

MARITIME LAW ASSOCIATION OF THE UNITED STATES.

The Fifth Annual Meeting of the Association, convened at the office of the President, No. 68 Wall Street, New York City, on Friday, May 6th, 1904, at 3 P. M.

Present: Robert D. Benedict, Esq., President; Hon Addison Brown, Hon. W. W. Goodrich and Messrs. Edward G. Benedict and Lawrence Kneeland.

The meeting having been called to order, Mr. Kneeland moved that the meeting adjourn to re-convene at the Association of the Bar of the City of New York, No. 42 West 44th Street, on May 20th, 1904, at 3 P. M.

Carried.

LAWRENCE KNEELAND,
Secretary.

The Fifth Annual Meeting of the Association re-convened at the Association of the Bar of the City of New York, No. 42 West 44th Street, on May 20th, 1904, at 3 P. M.

There were present: Hon. Wm. G. Choate and Messrs. Frederic Dodge, Hermann Haltermann, Lawrence Kneeland, George B. Ogden, Harrington Putnam and Everett P. Wheeler.

In the absence of the President, the meeting was called to order by the Secretary, and, on motion of Mr. Wheeler, Judge Choate was elected Chairman.

The reading of the minutes of the meeting of November 29th, 1903, which had been printed and distributed, was dispensed with. Upon motion said minutes were corrected by substituting the name of Judge Choate for that of Mr. Carver, on page 6, line 3, and with such correction said minutes were approved. The minutes of the meeting of May 6th, 1904, were read by the Secretary and approved.

The Treasurer presented his report as follows:

MARITIME LAW ASSOCIATION OF THE UNITED STATES:

In a/c with LAWRENCE KNEELAND, Treasurer.

Cr.

By cash on hand May 1, 1903.....	\$166.76	
“ amount dues received	240.00	
		\$406.76

Dr.

To printing bills.....	\$81.00	
“ stenographer, reporting proceedings of meeting of May 1, 1903	50.00	
“ amount assessment for expenses of Inter- national Maritime Committee, 500 francs	96.62	
“ expenses of Committee in charge of bill conferring a remedy for loss of life, on visit to Washington.....	48.20	
“ postage and stationery.....	13.91	289.73
		\$117.03
Balance on hand Oct. 20/04.....		\$117.03

Upon motion, the report was accepted, approved and ordered to be filed.

The following report of the Committee in charge of the bill conferring a remedy for loss of life in maritime cases was read:

To the Maritime Law Association:

I desire to Report to the Association that in pursuance of the vote at the last meeting constituting a Committee to present to Congress the Bill approved by the Association as to authorizing and maintenance of actions, for negligence causing death, in Maritime cases, a copy of the Bill was sent to Senator Platt, of this State, with a request that he introduce it into the Senate. Senator Platt returned it, with the suggestion that it would be better to have it introduced by Senator Depew, who was a member of the Committee on Commerce. A copy was thereupon sent to Senator Depew, but thus far it has not been introduced into the Senate.

A copy of the Bill was also sent to Hon. James S. Sherman, Representative from this State, who promptly introduced it into the House, and had it referred to the Judiciary Committee. In that committee it was referred to a sub-committee, consisting of Robert M. Nevin of Ohio, Richard Wayne Parker of New Jersey, and David A. DeArmond of Missouri.

Before that sub-committee a very satisfactory hearing was had by the President of this Association and Judge Addison Brown, who went to Washington representing this Association. That sub-committee gave us to understand that the Bill met their approval and would be by them reported to the full committee.

The Bill was also fully explained to Charles E. Littlefield of Maine, and to J. H. Gillette of California, two other members of the Judiciary Committee, both of whom expressed great interest in the matter and approval of the bill.

We have, therefore, good hope that action may be taken in reference to the Bill at the ensuing Session of this Congress.

I desire to add that at the Meeting of the American Bar Association in the year 1900 a Resolution was adopted expressing its approval of the Bill which had been introduced into Congress in March, 1900, by Mr. Boutell of Illinois, on this subject.

I think it would be wise to communicate to the American Bar Association at its next meeting the action taken by this Association in view of obtaining for the Bill now before Congress the powerful endorsement of that Association.

May 19, 1904.

ROBERT D. BENEDICT,
President.

Upon motion of Mr. Wheeler the report was accepted, and the Secretary was directed to communicate with the American Bar Association in accordance with the recommendation of the Committee.

