

DeForsen County Circuit Court
Case #10 - Civil

Box

16

Folder

57

November 1865, #58

Moss, James T.

vs

Greene, Michael W.

Assumpsit

Defendant failed to pay \$100 toward
paying a substitute were either of
them drafted; \$100 damages



We the Citizens of Sulphur
Springs Locality Jefferson Mo
do Subscribe our names to the
to this List. In order to prepare
for the coming draft

W. M. Greene ————— \$100.00

James T. Moff ————— 100.00

George Moff ————— 100.00

James T. Moss, - plaintiff, } In the Circuit
Against } Court of Jefferson
Michael W. Greene, - defendant, } County Missouri,

The Plaintiff states that on or about the first day of November 1864, he and the Defendant, and George Moss, made a verbal Contract with each other, as follows; that in order to provide for the draft for troops, which has been ordered by the United States government, to take place in this, the 3rd District of Missouri in December following, they would each pay to the other, who might be drafted, the sum of One hundred dollars, to aid him in part, in hiring a substitute for said military service. And that the Defendant, in consideration of Plaintiff's promise to pay Defendant one hundred dollars for said purpose in case he should be drafted, then and there agreed and promised to pay Plaintiff the sum of one hundred dollars, to aid him in employing a substitute for said service in case Plaintiff should be drafted. And Plaintiff states that Defendant at the time drew up a brief memorandum of said Contract, merely stating it was to prepare for the coming draft, and which was signed by Plaintiff, and Defendant, and George Moss, each one putting in figures 100. dollars opposite his name, meaning thereby that he would ^{pay} said sum to such other as should be drafted. Said memorandum does not purport to be, and was not intended to be, a full statement of said Contract, but was merely

intended to show the amount each of said parties agreed to pay for the purposes aforesaid, which memorandum is hereto the Court shown.

Plaintiff states that soon after said Contract was made, he was drafted as a Soldier to serve for one year in the United States Army, and was obliged to, and did pay, the sum of Seven hundred dollars, to procure a Substitute to serve in his place in said Army, - and of which the Defendant had notice. Plaintiff states that by reason of the premises, and of Defendant's Contract and undertaking as aforesaid, the Defendant became liable to pay Plaintiff the sum of one hundred dollars for said purposes, And Plaintiff states that Defendant, although often requested so to do, has neglected & failed, and still neglects and refuses, to pay the Plaintiff the sum of one hundred dollars, so due upon said Contract, or any part of it, And for which sum of one hundred dollars and the interest thereon, Plaintiff asks Judgment.

Abner Green
& Jas. C. Power
Attorneys for Plaintiff

James C. Power, Attorney for Plaintiff, makes oath, and says the above Petition and the matters therein as stated he believes to be true.

Sworn to and Subscribed before me
this 25th day of
Sept 1865

Samuel A. Rapp

In Circuit Court
of Jefferson County

James V. Chace

vs,

Michael W. Greene

Petition

for Annulment of

Mar. 20th, 1865, to J. H. Co.,

Green & Jones

for Debt

Filed Sept 25-1865

Samuel A. R. Parker

The State of Missouri, } SS.
COUNTY OF JEFFERSON.

The State of Missouri

To the Sheriff of the County of Jefferson---Greeting:

We command you, that you summon

Michael W Green

if he be found in your County, that he
be and appear before the Hon. Judge of our Circuit Court, on the first day
of the next term thereof, to be begun and held at the town of Hillsboro, within
and for the County of Jefferson, on the second ~~Monday after the fourth~~
Monday of *November* next, then and there to answer unto

James T Map

upon *his* original petition, a copy whereof is hereunto annexed and ac-
companies this writ, and have you then there this writ.



Witness, *Samuel A. Rapp* Clerk of our said Circuit
Court, with the seal thereof hereunto affixed, at office
in Hillsboro, this *25th*
day of *September* A. D. 1865-

Samuel A. Rapp
Clerk Circuit Court.



