

## 41.

Unless it appears that the *only* purpose of the seller in taking the bill of lading in his own name and sending it with draft attached, etc., was to secure performance of the contract by the buyer, the form of the bill cannot be interpreted as intended only for such purpose. Seller held to have reserved both the property in goods and right of possession thereof. Remedies of a seller upon the buyer's refusal to accept the goods. Where the seller reserves the property in goods by sending draft with bill of lading attached, and the buyer declines to pay the draft, whereupon the seller leaves the goods on the dock and they are stored in a warehouse and there destroyed by fire, the loss falls on the seller. *Rylance v. Walker*, 129 Md. 481.

Prior to the adoption of this section it had been uniformly held in Maryland that contracts of sale wherein the vendor reserves title to the property until the contract price was paid were valid between vendor and vendee and as to all persons claiming under the latter with notice, but that they were not binding as to *bona fide* purchasers without notice. *Praeger v. Implement Co.*, 122 Md. 308.

This section referred to—see notes to sections 39 and 40. *Agri Mfg. Co. v. Atlantic Fertilizer Co.*, 129 Md. 47.

## 43.

The situation for which sub-section (b) of this section provides is rather for a delay of the delivery of goods through the fault of either buyer or seller than for such a refusal to accept the goods or to pay for them as amounts to a breach of the contract. See notes to section 41. *Rylance v. Walker Co.*, 129 Md. 484.

This section referred to—see notes to sections 39 and 40. *Agri Mfg. Co. v. Atlantic Fertilizer Co.*, 129 Md. 46.

### Chapter III.

## 66.

A contract held not to be in accordance with this section; but if it were, the buyer was justified in treating the contract as rescinded or cancelled, because the seller drew on the vendee before delivery with the bill of lading attached, and upon non-payment of the draft instructed the railroad not to deliver the goods and notified the buyer. *Hazel Hill Co. v. Roberts Bros.*, 129 Md. 315.

## 68.

This section referred to—see notes to sections 39 and 40. *Agri Mfg. Co. v. Atlantic Fertilizer Co.*, 129 Md. 50.

## 69.

Where the condition of two upper sections of a monument has been changed and the two bases thereof permanently appropriated, the buyer has accepted the property under this section. *Loeblein v. Clements*, 130 Md. 629.

## 70.

The last sentence of this section has no application where the proof shows that the article sold was repeatedly sent back to the seller for repairs, and that he was thus apprised of the difficulties the buyer was having in its use. *Rittenhouse, W. Auto Co. v. Kissner*, 129 Md. 111.