

1968  
\*Oct. 21  
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TERENCE JOHN WHITFIELD .....PETITIONER;  
  
AND  
  
CANADIAN MARCONI COMPANY .....RESPONDENT.

MOTION FOR A REHEARING

*Jurisdiction—Application for rehearing of appeal—Judgment dismissing appeal already certified to Court of original jurisdiction—Relief refused—Supreme Court Act, R.S.C. 1952, c. 259—Rule 61 of the Rules of the Supreme Court of Canada.*

By an oral judgment dated March 8, 1968, this Court dismissed the petitioner's appeal from a judgment of the Court of Appeal of the Province of Quebec which had dismissed the petitioner's appeal from a judgment of the Superior Court of the District of Montreal. The judgment of this Court was settled on April 2, 1968. By this application dated September 20, 1968, the petitioner applied to this Court for a rehearing of his appeal.

*Held:* The application should be dismissed.

The decision in *Durocher v. Durocher*, 27 S.C.R. 634, is authority for the proposition that when the judgment of this Court has been certified to the proper officer of the Court of original jurisdiction, as has been done in the case at bar, the Court has not jurisdiction to entertain an application such as is now made. Rule 61 of the Rules of this Court does not alter or enlarge this Court's jurisdiction but only provides the manner in which it shall be exercised.

\*PRESENT: Cartwright C.J. and Fauteux, Martland, Ritchie and Pigeon JJ.

*Jurisdiction—Requête pour ré-audition d'un appel—Jugement rejetant l'appel ayant été certifié à la Cour de première instance—Requête refusée—Loi sur la Cour suprême, S.R.C. 1952, c. 259—Règle 61 des Règles de la Cour suprême du Canada.*

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WHITFIELD  
v.CANADIAN  
MARCONI Co.

Par un jugement prononcé oralement le 8 mars 1968, cette Cour a rejeté l'appel porté par le requérant à l'encontre du jugement de la Cour d'appel de la province de Québec qui avait rejeté l'appel que le requérant avait porté à l'encontre d'un jugement de la Cour supérieure du district de Montréal. Le jugement de cette Cour a été déterminé le 2 avril 1968. Par requête en date du 20 septembre 1968, le requérant a demandé à cette Cour de lui accorder une ré-audition de son appel.

*Arrêt:* La requête doit être rejetée.

Lorsqu'un jugement de cette Cour a été certifié au fonctionnaire compétent de la Cour de première instance, ainsi qu'il en a été fait dans le cas présent, la Cour n'a pas de juridiction pour entendre une requête telle que celle qui lui est présentée: *Durocher v. Durocher*, 27 R.C.S. 634. La Règle 61 des Règles de cette Cour ne change pas ou n'élargit par la juridiction de la Cour mais pourvoit simplement au mode de l'exercer.

REQUÊTE pour obtenir une ré-audition de l'appel<sup>1</sup>.  
Requête rejetée.

APPLICATION for a rehearing of the appeal<sup>1</sup>. Application dismissed.

*Pierre Langlois*, for the petitioner.

*Hazen Hansard, Q.C.*, for the respondent.

At the conclusion of the argument of counsel for the petitioner, the following judgment was delivered:

THE CHIEF JUSTICE (orally for the Court):—Mr. Hansard, we do not find it necessary to call upon you.

We are all of opinion that we have no jurisdiction to grant the relief asked for by Mr. Langlois. The unanimous decision of this Court in *Durocher v. Durocher*<sup>2</sup> is authority for the proposition that when the judgment of this Court has been certified to the proper officer of the Court of original jurisdiction, as has been done in the case at bar, the Court has no jurisdiction to entertain an application such as is now made to us.

<sup>1</sup> (1968), 68 D.L.R. (2d) 766.

<sup>2</sup> (1897), 27 S.C.R. 634.

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v.  
CANADIAN  
MARCONI Co. This being the state of the law when Rule 61 was made,  
it is clear that the effect of that rule, which is negative in  
form, is not to alter or enlarge our jurisdiction but only  
to provide the manner in which it shall be exercised.

Cartwright  
C.J. The Court is aware of only one case, that of *Poole v. The  
Queen*<sup>3</sup> referred to by Mr. Langlois, in which a re-hearing  
was granted by this Court after the judgment of this Court  
had been signed and entered, but in that case the Court had  
been mistakenly informed and proceeded on the belief that  
its judgment had not been entered.

The application is dismissed with costs on the ground  
that we have no jurisdiction.

*Application dismissed with costs.*

*Solicitors for the petitioner: Cutler, Lamer, Bellemare,  
Robert, Desaulniers, Proulx & Sylvestre, Montreal.*

*Solicitors for the respondent: Cate, Ogilvy, Bishop, Cope,  
Porteous & Hansard, Montreal.*

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<sup>3</sup> [1968] S.C.R. 381, 68 D.L.R. (2d) 449, 3 C.R.N.S. 213, 3 C.C.C. 257.