this letter.

Do not recollect of but one conversation with father in reference to the sale of the land. He said he guessed the patent was at Dixon. Unless it was at Dixon or Freeport he would not make a sale.

I have no recollection that my father saw the letter I wrote to Dr. Michener; my impression is he did not tell me to write any letter. I do not remember he has any knowledge of my writing that letter. The conversation was this; I said I would sell my land, and he said he would sell his land, provided the patent was at Dixon. We then fixed upon the price; that letter was not a transcript of the conversation. About the first of August that season I came to Illinois, and ascertained my father's patent had not arrived at Dixon or Freeport. The reason why it was not sent on by the Government was there was a mistake in the assignment of the land warrant with which this land was entered. It was returned by the Government and corrected and sent back.

U. D. MEACHAM,
Solicitor for Appellant.

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Jacob S Billhut

vs

Robert M Connell

Abstract

Filed Apr. 23rd 1860

L. Leland

Clerk

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Jacob S Brillhart

vs

Robert M. Connell

Filed Apr. 16th 1861 –

L. Leland

Clerk

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United States of America
State of Illinois
Stephenson County

Pleas before the Honorable Benjamin R. Sheldon, Judge of the Fourteenth Judicial Circuit of the State of Illinois, at a regular term of the Circuit Court held in & for the County of Stephenson, in the Judicial Circuit and State aforesaid; began and held in pursuance of law at the City of Freeport in said County on Monday the first day of September in the year of our Lord One Thousand, Eight hundred and fifty six.

Present- Hon' Benjamin R. Sheldon, Judge
William Brown Esq', States Attorney
Isaac Hleckner Esq' Sheriff
Joseph B. Smith, Clerk-

Be it remembered that heretofore, to wit: on the 2nd day of June A.D. 1856 the following bill of Complaint was filed in said Court, wherein Jacob E. Billhart is Complainant and Robert McConnell & Joseph A. McConnell are Defendants and is in the words and figures following, to wit:

In Chancery-

In the Circuit Court of Stephenson County in the State of Illinois of the September Term A.D. 1856, in Chancery

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- Humbly Complaining Showeth unto your Honor Jacob S. Billhart that heretofore, to wit: on the tenth day of July A.D. 1853, at said County of Stephenson, One Robert McConnell and one Joseph A. McConnell then citizens of the State of Ohio, then being the owners in fee simple of the following discribed land, to wit: The South East quarter & the North East quarter of Section twenty five in Township 26 North of Range No Seven East of the 4th Principal Meridian in the County of Stephenson and State of Illinois- The said Robert being the owner of the first mentioned quarter Section, and the said Joseph A. being the owner of the last mentioned quarter Section above mentioned- And your orator further shows unto your Honor, that afterwards to wit: on the day and year aforesaid at the said County of Stephenson the said Robert McConnell through his agent Joseph A. McConnell, and the said Joseph A. McConnell, entered into a written contract with your orator to sell him both of the quarter Sections, of land above mentioned for the sum of One Thousand Dollars, to be paid on the first of August A.D. 1853, at which time & by virtue of said written contract they were to deliver to your orator a deed or deeds of said land above

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mentioned, upon your orator paying to them One Thousand Dollars for the land above mentioned, which written contract ready to be shown to your Orator on the hearing of this cause will more fully & at large appear copies of which are hereto attached & marked A. & B. And your orator here avers that on the first day of August A. D. 1853, at said County of Stephenson and within the time limited in the written contract above mentioned, your orator tendered to the said Robert McConnell, and the said Joseph A. McConnell the said sum of One Thousand dollars, to comply with and carry out the provisions of the contract above mentioned, and at the same time demanded deeds of conveyance of said Lands, and the said Robert McConnell and the said Joseph A. McConnell then and there refused to recieve the said money and make and deliver to your orator conveyances of said land— And your Orator here states that the said Robert neglects and refuses to make and deliver to your Orator a conveyance of the said quarter of land first above described— And your Orator further shows unto your Honor, that he did comply with the provisions of said written contract on his part and has always heretofore been ready & now is still ready to comply with the terms of said Contract on his part— And your orator further shows unto your Honor that he fears that the said

Robert McConnell will sell and transfer the title to the land first above described unless he is restained by an injunction issuing out of and under the seal of this Hon, Court- But now so it is may it please your Honor that the said Robert McConnell combining and confederating together to and with divers other persons as yet to your Orator unknown but whose names when discovered he prays may be inserted herein as defendants with proper & apt words to charge them how to injure and oppress your Orator- The said Robert McConnell does now wholly neglect and refuse to make and deliver to your Orator a deed of the land above described as belonging to him- pretending on the part of the said Robert McConnell that he is under no obligations to perform the conditions of the said Contract

All of which actings and doings of the said confederates are contrary to Equity and good conscience and tend to the manifest wrong ~~and~~ injury and oppression of your Orator in the premises. In tender consideration whereof and for as much as your Orator is remediless in the premises at by the strict rules of the common law and is only relievable in a court of equity where matters of this nature are properly cognizable, To the end therefore that the said Robert McConnell and Joseph A. McConnell and their confederates when discovered may respectively full, true, direct and perfect answers make

5 to the best of their several and respective knowledge information and belief to all and singular the premises aforesaid their answer under oath being being hereby waived, according to the statute in such case made and provided to all and singular the matters and things hereinbefore stated, and that as fully and particularly as if the same were here again repeated and they thereto interrogated. And particularly is the said Robert McConnell required to set out copies in his answer of all letters and correspondance between Complainant & himself or Joseph A. McConnell relating to the land hereinbefore described. And may it please your Honor to grant unto your Orator ~~the Peoples~~ writ of injunction issuing out of and under the seal of this Honorable Court directed to the said Joseph A. McConnell & the said Robert McConnell restraining them their Solicitors agents and attorneys from selling said land or disposing of the same to any person whatever until the further order of this court in the premises, and that the said Robert McConnell be decreed to convey the said to your Orator & that your Orator may have such further & other relief in the premises as shall be agreeable to Equity and good conscience. 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 Robert McConnell and Joseph A. McConnell commanding them and Each of them to be and appear before our Circuit Court of Stephenson County, Illinois at a time and place in said writ to be specified to answer the premises and stand to and abide such order as the Court shall make in the premises and in duty bound your Orator shall ever pray &c-

U. D. Meacham
Sol for Complainant

Jacob S. Billhart

State of Illinois
Stephenson County } ss.

On this 20th day of May A. D. 1856, personally appeared before me the undersigned Urban D. Meacham, the Solicitor of the said Jacob S. Billhart and made oath that he has read the above bill subscribed by the said Jacob S. Billhart and knows the contents thereof, and that the same is true in substance and in fact as this affiant is informed and verily believes-

Dated May 20th A D. 1856-

Joseph B. Smith, Clerk

Exhibit "A"

McConnellsville, O. May 17/53

7

Dr Michener-

Sir

My brother arrived home last week in good Spirits & giving in his wild immagination 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 lands 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 could have arrived as early as this epistle, but can not tell now how long it will be as I am troubled with the "chills and fever" occasionally but will endeavor to beat 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 consequence- And this agreement will hold good until the first of July- We will be pleased to have any communication

from you at any time concerning matter provided it is not asking or taxing your time too much—

Dr B. Michener

Yours &c
Joseph A. McConnell

Exhibit "B".

McConnelsville O July 21/53

Mr Billhart

Sir We received your Note on yesterday and hasten to reply— We feel willing to extend the time you require, although it has kept one at home during the past month awaiting your arival, and do not feel like incurring much Expense in order to effect 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 conveyance &c—

Perhaps you are aware my father has not rec'd his patents for his part but know doubt it is at Dixon by this time please write

Joseph A. McConnell

State of Illinois }
Stephenson County } ss. Hon. Benjamin R. Sheldon
presiding Judge of the Circuit
Court of said County being absent from said County
upon the filling of the foregoing Bill of Complaint

9 Let a Writ of Injunction issue in accordance with the prayer of said Bill – May 31. 1856 –

To Joseph B. Smith Clerk Circuit Court of said County

H. A. Hibbard Master in Chancery for said County

Fees $1.50

on the back of which said Bill of Complaint the following endorsement appears

" Filed June 2nd 1856. Joseph B. Smith Clerk

Amended Bill

And on the same 2nd day of June the following bond for cost was filed in said cause –

Jacob L. Brillhart vs Robert McConnell } In the Circuit Court of Stephenson County in the State of Illinois –

I do hereby enter myself security for cost 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 2nd day of June 1856 – John Black

A. D. Meacham

on the back of which the following endorsement appears – " filed June 2nd 1856. J. B. Smith Clerk

and on the same day the following writ was issued out of said Court—

State of Illinois }
Stephenson County } ss. The People of the State of Illinois, to Joseph A. McConnell & Robert McConnell, and to their Solicitors, agents and Attornies, each and every of them, Greeting:

Whereas it has been represented to us in our Circuit Court in and for said County of Stephenson and State of Illinois (on the Chancery side thereof) in a certain cause therein depending wherein Jacob S. Brillhart is Complainant, and you the said Joseph A. McConnell & Robert McConnell are Defendants— among other things it is stated in the Bill of Complaint filed by the said Complainant in said Court against you the said Joseph A. McConnell & Robert McConnell 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 & good conscience— We therefore in consideration thereof and of the particular matters in the said Bill set forth, do strictly enjoin you the said Joseph A. McConnell and Robert McConnell and the persons hereinbefore mentioned under the penalty of ten thousand dollars to be levied upon

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your respective goods ~~and~~ chattels, lands & tenements to our use, that you do absolutely and entirely refrain from selling or in any manner disposing of to any person or persons whatever the following described tract of land, to wit: The South East quarter of Section Number Twenty five (25) in Township No. Twenty six, North of Range Seven (7) East of the fourth principal Meridian, in the County of Stephenson & State of Illinois- until you the said Joseph A. McConnell and Robert McConnell shall have put in your answer in this cause and our said Court shall have made further order thereon- Witness Joseph B. Smith Clerk of our said Court and the Seal of said Court at Freeport in said County this 2nd day of June A.D. 1856-

Seal

attest. Joseph B. Smith, Clerk

To the Sheriff of said County to execute

J. B. Smith, Clerk

on the back of which writ the following endorsement appears-

The within named Joseph A. McConnell & Robert McConnell are not found in my county July 19th A.D. 1856, Isaac Kleckner, Shff-

pr W. L. Narramore, Dep.

And on the same day the following summons was issued out of said Court in said cause-

State of Illinois
Stephenson County } ss.

