

MAINE STATE LEGISLATURE

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SEVENTY-FOURTH LEGISLATURE

SENATE.

No. 187

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND NINE.

AN ACT to make uniform the law relating to the Sale of Goods.

*Be it enacted by the Senate and House of Representatives
in Legislature assembled, as follows:*

PART I.

FORMATION OF THE CONTRACT.

Section 1. (*Contracts to sell and sales.*)—(1) A contract
2 to sell goods is a contract whereby the seller agrees to trans-
3 fer the property in goods to the buyer for a consideration
4 called the price.

(2) A sale of goods is an agreement whereby the seller
6 transfers the property in goods to the buyer for a considera-
7 tion called the price.

(3) A contract to sell or a sale may be absolute or con-
9 ditional.

(4) There may be a contract to sell or a sale between
 11 one part owner and another.

Sect. 2. (*Capacity—liability for necessaries.*)—Capacity
 2 to buy and sell is regulated by the general law concerning
 3 capacity to contract, and to transfer and acquire property.

Where necessaries are sold and delivered to an infant, or
 5 to a person who by reason of mental incapacity or drunken-
 6 ness is incompetent to contract, he must pay a reasonable
 7 price therefor.

Necessaries in this section mean goods suitable to the con-
 9 dition in life of such infant or other person, and to his actual
 10 requirements at the time of delivery.

FORMALITIES OF THE CONTRACT.

Sect. 3. (*Form of contract or sale.*)—Subject to the pro-
 2 visions of this act and of any statute in that behalf, a con-
 3 tract to sell or a sale may be made in writing (either with
 4 or without seal), or by word of mouth, or partly in writing
 5 and partly by word of mouth, or may be inferred from the
 6 conduct of the parties.

Sect. 4. (*Statute of frauds.*)—(1) A contract to sell or a
 2 sale of any goods or choses in action of the value of five hun-
 3 dred dollars or upwards shall not be enforceable by action
 4 unless the buyer shall accept part of the goods or choses in
 5 action so contracted to be sold or sold, and actually receive
 6 the same, or give something in earnest to bind the contract,
 7 or in part payment, or unless some note or memorandum in

8 writing of the contract or sale be signed by the party to be
9 charged or his agent in that behalf.

(2) The provisions of this section apply to every such
11 contract or sale, notwithstanding that the goods may be in-
12 tended to be delivered at some future time, or may not at
13 the time of such contract or sale be actually made, procured,
14 or provided, or fit or ready for delivery, or some act may be
15 requisite for the making or completing thereof, or rendering
16 the same fit for delivery; but if the goods are to be manufac-
17 tured by the seller especially for the buyer and are not suit-
18 able for sale to others in the ordinary course of the seller's
19 business, the provisions of this section shall not apply.

(3) There is an acceptance of goods within the meaning
21 of this section when the buyer, either before or after delivery
22 of the goods, expresses by words or conduct his assent to be-
23 coming the owner of those specific goods.

SUBJECT MATTER OF CONTRACT.

Sect. 5. (*Existing and future goods.*)—(1) The goods
2 which form the subject of a contract to sell may be either ex-
3 isting goods, owned or possessed by the seller, or goods to
4 be manufactured or acquired by the seller after the making
5 of the contract to sell, in this act called "future goods."

(2) There may be a contract to sell goods, the acquisition
7 of which by the seller depends upon a contingency which may
8 or may not happen.

(3) Where the parties purport to effect a present sale
10 of future goods, the agreement operates as a contract to sell
11 the goods.

Sect. 6. (*Undivided shares.*)—(1) There may be a con-
2 tract to sell or a sale of an undivided share of goods. If
3 the parties intend to effect a present sale, the buyer, by
4 force of the agreement, becomes an owner in common with
5 the owner or owners of the remaining shares.

(2) In the case of fungible goods, there may be a sale
7 of an undivided share of a specific mass, though the seller
8 purports to sell and the buyer to buy a definite number,
9 weight or measure of the goods in the mass, and though the
10 number, weight or measure of the goods in the mass is un-
11 determined. By such a sale the buyer becomes owner in
12 common of such a share of the mass as the number, weight
13 or measure bought bears to the number, weight or measure
14 of the mass. If the mass contains less than the number,
15 weight or measure bought, the buyer becomes the owner of
16 the whole mass and the seller is bound to make good the de-
17 ficiency from similar goods unless a contrary intent appears.

Sect. 7. (*Destruction of goods sold.*)—(1) Where the
2 parties purport to sell specific goods, and the goods without
3 the knowledge of the seller have wholly perished at the time
4 when the agreement is made, the agreement is void.

(2) Where the parties purport to sell specific goods, and
6 the goods without the knowledge of the seller have perished

7 in part or have wholly or in a material part so deteriorated in
8 quality as to be substantially changed in character, the buyer
9 may at his option treat the sale—

(a) As avoided, or

(b) As transferring the property in all of the existing
12 goods or in so much thereof as have not deteriorated, and as
13 binding the buyer to pay the full agreed price if the sale was
14 indivisible or to pay the agreed price for the goods in which
15 the property passes if the sale was divisible.

Sect. 8. (*Destruction of goods contracted to be sold.*)—

2 (1) Where there is a contract to sell specific goods, and sub-
3 sequently, but before the risk passes to the buyer, without
4 any fault on the part of the seller or the buyer, the goods
5 wholly perish, the contract is thereby avoided.

(2) Where there is a contract to sell specific goods, and
7 subsequently, but before the risk passes to the buyer, without
8 any fault of the seller or the buyer, part of the goods perish
9 or the whole or a material part of the goods so deteriorate in
10 quality as to be substantially changed in character, the buyer
11 may at his option treat the contract—

(a) As avoided, or

(b) As binding the seller to transfer the property in all
14 of the existing goods or in so much thereof as have not de-
15 teriorated, and as binding the buyer to pay the full agreed
16 price if the contract was indivisible, or to pay the agreed
17 price for so much of the goods as the seller, by the buyer's
18 option, is bound to transfer if the contract was divisible.

THE PRICE.

Sect. 9. (*Definition and ascertainment of price.*)—(1)

2 The price may be fixed by the contract, or may be left to be
3 fixed in such manner as may be agreed, or it may be deter-
4 mined by the course of dealing between the parties.

(2) The price may be made payable in any personal prop-
6 erty.

(3) Where transferring or promising to transfer any in-
8 terest in real estate constitutes the whole or part of the con-
9 sideration for transferring or for promising to transfer the
10 property in goods, this act shall not apply.

(4) Where the price is not determined in accordance with
12 the foregoing provisions the buyer must pay a reasonable
13 price. What is a reasonable price is a question of fact de-
14 pendent on the circumstances of each particular case.

Sect. 10. (*Sale at a valuation.*)—(1) Where there is a
2 contract to sell or a sale of goods at a price or on terms
3 to be fixed by a third person, and such third person, with-
4 out fault of the seller or the buyer, can not or does not,
5 fix the price or terms, the contract or the sale is thereby
6 avoided; but if the goods or any part thereof have been deliv-
7 ered to and appropriated by the buyer he must pay a reason-
8 able price therefor.

