

MARITIME LAW ASSOCIATION
OF THE
UNITED STATES

May 2, 1930.

The Thirty-first 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, New York City, on May 2, 1930, at 8 P. M.

The president, the Honorable Augustus N. Hand, presided, and in the absence of Mr. Harold S. Deming, the secretary, Arnold W. Knauth acted as secretary of the meeting.

The following eighty-seven members were present:

| | |
|----------------------|------------------------|
| John M. Aherne | Ezra G. Benedict Fox |
| Ray Rood Allen | John J. Galey |
| Norman M. Barron | Albert T. Gould |
| Howard W. Beebe | Chalmers G. Graham |
| Geo. E. Beechwood | Horace M. Gray |
| George W. Betts, Jr. | Charles W. Hagen |
| Harold F. Birnbaum | Charles S. Haight |
| Henry J. Bogatko | Charles Hann, Jr. |
| Charles S. Bolster | Charles W. Harvey |
| George S. Brengle | Christopher E. Heckman |
| Ira A. Campbell | James S. Hemingway |
| Arthur W. Clement | Joseph W. Henderson |
| Paul L. Clugston | Robert E. Hill |
| William E. Collins | Edwin C. Hollins |
| Frederic Conger | Roscoe H. Hupper |
| William J. Conlen | T. Catesby Jones |
| Douglas F. Cox | Vernon S. Jones |
| John W. Crandall | Edward J. Keane |
| John C. Crawley | Martin J. Kelly, Jr. |
| Martin P. Detels | P. J. Kooiman |
| John C. Donovan | Paul H. Lacques |
| Bertram E. Driscoll | Henry N. Longley |
| Charles F. Dutch | George deForest Lord |
| Gerald E. Dwyer | Anthony V. Lynch |
| D. Roger Englar | William J. Maher |
| Morris Douw Ferris | Leonard J. Matteson |

George V. A. McCloskey
 P. J. R. McEntegart
 William H. McGee
 Arthur E. Muller
 E. W. Murray
 J. Newton Nash
 Emory H. Niles
 William J. Nunnally
 Alfred Ogden
 George B. Ogden
 Henry E. Otto
 Hon. Robert P. Patterson
 Edward F. Platow
 F. Herbert Prem
 John C. Prizer
 Charles F. Quantrell
 Edward A. Quinlan
 Francis V. Reed

Gregory S. Rivkins
 W. M. L. Robinson
 E. Curtis Rouse
 James W. Ryan
 Arthur J. Santry
 Walter Schaffner
 John N. Senecal
 Carroll Single
 G. Noyes Slayton
 Carl G. Stearns
 Alonzo L. Tyler
 Eugene Underwood
 Charles A. Van Hagen, Jr.
 George R. Wagner
 Robert Williams
 William H. Woolley
 C. E. Wytke

The minutes of the meetings held during the year having been printed and distributed to the members, the reading of the same was dispensed with by unanimous consent.

The annual reports of the treasurer and secretary were submitted, and, on motion, were received, approved and ordered filed. They are printed herewith.

ELECTION OF MEMBERS:

The following members were proposed and elected:

Associate.

Edmund Lincoln Baylies, 10 East 62nd Street, New York City.
 (Mr. Baylies, a member since the Association was founded in 1899, has retired from practice.)

Hon. Mortimer L. Byers, Judge of the United States District Court for the Eastern District of New York, Eagle Building, Brooklyn, New York.

Hon. Clarence M. Galston, Judge of the United States District Court for the Eastern District of New York, Post Office Building, Brooklyn, New York.

Hon. Robert P. Patterson, Judge of the United States District Court for the Southern District of New York, 233 Broadway, New York City.

Active.

Edward Ash—Alexander, Ash & Jones, 79 Wall Street, New York City. Proposed by Peter Alexander.

J. Harry Labrum, c/o William J. Conlen, Esq., Packard Building, Philadelphia. Proposed by T. Catesby Jones.

Edwin C. Hollins—Rosen, Kammer, Wolff & Farrar, Hibernia Bank Building, New Orleans. Proposed by T. Catesby Jones.

