

MARITIME LAW ASSOCIATION OF THE UNITED STATES.

FEBRUARY 15, 1912.

To the Members of the Association:

At the last annual meeting of the Association there were given to the undersigned as a committee two legislative bills which had been adopted by the Association and introduced in Congress but which that body had not acted upon favorably. The committee were requested to examine the measures and to report whether or not they should be revised.

One of the bills referred to was entitled "An Act to Authorize the Maintenance of Actions for Negligence Causing Death in Maritime Causes." It had been adopted by the Association November 20th, 1903, and while no one seems to have questioned the need for some such federal legislation the bill never was completely satisfactory to many members of the Association. And it failed in Congress as above stated notwithstanding the efforts of the representatives of this Association and of the American Bar Association.

Your committee concluded that the bill was cumbersome and inadequate and they undertook to prepare a redraft which they could recommend to the Association. The purpose of the committee was, briefly, to frame a single law for the Courts of the United States which would meet the difficulties in the existing law and avoid the anomaly of having rights of action for death from a maritime tort depend in the Courts of Admiralty on state statutes. The task proved to be most difficult, and when asked to report progress at the recent dinner of the Association your committee made use of the opportunity to have printed and distributed for consideration by the members present a provisional redraft of the bill adopted by the Association. It was not expected that the matter could be disposed of finally at the dinner, but it was hoped that as a result of the discussion of the redraft the committee could agree upon a new bill to be submitted to the Association. The discussion showed, how-

ever, such a variety of views that, in light of the importance of the measure, your committee concluded that a further consideration of the subject was advisable, and that the matter could with advantage be submitted to all members of the Association for suggestions.

Enclosed herewith are copies (1) of the bill adopted by the Association in 1903, (2) of your committee's revised draft, together with (2a) an alternative first section, and (3) of a draft submitted to the Association by Henry W. Goodrich, Esquire, at the dinner on February 2nd. Your criticisms and suggestions in respect of all of these measures and of the subject generally are earnestly solicited, and will be gladly received by any member of the committee. Without your help in advance of the annual meeting next May, when the matter will come up for final action, the chance of securing approval of a satisfactory measure will be very much lessened.

While seeking your views the committee desires to emphasize the practical side of the matter, to wit: that the bill adopted must be one which Congress will be likely to pass; in other words, that it be as free as possible from features which might tend to arouse hostility. Feeling that the provision was one which would appeal to ship owners your committee retained in their revised draft the provision of the Association's bill limiting the amount to be recovered to \$5,000, although on general principles the committee believes that there should be no limitation, and for a similar reason recovery was restricted to "dependent" next of kin. There are, however, certain specific features of the law which it seems expedient to provide for in a federal statute, as for example, the right of recovery in the case of the death of a seaman, and the effect of the contributory negligence of the deceased.

At the dinner the suggestions most discussed were:

(1) That the statute should be made applicable to United States Courts only when sitting in admiralty, and

(2) That the right of action should be given for a tort committed on the high seas only. This suggestion had its origin in the fear that otherwise there might be objection to the bill on the part of the several states.

Among the questions asked at the dinner were

(1) As to how a case removed from a state court would be tried in the United States Courts, whether with or without a jury, and what law would govern in the event of such a removal, and

(2) Whether the running of the period of limitation as against the owner should bar action against the vessel, assuming that it was not possible to seize the vessel during the period.

All of these matters require serious consideration and upon them the committee respectfully asks to have your views at your earliest convenience, in any event before the first of April, 1912.

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Committee.

BILL ADOPTED BY MARITIME LAW
ASSOCIATION Nov. 20, 1903.

AN ACT to authorize the maintenance of actions for negligence causing death in maritime causes.

Be it enacted that:

SECTION I. Whenever an action, whether *in rem* or *in personam*, might have been maintained by any injured party, had death not occurred, to recover damages for personal injury happening to such person on the high seas, the Great Lakes, or any navigable waters of the United States, or if happening to any of the passengers or crew on board of any vessel of the United States, then in whatsoever waters such vessel may have been at the time of such injury, such injury in every such case having been caused by the wrongful act, neglect or default of another and though amounting to a felony, then if such personal injury shall result in the death whether on land or water of the person injured, an action *in rem* or *in personam* as may be appropriate, may be brought for the exclusive benefit of the deceased's husband, wife or next of kin, by the personal representatives of the deceased against the vessel, foreign or domestic, or the persons that would have been liable to the deceased if death had not occurred. And in such action such personal representatives may recover such damages as shall be fair and just compensation, with reference to the pecuniary damages resulting from such injury and death to the deceased's husband, wife or next of kin, severally, not exceeding in all the sum of \$5,000, to be apportioned among them at the trial, according to the pecuniary damages severally sustained by them, provided, however, that such action, if *in rem*, shall be brought within one year, or if *in personam*, within two years, after the decedent's death; but if the vessel or the persons liable be absent from the United States at the time of such death, the periods above limited for the commencement of the action against them respectively shall be counted from the time of the

first presence of such vessel or persons within the United States, affording reasonable opportunity for service of process upon them after such injured person's death.

SECTION 2. If at decedent's death, any action brought by him to recover damages for such injuries be pending and undetermined, such action shall proceed no further, except that his personal representatives may at their option 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 plaintiffs 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 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 other action than that given by the preceding Section shall be maintained by reason of such injuries.

SECTION 3. This Act shall not abridge the rights of ship-owners and others to avail themselves of the provisions of Sections 4282, 4283, 4285, 4286 and 4287 of the Revised Statutes of the United States, and Acts amendatory thereof and additional thereto relating to limitations of liability; nor the right of suitors to a remedy *in personam* in the Courts of the several States and elsewhere, for the recovery of damages under this Act, against any person or corporation liable therefor.

SECTION 4. In any action brought under this Act, negligence or contributory negligence of the decedent shall have the same effect as to the damages recoverable as if the action were an action brought by the injured person, but the damages are not in any case to exceed the limit above provided.

COMMITTEE'S REVISED 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 ship-owners and others to avail themselves of the provisions 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.

COMMITTEE'S REVISED BILL.

ALTERNATIVE FIRST SECTION.

I. That whenever the death of a person shall be caused by an injury received by such person through the wrongful act, neglect or default of a vessel, or of another person, 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, to recover damages for such injury had death not ensued, then the legal representative of such

deceased person, whether the death occurs on land or on water, may maintain in the District Court of the United States an action to recover damages for the death of such person *in rem* against the vessel, foreign or domestic, through the wrongful act, neglect or default of which the injury was sustained, or *in personam* against the person who would have been liable to the deceased had death not ensued.

BILL PROPOSED BY HENRY W. GOODRICH.

There shall be a right of action, *in rem* or *in personam*, for damages for negligence on the high seas, causing death; such action shall be maintained in the District Courts of the United States, by the personal representatives of the deceased, and be governed by the admiralty and maritime law, except as hereby modified.