MARITIME LAW ASSOCIATION OF THE UNITED STATES.

A meeting of the Association was held at the building of the Association of the Bar of the City of New York, No. 42 West 44th Street, on Friday, December 8th, 1905, at three o'clock P. M.

There were present: Mr. Robert D. Benedict, President; Honorable George C. Holt; Honorable W. W. Goodrich; Messrs. F. M. Brown; C. C. Burlingham; James E. Carpenter; W. R. Coe; C. S. Haight; L. Kneeland; Joseph Larocque; Jr.; A. G. Murray; George B. Ogden; J. B. Shope; James K. Symmers; Lorenzo Ullo; Henry G. Ward and J. Langdon Ward of New York; Messrs. John D. Bryant and Frederic Cunningham of Boston; Mr. George Whitelock of Baltimore; and Mr. C. E. Kremer of Chicago.

Upon motion the minutes of the meeting held May 5, 1905, as printed, were approved.

The first business considered was the Treaty relating to Collisions approved by the International Diplomatic Conference held at Brussels in October.

The President stated that he had received a copy of the treaty, as approved, the same being in the French language, and that he had prepared a translation of same, which he read and which is as follows:

ARTICLE I.—The reparation of damages caused by a collision which has occurred between seagoing vessels, or between seagoing vessels and vessels of internal navigation, is subjected to the following regulations, without regard to the waters in which the collision occurred:

ARTICLE II.—If the collision is fortuitous, or if it is due to a case of *vis major*, or if there is doubt as to the causes of the collision, the damages are borne by those who have experienced them. This regulation is applicable if the ships, or either of them, are at anchor at the time of the accident.

ARTICLE III.—If the collision is caused by the fault of one of the ships, reparation of the damage is incumbent upon the one who has committed it.

ARTICLE IV.—If there is common fault the responsibility of each of the ships is proportional to the gravity of its fault. Damages caused to ships or their cargo, or to goods or other property of the crew, passengers or other persons on board, shall be divided between the ships in said proportion, without joint liability as to third persons.

ARTICLE V.—The responsibility established by the preceding articles exists in the case in which collision has been caused by the fault of a pilot, even when the services of a pilot are obligatory.

ARTICLE VI.—The action to recover damages for collision is not subordinated to any procedure or any other special formality.

ARTICLE VII.—The action must be brought within two years from the event. Causes of suspense and non-application of this prescription are determined by the law of the tribunal which has jurisdiction. There may be considered as cause of suspense the fact that the defendant ship could not be seized within the territory, or waters of the state in which the owner of the claim has his domicile or his principal establishment.

ARTICLE VIII.—After a collision the captain of each of the ships which has been in collision is bound, as far as he can, without danger to his ship, his crew or his passengers, to furnish assistance to the other ship, to her crew and her passengers. He is equally bound, so far as possible, to give information of the name of the home port of his vessel, as well as the places from which he comes and whither he goes. The owner of a ship is not responsible by reason of non-compliance with the preceding regulation. These non-compliances, also, do not furnish any legal presumption of fault as to pecuniary responsibility for the collision.

ARTICLE IX.—The high contracting parties whose legislation does not repress infractions of the preceding article, bind themselves to take or to propose to their respective legislatures the measures necessary, in order that these infractions shall be repressed. The high contracting parties will communicate with each other as soon as possible the laws or regulations which shall have been already made or which may be made in their States for the execution of the preceding regulation.

ARTICLE X.—Under the reservation of ultimate agreements the present regulations have no effect with reference to the nature or the extent of the responsibility of ship owners as such have been regulated in each country, nor to the obligations resulting from the contract of transportation or any other contracts.

ARTICLE XI.—The present convention is not applicable to ships or to Government vessels exclusively held to a public service.

ARTICLE XII.—The regulations of the present convention shall be applied in regard to all those interested when all the ships shall belong to the contracting states, and in other cases provided by national laws.

ARTICLE XIII.—The delegates of the contracting states will come together again at Brussels three years after the present convention shall go into execution, with the object of seeking the amelioration which may be brought to it, and notably to extend its application, if it is possible.

