MARITIME LAW ASSOCIATION OF THE UNITED STATES.

MINUTES OF MEETING OF DECEMBER 4, 1908.

In answer to the call sent out by the Association for a meeting to consider the report of the Committee appointed May 15, 1908, to prepare a bill to regulate and make uniform the rights of persons furnishing to or for a vessel supplies, repairs and other necessaries, the Maritime Law Association met at No. 42 West 44th Street on December 4, 1908.

There were present Judge Addison Brown, in the chair, and the following members of the Association:

Messrs. Everett P. Wheeler, Harrington Putnam, Horace L. Cheyney, Charles C. Burlingham, James S. Carpenter, J. K. Symmers and Edward Grenville Benedict, of New York; Judge Frederick M. Dodge and Messrs. Eugene P. Carver and Fitzhugh Smith, Jr., of Boston; Mr. H. A. Kelley, of Cleveland, Ohio; and Messrs. Archibald Matteson and Frank Healey, of Providence, Rhode Island.

In addition to these, Mr. H. C. Hunter, Secretary of the N. Y. & N. J. Dry Dock Association, was present.

At the request of the Chair, Judge Dodge, for the Committee, made an oral report of the proposed bill, a copy of which proposed bill has already been sent to all the members of the Association, annexed to the notice of this meeting.

The meeting being opened for discussion of the report of the Committee, letters were read from Mr. Frederick Cunningham, of Boston, and Mr. H. R. Spencer, of Duluth, containing suggestions in regard to the bill.

The bill was thereupon taken up, section by section, and after extended discussion of Section 1, Mr. Kelley moved that that section be amended by the addition at the end thereof of the phrase,

> "and it shall not be necessary to allege or prove that credit was given to the vessel,"

which amendment was put and carried.

Mr. Hunter suggested that it was advisable to include in the bill a provision allowing a lien for the use of drydocks or marine railways; and Mr. Symmers moved that the bill be amended by including in the first line, after the word "necessaries," the phrase "including the use of drydock or marine railway," which motion was put and carried.

The second section of the bill coming on for discussion, Mr. Hunter objected to that portion of the section which empowered the chief engineer or chief steward of a vessel to create liens upon her, and after discussion, Mr. Kelley moved that the section be amended by inserting after the words "ship's husband," in the first subdivision of the bill, the word "master," and by striking out the second subdivision of the bill; leaving, however, the last sentence of the section intact; which motion was put and carried.

Sections 5 and 6 being considered, Mr. Matteson moved the adoption of Sections 5 and 6 as they stood, and the motion was put and carried.

The amendment proposed by Mr. Hughes, of the Committee, and attached to the Committee's report, was deemed inadvisable. A copy of the bill, as amended, is sent to each member of the Association with these minutes.

Mr. Putnam thereupon moved that the bill as amended be printed, and that in addition to sending copies to each member of the Association, the Secretary also send copies to the Committee which had prepared the bill, with authority to them to present the matter to Congress and to take all necessary measures looking toward its passage. The Secretary was instructed to act with the Committee in this matter, and the motion was put and carried.

On the suggestion of Judge Brown, the title of the Act was altered to read as follows:

> "An Act relating to liens on vessels for repairs, supplies and other necessaries."

Mr. Wheeler presented a letter from Mr. Chamberlain, Commissioner of Navigation, in regard to the approaching conference of the International Committee at Brussels, and requesting

information as to the attitude of the Maritime Law Association of the United States as to certain treaty matters to come up at that conference. The matter was referred to the Executive Committee, with power to reply to the letter of Mr. Chamberlain.

Mr. Putnam then called attention to two forms of bills which had been previously approved by this Association,—namely, a form of bill authorizing suits for death resulting from negligence, adopted by the Maritime Law Association November 20, 1903, and a bill permitting vessel-owners to sue the United States in certain circumstances, recommended for passage by the Maritime Law Association May 4, 1900; and thereupon moved that these bills be referred to the Committee on the Lien Bill, with directions to present them, together with the lien bill, to Congress in due course, which motion was carried.

The meeting thereupon adjourned.

EDWARD GRENVILLE BENEDICT,
Secretary.

(Bill relating to Liens on Vessels for Supplies, &c., adopted by the Maritime Law Association of the United States December 4, 1908.)

An Act relating to Liens on Vessels for Repairs, Supplies or other Necessaries.

SECTION 1.

Any person furnishing repairs, supplies or other necessaries, including the use of dry dock or marine railway, to a vessel, whether foreign or domestic, upon the order of the owner or owners of such vessel, or of a person by him or them authorized, shall have a maritime lien on the vessel which may be enforced by a proceeding *in rem* and it shall not be necessary to allege or prove that credit was given to the vessel.

SECTION 2.

The following persons shall be presumed to have authority from the owner or owners, to procure repairs, supplies and other necessaries for the vessel: The managing owner, ship's husband, master, or any person to whom the management of the vessel at the port of supply is intrusted.

No person tortiously or unlawfully in possession or charge of a vessel shall have authority to bind the vessel.

SECTION 3.

The officers and agents of a vessel specified in Section 2 shall be taken to include such officers and agents when appointed by a charterer, by an owner *pro hac vice*, or by an agreed purchaser in possession of the vessel, but nothing in this Act shall be construed to confer a lien when the materialman knew, or by the exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies or other necessaries was without authority to bind the vessel therefor.

SECTION 4.

Nothing in this Act shall be construed to prevent a materialman from waiving his right to a lien at any time by agreement or otherwise, and this Act shall not be construed to affect the rules of law now existing: (1) in regard to the right to proceed against a vessel for advances, (2) in regard to laches in the enforcement of liens on vessels, (3) in regard to the priority or rank of liens, and (4) in regard to the right to proceed *in personam*.

SECTION 5.

This Act shall supersede the provisions of all State Statutes conferring liens on vessels in so far as the same purport to create rights of action against vessels for repairs, supplies and other necessaries.

SECTION 6.

This Act shall take effect upon its passage.

(Form of Bill Authorizing Suits for Deaths Resulting from Negligence, Adopted by Maritime Law Association Nov. 20, 1903.)

AN ACT to authorize the maintenance of actions for negligence causing death in maritime causes.

Be it enacted that:

"SECTION 1. Whenever an action, whether *in rem* or *in personam,* might have been maintained by any injured party, had death not occurred, to recover damages for personal injury happening to such person on the high seas, the Great Lakes, or any navigable waters of the United States, or if happening to any of the passengers or crew on board of any vessel of the United States, then in whatsoever waters such vessel may have been at the time of such injury, such injury in every such case having been caused by the wrongful act, neglect or default of another and though amounting to a felony, then if such personal injury shall result in the death whether on land or water of the person injured, an action *in rem* or *in personam* as may be appropriate, may be brought for the exclusive benefit of the deceased's husband, wife or next of kin, by the personal representatives of the deceased against the vessel foreign or domestic or the persons that would have been liable to the deceased if death had not occurred. And in such action such personal representatives may recover such damages as shall be fair and just compensation, with reference to the pecuniary damages resulting from such injury and death to the deceased's husband, wife or next of kin, severally, not exceeding in all the sum of $5,000, to be apportioned among them at the trial, according to the pecuniary damages severally sustained by them, provided, however, that such action, if *in rem,* shall be brought within one year, or if *in personam,* within two years, after the decedent's death; but if the vessel or the persons liable be absent from the United States at the time of such death, the periods above limited for the commencement of the action against them respectively shall be counted from the time of the first presence of such vessel or persons within the United States affording reasonable opportunity for service of process upon them after such injured person's death.

