

No. 11813

Supreme Court of Illinois

Canal Trustees

vs.

DePug

71641  7

Cook
Canal Trustees
vs
John DePug

42
11813

1851



Chicago May 5th 1851.

Large Island Exp
Chas Sup. courts
Attorney. Ills.

Dear Sir.

Enclosed please find
transcript and digest of opinion
Case of Canal Trustees vs. Peop
which please file &
direct me to oblige

Yr friend

J. R. Arnold

Canal Trustees
of
John De Puy —

Philip

Filed May 13. 1854.
Leland Clk.

Received of
John De Puy
the sum of
\$100.00
for
rent of
land

Philip

Supreme Court,

Canal Trustees Appellants

vs

John De Pay, Appellee

appeal from book

And the said Board of Trustees, by J. N. Arnold their attorney come & say, that there is manifest error, in the record and proceedings in this case & in the decree rendered herein. And the said Appellants assign the following special causes of ~~damages~~ error, to wit:

- 1 The decree sustained the demurrer filed to the complainants bill, when it should have been overruled.
- 2 The decree was for the appellee when it should have been for the appellants.
- 3 The Canal Trustees are entitled to the go fat reserved, & the decree affirms they are not.

J. N. Arnold Atty
for Appellants.

United States of America
State of Illinois
County of Cook

Present before the Honorable Hugh Wickes
Judge of the Circuit Court of the seventh Judicial Cir-
cuit of the State of Illinois, presiding in the place
of the Hon. Giles Spring Judge of the Cook County
Court of Common Pleas, and at his request and
by agreement, at a regular term of the Cook County
Court of Common Pleas within and for the County
of Cook and State aforesaid, begun and holden
at the Court House in the City of Chicago in said
County and State, on the first Monday being
the third day of February in the year of our
Lord One thousand eight hundred and fifty one
and of the Independence of the United States
the seventy fifth

Present, the Honorable Hugh Wickes Judge
Daniel Mc Troy Prosecuting Attorney
William L Church Sheriff

Attest
Halter Kimball Clerk,

And now at this day that is to say on the fourteenth
day of February A D 1851, at yet of the February
term of this Court, begun and held on the first
Monday of February instant, the Pleas in said

Court begun and held by and before the Honorable
Hugh J. Wickes Judge of the Cook County Circuit
Court, Comes the Honorable Giles Spring Judge
of the Cook County Court of Common Pleas, before
whom the Pleas in said Court are continued,

It is Remembered, that heretofore to wit
on the second day of June in the Year of our
Lord one thousand eight hundred and forty eight
came the Board of Trustees of the Illinois & Michigan
Canal by J. Butterfield their solicitor and filed
in the Office of the Clerk of said Court, their Bill
of Complaint against John De Kay, which said
Bill is in the words and figures as follows, to wit,

Bill, To the Hon. Hugh J. Wickes Judge of
the Cook County Court in Chancery sitting,

Your Orators the Board of Trustees of the
Illinois and Michigan Canal, Complaining shew
unto your Honor, That under the provis-
ions of 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 February the 21st 1843. and the Act
Supplementary thereto, some time in the Year
1845. Your Orators became, and were and still
are seized and possessed of the bed of the Illinois
and Michigan Canal, and the land over which
the same passes, including its locks, margins, tow paths,

Levees, basins, right of way locks, dams, waterpower &c and all the property right title and interest of the State of, in and to the said Canal with the Hereditaments, and appurtenances thereto belonging or in any wise appertaining; as by reference to the said acts and the deed or Conveyance of the Governor of the said State, executed to your Orators under and in pursuance of the provisions of said Act, will more fully and at large appear.

And your Orators further say that the right of way to and for the said Canal extends to 90 feet in width on each side of the same, as granted by the United States to the said State by an act of Congress, 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 approved March 3rd 1822 as by reference being had thereto and to subsequent acts of Congress granting land to the State to aid in, and extending the time for the construction and completion of the said Canal will more fully and at large appear.

And your Orators further show that they have proceeded and substantially completed the said Canal and that it is now opened and used for the purpose of navigation and the transit of boats thereon.

And your Orators further show that John Depee of the County of Cook, without any right whatsoever and in defiance and in violation of the rights of your Orators, is proceeding to erect a house upon and upon the 90 feet of which your Orators are so seized as aforesaid of, the right of way upon the west side of the said Canal in Section 30. & 31 N.W. 14 E. Near the tow path of the said Canal, and within some 20 feet of the west side of said Canal; and threatens and

gives out that he will proceed to erect said house upon the said land as aforesaid.

