

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.

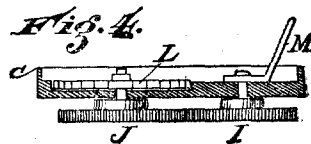
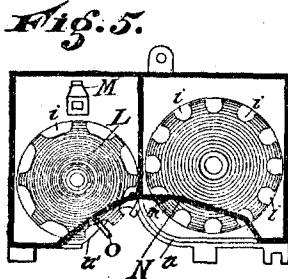
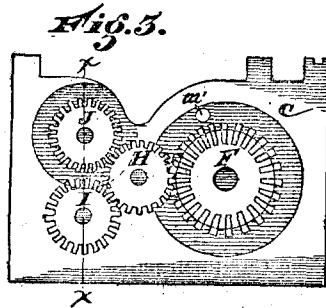
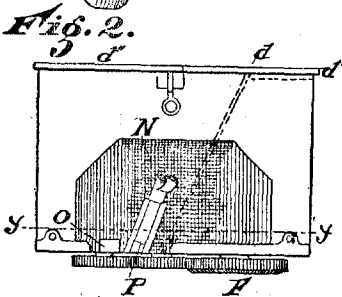
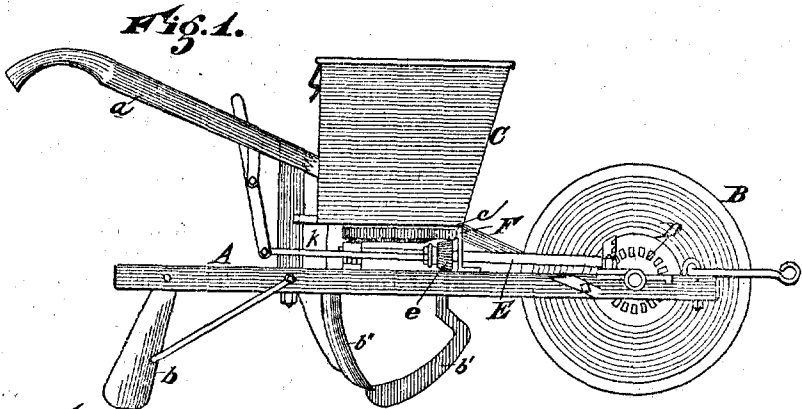
The Campbell patent, No. 324,983, for a combined corn planter and fertilizer distributor, consisting of a hopper having the rear portion inwardly curved in circular form, and extending across both dropping disks (a cell-disk through which the corn passes, and a cell-disk through which the fertilizer 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.

BAKER, District Judge. This is a suit for the alleged infringement of claims 2 and 5 of letters patent No. 324,983, issued August 25, 1885, to James Campbell, the complainant, for a "combined corn planter and fertilizer distributor." The object of the alleged invention is to produce a pilot-wheel corn planter with a fertilizing attachment so constructed and arranged that the fertilizing material can be dropped with the corn, and so that the operator can see the dropping operation upon the rear side of the hopper. This object is accomplished by a device consisting of a machine to be drawn through a cornfield having a cell-disk, K, for corn; a cell-disk, L, for fertilizing material, the two being geared so as to co-operate; a hopper for the whole, to carry the corn and fertilizer separately, which hopper is cut away or curved so as to show both of the cell plates or disks; and a flange, n, to prevent the corn from spilling.



The claims alleged to have been infringed are the following:

"(2) In a combined corn planter and fertilizer distributor, the combination of the corn-dropping disk, K, and the fertilizer dropper disk, L, geared together to drop the fertilizer at or near the same point as the corn, with the hopper, C, having the rear portion, N, inwardly curved in circular form, and extending over the two disks, and the bottom plate, c, having the upwardly turned flange, n, substantially as described." "(5) In a combined corn planter and fertilizer distributor, the combination of the two dropping plates, K and L, geared together for simultaneously dropping the corn and fertilizer, with the hopper having the rear portion inwardly curved in a circular form, and extending across both dropping disks, substantially as described."

