

THE STATE OF ALABAMA, on relation
of JOHN ZOLLER and JOHN ZOLLER,
individually,

Plaintiffs

vs

THE TOWN OF ELBERTA, an alleged
municipal corporation, JOHNNY J.
MILLER, as mayor, WALTER J. PERSKE,
CHARLES G. KOEHLER, BENNIE McCOMBS,
WERNER SALZMANN and JOE KRAUSS, as
councilmen, and each individually,

Defendants

1985
IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

QUO WARRANTO PROCEEDINGS

Come the defendants in the above styled cause and answering
plaintiffs petition say:

1. The matters therein alleged are untrue.

2. And defendants further answering plaintiffs petition say,
that on the 12th day of November, 1952, Herman Doege, and more than
twenty-five other electors residing within the boundary proposed to
be incorporated, filed their petition in writing with the Honorable
W. R. Stuart, Judge of Probate of Baldwin County, in which county
the territory embraced within the proposed corporation lay, for an
order of incorporation, in which said petition they allege and show
that the inhabitants of the unincorporated community known as
Elberta, Alabama, desired to incorporate as a municipality, that the
area proposed to be incorporated had a population of not less than
one hundred, and constituted a body of citizens whose residences
are contiguous to and all of which form a homogeneous settlement,
such petition further alleging the proposed name of such municipality
namely, Elberta, Alabama, and having attached thereto and as a part
thereof an accurate plat of the territory proposed to be embraced
within the corporate limits of such proposed municipality, including
all subdivisions into lots, blocks, streets and alleys, within such
territory and an accurate description by metes and bounds of the
boundary of the territory proposed to be incorporated, and said
petition further alleging that no platted or unplatted territory was
included within such boundary unless there were at least four quali-
fied electors residing on each quarter of each quarter section,
according to government survey or plat thereof, of such platted or

unplatted land, together with the consent of the persons, firms or corporations owning at least sixty per cent of the acreage of such platted or unplatted lands, such consent being signified by the signing of said petition, and further showing that the signers of said petition, twenty-five and more, were qualified electors residing in said area proposed to be incorporated as the town of Elberta, and requesting and praying that an election be called and held to determine whether or not such area should be so incorporated, and acting under the said petition the Honorable W. R. Stuart, Judge of Probate of Baldwin County, aforesaid, upon proof of residence and qualification as electors of the petitioners and of the persons affecting having been made to the Judge of Probate by affidavit or otherwise, did judicially determine that the said petition was in all things in strict conformity with the statutes made and provided, and especially Section 10 of Title 37 of the 1940 Code of Alabama, and having so judicially ascertained and determined, he did make and enter an order calling and directing an election to be held within the territory bounded and described in the said petition and map on December 9, 1952, within thirty days after the filing of such petition, at a place within the proposed town, and such place being designated by him, and he did give notice by publication in one or more newspapers published in Baldwin County and by posting in three public places within the limits of the proposed town, that such election would be held at such certain time and place, and that a plat showing the limits of the proposed town was on file in his office; that the Honorable W. R. Stuart, Judge of Probate of Baldwin County, appointed three qualified electors within the limits of the proposed town as inspectors to manage the election and such election was held and conducted under the same sanction and penalties as provided by the general election laws, except that the voter might furnish his own ballot upon which he might write or print corporation or no corporation, and all persons who were qualified electors of the State of Alabama and had resided within the boundaries of the proposed town for three months next preceding such election were authorized to vote at such election, and at such election, the same having been held in strict conformity with the statutes made and provided, a majority of the qualified electors

participating in said election voted for incorporating, and due canvass and return of such election was made in the manner required by law to the Honorable W. R. Stuart, Judge of Probate of Baldwin County, and the said Honorable W. R. Stuart, Judge of Probate did on December 13, 1952 canvass and declare the results thereof and did ascertain and decree that a majority of the qualified electors of said community voting in said election voted for incorporating the said municipality and the said Judge of Probate did appoint enumerators to make an enumeration of the persons in such area all in conformity and strict compliance with the statutes made and provided; that on December 18, 1952 the enumerators appointed as aforesaid by the said W. R. Stuart, Judge of Probate of Baldwin County, having enumerated the persons residing within the area described in the petition and plat for incorporation, did make return of the enumeration as made by them of such inhabitants and did file the same with the Honorable W. R. Stuart, Judge of Probate of Baldwin County, in which said enumeration it was ascertained and determined that there resided within the said area 333 persons; that on the 19th day of December, 1952, the Honorable W. R. Stuart, Judge of Probate of Baldwin County, did make and enter an order and decree determining, ascertaining and decreeing that the number of inhabitants within such area as enumerated aforesaid were 333 persons and he did order, adjudge and decree that the inhabitants of such area be and they were thereby declared incorporated as the Town of Elberta, Alabama, a municipal corporation under the laws of the State of Alabama, with the boundary described in the original petition and plat filed in connection therewith, with all the rights and powers granted by the laws of the State of Alabama, incident to such corporations; and on the 19th day of December, 1952, the Honorable W. R. Stuart, Judge of Probate of Baldwin County, Alabama, did make and enter an order and decree ordering an election to be held by the same inspectors, or other inspectors, appointed by him, to be held on February 9, 1953, for the purpose of electing a mayor and members of the council authorized under the laws of the State of Alabama who should, at such election, be and were elected from the town at large; that such

inspectors gave thirty days notice of the time and place of holding the election by posting notice in five public places within the limits of such town and such inspectors having the powers to discharge duties as inspectors and clerks in municipal elections, and said election was conducted as far as practicable in the manner prescribed for the election of city officers and no person voted at such election unless he was a qualified elector of the county and resided within the limits of the territory incorporated as such municipality for three months next preceding the election, and said election was called and held on February 9, 1953, as ordered in all things in strict conformity with the statutes made and provided, and at such election the defendant, John J. Miller, was elected mayor, and the defendants, Walter J. Perske, Charles G. Koehler, Bennie McCombs, Werner Salzmänn and Joe Krauss, were each elected councilmen, and the results of said election having been duly canvassed and return thereof having been made to the Honorable W. R. Stuart, Judge of Probate of Baldwin County, within five days after such election, he did on February 16, 1953, make and enter an order and decree canvassing the returns of said election and did judicially ascertain and determine the results thereof and did ascertain, determine and decree that the defendant, John J. Miller, was duly elected mayor of the Town of Elberta, and that the defendants, Walter J. Perske, Charles G. Koehler, Bennie McCombs, Werner Salzmänn and Joe Krauss were duly elected as councilmen for the Town of Elberta, and each of these defendants did thereafter and within the time and in the manner required by law, take, make and file the oath of office required by law and in all things fully and completely qualified as mayor and councilmen aforesaid, they each being qualified electors of the incorporated community of Elberta at the time of the said election; and the said Judge of Probate did make a record of the proceedings in the matter of such incorporation and election of officers and file in the office of the Secretary of State a certified copy of the entry showing the results of the elections preceding; and these defendants respectfully show unto this Honorable Court that the said Town of Elberta was under the laws of the State

of Alabama duly and legally incorporated and that they were duly and legally elected and qualified as mayor and councilmen of the said town ; that all such matters appear upon the records of the Probate Court of Baldwin County, Alabama; and they further say that they are acting in their official capacity as such mayor and councilmen as they have a legal right and are in duty bound to do, that they are levying taxes and passing ordinances and in all things performing their duties as such officers all within the law and as they are charged to do under the laws of the State of Alabama.