The People of the State of Illinois to the Sheriff of Stephenson County, Greeting:

We command you to Summon Robert McConnell and Joseph A. McConnell if they shall be found in your county to appear before the Circuit Court of Stephenson County, at the next term, to be holden at Freeport on the first Monday of September next to answer Jacob S. Billhart upon a certain Bill of Complaint filed by the said Jacob S. Billhart in the Circuit Court of said Stephenson County, on the Chancery side thereof against them - And have you then there this writ. Witness Joseph B. Smith Clerk of the Circuit Court of Stephenson County, Illinois, at Freeport this 2nd day of June A.D. 1856 -

Seal

Attest: Joseph B. Smith, Clerk

on the back of which Summons the following endorsement appears -

" The within named defendants are not found in my county this 19th day of July A.D. 1856 -
Isaac Kleckner, Shff - per W.P. Harrison, Depty

And afterwards, to wit: on the 18th day of September A.D. 1856, the same being one of the days of said September term of said Court, the following among other entries appear of record in said cause

13
24, Ch

Jacob S. Brilhart
vs
Robert McConnell &
Joseph A. McConnell } Chancery, Injunction

On motion of the said Complainant by his Solicitor it is ordered by the Court, that this cause be continued to the next term of this court, and that an alias Summons issue against the said Defendants, returnable at the next term of this court—

And afterwards, to wit: on the 30th day of September 1856. the following affidavit was filed in said Court, to wit:

Jacob S. Brillhart
vs
Joseph A. McConnell &
Robert McConnell } In the Circuit Court
Stephenson County
In Chancery

State of Illinois
Stephenson County } ss. A. D. Meacham being first duly sworn upon his oath says that the said Robert McConnell resides out of this State, and that the said Joseph A. McConnell has gone out of this State, so that process can not be served upon them and therefore asks that publication be made to the defts according to the Statute in such case made & provided—
Subscribed & sworn to before } A. D. Meacham

me this 29th day of Sept. 1856-
Joseph B. Smith, clerk
On the back of which the following endorsement appears- Filed Sept 30th 1856, J. B. Smith, clerk

And afterwards at the December Term A. D. 1856 of said Court began and held in pursuance of law at the Court House in said County on the first Monday of December A. D. 1856- to wit: on the 19th day of December the same being one of the days of said Term of said Court the following among other entrys appears of record in said cause-

Ch. 20 Jacob S. Billhart
vs
Robert McConnell &
Joseph A. McConnell
Chancery Injunction

And now comes the said Complainant by his Solicitor and files advertisement of notice to the defendants, and proof of its due publication being made to the satisfaction of the Court, thereupon the said Defendants Robert McConnell and Joseph A. McConnell, being severally three times solemnly called, came not but made default- It is therefore considered and ordered by the Court, that the said Complainants bill be taken for confessed, and on motion of the Complainant by his Solicitor it is further ordered by the Court

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that this cause be referred to the Master in Chancery of this Court to take proofs herein -

Jacob S. Billhart
vs
Joseph A. McConnell &
Robert McConnell

In the Circuit Court of Stephenson County, Illinois -

Affidavit having been made and filed in the office of the Clerk of the Circuit Court of said County, that process can not be served upon the above named Defendants, notice is therefore given to the said Defendants Joseph A. McConnell and Robert McConnell, that the said Jacob S. Billhart has filed his Bill of complaint against them in said Court, and that the same is now pending against them; that the said suit was at the September term of said Court, A. D. 1856, continued until the December term A. D. 1856, which is to be held at the Court House in the City of Freeport in said County, on the first Monday of December A. D. 1856. Now unless you the said Defendants, shall appear before the said Court on the said first day of December 1856, at the Court House in the City of Freeport in the said County of Stephenson, and plead, answer or demur to said bill your default will be taken, and other proceedings will then be had according to law in said cause - Dated September 20. 1856 - Joseph B. Smith, Clerk -

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A. D. Meacham
Sol for Complt-

I, C. H. McCluer one of the Publishing of the Freeport Journal [a newspaper published at Freeport Stephenson County Illinois] do hereby certify that an advertisement entitles Jacob S. Brillhart vs Joseph A. & Robt McConnell [an Exact copy of which is hereto attached] was published in said Newspaper 4 weeks successively- The first insertion of said advertisement was made on the second day of Oct A.D. 1856 and the last on the 12th day of Nov A.D. 1856, Fees for publication $3.50-

C. H. McCluer

On the back of which the following endorsement appears- Filed Dec 19th 1856.

L. W. Guitteau, Clk

And afterwards at the September term A.D. 1857 of said Court began and held in pursuance of law in and for said County on the first Monday of September A.D. 1857, to wit on the 10th day of September the same being one of the days of said term of said Court the following among other entry's appears of record in said cause-

Ch. 17 Jacob S. Brillhart
vs
Robert McConnell & Joseph McConnell } Injunction

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And now at this day came the said parties by their Solicitors and file their stipulation as follows to wit: That the default heretofore entered in this cause is waived and that the said Complainant may amend his Bill in any particular so as to require the defendants answers under oath to be filed by the first day of the next term of this court, and that this stipulation shall not interfere with the injunction in this cause—

Jacob Brillhart
vs
Joseph McConnell &
Robt McConnell

It is hereby stipulated that the default heretofore entered in this cause is waived and the said Complainant may amend his bill in any particular & so as to require the defendants answers to be under oath by the first day of the next term of this court. this stipulation not to interfere with the injunction in this cause
Sept 10. 1857. A D Meacham Sol for Compt
Jason Marsh Sol for defts

On the back of which the following endorsement appears- "Filed Sept 10. 1857 T W Guiteau Clk

And afterwards on the 24th day of September A.D. 1857. the same being one of the days of the aforesaid September term of said Court the following among

other entry's appears of record in said cause—

Ch. 117 Jacob S. Billhart
vs
Robt M Connell &
Joseph M Connell

Chancery Injunction

By the consent of the respective parties as by their Stipulation on file. It is ordered by the Court that the default heretofore entered in this suit be set aside, and it is further ordered that the said Defendants be ruled to answer by the first day of the next Term of this Court, and the Complainant have leave to amend his bill within twenty days—

And afterwards on the 7th day of December A. D. 1857, the following answer was filed in said cause

In Chancery

In the Circuit Court of Stephenson County in the State of Illinois of the December Term A D. 1857. In Chancery—

The answer of Robert M Connell one of the Defendants to the Bill of Complaint of Jacob S. Billhart Complainant—

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

sitting- This defendant now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception, demurrer plea or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said Bill contained for answer thereto, or to so much thereof as this defendant is advised, it is material or necessary for him to make answer to, answering saith that he enters the following tract of land, to wit: The South East quarter of Section twenty five in Township twenty six of Range seven East in the district of lands subject to sale at Dixon, Illinois, containing One hundred and sixty acres- The said Robert McConnell further says that he made said entry by virtue of land warrant No. 31267. which said warrant had been issued by the Pension Office to one Egbert Bullock and aftemards assigned or imperfectly assigned to this defendant- This defendant further says that he recieved a certificate of said entry from the land office located at Dixon Illinois- The defendant further says that some months elapsed and he did not recieve a patent from the Government for said land, this defendant further says that before his said patent came to hand, One Joseph A. McConnell desired this defendant to execute a deed of said land to Complainant, and to deliver the same to said Joseph

A. McConnell to enable said Joseph A. McConnell to complete a bargain between him and said Complainant for the sale of certain lands being the same described in the Bill of the said Jacob S. Bilkhart, the tract described in this answer being owned exclusively by this defendant the other tract being owned exclusively by the said Joseph A. McConnell. This defendant further says that when said Joseph A. McConnell requested him to Execute said Deed, then this defendant informed him, that in no case would he sell said land until he recieved a Patent for the same, and that he had not recieved any such Patent, but that he then informed the said Joseph A. McConnell, that he would prepare a deed for said lands to said Jacob S. Bilkhart in compliance with said request of said Joseph A. McConnell, the said Joseph A. McConnell to take the same as he was then going to Illinois, and if on inquiring at the Land Office before named should find that a patent should be there for this Defendant, and he should recieve the same there and in that case, he might deliver said Deed, but if said Patent was not at said Land Office and the Defendant Joseph A. McConnell did not recieve the same, then in no case whatever was he authorized by this defendant a deliver said Deed, and this defendant has especially and particularly so charged

21 Joseph A. McConnell in reference to said land
This defendant further says that when said
Joseph A. McConnell went to the State of
Illinois and made application for said patent
at said Land Office as he had been directed by
this defendant he then found that the Government
had refused to issue a patent to this defendant
at all by reason of an error in the assignment
of the warrant by virtue of which the said entry
had been made, and that said Warrant had been
returned to said Land Office by reason said error in
said assignment. Thereupon all authority was
given by this defendant to the said Joseph A. Mc Con-
nell to deliver said deed was at an end. This defend-
ant further says that he never executed any written
agreement with said Jacob S. Billhart, Dr
Michener or any other person whatever for the
sale of said land. This defendant further says
that he never authorized Joseph A. McConnell
or any other person to execute a written con-
tract with Jacob S. Billhart, Dr Michener or
any other person for the sale of said land. This
defendant further says that the exhibit marked
(A) and the exhibit marked (B) filed with &
attached to the Bill of the said Jacob S. Billhart
are papers that he never executed or authorized
Joseph A. McConnell or any other person to execute
for him, and this defendant further says that if said

Joseph A. McConnell did ever so execute them, it was done without the knowledge advice or consent of this defendant and that he is not bound thereby This defendant further avers that it is not true as alledged in the Bill of the complainant, that the complainant ever tendered ## him any money in pursuance of a contract with him in reference to the sale of said lands; this defendant further avers that it is not true as alledged in said bill that he ever authorized said Joseph A. McConnell to deliver to said complainant said deed except upon the conditions before named- this defendant further avers that he never had any correspondence with said complainant Dr Michener, Joseph A. McConnell or any other person by letters or otherwise in reference to the sale of said lands that there are none such in his possession or has there ever been- This defendant further avers that he never authorized said Joseph A. McConnell to correspond with the complainant, Dr Michener or any other person in reference to the sale of said lands, and that if he did so correspond it was done without the advice knowledge or consent of this defendant- This defendant further avers that after he had learned the action of the Government in reference to the said Warrant by which the entry of said land had been made- this defendant afterwards by

his attorny Mr J. A. Clarke a resident of Stephenson County, Ill had the error in the assignment of the said Warrant corrected and returned to the general land office, whereupon the Government did issue him a patent for said land And this defendant further avers that not considering himself in any way bound to the Complainant by any written or verbal contract whatever, that on the Seventeenth day of Jan A.D. 1856, as near as this defendant can now recollect he made conveyances of said land to his two sons Wilmer & Jonathan McConnell believing it to be his duty to provide lands for these sons as he had previously done for his other sons- and this defendant further avers that by a certain Statute of the State of Illinois, made and passed and approved on the 3 day of March A.D. 1845, said Statute being Chap 44 of the revised Statutes of 1845. for the prevention of frauds and perjurys and commonly called the Statute of frauds all contracts and agreements relating to lands except as therein excepted are required to be reduced into writing and signed by the party or parties to be bound thereby, and that the said agreement in the said Bill mentioned the execution whereof by this defendant or by his authority is by no means confessed in said Bill alledged to have been made and entered into by this defendant and the said Complainant was not

reduced into writing and executed pursuant to the said Statute and therefore this defendant insists that the same is void as against this defendant and that he can not be affected thereby and this defendant claims the same benefit as if he had pleaded the said Statute in this cause and this defendant for the reasons and under the circumstances aforesaid is advised and insists that the said Complainant is not entitled to any relief against this defendant touching the matters complained of in the said Bill — And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this that there is any other matter cause or thing in the said Complainants said Bill of complaint contained, material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied is true to the knowledge or belief of this defendant, all of which matters and things this defendant is ready and willing to aver maintain and prove as this Hon. Court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained —

Robert McConnell

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By Tompkins & Stoppel
Solrs for Defts

The State of Ohio } ss.
Morgan County } I, Robert McConnell being duly sworn according to law deposes and says that all the several matters and things which are set forth in the foregoing answer from my own knowledge and the information of others I believe to be true in substance and fact.

