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THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

Report to Executive Committee of Committee on Questionnaires Submitted by International Maritime Committee.

Your sub-committee, appointed at your meeting of February 18, 1939, begs to submit the following report as a result of its consideration of the Questionnaires submitted by the International Maritime Committee on the subjects of (1) "Gold Clause," (2) "Through Carriage of Goods," (3) "Liability of Shipowners in Respect of Passengers," and (4) "Stowaways."

(1)

GOLD CLAUSE.

The United States is not a party signatory to the Limitation of Liability Convention to the provisions of which the Questionnaire of the International Maritime Committee is directed. In view of this and in view of the highly complex and uncertain conditions presently inherent in the international situation and the monetary and exchange techniques of the signatory nations, we deem it inappropriate for us at the present time to suggest to the representatives of these countries what, if any, changes might appropriately be made in the Convention.

(2)

THROUGH CARRIAGE OF GOODS.

Experience with the Hague Rules has, we feel, indicated that the time is not yet ripe for endeavoring to work out a set of

complicated rules governing through carriage of goods, particularly where one or more carriers may be acting exclusively within the territory of their own nations. It seems clear that a not inconsiderable time will be required for the courts to render clarifying interpretations of the Hague Rules, although those rules deal with less complex situations than those which would be involved in a convention covering through carriage from an inland point in one country to an inland point in another. When more of these interpretations have been made and generally accepted it will, in our view, be time enough to return to the more intricate field sought to be opened up by the Questionnaire.

(3)

LIABILITY OF SHIPOWNERS IN RESPECT OF PASSENGERS.

Question (1). We do not regard it as advisable to permit the use of negligence clauses in passenger tickets. Such clauses, which we interpret in this connection as purporting to relieve the carrier from any liability for negligence with regard to the maintenance of the seaworthiness of the carrying vessel or the obligation of reasonable care on the part of the officers and crew in the navigation and conduct of the vessel, are contrary to the express spirit and policy of the law of this country and their elimination is a wise precaution against the inevitable relaxation of the carrier's obligation to passengers.

Question (2). For the reasons given under Question (1), we believe that limitation of liability with respect to negligence should not be attempted. At some appropriate time it might be advisable, in the interest of uniformity, to attempt international agreement as to the limitation of time within which to file claims; but in view of the more pressing problems awaiting international settlement by treaty or other adjustment, it would not seem advisable at this time to go into this or into the refinements in international dealings implied in this item of the Questionnaire.

Question (3). No. It is contrary to the law of the United States, both statutory and common, to recognize the validity of so-called negligence clauses, and the present day tendency of the courts and legislatures, both federal and state, is to eliminate exceptions to the strict liability imposed upon common carriers. In fact, the tendency is to increase liability rather than to permit its restriction. See, for example,

(a) Act of June 5, 1936, sec. 2 (46 U. S. C. 183 [c]), invalidating passenger ticket limitation of liability for death and personal injury claims arising from negligence and passenger ticket stipulations for the arbitration of death and personal injury claims.

(b) Act of June 5, 1936, sec. 1 (46 U. S. C. 183), providing guarantee of $60.00 per ton for death and personal injury claims, etc.

(c) Revised Statutes 4493 (46 U. S. C., par. 491), providing for civil liability for death or injury to passengers for certain neglect or failure to comply with statutory provisions.

(d) Act of March 30, 1920 (46 U. S. C., Secs. 761-768), with respect to death on the high seas.

(4)

STOWAWAYS.

We find ourselves unable to concur in the suggestions of the German Association of International Maritime Law.

In general, it would seem that the proposals go too far in permitting the vessel owner to wash his hands of a stowaway situation at the first port of call. With respect to the four specific proposals it is far from clear that these constitute a desirable change of the present situation.

(1) It is not clear that the stowaway has committed any crime at "the first port" if he is put ashore there by the Master against his will. Nor is it clear just why the police authorities at that port should be required to assume the expenses of maintenance and guarding and possible litigation with the stowaway as to his rights.

(2) It is not clear that the consular authorities will have a pressing interest to arrange the deportation. This would put the Consul in the position of punishing rather than assisting his national. If by laxness the Consul permits the stowaway to escape, the entire system looking to repatriation breaks down.

(3) It is not clear that a state will deem it good policy to assume the expenses of repatriating a national against his will, particularly if he has been permitted to go abroad on a vessel of a different flag.

(4) It might be most difficult to persuade ocean carriers to accept former stowaways as unwilling passengers for repatriation where the carrier has no legal or financial interest in accomplishing the repatriation. The furnishing of a guard for the entire passage would create additional expense.

In general, while the stowaway problem raises individual cases of hardship on vessel owners, it is not believed that modification of the existing rules would improve the situation. In fact, the contrary might be expected.

Respectfully submitted,

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