And Your Orators further show, that the erection of the said house upon the said right of way to the said Canal of which your Orators are so seized as aforesaid, will be a wilful trespass and encroachment upon the rights of your Orators, a great damage and injury to the said Canal and an obstruction to the tow-path and right of way of said Canal.

Your said Orators by their agent have requested the said Deft to desist from the erection of the said building, but he refuses so to do, and gives out and pretends that he has a right to erect the said building within the ninety feet so given and granted for the right of way for the said Canal as aforesaid, and that he will proceed to erect finish and use the said building or house upon the said right of way as aforesaid.

And Your Orators charge that the said pretences of the said Deft are unjust and untrue, and that he has no right, whatsoever to use and occupy for a building or house the said land within the distance of 90 feet from the Canal, and that he is a wilful trespasser upon the right and property of the Canal in so doing.

That the said building if so erected on the said place where he threatens to erect the same as aforesaid will be an injury to the said Canal and a nuisance.

Your Orators therefore pray that a writ of Injunction may be issued out of this Court enjoining and restraining the said Defendant from erecting

putting up, finishing or using any building or houses within 90 feet of the said Illinois and Michigan Canal, on said Section 30. & 39. N. R. 14 East or elsewhere within 90 feet of the said Canal.

And to the end, that the said Defendant may true answer make to this bill without oath, (the answering of the bill under oath being waived) and that he may by a decree of this Court be restrained from the erection using or occupying any building upon the said right of way of said Canal, and that your orators may have such further and other relief as may be decreed just, May it please your Honor that a Summons or Subpoena may be issued according to the Course and practice of this Court, against the Defendant to appear and answer to this Bill of Complaint at the next term of this Court.

Boards of Trustees of the Illinois
& Michigan Canal
by J. Butterfield. atty.

State of Illinois }
County of Cook } ss.

On this 2nd day of June before me personally appeared Eli S. Prescott, & made oath, that he is the agent of the Board of Trustees of the Illinois & Michigan Canal, the Complainants in the above Bill of Complaint, that he knows the facts stated in the said Bill, that he has read the above bill of Complaint & knows the contents thereof, & that the same is true of his own knowledge except as to the matters stated to be on information & belief, & as to those matters he believes it to be true.

Hugh J. Hickey Judge
Cook County Court.

" Let a Writ of Injunction issue according to the
prayer of the foregoing Bill
June 2 1848 Hugh J. Wickes
Judge Cook County Court

And thereupon, upon the same day to wit the
second day of June A D 1848 there was issued out of the
office of the Clerk of said Court, a writ of Injunction, and
a summons, which said writ of Injunction is in the
words and figures as follows, to wit:

State of Illinois }
County of Cook } p.

The People of the State of Illinois
to John De Sue, Agents and Deputies, Greeting:
Whereas it has been represented unto the
Hon Hugh J. Wickes, Judge of the Cook County Court in
and for the County and State aforesaid by the Board of
Trustees of the Illinois and Michigan Canal in & by
their bill of Complaint now on file in the office of
the Clerk of said Court, that certain proceedings of you
the said John De Sue are contrary to equity and
good conscience, and the said Judge of our said Court
having made order that the writ of Injunction issue
herein,

Now therefore we command you that from
erecting putting up finishing or using any building
or house within ninety feet of the Illinois and
Michigan Canal in the said County on Section Thirty
(30) in Township Thirty Nine (39) North Range Fourteen
(14) east of the Third principal meridian or elsewhere
within ninety (90) feet of the said Canal within the

said County you do absolutely and entirely abstain and
desist until the further order of our said Court in
this behalf

Seals
ccc

Witness the Hon Hugh S. Wiskey Judge
of our said Court & the Seal thereof at Chicago
in said County this 2^d day of June A.D. 1848
James Conliff

Clerk

Which said writ was afterwards returned into the office
of the Clerk of said Court with the endorsement
thereon in the words & figures as follows to wit,

"Executed by delivering a true copy of the within
at his usual place of abode with Mrs De Puy the
wife of the within named Defendant, and over the
age of ten years and informing her of the contents
thereof June 25th 1848

J Cook Sheriff

By John Beach & Copty

And which said writ of summons is in the words &
figures as follows to wit,

State of Illinois

Cook County

The People of the State of Illinois

to the Sheriff of said County Greeting;

We command you that you summon John
De Puy if he shall be found in your County, personally
to be and appear before the Cook County Court of
said County, on the first day of the next term thereof,
to be holden at the Court House, in the City of Chicago

in the said County on the first Monday of October
next to answer unto The Board of Trustees of the
Illinois & Michigan Canal in a Bill of Complaint
filed against them in the office of the Clerk of said
Court. And have you then and there this writ,
with an endorsement thereon, in what manner you
shall have executed the same.

