

# MARITIME LAW ASSOCIATION OF THE UNITED STATES.

An adjourned meeting of the Association was held at the Association of the Bar of the City of New York, No. 42 West 44th Street, on Friday, November 21st, 1902, at 3.30 P.M.

There were present: Mr. Robert D. Benedict, President; Hon. Addison Brown, Messrs. George W. Betts, Jr., Lawrence Kneeland, A. Gordon Murray, Harrington Putnam, Enos N. Taft, J. Langdon Ward and Everett P. Wheeler, of New York; Messrs. Arthur George Brown and George Whitelock, of Baltimore; Messrs. John D. Bryant, Frederic Cunningham and Frederic Dodge, of Boston; and Mr. Robert M. Hughes, of Norfolk.

The minutes of the annual meeting of May 2nd, 1902, were read, and, after correction by the addition of the name of J. Parker Kirlin to the delegates appointed to the International Marine Conference at Hamburg, were approved.

The President announced the resignation of Mr. Henry G. Ward as Secretary and Treasurer, and the election of Mr. L. Kneeland to said offices.

The following report of the delegates to the Hamburg Conference was submitted and read by Mr. Betts.

## REPORT OF THE DELEGATES OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES TO THE HAMBURG CONFERENCE OF THE INTERNATIONAL MARITIME COMMITTEE, SEPTEMBER 25th, 26th AND 27th, 1902.

It is much to be regretted that Mr. J. Parker Kirlin, of New York, and Mr. Geo. Whitelock, of Baltimore, duly appointed delegates, did not attend the Conference, in consequence of which only four delegates represented the United States.

Those present were:

Hon. Everett P. Wheeler, of New York.

A. Gordon Murray, Esq., of New York.

Geo. Whitefield Betts, Jr., of New York, and

John B. Jackson, Esq., Secretary of United States Embassy at Berlin, Germany.

In presenting their report to this Association, your delegates do not deem it necessary to refer to the purely formal proceedings of the Conference, as all such information may be had from the official report of the proceedings of the Conference when printed and distributed.

We were cordially received and hospitably entertained. The friendly conference between representative lawyers and business men from different countries was certainly adapted to promote uniformity of commercial law.

It is desired, however, to call the Association's attention to the disposition made by the Conference of certain important questions, which, if the treaties should become operative, would effect certain radical changes in the law, now long settled otherwise in the United States.

The proposed treaties on Collisions at Sea and on Salvage, which were before the Hamburg Conference, were considered in detail by this Association at its meeting on May 2d, 1902. Certain criticisms and objections were then made by the Association to the proposed treaties, and this Association's delegates at the Conference considered themselves bound by the recommendations and objections then made by the Association.

The most important of these were the provisions relating—

(a) To the apportionment of the losses caused by collisions according to the degree of fault. Art. 4.

This Association did not care to favor, although it decided it would not oppose, such a change, thus practically concurring in it.

(b) the non-joint liability of joint-tortfeasors, as proposed in Art. 4, as follows:

“All losses caused either to the vessels or to their cargoes, or to their crews or passengers, are divided between the vessels in the same proportion, the liability not being joint.

“The vessel sued by virtue of a contract of affreightment or carriage, can, by proving the fault and degree of fault of the other vessel, free itself proportionately from the liability under which it lies under the contract.”

Upon which the Association said:

“ But the same Fourth Article proposes that in case of common fault, the liability of the vessels should not be joint.

“ This is opposed to what has been the settled rule of law in the United States since the case of ‘ The Atlas,’ decided by the Supreme Court of the United States in 1876.

“ And as it would compel the cargo-owner to bear his own loss, at least partially, if either vessel were totally lost, or if the value of either vessel in fault was not equal to the share of the damages for which she was held liable, we do not think such a change would be acceptable to this country.

“ Such provision is also inconsistent with the provision in Article 5, that ‘ losses in case of collision are to be recompensed in full.’ ”

(c) The liability of sea-going ships in tow to third parties for the fault of the tug in its service, as follows:

“ Art. 7. The sea-going ship in tow is liable, in respect to third parties, for damage resulting from a collision caused by the fault of the tug in its service. This liability does not prevent the ship in tow having recourse against the ship towing in virtue of the towage contract. The tug is, on the other hand, directly liable for its faults with respect to parties injured, in conformity with the principles enunciated in the preceding articles, but it is not jointly liable for the faults of the towed ship.”

