

BROWN V. POND AND OTHERS.

District Court, S. D. New York. November, 1880.

Where the *Pracipe* directing the clerk to issue summons in an action for “statutory penalty; amount claimed, \$80,000,” is followed by the service of such a summons on the defendant, who was first informed of the nature of the plaintiff’s claim in an affidavit accompanying an order extending plaintiff’s time to serve a complaint:

Held, that a motion made to set aside the summons must be granted for the same reasons that apply in the case between the same parties heretofore decided, [*supra*, 31.]

Charles N. Judson and *E. H. Bien*, for defendants.

Kobbe & Fowler, for plaintiff.

CHOATE, D. J. This is like the case between the same parties decided to-day, [*supra*, 31.] except that the complaint has been served. The *pracipe* directs the clerk to issue summons in an action for “statutory penalty; amount claimed, \$80,000.” It is shown by affidavit, and is not contradicted, that the defendant was first informed of the nature of the plaintiff’s claim on the sixteenth of June, 1880, upon the service of an affidavit accompanying an order extending plaintiff’s time to serve his complaint. This motion to set aside the summons was made on the twenty-first of June.

For the reasons stated in the other case between the same parties the motion must be granted.

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