for the delivery of certain negroes, may, by a new bill, recover their increase and profits subsequent to the auditor's report, and not included

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plainant, a receiver will be appointed. A receiver will not be appointed, however, when the appointment will subject the co-tenant to inconvenience and expense, without corresponding benefit to the complainant, and such co-tenant will give the complainant security for the rents and profits. *Low* v. *Holmes*, 17 N. J. Eq. (2 C. E. Green,) 148.

When a warehouseman receives grain to be stored for the owners, and places it in a common bin with his own, or that received from other depositors, the weight of authority is that the contract is one of bailment and not of sale, and all the parties are tenants in common. *Rice* v. *Nixon*, 97 Indiana, 97; *Sexton* v. *Graham*, 53 Iowa, 181. Where a warehouseman, without a special agreement but in pursuance of a custom, mixed the grain of several depositors in a common mass, it was held, that they became tenants in common of the entire amount of like quantity, and for the negligent destruction of the same could each recover the value of his grain. *Arthur* v. *R. R.* 61 Iowa, 648. Where a warehouseman having in store a quantity of wheat deposited by several persons, for which under the statute he issues receipts to each depositor, fraudulently disposes of part of the wheat, the receipt holders must share in what remains according to the equitable interest of each to be ascertained by an accounting. *Dows* v. *Eckstrone*, 3 Fed. Rep. 19. In an article on Grain Elevators in 6 Am. Law Rev. 465, it is contended that the warehousemen should be considered as bailees to keep, with power to change the bailor's tenancy in severalty into a tenancy in common of a proportionately larger mass, and back again, and also with a continuous power of sale, substitution and re-sale. At any given moment, holders of receipts are tenants in common of the amount in store in proportion of their receipts. If it is wholly destroyed by accident, the warehouseman will not be liable further on his receipts: if it is injured or a part destroyed, the loss should be borne proportionately. See also *Bank* v. *Meadowcroft*, 4 Bradwell, 630; *Bailey* v. *Bensley*, 87 Ill. 556. As to rights of the bailor against the assignor of the warehouseman, see *Schindler* v. *Westover*, 99 Ind. 396. It is provided by Rev. Code, Art. 65, secs 12, *et seq.* that elevator receipts, &c., shall imply title to the grain in the hands of *bona fide* holders: shall be negotiable instruments and conclusive evidence of the receipt of the goods by the bailee. And it is made a misdemeanor for a warehouseman to issue a receipt for goods not actually received, or a second receipt till the first be cancelled, or to deliver any part of the goods except upon presentation of the receipt and cancellation, or endorsement thereon.

As to the ownership in common created by the mixture or confusion of goods, see *Jewett* v. *Dringer*, 30 N. J. Eq. 291, Reporter's note: *Pulcifer* v. *Page*, 54 Am. Dec. 590, *note*. If the mixture was by accident, or mistake, or the wrongful act of a stranger, the parties become tenants in common. 2 *Kent Com.* 365, *note* 1. Where one party supplies lumber and the other makes shingles out of it and is to receive a certain quantity of shingles in payment of his labor, the parties are tenants in common. *White* v. *Brooks*, 43 N. H. 402. Where a vessel loaded with cotton was wrecked and some of the cotton was saved, but the marks upon the bales obliterated, it was held that all the shippers were tenants in common of the bales saved. *Spence* v. *Ins. Co.* L. R. 3 C. P. 427. If a man wilfully and wrongfully mixes his own goods with those of another owner, so as to render them undistinguishable, he will not be entitled to his proportion, or any part, of the property. *The Idaho*, 93 U. S. 585. And so if the wrong-doer confounds his own goods with goods which he suspects may belong to another, and does this with in-