(2) Where such third person is prevented from fixing the
10 price or terms by fault of the seller or the buyer, the party
11 not in fault may have such remedies against the party in
12 fault as are allowed by Parts IV and V of this act.

CONDITIONS AND WARRANTIES.

Sect. 11. (*Effect of conditions.*)—(1) Where the obligation of either party to a contract to sell or a sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or sale or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first-mentioned party may also treat the non-performance of the condition as a breach of warranty.

(2) Where the property in the goods has not passed, the buyer may treat the fulfillment by the seller of his obligation to furnish goods as described and as warranted expressly or by implication in the contract to sell as a condition of the obligation of the buyer to perform his promise to accept and pay for the goods.

Sect. 12. (*Definition of express warranty.*)—Any affirmation of fact or any promise by the seller relating to the goods is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the goods, and if the buyer purchases the goods relying thereon. No affirmation of the value of the goods, nor any statement purporting to be a statement of the seller's opinion only shall be construed as a warranty.

Sect. 13. (*Implied warranties of title.*)—In a contract to sell or a sale, unless a contrary intention appears, there is—

(1) An implied warranty on the part of the seller that in the case of a sale he has a right to sell the goods, and that

5 in the case of a contract to sell he will have a right to sell
6 the goods at the time when the property is to pass.

(2) An implied warranty that the buyer shall have and
8 enjoy quiet possession of the goods as against any lawful
9 claims existing (at the time of the sale.)

(3) An implied warranty that the goods shall be free
11 at the time of the sale from any charge or encumbrance in
12 favor of any third person, not declared or known to the buyer
13 before or at the time when the contract or sale is made.

(4) This section shall not, however, be held to render liable
15 a sheriff, auctioneer, mortgagee, or other person professing
16 to sell by virtue of authority in fact or law goods in which a
17 third person has a legal or equitable interest.

Sect. 14. (*Implied warranty in sale by description.*)
2 Where there is a contract to sell or a sale of goods by des-
3 cription, there is an implied warranty that the good shall cor-
4 respond with the description and if the contract or sale be by
5 sample, as well as by description, it is not sufficient that the
6 bulk of the goods corresponds with the sample if the goods
7 do not also correspond with the description.

Sect. 15. (*Implied warranties of quality.*)—Subject to the
2 provisions of this act and of any statute in that behalf, there
3 is no implied warranty or condition as to the quality or fit-
4 ness for any particular purpose of goods supplied under a
5 contract to sell or a sale, except as follows:

(1) Where the buyer, expressly or by implication, makes
7 known to the seller the particular purpose for which the

8 goods are required, and it appears that the buyer relies on the
9 seller's skill or judgment (whether he be the grower or
10 manufacturer or not), there is an implied warranty that the
11 goods shall be reasonably fit for such purpose.

(2) Where the goods are bought by description from a
13 seller who deals in goods of that description (whether he be
14 the grower or manufacturer or not), there is an implied war-
15 ranty that the goods shall be of merchantable quality.

(3) If the buyer has examined the goods, there is no im-
17 plied warranty as regards defects which such examination
18 ought to have revealed.

(4) In the case of a contract to sell or a sale of a specified
20 article under its patent or other trade name, there is no im-
21 plied warranty as to its fitness for any particular purpose.

(5) An implied warranty or condition as to quality or
23 fitness for a particular purpose may be annexed by the usage
24 of trade.

(6) An express warranty or condition does not negative
26 a warranty or condition implied under this act unless incon-
27 sistent therewith.

SALE BY SAMPLE.

Sect. 16. (*Implied warranties in sale by sample.*)—In the
2 case of a contract to sell or a sale by sample—

(a) There is an implied warranty that the bulk shall
4 correspond with the sample in quality.

(b) There is an implied warranty that the buyer shall
6 have a reasonable opportunity of comparing the bulk with

7 the sample, except so far as otherwise provided in section
8 47 (3).

(c) If the seller is a dealer in goods of that kind, there
10 is an implied warranty that the goods shall be free from any
11 defect, rendering them unmerchantable, which would not be
12 apparent on reasonable examination of the sample.

PART II.

TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER.

Sect. 17. (*No property passes until goods are ascertained.*)

2 —Where there is a contract to sell unascertained goods no
3 property in the goods is transferred to the buyer unless and
4 until the goods are ascertained, but property in an undivided
5 share of ascertained goods may be transferred as provided in
6 section 6.

Sect. 18. (*Property in specific goods passes when parties
2 so intend.*)—(1) Where there is a contract to sell specific
3 or ascertained goods, the property in them is transferred to
4 the buyer at such time as the parties to the contract intend it
5 to be transferred.

(2) For the purpose of ascertaining the intention of the
7 parties, regard shall be had to the terms of the contract, the
8 conduct of the parties, usages of trade, and the circumstances
9 of the case.

Sect. 19. (*Rules for ascertaining intention.*)—Unless a
2 different intention appears, the following are rules for ascer-
3 taining the intention of the parties as to the time at which
4 the property in the goods is to pass to the buyer:

Rule 1.—Where there is an unconditional contract to sell
6 specific goods, in a deliverable state, the property in the goods
7 passes to the buyer when the contract is made, and it is im-
8 material whether the time of payment, or the time of delivery,
9 or both, be postponed.

Rule 2.—Where there is a contract to sell specific goods and
11 the seller is bound to do something to the goods, for the pur-
12 pose of putting them into a deliverable state, the property
13 does not pass until such thing be done.

Rule 3.—(1) When goods are delivered to the buyer “on
15 sale or return,” or on other terms indicating an intention to
16 make a present sale, but to give the buyer an option to return
17 the goods instead of paying the price, the property passes to
18 the buyer on delivery, but he may revert the property in the
19 seller by returning or tendering the goods within the time
20 fixed in the contract, or, if no time has been fixed, within a
21 reasonable time.

(2) When goods are delivered to the buyer on approval
23 or on trial or on satisfaction, or other similar terms, the
24 property therein passes to the buyer—

(a) When he signifies his approval or acceptance to the
26 seller or does any other act adopting the transaction,

(b) If he does not signify his approval or acceptance to
28 the seller, but retains the goods without giving notice of re-
29 jection, then, if a time has been fixed for the return of the
30 goods, on the expiration of such time, and, if no time has been

31 fixed, on the expiration of a reasonable time. What is a rea-
32 sonable time is a question of fact.

Rule 4.—(1) Where there is a contract to sell unascer-
34 tained or future goods by description, and goods of that de-
35 scription and in a deliverable state are unconditionally appro-
36 priated to the contract, either by the seller with the assent of
37 the buyer, or by the buyer with the assent of the seller, the
38 property in the goods thereupon passes to the buyer. Such
39 assent may be expressed or implied, and may be given either
40 before or after the appropriation is made.

