

No. **11899**

Supreme Court of Illinois

Dewes, et al.

vs.

Trustees, Ill. Michigan
Canal.

71841 7

69
Canal Trustees
vs
E. Dewes et al.

11899

Boyd
1850

State of Missouri = Of the Term Term 1850
Supreme Court

- And -

Trustees of the Missouri & Mexico App. &
Canal

Elizabeth Deves & al. vs. Appellants

And now comes the
said appellants by Wilson & Arnold their
attorneys & say that there is manifest
error in the Records & proceedings in
this cause for that the court below
erred in overruling the demurrer of the
appellants to the Bill of the said appellees
filed in this cause & for that the
Court below granted the prayer of the
said appellees & gave judgment in their
favor when the judgment should
have been in favor of said appellants
for cost -

Wilson & Arnold
Sols for appellants -

And the said Defendants in Error by Goodrich & Collins
their Solicitors come & say that there is not any error
in the Record of proceedings or in the giving of judgment
aforesaid & pray that said decree may be affirmed

Goodrich & Collins
Sols. Defs.

State of Illinois
Cook County, Ill.

Heas before the Honorable Jesse B Thomas one of the Justices of the Supreme Court of the State of Illinois and presiding Judge of the Seventh Judicial Circuit Court of said State of which said Circuit the County of Cook forms a part, a do cemo thereof began and held, at the Court House in the City of Chicago on the third Monday, (to wit the twentieth day) of November in the Year of our Lord One thousand Eight hundred and forty eight and of the Independence of the United States the Seventy fourth

Present Hon Jesse B Thomas Judge

Isaac Cook Sheriff

William A Boardman State Attorney

Attest Samuel Howards Clerk

Elizabeth Lewis, Henry Smith
James Robertson, Richard A Bayards
James S Newbold, Herman Cope
Thomas S Taylor, J. B. Murray, Frederick
Brownson, Robert Jones & John Miller

as

Chancery

The Trustees of the Illinois and Michigan Canal

Be it Remembered

that heretofore to wit: on the first day of September in the Year of our Lord one thousand Eight hundred and forty Eight there issued out of the Clerks Office of the Cook County Circuit Court the Peoples writ of Summons which is in the words and figures as follows to wit:

State of Illinois

Cook County

Sherriff of said County

The People of the State of Illinois to the
Greeting:

Do Command You that you Summon

The Trustees of the Illinois & Michigan if they shall be found in your County, personally to be and appear before the Circuit Court of said County, on the first day of the next term thereof, to be holden at the Court House, in Chicago in the said County, on the third Monday in November next, to answer unto Elizabeth Sewer, Henry Smith, James Robertson, Richards H. Bayard, James S. Newbold, Herman Cope, Thomas S. Bayler, J. B. Murray, Frederick Bronson, Robert Jones, & John Miller in a certain Bill of Complaint filed by them in said Court on the Chancery side thereof. And have you demand there this writ, with endorsement thereon, in what manner you shall have executed the same.



Witness my hand and the Seal thereof at Chicago in said County, this 1st day of September 1848.

Samuel Hoards Clerk

On the back of said writ is the following return to writ, executed by reading the within in presence of the Trustees of the Illinois and Michigan Canal and delivering them a copy of the same the first day of September 1848.

Service 150 3 Copy 150 3 miles 18 1/2 return 12 1/2 = \$3.31 1/4

Wm Cook Sheriff By Owen McCarthy Deputy

Also on the same day and year last aforesaid there issued out of the Clerk's office of the Cook Circuit Court, the Peoples writ of Enforcement which is in words and figures as follows to wit:

State of Illinois,
County of Cook

The People of the State of Illinois
To the Trustees of the Illinois and Michigan Canal
their agents, attorneys, servants & each of them.

Whereas it has been represented to the Honorable Hugh C.

Created by reading the within in presence of the Comtee of the Illinois
and Michigan Comtee, and delivering them a copy of the same. It is such they
accepted this first day of September 1848. 3 July 1848 return No. 33. 314
Shane Cook, Sheriff, By Owen McCarty, ex-officio

Dickey Judge of the Cook County Court, by Elizabeth Deves
Henry Smith, James Robertson, Richard H. Bayard, James S
Newbold, Herman Cope, Thomas S. Taylor, J. B. Murray, Enderick
Bronson, John Miller & Robert Jones, Complainants, in their
Bill of Complaint, filed in the office of the Clerk, of the
Cook County Circuit Court. That you the said Trustee
and your agents, are about to sell, at public sale, Block
Number seven in the Original Town, of Chicago under the
provisions of the 7th section of "an act to provide for the
sale of Certain Canal Lands, and for other purposes"

Now therefore in Consideration of the premises we
do hereby strictly enjoin and Command you the said
Trustee your agents and attorney and every of you that
you do not and refrain from selling or disposing of Block
Number seven in the Original Town of Chicago, otherwise
than by exchanging the same for Block, Number fourteen
in said Original Town as provided by the said act of
the Legislature of Illinois. Nor fail not under the
penalty of what the Law directs.



Witness Samuel Hoards Clerk of the said
Circuit Court and the Seal thereof Chicago
in said County this first day of September
A. D. 1848

Sam Hoards Clerk

To the Sheriff of Cook County to execute
on the back of said writ is the following return to writs. ##

Also on the same day and year last aforesaid
came the said Complainants by Messrs Spring and Cook
their solicitors and filed their Certain Bill of Com-
plaint herein which is in words and figures as
follows to wit:

To the Honorable the Judge of the
Cook County Circuit Court In Chancery setting
Humbly Com-
plaining Sheweth unto your Honor. Your Orators Elizabeth

Devs. Henry Smith, James Robertson, Richard A. Bayards,
James S. Stebbins, Herman Cope, Thomas S. Taylor, J. B.
Murray, Frederick Bronson, Robert Jones, John Miller that
they are the proprietors and owners of Block (14) fourteen
in the original Town of Chicago in the State of Illinois.
And your Orators would further shew unto your Honor
that by an act of the Legislature of the State of Illinois
approved July 21st 1837, entitled "An act to provide
for the sale of Certain Canal Lands and for other pur-
poses" it was amongst other things enacted by the
Seventh and Eighth sections of said act as follows.

to wit
"Sec. 7 The Canal Commissioners are authorized to enlarge
the natural basin at the Confluence of the North and
South Branches of the Chicago River, so as to render the
same as useful and convenient as possible, and
Block Number Seven of the Canal Lots in the
City of Chicago shall 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 are hereby 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.

