

Lorenzo D. Crouse, the defendant, had worked for the Western Marine & Salvage Company, which ceased operations in March, 1931. He "hooked on the last mast that was lying alongside the crane." After that the company kept a watchman until August, 1932, who "told me himself that he was placed there to keep anybody from removing any of the equipment that was on the beach." He understood from the workmen of the company that the ships were abandoned and "that they were quitting." He began the removal of lead, brass, copper, and scrap iron in September, 1932, and continued until the plaintiff, Steinbraker, undertook to buy the submerged hulls and had him enjoined. Most of his sales were to one, Sinclair, in shipments up to thirty tons. For the last sale to Sinclair, he was paid by the plaintiff, who, according to this record, was the ultimate purchaser of much of the metal sold by the local men to Sinclair, and some dealt with the plaintiff directly. There was much other evidence to the same effect from which it may be inferred that for over two years the wreckage had been abandoned so far as the community affected did or could know, and with this impression, under very great difficulties, anywhere from fifty to seventy-five persons had removed hundreds of tons of metal from these hulls and their principal customer was either Sinclair or Steinbraker, or both, and all without interruption or interference from the Western Marine & Salvage Company or any one interested in it, until Steinbraker, with the price of scrap metal rising, saw the possibilities in these burned, gutted, submerged vessels, and late in fall of 1934 he "called the Potomac Realty Company on the West Coast on the phone." This call resulted in the stockholders of the Western Marine & Salvage Company, by agreement dated December 1, 1934, assigning, releasing, and quitclaiming unto the Potomac Realty Company, Limited, all the "right, title or interest which they or any of them may have in and to all lead, copper, brass and/or other metals of whatsoever kind and nature located in or around each of the 169 vessels or hulls * * * situated in Mallow's Bay, near Sandy Point, Maryland." And by agreement of December 3, 1934, the Potomac Realty Company, Limited (of San Francisco, Cal.), assigned the same metals to the plaintiff, Harry Steinbraker, "as is, where is, if is, without any warranty of title whatsoever or otherwise." The price to be paid was \$2 per ton f. o. b. railroad cars, with a deposit of \$500 to be applied on the last payments due the purchaser. A bond of \$10,000 was required to guarantee noninterference with navigation.

In *Russell v. Stratton*, 201 Pa. 277, 278, 50 A. 975, it is said that abandonment is to be determined from a consideration of the property and the conduct of the plaintiff (in this case owner) in relation to it. *Fidelity-Phila. Trust Co. v. Lehigh Valley Coal Co.*, 294 Pa. 47, 143 A. 474, 479. What was said in the last-mentioned case (294 Pa. 47, 143 A. 474, 480), of an abandoned anthracite culm bank, which afterwards became valuable, in which the evidence almost duplicates the evidence here, applies to this case, and that is: "Inherent to possession is the right to exclusion; and, if through a duration of many years no act or attempted act of exclusion is exercised by a presumed possessor, and through all that time the thing, such as the culm bank here in question, is openly, freely, and continuously depleted, taken, and carried away in vast quantities, without compensation or permission asked, the intention, if it ever existed, to exclude others, has disappeared; and, when there never was, before and after these open appropriations, assertion of title or acts of dominion exercised, the conclusion is inevitable that the legal possession has been relinquished and the thing abandoned."

It requires no stretch of the imagination to believe from the evidence in this record that, if the plaintiff had not fastened his eyes on these hulls, the so-called "depredations" of the defendant and others in the vicinity of Mallow's Bay would have continued uninterruptedly to this day. The sequence of events from the time the stockholders of the Western Marine & Salvage Company conveyed the land from themselves to themselves under the name of the Potomac Realty Company, Limited, the sale of the equipment to outsiders the invasion for over two years of the wrecked and sunken vessels, and the continuous, uninterrupted, and open carrying away of the scrap therein, without compensation or permission asked, shows clearly, in our opinion, an intention to abandon and an actual abandonment, not to be recalled by the subsequent negotiations and agreement between the former owners and the plaintiff, and the decree of the chancellor should be affirmed.

Decree affirmed, with costs.