

the property he proposed to transfer, but had an agreement for the sale of it with one S., who had a similar agreement with the holder of the title. Several interviews took place between the parties and their solicitors, both before and after the ten days elapsed, and the registry office was visited, where it was found that the contract which formed the title of S. was not registered, and also that there was an annuity charged against the lands which R. was to transfer. These matters were pointed out to S., who took no active steps to remove them. Finally a letter was sent by H. to R.'s solicitor, informing him that unless something were done in regard to the proposed change by the following morning the agreement would be considered null and void. After this letter was written, R. took proceedings to enforce his agreement with S., and obtained a decree declaring his title to the property he proposed to transfer to H. a valid title, and he then brought a suit against H. for specific performance of the agreement for exchange. This suit was tried before ARMOUR, C.J., who dismissed the action, holding that time was of the essence of the contract. His judgment was reversed by the Divisional Court, and on further appeal to the Court of Appeal the judges were equally divided in opinion, and the decision of the Divisional Court stood.

*Held*, reversing the decision of the Court of Appeal (19 A.R. 134) and of the Divisional Court (21 O.R. 43), TASCHEREAU, J., dissenting, that the action could not be maintained; that as the evidence established that R. had no title whatever, at the date of the agreement, to the land he proposed to transfer to H., the latter was not bound to give reasonable notice of intention to rescind, as he would have been if the title had been imperfect merely; that the letter to R.'s solicitor put an end to the contract; and, independently of any rescission, the conduct of R. was such as to disentitle him to relief by way of specific performance.

*Held*, further, affirming in this respect the judgment of the courts below, that time was originally of the essence of the contract, but H. had waived the necessity to adhere to the time specified by negotiating as to the title after it had expired.

Appeal allowed with costs.

Reeve, Q.C., for the appellant.

Hodgins and Coatsworth for the respondent.

Quebec.]

[Oct. 6.

TREMBLAY v. BERNIER.

*Notarial Code—R.S.Q., Art. 3871—Board of Notaries—Disciplinary powers—Prohibition.*

When a charge derogatory to the honour of the profession of notary is made against a notary under the provisions of the Notarial Code, R.S.Q., Art. 3871, which amounts to a crime or felony, the Board of Notaries has jurisdiction to investigate it without waiting for the sentence of a court of criminal jurisdiction.

Appeal dismissed with costs.

Belcourt, Q.C., for the appellant.

Fremont and Languedoc, for the respondents.

[Oct. 10.

PARADIS v. BOSSE.

*Proceedings before Exchequer and Supreme Courts of Canada—Solicitor's costs—Quantum meruit—Parol evidence—Art. 3597, R.S.Q.*

In proceedings before the Exchequer and Supreme Courts, there being no tariff as between attorney and client, an attorney has the right to establish the *quantum meruit* of his services by oral evidence in an action for his costs.

Appeal dismissed with costs.

Belcourt and MacRae for appellant.

Casgrain, Q.C., for respondent.

O'SHAUGNESSY v. BALL.

*36 Vict., c. 81 (P.Q.)—Booms—Proprietary rights—Replevin—(Revendication)—Estoppel by conduct.*

O'S., claiming to be the legal depositary, and T. McC., claiming to be the usufructuary of certain booms, chains, and anchors in the Nicolet River under 36 Vict., c. 81, and which G.B., being in possession of the same for several years under certain deeds and agreements from T. McC., had stored in a shed for the winter, brought an action *en revendication* to replevy the same, and for \$5000 damages.

*Held*, affirming the judgment of the court below, that O'S. and T. McC. were not entitled to the possession as alleged, and that they were precluded by their conduct and acquiescence from disturbing G.B.'s possession. See *Ball v. McCaffrey*, 20 S.C.R. 317.

Appeal dismissed with costs.

M. Honan for appellants.

P. N. Martel for resp. ant.