MARITIME LAW ASSOCIATION OF THE UNITED STATES.

On January 28, 1910, at New York, there was held a meeting of the Maritime Law Association of the United States for the purpose of considering:

(1) The Proposed International Convention for the Unification of Certain Rules in the Matter of Collision, which convention was approved by the Brussels Diplomatic Conference of 1909.

(2) The Proposed International Convention for the Unification of Certain Rules in the Matter of Assistance and Maritime Salvage; also approved by the Brussels Diplomatic Conference.

(3) The Basis of a Plan for a Convention on Limitation of Ship-owners' Liability, prepared and submitted to the study of the Governments interested by the Brussels Conference; and

(4) The Basis of a Plan for a Convention on Hypothecation and Maritime Liens, also prepared and submitted to the study of the Governments interested by the Brussels Conference.

Copies of the foregoing have been distributed, annexed to the notice of the meeting of January 28, 1910.

The action of the Maritime Law Association of the United States thereon, and its resolutions in conformity with such action were as follows:

With regard to the Convention concerning Collisions, the Maritime Law Association resolved as follows:

> "*Resolved*, that this Association approves the provisions of the Convention for the unification of certain rules in the matter of collision, subject to a provision to be inserted in the protocol accompanying the treaty that Article X of the Convention shall be understood as

reserving all rights given by the Statute of the United States of February 13, 1893 (27 St. L., p. 445), entitled 'An Act relating to the navigation of vessels,' etc., etc., commonly known as the Harter Act."

With regard to the Convention concerning Salvage, the Maritime Law Association of the United States resolved as follows:

"*Resolved*, that it is the sense of this meeting that the United States Government should approve the same."

With regard to the two Proposed Conventions as to Maritime Liens and Limitation of Liability, the Maritime Law Association of the United States resolved as follows:

"*Resolved*, that each of the proposed conventions in regard to Limitation of Owners' Liability and Hypothecations and Maritime Liens be referred to a committee of five of this Association to be appointed by the President (Ex-Judge Addison Brown), the President and Secretary of the Association to be also *ex-officio* members, to examine the same and report to the Association at its next meeting whether the same should be adopted as proposed, and if not, what changes or amendments should be made therein."

The Committee appointed to consider the proposed convention as to Maritime Liens was as follows, in addition to the President and Secretary of the Association, viz.: Hon. Frederick Dodge, chairman; J. Parker Kirlin, Robert M. Hughes, Fitz-Henry Smith, Jr., and Benjamin Thompson. Their report is appended hereto.

The Committee appointed to consider the proposed convention as to Limitation of Liability was as follows, in addition to the President and Secretary of the Association, viz.: Everett P. Wheeler, chairman; Lawrence Kneeland, Robert D. Benedict, Eugene P. Carver and A. Gordon Murray. Their report is appended hereto.

EDWARD GRENVILLE BENEDICT.
Secretary.

REPORT OF COMMITTEE ON MARITIME LIENS.

The Committee of the Maritime Law Association appointed to consider the Proposed Convention on Maritime Liens, formulated by the Diplomatic Conference at Brussels, hereby report as follows:

Article 3 of the proposed convention enumerates, in the order in which they are to take rank, certain privileged liens on the vessel and freight, and declares that they are to be the only privileged liens upon vessels or freight.

The result of its adoption would be that a very great number of the liens upon vessels or freight, recognized by our laws, contemplated by persons engaged in maritime affairs and regularly enforced by our Maritime Courts, would cease to be liens, and the claims upon which they are based would become mere liabilities of the owner *in personam*.

Among the liens not based upon express agreement which would thus disappear from the list of those enforceable against foreign vessels are, (1) all liens in favor of cargo owners or of passengers against the carrying vessel for damage to cargo or baggage or for other violations of contracts of affreightment, (2) all liens for towage services as distinguished from salvage services, (3) all liens for wharfage, stevedore's services, etc., and (4) all liens founded on torts except those arising in collision cases.

We have no hesitation in expressing our conviction that the United States should not relinquish so great and important a part of the security at present afforded to those of its citizens who deal with foreign vessels. Many of the liens proposed to be given up are liens upon which they have been accustomed to rely ever since the establishment of our Maritime Courts. Reliance upon them has become closely interwoven with the body of rules according to which maritime business is carried on to a degree which renders the change proposed by the Brussels plan so radical as to be almost revolutionary.

