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THE PROTECTION OF A HOLDER OF A WAREHOUSE RECEIPT

By John Hanna*

INTRODUCTION

A warehouse receipt is a written acknowledgment by a bailee that goods are held by him. A dock warrant is a warehouse receipt issued by a warehouse which is a dock. Warehouse receipts and dock warrants are documents of title; that means that for most purposes the receipt is regarded as equivalent to the cotton, wheat, tobacco, canned goods, frozen strawberries, iron, bales of cloth, or other articles of commerce represented by it. Such goods are customarily pledged or sold by the transfer of the documents that represent them. The commissioners on uniform state laws have drafted and sponsored a law known as the Uniform Warehouse Receipts Act. The Act has been adopted in practically all the states and territories. There is also a United States Warehouse Act.

The Uniform Warehouse Receipts Act is concerned primarily with the issuance and use of warehouse receipts. Such receipts are either negotiable or non-negotiable. Non-negotiable receipts must be plainly marked "non-negotiable." Different colors are frequently used still further to distinguish negotiable from non-negotiable documents. When duplicate documents of title are issued, they must be plainly so marked. If there is an outstanding negotiable receipt, the warehouseman is entitled to deliver a commodity only to the holder on surrender of the document. If the receipt is non-negotiable, the warehouseman may deliver the commodity to the depositor unless he has received notice of the transfer of the document of title. If the warehouseman makes a delivery while a negotiable document is outstanding, he is liable to the bona fide holder. At the present time if a warehouse receipt

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2 Williston, Contracts, sec. 1046, et seq.

is issued without the receipt of goods, the issuer is also liable to
the bona fide holder.\textsuperscript{4}

For all practical purposes warehouse receipts are now as fully
negotiable as bills of exchange or promissory notes in states where
the amendment proposed in 1922 by the commissioners on uniform
state laws has been adopted. Formerly the bona fide transferee
of the stolen or lost receipt was not protected.

A warehouse receipt, depending upon its form, may be trans-
ferred by delivery either with or without endorsement. If the
document is negotiable the bona fide transferee obtains it free of
equities between the prior parties; if it is non-negotiable, he obtains
the rights the transferee had.

A creditor who has received the pledge of a non-negotiable
receipt may protect himself by notifying the warehouseman that
the goods described in the receipt are to be delivered only to his
order. Since the warehouseman may not release stored goods
represented by negotiable receipts, until the receipt is surrendered,
it is often inconvenient for the borrower who has pledged receipts
representing all its commodity holdings, to make sales. This is
especially true when the commodity in question is represented
by receipts covering units which cannot be readily adapted to
buyers' orders. For example, a pledged negotiable warehouse
receipt may cover a certain quantity of frozen strawberries or
milk powder in a cold storage warehouse. If a part of the lot
covered by the receipt has been sold, the bank must arrange
for the delivery of the receipt and the acceptance of a new one,
or the borrower cannot make delivery. Perhaps the best plan
in such a case is for the borrower to arrange for a non-negotiable
receipt to be issued to its creditor. When sales are made the
creditor can authorize the delivery of specified amounts and
qualities upon such conditions as he sees fit without surrendering
the receipt.

The present practice in the case of tobacco, cotton and some
other commodities is to issue a separate document of title for each
commercial unit, e.g. hogshead or bale. Since the physical labor
of indorsing so many documents is considerable, it is customary
for documents of title, especially warehouse receipts, to be in-
dorsed in blank. This obviates the necessity of an indorsement

\textsuperscript{4}Sec. 20 of the Warehouse Receipts Act. A similar provision is
found in sec. 23 of the Bills of Lading Act. The carrier may protect
himself by inserting the words "shippers' load and count."
when they are returned to the pledgor, or transferred. In this connection it should be noted that while the transferror of a document of title warrants its genuineness, his title and right to transfer and his lack of knowledge of defects, his indorsement does not make him a surety for subsequent parties, as in the case of bills and notes.

The document of title has no validity unless the shipper or depositor is the owner or has the right of disposal of the goods represented by the document. The mere issuance of a bill of lading or warehouse receipt to a thief, or finder, or mortgagee, does not deprive the owner or lienor of his rights. On the other hand, if a negotiable document is outstanding, the goods themselves are not subject to levy and attachment. If the document of title is non-negotiable, the goods are subject to levy and attachment as the property of the shipper or depositor, until a pledgee or transferee of the document has notified the carrier or warehouseman of his interest.

Where documents of title are to be attached to negotiable instruments expected to circulate in the money market, the documents should invariably be negotiable. Where the documents of title, however, are pledged to a creditor, especially a local creditor, with whom they are to remain until the goods are sold, and there is a sound business argument in favor of the use of a non-negotiable document, counsel for the lender should have no difficulty in affording his client complete protection in the use of non-negotiable security.

One of the first painful experiences of lawyers, to say nothing of their clients, is the realization of the purely nominal significance of many verdicts for the plaintiff. If a railroad misconducts itself in respect to a bill of lading, the holder of the document will likely be able to collect any judgment recovered. He has no such assurance if he is the holder of a warehouse receipt. The fact that he has a perfect civil right against the warehouseman, and even that the warehouseman may be sent to jail, does not improve his security if the note-maker and warehouseman are insolvent, and the warehouse is empty. This article is not concerned primarily with the statutory requirements as to the issuance of receipts and duplicates, their cancellation and the like, nor with the criminal sanctions provided for unlawful conduct by warehousemen, but with legal and administrative requirements in-
tended to assure the responsibility of the issuer of warehouse receipts.

