

To the International Maritime Committee :

The Maritime Law Association of the United States, after consideration of the questions presented in the Circular Letter of the Permanent Council dated December 23, 1903, and the Draft Treaties as to jurisdiction in collision cases and on the limitation of the shipowners' liability, has directed the following to be forwarded as the expression of the views of the Association.

CONFLICTS IN THE LAWS RELATING TO OWNERSHIPS,  
BOTTOMRY AND RIGHTS *in rem*.

The Association refers to its report of May 2, 1902, upon these subjects and desires to add nothing to the views there expressed.

JURISDICTION IN COLLISION CASES.

FIRST.

Article I. of the Draft Treaty is not clear, but we understand that it is intended by it to provide that the action in that Article referred to may be brought before any one 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.

It is a fundamental principle with us that no judgment *in rem* can bind the *res* or its owner unless the *res* be 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 so subjected.

We could not 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.

We suggest, therefore, as a substitute for Article I. the following:

“*Article I.*—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 such Court, according to the law of the forum;

“(2) within whose local jurisdiction the defendant may be 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, provided, however, that if the defendant shall not personally appear in the suit, the judgment rendered shall be valid only to the extent of the property so subjected to process.”

#### SECOND.

A marked feature of the Draft Treaty is that, throughout, it presents the idea of but one suit by but one plaintiff.

There may, however, be numerous interests which have suffered from the collision. The cargo or the vessel may be owned by various separate owners, residing in different countries, and, probably, citizens of different countries.

The difficulty of providing one action only for such cases seems insuperable. Suppose it were provided that, if suit be brought on behalf of one of the parties interested, no second suit could be brought by another, but all other parties must come into the first suit. How is the Court to determine what amount of security is to be given to free the vessel from *all claims*? It might be said that the value of the offending vessel could be taken as the amount of the security to be given. But that would make it necessary for the owner of the vessel proceeded against, *in every case*, to have her value appraised and to 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 well require communication with the

other side of the world, the delay to the defendant ship (perhaps an ocean liner) would be an oppressive burden.

These difficulties, in our opinion, make it impracticable to compel all injured parties to join in one action. Sometimes it could be done. Sometimes it is done now. But to compel it in all cases is not practicable and should not be attempted. Each party in interest must be left to protect and enforce his rights as he deems best.

#### THIRD.

For the reasons already expressed Article VI. should be amended by adding to the first sentence thereof the words: "in which the vessel proceeded against may be found."

#### FOURTH.

We suggest the substitution of the words "the law of the forum" for the words "the national law" in Subdivisions a and d of Article VI.

In the United States the law of the *State* might be invoked as well as the law of the *Nation*.

#### FIFTH.

Any treaty as to jurisdiction in collision cases should contain a special article providing that the treaty should not affect any proceeding by a shipowner to limit his liability.

The treaty proposed in reference to limitation of liability might be made with the treaty as to jurisdiction, but might not be made at all.

#### LIMITATION OF THE SHIPOWNERS' LIABILITY.

We submit the following criticism of certain provisions of the Draft Treaty:

#### FIRST.

There is serious question whether, under the terms of the Draft Treaty, an owner might not limit his liability even for his *own* fault. Suppose a collision caused by fault of a master known to be incompetent. The language of Article I. would seem to allow the owner to limit his liability in such case.

The words of the United States Statute, or similar words, providing that the loss or damage should have occurred “without the privity or knowledge of the owner” should be added.

#### SECOND.

The clause at the end of *Subdivision c* of Article I.—“subject to deduction of the expenses incurred in putting the ship in a fit state to complete the voyage”—should be made applicable to the value of the ship at the end of the voyage (*Subdivision a*) as well as to the indemnities mentioned in *Subdivision c*. Monies expended in repairing the ship after the occurrence of the damage should be deducted from her value on arrival.

#### THIRD.

The words “of the whole,” in the latter part of next to the last paragraph of Article I., seem to us unnecessary and to suggest a possible ambiguity.

#### FOURTH.

There should be added to Article II. the words “together with the net freight and indemnity as provided in Article I.”

#### FIFTH.

Article III. What is meant by the words “at every time”? Who is meant by “the party 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 offending vessel, but to all other cargo owners. Are they included in “the other side”?

#### SIXTH.

Article IV. provides: “The owner has the right to substitute for the modes of obtaining freedom from liability provided in Article I. *payment* of an indemnity,” &c. Does this mean payment into court? If this is meant it is similar to our proceeding to limit liability, except that there is no provision for a contest over the question of liability.

## SEVENTH.

By Article VI. the limitation of liability is made applicable to damage to dykes, quays and other fixed objects, that is, to damage occurring on land.

We are not opposed to the extension of the limitation to damage of this nature.

There would seem, however, to be some question as to the power of our Congress to change the law in this respect. Actions for damage occurring on land are not within the jurisdiction of our admiralty Courts, and an attempt to extend the application of our limited liability Statute to such cases was attacked on Constitutional grounds. The construction placed upon the Statute by which its application was confined to cases of admiralty jurisdiction rendered it unnecessary to decide the question of the constitutionality of such legislation, and the question is therefore still an open one.

July 18, 1904.

ROBERT D. BENEDICT,  
*President.*

LAWRENCE KNEELAND,  
*Secretary.*