

**MINUTES OF SPECIAL MEETING OF MARITIME LAW  
ASSOCIATION, HELD AT THE ASSOCIATION  
OF THE BAR, 42 WEST 44th STREET,  
MARCH 10, 1922, AT 2 P. M.**

The meeting was called to order by the President, Hon. Charles M. Hough.

Present:

Allen, Ray Rood	Hupper, Roscoe H.
Amberg, Harold V.	Hohenberger, William V.
Atkins, Horace T.	Houston, Oscar R.
Bailey, Theodore L.	Griffin, John W.
Beebe, Howard W.	Johnston, J. Floyd
Betts, George Whitefield, Jr.	Jones, T. Catesby
Blodgett, Edward E.	Kirlin, J. Parker
Blymyer, William H.	Loines, Russell H.
Burlingham, Charles C.	Maclay, Mark W.
Burlingham, Charles	Marsh, Carleton L.
Cheney, Horace L.	Matteson, Leonard J.
Clark, Chauncey I.	Mayhew, Karl S.
Cox, Douglas F.	Mount, Russell T.
Dean, William J.	Ogden, George B.
Deming, Harold S.	Price, Frederick H.
Ely, Albert H., Jr.	Prizer, John C.
Englar, D. Roger	Pyne, Warner C.
Farwell, Earle	Putnam, Harrington
Foster, Frederick	Quantrell, Charles F.
Gorham, William H.	Staley, J. Frank
Haight, Charles S.	Stockton, Herbert K.
Hall, Lyle H.	Symmers, James K.
Hargrave, George E.	Townsend, Dallas S.
Hickox, Charles R.	Veeder, Van Vechten

The reading of the minutes of the previous meeting was omitted on unanimous consent, the same having been printed and distributed to members.

Mr. Blodgett called the attention of the Association to the recent death of one of the oldest members, Mr. Herbert Green,

and moved that the Hon. Harrington Putnam be appointed a committee to draw resolutions on behalf of the Association and send them to Mr. Green's family.

The motion, duly seconded, was unanimously carried.

Judge Putnam then reported that pursuant to the direction of the Association at the meeting of February 10, 1922, he had associated with himself to form a committee on proposed International Maritime Conference, Messrs. Robert M. Hughes, FitzHenry Smith, Jr., Hermon A. Kelley and Charles R. Hickox, and thereupon presented their report, which was read.

By unanimous vote the report was received and ordered to be printed and distributed as a part of these minutes.

The Chair then laid before the meeting the first section of the report, concerning the proposed Treaty for ship hypothecation, mortgages and maritime liens, pointing out that the Committee of which Judge Putnam was Chairman unanimously reported that such proposed Treaty would not be acceptable in the United States and advising that this Association dissent from such projected Treaty both in principle and in detail. Mr. Englar moved that the first section of the report be accepted and adopted as the sense of the Association, which motion was duly seconded and unanimously carried.

The Chair then laid before the meeting the second section of the Committee's report concerning a proposed Convention or Treaty internationally unifying the liabilities of owners of sea-going vessels, and pointed out that all of the Committee except Mr. Kelley had reported (a) in favor of the concept of a unified international agreement for limitation of owners' liability, but (b) not assenting to the details of the project as proposed, nor (c) suggesting any project of their own; wherefore (d) the Committee majority deemed it advisable that a representative of the United States be sent to attend the proposed Maritime Conference for the purpose only of looking on and gathering information for the use of persons interested in this country.

Judge Putnam then spoke in explanation of the Committee report, saying in substance that Americans had long been primarily interested in cargoes and not in ships, but this country has now become a very large shipowner. While most members

are inclined to say, "We have got along very well under the Act of 1851, so why change it," it must now be remembered that American ships will go all over the world, encountering different systems of liability—indeed, visiting foreign ports happens in traffic on the Great Lakes, and limitation under the law of the United States has not been recognized in Canada when the ship survived and visited a Canadian port. The same thing has already occurred in respect of a ship for which limitation had been taken in this country and suit was subsequently brought against the owners in Great Britain; and it is stated in the text-books that one country at least (Portugal) has no limitation statute or practice. It is thought that this proposed Treaty will be acceptable to Great Britain; but if we expect to have anything like world-wide limitation, some uniform system must be adopted. The matter has been under discussion for about fifteen years, and this is the most hopeful suggestion for international limitation yet made. Limitation of liability in the form suggested is likely to be generally adopted, and it will be unwise for the United States to stand aloof as we now have ships going all over the world. The details seem to your Committee to be of a minor character; I read the proposed Treaty as meaning that £7 a ton is primarily set aside for loss of life; yet such claimants may have recourse to the £8 a ton subject to the priority of property claimants. This seems logical, but it is only a detail; if there is error it can be corrected, and this general system was approved, on the report of Judge Addison Brown, by this Association, in 1913.

