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NEW YORK, September 17, 1912.

*To the*

*Members of the Maritime Law Association:*

There will be a meeting of the Maritime Law Association at the rooms of the New York County Lawyers Association, No. 165 Broadway, New York City, on the 18th day of October, 1912, at 3:00 o'clock P. M. For the general information of the Association, and, in anticipation of matters probably to be taken up at that meeting, the following facts are presented:

1. The date for the assembling of the Brussels Diplomatic Conference has not been set. It will probably be held some time during the spring of 1913. The efforts of this Association to obtain from Congress an appropriation of \$5,000 to cover the expenses of the American representatives at that Conference, which efforts were continued after the meeting of this Association on May 3d, were finally unsuccessful, and the item was not included by Congress in the appropriation bills.

2. On August 6, 1912, there was a hearing by the Judiciary Committee of the House on the proposed bill of this Association relating to the maintenance of actions for death on the high seas and other navigable waters. Mr. FitzHenry Smith, Mr. Kneeland and Mr. Harrington attended on behalf of this Association, and Mr. Whitelock (also of this Association) was heard on behalf of the American Bar Association. Owing to the limited time at the disposal of the Committee, the proposed bill of this Association permitting suits against the United States for damages caused by vessels owned or operated by the United States, which bill has also been presented to Congress and referred to the Judiciary Committee, was not taken up. No hearing has been had in the Senate and no bill had been reported by the Judiciary Committee of the House at the time of adjournment.

3. At the meeting of this Association of May 3d, 1912, the question being presented whether the United States should rest content with the present limitation of liability acts, a resolution was passed authorizing the appointment of a Committee to consider what recommendation the Association should make, if

any, to the various Committees of Congress in respect to the measure of the liability of ship owners. The Committee thereafter made its report, a copy of which is hereto annexed. It was expected that a minority report would also be presented, but none has been received by the Secretary to date. If one is hereafter presented, it will be embodied in the next circular report of the Association.

4. A bill has been introduced in the Senate by Senator Nelson of Minnesota, and referred to the Committee on Commerce (Senate Bill 7208), amending the Harter Act. The effect of it in general is to make it unlawful for foreign shipowners, by means of clauses in their bill of lading, to limit their liability to less than the market value of merchandise lost or damaged through negligence in loading, stowing, custody, care and delivery of the merchandise, or through faults or errors in the navigation or management of the vessel, and to repeal as to foreign vessels that provision of the Harter Act which declares that where the shipowner has exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied, the vessel, her owner, etc., shall not be responsible for "faults or errors in navigation or in the management of the vessel," the words "latent defects" being substituted for the above quoted phrase. As to domestic vessels the provisions of the Harter Act remain unchanged. Copy of the bill is annexed to this report.

5. The International Maritime Committee has forwarded a circular letter and a series of questions, both of which are annexed to this report and which explain themselves. At the above noticed meeting of the Maritime Law Association, the circular and its questions will, no doubt, be taken up and a committee appointed to formulate replies. If members desire in advance to indicate their ideas as to the answers which should be made, and will send their communications to the Secretary, he will see that the same are delivered to the committee when appointed.

EDWARD GRENVILLE BENEDICT,  
*Secretary,*

79 Wall St., New York.

## REPORT OF COMMITTEE ON LIMITATION OF LIABILITY ACTS.

MINUTES of a meeting of a Committee appointed by the President of the MARITIME LAW ASSOCIATION OF THE UNITED STATES to consider the question of the measure of liability of shipowners, held at 3 P. M., Thursday, 16 May, 1912, at the Chambers of Honorable Henry G. Ward, Federal Building.

There were present Hon. Henry G. Ward (Chairman), Honorable Charles M. Hough, and Messrs. Lawrence Kneeland, Henry W. Goodrich, Edward E. Blodgett, Robert M. Hughes and Archibald G. Thacher.

Absent: Mr. Everett P. Wheeler and Mr. Harvey D. Goulder. The latter, however, expressed his views on the question to be considered by the Committee in a letter to Hon. Henry G. Ward, Chairman of the Committee, copy of which is attached to these minutes.

Hon. Henry G. Ward, Chairman, presided.

Mr. Thacher was elected Secretary.

