

12111

No. _____

Supreme Court of Illinois

Canal Trustees.

vs.

Chicago and Rock Island
R. R. Co.

71641  7

State of Illinois
Supreme Court 3rd fl

Of the June Term in the year of
Our Lord one thousand eight hundred
and fifty-three

The Board of Trustees of the
Illinois and Michigan Canal
— Appellants

Chicago & Rock Island Rail
Road Company —

Appeal

And now at his
June Term A.D. 1853 of this Court before the
Justices there of comes the said Board of Trustees
of the Illinois and Michigan Canal by Isaac N. Arnold
their Solicitor and say that in the record and
proceedings of the above entitled cause and
also in rendition of the decree there are the
following grounds of error, to wit:

That by the record aforesaid it appears that
the decree aforesaid in form aforesaid given
was given and rendered for the said Chicago
& Rock Island Rail Road Company against
the said Board of Trustees of the Illinois and
Michigan Canal, whereas by the laws of the
Land and in equity the said decree should
and ought to have been rendered and
given for the said Board of Trustees of the
Illinois & Michigan Canal against the
said Chicago & Rock Island Rail Road
Company —

The Court erred in dismissing the Bill
of Complaint

The Court should have granted the In=
junction in whole or in part

The Complainants below are entitled
to the relief prayed for

Isaac W. Arnold
Solic. for Appellants

State of Illinois
Supreme Court

Board of Trustees of the
Ill. & Mich. Canal

Chicago & Rock Island
R.R. Co

Appeals

United States of America
State of Illinois
County of Cook

S.S.

Pleas before the Honorable Mark Skinner
Judge of the Cook County Court of Common
Pleas, within and for the County of Cook and
State aforesaid at a regular term of the Cook
County Court of Common Pleas begun and
held at the Court House in the City of Chicago
in said county, on the first Monday being
the seventh day of February in the Year of
our Lord One thousand eight hundred and
fifty three, and of the Independence of the
United States the seventy seventh,

Present the Hon. Mark Skinner, Judge.

Daniel McCreary, Pros Attorney.

Cyrus S. Bradley, Sheriff.

Attest:

Walter Kimball, Clerk.

Be it Remembered, that heretofore to wit,
on the thirtieth day of July, in the year of our
Lord One thousand eight hundred and fifty
two, The Board of Trustees of the Illinois
and Michigan Canal, by J N Annals, Esquire
their solicitor, filed in the office of the
Clerk of the Cook County Court of Common
Pleas, within and for the County of Cook and
State of Illinois, their Bill of Complaint in
Chancery, against The Chicago & Rock Island
Rail Road Company, Joel A Mattern, Per
emiah Cratty, Michael Hillalea, and George
Annear, Defendants, which said bill of Com
plaint, and Exhibits thereto attached are
in words and figures as follows, to wit,

Cook County Court of Common Pleas
In Chancery

To the Hon. Mark Skinner, Judge
of the Cook County Court of Common
Pleas, sitting in Chancery.

The Board of Trustees of the Illinois and
Michigan Canal bring this their Bill against the
Chicago & Rock Island Railroad Company, a Company
authorized and organized under and by virtue of an
act of the Legislature of the State of Illinois, herein-
-after more particularly referred to, and having for
its object, intent and purpose to build and construct
a Railroad from Chicago to Rock Island, both points
being in the State of Illinois, and having such existence
as such Company under and by virtue of said act
of the Legislature of the State of Illinois, and none
other - And also against Joel & Matteson, Jeremiah
Britty, Michael Killalea, and George & Amour, all
Citizens of the State of Illinois -

And thereupon your orators complain,
and shew unto your Honor that heretofore to wit,
on the 30th day of March, A. D. 1832, the People
of the United States in Congress assembled, passed an
Act, entitled "An Act to authorize the State of Illinois
to open a Canal through the public lands, to connect
the Illinois River with Lake Michigan," in which it

was among other things provided that "Twenty feet of land on each side of said Canal shall be forever reserved from any sale to be made by the United States, and the use thereof forever shall be, and the same is hereby vested in the said State for a Canal, and for no other purpose whatever."

And your orators shew further that the said State of Illinois did accept such grant, and that the people of said State, represented by the General Assembly, on the 14th day of February A. D. 1823, passed an Act, entitled "An Act to provide for the improvement of the Internal Navigation of the State", under which act the said State did, as they are advised and therefore charge, survey and direct said Canal to be opened, and that the said State caused to be returned to the Treasury Department a complete map of the said Canal, in pursuance of the said Act of Congress, passed March 30th 1822, and hereinbefore referred to, as by reference to the said Act and survey will more fully appear.

And your orators further shew that afterwards to wit, on the 2nd day of March A. D. 1827 the People of the United States, in Congress assembled, passed an Act entitled "An Act to grant a quantity of land to the State of Illinois for the purpose of aiding in opening a Canal to connect the waters of the Illinois River with those of Lake Michigan", by which said Act the United States

granted to the State of Illinois "a quantity of land, equal to one half of five sections in width on each side of said Canal, and reserving each alternate section to the United States, to be selected by the Commissioner of the Land Office, under the direction of the President of the United States, from one end of the said Canal to the other", as by reference to said act will more fully appear,

And your orators further shew that under and by virtue of the said last mentioned Act of Congress, the lands hereinafter referred to, were amongst others selected by the Commissioner of the General Land Office, under the direction of the President of the United States, and were duly transferred, by virtue of said Act of Congress, to the State of Illinois, in trust for the purpose set forth, as by the following statement made by Andrew Jackson, President of the United States, now on file in the General Land Office at Washington, in the District of Columbia, will more fully appear to wit:

Whereas, by the Act of Congress, approved on the 2nd day of March, A. D. 1827, entitled "An Act to grant a quantity of land to the State of Illinois, for the purpose of aiding in opening a Canal to connect the waters of the Illinois River with those of Lake Michigan", it is provided

that there should be "granted to the State of Illinois for the purpose of aiding said State in opening a canal to unite the waters of the Illinois river with those of Lake Michigan, a quantity of land equal to the one half of five sections in width on each side of the Canal, and reserving each alternate section to the United States, to be selected by the Commissioner of the General Land Office, under the direction of the President of the United States, from one end of the said Canal to the other, and the said land shall be subject to the disposal of the Legislature of said State, for the purpose aforesaid, and no other" — Be it known that the following described tracts or sections of land north of the base line and east of the third principal Meridian line, are hereby designated as being a portion of those tracts intended to be granted by the United States unto the State of Illinois by the said Act of Congress, upon the conditions and for the purposes therein mentioned, and no other, viz: (Here follows a list of the lands, including among others, the lands hereinafter referred to)

(endorsed) "Approved May 31st 1830" (signed) "Andrew Jackson".

And your orator further shew unto your Honor, that by an Act, intitled "An Act to amend an Act entitled "An Act to grant a quantity of land to the State of Illinois, for the purpose

of aiding in opening a Canal to connect the waters of the Illinois River with those of Lake Michigan", and to allow further time to the State of Ohio for commencing the Miami Canal from Dayton to Lake Erie," passed by Congress March 3rd 1833, the time of commencing and completing said Canal was extended five years - as by reference to said act will more fully appear.

And your orators further shew unto your Honor that, by means of the said Acts of Congress and action under the same, they are advised and therefore so charge, that the aforesaid grant of 90 feet on each side of said Canal was confirmed unto said State, and any forfeiture in consequence of the failure of said State to comply with any condition or conditions of said grant was waived by Congress, and your orators say that they are informed and believe, and therefore charge that the U. States never did any act to declare such forfeiture but, on the contrary thereof, have waived the same, and your orators expressly charge that they are advised that there has never, since the passage of said Act of March 30th 1822, been any Act of Congress passed, authorizing the sale of the said 90 feet so reserved, or any part thereof, but, on the contrary, the land so reserved has always been held as so appropriated for Canals.

purposes, and never otherwise; and if any sale of any part thereof has been made, such sale has been entirely unauthorized by law, and is therefore void and of no effect, as against your orator's rights, as hereinafter set forth.

And your orators further shew unto your Honor, that the following provisions of the Statutes of Illinois were enacted by the People of the State of Illinois, represented in the General Assembly, at the times hereinafter set forth, as they are advised and informed and believe, and therefore charge, to wit:

Section 10 of an Act entitled "An Act to provide for constructing the Illinois and Michigan Canal," App.^d Jan.^y 22^d 1829

Section 11 of an Act entitled "An act to amend an act to provide for the Construction of the Illinois & Michigan Canal," App.^d Feb. 15th 1831

Section 16 & 21 of an Act entitled "An act for the construction of the Illinois & Michigan Canal" App.^d Jan.^y 9th 1836

Section 10 of an Act entitled "An act to amend an act to provide for the construction of the Illinois and Michigan Canal," App.^d Jan.^y 9th 1836 App.^d March 2^d 1837

Section 10 of an Act entitled "An act to amend the several laws in relation to the Illinois & Michigan Canal" App.^d Feb. 26th 1839

as, by reference to the said Canal Acts above referred to, will more fully and at large appear, each of which said acts and sections, your orators pray may be taken as part of this their Bill.

7
And your orators further shew that the State of Illinois, under the various laws of this State, commenced the construction of the said Canal in the year 1836, and continued to work upon and prosecute the same for some years thereafter, and laid out and expended in such construction a large sum of money, amounting in the whole to over seven Millions of dollars - And your orators shew that, in order to carry on said work and make the improvement, the State of Illinois was obliged to and did, borrow large sums of money, amounting, in the aggregate, to many millions of dollars, for the payment of which the State of Illinois pledged her faith and credit, and the said canal, and the revenues thereof, and the lands belonging thereto, as will more fully appear by the various acts of the Legislature of this State, authorizing loans for such purposes, as upon reference being had to the same, will more fully appear.

And your orators further shew unto your Honor that in the year 1842 the said State of Illinois, having expended in the work and construction of the said Canal the said sum of about seven millions of dollars, and the same yet being unfinished and unavailable for the purposes of navigation, was unable to go on with said work, having no money nor means to complete

the same. And previous to that time the said State has found herself unable to pay the interest on the monies she had previously borrowed, so that she was utterly unable to borrow any more money. Being, therefore, without the means of meeting her solemn engagements, the interests on her outstanding debts remaining unpaid, and with no means of completing the Canal, then and before that time regarded as of the greatest importance to her welfare and prosperity as a State, the State was obliged to abandon all work upon the Canal, to leave her contractors unpaid, and the works in their unfinished and incomplete condition, to go into dilapidation and decay.

And your orators further show that in the year 1843, the said State being then entirely without the means of paying either her foreign or domestic creditors, the interest on her state debt still remaining unpaid, the Canal works being in an unfinished state; abandoned, and going rapidly to decay, and property along the line of said Canal being greatly depreciated, certain creditors of the State of Illinois, with a view of obtaining security for the payment of their debts, and of aiding in completing this great work of Internal improvement, represented that they would be willing on obtaining certain securities, to advance money for the purpose of

completing the said Canal.

And your orators shew that the said State of Illinois, being anxious to extricate herself from her embarrassments, and to prevent the further depreciation of her property and credit, and being desirous of restoring her credit and of completing her great public work of internal improvement, on the 21st day of February A.D. 1843, passed an Act entitled "An Act to provide for the completion of the Illinois & Michigan Canal, and for the payment of the Canal debt", which said Act is particularly set forth in the Deed of Trust executed by the State of Illinois, hereto attached, and marked "Exhibit A", and made part of this Bill, to which your orators pray leave to refer as part of this their Bill of Complaint, And your orators shew that said act was passed as a proposition for a contract to the creditors of the State, and was the basis of negotiation between said State and her creditors.

And your orators further shew unto your Honors that the negotiation between the State of Illinois and the Bondholders and Creditors of the State, on the basis of said law, remaining open and unconcluded, afterwards, to wit, on the 1st day of March, A.D. 1845, the People of the State of Illinois, represented in the General Assembly, passed an Act, entitled "An Act supplemental to an act to provide for

the completion of the Illinois & Michigan Canal, and for the payment of the Canal debt, app.^d Feb 21st 1843", a copy of which said Act is also set forth in said Deed of Trust, a copy of which is hereto attached and marked "Exhibit A", to which your orators pray leave to refer as part of this their Bill, which said Act was passed as a modification of said act above referred to.

And your orators further shew unto your Honor that certain Bondholders and Creditors of the State of Illinois, under the provisions of the law above referred to, did enter into a Contract with the said State to loan and advance the said sum of \$1,000,000 to complete the said Canal upon the terms and in the manner specified in the said law above referred to, a copy of which contract, duly certified, is hereto attached and marked "Exhibit B", and to which your orators pray leave to refer as part of this their Bill of Complaint.

And your orators further shew unto your Honor, that the said Contract, having been so made and executed between the said State of Illinois and the said Creditors of the State, the Governor of the State of Illinois did execute and deliver unto your orators, as a part of said contract, the Board of Trustees of the Illinois & Michigan Canal (they having been duly appointed, according to said laws), under the Seal of the State of

Illinois, a Deed of Trust to the said Trustees, of which said Deed "Exhibit A" is a true and correct copy, duly certified, as, by the said deed so executed and delivered in due form, now in possession of your orators, will more fully and at large appear.

And your orators further shew unto your Honor, that the full amount of the said loan of \$1,000,000 having been subscribed by the subscribers thereto, on the 10th day of May, A.D. 1845, Thomas Ford, then Governor of the State of Illinois, and the subscribers to the said loan, did make, sign, execute and deliver a contract, closed upon the laws hereinbefore referred to, which is, as stated in "Exhibit B" above referred to, and to which your orators pray leave to refer as part of this their Bill, as by the said Contract, so executed in due form, now in possession of your orators, will more fully and at large appear.

And your orators shew unto your Honor, that it was provided in said contract, the said Creditors who had so advanced their money should be secured the payment of their advances and of their said Bonds by a ^{vested sum} restriction upon the Canal Lands & revenues, as in said contract will more fully appear.

And your orators further shew unto your Honor, that it is provided in said contract

among other things, that said Trustees should keep a just, full and accurate accounts of costs and expenditures of completing and superintending said Canal, and of the rents, issues, revenues & profits received from said Canal, and make reports, and the State reserved the right of paying off the monies so secured, and thereby acquiring the said Canal revenues and property.

And it was further provided, that said State of Illinois should not reduce the tolls of said Canal without the consent of said Trustees as by reference to said Contract, & the ~~Said~~ therein referred to will more fully and at large appear.

And your orators further shew unto your Honor, that the said loan of \$1,600,000 was made and subscribed, and the said Contract was executed on the part of the State of Illinois, and the various persons subscribing to said loan; and that they constitute a large number of persons, some of whom reside in England, and some on the Continent of Europe, and others in the Cities of Boston, New York and Philadelphia, and without the jurisdiction of this Court, and others in the State of Illinois, and others in various parts of the United States.

And your orators further shew, that the said subscribers did fully comply with the

terms and conditions of the said contract, on their part to be done and fulfilled, to the full satisfaction of the said State of Illinois, and advanced said monies as required, and in the manner provided for by law.