(2) Where, in pursuance of a contract to sell, the seller
42 delivers the goods to the buyer, or to a carrier or other bailee
43 (whether named by the buyer or not) for the purpose of
44 transmission to or holding for the buyer, he is presumed to
45 have unconditionally appropriated the goods to the contract,
46 except in the cases provided for in the next rule and in section
47 20. This presumption is applicable, although by the terms of
48 the contract, the buyer is to pay the price before receiving de-
49 livery of the goods, and the goods are marked with the words
50 Collect on Delivery or their equivalents.

Rule 5.—If a contract to sell requires the seller to deliver
52 the goods to the buyer, or at a particular place, or to pay the
53 freight or cost of transportation to the buyer, or to a partic-
54 ular place, the property does not pass until the goods have
55 been delivered to the buyer or reached the place agreed upon.

Sect. 20. (*Reservation of right of possession or property
2 when goods are shipped.*)—(1) Where there is a contract

3 to sell specific goods, or where goods are subsequently ap-
4 propriated to the contract, the seller may, by the terms of the
5 contract or appropriation, reserve the right of possession or
6 property in the goods until certain conditions have been ful-
7 filled. The right of possession or property may be thus re-
8 served notwithstanding the delivery of the goods to the buy-
9 er, or to a carrier or other bailee for the purpose of trans-
10 mission to the buyer.

(2) Where goods are shipped, and by the bill of lading the
12 goods are deliverable to the seller or his agent, or to the order
13 of the seller or of his agent, the seller thereby reserves the
14 property in the goods. But if, except for the form of the bill
15 of lading, the property would have passed to the buyer on
16 shipment of the goods, the seller's property in the goods shall
17 be deemed to be only for the purpose of securing performance
18 by the buyer of his obligations under the contract.

(3) Where goods are shipped, and by the bill of lading
20 the goods are deliverable to the order of the buyer or of his
21 agent, but possession of the bill of lading is retained by the
22 seller or his agent, the seller thereby reserves a right to the
23 possession of the goods, as against the buyer.

(4) Where the seller of goods draws on the buyer for the
25 price and transmits the bill of exchange and bill of lading to-
26 gether to the buyer to secure acceptance or payment of the
27 bill of exchange, the buyer is bound to return the bill of lad-
28 ing if he does not honor the bill of exchange, and if he
29 wrongfully retains the bill of lading he acquires no added

30 right thereby. If, however the bill of lading provides that
31 the goods are deliverable to the buyer or to the order of the
32 buyer, or is endorsed in blank, or to the buyer by the con-
33 signee named therein, one who purchases in good faith, for
34 value, the bill of lading, or goods from the buyer will obtain
35 the property in the goods, although the bill of exchange has
36 not been honored, provided that such a purchaser has received
37 delivery of the bill of lading indorsed by the consignee
38 named therein, or of the goods, without notice of the facts
39 making the transfer wrongful.

Sect. 21. (*Sale by auction.*)—In the case of a sale by auc-
2 tion—

(1) Where goods are put up for sale by auction in lots,
4 each lot is the subject of a separate contract of sale.

(2) A sale by auction is complete when the auctioneer an-
6 nounces its completion by the fall of the hammer, or in other
7 customary manner. Until such announcement is made any
8 bidder may retract his bid; and the auctioneer may withdraw
9 the goods from sale unless the auction has been announced to
10 be without reserve.

(3) A right to bid may be reserved expressly by or on be-
12 half of the seller.

(4) Where notice has not been given that a sale by auction
14 is subject to a right to bid on behalf of the seller, it shall not
15 be lawful for the seller to bid himself or to employ or induce
16 any person to bid at such sale on his behalf, or for the auc-
17 tioneer to employ or induce any person to bid at such sale on

18 behalf of the seller or knowingly to take any bid from the
19 seller or any person employed by him. Any sale contraven-
20 ing this rule may be treated as fraudulent by the buyer.

Sect. 22. (*Risk of loss.*)—Unless otherwise agreed, the
2 goods remain at the seller's risk until the property therein is
3 transferred to the buyer but when the property therein is
4 transferred to the buyer the goods are at the buyer's risk
5 whether delivery has been made or not, except that—

(a) Where delivery of the goods has been made to the
7 buyer, or to a bailee for the buyer, in pursuance of the con-
8 tract and the property in the goods has been retained by the
9 seller merely to secure performance by the buyer of his obli-
10 gations under the contract, the goods are at the buyer's risk
11 from the time of such delivery.

(b) Where delivery has been delayed through the fault of
13 either buyer or seller the goods are at the risk of the party in
14 fault as regards any loss which might not have occurred but
15 for such fault.

TRANSFER OF TITLE.

Sect. 23. (*Sale by a person not the owner.*)—(1) Sub-
2 ject to the provisions of this act, where goods are sold by a
3 person who is not the owner thereof, and who does not sell
4 them under the authority or with the consent of the owner,
5 the buyer acquires no better title to the goods than the seller
6 had, unless the owner of the goods is by his conduct pre-
7 cluded from denying the seller's authority to sell.

(2) Nothing in this act, however, shall affect—

(a) The provisions of any factors' acts, recording acts, or
10 any enactment enabling the apparent owner of goods to dis-
11 pose of them as if he were the true owner thereof,

(b) The validity of any contract to sell or sale under any
13 special common law or statutory power of sale or under the
14 order of a court of competent jurisdiction.

Sect. 24. (*Sale by one having a voidable title.*)—Where
2 the seller of goods has a voidable title thereto, but his title
3 has not been avoided at the time of the sale, the buyer acquires
4 a good title to the goods, provided he buys them in good
5 faith, for value, and without notice of the seller's defect of
6 title.

Sect. 25. (*Sale by seller in possession of goods already*
2 *sold.*)—Where a person having sold goods continues in pos-
3 session of the goods, or of negotiable documents of title to
4 the goods, the delivery or transfer by that person or by an
5 agent acting for him, of the goods or documents of title un-
6 der any sale, pledge, or other disposition thereof, to any per-
7 son receiving and paying value for the same in good faith
8 and without notice of the previous sale, shall have the same
9 effect as if the person making the delivery or transfer were
10 expressly authorized by the owner of the goods to make
11 the same.

Sect. 26. (*Creditors' rights against sold goods in seller's*
2 *possession.*)—Where a person having sold goods continues
3 in possession of the goods, or of negotiable documents of title
4 to the goods, and such retention of possession is fraudulent

5 in fact or is deemed fraudulent under any rule of law, a
6 creditor or creditors of the seller may treat the sale as void.

Sect. 27. (*Definition of negotiable document of title.*)—A
2 document of title in which it is stated that the goods referred
3 to therein will be delivered to the bearer, or to the order of
4 any person named in such document is a negotiable document
5 of title.

Sect. 28. (*Negotiation of negotiable documents by deliv-*
2 *ery.*)—A negotiable document of title may be negotiated by
3 delivery.