Sec 8. When the boards of appraisement shall appraise
the said Block fourteen, they shall also appraise the
aforesaid Block Seven and 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 of purchase 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; and upon such payment being made, the said owner shall be entitled to a Patent for the same; but 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 in value shall be in favor of the said owner the Canal Commissioners shall pay the same out of the Canal Funds; but if no such agreement is made as herein contemplated, the aforesaid Block fourteen shall nevertheless be obtained and appropriated as herein provided and Block Number Seven shall be subject to sale as other Lots in Chicago now are.

And your orator further shew unto your Honor that by the act entitled "an act to provide for the completion of the Illinois & Michigan Canal & for the payment of the Canal debt" approved Dec. 21st 1843 the said Board of Trustees became seized of said Block Seven, ~~and~~ became & was still in the duty of the said Trustees to carry into effect the provisions of the said Section 708 of the act first above mentioned & to make the exchange therein contemplated.

And your orator would further shew unto your Honor that by an act of the Legislature of the State of Illinois approved March 3^d 1845 entitled "an act to drain a marsh in Grof Point Precinct, Cook County, and for other purposes" it was amongst other things enacted by the sixth and seventh sections of said act as follows to wit:

"Sec 6. The seventh section of an act to provide for the sale of certain Canal Lands and for other purposes

approved July 21st 1837 is hereby amended also 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 twenty first one thousand eight hundreds and forty three, 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 provisions of said act to obtain the title to said Block Fifteen

Sec 7. And the said Commissioners or Trustees are hereby further empowered to make any arrangement with the City of Chicago or any individual for the location 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 location can be done without any expense to the State.

And your Orators would further Shew unto your Honor that they are ready and willing to take Block Seven in said Original Town of Chicago, in Exchange for said Block Fourteen in pursuance of the provisions of the eighth Section of said first above mentioned act & to perfect the said Exchange by the Execution & delivery of perpendicils of Conveyance as Contemplated by said acts & Carry into effect the objects, and intent of said act in all things on their part & behalf

And your Orators would further Shew unto your Honor that the Trustees of the Illinois & Michi-

your Canal have advertised for sale said Block Seven
at the sale of the Canal Lands to be held in said City
of Chicago on the first day of September next. & that
your Orators are informed and verily believe that
the said Trustees design and intend to sell and dispose
of said Block Seven, and thereby put it out of the power
of said Trustees to comply with the provisions of the
above mentioned acts in relation to the said Blocks
Seven and Fourteen.

And your Orators further shew unto your Honor
that they are informed and verily believe that the
said Trustees have and still do refuse to comply
with the provisions of said acts above referred to, al-
though often requested so to do by your Orators or
some of them. All which actings & doings are contrary
to Equity & good Conscience & tend to the manifest wrong
& injury of your Orators. In the end therefore that
the said Trustees & their Confederates when discovered
may, true, full, direct and perfect answer make
without Oath (their Oath being hereby expressly waived), to
all and singular the said premises according to the
best of their respective knowledge and belief; and that
the said Trustees may be enjoined from selling or dispo-
sing of said Block Seven otherwise than in pursuance
of said acts above referred to; and that the said
Trustees may be ordered & decreed by this Honorable
Court to cause said Blocks Seven & Fourteen to be
appraised & also to comply with all the provisions
of said acts above referred to in relation to said
Blocks. Your Orators being ready and hereby offering on
their part to accept said Exchange & to do & perform all
things on their part & behalf to be done & performed to
carry into full effect the provisions of the said acts
according to the intent & meaning thereof. And that
your Orators may have such other and further

relief on the premises as to your Honor may seem proper
& shall be agreeable to Equity & good Conscience

May it please your Honor the premises considered
to grant unto your Orator the Supplicatio of Injunction
issuing out of and under the seal of this Honorable
Court to be directed to the said Trustees their agents
and attorney, enjoining & prohibiting the said Trustees
their agents & attorney from selling or disposing of
said Block Seven otherwise than in pursuance
of said acts above referred to, and may it please your
Honor to grant unto your Orator the Supplicatio
of Subpoena issuing out of and under the seal
of this Honorable Court to be directed to the said Trustees
of the Illinois & Michigan Canal Commanding them
so as the Law directs. And your Orator will ever
pray.

John Miller

Spring Goodrich Comptroler

J. Hollins of Counsel

State of Illinois

Cook County } John Miller one of the Complainants
in the above Bill being duly sworn deposes and says
that he has heard the foregoing bill by him signed read
and that he knows the contents thereof & that the same
is true except as to the matters therein stated on inform-
ation & belief and as to those matters he believes them
to be true

John Miller

Sworn to & subscribed before me

this 30 day of August A.D. 1848

Hugh T. Siskey Judge Cook County Court

On the back of said bill is the following order to wit:

Let an Injunction issue according to the prayer of the foregoing Bill
dated this 1. Sept. 1848

Hugh T. Siskey Judge
Cook County Court.

