

APRIL 1911

International Maritime Committee

BULLETIN N° 24

BREMEN CONFERENCE

SEPTEMBER 1909

President : President Dr. FRIEDRICH SIEVEKING

- I. — CONFLICTS OF LAW AS TO FREIGHT.
- II. — COMPENSATION IN RESPECT OF LOSS OF LIFE OR PERSONAL INJURY.
- III. — REGISTRATION AND PUBLICATION OF MARITIME MORTGAGES AND LIENS.

ANTWERP

PRINTED BY J.-E. BUSCHMANN, REMPART DE LA PORTE DU RHIN

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INTERNATIONAL MARITIME COMMITTEE

BULLETIN N^o 24

BREMEN CONFERENCE

SEPTEMBER 1909

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P R E F A C E

Two subjects came under discussion at the Bremen Conference : the conflicts of laws in regard to Freight, and the Compensation for personal injuries. The considerations to which the discussion of these questions, submitted as they were to the examination of the numerous delegates, who had assembled to take part in this new session of the International Maritime Committee, were to a great extent new. Although it was found impossible to dispose of these subjects in the debates which took place, yet principles were laid down and opinions, often of great interest, were expressed, and the work done in these respects will render future discussions the more fruitful.

* * *

As regards the conflicts of laws in respect of Freight the discussion mainly turned on the question of Freight payable in respect of distance run. The delegates had as a basis for their discussions a Draft Treaty which had been prepared by the Paris Commission of 1909 (1). The fundamental principle of that Draft was the abolition of freight for distance run. This principle is in accord with the principles of the English, American and Belgian systems, whereas on the other hand continental legislatures for the most part recognize this class of freight, although their methods of calculating it are fundamentally divergent and irreconcilable. The Paris Commission had, however, admitted exceptions to the main principle and had recognized freight to be due, 1^o for goods which have

(1) Page 15 of this volume.

perished in the course of the voyage by reason of their nature or inherent vice ; 2° for goods sold in the course of the voyage on account of their damaged condition, whether this arose from their nature or inherent vice, or from perils of the sea ; 3° for goods consumed or sold in the course of the voyage on account of the urgent needs of the ship, subject to their value at the port of destination being brought into account.

The Conference, on a first vote which was taken on the question, approved of the principle of the abolition of freight for distance run.

Discussion with regard to the exceptions gave rise to a number of observations based on practical experience and numerous amendments were proposed.

The Conference thought it expedient to refer the examination of these amendments to a Commission, which should also complete the work of the Paris Commission by dealing comprehensively and systematically with the existing legislation in regard to Freight and Carriage by Sea. This Commission met in London during February 1911.

Regarded as a whole the discussion revealed that the whole question is one of great practical importance. Although in the case of each transaction the question is one of contract, yet it is hardly possible for the parties to the contract to draft an agreement which will completely cover every case which may arise. Conflicts of laws are in these cases inevitable ; as is apparent when one considers the difficulties which may arise in the case of the sale or discharge of goods at a port of refuge, such port not being the port of destination contemplated by the contract. Such difficulties can only be overcome by international legislation.

The second subject under discussion at Bremen was the question of compensation in the case of personal injuries. In dealing with the rules governing liability, four groups of considerations came under examination. These related to :

- 1° The rights of passengers against the carrying ship ;
- 2° The rights of third parties against the non-carrying ship ;
- 3° The rights of the crew ;
- 4° The rights of workmen and superintendants engaged in the service of the ship in port.

In regard to each of these classes of interests it was necessary to examine the conditions of liability, especially in respect of the rules as to proof, the persons who enjoy a right of action, the measure of damages and the periods of prescription.

The Conference listened with great interest to the explanation which was afforded by the various delegates of the state of the law in regard to these points existing in each country represented. The explanations served to reveal the conflict prevailing among the various systems of law. There appeared to be a general impression, although no vote was taken on the question, that an international agreement was desirable in regard to the remedies of passengers and third parties, but serious doubts were expressed as to the feasibility or advisability of such an agreement in regard to social legislation, which in a great number of countries regulates the rights exercisable by seamen against the owner of the ship on which they are serving.

As the question came up for the first time before the Conference, it was deemed advisable, in pursuance of the regular practice, not to attempt to arrive at the very first meeting at conclusions which could have been no more

than such provisional solutions of the question as found favour with a majority of those voting.

The subject is vast and interesting and it more especially merits our attention having regard to the fact that several Governments, represented at the Brussels Diplomatic Conferences of 1909 and 1910, expressed a desire that some solution might be found of questions arising from this source of international differences, at least so far as concerns limitation of liability in respect of personal injuries and loss of life.

* * *

Directly after the Bremen Conference, on the 28th September 1909, the Diplomatic Conference met again at Brussels and remained in session until the 8th October. Twenty-four Governments were represented by their plenipotentiaries and official delegates. It will be remembered that the number of countries represented at the first session which met in the month of February 1905 was only thirteen.

The Collision and Salvage Treaties underwent some modifications as to detail and their texts were rendered more accurate on certain points while certain passages, which seemed capable of doubtful interpretations, were made clear. Only two alterations of substance were made, and these were obvious improvements.

As regards the joint and several liability of ships in cases of Both-to-blame, it had not seemed possible at the first session of the Conference to achieve a solution of the questions relating to death or personal injury in such cases, and this point had been left to national laws.

During the session of 1909 the Conference was unanimously of opinion that this question should be dealt with. In the interests of humanity it conferred upon the persons injured and their personal representatives a right of action

against each of the two parties in fault, leaving it to the national laws to determine what effect exonerating clauses should have upon the right of action conferred.

As regards salvage, the salvers of human life have had conferred upon them a right to remuneration in so far as they will participate in the award granted in respect of the salvage of ship and cargo. The persons salvaged have no individual liability in regard to this reward. This equitable system is in conformity with the laws of several countries and was unanimously adopted.

Both the Treaties, thus modified, met with general approval.

* * *

On the 8th October 1909 the Brussels Diplomatic Conference adjourned until the following April and afterwards until September 1910, in order to allow the delegates to obtain complementary instructions. Having reassembled on the 12th September 1910, the Diplomatic Conference sat until the 27th and on this occasion the success of the Conference in regard to the Collision and Salvage Treaties was complete. On the 23rd September two conventions were signed by the plenipotentiaries of the twenty-four contracting States, one relating to collision and the other to salvage. The ratification of the treaties by the various legislatures should take place in the course of the year.

The International Maritime Committee may thus congratulate itself on a first and definite success. In commemoration of the event, the Council of the Burgomaster and Aldermen of the City of Antwerp, on the 23rd September 1910, the day on which the Conventions were signed, offered a magnificent banquet to the Conference, and a record thereof was inscribed in the Golden Book of the City. On the next day His Majesty King Albert received the plenipotentiaries and delegates at his Palace in Brussels.

These conventions, when they shall have been adopted by the legislatures of the various signatory powers and have been put in force, will constitute a uniform and universal code of law; applicable to all vessels other than ships of war and ships exclusively appropriated to public service. The following is an outline of the new code.

I. *Collision Convention.* — Civil liability to compensate for damage sustained of any kind shall, without regard to the place of collision and whether such collision shall have occurred on the high seas, or in territorial waters, or in harbour, or in a river or canal, but providing one at least of the vessels in collision shall be a sea-going vessel, be subject to the following provisions, that is to say :

1° If the collision is not proved to have been caused by a fault, there being no legal presumption of fault, even in the case where a vessel is run down which is at anchor at the time of collision each person injured by the collision bears his own loss ;

2° If the collision is proved to be due to a fault or faults committed on board of one of the ships, even though the guilty person is a pilot compulsorily in charge, the ship in fault is liable to make good all damage sustained ;

3° If two or more vessels are to blame by reason of a fault or faults committed thereon the liability for the whole damage sustained is apportioned among the ships in fault in accordance with the degree of fault attributable to each vessel.

In this last case a joint and several liability to compensate third parties exists only in respect of claims resulting from death or personal injury, but the ship, which by reason of this rule has become liable to pay to third parties a greater share than that which corresponds

with her degree of fault, can recover the amount paid in excess from the other ship or ships in fault.

The collision convention imposes, moreover, upon the captain of every ship in collision, the duty not only of rendering such assistance as he can, without seriously endangering his own ship, his crew, or his passengers, to the other ship or ships, but also the duty of revealing to such other ship or ships, the identity of his own vessel.

II. *Salvage Convention*. — In fixing the amount of the indemnity or remuneration, no regard shall here again be had to the place where the act of assistance or salvage is performed, nor to the nature of the thing salvaged, but, always providing at least one of the vessels concerned is a sea going vessel, regard shall be had to (*inter alia*) the following rules :

1° No remuneration shall be due unless the service shall have had a useful result. The remuneration should be equitably assessed, and should in no case exceed the value of the thing salvaged ;

2° No right to remuneration shall accrue to any person who has performed any salvage service against the express command of those in charge of the vessel salvaged, providing such command shall have been reasonable in the circumstances ;

3° No right to remuneration shall accrue to any tug for assistance or salvage, unless the tug shall have rendered exceptional services which form no part of the work stipulated for in the contract of towage ;

4° In cases of life-salvage the persons salvaged shall be under no personal liability in respect of any remuneration due in respect of services to themselves. The salvors shall have a right to a reasonable share in the remuneration awarded in respect of the salvage of the ship, her cargo and her accessories ;

5° The amount of the remuneration and the apportionment thereof among the various salvors shall be fixed by agreement among the parties, and in default of such agreement by the Court.

An agreement as to assistance and salvage may, however, on the demand of one or other of the parties interested, be set aside or even amended by the Court if : *a*) the terms of the agreement, settled at a moment, and under the influence of, danger, are inequitable, or *b*) if consent to the agreement has been vitiated by fraud or concealment or *c*) if the remuneration agreed upon was either too great or too small having regard to the service actually rendered.

The convention imposes upon every captain the duty, if he is able to do so without seriously endangering his ship, his crew, or his passengers, of rendering assistance to every person, even an enemy, found at sea in danger of becoming lost.

* * *

As regards the limitation of Shipowners' liability and Maritime Liens and Mortgages, the draft-treaties in regard to these matters, which were prepared at the Venice Conference, were for the first time submitted to the Diplomatic Conference at its session of September-October 1909. Widely divergent views were expressed and finally after prolonged debates, the Conference decided to submit to the different Governments the bases of two conventions which rest, as regards their main features, upon the fundamental principles approved at Venice; the liability being limited to ship and freight with a maximum of £ 8 per ton, and the liens being reduced within such limits as to provide, in accordance with the necessities of modern navigation, Mortgages with a substantial basis.

The Diplomatic Conference, at its session of September 1910, continued the examination of the Bases of agreement prepared at the session of 1909 and tendencies even yet more favorable to ultimate agreement were exhibited.

The cases in which limitation of liability is to be granted have formed the subject of profound study and a uniform solution has been finally achieved.

As regards the actual method of limitation, the system recognized by the Venice draft was retained so far as concerns its essential provisions, but it seemed far preferable to adopt as the base of the limited liability the value of the ship and freight after the accident with a maximum of £ 8 per ton rather than the ship itself at the end of the voyage with the option of substituting for it a sum equivalent to £ 8 per ton. The idea of « the voyage » would only be relevant in respect of the liabilities which terminate in port and which have their origin rather in failure to carry out a contractual engagement than in any particular accident.

One may observe that this new formula presents the following advantages :

1° It avoids the delays and losses, frequently considerable, which result at present from the fact that after a collision for example, the shipowner is unable to repair his ship before he has come to an agreement with the owner of the other colliding vessel as to the value of the ship in a damaged condition, and as to the acceptance of bail to cover this amount ;

2° It removes the abuse at present existing where the shipowner finds it good policy to abandon his interest in a ship which is lying in a damaged condition at some distant port and which is burdened with numerous claims. One has seen situations such as this exploited with the object of providing security for an amount less than an amount representing the true value of the vessel ;

3° In practice this system should not be found more onerous. One can of course conceive hypothetical cases without end in which it might happen that several mishaps or causes of liability happened at one time, but one is hardly able to quote an actual case where this has occurred. Moreover the coexistence of both the continental and of the English systems at present gives rise to far more serious inconveniences.

The Diplomatic Conference has also taken into consideration the limitation of liability in respect of personal injuries, several Governments being desirous of having this question settled by treaty.

The International Maritime Committee has then continued its labours in accordance with the method and system which have assured them the support and esteem both of Governments and of public opinion.

* * *

The International Maritime Committee has deeply appreciated the magnificent welcome which was accorded to it at Bremen not only by the Senate, by the Chamber of Commerce and by the local committee of organisation, but also by the great Shipowning company the Norddeutscher Lloyd. The Committee once more desires to express to them its lively sense of gratitude and to assure them that of the days passed in the noble Hanseatic town it carries away a durable and cordial remembrance.

The Hon. general Secretaries,

LOUIS FRANCK,
LESLIE SCOTT.

International Maritime Committee

STATUTES

ART. 1. The International Maritime Committee propose :

- a) To further, by conferences, publications and divers works, the unification of maritime law ;
- b) to encourage the creation of national associations for the unification of maritime law ;
- c) to maintain, between these associations, regular communication and united action.

ART. 2. The International Maritime Committee is composed of titular members and of delegates of the National Associations.

The founding members are, by right, titular members.

Their number is limited to nine for each country.

The number of delegates of national associations is limited to six for each country.

To complete the number of titular members, as when a vacancy occurs, an election may be held at the first meeting following the constitution of the committee or the vacancy.

The election shall be decided by secret ballot of the titular members, the candidate obtaining the absolute majority being successful.

Art. 3. Each conference shall choose its own officers and take the necessary steps for the execution of its resolutions and the preparation of subsequent reunions.

The following article however shall provide for such cases where no such decisions have been taken.

ART. 4. In the interval between the conferences, the administration of the Committee shall be entrusted to a permanent board.

The permanent board shall be appointed for three years and shall consist of : —

1° A president, vice-president and secretary or secretaries, who shall provide for the maintenance of regular communication between the national Associations, the management of the Committee and the execution of its decisions.

2° Of members, in the proportion of one for each country represented in the Committee, chosen from among either the titular members or the delegates of the national associations.

The board thus formed shall, should it be necessary, draw up the programme of the International Conferences.

The members of the permanent board are appointed by the International Maritime Committee. The elections are by secret ballot, the candidate obtaining the absolute majority being successful.

ART. 5. — The titular members of the International Maritime Committee pay an annual subscription of one guinea.

ART. 6. — The national associations shall be invited to contribute to the expenses of the Committee.

ART. 7. — The length of time during which a titular member may sit is indefinite and can be terminated either by resignation or by deliberation of the committee.

ART. 8. — The present statutes may always be modified, at the proposal of the board and after having been placed upon the order of the day of the reunion.

ART. 9. — The International Maritime Committee shall meet, unless unforeseen circumstances prevent, at least once a year. It shall determine directly or by delegation the time and place of such conference. An extraordinary meeting may be called by the permanent board or at the request of fifteen members, in which case the meeting shall be held in the country where the headquarters of the permanent board are established.

No vote shall be considered valid if not more than half of the countries affiliated to the Committee are present and if the vote does not give an absolute majority of the countries present, the members voting by nations.

ART. 10. — Every three years the committee shall designate the headquarters of the permanent board,

**Permanent Board
of the International Maritime Committee**

FOR 1908-1911

President : M. A. BEERNAERT, Minister of State, formerly Minister of Finances, former President of the Chamber of Deputies, Member of the Academie Royale of Belgium, and the « Institut de France », President of the Belgian Association of Maritime Law, &c., Brussels.

Vice-President : M. CHARLES LE JEUNE, Vice-Chairman of the « Association belge pour l'Unification du Droit Maritime » Vice president of the International Law Association. Antwerp.

Gen. Secretary : M. LOUIS FRANCK, M. P., Advocate, Hon. Secretary of the Belgian Association of Maritime Law, Vice-president of the International Law Association, Antwerp.

M. LESLIE SCOTT, Barrister, K. C., M. P., Hon. General Secretary of the British Maritime Committee.

Members : MM. F. C. AUTRAN, Advocate, Editor of the « Revue Internationale de Droit Maritime » formerly President of the « Association de Droit Maritime » of France, Marseille. (France).

COLOMAN DE FEST, Counsellor at the Ministry, Vice-President of the Royal Maritime Government, Managing director of the Hungarian Association of Maritime Law, Fiume (Hungary).

A. HINDENBURG, Advocate at the Supreme Court Chairman of the Danish Association of Maritime Law, Copenhagen. (Danmark).

- Members :* MM. Dr. A. MARGHERI, Advocate and former Deputy, Professor at the University, President of the Italian Association of Maritime Law, Naples. (Italy).
- Dr. G. MARTINOLICH, Advocate, Secretary of the Austrian Association of Maritime Law, Trieste (Austria).
- Dr. OSCAR PLATOU, Professor of Maritime Law, President of the Norwegian Association of Maritime Law, Christiania (Norway).
- HARRINGTON PUTNAM, Counsellor at law, Member of the Council of the United-States' Maritime Law Association, New-York. (United States America).
- E. N. RAHUSEN, Senator and Advocate, Vice-Chairman of the Dutch Committee of Maritime law, Amsterdam. (Netherlands.)
- K. UCHIDA, Director of the Department of Communications, Secretary of the Japanese Association of Maritime Law, Tokio (Japan).
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List of Members of the International Maritime Committee

- MM. Lord ALVERSTONE, Lord Chief Justice of England, President of the Maritime Law Committee, London.
- R. B. D. ACLAND, K. C., London.
- EARL APPONYI, actual Councillor of His I. & R. Majesty : deputy, Buda-Pesth.
- Baron ARICHI, Vice-Admiral, Tokio.
- Prof. ASCOLI, of the University of Venice.
- T. M. C. ASSER, Minister of State, formerly Professor at the University of Amsterdam, member of the Council of State, The Hague.
- F. C. AUTRAN, Advocate, Director of the « Revue Internationale de Droit Maritime », Marseille.
- BALLIN, General Manager of the Hamburg Amerika Linie, Hamburg.
- A. TYPALDO BASSIA, advocate, President of the House of Representatives, Vice-président of the Hellenic Association of Maritime Law, Athens.
- CHARLES BAUSS, Advocate, Antwerp.
- A. BEERNAERT, Minister of State, formerly Minister of Finances, Member of the Royal Academy of Belgium and of the Institut de France, President of the Belgian Association of Maritime Law and of the International Law Association, Brussels.
- Prof. ENRICO BENZA, Advocate, Genoa.
- DE BERENCREUTZ, former Consul general of Sweden at Antwerp.
- FRANCESCO BERLINGIERI Advocate, Professor at the University of Genoa.
- PAUL BOSELLI, formerly Minister, M. P. Rome.

- MM. Hon. EDWARD G. BRADFORD, Judge for the District of Delaware, Wilmington (U. S. A.).
President Dr. BRANDIS, advocate, president of the German Association for International Maritime Law, Hamburg.
- Hon. ADDISSON BROWN, Judge at the District Court of the U. S., New-York.
- FREDERIC M. BROWN, Counsellor-at-law, New-York.
- G. CERRUTI, President of the Italian « *Veritas* » and Underwriter, Genoa.
- Dr CHRISTOPHERSEN, Minister for Foreign Affairs, President of the Norwegian Commission for the Security of navigation, Christiania.
- EDOUARD CLUNET, Advocate at the High Court of Paris.
- His Exc. M. Victor CONCAS, formerly Minister of the Marine, Director at the Marine Ministry, Senator, Madrid.
- Dr ANTONIO AMARO CONDE, Advocate, Lisbon.
- CALLISTO COSULICH. Imperial councillor, Shipowner, Vienna.
- JUAN CARLOS CRUZ, Professor at the University, Buenos-Aires.
- JACINTHO CANDIDO DA SILVA, formerly Minister, President of the Naval League, Vice-president of the Portuguese Association of Maritime Law, Lisbon.
- FRANCISCO ANTONIO DA VEIGA BEIRAÕ, Councillor of State, formerly Minister, President of the Portuguese Association, Lisbon.
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- A. DE OLIVEIRA SOARES, Chancellor of the Legation of Portugal, Brussels.
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- L. DE VALROGER, Ex-President of the order of Advocates of the Court of Cassation, Paris,
- C. A. DE REUTERSKIOLD. Professor of the University of Upsal (Sweden).

- MM. COMM. E. DE RICETTI, Underwriter, Trieste.
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COLOMAN DE FEST, Councillor of the ministry, Vice-Prési-
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- EMBIRICOS, Minister of the Marine, Athens.
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K. W. ELMSLIE, Average Adjuster, London.
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Paris.
DOMENICO GAMBETTA, President of the Committee of
Maritime Underwriters, Genoa.
Sir JOHN GLOVER, Chairman of the Committee of Lloyd's
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Shipping of the United Kingdom.
Lord Justice GORELL BARNES OF HAMPTON, London.
PAUL GOVARE, Advocate at the High Court of Paris,
Secretary of the Association internationale de la Marine,
Paris.
WILLIAM GOW, (of the Union Marine Insurance Company,
Liverpool).
Dr HEINEKEN, President of the Board of Managers of the
North German Lloyd, Bremen.
L. HELDRING, Manager of the « Koninklijke Nederland-
sche Stoomboot Maatschappij » Amsterdam.
Sir JOHN GRAY HILL, Ex-President of the Law Society
Secretary of the Liverpool Steamshipowners Protection
Ass. &c., Liverpool.
A. HINDENBURG, President of the Danish Association of
maritime Law, Copenhagen.

- MM. AXEL JOHNSON, Shipowner, Stockholm.
Lord Justice KENNEDY, Lord Justice of Appeal, London.
REMPEI KONDO, President of the Navigation Company
Nippon Yusen Kaisha, Tokio.
General Director, JOH^s. KOTHE, Hamburg.
MASAYOSHI KOTO, Vice-President of the Navigation Compy
Nippon Yusen Kaisha, Tokio.
ANDRÉ LEBON, President of the « Messageries Maritimes »
Nav. Company, President of the Central Committee of
French Shipowners, Paris.
CH. LE JEUNE, Vice-President of the *Association belge pour
l'Unification du Droit maritime*, Antwerp.
SIGISMUND LEWIES, Advocate, St-Petersburg.
B. C. J. LODER, Judge at the Court of Cassation, the
Hague.
CH. LYON-CAEN, Professor at the « Faculté de Droit de
Paris », Member of the Institut de France, Paris.
O. MARAIS, Former Bâtonnier de l'ordre des Avocats à la
Cour d'Appel, Rouen.
M. A. MARGHERI, Professor at the University, President
of the Italian Association of Maritime Law, formerly
Deputy, Naples.
President MARTIN of the High Hanseatic Court, Hamburg.
DR G. MARTINOLICH, Advocate, Secretary of the Austrian
Association of Maritime Law, Trieste.
N. MATSUNAMI, Professor of Maritime Law, Tokio.
THOS. R. MILLER, Director of *The United Kingdom Mutual
Steamship Assurance Association*, London.
DUKE MIRELLI, Judge at the Court of Appeal, Naples.
J. STANLEY MITCALFE, Hon. Secretary to the *North of
England Steamship-Owners Association*, Newcastle-on-Tyne.
DR FR. NAGY, Professor at the University, Royal Coun-
cillor of the Court, Deputy, Buda-Pest.
COLONEL J. OVTCHINNIKOFF, of the Russian Imperial Navy,
St-Petersburg.

- MM. DOUGLAS OWEN, ex-Chairman of the Association of Average adjusters of Great Britain, Secretary of the *Alliance Marine Insurance Company*, London.
- A. PEREIRA DE MATTOS, formerly Member of Parliament, Secretary of the Portuguese Association of Maritime Law.
- EDMOND PICARD, Bâtonnier de l'Ordre des Avocats à la Cour de Cassation de Belgique, Senator, Professor at the « Institut des Hautes Études », Brussels.
- Sir W^m PICKFORD, Judge at the High Court of Justice, London.
- The Hon. Sir WALTHER PHILLIMORE, D. C. L. Judge of the High Court of Justice, London.
- Dr OSCAR PLATOU, Professor at the University, Christiania.
- A. PLATE, Deputy, Shipowner, President of the Chamber of Commerce, Rotterdam.
- ANT. POULSSON, Underwriter, Christiania.
- HONORIO PUEYREDON, Professor at the University, Buenos-Aires.
- HARRINGTON PUTNAM, Advocate, New-York.
- E. N. RAHUSEN, Advocate, Senator, Amsterdam.
- Dr AUG. SCHENKER, Shipowner, Vienna.
- LESLIE F. SCOTT, K. C., M. P., barrister-at-law, London.
- LEONE AD. SENIGALLIA, Advocate, Editor of the Italian Review of Maritime Law, Naples.
- Dr ALFRED SIEVEKING, Advocate, General Secretary of the German Maritime Law Association, Hamburg.
- GERMAIN SPÉE, Advocate, former Chief-Registrar of the Tribunal of Commerce, Antwerp.
- C. STUBBS, LL. D. Advocate, London.
- Baron DE TAUBE, Councillor at the Ministry of Foreign Affairs, St-Petersburg.
- OTTO THORESEN, Shipowner, Christiania.
- R. ULRICH, general Secretary of the *Internationaler Transportversicherungs Verband* and of the *Germanischer Lloyd*, Berlin.

- MM. KAKICHI UCHIDA, Director of the Mercantile Marine,
Department of Communications, President of the Supreme Admiralty Court of Justice, Secretary of the Japanese Association, Tokio.
- R. VERNEAUX, Chef du Contentieux à la Compagnie des Messageries Maritimes, Paris.
- Dr ANTONIO VIO, Advocate, Fiume.
- ESTANISLAS S. ZEBALLOS, Minister of Foreign Affairs, Buenos-Aires.
-

National Associations

ARGENTINE REPUBLIC

Argentine Association of Maritime Law

President : ESTANISLAS S. ZEBALLOS, former Minister of Foreign Affairs Buenos-Aires.

Vice-president : PEDRO CHRISTOPHERSEN, President of the Centre national de navigation transatlantique, Buenos-Aires.

Secretary : MARIO BELGRANO, Buenos-Aires.

Treasurer : PEDRO MIHANOVICH, Shipowner, Buenos-Aires.

AUSTRIA

Austrian Association of Maritime Law

President : Dr. AUGUSTO JACOPICH, President of the Court of Appeal, Trieste.

Secretaries : Dr. G. MARTINOLICH, Advocate, Trieste.

Dr. E. RICHETTI, Advocate, Trieste.

BELGIUM

Association Belge pour l'Unification du Droit Maritime

President : M. BEERNAERT, Minister of State, Brussels.

Vice-President : M. CHARLES LE JEUNE, Underwriter & Average Adjuster, Antwerp.

Secretary : M. LOUIS FRANCK, M. P. Advocate, Antwerp.

DANMARK

Danish Association of Maritime Law.

President : M. A. HINDENBURG, Advocate at the Supreme Court,
Copenhagen.

FRANCE

Association Française de Droit Maritime.

President : M. CHARLES LYON-CAEN, Professor, Paris.
Vice-President : M. PAUL GOVARE, Advocate, Paris.
Secretary : M. RENÉ VERNEAUX, Paris.

GERMANY

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INTERNATIONAL MARITIME COMMITTEE

Bremen Conference 1909

AGENDA-PAPER :

Sittings in the Committee's Room of the Bremen Exchange (Börse)

WEDNESDAY, 22^d SEPTEMBER

- 10 a. m. : Formal opening of the Conference.
Election of officers of the Conference.
Report on the labours of the International Maritime
Committee and the next Diplomatic Conference.
2.30 p. m. : Question of Freight. — Discussion.

THURSDAY, 23rd SEPTEMBER

- 10 a. m. : Question of Freight. — Discussion continued.
Means of giving Publicity to Maritime Mortgages
and Liens in the Various countries.
2 p. m. : Compensations due by the Shipowner for Loss of
Life and Personal Injury.

FRIDAY, 24st SEPTEMBER

- 10 a. m. : { Compensation for personal injury and loss of life.
2 p. m. : { — Discussion continued.

SATURDAY, 25th SEPTEMBER

10 a. m. : Conclusion of the discussion.

Place of the next Conference.

Closing of the Conference.

Administrative sitting : General meeting of the Permanent Members of the International Maritime Committee.



INTERNATIONAL MARITIME COMMITTEE

PARIS SUB-COMMITTEE

(FEBRUARY 1909)

At the Venice Conference, the International Maritime Committee had decided to refer the matter of Conflicts of law as to Freight to a Sub-Committee which, in consequence of an invitation made on behalf of the French Association of Maritime Law, was to meet at Paris and would have to prepare a draft-treaty which would be a basis for the discussion at the next Conference at Bremen.

In consequence of this decision, a Sub-Committee, the members of which were appointed by the Permanent Bureau, met at Paris on February 22nd and 23rd, 1909, in the rooms of the Central Committee of Shipowners of France. (1)

In the absence of Mr. Charles Lyon-Caen, who was prevented and had excused himself, the members of the Sub-Committee were received on behalf of the Bureau of the French Association of Maritime Law, by its vice-president, Dr Paul Govare, who was also elected to the chairmanship of the Sub-Committee.

Messrs René Verneaux and Dr Heinrich Finke were appointed to draw up the report.

The present report is a summary of the discussions of

(1) *The members of the Sub-Committee were* : Messrs C. D. Asser, Audouin, Autran, Bensa, Berlingieri, F. M. Brown, Dr. Finke, Louis Franck, Frankfurter, Govare, Gütschow, B. C. J. Loder, G. Marais, G. Martinolich, J. Stanley Mitcalfe, A. Musnier, Reck, de Rousiers, Schaps, Alfr. Sieveking, Leslie Scott, René Verneaux, Ant. Vio.

Were present at the meetings : Messrs C. D. Asser, Audouin, Autran, Berlingieri, Finke, Franck, Govare, Gütschow, Loder, Marais, Musnier, de Rousiers, Schaps, Sieveking, Verneaux et Vio.

the Sub-Committee on the various questions raised in the Questionnaire of the International Maritime Committee.

There was a provisional text drawn up by the French Association of Maritime Law, which served as a starting point for the discussions. We publish this draft below, for information only.

Draft-text of the French Association.

I. When after the beginning of the voyage, an accident (fortune de mer) prevents the ship from reaching her destination, such goods as have been put in safety at the port of refuge, shall pay a freight corresponding to the advantage which the partial voyage represents for the charterer.

This advantage procured to the charterer shall be appreciated on the basis of the difference between the initial freight and that which would be required to complete the voyage.

II. In the same case, the captain has the option to send the goods to their destination.

If he can do so against a freight equal to the original rate, or lower than same, the charterer is liable for the original freight, and only for same.

When the reforwarding freight is higher than the original rate, the charterer is liable for the whole amount, and by paying same, he is freed of the obligation to pay the initial freight.

III. The captain is entitled to the whole freight for the goods sold in the course of the voyage on account of their damaged condition owing, either to an inherent vice or to a « fortune de mer » (accident).

He is also entitled to the whole of the freight relating to goods sold during the voyage for the urgent needs of the ship, provided he accounts to the consignee for the value of his goods at destination, if the ship reaches that spot, or for the actual produce of the sale, if the ship does not

reach there. In the latter event, the claim for freight can only be enforced upon the amount of said price.

