

12998

No. _____

Supreme Court of Illinois

People, ex. rel.

vs.

Board of Trustees of the
Illinois & Michigan
Canal

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 28.

PEOPLE'S CAUSES.

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14

People's Causes

People's Causes

12918

Handwritten signature

28

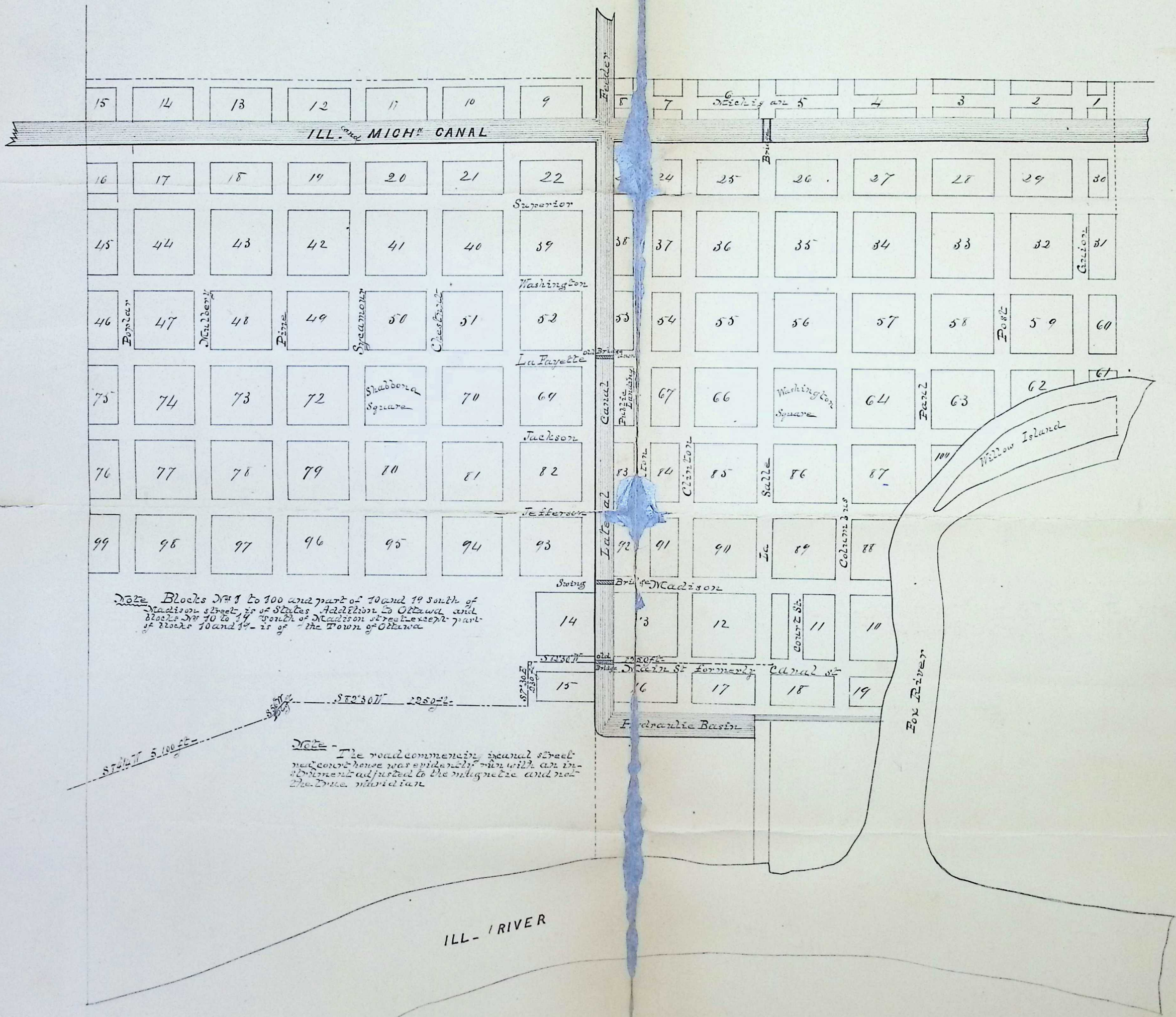
The People ex rel
Magill & Bristol
vs

The Board of Canal
Trustees of the Illinois
& Michigan Canal

Plat referred to
in the Petition

Filed May 7, 1860
L. Leland
Clerk

"H"