We are unable to see any advantage secured to citizens of the United States by the proposed convention, whether consisting in greater uniformity of the laws governing the commerce of the world, or in any other of the advantages claimed for the proposed conventions, which would be anything like

compensation for what they would lose by the proposed changes in the lien laws.

As our foreign commerce is carried on almost exclusively by foreign vessels, our interests as freighters are far more important than our interests as ship owners. The Committee cannot doubt that as a whole the citizens of this country will be far more injured than benefited by changes like these, calculated and intended, as they are, to afford, by the destruction of the liens referred to, a greater degree of security to the holders of maritime mortgages, for the most part citizens of foreign countries, whose loans need not have been maritime contracts at all.

FREDERIC DODGE,
ROBERT M. HUGHES,
FITZ HENRY SMITH, JR.,
BENJAMIN THOMPSON,
J. PARKER KIRLIN.

REPORT OF COMMITTEE ON LIMITATION OF LIABILITY.

To the Maritime Law Association of the United States:

The Committee to whom it was referred to consider and report upon the draft of the International Convention concerning the Limitation of Shipowners' Liability, which has been submitted to the various Governments for consideration by the Diplomatic Conference held at Brussels in September, 1909, begs leave to report:

That your Committee, after full discussion, agree in recommending,

A. That the Association disapprove of the substitution of Subdivision 2, of Article 8, for Subdivision 1 thereof.

B. That the Association disapprove of the language of Article 11, as being ambiguous, indefinite and incompatible with Article 2, and recommends its amendment so as to remove its ambiguities.

C. A majority of the Committee approve of Article 6 as an improvement upon our present rule of limitation, more consonant with justice and equality, more conducive to our shipping interests and working no substantial detriment to the owners of ships and cargoes or their insurers; and for the unification of the law, we recommend the adoption of the convention, amended as suggested.

A. Substitution of a lump sum for freight and accessories.

The items of accessories mentioned in Articles 2 and 8 are all extremely variable; they may amount to much, or little, or nothing at all. They depend wholly upon the events and circumstances of the particular voyage. As respects such items, there is nothing in common between different voyages of the same ship, or the voyages of different ships, to serve for striking an average. There is no basis, therefore, for arriving at any proximately correct *lump sum* per ton to be paid by the shipowner for such items. All of these have to be determined at some time; and there appears to be no sufficient reason why they should not be paid to the damage-claimants, according to the truth and the facts. Any lump

sum per ton that might be substituted by rule in advance, must necessarily be purely arbitrary and speculative; it would almost never approach the truth, would generally be grossly incorrect and unjust to one or the other of the parties and, as a rule, it would be highly unsatisfactory to both. One might as well fix a lump sum per ton to be paid in all cases for salvage services; and salvage awards are in fact among the items that would be included in the "substitution under Articles 2 and 8." The substitution should not be allowed.

B. Ambiguity of Articles 2 and 11.

A treaty framed for the purpose of securing uniformity in the law, ought to be itself clear and unambiguous. It should present no incompatible or contradictory provisions, nor any such difficulties of construction as would naturally lead to different interpretations and to new confusion.

Articles 2 and 11 seem to us subject to this objection. The former declares that the limitation shall apply to damages to cargo transported * * * on board the vessel and all other damages caused by a fault of navigation, even in the *performance of a contract.* This would include goods transported under bills of lading and charters of affreightment.

Article 11, on the other hand, declares that the foregoing provisions "do *not apply* to the *obligations* derived from * * * contracts made by the owner or from those [contracts] which he has authorized or ratified."

But the obligations of a carrier of goods are derived largely from the bill of lading. The bill of lading is a contract, ordinarily "made, authorized, or ratified by the owner." Damage to cargo by a fault of navigation is damage done in the performance of the contract, and hence would be subject to limitation under clause 2 of Article 2; but the obligation to pay damages, being derived from the contract of carriage, would not be subject, according to Article 11, to any limitation at all.

The use of the word "accident" in Sub. 4 of Art. 2 is also unfortunate. Is collision by the ship's negligence an *accident*, or not? Within the ordinary definition, Yes (Webster, New Int. Dict.). Within the sense of equity practice, No: because happening by *fault* (Century Dict.). Yet, on the meaning adopted for the word "accident" in this clause, must depend whether the master's bottomry bond or other agreement lawfully given in a port of refuge for repairs and supplies made necessary by a negligent collision, is subject to limitation, or is not. The convention should not be accepted

until Art. 2 and Art. 11 are harmonized and their intent made clear.

