No. 12055

Supreme Court of Illinois

People, ex. rel.

vs.

Board of Trustees of the
Illinois & Michigan Canal

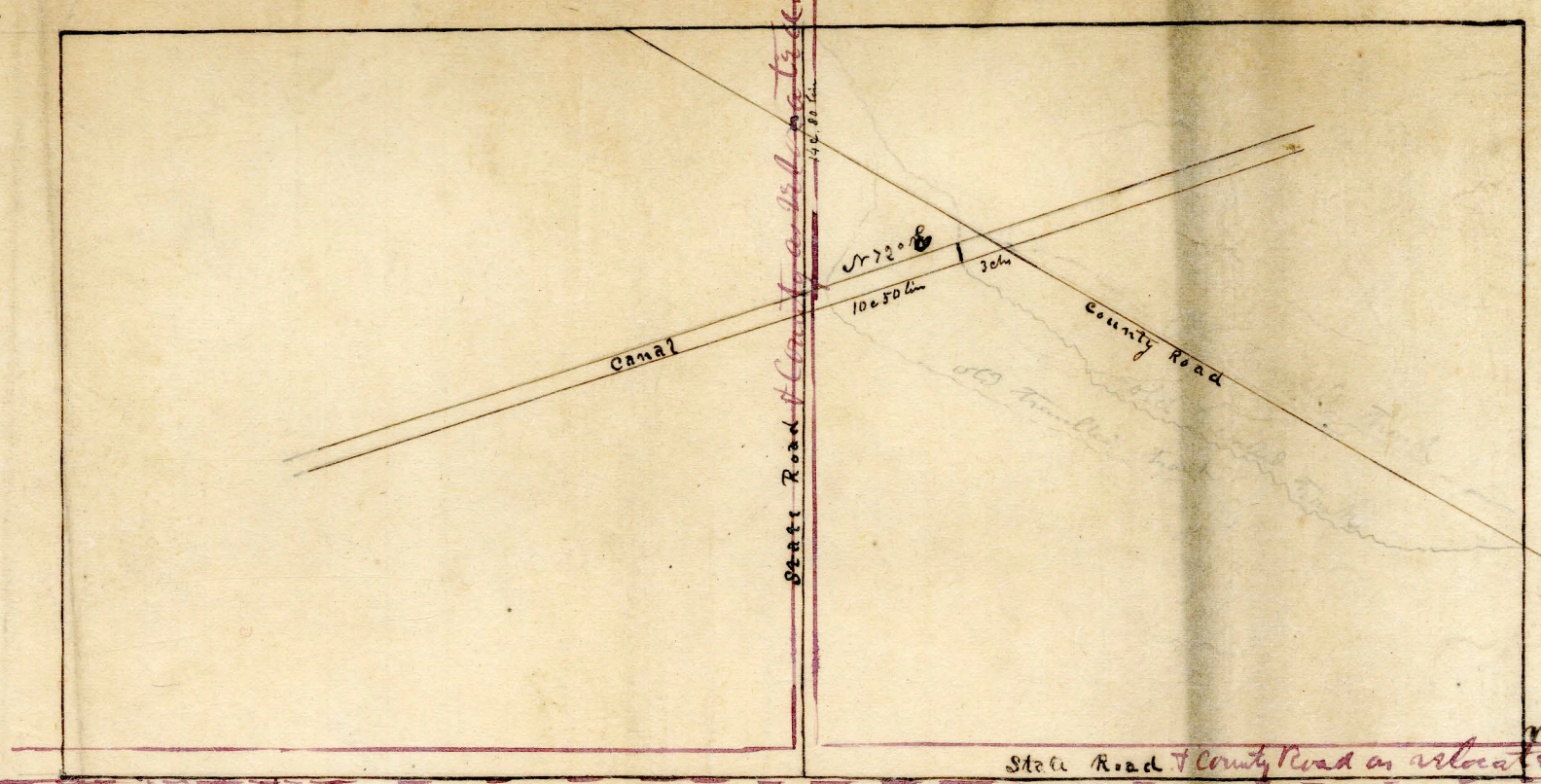
71641 7

Map of road of 1835
& 1853 on Section 9
Section 1853

"A"

[Inside]

N ½ Sec 10. T 33. 3.



State Road of 1835 &
County road of 1835 as
relocated April 1853
between red lines ~~crossing~~ canal
at centre of section 10. East & West.

To the Honorable Commissioners of Lacelle County State of Illinois. Your Petitioners humbly pray that a road may be laid off and established as follows. to wit. beginning at the town of Ottawa running from thence to Troy Grove on the nearest and best ground passing said grove on the nearest and best ground to said County line having also in view the best route from said Grove to General Atkinsons crossing place at the inlet on the west to Dixons ferry on Rock River your petitioners prays and still pray

and &c

Thomas Welch senior
Elias Cary
Abijah Cary
William Winterton
Nathan Wixon
Anthony Pitzer
Levi Kelsey
Joel Giggs
Hiram Thornton
Leonard Towner
William H. Stewart
Eli Leonard
Alexander Davis
John Hayes
Amos Leonard
Daniel Dimmick - but will not do three ten days works
Saml Lapsley
Jerry Parsons
Allen Tompkins
Joseph Jackson
Burton Ayers
James Hayes
Mason Dimmick
George Bentner
Samuel Patterson
John Fangkander
John Long
F. Mdugin
James Webb
Lewis Benton
Horatio A. Sprague
Geo. A. Sprague
Lewis Bayley
Asahel Baldwin
Thos Welch Jr
John Myers
David Shaver
James H. Woodworth
Wm Stadden.

B"

12055-2

State of Illinois
LaSalle County } ss

I, Samuel W. Raymond Clerk of the County Court in and for said County do hereby certify that the foregoing is a true and correct copy of a road petition from the files of the late County Commissioners Court of said County now remaining in my Office

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Ottawa this 8th day of July 1853

S. W. Raymond Clerk

Petition to the Commissioners of Lasalle County State of Illinois

Certified Copy

Sept 1st 1834 the Cof Comrs. Court appointed as a Committee to view & Report for the within Court for a Road

Simon Crosier
Daniel Quinnich
and Daniel F. Hewitt

"A"

State of Illinois
La Salle County } At a county Commissioners Court held at Ottawa in and for La Salle County on Monday Sept 1st A D 1834

This day a petition was presented to the Court praying for a road to be laid out established from the Town of Ottawa to Hay Grove on the nearest and best ground passing said grove on the nearest and best ground to the County line having also in view the best route from said Grove to general Ottersons crossing place at the inlet on the route to Devons Ferry on Rock River,

It is ordered by the Court that Simon Crosier, Daniel Dennicks and Daniel F Witt be appointed Commissioners to view survey and report on said road and that the Clerk issue notices to said Commissioners of their said appointment

State of Illinois
La Salle County } I Maurice Murphy Clerk of the County Commissioner's Court in and for LaSalle County and State aforesaid do hereby certify that the above is a true copy as of record

In Witness whereof I have hereunto set my hand and have affixed the seal of this Court at Ottawa April 5th 1849

M Murphy Clerk

"C"

State of Illinois
La Salle County } At a Special term of the County Commissioners Court commenced and held at the tavern of Isaac Marlett in the Town of Ottawa on Wednesday the 11th day of March A D 1835

This day Daniel F Witt made to the Court a

[12055-4]

Report of the survey of the road from Ottawa by Troy Grove to the County line towards Dixons Ferry which Report has been made to this Court at the December term and was made out then in pencil writing was therefore ordered to be made out anew and returned afterwards which report the Court now accept

It is ordered by the Court that the following sums be allowed to the following named persons for services on said road

To Daniel Dimmick as viewer on said road 6 days	$9
" Simon Cronin as viewer 6 days	$9
" Daniel F Hett as surveyor 6 days	$12
" Hiram Thornton 4 days with plow & Hydle of Oxen	$8
" Augustus Cary 4½ days as fore Chairman	4.50
" Joel Greggs 3 days as hind Chairman	" .50
" Daniel Dimmick 3½ days holding the plow	1.00

Ordered that George Johnston be appointed supervisor on said road that his district extend half the distance to the ~~nearest~~ nearest established road provided the distance does not exceed five miles

State of Illinois
La Salle County } I Maurice Murphy Clerk of the County Commissioners Court in and for La Salle County and State aforesaid do certify that the above is a true copy as of record

In testimony whereof I have hereunto set my hand and have affixed the seal of this Court at Ottawa April 5th 1849

M Murphy Clerk

La Salle County Ills
Sept 22nd 1834

To the Honorable County Commissioners Court

We the undersigned Commissioners appointed by your Honorable body to view and survey a road from Ottawa to Troy Grove and from there on to the County line towards Dixons Ferry &c Report that we viewed from Ottawa to the County line and commenced ploughing surveying and setting mile posts &c at Corner to Sections 19 & 30 in Township 36 on the 3d principal meridian in handsom rolling prairie and from said Corner we run South 45° 00 E 80.00 lks and set the first mile post thence S 44° 45' E 80.00 lks and set the 2nd mile post. thence S 44° 45 E 23.00 lks to a small slough 48.00 lks to a slough 50 lks wide 74.00 lks to a slough 150 lks wide 80.00 lks set the 3d mile ps S 44° 45 E 49.00 lks to slough. 80.00 lks. set the 4th mile post and thence S 44° 45 E 80.00 lks. set the 5th mile post and from thence S 44° 45 E. 7.00 lenks to a brook 12 lks wide and ranging East into the little vemillion Creek 43.38 lks to a Blk oak 17 inches in diameter which stands amoust a few scattering trees which are detached about 60.00 lks West of the N W part of Troy Grove, and from thence S 44° 45 E down on the S W side of said Grove 80.00 lks. set the 6th mile post thence S 28° 30 E 32.41 lks extend to Thornton's Farm 48.50 lks left said farm 80.00 lks set 7th mile post. thence S 26° 00 E 51.00 lks to a deep ravine ranging E. 65.00 lks. extend Elias Carys Farm 67.00 lks left said farm 76.00 lks another deep ravine rgs E 78.00 lks cut Thomas Welchs farm 80.00 lks set the 8th mile post. thence S 31° 30 E 15.00 lks left said farm 20.00 lks extend timber 35.00 lks to the little vermillion Creek 75 lks wide and rgs S W 60.00 lks left timber and cut prairie which lies very level and flat 80.00 lks set the 9th mile post. thence S 40° 00 E 80.00 lks set the 10th mile post thence S 40° 00 E 23.50 lks to the little Comsogin 34 lks wide and rgs South 80.00 lks. set

