MARITIME LAW ASSOCIATION OF THE UNITED STATES.

MAY 2, 1902.

The Third Annual Meeting of the Association was held at two P.M. at the Association of the Bar of the City of New York, No. 42 West 44th Street.

There were present: Mr. R. D. Benedict, Hon. Addison Brown, Messrs. J. E. Carpenter, E. B. Convers, A. G. Murray, W. Mynderse, H. Putnam, E. N. Taft, J. L. Ward, H. G. Ward and E. P. Wheeler of New York; Messrs. J. D. Bryant and F. Dodge of Boston; Messrs. F. Hughes and R. M. Hughes of Norfolk; Mr. F. Healy of Providence; and Mr. G. Whitelock of Baltimore.

The Secretary was unable to be present at the opening of the meeting, and Mr. Dodge was chosen Secretary *pro tem.*

The Treasurer's report for the year ending with this meeting was read, adopted and ordered to be placed on file.

The report of the Committee appointed November 22, 1901, to prepare the answers of the Association on the subject of the competency and jurisdiction of Courts in cases of collision, to be discussed at the Conference of the Comité Maritime International, at Hamburg, 1902, was presented and discussed.

The report of the Committee appointed on the same date to prepare the answers of the Association on the subject of conflict of laws regarding liens, mortgages and rights *in rem* was also presented and discussed.

It was voted, as to each of the reports above referred to, that the report be accepted, adopted and printed as part of the record of the meeting, and that it be forwarded by the President to the International Conference as the Answers of this Association to the questions proposed, together with a copy of the vote of the Association in regard to it.

These reports are as follows:

Answers of the Maritime Law Association of the United States, to Questions I. and II. proposed by the International Council.

The questions are as follows:

I.—The Laws Compared.

In what cases can the Courts of your country exercise their jurisdiction in the event of collisions occurring in foreign waters when one or both vessels are under foreign flag?

II.—Reforms.

What are the best rules to adopt as regards the territorial competency of the Courts and Tribunals as to collisions occurring abroad, either between foreign vessels or between a national vessel and a foreign vessel?

Should competency be specially attributed:

1. To the judge of the district where the collision took place?

2. To the judge of the home port of the defendant vessel?

3. To the judge of the district where the colliding vessel may be arrested?

4. To the judge of the district in which another vessel belonging to the same owner or incoming assets due to him may be seized?

5. To the judge of the place where the defendant has been served with a summons, although the defendant may have neither domicile nor residence in that place?

6. To the judge of the nation of the plaintiff?

7. In the event of there being several defendants—to the judge competent with regard to one of them?

8. Should the judge who is competent to exercise his jurisdiction on the principal action exercise the same jurisdiction on the cross-demands made by the defendant against the plaintiff as well as the demands in guarantee against third parties?

I.

By the Constitution of the United States, the Federal judicial power embraces "all cases of admiralty and maritime jurisdiction" (Art. III., Sec. 2). Congress, by the Judiciary Act of 1789, enacted that the Federal District Courts should have jurisdiction, among other things: "Of all civil causes of admiralty and maritime jurisdiction." It has, accordingly, always been held that our District Courts have original jurisdiction of all civil causes of an admiralty or maritime nature, without reference to the *place* where the cause of action arose, the *residence* of any of the parties, or the *home* of the ship.

The competency of the Federal Courts to hear and adjudicate all such causes is subject. however, to the same conditions that by our jurisprudence attach to the hearing of all other causes, viz.: the court must have jurisdiction of the *subject matter* (which is here satisfied by the maritime nature of collisions); and also, if the action be *in personam*, of the *person* of the defendant, or of some of his property. If the action be *in rem* the court must acquire jurisdiction of the *res* by its arrest within the district.

Jurisdiction of the person, if the defendant does not voluntarily appear, can only be acquired by service of process upon the defendant personally, within the geographical limits of the district. If the defendant is an incorporated company, personal service is made upon an officer or agent having business transactions of the company within the district. A suit *in personam*, may, however, proceed to judgment, without personal service or appearance, provided some of the defendant's property be found and attached within the district; but in that case the judgment operates only upon the property attached, and has no further validity.

