FEDERAL RESERVE BOARD

WASHINGTON

ADDRESS OFFICIAL CORRESPONDENCE TO
THE FEDERAL RESERVE BOARD

X-7255

September 24, 1932.

SUBJECT: Warehouse Receipts Securing
Bankers' Acceptances.

Dear Sir:

I inclose herewith for your information a copy of a letter which the Board is addressing to the executive vice president of the Lawrence Warehouse Company of San Francisco with reference to the question whether certain warehouse receipts proposed to be issued by that company for goods stored in certain warehouses leased from the Southern Idaho Bean Growers Cooperative Association would comply with the requirements of the Federal Reserve Act and the Board's Regulations with respect to warehouse receipts securing bankers' acceptances drawn to finance the storage of readily marketable staples, together with a copy of an opinion rendered by the Board's Counsel in this connection under date of August 4, 1931.

The desirability of publishing a ruling on this question in the Federal Reserve Bulletin, which would recite the facts upon which the conclusions of the Board are based but would not mention the name of the warehouse company in question, is now under consideration by the Board. In this connection, you are requested to advise

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the Board whether, according to your information, member banks in your district are engaged in granting acceptance credits on the basis of warehouse receipts issued under circumstances similar to those described in the inclosed opinion of Counsel; and the Board would also appreciate an expression of your views as to the advisability of publishing a ruling on this subject in the Federal Reserve Bulletin.

Very truly yours,

Chester Morrill,
Secretary.

Inclosures.

TO ALL FEDERAL RESERVE AGENTS.

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X-7255-a

September 23, 1932.

Mr. J. Van Cartmell, Executive Vice President,
Lawrence Warehouse Company,
1 North LaSalle Street,
Chicago, Illinois.

Dear Sir :

Reference is made to the Board's letter of November 23, 1931, with respect to the question presented to it by the Department of Agriculture as to whether certain warehouse receipts proposed to be issued by your company for goods stored in certain warehouses leased from the Southern Idaho Bean Growers Cooperative Association would comply with the requirements of the Federal Reserve Act and the Board's regulations with reference to warehouse receipts securing bankers' acceptances drawn to finance the storage of readily marketable staples.

As you were advised in that letter, notwithstanding the fact that your company has withdrawn its request for a reconsideration by the Department of Agriculture of certain questions pertaining to its operations, the Board has continued its consideration of the question whether such warehouse receipts comply with the requirements of the Federal Reserve Act and the Board's regulations, because it appears that some of the Federal reserve banks may have discounted or purchased bankers' acceptances secured by receipts issued under similar circumstances and that your company has advertised that "Credits based on Lawrence Warehouse Company field warehouse receipts are eligible for rediscount at Federal reserve banks."

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In connection with its investigation of this matter the Federal Reserve Board has consulted with several of the Federal reserve banks and has carefully considered the information furnished by your company and its attorneys and the arguments made by them together with information received from other sources. After studying all information received on this subject, the Federal Reserve Board is of the opinion that bankers' acceptances issued against receipts such as those proposed to be issued in the name of your company under the arrangement entered into between your company and the Southern Idaho Bean Growers' Cooperative Association are not eligible for rediscount at Federal reserve banks; because it is doubtful whether such receipts comply with the requirement of Section 13 of the Federal Reserve Act that warehouse receipts securing bankers' acceptances drawn to finance the storage of readily marketable staples must convey or secure title to such staples and because such receipts do not, in the Board's judgment, comply with the requirement of Section XI of the Board's Regulation A that warehouse receipts securing such bankers' acceptances must be "issued by a party independent of the customer."

In giving expression to this opinion, the Board is not undertaking to pass upon the merits of field warehousing in general, either as conducted by your company or as conducted by any other company, and the Board's opinion relates solely to warehouse re-

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ceipts such as those proposed to be issued under the arrangement entered into between your company and the Southern Idaho Bean Growers Cooperative Association.

Very truly yours,

Chester Morrill,
Secretary.

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C O P Y

C O N F I D E N T I A L

FEDERAL RESERVE
BOARD

Date August 4, 1931.

To The Federal Reserve Board

From Mr. Wyatt, General Counsel.

Subject: Warehouse receipts issued by Lawrence Warehouse Company of San Francisco.

On June 10, 1931, a letter was received from the Department of Agriculture inquiring whether certain warehouse receipts arising out of field warehousing arrangements of the Lawrence Warehouse Company of San Francisco would meet the Board's requirement that bankers' acceptances issued against the storage of readily marketable staples be secured by warehouse receipts issued by a party independent of the customer. The Lawrence Warehouse Company has applied to the Department of Agriculture for licences under the United States Warehouse Act; the Department has denied the licenses on the ground that the plan does not provide disinterested custodianship; the matter is now before the Department upon a request for reconsideration; and the Lawrence Warehouse Company has told the Department that its warehouse receipts issued under similar circumstances are accepted without question by the Federal Reserve Bank of San Francisco.

The letter from the Department states that, in administering the Warehouse Act, the Department has consistently endeavored to have warehousing arrangements approved by it comply with the Federal Reserve Board's regulations with reference to bankers' acceptances issued against warehouse receipts; and it is on this ground that a ruling by the Federal Reserve Board is requested.

The Board transmitted copies of the Department's letter to Governor Calkins of the Federal Reserve Bank of San Francisco and to Mr. E. R. Kenzel, Deputy Governor of the Federal Reserve Bank of New

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York and Chairman of the Standing Committee on Bankers' Acceptances, with a request for their views; and both of them expressed the view that such warehouse receipts comply with the Board's regulations.

As a result of requests for additional information which I made of Mr. A. C. Agnew, Counsel for the Federal Reserve Bank of San Francisco, the Lawrence Warehouse Company learned that the Board was considering this question and Mr. J. Van Cartmell, Executive Vice President of that Company, conferred at length with Mr. Vest and the undersigned and submitted lengthy documents describing in detail and defending the warehouse company's methods of operation.

Mr. Van Cartmell has also sent a telegram to the Board requesting that, before issuing any ruling adverse to the Lawrence Warehouse Company, the Board grant him a hearing.

In a letter addressed to me under date of July 31, 1931, Mr. Robert H. Bean, Executive Secretary of the American Acceptance Council, said:

> "I understand that the Board has indicated its intention of holding a hearing on this matter sometime this Fall. I am sure you understand the Council's deep interest in this matter and I ask that you will keep me informed as to the date of the hearing so that we can attend and be of any assistance to the Board in getting this question definitely adjusted."

Under date of July 17, 1931, Mr. Wilson V. Little, Executive Secretary of the American Warehousemen's Association, also addressed a letter to me expressing a great interest in this subject and expressing the hope that I would "concur with other noted counsel in reaffirming the eligibility of properly issued field warehouse receipts for purposes of rediscount by the Federal Reserve Banks."

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THE QUESTION PRESENTED.

The question presented for the Board's consideration may be stated concisely as follows: Whether warehouse receipts issued in the name of an independent warehouse company for goods stored on the premises of the bailor leased to the warehouse company, the sole custodian of which is an employee of the bailor, who has been transferred temporarily to the employ of the warehouse company and expects to be employed again by the bailor, are warehouse receipts "conveying or securing title" within the meaning of Section 13 of the Federal Reserve Act, and are "issued by a party independent of the customer," within the meaning of Section XI of the Board's Regulation A; so that bankers' acceptances secured by such warehouse receipts will be eligible for acceptance by member banks and for rediscount by Federal reserve banks.

OPINION.

I have read every word of every document in the attached file; I have given this subject thorough, careful and impartial consideration; while I have not attempted to read every case ever decided, I have studied enough of the recent cases to satisfy me as to the present status of the law on this subject; and I am of the opinion that:

(1) The decisions on this subject are in such conflict that there is no certainty that the validity of any lien attempted to be created by the pledge of such warehouse receipts will be sustained by the courts; and it can not be said with certainty that these warehouse receipts comply with the requirement of Section 13 of the Federal Reserve Act that warehouse receipts securing bankers' acceptances drawn to finance the storage of readily marketable staples must

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"convey or secure title" to such staples; and

(2) While the receipts are issued in the name of a warehouse company which is independent of the borrower, the actual custodian of the goods and the person upon whose certification the receipts are issued is so much under the influence of the borrower that these warehouse receipts can not be said to be "issued by a party independent of the customer" within the meaning of Section XI of the Board's Regulation A.

RECOMMENDATIONS.

Before the Board rules on this subject, however, I respectfully recommend:

(1) That the representatives of the Lawrence Warehouse Company be given a hearing on this subject;

(2) That Mr. H.S. Yohe and Mr. C.W. Kitchen of the Department of Agriculture, Mr. Robert H. Bean, Executive Secretary of the American Acceptance Council, and Mr. Wilson V. Little, Executive Secretary of the American Warehousemen's Association, be notified of the hearing and invited to attend; and

(3) That copies of this opinion be sent to Governor Calkins and Mr. Kenzel and that they be invited to submit their comments in writing and to attend, or have a representative attend, the hearing, if theycare to do so.

Proposed letters to each of these interested parties are respectfully submitted herewith.

THE FACTS.

