

wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed and the goods have not been appropriated to the contract. But it shall be a defense to such an action that the seller, at any time before judgment in such action, has manifested an inability to perform the contract or the sale on his part or an intention not to perform it.

(3) Although the property in the goods has not passed, if they can not readily be resold for a reasonable price, and if the provisions of section 82 (4) are not applicable, the seller may offer to deliver the goods to the buyer, and if the buyer refuses to receive them, may notify the buyer that the goods are thereafter held by the seller as bailee for the buyer. Thereafter the seller may treat the goods as the buyer's and may maintain an action for the price.

This section referred to in holding that where purchaser of an interest in a patent agrees to execute notes for purchase price, that seller may recover purchase price at law is no defense to action for specific performance. *Teschner v. Falkenwalde*, 135 Md. 119.

An. Code, 1924, sec. 85. 1912, sec. 85. 1910, ch. 346, sec. 82 (p. 291).

82. (1) When the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance.

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

(3) Where there is an available market for the goods in question, the measure of damages is, in the absence of special circumstances showing approximate damage of a greater amount, the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted; or, if no time was fixed for acceptance, then at the time of the refusal to accept.

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

Where seller elects to sue for damages, without resale, the measure of reasonable loss is difference between the contract price and the market price at the time and place where contract should have been performed if market is available. *Obrecht v. Crawford*, 175 Md. 397.

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

Measure of damages in suit for breach of contract to buy cement from manufacturer. *Laporte Corp. v. Cement Corp.*, 164 Md. 646.

Measure of damages for breach of contract when goods are made up and ready for delivery and when labor necessary to make them ready; prepared cherries. Absence of market. *DeVoine Co. v. International Co.*, 151 Md. 697.

Measure of damages for breach of contract for sale of raisins shipped from California to Baltimore. See notes to sec. 36. *International Co. v. Sun-Maid Co.*, 146 Md. 616.

Measure of damages for breach of contract for sale of silk goods to be specially woven. This section not applicable. *Kahn v. Carl Schoen Silk Corp.*, 147 Md. 530.

Measure of damages in suit for breach of contract for sale of canned goods. Length and form of prayer criticized. *Eastern Shore B. & C. Co. v. Messenger*, 143 Md. 225.