

Case No. 8,960. MAGOUN v. NEW ENGLAND GLASS CO.
[3 Ban. & A. 114.]¹

Circuit Court, D. Massachusetts.

Oct., 1877.

PATENTS—INFRINGEMENT—SPECIAL LICENSE.

Where the infringing articles were constructed and used with the knowledge of the complainant and with his consent, and were constructed by him or under his direction, and put into defendant's factories at its expense while in its employment, and were used under his direction before and up to the date of his application for a patent: *Held*, that such a state of facts operates as a special license to use such specific articles.

[Cited in *American Tube-Works v. Bridge-water Iron Co.* 26 Fed. 336; *Jencks v. Langdon Mills*, 27 Fed. 624.]

{This was a bill in equity by Joseph Magoun against the New England Glass Company, alleging the infringement of a patent which was granted to complainant September 10, 1867.}

Geo. E. Betton, for complainant.

Geo. L. Roberts & Bros., for defendant.

SHEPLEY, Circuit Judge. The defendants are not proved to have used any moulds of the construction set forth in complainant's patent, No. 68,633, except such as were constructed and used with the knowledge of the complainant, and with his consent, and were constructed by the complainant or under his direction, and put into defendant's factories and used under his direction before and up to the date of his application for the patent. Such construction of the moulds at defendant's expense while complainant was in their employment, operates as a special license to continue to use those specific moulds. No infringement being proved, the bill is dismissed with costs.

¹ [Reported by Hubert A. Banning, Esq., and Henry Arden, Esq., and here reprinted by permission.]