

January 1941

**MARITIME LAW ASSOCIATION OF THE
UNITED STATES**

**REPORT OF COMMITTEE ON SUPREME COURT
ADMIRALTY RULE 46½**

January 3, 1941

TO THE MARITIME LAW ASSOCIATION:

The undersigned were appointed a Committee to secure, if possible, a modification of Supreme Court Rule 46½, relating to findings of fact and conclusions of law. Your Committee drafted a modification of Supreme Court Admiralty Rule 46½ and submitted the same to the meeting of the Association held on May 6, 1940. Whereupon at that meeting, the Association adopted the following resolution:

“WHEREAS, it is the unanimous opinion of the members of the Maritime Law Association of the United States present at the annual meeting held on May 6, 1940, that the written opinion of the District Court in admiralty cases presents the views of the District Judge more clearly and satisfactorily than formal findings; and

WHEREAS, such formal findings duplicate the opinion of the District Court and require a very considerable and unnecessary expenditure of time on the part of the District Judge, as well as of counsel; and

WHEREAS, the operation of Rule XLVI½ in admiralty cases has, in the unanimous opinion of the members of the Association present at this meeting, been unsatisfactory for the reasons above stated; and

WHEREAS, in the opinion of the members of this Association a fairer and less technical set of findings is obtained by accepting the written opinion of the District Court as that Court's findings of fact and conclusions of law, leaving to any party the right to ask for additional findings, if they are desired;

NOW, THEREFORE, BE IT

RESOLVED that, in the opinion of this Association, it would promote the interests of justice if said Admiralty Rule XLVI½ were amended as hereinafter set forth; and it is

FURTHER RESOLVED that the presiding Judge of the United States Circuit Court of Appeals for the Second Circuit be requested to present to the council of the presiding Judges of the Circuit Courts of Appeals for their consideration an amendment of the rule to read as stated below, with the statement that the Maritime Law Association of the United States hopes that said amended rule may be submitted by them to the Supreme Court of the United States with the recommendation that it be adopted.

The suggested amendment is as follows:

'RULE XLVI½

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

In deciding cases of admiralty and maritime jurisdiction the court of first instance shall find the facts specially and state separately its conclusions of law thereon; and its findings and conclusions shall be entered of record and, if an appeal is taken from the decree, shall be included by the Clerk in the record which is certified to the appellate court under rule 49. It shall be deemed a compliance with the foregoing Rule if the court of first instance file a written opinion stating that it contains the court's findings of fact and conclusions of law, or if the decree shall so state. However, any party may propose further findings of fact and conclusions of law and the court shall pass thereon.' "

Pursuant to this resolution, your Committee waited upon Judge Learned Hand. Judge Learned Hand stated that the matter was one of importance to the whole court and called into conference with him all of the Judges of the Second Circuit who were available at that time, viz., Judge Swan, Judge Augustus Hand and Judge Patterson.

After discussing the situation fully with his colleagues, Judge Learned Hand stated that he would submit our resolution to the Chief Justice of the Supreme Court at the Judicial Conference to be held in October.

Mr. Charles S. Bolster of Boston submitted the resolution to the presiding judge in the First Circuit; Mr. Wolff to the pre-

siding judge in the Third Circuit; Mr. Vandeventer to the presiding judge in the Fourth Circuit; Mr. Terriberry to the presiding judge in the Fifth Circuit; Mr. Essery to the presiding judge in the Sixth Circuit; Mr. Branand to the presiding judge in the Seventh Circuit, and Mr. Griffiths and Mr. Frank to the presiding judge in the Ninth Circuit.

At the Judicial Conference held in October, Judge Learned Hand submitted the resolution to Chief Justice Hughes. Judge Hand has now written us as follows:

“At the Judicial Conference in October I talked with the Chief Justice about this, and, as I understood it, he had taken it up with the whole court. They will not change the Rule, and will continue to insist upon findings of fact in all admiralty appeals.”

Judge Hand stated orally to your Chairman that Chief Justice Hughes considered the rule as it now stands of great use to the Court because some trial judges confine their findings to their legal theory of the case. When the case is reviewed on appeal, the appellate court may find this legal theory incorrect. In that event the appellate court is forced to examine a voluminous record to make findings of its own. Judge Hand said that this placed an unnecessary burden upon an appellate court. Judge Hand requested us to call this situation to the attention of the Maritime Bar, in the hope that in preparing findings counsel will keep the foregoing in mind. Your Chairman does not know the specific case or cases which the Chief Justice or Judge Hand had in mind.

For the time being at least your Committee considers that further effort to change the rule is useless, and requests its discharge.

T. CATESBY JONES

JOHN W. GRIFFIN

L. DE GROVE POTTER

Committee on Supreme Court
Admiralty Rule 46½.

New York, N. Y.
January 3, 1941.