

NORTON AND OTHERS V. CITY OF PORTSMOUTH.

*Circuit Court, D. New Hampshire.*

June 7, 1887.

TRIAL—FEDERAL PRACTICE—SECTION 914, REV. ST.

Where a defendant, in an action brought in a circuit court of the United States, files several pleas, the court may direct the issues of fact arising on one of the pleas to be tried first, according to the law of the state where the court sits, by virtue of section 914 of the Revised Statutes, under which the practice in the federal courts is made to conform to that of the state where the court is held.

At Law.

The defendant, having been granted leave to plead double, filed several pleas—*First*, the general issue; *second*, the statute of limitations; *third*, a release of all claims, causes of action, etc., under the patent granted to Knibly, and set forth in the declaration; *fourth*, a plea denying infringement, etc.; *fifth*, license; *sixth*, public use of the alleged invention, etc.—and asked the court for a hearing on the third plea, on the ground that if that is sustained by proof there is an end of the case, and the time and expense involved on the trial, which is likely to be a protracted one, would in consequence be saved.

*Harvey D. Hadlock*, for plaintiff.

*William L. Foster*, for defendants.

COLT, J. I am of opinion that the motion of the defendant for an order of court that the issues of fact arising upon the third plea may be first tried, should be granted. By the law of New Hampshire, as laid down in the recent case of *Owen v. Weston*, 63 N. H. 599, 4 Atl. Rep. 801, whether all or a part of the issues in any action should be tried at one time, is a question of justice and convenience. This being an action at law, I see no reason, under section 914 of the Revised Statutes, why the practice of the United States courts should not conform to that of the state. In the present case, I am satisfied that justice and convenience call for the trial first of the issues arising upon defendant's third plea, and that the defendant should not be put to the costs, expense, and trouble of a trial on the merits until a determination of the questions raised by that plea.