We suggest that after the word "accident" the words "whether arising from fault, or not," be inserted.

The Harter Act. Again, Article 2 expressly declares that "The owner of a vessel *is liable* only to the value of the vessel * * * *. 2. For damage caused to *cargo transported* * * * caused by a *fault of navigation*, etc."

Section 3 of our Harter Act of 1893 (27 Stat. 445) provides that in the cases there stated, neither the ship nor the owner shall be liable for such damages.

The treaty should not be ratified, except with the reservation that where our citizens are concerned, its provisions shall not be applied in derogation of the Harter Act of 1893.

C. Article 6. £8 per Gross Ton the Maximum Liability for Property Damage.

This provision is the result of a compromise between the British delegates in the International Maritime Committee and the delegates from over 20 other nations represented by the committee.

By the general maritime law for centuries past, the limit of the shipowners' liability for loss or injury of property happening on the voyage by the fault of the master or mariners, but without the shipowner's fault or privity, has been the value of the vessel and freight; and the owner was discharged by the payment of that value, or by the surrender of the vessel at the close of the voyage.

In 1813, by the Statute 53 George III, Chapter 159, Parliament enacted the same general rule for Great Britain, except that no provision was made for an option to *surrender* the vessel, instead of paying her value; and also except that the language of the Act was such that the English Courts construed it to mean the value of the vessel immediately *before* the disaster, instead of *after*, as was the rule elsewhere.

The United States adopted the continental rule of limitation by our Statute of 1851 (Rev. St. §§ 4283 to 4287).

This general maritime rule took its rise in the expanding commerce on the Mediterranean in the middle ages. It was designed for the encouragement of navigation and to mitigate its ruinous liabilities. The rule was recognized and declared in the Consulado, a body of sea-laws compiled in the fourteenth

century. (See article by Judge Putnam 17 Law Review, 12 (1883); and it is explained and commented on by Mr. Justice Bradley in Norwich. &c., *vs.* Wright (13 Wallace, U. S. Rep. 104) as follows:)

> "The great object of the law was to encourage shipbuilding and to induce capitalists to invest money in this branch of business. Unless they can be induced to do so, the shipping interests of the county must flag and decline. Those who are willing to manage and work ships are generally unable to build and to fit them. They have plenty of hardiness and personal daring and enterprise, but they have little capital. On the other hand, those who have capital, and invest it in ships, incur a very large risk in exposing their property to the hazards of the sea, and to the management of seafaring men, without making them liable for additional losses and damage to an indefinite amount. How many enterprises in mining, manufacturing, and internal improvements would be utterly impracticable if capitalists were not encouraged to invest in them through corporate institutions, by which they are exempt from personal liability, or from liability except to a limited extent? The public interests require the investment of capital in shipbuilding quite as much as in any of these enterprises. And, if there exist good reasons for exempting innocent shipowners from liability, beyond the amount of their interest, for loss or damage to goods carried in their vessels, precisely the same reasons exist for exempting them to the same extent from personal liability in cases of collision. In the one case as in the other, their property is in the hands of agents whom they are obliged to employ."

The advantages and importance of this rule of limitation were so great that from the time of its early adoption, it gradually spread to all the maritime nations of Europe except in England. It was expressly enacted in many of the European Codes, notably in the Marine Ordinance of Louis XIV in 1681; and in its general principles it is to-day the continental maritime law, though with various minor variations, which it is the purpose of the proposed convention to unify.

In England, no doubt through her traditional attachment to the common law (by which the shipowner was liable to an indefinite extent for the consequences of the ship's faults), by her jealousy of foreign innovations, and by the hostility of her common law courts to the Courts of Admiralty, any

adoption of the continental system of limiting the shipowners' common-law liability, was long delayed. In the eighteenth century, however, the foreign rule was adopted by statute for losses by embezzlement and robbery; and in 1813, as above stated, it was applied generally to losses of property by negligence, with the exceptions above noted.

But the construction placed by the English courts upon their Statute robbed it of much of its value; for being required to pay the worth of the ship *before* the injury instead of after, in a case of collision for instance, if the vessel herself were thereby sunk and became a total loss to her owner, he was still obliged to pay her previous value, and thus to sustain a double loss, while the foreign owner, in like circumstances, though losing his vessel, would suffer no further liability—a disadvantage that told heavily against the British shipowner in business competitions with foreign ships.

