

Mr. Porter, counsel for the defence, contends that in any event the plaintiffs had no right to buy in until after 31st October, because the plaintiffs had all that day in which to deliver, and he cites Benjamin, 3rd ed., at p. 685, but I find the statement there to be: "A party who is by contract to do a thing transitory to another anywhere on a certain day has the whole of the day, and if on one of several days the whole of the days for the performance of his part of the contract, and until the whole day or the whole of the last day has expired no action will lie against him for the breach of such contract." This, of course, is true, but it refers to the time of bringing the action, and in this case the plaintiffs did not bring their action until long after 31st October.

I find also on p. 686 of the same edition, these words: "If he is to deliver goods, he must tender them so as to allow sufficient time for examination and receipt." In the case before us, the time for examination, according to New York custom, is 48 hours, and therefore the actual delivery should have been on 29th October in any event. But, as the plaintiffs did not purchase until the 31st, this, perhaps, does not come into this case.

In the same edition of Benjamin, at p. 1031, I find: "The general rule is well established that on the seller's failure to deliver the goods according to the contract, the ordinary measure of damages is the difference between the contract price and the market price of the goods at the time when and at the place where they should have been delivered, and when there is no market at the place of delivery, then at the nearest available market, with the addition of the increased expense of transportation and hauling." And in Addison on Contracts, 8th ed., p. 953: "If the vendor has a month or any specific period of time allowed him for making the delivery, and finds before the time has elapsed that he will be unable to complete delivery, and gives notice to the purchaser that he refuses to proceed therewith, and the price rises, the measure of damages is the difference between the contract price and the highest price of the subject matter on the last day of the period within which the delivery ought to have been made." Again: "If the vendor of shares neglects to deliver the shares or complete the transfer, the measure of damages is the difference between the price agreed to be paid and the market price on the day on which the sale