

May 4, 1936

**THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES**

REMINDER.

Executive Committee Meeting, May 8th, at 4.30.

*Informal Supper at the Harvard Club; May 8th,
at 6.30.*

*Annual Meeting and Elections at Bar Association,
May 8th, at 8.30.*

Kindly make supper reservations by May 7th, with check for \$2.75 per person.

CARRIAGE OF GOODS BY SEA ACT—HAGUE RULES.

CORRECTED DATES.

The President signed the Act and the Convention on April 16, 1936, and not on April 17th, the date incorrectly stated in Document No. 223. The Act consequently becomes effective in ninety days, i. e., on Wednesday, July 15, 1936.

The Convention will go into effect when proclaimed and in accordance with Article 14 thereof.

AVIATION SALVAGE AT SEA DRAFT CONVENTION.

The Committee on Aviation and Admiralty will submit the following resolution :

“WHEREAS, the International Technical Committee of Experts on Air Law has proposed a Draft Convention concerning salvage operations at sea, in which aircraft may be concerned, and the same has been considered by the Aviation and Admiralty Committee of this Association, be it

RESOLVED that the Maritime Law Association of the United States, while approving the general principles expressed in the proposed Convention, urgently recommends that the following six points in the said Convention shall be reconsidered with a view to their amendment in the respects indicated :

1. Elimination of provisions as to salvage services rendered by aircraft to vessels, the same being already adequately covered by law.

2. Cargo to pay the salvor directly for the salvage service, instead of through the carrier, who has no interest therein. The Convention should provide a maritime lien or a lien in the nature of a maritime lien directly upon all aircraft property, aircraft cargo and aircraft freight to which salvage services are rendered at sea by persons, aircraft and vessels.

3. The definition of ‘cargo’ to include all property in the aircraft, specifically baggage, personal possessions, parcel post and general mail matter.

4. An S.O.S. under the Aviation Salvage at Sea Convention to have precisely the same legal meaning and effect as an S.O.S. under the Maritime Salvage at Sea Convention, London 1919, Section 45.

5. Reward of successful lifesaving efforts, requested by S.O.S., should consider speed, skill and courage in rendering or attempting to render the service as well as out-of-pocket expenses.

6. The obligation to search for fallen aircraft should be limited so as to produce the result that the expenses of the obligatory search should not exceed the limit of liability of the exploitant of the aircraft which has requested the search by S.O.S.

The Secretary is directed to forward the foregoing resolution to the State Department and to seek the co-operation of the Admiralty Committee of the American Bar Association, the Admiralty Committee of the New York City Bar Association, the Boards of Marine Underwriters of New York and San Francisco and the American Steamship Owners' Association in respect thereof."

SAFETY AT SEA.

The Safety at Sea Committee will bring in a report and a resolution. Copies will be available before the meeting.

The following documents are available:

CARRIAGE OF GOODS BY SEA ACT, 1936, and the POMERENE
FEDERAL BILLS OF LADING ACT, 1916, ANNOTATED—
Document No. 223—25¢ a copy.

LIMITATION OF LIABILITY LAWS (AS AMENDED), 1935—
Document No. 216—25¢ a copy.

COMMITTEE REPORT ON THE HISTORY AND PRESENT
STATUS OF DOMESTIC AND FOREIGN LAWS CONCERNING
SHIPOWNERS' LIABILITY—Document No. 196—50¢ a
copy.

JUDGE HOUGH'S HISTORY OF THE SOUTHERN DISTRICT
COURT—Document No. 194—50¢ a copy.

ARNOLD W. KNAUTH,
Secretary,
80 Broad Street,
New York City.

LIMITATION OF SHIPOWNERS' LIABILITY.

FURTHER PROPOSAL OF AMENDMENTS.

H. R. 9969—MR. STROVICH.

This bill, **completely rewritten** in the House Merchant Marine Committee, was **favorably reported** during the week of April 27th, and is now before the House of Representatives.

The new text does not alter R. S. 4281, 4282, 4283-A, 4284, 4286, 4287 and 23 Stat. 57.

If adopted, it would radically amend R. S. 4283, 4285 and 4289, as follows:

(NOTE: *New matter is in italics.* Deleted matter is enclosed in square brackets [].)

"R. S. SEC. 4283. (a) The liability of the owner of any vessel, *whether American or foreign*, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, *except in the cases provided for in subsection (b) of this section*, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

(b) In the case of any seagoing vessel, if the amount of the owner's liability as limited under subsection (a) is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury is less than \$60 per ton of such vessel's tonnage, such portion shall be increased to an amount equal to \$60 per ton, to be available only for the payment of losses in respect of loss of life or bodily injury. If such portion so increased is insufficient to pay such losses in full, they shall be paid therefrom in proportion to their respective amounts.

(c) *For the purposes of this section the tonnage of a seagoing steam or motor vessel shall be her gross tonnage without deduction on account of engine room, and the tonnage of a seagoing sailing vessel shall be her registered tonnage: Provided, That there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use.*

(d) *The owner of any such seagoing vessel [or share therein] shall be liable in respect of [every such] loss of life or [personal] bodily injury arising on distinct occasions to the same extent as if no other loss of life or bodily injury had arisen.*

(e) *In respect of loss of life or bodily injury the [actual] privity or knowledge of the master of a seagoing vessel or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel.*

(f) *As used in subsections (b), (c), (d), and (e) of this section and in section 4283-A, the term 'seagoing vessel' shall not include pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels or their tenders, self-propelled lighters, nondescript self-propelled vessels, canal boats, scows, car floats, barges, lighters, or nondescript nonself-propelled vessels, even though the same may be seagoing vessels within the meaning of such term as used in section 4289 of this chapter, as amended."*

Section 4283-A is unchanged. For text, see Document No. 216.