3. And further answering plaintiff's petition defendants say that the plaintiff ought not to further prosecute this suit because the matters therein complained of have been heretofore by the Honorable W. R. Stuart, Judge of Probate of Baldwin County, in which the community of Elberta is situated, in a cause therein pending for the incorporation of the Town of Elberta, considered and judicially ascertained and determined as to all the matters complained of in this suit and such matters can not be now raised in this proceeding, all of which appears upon the records of the Probate Court of Baldwin County Alabama.

4. And further answering the plaintiff's petition the defendants say that on the 12th day of November, 1952, in a cause pending in the Probate Court of Baldwin County, on a petition therein filed by 25 or more qualified electors for the incorporation of the Town of Elberta, the Honorable W. R. Stuart, Judge of the said Court did judicially determine and render decree and judgment determining the matters complained of in said petition upon the merits thereof and the said matters can not be further considered in this court, all of which appears upon the records of the Probate Court of Baldwin County, Alabama.

5. And further answering the plaintiff's petition the defendants say that on the 19th day of December, 1952, in a cause pending in the Probate Court of Baldwin County, on a petition therein filed by 25 or more qualified electors for the incorporation of the town of Elberta, the Honorable W. R. Stuart, Judge of the said Court, did judicially determine and render a decree and judgment determining

the matters complained of in said petition upon the merits thereof
and the said matters can not be further considered in this court;
all of which appears upon the records of the Probate Court of Baldwin
County, Alabama.


Attorney for defendants.

1986

Jane of Elberta
in relation to John
Zeller and John Zeller
Individually
Plaintiff

VS

Jane of Elberta
et al.
Defendant

Answer

FILED

JUN 29 1953

ALICE J. DUCK, Clerk

THE STATE OF ALABAMA ON RELATION
OF JOHN ZOLLER AND JOHN ZOLLER
INDIVIDUALLY.

PLAINTIFFS

VS.

THE TOWN OF ELBERTA, AN ALLEGED
MUNICIPAL CORPORATION, JOHNNY J.
MILLER, AS MAYOR, WALTER J. PERSKA,
CHARLES G. KOEHLER, BENNIE McCOMBS,
AND WERNER SALZMANN AND JOE KRAUSS
AS COUNCILMEN, AND EACH INDIVIDUALLY.

DEFENDENTS

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN LAW

QUO WARRANTO PROCEEDINGS

TO THE HONORABLE HUBERT M. HALL, JUDGE OF THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA:

Now comes the plaintiffs and with leave of the Court first
had and obtained, amends the original Complaint and amended complaint
so that the complaint reads as follows:

The State of Alabama on relation of John Zoller, a citizen
of Baldwin County, State of Alabama, who joins with the State of
Alabama as plaintiff for himself and in the name of the State of Ala-
bama, respectfully represents unto your Honor as follows:

1. That the Plaintiff, John Zoller, is over the age of
twenty-one years, and is a bona-fide resident of Baldwin County, Alabama,
and of the alleged municipal corporation of Elberta; that Johnny
J. Miller, Walter J. Perske, Charles Koehler, Bennie McCombs Joe
Krauss and Werner Salzmann, the defendants herein with the alleged
Municipal corporation of Elberta, are each over the age of twenty-
one years and are residents for Baldwin County, Alabama; that the
alleged municipal corporation "The Town of Elberta" is within the
boundries of Baldwin County Alabama, and the venue of this Honor-
able Court,

2. That the said defendants, Johnny H. Miller, as Mayor, Walter
J. Perske, Charles G. Koehler, Bennie McCombs, Joe Krauss, and Werner
Salzmann, as councilmen, have associated themselves as officers of an
alleged municipal corporation by the name of the "Town of Elberta",
and as such officers of said alleged municipal corporation are levy-
ing taxes and passing ordinances without being duly and legally
incorporated.

3. That the defendants purports to be an incorporated town by the name of Elberta, there having been filed in the office of the Judge of Probate of Baldwin County, Alabama, a petition illegal and void ab initio, for the incorporation of said Town of Elberta, the following of which, the Judge of Probate of Baldwin County, Alabama made an order illegal and void on its face, for the holding of an election of voters of said town for the purpose of determining whether or not they should be incorporated and then made an illegal and void decree on the 19th day of December, 1952 without judically ascertaining that the laws of Alabama governing the incorporation of municipalites was met, and decreeing that the town of Elberta be a Municipal Corportion.

4. That in pursuance of the purpose of incorporation there was filed in the office of the Judge of Probate of Baldwin County, Alabama, on November 12, 1952 a void petition which stated that their was at least four qualified electors residing on each quarter of each quarter section of the lands within the boundry of the proposed Corporation limits and at least four persons from each quarter of each quarter section have assented to the incorporation by signing said petition, and that the assent of the persons, firms, or corporations owning at least sixty percent of the land within the plat area was evidenced by their signing said petition.

5. That said petition for incorporation was void on its face for the reason that it did not meet the requirements of the laws of Alabama for the incorporation of municipalities by not stating that the petition was signed by four qualified electors residing on each quarter of each quarter Section, according to government survey or part thereof, of such platted or unplatted land, who signified their assent to such incorporation by signing said petition.

6. That said petition was void ab initio for thge reason that there was not four qualified electors residing on each quarter of each quarter section according to the government survey or part thereof of such platted or unplatted land included within the boundry of said proposed corporationl limits.

7. That said petition for incorporation was not signed by four qualified electors residing on each quarter of each quarter section of land included within the described boundry of the proposed Corporate limits, who assented to the said incorporation by signing the said petition, as required by the laws of the State of Alabama for incorporating municipalities and said petition was therefore illegal and void.

