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The Irregular Issuance of Warehouse Receipts and Article Seven of the Uniform Commercial Code

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THE IRREGULAR ISSUANCE OF WAREHOUSE RECEIPTS AND ARTICLE SEVEN OF THE UNIFORM COMMERCIAL CODE

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IRREGULARITIES in the issuance of warehouse receipts provide counsel with the opportunity of arguing that the receipt is of no effect or that an adverse claimant has no right to property allegedly stored with a warehouseman. Such irregularities occur when there is noncompliance with one of the several statutes which, in a particular jurisdiction, may regulate the operations of warehousemen or the issuance of warehouse receipts. There may be, first of all, failure to comply with the formal requirements for warehouse receipts of Article Seven of the Uniform Commercial Code (Code) or its predecessor, the Uniform Warehouse Receipts Act (UWRA).[1] Any deviation from these requirements may encourage arguments in opposition to rights derived from the document, such arguments being limited only by the extent of counsel's ingenuity. For example, both the Code[2] and the UWRA[3] require that a warehouse receipt contain a statement of the rate of storage and handling charges to be claimed by the bailee. Where this statement has been omitted, it has been argued that title based on the warehouse receipt is invalid,[4] that the warehouseman does not enjoy the statutory right of interpleader,[5] and that the warehouseman is not entitled to any compensation for his storage services.[6]

Co-existing with the Code and UWRA in some states are statutes regulating the issuance of warehouse receipts for certain types of commodities, usually farm produce.[7] These statutes generally were

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1. UNIFORM COMMERCIAL CODE §§ 1-201(15), (45); 7-102(1)(h), -104(1), -201, -202 [hereinafter cited as U.C.C.]; UNIFORM WAREHOUSE RECEIPTS ACT §§ 1, 2, 4, 5, 58(1) [hereinafter cited as U.W.R.A.].

2. U.C.C. § 7-202(2)(e).

3. U.W.R.A. § 2(e).

4. Smith Bros. v. Richheimer & Co., 145 La. 1066, 83 So. 255 (1919) (argument rejected).

5. New Jersey Title Guar. & Trust Co. v. Rector, 76 N.J. Eq. 587, 75 Atl. 931 (Ct. Err. & App. 1910) (argument rejected). *But cf.* Maxwell v. Winans, 96 N.J. Eq. 178, 125 Atl. 38 (Ch. 1924).

6. Finn v. Erickson, 127 Ore. 107, 269 Pac. 232 (1928) (warehouseman entitled to reasonable compensation); *cf.* State Bank v. Almira Farmer's Warehouse Co., 123 Wash. 354, 212 Pac. 543 (1923) (so many terms were missing that documents were not warehouse reecipts and bailee could claim lien for advances not noted on the document).

7. *E.g.*, ARK. STAT. ANN. §§ 77-1201 through -1227 (1957); ILL. REV. STAT. ch. 114,

adopted prior to enactment of the UWRA when there was no general control of the issuance of warehouse receipts. They remain in force despite successive adoptions of the UWRA and the Code because they contain specialized regulation to meet the needs of a particular kind of commerce. An irregularity can occur when there is non-compliance with this specialized type of legislation even though there has been compliance with the Code or UWRA, as for instance, where such a statute requires the inclusion of terms not made mandatory by either the UWRA or the Code.[8] Failure to include such terms might thus prompt an assertion that the warehouse receipt is invalid.[9]

A third type of statute which must be considered is one which regulates the business of warehousing and requires that public warehouses be licensed and bonded.[10] Some irregularities giving rise to litigation are traceable to non-compliance with this type of statute. In the typical case, the warehouseman accepts goods for deposit at a time when it is unlicensed; it is then argued that the lack of a license affects the title-transmitting aspect of the receipt[11] or renders the bailee liable in an action for conversion.[12]

The draftsmen of Article Seven were well aware of the problems caused by irregular issuance of warehouse receipts and there will be fewer problems of irregularity under the Code for two reasons. First, the Code's formal requirements for issuance of warehouse receipts are less stringent than are those imposed by the UWRA, thereby lessening the chances of any irregularity occurring. Second, the Code contains two sections which aim to minimize the consequences of any irregularities which may occur.[13] In this article I will discuss the types of defects that have been troublesome over the years, focussing on the ways in which they have arisen, but also discussing some of their particularly troublesome consequences; then I shall consider

§§ 293-326a (1963) (storage of grain, soybeans and cowpeas); IOWA CODE §§ 543.1–.38 (1962).

8. *E.g.*, IOWA CODE § 543.18 (1962), as amended, Iowa Acts 1965, No. 61 G.A., ch. 413, § 10124, requires, in addition to the terms required by U.C.C. § 7-201(2), a description by "grade or other class" of stored agricultural products. GA. CODE ANN. § 111-513(j) (1959), requires a statement of the amount and rate of insurance on the goods.

9. No cases have been discovered in which there was compliance with the UWRA but non-compliance with a parallel regulatory statute of this type. The case most nearly in point is Central Nat'l Bank v. Fidelity & Deposit Co., 324 F.2d 830, 831 (7th Cir. 1963), in which the court, for the purpose of argument, assumed a set of facts which would have involved a violation of a provision in the Illinois Constitution.

10. *E.g.*, MASS. GEN. LAWS ANN. ch. 105, § 1 (1954). In some instances, laws regulating the issue of warehouse receipts may be combined with those regulating the warehousing business as in GA. CODE ANN. §§ 111-501 through -1532 (1959).