SECTION 2. If at decedent's death, any action brought by him to recover damages for such injuries be pending and undetermined, such action shall proceed no further, except that his personal representatives may at their option on petition to the

Court and upon such notice to the defendant as the Court may direct, be substituted as plaintiff in that action, and such amendment of pleadings be made as the Court may direct, and the action may on order of the Court thereafter proceed for the recovery of damages pursuant to this Act, and not otherwise; if final judgment on the merits has been rendered in the deceased's lifetime in any action brought by him for such injuries, such judgment shall be a bar to any other action therefor, except for the enforcement of such judgment.

Except as in this Section provided no other action than that given by the preceding Section shall be maintained by reason of such injuries.

SECTION 3. This Act shall not abridge the rights of shipowners and others to avail themselves of the provisions of Sections 4282, 4283, 4285, 4286 and 4287 of the Revised Statutes of the United States, and Acts amendatory thereof and additional thereto relating to limitations of liability; nor the right of suitors to a remedy *in personam* in the Courts of the several States and elsewhere, for the recovery of damages under this Act, against any person or corporation liable therefor.

SECTION 4. In any action brought under this Act, negligence or contributory negligence of the decedent shall have the same effect as to the damages recoverable as if the action were an action brought by the injured person, but the damages are not in any case to exceed the limit above provided."

(Bill introduced by Senator Hoar in 1885, and reported by Senator Evarts, with amendments, in 1886, permitting vessel owners, &c., to sue the United States. Recommended for passage by the Maritime Law Association May 4, 1900.)

"AN ACT to permit the owners of certain vessels, and the owners or underwriters of cargoes laden thereon, to sue the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the owner or owners of any American ship or vessel engaged in or belonging to the United States merchant-marine service, and the owners or underwriters of the cargoes laden thereon, and the owners or underwriters of any property on board thereof, may, and they are hereby authorized and empowered to sue the United States in any United States district court in which the parties so suing, or any of them, may reside, sitting as a court of admiralty and acting under the rules governing such courts, for any damage, loss, or injury to such ship or vessel, or her owner or owners, or to the owners or underwriters of any cargo laden thereon, or of any property on board thereof, arising from or attributable to the mismanagement of any vessel owned by the United States, or to the negligence or want of skill of those in charge thereof, by collision; and the said district court is hereby authorized to enter a judgment or decree for the amount of such injury, loss, or damage, if any shall be found due, against the United States, in favor of such owners or underwriters, upon the same principles and measure of liability, with costs, as in like cases in the admiralty between private parties, and with the same rights of appeal that now exist by law in civil cases in which the United States are a party; Provided, however, That this act shall not extend to cases occurring prior to the passage hereof, nor in any case shall any such suit be brought more than six years after the collision shall have occurred.

SEC. 2. That the process or procedure by which suits may or can be brought, and service on or notice to the United States or its officers shall be made or given, may be regulated by courts of admiralty by rules or orders made therein; and it shall be the duty of the Attorney-General of the United States to cause the United States attorney in each district to appear for and defend the United States in any such suit brought in his district.

AMENDMENTS TO ADMIRALTY LAW

HEARINGS

BEFORE THE SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

CONSISTING OF

SENATORS DILLINGHAM (CHAIRMAN)
BRANDEGEE, AND RAYNER

ON THE BILLS

S. 6289, relating to liens for repairs, supplies, or other necessaries; introduced by Senator Lodge, February 11, 1910;

S. 6290, to permit the owners of certain vessels and the owners or underwriters of cargoes laden thereon to sue the United States; introduced by Senator Lodge, February 11, 1910;

S. 6291, to authorize the maintenance of actions for negligence causing death in maritime cases; introduced by Senator Lodge, February 11, 1910;

S. 7334, permitting suits against the United States for damages caused by collision with vessels owned or employed by the United States; introduced by Senator Brandegee, March 22, 1910; and

S. 7501, permitting suits against the United States for damages caused by vessels owned or employed by the United States; introduced by Senator Brandegee, March 29, 1910.

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AMENDMENTS TO ADMIRALTY LAW.

COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE,
Thursday, March 31, 1910.

The subcommittee met at 10 a. m.

Among the gentlemen appearing before the subcommittee were George Whitelock, esq., counselor at law, of Baltimore, Md.; Fitz-Henry Smith, jr., esq., counselor at law, of Boston, Mass.; Archibald G. Thacher, esq., counselor at law, of New York City; James H. Hayden, esq., counselor at law, of Washington, D. C.; R. M. Hughes, esq., counselor at law, of Norfolk, Va.; F. S. Masten, esq., counselor at law, of Cleveland, Ohio; Hermon A. Kelley, esq., counselor at law, of Cleveland, Ohio; H. C. Hunter, esq., counselor at law, of New York City.

The bills before the subcommittee for consideration are numbered and entitled as follows:

S. 6289, a bill relating to liens for repairs, supplies, or other necessaries; introduced by Senator Lodge Februray 11, 1910.

S. 6290, a bill to permit the owners of certain vessels and the owners or underwriters of cargoes laden thereon to sue the United States; introduced by Senator Lodge February 11, 1910.

S. 6291, a bill to authorize the maintenance of actions for negligence causing death in maritime cases; introduced by Senator Lodge February 11, 1910.

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S. 7501, a bill permitting suits against the United States for damages caused by vessels owned or employed by the United States; introduced by Senator Brandegee March 29, 1910.

Senator DILLINGHAM (chairman). The subcommittee will be glad to hear any of you gentlemen who desire to be heard with regard to the bills before us for consideration.

STATEMENT OF FITZ-HENRY SMITH, JR., OF BOSTON.

Mr. SMITH. Mr. Chairman and gentlemen, I represent the Maritime Law Association of the United States. Speaking for the committee intrusted with authority as to the measures now under consideration before this committee, I will deal particularly with the lien bill, so called—that is, S. 6289—the title of which is "A bill relating to liens on vessels for repairs, supplies, or other necessaries."

I might say, generally speaking, that all three bills (S. 6289, S. 6290, and S. 6291) have a single aim; that is, to improve the practice of the admiralty law. The lien bill (S. 6289) is designed to

simplify the law and make it uniform throughout the country and to avoid the confusion now existing, due to conflicting and misconceived precedents, and the varying state statutes which now exist covering the subject so far as domestic vessels, so called, are concerned.

The short brief, giving the reasons for the bill, which we have had printed for the assistance of the committee, gives the present situation and the purpose of the bill, so that one who runs may read. I think that perhaps the clearest way to bring the matter before the attention of the committee will be to give a short outline of the history of the subject and how the present confusion has arisen.

Early in the last century a decision was rendered by our Supreme Court in the case of *The General Smith* (4 Wheaton, 438), the result of which was that vessels in this country have been divided into two classes, "domestic vessels," so called, and "foreign vessels," so called. It was held in the case of *The General Smith* that where necessaries and repairs were furnished to a vessel in a home port there was no lien unless recognized by state law.

That decision has been regarded on all sides as erroneous. Mr. Justice Brown in a recent decision (*The Roanoke*, 189 U. S., 185) has referred to it as a relic of the prohibitions of Westminster Hall against the court of admiralty. That is to say, the common-law courts, which were jealous of the admiralty jurisdiction, would not allow the admiralty court to take jurisdiction of supplies furnished within the country.

