REPORT OF SPECIAL COMMITTEE ON THE AMENDMENT OR REDRAWAL OF THE SUITS IN ADMIRALTY ACT.

New York, June 7th, 1923.

The Committee appointed to consider the Suits in Admiralty Act of March 9, 1920, have the honor to report:

That they have very fully considered the subject and are unanimously of opinion that the United States as sovereign should submit itself and its property to the same liabilities that apply to its citizens and their property, provided only that in respect of procedure its possession should not be disturbed nor its property subjected to seizure. To this end they are of opinion that it will be more judicious to amend the existing statute than to repeal it and propose a new act. It seems to them that the Judiciary Committee will be more likely to recommend to Congress amendment of the existing legislation than an entirely new statute.

In this connection they also favor the proposed international agreement as to public vessels that is to be submitted to the International Maritime Committee at its next meeting at Gothenburg in August next, which reads:

"IMMUNITY OF STATE-OWNED SHIPS.

Bases for a Draft International Convention.

The High Contracting Parties agree to subject to the Rules laid down in this Convention, the liability which may be incumbent upon them in relation to seagoing vessels owned by them or to cargoes carried by such vessels.

Art. I.—Seagoing vessels owned or operated by Sovereign States, cargoes owned by them, and cargo and passengers carried on such ships, shall be subjected to the same rules of liability and to the same obligations as those applicable to private shipowners owning or operating vessels of a like nature or to private owners of cargoes.

Art. II.—Except in the case of the ships and cargoes mentioned in Art. III, such liabilities shall be enforceable

by the tribunals having jurisdiction over and by the procedure applicable to, a privately-owned ship or cargo or the owner thereof.

Art. III.—In the case of:

a) Ships of war;

b) Other seagoing vessels owned or operated by the Sovereign State and employed only in Governmental non-commercial work;

c) State-owned cargo carried only for the purpose of Governmental non-commercial work on ships owned or operated by the Sovereign State,

such liabilities shall be enforceable only by the tribunals of the contracting States, provided always that the liabilities shall be the same as if such vessels or cargoes were privately owned."

This scheme goes further than we have proposed in the amendments to the Suits in Admiralty Act in that it contemplates the actual seizure of Government property instead of a mere appearance in the cause by the sovereign.

We think Art. III (c) should be amended so as to make the liabilities of the vessels and cargoes mentioned in it enforceable only by the tribunals of the states owning them and not by the tribunals of any of the contracting states.

The Suits in Admiralty Act as amended has been sent with a copy of this report to all members of the Association so that they may be better prepared to vote upon the subject when it is finally submitted to a special meeting to be called for that purpose at an early day.

Respectfully submitted,

HENRY GALBRAITH WARD,
Chairman,
VAN VECHTEN VEEDER,
EDWARD E. BLODGETT,
EMORY H. NILES,
JAMES KEITH SYMMERS,
Committee.

An Act to amend the Act entitled "An Act authorizing suits against the United States in admiralty, suits for salvage service, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdictions, and for other purposes," approved March 9, 1920, so as to read as follows:

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled:

Section 1. In all cases where, if a vessel were privately owned or operated, or cargo were privately owned, a suit in admiralty, either *in rem* or *in personam,* could be maintained, a suit in admiralty may be brought against the United States in respect to vessels owned or operated or cargo owned by it. If the United States shall file a libel *in rem* or *in personam,* a cross-libel may be filed or a counterclaim or a setoff arising out of the same contract or cause of action may be claimed against the United States. Subject only to the exceptions hereinafter expressly provided, jurisdiction is hereby conferred upon the several courts of the United States to hear and determine such suits, both *in rem* and *in personam,* upon the principles of liability and in accordance with the practice obtaining in like cases between private parties in suits in admiralty.

Section 2. Such suits, whether proceeding *in rem* or *in personam,* shall be brought in the District Court of the United States for the district in which the parties so suing, or any of them, reside, or have an office for the transaction of business; or, in the alternative, in the district, if any, in which the vessel or cargo charged with the liability is found. If the libellant neither resides nor has an office for the transaction of business in the United States, and if the vessel or cargo charged with liability is not within the United States, suit may be brought in any district court of the United States. The libellant shall forthwith serve a copy of his libel on the United States Attorney for such district and mail a copy thereof by registered mail to the Attorney General of the United States and shall file a sworn return

of such service and mailing. Such service and mailing shall constitute valid service on the United States. Upon the application of either party, the suit may, in the discretion of the court, be transferred to any other district court of the United States.