And your orators further shew that after the approval of the acts above referred to, the said loan having been subscribed, afterwards, to wit, on the 26th day of June, A.D. 1845, the State of Illinois, by Thomas Ford, Governor of said State, and Thomson Campbell, Secretary of State, and under the seal of the said State of Illinois, did execute and deliver unto William H. Swift, David Seavitt and Jacob Fry, in pursuance of the laws above referred to, a deed of grant wherein was recited, as more fully appears by "Exhibit A", heretofore referred to.

And your orators shew further that, among others, the lots and lands hereinafter referred to, as well as the said Canal, and the 90 feet so reserved were, in and by the said deed so granted and transferred to the said Board of Trustees as aforesaid.

And your orators further shew unto your Honor, that the said Board of Trustees of the Illinois & Michigan Canal, having been duly organized under the said laws, and having received said deed, did go on and pay said monies, and did go on

and complete the said Canal, expending in said completion about the sum of \$1,600,000, so subscribed and paid upon the faith of said contract and deed, and of the laws of the said State of Illinois - And your orators shew that said Canal was completed in the month of May, A.D. 1848, and has been in operation ever since, the said Board of Trustees having sold a portion of said Canal lands and lots and received said tolls, and after keeping said Canal in repair and paying incidental expenses, having made dividends in the said sum of \$1,600,000 as aforesaid, so secured by the said Canal its right of way, franchises &c., as will more fully appear by reports made ^{by the said Board of Trustees} to the Legislature of the State in pursuance of law, to which your orators pray leave to refer for greater certainty.

And your orators shew further, that the debts and monies, and all the registered Bonds so secured by the laws, contract and deed above referred to, still remain unpaid and unsatisfied, except as herein stated, and that there are several hundred thousand dollars of said sum of \$1,600,000 still remaining due and unpaid, and all the Registered and Unregistered Bonds and Scrip referred to in the above recited laws, approved Feb. 21st 1843 and March 1st A.D. 1845 - And your orators shew that the said State has neither paid said debts, nor made any provision for doing so, except by

this security and contract, and except by the small and inconsiderable pro-rata dividends and proceeds of the mill and a half tax - and that the interest tax, levied under the provisions of an act, entitled "An act to provide for paying a portion of the interest on the State debt," approved March 1st 1843 has been appropriated to the payment of the Internal Improvement, ^{what} so called, of said State, and not to the Canal Debt.

And your orators charge that they are and have been, since the date of the said deed, the owners of the said Canal, Canal lands, right of way, franchises and 90 feet reserved in trust as aforesaid, and that they held the same as fully and effectually as the State herself did, and the State having granted the same to your orators, in manner hereinbefore stated, and for the sacred purposes above stated, she cannot, until the said monies so secured thereby are fully paid, do any act or pass any valid law which will abridge, lessen, impair, depreciate or injure the right of your orators in the premises, nor in any manner impair the obligation of said contract between said State and the subscribers to said loan of \$1,600,000, as herein above stated.

And your orators shew unto your Honor that it was the fair and obvious intent and meaning of said contract and law above

referred to, that the revenues of said canal should be appropriated to the payment of the debts of said State so secured, and that the said State cannot legally nor in good faith do any act to lessen such revenues, without a violation of her faith, and impairing the obligation of the contract above recited.

And your orators further shew that it is provided in the 1st paragraph of the 10th section of the 1st article of the Constitution of the United States that "No State shall pass any ex-post-facto law, or law impairing the obligation of contracts" and it is also provided in the 16th section of the 8th article of the Old Constitution of Illinois approved August 26th A. D. 1818 that "No ex post facto law, nor any law impairing the validity of contracts shall ever be made", and in the New Constitution of Illinois, approved A. D. 1847, in the section of the article it is provided substantially as in the Old Constitution.

And your orators further shew unto your Honor that the said canal and its value as a security, depends mainly on having the exclusive right and franchise of transporting and carrying passengers and freight from Lake Michigan to the Illinois River upon said canal for tolls; and that the revenues of the said canal for

the years 1848, 1849, 1850 and 1851, were,
respectively as follows, to wit:

In 1848, it was	\$ 87,890.87
" 1849, " "	118,273.72
" 1850, " "	123,504.23
" 1851, " "	173,300.34

And your orators shew that about one tenth of
said receipts was received for tolls for passengers
transported upon said Canal.

And your orators further shew unto your
Honor that the Legislature of the State of Illinois
hereafter, to wit, on the 27th day of February A.D. 1849
passed an act, entitled "An act to incorporate the
Rock Island and La Salle Rail Road Company",
and afterwards, to wit, on the 7th day of February,
A.D. 1851, the said Legislature passed another act
entitled "An act to amend an act to incorporate
the Rock Island and La Salle Rail Road", to which
said acts, and especially to sections 1, 5, 7, 8 and 9
of the said last named act your orators pray leave
to refer, and to take as part of this their Bill.

And your orators further shew unto your Honor
that said Company did not, prior to the first Monday
in June referred to in said act of Feb. 7th 1851, nor
have they yet furnished your orators with a map or
profile of the said road, so that they could act
upon the provisions of the said laws, and your orators
have never been furnished with the information as to

the location of said road, so that they could determine, how far it would, as projected, planned and surveyed, injure the navigation of said Canal, and your orators shew that they are informed and believe that the said road was not surveyed nor located until after January, A. D. 1851.

And your orators shew further that, anxious to secure the rights of the creditors of said State, and believing that the said State never intended to authorize the construction of a road "in such manner as to injure the navigation of said canal", they, your orators, have often requested said company to furnish them with a plat and plan of such road and its location as surveyed (so that your orators could judge whether and how far its construction in the place and manner proposed, would injure the navigation of the Canal): but said company has entirely neglected to furnish the same, so that your orators have never been able to act upon the same.

And your orators shew further that the Illinois Michigan Canal, so in fact constructed by the State of Illinois and by your orators, commenced at Bridgeport, in the County of Cook and said State of Illinois, two miles from the City of Chicago and upon Section Twenty-nine (29), Town Thirt-nine (39), N. of Range Thirteen, East of the Third Principal Meridian, and runs from thence.

to Lockport, and from thence to Joliet in Will County, and thence through Grundy County to LaSalle County, through Ottawa in LaSalle County to LaSalle, at which place it connects with the navigable waters of the Illinois River, connecting at Chicago with Chicago Harbor and Lake Michigan, and designed and used as a principal means of commerce, travel and communication between Lake Michigan and the Illinois River, and your orators shew that the commerce, trade and travel upon the same are rapidly increasing, and, unless injured and destroyed by a rival and private corporation, will furnish large revenues, and rapidly pay off and discharge the debts, so secured by the same, as hereinbefore stated, and that the subscribers to the said loan of \$1,600,000, as your orators are informed and believe, made said subscription and paid said money upon the faith and contract that said State should not do any act, nor authorize any to be done, which would lessen the said revenues, divert the trade or travel or business therefrom, nor in any manner impair said securities.

And your orators further shew that they are informed and believe, that the said Rail Road Company are now engaged under the alleged sanction of their said charter, in constructing a Rail Road, and the proceedings for condemning your orators' lands are

for the purpose of constructing and running a Road,
designed and intended as a rival line, running from
the same termini and along the same line as the said
Canal, and expressly intended to do the same business
or as much of the same as practicable, and which
said road is being constructed from Chicago to LaSalle,
aforesaid, by Joliet, and in many places in the
immediate vicinity of said Canal and within the
90 feet so reserved, and in many places within the
navigable portions of said Canal as constructed.

And your orators further shew unto your
Honor that they have heard and therefore charge,
that the line of said Rail Road between Chicago
and Peru is located as follows, as they are in-
formed: Commencing at Chicago, the line runs
south to a point about five miles from the City
Boundary; from that point, in a south westerly
course, to Blue Island, where it is about eleven
miles from the Canal; from thence crossing the
Calumet Reeder, it continues nearly parallel to
the Canal, and about twelve miles south of it, for
the next fifteen miles; thence bearing more westerly,
it approaches and crosses the Canal at Joliet; from
Joliet, the line continues along the line of the canal,
and in its immediate vicinity at distances from the
pram of the canal, varying from less than one hundred
feet to two and a half miles, to a point in the
South west quarter of Section Nine in Township

Thirty-three, North of Range Three, East of the Third Principal Meridian, and about eighty miles from Chicago. From said Section Nine to the termination of the Canal lands, the line of the Rail Road runs along under the second bank or North bluff of the Illinois River, immediately at the base of the bluff, and immediately on the bank of the Canal, and, in some places, within its limits, and much of the way on the 90 feet reserved. From the said South West quarter of Section Nine, the said line of said road passes through the following sections, to wit: sixteen, nine, seventeen and eighteen North of Range three; and thirteen, fourteen, fifteen, ten, nine, eight, seven and eighteen in Range two, and thirteen and fourteen and fifteen in Range one, and runs all the way, until the road leaves the Canal, north of the Canal and between the Canal and said bluff of the Illinois River.

And your orators further shew unto your Honor that the construction of the said Rail Road along the line of said Canal from LaSalle by Joliet to Chicago, will materially lessen, depreciate and render comparatively useless the said Canal franchises, right of way &c., so solemnly granted to the said Board of Trustees your orators, by the State of Illinois, as aforesaid. And your orators shew that said Road has been located near the line of the Canal, from its northern terminus at Chicago to its southern terminus

at LaSalle, and that much of it is upon the 90 feet so reserved to the State and vested in the State for a Canal and for no other purpose whatever and so transferred by the State to your orators in trust as aforesaid. And your orators submit and charge that the said act of incorporation of the said Rock Island & LaSalle Railroad Company, and the said act amending thereto, above referred to, in as far as they undertake to authorize the appropriation and use of the 90 feet so reserved to the Canal itself, and the right of way, are in conflict with the provisions of the Act of Congress, approved March 2nd A.D. 1827, and the act, approved March 2nd A.D. 1833, hereinbefore referred to, and that the said acts of the said Legislature of the State of Illinois are therefore void and of no effect.

And your orators shew, that by the 10th Section of the said act of 1843, above referred to, and the contract and deed hereinbefore referred to, the State of Illinois did irrevocably grant to your orators the said canal, the 90 feet reservation as aforesaid, the exclusive right of way for the same, and all the privileges and franchises, connected with and growing out of the same; and your orators shew that by the terms of said law, contract and deed there is an implied, if not express, covenant and understanding on the part of said State, and so understood and relied upon by your orators and

vested line

said Bondholders, that said State should never revoke the said grant, or resume the same, or divert the said property under her power of eminent domain or otherwise, to any other purpose. until her debts had been paid as provided for by said laws, and a vested line on the tolls and revenues was created in favor of your orators, and a stipulation made that said State should not reduce tolls — and your orators charge that they took the same, and the said subscribers advanced their money, relying on said contract express and implied, and the said Bondholders advanced and expended said monies upon the faith thereof, and without which the said subscribers would not have paid said monies so advanced and paid as aforesaid. Your orators therefore submit that the grant by the State to any other party or corporation of the right or franchise of condemning the property so vested as aforesaid in your orators for the purpose of a rival line of communication, would be void as against your orators and the said subscribers, and your orators claim the protection of the Constitution of the United States against such violation of their said rights and contract.

And your orators further shew unto your Honor that the reservation of the right of way, and of 90 feet on each side of the Canal, has always been made in all sales by the State, under the

laws of the United States, and that such right of way and reservation being now in your orators, it cannot be taken for any purpose, and the State of Illinois cannot legally vest the said reservation, by her power of eminent domain or otherwise, in any other party or corporation, because such act would be a violation of the grant to her by Congress, as well as a violation of the contract between the said State and your orators, and your orators therefore claim the protection of said acts of Congress and the Constitution of the United States.

C And your orators further shew unto your Honor, that no provision is made in the charter of said Railroad Company for compensation to your orators or the said subscribers, for its franchises, right of way, diminution of business &c., by said Railroad Company, but only for the lands vested in your orators for the purposes aforesaid, and your orators shew, that the construction of the said Railroad, as herein stated, by said Company, will greatly lessen and render comparatively valueless, the said franchises, right of way, tolls &c., as vested as aforesaid in your orators, without the said Company having made, or proposing to make (or without provision by law for making) compensation for the same; and, therefore, your orators charge that the said acts of the Legislature in attempting

to authorize said Railroad Company to take said property, franchises, exclusive right to take tolls, &c., is an appropriation of property without any provision for making compensation therefor, and is therefore void.

And your orators further shew that the said Canal is navigable for the carriage of freight and passengers, and that its boats are drawn almost exclusively by horses, and that the said Railroad Company have unnecessarily laid out and surveyed, and are constructing their road along the bank of said Canal, and, in some places, within a few feet of the prism of said Canal, and with the view of running locomotives thereon, driven by steam power, and that it will materially injure the navigation of said Canal, and render its navigation extremely dangerous and uncertain, and that the country on the borders of said Canal is flat and level, and the said Railroad Company could, at little expense, compared to the injury and loss, which your orators believe must result to the free and safe navigation of said Canal, from locating their road so near to its banks, locate it farther from the said Canal.

And your orators further shew that the said Road is located upon the 90 feet expressly reserved by the several acts aforesaid, for the use of the Canal and for no other purpose whatsoever, in portions of sections Thirteen, Fourteen and Fifteen

in township Thirty-three Range One East of the Third Principal Meridian, (and in sections Nine, Fifteen and Seventeen) also in portions of sections Seven, Eight, Thirteen, Fourteen and Eighteen in Township Thirty-three Range Two East of the Third Principal Meridian, and in sections Nine, Fifteen and Seventeen in Township Thirty-three Range Three East of the Third Principal Meridian; all in the County of LaSalle, State of Illinois - And your orators shew that the construction of the said road, in the places where it is located, will materially injure the navigation of the said Canal, and that by Section Eight of the Charter of the said Railroad Company, above recited, the right of way was only to be granted to said Company in such manner as not to injure the navigation of said Canal.

And your orators further shew that the location of the said road, and its construction as so located, within the 90 feet expressly reserved for ever for the use of the said Canal exclusively is in direct violation of Section Fifteen of an act above referred to, approved January 9.th A.D. 1836, in which Section it is among other things provided that "Ninety feet shall be for ever reserved on each side of said Canal to enlarge its capacity, whenever it shall be required", and your orators submit, that if the said road shall be located and constructed so near the said canal, its

enlargement, as contemplated in the said act, will be impossible, and the prosecution of the necessary repairs upon the said canal will be attended with very great injury and inconvenience, if not rendered wholly impossible.

And your orators further show unto your Honor that the location of the said road within the 90 feet, reserved on either side of the Canal, is not necessary, but that the said road may, with comparatively little increased expense, be located at a sufficiently great distance from the said Canal, as not to interfere with, nor impair, nor injure the free and safe navigation of the said Canal.

And your orators further show that there is no provision in the Charter of the said Rock Island and Chicago Railroad Company, for the appraisal of the Canal franchise; and your orators therefore submit that the said road, by locating its track upon, and occupying any portion of the 90 feet so reserved to the said canal, and to it solely, will be taking private property, on the pretence of public use, without rendering any just or adequate compensation therefor.

