

# DOMINION LAW REPORTS

## DRUMM v. FOWLER.

*Alberta Supreme Court, Scott, J. December 16, 1915.*

ALTA.  
S. C.

1. HOMESTEAD (§ III—20)—ABANDONMENT IN FAVOUR OF COMPANY—RIGHT TO RECOVER BACK UPON DISSOLUTION—AGREEMENT FOR RECONVEYANCE—AMENDMENT TO ESTABLISH.

One cannot succeed in an action for the recovery of homestead lands, which he abandoned in favour of a company to enable it to erect a smelting plant, after the latter had ceased to operate and later went into liquidation, in the absence of an agreement for the reconveyance of the land upon such event; if, however, such agreement can be gathered from the subsequent dealings by the parties, the court will direct an amendment of the pleadings for the purpose of establishing it.

APPEAL by the plaintiff from the judgment of Walsh, J., dismissing the action. Statement

*W. F. W. Lent*, for appellant.

*A. L. Smith*, for respondents other than *J. H. Farmer*.

*J. W. McDonald*, for respondent, *J. H. Farmer*.

*Scott, J.*:—In 1900 the defendant company erected a zinc smelter upon lands adjoining a quarter section which the plaintiff had entered for as a homestead under the Dominion Lands Act. For the purpose of carrying off the noxious fumes from the smelter, the company constructed a conduit pipe leading from it to, and up an adjacent hill, and a chimney or stack upon the hill. After they were completed, it was found that the stack and a portion of the conduit pipe were constructed upon the plaintiff's homestead. It was then verbally agreed between the plaintiff and the company's manager that, in order to enable the company to obtain a grant from the Crown for the portion upon which the conduit pipe and stack were erected, the plaintiff should abandon his homestead right thereto. He accordingly abandoned his right to that portion which contained about 8 acres, and the company obtained a grant thereof from the Crown, and became the registered owner. In 1906, the company ceased to operate the smelter, and sometime prior to December 12, 1910, the company went into liquidation, the defendant Fowler, who had for some years been its general manager, being appointed liquidator.