

MARITIME LAW ASSOCIATION OF THE UNITED STATES.

A meeting of the Maritime Law Association of the United States was held at the Rooms of the County Lawyers' Association, 165 Broadway, New York, on the 8th of December, 1911, for the purpose of taking action upon the report of the Committee appointed to consider the propriety of amending the present Pilot Rules for Eastern Waters, promulgated with the approval of the Secretary of Commerce and Labor April 1, 1911. A copy of the report of the committee has been heretofore printed and sent to the members of the association.

In the absence of the Hon. Harrington Putnam, President of the Association, Judge Holt presided.

Mr. Burlingham offered the following resolution:

Resolved, that the report of the Committee appointed at the last annual meeting to consider the propriety of amending the Pilot Rules for Inland Waters, be accepted and approved;

Further, that the special rules recommended by the Committee in Appendix B of their report, be approved;

Further, that the suggestions of the Committee as to the contents of the official pamphlet published by the Department of Commerce and Labor, be approved;

Further, that the Committee be authorized to present the report, the proposed rules and the recommendations to the Secretary of Commerce and Labor, the Supervising Inspector-General and the Supervising Inspectors, and to take such steps as may be necessary to secure the adoption of the rules and recommendations by the Board of United States Supervising Inspectors, Steamboat Inspection Service, at their next meeting.

After discussion, the resolution was adopted without change.

A copy of the report of the Committee, together with the resolution, has been sent to the Secretary of Commerce and

Labor, and by him has been referred to the Steamboat Inspection Service. Under date of December 19, 1911, that Bureau advised the Secretary of this association that the matter had been listed for consideration at the next meeting of the Board of Supervising Inspectors to be held in Washington, Jany. 17, 1911, and that a copy of the report of the Committee of the association had been sent to each of the Supervising Inspectors.

Mr. Frederick M. Brown, delegate from the Maritime Law Association of the United States to the Paris Conference of the International Maritime Committee, held October 9-13, 1911, presented his report as such delegate, copy of which is hereto annexed, marked "A." The Resolutions of the Paris Conference, commented on in Mr. Brown's report, have already been sent to the members of this Association.

Since the above meeting the Secretary has received a communication from the Commissioner of Navigation, bearing date Jany. 10, 1912, enclosing copy of House Document No. 409, 62d Congress, 2d Session, recommending an appropriation of \$5,000 for the participation by the United States in the International Conference on Maritime Law, to meet in Brussels, Belgium, September, 1912. The Commissioner desires that members of the Association will write to members of the House and Senate Committees on Appropriations, explaining the desirability of the appropriation. A list of the members of such committees follows, marked "B"; also text of the letter of the Secretary of State to the Secretary of the Treasury, requesting that the claim be submitted to the Speaker of the House, which copy letter is marked "C."

New York, Jany., 1912.

EDWARD GRENVILLE BENEDICT,
Secretary.

A.

HON. HARRINGTON PUTNAM,

*President, International Maritime Law Association of the
United States.*

DEAR SIR:

In view of the fact that I attended the Paris Conference of October, 1911, without instructions as to the attitude which I should assume as representing the American Association, it seems proper that I should report the conclusions to which a careful consideration of the subjects before the Paris Conference brought me and which I advocated before the Conference.

For convenience of statement, I shall refer to the resolutions adopted by the Conference and sent (in French) to the various National Associations 24 October, 1911, by Mr. Louis Franck, the Honorable General Secretary of the Conference. A translation of these resolutions has, I understand, been sent to all the members of our Association.

SHIPOWNERS' LIMITATION OF LIABILITY.

The £8 limitation for material injuries has seemed to me not to be properly open to further consideration after the action taken at Venice, Bremen and Brussels. I believe there should be an additional limit to cover personal injury and death claims, but that the amount by which the £8 per ton limitation must be increased for this purpose should be more than £7 per ton. If, nevertheless, the shipowner surrender his vessel or her value, I favored a rule absolving him from all other liability than for his own personal acts and defaults and for unseaworthiness of his vessel existing at the time of leaving her last domestic port, instead of making the limit for the benefit of personal injury and death claimants £7 more than the value of the vessel, as is the rule represented by the resolution of the Conference. The latter rule of liability would, I think, be extremely difficult to apply under our procedure and would be of little value to American claimants in respect of foreign ships.

