

**MINUTES OF THE ANNUAL MEETING OF THE
MARITIME LAW ASSOCIATION HELD
ON MAY 8, 1925, AT 4 P. M.**

The Annual Meeting of the Maritime Law Association of the United States was held at the Association of the Bar of the City of New York, 42 West 44th Street, on May 8, 1925, at 4 P. M.

Those present at the meeting were:

The President, Honorable Charles M. Hough and the following members:

Allen, Ray Rood	Lawton, Jr., Alexander R.
Bailey, Theodore L.	Lord, George de Forest
Bradley, Allen B. A.	Lyeth, J. M. Richardson
Burlingham, Charles	Mack, Hon. Julian W.
Burlingham, Charles C.	Maclay, Mark W.
Burnham, Addison C.	Masten, Everett
Campbell, Ira A.	Matteson, L. J.
Cheyney, Henry L.	Mayhew, Karl S.
Coleman, Samuel C.	McCloskey, George V. A.
Conger, Frederic	Millsaps, Louis
Crandall, John W.	Mount, Russell T.
Crook, William M.	Muller, Arthur E.
Curren, Leo J.	Niles, Emory H.
Dean, William J.	Noel, Dix W.
Detels, M. P.	Padgett, Imman
Dodge, Hon. Frederic	Palmer, Courtland
Englar, D. Roger	Phillips, Robert
Farwell, Earle	Poor, Wharton
Ferris, Morris Douw	Prizer, John C.
Foster, Allen E.	Putnam, Hon. Harrington
Foster, Frederick	Pyne, Warner
Garvin, Hon. Edwin L.	Ryan, James W.
Gould, Albert T.	Senecal, J. Neale
Hann, Jr., Charles	Slayton, G. Noyes
Henriques, Edouard F.	Snider, Glen R.
Hill, Robert E.	Speer, Paul
Houston, Oscar R.	Veeder, Hon. Van Vechten
Hupper, Roscoe H.	Washington, George A.
Jones, T. Catesby	Wolfe, Carver W.
Keating, Cletus	Woolley, William H.
Knauth, Arnold W.	Wright, Austin T.

The dinner was attended by the foregoing, and by following additional members:

Biddle, George	McKenna, B. C.
Brengle, George S.	Menkel, Anthony M.
Brown, Jr., Everett H.	Nash, J. Newton
Brown, Ralph W.	Neely, A. Howard
Carter, Peter S.	O'Neill, James L.
Clark, C. I.	Prem, F. Herbert
Cowenhoven, Charles T.	Romaine, R. B.
Erskine, Robt. S.	Schmuck, T. K.
Galey, John L.	Shortridge, P. F.
Griffin, John W.	Siddall, Roger B.
Harris, P. Randolph	Snow, W.
Henderson, Jos. W.	Sprague, Geo. C.
Jackson, Jas. W.	Thirkield, Harry D.
Lenahan, Richard F.	Underwood, Eugene
Long, Howard M.	Wells, Walter J.
Manning, E. T.	Wythe, Charles E.
McGrann, Wm. H.	

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

In the absence of Mr. Deming, the President appointed Arnold W. Knauth Secretary of the meeting.

The annual reports of the Secretary and Treasurer were submitted and there being no objection the same were received, approved and ordered filed. Copies thereof are annexed hereto (Appendices 1 and 2, pp. 1332, 1333).

The Nominating Committee presented the following nominations for officers and members of the Executive Committee for the year commencing May, 1925:

President CHARLES M. HOUGH
Secretary and Treasurer HAROLD S. DEMING

Members of the Executive Committee

Baird, Edward R.	Janney, Stuart S.
Congdon, Ernest W.	Jones, T. Catesby
Gould, Albert T.	Mount, Russell T.
Hupper, Roscoe H.	Woolsey, John M.

On motion duly made and seconded the nominations were declared closed and the Secretary was directed to cast one ballot for the foregoing nominees who were thereupon duly elected for the ensuing year and until their successors should be chosen.

On motion duly made and seconded, the following new members were elected:

Biddle, George	Lecraw, Loring R.
Emery, Ralph C.	Lillibridge, Harrison
Freund, Sanford H. E.	Manning, Jr., George C.
Garity, Edward J.	Manning, J. Thruston
Henriques, Edouard F.	Nash, J. Newton
Hill, Sherwin A.	Padgett, Inman
Hughes, H. C.	Sedgwick, W. Parker
Jackson, James W.	Shortridge, Paul Fearson
Krause, Gunther F.	Wells, Walter J.