Edmund F. Lamb—Macklin, Brown, Lenahan & Speer, 44 Beaver Street, New York City. Proposed by Stanley F. Wright.

Gilbert Mather—Mather & Co., 226 Walnut Street, Philadelphia. Proposed by Arnold W. Knauth.

Louis H. May—Chubb & Son, 5 South William Street, New York City. Proposed by T. Catesby Jones.

Thomas A. McDonald—Single & Single, 15 William Street, New York City. Proposed by Edward Quinlan.

John L. Quinlan—Bigham, Englar, Jones & Houston, 64 Wall Street, New York City. Proposed by Edward Quinlan.

Henry H. Reed—Platt, Fullar & Co., 56 Beaver Street, New York City. Proposed by D. Roger Englar.

Richard F. Shaw—Bigham, Englar, Jones & Houston, 64 Wall Street, New York City. Proposed by Leonard J. Matteson.

George H. Toole, 156 State Street, Boston, Mass. Proposed by George R. Farnum.

George R. Wagner—Bigham, Englar, Jones & Houston, 64 Wall Street, New York City. Proposed by Edward Quinlan.

LIMITATION OF LIABILITY—VESTRIS:

Mr. Englar, on behalf of the Committee, stated that the naming of the Committee had been a formal action to provide a point of contact between the Association and Congress in the event of any legislation being contemplated, the Committee specifically having no power to commit or represent the Association but being instructed merely to observe and report. In that ca-

capacity he stated that there had been no developments and that there was no present prospect of legislation looking to any modification of the present law as to limitation of liability.

LEGAL COSTS:

Mr. Lord submitted a report, which is printed herewith. Mr. McCloskey remarked that the Circuit Court of Appeals for the Second Circuit had only recently done away with the old admiralty rule permitting taxing the cost of printing the brief of the successful party. On motion duly seconded, the report of the Committee was adopted without opposition as expressing the views of the Association.

JURISDICTION AND PENAL SANCTIONS IN THE EVENT OF COLLISIONS ON THE HIGH SEAS:

In the absence of Mr. Clark, the secretary read the majority report of Messrs. Clark and Griffin, and the minority report of Mr. McGrann, which had already been printed as Document No. 163 and stated that Mr. Griffin thought that the matter was not of sufficient importance to require any action. Mr. Betts felt that a criminal court prosecution, which could be promptly instituted and quickly carried through in a small and remote part of a foreign country, might result in a decision which other courts might regard as *res judicata*, although a United States civil court would not take such a view of a criminal case. Mr. Jones desired an expression of the Association's opinion to guide our delegate at Antwerp, and stated that he agreed with Mr. McGrann's views. Mr. McCloskey thought there should be no action which might embarrass the diplomatic officers of our Government in dealing with future cases. Mr. Jones proposed a resolution, which was somewhat amended after debate by Messrs. Haight, Hand, McCloskey and Dutch, and it was thereupon

RESOLVED that, without passing on the merits of the Lotus case, this Association feels that the subject is not of sufficient importance to require an international convention.

There was no opposition.

EXTENSION OF ADMIRALTY JURISDICTION TO LAND STRUCTURES:

Mr. Hupper stated that since the last meeting the matter has received attention but the Committee was not ready for a final report, finding that the subject becomes more difficult as it is further considered, since the Supreme Court for over half a century had applied the test of locality in ruling on questions of jurisdiction over maritime torts. The Committee on Admiralty and Maritime Law of the American Bar Association, of which Mr. T. Catesby Jones is Chairman, is considering the same subject at the request of municipal Port Authorities and held a meeting at the Chamber of Commerce in New York on April 10th, which Messrs. Hupper and Lord attended, where they stated their views. The report of Mr. Jones' Committee will soon be submitted to the American Bar Association, and our Committee will await the publication of that report and its discussion before endeavoring to make a final report.

ARBITRATION:

Mr. Jones stated that his Committee had no further report at the present time.