And afterwards to wit on the twenty second day of
November A.D. 1848. at being one of the days of the November
Term of said Court the following among other proceedings
were had to wit

Elizabeth Sewer Etal

In Chancery
Bill

Trustees of Illinois Michigan Canal

And now come the Com-
plainants by their Solicitors Spring and Goodrich and
on their motion It is ordered that the defendants who
have been served with process plead answer or demur to
the said Bill of Complaint by the opening of the
Court on Monday morning next - or that it be taken
as confessed against them

And afterwards to wit on the fifth day of September
A.D. 1849. came the said defendants by J. Butterfield
their solicitor and filed their certain demurrer herein
which is in words and figures as follows to wit

The demurrer of the Board of Trustees of the Illinois
and Michigan Canal to the Bill of Complaint
of Elizabeth Sewer, Henry Smith, James Robertson
Richard A. Bayard, James S. Hubbard, Norman Cope,
Thomas S. Taylor, J. B. Murray, Frederick Bronson, Robert
Jones & John Miller

These defendants by protestation, not confessing or acknow-
ledging all or any of the matters & things in the said Com-
plainants bill to be true in such manner of form as
the same are therein set forth and alleged doth demur
thereto and for cause of demurrer sheweth, that the
said Complainants hath not in and by his said Bill
made or stated such a Cause as doth or ought to entitle him
to any such discovery or relief as is therein sought; and

prayed for from or against these defendants.

Therefore these defendants demand the Judgment of this Honorable Court, whether they shall be compelled to make any further or other answer to the said Bill, or any of the Matters and Things therein contained, and pray to be here dismissed with their reasonable Costs in this behalf sustained.



The Board of Trustees of the Illinois
& Michigan Canal with their Seal
affixed

By: Wm Gooding Secretary

And afterwards to wit on the twenty third day of May
A.D. 1830 it being one of the days of the May Term
of said Court the following among other proceedings
were had to wit

Elizabeth Dewes, Henry Smith, James Robertson
Richard B. Bayard, James S. Stewart, Newman
Cape, Thomas S. Taylor, J. B. Murray, Frederick
Barnson, Robert Jones and John Miller

vs
Trustees of the Illinois and Michigan Canal

Chancery

And now at
this day, came the parties by their solicitors and the Court after hearing
the argument of Counsel on the said defendants demurrer filed
herein, and being fully satisfied in the premises It is Ordered that
the same be overruled. Thereupon on motion of Complainants
solicitors, It is ordered that the said defendants answer the
said Complainants Bill of Complaint within four days, or
that for want thereof their default be entered, and the said
Bill of Complaint be taken as confessed as against said defendants

State of Illinois }
County of Cook }³⁵ I Louis S. Hoards, Clerk of the Circuit
Court in and for the said County in the State aforesaid do
hereby Certify that the foregoing is a true and correct
transcript of the pref. Bill, demurrer and order
overruling demurrer as appears from the Records
of said Court and the files in my office in the Case
of Elizabeth Deems & others vs. Trustees Illinois & Michigan
Canal



In testimony whereof I have hereunto
set my hand and affixed the seal of
said Court at Chicago in said County
this fifth day of June one thousand
Eight hundred and fifty

L. S. Hoards Clerk

cus 7452

Handwritten notes in the left margin, including the name "Elizabeth Deems" and other illegible text.

Book 69
In Chancery
Elizabeth Dewes. Henry
Smith Etal

versus

Trustees Illinois and
Michigan Canal

Transcript

Filed June 14, 1850.
S. Leland Clerk.

The 7th and 8th sections of "An act to provide for the sale of certain canal lands, and for other purposes," approved, July 21st, 1837, are as follows.

"Sec. 7. The canal Commissioners are authorized to enlarge the natural basin at the confluence of the north and south branches of the Chicago river, so as to render the same as useful and convenient as possible; and block number seven of the canal lots in the city of Chicago, shall be resumed 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 basin; and the said Commissioners are hereby 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."

"Sec. 8. When the board of appraisement shall appraise the said block fourteen, they shall also appraise the aforesaid block seven, and 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 owners a sufficient conveyance for said block to the State, and giving to such owners a certificate of purchase for block seven, stating therein the facts of the transaction; and if block seven shall be appraised to more than block fourteen, the said owners shall be required to pay the

difference in a reasonable time, to be fixed by the canal commissioners; and upon such payment being made, the said owners shall be entitled to a patent for the land; but if the said block shall be valued to less than block fourteen, or the same sum, they shall be entitled to a patent, upon consenting the commissioners aforesaid. If the difference in value shall be in favor of the said owners, 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 retained and appropriated, as herein provided, and block number seven shall be subject to sale as other lots in Chicago now are."

By the provisions of the "act to provide for the completion of the Illinois and Michigan Canal, and for the payment of the canal debt," approved, February 21st 1843, the canal and all the unsold lands and lots belonging to the canal fund, were irrevocably granted to the Trustees of the Illinois and Michigan Canal, as security for the payment of the loan authorized by that act, for the purpose of completing the canal. The 8th section of the act declares, that the board of Trustees "shall possess all the powers and perform all the duties imposed upon the board of Commissioners of the Illinois and Michigan Canal." The 13th section provides, that "the said board of Trustees, when appointed, are hereby authorized to take possession of the said canal, property and assets, granted to them by this act, and proceed to complete the same. They are hereby authorized to make such changes and alterations of the original plan of said canal as they

may deem advisable, without reducing its present capacity, or materially changing its present location, having due regard to economy, permanency of the work, and an adequate supply of water for all seasons." By the same section, the Trustees are required, after the completion of the canal, to sell all the lands, lots and water houses granted to them by the act. The 18th section repeats so much of the former laws, in relation to the canal, as conflict with the provisions of this act.

The 7th section of the "act to drain a marsh in Groff Point precinct, in Cook county, and for other purposes," approved, March 3rd 1845, is as follows, "The seventh section of an act to provide for the sale of certain canal lands, and for other purposes, approved July twenty first, one thousand eight hundred and thirty seven, 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 and Michigan Canal, and the payment of the canal debt, approved February twenty first, one thousand eight hundred and forty three, 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."

The canal property was conveyed to the Trustees, on the 26th day of June, 1845.

In September, 1848, Deves and others filed a bill in chancery against the Trustees of the Illinois and Michigan canal, alleging in substance, that they were the owners of black powder referred to in the foregoing acts, and were ready and willing to exchange the same for black lead, as contemplated by those acts; that the Trustees had refused to comply with the provisions of said acts, and had admitted black lead for sale, with the design of disposing of the same.