Supreme Court of the State of Illinois
April Term A.D., 1860

To the Honorable, the Supreme
Court of the State of Illinois

Your petitioners, Alexander
H. Magill and George Bristol respectfully
represent unto your Honors
that they are residents of the City of
Ottawa, in the County of La Salle and
State of Illinois and citizens of
said State

Your petitioners further represent
unto your Honors that the Canal
Commissioners of said State by
virtue and in pursuance of the
laws enacted by the General
Assembly of the State of Illinois
relating to the construction of the
Illinois & Michigan Canal, then
in force, did, sometime previous
to the twenty sixth day of September
A.D., 1836, lay off the town of Ottawa
in the County & State aforesaid, with
streets therein as shown by the plat
of said town and the additions
thereto, herewith filed, marked "A";

which place is made a part of
this petition, and that said Town of
Ottawa was laid out as aforesaid,
upon a portion of the lands granted
by the United States to the State of
Illinois, and selected by said
State, by virtue of the provisions of
an act of Congress entitled "An Act
to grant a quantity of land to the
State of Illinois, for the purpose
of aiding her in opening a canal
to connect the waters of the Illinois
River with those of Lake Michigan,
approved March 2d. 1827, whereby
said State of Illinois dedicated
said streets in said Town of Ottawa,
to the use of the public for public
highways.

Your petitioners further show unto
your Honors, that on the ninth
day of September A.D. 1843, the same
being one of the days of the September
Term A.D. 1843, of the County Commissioners
Court in and for the County of La Salle
in the State of Illinois, the said County
Commissioners Court laid out and
established a road running from
Ottawa by Utica, La Salle, Peru and

Enterprise and terminating near the
County line between La Salle and
Putnam Counties and ordered the
same to be opened fifty feet wide,
that said road was in all respects
petitioned for, surveyed, laid out and
established according to law by the
said County Commissioners Court,
as by the orders of said County
Commissioners Court marked
"B", which are hereto attached and
made a part of this petition, will
appear, that said road became, at
the same time the same was established
as aforesaid, and has ever since
continued to be, and still is, a
public highway, and has been ever
since the same was established
as aforesaid, and still continues to
be, used and occupied by the public
as a public highway except so
far as the same has been & is
obstructed as hereinafter mentioned

Your petitioners further represent
unto your Honors that the said Canal
Commissioners, by virtue and in
pursuance of an act of the General
Assembly of the State of Illinois

entitled "An ^{Act} to provide for the construction
of the Illinois & Michigan Canal,"
approved January 22, 1829, on the
eighteenth day of June A.D. 1838 laid
off upon another portion of said
lands so granted by the United
States to the State of Illinois and
selected by said State as aforesaid,
an addition to the said town of
Ottawa known as the States
Addition to Ottawa, with streets
therein as shown by said plat
marked "A" whereby said State dedicated said
streets to the use of the public for public highways

Your petitioners further represent
unto your Honors that said
streets in said town of Ottawa
and in said States Addition to
Ottawa became at the time the
same were laid out as aforesaid,
and have ever since continued to
be and still are, public highways,
and have been, ever since the same
were laid out as aforesaid, and
still continue to be, used and
occupied by the public as public
highways except so far as the same
have been and are obstructed as
hereinafter mentioned

Your petitioners further show unto your Honors that said road as laid out and established as aforesaid commences one hundred and sixty five feet south of the south west corner of the foundation of the Court House and runs thence south eighty two degrees and thirty minutes west along canal street, designated on said plat marked "A" as "Main St formerly canal st", twelve hundred and fifty feet; crossing the space occupied by the lateral canal hereinafter mentioned, and thence by courses and distances designated in the order of said County Commissioners Court ^{hereinafter} ~~hereinafter~~ referred to, a hackberry tree near the county line between La Salle and Peoria counties