Our answer to the first inquiry of the International Council, therefore, is that the Courts of the United States having admiralty jurisdiction exercise jurisdiction in cases of collision occurring in foreign waters when one or both vessels are under foreign flags:

1. Whenever the defendant vessel is within the territorial

limits of the jurisdiction of the particular court so that she can be arrested in a suit against her *in rem.*

2. Whenever the owner or master is within those territorial limits so that he can be personally summoned to appear and answer in a suit against him *in personam.*

3. Whenever the property of the owner or master is within the territorial limits of the jurisdiction so that it can be attached in a suit *in personam*, though he himself is not within reach of the process of the court; but as above stated, the judgment in a suit wherein jurisdiction is thus acquired, unless the owner appears and submits to the jurisdiction, binds only the property attached and has no further force.

Neither the fact that the collision was in foreign waters, nor the fact that both vessels are foreign, deprives the court of jurisdiction. But if all the parties to the suit are foreigners, the court may, in its discretion, decline to exercise jurisdiction. It thus declines only when special circumstances exist to show that justice will be better subserved by declining jurisdiction than by exercising it.

One of the most common objections in such cases is the inconvenience or impossibility of producing the necessary witnesses. Next to this the most material circumstance affecting the trial of collision causes arising abroad between vessels of different countries is the difference in the principles of the law applicable to the same state of facts in the courts of different nations. If such differences exist it may be very important to the parties where the cause is heard. But this difficulty is unavoidable so long as the present diversity exists in the maritime law of different nations. It cannot be wholly obviated except by making the law in all countries uniform. The evil is remedied in our courts by comity so far as possible. If the vessels in collision, or the parties to the cause, belong to the same country, or to different countries having the same law, our courts apply that law to the case, though our law be different; but if they belong to different countries, with different laws, since neither is entitled to a preference over the other, our own law is in such cases applied as the law of the forum.

II.

To the second inquiry as to the best rules to adopt regarding the territorial competency of courts, etc., it is the opinion of the Association that the rules in force in the United States, as above stated, are the best rules to adopt: In other words, that competency should be attributed (1) to any court having jurisdiction of maritime affairs within the district where the colliding vessel may be arrested; (2) to any such court within whose district the property of her owner or master (whether another vessel belonging to the same owner or owners, or other property) may be attached; (3) to any such court within whose district the defendant, though having neither domicil nor residence there, may be personally served with summons.

These rules, administered as above described, seem to your Committee to furnish only reasonable opportunities for the redress of injuries by collision, and at the same time to secure to the offending vessels and to their owners all reasonable legal protection. The liability to suit in different jurisdictions for the same tort, as your Committee believes, is more a theoretical than a practical objection. It should be, and we believe mainly is, remedied by the universal comity of courts. If a prior suit is pending abroad, the additional suit will be stayed, or the plaintiff put to his election between the two. On the other hand, the restriction of jurisdiction to any single local court would, in the opinion of your Committee, often work extreme inconvenience and hardship to the injured parties, and give an inequitable advantage to the wrongdoer.

We think that no rule should be adopted which would oblige the courts of any country to refuse jurisdiction of any suit in which a citizen of that country, or an alien friend, seeks redress according to its law, provided the defendant is personally served, or his property arrested under the process of the court; but that the offending vessel and her owner should be each held to answer for their wrongs, wherever they may be found, and duly served with process.

We are of opinion, therefore, that competency should not

be restricted to either of the courts mentioned in the first six subdivisions of the second question, but that either one of them should be entitled to exercise jurisdiction, provided arrest of the vessel or service on the defendant is made within the territorial limits of the court; and that without personal service of the defendant, or arrest of his property or of the vessel, no suit for collision should be entertained in any court, except upon a voluntary appearance of the defendant.

The cases in which neither party is a citizen, and the question involved depends solely on foreign law, may safely be left to the discretion of the court, whether to undertake to deal with them or not.

As respects subdivision 7, we think jurisdiction should be taken of an action *in personam* against several foreign owners, defendants, provided personal service can be made on either one or more of them within the district, or provided property of one or more of them can be attached within the district; but any judgment in such action should be limited to the proportion of the damage chargeable against their vessel that the ownership of the defendant or defendants served bears to the whole ownership of the vessel.