8. That the consent of the firms, persons, or corporations owning sixty percent of the lands within the plat area of the boundry of the proposed corporation's limits was not evidenced by their signing of said petition for incorporation or as required by the Laws of the State of Alabama for the incorporation of municipalities.

9. That the order for the election for incorporation made by the Judge of Probate of Baldwin County Alabama was void for that the proof recited thereon to have been made, affirmatively shows on the face of the order that the requirements of the laws of Alabama for the incorporation of municipalities was not met.

10. That there was no proof made or adduced by which the Judge of Probate could Judicially determine or ascertain that the requirements of Section 10 Title 37 of the 1940 Code of Alabama was met.

11. That the record of the proceedings for the incorporation of the Town of Elberta affirmatively shows that there was no proof made or evidence taken as to the determination of the ownership of the lands included within the boundries of the proposed Corporate limits or as provided for in Section 10 of Title 37 of the 1940 Code of Alabama.

12. That the decree made on the 19th day of December 1952 for the incorporation of the town of Elberta by the Judge of Probate of Baldwin County, Alabama was void for that it does not show therein ~~as~~ that the requirements of Section 10 Title 37 of the 1940 Code of Ala. as to ownership of the land within the boundry of the proposed Corporate limits was judicially ascertained or determined.

13. That the said petition for incorporation as filed with the Judge of Probate of Baldwin County, Alabama was illegal and void, that the order for the election for the incorporation was illegal and void, and that the decree of incorporation for the alleged Town of Elberta, issued by the Judge of Probate was illegal, void, invalid and of no effect and the said defecdants are illegally and unlawfully acting as a Municipal

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

QUO WARRANTO PROCEEDINGS

THE STATE OF ALABAMA ON RELATION
OF JOHN ZOLLER AND JOHN ZOLLER,
INDIVIDUALLY.

PLAINTIFFS

VS.

THE TOWN OF ELBERTA, ET AL..

AMENDED COMPLAINT

Corporate body, officers and corporation passing ordinances and collecting taxes.

The premises considered, the relator prays that the Town of Elberta Johnny J. Miller, Walter J. Perske, Charles G. Koehler, Bennie McCombs, Joe Krauss and Werner Salzman as mayor and councilmen of the alleged town of Elberta, and each individually, be made parties defendants to this proceedings by due process of law; that the writ or quo warranto be directed to them and each of them, to show by what right or authority they and each of them exercise corporate powers, franchises and offices as herein charged; that upon a final hearing hereof judgment of forfeiture and ouster be made and granted denying and depriving the said Town of Elberta and said persons named, as mayor and councilmen, officers thereof, and from the exercise of the rights, powers and franchises of a municipal corporation as aforesaid, and said corporation be dissolved; that such other and further orders as may be necessary and proper to secure the relator the relief prayed be entered and that your Honor will grant such other, further and different relief as in this case may seem to your Honor meet and proper

STATE OF ALABAMA ON RELATION
OF JOHN ZOLLER AND JOHN ZOLLER
INDIVIDUALLY.

PLAINTIFFS

BY Arthur L. Epperson
ATTORNEY FOR PLAINTIFFS

ms 1985

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

QUO WARRANTO PROCEEDINGS

THE STATE OF ALABAMA ON RELATION
OF JOHN ZOLLER AND JOHN ZOLLER,
INDIVIDUALLY.
PLAINTIFFS

VS.

THE TOWN OF ELBERTA, ET AL..

Ind.

AMENDED COMPLAINT

FILED

JUN 15 1953

ALICE I. DUCK, Clerk

*copy received from
W. J. Riche 6-15-53*

WRIT OF QUO WARRANTO

STATE OF ALABAMA)
BALDWIN COUNTY)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

TO: THE TOWN OF ELBERTA, JOHNNY J. MILLER, WALTER J. PERSKE, CHARLES
G. KOEHLER, BENNIE MCCOMBS, JOE KRAUSS, and WERNER SALZMANN.

In obedience to an order of the Circuit Court of Baldwin County Alabama, made by the Honorable Hubert M. Hall, Judge of the said Court, on the petition of the State of Alabama, on the relation of John Zoller and John Zoller individually, you are commanded to be and appear before said Court at 10:00 . M. on the 29th day of May, 1953, and then and there each of you show by what legal authority and Warrant you and each of you, are and have been, exercising municipal corporate powers, franchises and offices, and show cause, if any you have, why you and each of you should not be barred, excluded and prohibited from exercising municipal corporate powers, franchises and offices, until legally and duly incorporated.

Witness my hand this 21st day of May, 1953

Allice J. Luck

Clerk of the Circuit Court

ORDER TO SHERIFF

TO: THE SHERIFF OF BALDWIN COUNTY, ALABAMA:

You are commanded to serve a copy of the foregoing writ on the Town of Elberta, Johnny J. Miller, Walter J. Perske, Charles G. Koehler, Bennie McCombs, Joe Krauss, and Werner Salzmänn, instant, and make return to this Court with your endorsement thereon not later than the ~~21st~~ 21st day of May, 1953.

Allice J. Luck

CLERK OF THE CIRCUIT COURT

Executed this 21 day of May, 1953, by serving a copy of the above writ upon each of the following: Town of Elberta, Johnny J. Miller, Walter J. Perske, Charles G. Koehler, Bennie McCombs, Joe Krauss, and Werner Salzmänn, all in Elberta, Alabama.

Joseph Wilkins
Sheriff of Baldwin County
By H. F. Hall P. S.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN LAW

STATE OF ALABAMA, on relation
of JOHN ZOLLER and JOHN ZOLLER,
individually. Plaintiffs

VS.

THE TOWN OF ELBERTA, et al,

WRIT OF QUO WARRANTO
ORDER TO SHERIFF
SHERIFF'S RETURN

FILED
MAY 9 1953
ALICE L. DUCK, Clerk

THE STATE OF ALABAMA on relation
of JOHN ZOLLER and JOHN ZOLLER,
Individually.

Plaintiffs

VS.

