SIMEON NICHOLS *vs.* CHARLES R. MORSE & another.

In an action for goods sold and delivered, if the plaintiff proves a delivery at the place agreed, and that there remained nothing further for him to do, he need not show an acceptance by the defendant.

CONTRACT for goods sold and delivered according to and on an account annexed.

At the trial in the superior court, before *Reed*, J., the plaintiff introduced evidence tending to show that he contracted to sell and the defendants contracted to buy, a certain quantity of hay of a certain quality, to be delivered at a certain place; that the hay was so delivered at the place agreed; that it was duly inspected and weighed; that the defendants were notified thereof; and that nothing remained to be done on the part of the plaintiff. The defendants introduced evidence tending to show that the hay was not of the agreed quality, and that because of this the defendants refused to take it away. As to the quality of the hay, the evidence was conflicting.

The defendants asked the presiding judge to instruct the jury that the plaintiff could not maintain this action unless he could show an acceptance of the hay on the part of the defendants; but the judge declined so to instruct the jury, and instructed them, among other things, that the burden was on the plaintiff to establish the fact that hay of the quality called for by the contract was delivered for the defendants at the place agreed: and that if the jury were satisfied that the hay in question was of the quality agreed upon, and that it had been delivered at the agreed place, for the defendants, by the plaintiff, and that nothing further remained to be done by the plaintiff, the verdict should be for the plaintiff. To this ruling and refusal to rule the defendants excepted.

W. Brigham, for the defendants.

J. Nickerson, for the plaintiff.

BY THE COURT. It appearing that there was a delivery as well as a sale, the action may be maintained upon the declaration. *Exceptions overruled.*