

11930

No. _____

Supreme Court of Illinois

People, ex. rel.

vs.

Canal Trustees

71641  7

The People of the State of Illinois

To the Honorable the Supreme Court
of the State of Illinois
now sitting

Your Orators upon the relations of the
City of Chicago, respectfully shew unto
this Honorable Court—

That by an act of the General
Assembly of the State of Illinois, approved
January 9th, 1836, entitled "An act for
the construction of the Illinois & Michi-
gan Canal", the Governor of said
state was authorized & empowered to
negotiate a loan on the faith & credit
of this state, for the purpose of aiding,
in connection with such other means as
might be thereafter received from the
Government of the United States, in the
construction of the Illinois & Michigan
Canal. That by section seven of said
act, the said Governor was required by
& with the advice & consent of the Senate,
to appoint three practical & skillful
citizens of the State of Illinois, to consti-
tute a board to be known by the style
& description of the Board of Commis-
sioners of the Illinois & Michigan Canal

That said Board of Commissioners,
by the said act was constituted a
body politic & corporate with full power
and authority in their corporate name
to contract & be contracted with, sue &
be sued, defend & be defended, plead

And be impleaded, in all the matters & things relating to them as Canal Commissioners, to have & use a common seal, to have the immediate care & superintendance of the canal, and all matters relating thereto, to provide efficient & proper means for the construction of the said canal, to examine the whole Canal route, & select town sites thereon, & to cause the Canal lands in or near Chicago, suitable therefor, to be laid off into town lots, & to sell the lot in the town of Ottawa and Chicago, & the lands along the line of said Canal.

Your Orators show that the said Canal lands were lands granted by Congress to the State of Illinois to aid in the construction of the Illinois & Michigan Canal.

That by an act of the General Assembly of this state, approved 2^d March 1837, entitled "An act to amend an act entitled an act for the construction of the Illinois & Michigan Canal, approved Jan. 9th 1836," it was provided that the Board of Commissioners of the Illinois & Michigan Canal should be elected by the joint vote of both houses of the General Assembly, and should have & exercise the general powers before that time vested in the corporate body of that name, with certain

additional powers by the last mentioned act conferred -

Basin

That by an act of the General Assembly of the State of Illinois, approved July 21st, 1837, entitled "An act to provide for the sale of certain Canal lands, & for other purposes", the Canal Commissioners were authorized to enlarge the natural basin at the confluence of the North & South branches of the Chicago River, so as to render the same as useful & convenient as possible; and it was enacted that block number seven of the Canal lots in the city of Chicago, should be reserved from sale for the purpose of exchanging the same for block number fourteen, which will be required to be removed in the enlargement of the said basin; and the said Commissioners were thereby required to cause the aforesaid block number fourteen to be appropriated for the purpose aforesaid, and to proceed to obtain the title to the same, in the manner provided by law for obtaining lands or materials for the use of the Canal -

The said last mentioned act contained also the following provision, "When the board of appraisement shall appraise the said block fourteen, they shall also appraise the said block seven, & if the owners of block fourteen

will take in exchange for the same, block number seven, at the appraisement thereof, the Canal Commissioners are authorized to make the exchange, taking from the said owner a sufficient conveyance for said block to the state, and giving to such owner a certificate for block seven, stating therein the facts of the transaction; and if block seven shall be appraised to more than block fourteen, the said owner shall be required to pay the difference in a reasonable time to be fixed by the Canal Commissioners, upon such payment being made, the said owner shall be entitled to a patent for the same; and if said block shall be valued to less than block fourteen, or the same sum, he shall be entitled to a patent upon executing the conveyance aforesaid. If the difference of value shall be in favor of the said owner, the Canal Commissioners shall pay the same out of the Canal fund; but if no such agreement is made, as herein contemplated, the aforesaid block fourteen shall nevertheless be obtained & appropriated as herein provided, and block number seven shall be subject to sale as other lots in Chicago now are.

That by the provisions of the Act to provide for the completion of the Illinois & Michigan Canal, & for the payment

of the Canal debt," approved February 21, 1843, the canal, and all the unsold lands & lots belonging to the Canal fund, were irrevocably granted to the trustees of the Illinois & Michigan Canal, as security for the loan authorized by that act, for the purpose of completing the canal.