The Secretary reported that the resolution adopted at the meeting of November 20th, 1903, expressing the opinion of the Association that it was advisable to have the United

States represented at the proposed International Conference to consider the draft treaties relating to collision and salvage, if, in the judgment of the State Department, such action could be taken without committing the United States in any way to the action of the Conference, had been communicated to the Department of Commerce; and that the Department of Commerce had forwarded same to the State Department, advising the latter that under the conditions suggested it interposed no objection to the representation of this country, if the State Department deemed it proper. That the State Department had thereupon advised the Belgian Minister that, if it would be agreeable to the Belgian Government for this Government to be represented on the understanding that it was not to be committed in any way to the action of the Conference, this Government would be pleased to be so represented.

The State Department subsequently requested the Department of Commerce to designate delegates to represent this Government at such Conference, and the Secretary of Commerce requested this Association to suggest the names of three gentlemen who would suitably represent the Government and be willing to serve, stating that an appropriation of \$5,000 to cover necessary and proper expenses would be asked of Congress.

In response to this request the Executive Committee suggested the names of Mr. Robert D. Benedict, Hon. Wm. W. Goodrich and Mr. Frederic Dodge.

On April 30th, the President was advised by the Secretary of Commerce that the Sundry Civil Bill adopted by Congress contains an appropriation of \$2,000 for the expenses of a delegate to such International Conference, and the Secretary inquired whether, under the circumstances, it was desirable to have the United States represented by one delegate, whose expenses will be paid by the Government, or by three, only one of whom can be so provided for. In further response to a suggestion that the sum appropriated might be sufficient to cover the expenses of three delegates, the Department of Commerce stated that under the general regulations of the

Government it would not be practicable to divide the amount of the appropriation between three delegates.

The time for holding such Conference has not yet been fixed. The Government of Great Britain has not yet expressed willingness to participate. On March 3d last an influential deputation, representing the General Council of the Bar, The Law Society, Lloyds' Chamber of Shipping of the United Kingdom, Liverpool Chamber of Commerce, Liverpool Steamship Owners Association, North of England Steamship Owners Association, Glasgow Chamber of Commerce, Glasgow Ship Owners Association and the International Law Association, waited upon the Marquis of Lansdowne, and solicited his co-operation in securing the Government's participation in the Conference, upon the understanding that it was not to be in way bound by the results arrived at. No report of the results of such interview has been announced.

France, Germany, Russia, Italy, Spain, Portugal, Sweden, Norway, Austria, Roumania and Japan are stated to have agreed to send delegates. Denmark and Greece are stated to have declined.

The Secretary's report was directed to be entered upon the minutes.

It was voted to proceed to the election of officers of the Association for the ensuing year.

Upon motion of Mr. Wheeler, the present officers of the Association were re-elected, to wit: President, Mr. Robert D. Benedict; Executive Committee, Hon. Addison Brown, Mr. Harrington Putnam, Mr. Frederic Dodge; Secretary and Treasurer, Mr. Lawrence Kneeland.

The following communication from the Secretary of the Permanent Council of the International Maritime Committee was then read:

INTERNATIONAL MARITIME COMMITTEE.

ANTWERP, 23d December, 1903.

AMSTERDAM CONFERENCE (1904.)

DEAR SIR:

On the invitation of the Dutch Maritime Committee the International Maritime Committee will meet at Amsterdam

towards the end of September, 1904. The order of the day will be as follows:

1. Conflicts in the laws relating to ownership, bottomry and rights in rem.
2. Second reading of the resolutions voted at Hamburg in the matter of jurisdiction on collision cases.
3. Limitation of Shipowners liability.

1. Conflicts in the laws relating to ownerships, bottomry and rights in rem.

It is not for us to call your attention to the great importance of this question. It has already been the object of the labours of the national associations and we therefore beg to invite the different national associations to examine all the reports presented on this subject at the Hamburg Conference.

Having this in view we think it would be advisable for the commission which, in each national association, has made a report, to meet again in order to complete its first labours by the suggestions made in the reports that have come to hand from other quarters since their last meeting. If this new work of each association could be prepared in a brief manner including both the conclusions arrived at in the first instance and the eventual modifications or observations which seem to them to deserve the attention of the other groups, the undersigned would promptly publish this comparative work which could not fail to be of the greatest interest and to furnish the basis of an exhaustive debate. Few questions are at the same time more complex and more urgent in the domain of international maritime law.