[12855.5]

the 11th mile post. the prairie is rolling and handsome. thence S 40° 00 E 80.00 lks set the 12th mile post thence S 40° 30 E 80.00 lks set the 13th m post. S 40° 30 E 33.00 lks Slough 80.00 lks set the 14th mile post thence S 40° 30 E 9.56 lks to the big Comsagin Creek 35 lks wd & rgs S W 15.00 lks brook 7 lks wd & rgs S W 19.07 lks to a brook 12 lks wd & rgs SW 60.00 links to another branch of the Comsogin Creek 27 lks wd & rgs SW 80.00 lks set the 15th mile post thence S 40° 30 E 39.00 to a pond 800 lks wd 80.00 lks. set the 16th mile post thence S 40° 30 E 80.00 lks set 17th mile post thence S 61° 30 E. 80.00 lks set the 18th M post S 61° 30 E 80.00 lks set the 19th mile post S 61° 30 E 80.00 lks set the 20th M post thence S 66° 45 E 24 00 lks entered timber at pine Creek point 29.00 lks brook 7 lks wd 33.86 lks to A blk oak 36 Inches in diamt and thence S 73° 00 E 35 50 lks left timber and cut prairie 80.00 lks set 21st m post and cut timber 1528 a burr oak 20.00 lks to the top of the bluff of the Ills river 25.50 to the foot of said bluff thence N 69° E 55.00 lks thence S 71° 00 E 80.00 lks set 22d M post and left the foot of the bluff and entered the prairie in the bottom thence S 71° 00 E 67.00 lks entered Dr Walters Grove 74.20 lks brook 6 lks wd & Rgs S W 78 00 lks left timber 80.00 lks set the 23rd mile post. thence S 74° 30 E 25.75 lks. to the N W corner of the Court House in Ottawa

Report

WE report favourable for establishing said road and claim services as follows

Daniel Demmitt 6 days $9
Simon Crosier 6 days $9
Dan'l F Hitt 6 days 12
Hiram Thornton 4 days with plough and four yoke of Oxen, $8
Elijah Cary 4½ days as fore chainman $4-50

Joel Griggs 3 days as hind Chairman $3
Jason Gurley 1/2 day as fore Chairman 50cs
$1 Extra Allowed to Daniel Dimmick for Holders plough

Commissioners { Daniel Dimmick, Simon Crosier, Dan'l F. Hitt Surveyor and Commissioner

D Dimmock Esq held the plough 3 1/2 days for which he claims Extra Services 1c (authies to claim)

State of Illinois
La Salle County } I Marcus Murphy Clerk of the County Commissioners Court in and for La Salle County and State of Illinois do hereby certify that that the foregoing is a true and correct Copy from the Original Report on file in my Office

In testimony whereof I have hereunto set my hand and have affixed the Seal of this Court at Ottawa April 7th 1849

Marcus Murphy Clerk

"D."

At a County Commissioners Court held at Ottawa in and for La Salle County on Tuesday June 3rd A D 1845

State of Illinois
La Salle County }

This day the commissioners appointed under an act entitled an act for the location of a certain State road therein named and for the vacation of other State roads approved March 1st 1845, have this day presented their report of a road located by them (by virtue of the above recited act) from the town and plat of Ottawa in La Salle County to the Town of Peru which report after due examination was accepted approved and ordered to be recorded which is accordingly done in the words and figures as follows to wit

To the Honorable the County Commissioners of La Salle County

We the undersigned viewers appointed by the annexed act of the legislature to view and locate the road therein named beg leave to report that we have viewed and located the same as represented in the annexed plate

A Woodruff
Benton Ayres

State of Illinois
La Salle County }

I hereby certify that personally appeared before me Thomas Larkin Probate Justice of the Peace in and for said County Alson Woodruff and Benton Ayres who were each severally sworn to faithfully discharge required of them by the annexed act

Given under my hand and seal this 16th May AD 1845

Thomas Larkin P J P

Survey of a road from Ottawa to Peru commencing at the West end of Maddison Street in the Hates addition to Ottawa run

1st " due west 40 chs to centre of Section 10
2nd " due N 40 chs to 1/4 corner between Sections 3 & 10 T 33 R 3
3rd " West 2 miles 4 chs 18 links
4th " N 56° 30 W 71.95 to a point 24.25 chs W of 1/4 corn between 5 & 6
5th " W — 3 miles 65.00 on 1/4 section lines
6th " S 80° 15 W. 17.57 to W Bank of Clarks creek

7th " N 80° 15 W 17.57 to 1/4 Sec corn in centre of 4 T 33 R 2
8th " W 1 mile 40.00 to 1/4 corn between Sec 5 & 6 T 33 R 2
9th " N 81° 45 W 10.40 across Peconsengan Creek to top of W bank
10th " W 20.00
11th " S 81° 45 W 9.23 to centre of Section 6
12th " S 48° W 1 mile 20.00
13th " S 57° W. 50.00 ch to hay grove road 2 chs N of Hardys bridge
14th " S 25.00. to S E corner of 11 T 33 R 1 E
15th " S 18.45
16th " S 52° 20 W. 17.50
17th " S 82° 35 W 30 40. to stump on top of E bluff on vermillion
18th " S 18° 15 W 12.00
19th " S 83° 30 W 8.30 across vermillion
20th " N 87° W 8.49 to E line of La Salle
then along the street of La Salle to W end of first street thence South 72° W 41.75 chs to the E end of centre street in the town of Peru

Geo H Norris County Surveyor
of La Salle County

State of Illinois
La Salle County } I Maurice Murphy Clerk of the County Commissioners Court do hereby certify that the foregoing is a true and correct copy from the record of said Court in my office, a copy of so much of the act approved march 1st 1845 as authorizes Sd Commrs to view & locate Sd road is annexed to their report
In testimony whereof I have hereunto set my hand and affixed the seal of the said Court at Ottawa this 9th day of April AD 1849

Maurice Murphy Clerk

Vilas April 14th 1849
P. Lincoln Clk

Certified copies
of record of roads
over 10-33-3

Certified

An act to relocate parts of State Roads & Vacate & Locate another therein mentioned

Sect. 1 Be it enacted by the People of the State of Illinois represented in the General Assembly That Joseph O Glover Milton S. Smith & Lucian P. Langdon or a majority of them be and they are hereby authorized to relocate the State Road leading from the West end of Madison Street in the Town of Ottawa in the County of La Salle West to the Centre of Section Ten Township Thirty three North of Range Three East the same to be relocated on the North side of the Quarter Section Lines and to view survey & Locate a public Road from thence to the Street or public highway on the North side of Section Sixteen in the same Township & Range between Lots Three & Four in said Section the said Road shall be relocated and laid out One hundred Feet wide

Sec 2. The said Commissioners or a majority of them shall have Power to Locate the public road leading from Ottawa to Troy Grove ordered to be surveyed viewed and represented on by the County Commissioners Court of said La Salle County on the 1st day of September 1834 and established by said Court on the 11th day of March A D 1837 so as to make said Road follow the line of the Road & Street in the first section mentioned & Cross the Illinois and Michigan Canal in a Northerly & Southerly Direction at the Centre East & West of said Section Ten Provided that the relocation of said Road shall in no wise impair the right of the People or any person or persons to

[12058-9]

compell the erection of a bridge over said Canal by the Trustees of the Same as now required by Law at the point where the same shall intersect said Canal as located under this act and the location of said Road under this act shall have the same force & Effect in all respects whatever in all Courts & proceedings as if the same had been originally Located at the place where the same shall have been located under this act.

Sec 3 The said Commissioners or a majority of them shall meet on the Second Monday in April Next at 10 o'clock A M at the Office of said Milton A. Smith in Ottawa and take and Oath before some Justice of the Peace or other person authorized to administer Oaths well & faithfully to perform the duties required of them by this act & proceed to the performance of such duties. In Case the said Commissioners shall not meet on that day they may meet at any other time and perform the said Duties

Sec 4 The said Commissioners shall make out a plat or plats of said Road as Located and Relocated under this act. Subject to the same & file them with the County Clerk of said County & shall record the same in the records of the proceedings of the Board of Supervisors of said County which Record or a Certified Copy of the same by the said Clerk shall be evidence in all Courts & proceedings of the location or Relocation of said Road The said Commissioners shall also assess the damages if any that any and all persons may sustain by reason of the location or relocation of such Roads & report the same as above

Sec 5. This act shall be in force from and after its passage

John Reynolds
Speaker of the House of Representatives
B. Kenner
Speaker of the Senate
Approved Feb. 11 1853
J. A. Matteson

United States of America
State of Illinois

I Alex. Starne Secretary of State for the State of Illinois do hereby certify that the foregoing is a true & correct copy of an Enrolled Law on file in this office

In Testimony whereof I hereunto set my hand and affix the seal of said State at Springfield this 11th day of March AD 1853

Alexander Starne
Secy of State

[12055-10]

Act for Location
of Roads &c

Fees $2.00

We do Solemnly Swear that we will faithfully perform the duties required of us by the act of the General Assembly of the State of Illinois. Entitled "An Act to relocate parts of State Roads and view and locate another therein named" approved February 11th 1853.

Subscribed & Sworn to before me this 11th day of April A.D. 1853 John P. Anthony Notary Public

J. C. Stover
M. H. Swift
Lucian P. Sanger

"#V"

In pursuance of the act of the General Assembly of the State of Illinois, Entitled, "An Act to relocate parts of State Roads and view and locate another therein named" approved February 11th 1853, the undersigned Commissioners appointed in & by said act do hereby Certify and report, that we met at the Office of Milton H. Swift in Ottawa on the Eleventh day of April A.D. 1853 at 10 o'clock A.M. and after having taken an oath faithfully to perform the duties required of us in & by the said act we proceeded to relocate the State road mentioned in the first section of said act and relocated the same as follows viz, Commencing at a point at the west end of Madison Street in said Town of Ottawa fifty feet north of the quarter section Corner on the East side of section Ten (10) Town-

[12055-11]

We do Solemnly Swear that we will faithfully perform the duties required of us by the act of the General Assembly of the State of Illinois. Entitled "An Act to relocate parts of State Roads and view and locate another therein named" approved February 11th 1853.