The court having jurisdiction of the principal action (sub. 8) should, we think, also have jurisdiction of all counterclaims arising out of the same transaction.

In what has been said above reference has been mainly had to suits in the Federal District Courts, in which collision actions are almost exclusively brought. But, by the Judiciary Act of 1789, above cited, there is reserved to suitors "in all cases the right to a common law remedy, where the common law is competent to give it." This remedy may be sought in the state courts. It is confined to actions *in personam*. It excludes any right to enforce a lien or privilege upon the vessel, and it is subject to the common law rule, that in cases of mutual fault the suit must be dismissed by reason of the plaintiff's negligence, as there can be no division of damages. These circumstances, and the ill-adaptation of a jury trial to collision causes, make such trials in the state courts very rare;

though other maritime causes, such as suits upon charter parties, bills of lading, marine insurance, etc., are not uncommon. Any revision looking to uniformity in the law, or in the jurisdiction of the courts, would, in this country, call for the action of Congress as well as of the treaty-making power.

NEW YORK, May 1, 1902.

ADDISON BROWN,
FREDERIC DODGE,
J. PARKER KIRLIN.

The Committee appointed to consider conflicts of law relating to cases of ownership, mortgage and other maritime liens, beg to report:

The first question, whether these rights should be governed by the law of the vessel's flag, seems to us to admit of a distinction. We consider it preferable that the law of the flag should regulate ownership, and the lien, if any, of the ship builder, documents of title, mortgages and hypothecations of vessels, such transactions being usually completed in the home port. The formality requisite for the proof of such titles and the requirements as to recording, and the satisfaction of such liens, should be regulated by the law of the place where these acts are performed. The same domestic law is also competent to determine the extent of the subject-matter to be hypothecated, and whether or not, and under what conditions, the freight moneys as appurtenant to the ship are to be included in such a mortgage.

But, in our view, the law of the flag cannot be allowed to determine the rank and priority in general of maritime liens, which are to be settled by the *lex fori*. The courts which administer the proceeds of the vessel and freight can ascertain by the provisions of the law of the flag whether the documents produced are regular in form and amount to a valid hypothecation, but must still determine independently the relative rank of these rights as against other competing liens.

While merchant vessels at sea may for some purposes be regarded as forming part of the territory of the nation to which the ship belongs, there are certain general rights which we believe may not be abridged by the local law. As to collisions and other wrongs committed at sea or in foreign waters, the right to proceed against the offending vessel should not be limited by the local law of the ship's flag; but a just liability against the offending *res* should be enforceable abroad, even if denied by the law of the flag of the culpable vessel. In the interests of public security, a lien upon the ship and freight should attach to the colliding vessel. Even if the law of the home port should discharge the ship owner from all liability for reparation, still the law of the forum, enforcing the collision lien, can be rightly applied in the interests of public safety and to secure an equality of all before the law.

The same is true as to salvage liabilities, and we think, also, as to certain necessary indebtedness incurred by the master in the course of the voyage.

Thus limiting the scope of the law of the flag to matters of the registration and like documentary formalities in the home port, it follows that the unification of the maritime law on these subjects is mainly to be sought by securing greater harmony in the different countries as to the rank and priority of liens, when these questions arise in foreign tribunals.

The Committee believe that it is not practicable at this time to enumerate and marshal all the liens upon vessel and freight. The divergence of legislation between different countries is so great that an agreement can be hoped for only upon certain general principles.

The American practice, as distinct from that of the Continent, gives precedence to the maritime lien upon a vessel for damage caused by her fault to another vessel. This maritime privilege when enforced against the offending ship relates back to the time of the collision and may be postponed to other liens subsequent thereto. The great increase of steam navigation (with the consequent frequency of collisions) demands that this lien for damage shall not be displaced by prior contract liens. We believe it is a salutary

rule that the owner of the injured vessel is entitled to proceed *in rem* against the offender without regard to the question who may be her owners, or to the division, the nature, or the extent of the interests in her.

Upon the Continent of Europe this collision lien is not recognized at all in the codes of France, Italy and Spain, and is only given a low rank in the maritime codes of Belgium, Germany and Scandinavian States.

The coming Hamburg conference should deal with this point of divergence separating the American practice from that of the Continent of Europe. This Association of the United States should urge that such a procedure be adopted as will protect the sufferer by collision.

