MARITIME LAW ASSOCIATION OF THE UNITED STATES.

MAY 1, 1914.

The annual meeting of the Maritime Law Association of the United States was held on May 1, 1914, at the rooms of the Association of the Bar in the City of New York. There were present the following members: Hon. George C. Holt, presiding; Mr. Goulder, Mr. Burlingham, Mr. Ogden, Mr. Kneeland, Mr. Loines, Mr. Little, Mr. Murray, Mr. F. M. Brown, Mr. Harison, Mr. Price, Mr. Hickox, Mr. Leach, Mr. Conlen, Mr. Maclay, Mr. Clark, Mr. Gardner, Mr. Benedict.

The Treasurer's report for the year 1913-14 was submitted, showing a balance on hand on May 2, 1913, of $299.04, and general receipts during the year of $459.40, in all $758.44, and general disbursements of $306.30, leaving on hand on May 1, 1914, a balance of $452.07. The report was approved and ordered on file.

The election of officers for the ensuing year being in order, Mr. Burlingham moved that the Secretary cast one vote for the present officers, which motion was put and carried, and the present officers thereupon re-elected. They are as follows:

President.
HON. GEORGE C. HOLT.

Secretary and Treasurer.
EDWARD GRENVILLE BENEDICT.

Executive Committee.
EVERETT P. WHEELER,
LAWRENCE KNEELAND,
FITZ-HENRY SMITH, JR.

The report of the committee appointed to consider the two bills proposed by Mr. Beverley W. Mister was then read by

the Secretary. The report will be found annexed to these minutes. Mr. Goulder objected to that part of the report which referred to the bill for shipmaster's wages. Mr. Hickox moved to accept the report as it stood and this motion was put and carried. Mr. Little moved to approve the report as to jury trials and findings of fact in admiralty, and this motion was carried unanimously. Mr. Little then said that in the Fourth Circuit there was, according to his knowledge, no demand on the part of shipmasters for the bill giving a lien to shipmasters for their wages and he regarded it as an unnecessary bill. Mr. Burlingham moved that it was the sense of the Association that any such legislation in favor of shipmasters is unnecessary, and this motion was carried unanimously.

The matter of the Loss of Life Bill then coming up, the Secretary announced that there was no report from the Committee in charge of the bill, but that he was informed that the bill had not been reached in the House, and that there was nothing new to report in reference to the bill. Mr. Little thereupon moved to continue the Committee, with power, which motion was carried.

The matter of limitation of liability statutes coming up, Mr. Burlingham commented on the draft convention proposed by the International Conference, a copy of which has been distributed to the members of the Association. He said that at the last meeting of the International Diplomatic Conference the subject of limitation of liability was not completed; that there was a sub-committee appointed at that time to consider this subject, which committee had worked out the draft above mentioned, which draft would be undoubtedly submitted to the Diplomatic Conference whenever that again convenes, probably in 1915; that the report of this sub-committee and this draft bill seem to be the best the sub-committee could do, and is the result of the best minds in Europe working on the subject; that whenever the Diplomatic Conference does meet again, every country will be asked to adopt this draft report, and this country ought to be in a position at that time to consider it intelligently.

Mr. Murray said that a proposed draft on this subject had

been heretofore circulated and considered by a previous committee of this Association, of which the late Judge Brown was a member; that Judge Brown rendered an elaborate report, which report will be found in the minutes of this Association of May 9, 1910, but which report was disapproved by this Association. Two other committees have made two reports; that he believed that the sense of the Association is that the law of this country and England should be brought into harmony, but he did not believe in extending the measure of shipowners' limitation or curtailing the rights of damage claimants; that in his opinion this proposed draft curtails the rights of damage claimants in a maritime disaster, in that it limits the liability of a shipowner to £6 per ton when his vessel survives, and exempts the shipowner entirely if the vessel is totally lost, and for that reason he objected to the draft convention.

Mr. Burlingham moved that a committee of seven with power to enlarge its membership, be appointed by the President to consider the general subject of limitation of liability, with special reference to the proposed draft convention, and with directions to make a report within sixty days. Mr. Hickox seconded the motion, which was then carried. The President subsequently appointed the following Committee: Hon. Frederic Dodge, Harvey D. Goulder, C. C. Burlingham, Chairman, Lawrence Kneeland, William H. Gorham, George W. Betts, Jr., D. Roger Englar.

The Secretary called attention to the report of the International Committee on Safety of Life at Sea, and distributed certain copies of that report.

Mr. Price moved that the report be referred to the Executive Committee of the Association, with power to act, which motion was carried.