MERCHANT MARINE CODE:

Mr. Niles stated that Senator Jones, of Washington, had introduced Woodruff's Code into Congress as a Bill and that it had been printed as Senate Bill No. 1272. The Code in this form is a 400-page document, which may be had from the Government Printing Office for 50 cents. The Omnibus Amending Bill had not been introduced and has not been printed as a Bill. Senate Bill No. 1272 is Woodruff's Code as we are familiar with it, without amendments. No hearings have been held or scheduled and the Bill has at present no backing, either Shipping Board or private. After introducing the Bill, Senator Jones retired as Chairman of the Senate Merchant Marine Committee and was succeeded by Senator Johnson of California. If the Bill should become law, the result would be the re-enactment of the statute law as to shipping as it stood two years ago. Such a law would have the full authority of an Act of Congress and would, therefore, be superior to the same provisions as they are now found

scattered through various parts of the U. S. Code, since the U. S. Code at present only states the law presumptively. The present position is that any text found in the U. S. Code, U. S. Code Annotated or Mason's U. S. Code must be checked back to the original source in order to verify what the statute law accurately is. If the Woodruff Code Bill is passed, it will not be necessary in maritime matters to consult the U. S. Code or the pre-existing law. We now have two committees, one a committee of twenty-three appointed in 1926, which has examined the Woodruff Code section by section and certified that it correctly re-states the existing statute law, and the second a small committee of eight appointed in 1928 and consisting of one member from each Circuit having maritime business, as follows: 1st, Addison C. Burnham; 2nd, George Whitefield Betts; 3rd, Joseph W. Henderson; 4th, Emory H. Niles, Chairman; 5th, Joseph M. Rault; 6th, Harvey M. Goulder (deceased); 7th, Charles E. Kremer; 9th, Farnham P. Griffiths—to push the Woodruff Code with the Shipping Board and Congress. The Shipping Board, however, since Mr. Woodruff's death in January, 1929, has been much occupied in ship sales and in regulatory and other activities and has not urged the matter. Mr. Betts asked whether we should also work for the Omnibus Amending Bill, but Mr. Niles thought that we should not; many of the proposed amendments are controversial matters of detail which are not our affair, whereas it is distinctly to our interest to secure the best possible version of the shipping statutes. Mr. Ferris, who had worked on the Woodruff Code, pointed out some details which could be improved. The following motion, made by Mr. Haight and added to by Mr. Betts, was thereupon unanimously carried:

RESOLVED that it is the sense of this Association that there should be a Merchant Shipping Code of the United States; that one single Act shall embrace all statutes applicable to maritime matters; that since Senate Bill 1272 is as satisfactory as such a Code can be made, the present committee of eight is instructed to take it up actively and push it to passage, and that the committee is further authorized to agree with the Committees of Congress and with the Shipping Board upon clarifying amendments.

SAFETY AT SEA CONVENTION AND REVISED RULES
FOR THE PREVENTION OF COLLISIONS AT SEA:

The President stated that no bills had yet been introduced into Congress to carry out the provisions of the Convention signed at London on May 31, 1929, whose provisions are proposed to go into force (provided the necessary national legislation is enacted) on July 1, 1931.

PASSENGER INSURANCE:

The President stated that this subject would again be discussed at Antwerp and called attention to our two previous resolutions opposing the schemes suggested in 1925 and 1928 which he had caused to be reprinted and sent to the members with the notice of this meeting. Since we had no committee on the subject and no committee report, he asked what the pleasure of the meeting was.

Mr. Jones thereupon stated that in his opinion the maximum payment in a death case of £250 was obviously inadequate for American citizens, and submitted the following resolution:

BE IT RESOLVED that this Association adheres to the views expressed on the subject of Proposed Compulsory Insurance of Passengers in the resolutions passed by it on May 8, 1925, and May 11, 1928; and

BE IT FURTHER RESOLVED that it is the sense of this Association that the sums of money which are mentioned in the report of Sir Norman Hill as proper compensation in cases of personal injury or death, are wholly inadequate to meet the needs of American citizens killed or injured while passengers at sea.