Hon. George C. Holt, President of the Maritime Law Association of the United States, also attended a portion of the meeting and referred the Committee to the minutes of the secretary of the Maritime Law Association relative to previous consideration which had been given to the question of shipowners' liability.

The resolution under which the Committee was appointed was then read by the Chairman and a general discussion of the measure of ship-owners' liability was then had.

Thereafter the following resolution was moved by Mr. Goodrich, seconded by Mr. Hughes and adopted by a vote of 4 to 3 of the members of the Committee who were present:

"RESOLVED that this Committee report to the Association that no change in the law of limited liability be recommended at the present time, but this shall not be taken as an expression of the view of the Committee as to what, if any, instructions shall be given to any delegates which

may be appointed by the United States to attend the International Conference on Maritime Law at Brussels in September, 1912."

Voting in favor of the resolution were Hon. Henry G. Ward and Messrs Hughes, Goodrich and Blodgett.

Voting against the resolution were Hon. Charles M. Hough, Mr. Kneeland and Mr. Thacher.

From the annexed letter of Mr. Harvey D. Goulder of Cleveland it appears that had he been able to attend the meeting of the Committee he would have voted with the majority.

On motion, duly seconded, the Committee adjourned *sine die*.

ARCHIBALD G. THACHER,  
*Secretary.*

Dated, New York, 18 May, 1912.

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LETTER HEAD  
OF  
GOULDER, DAY, WHITE, GARRY & DUNCAN.

CLEVELAND, OHIO, May 15, 1912.

Hon. HENRY G. WARD, Chairman,  
Maritime Law Association of the United States,  
New York City.

DEAR SIR:—

I much regret being obliged to attend in court here, and it has become out of question for me to get away for the meeting. However, I have made careful inquiry among our shipping interests and find a strong disposition that the present law and practice in this country on limitation of the shipowners' liability should stand, and that any change or enlargement would profoundly and seriously disturb and injure the business of the ship not only directly but it also would injuriously affect in all

its parts the shipping and freighting interests of and dependent on the Great Lakes transportation system. It may be taken, I think, that the Lake interests generally would earnestly oppose any change in the matter. Regretting sincerely that I am unable to be present to give to the Committee more in detail than a letter permits their arguments on the subject,

Sincerely,

HARVEY D. GOULDER.

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### TEXT OF SENATE BILL 7208.

A BILL To amend an act entitled "An act relating to navigation of vessels, bills of lading, and to certain obligations, duties, and rights in connection with the carriage of property," approved February thirteenth, eighteen hundred and ninety-three.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an act entitled "An act relating to navigation of vessels, bills of lading, and to certain obligations, duties, and rights in connection with the carriage of property," approved February thirteenth, eighteen hundred and ninety-three, be amended in section one so that said section shall read:*

"SECTION 1. That it shall not be lawful for the manager, agent, master, or owner of any vessel transporting merchandise or property between the ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge, or from faults or

errors in the navigation or management of said vessel, or whereby its or their liability is limited to less than the market value of such merchandise or property at the time and place of shipment. Any and all words and clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect."

SEC. 2. That said act be further amended in section three so that said section shall read:

"SEC. 3. That if the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel, her owner, or owners, agent, charterers, or master shall become or be held responsible for damages or loss resulting from latent defects in said vessel from dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect, quality, or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service; and when the vessel is engaged in transporting merchandise or property between ports in the United States of America, neither the said vessel, her owner or owners, agent, or charterers shall become or be held responsible for damages or loss resulting from faults or errors in navigation or in the management of said vessel."

SEC. 3. That said act be further amended in section four so that said section shall read:

"SEC. 4. That it shall be the duty of the owner or owners, master, or agent of any vessel transporting merchandise or property between ports of the United States and foreign ports to issue to shippers of any lawful merchandise a bill of lading or shipping document stating among other things the marks necessary for identification, number of packages, or quantity,

stating whether it be carrier's or shipper's weight and apparent order or condition of such merchandise or property delivered to and received by the owner, master, or agent of the vessel for transportation; and such document shall be prima facie evidence of the receipt of the merchandise therein described. Every bill of lading or shipping receipt relating to the carriage of merchandise or property from a port in the United States to a foreign port shall contain a provision to the effect that the shipment is subject to all the terms and provisions of, and all the exemptions from, liability contained in this act; and any stipulation or agreement purporting to oust or lessen the jurisdiction of the courts of the United States or of any State thereof having jurisdiction at the port of loading, in respect of the bill of lading or shipping document, shall be null and void and of no effect."

