

laid down that an obligation to discharge within a reasonable time is performed if the shipowner discharges the cargo within a time which is reasonable under the existing circumstances, assuming that those circumstances, in so far as they involve delay, are not caused or contributed to by him. This principle has also received further reinforcement by the decision of the House in *Hulthen v. Stewart* (1903) A.C. 389.

A consideration of all the foregoing decisions enables us to appreciate the standard which differentiates time which is of the essence of the contract from that which is not. Whether time is fixed or left to be determined by the Court, it is only one element in the contract. It may or may not be essential. If it is not vital, then the limit of reasonable time, when fixed by the Court, is as if it had been mentioned in set terms in the contract. At law default in point of time was fatal to the offending party—but now the provisions of the Judicature Act apply, and limitations of time are, if possible, treated as not necessarily of commanding importance. When, however, from the nature of the subject matter (see *Prendergast v. Turton*, 1 Y. & C. Ch. 98; *Tilley v. Thomas*, L.R. 3 Ch. 61; *Crossfield v. Gould*, 9 A.R. 218), or the surrounding circumstances (see *Oldfield v. Dickson*, 18 O.R. 188), or the commercial object of the undertaking (see *Nickell v. Ashton* (1900) 2 Q.B. 298; *Reuter v. Sala*, L.R. 1 C.P.D. 239), the Court determines that the time of performance must necessarily be of supreme importance, it either holds the parties explicitly to the time as named in the contract, or in defining unspecified time adopts the strict standard which requires a high regard for the prompt and business-like performance of the obligation.

This is what is meant by time being of the essence of the agreement.

FRANK E. HODGINS.