The following are the facts as stated in the letter from the Department of Agriculture:

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"The Lawrence Warehouse Company of San Francisco has applied to this Department for license under the Warehouse Act for the operation of several warehouses owned by the Southern Idaho Bean Growers' Cooperative Association, Twin Falls, Idaho. These houses are located at five different points in southern Idaho. The warehouses are leased to the Lawrence Warehouse Company for the purpose of storing the association's beans. In the operation of these warehouses the warehouse company will not send men from its home office to take charge of the leased premises but will transfer to its payroll present employees of the cooperative association, paying them the same salary as they are now receiving from the association. The expectation is that these employees will be re-employed by the association at the close of the storage season or when the beans have been removed from storage. This period of employment will naturally vary with the time required to market the crop. Except for such local employees who will serve as representatives of the Lawrence Warehouse Company the warehouseman will have no one in charge of the premises, but representatives of its district office which is located at Portland will visit the premises for periodic audits. These warehouses are leased from the association at a nominal rental and the association reimburses the warehouse company under contract with the company for all expenses including salary of custodian, cost of bonds, salaries and expenses of auditors, and also pays a monthly storage fee.

"This arrangement is solely for the purpose of obtaining credit for the cooperative association with a minimum of interference with the usual operations of the association."

Governor Calkins reports, in part, as follows:

"We believe the statements contained in the letter of the Department of Agriculture are correct insofar as they explain the situation, but are probably somewhat incomplete. There is no question in our minds that the leases executed by the Lawrence Warehouse Company under its field warehousing plan are bona fide leases, and that all the necessary precautions are taken to isolate the goods accepted in storage and to maintain physical control thereof. While it is true that the men placed in charge of this operation are, in some cases, former employees of the association or company in question, they become bona fide employees of the Lawrence Warehouse Company and are placed under bond by this company of at least $5,000, and are also covered under a superimposed blanket bond of $100,000. An employment contract is entered into which gives the Lawrence Warehouse Company the right to dispense with their services at any time. Their compensation insurance is paid by the Warehouse Company, and the Warehouse Company is responsible for their salary regardless of any agreement between the warehousing company and the association.

"A further important point in their operation, as we view it, is the fact that such employees are not permitted to issue warehouse receipts nor to authorize releases, this operation being carried on in a central office of the Warehouse Company by

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executives of the Company.

"It is, of course, true that through collusion between the representative of the Warehouse Company and the owner of the plant, the goods might be abstracted or false reports made concerning the goods in storage. This risk is present in any form of warehousing and, in our opinion, is no more apt to occur under the Lawrence Warehouse Company's plan than in any other plan. This company maintains a complete auditing system of their own and conducts periodical checks of all its agents, which not only check up and verify the goods stored, but also check up and maintain a uniformly high standard of operation throughout all of their warehouses. The Lawrence Warehouse Company has been operating under this plan for a number of years and has built up a considerable business. All our dealings with them have indicated that they are fully conversant with the obligations and duties of a warehouseman and fully realize that success in their business is dependent upon their strict adherence to proper warehousing ethics.

"We have not hesitated to accept their receipts as collateral in connection with notes offered for rediscount and, while we would not normally know whose warehouse receipts were held by a bank accepting drafts against readily marketable staples in storage, we do know that a good many of our Pacific Coast banks issue acceptances against their receipts."

From further information I have obtained from Mr. Agnew, Counsel to the Federal Reserve Bank of San Francisco and from Mr. J. Van Cartmell, Executive Vice President of the Lawrence Warehouse Compnay, however, it appears that:

1. The bonds covering the custodian are ordinary fidelity bonds issued to protect the warehouse company against any losses resulting to it from the wrongful acts of its employees and do not give a right of action against the bonding company to the holders of warehouse receipts who may suffer similar losses;

2. The Lawrence Warehouse Company operates about 500 field warehouses in the States of California, Oregon, Washington, Michigan, Idaho, Wisconsin, Iowa, Missouri, Arkansas, Pennsylvania, New York, and Maryland, although only 250 to 300 of these warehouses are in actual operation at any one time;

3. The financial statement of the Lawrence Warehouse Company

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indicates only about $300,000 net worth; and the elimination of certain questionable items would leave the Company very little, if any, actual net worth; and

4. While the warehouse receipts are issued by a branch office of the Warehouse Company in another city, the branch managers rely upon written statements signed by the manager of the cooperative association and by the local custodian of the warehouse, who is a former employee of the cooperative association and may still be performing services for the cooperative association.

From statements submitted on behalf of the Lawrence Warehouse Company, it appears that its plan of operation contemplates that the goods will be physically segregated in separate buildings or in portion of buildings partitioned off for that purpose and locked with the warehouse company's own locks; that conspicuous signs showing that the warehouse company is in charge of the premises will be placed both outside and inside of the premises; that the warehouse company's stack cards will be placed upon every stack of goods; and that all precautions will be taken to comply with the legal requirement that the warehoused goods be physically segregated from other goods and sufficiently placarded to give notice to the world that they are in the possession of the warehouse and not in the possession of the depositor. There is reason to believe, however, that these precautions are not always strictly adhered to.

For further details, the Board's attention is invited to the statements in the attached file submitted by Mr. J. Van Cartmell, Executive Vice President of the Lawrence Warehouse Company, describing in detail the general methods of field warehousing adopted by that company and its

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specific arrangement for warehousing the beans of the Southern Idaho Bean Growers' Association. These documents will be discussed in more detail elsewhere in this memorandum.

THE BOARD'S JURISDICTION.

The fifth and sixth paragraphs of Section 13 of the Federal Reserve Act provide, in substance, that Federal reserve banks may discount bankers' acceptances "which are secured at the time of acceptance by a warehouse receipt or other such documents conveying or securing title covering readily marketable staples"; and the second paragraph of Section 13 authorizes the Federal Reserve Board "to determine or define the character of paper thus eligible for discount, within the meaning of this Act."

Section XI of the Board's Regulation A provides, in substance, that, in order to be eligible for discount by a Federal reserve bank, a bankers' acceptance drawn to finance the storage of readily marketable staples must be secured at the time of acceptance "by a warehouse, terminal, or other similar receipt, conveying security title to such staples, issued by a party independent of the customer."

Under these provisions of the law and the Board's regulations, the Board has published a number of rulings on the question whether bankers' acceptances secured by warehouse receipts issued under various circumstances are eligible for rediscount by Federal reserve banks, and on February 17, 1931, advised the Department of Agriculture that warehouse receipts issued under circumstances very similar to those presented in this case do not meet the requirements of the Board's regulation.

It is clear that, under the usual authority of administrative officers of the Government to construe the act which they administer and the

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regulations which they have prescribed pursuant thereto, the Federal Reserve Board has the right to issue administrative rulings on this question. Even in the absence of such power, the right of the Federal Reserve Board to express its views on this subject when requested by a department of the Government could not be questioned.

ADVISABILITY OF RULING BY FEDERAL RESERVE BOARD.

Because of the fact that the request of the Department of Agriculture for an expression of the Board's views on this question apparently arises out of a controversy between the Department of Agriculture and the Lawrence Warehouse Company over the question whether the Warehouse Company should be licensed under the United States Warehouse Act, some question may be raised as to whether it is advisable or appropriate for the Federal Reserve Board to make a ruling on this question, especially in view of the fact that no actual case is presented involving an actual bankers' acceptance secured by such receipts which is offered to a Federal reserve bank for rediscount.

In view of the following facts, however, it would seem difficult for the Board to justify a refusal to give the Department of Agriculture an expression of its views on this question:

1. Both the Department of Agriculture and the Federal Reserve Board have been endeavoring for many years to raise the standard of warehouse receipts which are used as collateral in obtaining credit from banks and especially to obtain adherence to the principle of independent custodianship.

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2. The Department of Agriculture has always endeavored to require the warehouses licensed by it to conform to the Board's regulation requiring the warehouse to be independent of the borrower.

3. The Department of Agriculture has denied the license applied for by the Lawrence Warehouse Company, on the ground that the proposed arrangement does not provide disinterested custodianship; and

4. In applying for a reconsideration of its application for a license, the Lawrence Warehouse Company has represented that Federal reserve banks accept their warehouse receipts without question.

Moreover, it appears that commercial banks are accepting such warehouse receipts in large quantities as collateral for loans and acceptance credits; that the Federal reserve banks take them without question; and that the Lawrence Warehouse Company is advertising that, "Credits based on Lawrence Warehouse Company field warehouse receipts are eligible for rediscount at Federal reserve banks."

If, therefore, the Board concurs in my view that the validity and effectiveness of liens attempted to be created by the pledge of such receipts are very doubtful, it would seem appropriate for the Board to publish a ruling on this subject for the guidance and protection of member banks and Federal reserve banks. Such a ruling, however, should not name the Lawrence Warehouse Company but should merely describe the circumstances under which the warehouse receipts are issued.

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Mr. Yohe of the Department of Agriculture also advises that the Lawrence Warehouse Company proposes to expand its business by entering into similar arrangements for field warehousing in many parts of the country and that it is anxious to obtain some Governmental approval of its plan. This case may, therefore, be regarded as a test case and the Board's decision may have an important or far-reaching result. Under these circumstances, it would seem that the Federal Reserve Board should be unusually careful not to approve any plan of warehousing, the reliability and legality of which is subject to doubt and the approval of which might encourage unsound practices or might mislead member banks to their injury. It would seem that all doubts about this plan should be resolved on the side of conservatism and caution.

FIELD WAREHOUSING IN GENERAL

The general subject of field warehousing is not on trial here, and I believe that the Board should carefully avoid issuing any statement which would discourage the development of field warehouses along sound lines; because I believe that the practice is of great economic value.