Mr. Charles C. Burlingham presented and read a minute of the death of the Honorable E. Henry Lacombe. It was received and filed and is printed herewith (Appendix 3, p. 1334).

The President then stated that the International Maritime Committee will hold a meeting at Rome in the fall of 1925. He requested any members who might be able to go to Rome at that time to inform him or the Secretary. In preparation for the meeting at Rome, he had caused a number of reports to be prepared and printed and circulated among the members of the Association in advance of the present meeting. He stated that this was his own method of advancing the discussion so that action could be taken, since the usual method of discussing the matter first in open meeting, and then appointing a committee to bring in a report, might in this instance, as it sometimes had in the past, result in the American report being submitted to the International Maritime Committee too late for useful action.

Proposed International Code of Affreightment.

Accordingly the Honorable Van Vechten Veeder had been requested to report on the proposed International Code of Affreightment.

His report, printed on page 1290, was read by the Secretary and on motion made and seconded that the report be accepted as the sense of the Association, Mr. Englar rose and stated that he

had been present at Gothenburg in 1923 when it was resolved to prepare the draft which is now before us. It was felt at that time to be a forlorn hope. The discussion was whether the effort should be to produce an entire and complete code of affreightment or to confine the work to specific objects. At that time the Scandinavian countries were preparing a revision of their maritime laws and it was considered that the preparation of a complete code would influence and guide the new Scandinavian legislation, which would prevent the Scandinavian legislation taking a course contrary to the proposed code and save the necessity of repeals and amendments, should the latter eventually be accepted by the nations.

In view of the delays which have marked the progress of the Hague Rules it appeared to him quite obvious that the general success of this scheme could not be hoped for.

The resolution was put and the report was accepted without opposition as the sense of the Association.

Proposed Compulsory Insurance of Passengers.

The President then called upon Mr. Englar as Chairman of the Committee on the proposed Compulsory Insurance of Passengers for his report. The proposed International Convention had been printed and distributed to the members and will be found at page 1301, together with the proposed resolution drafted by the Committee. Mr. Englar rose to explain that the text as printed is not the precise text which will be presented at Rome. The new text was agreed upon at a conference in Paris in 1924, of which the report was not received by the President until after the report on page 1301 had been prepared. The Paris text, however, does not differ materially from that printed, but in order to indicate that the Committee's resolution applies as well to the Paris text as to the previous text, the following additional recital was offered by the Committee to be inserted after the first two recitals:

“WHEREAS this matter was further considered by a sub-committee which met at Paris in June, 1924 and drafted a convention designed to carry into effect the plan discussed at Gothenburg; and”

There was no discussion and on motion duly made and seconded the resolution with the added recital was adopted with-

out objection. The complete resolution as adopted is printed herewith (Appendix 4, page 1336).

Proposed International Convention on Maritime Liens and Mortgages

The President then remarked that the proposed International Convention on Maritime Liens and Mortgages, while no longer a new project, had not been much discussed in the United States. He stated that the proposal was new in 1922 and involved a complete recasting of the rules relating to maritime mortgages. The idea first appeared at the Brussels Conference in 1922, at which time the European delegates, accepting certain recommendations of Mr. Norman Beecher, were impressed by the structure of the American Preferred Mortgage Act of 1920 and appeared ready to abandon their previous theories relative to the ranking of liens with respect to mortgages and adopt something akin to the American method and ranking. The result was the present project, which was further discussed in Brussels in October, 1923, Mr. Beecher again being present. The form which it then took has not since been altered and is now presented for further discussion and possible action at Rome in the fall of 1925. The President desired that there should be general discussion and had caused a report to be prepared by the Honorable Harrington Putnam and William J. Dean as a special committee. Their report, together with the text of the Convention and their annotations, has been printed at page 1307. A further analysis appears at page 1337.

The President stated that the report was intended to pour cold water on the scheme and to be a rebuff to the idea of displacing not merely our Preferred Mortgage Act but possibly our entire theory of liens. The American theory of maritime liens is totally foreign to both the English and the Continental European theory. The American theory is that any demand capable of being called a maritime lien is, in the absence of statute, by its mere name superior to any maritime mortgage. The Supreme Court has not yet passed on the constitutionality of the 1920 Preferred Mortgage Act nor expressed itself as to the effect of that Act on the previously declared American theory. The lower courts have in the meantime held that the 1920 Act is both constitutional and has not affected the validity of the underlying American theory as to the fundamental relation between a mari-

time lien and a mortgage. In England and Europe generally, on the contrary, the general theory is that a good mortgage properly recorded is better than any maritime lien, unless the lien is given a preferred status by statute. The effort to carry through this proposed convention will therefore require that every conceivable safeguard be raised against upsetting the traditional American idea of the relation between a mortgage and a lien, unless America is ready to give up its traditional historical theory.