Robert McConnell

Sworn to by the above named Robert McConnell and subscribed by him in my presence this 27th day of November A.D. 1857.

W. W. McCarty, Justice of the Peace

Justices 15cts paid by Defts.

The State of Ohio } ss.
Morgan County } I, George S. Welsh, Clerk of the Court of Common Pleas in and for said County, do hereby certify that that W. W. McCarty Esqr before whom the above affidavit was Executed and acknowledged was at the date thereof an acting Justice of the peace within and for said County duly commissioned and sworn, that he had good right and lawful authority to take said affidavit and acknowledgement, that the same is in due form of law and that the signature of said Justice thereto is

genuine— Witness my hand and the seal of
Our said Court of Common Pleas at
McConnelsville in said County this 27th
day of November a. D. 1857—
George S. Welsh, Clerk

(Seal)

Clks fees 50 cts Rob by Left

The State of Ohio }
Morgan County } Ss. I Lucius S. Marsh, Presid-
ing Judge of the Court of Com-
mon Pleas within and for the first Subdivision
of the Eighth Judicial District of the said State
which said subdivision of said district embrac-
the County of Morgan in said State, do hereby
certify that the hepre named George S. Welsh
is and was on the 27th day of November a. D. 1857
the Clerk of said Court within and for the said
County of Morgan, and that his attestation aforesaid
is in due form of law— Given under my
hand at McConnelsville this 1st day of December
a. D. 1857—

Lucius S. Marsh Judge Court Com. Pleas
first Subdv Eighth Judicial District

On the back of which said answer the following
indorsement appears—

Filed Decr 7th 1857— S.W. Guiteau. Clk.

And afterwards at the December Term a. D. 1857

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of said Court began and held in pursuance of law in and for said County on the first Monday of December A.D. 1857, & sit on the 9th day of December the same being one of the days of said Term of said Court the following among other entrys appears of record in said cause—

Ch. 14 Jacob S. Billhart
vs
Robert M Connell
Joseph M Connell } Chancery Injunction

And now at this day came the said Complainant by his Solicitor and files his exceptions to the answer of Robert M Connell one of the Defendants herein

Jacob S. Billhart
vs
Robert M Connell &
Joseph A. M Connell } In the Circuit Court of Stephenson County

And now on this day comes the said Complainant and excepts to the answer of Robert M Connell one of the Defendants in this cause for the following reasons, to wit:

1st The answer is sworn to by the said Robert M Connell, the answer under oath being waived in the Bill—

2nd The said Robert does not answer and say whether he authorized the said Joseph A. M Con-

well as his agent to sell the land mentioned in the Bill as his land—

3rd The answer is otherwise informal and insufficient—

A. D. Meacham
Sol for Compt

on the back of which the following endorsement appears— Filed Dec 9. 1857—

L. M. Switzer, Clk

And afterwards to wit: on the 13th day of January A.D. 1858 the same being one of the days of the aforesaid December Term of said Court the following among other entrys appears of record in said cause—

Ch, 14 Jacob S. Billhart
vs
Robert M Connell &
Joseph A. M Connell } Chancery Injunction

And now at this day came the Complainant by his Solicitor and files his motion to strike from the files the Jurat to the answer of Robert M Connell for the reason that a sworn answer is waived in the Bill and on hearing of said motion It is considered and ordered by the Court that the said jurat be so stricken from the files

29 which said Motion is as follows to wit:

Jacob S. Billhart } In the Circuit Court
vs } Step Co Dec 1857
Robert McConnell et al }

And now on this day comes the Complainant by Meacham his Sol. and moves the Court to strike from the files the pleat to the answer of Robert McConnell for the reason that a sworn answer is waived in the bill — U. D. Meacham
Sol for Compt
on the back of which the following endorsement appears — Filed Jan 13. 1858 L. McCutcheon Clk

Ch, 14 Jacob S. Billhart } Chancery Injunction
vs
Robert McConnell &
Joseph A. McConnell }

And now again came the said Complainant by his Solicitor and files proof of publication of Notice to Defendants and moves the Court for Judgment by default against Joseph A. McConnell and the said defendant Joseph A. McConnell having been three times solemnly called came not but made default It is considered and ordered by the Court that the Complainants bill be taken as confessed

30 as against him, and that the same be set for hearing ex parte -

31 And afterwards to wit: On the 18th day of January A.D. 1858 as yet of the aforesaid December term of said Court the following among other entries appears of record in said cause -

Ch. 14 Jacob S. Brillhart
vs
Robert McConnell &
Joseph A. McConnell
} In Chancery

And now comes the said Complainant by his Solicitor and files his Replication to the answer of defendant Robert McConnell

which replication is as follows, to wit:

Jacob S. Brillhart
vs
Robert McConnell &
Joseph A. McConnell
} In the Circuit Court of Stephenson County Dec Term 1857 -

The Replication of Jacob S. Brillhart Complainant to the answer of Robert McConnell defendant -

This Repliant saving and reserving to himself now and at all times hereafter all manner of benefit and advantage of Exception which may be taken to the manifold insufficiences of the said answer, for Replication thereunto says, that he will aver, maintain &

prove his bill of complaint to be true certain and sufficient in law to be answered unto, & that the answer of the defendant is untrue, uncertain and insufficient to be replied unto by this repliant, all of which matters and things this Repliant is ready to aver maintain and prove as this Court shall direct and humbly prays as he has already prayed &c

U. D. Meacham, Sol for Comp

On the back of which the following endorsement appears - "Filed Jan 18. 1858 Wm. Guitean. clk

And afterwards at the April term A. D. 1858 of said Court began and held in pursuance of law in and for said County on the first Monday of April A D. 1858, to wit: on the 12th day of April the same being one of the days of said Term of said Court the following among other entrys appears of Record in said cause -

Ch, 8

Jacob S. Billhart
To
Robert M Connell &
Joseph M Connell

Injunction

On Motion of the Defendants by their Solicitor leave is given to the Clerk to open depositions on file herein -

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And afterwards on the 23rd day of April A.D. 1858, the same being one of the days of the aforesaid April term of said Court the following among other entry's also appears of record in said cause

Ch Jacob S. Billhart
vs
Robt McConnell &
Joseph McConnell } Injunction

On Motion of the Complainant by his Solicitor, It is ordered by the Court that leave be given him to amend his Bill herein by making additional parties to suit—

And afterwards at the December term A.D. 1858, of said Court began and held in pursuance of law in and for said County on the first Monday of December 1858, to wit on the 9th day of December the same being one of the days of said term of said Court the following among other entry's appears of Record in said cause—

Ch, 8 Jacob S. Billhart
vs
Robt McConnell &
Joseph McConnell } Injunction

On Motion of said Complainant by his Solicitor leave is given to open depositions on file in this cause

And afterwards at the April Term. A.D. 1859 of said Court began and held in pursuance of law in and for said County on the first Monday of April A.D. 1859. to wit: On the 21st day of April the same being one of the days of said term of said Court the following among other entries appears of record in said cause—

Ch. C

Jacob S. Billhart
vs
Robert McConnell &
Joseph McConnell

Bill in Chancery

On Motion of said Complainant by his Solicitor, leave is given him to amend his bill instanter—

And afterwards on the 22nd day of April, A.D. 1859, the same being on of the days of said term of said Court the following among other entry's also appears of record in said cause—

Ch. C

Jacob S. Billhart
vs
Robert McConnell &
Joseph McConnell

Injunction

Now comes the said Complainant by his Solicitor & enters his motion to suspress the 6th & 7th interrogatories and answers to the same in the deposition of Kahler and after arguments of counsel & the Court being

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advised in the premises, the motion is overruled thereupon the said Complainant dismisses his Bill as to Defendant Joseph McConnell- It is thereupon considered and ordered that said Defendant Joseph McConnell have and recover of said Complainant his costs by him about his suit in this behalf expended and that he have Execution for the same-

And afterwards on the 23rd day of April A.D. 1859, the same being one of the days of said April term of said Court the following among other entry's appears of record in said cause-

Ch. C

Jacob S. Billhart
vs
Robt McConnell &
Joseph McConnell

Bill in Chancery

Now comes the Complainant by Meacham his Solicitor, and files his affidavit for a continuance in this cause and on his motion it is ordered that this cause be continued at his costs of term- It is thereupon further ordered that said Defendants have and recover of said Complainant their costs by them about their suit at this term expended, and that they have Execution for the same- And now comes the said parties and file their Stipulations that the testimony on the part of the Complainant shall be closed before the

1st day of the September Term of this court-

Which said affidavit above mentioned is in the words and figures following, to wit:

State of Illinois
Stephenson County } ss. A. D. Meacham being first duly sworn says that he is the atty of Jacob S. Brillhart in the cause now pending in the Circuit Court of said County wherein Brillhart is Complainant & Robert McConnell is the Defendant, that he can not try the cause at this term because of the absence of Joseph A. McConnell a material witness for the Pltff, that he expects to prove by said Witness that Brillhart wrote to Joseph A. McConnell two letters in which he accepted the offers or propositions contained in the letters signed by Joseph A. McConnell & copies of which are attached to the Bill of Complaint in this cause, and that Robert McConnell directed Joseph A. McConnell to write the letters copies of which are attached to the Bill in this cause- That he knows of no other witness by whom he can prove said facts, that he has used due diligence to get the testimony of the said Witness but can not find where he is, that he has made for the last year diligent and careful inquiry

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as to the whereabouts of the said Joseph A. McConnell, and has not as yet been able to learn where he is, and if this cause is continued to the next term of this court he believes we can have the testimony of the said Joseph A. that this application is not made for the purpose of delay but that Justice may be done—

Subscribed and sworn to before me this 23rd day of April 1859, L.W. Guiteau, clk

U. D. Meacham

On the back of which affidavit the following endorsements appears— Filed Apl 23rd 1859—

L.W. Guiteau, clk

Which said Stipulation of the parties above mentioned is in the words and figures following, to wit;

Jacob S. Brillhart vs Robert McConnell

In the Circuit Court of Stephenson County, Illinois April Term 1859—

It is hereby stipulated and agreed on the part of said Complainant and defendant that the testimony in this cause shall be closed before the first day of the September term of this court a.D. 1859— U.D. Meacham for Brillhart

J.W. Bailey for Deft

On the back of which the following endorsement appears— "Filed Apl 23rd 1859 L.W. Guiteau, clk

And afterwards on the 25th day of April 1859 as yet one of the days of said term of said Court the following among other entry's appears of record in said cause-

Ch. 6 Jacob S. Brillhart
vs
Robert McConnell } In Chancery
On motion of defendant by his Solicitor leave is given to file an amended answer

And afterwards, to wit: at the December term A.D. 1859, of said Court began and held in pursuance of law in and for said County on the first Monday of December 1859, to wit: On the 1st day of February A.D. 1860- as yet one of the days of the aforesaid December term of said Court the following among other entry's appears of record in said cause-

Ch. 5 Jacob S. Brillhart
vs
Robert McConnell } Injunction
Now comes Complainant by Meacham his Solicitor and files his affidavit for a continuance in this cause, and on his motion it is ordered that a continuance be granted upon condition that Complainant file sufficient additional security for costs by Friday morning next-

which said affidavit is in the words & figures following, to wit:

State of Illinois } In the Circuit Court
Stephenson County } ss. Stephenson County Ill.

