MARITIME LAW ASSOCIATION OF THE UNITED STATES

Allocation of Damages.

March, 1927.

At the December, 1925, meeting of the Maritime Law Association of the United States, a Committee was appointed by the President of the Association to investigate the desirability of legislation calling for the allocation of damages in collision cases in accordance with the degree of fault.

The Committee has held meetings and considered the question but feels, before making its final report to the Association, that the members of the Association should have an opportunity to express to the Committee their individual views on the question.

The argument in favor of the change is that it is advisable to enable the courts to apportion the damages unequally where the vessels to blame have been guilty in unequal degrees, as, for instance, in such a case as *Yang-tsze Insurance Association* v. *Furness, Withy & Company, Ltd.* (1914, C. C. A. 2 C.), 215 Fed. 859.

It has been suggested on the one hand that the change would increase litigation and increase the number of appeals, in the hope of obtaining an advantageous apportionment of the blame and the damages. On the other hand, others think that exactly the opposite would be the result. It has also been suggested that many litigants, especially cargo interests, in the event that the proposed legislation should be enacted, would prefer the common law courts to the admiralty courts, in the hope that a jury might find the owner whose vessel is sued guilty of a higher degree of fault than would be found if the case were tried in the admiralty courts.

The Brussels Convention of 1910, which was ratified by nineteen countries including Great Britain, provided for alloca-

tion of damages in accordance with the degree of fault. In order to give effect to the Convention, Great Britain passed the Maritime Conventions Act of 1911, which is now in force in Great Britain.

The Brussels Convention was never submitted by the State Department of the United States to the Senate for action.

Replies to inquiries addressed to various very competent English authorities all have stated that the apportionment of damages according to the degree of fault, introduced into the statute law of Great Britain by the Maritime Conventions Act, 1911, has worked satisfactorily in Great Britain. On the other hand, since the receipt by the Committee of such replies, there has appeared the decision of the House of Lords in *The Clara Camus* (Lloyd's List Law Reports, Volume 26, page 39), where, in a collision on the high seas, both vessels were held at fault and damages divided by the court of first instance. On appeal, the Court of Appeal apportioned the damages two-thirds and one-third. On further appeal to the House of Lords this finding was reversed and the equal division of damages decreed by the Trial Court was restored, Lord Shaw using this language:

> "There may be a danger in these cases of error in refinement and ultra analyses in what is at best a highly difficult exercise, viz., the quantification of cause by the quantification of blame. It is clear, to my mind, that a mere enumeration of errors or faults goes no distance to satisfy the case, and forms no safe prescription of any rule of quantification. For many errors or mistakes in minor incidents or in minor particulars (although none of them could have been ruled out of the category of causes contributory to the result) may be completely outweighed in causal significance by a single broad and grave delinquency. One error of the latter kind may have done more to bring about the result than ten of the former."

In the United States, our Supreme Court, in the case of *The Atlas* (1876), 93 U. S. 302, at page 319, stated the settled law of this country as follows:

> "Cases also arise where both vessels are in fault; and the repeated decisions of this court have established the rule, that in that contingency the damages shall be equally apportioned between the offending vessels, as having been occasioned by the fault of both. *The Catherine,* 17 How. 177; *The Sunnyside,* 91 U. S. 216; *The Continental,* 14

Wall. 355; *The Morning Light,* 2 id. 560; *The Pennsylvania,* 24 How. 313."

Under this law the courts do not discriminate between the vessel whose fault may be gross and the vessel whose fault may be comparatively slight.

Before the Committee makes its report at the next stated meeting of the Association, it would be glad to have your views as soon as possible on the following questions:

1. Do you favor a change in the present American rule which divides damages equally in a collision case where both vessels are held to blame?
2. If you favor such a change, do you thing that such change should limit the right of cargo to recover full damages from the non-carrying vessel?

Nothing in the foregoing is intended to indicate that the Committee has any fixed view on either of the questions.

It may be helpful if the members of the Association will refer to the report of a similar committee printed in the proceedings of the Association held on the 10th of February, 1922, at page 1122.

Will you kindly send any reply to the undersigned, as Chairman of the Committee?

Very truly yours,

JAMES K. SYMMERS,
Chairman,
59 Wall St., New York City.

Reminder: Annual Meeting, Friday, May 6, 1927.