**UNITED STATES WAREHOUSE ACT**

The United States Warehouse Act is designed not only to insure the use of acceptable forms of warehouse receipts, but also to make certain of the integrity and standing of warehousemen. A warehouse is licensed under the federal act not only after a rigorous inspection of its physical plant, but also after a thorough investigation of the financial standing and character of the organization and management. The regulations of the Department of Agriculture, which is intrusted with the administration of the Act, impose several severe but fair requirements, including that of a bond by an approved surety company in an amount depending upon the storage space, and designed to afford genuine protection in proportion to the liabilities assumed. After the license is issued, the warehouses are examined by federal inspectors at least four times annually. The department has insisted that no receipt be issued by any warehouseman until the commodity is actually in storage and that no stored commodity under any circumstances shall be delivered until the receipt is actually in the hands of the warehouseman and cancelled. The federal inspectors have also developed a standard form of warehouse receipt containing the recitals specified in the uniform act and have been adamant in requiring warehousemen to use only approved forms. The rapid advance in standardization of products has materially increased the reliability of documents of title.

The administration of the federal warehouse act under H. S. Yohe, while subject to some criticism, chiefly from warehousemen, has been conspicuously courageous and intelligent. Most agencies which finance cooperative associations will accept only federal warehouse receipts as security unless other warehouses have been specially approved in connection with a particular loan. If unlicensed local warehouses are used, the borrower is required to post a surety bond covering the integrity of the security.

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5Act of Aug. 11, 1916, ch. 313, sec. 1, 39 Stat. 486, 7 U. S. C. A. ch. 10, sec. 241, 260. When the warehouse law was first passed it applied only to cotton, grain, wool and tobacco. In February 1923 it was amended to provide that the secretary of agriculture should decide for the storage of what products warehouses could be licensed under the Act. Since 1923 there have been placed on the eligible list in addition to the original four, late crop potatoes, farmer's stock peanuts, broom-corn, dried beans, dried fruit, syrup and several other commodities.
larger terminal warehouses are occasionally approved by creditors on the basis of their financial statements.

Aside from the comments of some individual warehousemen of excellent standing who are inclined to complain of the alleged inflexibility of certain federal standards, such as requirements of open space, and who resent the frequency and cost of inspections, the sharpest criticisms of the federal warehouse administration have come from cooperative association officers who have sought licenses from warehouse subsidiaries of the association. There is little doubt that the warehouse experts of the department of agriculture dislike to approve licenses for warehouses whose chief if not sole business is with the associations that control them. It is also true that certain bankers insist upon collateral issued by independent warehouses, and by independent is meant more than separate legal identity. The unity of control brings an undoubted temptation to irregularity. This fact places an increased burden on the federal inspection service. Warehouses in the federal system have made nearly a perfect record thus far, and the department of agriculture naturally fears the consequences of any relaxation of standards. The solution seems to lie merely in the maintenance of the present warehousing standards. If there is legal separation and other compliance with the law, the cooperative association’s subsidiary warehouse corporation is entitled to a license. The cooperative executives, if the subsidiaries are to be recognized as distinct entities, must respect the legal status of the subsidiaries. The warehouse administration must tighten its inspection requirements to the degree necessary to maintain the integrity of federal warehouse receipts even if issued by subsidiary to parent. The policy of recent federal legislation points too clearly in the direction of cooperative control of facilities to make genuinely independent warehousing generally practicable.

**State Warehouse Laws**

While some states are merely satisfied with the Uniform Warehouse Receipts Act supplemented by penalties for issuing a receipt before actually receiving goods and with other criminal sanctions, most states have some form of supplementary statute dealing with licensing and bonding of warehouses. Requirements may vary for local and terminal warehouses and for warehouses engaged in the storage of different sorts of personal property.
Both North and South Carolina have a form of state operation of warehouses. Mention will be made later also of a number of state laws permitting the issuance of warehouse receipts against agricultural property stored on farms.

The most conspicuous and perhaps the most important feature of a warehouse statute is the bonding requirement. If the bonding system is adequate, the holder of the receipt is generally protected even against dishonest warehousemen and in spite of lax state inspection. Moreover, the bonding system itself, because of the investigation made by the bonding companies, has a pronounced tendency to eliminate criminals from the warehouse business and to supplement the activities of state inspectors. The great majority of states leave the approval of the surety on warehouse bonds to the discretion of some agricultural board or commissioner. One group of states allows the judge of the county court to approve bondsmen. Oklahoma is satisfied with the discretion of the clerk of the county court, while Kansas and South Dakota place on the secretary of state this responsibility. Massachusetts, Nebraska and New Hampshire go still higher and require the governor to pass upon the sufficiency of the sureties. Several

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10Massachusetts, Gen. Laws 1921, ch. 105, sec. 1; Nebraska, Laws
states eliminate all provisions as to the discretion of an official and require merely a surety or bonding company that is complying with the laws of the state.\(^{11}\) Alabama adds the requirement that the company be one which has a reputation for settling claims promptly on the merits.\(^{12}\) Finally a few states require either a recognized company or "good and sufficient sureties."\(^{13}\) The inherent danger of such a choice is sought to be removed by various sorts of regulations, an example of which may be found in a rule of the North Dakota Board of Railroad Commissioners:

"All personal surety bonds must be signed by at least four North Dakota resident freeholders, each of whom must justify for twice the amount of the bond, over and above his debts and exemptions, and submit to this board a financial statement, under oath, on the form furnished by the board."\(^{14}\)

In practice the protection offered by local personal sureties is unsatisfactory. In the first place the financial situation of the sureties is apt to change with any alteration in the prosperity of the locality so that what affects the responsibility of the warehouseman will also affect the responsibility of the bondsman. While the bondsmen may be required to keep the warehouse commission informed of any change in their financial status, they are quite likely to overlook this requirement. The nominal existence of some criminal sanction is usually irrelevant. Moreover, a personal surety never signs a bond with the thought that he will be compelled to pay. He regards his position as a bondsman merely as a recommendation of the business standing of the principal. If the principal defaults, even a reputable bondsman is quite likely to transfer his property, or take other means of preventing or making more difficult a realization on the bond.