"Sec. 4283-B. Stipulations Limiting Liability for Negligence Invalid.—It shall be unlawful for the manager, agent, master, or owner of any vessel transporting passengers between ports of the United States or between any such port and a foreign port to insert in any rule, regulation, contract, or agreement any provision or limitation (1) purporting, in the event of loss of life or bodily injury arising from the negligence or fault of such owner or his servants, to relieve such owner, master, or agent from lia-

bility, or from liability beyond any stipulated amount, for such loss or injury, or (2) purporting in such event to lessen, weaken, or avoid the right of any claimant to a trial by a court of competent jurisdiction on the question of liability for such loss or injury, or the measure of damages therefor. All such provisions or limitations contained in any such rule, regulation, contract, or agreement are hereby declared to be against public policy and shall be null and void and of no effect."

"Sec. 4285. The vessel owner, within six months after a claimant shall have given to or filed with such owner written notice of claim, may petition a district court of the United States of competent jurisdiction for limitation of liability within the provisions of this chapter, as amended, and the owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount or value of the interest of such owner in the vessel and freight, or approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 4283, as amended, or (b) at his option shall transfer, for the benefit of claimants, to a trustee to be appointed by the court his interest in the vessel and freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 4283, as amended. Upon compliance with the requirements of this section all claims and proceedings against the owner with respect to the matter in question shall cease."

"Sec. 4289. Except as otherwise specifically provided therein, the provisions of the nine preceding sections and of section 18 of the Act entitled 'An Act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade and for other purposes', approved June 26, 1884 (23 Stat. 57; U. S. C., title 46, sec. 189), shall apply to all seagoing vessels, and also to all vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters."

The House Committee Report is No. 2517, and reads, in part, as follows:

“Under this subsection limitation of liability would operate as follows: If under subsection (a) (the old law) the sum available for the payment of all claims should be \$20,000 (such sum being the amount paid into court by the owner, or in case the owner has elected to surrender his vessel to a trustee, the proceeds of the sale of the vessel by the trustee) the cargo claimants and the claimants for loss of life and bodily injury would be entitled to share pro rata in such sum. Hence it would be determined at some stage of the limitation of liability proceedings from the number and amounts of loss of life, bodily injury, and cargo claims, what portion of the \$20,000 would be applicable to the payment of claims for loss of life and bodily injury. When that portion is determined, if it is found that it is less than an amount equal to \$60 for each ton of the vessel, such portion must be increased to an amount equal to \$60 per ton, and as so increased would be available only for the payment of loss of life and bodily injury claims. The portion of the \$20,000 found applicable to the payment of cargo claims would remain just as it was under the old law. Hence, if the tonnage of the vessel were 1,000 tons, and the amount available for distribution under the old law were \$20,000, and the amount of approved loss of life and bodily injury claims were \$60,000, and the amount of approved cargo claims were \$20,000, three-fourths of the \$20,000 available for distribution, i. e., \$15,000, would be applicable to the payment of loss of life and bodily injury claims, and one-fourth of the \$20,000 available for distribution, i. e., \$5,000, would be applicable to the payment of cargo claims. The cargo claimants would receive \$5,000, the amount they would have received under the old law, but the loss of life and bodily injury claimants would be paid in full, i. e., \$60,000, because the \$15,000 applicable to the payment of their claims is less than \$60 per ton of the vessel’s tonnage, and under subsection (b) must be increased to that amount. If it should be determined under the old law that the portion of the amount available for distribution applicable to the payment of claims for loss of life and bodily injury is more

than an amount equal to \$60 per ton, subsection (b) will not operate. In other words, in cases where the owner is permitted to limit his liability, subsection (b) guarantees to loss of life and bodily injury claimants at least \$60 per ton.

* * * * *

THE PROCEEDING TO LIMIT LIABILITY—DEPOSIT OF SECURITY AND TIME FOR FILING PETITION.

Section 3 of the committee amendment proposes to amend section 4285 of the Revised Statutes. That section provided that it should be deemed a sufficient compliance on the part of the owner of a vessel with the provisions relating to the limitation of his liability if he transferred his interest in the vessel and freight, for the benefit of claimants to a trustee to be appointed by any court of competent jurisdiction. The proposed amendment is made necessary because in the case of seagoing vessels, with respect to which the owner's liability is at least \$60 per ton in respect of loss of life and bodily injury, the owner would obviously not be complying with the requirements relating to this increased liability simply by transferring his interest in the vessel and freight to a trustee. The proposed amendment to section 4285 provides, first, that the vessel owner, within 6 months after a claimant shall have given to or filed with such owner written notice of claim, may petition a district court of the United States of competent jurisdiction for limitation of liability. Under the old law there was no time fixed within which such a petition might be filed. The proposed amendment further provides that the owner shall (1) deposit with the court, for the benefit of claimants, a sum equal to the amount or value of the interest of such owner in the vessel and freight, or approved security therefor, and in addition, such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 4283, as amended, or (2) at his option transfer, for the benefit of claimants, to a trustee to be appointed by the court, his interest in the vessel and freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of sec-

tion 4283, as amended; and further provides that upon compliance with the requirements of the above provisions all claims and proceedings against the owner with respect to the matter in question shall cease. With the exception of the provision relating to the time for filing the petition for limitation of liability, and the provision relating to the additional sums which must be turned over, either to the court or the trustee, the proposed amendment in substance follows rule 51 of the United States Supreme Court Admiralty Rules." * * *

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