THE TOWN OF ELBERTA, an alleged
municipal corporation, JOHNNY J.
MILLER, as Mayor, WALTER J. PERSKE,
CHARLES G. KOEHLER, BENNIE McCOMBS,
JOE KRAUSS, and WERNER SALZMANN, as
Councilmenn, and each individually.)
Defendants

IN THE ~~CIRCUIT~~ COURT OF
BALDWIN COUNTY, ALABAMA

IN LAW

QUO WARRANTO PROCEEDINGS

TO THE HONORABLE HUBERT M. ~~HALL~~, JUDGE OF THE ~~CIRCUIT~~ COURT OF
BALDWIN COUNTY, ALABAMA:

The State of Alabama on relation of John Zoller, a citizen of Baldwin County, State of Alabama, who joins with the State of Alabama as plaintiff for himself and in the name of the State of Alabama, respectfully represents unto your Honor as follows:

1. That the Blaintiff, John Zoller is over the age of twenty-one years, and is a bona-fide resident of Baldwin County, Alabama, and of the alleged Town of Elberta; that Johnny J. Miller, Walter J. Perske, Charles G. Koehler, Bennie McCombs, Joe Krauss, and Werner Salzmänn, the defendants herein with the alleged municipal corporation of Elberta, are each over the age of twenty-one years and are residents of Baldwin County, Alabama; that the alleged municipal corporation, "The Town of Elberta" is within the boundries of Baldwin County, Alabama, and the venue of this Honorable Court.

2. The the said defendants, Johnny J. Miller, as Mayor, Walter J. Perske, Charles G. Koehler, Bennie McCombs, Joe Krauss, and Werner Salzmänn, as Councilmen, have associated themselves as officers of an alleged municipal corporation by the name of the "Town of Elberta", and as such officers of said alleged municipal corporation are levying taxes and passing ordinances without being duly and legally incorporated.

3. That the defendants purport to be an incorporated town by the name of Elberta, under the general laws of the State of Alabama, there having been filed in the office of the judge of probate of Baldwin County, Alabama, a petition for the incorporation of said town of Elberta, and a holding of an election of voters of said

town for the purpose of determining whether or not they should be incorporated, the following of which, the judge of probate of Baldwin County, Alabama, decreed on the nineteenth day of December, 1952, that the Town of Elberta be a municipal corporation.

4. That in pursuance of the purpose of incorporation there was filed in the office of the judge of probate of Baldwin County, Alabama, on November twelfth, 1952, a petition signed by forty persons, which said petition stated the boundries and limits of the proposed town, that there was at least four qualified electors residing on each quarter of each quarter section of the lands within the boundry of the proposed corporation limits and at least four persons from each quarter of each quarter section have assented to the incorporation by signing said petition, and that the assent of the persons, firms or corporations owning at least sixty percent (60%) of the lands within the plat area was evidenced by their signing said petition.

5. That said petition for incorporation was not signed by four qualified voters residing on each quarter of each quarter section of land included within the described boundry of the proposed corporation limits, who assented to the said incorporation by signing the said petition as required by the laws of the State of Alabama for the incorporation of municipalities.

6. That the consent of the firms, persons, or corporations owning sixty percent of the lands within the plat area of the boundry of the proposed corporation's limits was not evidenced by their signing of said petition for incorporation or as required by the laws of the State of Alabama for the incorporation of municipalities.

7. That the said petition for incorporation as filed with the judge of probate of Baldwin County, Alabama, was erroneous, illegal and void and that the decree of incorporation for the alleged Town of Elberta, issued by the judge of probate of Baldwin County, Alabama was therefore invalid and of no effect and the said defendants are illegally and unlawfully acting as a municipal corporate body, officers and corporation.

The premises considered, the relator prays that the Town of Elberta, Johnny J. Miller, Walter J. Perske, Charles G. Koehler, Bennie McCombs, Joe Krauss and Werner Salzmänn, as mayor and councilmen of the alleged Town of Elberta, and each individually, be made parties defendants to this proceedings by due process of law; that the writ of quo warranto be directed to them and each of them, to show by what right and authority they and each of them exercise municipal corporate powers, franchises and offices as herein charged; that upon a final hearing hereof, judgment of forfeiture and ouster be made and granted, denying and depriving the said Town of Elberta and said persons named, as mayor and councilmen, officers thereof, of and from the exercise of the rights, powers and franchises of a municipal corporation as aforesaid, and said corporation be dissolved; that such other, further, or different orders as may be necessary and proper to secure to the relator the relief prayed be entered and that your Honor will grant such other, further and different relief as in this case may seem to your Honor meet and proper.

STATE OF ALABAMA on relation of
JOHN ZOLLER and JOHN ZOLLER, Individually.

Plaintiffs

By

Arthur C. Epperson
Attorney for Plaintiffs

STATE OF ALABAMA

BALDWIN COUNTY

Before Me ~~Alice J. Dack~~, Clerk of the Circuit Court, personally appeared, Arthur C. Epperson, who is known to me, and who being by me duly sworn, deposes and says, that the facts stated in the foregoing complaint or petition are true, and that he verily believes each of the conclusions therein alleged to be true.

Arthur C. Epperson

Sworn to and subscribed before me this 9th day of May, 1953.

Alice J. Dack
Clerk of the ~~Circuit~~ Court

1985 1986
~~1985~~

Received in Sheriff's Office
this 24 day of May 1953
TAYLOR WILKINS, Sheriff

IN THE ~~CIRCUIT~~ COURT OF
BALDWIN COUNTY, ALABAMA

IN LAW

STATE OF ALABAMA, on relation
of JOHN ZOLLER and JOHN ZOLLER,
individually, Plaintiffs

VS.

THE TOWN OF ELBERTA, et al.

PETITION FOR WRIT OF
QUO WARRANTO

Executed this 24 day of May, 1953 by serving a copy of the within
Petition upon each of the following: The Town of Elberta, Johnny J.
Miller, Walter J. Perske, Charles G. Koehler, Bennie McCombs, Joe
Krauss, and Werner Salzmann, all in Elberta, Alabama.

Taylor Wilkins
Sheriff of Baldwin County, Ala.

FILED

~~MAY 9 1953~~

~~ALICE J. DUCK, Clerk~~

FILED

MAY 9 1953

ALICE J. DUCK, Clerk

AMENDMENT

THE STATE OF ALABAMA on relation
of JOHN ZOLLER and JOHN ZOLLER,
Individually,

Plaintiffs,

VS.

THE TOWN OF ELBERTA, an alleged
municipal corporation, JOHNNY J.
MILLER, as mayor, WALTER J. PERSKE,
CHARLES G. KOEHLER, BENNIE McCOMBS,
and WEINER SALZMANN and JOE KRAUSS,
as councilmen, and each individually,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN LAW

QUO WARRANTO PROCEEDINGS

TO THE HONORABLE HUBERT M. HALL, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY,
ALABAMA:-

Comes now the Plaintiffs in the above styled cause and amends
their Complaint by striking out that section thereof marked and designated 6;
said section reads as follows: "That the consent of the firms, persons, or
corporations owning sixty percent of the lands within the plat area of the
boundary of the proposed corporation's limits was not evidenced by their sign-
ing of said petition for incorporation or as required by the Laws of the State
of Alabama for the incorporation of municipalities."