I executed the within writ at the County of
Jefferson State of Missouri on Michael W Green
the within named defendant on the 19 day of
October 1865 by delivering to him a true copy of said
writ and the annexed petition as furnished me
by the clerk

C. C. Fletcher
Sheriff

1865

TO JEFFERSON CIRCUIT COURT

2343

November Term, 1865

James W. Green

vs. J. Summers

Michael W. Green

25

W. C. Fletcher Sheriff 1865

chd



James I. Mass, Plaintiff }
2 } In the Supreme
Michael W. Green, Defendant } Circuit Court

Now at this day comes said Defendant and for answer to the petition of the Plaintiff denies that he and Plaintiff and George Mass entered into a verbal Contract of the kind stated in said petition, any further than is stated in said writing exhibited by Plaintiff.

Defendant avers that said writing was a mere memorandum made by the parties to it at the time of signing the same and was not intended to be binding upon any one of them until they should ascertain how many could be obtained who were willing to enter into such a Contract and then upon their meeting the particulars of the whole Contract could ~~have~~ be fully and definitely settled upon. When the money should be paid over. When it was found no one but Defendant, Plaintiff & George Mass and ^{on} the day before the day set for the draft in the 2nd district of Missouri, Defendant requested Plaintiff to come forward and pay over his hundred ^{dollars} and complete the Contract, which Plaintiff refused to do

saying he was ~~except~~ anyhow from military
service and would have nothing further
to do with said writing, thereby then and
there repudiating the whole thing. Deft
therefore alleges that no contract ever
existed between Plaintiff, Defendant and Green
Mass - to the effect that they should
pay one hundred dollars to the one of
them who should be drafted in Dec -
1864, The same never having been
completed by said parties, and having
fully answered prayer to be discharged
with his costs.

Thomas A. Fithian,
Att'y for Defendant.

Mr. W. Green makes oath that he
believes the above answer and the matters
as therein stated are true.

Sworn to and subscribed

before me, March 24

1866.

Henry Fithian

Notary Public

W. W. Green

J. J. Mass-

¹⁴⁹
Mr. M. Green

Answer -

Filed Jan 24th 1866
Dennis & Depue 10110

THE STATE OF MISSOURI,

COUNTY OF JEFFERSON.

To *George Popple & James H. D. Whaling*

GREETING :

You are **Hereby Commanded**, That setting aside all manner of excuse and delay You appear before our Circuit Court for the County aforesaid, on the *23^d* day of *May* next at Hillsboro, then and there to testify, and the truth to say in a certain matter of controversy, now pending in our said Court, wherein

James G. Popple is

Plaintiff and *Michael N. Green is*

Defendant on the part of *Plaintiff* and herein you are in no wise to fail.

WITNESS, *Emuel C. McJannet*, Clerk of our said Court,

with the Seal thereof hereto affixed, at office, this *23^d* day of *April* A. D. 186*6*

Emuel C. McJannet
Clerk.

SUBPOENA

TO JEFFERSON CIRCUIT COURT.

May Term, 1866

James F. Mox

vs

Michael W. Green

Witness for Plaintiff

*George Mox & F. Mox
& B. Whaling*

Stetcher Sheriff 150

*I & the undersigned the within & do in the County
of Jefferson on the 3 day of May 1866 in do now before
of the undersigned by bearing the same in their presence
bearing*

*Stetcher
Sheriff*

COUNTY OF JEFFERSON.

THE STATE OF MISSOURI,

To *Richard Whaling*

GREETING:

You are hereby Comanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court for the County afore-
said, on the _____ at Hillsboro, then and there to testify, and the truth to say in a certain matter of controversy, now pending in our
said Court, wherein *James J. Goodman is*

Plaintiff and *Michael W. Green is*

Defendant on the part of *Defendants* and herein you are in no wise to fail.

WITNESS, *Michael W. Green* ~~CLERK~~ Clerk of our said Court,

with the Seal thereof ~~here to~~ attested, at office, this

4th day of *May* A. D. 186*6*

Samuel A. Replogle

Clerk.

SUBPOENA

TO JEFFERSON CIRCUIT COURT.