Senator BRANDEGEE. Has the Supreme Court reversed that decision in 4 Wheaton?

Mr. SMITH. No; it is still law, though Mr. Justice Brown holds it to be a mistake. It is generally conceded that it is a mistake. Mr. Justice Clifford entered a very vigorous protest and dissent to the doctrine of that decision. (*The Lottawanna* case, 21 Wall., 558.)

In continental Europe, in France, they do not recognize this foolish decision, so Louisiana did not have to pass on the question, but the other States have had to pass on it.

The gross anomaly, the vice of the situation, is that although these statutes are passed by state legislatures they can be enforced only by the United States courts. The federal courts have therefore been called upon to construe all these various decisions of state legislatures, and the Supreme Court has held that the actions to enforce liens given by the state legislatures could not be brought in a state court.

Calling a vessel in her home port, which means a port of the state of ownership, a "domestic vessel" has led to this other curious result, that a port of another State of the United States is called a "foreign" port. For instance, a Portland vessel is in a domestic port when she is in Eastport, Me., but she is a "foreign" vessel if in a port of any other State.

The bill aims first to put foreign and domestic vessels and supplies furnished in so-called "foreign" ports and "domestic" ports on the same footing. Further, it aims to wipe out all these state statutes, and govern all vessels by a single federal statute, so that the federal courts will have only one statute to construe.

Further, owing, so far as can be ascertained, to a difficulty in determining how the decision in *The General Smith* case came to be estab-

lished, it is found that in the home ports the owner is supposed to be present and therefore there is no lien.

As a result of these two doctrines, the doctrine of *The General Smith*—the doctrine of "foreign" and "domestic" vessels, of "home" port and "foreign" port so-called, and the presumption of credit of the owner, we find that there are three distinct views of the statutes, held in the federal courts. If considered in one circuit, one rule of construction applies, if in a second circuit, another rule of construction, if in a third circuit, a third rule, and the Supreme Court has not been able to solidify the law. So that the matter remains with this great divergence and confusion.

We propose that a remedy shall be applied by a simple statute to wipe out these various elements in the law so as to enable shipowners and furnishers, and to enable the lawyers and the courts, to know what they have to deal with.

The bill was drafted by a committee of the Maritime Law Association of which Judge Dodge, Professor Hughes, and myself were members. It was passed on by a meeting of the association, and the draft bill was discussed by the association at a meeting attended by the most prominent admiralty lawyers of the country. It has been recommended and indorsed since then by the American Bar Association, of whose committee Mr. Whitelock is chairman, and it has been recommended by various associations throughout the country, shipowners and ship furnishers. It is an attempt to improve the practice. This is a matter of admiralty jurisdiction which is subject to regulation by Congress alone.

Senator BRANDEGEE. Are there associations of admiralty lawyers as distinguished from the bar association?

Mr. SMITH. Yes; the association I represent is made up of admiralty lawyers.

Senator BRANDEGEE. What is the general opinion of the association as to the bill?

Mr. SMITH. So far as we know there has been no dissent, but approval.

Senator BRANDEGEE. What is the opinion of shipowners and business men?

Mr. SMITH. There are other gentlemen here who may be able to speak on that subject better than I can.

Senator BRANDEGEE. Did you appear before the House committee?

Mr. SMITH. Yes.

Senator BRANDEGEE. What was their view of it?

Mr. SMITH. It was favorably reported by that committee.

Senator BRANDEGEE. Which committee?

Mr. SMITH. The Judiciary Committee.

I wish to say that I wrote an article on this subject which appeared in the March, 1908, number of the Harvard Law Review, which may be of service to the committee.

Senator DILLINGHAM. We shall be glad if you will leave it with us.

Mr. SMITH. I have also an article written by Mr. Whitelock on the subject.

Mr. THACHER. The bill I know is regarded favorably by Mr. James H. Hayden, of this city. It has also the indorsement of the Metal Trades Association of San Francisco and of the Union Iron Works of San Francisco, builders of vessels of all kinds.

STATEMENT OF HERMON A. KELLEY, COUNSELOR AT LAW, OF CLEVELAND, OHIO.

Mr. KELLEY. I represent the Lake interests here. I feel that the very clear statement made as to the merits of the bill can not be improved upon, and I rise merely to answer the question as to whether there was any opposition to the measure. I have taken some pains to ascertain the views of both sides. I can say that the vessel owners and everybody else interested are heartily in favor of the bill.

Lawyers now dealing with the subject are utterly unable to advise vessel owners or others whether the vessel is subject to a lien or not. The decisions vary and the vessel owners are anxious to have this mixed up condition of affairs straightened out, and so are the material men. I think I can say without hesitation that all the Lake interests on both sides are in favor of the bill.

STATEMENT OF F. S. MASTEN, COUNSELOR AT LAW, OF CLEVELAND, OHIO.

Mr. MASTEN. Mr. Chairman and gentlemen, I think I can supplement what Mr. Kelley has said by saying that if you take his clients and add mine to them they would include 90 per cent of the interests on the Great Lakes. There is absolutely no opposition. I have one client that operates about 90 tugs on the Lakes, and Mr. Kelley represents the same client.

I wish to suggest an amendment to the first paragraph of the bill (S. 6289), so as to have the word "towing" included in that immediate connection.

Senator BRANDEGEE. In what line?

Mr. MASTEN. Line 4 of page 1, after the word "including." It now reads "that any person furnishing repairs, supplies, or other necessaries, including the use of dry dock or marine railway, to a vessel, whether foreign or domestic, upon the order of the owner or owners of such vessels, or of a person by him or them authorized, shall have a maritime lien on the vessel which may be enforced by a proceeding in rem, and it shall not be necessary to allege or prove that credit was given to the vessel."

What I would like to have added to that paragraph is the words "towing and," to come in after the word "including," on line 4, page 1, so that the paragraph will read: "That any person furnishing repairs, supplies, or other necessaries, including towing and the use of dry dock or marine railway, to a vessel, whether foreign or domestic," etc.

We do not offer any opposition to the bill in its present form; in fact, we want it passed, but we would like to have those words "towing and" inserted. We do not oppose the bill.

Senator DILLINGHAM. Is there any opposition to that?

Mr. MASTEN. No; but I think it is by some gentlemen considered not necessary. We do not wish to tamper with the bill in any way that would jeopard its passage.

Senator BRANDEGEE. Did the House committee put that in?

Mr. MASTEN. No.

Senator BRANDEGEE. If we put it in, it has got to go back to the House, and you know the position of matters in the House. It is a question of judgment as to whether you want to take the chances.

Mr. MASTEN. We do not want to take any chances, but if in your report you say that it is not included because it is deemed that it is covered by necessaries, that would be a satisfaction.

STATEMENT OF H. C. HUNTER, OF NEW YORK.

Mr. HUNTER. Mr. Chairman and gentlemen, I appear on behalf of the New York and New Jersey Dry Dock Association, which includes substantially all the shipbuilding and ship-repairing concerns of the port of New York, and also for the New York and New Jersey branch of the National Metal Trades Association. Both are unanimously in favor of this bill.

The United Metal Trades Association of the Pacific coast, having its offices at Seattle, Wash., and Portland, Oreg., are also in favor of the bill, and the Buffalo (N. Y.) Manufacturers' Association has passed resolutions favoring the bill.

Senator BRANDEGEE. What bill do you wish to take up next?

Mr. WHITELOCK. The death statute.

Senator DILLINGHAM. That is, Senate bill 6291.