FREIGHT.

Article I, establishing the underlying principle that the obligation to pay freight, is conditioned upon delivery of the goods.

This article, in its French text, I favored. According to the proposal of the London Commission, freight would in general not be payable unless the goods arrive *at the port of destination*. The Hamburg Commission substituted "delivery to consignees" for "arrival at destination." My suggestion that this might advantageously read (in English) "delivered or tendered for delivery" met with the approval of the Conference. It was translated into French by the words "mise à la disposition," which is, I think, the equivalent of "tendered for delivery." "Placed in the control" does not seem to me so good a translation.

Article II, making freight due, by way of exception, in spite of non-delivery.

a. This subdivision (in respect of cargo owners' faults), I have regarded as satisfactory.

b. This subdivision (in respect of perishable goods) I favored omitting. If by any misrepresentation or artifice of the shipper, the carrier had no opportunity of knowing the condition of the goods, the situation, I think, would be sufficiently covered by subdivision "a". If, on the other hand, the carrier had such opportunity, it seems to me that it is a fair conception of the relations between carrier and cargo owner, where goods are shipped known (equally to both parties) to be liable to perish during the voyage on account of their nature, that the shipowner in accepting the goods for transportation, should be deemed to assume the risk of losing his profit in the adventure (freight) if the goods perish, just as the cargo owner, in the like event, loses his profit and more.

c. It seemed to me that the rule as to freight on animals dying during the voyage should be the same as that relating to perishable merchandise perishing on the voyage. The subdivision, as it stands, was added to the draft treaty after it had been otherwise fully passed upon. This was due to the urgency of Dr. Sieveking. Although the principle that freight is not payable in respect of merchandise lost on a voyage in consequence of a non-negligent, particular average disaster, was repeatedly accepted by the Conference and no difference in principle was attempted to be pointed out relating to live stock.

this subdivision was adopted because of the difficulty, in practice, in distinguishing between the death of animals by an external disaster and death by sickness.

d. If the purpose of this subdivision was merely to make it clear that freight is due in respect of goods justifiably destroyed during the voyage where the shipper was in fault for shipping them, I was in accord with such purpose, but favored including the provision with subdivision "a", enlarging the language of that subdivision, if thought necessary. I voted against subdivision "d" as it stood.

e. It seemed to me that the utmost concession from cargo interests which shipowning interests might fairly seek would be that where goods were properly sold short of destination owing to a casualty happening without fault on the part of the carrier, freight *pro rata itineris* or even full freight should be payable. The actual text of subdivision "e" is much broader than this.

f. This subdivision seemed to me illogical in principle. It will make the position of an owner of goods sacrificed and made good in general average the same whether, under the contract of carriage, freight was to have been payable on arrival at destination or was prepaid absolutely; that is, not subject to being returned in any event.

ARTICLE III.

I find no fault with this article, except that I think it would be fair that the shipper or promissor of lump sum freight should not be made liable under the treaty for more than the delivered value of his goods.

ARTICLE IV.

This article I have opposed because I think that as an underlying principle of construction (recognized in many ways by the Conference itself), freight should be regarded as compensation for benefit conferred upon the cargo owner, not for effort put forth by the shipowner.

ARTICLE V.