The bill prayed that the Trustees might be enjoined from selling black lead, and compelled to cause black powder and lead to be appraised, and exchanged in the manner prescribed by the act of 1837.

The court awarded a demurrer to the bill, and, on the failure of the defendants to answer, entered a decree against the Trustees in accordance with the prayer of the complainants.

To reverse that decree, the Trustees have presented an appeal to this court.

We are not aware of any principle of equity jurisprudence, upon which this bill can be sustained. This is not a suit to compel the specific execution of a contract, for no contract was ever made between the State and the complainants respecting the lots in question. The complainants never made any proposition for the sale or exchange of the lots, that was acceded to on the part of the State. Nor have they ever accepted any proposition made to

them by the State. There is not the slightest pretence
- or for insisting that there has been any contract,
express or implied, in relation to the lots, which
a court of equity can be called on to enforce.
The complainants have acquired no subsisting
interest, legal or equitable, in block seven,
the complete title to that block is in the Trustees.
The complainants are still the absolute owners
of block fourteen, with full power to dispose
of it as they please. This title has not been
divested, either, by their own voluntary act, or
by virtue of any proceedings instituted for that
purpose, by the State, or those charged with the
prosecution and management of the canal.
They have not in any manner been disturbed
in the enjoyment of their property, or prevented
from improving or selling the same. It is true,
the block may some day be taken for public
purposes. And so may the property of any other
individuals. But, until proceedings are had
with the view of appropriating the block for
the purposes of the canal, the complainants can
have no just cause for complaint. It will
then be in time for them to invoke the aid of
the courts for the protection of their rights, if
the same are in danger of being invaded
or disregarded. The block may never be app-
-ropriated. But, if it shall be, the complainants
will be entitled to receive a just compensation,
- a compensation that will embrace the full
value of the ground, at the time it is taken,
together with the improvements thereon, without
reference to the time the same were erected.

The act of the 21st of July, 1834, was not an appropriation of block granite, but simply a declaration on the part of the Legislature, that it would be required in the construction of the canal basin, and a direction to the canal commissioners to have it condemned for the purposes of the canal. The act was altogether executory in its character. It contemplated the taking of the block at some future day. It vested no rights in the complainants. It neither divested their title, nor affected their existing rights. It was then, and still is, in the power of the Legislature, at least with the assent of the Trustees, to repeal or modify the provisions of the act. The act conferred no authority on the complainants to appeal to a court of equity, to compel the commissioners to proceed and execute the will of the Legislature. The commissioners were responsible to the State, and not to the complainants, for any failure to discharge the duties imposed by that act. The State alone could compel them to comply with the requisitions of the land. The complainants had no such interest in the contemplated arrangement, as would authorize them to insist that the commissioners should carry it into effect. Even, if the provisions of the acts of 1834 and 1848 are binding on the Trustees, the case is in no respect altered. The complainants have no greater rights against the Trustees, than they had against the commissioners.

Nor did these acts vest in the complainants any present interest in block granite, which gives them the right to insist that the canal basin shall be constructed, and the blocks ^{exchanged} ~~conveyed~~.

The most that they could possibly claim, under the provisions of those acts, would be the right, upon the appropriation of block fourteen, to receive block seven in payment at its appraised value. But that right has not attached. This block has not been taken, and never may be. The basin has not been, and never may be constructed. Their claim to block seven was altogether contingent, depending entirely on the previous appropriation of block fourteen. The taking of the latter block was to be a precedent act. It was to be first appropriated for the purpose of constructing the canal basin, before the complainants could occupy a position to compel, if at all, an exchange of the property as contemplated by the Legislature. Having no present interest in block seven, the complainants have no right to call upon a court of equity to interfere and prevent the sale. If the Trustees have no objection in the matter, and are proceeding in violation of the statute, the State alone can complain of their conduct. The land must be vindicated by the State, whose interests are to be affected, and whose directions are disregarded; and not by individuals, who may have a beneficial or contingent, but not a real or substantive interest in the question. It is purely a matter between the State and the Trustees, to be settled and adjusted exclusively by them.

We have not considered it necessary to examine or discuss the question, whether the arrangement designed by the act of 1837 is binding on the Trustees. It is enough that the complainants have not,

in our opinion, should themselves be interested in its decision.

The course of the Circuit Court will be pursued, with acts, and the bill dismissed.

Canal Trustees

vs

Seneca Co. et al.

Opinion.

Trout.

Supreme Court

Elizabeth Jewes et al

vs

The board of trustees of
The Illinois & Michigan Canal

It is assumed by the plaintiffs in error,
1st That the defendants in error have no interest
in block seven, and that they have no such
interest in the arrangement contemplated by the 8th
section of the act of the 21st of July 1837 as to
entitle them to call on the trustees to carry into
effect the provisions of said act; —

The 7th section of the act authorizes
the Canal Commissioners to enlarge the natural
basin at the confluence of the north & south
branches of the Chicago river, and they are
required to ~~leave~~ from sale block seven "for the
purpose of exchanging the same for block 14
which will be required to be removed in the
enlargement of said basin" & and they are
also "required to cause the aforesaid block to
fourteen to be appropriated for the purpose
& to proceed to obtain the title to the same &c. —

The eighth section after pointing
out the manner in which the exchange
should be effected by the consent of the owners
declares that if no agreement shall be made as
contemplated by the act. "Block 14 shall
nevertheless be obtained & appropriated" and
block seven shall be sold as other lots;

The 6th section of the act of 3^d of March
1845 (The Fox point act) requires the trustees "who
may be appointed under the act of the 21st
July 1837 to cause block 15 to be appropriated if they

shall think proper for the same purpose "as is
block fourteen" &c And they are required to
proceed forthwith to perfect the exchange of
block fourteen for block seven as contemplated
by the act of 31st July 1837