Mr. Cheney said that this Association should not in his opinion presently commit itself further than to express a hope for some uniform legislation of world-wide force upon this subject.

In response to Mr. Englar and Mr. Blodgett, Judge Putnam stated that the Treaty regarding damages, of the Convention of 1910, has never been presented by the American State Department to Congress, and that he believed that it was not the intention of that Department so to present it until something more definite was submitted.

Mr. Hickox then moved that it be

RESOLVED, that the Maritime Law Association approve in principle the projected convention, Brussels, 1910-1913, for limitation of liability of owners of seagoing ships and recommend that delegates from the United States attend the proposed Brussels Conference in 1922 for further consideration of the details of the plan to the end that uniformity may result throughout the world with respect to the rules governing the limitation of shipowner's liability.

The motion was duly seconded.

Mr. Englar said that it would be a mistake to send delegates to Brussels instructed merely to observe and report. By sending such delegates we should lose the only opportunity we have of expressing our views. There is a prevailing opinion in this country that should be expressed at Brussels. My own feeling is that no logical basis exists for the optional feature in the proposed Convention. Personally I am indifferent whether the English system or the American system be adopted, but the option proposed is an indefensible hybrid. I understand the English system is the exceptional one; our system approaches the standard Continental one; therefore I incline to our system, but not to a choice between them at shipowners' option. While the English system is merely a "rule of thumb" I have no objection to it, nor have I any objection to our existing system; I do object to such a union as is proposed and think that the American delegates should be instructed to express approval of uniformity, but to oppose a uniformity reached by introducing the optional feature of the proposed Convention. I therefore move as a substitute for Mr. Hickox's motion the following:

RESOLVED, that the Maritime Law Association favors the plan now before the International Maritime Conference to bring about uniformity in the law with respect to limitation of shipowners' liability in the various maritime countries of the world, and recommends that delegates from the United States attend the proposed Brussels Conference in 1922 for further consideration of the details of the Convention to be adopted to that end; pro-

vided, however, that it is the sense of this meeting that the delegates should be instructed to state to the Conference that the Government of this country is opposed to the draft Convention heretofore adopted by the Subcommittee in so far as this draft gives to the shipowner the option of selecting one or the other of two different measures of limitation according as one or the other may be most favorable to him.

This motion was seconded.

Discussion ensued between Mr. Englar and Mr. Burlingham, in which Mr. Englar said that he thought the American delegates should be prepared in the interest of uniformity to accept either system, but that it is impracticable for us to say now which system should be adopted—uniformity is the principal thing.

A vote being taken, 35 were in favor of Mr. Englar's substitute and 16 opposed thereto; whereupon the Chair ruled that such vote disposed of the original motion of Mr. Hickox.

Mr. Blodgett thereupon moved to accept the report as modified and discharge the Committee with thanks, which motion was seconded.

Mr. Kirlin (who had voted in favor of Mr. Englar's motion) moved to reconsider the same, stating that, while the foremost consideration in this matter is to obtain some uniform world system under which the shipowner can be free from attack after he has been once sued, yet it was unwise to impose any instructions upon American delegates to Brussels. The motion was seconded and put to vote and lost.

Thereupon a vote was taken on Mr. Blodgett's motion to accept the report and discharge the Committee with thanks, and the same was unanimously carried.

It was thereupon moved by Judge Putnam, seconded by Mr. Deming, that the Association make an appropriation of \$100 with power in the Executive Committee to increase the same to \$300, as a contribution to the expenses of the International Committee for the year 1922. This motion was carried.

Mr. Englar then presented the report of the Committee on the Hague Rules appointed at the meeting of February 10th.

