

PHILLIPS v. COMBSTOCK.

{4 McLean, 525;³ 2 Robb, Pat Cas. 724.}

Circuit Court, D. Indiana.

May Term, 1849.

PLEADING—TIME FOR FILING SPECIAL
PLEA—CONTINUANCE—GENERAL ISSUE.

1. A special plea or notice must be filed thirty days before the term, in a patent case, or the plaintiff will be entitled to a continuance.
2. The option to file the general issue and give notice, does not take away the right to set up the special matter in a plea.

At law.

Mr. Baird, for plaintiff.

Mr. Judah, for defendant.

OPINION OF THE COURT. This is an action for the violation of a patent-right. The defendant filed a special plea, setting up that the right was not in the plaintiff; a previous discovery; and that the right was of no value. And a question was raised whether a special plea could be filed, or whether the plaintiff was not bound to plead the general issue and give notice as authorized by the statute. The court held that a special plea may be filed. That a right to plead the general issue, and give notice by the statute, was an enlargement of the defendant's mode of defence, but that it did not take away his right to plead specially. But the court held also, that as the plea was not put in thirty days before the term, the plaintiff was entitled to a continuance. The statute provides that the notice under the general issue shall be filed thirty days before the term. This entitles the plaintiff to the thirty days whether the matter be set up by a plea or notice.

³ [Reported by Hon. John McLean, Circuit Justice]

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