This disadvantage was afterwards greatly increased by the passage of Lord Campbell's Act (which gave a right of action for wrongful acts causing loss of life), and by the provision of the English Merchants' Shipping Act of 1854, which required the payment of at least £15 per ton of the ship's gross tonnage as a minimum in case of injuries to the person or the loss of life by passengers through the ship's fault.

Upon complaint by the shipowners of these excessive liabilities and disadvantages, and of the consequent decline of the British shipping, a Special Parliamentary Committee was appointed in 1860, upon whose report, after taking much testimony, a substitute for the limitation in the Statute of 1854 was enacted in 1862, making £15 per ton the maximum payment required as respects personal injuries or loss of life, and £8 per ton as respects loss of property; the computation in the case of steamers to be on the gross tonnage, and for sail vessels, to be on the net registered tons, without regard to the actual value of the vessels of either class. And this rule, with a slight modification in 1906 as to computing steamer-tonnage, is the existing British system of the limitation of shipowners' liability.

This system was adopted upon practical considerations rather than for theoretical reasons. It was complained to the Special Committee that old, inferior and unsafe vessels were employed for the transportation of both passengers and goods; that a limitation of liability based on the vessel's actual value alone tended to encourage that practice to the jeopardy of life and property at sea; and that it discouraged and paralyzed the building and the use of better and safer vessels of a superior class.

The Special Committee adopted that view, and finding that £15 per ton was sufficient for supplying safe and comfortable vessels, adopted that sum as an absolute maximum liability, without regard to the value of the particular vessel; neither releasing at a lower limit the owner who ran an old and cheap vessel, nor punishing another owner by imposing a higher limit for a similar loss simply because he ran a better and a safer vessel. The Committee say:

> "The Committee recognize the wisdom of the principle, viz., that to exempt shipowners from liability beyond the value of an inferior ship and freight would be encouragement to unprincipled persons to employ worn out and inadequately manned vessels in the conveyance of passengers; and, on the other hand, to subject shipowners to indefinite liability for such calamities might induce men of property and character to withdraw their fortunes from so great a hazard.
>
> "It is generally agreed that the valuation for loss of life in the Merchants Shipping Act [1854] at the minimum of £15 was fixed with a view of preventing the employment of inferior ships, and it was considered that vessels of the value of £15 per ton were sufficient for the comfort and safety of passengers. * * *
>
> "Instead of taking the actual value in every case a certain sum per registered ton might be fixed with a view to arrive at greater fairness between shipowner and shipowner.
>
> "At present the law inflicts a heavier punishment upon the owner of a vessel best adapted to provide (from her superior construction) for the safety of passengers; and the responsibility of the owner of a vessel actually increases with the increased means he employs for the health, safety and comfort of those who embark in his vessel.
>
> "Your Committee are therefore of opinion that an absolute sum of £15 per ton gross register, whatever may be the actual value, should be established as the definite valuation of the ship and all consideration of the freight should be excluded. * * * The owner of the inferior ship and the owner of the well-appointed ship would be placed on the same level of responsibility, and owners of valuable ships would not be at a disadvantage, as they now are, when a collision occurs with a badly-found vessel belonging, perhaps, to an opulent owner." 13 Parliamentary Papers (1860), pp. xiv to xviii. The Jurist, N. S., Vol. 6, Part 2, p. 368.

The Special Committee were evidently considering chiefly the transportation of passengers, which at that time was mostly by wooden vessels, in which the American clipper ships had distanced the English, and, as they complained, had largely captured their trade. The bill introduced into Parliament, based on the Committee's report, made no reference to freight vessels, to which it was plainly ill-adapted.

But this omission was soon supplied by an amendment introduced by Mr. Milner-Gibson, President of the Board of Trade and a member of the Special Committee, making £8 per ton the maximum liability for loss or damage of property, but without explaining how that figure was arrived at. "The owner of a good ship," he said, "and the owner of an inferior ship should be on the same level as to responsibility." Mr. Ayrton, in debate, stated that the principle hitherto had been "to make the owner responsible to the full value of his ship"; that "the Government did not intend to depart from that principle, but they endeavored to find some rule by which that value could be ascertained." And thus the bill, after long debate, was passed, to the effect first above stated; and with it vanished from British law all traces of the continental system. (See 165 Hansard Debates, 1933; 166 do., pp. 2217–2224; 167 do., p. 749.)

