

THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

NEW YORK, May 7, 1920.

The twenty-^{first}~~second~~ annual meeting of THE MARITIME LAW ASSOCIATION OF THE UNITED STATES was held at the Association of the Bar, No. 42 West 44th Street, New York City, May 7, 1920, at four o'clock P.M. There were present Honorable Charles M. Hough, Honorable Edwin L. Garvin, Messrs. William H. Blymyer, Horace L. Cheyney, J. Dexter Crowell, William J. Conlen, Oscar R. Houston, Henry H. Little, C. C. Burlingham, Victor W. Cutting, Charles R. Hickox, Archibald C. Matteson, William Harison and Herbert B. Lee.

The President, Charles M. Hough, presided.

The Secretary explained the present status of the proposed revision of the Admiralty Rules, viz.—that the Chairman of the Committee, acting in conjunction with the Chairman of the Admiralty Committee of the American Bar Association, had filed a petition with the Supreme Court of the United States, asking for the appointment of a committee of that Court to consider the Revision approved by the Committees. It was hoped that the Court would consider and act on the rules during the coming summer.

The Secretary submitted a report of the Committee having charge of the proposed Federal Statute giving a right of action in courts of the United States for death by wrongful act at sea. The report stated that a statute had been passed by Congress and approved by the President March 30, 1920. A copy of the Statute as approved and the Committee's report is annexed hereto as *Exhibit A* (page 1059). It was ordered that the report be received and placed on file and the Committee discharged with the thanks of the Association for its patient and successful efforts.

The Chairman of the Committee being absent, Mr. Burlingham stated that a bill had been passed by Congress and approved by the President, giving a remedy against *merchant vessels* owned or operated by the United States; but that the statute was not entirely satisfactory to the Committee of this Association in charge of the matter. The Statute, however, having been enacted, the Committee was discharged with the thanks of the Association. It was then stated that an effort was being made to procure further legislation by way of amendment to the Act, and on motion of Mr. Henry H. Little, duly seconded and carried, it was

Resolved that the President appoint a committee to consider and advocate the passage of legislation which will extend the obligation of the United States for damages for torts to all government owned or operated vessels whether employed by the Navy, Army or in merchant traffic. The President appointed Mr. Charles S. Haight, Chairman, Mr. H. Alan Dawson, Mr. Archibald Matteson and Mr. Edward E. Blodgett, as members of such Committee.

Mr. William J. Conlen for the Committee appointed December 5, 1919, having charge of the proposal in Congress to authorize the mortgaging of privately owned vessels which would constitute a lien superior to maritime liens, reported that notwithstanding the objection of this Association to much of the pending legislation, the Committee was convinced that some legislation was to be enacted and that it was the announced purpose of those having charge of the matter in Congress to enact such legislation;—the exact terms of which could not be stated at present. No legislation, however, had yet been passed. Discussion ensued as to the nature and effect of the last known draft of the proposed statutory changes in the law. Remarks were made by Messrs. Cheyney, Hickox, Hough, Conlen, Burlingham, Harison and Houston. On motion, duly seconded and carried, it was

Resolved that the Association approve the action of the Committee to date, and that it be instructed to continue to observe and report upon the further progress of legislation proposed and calculated to disturb the present law in respect of maritime liens.

The Committee on the proposed bill to amend the judiciary code in respect to common law remedies, was not prepared to make a formal report, but it was stated by the Chairman of the Committee, Mr. C. C. Burlingham, that a bill prepared by Mr. Frederic Cunningham of Boston, had been introduced in the Senate, and that the Committee had received some correspondence in respect thereto, but nothing definite had as yet occurred. It was

Resolved that the Committee be continued with power to take such further action as it might, from time to time, deem desirable or necessary.

Judge Hough for the Committee on Merchant Marine stated that the Committee was not prepared to make a formal report but had tendered its services to the Committee of the Chamber of Commerce on the same subject, which latter Committee was not active at present. The Committee was thereupon continued in office.

