

scription, and if the contract or sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

This section referred to in construing secs. 23 and 94. *Engineering & Machine Co. v. Swindell*, 161 Md. 592.

In order to recover for a breach of an implied warranty or in an action of tort, for a false warranty, plaintiff must by averment and proof bring his case within one of sections of uniform sales act. What is a sale of goods "by description." When warranty is implied. *Flaccomio v. Eysink*, 129 Md. 382.

An. Code, 1924, sec. 36. 1912, sec. 36. 1910, ch. 346, sec. 33 (p. 276).

**33.** Subject to the provisions of this sub-title and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract to sell or a sale, except as follows:

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose.

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

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

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

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

(6) An express warranty or condition does not negative a warranty or condition implied under this sub-title, unless inconsistent therewith.

The provision of this section that there is no implied warranty as to defects which examination by buyer ought to have revealed, applies to public sale of heifers examined by buyer. *King v. Gaver*, 176 Md. 81.

Implied warranty of heating equipment not enforceable where plans and specifications were so changed as to make it inadequate. *Parker v. Morgan*, 170 Md. 7.

Restaurant serving food to guest does not make sale under this section implying warranty. *Dining Hall Co. v. Swingler*, 173 Md. 495.

This section referred to in construing secs. 23 and 94. *Engineering & Machine Co. v. Swindell*, 161 Md. 596.

Where purchaser left to seller's judgment the grades and quantity of dynamite proper to produce certain result, implied warranty does apply. *Powder Co. v. Campbell*, 156 Md. 346.

Under this section, "The Quiet May Automatic Oil Burner" held to be a trade name, excluding any implied warranty of fitness for any particular purpose. *May Oil Burner Corp. v. Munger*, 159 Md. 605.

See notes to sec. 30.

The important change made by this section in the law as it existed prior thereto was to put seller who is not grower or manufacturer, in position formerly held by such grower or manufacturer only, in reference to implied warranty mentioned. This section is in effect a qualification of doctrine of *caveat emptor*. Authorities reviewed. Parol evidence admissible; ambiguity. Contract divisible. *Luria Bros. & Co. v. Klaff*, 139 Md. 593.

A sale of corn held to be a sale by description, and hence an implied warranty arose under paragraphs (1) and (2) of this section. The vendor knew that corn was to be used for seed purposes; no samples furnished. *Prayers. Robinson v. Barteldes Co.*, 139 Md. 494.

Sub-sec. (4) of this section applied to a sale of muriate of potash. No evidence of custom or usage in trade is admissible which conflicts with a statute. *Fertilizer Co. v. Trona Corp.*, 142 Md. 249.

See notes to sec. 32.