

company are not willing to discharge themselves by making an election and paying the money to the person they think entitled.

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*MEASURE OF DAMAGES—SALE OF ARTICLE HAVING
NO MARKET VALUE.*

A difficult question occasionally arises in practice as to the standard of damages for breach of contract when the article sold has no market value. This subject recently came up for consideration in the United States in the case of *Huyett-Smith Manufacturing Co. v. Gray*, 129 N.C. 438. An exhaustive note on the judgment in this case appears in 57 L.R.A. 198. The writer there comes to the following conclusions which will be of interest to our readers: "While damages for breach of a contract of sale or purchase are to be measured with reference to the market value of the thing sold whenever that is possible, the absence of a market in which it can be procured or sold does not defeat a recovery for the breach. The party injured is nevertheless entitled to reimbursement for the injury sustained, but the damages are to be measured by some other method. This method depends upon the character of the thing purchased, the situation of the parties, and the purpose of the purchase, and is affected by all the varying circumstances of the cases in which the question arises. As a general rule, the total absence of any market in which the article in question could be either bought or sold warrants a recovery for breach of the contract of sale of the difference between the contract price and what it would cost the purchaser to obtain it, though the reasonable value of the article is sometimes adopted as the measure when the cost of production cannot be accurately ascertained. If there is an available neighboring market, however, or if there was a market at some other not too remote time, that is to be resorted to, making allowance for cost of transportation or delay, in determining the measure of damages. Where the article is purchased for a special purpose known to the vendor, that purpose will generally control, a purchaser for the purpose of reselling being entitled, on breach by the vendor, to the difference between the contract price and the price to be obtained on the resale; and a purchaser for the purpose of using the article purchased being entitled to the difference between the contract price and what it would cost him to obtain it, or, if he could not