STATE OF ALABAMA on relation of

JOHN ZOLLER and JOHN ZOLLER

Individually,

Plaintiffs

By:

Arthur L. Epperson
Attorney for Plaintiffs.

AMENDMENT

THE STATE OF ALABAMA on relation of
JOHN ZOLLER and JOHN ZOLLER,
Individually,

Plaintiffs,

VS.

THE TOWN OF ELBERTA, an alleged
municipal corporation, JOHNNY J.
MILLER, as mayor, WALTER J. PERSKE,
CHARLES G. KOEHLER, BENNIE McCOMBS,
and WERNER SALZMANN and JOE KRAUSS,
as councilmen, and each individually,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN LAW

QUO WARRANTO PROCEEDINGS.

FILED
JUN 4 1953
ALICE A. DICK, Clerk

THE STATE OF ALABAMA on
relation of JOHN ZOLLER,
and JOHN ZOLLER, individually,
Plaintiffs

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

VS. THE TOWN OF ELBERTA, JOHNNY J.)
MILLER, as mayor, WALTER J. PERSKE,)
CHARLES G. KOELER, BENNIE MCCOMBS,)
JOE KRAUSS and WERNER SALZMANN, as)
Councilmen, and each individually.)
Defendants

IN LAW

QUO WARRANTO PROCEEDINGS

We the undersigned, hereby acknowledge ourselves security
for all costs in the quo warranto proceedings in the above entitled
cause; and hereby agree to pay all such costs as decreed by the
Court should be paid by ourselves, whether judgment be rendered in
favor of the plaintiff or the defendant. And for the payment of
this Bond, we hereby waive our rights of exemption to personal
property under the Laws and Constitution of the State of Alabama.

WITNESS OUR HANDS AND SEALS, this the 28th day of April, 1953

John Zoller (SEAL)

Sebastian Billo (SEAL)

Gay & Morton (SEAL)

John Kachela (SEAL)

John Lassan Jr. (SEAL)

TAKEN AND APPROVED THIS 15th DAY OF May, 1953

Arlet Leach
CLERK OF THE CIRCUIT COURT

FILED 1934

IN THE CLERK'S COURT OF
BALDWIN COUNTY, ALABAMA

IN LAW

STATE OF ALABAMA on relation
of JOHN ZOELLER, and JOHN
ZOELLER, individually,
Plaintiffs

Vis.
The Town of
HERRING, an alleged MUNICIPAL
CORPORATION, et al.

BOND, Security for Costs

FILED
MAY 9 1934
FILED
MAY 11 1934

ARTHUR C. HENDERSON
ATTORNEY AT LAW
MOBILE, ALA.

AMENDMENT

THE STATE OF ALABAMA on relation
of JOHN ZOLLER and JOHN ZOLLER,
Individually,

Plaintiffs,

VS.

THE TOWN OF ELBERTA, an alleged
municipal corporation, JOHNNY J.
MILLER, as mayor, WALTER J. PERKE,
CHARLES C. KOEHLER, BERNIE McCOMBS,
and WEINER SALZMANN and JOE KRAUSS,
as councilmen, and each individually,

Defendants.

IN THE CIRCUIT COURT OF
BALWIN COUNTY, ALABAMA.

IN LAW

QUO WARRANTO PROCEEDINGS

TO THE HONORABLE HUBERT M. HALL, JUDGE OF THE CIRCUIT COURT OF BALWIN COUNTY,
ALABAMA:--

Comes now the Plaintiffs in the above styled cause and amends
their Complaint by striking out that section thereof marked and designated 6;
said section reads as follows: "That the consent of the firms, persons, or
corporations owning sixty percent of the lands within the plat area of the
boundary of the proposed corporation's limits was not evidenced by their sign-
ing of said petition for incorporation or as required by the Laws of the State
of Alabama for the incorporation of municipalities."

STATE OF ALABAMA on relation of

JOHN ZOLLER and JOHN ZOLLER

Individually,

Plaintiffs

By:

Arthur C. Epherson
Attorney for Plaintiffs.

RETURN

JOHN SOBLER and JOHN ZOLLER,
Plaintiffs,

vs.

THE TOWNSHIP OF ELBERTA, an alleged
municipal corporation, JOHNNY J.
MILLER, as mayor, WALTER J. PERSKE,
CHARLES G. KOEHLER, BENNIE McCOMBS,
and WERNER SALZMANN and JOE KRAUSS,
as councilmen, and each individually,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

TO THE HONORABLE JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA:

WE, the undersigned, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears in the files of the Circuit Court of Baldwin County, Alabama.

Witness my hand and seal of office this 1st day of May, 1934.

JOHN SOBLER and JOHN ZOLLER, Plaintiffs.

THE TOWNSHIP OF ELBERTA, JOHNNY J. MILLER, as mayor, WALTER J. PERSKE, CHARLES G. KOEHLER, BENNIE McCOMBS, and WERNER SALZMANN and JOE KRAUSS, as councilmen, and each individually, Defendants.

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.

IN LAW

QUO WARRANTO PROCEEDING

AMENDMENT

THE STATE OF ALABAMA ON RELATION on
JOHN SOBLER and JOHN ZOLLER,
Individually,

Plaintiffs,

vs.

THE TOWNSHIP OF ELBERTA, an alleged
municipal corporation, JOHNNY J.
MILLER, as mayor, WALTER J. PERSKE,
CHARLES G. KOEHLER, BENNIE McCOMBS,
and WERNER SALZMANN and JOE KRAUSS,
as councilmen, and each individually,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN LAW

QUO WARRANTO PROCEEDING

JOHN SOBLER and JOHN ZOLLER,
Plaintiffs,

vs.

THE TOWNSHIP OF ELBERTA, an alleged
municipal corporation, JOHNNY J.
MILLER, as mayor, WALTER J. PERSKE,
CHARLES G. KOEHLER, BENNIE McCOMBS,
and WERNER SALZMANN and JOE KRAUSS,
as councilmen, and each individually,

Defendants.

Witness my hand and seal of office this 1st day of May, 1934.

JOHN SOBLER and JOHN ZOLLER,
Plaintiffs,

vs.

THE TOWNSHIP OF ELBERTA, an alleged
municipal corporation, JOHNNY J.
MILLER, as mayor, WALTER J. PERSKE,
CHARLES G. KOEHLER, BENNIE McCOMBS,
and WERNER SALZMANN and JOE KRAUSS,
as councilmen, and each individually,

Defendants.