## INTERNATIONAL MARITIME COMMITTEE.

ANTWERP, July 15th, 1912.

30, Rue Des Escrimeurs.

GENTLEMEN,

Our attention is at the present time directed to certain problems, which have profoundly stirred public opinion and which have relation to maritime questions of the greatest magnitude.

In the first place we would refer to the question of safe navigation. The *Titanic* disaster has shown the inadequacy of laws framed to safeguard the lives of seafarers and to protect property exposed to the perils of the sea, and the profound sensation, which this revelation has caused, has resulted in an universal demand for government intervention.

The question is essentially an international one. In the debate which took place in the House of Commons on the 21st May, 1912, Lord Charles Beresford expressed himself in the following terms on the matter:

"It is essential that you should insist, that whatever you do or decide within the British Empire in regard to the preservation of human life, should be international and should apply to the whole world."

Mr. Leslie Scott, one of our General Secretaries, himself a Member of Parliament, added that the International Maritime Committee, which had promoted the Diplomatic Convention in regard to Collisions and Salvage signed at Brussels, had decided to apply itself to a study of the question of safe navigation, and that the co-operation of this body promised to be of the greatest assistance to the nations in the work which lay before them.

The British and German Governments are already in communication with the object of promoting international action,



and on the other hand the Belgian Government will not remain idle in the matter. In connection with the latter Government it is of interest to remember that the Brussels Convention on Salvage sets out the duty of rendering assistance in the following terms:

ARTICLE II.—“Every master is bound, so far as he can do so without serious danger to his vessel, her crew and her passengers, to render assistance to everybody, even though an enemy, found at sea in danger of being lost.”

No deliberative body is better qualified than our own to consider the matter in question. Thanks to our influential national associations, thoroughly representative as they are in character, each country will be in a position to furnish its contingent of luminaries and through their agency to make an authoritative and considered contribution to the debate.

We are sending you a list of questions to which we are inviting reasoned replies from each Association, regard being had, as well to the care which the life of the seafarer demands, as to the practical conditions under which a mercantile marine can alone exist.

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Turning to another subject we have been approached by the Bureau of the Inter-Parliamentary Union on a question which has long agitated maritime commerce.

The international events of the last few years and even of the last few months have demonstrated afresh that private property at sea does not enjoy the same measure of protection as it does on land. The principles actually recognized on such subjects as the right of search, the right of capture, absolute and conditional contraband, etc., are far from being identical in every country.

A considerable effort was made by the International Naval Conference which met at London and concluded its labours on the 26th February, 1910, by producing a Declaration in regard to the law of maritime warfare.

This Declaration has not been ratified up to the present by

any Power, and on this account the operations of the Prize Court are also suspended.

Our attention has long been directed to the interesting questions, to which this subject gives rise, and it would undoubtedly be of great value to the various governments to have the advice of our International Maritime Committee, which through its national delegations of lawyers, shipowners, merchants and insurance experts is in a position to offer an opinion as to the extent to which a prompt ratification of the Declaration would be advantageous. That it should offer such an opinion is at any rate the wish of the Inter-Parliamentary Union, and, in view both of the important source from which that wish emanates and of the great importance, which attaches from an international point of view, to the solution of these questions, we have found it impossible to refuse our consent to the project.

Without encroaching on the domain of politics or meddling in regard to the offensive or defensive measures rendered necessary by maritime warfare, we believe that we are justified in expressing an opinion as to what measure of protection should be afforded to private property at sea. Public law relating to maritime matters, as well as private law, is tending in the direction of uniformity and the expression of opinion, which we ask of you, will doubtless receive your best attention.

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As a corollary to the resolutions embodied in the Declaration of London, we must further ask your consideration of a question, which does not indeed form any part of it, but which concerns maritime commerce in the highest degree: Can the subjects of a country under-write in time of war a valid policy on enemy goods?

According to English jurisdiction such an insurance is illegal. It is supposed that it would be contrary to public policy to indemnify the enemy against the loss that he meets with, since the object of war is to ruin him by all means possible.

