

SALE OF GOODS—CONTRACT FOR DELIVERY AT FIXED TIME—DELIVERY WITHIN REASONABLE TIME—MEASURE OF DAMAGES—
SALE OF GOODS ACT 1893 (56-57 VICT. c. 71), s. 51 (3)—
(10-11 GEO. V. c. 40, s. 49 (3) ONT.)

Millett v. Van Heck & Co. (1921) 2 K.B. 369. In 1916 the plaintiffs entered into a contract for the sale and delivery to the defendants of cotton waste. The contracts provided that shipment of the cotton was to be subject to the permission of the Government. When the contracts were entered into cotton waste could only be exported by permission of the Government, but in 1917 its export was absolutely prohibited. A correspondence then took place between the parties, as a result of which as Greer, J., who tried the action, found the parties entered into a new and binding agreement whereby the deliveries were suspended until the removal of the embargo the defendants being willing to accept the balance of the goods after the removal of the embargo, but in August, 1918, the plaintiffs repudiated the contract. In January, 1919, the embargo was removed. The plaintiffs claimed a declaration that the contracts had been put an end to; but this relief was refused and the only question was as to damages to which the defendants were entitled by reason of the plaintiffs' repudiation of the contract in 1918, and the main point was whether the latter part of sec. 51 (3) of the Sale of Goods Act (see 10-11 Geo. V. c. 40, sec. 49 (3) Ont.) applied to an anticipatory breach of contract arising from repudiation. On the reference to assess the damages the Master assumed that it did apply and the damages were assessed with reference to the market price of the goods at the date of the repudiation of the contract by the plaintiff. The Divisional Court (Bray and Sankey, J.J.) held that this was erroneous and that *prima facie* the damages should be the difference in price between the contract price and the market price at the time at which the goods should have been delivered according to the terms of the new contract, and as the deliveries were to be made at different times, the rule must apply to each delivery, but if it could be shown that a reasonable course for minimising the damages could have been taken then that would have to be taken into account in estimating the damages. With this conclusion the Court of Appeal (Bankes, Warrington and Atkins, L.J.J.) agreed.