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July, 1935

THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

INFORMAL DISCUSSION MEETING

By the courtesy of the Compagnie Generale Transatlantique, an informal discussion meeting will be held on

Tuesday, July 30, 1935, at 5 P. M.

in the Theatre on board the French liner *Normandie* at Pier 88, North River.

Subject: *Safety of Shipping.*

Speakers: DOCK COMMISSIONER MCKENZIE,
FIRE COMMISSIONER MCELLIGOTT,
KARL BAARSLAG, radio operator,
author of "SOS to the Rescue."

After the speaking the vessel will be inspected.

Admission by use of the enclosed card. A guest card may be had on application to A. W. Knauth, 80 Broad Street, New York City.

LIMITATION OF LIABILITY—ACTION OF FRANCE.

A cablegram from the Secretariat of the Comité Maritime International, dated July 17, 1935, states that both Houses of the French Parliament have adopted the Brussels International Convention for the unification of certain rules relating to the Limitation of the Liability of Owners of Seagoing Vessels. Promulgation of an appropriate decree is understood to be a merely ministerial act.

The text of the operative articles of the Convention is printed in the Committee Report on the History and Status of Domestic and Foreign Laws concerning Limitation of Shipowners' Liability (January 30, 1935), Document No. 196.

The action of France brings the number of States adhering to this convention to eleven, as follows: Belgium, Brazil, Denmark, Finland, France, Italy (effective date postponed), Netherlands, Norway, Portugal, Spain and Sweden.

The International Convention, reduced to the fewest possible words, provides that shipowners must respond for *death and injury* claims up to £8 (say $40) per ton, regardless of what the actual value of ship and freight may be. *As to cargo,* the shipowner may limit to the value of the ship after the disaster plus the freight, but need not respond for more than £8 ($40) per ton. The necessity for proving the amount of freight is eliminated by providing that the freight shall in every case be assumed to be 10% of the value of the vessel at the commencement of the voyage. If the death and injury claims exceed the special £8 fund provided for them, they rank, as to the excess, with the cargo claims in the distribution of the cargo fund. There is no compulsory insurance arrangement. Owners may not limit against (1) their personal acts and faults; (2) master's contracts, if expressly authorized; (3) contracts with the crew and ship's personnel, who in France are covered by workmen's compensation insurance.

Ship Mortgages and Liens—Action of France.

The French Parliament has likewise adopted the Brussels International Convention for the unification of certain rules relating to Maritime Mortgages and Liens. Promulgation of the appropriate decree is expected to follow shortly.

The text of the convention is not readily available in English. The draft text printed at page 96 of the Report of the Delegates of the United States to the Fifth Session of the International Conference on Maritime Law (1922) was modified as to Articles 2, 3, 4, 9 and 12 in 1926.

A comparison of the liens provided by the Convention with liens under United States law was prepared in 1925 by Mr. William J. Dean and printed at page 1337 of the minutes of the Association.

The French action brings the number of adhering States to thirteen, as follows: Belgium, Brazil, Denmark, Estonia, Finland, France, Hungary, Italy (effective date postponed), Netherlands, Norway, Portugal, Spain and Sweden (effective date postponed).

Limitation of Liability—New Bill in Senate.

S. 3285. Introduced by Senator Copeland, July 19, 1935.

The text of Title X of the House Subsidy Bill has been introduced by Senator Copeland as a separate bill, with the following *changes:* The sections have been renumbered; the effective date provision (30 days after enactment) has been eliminated. S. 3285 would leave the law as to *cargo loss* unchanged, with the right to limit to value of vessel after disaster plus freight; as to *death and injury on sea-going vessels* of persons, whether passengers, master, officers, crew, licensees or strangers, the limitation shall not be less than $60 per ton, which American shipowners must guarantee by insurance or self-insurance; foreign shipowners need not guarantee. The law as to sea-going tugs and barges, and as to vessels which do not go to sea, remains unchanged.

The text of Title X was printed in Document No. 212 recently distributed, with one change in phraseology as stated in Document 213, page 2208.

The material differences between the Convention, recently adopted by France, and S. 3285 are:

As to cargo, the Convention limits the maximum liability in all cases to £8 ($40) per ton, as in England; S. 3285 has no such limit.