On motion of Mr. C. C. Burlingham, duly seconded and carried, it was

Resolved that the Executive Committee be instructed to consider from time to time such subjects of maritime law as in the judgment of the Committee may be proper subjects of legislation, and that on the Committee's request the President be and he hereby is authorized to appoint Committees to take up any such subjects as may be deemed desirable by the Executive Committee.

The Secretary reported the deaths among our membership during the year, as also the resignations and additions. The present membership showed 36 Associate Members and 139 Active Members, making a total of 175 members.

The Treasurer submitted a report showing a balance of \$609.83, on hand May 1, 1920. A Committee consisting of Messrs. Horace L. Cheyney and J. Dexter Crowell, was appointed to audit the report, and upon their recommendation the report was approved and ordered on file. The same is annexed hereto as *Exhibit B* (page 1066).

The President appointed a Nominating Committee consisting of Messrs. C. C. Burlingham and Henry H. Little. On

motion, duly seconded and carried, the recommendations of the Nominating Committee were approved, and there being no objection the following officers were elected to hold office from May 1, 1920, to May 1, 1921, or until their successors are elected:

President:

Charles M. Hough,
Post Office Building,
New York City, N. Y.

Secretary and Treasurer:

A. Gordon Murray,
No. 56 Pine Street,
New York City, N. Y.

Executive Committee:

Floyd Hughes, Norfolk,
Ira A. Campbell, New York,
Edward E. Blodgett, Boston,
John W. Griffin, New York,
Alfred Huger, Charleston,
William J. Conlen, Philadelphia,
Oscar R. Houston, New York,
Russell H. Loines, New York.

There being no further business, the meeting was adjourned.

Respectfully submitted,

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

[PUBLIC—No. 165—66TH CONGRESS.]

[S. 2085.]

AN ACT Relating to the maintenance of actions for death on the high seas and other navigable waters.

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 beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies 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 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 by the persons for whose benefit the suit is brought and shall be apportioned among them by the court in proportion to the loss they may severally have suffered by reason of the death of the person by whose representative the suit is brought.

SEC. 3. That such suit shall be begun within two years from the date of such wrongful act, neglect, or default, unless during that period there has not been reasonable opportunity for securing jurisdiction of the vessel, person, or corporation sought to be charged; but after the expiration of such period of two years 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 whenever a right of action is granted by the law of any foreign State on account of death by wrongful act, neglect, or default occurring upon the high seas, such right may be maintained in an appropriate action in admiralty in the courts of the United States without abatement in respect

to the amount for which recovery is authorized, any statute of the United States to the contrary notwithstanding.

SEC. 5. That if a person die as the result of such wrongful act, neglect, or default as is mentioned in section 1 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 as a party and the suit may proceed as a suit under this Act for the recovery of the compensation provided in section 2.

SEC. 6. 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 recovery accordingly.

SEC. 7. That the provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this Act. Nor shall this Act apply to the Great Lakes or to any waters within the territorial limits of any State, or to any navigable waters in the Panama Canal Zone.

SEC. 8. That this Act shall not affect any pending suit, action, or proceeding.

Approved, March 30, 1920.

MARITIME LAW ASSOCIATION OF THE
UNITED STATES.

REPORT OF COMMITTEE ON LOSS OF LIFE BILL.

After a campaign of some twenty years, this Association, with the assistance of the American Bar Association, has finally succeeded in securing the passage of an act conferring a right of action for loss of life at sea. The act was approved March 30, 1920, and is Public Law No. 165 of the 66th Congress.

Briefly, the act gives a right of action in the admiralty for death from negligence occurring on the high seas beyond a marine league from the shore of any state, territory or dependency of the United States, 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 if death had not ensued. The act does not apply to the Great Lakes or to any waters within the territorial limits of a state, or to the navigable waters of the Panama Canal Zone. The amount of the recovery is to be a fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought, to be apportioned among them by the Court, and the Court is to take into consideration the contributory negligence of the decedent and reduce the damages accordingly. The suit is to be maintained by the personal representative of the decedent, and there is a limitation of the time within which it may be brought.