From the words above quoted there can be little doubt that the sum of £8 per ton was intended to represent the average value of vessels engaged in the freighting service alone; and that this valuation had the sanction of the Board of Trade, than which there is not in the world a more just or competent authority on this subject.

During an experience of nearly 50 years since that date the British shipping interests have become wedded to this system. They have greatly prospered, until their tonnage exceeds that of all the rest of the world together. They have improved and enlarged their passenger ships beyond all previous conception. Steam has at length almost expelled their sail-vessels from the ocean; and in the increasing size, speed and safety of her steamships Great Britain has set the pace which her rivals emulate and are forced to follow.

In securing this result the £8 maximum limit of liability has played its part. It furnishes several important business advantages:

First, it promotes speedy settlements by fixing a definite rate easily computed as a substitute for the "value of the ship, freight and accessories," generally a subject of great

difficulty in determining, and involving often protracted delays and no small annoyance and expense.

Secondly, it gives the shipowner a definite knowledge of his maximum risk, and thus enables him to figure more closely in all business competitions.

Thirdly, it enables him more easily, more completely and more cheaply to cover that risk by insurance; and fourthly, it enables him to build more attractive and costlier vessels for freight in combination with passengers and with more lucrative returns, *without any increase of damage risk* per ton in case of disaster.

Without these latter advantages it is doubtful whether any steamer of the size, speed and quality of the Lusitania and Mauritania, each costing, it is said, six millions of dollars, would ever have been built. The enormous liabilities that might arise under the old rule of limitation from a single disaster would probably have prevented the venture.

In reliance on the protection of this limitation, two other steamers, each of 60,000 tons displacement are building at this moment, it is said, at Belfast. (International Year Book, 1908, p. 648.)

Attempts at Compromise.—For more than eleven years the International Maritime Committee has been endeavoring to find some common ground for a unification of the law on this subject. The continental nations could not adopt the English law alone, nor could we, from our very considerable number of sail vessels (our own, according to the census of 1905, being nearly one-half the tonnage of our steamers; see "Transportation, 1906," pp. 5–9), on which the £8 per ton maximum would be very oppressive, because considerably in excess of the average value ($29) of our sail vessels. And Great Britain has been equally tenacious of her system.

On the other hand, since more than half the commerce of the world was in British bottoms, no attempt at unification could possibly be successful without the concurrence of Great Britain. Thus, after years of discussion, the only compromise found practicable, has been that of adopting the main features of the two systems, with the option of either, as presented in this convention.

Unless this convention can be adopted in substance, the attempt at unification of the law on this subject, must apparently fail. That it will be accepted by most, if not all, of the European nations is pretty certain; since the delegates of a number of the leading nations have already advocated it, and the rest have mostly given their assent.

All concede that uniformity in the law of this subject, is extremely desirable; since the existing differences lead to vexatious interruptions and obstructions in the free play of international commerce and navigation. Not to mention other instances, vessels and owners of one country often cannot visit another country because of their liability to arrest for the satisfaction of claims (arising, perhaps, from collision on the high seas), which, by their own law, do not exist at all.

The majority of your committee favor the adoption of the proposed convention (amended as above suggested), including Article 6, not merely as presenting the only practicable means of unifying the law, but also as beneficial, on the whole, to our own interests.

We warmly favor every means of improving and enlarging our commerce and navigation, and our ships also, as their necessary instruments. The English maximum limit of £8 per ton, is in the *same line* of encouragement to ship-building and navigation, as the old rule of limitation to the value of the vessel, in use in all other nations; only it is one step further in advance of that rule. And this step in advance is just as proper and legitimate now, in the changed circumstances of modern times, as was the first modification centuries ago of the more ancient rule of indefinite liability. The vastly increased size and value of many of the vessels of recent times, makes this further limit a matter not of justice alone, but of the highest policy and practical necessity.