Mr. Haight said that he had recently spoken to Sir Norman Hill, in London; that Sir Norman Hill's plan offers compensation to all passengers in all accidents; that the statistics of the leading British Protection Clubs show that of every \$100 which they spend on passenger injury and death cases \$50 goes to the companies' lawyers and the other \$50, which goes to the injured and the representatives of the dead, is divided probably half and half between them and their lawyers. Since of every dollar paid to-day by the steamship companies about 75 per cent. goes to lawyers and investigators, and only 25 per cent. reaches the

dead and injured, the proposal is, by compensation insurance, to have the entire sum go to the dead and injured and nothing to the lawyers and investigators. Such a re-allocation of the money paid will, on the average, result in the dead and injured receiving four times what they now receive.

A death benefit of £250 compares with an average death settlement in the *Titanic* case of £25, in the *Empress of Ireland* of £43, and in 2350 cases handled by the Liverpool Steamship P. & I. Association of £93.

Every passenger shall receive £250 of insurance, regardless of negligence, free as part of his ticket, and to this extent shall never be confronted with the defense that the ship is a total loss and that there is nothing to pay. In addition, substantial additional insurance shall be offered practically at cost. He urged that it was unnecessary to appear to go on record against the principle underlying workmen's compensation and employers' liability. Furthermore, the proposal is for a voluntary agreement between shipowner and passenger expressed in the ticket without legislation.

Mr. Jones replied that he thought the shipowners should offer not merely to spend the same money which they are now spending on this class of claims, but should offer more, and that they should not suggest a limitation of liability in regard to passengers regardless of due diligence in making the vessel seaworthy for the voyage. His aim was to prevent disasters as well as to compensate.

Mr. Hupper thought £250 was not enough in the United States, although it might be a fortune elsewhere, and feared that no plan would be satisfactory unless uniform. He asked that a memorandum by the German Maritime Law Association to the International Maritime Committee should be read, and the Secretary read a translation of it. This report will shortly be printed as a bulletin by the International Maritime Committee and will be available in that form.

Mr. Niles asked Mr. Jones if he agreed with the principle and merely disagreed with the figures, and, if so, what minimum figure he would regard as satisfactory, but Mr. Jones was not ready to state what figure he thought would do.

Mr. Niles offered a resolution favoring a scheme of compulsory insurance for passengers, provided the conditions laid

down in our resolutions of 1925 and 1928 are complied with, but it was not seconded.

After general debate, Mr. Jones' motion was put and carried *viva voce*, there being a considerable vote in opposition.

COLLISIONS CONVENTION—ALLOCATION
OF COLLISION DAMAGES:

The President called the attention of the meeting to the memorandum circulated in advance of the meeting giving the exact state of the record and the previous reports and actions of the Association on this subject, and asked the pleasure of the meeting.

Mr. Jones thereupon proposed the following resolution, which was seconded:

WHEREAS this Association has appointed a Committee to consider the question of the advisability of changing the maritime law with respect to allocation of damages in collision cases, in accordance with degree of fault when two or more vessels involved are found to blame; and

WHEREAS the said Committee reported at the annual meeting of this Association on May 20, 1927, recommending that no change be made in the present American rule, which divides damages equally between or among vessels at fault; and

WHEREAS at the said meeting the report of the majority of the Committee was accepted;

NOW, THEREFORE, BE IT RESOLVED that this Association again records its approval of the conclusions reached by the majority of said Committee; and

BE IT FURTHER RESOLVED that it is the sense of this Association that the principles of law with respect to the allocation of damages in collision cases where two or more vessels are at fault, as settled by numerous decisions of the Supreme Court of the United States, are suited to American needs, and that this Association disapproves the suggested changes of said principles which are embodied in the Brussels Convention of 1910; and

BE IT RESOLVED that a copy of this resolution be sent to the United States Shipping Board.

There being no debate, the question was put and the resolution was overwhelmingly carried *viva voce*, there being some voices in opposition.

ELECTION OF OFFICERS :

Mr. Englar submitted nominations on behalf of the Nominating Committee and, there being no other nominations, the following officers were declared elected :

President: Hon. VanVechten Veeder.

Secretary and Treasurer: Arnold W. Knauth.