2. Jurisdiction in the matter of collisions.

The Hamburg Conference voted a series of propositions on the first reading. A special commission, composed of Sir Walter Phillimore, Messrs. Asser, Autran, Ch. Bauss, Dr. Stubbs, Dr. Alf. Sieveking, have put these resolutions into the form of a draft treaty. This draft treaty, which you will find enclosed, will be the basis of a second reading.

We beg you to send us as soon as possible the report which

your association intends to present to the Congress on this subject.

3. *Owners Liability.*

In accordance with the desire expressed by the Hamburg Conference a commission, presided over by Mr. Chas. LeJeune, and composed of Messrs. C. D. Asser, Jr., Louis Franck, Sir John Glover, J.-E. Gray Hill, President Martin, E.-N. Rahusen, Dr. Alf. Sieveking, Dr. Chas. Stubbs and R. Vernaux has been appointed. This commission met at Antwerp at the end of September and prepared a draft proposition to serve as the basis of the debate. The text of the same will be found enclosed.

We beg to submit this draft proposition to the national associations, and, for the commentaries, we ask them to refer to bulletins number 3 and following numbers as well as to the reports of the Conferences of Paris and London.

4. *Treaty on Collisions and Salvage.*

The Belgian Government has continued, without interruption, its labours in view of the assembling of a diplomatic conference, and we are happy to announce that a large number of countries have agreed thereto. We think that the hesitation on the part of England will give rise to fresh efforts on the part of our English friends, and we are convinced they will not cease their efforts until the final success of this necessary reform.

FOR THE PERMANENT COUNCIL:

The Hon. Secretary,
LOUIS FRANCK.

INTERNATIONAL MARITIME COMMITTEE.

AMSTERDAM CONFERENCE (1904).

DRAFT TREATY AS TO JURISDICTION IN COLLISION CASES.

ARTICLE I.

The action founded on collision can be brought exclusively at the option of the plaintiff:

(a) Before the tribunal of the domicile, personal or commercial of the owner of the defendant ship.

In the case where the defendant is a company, the action can be brought before the tribunal of the *place of business* of the company.

(b) Before the tribunal of the place of collision when the collision has taken place in territorial waters appertaining to the contracting States.

(c) Before the tribunal of the port where the ship of the defendant is registered.

(d) Before the tribunal of the place where the ship of the defendant has been seized, even in the case where before the service of summons the seized property has been freed from arrest and replaced by bail.

ARTICLE II.

The tribunal competent to take cognizance of the principal action shall be equally competent to determine the counter-claim brought by the defendant against the plaintiff by reason of the same collision.

ARTICLE III.

The tribunals referred to in the preceding articles are designated by the national laws.

ARTICLE IV.

The plaintiff can only bring one single action founded on the same collision even if several tribunals situated in different States happen to be competent by virtue of Article I., provided, however, that he has been satisfied by the defendant in accordance with judgment obtained.

ARTICLE V.

The tribunals referred to in Article I. shall be equally competent to order provisional inquiries to enable the tribunal seized of the action to secure certified evidence.

ARTICLE VI.

The seizure to preserve rights of a ship by reason of a collision can be put in force in every port situate in the territory of the contracting States.

- (a) Such seizure can only be made with the permission of the competent authority designated by the national laws.
- (b) In authority specified by the preceding paragraph can order the plaintiff to provide bail as security for such damages as may result from the seizure.
- (c) The owner of a ship seized may demand the withdrawal of the arrest upon sufficient bail being given.
- (d) The formalities to be complied with to insure the validity of the seizure are regulated by the national laws.

INTERNATIONAL MARITIME COMMITTEE.

AMSTERDAM CONFERENCE (1904).

DRAFT TREATY ON THE LIMITATION OF THE SHIPOWNERS'
LIABILITY.

ARTICLE I.

When the owner of a ship is held responsible, according to the law of the country, for the acts of the master and crew or for the engagements entered into by the master in virtue of his legal capacity, his liability is for each voyage limited:

- (a) To the ship or its value at the end of the voyage, at the option of the owner.
- (b) To the net freight for the voyage until its termination.
- (c) To the indemnities due to the owner for general average, collision or other damage suffered by the ship during

the voyage, subject to deduction of the expenses incurred in putting the ship in a fit state to complete the voyage.