\(^{11}\) Arizona, Laws 1927, ch. 79, Arizona, Rev. Code 1928, sec. 3276; Georgia, Acts 1899, p. 84, Georgia, Ann. Code, Park 1914, sec. 2911; South Carolina, Laws 1896, ch. 32, South Carolina, Code 1922, sec. 3899. See Faircloth-Segrest Mercantile Co. v. Roach, (1924) 211 Ala. 498, 100 So. 908. An Alabama statute required that a warehouse furnish bond of a surety company. (Alabama, Acts 1923, art. 34, sec. 36, p. 492.) The warehousemen offered an individual surety which was rejected. In an action to compel the acceptance of the surety it was held that the bond offered was properly refused. The statute was a valid exercise of the police power.

1927, sec. 393.
1927, sec. 8002.
14Rule No. 9, Rules and Regulations, Board of R. R. Comm. 1927.
There is no uniformity among the states as to the amount of the warehousemen's bond. Some follow the federal system and allow the amount to be determined by the same official that approves the sureties. This discretion is controlled in other states by the fixing of a minimum and maximum amount, for example, from $5,000 to $50,000. A few states determine the amount by requiring a bond of from 5% to 10% of the estimated value to be stored. Others measure the bond by the highest amount of storage during the past year. Still others use the bushel capacity test and require a certain sum per 10,000 bushels. Many states use the obviously unsafe and unfair method of setting a definite sum, as the amount of the bond. The geographical factors are also allowed to affect the amount of the bond; thus Louisiana sets a flat rate of $5,000, but if the population of the city in which the warehouse is located exceeds 50,000 then the bond must be for $25,000. Minnesota fixes $50,000 as a warehouseman's bond.


in cities of the first class, but leaves the amount in other cities to be determined by the commission.\textsuperscript{21}

A common statutory provision permits the administrative body supervising the warehouse system to require an additional bond if, for any reason, the old one has become impaired or is deemed insufficient in the light of any changed circumstances. The sanction for not furnishing such additional protection within a stipulated time is either suspension or revocation of the warehouse license.\textsuperscript{22}

In several states if a bond has been given to and accepted by the United States Department of Agriculture, in connection with an application for a federal license, no other bond is required by

\textsuperscript{21}Minnesota, Laws 1927, ch. 360.

\textsuperscript{22}Alabama, Agricultural Code 1927, sec. 394; California, Statutes 1921, ch. 693; Idaho, Laws 1921, ch. 34; Iowa, Code 1927, sec. 9748; Kansas, Laws 1927, ch. 340; Minnesota, Laws 1923, ch. 201; Minnesota, Statutes, Mason 1927, sec. 5071; North Dakota, Laws 1927, ch. 155; Oregon, Laws 1903, p. 253, Oregon, Laws, Olson 1920, sec. 8003; South Dakota, Laws 1925, ch. 299, South Dakota, Rev. Code 1919, sec. 9751; see Rule No. 7 of Rules and Reg. of Board of R. R. Com., 1927: "Value of outstanding storage must be covered by grain in warehouse or an approved bond filed with the board of railway commissioners. Cash advances, endorsed upon storage receipt, will be allowed as a credit against storage liability as shown by receipts outstanding. The amount of grain on hand plus advances plus bonds must at all times equal amount of storage liability." The last sentence of the rule of the South Dakota's commissioner raises the interesting question as to whether the commissioner may contemplate that elevators will be allowed to release stored grain against which they have hedging contracts, provided the amount so released does not exceed the warehouse bond. At least until a comparatively recent time, if the practice is not still common, it was a reprehensible custom in certain northwestern states for elevators to assume they might sell and release customers' grain, provided they protected themselves by hedging contracts. Since the hedging contracts are made on a basis of the ordinary wheat trading unit and quality, while the released grain may be a superlative quality of premium wheat, the chance of loss to depositor and pledgee is apparent. An interesting case showing the limitations on the power of warehouse commissioners over bonding companies is State v. Stutsman et al., (1912) 24 N. D. 68, 139 N. W. 83. The warehouseman became insolvent and the surety company effected a settlement on a 50 per cent basis with holders of warehouse receipts. The warehouse commission did not approve of the settlement and ordered the surety company to make full payment. The surety company refused. The commission then cancelled the bond and the surety company applied for a writ of prohibition. The writ was granted and the commission appealed. Before the appeal was decided the bond expired. The supreme court decided nevertheless to adjudicate the question and held (1) the fact that the storage company had complied with the laws of the state and satisfied the insurance commissioner did not preclude the board of railway commissioners in charge of warehouses from declining the bond; (2) the railway commissioners had no power to cancel the bond because of the failure of the surety company to effect a settlement satisfactory to it.
the state authorities.\textsuperscript{23} Oregon, however, makes the further requirement that if its bond is to be accepted by the state, the company furnishing the bond given to the United States must be one that has also complied with the Oregon laws.\textsuperscript{24} North Carolina does not require any bond if the capitalization of the warehouse is at least $5,000.