The sense of the first part of this article, as it was discussed

in the Conference and, as I understood, adopted, was that a shipowner is not entitled to any limitation of liability where loss results from his failure to furnish a seaworthy vessel. To this extent I have favored the provision. The proposed definition of a seaworthy vessel does not seem to me satisfactory, especially the use of the phrase "under ordinary circumstances," which I fear might be understood as meaning any ordinary weather. If seaworthiness be defined at all, I should prefer to define it substantially as a state of reasonable fitness to undergo successfully the exigencies and dangers of the adventure undertaken. If a treaty on this subject be adopted, I do not think that it should be competent for the several nations to adopt for their own vessels a lower general standard of seaworthiness than that which the treaty may fix, thus giving the vessels of a particular nation, perhaps, the advantage over other vessels in litigation throughout the courts of the world. But I think that where the vessel has been made reasonably safe within the ordinary definition, it should be competent for the several nations to make specific requirements for their ships in addition thereto and that failure to conform to these requirements should be deemed throughout the entire world an actionable fault, loss having resulted therefrom.

ARTICLE XVII.

In case of a time charter of whose provisions the cargo owner has no notice, I favored giving the latter a remedy against the ship or shipowner for nautical faults and against shipowner and charterer jointly for commercial faults subject to a remedy also against the charterer for nautical faults if the charter turn out to be one of demise and subject to defenses under the Harter Act. As between shipowner and charterer, I favored a rule imposing the burden of loss upon the party whose right it was to hire and discharge the person guilty of fault.

Yours faithfully,

FREDERICK M. BROWN.

B.

MEMBERS OF THE COMMITTEE ON APPROPRIATION, HOUSE OF REPRESENTATIVES.

JOHN J. FITZGERALD, N. Y.	JOSEPH G. CANNON, Ill.
ALBERT S. BURLESON, Texas.	HENRY H. BINGHAM, Penn.
SWAGER SHERLEY, Kentucky.	FREDERICK H. GILLETT, Mass.
CHARLES L. BARTLETT, Ga.	EDWARD L. TAYLOR, Jr., Ohio.
JOSEPH T. JOHNSON, S. C.	GEORGE R. MALBY, N. Y.
ROBERT N. PAGE, N. C.	JOHN W. DWIGHT, N. Y.
E. W. SAUNDERS, Va.	JAMES W. GOOD, Iowa.
JOHN G. MCHENRY, Penn.	
GEORGE W. RAUCH, Ind.	
JOSEPH W. BYRNS, Tenn.	
THOMAS UPTON SISSON, Miss.	
EUGENE F. KINKEAD, N. J.	
JAMES M. COX, Ohio.	
WILLIAM P. BORLAND, Mo.	

MEMBERS OF THE COMMITTEE ON APPROPRIATIONS, U. S. SENATE.

FRANCIS E. WARREN, Wyoming.	BENJAMIN R. TILLMAN, S. C.
GEORGE C. PERKINS, Cal.	MURPHY J. FOSTER, La.
JACOB H. GALLINGER, N. H.	CHARLES A. CULBERSON, Texas.
CHARLES CURTIS, Kansas.	THOMAS S. MARTIN, Va.
ROBERT J. GAMBLE, S. Dak.	LEE S. OVERMANN, N. C.
REED SMOOT, Utah.	ROBERT L. OWEN, Okla.
GEORGE S. NIXON, Nevada.	JOHN WALTER SMITH, Md.
JOSEPH M. DIXON, Montana.	
JONATHAN BOURNE, JR., Oregon.	
GEORGE PEABODY WETMORE, R. I.	

C.

DEPARTMENT OF STATE,

WASHINGTON, January 4, 1912.

The Secretary of the Treasury.

SIR: In the estimates for foreign intercourse for the fiscal year ending June 30, 1913 (p. 175 of the Book of Estimates), I submitted the following item:

International Conference on Maritime Law: Participation by the United States, by officially appointed delegates, in the International Conference on Maritime Law to be called by the Government of Belgium, is hereby authorized.

No appropriation was requested for the expenses of such participation for the reason that the Department of State was not at the time advised when the conference would be held. Information has now reached the department that the conference will assemble at Brussels in September, 1912. I have the honor, therefore, to request that you will submit to the Speaker of the House of Representatives the following item in substitution for the item in the Book of Estimates above quoted:

For participation by the United States, by officially appointed delegates, in the International Conference on Maritime Law, to meet at Brussels, Belgium, in September, 1912, \$5,000, or so much thereof as may be necessary.