WRIT OF QUO WARRANTO

STATE OF ALABAMA)
BALDWIN COUNTY)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

TO: THE TOWN OF ELBERTA, JOHNNY J. MILLER, WALTER J. PERSKE, CHARLES
G. KOEHLER, BENNIE MCCOMBS, JOE KRAUSS, and WERNER SALZMANN.

In obedience to an order of the Circuit Court of Baldwin County Alabama, made by the Honorable Hubert M. Hall, Judge of the said Court, on the petition of the State of Alabama, on the relation of John Zeller and John Zeller individually, you are commanded to be and appear before said Court at 10:00 . M. on the 29th day of May, 1953, and then and there each of you show by what legal authority and Warrant you and each of you, are and have been, exercising municipal corporate powers, franchises and offices, and show cause, if any you have, why you and each of you should not be barred, excluded and prohibited from exercising municipal corporate powers, franchises and offices, until legally and duly incorporated.

Witness my hand this 21st day of May, 1953

Hubert M. Hall

Clerk of the Circuit Court

ORDER TO SHERIFF

TO: THE SHERIFF OF BALDWIN COUNTY, ALABAMA:

You are commanded to serve a copy of the foregoing writ on the Town of Elberta, Johnny J. Miller, Walter J. Perske, Charles G. Koehler, Bennie McCombs, Joe Krauss, and Werner Salzmann, instant, and make return to this Court with your endorsement thereon not later than the 21st day of May, 1953.

Hubert M. Hall

Clerk of the Circuit Court

Executed this _____ day of May, 1953, by serving a copy of the above writ upon each of the following: Town of Elberta, Johnny J. Miller, Walter J. Perske, Charles G. Koehler, Bennie McCombs, Joe Krauss, and Werner Salzmann, all in Elberta, Alabama.

Sheriff of Baldwin County

1985

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN LAW

STATE OF ALABAMA, on relation
of JOHN ZOLLER and JOHN ZOLLER,
individually. Plaintiffs

VS.

THE TOWN OF ELBERTA, et al,

WRIT OF HABEAS CORPUS
ORDER TO SHERIFF
SHERIFF'S RETURN

FILED

9 1985

CLERK OF COURT

Probate Office

Baldwin County
W. R. STUART, Judge

Bay Minette, Alabama

May 20, 1953

Mr. Arthur Epperson,
Attorney at Law
Foley, Alabama

Dear Mr. Epperson:

Please find returned herewith Quo Warranto proceedings
pertaining to the Town of Alberta.

It is my opinion that the Court of Probate does not have
jurisdiction in this matter. (Title 7, Section 1135, which
reads in part, "Actions under this chapter must be brought
in the Circuit Court, etc.....")

The only dissolution proceedings that may be brought in
the Court of Probate is under Title 37, Section 18, and
your petition does not conform with this Section.

Very truly yours,

W. R. Stuart,
Judge

By *Harry M. D'olive*
Harry M. D'olive,
Clerk of Probate.

Encl:

THE STATE OF ALABAMA on relation
of JOHN ZOLLER and JOHN ZOLLER,
Individually.

Plaintiffs

VS.

THE TOWN OF ELBERTA, an alleged
municipal corporation, JOHNNY J. MILLER,
as Mayor, Walter J. Perske, Charles G.
Koehler, Bennie McCombs, Joe Krauss, and
Werner Salzmänn, as Councilmen, and each
individually.

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN LAW

QUO WARRANTO PROCEEDINGS

This day came the State of Alabama on relation of John Zoller and John Zoller individually, and filed herein their petition against The Town of Elberta, an alleged municipal corporation, Johnny J. Miller, Walter J. Perske, Charles G. Koehler, Bennie McCombs, Joe Krauss, and Werner Salzmänn, alleging therein that Johnny J. Miller, Walter J. Perske, Charles G. Koehler, Bennie McCombs, Joe Krauss, and Werner Salzmänn, have associated themselves as officers of an alleged municipal corporation by the name of the "Town of Elberta", and as such officers of said alleged municipal corporation are levying taxes and passing ordinances without being duly and legally incorporated; and, upon consideration of the said petition, it is

ORDERED BY THE COURT that a copy of the said petition be forthwith served upon the Town of Elberta, Johnny J. Miller, Walter J. Perske, Charles G. Koehler, Bennie McCombs, Joe Krauss, and Werner Salzmänn, each individually, and they and each individually be and are hereby commanded to appear before the Circuit Court of Baldwin County, Alabama, on the _____ day of May, 1953, at 10:00 A. M., to show by what right and authority they and each of them exercise municipal corporate powers, franchises and offices as alleged in said petition and by what right and authority, they and each of them continue to exercise municipal corporate powers, franchises and offices without being duly incorporated as required by the Laws of the State of Alabama.

Dated at Bay Minette, Alabama, this _____ day of May, 1953.

Circuit Judge

exhibit three

dated at Elberta, Alabama, this _____ day of May, 1953.

at Elberta.

Attorney at Law, Elberta, Alabama, appearing for and on behalf of the State of Alabama, do hereby certify that the foregoing is a true and correct copy of the original of the same as the same is on file in the office of the Clerk of the Court of Baldwin County, Alabama.

Witness my hand and the seal of the Court of Baldwin County, Alabama, this _____ day of May, 1953.

IN THE ~~PROBATE~~ COURT OF
BALDWIN COUNTY, ALABAMA

QUO WARRANTO PROCEEDINGS

THE STATE OF ALABAMA on relation
of JOHN ZOLLER and JOHN ZOLLER
individually,

Plaintiffs

VS.
THE TOWN OF ELBERTA, et. al.

Defendants

ORDER DIRECTING ISSUANCE OF
WRIT OF QUO WARRANTO.

FILED

MAY 9 1953
ALICE I. DUCK, Clerk

FILED
MAY 9 1953
ALICE I. DUCK, Clerk

That the State of Alabama, by and through its Attorney General, do hereby certify that the foregoing is a true and correct copy of the original of the same as the same is on file in the office of the Clerk of the Court of Baldwin County, Alabama.

Delegations.

Delegations. (The following are the names of the persons who have been delegated to the office of the Clerk of the Court of Baldwin County, Alabama.)

at Elberta.

Delegations.

Delegations. (The following are the names of the persons who have been delegated to the office of the Clerk of the Court of Baldwin County, Alabama.)

at Elberta.

Delegations.

Delegations. (The following are the names of the persons who have been delegated to the office of the Clerk of the Court of Baldwin County, Alabama.)

