

## MARITIME LAW ASSOCIATION OF THE UNITED STATES.

A meeting of the Association was held at the Association of the Bar of the City of New York, No. 42 West 44th Street, on Friday, November 20th, 1903, at 3 P. M.

There were present: Mr. Robert D. Benedict, President; Messrs. ~~Charles C. Burlingham~~, ~~James E. Carpenter~~, ~~E. B. Convers~~, ~~Lawrence Kneeland~~, ~~Joseph Larocque, Jr.~~, ~~A. G. Murray~~, ~~Julian B. Shope~~, ~~James K. Symmers~~, ~~Henry G. Ward~~ and ~~Everett P. Wheeler~~, of New York; Messrs. Eugene P. Carver, Frederic Cunningham and Frederic Dodge, of Boston, and Mr. Arthur G. Brown, of Baltimore.

On motion of Mr. Dodge, the reading of the minutes of the annual meeting, held on May 1st, were dispensed with, and said minutes as printed were approved.

The report of the special committee on legislation in respect to loss of life being called for, the Chairman, Judge Brown, presented the following report:

### *To the Maritime Law Association of the United States :*

The Committee appointed to report a draft act respecting loss of life from negligence in maritime cases, in accordance with the Association's directions, at its meeting in May, 1903, hereby report:

That it has reconsidered, as requested, all the provisions of the draft act previously submitted and all the proposed amendments submitted to them, and have carefully considered the whole subject, with the welcome aid also of the President of the Association, and herewith report the subjoined draft act as the result of their deliberations.

To what was said in our Report at the last meeting of the Association, we add a few explanatory observations:

1. The first and second sections of the draft previously reported have been remodelled in form and condensed, but for the most part without any essential change in substance, except as follows:

(a) The limitation of six months in the second line of the former draft, it has been thought best to omit.

(b) The limitation to foreign vessels "bound to or from United States ports" is also omitted, because it is deemed most suitable and consistent that the proposed act should be made and deemed declaratory of the maritime law hereafter to be applied and administered in this country.

2. As respects injuries happening in foreign internal waters, the provisions of the act are made applicable to American vessels in favor only of persons on board a vessel of the United States. This consistently affords a remedy to the representatives of persons belonging to the American vessel, whether as passengers or seamen, though the foreign local law might afford no remedy; at the same time, these provisions will justly avoid responsibility to foreign vessels or those on board of them, where the local law denies any such remedy. To make our own vessels responsible without limitation of parties, for death happening from negligent collision by mutual fault in foreign internal waters, where the local law affords no relief, would be unjust, because there would be no mutuality of responsibility between the different vessels and their owners; not only would the whole burden be thrown upon our own vessels, but foreigners could recover from our vessels when they could recover nothing from their own. On the other hand, there is no reason why vessels of the United States should not respond in damages for the death of their crew or passengers through the vessel's own fault when navigating in foreign internal waters as well as when navigating the high seas.

3. The amendment to section 2 in *italics* proposed at page 7 of the proceedings of the May meeting has been rejected. The amendment forming section 4 in *italics* on the same page is covered, in somewhat different form, by section 2 of the draft herewith submitted.

4. Additional amendments have been proposed making the limitation of damages \$5,000; but the Committee on consideration think it advisable to adhere to the limit of \$10,000, as previously reported.

5. Section 4 of the proposed draft has not been previously submitted to the Association, but seems necessary in order to

avoid troublesome questions that might otherwise arise, from the Admiralty Rule giving half damages in case of contributory negligence, while the common law courts in the latter class of cases allow none. The general object is to disturb as little as possible the ordinary rules both in the common law courts and in the Admiralty. The effect of this 4th section will be to enable the representatives of the negligent deceased to maintain an action under this act in Admiralty in cases where the decedent might have maintained his action to recover half damages; though unable to proceed in a common law court, since the deceased would have been disabled by his own contributory negligence.

ADDISON BROWN,  
*Chairman.*

The following is the form of the proposed Act reported by the Committee:

AN ACT to authorize the maintenance of actions for negligence causing death in maritime cases.

BE IT ENACTED THAT:

1 SECTION 1. Whenever an action, whether *in rem* or *in*  
2 *personam*, might have been maintained by an injured party,  
3 had death not occurred, to recover damages for personal  
4 injury happening to such person on the high seas, the  
5 Great Lakes, or any navigable waters of the United States,  
6 or if happening to any of the passengers or crew of any  
7 vessel of the United States, then in whatsoever waters such  
8 vessel may have been at the time of such injury, such  
9 injury in every such case having been caused by the  
10 wrongful act, neglect or default of another and though  
11 amounting to a felony, then if such personal injury shall  
12 result in the death whether on land or water of the person  
13 injured, an action *in rem* or *in personam* as may be ap-  
14 propriate, may be brought for the exclusive benefit of the  
15 deceased's husband, wife or next of kin, by the personal  
16 representatives of the deceased against the vessel foreign

