

other dated the 14th October, 1915, for 1,000 tons, to be delivered "in about equal monthly instalments between date of current contract and the 30th June, 1916."

Deliveries under the contract of the 14th January, 1914, were not completed until the 12th January, 1916; the deliveries under the contract of the 14th October, 1915, were to begin at the date of completion of "current contract;" deliveries under this October contract began on the 12th January, 1916, and were completed on the 1st December, 1916. Thus, when the contract of December, 1915, was entered into, there was no existing contract under which the respondent was then entitled to have deliveries made, but the contract of the 14th January, 1914.

None of the iron, the subject of the contract of December, 1915, had been delivered, and the ground taken by the appellant with respect to it was, that the respondent had lost its right to have it delivered because of its failure to send specifications as to it in due time.

The appellant also relied upon the Statute of Frauds to meet the case of a parol variation of the contract as to the time for delivery.

What was meant by "current contract" might be shewn by parol evidence; and the trial Judge was right in holding that it was established that the reference was to the contract of January, 1914.

The trial Judge found that the respondent had supplied specifications for all the iron it had bought from the appellant, and that it was well understood by both parties that the specifications which had been supplied were to govern as to all the iron unless the respondent should desire to vary them and send other specifications. That finding was warranted by the evidence, and sufficed to dispose of the contention of the appellant adversely to it. In both cases, the provisions of the contracts as to sending specifications were strictly complied with.

The position taken by the appellant as to the contract of September, 1916, was, that the action was brought prematurely; that when it was begun the time for commencing deliveries had not arrived. The respondent answered that the appellant had, before the action was begun, repudiated the contract. The learned trial Judge treated the position taken by the appellant as being that, unless the respondent would formally abandon its contention with regard to the earlier contract, no deliveries would be made under the later one. In this the Judge could not be said to have erred; and, so treating it, the respondent was entitled to rescind and to sue for damages in respect of the breach.