

ance and actual receipt by the buyer of goods verbally bargained for must be shown, to take a case out of the statute of frauds, and no act of the seller alone is sufficient. *Shepherd v. Pressey*, 32 N. H. 49. "And there is no acceptance unless the purchaser has exercised his option to receive the goods or not, or done something that has deprived him of his option." *Gilman v. Hill*, 36 N. H. 311, 321. An acceptance of part of the property sold is sufficient. *Pinkham v. Mattox*, 53 N. H. 600, 606. The contract for the sale of the wood was an entire contract, and a delivery and acceptance of a part was sufficient to take the case out of the statute. *Gault v. Brown*, 48 N. H. 183.

The plaintiff delivered the wood at the defendant's mill, piling it at the places designated by the defendant. The defendant was at the mill and saw the wood drawn from day to day until the first of January, 1887, when he closed the mill and went to his home in Massachusetts. Some time in February he returned to Lancaster, and went to the mill and examined the wood that had then been drawn by the plaintiff, and made no objection to it. At that time about one half of the whole amount delivered had been drawn. The evidence of these facts was competent and sufficient to authorize a finding that the defendant accepted the wood then examined. The act of the defendant, in making an examination of the wood and making no objection to the character or quality of it, was evidence of his assent that the wood was accepted by him as so far satisfying the contract. His purpose in making the examination must have been to ascertain whether the wood delivered conformed to the contract; and his conduct signified an intention to accept it under the contract, and the plaintiff so understood it. It was an exercise of the defendant's option of rejecting the wood if for any reason it was unsatisfactory. It was an act independent of the original contract, showing a determination to accept and receive the wood already delivered. The fact that no survey had been made did not prevent an acceptance. No survey was required to determine what was sold. Weighing or measuring is not absolutely essential to a completed sale, except when necessary to define the subject-matter. *Gilman v. Hill*, 36 N. H. 311, 320.

Exceptions overruled.

BINGHAM, J., did not sit: the others concurred.

GATHERCOLE v. BEDEL.

A creditor who, by proving his claim, assents to an assignment by his debtor under the statute for the benefit of his creditors, cannot maintain a suit at law for the recovery of the same.

ASSUMPSIT, to recover four promissory notes given by the defendant to the plaintiff on and before March 24, 1884, for \$5,500 with interest. The writ was dated March 12, 1888, and served by attachment of property March 14 and 15. The defendant pleaded that on March 16, 1888, he made an assignment of all his property for the benefit of his creditors under the statute, and that the plaintiff proved this claim in the insolvency proceedings, thereby giving his assent to said assignment, and submitting the issue to the jurisdiction of the probate court.

To this plea the plaintiff filed a general demurrer.

J. H. Dudley, for the plaintiff.

T. F. Johnson, for the defendant.

BINGHAM, J. The case comes within Gen. Laws, c. 224, s. 34, which provides that attachments are dissolved by the assent of the plaintiff to a valid assignment by the defendant of his property for the benefit of his creditors, and c. 140, s. 3, which provides that actions of assenting creditors shall be discontinued.

The defendant in this action made a valid assignment for the benefit of his creditors. The plaintiff assented to it, proved his claim, and no appeal has been taken from its allowance. The attachment is dissolved, and the action should be discontinued. The case is not governed by *Leavitt v. Lovering*, 64 N. H. 607; Laws 1885, c. 85, s. 9.

Demurrer overruled.

SMITH, J., did not sit: the others concurred.

NICHOLS, *Ap't*, v. CASS, *Assignee*.

The statute requiring claims against insolvents to be filed within one month after the assignment (Laws 1885, c. 85, s. 5) is mandatory.

Section 2, c. 100, Laws 1889, allowing proof of claims to be filed after the prescribed time, does not operate retrospectively in a case in which the time had expired before the passage of the act, and some creditors had seasonably filed their claims and others had not.

APPEAL, from a decree of the judge of probate ordering distribution of all the property of Sleeper, an insolvent, who filed an assignment August 9, 1887. The plaintiff is a creditor residing in Massachusetts, and his name is in the list of creditors filed by Sleeper. Due notice was given the plaintiff and other creditors.