

A. H. Marsh, K.C., and W. J. Clark, for plaintiff.

G. H. Watson, K.C., for defendant.

The judgment of the Court (BOYD, C., MAGEE, J., MABEE, J.), was delivered by

BOYD, C.:—Stipulations making time of the essence of a contract are to be construed strictly, and require to be distinct and express: *Hudson v. Temple*, 29 Beav. at p. 543, and *Wells v. Maxwell*, 32 Beav. at p. 414. In the latter case time was made of the essence of the contract in respect of making objections to the title. The Master of the Rolls asks, "Why does the contract say 'in this respect' if it was meant that time should be of the essence of the contract in every other respect? This is distinctly a case in which no time whatever is limited for the performance of the contract:" p. 414.

I think the strict reading of the clause in this contract, "Time shall be of the essence of this offer," means in respect to the offer—the acceptance of the offer—time shall be essential. Does it mean that in respect of all matters and terms contained in the proposal after its acceptance—which then becomes a contract—time shall be equally essential? It does not say so, and if it is ambiguous, the Court leans against its being extended beyond its obvious meaning.

However, I do not find it necessary to place my decision on this ground. Assume that time was made essential as to the completion of the contract, the rule of the Court is that the vendor cannot claim the benefit of the term making time of the essence if he himself has been guilty of laches—if he has failed to bestir himself when he should have been doing, this policy of inactivity may enure to the exculpation of the other side. The Court may then consider that the time element has ceased to be of an essential character, and that reasonable diligence only has to be regarded.

Now, there is a clause of the contract which imposes a duty on the vendor as to the conveyance. It reads: "The deed of transfer is to contain covenant on part of purchaser to pay off said assumed mortgages and to be executed by purchaser (for the purpose of engaging him personally to its payment), and prepared at the expense of the vendor; and