

WATSON AND ANOTHER V. SMITH AND
ANOTHER.

Circuit Court, S. D. New York.

May 9, 1881.

1. INFRINGEMENT—LICENSE—PROOF.

In a suit for infringement, the allegation of a license is an affirmative defence, and must be made out by the proof.—[ED.]

In Equity.

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WHEELER, D. J. This suit is brought upon letters patent No. 68,656, dated September 10, 1867, and issued to Oliver Salgee for improvements in hose couplings, and owned by the plaintiffs. Manufacture and sale of the patented devices are admitted; the only defence made is that what was done, was, as is claimed, done under a license. This is an affirmative defence, to be made out by proof. That part of the answer setting it up is mere pleading, and not evidence. After careful examination of the proofs it does not appear, by any fair preponderance of evidence, that the parties mutually understood and agreed that the defendants might make use of the patented invention, nor that the plaintiffs gave them warrantably to understand that they might, on which understanding they acted. What they did appears to be a wrongful infringement instead of a matter of contract.

Let there be a decree for an injunction and an account, with costs.

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