DOCUMENT No. 133

MINUTES OF THE ANNUAL MEETING OF THE MARITIME LAW ASSOCIATION HELD MAY 20, 1927, AT 8:00 P. M.

The twenty-eighth annual 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, 42 West 44th Street, on May 20, 1927, at 8 P. M.

Present at the meeting were the new President, Hon. Augustus N. Hand, presiding, the Secretary, Harold S. Deming, and the following members:

Ray Rood Allen
Theodore L. Bailey
Frank A. Bernero
George Whitefield Betts, Jr.
Harold F. Birnbaum
Arthur M. Boal
Henry J. Bogatko
George S. Brengle
Charles Burlingham
Charles C. Burlingham
John Tilney Carpenter
Horace L. Cheyney
Chauncey I. Clark
Arthur W. Clement
William E. Collins
William J. Conlen
Douglas F. Cox
John W. Crandall
Harold J. Crawford
Leo J. Curren
William J. Dean
Martin P. Detels
John C. Donovan
Charles F. Dutch
D. Roger Englar
Earle Farwell
Ezra G. Benedict Fox
John L. Galey
Francis Goertner
Albert T. Gould
John W. Griffin
Farnham P. Griffiths
Charles W. Harvey
James A. Hatch
Henry M. Hewitt
Charles R. Hickox
Robert E. Hill
Perry A. Hull
Roscoe H. Hupper
Philip C. Jessup
Vernon S. Jones
J. Floyd Johnston
Edward J. Keane
Arnold W. Knauth
P. J. Kooiman
William W. Landis
Henry H. Little
Mark W. Maclay
Leonard J. Matteson
Russell T. Mount
Arthur E. Muller
George V. A. McCloskey
P. J. R. McEntegart
William H. McGrann
A. Howard Neely
Emory H. Niles
William J. Nunnally, Jr.
Alfred Ogden
George B. Ogden
James L. O'Neill
Frank A. Paul
Wharton Poor

Henry B. Potter
Herbert S. Prem
Harrington Putnam
Charles F. Quantrell
Edward A. Quinlan
William J. Rapp
Elizabeth Robinson
James W. Ryan
John N. Senecal
John B. Shaw
James K. Symmers
Harry D. Thirkield
Sawyer Thompson
Dallas S. Townsend
Eugene Underwood
Charles A. Van Hagen, Jr.
Van Vechten Veeder
Robert W. Williams
Carver W. Wolfe
William Henry Woolley
John M. Woolsey
Austin Tappan Wright
Charles E. Wythe

The meeting was called to order by the Secretary who, after stating that the Association had been left without a President, due to the death of Hon. Charles M. Hough on April 22, 1927, read the following letter written by Judge Hough on January 25th:

"Jan. 25, 1927.

Personal

Charles S. Haight, Esq.,
27 William Street, City.

Dear Haight:

If we all live until next May, the regular Annual Meeting of the Maritime Law Association will come off, and at that time it will be necessary to elect officers as usual.

I am going to name you as the Chairman of the Nominating Committee for that meeting. You may consider yourself named now. Also I wish you would select two other men to act with you, and for the following reasons, which I shall frankly state,—although it is great cheek for me to say what I am going to say:

You and such persons as you may associate with you must select a man to be President of the Association in my place.

Of course this assumes that I think I would be renominated. Well, I frankly think I would; but I am getting out of affairs as much as I can and I have now been President of the Association long enough; I am no longer fit to do what the place requires; and in this manner I put you in the lead to find a successor to

Yours very sincerely,

C. M. HOUGH."

The Secretary further stated that Mr. Haight had accordingly formed his Committee, consisting of Messrs. Englar, Hupper and Woolsey, who had unanimously agreed upon the nomination of the following gentlemen:

President
Augustus N. Hand

Secretary and Treasurer
Harold S. Deming

Executive Committee
George W. Betts, New York
D. Roger Englar, New York
Albert T. Gould, Boston
Roscoe H. Hupper, New York
Henry H. Little, Norfolk
Emory H. Niles, Baltimore
George B. Ogden, New York
James K. Symmers, New York

Mr. Deming called attention to the interesting fact that the Committee had nominated as President the man whom, of all others, Judge Hough would have preferred as his successor, as Mr. Deming happened personally to know.