THE STATE OF ALABAMA ON RELATION
OF JOHN ZOLLER AND JOHN ZOLLER
INDIVIDUALLY.

PLAINTIFFS

VS.

THE TOWN OF ELBERTA, AN ALLEGED
MUNICIPAL CORPORATION, JOHNNY J.
MILLER, AS MAYOR, WALTER J. PERSKA,
CHARLES G. KOEHLER, BENNIE McCOMBS,
AND WERNER SALEMANN AND JOE KRAUSE
AS COUNCILMEN, AND EACH INDIVIDUALLY.

DEFENDENTS

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN LAW

QUO WARRANTO PROCEEDINGS

TO THE HONORABLE HUBERT M. HALL, JUDGE OF THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA:

Now comes the plaintiffs and with leave of the Court first
had and obtained, amends the original Complaint and amended complaint
so that the complaint reads as follows:

The State of Alabama on relation of John Zoller, a citizen
of Baldwin County, State of Alabama, who joins with the State of
Alabama as plaintiff for himself and in the name of the State of Ala-
bama, respectfully represents unto your Honor as follows:

1. That the Plaintiff, John Zoller, is over the age of
twenty-one years, and is a bona-fide resident Baldwin County, Alabama,
and of the alleged municipal corporation of Elberta; that Johnny
J. Miller, Walter J. Perska, Charles Koehler, Bennie McCombs Joe
Krause and Werner Salzmenn, the defendants herein with the alleged
Municipal corporation of Elberta, are each over the age of twenty-
one years and are residents for Baldwin County, Alabama; that the
alleged municipal corporation "The Town of Elberta" is within the
boundries of Baldwin County Alabama, and the venue of this Honora-
ble Court,

2. That the said defendants, Johnny H. Miller, as Mayor, Walter
J. Perska, Charles G. Koehler, Bennie McCombs, Joe Krause, and Werner
Salzmenn, as councilmen, have associated themselves as officers of an
alleged municipal corporation by the name of the "Town of Elberta",
and as such officers of said alleged municipal corporation are levy-
ing taxes and passing ordinances without being duly and legally
incorporated.

3. That the defendants purports to be an incorporated town by the name of Elberta, there having been filed in the office of the Judge of Probate of Baldwin County, Alabama, a petition illegal and void ab initio, for the incorporation of said Town of Elberta, the following of which, the Judge of Probate of Baldwin County, Alabama made an order illegal and void on its face, for the holding of an election of voters of said town for the purpose of determining whether or not they should be incorporated and then made an illegal and void decree on the 19th day of December, 1952 without judicially ascertaining that the laws of Alabama governing the incorporation of municipalities was met, and decreeing that the town of Elberta be a Municipal Corporation.

4. That in pursuance of the purpose of incorporation there was filed in the office of the Judge of Probate of Baldwin County, Alabama, on November 12, 1952 a void petition which stated that their was at least four qualified electors residing on each quarter of each quarter section of the lands within the boundary of the proposed Corporation limits and at least four persons from each quarter of each quarter section have assented to the incorporation by signing said petition, and that the assent of the persons, firms, or corporations owning at least sixty percent of the land within the plat area was evidenced by their signing said petition.

5. That said petition for incorporation was void on its face for the reason that it did not meet the requirements of the laws of Alabama for the incorporation of municipalities by not stating that the petition was signed by four qualified electors residing on each quarter of each quarter Section, according to government survey or part thereof, of such platted or unplatted land, who signified their assent to such incorporation by signing said petition.

6. That said petition was void ab initio for the reason that there was not four qualified electors residing on each quarter of each quarter section according to the government survey or part thereof of such platted or unplatted land included within the boundary of said proposed corporation limits.

7. That said petition for incorporation was not signed by four qualified voters residing on each quarter of each quarter section of land included within the described boundary of the proposed Corporate limits, who assented to the said incorporation by signing the said petition, as required by the laws of the State of Alabama for incorporating municipalities and said petition was therefore illegal and void.

8. That the consent of the firms, persons, or corporations owning sixty percent of the lands within the plat area of the boundary of the proposed corporation's limits was not evidenced by their signing of said petition for incorporation or as required by the Laws of the State of Alabama for the incorporation of municipalities.

9. That the order for the election for incorporation made by the Judge of Probate of Baldwin County, Alabama was void for that the proof recited thereon to have been made, affirmatively shows on the face of the order that the requirements of the laws of Alabama for the incorporation of municipalities was not met.

10. That there was no proof made or adduced by which the Judge of Probate could judicially determine or ascertain that the requirements of Section 10 Title 37 of the 1940 Code of Alabama was met.

11. That the record of the proceedings for the incorporation of the Town of Elberta affirmatively shows that there was no proof made or evidence taken as to the determination of the ownership of the lands included within the boundaries of the proposed Corporate limits or provided for in Section 10 of Title 37 of the 1940 Code of Alabama.

12. That the decree made on the 19th day of December 1952 for the incorporation of the town of Elberta by the judge of Probate of Baldwin County, Alabama was void for that it does not show therein that the requirements of Section 10 Title 37 of the 1940 Code of Ala. as to ownership of the land within the boundary of the proposed Corporate limits was judicially ascertained or determined.

13. That the said petition for incorporation as filed with the judge of probate of Baldwin County, Alabama was illegal and void, that the order for the election for the incorporation was illegal and void and that the decree of incorporate for the alleged Town of Elberta, issued by the Judge of Probate was illegal, void, invalid and of no effect and the said defendants are illegally and unlawfully acting as a municipal

Corporate body, officers and corporation passing ordinances and collecting taxes.

The premises considered, the relator prays that the Town of Elberta Johnny J. Miller, Walter J. Perake, Charles G. Koehler, Hennie McCombs, Joe Krauss and Werner Salzman as mayor and councilmen of the alleged town of Elberta, and each individually, be made parties defendants to this proceedings by due process of law; that the writ or quo warranto be directed to them and each of them, to show by what right or authority they and each of them exercise corporate powers, franchises and offices as herein charged; that upon a final hearing hereof judgment of forfeiture and ouster be made and granted denying and depriving the said Town of Elberta and said persons named, as mayor and councilmen, officers thereof, and from the exercise of the rights, powers and franchises of a municipal corporation as aforesaid, and said corporation be dissolved; that such other and further orders as may be necessary and proper to secure the relator the relief prayed be entered and that your Honor will grant such other, further and different relief as in this case may seem to your Honor meet and proper

STATE OF ALABAMA ON RELATION
OF JOHN ZOLLER AND JOHN ZOLLER
INDIVIDUALLY.