11. Supervisor of Public Accounts v. Patorno Wines & Distilling Corp., 181 La. 814, 818, 160 So. 423, 424 (1935).

12. D'Aloisio v. Morton's Inc., 342 Mass. 231, 233, 172 N.E.2d 819, 821 (1961).

13. U.C.C. §§ 7-401, 10-104.

the ways in which the Code affects these irregularities and their consequences.

I. Legal Defects in the Character of the Issuer

A warehouse receipt is created only when a document of a certain type is issued by a particular type of bailee. Thus, according to the UWRA, the issuer of a warehouse receipt had to be "lawfully engaged in the business of storing goods for profit."[14] The UWRA, however, did not spell out the requirements of "lawful" conduct of business. Rather, the legitimacy of the warehouseman's activity was determined by reference to state laws regulating entry into the warehousing business. Violations of these state licensing laws, through failure to secure a license or post a bond, have been raised in two types of cases: in one, the illegal conduct of the issuer has been invoked to oppose rights derived from the document; in the second, it has been argued that the illegal warehousing activity has affected rights not dependent on a valid warehouse receipt.

Supervisor of Public Accounts v. Patorno Wines & Distilling Corp.[15] is a case in the first category. There, certain wines were deposited in a warehouse by the manufacturer who then pledged the receipts as security for a loan. The warehouse was located in a room on premises belonging to the manufacturer. The State of Louisiana caused a writ of attachment to be levied on the wines to satisfy a claim for unpaid taxes, and the court favored the claim of the state over that of the pledgee because the issuer was not licensed to do business at that address. This result is not surprising, for there was evidence that the pledgee was well aware of the state's claim and had permitted the release of wine on which taxes were unpaid. Moreover, the warehousing arrangement looked suspicious, and the case is therefore in line with others which have refused to recognize spurious field warehousing arrangements.[16] *Patorno* is thus an example of a case in which rights derived from the document were successfully opposed by invoking the invalidity of the alleged warehouse receipt, even though such invalidity was the result of the functional character of the issuer and not the legality of his business operations.[17]

Despite the fact that the lack of a warehouseman's license must be a somewhat common occurrence, there are few cases which seek to

14. U.W.R.A. § 58(1).

15. 181 La. 814, 160 So. 423 (1935).

16. The development of field warehousing is described in 1 Gilmore, Security Interests in Personal Property §§ 6.3–.4 (1965).

17. This problem reoccurs in the discussion of factual defects in the character of the issuer at pp. 1367-68 *infra*.

utilize such an irregularity to cast doubt on the validity of the warehouse receipt. But in a fairly recent Massachusetts decision[18] the depositor of goods sought to do just that; in order to avoid the limitation of liability in a warehouse receipt, the depositor attempted to establish that the warehouseman had converted the goods (liability for conversion not being covered by the exculpatory clause), arguing that the conversion arose from the fact that the warehouseman had accepted the goods for storage at a time when it was not licensed by the Commonwealth of Massachusetts. The argument did not succeed: the licensing statute had criminal sanctions for non-compliance and the court saw no need to impose the additional sanction of a liability for conversion.

More numerous are cases in the second category, in which the asserted illegality is supposed to affect rights that are not dependent on a valid warehouse receipt. In most of these cases the issue is whether the deposit of goods, usually grain, is a bailment or a sale. Here the courts have often attached some weight to the fact that the person receiving the goods is not licensed to act as a public warehouseman. One of the most unusual of these cases is *Green v. Fortune*,[19] a Kansas decision in which the lack of a license was dispositive of an issue involving the statute of limitations. Wheat was delivered to a grain elevator in June and July of 1934. The owner of the wheat demanded payment for it in May of 1937 and brought suit to recover the value of the grain on January 20, 1938. The applicable statutory limitation period was three years, so the plaintiff was barred if his action had accrued prior to January 20, 1935. He sought to avoid the application of the statute by arguing that the transaction with the defendant was a bailment and that the bailee was under no obligation to re-deliver the wheat, or its cash equivalent, until the demand was made in May, 1937. The defendant successfully argued that, because it did not have a license to operate as a public warehouseman, the transaction, as a *matter of law*, could only have been a sale, and a demurrer to the complaint was sustained. It seems erroneous to attach such great significance to the lack of a license. The real issue is the intent of the parties and, while the lack of a license should be considered, it does not follow that as a matter of law bailees should always be presumed to have followed a legal course of activity. Thus, the plaintiff in *Green v. Fortune* should have been given the opportunity to prove that the defendant was operating as a warehouseman, even though unlicensed.

18. D'Aloisio v. Morton's Inc., 342 Mass. 231, 172 N.E.2d 819 (1961).
19. 151 Kan. 598, 100 P.2d 631 (1940).

There are other cases in which it is indicated that the lack of a license makes the transaction a sale, but none in which the position is stated as strongly as in *Green v. Fortune*. In some of these cases there was other evidence justifying a finding of a sale, and the failure to obtain a license merely supported the conclusion.[20] In others, such a statement was dictum,[21] and some courts have simply refused to assign any significance to the lack of a license. In *Travelers Indemnity Company v. United States*,[22] one Luder was engaged both in the grain merchandising and in the grain storage business. The storage business was carried on, properly licensed, at one location, and Luder's grain for his own account was held at another location for which he did not possess a storage license. When Luder went out of business the bonding company attempted to argue that it was not liable to the plaintiff-bailor because the grain was delivered to Luder at Waldo, Kansas, the location where Luder did *not* have a license to engage in the business of storing grain, and the transaction was therefore a sale not covered by the bond. There was evidence that the plaintiff considered the transaction a bailment and the court refused to follow *Green v. Fortune* and other Kansas decisions which had announced the rule that the lack of a license made the transaction a sale. To the same effect is *Hartford Accident and Indemnity Co. v. State of Kansas*,[23] in which grain was received for storage but no warehouse receipt was ever issued. The grain was received during a period when the bailee's license had lapsed. The license was later renewed, and the bond required by statute of all warehousemen was back-dated to the day when the previous license had expired. The surety company sought to avoid liability on its bond by asserting that it had no responsibility for grain deposited with an unlicensed bailee. Since the warehouseman could either buy the grain or store it, the surety argued that grain received during the period when the license was not in force could not be stored grain, but rather must have been purchased outright. The Tenth Circuit rejected this argument. Previous Kansas decisions relating the lack of a license to the bailment-sale issue were summarily distinguished and, in the alternative, the court held that the surety company was estopped to deny liability because it had back-dated the bond so as to cover the period of un-

