

APPENDIX 8.**PROPOSED INTERNATIONAL CONVENTION ON
MARITIME LIENS AND MORTGAGES.****Resolution expressing the sense of the meeting of the Maritime
Law Association of the U. S. held on May 8, 1925.**

RESOLVED that the Maritime Law Association of the United States advise the International Maritime Conference to be held at Rome in September, 1925, with respect to the proposed "International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages" as follows:

The difference between the theory of jurisprudence and procedure in maritime affairs as in force in the United States and as in force in Great Britain and Continental Europe creates difficulty which may not be readily apparent to the delegates from other countries. One of the foundations of our maritime jurisprudence is that the ship may be sued as the guilty thing for a maritime tort and for breach of the contract of carriage. The right so to sue the ship is conditioned on the existence of a maritime lien against her, which is a property right in the ship herself and not merely a right to proceed against her. Therefore, when we speak of a maritime lien enforceable by a suit *in rem*, we mean a legal right and form of procedure peculiar to our law. Although frequently a ship may be arrested as an incident to a suit against a legal person, the procedure in such case is not based on a right in the ship herself, but merely on the right of attachment to secure the appearance in the litigation of the person sued.

The admiralty and maritime jurisdiction is vested by the Constitution of the United States exclusively in the Federal Courts as distinguished from the State Courts. There is high judicial authority for saying that the admiralty jurisdiction cannot be extended to non-maritime subjects even by the Congress of the United States, our Supreme Court having said, in substance, that the question of the true limits of the maritime law and admiralty jurisdiction is exclusively a judicial question, and that neither an Act of Congress nor a State law can make the jurisdiction broader or narrower than as determined by the judicial power. For this reason it is not yet certain that the

Ship Mortgage Act 1920, providing for foreclosure of preferred mortgages on vessels, will be held valid by the Supreme Court in so far as it ranks the mortgage ahead of maritime liens, the Supreme Court having long ago decided that a mortgage on a ship is not within the admiralty and maritime jurisdiction.

Under our law neither the cost of watching nor the master's contract of employment gives rise to a maritime lien on the ship and the same may be said of damage done by the ship to docks and harbor works; with respect to such damage it is doubted whether legislation could create such a lien.

These conceptions of our law make it proper that this Association should not unqualifiedly approve the proposed Convention.

1. This Association shares the general desire to grant to lenders on vessels all reasonable security and supports the purpose of the proposed Convention to state the rules relating to maritime liens and mortgages, so that the holders of such liens and mortgages will be assured that their relative positions will be substantially the same as between themselves, irrespective of the forum in which the liens and mortgages are enforced.

2. This Association does not favor the modification of American law in such way as to create new maritime liens not heretofore recognized by such law, or in such way as to impair or interfere with the rights now existing under such law to sue the vessel *in rem*.

3. This Association considers that the preferences to be given by the proposed Convention should not exceed those prescribed by sub-section "M" of the Ship Mortgage Act 1920, which section reads as follows:

"Sub-Section M. (a) When used hereinafter in this section, the term 'preferred mortgage lien' means (1) a lien arising prior in time to the recording and indorsement of a preferred mortgage in accordance with the provisions of this section; or (2) a lien for damages arising out of tort, for wages of a stevedore when employed directly by the owner, operator, master, ship's husband, or agent of the vessel, for wages of the crew of the vessel, for general average, and for salvage, including contract salvage."

The section here quoted does not recognize as preferred over the mortgage a lien for damages arising out of breach of

contract of affreightment, although damages arising out of tort are so preferred. This distinction as to the preferred status of such contract and tort liens has not been universally approved in the United States. Opposition to ratification of the proposed Convention is possible unless it shall prefer liens for breach of contract, of affreightment, in which case, however, opposition might alternatively be expected from those who do not favor modification in this respect of the Ship Mortgage Act 1920.