Mr. WHITELOCK. I do not understand that anybody else wishes to say anything further at the moment about the lien bill.

Mr. MASTEN. I wanted to say one word in addition to what Mr. Kelley said about the lien bill. I found only one person who objected, and he is one who is known to avoid paying his bills whenever he can.

Senator BRANDEGEE. On what constitutional authority do we take the ground to repeal all these state statutes?

Mr. WHITELOCK. It has been held that the States may act only in the event that Congress does not act.

Senator BRANDEGEE. Is it under the authority to regulate commerce?

Mr. SMITH. Yes, and under the power of admiralty jurisdiction.

STATEMENT OF MR. GEORGE WHITELOCK, COUNSELOR AT LAW, BALTIMORE, MD.

Mr. WHITELOCK. Mr. Chairman and gentlemen, I will say as to all three of the bills (S. 6289, S. 6290, and S. 6291) that they came originally from the Maritime Law Association of America, of which a number of us are members. Several of the gentlemen here present speak on behalf of that association. Primarily I appear for the American Bar Association, being the chairman of its special committee.

These bills were all recommended by the committee of the American Bar Association on commercial law and were approved at the last annual meeting of the association, at Detroit. A special committee was appointed on behalf of the association to lay the matter before the Congress of the United States.

The bills were prepared with the utmost care; every interest was invited to criticise them. They received the most careful attention of the best maritime lawyers in America. We were able to state to the bar association that they had originated with the Maritime

Law Association, and had received its approval, and that they have all been approved by the American Bar Association itself.

Now, gentlemen of the committee, I propose to confine my remarks exclusively to the enactment of the death statute.

You are, of course, familiar with the well-settled principle that apart from statute there is no right under the common law to recover damages for the unlawful killing of a human being.

Lord Ellenborough, as far back as 1808 (1 Camp., 493), commenting on this omission in the law, said it was a singular thing that for the gravest injury that could be done to a human being, the law of England allowed no remedy. So notorious was the injustice that Lord Campbell's act was adopted by Parliament in 1846, and it has since been the law of the realm. Not only so, but the salutary character of that legislation has commended itself to all lawyers on this side of the water. I may say that every State in the American Union (possibly except Louisiana) has adopted this legislation, and practically verbatim.

There is a difference in practice under the statutes of some of the States. In some, the personal representative is allowed to recover; in my own State of Maryland, the action is brought in the name of the State for the benefit of the family, and the judgment does not become an asset of the decedent's estate.

But the principle is now established in every State in the Union, with the single exception, perhaps, of the State of Louisiana. The legal situation there is very different from that in other States when it comes to matters of procedure.

The same doctrine has prevailed for generations in Holland, in Scotland, in France under the Code Napoleon, and in Italy, where the Italian code is a literal translation of the Code Napoleon; and notably in the German codification of 1896, probably the greatest work of codification that the world has known. The language of the German code expressly gives a right of action for willful or negligent killing of a human being.

Of course, we are all aware that one great object of the admiralty clause of the Federal Constitution was the attainment of unanimity. Let us see what has actually happened.

Starting with the *Genessee Chief* in 1851 (12 How., 443), the admiralty jurisdiction has been extended to all navigable lakes and rivers, as well as the high seas, where it prevailed in Great Britain.

Where the question has arisen as to the right of a party to recover for a death growing out of a collision, the courts have applied the law of the particular jurisdiction where the negligent killing has occurred. For instance, in a case, *The City of Norwalk* (55 Fed. Rep., 98), decided in 1893, Judge Brown applied the law of the State of New York, because the collision causing the death had occurred on the territorial waters of that State. He thus applied the death statute of New York in an admiralty court of the United States. So the Hon. William H. Taft, when circuit judge of the United States in 1896, in the case of Robinson *v.* the Detroit and Canada Steam Navigation Company (20 C. C. A., 86) applied in an admiralty court of the United States the statute of Canada to enable a party to recover damages for death.

Those were both instances of territorial waters only, but recently in two cases of notable importance which came before the Supreme

Court of the United States at the October term, 1907, the court was asked to say whether or not statutes foreign to the forum would be applied to sustain the right of recovery for death in cases where the collision or accident occurred on the high sea itself. The cases were the *Hamilton* (207 U. S., 298) and *La Bourgogne* (210 U. S., 95).

I need not go into the technical particulars as to the way in which the cases arose. They both came under the limitation of liability act; but I shall state the facts, so that you will see why we are contending that we should have a single authority and will see the embarrassments arising from want of uniformity.

The courts of the several States are able to go directly to the point and award damages.

Mr. SMITH. Including the District of Columbia?

Mr. WHITELOCK. Yes. You see there that there is a statutory regulation for the courts of the several States, but for the federal courts there is only this local statute for the District of Columbia.

What we wish is to put the entire federal territory in the position in which the local law of the District of Columbia is.

Let me now give the facts of the two cases which I have mentioned.

La Bourgogne was much earlier than the *Hamilton*, so far as the accident was concerned, although decided later. You will remember that that ship was on her way from New York to Havre, and a collision occurred between it and a British ship passing in another direction—a collision that resulted in a stupendous loss of life. As the record shows, and as Justice White states in his opinion, the property saved did not amount to more than $100—some life rafts and other trifling material. The claims filed aggregated $2,000,000, and the question arose as to the right of death claimants to participate in the fund, not only of $100, but the fund to accrue from the freight pending, making an aggregate of about $25,000. It was held that the death claimants could participate, the right of the Compagnie Générale Transatlantique to limit its liability having been sustained.

The only way in which the participation of the death claimants could be sustained was to look to the Code Napoléon and apply the law of France, although the accident happened on the high seas. It is the only way in which our federal courts could apply any rule of recovery to the case. In other words, there was no law of the forum, and it was necessary to seek the law of a foreign country in order that the courts of the United States of America could give the death claimants any recognition whatever.

The other case, which is even more anomalous, is that of the *Hamilton*. The ship was registered at the port of Wilmington, Del., and was on a voyage, I think, from Norfolk to Philadelphia. The other ship, with which she collided, was on a voyage from New York to Norfolk. It was a collision between two vessels carrying the flag of the United States of America, but under our peculiar duality of sovereignty, although both ships carried the flag of the United States, one was a vessel of the State of Delaware and the other, I think, of the State of Virginia.

The *Hamilton* collision occurred on the high seas, and the Supreme Court was obliged to look to the statute of the State of Delaware and to assume what seemed to many of us a most anomalous position, to wit, that the *Hamilton* was still a part of the territory of Delaware

(although navigating the high seas and flying the flag of the Union) in order that the law of the State of Delaware might be applied and death claimants be thus admitted to participation.

I took up this subject in a paper prepared a year or two ago for the International Law Association and read at the conference in Budapest. It was afterwards published in the Harvard Law Review for April, 1909, which Mr. Smith was good enough to produce here to-day. In that paper the gentlemen of the committee will find references to all the authorities. Suffice it to say that we are only trying to-day to have a definite statute like Lord Campbell's act, and the act for the District of Columbia, and the acts of all the States of the American Union (unless Louisiana), so that there may be no necessity hereafter for the federal courts to inquire what local law, whether foreign or of a particular State, may be applied in order to award damages in a court of the United States.

So far as I know there is no active opposition to the bill whatever. It was argued very fully before the American Bar Association last summer. There was some slight opposition, but after discussion by Mr. Hughes, myself, and others, it was carried by an overwhelming majority.

Senator BRANDEGEE. I would like to hand you a letter I received this morning from Mr. Burlingham, of New York. You might look it over and see if it represents your views about these matters.

