

Appendix I 117

# THE MARITIME LAW ASSOCIATION OF THE UNITED STATES.

## COMMITTEE ON DOCUMENTATION OF VESSELS.

February 20, 1925.

The following papers are printed in accordance with a resolution of the Maritime Law Association of the United States passed at the meeting held on February 6, 1925.

1. Report of the Association's Committee on Documentation of Vessels, dated Feb. 6, 1925.
2. Comprehensive Draft Act dated Feb. 1, 1925 to amend the Law of Documenting and Conveyancing of Vessels prepared by the Association's Committee.
3. Memorandum of Comment upon the Comprehensive Act prepared by the Committee.

The new Home Port Act, (Act of Congress Feb. 16, 1925 c. —) will be found in the body of this number of American Maritime Cases. The Home Port Act is the bill H. R. 11884 referred to in the report of this Committee, and passed since the report was made.

These papers are published in order to acquaint the members of the Association with the proposed legislation, and in the hope that all interested will send as soon as possible their comments, suggestions and proposed amendments to the Committee for consideration.

It is hoped that members of the association and others will present their views as fully as possible to the Committee.

Communications should be addressed to the Secretary, 1606 Munsey Building, Baltimore.

JOHN C. ROSE, *Chairman,*  
ADDISON C. BURNHAM,  
MORRIS D. FERRIS,  
FARNHAM P. GRIFFITHS,  
ROSCOE H. HUPPER,  
GEORGE H. TERRIBERRY,  
EMORY H. NILES,

*Secretary.*

# REPORT

## TO THE MARITIME LAW ASSOCIATION OF THE COMMITTEE ON DOCUMENTATION OF VESSELS.

---

February 6, 1925.

Your Committee begs to report that since its report made on May 2, 1924, it has held meetings in New York, Baltimore and Washington, and has conferred with officials of the Department of Commerce and the Shipping Board with a view to proposing legislation which would have the approval of those bodies as well as of the Maritime Law Association.

In the fall of 1924, the Committee was engaged in considering a Draft Act prepared by Mr. Burnham, which Act was intended to cover the whole situation and to be a complete revision not only of the law of documentation but also to clear up certain points of difficulty which had arisen in connection with the Ship Mortgage Act. A draft dated December 22, 1924, was considered by the Committee in a meeting held in Baltimore and was then revised in accordance with the views of the Committee, the second draft being dated January 1, 1925.

Thereafter it appeared that by reason of the fact that the present Congress will adjourn on March fourth, it will be impossible to obtain the passage of a comprehensive bill. It was necessary therefore to abandon hope of obtaining any action at this Session, or else to content ourselves with an emergency bill designed to remedy only the situation arising from the confusion in the law as to the location of the home port and the defining of the home port as the place for recording documents, rather than any port of temporary documentation, and the validation of existing documents based on erroneous home ports and mortgages incidental thereto.

Several drafts of laws were prepared by the Committee, the Shipping Board, the Department of Commerce and others. On January twenty-first, Mr. Edmunds introduced in the House of Representatives a Bill No. H. R. 11817, and on January twenty-second, the Committee met in Washington to consider this Bill and recommend its passage to the House Committee on Merchant Marine and Fisheries. Your Committee was unable to agree at that time that H. R. 11817 was a proper measure to be passed, but, after a meeting with representatives of the Shipping Board and the Department of Com-

merce, agreed upon certain amendments which were embodied in H. R. 11884,\* the terms of which met with the approval of all parties.

On January 24, 1925, representatives of your Committee again brought before the House Committee on Merchant Marine and Fisheries Bill No. H. R. 11884, and urged its passage. The House Committee acted upon the recommendation and reported the Bill favorably. Since this action of the House Committee upon the Bill Mr. Edmunds, Chairman of the Committee on Merchant Marine and Fisheries of the House of Representatives and Senator Jones of the Committee on Commerce of the Senate have expressed their intention of using their utmost efforts to obtain the passage of the Bill at this Session and their hopes that these efforts would prove successful.

The net result of the Bill proposed, if it is enacted into law, will be to give to every ship owner the right of choosing the home port of vessels owned by him, subject only to the approval of the Commissioner of Navigation. Under the new Bill the home port will also be definitely fixed and all documentations which were invalid by reason of an erroneous designation of home port have been validated, subject only to vested rights which have accrued.

Your Committee feels that its labors have by no means been completed. A new draft of the comprehensive Act dated Feb. 1, 1925 has been prepared, and after it has been considered by the Association and the various interests concerned, will be introduced into the next Congress. It is felt, however, that a long step in advance has been taken by the favorable action upon the emergency bill (H. R. 11884), and that by this Bill the most troublesome uncertainty of the present law has been removed.

Your Committee asks the authority of the Association to print and distribute to the members the draft of the comprehensive bill dated Feb. 1, 1925 and H. R. 11884 and a memorandum of comment thereon. It also desires an expression from the Association with reference to its pleasure as to the continuance of the Committee for the purpose of considering and acting upon any suggestions of members or other persons interested as to changes in the draft of Feb. 1, 1925, as prepared.

A copy of H. R. 11884 is hereto annexed and of the draft of the comprehensive bill dated Feb. 1, 1925 will be filed with the Secretary of the Association.

EMORY H. NILES,

*Secretary.*

\* Now the Act of Congress of Feb. 16, 1925, c. —.

# An Act relating to the Documenting of Vessels and Vessel Conveyances and Mortgages and for other purposes.

(February 1, 1925, Draft)

SECTION 1. This act may be cited as the "VESSEL DOCUMENTING AND CONVEYANCING ACT, 1925."

SECTION 2. When used in this act—

(a) The term "vessel" means, according to the context, either (1) any vessel entitled to be registered, or enrolled and licensed, or licensed as a vessel of the United States; or (2) "vessel of the United States."

(b) "Document" means United States register, enrollment and license, or license of a vessel, either permanent or temporary, as may be indicated by the context; "documented" and "documentation" are used with the same meaning.

(c) "Home port" means "home port" as fixed and determined as provided in Section 1 of the Act of Feb. 16, 1925, c. —, subject to the provisions of Section 4 of this act.

(d) "Collector" means collector of customs, and, so far as concerns any acts to be done, includes his duly authorized deputy.

(e) "Ship Mortgage Act, 1920" means Ship Mortgage Act, 1920, otherwise known as Section 30 of the Merchant Marine Act, 1920.

(f) "Recorded" means, so far as concerns rights dependent on recording, extended on the record and indexed, or received by the Collector for recording and indexed.

(g) "Effective date of this act" means the date fixed herein for the act to go into effect.

SECTION 3. The Secretary of Commerce is authorized to designate such ports of entry as he deems advisable as ports of documentation for vessels. All ports of entry which are ports of documentation on the effective date of this act shall continue to be such until discontinued as such according to law.