Your petitioners further represent unto your Honors that the Board of Trustees of the Illinois and Michigan Canal caused the plat of said town of Ottawa, as laid out as aforesaid, to be recorded on the records in the recording office in said La Salle county on

the thirteenth day of June A.D., 1842
and that they also caused the
plan of said State Addition to Ottawa
as laid out as aforesaid, duly certified
and acknowledged, to be recorded
in said records on the eighteenth
day of June A.D., 1838

Your petitioners further shew
unto your Honors that by Section
Eight of an act of the General Assembly
of the State of Illinois entitled "an act
to amend an act entitled an act for
the construction of the Illinois
and Michigan Canal, approved
Jan. 9th, 1836." Approved 3 March,
1837. the Board of Commissioners of
the Illinois and Michigan Canal
were required to construct such basins
or lateral canal connecting the Illinois
river with said Canal, at Ottawa, as
in their opinion would most enhance
the value of the property of the State
that said Board of Canal
Commissioners in compliance

therewith, sometimes during the years
AD. 18~~80~~ and after the laying out
& establishing said road and said
streets, caused a lateral canal
to be constructed in such manner
that said lateral canal intersects and
crosses said road, the said Main
Street and the ~~said La Fayette~~ Street
in said State's Addition designated
on said plan marked "A" as
La Fayette Street, within the corporate
limits of the City of Ottawa, as
shown by said plan

Your petitioners further represent
unto your Honors that the Board
of Trustees of the Illinois and
Michigan Canal immediately
after the completion of said lateral
canal, caused a bridge ^{for the passage of teams & pedestrians} to be
constructed across the same at
each of the points where said lateral
canal crosses and intersects the
said road and the main street and
the said La Fayette Street as aforesaid,
for the use and accommodation
of the public and have since
reconstructed said bridge on said
road & main street for the purposes

aforesaid and have ever since kept up and maintained the same, that said Board of Trustees also kept up and maintained the said bridge on said La Fayette street from the time of the completion thereof until sometime in the year A.D. 1859 when the same became unfit for the use and accommodation of the public and was caused to be removed by the said board of Trustees and that said board of Trustees have never reconstructed or replaced said bridge.

Your petitioners further represent unto your Honors that ^{said bridges} during all the time the same were kept up and maintained as aforesaid were used and occupied by the public as public highways with the consent of the said Board of Trustees & the corporate authorities of said city.

Your petitioners further represent unto your Honors that said road and the said Main and La Fayette Streets are necessary for the accommodation of the public.

and neither of them can be discontinued
or obstructed without great and
manifest injury to the public
that the said lateral canal wholly
obstructs the said La Fayette street
at the point where said lateral
canal crosses and intersects the
same as aforesaid and prevents
the public from passing thereon from
points on either side of said lateral
canal to points on the opposite side
thereof, thereby subjecting the public
to great inconvenience and delays,
that said bridge on said Main street
is, & has been for more than one year
last past inconvenient and insufficient
for the accommodation and use
of the public, and with said lateral
canal constitutes a material and
essential ~~obstruction~~ obstruction
to said Main street and said said

Your petitioners further represent
unto your Honors that the
accommodation, rights and interests
of the public, require that bridges
suitable for the passage of teams
& pedestrians should be constructed
across said lateral canal at the

points where said road, the said
Main Street and the said La Fayette
Street are crossed and intersected
by said lateral Canal as aforesaid
and that the public suffer great
inconvenience, injury and
injury by reason of said obstructions.