The form and contents of the bond are subject to the approval of some administrative body or official, though the statutes commonly specify the condition of the bond. The condition usually reads somewhat as follows:

"To secure the faithful performance of his obligations as a warehouseman under the laws of the state of ............ as well as under the terms of this act and the rules and regulations prescribed hereunder, and of such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of agricultural products in such warehouse."

Another provision which appears in every act accords to an individual injured by the breach of an obligation the right to sue on the bond, although the bond customarily is made payable to the state, and is filed with the official issuing the license. While the injured individual usually may sue in his own name, in some states the suit must be brought in the name of the state, although for the benefit of the injured party. It should be noted that not all states require every public warehouse to be bonded. However, in states in which the giving of a bond is optional, only those warehouses which are bonded are entitled to be called "bonded warehouses" or "state licensed warehouses."

The second general requirement for the protection of the public in the warehouse statutes is concerned with the licensing of public places of storage. While not as effective a protection as the bonding requirement, it does have its value in states which require an inspection prior to the granting of a license and results in the elimination of patently unfit warehouses from the privilege of doing business. Moreover, the license requirements and the bonding requirements are very closely connected. The practice is now substantially uniform of requiring the filing of some sort of bond as a condition precedent to the granting of a license.

State licensing officials fall within two general categories.


\textsuperscript{24}Oregon, Laws 1923, ch. 78, Oregon, Gen. Laws Supp. 1927, sec. 6145.
first class includes various elective or appointive officials, such as governor, secretary of state, district or county judge, or clerk of the court. The other category includes officials who are either appointed solely to administer the warehouse law, or whose other duties are more or less analogous. The provisions in the statute designating the official who is authorized to grant warehouse licenses usually give an accurate indication of the actual conditions precedent to the granting of a license. If the licensing official has many other duties he obviously will look almost solely for formal requisites; on the other hand, if a large part of the duties of an administrative body is the licensing of warehouses, the statutory provisions will be supplemented by rules and regulations which will enable the warehouse commissioners in many instances to exercise a real discretion before granting the license. Where the licenses are granted by a judge, clerk, secretary of state or governor, no inspection seems to be required prior to the granting of a license. In most of these states, however, the license is revocable by the circuit court of the county, upon a summary proceeding, after written complaint of any person who sets forth the particular violations of the law with satisfactory proof. Tennessee requires proof to the clerk of the court before the granting of a license.

"By the testimony of two impartial witnesses known to him to be well qualified, from knowledge and experience, as judges in the matter, that he is the proprietor of a good and sufficient warehouse, situated so as to be exposed to no extraordinary risk from fire or flood."

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The Nebraska statute seems to imply that the governor personally will take the responsibility for the licensing of a warehouse.\textsuperscript{25} Massachusetts gives the governor the advice and consent of the council.\textsuperscript{20} Alabama allows the judge of the probate court in the county to issue the license, but his duty is perfunctory. However, before the license may be issued, the applicant must present a permit signed by the commissioner of agriculture. The commissioner himself is required to investigate the veracity of the statements made in the application in order to ascertain whether the proposed warehouse building is suitable and whether there has been compliance with all rules and regulations.\textsuperscript{30}

The remaining states which have a license system, as has been indicated, leave the matter of granting licenses to some administrative or official body which has direct supervision over the warehouse system. Some statutes categorically require a thorough examination of the warehouse before a license is granted, in this respect following the example of the United States Warehouse Act.\textsuperscript{31}

These same statutes also provide for the suspension or revocation of a license, after a hearing, for any failure to comply with any provision of the warehouse law or with the rules and regulations prescribed by the administrative body. Pending investigation the warehouse commissioners may suspend temporarily without a hearing.\textsuperscript{32} Several states will not grant or renew a license if the applicant has refused to furnish a report required of him by statute, or by an administrative body under authorization of a statute.\textsuperscript{33} There remains only one small group of states whose

\footnotesize{\textsuperscript{25}Nebraska, Laws 1909, p. 555, Nebraska, Comp. Stat. 1922, sec. 7222. 
\textsuperscript{20}Massachusetts, Gen. Laws 1921, ch. 105, sec. 1. 
\textsuperscript{30}Alabama, Agricultural Code 1927, sec. 390-1. 
\textsuperscript{33}Kansas, Laws 1921, ch. 200, Kansas, Rev. Stat. 1923, ch. 34, art. 211; Minnesota, Laws 1923, ch. 114, Minnesota, Stat., Mason 1927, sec.}
statutes merely stipulate that a license may be obtained from a named administrative body. Five states allow the officials empowered to grant or renew licenses the privilege of refusing a license to any applicant whose previous license has been revoked within a year. A few statutes specifically provide for an appeal from a refusal to grant a license. This appeal generally may be filed in the circuit court of the county where the warehouse is located. Alabama gives to the findings of the state board of agriculture, which is the licensing board, a presumption of correctness, and puts the burden on the applicant to show beyond a reasonable doubt that he is entitled to a license.

Licenses are usually granted for a year with the privilege of annual renewals. The customary annual fee is $10. This fee goes to the state, frequently being credited to a special fund created to meet the expenses of supervising the warehouse system. The control of application blanks is almost always left to the licensing board. Licensing requirements, as well as bonding requirements, are mandatory in some states; in others, optional. Where a license is mandatory, there is usually a statutory fine for each day's operation without a license, and in some states further operation may be enjoined on the petition of the attorney general or the department of agriculture.

