

July 1959

## Article 7: Documents of Title

David R. Mason

*Professor of Law, Montana State University School of Law*

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### Recommended Citation

David R. Mason, *Article 7: Documents of Title*, 21 Mont. L. Rev. 59 (1959).

Available at: <https://scholarworks.umt.edu/mlr/vol21/iss1/7>

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## Article 7: Documents of Title

By DAVID R. MASON\*

Article 7 of the Uniform Commercial Code is a consolidation and revision of provisions of three uniform acts promulgated half a century ago. It embraces the field of the Uniform Warehouse Receipts Act,<sup>1</sup> the Uniform Bills of Lading Act,<sup>2</sup> and those provisions of the Uniform Sales Act<sup>3</sup> relating to negotiable documents of title. Although the Uniform Warehouse Receipts Act was enacted in Montana in 1917,<sup>4</sup> neither of the other two uniform acts have been adopted in this state. There are only meager statutory provisions relating to documents of title issued by carriers,<sup>5</sup> which have not been changed since their original enactment in 1895.

Because of the tremendous development in the commercial field since the promulgation of the statutory provisions applicable to warehousemen and the abbreviated character as well as age of those relating to carriers, it is believed that revision and codification of the law applicable to documents of title is in order.<sup>6</sup>

### *Coverage*

Apparently the Montana statutory provisions with respect to bills of lading cover bills issued by all carriers, whether common or not.<sup>7</sup> The more extensive provisions of the Uniform Bills of Lading Act, however, apply only to common carriers.<sup>8</sup> The Code defines "bill of lading" to include freight forwarders' bills and bills issued by contract carriers as well as those issued by common carriers. It also introduces the term "air bill," defined as a document serving for air transportation, as a bill of lading does for marine and rail transportation.<sup>9</sup>

The Uniform Warehouse Receipts Act as adopted in Montana defines a warehouseman as "a person lawfully engaged in the business of storing goods for profit."<sup>10</sup> The Code defines a warehouseman as "a person engaged in the business of storing goods for hire."<sup>11</sup> It would seem that the responsibility of one who issues a warehouse receipt should not be diminished because of his violation of law.

### *Negotiation*

The problem of whether documents of title are negotiable in the sense of representing better title than the shipper or depositor had, is clarified

\*Professor of Law, Montana State University. LL.B. 1924, B.A. 1926, University of South Dakota; S.J.D. 1927, Harvard University.

<sup>1</sup>Promulgated by the Commissioners on Uniform State Laws in 1906, and enacted in all states. Amendments approved in 1922 by the Commissioners were adopted in 17 states, but not in Montana.

<sup>2</sup>Promulgated in 1909 and enacted in 31 states.

<sup>3</sup>Promulgated in 1906 and enacted in 34 states.

<sup>4</sup>REVISED CODES OF MONTANA, 1947. §§ 88-101 to -160. (Hereinafter REVISED CODES OF MONTANA are cited R.C.M.)

<sup>5</sup>R.C.M. 1947, §§ 8-501 to -507.

<sup>6</sup>Of course, applicable federal law is paramount to state statutory provisions and would remain paramount to provisions of the Code. UNIFORM COMMERCIAL CODE § 7-103. (Hereinafter UNIFORM COMMERCIAL CODE is cited UCC.)

<sup>7</sup>R.C.M. 1947, § 8-501.

<sup>8</sup>UNIFORM BILLS OF LADING ACT § 1.

<sup>9</sup>UCC § 1-201(6).

<sup>10</sup>R.C.M. 1947, § 88-158.

<sup>11</sup>UCC § 7-102(1) (b).

by the Code. It continues the existing rule that a thief of goods cannot by shipping or storing them to his own order acquire power to transfer them to a good faith purchaser.<sup>13</sup> But it details the circumstances under which the true owner of goods may be precluded from questioning the title of a purchaser by due negotiation of the document.<sup>13</sup> In general, if the possession of the goods by the person obtaining the document derived from any action by the prior claimant which introduced the goods into the stream of commerce or carried them along that stream, the one to whom the document is negotiated prevails.<sup>14</sup>

The Code unifies the law governing the question of whether a transferee of a document of title may acquire greater rights than those of his transferor. Under the Montana statutes the answer depends upon whether the document involved is a bill of lading or a warehouse receipt. Under the provisions of the statute applicable to bills of lading a good faith purchaser for value of an order bill properly indorsed or of a bearer bill acquires good title although he purchased from one who stole the document.<sup>15</sup> But this is not true in the case of a warehouse receipt, for in that case a transferee acquires only such title as the person negotiating the receipt "had or had the ability to convey to a purchaser in good faith for value."<sup>16</sup> Under the Code bills of lading and warehouse receipts are not distinguished, and negotiation may be made by an holder no matter how he acquired possession of the document.<sup>17</sup>