The report was in the form of a proposed Act of Congress, the draft whereof is as follows:

From and after \_\_\_\_\_, 1922, it shall be lawful to contract for the transportation of property by sea subject to the Hague Rules 1921, any existing law of the United States to the contrary notwithstanding; provided nevertheless that the said Rules shall be interpreted as follows:

(1) Wherever loss or damage has resulted from unseaworthiness the burden shall be on the carrier or other person claiming the exemption provided in Section 1 of Article 17 of said Rules to prove that such unseaworthiness did not result from want of due diligence to make the ship seaworthy.

(2) The burden of proof shall be on the person claiming exemption under subdivision (q) of Section 2 of Article IV of said Rules, to show that neither the actual fault or privity of the carrier nor the fault or neglect of the carrier's agents, servants or employees contributed to the loss.

(3) Article IV of said Rules shall not apply to ordinary commercial shipments, but only to cases where the character or condition of the property to be carried, or the circumstances under which the carriage is to be performed, are such as reasonably to justify special contracts.

Mr. Englar pointed out that it had been suggested that the Hague Rules in some particulars conflict with the Harter Act; he personally did not think that much conflict existed, and that there was a prospect of an amendment of the Harter Act giving full effect to the Rules, which amendment had been approved by the reporting Committee unanimously. The Committee, however, had received just before this meeting a letter from Mr. Payton, General Counsel of the American Bankers Association, generally in favor of the Hague Rules, but pointing out that they to some extent override Section 22 of the Federal Bills of Lading Act, which is the section declaring in substance that the carrier is bound by the bill of lading as to the quantity and

condition of the goods received. This Committee is of opinion that it would be better for the Association not to deal with that objection, but leave it to the Bankers Association to make representations direct to Congress when the bill comes up. We ought not to appear to oppose the Act, though we may have no objection to the Bankers' proposed amendment if offered before Congress.

Mr. Haight hoped that Mr. Payton's suggestion would be approved by this Association and incorporated in the proposed bill, because the same was for the protection of *bona fide* purchasers of bills of lading issued with apparent authority by carriers' representatives. To estop the carrier from denying receipt of the goods named in such a bill would prevent the public's suffering from the well known "cotton frauds," consisting in the negotiation of bills of lading issued in anticipation of cotton shipments, which shipments were in point of fact never made.

Mr. Englar expressed himself personally in favor of Mr. Haight's views, but opposed to embodying any such amendment in the bill approved by this Association. We may gain support of the Bankers at the price of antagonizing equally important interests.

Mr. Kirlin said that to make a bill of lading conclusive as proposed by Mr. Haight is at variance with the whole principle of the Hague Rules. Those Rules require the carrier to issue a bill of lading on request, showing identifying loading marks, and such a bill of lading would be conclusive; but bills issued in respect of other goods are merely *prima facie* evidence of the carrier's receipt of the same. If we make the bill of lading as issued the basis of "shipper's representations, we have disrupted the bargain which lies at the base of the Hague Rules."

Mr. Haight inquired whether Mr. Kirlin thought that the Rules were ever intended to cover the case of a bill of lading dishonestly issued for goods not received.

Mr. Kirlin replied that the Hague Rules suggested a form of bargaining between shipper and carrier, and they must be accepted or rejected as they are; it was not advisable for this Association to attempt to tinker them, and expressed the opinion that Mr. Englar had hit upon a form of words interpretative of what was intended by those who drew the Rules.

Mr. Hupper stated that as a member of the Committee with Mr. Englar he had considered that we were dealing with a document that had been finished. We cannot amend in one direction without in all probability amending in others; the Rules must be taken as they are or they must be left.

Mr. Haight then moved that the proposed bill as offered by the Committee be accepted upon the condition that the Committee be requested to draft a fourth clause to the effect that the Hague Rules are not to be considered as in any way altering or changing the effect of Section 22 of the Federal Bills of Lading Act.

That motion was seconded.

Mr. Kirlin moved to accept and adopt the report of the Committee as read, which motion was duly seconded.

Mr. Cheney then spoke in opposition to taking any steps with regard to the approval of the Hague Rules at present, and suggested that the report of the Committee be printed, and together with a copy of the Hague Rules be sent to the members of the Association.