IV. In case of cancelment or non-execution of the contract of affreightment by the charterer, the indemnity due to the captain, shall be determined, — when there is no contrary provision, — according to the following rules :

When the charterer, not yet having loaded any goods, breaks the contract before the departure of the vessel, or when he has provided no cargo within the delay fixed for loading, the captain, 24 hours after having lodged a protest, is entitled to claim one half of the freight.

When the voyage has commenced, the charterer cannot cancel the contract or withdraw his goods, unless he pays the whole freight and unless he pays or guarantees the payment of any indemnities which may be due to the captain.

The whole freight is also due when the ship, having been chartered for a voyage outward and homeward, effects the homeward voyage without cargo, or with an incomplete cargo.

In the above event, the charterer is entitled to a proportional reduction of the indemnity due as dead freight, when, owing to the cancelment of the contract, the captain has saved expenses or earned another freight.

In the event of a ship being chartered for a part only, if the charterer does not load his merchandise after having been required by the captain to do so, he is liable for half the freight only.

The same provision applies to a charterer, who, having chartered part of a vessel, withdraws his merchandise before the departure of the vessel. But in the latter case, he will have to refund the loading and unloading expenses for suchs goods as must be displaced, also the expenses for detention.

V. Demurrage and extra-demurrage are to be considered and to be treated as an additional freight.

They will run *ipso facto* and without any protest, from the date fixed by the agreement, if any; if not, according to the customs of the place.

* * *

In the above text, the order followed in the Questionnaire had been changed for the questions 2 and 3. Finally, the Sub-Committee has come back to the former and same will be observed in these explanations of the Resolutions adopted.

1st QUESTION

Is any freight due when the vessel is lost during the voyage but the cargo saved wholly or partly? In what proportion and on which basis?

On this first question, the Sub-Committee had to examine whether they should recommend the solution either of the freight *pro rata itineris*, or of the *equity* freight, or whether they should adopt the English system according to which no freight at all is due in the case supposed.

This last solution they finally adopted after having considered the following reasons, put forward respectively by several members (1).

From a theoretical point of view, this solution is the logical consequence of the notion according to which the contract of affreightment has the character of a *conductio operis faciendi*, of the carrier being a « *contractor* » : the price of the carriage ceases to be due when the result in view has not been obtained.

From the practical point of view the advantage of this system is that it works very simply. On account of this very advantage, it must be preferred rather than the *equity-freight* system, seeing that to determine the latter, numerous difficulties would have to be contended with.

As to question of equilibrium of the various interests

(1) Messrs Schaps, Autran, Loder, Franck.

involved, one cannot say that this system is unfair. Can it be said that it is hard for a shipowner to lose any right to the freight when the goods are carried to a spot very near to the port of destination? This is but a semblance, if the Captain has the option to have the goods, carried by another ship, over the short additional distance supposed and to be left uneffected, in that way earn the whole freight.

The Commission have expressed their opinion in a text reading as follows :

« Save as hereinafter provided, no freight is payable in respect of goods which do not reach their destination ».

2^d QUESTION.

The second question is put as follows by the questionnaire :

- « Is any freight due for goods sold during the voyage :
- 1^o for the needs of the vessel ;
 - 2^o in consequence of their damaged state :
- a) owing to a « vice propre » ;
 - b) owing to accident. (fortune de mer).

After having discussed the various points of view considered in this question, the Sub-Committee arrived to the conclusion that freight was due in all the cases indicated here, although the goods would not have reached their destination, and further in another case too. Therefore, after having set down the general principle contained in article 1, viz that no freight shall be due on the goods having not reached their destination by means of the chartered vessel, the Sub-Committee have thought it logical to indicate, in a second article all cases in which — contrarily to the above principle — freight should be due for the goods having not arrived at destination.

The second question ought therefore to be worded as follows :

When shall freight be due, although the goods concerned should not arrive at destination?

A. — A first case had been admitted without any difficulty, viz when it concerns goods the value of which has been refunded to the party interested by way of general average settlement. It is quite naturel that the consignee should pay freight for goods the value of which is paid to him.

B. — The second case which has been settled was where merchandise has perished in the course of the voyage in consequence of their own defective condition by « vice propre » (inherent vice.) It appeared equitable to admit that the claim cannot be affected by the fact that the goods are perishing by themselves, which risk must be exclusively for account of the owner of the merchandise.

Moreover, the Commission was of opinion that they should not maintain the expression « vice propre », this latter being too much restrictive, but that the same solution should be admitted for the case where merchandise, although in a perfectly sound condition when shipped, perish nevertheless by itself during the voyage ; that is why the Commission has also mentioned at the same time all goods which perish during the voyage « owing to their own nature or vice propre ».

C. — The Commission then has regulated the case where goods are sold in consequence of their damaged state, which may happen for a double reason : the damage can be due either to the nature of the merchandise or vice propre or be owing to accident (fortune de mer).

As to this, there should in the first place be made a distinction as to whether the merchandise is sold for the sake of the merchandise itself, i. e. that the sale has to take place before the merchandise be completely deteriorated. — or for any other reason, for instance, as a measure of general health? The Commission has been of opinion that no distinction should be made and has thought that in every

case, the Captain should be considered as a *gestor negotiorum* and be entitled to the whole freight.

D. — Finally, they have considered the case where the merchandise is sold or employed in the course of the voyage for the needs of the vessel. In such case, as the value of those goods must be accounted for to the consignee, it is but just that the claim for freight should continue to exist. This solution has been admitted without difficulty. But the question then was : What was the value which shall be accounted for to the consignee? Will it be necessary to make a distinction (as the French Code of Commerce does) between the case where the vessel reaches her destination and the case where she is lost before the end of the voyage? In the first instance, the value to be refunded to the consignee would be equal to the price to which the goods could be sold at destination. In the second case, only the actual sale-price should be accounted for to the consignee, this solution being founded on the supposition that the merchandise would have been lost with the vessel.

This was the solution advocated by the French Association of Maritime Law, and was based on the following remarks : When the vessel is lost before the termination of the voyage, it is difficult to know at what exact time she would have reached her destination, and consequently to ascertain what is the market price to be considered in order to fix the value to be refunded for the merchandise lost; this difficulty still increases when the merchandise is shipped for option. Notwithstanding these arguments, the majority of the Commission has admitted that the value to be accounted for to the consignee should be that which the merchandise would have had at the time of the actual or presumed date of arrival of the vessel.

These various solutions have been formulated in an article 2 running as follows :

ART. 2.

Freight is payable in respect of : 1^o all goods to which General Average Contribution is due ; 2^o all goods which

have perished in the course of the voyage by reason of their nature or of their inherent vice ; 3^o all goods sold in the course of the voyage by reason of their defective condition, whether arising from the nature or inherent vice of such goods or from perils of the sea.

Freight shall also be payable in respect of goods made use of or sold in the course of the voyage for the urgent needs of the vessel, but as against such freight subject to an obligation to account for the value of such goods at their intended port of destination.

3rd QUESTION.

Of Freight in case the vessel is declared unseaworthy.

Is any freight due when the vessel is declared unseaworthy at the port of refuge, or cannot complete the voyage, but when the cargo is reforwarded by another vessel and reaches its destination ? On what basis and in what proportion ?

The discussion which has taken place induces us to put the question in the following terms :

Of the Freight of the goods having reached their destination, notwithstanding an impediment preventing the vessel from completing the voyage.

The instance where goods reach their destination, after having been separated from the vessel, has given raise to important discussions.

In the first place, it was necessary better to explain the instance, by indicating the cause of the separation. Several proposals have been made on that point : they tended to indicate, either « the cases of loss or unseaworthiness, or the « peril of the sea », or the « force majeure », or the « fortuitous accident and the force majeure ». None of these expressions appeared to be sufficiently comprehensive, in the opinion of the Commission, the latter wishing to adopt a wording broad enough to include all impediments independent of the free will of the Captain, amongst others administrative impediments resulting from the acts of the various Port-Authorities, and finally the Commission has

chosen the following terms : « *in the event of the ship after sailing, being prevented from completing her voyage* ».

The Commission then examined the various cases of reforwarding of the goods to their destination.

It abstained from prescribing imperatively that the captain should himself undertake this reforwarding, by chartering another vessel or by resorting to any other means.

But the Commission was of opinion that the option to do so should be left to the Captain, in order to give him an opportunity to earn the freight which, otherwise, would be lost to him.

This option appeared as the necessary corrective of the suppression of distance-freight. An instance given during the discussion may perhaps illustrate and render more striking the idea which seemed to impose itself on the Commission. Suppose a vessel taking a cargo from Smyrna to Marseille ; she is wrecked on the coast of Sardinia. The freight stipulated for the whole voyage is frs. 30. ; for the additional voyage from Sardinia to Marseille, it would be sufficient to pay frs. 10. The Charterer would have an advantage to consider the contract as cancelled at the place where the ship was wrecked and to undertake himself the reforwarding of the goods to Marseille. Would it be equitable that he may do so to the great disadvantage of the first carrier ? The Commission did not think it, but considered that the first carrier ought not to be denied the possibility to earn the freight stipulated, by undertaking the reforwarding of the goods, and that he must have the option to take such measure without being bound to consult the owner of the goods.

This idea having been adopted, the Commission had to solve this question : Is the carrier only entitled to the freight stipulated when the goods have been reforwarded to destination *by his care* ? Indeed, one of the French members (1) proposed to provide that the freight agreed

(1) Mr. R. Verneaux.

upon, is due, whatever be the person taking care of the reforwarding, subject the obligation for the carrier to pay the freight for the additional voyage. The following remarks were put forward to second this proposition : The first carrier may have some legitimate reasons, material or moral, for not undertaking himself the reforwarding. In such case, and often at the request of the carrier, a trustee may be appointed by the Court. Such trustee acts for account of whom it may concern. Must we not consider that he is thus acting as well on behalf of the freighter (shipowner) as on behalf of the charterer ; and as the object of the contract is, after all, attained by the arrival of the goods at destination, is the shipowner not justified, if he offers to pay the price of the additional distance, to claim payment of the whole freight stipulated at the time of shipment ? And even in the case where, failing a trustee, it is the charterer himself who takes care of the reforwarding, would it not be equitable to authorise the shipowner, notwithstanding his having abstained, to claim the freight agreed upon, under deduction of the reforwarding freight ?

However, this system has not prevailed and by a majority of votes, the Commission admitted that the reforwarding shall confer to the shipowner no right to the freight agreed upon, unless this reforwarding has taken place « by his care ».

This settled the case where the reforwarding freight does not exceed the rate of freight agreed at the port of shipment. But then came the case where this reforwarding freight should be higher.

It has seemed justified to leave the difference in excess for account of the goods, reserving however to the charterer the right to intervene himself in order to prevent a *gestio negotiorum* which he might deem unseasonable.

These deliberations have led to the following text :

ART. 3.

In the event of the ship, after sailing, being prevented from completing her voyage, the Captain shall be entitled to demand the agreed freight, should he, in spite of such prevention, succeed in getting the goods carried to their destination.

Should a reshipment, rendered necessary in the last mentioned case, be practicable only at a rate of freight higher than the agreed freight, the difference between the two rates of freight shall be chargeable upon the goods; but nothing herein shall interfere with the right of the shipper to effect such reshipment on his own account or otherwise to dispose of the goods carried.

4th QUESTION

In the case where the Charterer cancels the voyage before loading, or loads only part of the engaged cargo, shall the indemnity due (half-freight or dead-freight) be fixed legislatively, or should the question be referred to common law as to damages?

According to British law, the charterer who does not tender the cargo specified in the contract, or who does not supply the whole cargo, is liable for damages which are not fixed legislatively, but are determined by the Court according to the circumstances of each case, the shipowner having to prove, under the terms of the common law, the import of the damage he suffers.

The Commission has thought that, according to the conception prevailing in the continental legislations, it would be far better to adopt the system of a lump-indemnity fixed by law. It considered that in this matter the mere application of common law could lead to real injustice, on account of the difficulty on the side of the shipowner to prove the various sources of a damage which is nevertheless existing.

After having admitted that the indemnity due to the shipowner should be fixed by law, the Commission thought it advisable to make a distinction between the case where the contract is cancelled before any loading of goods, and

the case where it is cancelled after the loading having commenced.

For the first case, it appeared that the old practice, viz to allow the half-freight, should be maintained. Is it advisable (as it has been proposed) to add that this lump indemnity would be due only 24 hours after a protest? To this the Commission answered negatively.

For the second case, the Commission adhered to the system of the dead-freight, and considered that the charterer was liable for the whole freight and for the whole cargo provided for in the contract, subject to his right to obtain a proportional reduction if he proves that other goods have taken the place of the merchandise not supplied by him.

Considering next the withdrawal of goods already placed on board, the Commission proposed to decide that the charterer is liable for the whole freight and has further to indemnify the shipowner for all expenses and damages caused by this withdrawal of the goods.

An interesting discussion has taken place on the following point : Would it not be convenient to provide that the rules established as to cancelment of the contract, shall apply to carriage by sea by liners as well as to charter-contracts? Some waveringness which has been observed in the decisions of the Courts, make it highly desirable that the future law be very clear on this point. Now if one considers that the shipowner running a regular line and is acting, under all respects, as a common carrier, is subject, at least as much as those contracting per « charter-parties » in the proper sense of the word, to all difficulties incidental to the proof of his loss under the terms of common law, it seems fair, as was argued, to extend to him the benefit of the legal provision which will be adopted. The Commission acceded to this view.

During the discussion, a proposal was made to grant

to the ordinary carrier by sea a right to the whole freight in case of cancelment of the contract before departure of the ship. But it was answered that such solution is diverging so widely from the British system that it could not fail to raise opposition and that it was much better to propose a main system, so as to arrive at an agreement. The Commission deemed it wise to follow this suggestion and to keep to the system of half-freight.

The Commission reserved the question whether it would not be well to make a distinction (as is the case in the Italian code) between the case where the charterer who does not load any goods, declares the cancelment of the contract, (when he is liable for half the freight) and the case where he omits to make such declaration before the ship sails, in which latter case he should be liable for the whole freight.

Finally, the Commission decided to propose simply the following text, noting however the reserve that the German delegates, for the cases of loading of general cargo (Stückgüter Vertrag) would have preferred the allowance of the whole freight :

ART. 4.

It shall be a rule of affreightment and carriage of goods by sea that if the shipper do not tender the agreed cargo for shipment, he shall forfeit to the shipowner by way of compensation, a sum equivalent to one half of the agreed freight. Where part only of the agreed cargo shall have been tendered for shipment, the shipper shall be liable to pay freight for the whole of the said agreed cargo, subject to a proportionate reduction of liability in respect of freight earned on substituted cargo.

Where a shipper, in the case provided for under Art. 3, whithdraws his goods from the shipowner's control, he shall be liable to pay the whole freight and to reimburse the Captain in respect of any expense or loss to which he may be put by reason of such withdrawal.

The above provisions shall be equally applicable to general ships.

5th QUESTION.

Shall demurrage be considered as an additional freight, or as an indemnity?
Will the debition or same be subordinated to a written protest, at least by correspondence?

Everybody knows the doctrinal discussions to which the character of demurrage has given raise.

Shall demurrage be considered as an additional freight or as an indemnity? From the point of view of doctrine of law, the interest of this question is very large, as has been shown by Mr. Denisse. If demurrage is to be considered as an accessory of freight, then it must be included in the abandonment of ship and freight; it shall follow everywhere the fate of the claim for freight : i. e. it shall not be due when freight is not due or is lost by way of prescription; it shall be guaranteed by the same lien; it shall begin running by right, without previous protest. The contrary solutions would of course depend upon demurrage being merely damages (indemnity).

These various interests have been reminded to the Commission. It has been also reminded that as regards the question whether demurrage shall follow freight in the sea venture (estate of shipowner at risk) as towards the creditors, that question had been decided by the draft-treaty on limitation of shipowners' liability.

The Commission has been of opinion that they had no reason, and that it was not advisable, to make out what is, theoretically, the character of demurrage, so as to settle this in conformity with a quite satisfactory doctrinal construction, and concluded that it was sufficient for the Commission to put forward two rules which appeared as imposing themselves from the point of view of equity and practice, and has formulated same as follows :

Payment of demurrage ought to be enforceable in the same manner as payments of freight.

Payment of demurrage shall not be conditional upon any special legal processor formality.

ANNEXE

Draft Articles proposed by the Paris Commission

ART. 1. — Saving in the cases hereinafter excepted, no freight shall be payable in respect of goods which do not reach their destination.

ART. 2. — Freight is payable in respect of : 1° All goods to which General Average contribution is due ; 2° all goods, which have perished in the course of the voyage by reason of their nature or of their inherent vice ; 3° all goods sold in the course of the voyage by reason of their defective condition, whether arising from the nature or inherent vice of such goods or from perils of the sea.

Freight shall also be payable in respect of goods made use of or sold in the course of the voyage, but as against such freight subject to an obligation to account for the value of such goods at their intended port of destination.

ART. 3. — In the event of the ship, after sailing, being prevented from completing her voyage, the Captain shall be entitled to demand the agreed freight, should he in spite of such prevention, succeed in getting the goods carried to their destination.

Should a reshipment, rendered necessary in the last-mentioned case, be practicable only at a rate of freight higher than the agreed freight, the difference between the two rates of freight shall be chargeable upon the goods ; but nothing herein shall interfere with the right of the shipper to effect such re-shipment on his own account or otherwise to dispose of the goods carried.

ART. 4. — It shall be a rule of affreightment and carriage of goods by sea, that if the shipper do not tender the agreed cargo for shipment, he shall forfeit to the shipowner by way of compensation, a sum equivalent to one half the agreed freight. Where part only of the agreed cargo shall have been tendered for shipment, the shipper shall be liable to pay freight for the whole of the said agreed cargo : subject to a proportionate reduction of liability in respect of freight earned on substituted cargo.

Where a shipper in the case provided for under Art. 3, withdraws his goods, from the shipowner's control he shall be liable to pay the whole freight and to reimburse the captain in respect of any expense or losses to which he may be put by reason of such withdrawal.

The above provisions shall be equally applicable to general ships.

ART. 5. — Payment of demurrage ought to be enforceable in the same manner as payment of freight.

Payment of demurrage shall not be conditional upon any special legal processor formality.

BELGIUM

BELGIAN ASSOCIATION FOR UNIFICATION OF MARITIME LAW

Compensation due by shipowners in case of personal injury

PART I

Comparative Law

A. — Principles

What are the general principles which according to the law of your country, regulate liability for accidents resulting in death or personal injury.

In particular, in regard to the following questions.

1° *What are the rights of passengers against the ship carrying them, or its owners?*

ANSWER

There is no special legislation on the matter. The common law on delicts & quasi-delicts applies: art. 1382, 83, 84 Code Civil.

Art. 1382: « Every act of man which causes damage to another, binds him by whose fault it happened, to repair it. »

Art. 1383: « Anyone is liable for the damage caused not only by his own act, but also for the damage caused by his negligence or imprudence. »

Art. 1374 : « Anyone is liable not only for the damages caused by his own act, but also for those caused by the act of such persons for whom he is responsible or of such things which he has in his custody

Employers are responsible for the damage caused by their servants and employees in the duties on which they employ them.

2° what are the rights of third parties, e. g. passengers and crew of a ship collided with against the colliding ship or its owners ?

ANSWER

Same as preceding question.

3° what are the rights of the crew against the ship on which they are engaged or its owners ?

ANSWER

This is the subject of special legislation :

Art. 102 of the new marine law dated 10th of February 1908 (formerly art. 57) :

« The sailor shall be paid his wages, provided with medical aid and returned to his native country *at the expense of the ship*..... should he be wounded in the service of the ship. Wages shall be payable up to the end of the voyage for which te engagement has been contracted, unless it be proved that the sailor has been restored to health before that period and has been enabled to rejoin the ship or to obtain another engagement. »

Art. 103 (formerly art. 58).

« If he is wounded whilst fighting against ennemies and pirates, he shall be paid his wages, provided with medical

attendance, and returned to his native country *at the expenses of the vessel and the cargo.* »

There are some restrictions to these rights :

Art. 104 (formerly art. 59) : « If the wound or the illness shall have been occasioned by the sailor's own fault, or if having left the vessel without authority he has been wounded on land, the expense of the medical attendance shall be paid by him personally ; and the Captain shall be entitled to discharge him. His wages in the last case, shall only be paid to him in proportion to the time during which he has been employed. »

Finally :

Art. 105 (formerly art. 60) last paragraph.

« The wages of a sailor killed whilst defending the vessel shall be payable in respect of the whole voyage, if the vessel arrives safely in port. »

These provisions are in favor of the sailors : even if the captain has committed no fault for which he is liable, the above mentioned damages are payable e. g. in the event of force majeure, accident or fault of a third person.

If on the contrary, the captain committed a fault, the common law — art. 1382, 83, 84 — applies. The above mentioned damages would be but part of the more important damages which could be allowed.

4° *Where foremen and workmen other than the crew are employed, such as stevedores, watchmen, and other persons employed in port, what rights have they against the ship on or for which they are employed or its owners ?*

ANSWER

The following distinction should be made :

A) *the workmen are under a contract of labour relating to one of the industries to which the law of 24th december 1903 applies.*

E. g. storing, packing, loading and discharging.

The law of 24 december 1903 then applies.

This law is based on the following main principles :

1° it is applicable to workmen belonging to certain categories of industries, specified by the law (art. 23).

2° it provides lump indemnities, fixed by the law (art. 4, 5, 6, 7 & 8).

These indemnities are 50 % on the loss of professional ability.

In the case of death, funeral costs fixed at 75 frs and the value of a life annuity fixed with regard to the age of the victim and representing 30 % on his salary.

3° the indemnities are payable for every accident happening during and by the fact of the performance of the contract of labour (art. 1).

The accident happening during the performance of the contract is *prima facie* deemed to be due to the fact of its performance (art. 1).

4° the law is not applicable to those accidents which are willfully caused by the employer or the workmen (art. 21 & 22). In such case common law applies.

B) *the employees are under a contract of employment or the workmen are under a contract of labour relating to industries to which the law of 24th december 1903 is not applicable.*

Common law applies.

C) *It may be observed that the only indemnities allowed are those, fixed by the Law of 1903 if the victims to whom they are payable were under a contract with the captain. (Art. 21. al. 4).*

If to the contrary, they were under a contract with another employer who had on his turn contracted with the captain, common law applies to the relations between the captain and the victims. Indeed, the captain is then a third person.

And when the indemnities paid by the captain under common law would cover the total damage suffered, the employer, liable under and according to the law of 1903, would be exonerated (art. 21, al. 4).

B. — Application of the Principles.

I. — Conditions of liability

1. — *Is the liability regulated by common law, or is it the subject of special legislation?*

ANSWER

By common law.

There are however special provisions in favor of sailors (see. A. — Principles — 3°).

And there is a special legislation for certain categories of workmen (A. — Principles — 4°).

2. — *Is liability presumed or must negligence be proved?*

ANSWER

There is no presumption of liability : negligence must be proved (art. 1382, 83, 84 et 1315 Code Civil).

Exceptions :

1° Employers' liability (art. 1384).

If the negligence of him who causes the damage is

proved, he who is civilly liable for it, cannot exonerate himself.

He stands under a presumption *juris et de jure* of negligence by reason of the bad choice of his employee.

2° indemnities payable to sailors (A. — Principles — 3°).

These are payable even if neither the captain nor the owners are guilty of negligence, in cases of force majeure or accident.

3° indemnities of the law of 24th dec. 1903 (A. — Principles — 4°).

There is no question of negligence. That which must be proved is quite different : the only evidence required is that the casualty have happend during and by the fact of the execution of the contract of labour. It is based on the idea of professionnal Risk.

3. — *If liability be presumed, may such presumption be rebutted on proof of accident or force majeure ?*

ANSWER

See preceding answer.

4. — *Does the inherent vice or defect in inanimate objets (breakdown of engines, machinery ropes &c) give a right of action ?*

ANSWER

Yes (art. 1384, par. 1 in fine).

5. — *What proof is necessary to succeed in such action ? Must negligence of captain or crew be proved as well as defect in the engine or other object ?*

ANSWER

This is a question open to controversy on which the opinions are very different. — The latest state of jurisprudence (Cass. 26 mai 1904. — Pas 1904, I, p. 246; Cass. 15 fevrier 1906. — Pand. Per. 1906, n° 753; Cass. 2 juillet 1908. — J. P. d'Anvers 1908, I. 372) seems to be as follows :

Proof of the vice of the object, i. e. the defect in the engine.

If there was no defect in the engine, the negligence of its guardian — i. e. the captain or crew, must be proved.

We may add that it is often decided that negligence of the guardian must be proved in any case.

6. — *Is proof of accident or force majeure admissible as a defence?*

ANSWER

Yes.

II. — Persons entitled to sue

Does a right of action only belong to the person injured or does it equally belong to his widow or children? Can more distant relatives or personal representatives sue?

ANSWER

A. — *Common law accidents*

a) In the absence of any special provision, the general provisions on successoral rights are applicable.

The heirs, even collateral heirs and irregular inheritors (illegitimate children, the deceased's husband or wife or the State) inherit of all the rights having accrued to the

estate before the death. E. g. the action for physical pains suffered by the deceased (art. 724-731-755 Code Civil.)

b) Independently of the inherited rights, any person who has suffered damage has a personal action against him who caused damage. (Laurent T. XX, n° 534).

B. — *Accidents under the law of 24th December 1903*

Art. 6 of this law provides that the beneficiaries of the indemnities shall be :

a. The deceased's husband or wife, neither divorced nor legally separated, if the marriage is prior to the accident.

However, the widower has no right to indemnity unless he was supported by the victim.

b. The legitimate children, born or conceived prior to the accident, and the illegitimate children recognized before the accident, inasmuch as they are less than 16 years of age.

c. The little-children less than 16 years old and the ascendants, who were supported by the victim.

d. The brothers and sisters less than 16 years old who were supported by the person injured.

Category *b* shuts out categories *c* and *d* and category *c* shuts out category *d*.

III. — **Damages**

1. May material loss only be recovered by way of damages or may damages also be awarded in respect of general damage?

ANSWER

Damages are payable for general damage (1) in the case of accidents under the common law.

(1) By « general damage » is meant « dommage moral » i. e. for instance indemnity for pains suffered.

General damage cannot be recovered in the case of accidents under the law of 1903.

2. *Do such damages include only damage directly attributable to the accident, or do they also include damage indirectly attributable?*

ANSWER

All damages as well indirect as direct are taken into account in the case of accidents under common law. They are not in the case of accidents under the law of 1903, whilst said law fixes the basis on which damages are payable.

3. *Is the amount recoverable limited to a fixed sum, e. g. has a maximum recoverable in such cases been fixed by any law or proposed law? What is the limit if any?*

ANSWER

No such limit exists under Belgian law.

IV. — Exonerating clauses under contracts.

Is it possible to contract out of the liability imposed by common law?

ANSWER

Accidents under common law : Yes.

However it is not possible to contract out in advance of the consequences of his « dolus » or « culpa lata ».

Accidents under the law of 1903.

Art. 23 provides : Any contract contrary to the provisions of this Law is void.

V. — Prescription.

Is there a period of prescription and if so what period ?

ANSWER

A. *Accidents under the common law.*

A. — Accidents caused by collision : Period of prescription one year from the date of the collision (art. 259, law of 10th February 1908).

B. — All other accidents : Period of prescription : 3 or 10 years according as to whether there be delict or crime (art. 21 or 22 law of 17 april 1878).

B. *Accidents under the law of 1903.*

3 years (art. 30) from the date of the accident.

VI. — Nationality.

Are foreigners and nationals upon the same legal footing ?

ANSWER

Yes (art. 128. Constitution).

SECOND PART

**Resolutions proposed as a basis of
international agreement.**

**A. — Rights of passengers against the Carrying
Ship.**

1. Is it desirable to regulate by international agreement the right of passengers to recover compensation from the carrying ship in case of death or personal injury?

ANSWER. — Yes.

2. — Should this liability be presumed?

ANSWER. — As a matter of principle, the carrier is responsible for the good and safe arrival of the passenger at the port of destination. In case of accident, is it logical that the carrier's liability be presumed, unless he proves that the damage was caused by accident or force majeure. But it would be of great advantage, both practical and economical, to have this liability assessed at a lump indemnity.

3. — What provisions should apply to cases in which an accident is due to a vice or defect in ship or engines?

Should a distinction be drawn between a latent and a patent defect?

ANSWER. — The owner is liable for the patent defect; he is not liable for the latent defect provided he used reasonable care to avoid it.

4. — Basis of damages.

ANSWER. — The damages should be limited to material damages directly attributable to the accident or which are at least the necessary consequence thereof. We would prefer the system of a lump indemnity.

5. — An action should be open to the deceased's husband or wife, to his children and little-children. These failing, to his ascendants.

The other relatives should only have an action if they were dependent on the deceased and in as far as they were.

There is no reason of giving an action to any person not being in one of the above conditions.

6. — Limitation.

We are of opinion that it would be of great advantage to have a system which would regulate by way of a lump-indemnity the damages recoverable in case of personal injury fixing to a certain amount the maximum of damages payable in each case.

7. — See answer to question 5.

8. — Contracting out of liability.

If the contract of carriage remains subject to common law, we suggest that it should be permissible to contract out of liability, provided that due notice has been given to parties and that they have accepted. But that it should not be permitted in the case of accidents caused by the unseaworthiness when sailing, of the vessel or by want of care or caution if the latter are imputable to the owner.

Under the lump-indemnity system we suggest that in compensation for a reduction of liability, the legal basis should be compulsory, and that no conventional derogations should be permitted.

9. — Foreigners and nationals should be placed on the same footing.

10. — Two years.

B. — Actions of third parties against non-carrying Ships

1. It is desirable to regulate the matter by international agreement.

2. The negligence should be proved by the plaintiff.

3. There should be no liability when the accident is due to a latent defect, provided that due diligence has been used to prevent it.

4. Damages should include the damage actually suffered. General damages, or damages indirectly attributable to the accident should not be allowed.

5. A right of action should be given to the injured party. If he fails, to the deceased's husband or wife, children and little children. If they fail, to the ascendants. The other relatives have no action unless they were dependent on the deceased and inasmuch as they were.

6. If the system of a lump-indemnity could obtain the general agreement of nations we are willing to adhere to same

7. No distinction should be made between foreigners and nationals.

8. Two years.

C. — Actions by the Crew

Although there would be serious advantages to regulate this question by international agreement, we are of opinion that owing to the difficulty which such agreement would

involve and the differences existing between the various nations, economically and socially, it should be reserved to national legislation: but we think that it would be desirable that in every country equitable compensation be assured to the crews of vessels on the basis of professional risk. An international agreement ought to give assurance that in the application of such legislation no distinction whatever would be made between nationals and foreigners.

If the matter must continue to be ruled by common law, the solutions to be adopted should be similar to those which have been given under n° 2; the default or negligence must be proved by the plaintiff.

D. — Actions by workmen and others employed in Port on board the ship or in her service

Such workmen and employers should be treated in the same way as the crew.

Conflicts of Law as to Freight

The Belgian Association for Unification of Maritime Law adheres to the conclusions set out in the Report of the Paris-Commission (February 1909).

DANMARK

DANISH ASSOCIATION OF MARITIME LAW

Draft-treaty on Freight.

The draft-treaty on Freight has been examined by our Association.

This draft-treaty differs on very important points from our national law, as it does not admit distance-freight.