SECTION 4. The home port of a vessel shall be deemed to have been fixed and determined with the approval of the Commissioner of Navigation under Section 1 of the Act of Feb. 16, 1925, c. —, if so fixed

and determined either in accordance with rules or regulations issued by the Commissioner of Navigation or with his specific approval. No error in the fixing and determining of a home port under rules or regulations issued by the Commissioner of Navigation shall affect the validity of any document issued, provided the port is a port of entry which has been established as a port of documentation; the port shown as the home port in such document shall constitute the home port, but in case of such error the Commissioner of Navigation may order the home port to be changed to conform to such rules and regulations within such time as may be specified in the order after the vessel is next within any port where such documentation as is required can be taken out. If such order is not complied with within such time, or such extension thereof as the Commissioner of Navigation may allow, the owner or owners shall be liable to a penalty of not less than five dollars nor more than twenty-five dollars for each seven days during which such order is not complied with after the expiration of the time allowed.

SECTION 5. The Collector issuing any temporary document shall notify the Collector of the home port shown in the document of the issue thereof, with such particulars as the Commissioner of Navigation may prescribe, and the issue of the temporary document shall be noted of record by the Collector at the home port.

SECTION 6. No permanent new document with a change of home port shall issue until there has (a) either been recorded at the proposed new home port a certificate to be entitled "Certificate for New Documentation," issued by the Collector of the previous home port stating the owners of the vessel and the shares owned by them according to the record of title of the vessel at that port, with such other matter, if any, from the record as the Commissioner of Navigation may by rules or regulations prescribe, or (b) the Collector of the proposed new home port has received telegraphic advice from the Collector at the previous home port as to the owners of record and the shares held by them and that such a certificate has been mailed by him to the Collector receiving such advice. The certificate when received shall be recorded at the new home port. No temporary document with change of home port shall issue until the Collector has been advised by the Collector of the home port on which the document is to be based that a "Certificate for New Documentation" has been recorded, or telegraphic advice received by him, as above prescribed.

In such advice to the Collector at the proposed port of temporary documentation the names of the owners and the shares held by them shall be stated. The Commissioner of Navigation may by rules or regulations prescribe the form of telegraphic advice provided for in this section and any other conditions to be complied with in connection therewith.

The "Certificate for New Documentation" shall issue on the request of the owner of record or, if there is more than one owner, of the managing owner, or of owners of more than a half interest. It shall, when issued, be noted on the record. After the issuing of such certificate no further instruments, except notices of claims of lien, shall be recorded prior to new documentation except on instructions from the Commissioner of Navigation.

SECTION 7. (a) No bill of sale, conveyance, mortgage, hypothecation (except bottomry created during a voyage by a loan of money or materials necessary for the prosecution of the voyage), or assignment of a mortgage, which includes a vessel of the United States or any portion thereof, shall be valid in respect to such vessel against any person other than the grantor, mortgagor, hypothecator or assignor, respectively, and his legal representatives and devisees on his death, and any person having actual notice thereof, until such bill of sale, conveyance, mortgage, hypothecation or assignment is recorded at the office of the Collector of Customs of the home port of the vessel.

(b) On change of ownership in whole or in part, the place for recording any bill of sale or conveyance of the whole of the vessel, and any bill of sale or conveyance of any part of the vessel first presented for recording, shall be the office of the Collector of the home port of the vessel shown in the last document outstanding issued to the grantor or to the grantor and others as part owners.

(c) After the recording of a bill of sale or conveyance as provided in (b) there may be recorded at the same office (1) prior to the issuing of any new document any notices of claims of lien, and (2) prior to the issuing of any "Certificate for New Documentation" any bills of sale or conveyances or mortgages of any interest of any owner as shown by the vessel's last document, any mortgage by any vendee named in any bill or bills of sale or conveyances which have been recorded, provided such mortgage is presented for recording concurrently with any bill of sale or conveyance so recorded, and any assignment, discharge or release or partial discharge or release of any mortgage or claim of lien on the vessel or any part thereof.

(d) Except as provided in subdivision (e) hereof there shall, as a condition of the right to record any bill of sale or conveyance, either be incorporated in the instrument and recorded therewith or separately recorded therewith an affidavit of the vendee showing such United States citizenship as to entitle him, or him together with the other owners of record, to United States documentation for the vessel; and as a condition of the right to record any mortgage or assignment of mortgage there shall be similarly recorded an affidavit of the mortgagee or assignee showing United States citizenship qualifying him to take such mortgage, or, if there is not such citizenship, such approval of the United States Shipping Board as entitles him to take such mortgage.

(e) There may be recorded at the office of the Collector of the home port of a vessel as shown in her last document any bill of sale or conveyance of the whole of the vessel to a grantee who is not a citizen of the United States, provided there is recorded therewith the approval of the United States Shipping Board to such sale or conveyance and also, if there are any mortgages, hypothecations, or claims of lien of record on the vessel, the consents in writing, duly acknowledged, of the holders of all such mortgages, hypothecations, and claims of lien, and provided the outstanding document is concurrently surrendered.

(f) On any recorded change of ownership in whole or in part, no instruments other than as above provided shall be recorded until new documentation and in accordance with such documentation.

(g) On any documentation of a vessel which at the time when title was acquired was not under United States documentation any bills of sale or conveyances upon which title is based shall be recorded at the office of the Collector of the home port of the vessel according to the document to be issued.

(h) The Collector shall record all such instruments which are herein provided to be recorded on compliance with the conditions stated and on payment of recording fees.

SECTION 8. The vessel's last document and the status of the vessel as a vessel of the United States thereunder shall continue in force for the purpose of bills of sale, conveyances, mortgages and instruments and the recording thereof specified in Section 7 of this act, but for no other purpose after change of ownership in whole or in part except as so continued under other provisions of law. The document to be

recited in any such bill of sale, conveyance and mortgage shall be the last document issued for the vessel. If a mortgage so recorded is a preferred mortgage the indorsement thereof on the vessel's last document or, if for any reason not so indorsed, on any new document issued, shall constitute an indorsement under, and a full compliance with the indorsement provisions of, the Ship Mortgage Act, 1920.

SECTION 9. Section 4192 of the Revised Statutes and subdivision (a) of Subsection C of the Ship Mortgage Act, 1920, and Section 2 of the Act of Feb. 16, 1925, c. —, are hereby repealed and the provisions of Section 7 of this act substituted in the place thereof.

SECTION 10. When the title of a vessel or any interest therein has passed by will or descent there may be filed with the Collector at the home port of the vessel as shown by her last document a certified copy of that portion of the record of the court where the will was probated or the estate administered which establishes the vesting of title in the legatee or distributee. Such certified copy shall be retained on file and shall be open to examination, and such portion thereof as is pertinent to the passing of title shall be recorded with a reference sufficient for identification to the certified copy of the court record on file. There may be a similar filing and recording of the record of any other court proceedings by which any interest in a vessel of the United States is transferred. The provisions of law as to the recording of conveyances of vessels shall apply to such transfers except that no recording shall be necessary to the vesting of a title good as against all persons on a sale of a vessel on proceedings *in rem* in admiralty. In any bill of sale given by a United States marshal of a vessel of the United States there shall be recited in the bill of sale either the last document of the vessel or the vessel's official number, if such document or number is available to the marshal, but any failure so to do shall not affect the validity of the bill of sale or the right of the purchaser to have the bill of sale recorded.