ARTICLE XIV.—The States which have not signed the present Convention will be admitted to give their adhesion to it on their requests. These adhesions will be conveyed by diplomatic means to the Belgian Government, and by that Government to each of the other Governments. It will take effect a month after the sending of the notification by the Belgian Government.

ARTICLE XV.—The present Convention shall be ratified and the ratification deposited at Brussels as soon as can be done. After a delay of two years, counting from the day of the sending of the Convention, the Belgian Government will take up arrangements with the Governments which have declared themselves ready to ratify it, in order to bring about a decision if there is ground to put it in force. The ratification shall be, if the case arises, deposited immediately, and the Convention will take effect one month after the deposit. The protocol shall remain open another year in favor of the states represented at the Belgian Convention. After that delay they can give their adhesions to it in conformity with the regulations of Article XIV.

ARTICLE XVI.—In case either of the contracting parties shall renounce the present agreement, this renunciation shall take effect only one year after the date that it shall have notified the Belgian Government. And the Convention shall remain in force among the other contracting Governments.

The Secretary read the following communication from Mr. Louis Franck, Secretary of the International Maritime Committee, upon the same subject:

INTERNATIONAL MARITIME COMMITTEE.

ANTWERP, November 5th, 1905.

DEAR SIR:

Diplomatic Conference.

The International Diplomatic Conference met in second session at Brussels, from 16th, to 21st October, under the presidency of Minister of State AUGUST BEERNAERT and under the vice-presidency of Mr. GERARD, Minister of France at the Court of Brussels.

At the first session of the Conference (February 1905) thirteen countries were represented. Since then, nine new adhesions have been notified, so that there are now twenty-two Governments participating in the deliberations. Great

Britain, Germany and Austria-Hungary are amongst the more recently adhering countries.

Several amendments were moved, although without modifying the basis itself of the draft-treaties elaborated by our conferences. After long deliberations, an understanding could be arrived at on all points and the delegates were unanimous to adopt a text of the draft-treaties with the view to submit same for final approval to their respective Governments. A protocol has been drawn up to that effect.

We heard that several countries who were represented at the first session had already given to their delegates full powers to conclude an international convention on both matters; but as a matter of course, the presence of so many countries who were not represented at the first session must necessarily cause some further delay, in order to enable those new adherents to consult their Governments as to the amended texts. Therefore, a third session will be held within a delay which shall not exceed one year, unless the different Governments may see in the meantime their way to notify to the Belgian Government by the diplomatic way their adhesion, without further deliberation.

If we had only to consult our own wishes, we would doubtless have preferred an immediate solution; but we must not forget that for a work of this kind, causing alterations to be effected in the laws of twenty-two countries, it is most natural that the interested Governments should only proceed with a wise caution; some delay is therefore unavoidable, but will not, in our opinion, endanger the work in any way. Besides, the Convention of Washington on the Rules of the Road was only accepted by the Governments after several years, and the Hague Convention on International Private Law, which was of 1893-94, came only into force in the 25th May 1899.

Anyhow, it is gratifying for us to consider that we have been able to advance so far in our work; nothing allows to doubt that the draft-treaties adopted by the Brussels Conference will soon become the international code of the sea as to collision and salvage.

The most conciliating dispositions were shown by all the plenipotentiaries and representatives together, with the greatest appreciation of the work done by this Committee. Unification of maritime laws now appears as urgent need, not only to shipowners, underwriters and merchants, but also to statesmen without distinction as to nationality.

The Secretary stated that advice had been received from Mr. Franck that in order to meet the objections of the delegates from the United States, a provision had been inserted in the protocol reserving to the United States the right to limit the application of the treaty to causes litigated in our Admiralty Courts.

The Secretary read a letter from Mr. Everett P. Wheeler, advocating the approval by the Association of the proposed treaty, and also the following communication from representatives of certain marine insurance companies in the City of New York:

NEW YORK, December 7, 1905.

The Secretary, The Maritime Law Association of the United States, New York City.

DEAR SIR:

Referring to a treaty approved by representatives of various nations held at Brussels in September last and now before our State Department, said treaty being for the unification of the laws for collision of vessels, the present is to advise you

THAT at a meeting of the undersigned marine underwriters, held December 5, 1905, the following resolution was adopted:

"That the sense of this meeting is to oppose the proposed Treaty on ground that Article No. 4 deprives the cargo owners of rights they now possess."