Subscribed & Sworn to before me this 11th day of April A.D. 1853 John P. Anthony Notary Public

S. C. Hover
M. H. Swift
Lucian P. Sanger

In pursuance of the act of the General Assembly of the State of Illinois, Entitled, "An Act to relocate parts of State Roads and view and locate another therein named" approved February 11th 1853, the undersigned Commissioners appointed in & by said act do hereby Certify and report, that we met at the Office of Milton H. Swift in Ottawa on the Eleventh day of April A.D. 1853 at 10 o'clock A.M. and after having taken an oath faithfully to perform the duties required of us in & by the said act we proceeded to relocate the State road mentioned in the first section of said act and relocated the same as follows viz, Commencing at a point at the west end of Madison Street in said Town of Ottawa fifty feet north of the quarter section Corner on the East side of section Ten (10) Town-

"A"

[12055-11]

-ship thirty three (33) North of Range three (3) East, the center line of said road will run, as relo-
-cated by us from thence westerly to a point fifty feet north of the center of said section ten (10) the said road being relocated by us one hundred feet in width being fifty feet in width on each side of the said center line

And we do further certify and report that we have located the road mentioned in the second section of said act, ordered to be surveyed viewed & reported on by the County Commissioners Court of said LaSalle County on the 1st day of September 1834 and established by said Court on the 11th day of March A.D. 1835, as follows, Commencing in the center of said Madison Street in the said Town of Ottawa at the point where said road ~~was~~ as originally located intersects said Madison Street and running thence west along the center line of said Street to the west end of the same. thence westerly parallel or nearly so with a line drawn from the quarter section corner on the East side of section ten (10) Township thirty three (33) North of Range three (3) East, to a point fifty feet north of the center of said section ten (10). thence northerly on the said center line east and west of said section to the quarter section corner on the north side of

said section thence westerly on the north line of the said section to the point where the said road as now located will intersect the said road as originally located — thus making the said road as this day relocated by us follow the line of the Street and road in the first section of the said act mentioned

And we do further certify and report that we have viewed surveyed & located a public road as provided and authorized in the latter part of said section one of the act before refered to as follows. viz;

Commencing at a point fifty feet north of the center of said section ten (10) Town thirty three (33) North range three (3) East on the line between the north east and north west quarters of the same, the center line of said road will run, as viewed surveyed & located by us, westerly parallel with the south line of said North west quarter to the west line of the said section, thence southerly along said west line to the south west corner of said section, thence in a right line to the west side of the road between lots three (3) and four (4) in Section Sixteen (16) Same Town & Range on the north side of the same. Said road being located by us one hundred feet in width.

And we do further certify and report that upon full examination and after having

heard the allegations of the parties in interest that no damage will be sustained by any person by the establishing relocation and opening of said roads herein before described or of any or either of them,

Given under our hands this 11th day of April A.D. 1853.

Milton H. Swift
Lucius P. Sanger
L. D. Glover
Commissioners

State of Illinois
LaSalle County } ss

I, Samuel W. Raymond Clerk of the County Court in and for said do hereby certify that the foregoing is a true and correct copy of a Road report & Plat from the original now on file in my Office.

In testimony whereof I have hereunto set my hand and affixed the Seal of said Court at Ottawa this 9th day of July A.D. 1853

S. W. Raymond
Clerk

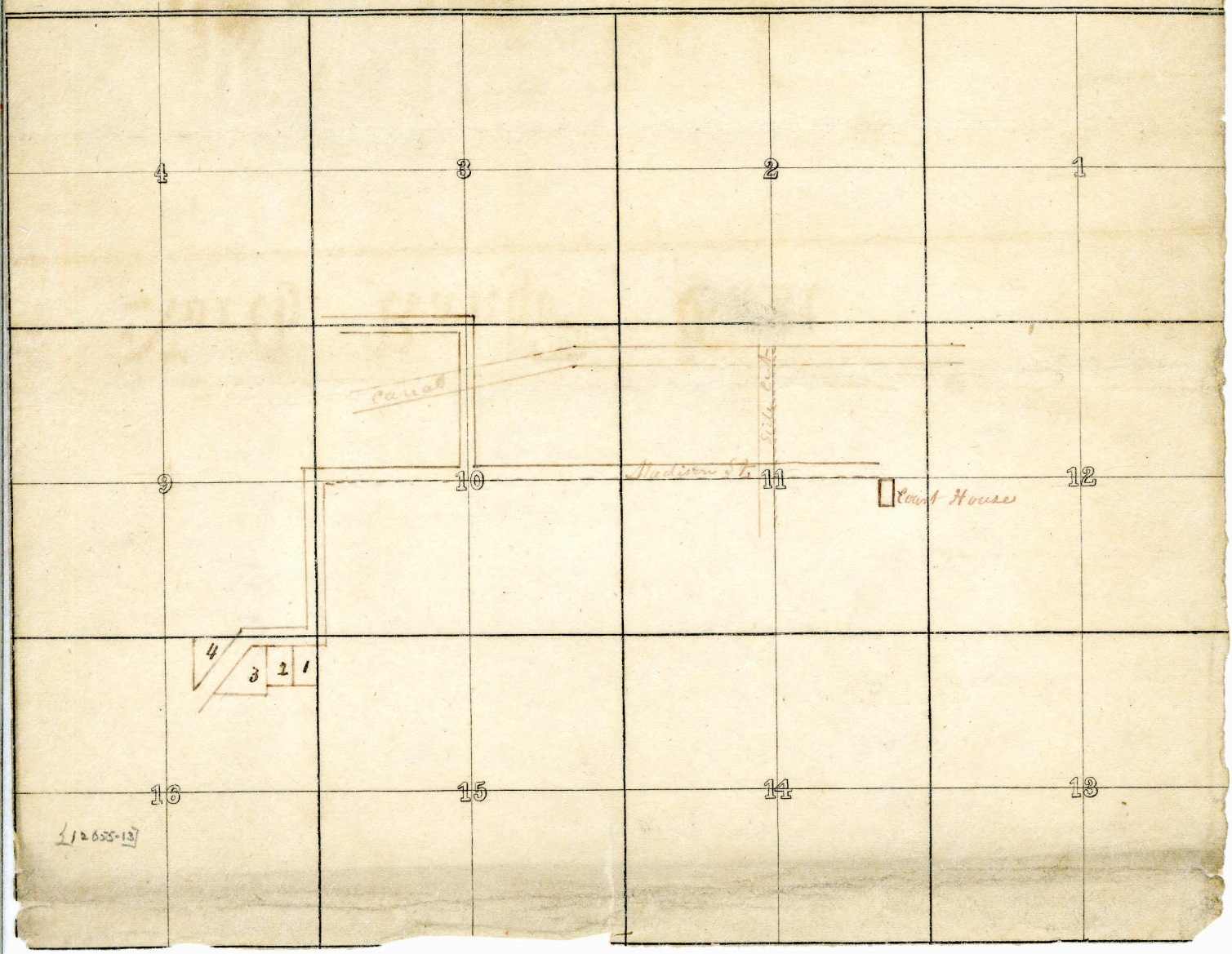
Road Report & Plat

Certified Copy of

J. O. Glover
L. P. Sanger
M. H. Swift
Viewers

Filed July 8th 1853
J W Raymond
Clerk

33 North, Range 3 East Plat of foregoing Roads



[12655-13]

The People of the State of Illinois upon the relation of John N. A Hoes & others vs The Board of Trustees of the Illinois & Michigan Canal

In the Superior Court — Term Term A.D. 1853

Your Petitioners by way of amendment to their Petition & the Writ issued in this cause further beg leave to Represent, that the said public road laid out, and Established on the 11th day of March A.D. 1835 mentioned in the original Petition filed herein was in all respects petitioned for, Surveyed and laid out and Established according to law by the said County Commissions Court, as by the Petition marked "B"; the Orders of the said County Commissions Court, the Report & Survey of the Viewers marked "A" which are hereto attached and made parts of this Petition and Writ will fully appear.

And your Petitioners further State that the said Road crossed the Canal in the original petition mentioned at a point on said

[12055-15]

Canal 10 chains and fifty links from the Center East and West of Section Ten aforesaid, and in a direction from said Center North Seventy two degrees East; said road as Established running across said Section ten (10) from the north line thereof in a direction South (71° 00') East; said Road and Canal being located and crossing each other as aforesaid and at the point and in the manner and directions as indicated upon the Plat herewith filed marked "A" and made part hereof

And your Petitioners further State that the said State road mentioned in their original Petition laid out and Established on the 16th May 1845 was by the Commissioners appointed by the act of the General Assembly of the State of Illinois entitled "An act for the location of certain State Roads therein named and for the vacation of other State Roads" Approved March 1. 1845; duly and legally laid out and established according to law and that a map of the Survey & also the Survey of said Road was Certified by them and filed in the County Commissioners Clerks Office of said County according to law; a Copy of which said

Survey, Report of said Commissioners and proceedings of the County Commissioners Court thereon marked "D" is herewith filed and made part hereof; from which said Survey it will appear, that said Commissioners Commenced at the West end of Madison street in the Stokes addition to Ottawa and run thence due West 40 chains to the Center of Section ten (10) thence due North Forty (40) chains to the quarter Corner between Sections three (3) and Ten (10) in (33) North R. (3) East of the 3rd Principal Meridian; and that the said Road across said Section Ten (10) aforesaid running North and South through the center of said Section aforesaid is crossed or intersected by said Canal at a point twenty four chains and Sixty Six links due North from the center of said Section ten, at the place and in the manner indicated by said Plat marked "D" before referred to, and that the said State Road was located and Established over said Section Ten (10) in the manner indicated on said plat.

And Your Petitioners further State that on the 11th day of February A.D. 1853. the General Assembly of the State of Illinois

{12055-16}

passed an act entitled "An act to relocate parts of State Roads, and view and locate another therein mentioned". A copy of which said act duly certified is herewith filed and made part hereof. That in pursuance of the terms ~~and~~ conditions and provisions of the said act after being duly sworn according to law the commissioners named in said act proceeded to relocate that part of the said State road mentioned in the 1st Section of said act; and also to locate (or relocate) the said Road mentioned in the 2nd Section of said act; and did locate and relocate said Roads and make their Report, plat and Return of the same in the manner particularly described in the certified Copy & plats of said relocations hereto attached and made part hereof marked "A"; and which said relocations are also fully indicated in the said Plat marked "A" before referred to: So that in fact the County road established March 11th 1835 aforesaid and the State Roads aforesaid located & established under the act of March 1. 1845 as now relocated pass over and occupy the

same grounds and intersect the said Canal upon Section ten aforesaid at the same place; being the place aforesaid indicated on said plat Marked #4

And your Petitioners further state that the Public Road used and travelled by the Public as a Public Highway since the year A.D. 1832 until obstructed by the said Canal as stated & set forth in their original petition crossed said Canal at now located at or near the same place where the said Roads herein before mentioned now cross or are intersected by the said Canal

State of Illinois }
LaSalle County }

John V. A Hoes being duly sworn says that the foregoing amended Petition is true to the best of his knowledge information and belief & further saith not

Subscribed & Sworn to before me this 11th day of July A.D. 1853.

L. Leland Clerk. S. C.

John V. A. Hoes

[12055-17]

(1)

The People Ex. Re.
John V. A. Hoes Exd
vs
Board Trustees of
the Illinois and
Michigan Canals

Amendments to
Petition or Mit

(Copy)

Supreme Court of
the State of Illinois

The Board of Trustees of the
Illinois & Michigan Canal
ads
The People of the State of
Illinois, on Relation of
John C. A. Stoes and others

Answer.
Return to writ
of Alternative
Mandamus

The Board of Trustees of the Illinois and Michigan Canal in obedience to the ~~order~~ alternative writ of Mandamus to us directed of this Honorable Court, Submit the following ~~Answer~~ return to the ~~Petition for~~ said writ of Mandamus filed against them by the People of the State of Illinois, on Relation of John C. A. Stoes, and others.