And your orators show that they have at all times opposed and sought to prevent such location and construction of the said road, and that on the 3^d day of June, A.D. 1852, your orators served upon said Rock Island and Chicago

Railroad Company, in the person of the Secretary of said Company, a notice, of which the following is a correct copy, viz:

To the Chicago and Rock Island

Railroad Company:

Gentlemen,

In order that there may be no misapprehension of the position of the Board of Trustees of the Illinois & Michigan Canal in regard to the construction of a Railroad from Chicago to LaSalle, in the vicinity of the Canal, I think it proper to notify you (what you are already apprized of), viz:

That the Board of Trustees, unless a satisfactory adjustment is made, with regard to location and tolls, will, by all legal and proper means, resist the construction of such road,

Its construction in Canal lands will be resisted.

Its construction within 90 feet of the Canal will be resisted.

And its construction altogether, in any place, or in any manner, and the use of the same as a means of transportation of freight and passengers, between Chicago and LaSalle and intermediate points, will be resisted as a violation of the rights secured by Contract, the laws of the State of Illinois, and the Constitution and laws of the United States, to the Board of Trustees of the Illinois & Michigan Canal.

This notice is not designed for any other purpose

share to apprise your body, that the Canal Trustees
will stand upon all their legal rights, and that any-
thing you may do in the premises, will be at your
own risk.

I am, very Respectfully

Your obedient servant

Chicago, May 31st 1852.

Isaac N. Arnold

Attorney for the Board of Trustees
of the Illinois & Michigan Canals.

And your orators further shew unto your
Honour that the Chicago and Rock Island Railroad
Company, and Joel, A. Matteson, their Principal
Contractor, and Michael Killalea, George Armon,
and others, are now engaged in the construction of
the said Railroad from Chicago to LaSalle, as here-
before stated, and in violation of the rights of
your orators and the said subscribers, as in the Bill
more particularly set forth; And your orators pray
that they and each of them, and all persons associ-
ated with them, and acting under them, or either
or any of them, may be made defendants hereto,
with proper and apt words to charge them in the
premises.

And your orators further shew that said
Railroad Company have located their road upon, and
are taking proceedings to condemn and appropriate,
lands and lots of your orators, lying in the counties
of Cook, Will, Grundy and LaSalle, the fee of which

22
is in your orators, and which they hold in trust for the said subscribers to the said loan of \$1,000,000, as hereinbefore stated.

And your orators shew that they are advised and therefore charge that said Company has not been entitled to use any lands vested in your orators, by any legal and proper proceedings had for that purpose, and your orators submit that the said Railroad Company could not become entitled to use any lands or property so vested in your orators for said road; if indeed they can acquire such right in any manner, until the same has first been appraised and condemned according to law.

And your orators further shew unto your Honor, that notwithstanding the premises, the said defendants are now engaged on the banks of said canal, and on the property and land so vested in your orators, in the town of Losalle to wit: on portions of Sections Fourteen and Fifteen in Township Thirty-three, Range One, East of the Third Principal Meridian, in filling up the canal itself, and thereby lessening its capacity to do business, and actually contracting its width, and the said defendants are constructing their track within and upon the 90 feet, so reserved on the side of the Canal, and thereby materially injuring the same, and rendering its navigation dangerous and difficult.

And your orators further shew, that the

business of the said Canal now, and its anticipated business will render it absolutely necessary to retain the present dimensions of said Canal in said town of LaSalle, and, at an early period, it will be required to be enlarged - And your orators show that the construction of the said road will render it impossible without great expense and inconvenience, to enlarge said Canal - Your orators further show that, from the commencement of the construction of the Illinois & Michigan Canal, its future enlargement has been anticipated, and it has been constructed with reference to such enlargement, and made, in some places, wider than the law required when it conveniently could be - And your orators show that the construction of the said road on the 90 feet so reserved, and as they are now constructing it at LaSalle, will render it impracticable to carry out the original plan of enlargement.

And your orators further show that the construction of the said road within and upon the 90 feet, so reserved for the use of the said Canal, will greatly increase the expense of the necessary repairs of said Canal, by rendering the materials of which the said repairs are to be made, less accessible, and their procurement much more difficult and inconvenient. - And your orators further show, that it is the intention of the said Company, as your orators are informed and believe, to build walls for the

support of their track, upon and within the 90 feet reservation, and along the side of the canal. And your orators shew, that, should they be permitted so to do, it will greatly injure the navigation of said canal, by the sliding of earth into the said canal, and will subject your orators to much expense and loss, by delays and repairs consequent upon such sliding of the earth, and obstruction of navigation.

And your orators shew further unto your Honor, that the said canal has been constructed with reference to the towing of its boats by horses, — and if the said Railroad Company shall be allowed to construct their Road so near the banks of said canal as is intended, and shall use locomotives thereon, propelled by steam, your orators submit, that the use of horses upon the towpath of said canal, for the purpose of towing its boats, will be dangerous, if not wholly impossible, and thus your orators must be subjected to constant losses and injury from the use of such locomotives.

And your orators further shew unto your Honor, that the construction of the said road, as designed, and now actually progressing, so near the said canal, and in many places within its limits, as constructed and used, will greatly lessen and diminish the amount of receipts of the said canal and injure navigation of same — that the said Canal, instead of increasing in its receipts, as your orators

hope will be the case, and as the statement of the receipts for the years 1848, 1849, 1850 & 1851, heretofore given, reasonably justify your orators in hoping, will have such receipts greatly decreased, and the amount of receipts for passengers and light freight, your orators believe, will be almost entirely destroyed and taken from your orators.

And your orators further shew, that the track of said road, in some places, is designed to be laid within a very few feet of the water's edge in the said canal, and especially for a portion of the distance between Locks No. 11 & 12 on said canal, about two miles south of Ottawa being in Section Seven, in Township Thirty three, Range Two, East of the Third Principal Meridian, and also for a portion of the distance between the Cement Mill at Utica and the Town of LaSalle, being in Sections Nine and Seventeen, in Township thirty three, Range Three, East of the Third Principal Meridian, in the County of LaSalle - And your orators shew, that upon these portions of the said canal it will be very difficult or impossible, to keep the horses upon the towpath, when the locomotives are passing upon the said track, so designed to be constructed, thus causing great loss and injury to the navigation and receipts of the said canal.

And your orators further shew, that they have been informed and therefore charge that the said

Defendants, or some of them, threaten, and are making arrangements to blast the rocks with powder, adjoining and in the immediate vicinity of the Canal, between Ottawa and LaSalle, in the said County of LaSalle which, if carried out, will greatly injure and render extremely dangerous and inconvenient, the property so situate, as aforesaid, in your waters, by causing large quantities of rock and stone to be thrown into the said Canal, so that the navigation thereof will be obstructed, and the persons, property and lives of those travelling upon the same, and doing business thereon, will be greatly endangered. All of which said premises are against equity and good conscience, and tend to the manifest wrong and injury of your waters in the premises, &c.

And your waters shew unto your Honor that by the charter of the said Railroad Company, as amended Feb. 7th 1851 - the right, power and privilege, conferred on said Company are made subject to certain conditions, for the purpose of (partially, at least) protecting the interests of your waters; and, among others, was the condition that the said Railroad should be so constructed, and "in such manner as not to injure the navigation of said Canal", and your waters shew that the said defendants have laid out, and planned, and are in process of making said Road, and the track of said Railroad, as hereinbefore stated, in such manner, as that

its construction, as so laid out, will necessarily and materially injure the navigation of the said Canal.

And your orators further shew unto your Honor that the said track of the said Railroad, across all of said sections hereinbefore enumerated in said County of St. Louis, is on the margin of said Canal, and in its immediate vicinity, and, in many places, encroaching upon the water of the canal, lessening its width and capacity, and filling it up and narrowing it, by means whereof its navigation will be materially injured, as hereinbefore stated, and your orators shew that said Railroad track has been located unnecessarily near the bed and prism of the Canal, the evil consequences whereof will, among others, be the following, viz:

It will diminish the capacity of said canal for business.

It will narrow its water surface.

It will render it liable to constant injury by slides, or otherwise.

It will render its navigation, and the propelling of Boats thereon by horses extremely dangerous and inconvenient.

It will render its enlargement difficult and expensive, if not, in some places, impossible.

It will take away nearly all its revenues

derived from the transportation and carriage of passengers.

It will greatly diminish its revenues, derived from all other sources.

And your orators further shew that they are informed and believe true, that the said defendants, or some of them, or their agents, avow and declare that they will go on without delay in constructing the said road, as so planned and laid out — and that they will build the same when and where they please, in defiance of the rights and franchises of your orators and the said subscribers to the said loan, and that they will diminish the width of the Canal and materially injure its banks and reservation, and that they have made no compensation, either to your orators, or to the said subscribers, for this threatened impending and imminent danger to the rights, property and interest so vested in your orators as aforesaid, in trust for the said subscribers, and your orators doubt whether said Company has the means of paying to your orators the damages, to the full extent of such injury, if consummated, as proposed and threatened — And your orators submit that said defendants are going on in violation of law, and of the rights secured to your orators and to the said subscribers, and by sacred contracts made with the State of Illinois, and protected

by Acts of Congress, and by the Constitution of the State of Illinois and the United States, as hereinbefore stated.

And your orators further shew unto your Honor that the said subscribers to the said loan advanced and paid their money, as hereinbefore stated, relying on their contract with the State of Illinois, and her faith, as hereinbefore stated, that the construction of said road will render their security for the payment of the money, so due from the said State to them, and secured by said contract, of greatly depreciated value, that it will materially lessen the value of said Canal and its revenues, tolls, and the property &c., so held by your orators in trust as aforesaid.

And your orators further shew unto your Honor that the semi-annual interest on the Registered Bonds hereinbefore mentioned as having been registered by the said subscribers to the said loan has remained unpaid, since the same were registered by them, and prior to that time, no part thereof having been paid by the said State of Illinois, except a very small and inconsiderable pro-rata dividend; being the proceeds of the mill-and-a-half tax.

To the end thereof that the said defendants, and each of them, may full, true and perfect answer make to all and singular the premises aforesaid, as fully and in such detail, as if the same were here again

repeated, and they were particularly interrogated,
(their answer under oath) being hereby expressly
maimed.

May it please your Honor, the premises
considered to grant unto your orators the writ of
injunction to be directed to the said defendants,
and each of them, their Contractors, Agents, Servants,
Engineers and Employees, enjoining and commanding
them and each of them to desist from any further
prosecution of such Road from Chicago to LaSalle,
as heretofore stated, from going upon, interfering with,
and digging up any portion of your orators' land
and premises, and especially enjoining and commanding
them to desist from building their road on any part
or upon any part of Canal interest, its construction
unto any banks, towpaths, keelpaths, or any
part and parcel thereof, and enjoining them from
building and running and operating such Road
from Chicago to LaSalle and every part thereof,
and especially enjoining them from so doing, until
they have first complied with the laws purporting
to authorize the construction of the same.

And that your orators may have such
other and further relief in the premises, as shall be
agreeable to equity and good conscience, as to your
Honor shall seem just.

Your orators pray for process of summons
against the said defendants, summoning them to appear

and answer, as before prayed, and also for an
injunctive as heretofore prayed for. And your
orators, as in duty bound ever.

In witness whereof, your orators have
caused this Bill to be signed by their Secretary
and Solicitor.

Wm. Gooding
Secretary

J. H. Arnold,
Sol. & Counsellor Complainants

State of Illinois }
Cook County } ss.

Eli S. Prescott, being
dub. sworn, says that he is the same Agent of the
Board of Trustees of the Illinois and Michigan
Canal, having General Superintendence of their Lands
and Real Estate from Chicago to LaSalle; that
he has acquired and possesses, as he verily believes,
more particular knowledge of the matters stated
in said Bill than other Officers or Members of
said Corporation; that he has heard read the
foregoing Bill, and knows the contents thereof; that
he has information as to all the matters therein
stated; and that from such information he believes
such matters to be truly stated therein, and that such
Subscribed & sworn to before me,
this 30th day of July, A.D.
1852, Walter Kimball, Clerk } Bill is true.
E. S. Prescott, Agt.

Exhibit B.

Whereas The Legislature of the State of Illinois, by an act entitled "An Act to provide for the completion of the Illinois and Michigan Canal, and for the payment of the Canal Debt, approved the twentieth day of February, A. D. 1843." authorized the Governor of said State to negotiate a loan of sixteen hundred thousand dollars, and did pledge therefor, as security for the repayment, the said Canal, the tolls and revenues thereof, together with the lands belonging to the Canal fund, with various other property, and did also by an act in addition thereto, approved the first day of March, A. D. 1845, empower the Governor aforesaid to convey the same for the purpose aforesaid,

And, Whereas the said acts further provide that in case said loan should be effected, the said Canal, Canal lands, and property, should be conveyed to Trustees, and fully vested in them, both by law and by force of a deed from the Governor aforesaid, to be held by them, and disposed of in the manner therein prescribed, for the benefit of the subscribers to such loan, to reimburse the amount thereof, with the interest, and afterwards to pay in preference to all other claims, the securities registered by such subscribers with the interest thereon, and also for such other

purposes as are in said acts specified.

And Whereas the said acts further provide that the Creditors of the State, who have lawful claims for money advanced, or other things done, in constructing the Canal, shall have the first right to subscribe to such loan; but in case of their failure so to do, that other persons might, under the authority of the Governor, fill up the subscription, and thus entitle themselves to the privileges of said acts.

And Whereas the Governor did make such offer to such first named class of persons, who neglected to avail themselves of it within a reasonable time; whereupon he invited others to advance the money, under the provisions of said first named act, pursuance to which invitation the requisite amount was subscribed, and the parties to such subscription entitled themselves to the full benefit of the several provisions, contained in said acts for their benefit.

And Whereas in and by the Eleventh section of said first mentioned Act, the subscribers to such loan, in order to avail themselves of the security intended to be given to ensure the reimbursement thereof, with the interest, and the priority in the payment of the registered securities, with interest thereon, and the other provisions in said acts made, are required to enter into an agreement with the

Governor of said State, promising each to pay to said Trustees the amount by him respectively subscribed, at such times, and in such instalments as they shall designate - which said agreement must specify the manner in which said Trustees shall give notice of a demand for the subscription, or any portion thereof.

And Whereas the twelfth section of said first mentioned act provides, that upon the making of any such payment, by any subscriber, to said loan, a certificate thereof shall be executed in the manner therein specified, and by the persons therein designated, to be held by such subscriber as evidence of the amount paid by, and due to him, to be reimbursed out of the property pledged as aforesaid.

And Whereas further provisions are made, authorizing the subscribers to such loan to register Canal boats and certain other evidences of claim upon the Canal fund, in order to entitle them to priority in the order of payment over the claims of non-subscribers.