The next matter before the meeting was the suggestion as to the rights of seamen on the Great Lakes, with reference to the applicability of the Workman's Compensation Acts of the states bordering on the Lakes where the same come into contact with the maritime law on the Lakes, and the Secretary read a letter from Mr. G. D. Van Dyke, of Milwaukee, suggest-

ing that the subject was a proper one for the Association to consider.

Mr. Goulder went over the present situation of the law with reference to the districts bordering on the Lakes, and said that the question was now pending before Killetts, J., of the Northern District of Ohio in the case of Schuede v. Zenith SS. Co., and he thought it would be advisable for the Association to refrain from action of any kind in the matter until that case was decided, and to act in the light of that decision when it was handed down; and he suggested that a committee, in number to be decided by the President of the Association, be appointed to take action upon this subject, if it was considered necessary, when the court should decide the above case;—such committee to be appointed when in the judgment of the presiding officer it should be advisable so to do. The suggestion was put to a motion and carried in that form.

Attention was then called to the fact that, unless a special meeting was called earlier, the next meeting of the Association would be held at Washington on October 19, 1914, at the time of the meeting of the American Bar Association in that city, and the Secretary announced that formal notice would be sent out in regard to the same.

The meeting then adjourned.

Report of Committee Appointed to Consider Proposed Bill Permitting Jury Trials in Admiralty, &c., and Proposed Bill Giving Shipmasters Lien for Wages.

To the Maritime Law Association of the United States:

The committee appointed at the meeting of this Association on February 6th, to consider and report upon the two bills proposed by Beverly W. Mister, Esq., of Baltimore, beg to report thereon as follows:

First.—Agreeably to the terms of the resolution referring these measures to us, several communications were sent to Beverly W. Mister, Esq., during February, inviting him to appear before the committee at a time to suit his convenience. An opportunity to confer with the committee at any time in March, or even later, was also afforded him, but has not been availed of.

Many members of the Association, however, have written on the subject of these bills, to the Secretary, and also directly to the Committee, which communications have had our careful attention.

Second.—The bill first proposed by Beverly W. Mister, Esq., and printed in the notice to members under date of January 6th, 1914, is entitled: "An Act to permit jury trials in Admiralty causes, and bills of exceptions on appeals." As the caption indicates, it embodies two distinct changes—the radical departure of jury trials in admiralty, and the provision to require findings of fact and conclusions of law, which should go up by bill of exceptions. The second measure prepared by Mr. Beverly W. Mister, is to give shipmasters a maritime lien for their wages. It also is set forth in the same notice.

Third.—The trial of complex and intricate questions of navigation, collision, and other maritime torts by a jury, by the inherent nature of the subjects to be passed upon, is a mat-

ter of extreme difficulty. Then if jurors could grasp all points raised in transactions peculiar to the sea, admiralty courts of necessity are international in scope, and their findings and decrees are not to be subjected to the uncertainties arising from the feelings of sympathy, which a jury might naturally entertain towards a local ship, as against a foreigner.

Besides the radical difference in admiralty procedure, the investigation of the more complicated incidents in sea disasters, is too intricate for the sittings of a jury, as the court itself, though schooled in the principles and mystery of sea-faring transactions, must have full opportunity to collate the testimony and carefully review the mass of evidence often contained in a series of depositions.

A further ground is the regulations by Congress, and by the Department of Commerce, prescribing what to do in various situations, the strict, impartial and rigid enforcement of which, is essential to safety at sea. If juries attempt by their verdict to pass upon an issue of navigation or of prudent seamanship, the judge would have to set aside the verdict, unless it be in conformity with the construction of the regulations as laid down by the Supreme Court of the United States.

FOURTH.—The exception which exists on the Great Lakes. There, vessels of over 20 tons, in commerce between different States, may have issues of fact tried by a jury, when either party requires it (U. S. Rev. Stat. § 566). This got into the law by mistake. As it has been recently referred to in Congress, it seems needful to recall the origin of this anomalous statute, which is at variance with the judiciary act and the system of maritime law procedure. At first, our courts followed English precedents, holding the ebb and flow of tide waters to be the limits of the admiralty. The Thomas Jefferson, 10 Wheaton, 428 (1825). With the short streams in England, where a public navigable river was indicated by its tidal flow, this was a working rule. Later on as our commerce reached the rivers and great lakes, it was felt that these inland waterways and seas should come under the admiralty jurisdiction. Congress seeking to extend admiralty jurisdiction to

the great lakes, put in this saving clause, permitting a party to have a jury trial. Act of February 26th, 1845.