The right of the creditors does not include the claim of the owner against the insurer.

By net freight is meant the gross freight and passage money, even if paid in advance, deduction being made of the charges which are proper to the same.

The voyage will be considered ended after final discharge of the goods and passengers happening to be on board the ship and shown on the manifest at the moment when the obligation has arisen, and in case of successive obligations after final discharge of the whole of the goods and passengers happening to be on board at the moment both of the one and of the other event.

If the ship carries neither goods nor passengers the voyage will be considered ended at the first port it puts into or at the particular port where it happens to be.

ARTICLE II.

If the owner elects for the abandonment of the ship, and does not carry this into effect until some time after the end of the voyage, he is only freed up to the amount of the value of the ship at the moment of the abandonment, and he remains bound for the difference between this value and that which the ship had at the end of the voyage.

ARTICLE III.

In the case provided for in Article II., and to provide for the case where the owner elects, so far as concerns the ship, for the payment of its value at the end of the voyage, the valuation may at every time after the end of the voyage be judicially fixed by proceedings taken after due notice to the other side at the demand of the party who is the most diligent

ARTICLE IV.

The owner has the right to substitute for the modes of obtaining freedom from liability, provided in Article I., payment of an indemnity limited for each voyage to £8 sterling per ton of the gross tonnage of his ship.

ARTICLE V.

If there exists a priority of lien upon the ship or upon the freight in favour of creditors, in respect of whom limitation of liability is not admitted, the owner of the ship will be personally bound to make up in specie to the extent of the sums first collected by such creditors the amount forming the limit of his liability.

ARTICLE VI.

The limitation of liability determined according to the preceding articles will be applicable to contracts concluded even by the owner of the ship so far as their execution lies within the legal duties of the master without his having cause to distinguish if the breach of these contracts is due to a member of the crew or not, the case of personal fault of the owner alone excepted. It applies also to damage caused to dykes, quays and other fixed objects as well as to the removal of wrecks. It is not admitted for the wages of master and crew.

ARTICLE VII.

When, according to the laws applicable, the limitation of liability for damage to property is different from that for personal injury the present treaty shall only have effect so far as concerns damage to property.

The Secretary stated that the Conference at Amsterdam would be held on the 14th, 15th, 16th and 17th of September.

Upon motion of Mr. Wheeler, the selection of delegates to the Amsterdam Conference was referred to the Executive Committee, with power.

The topics mentioned in the letter of the Permanent Council were considered in their order.

I.—Conflicts in the laws relating to ownerships, bottomry and rights *in rem*.

Mr. Dodge called attention to the fact that the Association had expressed its views upon this subject on May 2nd, 1902,

and it was decided that no further expression of opinion was now necessary.

II.—Jurisdiction in the matter of Collision.

The following criticism by Mr. Benedict of the draft treaty upon this subject was read:

FIRST.

Article 1 of the Treaty in question is not clear.

Does it mean that the action may be brought before either of the tribunals named, although *neither* the ship, nor her owner, nor any property of her owner, is within the local jurisdiction of such tribunal?

Mr. Murray thinks, from what he heard said at the last Conference, that this is what was intended.

If it is, we could not agree to it. It is a fundamental principle with us that no judgment *in rem* can be binding upon the *res* or its owner, unless the *res* is within the jurisdiction and control of the tribunal which pronounces the judgment; and that a judgment *in personam* is valid only against a defendant who is duly served with process within the jurisdiction of the tribunal which pronounces the judgment, or has appeared in the suit, unless property of the defendant has been made subject to such process, and then only to the amount of the property subjected.

We could never agree that a defendant or his ship should be bound by the judgment of a tribunal within whose local jurisdiction neither the defendant nor his ship, nor any of his property had been found, and brought before the Court.

But, if the above question as to the meaning of the clause is to be answered in the negative, then we think a very much briefer form may well be substituted, as follows:

“The action founded on collision may be brought at the option of the plaintiff before any Court

(1) within whose local jurisdiction the offending vessel may be subjected to the process of the Court, according to the law of the forum;

(2) within whose local jurisdiction the defendant may

have been legally subjected to the process of such Court;

(3) before which the defendant may appear and submit himself to the jurisdiction of the Court;

(4) within whose local jurisdiction property of the defendant other than the offending vessel may, according to the law of the forum, be subjected to the process of the Court."