Replying to questions, he stated further that the meeting at Rome will be a meeting of private individuals, like the meetings of this Association, but that the persons there present would be individuals who probably could translate any action at Rome into official action in their respective countries. He felt that competent American delegates sent to Rome would find the other delegates extremely anxious to harmonize their views with ours.

Mr. Putnam remarked that the American theory keeps the *res* intact for tort claims and that the theory has been maintained unbroken since the *John G. Stevens* case, 1898 (170 U. S. 1133). In his view the American theory is not impaired by the Ship Mortgage Act of 1920.

Mr. Burlingham said that the adoption of the report, including the last sentence thereof, would appear to place the Association in the invidious position of appearing to attack both the Convention and the Preferred Mortgage Act. Replying to questions as to the precise points of likeness and of difference between the proposed Convention and the American Preferred Mortgage Act of 1920, Mr. Dean read a schedule which enlarges on the report and which is hereto attached. (Appendix 5, page 1337).

Mr. Putnam, opposing the Convention, pointed out that as against tort claims, the Convention encourages the shipowner to encumber his vessel with unpaid contract claims, which come ahead of tort claims, and does not encourage the shipowner to pay off his contract debts.

Mr. Campbell stated that Mr. Cleminson, the General Secretary of the British Chamber of Shipping, had on a recent visit met American steamship owners and bankers and had stated that the English shipowners are going to oppose the Convention and are going to oppose the provision placing "maintenance in the last port" ahead of the mortgage. Mr. Cleminson was anxious to enlist the support of the American shipowners.

Mr. Burnham stated that certain members of the Association's Committee on Documentation of Vessels are very favorably impressed by the Preferred Mortgage Act in its scientific demarkation between liens placed ahead of the preferred mortgage and those coming after it. The liens placed ahead of the mortgage, excepting crew's wages, are those capable of being insured against, and those coming after the mortgage are in general those not susceptible of insurance. The mortgagee can thus protect himself by the Act plus insurance against all the important risks. The American Act is therefore being increasingly regarded as a successful solution and the banks are rapidly coming to a more sympathetic attitude towards ship mortgages. The persons for whom he spoke sympathize with the report in so far as it is unfavorable toward increasing the number of liens placed ahead of the mortgage. But the last paragraph of the report and especially the last sentence appear, perhaps unintentionally, to cast discredit on ship mortgages in general. Subject to proper demarkation, he thought it desirable that by international convention the ship mortgage should be given greater certainty of status in all countries. He therefore proposed a substitute resolution instructing American delegates at Rome to take all reasonable steps to bring about a convention toward that end.

Replying to Mr. McCloskey's suggestion that the line of demarkation should follow our Preferred Mortgage Act, Mr. Burnham stated that this was his personal view but that he did not wish to crystallize the instruction too far.

Mr. Englar stated that his rather hurried examination of the subject led him to conclude that the likenesses between the convention and the American Act are great and that the differences are few, and he urged that the Association should not act against the Convention unless it was quite clear that the differences are important. The President thereupon pointed out the fundamental difference of approach toward the subject mentioned above.

Mr. Campbell favored the maintenance of the Preferred Mortgage Act unimpaired since it is scientifically correct and is beginning to gain the confidence of lenders. He would oppose sending delegates to Rome with a loosely worded general instruction which might result in America being bound by action of the conference contrary to the American desires. He favored an in-

struction to the delegates which would commit them firmly to the maintenance of the American theory and statute. Mr. Burnham expressed his dislike of sending delegates to Rome burdened with too positive a position of dictation.

Mr. Masten pointed out that it would be unfortunate for American delegates in Rome to represent what the American statute might be before it was clear what the Supreme Court would decide with respect to the 1920 Act, in which he was supported by Mr. Cheney. The President, however, said that the Rome meeting was a private affair and that no one there could bind the United States.

Mr. Burnham not being ready to present his substitute motion in definite form, the Chair called for a show of hands as to the theory of Mr. Burnham's motion and the vote being 23 in favor and 15 opposed, the Chair appointed a special committee of three persons, Messrs. Hupper, Jones and Niles, to draft a resolution in accordance with Mr. Burnham's views. The resolution is appended to these minutes (Appendix 8, page 1343).

