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BOWMAN *v.* PANYARD MACHINE AND  
MANUFACTURING CO.

1927  
\*May 9.

*Appeal—Delay in prosecuting—Appearance of bad faith—Motion to quash granted*

Where an appellant is in serious default in the prosecution of his appeal, and his conduct in defending the action without disclosing that he had parted with his interest in the subject matter, with the result that his transferee would not be bound by the judgment, if maintained, savours of bad faith, indulgence will be refused and the appeal will be quashed at the instance of the respondent.

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\*PRESENT:—Anglin C.J.C. and Duff, Mignault, Newcombe and Rinfret JJ.

1927  
 BOWMAN  
 v.  
 PANYARD  
 MACHINE  
 & MFG. CO.

MOTION by the respondent to quash the appeal by the defendant to this Court from the judgment of the Exchequer Court of Canada (1) on the grounds (1) That the Court had not jurisdiction to hear the appeal; (2) That the appeal was devoid of merit and substance and was taken against good faith; and (3) That the appellant had unduly delayed to prosecute his appeal.

*W. D. Herridge* for the motion.

*M. Powell contra.*

At the conclusion of the argument, the judgment of the court was orally delivered by

ANGLIN C.J.C.—We are all of the opinion that the motion should be granted. There is every appearance of bad faith. The action in the Exchequer Court from the first was admittedly allowed to proceed on the erroneous assumption that the defendant was still carrying on the business. The proceedings, except as to the claim for damages, were thus rendered useless. The court was allowed to go through the idle form of granting an injunction in complete ignorance of what the defendant well knew would render it of no avail because he had parted with his interest to the company formed to take it over and of which he is the President. When asked by the Court whether he would consent on behalf of the company to its being added as a party so that it might be bound by the determination of the appeal on the question of infringement, counsel for the defendant-appellant stated that he was without instructions to do so.

Under these circumstances, an appeal is brought to this Court against a judgment entered nearly a year ago, and although several terms have elapsed, that appeal is not yet inscribed. The delay is not satisfactorily explained. Should the appeal be allowed to go on, and fail, the respondent will then be obliged to proceed against the company, which will not be bound by the result. Such tactics should not be encouraged by the granting of indulgence. The appellant is in grave default.

We are satisfied that the motion should be granted, and the appeal dismissed with costs.

*Appeal quashed with costs.*