20. Schmitz v. Stockman, 151 Kan. 891, 101 P.2d 962 (1940); Kipp v. Goffe & Carkener, 144 Kan. 95, 58 P.2d 102 (1936). But in other litigation involving the same grain elevators as in *Kipp*, the court did not apparently consider the lack of license important. See Kipp v. Carlson, 148 Kan. 657, 84 P.2d 899 (1938).

21. Shugar v. Antrim, 177 Kan. 70, 74, 276 P.2d 372, 375 (1954); Greep v. Bruns, 160 Kan. 48, 56, 159 P.2d 803, 809 (1945).

22. 271 F.2d 521 (10th Cir. 1959).

23. 247 F.2d 315 (10th Cir. 1957).

licensed activity. The estoppel argument was a make-weight because the plaintiff did not demonstrate reliance, and it is therefore plain that the court was simply unwilling to attach any specific significance to the lack of license.[24]

Aside from state licensing questions, the requirement of the UWRA that the issuer of a warehouse receipt be "lawfully" engaged in the warehousing business was not functionally significant. The theory of the statute was that documents which in some instances would embody title to warehoused goods should only be issued by a certain type of bailee, but the requirement of lawful engagement in business did not help to identify the type of bailee that the draftsmen of the UWRA had in mind. Therefore, in order to clarify the situation, two changes have been made in the Code. First, the requirement that the bailee be "lawfully" engaged in the warehousing business has been dropped.[25] The only issue now is the factual one of determining the nature of the issuer's business. Second, section 10-104 provides:

> The Article on Documents of Title (Article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailee's businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not effect the status of a document of title which otherwise complies with the definition of a document of title (Section 1-201).

It seems pretty clear that as far as rights under the document are concerned, counsel will not be able to argue that the lack of a license has much significance. But where the litigation does not directly involve rights derived from a warehouse receipt, as in the bailment-sale cases, the issue of illegality is still potentially present. The definition of warehouseman is not controlling in cases outside the scope of Article Seven and the direction to disregard illegality contained in section 10-104 is confined to those situations in which the "status of a document of title" is at issue. Nevertheless, the decisions in *Hartford Accident and Indemnity Co. v. State of Kansas*[26] and *Travelers Indemnity Company v. United States*[27] hopefully signal a movement away from the mechanical analysis of the previous bailment-sale cases.

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24. See also Torgerson v. Quinn-Shepherdson Co., 161 Minn. 380, 201 N.W. 615 (1925) (lack of statutory bond not significant when evidence supported finding of bailment).

25. See U.C.C. § 7-102(h).

26. 247 F.2d 315 (10th Cir. 1957).

27. 271 F.2d 521 (10th Cir. 1959).

II. Factual Defects in the Character of the Issuer

Defects in the status of the issuer of a supposed warehouse receipt may be factual instead of legal. In other words, it may be argued that the warehouse receipt was invalid because it was not issued by a person engaged in the storage business. Under the UWRA, the issuer not only had to be lawfully conducting his business, but he also had to be "engaged in the business of storing goods for profit."[28] Some cases made much of the fact that the issuer did not seek a profit[29] from the warehousing operation and consequently invalidated pledges of the supposed warehouse receipts. But often the presence or absence of a profit motive, although given emphasis in the report of the case, was only an indicium of whether the issuer was actually in the business of warehousing. The courts in these cases[30] were apprehensive about permitting warehouse receipts to serve as security when issued by the owner of the goods. In one of these cases, in which the pledgee sought to rely upon the validity of what was alleged to be a valid field warehousing arrangement, the court said:

> To uphold and give legal effect to the rights claimed by the interpleaders in this case would destroy all safeguards of statutory law enacted to provide for constructive notice of liens and incumbrances upon property by persons innocently contracting with reference thereto. The fact of the property being stored in a regular warehouse which is run and operated by a warehouseman engaged in the business for profit (as prescribed in the 1938 act) is notice to one dealing in any manner with the stored property that warehouse receipts might be outstanding against it.[31]

The Code, which drops the profit requirement and defines a warehouseman as "a person engaged in the business of storing of goods for hire,"[32] does not affect the holdings in these cases.[33] Although the profit requirement is gone, it is still necessary that the issuer be engaged in the business of warehousing if the pledge of the receipts is to be held valid.[34]

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28. U.W.R.A. § 58(1).

29. Continental Can Co. v. Jessamine Canning Co., 286 Ky. 365, 150 S.W.2d 922 (1941); Moore v. Thomas Moore Distilling Co., 247 Pa. 312, 93 Atl. 347 (1915); Citizen's Bank v. Willing, 109 Wash. 464, 186 Pac. 1072 (1920).