Committee on Suits in Admiralty Act

The President then stated that the Committee on Amending the Suits in Admiralty Act would have no report until the reassembling of Congress in December. The Committee was continued.

Committee on Documentation of Vessels

The President then called upon Mr. Niles as Secretary of the Committee on the Documentation of Vessels for a report on the progress of the Committee. The report is annexed to these minutes (Appendix 6, p. 1339). The Committee was continued.

Committee on Interlocutory Decrees in Admiralty

The President then called upon Mr. George DeForest Lord as a member of the Committee on Interlocutory Appeals in Admiralty. Mr. Lord stated that the Act which was passed by Congress and approved on February 6th unfortunately would suffer a premature death on May 13th due to an oversight of the

Chairman of the Judiciary Committee in failing to include the material of this Act when reporting out the Act for the relief of the Supreme Court amending the Judiciary Code generally. Congressman Graham, Chairman of the Judiciary Committee, had promised to take up the Act in the next session with a view to its repassage. The Committee was continued.

York-Antwerp Rules, 1924

The Chairman then stated that he had noted the action of the International Law Association at the Stockholm Conference of 1924 in discussing amendments to the York-Antwerp Rules, 1890, and adopting a new set of rules with respect to general average known as the York-Antwerp Rules 1924. He stated that the Association had never received an official communication from any body respecting this subject matter and inquired whether the members desired any position to be taken. Mr. Englar reported that a number of members of the Association were also members of a special committee acting under the auspices of the Chamber of Commerce of the United States to express the American position. The Chairman thereupon stated that if left to his own devices, he would assume an attitude of watchful waiting and depend upon the members of the Association who were members of the American Committee on General Average Rules to inform him whether action of the Association might become necessary or desirable, in which event he would call a special meeting.

The report of the American Committee and resolutions thereon are to be distributed with these minutes.

Committee on Limitation of Liability of Ship-Repairers

The President, in asking for the report of the Committee on the suggested Limitation of Liability of Ship Repairers, stated that Mr. Griffin, who was originally appointed Chairman (page 1269), had requested to be excused for personal reasons, whereupon he had appointed Mr. Oscar R. Houston to act as Chairman. Mr. Houston submitted the report of the Committee which is attached hereto (Appendix 7, page 1340). The report was read, and there being no discussion, upon motion duly made and seconded, was unanimously adopted. The Committee was discharged. .

Committee on Arbitration Statutes

The President called upon Mr. Jones in the absence of Mr. Woolsey, to report for the Committee on Arbitration Statutes. Mr. Jones reported that Mr. Woolsey was shortly going to London and would investigate further the English method of using arbitration in shipping matters in furtherance of the first steps of litigation, and expected to make a full report in the fall. He asked that the Committee be continued.

*Committee on proposed Federal Maritime Workmen's
Compensation Act*

The President then called upon Mr. Palmer to report for the Committee on the proposed Federal Maritime Workmen's Compensation Act. Mr. Palmer reported that Mr. Smith had been elected Chairman but that the Committee had not been able to meet because of the engagements of Mr. Boal. The result of the postcard canvass of the Joint Insurance Committee under the auspices of the New York Towboat Exchange, had been overwhelmingly in favor of such an act. The postcard, with a statement of the propositions and a draft of an act, was sent to vessel owners of the United States generally. Only ten dissenting postcards were received and 95% of the replies favor a Federal Maritime Workmen's Compensation Act. Many helpful suggestions have been received from interested persons all over the country. Mr. Palmer urged members of the Association to send in their suggestions and asked that the Committee be continued.

The President urged the members to render all possible assistance to this Committee. We are almost all maritime lawyers and therefore not in close contact with the operation of Workmen's Compensation Acts which he feels renders us rather intolerant if not grossly ignorant of the scope and great progress of the Workmen's Compensation movement. The subject is one which must be met. In the conduct of the business of courts, he could not help remarking that the maritime business of the United States today stands alone in nourishing the class of litigation which the Workmen's Compensation Act movement has sought to extinguish the country over. It is not a pleasant conspiracy.

Other Business

The President then called for any new business. Mr. Cheney, remarking upon Judge Hough's recently published volume of Vice Admiralty Cases of the Province of New York, pointed out the historical and legal value of these reports, and urged the members to seek further material of this character.

