

formance. As time was declared to be of the essence of the agreement *this could only have been decreed if their Lordships were of opinion that the stipulation as to time had ceased to be applicable.* On examining the facts which were before the Board, it appears that their Lordships proceeded on the view that this was so. The date of payment of the instalment which was not paid had been extended, so that the stipulation had not been insisted on by the company. The learned counsel who argued the case for the purchaser contended that when the company had submitted to postpone the date of payment they could no longer insist that time was of the essence. Their Lordships appear to have adopted this view and on that footing alone to have decreed specific performance as counterclaimed."

Under this authoritative explanation of the Kilmer judgment I think that I am bound to hold upon the facts of this case that the vendor cannot insist that time was of the essence with respect to this overdue interest. . . . And so applying the principle of *Kilmer v. British Columbia Orchard Lands, Ltd.*, *supra*, as I understand it, to the facts of this case, I must hold that the contract is still on foot.