Now therefore, Be it known to all persons whom it may concern. That we, the undersigned, subscribers to the loan aforesaid, in consideration of the premises, and of the benefits and advantages, secured and to be secured to us, by the various provisions of said acts, and of a fulfillment hereafter in good faith, by the State

and the Trustees, of whatever remains to be done to perfect our rights, and to secure the privileges conferred upon us by said acts, do, each for himself, but not one for another, promise the Governor of said State, to pay to the said Trustees, or their successors, the full amount of our respective subscriptions, at such times, as they shall appoint, and upon such notice, as is herein provided, but with the express understanding, that the State and the Trustees are to do and perform in good faith all the duties devolving upon them, with all reasonable dispatch, and in case we fail to make such payment from our fault, then each subscriber so failing shall forfeit all previous payments in the manner specified in said eleventh section, but such forfeiture shall in no wise affect the rights or security of such, as fulfill their promises,

Provided however, if the said Board of Trustees shall, by connivance or direction of said subscribers or any of them, omit to do any act or thing required of the said Trustees to be done, such subscriber shall not be allowed to object or allege any matter, thing or excuse, in consequence of such omission.

And I, Thomas Ford, Governor of the said State, do hereby signify my approval and acceptance of the agreement above written, and do on my part, and in behalf of the State, promise and undertake that the said deed of conveyance to said Trustees

when duly appointed, shall be made and executed according to the true intent and meaning of said acts, that certificates shall, from time to time, be executed, and delivered, & payments are made, in the manner provided in the twelfth section of said first mentioned act, and that whatever duties and obligations intended for the benefit or protection of the subscribers to said loan, rest upon the Executive, by force of said acts, shall be promptly and faithfully performed, and I further agree that notice to the subscribers of the demand of payment upon their subscriptions shall be as follows, to wit:

The Trustees shall cause a written or printed notification to be forwarded to the address of each subscriber through the Post Office, or to their authorized agents, ninety days previous to the day of payment, informing him of the amount required, and specifying the time and place of payment; and shall also cause public notice to be given to all subscribers, by publishing an advertisement in some public Newspaper in each of the following places, to wit: The City of Chicago, The City of New York, and the City of London, which advertisement shall also designate the time and place of payment, shall be inserted four weeks successively, the last publication whereof shall be at least twenty days before the day of payment.

It is further agreed by and between the parties of this agreement as follows - on the part of said Governor it is agreed that convenient places shall be designated in Illinois, the City of New York, and the City of London, for the subscribers to register their bonds and other claims, and the mode of doing the same shall be clearly defined, and it is agreed on the part of the said subscribers, in regard to the place, at which the several instalments of the said loan shall be paid, as called for by the Board of Trustees, that such of the subscribers, who, at the time of subscription, reside in the State of Illinois, shall pay their several instalments at some place to be designated by the Board of Trustees, in the City of Chicago, in such funds, as shall, at the time of payment, be at par with gold and silver at Chicago, and such of the subscribers, who may, at the time of subscription, reside elsewhere in America or in Europe, or such others of them, who may prefer it, shall pay their respective instalments of said loan, as called for, at some place to be designated by the Board of Trustees, in the City of New York, and to be paid then in funds, which shall be at par with gold and silver coin in said City of New York.

And it is further agreed that the said loan, and the interest thereon, shall be repaid to each subscriber at the place, where such subscriber shall

pay his subscription to said loan, and in the same kind of funds as those to be advanced.

In testimony of all which me, the Governor, in behalf of the State, and the subscribers to the loan aforesaid, either by themselves, or their proxies thereto duly authorized, have hereunto set our hands, in duplicate, this tenth day of March, A. D. 1845.

signed by.

Thomas Ford Governor of the State of Illinois
and the subscribers to the loan.



I hereby certify that the foregoing is a true and correct copy of the Contract between the Governor of the State of Illinois, and the subscribers to the loan of \$1,600,000 dollars, on record in this office

Wm Gooding

Secretary

of the Board of Trustees of the
Illinois & Michigan Canal.

Canal Office, Lockport

May 31st A. D. 1845.

Exhibit A.

To all to whom these presents shall come, I, Thomas Ford, Governor of the State of Illinois send, Greeting:

Whereas, The General Assembly of the State of Illinois passed an act, approved the twenty first day of February in the year of our Lord, One thousand, eight hundred and forty-three, entitled "An Act to provide for the completion of the Illinois and Michigan Canal and for the payment of the Canal Debt", which said act is in substance and effect, as follows, viz:

Whereas, It has been represented, that certain holders of the bonds of this State are willing to advance the necessary funds for the completion of the Illinois and Michigan Canal, upon being secured the payment of their said advances, and of their said bonds, by a vested lien upon the said Canal, lands, and revenues, for the purpose therefore of accomplishing an object so desirable and beneficial to the said Bondholders and the State,

Section 1.

Be it enacted by the people of the State of Illinois, represented in the General Assembly, That, for the purpose of raising a fund for the completion of the Illinois and Michigan Canal, the Governor of this State be, and hereby is fully authorized and empowered to negotiate a loan, solely on the credit and pledge of the said canal, its tolls, revenues and lands, to be granted to Trustees, as hereinafter provided, of One million, six hundred thousand dollars, for a term not exceeding six years, and at a rate of interest, not exceeding six per cent per annum,

payable out of the first moneys, to be realized from said canal, its lands, tolls and revenues, the payment of interest and reimbursement of principal, to be at such place within or without the United States, and payable in such currency, as may be agreed on.

Section 2.

The Holders of Canal bonds and other evidences of indebtedness of this State, issued for the purpose of aiding in construction of the Illinois and Michigan Canal, or hereafter to be issued for work done, percentage, sealage, or damages, shall be first entitled to subscribe in proportion to the amount of bonds or other indebtedness, held by them, and take the whole of said loan; but if, within a reasonable time, to be determined by the Governor, any of the said holders of Canal bonds or indebtedness shall neglect or refuse to subscribe as aforesaid, the whole of said loan may be subscribed for, and taken by other holders of Canal bonds or indebtedness; but if, within a reasonable time, to be determined upon by the Governor, the holders of the said Canal bonds or other evidences of indebtedness aforesaid, shall not subscribe for, and take the whole of the said loan, then, and in that case any other person or persons, body politic or corporate, shall be entitled to subscribe for, and take so much of the said loan, as may remain

unsubscribed for, by the said holders of bonds, or other evidences of debt aforesaid.

Section 3.

After the said loan shall be subscribed for, as aforesaid, there shall be appointed three discreet persons, to constitute a Board, to be known by the style and description of "the Board of Trustees of the Illinois and Michigan Canal"; one of the said trustees shall be appointed by the Governor of this State, and the other two shall be elected or appointed by the subscribers to the said loan, or the holders of the certificates, authorized by this in manner and form, as hereinafter mentioned.

Whenever any vacancy shall occur in the said Board of Trustees, either by death or resignation, or from any other cause, said vacancy shall be filled by the Governor, or holders of said certificates, to whom belonged the appointment of the trustees, whose seat shall have become vacant, as the case may be.

Section 4.

The first election of Trustees, by the subscribers to said loan under this act, shall be held at the Canal Office at Lockport, at such time, as the Governor of this State shall appoint, under the direction of one of the Judges of the Supreme Court of this State, who is hereby appointed Inspector of the first election; and the two persons then elected, as trustees by the said subscribers, and

the person appointed trustee by the Governor, shall hold their offices for two years from the time of their said election, or appointment, and until others are elected.

Section F.

Subsequent elections shall be held every two years, at such time and place, and under the direction of such persons, as a majority of the trustees for the time being, shall by resolution to be entered on their minutes, appoint, and shall hold their offices for two years, and until others are elected in their stead.

Section G.

At the election of trustees under this act, each stockholder shall be entitled to one vote for each and every one thousand dollars of stock, held by him, and in all elections, votes may be given in person or by proxy.

Section H.

All elections shall be by ballot, and the two who shall have the greatest number of votes shall be the two trustees, duly elected by the said subscribers or holders of said certificates. At all such elections, the said subscribers or holders of said certificates shall designate upon their ballots, one of the persons voted for, as President, and the person having the greatest number of votes as trustees and president shall be one of the said trustees, and president of said board.

Section 8.

The said Board of Trustees of the Illinois and Michigan Canal, when duly appointed and elected, as aforesaid, shall apportion their respective duties among themselves, and so far as is not incompatible with this act, shall possess all the powers, and perform all the duties, conferred upon the Board of Commissioners of the Illinois and Michigan Canal by the act entitled "An Act for the construction of the Illinois and Michigan Canal", approved January ninth, eighteen hundred and thirty six, and the acts supplementary and amendatory thereto; and shall take an oath or affirmation, and give bonds, with security, for the faithful discharge of the duties imposed upon them by this act.

Section 9.

If the holders of any of the said Canal Bonds or other evidences of indebtedness, issued for the purpose of aiding in the construction of the Illinois and Michigan Canal, shall become subscribers for the said loan, or any part thereof, they shall, at the time of subscribing, file or cause to be filed with the Governor, a brief description of said bonds or other evidences of indebtedness aforesaid, owned by them, which description shall be deposited, by the Governor, in the office of the Auditor of Public Accounts, in order that the evidences may be preserved to discriminate the holders, who

subscribed for the said loan, and to identify the said Bonds, or other evidences of indebtedness, aforesaid, that may in consequence be entitled to a priority of payment, out of property and assets granted to the board of trustees as hereinafter provided.

Section 10.

For the purpose of placing in the hands of trustees full and ample security for the payment of said loan, authorized by this act, and the interest thereon, as well as for securing a preference in the payment of such of the Canal Bonds and other evidences of indebtedness issued by the State, for the purpose of aiding in the construction of the Illinois and Michigan Canal, as may be owned by the subscribers to the said loan, the State does hereby irrevocably grant to the said board of trustees of the Illinois and Michigan Canal, the bed of the said Illinois and Michigan Canal, and the land over which the same passes, including its banks, margins, towpaths, feeders, basins, right of way, locks, dams, water power structures, stone excavated, and stone and materials quarried, purchased, procured or collected for its construction, and all the property, right, title and interest of the State of, in, and to the said Canal, with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining; and also all the remaining

lands and lots, belonging to the Canal funds, or which hereafter may be given, granted or donated, by the General Government to the State, to aid in the construction of the said Canal, and the buildings and erections, belonging to the State, thereon situated. The said Board of Trustees to have, hold, possess and enjoy the same as fully and as absolutely in all respects, as the State now can, or hereafter could do, for the uses, purposes and trusts hereinafter mentioned; but it is to be understood that all Canal lands and lots, heretofore sold by the Board of Commissioners, upon which moneys are now due, or may hereafter become due, whether the said lands and lots be now forfeited or relinquished, or hereafter become forfeited or relinquished, shall be exempt from the aforesaid provisions of this act, and the trustee, herein provided to be appointed by the Governor, or any other officer or officers, having the management of the affairs of the canal, untill said trustee shall be appointed on the part of the State, is hereby authorized, and required to settle, all accounts due to Contractors and others (except for such damages as are hereinafter provided for) by issuing Certificates of indebtedness which, together with the certificates of indebtedness, scrip and acceptances heretofore issued by the said Canal Commissioners, shall be received by said trustee, or other officer or officers aforesaid, in payment for said

lots and lands hereby reserved whenever they may be presented for that purpose; the said lands and lots hereby reserved shall within three months after the passage of this act be appraised, as is provided in the thirteenth section of this act, and sold in accordance with the laws of this State, regulating the sale of Canal lands.

Section 11.

The subscribers to the said loan shall execute an agreement to and with the Governor of this State, to pay the amount by them respectively subscribed, to the said board of trustees, at such times, and in such proportions, as said trustees shall direct; and said agreement shall specify the manner, in which said Trustees shall give notice to the said subscribers of every call for a payment. Provided that, in case any subscriber, under the provisions of this act, shall fail, neglect or refuse to pay any instalment at the time called for by said trustees, he shall forfeit all payments previously made, and all benefits and advantages, arising under the provisions of this act. Provided however, that the said trustees shall be bound to make a call for at least One hundred thousand dollars per quarter, for the first year after their appointment.

Section 12.

Whenever and as often as the said

subscribers to the said loan shall make a payment of any portion of their subscriptions, in pursuance of a call of the said trustees, the said board of trustees, by their president and secretary, under the seal of said board, shall execute a certificate to each of the said subscribers, for the amount paid by them on their respective subscriptions, with one year's interest, at the rate of six per cent, added to the principal, stipulating for the payment of the same within six years, with interest, at the rate of six per cent per annum, to be computed after one year from the date of said certificate, and to be paid semi-annually thereafter; the said principal and interest to be paid by the said trustees, and of the first moneys to be realized by them from the Illinois and Michigan Canal, its assets, revenues, tolls and lands, granted to the said trustees by this act, which said certificates shall also be countersigned by the Governor, and the impress of the great seal of the State shall be affixed thereon by the Secretary of State.

Section 13.

The said Board of Trustees, when appointed, are hereby authorized to take possession of the said Canal, lands, property, and assets, granted them by this act, and proceed to complete the same. They are hereby authorized to make such changes and alterations of the original plan of said canal, as they

may deem desirable, without reducing its present capacity, or materially changing its present location, having due regard to economy, permanency of the mint and an adequate supply of water at all seasons, None of the lot, lands, or water powers so granted to the said trustees, shall be sold untill three months after the completion of the said canal, the said lots, lands and water powers shall then be offered for sale by the said trustees at public auction, in lots and legal sub-divisions, once or oftener in each year, for the four succeeding years; said sales to be made for Cash, or on Credit, in the manner prescribed in the act of Ninth of January, eighteen hundred and thirty-six. The said lands, lots and water powers, before they are offered for sale as aforesaid, shall be appraised by three disinterested persons, to be appointed by the Judge of the Circuit in which said lands, lots, and water power are situated, who shall take an oath, faithfully and impartially to discharge the duty of appraisers; said lands, lots and water power, when so appraised, shall not be sold for less than the appraisement. After the expiration of said four years, the said trustees shall expose the residue of said lands, which may remain on hands, to sale at such times, and in such manner, as they may deem proper. The said Board of Trustees are authorized to convey said lands and

water power, sold by them as aforesaid, after the purchase for the same shall be fully paid, but not before, and the said lands and lots shall be exempt from taxation of every description, by, and under the authority of any law of this State, until after the same shall have been sold and conveyed by the said trustees, as aforesaid. Provided, also that in the construction of the said Canal no change shall be made in its location, so as to divert the water power from Canal lands. Provided That in all cases where improvements were made upon the said Canal lands or lots, previous to the first day of February, eighteen hundred and forty three, the owner of such improvements shall be entitled to purchase the said lands or lots, on which said improvements are situated, at an appraisement, to be made as aforesaid, without reference to said improvements.

Section 54.

The said Trustees shall proceed to the completion of the said Canal, in a good, substantial and workmanlike manner, so that the same shall, if practicable, be ready for use and navigation within two years and six months from the time this act goes into operation. The said Trustees shall keep a just, full and accurate account of all the costs and expenditures of completing and superintending the said Canal, and of the rents, issues, revenues,

and profits received by them from the said Canal, and from the property granted to them by this act; and of the amounts received by them under the said loan, and shall annually make a report to the Governor, in manner and form, specified in the forty third section of the said act of January ninth, eighteen hundred and thirty six, Provided that in case the subscribers, under the provisions of this act, shall fail or neglect to complete the said Canal within three years, after this act goes into operation, then, and in such case, the lands and property hereby granted to said trustees shall revert to the State.