Upon which the Association said:

“ Article 7 of the proposed treaty proposes a rule in reference to the respective liabilities of tug and tow which is opposed to the law in this country, in that it proposes to provide that the tow is to be considered as the principal and liable for fault of the tug as its agent, the tug, however, remaining directly liable for its own faults.

“ We think such a change would not be acceptable to this country.

“ It is contrary, not only to the settled rule of law, but also to the universal manner of doing business in this country, according to which the tug is the principal as an independent contractor.

“ This article would also seem to confine this proposed

change of the law to 'sea-going ships' in tow. We do not think this country would accede to any change which should make the law of tug and tow vary according to the kind of vessel in tow."

(d) The duty of ships which have been in collision to afford assistance, and the non-presumption of fault for a neglect to do so.

Upon which the Association said:

"The Tenth Article provides that if vessels have been in collision, the failure to render needed assistance, when possible, shall not 'entail a presumption of fault' in the collision.

"Our statute is to the contrary, and we do not believe that the proposed change would be acceptable to this country."

(e) A recommendation of an additional clause in regard to limitation of liability, as follows:

"Article 12. All the above provisions are subject to the right of abandonment or surrender by the owner, of his interest in the vessel and freight in discharge of his personal liability, in accordance with the laws of the respective countries, and without prejudice to that right."

At the opening of the Conference, a proposition was advanced by Dr. Goetchow, Secretary of the Hamburg Chamber of Commerce, that there should be no liability of ship-owners for collisions, but that the matter should be adjusted between underwriters. This proposition received substantial support from the German delegation, but practically no support from the rest of the Conference. There was a decided attempt made to have, in some way, the Conference further commit itself on the subject of the law of limitation of ship-owners' liability, but the presiding officer of the Conference ruled that a discussion or debate would not be allowed on any matters heretofore discussed in previous Conferences of the Committee, and not on the order of business prepared for the Conference.

This ruling substantially shut off all discussion on the

matters dealt with in the proposed treaties, so far as broad principles were concerned, as well as the law of limitation of liability, which had been discussed at London in 1899, and at Paris in 1900.

In consequence of this ruling, it was not possible to get before the Conference, for discussion at its open session, the recommendations of this Association, and the Association is respectfully informed that the proposed treaties which were adopted by the Conference, are in scarcely any respect changed to meet the recommendations made by this Association at its May meeting.

We are, therefore, in the position that this Association was represented in a Conference of an international character, which adopted certain proposed treaties to be submitted to the sanction of treaty or law making power of the various sovereign powers, which treaties, as adopted, were, in some important respects, shown to be wholly unsatisfactory to this Association, as voicing the Maritime interests of the United States.

We felt that the Conference was hardly justified in not allowing these matters to be brought before it, especially by the American delegates, inasmuch as the Conference of 1897 and 1898, where the law of collisions was discussed, did not contain delegates or members from the United States.

It is possible, however, that the provisions adopted might constitute a system which would be satisfactory to the Continental powers, whether or not the United States cared to join or submit itself to such a system. It was left to the Permanent Bureau to determine by what means the treaties should be submitted to the various governments, with a suggestion that it be done through the foreign office of one of the governments represented at the Conference.

At the opening of the second day's session, Sir John Glover, representing at the Conference certain British ship owning interests, brought in a resolution proposing that the Committee be empowered to report a further proposed treaty dealing with the important question of the limitation of ship owners' liability. After some discussion, in which the importance of

the matter was fully borne in mind, the resolution was passed and the matter of limitation of liability is now before the Committee for a report to be considered at the next Conference.

That Committee, as constituted, has no American member, and profiting by the experience of this year's Conference, it seems to your representatives that it is most important that the United States should be represented on that Committee, if the United States is to play or take any part in the present movement for the unification of the Laws of the Sea.

When it is remembered that the United States pays annually some two hundred millions of dollars in freights to vessels engaged in the foreign trade and that the United States is largely a cargo-owning country, the radical differences which at present exist between the Continental and the English systems of limitation of liability, and that which obtains in the United States, which seems to be somewhat different from both, suggest that now is the time to take such steps as will enable the United States to be fully safeguarded in her interests in this most important matter, if she is to be, as before said, a party to the general scheme of reform or unification of maritime law.

FINALLY: In order that there could be no question as to the position of the delegates from the United States, they handed through the senior member of the Delegation, Mr. Wheeler, to the Secretary of the Conference, for the records, a memorandum of their grounds of objections to the treaties as approved, and now herewith report the fact to the Association for such further action as it may deem advisable.

