Anne Arundel County Set. } Then came Richard G. Hat-
The 27th day of January 1826. } -ton one of the subscribing
witnesses to the aforegoing last will and testament of John Shepherd
late of said County deceased and made oath on the Holy Evangely
of Almighty God that he did see the testator therein named sign and
seal this well and that he heard him publish pronounce and declare
the same to be his last will and testament that at the time of his so
doing he was to the best of his apprehension of sound and disposing
mind memory and understanding and that he together with Hen-
-ry C Drury of Chas. and Henry C Drury of Samuel the other
subscribing witnesses respectively subscribed their names as witnesses to the
will in the presence and at the request of the testator and all in the pre-
-sence of each other

Thos. H Hall Regr of Wills A A Coty

Anne Arundel County Set } Then came Henry C Drury of Sam-
The 25th day of March 1826. } -uel one of the subscribing witnesses
to the within last will and testament of John Shepherd late of said County
deceased and made oath on the Holy Evangely of Almighty God that
he did see the testator therein named sign and seal this will and that
he heard him publish pronounce and declare the same to be his last will and
testament that at the time of his so doing he was to the best of his appre-
-hension of sound and disposing mind memory and understanding and
that he together with Richard G Hutton and Henry C Drury of Chas.
the other subscribing witnesses respectively subscribed their names as wit-
-nesses to this will in the presence and at the request of the testator and all
in the presence of each other

Thos. H Hall Regr Wills A A Coty

Anne Arundel County Set } Then came Eliza Shepherd and Eliz-
The 12th day of April 1826. } -abeth Shepherd and made oath on the
Holy Evangely of Almighty God that the aforegoing Instrument of
writing is the true whole and last will and testament of John Shep-
-herd late of said County deceased that hath come to their hands
and possession and that they do not know of any other

Thos. H Hall Regr Wills A. A. Coty.

In Testimony that the aforegoing is a true Copy taken from Liber
T.H.H. No. 1 folio 275 one of the records of register Wills office for Anne
Arundel County.

Seal } I have hereunto set my hand and affix my seal of Of-
-fice this fifteenth day July eighteen hundred and forty
eight,

Benj. C Gantt Reg Wills A. A. County

And at the same time the Complainant aforesaid by his Solicitor
aforesaid filed in the said cause the following agreement

Joseph Shepherd
vs
Samuel Shepherd } In Chancery

It is agreed in this case that the property claimed
by the Complainant is worth more than his share of the whole real
estate of his mother including the same as a part of said estate and
that if the Chancellor should think any question of election arises in
the case he elects to take the part claimed in lieu of his portion as

one of the heirs at Law.

It is also agreed that the will of John Shepherd now filed may
be used as testimony as if regularly filed before the Commission

Cornelius McLean Sol for Complts

And at the same time came the defendants Mary Ann Bevin Eliza
C Bevin John W. Bevin and Charles Bevin Infants by Charles A.
Bevin their father and next friend by their Counsel aforesaid and filed
in the said Cause their exceptions to the Testimony in the words following
towit

Joseph Shepherd
vs
Samuel Shepherd
& others. } In Chancery

The defendants Mary Ann Bevan, Eliza
Ellen Brown, John Wm. Bevin and Charles
Bevin by Charles A Bevin their father and next friend they being
infants except to the testimony offered in this case by the Complain-
-ants for the following reasons.

1st. That the said testimony is offered to vary explain or contradict the
written paper, the receipt of Joseph Shepherd to his mother Mary
Shepherd a Copy of which is filed with the Complainants and is
therefore illegal and inadmissible,

2d. That the said Testimony is offered to prove a contract by parol in
relation to the transfer of Real Estate which should be in writing and that
therefore said testimony is contrary to the statute of frauds which these de-
-fendants plead and rely on as a defence to the Complainants pretentions
as set up in his bill.

A Randall. D. C. Wirt for defts Bevans

And afterwards towit on the 27th day of July 1848 the Chancellor
passed his decree in the said cause which was duly enrolled in the words
following towit.

Joseph Shepherd
vs
Saml Shepherd
et al. } In Chancery
July 1848.

This is a bill for the specific performance of a parol
Contract in relation to lands, and of course the plantiff can only succeed
upon the ground of a part execution of the agreement, and the acts done
in part performance must not only be referable exclusively to the con-
-tract set up in the bill, but the Contract must itself be established
by Evidence clear, definite and unequivocal in its terms, such is the cur-
-rent of all the authorities upon this branch of the jurisdiction of Courts
of Equity, 2 Story Eq section 76

Wingate vs Dail 2 Hawks 76

It was said by Chancellor Kent in Phillips vs Thompson 1 Johns
Ch Rep 131 that if a party sets up part performance to take a
parol agreement out of the Statute of frauds he must show acts une-
-quivocably referring to and resulting from that agreement such as the
party would not have done unless on account of that very agreement,
and with a direct view to its performance and the agreement set up
must appear to be the same, with the one partly performed.

These principles are declared to be recognized by a series of