(a) Where by the terms of the document the carrier, ware-
5 houseman, or other bailee issuing the same undertakes to de-
6 liver the goods to the bearer, or

(b) Where by the terms of the document the carrier,
8 warehouseman, or other bailee issuing the same undertakes
9 to deliver the goods to the order of a specified person, and
10 such person or a subsequent indorsee of the document has in-
11 dorsed it in blank or to bearer.

Where by the terms of a negotiable document of title the
13 goods are deliverable to bearer or where a negotiable doc-
14 ument of title has been indorsed in blank or to bearer, any
15 holder may indorse the same to himself or to any other speci-
16 fied person, and in such case the document shall thereafter
17 be negotiated only by the indorsement of such indorsee.

Sect. 29. (*Negotiation of negotiable documents by in-*
2 *dorsement.*)—A negotiable document of title may be ne-
3 gotiated by the indorsement of the person to whose order

4 the goods are by the terms of the document deliverable.
5 Such indorsement may be in blank to bearer or to a specified
6 person. If indorsed to a specified person it may be again
7 negotiated by the indorsement of such person in blank, to
8 bearer or to another specified person. Subsequent negotia-
9 tion may be made in like manner.

Sect. 30. (*Negotiable documents of title marked "not ne-
2 gotiable."*)—If a document of title which contains an under-
3 taking by a carrier, warehouseman, or other bailee to deliver
4 the goods to the bearer, to a specified person or order, or to
5 the order of a specified person, or which contains words of
6 like import, has placed upon it the words "not negotiable,"
7 "non-negotiable" or the like, such a document may neverthe-
8 less be negotiated by the holder and is a negotiable document
9 of title within the meaning of this Act. But nothing in this
10 Act contained shall be construed as limiting, or defining the
11 effect upon the obligations of the carrier, warehouseman, or
12 other bailee issuing a document of title of placing thereon the
13 words "not negotiable," "non-negotiable," or the like.

Sect. 31. (*Transfer of non-negotiable documents.*)—A
2 document of title which is not in such form that it can be
3 negotiated by delivery may be transferred by the holder by
4 delivery to a purchaser or donee. A non-negotiable receipt
5 cannot be negotiated and the indorsement of such a receipt
6 gives the transferee no additional right.

Sect. 32. (*Who may negotiate a document.*)—A negotia-
2 ble document of title may be negotiated—

(a) By the owner thereof, or

(b) By any person to whom the possession or custody
5 of the document has been entrusted by the owner, if, by the
6 terms of the document the bailee issuing the document under-
7 takes to deliver the goods to the order of the person to whom
8 the possession or custody of the document has been entrusted,
9 or if at the time of such entrusting the document is in such
10 form that it may be negotiated by delivery.

Sect. 33. (*Rights of person to whom document has been*
2 *negotiated.*)—A person to whom a negotiable document of
3 title has been duly negotiated acquires thereby,

(a) Such title to the goods as the person negotiating the
5 document to him had or had ability to convey to a purchaser
6 in good faith for value, and also such title to the goods as the
7 person to whose order the goods were to be delivered by the
8 terms of the document had or had ability to convey to a pur-
9 chaser in good faith for value, and

(b) The direct obligation of the bailee issuing the docu-
11 ment to hold possession of the goods for him according to the
12 terms of the document as fully as if such bailee had contract-
13 ed directly with him.

Sect. 34. (*Rights of person to whom document has been*
2 *transferred.*)—A person to whom a document of title has
3 been transferred, but not negotiated, acquires thereby, as
4 against the transferor, the title to the goods, subject to the
5 terms of any agreement with the transferor.

If the document is non-negotiable such person also acquires
7 the right to notify the bailee who issued the document of the

8 transfer thereof, and thereby to acquire the direct obligation
9 of such bailee to hold possession of the goods for him accord-
10 ing to the terms of the document.

Prior to the notification of such bailee by the transferor
12 or transferee of a non-negotiable document of title, the title
13 of the transferee to the goods and the right to acquire the
14 obligation of such bailee may be defeated by the levy of an
15 attachment or execution upon the goods by a creditor of the
16 transferor, or by a notification to such bailee by the trans-
17 feror or a subsequent purchaser from the transferor of a sub-
18 sequent sale of the goods by the transferor.

Sect. 35. (*Transfer of negotiable document without in-*
2 *dorsement.*)—Where a negotiable document of title is trans-
3 ferred for value by delivery, and the indorsement of the
4 transferor is essential for negotiation, the transferee acquires
5 a right against the transferor to compel him to indorse the
6 document unless a contrary intention appears. The negotia-
7 tion shall take effect as of the time when the indorsement is
8 actually made.

Sect. 36. (*Warranties on sale of document.*)—A person
2 who for value negotiates or transfers a document of title by
3 indorsement or delivery, including one who assigns for value
4 a claim secured by a document of title unless a contrary in-
5 tention appears, warrants:

(a) That the document is genuine.

(b) That he has a legal right to negotiate or transfer it.

(c) That he has knowledge of no fact which would impair
9 the validity or worth of the document, and

(d) That he has a right to transfer the title to the goods.
11 and that the goods are merchantable or fit for a particular
12 purpose, whenever such warranties would have been implied
13 if the contract of the parties had been to transfer without a
14 document of title the goods represented thereby.

Sect. 37. (*Indorser not a guarantor.*)—The indorsement
2 of a document of title shall not make the indorser liable for
3 any failure on the part of the bailee who issued the document
4 or previous indorsers thereof to fulfill their respective obli-
5 gations.

Sect. 38. (*When negotiation not impaired by fraud, mis-
2 take or duress.*)—The validity of the negotiation of a ne-
3 gotiable document of title is not impaired by the fact that the
4 negotiation was a breach of duty on the part of the person
5 making the negotiation, or by the fact that the owner of the
6 document was induced by fraud, mistake, or duress to entrust
7 the possession or custody thereof to such person, if the per-
8 son to whom the document was negotiated or a person to
9 whom the document was subsequently negotiated paid value
10 therefor, without notice of the breach of duty, or fraud, mis-
11 take, or duress.

Sect. 39. (*Attachment or levy upon goods for which a ne-
2 gotiable document has been issued.*)—If goods are delivered
3 to a bailee by the owner or by a person whose act in convey-
4 ing the title to them to a purchaser in good faith for value
5 would bind the owner and a negotiable document of title is
6 issued for them they cannot thereafter, while in the posses-

7 sion of such bailee, be attached by garnishment or otherwise
8 or be levied upon under an execution unless the document
9 be first surrendered to the bailee or its negotiation enjoined.
10 The bailee shall in no case be compelled to deliver up the
11 actual possession of the goods until the document is sur-
12 rendered to him or impounded by the court.

Sect. 40. (*Creditors' remedies to reach negotiable docu-
2 ments.*)—A creditor whose debtor is the owner of a ne-
3 gotiable document of title shall be entitled to such aid from
4 courts of appropriate jurisdiction by injunction and other-
5 wise in attaching such document or in satisfying the claim by
6 means thereof as is allowed at law or in equity in regard to
7 property which can not readily be attached or levied upon by
8 ordinary legal process.