30. Continental Can Co. v. Jessamine Canning Co., *supra* note 29; Citizen's Bank v. Willing, *supra* note 29.

31. Continental Can Co. v. Jessamine Can Co., 286 Ky. 365, 369, 150 S.W.2d 922, 924 (1941).

32. U.C.C. § 7-102(1)(h).

33. *But see* Second Report of the State of New Jersey Commission to Study and Report Upon the Uniform Commercial Code 512-13 (1960).

34. The requirement of "profit" meant that the bailee had to be in the business of

The danger of defrauding the public, suggested in the above quotation, is sharply reduced where the storage arrangement, although not a true warehousing situation, is subject to public regulation of the issuance of receipts. If a state has statutes under which receipts for agricultural products or liquor may be issued by an owner who is not a warehouseman, the Code recognizes this document as a warehouse receipt despite the unorthodox character of the issuer.[35] In *Moore v. Thomas Distilling Co.*,[36] a distiller had issued certificates covering his own goods. There was an over-issue of these certificates and the dispute was between a claimant whose certificates had been purchased first and a second claimant whose certificates, although purchased later, had been issued first. The court resolved the question in favor of the first purchaser, finding the date of the first sale and not the date of the first issuance controlling. The irregularity in the character of the issuer thus deprived the supposed warehouse receipts of their special title-transmitting characteristics. Under the Code, however, this irregularity would be immaterial[37] and the Code rule governing over-issue would apply.[38]

A final case involving a factual defect in the character of the issuer is *Deaux v. Trinidad Bean & Elevator Co.*[39] This was an action involving beans stored with defendant as security for a loan. The beans were sold prior to the due date of the loan and the debtor sued his creditor for conversion. After judgment in the trial court for the plaintiff, the defendant moved for leave to amend its answer to allege that it was not engaged in storing goods for profit. The denial of this motion was affirmed on appeal: the receipt had fixed the rights of the parties irrespective of whether the defendant was a warehouseman. This case should surprise no one. The special character of the issuer is relevant only when the title-transmitting qualities of the warehouse receipt are at issue and a piece of paper can serve as a contract to store and return the goods upon a fixed condition even if the promisor is not a warehouseman.[40]

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warehousing and this functional definition is retained by the Code. The profit requirement is discussed in *In re* Hedgeside Distillery Corp., 123 F. Supp. 933 (N.D. Cal. 1952).

35. U.C.C. § 7-201(2).

36. 247 Pa. 312, 93 Atl. 347 (1915).

37. *Cf.* BRAUCHER, DOCUMENTS OF TITLE 10 (1958).

38. U.C.C. § 7-402. Even where there is over-issue, cancellation of the first document validates the second. Over-issue does not make the second document perpetually bad. See Block v. Oliver, 102 Ky. 269, 43 S.W. 238 (1897); Roche v. Crigler, 23 Ky. L. Rep. 2378, 67 S.W. 273 (Ct. App. 1902). There is nothing in U.C.C. § 7-402 which would prevent a court from reaching the same result under the Code.

39. 8 Cal. App. 2d 149, 47 P.2d 535 (Dist. Ct. App. 1935).

40. *Cf.* U.C.C. § 7-401, discussed at pp. 1374-76 *infra*.

III. Defects in the Warehouse Receipt

A. *Defects Generally*

More common than issuer irregularities are defects in the form of the document. Neither the UWRA nor the Code state precisely what must be in a warehouse receipt. However, each statute contains a list of what are called "essential terms,"[41] and courts have the responsibility for deciding whether the failure to include one or more of these terms prevents the piece of paper in question from being a valid warehouse receipt. The Code goes somewhat further than the UWRA by suggesting some (but not all) of the minimum attributes which a warehouse receipt must have if it is to function as a document of title.[42]

The designation of some items in the UWRA as "essential terms" invited the argument that omission of any one of these invalidated the receipt. A typical case is *Sampsell v. Security-First National Bank of Los Angeles*,[43] in which a debtor deposited goods in a warehouse which issued the receipts to a pledgee-bank as security for its loan to the debtor. The receipts failed to contain the rate of storage charges required by the UWRA and the debtor's trustee in bankruptcy argued that this omission invalidated the receipts and the pledge. The court could not agree: there was no showing of prejudice to any party caused by the failure to include the rate of storage and the court did not believe that the legislature would want to penalize the holder for such a slight defect in the document.

A similar case is *Manufacturer's Merchantile Co. v. Monarch Refrigerating Co.*,[44] in which execution had been levied on warehoused goods and the warehouseman was therefore unable to deliver them to the holder of a negotiable warehouse receipt. The bailee sought to establish that the receipt was non-negotiable so that it would be able to claim against the holder of the receipt the excuse of delivery to the levying officer. It argued that negotiability had been impaired by

41. U.C.C. § 7-202(2); U.W.R.A. § 2.

42. See U.C.C. § 1-201(15). In some instances only purchasers of documents of title are entitled to the benefit of a special Code rule. See, *e.g.*, § 7-203 (liability for non-receipt or misdescription). *But cf.* §§ 7-401(a); -502 (rights acquired by due negotiation); -507 (warranties on negotiation or transfer). In other instances, although the draftsmen refer to rights based on a warehouse receipt, the context indicates that they meant a warehouse receipt which also satisfied the definition of document of title. See, *e.g.*, §§ 7-205 (rights of buyer in ordinary course of business of fungible goods); -207 (over-issue of receipts for fungible goods; -209(1) (lien of warehouseman).

43. 92 Cal. App. 648, 207 P.2d 1088 (Dist. Ct. App. 1949). See also Sampsell v. Lawrence Warehouse Co., 167 F.2d 885 (9th Cir. 1948); Smith Bros. v. Richheimer & Co., 145 La. 1066, 83 So. 255 (1919); Arbuthnot, Latham & Co. v. Richheimer & Co., 139 La. 797, 72 So. 251 (1916).

