

SELECTIONS.

whether a presentment was made in a reasonable time or not, partakes both of law and fact, but in case the facts are uncontradicted it is for the court to determine whether a reasonable time has been exceeded. * Mr. Byles maintains that what is a reasonable time is a question of law.† Mr. Edwards also says, "the question is one of law to be decided by the court," ‡ and several New York authorities have approved the doctrine. § In Pennsylvania the cases have not been uniform, || but they incline to the view, that where the facts are not in dispute, due diligence in communicating the fact of non-payment to the guarantor, is a question of law. Mr. Justice Story takes a somewhat different view, and certainly his opinion is entitled to great respect. In *Wallace v. Argy*, ¶ he makes use of the following language, in speaking of reasonable time: "What that reasonable time is, depends upon the circumstances of each particular case, and no definite rule has as yet been laid down, or indeed can be laid down, to govern all cases. The question is one of fact for the jury, and not of law for the abstract decision of the court. Such, as I take it, is the doctrine of the authorities." This seems to be a better view of the matter, and is based on safe ground. The prevailing doctrine, however, is that the question is a mixed one of law and fact, and if the facts are admitted, or agreed upon, or found by special verdict, the court may decide what is a reasonable time for presentment or notice, otherwise the question should be left to the jury. **

* *Gilmore v. Wilbur*, 12 Pick. 124; *Holbrook v. Burt*, 22 Id. 555; *Spoor v. Spooner*, *supra*; 1 Dan. Neg. Ins., sec. 466.

† Byles on Bills, 163.

‡ Edw. Bills. 391.

§ *Mohawk Bank v. Broderick*, 10 Wend. 304; *Gough v. Staats*, 13 Id. 549; *Elting v. Brinkerhoff*, 2 Hall, 459; *Vantrot v. McCulloch*, 2 Hilt. 272 and cases; *Middletown Bank v. Morris*, 28 Barb. 616; *Aymar v. Beers*, 7 Cow. 105.

|| See opinion of Sergeant, J., in *Brenzer v. Wightman*, 7 Watts. & S. 264. also *Bank of Columbia v. Lawrence*, 1 Pet. 578.

¶ 4 Mason, 345. Following opinion expressed in *Muilman v. D'Equino*, 2 H. Bl. 565; *Fry v. Hill*, 7 Taunt. 397; *Straker v. Graham*, 4 M. & W. 721.

** Chitty Bills, 369; *Hadduck v. Murray*, 8 Am. Dec. 43; *Nash v. Harrington*, 16 Id. 672; *Gilmore*

Application to Other Cases.—The rule of reasonable time is substantially the same in its application to other cases that it is to negotiable instruments, but a reference to a few cases where the question has been decided in particular instances may not be out of place. In *Parker v. Palmer*, † it was left for the jury to say whether the vendee of goods sold by sample had redeemed them within a reasonable time after discovering they did not correspond with the sample. Again, owing to conflicting testimony, it was left to the jury whether tithe corn was left on the premises a reasonable time for comparison with the whole corn; ‡ and the time in which to sell good after distress; § and when in defence of an action brought for carrying away the plaintiff, against his will, on the defendant's vessel, it was left for the jury to say, whether he had delayed his departure from the vessel an unreasonable time after being warned that she was about to sail. ||

In the following cases reasonable time was held to be a question of law. Where the question was as to the time allowed a tenant at will to remove his family and goods; ¶ as to the time allowed a patentee to file a disclaimer of an improvement included in his patent, of which he does not claim to be the author; ** where the question was whether one entitled to claim letters of administration had lost precedence by delay; †† whether the executor of a lessee for life had a reasonable time after his death to remove his goods, where six days time was held reasonable; ‡‡ where the

v. Wilbur, 22 Id. 410; *Shute v. Robbins*, 3 C. & P. 80; *Ins. Co. v. Allen*, 11 Mich. 506; *Moose v. Bellows*, 28 Am. Dec. 372; *Sussex Bank v. Baldwin*, 17 N. J. L. 494; *Howe v. Huntington*, 15 Me. 353; *Chambers v. Hill*, 26 Tex. 472; *Nichols v. Blackmore*, 27 Id. 586; *Fernandez v. Lewis*, 1 McCord, 322.

† 4 B. & Ald. 387.

‡ *Facey v. Hendon*, 3 B. & Cr. 21. 3

§ *Pitt v. Shew*, 4 B. & Ald. 208.

|| *Spoor v. Spooner*, 12 Met. 285. For other illustrations, see Wells' "Questions of Law and Fact," 151.

¶ *Ellis v. Page*, 1 Pick. 43.

** *O'Reilly v. Moore*, 15 How. 121; *Seymour v. McCormick*, 9 Id. 106.

†† *Hughes v. Pipkin*, Phil. Law (N. C.), 4.

‡‡ *Stodden v. Harvey*, Cro. Jac. 204.