These Respondants in reply to said petition say that they are advised by their Counsel and believe and therefore say, that there is not set forth in said petition any legal or sufficient grounds, or facts showing any legal obligation resting on these Respondants to do the act which the relators seek to compel these Respondants to do.

These Respondants Submit that the relators do not set fourth any suffient interest, or right of theirs to be affected by said bridge by which they are authorized to file such Petition—

And these Respondants further answering say that they are

Advised by their Counsel and believe, therefore reply that they are not bound by the laws of this State to erect the bridge in said Petition mentioned.

And these Respondants say that the petition is so ambiguous and uncertain in regard to the location and course of said Road therein mentioned, that they would not know where to build said bridge if ordered so to do according to the prayer of said petition.

And further answering they say that the petition does not set forth with sufficient certainty, the location of said Bridge nor the place where it is desired it should be built so that by anything contained in said Petition these Respondants are unable exactly to locate said Bridge.

And these Respondants submit that the proceedings in the premises if sustainable against any persons should be against the State Trustee of Illinois and Michigan Canal and not against these Respondants.

For these and other defects of form and substances in said Petition these Defendants pray all the advantage as though the same had been demurred to in form and that the same may be quashed.

These Respondants further answering says that, except from said relators and said petition, they have no knowledge or information that a public

highway was on the 11th of March 1835. located, laid out, and ordered to be opned by the County Commissioners Court, of La Salle County, from Ottawa to Troy Grove in said County, nor of the establishment of the same in the manner prescribed by law. ~~And~~ Nor that the same ever was a public highways as alleged in said petition, but from enquiries made, they believe that no such road was established, in the manner prescribed by law, Nor has the same been occupied and used as a public Highways in manner alleged, These Respondants therefore ~~xxxxx~~ deny the same and call for legal proof thereof

And these Respondants further ~~answering~~ return & says that it may be that there may have been since 16th day of May 1845. (although they have no knowledge of the facts) a State road, or State Roads legally laid out and opned according to law running from the Town of Ottawa to Peru, in said County, but as to what particular road is refered to in said petition and where it is located, the petition not stating these Respondants cannot more fully answer and whether the same is a legal Road they cannot State.

And these Respondants further answering says that there may have been, since 1832, a public road across Section 10. mentioned in said petition, and it may have been ~~through~~ travelled and used as a Highway by the public to some Extent, but they have no knowledge

[12655-9D]

of its Existance except from said petition and inasmuch as said petition does not state its location nor where it crosses said section nor the angle it runs they have no means of answering said allegation in said petition more fully.

further ~~answering~~ return to said petition and these Respondants say that having no Knowledge of the Existance of said Roads (if any there are) except from said petition, and said petition not giving their location these Respondants are unable to answer ~~whether~~ to what extent they are necessary for the accommodation of the public.

These Respondants admit that in the year 1848 they finished the Illinois and Michigan canal that it crosses section 10 as ~~they had a right~~ it was authorized by law to do.

further ~~answering say~~ return to said petition These Respondants that according to the best of their information knowledge and belief there was not any ~~legally~~ legally laid out and located Road intersected by the canal in the center of said section 10. East and West. ~~which~~ In constructing the canal said section it may ~~canal~~ ~~[illegible]~~ ~~canal~~ may have intersected a place where the public were in the habit of travelling, but these Respondants ~~after their~~ after diligent inquiry are unable to find the records of any legally laid out road or highway which has been intersected by the canal at the center of said section 10. East and West as alledged in said petition, and therefore denies the existance of the same and calls for the proof by the record, and surveys

thereof or other Competant Evidance.

And these Respondants further answering says that after making diligent Enquiry, as to what Road the Petition referd to as the one they desire to have Connected by a Bridge, accross the Canal, they obtained, a description of the location of a pretended or supposed road which they suppose to be the one refered to, and caused the same to be surveyed by and under the direction of their Chief Engineer and they found by such survey that it does not cross said section 10 within 40 rods of the Center East and west, as stated in said Petition. And they are utterly ignorant of the Existance of any legally laid out Road State or County Crossing the Canal at the point alleged in said petition, and Call for proof thereof.

And these Respondants further answering say that they admit that the relators or some of them have made application to these Respondants to Construct a Bridge for them but these Respondants have declined doing so because there was not as they were advised any law making it their duty to build such Bridge, nor could they ascertain after enquiry that there was any legally laid out Road Crossing said Section 10, at the place designated for a Bridge.

And these Respondants further answering says that they have by their agent & attorney looked for the record of any proceedings laying out such roads as stated in said petition, with view of ascertaining where they were, and what they were

[12055-2]

for the purpose of ascertaining their Civil rights

And they by their Counsel applied to John C. A. Stoes Esq. one of the relators for Copies or an inspection of such papers as the relators have, but he failed & refused in relation thereto to furnish the same or did not submit the same to their inspection so that these Respondents have no evidence. nor has any ever been furnished them of the existance of any such Road as stated in said petition. and they are ignorant of such proof in this particular

And these Respondents further ~~Answering~~ says that by the Act of March 30, 1822 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" the State of Illinois was authorized to survey and mark through the public lands of United States, the rout of a Canal connecting Illinois River with the Southern bend of Lake Michigan, that in persuance of said act and the acts amending that, and the acts of the State of Illinois, the Illinois and Michigan Canal was surveyed and located through said Section 10 - before any road was ever laid out over the same to the knowledge of these Respondents

That by the 10th Section of an act approved January 22, 1829, it was provided said Commissioners may sue and be sued and defend in the name of "the Board of Commissioners of the Illinois and Michigan Canal" And to enable said Commissioners to accomplish the object therein contemplated, it was made lawful for them to enter and take of and use any lands, waters, and streams, necessary for the prosecution of the works intended by this act"

And these Respondants Submit that any road laid out Subsequent to that time was Subject to the prior right to use the Same for a Canal. That by the 11th Section of an act Approved February 15, 1831, "Entitled An act to amend an act to provide for the Construction of the Illinois and Michigan Canal. it was provided that "Nothing in this act or the one to which this is an amendant, Shall be so Construed as to prevent Said Commissioners or their Successors in office from using any Stone, timber, ground or water, or other Material, for the purpose of Making or aiding Said Canal which May be required in its Construction; And in all Sales of Said lands this right is hereby expressly reserved free from any Cost, Charge or liability whatever, And the Said Commissioners May reserve from Sale any tract or tracts of land which they May think useful on account of its timber, rock, or other advantages, in the Construction of Said Canal.

Also 10th Section of an act to amend an act entitled an act for the Construction of the Illinois and Michigan Canal, Approved March 2nd 1837, it was provided "the Canal Commissioners Shall insist upon the right of the State to the rights of ways, through and upon all lands heretofore Sold or granted by the State. and also the use of all water and materials required in the Construction of the Canal under the reservation Contained in the tenth Section of the act passed January 22nd 1829, providing

[12055-02]

for the Construction of said Canal, and under the reservation contained in subsequent laws on the same subject.

And these Respondants further ~~answer~~ ~~answering~~ state that the Board of Commissioners of Illinois and Michigan Canal by virtue of the laws of this State, in September 1836, located the said Canal through said Section 18, and duly & legally appropriated so much thereof as was necessary for the purposes of said Canal. And that said Commissioners under and in accordance with the laws of this State took possession of, and appropriated so much of Section 18 as is now used for Canal, and commenced the Construction thereof, and so continued until 1845, when the same was in accordance of the laws of this State transfered to these Respondants as by the acts of February 21, 1843, Entitled "An act to provide for the Completion of the Illinois and Michigan Canal, and for the payment of the Canal debt" — Also, An act approved March 1st 1845, Entitled 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 21st one thousand eight hundred and forty three.

And which these Respondants ask may be taken as part of this answer, will more fully and at large appear.

And these Respondants submit that the State of Illinois, by law has appropriated the Lands ~~adjacent~~ adjacent to Canal, to Canal purposes, and appropriated so much of the Highways at the place where said Road crosses the Canal if any

there was on said Section 10, to Canal purposes
And by law therefore these Respondants Submit
that so much of said highways if any there was
at the place now occupied by the Canal has been
~~Vacated~~ vacated - by law - and appropriated to other purposes
And these Respondants insist if there
was ever any such roads as are maintained in said
petition, The same have been vacated ~~Maintained~~ by the public laws
of this State -

These Respondants further Submit
that by the act of the Legislature Entitled "an act to
authorize the bringing of Suits against the State
Trustee of the Illinois and Michigan Canal"
It was provided that in all Cases where Individ=
=uals or Corporations had a right of action against
Board of ~~Trustees~~ Commissioners said - said action should be
Continued - against the State Trustee as by
reference to said act will more fully appear -
And these Respondants Submit
that the land now used for Canal purposes on
said Section 10. was appropriated by the Board of
Commissioners for Canal purposes And said Road if any was obstr=
=ucted by the Board of Commissioners that by the
Transfer of the Canal - and the land over which
the same passes, including its banks, tow paths
feeders, rights of way &c by the act of 21. February
1843. & the act of 1845. the said Canal &c through and upon said
Section 10. passed to these Respondants unencumbered
by any obligations to build Bridges or other
Structures And that the proper party to proceed
against in the premises is the State Trustee
as Successor of Board of Commissioners of said Canal -

And these Respondents submit that there is no fund provided from which they can legally appropriate money for the Construction of said Bridge. And Section 16 of the act of February 21. 1843, makes a specific appropriation by law of all moneys coming into the Respondents hands, and these Respondents submit that it would be a violation of law to appropriate the Canal fund to Construction of such Bridge according to the prayer of the said petition. And these Respondents pray that the general laws of the state of Illinois herein before referred to, may be taken & considered as a part of this answer —

And said Board of Canal Trustees insist that the Waters have no right to the interposition of this Court to compel them to do the acts in the said petition set forth —

In witness whereof, the said Board of Trustees of the Illinois & Michigan Canal have caused the seal of said Board to be hereto attached & the same to be signed & attested by their Secretary of said Board —

Jno. Gooding Secretary

Isaac N. Arnold
Atty for Board of
Trustees of Ills & Mich.

Canal —

State of Illinois
Will County ss: W. Gooding being sworn
says that he is Secretary
of said Board & that he has read the
foregoing answer & knows the contents
thereof & that the same is true
according to the best of his knowledge
information & belief —

W. Gooding

Subscribed and sworn
before me this 4th day
of October A.D. 1852.
John W. Paddock
Notary Public
in & for Will County, Illinois

Supreme Court

Board of Trustees of the Ill. & Michigan Canal

ads.