We believe it is not advisable to recommend a precise order for the ranking of maritime liens. It is difficult to assign the relative merits of such liens apart from the consideration of the time when each has arisen. The most favored lien is liable to be postponed to later claims in order of time.

If there be first a general recognition of liens for reparation of wrongs done, it is hoped that then the countries could eventually reach an agreement as to the ranking and order of other maritime liens.

We consider also that a time limit should be prescribed for the enforcement of these liens, which should depend on the presence of the vessel in the port where the claim arose, or the return of the vessel to that port or country, so as to afford a reasonable opportunity for the creditor to enforce his demands.

Respectfully submitted,

HARRINGTON PUTNAM,
EVERETT P. WHEELER,
Committee.

New York, May 2d, 1902.

Report of the Special Committee of the Maritime Law Association, May 2, 1902.

Mr. Mynderse presented a report from the Committee appointed May 4, 1900, to consider Congressional action to confer right of action for loss of life caused by negligence at sea, accompanied by a draft of a proposed Act prepared by Mr. Thompson, of Portland, and a draft of an Act prepared by the Committee.

It was voted that the report be printed and distributed to the members of the Association; that the Committee be continued, with power to add to its numbers; and that the report be referred back to the Committee so constituted.

Report.

To the Maritime Law Association:

Since the presentation of our report, November 13, 1900, the Act then pending in Congress, introduced by Mr. Boutell, of Illinois, has been withdrawn.

The Bill was withdrawn, not because of lack of interest in the subject, but because it was deemed unsatisfactory in its particular provisions.

A new Act has been drafted by Mr. Benjamin Thompson, of Portland, Maine, and at his instance has been introduced by Mr. Boutell.

We have been in correspondence with Mr. Thompson respecting the Bill prepared by him, and have criticised it in that it apparently asserts jurisdiction against foreign vessels and shipowners, not only upon the high seas, but also in foreign waters, even when there is no participation by such vessel or shipowners in American commerce.

This seems to us a serious defect.

We have other objections to the Bill, of minor character, relating to procedure, and relating to the beneficiaries.

We have drafted a Bill, doubtless with many imperfections, but laid out upon lines differing from Mr. Thompson's, and submit it herewith for consideration (Exhibit 1), not with any expectation of its adoption by you in its present form, but merely to bring before you the ideas which have influenced us.

We also submit a copy of Mr. Thompson's Bill (Exhibit 2).

Further, we submit Mr. Thompson's Bill with certain amendments which aim to correct details which seem to us defective (Exhibit 3).

The question as to the most effective method of securing a jurisdiction over foreign vessels and foreign shipowners is perplexing.

We have had in mind the idea of securing such jurisdiction by a provision for reciprocal action of National authorities in accord with the procedure in Great Britain's Merchant Shipping Act of 1894, Section 544, relating to the salvage of life, the specific provision being—

> "And when it is made to appear to Her Majesty that "the government of any foreign country is willing that "salvage should be awarded by British courts for services "rendered in saving life from ships belonging to that "country when the ship is beyond the limits of British "jurisdiction, Her Majesty may by order in council direct "that the provisions of this part of this Act with refer- "ence to salvage of life shall, subject to any conditions "and qualifications contained in the order apply and "those provisions shall accordingly apply to those ser- "vices as if they were rendered in saving life from ships "within British jurisdiction."

We have found it difficult, however, to make a satisfactory draft based upon this idea, and therefore have followed the lead given us by the Harter Act of asserting jurisdiction over all vessels bound to or from a port of the United States.

We suggest that action be taken by the Association approving the general purpose of securing legislation to authorize recovery for loss of life occurring at sea through negligence.

Further, we suggest that in view of the importance of the question, the Committee be enlarged.

Very respectfully,

WILHELMUS MYNDERSE, *Chairman.*
E. N. TAFT.

EXHIBIT 1.

A BILL to authorize the maintenance of actions at law and in admiralty for loss of life by negligence.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED.