Mr. WHITELOCK. Does he say anything about the death question?

Senator BRANDEGEE. Yes. He was a member of the international conference at Brussels.

Mr. WHITELOCK. Yes.

Senator DILLINGHAM. We have also a letter written to Senator Rayner by Mr. Foster, of Baltimore, relating to all these bills.

Mr. WHITELOCK. Yes. Mr. Foster has had a great deal of experience in these matters.

Mr. HUGHES. I have just received a telegram from Mr. Edward C. Plummer, asking me to state to the committee that he is in favor of all these bills. Mr. Plummer is from Bath, Me., and is counsel of the Atlantic Carriers' Association, which includes all the large coasting steamers in the coal trade. He is in favor of the lien bill as well as the others, as I understand it, so that there is a large representation of vessel owners in favor. The whole thing is that it does not make any material change in the law except by taking away the confusion about credits. The bill is exactly the existing law as we understand it to-day, except in doing away with the distinction between foreign and domestic vessels.

Senator BRANDEGEE. In relation to the bill permitting suits against the United States, S. 6290, introduced by Senator Lodge on February 11 of this year, Mr. Burlingham forwarded to me that bill with suggested amendments, and I thought it was easier to introduce the bill as a complete new bill with his amendments inserted so that we might have a complete printed draft of it, and have the hearing on that bill, if you approve of that amendment.

Senator DILLINGHAM. So that the bill you introduced last (S. 7501) is in the nature of a substitute for the other bill?

Mr. HUGHES. For S. 7334.

Senator BRANDEGEE. It is intended as a substitute for S. 7334, and supersedes that. Are you in favor of that new bill, S. 7501?

Mr. SMITH. Is S. 7334 the same that Mr. Parsons introduced in the House?

Senator BRANDEGEE. I think it is, but since the introduction of that bill people have been writing to me on the subject, and S. 7501 is the last bill introduced, and I would suggest that we have the hearing on that unless the gentlemen are in favor of S. 6290.

STATEMENT OF ARCHIBALD G. THACHER, COUNSELOR AT LAW AND PROCTOR IN ADMIRALTY, NEW YORK.

Mr. THACHER. Mr. Chairman and gentlemen, on behalf of a number of steamship companies, and also as a member of the admiralty bar, I desire to say a few words particularly in support of the last bill referred to by Senator Brandegee, Senate bill No. 7501, and also to express briefly a few reasons why it is better than bill S. 6290.

The question of the liability or suability of a sovereign is one of great interest and increasing importance. It of course has a long history, though it is not my purpose to take up the time of the committee on that point. It is, however, a matter of obvious justice that when a war vessel, collier, or other craft owned or operated by a sovereignty negligently collides with and damages or wholly destroys the property of an innocent private owner the government owner should make compensation for that wrong, because, whether or not "the sovereign can do no wrong," it is an injury to that private owner to be thus negligently deprived of his property.

I would like briefly to refer to the practice in England, because it leads to manifest justice, and this bill is no more than a parallel with the present English practice so far as our Constitution permits a parallel.

In England if a war vessel collides with a merchantman owing to the negligent navigation of the war vessel, what occurs? In ordinary civil cases, by petition, the right to sue the Crown is given. In admiralty the right is given to file a libel against the navigating officer of the war vessel personally. The Crown solicitor, or the solicitor of the admiralty (sometimes associated with him) provides him with legal defense. The case is fought in the Crown's own admiralty court, from which an appeal would lie to the court of appeals. In other words, the litigation is held against the government officer in the Government's own court, which is exactly what this bill proposes to do. The sovereign in his own court is made defendant, through the naval officer. The result is that if the officer is found negligently to have caused that collision, the Government pays the bill because one of its own representatives has committed a wrong, as found by its own court; a check is drawn by the admiralty and the claim is paid.

Our government departments can not do such a thing. All such payments with us must be by special appropriation of both Houses of Congress. Therefore this bill seeks to accomplish the same end as the present practice in England, which is manifestly just.

Look at the crying injustice of the present American system. An American war vessel collides with a merchantman. The practice has never existed in this country of suing the navigating officer of the vessel. A petition is filed, private bills are introduced in either one or both Houses of Congress, and I think I do not exaggerate when

I say that those bills, in spite of proper consideration by committees already overburdened with claims bills, drag for years before a private suitor is given any remedy against a republican Government, if he is ever given any relief.

Now, if all the monarchies of Europe and the Republic of France give that right, why should our Government be the only one of the great nations to deny that right?

I propose to compare two cases of the injustice of the present American system with the prompt equity afforded by the English practice.

A collision occurred in 1902 in Chinese waters between the American government collier *Saturn* and the English steamer *Newchang*. Both vessels sustained serious damage. The United States Government, in the name of the people of the United States, began suit in the British consular court of Shanghai, which had admiralty jurisdiction in such case against the English vessel.

The British owner asked the court to be permitted to counterclaim or file a cross suit. The consular court said, "No, we have no jurisdiction against the property of a friendly sovereign." It was not a claim against a British subject.

In the court of its own selection the United States Government fought that suit. The court found that the English vessel was wholly free from wrong and the American vessel was solely in fault.

An appeal was taken to the English privy council. Feeling that they would not succeed on the appeal, our Government withdrew the appeal. Therefore, the United States, having selected its own forum, was defeated and failed to carry the case higher.

My firm has for years been trying to obtain recognition of this just claim from the United States. First we tried to get an appropriation for our damages or an act of Congress referring their computation to the Court of Claims, and that failed. We then tried to obtain a statute which would give to the English owners the right to enter suit against the United States in the Court of Claims (although the merits had already been decided). That was opposed and failed.

We have tried for over six or seven years to get relief of any kind in that case. Now, this is the kind of bill which would righteously meet such a case as that.

Why should a government not pay for destroying the property of a friendly neutral power or of its own citizens? That is the situation to-day.

Owing to the mass of bills before both Houses of Congress, it is almost impossible to get relief. That is repugnant to all sense of justice.

Contrast that with the very recent case of collision between the American Line steamer *St. Paul* and the British cruiser *Gladiator* in 1908 off the coast of England. I have brought with me reports of those cases and will briefly refer to them.

That case is reported under the name of *St. Paul* and the *Gladiator*, in the eleventh volume of Aspinall's Maritime Law Cases, part 2, page 152, in the court of first instance. The same is reported under the name of *St. Paul* in the eleventh volume of Aspinall's Maritime Law Cases, part 3, page 169.

The following is the history of that case, and I think it is most significant of the swiftness, the impartiality, and the equity of the English practice:

The collision occurred on the 25th of April, 1908. The trial against the British navigating officer was on the 3d of June—less than three months after the occurrence. The case was heard by Sir Gorell Barnes on the 20th of June of the same year. The appeal was heard on the 16th and 17th days of December of the same year. The English courts, throughout, held the cruiser *Gladiator* solely in fault, wholly exonerated the owners of the *St. Paul*, and within eight months of the date of the disaster the entire damages were paid. Is not that a magnificent example of the treatment that one friendly power should render to another? Should we be less just?

Compare that case with one reported in our own reports—the case of the *Esparta*, reported in 130 Federal Reporter. That was a case where a foreign vessel was struck in the Mississippi River and seriously damaged by the light-house tender *Magnolia*, then carrying the President of the United States.