Your petitioners further shew
unto your Honors that the Board
of Directors of the Illinois & Michigan
Canal, in the construction of said
lateral Canal, were not authorized,
either by any positive law or laws of
the State of Illinois, nor by any
necessary implication arising
from any such laws or laws, to
materially or essentially obstruct
the said road, ^{or} the said Main or
La Fayette Streets or any part of
the same and that the General
Assembly of said State in enacting
the several laws relating to the
Illinois and Michigan Canal
and the said lateral Canal, did
not intend to, and did not in fact,
abolish or discontinue any portion
of the said road, ^{and streets} and your petitioners
further represent unto your Honors

that the said Board of Trustees of the Illinois and Michigan Canal have hitherto so understood the said laws and that they acted upon such understanding in constructing and maintaining said bridges as aforesaid, thereby admitting their legal obligation to erect & maintain bridges at the aforesaid points of crossing and intersection

Your petitioners further represent unto your Honors their application has been made to said Board of Trustees of the Illinois and Michigan Canal to erect ~~a~~ bridges ~~upon~~ ~~said~~ ~~public roads~~ ~~or~~ ~~over~~ ~~of~~ ~~them~~ across said lateral canal at the points where the same crosses and intersects said road and said Main and La Fayette Streets as aforesaid that a reasonable time has elapsed since said application for the construction of said bridges yet said Board of Trustees have neglected to build the same

Wherefore your petitioners pray for an alternative writ of Mandamus

& be issued out of this Honorable
Court, directed to the Board
of Trustees of the Illinois and
Michigan Canal commanding
them to erect ~~bridges~~ of sufficient
dimensions for the safe & convenient
passage of teams & pedestrians,
across said lateral canal, at
the points where the same
crosses and intersects said
road and Main Street and
the said La Fayette Street, or in
such manner as the City Council
of said City of Ottawa may direct.

Or that the said Board of
Trustees show cause why they
should not erect said bridges, to
this Court within a reasonable
time to be fixed by the Court,
and that upon the ^{return of said writ} final hearing
of this cause a prescriptive manda-
ment may issue to the said Board
of Trustees of the Illinois and
Michigan Canal commanding
them to erect said bridges at the
places aforesaid, and in the
manner aforesaid.

Alfred W. Magill
George Bristol
By ^{James} D. James Atty
for Plaintiff

State of Illinois }
La Salle County } 8

Alexander H. Magill being first
duly sworn, ^{says on oath} that the matters and
things in the foregoing petition
stated & set forth are true as therein
stated & set forth to the best of
his knowledge, information
& belief

Subscribed & Sworn to before Alex Wm Magill
on this 27th day of April A.D. 1860
L. Leland Clerk
by J. B. Rein Deputy

To the Board of Trustees of the
Illinois and Michigan Canal
You are hereby notified that
on ~~Thursday~~^{Tuesday} the Eighth day of
May A.D. 1860 we shall present
the foregoing petition to the Supreme
Court of the State of Illinois, in
Session at Ottawa in the third
Grand Division of said State and
then and there apply to said Court
for an alternative writ of mandamus
to issue upon said petition in
accordance with the prayers
thereof, when and where you
can attend and resist said
application if you see proper

Respectfully,
Advs

April 27th 1860

Alexander H. Magill
George Bristol
By D. D. Jones
their Atty.

State of Illinois }
La Salle County } f

Sanders & Co. Cornicks

being first duly sworn says on
oath that he served the above notice
on ~~the~~ Board of Trustees of the
Illinois & Michigan Canal by
leaving a copy of the same together
with a copy of the foregoing petition
thereto attached and also copies of
the exhibits in said petition
referred to, with William Gooding
secretary of said board, on the
twenty eighth day of April A.D. 1860

Subscribed & sworn before me Sanders & Co. Cornicks
this 7th day of May A.D. 1860.

L. Leland Clerk of Sup. Court
by J. B. Rice Deputy

"B"

County Commissioners Court June Term 1843

Saturday June 9th 1843

Road Petition.

This day a petition was presented praying for a route for a route from Ottawa to run by Putica, Lafalle, Peru & Enterprise to terminate in Section 30 T33. R1 East, and the said petition being signed by the requisite number of signers, the Court appointed Jimmie Lewis, C. S. Woodworth & Chauncey Wells as viewers in said route and order that they make a report together with a map of the same to the next Term of this Court

County Commissioners Court. September Term 1843

Saturday September 9th 1843

Road Report.

This day the Report of Jimmie
Leitz, C. S. Woodward and Nathaniel Elz was
made to the Court of a Road located by them
from Ottawa to run by Utica, Lafalle
Penn, and Enterprise, which Report after
examination was accepted by the Court
and ordered to be filed and Recorded which
is accordingly done in the words and figures
following to wit.