Section 15.

The said board of trustees shall annually establish a tariff of tolls to be paid for transportation upon said Canal, but the Legislature hereby reserves the right to increase the tolls, with a view to an increase of revenue, but shall not reduce the same, without the consent of the trustees, and are hereby fully authorized and empowered to collect the same, and from time to time to make, ordain and establish such reasonable rules, by-laws and regulations, in relation to the collection of tolls, the transportation upon the canal, the conduct of boats and rafts, and the general police of the said Canal, as are usual, or may be found necessary, and to enforce the observance of

the same, and that said Canal, when completed, shall in all future time be free for the transportation of the troops of the United States and their munitions of war, without the payment of any tolls whatever.

Section 16.

After the completion of the said Canal, as aforesaid, the said Board of Trustees shall make annual dividends of the money which shall come to their hands from the said Canal, its assets, tolls, revenues and lands granted to the said trustees by this act, after payment of incidental expenses, among the holders of the bonds of this State, in the following order: First, the said Board of Trustees shall annually make a pro-rata dividend or payment of said moneys, on the Certificates given to the subscribers to the loan authorized by this act, until said certificates and interest thereon are fully paid. Second, the said Trustees shall then make annual dividends and payments of said money upon the interest due upon the bonds, and other evidences of indebtedness, held by the subscribers to the said loan, a description whereof shall have been filed with the Governor, as provided in the ninth section of this act, until the interest thereon is fully paid. Third, the said Trustees shall then make annual dividends and payments of said money upon the interest due to the non-subscribing holders of bonds or other evidences of Canal indebtedness. Fourth, after paying all interest due such non-

subscribing land holders, the said trustees shall make annual dividends pro rata, upon the principal of the bonds and other evidences of Canal indebtedness held by the subscribers to said loan, so provided for by the ninth section of this act, until the same shall be liquidated, at which time the trust, hereby created, shall cease, and the Canal shall revert to the State, with all the appurtenances thereto belonging.

Provided, that the Certificates of Canal indebtedness not stipulating on their face for the payment of interest shall, when registered by subscribers to said loan, as hereinbefore provided, bear an interest of six per cent *une per annum*, from and after they shall be so registered. Provided further, that no appraisal shall be made for any damages, arising under the provisions of any contract, entered into, in pursuance of an act for the construction of the Illinois and Michigan Canal, unless the Contractor or Contractors interested therein, shall first signify his or their consent in writing (which writing shall be deposited with the appraisers to be filed in the Auditor's Office), that such appraisal of damages shall be made without allowing any prospective damages, or any profits which said Contractor or Contractors might have made, had they finished their jobs, but such contractor or contractors shall be allowed the value of their

machinery upon the Canal, at the time the work stopped, and back percentage and scalage, which entire amount of damages is allowed to all contractors, shall not exceed the sum of two hundred and thirty thousand dollars.

Section 14.

The Governor is hereby authorized and empowered to appoint three discreet and skillful persons, to go on to the jobs and settlements upon the Canal, and appraise the actual damage which the respective contractors upon the said Canal will sustain, in being deprived of the same; said appraisal shall be final and conclusive, unless appealed from. That if any person shall consider himself aggrieved by the decision of said appraisers, he may appeal from the same, at any time within thirty days, to the Circuit Court of the County, in which the job so appraised is situated.

If the Governor shall be satisfied that the appraisal is fair and honest, he shall issue certificates of Canal indebtedness, bearing interest at six per cent, to the persons in whose favor the appraisal shall be made for the amount, the holders of which certificates shall be entitled to all the privileges conferred by this act, upon other holders of Canal indebtedness. And the present Contractors of the Illinois and Michigan Canal shall have the right to take the contract for the jobs which

they now hold, at the estimate of the Engineer, to be appointed by said trustees, under such regulations and provisions, as the said trustees shall direct.
Section 18.

This act shall go into effect, and the said Canal property and assets shall vest in the said trustees, as hereinbefore granted, whenever and as soon as the full amount of the said loan shall be subscribed for, and the trustees elected as thereinbefore provided; and when this act goes into effect, so much of the acts heretofore passed by the Legislature of this State, in relation to the Illinois and Michigan Canal, and the Canal lands and property, as conflicts with the provisions of this act, are hereby repealed.

Section 19.

Whenever the trust, created by this act, shall have been fully executed and performed by the said Trustees, the said Canal, and the Canal property that may then remain, shall revert to the State; and the State hereby reserves the right of paying off the Bonds and Certificates, to be paid to the said trustees, and the incidental expenses paid by them, and the interest thereon; and the said trustees shall then resign the said Canal, and the remaining Canal property and assets to the State.

Section 20.

This act shall be a public act, and shall be liberally construed in all Courts of justice, and the State hereby solemnly pledges its faith, to supply the future Legislature all such defects as may be found necessary, to enable the said trustees to carry into full effect the fair and obvious intent of this act.

Section 21.

If, in consequence of any defect, omission or objection to the foregoing act, the said bondholders or other persons shall neglect or refuse to subscribe for the said loan, in that case the Governor is hereby authorized to negotiate and enter into a contract with the said bondholders, or other persons, in pursuance of the general principle of this act, Provided that he shall make no further pledge of the faith or credit of the State, for any advance of money, but shall be limited to pledging the Canal and Canal property therefor. And Provided further; That in any negotiations to be made under the provisions of this act, for the purpose of carrying them into effect, nothing shall be done, which shall in any wise interfere with the rights, now secured to the holders of Canal bonds. The Governor is hereby vested with all such power, as may be necessary to carry this act into operation, or to make, or cause to be made

such negotiation.

Section 22.

The said Trustees shall employ a Chief Engineer, of known and established character for experience and integrity, who shall be subject to the direction of the trustees, but shall be required to execute a bond to the Governor, in the sum of ten thousand dollars, to be approved by him, for the faithful performance of all the duties of an Engineer, and shall be subject to be removed by the Governor for any good reason, which he shall make known to the next General Assembly — the said Engineer shall in addition be required to take an oath, "that he will faithfully and impartially perform all the duties of his office, without respect to persons, and that he is neither interested, ^{nor will be interested.} in any job, work, or contract, let, or to be let on the Canal, or connected therewith," which oath shall be entered and subscribed on the bond of said Engineer.

And Whereas, the General Assembly of the State of Illinois, at their session, began on the first Monday of December, in the year of our Lord, One thousand, Eight hundred and forty four, passed an act, entitled "An Act supplementary to an act to provide for the completion of the Illinois and Michigan Canal and the payment of the

Canal Debt, approved February 21st 1843 "
Approved March 1st 1845, which said act is in
substance and effect as follows, viz:

Section 1.

Be it enacted by the People of the
State of Illinois, represented in the General Assembly
That after the contract for the loan of One Million
and six hundred thousand dollars, as contemplated
in the act, entitled "An Act to provide for the
completion of the Illinois and Michigan Canal and
for the payment of the Canal Debt", approved
February twenty-first, Eighteen Hundred and forty-three,
shall be duly executed in all respects, as is
provided by the terms of the above recited act,
as modified by the provisions of this act, and the
trustees are appointed, as is contemplated in
said act, the Governor of this State shall exe-
cute and deliver, under the seal of State, a deed
of trust to the said trustees, of all the property
and effects, mentioned in the tenth section of said
act, which said conveyance shall include the lands
and lots remaining unsold, donated by the United
States to the State of Illinois, to aid in the
completion of the said Canal, to be held in trust
as in the said act stipulated; and it is expressly
provided, that the subscribers to said loan may
and shall register their bonds, or other evidences
of indebtedness, upon which they may have made

or may hereafter make, their subscriptions, within the year after the appointment of trustees, and the said subscribers shall be entitled to priority in the payment of the respective advances to be made by them, and the interest thereon, also a priority in the payment of the principal and interest of the bonds or other evidences of indebtedness, to be registered by them, out of the proceeds of the said land property, anything in the said act above mentioned to the contrary notwithstanding.

Section 3.

The majority of the said Board of Trustees shall have power and authority, to act and decide in all cases, and their acts shall bind all parties; and in appointing the said trustees each subscriber to the said loan shall be entitled to one vote for each sum of Three hundred and twenty dollars subscribed, and such election may be held in the City of New York, under the direction of the District Judge of the United States for that District, or such person, as he for that purpose may appoint.

Section 3.

In case, a sufficient sum shall not be subscribed or paid to complete said Canal, the said subscribers shall share pari-passim with other persons who may subscribe and pay the residue of the amount necessary to complete the

Canal, provided, that the subscribers to said loan shall have the right to subscribe, and fill up the amount necessary to finish said Canal in the first instance; and if they neglect so to do, then any other person may subscribe such amount. - And provided further, that such subscribers may register bonds upon such subscriptions, as hereinbefore provided, within one year after such subscriptions.

Section 4.

When the amount due for arrears and difference of interest on the registered bonds and other Canal indebtedness shall be extinguished, then the principal of said registered bonds and Canal indebtedness shall be paid; and when the said principal shall have been paid, the said trustees shall proceed to pay the interest on the unregistered Canal bonds and Canal indebtedness.

Section 5.

The preliminary expenses of the negotiation of said Contract with the expenses of the examination of the Canal property by the Agents, appointed by the authority of the bondholders, shall be first paid by the said trustees, unless some other provision for their payment be made by the General Assembly; but no further expense shall be incurred by the State, by sending Agents to Europe or elsewhere, in relation to the matter.

Section 6.

If the said Canal shall not be completed within three years, as is contemplated in the fourteenth section of the above recited act, the subscribers to said loan, who shall have advanced money, in pursuance of their subscriptions, shall not forfeit the priority of payment, secured to them by this act, but shall share in the trust property *pari-passu* with such other persons, as will advance further sums, if such should be necessary to complete the Canal.

And Whereas. After the approval of the aforesaid acts, and before the election and appointment of the said trustees, as hereinafter mentioned, the whole amount of the said loan of One Million six hundred thousand dollars was subscribed for and filled up, in strict pursuance of the provisions of the said Acts, and the subscribers thereto have entitled themselves to the privileges, conferred upon such subscribers by the said acts.

And Whereas the said subscribers to said loan have made and executed a contract, or agreement, to and with the Governor aforesaid, in strict conformity to and with the provisions of the aforesaid acts, and did, at a meeting duly and legally summoned, and called by the said Governor to be held in the City of New York, on the twenty seventh day of May Eighteen hundred and forty five, duly

and legally elect, in conformity with the provisions of the said acts, William H. Swift, a Captain in the service of the United States, and David Leavitt Esquire, of the said City of New York as trustees, on the part of the said subscribers, and him the said William H. Swift, President of said Board of Trustees.

And whereas, the said Governor has duly appointed Jacob Fry, of the County of Will, in the State of Illinois, to be a trustee on the part of said State - they, the said William H. Swift, David Leavitt and Jacob Fry, now constituting the "Board of Trustees of the Illinois and Michigan Canal" duly elected and appointed, in pursuance with the provisions of the above recited acts.

And Whereas all things which the said acts require or provide for, as necessary to be done before the execution of a deed of trust to the said trustees, having been done and completed according to the terms and requirements of said acts —

Now therefore, Be it known to all persons whom it may concern, that I, Thomas Ford, Governor of the State of Illinois, by virtue of the powers and authority vested in me as aforesaid, and in execution of the provisions of the aforesaid acts, as well as in consideration of the subscription and contract, entered into by the said subscribers, and

the premises aforesaid, do by these presents hereby
give, grant, bargain, sell, convey, transfer, assign
and make over unto the said William St. Swift,
David Leavitt and Jacob Fry, Trustees of the
Illinois and Michigan Canal as aforesaid, and to
their successors in the said trust, the bed of the
said Illinois and Michigan Canal, and the land
over which the same passes, including its banks, mar-
-gins, towpaths, feeders, basins, right of way, locks
dams, water power structures, stone quarried, and stone
and materials quarried, purchased, procured or
collected for its construction, and the said Canal
with all the tenements and appurtenances there-
-unto belonging or in any wise appertaining, and
all the remaining lands and lots belonging to the
Canal Fund, or which hereafter may be given, grant-
-ed or donated by the General Government to the
State to aid in the construction of the said Canal,
and the buildings and erections belonging to the State
thereon situated; also the lands and lots remaining
unreclaimed donated by the United States to the State
of Illinois to aid in the completion of the said
Canal, We Have, hold, possess and enjoy -
the premises aforesaid, without hindrance or molesta-
-tion to them; the said William St. Swift,
David Leavitt and Jacob Fry, as trustees of the
Illinois and Michigan Canal as aforesaid and
their successors in trust, as in the said above

recited acts stipulated, and to and for the uses and purposes in the said acts expressed and intended, And so to have, hold and enjoy the said property with the rights of controlling, managing, selling and disposing of the same, and subject to all the duties and obligations, as they are set forth and specified in the said acts of the General Assembly, until from the proceeds of the said property, and the revenues of the said Canal, after it shall be completed, all the moneys to be paid and trusts performed, by the said trustees as specified in the said acts, shall be fully paid, performed, satisfied and extinguished, together with all just and necessary charges and expenditures incurred and to be incurred in carrying on the work and business of said trust.

And the property of the said trustees, the rights of the said subscribers to the said loan, or any of them, and the rights of their heirs, executors, administrators or assigns shall not be in any wise affected or impaired, in case any of the said subscribers to the said loan, their heirs, executors, administrators or assigns, or the holders of bonds, or Canal indebtedness entitled to be paid by the said trustees, shall be Citizens, or Subjects of any Power, at any time at war with the United States of America, or the State of Illinois.



In testimony of all which, I,
Thomas Ford Governor of the State of
Illinois, in virtue of the power and
authority in me vested, by force of the
Legislative acts above recited, have here-
unto set my hand, and caused the seal
of State to be affixed, this twenty sixth
day of June, in the year of our Lord
One thousand eight hundred and forty five,
and of the Independence of the United
States, the Sixty ninth.

Signed triplicates

Thomas Ford

By the Governor

Thompson Campbell

Secretary of State

State of Illinois
Witt County 3 Ps

On the first day of August
1845 the within deed was left for record and
was duly recorded in Book I, Pages 563, 4, 5, 6,
7, 8, 9, 70, 71, 2, 3 & 4.

(5531) Holt & Dunsen Records
Vol. 1 p. 32 Filed Augt 1st 1845.

I hereby certify that the within is a true and
correct copy of the Original Record
of Trust on file in my office.
Wm. H. Dunsen



Seal

Secretary
of the Board of Trustees of the
Illinois and Michigan Canal

Canal Office, Lockport
May 31st A.D. 1852.

And afterwards, to wit. on the Twenty-
sixth day of November in the year of Our Lord
One Thousand eight Hundred and fifty two,
The Chicago and Rock Island Rail Road Com-
pany, Defendants, by Budd & Wilson their soli-
citors, filed in the office of the Clerk of said
Court, their answer, to said Bill of Complaint,
which said answer, ~~and~~ ~~affidavit~~ ~~filed~~
~~therein~~, ~~and~~ in words and figures as fol-
lows. To wit,

Scott County Court }
of Common Pleas }

The Chicago and Rock Island Railroad
Company, Joel A. Matteson,
Jeremiah Cratty, Michael Killalea
and George Armour

vs

The Board of Trustees of the Illinois
and Michigan Canal

The Separate answer of the Chicago and Rock Island
Railroad Company to the Bill of Complaint of
The Board of Trustees of the Illinois and Mich-
igan Canal.

