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March 1942

THE MARITIME LAW ASSOCIATION OF
THE UNITED STATES

SPECIAL MEETING, JANUARY 16, 1942

A special meeting of the Association was held at the House of the Association of the Bar of the City of New York on Friday, January 16, 1942, at 8 P. M., pursuant to due notice, following the regular quarterly meeting of the Executive Committee, with the President, Roscoe H. Hupper, presiding.

Present: Roscoe H. Hupper, President, Robert W. Williams, Vice President, P. J. R. McEntegart, Secretary and Treasurer, and the following members:

Ray Rood Allen
Edward Ash
Norman M. Barron
James S. Benn, Jr.
Charles S. Bolster
Frank A. Bull
John T. Carpenter
Charles J. Carroll
Vincent A. Catoggio, Jr.
Roy W. Chamberlain
Chauncey I. Clark
Arthur W. Clement
William E. Collins
John W. Crandall
Theodore R. Dankmeyer
Martin Detels
Seymour P. Edgerton
D. Roger Englar
Robert S. Erskine
Earle Farwell
Barton P. Ferris
Ezra G. B. Fox
John L. Galey
John W. Griffin
Charles W. Harvey
Christopher E. Heckman
Wilbur H. Hecht
Oscar R. Houston
Edward J. Keane
Arnold W. Knauth
Paul H. Lacques
Henry N. Longley
Anthony V. Lynch
John A. Lyon
Frank C. Mason
Leonard J. Matteson
G. Hunter Merritt
Russell T. Mount
Edward L. P. O'Connor
Alfred Ogden
Adrian J. O'Kane
Edward F. Platow
F. Herbert Prem
Edward A. Quinlan
Edna Rapallo
E. Curtis Rouse
Paul Speer
George C. Sprague
Eugene Underwood
George L. Varian
Burton H. White
William H. Woolley
John W. R. Zisgen

On recommendation of the Executive Committee, and on motion duly made, seconded and carried, the following named persons were elected members of the Association:

ASSOCIATE MEMBERS

HON. ALBERT B. MARIS
United States Circuit Judge for the Third Circuit,
Philadelphia, Pa.
Proposed by Joseph W. Henderson.
Seconded by Thomas F. Mount.

HON. WILLIAM CLARK
United States Circuit Judge for the Third Circuit,
Philadelphia, Pa.
Proposed by Joseph W. Henderson.
Seconded by Thomas F. Mount.

HON. CHARLES ALVIN JONES
United States Circuit Judge for the Third Circuit,
Philadelphia, Pa.
Proposed by Joseph W. Henderson.
Seconded by Thomas F. Mount.

HON. HERBERT F. GOODRICH
United States Circuit Judge for the Third Circuit,
Philadelphia, Pa.
Proposed by Joseph W. Henderson.
Seconded by Thomas F. Mount.

HON. ADRIAN J. CAILLOUET
United States District Judge for the Eastern District of Louisiana,
New Orleans, La.
Proposed by Joseph M. Rault.
Seconded by Walter Carroll.

HON. JOHN BRIGHT
United States District Judge for the Southern District of New York,
New York, N. Y.
Proposed by Morris Douw Ferris.
Seconded by P. J. R. McEntegart.

HON. SIMON H. RIFKIND
United States District Judge for the Southern District of New York,
New York, N. Y.
Proposed by Russell T. Mount.
Seconded by P. J. R. McEntegart.

ACTIVE MEMBERS

COMMANDER RAYMOND F. FARWELL
Member of the Faculty of the College of Economics and Business of the University of Washington,
Seattle, Washington.
Proposed by Arnold W. Knauth.
Seconded by Lane Summers.

GERALD H. BUCEY
Hayden, Merritt, Summers & Bucey,
Seattle, Washington.
Proposed by Lane Summers.
Seconded by John W. Crandall.

FRANK H. GERRODETTE
Flushing, New York.
Proposed by George C. Sprague.
Seconded by Martin Detels.

JOHN H. SKEEN, JR.
Beeuwkes, Skeen & Oppenheimer,
First National Bank Building,
Baltimore, Maryland.
Proposed by John Henry Skeen.
Seconded by George W. P. Whip.

JOSEPH M. MEEHAN
Alexander & Ash,
76 Beaver Street,
New York, N. Y.
Proposed by Edward Ash.
Seconded by Frank C. Mason.

E. MYRON BULL
Bull Insular Line, Inc.,
115 Broad Street,
New York, N. Y.
Proposed by Roscoe H. Hupper.
Seconded by Robert W. Williams.

The meeting then took up for discussion the matters comprehended by the inquiries of Chief Justice Stone and Circuit Judge Learned Hand concerning several features of the admiralty practice, as set forth more fully in Documents Nos. 266, 267 and 268. The President stated that 190 active members had filled out and returned their ballots (Document 267). A tally of these ballots showed that the members had answered the six questions as follows:

In answer to question number 1 (new trial), 25 members replied "yes" and 163 members replied "no".

In answer to question number 2 (findings and conclusions), 168 members replied "yes" and 19 members replied "no".

In answer to question number 3 (assignments of error), 109 members replied "yes" and 76 members replied "no".

In answer to question number 4 (pre-trial practice), 97 members replied "yes" and 89 members replied "no".

In answer to question number 5 (further extending Civil Rules), 73 members replied "yes" and 110 members replied "no".

