

JUNE, 1936

**THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES
80 Broad Street, New York City**

*THE AMERICAN SHIPOWNERS' LIMITATION OF
LIABILITY STATUTES*

AS NEWLY AMENDED BY THE ACTS OF AUGUST 29, 1935, AND
JUNE 5, 1936, PUBLIC No. 662.

UNITED STATES CODE (1926), TITLE 46, CHAPTER 8.
UNITED STATES REVISED STATUTES (1873), TITLE 48, CHAPTER 6.

NOTE: Additions introduced in 1936 by the 74th Congress,*
2nd Session, are in *italics*. The captions in square capitals, the
notes as to dates of enactment and the footnotes are not part of
the text as enacted by Congress.

*The bills were known as H. R. 9969 and S. 4655; the House report
was No. 2517, based on hearings held on February 19, 20, 21, 1936, printed
by the Government Printing Office, No. 52796; the Senate report was a
mere recommendation of passage, without discussion and without hearing
by the Senate Committee on Commerce.

46 U. S. C., §181. LIABILITY OF MASTERS AS CARRIERS.

R. S. 4281. Originally enacted 1851. Unamended since 1871.

If any shipper of platina, gold, gold dust, silver, bullion, or other precious metals; coins; jewelry; bills of any bank or public body; diamonds or other precious stones; or any gold or silver in a manufactured or unmanufactured state; watches, clocks, or timepieces of any description; trinkets; orders, notes, or securities for payment of money, stamps, maps, writings, title deeds, printings, engravings, pictures; gold or silver plate or plated articles; glass; china; silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with any other material, furs, or lace, or any of them, contained in any parcel, or package, or trunk, shall lade the same as freight or baggage on any vessel, without at the time of such lading giving to the master, clerk, agent, or owner of such vessel receiving the same a written notice of the true character and value thereof, and having the same entered on the bill of lading therefor, the master and owner of such vessel shall not be liable as carriers thereof in any form or manner; nor shall any such master or owner be liable for any such goods beyond the value and according to the character thereof so notified and entered.

46 U. S. C., §182. LOSS OF MERCHANDISE BY FIRE.

R. S. 4282. Originally enacted 1851. Unamended since 1874.*

No owner of any vessel shall be liable to answer for or make good to any person any loss or damage which may happen to any merchandise whatsoever which shall be shipped, taken in, or put on board any such vessel, by reason or by means of any fire happening to or on board the vessel, unless such fire is caused by the design or neglect of such owner.

46 U. S. C., §183. LIABILITY OF OWNER NOT TO EXCEED INTEREST.

R. S. 4283. Originally enacted 1851. Amended in 1873, 1935 and 1936.

(a) The liability of the owner of any vessel, *whether American or foreign*, for any embezzlement, loss, or destruction by any

* Effectiveness expressly preserved by Section 8 of the Carriage of Goods by Sea Act, 1936. Cf. the immunity against fire losses provided in the Carriage of Goods by Sea Act, Section 4, subsection 2 (b).

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.

LOSS OF LIFE AND BODILY INJURY—PORTION INCREASED TO
\$60 PER TON.

Originally enacted in 1935. Amended in 1936.

(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.*

TONNAGE DEFINED.

Originally enacted in 1935. Amended in 1936.

(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.

LIFE AND BODILY INJURY CLAIMS ARISING ON DISTINCT
OCCASIONS.

Originally enacted in 1935. Amended in 1936.

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

LOSS OF LIFE AND BODILY INJURY—MASTER'S PRIVILEGE OR KNOWLEDGE.

Originally enacted in 1935. Amended and Re-enacted in 1936.*

(e) In respect of loss of life or bodily injury the privilege 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 privilege or knowledge of the owner of such vessel.

SEAGOING VESSEL DEFINED.

Originally enacted in 1936.

(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.*

LIFE AND BODILY INJURY—TIME FOR CLAIM AND SUIT.

Originally enacted in 1935.

SEC. 4283A. Stipulations limiting time for filing claims and commencing suit.—(a) It shall be unlawful for the manager, agent, master, or owner of any sea-going vessel (other than tugs, barges, fishing vessels and their tenders) transporting passengers or merchandise or property from or between ports of the United States and foreign ports to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of, or filing claims for loss of life or bodily injury, than six months, and for the institution of suits on such claims, than one year, such period for institution of suits to be computed from the day when the death or injury occurred.

(b) Failure to give such notice, where lawfully prescribed in such contract, shall not bar any such claim—

* The "master's privilege" provision as enacted in Section 2 of the Act of August 29, 1935 (with the expression "actual privilege"), is expressly repealed by Section 5 of the Act of June 5, 1936.