The People of the State of Illinois ex rel. J. W. Hoyne et al

answer

Filed Oct. 7. 1852
L. Leland Clk.

Supreme Court of the
State of Illinois

The Board of Trustees of the
Illinois & Michigan Canal
ads
The People of the State of
Illinois on Relation of
John V. A. Hors et al

} amended
Return to
writ of al=
ternative Man=
damus

The Board of Trustees
of the Illinois & Michigan Canal in obe=
dience to the alternative writ of man=
damus of this Honorable Court to us di=
rected. Submit the following return
to the said writ of mandamus

And these Respondents answering
say that they are advised by their Counsel
and believe, therefore reply that they
are not bound by the laws of this State to
erect the bridge in said petition men=
tioned

These Respondents further answer
say that except from said Relators and said
petition & writ they have no knowledge or infor=
mation that a public highway was on the 11th of
March 1835 located laid out and ordered
to be opened by the County Commissioners
Court of La Salle County from Ottawa

to Troys Grove in said County nor of the establishment of the same in the manner prescribed by law nor that the same ever was a public highway as alleged in said petition, but from inquiries made they believe that no such road was established in the manner prescribed by law Nor has the same been occupied and used as a public highway in manner alleged

These Respondents therefore deny the same and call for legal proof thereof

And these respondents further return & say that it may be that there may have been since the 16th day of May 1845 (although they have no knowledge of the facts) a state Road or State Roads legally laid out & opened according to law running from the town of Ottawa to Peru in said County but as to what particular road is referred to in said petition & where it is located the petition not stating these Respondents can not more fully answer and whether the same is a legal road they cannot state.

And these Respondents further answer they say that there may have been since 1832 a public road across section 10 mentioned in said petition it may have been travelled and used as a highway by the Public, to some extent, but they have no knowledge

of his existence except from said petition & inas=
much as said petition does not state the loca=
tion - nor where it crossed said section
nor the angle it runs, they have no means
of answering said allegation in said pe=
tition more fully

And these Respondents further
returning to said writ & say that having
no knowledge of the existence of said Roads
(if any there are) except from said petition
and said petition not giving the exact location
these Respondents are unable to answer
to what extent they are necessary for the ac=
commodation of the public

These Respondents admit
that in the year 1848 they finished the Illi=
nois & Michigan Canal, but it crosses
section 10 as it was authorized by law to do

These Respondents further return to
said writ that according to the best of their
information knowledge and belief there
was not any legally laid out and located
road intersected by the Canal - in the cen=
tre of said Section 10, East and West.
In constructing the Canal across said Sect=
ion it may have intersected a place where
the public ~~may~~ were in the habit of
travelling but these Respondents after
diligent inquiry are unable to find the records
of any legally laid out road or Highway which
has been intersected by the Canal at the

centre of said Section 10 East & West as alleged in said Petition and therefore denies the existence of the same and calls for the proof by the record & surveys thereof or other competent evidence, if any there be.

And these Respondents further answering say that after making diligent inquiry as to what Road the petition referred to as the one they desire to have connected by a bridge across the Canal. These Respondents obtained the description of a road ~~supposed to be~~ supposed road which they suppose to be the one referred to in said writ and caused the same to be surveyed by and under the direction of their Chief Engineer & they found by such survey that it does not cross said section 10 within 40 rods of the centre East and West as stated in said petition & they are utterly ignorant of the existence of any legally laid out Road State or County crossing the Canal at the point alleged in said petition and call for proof thereof.

And these Respondent further return to said writ and say that they admit that the relators or some of them have made application to these Respondents to construct a Bridge further but these Respondents have declined doing so because there was not as they were advised any law making it their duty to build

such bridge nor could they ascertain after enquiry that there was any legally laid out road crossing said section 10 at the place designated for a Bridge.

And these Respondents further answering say that they have by their agent and attorney looked for & enquired for the record of any proceedings laying out such road as stated in said petition with a view of ascertaining where they were & what they were

And they for the purpose of ascertaining their duty in the premises by their Counsel applied to John V. A. Voss Esq one of the relators for copies or an inspection of such papers as the relators have in relation thereto but he failed & omitted to furnish the same ~~or~~ did not submit the same to their inspection so that these Respondents have no evidence nor has any ever been furnished them of the existence of any such road as stated in said petition. ~~that~~ And these respondents submit that in the absence of such proof & ~~of~~ such failure to furnish such evidence when requested they are under no obligation to construct said bridge — these respondents having diligently sought for the same with a view of ascertaining if any such road existed & their rights in the premises.

And these respondents further answering say that they respectfully

[12255-27]

submit that the construction which has hitherto been put on the Canal laws by the Board of Trustees, or in what manner they have understood them is not material nor important to the decision of the question, that they are now advised that it is not their duty - & that they have no right to appropriate Canal funds to the building of bridges &c & respectfully ask the advice, opinion & direction of this Court in the premises

These ~~premises~~ respondents admit that in most instances they have built bridges over & across said Canal as stated in said writ - but they submit that if they have done so in ignorance of their duty & no legal right exists in Congress or the Legislature to compel them to build bridges. ~~Our construction~~ ~~has~~.

These Respondents say that the place for building said bridge has never been pointed out to them nor the angle at which it was to cross the Canal, nor any evidence of the existence of said road or roads furnished. They therefore respectfully ask advice & insist that the relators

have no legal right to the writ of Mandamus & they pray to be released from the doing of the acts mentioned in said alternative writ of mandamus.

And these Respondents further return that by the act of March 30. 1822 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". the State of Illinois was authorized to survey & mark through their public lands of the United States the route of a Canal connecting Illinois river with the South ern bend of Lake Michigan that in pursuance of said act and the acts amending that, & the other acts of the State of Illinois, the Illinois and Michigan Canal was surveyed and located through said Section 10 before any work was ever laid out on the same to the knowledge of these Respondents.

Saw of Congress 1822

That by the 15th Sect. of an Act approved February 22. 1829 it was provided said commissioners may sue and be sued and defend in the name of "the Board of Commissioners of the Illinois & Michigan Canal" and to enable said

[12055-28]

Commissioners to accomplish the object therein contemplated it was made lawful for them to enter upon and use any lands, waters and streams necessary for the prosecution of the works provided by this act."

And these Respondents submit that any road laid out subsequent to that time was subject to the prior right to use the same for a canal. That by the 11th section of an act approved February 15th, 1831, "entitled an act to amend an act to provide for the construction of the Illinois & Michigan Canal it was provided that "nothing in this act or the one to which this is an amendment shall be so construed to prevent said Commissioners or their successors in office from using any stone timber ground or water or other material for the purpose of making or aiding said Canal which may be required in its construction and in all sales of said lands this right is hereby expressly reserved free from any cost charge or liability whatever, and the said Commissioners may reserve from sale any tract or tracts of land which they may think useful on account of its timber rock or other advantages in the construction of

said Canal

Also 15th section of an Act to amend an act entitled an act for the construction of the Illinois & Michigan Canal approved March 2nd 1837 it was provided " the Canal Commissioners shall insist upon the right of the State to the right of way through and upon all lands hereafter sold or granted by the State & also the use of all water & material required in the construction of the Canal under the reservation contained in the tenth section of the act passed January 22nd 1829 providing for the construction of said Canal and under the reservation contained in subsequent laws on the same subject

And these respondents further return & state that the Board of Commissioners of Illinois and Michigan Canal by virtue of the laws of this State in September 1836 located said Canal through said section 10 and duly and legally appropriated so much thereof as was necessary for the purposes of said Canal And that said Commissioners under and in accordance with the laws of this State took possession of and appropriated so much of section 10 as is now used for a Canal and commenced the

construction thereof & so continued until 1845 when the same was in accordance with the laws of this State transferred to these respondents as by the act of February 21 1843 Entitled "An act to provide for the completion of the Illinois & Michigan Canal and for the payment of the Canal debt" approved February 21st One thousand eight hundred and forty three

And which these Respondents ask may be taken as a part of this, will more fully and at large appear

And these Respondents submit that the State of Illinois by law has appropriated the lands occupied by Canal, to canal purposes and appropriated so much of the highways at the place where said road crosses the Canal (if any there was on said section 10) to Canal purposes & by law therefore these respondents submit that so much of said highway if any there was at the place now occupied by the Canal has been vacated by law and appropriated to other purposes

And these respondents aver that if there ever was any such roads as are mentioned in said petition the same have been vacated by the public laws of this State.

These Respondents further submit that by the act of the Legislature entitled "An act to authorize the bringing of suits against the State Trustees of the Illinois & Michigan Canal"

It was provided that in all cases where individuals or Corporations had a right of action against Board of Commissioners said action should be continued against the State Trustees as by reference to said act will more fully appear

And these Respondents submit that the land now used for Canal purposes on said section 10 was appropriated by the Board of Commissioners for Canal purposes and said road if any was obstructed by the Board of Commissioners, that by the transfer of the Canal and the land over which the same passes intersecting its banks, tow paths, feeders, right of way &c by the act of 21 February 1843 and the act of 1845 the said Canal &c through & upon said section passed to these Respondents unencumbered by any obligation to build bridges or other structures And that the proper party to proceed against is the persons the State Trustees as successors of Board of Commissioners of said Canal

{12055-30}

And these Respondents submit that there is no fund provided by law from which they can legally appropriate money for the construction of said Bridge as they are now advised. Section 16 of the act of February 21 1843 makes a specific appropriation by law of all money coming into the Respondents hands And these Respondents submit that it would be a violation of law to appropriate the Canal fund to construction of such bridge according to the said writ

And these Respondents pray that the several lands of the State of Illinois herein before repeated may be taken and considered as a part of this answer

And said Board of Canal Trustees insist that the relators have no right to the interposition of this Court to compel them to do the acts in the said writ set forth

In witness whereof the said Board of Trustees of the Illinois & Michigan Canal have caused the seal of said Board to be hereto attached & the same to be signed and attested by the Secretary of said Board

Attest Wm Gooding Secy.

Isaac N. Arnold
Atty. for Respondent

State of Illinois
Will County } ss

Wm Gooding being sworn says that he is secretary of said Board & that he has heard read the foregoing answer & knows the contents thereof & that the same is true according to the best of his knowledge information and belief

Wm Gooding Secy

Subscribed & sworn to before me this 2d day of July A.D. 1853

John W. Paddock
Notary Public in & for the County of Will & State of Illinois

[12055-31]

Supreme Court

Board of Trustees
of the Illinois &
Michigan Canal
ads
The People of the
State of Illinois
Excl. for U. Hons
et al

~~Answer~~
Return as
amended —

Filed July 5th 1853.
C. Leland Clk.
By P.R. Leland Dep.