Freight *pro rata itineris* has been admitted by our law since several centuries et for this reason, our Government have thought it advisable, in the year 1892, to maintain same. During the deliberations on the draft-treaty, one of our members, Mr. Middelboe, expressed his opinion that we should maintain our national law as it presently stands. The other members recognised that a reform of our law as to this would meet with a strong opposition ; but we have thought that the advantage to arrive at a uniform rule is so great that we might give way on this principle of distance-freight.

The provision of article 4, first paragraph, is in conformity with article 126 of our maritime law. However, in practice, this rule is only observed for small vessels. For large ships, nearly all charter-parties contain provisions quite different for the case where the contract is not executed. Often damages have been stipulated which exceed the half-freight or covering the loss judicially fixed, provided said damages do not exceed the whole freight.

For this reason, Messrs Johan Hansen, Otto Liebe, O. B. Muus and Middelboe are of opinion that we must

not stand on maintaining a rule which is practically abandoned by parties interested themselves.

Without denying the importance of this remark, the undersigned, Mr. Hindenburg, prefers to adopt the draft-treaty as framed by the Commission.

Other provisions of the draft-treaty are not quite in accordance with our national law. However, such divergencies are of less importance, so that we can accept the draft-treaty entirely.

Copenhagen, 10th July 1909.

(S.) JOHAN HANSEN,
O. B. MUUS,
OTTO LIEBE,
A. HINDENBURG,
VIGGO MIDDELBOE.

FRANCE

FRENCH ASSOCIATION OF MARITIME LAW

QUESTIONNAIRE

on Compensation in respect of Personal Injury

REPORT

by Mr RENÉ VERNEAUX

General Secretary of the French Association of Maritime Law

The International Maritime Committee puts on its agenda-paper a very important matter which had always been reserved : the compensation in case of personal injuries. To say the truth, this problem rose from the very beginning of its works, as the shipowner's liability has been the object of its cogitations from the moment the Committee was established. But it was held that the examination of this point ought to be adjourned in order to deal only with damages caused to property. The discussion on liability, thus defined, has been carried on during ten years in a series of conferences the last of which has been that of Venice, and finally resulted in a satisfactory system whose advantages (1) we tried to show at different times and which must be submitted to the Diplomatic Confe-

(1) *L'Unification du droit dans la matière de la responsabilité des propriétaires de navires* (Clunet 1900) ; *L'Industrie des transports maritimes*, II, p. 237 et s. ; Reports presented at the Liverpool- and at the Venice-Conference: *La Fortune de Mer*, Recueil de Législation, 1906.

rence of Brussels. It would perhaps have been more prudent not to touch the problem of personal injuries just before the meeting of this Conference. However, the Permanent Bureau points out that the new debate to be opened at Bremen must not exert any influence on the draft-treaty put before the Diplomatic Conference. Wishing that the event may prove to be so, we commence the study of the Questionnaire which has been proposed to the examination of the National Associations of Maritime Law.

This Questionnaire invites the Associations to deal with the subject in the broadest way, to consider the matter as to the relations of the shipowner with the passengers carried on board his vessel, with third parties, with the crew and with the workmen employed in loading or unloading of the ship. In so doing it induces to work out a general and utmost interesting comparative view. Let us say immediately that our Association has been led to state that the mission of the International Maritime Committee ought not to extend so far and that the professional accidents ought not to be dealt with.

PART I

Comparative View

French Law

A. — Actions of the passengers against the carrying ship and actions of third parties against the non-carrying ship.

Conditions of the Liability

1. — In France, the conditions of the liability are regulated by the common Law as contained in the Code Civil

and in the rules of the commercial maritime law which are to be found in Book II of the Code of Commerce.

In the Civil Code we refer to article 1382 and following ones which outline the basis of the claims for liability when there exists no contract and which may be also invoked by contracting parties.

In the Code de Commerce we must refer to article 216, capital provision by which the system of the limitation of liability to the maritime estate is consecrated, and whose signification it is essential to study deeply, in order to appreciate the relations we are considering now.

If the origin of this article had to be consulted only, that is to say the contract of *command* (1) « (contrat de commande) » one would be inclined to find a quite particular construction in it. But generally the commentators have framed this article in the general dispositions relating to mandate and « *preposition* » (committing).

The first paragraph provides that « every shipowner is civilly (i. e. by opposition to penalty) responsible for the acts of the Master and is obliged by the liabilities which have been entered in by the Master for such matters in which the ship and the venture are concerned. »

This owner, it is said, is liable because of his being a *mandant*: he is obliged, in principle, on all his *goods* for the lawful liabilities entered in by the Master; this is an application of the general rules on the mandate (art. 1998 Code civil). On the other hand, it is because he is an *employer* (commettant) that he is liable for the damages

(1) Consult R. de Sèze, *De la responsabilité des propriétaires de navires*; R. Saleilles, *Étude sur l'histoire des sociétés en commandite*, *Annales de droit commercial*, 1895; Lyon-Caen et Renault, *Traité de droit commercial*, II, p. 293, and the different studies of Mr. de Valroger, especially his *Rapport sur l'avant-projet de traité concernant la responsabilité des propriétaires de navires*.

caused through the Master's delicts or quasi-delicts; art. 1384 3° C. Civil comes into application in this case. Now, does really the liability of the shipowner for the lawful obligations assumed by the Master within the sphere of his functions, proceed from a mandate? The shipowner cannot choose freely the Master, as he is bound to take him within the limited category of those who possess a certificate. This sole circumstance may perhaps not be sufficient to exclude the idea of a mandate. But here is an other peculiarity of the situation. It may occur that the owner should be liable without any choice of his. The Master may indeed be invested with the command of the vessel without his interference and without his knowledge. This happens in the following cases. The Master dies during the voyage; the mate also gets ill or dies. A new Master is chosen by the Consul or by the Commander of the naval station. Secondly, a ship may be hired without being equipped to somebody who would thus become the managing owner and choose the master. In both cases the owner is nevertheless liable as owner. The same occurs also when, after the vessel being sold, the buyer has chosen a new master before the formalities of custom-mutation have been accomplished; as the seller remains the owner towards third parties, he may be sued by them according to article 216. This seems to be the demonstration that according to this provision, the owner is only liable as owner.

On the other hand, does the liability of the shipowner for the damages caused through the master's unlawful acts proceed from the employer's (préposant) civil responsibility? It can hardly be admitted, as it is to be considered that this responsibility is based on a presumption of negligence in the choice of the employee (préposé) or of negligence in the exercise of authority. The liability of

the owner exists even when he has not chosen the master. This liability exists also when the master is in default through negligence or error in the exercise of his nautical command, that is to say in such case where his authority is exclusive of every other. It exists likewise when the fault has been committed by a compulsory pilot who has not even been chosen by the master.

Under these circumstances, it seems that one could not see in the first paragraph of article 216 a reference to the common law regulating «mandates and preposition» and in the second paragraph an exception, an excessive privilege. Does one need to speak first of a principle of indefinite personal liability, when the law itself attaches the risk to the sole fact of property, reduces same to the property and concentrates it in the property? The liability has altogether its origin and its limit in the patrimony exposed to the maritime venture. The creditors whose claim is in connection with the venture have this patrimony as exclusive guarantee. In consequence, we are dealing with a maritime estate which has a striking likeness with that of German law, that is to say which represents a patrimony of execution, and which is also a juridical organisation reminding, in some of its features, of the ancient «contract of command», whence it proceeds, and of the contract constitutional of the limited companies.

These remarks must not be lost out of sight in the interpretation of French Law concerning the relations of the shipowner with third parties on the one side, and with the passengers on the other side. This last category of relations, which draws our attention more particularly at this moment, must, being a contract of carriage, be set in connection with the contract of carriage of goods; by this last contract a direct obligation is created between the shipper and the master, who is liable for the goods

according to article 221 of the Code de Commerce. The French jurisprudence has a tendency to consider that, in the exercise of his legal attributes, the master is a distinct personality in which the liabilities corresponding to his attributes reside, and which the shipowner simply bails to the extent of the maritime patrimony. To say the truth, these principles have only been asserted and decisions have been given concerning the carriage of the goods, but one may be entitled to give them a general signification, extending to carriage of human beings, for whom our Code de Commerce does not especially provide; the reasons of decision are the same, as the master is bound by his functions to accomplish this sort of carriage.

As a matter of fact, both for the carriage of passengers and that of goods, there are two personalities: that of the shipowner and that of the master. There is not only an employer whose authority covers his employee, one single carrier who should be the shipowner, and whom one could compare with a Railway Company. There is a shipowner, liable as shipowner for the faults of the captain to the extent of the value of vessel and freight; there is, moreover, the master who is liable for his own negligence.

It is under the restriction of these remarks that the following questions are to be examined.

2-3. — Is liability presumed, or must negligence be proved?

As far as the carriage of goods by land is concerned, the French jurisprudence has had frequent opportunities to decide upon this matter. The question was whether, when a passenger was injured during the carriage, the carrier was held responsible according to article 1785 of the Code Civil, that is to say, could only exonerate himself in pro-

ving accident or force majeure, or if this passenger could only obtain a condemnation by proving the carrier's fault according to common law as contained in articles 1382 and following of the Code Civil. During a certain time there have been different-opinions in the jurisprudence. Nowadays it is held that article 1774 of the Code Civil does not apply to human beings, the custody imposed upon the carrier by this disposition originating from the idea of deposit, which can only be applied to the animate objects. Consequently, the injured passenger must prove a fault imputable to the carrier. This has often been decided in cases of carriage by land (1). Concerning case of maritime carriage the decision of the Court of Rouen of the 13th January 1904 (Autran XIX p. 686) may be quoted.

4-5-6. — Does vice or defect in inanimate objects give a right of action? What proof is necessary to such action?

The question of the inherent vice of the vessel or of one of her parts is one of the most interesting to consider in order to define the shipowner's liability. Here we must first of all eliminate the case where the damage should be the consequence of a fault or negligence of the captain or crew, such hypothesis being included in the question of the shipowner's liability for the faults or negligences of this kind. The question we have to examine is that of the inherent vice which does not result from such a fault.

Concerning this hypothesis, one could have feared that the French jurisprudence should incline in the sense of the theory of the liability « damage caused by inani-

(1) Cass. :4 december 1903. S. 1904. I. 261 ; Paris, 14 janvier 1903, Gaz. Trib. second part 1903, I, 360 : Grenoble, 30 janvier 1904, S. 1906. 2-94.

mate objects, according to which the inherent vice should involve the shipowner's personal liability, such vice being a risk attached to the ownership. Nowadays the jurisprudence of our country is settled in an opposite sense by an important decision of the Supreme Court of the 2^d of April 1901 (Autran XVII, p. 5), according to which the inherent vice does not involve in any way the shipowner's liability : « The master », it is said in the decision, « has not committed any fault in accepting the command of a vessel whose rigging had an inherent vice; on his side, the shipowner, against whom no personal fact is reproached, could not be held responsible for the inherent vices of his vessel, same being an essentially movable object and being, in no case, under his custody. »

Persons entitled to sue

When a passenger dies in consequence of an injury which has been caused through negligence, any person who sustains damage by this decease possesses a right of action which takes its origin in the person entitled himself and which belongs to him, apart from any successoral right. Consequently the wife, who is not entitled to inheritance, has a personal right of action.

Damages

The damages include the whole damage directly sustained and only that damage. As the judge has a discretionary power of appreciation, he may award damages for « moral » damage.

There is no legal disposition in France which determines a limit *in figures* for the damages. There is also no law presently proposed in order to fix a limit of that kind. In fact, no other limitation exists than that which

proceeds from article 216 of the Code of commerce, that is to say, the limitation of liability to the extent of the maritime « patrimony ».

Exonerating clauses under contracts

The French jurisprudence has had rarely the opportunity of giving decisions upon the validity of the exonerating clauses applied to personal injuries. One could hardly quote another decision than that of the Court of Alger, of the 20th of January 1892 (D. 92. 2. 564) which in the reasons at least constructs this clause as exonerating the ship-owner even in case of injuries caused to passengers. (1)

Prescription

There is no short prescription for actions concerning personal injuries. These actions are only submitted to the prescription of thirty years, or to that of ten or three years, if a crime or a delict has been committed (art. 637 and 638 C. instr. crim.). It has been held, namely by the Court of Rennes, the 19th of April 1898 (Autran, xiv, p. 340), that the prescription of one year provided in the new article 436 of the Code de Commerce, only applies to those actions concerning the damage caused to inanimate objects.

Nationality

Foreigners and nationals are upon the same legal footing, according to French Law.

(1) One could not, in our opinion, invoke in an opposite sense the judgment of the tribunal civil de la Seine of the 16th of July 1907 (Autran, xxiii, p. 222), or the decision of the Court of Paris of the 4th of March 1909, both decisions delivered in the Chodoc-case. These decisions do not solve the question of principle we deal with.

B. — Actions of the Crew. — Actions by workmen and others employed in port on board the ship or in her service.

The actions spoken of here are those which proceed from the professionnal accidents.

In France, the professional accidents of seamen are regulated by art. 262 of the Code de Commerce and by the law of 29th of December 1905. — This law has taken the place of the law of 21th of April 1898, which had established a « *caisse de prévoyance* » among French seamen against the risks and accidents of their profession. In paying a higher tax, which has been imposed upon him by the law of 1905, the shipowner is exonerated from the civil responsibility of the master's or Crew's faults, in respect of professional risk. He is only liable for his own wilful and unjustifiable fault, under deduction of such indemnities, and annuities which are due by the « *Caisse de prévoyance* ».

As far as the actions by reason of accidents sustained by workmen in port are concerned, they are regulated by the general law on professionnal accidents (law of the 9th of April 1898, amended by several subsequent laws.)

PART II

**Resolutions proposed as a basis
of international agreement**

A. — Right of Passengers against the carrying Ship

1. — Is it desirable to regulate by international agreement the right of passengers to recover damages from the carrying ship in case of death or personal injury ?

2. — Should this liability be presumed as arising out of the contract of carriage, or must the passenger prove negligence of the captain, crew or marine superintendent? Upon whom should rest the burden of proving that the damage was caused by accident or force majeure?

3. — What provisions should apply to cases in which an accident is due to a vice or defect in ship or engines? Should a distinction be drawn between a latent and a patent defect?

4. — Upon what basis should damages be awarded? Should general damages be given? Should damages, indirectly attributable to the accident (consequential damages) be allowed?

5. — In whom should the right of action rest? In the injured party? In the widow or children, or descendants? In all persons beneficially interested in the estate?

6. — Is it desirable that the law should impose a limit upon the damages recoverable in cases of personal injuries?

7. — Should the right of action, for damages for the death of a person, depend upon the condition that the persons claiming were dependant on the deceased person?

8. — Should contracting out be permitted?

9. — Should foreigners and nationals be placed upon the same legal footing?

10. — What time-limit should be imposed within which an action must be brought?

The French Association has examined the various questions thus asked. Most of the solutions proposed by us may be expressed in few words. Questions 6 and 8 only need some explanations.

1. — It is convenient to regulate internationally compensation due to the passengers by the carrying vessel in

case of death or personal injury. No doubt the conflicts of law are not to be feared as much in the relations we deal with here, as when a litigation gives existence to actions of third parties ; the law of the flag ought to be applied to all the passengers. It should perhaps be sufficient to adopt a common rule in this sense. Nevertheless the Association has held, finally, that it was better to try to establish uniform and complete rules on the matter.

2. — It has seemed to the Association that, according to the prevailing jurisprudence in France, the carrier's liability ought not to be presumed and that the action of the passenger supposes that the latter proves a fault imputable to the carrier.

3. — If the accident is due to a vice or defect of the vessel or engines, it is convenient to apply simply the common law according to which the plaintiff is bound to prove the existence of a precise and determined negligence. Consequently, in case of patent defect, there shall be almost always a fault involving the shipowner's liability. On the contrary, in case of latent defect, as the theory of the liability for damage caused by « the inanimate objects » must be rejected, there shall not be in principle any liability of the owners or of the captain. The judge shall be at liberty in some of the cases to decide that there is a fault because the latent defect could have been discovered by a more accurate watchfulness, or by experiments who should have been made, as prudence recommends. But he shall not be at liberty to decide that a latent defect by itself and without other proof involves the liability of both owner and captain. He shall have to specify that a negligence has been committed and of what it consists, and, in order to admit its reality, he shall have to be the more cautious, as recent laws in the different countries have increased the number of the precautions concerning the

ship's seaworthiness and the good state of her engines and apparatus.

4. — The damages must correspond to the immediate and direct prejudice only. These must not include the indirect and mediate consequences.

5. — The right of action must belong to the injured party, who sustains personally that immediate and direct damage. Consequently the quality of heir is not sufficient to give this right of action.

6. — It should be recommended that the law should fix a limit for the damages awarded in case of personal injuries.

7. — The action must not necessarily depend upon the condition that the plaintiffs should prove to have been dependent on the deceased, but such proof is one of those who shall justify the damage sustained.

8. — It must not be allowed to exonerate oneself by contract from the limited liability which shall be admitted.

9. — There is no need to draw a distinction between foreigners and nationals.

10. — It is convenient to establish the same prescription for the action in case of personal injury as for the action concerning material damage.

Such are the solutions adopted by the French Association in consequence of the discussion, summary indeed, to which the series of the hereabove mentioned questions has given raise. Among those questions, two have most particularly drawn our attention. They are those which are put down under numbers 6 and 8 and which have seemed to be the very knot of the difficulty. Although the circular of the Permanent Bureau indicates that the question of the limitation of liability is still reserved, these questions are connected with it and have raised a discussion the principal features of which are worth recapitulating.

According to our opinion, one ought to apply for personal injuries the rules proposed by the International Maritime Committee for the material damages, these rules providing that the shipowner is only liable to the extent of the vessel's value, freight and accessories, with the liberty to release this patrimony by the payment of a sum of 8 £ per ton (and to substitute to the vessel her value). On the other hand,* the shipowner ought to be allowed to stipulate the exoneration from the captain's faults, as well towards passengers as towards goods. These solutions are justified by the following remarks: *a)* They are in harmony with the continental tradition, according to which the system of liability, being limited to the maritime estate, has been applied without distinction to both categories of damages. (Concerning especially the exoneration-clause, if the French jurisprudence has not had the opportunity of affirming its opinion, one might at least quote the above-mentioned decision of the Court of Alger in the sense of the validity of such clause in application to passengers (20th of January 1892). *b)* These rules appear to be logically justified if the fundamental principle of shipowner's liability is taken into consideration, this principle being not, at least according to one interpretation, an employer's liability, but a guarantee of a special kind, proceeding from the quality of owner, restricted to ownership and disappearing consequently with it, just as the guarantee given by a *limited company* disappears when its assets have come to nothing. *c)* This comparison is the more interesting to point out that, as a matter of fact, it frequently occurs that a vessel, especially in England, represents the whole assets of a small company (single ship company), which creation of common law allows the shipowners to limit their liability to the maritime estate. No doubt it is objected to the argument resulting from this comparison that in the

case of a vessel being constituted in a company, there shall be, as a rule, an indemnity of insurance which shall be part of the assets and shall be substituted to the lost vessel as a guarantee to the creditors. But we must leave aside the practice of insuring the vessels, as insurance is only a caution which the shipowner is at liberty not to resort to. Thus it is not possible to prevent, in the actual state of common commercial law, a creditor for personal injury from finding himself without any available guarantee; it seems not proper to decree new rules which throw into disorder the system of the maritime venture (estate at risk at sea) when we are obliged in another way to let the shipowners limit their risks to that very estate. *d)* In fact, the maritime venture implies various risks accepted respectively by those who give credit to the captain, master of the management of the vessel: the shipowner entrusts to him his vessel, the shipper his cargo, the passenger his life. Account must be taken of the risk accepted by the passenger, as well as by the owner himself, with regard to the error of judgment, the nautical faults of the man who has the management of the vessel. *e)* If it is true that the legislators must take heed of the safety of human lives, it must also be recognised that they can only do it by preventive measures, like those rules which have been promulgated lately, but that the admission of a personal liability of the shipowner, — as in England — up to a certain figure, shall never give a guarantee sufficiently serious to this necessity of safety. *f)* Neither would it give satisfaction from the humanitarian point of view, seeing that those creditors who deserve the greatest interest can sometimes get only a mere trifle for their share in the assessment of the limited liability fund, the latter being almost entirely exhausted by the richest creditors. *g)* The system of the « maritime venture » applied to the creditors

for personal injury, is very simple and may lead to unification, whilst if we are to try to find a special mode of liability towards such creditors, we involve ourselves into difficulties of such nature as to set us out to the risk of endangering the whole work of the International Maritime Committee.

In the contrary sense, it has been proposed to adopt a system of liability limited to a certain amount per ton, according to British law.

Other members of the Association, who recognise the inconveniences of the British system of limitation to a lump sum, have proposed : 1° to establish a personal liability, limited to a maximum amount for each *passenger* ; 2° to compel the shipowner to complete the passage-ticket (for that maximum) by an insurance-policy giving to the passenger a direct right of action against the underwriter ; 3° to prohibit any exonerating-clauses which might have in view the suppression of the liability thus established.

This discussion has made clear that there is a very wide difference of opinion on the subject. It proved also that difficulties arise when we try to conciliate a new system with that adopted at Venice.

Finally the Association limited itself for the moment to express, by a majority, the following opinions : *a*) with regard to personal injury and loss of life, it is advisable to accept a limited personal liability, which ought to be a measure of « public order » so that no exoneration by way of contractual clauses should be permissible. *b*) It is desirable that the International Maritime Committee should draft, on the subject of shipowners' liability a general system which regulates this liability as well towards persons as with regard to goods.

The French Association further expressed, on this occasion, their regret that those important questions were put

before them too late to give them an opportunity for a thorough and complete study.

**B. — Claims of third parties against
non-carrying vessels**

As regards such actions, the foregoing remarks contain the answers which the French Association can give for the present, as the outcome of their deliberations.

C. — Actions by the Crew.

It is proposed to examine the same questions as under A, except that question 2 should read as follows :

« Should this liability be left to the common law or regulated by special legislation ? In either case what should it be necessary for the injured person or his representatives to prove in evidence, particularly on the question of negligence ? »

The French Association answers below.

**D. — Actions by workmen and others employed in
Port on board the Ship or in her Service ?**

The questionnaire says that the same questions as in the case of the crew ought to be examined.

The French Association observes that at present accidents befalling seamen and workmen in the ports with relation to their duties, are regulated in most countries by special laws of recent date which have a specially national character, and of which some are based on financial systems peculiar to such countries.

Under such conditions, it seems to the French Association that it seems impossible, at the present time, to try to obtain unification on this matter, and it concludes that it seems better to abstain from any efforts in this direction.

HUNGARY

HUNGARIAN ASSOCIATION OF MARITIME LAW

FINAL CONCLUSIONS

relative to the draft-treaty on Freight proposed by the Paris Commission.

ART. 1. — No freight shall be due for goods which do not arrive at destination, under reserve of the cases hereafter excepted.

ART. 2. — Freight is due :

1. for merchandise the value of which is admitted in General Average ;
2. for goods which have perished in the course of the voyage, owing to their special nature or « vice propre » ;
3. for goods which are sold in the course of the voyage on account of their damaged condition owing either to a « vice propre » or to an accident (fortune de mer) ;
4. for goods used or sold in the course of the voyage for the urgent needs of the vessel.

In the case provided for by article 2, 3°, account shall however be taken of the price obtained for the goods sold, and, in the case alluded to sub 4°, of the value they would have had at the port of destination.

ART. 3. — When after having sailed, the vessel is prevented from completing the voyage, the captain is entitled to receive the freight agreed upon if the goods nevertheless arrive at destination by his care.

If the reforwarding can be effected only at a higher rate of freight, the difference in excess will be for account of the goods.

The sentence « but nothing herein shall interfere with the right of the shipper to effect such re-shipment on his own account or otherwise to dispose of the goods carried » seems unjust, seeing that this provision would render it possible that the charterer would take the occasion afforded by a small difference in freight, to dispose of the goods at the port of refuge, either by re-shipping same, or by selling them in order to obtain in that way a profit on the shipowners' shoulders who would be deprived of the freight even in the case where he would have brought the ship close to her destination.

The Association expresses the wish that the Bremen Conference may find a more equitable solution.

ART. 4. — *In case of a charter for the whole burden of a ship*, if the shipper does not tender the entire quantity engaged for shipment, he must pay the whole freight as a lumpindemnity. If he tenders only part of that quantity, he shall pay the whole freight for the quantity stipulated in the contract.

In case of a charter for a proportional part of the burden of a ship, or of an exactly determined space, as well as in the case of charter per parcel, the shipper who does only tender part of such goods, or nothing at all, shall have to pay the whole freight ; however he shall be entitled to a pro-

portional reduction if he can prove that other goods have been shipped in stead.

The shipper who, outside of the case provided for by article 4, withdraws his goods, is bound to pay the whole freight and to indemnify the captain for all expenses and losses caused by this withdrawal.

ART. 5. — Payment of demurrage ought to be enforceable in the same manner as payment of freight.

Payment of demurrage shall not be conditional upon any special processor formality.

GERMANY

GERMAN ASSOCIATION OF INTERNATIONAL MARITIME LAW

REPORT

**on the General Meeting held on 22^d June 1909
at the Exchange, Hamburg**

Were present a. o. : President Dr. F. SIEVEKING, as president ; Messrs Dr. JOH. BEHN, President Dr. MARTIN, of the Supreme Hanseatic Court, Judge Dr. SCHAPS, Dr. GÜTSCHOW, EICHENBERG (Chamber of Commerce), Dr. ALFRED SIEVEKING of Hamburg, EDZARD, barrister, Dr. FINKE, WUPPESAHL and GRONINGER of Bremen, Counsellor of the Civ. Court Dr. MEYER, Consul SUCKAU of Lübeck, Prof. Dr. NIEMEYER of Kiel, ADOLF SCHIFF, manager of the Bank at Elsfleth, the latter representing the Chamber of Commerce of Oldenburgh.

Legislation on Freight

The President observes that according to the draft-treaty submitted to the examination of the meeting, three objects are to be discussed, viz : suppression of distance-freight ; uniform regulation as to dead-freight and finally a few questions relating to demurrage.

According to German law, distance freight is allowed when the ship, after having once started on her voyage, is lost owing to a force majeure (art. 630, 628 of the Commercial Code) or when one of the parties renounces to the execution of the contract on account of an outbreak of war or of an order of the Authorities with regard to the ship or her cargo (Code of Commerce, art. 634, 629).

Suppression of pro rata itineris freight would involve in the provisions of the German Code of Commerce, the following alterations :

In art. 630, the second part of the first paragraph, and paragraph 2 would disappear, and the first part of paragraph 1 should be completed as follows :

« In such case, the owner is not entitled to the freight agreed upon ».

Articles 631, 634, paragr. 5 and 6, art. 640 1th paragraph, 3rd sentence, should disappear.

CONSUL SUCKAU (Lübeck). — The draft-treaty of Paris goes even farther than English law. According to the latter, distance freight is due to every mariner when, in case of interruption of the voyage, the charterer himself undertakes to reforward his goods to their destination. The suppression of distance-freight would involve very unfavourable consequences for the shipowner. Speaker reproduces the instance given by Mr. Marais at the Paris Commission : A voyage from New-York to Cherbourg is abandoned at Brest. Similar cases also occur in the Baltic trade. In such case, it is very often difficult, if not impossible, for the Captain to charter another vessel for the remaining portion of the voyage or to reforward the cargo to its destination, for instance on account of custom duties. It would be unfair not to allow distance freight in such cases. As to the calculation of freight pro rata

itineris, speaker says that during more than 20 years' practice, he never observed, or at least he very seldom observed any difficulties arising as to this.

He accordingly declares for the distance freight. Besides Russian and Swedish laws agree with German law on that point.

Mr. GRONINGER (Bremen) begs to draw the attention on the following case :

A ship chartered for a voyage from Pensacola to New Castle, became damaged in the Channel. She was towed in at Portsmouth and the master decided to abandon the voyage. No other ship was to be found in order to forward the cargo. The owner of the cargo sold it at Portsmouth at the same rate he would have obtained at New-Castle ; the English tribunal allowed no freight to the owner. Even when the captain succeeds to find another vessel, it very often occurs that the second rate of freight is higher than the first, so that he must for that reason give it up to reforward the cargo to its destination. It would be unfair not to allow distance freight in such cases. Speaker accordingly declares against the suppression of the German rule, but does not object to a different mode of calculating distance freight.

Mr. EDZARD (Bremen) declares also against the suppression of the distance freight. If the consignee undertakes the reforwarding of the goods and if the second freight is lower than the first one, the difference at any rate is due to the first master.

Mr. BRODMANN (Hamburgh). — The freighting contract must be considered as a *locatio conductio operis*. This is the only juridically justifiable conception. It is also the

only one which affords a practical solution. The calculation of the distance freight according to German law is very favourable for the owner but very unfair for the charterer. A modification in the mode of calculating distance freight in order to render it less iniquitous for the latter would render the calculation extremely difficult and the consequence would be to subject it to the chances of the supply of evidence.

Mr. EICHENBERG (Hamburgh). — The maintainance of distance freight is not required by the interest of commercial transactions. The owners of the cargo take an insurance on the cargo but not on freight. According to German law, the consignees of the cargo not only have to bear the loss of their cargo but they have to pay distance freight besides ; that is unfair.

Mr. NIEMEYER (Kiel). — Speaker declares for the suppression of distance freight. Besides it is apt to work out as a stimulant in order to induce the carrier to execute his obligation and to reforward the cargo to its destination. Finally an international agreement can be obtained sooner in case of suppression of the distance freight than if it is maintained.

GRONINGER (Bremen). — The insurance ought not to be involved in the discussion. An insurance on the freight can be taken by the owner of the cargo if he thinks advisable to do so. The owner of the ship has made expenses. He should be paid for them. That is why the distance freight may not be suppressed.

WUPPESAHN (Bremen). — In case of suppression of the distance freight, it must at any rate be left to the master

to reforward or not the cargo, as he thinks it advisable. The owner of the cargo ought not to be allowed to reforward the cargo on his own account and let the master go unpaid.

Dr. GÜRSCHOW (Hamburgh). — The draft-treaty of Paris leaves it to the master to reforward the cargo if he thinks it advisable to do so.

In case of maintaining distance freight, it would be very difficult to find a satisfactory mode of calculation.

Mr. EDZARD asks for the interpretation of par. 2 of article III of the draft treaty of Paris. This paragraph was constructed in this way : It is left to the master to determine if he chooses to reforward the goods. If he prefers not to reforward them, then he loses his freight. But if he chooses to reforward, the freight is due to him. If the second freight is higher than the first (Exemple : 1^t Freight Cape of Good Hope-Marseille fr. 100; ship damaged near St-Helen, 2^d freight St-Helen-Marseille fr. 110) the consignee is bound to pay the second freight even if the goods were reforwarded with his consent. The owner of the cargo has accordingly in that case a right to cancel the contract and to dispose of his goods by himself.

THE PRESIDENT explained further the question that was to be solved, in this way : it being assumed that according to art. III of the draft-treaty of Paris the master has a right of forwarding the goods, ought the distance freight allowed by German law in certain cases, to be suppressed henceforth ?

The meeting answered this question affirmatively with 15 votes against 4 and adopted accordingly the articles I and III of the draft-treaty of Paris.

Article II of the Draft Treaty of Paris.