Jacob S. Brillhart }
vs } In Chancery
Robert McConnell }

A. D. Meacham being first duly sworn upon his oath says that he is the Sol of Complainant in this cause, that he can not safely proceed to the hearing of this cause at this time for the reason that Joseph A. McConnell is a Material witness for the complainant in this cause, that since the April term of this court, he has diligently inquired as to the whereabouts of the said Joseph A. McConnell, and has not been able to find out where he lives, that the said McConnell formerly lived in the State of Ohio and came to this State some three or four years ago, and a short time thereafter left this State as this affiant is informed and has gone to some parts unknown to this affiant. That this affiant has made inquiries of every person that he supposed knew where said McConnell lives, but was unable to ascertain his whereabouts, that at the time the stipulation filed in this cause was made the counsel for Defts & this affiant, this affiant supposed that said McConnell

lived in Ohio. but this affiant since learned, that he does not now and has not for some time lives in Ohio. and this affiant after diligent inquiry has been unable to find out where said McConnell lives at this time but if this cause is continued until the next term. he believes he can have the Deposition of said McConnell ready at that time - This affiant expects to prove by said McConnell he as the agent of said Deft and for himself wrote the letters files as exhibits with the Bill in this cause and that the Deft recieved two or three letters from Complainant accepting the proposition contained in the said Exhibits - That this affiant is informed that said Letters are now in the poseision of said Joseph A. McConnell, and that it is necessary for the Complainant to have said Letters as Evidence on the hearing of this cause, that true copies of said letters are set forth in the case of McConnell vs Billhart in the 17 Vol Ill Reports; that this affiant has tried to Obtain said letters but has been unable to obtain them up to this time, and this affiant is now believes that said letters are not now in this state, and the fregoing facts this affiant can not prove by any other witness; and this affiant has used all the diligence at his command to get these letters but has been unable, that this affiant

41 is anxious to have this cause brought to a hearing as the opposite party can be, but up to this time has been unable to obtain the foregoing proof, and this affiant says that this application is not made for the purpose of delay, but for the reason above stated and therefore asks, that this cause be continued until the next term of this court—

Subscribed and Sworn to before me this 1st day of Feb. 1860. L. W. McGuitian. Clk

W. D. Meacham

On the back of which the following endorsement appears—

Filed February 1. 1860 L. W. McGuitian. Clk

And afterwards on the 4th day of February 1860 the same being one of the days of said December term of said Court, the following among other entry's appears of Record in said cause—

Ch Jacob S. Brillhart vs Robert McConnell } Injunction

On Motion of Defendant by Bailey his Solicitor, it is ordered that he have leave to withdraw his answer from the files, and file an amended answer within thirty days—

And afterwards at the April term A.D. 1860, of said Court began and held in pursuance of law in and for said County, to wit: on the 1st day of May 1860, the same being one of the days of said April term of said Court, the following among other entry's appears of record in said cause

Ch. 2 Jacob S. Billhart
vs
Robert M Connell } Bill in Chancery

Now comes A. D. Meacham Solicitor for complainant and files his affidavit for a continuance, and on his motion after arguments of counsel, it is ordered that this be continued at Complainants cost of term It is thereupon considered and ordered, that said defendant have and recover of said complainant his cost by him about his suit in this behalf expended and that he have Execution for the same-

which said affidavit is in the words and figures as follows, to wit:

State of Illinois }
Stephenson County } ss. A. D. Meacham, being first duly sworn, says that he is the Solicitor for the Complainant in the suit now pending and undetermined in the Circuit

Court of said County, where Jacob S. Billhart is Complainant & Robert McConnell Defft that the Complainant can not safely proceed to the trial of this cause, at this Term for the reason of the absence of Joseph A. McConnell a Material witness for the Complainant, who this affiant expects and believes he will be able to prove and that said Witness testify that Robert McConnell authorized him to sell the land described in the Bill in this cause for $500. in A.D. 1853. to Billhart, that this affiant can not prove said fact by any other witness, that this affiant has made for the last year diligent & frequent inquiry for said Joseph A. McConnell, and was not able to find his residence until last Friday, when he learned for the first time that he had taken up his residence at Geneseo in Henry County in this State, that this affiant has frequently inquired of persons who were supposed to know said Joseph A. McConnells residence and some said he was in Ohio and others told me he was in California, and recently and during this Term of this Court this affiant learned that Joseph A. McConnell lived in Henry County in this State and this affiant immediately wrote to the Post Master at Geneseo and last Friday received a letter from said Post Master, that McConnell had taken up

his residence in Henry County and was there at that time, and since this affiant received said information he has not had time to get the said McConnells testimony for this term and if this cause is put off until the Sept term this affiant will be able to have the testimony of said Witness for the next term That this application is not made for the purpose of delay but to obtain the Testimony of said Witness this affiant has used all the exertions in his power to find where said Witness resides, but was not able to learn his whereabouts until last Friday- This affiant further says that Joseph A. McConnell is now as this Afft is informed in possession of two letters written by him one to Dr Michener & one to Complainant selling the land mentioned in the Bill to Brillhart & this affiant must have the said letters to be used as evidence in this cause, and further this affiant says not-

Subscribed & sworn to } W. D. Meacham
before me this 1st day of }
May 1860 S. M. Guitteau Clk

On the back of which affidavit the following endorsement appears "filed May 1st 1860-"

S. M. Guitteau, Clk

And afterwards at the September Term, A.D. 1860. of said Court, began and held in pursuance of

45 law in and for said County to wit: on the 15th day of September the same being one of the days of said term of said Court, the following among other entry's appears of record in said cause—

Ch, 2 Jacob S. Brillhart
vs
Robert McConnell } Bill in Chancery

On Motion of ~~said~~ complainant by Meacham his Solicitor, it is ordered that an attachment issue for a Joseph A. McConnell a defaulting Witness in this cause—

And afterwards on the 21st day of September a.D. 1860, at yet of said September term of said Court the following among other entry's appears of record in said cause—

Ch, 2 Jacob S. Brillhart
vs
Robert McConnell } Bill in Chancery

On Motion of said Complainant by Meacham his Solicitor, it is ordered that Joseph Carey be substituted as security for costs in place of Urban D. Meacham he being needed as a Witness and it is so done. And now this cause having come on to be heard upon the proofs and allegations of the respective parties, after

arguments of counsel and the Court being fully advised in the premises- It is ordered and adjudged that the bill be dismissed at the Complainants cost It is thereupon considered and ordered that said defendant have and recover of said Complainant his costs by him about his suit in this behalf expended and that he have Execution for the same- And the said Complainant prays an appeal and it is ordered that the same be allowed upon Complainants filing his bond with the Clerk of this Court in the Sum of Five Hundred Dollars properly conditioned to said Defendant with Urban D. Meacham, as Surety within ninety days-

And on the 12th day of April 1858 was filed and now appears among the files in this cause- the following Depositions & is in the words & figures following, to wit:

State of Illinois } ss- In the Circuit Court of
Stephenson County } Stephenson County, Illinois
of the April Term A.D. 1858-
In Chancery-

Jacob S. Brillhart
vs
Robert McConnell &
Joseph A. McConnell

To Jacob S. Brillhart the above named Complainant or to Urban D. Meacham Esq his Solicitor and Attorney-

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You will take notice that on the 26th day of February A. D. 1858, between the hours of nine, O'Clock A. M. and six o'Clock P. M. of that day I will by myself or my Solicitor attend at the Office of the Clerk of the Circuit Court of said County of Stephenson for the purpose of suing out a Dedimus Potestatum or Commission under the seal of said Court directed to N. W. McCarty Esqr of the County of Morgan in the State of Ohio as Commissioner to take the deposition of Reuben Kahler of said County and State on the Interrogatories of which a copy is hereto annexed to be read in evidence, on the trial of the above entitled suit now pending & undetermined in said Court, on the part of the undersigned one of the defendants therein when and where you can attend and file cross Interrogatories if you see proper— Yours &c

Robt McConnell

By Tompkins, Cooper & Bailey

his Solicitors

I hereby acknowledge due service on me of a notice of which the within is a copy and of a copy of the interrogatories hereto attached this 15th day of February A. D. 1858, at Freeport Stephenson County Illinois—

U. D. Meacham

Atty for Complainant

In Chancery

Interrogatories to be administered to Andrew Kahler a resident of Morgan County in the State of Ohio, a Witness to be produced sworn and examined in a certain civil cause now depending in the Circuit Court of Stephenson County, in the State of Illinois on the Chancery side thereof in which Jacob S. Brillhart is Complainant and Robert McConnell & Joseph 2d McConnell are Defendants on the part of the said Defendant Robert McConnell in pursuance of the Commission hereto annexed

First Interrogatory What is your name, age, occupation, and place of residence?

Second Interrogatory Do you know the parties Complainant and Defendants in the title of these interrogatories named, or either of them and which of them - and how long have you known them respectively, or such of them as you do know?

Third Interrogatory - Were you at any time during the year 1853, or thereabouts an acting Justice of

49 of the Peace in and for the Township of Morgan in the County of Morgan and State of Ohio? If yea. how long and during what time, were you such Justice of the Peace?

Fourth Interrogatory—

Did you while such Justice of the peace, take and certify the acknowledgement of said Robert McConnell of any deed from him to said Jacob S. Brillhart of any lands and Real Estate situate and lying within the State of Illinois? If yea. of what lands and Real estate? describe the same fully and particularly— Also declare when such acknowledgement was so taken by you?

