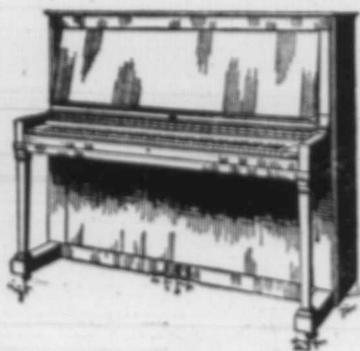


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Farmers Win Decision

Deputy Minister of Justice says Elevator Companies cannot sell farmers' stored grain and substitute future options as they have been doing in the past

The Department of Justice at Ottawa has advised the Board of Grain Commissioners that the line elevator companies in the West are violating the law in their method of handling farmers' grain. It will be remembered during the past summer that the "hybrid ticket" and the question of "substitution of grain" were argued at great length before the Grain Commissioners by the organized farmers on the one side and the elevator interests of the Grain Exchange on the other side. The line elevator interests admitted that they had been selling the grain which farmers had stored in their elevators and had been substituting a future contract. This, they claimed, was of great advantage to them financially. The organized farmers opposed it vigorously, saying that the act was illegal, that it placed an unfair advantage in the hands of the elevator companies, and that it did not give the farmers a square deal in the marketing of their grain. The elevator companies produced voluminous legal opinions to show that once grain was stored in their elevator and held for storage only it at once became their own legal property and no longer belonged to the farmer who held the storage tickets. Acting on this extraordinary opinion, the elevator interests maintained that they were doing quite a legal business. The Department of Justice, however, has ruled that the grain stored by a farmer in a country elevator still belongs to the farmer, and that the elevator operator has no right to sell it, but must hold that grain or a similar quantity of grain to the farmer's order. No doubt the ruling of the Department of Justice will be acted upon by the Board of Grain Commissioners, and if so it will have a very considerable effect on the grain marketing system.

Opinion of Department

The opinion of the Department of Justice is as follows:

Ottawa, October 31, 1916.

Referring to your letter of August 16 last, I have now the honor to submit my opinion upon the second group of questions propounded for the consideration of this department by the Board of Grain Commissioners for Canada.

The first of these questions is as follows:

"1. Is the contract in this receipt (Schedule B), such that the warehouseman issuing it is the legal owner of the grain?"

I have perused the arguments pro and con on this question contained in the printed brief of matter which accompanied your letter, and on due consideration of these arguments and of the provisions of the receipt and the Canada Grain Act, I am of the opinion, with due respect to those who entertain a different view, that the deposit of grain in a country elevator for the storage represented by the Schedule B receipt does not operate as a transfer of the proprietary interest in the grain from the person delivering the same to the operator, but that the legal quality of the operator's possession of the grain so received is that of custodian for the person to whom the receipt is issued, who remains the beneficial owner of the grain.

The storage receipt is a statutory instrument and the rights and obligations of the parties thereto are regulated by the terms of the contract and the provisions of the statute whereby they are defined. It is, I think, in accordance with the intention of the statute that the grain having been stored for the person who brings it to the country elevator, and who is described by the statute as the owner, shall not be removed without his consent, except upon forty-eight hours' notice, within which time he has the right to resume control in the manner provided.

Upon my construction it is the intention of the statute that an operator

shall always have in storage at any given time grain equal in quantity and quality to that which may be demanded under outstanding receipts, and that an operator is not entitled to use or dispose of any part of this grain for his own benefit. He is, as I have said, merely a custodian of the grain, with authority, by virtue of the implied consent of each depositor, to draw from the common mass in storage, upon the order or at the request of an owner, or by compliance with the statutory requirements, grain in amount and quality equal to that stored by the owner. If an operator put any grain acquired on his own account under cash purchase ticket (Schedule A form of receipt) in general storage, he becomes, to the extent of his deposit, an owner in common with the other depositors, but still remains a bailee as to their respective shares. The operator could not abstract from the common stock any more than his appropriate share without breach of his statutory engagement, which would, it is apprehended, amount to a conversation to the extent of his taking.

I observe that the authors of the legal opinions which have been given to the effect that the transaction under Schedule B is a sale and not a bailment, attempt to support this view upon the authority of the decision rendered in the cases of the South Australian Fire Insurance Company vs. Randall and Lawlor vs. Nichol, but I regard these decisions as distinguishable from the facts from the transaction under Schedule B, and as having no apposite bearing upon the question.

Control of Operators

The second question submitted by the Board of Grain Commissioners concerns the authority of the board to issue an order imposing upon country elevator operators, in respect of grain in general storage, a prohibition somewhat similar in terms to that contained in Section 171 in relation to grain in special binned storage. In my view of the nature of the transaction under Schedule B, I do not think that the proposed order is appropriate; but I submit herewith, for your consideration, a draft order which I am disposed to think the board may make consistently with the provisions of the statute in the execution of its powers to make rules and regulations under Sections 20 and 156; and while I think that the order suggested is no more than a declaration of the law already sanctioned by the statute, still if, as I apprehend, it prohibits nothing which the statute is intended to permit, it may be advisable to give effect to such an order as notice to the trade of the view which the board proposes in the public interest to enforce.

I suppose it is not advisable that the board should undertake to determine or advise upon questions which may arise as between the owners of the grain and their warehousemen touching the property in the grain or otherwise. This may, I think, properly be left for adjudication by the ordinary tribunals, but the board exercises a power in the common interest to regulate, in compliance with the statute the receipt, storage, handling and shipping of grain at the country elevators, and therefore it is, I have no doubt, competent to the board to insist that the elevator operators shall comply strictly with the statutory requirements and the regulations prescribed for governing their operations.

I have the honor to be, sir,

Your obedient servant,

(Sgd.) E. L. NEWCOMBE,
Deputy Minister of Justice.

PARLIAMENT TO ASSEMBLE

The Dominion Parliament will re-assemble at Ottawa for the transaction of business on January 18, after a recess of almost eight months.

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