

# MARITIME LAW ASSOCIATION OF THE UNITED STATES.

## ADJOURNED ANNUAL MEETING.

MAY 27TH, 1910.

The adjourned annual meeting of the Maritime Law Association of the United States was held at the Building of the Association of the Bar of the City of New York on Friday, May 27th, 1910.

There were present: Hon. Addison Brown, Hon. William G. Choate, Hon. Henry G. Ward, Hon. Walter Noyes, Hon. Frederick Dodge, Hon. Charles M. Hough, Hon. Harrington Putnam, Messrs. Charles C. Burlingham, Robert M. Hughes, Lawrence Kneeland, George B. Ogden, Archibald C. Matteson, William Harison, A. Gordon Murray. The President, Hon. Addison Brown, presided.

The report of the Treasurer showing a balance on hand of \$179.63 was presented and ordered on file.

Mr. Murray presented a request from Mr. Edward G. Benedict, the Treasurer, that the action of the Association at the annual meeting in 1909, which remitted the collection of the annual dues for 1909, be rescinded, and that the Treasurer be authorized to collect the annual dues for both 1909 and the present year. The request of the Treasurer was not complied with, but the Treasurer was authorized to levy an additional tax if he should find the same necessary.

The Secretary presented a communication from Mr. A. A. Raven, President of the Atlantic Mutual Insurance Company, expressing his hope that the Association would not approve of the proposed convention in reference to limitation of ship owners' liability.

The Secretary also read a report from Mr. FitzHenry Smith, Jr., in reference to certain Bills now pending in Congress

awaiting action, to wit: Bill relating to actions for death at sea; Bill relating to suits against the United States, and Bill in reference to liens. A copy of the report is annexed hereto. It may be added that the Lien Bill passed the House on June 6, 1910. *It became a law June 27, 1910.*

The reports of the Special Committees appointed by the President to consider the proposed Conventions of the Brussels Conferences on Maritime Liens and on the Limitation of Ship Owners' Liability were made and a general discussion had on the same. The reports have been printed and distributed.

Judge Hough moved the adoption of the report of the Committee on the proposed Convention on Maritime Liens, which condemned Article 3 of the proposed convention. The resolution was unanimously adopted, and it was further directed that the Secretary be directed to notify the Secretary of State of the action of the Association, sending a copy of the report.

Judge Hough further moved that this Association recommend to the Secretary of State that we do not concur in the proposed convention. A general discussion followed, Judge Noyes, Judge Putnam, Mr. Burlingham, Judge Dodge and Mr. Kneeland participating. Mr. Kneeland moved that the delegates be instructed to insist that no treaty should be concurred in that does not amply secure the present American law in reference to liens and that this country should disapprove of anything that does not so approve. Judge Dodge, the Chairman of the Committee, then offered the following resolution, which, with the amendment proposed by Judge Choate and accepted by Judge Dodge, is as follows:

"In the opinion of this Association no treaty regarding maritime liens should be agreed to by the U. S. unless (1) it gives to liens arising from torts a rank superior to that of liens arising from contracts (other than mariner's wages, Choate, J., amendment—accepted, Dodge, J.); (2) recognizes, in addition to the list of liens set forth in Art. 3, liens in favor of charterers and cargo owners, liens for towage, stevedores' services and liens arising from torts other than collision."

It was proposed that the resolution be amended by striking out the first paragraph. The motion was lost. On the previous question the resolution as amended (Choate amendment) was adopted.

The Association proceeded to the consideration of the Proposed Convention on Limitation of Ship Owners' Liability.

Judge Brown asked to be allowed to make a correction in paragraph 4 of the Summary (page 20) by substituting after the opening word "Because," the words "the improvements in large steamers and in the aids to safe navigation," instead of the words "such large and costly vessels"; and in the third line to have the report read "in collision between them"; which corrections were allowed.

Judge Ward moved to accept the report of the Committee approving the substitution of £8 per ton for our present system, by the Association. Mr. Kneeland spoke against the motion.

