

no longer be insisted on as a binding term of the contract. That this is the true meaning of the *Kilmer* case is shewn by what is said in *Steedman v. Drinkley*, 1916 A.C. 275 at p. 280. At all events that is the way the decision in the *Kilmer* case is interpreted by Lord Haldane when he says: "The learned counsel who argued the case for the purchaser contended that where the company submitted to postpone the date of payment *they could not any longer insist that time was of the essence*. Their Lordships appear to have adopted this view and *on that footing alone* decreed specific performance as counterclaimed." But even understanding the decision in that way it does seem to have given to the waiver of the condition a wider effect than has usually been considered to be proper. For instance, in Sugden's Vendors and Purchasers (14th ed.), p. 270, it is said, "it can hardly be contended that, if time be of the essence of the contract, an extension of it by one party for the convenience of the other can be considered operative beyond the further day named," and in Dart on Vendors and Purchasers we read, "mere enlargement of time does not amount to a waiver." Dart, 7th ed., 503, citing *Parkin v. Thorold*, 2 Sim. N.S. 1; 16 Beav 59, *Barclay v. Messenger*, 30 L.T. 351; but what Lord St. Leonards thought to be hardly arguable has been held in the *Kilmer* case, not only to be arguable but a tenable proposition. But for the single fact that the bill of exchange was not returned there could be no pretence for saying that there had been any extension of time beyond the 7th July. Even if the retention of the bill until the 19th July operated as an extension of time until that date, the fact remains that the money was not tendered even then, nor until another month had elapsed to which time there was no pretence that there was any extension. According to the *Kilmer* case, where time is of the essence of the contract, an extension of time in the case of any particular breach appears to operate, not as Lord St. Leonards thought, only to the further day named, but works a practical waiver of the condition altogether as to that particular breach, leaving the rights of the parties to be adjudicated as if the stipulation did not exist. Looking at the matter from the standpoint of common sense, Lord St. Leonards' view of the law seems to be the preferable one.

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