The questions with regard to the jurisdiction of courts in collision cases were discussed, and a vote of the Conference taken. After some argument, in which the representatives of the United States endeavored to convince the Conference of the soundness of the position taken by this Association, in upholding the wide jurisdiction of our Admiralty Courts in all cases where proper process can be served, and without other limitations of the same, it was decided to give jurisdiction to the court having territorial jurisdiction over the place

where the collision occurred, irrespective of the ability to serve process on the defendant, attach his property or the ship. In other respects, on this subject, the Conference had for the most part the same views as this Association.

The question of jurisdiction in collision cases had not been gone over so thoroughly as had those with regard to which draft treaties had been made, and it was said at the start that our work was to be more like the first reading of a new bill. In several cases the maritime nations (the United States, England, Germany, etc.) were voted down by a majority consisting of Norway, Sweden, Austria, Hungary, Japan, each country having one vote. In one instance Sir Walter Phillimore urged that we give up in the interests of unanimity, but we did not feel at liberty to do so. The question was, should jurisdiction be given to the judge (5°) at the place where service could be made on the defendant, wherever found, and the American Association voted "Yes" by themselves. We explained the views of the American Association, as shown in its report, and said that it was impossible for us to vote "No," even to make the vote unanimous, as our doing so would not bind anyone, and might give a false impression to non-Americans and to the members of the next Congress, when the whole matter will be discussed again.

Lack of time prevented discussion on the questions of liens and rights *in rem*, which went over to a subsequent Conference, to be held, probably, in Amsterdam in 1903 or 1904, as determined by the Permanent Bureau.

November 21, 1902.

Respectfully submitted,

EVERETT P. WHEELER.

A. GORDON MURRAY.

GEO. WHITEFIELD BETTS, JR.

The President presented certain correspondence with the State Department, respecting the proposed consideration by the Hamburg Conference of an International Code dealing with salvage and collisions, and the possibility of its recommendations becoming the subject of diplomatic action.

After discussion, it was voted that the Association, through its officers, call to the attention of the State Department the adoption of the Draft Treaties by the Conference, and request an opportunity to be heard in case the same are submitted to the Department for consideration.

On motion of Mr. Murray it was voted that the Association take steps to ascertain the views of the maritime and other business interests of this country upon the adoption of the Draft Treaties, and that a Committee of three be appointed by the Executive Committee to carry out such purpose.

The Executive Committee subsequently appointed as such Committee Messrs. A. Gordon Murray, George W. Betts, Jr., and L. Kneeland.

It was voted that the report of the delegates be accepted, and be printed and distributed to the members of the Association.

On motion, the matter of obtaining a hearing before the State Department was referred to the officers of the Association, with power.

It was also voted to refer the question of securing representation of this Association upon the Committee entrusted with the preparation of a treaty dealing with the question of limitation of liability, to the Executive Committee, with power.

Mr. E. N. Taft submitted and read the following report of the Committee appointed May 4th, 1900, to consider Congressional action to confer a remedy for loss of life caused by negligence at sea.



REPORT OF THE SPECIAL COMMITTEE OF THE MARITIME LAW  
ASSOCIATION RESPECTING LEGISLATION FOR LOSS OF LIFE.

November 21, 1902.

*To the Maritime Law Association :*

Since the presentation of our report on May 2, 1902, the Committee have taken no formal action respecting the form of proposed legislation beyond continuing correspondence with gentlemen interested in the subject in other States.

We submit herewith two forms of proposed legislation neither of which has been acted on by the full Committee.

One form, marked "A," is substantially the same in form as the Bill proposed at the meeting in May last, though it has been modified verbally to meet suggestions then made.

The other form, marked "B," has been drafted by Mr. Taft, and is submitted to the Association for discussion and consideration.

Under the authority given to the Committee at the May meeting, they propose that the Committee be enlarged by the addition to the Committee of Honorable Addison Brown, and Henry G. Ward, of New York, Daniel H. Hayne, of Baltimore, and Eugene P. Carver, of Boston.

Generally the Chairman feels that the movement would be advanced by his retirement as Chairman, and asks, with the assent of the Committee, that Honorable Addison Brown be designated Chairman.

Respectfully submitted,

WILHELMUS MYNDERSE.  
ENOS N. TAFT.

## "A."

A BILL to authorize the maintenance of actions at law and in admiralty for loss of life by negligence.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED.