44. 266 Ill. 584, 107 N.E. 885 (1915).

its failure to include the rate of storage charges in the receipt. The court did not accept this argument. Beside noting that the receipt did not have to be in any particular form, the court relied on a provision of the UWRA that made the warehouseman liable for damage caused by omission of an essential term from a negotiable receipt.[45] Thus it concluded that a warehouse receipt could still be valid despite this type of irregularity. Obviously this reasoning can only be carried so far. Despite the statements in both the UWRA and the Code that a warehouse receipt does not have to be in any particular form, the failure to comply with the statute will at some point be so complete that it no longer makes sense to refer to a piece of paper as either a receipt, contract of storage, or document of title.[46]

Unless the title-transmitting qualities of the document are at issue,[47] irregularities of form generally do not present difficult problems. In the footnotes of this article I have cited numerous cases in which there was a defect in form but in the text I shall speak only of a few interesting decisions. One of these is *Redmon v. State*,[48] in which the Indiana Supreme Court found that failure to indicate where goods were stored, failure to indicate storage charges, and failure to number the receipt prevented the item in question from being a warehouse receipt. But this was a peculiar case involving the prosecution of a warehouseman for embezzlement. The court felt that the defendant could not be a warehouseman unless he issued a warehouse receipt.[49] The character of the document was thus tied up with proof of a criminal offense and the court was obviously not concerned with the commercial function of the document. *Redmon* stands alone.

Another case, best classified as involving a defect in form, is *Old Colony Trust Co. v. Lawyer's Title and Trust Co.*[50] The defect there was that the warehouse receipts required by the terms of a letter of

45. U.W.R.A. § 2. The same provision appears in U.C.C. § 7-202(2) and is not restricted to negotiable documents.

46. Harry Hall & Co. v. Consolidated Packing Co., 55 Cal. App. 2d 651, 131 P.2d 859 (Dist. Ct. App. 1942) (alternative holding); Kramer v. Northwestern Elevator Co., 91 Minn. 346, 98 N.W. 96 (1904) (UWRA not in force); Investment Serv. Co. v. O'Brien, 190 Ore. 394, 223 P.2d 163 (1950) (alternative holding); Rodgers v. Murray, 247 S.W. 888 (Tex. Civ. App. 1923). *But cf.* Joseph v. P. Viane Co., 118 Misc. 344, 194 N.Y. Supp. 235 (Sup. Ct. 1922).

47. See Part III *B infra*.

48. 234 Ind. 306, 126 N.E.2d 485 (1955).

49. This assumption is erroneous. The relationship of depositor and warehouseman can exist even where a receipt is not issued. See Hartford Acc. & Indem. Co. v. State, 247 F.2d 315 (10th Cir. 1957); Stevens v. Farmers Elevator Mut. Ins. Co., 197 Kan. 74, 415 P.2d 236 (1966); U.C.C. § 7-202, comment. In both of these cases, liability was imposed on surety companies although the principal debtor, a warehouseman, had not issued warehouse receipts for goods deposited.

50. 297 Fed. 152 (2d Cir. 1924).

credit represented goods that were not actually on deposit with the bailee. This was known by the issuer of the letter of credit and it refused to accept the proffered receipts. The court held that the issuer was justified in insisting upon strict compliance with the terms of the credit. Presumably, such reasoning would apply to uphold the insistence on the inclusion of essential terms as well as the inclusion, as in this case, of a statement known to be false.

A contrasting case in which much too great an emphasis was placed on irregularities of issue is *Maxwell v. Winans*.[51] Here the warehouseman sought to take advantage of the right granted by the UWRA[52] to interplead adverse claimants. One of the defendants objected to the bill of interpleader, arguing that because the warehouseman had not in fact issued a warehouse receipt for the stored goods it was not entitled to interplead adverse claimants. In a previous decision, *New Jersey Title Guarantee & Trust Co. v. Rector*,[53] the same court had rejected a similar argument that the omission of an essential term (the statement of storage charges) from a warehouse receipt deprived the warehouseman of his right to interplead adverse claimants, and had characterized the UWRA as a remedial statute designed to avoid the harsh common law rule which denied a warehouseman such a right.[54] But the court in *Maxwell v. Winans* read the *Rector* decision restrictively[55] (in effect refusing to follow it), and held that the warehouseman was denied the right to invoke section 17 of the UWRA since no warehouse receipt had been issued. This decision seems clearly wrong. The benefits of section 17 of the UWRA were intended to extend to those engaged in a certain type of business—warehousing; they can be engaged in this business even though no receipts are issued.[56] Unfortunately, there is nothing in the text of the Code which indicates disapproval of *Maxwell v. Winans*,[57] although the comment to section 7-202 states that the warehouseman is under no obligation to issue a warehouse receipt. Since the opinion in *Maxwell v. Winans* emphasizes the fact that no receipt had been issued, a court could find that the absence of an affirmative duty under the Code to issue a receipt makes the case distinguishable. A court which does not feel that *Maxwell* is so distinguishable would be well advised simply not to follow it.

51. 96 N.J. Eq. 178, 125 Atl. 38 (Ch. 1924).

52. U.W.R.A. § 17.

53. 76 N.J. Eq. 587, 75 Atl. 931 (Ct. Err. & App. 1910).

54. The availability of this remedy is discussed in Annot., 100 A.L.R. 425 (1936).

55. It distinguished the case as one of "substantial compliance" but did not explain why non-compliance should affect the warehouseman's remedy.

