will of the business purchased; that L. was guilty of a breach of the contract; and that he and the other members of the corporation should be perpetually enjoined from using the name of Kalamazoo Buggy Company, or the circulars resembling those used by M. in the transaction of their business. *Beal* v. *Chase*, 31 Mich. 490. (2) The decree of the Circuit Court, in addition to enjoining defendants from use of the name of Kalamazoo Buggy Company, and the use of the circulars resembling M.'s circulars, enjoined defendants from receiving mail from the post-office addressed to the Kalamazoo Buggy Company, with a provision requiring M. to deliver to defendants any mail received by him and intended for defendants, or either of them. *Held*, that this part of the decree was erroneous, and could not be sustained. *Myers* v. *Kalamazoo Buggy Co.*, Supreme Court, Michigan. Opinion by Cooley, C.J. Decided Sept. 23, 1884; 30 Albany L.J. 517.

Copyright—Lecture—Publication—Injunction. The publication by one who had attended lectures delivered orally by an eminent surgeon, of a summary or epitome thereof, under the name of the lecturer, as author of such epitome, will be enjoined. The publication of a book containing the substance of such lectures, however, will not be restrained. *Miller's Appeal*, Supreme Court, Pennsylvania. Decided April 21, 1884; 30 A.L.J. 514.

SALE OR BAILMENT.

It is the glory of the common law, that its "plastic and accommodating nature" lends itself readily to the varying exigencies of modern civilization, yet occasionally, a case arises where it is as difficult to accommodate old principles to new facts as old wine to new bottles. For example: it is at present the universal custom to store grain in "bulk"—that is, to put all grain of like kind and quality in the same bin of an elevator. The convenience of this method is obvious. It greatly economises space, and thereby reduces the expenses of storage. If a special bin were required for every particular bailment, it would be necessary to construct elevators like beehives with an infinite number of cells whose division walls would require as much space as the grain stored. For convenience and economy, therefore, it is usually agreed that all grain of the same kind and quality shall be mixed together. Receipts are issued to depositors for the number of bushels stored—who become "tenants in common" of the entire mass.* So far, little difficulty is found in determining the mutual rights and obligations of the depositors and warehouseman. The contract is one of bailment. The warehouseman is bound to use reasonable care in the conduct of his house. If loss is suffered without his fault, it falls upon the depositors—who share *pro rata*. A different state of facts may, and in fact, usually does, arise, in the conduct of elevators. Grain is put in at the top of a bin as fast as it is drawn out at the bottom, and it may well happen, that none of the identical grain for which receipts are outstanding, will remain in store. The question now is, upon whom shall a loss fall, in case of damage by fire or inevitable accident? The holder of a receipt urges that none of his grain has been injured. It passed through the elevator and was delivered to other parties. The bailee is bound to replace his property by an equivalent and cannot deliver to him damaged inferior grain. In support of this position, it may be urged that the facts above stated, constitute a sale and not a bailment. They cannot be brought within any definition of bailment, found in the books. "Bailment is a delivery of goods in trust upon a contract express or implied, that the trust should be duly executed, and the goods restored by the bailee." If we add "as delivered to the agent or representative of the bailor,"—the definition is broad enough to cover all disputed ground.†

Where the grain stored has been delivered to any one except the holder of the receipt issued for it, it cannot be returned to the bailor. If done without authority, the grain has been converted; if by permission, the transaction is a sale and not a bailment, for wherever a thing is declared to be accounted

* *Chase* v. *Washburn*, 1 Ohio St. 244; *Cushing* v. *Bond*, 14 Allen, 380.

† Bouv. Dict. Story Bail, Sec. 2; 2 Black. Com. 395; Jones on Bail, 1,117; *Coggs* v. *Bernard*, 2 Ld. Raym., 917; Schouler on B. 2; Hammond, Lectures on Bail, 3; 2 Kent, 550.