

**MINUTES OF THE MID-WINTER MEETING OF  
THE MARITIME LAW ASSOCIATION HELD  
JANUARY 7, 1927, AT 8:00 P. M.**

The mid-winter meeting of the Maritime Law Association of the United States was held at the house of the Association of the Bar of the City of New York, No. 42 West 44th Street, on January 7, 1927, at 8:00 P. M.

Present at the meeting were:

The President, Hon. Charles M. Hough, presiding; the Secretary, Harold S. Deming, and the following members:

Ray Rood Allen	Henry N. Longley
Mark W. Ash	Roger H. Loughran
Horace T. Atkins	Mark W. Maclay
Frank A. Bernero	Frank C. Mason
Geo. Whitfield Betts, Jr.	Leonard J. Matteson
Henry J. Bogatko	Edwin A. Murphy
Ralph W. Brown	George V. A. McCloskey
Ira A. Campbell	P. J. McEntegart
Samuel C. Coleman	William H. McGrann
Frederic Conger	A. Howard Neely
John W. Crandall	William J. Nunnally, Jr.
Harold J. Crawford	Courtland Palmer
William J. Dean	Frank A. Paul
Martin P. Detels	F. Herbert Prem
Charles F. Dutch	John C. Prizer
D. Roger Englar	Edward A. Quinlan
Robert S. Erskine	Ralph B. Romaine
Earle Farwell	E. Curtis Rouse
Littleton H. Fitch	H. H. Rumble
Frank J. Foley	James W. Ryan
Ezra G. Benedict Fox	Arthur J. Santry
Sanford H. E. Freund	Walter Schaffner
John L. Galey	John B. Shaw
Donald D. Geary	John H. Skeen
Francis Goertner	G. Noyes Slayton
Horace M. Gray	Paul Speer
John W. Griffin	George C. Sprague
Charles Hann, Jr.	J. Frank Staley
Charles W. Harvey	Thomas W. Swan
James A. Hatch	Rush Taggart
Henry M. Hewitt	Delbert M. Tibbetts
Charles R. Hickox	Charles A. Van Hagen, Jr.
Perry A. Hull	Carver M. Wolfe
Roscoe M. Hupper	William H. Woolley
T. Catesby Jones	John M. Woolsey
Cletus Keating	Austin T. Wright
Arnold W. Knauth	C. E. Wythe

Reading the Minutes of the last meeting was omitted by unanimous consent, the same having been printed and distributed to all the members.

The Treasurer presented an interim report showing a balance in the Treasury as of January 1, 1927, of \$2,449.85. The following back dues were reported as uncollected:

1926.....	\$330.00
1925.....	185.00
1924.....	85.00
1923.....	45.00
1922.....	5.00
1921.....	5.00
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	\$655.00

The Secretary reported the resignations of the following four members:

Earl Appleman  
 Perry A. Beck  
 A. C. Carson  
 A. Leo Everett

and the death of the following members:

Hon. Walter C. Noyes, late Judge of the United States  
 Circuit Court of Appeals, Second Circuit;  
 Hon. Henry Wade Rogers, Judge of the United States  
 Circuit Court of Appeals, Second Circuit;  
 Frederick H. Price, New York City;  
 Frazier L. Rice, New Orleans.

He inquired whether any members could furnish the correct addresses and the present whereabouts of the following members, from whom the Treasurer had not heard for over two years and whose notices are sometimes returned by the Post Office:

Henry W. Nichols, 3rd  
 H. B. Lee  
 Lt.-Col. Frederick M. Brown.

Upon motion duly made and seconded, the following members were elected to the Association:

*Associate Members—*

Hon. Thomas W. Swan, United States Circuit Court of Appeals, Old Post Office Building, New York City;  
 Hon. Grover M. Moscovitz, United States District Court, Post Office Building, Brooklyn.