Section 3. In view of the provision herein made for suits in admiralty against the United States, no vessel owned or operated by or for the United States, and no cargo owned by the United States, shall be subject to arrest or seizure by judicial process in the United States or its possessions, nor shall the United States be required to give any bond or admiralty stipulation in any proceeding brought hereunder.

Section 4. A decree against the United States may include costs of suit and interest, as awarded by the court, at the rate of four percentum per annum until satisfied, or at any other lawful rate stipulated in the contract upon which such decree shall be based. The decree shall be subject to appeal and revision as provided in other cases of admiralty and maritime jurisdiction.

Section 5. This Act shall not extend to cases arising prior to the passage hereof, nor in any case shall any such suit be brought more than two years after the cause of action arose.

Section 6. The United States shall be entitled to the benefits of all exemptions and of all limitations of liability accorded by law to the owners, charterers, operators, or agents of vessels.

Section 7. If any merchant vessel owned or operated by the United States or any cargo of such vessel owned by the United States is arrested, attached, or otherwise seized by process of any court in any country other than the United States, or if any suit is brought therein against the master of any such vessel for any cause of action arising from, or in connection with, the possession, operation, or ownership of any such vessel, or the possession, carriage or ownership of any such cargo, the Secretary of State of the United States in his discretion, upon the request of the Attorney General of the United States, or any other officer duly authorized by him, may direct the United

States consul residing at or nearest the place at which such action may have been commenced to claim such vessel or cargo as immune from such arrest, attachment, or other seizure, and to execute an agreement, undertaking, bond, or stipulation for and on behalf of the United States, or the United States Shipping Board, as by said court required, for the release of such vessel or cargo, and for the prosecution of any appeal; or may, in the event of such suits against the master of any such vessel, direct said United States consul to enter the appearance of the United States, or of the United States Shipping Board, and to pledge the credit thereof to the payment of any judgment and costs that may be entered in such suit. The Attorney General is hereby vested with power and authority to arrange with any bank, surety company, person, firm, or corporation in the United States, its Territories and possessions, or in any foreign country, to execute any such aforesaid bond or stipulation as surety or stipulator thereon, and to pledge the credit of the United States to the indemnification of such surety or stipulator as may be required to procure the execution of such bond or stipulation. The presentation of a copy of the judgment in any such suit, certified by the clerk of the court and authenticated by the certificate and seal of the United States consul claiming such vessel or cargo, or his successor, and by the certificate of the Secretary of State as to the official capacity of such consul, shall be sufficient evidence to the proper accounting officers of the United States, or of the United States Shipping Board, for the allowance and payment of such judgments: *Provided, however,* that nothing in this Act shall be held to subject the United States to suit in any foreign jurisdiction for any act or default of its public vessels, nor shall anything in this Act prejudice or preclude a claim of the immunity of any other vessel or cargo within the purview of this Act from foreign jurisdiction in a proper case.

Section 8. Any final judgment rendered in any suit herein authorized, and any final judgment within the purview of section 7 of this Act, and any arbitration award or settlement had and agreed to under the provisions of section 9 of this Act, shall, upon the presentation of a duly authenticated copy thereof, be

paid by the Secretary of the Treasury or other proper accounting officers of the United States out of any appropriation or insurance fund or other fund especially available therefor; otherwise there is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, a sum sufficient to pay any such judgment or award or settlement.

Section 9. The Secretary of any department of the Government of the United States, or the United States Shipping Board, having control of the possession or operation of any vessel or of any cargo owned by the United States, are, and each hereby is, authorized to arbitrate, compromise, or settle any claim in which suit will lie under the provisions of this Act.

Section 10. The crew of any merchant vessel owned or operated by the United States, and the United States as owner or operator thereof, shall have the right to collect and sue for salvage services rendered by such vessel and crew, and any moneys recovered therefrom by the United States for its own benefit, and not for the benefit of the crew, shall be covered into the United States Treasury to the credit of the department of the Government of the United States, or of the United States Shipping Board, having control of the possession or operation of such vessel.

Section 11. All moneys recovered in any suit brought by the United States on any cause of action arising from, or in connection with, the possession, operation, or ownership of any merchant vessel, or the possession, carriage, or ownership of any cargo, shall be covered into the United States Treasury to the credit of the department of the Government of the United States, or of the United States Shipping Board, having control of the vessel or cargo with respect to which such cause of action arises, for reimbursement of the appropriation, or insurance fund, or other funds, from which the loss, damage, or compensation for which said judgment was recovered has been or will be paid.

