

THE
MARITIME LAW ASSOCIATION OF THE UNITED STATES.

*To the Judges of the United States Circuit Courts of Appeals
in the several Circuits.*

SIRS:

The President of this Association, Hon. Henry Galbraith Ward, was authorized by resolution December 7, 1917, to appoint a Committee for the purpose of considering and recommending such changes in the Rules of practice of the Courts of the United States of America in Admiralty and Maritime causes as should seem desirable, in order to secure uniformity of practice throughout the several Circuits.

Edward E. Blodgett of Boston, Mass., Floyd Hughes of Norfolk, Va., and D. Roger Englar of New York City were appointed as such Committee, and at a meeting of the Association on May 3, 1918, submitted its report, which was then approved by the Association, as appears in its files, in words and terms as follows:

MARITIME LAW ASSOCIATION

REPORT OF COMMITTEE APPOINTED TO RECOMMEND
CHANGES IN RULES OF ADMIRALTY PRACTICE.

The Committee appointed by the President of the Association at a meeting of the Association held in New York on December 7, 1917, for the purpose of considering and recommending such changes in the rules of practice for the Courts of the United States in Admiralty and Maritime cases as are desirable in order to secure uniformity of practice throughout the several circuits, has considered the subject referred to it and recommends that this Association request

that the following changes in and additions to the Admiralty Rules of the Supreme Court of the United States be made:

1. Add to Supreme Court Rule No. 2 the following, immediately preceding the words "as the libellant shall in his libel or information, pray for or elect":

"Or by such monition with a clause therein that if the defendant is a non-resident of the state in which the district is comprised, or a corporation incorporated outside such state, to attach the goods and chattels of the defendant to the amount sued for; or if such property cannot be found, to attach his credits and effects to the amount sued for in the hands of the garnishees named therein." As adopted May 3, 1918.

2. In Supreme Court Rule No. 5 in the third line insert before the words "any commissioner" the words "the clerk or," and at the end of the rule the words "or any duly qualified Notary Public." As adopted May 3, 1918.

3. Add to Supreme Court Rule No. 52, the following:

"The testimony should be printed by question and answer, except where the parties by their proctors agree in writing that all or any fact thereof shall be printed in narrative form, and such agreement shall be incorporated in the record." As adopted May 3, 1918.

4. Insert after the words "for the payment thereof into Court" in Rule 54 the following:

"With interest at the rate of 6 per cent. per annum from the date of the giving of said stipulation." As adopted May 3, 1918.

Add the following to the Supreme Court rules:

5. "No property in the custody of the Marshal or other officer of the court shall be delivered up without an order of the court; but, except in possessory actions, such order may be entered, as of course, by the clerk, on filing either a written consent thereto by the proctor on whose behalf it is detained, or an approved stipulation or an approved bond to the

Marshal, as provided by law; or by dismissal or discontinuance of the libel; provided, however, except in proceedings under Section 941, of the Revised Statutes, the Marshal shall not deliver any property so released until the accrued costs and charges of the officers of the court shall first have been paid into court by the party receiving such property, subject to the decision of the court with respect to the amount of costs due such officers." As adopted May 3, 1918.

6. "In cases where a witness travels from a place outside the district to the place of trial his taxable mileage shall not exceed \$10.00, and in no case shall mileage be allowed for a greater distance than that actually traveled by the witness." As adopted May 3, 1918.

7. "In all cases where costs are allowed, reasonable premiums on bonds or stipulations for value and on bonds or stipulations for costs, paid by the party filing the same, shall be included as taxable costs." As adopted May 3, 1918.

8. "Admission to practice in any Circuit Court of Appeals or any District Court in causes of admiralty or maritime jurisdiction may be granted on motion of an attorney of said Court to any member of the Bar of the Supreme Court of the United States or of the Circuit Court of Appeals in the circuit in which he resides, provided said person is of good character and professional repute, and provided further that, in every suit or proceeding, some attorney maintaining an office within the district or circuit where the same is pending, shall be appointed to receive service of notices or other papers." As adopted May 3, 1918.