In answer to question number 6 (as to further legislation-rules), 99 members replied "yes" and 87 members replied "no".

The President called attention to the fact that the balloting had been preliminary and informal, and that a member at the meeting might vote according to his views as developed by the discussion irrespective of his ballot vote. The President further stated that the Executive Committee would consider both the ballots and the voting at the meeting when advices to the Chief Justice and Circuit Judge Learned Hand were prepared.

The President then read question number 1, the ballot (Document 267) tally thereon, and asked for discussion. After raising of a question as to the exact meaning of "doing away with new trial on admiralty appeal" and after much discussion, it was decided to break up question number 1 into three questions, for three separate votes. Thereupon, the following motions were regularly made and seconded with the following results:

(a) That the Court Rule to permit the taking of new testimony on appeal should be abolished.

The great majority voted strongly in the negative, with a few scattering votes only in the affirmative.

(b) That the power of the Court to vary the decree below in respect of a party who has not appealed and who has not filed cross-assignments of error or against whom assignments have not been filed should be done away with.

A member moved to lay this motion on the table because determination by the members on the third motion (c below) would cover this situation also. Said motion was seconded and carried.

(c) That the power of the Court to review facts as in a trial de novo should be done away with.

This motion was defeated by a unanimous vote.

Following the disposition of the three questions as above stated, it was regularly moved and seconded, that this Association is opposed to doing away with new trial on admiralty appeal.

This motion was carried with only one dissenting vote.

Question number 2 on the ballot (Document 267) was then taken up and discussed. It was reported that the Admiralty Committee of the New York City Bar Association had recently approved a proposed rule to effect that where there was an opinion, findings and conclusions should not be required but might be proposed by counsel. A motion was regularly made and seconded, as follows:

That present Admiralty Rule 46½ should be abolished and a new rule promulgated whereby the District Court would be required to state its findings of fact and conclusions of law, either in an opinion or in such other form as it deems appropriate.

A member moved that this motion be tabled, but there was no second. On the original motion being put to vote it was carried with only one dissenting vote.

Question number 3 on the ballot (Document 267) was presented to the meeting, and full discussion followed as to the merits of requiring service at the time of taking an appeal of some document which would limit the issues and prevent surprise.

It was regularly moved and seconded that the sense of the meeting was that assignments of error be done away with. An amendment was proposed, but not accepted, which would require some other document limiting the issues, in lieu of assignments. The motion to do away with assignments of error was carried by a vote of 27 to 25.

The meeting proceeded to discussion of question number 4 on the ballot (Document 267). It was regularly moved and seconded to be the sense of the meeting that the pre-trial practice as set out in the Civil Rules be adopted into admiralty. After full discussion, this motion was carried by a vote of 29 to 23.

The President then asked for discussion on question number 5 on the ballot (Document 267). It was regularly moved and seconded to be the sense of the meeting that the Rules of Civil Pro-

cedure should not be extended to admiralty practice any further than they have been already. Several members spoke at length on this motion. A motion, seconded, to lay the motion on the table was voted down. The original motion was then voted upon and carried, with only one vote in opposition.

Question number 6 appearing on the ballot (Document 267) was presented to the meeting and fully discussed. It was moved and seconded that this Association is not in favor of such legislation as would be necessary to enable the Supreme Court to make substantially the same rules for Admiralty as have been made in the Rules of Civil Procedure with respect to depositions and examination of parties and witnesses before trial. This motion was carried by a large majority, with only a few votes in opposition.

Mr. Englar then offered the following resolution:

> "RESOLVED that the Maritime Law Association of the United States while recognizing the need for periodical revision of the rules of practice, and while desirous of coöperating in any steps which may be necessary or desirable for the amendment and improvement of the rules now in effect, believes that the ends of justice will be best served by preserving as much as possible of the present system of admiralty practice which has grown up over a period of many generations and has proved itself so well adapted to the many problems which are peculiar to the administration of maritime law; and it is further
>
> RESOLVED that the President of this Association appoint a committee of not less than three or more than five who shall be authorized in their discretion to communicate with the Chief Justice of the United States and such other member or members of the Supreme Court of the United States as may be designated by the Court to deal with the subject of admiralty rules, and also with the federal judges in the several circuits; and it is further
>
> RESOLVED that said Committee be authorized to make such recommendations to any of such judicial officers, with respect to the admiralty rules and practice, as the Committee may consider desirable."

This resolution was seconded by Mr. Clark and after some discussion carried, with a few votes in opposition.

Mr. Griffin brought to the attention of the meeting the statutory requirement of having admiralty appeals allowed, and stated that it served no useful purpose. After discussion, it was regularly moved, seconded and unanimously carried that the Committee to be appointed under Mr. Englar's resolution be authorized to consider the subject of doing away with this present necessity for allowance of admiralty appeals and to take steps to that end if it could be brought about by rule, or to seek amendment of the statute if that were deemed necessary.

Mr. Underwood invited attention of the meeting to the futility of appointing commissioners to receive claims, and of filing objections to claims in limited liability proceedings, and suggested that the Admiralty Rules be amended to do away with these requirements. After discussion, and on motion duly made, seconded and carried unanimously, this matter was also referred to the Committee to be appointed under Mr. Englar's resolution.

There being no further business, the meeting adjourned at 10:30 P. M.

[Action of the meeting has been reported to Chief Justice STONE and Circuit Judge LEARNED HAND, and relevant correspondence has ensued.]