56. See cases cited note 49 *supra*.

57. The comment to U.C.C. § 7-603 states that there has been consolidation of previous uniform statutory provisions "without substantial change."

B. *Defects Involving Title*

Irregularities of form can be serious when title to the warehoused goods is involved. A claimant whose rights are based upon a negotiable warehouse receipt must establish both that his receipt is negotiable and that it was properly negotiated to him if he wishes to claim the preferred status of a holder through due negotiation.[58] However, absence of an essential term could destroy the negotiable character of the document or could support the conclusion that the document, although negotiable, was not properly negotiated to the claimant.[59] To date, neither of these arguments has found much support in the decisions. On the contrary, courts are quite often willing to overlook substantial defects in the document when dealing with questions of title. In *Manufacturer's Merchantile Co. v. Monarch Refrigerating Co.*, already discussed,[60] the failure to state the rate of storage charges did not impair negotiability. The *Monarch* decision was read rather broadly in *Laube v. Seattle National Bank*,[61] in which the failure to state the location of a warehouse[62] was not enough to invalidate a pledge of the warehouse receipts. The depositor's trustee in bankruptcy argued that the receipts were invalid on their face because they did not indicate where the goods were warehoused. The court dismissed this argument and cited *Monarch* for the proposition that the failure to include an essential term was not a fatal defect. This simple reading of *Monarch* may have been erroneous for two reasons. First, in *Monarch* the warehouseman was seeking to turn a defect for which it was at least in part responsible to its own advantage, and it is understandable that a court would be reluctant to permit this.[63] Second, and more important, the inadequacy of the receipt in *Monarch* was much less significant than that

58. U.C.C. § 7-502.

59. See ILL. REV. STAT. § 7-202, Illinois Code Comment (1963). *But cf.* Starkey v. Nixon, 151 Tenn. 637, 270 S.W. 980 (1924), in which a warehouse receipt (as permitted by statute) contained a term limiting storage to one year. The receipts were pledged to X who sold them to defendants without authority after the year had expired. Plaintiffs, original owners of the receipts, unsuccessfully argued that the receipts could not be negotiated after the year had expired. The court refused to accept the analogy to overdue commercial paper.

60. 266 Ill. 584, 107 N.E. 885 (1915); see text accompanying note 44 *supra*.

61. 130 Wash. 550, 228 Pac. 594 (1924).

62. U.C.C. § 7-202(2)(a); U.W.R.A. § 2(a).

63. In at least six other cases, warehousemen have not been permitted to benefit from irregularities for which they were responsible. Citizens' Bank v. Arkansas Compress & Warehouse Co., 80 Ark. 601, 96 S.W. 997 (1906); Deaux v. Trinidad Bean & Elevator Co., 8 Cal. App. 2d 149, 47 P.2d 535 (Dist. Ct. App. 1935); Peoples' Warehouse Co. v. Commercial Bank & Trust Co., 74 Ga. App. 67, 38 S.E.2d 855 (1946); Kramer v. Northwestern Elevator Co., 91 Minn. 346, 98 N.W. 96 (1904); Granada Cotton Compress Co. v. Atkinson, 94 Miss. 93, 47 So. 644 (1908); Nowell v. Seattle Transfer Co., 63 Wash. 685, 116 Pac. 287 (1911). In the last four cases, the UWRA was not in force. *Cf.* Green v. Fortune, 151 Kan. 598, 100 P.2d 631 (1940).

in *Laube*.[64] While not all essential terms need be assigned equal importance (or unimportance), the location of the warehoused goods would seem no less important than the physical description in the identification of the subject matter of a pledge. In *Laube*, however, there was not much controversy about whether the goods were those that had been pledged, and that perhaps explains the decision. But there are other cases in which the courts have also been willing to accept considerable ambiguity or vagueness in either the description of the goods or in the statement of their location.[65] Indeed, one court has suggested that the only absolutely essential term in a negotiable warehouse receipt is the delivery term.[66] Even if this statement is not accepted, it is obvious that courts under the UWRA have been, and under the Code will probably continue to be, very willing to overlook defects in the form of the warehouse receipt.[67]

Sometimes arguments that a particular piece of paper is not a warehouse receipt rest not only on the failure to include certain terms but also on the absence of intent on the part of the issuer that the alleged receipt function as a document of title. For instance, in *Investment Service Co. v. O'Brien*,[68] a bailee issued what was termed a dock receipt in the name of a bank and the receipt was then pledged to the bank as security for a loan. There was a custom in the trade that this receipt was only evidence that goods had been received on the dock and did not pertain to ownership or title. The bailee would issue a warehouse receipt on request but in that case it would not move the goods from the dock until there was surrender of the warehouse receipt. On these facts the court held that the bailee was not liable to the pledgee-bank for misdelivery when it disposed of

64. Other cases in which the failure to list the storage charges has been disregarded are Sampsell v. Lawrence Warehouse Co., 167 F.2d 885 (9th Cir. 1948); Equitable Trust Co. v. White Lumber Co., 41 F.2d 60 (N.D. Idaho 1930); Sampsell v. Security-First Nat'l Bank, 92 Cal. App. 2d 648, 207 P.2d 1088 (Dist. Ct. App. 1949) (validity of pledge); Graham v. Frazier, 82 Ga. App. 185, 60 S.E.2d 833 (1950) (validity of pledge); New Jersey Title & Trust Co. v. Rector, 76 N.J. Eq. 587, 75 Atl. 931 (Ct. Err. & App. 1910); Finn v. Erickson, 127 Ore. 107, 267 Pac. 232 (1928).