Judge Brown lucidly explained the reasons which had led him to the conclusions stated in the Report of the Committee.

Judge Hough asked what the Committee had considered as to the meaning and effect of Article 13 and a general discussion followed, Judge Brown, Judge Putnam, Mr. Hughes, Mr. Burlingham participating, Judge Putnam holding that the proposals were not acceptable to him because they were not beneficial to the United States or its citizens.

Judge Hough moved the following resolution:

"That this Association recommends in principle the proposed Convention as to Limited Liability, but believes that the maximum liability for both property and personal damage should be further discussed, and therefore does not recommend £8 or any other exact amount per gross ton."

A general discussion followed, being participated in by Judge Brown, Judge Hough, Mr. Burlingham and others.

Judge Ward, by way of amendment, moved the acceptance of the report of the Committee as to Article 6, and the vote being taken by show of hands, the motion was lost: Ayes 4,

Noes 6. Mr. Hughes moved a reconsideration of the vote as to Article 6, but after discussion he withdrew the motion.

Judge Hough's resolution was then re-read and a vote taken by a show of hands, and it was adopted. Ayes 6, Noes 4.

Judge Putnam then moved that the President and Secretary be authorized to prepare a report of the action of this Association, and forward the same to the Secretary of State.

It was then moved and seconded that the report of the Committee as to other matters except Articles 6, be approved.

The same was unanimously adopted.

The meeting adjourned *sine die*.

A. GORDON MURRAY,  
*Secretary pro tem.*

REPORT ON THE BILLS OF THE ASSOCIATION,  
INTRODUCED IN CONGRESS.

The three bills proposed by the Association for enactment by the Congress of the United States and recommended by the American Bar Association, viz: (1) the bill relating to actions for death; (2) the bill relating to suits against the United States; and (3) the lien bill, so-called, were introduced in the House of Representatives at the request of the two Associations by Congressman Parker of New Jersey, December 17th, 1909. They were numbered respectively H. R. 15810, H. R. 15811 and H. R. 15812; and on the 10th of February, 1910, a hearing was had on all three measures before the sub-committee of the Committee on the Judiciary to which they were referred. Present at the hearing were Robert M. Hughes, Esq., representing the Maritime Law Association and the American Bar Association; FitzHenry Smith, Jr., representing the Maritime Law Association; H. C. Hunter, Esq., of New York, representing the New York & New Jersey Dry Dock Association, and other allied interests; Hermon A. Kelley, Esq., and F. S. Masten, Esq., both of Cleveland, representing ship-owning and ship-furnishing interests on the Great Lakes; and Edward C. Plummer, Esq., of Bath, Maine, the representative of the Atlantic Carriers' Association. The argument on the lien bill was made by Mr. Smith, Mr. Hughes taking charge of the other two bills. Benjamin Thompson, Esq., of Portland, Maine, through Mr. Plummer, submitted briefs on all three measures, and Mr. Kelley and Mr. Masten spoke in favor of the lien bill.

The Committee took kindly to all of the measures except the bill relating to suits against the United States, which Congressman Moon of Pennsylvania, the Chairman of the Committee, opposed as special legislation. He expressed himself as of the opinion that the United States should be held responsible for the torts of its agents, but thought that the

proper way of providing rights of action in cases of tort was by an amendment of the Tucker Act, whereby it should be made to include torts as well as contracts. It was suggested that so radical a measure might not meet with the approval of Congress, that the right of action provided for in the bill of the Association was much demanded and that the bill made a good beginning; but the Chairman said he could not see his way conscientiously to favor the measure.

Without opposing the lien bill Mr. Masten desired to have the word "towage" added after the word "including" in the first section. This amendment your Committee did not think necessary, or feel itself in a position to agree to, and the bill was favorably reported by the full Judiciary Committee of the House without amendment on the 20th of March, 1910. This report was unanimous.

