the true boundary line was difficult to ascertain. (See Arkansas *v.* Tennessee, *supra,* and the cases cited at p. 172.)

This record presents a clear case of a change in the course of the river by avulsion, and the applicable rule established in this court, and repeatedly enforced, requires the boundary line to be fixed at the middle of the channel of navigation as it existed just previous to the avulsion. The location and determination of such boundary is a matter which we shall leave in the first instance to a commission of three competent persons to be named by the court upon suggestion of counsel, as was done in Arkansas *v.* Tennessee. See 247 U. S. 461. This commission will have before it the record in this case, and such further proofs as it may be authorized to receive by an interlocutory decree to be entered in the case. Counsel may prepare and submit the form of such decree.

THE PROTON [1]

Judicial Committee of the Privy Council

March 15, 1918

This was an appeal from the judgment of the Supreme Court of Egypt (in Prize), pronouncing the *Proton* to have belonged at the time of capture and seizure to enemies of the Crown, and condemning her as good and lawful prize.

Lord Sumner, delivering their Lordships' judgment, said that on February 8, 1916, the *Proton* was condemned in prize. The present appeal was brought by George Kotsovillis, master, and Michael Kouremetis, claiming as owner of the ship. The former only represented the title of Kouremetis, his employer. The *Proton* was on the Greek register, and flew the Greek flag. There was nothing in the evidence to show that she was not entitled to do so. The ground of condemnation was that she belonged to the German Government. The appellants contended that her flag was conclusive. They relied on Chapter VI of the Declaration of London, which dealt with enemy character, and by Article 57 provided: "Subject to the provisions respecting transfer to another flag" (which did not apply here) "the neutral or enemy character of a vessel is determined by the flag which she

[1] 34 The *Times* Law Reports, 309.

is entitled to fly." It was not necessary to consider whether that provision would in any case apply if the use of the neutral flag were only part of a fraudulent design to defeat belligerent rights.

Their Lordships held in *The Zamora* (32 The *Times* L. R., 436; [1916] 2 A. C. 77) that while the Crown could not by Order in Council prescribe or alter the law to be administered by a court of prize, the court would act on Orders in Council in every case in which they amounted to a mitigation of the Crown's rights in favor of the enemy or neutral, as the case might be. The Declaration of London Order in Council, No. 2, 1914, which declared that the provisions of the Declaration of London should be adopted and put into force, was in force at the material time in this case. Did Article 57 prescribe the law to be administered by a court of prize or did it direct that the rights of the Crown were to be mitigated in favor of a neutral or of the enemy? In their Lordships' opinion, the former was the effect of the article. It declared that a court of prize should determine the character of a vessel alleged to be of enemy character by one single circumstance, the character of the flag which she was entitled to fly, and not by the entire body of relevant circumstances which determined the truth as to that character. That was a positive prescription as to a material part of the law of evidence. Furthermore, the surrender of the rights of the Crown was a thing not to be inferred from doubtful language or from general considerations, especially in a case of fraud and in a matter so grave as the exercise of sovereign belligerent rights. The terms of this article were little adapted to a waiver of His Majesty's rights in favor of others; they clearly purported to prescribe the law on a topic which had been the subject of many decisions. Their Lordships were of opinion that, notwithstanding the Order in Council, it was their duty, sitting in prize, to consider the facts proved in order to ascertain what the character of the *Proton* really was.

When she was seized on May 16, 1915, she was loading oats at the Turkish port of Kiuluk, having lately arrived from Calymnos. One "Mihail Kromatis" was entered on the ship's papers as a seaman, and was on board purporting to act in that capacity, but he stated to the British officer who searched the vessel that he was really her owner traveling in the vessel to buy goods at one port and sell them at another, and he was now the chief appellant. The ship had left Piræus in ballast on April 22 for Adalia, where he bought eggs,

chickens, and bullocks, and he left with them for Samos and Piræus. It was suggested that he was entered in the ship's papers as a seaman because there was no other capacity in which he could be entered, but that was mere guesswork. He came to Alexandria, presumably in the vessel, but he did not think fit to remain for the trial or to give evidence on oath.

The master, however, gave evidence on his behalf. He swore that on the passage from Adalia, as the weather was rough, some of the bullocks became seasick, whereupon it was decided to land them and the other cargo at the island of Calymnos. That was how the vessel came to be loading at Kiuluk. That story the learned judge did not believe, nor were their Lordships invited to give it credence. It was admitted that the *Proton* had been taken into Calymnos to pick up and run a cargo of contraband—namely, fuel oil in tins—into the Turkish port of Budrum, only a few hours away on the mainland. That enterprise, however, was forestalled. No doubt that was true so far as it went, but there was a good deal more in her manœuvres. Calymnos was the birthplace of M. Michael Kouremetis, and the day after his arrival in the *Proton* there arrived the steamship *Vassilefs Constantinos* laden with fuel oil consigned to his uncle, who was a tailor. M. Kouremetis promptly boarded her and tried hard, without success, to induce the captain to take the cargo of oil on to Budrum. He then tried to get it transferred to the *Proton,* but the ship's agent insisted that the oil must be landed. When that had been done the Italian authorities, who were in occupation of the island, declined to let it go again. They suspected an attempt to supply this fuel to the Turks.