In Philadelphia Warehouse Co. v. Winchester, 156 Fed. 600, (decided September 5, 1907), the advantages of field warehousing were stated as follows:

> "The system of 'field storage' under which the warehouse company largely, if not wholly, conducts its business, has much to commend it, if care be taken not to mislead the public. It is both convenient and economical. It is promotive of the welfare of manufacturing and commercial industry. It avoids all necessity for unreasonably

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> moving from place to place heavy and bulky material. Sound industrial policy requires that when conducted with reasonable safeguards for the public, it should be encouraged, and not discountenanced."

An examination of certain circulars issued by the Department of Agriculture which are in the attached file discloses that the Department is inclined to encourage field warehousing and to prefer it to subsidiary warehousing. Moreover, there is a letter in the attached file listing no less than 82 field warehouses actually licensed at the present time by the Department of Agriculture.

The practice of field warehouses, however, is comparatively new; the law on this subject is not at all settled; the court decisions affecting it are in hopeless conflict; the decision in each individual case seems to depend quite largely upon the apparent good faith or lack of good faith of the parties and upon the court's feeling as to whether a greater injustice will be done in that particular case by upholding the validity of the warehouse receipts or by holding that they are not valid; and, in many of the cases, the validity of the warehouse receipts has depended upon the findings of a jury or a master as to the particular facts in that case. Under these circumstances, it is important that the Board not issue any ruling which will encourage the development of unsound or dangerous practices.

In a decision rendered November 10, 1930, in the case of McGaffey Canning Co. v. Bank of America, 294 Pacific 45, which involves the warehouse receipts of the Lawrence Warehouse Company itself, the California District Court of Appeals, sums up the situation as follows:

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"Warehousing on the premises of the owner proposing to pledge his merchandise is effective when done in obedience to legal requirements; but when done only far enough to get the goods represented by documents without really getting them stored, the documents are but scraps of paper. The term "field warehousing" is not a talisman to give dominion by enchantment. Taking exclusiveness of possession and control as the criterion, we find now and then a case where it may be said as a matter of law that, through the field warehouse, open, exclusive, and unequivocal possession passed constructively to a pledgee; and then again in other cases we find that as a matter of law the possession of the warehouseman "tapers away" to nothingness. Between these two extremes lies the aggregation of cases in which the facts are such that different men may with reason reach opposing conclusions. Cases of that character, when tried by a jury, must be allowed to go under proper instructions to the jury for their determination of the facts in controversy."

In this opinion I shall not endeavor to discuss all of the cases dealing with the legality of field warehouses in general but shall discuss only those cases having a direct bearing upon the precise question presented for the Board's consideration. For the Board's additional information on this general subject, however, I respectfully submit with the attached file the following documents:

1. A copy of the important portions of the opinion of the California Court of Appeals in the case of McGaffey Canning Co. vs. Bank of America, which contains the best discussion of the decided cases on this subject which I have been able to find anywhere;

2. A memorandum entitled, "Decided Cases as to Validity of Warehouse Receipts", which was prepared by Mr. Vest under date of June 30, 1931; and

3. A 92 page "Abstract of Cases Involving Field Warehousing", which was loaned to me by Mr. Yohe and which he said was prepared by

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counsel for the Federal Intermediate Credit Bank at Berkeley, California.

THE REQUIREMENTS OF THE LAW AND REGULATIONS.

In order for a bankers' acceptance drawn to finance the domestic storage of readily marketable staples to be eligible for rediscount by Federal reserve banks:

(1) Section 13 of the Federal Reserve Act requires that it be "secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples"; and

(2) Section XI of the Board's Regulation A requires that it be "secured at the time of acceptance by a warehouse, terminal, or other similar receipt, conveying security title to such staples, issued by a party independent of the customer."

The requirement of the law that such warehouse receipts must convey or secure title to readily marketable staples obviously contemplates that the accepting bank shall have a lien on such staples which is valid and enforceable against general creditors of the person for whose benefit such acceptance credit is granted.

The requirement of the Board's regulations that such warehouse receipts be issued by a party independent of the customer obviously is intended to require that the actual custody of the goods be maintained by an independent and disinterested party, so that the bank holding the warehouse receipt may be able to identify and obtain possession of them

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and thus enforce its lien without any difficulty. A lien on personal property is of no practical value unless such property can be found and identified when it becomes necessary to enforce the lien; and, if custody of the goods is not maintained by a disinterested party, there is danger that the goods may be improperly released or disposed of.

Both the requirements of the law and the requirement of the Board's regulations, therefore, are intended for the protection of the accepting banks; they are of great practical importance; and any unsound interpretation thereof by the Federal Reserve Board would be likely to mislead member banks to their injury.

VALIDITY OF LIENS GIVEN BY WAREHOUSE RECEIPTS.

It is my conclusion, after an examination of cases decided on somewhat similar facts, that no definite statement may be made as to the validity or invalidity of the lien afforded by a pledge of the warehouse receipts issued by the Lawrence Warehousing Company under the facts stated; but the question is one upon which there is serious doubt and reasonable precaution would seem to demand that such receipts should not be accepted by banks which wish to be assured beyond question of the safety of their loans.

Whether the lien given by the receipt will be held valid depends in a large measure on the facts which are presented in the particular case which reaches the courts and to some extent also perhaps on the jurisdiction in which the question arises.

While the essential requirements for the creation of a valid lien through the pledge of warehouse receipts have been prescribed in

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different ways by statutes in different States and apparently have never been uniformly stated by the courts, those generally recognized may be summarized as follows:

1. The warehouse receipts must be issued by a person, firm or corporation regularly engaged in the business of storing the goods of others;

2. The warehouseman must take and maintain actual physical possession of the goods;

3. The possession of the warehouseman must be exclusive and unequivocal;

4. The warehoused goods must be segregated from other goods of the owner which are not warehoused; and

5. The possession of the warehouseman must be open and notorious so as not to mislead other creditors of the owners of the goods.

American Can Co. v. Erie Preserving Co. (C.C.A.) 183 Fed. 96, 98 (Decided Nov. 14, 1910);

In re Rodgers (C.C.A.) 125 Fed. 169 (Decided April 22, 1903);

MacDonald v. Aetna Indemnity Co., 90 Conn. 415, 97 Atl. 332 (Decided April 19, 1916);

Security Warehousing Co. v. Hand, 206 U.S. 415, 27 Sup.Ct. 720, 51 L.Ed. 1117, 11 Ann. Cases 789 (Decided May 27, 1907);

McGaffey Canning Co. v. Bank of America (Calif) 294 Pac. 45, 53 (Decided November 10, 1930).

In Security Warehousing Company v. Hand (C.C.A.) 143 Fed. 32, 41, (Decided January 2, 1906) affirmed 206 U.S. 415, 27 Sup. Ct. 720, the Circuit Court of Appeals said:

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"Delivery of possession is the very life of a pledge. No mere agreements respecting possession can create it. The contract of pledge cannot exist outside of the fact of change of possession. The pledgor must dispossess himself openly, completely, unequivocally and 'without deceptive combinations which lead third persons into error as to the real possessor of the thing'. And the pledgee must take and maintain an open, exclusive and unequivocal possession."

In the case of In Re Rodgers, 125 Fed. 169, 179 (decided April 22, 1903 and reversed on other grounds by the Supreme Court of the United States) the Circuit Court of Appeals said:

"Actual or symbolical possession of personal property in the pledgee is essential to its pledge. It is true that when the actual delivery is to a carrier or warehouseman, and bill of lading or warehouse receipt is given therefor, the transfer of the instrument and its delivery to the pledgee is regarded in the law as delivery of possession to the pledgee of the property represented by the instrument; but it is a necessary condition to the existence of such symbolical possession by the pledgee that the property itself be in the possession of some person other than the pledgor. Two different persons cannot be in the actual adverse possession of the same property or premises at the same time, * * *."

In McGaffey Canning Company vs. Bank of America, 294 Pacific, 45, 50, 53, (decided November 10, 1923), a well considered case involving receipts of the Lawrence Warehouse Company, the California District Court of Appeals said:

"When there is actual delivery of merchandise to a warehouseman, with actual and explicit change of possession, and a warehouse receipt is issued and delivered to one lending money on the security of the merchandise in store, the delivery of the warehouse receipt is the legal equivalent of the delivery of the merchandise itself; but such symbolic possession by the pledgee is dependent for its efficacy upon complete and actual, as distinguished from merely formal or colorable, relinquishment of possession and control by the pledgor."

* * * * * * * * * * *

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> "Merely colorable or constructive change of possession accomplishes nothing in favor of a pledgee. There must be open, visible, unequivocable change of possession, manifested by such substantial outward signs as to make it evident to the world that the control of the owner has wholly ceased, and that another has acquired, and is openly exercising, the exclusive dominion over the property."

It may be assumed for the purpose of the discussion of this particular point that the Lawrence Warehouse Co. is regularly engaged in the business of storing goods of others; that the goods are placed either in separate buildings or in portions of buildings which are partitioned off from the other portions of such buildings; that all entrances to such buildings or the portions thereof used as warehouses are securely locked with the warehouseman's own locks; that the warehoused goods are completely segregated from all other goods of the depositor; and that the premises are sufficiently designated with large and conspicuous signs so placed as to give adequate notice to all the world that the premises and the goods therein are in the custody of the warehouseman and not in the custody of the depositor. (There are indications that sometimes these precautions are not strictly adhered to by the Lawrence Warehouse Company in actual practice; but it may be assumed that they are for the purpose of this discussion.)

