

COMPULSORY INSURANCE OF PASSENGERS.

At the meeting of the Comité Maritime International, held at Gothenburg in August, 1923, there was discussed a system of Compulsory Insurance of Passengers, particularly of immigrant passengers, upon sea routes. Mr. D. Roger Englar attended this meeting on behalf of our Association. In June, 1924, a Committee appointed at Gothenburg further considered the matter at Paris, and that Committee has prepared a report concerning which we and other Maritime Law Associations are requested to express opinion. The scheme of insurance favorably regarded by the Paris Committee, which will be pressed for further consideration at the meeting of 1925, is set forth in the project for a convention hereto annexed and marked A.

Mr. Englar has prepared, in the shape of a motion, his views on the subject, which are hereto annexed marked B.

In order to bring the matter before the Association, a motion will be made at the next regular meeting to adopt the views of Mr. Englar as the sense of the Association.

HAROLD S. DEMING,
Secretary.

A.

TEXT OF CONVENTION.

1. In this Convention the following words are employed with the meanings set out below:

a) "Shipowner" includes the owner or charterer of any ship who enters into a contract to carry one or more passengers on board such ship.

b) "Passenger" includes any person who is so carried under any such contract for reward to the shipowner. This definition is subject to the provisions of Article 3 of the Convention.

c) "Ship" includes any vessel on board of which a passenger is carried for reward to the shipowner, whether such vessel is

regularly employed for the carriage of passengers or, being regularly employed for the carriage of goods only, is upon a particular occasion employed for the carriage of a passenger or passengers. This definition is subject to the provisions of Article 2 of the Convention.

d) "Voyage" covers the whole period while the passenger is on board and during the process of embarkation and disembarkation, whether directly from or to the shore or by gangway or ladder, or by means of tenders, tugs, ferries or other craft.

2. Every shipowner shall insure all passengers against all risks of death or personal injury incurred upon the voyage in accordance with Schedule A (*) annexed hereto. Provided that each of the High Contracting Parties shall be at liberty to exempt from the operation of this Convention any vessels navigating exclusively in tidal rivers and inland waterways.

3. Each of the High Contracting Parties shall be at liberty to make special provisions applicable to the carrying of: 1) pilgrims and 2) coolies and other similar workers, provided that such provisions secure to such persons equitable insurance.

4. Such insurance shall cover all risks of accidents causing the death of, or personal injury to, the passenger, and the shipowner shall indemnify the passenger, or the personal representatives of a deceased passenger, as determined by the national law of that passenger, in respect of any such accident from whatsoever cause such accident may arise, and even though caused by negligence or want of reasonable care on the part of the passenger.

Notwithstanding the foregoing provisions, the shipowner shall not in any case be liable to indemnify the passenger, or the personal representatives of a deceased passenger, wherever the personal injury or death are directly caused by the wilful misconduct of the passenger.

5. The insurance aforesaid shall be an absolute bar to all actions against the shipowner in the courts of any country in

(*) To be prepared later on.

respect of an insured accident, other than for the enforcement of claims based on the insurance.

Provided that nothing in this Convention shall relieve any person from the full responsibility for the result of his own wilful misconduct or deliberate negligence.

6. Such insurance shall not cover any risks of loss or damage to personal property or effects of any passenger.

7. All claims under such insurance shall be and remain payable in full without regard to any limitation of liability which the shipowner may or would be entitled to claim in respect of any action for damages according to the laws of the country under whose flag the ship is sailing, or the laws of any other country.

8. Such insurance shall not affect or prejudice the right of the shipowner to bring an action for damages against a third party or against the owner of any other vessel by whose default or negligence loss or damage has been caused to the ship, or where death or personal injury has resulted to any passenger carried therein. In such cases the shipowner shall pay in full the claim of any passenger on board his ship under the insurance, and shall acquire all rights in respect of the insured accident, but shall only be entitled to enforce such rights to the extent of the sums paid under the insurance as part of the damages he is entitled to recover in any action for damages which he may bring in the courts of any country against the negligent or defaulting third party, subject only to such limitation of liability as the negligent or defaulting third party may be entitled to claim.