Article No. 4, above referred to, provides that if both vessels are in fault for collision, the responsibility of each of the vessels is proportionate to the gravity of her fault.

It is also provided that losses to cargoes shall be divided in

the same proportion and that there shall be no liability of either vessel to the cargo beyond such proportion.

Respecting this we submit the following comments for consideration of your honorable Association.

In cases of mutual fault it has been the custom in this country to consider that both vessels are equally in blame. This rule has the advantage of simplicity and it seems probable that any rule which attempts more exact justice will be a fruitful source of litigation.

At present a vessel owner who believes that his vessel was in some degree at fault is not likely to appeal from a decision holding both vessels to blame for whatever the relative fault of his vessel she would be considered equally in fault with the other.

If degrees of fault are considered many differences will arise and appeals from decisions are likely to increase.

It has, however, long been judicially settled in this country that in cases of mutual fault the owners of cargo, being innocent sufferers, can look to either vessel for their entire loss.

The decisions giving cargo owners this right of recovery are founded on equity, being based upon the theory that those who are in no way guilty shall have complete recovery. The Supreme Court of the United States (The Alabama and the Game Cock) said "But, if the carrying ship is unable to respond to half the damage sustained by her cargo, the deficiency will be entirely lost if the other offending vessels can only be made liable for a single moiety. And yet it would seem to be just that the owner of the cargo, who is supposed to be free from fault, should recover the damage done thereto from those who caused it; and if he cannot recover from one of them such party's due share, he ought to be able to recover it from the other * * * * * * * * * *. In short, the moiety rule has been adopted for a better distribution of justice between mutual wrongdoers and it ought not to be extended to inflict positive loss on innocent parties."

Positive loss to innocient parties is inflicted by the suggested treaty.

Carrying vessels are now relieved from losses due to faults of navigation and from stranger vessels alone can innocent cargo owners now look for redress. If their rights, as against strangers, are curtailed by the adoption of the treaty, violence will be done to fundamental principles and our law will be radically changed to the detriment of cargo owners.

After paying the entire cargo loss the stranger vessel can now, usually, recoup one-half of such loss from the carrying vessel. This cannot always be done, for, as in the case of the "Alabama" and the "Game Cock," the other vessel may not be of sufficient value to respond. This may seem hard, but it is clearly fairer for a guilty party to suffer than for an innocent one to do so.

The diplomatic conferences and the various meetings of maritime associations which have been held abroad regarding the subject of this and of other draft treaties relating to shipping matters have been apparently actuated by regard only to the benefits conferred on ship owners.

A striking instance of this is shown by a study of the debates at the conference of the International Maritime Committee held at Liverpool last June. The principal subject of discussion before that meeting was another draft treaty relating to the limitation of ship owners' liability.

The limit of recovery according to the laws of this country and of most of the continental countries of Europe is the value of the vessel after the disaster and her pending freight, while in England the limit of the ship owners' liability in case of loss of property is £8 a ton. To reconcile this difference was one of the main objects of the conference.

It was suggested that a vessel owner should have the option of the two rules—that is to say, that if his vessel is a total loss there will be no liability on his part, but if his vessel survives and is worth more than £8 a ton, he can claim the benefit of that limitation.

It was pointed out by some of the speakers in the conference that the cargo was not in any way considered, and one of the speakers stated as follows:

"This is a proposal which entirely ignores the rights and claims of the cargo shippers. It treats them as if they were of negligible quantity, or as if they were non-existent * * * * * * * * * * The proposal now before us is this: That a wrongdoing ship—an injuring ship—should have the choice of two systems; that she should be able to pick the plums out of two cakes. She will be able to say, 'I am going to choose the method of indemnity which will give the injured party least.

Notwithstanding the injustice to cargo owners thus clearly pointed out, the conference approved of a treaty giving ship owners the option they sought.

The laws of almost all the continental countries of Europe are substantially the same as ours—as regards the recovery of the entire cargo loss from the stranger vessel. The contrary rule in England is based (so far as the common law courts are concerned) on statute alone.