As the undersigned having been
appointed viewers on a Road for a Road
from Ottawa to run by Utica, Lafalle Penn
Enterprise to terminate in Section 30. T 33

Rd 1 East beg leave to submit the following
viz. Commencing 165 ft South of the South
West corner of the foundation of the Court
House, Thence S $82^{\circ} 30'$ W along canal
Street 1250 ft. Thence S $7^{\circ} 30'$ E 230 ft
Thence S $82^{\circ} 30'$ W along front Street
1250 ft. Thence S 56° W 10600 ft Thence
S $74^{\circ} 15'$ W. 5100 ft Thence $71^{\circ} 45'$ W 3000 ft
Thence S $60^{\circ} 30'$ W 945 ft Thence S 68° W
4000 ft Thence S $76^{\circ} 30'$ W 9000 ft. Thence
N $84^{\circ} 30'$ W 10500 ft S 75° W 4760 ft. Thence
S 81° W 4200 ft. Thence S $57^{\circ} 45'$ W. 2600 ft
Thence S $68^{\circ} 30'$ W 2380 ft W. Thence S 82° W
2000 ft Thence $83^{\circ} 45'$ W 2000 ft Thence N
 $62^{\circ} 30'$ W 2360 ft Thence South 88 W 2300 ft
Thence N ~~25~~ 32° W 410 ft Thence S 85° W 3000 ft
Thence S $77^{\circ} 30'$ W 5000. Thence S $63^{\circ} 30'$ W 1038 ft
Thence S $7^{\circ} 50'$ E 470 ft Thence S $82^{\circ} 30'$ W
1642 ft Thence S $65^{\circ} 45'$ W 1031 ft Thence
S 58° W 2900 ft thence along water Street
Peru. Thence S 69° W 1206 ft. Thence S $70^{\circ} 30'$
W 1490 ft Thence S $64^{\circ} 26'$ W 7568 ft thence
S 60° W 695 Thence S 64° W 746 ft Thence S 44°
W 2000 ft to Ferry at Enterprise. Thence
S 10 E 600 ft across River Thence S 33° W 1550 ft
Thence S 57° W 300 ft to Hackberry Tree or
near the county line between Lafalle
& Putnam Counties

C. S. Hoodworth
 Jimmie Leung
 Nathan Ellz
 Mrs. Quess

Sept 9-1843

Ordered by the Court that said Road be
opened &c

State of Illinois
Lafayette County

Rafale Cornhus 3
 Philo Lindley
 Clerk of the County Court in and for said
 County Certify the above and foregoing to
 be truly copied from the Records in
 our Office

Witness my hand and the
 seal of said Court at Ottawa
 This 6th day of April 1869
 Philo Lindley C. R.
 Esq. Clerk