The Department of Agriculture has questioned the method of the Lawrence Warehouse Company, however, because the sole custodian of the warehoused goods is a person transferred from the employ of the depositor to the employ of the warehouse company, who expects to be reemployed by the depositor and may continue to perform certain services for the depositor during the period of warehousing. This raises the following legal questions:

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1. Whether it can be said that the warehouseman takes and maintains actual physical possession of the goods, in view of the fact that such possession is maintained by a person so closely identified with, and so much under the influence of, the depositor, i. e., whether the possession of such custodian is the possession of the warehouse company or the possession of the depositor.

2. Whether the possession of the warehouseman can be said to be exclusive, when the actual custodian cannot reasonably be expected to refuse to permit his former employer and the person to whom he looks for future employment to have access to the premises whenever requested; and

3. Whether the possession of the warehouse company can be said to be unequivocal when it is exercised by a custodian whom the depositor and his creditors may regard as the employee of the depositor rather than of the warehouseman.

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On these points, and on the entire subject of the validity of warehouse receipts arising out of field warehousing, the law is in a very unsettled state; the decisions of the courts are in conflict; and no definite conclusion can be expressed with any real assurance that it will be sustained by the courts in any given case.

The case of Union Trust Co. v. Wilson, 198 U.S. 530; 25 Sup. Ct. 766, (decided May 29, 1905) is often cited as a case in which the Supreme Court of the United States sustained the legaility of field warehousing. The question presented here was not present in that case, however, because the warehouse company itself actually held the only keys to the warehouse and, whenever the owner desired access to the goods, the warehouse company had to send a man to unlock the warehouse. Moreover, three of the justices of the Supreme Court dissented from the majority opinion sustaining the validity of the warehouse receipts; and Mr. Justice Holmes, who wrote the majority opinion, qualified it as follows:

> "We deal with the case before us only. No doubt there are other cases in which the exclusive power of the so-called bailee gradually tapers away until we reach those in which the courts have held as matter of law that there was no adequate bailment."

The following language of the Circuit Court of Appeals in the case of In re Cincinnati Iron Store Company, 167 Fed. 486, 492, (decided February 22, 1909) is frequently cited in support of the proposition that a field warehouseman may utilize an employee of the owner of the goods for his custodian:

> "Nor is the fact that the custodian was an employe of the bridge company, and in its sole pay, necessarily inconsistent with his lawfully and effectually acting as the representative of the bank, and with his possession being regarded in law as that of the bank."

That, however, was a case in which the Circuit Court of Appeals

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sustained the validity of certain preferential claims of a bank against a bankrupt bridge company, based partly upon the written assignment of moneys due the bridge company under its contract for the construction of the bridge and partly upon a pledge of certain structural iron which was set aside, earmarked, and placed under the custody of one of the bridge company's employees, appointed by the bank as its custodian. It was not a case involving warehouse receipts but involved an attempt to pledge the goods themselves direct to the bank. Moreover, the court said:

> "A change of possession to the extent of furnishing notice to third persons becomes immaterial, as no rights of such third persons have intervened."

In the case of Love v. Export Storage Co. (C.C.A.) 143 Fed. 1, (decided February 1, 1906) a lumber company leased its premises to a warehouse company and the warehouse company issued receipts against the lumber stored on the premises. The warehouse company was engaged in warehousing business throughout several states but had no warehouse of its own. In arranging for warehousing of the lumber in question it sent its State agent to the premises temporarily, and piles of lumber were numbered, designated and placarded by this agent and by an employee of the lumber company. This employee was designated as custodian for the warehouse company and it was provided by contract that he should be paid $1 per month for his service. He actually received nothing, however, except his wages from the lumber company. The custodian was bonded in the amount of $5,000. The lumber company was required to pay compensation for storage of the lumber, and to reimburse the storage company for all expenses connected with the storage. The custodian was still subject to instructions from his superior on the premises, but no regular business of the company was transacted there after the storage contract was entered into. The warehouse receipts

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were pledged with the bank as security for a loan. After the bankruptcy of the lumber company it became material to determine the validity of the warehousing arrangement and of the lien created by the receipts. The court upheld the validity of the lien, taking the position that there had been a sufficient designation of the stored lumber, and said:

> "It is unimportant that at the time of his appointment as custodian he was the servant of the hardwood company and continued such after his appointment and received no other pay than the wages paid him by the hardwood company * * *. It is well settled in cases of this sort that the warehouseman may acquire and hold exclusive control and possession of the goods in such a way and under such circumstances."

That case was decided in 1906, however, and other cases decided since that date show clearly that the law on this point is not well settled.

In the case of Dunn v. Train, 125 Fed. 221, 224, (decided September 29, 1903) the Circuit Court of Appeals said:

> "We are not aware of any absolute rule of law which would render actual possession and dominion inoperative, and a pledge invalid because the keeper selected to protect the property was in the employ of the pledgor."

This, however, was another case involving a pledge of goods themselves direct to the creditor; and no warehouse receipts were involved.

In the case of Philadelphia Warehouse Co. v. Winchester, 156 Fed. 600, (decided September 5, 1907) where a field warehousing arrangement was entered into and adequate precautions were taken to put the public on notice that the goods were in the possession of a warehouseman but the actual custodian of the goods was the treasurer of the pledgor company, the court definitely held that the law does not render an officer or agent of the pledgor incompetent to be the custodian of the pledged property, where the parties so agree; but this was a decision of a trial court, no appeal was

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taken, and the decision is not of any great value as a precedent.

The case of American Can Co. v. Erie Preserving Co., 171 Fed. 540, 548, (Decided February 20, 1909), 183 Fed. 96, (Decided November 14, 1910) which apparently is relied upon very strongly by the Lawrence Warehouse Company as sustaining the validity of its receipts, is also of very doubtful value as a precedent. It was really a combination of several cases.

In one of these cases (171 Fed. 548), where goods on the premises of the Preserving Company were conspicuously marked as belonging to a bank and the bank employed an employee of the Preserving Company as its custodian and through him exercised exclusive dominion and control over the property, the trial court sustained the validity of the pledge, and said that, "There was no legal objection to the employment of Wode by the bank as custodian of the property or to the storing of the property in the defendant's warehouse."

In another of these cases (171 Fed. 540), where a warehouse company undertook to warehouse goods on premises leased from the Preserving Company, employed the Preserving Company's superintendent to act as its custodian, and failed to segregate and earmark the goods, the trial court held that no valid pledge was created, since the pledgor never parted with the possession of the property; but said that, "It is not intended to hold that the property pledged as collateral security may not be stored by the pledgee at such place as he selects, or that the warehousing company cannot designate as custodian an employee of the pledgor."

On appeal, both cases were considered together and both decisions were affirmed (183 Fed. 96). The Circuit Court of Appeals, however, did not expressly adopt the view of the trial court that there is no legal objection to the employment of an employee of the pledgor as the custodian

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of the pledgee or of the warehouseman whose receipts are pledged. On the contrary, the court said:

> "Warehouse receipts would give constructive possession of goods actually warehoused; but it is plain that the warehousing company did not maintain a warehouse in any proper sense, because it had no exclusive and unequivocal possession. There is no pretense that either Sheridan or Wode were warehousemen at all. Yenni v. McNamee, 45 N.Y. 614. Therefore the holders of these receipts who had no actual possession had no constructive possession either. The Bank of North Collins has, however, been found both by the special master and the judge of the Circuit Court to have actually set apart and marked and kept in its own custody the goods described in its receipts which remained undisturbed down to the time receivers were appointed. We will adopt the conclusion of the court below as to its claim also because it did have actual possession and a valid lien."

In Security Warehousing Co. v. Hand (C.C.A.) 143 Fed. 32, (decided January 2, 1906) affirmed 206 U.S. 45, 27 Sup. Ct. 720 (May 27, 1907), a knitting company leased a portion of its premises to a warehouse company and the latter issued warehouse receipts against the goods of the knitting company stored on such leased premises. The leased premises were separated from the remainder of the building by a slatted enclosure provided with a door which was locked with a padlock on which was stamped, in small letters, the fact that the premises were those of the warehouse company. There was, however, no adequate designation or marking of the goods nor of the leased premises showing that the warehouse company had possession. The custodians in charge of the warehouse goods were employees of the knitting company. All expenses incident to the storing arrangement were collected from the knitting company. The lease was for a nominal sum only. The custodian's salary up to $5 per month was reimbursed by the knitting company. The key to the slatted enclosure was kept by the cashier of the knitting company, the custodian, on a ring with other keys used in the business of the knitting company; this

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bunch of keys was accessible to the manager of the knitting company during the cashier's absence.

The Circuit Court of Appeals held that this was not a public warehouse within the meaning of the Wisconsin law and further that the arrangement did not give a valid pledge to the holders of the receipts. The court said:

> "So far from the security company's maintaining an open, exclusive, unequivocal possession during the two years this arrangement was carried on, it seems to us that the security company might as well have been eliminated, and the knitting company have employed its own stockkeepers and shipping clerks as custodians for intending lenders, directly, instead of indirectly through the security company."

In affirming the decision of the Circuit Court of Appeals, the Supreme Court of the United States said:

> "* * * There was scarcely a semblance of an attempt at such change of possession from the hands of the knitting company to the hands of the warehousing company. Actual possession of the property in question was exercised by and existed with the knitting company substantially the same after the issuing of the receipts as before. It is a trifling with words to call the various transactions between the knitting company and the warehousing company a transfer of possession from the former to the latter. There was really no delivery, and no change of possession, continuous or otherwise. The alleged change was a mere pretense, a sham."

In McGaffey Canning Co. v. Bank of America, 294 Pac. 45, 53, (decided November 10, 1930) a case involving the Lawrence Warehouse Company itself, the California District Court of Appeals said:

> "The appointment of the owner, or one of his staff, as a warehouseman's custodian of goods stored, while not conclusively ineffectual, is nevertheless a circumstance to give pause, and must be carefully weighed in connection with the other facts in evidence."