SECTION 11. The presence of a vessel at her home port shall not be necessary to the issue of a permanent register, enrollment and license, or license, but the same may be issued while the vessel is in any port of documentation of the United States; oaths required to be taken for either temporary or permanent documentation and all other acts required to be done as incidental to such documentation may be taken or done before, or at the office of, the Collector at any port of



documentation of the United States, except that the signing of the document shall be by the Collector at the port from which it issues; such document may be issued on advice, telegraphic or otherwise, from Collectors of other ports of documentation as to oaths which have been taken and the acts which have been done at said ports and, where documentary evidence of such acts is required, stating that such documentary evidence has been mailed, and subject to such other conditions if any, as may be prescribed by the Commissioner of Navigation.

SECTION 12. The surrender of any outstanding document may be made at the office of the Collector at any port of documentation of the United States; if the surrender is at any port other than that from which the new document is to issue, the Collector at whose office the document is surrendered shall advise the Collector of the port from which a new document is to issue of such surrender and also the Collector from whose office the surrendered document was issued, who shall note the surrender on his record; such advice may be by telegram; a surrender when advised to the Collector of the port from which a new document is to issue shall have the same effect as if the surrender were made at that port. When a document is surrendered, its surrender shall be noted on the document and the document shall then be forwarded directly to the Commissioner of Navigation for cancellation.

SECTION 13. Section 4166 of the Revised Statutes is hereby amended to read as follows:

“When any vessel documented under the laws of the United States, or any part of such vessel, is sold or transferred to a citizen of the United States qualified to hold title in the vessel as a vessel of the United States, while she is without the limits of the United States, her last document and her status as a vessel of the United States thereunder shall continue in force, for the operation of the vessel and otherwise, until seven days, or any extension thereof as hereinafter provided, after her arrival at any port, other than a port of emergency call, where she can be newly documented in accordance with the laws of the United States under her new ownership. The Commissioner of Navigation may extend said period of seven days by permit issued either by him or by his order by the Collector at the home port as shown in the vessel's last document. Such permit shall be noted by the

Collector on the record of title of the vessel. The provisions of Section 4170 of the Revised Statutes shall not apply while the document and status of the vessel is continued as provided in this section. The Commissioner of Navigation shall by rule or regulation prescribe what shall constitute a port of emergency call hereunder."

SECTION 14. Whenever a vessel of the United States is to be altered in form or burden, by being lengthened or built upon, or from one denomination to another, by the mode or method of rigging or fitting, there may be issued, either by the Commissioner of Navigation or by his order by the Collector at the home port as shown in her last document, a permit for the document of the vessel and her status as a vessel of the United States thereunder to continue in force for all purposes, other than the operation of the vessel, for such time as is specified in the permit or any extension thereof thereafter granted. Such permit and any extension of time thereunder shall be noted by the Collector on the record of the vessel's title. During the time allowed under such permit the status of the vessel as a vessel of the United States shall continue for said purposes, including those specified in Section 8 of this act, and the provisions of Section 4170 of the Revised Statutes shall not apply during such time.

SECTION 15. (a) A vessel owned by a corporation shall be documented directly in the name of the corporation with the same force and effect as if the document were issued to an individual owner. Such affidavit as is required for the recording of any instrument and such oath of citizenship as is required for documentation shall be by such officer or agent of the corporation as is permitted by law to make oath of ownership. If under the laws of the state of incorporation a secretarial officer bears the title of clerk such officer shall be deemed to be included within the term "secretary," and "vice-president" shall be deemed to be included within the term "president," and such clerk and vice-president are included among the officers permitted by law to make affidavits and oaths of ownership and citizenship.

Any vessel document outstanding on the effective date of this act issued in the name of a corporation or the president or secretary of a corporation shall, from and after said date, if the corporation on said date has the qualifications required by law for it to hold title to the vessel and operate her as a vessel of the United States in the trade

designated by the document, have the same force and effect as if said document had been, immediately upon this act going into effect, duly issued to the corporation, and the prior or subsequent death, removal, resignation or disqualification of the officer to whom the documentation was issued shall not affect the validity of said document.

(b) A vessel owned by a partnership shall be documented in the name of the partners as partnership owners. If a vessel is owned by an unincorporated association or trust and there are trustees or other representatives of the association in whom, according to the agreement of association or trust or by statute title to property held by the association or trust vests, the vessel shall be documented in the name of such trustees or representatives and documented anew in case of change, otherwise in the name of the members of the association jointly, with new documentation on change of membership.

(c) In the case of a partnership such affidavit as is required for the recording of any instrument and such oath of ownership and citizenship as is required for documentation shall be by one or more of the partners or by an agent of the partners duly authorized by power of attorney in writing. In the case of an unincorporated association such affidavit and oaths shall be by the chief or vice chief executive officer of the association or by its chief secretarial officer, or, in the case of a trust, by one of the trustees.

(d) When the documentation is merely a change as between permanent or temporary documentation or between registry, enrollment and license, or license, or incident to a change of home port, all without change of ownership, the oaths of ownership, citizenship of the owners, and as to such other matters as are required by law, may be made by the master, whether the vessel is individually owned or owned by a corporation, partnership or unincorporated association or trust.

SECTION 16. Sections 4137, 4138, 4313 and 4315, as amended, of the Revised Statutes are hereby repealed, but such repeal shall not affect or impair the validity of any document issued prior to the effective date of this act to a corporation or to any president or secretary of a corporation or the continuance of such documentation as provided by Section 15 of this act as a documentation running to the corporation. Subject to any right or title which on the effective date of this act has vested or accrued, all documents which prior thereto have been issued to any corporation or to the president or secretary of any corporation, and all conveyances and mortgages and the re-

cordings thereof duly based on such documentations, and proceedings incidental thereto, shall, notwithstanding the death, removal, resignation or disqualification of such officer, have full force and effect as of the dates thereof, provided the corporation was otherwise qualified to hold the title or interest in the vessel as a vessel of the United States.

SECTION 17. If a documentation is defective on account of the failure to comply with the formalities prescribed by law for such documentation, or if a vessel after documentation loses her status as a vessel of the United States because of any failure on the part of her owner or owners to observe or comply with any provision of law, the Secretary of Commerce may so notify the Collector at the home port of the vessel, and there shall be notation thereof made by the Collector on the record of the title of the vessel.