N° 1) It is observed that par. 2 of the German H. G. B. (Code of Commerce) reserves the payment of freight in case of a loss of cargo, said settlement to be effected according to the rules on common average. Accordingly the meeting resolved to strike out n° 1.

N° 2) The German Code of Commerce expressly mentions animals dying in course of the voyage. This mention is justified by the fact that it may be often difficult to determine if an animal died by accident or for some natural cause — f. i. when an animal by the knocking of the ship has a leg broken and dies. — The meeting accordingly resolved to add to par. 2. the following words : « also for animals which died in the course of the voyage ». The meeting resolved further not to add a provision in the sense of par. 1 and 2 of the § 616 of the German H. G. B. (Code of Commerce) as this paragraph contain obsolete rules.

N° 3. Mr. EDZARD (Bremen) quotes the fact that cotton had to be sold in the course of the voyage because the forwarding of it would have exposed the ship and her cargo to a danger of fire.

Mr. GRONINGER (Bremen). Speaker expresses the opinion that in such case, the owner of the vessel earned his freight, notwithstanding the goods were sold. It is not a casualty which befalls the ship — the ship herself is apt to proceed and forward the goods to their destination — but it is a casualty which exclusively attains the cargo. That is why the full freight is payable even as in the case quoted by Mr. de Rousier. In that case the cargo had been destroyed in course of the voyage by order of the autho-

rities for the sake of common health. (Minutes of the meeting at Paris p. 7 in fine). The meeting accordingly resolves to add also the following provision :

« also for goods which are destroyed or sold in the course of the voyage by order of the authorities, provided the ship was apt a ready to carry them farther ».

To par. 2 Mr. GÜTSCHOW (Hamburg) expressed the opinion that the mode of calculation of the § 54I, 6II, 6I2 of the German H G B is simpler and ought to be preferred for that reason.

Mr. BRODMANN (Hamburgh) insists on the fact that if the produce of the goods sold exceeds their value at the port of destination, the difference is due to the owner of the cargo and not to the freighter.

THE PRESIDENT's opinion is that the object of the art. 2 belongs in no way to the legislation on freight and that these provisions find their place among the rules relating to the responsibility of the owner.

According to this view the meeting suppresses the art. 2.

Art. 4. (Dead-freight). Art. 5. (Demurrage).

THE PRESIDENT observes that the provisions of art. 2 inasmuch as they diverge from German Law are not at all to be approved. So for instance, the allowance of half-freight in case of shipment of a general cargo. The provisions of the draft-treaty on dead freight are not sufficiently worked out to be submitted to discussion. He accordingly proposes to recommend the adoption as an international law of the provisions of the German Code of Commerce. These provisions contain a regulation which is at a same time consistent and meeting all requirements of practice.

The same observation is to be made with regard to art. 5. The first paragraph is a theoretical principle not at all apt to be incorporated in the text of a positive law. As to the questions which are the object of the 2^d article, the German Code of Commerce may here also be taken as an example. Its provisions are clear, well conceived and practical. So, for instance, the draft-treaty entirely omits to determine when a ship may be considered as ready to load or unload. This point is nevertheless the basis of any claim for demurrage.

The meeting adopts this view and unanimously decides to recommend to the Congress of Bremen the adoption of the German law with regard to the questions raised by art. 4 and 5.

Compensation due in case of Personal Injury.

A few days before the general meeting of the 22nd June 1909, the writer of this report received from Mr. Louis Franck, Hon. Gen. Secretary a circular with two annexes.

In order to answer the desire expressed in that letter, it would have been necessary to appoint a commission whose duty it would have been to report on these questions to a subsequent general meeting, the decisions of which, under the form of a final report, would have to be translated by the Permanent Bureau of the International Maritime Committee in French and in English. All this could not be done before the Bremen Congress. Therefore, and in order to contribute as much as possible to the work which is undertaken, the undersigned begs leave to

briefly summarize what are the principles of German law relative to liability in case of personal injury. Further study and subsequent deliberations shall give more precise answers to the various questions put in the first part of the questionnaire and shall determine the view which must be taken with regard to an international settlement.

General Principles.

A. Who is liable for compensation? *Liability for personal acts.*

The answer is given by article 823 of the Code of civil law; the text of this article reads as follows :

« AnyOne who through *dolus* or negligence causes a damages to the life, to the body or the health of another person without having the right to do so, is bound as towards such person to compensate the loss or damage caused by his act ».

If the wrongful act has been committed by several persons together, or if it is not possible to determine who among them caused the damage, all parties concerned are jointly and severally liable for compensation. Abettors are treated in the same way as the wrongdoer, as well as accomplices, i. e. persons who have assisted the perpetrator in an effective way either by advice or by acts. (Civil Code, art. 830, 840, al. 1.)

Liability for the acts of third parties.

1. In case of a quasi-delictual liability (i. e. when the action for compensation is based on an *act* and not on a contract having existed before such act) the employer is

only liable for his employee when the damage or loss is attributable to the fact that the employer lacked the necessary care required in the regular course of life in the choice of his employee (*culpa in eligendo*), either in providing the tools which he has to supply or in the management of the operations of the direction which rests with him. (Civil Code, art. 831, al. 1.)

The question whether the employee is also liable is determined according to article 840, al. 1.

2. In case of liability resulting from a contract, (that is : when the action for compensation is based on a contract and not merely on a wrongful act) the contracting party is responsible for the negligence of the persons whom he substituted to himself as well as for his own negligence. The law permits however to exonerate oneself from liability by reason of *dolus* or negligence committed by employees (Civil code, art. 278).

In case of several persons being jointly liable, damages are to be apportioned amongst them equally, unless otherwise agreed. However, in the case of article 831 (see *supra*, sub 1) the employee alone bears the damage.

B. Who is entitled to compensation ?

In the first place, the person injured or his heirs, as far as a pecuniary damage is concerned. A right to compensation for other than pecuniary damages (see *supra*, sub 2) is only transmissible to the heirs when such right has been recongnised by agreement or when the action is already brought before the Court (f. i. by notification of the writ of summons).

Third parties having right to compensation :

1. In case of death, a right to compensation is given to

those persons towards whom the deceased was obliged, or could be legally obliged, at the time of the accident, to supply a maintenance provided the death of the injured person have deprived them of this right. It is sufficient that at the time of the death, the third party entitled be conceived. It is not necessary that he have been already born. (Civil code, art. 804. 2).

2. If the injured person was legally obliged to tender to a third person some services in his house or in his trade, this third person is entitled to claim damages if in consequence of the death or the accident, he is deprived of such services (Civil code, art. 845).

3. In case of death, the funeral costs must be paid to him who is obliged to pay same (Civil code, art. 844, 1).

C. For what damages shall compensation be due ?

The person liable for compensation of the damage, is in the first place bound to re-establish the same situation which would exist if the circumstance giving raise to compensation had not happened.

This includes, in case of wounds or illness, the healing.

The person entitled to compensation has the option to claim a sum of money instead. As far as it is impossible to re-establish the same situation, or when this suffices not to indemnify the person injured, the person liable for compensation must indemnify the injured party by payment of a sum of money (Civil Code art. 249, 251, a. 1.)

1. Damages include the profit lost and the loss occasioned in consequence of the accident, in the wages or prospects of the party injured.

2. In case of personal injury, the party injured may also claim payment of an equitable amount of damages for losses or damages which are not pecuniary ones (f. i. Schmerzengeld. i. e. indemnity for pains suffered).

This action does not pass to heirs (Civil Code, art. 847, a. 1. See supra sub b).

3. Payment of damages is effected by means of a pension paid every three months, in anticipation. The person entitled to compensation, may also claim a payment in capital (if there are serious reasons justifying such claim) when, and as far as :

a. In case of personal injury, the accident involves suppression or diminution of the power of acquiring of the person injured, or an increase of his needs (f. i. necessity of a more expensive food required by the physical condition of the injured person.

β. In case of death or personal injury, third parties may have a right to compensation for the reasons stated above under b 1 and 2.

The basis of the calculation shall be the presumed length of the life of the person injured, respectively of the services which such person has to render (Civil Code art. 843, 844, 845, 760).

The circumstance that another person than he who was injured must also supply a maintenance or render services to the person entitled to compensation, is without any influence on the action for damages.

4. As to funeral costs, see sub 3.

D. Exceptions. — Prescriptions.

1. If the person injured is himself partly liable for the accident, the consequence is that the amount of damages is to be diminished according to the respective importance of the negligence committed on each side (Civil code art. 254).

2. The action for compensation in consequence of a quasi-delict falls under prescription three years to be reckoned from the moment the person injured gained knowledge of the damage and of the identity of the person who is bound to compensate same, provided it be within thirty years from the date of the wrongful act which gives raise to compensation (Civil code art. 852).

3. The nationality of the person who is entitled to compensation, as well as the nationality of him who is liable for compensation, do not matter.

The introductory law to the Civil code (art. 12) decides that quasi-delicts perpetrated in a foreign country cannot involve for a German subject a liability which would be more extensive than that to which he would be bound by his national law.

II. — **Special principles**

The employer who is entitled to receive services from others in virtue of a contract of labour (*locatio, conductio operarum*) has towards his employees the following obligations : He is bound to supply and to maintain tools and machineries in such condition, and organise the work which must be effected according to the measures taken by him or under his direction, in such way as to ensure that the life and health of his employees be guaranteed safe

in so far as the nature of the services to be rendered, permit. (Civil Code, art. 618 al. 1).

This provision is completed by article 56 of the Disciplinary Code for the Marine with regard to provisions, dimensions and outfitting of lodging-places, lavatories, bathing-rooms, WC. on board vessels and as regards a minimum of medicaments to be taken on board.

The general rules referred to sub I apply to a willful or wrongful trespassing of these provisions.

b. The shipowner is liable for the damage which a member of the crew causes to a third party by his negligence in his service (Code of Commerce, art. 485.)

This provision exceeds the rules explained supra sub 1a 1 and 2 in so far as the shipowner is liable towards third parties even when he has committed no negligence in choosing his employee. But this provision supposes a negligence of the employee. If the latter has committed no negligence, the shipowner can only be held liable in virtue of the general rules set out sub 1.

If the shipowner is liable in virtue of article 485 of the Code of Commerce, his liability is limited to ship and freight (Code of Commerce, art. 486 n° 3.)

Outside of these cases, the principles explained sub. 1 apply.

c. Death and personal injury occurring in the *management of a railway*, of a mine or of a quarry or of a mill are regulated by the law of 7th June 1871. The manager of a railway is liable without limit, unless he proves that there was either force majeure, or negligence of the person injured. To the contrary, the manager of a mine or of a manufactory is only liable when the person injured proves that there was negligence committed by an employee or a superintendent of the manager. The amount of the damages

is calculated according to what has been explained sub 1c, with this exception however that no compensation is allowed for general damage (*dommage moral*). The delay of prescription is of two years.

III. — Answers to Questionnaire (Annex II).

FIRST PART.

In consequence of the preceding remarks, the following answers should be given to the questions put in the questionnaire :

A. — Conditions of Liability.

1. *Is the liability regulated by the common law, or is it the subject of special legislation ?*

The liability is determined by the civil Code. Only with regard to the crew, the Disciplinary Maritime Code also some provisions which apply here. The liability of the shipowner for faults or negligence committed by the crew, has been modified by the Code of Commerce. (See above, sub II a. and b.).

2. — *Is liability presumed, or must negligence be proved ?*

. There is no legal presumption. The plaintiff has to prove *dolus* or negligence. This answers also question 3.

3. *Case of accident* and 4. *Vice or defect of inanimate objects.*

When the accident has been caused by the vice or defect of such objects, the claim is justified only as far as negligence is proved against the person who has to

answer, as towards the plaintiff, for the good condition of such inanimate things. (See especially supra, sub II a.).

On this subject, it should be further observed that the captain is responsible for the good outfitting of the vessel and the good condition of the toils and gear employed for loading and discharging. (Code of commerce art. 513, 514) and that the shipowner is liable for the negligence of the captain (supra sub b). This answers also to the 5th question (re Proof to be supplied).

6. *Is proof of accident or force majeure admissible as a defence?*

An answer has been given to this question at the same time as to questions 2 and 3.

B. — Persons entitled to sue

Are entitled to compensation (outside of the right of personal action for compensation of general damage (See supra sub I b. and c. 2); the heirs, even those who are most remote and even to the extent indicated supra sub I b. 2, third parties having a right upon the services of the injured.

As far as an action for damages is only a claim the economical nature of which is to provide for the sustenance of the plaintiff, it belongs only to such persons towards whom the person injured had the lawful obligation to supply a pension. These persons are the wife, the parents in direct line and certain persons determined in some particular cases (obligation to afford sustenance in case of divorce or in case marriage is declared void, obligations towards the donor who has become a miser, a few cases of successoral law and some other similar instances) See supra sub I b. 1).

C. — Damages

1. The answer is to be found supra, sub I c.
2. There is no maximum-limit. As to the limitation of the shipowners' liability to ship and freight, see supra II b.

D. — Exonerating clauses

It is permissible to exonerate oneself from everything, the case of personal dolus excepted.

E. — Prescription.

Prescription for a quasi-delict falls in after three years or after thirty years (See supra I d 2).

An action based on a contract comes under prescription according to the legal provisions applicable to the various modes of contract.

The Secretary,

ALFRED SIEVEKING.
Advocate, Dr. Jr., Hamburgh.

NORWAY

NORWEGIAN ASSOCIATION OF MARITIME LAW

Questionnaire on compensation for personal injuries.

According to Norwegian Maritime law § 8, the owners are responsible only with ship and freight for damage caused by the Master or any of his subordinates. The sufferer has a maritime lien for compensation on the ship and freight according to Maritime law § 268 No. 4. The person that has caused the damage, is personally responsible. The owners have a regress against him.

The obligation to compensation is regulated by Norway's municipal law (*droit civil*). According to this, that person who intentionally, or through culpable carelessness causes damage, is obliged to render compensation, and, if the damage is caused in or by his ship, it is immaterial whether the sufferer is a passenger, or belongs to the crew on board of this ship, or on board of another ship, or is ashore, (e. g. standing on the quay), and the nationality of the sufferer is in any case immaterial; a foreigner and a foreign ship with passengers and crew have the same right to compensation as a Norwegian citizen.

I. PART

With reference to the persons (stevedores, dock labourers etc.) mentioned in this Part, Section Droit comparé, No. 4, the law of insurance against accidents dated 23rd July 1894 § 1 No. 7 enjoins an employer to insure in a public institution; this secures also compensation for casual injury during work.

I. — Conditions of liability

1, 2, 3.) As the rules of the ordinary municipal law (droit civil) apply also to the cases here mentioned, there is not defined any responsibility.

4. — *a*) The Norwegian style of court has during the last decades evolved a doctrine (an evolution which is not yet concluded), that he who carries on a trade in which he employs these forces of nature that may injure other persons, has to compensate for any injury done. When applied to machines on board, this will presumably involve that Owners are responsible with ship and freight for injury caused by machinery, whether on crew, passengers, or others. If the Owners knew, or ought to have known about defects in machines, they must, according to ordinary rules of law be held personally responsible.

b) As to ship and rigging, it has been practice to act on this rule, that the Owners are only responsible for such injury as might by attention have been avoided.

5, 6. — Except in the case referred to in No. 4 *a*, the injured person must prove that the injury is owing to a « culpa » on the part of the commander, in order to acquire a right to compensation; but if the defendant asserts that the injury is owing to « cas fortuit », he must prove this, and such proof relieves him of any responsibility.

II. — If the injured person survives the injury he alone has a right of compensation. If the injury be the cause of his death, those liable to make compensation have to pay the expenses of the funeral, and to make compensation to those persons whose support he was. (Introductory law to the Penal Code 22nd May 1902, §§ 20, 21).

III. — Compensation to be made for *damnum emergens* (expenses directly caused by the injury, loss of income in consequence of illness, the sick-bed, medical attention) and for *lucrum cessans*, (particularly the deterioration of the injured person's ability to support himself in future), that has been caused by the injury. If the person who caused the injury acted intentionally, or showed a carelessness which according to the common Penal Code is culpable (e. g. Penal Code § 237 which punishes him who through carelessness causes inability of supporting oneself, illness, etc. § 239 which punishes manslaughter), the Court may, moreover, award the injured person, or, if he dies in consequence of the injury, those persons whose support he was, a satisfaction adapted to the circumstances.

As to the amount of compensation, no special limitation is provided.

IV. — A person may stipulate exemption from compensation for his own culpa, and for his subordinates' culpa or dolus, but not from his own dolus. If a sailor gets employment on board, or if a passenger makes a voyage with a ship, then this fact is not considered a relinquishment of claim for compensation for injury caused by the ship or her crew, if he, according to the common rules of law were entitled to compensation.

V. — Claim for compensation is forfeited according to the said Introductory law § 28 in three years, but in ten years if the act be criminal.

VI. — Answered above.

II. PART

A mutual maritime Law of Compensation can hardly be looked upon as obtainable ; it would interfere too much with the Droit civil of the different countries. Agreement can only be considered attainable as regards the duty of compensation.

The Rules of the Norwegian law respecting the duty of compensation touch mainly upon the subjects otherwise mentioned in this Part, and in practice the settlement has on the whole been found equitable and just. Concerning this we accordingly refer to the above statement.

Norwegian Association of international maritime law.

June 1909.

DR. OSCAR PLATOU.

Conflicts of law as to Freight

NOTES

to Draft Articles proposed by the Paris Commission
(Mar. 22-23 1909)

The Norwegian Committee refer to their statements in Bulletin No. 14 (Conférence de Venise, Septembre 1907,

Rapports préliminaires I Conflit des lois en matière de fret P. 170 sq.), and make the following remarks :

What is proposed in Art. 1 and 2 is in force in the Norwegian law according to the Norwegian maritime law § 151, 149; this last paragraph enjoins, by its reference to § 200, that if the Master sell goods for the needs of the ship, the value of it shall be paid to the owner of the cargo at the price ruling at the place of destination; the condition laid down in the last clause of Art. 3 is accordingly fulfilled by the Norwegian law.

From Art. 1 and 3 it is seen that the Paris Commission has thrown overboard the German-Scandinavian and French system — distance-freight — in order to adopt the English system.

The Norwegian Committee find the English system hard upon the owner, and that the other system — distance-freight — therefore offers a more equitable settlement.

Art. 4 corresponds (with the exception that is a result of the reference, third section to Art. 3) to the Norwegian law § 126, 128 compare 130. The Committee find, that the Norwegian law § 130, last clause, offers a preferable and more equitable Rule than Art. 4, second section, seeing it only enjoins that half of the freight for the goods the Master takes instead of what goods the shipper has not supplied, is to be deducted from the Master's claim for freight with the shipper; as the Master has had some trouble in finding other goods, he ought to be paid for it, and such a regulation will encourage him in his exertions to procure other goods.

Art. 5. — Agree. As a wrong definition of the nature of demurrage might result in the deduction as corollaries

of such principles of justice as might militate against positive instructions given, the safest thing is to omit any definition.

Second section is Norwegian law in force. Maritime law § 276 No. 4.

Third section is Norwegian law in force.

Norwegian Association of Maritime Law.

March 1909.

A. POULSSON.

SWEDEN

SWEDISH ASSOCIATION OF MARITIME LAW

REPORT

regarding compensation in case of accident according to Swedish law

I. — Conditions for responsibility.

1. According to the Swedish law there are special provisions about compensation for damage in consequence of an accident during the work (the law of July 5. 1901), but as against the shipowner these do not include seamen (sailors) and others on board the ship. For the latter there exist, beside the maritime law, only those instructions given in the common law which, however, are particularly short. It must be pointed out that the Swedish penal law of February 16. 1864 in the sixth chapter gives provisions as to damages on account of a criminal action which rules are partly applicable also when there is no crime.

The provisions of the Swedish maritime law are of two sorts and partly deal with *a*) damages in case of a fault or neglect in the service of those employed on board the ship, and partly also *b*) with compensation in case of a mere accident.

A. The principal regulation of the maritime law as to damages is found in § 8 of the maritime law of June 12. 1891. Without being specially pointed out the regulation

applies also to bodily hurt and, on account of there mentioned faults, the ship-owner or owners have been found liable to pay damages with ship and cargo for both medical attendance and diminished earnings as also for bodily suffering.

B. In case of a mere accident causing death the captain shall, in conformity with § 46 of the maritime law, see about the burial of the seamen and the shipowner shall pay the cost thereof, but is for the rest not bound to pay compensation.

If a seaman gets hurt he receives free medical attendance, full wages till the paying off or, if there is no paying off, till the day when the ship continues her voyage. The ship-owner is, however, not bound to compensate for medical attendance longer than 4 weeks, counted from the day when the right to receive wages ceased (§ 90 Swedish law).

The regulations in § 8 are intended for passengers, seamen and others that have been hurt through the fault or neglect of someone doing work on board and being in the service of the ship, but passengers have no right whatever to compensation in case of a mere accident.

When making the above observations the Association has been chiefly considering the relations between the owner of a certain ship, on the one hand, and the persons on board the ship, on the other hand. Regarding a foreign ship persons hurt can only plead according to general law (the maritime law § 220).

2. For receiving damages for bodily hurt according to § 8 in the maritime law or according to the general rules respecting damages, the fact must be proved.

In case of bodily hurt because of deficient seaworthi-

ness it is, however, considered that there is a presumption of neglect if the plaintiff proves the defectiveness.

3. Also in case of bodily hurt the regulations in the Swedish maritime law should be valid viz, that if injury has been caused by the ship having been in a defective condition at the beginning of the voyage, the presumption of neglect is removed, if it had not been possible to detect the defectiveness in spite of all possible care.

4. Defects in the ship and its belongings give raise to compensation (see above).

5 and 6. See above.

II. — The plaintiff.

In case of death, only the surviving wife and the unprovided for children are entitled to claim damages. Cost of burial, according to § 46 in the maritime law, can be claimed by the next of kin after the decease. In case of bodily hurt, not causing death, the hurt person alone is himself the plaintiff.

III. — The extent of damages.

1. The damages comprise first of all direct cost and damage including lost wages. Also compensation « for sufferings », in the sense stated above under I, can be adjudged, but the Swedish courts are not particularly inclined to estimate such at any considerable amount.

2. Any limit as to damages does not exist according to law, expressed in any other way than that in case of crime, causing death, the deceased's widow and children

are adjudged reasonable damages to be paid «till they can provide for themselves». Otherwise there exists no limit except in the case mentioned in § 90 respecting an injured seamen's right to free medical attendance.

IV. — **Clauses of C. P. and B. L.**

To a certain extent there should, according to custom, be a possibility of renouncing beforehand by contract all right to damages because of another's doing. But from responsibility for is own fault and from *grave* carelessness (*culpa lata*) of the subordinates, neither the ship-owner nor the captain are likely to be able to free themselves.

V. — Claims for compensation on account of § 8 in the maritime law are precluded within 2 years, but for the rest ten years is the limitation.

VI. — **The nationality.**

The subjects of foreign nations are in the above respects on a level with the Swedish.

For the Swedish Association,
EIJEL LÖFGREN, *Secretary*.

The Maritime Law of Sweden (1891)

§ 8. — The owner is responsible with ship and freight for damage through fault or neglect in the service on the part of the master or any of the crew. This law will equally apply in cases, where the damage is caused by some person not being a member of the crew but doing ships, service or working on board. The owner shall have right to recover his expenses from the person causing the damage.

§ 46. — If a seaman dies, whilst in service, the master shall look after his burial and see that an inventory is taken of his effects left on board. If the property cannot immediately be delivered to the person or persons interested in the estate, or to any other person for their account, nor be kept on board without inconvenience or danger of its becoming damaged, until it can thus be delivered, the master shall either deliver the property to the nearest Swedish Consul, or cause it to be sold in a suitable manner, and he shall, on the arrival at a Swedish port render an account thereof to the Superintendent of the Mercantile Marine Office (Sjömanshus) of the port to which the ship belongs.

§ 50. — If a seaman falls ill or gets injured, the master shall provide for the requisite nursing on board or on shore. If from illness or injury rendered unable to work for any longer period, or if suffering from venereal disease, the master shall have the right to discharge him. In case a master is obliged to leave a sick seaman behind at a foreign port, he is to deliver him into the charge of the

Swedish Consul, or, should no such official reside in the port, he shall otherwise take care that the seaman receives proper nursing.

If a seaman is discharged on account of illness or damage through his own grave carelessness or on account of venereal disease, his wages are only to be paid for the time served and the expenses in connection with his nursing and treatment may be deducted from the wages due. If he is not discharged, he is not to be paid wages for the time he is unable to work, and shall be bound to refund the expenses incurred for nursing and treatment.

Any seaman who otherwise falls ill or gets injured in the service shall draw full wages and shall be doctored and cared for at the expense of the owners, as long as he remains in the service. If he is told to leave the service he shall receive his wages until the date of discharge, or, should no discharge take place, up to the day the ship sails, in addition to which he is entitled to nursing and treatment at the expense of the owners for a term of four weeks reckoned from the day when his right to wages ceased.

§ 93. — The wages of a deceased seaman shall be paid up to the date of death, unless his right to wages has previously ceased on account of illness or from any other cause. The burial expenses are to be paid by the owner.

If the vessel is lost with all hands and no information can be obtained as to the time of the calamity, the wages are to be calculated in accordance with the rules laid down in § 67.

For the true copy,
ELIEL LÖFGREN; *Secretary*.

ANSWER

to the questions made by the International maritime Committee concerning compensation in case of accident on board a ship

A. — Passengers in relation to the ship on which they are carried

1. It seems desirable that, in case a special law about accidents to passengers is found necessary, the same should be of an international character.

2. How the responsibility for passengers' accidents should be determined will principally depend on the question whether it is considered that compensation shall also be paid although the misfortune is to be attributed to mere accident, not caused by third parties, or whether only faults or neglect of the shipowner, the captain or the crew should form the basis of such responsibility. As only in the last-mentioned case compensation ought to be paid, the plaintiff, claiming compensation, will in the usual way have to produce full evidence.

3. Regarding the manner in which full evidence is given, the principles on which the Swedish maritime law is based, can be considered as satisfactory (see report about it).

4. All real injury, also indirect injury, should be compensated for, whereas a reliable basis for judging a psychological suffering will scarcely be found.

5. In case of death caused, the question may arise, if not aged parents who have lost their support through the death, should be considered as plaintiffs. For the rest, the Swedish law is referred to.

6. Regarding the shipowner's responsibility, also for bodily hurt, the extent of damages should be limited to the ship and cargo in those cases, when the injury has been caused through another person than the shipowner himself.

7. The right of claiming should also be given to a foreign subject.

8. It should not be permitted to free oneself by agreement from the legal duty to be responsible for injury caused through

a. one's own fault,

b. through grave carelessness of a subordinate.

9. Swedish and foreign subjects should in general have the same right in this respect.

10. A short limitation of time should be fixed for claims applicable only to the ship and cargo.

See the 2 years' limitation in the Swedish law.

B. — A claim against another ship than that on which the person injured was at the time should in suitable parts be considered according to the above rules.

C. — The rights of the crew to claim.

Until a special law has been made, securing to the crew compensation in case of accident in general, their

rights should be judged according to the principles stated under A.

In the meanwhile it has for several years stood on the order of the day in Sweden to make such a special law in or without connection with the national insurance; and if such a law should come into existence the consequence will, of course, be a change in the principles of compensation in case of accident so that, while now the fault or neglect on the part of the shipowner or a subordinate must be proved, the injured party would be entitled, according to the special law, to compensation, if the injury has not obviously been caused through grave carelessness (*culpa lata*) from the injured himself.

D. — Compensation to those doing work on board without belonging to the crew, is paid by the ship-owner on the same principles as to the crew. If, however, the work is done for the stevedore's account, compensation is paid according to the special law of July 5. 1901 applicable thereto.

For the Swedish Association,
(S.) ELIEL LÖFGREN.

REPORT

on the Draft-treaty as to Freight.

The Swedish Association of International Maritime Law has noted the special draft-treaty of the Paris-commission for international rules respecting freight, and it occasions, on comparing the proposal with the Swedish

maritime law (see the statement of the Association of 1907), the following remarks :

ARTICLE 1. — By the proposal, distance freight is removed from the rules expected to be adopted by all nations.

On the presumption that the regulations regarding distance freight be retained the Association has, in its last report, proposed some changes in them, such as they are found in the Scandinavian laws. In conformity with what has already been said by the committee that did the preparatory work for these laws, the Association acknowledges, however, that justified remarks, founded on principle, can be made against the payment of distance freight, and as also practical difficulties have presented themselves regarding the just calculation, the Association will not oppose the removal of distance freight as principal-rule, if this will be resolved upon by common consent of other nations.

ART. 2. — The proposed regulations agree as to the matter with the Swedish maritime law and are recommended.

ART. 3. — Considerable changes would thereby be made in the Swedish maritime law. According tot §§ 160. and 161 of the Swedish maritime law the following is in force :

a) if a ship is lost or condemned on the voyage the charter-party ceases to be valid without any special agreement ;

b) in case of hinderance by force majeurs, which breaks off the voyage, both parties are entitled to cancel the charter-party. In both cases the legal relations are settled as if the voyage had been completed, the ship-owner being

entitled to receive distance freight and the ship-master being bound to take care of the cargo on account of the cargo-owner in the best possible manner.

According to the proposal of the Paris-commission the charter-party would, in both these cases, continue to be valid if the goods can be carried to their place of destination at the original freight. Only in case the freight became higher the charterer would be entitled to annul the agreement. Respecting the shipowner's right to annul the agreement in the said case there is no clear definition in the proposal. The shipowner, however, would always be *entitled*, unless the charterer annuls the agreement on account of the higher freight, to forward the goods with a lien on the goods both for the freight first agreed on, as also for the eventual difference in freight.

An enactment in this direction, as a consequence of the unconditional connection of the claim with the arrival of the goods at their place of destination, could, as to matter, be recommended provided the regulation be drawn up more distinctly and completely. Special attention should be paid not only to the circumstances causing an absolute hindrance, but also to the delay in the forwarding of the cargo. Likewise such circumstances as concerning the cargo alone and not at all the ship should be taken in consideration when drawing up the regulations.

ART. 4. — The proposed regulations respecting faute-freight rest on the same principles as in the Swedish maritime law, although the fixed damages have been determined at equal amounts (half freight) no matter whether the ship has commenced the voyage, for which she is chartered or not.

The Association considers it, however, in principle correct to make a difference in this respect, in conformity

with the Swedish maritime law, and therefore this part of the proposal has not been considered well-founded.

Further, the enactment in the Swedish maritime law is recommended that when the charterer has not given full cargo and the captain takes other goods to make up for that wanting, *half*, but not more, of the freight payable for it, may be deducted from the charterer's debt for freight for the wanting goods.

The Association recommends that the regulations, in conformity with the proposal, particularly include likewise the case where a ship or ships be defined only *in genere*.

ART. 5. — The advisability of taking in the first part of this article is not quite conceivable. For the rest the article is approved.

For the Swedish Association
ELIEL LÖFGREN, *Secretary*.

UNITED STATES
MARITIME LAW ASSOCIATION OF THE
UNITED STATES

Memorandum in answer to questions by the
International Maritime Committee.

Comparative Law.

We now have no federal legislation for recovery of damages for accidents causing *death* to human beings at sea. In the absence of such general legislation, the Supreme Court of the United States holds that ships may be deemed a part of the territory of the local State or the foreign country in which they are owned, so that in case of death on board such vessels, our court may apply a statute of the State, and enforce such a local remedy.

