

garded by the jury, in every case, as matter of evidence, to the benefit of which the defendant is entitled until overthrown by contrary evidence satisfactory beyond a reasonable doubt. This presumption is very important in cases where the guilt of a party is dependent upon a presumption of law, or where there are doubts arising from insufficient, inconsistent, or conflicting evidence. Where, from a consideration of the entire evidence, a case is left doubtful in the minds of a jury, or a decided majority of a jury, this presumption of innocence should always be sufficient to turn the scale in favor of defendant. In this case, the voluntary killing of the deceased with a deadly weapon having been shown by the declarations of the prisoner, the law raised a presumption that the act was done with malice; and the burden was on the defendant to rebut such presumption to the satisfaction of a jury, but not beyond a reasonable doubt. The presumption of innocence is a counter presumption, not sufficient of itself to rebut the presumption of malice; but it should have much weight, as the evidence tends to show, from facts and circumstances, that the killing was not done with malice, but was done in self-defense, when engaged in the execution of legal process, and to avoid serious injury, from a violent assault made by deceased with a deadly weapon while resisting an arrest. In the recent case of *Coffin v. U. S.*, 156 U. S. 432, 15 Sup. Ct. 394, the supreme court of the United States carefully considered the force, effect, and application of the presumption of innocence in the trial of criminal cases. Mr. Justice White, in an elaborate, instructive, and very able opinion, delivered the unanimous decision of the court; holding that such presumption was elementary, and its enforcement lies at the foundation of the administration of our criminal law, and showing from many authorities that such presumption had long existed, and still exists, in every system of jurisprudence which has reason, religion, and humanity for a foundation. It is evidence in favor of the accused, introduced by the law in his behalf, to be considered as proof by the jury, and involves more in the trial of a case than "reasonable doubt" which is only the result of insufficient proof. You are now placed under the care of the marshal, to be kept together in this room. On to-morrow evening this term of the court will be adjourned to Greensboro, for the purpose of your deliberating until a verdict is agreed upon and rendered.

Verdict, "Not guilty."

GABRIEL v. McCABE et al.

(Circuit Court, N. D. Illinois. June 8, 1896.)

COPYRIGHT—LICENSE—USE OF SONG IN COMPILED BOOK—CHANGES.

Complainant licensed defendants to publish a song, of which he held the copyright, in a book of songs, entitled "Finest of the Wheat No. 2." Defendants issued the book, and subsequently issued a combined edition of it and another collection, entitled "Finest of the Wheat No. 1," in which the two books, without change of contents, were bound under one cover. They also issued an abridged edition, in which about 100 songs from "Finest of the Wheat No. 2," including complainant's, were printed without change, this edition being used chiefly as an advertisement of the larger.

Complainant brought suit to enjoin the publication of his song in the combined and abridged editions. *Held* that, by licensing the use of his song in a general compilation, complainant, having made no explicit declaration to the contrary, consented that future editions might be issued containing his song, and might be characterized by omissions or additions of other matter, within fair limits, which had not been exceeded in this case.

This was a bill by Charles H. Gabriel against R. R. McCabe and George D. Elderkin to restrain the infringement of his copyright.

In January, 1894, George D. Elderkin, who was then acting as one of the editors of a book of songs about to be published by the defendant R. R. McCabe, obtained from Charles H. Gabriel, the holder of a copyright on a song entitled "When the Roll is Called up Yonder," the following writing:

"Chicago, January 1, 1894.

"It is hereby agreed that George D. Elderkin has right to use my copyright piece 'When the Roll is Called up Yonder' in the book to be entitled 'Finest of the Wheat No. 2.'

"[Signed]

Charles H. Gabriel."

Pursuant to this license, the defendant McCabe, acting with the said Elderkin, published the song "When the Roll is Called up Yonder" in the song collection entitled "Finest of the Wheat No. 2." Subsequently the defendants published a "combined edition" in which "Finest of the Wheat No. 2," without alteration, was bound under one cover with another volume, entitled "Finest of the Wheat No. 1." Defendants also published an "abridged" edition, consisting of about 100 songs from the book "Finest of the Wheat No. 2," including the song "When the Roll is Called up Yonder." This abridged edition was printed from the same plates as the complete edition, and was used to advertise the complete edition; purchasers of the abridged edition having the option of purchasing the complete edition within one year, and of having the purchase price paid for the abridged edition deducted from the price of the complete edition.