If equality is justice, the shipowner should not be mulcted disproportionately to his ship's tonnage capacity, merely because he has at greater cost to himself made her larger, faster and safer for the benefit of navigation. Vessels like the Lusitania and Mauritania, of about 32,000 tons each and worth five or six millions of dollars, or from £35 to £40 per ton, ought not to be held liable for property damage up to their full value, when a good freight steamer like the Wildenfels doing a slower and therefore inferior freight service, is charged for similar damage less than one-third as much; yet that would be the case under our present rule. When such inequality exists in the same freighting service, it is time to change the law. The same applies, only in a little less degree, to all the large and fast passenger steamers as respects their freighting service.

A fixed rate per ton furnishes the nearest practicable approach to equality of responsibility among all vessels in performing similar service, and for damage claims incurred in performing it.

So, freedom to improve the vessel in every possible way, without increased risk of loss, is of the highest policy, because that is the most powerful stimulus to improvement. It has proved so in British experience, and we believe would be so in this country.

Another reason for adopting the £8 limit as to property losses, is to leave room for compensation for loss of life on passenger vessels, for which England allows a liability up to £15 per ton. The United States has not yet enacted, as England has done, any statute giving compensation for losses of life at sea. It is the same with several of the European maritime countries. But there is already before our Congress a bill for that purpose, and it is hoped that this bill, supported as it is by so many precedents in State legislation, will become a part of our maritime law. To be effective such a law must have, so far as possible, means of enforcement against the ships themselves, and that must be done without at the same time becoming ruinous to owners.

It is just that the £7 extra should be imposed for loss of life on passenger ships, because it is only for the passenger trade that the high speed and luxurious appointments are required, which so greatly increase the cost and value per ton of passenger vessels. But this enhanced cost for the passenger trade affords no just ground for charging those vessels a disproportionate rate per ton for loss of goods, as compared with the cheaper ships that carry freight alone.

The limit of £8 per ton for damage to property would operate most unfavorably upon our sail vessels, if payment at that rate were obligatory; for our sail vessels are mostly of wood, and, according to the census of 1905 (see "Transportation, 1906," pp. 5–9) their average value is but $29 per ton, much less than £8. But this payment under Article 6 is never obligatory; it is optional only, and it would never be paid except when the ship was worth considerably more than £8 per gross ton. The right to *surrender* the ship, whether sail or steam, or to pay her value, would remain under this convention precisely as it exists now.

Infrequent use of the £8 option.—It is only when a considerably higher sum could be realized from a surrender of the vessel that any just objection could be made to the owner's option to pay £8 per ton and keep her. This would mostly arise in the case of passenger vessels only, whose greater cost and value were due to the requirements of the passenger service, and not to the carriage of cargo. The number of these ves-

sels is not large compared with the whole mass of freighting ships, and if £8 per ton is a fair limit for freight vessels, as respects damage to cargo, then passenger vessels are justly entitled to a release at the same rate per ton, as respects damages to property alone, in their freighting service.

Adequacy of £8 per ton.—In judging of the sufficiency of this sum as a cash payment in lieu of a surrender of the vessel in the freighting service, several points must be borne in mind, in addition to what has been said above (pp. 12, 11, 14).

1. Art. 6 applies to injuries to property alone. It does not apply to loss of life, which is wholly excluded from this convention (Art. 13); nor to damages arising from the faults or contracts of the owner (Art. 11); nor to indemnities for assistance and salvage, nor to the masters' contracts (Art. 6).
2. It has no application to damages to the cargo on board the *carrying vessel in fault*, because in this country by the Harter Act of 1893 (27 St. at Large, p. 445, ch. 105) all liability of the ship and owner for such damage is annulled: and in other countries the same result follows from the terms of the bills of lading universally there in use.
3. The £8 clause does apply to a vessel and her cargo wrongfully run down by another vessel; and claims for damages arising out of collisions are the principal, if not the only cases, to which Art. 6 applies.
4. The payment of £8 is substituted for the value of the vessel, etc., at the end of the voyage (Arts. 5 and 6).
5. Hence, in judging how far £8 per ton would be an average equivalent to a surrender, as respects freight vessels, a deduction from their first cost must be made:
   (a) For their yearly depreciation through age and use.
   (b) For their own damage through the collision itself.
   (c) For the loss on appraised value through a public forced sale after surrender.