The said defendants, now and at all times here-
-after saving and reserving to themselves the benefit
of exception to the manifold errors, uncertainties
imperfections and defects in the said complainant's
said Bill of Complaint contained for answer thereto
on its so much thereof as they are advised is
material and necessary to answer unto; they
answering they.

That they admit that on the 30th day of March
1822 the People of the United States, in Congress
assembled, passed an act entitled, "an act to
authorize the State of Illinois to open a Canal
through the public lands, to connect the Illinois

River with Lake Michigan. These Defendants deny that said act is truly and correctly set forth in said complainant's Bill. On the contrary thereof these Defendants state, that among other things it is provided as follows: "And ninety feet of land on each side of said canal shall be forever reserved from any sale to be made by the United States except in the cases hereinafter provided for, and the use thereof shall be, and the same is hereby vested in the said State for a canal, and for no other purpose whatever; on condition however that if said State does not survey and direct by law said canal to be opened, and return a complete map thereof to the Treasury Department, within three years from and after the passage of this act, or if the said canal be not completed suitable for navigation within twelve years thereafter, or if said ground shall ever cease to be occupied by and used for a canal suitable for navigation the reservation and grant hereby made shall be void and of none effect."

And these Defendants further answering deny that the said State of Illinois accepted of said grant, but on the contrary thereof these Defendants say that said State neglected to comply with the conditions in said acts contained, and that, by reason thereof, said reservation and grant became void and of none effect by the terms of said act for the terms and conditions of which act.

these Defendants refer to same for greater certainty.

These Defendants further answering admit that on the 14th day of February 1823, the General Assembly passed an act, the title of which is correctly set forth in said bill of complaint as follows:

"an act to provide for the improvement of the internal navigation of this State", for the particular provisions of which these Defendants refer to said act, but these Defendants expressly deny, that in and by said act the State of Illinois did direct any canal to be opened, or that the said State caused to be returned to the Treasury Department a complete map of said canal, in pursuance of said act of 30th March 1822.

These Defendants further answering state, that the Commissioners appointed by said act of 14th February 1823 did on the third day of January 1825 submit to the General Assembly of the State of Illinois a report of their doings under said act, together with the report of the Engineers Justus Post and R Paul, showing what had been done under said act, and among other things, said Engineers state, that their object was to ascertain the practicability of constructing a canal between the Lake and some point below the rapids of the Illinois River, and they further add the following "the undersigned have confined themselves

no further to location than merely to designate the two extreme points - the head of the Chicago river and the confluence of the little Vermillion and Illinois Rivers."

Said Engineers surveyed five different routes, for the particulars of which action by said Commissioners and Engineers, these Defendants make special reference to their published report for greater certainty, and these Defendants expressly deny that under the provisions of said act of Congress of 30th March 1822, and said act of the General Assembly of the State of Illinois of 14th February 1823, any Canal was ever located or directed to be opened.

And these Defendants further answering admit that the People of the United States in Congress assembled, on the second day of March 1827, pass an act entitled "An act to grant a quantity of land to the State of Illinois, for the purpose of aiding in opening a Canal to connect the waters of the Illinois River with those of Lake Michigan" and that by said act land was granted, as in said bill set forth, and that the same was selected and confirmed to the State of Illinois, as in said Bill alleged.

These Defendants further answering admit, that on the second day of March 1833 the Congress of the United States passed an act entitled "an act to

amend an act entitled an act to grant a quantity of land to the State of Illinois, for the purpose of aiding in opening a canal to connect the waters of the Illinois River with those of Lake Michigan and to allow further time to the State of Ohio for commencing the Miami Canal from Dayton to Lake Erie" and these defendants admit that by said act the time for completing said Canal, mentioned in the act of Congress passed March Second 1827 was extended five years, but these defendants deny that said act refers in any manner to the said act of 30th March 1822.

These defendants further deny that by said act of March 1823, the grant of ninety feet on each side of said Canal was confirmed unto the State of Illinois, or that any forfeiture incurred by a failure to comply with the conditions of said act of 1822 were waived by Congress, as charged in said Bill of Complaint.

These defendants further state that by the laws of the land no act was required to be done by the Congress of the United States, being the Sovereign Power to declare said forfeiture; on the contrary thereof these Defendants state that the Sovereign power, in order to have title re-invest on forfeiture for breach of condition, are not required to make any entry or claim. These Defendants further state that the Sovereign power of the United States did

after forfeiture incurred by a non-compliance with the act of 1822 order and expose to public sale without any condition, restriction or reservation, except military reservations, all the lands owned by them in the district of country through which the Canal, as proposed by the act of 1822, was intended to pass, and also through the district of country through which the present Canal passes, excepting and reserving from such sale only the lands selected under the act of March 1827, and that most of the lands so offered for sale have been sold, pursuant to legal authority - without any reservation of the ninety feet, as claimed in said Complainant's said bill of complaint, and that such lands were sold and paid for by the acre.

These Defendants further answering admit, that they know of no act of Congress declaring said forfeiture, but they expressly deny that the said ninety feet has been held as so appropriated and reserved as charged in said Bill - on the contrary thereof these Defendants expressly state that in all sales of Canal lands made under the authority of the State of Illinois no such reservation has ever been made even of Canal lands, and in addition thereto that the State of Illinois has by its Legislation from time to time expressly provided for compensation being made for the damages occasioned by the taking of lands in the construction of the said

Canal, except some reservations made by the present Complainants, since the property was transferred to them.

And these Defendants further answering admit that Section ten of the act to provide for constructing the Illinois and Michigan Canal, approved January 22^d 1824, and that the eleventh section of an act entitled an act to provide for the construction of the Illinois and Michigan Canal, approved February 18th 1831, and that the sixteenth section and the twenty first section of an act entitled: an act for the construction of the Illinois and Michigan Canal, approved January 9th 1836 - that the tenth section of an act, entitled an act to amend an act entitled an act for the construction of the Illinois and Michigan Canal, approved January 9th 1836, approved March 2^d 1837 - that the tenth section of an act, approved February 26th 1839 entitled an act to amend the several laws in relation to the Illinois and Michigan Canal, were passed by the people of the State of Illinois represented in the General Assembly, at the times in said bill set forth - these Defendants expressly referring to the whole of each and every one of said acts.

And these Defendants further answering admit that under the various laws of this State, the Illinois and Michigan Canal was commenced in 1836, and

that the work was continued and prosecuted for several years, and that the State expended a large sum of money, about whether the same amounts to seven millions, these Defendants are ignorant and cannot answer. These Defendants admit that the State borrowed large sums of money for the aforesaid purposes - the terms and conditions of said loans are prescribed in the several laws authorizing the same, and to which several acts these Defendants expressly refer.

And these Defendants admit that the State was unable to pay her debts and the interest thereon and continue the work upon said Canal, and was compelled to abandon the work on said Canal some time in the year 1842.

And these Defendants further answering admit that certain Creditors represented, that upon obtaining certain securities, they were willing to advance money for the completion of said Canal.

And these Defendants admit that the State of Illinois, represented in the General Assembly, on the 21st day of February 1843 passed an act, entitled, "an act to provide for the completion of the Illinois and Michigan Canal and for the payment of the Canal debt", and that on the first day of March 1843, the people of the State of Illinois, represented in the General Assembly, passed an act supplemental to an act, to provide for the completion

of the Illinois and Michigan Canal, and for the payment of the Canal Debt, approved February 26th 1843, to which said acts these Defendants for greater certainty refer.

And these Defendants further answering say that they admit that certain bondholders and creditors of the State of Illinois did subscribe the full amount of said loan of \$1,600,000, but these defendants have no knowledge or information of the execution of any contract between the bondholders and the State of Illinois, except from the statements in said bill - these Defendants further state that a contract was entered into by the Governor of the State of Illinois and said bondholders, purporting to be executed in pursuance of said acts of 21st February 1843 and of first of March 1845, but whether it was the same in substance, as set forth in said bill, they are ignorant, and neither admit nor deny the same. And these Defendants insist that so far as said contract as entered into, varies from said acts in the rights conferred, the same is without any authority of law, and void.

And these Defendants admit that a deed of trust was executed conveying the said canal and canal property as set forth in said Bill, that said Deed was executed under and by virtue of the authority of said acts of the Legislature, and by no other authority or contract whatever.

And these Defendants further answering admit that said Board of Trustees were organized by the election of William St Swift and David Corvitt as trustees on behalf of the bondholders, and Jacob Fry as trustee on the part of the State; and that they completed the said Canal, and admit that said Trustees expended about \$ 1,600,000 in and about such completion.

And these Defendants further answering say that said Canal has been in operation, during the season of navigation, most of the time since May 1846, and they are informed and believe and therefore assert that said Board of Trustees have sold a portion of said lands and lots, and received tolls, and that, after paying repairs and expenses, dividends have been declared and paid; but whether, as stated in said bill, they are ignorant and leave said Complainants to prove the same, if they are advised that such proof is material.

These Defendants further answering state that they have been informed and believe, that the sale of lands and lots has amounted to more than sufficient to pay said \$ 1,600,000 and interest thereon, but these Defendants admit that a portion of said \$ 1,600,000 is yet unpaid.

And these Defendants further answering say that they are informed and believe and therefore admit

that a large part, but how much these Defendants cannot state, of said debts and money secured by said laws are unpaid, and that the larger proportion of Canal debt is still unsatisfied, and these Defendants admit that there is no other mode provided for the payment of the same, except by the tolls and receipts from the sale of canal lands, and by the revenue now provided by law to be applied to said debts.

And these Defendants further say that they are informed and believe and advised by counsel and therefore admit, that the Constitution of the United States, and the Old and New Constitution of the State of Illinois provide as in said bill set forth in regard to the passage of ex post facto laws, or laws impairing the obligation of contracts. These Defendants further answering say they are ignorant whether one tenth of the revenue of said Canal for the past few years has been derived from the conveyance of passengers or not, except from the statements in said bill, and therefore neither admit nor deny the same, but they admit that they are informed and believe that some revenue is derived from tolls on the carriage of passengers, but what proportion these Defendants are not informed but whether the value of said Canal as a security depends mainly upon having the exclusive right and franchise of transporting and carrying passengers

A

and freight from Lake Michigan to the Illinois River upon said canal for tolls, these defendants are ignorant and neither admit nor deny the same. These Defendants admit that in the years 1848. 1849. 1850. & 1851 a large amount of revenue was derived from said Canal, but whether such revenue was the sums stated in said Bill, these Defendants are ignorant, and neither admit nor deny the same. These Defendants further answering admit that the exclusive right of transportation of freight and passengers between the Illinois River and Lake Michigan would be very valuable, but these Defendants expressly deny that any such exclusive right has ever by any law or authority whatever of the State of Illinois been granted to the said Plaintiffs or to any person or corporation whatsoever.

And these Defendants admit that the Legislature of the State of Illinois, on the 27th day of February 1847 passed an act entitled an act to incorporate the Rock Island and LaSalle Rail Road Company, and that on the 7th day of February 1851 another act was passed entitled an act to amend an act to incorporate the Rock Island and LaSalle Rail Road Company which said acts are public laws of the State of the State of Illinois, and to which these Defendants refer for greater certainty.

And these Defendants further answering say that they

did not furnish said Trustees with any map or profile of said Road, except as hereinafter mentioned, and that they were not required to furnish the same, and that a map and profile were not necessary to enable said Trustees to decide whether they would accept the provisions in relation to tolls made to them in and by said acts of incorporation, and these Defendants further say that it was impossible to organize, survey and locate said Railroad, and furnish a map and profile of the same, before the time limited for acceptance expired by the terms of said act of the month of February 1851. And these Defendants further say that immediately upon the passage of said act, a copy of the same was forwarded to William H. Swift President of said Board of Trustees, and the receipt of said act was duly acknowledged by said Swift under the date of fifteenth February 1851, which said Correspondence is as follows to wit:

Springfield Ill. Feb 28 1851

Capt. William H. Swift }
Philadelphia }

Dear Sir

I enclose to you a copy of the acts of the Legislature of the State, authorizing the Rock Island and LaSalle Rail Road Company to extend their Road from the termination of the Illinois and Michigan Canal to the City of Chicago.

The Company expected that the Legislature would grant to them the right of extending their Road without the payment of tolls to the Canal.

The Legislature however determined otherwise, and as a consideration for tolls, have required for us the right of way.

We shall take great pleasure, in the construction of our line, in consulting with the Trustees of the Canal, and hope that our intercourse with them will be pleasant to both parties and result in the promotion of their mutual interest.

My residence is Davenport, Iowa, at which place I shall be pleased to hear from you.

Your obedient servt.

James Grant

Pres^t. Chicago & N. W. R. R. Co.

Philadelphia Feb 15 1857.

James Grant Esq

President do do

Davenport Iowa

Dear Sir

I have to acknowledge the receipt of your letter of the 8 inst., enclosing a copy of an act of the Legislature, relating to the Rock Island and LaSalle Rail Road Co.

I shall at the first meeting of the Board of

Trustees of the Illinois and Michigan Canal lay
your communication before it.

The subject is of grave import, and it will
receive due consideration, on the part of the Board

Respectfully

Your obt. servant

W. H. Swift

President

And these Defendants further state, that said Board
of Trustees did meet, for the transaction of busi-
ness in the month of May 1851, and before the
expiration of the time limited in said act for the
acceptance of the provisions thereof, in relation to
tolls. These Defendants further state upon information
and belief, that no action was had or taken by
said Board of Trustees, in relation to the acceptance
of the provisions of said act; and these Defendants
further state that if any such action was had by
said Board of Trustees, the same was never made
communicated to these Defendants.

And these Defendants further say that after the time
for acceptance had expired, and after said Road
was located, to wit: on the thirteenth day of
January 1852, maps were furnished, and a letter
was sent by William Jervis, the Chief Engineer
of said Road, to William H. Swift, President of
said Board, enclosing a map of the route of said

Rail Road as located, and that said Swift acknowledged the receipt of said map and letter, which said letters were as follows, to wit:

Engineers Office C. & R. I. R. R. Co }
Chicago 20 January 1852 }

W. H. Swift

Pres. Rec. Trustees I. & M. Canal

Dear Sir

Enclosed I send maps of the Chicago and Rock Island Rail Road line, from Joliet to LaSalle. Map No. 1. is from Joliet to Buffalo Rock below Ottawa, on a scale of 2000 feet to an inch, showing the center line of Rail Road and Section lines, designating as far as could be ascertained by a yellow shade the Canal lands crossed by the Railroad. The width required will be 100 feet, except in cases where slopes of excavations or embankments will extend beyond 50 feet from center line of Road.

Map No. 2 is on a scale of 400 feet to an inch, extending from Buffalo Rock to LaSalle.