As to death and injury, the Convention provides a fund of £8 per ton—that is, $40, with the right to prove any excess against the cargo fund, whereas S. 3285 provides $60, with no right to prove any excess against any other fund. The Convention does not require compulsory insurance or guarantee. The Convention excludes the crew, who are covered by workmen's compensation in England, France, Germany, Italy, the Scandinavian countries, Holland, Belgium, Japan and most other maritime countries other than the United States; whereas S. 3285 permits the crew to sue against the $60 fund equally with passengers and the general public.

Privity and knowledge of the master at or prior to commencement of each voyage shall be deemed that of the owner, as to death and injury claims but not as to cargo claims.

Notice and suit clauses. In death and injury cases, S. 3285 provides that notice of claim clauses may not provide less than 6 months, and suit clauses less than 1 year from date of disallowance of claim.

S. 3285 has been referred to the Senate Committee on Commerce, of which Senator Copeland is chairman.

Other New Bills in Congress.

H. R. 8139 has an object similar to H. R. 7811, i. e., to provide for extra compensation for overtime for the services of local inspectors of steam vessels and United States shipping commissioners when they have been ordered to report for duty and whether or not they have done any work. This bill was introduced by Mr. Bland.

H. R. 8457, also introduced by Mr. Bland, amends Section 13 of the Seamen's Act of 1915 by providing that 75% of every crew shall understand any order given by the officers and 65% of the deck crew shall be of a rating not less than able seamen. It provides for the issuance of certificates as able seamen after examination.

Section 2 of the Act provides for certificates for pursers, radio operators and chief and assistant stewards. Compare H. R. 6041 and H. R. 6040.

Aviation Salvage Draft Convention, Applicable to Shipping.

The International Technical Committee on Air Law (Citeja) is engaged in drafting a Convention on salvage and assistance as between aircraft, and as between aircraft and vessels. The text, translated by the State Department, is available in Treaty Information Bulletin No. 66 (Government Printing Office, 10 cents). The Joint Committee of the New York State and City Bar Associations on Air Law is submitting the following statement to the State Department for the consideration of the American delegates to the Citeja meeting at Lisbon in September:

(1) The Draft Convention, although described as "relating to assistance and salvage of aircraft," actually relates also "to assistance and salvage of vessels by aircraft." The title should contain the full statement that this is a "preliminary Draft Convention for the establishment and unification of certain rules relating to assistance and salvage of aircraft by other aircraft and vessels, and relating to assistance and salvage of vessels by aircraft." This will fairly disclose the full subject matter dealt with.

[NOTE: Salvage services by aircraft to vessels and their cargo would appear to be satisfactorily recognized by the provisions of the Maritime Salvage Convention (1910) already in general use.]

(2) The Convention can clearly be given effect under the Constitution of the United States in respect of assistance and salvage on navigable waters of the United States and on the high seas, under the grant of admiralty jurisdiction. It may also be constitutional within the District of Columbia, the Territories and Possessions of the United States, on the dry land thereof, at least in so far as the Constitution does not apply to such Territories and Possessions. It is, however, exceedingly doubtful whether the Convention could apply to assistance and salvage on or over the land territories and non-navigable waters of the forty-eight States, for the reason that there is no constitutional power in the Federal Government to alter the common law rules of the forty-eight States. The Convention might be given effect on and over the land and unnavigable waters of the forty-eight States in respect to foreign aircraft flying over the United States as a condition of the grant of permission to fly at all, the Federal power being based on the Foreign Commerce Clause and the Declaration of the Aircraft Act, 1926) (Section 6), that

> "The Congress hereby declares the Government of the United States has, to the exclusion of all foreign nations, complete sovereignty of the air space over the lands and waters of the United States. * * * Foreign aircraft * * * shall be navigated in the United States only if authorized as hereinafter * * * provided."

It was suggested that the Convention might be generally applicable to all situations under the doctrine of *Missouri* v. *Holland,* 252 U. S. 416; in that case the Federal Government made a treaty with the British Government respecting uniform protection and game laws for migratory birds, and it was held that the game laws of the several States would have to yield to Federal law. It is, however, pointed out that the flight of migratory birds occurs without human knowledge of the plan and intention of the flight, and without knowledge by the birds of the existence and meaning of political boundaries. A majority of the committee doubted that the reasoning of the Migratory Bird

Treaty would support the Convention as applied to the air space overlying the lands of the forty-eight States.

(3) The Convention proposes (Article VII) that the salvor of goods may claim remuneration from the operator of the aircraft or the owner of the vessel, with reservation of the latter's recourse against the owner of the goods. This was deemed a needless circumlocution. The salvor, having possession of the goods, will retain possession of them until the owner of the goods, or his agent, appears and settles the salvage claim and thereupon repossesses himself of his goods.