Fifth Interrogatory—

Were any other persons than the said Robert McConnell present before you at the time of taking and certifying said acknowledgement? If yea. who were such person or persons and what disposition if any did said Robert McConnell then and there make of said Deed?

Sixth Interrogatory—

Did you, or not, at the time of taking said acknowledgement hear any conversation between said Robert McConnell and Joseph McConnell

respecting said Deed and the disposition thereof to be made by the said Joseph A. McConnell? if yea, How did such conversation arise and what passed between them on that subject? declare said conversation fully according to the best of your knowledge, remembrance and belief -

Seventh Interrogatory -

Did or did not said Robert McConnell upon the delivery of said Deed to said Joseph A. McConnell accompany such delivery with any instructions, as to the disposition to be made of said deed by said Joseph A. McConnell, and as to the sale of the lands therein described to said Complainant? if yea, declare fully what such instructions were -

Eighth Interrogatory -

Do you know or can you set forth any other matter or thing which may in anywise tend to the benefit or advantage of the said defendant Robert McConnell in this cause? If yea, set forth the same, and all the circumstances and particulars thereof according to the best of your knowledge, remembrance and belief as fully, as if you had been thereunto particularly interrogated -

Tompkins, Hopper & Bailey - Defts Sol -

State of Illinois
County of Stephenson } ss. The People of the State of Illinois - To W. W. McCarty Esquire of the County of Morgan, in the State of Ohio - Whereas, it has been represented to us that Andrew Kahler of said County of Morgan in the State of Ohio is a Material Witness in a certain cause now depending in our Circuit Court, in and for the County of Stephenson aforesaid, between Jacob S. Billhart plaintiff and Robert McConnell & Joseph A. McConnell, defendants and that the said Witness, reside at the County of Morgan in the State of Ohio aforesaid, without the said State of Illinois, and that his personal attendance, can not be procured at the trial of the said Cause: Now know ye, that we in confidence of your prudence & fidelity have appointed you Commissioner to examine the said Witness - and do therefore authorize & require you to cause the said Witness, to come before you at such time and place as you may therefor designate and appoint, and diligently to examine the said Witness, on the oath or affirmation of the said Witness by you first duly in that behalf administered, and faithfully to take the deposition of the said Witness, upon all interrogatories inclosed with or attached to these presents, both on the part of the said plaintiff and of the said defendants and none others; and the same when thus taken

together with this commission and the said Interrogatories, to certify into our said Circuit Court with the least possible delay—

Witness Luther W. Guitteau, Clerk of our said Court, and seal thereof at Freeport in said County this 26th day of February A.D. 1858.

(Seal)

L. W. Guitteau, Clerk—

The deposition of Andrew Kahler of the County of Morgan and State of Ohio, a Witness of lawful age, produced, sworn and examined upon his corporal oath, On the 10th day of March in the year of Our Lord, One thousand Eight hundred and fifty eight at the office of the undersigned W. W. McCarty, in the town of W Connelsville, in the County of Morgan and State aforesaid by me W. W. McCarty a Commissioner duly appointed by a dedimus Potestatum or commission issued out of the Clerks Office of the Circuit Court of Stephenson County in the State of Illinois, bearing teste in the name of Luther W. Guitteau ~~Gentleman~~, Esq: Clerk of the said Circuit Court with the seal of said Court affixed thereto, and to me directed as such Commissioner for the examination of the said Andrew Kahler a Witness in a certain suit and Matter in controversy now pending and undetermined in the said Circuit Court, Wherein Jacob C. Brillhart is Plaintiff and Robert McConnell and Joseph.

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A. M Connell are the defendants, in behalf of the said Robert M Connell defendant, upon the interrogatories of the defendant Robert M Connell which were attached to and enclosed with the said Commission and upon none others, there being no interrogations nor cross interrogations of the said Plaintiff attached to or inclosed with the said Commission. The said Andrew Kahler being first duly sworn by me (as Commissioner aforesaid) as a witness in the said cause previous to the commencement of his examination to testify the truth as well on the part of the plaintiff as defendants in relation to the matters in controversy between the said plaintiff and the said defendants, so far as he should be interrogated. testified and deposed as follows:

Interrogatory first

What is your name, age, occupation and place of residence?

Answer to interrogatory 1st My name is Andrew Kahler, I am 44 years of age, and for my present occupation I am Sheriff of Morgan County Ohio, and acting in that capacity, I reside in McConnelsville in said County of Morgan

Interrogatory Second.

Do you know the parties Complainant and defendants in the title of these inter-

rogatories named, or either of them, and which of them and how long have you known them, respectively or such of them as you do know?

Answer to said interrogatory- I do not know the party complainant, but I am acquainted with the party defendants, I have known both of them for about fifteen years-

Interrogatory third-

Were you at any time during the year 1853, or thereabouts an acting Justice of the peace in and for the Township of Morgan in the County of Morgan and State of Ohio? If yea, how long & during what time were you such Justice of the peace?

Answer to third interrogatory. I was an acting Justice of the peace in and for the Township of Morgan and in the County of Morgan, Ohio, about the time mentioned- I was elected to the office of Justice of the peace on the 4th day of April 1853, and received my commission during the same month- I continued in the office for the term of three years, and was re-elected in the month of April 1856. and duly commissioned and continued to hold said office for about one year thereafter, when I removed out of the Township, and thereby the powers granted me under said Commission ceased- In the month of October 1857, I was

elected to the office of Sheriff, and consequently in the month of November last I removed back into Morgan Township—

Interrogatory fourth

Did you while such Justice of the peace, take and certify the acknowledgement by said Robert McConnell of any deed from him to said Jacob S. Billhart of any lands and Real estate, situate and lying within the State of Illinois? if yea. of what lands and Real estate? describe the same fully & particularly, also declare when such acknowledgement was so taken by you—

Answer to fourth interrogatory. While acting Justice of the peace, I did take and certify the acknowledgement of a deed from Robert McConnell and wife to said Jacob S. Billhart for the South East quarter of Section 25. Township 26. N of Range 7 East of the 4th principal meridian in the County of Stephenson & State of Illinois. While acting as Justice of the peace and when taking acknowledgements of deeds &c I was in the habit of noting the names of the grantors and grantees. I did so in this case, and also notes the County and State in which the land was situated. I did not at the time note any further description of the land, but according

to the best of my recollection and belief the description in said Deed fully corresponded, and was as I have heretofore and herein stated. The said acknowledgement of said deed was taken on the 27th day of July 1853. The deed was written some time previous to that—

Interrogatory fifth.

Were any other persons than the said Robert M Connell present before you at the time of taking and certifying said acknowledgement? If yea, who were such person or persons and what disposition if any did said Robert M Connell then and there make of said deed?

Answer to fifth Interrogatory. I do not remember of any one being present but Joseph A. M Connell and the wife of Robert M Connell I think Joseph was one of the witness to the signing of the deed by Robert M Connell and wife. The deed when executed and acknowledged by the said Robert M Connell and wife was handed to Joseph A. M Connell by Robert M Connell—

Interrogatory six.

Did you or not at the time of taking said acknowledgement hear any conversation between said Robert M Connell & Joseph A. M Connell

57 respecting said Deed, and the disposition thereof to be made by the said Joseph A. McConnell? If yea. How did such conversation arise, and what passed between them on the subject? Declare said conversation fully according to the best of your knowledge remembrance and belief -

Answer to interrogatory six - I did hear a conversation between Robert & Joseph A. McConnell in reference to the disposition of the said deed - The conversation arose at the time Robert McConnell delivered the deed to Joseph A. McConnell - In that conversation I heard Robert McConnell tell Joseph that the first thing he should do when he got to Illinois and before making any disposition of the deed or sale of the land, was to go to Dixon and ascertain whether a patent for said land was there, and unless the patent was there, he told him not to make any bargain for the sale of the land, Joseph assented to it -

Interrogatory Seven

Did or did not said Robert McConnell upon the delivery of said deed to Joseph A. McConnell accompany such delivery with any instructions as to the disposition to be made of said deed by said Joseph A. McConnell, and as to the sale of the land therein described to said Complainant? If yea. declare fully what such

instructions were -

Answer to seventh interrogatory - Robert McConnell did upon the delivery of said deed to Joseph A. McConnell accompany the same with instructions, as to the disposition to be made of said deed by said Joseph A. McConnell, and as to the sale of the lands described in said deed, In my answer to the sixth interrogatory just preceding I have given the substance of the instruction by Robert McConnell to Joseph A. in in reference to the sale of the lands and delivery of said deed to said complainant, to wit: That Robert McConnell on the delivery of the deed to Joseph A. McConnell told Joseph that he was to make no delivery of the deed nor any bargain for the sale of the land until he had gone to Dixon and learned that the patent for said land in said deed described was there. and that if the patent was not at Dixon, when he got there, then he should proceed no further in the matter, as he was not sure that he could receive a patent for the land in said deed described at all -

Interrogatory Eight -

Do you know or can you set forth any other matter, or thing which may in anywise tend to the benefit or advantage of said Defendant Robert McConnell in this cause? If yea, set forth the same and all the circumstances & particulars

thereof, according to the best of your knowledge, remembrance and belief as fully as if you had been thereunto particularly interrogated—

Answer to Eighth interrogatory— I remember hearing Robert McConnell & Joseph A. McConnell talking about two tracts of land that each of them owned in Illinois— a quarter Section each, making a half Section— The conversation arose out of some inquiry of mine about their owning land in that State— the Subject of the sale of said land came up in the cause of the conversation I heard Robert McConnell say in that conversation that he did not wish to bargain away his piece of land, as he did not know that he had a patent for it, and he would get himself into a pretty fix to sell and deed away land that did not belong to him— The land spoken of in this conversation, and the same land described in the deed heretofore testified about as acknowledged before me by Robt McConnell to the party Complainant. all of this conversation took place on the same day said acknowledgement was taken and further this deponent saith not—

Andrew Kahler

I, W. W. McCarty of the County of Morgan & State of Ohio, a Commissioner duly appointed to take the depositions of the said Andrew Kahler, a witness, whose name is subscribed to the foregoing

deposition, do hereby certify that previous to the commencement of the examination of the said Andrew Kahler as a witness in the said suit between the said Jacob S. Billhart plaintiff and the said Robert McConnell and Joseph A. McConnell defendants, he was duly sworn by me as such Commissioner to testify the truth in relation to the matters in controversy between the said Jacob S. Billhart plaintiff and the said Robert McConnell and Joseph A. McConnell defendants so far as he should be interrogated concerning the same. That the said deposition was taken at my office in the Town of McConnelsville in the County of Morgan and State of Ohio, on the tenth day of March A.D. 1858, and that after said deposition was taken by me as aforesaid, the interrogatories and answers thereto as written down, were read over to said witness: that thereupon the same was signed and sworn to by the said deponent, before me the oath being administered by me as such Commissioner at the place and on the day and year last aforesaid.