The map has the width required designated by red lines. The South boundary being in no case less than 60 feet off from the South water line of Canal, leaving 60 feet water way. I believe, no Canal lands are crossed East of Joliet, except section 9 near the City.

Very respectfully

William Jarvis

Boston July 12 1852

William Jarvis Esq }
Chicago }

Dear Sir

I have received yours of the 30th ult. with map of Chicago and Rock Island R. Rd. The object in view in asking for this map in the early part of 1851 was to enable the Board of Trustees to determine whether it would be expedient to accept the terms which were offered as an Equivalent for the right of way. The map was not received before the time for acceptance, fixed by the law, had expired. Consequently, the Board had no knowledge of the route selection for the Railroad, and consequently too late for any action upon the question.

yours Respectfully

W. A. Swift

President.

And the said Defendants further say that said maps were furnished to said Board as aforesaid, to enable these Defendants and said Board to agree upon the amount to be paid for right of way over said Canal lands.

These Defendants further answering expressly deny all

the allegations in said bill of complaint, wherein said Complainants allege, that they desired said map for the purpose of determining whether the location of said Rail Road would injure the navigation of said Illinois and Michigan Canal.

These Defendants further state and insist that said Complainants had no authority or power to agree or assent to any location of said Road, which would injure the navigation of said Canal.

These Defendants further answering admit, that said Canal is located as charged in said bill of complaint - that the same is used as a means of travel and navigat communication between the Illinois River and Lake Michigan, that the travel and trade upon said Canal has been increasing - that the revenues derived from said Canal would pay off some portion of the debt secured by said deed of trust - these Defendants further state, that the lands conveyed to said Complainants, will more than pay the entire loan of \$ 1,600,000 and interest thereon, and these Defendants are informed and believe and so charge that the assets derived from said lands, after paying said sum, will yield a surplus of at least three hundred thousand dollars.

These Defendants further answering, expressly state that the Subscribers to said loan of \$ 1,600,000, made their subscription, and paid their money, upon the faith of the acts of the General Assembly of the

State of Illinois; and upon the terms and conditions therein expressed. And these Defendants expressly deny that said subscribers made their subscriptions or paid their money in view of, or relying upon any other rights than such as are enumerated in said acts. And these Defendants further answering say, that the line of their Road between Chicago and Peru is located as follows:

Commencing at Chicago, the line runs South to a point, about five miles from the City boundary — from that point in a South westerly course to Pulse Island, where it is about eleven miles from the Canal, from there crossing the Calumet feeder, continues nearly parallel to the Canal, and about twelve miles south of it, for the next fifteen miles — thence bearing more westerly, it approaches and crosses the Canal at Joliet.

From Joliet the line continues along the line of the Canal, but being at distances from the prism of the Canal, varying from One hundred feet to two and one-half miles to a point in the South West quarter of Section Nine, in Township Thirty-three, North of Range Three, East of the Third Principal Meridian, and about eighty-three miles from Chicago.

From Chicago to this point, the line approaches at no place within ninety feet of either bank of the Canal, except at its crossing at Joliet.

From said section nine to the termination of the Canal lands, the line of the Railroad runs along under the second bank of North bluff of the Illinois River, diverging from the Canal at points, where said bluff renders it practicable, and approaching the Canal only at such points, where the Canal has been constructed immediately at the base of the bluff, and at no place will the construction of their road contract the width, or diminish the capacity of the Canal, or interrupt the navigation of the same.

From the said South west quarter section nine, the said line of their road passes through the following sections to wit - sixteen, nine, seventeen, and eighteen north of range three, and thirteen, fourteen, fifteen, ten, nine, eight, seven and eighteen in range two, and thirteen and fourteen and fifteen in range one, and runs all the way, until the road leaves the Canal lands north of the Canal, and between the said bluff of the Illinois river.

These Defendants further show, that from said point in said section nine, in Township thirty three, and through the South West quarter of section sixteen and into section seventeen, the distance being seven thousand - four hundred feet, the South boundary of the Rail Road is within ninety feet of the north line of the Canal, but at no point within the sixty feet water way of said Canal.

From the said point in section seventeen for the right

Eleven thousand - three - hundred feet, the line of
Rail Road diverges from the said Canal, so that
the South boundary of said Rail Road line is at
no point within one hundred and fifty feet of the
South Water line of the Canal, and for most of
that distance five hundred feet from the same. The
said last mentioned distance is over a part of said
sections Seventeen and Eighteen, in range Three, and
nearly across said section Thirteen in range Two.
From the last point, for the distance of fourteen
hundred feet, through the remainder of said section
Fourteen, range Two, to a point, two hundred feet
west of the East line of said sections, the South
boundary of said Road is within ninety feet of
the North line of said Canal.

From the last mentioned point, for the distance of
nineteen thousand one hundred feet through the
balance of said section Fourteen, and sections Ten,
Fifteen and Nine to a point in the South west quarter
of section Eight, the South boundary of the Rail
road varies from three hundred to one thousand feet
from the prism of the Canal, and at no point
within one hundred and fifty feet of the South
water line of the Canal.

From said last mentioned point, for the distance
of Twenty-one thousand, eight hundred feet, being
through the balance of sections Eight, and sections
Seventeen and Eighteen, in range Two, and Thirteen,

Fourteen and Fifteen in range One, the South number Fourteen in the town of LaSalle, the South boundary of said Rail road is for most of the distance within ninety feet of the prism of the Canal - but in no place within the sixty feet water way of said Canal.

And these Defendants further answering say that the foregoing is a true and accurate description of the location of the line of said Rail Road.

And these Defendants further say that from Joliet to LaSalle said Rail road is located, as herein before described, upon the side of said Canal opposite the towing-path, and that at no point on said line does the line of said Road approach near said Canal, except where from the character of the country, it became necessary to do so in consequence of high and abrupt bluffs, and that there is no other practicable route for said Rail Road on the north side of said Canal so as to reach the termination of said Canal as required by their Charter.

And these Defendants further say that it became necessary to cross said Canal at Joliet, because they would otherwise have been compelled to construct their Road for several miles along the West Plaines River, immediately adjoining the towing-path of said Canal and upon the bank, if not partly in said River.

And these Defendants further say, that to cross said Canal West of Ottawa, and construct their road on the South side of said Canal, would increase the cost of said road at least Two hundred thousand dollars.

And these Defendants further say, that to construct said road upon the South side of said Canal, between Ottawa and LaSalle, it would be necessary to pass over the Illinois Bottom which is uniformly overflowed at high water, so as to render the maintenance of a road extremely hazardous, if not impracticable; that for several miles along the Western end of the Canal, the Illinois River Bottom is frequently overflowed, to a depth of from fifteen to twenty feet in high water, so that Steam Boats navigating the Illinois River have been enabled to sail over said bottom, and land passengers and freight on the towing-path of said Canal, at a point over two miles East of the West termination of said Canal.

These Defendants further state that to arrive at the point prescribed in their Charter, they would be compelled, if said Road had been located on the South side of said Canal, to cross the Canal basin or the Steam Boat Channel connecting said Canal with the Illinois River, and that to make such crossing, a bridge of the length of three hundred feet would have to be built, ^{to sustain which one pier at least would have to be built} in the Canal basin -

and in high water, a draw would also be necessary - and in the Steamboat Channel a drawbridge would also be necessary, and that the crossing in either case would have been a serious obstruction to the use of said basin, and a more serious injury to the use and navigation of said canal, than all the injury pretended by the complainants, by the location on the North side as is hereinbefore set forth.

These Defendants further state that the location of their Road, as made by them, was necessary - and that it does not interfere with the navigation of said Canal, and these Defendants further answering say that the only provision made for compensation is contained in the seventh section of the said act of February 27th 1847, and that as they are advised, said act is a public act and that the courts are presumed to be impotent to give a construction to the same.

And these Defendants deny that they proposed to take away any of the franchises of said Board of Trustees.

These Defendants further state that full provision is made for compensation for right of way through all lands, through which said Rail Road may be located, and for all property taken for the use of said Road; and that there is no legal liability on these Defendants to make compensation for any

diminution of business.

These Defendants further answering admit, that the boats navigating said Canal for carrying passengers and freight, are almost exclusively drawn by horses, and they further admit that their said Rail Road has been located in the place and manner here-
inbefore stated, and in no other place or manner - that these Defendants intend to use their said Road in the manner authorized by their charter and to use locomotives thereon; and that such use will be no injury to the navigation of said Canal or render its navigation dangerous or uncertain.

These Defendants further answering deny upon in-
formation and belief that ninety feet has been expressly reserved through sections Thirteen, Fourteen and Fifteen in Town Thirty three, Range One East of the Third Principal Meridian, and in portions of section Seven, Eight, Thirteen and Fourteen and Eighteen in town Thirty three, range Two East, and in sections Nine, Sixteen & Seventeen in town Thirty-three East in the County of LaSalle; on the contrary, these Defendants say they have been informed and believe and therefore state, that the sections of land here-
inbefore, numbered with the even numbers were never owned by the State of Illinois, or by said Board of Trustees - that they never had title or interest in the same, and that they never condemned any part thereof according to law, and that the entry

upon the same and the construction of their Canal thereon, was without legal authority, and a trespass. These Defendants admit that they have located their Road in the manner and place hereinbefore stated and in no other place.

And these Defendants further answering state that they have taken steps to condemn the land and property of said Canal that may be useful for Railroad purposes in every County, through which said Rail road passes, and where there are any Canal lands - that for the purpose of condemning the lands of said Complainants proceedings have been instituted in pursuance of their charter in each of said Counties - that due and legal notice of the commencement of such proceedings have been served upon said Complainants - that petitions have been presented and appraisers appointed - that said appraisers have made their awards of damages - that such awards have been confirmed by the Circuit Court in the Counties of Cook and Will - that in the Counties of LaSalle and Grundy, the confirmation of such awards was resisted by said Complainants; and on account of some irregularities in the proceedings of said appraisers, the matters were referred back to said appraisers for further action - that a new award has been made in the County of LaSalle, the confirmation of which came on to be heard at the November term of

2
said Court last past - that in consequence of the
newly elected Judge having been before his election
counsel for these Defendants, the proceedings for
confirmation were postponed on objection taken by
said Complainants.

That these Defendants intend to prosecute final pro-
ceedings in said matters, so far as it has not
been obtained, at the earliest practicable day -
and that they are ready, willing and able to
pay said Board of Trustees all the damages
that may be awarded, for taking the property
aforesaid.

These Defendants further answering admit that they
are now engaged in constructing said Rail Road
and at some points near the north line of the
Canal on said section Fourteen - more particular
description of which said work has been hereinbefore
given. These Defendants expressly deny that they
are filling up the Canal, or contracting its width
and they state that the work so being done on
said section Fourteen is on land owned by E. D.
Taylor and John A. Rockwell, and is being done
with the permission and consent of said Taylor
and Rockwell.

And these Defendants deny that they are filling up
said Canal, or rendering its navigation difficult
and dangerous by any work that they are doing
or intend to do, or that said work will lessen the

capacity of said canal for business.

These Defendants further answering say, they are informed and believe and therefore expressly deny that said canal has been constituted by said Board of Trustees with reference to its enlargement, or that the said Board of Trustees have power to make such enlargement, and that an attempt so to do would be in violation of their trust - and further state that the power of enlargement is vested in the State of Illinois, if by any contingency the State ever gets possession of said Canal.

These Defendants further state that by the sixteenth section of the act approved January ninth A.D. 1836, it is provided that said Canal shall not be less than forty five feet wide at the surface, thirty feet at the base, and sufficient depth to insure a navigation of at least four feet - to be suitable for ordinary canal boat navigation, to be supplied with water from Lake Michigan and such other sources as the Canal Commissioners may think proper, and to be constructed in a manner best calculated to promote the permanent interest of the country - reserving ninety feet on each side of said Canal to enlarge its capacity, whenever in the opinion of the Board of Canal Commissioners the public good shall require it. These Defendants further state that the Board of Commissioners, under the authority of said act, proceeded to survey and locate the line, and determine

the dimensions of the Illinois and Michigan Canal, and made a report to the General Assembly of the State of Illinois among other things as follows:

"The next question to be decided was the size of the Canal - after mature deliberation, the Board determined to adopt the recommendations of the Chief Engineer, and construct it of the following dimensions to wit, sixty feet wide at the top water line, thirty six feet wide at the bottom, and six feet deep, ^{and again} Let it once be conceded that in any reasonable lapse of time, a forty five feet canal would require to be enlarged, then the experience of New York is demonstrative that it is better to begin with greatest size that may be wanted than trust to Enlargement, since the process of Enlargement is tedious, embarrassing and far more costly than the original work."

and for a more particular certainty in this behalf as to the size and plan of said work and contents of said report, these Defendants refer to said report, as printed and published by authority of the State of Illinois.

And Defendants further averring show unto your Honor that after the adoption of said plan, and making said report to the General Assembly, and on the second day of March 1837, the General Assembly of the State of Illinois passed an act entitled an act to amend an act for the construction

of the Illinois and Michigan Canal approved January ninth 1836, the second section of which is in the words and figures following,

"That it shall be the duty of the Commissioners authorized to be elected by this act, to proceed immediately and without delay to the prosecution and final completion of said Canal upon the plan set out upon by said Commissioners in the year 1836, in all respects"—

and by the Eighteenth section of said act, the previous act Jan^y 9th 1836 is repealed so far as it in any manner conflicts with the provisions of said acts, and for greater certainty these Defendants refer to said acts as published by the authority of the State of Illinois.

These Defendants further aver and state that they have been informed and believe, that the plan adopted by said act of March Second 1837 was the final plan - that no provision for further enlargement is made in any subsequent legislation - that no reservation of ninety feet or any other quantity of land has ever been made by the State with a view to the future enlargement of the canal, and that no enlargement beyond the capacity provided for in the plan of 1836 has ever been adopted. — And these Defendants further state that they have been informed and believe that the said Board of Commissioners, after the passage

of said act of March second 1837, by virtue of various laws, proceeded to sell from time to time the said Canal lands belonging to the State, and delivering on said Canal; and that upon such sales no reservation of ninety feet or of any other quantity of land, for the purpose of, or with a view to a further enlargement of said Canal were ever made upon such sales - that the State has fully authorized the construction of the Canal Road as herein before set forth without any reservation for the purpose of, or with a view to the enlargement of the Canal - that said Canal as completed is a first class canal in point of capacity, and fully competent to all the business that may be required to be done on it during the existence of the charter of these Defendants. These Defendants further state that if any intention ever existed on the part of the State to enlarge the capacity of the canal, it was based upon the size adopted by the act of January month 1836, and was afterwards abandoned by the passage of the act of second of March 1837 and prior to the passage of said act creating said Board of Trustees.

These Defendants further answering deny that said Complainants have always opposed and sought to prevent the location and construction of said Road but admit that on or about the third day of

June 1852 a notice, signed by Isaac W. Arnold Esq. as Attorney for said Complainants, was served on the Secretary of these Defendants, as set forth in said bill of complaint.