There being no other nominations from the floor, Mr. Little moved that the Secretary cast one ballot for the persons nominated by Mr. Haight's Committee, and the motion, being seconded and put, was unanimously carried.

Judge Hand, being installed as Chairman of the meeting, expressed his gratitude that Judge Hough, the outstanding Admiralty Judge of his generation, should have thought of him at all in connection with admiralty matters, and his equal gratitude that the Maritime Law Association should have acquiesced in the choice.

The minutes of the last annual meeting and of the winter meeting having been printed and distributed to the members, the reading of the same was dispensed with by unanimous consent.

The Annual Reports of the Secretary and Treasurer were next submitted and, there being no objection, were received, approved and ordered filed. Copies thereof are annexed hereto as Appendices I and II.

Mr. Crandall read a memorial to the late Hon. Julius M. Mayer, prepared in association with Messrs. Haight and Lord. Upon motion duly made and seconded, the memorial was received and ordered filed, with the direction that the Secretary send a copy to Judge Mayer's sister. The memorial is printed herewith (Appendix III).

The Chairman called attention to the death during the past year of Judges Hough, Noyes and Rogers of the Second Circuit and Judge Rose of the Fourth Circuit, and upon motion duly made and seconded, was authorized to appoint Committees of three persons each to prepare appropriate memorials of our late members.

Arbitration Statutes.

Mr. Woolsey, Chairman of the Committee, stated that there was for the present nothing to add to the first report, presented at the January meeting. The Committee is now awaiting the reassembling of Congress in order to present its views to that body.

Federal Maritime Workmen's Compensation Legislation.

In the absence of Mr. Palmer, the Chairman, Mr. Boal stated that Congress had since the last meeting passed the Longshoremen and Harbor Workers' Compensation Act, which covers certain classes of maritime workers. Upon motion duly made and seconded, the Committee was thereupon discharged.

Allocation of Damages.

Mr. Symmers, Chairman of the Committee, read its report, of which copies were distributed to the members. The report, signed by Messrs. Symmers, Matteson and Mount, three of the four members who attended the recent meetings, is printed herewith and marked Appendix IV.

At the conclusion of the reading of the majority report, Mr. Hickox, the fourth active member of the Committee, requested leave orally to state the position of the minority. He agreed, in the first place, that the second question put by the Committee in its circular dated March, 1927 (pp. 1455-1457), as to whether the right of cargo to recover full damages from the non-carry-

ing vessel should be changed, should be left aside for the present in view of the determined opposition of cargo underwriters. On the first question, whether the present American half-damage rule in collision cases should be limited to permit the allocation of damages according to the degree of fault, where both vessels are held to blame, he urged that the arguments for the change are, as a matter of principle, unanswerable; that the objections of the majority do not bear on the principle involved, but are of a "practical" nature. Taking these up in turn, the first objection is that the proposed change would place too great a burden on the Court, which, in his opinion, meant that the Courts were regarded as too inexperienced to deal with allocation of damages and would not give opinions satisfactory to litigants or to the Bar. This objection he regarded as wholly unsound; Judges, even those at first inexperienced in admiralty, would soon acquire sufficient experience to deal with the question of apportionment just as they were required to become familiar with the principles of fault in collision cases. Difference in degree of fault is the usual situation in collision matters and the punishment should fit the crime. The half-damage rule is only a rule of convenience, being less unfair than putting all the blame on the vessel having the greater fault. The remarks of Lord Shaw in the very recent case of *The Clara Camus,* 26 Lloyds L. L. 39, in the House of Lords, on which the majority report relies, do not put the issue quite fairly; the number of items of fault of course cannot control—the question in each instance is on the whole case—whether one ship is substantially more at fault than the other. Judges have tried to work out a rule that a gross fault on the part of one vessel excuses a small fault on the part of the other, but with scant success. Mr. Hickox put the case of a vessel with small hull damage but very large cargo damage in collision with another vessel which suffered some hull damage. It is quite conceivable in such a case that the vessel with large cargo damage would find it cheaper to admit that she was wholly at fault, thus escaping any liability to cargo under the Harter Act and bill of lading clauses, because she would be worse off if only half to blame. Such a situation is destructive of sound principle.

Secondly, the contention that the English Courts, unlike the American Courts, are aided by nautical assessors to guide them in these matters is unimportant, since the English Courts both

on trial and on appeal may and do disregard the opinions of the assessors as to navigation faults.

