

8467

No. \_\_\_\_\_

Supreme Court of Illinois


Shanfieldt

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vs.

Green & Green

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71641  7

State of Illinois } In the Circuit Court of Marion County  
Marion County } August term c. D. 1862.

John Shuffelt }  
v } c. Appeal  
Daniel K Green }  
William J Green }

Be it remembered that on Tuesday  
the 19<sup>th</sup> of August 1862 Henry C Goodnow  
the atty of Daniel K Green in open court  
moved the court for a continuance of this  
cause until the next term of this court  
for the reasons in the affidavit of the s<sup>r</sup>  
Goodnow in the word and figures followi  
ng to wit. H C Goodnow comes and being  
duly sworn deposes and says that he is  
one of the attys for the dependant in  
the above entitled cause and that said  
dependant is now in the military  
service of the State of Illinois and that his  
presence is necessary for a full and fair  
defence as affiant is informed and  
believes and affiant asks that said cause  
may be continued

Sworn to and signed  
August 19<sup>th</sup> 1862

H. C. Goodnow

J. O. Chance, Clerk

Which motion the S<sup>r</sup> J<sup>st</sup> resisted upon the grou  
nds that the S<sup>r</sup> Green was then in the town  
of Salem in Marion County Illinois where

court was held and the S. court not being sufficiently advised granted leave to S. plf to make proof of that fact and passed the cause for further action on S. motion. And whereas on the 21<sup>st</sup> day of S. August in court the S. plf filed the following affidavit of Thos J Black and Smith Saraner in words & figures following to wit: Thos J Black and Smith Saraner upsw and says that they saw Daniel R Green one of the Depts in the case of John Sharfett vs Daniel R Green and William J Green on Tuesday last the 19<sup>th</sup> inst in the town of Salem in Marion County Illinois.

Sworn to & subscribed this } Smith Saraner  
21<sup>st</sup> day of August A.D. 1862. } J Black

J C Chancel, clk  
And on the 22<sup>nd</sup> day of August the S. Dept filed his further affidavit for a continuance in S. cause in these words and figures to wit: H B Goodnow of Basett comes and being duly sworn deposes and says that Willard & Goodnow are the attorneys for the defendant in the above entitled cause that said defendant is now in the military service of the state of Illinois that said defendant Daniel R Green called upon

said attorneys on Monday morning of this  
of ~~the~~ week and employed them to defend  
said cause That said defendant informed  
said attorneys that he expected to leave this  
place on said Monday evening or Tuesday  
morning for Chicago his place of duty for  
said State That affiant has been informed  
that said defendant was unavoidably deta-  
ined till Tuesday evening of this week, <sup>that</sup> affi-  
ants are informed and believe that said  
defendant is now at this time of making  
of this affidavit absent on Military duty  
of this State That this cause was not  
set for hearing until Wednesday of this  
week the day after said defendant must  
have left this place That affiants do  
not know what defence said defenda-  
nt has in said cause and that said  
defendants presence is necessary that said  
attorneys may make for said defendant  
a full and fair defence for said  
defendant and further affiant says  
not but ask that said cause may  
be continued &c

Sworn to and signed } James Bassett  
before me this August } H B Goodson  
22<sup>nd</sup> 1862. } O Chance, clerk

To which the Depty filed his objections to a  
continuance in words & figures following

to wit: And now this day comes the sd. Jy. by Orndorff  
& Merritt his attys and objects to the court sustaining  
the motion of S<sup>d</sup> Deft for a continuance of  
this cause and demurs to the affidavits of  
attys of S<sup>d</sup> Deft Daniel R Green to wit the  
1<sup>st</sup> affd of Goodnow & Bassett<sup>1<sup>c</sup></sup> because the sd  
affidavits do not disclose any defence nor the  
~~nature~~<sup>nature</sup> or kind of defence ~~whatsoever~~ so  
that the court can decide upon whether  
he has a defence or not & that his presence  
is necessary? because no defence is disclosed  
so that the pff might have the opportunity  
of admitting the same and <sup>with</sup> arraigning his  
suit, or taking judgment for the residue  
& because of other misapprehensions  
Orndorff & Merritt  
Attys for S<sup>d</sup>