Rights of third parties acquired after the effective date of this act in good faith and for value in a vessel for which a document is outstanding shall, in the absence of such a notation on the record of the title of the vessel at the time of the acquisition of such rights, not be affected or impaired because of such defect in documentation or loss of status prior to the acquisition of such rights, and the vessel, so far as concerns the rights of such third parties and the taking by them of any bill of sale, conveyance or mortgage thereon or assignment of mortgage, and the recording thereof and the indorsement of any preferred mortgage so taken, shall be deemed to have the status of a vessel of the United States under the outstanding document. Provided, however, that such rights shall be subject to any existing liability of the vessel to forfeiture for violation of any laws of the United States, other than those relating to the documentation of vessels, except in so far as the interest of the holder of a preferred mortgage is free from such liability for forfeiture under the provisions of subdivision (c) of Subsection O of the Ship Mortgage Act, 1920.

SECTION 18. If a vessel loses her status as a vessel of the United States for failure to observe or comply with any provision of the navigation laws, except those rendering the vessel liable to forfeiture, the Secretary of Commerce may restore her status on the payment of all penalties imposed by law which have not been lawfully remitted, and on such other terms and conditions, if any, as he may prescribe, provided that the vessel is so owned and the conditions in other respects are such that she would be entitled to such status, except for such failure. This section shall not preclude the restoration of a vessel to

the status of a vessel of the United States in any other manner permitted by law.

SECTION 19. On the request of any party claiming a title or interest in a vessel according to the record of title of said vessel at any port there shall, for the purpose of enabling such title or interest to be perfected, be issued by the Collector at said port an attested certificate of the record of title of the vessel at said port to be entitled "Certificate to Perfect Title." Such certificate may be recorded at the office of the Collector of the then home port of the vessel and on such recording all instruments which were recorded at the office of the Collector issuing such certificate, and the recordings thereof, and all documentations of the vessel at said port and indorsements of preferred mortgages shown by such certificate, and proceedings incidental to such documentations, shall have the same force and validity as if said instruments had been recorded and documentations issued, indorsements of preferred mortgages made and incidental proceedings taken at a port or ports at which they could, at the times thereof, have been recorded, issued, made or taken with full effect and validity; provided, however, that no rights or title which at the time of the recording of such certificate have accrued or vested shall be impaired or affected by the provisions of this section.

By "certificate of record of title" as used in this section is meant a certificate of all matter of record affecting or relating to the title of the vessel or claims thereon, with dates of instruments, names of parties and of shares or interest covered thereby, time of recording of instruments, dates of issue of documents, time and particulars of indorsements on documents, and such other particulars if any as the Commissioner of Navigation shall prescribe.

This section is in supplement of and not in limitation of Section 3 of the Act of Feb. 16, 1925, c. —, and no validation under that section shall be in any respect affected or impaired by any provision of this section.

SECTION 20. Subject to the exceptions and provisos of the subdivisions of this section no bill of sale or conveyance of the whole or any part of a vessel covered by a preferred mortgage which has been given after the effective date of this act shall become of force or validity or be recorded, nor shall the document of said vessel be surrendered, without the approval of the United States Shipping Board and the consent in writing of the holder of record of the preferred

mortgage acknowledged by him and recorded at the office of the Collector of the home port of the vessel as shown in her last document. The Collector shall record such consents.

(a) Such approval of the United States Shipping Board shall not be required in case of a forfeiture of the vessel or its sale by order of any court of the United States or of any foreign country, nor to a surrender of document incident to new documentation without change of ownership, nor to any sale, conveyance, transfer, or mortgage to parties shown by affidavit filed or recorded as provided in Section 7 of this act to be citizens of the United States qualified to take such title or interest in a vessel of the United States, nor to any surrender of document incident to new documentation on any such change of ownership, nor to any recordings incident to any transactions to which approval is not required.

(b) Such consent of the holder of the preferred mortgage shall not be required in case of a forfeiture of the vessel or its sale by order of any court of the United States or of any foreign country, nor to surrender of document incident to new documentation without change of ownership, nor to the giving of any subsequent mortgage subject to the preferred mortgage, nor to the passing of title by will or descent or the surrender of the outstanding document incident to new United States documentation required because of such passing of title provided the new owners are citizens of the United States qualified, as shown by affidavit filed or recorded as provided in Section 7 of this act, to so document the vessel and the surrender is made concurrently with such new documentation, nor to any sale or conveyance or surrender of document pursuant to any decree or decision made or rendered as provided in subdivisions (c) or (d) of this section, nor to any recordings incidental to transactions to which such consent is not required.

(c) If the holder of the preferred mortgage refuses to consent to any sale or conveyance which would be invalid without such consent under the foregoing provisions, a bill in equity may be brought by the owner against said holder in any District Court of the United States in which said holder resides or has a usual place of business, setting forth the name and official number of the vessel, the preferred mortgage, and the name, residence and citizenship of the proposed grantee and the refusal of the said holder to give his consent to the proposed conveyance and praying that the amount which is secured by the preferred mortgage may be determined and adjudicated and

that it may be ordered and decreed either that the preferred mortgage be discharged on the payment of said amount or that the sale or conveyance may be made without the consent of the preferred mortgage holder.

If in such proceeding it appears to the court that justice and equity so require, the court may (a) either determine the amount secured by the mortgage and order and decree that it be discharged on the payment of such amount within a specified time after the decree becomes final, with interest at the rate fixed in the mortgage to the date of payment, or (b) if the court is satisfied on evidence submitted that the proposed grantee is a citizen of the United States qualified to document the vessel as a vessel of the United States, and that no injury or disadvantage will result to the holder of the mortgage from the proposed sale or conveyance, may order and decree that such sale or conveyance may be made and the outstanding document surrendered without the consent of the holder of the mortgage provided a bill of sale to the proposed grantee is given and recorded and the vessel newly documented under the laws of the United States as hereinafter specified.

On such decree becoming final a certified copy of the same together with a bill of sale to the grantee named in the bill of complaint, may, subject to the conditions imposed by law for the recording of bills of sale, be recorded within fifteen days after the date when the decree becomes final not including said date; thereupon, upon compliance with requirements of law for documentaion, the vessel may be documented in the name of the grantee with a concurrent surrender of the previous document, provided there is such surrender and issue within seven days after the date of such recording not including said date.

Such bill of sale so recorded shall be of full force and effect subject only to the condition, as a condition subsequent, that if the outstanding document is not surrendered and new documentation issued as hereinbefore provided within said seven days, the bill of sale shall become void and of no effect. In any certificate or telegraphic advice incident to the issue of a new document as provided in Section 6 of this act the Collector shall state the date of the recording of the bill of sale and copy of the decree. If the outstanding document is not so surrendered and new documentation issued within the required time the Collector of the port where the bill of sale is recorded shall, on advice from the Commissioner of Navigation, so note on the record of the vessel's title; the grantee shall also in such case, on request of

either the grantor or the holder of the preferred mortgage, execute, acknowledge and deliver a release of interest in the vessel and the same may be recorded at the office of the Collector of the home port of the vessel. There shall be jurisdiction in equity in the District Court of the United States where the grantee resides or has a usual place of business to compel the execution and delivery of such a release on the complaint either of the grantor or of the holder of the preferred mortgage.