From this summary of the Legislation
on the subject of the basin it will be seen
that the state has exercised the right of
Eminent domain & appropriated as far as
legislation can do it, the property of the defendants
in error to the public use & provided the mode
of Compensation & has directed in the most
Emphatic manner, her officers to perfect a
title to the property. — It amounts practically
to an appropriation or Condemnation of the
defendants lands to the uses of the state, and
gives to them such an interest in the Exchange &
perfection of the title as to enable them to file
a bill against the trustees to restrain them
from a sale & to compel them to carry into effect
the designs of the state; The defendants could
not after the appropriation, improve their property
safely, knowing that whenever the Commissioners
or their successors the trustees proceeded to execute
their duty, their property with the improvements,
could be taken from them — They therefore had
an interest in the completion of the arrangement
contemplated & could compel an execution of
it by a resort to Equity, more especially, when they
found it necessary to restrain the trustees from a
gross violation of their duties & a disregard of the
defendants rights to have the Exchange perfected. —
A restriction upon the full & perfect exercise

of the right of the complainants in their absolute ownership of the property, so as to ~~incur~~ ^{incur} their title or prevent the making of improvements surely gives them such an interest as will authorize them to call upon a court of Equity, to put them in the full enjoyment of their rights as absolute owners of their property. If it were otherwise the complainants property in block seven would be rendered valueless, & at the option of the trustees might remain for an indefinite period to the utter ruin of the complainants.

The Commissioners & their successors the trustees were not only invested with power to make the appropriation of block fourteen but they were required at all events (whether the defendants consented to the proposition of Exchange offered by the ~~act~~ ^{act} or not) to proceed and appropriate block fourteen & to withhold block seven from sale unless defendants would take it in exchange.

And the Proprietary act recognizes Block fourteen as already appropriated. Here then was practically an appropriation of the defendants property, they had a right to take block seven in exchange on the terms offered by the act & having this right they could restrain a sale by injunction & compel an exchange of block for block & more but these ~~low~~ ^{low} trustees would dare undertake to defeat the will of the Legislature clearly expressed. The defendants had the right to apply for, & the Court to grant an injunction, and the rule is well settled that where Chancery gains jurisdiction of a cause for one purpose it may retain the bill generally. 10th Johnson v. p. 387. So Chancery once having ^{had} jurisdiction

will retain it through the original grounds of jurisdiction to wit the reality to recover at Law no longer exists. 17th Johnson Rep. 384.

It is further assumed by the plaintiffs in error that the trustees were not bound to carry out the intentions of ^{the} law because the duty of so doing is incompatible with the 8th Section of the act of 21st Feb 1843, which requires them to perform all the duties conferred upon the Commissioners of the Illinois & Michigan Canal &c and it is argued, that, as these lands were conveyed in trust to be sold & the proceeds to be applied to pay the creditors &c it is incompatible with the last mentioned act to carry into effect the provisions of the other act upon this subject: The trustees took the estate cum onere. They knew that block fourteen had been devoted to the construction of the basin & that block seven was secured to be given to the owners of block fourteen in payment or compensation and they took the estate subject to the law - And the act of 21st February 1843 was not a repeal of the seventh & eighth sections of the act of 21st July 1837 - The last mentioned act was a perpetual statute, & the rule is "that a perpetual statute (which all statutes are unless limited to a particular time) until repealed by an act professing to repeal it, or by a clause or section of another act directly bearing in terms upon the particular matter of the first act, ~~with~~ notwithstanding an implication to the contrary may be raised by a general law which embraces the subject matter, is considered there to be the law

" in force as to the particulars of the subject
" matter legislated upon" 9 Howard U.S. Rep. 131.

1 Kent
Com 459
Magin

U.S. vs Du - But the Grop point act, so far
as it related to the blocks in question removes
all doubt in regard to the construction -
That act so far as it relates to the Basin
is a public statute & was passed before
the trustees were invested with the title
to the canal lands and all persons were
bound to take notice of it - All the
allegations of the plaintiffs in error that
the last mentioned act was a fraud upon
the trustees & bond holders & designed to
swindle them, we know nothing about it
The presumption is that it was honestly
passed without any such design as is
imputed to the respectable body which passed
it - But whatever its history or character
may have been, there it stands & there too
it stood, when the canal lands were con-
veyed to the trustees, a notice of the will of the
legislature or the people that block seven was
to be given in exchange for block fourteen
& that the trustees were required in the dis-
charge of their duty to complete the title -
If there is fraud any where, it is on the
part of the trustees, who seek to evade
their duty & wrongfully to divert the proceeds
of block seven to a purpose different from
that which was intended by the contracting
parties, - It may be further urged that
the legislature deemed the Canal basin
contemptible to be made as a part of &

Essential to the full advantage of the benefits to be derived from the construction of the Canal and the acts required the Exchange & appropriation of said blocks is just as mandatory on the trustees in the fulfillment of their trust as the construction of any part of the Canal or the performance of any part of those things which were to go to make up the Consideration of the land conveyed - It is clear that the Legislature deemed it necessary & expected & required it to be done as a part of the Consideration to be given for the lands conveyed, & if the trustees may refuse to execute one of their agreements, requirements of the laws then existing, they may the whole - And to admit this, would be leaving the Legislature requirements, to the volition & caprice of the trustees.

If the Court should ~~not~~ come to a conclusion adverse to the acts in law, they ask leave to amend their bill -

Woodruff Goble,
Suff. Atty.

69
Canal Trusts
as

E. Dives 1844.

Argument for Defts.

Filed July 29, 1880.
W. L. Bond, Clk.

Springfield Aug. 6th 1850.

Dr Sir.

Enclosed you have the papers, and the
opinion of the Court, in the case of the
Canal Trustees vs Reeves et al. I have
retained a copy of the opinion, and prepa-
-red the case for the Reports. You need not
therefore send the papers or the opinion
to Mr. Peck. Be good enough to show the
opinion to Judge Eaton before recording it.