*Active Members—*

Henry J. Bogatko, 64 Wall Street, New York City;  
 Henry S. Fraser, 27 William Street, New York City;  
 Charles W. Harvey, 64 Wall Street, New York City;  
 Perry A. Hull, 64 Wall Street, New York City;  
 Berwick B. Lanier, 27 William Street, New York City;  
 Edward A. Quinlan, 64 Wall Street, New York City;  
 William J. Rapp, 64 Wall Street, New York City;  
 Miss Elizabeth Robinson, 11 Moore Street, New York City;  
 H. H. Rumble, Seaboard Bank Bldg., Norfolk, Va.  
 Sawyer Thompson, 64 Wall Street, New York City;  
 Walter R. Tiernan, 27 William Street, New York City.

*Hague Rules.*

The President stated that he had a letter from Mr. Charles S. Haight reporting that the Hague Rules situation rests exactly where it stood last May. The Treaty has been signed by the United States, but the State Department has not yet sent it to the Senate for consideration. It probably will not be sent to the Senate during the present short session, which concludes on March 4th next.

*Allocation of Damages.*

Mr. Symmers, who could not be personally present, sent a report which is attached hereto and marked Appendix I. The President suggested that it would be a misfortune for the Association to act pro or con upon this important subject, except at a meeting of which the members had adequate special notice. He added that it was well known that there were three parties

among us—the first in favor of allocation of damages, the second opposed thereto, and the third, a minority to which he belonged, that believed the question to be one of discretion rather than law, and held that the Courts already had power to allocate damages when deemed best.

He also stated that the reports of the Committees on Admiralty and on Commerce, Trade and Commercial Law of the American Bar Association, favoring legislation providing for allocation of damages, and printed in the 1926 reports, were not presented to the American Bar Association because of opposition which developed.

Thereupon, on motion duly made and seconded, it was

RESOLVED that the Committee on Allocation of Damages be continued and requested to make a written report (setting forth its conclusions or its inability to agree—in either case with the reasons therefor) which shall be printed and sent by the Secretary to every member of the Association at least two weeks before the annual meeting on the first Friday in May and that every member be notified that this subject will come up for discussion and probable action at the May meeting.

#### *Codification of Navigation Laws.*

Mr. Niles presented and read the report of the Committee which is attached hereto and marked Appendix II. To the report he added the statement that Messrs. Woodruff and Buskey of the Shipping Board Bureau of Law, who prepared the Code, had encountered delays in the printing so that the work did not come from the printer until the autumn. The Committee's task was to ascertain that the Code was in fact an accurate re-statement of the existing statutes without change. Members of the Committee were unanimous that in general an excellent piece of work had been done. The Chairman, in the name of the Association, extended to the Committee members hearty thanks for their prompt and careful labors at the tedious and thankless task of comparing the statutes.

Thereupon, on motion duly made and seconded, the following resolution was adopted:

RESOLVED that the report of the Committee on Codification of the Navigation Laws be accepted and approved.

*Documentation of Vessels.*

The Committee on Documentation of Vessels had no separate report. Several of its members were active in the examination of the appropriate chapters of the Code.

*Arbitration.*

Mr. John M. Woolsey, Chairman of the Committee, tendered a printed report of which he read the principal portions. Upon motion duly made and seconded the report was received and approved, and the Chairman of the Committee was empowered to add members to the Committee in his discretion for the purpose of maintaining close working contact with the American Arbitration Association and the appropriate Committees of the American Bar Association and the Association of the Bar of the City of New York dealing with arbitration. It was also

RESOLVED that the cost of printing the report be paid by the Treasurer and that the Secretary notify all members that copies could be secured upon application to him before March 1st.

The President inquired whether any effort had yet been made to amend the United States Arbitration Act of 1925 in Congress or whether there had been any litigation designed to test the validity of that statute. Mr. Jones stated that he had had one case involving the Act, but no question of its validity had been raised. As a result of the case in which he had been interested, he was led to suggest that the Association should prepare a list of persons suitable to act as Umpires in maritime cases.

Upon motion of Mr. Hupper, the thanks of the Association was extended to Mr. Woolsey and his Committee.

*Suits in Admiralty Act.*

Mr. Betts reported that there are no pending proposals of amendment which might diminish the rights of suitors, and that the recent decision of the Supreme Court in *The Snug Harbor; Eastern Transportation Company v. United States* clarifies some of the doubtful points in the interpretation of the Act.