The People of the State of Illinois
Upon the Relation of John V. A. Hood, Allen Woodruff, J. O. Glover, George H. Norris, Eli Strawn & Warren Moore

vs

The Board of Trustees of the Illinois and Michigan Canal

Your Petitioners by way of amendment to their Original Petition filed in this Cause by leave of the Court for that purpose obtained do further respectfully represent

That the said Board of Trustees of the Illinois & Michigan Canal in the building and construction of their said Canal were not authorized either by any positive law nor by any necessary implication from any law authorizing the Construction of the Illinois & Michigan Canal, materially or essentially to obstruct any public road or highway over, through or across which the said Canal might pass or be constructed; and they submit respectfully that in the passage of the several laws in relation to the construction of said canal the General Assembly did not intend, and did not in fact, abolish and discontinue so much of any one or all the Public roads or highways over, through, or across which the said Canal might be constructed.

And Your Petitioners further state that the said Board of Trustees of the Illinois & Michigan Canal have

[12055-32]

hitherto so understood the said several laws relating to said Canal — and acting upon such understanding have in most instances when the said Canal passes any public road or high-way, erected and constructed Bridges over and across said Canal so as not materially or essentially to obstruct the said Public Roads or High-ways: thereby admitting their obligation under the laws aforesaid to erect & construct bridges when the said Canal crosses a Public high-way and giving evidence that their understanding of the said laws and their contract with the State was such, as confers upon the said Board of Trustees no authority materially to obstruct the Public Roads & Highways of the State —

State of Illinois
LaSalle County } ss Shem P. A. Hess being duly sworn says on oath that the matters & things set forth above in manner & form as above set forth are true in substance & in fact

Subscribed & sworn to before me this 8th day of July A.D. 1852.

Shem P. A. Hess

T. Leland Clerk. Sup. Court
By P. K. Leland Depy.

The People vs Eq Re-
John V. A. Hoxt Exor.
vs
The Board of Trustees of
the Illinois & Michigan Canal

Petition for
Mandamus

And now come the said Plaintiffs and say that all the matters & things stated in said Petition and writ and the several amendments thereto are true and that the return and amendments thereto of the said Defendants so far as the same or any part thereof relate to or purport to deny any of the allegations in said writ & the amendments, which assert the location, rise and existence of any and all the Public roads therein mentioned, and which ~~seek~~ set up any real matter in avoidance of the rights sought to be enforced by said Plaintiffs are untrue and are hereby expressly traversed and denied ~~so~~ this the said Plaintiffs are ready to verify; and as to all the other matters and things in said Returns stated Plaintiffs say that the matters & things therein stated are not sufficient in law to bar or preclude the said Plaintiffs from having & maintaining his writ aforesaid against the said Defendants & that said Plaintiffs are not bound in law to answer the same & this the said Plaintiffs are ready to verify wherefore they pray Judgment &c

Pepple Gloon Cook for Plfs

[12050-33]

~~and to~~ and the Respondents
in affirming all the matters
set forth - in their said
returns - & denying all the
matters in said petitions
newly offered to my & upon
the allegations in their
said Returns - & as to
the questions of law they
pray the judgt of
the Court &c

J. R. Armitt
Atty for Board
of Trustees

Supreme Court
A.J. of Hood Canal
vs
Trustees, &c -

Answer & Return
& Return

Filed July 28th 1853.
L. Leland Clk.
By P.M. Leland Dep.

State of Illinois } ss.
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 represented to the Justices of our Supreme Court, now sitting at Ottawa in said State, that on the 11th day of March A.D. 1835 a public highway from the town of Ottawa to Troy Grove in the County of La Salle and State aforesaid was located and laid out and ordered to be opened by the County Commissioner's Court of said County, and said public road was then and there established in the manner prescribed by law, and then and there became and ever since has continued to be a public highway — That said highway was so laid out and located across section No ten in Township No thirty three North of Range No three East of the third principal meridian in said County — and that said public road from the time above mentioned hitherto has been and still is a public highway, and during all that time has been used and occupied by the public as a public

[12058-34]

highway except so far as the same has been obstructed as hereinafter mentioned - and also that ever since the 16th day of May A.D. 1845 there has been a State Road legally laid out and opened according to law, running from the town of Ottawa to the town of Peru in said La Salle County - that said public road has never been vacated, but ever since said 16th day of May A.D. 1845, the same has been used and travelled by the public as a public highway, except so far as its use has been obstructed as hereinafter stated - that said public road runs across section No ten in Township No. thirty three North of Range No. three East of the 3d principal meridian in said La Salle County - that ever since the year of our Lord 1832, a public road across said section No. ten above described was used and travelled by the public as a public highway, and from that time hitherto has always continued to be used and travelled as a public highway except as its use has been obstructed in the manner hereinafter stated - and also that each of the above public roads is necessary for the accommodation of the public, and that neither

of them can be discontinued without great and manifest injury to the public — That during the years 1847 & 1848, the Board of Trustees of the Illinois and Michigan Canal caused said Canal to be constructed across said Section ten in such manner, that said Canal intersects each of the above named roads at a point on said Section ten, where each of said roads were used and travelled by the public, which point is upon said Canal and at the centre of said Section East and west — That by reason of the construction of said Canal, and the intersection of the roads above mentioned, by said Canal, the said roads and each of them were wholly obstructed, and their use at that point entirely prevented, and that said obstruction has continued from that time to the present, and thereby said roads and each of them are for a long distance rendered wholly useless to the public — That application has been made to said Board of Trustees of the Illinois and Michigan Canal to erect a bridge upon said public roads, or one of them, at the point where said roads are intersected by said Canal as aforesaid — That since

[12055-35]

said application a reasonable time for the construction of such bridge has passed, yet, said Board of Trustees have utterly neglected and refused to build said bridge.

And further, that the said Board of Trustees of the Illinois and Michigan Canal, in the building and construction of their said Canal, were not authorized either by any positive law, nor by any necessary implication from any law authorizing the construction of the Illinois and Michigan Canal, materially or essentially to obstruct any public road or highway, over, through, or across which the said Canal might pass or be constructed — and that in the passage of the several laws in relation to the construction of said Canal, the General Assembly did not intend, and did not in fact, abolish and discontinue so much of any one or all the public roads or highways over, through, or across which the said Canal might be con-
-structed. — That the said Board of Trustees of the Illinois and Michigan Canal have hitherto so understood the said several laws relating to said Canal, and acting upon such understanding have in most instances

where the said Canal passes any public road or highway, erected and constructed Bridges over and across said Canal, so as not materially or essentially to obstruct the said public roads or highways; thereby admitting their obligation under the laws aforesaid to erect and construct bridges where the said Canal crosses a public highway, and giving evidence that their understanding of the said laws and this contract with the State was such, as conferred upon the said Board of Trustees no authority materially to obstruct the public roads and highways of the State—

Therefore, we, being willing that full and speedy justice be done in this behalf, command you, that immediately after the receipt of this writ, you erect upon the public roads aforesaid or one of them, at the point where said public roads are intersected by the said Canal, a bridge of suitable dimension to enable the public to cross said Canal at that point with teams, or that you show cause why you should not erect said bridge before our said Justices of our said Supreme Court at said Ottawa, on the

lest complaint shall again come to us by your default; and in what manner this our command shall be executed, make appear to our said Justices of our said Supreme Court at said Ottawa on the

and then sending back to us this our writ.

Witness the Honorable Samuel H. Treat, Chief Justice of our said Supreme Court, and the Seal thereof, at said Ottawa, this day of A.D. 1852.

Clerk of said Supreme Court

The People &c. ex rel.
John V. A. Hoes et als.
vs.
The Board of Trustees
of the Ill. & Mich. Canal.

Alternative Mandamus.

[205 7 037]

The People upon the Relation of John P. A. Hoes & al vs Canal Trustees &c

No 1

Motion to Strike Answer from files —

Reasons

1st. Because said Answer contains a Demurrer to ~~Complaints~~ Relators Petition, which is not authorised by law or the Practice in cases of Mandamus —

2. Because the said Defendants admit to file an answer to said Relators Petition which they are not authorised by law or the Practice in such cases to do.

3rd Because the said Defendants should have made a return to said Writ, instead of filing a Petition

Pruyn for Relator

June 23. 1853

[12056-3B]

1

People Ex Re. Hoes Exr.

vs

Canal Trustees

Reasons for striking
answer from filed

Filed June 22d - 1853.
L. Leland Clk.

People ex. rel. Hoes et al.
vs
Canal Trustees

amended Petn.

Filed July 9. 1852.
L. Leland Clk.

Acts of Parties evidence of proper construction of contract

3 Annual Dig. p 21. S 84.
1 Supplement p 70. S. 279.

Allegations of Writ not denied by the Return are admitted

Tapping on Mandamus
392.

Trustees, Successors of Board of Commrs
Act 21 Feby. 1843. Cand Laws p. 43
S. 8 —

The People of the State of Illinois Ex Re - John W. A. Hoes & others
vs
The Board of Trustees of the Illinois & Michigan Canal

Cum Term A.D. 1852
Application for Mandamus to Compel Defts to Build a Bridge over the Canal &c

1st Point

The grant of the General Assembly to the Board of Trustees of the Illinois and Michigan Canal, as contained in the acts of Feby 21. 1843 & March 1. 1845 is a Franchise

The "Board of Trustees of the Illinois & Michigan Canal" are a Corporation;

Their power to sue and liability to be sued results as a matter of necessity from their organization; has been used and practiced & never questioned or disputed.

They possess the powers and privileges and are subject to the duties and liabilities incident to a Corporation.

They are authorised to take possession of the Canal Lands &c & proceed to complete the same
Sec 13. Act 21. Feby 1843. L. S. P 45.
make changes & alterations. Sell lands & lots
Idem

To establish a tariff of tolls. Collect them - make by laws relation to transportation Collection of tolls, conduct of boats &c &c. Act Feby 21. 1843 Sec. 15. P 46.

[12055-41]

In short the whole scope and object of the grant or trust if you please to call it such — is what the law defines as a —

Franchise

" A certain privilege conferred by grant from the government and vested in individuals "

" Corporations or bodies politic are the most usual Franchises known to our law "

1 Bouvier Law Dic. 587.
3 Kents Com. 457-8

In England a Franchise is

" a Royal privilege in the hands of a subject "

In this country

" a privilege conferred by the government upon a subject "

15. Serj & Rawle 130
People vs Utica Insurance Co 15 John. 386

Although a Franchise is some times called a hereditament. & an incorporeal hereditament It does not of necessity possess any descendable or inheritable quality

But a mere privilege to do a particular thing or exercise a particular function — emanating from the sovereign power, is a Franchise

The Board of Trustees are invested with that Sovereign power which formerly belonged to the State; to Construct the Canals. Sell the Canal lands, Raise the money on the Sales regulate tolls, Collect the same; and to take entire and absolute Control over the whole Canals & Canal Lands until the creditors of the ~~Canal~~ State holding Canal indebtedness are fully paid

A Franchise need not have succession or perpetuity

Whenever a corporation which is a Franchise becomes extinct either by the natural death of all the Corporators - or by the limitation contained in the grant or by forfeiture of the conditions imposed or by any other means the privilege reverts immediately to the Sovereign

In this case the grant contained a condition that upon the happening of a certain event the Canal Lands, privilege & Granted shall revert to and become vested in the State

This may or may not happen.

