

Chapter 77

Warehouse Receipts, Bills of Lading and Other Documents of Title

77.1020

CASE CITATIONS: *State v. Am. Sur. Co.*, (1934) 148 Or 1, 35 P2d 487.

ATTY. GEN. OPINIONS: When a corporation is considered a "warehouseman," 1940-42, p 269.

77.1040

NOTES OF DECISIONS

1. Under former similar statute

A receipt requiring return of wheat upon demand to the order of a named person was negotiable. *State v. Am. Sur. Co.*, (1934) 148 Or 1, 35 P2d 487.

Warehouse receipts were negotiable that contained all of the statutory requirements with the exception that they were not consecutively numbered, and were payable to order. *Bank of Calif., Nat. Assn. v. Schmaltz*, (1932) 139 Or 163, 9 P2d 112.

A straight bill of lading was not negotiable. *Weyerhaeuser Timber Co. v. First Nat. Bank*, (1935) 150 Or 172, 217, 38 P2d 48, 43 P2d 1078.

FURTHER CITATIONS: *Gill & Co. v. Frank & Koshland*, (1885) 12 Or 507; *Anderson v. Portland Flouring Mills Co.*, (1900) 37 Or 483, 60 P 839, 50 LRA 235; *Finn v. Erickson*, (1928) 127 Or 107, 269 P 232, 270 P 767.

LAW REVIEW CITATIONS: 1 OLR 116; 8 OLR 99.

77.2010

NOTES OF DECISIONS

Under a former similar statute, the owner of the grain stored had to be given a receipt therefore. *Wyatt v. Henderson*, (1897) 31 Or 48, 48 P 790; *Milliorn v. Clow*, (1902) 42 Or 169, 70 P 398; *Diamond Roller Mills v. Moody*, (1912) 63 Or 90, 125 P 284, 126 P 984.

FURTHER CITATIONS: *State v. Stockman*, (1896) 30 Or 36, 46 P 851; *State v. Koshland*, (1893) 25 Or 178, 35 P 32; *Adamson v. Frazier*, (1901) 40 Or 273, 66 P 810, 67 P 300; *State v. Humphreys*, (1902) 43 Or 44, 70 P 824.

ATTY. GEN. OPINIONS: Duty of warehouseman to issue and deliver receipt, 1924-26, p 634.

77.2020

NOTES OF DECISIONS

1. Under former similar statute

Warehousemen were not prevented from recovering reasonable compensation for storage because the receipt did not conform in all particulars with requirements of the statute. *Finn v. Erickson*, (1928) 127 Or 107, 269 P 232, 270 P 767.

Where a receipt was not executed upon delivery of goods to warehouse, a contract arose embracing the various terms

required by law. *Voyt v. Bekins Moving & Storage Co.*, (1942) 169 Or 30, 119 P2d 586, 127 P2d 360.

A document could be a warehouse receipt without expressly complying with all of the requirements of the statute. *Investment Serv. Co. v. O'Brien*, (1950) 190 Or 394, 223 P2d 163.

FURTHER CITATIONS: *State v. Humphreys*, (1902) 43 Or 44, 70 P 824; *Savage v. Salem Mills Co.*, (1906) 48 Or 1, 85 P 69, 10 Ann Cas 1065.

ATTY. GEN. OPINIONS: Liability of warehouseman who delivers the grade and quantity of grain named in warehouse receipt, 1924-26, p 327; insurance provision in warehouse receipt, 1928-30, p 156; legality of blank negotiable warehouse receipt, 1932-34, p 276.

LAW REVIEW CITATIONS: 8 OLR 220.

77.2040

NOTES OF DECISIONS

1. Under former similar statute

(1) **In general.** A warehouseman was liable for defects in his warehouse unless such defects were unknown to him and could not have been discovered by the use of ordinary care. *Hansen-Rynning v. Ore.-Wash. R.R. & Nav. Co.*, (1922) 105 Or 67, 209 P 462.

Where a warehouseman negligently exposed goods to the hazard of freezing, he was liable for damages resulting therefrom. *Hubbard v. Olsen-Roe Transfer Co.*, (1924) 110 Or 618, 224 P 636.

A bailor was presumed to know the contents of a receipt containing only the provisions required by law. *Voyt v. Bekins Moving & Storage Co.*, (1942) 169 Or 30, 119 P2d 586, 127 P2d 360.

The warehouseman's duty at common law was that of ordinary reasonable care and the same duty was expressed in the warehouse receipt. *Id.*

The burden was on the warehouseman to show his freedom from fault. *Scott v. Lawrence Whse. Co.*, (1961) 227 Or 78, 360 P2d 610.

(2) **Exemption from liability.** A provision in a warehouse receipt that the warehouseman would not be responsible for his own negligence was void. *Reeder v. No. Pac. R.R.*, (1922) 283 Fed 786; *Bank of Calif., Nat. Assn. v. Schmaltz*, (1932) 139 Or 163, 9 P2d 112; *Voyt v. Bekins Moving & Storage Co.*, (1942) 169 Or 30, 119 P2d 586, 127 P2d 360.