The Code adds an important new concept to "due negotiation" which will transfer greater rights than those held by the person negotiating. The negotiation must be in the "regular course of business or financing." The Montana statute with reference to the negotiation of a bill of lading requires transfer "in the ordinary course of business."<sup>18</sup> No similar language is found in the statutes dealing with negotiation of warehouse receipts, although the foundation of the mercantile doctrine of good faith for value is the furtherance and protection of the regular course of trade. But the Code qualification of "regular course" encompasses consideration of the person making the transaction and also the nature of the transaction itself. A comment states that the "only holder whose possession appears, commercially, to be in order is almost invariably a person in trade. No commercial purpose is served by allowing a tramp or a professor to 'duly negotiate' an order bill of lading for hides or cotton not his own, and since such transfer is obviously not in the regular course of business, it is excluded. . . ."<sup>19</sup>

An explicit provision is contained in the Code which controls rights between a buyer of grain from an elevator and one to whom a warehouse receipt is negotiated. It provides that a buyer in the ordinary course of

<sup>13</sup>R.C.M. 1947, § 8-502, refers to the title which the first holder of a bill of lading had when he received it. R.C.M. 1947, § 88-141, refers to the title of the person negotiating a warehouse receipt and that of the depositor.

<sup>14</sup>UCC § 7-503.

<sup>15</sup>UCC § 7-503, comment 1.

<sup>16</sup>R.C.M. 1947, §§ 8-502, -503.

<sup>17</sup>R.C.M. 1947, § 88-141 (a). Section 88-147 elaborates certain cases within section 88-141. These are provisions of the Uniform Warehouse Receipts Act which have been amended in some states but not in Montana.

<sup>18</sup>UCC § 7-501, comment 2.

<sup>19</sup>R.C.M. 1947, § 8-502.

<sup>20</sup>UCC § 7-501, comment 1.

business, who buys, and takes delivery of fungible goods from a warehouseman who is also in the business of buying and selling such goods, takes free from any claim under a warehouse receipt even though it has been duly negotiated.<sup>20</sup> The comment states, "[T]he substantive question at issue is whether in case the warehouseman becomes insolvent the receipt holders shall be able to trace and recover grain shipped to farmers and other purchasers from the elevator. This was possible under the old acts, although courts were eager to find estoppels to prevent it."<sup>21</sup>

The Code eliminates the present requirement of value as a condition to the right of a transferee of a negotiable warehouse receipt to enforce indorsement.<sup>22</sup> It provides that the transferee of a document has a specifically enforceable right to have his transferor supply any necessary indorsement, whether or not there was consideration for the transfer.<sup>23</sup> Since under the Code no liability is imposed upon an indorser, there seems to be no reason why the transferee should not be required to indorse in cases where the transferee must obtain an indorsement before he can claim rights under due negotiation or demand the goods from the bailee.

#### *Rights and Liabilities of Bailee*<sup>24</sup>

The modern phenomenon of high speed shipments, by reason of which the goods may arrive at destination before the documents, is recognized by provisions of the Code for "destination bills." Instead of issuing a bill of lading to the consignor at the point of shipment, the carrier may at the request of the consignor issue the bill at destination or any other place designated in the request.<sup>25</sup>

The Code subjects the initial carrier under a through bill of lading to a suit for breach of contract by any connecting carrier, although the connecting carrier is liable only with respect to its own performance while the goods are in its possession.<sup>26</sup> This provision is patterned generally after the Interstate Commerce Act, but it does not impose any obligation to issue a through bill of lading.<sup>27</sup> Under the existing law in Montana there not only is no obligation to issue a through bill of lading, but the only obligation appears to be to deliver the freight to some other competent carrier at the end of the initial carrier's route.<sup>28</sup>

Detailed provisions are contained in the Code with respect to the rights of the several parties in the event of diversion or reconsignment of goods while in transit.<sup>29</sup> Explicit provision is made for what is perhaps implicit

<sup>20</sup>UCC § 7-205.

<sup>21</sup>UCC § 7-205, comment.

<sup>22</sup>R.C.M. 1947, § 88-143. No Montana statute applicable to bills of lading has been found.

<sup>23</sup>UCC § 7-506.

<sup>24</sup>The article does not attempt to define the tort liabilities of bailees, except to hold certain classes of bailees to a minimum standard of reasonable care. UCC § 7-101, comment.

<sup>25</sup>UCC § 7-305.

<sup>26</sup>UCC § 7-302.

<sup>27</sup>UCC § 7-302, comment 1.

<sup>28</sup>R.C.M. 1947, § 8-816. Under the provisions of R.C.M. 1947, § 8-817, a carrier may escape liability for injury or loss by giving proof that it did not occur while the freight was in his charge.