In the formal International Conference on Maritime Law which met at Brussels in September, 1910, the Government of the United States, under provision made by Congress, was represented by four of the leading admiralty lawyers in the United States. At that conference, two conventions were adopted for submission to the Governments, one relating to salvage and the other to collisions at sea. The former is now before the Senate and the latter is still having the consideration of the Executive. The forthcoming conference will take up the study of the codifying of the laws of maritime law concerning the limitation of the liability of owners of seagoing vessels and those concerning liens and mortgages. The Secretary of Commerce and Labor, to whose department these subjects are pertinent, is of the opinion that the United States should be represented at this important conference by gentlemen proficient in maritime law, and that the sum of \$5,000 will be required for the purpose of such participation. I have the honor to be, sir,

Your obedient servant,

P. C. KNOX.

MARITIME LAW ASSOCIATION OF THE UNITED STATES.

PROPOSED BILL

RELATING TO THE MAINTENANCE OF ACTIONS FOR DEATH
IN MARITIME CASES.

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

That whenever the death of a person, whether on land or water, shall be caused by a personal injury received by such person, through the wrongful act, neglect, or default of another, on the high seas, the Great Lakes, or any navigable waters of the United States and the deceased might have maintained an action, whether of contract or tort, in the Admiralty Courts of the United States to recover damages for such injury had death not ensued, then the legal representative of such deceased person may maintain an action to recover damages for the death of such person against the vessel, foreign or domestic, or the person who would have been liable to the deceased had death not ensued.

SEC. 2. That such action shall be brought by the legal representative of the deceased for the exclusive benefit of the deceased's wife, husband, or dependent next-of-kin, and in such action the said legal representative may recover such damages as shall be just and reasonable

compensation to the party or parties for whom the action is brought not exceeding in all the sum of Five Thousand Dollars, to be apportioned among them by the Court according to the pecuniary damages they severally have suffered by reason of the injury and death of the decedent.

SEC. 3. That if the death of a seaman, whether on land or water, be caused by an injury received in the service of a vessel under such circumstances that the seaman could not have maintained an action in the Admiralty Courts of the United States to recover damages against such vessel, or the owner thereof, had death not ensued, then no action shall be maintained against such vessel or owner to recover damages because of the death of such seaman; but this section shall not be construed to abridge any right of action for the recovery of the wages of a deceased seaman or the expenses of his maintenance and care in the case of the death of the seaman from an injury received in the service of the vessel, and nothing in this section shall be construed to abridge the right to maintain an action under this Act to recover damages for the death of a seaman against another vessel or the owner thereof.

SEC. 4. That in any action brought under this Act in a Court of Admiralty of the United States, contributory negligence shall not be held to bar recovery, but the negligence or contributory negligence of the deceased shall have the same effect as to the amount recoverable as if the action were brought by the injured person, provided that the amount of damages awarded shall not in any case exceed the limit specified in section two.

SEC. 5. That no action shall be maintained under this Act unless it is brought within one year after the decedent's death, provided that no action shall be barred by the running of the limitation aforesaid if reasonable opportunity be not afforded during said period for service of process within the United States upon the vessel or the person liable. Except as otherwise provided herein every right of action given by this Act shall be barred by laches in the enforcement of such right.

SEC. 6. That if at the death of a person any action brought by him to recover damages or compensation for a personal injury received by him, as aforesaid, be pending and undetermined, such action shall proceed no further, except that his legal representative may, on petition to the court, within one year after his decease, or within such further time as the court, on cause shown, may permit, 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 or compensation 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 action other than as given by this Act shall be maintained because of such injuries.

SEC. 7. That this Act shall not abridge the rights of shipowners and others to avail themselves of the provi-

sions of sections forty-two hundred and eighty, forty-two hundred and eighty-three, forty-two hundred and eighty-five, forty-two hundred and eighty-six, and forty-two hundred and eighty-seven of the Revised Statutes of the United States, and Acts amendatory thereof and additional thereto, relating to limitations of liability.