*Workmen's Compensation.*

Mr. Palmer, the Chairman of the Committee, stated that he had no formal report, but that interest in the subject had de-

veloped to a great degree since the appointment of the Committee. As Messrs. Hunter and Keating, who were added to the Committee in May, have latterly taken the leading part in seeking to develop a satisfactory bill, he suggested that Mr. Keating report for the Committee.

Mr. Keating stated that the Cummins Senate bill of last winter, which is less objectionable than the Graham bill in the House, passed the Senate and then went to the House where it was not acted upon, as hearings were continued until Congress adjourned. The American Steamship Owners Association and other interests which he represented thereupon decided to draft their own bill and this was done during the summer, the draft seeking to embody the best features of all the proposals. The Steamship Owners Association's draft was sent to all interested organizations and resulted in a meeting held in December at the New York office of that Association which was attended by interested parties from all parts of the United States, including the Pacific Coast and the Great Lakes. As a result of that meeting, a final compromise draft has been agreed upon and is now being printed for distribution and criticism. The compromise will have the support of interests representing stevedores, shipbuilders, shipowners, P. & I. underwriters, etc., on all coasts of the United States and on the Great Lakes.

Congressman Graham, Chairman of the House Committee of Marine and Fisheries, had said that it is hopeless to introduce this bill at the present short session. The Cummins bill was still before the House, and Mr. Graham is considering amending it so as to embody some of the ideas of the Steamship Owners Association bill. The Cummins bill, as it stands, will encounter too much opposition to have a chance of passing this Congress.

The President stated that some form of compensation insurance is sure to come and that while the Association, composed largely of lawyers, cannot expect to control the result, it should keep in touch with the movement and render all possible aid in the effort to secure just and workable legislation.

Upon motion duly made and seconded it was

RESOLVED that the Committee be continued and empowered to endorse any bill which the members of the Committee unanimously approve.

*New Business:**Appeal in Admiralty as New Trial.*

Mr. Hickox called the attention of the Association to the development and operation of the rule that an appeal in admiralty is a new trial of the issues of fact. In view of the accumulation of some ten years of experience since the decision of *The John Twohy* by the Supreme Court of the United States settling the practice, he moved the appointment of a Committee of five by the Chairman to examine the present state of the law and practice on this point and to report to the next meeting whether any change in the law would be desirable, and if so, what change should be urged.

Mr. McCloskey spoke in opposition, pointing out that a wide power of revising District Court judgments is desirable; that the admiralty procedure has always been favorably known for its flexibility, which should be preserved; and that with the increase in the numbers of Judges of the District Courts, it has become desirable to have the findings of the single Judges subject to review by the Circuit Courts of Appeal which have more experience in admiralty matters.

Mr. Betts, Mr. Jones concurring, stated that he understood the object of the Committee would be to inquire whether there ought to be any statutory revision of the present doctrine. The President stated that the question was whether the doctrine of *The John Twohy* should be altered, bettered or abandoned. On motion duly made and seconded, it was

RESOLVED that the President be empowered to appoint a Committee of five to examine the present state of the law and practice under the decision of the *John Twohy*, to report to the next meeting whether any change in the law would be desirable, and, if so, what change should be urged.

The President thereupon appointed the following Committee: T. Catesby Jones, Chairman, Charles F. Dutch, Leslie M. Krusen, George De Forest Lord and John C. Prizer.

*Supplementary Proceedings in Admiralty.*

Mr. McCloskey called the attention of the members to the fact that the old provisions of the general rules permitting supplementary proceedings in admiralty, as in other branches of the

jurisdiction, had apparently, through inadvertence, failed of inclusion when the admiralty and other rules of the Eastern and Southern Districts were revised and brought into harmony in 1924. The unfortunate result of this situation had appeared in a case before Judge Garvin who had been compelled to decide that, under the present rules, supplementary proceedings in aid of an admiralty judgment are impossible. Upon motion duly made and seconded, it was

RESOLVED that the President appoint a Committee of five to investigate the advisability of devising a rule to restore the remedy of supplementary proceedings in admiralty in the Southern and Eastern Districts.