65. Graham v. Frazier, *supra* note 64; General Motors Acceptance Corp. v. Sharp Motor Sales, 233 Ky. 290, 25 S.W.2d 405 (1930); Swedish-Am. Nat'l Bank v. First Nat'l Bank, 89 Minn. 98, 94 N.W. 218 (1903) (UWRA not in effect); Starkey v. Nixon, 151 Tenn. 637, 270 S.W. 980 (1924). *But see* Interstate Banking & Trust Co. v. Brown, 235 Fed. 32 (6th Cir. 1916).

66. Equitable Trust Co. v. White Lumber Co., 41 F.2d 60, 61 (N.D. Idaho 1930).

67. Joseph v. P. Viane Co., 118 Misc. 344, 194 N.Y. Supp. 235 (Sup. Ct. 1922), goes too far in disregarding irregularities of form. Other courts have found that the absence of a delivery term combined with other omissions will prevent the document in question from functioning as a warehouse receipt. Graves v. Garvin, 272 F.2d 924 (4th Cir. 1959) (parol evidence rule not applied); Investment Serv. Co. v. O'Brien, 190 Ore. 394, 223 P.2d 163 (1950) (alternative holding); State Bank v. Almira Farmer's Warehouse Co., 123 Wash. 354, 212 Pac. 543 (1923).

68. 190 Ore. 394, 223 P.2d 163 (1950).

the goods in accordance with the wishes of the pledgor-owner. The court said that the document was not a warehouse receipt, not only because it did not contain certain terms, but also because the parties did not intend that it should be a warehouse receipt. In another case the seller of raisins issued items bearing the label "warehouse receipt" to a buyer who in turn resold these items to a third party.[69] When the second buyer asserted his right to these goods, the seller claimed a set-off arising out of a separate transaction with the original buyer. The court held that this could be done, as the documents issued by the seller were not intended by the parties to be warehouse receipts, even though so labeled.

The courts in these two cases were concerned with function as well as with form. No mention of function was contained in the UWRA but, under the Code, if an item is to serve as a document of title,[70] its function becomes important.

> "Document of Title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document *which the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers.*[71]

Often function and form will be closely related. Thus, a document which does not possess many essential terms will probably not be one which is intended to function as a document of title. But the Code makes it clear that, even if formal requirements apparently are met, there still must be a custom that the item in question serve as a document of title.

IV. The Code Provisions Covering Consequences of Irregularity

The most difficult question under both the UWRA and the Code is not determining whether there has been an irregularity in the issuance of a warehouse receipt, but rather deciding what effect, if any, the irregularity should have upon the issue in the particular case. One of the changes found in Article Seven is the instruction that some irregularities should be disregarded in certain instances. Thus, section 7-401 states:

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69. Harry Hall & Co. v. Consolidated Packing Co., 55 Cal. App. 651, 131 P.2d 859 (Dist. Ct. App. 1942).

70. The situations in which document of title (as opposed to warehouse receipt) is a significant concept are listed in note 42 *supra*.

71. U.C.C. § 1-201(15). (Emphasis added.)

> The obligations imposed by this Article on an issuer apply to a document of title regardless of the fact that
> (a) the document may not comply with the requirements of this Article or of any other law or regulation regarding its issue, form, or content; or
> (b) the issuer may have violated laws regulating the conduct of his business; or
> (c) the goods covered by the document were owned by the bailee at the time the document was issued; or
> (d) the person issuing the document does not come within the definition of a warehouseman if it purports to be a warehouse receipt.

This section is desirable. It deprives an issuer of the benefit of defenses which it might seek to create out of its own wrongful activity and is generally in accord with existing case law.[72] Its interpretation does, however, raise two problems.

First, what effect will it have on the liability of surety companies that provide bonds conditioned on the faithful performance of the warehouseman's obligation? Surety companies sometimes seek, with occasional success, to avoid liability on the theory that the bond does not cover illegal activity of the warehouseman. Does section 7-401(b) deprive the surety of the opportunity to so argue? It should not, for the cases in which the surety has successfully raised the defense of illegality are those in which the claimant under the bond had knowledge of the wrongdoing,[73] while those in which the claimant was successful contain no evidence of such knowledge.[74] Courts are obviously concerned that the protection of indemnity be given to those who can be expected to be harmed by illegal warehousing operations, and this concern is reflected in section 7-401(b). But there is no need to extend the protection of the surety bond to those who have participated or acquiesced in the wrongful activity.

Second, since the definition of warehouseman in the Code is so broad, it is hard to imagine situations in which a person not meeting the definition of a warehouseman issues what purports to be a warehouse receipt and assumes issuer obligations under 7-401(d). Probably the only significant case it covers is one in which a person who is not a warehouseman issues a receipt for his own goods. However,

72. See authorities cited note 63 *supra*.

73. Hartford Acc. & Indem. Co. v. State, 247 F.2d 315 (10th Cir. 1957); United States v. Merchants Mut. Bonding Co., 242 F. Supp. 465 (N.D. Iowa 1965); People v. Farmer's Elevator Mut. Ins. Co., 74 Ill. App. 2d 1, 220 N.E.2d 585 (1966); Stevens v. Farmer's Elevator Mut. Ins. Co., 197 Kan. 74, 415 P.2d 236 (1966) (federally licensed warehouse); State v. Interstate Sur. Co., 48 S.D. 57, 201 N.W. 717 (1924).