Seal

Witness The Honorable Hugh S. Wiley
Judge of our said Court and the Seal there-
of, at the City of Chicago in said County
this 2nd day of June A D 1848
James Curtis Clerk

Which said summons was afterward returned into
the office of the Clerk of said Court with an endor-
ment thereon in words and figures as follows to wit:

" Executed by delivering a true Copy of the within
at the usual place of abode of the within named
Defendant with Mrs. Desjue a White person over
the age of ten years and informing her of the
Contents of the same. June 28 1848

J. Cook Sheriff
By John Beach Deputy

And afterwards to wit on the Twenty eighth day
of October A D 1848 the said day being one of
the days of the October Term of said Court for the
Year aforesaid, the following proceedings were had
in said Cause and entered of Record to wit

The Board of Trustees
of the Illinois & Michigan Canal

vs
John De Puy

} Bill in Chancery

On motion of the Complainant by its
Solicitor Ordered that the said Defendant plead
Answer or Demurr to the Bill of Complaint herein
by the first Monday of December next,

And afterwards to wit on the twenty eighth
day of November A D 1848. came the said Defend-
ant by R J Hamilton his Solicitor and filed in
said Cause his Demurrer to the said Complainant
Bill of Complaint, which said Demurrer is in
the following words and figures to wit

John De Puy

vs

The Trustees of the
Illinois & Michigan Canal

} In Chancery
in the Court of Chancery

The Demurrer of John
De Puy the defendant herein to the bill of Complai-
int of the Trustees of the Illinois and Michigan Canal
Complainant

This defendant by protestation not Confess-
ing or acknowledging all or any of the matters
and things in said Complainant's bill contained,
to be true in such manner and form as the
same are therein set forth, doth Demur thereto
and for Cause of Demurrer says that the Complain-
ant said bill of Complaint in case the same were

true which this defendant in no wise admits, con-
tains not any matter whereon this Court can grant
any decree or give the said complainant any
relief against this defendant. Therefore and for
divers other defects and Causes of Demurrer appear-
ing in the said Complainant's said Bill this de-
fendant doth Demur thereto, and humbly demands
the judgment of this Honorable Court whether
he shall be compelled to make any answer to
said bill, and prays to be hence dismissed with
his reasonable costs in this behalf most wrong-
fully sustained.

R. J. Hamilton, *Def't*

" And the said Complainant says said
Bill & the matter & things therein contained are suffi-
cient in Law & prays judgment &c

J. W. Arnold

Sols for Compt'rs

And afterwards to wit on the Eleventh
day of November A. D. 1850 the said day being
one of the days of the October Special term of said
Court for the year aforesaid the following pro-
ceedings were had in said cause and entered of
Record. to wit

The Board of Trustees of the
Illinois & Michigan Canal

John De Jay

Bill &c

And now come

the said parties by their solicitors and by agreement
It is Ordered that this Cause be set for hearing two
weeks from Tuesday next, at the Judges Chambers
in Vacation, and decree to have same effect as though
entered at the present term of this Court.

And thereafter to wit on the sixth day
of March A.D. 1857 the said day being one of the
days of the February Term of said Court for the
year aforesaid. The following proceedings were
had and entered of Record to wit

The Board of Trustees of the } In Chancery
Illinois & Michigan Canal }
John W. Peay } Bill.

And now come the parties in this
Cause by their Solicitors respectively, and this Cause
is submitted to the Court upon the Demurrer to
the Bill filed herein, and the Court being fully
advised in the premises sustains said Demurrer.
It is therefore Ordered that the Bill in this Cause be
dismissed at the Cost of said Complainants, and that
execution issue therefor, from which decision sus-
taining said Demurrer and dismissing the Bill in
this Cause the Complainants pray an appeal, and
by agreement of parties the giving an appeal Bond
is waived. And by consent an appeal is granted
on the Complainants filing in the Clerks office of
the Supreme Court on or before the third day of
the next term thereof the Record in this Cause

with an assignment of errors.

State of Illinois
County of Cook

I Walter Kimball Clerk of
the Cook County Court of Common Pleas within
and for the County of Cook and State aforesaid
do hereby Certify that the foregoing is a full
true and correct Copy and Transcript of all
the papers, and of the Orders entered of Record
on file in my office in the Cause of The Board
of Trustees of the Illinois Michigan Canal vs
John De Key in Chancery.

In Testimony Whereof I have hereunto
set my hand and affixed
the Seal of said Court at the City of
Chicago in said County this Tenth
Day of April A.D. 1851

Walter Kimball
Clerk

1213-2

Costs
The Board of Trustees
of the
Illinois & Michigan Canal
vs
John W. Puy

Transcript

Filed May 13. 1884.
L. Deland Clerk.

Fee Grant \$4.25