

common of such a share of the mass, as the number, weight or measure bought bears to the number, weight or measure of the mass. If the mass contains less than the number, weight or measure bought, the buyer becomes the owner of the whole mass and the seller is bound to make good the deficiency from similar goods, unless a contrary intent appears.

See art. 14 A, sec. 23.

1910, ch. 346, sec. 25 (p. 274).

**28.** (1) Where the parties purport to sell specific goods, and the goods, without the knowledge of the seller, have wholly perished at the time when the agreement is made, the agreement is void.

(2) Where the parties purport to sell specific goods, and the goods, without the knowledge of the seller, have perished in part or have wholly or in a material part so deteriorated in quality as to be substantially changed in character, the buyer may, at his option, treat the sale:

(a) As avoided; or

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

1910, ch. 346, sec. 26 (p. 274).

**29.** (1) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault on the part of the seller or the buyer, the goods wholly perish, the contract is thereby avoided.

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

(a) As avoided; or

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

1910, ch. 346, sec. 27 (p. 275).

**30.** (1) The price may be fixed by the contract, or may be left to be fixed in such manner as may be agreed, or it may be determined by the course of dealing between the parties.

(2) The price may be made payable in any personal property.