SECTION 1. Whenever the death of a person shall be caused either upon the high seas or upon the Great Lakes, or in foreign waters or in waters of the United States by the wrongful act, neglect or default of the owners, charterers, agents, officers or crew of any vessel, foreign or domestic, bound to or from any port of the United States of America, or by the owners, charterers, agents, officers or crew of any vessel of the United States wherever bound; or by the wrongful act, neglect or default of any other person on board any such vessel, an action for damages may be maintained against such vessel *in rem*, if such wrongful act, neglect or default is attributable to the persons operating such vessel or to their servants or agents, or against any natural person or persons who or corporation which would have been liable to an action in favor of the decedent by reason of such wrongful act, neglect or default if death had not ensued, notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as shall amount to a felony.

SECTION 2. Such action shall be brought by and in the names of the personal representatives of said deceased person for the benefit of the heirs or next of kin of said deceased person for the recovery of such damages as shall be fair and just compensation with reference to the pecuniary injuries resulting from the decedent's death to the person or persons for whose benefit such action is brought; but the recovery in respect of the death of any one person for the benefit of all the heirs or next of kin of such person shall not exceed Ten thousand dollars ($10,000) and the recovery shall be distributed among the heirs or next of kin in accordance with the laws of the

place of domicile of the decedent for the distribution of the personal estate of an intestate.

SECTION 3. District Courts of the United States, in admiralty and Circuit Courts of the United States, as courts of law, shall have jurisdiction in all such suits, provided that such suit shall be commenced within two years after the occurrence of the death in respect of which damages are sought.

SECTION 4. Whenever the wrongful act, neglect or default resulting in death has occurred within the waters of any State, and such State has authorized the maintenance of an action for the recovery of damages in respect thereof, such action may be had *in rem* against a vessel in all cases when, if death had not ensued, the injured person might have proceeded *in rem* against such vessel for the recovery of damages.

SECTION 5. Nothing in this Act shall be construed to abridge the rights of ship owners or others under the provisions of Sections 4282, 4283, 4284, 4285, 4286 and 4287 of the Revised Statutes of the United States and Acts amendatory thereof and additional thereto relating to limitation of liability.

EXHIBIT 2.

A BILL to extend the jurisdiction of the Circuit and District Courts of the United States to actions for loss of life by negligence.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

SECTION 1. The jurisdiction of the Circuit Courts of the United States, as Courts of Law, and the jurisdiction of the District Courts of the United States as Courts of Admiralty, shall extend to actions for loss of life on the high seas, in foreign waters, and on the waters of the Great Lakes, when such loss is caused by wrongful act, neglect or default, and

the act, neglect or default, is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or the corporation, or vessel which would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as shall amount to a felony.

SECTION 2. Every such action shall be brought by and in the names of the personal representatives of such deceased person, and the amount recovered in every such action shall be for the exclusive benefit of his widow, if no children, and of the children, if no widow, and if both, then of her and them equally, and, if neither, of the heirs of the decedent. The court, or jury, may give such damages as they shall deem a fair and just compensation, with reference to the pecuniary injuries resulting from the decedent's death, to the person or persons for whose benefit such action is brought, not exceeding six thousand dollars ($6,000), provided, that such action shall be commenced within two years after the death of such person, and when the vessel proceeded against is within the jurisdiction of such District Courts, proceedings under this act, or proceedings to enforce similar remedies provided by the statutes of a State, and applicable to maritime torts, may be had *in rem.*

SECTION. 3. This act shall not abridge the rights of ship owners and others, to avail themselves of the provisions of Sections 4282, 4283, 4284, 4285, 4286, 4287 of the Revised Statutes of the United States, and acts amendatory thereof and additional thereto, relating to limitation of liability.

EXHIBIT 3.

A BILL to extend the jurisdiction of the Circuit and District Courts of the United States to actions for loss of life by negligence.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

SECTION 1. The jurisdiction of the Circuit Courts of the United States as Courts of Law, and the jurisdiction of the District Courts of the United States, as Courts of Admiralty, shall extend to actions for loss of life on the high seas, in foreign waters and on the waters of the Great Lakes when such loss is caused by the wrongful act, neglect or default of the owners, charterers, agents, officers or crew of any vessel of the United States or of any foreign vessel bound to or from any port of the United States, or by any other person or persons whatsoever on board a vessel of the United States, and when the act, neglect or default is such as would if death had not ensued have entitled the party injured to maintain an action and recover damages in respect thereof and in every such case the person who or the corporation or vessel which would have been liable if death had not ensued, shall be liable to an action for damages notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as shall amount to a felony.

