

MARITIME LAW ASSOCIATION OF THE UNITED STATES.

MARCH 7, 1913.

A meeting of the Maritime Law Association of the United States was held at the rooms of the Bar Association, City of New York, on the 7th day of March, 1913.

There were present Hon. George C. Holt, presiding; Mr. Everett P. Wheeler, Judge Harrington Putnam, Mr. J. P. Kir- lin, Mr. George B. Ogden, Mr. C. C. Burlingham, Mr. Robert M. Hughes, Mr. Archibald G. Thacher, Mr. W. H. McGee, Mr. Lawrence Kneeland, Mr. Thomas D. Hewitt, Mr. Robin- son Leech, Mr. George W. Betts, Jr., Mr. Herbert Green, Mr. F. H. Price, Mr. Alfred Huger, Mr. Clarence B. Smith, Mr. A. Gordon Murray, Mr. M. J. Conlen, Mr. D. R. Englar, Mr. H. S. Harrington, and Mr. E. G. Benedict.

The Secretary called attention to the fact that there had been inserted in the Diplomatic and Consular Appropriation Bill a provision for an appropriation to cover the expenses of delegates to the International Conference on Maritime Law, to meet at Brussels in 1913.

The answers to the questions propounded by the Interna- tional Maritime Committee in the Questionnaire of July 15, 1912, under the headings, "State of War," "Marine In- surance on enemy goods," "Comparative law," and "Bases of International Agreement," were then considered. The answers of the committee to these questions have been printed in the circular of December 23, 1912. On motion the answers of the committee were adopted by the Association, and the Secre- tary was directed to communicate them to the International Maritime Committee.

The matter of the appointment of delegates to the Copen- hagen Conference was then taken up, and as no delegates were immediately available, the matter was referred to the Execu- tive Committee with power to appoint.

The report of the committee appointed to consider and report what changes, if any, should be made in the limitation of liability statutes of the United States was then considered. A copy of this report has been sent to the members of the Association. Mr. Wheeler, for the Committee of nine, presented the report and briefly explained its nature and moved its adoption.

The Secretary presented letters from Mr. Beverley W. Mister of Baltimore, and Mr. Frederic Cunningham of Boston, containing suggestions as to the report.

Mr. R. M. Hughes thought that the matter of the limitation of liability statutes were best left alone; that a bill along the lines of the committee's report could not be passed through Congress; that he personally did not believe in altering laws and one disaster was not sufficient to change the policy of the country in force since 1851; that there is no American criticism of that law, and no opposition had been crystallized into an organized effort to change it; that the English law of limitation was a mere rule of thumb; why adopt it for our law? That the committee's report was subject to criticism, especially as to the different rules proposed for large steam vessels on the one hand, and sailing and small vessels on the other; that what the committee wanted was to give more protection to the families of persons injured in marine disasters; that small vessels are frequently crowded with people and a loss of life may occur on such vessels as well as on large ones; that the report of the committee should adopt either the American or English rule, and not a straddle of both; but for himself he saw no reason for a change, and thought that any change would discourage investment in vessel property.

Mr. Kneeland stated that he advocated any substantial improvement of the present condition of things, which results that a vessel owner may go free if his vessel sinks; that he thought the report of the committee was good, but did not go far enough; that the Association had heretofore approved a treaty convention which gives a ship owner the alternative right of surrendering his vessel if it sinks or paying £8 per ton if it survives, which was entirely wrong; that if the Asso-

ciation should revoke its action in reference to the treaty convention, and stand for this bill, he thought that many would agree and stand with the Association; that he agreed with Mr. Hughes that sailing vessels and small vessels should not be exempted from the application of the act; that some value on such vessels ought to be reached to which their liability could be limited, but they should not be exempt.

Mr. Thacher expressed the opinion that Congress was glad to have the Maritime Law Association make recommendations to it; that the loss of the "Titanic" was not the cause for the suggested change, but simply focused attention upon the general necessity for a change; that this nation placed more cargo on vessels than almost any other nation, and should take steps for the cargo owners' protection.

Mr. Wheeler, for the committee, said that this action of the Association, if the committee's report were adopted, would supersede the former action of the Association as to the treaty convention; that there were large amounts of American capital invested in shipping, and that as to the amount of American shipping itself, we were the third carrying nation in the world; that it was to meet the opposition of the small owners and of coasting vessels that the report of the committee was made as it was; that the views as to the coastwise vessels expressed in the report are the views of many; that this discrimination would not act unfavorably, but was a reasonable compromise.

Mr. Harrington disapproved of the discrimination in the committee's report, and thought that the exemption in the report of small vessels from the operation of the law would draw unfavorable attention and would tend to do away with the limitation of liability acts entirely; that a graduated scale should be applied to small vessels; that, in his opinion, Congress welcomed any action from this body.

Mr. Kneeland stated that, in his opinion, Congress was ready for and would welcome any improvement of the limitation of liability law.