That by said last mentioned act it was further provided that the "Board of Trustees of the Illinois & Michigan Canal," to be appointed in the manner in said act pointed out, should as far as was not incompatible with that act, possess all the powers & perform all the duties conferred upon the Board of Commissioners of the Illinois & Michigan Canal, by the act entitled "An act for the construction of the Illinois & Michigan Canal," above referred to, approved Jan. 9th, 1836, and the acts supplementary and amendatory thereto.

That the said Canal, Canal lands and property were in accordance with the provisions of the said act of February 21st 1843, conveyed to the Board of Trustees of the Illinois & Michigan Canal on the 26th day of June A.D. 1845.

That by an act of the General Assembly approved March 3^d 1845, entitled "an act to drain a marsh in Gross point precinct, Cook County,

and for other purposes" it was provided that "The seventh section of an act to provide for the sale of certain Canal lands, and for other purposes, approved July 21st 1837", (being the same act above particularly referred to); "is hereby so amended as to authorize the trustees who may be appointed in pursuance of an act to provide for the completion of the Illinois & Michigan Canal, and the payment of the Canal debt, approved February 21st 1843, to cause block number fifteen in the original town of Chicago to be appropriated if they shall think proper for the same purpose as is block fourteen of said city, by virtue of said first mentioned section; and the said commissioners or trustees shall proceed forthwith to perfect the exchange of block fourteen aforesaid for block seven as contemplated by the said act, to which this section is an amendment, and also in like manner under the provisions of said act to obtain the title to said block fifteen. And the commissioners or trustees are hereby further empowered to make any arrangement with the city of Chicago, or any individual for the excavation in whole or in part of the Canal basin referred to in the seventh section of the act first named as they may judge best and expedient

provided such excavation can be done without any expense to the state."

And the said act of 1843, by the 18th section thereof went into effect upon the election of said Trustees, and the said Trustees were elected on the day of May A.D. 1845, and subsequently to the passage of the act of March 3rd 1845, last above referred to, & not before.

That by virtue of the several acts of the General Assembly of the state of Illinois above referred to, the said Trustees of the Illinois & Michigan Canal are irrevocably seized in trust for the purposes & uses in said several acts mentioned ~~of~~ said Block seven in the Original Town of Chicago, that by virtue of the provisions of said acts above referred to, and mentioned, it is the duty of the said Trustees to effect the exchange of said block seven for block fourteen in the Original town of Chicago, and to reserve said block seven & fourteen from sale, and to hold said block seven before said exchange, and said block fourteen after said exchange, for the purposes above specified, and particularly for the construction upon said block fourteen of a canal basin; & it is also the duty of the said Trustees to proceed to cause block number fifteen in the original town of Chicago to be

appropriated and condemned for the purpose of constructing said basin.

And your orators further shew that Elizabeth Dewes, Henry Smith, James Robertson, Richard W. Bayard, James S. Newbold, Herman Leape, Thomas S. Taylor, J. B. Murray, Frederick Bronson, Robert Jones, and John Milles, are the proprietors & owners of said Block number fourteen; and that they the said owners of said block fourteen, have been for a long time & are now ready & willing to take said block seven in exchange for said block fourteen upon the terms & in accordance with the provisions of the several acts above mentioned in relation to said blocks, ^{which apply ~~to~~ ~~the~~ ~~same~~ ~~by~~ ~~said~~ ~~acts~~} & have offered to do so.

And your orators further shew unto your Honors that the city of Chicago, the relations herein was incorporated by act of the Legislature of Illinois, approved ^{and by said act and} amendatory acts, subsequently passed & made laws of said state, especially by an act entitled "An act to reduce the law incorporating the city of Chicago & the several acts amendatory thereof, into one act & to amend the same, approved February 14th 1851, which are referred to & made part of this relation, has, under said several acts of incorporation & acts amendatory thereof, a general superintendance & control over the Chicago River, & its

What
are they?

branches at said blocks fourteen & fifteen
& for along distance above & below
that place, & has authority to exca-
vate & widen & improve the same
for the public convenience, ^{& accommodation} of the citizens
of said city engaged in commerce & other
business, & of canal boats & other ves-
sels navigating said River & branches.