SECTION 2. Every such action shall be brought by and in the names of the personal representatives of such deceased person and the amount recovered in every such action shall be for the exclusive benefit of the heirs or next of kin of the decedent. The Court, or jury, may give such damages as shall be fair and just compensation with reference to the pecuniary injuries resulting from the decedent's death to the person or persons for whose benefit such action is brought, not exceeding six thousand dollars ($6,000), which sum shall

be distributed according to the laws of the place of domicile of such decedent for the distribution of the personal estate of an intestate, provided that such action shall be commenced within two years after the death of the decedent and when the vessel proceeded against is within the jurisdiction of such District Court.

SECTION 3. The proceedings nnder this Act or proceedings to enforce similar remedies provided by the Statutes of a State, and applicable to maritime torts, may be had *in rem.*

SECTION 4. This Act shall not abridge the rights of shipowners and others to avail themselves of the provisions of Sections 4282, 4283, 4284, 4285, 4286 and 4287 of the Revised Statutes of the United States and Acts amendatory thereof and additional thereto relating to limitation of liability.

On motion of Mr. Wheeler it was voted that the Committee be requested to consider the expediency of regulating the subject, so far as possible, by Treaty.

The President presented recommendations for the action of this Association in regard to the Draft Treaty relative to a Uniform Law of Collision and the Draft Treaty relative to a Uniform Law on Marine Salvage, prepared by the Special Commission of the Comite Maritime Internationale for submission to the approaching conference at Hamburg.

The recommendations regarding the Draft Treaty relative to Salvage were adopted as the views of this Association.

The recommendations regarding the Draft Treaty relative to Collision were dealt with as follows:

The recommendations applying to Articles 1, 2, 3, 4, 6, 7, 8, 9, 10 and 11 of the Draft Treaty were adopted as the views of this Association.

The recommendations applying to Article 5 were also adopted, after striking out all that part of them following the words "in full."

On motion of Judge Brown, it was voted to recommend the addition to the Treaty of the following additional article:

"Article 12. All the above provisions are subject to the "right of abandonment or surrender by the owner of his

"interest in the vessel or freight, and discharge of his per-"sonal liability, in accordance with the laws of the respective countries; and without prejudice to that right."

The recommendations as to the proposed treaties on collision and salvage, as adopted by the Association, are as follows:

The Maritime Law Association of the United States having considered the report of the Special Commission appointed at the Paris Conference in reference to collision and to salvage, desires to communicate to the Conference, to be held at Hamburg, its views in respect to the Proposed Draft Treaties reported by that Commission.

FIRST.

As to the Draft Treaty relative to a uniform law of collision,

We accede to the First, Second and Third Articles of the Proposed Draft Treaty.

The Fourth Article of the Draft proposes to adopt the rule of dividing damages between vessels in fault not equally, as is the present rule of the law of the United States, but in proportion to the gravity of the fault of each.

There has been of late years a tendency in that direction in this country, in view of which, and in view of the very strong expression in favor of such a rule at the Paris Conference, we desire to express ourselves as not opposing, while not favoring, the adoption of such a rule of damages.

But the same Fourth Article proposes that in case of common fault the liability of the vessels should not be joint.

This is opposed to what has been the settled rule of law in the United States since the case of The Atlas, decided by the Supreme Court of the United States in 1876.

And as it would compel the cargo-owner to bear his own loss, at least partially, if either vessel were totally lost, or if the value of either vessel in fault was not equal to the share of the damages for which she was held liable, we do not think such a change would be acceptable to this country.

Such a provision is also inconsistent with the provision in Article 5, that "Losses in case of collision are to be recompensed in full."

As to Article 5, we recommend that all of the Article after the words "in full" be stricken out.

We accede to Article 6.

Article 7 of the proposed treaty proposes a rule in reference to the respective liabilities of tug and tow which is opposed to the law in this country, in that it proposes to provide that the tow is to be considered as the principal and liable for fault of the tug as its agent, the tug, however, remaining directly liable for its own faults.