1. Even in case of passengers under contract with the carrying ship, there is no remedy for death by our maritime law, unless by resorting to a local statute of the state or country to which the ship belongs.

2. It is very doubtful if any remedy exists for death by collision in favor of the passengers and crew of another ship, where the death being on another vessel cannot be regarded as occurring within the territory of a country which gives such a remedy.

3. The remedy of the crew with respect to their own ship is doubtful, unless by the benefit of some local statute.

4. The same answers would not apply to cases of personal injuries not resulting in death. Workmen, stevedores and labourers are entitled to damages where the shipowner has been guilty of negligence.

I. — Conditions of Liability.

1. The liability is regulated wholly by statute law. No liability existed by the common law of England and of the United States for injuries causing death.

2. Responsibility is not presumed. Fault must be established. Nevertheless, there are many cases in which courts held — *res ipsa loquitur*. That is to say, — they hold that the circumstances of a particular accident or injury are such that they lead to a presumption of fault. The common law of England and of the United States is that a common carrier does not warrant the safety of passengers, but that he is bound to transport them with the highest degree of care.

3. Whatever presumption of negligence might arise from the circumstances of an accident, could be rebutted by proof that the real cause was unavoidable accident (*cas forfuit*) or (*force majeure*).

4. If it were shown that the injuries in question were caused by defects or insufficiency of machinery, the inference of negligence would ordinarily arise. It would be competent for the carrier to show that the defect was latent, and could not be discovered by the use of reasonable diligence.

5. Proof of negligence in a captain or the crew, or proof of a defective condition of the machinery, would ordinarily justify a recovery. If the person injured were one of the crew, and the injury was caused by the fault of a fellow

sailor, the carrier would not be liable according to the common law of England and of the United States. But this has been changed by statute in England, and in many of the United States, so as to make the employer liable for injury caused by the negligence of a fellow workman.

6. See answer to 3.

II. — Persons who may enforce the liability

The right of action in the case of injuries causing death is a creature of statute. In some jurisdictions the suit would be brought by an executor or administrator of the deceased. In other jurisdictions, the suit could be brought by his wife and children. In general, it may be said that whatever the requirement as to the formal plaintiff, the suit is for the benefit of the next of kin.

In the case of injuries not causing death, the right of action belongs to the person injured only. By the common law of England and of the United States, this right ceases upon the subsequent death of the injured person, unless the death was the result of the injury. The common law maxim was — *actio personalis moritur cum persona*.

III. — Damages

1. Our law allows only direct personal injuries, and does not recognize damages for mental distress. The damages are limited to the direct and proximate results, and do not extend to remote and indirect consequences.

2. In many States there is a limit for recovery for death occurring on land, but in other States there is no such limitation. In case of personal injuries not causing death, there is no limit by our law, except subject to the general right

of the shipowner to limit his liability to the value of the vessel and her pending freight.

IV. — Contract clauses of exoneration

The jurisprudence of the States differs in this respect from that of the Federal Courts. Generally speaking where the liability arises out of a public duty like that of a common carrier, contract clauses of exoneration are held to be against public policy and void.

V. — Limitations of time to sue

In many of the States there is a statute of limitations for death, or personal injuries, of two or three years.

VI. — Nationality

Our laws do not discriminate between foreigners and citizens, in regard to the remedies, either for personal injuries, or for death.

SECOND PART.

Matters which may serve as a basis for an international agreement.

A. —

1. Yes.
2. We think the present law, which has been stated in answer to the questions previously put under the head of « Conditions of Liability » is satisfactory.
3. The same answer applies to this question.

4. The basis of damages is the actual injury.

Where the action is brought by the person injured, he is entitled by the common law of England and of the United States to recover compensation for his suffering, as well as for the expenses of a cure and the loss of income which may follow from the result of the injuries.

When the injury causes death, and the action is brought by the personal representatives of the deceased, the right to recover is limited to the pecuniary loss which they sustain in consequence of the death. In fixing the amount of this pecuniary loss, however, much discretion is left to the tribunal which assesses the damages. Ordinarily, causes of this description are tried before a jury, and the jury assesses the damage.

5. The right of action should inure in favor of all his family or kindred who sustain pecuniary injury from the death.

6. Recommendation should be made that the law shall provide a maximum limit for the damages allowed in case of accidents causing death. This is for the reason that it is very difficult to fix the actual injury, and that a jury will often be led by sympathy for the family of the deceased to award excessive damages.

However, it should be stated that opinion on this subject in the United States is not unanimous, The Constitution of the State of New-York, adopted in 1894, provides expressly :

« Art. 1. § 18. — *Damages for injuries causing death.*

« The right of action now existing to recover damages for injuries resulting in death, shall never be abrogated ;

and the amount recoverable shall not be subject to any statutory limitation ».

7. Yes.

8. By the laws of the United States as administered in most jurisdictions, it is not permissible to exonerate oneself by contract from the responsibility of the common law in the case of negligence.

9. Aliens and citizens should be put upon the same plane so far as the right of action is concerned.

10. In order to guard against the dispersion of witnesses, and the consequent difficulty of proof in case of accident, the limitation of time should be comparatively short. By the law of the State of New-York an action to recover damages for a wrongful act causing death must be commenced within two years after the death of the decedent.

B. — The answers to the questions as to passengers under A would apply here.

C. — Actions by Crew

The members of the crew (which include the subordinate officers below the master), are not entitled to sue for damages they may sustain by negligence of other members of the crew, in case the ship was in all respects seaworthy. (The *Osceola*, 189 U. S. 158.)

The obligation of the shipowner is to attend to the cure and relief of the seamen injured, whether by accident or negligence of those on the ship, and for that purpose to provide a suitably equipped medicine-chest upon the vessel; also in serious cases to put the seamen on shore

for surgical treatment, even if it becomes necessary to deviate from the voyage.

This humane principle in general has been found satisfactory. We see no reason why these remedies of the crew should be changed, or made a matter of special legislation.

D. — Actions by workmen and employees in port

In case of shore-workmen and other labourers working on a ship in port, the ordinary recovery for negligence should apply — that is, the shipowner should be answerable that the workman has a safe place in which to work, and he should be liable also for not having competent supervision. Negligence resulting without fault of the owner, should not give a remedy, unless by application of some modern Employers Liability Statutes, which, in this country, have not been extended to ships and vessels.

Executive Committee of the Maritime Law Association
of the United States :

EVERETT P. WHEELER,
FREDERIC DODGE,
HARRINGTON PUTNAM.

REPORT

upon the Questions formulated by the
International Maritime Committee and upon the
Draft Articles Proposed by the Paris Commission.

Preliminary Observations.

The proposition to make the law governing freight the matter of international regulation goes a step beyond what has yet been attempted by the International Committee and the several Conferences. Since freight is purely a matter of contract, differing in this most important respect from the questions which have heretofore been considered, no regulation of the subject, by treaty or otherwise which may be adopted, will prevail against a contract which does not conform with the treaty provisions, unless such treaty further provides that all contracts in contravention thereof shall be void. We do not think that a provision of this nature can be justified upon grounds of either necessity or expediency, and we consider it both inadvisable, and at the same time hardly probable, that the consent of the several interests or of the several Governments could be obtained to such a limitation upon the freedom of contract. We favour, however, an attempt to secure uniformity upon those questions which are not customarily the subject of express regulation by the contract of carriage, such as the questions covered by the Draft Articles adopted by the Paris Commission.

Art. I. — Save as is hereinafter provided, no freight is payable in respect of goods which do not reach their destination.

We favor this provision in that it eliminates all question of freight *pro rata itineris*, and we consider that such elimination is the best solution of the differences now existing in the law of the several countries. We think, however, that this article should allude to prepaid freight, as to which there is now a difference between the law of England and the laws of most of the other countries. We would suggest, therefore, that there be added to this article the following :

« Any freight prepaid shall be returned unless an agreement to the contrary has been made. »

Art. II. — Freight is payable in respect of :

1st. Goods of which the value is made good by contribution in General Average ;

2^d. Goods which have perished in the course of the voyage by reason of their nature or inherent vice ;

3^d. Goods which are sold in the course of the voyage on account of their damaged condition, whether the same arises from their nature or inherent vice or from a peril of the sea.

Freight is also payable in respect of goods used or sold by reason of the urgent needs of the ship, subject to a right of compensation for an amount equal to the value as they would have possessed at their port of destination.

Subdivision 1^o

Our opinion is that this provision has no place in the law regulating freight and that all rights in respect to freight on cargo which is made good in general average are properly a part of, and should be left to the law of general average.

Under the provision proposed, the cargo owner would be called upon to pay the freight on such goods and would have such freight made good to him in general average in

addition to the value of the goods, and would naturally contribute on such freight instead of the ship owner. In other words the cargo owner would be in the same position as if the freight had been absolutely prepaid and not at risk, which we consider improper.

Subdivision 2°

We consider this paragraph objectionable.

In the case of cargo, such as fruit or vegetables, naturally perishable, or such as coal subject to spontaneous combustion notwithstanding the exercise of utmost care, both the shipper and the ship owner contract with full knowledge of the nature of the cargo and of the contingencies which will attend its transportation, and both should take the risk.

The ship owner can always protect himself by making the freight payable in advance and not dependent upon delivery at destination, and in case he does not do so, he should be considered to have assumed the risk in respect to freight.

Where, however, the cargo has perished by reason of its defective condition, the shipowner should receive freight, and we suggest that Paragraph 2 be modified so as to read :

« Goods which have perished in the course of the voyage by reason of their defective or improper condition at the time of shipment. »

Subdivision 3°

We approve of this provision, but think that the right to freight should be limited to the case of a necessary sale, and to cases where the cargo although damaged was in a condition to reach destination *in specie*. We suggest therefore the insertion of the word *necessarily*, before the word *sold* and that there be added the words « provided such

goods were then in a condition to have reached the port of destination *in specie*. »

The final paragraph of Article II we approve, except that no provision is made for cases where the amount realized upon the sale of the cargo exceeds the value of same at destination. Any profit realized should go to the cargo owner only, and the paragraph should be modified so as to provide for this contingency.

We think a further subdivision or paragraph should be added to this article providing for the recovery of freight upon goods of a dangerous nature, shipped without notice of their character, and destroyed during the voyage.

ART. III. — « Where a ship is, after departure, prevented from completing the voyage, the captain has a right » to the agreed freight if the goods nevertheless arrive at » their destination by reason of his exertions.

» If the reshipment can only be effected by the payment » of a higher rate of freight, the excess is chargeable » against the goods, saving for the right of the shipper to » effect the reshipment himself or otherwise to dispose » of the goods carried. »

This article is approved.

ART. IV. — « Upon all contracts of affreightment and » carriage by sea, where the shipper does not provide the » agreed cargo, he is liable to pay half the freight by way » of forfeit and indemnity.

» Where a shipper loads only part of the agreed cargo » he is liable for the entire freight on the whole quantity » specified in the contract, subject to a right to a proportional reduction of his liability, if he is able to prove » that other goods have been shipped in place of his own. » The shipper, who, except in the case provided for

- » under Article 3, resumes control of his goods, is liable
- » to pay the whole freight and to indemnify the captain
- » in respect of all the expenses and losses occasioned by
- » such resumption.
- » The foregoing provisions are equally applicable to
- » general ships. »

The question of principle involved here is whether in case of the failure of the charterer or shipper to furnish the agreed cargo, the shipowner must prove the actual damage sustained through the breach of agreement, or whether such damage should be fixed by law. We favour the rule prevailing in this country and in England of the recovery of the actual damages shown.

We recognize that the disadvantages of this rule are that the ascertainment of such damages usually necessitates either a suit at law or an arbitration involving delay and the comparison of profits realized upon an entirely different voyage.

In case the principle established by art. IV is adopted, we consider that the proposed article is open to criticism in applying the same rule to a general ship as to the charter of an entire vessel. In the latter case a failure to furnish any cargo breaks up the voyage, and the ship is bound to seek another charter. In the case of a general ship this is not the case. The ship still performs the voyage either with the space empty or with substituted cargo. In the former case the expense of performing the voyage is the same, and the vessel loses the entire freight; half freight would therefore not be an indemnity. In the latter case the ship may fill the space with other cargo at little or no expense, and would be able to collect full freight on same in addition to half freight from the original contractor. We think that the first paragraph of article IV should apply

only to cases where the whole capacity of a vessel is chartered or engaged, and that the rule of entire freight less freight earned, or that might have been earned from substituted cargo tendered, should govern in the case of general ships, whether the failure to furnish the agreed cargo be total or partial ; and that the last words of the Second paragraph should read — « if he is able to prove that other lawful goods have been shipped or tendered in place of his own ».

ART. V. — The differences of opinion existing in regard to the legal attributes of demurrage would appear to be of a theoretical description.

Claims in respect of demurrage enjoy the same protection as those in respect of freight.

They are payable without any special mode of procedure or technicality.

We do not consider it advisable to attempt to regulate the question of demurrage, and are opposed to the requirement of the observance of any prescribed mode of procedure or technicality.

Regarding the subject of the treatment of freight in General Average, we are opposed to the allowance of gross freight and to taking any arbitrary fraction of the gross freight as a basis of contribution. In our view the net freight, ascertained by deducting the further expenses of the voyage (exclusive of stores then on board), should be the basis for allowances, and for contribution.

ADDISON BROWN,
LAWRENCE KNEELAND,
WILLIAM R. COE,
GEORGE B. OGDEN,
HARRINGTON PUTNAM.

Registration and Publication of liens on vessels

The Maritime Law Association of the United States, in compliance with the request of the International Maritime Committee in their circular letter of March 31, 1909, reports as follows to the Permanent Bureau with regard to the existing legislation and administrative means of regulation and publication of liens on vessels in the United States :

It is expressly provided in the statute law of the United States that no bill of sale, mortgage, hypothecation or conveyance of any vessel or part of any vessel of the United States shall be valid against any person other than the grantor or mortgagor, his heirs, devisees and persons having actual notice thereof, unless recorded in the office of the collector of customs where the vessel is registered and enroled.

From these provisions, however, bottomry bonds given during a voyage to obtain money or material necessary for repairs or to enable the vessel to prosecute the voyage are expressly excepted. (U. S. Rev. Stats. Sec. 4192.)

No registration or record is necessary to the validity of any of the other liens upon vessels which are recognized by the Maritime Courts of the United States as arising under the general maritime law of the country, such as liens for wages, salvage, towage, liens for collision damages, the liens accruing in favor of cargo owners and the liens for repairs or supplies furnished in ports where the vessel is to be regarded as foreign.

For repairs or supplies furnished in ports where the vessel is to be regarded as domestic, liens enforceable in the Maritime Courts of the United States may arise if the

law of the particular State, within which the repairs or supplies have been furnished, so provide. Such liens require or do not require registration or record in order to be valid according to the requirements of the particular State in question. In some of the States which have provided for such liens, registry or recording is not required. In other States various requirements of registry or recording have been imposed and the requirements imposed by the different States vary widely in character and in detail. It is not believed that the specific statement of the requirements imposed by each of the States referred to, is desired by or would be of assistance to the Permanent Bureau.

FREDERIC DODGE,
ROBERT M. HUGHES.
FITZ HENRY SMITH, J^r.

NETHERLANDS

DUTCH ASSOCIATION OF MARITIME LAW

Publication of maritime Mortgages and Liens

The Code of Commerce of the Netherlands establishes the following distinction :

- a) sea-going vessels ;
- b) ships and vessels navigating on inland waters and rivers and not going out of the boundaries of the Kingdom ;
- c) ships for inland navigation coming from or going to foreign countries and which are treated in the same way as sea-going ships.

Delivery of sea-going vessels and of ships for inland navigation having a burden of ten *lasts* and more, can only be effected by a deed transcribed on the Official Registers which are specially kept for that purpose. (1)

The law of the Netherlands recognises two categories of liens :

- 1° legal liens ;
- 2° contractual liens.

The legal liens, which are enumerated in article 313 and in article 315, 1°, of the Code of Commerce, rank prior to contractual liens, in the order established by the law.

As to the second category of liens, (maritime mortgages

(1) Under this system, ships although they are *moveables*, are treated according to the rules which apply to real estate.

or « pand — en verpandbrieven), our law has adopted the following system :

I. — In order to establish the lien, it is not necessary that the vessel be put into possession of the creditor.

II. — The lien must be stipulated by an official deed mentioning the amount of the debt and of the rate of interests agreed upon.

III. — This deed must be transcribed on the above-mentioned Register.

IV. — The interests are guaranteed only for the two last years.

V. — The rank of the liens is regulated by the priority of their registration.

VI. — The lien becomes extinct when the ship after having been transferred to a third party has navigated during sixty days since leaving port, under the name and for account of her new owner, if the creditor has not protested.

This provision however does not apply to sale of a ship abroad.

Administrative Rules.

Administrative Rules have been promulgated by two Royal ordinances, the first of which is dated 1st August 1828 (Official Journal, n^o 28) the other one of 21st June 1836 (Official Journal, n^o 41).

The most important of these rules may be summarized as follows :

I. — The Registrars of Mortgages on landed estate have to keep Registres for the transfer of ships and for maritime mortgages.

II. — A central Office is located at the Hague. It receives copies of all deeds registered in the various local offices.

III. — In every Office, they keep a register-journal in which they inscribe day per day and in the order of following numbers, the declarations and deeds which are presented for registration.

Furthermore, there are Register-Books for transfers and inscriptions, whilst a general Register is kept by the Central Office.

The Registers of local offices are numbered, certified and undersigned by the Justice of the Peace of the place where each Office is located; those of the central office by the President or by one of the Counsellors of the Court of Appeal at the Hague.

Finally, there are auxiliary Registers, mentioning the name of the vessels and of their owners, in order to facilitate researches and control.

IV. — The name of the office, the number of the register and the date of the first inscription are indicated on the ship by a sworn official, in indelebile writing and in characters which can be read from a distance.

This official delivers a certificate which must be shown to the Registrar in order to obtain the restitution of the documents which are tendered for registration.

V. — In order to have the registration of a mortgage effected, the creditor must either by himself or through a third person, deliver to the Registrar at the Office where the ship has been inscribed, two memorandums signed by the creditor or by such third party, one of which may be given on the title-deed presented to the Registrar, or on the certified copy.

Those memorandums must contain :

1° The mention of the creditor and of the debtor and of the domicile elected by the first one within the jurisdiction of the office ;

2° The date and nature of the title-deed with indication of the official before whom such deed has been executed ;

3° The amount of the debt or the valuation of the conditional and undetermined rights which are to be guaranteed, and the date of maturity of such obligations ;

4° The name and tonnage or description (dimensions) of the ship, the office, date and number of her registration, and the port or place within the Kingdom where the ship generally calls.

The Registrar keeps one of the memorandums in order to effect the inscription of same in the Register-Journal at the date of presentation.

He restitutes immediately to the applicant the other copy of the memorandum, at the foot of which he certifies, the date of presentation. He must also, if requested to do so, add within 24 hours, on the same memorandum, the number under which it has been transcribed on the Register.

Both certificats shall be signed by him.

Draft-treaty on Freight.

The Association of the Netherlands generally adheres to the principles adopted by the Paris Commission. It merely limits itself to propose an amendment to article 3, 2^d paragraph : « The difference of freight must only be for charterer's account in case the captain has advised him in due time of the impediment for the ship, so that the charterer, if he deems fit, may effect himself the reforwarding of his goods ».

NETHERLANDS

MARITIME LAW ASSOCIATION OF THE NETHERLANDS

ANSWERS

to the questionnaire on Compensation due for personal injury

1st PART

Comparative law

The general principles ruling, in the Netherlands, the liability of accidents involving death or personal injury, are codified in the Civil Law of the Netherlands (art. 1401-1407). They are the same as those of the French Civil Code (art. 1382-1386) with this exception however that according to our law, the act causing damage to third parties must be an unlawful act (« illicite ») which, according to the jurisprudence of the Supreme Court of the Netherlands, must be construed in a rather narrow sense, as meaning an act which in contrary to a provision of law, or which violates a right of another person.

The law of 2^d January 1901, modified by that of 13th January 1908, regulates the « compulsory insurance of workpeople against the pecuniary consequences in some categories of trades. » Those accidents, against the consequences of which the workmen are thus insured, must have happened in the exercise of their profession.

This law includes within its scope a great many of professions and among them that of the « skippers » who although going often beyond the boundaries of the Kingdom, never cross the seas, and also the sweet-water fishermen.

But it excludes the crews of sea-going vessels and also the salt-water fishermen. However, the Code of Commerce contains the following provisions in favour of the shipscrews.

« Art. 423. — Any member of the crew becoming ill during the voyage, or who, either in the service of the ship or in a fight against enemies or pirates, is wounded or crippled, is paid for his wages, cared for and cured, and in case of being crippled, indemnified by arbitration of the judge if any dispute should arise.

Art. 424. — The cost of care and medical attendance and the indemnities are for account of ship and freight if the illness, the wounds or mutilation have been occasioned by the service of the ship.

If they happened in a fight for the defence of the vessel, the costs and indemnities shall be apportioned on the ship, the freight and the cargo by way of General Average contribution.

Art. 425. — If at the time of departure of the vessel, the sailor who is ill, wounded or crippled, could not continue the voyage without danger, the care and medical attendance shall be continued until the man be cured.

The captain is bound, before leaving, to defray those expenses and to provide for the sustenance of the sailor who is ill or wounded.

Art. 426. — The sailor, who is ill, wounded or crippled is not only entitled to his wages until he be cured, but such wages shall continue to be due to him up to the time when he shall be back at the place whence the ship sailed

and he shall further have an indemnity for the travelling expenses on the homeward voyage.

Art. 427. — In the cases provided for in articles 424, 415 and 426, he has no other regress than against the ship, the freight and the cargo.

As will be observed from the above-quoted texts, all this does not refer to any quasi-delict. The law exclusively regulates some contingencies which may occur during the execution of the contract of service.

There is no other law especially regulating the liability in case of personal injury occurring at sea. The above-mentioned articles of the Civil Code and of the Code of Commerce must do for all cases, so that in fact sailors, passengers or third parties — unless they may found their action on a contract of service, on the contract of passage or on any other special contract — can only rely on the provisions of the Civil Code for their claims for compensation.

It further results thereof that there is no reason to make the distinctions drawn in the questionnaire in case of an accident attributable to a fault or a negligence, either of the shipowner of the captain or of such persons for whom he is responsible.

When replying to the questions below, we have only considered the claims which are based on a quasi-delict.

I. — Conditions of liability

1. — *Is the liability regulated by the common law, or is it the subject of special legislation?*

See above.

2. — *Is liability presumed, or must negligence be proved?*

Any fault (including negligence) must be proved by legal evidence.

3. — *If liability be presumed, may such presumption be rebutted on proof of accident or force majeure ?*

There is no legal presumption of liability.

4. — *Does the inherent vice or defect in inanimate objects (breakdown of engines, machinery, ropes, &c.) give a right of action ?*

In such case, there shall be an action in so far that it shall be proved that the vice or defect must be attributed to a fault or a negligence of the Captain, or of such persons for whom he is responsible, or of the shipowner.

5. — *What proof is necessary to success in such action ? Must negligence of captain or crew be proved as well as defect in the engine or other object ?*

See answer to question 4.

6. — *Is proof of accident or force majeure admissible as a defence ?*

There is no responsibility if there is no fault or negligence; neither is there any in case of force majeure. So, in any case where the shipowner shall need contrary evidence, he shall be allowed to prove accident or force majeure.

II. — Persons Entitled to Sue

Does a right of action belong only to the person injured, or does it equally belong to his widow or children ? Can more distant relatives or personal representatives sue ?

The action belongs to the party injured, or after his death, to his wife, to his children and to his relatives of the ascending branch, provided that they were dependant on the deceased. Damages are estimated according to the

social standing and respective fortune of parties and according to circumstances.

The relatives of a collateral branch, or the heirs, as such, have no action.

III. — Damages

1. — *May material loss only be recovered by way of damages, or may damages also be awarded in respect of general damage? Do such damages include only damage directly attributable to the accident, or do they also include damage indirectly attributable?*

The law allows all material damages which may be foreseen, including all direct consequences of the damage. But such damage as is of purely psychical character is not taken into consideration.

2. — *Is the amount recoverable fixed to a limited sum, e.g. has a maximum recoverable in such cases been fixed by any law or proposed law? What is that limit, if any?*

The law does not provide any limit of that sort. We refer however to the remarks made on question II.

IV. — Exonerating Clauses under contracts

Is it possible to contract out of the liability imposed by common law?

As far as the profession in question comes not within the terms of the above-mentioned Special law, and that the contract itself is not in contradiction with some legal compulsory provision, or is not contrary to « public order » or to « morals », anybody has full liberty to exonerate himself by contract for any legal liabilities.

V. — Prescription

Is there a period of prescription, and is so, what period ?

For these matters, there is no shord delay of prescription. The prescription of thirty years applies.

VI. — Nationality

Are foreigners and nationals upon the same legal footing ?

Article 9 of the law of 15th May 1829, containing the general provisions of legislation for the Kingdom, says :

« The civil law of the Kingdom applies without distinction to Netherlanders and to foreigners, under the exceptions provided by the law ».

As regards thè matter under examination, no such exception exists.

The answers to the second part of the questionnaire, relating to the « *jus constituendum* » require a thorough study. We regret that the time necessary for such work, has failed us, and we hope to come back upon the subject later on, as we assume that the discussions which are to take place at the Bremen Conference, will only serve to « set in » these questions and that the latter will be again on the agenda-paper of a following meeting.

DANMARK

DANISH ASSOCIATION OF MARITIME LAW

Compensation due in case of Personal Injury

In reply to a circular letter n^o 22 which we received from the International Maritime Committee, together with two annexes, we beg to state that our maritime law admits, as a principle, that the shipowner is responsible for the default or negligence of his employee.

However, as far as it concerns damages in case of personal injury, this rule only applies when the wrongdoing person committed a negligence which is punishable according to penal laws. In such cases, the shipowner may take a regress against the captain for the amounts he has been compelled to pay. We should wish that this legislation be maintained. We think it is already hard enough for the shipowner to have to pay damages though being completely innocent. Such a rule can only be justified if the safety of navigation requires it.

With the exception of Mr. Middelboe, we all think this to be actually the case. In the great majority of lawsuits based on nautical faults, there is no negligence (culpa) according to common law. So there is no reason to compel the captain, who has acted to his best, to pay. It would be still more unfair to compel the shipowner to pay.

Those persons who run the risks of navigation at sea, can cover themselves by insurance. Under this head, we refer to the study of Mr. Hindenburg : « Of negligence in collision cases and Shipowners' Liability ». Antwerp 1899.

For the Danish Association of Maritime Law,

A. HINDENBURG.

ITALY
ITALIAN ASSOCIATION OF MARITIME LAW

(NEAPOLITAN SECTION)

REPORT
on the Draft-treaty on FREIGHT

The Neapolitan Section of the Italian Association of Maritime Law has examined the international draft-treaty on Freight, and in the last meetings the following resolutions have been taken :

ON ART. I

The draft-treaty as put down by the Commission of Paris is based upon a principle which is different to the utmost from the system of the Italian legislation.

Between the three systems — *freight pro rata itineris*, *freight of equity* and the English system according to which no freight is due when the goods do not arrive to destination — the Commission of Paris has preferred this last system.

There is no possibility to pretend that a principle admitted in one legislation should be predominant and exclude the principles of other legislations, and, in order to come to an international agreement, mutual concessions must be made.

The Neapolitan Section, considering the dispositions of

the draft-treaty, which moderate and modify the strictness of the abrogation of the *pro rata itineris freight* adheres to the draft-treaty as put down, and admits even the principle contained in article 1. But at the same time the Association cannot help pointing out the difficulties which the assent to a system essentially different from that adopted by the Italian Code should have to meet with in case of an international agreement. Such assent should necessarily lead to a complete alteration of all the provisions of the Code and to their adaptation to the contents of the draft-treaty.

At the time of the Conference of Venice the Italian Association has presented conclusions based upon the same reasons of equity as those which lay at the bottom of the system of freight *pro rata itineris*, this last system being in accordance with our national traditions and having its consecration in the provisions of the Commercial Code in articles 561 and subsequ. put into relation with art. 388 and foll. which regulate the contract of carriage.

The reasons of these conclusions have been broadly explained in professor Peronne's study which was written at this occasion.

ON ARTICLE 2

This article shows the exceptions to the principle established in article 1, and it contains a moderate solution between opposite tendencies.

It should be desirable that at the time of the discussion which shall follow at Bremen, a declaration were entered in order to know whether the exceptions of art. 2 are strictly determined and exclusive or not.

As the four cases provided in art. 2 are exceptions they should not allow an extensive interpretation, such interpretation being in contradiction with the idea of exception. But it would be reasonable to explain that when nationa

laws consider similar cases also as exceptions, such cases ought to be deemed a part of the exceptions of art. 2.

The four exceptions of art. 2 are just and fair ; therefore they ought to be accepted. The first because it should be unfair that the consignee who receives the value of the goods, should make a profit on it without paying the freight.

It is reasonable to agree with the second exception, as the risk must exclusively rest upon the owner of the goods. And it should also be ascertained if the inherent vice of the goods is equivalent to the loss of goods by the shipper's act because it should be unfair that the freighter (shipowner) should sustain the consequences of facts he has not to meddle with.

There is no doubt about the rightfulness of the third exception, but the same questions we have spoken of about number 2 rise again in the hypothesis provided in number 3.

Concerning the exception provided by number 4, a member of the Neapolitan section suggested instead of the expression « *in consequence of urgent needs of the vessel* » it would read better : « in consequence of *urgent needs of navigation* ».

In any case, as this is a general disposition which must be *adopted* by all the States which shall give their assent to the International agreement, this section of the Italian Association is of opinion that the fourth exception proposed provides the selling of goods for the necessities of vessel and navigation, this expression being understood to include the cargo, passengers and whatever may be connected with the vessel.

ON ART. 3.

This article deals with the obstacles preventing the accomplishment of the *voyage* and includes in a rather

broad expression all the possible hindrances for a vessel to finish her voyage. This article is an other *mitigation* of the abrogation of the freight pro rata itineris. When, in consequence of an obstacle the vessel cannot accomplish her voyage and the captain succeeds to bring the goods to their destination, it is fair and just that he should receive the whole freight agreed upon, being understood that he shall be at liberty to choose the *means of carriage* in order to send the goods forward to destination.

ON ARTICLE 4.

This article deals with the case when the charterer does not supply the whole cargo; it is necessary that the captain should not be submitted to strict formalities and absolute delays.

Carriage at sea needs dispatch. Vessels may not remain idle. The business they are intended for does not allow of formalities too strict.

Naturally, if evidence must be given as to the proportional reduction for such goods which have taken the place of those which have not been supplied, the rules of common law must be referred to for any question of proof, the manner to present the defences, and so on. Such details are supposed to complete the general principles, but an international draft-treaty cannot deal with them.

In the case provided in the second paragraph of article 4, it seems that the condition intended is similar to that of the disposition put down in the first part of same article; and in the face of the other conditions it seems logical to apply the same solution of payment of half-freight and to pay the costs of loading and unloading.

ON ARTICLE 5.

The Draft-Treaty rejects any doctrinal question about

the nature of demurrage, in order to know whether they must be considered as an additional freight or as damages.

