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RAHILLY V. WILSON.

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in them is conducted in the same general manner. The wheat is brought in by the farmers and is either purchased and paid for at the time by the proprietors of the elevators, or received by them and receipts issued therefor, like the one above copied.

Wheat is classified or graded into what is termed No. 1. No. 2, and rejected. Wheat when received in either mode, is tested, graded, and put into a common bin, each grade being kept distinct, but all of the same grade is mingled together, and this is the invariable practice and known to be so. The warehousemen do not keep the identical wheat on hand for which receipts are issued, but sell and ship at their pleasure: at least, the evidence shows that this is the general practice. The receipts specify *no time for the delivery* of the wheat to the depositor, but the usage or custom is that the holder may select his own time for presenting them, and demand either the market price of the grain on that day, or the quantity and quality of the grain called for in the receipt. It is expected that the ticket-holder will give the warehousemen who issued it the first privilege of buying, if he will pay as much as the holder can obtain elsewhere. In the event of the holder selling to the warehouseman, the latter receives no storage, unless the grain has been carried over the winter; but if he demands grain, or if he sells the receipt to others, who demand grain instead of the market price or value, then the practice is to charge storage. The evidence shows that it seldom happens that the depositor demands grain, but almost invariably elects to take the money, that is the highest market rate of the grade of grain mentioned in the receipt on the day when he closes the transaction and surrenders the instrument. The warehouseman often makes advances on these receipts, charging interest.

The bankrupts, in addition to receiving wheat of farmers and issuing storage tickets as above, also purchased wheat for themselves under an arrangement with Eames & Co., of St. Paul, whereby the latter were to allow them a commission or compensation for their services, of two cents per bushel. Wheat thus purchased was paid for by the bankrupts' own checks on local banks, and the bankrupts reimbursed themselves by drafts drawn from time to time on Eames & Co., on account of wheat shipped to them. All wheat thus purchased was graded and put into its proper bin, mingled with wheat for which receipts or tickets were issued; and when shipments were made, the grain was taken from the amount in the elevator building. As wheat was

being constantly received and constantly shipped, the amount in the elevator fluctuated from week to week. In the summer of 1870, before the new crop of that year came in, the bankrupts' elevator was entirely cleared of grain, although many of their receipts, issued in 1869, were then outstanding.

The storage capacity of the bankrupts' warehouse was about 60,000 bushels, although the amount of wheat which was received, handled and discharged therefrom in a year largely exceeded this amount.

When they failed they had on hand 21,500 bushels of wheat, of which about 18,000 had been purchased within a week previous to the failure and mixed with grain then in the building. To pay for this 18,000 bushels, the bankrupts drew cheques on their local bankers, Williamson and Co., and between the 15th and 17th of November, 1870, drew in favor of these bankers three drafts on Eames & Co. for \$10,000, which were dishonored and returned to Williamson & Co., who demanded warehouse receipts as security, and on the 23rd day of November, when it was known that the bankrupts had stopped business, and were in failing circumstances, the bankrupts issued two warehouse receipts for \$12,000, which afterwards came into the hands of the First National Bank at St. Paul, as collateral security, with full notice of all circumstances.

The district court held that this transaction was an attempt on the part of Williamson & Co. to obtain from the bankrupts an illegal preference, contrary to the bankrupt act, and that the St. Paul bank was affected with notice thereof, and it accordingly dismissed the cross-bill of the last named bank, but decided that the ordinary receipt holders were entitled to the grain on hand at the time the petition in bankruptcy was filed. From the decree dismissing the cross-bill, the St. Paul bank appeals, and from the decree on the original bill, the assignee in bankruptcy appeals.

E. C. Palmer & James Gilfillan for the assignee; *George L. Otis*, for the First National Bank of St. Paul; *Bigelow, Flandrau & Clark*, for the complainant, Rahilly.

DILLON, Circuit Judge.—The proofs satisfy me that the invariable and known course of business at the elevator warehouse in Lake City, was to mingle together all grain of the same grade, whether purchased outright and paid for at the time, or received on tickets specifying the grade and quantity, and which contemplate the future delivery of the like amount of the same grade of wheat to the holders of such receipts.