Where a warehouse was leased and the lease exempted the lessor from liability due to its negligence, holders of warehouse receipts waiving recovery from the lessor or lessee were nevertheless allowed to recover from the lessor for damages caused by its negligence. *Reeder v. No. Pac. R.R.*, (1922) 283 Fed 786.

(3) **Agreed value of goods.** A valid contractual provision as to agreed value fairly arrived at was binding notwithstanding negligent loss of goods by warehouseman. *Voyt v. Bekins Moving & Storage Co.*, (1942) 169 Or 30, 119 P2d 586, 127 P2d 360.

(4) **Acceptance necessary.** The right to insert additional terms does not give such terms the force of contract unless the parties' minds can be said to have met thereon. *Voyt v. Bekins Moving & Storage Co.*, (1942) 169 Or 30, 119 P2d 586, 127 P2d 360.

Retention of the warehouse receipt did not manifest acceptance of its provisions. *Id.*

FURTHER CITATIONS: *Herring v. Springbrook Packing Co.*, (1956) 208 Or 191, 299 P2d 604, 300 P2d 473.

ATTY. GEN. OPINIONS: Provision in warehouse receipt issued by an elevator company exempting a railway company from liability to third persons, 1926-28, p 560; provision relative to insurance, 1928-30, p 156; provision relative to liability, 1932-34, p 276.

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ATTY. GEN. OPINIONS: Distribution where warehouseman mingles goods of depositors, 1926-28, p 15.

77.2090

NOTES OF DECISIONS

1. Under former similar statute

The implication from the statutes was that a lien existed for warehouseman's charges where the receipt was nonnegotiable. *Finn v. Erickson*, (1928) 127 Or 107, 269 P 232, 270 P 767.

In claim and delivery against a warehouse, it could set up an equitable defense and secure foreclosure of its lien, notwithstanding the statute. *Fischer Bros. Milling Co. v. Lawrence Whse. Co.*, (1932) 138 Or 439, 4 P2d 1117.

A warehouseman had a first and prior lien on wheat stored by tenants. *Milton Whse. Co. v. Basche-Sage Hdw. Co.*, (1934) 147 Or 563, 34 P2d 338, 978.

ATTY. GEN. OPINIONS: Warehouseman's lien for insurance on goods stored, 1928-30, p 156.

77.3090

CASE CITATIONS: *Timber Structures, Inc. v. So. Pac. Co.*, (1964) 237 Or 42, 390 P2d 343, 16 ALR3d 1102.

77.4030

NOTES OF DECISIONS

1. Under former similar statute

Warehousemen by shipping potatoes without demanding warehouse receipts as required by the statute were liable to pledgee of said receipts. *Farmers' Bank of Weston v. Ellis*, (1927) 122 Or 266, 258 P 186; *Farmers' Bank of Weston v. Ellis*, (1928) 126 Or 602, 268 P 1009.

Where by mistake a greater quantity of grain was surrendered by the warehouseman to the depositor than he was entitled to, trover would lie to recover the excess or its value. *Miller v. Hirschberg*, (1895) 27 Or 522, 40 P 506.

Where warehousemen delivered goods to a pledgor of negotiable warehouse receipts and failed to take up and cancel the receipts as required by this section, it was no defense in an action for conversion by the pledgee of the receipts to show the pledgor had assigned the proceeds of the goods to the pledgee. *Farmers' Bank v. Ellis*, (1928) 126 Or 602, 268 P 1009.

Where warehouseman delivered portion of hops covered by warehouse receipts to person not entitled thereto, such act amounted to conversion of all bales represented by receipts. *Bank of Calif., Nat. Assn. v. Schmaltz*, (1932) 139 Or 163, 9 P2d 112.

Upon presentation of negotiable warehouse receipts, owner was entitled to identical property stored, and warehouseman could not fulfill obligation by partial performance. *Id.*

A warehouseman was entitled to reasonable storage charges upon delivering grain pursuant to the statute. *Milton Whse. Co. v. Basche-Sage Hdw. Co.*, (1934) 147 Or 563, 34 P2d 338, 978.

The statute was not applicable unless a warehouse receipt was involved in the litigation. *Investment Serv. Co. v. O'Brien*, (1950) 190 Or 394, 223 P2d 163.

An "Order for Warehouse Release" was not such a release as would terminate liability. *Scott v. Lawrence Whse. Co.*, (1961) 227 Or 78, 360 P2d 610.

An "Order for Warehouse Release" was (1) a formal demand imposing the duty on the warehouseman to deliver the goods, and (2) evidence of redelivery when filed in the regular course of business. *Id.*

The burden was on the warehouseman to show his freedom from fault. *Id.*

FURTHER CITATIONS: *Diamond Roller Mills v. Moody*, (1912) 63 Or 90, 125 P 284, 126 P 984; *National Fire Ins. Co. v. Morgan*, (1949) 186 Or 285, 206 P2d 963.