5070; Nebraska, Acts Sp. Sess. 1930, No. 11. North Dakota, Laws 1927, ch. 155. The authority of warehouse commissioners is not unlimited. Miller Cold Storage Co. v. State, (1928) 195 Wis. 361, 218 N. W. 192. The statute dealing with cold storage warehouses provided for criminal prosecution in case of violation of the provisions of the chapter. The defendant was convicted for failure to keep actual records of food received and drawn out. His particular default was his neglect to comply with the commission's requirements to record the date when eggs were received and to make an account of the ownership of eggs. Conviction was set aside, the court holding that violation of a rule or interpretation of the commission which enlarged the scope of the statute, was not punishable.


Massachusetts and New Hampshire require the secretary of state:

"At the expense of each warehouseman, to give notice of his license and qualification, of the amount of his bond, and also of the discontinuance of his license, by publishing the same for not less than ten days in one or more newspapers of the town."

If there is no such newspaper, then Boston and Manchester respectively may be substituted. One finds occasional provisions under which a license may be granted to one not a warehouseman, which permits him to accept custody of products provided he furnishes the bond stipulated in the warehouse act. Another form of license, which is not discussed in this article, deals with the privilege of classifying, weighing and grading cotton and other commodities.

The third device which is used to supplement the bonding and licensing requirement is that of warehouse inspection. When it is conducted as frequently and thoroughly as is the practice of the United States Department of Agriculture, it can do much to maintain the integrity of a safe warehouse system. So far as the states are concerned on this point, it is not safe to assume that even the inspections required by law are actually made. Whatever the statutory requirements, if the funds provided for the warehouse department are inadequate to pay the necessary staff of inspectors, it will be physically impossible to follow the statutory directions. Moreover, if inspections are made, it is quite possible for these inspections to be so routine as to afford only nominal protection. Even the state banking examinations in certain jurisdictions have acquired an unenviable reputation for laxness. The majority of state statutes requiring warehouse inspection merely give authority to some administrative board to inspect when it sees fit. The usual phrasing of the statutory provision is somewhat as follows:

"The commission may cause every warehouse and mode of conducting same to be inspected by one or more of its members, whenever deemed proper, and the property, books, records, accounts, papers and proceedings of every such warehouseman shall at all times during business hours be subject to such inspection."

Oklahoma requires an inspection at least once every six months.\textsuperscript{40} Wisconsin requires that grain in storage be measured at least three times annually.\textsuperscript{41} California, Idaho and Iowa require a classification of warehouses in accordance with ownership, location, capacity and surroundings. Warehouse commissioners of these states, as well as of Minnesota, are authorized to prescribe in some detail the duties of the warehouseman. The supervising warehouse inspector of California writes that four inspections are made annually. The Idaho warehouse department writes that:

"Regular inspection of stored products is not made for the reason that sufficient funds have not been provided to carry on such work. Original examinations to determine fitness of structures for storage are made in all instances."

In California, Idaho and Iowa the warehouse commissioner may publish his findings if his inspection discloses that a warehouseman is lax in his duties. Naturally a license may be revoked for cause. Such cause is generally discovered only by official inspection. Several states, however, allow a warehouse to be inspected by any person having an interest in property stored there.\textsuperscript{42} Other states merely allow patrons of the warehouse to examine book entries relating to their property.\textsuperscript{43}

As a corollary to the inspection system one often finds in statutory requirements that:

"Every warehouseman conducting a warehouse licensed under this act shall keep in a place of safety complete and correct records of all agricultural products stored therein and withdrawn there-\ldots"
from, of all warehouse receipts issued by him, and of the receipts returned to and cancelled by him.\textsuperscript{44}

North Dakota places upon its railway commission the duty of planning a uniform system of accounting and recommending its adoption to all warehousemen. If 15\% of the stockholders of a warehouse petition the commission to such effect, the commission must install an accounting system. Thereafter the commission must examine the books at least once a year until asked by the stockholders to discontinue its examinations. The result of this examination is to be reported to the president and secretary of the warehouse corporation or association. If the railway commission is satisfied with the methods used and the condition disclosed, it is to issue a certificate of solvency, which may be conspicuously posted. If, on the other hand, the commission considers that the warehouse is operating on an unsafe basis it is to mail a copy of such finding to each of the stockholders.\textsuperscript{45}

Several states require warehouses to post on or before Tuesday morning of each week in a conspicuous part of the business office the amount and kind of grain in storage at the close of business on the preceding Saturday.\textsuperscript{46}

A characteristic of all forms of public supervision is the requirement of reports. When the report blanks are shrewdly devised and carefully scrutinized after they are filed, the report system may be of real significance in administration. This is especially true when the reports represent examinations and inspections by skilful public employees. No one would deny, however, that literally tons of the reports which constitute various sorts of public archives do not now constitute and never have constituted anything of the slightest value to the public. Too often reports are merely filed as received and serve no purpose


\textsuperscript{45}North Dakota, Laws 1913, ch. 236, North Dakota, Comp. Laws 1913, sec. 3130-32.

except as they may be used for the compilation of statistical tables which themselves have few readers. Warehouse laws usually provide that a licensed warehouseman shall make reports to the director of agriculture or other official concerning his warehouse and its condition and contents as well as the operations of his business. Such reports must be in the form and must be filed at such times as the public official may require. In addition some of these states require specifically an annual report which must show the total amount of produce received and delivered as well as the total outstanding receipts and the amount of produce on hand to cover them. North and South Dakota require a monthly report. Six states exact a report every week; Georgia, Illinois, Kansas, Minnesota, Oklahoma and Wisconsin. Of these, Illinois, Minnesota and Wisconsin require as to grain a daily report to the registrar of warehouses, showing the amount and kind of grain received the day before, grain delivered, and receipts cancelled. Kentucky also requires such a daily report. Oregon and Washington have a system of registered receipts. The warehouseman within thirty-six hours after the receipt of grain must file with

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49 North Dakota, Laws 1927, ch. 155; South Dakota, Laws 1925, ch. 299; South Dakota, Rev. Code 1919, sec. 9751.