And the court being sufficiently advised  
thereof now sustained the motion of S<sup>d</sup>  
Deft for the cause so assigned as aforesaid  
to which decision p<sup>y</sup> by his counsel at  
the time excepted for therefore at the  
request of counsel ~~at~~ both for the p<sup>y</sup> S<sup>d</sup>  
defts & the undersigned Judge of the  
circuit court of the 2<sup>nd</sup> Judicial circuit  
of the State of Illinois do certify the  
forgoing to be a true <sup>record</sup> ~~record~~ of the  
facts with the decision of the court

thereunto <sup>the end</sup> that the opinion of the  
suprem court may be taken thereon  
as to whether there is or not any error  
in the record appearing

all of which I do certify

Silas L Bryan Judge Cir <sup>Circuit</sup>

State of Illinois }  
Marion County } I do hereby  
Certify the within  
to be a true and correct copy  
from the Original papers in the above  
Title Case as recently filed in  
my office

Given under my hand  
and Seal of said Court  
This 7th day of November  
AD 1862

J O Chance Cir Clerk  
J S Chance Deputy

And the <sup>officer</sup> in error for assignment of error  
says that the judgment of the Court in sustaining  
the motion of Deft for a continuance, was  
contrary to Law, as the affidavits filed.

Defendants Veris vs  
error  
H C Goodnow  
Atty for Defts

H K S & others  
T. E. Martin,

~~40~~ 40

John Shampell  
ref in error

James K Green  
& Wm J Green  
Dyts in error.

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Error from previous

Filed Nov. 11 - 1862 -  
N. Johnston City  
Paid by Ouelvey \$5.00

Ouelvey

IN THE SUPREME COURT OF ILLINOIS,

FIRST GRAND DIVISION ----- NOVEMBER TERM, 1862.

ABSTRACT.

John Schenefelt, Plaintiff in Error, }  
VS. }  
Daniel K. Green and William J. Green } Error to Marion County.  
Green Defendant in Error.

Page.

This case is brought here under the the certificate of the Judge of the 2nd Judicial circuit, by virtue of Sec. 17, P. 311, 1st Purple's Statute.

1 August 19, H. C. Goodnow, Defendant's Attorney, moved the Court for a continuance on his affidavit which alleges that Defendant, Daniel K. Green, is now in the military service of the State of Illinois, and that his presence is necessary for a full and fair defence.

1-2 We resisted on the ground that said Defendant was then in the town of Salem, and time being given to make affidavit of that fact, same was done 21st Aug., 1862. Aug. 22d Defendant's Attorneys filed their further affidavit to-wit: That said Green is now in the military service of the State, is now at this time of making of this affidavit on military duty of the State. That aff-  
2-3 ants do not know what defense said Defendant has in said cause, and that said Defendant's presence is necessary that said Attorney may make for said Defendant a full and fair defense.

3-4 Plaintiff resisted the motion for continuance, 1st, because no defense or the character of de-  
fense is discovered

4 The Court sustained the motion of Defendant for a continuance, and gave judgment that the  
4 cause stand continued, to which judgment Plaintiff's Counsel excepted at the time.

ERRORS.

- 1st. The Judgment of the Court was contrary to the law.
- 2nd. The Court should have overruled Defendant's motion for a continuance.

BRIEF.

John Schenefelt, }  
V. S. } BRIEF.  
Daniel K. Green & William Green, }

1st. The nature of the defense must be stated before a Court can be satisfied that the presence of the party is or is not necessary. Laws 1861, extra session, page 26.

2nd. The defense should be set out so that Plaintiff may admit it, and take Judgment for the residue if any, or dismiss his suit if the defense be full and complete.

3d. Unless this is the law, the Plaintiff may have his cause continued for years, and in the case of death of the Defendant be compelled to pay all costs of the continuance, and file his demand against the estate of deceased.

H. K. S. O'MELVENY,  
T. E. MERRITT,

For Plaintiff in Error.



John Sheufield vs

Daniel K Green & William Green  
Depts in error

Brief & Abstract

H. E. S. OMBELTANI

for Plaintiff in error

Filed Nov. 12. 1862 -  
N. Johnston Clk  
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JOHN SHEUFIELD vs

NOVEMBER TERM 1862

IN THE SUPREME COURT OF ILLINOIS

Daniel K. Green and William J. Green vs  
John Sheufield, Plaintiff in error

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4 The Court sustained the motion of Defendant for a continuance, and gave judgment that the cause stand continued, to which judgment Plaintiff's Counsel excepted at the time.

RECORD OF DECISION.

- 1st. The Judgment of the Court was contrary to the law.
2nd. The Court should have overruled Defendant's motion for a continuance.

BRIEF.

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V. S. } BRIEF.
Daniel K. Green & William Green, }

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H. K. S. O'MELVENY,
T. E. MERRITT,

For Plaintiff in Error.



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Shawfeth

n

Green & Green

Dismissed for want  
of judgment below.

Cont. bill on Page 529

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