9. "Where any vessel or other property is sold under process of the court, the relative priority of claims or liens shall be determined as of the date of the distribution of the fund realized from such sale, and shall not be affected by the respective dates of beginning suit thereon or of any decrees therein."

Your Committee has also considered the question of the enforcement of liens for labor, material and supplies as they are now enforced in the various Districts, and it is very

strongly of the opinion that if it is possible to do so, a rule should be added for the purpose of harmonizing the law in the various Districts with respect to the length of time during which such liens retain their priority. It has reached the conclusion, however, that this is a question of substantive law, which cannot be governed by a rule of Court. It therefore suggests the advisability of endeavoring to obtain some legislation dealing with this subject matter.

Your Committee has also considered another matter, which, while probably outside the scope of its powers, seems to it to require some action by this Association. Under the present law, as construed by the various Collectors of Customs, a vessel sold and registered in a new District receives a clean registry which does not show any liens which may be recorded against her in the District where she was previously registered. This makes it necessary, in searching the title of any vessel, to examine the records in every port where she has ever been registered. It seems to us most desirable that an act be passed to remedy this situation. If the Association desires to take any action with a view to obtaining legislation governing the registration of vessels, we think such legislation should also include provisions clarifying in general the present law with respect to the recording of bills of sale and mortgages.

Another matter which seems to your Committee to be of peculiar importance at the present time is the question of the right to proceed against vessels owned or requisitioned by the United States Government or its representatives. While the decisions of the Courts up to this time have allowed proceedings to be taken against such vessels when used for commercial purposes, there is no method at the present time by which bond can be furnished and persons filing libels against such vessels have been faced with the alternative of either abandoning their rights or of taking action which would be likely to result in delaying vessels in Government service at a time when such a course might well seem unpatriotic. Your Committee believes that the time is ripe to ask the passage of legislation allowing proceedings to be brought against the

United States in all cases where damage is caused by vessels owned or operated by it, without the necessity of obtaining an Act of Congress in each particular case. Such legislation should make some provision for the payment of any decree which may be obtained in any such suit; and should permit such suits to be brought in the District Courts of the United States.

NOTE: Subsequent to paragraph 8 all matters were referred back to the Committee to draft such bill or bills as they saw fit, and a Special Committee was appointed with respect to the last recommendation.

Respectfully submitted,

EDWARD E. BLODGETT,
D. ROGER ENGLAR,
FLOYD HUGHES.

Subsequent to May 3, 1918, the Committee has conferred with Chief Justice White of the United States Supreme Court, who has agreed to receive any concrete plan or text of any proposed rules and submit them to the other members of the Supreme Court for action. The Chief Justice, however, deems it necessary that any such plan be approved by a Representative for each of the nine (9) Circuit Courts of Appeals in any Committee which might be organized, such as was done in the case of Revision of the Equity Rules.

This Association's Committee now suggests that each of the Courts of Appeals appoint such a Representative, if they be so minded or are sufficiently interested in the matter to do so. Each of such Representatives should be instructed to prepare their suggestion and be prepared to meet at a call of the Chairman of this Association's Committee in New York City on Thursday, December 5, 1918, at a time and place in such City to be hereafter announced. The Resolution under which the Association's Committee acts authorized it to take

whatever action it determined upon, and the Secretary is now instructed by the Committee to communicate with the Judges of the Circuit Courts of Appeals.

Your co-operation and assistance will be greatly appreciated by this Association, as well as its Committee, and compliance will be in furtherance of the suggestion of the Chief Justice of the Supreme Court of the United States. It is hoped that the Judges of the First, Second and Fourth Circuit may be minded to designate respectively, Messrs. Blodgett, Englar and Floyd Hughes as Representatives for their Circuit.

Kindly address all communications to the undersigned, and the same will receive prompt attention.

Yours respectfully,

A. GORDON MURRAY,
Secretary,
No. 56 Pine Street,
New York City, N. Y.