ATTY. GEN. OPINIONS: Duty of warehouseman to deliver grain in case of adverse claim, 1924-26, p 634.

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NOTES OF DECISIONS

Under former similar statute, where warehousemen delivered goods to a pledgor of negotiable warehouse receipts, they acted at their peril in relying on the pledgor's verbal statement that he was acting for the pledgee. *Farmers' Bank of Weston v. Ellis*, (1927) 122 Or 266, 258 P 186; *Farmers' Bank of Weston v. Ellis*, (1928) 126 Or 602, 268 P 1009.

Under former similar statute, where warehousemen delivered goods to a pledgor of negotiable warehouse receipts and failed to take up and cancel the receipts as required by the statute, it was no defense in an action for conversion by the pledgee of the receipts to show the pledgor had assigned the proceeds of the goods to the pledgee. *Farmers' Bank v. Ellis*, (1928) 126 Or 602, 268 P 1009.

77.5010

NOTES OF DECISIONS

1. Under former similar statute

The former statute applied the law of negotiable instruments to warehouse receipts with respect to what was a "reasonable time" in which a warehouse receipt had to be negotiated. *State v. Am. Sur. Co.*, (1934) 148 Or 1, 35 P2d 487.

The assignee of a nonnegotiable document was put on notice that there might be outstanding equities against the goods represented thereby or the proceeds thereof. *Weyerhaeuser Timber Co. v. First Nat. Bank of Portland*, (1935) 150 Or 172, 38 P2d 48, 43 P2d 1078.

Delivery of an undorsed warehouse receipt to a buyer of hops was substantial evidence of acceptance of the hops and transfer of title. *Pokorny v. Williams*, (1953) 199 Or 17, 260 P2d 490.

Plaintiffs were transferees of nonnegotiable warehouse receipts. *Scott v. Lawrence Whse. Co.*, (1961) 227 Or 78, 360 P2d 610.

LAW REVIEW CITATIONS: 1 OLR 116; 14 OLR 213.

77.5020

NOTES OF DECISIONS

1. Under former similar statute

A valid transfer of the property was effected by negotiation of the warehouse receipt. *Adamson v. Frazier*, (1901) 40 Or 273, 66 P 810, 67 P 300; *Lewis v. First Nat. Bank*, (1904) 46 Or 182, 78 P 990; *Diamond Roller Mills v. Moody*, (1912) 63 Or 90, 125 P 284, 126 P 984.

A warehouse receipt three years old had passed the period in which its negotiation could make its recipient a holder in due course. *State v. Am. Sur. Co.*, (1934) 148 Or 1, 35 P2d 487.

Right of stoppage in transitu could be asserted against the insolvent buyer's purchasers or transferees to whom bill of lading had not been properly transferred. *Weyerhaeuser Timber Co. v. First Nat. Bank of Portland*, (1935) 150 Or 172, 38 P2d 48, 43 P2d 1078.

Transfer of straight bill of lading would not cut off seller's right of stoppage in transitu. *Id.*

LAW REVIEW CITATIONS: 1 OLR 116.

77.5030

LAW REVIEW CITATIONS: 1 OLR 116.

77.5040

NOTES OF DECISIONS

1. Under former similar statute

The assignment of a nonnegotiable document was good

as against the transferor but was subject to equities of prior parties. *Weyerhaeuser Tbr. Co. v. First Nat. Bank*, (1935) 150 Or 172, 38 P2d 48, 43 P2d 1078.

Delivery of an unindorsed warehouse receipt to a buyer of hops was substantial evidence of acceptance of the hops and transfer of title. *Pokorny v. Williams*, (1953) 199 Or 17, 260 P2d 490.

Plaintiffs were transferees of nonnegotiable warehouse receipts. *Scott v. Lawrence Whse. Co.*, (1961) 227 Or 78, 360 P2d 610.

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NOTES OF DECISIONS

Under a former statute, where a depositor had transferred warehouse receipts to another, the depositor no longer had an attachable interest in the property deposited. *Adamson v. Frazier*, (1901) 40 Or 273, 66 P 810, 67 P 300.

77.6030

NOTES OF DECISIONS

Under former similar statute, interpleader was proper where several parties claimed wheat, notwithstanding a pending partition suit as to the ownership of same. *Milton Whse. Co. v. Basche-Sage Hdw. Co.*, (1934) 147 Or 563, 34 P2d 338, 978.

Under former similar statute, warehousemen bringing interpleader were entitled to reasonable charges for storage from date of demand for warehouse receipts and refusal to deliver same. *Id.*

ATTY. GEN. OPINIONS: Duty to deliver grain in case of adverse claim, 1924-26, p 634.