

chase. At the barns visited plaintiff saw the hay in the mows, and was told that the hay was of uniform quality. The hay was to be sold by defendant and purchased by plaintiff as pressed hay. Some of the hay had been pressed before plaintiff's visit—this was covered up by the loose hay so that it could not be seen by plaintiff. The plaintiff agreed to pay \$12 a ton for the hay, to be delivered as pressed hay, and he agreed to take all that defendant had.

The defendant commenced to deliver in December, 1906, and the hay, with the exception of a comparatively small quantity, was delivered to the plaintiff himself, and was inspected by him, so far as hay pressed and in bales could be inspected. The plaintiff had the right to inspect and to reject if the hay was not such as plaintiff purchased—and he exercised that right in at least one instance and as to a small quantity of hay. Upon the evidence it is quite impossible to find that there was any fraud on the part of the defendant, either by concealment or misrepresentation. It is conceded that there was no express warranty, and upon the whole evidence I am of opinion that there was no implied warranty. It is no fault of defendant's that plaintiff did not make a more full and careful examination. The plaintiff could have seen the hay as it was being pressed; and when it was being delivered, if the plaintiff was not satisfied with the outside of the bales, he could have opened such as he suspected, if any, or such and so many as would enable him to see the average quality of the hay. The plaintiff did open one bale under suspicion and found it good. It is in evidence, and I accept it as proved, that it is very difficult, if not impossible, in the ordinary process of pressing hay, to mix any considerable quantity of bad hay with good in such a way that the bad cannot be easily detected, without opening the bales. Apart from the odour as a means of detecting musty hay, discolouration will manifest itself, and weeds, wire grass, and other grasses that are not good hay will be seen on the exposed parts of the bales. I am satisfied that there was not any large quantity of the hay, when delivered by the defendant, of the inferior quality contended for by the plaintiff. The weight of evidence is that at the time of delivery the hay, except a comparatively small quantity, was of the quality of hay which the plaintiff saw. The evidence of defendant's witnesses, who were employed by him, and who assisted in pressing and who saw this hay pressed, is absolutely inconsistent with there