Judge Garvin stated that the Eastern District is finding the influx of admiralty cases such as to threaten congestion of the calendar. He stated that the Judges of the Eastern District are prepared to afford opportunity for the trial of admiralty cases during the summer and he requested members of the Bar to indicate whether it would be desirable to call a general admiralty calendar during the summer. He stated that the Judges would be ready, on consent, to call a special calendar for the trial of any particular cases as to which counsel might agree.

The meeting was then adjourned to re-convene at the Yale Club at 7:30 where after a dinner admirably managed by a committee consisting of Chauncey I. Clark, Mark W. Maclay and Cletus Keating, and attended by 85 members, the President brought up the question of the Hague Rules.

Hague Rules

The President stated that the Hague Rules of 1921, amended and endorsed by the Brussels Conferences of 1922 and 1923, had become the law of Great Britain under the name of the Carriage of Goods by Sea Act 1924, and had also become the law of Australia. He called attention to the report of Honorable Van Vechten Veeder, printed on page 1287 and the following pages, and pointed out that the Association had unanimously endorsed these rules upon their first presentation in 1922. He asked that the Association endorse them again and there being no discussion, on motion duly made and seconded, the Association adopted Judge Veeder's report as the sense of the Association.

There being no further business, the meeting was duly adjourned.

APPENDIX 1.**ANNUAL REPORT OF THE SECRETARY.**

TO THE MARITIME LAW ASSOCIATION OF THE UNITED STATES—

Harold S. Deming, as Secretary of the Maritime Law Association of the United States, submits his report for the year ending April 30, 1925, as follows:

There have been three meetings of the Association, on the following dates:

Annual Meeting, May 2, 1924

Special Meeting, June 3, 1924

Usual Winter Meeting, February 6, 1925.

As reported to the Secretary, the roll of associate members has been depleted by the death of

Honorable E. Henry Lacombe

and the active list by the death of

Hermon A. Kelley

Honorable Everett P. Wheeler.

Mr. Harry Pillans of Mobile, one of the original members, was transferred from the active to the associate list.

The following members have resigned during the year:

Albert E. Kane

Harold V. Amberg

Ellis P. Collins

Alfred Gilbert Smith

Basil H. Pollitt

Henry E. Mattison.

Forty-one new active members and five new associate members have been elected to the Association.

The present membership is 311 active and 45 associate members, making a total of 356, as compared with 319 last year.

The Association is enjoying a steady growth in membership, especially outside New York.

During the year the Association has been active through committees on the following subjects:

Documentation of Vessels

Revision of Suits in Admiralty Act

Hague Rules

Suggested Limitation of Liability of Ship-repairers

Appeals from Interlocutory Decrees

Arbitration statutes

Federal Workmen's Compensation Act

Proposed International Code of Affreightment
 Proposed Compulsory Insurance of Passengers
 Proposed International Convention relating to maritime
 liens and mortgages

The Committee on Revision and Unification of the Admiralty Rules of the Southern and Eastern Districts completed its work and the new rules became effective on July 1, 1924.

As the minutes of the meetings containing the reports of these committees have already been printed and distributed to the members, it is not necessary to refer in further detail to the accomplishments of the Association during the year.

Respectfully submitted,

HAROLD S. DEMING,
Secretary.

May 1, 1925.

APPENDIX 2.

ANNUAL REPORT OF THE TREASURER.

TO THE MARITIME LAW ASSOCIATION OF THE UNITED STATES:

Receipts

Balance on hand April 30, 1924.....		\$1,595.26
Dues received—		
1922-23 1 member	\$	5.00
1923-24 15 members		75.00
1924-25 282 members		1,410.00
1925-26 124 members		620.00
1926-27 1 member		5.00
Interest to date.....		23.05
		<hr/>
		2,138.05
		<hr/>
		\$3,733.31

Disbursements

Printing	\$	406.80	
American Maritime Cases.....		38.50	
Bar Association—room hire		30.00	
Adams & Chambers—Stenography....		19.20	
Committee on Documentation of Vessels		46.44	
Comité Maritime International.....		200.00	
Vandegrift & Co., custom house brokers		15.70	
Addressing and Mailing.....		12.64	
Postage		26.36	
Stenography and minor disbursements..		167.60	
		<hr/>	
			963.24
			<hr/>
			\$2,770.07

Respectfully submitted,

HAROLD S. DEMING,
Treasurer.

May 1, 1925.