Very truly yours,

S. H. Hunt.

L. Leland Esq.
Ottawa, Ills.

L. Leland Esq.

34
2720
78

Board of Trustees
Illinois & Michigan
Canal

Appeal

vs

Elizabeth Deuus et al

The Bill states that defendants are owners of Block 14 in the Town of Chicago - that the Legislature of the State by the 7 section of an act entitled an act to provide for the sale of certain Canal lands and for other purposes approved July 21. 1837 reserved Block 7 of Canal lands in the City of Chicago from sale for the purpose of exchanging the same for Block 14. & required the late commissioners of the Illinois & Michigan Canal to cause said Block 14 to be appropriated for the purpose of enlarging the natural basin at the N. & S. branches of the Chicago River in the manner provided by law for obtaining lands for the use of the canal & by Sec 8 of the same act providing for the appraisal of said Blocks & for exchanging Block 7 for Block 14, upon certain terms specified - if the owners of Block 14. should agree to the terms specified. at the same time making it the duty of said Com^{rs} to appropriate Block 14 in any event.

The Bill further states that the said Com^{rs} neglected to comply with the provisions of said 7th & 8th Sections.

It is submitted that by virtue of the act of 1837 the owners of Block 14. acquired no

S. L. July
Session 1837
Page 125. 7. 8.

Welford
Equity Pleading
p p 14-24

interest in Block 7. and that they have no such interest in the arrangement contemplated by the 8. section of said act as to enable them to call upon the successors of the commissioners to execute the powers conferred upon the Commissioners.

The power was a mere naked authority - The commissioners were the agents of the State and were responsible to the State alone for the execution of the powers conferred upon them. The State alone could compel the execution of ~~the~~ until the Comrs by appropriating Block 14. had placed the defendants in position to require an exchange under the provisions of the act.

The appropriation of the Block was a precedent act on the part of the Comrs necessary to enable the defendants to compel an execution of the power.

The ownership of Block 14 is not changed by the act. nor the right of the defendants in any manner affected. All the proceedings contemplated by the act are executory & there can be no doubt that the legislature might revoke the power granted by repealing the act or otherwise at any time before the appropriation of Block 14. The act contemplates a further appropriation - but makes none.

If the defendants acquired rights under the act then the legislature could not repeal the act so far as the defendants acquired a vested right & by the mere passage of the act the

legislature would be forever prevented from annulling the naked powers of her own agents & could not be compelled to appropriate property to a public use even tho she became convinced that the public interests did not require such appropriation.

It is admitted that by the 9. Sec of the act of Feby 21. 1843 (P. L. p 609) that the plaintiff were required to perform all the the duties conferred upon the Board of Commissioners Illinois & Michigan Canal so far as not in computation with said act of 1843. & that one of the of said Commissioners under said act of 1837 was to appropriate said Block 14. But if I am correct in the position that the defendants acquired no vested rights in the premises by virtue of the act of 1837 & that the legislature had the power to revoke the power conferred on the Commissioners by repeal or otherwise, then the power to appropriate Block 14 as provided in the act of 37 was not one of the powers or duties conferred upon the Plaintiff by the act of Feby. 43 such powers & duty being in computation with the provisions of the said act in the language of the 8th Section

1 Because Block 7. was by the 10 Section of the act of .43 irrevocably granted to the Plaintiff - "all the remaining lands & lots belonging to the Canal fund"

Block 7 is admitted by the Bill to be a portion of the canal fund & that the Plaintiffs became seized of it by virtue of the act of 43.

- All the lands granted by this act are by the 13. Sec required to be sold in the manner specified in said Section

By 16. Sec the proceeds of the lands so sold are to be appropriated in the manner specified in said Section

Here then is a sale ~~for~~ if you prefer an appropriation of this land & other lands to a purpose incomputable with the provisions of the act of 1837. It is impossible to appropriate it under the act of 37 in Exchange for Block 14. and also to sell it & appropriate the proceeds as under the 13 & 16 sections of the act of 43 & as ~~under~~ the act of 43 is to control by the terms of the 8. Section the appropriation by that act must prevail unless the defendants by the act of 37 obtained a right to said Block which the legislature could not divest.

To show that the legislature did not intend to reserve Block 7. from the grant in 10 Sec I ask attention to the fact that in that Section after granting all the remaining Canal lands it is provided as follows. "But it is understood that all Canal lands & lots here tofore sold by the Board of Comrs shall be exempt from the provisions

of this act." Here is a specific description of the lands reserved. The grant includes Block 7. & the reservation does not include it.

It would seem that the grant of Block 7. by act of '43 is sufficiently obvious and that such grant and appropriation was incompatible with the act of '37 is equally clear.

And it follows that the act of '43. is a repeal by implication of the 7. & 8. Sec of the act of '37. - because by the 8. Sec. of the act of 43. No power or duty conferred or imposed by any former act was binding upon the Plaintiffs if incompatible with the provisions of that act.

And I submit 1.st that the defendants acquired no right by the act of '37 to entitle them to the relief sought

2^d that the Legislature had the right to revoke the power granted by act of '37. 3^d that they have done so.

4th that the provisions of act of '43 are incompatible with the provisions of '37

5th: that the 8th Sec of act of '43 repeals act of '37 so far as relates to Block 7. & 14.

The Bill further states that by the 6th Sec of an act entitled An Act to drain a Marsh in Gross point preince Cook County & for other purposes. the said Act of March 1. 1837. is amended so as to authorize the Trustees then to be appointed under the said Act of Feby 21. 1843. to appropriate Block 15 in the original Town of Chicago for the same purpose as said Block 14. was to be appropriated by said Act of March 1. 37 & also making it imperative upon said Trustees to appropriate said Block 14 as provided in said Act of March 1. 37

The said Act of March 3^d. 45 is a private Act relating to a particular Marsh, the route & dimentions of a ditch & 2 Blocks in the Town of Chicago & no one from its title, unless acquainted with the impositions thus practised upon the legislature would look for a provision in relation to the Trustees of the Illinois & Michigan Canal under such a title.