Thirdly, the practical objection that the proposed change will increase litigation is purely a conclusion. It may equally be said that the present half-damage rule offers a large stake for which the vessel grossly at fault may play and tempts such a vessel to litigate in the hope of discovering sufficient fault on the part of the less offending vessel to bring about a half-damage decree.

Fourthly, the views of the Judges should be considered. The Legal Department of the Shipping Board, in the course of its investigation of the desirability of proposed changes in the law, circularized the Federal Bench two years ago and, of twenty-eight Judges who expressed an opinion on this rule, twenty-six favored the change and only two opposed. Among those favoring the change were Judges Hough and Rose, who in the course of long experience in the Second and Fourth Circuits, where by far the greatest amount of this kind of litigation takes place, were strongly in favor of the change. None of the Judges suggested that the change would place an unbearable further burden upon them.

Fifthly, the International Maritime Convention of 1910 on Collisions, which provides that liability shall be in proportion to the degree of fault, has been adopted by every other maritime nation of importance except Spain. Canada has adopted it and the present disparity between the damage rules on opposite sides of the Great Lakes and along the Atlantic seaboard is extremely undesirable.

The sixth objection, that the change would cause underwriters to raise their premiums, hardly seems tenable. The total amount of the hull losses will not be changed by the rule. If the present rule permitting cargo to recoup is not now changed, cargo premiums should likewise remain unaltered. Premiums, furthermore, are in the main adjusted on the basis of long term experience rather than on the short view of altered conditions.

Finally, the principle should be that the party at fault should pay according to its fault and no more. The principle of comparative negligence has been the rule in collision cases in all other maritime countries for many years and is well established. It is not unknown even in the United States where—for example, in Massachusetts—juries may find comparative negligence in death cases.

Mr. Englar thereupon moved that the majority report be taken up, and a discussion ensued as to whether the matter should be put over until the autumn meeting or until a special meeting which might be called in June, in order to give the members further time to consider the majority and minority reports before voting. Stress was laid on the fact that the Committee on Commerce of the American Bar Association, which a year ago withdrew its report favoring the adoption of the new rule of the 1910 Convention because of opposition of cargo interests, is now again preparing its report for the August meeting of the American Bar Association at Buffalo and its decision, which must be made by June 1st, will be largely influenced by the action of this Association on the present occasion.

On the merits of the proposition, Mr. McCloskey pointed out that the rule that clear evidence of gross fault on the part of one ship places upon it the burden of showing by equally clear and convincing evidence the fault of the other vessel, softens the hardship of the half-damage rule and that navigators ought not to be encouraged to believe that their actions at the time of collision will be made the basis of astute speculations as to percentage of fault.

Mr. Englar being willing to yield the floor on his motion to the question whether the discussion should be postponed or not, it was, upon motion duly made and seconded, resolved not to adjourn the discussion but to bring the matter to a vote at the present meeting.

The question of the adoption or rejection of the majority report, adhering to the present half-damage rule and opposing the proposal of allocation of damages in accordance with the degree of fault, was thereupon put and, upon a rising vote, the majority report of the Committee was adopted by vote of 54 to 25, there being 87 persons recorded as present.

Appeal in Admiralty as New Trial.

In the absence of Mr. Jones, Chairman of the Committee, the report was presented by Mr. Prizer. It is separately printed and marked Appendix VI. Mr. Clark and Mr. McCloskey pointed out that the time for exceptions should run, not twenty days after filing the record, but twenty days after *notice* of filing has

been given to the adverse party, and this amendment was accepted by Mr. Prizer. Mr. Griffin pointed out the mechanical difficulty that the method recommended by the Committee would make it impossible to print the assignments of error in the record. Mr. Prizer replied that the Committee had carefully weighed this difficulty and appreciated that its recommendation would mean that the assignments would form a document separate from the bound record but was convinced that the other advantages outweighed this disadvantage.

Upon motion duly made and seconded, the report of the Committee was unanimously adopted.

Supplementary Proceedings in Admiralty.

In the absence of Judge Campbell, the Chairman of the Committee, the Secretary read its unanimous report which is annexed hereto and marked Appendix V.

There being no discussion, upon motion duly made and seconded, the report was unanimously adopted.

56th Rule.