APPENDIX 3.**MINUTE OF DEATH OF HON. E. HENRY LACOMBE**

Months enough have passed since the death of Emil Henry Lacombe to enable even the older of us to write of him without that funereal manner which seems unescapable immediately after the passing of an admired friend.

By his death we recognize that this Association has lost another of its founders, and one who always felt and manifested an active and practical interest in its aspirations and efforts; the Bar not only of this city and state, but of the whole country is less by one who always stood for the best side of professional life, and the men who are old enough to have known him familiarly are missing a work-fellow of the best and a comrade whom one would choose in hours of relaxation.

In a sense rare in this crowded town, Judge Lacombe was a New Yorker. Here he was born January 29, 1846, and here he died November 29, 1924, and between these very distant dates here he studied and worked almost without intermission.

Taking his degree at Columbia in 1863 at an age early even then, and even for a clever boy, he passed for the bar so young that he had to wait for admission. Yet even that waiting was delayed by military service with the Seventh New York, the sole duty that for any considerable time ever removed him from his birthplace. His waiting period he occupied with a well known firm of Maritime Adjusters, a training which, as he often said with modesty, had given him at least a liking for one and a very extensive side of maritime law.

After a brief period of general legal practice he entered the service of the City of New York as a still remarkably young assistant to the Corporation Counsel, and in that office at a time when its importance was rapidly increasing he remained and rose until after some thirteen years of work, recognized as of the highest class, President Cleveland appointed him Circuit Judge, the office by which he will be best remembered.

Because he was resident in the City, Judge Lacombe became at once the Judge with whom the city lawyers who then and now form the larger fraction of the active bar of the circuit had to deal; he alone ordinarily attended to motions of every kind, and

upon him at once devolved the duty of hearing admiralty appeals coming from such men as Addison Brown, Charles L. Benedict and Nathaniel Shipman.

How well he bore the numerous and differing duties laid upon him the memories of many and the records of the reports amply prove; but no reports can exhibit the patience and helpfulness with which he listened to many men wanting many things and sent no man away empty at least of a word of kindness.

The creation of the Circuit Court of Appeals in 1891 was a real boon to Judge Lacombe. As crowding calendars made the Supreme Court for most litigants something remote and difficult, his real and sensitive modesty induced a feeling often expressed that he needed the corrective advice of a nearby appellate court, a sentiment which in him was wholly spontaneous and unaffected.

Yet until his own share of the appellate work became a burden both duty and inclination kept him assiduously laboring in the trial court, and the whole history of the Metropolitan Railway receivership is only one, yet an enduring, testimonial to a capacity and loyalty unsurpassed in professional annals. As seventy approached he looked forward eagerly to retirement, but not for the sake of even well earned ease; he often said that he had worked in harness most of his life and he wanted to try free labor. The change in kind of work was not very obvious to his friends, for as Master, Referee and Commissioner his time was fully occupied in that judicial labor for which nature made him; yet he really enjoyed what he regarded as his freedom, and enjoyed it to the end.

And that end came swiftly, and to a man mentally as strong as ever, who met it calmly and in the best and highest sense religiously.

Nearly all of us have worked before him, many of us under him, and some of us with him; but whatever the relation we have recognized, and now recognize in Judge E. Henry Lacombe that good and faithful servant whose life is fruitful of encouragement for us who are left, and whose memory we delight to honor.

APPENDIX 4.**PROPOSED COMPULSORY INSURANCE
OF PASSENGERS.****Resolution of the Maritime Law Association of the U. S.**

NEW YORK, MAY 8, 1925.

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 toward 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, this matter was further considered by a subcommittee which met at Paris in June, 1924 and drafted a Convention designed to carry into effect the plan discussed at Gothenburg; 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.

APPENDIX 5.

PROPOSED INTERNATIONAL CONVENTION RELATIVE TO MARITIME LIENS AND SHIP MORTGAGES.

Analysis of Convention Compared with American Preferred Ship Mortgage Act 1920.

The following analysis is submitted in support of the critical review of the proposed convention already printed at page 1307.

1. Both the Ship Mortgage Act and the proposed Convention make a mortgage subordinate to the following maritime liens which appear to be substantially equivalent:

<i>American Ship Mortgage Act</i>	<i>Proposed International Convention</i>
Court costs	Law costs
Tonnage and light dues	Tonnage, light or harbor dues imposed by the State
Taxes	"Other taxes and charges of a similar nature"
Wages of crew	Wages of crew
Wages of Stevedores directly employed	Wages of "other persons engaged in the service of the ship"
Collision liability	Collision liability
Contribution to general average	Contribution to general average
Liability to pay salvage	Liability to pay salvage
Liability for cargo loss and damage	Liability for cargo loss and damage
Liability for personal injury.	Liability for bodily injury.