In the case of MacDonald v. Aetna Indemnity Co., 90 Conn. 415, 97 Atl. 332, 334, (decided April 19, 1916) a warehouse company was engaged in the business of field warehousing; it warehoused the goods of the bailor

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upon premises leased from the bailor and issued warehouse receipts to the bailor, who pledged them as collateral security for credit obtained by him. Apparently the bailor continued in control of the premises and goods therein with the right to sell the goods, provided he continued ready to meet the demand of the holder of the receipt; but, just before the appointment of a receiver, the warehouse company entered and took actual possession of the goods. Because the warehouse company had taken actual possession of the goods, the court upheld the validity of the lien created by the pledge of the warehouse receipt; but, in discussing the situation existing prior to the taking of actual possession by the warehouse company, the Supreme Court of Connecticut said:

> "The custodian remained an employe of the pledgor, and any possession he may have had was that of his employer; the repayment to his employer of the compensation paid him as custodian indicates this."

Likewise, in any case in which the Lawrence Warehouse Company employs as its custodian an employee of the cooperative marketing association, the courts may hold that the warehouse company had no exclusive and unequivocal possession of the goods and that, therefore, the pledge of its warehouse receipt does not create a valid lien, especially in view of the fact that the Lawrence Warehouse Company requires the cooperative marketing association to reimburse it for the salary paid to the custodian.

There is no certainty that the courts will adopt this view; but there is such a grave danger of it that it would seem inadvisable for the Federal Reserve Board to approve of such warehouse receipts as complying with the requirements of the Federal Reserve Act and the Board's regulations. The most the Board can do is to guess at what the courts may hold; and if it guesses wrong, it may mislead member banks to their injury.

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PRACTICAL QUESTION AS TO INDEPENDENCE OF CUSTODIAN.

Even if it could be said without question that the warehouse receipts issued by the Lawrence Warehouse Company under the circumstances described above convey or secure title to the goods covered thereby and, therefore, comply with the requirement of Section 13 of the Federal Reserve Act, I am clearly of the opinion that they do not comply with the requirement of the Board's regulations that warehouse receipts securing bankers' acceptances drawn to finance the storage of readily marketable staples must be "issued by a party independent of the customer."

It is true that they are issued in the name of the Lawrence Warehouse Company which is supposedly independent of the borrower; but the actual custodian of the goods is so much under the influence of the borrower that the purpose of the regulation is defeated.

This requirement of the regulation is based upon the fact that a lien on personal property is of no practical value unless it is possible to identify and seize the goods whenever it becomes necessary to enforce the lien; and, unless the goods are in the hands of a party independent of the borrower, they may be dissipated or wrongfully disposed of and it may be impossible to enforce the lien.

While nominally on the pay roll of the warehouse company, the custodian of the goods is a former employee of the cooperative association; he expects to be placed again on the pay roll of the cooperative association as soon as the storage season closes; and, while he may draw his pay from the warehouse company, he knows that it will be reimbursed by the cooperative. It is natural for him to continue to regard the cooperative

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association as his real employer and as the one to whom his allegiance and responsibility are due.

Under such circumstances, he would naturally be inclined to accommodate the cooperative association in any emergency, and, if the officers of the association should request the release of certain goods, urging that the custodian could get the receipts covering the goods at a later date, it is not unlikely that in many cases the custodian would comply; and the receipts might or might not be forthcoming later. His future means of livelihood would depend upon retaining the good will of the manager of the cooperative marketing association and he could not reasonably be expected to be as independent nor as strict in his performance of his duties to the warehouse company and the holders of the warehouse receipts as could be a person not so situated.

Whatever may be the theoretical requirements of the arrangement as to the complete control and custody of the goods by the warehouseman, therefore, it is obvious that in fact the cooperative association will be in a position to exercise control over the goods through control of its former employee, and that the association in such cases may have unlimited access to the goods in storage. Under such circumstances, it is apparent that the warehouseman will not actually be independent of the cooperative association; because the warehouse company must rely upon its local custodian, and he is not independent of the association.

Both Governor Calkins and the Lawrence Warehouse Company argue that the risk that the goods will be abstracted or a false report made concerning the goods in storage always exists and that this may always

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be accomplished through collusion between the representative of the warehouse company and the owner of the goods; but it is obvious that this is not so likely to happen when the custodian of the goods is a truly independent person as it is where the custodian of the goods is so much under the influence of the borrower.

As was said by Mr. Wilbert Ward, Assistant Vice President of the National City Bank of New York, in an address before the Association of Reserve City Bankers, at New Orleans, La., March 15, 1928:

> "No barrier of legal sophistry will prevent the servant from hearing his paymaster's voice".

This principle has been recognized repeatedly by the courts in cases dealing with trusteeship; but I shall quote only two short passages from the court's opinions as illustrating the point.

In Michoud v. Girod, 4 How. 503, The Sup. Ct. of the U.S. said:

> "In this conflict of interests, the law wisely interposes. It acts not on the possibility, that, in some cases, the sense of that duty may prevail over the motives of self-interest, but it provides against the probability in many cases, and the danger in all cases, that the dictates of self-interest, will exercise a predominate influence, and supercede that of duty."

In Staats v. Bergen, 17 N.J. Equity 554, Chief Justice Beasley said:

> "So jealous is the law upon this point, that a trustee may not put himself in a position in which to be honest must be a strain on him."

When the custodian of the goods depends for his future employment and his means of livelihood upon the good will of the borrower and knows that the salary paid to him by the warehouse company is being reimbursed by the borrower, there is a real danger that it would be too much of a strain on

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him to refuse a request of the borrower to release the goods on a promise that the warehouse receipts will be presented in a few days.

The Department of Agriculture advises that, as a matter of fact, the requirements of the Lawrence Warehouse Company arrangement are not always strictly observed; and that, in one case which came to the Department's attention, it was found that goods warehoused by this company had been withdrawn from storage without the surrender of the warehouse receipts covering them.

Viewing this warehousing plan from the standpoint of the cooperative association whose goods are warehoused, it appears that, in substance, the warehouse company does not propose actually to operate the warehouse itself but proposes to lend its name or endorsement to these warehousing operations, accepting the legal responsibility for the safe custody of the goods stored therein and providing supervision and inspection of the warehoused goods from a distance, but leaving the actual operation of the warehouse to persons who, while technically in the employ of the warehouse, are actually subject to the influence of the cooperative association whose goods are stored.

Much emphasis is laid upon the fact that the custodian of the goods is bonded in each case in the amount of $5,000 and that there is a superimposed blanket bond of $100,000. These bonds, however, are for the protection of the warehouse company itself and do not of themselves protect the holders of the warehouse receipts for any losses which they may suffer. The holders would have no right of action against the bonding company for losses incurred, and it is conceivable that in emergencies the warehouse company might permit the bonds to lapse or the bonding company might possibly cancel the bonds.

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The fact is also emphasized that warehouse receipts are not issued by the local custodian but by the regional offices of the company and that withdrawals may be effected only upon instructions from a regional office. The regional office, however, issues warehouse receipts upon the basis of a statement from the owner and a report from the local custodian as to the goods which have been received in storage. Accordingly, the fact that the regional office actually issues the receipts is of little importance so far as the question under consideration is concerned; because the company must nevertheless rely upon the honesty and good faith of the local custodian.

While the Lawrence Warehouse Company claims that it will not employ as its custodian the manager or any responsible officer or even a large stockholder or relative of an officer or stockholder of the depositor, the fact is that in the only two decided cases we have dealing with the transactions of that company, McGaffey Canning Co. v. Bank of America and the Topper-Knewbow case, the so-called custodian of the Lawrence Warehouse Company, remained in the employ of the depositor. In one case he was the manager of the depositor company and in the other case he was the nephew of the owner of the depositor company. Moreover, one of the chief advantages claimed by the Lawrence Warehouse Company for its system of field warehouses is that it interferes as little as possible with the activities of the depositor.

EXCUSES FOR FAILURE TO HAVE INDEPENDENT CUSTODIAN.

I asked Mr. J. Van Cartmell, Executive Vice President of the

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Lawrence Warehouse Company, why that company does not place in charge of its field warehouses its own employees who would be independent of the depositor. He replied, (1) that it would interfere too much with the operations of the depositor, (2) that it would add too much expense to the plan, and (3) that it is difficult to find independent custodians sufficiently familiar with the business of the canneries and cooperative marketing associations and of the grade and qualities of the goods stored.

In a telephone conversation which I had with him on this subject, on July 24, 1931, Mr. Ralph Merritt argued that it would be impossible to comply with the Board's requirements regarding independent custodianship in so far as the Raisin Growers' Association is concerned; because there are about 35 field warehouses storing raisins and there are no men who know the grades of raisins except the men in the employ of the Raisin Growers' Association. In other words, he said that the raisin growers have in their own employ all the men who have any knowledge of this subject.

The answer to these arguments is that the problem of finding competent men to conduct this business on behalf of the warehouse company is a business problem which the warehouse company must solve for itself; and the fact that it may be a difficult business problem is no reason why the Federal Reserve Board should sacrifice an important provision of its regulations designed for the protection of its member banks.