We think such a change would not be acceptable to this country.

It is contrary not only to the settled rule of law but also to the universal manner of doing business in this country, according to which the tug is the principal, as an independent contractor.

This article would also seem to confine this proposed change of the law to "seagoing ships" in tow. We do not think this country would accede to any change which should make the law of tug and tow to vary according to the kind of vessel in tow.

We accede to Articles 8 and 9.

The Tenth Article provides that if vessels have been in collision the failure to render needed assistance, when possible, shall not "entail a presumption of fault" in the collision.

Our statute is to the contrary, and we do not believe that the proposed change would be acceptable to this country.

We accede to Article 11.

And we recommend the addition to the proposed Treaty of another article, as follows:

"ARTICLE 13. All the above provisions are subject to the right of abandonment or surrender by the owner of his interest in the vessel and freight in discharge of his personal liability, in accordance with the laws of the respective countries, and without prejudice to that right."

SECOND.

As to the proposed Draft of a Treaty relating to salvage, we perceive that there is little difference between the proposed Treaty and our law of salvage.

The first article (numbered 15 in the Treaty) reads as follows: "Successful services rendered to a ship in peril give the right to the reimbursement of freight and damages, and to an equitable remuneration. All legislative distinction between salvage and assistance (services in the nature of salvage) is abolished."

There is no legislative distinction in the United States between salvage and services in the nature of salvage.

That part of this article which provides that successful service rendered to a ship in peril "gives the right to the reimbursement of freight and damages, and to an equitable remuneration," seems to us objectionable.

The proper form should be "gives the right to an equitable remuneration."

The giving of an absolute right to recover freight and damages would be inconsistent with the nature of salvage suits under our law, in which the question has always been merely as to the amount of an equitable remuneration.

The elements of loss of freight and damages should be specified in Article 20, as elements to be considered in fixing the remuneration.

The next article, which provides that nothing is due if the services "remain without useful result," is broad enough to cover cases of salvage services rendered by different vessels in succession, as to which there has been some controversy in our Courts.

And the clause that no more can be awarded than the value of the property saved, agrees with our law.

The next article, forbidding any reward for services rendered "against the express prohibition of the captain of the ship," might well except the very rare, yet possible, case of a captain who was not in his right mind.

The next two articles cover the case of salvage services

rendered by tugs and pilots and seamen to vessels in whose service they are, and they agree with our law that no salvage can be claimed by them for services which are within their respective contracts.

The next article, as to the elements to be considered in fixing a salvage, agrees with our law; but loss of freight and damages should be included. But the last clause of the article reads that "in no case shall the competent authorities be either forced *or authorized* to allow a fixed proportion of the objects salved, or their value."

The words "or authorized" ought to be omitted. No reason is manifest for limiting the discretion of the "competent authorities" in this way. The practice of fixing salvage in some cases by a percentage of the value saved is of ancient date, and should not be forbidden.

The last article, as to the modifying by the Judge of "contracts made in time of peril," agrees with the rule of our law.

We therefore approve of the Draft Treaty relative to a uniform law of salvage, with the following exceptions:

The words "to the reimbursement of freight and damages and" should be stricken out of the Fifteenth Article.

The words "or authorized" in the Twentieth Article should be stricken out.

In Article 20, after the words "assisting vessel," should be added the words "and any loss of freight or damage sustained by her."

Further action on the bill reported by the Committee on the subject of Uniform Maritime Lien Law and adopted February 6, 1902 (see the report of the adjourned meeting of that date), was postponed for the present.

Officers of the Association were elected for the coming year, namely: Mr. Robert D. Benedict, President; Hon. Addison Brown, Messrs. Harrington Putnam, Frederic Dodge, with the President *ex-officio*, Executive Committee; Mr. H. G. Ward, Secretary and Treasurer.

Messrs. Everett P. Wheeler, J. Edward Carpenter, A. Gordon Murray and George Whitelock, were appointed dele-

gates to the International Marine Conference, to be held at Hamburg, on September 27th.

A vote of thanks to the Association of the Bar of the City of New York for permission to meet at its building was unanimously passed.

The meeting then adjourned, to meet again in the same place on Friday, November 14, 1902.

FREDERIC DODGE,
Secretary pro tem.