All three measures were introduced in the Senate by Senator Lodge on the 11th of February, and there was a hearing before the sub-committee of the Senate Judiciary Committee in Washington, March 31st. At this meeting were present Robert M. Hughes, Esq., representing the Maritime Law Association and the American Bar Association; George Whitelock, Esq., representing the American Bar Association, and FitzHenry Smith, Jr., representing the Maritime Law Association; also, as on the former occasion, Mr. Hunter appeared for the New York & New Jersey Dry Dock Association, and other interests, and the Lake interests were represented by Mr. Kelley and Mr. Masten. Mr. Plummer sent a telegram announcing that he favored all three of the bills, and Archibald G. Thacher, Esq., of New York and James H. Hayden, Esq., of Washington, appeared in support of the bill relating to suits against the United States in particular.

The arguments in favor of the bills were made as follows: the lien bill, by Mr. Smith; the death statute, by Mr. Whitelock; and the bill relating to suits against the United States by Mr. Thacher, Mr. Hayden and Mr. Hughes. Mr. Masten again suggested the insertion of the word "towage" in the lien bill. The bill was, however, favorably reported by the full

Judiciary Committee the 16th inst. without the addition of the word, but with an amendment in the fifth clause consisting of the insertion of the words "to be enforced by proceedings *in rem*." This amendment your Committee thinks was unnecessary, but was insisted upon by Senator Clark because of the fear that the bill might otherwise be construed to prevent the attachment of a vessel in an action against the owner in a State court. The report of the Committee on the lien bill was unanimous, and it is expected by the Chairmen of both Committees of Congress that the bill will pass at this session. The amendment, being a mere matter of phraseology, it is not anticipated will, in any way, hinder the progress of the measure.

Neither of the remaining measures, the death statute, so-called, and the bill relating to suits against the United States, has as yet been reported out of the Committees, but it is hoped that the former, at least, will be placed upon the Calendar during this session and perhaps the bill relating to suits against the United States. It is extremely doubtful, however, if either will be enacted by the present Congress.

Because of criticism of the original bill of the Association relating to suits against the United States, a new bill was introduced by Senator Brandegee. This was the bill discussed at the hearing before the Senate Committee. It was revised as a result of the hearing and the revised bill has been introduced in both branches of Congress, S. 7938, H. R. 26137.

The Senate numbers of the other bills are: the lien bill S. 6289 (Calendar No. 650); the death statute S. 6291.

The revised bill relative to suits against the United States is broader than the original bill of the Association upon the same subject in that the right of action is not given to the owners of American vessels alone, or the damages limited to those resulting from an actual physical contact with a vessel of the United States. The new bill does, however, expressly limit the injury for which recovery may be had to damages to property and refers only to cases occurring after the passage of the act. Further, the bill now under consideration contains a section providing for the removal of the cause, under certain

circumstances, by the United States. The want of such a provision raised an objection to the original bill, for it was felt that without it the Government might be greatly inconvenienced by a trial of the case in the district wherein the libel was filed.

In the main, the new bill follows the Tucker Act more closely than did the old bill and the changes made, it is believed, will have the effect of mitigating the opposition to the Association's bill, if not to dissipate all opposition. The importance of the measure from the point of view of the national Government has, however, tended to delay action on the bill.

Aside from the personal attendance of members of your Committee and of the Committee of the American Bar Association before the Committees of Congress, your Committee has been in constant communication with the members of Congress in charge of the bills here referred to, and with parties throughout the country interested in them. Every effort has been made to secure the support of as many members of Congress as possible, and it is confidently believed that, as a result, the lien bill, at least, will become law before Congress adjourns.

Much credit is due to the members of the Congressional Committees, in particular to Senator Dillingham, the Chairman, and Senator Brandegee of the Senate sub-committee, and to Mr. Moon, the Chairman of the House sub-committee, for the careful attention they have given these important matters.

Respectfully submitted,

FITZ-HENRY SMITH, JR.,  
*For the Committee.*

*May 26th, 1910.*