PART III.

PERFORMANCE OF THE CONTRACT.

Sect. 41. (*Seller must deliver and buyer accept goods.*)—
2 It is the duty of the seller to deliver the goods, and of the
3 buyer to accept and pay for them, in accordance with the
4 terms of the contract to sell or sale.

Sect. 42. (*Delivery and payment are concurrent condi-
2 tions.*)—Unless otherwise agreed, delivery of the goods
3 and payment of the price are concurrent conditions, that is
4 to say, the seller must be ready and willing to give possession
5 of the goods to the buyer in exchange for the price and the
6 buyer must be ready and willing to pay the price in exchange
7 for possession of the goods.

Sect. 43. (*Place, time and manner of delivery.*)—(1)
2 Whether it is for the buyer to take possession of the goods
3 or for the seller to send them to the buyer, is a question de-
4 pending in each case on the contract, express or implied, be-
5 tween the parties. Apart from any such contract, express or
6 implied, or usage of trade to the contrary, the place of de-
7 livery is the seller's place of business, if he have one, and if
8 not his residence; but in case of a contract to sell or a sale
9 of specific goods, which to the knowledge of the parties
10 when the contract or the sale was made were in some other
11 place, then that place is the place of delivery.

(2) Where by a contract to sell or a sale the seller is
13 bound to send the goods to the buyer, but no time for sending
14 them is fixed, the seller is bound to send them within a rea-
15 sonable time.

(3) Where the goods at the time of sale are in the pos-
17 session of a third person, the seller has not fulfilled his obliga-
18 tion to deliver to the buyer unless and until such third person
19 acknowledges to the buyer that he holds the goods on the
20 buyer's behalf; but as against all others than the seller the
21 buyer shall be regarded as having received delivery from the
22 time when such third person first has notice of the sale. Noth-
23 ing in this section, however, shall affect the operation of the
24 issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as in-
26 effectual unless made at a reasonable hour. What is a rea-
27 sonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental
29 to putting the goods into a deliverable state must be borne by
30 the seller.

Sect. 44. (*Delivery of wrong quantity.*)—(1) Where the
2 seller delivers to the buyer a quantity of goods less than he
3 contracted to sell, the buyer may reject them, but if the buyer
4 accepts or retains the goods so delivered, knowing that the
5 seller is not going to perform the contract in full, he must
6 pay for them at the contract rate. If, however, the buyer has
7 used or disposed of the goods delivered before he knows that
8 the seller is not going to perform his contract in full, the
9 buyer shall not be liable for more than the fair value to him
10 of the goods so received.

(2) Where the seller delivers to the buyer a quantity of
12 goods larger than he contracted to sell, the buyer may ac-
13 cept the goods included in the contract and reject the rest,
14 or he may reject the whole. If the buyer accepts the whole
15 of the goods so delivered he must pay for them at the con-
16 tract rate.

(3) Where the seller delivers to the buyer the goods he
18 contracted to sell mixed with goods of a different description
19 not included in the contract, the buyer may accept the goods
20 which are in accordance with the contract and reject the
21 rest, or he may reject the whole.

(4) The provisions of this section are subject to any usage
23 of trade, special agreement, or course of dealing between
24 the parties.

Sect. 45. (*Delivery in instalments.*)—(1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract to sell goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it depends in each case on the terms of the contract and the circumstances of the case, whether the breach of contract is so material as to justify the injured party in refusing to proceed further and suing for damages for breach of the entire contract, or whether the breach is severable, giving rise to a claim for compensation, but not to a right to treat the whole contract as broken.

Sect. 46. (*Delivery to a carrier on behalf of the buyer.*)—(1) Where, in pursuance of a contract to sell or a sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, except in the cases provided for in section 19, rule 5, or unless a contrary intent appears.

(2) Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the

13 seller omit so to do, and the goods are lost or damaged in
14 course of transit, the buyer may decline to treat the delivery
15 to the carrier as a delivery to himself, or may hold the
16 seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the
18 seller to the buyer under circumstances in which the seller
19 knows or ought to know that it is usual to insure, the seller
20 must give such notice to the buyer as may enable him to
21 insure them during their transit, and, if the seller fails to
22 do so, the goods shall be deemed to be at his risk during
23 such transit.

Sect. 47. (*Right to examine the goods.*)—(1) Where
2 goods are delivered to the buyer, which he has not previ-
3 ously examined, he is not deemed to have accepted them
4 unless and until he has had a reasonable opportunity of
5 examining them for the purpose of ascertaining whether
6 they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders de-
8 livery of goods to the buyer, he is bound, on request, to
9 afford the buyer a reasonable opportunity of examining the
10 goods for the purpose of ascertaining whether they are in
11 conformity with the contract.

(3) Where goods are delivered to a carrier by the seller,
13 in accordance with an order from or agreement with the
14 buyer, upon the terms that the goods shall not be delivered
15 by the carrier to the buyer until he has paid the price,
16 whether such terms are indicated by marking the goods

17 with the words Collect on Delivery, or otherwise, the buyer
18 is not entitled to examine the goods before payment of the
19 price in the absence of agreement permitting such exam-
20 ination.

Sect. 48. (*What constitutes acceptance.*)—The buyer is
2 deemed to have accepted the goods when he intimates to
3 the seller that he has accepted them, or when the goods
4 have been delivered to him, and he does any act in relation
5 to them which is inconsistent with the ownership of the
6 seller, or when, after the lapse of a reasonable time, he
7 retains the goods without intimating to the seller that he
8 has rejected them.

Sect. 49. (*Acceptance does not bar action for damages.*)
2 —In the absence of express or implied agreement of the
3 parties, acceptance of the goods by the buyer shall not
4 discharge the seller from liability in damages or other legal
5 remedy for breach of any promise or warranty in the con-
6 tract to sell or the sale. But if, after acceptance of the
7 goods, the buyer fail to give notice to the seller of the breach
8 of any promise or warranty within a reasonable time after
9 the buyer knows, or ought to know of such breach, the
10 seller shall not be liable therefor.

Sect. 50. (*Buyer is not bound to return goods wrongly
2 delivered.*)—Unless otherwise agreed, where goods are de-
3 livered to the buyer, and he refuses to accept them, having
4 the right so to do, he is not bound to return them to the

5 seller, but it is sufficient if he notifies the seller that he re-
6 fuses to accept them.

Sect. 51. (*Buyer's liability for failing to accept delivery.*)

2 —When the seller is ready and willing to deliver the goods,
3 and requests the buyer to take delivery, and the buyer does
4 not within a reasonable time after such request take deliv-
5 ery of the goods, he is liable to the seller for any loss occa-
6 sioned by his neglect or refusal to take delivery, and also
7 for a reasonable charge for the care and custody of the
8 goods. If the neglect or refusal of the buyer to take de-
9 livery amounts to a repudiation or breach of the entire con-
10 tract, the seller shall have the rights against the goods and
11 on the contract hereinafter provided in favor of the seller
12 when the buyer is in default.