But in the fourth case, if the defendant shall not personally appear in the suit, the judgment shall be valid only to the extent of the property so subjected.

SECOND.

A notable feature of the draft treaty is that throughout it presents the idea of only one suit by only one plaintiff.

But there may be four different interests which have suffered from the collision, viz., (1) the owner of the injured ship; (2) the insurer of her; (3) the owner of the cargo on board, and (4) the insurer of cargo (in fact, the cargo or the vessel may be owned by various separate owners living in different countries), and these various interests may very probably belong to citizens of different countries. Could the provisions of such a treaty provide that all interests must combine in a single action?

The difficulty of providing one action only for such cases seems insuperable. Suppose it were provided that if a suit has been begun on behalf of either one of the parties interested, no second suit could be brought by any other party, but all other parties must come into that suit. How is the Court to ascertain what amount of security must be given to free the vessel from *all* claims, and to protect the rights of all parties interested? It might be said that the value of the wrongdoing vessel with the net freight and the amount of indemnity, as stated in Article 1 of the other treaty, could be taken as the amount of security to be given.

But that would make it necessary for the owner of the wrongdoing vessel *in every case* to have those values appraised and give security for the appraised amount, which in cases

where the claims did not reach that value (and those cases are far the most numerous) would be a great and additional burden upon the shipowner.

Or, if the actual amount of the claims were to be ascertained, which might easily require communication with the other side of the world, the delay to the wrongdoing ship (perhaps an ocean liner) would be an oppressive burden.

These difficulties seem to us to make it impossible to compel all the parties injured to join in one action. Sometime it could be done. Sometimes it is done now.

But to compel it in all cases is impracticable, and should not be attempted. As to that question the law will have to remain as it is. Each party in interest must be left to protect his rights as he deems best.

THIRD.

In any treaty as to jurisdiction in collision cases there should be a special article saying that the Treaty should not affect any proceeding by a ship owner to limit his liability, for the treaty which is proposed in reference to limitation of liability might be made with the treaty as to jurisdiction—might not be made at all.

FOURTH.

To the first sentence of Article VI. should be added the words, "in which the vessel proceeded against may be found."

Sec. a. The words "the national laws" should be changed to "the law of the forum," for the law of the State might be invoked as well as the law of the Nation.

Sec. d. The same change of wording should be made in this section.

R. D. BENEDICT.

After discussion it was voted upon motion of Mr. Wheeler that the Association approves in general of the criticisms by Mr. Benedict, and that it be referred to the Executive Committee to formulate and enlarge such criticisms and to communicate same to the International Committee as the views of this Association, but without thereby approving the advisability or necessity of any treaty upon such subject.

III.—*Limitation of Liability.*

The following criticism by Mr. Benedict of the draft treaty was read:

ARTICLE I.

It would be a serious question under this treaty whether it would not allow an owner to limit his liability even for his own fault. Suppose a collision by fault of a master known to be incompetent.

The language of the first article would seem to allow the owner to limit his liability as well in that case, as if the master were competent.

The words of our Act, or something similar, providing that the disaster shall be without the privity or knowledge of the owner, should be added.

ARTICLE II.

There should be added to this the words "together with the net freight and indemnity as provided in Article I."

ARTICLE III.

What is meant by "at every time"?

Who is meant by "the party who is the most diligent"?

Is it the owner? Or is it any party who has a claim? And who is meant by "the other side"? If the "diligent" party is an owner of cargo, the notice should be given not only to the owner of the wrong doing ship, but to all other cargo-owners. Are they included in "the other side"?

What is "due notice"?

ARTICLE IV.

"Payment"! To whom? Payment into Court? If this is meant, it is like our proceeding to limit liability, except that there is no provision, as there is in our rules, for a contest over the question of liability. The only question that would remain open under this article would be whether the ship-owner was entitled to any limitation at all.

R. D. BENEDICT.

After discussion, upon motion of Mr. Putnam, it was voted that the Association concurs in the criticism expressed by Mr. Benedict and that it be referred to the Executive Committee to formulate and enlarge such criticism and to communicate the same to the International Committee as the views of this Association.

It was voted that the report of the Executive Committee to the International Maritime Committee upon these draft treaties be printed and distributed among the members of the Association. The meeting then adjourned.

LAWRENCE KNEELAND,
Secretary.