MARTIN ET AL. V. CRISCUOLA.

Case No. 9,159.
{10 Blatchf. 211.}[2]

Circuit Court, E. D. New York. Oct. 4, 1872.

PRACTICE AT LAW—IN CONFORMITY WITH STATE—SUMMONS IN NAME OF PLAINTIFF'S ATTORNEYS.

The effect of the 5th section of the act of June 1, 1872 (17 Stat. 197), which provides, that the practice, pleadings, and forms and modes of proceeding, in other than equity and admiralty causes, in the circuit and district courts of the United States, shall conform, as near as may be, to the practice, pleadings, and forms and modes of proceeding, existing at the time, in like causes, in the courts of record of the state within which such circuit or district courts are held, is not to authorize the commencement of an action at law in the circuit court by a summons issued in the name of the plaintiff's attorney, according to the mode of commencing actions in the courts of the state of New York:

{Cited in Johnson v. Healy, Case No. 7,389.}

{Action by Francis D. Martin and others against L. Criscuola.}

Goodrich & Wheeler, for plaintiffs.

Beebe, Donohue & Cooke, for defendant.

BENEDICT, District Judge. This motion raises the question, whether the effect of the 5th section of the act of June 1, 1872 (17 Stat. 197), which provides, that the practice, pleadings, and forms and modes of proceeding, in other than equity and admiralty causes, in the circuit and district courts of the United States, shall conform, as near as may be, to the practice, pleadings, and forms and modes of proceeding, existing at the time, in like causes, in the courts of record of the state within which such circuit or district courts are held, is to authorize the commencement of an action at law in this court by a summons issued in the name of the plaintiff's attorney, according to the mode of commencing actions in the courts of the state of New York.

This question, I learn, upon inquiry, has already received the consideration of the circuit judge of this circuit, and he has advised the clerk of the circuit court for the Southern district of New York, that the act referred to does not authorize the commencement of an action at law by such a summons. This action of the circuit judge makes it proper that the practice in this district be made to conform to that directed by the circuit judge, in the Southern district, and, accordingly, the summons served in this action must be set aside, as unauthorized by any law of the United States.

[2] {Reported by Hon. Samuel Blatchford, District Judge, and here reprinted by permission.}