

Warehouse Receipt—Negotiability of—Transfer of.

A warehouse receipt duly assigned and placed as collateral is a sufficient transfer of the property described therein and the purchaser takes the same title that he would if he held the property itself.

April 10, 1917.

Hon. H. S. Magraw,
State Examiner,
Helena, Montana.

Dear Sir:

I have your letter of recent date submitting the following question:

"Is a receipt issued by a public warehouseman in accordance with the provisions of Section 31, Chapter 93, Laws of 1915, as amended by Section 9, Chapter 147, Laws of 1917, duly assigned and placed as collateral to the note in the bank, a sufficient transfer of the articles mentioned?"

The copy of the receipt submitted, and which is in general use throughout the state, conforms to the laws of the state with reference to warehouse receipts.

A warehouse receipt, is not, in a technical sense, a negotiable instrument, unless made so by statute.

In many states they are declared by statute to be negotiable, and transferable by endorsement, in the same manner and with like effect as a bill of exchange.

There is no law in this state making such receipts negotiable.

It was held by the Supreme Court of the United States in the case of *Union Trust Company v. Wilson*, 198 U. S. 530, that the transfer of a warehouse receipt operates as an actual delivery of the property which it represents.

In the case of *Stanford Compress Company v. Farmer's National Bank*, 129 S. W. 1160, (Tex. Civ. App.) it was held that: "It is undoubtedly true that such a receipt, even in the absence of the stipulation against the negotiability, is not a negotiable instrument according to the law merchant, but such receipt containing as this one does, the usual stipulation that the commodity will be delivered only on the return of the receipt partakes more of the nature of a contract than a mere receipt. The stipulation last referred to is tantamount to an agreement on the part of appellant to become bailee for any and all persons to whom the receipt may be transferred or assigned."

The receipt in question contained these provisions: "This receipt must be returned on delivery of cotton and is non-negotiable."

In the case of *Burton v. Curga*, 40 Ill. 320, it was held that warehouse receipts were not, in a technical sense, negotiable instruments, but merely stand in the place of the property itself, and the delivery of the receipts has the same effect in transferring the property as the delivery of the property.

To the same effect are:

Solomon v. Bushnell, 3 Pac. 677 (Or.).

Security Nat. Bank v. Walridge, 40 Ohio St. Rep. 419.

Freidman v. Peters, 18 Tex. Civ. App. 11.

National Bank v. Citizens Bank, 41 Tex. Civ. App. 535.

I am therefore of the opinion that a warehouse receipt duly assigned and placed as collateral is a sufficient transfer of the property described therein, and that the purchaser takes the same title that he would if he held the property itself.

Respectfully,

S. C. FORD,

Attorney General.