Cost of Building.—The cost of building vessels is higher in this country than in Europe. But the difference is less in the construction of the high class passenger ships than in constructing ordinary freight vessels. The reason for the difference, as we are informed, is that the machinery and other

parts entering into the construction of freighters, are to a large extent *standarized*, and being manufactured in mass can be purchased as wanted, at much lower prices than they cost when manufactured for each particular ship. Thus, a plain metal freight ship like the Jean, of 3,125 gross tons, 2,391 registered tons and of about 9 knots speed, can be built in Europe for £9 per gross ton; a vessel like the Wildenfels, of about 10 knots speed, 5,505 gross tons, 3,559 net registered tons, for about £11. The cost in this country would be considerably more. Those prices were about the cost of wooden sail vessels in 1862, when the £8 limit was enacted, and it was in wooden vessels that freight was then chiefly carried.

Since then sailing freight vessels, of over 100 tons, are rapidly disappearing both here and in Europe. In 1902 the tonnage of the British sailing vessels was but one-seventh of the whole, and of these, three-fourths were of metal; in the United States 45 per cent. of our tonnage were in sail vessels, of which about five-sixths were of wood (Encycl. Brit., vol. 31, p. 545, "Ship"). According to the census of 1905 the percentage of our tonnage in sail-vessels was reduced to 30 per cent. ("Transportation, 1906," pp. 5–9).

In 1908 the new tonnage construction of sail-vessels in the United Kingdom was but one-twentieth of their whole construction in that year, and of this one-twentieth only one-fifth was of wood; in the United States, in that year, only one-eighth of the new construction was of sail-vessels, and these were nearly all of wood (New International Year Book, 1908, p. 647).

In the census returns of 1905, above referred to, the average value of

Metal sail vessels is given as	$44	per ton
Wooden sail-vessels is given as	29	" "
Wooden steamers is given as	61	" "
Passenger and freight metal steamers is given as	91	" "

Depreciation from Age.—The usual allowance for yearly depreciation on freight and passenger steamers of medium speed kept in good repair, is at least five per cent. of their value, taken year by year. On steamers of high speed somewhat more, and on low speed steamers and wooden vessels, a little less.

The sister steamers, Etruria and Umbria, of 8,120 gross tons, have been reported as sold within a few weeks past, to be broken up, for $100,000 and $80,000, though costing about $1,500,000 each.

Depreciation by Collision.—Slight collisions often happen with but little damage; but if a collision is so serious as to cause damage exceeding £8 per ton of the vessel in fault, the latter very rarely escapes without considerable damage to herself. Her damage, however, may be anything from zero to complete loss by sinking. While no accurate average is attainable, experts best acquainted with such cases assure us that from 5 per cent. to 12 per cent. on the value of the vessel is a very moderate estimated average of depreciation from a serious collision.

Loss from a Judicial Sale.—A surrender of the vessel means a forced public sale in judicial proceedings. We have never known such a sale to bring the appraised value. Seventy-five per cent. of the appraisement is generally deemed a successful sale; the amount realized is often less than that. We are assured by marine insurers that they would regard a cash payment of seventy-five per cent. of the appraisement as a fortunate settlement, to be decidedly preferred to the chances of a public sale.

With the above deductions in mind, it is obvious, that except in some extremely rare cases that might be imagined, the owner's voluntary payment of £8 per ton would be more beneficial to damage-claimants than the surrender of any sail vessel or freighting steamer; because that sum would be more than was likely to be realized from a surrender; and that for the same reason the owner would almost never make any such payment, and Art. 6 would, in such cases, be generally inoperative and harmless.

The large passenger steamers of from 10,000 to 35,000 gross tons, damaging wooden sail vessels or the small steam freighters would be held under Art. 6, if in fault, up to from $400,000 to $1,400,000, a sum sufficient to cover all ordinary damages to hull or cargo. So that it is only on collisions between the larger and costlier passenger steamers themselves that the £8 limit would be likely to prove inadequate and less beneficial than a surrender.

Damages to the Hull.—But as respects damages to the *hull*, any such inadequacy would in the long run prove no detriment. For what to-day would be lost by the £8 rule to one of the two vessels in collision would be so much gain to the other; and to-morrow, the conditions being reversed, the loss and the gain would on the whole be equalized. This ultimate equality is more certainly secured through the practise of insurance, now universal, except with a few companies,

which have so many vessels that they are able, profitably, to insure themselves.