W. W. McCarty,
Commissioner

Fees taken Deposition $1.35
Certificate to same " .25
Fees of Witness Kahler .50
total $2.00 by Defendant Rob't McConnell

61 on the back of which depositions appears the following endorsement— "Filed April 12. 1858."

L. W. Leuteau, Clk

And afterwards on the 9 ~~day of December~~ 1858, was filed the following deposition which now appears among the files in this cause and is in the words & figures following, to wit:

State of Illinois } ss.
County of Stephenson }

The People of the State of Illinois.

To the Clerk of the District Court in and for the County of Dallas in the State of Iowa— Whereas it has been represented to us that Barak Michener of Dallas County Iowa is a material witness in a certain cause now depending in our Circuit Court in and for the County of Stephenson aforesaid between Jacob L. Billhart Complainant and Robert McConnell & Joseph A. McConnell, defendants and that the said Witness resides in Dallas County aforesaid, without the said State of Illinois and that his personal attendance cannot be procured at the trial of the said cause: Now know ye that we in confidence of your prudence and fidelity, have appointed you Commissioner to examine the said Witness, and do therefore authorize and require you to cause the said Witness, to come before you at such time and place as you may therefor designate and appoint, and diligently to examine the said Witness, on the oath or affirmation of the said Witness, by you first duly in that behalf administered and faithfully to take the

deposition of the said Witness upon all interrogatories inclosed with or attached to these presents both on the part of the said Plaintiff and of the said Defendant and none others; and the same when thus taken, together with this commission and the said interrogatories, to certify into our said Circuit Court with the least possible delay—

Witness Luther W. Guitteau Clerk of our said Court and Seal thereof at Freeport in said County this 28th day of July A.D. 1858, L.W. Guitteau. Clerk

By W.H. Barry. Dep—

(Seal)

State of Illinois
Stephenson County } ss. In the Circuit Court of Stephenson County, Illinois— In Chancery—

Interrogatories to be administered to Barak Michener of the County of Dallas in the State of Iowa a Witness to be produced Sworn and Examined under and by virtue of the annexed Commission before the Clerk of the District Court in and for the County of Dallas in the State of Iowa, residing in said County of Dallas in said State of Iowa the Commissioner therein named in a certain cause now pending at issue and undetermined in the Circuit Court of Stephenson County, Illinois, on

the Chancery side thereof wherein Jacob S. Brillhart is Complainant and Robert M Connell and Joseph A. M Connell are Defendants. Said deposition is taken on the part of the Complainant

First Interrogatory—

What is your name, age, occupation, and where do you reside?

Second Interrogatory—

Do you know the parties Complainant and Defendants in the title of these Interrogatories named or either of them and which of them and how long have you known them, or either of them, or either and which of them?

Third Interrogatory—

State whether you have ever acted as the agent of the said Complainant Brillhart in negotiating with the Defendants for the purchase of some land by the Complainant of the Defendants situate in the County of Stephenson & State of Illinois? If yea, State fully & particularly when and what took place between you and the said Defendants or Either of them—

Fourth Interrogatory—

Give a description of the land

mentioned in interrogatory third—

Fifth Interrogatory—

Look upon a 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 McConnelville O, May 17. 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 whom and to whom it was written—

Sixth Interrogatory—

State whether before the date of the paper writing mentioned in the fifth Interrogatory, you as the agent of the said Complainant wrote to the said Defendants or either or both and which of them concerning the land mentioned in said paper writing, and if yea State fully and particularly, what you wrote to the Defendants, or either or which of them, and if said letter or paper writing was in reply to what you wrote?

Seventh Interrogatory—

State whether you or the Complainant, and which if either of you, replied to the

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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 can not give the language, state the substance of the reply as near as you can recollect it?

Eighth Interrogatory—

State whether the Defendant Joseph A. McConnell 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 and said Defendant Joseph A. McConnell in relation to the Complainants paying for 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 said Defendant Joseph A. McConnell for the land mentioned in the third interrogatory, and state fully what the said Defendant Joseph A. McConnell said in relation to either of those pieces of land mentioned in 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—

Tenth Interrogatory—

State whether the said Joseph A. McConnell was or was not the agent of the Defendant Robert McConnell in negotiating the sale of the lands mentioned in the foregoing interrogatories?

Eleventh Interrogatory—

State whether or not you wrote to the Defendants or Either or both and which of them in relation to the Sale of the land mentioned in the foregoing interrogatories? If yea, State which of them & the contents of the letter you wrote as near as you can—

Twelfth Interrogatory—

State whether you know of the Defendant Joseph A. McConnell having in his possession a deed from Robert McConnell to the Complainant of the South East quarter of Section 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 yea State what you have heard him say in relation to it and when— Answer this interrogatory fully and particularly—

Thirteenth Interrogatory

State whether you know of Robert McConnell,

making a deed to Complainant and delivering the same to Joseph A. McConnell of the South 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, and if yea, all you know about it, and how you came to the knowledge answer fully—

Fourteenth Interrogatory—

State what you know if any thing in relation to money being tendered by the Complainant or his agent to the Defendant Joseph A. McConnell in payment for either or both of those pieces or parcels of land and State fully what you know about it and when—

Fifteenth 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 alluded to in said letter as being contiguous—

Sixteenth Interrogatory—

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—

A. D. Meacham
Solicitor for Complainant

To Mr Robert McConnell or to Joseph M. Bailey his Solicitor—

You are notified that on the 26th day of July A.D. 1858, between the hours of ten o'Clock A.M. and six o'Clock P.M. I will by myself or by my solicitor attend at the office of the Clerk of the Circuit Court of the County of Stephenson, State of Illinois for the purpose of suing out a Commission under the seal of the said Court, directed to the Clerk of the District Court in and for the County of Dallas in the State of Iowa, to take the Deposition of Barak Mickum a citizen of the said last mentioned County in the State of Iowa on the annexed interrogatories to be read as testimony in a certain suit now pending at issue and undetermined in the Circuit Court of Stephenson County, Illinois, on the Chancery side thereof in which Jacob S. Billhart is Complainant and the above named Robert McConnell and one Joseph A. McConnell are Defendants on the part of the

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complainant when and where you may attend and file Cross interrogatories if you think proper July 13th 1858.

Jacob S. Billhart
by A. D. Meacham, his Solr

I hereby admit due service on me of a copy of the foregoing interrogatories and the notice of which the foregoing is a copy this thirteenth day of July A. D. 1858.

Joseph W. Bailey
Solicitor for Robert M Connell

Cross Interrogatories to be administered to the said Witness Barak Michener in pursuance of the annexed Commission.

First Cross Interrogatory. State whether in your conversation or conversations, with the said Joseph A. McConnell known to by you in your above direct examination or in either of them the said Joseph A. McConnell stated to you that he did not know, whether his patent for the land in question in this suit had been arrived at Dixon, and that he was not authorized to deliver a deed of said land to Complainant unless the said patent was then at Dixon, or any thing to that effect, or on that subject - if yea, state the same fully and all the particulars and circumstances thereof

Second Cross Interrogatory—

If your answer to the forth direct interrogatory be yea, State fully & particularly by your means of knowledge of such agency of the said Joseph A. McConnell—

Third Cross Interrogatory—

Do you know any other matter or thing touching the matters in question that may tend to the benefit or advantage, of the said Defendant? if yea, declare the same fully and particularly and at large as if you had been interrogated thereto—

J. M. Bailey
Solicitor for Robert McConnell

"A"

McConnelsville, O. May 17, 53

Dr Michinor

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 lands 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 can not 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 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 too low, on our part will abide the consequences - And this agreement will hold good until 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 -

Dr B. Michener

Yours &c
Joseph A. McConnell

The deposition of Barak Michner of the County of Dallas and State of Iowa, a witness of lawful age, produced, sworn and Examined upon his corporal oath on the 27th day of

October in the year One thousand Eight hundred and fifty eight at the office Dole Stock, Clerk of the district Court in the town of Adel, in the County of Dallas and State of Iowa, by me Dole Stock a Commissioner duly appointed by a dedimus Potestatem or Commission issued out of the Clerks office of the Circuit Court of Stephenson County, in the State of Illinois bearing teste in the name of S. H. Gaitan Esq Clerk of the said Circuit Court with the seal of said Court affixed thereto and to me directed as such Commissioner for the Examination of the said Barak Wickens a witness in a certain suit, and matter in controversy, now pending and undetermined in the said Circuit Court wherein Jacob S. Billhart is Plaintiff and Robert McConnell Joseph A. McConnell are defendants in behalf of said Plaintiff as well upon the cross interrogatories of the Defendants as on the interrogatories of the Plaintiff which were attached to or inclosed with the said Commission, and upon none others— The said Barak Wickens being first duly sworn by me as a witness in the said cause previous to the commencement of his examination to testify the truth as well on the part of the plaintiff as the Defendant in relation to the matters in controversy between

the said Plaintiff and the said Defendants, so far as he should be interrogated- testified and deposed as follows-

Complainants Interrogatories

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

Answr My name is Barak Nichens, my age is fifty eight years, occupation, Physician My residence is Dallas County, State of Iowa

Second Interg- do you know the parties, Complainant and Defendants in the title of these interrogatories names, or either of them and which of them, or either of them, how long have you known them or either of them and which of them?

Answr. I am acquainted with Jacob S. Billhart and Joseph A. McConnell, I became acquainted with Jacob S. Billhart some time during the year A. D. 1852, and with Joseph A. McConnell during the year A. D. 1853-

Third Interg- State whether you have ever acted as the agent of the said Complainant Billhart in negotiating with the Defendants for the purchase of some land by the Com-

plaintiff of the Defendants, situate in the County of Stephenson and State of Illinois? if yea, State fully and particularly when and what took place between you and the said Defendants or either of them —

Answer I was requested by the Complainant Billhart to correspond with Robert M Connell and Joseph A. M Connell in relation to some land the said M Connells owned in Stephenson County, in the State of Illinois, the said Billhart being desirous of purchasing the same and that some time in the Spring of the year A.D. 1853, I wrote to the Defendants to know if those lands were for sale, and at what price I had information previous to writing from Wilson M Connell a brother of Joseph A. M Connell that Robert M Connell and Joseph A. M Connell was desirous of selling said lands, and I do not now recollect whether I directed my letter to Robert M Connell or Joseph A. M Connell or to both of them

Fourth Interg — Give a description of the land mentioned in interrogatory third

Answr — The lands referred to is the East half of Section No. Twenty five in Township Twenty six North Range Seven East in the County of Stephenson State of Illinois —

Fifth Interg

Look upon a letter or paper writing now here shown to you marked "A" purporting to be a letter written by Joseph A. McConnell to Dr Michner 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 whom and to whom it was written —

Answer. I recieved the letter above referred to marked "A" from Joseph A. McConnell said letter was written by Joseph A. McConnell to myself the lands referred to are the same as described in interrogatory the fourth —

Sixth Interg — State whether before the date of the paper writing mentioned in the fifth interrogatory, you as the agent of the said complainant wrote to the said defendants or either or both and which of them concerning the land mentioned in said paper writing and if yea, state fully and particularly what you wrote to the defendants, or either or which of them and if said letter or paper writing was in reply to what you wrote?

