

being any considerable quantity of hay such as the sample produced in Court by the plaintiff.

I am not able to fully understand how it is that there were complaints of bad hay to such an extent by purchasers from plaintiff—of hay said to have been part of defendant's hay. No doubt, there were causes for some deterioration after the hay was delivered to plaintiff. Snow was upon some of the bales. Some was delivered wet. Then hay from Touissant was received by plaintiff in a wet condition, and it was stored with hay delivered by defendant. The Christie barn, where plaintiff stored some of the hay, was in places more or less open, and some damage was done by reason of exposure to the weather.

The law as laid down in *Jones v. Just*, L. R. 3 Q. B. 197, is not questioned: "Under a contract to supply goods of a specified description, which the buyer has no opportunity of inspecting, the goods must not only in fact answer the specific description, but must be saleable or merchantable under that description," and "the maxim *caveat emptor* does not apply to a sale of goods where the buyer has no opportunity of inspection." That case was followed by *Mooers v. Gooderham*, 14 O. R. 451.

The present case is different in its facts. Here the buyer, the plaintiff, had an opportunity of inspecting, and, except in so far as he did in fact inspect, he waived inspection, and so the case is like *Borthwick v. Young*, 12 A. R. 671, where it was held that, as the sale was not a sale by sample, and the purchaser had not been deterred by any acts or conduct of the defendant from making a full inspection, the vendor was not liable on any warranty, expressed or implied. I find upon the evidence that if there was bad hay, musty hay, hay not well saved, of any considerable quantity, in the hay delivered by defendant to the plaintiff, at the time of such delivery it could have been discovered by plaintiff by any inspection which ought reasonably to have been made: *Heilbutt v. Hickson*, L. R. 7 C. P. 438.

Upon the evidence I think it clear that the acceptance by plaintiff of any load or bale of hay did not preclude him from rejecting any other load or bale which did not substantially answer the contract: *Dymont v. Thompson*, 12 A. R. 659, affirmed by the Supreme Court of Canada, 13 S. C. R. 303.

The place of delivery was the place of inspection. The plaintiff was not tied down to the exact time of delivery.