9. Every shipowner shall issue to every passenger at the same time as his ticket under the contract of carriage a policy of insurance in accordance with this Convention, or shall embody the terms of such a policy in the ticket itself.

10. In case of personal injury, unless the accident is known to the surgeon or other authorities on board or unless the passenger is prevented by *force majeure* from giving such notice, the passenger shall within eight days after disembarkation give

notice of the accident to the captain or to the shipowner or his agent at the port of disembarkation or to the authorities competent in that behalf according to the national law of the port of disembarkation.

All claims arising either from personal injuries or from death shall be barred unless the action be instituted within twelve months after the date of the accident.

11. All claims shall be paid on a gold basis.

12. Insurance against death and personal injury as aforesaid shall be compulsory for both shipowner and passenger, and neither party shall be at liberty to make any contract exempting himself therefrom. Any contract so made shall be absolutely null and void.

13. Where any passenger shall desire to insure against death or personal injury to himself for any amount greater than as aforesaid and shall, at any time before or at the time of payment of the fare under the contract of carriage, formally request the shipowner so to insure him, the shipowner shall be obliged to issue in his own name or as agent for insurers approved under Article 15 a policy for such larger amount as the passenger shall demand, upon payment by the passenger of a premium and subject to terms and conditions in accordance with Schedule B (*) annexed hereto. Save that in no case shall a shipowner be compelled to issue a policy to any passenger for an amount exceeding ten times the amount insured under Schedule A.

14. Nothing in this Convention shall operate to prevent a shipowner from reinsuring his liabilities under the insurances aforesaid with any Mutual Insurance Association, Insurance Company or Underwriters.

15. No ship shall be allowed to carry passengers or to put to sea at any time with passengers on board unless the shipowner shall have in his possession at such time a certificate

(*) To be prepared later on.

issued by the government of the country under whose flag his ship is sailing certifying that such shipowner is insured wholly or in part in such manner and form as may be required by such government against liabilities in respect of policies issued by him to passengers on board his ships with Mutual Insurance Associations, Insurance Companies or Underwriters approved in that behalf by such government or, if not so insured, that such shipowner is in a position to pay any claims in respect of the policies held by passengers on board all ships belonging to him at such time. Such certificates shall be approved on a condition of reciprocity by all contracting governments.

A passenger on board any such ship shall be entitled to call for and to inspect such certificate or a copy duly certified by the authority issuing such certificate.

B.

RESOLUTION.

WHEREAS, at the meeting of the International Maritime Committee at Gothenburg, in August, 1923, one of the questions considered was the question whether it would be desirable to organize, by means of an International Convention, a scheme of compulsory insurance of passengers carried by sea, in place of the present contractual liability of shipowners towards the passengers traveling on board their vessels; and

WHEREAS, it became clear from the discussion at the said meeting that the plan for compulsory insurance involved limiting the compensation recoverable by an injured passenger, or by the estate of a passenger who had lost his life, to a comparatively small sum, which would be only a small fraction of the amount which might be recoverable under the present American law; and

WHEREAS, it is the opinion of this Association that any such limitation of the liability of shipowners, in respect of the safety of passengers traveling on their vessels, is contrary to the traditional attitude of the Governments of the United States and of the several states of the Union, on this subject;

Now, THEREFORE, it is resolved that while this Association recognizes that certain advantages might accrue from a uniform scheme of insurance, by which passengers would receive, without the expense of litigation, at least a moderate compensation, irrespective of the shipowner's negligence or liability, nevertheless, this Association does not favor the plan put forward at Gothenburg, or any similar plan by which the existing rights of passengers traveling by sea would be surrendered or limited.