Section 12. The Attorney General shall report to the Congress at each session thereof the suits under this Act in which

final judgment shall have been rendered for or against the United States, and the Secretary of any department of the Government of the United States, and the United States Shipping Board, shall likewise report the arbitration awards or settlements of claims which shall have been agreed to since the previous session, and in which the time to appeal shall have expired or have been waived.

Section 13. The provisions of all other Acts inconsistent herewith are hereby repealed.

REPORT OF COMMITTEE OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES ON THE QUESTIONNAIRE PREPARED BY THE INTERNATIONAL MARITIME COMMITTEE ON COMPULSORY INSURANCE FOR PASSENGERS.

The Committee appointed by the Maritime Law Association of the United States to draft answers to the questionnaire submitted with the letter of the International Maritime Committee, dated Antwerp, 11th of April, 1923, respecting "Compulsory Insurance for Passengers" respectfully proposes the following answers to these questions:

QUESTION No. 1: Do you consider that it would be desirable to organize, by means of an International Convention, a scheme of compulsory insurance of passengers carried by sea in the place of the contractual liability of the shipowners towards the passengers travelling on board their vessels?

ANSWER: No.

As we view the situation, emigration is peculiarly a national rather than an international problem. The emigrant remains a subject and resident of the country of origin until he formally enters the country of destination. The risk that he may die or become incapacitated during carriage, and the consequent advisability of insurance against such risk, is, therefore, a national rather than an international question. The country of destination has no power over the emigrant until ocean carriage ends, and he applies for admission to that country; hence, emigration does not assume an international character until the emigrant applies for such admission.

It has long been the policy of the United States Government to refrain from interfering with emigrants until they arrive at ports of entry in this country. Following this policy, elaborate machinery and plants exist in various ports of entry in this country, especially in the port of New York, for the examination of emigrants. The policy of the United States Government, to which we refer, is set forth in various Acts of Congress.

See the Act of March 3, 1875, sections 3 and 5 (18 Statutes at Large, 477); the Act of August 3, 1882, Chapter 376, section 2 (22 Statutes at Large, 214); the Act of February 26, 1885, Chapter 164, sections 1, 5 and 6 (23 Statutes at Large, 332, 333); the Act of March 3, 1891, Chapter 551, section 1 (26 Statutes at Large, 1084); the Act of March 3, 1903, Chapter 1012, section 2 (32 Statutes at Large, 1214); the Act of February 20, 1907, Chapter 1134, section 2 (34 Statutes at Large, 898; amended by 36 Statutes at Large, 263); and the Act of February 5, 1917, Chapter 29, section 3 (39 Statutes at Large, 875), as amended by the Act of June 5, 1920, Chapter 243 (41 Statutes at Large, 981; U. S. Compiled Statutes, 1923, Cumulative Supplement, Compact Edition, page 226).

This last statute provides in definite terms what aliens shall be excluded from admission to the United States:

> "The following classes of aliens shall be excluded from admission to the United States: * * * Paupers; * * * persons not comprehended within any of the foregoing exclusive classes who are found to be and are certified by the examining surgeon as being mentally or physically defective, such physical defect being of a nature which may affect ability of such alien to earn a living; * * * person likely to become a public charge; * * * the Commissioner General of Immigration, with the approval of the Secretary of Labor, shall issue rules and prescribed conditions, including execution of such bonds as may be necessary to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission."

The Commissioner General of Immigration has issued rules under authority granted by this Act, which provide that an alien who applies unsuccessfully for admission in the United States shall be returned to port of embarkation by and at the expense of the steamship company or vessel which brings him to the United States and, in the event that an inadmissible alien is permitted to land, the vessel is subject to a penalty of $1,000.

The United States has been, for many years, the country of destination of perhaps the majority of emigrants from the other

countries of the world. The Acts of Congress referred to show, as is to be expected, that the interests of our legislators in persons who are moving from one country to another for the purpose of emigration, is in obtaining for itself immigrants who will strengthen the country rather than weaken it. In other words, our national interest in this problem is in immigration rather than in emigration.

If the Association approves the report of this Committee, that question No. 1 be answered in the negative, it will be unnecessary to answer the remaining questions. If, however, the Association should consider that the preceding question should be answered in the affirmative, the Committee suggests the following answers to the remaining questions.

QUESTION No. 2: Should this scheme of compulsory insurance form the subject of a special international convention, or would it be desirable to include it in the draft convention on shipowners' liability at present before the Diplomatic Conference?

ANSWER: Any scheme of compulsory insurance should form the subject of a special international convention, because in our opinion it has no relation to the subject of the limitation of shipowners' liability.

QUESTION No. 3: Should the scheme of compulsory insurance be provided in favour of all passengers or in favour of emigrants only?