28
The People Ex. Rel
Magill et al.
vs

The Board of Trustees
of Illinois & Michigan
Canal
~~~~~

Petition for Mandamus

Filed May 26 1860  
L. Leland  
Clerk



State of Illinois }  
Supreme Court }.

The People of the State of Illinois

To the Board of Trustees of the Illinois  
and Michigan Canal ~~~~~ Greeting;

Whereas, it has been lately  
represented to us, <sup>in</sup> ~~before~~ our Supreme  
Court, before our Justices thereof,  
by Alexander W. Magill and  
George Bristol, that they, the said  
Alexander W. Magill and George  
Bristol are residents of the City  
of Ottawa in the County of La Salle  
and State of Illinois and Citizens  
of said State, and that the Canal  
Commissioners of said State by  
virtue and in pursuance of the  
law enacted by the General Assembly  
of said State, relating to the construction  
of the Illinois and Michigan Canal,  
then in force, did, sometime previous  
to the twenty sixth day of September  
A.D. 1836, lay off the town of Ottawa  
in the County and State aforesaid,  
with streets therein ~~as shown by the~~  
~~plat hereto attached~~ ~~and~~ ~~as~~ ~~shown~~ ~~by~~ ~~the~~



and that said Town of Ottawa was  
laid out as aforesaid upon a  
portion of the land granted by  
the United States to the State of  
Illinois, and selected by said  
State, by virtue of the provisions  
of an act of Congress entitled "an  
act to grant a quantity of land  
to the State of Illinois, for the  
purpose of aiding her in opening  
a canal to connect the waters of the  
Illinois river with those of Lake  
Michigan", approved March 2d,  
1827, and that thereby said State of  
Illinois dedicated said street,  
in said Town of Ottawa, to the use  
of the public for public highways  
and that on the ninth day of  
September A.D. 1843, the same being  
one of the days of the September term  
A.D. 1843, of the County Commissioners  
Court in & for the County of La Salle  
in the State of Illinois, the said  
County Commissioners Court  
laid out and established a  
road running <sup>from Ottawa</sup> by Utica, La Salle,  
Peru and Enterprise and terminating  
near the County line between



LaSalle and Putnam Counties and ordered the same to be opened fifty feet wide. and that said road was in all respects petitioned for, surveyed, laid out and established according to law by the said County Commissioners Court and that said road became, at the time the same was established as aforesaid, and has ever since continued to be, and still is, a public highway, and has <sup>been,</sup> ever since the same was established as aforesaid, and still continues to be, used and occupied by the public, as a public highway, except so far as the same has been, viz, obstructed as hereinafter mentioned

and also, that the said Canal Commissioners, by virtue and in pursuance of an Act of the General Assembly of the State of Illinois, entitled "An Act to provide for the construction of the Illinois and Michigan Canal," approved January 22, 1829, on the eighteenth day of June A.D. 1838, laid off, upon another portion of said lands so



granted by the United States to the State of Illinois and selected by said State as aforesaid, an addition to the said town of Ottawa known as the State Addition to Ottawa, with streets therein, and thereby dedicated said streets to the use of the public, ~~for~~ public highways and that said streets, in said State Addition to the town of Ottawa, became, at the time the same were laid out as aforesaid, and have ever since continued to be and still are, public highways and have been, ever since the same were laid out as aforesaid, and still continue to be, used and occupied by the public as public highways, except so far as the same have been and are obstructed as hereinafter mentioned.

And also, that said road, as laid out and established as aforesaid, commences one hundred and sixty five feet south of the south west corner of the foundation of the Court House and runs thence south eighty two degrees and thirty



minutes west along Main Street  
(formerly Canal Street) crossing  
the space occupied by the lateral Canal  
hereinafter mentioned, twelve  
hundred and fifty feet and thence  
by courses and distances designated  
in the orders of said County Commission-  
ers Court establishing said road, to  
a hackberry tree near the county  
line between La Salle and Putnam  
Counties and that the Board of  
Trustees of the Illinois & Michigan  
Canal caused the plat of said town  
of Ottawa, as laid out as aforesaid, to  
be recorded on the records in  
the recording office in said La Salle  
County on the thirteenth day of June A.D.,  
1842 and that said Board of Trustees  
of the Illinois and Michigan  
Canal also caused the plat of said  
State's Addition to Ottawa as laid  
out as aforesaid, duly certified  
and acknowledged, to be recorded  
on said records on the eighteenth day  
of June A.D., 1842

and also, that by section eight of an  
act of the General Assembly of the  
State of Illinois entitled "An Act



to Amend an Act entitled an Act  
for the Construction of the Illinois  
and Michigan Canal, approved  
Jan. 9th, 1836," approved 2. March 1837,  
the Board of <sup>Commissioners</sup> ~~Trustees~~ of the Illinois  
and Michigan Canal were required  
to construct such basing or lateral  
Canal connecting the Illinois  