Executive Committee:

Ira A. Campbell

Chauncey I. Clark

Oscar R. Houston

Mark W. Maclay

Harold S. Deming

Albert T. Gould

William N. Davey

Robert W. Williams

Mr. Betts offered a resolution expressing the thanks of the Association for the happy manner in which Judge Augustus N. Hand, the retiring President, has presided over the meetings of the Association during the past five years; and Mr. Campbell presented a resolution thanking Mr. Deming for his devotion of time and energy as Secretary since 1922. Both resolutions were enthusiastically carried and the meeting thereupon adjourned.

ARNOLD W. KNAUTH,
Secretary of the Meeting.

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, 1930, as follows:

There have been two meetings of the Association, the annual meeting on May 3, 1929, and the usual winter meeting on January 17, 1930.

The death of several members has been noted during the past year:

Mark Ash,
Hon. E. T. Chamberlain, of Washington,
W. O. Hart, of New Orleans,
Chas. E. Mather, of Philadelphia,
Edgerton Parsons,
Julian B. Shope,
Jas. K. Symmers.

Four members have resigned:

Col. Dallas M. Townsend,
H. B. Potter,
Edmund L. Baylies,
Caleb A. Harding.

It is proposed that Mr. Baylies, who was one of the original members in 1899, be elected as Associate or honorary member.

Eleven new active members have been elected to the Association. The Executive Committee has dropped three. The present membership is 57 Associate members without dues, and 344 Active or dues-paying members. The total number of names on the mailing list is 401.

It is evident that the Association continues to maintain its wide membership throughout the country among attorneys practicing in admiralty and judges and other officials concerned with shipping matters.

The Association during the year has had committees on the following subjects:

- Admiralty and Aviation
- Arbitration Statutes
- Legal costs in admiralty
- Limitation of liability in connection with *Vestris* discussions
- Jurisdiction and penal sanctions in the event of collision on the high seas
- Extension of admiralty jurisdiction to land structures
- Codification of navigation laws
- Affreightment, proposed discussion of international agreement on certain points.

Not all of these committees have been active and the last-named committee has found its labors vain for the present because the subject is not to be discussed by the International Maritime Committee at its next meeting at Antwerp. The minutes of the meetings and the reports of the committees have been printed and distributed. The text of the Safety at Sea Convention, 1929, was distributed to all our members. It is therefore unnecessary to describe further the work of the Association during the year.

I might mention, however, that the discussion of the Collisions Convention of 1910 and the allocation of collision damages at the mid-winter meeting resulted in the subject being placed upon the agenda for to-night. Several members asked me for a statement of "all the previous steps taken by the Association in regard to this matter, with the exact state of the record." An examination of the early minute books produced a great deal of interesting material, which has been printed and placed at your disposal in Document No. 161. This collection of material will, I trust, be of assistance in the discussion of the subject.

The investigation of the early minute books resulted in the preparation of a brief digest of the minutes of the Association. In the belief that this digest will be of general interest to the members and will be particularly helpful to future committees dealing with various maritime questions, it has been printed and will shortly be distributed.

HAROLD S. DEMING,
Secretary.

ANNUAL REPORT OF THE TREASURER.

Balance on hand, May 1, 1929..... \$1,937.59

Receipts

| | | |
|-----------------|----------|----------|
| Dues, 1925..... | 5.00 | |
| “ 1926..... | 5.00 | |
| “ 1927..... | 50.00 | |
| “ 1928..... | 190.00 | |
| “ 1929..... | 1,085.00 | |
| “ 1930..... | 420.00 | 1,755.00 |

| | | | |
|----------------|-------|----------|----------|
| Interest | 44.63 | 1,799.63 | 3,737.22 |
|----------------|-------|----------|----------|

Disbursements

| | | |
|--|--------|----------|
| Printing | 948.05 | |
| Addressing | 49.45 | |
| American Maritime Cases, subscription | 50.00 | |
| Annual Meeting..... | 10.00 | |
| Stenography, Postage, Cables and minor dis- bursements | 196.46 | 1,253.96 |

| | | |
|------------------------------|----------|----------|
| Balance, April 30, 1930..... | 2,483.26 | 3,737.22 |
|------------------------------|----------|----------|