Messrs. Haight, Cheney, Lewis and Deming spoke on the general subject of the frequency and danger of bills of lading fraudulently issued for goods not received, on the history of the Hague Rules and the difficulties that had been smoothed out in arriving at them; and thereupon the Chair put the motion of Mr. Cheney to defer consideration of the matter in hand until the next meeting of the Association, which motion was lost.

Thereupon, after further discussion of the bills of lading clauses in the Hague Rules by Messrs. Kirlin, Englar, Cheney, Hupper, Farwell and Blodgett, the motion to receive and adopt the report of the Committee as made was put and carried by a large majority.

Mr. Blodgett thereupon moved to continue the Committee on the Hague Rules with authority to take such further action as may be deemed advisable in regard to the matter, such Committee to act in conjunction with the Executive Committee of the Association.

This motion was seconded and duly carried.

Upon motion duly made and seconded, the meeting adjourned.



## FURTHER REPORT OF THE COMMITTEE ON THE PROPOSED BRUSSELS TREATY.

The original committee, pursuant to a vote at the last meeting, has been enlarged by adding Messrs. Robert M. Hughes, FitzHenry Smith, Jr., Hermon A. Kelley and Charles R. Hickox. As they are widely dispersed they have compared views by correspondence.

### **The Treaty for Ship Hypothecation (Mortgages) and Maritime Liens.**

The main objection is to the order of the respective privileges. Art. 3d sets forth the following four classes, as ranking ahead of liability for collision or other tort:

1. Court costs, port charges, pilotage dues and expenses of ship's custody, after coming into port.
2. Wages, including those of master.
3. Salvage, assistance, and general average contributions.
4. Debts arising on master's contracts or transactions outside the port of arrest, for ship's needs, preservation of the ship for continuation of the voyage, even if the master be part owner, and whether the claim be by him or by the supply men, repairers, lenders or other person contracting.

Such ranking of liens leaves to the collision creditor only what remains after satisfying wages, salvage and general average, also preferring sums due for supplies, repairs and loans upon the vessel.

Apparently no lien is recognized for towage as distinguished from salvage. This whole method of contract priority is against the present Anglo-American system which recognizes that the entire ship becomes subject to the lien for collision or other maritime tort. *The J. G. Stevens*, 170 U. S. 113. The committee is therefore unanimous in the view that this proposed convention would not be acceptable in the United States.

### The Limited Liability Treaty.

As to this projet, the members are not in accord. Mr. Hughes is against changing our present system, unless Great Britain should first adopt it. Mr. Kelley is opposed to the projet.

The majority, however, recommend that the principle of the projet be generally approved, subject to reservations, as to certain details. A doubt whether the treaty could constitutionally legislate for internal conditions in this country may be removed by an act of Congress to carry out these provisions. This was the British method with the Collision Liability treaty by means of the "Maritime Conventions Act of 1911" (1 and 2 George V, c. 57), entitled "An Act to Amend the law relating to merchant shipping, with a view to enabling certain Conventions to be carried into effect."

American shipping, now extending into foreign trades, especially needs to be protected by a standard of limited liability, which will be uniform, to be resorted to for the owner's final exoneration to be effective abroad. At present our shipowners are exposed to foreign suits with different liability standards. Thus an American shipping company which has a British office, might take limitation proceedings in the U. S. courts, respecting a casualty on the high seas, and surrender the vessel and freight and secure a decree here, and yet have to defend a suit arising from the same casualty in Great Britain (*La Compagnie Gen. Transatlantique v. Law* [1899], A. C. 431) in which a deposit of the tonnage amounts, with interest, according to British statutes, would be required, notwithstanding prior surrender of the ship. The British court might credit the shipowner with such payments in the United States, but would otherwise enforce its own standards of liability. *The Crathie* (1897), Prob. 178. It is doubtful how this question would now be dealt with in France.

The members of this Association may differ as to special details in this projet. However, such minor matters are not beyond adjustment, and compromise, in a future conference. An international standard of liability is essential to help our shipping to enter into world trade. Therefore the majority of the Committee favor the principle of this projet and recommend

that this Association assent to the general system proposed by the draft convention to unify the liability of owners of sea-going vessels.

Dated March 10, 1922.

HARRINGTON PUTNAM

ROBT. M. HUGHES, by telegraphic direction

FITZHENRY SMITH, JR., by letter direction

CHARLES R. HICKOX