May Term, 1864

James T. Mass

vs
J. W. Green

Defendant

R. Thaler

Hetcher Sheriff 50

I Execute the within in the
County of Jefferson on the 5th day of May 1864
on R. Thaler by reading the same in his
presence & hearing of

E. L. McNeely

Sheriff

James T. Moss
vs
Michael W. Green

In the Circuit Court
of Jefferson Co. Mo.
November Term 1866.

Now at this day comes the de-
fendant and moves the court to
set the judgment rendered in the above
entitled cause against him, aside,
and to grant him a new trial for
the following reasons to wit:

1. Because the judgment rendered was
against the evidence

2nd Because the court refused, to
give instruction No. 1. asked
by defendant, which instruction
ought to have been given.

Thomas A. Ahrens
Atty for defd.

James J. Moore

vs.

Michael W. Green

Motion to set
aside judgment
and grant a
new trial,

Filed Nov 13 1866
at the City of New York

We, Michael W. Green, as principal,
and John L. Thomas and ~~John L. Thomas~~ ^{John L. Thomas}
as securities, acknowledge ourselves indebted
to James T. Mass in the sum of
Two Hundred dollars, for the payment
of which we bind ourselves, our heirs,
executors & administrators.

The condition of the above bond is
as follows:

Whereas an appeal has been granted
to said Michael W. Green from a judg-
ment, rendered against him by the Cir-
cuit Court of Jefferson County, Mo. in an
action of assumpsit, in which said James
T. Mass was plaintiff and Michael W.
Green was defendant, for the sum of One
Hundred dollars, Now if said Michael
W. Green will prosecute his appeal
with due diligence to a decision in the
Supreme Court, and shall perform such
Judgment, as shall be given by the Supreme
Court, or such as the Supreme Court may
direct the Circuit Court to give, and
if the Judgment of such Court or any
part thereof be affirmed, that he will
comply with and perform the same
so far as it may be affirmed, and
will pay all damages and costs
which may be awarded against the
appellant by the Supreme Court.

Then the above land is to be sold, other-
wise to be in full force and effect.

In Witness whereof We have here-
unto subscribed our names and affixed
our seals this day of November 1866,

approved
J. H. Vail
Judge

M. W. Green,
By Thomas D. Ahlven, attys
John L. Thomas
John C. Fallon

Seal

Seal

Seal

Seal

James T. Moss plaintiff
vs.
Michael W. Green, deft.
In the Circuit
Court of Jefferson
County Mo.
Action of assumpsit.

John L. Thomas, one of the Attorneys for
defendants, makes oath and says, that
the appeal from the judgment, rendered
in the above entitled cause in the
court aforesaid, is not made for
vexation or delay, but because affirmed
believes, that the appellant is aggrieved
by the judgment or decision of the
court aforesaid.

Examined and subscribed
ed before me this 13th day of November 1866.
John L. Thomas
Kerry F. Ahrens
Notary public.

James S. Moore

vs.

Michael W. Green,

—
Affidavit for papers
—

Filed Nov 17 1866

Samuel R. R. R.

James F. Moss, Plaintiff

vs

Michael W. Green, Defendant

Be it Remembered that on the 12th day of November 1866, the above entitled Cause was submitted to the Court for trial ~~with~~ party requiring a jury and the Plaintiff to sustain the issues on his part ^{produce the following testimony} "George" Moss who testified that sometime in the fall of 1864 he went into Mr. Green's Store at Sulphur Springs & Mr. Green handed him the following writing in words and figures as follows (here copy the writing); that Mr. Green asked him to sign said writing which he did. That he understood from Mr. Green, that the one that was drafted (being a signer to the paper) should receive from the other signers, one hundred dollars each, for the purpose of purchasing a substitute; that no definite number of signers was necessary to make the contract binding, although it was desirable to get as many responsible men as possible - no one not responsible should be allowed sign the paper: That witness considered the contract binding upon himself. And upon Cross Examination he stated that he had not paid Plaintiff

1 - A memorandum in words and figures as appears to wit (here copy memorandum)

his hundred dollars, nor had he even
been summoned for the amount. Plaintiff
also introduced C. J. Moss who testified
that he & Plaintiff were in 1864 drafted into
the Army of the United States: that Plaintiff
went to St. Louis & hired a substitute
paid for him \$700.