Note: We owe the Comité the usual annual contribu-
tion of..... \$250.00
We owe the printer for recent work about.... 300.00
And for recent postage and stenography..... 151.96

Leaving an actual working balance of approximately \$1,750.00

Back Dues uncollected as of May 1, 1930:

| | |
|-----------|----------|
| 1929..... | \$335.00 |
| 1928..... | 220.00 |
| 1927..... | 120.00 |
| 1926..... | 25.00 |
| 1925..... | 25.00 |
| 1924..... | 5.00 |

HAROLD S. DEMING,
Treasurer.

COMMITTEE ON LEGAL COSTS

REPORT.

The undersigned, appointed as a Committee to consider and report on the advisability of adopting a system in admiralty of taxing legal fees as a part of the costs, begs leave to submit its report:

Prior to considering the questions before it, your Committee communicated, through the Maritime Law Association, and directly with English and French lawyers, and with British, Norwegian, German and Danish steamship owners' mutual protection associations.

We are informed that, under the French system, lawyers' fees are not included in the expenses which are taxable as costs.

Under the English system the fees of solicitors and barristers are taxable as costs against the losing party unless the court shall otherwise rule for cause shown. An interesting article by Arthur Lehman Goodhart on the English law relating to this subject will be found in Yale Law Journal for May, 1929. The English system is so complicated and is the outgrowth of so many centuries of practice that your Committee cannot recommend its adoption here.

In Germany and Denmark the losing party in a law suit is liable to compensate the successful party for the fee, or perhaps the greater part, which he must pay to the solicitor or counsel.

The First Report of the Massachusetts Judicial Council (1925) recommended the adoption of increased costs as a preventive to ill-advised and unfounded litigation. The Report of the Judicial Council in 1926 recommended substituting for this preventative increased court fees.

At one time it was customary in admiralty courts to award counsel fees to the successful litigant. *Benedict on Admiralty*, 5th Edition, Section 424. However, since the passage of the Fee Bill in the Act of February 26, 1853, now contained in 28 U. S. C., Sections 541-609, fees and costs to be awarded to attorneys and various officers of the court have been prescribed by statute. Since Section 571 provides that the "following fees and *no other*, shall be taxed and allowed" the courts have held that the Admiralty Court has at the present no discretionary power to tax more than the fees allowed in the Act of Feb-

ruary 26, 1853. It is apparent, therefore, that any change in the present rule would have to be made by the passage of a Federal Statute which would preferably grant to the Circuit or District Courts the right to fix the amount taxable against unsuccessful litigants in Circuits or Districts.

On March 15, 1930, the Maritime Law Association issued a circular to the members calling their attention to the fact that this Committee was considering the question of adopting a system of taxing legal fees as a part of the costs and to the principal arguments which suggested themselves pro and con. Replies from 21 members have been received. Of these only 3 are in favor of taxing legal fees as costs. Four others are in favor of increasing the amount of costs or providing a sliding scale of costs to be based upon the amount involved in the case. Due to the small number of replies received pro and con the proportion do not indicate definitely that the majority of the members of the Maritime Law Association are opposed to the proposal. However, it seems to us that it indicates that there is no desire for a change on the part of the members of the Association.

Your Committee is definitely opposed to the scheme of taxing legal fees as costs unless a similar change could be made in the Courts of Common Law, since in our opinion the inevitable result of increased costs in admiralty would be to drive undeserving and doubtful cases to the common law courts for litigation.

Among the replies received to the questionnaire one of the members of the Association suggested that a proctor's fee of at least \$100 be allowed on appeal of a case and that in all cases the losing party should pay the cost of the briefs in the Appellate Court. Your Committee approves these two suggestions in principle and recommends that the officers of the Association so advise the Attorney General and any appropriate Committee of the American Bar Association.

May 2, 1930.

GEORGE DEFOREST LORD,
Chairman,
T. CATESBY JONES,
CHARLES F. DUTCH.