PLAINTIFFS

BY

Arthur L. Gerson
ATTORNEY FOR PLAINTIFFS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

QUO WARRANTO PROCEEDINGS

THE STATE OF ALABAMA ON RELATION

OF JOHN ZOLLER AND JOHN ZOLLER,

INDIVIDUALLY.

PLAINTIFFS

VS.

THE TOWN OF ELBERTA, ET AL.

AMENDED COMPLAINT

FILED

JUN 12 1953

CLERK

[Signature]
J. J. [Name]
[Address]

STATE OF ALABAMA on relation
of John Keller and John Keller,
individually,

Plaintiffs

vs

Town of Liberty, an alleged
municipal corporation, ARTHUR J.
HILL, JR., as Mayor, WALTER J.
FOWLER, GEORGE E. ADAMS, JR., HOMER
McCOLLUM, JOE ARAN, and ARTHUR
SHELTON, as councilmen, and each
individually.

Defendants

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

at law.

quo warranto habere.

Come the defendants in the above cause and demurring to
petitioner's petition, and as grounds of demurrer, say:

1. The petition does not state a cause of action.
2. The petitioner alleges no facts upon which this court
can issue the writ of quo warranto.
3. The petition shows on its face that the Town of Liberty
was legally and duly incorporated under the laws of the State of
Alabama.
4. For aught that appears in said petition the Town of
Liberty was duly and legally incorporated.
5. Petition shows on its face that the matters complained
of are res adjudicata.
6. Petitioner seeks by collateral proceedings to vacate
and annul the proceedings incorporating the Town of Liberty.
7. For aught that appears in said petition the matters
alleged as grounds for setting aside and annulling the incorporation
of the Town of Liberty were judicially determined by the Judge of
Probate of Baldwin County in said proceedings adversely to the con-
viction of the petitioner and under the laws of the State of Alabama
can not now in this proceeding be questioned.
8. The matter of the sufficiency of the number of qualified
electors signing the petition for the incorporation of the Town of
Liberty was under the laws of the State of Alabama judicially determined

by the Judge of Probate of Baldwin County and can not now be questioned in this proceeding.

9. The matter of the sufficiency of the number of residents and of the property owners signing the petition for the incorporation of the Town of Elberta under the laws of the State of Alabama was judicially determined by the Judge of Probate of Baldwin County and can not now be questioned in this proceeding.

And specifically demurring to paragraph four of the said petition, defendants say:

A. The allegations shown in paragraph ~~four~~ ^{five} do not set up facts upon which this court can issue writ of quo warranto.

B. The allegations of said paragraph show that the matters complained of thereof are res adjudicata.

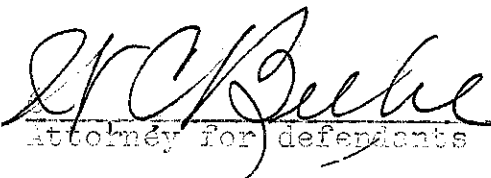
C. The matter of the sufficiency of the number of qualified electors signing the petition for the incorporation of the Town of Elberta was under the laws of the State of Alabama judicially determined by the Judge of Probate of Baldwin County and can not now be questioned in this proceeding.

And specifically demurring to paragraph ~~six~~ of the said petition, defendants say:

A. That the matters alleged in said petition do not set up facts upon which this court can issue the writ of quo warranto.

B. The allegations of said paragraph show that the matters therein alleged are res adjudicata.

C. The matter of the sufficiency of the number of residents and of the property owners signing the petition for the incorporation of the Town of Elberta under the laws of the State of Alabama was judicially determined by the Judge of Probate of Baldwin County and can not now be questioned in this proceeding.


Attorney for defendants

STATE OF ALABAMA, on relation
of John Zoller and John Zoller,
individually,

Plaintiffs

vs.

THE TOWN OF ELBERTA, et al

Defendants

DEMURRER

FILED
JAN 14 1953
ALICE J. BUCK, Clerk

THE STATE OF ALABAMA on relation
of JOHN ZOLLER and JOHN ZOLLER,
Individually.

Plaintiffs

VS.

THE TOWN OF ELBERTA, an alleged
municipal corporation, JOHNNY J. MILLER,
as Mayor, Walter J. Perske, Charles G.
Koehler, Bennie McCombs, Joe Krauss, and
Werner Salzmänn, as Councilmen, and each
individually.

Defendants.

IN THE ~~CIRCUIT~~ COURT OF
BALDWIN COUNTY, ALABAMA

IN LAW

QUO WARRANTO PROCEEDINGS

This day came the State of Alabama on relation of John Zoller and John Zoller individually, and filed herein their petition against The Town of Elberta, an alleged municipal corporation, Johnny J. Miller, Walter J. Perske, Charles G. Koehler, Bennie McCombs, Joe Krauss, and Werner Salzmänn, alleging therein that Johnny J. Miller, Walter J. Perske, Charles G. Koehler, Bennie McCombs, Joe Krauss, and Werner Salzmänn, have associated themselves as officers of an alleged municipal corporation by the name of the "Town of Elberta", and as such officers of said alleged municipal corporation are levying taxes and passing ordinances without being duly and legally incorporated; and, upon consideration of the said petition, it is

ORDERED BY THE COURT that a copy of the said petition be forthwith served upon the Town of Elberta, Johnny J. Miller, Walter J. Perske, Charles G. Koehler, Bennie McCombs, Joe Krauss, and Werner Salzmänn, each individually, and they and each individually be and are hereby commanded to appear before the Circuit Court of Baldwin County, Alabama, on the 29 day of May, 1953, at 10:00 A. M., to show by what right and authority they and each of them exercise municipal corporate powers, franchises and offices as alleged in said petition and by what right and authority, they and each of them continue to exercise municipal corporate powers, franchises and offices without being duly incorporated as required by the Laws of the State of Alabama.

Dated at Bay Minette, Alabama, this 21 day of May, 1953.

Hubert M. Hall
Circuit Judge

701985

1985

IN THE ~~CIRCUIT~~ COURT OF
BALDWIN COUNTY, ALABAMA

QUO WARRANTO PROCEEDINGS

THE STATE OF ALABAMA on relation
of JOHN ZOLLER and JOHN ZOLLER,
individually,

Plaintiffs

VS.

THE TOWN OF ELBERTA, et. al..

Defendants

ORDER DIRECTING ISSUANCE OF
WRIT OF QUO WARRANTO.

FILED

MAY 9 1953

ALICE J. DUCK, Clerk

FILED