

specified time or later of any undelivered balance of the quantity contracted for.

The contract was not one for separate and distinct weekly deliveries, each one independent of the other—it was one entire contract.

There was no evidence of any express request by the plaintiff to the defendant to delay or defer delivery of the part of the 35 bags of which he did not ask delivery in any week; but such request might well be implied from the manner of dealing. In no case, in any week in which the plaintiff did not require delivery of the full amount of 35 bags, did the defendant assert that the plaintiff, in not asking for the full amount of 35 bags, was thereby waiving his right to receive the portion he did not in that week specify for delivery; but he continued delivery as the plaintiff required from time to time, without protest—in effect postponing the time for delivery of any undelivered portion of the weekly amount.

The plaintiff was in a much stronger position than were the purchasers in *Tyers v. Rosedale and Ferry Hill Iron Co. Limited* (1875), L.R. 10 Ex. 195.

There was in fact an acquiescence in delay for delivery in this case as in the English case.

The plaintiff's contract called for delivery of 2,000 bags; notwithstanding that he had not asked for or received during the term the full amount of 35 bags per week, he was still entitled to delivery of the undelivered part of what was contracted for. The defendant, having about the end of October, 1916, refused to deliver anything beyond the amount specified for that month, was guilty of a breach of the contract which entitled the plaintiff to his remedy in damages. It was apparent that prices had risen at the end of October, and that the advance had continued after that time.

The defendant had delivered 440 bags of Rose flour and 727 bags of Queen flour. On the evidence of the prices at which this flour, or flour of a similar grade, could be purchased at the beginning of November, 1915, the fair deduction was, that there was an advance of about \$2.15 per bag on each grade.

The plaintiff had sustained damages of \$1,790.95, for which amount, less \$53.15, unpaid for flour delivered, there should be judgment in his favour, with costs.