These Defendants further answering state that previous to the service of said notice the following proceedings were had and work done by these Defendants, most of it with full knowledge of said Complainants. Said Complainant was advised of the passage of the said act of February 7th 1851 in the said month of February, and that the attention of said Board was called to said act and the provisions thereof, as herein before stated, and that said Board permitted the time for acceptance of the provisions of said act, in relation to tolls, to elapse without accepting the same, and that they have since been requested by the President of said Company to negotiate in relation to the same matter, but that said Board under various pretences for a long time delayed said matter, but negotiations are now pending.

These Defendants further state that previous to the first day of August 1851, a written notice in due form of law was served on said complainants - that these Defendants had located their Road across sections nine, in township thirty eight, Range fourteen East, lying in Cook County -

the property of said Complainants, and that an application for the appointment in pursuance of the Charter of these Defendants of Appraisers to assess the damages which said complainants would sustain by reason of the appropriation of a portion of section nine on the first day of September then next. That on said first day of September the Hon. Hugh T. Sickey Judge of the Circuit Court of said Cook County, appointed appraisers in pursuance of said notice - that said appraisers made their award in writing, on the seventeenth day of September in the year last mentioned, and the same was duly filed in the Clerk's Office of the Circuit Court of said County - that in and by said award the sum of sixty dollars was awarded to said complainants for their damages aforesaid, of which award and the amount thereof said Complainants were duly notified and the amount offered to be paid - that afterwards and before the confirmation of said award as hereinafter stated, a written notice was given by said complainants by their Attorney Isaac N. Arnold of exception to said award, which notice was afterwards withdrawn, and at the December Term 1851 the report of said appraisers was confirmed by said Court, and the confirmation entered of Record, of all of which said Complainants had notice.

These Defendants further say that they were organized under said act on the thirteenth day of February 1851, and that such organization was notorious, and of which said complainants were informed by correspondence with the President of said Company.

These Defendants further say that one of said Board of Trustees to wit, Joseph V Wells, has resided in the City of Chicago from the passage of said act to this time - that the Secretary of said Board has resided at Lockport and the County of Will during all that time, and that the Attorney of said Board has, since the passage of said act, resided in Chicago, as also the Land Agent Eli S. Prescott.

These Defendants further show that immediately after the organization of said Company, they employed Engineers, and commenced the survey of the route and location of said Road, all which acts were matters of public notoriety, and well known to the said Board, Secretary, Attorney and Agent.

These Defendants further say that on the sixth or eighth day of September 1851, these Defendants made a contract for the construction and equipment of the entire line of said Road, from Chicago to Rock Island, a distance of about 180 miles - that the amount of said contract was over

Three million eight hundred thousand dollars
and was entered into between Joseph E Sheffield
and Henry Farnham - that by the terms of said
contract said Sheffield & Farnham were to build
jerrish and equip said road, and have it
ready for delivering to these Defendants on the
tenth day of January 1854 - that in pursuance
and for the fulfillment of said contract, said
Sheffield and Farnham have procured materials
done work and incurred liabilities to an amount
exceeding two millions and five hundred thousand
dollars which is more particularly described
as follows: they have completed so much
of said Road, as lies between Chicago and just
a distance of forty miles, so that the cars are
now running thereon in regular business; the
grading and bridging from Joliet to Peru
is nearly completed, and several parties of
track layers are now engaged in laying down the
rails; that the grading and bridging from Peru
to Rock Island is contracted to be done by the
first day of July next, and some of the con-
-tractors are actually engaged on said work -
the bridge over Rock river near Rock Island is
four-fifths completed - that the money paid
upon estimates for grading and bridging, up to
first November 1852 is \$ 365 800 - said
contractors have on hand one hundred and twenty

thousand ties, worth \$36,000, one hundred and seventy thousand pounds of chains worth \$8500 - One hundred and thirty thousand pounds of spikes worth \$11500; six Locomotives worth \$34000 - Four passenger cars worth \$8400 - Twelve gravel cars worth \$3010 - Twenty Platform cars worth \$11000 - Two box cars worth \$1300 - that the materials for the track from Chicago to Iowa are in part distributed along the line, and will be entirely delivered during the month of November 1852 - that said Sheffield & Farnham the Contractors, has promised to the notice given by said complainants contracted for all the iron to lay said Road, amounting to eighteen thousand tons, which, at sixty dollars per ton, its present value, amounts to one million and eighty thousand dollars; nine thousand three hundred tons of which have been received in Chicago, and seven hundred tons are between Peoria and Chicago on its way here - that they have seven additional locomotives contracted for, three of which are nearly completed - that at the time of the service of said notice by said complainants, the entire grading, bridging and track laying between Chicago and Iowa had been let to sub-contractors - and the work was and had been for several months progressing, with the full knowledge of said complainants, their officers and agents - that the contracts hereinbefore stated for iron, ties, locomotives

Ver. And all been made previous to that time - that every contractor and labourer upon said road has been promptly paid on the day, when his money became due - that in addition to the above liabilities, these defendants have paid for right of way a sum exceeding thirty thousand dollars - that in addition to the above the said contractors have let contracts for station buildings, and fixtures connected therewith, which are in process of construction, amounting to a sum exceeding twenty five thousand dollars, and which will be completed and paid for, within thirty days.

These Defendants answering deny that the construction of the said Rail Road will at any point, where these defendants propose to construct the same, render the enlargement of said Canal impracticable and these Defendants further state, that if said Canal is ever enlarged, it will be done by a removal of the towpath further south - that the cheapest and best way to enlarge said canal would be by removal of the towpath, and these Defendants further deny, that any of the work done or proposed to be done by them in LaSalle County or elsewhere will render the enlargement of said Canal impracticable.

These Defendants further answering say that it will probably be necessary for these Defendants to build walls in some places, for the support of their

track, within ninety feet of the north side of said Canal.

These defendants further answering state, that they do not know, whether the construction of said Rail Road will tend to lessen or diminish the tolls of said canal - if they were to judge from the experience in New York and other States, and the reported earnings of several canals in England - they would state that such would not be the effect.

These Defendants further answering admit that said Rail Road is designed to be laid within a few feet of the water's edge in some places, the particulars of which are heretofore more particularly set forth.

These defendants further answering state, that between Locks Number Eleven and Twelve, the south boundary of said Rail Road line is located within a few feet north of the prism of said Canal and between the Cement Mill at Utica and the town of LaSalle the said Rail Road is located within a few feet of the Canal - that between Locks Eleven and Twelve, the water spreads out beyond the sixty feet water way of said canal, and at one point sets back a considerable distance - that these defendants are constructing their track in the water, but nowhere within the sixty feet water way of said canal.

There are several depressions between these points

where the water sets back from the canal for several hundred feet, and through some of these, the Road is located -

These defendants further answering admit that some of the Contractors have been and are now engaged in blasting rocks with powder between Ottawa and LaSalle, in the immediate vicinity of the canal, but these defendants expressly deny that said blasting either has or will greatly injure and render extremely dangerous and inconvenient the property of said complainants, by causing rocks and stones to be thrown into said Canal, so as to interrupt or interfere with the navigation of said canal in any manner; on the contrary therefore, these defendants state that the only rock excavation between Ottawa and LaSalle is at two places - the first place, the entire quantity to be excavated is twelve thousand six hundred yards of which eleven thousand three hundred yards have already been excavated, ^{the other quantity is three thousand nine hundred yards of which three thousand four hundred yards have already been excavated} - the work already done and the work remaining to be done has not interfered and will not interfere with or interrupt the navigation of said canal, or render such navigation dangerous and inconvenient - The rock so blasted is a red Sand stone, and in blasting crumbles so fine, that shovels only are used after the blast to remove the material. - That no pieces of rock or stone of any size are raised or thrown out

by the blast - the men remain in the pit where the blasts are made, and very frequently boats are alongside, and there is no possible injury or danger, either to the canal or to property or persons in said blasting.

These Defendants further answering expressly deny that the construction of said Rail Road will diminish the capacity of said canal for business.

These Defendants further answering state that the construction of said Rail Road will not narrow the water surface of said canal - that at all points and places a water surface of sixty feet is left to said canal - at some points between Ottawa and Perre, the said Canal is built with only one bank, the other being formed by the bluff on the opposite side - that said trustees in getting material to make said bank, have excavated to some extent a surface beyond the prism of the canal, and there are some natural depressions, so that the water flows back in some places, a distance of five hundred feet - these Defendants have, or are about to place a portion of their Road through some of those places, but in no place will they interfere with the prism of the Canal, or contract its water way; and no point or place where the track of these Defendants' road is located, is used for the purpose of navigation.

These Defendants expressly deny that the construction of their road will render the said Canal liable to contact injury by slides, - and on the contrary vice of, these Defendants state that the construction of said Road will protect said Canal from the slides to which it is now exposed, and from which it has suffered much; and these Defendants intend to protect their road by walls and piles and as a necessary consequence of such protection said canal will also be protected from slides. These Defendants further answering state that the construction of said Road may at some particular point render the enlargement of said Canal more expensive, but these Defendants expressly deny that it would render such enlargement impracticable.

CB
These Defendants further answering state that they intend to construct a first rate Road, and hope to carry the entire travelling public, but they cannot tell until they try it, whether it will take away all the revenue of said Board of Trustees derived from passenger traffic.

And these Defendants further answering admit that the semi-annual interest upon the registered bonds remains unpaid, except a very small part thereof.

And these Defendants deny all and all manner of fraud and combination and confederacy wherewith

they are charged in said Bill of complaint, without that any other matter or thing not herein and thereby well and sufficiently answered unto confessed or avoided, traversed or denied is true to the knowledge and belief of these Defendants; all which matters and things these Defendants are ready to aver, maintain and prove, as this Hon^r. Court shall direct, and pray to be hence dismissed with their costs and charges, ^{in this behalf} most wrongfully sustained.

In witness whereof we have attached our corporate seal and caused the name of our Secretary to be hereunto subscribed, the twentieth day of November, in the year of our Lord One thousand eight hundred and fifty-two.

A. D. Elwood
Secretary

State of Illinois

Cook County Ss. James Grant being duly sworn, saith that he was President of the Board of Directors of the Chicago and Rock Island Rail Road Company, from its first organization until December 1851

and that since that time he has been and now is Vice
President of said Company and acting as President
that this Depoant is more familiar with affairs
of said Company and the matters charged in said
Bill of Complaint than any other Member of the Com-
pany - this Depoant further saith that he has read
the foregoing answer and knows the contents thereof
I acknowledge, and so far as stated upon
that the same is true so far as stated upon informa-
tion and belief, he believes it to be true.

Wm Grant

Subscribed and sworn to before me
this 20 day of November A D 1852 at New
York and Notarial Seal

Henry H Clarke

Notary Public

Wm Grant

And a pleaders to wit on the second day
of March A.D. 1853. the said complainants
by their said solicitor Felix in the office of the
Clerk. Said Court their Replication to the answer
of the said Chicago and Rock Island Railroad
Company. which said Replication is in the
following words to wit:

Cook County Court of Common Pleas
In Chancery.

The Replication of the Board of Trustees
of the Illinois & Michigan Canal com-
plainants to the answer of the Chicago
& Rock Island Railroad Company et al
Defendants.

Before the Hon Mark Skinner Judge of the
Cook County Court of Common Pleas in Chancery
sitting.

This Replicant saving and reserving to him-
self now and at all times hereafter, all and all
manner of benefit and advantage of exception which
may be had or taken to the manifold insuffi-
ciencies of the said Answer for Replication thereunto,
says that he will aver maintain, and prove his
Bill of Complaint to be true, certain, and sufficient
in the law to be answered unto; and that the
said Answer of the said Defendants is uncertain,
contrary, and insufficient to be replied unto.

by this Repliant without this, that any other
matter or thing whatsoever, in the said Answer
contained, material or effectual in the law
to be replied unto, and not herein and hereby made
and sufficiently replied unto, confessed and
avoided, traversed or denied, is true: all which
matters and things this Repliant is and will be
ready to aver, maintain, and prove as this
Honorable Court shall direct, and humbly
prays as in and by his said Bill he has already
prayed

J. W. Arnold
Solicitor for Complainant

And afterwards to wit, on the nineteenth
day of March in the year of our Lord one
thousand eight hundred and fifty three, the said
day being one of the days of the said February
Term of the Cook County Court of Common
Pleas, the following proceedings were had in
said Cause and entered of Record to wit,

The Board of Trustees of
the Illinois & Michigan Canal

The Chicago and Rock Island
Rail Road Company et al

In Chancery

And now at this
day comes the said Complainant by A. H. Arnold
their solicitor and the said Defendant by Daniel
& Wilson their solicitors, and this cause being sub-
mitted to the Court upon the pleadings and ex-
hibits in the same, and the Court being non fully
advised in the premises doth award order and
decree that said complainants take nothing by
their said bills, and that the same be dismissed,
and that said defendants have and receive of
said complainants their costs and charges by
them in this behalf expended and have execution
therefor.

And thereupon said complainants pray an
appeal herein which is allowed upon said
complainants filing with the Clerk of this Court
within thirty days from the date hereof the bond
of Eli S. Prescott, in the penal sum of Five
Hundred Dollars conditioned as the law directs.

And afterwards to wit, on the Twenty Sixth
Day of March A.D. Eighteen Hundred & Fifty Three
The said Complainants by J.W. Annals their
Solicitor, filed in the office of the Clerk of said
Court a Bond signed by E. S. Prescott, which
said bond is in words and figures as follows
to wit:

Know all men by these Presents, that I Eli S.
Prescott, of the County of Cook and State of Illinois
am held and firmly bound unto the President
Directors and Company of the Rock Island Rail
Road Company also of the same County and
State in the penal sum of five hundred dollars
current money of the United States for the
payment of which well and truly to be made
I bind myself my heirs, executors and admin-
istrators jointly severally and firmly by these
Presents. Witness my hand and Seal this
26th Day of March A.D. 1853.

Whereas the Cook County Court of Common
Pleas did on the 14th of March Inst. dismiss
the Bill in Chancery of the Board of Trustees of
the Illinois and Michigan Canal filed against
the President Directors and Company of the Rock
Island Rail Road Company from which dismissed
the Board of Canal Trustees prayed an appeal which
was granted on Eli S. Prescott filing a Bond with

in thirty days conditional as the law directs.
Now if said Board of Canal Trustees shall
pursue their appeal with effect and pay
whatever shall be decreed by Supreme Court
against them in case the said decree shall be
affirmed, then to be void otherwise to remain
in full force & virtue.

C. J. Present 

State of Illinois }
Cook County } S. J.

I Walter Kimball clerk
of the Cook County Court of Common Pleas
within and for the County and State aforesaid
do hereby certify that the above and
foregoing is a true copy, and Transcript, of the
Bill, Answer, Replication to Answer, Appeal
Bond, and Order of Record, now on file in
my office in the case of The Board of Trustees
of the Illinois & Michigan Canal complain-
ants and The Chicago and Rock Island Rail
Road Company et als. Defendants in Chancery.

In Testimony Whereof I have
hereunto set my hand & affixed
the Seal of said Court at Chicago
in said County this 16th day of
May A.D. 1853

Walter Kimball Clerk

38
Hans Christian
Chicago, Ill.

Dec 10, 1853

38

12111

Highway Station
Chicago, Ill.

Paul

Payable

3 1853

11