SEC. 8. That the words "dependent next of kin" in this Act mean such next of kin as are wholly or in part dependent upon the decedent for support at the time of his injury.

SEC. 9. That this Act shall supersede in the Courts of the United States the provisions of all State statutes, providing rights of action for death, in respect of all cases of death caused by an injury received on the high seas, the Great Lakes or any navigable waters of the United States. But this Section shall not be construed to abridge the rights of suitors to a remedy in personam in the courts of the several states or elsewhere for the recovery of damages or other compensation under this Act.

LIST OF MEMBERS

MARITIME LAW ASSOCIATION OF THE UNITED STATES.

NOVEMBER, 1911.

President :

HONORABLE HARRINGTON PUTNAM.

Secretary and Treasurer :

EDWARD GRENVILLE BENEDICT.

Executive Committee :

EVERETT P. WHEELER,

LAWRENCE KNEELAND,

FITZ-HENRY SMITH, Jr.

- | | |
|-----------------------------|---|
| ANDERSON, CHARLES E. | 34 South St., Baltimore, Md. |
| BAYLIES, EDMUND L. | 54 Wall St., New York. |
| BENEDICT, EDWARD GRENVILLE, | 79 Wall St., New York. |
| BETTS, GEORGE W., Jr. | 165 Broadway, New York. |
| BICKFORD, R. G. | Newport News, Va. |
| BLODGETT, EDWARD E. | 28 State St., Boston, Mass. |
| BRADFORD, Hon. EDWARD G. | Wilmington, Del. |
| BRAWLEY, Hon. WILLIAM H. | Charleston, S. C. |
| BROWN, Hon. ADDISON, | 45 West 89th St., New York. |
| BROWN, ARTHUR GEORGE, | 841 Calvert Bldg., Baltimore, Md. |
| BROWN, Hon. ARTHUR L. | Providence, R. I. |
| BROWN, FREDERICK M. | 54 Wall St., New York. |
| BROWN, Hon. HENRY B. | Washington, D. C. |
| BROWN, PIERRE M. | 71 Nassau St., New York. |
| BRYAN, J. P. K. | Charleston, S. C. |
| BRYANT, JOHN D. | 53 State St., Boston, Mass. |
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| CANFIELD, F. H. | Moffatt Block, Detroit, Mich. |
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| CARVER, EUGENE P. | 60 Wall St., New York. |
| CATON, JAMES R. | 111 South Fairfax St., Alexandria, Va. |
| CHAMBERLIN, Hon. E. T. | Bureau of Navigation, Washington, D. C. |
| CHEYNEY, HORACE L. | 60 Wall St., New York. |

CHOATE, Hon. JOSEPH H.	60 Wall St., New York.
CHOATE, JOSEPH H., Jr.	60 Wall St., New York.
CHOATE, Hon. WILLIAM G.	40 Wall St., New York.
CLIFFORD, CHARLES WARREN,	New Bedford, Mass.
COE, WILLIAM R.	49 Wall St., New York.
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DEAN, CHARLES E.	37 Wall St., New York.
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GORE, THEODORE W.	30 Kilby St., Boston, Mass.
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HICKOX, CHARLES R.	27 William St., New York.
HOUGH, Hon. CHARLES M.	P. O. Bldg., New York.