Gabriel filed his bill of complaint, alleging infringement of his copyright by a publication of the song "When the Roll is Called up Yonder" in the combined and abridged editions of "Finest of the Wheat No. 2."

N. A. Partridge and C. S. Williston, for complainant.
J. H. Raymond, for defendants.

GROSSCUP, District Judge. This is a bill for injunction to restrain infringement of a copyright. The complainant claims a copyright upon a religious song entitled "When the Roll is Called up Yonder." It is admitted that on January 1, 1894, complainant licensed George D. Elderkin to use this copyright in a book to be entitled "Finest of the Wheat No. 2." Defendants, among other defenses, claim right under this license. The proof shows that the defendants have issued abridged copies of the "Finest of the Wheat No. 2," in which the copyrighted song was included, and also a book comprising the whole of "Finest of the Wheat No. 2," and another book of religious songs, known as "Finest of the Wheat No. 1." In neither the abridgment nor the enlarged work is there any change in the print of the music or the words of the copyrighted song, nor is there any change in the music and words of the other songs, except that, in the abridgment, certain songs are omitted. It is not contended that either the abridgment or the enlarged book is in its general character different from that of "Finest of the Wheat No. 2."

The question presented is whether the use of the copyrighted song in this abridgment and in the enlarged book is a fair use under the license. I have been furnished with no adjudications pertinent to

this question. It seems to me that the author of an article who has licensed its use in some general book containing articles of a like character, such, for instance, as an encyclopædia, fairly and reasonably intends, in the absence of some explicit declaration to the contrary, that future editions of the book containing the article may be issued, and also that such future editions may be characterized by omissions or additions of other articles, or changes in the other articles, within fair limits, if such changes be not inconsistent with the general tenor of the original book. To hold otherwise would practically forbid any new editions of books of compilation, for the consent of all the authors contributing could not, in many instances, be obtained. A license to publish a song in a book of songs would not fairly permit of its publication alone as sheet music, even though bearing the title of the book of songs. Such a use would, in its effect upon the receipts of the author and profits of the publisher, be a decisive departure from the apparent intention of the parties. While it is true that, by a process of emendation, the book known as "Finest of the Wheat No. 2" might, in the end, come to be a publication of the complainant's song alone, the actual facts of this case are otherwise. It may be difficult to draw the line where the rights of the publisher end, but, until his conduct offends one's sense of fair play and a reasonable interpretation of the parties' intentions, the line has not been reached.

I am of the opinion that the publication known as the "abridgment" and the enlarged book, called to my attention, are not outside of the reasonable intendment of the parties. The abridgment does not approach the point of publication of the song as a single sheet of music,—the smallest one brought to my attention having upwards of 100 songs,—but is evidently intended as an exhibit of samples of the original book. For these reasons the bill will be dismissed.

CAMPBELL v. H. T. CONDE IMPLEMENT CO.

(Circuit Court, D. Indiana. March 2, 1896.)

No. 9,031.

1. PATENTS—COMBINATIONS—PRESUMPTIONS.

Failure to claim separately any of the elements composing a patented combination raises a presumption that none of them are novel. *Richards v. Elevator Co.*, 16 Sup Ct. 53, 159 U. S. 477, followed.

2. SAME—CORN PLANTERS.

The Campbell patent, No. 324,983, for a combined corn planter and fertilizer distributor, consisting of a hopper having the rear portion inwardly curved in circular form, and extending across both dropping disks (a cell-disk through which the corn passes, and a cell-disk through which the fertilizer passes), geared together, for simultaneously dropping the corn and fertilizer, is void, as being simply for a new collocation or juxtaposition of old elements producing no new function, operation, or result.

This was a bill in equity by James Campbell against the H. T. Conde Implement Company for alleged infringement of a patent.

George B. Parkinson, for complainant.

J. H. Raymond, for defendant.