The proposed Convention omits death, unless the words "bodily injury caused to passengers and to crew" be construed to include death.

2. The proposed Convention gives priority to the following liens which are not preferred maritime liens under the Ship Mortgage Act:

Pilotage dues.
Watching and maintenance in the last port (presumably the port in which the vessel is sold).

3. The proposed Convention would create the following maritime liens (all superior to a mortgage lien) which do not exist under American law :

Admiralty Rule 15 expressly refuses a lien for assault and beating cases

Bodily injury * * * caused by assault or beating.

Master has no lien for wages (1837).

Master's wages

11 Peters 184 and other cases
1924 A. M. C. 1571

Watchman has no lien for wages

Watchman's wages

Admiralty has no jurisdiction over damage to docks, etc.

Damage to harbor works and docks.

Benedict on Admiralty, 5th Ed. §128.

4. The proposed Convention would create the following liens (all subordinate to a mortgage lien) which do not exist under our law :

Under charters requiring charterers to furnish necessities, American cases allow supplymen to have a lien only when the limitation on charterer's authority could not be discovered by reasonable diligence.

Disbursements of Master, general agents and charterers for necessities away from the port of registry.

5. The proposed Convention would create the following lien (subordinate to a mortgage lien) which may or may not exist under American law :

Under American law, bills of lading issued by the Master, owner, or owner's agent bind the vessel; but those issued by others do not, unless ratified by the sailing of the vessel or otherwise.

Claims resulting from the Bills of Lading.

6. The proposed Convention provides for maritime liens on the following accessories of the ship and of the freight, which accessories are not subject to maritime liens under American law:

- The owner's claim for unrepaired damage to the ship, or for loss of freight;
- Contributions in general average due the owner for the foregoing;
- Remuneration due the owner for salvage or *assistance*,* less sums allowed the master and crew.

Article 4, section 2 of the proposed convention suggests liability in certain cases in which none exists under American law. For example, the provision concerning loss or damage to cargo caused by "the fault * * * of a person in the service of the ship" is broad enough to include errors in navigation or in the management of the vessel, for which under the Harter Act (and under the Hague Rules) the owner may be exempt from liability. Another case is that of bodily injury to the crew caused by "the fault * * * of a person in the service of the ship." This goes beyond our rule of law that the owner is not liable in damages (as distinguished from the expenses of maintenance and cure) for an injury to the crew unless such injury was due to unseaworthiness or unsafe appliances.

WILLIAM J. DEAN.

*The word *assistance* is used in the French sense. It is used in the International Salvage Convention, and in the Salvage Act 1912.

APPENDIX 6.**DOCUMENTATION OF VESSELS.**

MAY 8, 1925.

TO THE MARITIME LAW ASSOCIATION OF THE UNITED STATES:—

Your Committee begs to report that since its report on Feb. 6, 1925, Bill No. HR 11884 has been passed by the Congress and approved by the President. It has thus become enacted into law as the Home Port Act of February 16, 1925. The Committee feels that the passage of this Act has removed the greatest source of trouble and complications for ship owners in regard to the documentation of vessels, giving as it does the right to every ship owner to document his ships in any port chosen by him, subject only to the approval of the Commissioner of Navigation.

The Home Port Act of 1925 is merely an emergency measure and the Committee invites attention to the comprehensive Draft Act which was submitted at the meeting of February 6th, and later distributed, together with comments of the Committee, to the members of the Association. (The Act and comments are to be found in the March Number of *American Maritime Cases*).

A request for criticism by members of the Association and others interested was made at the time of the distribution of the Comprehensive Act, but as yet no such criticism or comment has been received by the Secretary of the Committee. As the matter is one of great importance to all maritime interests, it is urged that members of the Association communicate such criticisms as they may have to the Secretary of the Committee promptly, so that they may be embodied in the Bill, which must be put into final shape for introduction at the next Session of Congress.

Respectfully submitted,

EMORY H. NILES,
*Secretary of Committee
on Documentation of Vessels.*

APPENDIX 7.**LIMITATION OF LIABILITY OF SHIP REPAIRERS.**

Report of Committee appointed at meeting of February 6, 1925

Your Committee has considered the proposal to extend the right of limitation of liability to ship repairers and has given particular attention to the circular on the subject from the Stockholm Conference, 1924, of the International Law Association.