Damages to Cargo.—As respects damage to cargo also, the same equalization and distribution of loss are attained, for the most part, by the universal practise of insurance. Insurance of cargo is necessary for many other causes than faults of the vessel. It is indispensable, without reference to the owner's limitation of liability. On payment of a loss the insurer becomes entitled by subrogation to all the property, and to all the claims against others, that the assured holds as security for the same loss; and therefore the insurer may recover against the shipowner to the extent of his legal liability. Under the operation of Art. 6, the shipowner, when sued, could limit recovery to £8 per ton, and if the insurance money paid for damages exceeded that sum, and the ship was worth, say $50,000 more, the insurer might at first seem to lose the difference under the £8 option allowed by Art. 6. But the owner of the ship in fault, when insuring, by his policy on the ship, his contingent liability for any damage to other property, by means of the runnning down clause, pays for this clause an additional rate of premium; and considering that this added rate is paid on every voyage, and that the cargo-owner has once already paid the proper rate for the full amount of his insurance, the additional rates paid by the ship owner for the running down clause covering the same damage claim must be deemed ample compensation to the insurer for the insurance of any such deficiency as above supposed, in the very few instances compared with the whole number of the ship's voyages in which a collision with such a deficiency would occur.*

to the extent of the insurers obligation

If, however, the added rate on the running down clause were not sufficient to cover such occasional deficiencies, the insurance companies can at any time adjust their rates to their needs, and an increase scarcely perceptible to the shipper would suffice.

Never, perhaps, was there so revolutionary a stroke in commercial relations as the Harter Act of 1893, which at one blow destroyed all responsibility of the ship-owner for damages caused to cargo on board his ship by faults in the navigation or management. In so doing, that Act at once swept away all right of indemnity by subrogation in favor of insurers, such as had previously existed, against the ships or owners, for the damages caused by their faults upon our export shipments amounting annually at that time to nearly $900,000,000, and in 1909 amounting to nearly $1,700,000,000

* Besides this, what is lost by insurer of cargo, is saved by the hull insurer under the running down clause: so that the £8 rule will make no difference to insurers as a whole

—all presumably insured. This was accomplished, it is said, without leading to any material increase in the rates of marine insurance, the increasing volume of insurance business rendering any increase in rates unnecessary. Any change that might be made by Art. 6 in insurers' rights of indemnity by subrogation would be vastly less than was caused by the Harter Act; and the change of rates, if any, would be proportionally less and utterly insignificant. Besides the continued natural increase of our insured exports, the maximum limit of £8 per ton would still further increase insurance business by fixing its exact needs and limits, and thus making its procurement easier.

Risks Diminishing.—It should be further noted, that the damages arising from collisions in proportion to our maritime commerce are much less now than formerly, and are continuously diminishing. Improved construction of vessels, iron or steel largely replacing wood; more numerous and more perfect water-tight compartments; improved signalling; and the wireless telegraph, both in warnings of danger and in bringing speedy assistance to vessels in distress, are more and more preventing serious collisions, and reducing losses when they occur. Rarely now is cargo seriously damaged in *all* of a ship's compartments: vessels that would formerly have sunk, with total loss, are now safely brought into port, with cargo mostly unharmed, to the great saving of owner and insurer. Thus the adequacy of the £8 limit in collision cases is greatly extended, and year by year it will continue to be extended more and more. Any deficiency in the comparatively few cases in which it may still be more or less inadequate, we believe, will be far more than compensated by the practical business advantages which the £8 limit will afford, and will justly fall upon insurer, without appreciable injustice to any one.

Summarizing: We favor the adoption of Art. 6, making £8 per gross ton the maximum liability for property damage;

1. Because this maximum will be without detriment to our freight vessels, whether steam or sail, since it will not be applied to them except in very rare instances, when the deficiency may justly be made good by the insurer.

2. Because for the large and fast passenger steamers, of the present day, a forfeiture of their full value is excessive; it is also impolitic, as discouraging to the building of such vessels and the growth of our shipping.

3. This maximum is reasonable in amount; it is a sufficient guaranty of honest and careful navigation and management, and it encourages the building of the largest and safest vessels by not increasing the penalties against them in case of disaster.

4. Because such large and costly vessels promote the safety of life and property by very greatly diminishing the damages on collisions to the great advantage of insurer and assured.

5. Because any damage above £8 per ton may, from these and other advantages, justly fall upon the insurer, without appreciable increase of rates or injustice to anyone.

N. Y., May 9, 1910.

ADDISON BROWN,
for the Majority of the Committee.