17 or domestic or the persons that would have been liable to  
 18 the deceased if death had not occurred. And in such  
 19 action such personal representatives may recover such  
 20 damages as shall be fair and just compensation, with ref-  
 21 erence to the pecuniary damages resulting from such injury  
 22 and death to the deceased's husband, wife or next of kin,  
 23 severally, not exceeding in all the sum of \$10,000, to be  
 24 apportioned among them at the trial, according to the  
 25 pecuniary damages severally sustained by them, provided,  
 26 however, that such action, if *in rem*, shall be brought  
 27 within one year, or if *in personam*, within two years, after  
 28 the decedent's death; but if the vessel, or the persons  
 29 liable be absent from the United States at the time of  
 30 such death, the periods above limited for the commence-  
 31 ment of the action shall be counted from the time of the  
 32 first presence of such vessel or persons within the United  
 33 States affording reasonable opportunity for service of pro-  
 34 cess upon them after such injured person's death.

1 SECTION 2. If at decedent's death, any action brought  
 2 by him to recover damages for such injuries be pending  
 3 and undetermined, such action shall proceed no further,  
 4 except that his personal representatives may at their  
 5 option on petition to the Court and upon such notice to  
 6 the defendant as the Court may direct, be substituted as  
 7 plaintiff in that action, and such amendment of pleadings  
 8 be made as the Court may direct, and the action may on  
 9 order of the Court thereafter proceed for the recovery of  
 10 damages pursuant to this Act, and not otherwise; if final  
 11 judgment on the merits has been rendered in the deceased's  
 12 lifetime in any action brought by him for such injuries,  
 13 such judgment shall be a bar to any other action therefor,  
 14 except for the enforcement of such judgment.

1 SECTION 3. This Act shall not abridge the rights of  
 2 ship-owners and others to avail themselves of the provis-  
 3 ions of Sections 4282, 4283, 4285, 4286 and 4287 of the  
 4 Revised Statutes of the United States, and Acts amenda-  
 5 tory thereof and additional thereto relating to limitations

6 of liability; nor the right of suitors to a remedy *in per-*  
 7 *sonam* in the Courts of the several States and elsewhere,  
 8 for the recovery of damages pursuant to this Act, against  
 9 any person or corporation liable therefor.

1 SECTION 4. In any action brought under this Act, negli-  
 2 gence or contributory negligence of the decedent shall  
 3 have the same effect as to the damages recoverable as if  
 4 the action were an action brought by the deceased, but  
 5 the damages are not in any case to exceed the limit above  
 6 provided.

Upon motion of Mr. Carpenter the report of the Committee was accepted, and it was decided to consider the proposed bill by sections.

Upon motion of Mr. Ward, Section 1 of the Act was amended by inserting the words "on board" between the words "crew" and "of" in line 6.

Mr. Wheeler moved to amend Section 1 by striking out the words "such injury in every such case having been caused" in lines 8 and 9, and substituting the words "and when such injury has been caused."

The motion was lost.

Mr. Carver moved to amend Section 1 by striking out the words "\$10,000" in line 23, and substituting in the place thereof "\$5,000." After discussion the amendment was adopted.

Upon motion of Judge Choate, Section 1 was further amended by inserting after the word "action," in line 31, the words "against them respectively."

Mr. Convers, on behalf of Mr. Hughes, who was not present, moved to strike out all of Section 1 following the words "after decedent's death" in line 28.

The motion was lost.

Mr. Arthur G. Brown moved to amend Section 1 by striking out the words "high seas the Great Lakes or" in lines 4 and 5, and also lines 6 and 7 and all but the last word of line 8.

The motion was lost.

Upon motion Section 1, as amended, was approved and adopted.

Upon motion of Mr. Carver it was voted to amend Section 2 by adding thereto the following:

“Except as in this Section provided, no other action  
“than that given in the preceding section shall be main-  
“tained by reason of such injuries.”

Upon motion Section 2, as amended, was then approved and adopted.

Upon motion Section 3 was approved and adopted.

Upon motion Section 4 was amended by striking out the word “deceased” in line 4, and substituting the words “injured person,” and Section 4, as so amended, was approved and adopted.

Upon motion, duly seconded, the proposed Act with the amendments was approved and adopted.

The following is the form of the proposed act as approved and adopted:

AN ACT to authorize the maintenance of actions for negligence causing death in maritime cases.