Your Committee is unanimously opposed to creating any limitation of liability for ship repairers. The reasons which have led your Committee to this conclusion may be briefly summarized as follows:

The general rule of the maritime law (as well as of the common law) is that every one is liable for the negligence of himself or his agents and servants acting in the scope of their employment, and must respond for all damages proximately resulting from such negligence. Exceptions to the general rule are few, and have only been created for very strong reasons.

The principal exception is the right of limitation accorded to owners and charterers of ships and even this limitation is accorded under our law only to those who man and victual. Such limitation has been created primarily for reasons of public policy to encourage the maintenance of a merchant marine for the general benefit of the country both in peace and in war. Such public policy was recognized at an early period in the history of the sea and has been approved by all maritime nations in some form or other.

Furthermore, the more serious disasters on ships usually occur at sea where the ship is in the hands of her master and the ship owner is powerless to act, and under our law the right to limit is only allowed where the owner can show that the disaster occurred without his fault or privity.

None of the above reasons apply in the case of ship repairers. No doctrine of public policy has heretofore been recognized in any maritime country as calling for special exemption of ship repairers; their work is necessarily performed in docks or safe harbors where the repairer in person can supervise the work of his agents and servants, if he so desires, and see to it that their work is carefully performed.

Your Committee sees no reason of public policy why a ship repairer should be accorded the right to limit his liability any more than the builder or repairer of office buildings, docks or other structures on land. In both cases the builder or repairman runs the risk of causing serious damage by his negligence and often his negligent act may cause damage to an amount quite out of proportion to the compensation that he is to receive for the particular job he has undertaken.

The ship repairer can, if he so desires, protect himself from danger in several ways: he may insist upon inserting in the contract for repairs an appropriate provision whereby the men employed on the job become the servants of the owner of the ship and by which the risk of damage due to their negligence is borne by the ship owner. The repairman, unlike a common carrier, is free to make such contracts as he pleases and no rule of public policy hampers him from protecting himself by contract. The repairman may carry an appropriate policy of insurance covering him against any liability arising from jobs undertaken. Such insurance is quite common at the present time, and as it can be taken out on an annual basis and the premium divided pro rata over all the work undertaken during the year, no great hardship would result.

At the Stockholm Conference the case was suggested where a repairman takes a contract which involves the taking possession of a vessel at some exposed point distant from the shipyard and bringing her to the shipyard and there completing the repairs and in which the ship repairer "has to find a crew and navigate the ship." It would seem that such a contract would amount to a demise (or could be so drawn as to amount to a demise), and, in that event, the ship repairer would be entitled to limit his liability under existing law.

In the same circular, the statement is made that shipbuilders, wet and dry dock owners, harbor authorities, and others, all have some measure of limitation of liability under British law. So far as the law of this country is concerned, such limitations do not exist.

As your Committee reached the conclusion that no limitation was necessary or advisable, your Committee did not consider in detail what limitation could be applied, but your Committee wishes to point out that the fixing of any limitation would be

attended with very serious difficulty. If the liability of the ship repairer should be limited to some fixed amount, as, for example, £8 per registered ton, the measure of protection afforded to the ship repairman would hardly seem worth while. If the liability should be limited to the value of the ship after the disaster, it might, in many cases, be to the interest of the ship repairman to see that the ship was totally lost, in order to avoid liability for a serious partial loss. As the ship repairman has no proprietary interest in the ship or her cargo, it is difficult for your Committee to see how the value of the ship and/or cargo could properly be used as a measure of limitation of liability in any event.

Your Committee recognizes that in recent years there have been a number of disasters which have resulted in serious loss to ship repairers. These losses, however, could all have been avoided either by appropriate provisions in the contract under which the repairs were being performed, or by liability insurance, as pointed out above, and the Committee thinks that these recent disasters should not be allowed to engraft upon the maritime law an anomalous rule for which no sound reason has been advanced, so far as your Committee sees.

OSCAR R. HOUSTON,
Chairman.

A. B. A. BRADLEY
HERBERT F. EGGERT
ALBERT R. GOULD
J. M. R. LYETH

APPENDIX 8.

The resolution which is being prepared by the drafting committee will be mailed to the members as soon as ready.

NOTE.

By courtesy of the Chamber of Commerce of the United States, the Report of the American General Average Committee, and the Resolution thereon, are mailed herewith to the members of the Maritime Law Association.