PART IV.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS.

Sect. 52. (*Definition of unpaid seller.*)—(1) The seller
2 of goods is deemed to be an unpaid seller within the mean-
3 ing of this act—

(a) When the whole of the price has not been paid or
5 tendered.

(b) When a bill of exchange or other negotiable instru-
7 ment has been received as conditional payment, and the
8 condition on which it was received has been broken by
9 reason of the dishonor of the instrument, the insolvency of
10 the buyer, or otherwise.

(2) In this part of this act the term “seller” includes an
12 agent of the seller to whom the bill of lading has been
13 endorsed, or a consignor or agent who has himself paid, or
14 is directly responsible for, the price, or any other person
15 who is in the position of a seller.

Sect. 53. (*Remedies of an unpaid seller.*) (1)—Subject
2 to the provisions of this act, notwithstanding that the prop-
3 erty in the goods may have passed to the buyer, the unpaid
4 seller of goods, as such, has—

(a) A lien on the goods or right to retain them for the
6 price while he is in possession of them.

(b) In case of the insolvency of the buyer, a right of
8 stopping the goods in transitu after he has parted with the
9 possession of them.

(c) A right of resale as limited by this act.

(d) A right to rescind the sale as limited by this act.

(2) Where the property in goods has not passed to the
13 buyer, the unpaid seller has, in addition to his other reme-
14 dies, a right of withholding delivery similar to and co-ex-
15 tensive with his rights of lien and stoppage “in transitu”
16 where the property has passed to buyer.

UNPAID SELLER'S LIEN.

Sect. 54. (*When right of lien may be exercised.*)—(1)
2 —Subject to the provisions of this act, the unpaid seller of
3 goods who is in possession of them is entitled to retain pos-
4 session of them until payment or tender of the price in the
5 following cases, namely:

(a) Where the goods have been sold without any stipulation as to credit.

(b) Where the goods have been sold on credit, but the term of credit has expired.

(c) Where the buyer becomes insolvent.

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

Sect. 55. (*Lien after part delivery.*)—Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an intent to waive the lien or right of retention.

Sect. 56. (*When lien is lost.*)—(1) The unpaid seller of goods loses his lien thereon—

(a) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the property in the goods or the right to the possession thereof.

(b) When the buyer or his agent lawfully obtains possession of the goods.

(c) By waiver thereof.

(2) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained judgment or decree for the price of the goods.

STOPPAGE IN TRANSITU.

Sect. 57. (*Seller may stop goods on buyer's insolvency.*)

2 —Subject to the provisions of this act, when the buyer of
3 goods is or becomes insolvent, the unpaid seller who has
4 parted with the possession of the goods has the right of stop-
5 ping them in transitu, that is to say, he may resume posses-
6 sion of the goods at any time while they are in transit, and
7 he will then become entitled to the same rights in regard
8 to the goods as he would have had if he had never parted
9 with the possession.

Sect. 58. (*When goods are in transit.*)—(1) Goods are in
2 transit within the meaning of section 57:

(a) From the time when they are delivered to a carrier
4 by land or water, or other bailee for the purpose of trans-
5 mission to the buyer, until the buyer, or his agent in that
6 behalf, takes delivery of them from such carrier or other bailee;

(b) If the goods are rejected by the buyer, and the carrier
8 or other bailee continues in possession of them, even if the
9 seller has refused to receive them back.

(2) Goods are no longer in transit within the meaning of
11 section 57:

(a) If the buyer, or his agent in that behalf, obtains de-
13 livery of the goods before their arrival at the appointed des-
14 tination;

(b) If, after the arrival of the goods at the appointed
16 destination, the carrier or other bailee acknowledges to the
17 buyer or his agent, that he holds the goods on his behalf

18 and continues in possession of them as bailee for the buyer,
19 or his agent; and it is immaterial that a further destination
20 for the goods may have been indicated by the buyer;

(c) If the carrier or other bailee wrongfully refuses to
22 deliver the goods to the buyer, or his agent in that behalf.

(3) If goods are delivered to a ship chartered by the
24 buyer, it is a question depending on the circumstances of
25 the particular case, whether they are in the possession of
26 the master as a carrier, or as agent of the buyer.

(4) If part delivery of the goods has been made to the
28 buyer, or his agent in that behalf, the remainder of the
29 goods may be stopped in transitu, unless such part delivery
30 has been made under such circumstances as to show an
31 agreement with the buyer to give up possession of the whole
32 of the goods.

Sect. 59. (*Ways of exercising the right to stop.*)—(1)
2 The unpaid seller may exercise his right of stoppage in
3 transitu either by obtaining actual possession of the goods,
4 or by giving notice of his claim to the carrier or other bailee
5 in whose possession the goods are. Such notice may be
6 given either to the person in actual possession of the goods
7 or to his principal. In the latter case the notice, to be
8 effectual, must be given at such time and under such cir-
9 cumstances that the principal, by the exercise of reasonable
10 diligence, may prevent a delivery to the buyer.

(2) When notice of stoppage in transitu is given by the
12 seller to the carrier, or other bailee in possession of the

13 goods, he must redeliver the goods to, or according to the
14 directions of, the seller. The expenses of such redelivery
15 must be borne by the seller. If, however, a negotiable doc-
16 ument of title representing the goods has been issued by
17 the carrier or other bailee, he shall not be obliged to deliver
18 or justified in delivering the goods to the seller unless such
19 document is first surrendered for cancellation.

RESALE BY THE SELLER.

Section 60. (*When and how resale may be made.*)—(1)

2 Where the goods are of a perishable nature, or where the
3 seller expressly reserves the right of resale in case the
4 buyer should make default, or where the buyer has been
5 in default in the payment of the price an unreasonable time,
6 an unpaid seller having a right of lien or having stopped
7 the goods in transitu may resell the goods. He shall not
8 thereafter be liable to the original buyer upon the contract
9 to sell or the sale or for any profit made by such resale, but
10 may recover from the buyer damages for any loss occa-
11 sioned by the breach of the contract or the sale.

(2) Where a resale is made, as authorized in this section,
13 the buyer acquires a good title as against the original buyer.

(3) It is not essential to the validity of a resale that notice
15 of an intention to resell the goods be given by the seller to
16 the original buyer. But where the right to resell is not
17 based on the perishable nature of the goods or upon an

18 express provision of the contract or the sale, the giving or
19 failure to give such notice shall be relevant in any issue
20 involving the question whether the buyer had been in default
21 an unreasonable time before the resale was made.

(4) It is not essential to the validity of a resale that notice
23 of the time and place of such resale should be given by the
24 seller to the original buyer.

(5) The seller is bound to exercise reasonable care and
26 judgment in making a resale, and subject to this requirement
27 may make a resale either by public or private sale.

RESCISSION BY THE SELLER.