BE IT ENACTED THAT:

SECTION 1. Whenever an action, whether *in rem* or *in personam*, might have been maintained by any injured party, had death not occurred, to recover damages for personal injury happening to such person on the high seas, the Great Lakes, or any navigable waters of the United States, or if happening to any of the passengers or crew on board of any vessel of the United States, then in whatsoever waters such vessel may have been at the time of such injury, such injury in every such case having been caused by the wrongful act, neglect or default of another and though amounting to a felony, then if such personal injury shall result in the death whether on land or water of the person injured, an action *in rem* or *in personam* as may be appropriate, may be brought for the exclusive benefit of the deceased's husband, wife or next of kin, by the personal representatives of the deceased against the vessel foreign or domestic or the persons that would have

been liable to the deceased if death had not occurred. And in such action such personal representatives may recover such damages as shall be fair and just compensation, with reference to the pecuniary damages resulting from such injury and death to the deceased's husband, wife or next of kin, severally, not exceeding in all the sum of \$5,000, to be apportioned among them at the trial, according to the pecuniary damages severally sustained by them, provided, however, that such action, if *in rem*, shall be brought within one year, or if *in personam*, within two years, after the decedent's death; but if the vessel or the persons liable be absent from the United States at the time of such death, the periods above limited for the commencement of the action against them respectively shall be counted from the time of the first presence of such vessel or persons within the United States affording reasonable opportunity for service of process upon them after such injured person's death.

SECTION 2. If at decedent's death, any action brought by him to recover damages for such injuries be pending and undetermined, such action shall proceed no further, except that his personal representatives may at their option on petition to the Court and upon such notice to the defendant as the Court may direct, be substituted as plaintiff in that action, and such amendment of pleadings be made as the Court may direct, and the action may on order of the Court thereafter proceed for the recovery of damages pursuant to this Act, and not otherwise; if final judgment on the merits has been rendered in the deceased's lifetime in any action brought by him for such injuries, such judgment shall be a bar to any other action therefor, except for the enforcement of such judgment.

Except as in this Section provided no other action than that given by the preceding Section shall be maintained by reason of such injuries.

SECTION 3. This Act shall not abridge the rights of ship-owners and others to avail themselves of the provisions of Sections 4282, 4283, 4285, 4286 and 4287 of the Revised Statutes of the United States, and Acts amendatory thereof

and additional thereto relating to limitations of liability; nor the right of suitors to a remedy *in personam* in the Courts of the several States and elsewhere, for the recovery of damages under this Act, against any person or corporation liable therefor.

SECTION 4. In any action brought under this Act, negligence or contributory negligence of the decedent shall have the same effect as to the damages recoverable as if the action were an action brought by the injured person, but the damages are not in any case to exceed the limit above provided.

Upon motion of Mr. Carver, the President of the Association and the Committee in charge of the preparation of the bill were constituted a committee to present the bill to Congress and to take such action as they might see fit to further its adoption, and the Treasurer was authorized to pay such expenses as the Committee might incur in the premises.

The President stated that the next business was the question of the representation of this Government in the proposed diplomatic conference to consider the draft treaties relating to collision and salvage adopted at the Hamburg Conference.

The Secretary thereupon read the letter sent to the Secretary of the Treasury by the Committee appointed by the President at the meeting on May 1st, communicating the resolution adopted at such meeting; also a letter from the Secretary of the Treasury stating that the Secretary of State had advised the Belgian Legation that the Government of the United States did not consider the present a propitious season to participate in the proposed conference; also a communication from the Department of State enclosing a communication from the Belgian Minister, requesting a reconsideration of such action, and a communication from the Secretary of the International Maritime Committee urging action by the Association to secure the co-operation of this Government at the proposed conference. After general discussion the following resolution was proposed by Mr. Wheeler:

“*Resolved*: That in view of the communication from  
“the Belgian Government and from the International



“Maritime Committee, requesting that the decision of  
 “the United States not to take part in the proposed dip-  
 “lomatic conference for the unification of the maritime  
 “law of the various commercial nations be re-considered,  
 “and in view of the fact that the United States of  
 “America would not in any way be bound by the result  
 “of such a conference, but that any treaty recommended  
 “by such conference must first be approved by the Gov-  
 “ernment of the United States and afterwards ratified by  
 “the Senate, and might also require the adoption of an  
 “act of Congress, the Maritime Law Association of the  
 “United States recommends to the Government of the  
 “United States to re-consider its decision not to take  
 “part in the diplomatic conference asked for by the  
 “Belgian Government.”

Mr. Carver moved as a substitute for such resolution the following:

“*Resolved*: That it is the sense of this Association that  
 “the United States should be represented at the pro-  
 “posed diplomatic conference for the unification of mari-  
 “time law, it being understood that its representation  
 “should not commit the United States to the conclu-  
 “sions reached.”

Mr. Dodge moved the following resolution as a substitute:

“*Resolved*: That the Maritime Law Association, in  
 “view of the request of the Belgian Government to have  
 “the United States represented at the proposed Inter-  
 “national Conference to consider the proposed draft  
 “treaties relating to collision and salvage, deems it  
 “desirable to have the United States represented at  
 “such conference, if, in the judgment of the State  
 “Department, such action can be taken without com-  
 “mitting the United States in any way to the action of  
 “the conference.”

The resolution proposed by Mr. Dodge was thereupon adopted.

The meeting then adjourned.

LAWRENCE KNEELAND,  
*Secretary.*