Richard Whaling testified that Mr. Green
in 1864 in the fall asked witnesses to sign
the paper above referred to - which he did
not do - that he understood from Green
that they were making up a club to help
each other to purchase a substitute for any
one that might be drafted & if a hundred
dollars was not enough they would have
to pay \$200 - instead of one hundred.
The Plaintiff here closed his case.

The Defendant to sustain the issues on
his part was sworn himself & testified
that they wanted to get up a club in 1864
to assist each other in regard to the
draft: that he & George Mann & Plff signed
the above memorandum for the purpose
of ascertaining in the first place whether
such a thing was practicable; that

no definite agreement was entered into, that if enough signed the paper to make it desirable to enter into the agreement then the parties were to put together & pay in their money to some one before the draft came on. That he saw Plff the day before the draft came off in 1864 & asked him to come forward & pay in his hundred dollars if he intended to do anything in regard to the matter & he replied that he would be exempt anyhow he would have nothing further to do with it or at least he would not until he saw Mr. Kenney - & that Plam'tff never came back any more until after the draft. Here Dep't Closed

Plam'tff then in rebuttal was sworn himself & said that there was no agreement to pay the money in before the draft & that he did not tell Dep't the day before the draft or any other time that he expected to be exempt & would have nothing further to do with the matter, but on the contrary insisted that a few was as good as none. He did state to Mr. Kenney however that he thought perhaps he might be exempt from military duty. Plff closed. Dependant then asked the Court to declare the case as follows (here copy instructions asked by Dep't No. 1 & 2.)

The Court gave No 2 but refused no 1
to which action of the Court in refusing
Instruction No one dect ~~the~~ then. &
there objected & accepted. The Court
then gave Judgment for Plaintiff (here
copy)

Deft then filed a motion for new trial
as follows (here copy) which the Court
overruled to which action of the Court
in overruling said motion Deft then
& there objected & accepted & there in
open Court tenders his bill of exceptions
& prays that it may be signed sealed
& filed & made a part of the record in
this case which is accordingly done

J H Vail Judge ~~329~~

James J. Mass.

vs
W. W. Green

Bill of exceptions.

James J. Moss Resp } Appeal from Jefferson Co. Circuit
 no } Court: In the District
 Michael W. Green Appr } Court for the Second Dist. Mo.
 July Term 1868 - July 22, 1868 -

Now comes again this matter before the Court
 and it appearing that the mandate of the Supreme
 Court in this Cause, has been filed in the office
 of the Clerk of this Court, reversing the judgment
 of this Court herein at its said July Term 1867.
 It is therefore ordered and decreed by the Court
 that the judgment of the Circuit of Jefferson
 County herein before had in this Cause, be in all
 things affirmed and stand in full force and effect
 and that the respondent be restored to all things
 he has lost by reason of said judgment of this Court
 heretofore and that he have execution accordingly

Fee Bill in District Court	
(Fee bill from Jefferson Circuit Court)	\$4.16
Docket fee - Paid by Appr	\$10.00
Transcript to Sup Court (unpaid)	2.25
Copy of order of Court & fee bill (")	1.00

State of Missouri }
 Second District } J. Leonard Sargeant Clerk of
 the District Court hereby certifies that the foregoing
 is a true copy of the order of the District Court in

the above entitled matter as also of the bill of
Costs herein as fully as the same remain
of record in my office and that the Apph
herein is liable for the same. In testimony
whereof witness my hand & official
seal hereunto affixed at my office in
Cape Girardeau this 4th day
of August A.D. 1868
Leonard Sargeant Clerk

James D. Moss

vs

Michael W. Green

2343

Filed Aug 5 1868.
C. F. Henry Clk

~~refused~~

James J. Mann
Mr. W. Green,)

there is no contract proven in this case
which binds any one & judgment should
therefore be for defendant.

If the Court finds from the evidence
that Plaintiff before the draft came on,
repudiated the Club, for the reason that
he believed he would be exempt, then the
judgment should be for Deft.

Given