Sect. 61. (*When and how the seller may rescind the sale.*)

2 —(1) An unpaid seller having a right of lien or having
3 stopped the goods in transitu, may rescind the transfer of
4 title and resume the property in the goods, where he ex-
5 pressly reserved the right to do so in case the buyer should
6 make default, or where the buyer has been in default in
7 the payment of the price an unreasonable time. The seller
8 shall not thereafter be liable to the buyer upon the contract
9 to sell or the sale, but may recover from the buyer damages
10 for any loss occasioned by the breach of the contract or the
11 sale.

(2) The transfer of title shall not be held to have been
13 rescinded by an unpaid seller until he has manifested by
14 notice to the buyer or by some other overt act an intention

15 to rescind. It is not necessary that such overt act should
16 be communicated to the buyer, but the giving or failure to
17 give notice to the buyer of the intention to rescind shall be
18 relevant in any issue involving the question whether the
19 buyer had been in default an unreasonable time before the
20 right of rescission was asserted.

Sect. 62. (*Effect of sale of goods subject to lien or stop-*
2 *page in transitu.*)—Subject to the provisions of this act,
3 the unpaid seller's right of lien or stoppage in transitu is
4 not affected by any sale, or other disposition of the goods
5 which the buyer may have made, unless the seller has as-
6 sented thereto.

If, however, a negotiable document of title has been issued
8 for goods, no seller's lien or right of stoppage in transitu
9 shall defeat the right of any purchaser for value in good
10 faith to whom such document has been negotiated, whether
11 such negotiation be prior or subsequent to the notification
12 to the carrier or other bailee who issued such document, of
13 the seller's claim to a lien or right of stoppage in transitu.

PART V.

ACTIONS FOR BREACH OF THE CONTRACT.

REMEDIES OF THE SELLER.

Sect. 63. (*Action for the price.*)—(1) Where, under a
2 contract to sell or a sale, the property in the goods has
3 passed to the buyer, and the buyer wrongfully neglects or

4 refuses to pay for the goods according to the terms of the
5 contract or the sale, the seller may maintain an action
6 against him for the price of the goods.

(2) Where, under a contract to sell or a sale, the price is
8 payable on a day certain, irrespective of delivery or of
9 transfer of title, and the buyer wrongfully neglects or re-
10 fuses to pay such price, the seller may maintain an action
11 for the price, although the property in the goods has not
12 passed, and the goods have not been appropriated to the
13 contract. But it shall be a defense to such an action that
14 the seller at any time before judgment in such action has
15 manifested an inability to perform the contract or the sale
16 on his part or an intention not to perform it.

(3) Although the property in the goods has not passed,
18 if they can not readily be resold for a reasonable price, and
19 if the provisions of section 64 (4) are not applicable, the
20 seller may offer to deliver the goods to the buyer, and, if
21 the buyer refuses to receive them, may notify the buyer that
22 the goods are thereafter held by the seller as bailee for the
23 buyer. Thereafter the seller may treat the goods as the
24 buyer's and may maintain an action for the price.

Sect. 64. (*Action for damages for non-acceptance of
2 the goods.*)—(1) Where the buyer wrongfully neglects or
3 refuses to accept and pay for the goods, the seller may
4 maintain an action against him for damages for non-ac-
5 ceptance.

(2) The measure of damages is the estimated loss directly
7 and naturally resulting, in the ordinary course of events,
8 from the buyer's breach of contract.

(3) Where there is an available market for the goods in
10 question, the measure of damages is, in the absence of spe-
11 cial circumstances, showing proximate damage of a greater
12 amount, the difference between the contract price and the
13 market or current price at the time or times when the goods
14 ought to have been accepted, or, if no time was fixed for
15 acceptance, then at the time of the refusal to accept.

(4) If, while labor or expense of material amount are
17 necessary on the part of the seller to enable him to fulfill his
18 obligations under the contract to sell or the sale, the buyer
19 repudiates the contract or the sale, or notifies the seller to
20 proceed no further therewith, the buyer shall be liable to
21 the seller for no greater damages than the seller would have
22 suffered if he did nothing towards carrying out the contract
23 or the sale after receiving notice of the buyer's repudiation
24 or countermand. The profit the seller would have made
25 if the contract or the sale had been fully performed shall
26 be considered in estimating such damages.

Sect. 65. (*When seller may rescind contract tract or sale.*)

2 —Where the goods have not been delivered to the buyer,
3 and the buyer has repudiated the contract to sell or sale,
4 or has manifested his inability to perform his obligations
5 thereunder, or has committed a material breach thereof, the

6 seller may totally rescind the contract or the sale by giving
7 notice of his election so to do to the buyer.

REMEDIES OF THE BUYER.

Sect. 66. (*Action for converting or detaining goods.*)—

2 Where the property in the goods has passed to the buyer
3 and the seller wrongfully neglects or refuses to deliver the
4 goods, the buyer may maintain any action allowed by law
5 to the owner of goods of similar kind when wrongfully con-
6 verted or withheld.

Sect. 67. (*Action for failing to deliver goods.*)—(1)

2 Where the property in the goods has not passed to the
3 buyer, and the seller wrongfully neglects or refuses to de-
4 liver the goods, the buyer may maintain an action against
5 the seller for damages for non-delivery.

(2) The measure of damages is the loss directly and natur-
7 ally resulting, in the ordinary course of events, from the
8 seller's breach of contract.

(3) Where there is an available market for the goods in
10 question, the measure of damages, in the absence of special
11 circumstances showing proximate damages of a greater
12 amount, is the difference between the contract price and
13 the market or current price of the goods at the time or times
14 when they ought to have been delivered, or, if no time was
15 fixed, then at the time of the refusal to deliver.

Sect. 68. (*Specific performance.*)—Where the seller has

2 broken a contract to deliver specific or ascertained goods,

3 a court having the powers of a court of equity may, if it
4 thinks fit, on the application of the buyer, by its judgment
5 or decree direct that the contract shall be performed spe-
6 cifically, without giving the seller the option of retaining the
7 goods on payment of damages. The judgment or decree
8 may be unconditional, or upon such terms and conditions
9 as to damages, payment of the price and otherwise, as to
10 the court may seem just.

Sect. 69. (*Remedies for breach of warranty.*)—(1)

2 Where there is a breach of warranty by the seller, the buyer
3 may, at his election—

(a) accept or keep the goods and set up against the seller,
5 the breach of warranty by way of recoupment in diminution
6 or extinction of the price;

(b) accept or keep the goods and maintain an action against
8 the seller for damages for the breach of warranty;

(c) refuse to accept the goods, if the property therein has
10 not passed, and maintain an action against the seller for
11 damages for the breach of warranty;

(d) rescind the contract to sell or the sale and refuse to
13 receive the goods, or if the goods have already been received,
14 return them or offer to return them to the seller and recover
15 the price or any part thereof which has been paid.

(2) When the buyer has claimed and been granted a rem-
17 edy in any one of these ways, no other remedy can thereafter
18 be granted.