Notwithstanding this, two principles are established in that article :

Demurrage has the same securities as freight.

Demurrage is due without formal protest or formalities.

In the majority of the cases demurrage is stipulated in the charter-parties, or the customs admit them according to a certain extent, and they must be considered damages for the prolongation of the chartering during a certain time, after which the « extraordinary » demurrage commences.

It would be useful for the Conference to resolve the following doubt : what about the manner to determine demurrage with regard to the lien which apply to same as well as to the freight.

Questionnaire on the Recovery of Compensation in respect of Personal Injury

This Section could not examine this Questionnaire which arrived too late. The section can only express the resolution that uniform principles may regulate both method and measure of compensation, in order to establish a certain equality between the parties injured whatever their nationality may be.

This problem, however, is very vast and not easy to resolve in so short a time.

This section especially must be grateful towards the International Maritime Committee for having considered this difficult problem and for its having opened the discussion on a matter we insisted upon at the time of the Conference of Venice.

We can only point out at this moment concerning accidents sustained by the crew, and compensation in

case of bodily injuries or death, that it would be convenient that the law of the flag should regulate these accidents

Whatever their nationality may be, those who agreed becoming a member of the crew have submitted themselves to the law of the flag; and it should be natural that the same law should be accepted to regulate the accidents.

At the present time in almost all countries workmen's compensation Acts have been passed and it is very rare that this matter should be abandoned to private agreements.

In any case, as the members of the crew have submitted themselves freely to the law of the flag of the vessel on board of which they engaged, it should be fair to consider the same law as chosen by themselves to regulate the accidents which may occur to them during their service on board.

Naples, the 9th of August 1909.

F. MIRELLI, *Vice-President, reporter*
E. SOPRANO
M. RODINO

ITALIAN ASSOCIATION OF MARITIME LAW

(SECTION OF GENOA)

QUESTION OF FREIGHT.

**Report on the text proposed by the
Paris-Committee.**

The rules embodied in the Draft-Treaty of the Paris-Commission are chiefly inspired by the principle that no freight is due when cargo cannot reach its port of destination for reasons imputable to the vessel. It is thus the abolition of the proportional freight (*pro rata itineris peracti*) which the Paris-Commission proposes, that is to say the abolition of the system adopted by the Italian Code and by nearly all the continental legislations.

And this solution is certainly more in harmony with the nature of chartering, which, being principally a contract of carriage, does not allow partial execution, and which is only accomplished by the carriage of cargo to the port of destination.

But if the cargo does not arrive owing to damages having occurred to it during the voyage, there is no reason why the vessel should lose the whole amount or part of the freight which has been stipulated for the carriage.

And the shipper cannot in any case free himself of this obligation by abandoning the cargo.

One traditional exception to this principle is admit-

ted by several Codes, including the Italian code, to the benefit of the owners of casks containing liquids in case the casks arrive empty or nearly empty at destination. But this exception must be abrogated, it being not justified.

A fortiori, the whole freight shall be earned by the captain when the cargo-owner whose cargo did not arrive at destination, receives the value of same on the basis of the price it would have been worth if it had accomplished the voyage. Such is the case of goods which have been voluntarily sacrificed for the common safety, or which have been sold during the voyage for the vessel's necessities.

In the case, however, where the shipper, losing his goods owes nevertheless the whole freight, if the captain succeeds in taking other goods instead of those which perished or were sold in consequence of their state of average and in earning a new freight, it is fair and just that the benefit thereof should not be entirely go to the captain.

The Italian Association are of opinion that this new freight ought to be shared between the captain and the preceding shipper, thus rejecting for reasons of expediency and equity the too exclusive opinion of those who would attribute this freight wholly to the preceding shipper.

The captain must, as a matter of fact have an interest in trying to substitute new goods to those which perished or were sold and, on the other hand, it must not be lost out of sight that a new cargo involves for the captain both care and responsibility which he could avoid if he finished the voyage without substitution.

On another hand, the consequences of the abolition of the distance-freight must not be extended so far that the cargo-owner would make a profit by the events through which the vessel has been prevented from accomplishing her voyage. And this could occur if he were allowed to

reforward his goods to destination at a rate which would be lower than the original freight or to withdraw the merchandises by selling them at an intermediate port and getting for same an equal or a higher price than that which he could obtain at destination. In such case it would only be equitable that he should be liable for payment of a portion of the freight ; indeed, if he were not, he would most unjustly get a profit to the expense of the vessel.

These are the reasons which have decided the Italian Association to propose the addition of the following paragraphs to articles 2 and 3 of the draft-treaty :

ART. 2.

Between n^o 2 and the last paragraph :

In no case shall the shipper be allowed to free himself of his obligation to pay freight, by abandoning the merchandize.

After the third paragraph :

New freight which may be earned by the captain on the carriage of goods shipped instead of those which were lost or sold in the course of the voyage owing to their damaged condition, shall be divided by halves between the captain and the former charterer.

ART. 3.

After the last paragraph :

By way of exception, the captain shall be entitled to a portion of the freight, if the charterer succeeds to forward the goods to their destination by other means at a lower rate than the original freight, or if the goods are sold at the port (of call) at a price equalling or exceeding the value at destination.

In the former case, the freight payable to the captain shall be determined by calculating the difference between the original freight and the price of the new carriage, and in the second case, it shall be fixed ex æquo et bono.

The discussion as to the juridical nature of demurrage is not completely a theoretical one, as it appeared to the Paris Sub-Committee.

The consequences may differ very essentially, according as demurrage is considered as an accessory of freight or as damages or indemnities.

In the first case, demurrage is to have the same fate as freight itself, being subjected to the same risks and having the benefit of the same privileges — and this could not be, juridically speaking, in the second case.

But it appeared to the Paris Sub-Committee that by not adhering with too scientific severity to the principles, they could best solve the difficulties arising, on the matter of demurrage, out of the numerous divergencies now existing in the laws and customs of seartrading countries.

We must therefore limit ourselves to simply formulate a few general rules that shall benefit the interests of maritime trade, and taking especially into consideration the ever increasing requirements of steam-navigation.

With this object, the Italian Association propose to add to article 5 a further paragraph, stating that demurrage shall continue running also on holidays and on such days on which the loading or discharging are impeded by events of force majeure.

An exception to the rule established by the last paragraph of the same article has further been proposed in order to meet a case, which however seldom, may still occur, viz ; when no delay for loading and discharging has been fixed, either by the contract between parties or by the customs of the port.

Article 5 would therefore be worded as follows :

Demurrage shall have the benefit of the same guaranties as freight itself.

Demurrage shall not be suspended, either during holidays, or owing to events of force majeure.

Payment of demurrage shall not be conditional upon any special legal processor formalities, except in the case where no delay for loading or discharging has been fixed either by the contract or by the customs of the port.

International Publications with regard to Mortgages on Ships

The Italian Association of Maritime Law propose to insert in the draft-treaty on Maritime Mortgages and Liens, a provision to the effect :

that, in order to be acknowledged in the Contracting States, the Mortgage shall have to be mentioned in the Certificate of nationality of the ship,

and that the mortgages shall rank among themselves according to the date of inscription on the certificate of nationality.

This is the system followed by the Italian Code of Commerce, and, with regard to international publicity of maritime mortgages, this system is, certainly, the surest and the most practical one; for, as the certificate of nationality must be always kept on board, third parties have a very simple means to know accurately in how far a ship is burdened with mortgages.

The only objection which might be raised against this system is that it could involve as a consequence that it would render impossible to mortgage a ship in the course of a voyage. But this difficulty has been met by the Italian legislation.

Art. 489 of the Code of Commerce provides that if the conclusion of the Mortgage takes place within the Kingdom while the ship is on a voyage abroad, it may be agreed that the inscription on the Certificate of nationality shall be effected at the Consulate of the place where the ship is laying or for which she is bound, provided that such place be named in writing at the very moment when the transcription of the title is demanded. In such case the Director of the Merchant Shipping Office has to send immediately a copy of the title authenticated by him, to the consular officer in question, the expenses being borne by the party demanding it.

The contract is only valid, as towards third parties, from the date of the inscription on the certificate of nationality.

This system has worked since January 1st 1883 — date at which the Code came into force — and this experience has shown that the working of this system does not at all involve the inconveniences which they feared it would.

Questions of Freight with regard to General Average

I

Shall freight contribute as per XVIIth York & Antwerp Rule (under deduction of port dues and crew's wages which would not have been incurred if ship and cargo had been totally lost at the time of the act of common average or the sacrifice) or according to the system of valuating at a lump sum the proportion between net freight and gross freight, outside of the special circumstances of each case ?

Note. Under Belgian law, net freight is valued at one half of the gross freight (art. 105 of the Law of 21st August 1879) and under German law, it is fixed at two thirds of the gross freight (art. 721).

ANSWER. — The system to be preferred is to fix at a lump sum the proportion between net freight and gross freight, and practical experience proves that it is equitable to fix the portion of freight liable to contribution, to two thirds of the gross freight acquired at the time of the discharging or lost on account of the common average.

II

Freight acquired (*ship lost or not lost*) and which is free of contribution for the freighter, shall it be calculated entirely against the Charterer in the value of the goods saved, or shall it be taken only under deduction of the items mentioned under the preceding number ?

ANSWER. — When freight is at risk for account of charterers, no deduction must be made. In fact, when freight has been prepaid, or when it is stipulated as payable ship lost or not lost, it is the total amount of freight which is at risk, because port dues and crew's wages subsequent to the General Average, would not have been saved for the Charterers if, at the time the General Average occurred, ship and freight had been lost. In that case, freight must be considered as embodied in the merchandize, the value of which it increases.

For the Italian Association (Genoa Section)

BERLINGIERI, *Reporter.*

GREECE

MARITIME ASSOCIATION OF GREECE

Compensation in case of personal injuries

REPORT

of Mr GEORGES DIOBOUNOTIS

Professor agr. at the University of Athens, Advocate at the Court of Appeal, Formerly Judge.

A

I

An international settlement of the question of compensation for damages caused to passengers in case of loss of life or personal injury, is nowadays a necessity. Indeed, owing to the extension of the carriage of passengers by sea, such accidents occur very frequently ; and the way in which compensation is to be allowed has become a question of great social importance.

But before Government can adopt into legislation some principles of compensation on an equitable basis, it must have a certainty that the other States will adopt similar laws. If not, it would lay upon the ships under the national flag a very heavy burden in favour of the foreign competitors, which would only handicap the national flag. This reason, though one dares not always to acknowledge it, has hitherto prevented the legislature from taking up the question with a view to solve it.

II

The obligation of the owner of the carrying ship to indemnify the passenger for any damage suffered by reason of loss of life or personal injury — is it a liability arising out of the contract, or *ex delicto*?

This is a very nice question and in no way easy to solve.

The question is of very great importance if we mean to solve it *de lege lata*. But if, if we are going to answer the question *de lege ferenda*, it loses almost all practical importance, because the legislator may drop all consequences arising out of the general principles of law when fixing in a new code the fundamental principles.

As however, the point is not without its own interest, we are going to consider it briefly (1). Besides, this study shall be of use for discussing the provisions of the new legislation.

There is a great difference between the contract of carriage for goods and the contract for the carriage of passengers. All writers admit this. But the difficulty arises when it must be ascertained what is the difference.

As a matter of fact, the contract for carriage of goods as well as the contract for the carriage of passengers are neither mere contracts of *locatio-conductio rei* nor purely *locatio-conductio operis* contracts: they are contracts of a different nature, although they are in close connection with a *locatio-conductio operis*.

(1) In France theorists and Jurisprudence have examined that question from the point of view of the general principles of law, there being no text of law on the subject.

For «obligation arising out of a contract»: Lyon-Caen and Renault, Cours V § 835 and III § 709. For the contrary opinion: Feraud-Giraud, Code des Transports III, n° 420. Cour de Cassation, 10 November 1884. Lewis-Boyens II, p. 394. For Italian law: Vivante, Trattato § 025, Bruschetti, § 7.

By a contract for carriage of goods, the Shipowner undertakes to receive the merchandise on board his vessel, to carry and to deliver it to the consignee. His chief obligation is the carriage from one place to another. But in each carriage of goods, there is, so to say, a *pactum adjectum de custodia*, by which the Shipowner undertakes to guard during the voyage the goods entrusted to his care.

When, on arrival of the ship, some goods are missing, the Shipowner who cannot deliver them to the consignee, fails to his obligation of *custodia*.

His obligation to deliver the things is derived out of the contract, and so is his obligation to indemnify the consignee in case he is unable to deliver these things to the latter. If the proof of the existence of a contract of carriage is supplied, the Shipowner is bound to deliver the things carried; if he does not, then the things are presumed to be lost owing to his negligence; and he cannot free himself of this presumption unless he proves that the loss was due to a fortuitous accident or to a force majeure, or to an inherent vice of the thing itself.

As a general rule, the Shipowner undertakes the custody of the goods to be carried; but there are some instances where the *custodia* is not entrusted to him — such is the case, f. i. with the luggage of passengers which the latter keep with them in their cabins. In such case, as the Shipowner is not bound to guard the things, if the latter happen to be lost, he is only liable according to the principles of common law re obligations *ex delicto*. The passenger has to prove a fraud or a *culpa* on the side of the shipowner.

This solution, which in itself cannot be contested, is admitted by the modern legislations (1).

By the contract for carriage of passengers, the Shipowner (2) undertakes : 1° to give to the passengers board and lodging ; 2° to carry them from the country where they embarked to the land of destination. Beyond these parts of the contract, a *pactum adjectum de custodia* is neither customary nor concluded in fact.

Some writers (3) contend that the shipowner undertakes the obligation to land the traveller safe and sound. Such obligation might indeed be admitted for a cargo of horses, but it is quite out of the question for persons who are free of their motions on board the ship. If a horse was to fall sick owing to a draught of cold air, the shipowner would, of course, be liable for it, because he has the *custodia* of the animal ; but the case would be quite different if a passenger should die in consequence of a cold caught on board.

If an accident happens to a passenger and if this accident is imputable to the shipowner, then this accident cannot be considered as being one of the consequences of the contract of carriage, but only as happening in relation to the carriage. And there is no juridical relation whatever between the accident and the contract of carriage.

The juridical nature of the various parts of the contract for carriage of passengers is still better illustrated by the example of the following contract which is on many points similar to the contract for carriage of passengers.

(1) Lyon-Caen. Op. cit. V, § 835. — Belgian law of 21 August 1879. Art 122, al. 2. — German Rules on Railways, of 15th November 1892, art. 34. — German Code of Commerce, § 465 par. 3. — Lehmann, Lehrbuch des Handelsrechtes § 216. — Lewis-Boyens, Vol II, p. 393.

(2) Op. cit. Lewis-Boyens. II, p. 393.

(3) Lyon-Caen. Op-cit III § 709.

The Master of a boarding School undertakes to give his pupils board and lodging; he is not liable, under the contract, for personal injuries which may befall the pupils. Is the master of the boarding school bound to lodge safe and sound and to give board to the pupil? If a pupil should become ill in consequence of bad quality of food owing to the bad condition of the kitchen-utensils, the master of the boarding school is liable in damages. But this obligation to preserve the health of the pupil is limited within the bounds of the contract. The Schoolmaster is liable under the contract for any illness or injury due to the bad condition of the lodging or the defective quality of the food. But to say generally that the boarding-school master, is, under his contract, bound to keep the pupil safe and sound in any respect, this would be indeed a very wrong notion, that nobody would dare to maintain. Nevertheless, the essential juridical parts of that contract, with the exception of the movement from one place to another, are quite the same in the two contracts (1).

(1) From which I draw the conclusion that the shipowner is liable, under the contract, for any accident which relates to the liabilities undertaken in consequence of the contract; but as he has not undertaken an obligation of *custodia*, he is not bound to land the passenger safe and sound from any accident in general. Consequently, if a passenger does not arrive safe and sound at destination, the shipowner is not, *eo ipso*, liable under the contract, because the mere fact that the passenger does not reach his destination safe and sound involves no infringement of the obligations of the shipowner. If the passenger proves that he was injured in an accident due to the negligence or default of the shipowner's servants (or to the defective condition of the ship's gear) then the shipowner is liable, under the contract in *that special case* to compensation for the bodily injury caused to the passenger.

Besides, the presumption of negligence of the shipowner may very well accord with his obligation *ex delicto*. F. i. the owner of a motorcar which was driven by a «chauffeur», is liable *ex delicto* towards

III

According to the principles of common law (1) the shipowner is liable for the acts of Master and crew, not only in consequence of the contracts concluded with them, but also in consequence of the negligences (*dolus* or *culpa*) committed by themselves in their service.

But if we were to apply these principles, compensation for damages caused to passengers for loss of life or personal injuries would become almost a mere delusion:

Under common law, the passenger has to prove : 1° the negligence of the shipowner or of his crew ; 2° the amount of indemnity corresponding to the damage sustained.

It is very difficult to supply these proves, especially when the passenger is poor whilst the shipowner is a rich Company. Such law-suit would be so long and so expensive that the passenger would be unable to carry it on.

It is therefore an absolute social necessity that these matters be regulated according to the principles of social justice.

On one hand, to facilitate the proof to be supplied by the passenger, on the other hand to lower the maximum of indemnity due by the shipowner ; these are the two principles on which modern legislation ought to be based.

Besides, if it is necessary, for reasons of social justice, to give compensation to the injured passenger, we must not forget that the shipowner's liability is already a very heavy one, because he has to answer for negligence of persons (master and crew) whom he is obliged to employ on his vessel and over whom he has no sufficient control.

passers-by injured by the motorcar. Nevertheless, the laws on motor-driving admit a presumption of fault of the owner.

(1) Windscheid Pandekten § 455, n° 7. Dernburg Pandekten II § 132.

IV

The new legislation ought therefore to be based on the following principles :

1° The shipowner shall be liable not only for his own negligence (*dolus et culpa*), but also for the negligence of the captain, the members of the crew and generally of any other person occasionally or permanently in the service of the ship. He shall be liable for defective or bad condition of the ship's gear. This absolute responsibility of the shipowner, although it be rather unknown in common law, is in conformity with the requirements of modern social justice.

2° If an accident happens to a passenger in the course of the voyage, there shall be a presumption of negligence against the shipowner, without the passenger having to prove it. But the shipowner shall be allowed to prove that the accident is due to a force majeure, to a fortuitous accident, or to another passenger. If there is some doubt as to the cause of the accident, then the negligence of the shipowner shall be taken as established, seeing that there exists a presumption against the shipowner.

3° The question of fixing the amount of the indemnity due in consequence of the accident, gives raise to the greatest difficulties.

V

According to common law, any person party who causes, by his negligence, a bodily injury to another party, is bound to fully indemnify the latter. But of what does the damage of the injured party consist? This is a much controverted question not only *de lege lata* but also *de lege ferenda*.

As a matter of course, the injured party is entitled to the medical costs, nursing and sustenance during the time

of his illness. He is also entitled to an indemnity *operarum quibus caruit aut cariturus est.* (B. 7. Pand. 9. 3.)

But has the injured party a right to an indemnity for other reasons ?

Roman law introduced the rule *corpus in æstimationem non venit.* But on the other hand compensation in full was possible for the *corpus servum*, which had a venal value ; this value representing the full indemnity. This rule established the difference between free citizens and slaves. It is not only a hymn to liberty, it is at the same time an affirmation of a truth which is still ruling to day.

It is indeed very difficult to prove the loss which may result from a personal injury and it may often give occasion to abuses. How are we going to fix the value of the life of a *rentier*, of a child, of a lady without profession ? How is it possible to calculate the personal earnings of a banker, or of a merchant, or the prospects of a painter-artist or musician, who loses his hands or his voice ?

If all this is to be calculated by valuation of probabilities in favour of the passenger, will it not very often prove most unjust for the shipowner ? Besides, to fix such indemnity would require long and expensive evidence and occasion endless litigation which would prove ruinous even to the gaining party.

It is true that this matter could be regulated by way of life-insurance. This institution of life-insurance comes to our assistance on two different points : It may enlighten us as to the amount to be paid to the Insurer so that the latter may pay out a life-rent to the injured party. And the Insurer might undertake to pay out to the injured party, during the whole term of his life, the annuity due to him.

But neither Insurance, nor any other institution could give any accurate information as to the probable future

earnings of the party injured. Events which we can by no means foresee to-day may make it quite impossible to foretell what somebody may be able to earn at a future time. Who could tell what a beautiful dancer might earn in future, if she does not lose one eye in consequence of an accident? Who can foresee whether a boy of ten years, son of a poor music-teacher would not become some day a well paid tenor-singer?

These principles adopted by Roman law, we also find back, with slight modifications, in the German civil law (1).

In matters as those under discussion, which must be regulated on principles of social equity, the fixation of compensation must be based on the main-damage actually and immediately sustained.

Consequently :

1° The only positive basis shall be the loss of the actual earnings of the person injured ;

2° neither the possibilities or prospects of a bettering of the social position of the party injured (if f. i. he was a public officer and could be promoted according to his period of office), nor general damage (« *dommage moral* ») nor indirect and mediate damages should be compensated (2). But it is quite evident that a deformity occasioned to a lady-dancer by an accident, must be valued at an amount of money, seeing that a beautiful dancer can earn much more than a dancer who has become deformed.

(1) On German civil law, see v. Liszt, *Die Delikts-Obligationen im System des BGB.* — Windscheid-Kipp § 450, p. 947-959. According to said law, compensation for loss of life is due to those who had a legal claim on the deceased for their sustenance..

(2) Here we diverge from the rules of common law which in fact, vary in every legislation ; but of which the best regulation is to be found in German civil law.

VI

When personal injuries have caused a lasting inability to work, the indemnity due to the passenger in consequence of such injuries must be transformed into life-annuity : this is better appropriated to social requirements. But this way to settle compensation may prove dangerous for the injured party's interests, f. i. if the shipowner becomes insolvent. In order to avoid this, it is suggested to resort to life-insurance. The shipowner should have to pay, either to the State's Treasury or to an Insurance Company of first standing and appointed to that effect by the law itself, such amount as would cover, according to official tariffs, an annuity for life equal to the compensation due to the injured passenger.

The system of life-annuity has been adopted by the German civil Code (1).

VII

If the passenger is not only injured, but if he dies in consequence of the accident, how shall compensation be made? In such case, there are, outside of the difficulties relations to compensation for damage caused by personal injuries, two other points which appear very doubtful.

1° Human life may not be the subject of pecuniary transactions (2) : the heirs of a person, or his creditors

(1) The German Civil law Code, § 844 adopts this mode of compensation. Windscheid-Kipp, 1. c. page 956. The annuity is paid by instalments every three months, each instalment being due by anticipation.

(2) Human life in itself has no pecuniary value. For a living man, life has a pecuniary value in so far as he may by his work (or without working in the case of a person entitled to an annuity or to a pension &c.) earn money; put for a third party, the life of another person cannot have a value in money, because such third party cannot him-

cannot contend to be entitled to the value of the life of the deceased passenger.

2° There are indeed persons who suffer a pecuniary loss by the death of the passenger. So, f. i. death may cause damage : 1° to the heirs if the passenger enjoyed an important usufruct allowing him to lay by some economies of which the heirs could have a profit, 2° to an insurance Company having insured the life of the passenger and which is bound to pay out to pay out the amount assured to the heirs of that passenger immediately after his death occurring in consequence of the accident and which is losing thereby all subsequent premiums; 3° to the persons who depended for their subsistence upon the deceased.

But the shipowner has not to indemnify all those persons. There is no reason to grant compensation of all damages, even mediate, which death has caused.

As a matter of principle, he who causes death ought to pay to the heirs of the deceased an amount corresponding to that which the death would have earned during the natural term of his life. The heirs, on receiving that amount would have to provide for the sustenance of those who were dependent upon the deceased, in consequence of a lawful obligation. But positive legislations have solved these questions in different ways.

Roman law (1) does not grant to the heirs a right to

self draw a profit out of another man's life. A workman who engaged his services and received an advance on his wages, if he refuses to work, cannot be compelled to do work but only to pay back the advance received, with damages. But if the workman happens to die, the party who paid the advance cannot, claim back these advances from the person who caused the man's death. Neither Roman law, nor moderne law recognise any right to damages against the perpetrator of a *delictum* in favour of the party who has personal rights (not rights *in rem*) against the person deceased or injured.

(1) Windscheid, § 455. — Dernburg II, § 132.

claim compensation for the life lost, and only admits such right to the persons towards whom the deceased person was legally obliged to give food. These persons may claim the necessaries for life from him who caused the fatal accident. The German civil Code grants a right to an annuity, equal to the probable term of the deceased person's life, to every person who had or ought to have the right to receive from the deceased the necessaries for life according to law.

VIII

As a matter of course, he who caused the accident could not be obliged to pay any compensation if the passenger killed through the accident was absolutely unable to work and to maintain other persons.

IX

Should a maximum of compensation or a lump sum be fixed in order to provide for such cases where it becomes almost impossible to estimate the damage ?

This again is a very difficult question.

If the shipowner was obliged to pay compensation for all damages sustained by passengers, he would in many cases be a ruined man owing to the enormous amounts of damages he would have to pay.

The absence of any personal default of the shipowner, and the extensive amount of damage which an accident may cause, have suggested the idea to fix a maximum of compensation. Impressed by these ideas, modern legislations with regard to accidents cause by motor-cars (1)

(1) The Austrian law of 9th August 1908 on motoring, does not contain any limitation of liability. The German law, passed on March 27th 1909, provides that : 1° in case of loss of life of, or personal injury, to, one person, the maximum-indemnity shall be a capital of

have fixed the maximum of compensation payable to one person injured by an accident, at Mk. 50,000 and and Mk. 150,000 when several persons are injured by the same accident.

We have thought that for injuries caused to passengers owing to an accident, we could fix a maximum of compensation of 20,000 francs. We did not however think fit to establish a maximum for such cases where an accident should injure several persons simultaneously, because such provision would be too unfair, considering the great number of persons who might be injured by an accident. Besides, the limited liability of the shipowners establishes as a maximum the value of the ship (1).

X

As the shipowner's liability (2) is a question of public order, he cannot escape same by contract. Besides if such

50,000 Marks or an annuity for life of 3,000 Marks; 2° in the case of loss of life, or personal injury to, several persons by the same accident, the maximum of the total indemnity shall be a capital of 150,000 Marks or an annuity for life of 9,000 Marks. Compare von Randa, Goldschmit's Zeitschrift für das gesammte Handelsrecht, Chap. 64. page 394.

(1) According to the English system, the shipowner is liable, towards the persons injured by reason of the negligence of the Master and crew, up to £ 15 per gross ton registered. Boyens, op. cit. I. p. 186. The Government of Germany. in their proposals submitted to the Brussels Diplomatic Conference of 1909, adopted the English system, providing however how this amount should be apportioned. We can only adhere to these proposals, but we think that this rule should be brought into harmony with the fixation of a maximum of compensation of 20,000 per person injured or killed.

(2) If the captain is sole proprietor, or co-proprietor of the ship, he cannot have an action for compensation against himself or against his fellow-owners, according to the principles of common law. But with regard to the principles of social justice, it would be proper to give to the captain who is sole owner or part-owner of the ship, a

clause were permissible, the law in itself would lose every practical value, seeing that the shipowners would never fail to insert in the contract of carriage (or passenger ticket) such exonerating clause : the passenger would not mind it particularly at the time and even if he did, he could by no means compel the shipowner to strike out that clause.

XI

Foreigners and national subjects ought not to be treated on the same footing, unless there should be an international agreement providing so.

XII

A prescription of one year from the date of the accident would be sufficient; but if the accident has caused the death of the passengers, the delay of prescription ought to be two years.

XIII

The exclusive character of the provisions of the present draft is of paramount importance. For the passenger it involves an advantage : by rendering more easy the obligation of proof — and a disadvantage : it limits the indemnity.

If the passenger does not rely on this special law, but means to base himself on common law, i. e. if he offers to prove the negligence of the shipowner (or of his servants) in order to claim compensation in full, shall he be permitted to base his claim on common law ?

According to the principles of law, the present law

right to indemnity, even in case of slight negligence, but except in case of *dolus* or of heavy negligence.

which is an exceptional one, does not prejudice in any way common law, which always remains applicable whenever the party interested should resort to it. All advantages and disadvantages of the present law disappear as soon as the party interested means to resort to common law.

B.

The queries mentioned in the questionnaire under B must be solved in the same way as expressed under A.

C.

Shall the actions of the Master, of the members of the crew, and of any other person in the service of the ship, in case of accident, be submitted to the same rules as the actions or claims of passengers ?

This question starts two essential points of view which are in opposition with each other :

On one hand the shipowner has a right to require from his crew that they should work with care and in conscience when performing their duties. Besides to their case the shipowner entrusted his vessel.

On the other hand, the seaman himself is, by his very profession, exposed to accidents and he, more than the passenger, stands out to the risk to be injured by those accidents. Therefore his right to compensation ought to extend farther than that of the passenger. We conclude from all this that the seaman ought to have a right to compensation in the case where he is killed or injured by an accident during the time he is performing his service on board the ship, even if the death or the personal injuries should be the consequence of a fortuitous accident or a force majeure.

We should even go a little farther and admit that even

negligence of the seaman himself ought not to deprive him of his right to indemnity, except in such case where he is guilty of *dolus* or of a heavy negligence. One would then be disposed not only to presume the negligence of the shipowner but also to burden him with the consequences of fortuitous accidents or force majeure, as well as for slight negligence (f. i. drunkenness) of the party injured; the shipowner, in order to exonerate himself, would have to prove the *dolus* or the negligence of the party injured or of any other person for whom he is not liable.

But the shipowner's liability, increased in that way, would not be a fair one if it were not softened by reducing the amount of the indemnity converted into a modest annuity. The best system of regulating this liability would be to compel him to insure the persons in the service of the vessel against the consequences of accidents, excepting only the cases of *dolus* or negligence of the party injured and of negligence of a third party.

So it would appear a necessity to institute a National Funds for assisting invalid seamen (1) which would receive

(1) Greece, possessing a very important maritime population has long since taken these measures by instituting a Fund of Assistance for Invalid Seamen.

The Fund was instituted in August 1861, in virtue of a law dated 21st July 1861. It is at present regulated by a law of 6th July 1907, which came into force on 1st January 1908.

The Fund received since 1861 to 1905, 31 millions 800.000 francs; it paid under the form of annuities fr. 26.000.000.

The monthly indemnity of a seaman is about 20 fr. — and that of the Master: about 90 fr. —

The Fund receives especially contributions from the seamen and the shipowners and further a certain amount per cent on the produce of some taxes levied by the State.

Every seaman, whether serving on board of merchant vessels or on the Hellenic fleet (excepting however the officers of men-of-war) is entitled to a pension paid monthly in case of disability, whether resulting from old age or from accident.

contributions from the owners of national vessels and would have to pay an annuity to every person belonging to the nation of the Fund and serving on board a national vessel, who should be injured by an accident.

The shipowner, by paying his contribution to this Fund, would be freed from any other obligation, excepting only in case of his personal *dolus*. Each national Fund would, in case of accident, have to pay out an annuity to foreign seamen, serving on board national vessels, if such seamen belong to one of the contracting States, when the laws of the latter lay on its own shipowner similar obligations (1).

Draft of a Convention relating to Compensation in case of personal injury

I.