A mimeographed circular entitled "Acceptable 'Field' or 'Custodian' Set-ups for Warehousemen licensed or Applying for Licenses under the United States Warehouse Act," issued by the Department of Agriculture under date of March 21, 1928, which is in the attached file, contains the following requirement on this subject:

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"7. A custodian or manager of the warehouse shall not receive any part of his salary or wages from any person depositing goods in the warehouse, nor shall he be subject to receiving instructions from anyone concerning the business of the warehouse except from the warehouseman. He need not be a full-time employee of the warehouseman but he shall not be a part or a full-time employee of any depositor who owns or is interested in any of the goods in the warehouse. He cannot perform any services for such depositor either for compensation or otherwise. In other words, the custodian or manager must be absolutely independent of every depositor. A temporary independence cannot be considered; that is, an employee of a depositor may not be engaged for the period of the lease and then thereafter return to the employ of the depositor."

Notwithstanding this requirement, which I believe is strictly enforced, there is enclosed in the attached file a letter addressed to me by Mr. Yohe under date of July 25, 1931, listing 82 field warehouses which are now licensed and doing business under the United States Warehouse Act. This would seem to demonstrate that it is not impossible to comply with the requirement of the Board's regulation that warehouse receipts underlying bankers' acceptances must be issued by parties independent of the borrower.

STATEMENT SUBMITTED BY LAWRENCE WAREHOUSE COMPANY.

Mr. J. Van Cartmell, Executive Vice President of the Lawrence Warehouse Company, has filed with me several letters describing the field warehouse operations of the Lawrence Warehouse Company in general and the plan proposed to be operated for the Southern Idaho Bean Growers' Association in particular. All of these letters are respectfully submitted herewith for the Board's information.

He emphasizes the statement that the Lawrence Warehouse Company is an independent public warehouseman which has successfully conducted field warehousing operations for a number of years; that the premises to be used as warehouses will be leased from the Bean Growers' Association under bona

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fide leases which are duly recorded; that they will be completely partitioned off from other parts of the building in which they are located; that Lawrence Warehouse Company signs will be conspicuously placed on the outside of the buildings and on the inside of the buildings; that the Lawrence Warehouse Company locks will be placed on all doors to the premises used for warehouse purposes; that all commodities warehoused for this account will be conspicuously placarded with the Lawrence Warehouse Company's stack cards; and that any person approaching the premises or the commodities can readily see that the goods are warehoused and are not in the possession of the cooperative association.

If faithfully adhered to, these precautions are sufficient to satisfy the usual legal requirements that the warehouseman's possession must be open and notorious and sufficient to place creditors upon notice that the goods are in the possession of a warehouseman and not in the possession of the depositor.

The principal question before the Board, however, is whether the actual custodian of the goods is independent of the depositor who desires to borrow against the warehouse receipts. On this question, Mr. Van Cartmell says:

> "The Lawrence Warehouse Company has not definitely decided who it will employ as its Bonded Field Warehouse Custodian (Bonded Agent) at each of the five locations referred to, but anticipates employing one of the former employees at each location of the subsidiary warehouse company of the Southern Idaho Bean Growers' Association, which is now operating the warehouses. However, The Lawrence Warehouse Company will not employ the present manager of the subsidiary warehouse company, as we are advised he is an officer and director of the Southern Idaho Bean Growers' Association, and The Lawrence Warehouse Company does not employ as a Field Warehouse Custodian (Bonded Agent) or a Field Warehouse Watchman, an officer, director or stockholder of the depositor of commodities."

From the description of the Lawrence Warehouse Company's method of

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operating field warehouses furnished to me by Mr. Van Cartmell, it would seem that, if the plan is rigidly adhered to in all respects, there would be no legal or practical objection to it, except for the fact that the actual custodian of the goods is not sufficiently independent of the depositor who proposes to borrow money against the receipts issued by the Lawrence Warehouse Company. This is a very important exception, however, and in my opinion it renders such warehouse receipts unreliable as collateral both from a legal standpoint and from a practical standpoint.

The Lawrence Warehouse Company places great emphasis upon the fact that its receipts are accepted as collateral by numerous large commercial banks. It is possible, however, that these banks do not know that the actual custodian of the goods is a former employee of the depositor who pledges the warehouse receipts as collateral and the banks, without making their own independent inquiries, may be relying upon statements by the company to the effect that, "The Lawrence Warehouse Company places each of its field warehouses in the custody of a bonded Lawrence Warehouse Company employee."

Moreover, from the facts stated by the courts in the McGaffey Canning Company case and the Topper Knewbow case, which are discussed elsewhere in this memorandum, it appears that the Lawrence Warehouse Company does not always faithfully adhere to the course of business described in its circulars and in the briefs submitted to me by Mr. Van Cartmell.

OPINIONS OF COUNSEL FOR LAWRENCE WAREHOUSE COMPANY.

The advertising circulars of the Lawrence Warehouse Company quote the conclusions expressed by counsel retained by the warehouse company for the purpose of giving advisory opinions to the warehouse company as to the legality of its methods and validity of the warehouse receipts issued by it, and, of course, all of the opinions quoted are favorable to the warehouse

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company. As usual in such opinions, however, it may be assumed that they are based upon hypothetical statements of fact submitted to counsel by the warehouse company, which describe its system of warehousing in its most favorable light.

One of these opinions was by Hon. Owen J. Roberts, now an Associate Justice of the Supreme Court of the United States, and a copy of his opinion is in the attached file. It is based upon a hypothetical statement of facts and upon the following statement regarding the custodians of the warehouses:

> "* * * If the bonded agent be a former employee of the manufacturer or storer of the goods, he is transferred to the pay rolls of your company, is paid a substantial salary by your company, and is under the control and supervision of your company only."

In the case now under consideration, however, it appears that the custodians will not be under the control and supervision of the warehouse company only, but will continue to perform services for the cooperative association and will look to it for future employment.

CASES INVOLVING THE LAWRENCE WAREHOUSE COMPANY.

While the Board is not called upon to pass upon the merits of the entire plan of operation of the Lawrence Warehouse Company, the representatives of that company have filed lengthy documents setting forth in detail the alleged merits and advantages of this plan; and, if they are granted a hearing, they undoubtedly will elaborate on this subject at great length.

The Board should not lose sight of the fact that the sole questions presented for its consideration are:

1. Whether, on the facts submitted by the Department of Agriculture, the warehouse receipts of the Lawrence Warehouse Company may be said to convey or secure title, as required by Section 13 of the Federal Reserve Act; and

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2. Whether they may be said to be issued by a party independent of the borrower, as required by Section XI of the Board's Regulation A.

As a matter of general information, however, it no doubt will be of interest to the Board to know something about the decided cases affecting the Lawrence Warehouse Company itself.

THE MC GAFFEY CANNING COMPANY CASE.

In the case of McGaffey Canning Co. v. Bank of America, 294 Pac. 45, decided November 10, 1930, by the California District Court of Appeal, a creditor sought to attach certain goods in one of the field warehouses of the Lawrence Warehouse Company; the Bank of America, which held warehouse receipts for such goods, intervened; the Sheriff released the goods to the Bank of America when the attaching creditor refused to furnish him an indemnity bond; the Bank of America sold the goods and applied the proceeds in liquidation of its loan; and the attaching creditor brought suit against the Bank of America, the Lawrence Warehouse Company and the Sheriff, for conversion.

The trial Court granted a non-suit (i. e., dismissed the case) and an appeal was taken to the California District Court of Appeal, which held that there was not such a transfer of possession from the Canning Company to the warehouse company that it could be said absolutely as a matter of law that there was an actual, open, visible, and unequivocal change of possession and that, therefore, the decision of the trial court must be reversed and the case remanded for a trial before a jury. The defendants sought a review of the decision of the court of appeals; but the Supreme Court of California denied it. I understand that the case is now pending trial on the merits and probably will be tried again during September, 1931, unless it is settled out of court.

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The court described the warehousing transaction as follows:

"In considering this question it will be necessary to have in mind the circumstances surrounding the dealings between the parties. The canning business of the Ventura County Canning Company was carried on in a workshop or factory at Camarillo, rented from the California Fruit Confection Company, which conducted its business on the other side of a wooden partition in the same building. The rent payable by the canning company was 12½ cents per case, and its output for the canning season was about 50,000 cases. A man named Pace, employed by the canning company, served as its cookroom foreman and superintended the canning operations, at a salary of $60 per week.

"With the consent of its landlord, the canning company, on June 28, 1923, sublet its entire shop, on a month to month tenancy, to the Lawrence Warehouse Company, at a rent of $1 per month, for warehouse purposes. This lease was recorded July 28, 1923.

"Notwithstanding this sublease the canning company continued to conduct its business in the shop as before, using during the apricot season 150 to 200 employees. Pace continued to act as cookroom foreman; and at the same time he acted also as the sole representative of the Lawrence Warehouse Company on the premises. In fact, he drew his salary of $60 a week from the warehouse company, and that company then rendered a bill for the amount to the canning company. Practically all Pace's time was given to superintendence of the canning processes. At night an employee of the canning company slept on a cot in a cubby-hole above a small office partitioned off from the shop, and during the night the premises with its contents were in his care.

"When the cans had been filled and were ready for stacking, they were moved on trucks to another part of the shop and stacked by skilled employees of the canning company, in rows set about four and a half feet apart, and reaching to the ceiling. At the time of the attachment there were three or four such stacks in place. Frames made of slats were placed around the several stacks for the purpose of separating them and simplifying the count. The canning was done at the north end of the shop and the storage at the south end. There was nothing to separate the canning department from the storage department except an intervening space about fifteen feet in width.