Who, then, was M. M. Kouremetis? Of Greek race and a Calymniote born, and therefore an Ottoman subject; for 14 years or more he had been in business as a sponge merchant at Hamburg. He said that he prospered there, but there was evidence that about 1913 he failed in business, having quarrelled with, and become heavily indebted to, his German partner, Herr Emil Stiller. He was then taken into the service of the Deutsche-Tripolitanische Handels-Aktien-Gesellschaft. He further said that, having made a considerable fortune, he realized it at the outbreak of war and quitted Germany for home. On April 15, 1915, he obtained a certificate of Greek nationality and became a subject of the King of the Hellenes, and two days later he bought the *Proton* for about 160,000 fr. As he was

also able about the same time to buy the fuel oil cargo shipped in the *Vassilefs Constantinos,* and the flour, the corn, and some of the bullocks shipped in the *Proton* at Adalia, he must have disposed of considerable sums. He said that there were further sums amounting to about 20,000 fr., which he had placed in the hands of two Calymniote merchants, Vouvalis and Manglis, and he claimed to have used a great deal more money than that. There was, however, evidence to the contrary given by persons competent to speak of the facts. The brother of the appellant, P. Kouremetis, could not say whether he was a poor man or a millionaire, but Aristotelis Manglis, a merchant of Calymnos, swore that Michael Kouremetis came home from Germany in the autumn of 1914 practically penniless, and in April, 1915, was well provided with funds, and he appeared to be quite innocent of any knowledge that he held 10,500 fr. on deposit from M. Michael Kouremetis. Nicholas Vouvalis, too, was equally unaware of the deposit alleged to have been made with him. According to Dimitri Michael Maroulakis, of Calymnos, M. Michael Kouremetis told him that he was supplied with funds from the Turkish and German Embassies, had paid 24,000 fr. to the Mutessarif of Adalia (which seemed a large sum for mere baksheesh on the shipment of flour and bullocks), and was in the habit of frequently calling at the Germany Embassy in Athens.

All these facts were deposed to in affidavits, or, in the case of Vouvalis, were stated in a letter, which, as it appeared without objection in the record, their Lordships took to have been admitted in evidence by consent. It was true that the affidavits contained many other statements which were not evidence and were not trustworthy. They revelled in rumors, they abounded in hearsay, they contained many exaggerations and some extravagancies, and after all they were affidavits. Still, the learned judge was vigilantly on his guard against such parts of them as were inadmissible; he was well qualified to appraise them at their true value, and in the result he accepted them. On the other hand, the appellant gave no evidence on oath. A letter which he wrote to the Minister for Foreign Affairs of the Hellenic Government was allowed to be read in evidence, and probably would have been of no greater weight if formally attested, but the learned judge did not believe it. Numerous and precise statements were to be found in it as to the appellant's ample means, every one of which could have been readily and cogently

confirmed by documentary evidence, which he must either have had in his possession or might easily have obtained. No such documents were forthcoming, and M. Kouremetis must accept the consequences, which attended those who advanced claims but withheld the evidence which, if their claims were just, candor and self-interest would alike have impelled them to give.

The learned judge disbelieved the appellant's case and on the evidence found: (1) that M. Kouremetis had not means of his own with which to buy the *Proton;* that he did not buy her, and was not her owner; and that he only figured as her owner that she might continue to fly the Greek flag as a convenient but dishonest device; (2) that, in view of his enemy associations, he must have bought her with German money; (3) that only the German Government could have been concerned in laying out so much money on the ship in order forthwith to hazard her in so dubious and dangerous an adventure; (4) that, as M. Kouremetis was no seaman, he could only have been on board to look after the interests of the German Government, his employers. If the learned judge's first finding was right, the appeal failed, for M. Kouremetis had no character except that of owner in which he could claim to have the ship released to him, and, if not her owner, had no *locus standi* to criticize or complain of her condemnation.

Their Lordships did not wish to be understood as casting any doubt on the other findings, but it was not necessary that they should express any opinion about them. It was enough to say that, in their opinion, the finding that the *Proton* did not belong to the appellant, and that his purported ownership was a mere blind to enable a German ship to conceal her character by continuing to fly the Greek flag as before, was well warranted by the evidence.

Their Lordships would accordingly humbly advise his Majesty that this appeal should be dismissed, with costs.