ANSWER: In favor of emigrants only. Other passengers, if they desire insurance, are in a position to take out such policies as their needs require.

QUESTION No. 4: Insurance constituting a liability due both in case of chance accident and in case of negligence of the carrier or negligence of another ship, is it desirable to reserve the cases of personal liability of shipowners, and under what conditions?

ANSWER: In view of the apparently small indemnities proposed by the Committee, in our opinion, the legal liability of shipowners for personal injury or death occasioned by his negligence should remain undisturbed. If, however, the indemnities are

increased to provide an adequate compensation to the injured person in a case of personal injury, or to his dependents in a case of death, the steamship companies should be permitted by law to provide in their contracts of carriage that the insurance indemnity shall be the sole recovery in respect of such injury or death.

It is well settled in the United States that a carrier cannot stipulate against his own negligence in so far as the carriage of passengers and their baggage is concerned. See *The Kensington,* 183 U. S. 263, 268, where it is said:

> "It is settled in the courts of the United States that exemptions limiting carriers from responsibility for the negligence of themselves or their servants are both unjust and unreasonable and will be deemed as wanting in the element of voluntary assent; and, besides, that such conditions are in conflict with public policy. This doctrine was announced so long ago, and has been so frequently reiterated, that it is elementary."

In the same case, the Supreme Court held that the Harter Act related only to the carriage of goods and did not affect a steamship company's liability in respect of the carriage of passengers and their baggage. The Court further held that a provision in a steamship company's ticket, providing that all questions arising under the contract should be settled according to a foreign law with reference to which the contract was made, was invalid (whenever in conflict with the public policy of the United States) where the contract was to be executed in part in the United States. Consequently, any legislation relating to the proposed scheme of compulsory insurance would necessarily have to deal specially with the law of the United States as stated in *The Kensington.*

Following the analogy of the compensation laws that have been enacted in various States in this country, it seems to your Committee that, if the steamship company is compelled to participate in the scheme of compulsory insurance, and if, as your Committee has indicated, the indemnities to be awarded are ade-

quate compensation for the losses which may be sustained, it is only fair that the steamship companies should be treated with the same consideration as employers under the Workmen's Compensation Laws. Under these laws when the employer pays the provided compensation to the employee he is discharged from further liability in respect of the injury for which compensation is made.

QUESTION No. 5: What indemnity would you propose?

a) In the case of death?

b) In the case of permanent total incapacity?

c) In the case of partial permanent incapacity?

d) In the case of temporary incapacity?

Would the following indemnities appear to you to be sufficient:

Indemnities of the order of £100 for categories (a) and (b), a proportion of this amount for category (c), Frs. 25. (gold) per week for 12 weeks?

ANSWER: a) Your Committee notes that it is suggested that £100 Sterling is a suitable indemnity in the case of death. Your Committee considers that this indemnity is wholly inadequate if it should appear that the decedent is the sole support of a family. Your Committee cannot suggest an alternative sum, because the sum which would be adequate for the nationals of some countries would be wholly inadequate for the nationals of other countries. This is due to the fact that the living conditions and the habits of the emigrants coming from various portions of Europe, not to mention emigrants coming from other continents, vary to such a great degree that it is impossible to fix a figure which would be suitable for all cases. Roughly speaking, however, your Committee considers that an adequate compensation for death in the case of an emigrant should be an annual payment to the decedent's family of £100 for a period of time equal to the expectancy of life of a person of the de-

cedent's age. Any payment short of the figures suggested would fail to meet the only object that can be urged for such a scheme, viz., that the dependents of the decedent be not left in want.

(b, c, d) The same consideration mentioned in answer to sub-section (a) should govern the indemnity to be paid for injuries that fall in these categories. We suggest, however, that it would simplify the administration of the scheme if a definite schedule similar to those incorporated in accident insurance policies, naming a specific sum to be paid in the event of each character of injury, should be adopted.

Who do you consider should pay the cost of this insurance?

The cost should be paid by the emigrant, if the steamship company is not to be relieved from liability. If on the other hand the steamship company is relieved of liability we think that it should pay the premium or a substantial part of it.

QUESTION No. 6: Who would be the beneficiaries of this insurance? Persons appointed by common law, or those categories of persons interested as laid down by the Convention, for example, the beneficiaries nominated by the insured person, his wife and his children, his father and his mother, if he supported them?

ANSWER: The beneficiaries of the insurance should be, the person injured, unless his injury has been so serious as to render him non-compos. In that event they should be his dependents, and, in our opinion, the Convention should define the classes of persons who are to be considered dependents.