The shipowner is bound to indemnify the passenger for any bodily injury (and mental diseases) caused to such passenger during the voyage, either by *dolus* or negligence of the master, of the members of the crew or of any other

An annuity is also payable, in case of death of a seaman, to some persons, near relations of the deceased who are mentioned in the law.

In such way has Grecian law provided for compensation in case of loss of life or personal injury to persons of Grecian nationality serving on board a ship.

(1) It would be more desirable to have only one International Fund which would have to assist seamen of all contracting States, if such seamen were serving on board vessels belonging to one of such contracting states. Such institution would, no doubt, meet numerous if not insuperable difficulties, but it would certainly in some near future, succeed to avoid same.

Such Fund ought to be a Fund for old age and for accidents.

person serving (even if only for a given time or on trial) on board the vessel, in so far as such *dolus* or negligence is committed in performing their service, or by reason of the defective or insufficient condition of the ship's gear.

2.

The shipowner can only free himself from liability by proving that the accident is owing to fortuitous accident (force majeure being included) to the default of the passenger, of the persons mentioned under article I not acting in performing their service or of a third party other than the persons mentioned under article 1.

3.

Compensation shall include :

1° The expenses caused by the accident,

2° Indemnity in money for the immediate and material damage caused to the person injured.

In case of permanent inability of the passenger to work, the indemnity shall be an annuity for the life-time paid to the person injured by Government or by a national Insurance Company appointed to that effect by Decree of the King.

The shipowner shall have to deposit with the Government or with the Insurance Company an amount of money which according to the estimated term of life of the party injured shall be necessary to constitute such annuity, the latter to be calculated according of the official tables of mortality. The official amount of the annuity shall be fixed by the court, the latter having to take into account what the person injured earned during the year preceding the accident. If the party injured is not exercising any profession, having no earnings, the Judge shall fix the indemnity *ex æquo et bono*.

4.

In case the passenger loses his life in consequence of the accident, the indemnity shall be settled according to the provisions of article 3.

If the deceased passenger was absolutely unable to do any work, no indemnity shall be due.

5.

In the case provided for in a article 4, the indemnity shall be payable to the descendants, father, mother, wife sisters of the party injured.

It shall be apportioned among them equally.

No indemnity shall be due to men after they have come to age, or to females after their marriage. Are excepted, ascendants, persons unable to work and misers.

6.

The indemnity due in virtue of articles 3 and 4 shall not exceed an amount of frs 20.000 in capital for a person killed or disabled.

7.

The provisions established by the preceding articles shall not be abrogated or modified by any abrogating or limiting clauses inserted in passage tickets.

8.

The person injured may also have a claim for total compensation against the principal *actores* of the accident when proving their dolus or negligence according to the demned to pay indemnity, the party injured shall have to rules of common law on delictual obligations. But in case such party who has been the principal wrongdoer is con-

refund to the shipowner any amount the latter shall have paid under the preceding articles, if the amount paid by the principal wrongdoer is a higher one.

9.

If the master is sole owner or a co-owner of the ship, he is responsible for his own negligence as well as the shipowner who does not conduct the vessel.

10.

The shipowner has a remedy against the person who caused the accident, under the provisions of common law.

11.

The action against the shipowner, under articles 1-7 must be brought before the courts of the home-port of the vessel.

12.

For the action against the shipowner, the delay of prescription shall be one year from the date of the accident.

For the action under article 10 against the shipowner, it shall be two years.

For the action against the personal *actor* of the accident, it shall be two years.

For the remedy of the shipowner against the person who caused the accident, it shall be two years.

13.

The provisions of the preceding articles shall not apply if the shipowner and the party injured do not belong to one of the states having signed the present convention.

14.

The provisions of the preceding articles shall apply even in the case where the party injured is not a passenger for any another person, except those mentioned under art. 15.

15.

In case of loss of life or personal injury of the captain, even if he happens to be sole owner or co-owner of the ship, of a member of the crew or of a person in the service of the vessel, even temporarily, an annuity shall be paid to the party injured or to his assigns, under the law on the States Navy Seamen Fund of the nation to which the injured party belongs.

The Fund shall pay this annuity, even if death or personal injury are owing to an accident occurring through a force majeure, a fortuitous accident or a slight negligence of the injured man.

If the accident is caused by a ship belonging to another nation, the Fund, when paying the annuity, shall have a remedy against the owner of the ship having caused the accident.

In case the party injured means to institute proceedings against the foreign shipowner, under the provisions of art. 10, the shipowner is entitled in case judgment is given against him, to set off on the indemnity the amount which he would have to pay to the Invalid Fund.

16.

The provisions of art 15 shall apply in each contracting State, if the ship and the party injured belong to one or several of the contracting states, and al in the other cases as provided by the national legislations.

GREAT-BRITAIN
BRITISH MARITIME COMMITTEE

REPORT
on the recovery of compensation in respect
of personal injury

I. — **What are the rights of passengers against the ship carrying them or its owners ?**

The rights of passengers on board a ship are derived :

- a)* from a contract of carriage ; or
- b)* from the provisions of the common law.

Where a contract of carriage exists, the liability of the carrier in respect of any injury, fatal or otherwise, will depend on the terms of such contract. These terms may either contract or expand the duty imposed upon the carrier by the common law. In so far as this duty is not so contracted or expanded, it remains binding upon the carrier. This duty may be briefly defined as an obligation to take all due care, and to carry safely as far as reasonable care and forethought can obtain that end. In other words the carrier is not an insurer of his passengers, but is answerable, and only answerable to them for the negligence of himself or his servants. The carrier will in

most cases be the shipowner, though in rare cases, where ship and crew are under the complete control of a charterer, then the carrier will be the charterer. For the purposes of this report the term « carrier » and « owner » may be regarded as synonymous.

As negligence confers the right of action upon the passenger, and as, by the practice of the English Courts, the burden of proving his case is always upon the plaintiff, evidence of the carrier's negligence is necessary to establish the plaintiff's case. This may be direct evidence of want of care but sufficient evidence of negligence will, however, be deemed to have been given if the plaintiff is able to prove that he has sustained injury through the happening of something, which does not in the ordinary course of things happen, if proper care is used by the carrier. The liability, to which evidence of negligence gives rise may be rebutted by the carrier in three ways :

a) By showing that he is protected from liability in respect of the injury by his contract of carriage.

b) By showing that the negligence causing the injury was not that of himself or of his servants, but that of some other persons — *e. g.*, the passenger himself.

c) By showing that the accident occurred by reason of Act of God (*vis major*) -- that is to say, by reason of something which cannot be guarded against by ordinary exertions of human skill and prudence.

The negligence upon which the right of action rests may, as has been said, be either that of the carrier, or that of his servants, and such negligence may be shown either in the negligent control of the vessel's movements or in the negligent management, supervision and up-keep of the

vessel or care of the passenger. In respect of these sets of functions, a duty of taking reasonable care is imposed upon the carrier, and any breach of this duty is actionable. A defect in gear, or in other inanimate objects, constitutes a *prima facie* case of negligence against the carrier, who may escape liability if he can show that such defect was not caused by the failure of himself or his servants to use reasonable care and skill.

The persons entitled to sue in respect of personal injury are :

a) Where such injury does not prove fatal, the injured person who is so entitled in virtue of the Common Law.

b) Where such injury proves fatal : either the wife, husband, parent or child of the deceased or the personal representatives of the deceased suing on their behalf. These are so entitled in virtue of a special Statute.

The damages awarded to an injured party consist of a sum of money sufficient to recompense him for all loss of which the negligence of the carrier was the natural and proximate cause. Such damages are given in respect of the two kinds of damage suffered by the injured person — that is to say, general damage and special damage. General damage consists of the pain, suffering and inconvenience or loss of prospects and wage-earning ability sustained by reason of the accident. Special damage consists of the actual pecuniary loss naturally attributable to the injury. Where the injury has proved fatal, the persons entitled to sue can only recover a sum sufficient to recompense them for the pecuniary loss they have sustained by the death so far as such

damages can be reasonably estimated according to the circumstances of the particular case.

The amount which may be recovered from the carrier for loss of life or personal injury in respect of each separate occasion is limited by Statute, provided always that such loss or injury has taken place without the carrier's actual fault or privity. Out of the £ 15 per ton which is the limit of liability in respect of losses of all kinds occurring on any one occasion, £ 7 is specifically allotted to life and injury claims. Where this fund is insufficient to meet these claims they are permitted to rank *pari passu* with all other claims in the allocation of the remaining £ 8.

The right of action which the passenger possesses against the carrier is purely personal, and he has no right against the ship, regarded as a *res*. The normal limit of time imposed upon an injured person for the bringing of his action is six years. Where the accident has proved fatal, action must be brought by or on behalf of the relations of the deceased above enumerated within one year of the accident. So far as the rights of passengers or their relations are concerned, both the British subject and the foreigner are on the same footing.

It may be observed, that while the carrier is always liable for the negligence of his servants, the injured person has always a right of action against the person whose negligence has actually caused his injury. Injured persons do not as a rule avail themselves of this right, the carrier's servants being persons of small substance. There is no limit of liability in respect of actions so brought.

II. — What are the rights of third parties — *e. g.* passengers and crew of a ship collided with, against the colliding ship or its owners.

The rights of passengers and crew on board a vessel as against the owners of a vessel colliding with their own are very similar, although the nature and extent of their remedy differ to some extent. No question of contract can arise, and these persons are therefore much in the position of passengers who are not being carried under a special agreement. They can, that is to say, sue the owners and officers of a colliding ship for failure to take reasonable care in the management or navigation of their ship.

The same principles in respect of proof of negligence and the assessment of damages apply in these cases, as have been above discussed. Where the accident proves fatal the same persons are entitled to sue.

Where both ships are to blame, the results are somewhat complicated. In such a case the person injured would, if suing in person, probably be held entitled to only half his damage from the ship upon which he is not being carried. Where, however, the accident has proved fatal, the representatives of the deceased can claim their whole damage from the owners of either ship.

A person on board the ship collided with, who is injured has a personal right of action against the negligent owner of the other ship and his servants, and has probably also a right *in rem*. The personal right must normally be exercised within six years. The limit of time in respect of claims brought by relatives is the same as in the cases above discussed. Liability may also be limited in the same way as in those cases, and here also foreigners and British subjects are on the same footing.

III. — What are the rights of the crew against the ship on which they are engaged, or its owners?

The rights of the crew against their own ship, are, so far as personal injury is concerned, established both by the Common Law and by Statute. Under Common Law the shipowner has always been liable to the crew for his personal negligence, though he is not answerable to one member of the crew in respect of an injury caused by the negligence of another member.

By recent legislation the rights of the seaman have been much extended. While he retains all his rights to recover damages from his employer in cases where he can prove negligence he, — and in case of his death those dependent on him — have been given a right of action, which is wholly independent of proof of negligence — that is to say, a right to recover compensation wherever he has received personal injury by accident arising out of and in the course of his employment. Where the accident has been brought about by his own serious and wilful misconduct, he is, unless the injury results in death or serious and permanent disablement, debarred from recovery.

The persons who can claim compensation are :

1. The injured seaman.

2. In the case of fatal injury the whole of the seaman's dependants, including the wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, grand-daughter, stepson, step-daughter, brother, sister, half-brother, half-sister. Illegitimacy is no bar.

3. The personal representatives of dependants who die before they have claimed.

It will be seen that many persons can claim compensation who would have no right to bring an action for negligence. The amount of compensation payable is half the seaman's average weekly wages per week, but if the incapacity lasts less than two weeks no compensation is payable in respect of the first week. In the case of a fatal accident the seaman's dependants can recover a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of £ 150, whichever is the larger, but in no case more than £ 300. Under the provisions of the Merchant Shipping Acts, the employer is liable, as a general rule, for all medical and funeral expenses of seaman who become sick or disabled in the service of the ship.

The shipowner cannot limit his liability in respect of payments due as compensation, under the Workmen's Compensation Acts, but must pay compensation due in full. He is entitled to contract out of his statutory liability providing he furnishes a scheme of compensation not less beneficial to the seaman, to the Registrar of Friendly Societies.

In order to obtain compensation, notices of the accident must be given to the employer or Master of the ship, within six months of its happening unless the accident occurred on board the ship. In the case of a fatal injury, dependants must claim compensation within six months after receiving notice of the seaman's death. The right to claim compensation is vested in all members of the crew of any ship registered in the United-Kingdom, or of any other

British ship or vessel of which the owner resides or has his principal place of business in the United Kingdom, and in their dependencies. Payment of compensation may be enforced by the arrest of a ship whose owners reside abroad. Payment of statutory compensation begins only when the right to maintenance under the Merchant Shipping Acts has terminated.

IV. — Where foremen and workmen other than the crew are employed, such as stevedores, watchmen and other persons employed in port, what rights have they against the ship on or for which they are employed or its owners?

The class of persons here dealt with have somewhat more extended rights against the shipowner than does the seaman. If they are in the shipowner's employ they can sue him both for his own acts of negligence and also for those of their fellow-servants who have superintendence over them. If they are not in the shipowner's employ they may sue the shipowner both for his own acts of negligence and for those of all his servants. The same rules apply to such cases in regard to proof of negligence and the recovery and assessment of damages as to other actions founded upon negligence. The employer can, so far as his liability in respect of injuries received by reason of the negligence of a workman's fellow-servants is concerned, contract out of this liability.

The class of persons here dealt with can also institute proceedings to recover compensation in the same manner as seamen wherever they have sustained injury by accident arising out of and in the course of their employment. In such actions proof of negligence is unnecessary. Where such accident happens to his class of workmen on board ship they can, if in the shipowner's actual employ, sue him for

compensation. If on the other hand they are engaged upon the ship, but in the actual employ of a person other than the shipowner, they can still sue the shipowner as principal. The shipowner may then reimburse himself by proceeding against the injured man's actual employers.

The principles upon which compensation is awarded are the same in these cases as in the case of seamen. Notice of the accident is required within six months in order that a valid claim may be made.

To enforce claims for compensation, the ship may in certain circumstances, be arrested. For the enforcement of claims in respect of negligence no right *in rem* exists.

FREIGHT

Draft articles proposed by Paris Commission

NOTE

on the English Law with regard thereto

ARTICLE I

Payment of freight is due on the delivery of the cargo after a lawful voyage, at the port of destination.

Delivery — readiness to deliver at the proper place — usually at the usual discharging place for such cargo in the port to which it is shipped.

If part of the cargo is so delivered, freight is payable on such part.

Freight is payable on goods which arrive at their destination, though damaged, provided that from the terms of the contract the thing for the carriage of which freight was to be paid, or some of it, substantially arrives at the port of destination, retaining its commercial identity.

But note :

1. Freight *pro rata itineris peracti* is payable where there is a voluntary acceptance of the goods by the owner at

any intermediate port in such a mode as to raise a fair inference that the further carriage of the goods was intentionally dispensed with.

2. But the inference is to be drawn from the circumstances of the receipt by the merchant. The mere fact that he does receive them is not conclusive.

3. The whole freight is payable if by the fault of the owner of the cargo the master is prevented from forwarding the cargo from the intermediate port to its destination.

ARTICLE II

1. This would be so on goods which arrive damaged because of a General Average Act of loss, but not on goods, which do not arrive at all.

2 and 3. No freight is payable on such goods by English law, they not having been delivered at the port of destination.

(Subject to Note 1 on Article 1).

The rest of the Article is not in accordance with English law.

The shipowner is not entitled to *pro rata* freight, even though he may account to the cargo-owner for the price of the goods if sold by him.

ARTICLE III

The correct way of stating this proposition in accordance with English law would be — if the voyage of the ship be justifiably abandoned, *i. e.*, where excepted perils render

the completion of the voyage physically impossible or so clearly unreasonable as to be from a business point of view impossible, the master is entitled to procure another ship to transport the cargo to its destination in order to earn the contract freight for his owner.

But he (the master) cannot without express authority bind the cargo owner to more unfavourable terms than those in the original bill-of-lading nor probably to pay a higher rate of freight unless communication with the cargo owner is impossible and forwarding the cargo and the terms on which he forwards the cargo would appear to a reasonable man to be the most beneficial course in the interests of the cargo.

Note to Articles 1, 2 and 3.

Advance freight, however, is not recoverable though the ship is lost and the freight not earned.

Contra where the loss is from perils which are not excepted (*e. g.*, negligence of shipowner), when the cargo owner can recover advance freight as part of his damages.

Lump freight (gross sum stipulated to be paid for the use of the ship) is not dealt with here; (probably) freight is payable though no cargo delivery.

Carver — See 55o.

There may be some doubt, too, whether lump freight is payable in the event of transshipment.

ARTICLE IV

This is quite contrary to English law, which may be stated as follows :

The charterer (or the shipper if he has *contracted* with the shipowner to load) where he fails to load is liable in damages for breach of the contract to load a full cargo on the ship.

For these damages a lien may be given (for dead freight) by usage or express contract—*i.e.*, the shipowner *may* have a lien on the amount loaded for the damages for failing to load the agreed amount.

The measure of damages for not loading a cargo is the amount of freight which would have been earned under the Charter-Party less the cost of earning it.

The proposition in the proviso at the end so far as it goes is in accordance with English law, which correctly stated would be—

Freight earned upon a substituted cargo must be taken into account in estimating the damages and if that has amounted to as much as would have been earned under the original Charter-Party after bringing in all expenses, the damages for the breach are only nominal.

The second clause of this article has been dealt with above.

The same considerations do not apply in all cases to general ships as to chartered ships, though some of them may.

ARTICLE V

No distinction is made between *demurrage*, *i. e.*, the payment *agreed* to be made at a certain rate for delay beyond the time stipulated for loading (or discharging),

and *damages for detention*, i. e., *unliquidated* damages when there has been delay beyond the time stipulated without any agreement for payment for additional time (or where the sum agreed to be paid was for a fixed number of days, and delay beyond this has taken place).

By English Law.

a) Where there is a charter-party containing express stipulations for demurrage there will be liable on it for demurrage :

1. *The charterer*, unless there is a cessor clause freeing him from liability (The Courts tend to hold that the exemption given by the cessor clause is only coextensive with an express lien for demurrage conferred on the shipowner by the charter-party).

2. *The parties to the bill of lading* if the charter party stipulations as to demurrage are expressly incorporated in the bill of lading.

b) Where there is an express stipulation as to demurrage in the bill of lading, demurrage due under it will be payable by :

1. The shipper of consignor.

2. Persons demanding and taking delivery under the bill of lading if there is evidence upon which the tribunal (judge or jury) can and do find by such demand an agreement to pay it.

3. By the Bills of Lading Act. 1855, every consignee named in the bill of lading to whom the property in the goods had passed by consignment or indorser, to whom

the property in the goods has passed, either by indorsement or by indorsement followed by delivery.

The second clause is not in accordance with English law, for by English law whereas there is a *common law* lien for freight, a lien for demurrage and for damages for detention in only given by *express stipulation*.

The third clause is in accordance with English law.



GREECE
MARITIME ASSOCIATION IN GREECE

QUESTIONNAIRE
on Compensation in case of Personal Injury

PART I

Comparative Law

REPORT

of M. THRAS. G. PETIMERAS,
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1. The question as to what extent there exists a liability for compensation in case of accident resulting in human death or personal injury must be solved in Greece, where there is no special legislation, according to the general principles of greco-roman law ruling the matter. Some provisions concerning our subject must be added, which are to be found in the « Code de Commerce » of 1807, translated and governing law here as commercial statute.

2. Roman law, arrived at its complete development connects the obligation of compensating purely pecuniary damage, by preference, with a fault (i. e. negligence).

This principle has no application, in the cases referring to the subject under consideration, when damage is caused by an animal (*actio de pauperie et noxalis*) or by what has been thrown or poured out of a lodging (*actio de effusis et dejectis*).

3. With the exception of these two cases (vide Dernburg. Pand. § 133, 134, Windscheid, II § 457, 1, 3) the existence of a fault is required, — its degree does not matter — in order to justify a claim arising out of human death or personal injury. The opinion, much spread among authors and in jurisprudence, based (Kalligas Handbook of Roman law III § 397, Paparrigopoulos, Law of Obligations I § 284) on penal law (Penal Code art. 30, 31, Penal Proceedings, art. 6, 85, 302), according to which the person who has committed a punishable action (even without intention or negligence) is liable in compensation for the injurious consequences, has no influence on the subject-matter. Indeed these offences (art. 610, 617, 618, 623, 626 - Penal Code) imply a fault of the defendant.

The claim is governed by the dispositions of the *lex Aquilia*.

This is by no means modified, in case of collision, by the provisions of art. 407 of the Code de Commerce, because this article refers only to compensation in cases where liability is halved or doubtful (Lyon Caen and Renault, VI § 1005, 1006, 1012).

4. The right of action in *lex Aquilia* resides in the person injured.

In case of death, it belongs to the widow and to other relatives of the injured (ascendants and descendants) to whom maintenance was due by the deceased and has been suppressed by the death. The Court of Cassation of

Athens (*"Απειος Ηάγος*) in a series of cases (decisions : 145 (1893), 131 (1894), 5 (1896), 117 and 121 (1897), 79, 101, 147, 149 (1898), 133 (1901), 208 (1903), 65 and 116 (1906) has adopted this opinion, which had first been admitted by the jurisprudence of common law in Germany (Dernburg, a. a. O. § 132⁸), so that at present such claim may be considered as existing.

5. According to 9, 1, 3 (Bas. 60, 2, 3) 9, 2, 9 (Bas. 60, 3, 9) and 9, 3, 7 (Bas. 60, 4, 7), when the plaintiff, being an independant man, has sustained personal injuries, damages include, besides medical costs, the loss of profits, i.e. the sums which the plaintiff has lost or shall lose.

The remainder is to be found in the quotations already made which are to be connected with the edictments of Roman Law concerning the « interested » (the damages) 9, 2, 21 and 33 (Bas. 60, 3, 21 and 83) :

a) This last category of damages consists of a life annuity with fixed arreary which the plaintiff would have benefited had the accident not happened. This does not exclude any prejudiciable consequence following, even indirectly [decision of the Court of Appeal of Athens 1702 (1904)].

b) If the action be sued by those towards whom the injured had a legal obligation of maintenance, the amount of the annuity is to be determined by the probable length of life of the injured according to the rules of D. 35, 2, 68 pr. for the calcution of probable term of life.

However in these two cases one cannot, as has sometimes been admitted by jurisprudence, [decision of the Court of Cassation of Athens 160 (1908)], ask the payment of a sum in capital calculated on the probable duration of

life [decision of the Court of Cassation of Athens 42 (1909), in full session].

6. The defendant to the aquilia action is he who has caused death or personal injury.

The Greek jurisprudence, considering the practical necessity of extending the limited cases of liability established by Roman Law for another's fault, has admitted this principle that the person (physical or juridical entity) who appoints another for the undertaking or execution of determined occupations, must make good the damage caused by this agent, even if no fault can be retained against him for the choice or the supervision of that agent [e. g. decisions of the Court of Cassation of Athens 31 (1904) and Court of Appeal of Athens 1540 (1904)].

Consequently, as this solution does not result clearly from the texts of Roman Law (Dernburg, Pand. II 38, Windscheid II §§ 455^{27a}, 401⁵), it must be considered as practically a settled matter that the aquilian action is given not only against the person who caused the damage but also against his employer.

7. If the accident resulting in death or personal injury happens on a national ship, the following remarks are to be made :

a) The special provision of art. 216 Code of Commerce then applies. This article provides a limitation of the liability of the shipowner for the faults of the captain, by abandonment of ship and freight.

This liability is a liability of employer as far as the owner of the vessel is also the managing owner (armateur), no distinction being made if this managing owner be a physical person or a juridical entity [decision of the Court of Cassation of Athens 442 (1903)].

But when the managing owner (armateur) and the shipowner are not the same person, there is only, according to article 216 Code of Commerce, a limited liability legally based upon the ownership of the vessel.

In the two above-mentioned cases however the claim for damages based on art. 216 consists with the aquilian action maintained against the captain in fault.

b) As in France (Lyon-Caen and Renault V, § 189 bis note 3) the application of art. 216 is extended to the cases where faults are committed by other members of the crew; this rule applies not only when the shipowner is simultaneously the managing owner (armateur) but also [by logical application of art. 216 (arg. art. 217)] when there is only question of an owner.

c) When the accident resulting in death or personal injury has been caused by breaking of machinery or ropes, the existence of the official Certificate of visit (procès-verbal de visite) of the vessel before her sailing, prescribed by art. 115 of the Code of Commerce, has a peculiar importance for the proof of the vessel's seaworthiness. If there is no Certificate the unseaworthiness is presumed; one can prove against the statements of the Certificate (Lyon-Caen and Renault V § 547).

Generally speaking even in this case, the proof of the breaking of machinery or ropes is not sufficient to base the claims for damages under article 216, because one cannot admit in every case a fault of the captain or crew.

8. According to the opinion prevailing in Greek jurisprudence the solutions described in the preceding paragraphs remain unaltered when the person injured was under contract with the carrier of persons or with the employer.

In the Romain civil law, the legal obligations of the contract of carriage of persons or of the contract of employment, do not include, in the absence of special agreement on this point, a guarantee of the bodily integrity of the passenger or of the employed. Such guaranty is admitted in the French science for the contract of carriage of persons (Lyon-Caen and Renault II, § 709, V, § 834 n° 5, VI, § 1012). For « the theory of Employers' liability » vide Planiol, *Traité Élémentaire de Droit Civil*, 3^d edition II, § 1856, and follow.

Consequently the principles of Roman Law on contractual liability (Dernburg, *Pand.* II, § 37, 4) which rests upon the debtor according to the contract, have only an insignificant practical application as for as contracts we are dealing with are concerned. Considering these principles as applied to the carriage of persons (at sea or on land) we may note that the opinion according to which the carrier is liable by contract can only be based upon the analogy drawn from art. 103 Code of Commerce, ruling the carriage of goods. The French doctrine as to that (Lyon-Caen and Renault, cited in the preceding remark — contra Thaller, § 1385) is represented, among Greek authors, by Krokidas, *Handbook of Greek Law*, § 1182. But it has not been adopted by the Greek jurisprudence (Krokidas, a. a. O.).

9. — We may make the following remarks on the contractual liability of the carrier of persons dealt with in the preceding paragraphs :

a. The plaintiff is the passenger who has sustained personal injury.

His inheritors can only maintain such rights, based on the contract, which have come to existence during the

injured party's life. On the contrary, the heirs e. g. of a passenger killed in a collision of ships, cannot as such, claim compensation of a pecuniary loss caused by the deceased's death, i. e. at a moment when his juridical capacity has disappeared (cf. Seuffert's Archiv, vol. 64 [9] n° 127). This applies for instance to the costs of the transport of the decujus' corpse, which have to be paid by the heir as a general rule in Roman Law (Windscheid, II, § 430, *Rem.* 20).

β. In case the defendant be a managing owner (armateur), his liability is limited according to art. 216 Code of Commerce (See above 37).

γ. The claim of the plaintiff is not protected by a lien, according to art. 191, n° 11 Code of Commerce.

δ. The following provisions have no application to such action of the passenger :

1) The action is not debarred by art. 105, 433, 435 and 436. This last case (ships' collision) is differently disposed of in France, according to the Law of 24th of March 1891 (Lyon-Caen and Renault, VI, § 1030) Code of Commerce.

2) The prescription of one year of art. 433 and the short prescriptions of art. 108 Code of Commerce.

10. — The exoneration clauses or those who diminish the liability for the events causing death or personal injury are only valid, according to the general principles of Roman Law, if the liability for the *dolus* or gross negligence personal to the carrier is not excluded

nor diminished (Windscheid, I, § 101, II, § 265, *rem.* 5, Dernburg, Pand. II, § 36, 1, 2 ; — decisions of the Court of Cassation of Athens, 231, 38 [1907]).

11. — In all the above cases, the prescription of the claim for damages is of 30 years.

Furthermore the right of action belongs without distinction to the nationals and to the foreigners (*arg. art.* 13, Civil Code of 29 October 1856).

12. — Under Greek legislation the position of seamen and mining labourers is ruled in a wholly exceptional manner in comparison with that of the other labourers.

These provisions have the common feature to represent in Greece the principal models of a social legislation. But these differ from one another on this point that the legislative basis of the provisions concerning seamen is completely different from the modern Workmen's Act whereas the provisions concerning mining labourers (*cf.* the law of 23 Mars 1901 imitated from the French law of 9 April 1898) are in harmony with those modern legislations. We may note as far as the special provisions for seamen are concerned :

Pursuant to the law of 20th of July 1861 a Fund for Invalid Seamen has been created (*Ναυτικὸν ἀπομαχικὸν ταμείον*) which has been reorganised by the law of 17 April 1884 and partly altered by subsequent laws, then finally regulated by the law of 20 July 1907.

This Fund is a public institution under the inspection of the Minister of Navy (*art.* 9). It possesses incomes of several kinds, among which the contributions of seamen and shipowners may be quoted (*art.* 2 and 3). The foreigner who is engaged on board a national vessel can-

not free himself from this contribution, although he is not entitled to the rent granted by the Fund (art. 3, 23).

The seamen are entitled to small monthly rents (and after their death their family possess this right) not only when they leave the profession of seaman or when they become disabled to work, after a certain time of service and according to certain conditions, but also when, in consequence of an *unforeseen accident occurring by reason of the work*, they become unable to follow their profession any more; and their right to the rent lasts as long as they are disabled.

The rent granted in this last case does not exclude the action which belongs to the injured party, under common law. First the text of the law is not in this sense and on the other hand the report of the Commission entrusted with the preparation of the law states clearly as much (p. 24 sq.).

The following persons are also entitled to a rent in this case (art. 23, 26, 28, 34) :

1. The widow and the lawful children i.e. the widow as long as she does not marry again; the sons till aged 14, and the daughters until their marriage.

2. The indigent father if he is unable to work, the mother if she is indigent and a widow; the indigent brothers and the sisters if indigent and unmarried.

The right to the rent is debarred :

a) by the loss of nationality (art. 34).

b) by prescription : one year for the seaman, 5 years for the other persons entitled (art. 64).

The right to the rent is not transferable. Those who are legally creditors of an obligation of maintenance can seize one third of the rent's amount (art. 66).

THR. G. PETIMERAS.

Athens, the 16/29 August 1909.

SYNOPTICAL SUMMARIES

I

COMPENSATION IN CASE OF PERSONAL INJURIES

by Mr FREDERIC SOHR

Barrister-at-law, Antwerp

II

DRAFT-TREATY ON FREIGHT

by Mr JEAN HOSTIE

Barrister-at-law, Antwerp

Compensation in case of personal injuries

Synoptical Summary of the REPORTS sent by the National Associations

by Mr. FREDERIC SOHR, barrister-at-Law in Antwerp.

