

ARMAND DUHAMEL (*Defendant*) APPELLANT;

1954

AND

*May 10
*May 19DAME GEORGETTE COUTU }
(*Plaintiff*) } RESPONDENT.ON APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE,
PROVINCE OF QUEBEC*Appeal—Jurisdiction—Lack of substance in appeal—Motion to quash.*

As the judgment appealed from demonstrated that there was a manifest lack of substance in the appeal, the respondent's motion to quash was granted.

MOTION to quash for want of jurisdiction.

Paul Michaud for the motion.*J. G. Ahern Q.C.* contra.

KERWIN J.:—In *National Life Assurance Co. v. McCoubrey* (1), an appeal was quashed for a “manifest lack of substance” and in *Cameron v. Excelsior Life Insurance Co.* (2), it was decided that the appeal “ought not to be permitted to proceed further”. These cases and others are referred to in *Oatway v. Canada Wheat Board* (3). Upon the argument of a motion by the respondent in the present case to quash an appeal, it was suggested from the bench that there was no merit in the appeal and we heard all that counsel desired to say upon the matter.

In one of the considerants of the formal judgment of the Court of Queen's Bench (Appeal Side) (4), it is stated that the appellant had not established the only ground of defence invoked in the appeal, which was that there had been a tacit renewal of the lease in question. The trial judge had found against this contention and decided that the lease was terminated as of April 30, 1952, and the members of the Court of Queen's Bench (Appeal Side) unanimously agreed with him. In the opinion of the majority of the Court (Mr. Justice Rand and Mr. Justice Estey not concurring in this) the notes of Mr. Justice St. Jacques and the

*PRESENT: Kerwin, Rand, Estey, Locke and Cartwright JJ.

(1) [1926] S.C.R. 277.

(3) [1945] S.C.R. 214.

(2) [1937] 3 D.L.R. 224.

(4) Q.R. [1953] K.B. 330.

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—
Kerwin J.

judgment of the Superior Court demonstrate that there is a manifest lack of substance in the appeal and that this motion should be entertained favourably—as stated in the McCoubrey case, “as a convenient way of disposing of the appeal before further costs have been incurred.”

Motion granted with costs.

Solicitors for the appellant: *Hyde & Ahern.*

Solicitors for the respondent: *Michaud, Mercier & Denis.*