It can fairly be said that throughout the world it is held that equity requires that innocent cargo owners should be fully reimbursed.

The argument most commonly used, in favor of the unification of the laws regarding collisions is that it will give greater certainty, and that therefore both ships and cargo owners will be better able to measure the risks they run and to guard against them.

This argument, as applied to joint liability in collision cases, is largely if not wholly misleading. The difference between the laws in this regard is known by those concerned. There is no uncertainty. Indeed, outside of England, there is little difference. It is proposed to do away with the present substantial uniformity which protects innocent cargo owners and to substitute a new uniformity which shields guilty ships. No advantage, not afforded by the laws of this country, is given to cargo owners in return for what is taken away.

Laws that work for the general good should not be opposed, even though in isolated cases they may work badly. But the treaty now before our Government takes away

rights almost universally acknkowledged, without giving any corresponding benefit to the people at large. It favors shipowners by giving them a benefit not given by the common law of any country.

It is International class legislation without a basis of equity. Cargo owners cannot afford to give up what is fairly theirs for the sake of a treaty not founded upon broad principles of justice.

Yours very respectfully,

FEDERAL INSURANCE CO. SEA INSURANCE CO.	CHUBB & SON, Managers.
MARINE INSURANCE CO., LD. LONDON ASSURANCE CORPORATION.	CHUBB & SON, Agents.
GENERAL MARINE INS. CO.	M. GRUNDNER, Atty.
INSURANCE CO. OF NORTH AMERICA.	PLATT & JEREMIAH, Agents.
MANNHEIM INSURANCE CO. FIREMAN'S FUND INS. CO. UNION MARINE INS. CO.	F. HERRMANN, Manager. P. P., C. E. DEAN.
PROVIDENCE WASHINGTON INSURANCE CO. ST. PAUL FIRE & MARINE INS. CO.	W. H. MCGEE, General Agent.
HOME INSURANCE COMPANY.	LOUIS F. BURKE, Superintendent Marine Dept.
BOSTON INSURANCE COMPANY.	WARD WILLIAMS.

Mr. Kneeland offered the following resolution and moved its adoption:

RESOLVED, that this Association disapprove the treaty relating to collisions adopted by the Diplomatic Conference recently held at Brussels, in so far as the same abolishes joint liability of two vessels in fault for cargo and property losses.

Mr. Cunningham offered as an amendment the following:

RESOLVED, that this Association approves Article IV. of the proposed treaty.

General discussion followed.

A vote was then taken upon the amendment proposed by Mr. Cunningham and the same was not adopted, after which

the original resolution was approved and adopted, and the Secretary was directed to forward a copy of same to the Secretary of State.

The next business upon the program was the subject of the Draft Treaty adopted as a first reading at the conference of the International Maritime Committee held at Liverpool in June last, regarding limitation of ship owners' liability. It was decided that no action by the Association at the present time in reference thereto was advisable.

The next subject for discussion was the proposed changes in Article IX. of the rule to prevent collisions on the high seas submitted by the Government of Great Britain to our Government for consideration.

Upon motion of Mr. Shope, it was voted that the Association approve the proposed amendment of the rules.

The President reported the action which had been taken by the special committee in charge of the Association's proposed bill, giving a remedy for loss of life through negligence upon the high seas, and on motion of Mr. Burlingham, the President was authorized to appoint a committee of five, of which he should be a member, to take full charge of said bill and of the bill approved by the Association permitting Government vessels to be sued for collision, and to take such measures as they deemed advisable to secure their passage and adoption.

In conformity with this resolution the following committee was appointed:

Robert D. Benedict, *President*,
Lawrence Kneeland, *Secretary*,
Hon. Addison Brown,
Mr. C. E. Kremer,
Mr. Harvey D. Goulder.

The meeting then adjourned.

LAWRENCE KNEELAND,
Secretary.

A dinner was held at the Hotel Gotham on the evening of the meeting, at which twenty-seven members of the Association were present. There were no formal speeches, but at the request of the President Judge Holt, Judge Choate, Judge Gardiner, Messrs. Kremer, Cunningham and Whitelock made short addresses.