The United States sued the *Esparta* in the district court of the United States in the district of Louisiana. That court held the United States Government vessel solely in fault and exonerated the *Esparta* from all blame. The United States appealed to the circuit court of appeals, which, without writing a special opinion, affirmed the decision of the court below, again holding the steamer *Magnolia* solely in fault.

It has been impossible, I am told, for counsel for the owners of the *Esparta* to obtain any relief by act or otherwise for their clients who have been themselves subject and unresistingly open to attack by suit by the United States Government; they have not been able to file a counterclaim or cross libel.

Mr. MASTEN. Or even to get costs?

Mr. THACHER. Yes.

Senator DILLINGHAM. In my State the people have provided for something in the nature of a court of claims, to hear all cases as to which the State may not be sued. Excuse the interruption.

Mr. THACHER. I am most glad to be interrupted. If a state government takes that attitude, why should the United States Government lag behind?

I do not think I need refer to further cases to show (I dislike to say it) the vicious custom at present in operation and which would be done away with if this bill were passed.

Let me refer to the reason why this bill is better than S. bill 6290. In the first place the limitation of time, as given in Senator Brandegee's bill for the bringing of an action, is stated on page 2, line 4, as two years. The other bill gives six years. I think that is too long. I think that two years after the cause of action arises is a reasonable time within which the Government should be sued, if it is to be sued at all.

Secondly, bill S. 6290 gives practically an unlimited right to the suitor—the libellant really—to select the district. It says "any district in which any of the parties owning may reside"—a valuable and I think a reasonable provision, but permitting the selection by the suitor of a distant district. It is covered in Senator Brandegee's bill by the statement that "the Attorney-General shall have the right

within twenty days after the receipt of a copy of the libel, as provided herein, to remove the cause to another district in the United States where said vessel then is or to which, if at sea, she is then bound."

In other words, the Government is fairly entitled to say, "I desire that this litigation shall be held where I, the sovereign, can command my witnesses. I should not be subject to a suit in, say, California, because one of the owners of the libellant vessel happens to own a one sixty-fourth interest in the vessel and the collision took place on the Atlantic seaboard."

Senator Lodge's bill would give the right to any man living, perhaps, on the Pacific coast to bring his suit there. It would not be fair to make the Government go all the way to the Pacific coast. That is, perhaps, an extreme instance, but it illustrates the situation.

For this reason and because it is simpler and accomplishes the end aimed at, I am sure that with hardly an exception the members of the admiralty bar will support Senator Brandegee's bill.

I propose to file a copy of a very interesting opinion, not exactly in point, but analogous to the question which this bill will cover. It is the decision handed down a few days ago by Judge Hough in the southern district of New York, in a case growing out of a collision between the Italian steamer *Florida* and the White Star liner *Republic*.

We were acting for the *Florida*, and the case of a possible distribution of the funds derived from the sale of the *Florida* in limited liability proceedings, was hampered by the fact that the United States Government claimed priority against the fund—claimed that it was not bound by the limited liability act of the United States. For a Republican Government to assert priority, where it had itself filed its claim under its own statutes—to take away literally the bread out of the mouths of its own citizens, strikes us as one of the strangest claims ever made by any sovereignty.

The question was argued at great length before Judge Hough, and in a very able opinion he destroys utterly the claim of the Government to priority after it had appeared in one of its own courts under its own statutes. The decision denies the Government, flatly, any priority.

That is not the attitude which this Government, above all others, should take toward private owners.

In a case where its agent has committed a wrong on the high seas, it should pay the bill, with frankness and generosity.

Senator BRANDEGEE. Before you close, Mr. Thacher, will you be good enough to take the bill (S. 7501) and look at lines 9 and 10 of page 1, where it says: "Any vessel owned or employed by the United States."

What do you think that the word "employed" means there—to what does it apply?

Mr. THACHER. Generally speaking it would refer to a chartered vessel. In times of pressure, when a large station is being opened by the United States, or when a war is in prospect, a great many colliers and vessels not of government ownership would be chartered. I think the word "employed" is substantially the equivalent of "chartered."

Senator BRANDEGEE. I had in mind this: Would the substitution of the words "operated by the United States" be better adapted for the purpose in view?

Mr. THACHER. I think it would be best to have it read "owned or operated."

Senator BRANDEGEE. The word "operated" would cover it all, would it not? It is the operation of the vessel that constitutes the negligence of the Government, is it not?

Mr. THACHER. The relation of master and servant between the true owner and the crew does not enter into the liability of a vessel in rem. For example, in the case of a vessel which is chartered by me to you as a "bare ship;" you man her, and your servants manage her. Nevertheless she is liable in rem to a third party for damages inflicted by her while being navigated by your agents and not by mine.

A decision (*The Barnstable*, 181 U. S.) illustrating the same point was rendered in the case of the brig *Malek Adhel* by Justice Story in 2 Howard, that a private vessel was liable in rem although absolutely out of the control of her true owner and actually in the hands of pirates.

It was the inability to connect the relation of master and servant with the United States that made me hesitate over your question. I think the question an apt one and one that should receive consideration.

Senator BRANDEGEE. Is not the purpose of the bill to give the owner a right to sue the United States for money damages, and not *in rem*?

Mr. THACHER. Of course.

Senator BRANDEGEE. And it contemplates an appropriation by Congress to pay the judgment?

Mr. THACHER. Yes.

Senator BRANDEGEE. Well, do you not want to hold the United States for the fault of any person operating the vessel for the United States? That is what I mean.

Mr. THACHER. Yes; but not where the true owner has merely made a contract of affreightment with the Government and where the crew are employed by the true owner. Take the case of a vessel operating with a full crew and having a cargo which she transports from A to Z. If that vessel collides the true owner is in the position of a contractor to the United States.

Senator BRANDEGEE. Would not that be a case in which the United States was "employing" that vessel?

Mr. THACHER. Yes; but I do not think that they ought to pay the damages in that case, for the offending vessel would there be liable in rem and her owner in personam to the innocent injured party. The United States should be held liable only where the offending vessel is owned by the Government or where it is navigated by those who are pro tem agents of the sovereign, or where an agent of the United States directs an act resulting in damage.

Senator BRANDEGEE. But under this bill the United States would be liable if that vessel is employed by the United States.

Mr. KELLEY. The word "operated" would suit better there.

Senator BRANDEGEE. The difficulty arises from the fault of the vessel and not of the operators?

Mr. THACHER. Yes: she is regarded as the offending thing.

Senator BRANDEGEE. In section 2 you confer jurisdiction upon the several courts of the United States, but on the first page you

provide that the right to sue shall be confined to the *district* courts of the United States.

Mr. THACHER. Which, I think, would be much better.

Senator BRANDEGEE. Then I think it would be well, on page 2, at line 6, before the word "courts," to interline the word "district."

Mr. THACHER. I think not; because in the event of an appeal to the circuit courts of appeal it is necessary that jurisdiction should be conferred in order to hear the appeal. In fact, I had only seen this redraft this morning.

Senator BRANDEGEE. It is the same in the other bill.

Mr. THACHER. I thought it was "district" throughout.

Senator BRANDEGEE. In section 3 should there not be some provision as to when all these things should be done?

Mr. THACHER. The filing of the libel would have to be done within two years of the cause of action.

Senator BRANDEGEE. But the serving of the Attorney-General?

Mr. THACHER. I should say serve "forthwith." There is no reason why it should not be done promptly after the filing of the libel.