<sup>29</sup>UCC § 7-303. Cf. R.C.M. 1947, § 8-412: "A carrier must comply with the directions of the consignor or consignee to the same extent as an employee is bound to comply with those of his employer."

in existing statutes, *i.e.*, that a bailee who merely delivers goods to his bailor or to the latter's order is not liable as an "innocent converter" although original delivery to the bailor was unlawful, if he receives the goods and disposes of them "in good faith including observance of reasonable commercial standards."<sup>80</sup>

Under existing law apparently a request for delivery by a warehouseman must be accompanied by a formal tender of the amount of the charges due.<sup>81</sup> But the Code provides that a party claiming delivery must satisfy the bailee's lien only where the bailee requests it, except in the case where the bailee is prohibited by law from delivering until the charges are paid.<sup>82</sup>

The Montana statute dealing with the carrier's lien merely provides that a carrier has a lien for freightage, which is regulated by the chapter on liens.<sup>83</sup> Under the Code, if the carrier is required by law to receive the goods, the lien upon the goods is valid even though they have been stolen unless the carrier had notice that the consignor lacked authority to ship the goods. If, however, the carrier is not required by law to receive the goods, he has a lien only if control or possession has been entrusted to the bailor and the bailee is unaware that the bailment is wrongful.<sup>84</sup> The latter position is taken when dealing with a warehouseman, both under the existing Montana statute<sup>85</sup> and the Code.<sup>86</sup>

A recognition of the distinction between a merchant and a non-professional is contained in the Code provisions with respect to the foreclosure of a warehouseman's lien. A standard of "commercial reasonableness" is provided for foreclosure proceedings, which may be at public or private sale, in all cases except non-commercial storage.<sup>87</sup> Non-commercial storage embraces principally storage of household goods by private owners; and in such cases the detailed provisions as to notification and public sale, found in the Uniform Warehouse Receipt Act as adopted in Montana, are retained.<sup>88</sup> A swifter, more flexible procedure is considered appropriate to commercial storage,<sup>89</sup> and this "commercially reasonable" procedure is also given to carriers by the Code.<sup>90</sup>

The law with respect to exculpatory agreements is clarified by the Code. A Montana statute prohibits the inclusion in a warehouse receipt of a provision impairing the obligation of the bailee to use reasonable care.<sup>91</sup> This is the provision of the Uniform Warehouse Receipts Act, and there

<sup>80</sup>UCC § 7-404. *Cf.* R.C.M. 1947, §§ 88-110, 8-414.

<sup>81</sup>R.C.M. 1947, §§ 88-108, 88-131, 8-601, 8-609. *O'Neill v. Montana Elevator Co.*, 65 Mont. 259, 263, 211 Pac. 222, 224 (1922): "The complaint does fail to allege that at the time plaintiff demanded the grain . . . he tendered the storage charges then due. . . ." But if defendant refused to deliver because he claimed plaintiff never stored grain with it, this would obviate the necessity for pleading tender of storage charges.

<sup>82</sup>UCC § 7-403(2).

<sup>83</sup>R.C.M. 1947, § 8-609, and see § 8-811.

<sup>84</sup>UCC § 7-307.

<sup>85</sup>R.C.M. 1947, § 88-128(b).

<sup>86</sup>UCC § 7-209(3).

<sup>87</sup>UCC § 7-210.

<sup>88</sup>R.C.M. 1947, § 88-133.

<sup>89</sup>UCC § 7-210, comment 1.

<sup>90</sup>UCC § 7-308. *Cf.* the provisions of R.C.M. 1947, § 20-306, with respect to sales at public sale by carriers to pay storage charges.

<sup>91</sup>R.C.M. 1947, § 88-103. See also 88-121.

has been controversy as to whether it is violated by a stipulation that in case of loss the warehouseman's liability shall be limited to stated amounts.<sup>43</sup> Other Montana statutes apply to common carriers, and their application to stipulations as to value has been litigated in this state. They give to a common carrier the right by special contract to provide against liability in all cases, except when it arises from his gross negligence, fraud or willful wrong.<sup>44</sup> The Supreme Court of Montana has held that a stipulation in a contract of transportation fixing the value of property has the effect of limiting the liability of the carrier and does not violate these statutes.<sup>45</sup> The Code provisions applicable to both warehousemen and carriers prohibit the inclusion in the documents of provisions impairing the obligation of the bailee to exercise reasonable care, and approve stipulations as to the value of the goods. However, it is provided that such stipulations are not effective with respect to the bailee's liability for conversion to his own use.<sup>46</sup> The Code provision as to carriers is in accord with the Carmack amendment to the Interstate Commerce Act applicable to bills of lading in interstate shipments.<sup>47</sup> A justification is that a bailor may already be insured and would be required to pay extra charges for what would amount to duplicate insurance, if required to declare true value.

The above are samples of the many provisions of article 7 of the Code. While they make some minor changes in the policy of the law, they do not appear to make major policy changes. They do expand, modernize, consolidate and clarify the present law and are believed to be an improvement on it.

<sup>43</sup>UCC § 7-204, comment ; Annot. 142 A.L.R. 776 (1943).

<sup>44</sup>R.C.M. 1947, §§ 8-707 to -709.

<sup>45</sup>Nelson v. Great Northern Railway Company, 28 Mont. 297, 72 Pac. 642 (1903) ;  
Rose v. Northern Pacific Ry. Co., 35 Mont. 70, 88 Pac. 767 (1907).

<sup>46</sup>UCC §§ 7-204, -309.

<sup>47</sup>UCC § 7-309, comment.