51 Kentucky, Laws 1893, ch. 256; Kentucky, Stat., Carroll 1930, sec. 4790.
the registrar at the terminal point where the warehouse is situated a report showing the amount received, the name of the owner, and certain other relevant facts. The receipts are delivered to the registrar, who enters them in a book and stamps on each receipt the word "Registered," with the date. The registrar then affixes his signature and returns the receipts to the warehouseman for delivery to the depositor. When the owner wishes to withdraw his grain, he must go to the registrar, who stamps the receipt "Registered for Cancellation," after appropriate entry in the books of the registrar. Only then may the warehouseman deliver the grain. The warehouse commission of Kansas writes that the same system has been inaugurated in Kansas for terminal warehouses under a regulation adopted by the commission. It is understood that Kansas also expects to extend the system to local warehouses. While the registrar will not prevent an unscrupulous warehouseman from committing larceny, it seems likely that any conversion of grain would usually be discovered in a short time.

The various state laws exhibit a considerable variety in respect to provisions for assisting the public officials to enforce the warehouse statutes and regulations. Minnesota has a provision which, whenever a warehouseman fails to obey the law or an order of the commission, allows the commission on verified petition to apply to the district court of the county in which the warehouseman has his principal place of business. The court must hear such petition as if it were a case of an appeal from an order of court. The findings of fact by the commission are prima facie evidence. The court may grant other legal or equitable relief and may impose a fine of not more than $50 for each day's failure to obey its order. A temporary mandatory or restraining order may be made notwithstanding any undetermined issue of fact, upon such terms of security as the court may direct. Tennessee requires the judges of its circuit courts to give a complaint dealing with warehouses to the grand jury who are instructed to make diligent inquiry of breaches, particularly with regard to the conduct of inspectors. Montana would protect her receipt holders by the following:

"Whenever any warehouseman is found to be in a position where he cannot, or where there is a probability that he will not meet in full all storage obligations or other obligations resulting from the delivery of grain, it shall be the duty of the department of agriculture, through the division of grain standards, to intervene in the interests of the holders of warehouse receipts or other evidences of delivery of grain for which payment has not been made, and the department shall have authority to do any and all things lawful and needful for the protection of the interests of the holders of warehouse receipts or other evidences of the delivery of grain for which payment has not been made, and when examination by the department shall disclose that for any reason it is impossible for a warehouseman to settle in full all outstanding warehouse receipts or other evidences of delivery of grain for which payment has not been made, without having recourse upon the bond filed by said warehouseman, it shall then be the duty of the department for the use and benefit of holders of such unpaid receipts, etc., to demand payment of its undertaking by the surety upon the bond in such amount as may be necessary for full settlement of warehouse receipts, etc. It shall be the duty of the attorney general or any county attorney to represent the department in any necessary action against such bond when facts constituting grounds for action are laid before him by the department of agriculture."\textsuperscript{55}

North Dakota in 1927 amended its warehouse act to include a plan intended to protect receipt holders in cases of the warehouseman's insolvency.\textsuperscript{56} Insolvency is determined by a refusal to redeem a receipt upon demand. Upon such refusal all grain in the warehouse, the proceeds of insurance policies, the cause of action upon any bond, and any causes of action for conversion in respect to the stored grain constitute a trust fund for the redemption of outstanding receipts. Upon insolvency of the warehouseman it becomes the duty of the board of railway commissioners to apply to the district court of Burleigh County, the county in which the state capital is located, for appointment as trustee of the fund. After notice to the warehouseman, or waiver of such notice, the court is to determine in a summary manner the application of the board. If it appears to the court that there is in fact insolvency and that it would be for the best interests of the receipt holders that the board of railway commissioners

\textsuperscript{54}Tennessee, Laws 1871, ch. 65; Tennessee, Ann. Code, Shannon 1917, sec. 3405.

\textsuperscript{55}Montana, Laws 1923, ch. 41 amended, Laws 1925, ch. 42; Montana, Rev. Code Supp. 1927, sec. 3589A.

\textsuperscript{56}North Dakota, Laws 1927, ch. 156.
execute the trust, the judge must issue an order appointing the commission as trustee. 'No bond is required of the trustee, nor does it need any direction of the court to perform its further duties. The trustee is entitled to the possession of all books and records; of all the grain; and of all the outstanding receipts. After obtaining the receipts, the trustee is to sue on the bond and also may sue all converters of any grain for the benefit of all receipt holders. The only proviso is that the remedy against insurers be first exhausted before suing on the bond; the remedy against both of these must generally be exhausted before suing honest converters. If the commission thinks it necessary, however, it may sue both insurers and converters at once. The receipt holders may not pursue these remedies individually, unless the commission fails to have itself appointed trustee after a request by five or more holders. The commission is empowered to compromise any action if it thinks it to be in the best interests of the receipt holders to do so. All monies collected must be deposited in the Bank of North Dakota. After recovery of the trust fund, the trustee must file a report with the court showing the amount payable on each receipt. If there is not enough to pay all receipt holders, the holders must be notified and they thereupon have an opportunity to show cause why a pro rata payment should not be approved. Upon a hearing the court shall approve or modify the report of the trustees and issue an order directing distribution of the fund. When the fund is distributed and the distribution approved, the court will discharge the commission from its trust.