The President thereupon appointed the following Committee: Hon. Marcus B. Campbell, Chairman, John W. Crandall, George V. A. McCloskey, Paul Speer and Hon. Thomas D. Thacher.

*Fifty-sixth Rule.*

Mr. Ray Rood Allen called the attention of the members to the present tendency in the opinions to restrict the right of impleading parties, denying it where the right against the additional party is not maritime or where the libellant could not have sued the additional party directly.

Upon motion duly made and seconded, it was

RESOLVED that the President be empowered to appoint a Committee of five to consider whether a broader right of impleading parties is desirable, and if so, how the result could be accomplished.

The President thereupon appointed the following Committee: Roscoe H. Hupper, Chairman, William J. Conlen, Albert T. Gould, Wharton Poor and George W. P. Whip.

*Bullowa Matter.*

In answer to a question put by Mr. Campbell, the Secretary reported on the status of the Bullowa matter, which was considered by the Association at a Special Meeting on June 3, 1924. The Secretary reported that the resolution of the Association, together with the report of its Committee and the stenographic minutes of the investigation conducted by its Committee and all



the exhibits, had been promptly submitted to the Grievance Committee of the Bar Association which had acknowledged receipt thereof but which up to the present time was not known to have acted upon the matter in any way.

Upon motion duly made and seconded it was thereupon

RESOLVED that the President and Secretary be directed to request and require of the Bar Association the return of the papers transmitted to it by this Association unless the Grievance Committee proposed to act in the matter before the annual meeting of this Association on the first Friday in May.

Upon motion duly made and seconded, the meeting thereupon adjourned.

HAROLD S. DEMING,  
*Secretary.*

**APPENDIX I.***Allocation of Damages.*

6 January, 1927.

Honorable Charles M. Hough,  
President of The Maritime Law Association  
of the United States.

Dear Sir:—

The Committee appointed to consider the question of the advisability of such changes in our law as will permit of the allocation of damages in collision cases in accordance with the degree of fault when two or more vessels involved are found to blame, does not yet feel ready to render a final report.

The Committee has kept in touch from time to time with the Admiralty Committee of the American Bar Association, which drafted a bill relating to "the maintenance of suits for damages by collision on the high seas and other navigable waters," which appears as Appendix B to the report of the standing Committee on Commerce, Trade and Commercial Law of that organization, and is printed at page 409 of Volume 51 of the Reports of the American Bar Association (1926). As a result of the active opposition that arose on the part of a member of the American Bar Association, this bill, although approved by the Commerce, Trade and Commercial Law Committee, was disapproved by the Association, and referred back to the Admiralty Committee, whose present chairman, we understand, is Mr. Fitzhenry Smith of Boston, so that no definite action has been taken by the American Bar Association in this behalf.

Your Committee, owing to the illness and/or absence of several of its members, has not been able for some time to hold a meeting at which a quorum was present.

The undersigned feel that the subject is of such importance that it is desirable for them to secure as wide an expression of opinion as possible from other members of this Association before any definite report or recommendation is made on the subject. They therefore suggest that the matter should be put over until the next meeting of the Association.

Very respectfully yours,

RUSSELL T. MOUNT  
CHARLES R. HICKOX  
JAMES K. SYMMERS.

## APPENDIX II.

*Report of Committee on Codification of the Navigation Laws.*

January 6, 1927.

Honorable Charles M. Hough,  
President of the Maritime Law Association  
of the United States.

Dear Sir:

1. At the annual meeting of the Maritime Law Association held on May 7th, 1926, at the house of the Association of the Bar of the City of New York a resolution was passed empowering the President to appoint a Committee for the purpose of examining a codification of the Navigation Laws which had been prepared by the Shipping Board during a period extending over several years. It was felt by the Association that a restatement of the Shipping Laws should not be presented to Congress before the members of the Association should have time to examine carefully the provisions of the restatement and codification for the purpose of ascertaining whether the language of the restatement was accurate and comprehensive and the arrangement of the codification was satisfactory with reference to subjects, chapters, and indices.