This court have decided that the Canal lands belong to the Trustees. & Canal Trustees vs City of Chicago 12 Ill. 405

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2. Point

The owners of a Franchise authorised to construct a Canal or other public work which renders a highway impossible without a bridge are by virtue of the grant itself under obligation to erect the Bridge & keep the same in repair within the limits of the Franchise

2. Bacons Abdgt 122
1 Hawkins Pleas of the Crown 706
14 East 317. 321
1 Gill 227.

When the act conferring the grant is silent upon the subject, there is no presumption of law that the General Assembly have designed or intended to abolish any portion of her public roads or highways

3 Point

Whether the Legislature have abolished a Public high-way by the passage of a law authorising the construction of a Rail Road or Canal is purely a question of intention, to be ascertained in the same manner that intention is reached in relation to other Statutes

Paxton Turnpike Co vs Bishop 11 Verm. 201
2 N.H. 24

Object of these authorities is to shew

That by the act creating the franchise, it is apparent the Legislature intended to abolish the Public Highways to a certain extent.

Was such the intention in the case now under consideration?

Was it intended to impose upon the Counties through which the Canal was located the Oppressive burden of constructing Bridges over the Canal whenever a Public highway should be obstructed by said Canal?

The whole County Revenue which could be assessed and collected at the time of the passage of the act would not be sufficient for that purpose —

As a matter of consequence it is not to be presumed that the Legislature intended to subject these Counties to a burden which by the laws of the State they could not be permitted to bear.

That the Legislature intended to compel them to erect Bridges where the Canal passed over or through Public highways, when they had no power or authority to collect the funds necessary for that purpose

Nor is it to be presumed that in the passage of any of the laws authorising the construction of the Canal — Either by the Cons.ns or Instruct. they intended to abolish any portion of the Public Highways of the State.

The Canal in its course often crosses the main Public travelled highway from Chicago to Lasalle Peru & Peoria.

Is it to be supposed that this road at all the different places where the Canal crosses the same was intended to be or is abrogated by any act of the Legislature authorising the construction of the Canal

The Board of Trustees have not so understood the law nor the effect and operation of their contract with & privilege derived from the State —

They have constructed Bridges for aught I know every where along the line except at this particular place thereby affording conclusive evidence of their understanding of the contract, and their obligations in this respect.

The idea is not for a moment to be entertained that in the construction of this Canal the Legislature intended to abolish or render useless any great highway or public thoroughfare of the State — or impose upon the citizens the onerous burden of erecting bridges over the Canal for the purpose of rendering them passable

This question is fully settled by the proceedings preliminary and subsequent to the time the loan was taken —

1st The Loan was taken on offered at least under assurances "that the cost of completion of the Canal would not exceed $1.600.000"

Reports Genl Assembly 1845. P. 314

[12055-44]

Lewis & Swift two of the Trustees were appointed to make an estimate of the probable expense &c of completing the Canal.

This Estimate includes Bridges — Idem — P 356.

1.st 24. all but 2. Road bridges

In addition —— 1. Road bridge over desplaines

1 " " at Joliet

1 across drainage

4 total path Bridges } Cost $69.646.14

31

Report of the Board of Trustees in 1850, shows the construction of 25 Bridges including feeders side cuts desplaines River

List Canal lots & Lands &c 1850 P. 14.

How recreant have they been to their trust, if they have expended all this money in the construction of bridges without authority of law.

Report Gooding. Chief Eng.r Rep. 1846. p. 97.

" " " " " p. 150

Abstract of Expenditure. for 1847. Rep. 1849. p. 152

The Board of Commissioners of the Illinois & Michigan Canal

Brief

12th Cir. 403

Mr Joseph Cyr.
John A. Hord & others
vs

4 Hoop. 208. Spencer N.J. Rep. 236
7. Met. 61.

Blackwell says.

1st "By common law Counties are bounds to build bridges" — —

Remark

The common law is not in force in this State. Legislature never required a county to build or Repair a Bridge unless the County had funds for that purpose.

2. He refers to numerous acts of the Leg. assembly in which provision is made by Law that when roads are crossed by their work they shall be restored —

"This, (he says) is a Conclusive argument"

Remark

This work was commenced by the State — prosecuted under its Supervision — carried on under its own Officers; and it was wholly unnecessary for the State to impose upon herself the restriction, that she would not destroy her own Public Highways —

She could build the necessary Bridges over public Roads — without any Statutory requirement to that Effect —

The State acted upon this principle The Board of Trustees — followed in the same course — See — Reports — particularly Report of 1842. P. 108. 109. 110

All these matters thrown to Trustees

[12055-45]

3. "Trustees not to be considered as ordinary Corporations – Great Public work –
State to be cheated
Stolen from
State & People antagonists

4th Trustees have no funds to build bridges
Remark
After the completion of Canal Trustees to distribute funds.
<u>This is begging the question</u>
If they are bound to build it – then they are bound to use funds for that purpose,

The whole thing again comes back to the question of intention on the Part of the Legislature
Did it intend to abolish State & County roads.

Supreme Court

Canal Trustees
vs
The Proprietors
Rel. Hacs et al

Points made by
J. R. Arnold

1. Hacs & others, the Petitioners have no right to this writ. The Petition does not allege any interest in them over others.

18 Pick. 89-
105-6

25 Maine Rep. 296
Yapping on Mandamus
51 Law Lib. p. 338.

This is a substantial defect, which goes to foundation of writ & may be raised at any time.
Canal Trustees v. Hacs
12 Ills. Rep. 248.

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2. There is no legal obligation resting on Canal Trustees to build Bridges across the Canal, except so far as convenience of Canal itself may require —

This question was fully & ably argued & all the authorities bearing on question collected in Blackwell's Brief —

12 Ills. Rep. 249. 250 251 —

The propositions established by the authorities there collected are —

1. At common law Counties are bound to build & repair bridges —

2. No corporation is bound to repair or build them, except required so to do by Statute.

This principal applies to all Rail-Roads & Canals, ~~except~~ where their use is so public as to authorize them to take property by condemnation under right of Eminent domain

3. This is the established rule in ~~New York~~ New York

17 John 452 -
7 Wend 477 -
2 Cowen R. 169 - 170 } New York

2 New Hamp. 513 } New Hampshire

1 Spencer R. 324 } New Jersey

4 Day - 208 } Connecticut

7 Metcalf R. 1 - Massachusetts

These authorities would seem to be ample to settle the question. If any question can be settled by decisions and dicta of the state, this seems to be one of them

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But the Canal was located in 1836 & excavated in 1837 - 1838. across this section 10 by authority of the State & by her agents

Was the State bound to build bridges?

Would this Court have ordered a Mandamus against the State to build this Bridge - or her officers -

It would have been the State vs The State - an absurdity -

If State was not bound to build the Bridge was in her hands. Canal Trustees are not. They stand in same position - Certainly they are bound beyond their obligation in the contract -

3. But when the State transferred this property to Trustees, there was no law requiring them to build bridges - There is nothing in their contract requiring it -

1. If the Trustees are not bound to build Bridges either by law existing when they made their contract nor

2. By this contract, where is their legal obligation derived from?

4. The Canal is a public highway - made so by the State -

Laws of Ill. p. 1822. C. S. p. 1. p. 10. Sec. 10 14 - " 11 18 - 16. 19 " 21

The Counties ought of right to Bridge it - as much as the Illinois. The Hay or the Sangamo. rivers -

It is as unjust in principal for Sangamo County to pay for a bridge across Canal - as it would be for the State to be compelled to bridge the Sangamo river -

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5. But there was no ~~bridge~~ Road there when Contract between Subscribers to law was made - & clearly no obligation could be created by any act subsequent to that time -

Contract was made 10 March 1845 -
See Contract attached to Return

The Petition sets up 3 Roads -

1. a County Road of 1835

2. State Road of 1845

3. a Turnpike Road since 1833 -

This last was abandoned or merged in County Road of 1835.

Both Hill & Woodruff - testify that it was a mere path - or track - leading out of County Road & coming back to it - & going out to avoid a slough

2. Besides its location was constantly varying according to the condition of ground -

3. & again it was not at the present location of Bridge. It was about ½ way between County & State Road –

This waggon track – or trail cuts no figure in the case –

The County Road

1. This was 1050 Chains east of place where bridge is desired

2. Petition does not ask to have this road bridged where it crosses Canal –

3. It has been vacated by act of 1853.

And so has the trail –

If the Canal Trustees were bound to bridge the County Road – is it competent for the State or County, to change its location & compel them to build a Bridge at another place? –

Clearly, NO – Reason

1. It is a change of their obligation.

The Trustees were bound only under their Contract – If bound to build bridges – only such

as well on roads then in Existence -
- If by the State could not add to the obligation assumed - by adding a new road - They could not change its location -
one would be as much a Change of the Contract -

2. If they can change the location of a road, when there is ~~[illegible]~~ no bridge, they can change it - when there is a bridge - A then can Trustees to build another set of Bridges all along line -

The County road as it now having been vacated. No obligation arises on account of this road -

6. State Road of 1845.
Established June 3. 1845.

But contract was made
March 10. 1845. unless the
State can compel the Trustees
to build Bridges on roads
laid out subsequent to contract,
& make them build Bridges
ad libitum. State cant compel
to bridge this road at canal.

7. But the Law of 1845. provides
in effect that County shall
build bridge & keep it in
repair.

Canal was located & dug. at
time of passage of Act.
Both — public highways. the
last one made — Must state
its own expense one & the

8. Both the Acts of 1845 & 1853 so far as they impose obligations that assumed by Contract of March 10. 1845 are unconstitutional & void.

Brief

Canal Trustees
ads
The People
Ex Rel. Hues
et al.

Brief of
Mr Arnold

A - Referred to in
within Writing

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. 1845, authorized the Governor of said State to negotiate a loan of Sixteen hundred thousand dollars, and did pledge therefore 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 purposes 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 au=

thority 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 said first named class of ~~such~~ persons, who neglected to avail themselves of it within a reasonable time, whereupon he invited others to advance the money under the provisions of the said first named act pursuant 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 such to pay to said trustees the amount by him respectively subscribed, at such times and in such installments 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 bonds 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 fullfilment 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 ~~designate~~ 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 despatch, 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 said Trustees to be done, such subscribers 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 on 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 act, that certificates shall from time to time be executed and delivered as 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 ~~said~~ the subscribers to said loan, rest upon the Executive by force of said act 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

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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 agent 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 and 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 ~~the~~ 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

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payment, be at par with gold and silver at Chicago, and each 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 there in funds which shall at the time of payment 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 there to be advanced.