(1) If the owner or master of the vessel or his agent had knowledge of the injury, damage, or loss and the court determines that the owner has not been prejudiced by the failure to give such notice; nor

(2) If the court excuses such failure on the ground that for some satisfactory reason such notice could not be given; nor

(3) Unless objection to such failure is raised by the owner.

(c) If a person who is entitled to recover on any such claim is mentally incompetent or a minor, or if the action is one for wrongful death, any lawful limitation of time prescribed in such contract shall not be applicable, so long as no legal representative has been appointed for such incompetent, minor, or decedent's estate, but shall be applicable from the date of the appointment of such legal representative:

Provided, however, That such appointment be made within three years after the date of such death or injury.

PASSENGER CARRIERS—LIMITATIONS OF LIFE AND BODILY INJURY
DAMAGE SUIT RECOVERY TO STIPULATED AMOUNTS AND OF
RIGHT TO COURT TRIAL DECLARED AGAINST PUBLIC POLICY.

Originally enacted in 1936.

Sec. 4283B. 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 liability, 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 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.*

* The House bill read "a Court"; the Senate bill read merely "Court." The two bills were in all other respects identical. The Senate bill was passed by both the Senate and the House, the House bill being discarded.

46 U. S. C., §184. APPORTIONMENT OF COMPENSATION.

R. S. 4284. Originally enacted 1851. Unamended since 1877.

Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel in proportion to their respective losses; and for that purpose the freighters and owners of the property, and the owner or owners of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto.

46 U. S. C., §185. TRANSFER OF INTEREST OF OWNER TO TRUSTEE.

R. S. 4285. Originally enacted 1851. Amended in 1873 and 1936.

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.

46 U. S. C., §186. CHARTERER WHO MANS, VICTUALS AND NAVIGATES THE VESSEL MAY BE DEEMED OWNER.

R. S. 4286. Enacted in 1851. Unamended.

The charterer of any vessel, in case he shall man, victual, and navigate such vessel at his own expense, or by his own procurement, shall be deemed the owner of such vessel within the meaning of the provisions of this chapter relating to the limitation of the liability of the owners of vessels; and such vessel, when so chartered, shall be liable in the same manner as if navigated by the owner thereof.

46 U. S. C., §187. REMEDIES RESERVED.

R. S. 4287. Enacted in 1851. Unamended.

Nothing herein* shall be construed to take away or affect the remedy to which any party may be entitled, against the master, officers, or seamen, for or on account of any embezzlement, injury, loss, or destruction of merchandise, or property, put on board any vessel, or on account of any negligence, fraud or other malversation of such master, officers, or seamen, respectively, nor to lessen or take away any responsibility to which any master or seaman of any vessel may by law be liable, notwithstanding such master or seaman may be an owner or part owner of the vessel.

46 U. S. C., §188. LIMITATION OF LIABILITY OF OWNERS APPLIED TO ALL VESSELS.

R. S. 4289. Enacted in 1851. Amended in 1886 and 1936.

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., 1934 Ed., title 46; sec. 189), shall apply to all sea-going vessels, and also to all vessels used on lakes or rivers or in inland navigation, including canal boats, barges and lighters.

* Originally: "In the five preceding sections."

46 U. S. C., §189. LIMITATION OF LIABILITY OF OWNERS OF
VESSELS FOR DEBTS, EXCEPT WAGES.

23 Stat. 57. Act of June 26, 1884, Sec. 18. Unamended.

The individual liability of a shipowner shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessels* and freight pending; *Provided*, That this provision shall not prevent any claimant from joining all the owners in one action; nor shall the same apply to wages due to persons employed by said shipowners.

NOTE: A full account of the legislative and judicial history of the foregoing sections will be found in Maritime Law Association Document No. 196 (January, 1935). The development of the 1935 and 1936 amendments is traced in Documents Nos. 197, 199, 200, 202, 205, 207, 210, 212, 213, 214, 215 and 224, and in the hearings of the Committee on Merchant Marine of the House of Representatives on April 3 and May 13, 1935, and February 19, 20, 21, 1936.

The Harter Act (February 13, 1893), relating to carriage of goods in vessels under bills of lading, remains unamended; the text was last printed in Document No. 216 at pages 2234-2236. It has, however, been largely supplanted by the Carriage of Goods by Sea Act of April 16, 1936 (effective July 15, 1936), the text of which was printed in Document No. 223.

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* So in original.