Any bill in equity brought against the holder of the preferred mortgage as provided in this section and any appeal from any decree therein, shall, on application of either party, be advanced for speedy hearing.

Jurisdiction in equity is hereby conferred upon the District Courts of the United States for the purposes herein provided.

(d) The owner of the vessel and the holder of the preferred mortgage may, in lieu of a proceeding in equity, by agreement in writing, signed and acknowledged by them, submit to final arbitration by any person or persons named in the agreement the matters which the court is authorized to determine and adjudicate as hereinbefore provided, the decision of the arbitrator or a majority of the arbitrators in such case to be final and binding on both parties.

Such agreement shall specify the proposed grantee, with his residence and citizenship, and shall identify the vessel by her name and official number and the mortgage by date and port and date of record, and names of parties to the mortgage. Said agreement, or, if executed in original counterparts, one or more of such counterparts, shall be lodged with the arbitrator or arbitrators. Any decision rendered shall be in writing and shall be dated, signed and acknowledged in duplicate by the arbitrator or a majority of the arbitrators, and a signed and acknowledged copy delivered promptly to each of the parties. If the decision is that the sale or conveyance may be made without the consent of the mortgagee, the executed agreement for arbitration, or one of the original executed counterparts, lodged with the arbitrator or arbitrators, shall be attested by the arbitrator, or a majority of the arbitrators, and delivered with the decision to the owner of the vessel. The decision, together with the attested agreement for arbitration, and a bill of sale to the grantee may thereupon, within ten days after the date which the decision bears, not including said date, be recorded in the same manner and subject to the same conditions and with the same effect as is provided in subdivision (c)



of this section as to the recording of the bill of sale and certified copy of a final decree of the court; and thereupon the owner and specified grantee and the holder of the preferred mortgage shall have the same rights and be under the same obligations as are provided in said subdivision when the certified copy of the decree and the bill of sale have been recorded. Any decision that the mortgage may be discharged shall be subject to the same conditions as are specified in said subdivision (c) as to a discharge, and shall be binding on the parties.

(e) Any requirement for the consent of the holder of the preferred mortgage may be waived in whole or in part by express waiver in the mortgage. The rights and remedies given by subdivisions (c) and (d) of this section shall apply also to any provisions contained in the mortgage as to consent of the mortgagee to a sale or conveyance by the owner of his interest. Except for such waiver as there may be in the mortgage of any statutory requirements for consent of the mortgagee, the provisions of this section shall constitute statutory conditions of any preferred mortgage given after the effective date of this act which cannot be waived.

SECTION 21. Portions of the Ship Mortgage Act, 1920, are hereby amended or repealed as follows:

(a) The word "documents" wherever it appears in said act is hereby amended to read "document."

(b) Paragraphs (1), (2) and (3) of Subsection B are hereby repealed and there is substituted therefor the following:

" 'Document' means United States register, enrollment and license, or license, either permanent or temporary as may be indicated by the context, and 'documented' and 'documentation' are used with the same meaning."

(c) Paragraph 4 of Subsection B is hereby amended to read as follows:

"The term 'vessel of the United States' means any vessel documented under the laws of the United States, including, so far as relates to rights hereafter acquired by third parties in good faith and for value, any vessel for which a United States document is outstanding, unless at the time of such acquisition there is on the record of the vessel's title at her home port as shown in said document a notation that the document is defective or that the vessel has lost her United States status thereunder. Whenever the approval of the United States Shipping Board or the

consent of the holder of a preferred mortgage is required for the surrender of a document, the outstanding document shall continue in force for the purposes herein stated until the required approval and/or consent has been given. The continuance herein provided for is for the effective enforcement of the requirements for such approval or consent and to preserve the United States status for the protection of the interest of the mortgagee, and shall not be construed as conferring on the owner any right to continue to operate the vessel, or any other right, which he would not otherwise have."

(d) Paragraph (2) of subdivision (a) of Subsection D is hereby amended by inserting therein after the word "recorded" the words "or received by the Collector for recording and indexed on the record of the vessel's title."

(e) Paragraph (3) of subdivision (a) of Subsection D is hereby amended by inserting after the words "filed with the record of such mortgage" the words "or attached to such mortgage and to be recorded therewith," and by adding at the end of said subdivision the words

"such affidavit shall be by the mortgagor, or, if the mortgagor is a corporation, by its president, vice-president or secretarial officer or by any officer or agent authorized by vote of its board of directors to make such affidavit in its behalf; or, if the mortgagor is an unincorporated association or trust, it shall be by its president, vice-president, secretarial officer or one of the trustees."

(f) Subdivision (d) of Subsection D is hereby amended to read as follows:

"Such indorsement shall be made (1) by the Collector of the port where the mortgage is recorded according to law, or (2) by the Collector of any port of the United States in which the vessel is found, if such Collector is directed to make the indorsement by the Collector of the port of recording, or (3) if the vessel is found in a foreign port, by the United States consul at that port if so directed by the Collector of the port of recording; and, if the vessel is found in a port of the United States, no clearance shall be issued to the vessel until such indorsement is made. The Collector of the port of recording shall give such direction by letter or by wire. Whenever any new document is issued for the

vessel, such indorsement shall be transferred to and indorsed by the Collector upon the new document."

(g) Subdivision (a) of Subsection G is hereby amended by striking out therein the words "port of documentation" and inserting in the place thereof the words "home port of the vessel as shown in her last document" and by striking out therein the words "covered by a preferred mortgage."

(h) Subdivision (b) of Subsection G is hereby repealed and there is hereby substituted in the place thereof the following:

"Upon the discharge of the indebtedness secured by a mortgage on a vessel the owner of the vessel shall be entitled to have from the holder of the mortgage an instrument of discharge duly executed and acknowledged by such holder. Such discharge shall be promptly recorded by the owner, and the owner or owners shall be subject to a penalty of not less than five nor more than twenty-five dollars a day for failure so to do, but with the right in the Secretary of Commerce to remit such penalty for good cause shown. If the mortgage is a preferred mortgage the Collector upon such recording shall indorse on the vessel's document, or direct the Collector at any port where the vessel is found to indorse, the fact of such discharge, and the vessel shall not be cleared until it is so indorsed."

(i) Subdivision (b) of Subsection H is hereby amended by inserting therein after the word "mortgage" the words "hypothecation, assignment of mortgage, discharge of mortgage," and by adding at the end thereof "except that the certification of any copy of a court record by virtue of which any interest in a vessel is transferred shall be in lieu of such acknowledgment."

(j) Subdivision (c) of Subsection H is hereby repealed.

(k) Subsection I is hereby amended by striking out therein the words "a certified copy as required by subdivision (c) of Subsection H" and inserting in the place thereof the words "a certificate, or, if so requested, a certified copy, of the record of title of the vessel at said port or of such portion thereof as may be requested."