Mr. Hupper, Chairman of the Committee, presented its unanimous report, which is separately printed and marked Appendix VII. He stated the substance of the Committee's report fully and was listened to with close attention. There being no discussion of the report, it was, upon motion duly made and seconded, unanimously adopted.

Documentation of Vessels.

Mr. Niles stated that the Committee had no report to make, as Congress is not in session. He called attention to the fact that the death of Judge Rose had deprived the Committee of its Chairman. On motion duly made and seconded, the President was authorized to appoint a new Chairman and the Committee was continued.

Bullowa Matter.

The Secretary called attention to the instructions given at the last meeting to the President and Secretary to induce the Grievance Committee to act, and stated that the trial of the case

had subsequently been completed, that briefs had been filed and that Judge Davis, the Referee, was expected to give his decision in the near future. He accordingly suggested that further pressure on the Grievance Committee be left in the discretion of the President, in which view the meeting acquiesced.

GENERAL.

The Chairman reported that the Committees on Appeals from Interlocutory Decrees and Codification of Navigation Laws had finished their work during the year and had been discharged and that there was nothing new to report in respect of the Suits in Admiralty Act and the Uniform Ocean Bill of Lading (Hague Rules), except that a form of the Hague Rules has been introduced into the French Parliament and is under consideration there.

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

M. H. Avery
Stephen Barker
H. F. Birnbaum
Chas. S. Bolster
Frederick W. Brune
John C. Crawley
John Kirby Hartley
John J. Heckman
Ellis Knowles
P. J. Kooiman
Gerald J. McKernan
W. M. L. Robinson
N. B. Schott

The Secretary also announced three resignations, as follows:

Robert McL. Jackson
Harrison Lillibridge
Carleton L. Marsh

Upon the suggestion of the Secretary, the following Judges, active in admiralty matters in the various coastal jurisdictions, were invited to become associate members:

Hon. George W. Anderson, U. S. Circuit Judge, Boston, Mass.
Hon. Robert S. Bean, U. S. District Judge, Portland, Ore.
Hon. Louis H. Burns, U. S. District Judge, New Orleans, La.

Hon. Rhydon M. Call, U. S. District Judge, Jacksonville, Fla.
Hon. William C. Coleman, U. S. District Judge, Baltimore, Md.
Hon. Rufus E. Foster, U. S. Circuit Judge, New Orleans, La.
Hon. D. Lawrence Groner, U. S. District Judge, Norfolk, Va.
Hon. John R. Hazel, U. S. District Judge, Buffalo, N. Y.
Hon. Frank H. Kerrigan, U. S. District Judge, San Francisco, Cal.
Hon. Jeremiah Neterer, U. S. District Judge, Seattle, Wash.
Hon. Edwin S. Thomas, U. S. District Judge, Norwalk, Conn.
Hon. Edmund Waddill, Jr., U. S. Circuit Judge, Richmond, Va.

New Business.

International Maritime Committee—Instructions to Delegates—Amsterdam, 1927.

The Secretary called attention to the forthcoming biennial meeting of the Comité Maritime International at Amsterdam, August 1 to 4, 1927, of which the Agenda was distributed to the members in January. Mr. T. Catesby Jones had expressed his readiness to attend and serve as a delegate and Mr. George de Forest Lord had stated that he might also be able to attend. The Secretary announced that he had prepared a memorandum stating the views of this Association in respect of the questions on the Agenda, in so far as the same were expressed in the resolutions and proceedings heretofore had, and had sent the same to the Secretaries of the Comité. Upon inquiring whether the meeting desired to hear the reading of the memorandum with a view to instructing the delegates, it was suggested that the matter be referred to the Executive Committee with power, the hour being late. On motion duly made and seconded, Messrs. Jones and Lord were unanimously appointed delegates to the Amsterdam meeting and the Executive Committee was empowered to instruct them.

The Executive Committee thereupon adopted as its instruction the Secretary's letter of April 19, 1927, which is separately printed and marked Appendix VIII.

Award of Interest in Admiralty Decrees on Appeal.

The Secretary presented to the meeting a letter and brief from Mr. Kremer of Chicago calling attention to the differing rules of the Circuits with respect to the allowance of interest upon decrees in admiralty and urging that the rule of the Sixth Circuit be adopted by all the Circuits. The communication is printed separately and marked Appendix IX. Upon motion duly made and seconded, the President was authorized to appoint a Committee to examine the matter and report at the next meeting.

