

**In the Matter of the Steamship "Proton."**

**George Kotsovillis (Master) and Michael  
Kouremetis - - - - - Appellants,**  
*v.*  
**His Majesty's Procurator in Egypt - - - Respondent,**

FROM

**HIS BRITANNIC MAJESTY'S SUPREME COURT FOR EGYPT (IN PRIZE).**

---

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 15TH MARCH, 1918.**

---

*Present at the Hearing:*

LORD PARKER OF WADDINGTON.  
LORD SUMNER.  
LORD PARMOOR.  
LORD WRENBURY.  
SIR SAMUEL EVANS.

[*Delivered by* LORD SUMNER.]

---

On the 8th February, 1916, the steamship "Proton" was condemned in Prize. The present appeal is brought by George Kotsovillis, master, and Michael Kouremetis, claiming as owner of the ship. The former only represents the title of Kouremetis, his employer. He has no independent right of his own.

The "Proton" was on the Greek register and flew the Greek flag, nor is there anything in the evidence to show that she was not entitled to do so. The ground of condemnation was that, in truth, she belonged to the German Government. The appellants contend that her flag is conclusive to the contrary. They rely on chapter VI of the Declaration of London, which deals with Enemy Character, and by article 57 provides: "Subject to the provisions respecting transfer to another flag" (which do not apply here), "the neutral or enemy character of a vessel is determined by the flag, which she is entitled to fly." It is not necessary to consider on the present occasion whether this 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" (1916, 2 A.C. at pp. 96 and 97) that while the Crown cannot 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 amount to a mitigation of the Crown's rights in favour of the enemy or neutral, as the case may 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 in force, was in force at the material time in this case. Does then article 57 prescribe the law to be administered by a Court of Prize or does it direct that the rights of the Crown are to be mitigated in favour of a neutral or of the enemy? In their Lordships' opinion, the former is the effect of the article. It declares that a Court of Prize shall determine the character of a vessel alleged to be of enemy character by one single circumstance, the character of the flag which she is entitled to fly, and not by the entire body of relevant circumstances, which determine the truth as to that character. This is a positive prescription as to a material part of the law of evidence.

Furthermore, the surrender of the rights of the Crown is 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 are little adapted to a waiver of His Majesty's rights in favour of others: they clearly purport to prescribe the law on a topic which has been the subject of many decisions. Their Lordships are of opinion that, notwithstanding the Order in Council, it is their duty, sitting in Prize, to consider the facts proved, in order to ascertain what the character of the "Proton" really was.

When seized on the 16th May, 1915, she was loading oats at the Turkish port of Kiuluk, in Anatolia, 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 travelling in the vessel to buy goods at one port and sell them at another, and he is now the chief appellant. The ship had left Piræus in ballast on the 22nd April for Adalia, where he bought among other things, eggs, chickens, and bullocks, and sailed in her with them for Samos and Piræus. It is 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 this is mere guess-work. He came to Alexandria, presumably in the vessel, but 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, the weather being rough, some of the bullocks became seasick, whereupon it was decided to land them and the other cargo at the island of

Calymnos. This was how the vessel came to be loading at Kiuluk. This 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 in order to pick up and run a cargo of contraband—namely, fuel oil in tins—into the Turkish port of Budroum, only a few hours away on the mainland. This enterprise, however, was forestalled. No doubt this is true so far as it goes, but there is a good deal more in her manoeuvres than this.

Calymnos was the birthplace of M. Michael Kouremeti, 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 to induce the captain to take the cargo of oil on to Budroum, but without success. He then tried to get it transferred to the "Proton," but the ship's agent insisted that the oil must be landed. When this 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. Its quantity alone made it an unsuitable cargo for consignment to so small an island.

Who then was M. M. Kouremetis? Of Greek race and a Calymniote born, and therefore an Ottoman subject, for fourteen years or more he had been in business as a sponge merchant at Hamburg. He says 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 says that, having made a considerable fortune, he proceeded to realise it at the outbreak of war and quitted Germany for home. On the 15th April, 1915, he obtained a certificate of Greek nationality and became a subject of the King of the Hellenes, and two days later 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 says 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 claims to have possessed a great deal more money than this, and specifies amounts and to some extent its sources. There was, however, evidence to the contrary given by persons competent to speak to the facts. The brother of the appellant, Pantilis 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 appears to be

quite innocent of any knowledge that he held 10,500 fr. on deposit from M. Michael Kouremetis. Nicolas Vouvalis too is 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 seems a large sum for mere baksheesh on the shipment of flour and bullocks), and was in the habit of frequently calling at the German Embassy in Athens.

All these facts are deposed to in affidavits, or, in the case of Vouvalis, are stated in a letter, which, as it appears without objection in the record, their Lordships take to have been admitted in evidence by consent. It is true that the affidavits contain many other statements which are not evidence and are not trustworthy. They revel in rumours, they abound in hearsay, they contain many exaggerations and some extravagancies, and after all they are 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 are 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 are forthcoming, and M. Kouremetis must accept the consequences, which, as has so often been pointed out in Courts of Prize, attend on those who advance claims, but withhold the evidence which, if their claims were just, candour and self-interest would alike have impelled them to give.

The learned Judge disbelieved the appellants' case and on the evidence found (1) that M. Kouremetis had not means of his own with which to buy the "Proton"; did not buy her and was not her owner; and only figured as her owner in order 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 is right, this appeal fails, for M. Kouremetis has no character except that of owner in which he can claim to have the ship released to him, and, if not her owner, has no *locus*

*standi* to criticise or complain of her condemnation. Their Lordships do not wish to be understood as casting any doubt on the other findings, but it is not necessary that they should express any opinion about them. It is 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 will accordingly humbly advise His Majesty that this appeal should be dismissed with costs.

---

In the Privy Council.

---

---

In the Matter of the  
STEAMSHIP "PROTON"

GEORGE KOTSOVILLIS (MASTER) AND  
MICHAEL KOUREMETIS

v.

HIS MAJESTY'S PROCURATOR IN  
EGYPT.

---

DELIVERED BY LORD SUMNER.