By this Act of March 3^d there is no attempt to divest the Plaintiffs of the title to Block 7. and vest in a third person & the observations made in relation to the want of interest in the defendants under the Act of '37 apply with equal force to the Act of March 3^d. It was at most a voluntary matter on the part of the State & vested no interest in the defendant.

But it is said that ^{the} a private Act & surreptitiously introduced & tho it may be in violation of good faith

on the part of the State & such an act as if perpetrated by a private individual ought to consign him to the Penitentiary - yet that is binding upon the Trustees because perpetrated by the Legislature of a Sovereign State - -

The privilege of enacting villainy & profiting by it, if a State Right is certainly a massive discovery has never before I believe been advocated.

It is true that all individuals are bound to take notice of the Laws of a State when they relate to the civil arrangements of the government.

But as the State under our government can only act through her Legislature in making contracts such acts it is conceived are in, the nature of contracts & are in all respects governed by the Law of Contracts.

The State has no special privilege. In the present case by the Act of '43 10 Sec. as before shown B 7 was granted as security for the proposed loan & specially appropriated to pay such loan.

By an act passed March 10th 45 (S 2 1845 p. 31-) supplemental to the Act of '43 15th Sec. it is provided that after the contract for the loan shall be duly created. the Governor shall execute a deed of trust. to the said Trustees of all the property & effects mentioned in the 10 section of Act of '43. Block 7 as I have shown & as is admitted was a portion of

this property. Upon the faith of these two acts the loan was obtained & the deed of trust executed includes Black & without doubt both the Governor & the Bond holders were utterly ignorant of the existence of the Grass Joint Act. so far as it related to the canal lands.

Had this transaction been consummated between two private individuals can there be a doubt in relation to the effect of the secret incumbrance or alienation of a portion of the property proposed to be given as security. Does the law permit a private individual to encumber his property after a proposition to sell or mortgage without the assent or knowledge of the other contracting party. When the grantee has notice of notice of the negotiation. And in such case will the courts sustain such a conveyance to a person without consideration as against the contracting party who consummates the original agreement in ignorance of the intermediate sale or incumbrance.

What would render an individual infamous cannot be either legal & commendable in a state.

In this case on the one hand the Bond holders advance the money in consideration of this security and the State has received the money.

On the part of the defendants it is not pretended that they who claim the benefit of this pretended intermediety in cumbrance and have paid any consideration and indeed they admit they have no interest in the Block & expressly state that the title is vested in the Plaintiffs. The defendants do not stand in the position of a bona fide purchaser. They have paid no money - their property is not appropriated nor their rights or interests in any way affected & cannot be unless by the proposed exchange they obtain an undue advantage by obtaining an extravagant appraisal of Block 14 or a low appraisal of Block 7. Besides this Block 7 was donated to the State in trust for the purpose of building the Illinois & Michigan Canal & for no other purpose.

It is not pretended & is not true that the proposed basin is part of the Canal or necessary for the accommodation of the Canal or its business -

And the appropriation of Block 7 to such a purpose would be a violation of the trust tho by a special provision of the Act granting the Canal lands the sale to a third person would be valid. - Yet until the property is sold the Courts may & should see that the trust is executed - at any rate a Court

Equity which has a special & exclusive jurisdiction in relation to trusts will not lend its aid to a party who is seeking to compel the violation of a trust even when such violation is attempted under the sanction of the legislature act.

It is contended that all persons are bound to take notice of the laws of the State. The general principle is not denied & admitting it to be applicable in this case in what position are the defendants placed. Under what circumstances did they acquire rights in the premises if they have any?

The acts of 43 & March 1. 1845 were both public laws. 43 expressly declared to be so & the act of 45 is only supplementary.

Here then at the time the Gross point act was passed were two acts notifying the defendants that this Block 7 had been given in mortgage to secure a contemplated loan of money also an act granting the lands to the State in trust for the building of the canal. of all which they were bound to take notice & they were also bound to know what negotiations had taken place under the two first acts & they must have known if they knew anything in relation to Gross point, that the

Willoughby

Willoughby

1 Term R. p. 769.

act of the 3^d March was a gross violation
of the faith of the State pledged in
the acts of 43 & March 1. 45 contempla-
ted a violation of the trusts contained
in the act ceding the Canal lands.
Besides if the principle contended
for by the defendants is sustainable, the
State might by this act of March 3^d
have encumbered or appropriated
to other persons all the lands granted
by the acts of 43 & March 1. 45. received
the money & conveyed the lands as
they have done & still the individuals
to whom such conveyances were made
with these public acts in force might
divest the Trustee of the entire fund
pledged & leave the Bondholders
remediless. I need no argument to
sustain this position. If the principle
is to govern it can be carried out
to its full extent. If the State can
divest the Plaintiffs of Block 7. it
might have divested them of all the
lands.

It is under such circumstances that
this Court is called upon to compel the
Plaintiffs to give up for the benefit of
the defendants & the City of Chicago
a Block valued at \$20,000. with a
contingent liability to pay another
amount in money out of the Canal fund
to make up the difference between the value
of Blocks 7. & 14. *John Mc Wilson* Atty for
Trustees Merrin & Jackson Canal

69
Canal Trustees
of
E. Deved Mass.

Arguments for Trustees

Filed July 29. 1850.
L. Seland Clerk.

State of Illinois, ss.

Supreme Court, Third Grand Division, at Ottawa:

The People of the State of Illinois, to the Sheriff of *Cook* County---Greeting:

WE COMMAND YOU, That of the goods and chattels, lands and tenements, and real estate of *Elizabeth Dives, Henry Smith, James Robertson, Richard H. Bayard, James S. Crechold, Herman Cope, Thomas S. Taylor, J. B. Murray, Frederick Pearson, Robert Jones & John Miller*

you cause to be made the sum of *twelve* dollars and *ninety five* cents costs in the said Supreme Court, which *the Trustees of the Illinois & Michigan Canal*

lately recovered against *them* before the Justices of our said Supreme Court, as appears to us of record, and make return hereof in ninety days.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *16th* day of *October* in the year of our Lord one thousand eight hundred and *fifty*.

