

Opinion of the Court.

business, or any officer or other person upon whom the summons may by law be served, known to the plaintiff, or if such defendant be a non-resident, or a non-resident corporation, to the sheriff or other proper officer of the county in which plaintiff shall bring his action. But such an attempt must be followed by the first publication of the summons, or the service thereof within sixty days. If the action be in a court not of record, the service thereof must be made with due diligence."

Now, it is clear from what was said in the case of *Amy v. Watertown*, (No. 1,) *ante*, 301, that there was never any legal service of process upon the defendant in this case. The summons was never served upon the mayor of the city, or upon any person having or exercising the powers of mayor, and there is no pretence that the directions of § 4240 were followed or attempted to be. The action was really not commenced within the meaning of the statute until the attorneys of the defendant voluntarily entered a general appearance. This was done on the 14th of July, 1883. At that time more than ten years and a half had elapsed since the last coupon sued on became due.

We have no hesitation, therefore, in saying, that the court below committed no error in overruling the plaintiffs' demurrer and giving judgment for the defendant. That judgment is

Affirmed.

KNOWLTON v. WATERTOWN, No. 199, **SPALDING v. WATERTOWN**, No. 200. Error to the Circuit Court of the United States for the Western District of Wisconsin. Argued March 13, 1889. Decided April 8, 1889.

MR. JUSTICE BRADLEY: These cases are, in all essential respects, the same as that of No. 198, in which the opinion has just been announced, and the same judgment — of affirmance — is therefore rendered therein.

Affirmed.

Mr. George P. Miller for plaintiffs in error.

Mr. George W. Bird and **Mr. Daniel Hall** for defendant in error.