(l) Subsection L is hereby amended by adding at the end thereof the following:

"In any proceeding *in rem* in admiralty against the vessel the holder of any preferred mortgage may intervene for the pro-

tection and enforcement of his mortgage lien. If the court is satisfied from the record, or on a preliminary hearing, that the rights of all parties who have appeared in the proceeding are subordinate to the lien of the preferred mortgage, the holder of the preferred mortgage shall, if so prayed for in his intervening petition, have the same rights as to foreclosure, including the appointment of, and operation of the vessel by, a receiver, as if the mortgagee were proceeding by an original libel *in rem* for foreclosure."

(m) Subdivision (a) of Subsection O is hereby amended by adding at the end thereof the following:

"Provided, however, that no such approval or consent shall be required to any surrender of document incident to new documentation without change of ownership, nor shall any approval of the board be required to a surrender of document on a sale of the vessel or any part thereof to a citizen of the United States qualified to hold title in the vessel as a vessel of the United States, if there is recorded at the home port of the vessel as shown in her last document a consent in writing to such sale acknowledged by the holder of record of the preferred mortgage. Such consent shall be recorded by the Collector as a part of the record of the vessel's title."

(n) Subdivision (b) of Subsection O is hereby amended by adding at the end thereof the following:

"Nor shall the interest of the mortgagee in the vessel as a vessel of the United States be affected or impaired by any act or omission to act of the owner, or his representatives or agents, by which the vessel loses, so far as concerns said owner, her status as a vessel of the United States, and the vessel shall, notwithstanding such act or omission to act, continue to have such status under her last document so far as concerns the right and interest of the mortgagee therein, including the right to enforce and foreclose the mortgage as a preferred mortgage on a vessel of the United States and to have her newly documented as such a vessel on a sale thereof on foreclosure, unless the mortgagee was a party to or authorized or consented to such act or omission. Provided, however, that nothing herein contained shall be construed to authorize or permit the operation of the vessel by

the mortgagee, after such act or omission of the owner, as a vessel of the United States until she has been newly documented or restored to full status as a vessel of the United States."

SECTION 22. The provisions of subdivision (a) of Subsection O of the Ship Mortgage Act, 1920, as amended by this act, shall continue in effect only as to the surrender of a document of a vessel covered by an outstanding preferred mortgage given before the effective date of this act, and as to approval and consent required because of the vessel being so covered, the provisions of Sec. 20 of this act being substituted therefor as to any preferred mortgage given after the effective date of this act.

SECTION 23. That portion of subdivision (c) of Subsection O of the Ship Mortgage Act, 1920, which reads as follows:

"but the court shall, upon the request of the mortgagee, the libellant, or any intervenor, require the purchaser at such sale to give and the mortgagor to accept a new mortgage of the vessel for the balance of the term of the original mortgage. The conditions of such new mortgage shall be the same, so far as practicable as those of the original mortgage and shall be subject to the approval of the court. If such new mortgage is given, the mortgagee shall not be paid from the proceeds of the sale and the amount payable as the purchase price shall be held diminished in the amount of the new mortgage indebtedness"

shall have no application to any preferred mortgage given after the effective date of this act and there shall be no rights or obligations under said portion of said subdivision as between the holder of such a preferred mortgage and other parties; and said subdivision (c), so far as relates to any preferred mortgage given after the effective date of this act, is hereby amended to read as follows:

"(c) Upon the sale of any vessel of the United States covered by a preferred mortgage, by order of a district court of the United States in any suit *in rem* in admiralty for the enforcement of a maritime lien other than a preferred maritime lien, the vessel shall be sold free from all pre-existing claims thereon."

SECTION 24. The following fees shall be paid: For, etc.

(Determine upon fees in conference with Commissioner of Navigation and fill in.)

Other fees shall be as now provided by law. All fees for certificates

and recordings and all charges for telegraphic communications shall be paid to the Collector in advance by the party requesting the same.

SECTION 25. Any provisions of the statutes of the United States which art inconsistent with any of the provisions of this act are hereby amended to conform therewith.

SECTION 26. This act shall go into effect at the end of the thirtieth day after its approval exclusive of the day of its approval.

---

## COMMITTEE'S COMMENT ON DRAFT SUBMITTED OF "VESSEL DOCUMENTING AND CONVEY- ANCING ACT, 192 ."

SECTION 2. Definition of "Recorded." The recording provisions of the Ship Mortgage Act, 1920 (subdivision (a) of Subsection C in conjunction with subdivision (b)) are open to the construction that the instrument must be extended on the record before there is a recording which protects the grantee. The instrument is frequently not so extended when received for recording and often not for some time. The instrument can be indexed at once and it is possible for the grantee to see that this is done; such indexing gives sufficient notice to an examiner of title. "Recorded" is therefore defined, so far as concerns rights dependent on recording, as "extended on the record and indexed or received for recording and indexed.

SECTION 4. This section, to be read in connection with Section 1 of the Home Port Act of Feb. 16, 1925, a. —, makes clear that the Commissioner of Navigation may give specific approval to a selection of home port, thus providing for cases where, because of special circumstances, the vessel might be seriously delayed in documentation based on a home port fixed according to rules and regulations. It also provides that any error on the part of the owner and Collector in fixing the home port under rules and regulations shall not invalidate the document, thus avoiding the possibility of the same situation as to invalidity of documentation arising under Section 1 of the Act of Feb. 16, 1925, as arose under R. S. 4141, *The Susana*, 1924 A. M. C. 1389, 2 F. (2d) 410. In case of such error the Commissioner may, however, require the documentation to be changed under a penalty, thus preventing the continuance of freak and undesirable documentations.

SECTION 5. Under this section there will be gotten on to the home port record, when the vessel is documented temporarily, the necessary information for the home port collector.

SECTION 6. This section is to assure to the Collector both at a new home port and at any port of temporary documentation the necessary information for the issuing of the document. Telegraphic advice is provided for to avoid delay to the vessel in documentation. The provision for closing the record on the issue of a "Certificate for

New Documentation" is to preclude the recording of instruments which might alter the situation as to title and new documentation after the certificate is issued. The provision for permitting the record to be reopened on instructions of the Commissioner is to cover a case where for any reason it may be necessary to proceed differently as to new documentation.

SECTION 7. This section makes a fundamental change in the previous practice under *White's Bank Case*, 7 Wallace 646, in that it provides for the recording of any bill of sale of the whole of the vessel, or of any part first recorded, at the home port of the vessel under the grantor's ownership.