2. In accordance with the above resolution the following Committee was appointed by the Honorable Charles M. Hough, the President, for the purpose of examining the Code with the objects above stated in mind.

Chairman Emory H. Niles,  
Niles, Barton, Morrow & Yost,  
1606 Munsey Building,  
Baltimore, Maryland.

Chapter 1—Documented and Recorded Vessels  
Addison C. Burnham and Albert T. Gould,  
Blodgett, Jones, Burnham & Bingham,  
1 Federal Street,  
Boston, Massachusetts.

- Chapter 2—Admeasurement of Vessels  
Henry H. Little,  
Hughes, Little & Seawall,  
Law Building,  
Norfolk, Virginia.
- Chapter 3—Marine Inspection Service  
Samuel C. Coleman,  
Office of U. S. Attorney,  
Old Post Office,  
New York, New York.
- Chapter 4—Officers and Pilots of Merchant Vessels  
John W. Crandall,  
Hunt, Hill & Betts,  
120 Broadway,  
New York, New York.
- Chapter 5—Shipping, Rating, Wages and Discharge of Seamen  
Robert W. Williams,  
Janney, Ober, Slingluff & Williams,  
Title Building,  
Baltimore, Maryland.
- Chapter 6—Protection and Relief of Seamen, etc.  
George C. Sprague,  
Hunt, Hill & Betts,  
120 Broadway,  
New York, New York.
- Chapter 7—Offenses By and Against Seamen  
Earle Farwell,  
Barry, Wainwright, Thatcher & Symmers,  
59 Wall Street,  
New York, New York.
- Chapter 8—Entry and Unlading of Vessels, etc.,  
Leo J. Curren,  
29 Broadway,  
New York, New York.

- Chapter 9—Clearance of Vessels  
Wharton Poor,  
Haight, Smith, Griffin & Deming,  
27 William Street,  
New York, New York.
- Chapter 10—Customs Officers  
Dallas S. Townsend,  
Barry, Wainwright, Thatcher & Symmers,  
59 Wall Street,  
New York, New York.
- Chapter 11—Restrictions Upon Coastwise Trade  
Ray R. Allen,  
Burlingham, Veeder, Masten & Fearey,  
27 William Street,  
New York, New York.
- Chapter 12—Fish and Fisheries  
W. C. Bristol,  
504 Wilcox Building,  
Portland, Oregon.
- Chapter 13—Aids and Obstructions to Navigation, including  
Coast Guard, Radio, etc.  
C. E. Wythe,  
U. S. Shipping Board,  
45 Broadway,  
New York, New York.
- Chapter 14—Passengers and Immigration  
George De Forest Lord,  
Lord, Day & Lord,  
25 Broadway,  
New York, New York.
- Chapter 15—Classes of Cargo  
L. De Grove Potter,  
Kirlin, Woolsey, Campbell, Hickox & Keating,  
27 William Street,  
New York, New York.

- Chapter 16—Consular Service  
Joseph M. Rault,  
Terriberry, Young, Rault & Carroll,  
526 Whitney Building,  
New Orleans, Louisiana.
- Chapter 17—Public Health and Quarantine  
James A. Hatch,  
Hatch & Wolfe,  
27 William Street,  
New York, New York.
- Chapter 18—Tonnage Dues and Taxes, etc.  
Golden W. Bell,  
Bell & Simmons,  
Alaska Commercial Building,  
San Francisco, California.
- Chapter 19—Marine Postal Service  
Frank A. Bernero,  
Rumsey & Morgan,  
44 Wall Street,  
New York, New York.
- Chapter 20—Collision of Vessels  
Chauncey I. Clark,  
Burlingham, Veeder, Masten & Fearey,  
27 William Street,  
New York, New York.
- Chapter 21—Rights, Immunities and Liabilities of Shipowners  
and Carriers, and Enforcement  
George V. A. McCloskey,  
House, Holthusen & McCloskey,  
120 Broadway,  
New York, New York.
- Chapter 22—Sales, Charters, and Mortgages of Vessels  
John H. Skeen,  
Emory, Beeuwkes & Skeen,  
Equitable Building,  
Baltimore, Maryland.

