

SELECTIONS.

such cases the legal conclusion follows the inference of fact; in other words, the question of reasonable time etc., is one of fact, and the time is reasonable or unreasonable in point of law, according to the finding of the jury in point of fact." While the doctrine enunciated in *Sarkey* does not meet with the entire approval of *Shepley, J.*, still he says in *Howe v. Huntington*,* "When there is a certain epoch after which the act is to be performed, as soon as it may be conveniently without regard to one's interest or to the course of trade or to other matters, not within the control of human agency, the court may be able to come to a satisfactory conclusion for itself without the assistance of a jury."

Another statement of the principles which aid in solving the question is contained in the opinion of *Hubbard, J.*, in *Spoor v. Spooner*.† He says, "So also as to contracts, when something is to be performed, and the contract is silent on the subject, what is a reasonable time for performance, is held to be a matter of law.‡ And so when the facts are agreed, reasonable time is a matter of law. But when the facts are controverted, and the motives of the parties are involved in the question, reasonable time is a question for the jury.§ In the case at bar the facts were in dispute, and the conduct of the several parties was to be considered, and we are of opinion, that the question of the plaintiff's negligence, under all the circumstances in evidence was properly submitted to the jury." In regard to rescinding a contract for fraud, it has been held in *Indiana* that "when there are no facts involved but the simple one of length of time elapsed, it is a question of law. But when disputed facts involving questions of excuse, of time of discovery of the fraud, etc., as in this case are to be passed upon, the question, like that of due diligence in the prosecution of an assigned promissory note, is a mixed one of law and fact, and is for the jury."|| It will be seen that

substantially the same rule has been adopted in all the cases referred to. If the question of reasonable time can be settled in any particular case by applying principles of law, without passing judgment on the facts it is for the court to decide; otherwise it must be left to the jury with appropriate instructions.

Application of the Rule to Negotiable Instruments.—Most frequently are courts required to pass upon the question of reasonable time, in cases arising from the non-payment of bills and notes; whether or not there has been due diligence in the presentment of bills and notes, payable on a certain number of days after sight or on demand. It is easy to see how difficult it is to lay down any precise rule in relation to this subject. Distance, means of communication and other matters equally outside human control, may each have a bearing upon the question of reasonable time in a given case. Thus it is said in cases of guaranty if the principal fails to pay when he should, the guarantor must be informed of the failure, within a reasonable time; that is, he should be informed soon enough to give him ample opportunity to do what might be necessary to save himself from loss. If the notice were delayed but a short time the guarantor might lose the opportunity of obtaining indemnity, and be damaged, and in consequence be discharged from his obligation. On the other hand, the delay might be for days, months and perhaps years, and yet he might not be injured by the delay, and if it be evident that the guarantor could not have been benefited by earlier notice, he will be held.† In *Mullick v. Radikissen*,‡ it is said the rule of a reasonable time in relation to the presentment of bills and notes, is adopted for want of a better, the law not defining the time precisely when they should be presented, and that the question is a mixed one of law and of fact. In *Bank v. Caverley*, § it was held, that,

* *Gatling v. Newell*, 9 Ind. 577; See *Hays v. Hays*, 10 Rich. 421.

† *Clark v. Remington*, 11 Met. 361; *Craft v. Isham*, 13 Conn. 28; *Thomas v. Davis*, 14 Pick. 353; *Talbot v. Gay*, 18 Id. 534.

‡ 28 Eng. Law & Eq. 86. See *Mellish v. Rawdon*, 9 Bing. 423.

§ 7 Gray. 217.

* 15 Me. 350.

† 12 Met. 284.

‡ *Atwood v. Clark*, 2 Greenl. 249.

§ *Hill v. Hobart*, 16 Me. 164; *Ellis v. Thompson*, 3 M. & W. 445.

|| *Holbrook v. Burt*, 22 Pick. 546; *Kingsley v. Wallis*, 14 Me. 57; *Kelsey v. Ross*, 6 Blackf. 356.