Mr. Burlingham stated that no one present seemed to be satisfied with the report of the committee; that the situation

in regard to the convention was as follows: At the Conference of 1910 a *project* was drawn; it was never brought before the Conference, but was referred to a committee, which is about to meet; that the Belgian Government had sent to each nation a request for its views on the question of limitation of liability; that our Government had done nothing about it; that the Department of State looks to this body for guidance in the matter and that the Secretary of State would welcome suggestions from this Association, but instead of asking the Secretary to instruct delegates, the Association is apparently starting off on a new tack, and asks this country to adopt a system which England is likely to abandon; that if the limitation of liability act were repealed, we should have single-ship companies, and, if necessary, such companies would take out insurance on their vessels in the name of the mortgagees, and a damage claimant would then have no greater chances for recovery than he has under the present limitation of liability act; that it was agreed by the delegates of all nations that there should be a right of recovery for loss of life in marine disasters; that the French delegates had suggested compulsory insurance to cover such claims, which was a good plan, but that the present suggestion of this committee was entirely out of place and belated.

Mr. Kirilin thought that action was inopportune at the present time; that it would be said that the action was taken because of the "Titanic" disaster, and would be considered an attempt to effect a recovery in such case; that it was inopportune, when Governments were attempting to make some international arrangement in regard to such matters, for this Association to propose a new scheme; that the distinction between large and small vessels in the matter of loss of life was bad; that life was as valuable on board a small vessel as on board a large one, and probably more lives were lost on small vessels than on large vessels; that he thought the report inconsistent, and that if the Committee agreed that all limitation should be abolished they should say so and let the issue be squarely determined; that indemnity in respect of loss of life should be kept separate from limitation of liability for loss of property; that liability for losses of property is, in the last

analysis, merely a matter of insurance in a great majority of cases, the only question involved being whether the loss will fall on the cargo underwriter or on an underwriter against ship's liability; that there is no ground, in reason or policy, for distinguishing between large and small vessels in this respect; that limitation of liability in reference to property is as old as the maritime law, and no sufficient reasons are advanced in the report for making any change in it; that loss of life, on the other hand, involves considerations of humanity, and it is hoped that some arrangement may be worked out through international action which may result in provision being made for some form of indemnity in such cases irrespective of the class or size of vessel on which the loss may occur; that there is no good reason to believe that this object would be accomplished by such a proposal as that contained in the report which, if followed by legislation, would effect such a radical change in our own law as would make international agreement much less probable.

Mr. Betts, for the committee, said that the members were in accord that there was a demand for some change; that three things had been suggested to the Committee: (1) that there should be no limitation whatever; (2) that the limitation should be to the value of the vessel before the catastrophe; (3) that the British law should be adopted for all vessels; that the report of the Committee was a compromise; that it was thought that opposition of owners of small vessels to a scheme similar to the British law would be considerable, but that there was a popular demand for a change and that it was now a proper time to make a change; that W. O. Hart of New Orleans and W. H. Gorham of Seattle, members of the Committee who did not sign the report, have since joined in the report, so that the report is now the unanimous report of the Committee.

Judge Holt thought that the limitation of liability acts ought to be absolutely abolished, but that the practical question is what can be done; that he thought that a proposition to repeal the law entirely could not be passed through Congress; if that were so, then the best thing to do was to make the law of this country similar to the law of England, which country is the

country of the largest ship-owning interest, and the country in the closest relations to us; that objections to a repeal would undeniably come from small owners and owners of the Lake and Coastwise vessels; that that would create opposition, and it seemed the best thing to put that class out of consideration; that large corporations, owning large ships, do most of the business of the world, and legislation should concern such large ships.

Mr. Clarence B. Smith said that the limitation of liability act was objected to because it was special legislation for a class, but the report of the committee is also special legislation in regard to the class of small vessels; that the practical situation would seem to be that whatever law is passed should be a law universal to all nations, and that we should make recommendation to all nations through the Brussels Conference.

Mr. Wheeler, for the committee, said that the committee had in mind the Brussels Conference, and that the report of the committee was meant to indicate how it was thought that this country should change the law, but that whatever conclusion this Association came to, we should urge such change upon the State Department as well as Congress; that the law of limitation of liability is very old. The Act of 1851 merely adopted the maritime law in force for four or five centuries and probably for much longer. On the whole the compromise recommended by the committee seemed the best possible.

Mr. Burlingham said that if the sense of this Association is that we should adopt the British system, he thought that we should urge the Department of State to instruct delegates to the Brussels Conference to advocate the adoption of such system.

Mr. Hughes moved the immediate vote of the Association on the resolution to adopt the committee's report.

Mr. Harrington, as a substitute, moved as follows:

Resolved, That it is the sense of this meeting that the Act of 1851 and all acts supplemental thereto and amendatory thereof be repealed.

The vote on this resolution was as follows (the presiding officer not voting): Ayes, 10; noes, 11.

Mr. Kneeland offered as a substitute resolution the following:

Resolved, That the limitation of liability law be amended so that the owner shall be liable up to the value of the vessel at the commencement of the voyage on which the accident occurred.

The vote on this resolution was as follows: Ayes, 9; noes, 12.

The original resolution of Mr. Wheeler for the adoption of the committee's report was then moved, and the result was as follows: Ayes, 11; noes, 10. Four members of the Committee who signed the report were absent.

Mr. Betts thereupon moved the following resolution:

Resolved, That the Department of State be requested to instruct the delegates of the United States to the Third International Conference on Maritime Law to urge the adoption of the existing British system of limitation of ship owners' liability with due regard to the interests of owners of small vessels, and with provision for loss of life and personal injuries.

The vote on this resolution was as follows: Ayes, 13; noes, 5. The meeting was thereupon adjourned.

EDWARD GRENVILLE BENEDICT,
Secretary.