Even if warehouse receipts are properly issued and the warehouseman is honest and responsible, the holder of the receipt always must face the possibility of the destruction of the property without fault of the warehouseman. Since the holder of the receipt has an insurable interest in the products which it represents, he is in a position to protect himself by placing insurance thereon. Where the original holder pledges warehouse receipts, it is often the practice of the pledgor to obtain blanket insurance policies, insuring himself and all pledgees as interest may appear. Many statutes provide that a warehouseman must insure stored property upon written request of any receipt holder. A few statutes make it obligatory upon the warehouseman to provide tornado, wind and fire insurance immediately upon receipt of the produce and without request by anybody.
FIELD STORAGE WAREHOUSING

The past few years have seen an accumulation of an increasing surplus of several important agricultural commodities, notably wheat and cotton. The existence of these large surpluses has taxed the resources of licensed warehouses to capacity. To facilitate the financing of crop carry-overs the proposal is frequently made that arrangements be legalized whereby warehouse receipts can be issued representing agricultural products stored at the farms on which they have been raised. While the dangers inherent in the use of such warehouse receipts are obvious, several states have enacted laws under which farm warehouses may operate. The typical scheme is somewhat as follows. A landowner, tenant, or manager of land who wishes to obtain a loan on non-perishable produce, may store it in a building on his farm and can receive a warehouse certificate by complying with the provisions of the act. He must get a warehouse license from the clerk of the county court. The clerk must be convinced that the building designated as a warehouse is a suitable structure in which to store the product in question. The board of county commissioners of each county is authorized, and upon a petition of twenty farmers resident within the county, is directed, to appoint one or more men as may be needed who are to serve as warehouse inspectors. They may collect a fee of $5 from each applicant for a warehouse certificate. Each inspector must take an oath of faithful service and give a bond prescribed by the board in the sum of not less than $5,000. The duties of the inspector are: (1) upon application, to examine the farm building which is sought to be designated as a warehouse; (2) if the building is approved, to test the bin or other receptacle which is to contain the product; (3) make a sample of the product and forward it to the state inspector for grading, and to issue a receipt after receiving the grade; (4) to make a weekly report to the county clerk of all inspections. A warehouse license may be cancelled by the clerk on recommendation of the warehouse inspector after personal examination of the warehouse. The holder of a license, whenever his warehouse has been approved as safe, and the produce has been graded, is entitled to have the inspector issue a warehouse receipt for the stored produce. The form of the warehouse receipt is prescribed by the commissioner of agriculture and approved by the attorney general. These receipts are negotiable.
The person to whom the farm warehouse license is issued must insure against loss by fire, tornado and wind storm in some good and responsible insurance company before negotiating the receipts.\textsuperscript{57}

Texas and Arkansas have similar statutes which allow the formation of warehouse corporations to operate along the lines of the farm or field warehouses. Any number of persons, but not less than ten, 60\% of whom must be engaged in agriculture, horticulture or stock-raising, and three-quarters of whom must be residents of the state, may apply for a charter to the warehouse commissioner. The application is to be accompanied by an affidavit of three applicants, showing that not less than 50\% of the capital stock has actually been paid in. The capital stock is never to be less than $500, divided into $5 shares. If not paid for in cash, the application must set out the actual mode of payment. The corporation has the powers of an ordinary warehouseman. It may also act as the selling agent for farm, ranch or orchard products on a commission or other agreed basis; may purchase, construct or lease warehouses necessary for its business; may employ other agencies necessary to store and preserve products, and may loan money up to 75\% of the market value of products stored in the warehouse. It may also loan money on chattel mortgages, but only to members, and only to enable members to mature their crops. Such chattel mortgages must cover property worth at least twice the amount of the loan. Farm warehouse corporations may also lend on crop mortgages for the same purpose, but crop mortgages must always be a first lien exclusive of the landlord's lien and the estimated value of the crop must be double the amount of the loan. The capital stock of the warehouse corporation and its surplus may be invested in its warehouse or in its office building as well as in certain federal and local public bond issues.

\textsuperscript{57}Mississippi, Laws 1924, ch. 270; Mississippi, Ann. Code Hemingway 1927, sec. 9599-9605; Montana, Laws 1923, ch. 59; Montana, Rev. Code Supp. 1927, sec. 4138-4138.8; Nebraska, Acts Sp. Sess. 1930, House Roll No. 12; South Dakota, Laws 1923, ch. 306. Where the state constitution includes agricultural matters commonly found only in statutes, there may occasionally be constitutional obstacles to the establishment of farm warehouses. See Hannah v. People, (1902) 198 Ill. 77, 54 N. E. 776, in which an amendment to the warehouse law permitting the proprietors of class “A” warehouses to store and mix their own grain with other grain and to deal in their own warehouse receipts, was held unconstitutional. The court said it was inconsistent with the duties to the public imposed on warehouseman by art. xiii of the Illinois constitution.
Before the charter is delivered to the warehouse corporation, it must execute a bond to the state, in an amount to be determined by the commissioner. This amount may be varied from time to time, in accordance with the volume of business done, or expected to be done by the corporation. The bond must be approved by the warehouse commission before it is filed. If the bond becomes impaired, a new and sufficient bond must be furnished. If this is not done within thirty days, the commission may proceed to wind up the corporation. If the warehouse commissioner takes charge, he is empowered to collect by suit or otherwise the full amount of the bond, or so much of it as is necessary to discharge the corporation's obligations.