These two claims differ in no respect except that the fifth is broader than the second in the omission of the flange, n, for preventing the spilling of the corn. It seems too plain for doubt that the addition of the flange to the combination of claim 5 does not of itself lend patentability to the subject-matter of claim 2; and it necessarily follows that, if claim 5 is invalid for any reason, claim 2 cannot be supported. Omitting the flange found in claim 2, we find that the essential elements of the combination embodied in each claim are the following: A hopper of any suitable material, 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, both geared together for simultaneously dropping the corn and fertilizer. Every element of this combination is old. The gearing device for simultaneously dropping the corn and fertilizer is also old and well known. Indeed, the failure to claim either one of the elements separately raises a presumption that no one of them is novel. *Richards v. Elevator Co.*, 159 U. S. 477, 16 Sup. Ct. 53.

In view of the prior state of the art as shown by the proofs, the court sees nothing novel in the combination of these old elements disclosed in the claims in question. These claims are simply for a new collocation or juxtaposition of old and well-known elements found in similar devices in common use. This new collocation or juxtaposition of old elements produces no new function, operation, or result. The only thing done is to bring together these three old and well-known elements in the construction of a corn planter and fertilizer distributor. The elements used produce no new result or effect, because used in combination. Each element produces its appropriate effect, unchanged by the others. Merely bringing old devices or elements into juxtaposition, and there allowing each to work out its own effect, without the production of something novel, is not invention. There is nothing disclosed in the prior relation of the parties which will estop the defendant to question the validity of the complainant's patent. The bill is dismissed at complainant's costs for want of equity.

THE LOUISIANA.

HARTY v. CROMWELL S. S. CO. et al.

(Circuit Court of Appeals, Fifth Circuit. May 5, 1896.)

No. 396.

1. SHIPPING—INJURY TO STEVEDORE—OPEN HATCH.

A stevedore going into the between-decks, in the daytime, pursuant to the orders of the foreman in charge, fell down an unguarded hatchway, which was lighted by a port six feet square, a hatch eight feet square, and four deadlights. It was not customary on that vessel, or any other vessel coming into the port, to keep any railing about the hatch, and the preponderance of the evidence showed that it was usual to leave the hatchway uncovered until the hold was fully stored. *Held*, that the accident was due to the stevedore's own negligence, and the vessel was not liable.

2. SAME—NEGLIGENCE OF FELLOW SERVANTS.

Where a stevedore engaged in discharging cargo fell through an unguarded hatchway in the between-decks, *held*, that if there was any obligation to have the hatchway closed, the duty of opening and closing it when necessary rested upon the squad of laborers working in the between-decks, who were the stevedore's fellow servants, and the ship was not liable.

3. SAME—WHO ARE FELLOW SERVANTS—FOREMAN.

An under-foreman (called the third foreman) in charge of a squad of stevedore's laborers, is their fellow servant as to any injury occurring to one of them through his negligence. *Railroad Co. v. Baugh*, 13 Sup. Ct. 914, 149 U. S. 368, followed.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

This was a libel in rem by Patrick Harty against the steamship Louisiana, of which the Cromwell Steamship Company and E. V. Gager, master, were claimants, to recover damages for personal injuries. The district court dismissed the libel, and the libellant appealed.

Bernard Titcher and O. B. Sansum, for appellant.

J. P. Blair, for appellees.

Before PARDEE and McCORMICK, Circuit Judges, and SPEER, District Judge.

SPEER, District Judge. The libellant, Patrick Harty, was, on the 19th day of September, 1892, employed as a laborer in discharging a cargo from the steamship Louisiana, belonging to the defendant company. The steamship at that time was moored at the foot of St. Louis street, in the city of New Orleans. While so engaged, the libellant was ordered by the foreman in charge to proceed to the aft part of the vessel between-decks, and complying with this direction he fell through an open hatchway into the hold of the vessel, as stated in the libel, from 25 to 30 feet, and as a result of the fall he received severe injuries to his back, arms, legs, and other portions of his body, and was, it is stated, for the time, completely paralyzed. He was confined, it is alleged, to his bed, for a period of five months, and during more than three months of this time was helpless. It is alleged that he received perma-