

which it is to be realized bears also the costs of realization. The tax follows the hide, and the costs of realization are added to the claim. Why should it be otherwise in regard to mechanics' liens?

#### TIME OF THE ESSENCE OF THE CONTRACT.

That hard cases sometimes make bad law is a trite saying, and it may perhaps be thought that the case of *Kilmer v. British Columbia Orchard Lands* (1913), A.C. 319, is an illustration of its truth. The facts of that case so far as they appear to be material may be thus summarized:—Kilmer, the defendant, entered into contract with the plaintiff, the British Columbia Orchard Lands Co., to buy a parcel of land from the company for \$75,000, the purchase money was to be paid, part down, and the balance in instalments; the contract contained a proviso that it was to be null and void and all payments to be forfeited and the vendors were to be at liberty to resell if default should be made in the payment of any of the instalments at the time named. The second instalment was due on the 14th June, 1910, and on the 11th June, 1910, the purchaser asked for time, and the defendants agreed to draw for the amount by bill of exchange payable on 22nd June, 1910; this bill was accepted by the defendant, but was not paid at maturity, and on 27th June, 1910, Kilmer asked the defendants to hold the bill for 10 days, which they agreed to do. He failed to make arrangements to meet the bill on 7th July, thinking quite erroneously that it was not due till the 10th July; and on 8th July wrote to say that it would be paid on the 12th July. On receipt of this letter the company, on 9th July, notified Kilmer that the deal was off and on 11th July sold the land to another party for \$100,000. The bill of exchange remained in the hands of the Canadian Bank of Commerce, to whom it had been indorsed by the company (but whether for value or merely for collection did not appear), until 19th July, when it was returned to Kilmer. On the 19th August, 1910, the instalment in arrears was tendered and refused and the company then brought the action for a