

He had a reasonable time. He did not pay for the hay delivered until a considerable time after delivery. After delivery plaintiff commenced to sell the hay to his customers, and when he did this, and when the hay was in the hands of subsequent purchasers, plaintiff's right of rejection was gone: *Perkins v. Bell*, 12 Q. B. D. 193.

I have read the cases cited by counsel for plaintiff in his very full and able argument, but, applying the law to the facts before me, these cases do not shew that plaintiff is entitled to succeed.

The defendant offered evidence of a judgment in a Division Court between these parties as an estoppel against plaintiff in his claim for damages. There is no estoppel, but what took place is, in my opinion, important as shewing what plaintiff then thought about the quality of the hay now in question, and what he thought his rights were.

The defendant did not in fact deliver all his hay on hand in November, 1906, to plaintiff. He sold 56 tons to other people. After the payment by plaintiff for the 101 tons, the defendant, assuming that plaintiff desired and was willing to accept more, delivered 6 tons and 640 lbs. of hay in an ice-house of plaintiff at Suffels crossing. Plaintiff was annoyed about it, locked up the ice-house, refused to allow defendant to re-take the hay, and refused to accept more. The now defendant, Clark, commenced an action in the 10th Division Court . . . for the value of this hay, calling it \$13 a ton. Bouck, the now plaintiff, put in a defence admitting the quantity of hay, but saying the price should be \$12 a ton, making \$75.84. He put in as a set-off the non-delivery of the balance of defendant's hay, and alleging the sale to other persons of 56 tons at \$13 a ton, claiming \$1 a ton, or \$56, and Bouck paid \$19.84 into Court. This was on 18th March, 1907, and I regard it as strongly confirmatory not only of what I thought the bargain really was, but of what plaintiff on that date thought it was. No complaint was then made of the quality of the hay by plaintiff, or by any purchaser from him.

I ought to say further that, even if the bargain was as plaintiff contends, or if there was an implied warranty, the evidence is not clear as to a breach. Considering when the complaints as to the quality of hay were made, and from whom the complaints first came to plaintiff, and having regard to what could easily have happened to the hay after delivery by defendant, defendant may not have been at all