That the said City has heretofore
been & is now prosecuting extensive
improvements by widening & excavating
in the main Chicago River & in & upon
the North ^{South} Branches of said river in the
immediate vicinity of the said blocks
fourteen & fifteen, & the junction of
said branches. That the appropri-
ation & excavation of said blocks fourteen
& fifteen, & the making of a canal basin
thereupon, is an object of public im-
portance and utility, & greatly needed
at the present time for the accommoda-
tion of the citizens & commercial interests
of said city & of canal boats which nav-
igate said Canal, ^{for the purposes contemplated by said act} as well as for the
accommodation of other vessels which
use to load & unload in said river &
branches, & are now much inconve-
nient by the throng of canal boats which
also now use to load & unload in said
main river & branches, & for the conven-
ience of the commerce of said State
& of the said city of Chicago.

That the said city of Chicago

But your orators further show that the said Trustees, although a long & more than a reasonable time has elapsed since the passage of the said several acts imposing said duties in relation to the said blocks upon them, have entirely failed and refused on request so to do, & still do refuse to cause the aforesaid Block number fourteen to be appropriated for the purposes specified in said act of July 21, 1837, & to proceed to obtain the title to the same by exchange thereof for said block seven, as in said act, & the said acts amendatory thereto directed, or in such manner as is prescribed by law, & also neglect & refuse to procure title & the appropriation of said Block fifteen as aforesaid, and as by said act of March 2^d 1845, they are required to do; and give out & declare their refusal & their intention not to do the same; and instead of complying with said requisitions & their duty in this behalf, said trustees have advertised said block seven for sale & threaten to sell the same; and your orators charge that they intend to sell said Block seven, & that they have no intention now or at any future time to effect the said exchange, or appropriate or procure the title of said Block fourteen, or to procure the title & make the appropriation of said Block fifteen as aforesaid—

And your orators pray that each of said acts of the General Assembly of the State of Illinois above referred to may be taken as a part of this petition.

And your orators show further, that as they are advised by counsel they are the only parties who have the right to seek & obtain the interposition of this Court to compel the performance of the duties & obligations aforesaid by the said trustees, & that they have no other remedy or means of relief in the premises except by this proceeding.

Your orators pray therefore that in tender consideration of the premises, this Honorable Court will grant to your orators the writ of mandamus, directed to William H. Swift, David Leavitt & Joseph B. Wells, the Trustees of the Illinois & Michigan Canal, commanding them as such Trustees to reserve Block number seven in the original Town of Chicago, from sale, & to cause Block fourteen of the original Town of Chicago, to be appropriated for the purpose specified in said act of July 21st 1837, and to proceed to obtain the title to the same by exchange thereof for said Block Seven in the manner & as is by said act & the act of March 3^d 1845, amendatory thereto directed, or in such other manner as is prescribed by law, & the several acts above mentioned; and

in like manner under the provisions
of said acts to obtain the title to said
Block fifteen in the original town of
Chicago; and thereupon to reserve,
set apart, & appropriate said Blocks
fourteen & fifteen for the construc-
tion of a canal basin thereupon, & at
the confluence of the North & South
branches of the Chicago River; and to
arrange with & permit the city of Chi-
cago to make the excavations & im-
provements, & construct the canal
basin aforesaid upon said Blocks
fourteen & fifteen, or to show cause
why they have not done the said acts;
to grant to your orators such other,
further, & different relief as to this
Honorable Court may seem meet
& as to equity belongs; and as in
duty bound, your orators will ever
pray &c.

S. S. Hayes }
G. Goodrich } of Council

H. Zimmerman, City Clerk
D. M. Stroy
State Atty

State of Illinois }
Cook County } So. This day personally ap-
peared before the undersigned, clerk of the
Circuit Court of Cook County, Henry H. Zim-
merman clerk of the city of Chicago, & having
been duly sworn says that the facts set
forth in the foregoing petition are true
to the best of his knowledge, & as he verily

believes are true.

Witness my hand & the seal of said Court at Chicago, this day of July, 1852.

J. R. Hoard ~~Justice of the Peace~~ Clerk of the Court

Book
The People ex. rel.
City of Chicago
vs
Canal Trustees

Record

68

1852

Filed July 15. 1852
C. Keland Clk.

Deputed

11930

The people of the State of Illinois
at the Relation of the City of Chicago

vs

Trustees of the Michigan
Canal

And the said Relator

Comes & says that the matters & things set forth
in the answer of said respondents, are
no bar to the granting of the prayer of
said Relator & that the said Relator
is not bound ^{by the law of the land} to answer the said
answer of said respondents

Collins & Hodick
for Relators

People of the
City of Chicago

Capital Trustees

Filed June 22^d 1853,
L. Leland Ch
P. R. Leland

Dep.
for
the
City

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