Chapter 23—United States Shipping Board  
Ralph B. Romaine,  
27 William Street,  
New York, New York.

The above members of the Committee are all members of the Maritime Law Association and are proctors in active practice at the Admiralty Bar. The Chairman had power to add to members of the Committee and several members were added to the Committee after the original appointment.

3. The plan of work pursued by the Committee was to assign one chapter of the proposed codification as prepared by the Bureau of Law of the United States Shipping Board to each member except that two members were assigned to Chapter One. Each member was requested to examine the proposed Code with reference to the present statutes and decisions relating thereto and to report his criticisms and suggestions to the Chairman. No effort at amendment was made and all possible means were used to prevent any question of amendment being taken up. The members of the Committee made their reports to the Chairman and their criticisms were passed by the Chairman to Messrs. John S. Woodruff and Lylle R. Buskey of the Bureau of Law. These gentlemen by correspondence and personal interview with the individual members of the Committee dealt with all the criticisms which had been made and on all occasions except two were able to reach an agreement with the members of the Committee as to the proper changes to be made in the codification as originally submitted. In general the opinion of the Committee was that the work of the Bureau of Law had been most excellently done and the criticisms were directed rather to matters of detail than to matters of general importance. In one case, however, a member of the Committee discovered an omission which was thereupon corrected by a personal visit to Washington and conference at the Shipping Board.

4. Following the examinations and suggestions for correction made by the members of the Committee respectively as to chapters assigned to each, all the members of the Committee have severally reported to me as Chairman as to their examination. In accordance with the unanimous report of said Com-

mittee, and subject to the exceptions contained in the individual reports, I hereby certify on behalf of the Committee as a whole with reference to Chapters 1 to 23, inclusive, of said proposed codification as follows:

1st. That the work of restatement has been thoroughly and accurately carried out and does present all the existing substantive law now in force without changing its meaning, scope, or application.

2nd. In accordance with the statement included in paragraph "1st" next above, that, in the opinion of this Committee, none of the changes from the language of the original statutes, contained in the restatement of such statutes in the Code, are of such a nature as to involve any change of judicial construction, so as to create any change in meaning of the language of said restatement as compared with the language of the original statutes, nor of such a nature as to give rise to any reasonable apprehension of any such change in construction.

3rd. The language of the statutes has been closely followed throughout the codification, the changes in the language contained in the restatement being of a nature to clarify the meaning of the statutes without in the least changing the meaning, scope, or application of such statutes.

4th. That, subject to the reservations above mentioned, the language of the chapters, sections, captions, and indices presented by said codification is, in the opinion of said Committee, satisfactory.

5. The status of the proposed codification is now as follows: It has been submitted to Senator Jones of Washington, Chairman of the Senate Committee on Commerce, and to Representative Scott of Michigan, Chairman of the House Committee on Merchant Marine and Fisheries. These gentlemen have stated that they are ready to introduce the Code as a bill into Congress.

The proposed Code was submitted to the United States Shipping Board, which referred it to a sub-committee consisting of Commissioners Myers, Teller and Smith, who have been in touch with the work and who approved the Code on January 4, 1927,



and presented it to the full Board, which approved it on the same day.

Upon the formal approval of the Code by the Shipping Board the Chairman sent the Code to Senator Jones and Representative Scott with the approval of the Board and a request that it be introduced as a bill. The bill was introduced by Senator Jones on January 6, 1927, and hearings will be held by the proper Committees preliminary to a report to Congress as a whole.

6. The immediate work of the Committee, i. e. the examination of the draft of the Code and the criticism of it, has now been completed. It is suggested that the Committee be kept in being, so that any further action which may be desirable in regard to hearing or other matters which may come up while the bill is in Congress may be attended to. The Chairman wishes to express his deep appreciation of the prompt, thorough, and generous way in which the members of the Committee completed their work.

EMORY H. NILES,  
Chairman.