The reasons for this proposed change are (1) that under the present law, requiring the recording at the port of new documentation, it is difficult to avoid a possible defeat of the grantee's title, as, for example, by a mortgage put on record at the old home port after the latest advice which the grantee can get at the new home port as to the title at the old home port; even if the grantee arranges for telegraphic advice there may be offered for record, after such advice, at the old home port and before the bill of sale is actually recorded a mortgage which was taken in good faith and which the Collector could not properly refuse to record. (2) The provision for recording at the old home port, with some supplemental provisions, makes it possible to provide readily for a conveyance and a good recording of a bill of sale of a vessel when at sea or undergoing alterations, which cannot be done under existing law. (3) The change also eliminates the awkwardness which there is under existing law as to the giving of a mortgage to a party supplying a part of the purchase money on a mortgage to be given by the grantee. If the document running to the new owner is required, under existing law, to be recited in a mortgage given by the grantee, *Mitchell vs. Taylor*, 34 Me. 434, there is, under existing law, a gap between the time when the mortgagee must part with the money and the mortgage can be recorded.

The proposed change requires, however, the satisfactory working out of some supplemental provisions as follows:

(1) In order to admit of a purchase money mortgage by the grantee such mortgage also must be permitted to be recorded at the old home port.



(2) After a bill of sale of a part of the vessel is recorded bills of sale of other parts must be permitted to be recorded at the old home port to enable the title of the whole vessel to be brought together of record in one grantee.

(3) In lieu of the oaths incident to new documentation by which, under existing law, the citizenship and right of the grantee to documentation and the right of recording are established, some other provisions must be made to establish such citizenship and right.

(4) While it is necessary that provision should be made for the recording at the old home port of some instruments in addition to a bill of sale of the vessel, the right to so record should not be left unlimited as to such recordings by successive grantees, as the vessel, even if owned by a citizen of the United States, may never be redocumented and may remain indefinitely as a mere chattel. It would be manifestly improper to permit of continuous recordings, under the laws of the United States, of a vessel thus indefinitely kept in the status of a chattel.

Subdivisions (b) and (c) and (d) are intended to draw a satisfactory line between what may and what may not be so recorded at the old home port.

In further comment on SECTION 7. "Hypothecation" (except bottomry), which was included in R. S. Section 4192 as requiring recording but left out of subdivision (a) of Subsection C of the Ship Mortgage Act, 1920, is restored; if for instance there is a pledge of the vessel with possession, such pledge should be recorded as notice of record to anyone taking title to a vessel; assignments of mortgages are also included for the same reason. While recording of other instruments at the old home port are limited to the time when a "Certificate for New Documentation" is issued, the recording of claims of lien is permitted up to the time when new documentation is actually issued in order to prevent such lien claimant from being cut out of the protection given by Subsection K of the Ship Mortgage Act, 1920, by the taking out of a "Certificate for New Documentation" not followed up by new documentation. Provision is made in subdivision (e) for the recording of a bill of sale not to a citizen of the United States, subject to the conditions stated, in order to establish of record the termination of the grantor's title and to cut

off the possibility of a later sale to another party taking title on the strength of an apparent record title, with resulting loss to one of two innocent parties, or an attachment by a creditor of the grantor on the strength of such apparent title.

SECTION 8. This section, in supplement of Section 7, continues the vessel's document and United States status for the purposes of the conveyances, etc. and recordings thereof provided in Section 7 but for no other purpose.

SECTION 10. This section makes provision for getting on the record the passing of title by operation of law or through court proceedings. At present marshal's bills of sale often do not recite the vessel's last document or identify her by number. There are frequently two or more vessels of the same name and sometimes of the same rig. The provision as to marshal's bill of sale are intended to eliminate so far as is practicable without impairing in any respect the unconditional effect of a sale *in rem*, the clouding of title which may occur as between two vessels of the same name.

SECTIONS 11 and 12. These sections are to enable documentation, permanent or otherwise, to be taken out with increased ease and promptness, by removing restrictions now existing as to the port where certain formalities may be carried through.

SECTION 13. The amendment of R. S., Section 4166, is (1) to extend to more reasonable limits the time during which the United States status of a vessel shall continue without new documentation after a sale made when the vessel is without the limits of the United States; (2) to make the status good for the purpose not only of the bill of sale and the recording thereof but of any mortgage given by the vendee, and the recording thereof, as provided in Section 7, instead of making the status, and therefore the mortgage, liable to be defeated, as a condition subsequent, by the failure of the vendee to take out new documentation, see *Davidson vs. Gorham*, 6 Cal. 343, under R. S., Section 4166 as it now reads. The amendment also extends the provisions to enrolled or licensed vessels as well as to registered vessels; (3) under existing law and Section 4166 as it now reads it is not clear as to what recording, if any, would make valid a bill of sale of a vessel when without the limits of the United States, and if *Davidson vs. Gorham* is sound law no mortgage can be taken from the purchaser with any assurance of validity. With the amend-

ment the recording of the bill of sale will be as provided under Section 7 and a good mortgage under Sections 7 and 8 be given by the vendee with a valid recording provided for.

SECTION 14. This section is to enable conveyances and mortgages to be given and recorded as provided in Section 7, with validity, while a vessel is being enlarged or altered prior to the new documentation required by R. S., Section 4170.

SECTION 15. (a) This is to permit of documentation directly to a corporation of a vessel owned by it and to give to documentations under prior law automatically as of the effective date of the act the effect of a legal documentation directly to the corporation.

(b) and (c) make provisions now lacking in the law as to documentations to partnerships and unincorporated associations or trustees.

(d) This is to give clear statutory authority for the redocumentation of vessels on changes between classes of documentation or from permanent to temporary or vice versa on oath of the master according to practical necessity.

SECTION 16. The provisions of existing law requiring new documentation of a vessel owned by a corporation on change of the corporate officer has in practice largely been disregarded. This section validates, subject to any rights which have vested or accrued, documentations which may be invalid because of such failure, or which have been issued directly to a corporation instead of to an officer.

SECTION 17. The purpose of this section is to make apparent United States status under an outstanding document sufficient, so far as concerns title or rights of third parties taken in good faith or for value. Such a provision seems essential as a satisfactory basis for the taking of a vessel mortgage and to afford only reasonable protection of parties taking title in good faith and for value. The protection is made subject to rights of forfeiture for breach of law other than those relating to documentation (as for example for rum running), as otherwise an owner who had violated the law could escape the consequences of loss of the value of the vessel by selling her. The section is in supplement of and not in limitation of the provisions of subdivision (b) of Subsection O of the Ship Mortgage Act.

SECTION 19. This section provides a means of validating, subject to rights which have vested or accrued, any recordings, etc. which

have been made under erroneous views as to the right construction of the confused provisions of the Ship Mortgage Act. It is intended to supplement the automatic validation provided by Section 3 of the Emergency Act. That section validates conveyances, etc. which have been made under erroneous documentations to the extent that they would have been valid if the vessel had been documented at the right port, but does not cover the case where the documentation was according to law but the recording was not as required by law, as for example recordings at a port of temporary documentation if it should finally be held that the recording under the Ship Mortgage Act, 1920, was legally required to be at the home port. On account of the difficulty pointed out in *White's Bank Case*, 7 Wallace 646, of following through recordings at ports of temporary documentation, the validation under this section is made subject to the condition that the party desiring to so validate shall cause a Certificate of the Record of Title from the port to be recorded at the home port.