The President thereupon appointed the following to serve on the Committee: Charles E. Kremer of Chicago, Chairman; Hon. Thomas H. Swan and Oscar R. Houston of New York, Joseph W. Henderson of Philadelphia and Farnham P. Griffiths of San Francisco.

At this point Mr. Betts arose to announce that news had come that President Coolidge had appointed Hon. Augustus N. Hand to the vacancy in the Circuit Court of Appeals, Second Circuit, resulting from the death of Judge Hough. The news was received with prolonged applause.

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

The President subsequently appointed the following Committees to prepare memorials to our late members:

Memorial to Judge Hough: Chas. C. Burlingham, Chairman, John M. Woolsey and John W. Griffin.

Memorial to Judge Rogers: Hon. Harrington Putnam, Chairman, George V. A. McCloskey and Pierre M. Brown.

Memorial to Judge Noyes: Hon. Van Vechten Veeder, Chairman, D. Roger Englar and O. D. Duncan.

Memorial to Judge Rose: Emory H. Niles, Chairman, Henry H. Little and Alfred Huger.

HAROLD S. DEMING,
Secretary.

APPENDIX I.

Annual Report of the Secretary.

To the Maritime Law Association of the United States:

Harold S. Deming, as Secretary, submits his report for the year ending April 30, 1927, as follows:

There have been two meetings of the Association, the Annual Meeting on May 7, 1926, and the usual winter meeting on January 7, 1927.

The roll of members has been depleted by the death of Charles M. Hough, John C. Rose, Walter C. Noyes, Henry Wade Rogers, Frederick H. Price, Frazer Lee Rice.

Two new associate members and eighteen new active members have been elected to the Association. Seven members have resigned and the Executive Committee has dropped one. The present membership is 329 active and 38 associate members, making a total of 367. The Association continues to maintain a wide membership throughout the United States among attorneys practicing in admiralty.

The Association during the year has been active through Committees on the following subjects:

Arbitration Statutes
Federal Maritime Workmen's Compensation Legislation
Allocation of Damages
Uniform Ocean Bill of Lading (Hague Rules)
Codification of Navigation Laws
Suits in Admiralty Act
Appeal in Admiralty as New Trial
Supplementary Proceedings in Admiralty
56th Rule—Right to Bring In Party Jointly Liable.

Members of the Association have also been active as members of the American Committee on the revision of the York-Antwerp Rules.

The minutes of the meetings and reports of the Committees have been printed and distributed to the members in full detail.

It is therefore unnecessary to refer further to the accomplishments of the Association during the year.

Respectfully submitted,

HAROLD S. DEMING,
Secretary.

May 1, 1927.

APPENDIX II.

Annual Report of the Treasurer.

To the Maritime Law Association of the United States:

Balance on hand May 1, 1926		$1,374.54
Receipts		
Dues: 1924	$ 15.00	
1925	295.00	
1926	1,435.00	
1927	15.00	$1,760.00
Interest	40.94	
Sale of Committee Reports	20.40	1,821.34
		$3,195.88
Disbursements		
Comité Maritime International	$ 250.00	
American Maritime Cases	38.50	
Bar Association—Room Hire	10.00	
Printing	659.95	
Addressing, Mailing and Postage	51.80	
Officers and Committees:		
Treasurer	1.15	
Documentation Committee	10.32	
Codification Committee	63.82	
Stenography and minor disbursements	197.03	1,282.57
Balance on hand April 30, 1927		$1,913.31

Back Dues uncollected, as of April 30, 1927:

1921	$ 5.00
1922	5.00
1923	45.00
1924	75.00
1925	140.00
1926	245.00
	$515.00

(Note: $50.00 has been collected since April 30.)

Back dues written off as uncollectible in 1927.....$95.00

There are 284 paid-up members
45 members in arrears

329 active members on rolls.

Respectfully submitted,

HAROLD S. DEMING,
Treasurer.

APPENDIX III.

Memorial to Judge Mayer.

Julius Marshuetz Mayer was born in New York City on September 5, 1865, and died in the city of his birth on November 30, 1925.

He attended Public School No. 68, and later entered the College of the City of New York, from which he graduated in 1884 with the degree of Bachelor of Arts, also receiving the Phi Beta Kappa key.