We attach a copy of the act to this report and call attention to two features which were not recommended by your committee. One is Section 4, which was added in the Senate where the measure was first adopted. Section 4 reads:

“That whenever a right of action is granted by the law of any foreign state on account of death by wrongful act, neglect, or default occurring upon the high seas, such right may be maintained in an appropriate action in admiralty in the courts of the United States without

abatement in respect to the amount for which recovery is authorized, any statute of the United States to the contrary notwithstanding."

The section is obviously an echo of the "Titanic" controversy, and though your committee did not approve, it was thought wise not to attempt to strike it out in the House inasmuch as the failure to include some such provision defeated the bill in a former Congress, and the House Committee unanimously reported the bill as it came from the Senate.

The Senate Committee also struck out the specific inclusion of the waters of the Panama Canal Zone which was in the bill as submitted by your committee. This was done in deference to the views of the Governor of the Canal, as presented by the Secretary of War, who wrote that the present laws of the Canal Zone extended over the waters of the Zone as well as over the land, and that if the bill were made extensive to the navigable waters of the Zone that it would result in the application of different principles of substantive law for cases arising on board of ships from those arising on land. He also pointed out that the Employers' Liability Act was applicable to the Zone, and that some suits had been instituted under it against the Panama Railroad for deaths occurring upon the company's ships; that the Loss of Life bill was broader than the Employer's Act, and that its application to the Canal would result in confusion. In light of previous experiences, your committee did not think it worth while to contest this point of view.

The other change in the bill, which your committee regrets, was made in Section 7. That section as the bill was reported and passed in the Senate read as follows:

"That the provisions of any state statute giving or regulating rights of action or remedies for death shall not be affected by this act *as to causes of action accruing within the territorial limits of any state*. Nor shall this act apply to the Great Lakes or to any waters within the territorial limits of any state, or to any navigable waters in the Panama Canal Zone."

When the bill was called up for consideration in the House

the question was asked as to why Section 7 was needed when by Section 1 the right of recovery was limited to death from negligence on the high seas a marine league from shore. Mr. Montague of the House Committee answered rightly when he said that the section was "put in out of abundant caution to calm the minds of those who think that rights within territorial waters will be usurped by the national law," and he agreed with the gentleman who asked the question that there was no necessity for Section 7 "except to put at rest the minds of people who see dangers everywhere they turn." (Congressional Record of March 17, 1920, p. 4798.) Notwithstanding this explanation, the question raised further discussion, and Mr. Mann of Illinois moved to strike out the words "as to causes of action accruing within the territorial limits of any state." He suggested that if the amendment were agreed to then "the bill would not interfere in any way with rights now granted by any state statute, whether the cause of action accrued within the territorial limits of the state or not"; that "if a man had a cause of action and could get service, he could sue in a state court and not be required to bring suit in the federal court." Later he expressed the view that "if this act as originally drawn by the admiralty lawyers was intended for the purpose of taking away jurisdiction now conferred by state statutes it ought to be very critically examined." (Ibid, p. 4799.) The members of the House Committee endeavored to explain the purpose and scope of the bill, and Mr. Montague stated the situation tersely by saying (Ibid, p. 4081):

"This bill has been killed three or four times in other Congresses on three grounds: One, that it embraced the Great Lakes and inland waters; the second, that it did not provide for a jury trial; third, that there was no limitation upon the liability of shipowners, and that there ought to be such a limitation. These three objections, in some form or another, have been interjected heretofore to kill this very meritorious legislation. This bill as now worked out is not perfect, and no legislation is perfect, but certainly in the minds of the committee it is legislation that we would generally consider most wholesome and righteous for mankind."

The result was a roll call, the amendment was adopted, and the bill then passed. The Senate accepted the amendment, and the bill as thus amended was signed by the President.

