2134

John Findley & others
v
Auditor of the State of Missouri

November 1827 - Jefferson County

- Petition to Prohibit the sale of lands
to pay off tax debt

To the Honorable the Supreme Court of the 3rd Judicial district.

The petition of John Findley and Elisha Ellis, represents, that on or about the first of august, (as nearly as your petitioners can remember,) in the year Eighteen & twenty five William Ellis was appointed collector of the state and county taxes for the county of Jefferson in the state of Missouri: that some time in august your petitioners, together with said William Ellis, Joseph Fitch and William Wright, signed and executed an instrument of writing under seal, ~~[illegible]~~ a certified copy whereof is herewith exhibited, marked No 1. A. - which said writing was ~~[illegible]~~ ~~duplicate, a [illegible]~~ ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ deposited in the office of the Clerk of the county court of Jefferson county, and ~~the~~ ~~[illegible]~~ copy thereof ~~[illegible]~~ was deposited in the office of the auditor of public accounts, at St Charles, the then seat of government.

a copy of

And your petitioners represent, that not long since Elias Barcroft Esqr, auditor of public accounts within & for the State of Missouri, Issued, by & under colour, of his authority as auditor of public accounts his warrant, a copy whereof is herewith exhibited no 2. B. which said warrant is now in the hands of Gabriel J. Johnston, coroner for Jefferson county, to be executed by him officially. And your petitioners represent, that said coroner Johnston has levied upon and advertised for sale, certain personal property belonging to said Elisha Ellis, and has advertised the same for sale to satisfy said warrant; and ~~your~~ said coroner also threatens to levy upon and sell the property real and personal of said Findley, to satisfy said warrant. And your petitioners represent, that they are advised and informed by their counsel, that said warrant is irregular and void and was issued by said auditor without any authority of law (the said bond being voluntary, and the subject of a suit at law), and the proceedings under color of its authority by said coroner are highly injurious to the rights and property of your petitioners.

Your petitioners therefore pray that this honorable court will interpose its authority, for

the benefit and protection of your petitioners and their property, by Issuing your writ of prohibition, directed to said coroner, as well as to said auditor of public accounts, absolutely forbidding & prohibiting the said auditor and Coroner, &c either of them, as well as every other person whatsoever from further proceedings against your petitioners under or by colour of said Warrant. And your petitioners will ever pray &c.

J. Findley for
Self & Elisha Ellis

Personally appeared in open court John Findley one of the above named petitioners who being sworn, upon his oath saith, that the facts stated in the foregoing petition upon his own knowledge are true and those stated upon the knowledge of others he believes to be true and that the Exhibits marked No. 1. A. & No 2. B. here with presented, are true copies from the originals.

J. Findley

Sworn to and subscribed in open court this 13th Novr. 1827

H. Douglass Clk

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Petition for a
Prohibition

John C. Findley & others
vs. Petition
Auditor of the State of Miss.

filed 13th Novr 1827
H. Douglass Clk

State of Missouri
Third Judicial District } Supreme Court Nov. Term 1827

The State of Missouri

To Gabriel P Johnson Coroner of the County of Jefferson & his Successors in Office, Greeting

You are hereby Commanded that you take not further proceedings whatsoever against Joseph Fitch Elisha Ellis John Findley and William Wright, upon a certain warrant issued by the Auditor of Public Accounts of the State of Missouri, directed to you the said Coroner dated the twelfth day of February in the year one thousand eight hundred and twenty seven, against William Ellis the Collector of State and County taxes for the said County of Jeffuson, and against the said Joseph Fitch Elisha Ellis John Findlay and William Wright as securities of the said William Ellis Collector as aforesaid; and you are hereby prohibited from further proceedings in this behalf against the said Joseph Fitch Elisha Ellis John Findlay and William Wright securities as aforesaid until the further order of our said Supreme Court

Witness Thompson Douglass Clerk of our said Supreme Court this fourteenth day of November eighteen hundred and twenty seven

By order of the Court

W Douglass Clk

I acknowledge the Service of the Within

Nove 19th 1827

G. L. Johnston
Coroner

The State of Missouri County of St Louis Sct.

To Elias Barcroft Esquire Auditor of Public accounts of the State of Missouri Greeting

Whereas it has been made appear to our Supreme Court sitting at the City of St Louis within and for the third Judicial District of the State of Missouri that you the said Elias Barcroft as Auditor of Public accounts for said State have issued your warrant against one William Ellis Collector of the Taxes for the County of Jefferson in said State, and Joseph Fitch Elisha Ellis John Findley and William Wright his securities as such Collector, for the sum of One hundred and ten dollars with a penalty thereon at the rate of ten per centum per month from the 1st Monday of December 1826 untill paid, And upon the Petition of the said securities of the said William Ellis, our said Supreme Court have ordered that you the said Elias Barcroft Auditor as aforesaid & your successors in said Office be absolutely prohibited & restrained from proceeding by your writ against the said Joseph Fitch Elisha Ellis John Findley and William Wright securities as aforesaid untill the further order of said Court.

These are therefore to command you the said Auditor and your successors in Office that you absolutely abstain and refrain from proceeding against the said Joseph Fitch Elisha Ellis John Findley and William Wright securities as aforesaid for the said sum of One hundred and ten dollars, and the penalty at the rate of five per Cent per Month from the said first Monday of December in the year Eighteen hundred and twenty six, untill the further order of this Court in the premises.

Witness Archibald Gamble Clerk pro tempore of our

Said Supreme Court at the City of St Louis this fourteenth day of May in the year Eighteen hundred and twenty Eight

Archibald Gamble Clerk
Pro tem:

I Certify to have served this writ upon Elias Barcroft by his reading the same and Confessing the Service thereof, at the City of Jefferson, Cole County, Missouri, on the 27nd day of May 1828 —

D. E. Cuyler

David E Cuyler being sworn upon his oath says that he served the within Writ upon Elias Barcroft Auditor of Public Accounts in manner and form as mentioned in the above return and that the said return is true.

D. E. Cuyler

Sworn to & Subscribed in open Court Nov 5th 1828

A Gamble Clerk S.C.

Writ of Prohibition
To the Auditor of
Public Accounts
Missouri

John Findley & others

on motion for prohibition.

Motion to amend the record so as to extend the writ of prohibition to the auditor of the state of Missouri, or of Public accounts - & to his successors in which the record of the order of the court is defective and that a writ issue to the auditor

McGirk for appl ctr

On motion of Mr McG on behalf of Mr Findley, Joseph Fitch Elisha Ellis & Wm Wright Petitioners it is ordered by the Court that the record of the order made at the last Term of this Court upon the prayer of said petitioners be so amended as to restrain & prohibit Elias Barcroft Esqr Acd of P. Afc's & his successors in Office from proceeding by ~~the~~ Writ as such auditor to collect the sum of money mentioned in said petition & the penalty thereon accruing, untill the further

order of this court. And it is further ordered that a Writ of Prohibition issue to restrain the said Auditor & his successors from proceeding in the premises until the further order of the Court