"As the cases were stacked, they were inventoried by Pace who kept the records. He then issued nonnegotiable warehouse receipts for the Lawrence Warehouse Company. The form used was an acknowledgment of receipt for storage 'for account of, and to be delivered upon the written order, without surrender of this receipt, to Bank of America, Los Angeles.'

"Referring to these receipts, Heck, one of the partners interested in the cannery, said in his testimony: 'We jumped in the car, as soon as we got them, and went to Los Angeles, and

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"to the Bank of America, and got all the money we could.'

"As receipts were issued, stack cards of the Lawrence Warehouse Company were placed on the stacks, about six feet from the floor, each specifying the aisle, stack, and mark, and giving the date, lot number, and quantity. These cards bore, also, the statement, 'Warehoused to Bank of America.'

"When fruit was to be marketed, a release was issued from the Los Angeles office of the Lawrence Warehouse Company on order of the Bank of America; and, upon delivery of the release to Pace, withdrawal of the quantity designated followed. The cans were then labeled, packed in cases, and shipped by the canning company to fill orders obtained through brokers, who appear to have assumed responsibility to the bank for the proceeds of sale.

"The canning company really paid Pace's salary; and though the warehouse company, according to the sublease, was charged the nominal rent of $1 per month, there was an accompanying agreement obligating the canning company to pay the warehouse company for issuing receipts three cents per case for the first 50,000 cases and lesser amounts for additional quantities.

"No sign of the Ventura County Canning Company seems to have been displayed on the building. There was a sign of the California Fruit Confection Company on the outside, and a sign of the Lawrence Warehouse Company inside the shop near the south end. While Mr. Heck said the warehouse company had two of its signs on the outside, his co-partner, Mr. Clarke, said there was none on the outside to his knowledge. For purposes of nonsuit the testimony of Heck on this point must be disregarded."

The Court then stated the point upon which its decision turned as follows:

"If, under the facts of this case, there was a transfer of possession from the canning company to the warehouse company of such exclusive character that it must be declared, as a matter of law, that there was indisputable compliance with the requirements of section 3440, Civil Code, then the judgment of nonsuit was properly entered; but if a contrary conclusion was reasonably deducible from the evidence, the case should have been allowed to go to the jury as the triers of the facts."

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After indulging in the best discussion of the decided cases on this subject which I have been able to find anywhere, the court concluded as follows:

> "In the disucssion in which we have indulged, we are not to be understood as intimating any opinion upon the question whether the circumstances in evidence do, or do not, show a change of possession satisfying the law. As is said in Byrnes v. Moore, 93 Cal. 393, 394, 29 P. 70; 'Every case of the kind here involved has its own peculiar features, and must be determined on the particular facts which surround the given transaction or transfer.' We hold merely that the circumstances are not such that it can be said absolutely as a matter of law that there was an actual, open, visible, and unequivocal change of possession. The plaintiff was therefore entitled to the submission of the facts to the jury for their verdict on this point under appropriate instructions as to the rules of law by which they should be guided."

While the matter is thus left to be tried by a jury, under proper instructions in the court, the following passages from the opinion of the District Court of Appeals indicate quite clearly the character of the instructions which should be given to the jury:

> "Whether warehousing is called 'field warehousing' or by any other name, it cannot be effectively conducted in this state without compliance with the law as declared in section 3440 of the Civil Code. Merely colorable constructive change of possession accomplishes nothing in favor of a pledgee. There must be open, visible, unequivocal change of possession, manifested by such substantial outward signs as to make it evident to the world that the control of the owner has wholly ceased, and that another has acquired, and is openly exercising, the exclusive dominion over the property. * * *
>
> "Actual change of possession means existing in act, and truly and absolutely carried out, as opposed to formal, potential, virtual, or theoretical change. * * * The proof required to show actual change of possession is not measured by any fixed set of rules. Dependence must be placed upon the facts and circumstances of each particular case; and usually the determination must rest upon the finding of the court or the jury after hearing

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"The evidence adduced on both sides. * * *

"The appointment of the owner, or one of his staff, as a warehouseman's custodian of goods stored, while not conclusively ineffectual, is nevertheless a circumstance to give pause, and must be carefully weighed in connection with the other facts in evidence. * * *

"In this case a foreign element is introduced by the interjection of the warehouse company between the pledgor and the pledgee. If the loans had been made without resort to warehouse receipts, and the fruit had been stacked and kept on the premises as shown in the evidence, with Pace as custodian for the bank, there would then have been the simple question whether the pledgee had been placed in actual exclusive possession and control. Instead of actual possession the bank claims to have obtained symbolic possession by virtue of the warehouse receipts; but these receipts can have no virtue, unless the warehouse company had the same actual and exclusive possession and dominion which would have been essential to the protection of the bank, if it had acted independently in reliance on the goods instead of on the receipts."

As applied to the question now before the Board, two conclusions may be reached with reference to the warehouse receipts involved in the McGaffey Canning Company case:

(1) That the validity of any lien created by the pledge of such receipts is extremely doubtful; and

(2) That there was no semblance of independent custodianship.

The Lawrence Warehouse Company states that the McGaffey

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case arose under the procedure followed by that company during the year 1923 and that, since that time the company, has adopted many additional safeguards and refinements in field warehousing which offer much greater safeguards to the parties concerned than under its former procedure. The procedure described in the unpublished findings of the special master in the recent case of William H. Moore, Jr., Trustee in Bankruptcy of Topper-Knewbow v. Pacific Finance Corporation and Lawrence Warehouse Company, copies of which are in the attached file, however, was just as bad in my opinion as the procedure adopted in the McGaffey case, except that there was a better segregation of the goods. Both cases are alike in that the actual custodian of the goods was a person who remained in the employ of the depositor and who was more under the influence of the depositor than under the influence of the warehouse company.

THE TOPPER-KNEWBOW CASE.

The Topper-Knewbow case arose in 1930 and may properly be taken as an example of the methods actually used by the Lawrence Warehouse Company at the present time. The warehousing arrangement was set up June 10, 1929; the Topper-Knewbow Company went into bankruptcy during the month of March, 1930; and the special master's report was rendered December 11, 1930.

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The findings of the special master may be summarized as follows: The Topper-Knewbow Company applied to the Pacific Finance Corporation for a loan of $20,000 and was told that it must pledge warehouse receipts for $30,000 worth of merchandise. The Topper-Knewbow Company then removed certain woolen goods from its workrooms on the fourth and fifth floors of the building which it occupied with other tenants to a room on the third floor. It leased to the Lawrence Warehouse Company the room in which these goods were placed and the Lawrence Warehouse Company placed its lock and sign on the only door thereto. The Lawrence Warehouse Company employed as its custodian, one Nat Klitnick, an employee of the Topper-Knewbow Company, and turned the keys over to him. The Lawrence Warehouse Company issued warehouse receipts for the goods and the Pacific Finance Corporation made a loan to the Topper-Knewbow Company against the pledge of such receipts. Goods were frequently removed to the cutting room of the Topper-Knewbow Company and clothing was manufactured therefrom, but it appears that other goods were substituted for the goods so removed. (It does not appear whether the consent of the warehouse company to such removals and substitution was obtained; but Mr. Van Cartmell told me that the warehouse company had to pay the finance company $3200 for goods which were missing, and obtained reimbursement from the bonding company.) The Warehouse Company paid Klitnick $80 per month but he continued to work for the Topper-Knewbow Company and endorsed his pay check each month over to the Topper-Knewbow Company which deposited it to its own account, although this was not known to the Lawrence Warehouse Company. Klitnick sometimes delegated his authority and permitted other employees of the

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Topper-Knewbow Company to have access to the warehouse.

The special master concluded that this was a public warehouse; that the warehouse company took actual physical possession of the goods; that such possession was open, notorious and exclusive; and that the warehouse receipts were valid. Therefore, when the Topper-Knewbow Company went into bankruptcy and litigation ensued between the trustees representing the general creditors and the Pacific Finance Company which held the warehouse receipts, the master held that the Pacific Finance Company had a valid lien and was entitled to the goods and the United States District Court approved this finding.

The legality of the lien was thus sustained; but it appears that part of the goods were not there; and, under the practice permitted, it is entirely possible that none of them would be there. Moreover, it is perfectly obvious that in this case, it could not be said that there was any real independent custodianship of the warehoused goods.

FINANCIAL RESPONSIBILITY OF LAWRENCE WAREHOUSE COMPANY.

It may be contended that, since the Lawrence Warehouse Company is independent of the borrower and accepts full legal responsibility for the goods represented by its warehouse receipts, the fact that the actual custodian of the goods is not independent of the borrower is unimportant; because the Lawrence Warehouse Company would be liable to the holder of any warehouse receipt who is damaged by a failure to deliver the goods to him upon presentation of the receipt. The value of the legal responsibility of the Lawrence Warehouse Company, however, depends upon its financial responsibility.

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On this subject a balance sheet of the Lawrence Warehouse Company as of December 31, 1930, furnished to Mr. Agnew by that company and enclosed in the attached file, would seem to speak for itself. It lists the following assets and liabilities:

LAWRENCE WAREHOUSE COMPANY.

BALANCE SHEET

DECEMBER 31 1930

A S S E T S :

Cash	$ 14 061 79	
Notes Receivable	5 608 44	
Accounts Receivable	166 956 54	
Supplies	12 743 06	
Equipment	149 481 59	
Real Estate & Improvements	21 373 29	
Stocks & Misc. Investments	5 238 00	
Prepayments	59 474 38	
*Branch Development Cost	129 439 53	
*Leaseholds	77 500 00	
*Good Will	50 000 00	
		$ 691 876 62

L I A B I L I T I E S :

Notes Payable	$ 90 000 00	
Audited Vouchers & Accts. Payable	60 024 92	
Deferred Liabilities	7 211 00	
Accounts with Affiliated Cos.	127 390 93	
Deferred Revenue Credits	240 00	
Reserve for Depreciation	105 141 01	
*Common Stock Outstanding	100 000 00	
*Preferred Stock Outstanding	100 000 00	
*Surplus	101 868 76	
		$ 691 876 62

Attention is invited to the so-called assets marked with asterisks.