In England insurance against seizure by English ships is, however, often effected by "honour" policies, which are only binding on the conscience of those who have entered into them,

since the courts would pronounce them void. In other countries the question is not so neatly disposed of and gives rise to divergencies of opinion.

To what extent and for what purposes in these days can the subject of a belligerent State be prohibited from effecting an insurance on the goods of the enemy? That is the first consideration which presents itself to the mind.

In times past, marine insurance was effected only locally and according to the commercial system then prevailing, insurance only came into being either in the country from which goods were sent or in the country to which they were destined; if war broke out between these two countries, the enemy's goods were destroyed without mercy while crossing the seas in private ownership. To declare void a policy of insurance, effected for the benefit of an enemy was therefore to exert the means of hostility which a country possessed, to their utmost extent.

Marine insurance is today international. Both ships and cargoes are insured in all countries by persons of all nationalities in accordance with the convenience of interested parties, and the cargoes change hands again and again in the course of a voyage together with the policies, which belong to them.

A nation can therefore derive no advantage from any law forbidding the issue of policies in favour of an enemy, since it could not prevent the enemy from effecting valuable insurances in neutral countries. The only effect of such a law would indeed be to discredit the underwriters and to hinder the commercial relationships of its country of origin.

The question is not one of insurance pure and simple, since re-insurances are frequently effected between the insurers of different countries, and one is at once confronted with the problem, whether these transactions are to be declared void in time of war, and what would be the effect on the security of commercial engagements in general, if the principles underlying such a declaration are to be consistently applied to their fullest limits.

We find ourselves therefore in a difficult position, and surrounded by uncertainties which are capable of causing the most serious trouble in the economic relationships of nations. We

shall be proportionately grateful for your assistance in throwing light upon the problems which embarrass us.

We beg to remain, Gentlemen,

Yours very truly,

THE PERMANENT BUREAU:

*The President,*

A. BEERNAERT.

*The Hon. Gen. Secretaries,*

LOUIS FRANCK,

LESLIE SCOTT.

*The Vice-President,*

CHARLES LE JEUNE.

## QUESTIONNAIRE

### SAFETY IN NAVIGATION

1. Is it desirable to render uniform by international convention the provisions of law, enacted or proposed, in the various countries for the purpose of securing safety in navigation?

2. With what subjects should the convention deal, special regard being had to the class of ship (sail or steam), the nature of the traffic, and the tonnage of the vessels?:

(a) Measures of Safety.

1. Seaworthiness of the ship, watertight compartments.
2. Engines and boilers.
3. Draft and free-board.
4. Deck-cargo, stowage, and ballast.
5. Life boats and life-saving apparatus.
6. Wireless telegraphy.
7. Nautical instruments and charts and sailing directions.
8. Number and physical condition of crew.
9. Number and physical condition of passengers.

10. Sleeping and other accommodation of crew.
  11. Sleeping and other accommodation of passengers.
  12. Sleeping and other accommodation of emigrants.
  13. Medical attendance.
- (b) Certificates of seaworthiness and other similar documents.
- (c) Inspection of ships and legal and administrative action consequent thereon.

#### DECLARATION OF LONDON OF THE 26TH FEBRUARY 1909 IN REGARD TO THE LAW OF MARITIME WARFARE

1. Does the Declaration of London of 26th February 1909 constitute, from the point of view of international interests in respect of shipwrecking, commerce, and insurance, any appreciable advance on the existing position?
2. Are you in favour of voting for its ratification?
3. What are the subjects, with which, in the event of your being of opinion that a supplementary declaration would facilitate agreement on the points dealt with in the Declaration of London, such supplementary declaration should deal?

#### STATE OF WAR. MARINE INSURANCES ON ENEMY GOODS. COMPARATIVE LAW.

1. Does a state of war render void policies of marine insurance on enemy goods?
2. Does such avoidance apply only to risks of war properly so called, or does it go further and affect insurance against ordinary risks?
3. What is the law of your country so far as regards actions at law brought by insured enemies
  - (a) For losses sustained before the state of war.
  - (b) For losses sustained during the war.

#### BASES OF INTERNATIONAL AGREEMENT

How far, if at all, is it possible to come to an international agreement with regard to the validity of policies on enemy goods?