- HOLT, Hon. GEORGE C.
 HOWE, WILLIAM WIRT,
 HOYT, JAMES H.
 HUGER, ALFRED,
 HUGHES, FLOYD,
 HUGHES, ROBERT M.
 HUNTER, HENRY C.
- KIRLIN, J. PARKER,
 KELLEY, H. A.
 KNEELAND, LAWRENCE,
 KRAUSE, M. C.
 KREMER, C. E.
- LACOMBE, Hon. HENRY E.
 LAROCQUE, JOSEPH J., Jr.
 LATHROP, Hon. JOHN,
 LEAKEN, WILLIAM R.
 LEAKIN, J. WILSON,
 LEDYARD, LEWIS CASS,
 LEWIS, JOHN F.
 LITTLE, HENRY H.
 LOCKE, Hon. JAMES W.
 LOINES, RUSSELL H.
- MACKALL, WILLIAM W.
 MACKLIN, JAMES J.
 MARKHAM, STEWART,
 MARSH, GEORGE T.
 MASTEN, FRANK S.
 MATHER, CHARLES E.
 MATTESON, ARCHIBALD C.
 MATTISON, HENRY E.
 MCPHERSON, Hon. JOHN B.
 MCGEE, WILLIAM H.
 MISTER, BEVERLEY W.
 MORRIS, Hon. THOMAS J.
 MURRAY, A. GORDON,
- NEALL, F. L.
 NOYES, Hon. WALTER C.
- OAKES, HERBERT K.
 O'BRIEN, JOSEPH A.
 OGDEN, GEORGE B.
 OWEN, EDWARD L.
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 Western Reserve Bldg., Cleveland, O.
 Charleston, S. C.
 Norfolk, Va.
 Columbia Bldg., Norfolk, Va.
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 Western Reserve Bldg., Cleveland, O.
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 Fort Dearborn Bldg., Chicago, Ill.
- P. O. Bldg., New York.
 40 Wall St., New York.
 Boston, Mass.
 Savannah, Ga.
 705 Fidelity Bldg., Baltimore, Md.
 54 Wall St., New York.
 722 Bourse Bldg., Philadelphia, Pa.
 Norfolk, Va.
 Jacksonville, Fla.
 49 Wall St., New York.
- Savannah, Ga.
 1 Broadway, New York.
 New Insurance Bldg., Milwaukee, Wis.
 31 Market Square, Providence, R. I.
 Rockefeller Bldg., Cleveland, O.
 226 Walnut St., Philadelphia, Pa.
 31 Market Square, Providence, R. I.
 79 Wall St., New York.
 P. O. Bldg., Philadelphia, Pa.
 77 Beaver St., New York.
 Equitable Bldg., Baltimore, Md.
 U. S. Court House, Baltimore, Md.
 60 Wall St., New York.
- 318½ Walnut St., Philadelphia, Pa.
 P. O. Bldg., New York.
- Union Trust Bldg., Detroit, Mich.
 226 Walnut St., Philadelphia, Pa.
 7 South William St., New York.
 71 Wall St., New York.

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PILLANS, H.	Mobile, Ala.
PUTNAM, GEORGE,	Ames Bldg., Boston, Mass.
PUTNAM, Hon. HARRINGTON,	County Court House, Brooklyn, N. Y.
PUTNAM, Hon. WILLIAM L.	Portland, Me.
RAVEN, A. A.	49 Wall St., New York.
RICHBERG, JOHN C.	Rector Bldg., Chicago, Ill.
ROGERS, HENRY M.	89 State St., Boston, Mass.
RUSSELL, ARTHUR H.	27 State St., Boston, Mass.
RUSSELL, THOMAS H.	27 State St., Boston, Mass.
SHAW, JOHN C.	Union Trust Bldg., Detroit, Mich.
SHELBY, Hon. DAVID D.	Huntsville, Ala.
SHOPE, JULIAN B.	37 Liberty St., New York.
SMITH, FITZ-HENRY, Jr.	35 Congress St., Boston, Mass.
SMITH, ROBERT H.	Baltimore, Md.
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WARD, J. LANGDON,	120 Broadway, New York.
WHEELER, EVERETT P.	27 William St., New York.
WHITE, WILLIAM H., Jr.	Norfolk, Va.
WHITELOCK, GEORGE,	1407 Continental Bldg., Baltimore, Md.
WILLIAMS, A. NATHAN,	10 Tremont St., Boston, Mass.
WING, HENRY T.	27 William St., New York.
WOOLSEY, JOHN M.	27 William St., New York.