Answer. I did write for Brillhart to one or both of the McConnells, but do not now recollect

whether it was before the date of the letter or paper writing refered to, but my impression is that I wrote previous to the date of said letter and that the letter above refered to marked "A" is in reply to my letter—

Seventh Interg.- State whether you or the Complainant, and which of either of you replies to the letter or paper writing mentioned in fifth interrogatory, and if so State the subject matter of the reply in the language as near as you can, and if you can not give the language State the substance of the reply as near as you can recollect it—

Answer- I can not state which of us replied to said letter or paper writing, and can not give the language or substance of said reply except that the offer made by said McConnell to Brillhart was accepted by Brillhart—

Eighth Interg. State whether the defendant Joseph A. McConnell, 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 and said defendant Joseph A. McConnell in relation to the Complainants paying for 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 said defendant Joseph A. McConnell for the land mentioned in the third interrogatory, and state fully what the defendant Joseph A. McConnell said in relation to either of those pieces of land mentioned in the third interrogatory—

Answer— The defendant Joseph A. McConnell came to Freeport, Stephenson County Illinois on or about the first day of August A.D. 1853, & on hearing that he had arrived at the Stephenson House, I immediately called upon him and informed him that Brillhart was absent in Iowa, and had left me his agent to pay for the land about which we had negotiated and receive the deeds, & McConnell answered that he had just arrived, and was weary but would call upon me in my office— The next day or very shortly he did call at my office, he asked me if Brillhart was aware that his father had not received the Patent for his quarter Section, & told him that Brillhart was aware of that fact, but was willing to take his father's deed for said land, & then told him I would show him the funds which Brillhart had left with me for him— I took out of my pocket book a draft for five hundred Dollars, & think it was a new-

York draft which he looked at and said it was right- I told him the other Five hundred Dollars was deposited in Tayler & Bronson's bank and asked him to go with me to the Bank, and see if the funds were satisfactory- I stated to said Bankers the object of our call and they said that Billhart to deposite with them was currency, Mr Connell said that he would prefer Specie; they told him that they could give him currency on banks on which he could call as he returned home and receive Specie for it- he then expressed himself satisfied with the funds- Mr Connell told me that his father Robert Mr Connell had Executed a deed of his quarter Section to Billhart which he had then in his pocket, but he said he did not know whether Billhart could compel him to deed him the land or not, but he said he had remained at home I think about the first of July to meet him there and for that inconvenience he thought Billhart ought to pay his expenses from Mr Connelsville to Freeport, that if I would pay him One Thousand for the land, and in addition pay his Expenses out he would deliver me the deeds- I told him I was not authorized to pay more than One Thousand Dollars- He then said he would not deliver the deeds, but wait till ——

Brillhart should return—

Sixth, Interg— State whether the lands alluded to in the letter mentioned in the fifth interrogatory is the same described in this interrogatory?

Answr. It is—

Tenth, Interg— State whether the said Joseph N. McConnell was or was not the agent of the defendant Robert McConnell in negotiating the sale of the lands mentioned in the foregoing interrogatories?

Answr. He told me he was authorized by Robert McConnell to act for him—

Eleventh, Interg— State whether or not you wrote to the Defendants, or either or both, and which of them in relation to the sale of the land mentioned in the foregoing Interrogatories? if yea, state which of them, and the contents of the letter you wrote as near as you can—

Answr, I did write one or more letters to the defendants, the contents were concerning the purchase of their lands by Brillhart, I do not recollect the language—

Twelfth Interr. State whether you know of the defendants Joseph A. McConnell having in his possession a deed from Robert McConnell to the Complainant of the South East quarter of Section 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 yea, state what you have heard him say in relation to it, and when; answer this interrogatory fully and particularly—

Answer. At the time the defendant Joseph A. McConnell called upon me in my office as stated in my answer to the eighth, interrogatory, he informed me that he had a deed in his possession from Robert McConnell to Complainant for the land referred to in the third interrogatory. I know nothing further in relation to the matter—

Thirteenth Interr. State whether you know of Robert McConnell making a deed to Complainant and delivering the same to Joseph A. McConnell of the South East quarter of Section twenty five, Town twenty six, North of Range Seven East in the County of Stephenson with instructions to deliver the same to the Complainant, and if yea, all you know about it, and how

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you came to the knowledge—

Answer. I have stated in my answer to the twelfth interrogatory all I know in relation to a deed from Robert McConnell to the complainant—

Fourteenth Interr. State what you know if anything in relation to money being tendered by the complainant or his agent to the defendant Joseph A. McConnell in payment for either or both of these pieces or parcels of land and state fully what you know about it & when

Answer. I have stated that as the agent of Billhart I tendered the defendant Joseph A. McConnell One thousand Dollars in payment for the East half of Section twenty five in Township twenty six North of Range seven East in Stephenson County, State of Illinois, I can only say in addition that Billhart made an arrangement with me a few days after my interview with Joseph A. McConnell in my office, for Gold which he said he would tender McConnell for said land, Billhart rode with me in my buggy to my farm, where McConnell made his home at the time for that purpose and wished me to witness the tender, but I declined for the reason that I was about to leave Illinois, I believe James L. Michener and others were present I was not.

Fifteenth. Interg. 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 alluded to in said letter as being contiguous

Answer. The land above described is contiguous to land which I had at the time Eighty acres of my improved land (now belonging to Martha L. Biggs) is the East half of the North East quarter of Section thirty six in the Township above named, and two fractional lots which I then owned, on which my son James L. Michner now resides, bound the said land of the McConnells on the entire East line, the said fractional lots are in Section thirty, Township twenty six, North of Range & eight East in Stephenson County, State of Illinois—

Sixteenth Interg. 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 yea, declare the same fully and at large, as if you had been particularly interrogated thereto—

Answer. I recollect nothing more—

First Cross Interrogatory. State whether in your

conversation or conversations with the said Joseph A. McConnell known to by you, in your above direct examination, or in either of them, the said Joseph A. McConnell stated to you that he did not know whether his Fathers patent for the land in question in this suit had been arrived at Dixon, and that he was not authorized to deliver a deed of said land to Complainant unless the said Patent was there at Dixon, or any thing to that effect or on that subject? if yea, state the same fully and all the particulars and circumstances thereof —

Answer. He asked me if Billhart was aware that his Father had not recieved his Patent I think he said he would inquire in the Land office at Dixon and see whether it had arrived or not, I do not recollect whether he said he was to withhold his fathers deed or not if the patent had not come —

Second Cross Interr. If your answer to the tenth direct interrogatory, be yea, state fully and particularly your means of knowledge of such agency of the said Joseph A. McConnell —

Answer. As I have before stated Joseph A. McConnell informed me in Freeport that he was authorized to act for his father Robert McConnell

Third Cross Int.- do you know any other matter or thing touching the matters in question that may tend to the benefit or advantage of the said Defendant? if yea, declare the same fully and particularly and at large as if you had been interrogated thereto-

Answr. I recollect nothing more

B. Michner

I, Cole Noel, Clerk of the district Court in & for the County of Dallas, State of Iowa a Commissioner duly appointed to take the deposition of the said Barak Michner a Witness whose name is subscribed to the foregoing deposition do hereby certify that previous to the commencement of the examination of the said Barak Michner as a Witness in the said suit between the said Jacob S. Billhart Plaintiff and Robert McConnell and Joseph A. McConnell defendants he was duly sworn by me as such Commissioner to testify the truth in relation to the matters in controversy between the said Jacob S. Billhart plaintiff and the said Robert McConnell & Joseph A. McConnell defendants, so far as he should be interrogated concerning the same that the said deposition was taken at my office in the Town of Adel in the County of Dallas and State of Iowa, on the 27th day

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of October a. D. 1858, and that after said deposition was taken by me as aforesaid, the interrogatories and answers thereto, as written down were read over to the said Witness, and that thereupon the same was signed and sworn to by the said Barak Michener before me the said being administered by me said Commissioner at the place and on the day and year last aforesaid — In Witness whereof I have hereunto subscribed my name and affixed the seal of the district Court of Dallas County, Iowa, this 27th day of October a. D. 1858. Cole Noel, Clerk

(Seal)

Commissioners fees 3.35 Commissioner
Postage .15
Witness B Michener 1.40
Paid by Complainant 4.90

On the back of which the following endorsement appears "Opened & filed Dec 9. 1858 —

L. W. Guiteau, Clerk

And afterwards on the 22nd day of September 1860 the following certificate of testimony was filed and now appears among the files in this cause — and is in the words & figures following, to wit:

State of Illinois } ss. In the Circuit Court of
Stephenson County } Stephenson County, Ill.

Jacob S. Billhart }
vs } Chancery
Robert McConnell }

Jacob A. McConnell called as a witness for the Complainant being duly sworn

testifies as follows, to wit: In the Summer of 1853, resided at McConnellsville Ohio, I recieved one or two letters from Jacob S. Billhart the letters I gave to my attorney Charles A. Clark of Zanesville, have not had them in my possession since that time and have not got them now— during the Summer of 1853, resided in the family of my father in McConnellsville Ohio resided there at the time the letters was received here the witness was shown his answer in the case of Jacob S. Billhart vs Joseph A. McConnell and says that it was his answer that he read it over and that he swore to it— There might have been three letters thinks there was, thinks the letters set forth in said answer shown him to be true copies of the letters recieved from Billhart— I received a letter purporting to from Dr Michener, the letter came through the Post office, left it with Mr Clark had a brother out in Illinois in the Spring of 1853, after he returned home, resided with my father— brother returned home in the month of May 1853. his name was Wilson McConnell

Here witness was shown letter dated McConnelsville Ohio. May 17th 1853, and signed by Joseph A. McConnell now in the deposition of Dr Michener, witness said he wrote that letter— said he had recieved a

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letter from Dr Michener inquiring whether father and I would sell the land contiguous to his & the letter of May 17th was written in reply to that letter- My brother informed us that Dr Michener had a friend who wanted to buy the land-

