

MARITIME LAW ASSOCIATION OF THE UNITED STATES.

NEW YORK, April 20, 1915.

The annual meeting of the Association will be held on Friday, May 7, 1915, at 3 o'clock P. M., at the Rooms of the Bar Association, No. 42 West 44th Street, New York City, at which time will be considered the report of the Committee on Actions for Death at Sea, and such other matters as may properly come before the meeting.

A. GORDON MURRAY,
Acting Secretary,
 No. 60 Wall Street,
 New York City.

MARITIME LAW ASSOCIATION OF THE UNITED STATES.

REPORT OF THE COMMITTEE ON THE PROPOSED FEDERAL
 STATUTE RELATING TO RECOVERY FOR LOSS OF
 LIFE AT SEA.

To the Members of the Association:

This measure as it was adopted by the Association at the meeting of May 3rd, 1912, and unanimously reported by the Judiciary Committee of the House of Representatives on December 22nd, 1913, provided as follows:

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 shall be caused by wrongful act, neglect, or default occurring on the high seas, the Great Lakes, or any navigable waters of the United States the personal representative of the decedent may maintain a suit for damages in the district courts of the United States in admiralty

for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable to a suit for damages by or in behalf of the decedent by reason of such act if death had not ensued.

SEC. 2. That the recovery in such suit shall be a fair and just compensation for the pecuniary loss sustained to the persons for whose benefit the suit is brought and shall be apportioned among them by the court in proportion to the damage they may severally have suffered by reason of the death of the person by whose representative the suit is brought.

SEC. 3. That suit shall be begun within two years from the death of the decedent, unless during that period there has not been reasonable opportunity for securing jurisdiction of the vessel, person, or corporation sought to be charged: Provided, however, that after the expiration of a period of two years from the decedent's death the right of action hereby given shall not be deemed to have lapsed until ninety days after a reasonable opportunity to secure jurisdiction has offered.

SEC. 4. That if a person die as the result of wrongful act, neglect, or default occurring on the high seas, the Great Lakes, or any navigable waters of the United States during the pendency in a court of admiralty of the United States of a suit to recover damages for personal injuries in respect of such act, neglect, or default, the personal representative of the decedent may be substituted for the decedent as a party, and the suit may proceed as a suit under this Act for the recovery of the compensation provided in section two.

SEC. 5. That in suits under this Act the fact that the decedent has been guilty of contributory negligence shall not bar recovery, but the court shall take into consideration the degree of negligence attributable to the decedent and reduce the damage accordingly.

SEC. 6. That this Act shall not affect the rights of ship-owners and others to avail themselves of the provisions of the laws of the United States relating to limitation of liability.

SEC. 7. That all suits for damages for the death of a person caused by wrongful act, neglect, or default occurring on the high seas, the Great Lakes, or any navigable waters of the United States wherever such death may occur shall be deemed to be within the admiralty and maritime jurisdiction of the United States, and in all suits in admiralty recovery of damages for death so caused shall be had only under the provisions of this Act; and where the death has been caused by wrongful act, neglect, or default occurring on the high seas suit for damages shall not be maintained in the courts of any State or

Territory or in the courts of the United States other than in admiralty.

SEC. 8. That nothing in this Act shall be construed to abridge the rights of suitors in the courts of any State or Territory or in the courts of the United States other than in admiralty to a remedy given by the laws of any State or Territory in case of death from injuries received elsewhere than on the high seas: Provided, That there shall be but one recovery by the person injured or by or in behalf of any of the persons mentioned in section one.

When the bill came up for consideration in the House in January, 1914, considerable objection developed to the provisions of Sections 7 and 8 giving to the admiralty courts exclusive jurisdiction of actions for death on the high seas and it failed to receive the unanimous consent necessary for its consideration at that time. After much correspondence with the committee of Congress, your committee met the Judiciary Committee at Washington on the 5th of January last and thoroughly discussed the measure. As a result, it was agreed that the bill should be reported without Section 6, and that the last half of Section 7 relating to the jurisdiction of the high seas should be stricken from the bill.

The bill was reached in the House January 6, 1915, and passed, the first five sections remaining as originally worded. Section 6 was left out and Sections 7 and 8 were incorporated in a new Section 6 reading as follows:

SEC. 6. That the right under this Act to recover damages for the death of a person caused by wrongful act, neglect, or default occurring on the high seas, the Great Lakes, or any navigable waters of the United States wherever such death may occur, shall be deemed to be a right of recovery within the admiralty and maritime jurisdiction of the United States; but nothing in this Act shall be construed to abridge the right to sue and pursue any remedy given by the laws of any State or Territory in such cases.

In addition an entirely new section, numbered Section 7, was added on the motion of Mr. Graham of Pennsylvania as follows:

SEC. 7. In all cases now pending, or hereafter brought, to limit liability, where the loss occurred upon the high seas, and

only a vessel or vessels of foreign ownership are involved, and the laws of the foreign country to which such vessel or vessels belong provide for limitation of liability in an amount greater than that fixed by laws of the United States, the owner of such foreign vessel or vessels shall be permitted to limit liability only in accordance with the laws of the foreign country to which such vessel or vessels belong.

The matter then passed to the Senate, and under date of January 16th your committee addressed a letter to the Senate Judiciary Committee suggesting the following changes in the bill, viz.:

“SECTION 2, Line 7; for the word ‘damage’ substitute the word ‘loss.’

SECTION 5, Line 8; for the word ‘damage’ substitute the word ‘recovery.’

SECTION 6, Line 16; Strike out all after the word ‘pursue,’ and substitute the following words, viz.: ‘In the courts of any state or territory any remedy given by the laws of any state or territory for damages by death: *Provided* That there shall be but one recovery by the person injured, or by or in behalf of any of the persons mentioned in Section 1.’”

Your committee also urged that the whole of the new Section 7 be stricken out as not germane to the subject-matter of the bill, and they recommended in place thereof the following section:

SECTION 7. This act shall not affect any pending suit, action or proceeding.

It was thereafter pointed out that under Section 6—even with the proviso recommended by your committee (which appeared in Section 8 of the original bill)—there might be a double recovery for the same tort because of the great diversity in the state statutes as to the parties entitled to proceed thereunder. A new Section 6 was then suggested to read as follows:

SEC. 6. That the right to recover damages for the death of a person caused by wrongful act, neglect or default, occurring on the high seas, the Great Lakes, or any navigable waters of the United States, wherever such death may occur, shall be governed exclusively by the provisions of this Act, which shall supersede all state statutes in so far as they apply to causes of action for death arising on such waters. But the right to sue

under this Act in the courts of common law of appropriate jurisdiction, whether state or federal, is hereby expressly preserved.

It is to be noted that the above section would make the act the only law applicable to death on navigable waters even within the jurisdiction of a state, whereas the act as agreed upon with the Judiciary Committee was limited in its application to the courts of admiralty and reserved to the state courts rights under state statutes.

There was such a difference of opinion as to the proper form and scope of the bill that the opportunity to secure its passage in the last Congress failed, and if the Association is still in earnest about the matter, it is of the utmost importance that the Association determine in advance the limits of the bill, whether (1) it shall be restricted to the courts of admiralty, leaving the right to recover under state statutes in the state courts unaffected, or whether (2) it shall attempt to supersede the state statutes in respect of any waters, and whether (3) it shall deal with the limitation of liability of shipowners.

Your committee sincerely hope that all these questions may be settled at the annual meeting.

All of which is respectfully submitted.

FITZ-HENRY SMITH, JR.,
Chairman.