Mr. HUGHES. As to the clause of section 2, which you have just been considering, which reads, "jurisdiction is hereby conferred on the several courts for the purposes hereinbefore specified," I take that to be intended to cover appellate courts as well as district courts. In that case the word "district" should not be added.

Senator BRANDEGEE. That is right.

Mr. HUGHES. What is the use of that second section anyhow? Does not the first section give jurisdiction?

Senator BRANDEGEE. That he has a right to sue in the district courts? I think that would confer jurisdiction, but I do not know that it would do any harm.

In section 4 there is a clause stating that "the Attorney-General shall report to Congress at each session thereof the suits under this act," etc.

Does that mean the numbers and names of the several suits?

Mr. THACHER. Mr. Hayden is clearly of opinion that that would be the names and titles and perhaps a brief description of the suits—the record title of the suits.

Senator BRANDEGEE. The bill S. 7501, page 3, line 6, requires the Attorney-General to report to Congress the suits as to which final decrees have been entered and the amount of costs taxed. Why should he not also report the amount of loss or damage incurred, so that Congress may know the total sum of the damage to be found against them?

Mr. THACHER. Do you not think that that would be included under the terms now used?

Mr. HAYDEN. I should think so. It is very broad. It leaves it in the hands of the government officer to fully advise Congress.

Senator BRANDEGEE. And if he does not, Congress can ask for the information.

Mr. SMITH. It refers to final decrees.

Mr. THACHER. I think this bill is righteous in the fact that it requires costs and reasonable interest.

Senator BRANDEGEE. Why should the 4 per cent interest be limited to the time when the appropriation for the payment is made? Suppose the appropriation has been made and there is some difficulty

or delay in the department, and the man does not get his money for another year or two. Why should not the interest run against the Government until the payment is made?

Mr. THACHER. That would be better, but this is good and we do not wish to ask what some persons might consider too much. We prefer to have this bill passed now rather than wait longer.

STATEMENT OF JAMES H. HAYDEN, COUNSELOR AT LAW, WASHINGTON, D. C.

Mr. HAYDEN. Mr. Chairman and gentlemen, if I may, I will say a word to the committee with regard to the policy of Congress in dealing with cases of this description; that is to say, the recognition by Congress of the Government's liability for damages sustained by collisions when caused by the negligence of its agents in charge of its vessels.

While the liability of the Government in such cases has always been recognized, there has been no remedy provided for the injured parties. There have been, however, a number of instances where Congress has, by special enactment, referred causes for adjudication either to the Court of Claims or to some district court of the United States. The cases that have been thus referred to the Court of Claims by special act are:

Carlton *v.* U. S. (10 Ct. Cls., 485).

Sampson *v.* United States (12 Ct. Cls., 480).

Prescott *v.* U. S. (19 Ct. Cls., 684).

Walton *v.* United States (24 Ct. Cls., 372).

St. Louis and Mississippi Valley Transportation Co. *v.* U. S. (33 Ct. Cls., 251—affirmed on appeal in 194 U. S., 247).

Pope *v.* U. S. (34 Ct. Cls., 361).

The cases which have been referred to the district courts are:

The Brooklyn Ferry Company *v.* United States (122 Fed., 696).

The *Foscolia* and the U. S. S. *Columbia,* 123 Fed. Rep., 106.

Both of these cases were referred to court by the act of Congress, 32 Stats. L., 207, 242.

Probably the clearest exposition of the policy of the Government in such cases and its attitude toward the injured parties is contained in a report made by the Senate Committee on Claims by its then chairman, Senator Hoar, of Massachusetts, in 1889. It is quoted by the Court of Claims in the case of Walton *v.* United States, to which I have referred. It points out so clearly the distinction between torts of this class and certain other torts which no government recognizes, that I ask the committee to permit me to read it:

> The committee think that the Government of the United States is not liable for loss or damage occasioned to private citizens by reason of any imperfection in the performance of the ordinary functions of government, or by reason of the acts, omissions, or negligence of its officers or agents in the discharge of such functions.
>
> This principle we suppose to be applicable not only to the General Government but to the governments of the States and to municipal and other similar corporations to whom certain public functions are assigned, even though such corporations may be made parties, defendant or plaintiff, to suits in law or equity. In some cases such corporations are stimulated to due care in the exercise of public duties imposed upon them by rendering them liable for damage occasioned by their negligence. But this liability is created only by express statute. Such has been the well-settled rule in regard to actions against towns and cities for defects in highways or injuries suffered

by individuals for want of repair of public buildings erected or maintained by the municipality for municipal purposes only.

We are not in favor of extending the liability of the United States to such cases. But we are of opinion that there are two classes of cases where sound public policy requires the United States and all other sovereign governments to hold themselves responsible for injuries occasioned by the negligence of their agents. One is where the government, through its agents, manages or controls property from which it receives a benefit or profit, in the same way as private owners receive such benefit or profit, as by receiving rents or other advantage for what might be termed its "private emolument," although the profits so received are ultimately thereafter disposed of for public purposes. This obligation is recognized by the courts in many of the States, and by the House of Lords in England. Many of the leading cases on this subject are collected in Oliver *v.* Worcester, decided by the supreme court of Massachusetts in 1869 and reported in 102 Mass., 489.

Another class of cases where this responsibility is recognized is where the Government is using or managing property through its agents under circumstances where these agents mingle on terms of equality with the general mass of citizens, and where the security of the citizens requires that the same obligation shall rest upon them and that it shall be enforced by similar responsibility as in the case of private persons. Congress has always recognized the obligation of the Government for injuries occasioned by the fault of the officers of its naval and other vessels in maritime collisions. We have no doubt that an injury occasioned to a private person by the carelessness of the driver of a mail wagon or other vehicle passing through the streets and engaged in business of the Government ought in like manner to be the subject of responsibility.

The right being thus recognized, it seems no more than just to provide a uniform remedy for all persons suffering damage through collisions.

At the present time there are outstanding many such claims. Some of them have been presented to Congress by petition, and some private bills have been introduced, but it is extremely difficult in the crowded condition of the congressional calendars to have such matters taken up and passed upon; and it is practically impossible to have that done when the department of the Government in which the cause of action arose differs from you in your belief that you have a just claim.

I will mention one case to illustrate the defective condition of the law in this country. I expect next week to argue in the Court of Claims a case which grew out of a collision that occurred in the port of Norfolk on March 17, 1900. An army transport, newly finished, was starting out of the harbor, became unmanageable, proceeded across the river, and sank a lighter belonging to the Southern Railroad, then moored at her wharf. The claimants were people able to get proper consideration from their representatives in Congress. Bills were duly introduced and considered, but it was five years before a bill was passed submitting the case to the Court of Claims; and five additional years have been expended in trying to bring the case to hearing, a very large part of that time being consumed by representatives of the Government not familiar with admiralty matters, and disposed to put them aside in favor of cases arising under contracts.

It seems very clear that a remedy, such as that contemplated by this bill, should be accorded to owners of vessels, foreign and domestic. The liability of the United States should extend to all vessels owned or controlled by it; that is to say, all vessels in charge of its agents.

And, as Senator Hoar points out, this will be an additional spur to those agents to exercise due care in the management of the Government's property. They will realize that negligence on their part will meet with proper rebuke if the citizen has this remedy and can make his grievance known in court.

Mr. Thacher has suggested that we should like to hand up to the committee a short brief.

Senator DILLINGHAM. We shall be very glad to receive it.

STATEMENT OF R. M. HUGHES, COUNSELOR AT LAW, OF NORFOLK, VA.