River with said Canal, at Ottawa,  
as in their opinion would most  
enhance the value of the property  
of the State and that said Board  
of Canal Commissioners in  
compliance therewith, sometime  
during the year A.D. and after  
the laying out and establishing  
said road and street, caused  
a lateral Canal to be constructed  
in such a manner that said  
lateral <sup>canal</sup> intersect and crosses  
said road, the said Main Street and  
the street in said State. Addition  
to Ottawa designated on the  
said plat thereof as La Fayette  
Street, within the corporate limits  
of the City of Ottawa and that  
the said Board of Trustees of  
the Illinois and Michigan



Canal, immediately after the completion of said lateral Canal, caused a bridge for the passage of teams and pedestrians to be constructed across the same at each of the points where said lateral Canal crosses and intersects the said road and Main Street and the said La Fayette street as aforesaid, for the use and accommodation of the public and that said Board of Trustees have since reconstructed said bridge on said road and Main Street for the purposes aforesaid and have ever since kept up and maintained the same and that said Board of Trustees of the Illinois & Michigan Canal also kept up and maintained the said bridge on said La Fayette street from the time of the completion thereof until sometime in the year AD, 1857 when the same became unfit for the use and accommodation of the public and was removed by the said Board of Trustees and that said Board of Trustees have never reconstructed



~~said bridge~~ or replaced said bridge  
and that said bridges during all the  
time the same were kept up and  
maintained as aforesaid were  
used and occupied by the public  
as public highways with the  
consent of said Board of Trustees  
and the corporate authorities  
of said city and that said road  
and the said Main and La Fayette  
streets are necessary for the  
accommodation of the public and  
that neither of them can be  
discontinued or obstructed without  
great and manifest injury to the  
public and that the said lateral  
canal wholly obstructs the said  
La Fayette Street at the point where  
the said lateral canal crosses and  
intersects the same as aforesaid and  
prevents the public from passing  
thereon from points on either  
side of said lateral canal to  
points on the opposite side  
thereof, thereby subjecting the public  
to great inconvenience & delay  
and that said bridge on said Main  
street is, and has been for more



than one year last past ~~inconvenient~~  
and insufficient for the use and  
accommodation of the public  
and with said lateral canal  
constitutes a material and essential  
obstruction to said Main Street  
and said road and that the  
accommodation, rights & interests  
of the public require that bridges  
suitable for the passage of teams  
& pedestrians should be constructed  
across said lateral canal at  
the points where said road, the said  
Main Street and the said La Fayette  
street are crossed and intersected  
by said lateral canal as aforesaid  
and that the public suffer great  
wrong and injury by reason of  
said obstruction and <sup>that</sup> the Board  
of Trustees of the Illinois and  
Michigan Canal, in the construc-  
tion of said lateral canal, were  
not authorized, either by any positive  
law or laws, of the State of  
Illinois, nor by any necessary  
implication arising from any  
such law or laws, to materially  
or essentially obstruct the said



road or the said Main or La Fayette  
streets, or any part of the same and  
that the General Assembly of said  
state in enacting the several laws  
relating to the Illinois & Michigan  
canal and the said lateral canal  
did not intend to, and did not in  
fact, abolish or discontinue any  
portion of the said road and streets  
and that the said Board of  
Trustees of the Illinois and  
Michigan Canal have hitherto  
so understood the said laws and  
that they acted upon such under-  
standing in constructing and  
maintaining said bridges as  
aforesaid, thereby admitting their  
legal obligation to erect and  
maintain bridges at the aforesaid  
points of crossing and intersection  
and that application has been  
made to said Board of Trustees  
of the Illinois & Michigan Canal  
to erect bridges across said lateral  
Canal at the points where the  
same crosses and intersects said  
road and said Main and  
La Fayette streets as aforesaid



and that a reasonable time has elapsed since said application for the construction of said bridges and that said Board have neglected to build the same.

Ire therefore, being willing that due and speedy justice should be done in the premises, do command you, that you the said Board of Trustees of the Illinois and Michigan Canal do erect, or cause to be erected, bridges of sufficient dimensions for the safe and convenient passage of teams & pedestrians, across said lateral canal, at the points where the same crosses and intersects said road and Main Street and said La Fayette Street, or in such manner as the City Council of said City of Ottawa may direct, or that you show cause, in our Supreme Court before our said Justices thereof at Ottawa in said State, on the twenty third day of May A.D., 1860, why you should not erect said bridges