After leaving college, he studied law in the Law School of Columbia University, receiving the degree of Bachelor of Laws in 1886. His law clerkship was served in the office of the late Everett P. Wheeler. He subsequently formed a partnership

with Abraham S. Gilbert, which was maintained for many years during the periods when he was free to follow the practice of his profession.

He was never permitted to remain in private practice for very long, however. In 1893 he was made counsel for a Legislative Committee appointed to look into conditions in the tenement houses of New York City. In 1895 he was selected as counsel to the New York State Excise Board and in 1897 he became counsel to the New York City Building Department. In 1902 he was made a Justice of the Court of Special Sessions of the City of New York and while serving on that Court he was elected Attorney General of the State of New York. In 1904 and 1908 he was a delegate to the Republican National Convention.

In February, 1912, President Taft appointed him United States District Judge for the Southern District of New York. On October 5, 1921, President Harding chose him as a Judge of the United States Circuit Court of Appeals for the Second Circuit, during which year the degree of Doctor of Laws was conferred upon him by Columbia University. He served on the Circuit Court until July 31, 1924, when he resigned in order to return to private practice, entering the firm of Warfield & Watson, of which he became and remained the senior member until the time of his death.

It was not long after his appointment to the Federal bench that he was observed to have a peculiar aptitude for the intricacies of the patent law, which manifested itself in a series of noteworthy decisions on patents, extending through many volumes of the Federal Reporter.

Although never having previously specialized in the maritime law, he nevertheless acquired a reputation as a very able Admiralty Judge and was called upon to hear two of the most widely known cases of recent times, the "Titanic" and "Lusitania."

He also presided over a number of noted criminal trials, including that of the anarchists Alexander Berkman and Emma Goldman, during the World War.

One of his outstanding services as a Federal Judge was his conduct of many large and important receiverships, particularly those of the surface railways and certain rapid transit lines in New York City, and the successful results achieved in the re-

organization of practically all of the companies under his supervision were due in no small part to the keen business sense which he brought to bear on the questions presented.

But overshadowing even his great and diverse abilities was a quality which he possessed in an unusual degree, that of kindliness. He was approachable at all times, and always willingly gave the benefit of his counsel to any member of the bar who sought him when troubled by some problem. Although always mindful of the legal side of a case, he never overlooked its human side, and continually endeavored, so far as lay within his power, to bring the two into harmony.

His resignation from the bench was a distinct loss to the judiciary and to that Court of which he was so distinguished a member.

In his death, at the very crest of his career, the American Bar lost one of its great leaders, and the Maritime Law Association one of its honored members, a man whom every one of us that was privileged to know him could call his friend.

APPENDIX IV.

Report of the Committee on Allocation of Damages in Collision Cases.

To the Maritime Law Association of the United States:

Your Committee, appointed to consider and report to the Association on the question of the proposed allocation of damages in collision cases in accordance with the degree of fault, respectfully report:

Four of the members of your Committee have attended several meetings at which the question was considered from many viewpoints. Inquiry was made by members of the Committee of various British interests familiar with the practice of the rule now obtaining in Great Britain and other countries, which provides for the allocation of the damages in collision cases in accordance with the degrees of fault of the two or more vessels found to blame. The replies received indicated generally that the rule is working with entire satisfaction in Great Britain.

Indeed, the only adverse criticism communicated to us respects the failure of the British rule to apportion costs also in accordance with the apportionment of the damages themselves—a consideration that would be of small importance in the United States owing to the trivial amount of costs taxable here.

Recently (March, 1927) your Committee caused the membership generally to be circularized with a view to ascertaining the trend of opinion throughout our country with respect to the proposed change from the American rule that has long obtained, and which divides the damages equally among the vessels held at fault. Rather surprisingly, the Committee was favoured with the views of only a small percentage of the members of the Association. Of the letters received by your Committee in answer to the two questions, to wit:

1. Do you favour 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 favour such a change, do you think that such change should limit the right of cargo to recover full damages from the non-carrying vessel?

the writers of fifteen of such letters are opposed to any change whatsoever in the present American rule. The writers of two of the letters are in favour of answering both questions in the affirmative, while still another member favours answering the first question in the affirmative and the second question in the negative. Letters were received from New York, San Francisco, Norfolk, Philadelphia, Charleston, Savannah and Mobile.