SECTION 20. This section is to make more reasonable the requirement of consent of the holder of a preferred mortgage to a sale with new documentation to the vendee, and to prevent the power from being used unreasonably and oppressively. It also makes unnecessary the approval of the Shipping Board when the sale or mortgage is to a qualified citizen of the United States. It makes either such approval or consent of the mortgagee unnecessary where the surrender of documentation is incident merely to change of documentation without change of ownership; this is understood to be in accordance with the construction placed on the existing law by the Bureau of Navigation. The modifying of the requirement of consent of the holder of the preferred mortgage in the foregoing and certain other instances as provided in the section is to be considered in connection with the relief afforded to the preferred mortgagee from what appear to be unduly burdensome conditions on a foreclosure under subdivision (c) of Subsection O of the Ship Mortgage Act, see Section 23 of this act for proposed amendment of that subdivision.

Section 20 is made applicable only to a preferred mortgage given after the effective date of the act on account of doubt whether rights under existing preferred mortgages can be changed constitutionally *ex post facto* to such an extent.

SECTION 21. The amendments of the Ship Mortgage Act are mainly to bring it into adjustment with the provisions of the pro-

posed act and to remove existing doubts and ambiguities. Some changes in substance are however made as follows:

(1) Provision is made in the amendment of subdivision (d) of Subsection D so that a preferred mortgage may be perfected by indorsement on the document, when the vessel is abroad, by a United States consul on instruction from the Collector of the port of recording.

(2) The amendment of subdivision (a) of Subsection G permits notice of claim of lien to be recorded irrespective of the vessel's being covered by a preferred mortgage. New provisions are substituted for subdivision (b) of Subsection G. The present provisions requiring an indorsement each time any partial payment is made on the mortgage are in practice impracticable and may be very onerous, as in case of frequent payments of small amounts they would, if the provisions were observed, mean holding up the vessel frequently at large loss. As there is no penalty for non-observance the subdivision is in practice nugatory. The new provisions require the mortgagee to give a discharge when the mortgage is satisfied and for the mortgagor to record the discharge under a penalty.

(3) Subsection L is amended to permit the holder of the preferred mortgage to intervene in any proceeding *in rem* admiralty and have his rights enforced.

(4) The amendment of subdivision (a) of Subsection O relieves from the necessity of approval of the Shipping Board when a sale of a vessel covered by a preferred mortgage is made to a citizen of the United States qualified to hold title, and of either such approval or consent of the preferred mortgagee when the surrender of document is incidental to new documentation without change of ownership. It also, when consent of the preferred mortgagee is required, requires acknowledgment to the consent of the preferred mortgagee as a protection against the recording of a false consent. These provisions are made applicable to existing preferred mortgages.

(5) The amendment to subdivision (b) of Subsection O preserves the United States status of the vessel for the benefit of the preferred mortgagee and his rights if foreclosure of the vessel as such when there has been an act or omission to act of the owner because of which the vessel's status would be lost, pro-

vided the mortgagee has had no part in the act or omission and has not authorized or consented to it; this confirms clearly what is apparently the purpose and effect of clause (4) of Subsection B in conjunction with Subsection O (a) and (b).

SECTION 23. The passage appearing in subdivision (c) of Subsection O is unintelligible as it is printed; assuming that the courts would construe "mortgagor" as if it read "mortgagee" the provisions may work oppressively and unreasonably. The purchaser may be an irresponsible and unreliable party from whom the mortgagee would never have taken a mortgage; the mortgagee's interest should not be put at the peril of such an irresponsible and perhaps dishonest ownership. On the other hand the mortgage may have been taken from parties of impaired financial standing, at a commensurately high rate of interest and with other onerous conditions. The obligation of a purchaser at marshal's sale to give a new mortgage on similar terms might well deter a high class prospective purchaser from bidding, either because he wanted a vessel free from incumbrance or at least one which he could sell free from the obligation of consent of a mortgagee; if it did not so deter him it would certainly reduce the amount which he would bid and give the mortgagee a mortgage of premium value, in comparison with the mortgage originally taken, at the expense of other junior lienors resulting from the reduced price which would be bid for the vessel.

SECTION 25. A deferred date is fixed as the effective date of the act to allow time for rules and regulations to be formulated for procedure under it, Collectors to receive instructions, and for owners and their legal advisers to become familiar with its provisions.

---

## HOME PORT ACT.

Act of Congress, Feb. 16, 1925.

### AN ACT

To establish home ports of vessels of the United States, to validate documents relating to such vessels, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That for the purposes of the navigation laws of the United States and of the Ship Mortgage Act, 1920, otherwise known as section 30 of the Merchant Marine Act, 1920, every vessel of the United States shall have a "home port" in the United States, including Alaska, Hawaii, and Porto Rico, which port the owner of such vessel, subject to the approval of the Commissioner of Navigation of the Department of Commerce, shall specifically fix and determine, and subject to such approval may from time to time change. Such home port shall be shown in the register, enrollment and license, or license of such vessel, which documents, respectively, are hereinafter referred to as the vessel's document. The home port shown in the document of any vessel of the United States in force at the time of the approval of this Act shall be deemed to have been fixed and determined in accordance with the provisions hereof. Section 4141 of the Revised Statutes is hereby amended to conform herewith.

SEC. 2. No bill of sale, conveyance, mortgage, assignment of mortgage, or hypothecation (except bottomry), which includes a vessel of the United States or any portion thereof shall be valid in respect to such vessel against any person other than the grantor or mortgagor, his heirs or devisees, and any person having actual notice thereof, until such bill of sale, conveyance, mortgage, assignment of mortgage, or hypothecation is recorded in the office of the Collector of Customs, at the home port of such vessel. Any bill of sale or conveyance of the whole or any part of a vessel shall be recorded at the home port of such vessel as shown in her new document.

SEC. 3. All conveyances and mortgages of any vessel or any part thereof, and all documentations, recordations, indorsements, and in-

dexing thereof, and proceedings incidental thereto heretofore made or done, are hereby declared valid to the extent they would have been valid if the port or ports at which said vessel has in fact been documented from time to time had been the port or ports at which it should have been documented in accordance with law; and this section is hereby declared retroactive so as to accomplish such validation: *Provided*, That nothing herein contained shall be construed to deprive any person of any vested right.

SEC. 4. Wherever in the Ship Mortgage Act, 1920, otherwise known as section 30 of the Merchant Marine Act, 1920, the words "port of documentation" are used they shall be deemed to mean the "home port" of the vessel, except that the words "port of documentation" shall not include a port in which a temporary document is issued.

SEC. 5. All such provisions of the Navigation Laws of the United States and of the Ship Mortgage Act, 1920, otherwise known as section 30 of the Merchant Marine Act, 1920, as are in conflict with this Act are hereby amended to conform herewith.

---