But Congress could not enlarge the constitutional grant of admiralty jurisdiction. In 1851, the Supreme Court held that in this country, the tide-water rule was inapplicable, and that admiralty had jurisdiction of navigable waters on rivers and lakes, regardless of the tide. The Genessee Chief, 12 Howard, 443 (1851). Hence, this saving clause, providing for a jury trial, was originally part of a void statute and ineffective. The Eagle, 8 Wallace, 25. The Revised Statutes, in 1873, however, retained the provision (§ 566); see Gillet *v.* Pierce, Brown Adm. 553; F. C. 5437.

The clause does not apply, if both vessels belong to the same Federal District. The verdict of a jury if required, has been held to be merely advisory, and not to bind the court. The Empire, 19 Fed. Rep. 558; The City of Toledo, 73 Fed. Rep. 220. The contrary, however, is the law of the Second Circuit. The Western States, 159 Fed. Rep. 354. Here Judge Ward, however, expressed the view that this section of the Revised Statutes should be repealed. The admiralty courts of the districts bordering on the Lakes, where the system has been tried, have not looked with favor on this provision for jury trials in admiralty. (Benedict's Ad. § 138, 4th Edition.)

FIFTH.—The proposal that the district court shall make findings of fact and conclusions of law, is not without support from some of this Association. This was the method under the Act of February 16th, 1875, by which the review of the Supreme Court of the judgments in admiralty on the instance side of the former Circuit Court was limited to questions of law arising on the record, as presented by a bill of exceptions. The Abbotsford, 98 U. S. 440. But to have such a system effective, either party should in advance hand up to the court his proposed findings, deemed to be established by the testimony (N. Y. Code Civil Proc. § 1023), for the court to approve or to reject. Such requirement in admiralty, would go back to technical forms, and limit the power of the appellate court to the points taken on the first trial and preserved in the bill of exceptions.

There was a reason to limit the review by the act of 1875, that does not apply to the measure now proposed. That act did not touch appeals to the former Circuit Court. The statute apparently was intended to liken this third and last admiralty hearing (when the parties had already the right to two trials of issues of fact), to appeals from the Court of Claims. (De Groot *v.* United States, 5 Wall 419.) But after the act of 1875, admiralty appeals from the District to the Circuit Court still followed the ancient and liberal principle of an unrestricted hearing *de novo,* by which all grievances could be corrected regardless of mistakes and omissions upon the first trial. The measure now proposed would deprive a suitor in admiralty of this ancient appellate jurisdiction, so beneficial, and often vital to ultimate justice in maritime causes. By resorting to findings of fact, under requests by advocates, with exceptions taken to findings made, and to refusals to find, followed by bills of exceptions, the prompt, simple admiralty procedure would inevitably grow formal and technical—a direction wholly against the trend of modern reform of procedure which is to let appellate courts right errors, regardless of matters of form. If it be objected that without specific findings of fact, decrees in admiralty are liable to lose their full weight and effect in collateral proceedings, it is to be noted that common law courts of late treat the Judge's opinion in admiralty as embodying his findings of fact. (Cahill *v.* Standard Marine Insurance Co., 204 N. Y. 190; Buckholz *v.* Baxter, 206 N. Y. 173), since the opinions usually have sufficient detail for all practical purposes.

We therefore recommend that this Association disapprove of the measure thus proposed.

SIXTH.—The bill to give the shipmaster a maritime lien for wages, unless employed on shares or as a charterer of the vessel, is also referred to this Committee.

This proposed measure generally follows the statutes of other maritime countries. Since under modern conditions, especially by the introduction of steam vessels, masters are less frequently part owners of the ship, and do not have the power

to collect the vessel's freights, such a remedy may be a just protection. However, a shipmaster represents his owners in foreign ports, and an unlimited right to process under his libel, in the hands of a disaffected master, might become a means of gross injustice. We suggest, therefore, a proviso to guard against any unfair practice or abuse of process. This might be by adding a section: "Provided, however, that, if upon the trial or in the course of proceedings in the suit, it shall appear to the satisfaction of the court, that the master has caused the arrest of the vessel, or the attachment of the freight-moneys, without having given previous notice thereof to the shipowner, or to the general agent of such shipowner, the court, in its discretion, may impose on such master the costs of the suit, together with the expenses incurred by such premature issue of process."

With some such proviso against abuse of process, the Committee see no objection to such a bill, and recommend that this Association favor its enactment, if American shipmasters generally are demanding such a measure for their relief.

Respectfully submitted,

HARRINGTON PUTNAM,
CHARLES M. HOUGH,
LAWRENCE KNEELAND,

Dated April 27th, 1914.