S. Deland Clerk of the Supreme Court.

1) Canal Trustees

by
Elizabeth Dewes et als.

Execution

Bill of costs \$12.95
Fur Bill 3.10
Amount \$16.05

Int 1.00
Exp 2.00
Station 1.00
Travel 1.00
1947

Satisfied in full

Wm Church Shiff
By S. S. Woodcock

68
24
92

Oct 2, 1852
Filed May 17th 1852
L. S. Woodcock
124 N. W. 1st St. St. Louis



Witness, the Hon. James H. Hunt, Chief Justice
of our said Court, and the Clerk thereof, at Columbia
the 19th day of October 1852

Trustees of M. O. Clark, bond

69 vs
Elizabeth Dukes et als.

Appeal from Cook,
Judt. wd. & bill disp. -

Appellants Costs =

Fil. Transcript. 15, Sh. writ 10, apper. 25, fil. mas 5, fil. & stip. 10, .65

Fil. argt. briefs, ee. 30, ent. argt. 25, ent. submission 25, .80

Ord. taking time 25, Ord. revq. 25, Ord. disp. bill 25, .75

Fil. opus. 5, ent. judt. & opus. 3.25, Copy of judt. 50, ent. usual 25, 4.05

Judt. for costs 25, Ord. for extra. 25, Sh. judt. 25, bill of costs 25, 1.00

Copy 25, Execution 25, fil. & Sh. 15, Shiffs. retu. 10, Postg. 20, Satofm. 25, 1.20

Circuit Court Transcript. ee. paid by J. O. Arnold 4.50

Amount of 12.95

A true copy from my fee books as taxed & rendered therein.
L. Leland Clerk.

Canal Trustees

17

E. Jewes et al.

Bill of costs \$13.95

Chicago 26 Nov/50

Mr Clark

Please send to Jas H Collins
at this place at as early a day as
possible a stipulation between the
Comrs & the found in the ^{case of} Elizabeth
Dunn & others, Insular Canal. Collins thinks
it is attached to the Argumts - But it
is in the papers on. We want it to get
the case argued on application to the
president of the Supreme Court.

Yours

Grant Goodrich

Sent the 2 stipulations to Mr. Collins Nov. 28, 1850.

Trustees of the Illinois & Michigan Canal

69

Appeal from Cook.

Elizabeth Dewes, Henry Smith, James Robertson, Richard H. Bayard, James S. Chewbold, Herman Cope, Thomas S. Taylor, J. B. Murray, Frederick Keenan, Robert Jones & John Miller — — — — — just. recd. & bill disp. —

Appellus costs =

Apper. 25,	fil. & cert. joined 30,	fil. argt. 5,	bill of costs 25,	.85
Copy 25,	cert. & seal 25,	fil. & dk. 15,	Shipp. retur. 10,	.75
dk. for 125,	entering satisfaction 25,			1.50
			total.	\$ 3.10

State of Illinois, ss.

Supreme Court—Third Grand Division, at Ottawa:

The People of the state of Illinois to the sheriff of Cook — county --- Greeting :

WE COMMAND YOU, that of the goods and chattels, lands and tenements of the above named dependants, Elizabeth Dewes & others ————— you cause to be made the sum of thirteen ————— dollars and ten —————

cents, the amount of the foregoing bill, which is due and unpaid, and is a true copy from the Fee Book in my office; and hereof make due return in ninety days.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 16th day of October —————

A. D. 1850.

L. Deland Clerk of the Supreme Court.

Canal Trustees
E. Dues et al.

For Bill of \$3.10

Satisfied in full

Wm. L. Church Shff

By D. T. Moore Depy

Filed May 17th 1852.
Leland Clerk
By P. H. Leland Depy.

Supreme Court

The Board of Trustees of
the Union of Michigan Canal

or
Elizabeth Dewees et al

May June 1858

It is hereby stipulated and
agreed between the parties that this cause be submitted
upon the pleadings ^{on file} and briefs of counsel ^{& decided by the court in}
vacation ^{And that the judgment of the court may be entered}
by the Clerk in vacation in the same manner
just as the like order in all respects as if entered
in term time. ^{the parties, ^{respectively} retaining all the rights which they}
would be entitled to if said judgment were entered in open court. ^{They were}
July 26. 1858 ^{personally present to move for an adjournment or to}
^{leave to amend their pleadings or to answer}

Witness my hand & seal of office
John McWilson Clerk

69.
Canal Trustees
vs
Dewes & all.

Stipulation

Filed July 29. 1850.
V. Ireland & Co.

State of Illinois

Supreme Court Jan 9, 1850

James M. McComb App't

Elizabeth Wilson et al App'ee

It is admitted by the parties that the plain-
tiffs in error in the above suit failed to an-
swer within the day according to the order
made by the Court & that thereupon
the Rule in said suit was taken as
confessio against said plaintiffs in error
and a judgment entered against them according to
said Rule & that said plaintiffs thereupon filed
the process of writ of Habeas
corpus and appeal to this court & that by agree-
ment of the counsel for the defendants
in error no appeal bond was to be
filed by the appellants but the filing
of the same was expressly assented to
it is hereby agreed & stipulated that
for the purposes of the argument and
decision of this case it shall be un-
derstood & considered that all the facts
above stated appear by the Record &
the

J. A. H. Miller

Atty for Dist in Error

John W. Wilson Solicitor

Trustas W. M. C. Bond

v

C. Dimentale

Regulation

Filed June 14 1854.
D. M. C. Bond & Co.

[Extensive handwritten notes in cursive, likely a ledger or record book, covering most of the page. The text is densely packed and spans across multiple lines and columns.]

2
1
[Vertical handwritten notes on the right side of the page.]