In testimony of all which, we, 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 William Gooding Secretary of the Board of Trustees of the I & M Canal do hereby certify that the above and foregoing is a true copy from the Records of said Board on file in my Office.

In witness whereof I have hereunto set my hand and affixed the seal of said Board this twenty third day of July A D. 1853

Wm Gooding Secy.

[12055-58]

Filed July 28th 1853.
L. Leland Clk
By P. K. Leland Dep.

Supreme Court

The People Ex. Rel.
Jno. F. A. Hoes
vs
The Board of Trustees of the
Illinois & Michigan
Canal

The Board of Trustees of the Illinois & Michigan Canal, insisting upon the truth, & U-S-forming, the allegations of their former return - make the following return, to the amended writ, in this case -

These respondents return, that there may have been such petition, order, report & survey, as set forth & referred to in said amended writ, but they have no knowledge thereof, except from said amendment, & therefore respectfully submit that it constituted no legal road, & that they aver that the road referred to as the road of 1835, did not cross or think 10. at the place, where such Bridge is desired, but at a Construction constructed there from -

These respondents answering say that it may be that such supposed road crossed

Section 10. as in said Amendment alleged - but these respondents have no knowledge thereof except from said Amendment & so refer. referred to. & they submit that it being at a different point from the place where said Brigs is stayed for, it is immaterial where or when it was located &c -

These respondents further return that the supposed State road referred to in said Amendment was not established as they are advised & therefore apart on the 16th of May 1845. but that it appears from the proceedings that said supposed road was not established until the 3 day of June 1845.

And these respondents submit that by the proceedings with said Amendments & proceedings that said supposed road was never duly & legally laid out & established according to law, until after the passage of the act of 1853, referred to in said Amendment. if, indeed it has been at any time.

Your Respondents admit that on the 3 day of June 1845. there A. Woodruff, & Benton Ayres made such report, & filed the survey of Geo. W. Ackis as the attachis to, & mentioned in said Amendment - but they submit that such acts do not constitute a legal road -

Your respondents have no knowledge of the place where said Commissioners commenced the Courses &c - nor when the same closed said section 10. except from said Amendment & they therefore neither admit nor deny the same. nor can they tell whether the same was located on said section 10. as indicated in the plaint referred but leave said petitioners to such proof thereof, if they claim it necessary to do so.

Your Respondents say that it may be true that on the 11th of July 1853. such a Law was passed as is alleged in said Amendment - but they never heard of, nor had any notice of the same - nor are they now expected from said Amendment. Over Head

Respondents return that it may be that such proceedings have been had under said law as is alleged in said Amendment, but these respondents being wholly ignorant thereof except from said Amendment they can neither admit nor deny the same.

Your Respondents further return that, as they are informed & believe & therefore allege that there was no public, legal road, nor any established road, used & travelled by the public since the year 1832, until obstructed by the Canal, and they deny that any such road crossed the Canal at the place or at the angle, where the roads alleged in said Amendments to have been located under the law of 1853 are located. ~~alleged to be located & cross~~ in said amendments the Canal =

Thus Respondants respectfully insist that if such law of 1853 has been enacted, & the roads relocated as set forth in said Amendment that the supposed County road alleged to have been laid out in 1834, & the supposed State road of 1845, & the supposed public travelled highway, have by such relocation, each, & every of them been vacated, & that none of them now exist. And that a new road has been located, or "relocated" in this ~~place~~ stead, & at a different place, & crossing said Canal at a different angle - And these respondants respectfully submit that in consequence of such change & "relocation" any obligation there may have been - of any - on these Respondants to build said bridge has been discharged.

Thus Respondants further answer & return, that prior to the establishment of said supposed State road. ~~to the establish~~ as they are advised & believe, & therefore allege prior to the existence of any legal

[12055-6]

work crossing the Canal at the place at which a bridge is desired, to wit on the 10th day of March 1845, a Contract was duly entered into between the Governor of this State, & the subscribers to the loan of $1.600.000. A Copy of which duly certified with the exception of the public laws therein recited & hereto attached Marked (A.) these respondents pray may be taken as part of this return.

And these respondents refer to the Act of 21. July 1843 & entitled "an act to provide for the completion of the Illinois & Michigan Canal & payment of Canal debt." also an Act supplementary thereto approved March 1. 1845. & pray that they may be considered as a part of this their return.

And these Respondents further return, that in pursuance of said Contract & of the laws taken referred to, the Board of Trustees of the Illinois & Michigan Canal. was immediately organized. & a third

of said Canal & Canal so constructed was duly executed under the seal of the State to these Respondents in pursuance of said Contract & the laws relative to.

And these Respondents return that the Board of Trustees constituted multitude trustees supervision of Canal & properly completed the same expending therein the sum of about $1.600.000 -

And these Respondents return that they took said Canal & accepted said trust, assuming no obligation except such as is contained in the Contract a true copy of which (except the laws therein recited) is hereto attached - And these Respondents insist that they did not assume no undertaking to construct a high across ~~[illegible]~~ the Canal in said section 10, and as they are now advised & therefore submit that they are under no legal obligation to build bridges across said Canal except for the accommodation of the [illegible] -

[12055-62]

Your Respondents insist that the State Road (if any) established & opened the 10 of March 1845. & the Acts of ~~Ap~~ July 11. 1853. & the Acts done under them do not & cannot create any obligation on these Respondents.

Your Respondents submit that by the Constitution of this State & of the United States, the State can pass no law impairing the obligation of the contract ~~between~~ above mentioned - the protection of which these Respondents invoke -

Your Respondents submit that laying out of roads & the passage of laws requiring these Respondents to build bridges, or bridges over the Canal would impose upon them burdens not assumed and would violate the letter & spirit of their contract - & that the Laws of 1853. referred to, in so far as it undertakes to increase the obligations of these Respondents & requires them to build a bridge - by lengthening, dislocating

or Establishing roads - or otherwise is void & of no binding authority under Constitution.

Wherefore Respondents therefore pray to be discharged from said Writ & for their costs &c —

In Witness whereof they have hereunto attached their seal & caused this return to be signed by the secretary of said Board —

Wm Gooding
Secretary

State of Illinois
Will County } I, William Gooding being sworn according to oath says that he has read the foregoing return & that it is true according to the best of his knowledge information & belief

Wm Gooding

Subscribed & sworn to before me this 25th day of July A.D. 1853
John M. Paddock
Notary Public in & for said County

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No. 1.

The People ex rel.
W. A. Hous et als.
vs
Board of Trustees of
Ill. & Mich. Canal

Filed Jul 28th 1853.
L. Leland Clk.
By P. K. Leland Dep.

(12085-69)

To the Hon. the Supreme Court of the State of Illinois

Your petitioners John V A Hors, Alvin Woodruff L. B. Gloves, Geo A. Mills Eli Hamm & Warren Moore respectfully represent

That they are residents of the county of LaSalle in the State of Illinois and citizens of said State

That on the 11th day of March AD 1835 a public highway from the town of Ottawa to Troy Grove in said LaSalle County was located and laid out and ordered to be opened by the County Commissioners Court of said County and said public road was then and there established in the manner prescribed by law and then and there became and ever since has continued to be a public highway. That said highway was so laid out and located across section No ten in Township No Thirty three North of Range No three East of the third principal meridian in said County and that said public road from the time above mentioned hitherto has been and still is a public highway and during all that time has been used and occupied by the public as a public highway except so far as the same has been obstructed as hereinafter mentioned

And also that ever since the 16th day of May AD 1845 there has been a State road legally laid out and opened according to law running from the town of Ottawa to the Town of Peru in said LaSalle County That said public road has never been vacated but ever since said 16th day of May AD 1845 the same has been used and travelled by the public as a public highway except so far as its use has been obstructed as hereinafter stated. That said public road runs across section No ten in Township No Thirty three North of Range No three East of the 3d principal Meridian in said LaSalle County

That ever since the year ~~of our~~ Lord 1832 a public road across said section No ten above described was used and travelled by the public as a public highway and from that time hitherto has always continued

[12855-45]

to be used and travelled as a public highway except as its use has been obstructed in the manner hereinafter stated

And also that each of the above public roads is necessary for the accommodation of the public and that neither of them can be discontinued without great and manifest injury to the public

That during the years 1847 & 1848 — the Board of Trustees of the Illinois & Michigan Canal caused said canal to be constructed across said section ten in such manner that said canal intersects each of the above named roads at a point on said section ten where each of said roads were used and travelled by the public which point is upon said canal and at the centre of said section east and west.

That by reason of the construction of said canal and the intersection of the roads above mentioned by said canal the said roads and each of them were wholly obstructed and their use at that point entirely prevented and that said obstruction has continued from that time to the present and the said roads and each of them are for a long distance rendered wholly useless to the public

That application has been made to said Board of Trustees of the Illinois & Michigan Canal to erect a bridge upon said public roads or one of them at the point where said roads are intersected by said canal as aforesaid that since said application a reasonable time for the construction of such bridge has passed Yet said Board of Trustees have utterly neglected and refused to build said bridge

Wherefore said relators pray for an alternative writ of Mandamus to be issued from ~~and~~ this Hon. Court directed to the Board of Trustees of the Illinois and Michigan Canal commanding them to erect upon the public roads aforesaid or one of them at the point where said public roads are intersected and intersected by the said canal a bridge of suitable dimension to enable the public to cross said canal at that

point with teams,

or that they show cause why they should not erect said bridge, to this court within a reasonable time to be fixed by the court and that upon the ~~hearing~~ return of said writ and the final hearing of this cause a peremptory mandamus may issue to the said Board of Trustees of the Illinois & Michigan Canal commanding them to erect said bridge at the place aforesaid in the manner aforesaid

State of Illinois
LaSalle County

John V. A. Hoes being duly sworn saith on oath that the matters and things set forth in the above petition in manner & form as the same are above set forth are true in substance and in fact

J. V. A. Hoes

Subscribed & sworn to before me this 3d day of July A.D. 1852.

L. Leland Clerk Sup Court
By P. K. Leland Dep

[12055-66]

The People of the State of Illinois
upon the relation of ~~the~~
~~Board of Trustees~~
John R. A. Hors & others

vs

The Board of Trustees of
the Illinois & Michigan
Canal.

Filed July 3rd 1852
L. Leland Clk.

People ex. rel. Hoisted,
vs.
Canal Trustees

People ex rel

1853.

Opinion by Scates J.

1 P. D.

Lost

Refused

B-2

1853