Before writing letter of May 17th/53, had a conversation with father, best of my recollection my father and I had a talk & thought we would offer the land for sale- This was about the time of writing the letter of May 17th- The conversation we had were likely to be embodied in the letters meaning the conversations had with father- The words in the letters "we" refers to father & myself, the word father refers to Robert McConnell the deft in this suit- The conversation I had with my father in regard to selling the land was embodied in the letter of May 17/53- Wrote it from information received from my brother Wilson- conversed with father in regard to selling the land- The conversation was embodied in this letter- I was acting for myself and so far as what is found in the said letter for my father Robert McConnell I wrote a letter to Michener and after I wrote one to Billhart- I wrote the one to Billhart in answer to the one he wrote to me- The one I wrote to Mr Billhart was dated About July 1st 1853- After receiving the letter from Dr Michener I and father had a conversation about

the price of the said land, the price fixed upon by us was $1000. for the half section - I think as near as I can remember after recieving the letter from Dr Michener father and I had a conversation - I said I would sell my land, he said he would sell his, the price was fixed, and then I wrote this letter — I recieved letters purporting to come from Jacob S. Billhart & Dr Michener dated Freeport Illinois - don't remember whether I recieved them from the Post office - I do not know of my own knowledge who wrote the letters do not know the handwriting of Dr Michener or Billhart - do not recollect of but one conversation with father in reference to the sale of the land he said he guessed the patent was at Dixon, that unless it was at Dixon or Freeport he would not make a sale - Witness said the letters mentioned in the answer of Joseph A. McConnell purporting to come from Jacob S. Billhart to McConnell was recieved by him from Billhart and are the ones he left with Charles A. Clark - I have no recollection that my father saw the letter I wrote to Dr Michener, my impression is he did not tell me to write any letter - I do not remember he had any knowledge of my meeting that letter, the conversation was this - I said I would sell my land, and he said he would sell his land provided his patent was at Dixon or Freeport - We then fixed upon the price

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that letter was not a transcript of our conversation – Wrote a letter to Billhart dated about the first of July 1853. thinks this is only one he wrote to Billhart – It was in reply to one received from Billhart, the first one rec'd from Billhart thinks the copy of one attached to the bill of complaint substantially a true copy – About the 1st august that season I came to Illinois and ascertained that my fathers patent had not arrived at Dixon or Freeport – the reason why it was not sent on by the government was there was a mistake in the assignment of the land warrant with which my fathers land was entered – It was returned by the government to Freeport, the warrant was then corrected and sent back –

John A. Clark sworn as a witness and testifies as follows, that he was the brother of Charles A. Clark, deceased that Chas A. Clark died in 1854 & that he John A. Clark was appointed his Executor, and took possession of all his papers took possession of the letters of Jacob S. Billhart to Joseph A. McConnell spoken of by the former witness, that he has made a thorough and diligent search through all the papers of the said Charles A. Clark and his own papers and can not find said letters, that he has searched for said letters two or three times, once or twice at the request of

Mr Meacham, and once at the request of J. A. McConnell and he has not been able to find them Nor the Solicitor of the Complainant offered to introduce in evidence the copies of the letters from said Jacob S. Billhart to Joseph A. McConnell in the Summer of 1853, & found in the answer of Joseph A. McConnell in a suit of Jacob S. Billhart vs Joseph A. McConnell, the said McConnell having stated that they were true copies —

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 the 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. Billhart

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Freeport, Ill. June 24. 1855.

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 Respt J. S. Billhart

Freeport Ill, July 9/55

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 Doctor Machenes, and then he could make me a deed. I want a warrantee deed— By so doing you would save the expense of coming out to Ill I am selling out tavern (or lease and furniture) 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 Machenes 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 Machenen can get it- Please and answer me Yours respectfully

J.S. Billhart

W.D. Meacham sworn says that he was in possession of a letter purporting to be a letter from Joseph A. McConnell to Mr Billhart. dated McConnelsville Ohio July 2 1853. that he saw the letter the last time among the papers in his office that he has made diligent and thorough search for said letter through all the papers in his office and has been unable to find it- That he first had possession of it in 1853 & the last time he saw it was in his office and among the papers in his office, that he then filed it away among the papers in his office where he supposed he could find it at any time, that he supposed he could put his hand upon it at any moment, that he has made diligent and thorough search for it and it can not be found- that the exhibit marked B. attached to the Bill in this cause is a true and Exact copy of the said letter that he made the copy attached to the Bill from the letter itself- Here the atty for the

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complainant offered in evidence as secondary evidence of the said letter, it being the copy of said letter -

"B"

McConnelsville O. July 2/53

Mr Billhart

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 arival & 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 conveyancy &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

The Sol for complainants then offered in evidence the deposition of Barak Michener and the exhibits thereto attached including letter of Joseph A. McConnell to Dr Michener dated McConnellsville O. May 17. 1853, and also the answer of the Defts as to the title to the land in question except all those parts of

of said deposition of Barak Michener relating to the deed from Robert McConnell to complainant brought to Ill. by J. A. McConnell which by agreement of parties were suppressed from the said deposition and not read in evidence & not to be taken as a part of it - the foregoing being all the evidence in the cause

Benj R. Sheldon

on the back of which the following endorsement appears - Filed Sept 22nd 1860 -

L. W. Gaitian. Clerk

And afterwards on the 17th day of December A D 1860 - the following bond was filed in said cause -

Know all men by these presents that we Jacob S. Brillhart, of the State of Michigan and U. D. Meacham of the City of Freeport in the County of Stephenson and State of Illinois are held and firmly bound unto Robert McConnell in the penal sum of Two Hundred Dollars lawful money of the United States to be paid to the said Robert McConnell and for the payment of which well and truly to be made we bind ourselves our heirs, Executors and administrators jointly and severally and firmly by these presents sealed with our seals

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and dated this 17th day of December A.D. 1860- Whereas the above bounden Jacob S. Brillhart brought his bill of complaint in the Circuit Court of Stephenson County against the above named Robert McConnell on the Chancery side of said Court and on final hearing of the same at the September term of the said Court A.D. 1860, the same was dismissed at the costs of the said Complainant and the said Jacob S. Brillhart thereupon prayed an appeal to the Supreme court and the same being allowed- Now the condition of this obligation is such that if the said Jacob S. Brillhart shall duly prosecute his said appeal, and shall pay the judgment, costs, interests and damages in case the judgment of the said Circuit Court in said cause shall be affirmed then this obligation to be void otherwise of full force and effect

Jacob S. Brillhart (Seal)
A D Meacham (Seal)

on the back of which bond the following endorsement appears" filed December 17. 1860-

A M Shaffer Clerk
by C W Gaitan. Dep

State of Illinois } ss- I, A. Wilson. Shaffer Clerk
Stephenson County }

of the Circuit Court within and for the County of Stephenson in the State aforesaid, do hereby certify that the foregoing is a true, complete & perfect transcript of the record and files in the above entitled cause wherein Jacob S. Billhart is Complainant & Robert McConnell is Defendant as the same appears of the Records and files in said cause in my office -

In testimony whereof I have hereunto set my hand and affixed the seal of Our said Court at Freeport in said County this 28th day of October A.D. 1861 -

J. Wilson Shaffer, Clerk -

by L. W. Guiteau, Dep -

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Jacob S. Billhart
vs
Robert M Connell

September Term A.D. 1860
Stephenson Co. Cir Court
Complt's Bill Costs

Doc Suit & Sumns 20c Taky Fil Bf Proch 15c Fil Bill 5c .40
Sumd Fil 40c Sug Fil Aff 15c Writ Sug 75c 1.30
Eutg Mo Contin with Alias Sumd 20c order Do 20c .40
J. B. Smith clerk — $2.10
Doc Suit 10 Sumd 1 Do Eutg Ap & Atty 15c Eutg Proof Pub 25c 1.40
Eutg Deft 20c Ord Do Confess 20c Mo Ref & Master 20c .60
" Ord Ref & M 20c Eutg Fil Rep to Am of Robt M Connell 25c .45
" Fil Stip of parties 25c Ord on Do 20c Ord Defts to Ans 20c .65
" Fil Mo Strike Jurat of R M C & Fr file 25c Ord Do 20c .45
" Fil Proof Pub & Ja M C 25c Eutg Deft Do 20c .45
" Fil Rep to Am of R M C 25c Op & Fil Dep 10c .35
Sug Dec Sol & Dallas Co 50c Dep & Morgan Co 50c 1.00
Op & Fil Dep 10c Eutg Mo Leave to Amend Bill 20c .30
Ord Leave Amend Bill 20c Mo Amend Bill Again 20c .40
Ord Do 20c Eutg Mo attach Ja M C 20c Ord Do 20c .60
Sug attach & Fil 25c 2 Subs & Fil 80c Mo Sust Pro C 20c 1.25
Eutg Ord Do 20c Ord Dis Bill as to Ja M C. 20c Sug Writ 15c .55
Sug & Fil Writ Aff 30 Fil Praec 5c Taky & Fil Copy Bond 15c .50
Eutg & Pr Appeal 20c Order Do 20c Fil Bill & Copy 5c .45
Bl Cert 30c Feebill & Cp 45c .75
12.25

Printers Fees Judson & McClure — Pub Notice 3.00
Sheriff Fees — D. N. Griff Exp Eutg Subp 1.75
" Taggart " " (Beede) .30
Witness Fees — Thomas North 1 day 1.00
" Jno A. McDonell 3 days 246 Miles 16.30 17.30

98

Com'r fees- Cole Steel Tatty (dep'ft by complt)	4.80
	39.90
J.W. Shaffer, clk for Transcript	26.00

Defendants Costs

Cutg appt & Sol 15c Cutg & fil Aff of R M C 25c	.40
" Mo leave to open Def't 20c Ord Do 20c	.40
" Mo deft for leave & amend Aff of R M Connell	.20
" Mo deft leave & withdraw Aff & aff again	.20
" Ord Do 20c Ord Judg't 20c Cutg Judg't 25c	.65
" Sats Judg't 15c Ord Exp 20c Exp & fil 45c Ord Exp 10c	.90
Shff ret 10c Bl Costs 30c Cff & seal 35c	.75
	3.50
Com'r fees- W. H. McCarty Tatty Def't 1 day deft	2.00
	5.50

State of Illinois
Stephenson County } ss.

I, J. Wilson Shaffer clerk of the Circuit Court within and for said County do hereby certify that the foregoing is a true and correct copy from the fee book in my office

Witness my hand and the seal of said Court this 28th day of March A.D. 1861. J. Wilson Shaffer, clerk

by J.M. Scritsen, Dep'y

State of Illinois }
Supreme Court } Third Grand Division
April Term 1861

Jacob S Bullbert Plff in Error
vs
Robert McConnell Deft in Error

Afterwards to wit
on the 16th Day of April A.D 1861 in the same
Term before the Justices of the Supreme Court
of the State of Illinois at the County of Labelle
Comes the said Jacob S Bullbert by
W D Meecham his atty and says that
in the Record and proceedings aforesaid and
also in giving the ~~Jud~~ Decree aforesaid there
is Manifest Error in this to wit

That the Decree Dismissing the Bill in
this cause is against the weight of evidence
in the Cause and

That a decree should have been made
by the Circuit Court agreeable to the
prayer of the Bill and the said Jacob
S Bullbert prays the decree aforesaid
for the Errors ~~aforesaid~~ in the Record
& proceedings aforesaid may be reversed
annulled and altogether held for nothing
& that he be restored to all things which he
has lost by reason of said decree &c

W D Meecham Atty for
Plff in Error