(4) The Draft Convention provides a novel reward for life salvage. Historically, at least in England and in America, and it is understood in most countries, there has not been any reward for life salvage; the salvor has had no right to detain the body of the person whom he has brought to safety. England has, since 1854, by statute provided a limited right of life salvage, payable out of the property simultaneously saved. The Brussels Convention on Maritime Salvage, 1910, grants a similar right. In operation, it is not very satisfactory; the award for property salved is not increased but the salvor of property is obliged to divide his remuneration with the salvor of life. The novel proposal that the operator of the aircraft shall be independently liable for life salvage up to 125,000 gold francs per life saved appears to have great merit and to be well worth a trial.

(5) The obligation to go to the rescue of persons on aircraft in distress (imposed by Article II) is considered by the committee to be premature and impracticable. Aircraft of the present day rarely if ever have reserve fuel capacity sufficient to deviate from their scheduled courses in response to distress messages. The larger and swifter ocean liners, committed to the transport of large numbers of persons, the mails and property of great value, and representing large investments and large operating expenses, may not reasonably be asked to depart from their important voyages to assist persons in peril off their courses. No such obligation exists at the present time. The Maritime Salvage Convention, 1910, merely imposes the duty to assist persons *found at sea**—that is to say, the duty is only to pick up persons who are

*The French text is: "Tout capitaine est tenu de prêter assistance à toute personne trouvée en mer" (37 Stat. 1664).

encountered as the vessel proceeds along its course. Should an obligation be imposed to turn off the course, the effect on the commercial operation of ships and on their insurance would be profound. Memoranda submitted by various organizations in Europe appear to indicate that it is thought that Article II, imposing the obligation to go to the scene of a disaster, is merely a restatement of the Maritime Salvage Convention of 1910. It is submitted that this is a complete misapprehension and the committee feels that Article II should be revised to impose the duty of assistance only when persons in need of assistance are *found* by the ship at sea or by aircraft, whether at sea or over land.

(6) The Draft Convention provides (Article IV[3]) that the remuneration shall not exceed the value of the property salved—that is to say, 100%. The maritime rule in the United States is that a salvage award should not exceed 50% of the value saved. An award of 100% amounts to confiscating the property for the exclusive benefit of the salvor and leaves the owner of the goods in the position of having suffered a total loss. This is felt to be entirely unjust. When the salvor feels that the effort will not be worth the results, he should desist or continue his effort at his own risk. If he is given more than half the salved value as remuneration, the goods are in effect confiscated for his benefit, which is fundamentally unjust.

[NOTE: The Maritime Salvage Convention (1910) contains the same 100% provision. Several American commentators feel that the 100% provision is proper, and dissent from the sixth recommendation.]

(7) The Convention (Article VIII) excludes personal effects and baggage from salvage. Unless "personal effects and baggage" are by definition confined to relatively modest values, very substantial salvage service, rendered to save goods of very substantial value, may remain unrewarded. In the case of *Watson* v. *R. C. A.-Victor,* 50 Lloyds Law List 77, the salving steamer rescued photographic and radio apparatus of great value. This apparatus was at least in part "personal effects and baggage" of the passengers of the aircraft. The Convention might well provide that "personal effects and baggage" shall not exceed 250 francs per kilogram in value and 25 kilograms in weight, plus

5,000 francs per passenger, these value figures being derived from Article 22 of the Warsaw Convention (49 Stat.). Persons who carry with them greater values than these "as personal effects and baggage" should be prepared to pay contributions for salvage. In fact, if salvage is payable for the aircraft itself, the cargo, and the lives on board, there seems to be no reason why baggage and personal effects should alone remain immune.

A majority of the Executive Committee of the Maritime Law Association and Messrs. Bradley, Graham, Conger and Knauth of the Committee on Aviation and Admiralty approve the foregoing statement, subject to the comments in brackets.

Aviation Collisions Draft Convention.

The Citeja is also considering an aviation collisions convention, of which the draft text is also printed, in State Department translation, in Treaty Information Bulletin No. 66. While this Convention has no direct bearing on shipping, its terms might establish precedents which might eventually react on shipping, and the Executive Committee will consider whether comment is appropriate. As the United States has never ratified the Maritime Collisions Convention (1910), there may be no need of further comment.

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