SECTION 1. Whenever the death of a person shall be caused either upon the high seas or upon the Great Lakes, or in foreign waters or in waters of the United States by the wrongful act, neglect or default of the owners, charterers, agents, officers or crew of any vessel, foreign or domestic, bound to or from any port of the United States of America, or by the owners, charterers, agents, officers or crew of any vessel of the United States wherever bound, or by the wrongful act, neglect or default of any other person on board any such vessel, an action for damages may be maintained against such vessel *in rem*, if such wrongful act, neglect or default is attributable to the persons operating such vessel or to their servants or agents, or against any natural person or persons who, or corporation which would have been liable to an action in favor of the decedent by reason of such wrongful act, neglect or default if death had not ensued, notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as shall amount to a felony.

SECTION 2. Such action shall be brought by and in the names of the personal representatives of said deceased person for the benefit of the wife or husband and next of kin of said deceased person for the recovery of such damages as shall be fair and just compensation with reference to the pecuniary injuries resulting from the decedent's death to the person or persons for whose benefit such action is brought; but the recovery in respect of the death of any one person for the benefit of all interested parties shall not exceed Six thousand dollars (\$6,000), and the recovery shall be distributed among the wife or husband and next of kin in accordance with the

laws of the place of domicile of the decedent for the distribution of the personal estate of an intestate.

SECTION 3. District Courts of the United States, in admiralty, and Circuit Courts of the United States, as courts of law, shall have jurisdiction in all such suits, provided that such suit shall be commenced within two years after the occurrence of the death in respect of which damages are sought.

SECTION 4. Whenever the wrongful act, neglect or default resulting in death has occurred within the waters of any State, and such State has authorized the maintenance of an action for the recovery of damages in respect thereof, such actions may be had *in rem* against a vessel in all cases when, if death had not ensued, the injured person might have proceeded *in rem* against such vessel for the recovery of damages.

SECTION 5. Nothing in this Act shall be construed to abridge the rights of shipowners or others under the provisions of sections 4282, 4283, 4284, 4285, 4286 and 4287 of the Revised Statutes of the United States and Acts amendatory thereof and additional thereto relating to limitation of liability.

“B.”

A BILL to extend the jurisdiction of the Circuit and District Courts of the United States to actions for loss of life by negligence.

SECTION 1. In all cases where the District and Circuit Courts of the United States would respectively have jurisdiction of actions or suits for injuries caused by wrongful act, neglect or default, if death had not ensued, and in which the award of damages would be required to be made in accordance with the laws of the United States, their respective jurisdictions are hereby extended, in cases where death shall have so ensued, to actions or suits for the loss of life so caused, and in every such case the person who, or the corporation or ves-

sel which, would have been liable, if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as shall amount to a felony.

SECTION 2. Every such action shall be brought by and in the names of the personal representatives of such deceased person, and the amount recovered in every such action shall be for the exclusive benefit of the husband, wife or next of kin of the decedent. The court, or jury, may give such damages as shall be fair and just compensation with reference to the pecuniary injuries resulting from the decedent's death to the person or persons for whose benefit such action is brought, not exceeding six thousand dollars (\$6,000), which sum shall be distributed according to the laws of the place of domicile of such decedent for the distribution of the personal estate of an intestate, as if such damages were unbequeathed assets left after the payment of all debts and expenses of administration.

SECTION 3.—And when the vessel proceeded against is within the jurisdiction of a District Court, the proceeding under this act may be had *in rem*.

SECTION 4.—In cases not hereinbefore provided for, but in which similar remedies are provided by the statutes of a State and applicable to marine torts, proceedings to enforce the same may be had *in rem* when the vessel proceeded against is within the jurisdiction of the District Court.

SECTION 5.—This act shall not abridge the rights of ship-owners and others to avail themselves of the provisions of Sections 4282, 4283, 4284, 4285, 4286 and 4287 of the Revised Statutes of the United States, and acts amendatory thereof and additional thereto, relating to limitation of liability.

It was voted that the report of the Committee be printed and distributed to the members of the Association, and that the matter be referred back to the Committee, to which shall be added Hon. Addison Brown and Henry G. Ward of

New York, Daniel H. Hayne of Baltimore, Eugene P. Carver of Boston and Benjamin Thompson of Portland, Maine, for further consideration.

A motion was made by Mr. Hughes to reconsider the action of the Association of February 6th, 1902, adopting a uniform maritime lien law.

The Secretary reported that the proposed act had been placed in the hands of Representative Sherman and of the Senators from this State for introduction in Congress, and after some discussion the motion was lost.

A vote of thanks to the Association of the Bar of the City of New York for permission to hold the meeting at its building was unanimously passed.

The meeting then adjourned.

LAWRENCE KNEELAND,  
*Secretary.*