QUESTION No. 7: If you approve a scheme of insurance in favour of emigrants only, should not the States set up Insurance Bureaux in favour of their nationals and bear the charges thereof?

ANSWER: In the opinion of your Committee, if the scheme of insurance in favor of emigrants is approved, the only practical way to bring the scheme in force would be for the various States to set up insurance bureaus in favor of their nationals and for such States to bear the charges thereof. We say this be-

cause we think that the expense will, in your Committee's opinion, probably be beyond the means of the emigrants. This would be true no matter whether the premium is paid as such by the emigrant or as an addition to his passage money. It seems to your Committee, however, that the scheme involves an expense to the various States interested which the present necessity does not justify.

What would be the mutual relations of these Bureaux?

Apparently it is contemplated that the insurance is to be taken out by the emigrant in a bureau of the State of which he is a national. As emigration from the United States is negligible, obviously the only relation which a bureau to be set up in this country could have in such a scheme would be to report to the bureau of the State where the emigrant has been insured that, on examination of the emigrant upon arrival here, he was found to be incapacitated, either by injury or by sickness. As emigrants are all examined by the United States Public Health Service before they can be admitted in this country, we can see no occasion for the organization of such a bureau in the United States. If the scheme of compulsory insurance should be approved, we think that a certificate from a medical officer of the United States Public Health Service as to the physical condition of the emigrant at the time of his examination by such officer should be all that the Convention should require from officials of this Government.

Would this scheme give a practical result from the point of view of uniformity of treatment and certainty of result?

If it is intended by the proponents of the scheme that, irrespective of the cause of injury or sickness, the emigrant or his dependents are to receive some form of indemnity, there would obviously be a certainty of remedy; but we have doubt whether uniformity of treatment is desirable. If an emigrant comes from a country where the cost of maintenance is low, we can see no reason for his receiving an indemnity equal to that of an emigrant who comes from a country where the cost of maintenance is greater. Moreover, the fiscal conditions in those countries where the cost of maintenance is low would not war-

rant such a State in paying indemnities equal to those which could be paid in countries where the cost of maintenance is greater, because the public wealth, speaking generally, varies to a considerable extent with the cost of maintenance. Also, if the emigrant himself is to provide the premium money, what might be a possible premium for him to pay in a country of high wages, would be a prohibitive premium in a country of low wages. Indemnity obviously must vary with the premium.

QUESTION No. 8: What will be the procedure for recourse against the third parties responsible:

a) On the part of the carriers who have paid insurance indemnities to the victims;

b) On the part of victims incompletely indemnified?

ANSWER: a) We see no reason why the carrier should be subrogated to the victim as against third persons, unless the carrier has made a payment out of an insurance fund which it may set up for the purpose. If the carrier should take out insurance with underwriters, such underwriters and not the carrier should be subrogated to the victim. In other words, we think that the persons who actually provide the indemnity to be paid for the victim should be subrogated to claims against third persons if any subrogation is to be allowed. We think, however, that no subrogation should be allowed unless the compensation to be paid is abundantly adequate to protect an injured person or the dependents of the decedent from want.

b) In the case of victims being incompletely indemnified, it is suggested that the rule as stated by the Supreme Court of the United States in *The Kensington,* quoted above, should be applied, and that limitations in tickets, as against negligence, should be made unlawful. The emigrant should not only have his full rights as against third persons, but, in the event that the carrier is negligent, his full rights as against the carrier should be preserved.

When we consider the details of the scheme, as set forth above, the practical operation of the scheme appears to us to be fraught with many difficulties. A serious difficulty which we have suggested in answer to some of the questions is that emigrants of the various countries obviously cannot be treated alike. This factor alone seems to us a sufficient objection to an international scheme. Moreover, an international scheme goes a step further than the paternal and essentially national schemes for compensation of employees, and it seems to your Committee that, until these schemes have been more thoroughly tried than they have been at present, it is at least hazardous to extend their operation to international relations.

So far as your Committee has been able to ascertain, the large carrying steamship companies do not favor the scheme, as it would add considerably to the burdens under which they now labor, and they feel that, in so far as their interests are concerned, if insurance protection is desired they can take out such insurance on their own behalf.

It is the opinion of your Committee that the United States Government has already met its problem both from a practical and a humanitarian point of view, when it imposed on steamship companies a heavy penalty for bringing excluded persons to the United States, and by subjecting the steamship company to suit in the Courts of the United States when persons travelling on them are injured by the negligence of the servants of such companies.

Respectfully submitted,

T. CATESBY JONES,
Chairman;
A. B. A. BRADLEY,
JOSEPH P. NOLAN,
J. FRANK STALEY.