The change from the equal division of damage rule was brought about, in the countries that now apportion the damages in accordance with the degree of fault, through the ratification by such countries of the International Convention relating to collisions at sea, signed at Brussels on September 23, 1910. Our Government has never ratified that Convention, and the reasons for its refusal or failure so to ratify have not been disclosed, so far as your Committee is advised.

The majority of the members of your Committee are opposed to any change in our present rule because of one or more of various considerations, such as the belief that, as our Courts operate without the assistance of nautical assessors (as in Great

Britain), and through judges, only a few of whom are themselves possessed of a knowledge of navigation, it would be imposing upon our Courts too much of a burden if in every collision case they were obliged not only to find whether two or more vessels were guilty of actionable faults, but in what degree such faults should be deemed to have contributed to the resulting damage. Even in England, where the Courts are now obliged to apportion the damages according to the degree of fault, the House of Lords, in the case of *The Clara Camus,* Lloyd's List Law Reports, Volume 26, page 39, has pointed out the danger involved "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," and Lord Shaw added:

> "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 this country, the rule laid down by our Supreme Court in the *City of New York,* in accordance with which, where the fault of one vessel is gross and clear, the Courts are not astute to look for minor, though possibly contributing, faults in the other vessel or vessels concerned, probably is an efficient and sufficient safeguard to those interests here which under a different rule might be held for some comparatively small percentage of the damages.

It has been suggested that although much is to be said in theory for a rule which allocates collision damages in accordance with the respective degrees of fault, it will not under our conditions work satisfactorily in practice. Some believe that it would encourage the consideration of negligible and immaterial faults with a consequent confusion of the real issues; that it would result in the Courts disregarding the principle announced in the *City of New York,* 147 U. S. 72, 85; that it would emasculate the *in extremis* rule; that it would drive col-

lision litigation into inexperienced common law courts; that it would greatly increase the percentage of appeals, and that it would render more unlikely the effecting of compromise settlements.

It has also been suggested that both in respect of hull and cargo insurance, premiums would be raised, and unduly raised, until such time as insurers should be enabled, by perhaps several years of experience under the new rule, intelligently and fairly to adjust insurance rates to the new conditions that would be brought about by such a change in the practice of the Courts as is referred to in the question.

The four members of the Committee that have attended its meetings are in agreement that in any event it would not be practicable to get Congress to enact any rule that contemplates an allowance to cargo of less than its full damages from the non-carrying vessel involved in the collision, subject to the limitation of liability statute.

The majority of your Committee therefore recommend that no change be made in the present American rule which divides damages in equal degree between vessels at fault in collision cases.

Respectfully submitted,

JAMES K. SYMMERS, Chairman.
LEONARD J. MATTESON.
RUSSELL T. MOUNT.

(Note: Charles R. Hickox did not sign and presented an oral minority report which is summarized in the minutes, at pages 1462-1464. William J. Conlen did not take part in the Committee meetings at which the report was drafted.)

APPENDIX V.

Report of the Committee on Supplementary Proceedings in Admiralty.

To the Maritime Law Association of the United States:

Gentlemen:

Your committee, appointed pursuant to the resolution passed at the meeting held on January 7th, 1927, "to investigate the advisability of defining a rule to restore the remedy of supplementary proceedings in admiralty in the Southern and Eastern Districts," respectfully reports:

That in their opinion there is no necessity for the adoption of any further rule with reference to the above matter, as the right to the remedy of supplementary proceedings in admiralty is given by the last paragraph of Rule XX of the Admiralty Rules promulgated by the Supreme Court, December 6, 1920, to take effect March 7, 1921, which, in its present form reads as follows:

> "Rule XX. Execution on Decrees.
>
> In all cases of a final decree for the payment of money, the libellant shall have a writ of execution, in the nature of a fieri facias, commanding the marshal or his deputy to levy and collect the amount thereof out of the goods and chattels, lands and tenements, or other real estate of the respondent, claimant, or stipulators. And any other remedies shall be available that may exist under the State or Federal law for the enforcement of judgments or decrees."

Dated, New York, May 16, 1927.

MARCUS M. CAMPBELL,
THOMAS D. THACHER,
GEORGE V. A. McCLOSKEY,
JOHN W. CRANDALL,
PAUL SPEER,

Committee.