

document: "Re Sale to you of Mill-Site. The Crow's Nest Pass Coal Company hereby agree to sell to you a piece of land at or near Hosmer Station on the Crow's Nest line, to contain at least one hundred acres of land, at the price of \$5.00 per acre, payable as follows: When title issued to purchaser. Title to be given as soon as the company is in a position to do so. Purchaser to have possession at once. The land to be as near as possible as shewn on the annexed sketch plan."

M. for a nominal consideration, in October, 1902, assigned this document to B. who in turn assigned it for value to plaintiff company. In an action for specific performance of this agreement, plaintiff company was non-suited at the close of its case, and it was

Held, on appeal, that one of the conditions on which the document was given being that a mill should be built at an early date, the defendant M., not having done anything in that direction for two years, must be taken to have abandoned any such intention.

Per HUNTER, C.J.—It was for the company to shew that the intention to build a mill was a condition *dans locum contractui*, and the fact that the condition was not inserted in the agreement was sufficient to call upon the company to make good that defence.

Taylor, K.C., and *Ross*, K.C., for plaintiff company. *J. A. Macdonald*, K.C., and *Herchmer*, for defendants.

Full Court.]

[Jan. 21.

PADULAROGA v. CANADIAN CANNING CO.

Shipping—Proximate cause of injury—Negligence—Collision with vessel at anchor.

A tug attached to a scow loaded with coal approached a bridge the piers of which were being repaired by a railway contractor. The fairway was partly obstructed by a scow connected with the work, but the captain of the tug, after viewing the situation, was of opinion he could get through. In doing so, he brushed slightly against the scow, at the further end of which, on a boom stick in the water, was the plaintiff, engaged in an endeavour to swing or push the scow further around and out of the way of the tug. Plaintiff was crushed against a pile by the scow and severely injured.