74. Central Nat'l Bank v. Fidelity & Deposit Co., 324 F.2d 830 (7th Cir. 1963); Central States Corp. v. Trinity Universal Ins. Co., 237 F.2d 875 (10th Cir. 1956).

even under section 7-401(d) it is not just any receipt which will impose issuer obligations, for the document must purport to be a warehouse receipt, and it must have some of the essential terms listed in section 7-202. In the California case of *Harry Hall & Co. v. Consolidated Packing Co.*, already discussed,[75] the seller of raisins issued documents labeled "warehouse receipt" which it knew the buyer intended to transfer to a purchaser for value. These documents, describing certain raisins, were in fact sold by the buyer to the plaintiff. Defendant seller refused plaintiff's demand for delivery, claiming the right to retain the raisins in settlement of an unrelated claim it had against the original buyer. The seller's position was sustained by the court, which held that the documents could not be enforced as warehouse receipts, even though so labeled, as they were not intended to serve that function. Section 7-401(d) would not change the result in such a case unless a court were willing to hold that merely designating documents as "warehouse receipts" fulfills the statutory requirement that they "purport to be such."[76]

Section 7-401 deals only with the effect of irregularities upon issuer obligations. Far more sweeping is the declaration in section 10-104[77] that violations of laws regulating the bailee's services or prescribing the form of documents of title do not affect the status of a document of title. The key phrase here is "status of a document of title." To explore the meaning of this phrase, suppose that a state statute regulating the issuance of warehouse receipts for agricultural products requires that certain information about the grade or class of the stored products be included in the receipt.[78] What would be the effect of omitting this information from a receipt for such goods? Such an omission would be a violation of the state statute which, under the terms of section 10-104, is supposed "not [to] affect

75. 55 Cal. App. 651, 131 P.2d 859 (Dist. Ct. App. 1942); see text accompanying note 69 *supra*.

76. § 7-401(d) calls for a reference to the purchaser's state of mind. U.W.R.A. § 7 called for a similar subjective determination of whether the purchaser of a non-negotiable warehouse receipt not clearly stamped "non-negotiable" did in fact suppose it was negotiable. Although the issue was discussed in *Lynn Storage Warehouse Co. v. Senator*, 3 F.2d 558 (1st Cir. 1925), it was never clear what would justify such a belief.

CAL. COMM. CODE § 1201(45) (West 1964), provides that labeling a document "warehouse receipt" is conclusive evidence of the intention of the issuer that the person entitled under the document has the right to transfer the goods. Thus, in California, an item labeled "warehouse receipt" may purport to be one under § 7-401(d) despite all other irregularities of form. This would mean that Harry Hall & Co. v. Consolidated Packing Co., 55 Cal. App. 651, 131 P.2d 859 (Dist. Ct. App. 1942), would be decided differently under the California version of the Code.

77. Quoted at text accompanying note 25 *supra*.

78. *E.g.*, 34 IOWA CODE § 543.18 (1962), as amended, Iowa Acts 1965, No. 61 G.A., ch. 413, § 10124.

the status of a document of title." But at the same time it could be argued that the omission of the required term was sufficient to warn a purchaser of possible irregularities in the warehousing transaction and thus deprive him of the preferred position of a holder through due negotiation. In such a case it would be necessary to determine whether section 10-104 states a substantive principle with respect to the effect of irregularity which justifies reaching a result different from that which would be reached were any other section of the Code applied.

There is no indication that the draftsmen of the Code intended to adopt such a sweeping change. It was necessary to take cognizance of the many laws regulating the warehousing business, for if these laws had not been mentioned, there would always have been the question of whether they were repealed by implication. Since they were not to be repealed by the Code, the alternative of silence (itself undesirable) was not available. On the other hand, the Code could not be made to conform to these many laws, since this would have caused too much variation in versions of the Code from state to state. The solution chosen was to continue the co-existence that prevailed when the UWRA was in force: the reference to "status of a document" expresses the thought that no greater or lesser significance should be given to violations of these collateral laws than would have been given to them prior to adoption of the Code. The Code position in section 10-104 is neutral. Thus, in the above example, the issue of due negotiation should not be affected by section 10-104, and the question, therefore, is simply whether the omission of a term required by a collateral statute prevents due negotiation from taking place. Cases decided to date do not provide a clear answer to this question.[79]

Conclusion

There has been a substantial but not extraordinary amount of litigation in which defects in the character of the issuer or in the form of the warehouse receipt have been raised. However, considering the number of warehousing transactions that take place each year, the relative amount must be regarded as small. Much of this is due to the professionalism of those who issue warehouse receipts and those who deal in them. Furthermore, the question of irregularity is one which is hard to raise, at least in a manner which promises

79. The only case close to the issue is Starkey v. Nixon, 151 Tenn. 637, 270 S.W. 980 (1925), discussed in note 59 *supra*.

much chance of success. Unless the warehousing transaction has been incredibly mishandled, it is difficult to argue that those irregularities which have occurred ought to have a significant effect on the outcome of the case. The courts generally have reached commonsense solutions and have not permitted themselves to be carried away by arguments that often are most sophist in character. The bailment-sale cases, with their sometimes uncritical acceptance of arguments based on irregularities in the character of the issuer, are fortunately rare.

The Code, with its broadened definition of issuers, can be expected to reduce litigation somewhat, but there will always be defects in the documents themselves. Apart from section 7-401, dealing with issuer obligations, there are no guidelines in the Code for relating irregularity to the rights of those involved in warehousing transactions. The draftsmen of the Code could not go further than they did in section 7-401 because it is impossible to predict a consistent context in which irregularities may occur. As in the past, it will be necessary to rely on the ability of judges to reject contentions based on irregularity, which seek to promote slight variations from statutory norms into victory. There is nothing in the last half century of decisions that indicates that reliance on the judiciary will not be a generally satisfactory way of solving the problems posed by irregularities of all types.