The commissioner must require that the corporation file in his office, at least twice a year, a statement showing the condition of its reserve fund, assets and liabilities, and such other information as he may deem advisable. This statement is to be on the oath of at least one of the managing officers, and attested to by a majority of the directors. The commissioner is to examine the affairs and dealings of the corporation, at its expense, at least once a year. If he finds it insolvent, or finds that it has exceeded its powers, or that its business is being conducted in an unsafe manner, or that it has failed to comply with any provision of this chapter, the commissioner shall report to the attorney general who may bring the necessary actions. If the corporation refuses to submit its books for inspection, or if any officer refuses to be examined under oath, or if the corporation has violated any law binding on it, the commissioner is to report to the attorney general, who shall institute such proceedings as are authorized against an insolvent corporation. Whenever the commissioner believes that the stock has become impaired, he must require that it be made good by written notice. Whenever it appears to him that the corporation is conducting its business in an unsafe and unauthorized manner, he must direct its discontinuance. If wrong entries are made in the books, he must see that they are corrected. If wrong uses are made of the funds, he must see that the person wrongfully using them makes it good. If the corporation refuses or neglects to make any required report, or comply with any order, the commissioner is to communicate that fact to the attorney general. If upon examination the warehouse commissioner discovers that a warehouse corporation is insolvent, or that its continuance
in business will seriously jeopardize the interests of the stockholders or creditors, he may immediately close the doors of the corporation and take charge of all its property and effects. Upon taking charge he is to ascertain the exact financial condition. If satisfied that the corporation cannot resume business, or that it is unsafe to allow it the privilege of voluntary liquidation, he is to report to the attorney general. Upon receipt of this notice the attorney general must institute proper proceedings to have a receiver appointed to wind up the business for the benefit of creditors and members.

The court or judge, in term or vacation, has power to grant such orders as may be necessary to proper relief. The warehouse commissioner may appoint a special agent to take charge until a receiver is appointed. Such agent must give a bond; but he is never to be in charge for a period exceeding sixty days. Any warehouse corporation may place its affairs under the control of the commissioner upon notice to him and by posting a notice on its front door as follows: "This institution is in the hands of the commissioner of ............... of the state of Texas (or Arkansas)." The commissioner has the power to deny a warehouse permit, or to revoke one, when in his judgment there are sufficient warehouse facilities at the point where a new corporation may desire to do business.58

STATE WAREHOUSE SYSTEMS

Both North and South Carolina have a statute similar in many respects to the United States Warehouse Act, but is goes further in that the state guarantees the integrity of the warehouse receipt. The law is administered by the state board of agriculture through the state warehouse superintendent. In each state any person or corporation desiring to run a warehouse applies to the superintendent. If the superintendent finds the proposed warehouse suitable for the storage of cotton, it is leased to the state until the August 31 following. The purpose of the leasing device is to facilitate state supervision. The state neither pays nor is responsible for rental. The private warehouse organization assumes all risk of financial loss or gain. It must, however, obey the warehouse statute and the rules and regulations issued thereunder. Licenses are issued for one year ending August 31, but are renew-

able annually. The state warehouse superintendent licenses each of the warehouses in the system under the United States Warehouse Act in the name of the state warehouse superintendent. The superintendent then appoints a local manager to take charge of the warehouse. It is the usual practice to appoint the person recommended by the owners of the property. The board of county commissioners and the president of a bank in the county must attest to the good character of the local manager. The manager must also furnish an acceptable bond. The warehouse superintendent takes out the insurance himself. This is in the form of a general cover policy up to $5,000,000 maximum for a single locality. The warehouse receipts state that they are issued subject to the laws of the United States and the laws of the state; that the cotton they represent is fully insured, and that their integrity is guaranteed by the state. Every state leased and operated warehouse is subject to four state and federal inspections annually. The examiners report infractions and the local manager must rectify them. The whole state system is optional.\(^{59}\)

**Conclusion**

Warehouse receipts are used so extensively in the financing of agricultural products that current discussion of warehouse administration and supervision often assumes that warehouses store little besides grain and cotton. This overlooks the great warehouse enterprises in New York and other importing and exporting centers which provide storage facilities for goods of every description from all over the world. The business of warehousing naturally classifies itself first, as agricultural and non-agricultural and second, on a different basis, as the source of security offered to central financing agencies, and as the origin of documents of title securing local lenders. A number of states have frankly recognized these classifications, and have largely left to the federal government the licensing and supervision of the larger warehouses storing agricultural products. Compliance with federal requirements becomes automatically a compliance with state standards. The state administration can then give its full attention to non-agricultural warehouses and to the smaller local warehouses whose receipts will be offered chiefly to local banks and other community financing agencies. The system of farm ware-

\(^{59}\)North Carolina, Acts 1921, No. 198; South Carolina, Pub. Laws 1921, ch. 137.
housing develops, the governmental agencies like the Federal Intermediate Credit Banks and the Federal Farm Board, as well as the larger city banks, will undoubtedly be asked to accept field storage receipts as collateral security. Nothing in the present standards of state inspection indicates that such requests can safely be granted. It is quite possible, however, that in states where warehouse licensing, bonding and inspection are satisfactory, a compromise response can be made which will enable the central financing agencies to lend to responsible intermediate borrowers who have themselves financed local borrowers on the security of products stored in the smaller warehouses.