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With these obviously questionable assets eliminated, the statement would indicate an actual net worth of only $44,929, even if the other assets, such as notes and accounts receivable, are accepted without question. In this connection it must be remembered that the Lawrence Warehouse Company operates approximately 500 field warehouses, although only 250 to 300 are in actual operation at any one time.

Although the Lawrence Warehouse Company would be legally liable to any person holding a negotiable warehouse receipt issued by it, if the goods are not faithfully kept and delivered to such holder, its financial responsibility, or rather its financial ability to discharge such legal liability, is questionable.

It places much emphasis upon the fact that each of its custodians is bonded in the sum of $5,000 and that there is a blanket bond of $100,000 superimposed upon such individual bonds. All of these bonds, however, are merely fidelity bonds to protect the Lawrence Warehouse Company against losses resulting from the fraudulent or dishonest acts of its own employees and they would give the holder of the warehouse receipts no right of action against the bonding company. It may be argued that this protection would enable the Lawrence Warehouse Company to protect its customers; but, if the Lawrence Warehouse Company should get into financial difficulties, it might fail to pay the premiums on these bonds or the bonds might be cancelled.

The Lawrence Warehouse Company is owned and controlled by the Lawrence Warehouse Corporation, a holding corporation which also owns several other companies in California; and this holding company has notified R. G. Dunn & Co., the mercantile credit agency, that its board

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of directors has adopted a resolution to the effect that the corporation is responsible for the indebtedness of the Lawrence Warehouse Company contracted in the usual course of business. It is very doubtful, however, whether this action of the directors of the Lawrence Warehouse Corporation would give rise to a valid legal claim against the corporation in favor of creditors of the Lawrence Warehouse Company.

DIFFICULTY OF COMPLIANCE WITH U. S. WAREHOUSE ACT.

It appears that the proposed arrangement between the Lawrence Warehouse Company and the Idaho Bean Growers' Cooperative Association contemplates that the cooperative association will not only pay the warehouse company a monthly storage fee, but will also reimburse the warehouse company under contract for all expenses, including salary of custodian, cost of bond, salaries and expenses of auditors.

Section 13 of the U. S. Warehouse Act provides as follows:

> "That every warehouseman conducting a warehouse licensed under this Act shall receive for storage therein, so far as its capacity permits, any agricultural product of the kind customarily stored therein by him which may be tendered to him in a suitable condition for warehousing, in the usual manner in the ordinary and usual course of business, without making any discrimination between persons desiring to avail themselves of warehouse facilities."

If, therefore, any person other than the Idaho Bean Growers Cooperative Association should demand it, the Lawrence Warehouse Company would be required to receive beans for storage from such other persons; and it would be extremely difficult to work out any measure of compensation for such storage service rendered to persons other than the cooperative

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association which would not violate the prohibition against discrimination. If such other persons are charged a storage fee only, it would amount to a discrimination against the cooperative association; and, if such other persons are required to pay a monthly storage fee and also to reimburse the warehouse company for all expenses including salary of custodian, cost of bond, salaries and expenses of auditors, etc., then the charges would seem to be exorbitant.

In this connection, attention is invited to the fact that Section 25 of the U. S. Warehouse Act authorizes the Secretary of Agriculture to revoke the license of any warehouseman "upon the ground that unreasonable or exorbitant charges have been made for services rendered."

ADVISABILITY OF CONDUCTING A HEARING ON THIS SUBJECT.

On July 24, 1931, the Board received the following telegram from Mr. J. Van Cartmell, Executive Vice President of the Lawrence Warehouse Company:

> "Understand that the Federal Reserve Board has been asked for an opinion on certain phases of Field Warehouse procedure I desire to ask that in event any rulings of the Board would appear to be adverse to the Lawrence System of field warehousing as operated by the Lawrence Warehouse Company that the Board would allow us to appear at hearing prior to promulgation of new ruling and would appreciate being notified by wire care of our Chicago office of time of hearing."

Although Mr. Vest and the undersigned have discussed this subject at great length with Mr. Van Cartmell and although he has submitted lengthy documents which are in the attached file describing the methods of the Lawrence Warehouse Company and submitting arguments in support of such methods, it would seem advisable to grant this request, in order to forestall

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any possibility of an injustice or charges of injustice.

Inasmuch as the Federal Reserve Banks of New York and San Francisco have heretofore accepted the field warehouse receipts of the Lawrence Warehouse Company without question, and have written the Board that they consider these receipts unobjectionable, it would seem advisable for the Board either to grant them a hearing on this subject or to submit this memorandum to them with a request for a further expression of their views.

If the Board decides to conduct a hearing on this subject, it would also seem appropriate to invite Mr. C. W. Kitchen and Mr. H. S. Yohe of the Department of Agriculture to attend the hearing as observers. I do not think, however, that these gentlemen would care to testify at an open hearing or to participate in any debate with the representatives of the Lawrence Warehouse Company.

In view of the interest which they have manifested in this question, it would also seem advisable to invite Mr. Robert H. Bean, Executive Secretary of the American Acceptance Council, and Mr. Wilson V. Little, Executive Secretary of the American Warehousemen's Association, to attend such hearing.

PRACTICE OF FEDERAL RESERVE BANKS AS TO CHECKING WAREHOUSE RECEIPTS UNDERLYING ACCEPTANCE CREDITS.

It is surprising that warehouse receipts issued under this plan have been accepted and approved by at least two of the Federal Reserve Banks without consultation with the Federal Reserve Board; and I believe that it would be advisable to inquire into the question whether the Board is providing

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a sufficient check upon the decisions made by the Federal Reserve Banks on this subject and whether the Federal Reserve Banks are inquiring with sufficient care into the character of warehouse receipts against which bankers' acceptances purchased or discounted by them are issued.

Since bankers' acceptances drawn to finance the storage of readily marketable staples are not eligible for rediscount by Federal reserve banks unless they are secured at the time of acceptance by warehouse receipts conveying good security title and issued by parties independent of the borrowers, it would seem that, before purchasing or rediscounting bankers' acceptances secured by warehouse receipts, Federal reserve banks should inquire as to the character of the underlying warehouse receipts. This would not necessarily involve a separate inquiry as to each acceptance, but the Federal Reserve Bank of the district in which the accepting bank is located could obtain the necessary information as to each acceptance credit granted and could pass the information along to the other Federal reserve banks.

This question could very well be referred to the General Committee on Bankers' Acceptances for study and report. That Committee consists of the officers of the various Federal Reserve Banks who purchase acceptances for them and pass upon all problems pertaining to this subject. The committee's activities, as a whole, set the standard of the acceptance practices of all banks in this country. If the members of this Committee will not purchase the acceptances of particular banks, or acceptances of a particular issue, such acceptances are discriminated against in the market and there is

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little if any advantage is using them as a means of providing bank credit.

That Committee and its individual members, therefore, hold the key to the practical administration of this particular problem; and I believe that it would be well worth while for it to have a meeting for the purpose of discussing and giving thorough reconsideration to:

(1) The character of warehouse receipts which should be deemed acceptable as a basis for bankers' acceptance credits, and

(2) The steps which should be taken by the Federal Reserve Banks to assure themselves that the warehouse receipts underlying domestic storage acceptance credits are proper warehouse receipts and comply fully with the Board's regulations and rulings.

I do not believe that the Board's consideration of this particular case should be postponed until after such a meeting, because that would cause too much delay; but I do believe that this general subject should be thoroughly considered by that Committee in the near future.

CONCLUSION.

I agree with the officers of the Federal Reserve Banks that field warehousing actually conducted by bona fide warehousemen regularly engaged in public warehousing is much preferable to subsidiary warehousing and I think it is much more likely to be sustained by the courts. As this particular plan is proposed to be operated, however, I think it is fatally defective; because of the fact that the man actually in charge of the warehouse is taken immediately from the employ of the person whose goods are stored and expects to be reemployed by that person at the termination of the warehouse season, and, therefore, is not in fact independent but is too much subject to the influence of the person whose goods are stored.

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This company, however, has worked out many important safeguards for field warehouses; on paper, its plan looks very good except for the fact that it does not employ independent custodians owing allegiance solely to the warehouse company; and I am inclined to believe that the plan would be sound, the company would render a valuable service, and there would be no objection to its warehouse receipts, if:

(1) The warehouse company would place in charge of each field warehouse its own independent custodian owing allegiance solely to the warehouse company;

(2) The warehouse company had an adequate net financial worth to support the large number of field warehouses for which it accepts the legal responsibility; and

(3) It would actually operate all of these warehouses in strict conformity with the plan which it has outlined on paper.

From a careful study of all the documents in the attached file and all other information I have been able to find about this company, however, I believe that its warehouse receipts are not now reliable collateral for banks and that it would be inadvisable for the Board to issue any ruling which could be used by that company as a basis for the statement that the Federal Reserve Board has approved its plan or its warehouse receipts, especially in view of the fact that the company appears to be ambitious to expand its operations all over the United States.

Respectfully,

(Signed) Walter Wyatt

Walter Wyatt,
General Counsel.

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