

14195

No. _____

Supreme Court of Illinois

Schenefeldt

vs.

Green et al.

71641  7

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. 211, 1st Purple's Statute.

1 August 19, H. C. Goodnow, Defendant's Attorney. moved the Court for a continuance on his affidavit which alledges 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. 23d 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 affi-
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 cause stand continued, to which judgment Plaintiff's Counsel excepted at the time.

REMARKS.

- 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.

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John Shuffelt
vs
P R Green
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Filed Nov. 12. 1862.
St. Johnston Ct

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REMARKS.

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REPLIES.

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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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Shawfel
D^{rs} K. Green
et al

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N. Johnston Ck

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REASONS.

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REHEARS.

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T. E. MERRITT,

For Plaintiff in Error.

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W

D K Green
et al

Herbert & Bray

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N. Johnston Clerk