(3) Where the goods have been delivered to the buyer, he
20 can not rescind the sale if he knew of the breach of war-
21 ranty when he accepted the goods, or if he fails to notify
22 the seller within a reasonable time of the election to rescind,
23 or if he fails to return or to offer to return the goods to the
24 seller in substantially as good condition as they were in at
25 the time the property was transferred to the buyer. But if
26 deterioration or injury of the goods is due to the breach of
27 warranty, such deterioration or injury shall not prevent the
28 buyer from returning or offering to return the goods to the
29 seller and rescinding the sale.

(4) Where the buyer is entitled to rescind the sale and
31 elects to do so, the buyer shall cease to be liable for the price
32 upon returning or offering to return the goods. If the price
33 or any part thereof has already been paid, the seller shall be
34 liable to repay so much thereof as has been paid, concur-
35 rently with the return of the goods, or immediately after an
36 offer to return the goods in exchange for repayment of the
37 price.

(5) Where the buyer is entitled to rescind the sale and
39 elects to do so, if the seller refuses to accept an offer of the
40 buyer to return the goods, the buyer shall thereafter be
41 deemed to hold the goods as bailee for the seller, but subject
42 to a lien to secure the repayment of any portion of the price
43 which has been paid, and with the remedies for the enforce-
44 ment of such lien allowed to an unpaid seller by section 53.

(6) The measure of damages for breach of warranty is
46 the loss directly and naturally resulting, in the ordinary
47 course of events, from the breach of warranty.

(7) In the case of breach of warranty of quality, such
49 loss, in the absence of special circumstances showing proxi-
50 mate damage of a greater amount, is the difference between
51 the value of the goods at the time of delivery to the buyer,
52 and the value they would have had if they had answered
53 to the warranty.

Sect. 70. (*Interest and special damages.*)—Nothing in
2 this act shall affect the right of the buyer or the seller to
3 recover interest or special damages in any case where by
4 law interest or special damages may be recoverable, or to
5 recover money paid where the consideration for the pay-
6 ment of it has failed.

PART VI.

INTERPRETATION.

Sect. 71. (*Variation of implied obligations.*)—Where any
2 right, duty, or liability would arise under a contract to sell
3 or a sale by implication of law, it may be negatived or
4 varied by express agreement or by the course of dealing
5 between the parties, or by custom, if the custom be such
6 as to bind both parties to the contract or the sale.

Sect. 72. (*Rights may be enforced by action.*)—Where
2 any right, duty or liability is declared by this act, it may,
3 unless otherwise by this act provided, be enforced by action.

Sect. 73. (*Rule for cases not provided for by this act.*)—

2 In any case not provided for in this act, the rules of law
3 and equity, including the law merchant, and in particular
4 the rules relating to the law of principal and agent and to
5 the effect of fraud, misrepresentation, duress or coercion,
6 mistake, bankruptcy, or other invalidating cause, shall con-
7 tinue to apply to contracts to sell and to sales of goods.

Sect. 74. (*Interpretation shall give effect to purpose of
2 uniformity.*)—This act shall be so interpreted and construed,
3 if possible, as to effectuate its general purpose to make uni-
4 form the law of those states which enact it.

Sect. 75. (*Provisions not applicable to mortgages.*)—The
2 provisions of this act relating to contracts to sell and to
3 sales do not apply, unless so stated, to any transaction in
4 the form of a contract to sell or a sale which is intended
5 to operate by way of mortgage, pledge, charge, or other
6 security.

Sect. 76. (*Definitions.*)—(1) In this act, unless the con-
2 text or subject matter otherwise requires—

“Action” includes counterclaim, set-off and suit in equity.

“Buyer” means a person who buys or agrees to buy goods
5 or any legal successor in interest of such person.

“Defendant” includes a plaintiff against whom a right of
7 set-off or counterclaim is asserted.

“Delivery” means voluntary transfer of possession from
9 one person to another.

“Divisible contract to sell or sale” means a contract to

11 sell or a sale in which by its terms the price for a portion
12 or portions of the goods less than the whole is fixed or
13 ascertainable by computation.

“Document of title to goods” includes any bill of lading,
15 dock warrant, warehouse receipt or order for the delivery
16 of goods, or any other document used in the ordinary course
17 of business in the sale or transfer of goods, as proof of the
18 possession or control of the goods, or authorizing or pur-
19 porting to authorize the possessor of the document to trans-
20 fer or receive, either by endorsement or by delivery, goods
21 represented by such document.

“Fault” means wrongful act or default.

“Fungible goods” mean goods of which any unit is from
24 its nature or by mercantile usage treated as the equivalent
25 of any other unit.

“Future goods” mean goods to be manufactured or ac-
27 quired by the seller after the making of the contract of
28 sale.

“Goods” include all chattels personal other than things in
30 action and money. The term includes emblements, indus-
31 trial growing crops, and things attached to or forming part
32 of the land which are agreed to be severed before sale or
33 under the contract of sale.

“Order” in sections of this act relating to documents of
35 title means an order by indorsement on the document.

“Person” includes a corporation or partnership or two or
37 more persons having a joint or common interest.

“Plaintiff” includes defendant asserting a right of set-off
39 or counterclaim.

“Property” means the general property in goods, and not
41 merely a special property.

“Purchaser” includes mortgagee and pledgee.

“Purchases” includes taking as a mortgagee or as a pledgee.

“Quality of goods” includes their state or condition.

“Sale” includes a bargain and sale as well as a sale and
46 delivery.

“Seller” means a person who sells or agrees to sell goods,
48 or any legal successor in interest of such person.

“Specific goods” means goods identified and agreed upon
50 at the time a contract to sell or a sale is made.

“Value” is any consideration sufficient to support a simple
52 contract. An antecedent or pre-existing claim, whether for
53 money or not, constitutes value where goods or documents
54 of title are taken either in satisfaction thereof or as security
55 therefor.

(2) A thing is done “in good faith” within the meaning
57 of this act when it is in fact done honestly, whether it be
58 done negligently or not.

(3) A person is insolvent within the meaning of this act
60 who either has ceased to pay his debts in the ordinary course
61 of business or can not pay his debts as they become due,
62 whether he has committed an act of bankruptcy or not,
63 and whether he is insolvent within the meaning of the
64 federal bankruptcy law or not.

(4) Goods are in a “deliverable state” within the meaning of this act when they are in such a state that the buyer would, under the contract, be bound to take delivery of them.

Sect. 77. (*Inconsistent legislation repealed.*)—All acts or parts of acts inconsistent with this act are hereby repealed.

Sect. 78. (*Time when the act takes effect.*)—This act shall take effect on the first day of July, one thousand nine hundred and nine.

Sect. 79. (*Name of act.*)—This act may be cited as the Sales Act.

STATE OF MAINE.

IN SENATE,

February 15, 1909.

Reported by Mr. HASTINGS from Committee on Judiciary
and ordered printed and recommitted.

F. G. FARRINGTON, *Secretary*.