Just how Section 7 will be construed by the Courts remains to be seen. One great purpose of the act was to establish a uniform law for the high seas, and it may be that Congress having acted in a field over which the United States has exclusive jurisdiction that the state statutes will be held to be displaced, at least, in the admiralty; but the act as it reads seems to preserve such force as the state statutes now have. The question may not be of practical importance to the admiralty bar, whose members will not be likely to run the risk of proceeding under a state statute where there is a federal law, but it is unfortunate that the explicit language of the committee's draft was not retained.

Having in mind the form in which the law will appear on the statute books, it is interesting to look back, for a moment, to the bill first proposed by this association, and to note some of the changes that have taken place. Our first measure covered death from negligence on the high seas, the Great Lakes, or any navigable waters of the United States, or on any waters whatsoever if happening to the passengers or crew of an American vessel. Recovery was limited to \$5,000., and the right to a remedy *in personam* under the act in the state courts was expressly recognized.

As the bill failed to receive the approval of Congress, another committee was appointed which redrew it. Copies were submitted to the members of the association for criticism and the measure was thoroughly discussed at a meeting of the association. The result was a new draft which was designed primarily for the courts of admiralty. It contained no limit as to the amount of the recovery, and expressly provided that in the admiralty recovery for death should be had only under the provisions of the act, and that whenever death occurred from negligence on the high seas that no suit should be maintained in this country except in the admiralty. A separate section reserved the right of recovery under state laws in the courts of the states or of the United States, other than in the

admiralty, for injuries received elsewhere than on the high seas. It is this draft, modified to meet the views of Congress, that is now the law.

No opposition on the part of ship owners developed against the bill. The objections came from unexpected sources, and for reasons that were not looked for—the fear of the exclusive jurisdiction of the admiralty and hostility to the Limited Liability Acts as enforced in the United States Courts—the conception that the enforcement of a right was being taken from the state courts and jury trials, and the confusion of the measure with Workmen's Compensation Laws—to mention some of the objections. Mr. Montague was not quite accurate when he said that the bill was protested because it was thought there ought to be a limitation of liability. Whereas the Limited Liability Acts were an important issue, the real situation was that some members of Congress wanted to amend them in a section of the Loss of Life bill, and they have succeeded, in part, in Section 4.

The members of your committee did what they could to meet the objections and preserve the great purpose of the bill. The Great Lakes were eliminated, the scope of the measure restricted to the high seas, and a definite and fair line of demarkation between state and federal authority established. The latter has been somewhat destroyed and the act is in by no means the best shape possible. But it contains all that Congress was willing to give, and it does furnish a right of action for death in those cases where the right was most needed. Let us hope that it will serve its purpose.

For the Committee,

FITZ-HENRY SMITH, JR.

May 6, 1920.

TO THE MARITIME LAW ASSOCIATION OF THE
UNITED STATES.

A. Gordon Murray, as Treasurer of The Maritime Law Association of the United States, submits his annual report for the year ending April 30, 1920, as follows:

RECEIPTS.

April 30, 1919:		
Balance carried over.....	\$509.71	
Dues received:		
Year 1918 from 9 members.....	\$ 45.00	
Year 1919 from 121 members.....	605.00	
Year 1920 from 3 members.....	15.00	
	665.00	
Assessment for dinner held Dec. 5, 1919.....	175.00	
Petty Cash	6.35	
Interest on Bank Deposit.....	4.52	
	\$1,360.58	

DISBURSEMENTS.

Room Rent, N. Y. Law Inst. Ass'n of the Bar.	20.80	
Printing, Douglas Taylor & Co., and Court Press	235.23	
Stenography, Miscellaneous	17.25	
Clerical Assistant to Secretary and Treasurer..	50.00	
Expenses Annual Dinner	137.70	
Expenses Dinner held Dec. 5, '19.....	254.27	
Travelling Expenses	10.50	
Postage	25.00	
	\$ 750.75	

TOTAL RECEIPTS	\$1,360.58
TOTAL DISBURSEMENTS	750.75

BALANCE ON HAND, May 1, 1920..... \$ 609.83

Respectfully submitted,

A. GORDON MURRAY,
Treasurer