Mr. HUGHES. Mr. Chairman and gentlemen of the committee, I have the honor to be a member of the committee of the Maritime Law Association, which was appointed to appear before Congress and urge the passage of all three of these bills, and also of the committee of the American Bar Association, of which Mr. Whitelock is chairman.

I do not feel it at all necessary to add anything to what has been said in reference to the lien bill and the death bill. And I only deem it necessary to add a word to what has been said about the other bill, for the reason that I was in charge of the argument on that bill before the House committee, and am in a position to state to this committee the only objection that was urged to the bill there; so that, in case the House committee should report adversely to it, and you gentlemen should be on the committee of conference, you may think over what I may be able to say to meet that objection.

While on the line of personal reminiscences these gentlemen will, I am sure, pardon me for giving an instance of a private case with which I had to do.

The British steamer *Maroa* was in collision off the Lambert Point piers. The night was clear. The lightest zephyr of summer was blowing, although it happened on February 2, 1907. There was no question about the lights. But that night at half past 10 the *Maroa* was run into by the government tug *Rocket*—very well named. The tug was by no means a vessel of war. The channel at that point, according to the best evidence I have been able to get, was such that this little tug with a beam of about 10 or 15 feet had 600 or 800 feet of clear to get by. She went up to the navy-yard. The navy officials had the vessel examined. That navy board held an investigation, and (to show what a farce such investigations are) the board reported that the accident was unavoidable. If that had been an ordinary admiralty case, no naval board would have dared to come before a court and say that that boat was not in the wrong.

As I have said, they reported that it was an unavoidable accident. The Britishers happened to be rather more energetic than the people of some other nations, and they went to their department of state and to our Department of State, and the result was that on March 6, 1909, a private act was passed allowing this suit to be brought against the United States in the district court at Norfolk.

I represent them in that suit now. The suit has been brought. Only recently the answer of the Government has been filed. In the meantime there is not more than one man on our ship who was there on the day of the collision. That is one way in which these private acts work injustice.

I believe it was Justice Greer who spoke of the hopelessness of the remedy of a petition to Congress. If after a time Congress grants it, in view of the immense amount of work demanding the attention of

Congress, the witnesses in the meantime become scattered to the four winds of heaven.

That shows that a private bill does not always meet the difficulty. I hope not to have much difficulty in that case because if I ever get at the cross-examination I do not think I shall have much difficulty in proving our case. So much for personal reminiscences.

Now, the only point urged against this bill by Mr. Moon, of Pennsylvania, who was chairman of the subcommittee before whom we appeared, was, he said, that he was not sure but that this was special legislation. He started by disclaiming against any knowledge of maritime law. He started out by saying, "I am heartily in favor of allowing suits against the Government for all torts; but I can not see my way now to allowing suits against the Government in special cases like this; I would be in favor of bills permitting suits against the Government for all torts." He did not even draw the distinction made in the report that Mr. Hayden has just read.

I am not sure that I would go so far as that if I had the honor to hold a seat in Congress, because when you commence to draw a bill to allow claims against the Government for all torts, you come up against all sorts of questions.

In one case, you will remember, the Supreme Court held that you could not maintain a claim against the Government under the Tucker bill in a case where a defective elevator fell. A sweeping bill of that sort might be very questionable in its policy, because, with the number of employees that the Government has, it might be impossible to say who was actually responsible.

To say that legislation like this should wait until a general law like that was passed would be to throw away the attainable until the unattainable should be reached. That was the only general objection that Mr. Moon urged, and with all due respect I do not think that this is special legislation. In that sense there is a quantity of special legislation in the admiralty law. Take the limited-liability law—there is special legislation. The statute books are full of special legislation, in that sense. Instances will occur to you gentlemen.

Senator BRANDEGEE. The President, I think, has recommended Congress to pass a government employee's liability act.

Mr. HUGHES. I am glad you mentioned that, Senator, because, as a matter of fact, there is one piece of special legislation that Congress has already passed, and that is the act giving the right to certain employees of the Government to claim, not exactly damages, but a certain amount of wages when they have been hurt in the service of the Government.

Senator BRANDEGEE. We have already put that provision in the bill regarding the Panama Canal bonds.

Mr. HUGHES. Yes. It seems to me the best way to bring these things about is to go about them step by step.

When you talk about a suit against the Government for the breaking of an elevator you are not getting tangled up with national affairs. But when you come to say that things are not on our statute books which are on the statute books of every other civilized nation, then I say it is a case for special legislation.

Senator BRANDEGEE. Do the foreign acts you refer to permit the citizens of any other country to sue in their courts?

Mr. HUGHES. I think so. I am sure the English acts do.

Senator BRANDEGEE. Would this bill permit the citizens of any other country to sue?

Mr. HUGHES. I think so.

Senator BRANDEGEE. I ask if that is the intention?

Mr. HUGHES. It says:

> That the owner or charterer of any vessel and the owner of any cargo or property laden thereon shall have the right to sue the United States in the district court of the United States for the district in which the parties so suing, or any of them, may reside or the vessel charged with fault may then be found.

The word "to" is omitted in the bill at the end of line 4. It should read "shall have the right *to*" sue the United States.

Senator BRANDEGEE. Yes; I observed that.

Mr. HUGHES. I rather think that the wording of that section would give the remedy to foreigners.

Senator BRANDEGEE. And would give that remedy in our courts to the subjects of foreign nations that did not extend that remedy to us?

Mr. HUGHES. I think so. I think we ought to set a good example, and, as I understand it, pretty much all the nations in our class have done it.

Mr. HUGHES. I do submit to you Senators that the bill ought to be made clear. There is the general principle of construction that a remedy is not given against the Government unless it is absolutely clear. The other bill expressly provides that they can recover with costs. This bill (S. 7501) provides, "such district court is hereby authorized to enter a decree for the amount of such loss, damage, or injury against the United States upon the principles of liability obtaining in like cases between private parties in collision suits in admiralty."

There is nothing in the bill about costs except section 4.

Senator BRANDEGEE. That would not give the court authority to enter judgment for costs.

Mr. HUGHES. I should say that, unless that is made clear, it might be construed by a court under the principle that you could not recover costs from the Government.

Mr. WHITELOCK. That, I think, ought to be made clear.

Mr. Hughes. I should say that you should add, on line 14, after the word "admiralty," the words "with costs." It seems to me that that is the best place to insert those words. In these admiralty cases the costs are sometimes heavy and unavoidable because sometimes depositions have to be taken abroad.

Senator DILLINGHAM. We are very much obliged to you gentlemen for the light you have given us on these subjects.

Mr. WHITELOCK. We are grateful to you Senators for the hearing you have given us.

Mr. THACHER. There is an important reason why there should not be added a provision that would not give England the same rights here that we have there, because England does not do it by statute, but by practice, and we should not cut off the one country that is most liberal.

Mr. SMITH. The lien bill has been reported favorably by the House, and the death statute is likely to be so reported, I understand. The approval of the association, in favor of S. 6290 would, of course, apply equally to the bill that you, Senator Brandegee, introduced, so far as the general proposition is concerned. I do not think that any of us have seen that bill until this morning.

Senator DILLINGHAM. I suggest that if any needed amendments occur to any of you as to those bills, you might write us.

Mr. SMITH. I think that would be well.

Senator BRANDEGEE. Why not take S. 7501, S. 6290, and S. 7334 and get up a perfected bill that we can report as a substitute for all these bills?

Mr. WHITELOCK. The other two bills do not need any change.

(The hearing was then closed.)