

FIRST DIVISIONAL COURT.

JULY 15TH, 1918.

\*DOMINION RADIATOR CO. LIMITED v. STEEL CO. OF  
CANADA.

*Contract—Breach—Failure to Deliver Goods Contracted for—Speci-  
fications—Statute of Frauds—Repudiation—Rescission—  
Damages—Measure of—Findings of Trial Judge—Appeal.*

Appeal by the defendant company from the judgment of  
MIDDLETON, J., 13 O.W.N. 124.

The appeal was heard by MEREDITH, C.J.O., MAGEE, HODGINS,  
and FERGUSON, JJ.A.

George Lynch-Staunton, K.C., and J. G. Farmer, K.C., for  
the appellant company.

R. S. Robertson and G. H. Sedgewick, for the plaintiff company,  
respondent.

The judgment of the Court was read by MEREDITH, C.J.O.,  
who said that the action was brought to recover damages for  
alleged breaches of two contracts for the sale and delivery of pig-  
iron by the appellant to the respondent, one dated the 23rd  
December, 1915, for 1,000 tons, and the other dated the 25th  
September, 1916, for 1,200 tons. The contracts were both on  
printed forms, and it was a term of them that "all specifications  
are to be sent by buyer at least 15 days before time fixed for  
shipment." In each form there was a space for the statement of  
the specifications, which referred to the chemical analysis of the  
contract. By the earlier contract, the time for delivery was stated  
to be, "between date of completion of current contract and the  
30th June, 1916, in equal monthly instalments;" the blank oppo-  
site to the word "specifications" was filled in with the words "to  
follow;" and opposite to the word "remarks" were the words  
and figures, "Order No. 5555." By the later contract, the time  
for delivery was stated to be, "in about equal monthly instalments  
between the 1st January and the 30th June, 1917;" the blank  
for "specifications" was filled in with "to follow;" and opposite  
to "remarks" was written "Order 6398."

At the time when these two contracts were made, there were  
two existing contracts between the parties: one dated the 14th  
January, 1914, for 2,000 tons, to be delivered "as required from  
time to time and as nearly as possible in equal monthly instal-  
ments between above date and the 30th June, 1914;" and the