PART I COMPARATIVE LAW	Germany (p. 61).	Belgium (p. 17).	United-States (p. 89).	France (p. 33).	Norway (p. 70).	Sweden (p. 76).	Great-Britain (p. 149).	Greece (p. 165).	Danmark (p. 113).	Holland (p. 107).	Italy (p. 119).
<i>A. What are the rights of passengers against the ship carrying them, or its owners?</i>											NOTA. — The Association had not the time to examine Part I.
I. — Liability											
1. — Is the liability regulated by the common law, or is it the subject of special legislation?	By Common Law.	By Common Law.	By Common Law.	By Common Law.	By Common Law.	By Common Law.	By Common Law.	By Common Law.		By Common Law.	
2. — Is liability presumed, or must negligence be proved?	Negligence must be proved.	Negligence must be proved.	Negligence must be proved.	Negligence must be proved.	Negligence must be proved.	Negligence must be proved.	Negligence must be proved.	Negligence must be proved.		Negligence must be proved.	
3. — If liability be presumed, may such presumption be rebutted on proof of accident or <i>force majeure</i> ?	Answered hereabove.	Answered hereabove.	Answered hereabove.	Answered hereabove.	Answered hereabove.	Answered hereabove.	Answered hereabove.	Answered hereabove.		Answered hereabove.	
4. — Does the inherent vice or defect in inanimate objects (breakdown of engines, machinery, ropes, &c.) give a right of action?	Yes.	Yes.	Yes.	Yes.	Yes.	Yes.	Yes.	Yes.		Yes.	
5. — What proof is necessary to succeed in such action? Must negligence of captain or crew be proved as well as defect in the engines or other objects?	Negligence must be proved of the person responsible towards the plaintiff for the good state of the engines or other objects.	Controversed Question. The last jurisprudence seems to be that proof of vice is sufficient.	Negligence of captain or crew must be proved, or the defect of engines or other objects.	Negligence must be proved.	Negligence must be proved, but jurisprudence has a tendency to admit liability ipso facto in case of damage caused through engines or other objects.	Negligence must be proved. Presumption of negligence if accident be caused through unseaworthiness.	Defect in inanimate objects constitutes a prima facie case of negligence. Liability to be escaped by showing that defect was not caused by negligence.	Negligence must be proved.		Proof must be given that defect is attributable to the negligence of captain, shipowner or their employees.	
6. — Is proof of accident or <i>force majeure</i> admissible as a defence?	Yes.	Yes.	Yes.	Yes.	Yes.	Yes.	Yes.	Yes.		Yes.	
II. — Persons Entitled to Sue.											
Does a right of action belong only to the person injured, or does it equally belong to his widow or children? Can more distant relatives or personal representatives sue?	Action equally belongs to wife, children, and distant relatives, and even to third persons.	To every person who sustains damage and to all inheritors.	Actio personalis moritur cum persona, except if death be the consequence of the injuries. But in the different States an action exists in case of death, to the benefit generally of the relatives.	To every person who sustains damage and to all inheritors.	Equally to persons who depended upon the deceased, in case of death only.	Equally to widow and children who remain without means in case of death only.	Equally to husband, wife, ascendants and children of the deceased, or to the personal representatives suing on their behalf.	Equally to wife, ascendants and descendants who legally depended upon the deceased. The inheritors possess an action only for the rights which belonged to the deceased before his death.		Equally to wife, children and ascendants if they depended upon the deceased. More distant relatives and the inheritors are not entitled to sue.	

	Germany (p. 61).	Belgium (p. 17).	United States (p. 89).	France (p. 33).	Norway (p. 70).	Sweden (p. 76).	Great-Britain (p. 149).	Greece (p. 165).	Danmark (p. 113).	Holland (p. 107).	Italy (p. 119).
III. — Damages											
1. May material loss only be recovered by way of damages, or may damages also be awarded in respect of general damage? Do such damages include only damage directly attributable to the accident, or do they also include damage indirectly attributable?	General damage admitted. The whole prejudice must be made good.	General damage admitted. Indirect damage admitted.	No general damage. Direct consequences only considered.	General damage admitted. Direct consequences only.	Report does not mention general damage. Compensation makes good <i>damnum emergens</i> and <i>lucrum cessans</i> which are consequences.	Jurisprudence admits general damage, but with restriction. Damage include expenses and prejudice directly caused. This prejudice includes loss of profits.	General damage admitted. The damage which is a proximate and natural consequence of the accident. In case of death, only the material damage.	Report does not mention general damage. Indirect damage included.			No general damage. All the direct consequences.
2. Is the amount recoverable limited to a fixed sum, <i>e. g.</i> , has a maximum recoverable in such cases been fixed by any law or proposed law? What is that limit, if any?	No.	No.	A form of Bill of the Association provides such a limit. \$ 5,000 per case.	No.	No.	No.	No.	No.		No.	
IV. — Exonerating Clauses under contracts.											
Is it possible to contract out of liability imposed by common law?	Yes, <i>dolus</i> excepted.	Yes, <i>dolus</i> excepted, or gross negligence.	Federal Courts generally consider such clauses, as null and void. But in the States they are sometimes considered as valid.	Yes, <i>dolus</i> excepted, or gross negligence.	Yes, <i>dolus</i> excepted.	Yes, for the liability of another's fact. But shipowner and captain could probably not exonerate themselves from their own negligence or from <i>culpa lata</i> of their employees.	Unanswered.	Yes, <i>dolus</i> and <i>culpa lata</i> excepted.		Yes, unless such clause be in contradiction with some imperative disposition or with public security.	
V. — Prescription											
Is there a period of prescription, and, if so, what period? (Note. — « Prescription » is the limit of time within which the action must be brought. In English law it is the period of limitation.)	If action be based on quasi-delict: 3 years to be reckoned from the knowledge of the damage and of the identity of the person liable, provided it be within thirty years from the date of wrongful act. If based on contract the special prescription for that contract. Report does not mention if there is such a prescription for passengers.	Collision of ships: 1 Year from the day of the accident. Other cases: 3 Years (delicts) or 10 years (crimes).	In many States of the Union there are prescriptions of 2 or 3 years.	Prescription of 30 years; or 3 (delicts) or 10 years (crimes).	Prescription of 3 (delicts) or 10 years (crimes).	Prescription of 2 years if action based on Maritime Law, otherwise 10 years.	Prescription of 6 years. In case of death: 1 year after the decease.	30 years.		30 years.	

VI. — Nationality

Are foreigners and nationals upon the same legal footing?

B. What are the rights of third parties e. g. : passengers and crew of a ship collided with against the colliding ship or its owners?

NOTE. — Same answers as sub A. with one exception for Great-Britain (see hereafter) There is of course no question of exonerating clauses under contract.

C. What are the rights of the crew against the ship on which they are engaged, or its owners?

I. — Liability

1. — Is the liability regulated by the common law, or is it the subject of special legislation?

2. — Is liability presumed, or must negligence be proved?

3. — If liability be presumed, may such presumption be rebutted on proof of accident or force majeure?

4. — Does the inherent vice or defect in inanimate objects (breakdown of engines, machinery, ropes, &c.) give a right of action?

5. — What proof is necessary to succeed in such action? Must negligence of captain or crew be proved as well as defect in the engine or other object?

6. — Is proof of accident or force majeure admissible as a defence?

Germany

(p. 61).

Yes

By Common Law, with provisions in favour of seamen hurt or killed during service.

Same as sub A

Belgium

(p. 17).

Yes

By Common Law, with dispositions in favour of seamen hurt or killed during service.

idem

United States

(p. 89).

Yes

It is doubtful whether crew has an action, unless by the benefit of some local statute.

France

(p. 33).

Yes

By special legislation. There is a Caisse de Prévoyance for seamen. Taxes are collected from ship-owners. Besides, there are dispositions in favour of seamen hurt or killed during service.

Norway

(p. 70).

Yes.

By Common Law.

Same as sub A.

Sweden

(p. 76).

Yes.

By Common Law, with dispositions in favour of seamen hurt or killed during service.

idem.

Great-Britain

(p. 149).

Yes.

Third parties possess two actions : against the owner (personally), and probably also against the ship (in rem).

2 Prescriptions :

Actio in personam : 6 years.

Actio in rem : reasonable time to be appreciated by the Judge.

By Common Law, and by special legislation. Choice between two remedies :

Action of Common Law : same as sub A. Special action : Proof that the accident arose out of and in the course of his employment.

Greece

(p. 165).

Yes

By Common Law and by special legislation.

There is a Fund for Invalid Seamen. The indemnities paid by the Fund do not exclude action according to Common Law.

Danmark

(p. 113).

Holland

(p. 107).

Yes.

By Common Law ; with dispositions in favour of seamen hurt or killed during service

Same as sub A.

Italy

(p. 119).

II. — Persons Entitled to Sue.

Does a right of action belong only to the person injured, or does it equally belong to his widow or children? Can more distant relatives or personal representatives sue?

Germany
(p. 61).

Same as sub A

Belgium
(p. 17).

idem

United States
(p. 89).

France
(p. 33).

Norway
(p. 70).

idem.

Sweden
(p. 76).

idem.

Great-Britain
(p. 149).

Action of Common Law :
Same as sub A II.
Special Action :
a. the person injured.
b. the persons who depended upon the deceased viz : wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, halfbrother, halfsister.

Greece
(p. 165).

Action of Common Law :
Same as sub A II.
Special Action :
Widow unremarried, son until aged 14 years, daughter until marriage, father unable to work and indigent, mother if widow and indigent, indigent brothers, sisters if indigent and unmarried.

Danmark
(p. 113).

Same as sub A.

Holland
(p. 107).

Same as sub A.

Italy
(p. 119).

III. — Damages.

1. — May material loss only be recovered by way of damages, or may damages also be awarded in respect of general damage? Do such damages include only damage directly attributable to the accident, or do they also include damage indirectly attributable?

Same as sub A

2. — Is the amount recoverable limited to a fixed sum, *e. g.*, has a maximum recoverable in such cases been fixed by any law or proposed law? What is that limit, if any?

Same as sub A

IV. — Exonerating Clauses under contracts

Is it possible to contract out of liability imposed by common law?

Same as sub A

Same as sub A

V. — Prescription.

Is there a period of prescription, and, if so, what period? (Note. — « Prescription » is the limit of time within which the action must be brought. In English law it is the period of limitation).

Same as sub A

idem

idem.

idem

Action of Common Law :
Same as sub A V.
Special Action :
Notice to be given within six months of the accident.
In case of death, prescription of six months after receiving notice of the death.

Action of Common Law :
Same as sub A V.
Special Action :
Prescription of one year for the injured person; of five years for the other claimants

Same as sub A.

VI. — Nationality.

Are foreigners and nationals upon the same legal footing, with regard to this legislation?

D. Position of employees and workmen other than the crew, employed in port on board the ship or in her service (stevedores, and workmen employed for discharging, watchmen &c.)

I. — Conditions of Liability.

1. — Is the liability regulated by the common law, or is it the subject of special legislation?

2. — Is liability presumed, or must negligence be proved?

3. — If liability be presumed, may such presumption be rebutted on proof of accident or force majeure?

4. — Does the inherent vice or defect in inanimate objects (breakdown of engines, machinery, ropes, & c.) give a right of action?

5. — What proof is necessary to succeed in such action? Must negligence of captain or crew be proved as well as defect in the engine or other object?

6. — Is proof of accident or force majeure admissible as a defence?

	Germany (p. 61).	Belgium (p. 17).	United-States (p. 89).	France (p. 33).	Norway (p. 70).	Sweden (p. 76).	Great-Britain (p. 149).	Greece (p. 165).	Danmark (p. 113).	Holland (p. 107).	Italy (p. 119).
VI. — Nationality.	Same answer as sub. A	idem			Idem.	Idem.	Action, common law : Same answer as sub A VI. Special action : No. T : be admitted to the benefit of the special law, a seaman must be a member of the crew of a ship registered in the United Kingdom, or of an English ship whose owner resides or has his principal establishment in England or Colonies.	Action of common Law. Same answer as sub A VI. Special Action : Foreign seamen are not entitled to the pensions of the Fund.		Same reply as sub A.	
D. Position of employees and workmen other than the crew, employed in port on board the ship or in her service (stevedores, and workmen employed for discharging, watchmen &c.)											
I. — Conditions of Liability.											
1. — Is the liability regulated by the common law, or is it the subject of special legislation?	By Common Law.	By a special legislation on Workmen's compensation when it concerns categories of workpeople enumerated by law — otherwise by common law.	By Common Law.	By a special Workmen's compensation Act where it concerns categories of workpeople enumerated by law — If not, by common law.	The employer is bound to contract an insurance with a public Institution.	By Common Law. But if the work is performed for account of the Stevedore, there is a special law.	By common law and by a special legislation.	The report does not mention that. Its text seems to imply that this is regulated by common law. We therefore refer to answers sub A.		By a special legislation on compulsory insurance of workmen, when it concerns classes of labourers enumerated in the law. — If not, by common law.	
2. — Is liability presumed, or must negligence be proved?	Same answers as sub. A.	When the special law applies: It is necessary but sufficient to prove that the accident occurred during and by reason of the execution of the contract of labour.	Same replies as sub A.	When the special legislation applies: It is necessary and sufficient to prove that the accident occurred by reason of the work or with relation to same.		Work performed for Stevedore's account: Special law.	Just as sub C, there is option between two actions. We therefore refer to what is stated above sub C.			Common law : Same answers as sub A. Compulsory Insurance : Principles of insurance.	
3. — If liability be presumed, may such presumption be rebutted on proof of accident or force majeure?		Same answers as sub A, when common law is applicable		Same answers as sub A, when common law is applicable.							
4. — Does the inherent vice or defect in inanimate objects (breakdown of engines, machinery, ropes, & c.) give a right of action?											
5. — What proof is necessary to succeed in such action? Must negligence of captain or crew be proved as well as defect in the engine or other object?											
6. — Is proof of accident or force majeure admissible as a defence?											

II. Persons Entitled to sue.

Does a right of action belong only to the person injured, or does it equally belong to his widow or children? Can more distant relatives or personal representative sue?

III. Damages.

1. May material loss only be recovered by way of damages, or may damages also be awarded in respect of general damage? Do such damages include only damage directly attributable to the accident, or do they also include damage indirectly attributable?

Is the amount recoverable limited to a fixed sum, e. g., has a maximum recoverable in such cases been fixed by any law or proposed law? What is that limit, if any?

IV. Exonerating Clauses under Contracts.

Is it possible to contract out of liability imposed by common law?

Germany (p. 61).	Belgium (p. 17).	United-States (p. 89).	France (p. 33).	Norway (p. 70).	Sweden (p. 76).	Great-Britain (p. 149).	Greece (p. 165).	Danmark (p. 113).	Holland (p. 107).	Italy (p. 119).
Same answer as sub A.	Same answer as sub A.	Same answer as sub A.	Idem, if Common Law applies.	The Report says nothing as to this.	Same answer as sub A if Common Law applies.	See above.	See above.		Idem, if Common Law applies.	Compulsory Insurance: Principles of Insurance.
Same answer as sub A.	Same answer as sub A.	Same answer as sub A.	Idem, if Common Law applies.	The Report says nothing as to this.	Idem, if Common Law applies.	See above.	See above.		Idem, if Common Law applies.	Compulsory Insurance: Principles of Insurance.
Same answer as sub A.	Idem, if Common Law applies.	Same answer as sub A.	Idem, if Common Law applies.	Such clauses are impossible seeing that there exists for the Employers a compulsory insurance.	Idem, if Common Law applies.	See above.	See above.		Idem, if Common Law applies.	Compulsory Insurance: Principles of Insurance.
Same answer as sub A.	Idem, if Common Law applies.	Same answer as sub A.	Idem, if Common Law applies.	Such clauses are impossible seeing that there exists for the Employers a compulsory insurance.	Idem, if Common Law applies.	See above.	See above.		Idem, if Common Law applies.	Compulsory Insurance: Such clauses are not permissible.

V. — Prescription

Is there a period of prescription, and, if so, what period? (Note. — « Prescription » is the limit of time within which the action must be brought. In English law it is the period of limitation).

VI. — Nationality

Are foreigners and nationals upon the same legal footing?

PART II
Resolutions proposed as basis of
International Agreement

QUESTIONS

A. *Rights of Passengers against the Carrying Ship*

1. Is it desirable to regulate by international agreement the right of passengers to recover damages from the carrying ship in case of death or personal injury?

	Germany (p. 61).	Belgium (p. 17).	United-States (p. 89).	France (p. 33).	Norway (p. 70).	Sweden (p. 76).	Great-Britain (p. 149).	Greece (p. 165).	Danmark (p. 113).	Holland (p. 107).	Italy (p. 119).
Same answer as sub A.	Same answer as sub A.	Idem, if Common Law applies. If special law applies : 3 years from date of accident.	Same answer as sub A.	Idem, if Common Law applies. If special legislation : 1 year to be reckoned from the accident.	idem.	Idem, if Common Law applies. If work for stevedore's account : Special law.	See above.	See above		Same answer as sub B. Compulsory insurance. ?	
Same answer as sub A.	Same answer as sub A.	Same answer as sub A.	Same answer as sub A.	Same answer as sub A.		Idem, if Common Law applies. If work for stevedore's account : Special law.				Yes.	
(p. 61)	(p. 26).	(p. 93).	(p. 42).	(p. 73).	(p. 82).	(p. 149).	(p. 128).	(p. 113).	(p. 112).	(p. 119).	
NOTA. — The association had not the time to deal with Part II of the Questionnaire	Yes.	Yes	Yes. Conflicts of laws : the law of the flag to be applied to all passengers.	An international law can hardly be considered as obtainable. An agreement on the obligation to compensate could be obtained.	Yes, in case such special law be deemed necessary.	NOTA. — Part II is unanswered.	NOTA. — There is a Draft-treaty at the end of the report. Yes. The association proposes a special law, which would not prevent common law to be applied.	NOTA. — The report does not answer to the detail of the questions. The association wishes the maintenance of actual law, in accordance to which the shipowner is responsible for such fault of his employees which are negligences punished by penal law. In that case the shipowner has a remedy against the captain for whom he had to pay. Association thinks it hard enough to make the shipowner pay notwithstanding his innocence.	NOTA. — The Association had not the time to study the questions.	NOTA. — The Association had not the time to examine the subject of personal claims. It expresses two wishes : 1° that uniform principles regulate compensation. 2° that the law of the flag regulates the accidents to the crew.	

11. Part. Resolutions proposed as a basis of international agreement.

2. Should this liability be presumed, as arising out of the contract of carriage, or must the passenger prove negligence in the captain, crew, or marine superintendent? Upon whom should the burden rest of proving that the damage was caused by accident or *force majeure*?

3. What provisions should apply to cases in which an accident is due to a vice or defect in ship or engines? Should a distinction be drawn between a latent and a patent defect?

4. Upon what basis should damages be awarded? Should general damages be given? Should damages, indirectly attributable to the accident (consequential damages), be allowed?

5. - In whom should the right of action rest? In the injured party? In the widow or children, or descendants? To all persons beneficially interested in the estate?

6. - Is it desirable that the law should impose a limit upon the damage recoverable in cases of personal injuries?

7. - Should the right of action, for damage, for the death of a person, depend upon the condition that the persons claiming were dependent on the deceased person?

Germany	Belgium	United-States	France	Norway	Sweden	Great-Britain	Greece	Danmark	Holland	Italy
(p. 61).	(p. 26).	(p. 93).	(p. 42).	(p. 73).	(p. 82).	(p. 149).	(p. 128).	p. 113).	(p. 112).	(p. 119).
	This liability should be presumed, burden of proof of accident or <i>force majeure</i> resting upon the shipowner.	Association refers to existing law.	Association refers to existing law.	Association refers to existing law.	Damages only to be awarded in case of shipowner's fault. In such case plaintiff has to prove the fault.		Shipowner's fault to be presumed. He should be permitted to prove accident or <i>force majeure</i> .	See above.		
	Shipowner to be responsible for patent defect; not for latent defect, if due care has been taken to detect it.	Idem.	Plaintiff must prove the fault. Latent defect on itself does not involve liability; a fault must be proved.	Idem.	Association refers to existing law.		Shipowner to be absolutely responsible for defect.			
	Only material, direct and immediate damages, or at least damages being in necessary connection with the accident. Lump compensation to be preferred.	Reference to existing law.	Immediate and direct damage.	Reference to existing law.	Any material damages, even indirect, to be awarded. It is hardly possible to find a basis for moral sufferings.		The only positive basis is the loss of the victim's earnings at the time of accident. No moral, nor indirect and mediate damages to be awarded.			
	In deceased's wife or husband, children and descendants; if there are no descendants, to the ascendants. In other relatives only if they depended on the deceased and in the measure of that dependence.	In such relatives who are materially prejudiced by the decease.	In any person who sustains prejudice in the heirs, if they are prejudiced.	idem	Reference to existing law, with the addition that elderly parents who are dependent on the deceased should be considered plaintiffs.		In descendants, parents, and sisters of the victim. No damage to men after their majority nor to women after their marriage, with exception of ascendants and such persons unable to work and without means.			
	Lump - indemnity with a maximum limit for each case.	Yes. A Form of Bill drafted by the Association proposes \$ 5,000 per case.	Yes.	No (as association refers to existing law).	Unanswered.		Yes. Association proposes Frs 20,000 per case.			
	See answer 5	Yes.	Not necessarily. It will be one of the proofs of the prejudice sustained.	Reference to existing law.	Unanswered.		See answer 5.			

II^a Part. Resolutions proposed as a basis of international agreement.

	Germany (p. 61).	Belgium (p. 26).	United-States (p. 93).	France (p. 42).	Norway (p. 73).	Sweden p. 82).	Great-Britain (p. 149).	Greece (p. 128).	Danmark (p. 113).	Holland (p. 112).	Italy (p. 119).
8. — Should contracting out be permitted?		If common law remains applicable: Yes, excepting in case of accidents caused by unseaworthiness at the departure or by negligences attributable to shipowner. If lump-system is agreed: no.	Reference to existing law (according to which these clauses are prohibited).	No, if the limited liability is agreed (see question 6).	idem	No, in the following cases: a) one's self own fault. b) culpa lata of an employee.		no.			
9. — Should foreigners and nationals be placed upon the same legal footing?		Yes.	Yes.	Yes.	Reference to existing law, which makes no distinction.	Yes.		No, unless an international agreement stipulates the contrary.			
10. — What time-limit should be imposed within which action must be brought?		2 years	A short prescription, for instance that of the State of New-York: 2 years after the death.	Same as for material loss.	Reference to existing law. No wish expressed.	There is a prescription of 2 years in the Swedish Maritime law		Prescription of one year for the action against the shipowner. For other actions, two years.			
<p>B. — <i>Actions of Third Parties against Non-carrying Ships.</i></p> <p>With the exception of contractual liability, the same questions arise as in A. Same answers as sub A., with the following for Belgium:</p>											
2. — Should this liability be presumed, as arising out of the contract of carriage, or must the passenger prove negligence in the captain, crew or marine superintendent? Upon whom should the burden rest of proving that the damage was caused by accident or <i>force majeure</i> ?		Fault must be proved by the plaintiff.									

C. — Actions by the Crew.

The same questions arise as under A. except that question 2 should read as follows :

“Should this liability be left to the common law or regulated by special legislation? In either case what should it be necessary for the injured person or his representatives to prove in evidence, particularly on the question of negligence?”

NOTE. — The associations have not followed the detail of questions but answered on the whole matter generally. The answers are recapitulated in the following columns

D. — Actions by Workmen and Others employed in Port on board the Ship or in her Service.

The same questions arise as in the case of the crew.

NORW. — We recapitulate the answers in the same way, as sub C.

Germany	Belgium	United States	France	Norway	Sweden	Great-Britain	Greece	Danmark	Holland	Italy
(p. 61).	(p. 26).	(p. 93).	(p. 42).	(p. 73).	(p. 82).	(p. 149).	(p. 128).	(p. 11).	(p. 112).	(p. 116).
	An international agreement is desirable, but the differences are so important that this question ought to be reserved to national legislations. It is desirable that everywhere : a) an equitable compensation should be awarded on basis of professional risk b) nationals and foreigners should be on the same footing. If Common Law remains applicable, same answers as sub B of Part II Resolutions)	Reference to existing law. No wish expressed.	The question is regulated in each country by special laws of a national character. It is useless for the moment to try unification.	Reference to existing law. No wish expressed.	A special law is now studied in Sweden, according to which compensation should always be awarded, unless there be culpa lata of the crew. No wish expressed.		Seamen ought to be entitled to compensation in case of accident occurring during their service, even in case of mere accident or force majeure. Shipowner to be compelled to insure the crew. An International Fund for Seamen is desirable but impossible to realise for the time being.			
	Same answer as sub C.	Cases of negligence not attributable to the shipowner should not give a right of action, unless a modern law on employers' liability should be applied. No wish expressed.	Same answer as sub C	Reference to existing law. — No wish expressed	No wish expressed.		Provisions sub C should also apply to all persons employed even temporarily at the ship's service.			

Draft-treaty of the Commission	Germany	Great-Britain	Belgium	Denmark	Spain	United States	France	Hungary	Italy	Japan	Norway	Netherlands	Sweden
<p>ART. 4. — It shall be a rule of affreightment and carriage of goods by sea, that if the shipper does not tender the agreed cargo for shipment, he shall forfeit to the shipowner by way of compensation, a sum equivalent to one half the agreed freight. Where part only of the agreed cargo shall have been tendered for shipment, the shipper shall be liable to pay freight for the whole of the said agreed cargo: subject to a proportionate reduction of liability in respect of freight earned on substituted cargo.</p> <p>Where a shipper in the case provided for under Art. 3, withdraws his goods from the shipowner's control, he shall be liable to pay the whole freight and to reimburse the captain in respect of any expense or losses to which he may be put by reason of such withdrawal.</p> <p>The above provisions shall be equally applicable to general ships.</p>	<p>Meeting decides to recommend adoption of provisions of German Code of Commerce (§ 580 and follow.) Distinction: 1° Chartering of entire ship: half-freight due as lump-indemnity if charterer renounces to the execution of the contract before the voyage has commenced.</p> <p>The voyage is considered as having begun:</p> <p>1° If the charterer has given notice to the captain of the end of the shipment.</p> <p>2° If the lay days are expired even when the shipment has only partially taken place. Otherwise entire freight is due. 2° Partial chartering or carriage by a general ship: entire freight due but under deduction of freight for goods shipped instead.</p>	<p>This question must be resolved by the general principles on indemnification.</p>	<p>Adopted.</p>	<p>Adopted.</p>	<p>Half freight due by the charterer if he renounces to execute the contract before the date fixed for beginning the loading. That date being past, the entire freight is due.</p>	<p>General principles on compensation of damage. If not, then at least distinction should be made. First paragraph only to be applied to the chartering of an entire ship (or part of ship). When a general ship, then entire freight due under deduction of freight effectively earned on substituted cargo without distinction of a total or partial breach of contract. Addition of «lawful» after «goods» at the 2^e al.</p>	<p>Adopted.</p>	<p>Adoption of 3^d paragraph. Suppression of 4th paragr. Paragr. 1 et 2 reserved to chartering of a ship's whole burden. In case of charter of part of ship, or of shipment of general cargo, the charterer always has to pay the whole freight, unless he proves that other goods have been shipped instead.</p>	<p>Adopted</p>	<p>Should be fixed by law.</p>	<p>Adopted, under reserve of modification of 2^d paragr. deducting only one half of freight for merchandise which captain takes instead.</p>	<p>Adopted.</p>	<p>Fixes wrongly these damages to lump sum (half-freight) without considering whether the voyage commenced or not. Adoption of Swedish rule: half the freight of goods taken instead, to be deducted.</p>
<p>ART. 5. — Payment of demurrage ought to be enforceable in the same manner as payment of freight.</p> <p>Payment of demurrage shall not be conditional upon any special legal processor formality.</p>	<p>Meeting decides to recommend adoption of the provisions of German Code of Commerce: 1° Lay day begin a) for an entire ship or part of ship freighted: the day after the master is ready to load or unload and gives notice of it to charterer or consignee. b) For a general ship: if not otherwise provided, no lay-days are allowed; to be loaded or unloaded without delay when required to do so by master (588, 604). 2° Demurrage is an indemnity. 3° Formalities: no formalities required if number of lay days determined by contract: if not, the master ought to give notice of the number of lay days allowed</p>	<p>Demurrage is an indemnity and not a supplementary freight. No formalities are required.</p>	<p>Adopted.</p>	<p>Adopted.</p>	<p>Demurrage is an indemnity. No formalities are required.</p>	<p>No international rule on this matter. No formalities.</p>	<p>Adopted.</p>	<p>Adopted.</p>	<p>(Naples) Adopted. (Genoa) Adopted. To be added to paragr. 1°: «Demurrage runs during holidays and notwithstanding <i>force majeure</i>»; and add to 2^d paragr.: «Except in case the delay of lay-days is fixed neither by contract nor by customs of the place.»</p>	<p>Demurrage should be considered as an indemnity. Written protest is necessary.</p>	<p>Adopted.</p>	<p>Adopted.</p>	<p>1st paragraph, needless. 2^d paragraph, adopted.</p>

CONFÉRENCE DE BRÊME

SEPTEMBRE 1909

COMPTE - RENDU

BREMEN CONFERENCE

SEPTEMBER 1909

REPORT OF PROCEEDINGS

MERCREDI, 22 SEPTEMBRE 1909
WEDNESDAY, 22nd SEPTEMBER 1909

Séance d'Ouverture
Opening Sitting

*La séance est ouverte à 10 heures dans la Salle du Conseil
du Sénat.*

*The sitting was opened at 10 o'cl. a. m. in the Council-Room
of the Senate.*

Herr Bürgermeister Dr. PAULI. — Meine hochgeehrten Herren! Namens des Senats der freien Hansestadt Bremen gestatte ich mir, Sie, bevor Sie Ihre wichtigen Beratungen beginnen, aufs herzlichste zu begrüßen. Dem Senat gereicht Ihr Beschluss, Ihre Versammlung in Bremen stattfinden zu lassen, um so mehr zur Genugtuung, da vor gerade einem Menschenalter, im Jahre 1876, der deutsche Zweig der International Law Association, die ich wohl als Ihre Frau Mutter bezeichnen darf, uns die gleiche Ehre und Freude erwiesen hat. Ich darf diese Ihre Mutter nennen, da das Comité maritime einer Anregung aus Ihrer Mitte die Entstehung verdankt und sie hat alle Ursache sich dieses Sprösslings zu freuen. Wer kann daher wissen, ob sie Ihnen nicht früher oder später noch Geschwister schenken wird, denn es gibt in dem weiten Bereiche der internationalen Rechtsbeziehungen noch

manches Gebiet, das der gleichen gemeinsamen Arbeit der beteiligten Nationen wohl wert wäre, um so dem Ideale einer Einheit des Rechtes in den für den Weltverkehr wichtigsten Materien uns schrittweise zu nähern.

Wie dem aber auch sei, jedenfalls haben Sie, meine verehrten Herren, alle Ursache, mit Genugtuung auf Ihre bisherige Arbeit zurückzublicken, und wenn mich nicht alles täuscht, können Sie hoffen, durch Ihre bevorstehenden Verhandlungen einige Schritte vorwärts zu kommen. Je überzeugender Ihre Diskussion, je einhelliger Ihre Beschlüsse und je einleuchtender deren Inhalt sein wird, um so grösser wird die Aussicht sein, dass die Regierungen und die Parlamente ihr Fiat darunter setzen. Sie befinden sich, indem Sie, wie vor einigen Jahren in der Hansestadt Hamburg, so jetzt in deren Schwesterstadt Bremen tagen, auf einem klassischen Boden für derart Beratungen. Die Blüte der alten Hansa wäre nicht möglich gewesen, wenn unsere Vorfahren nicht bemüht gewesen wären, bei ihren Tagungen und ihrem gemeinsamen Vorgehen nur auf das zu sehen, was ihnen allen nützlich war und beiseite zu setzen, was sie trennen möchte.

Vergegenwärtige ich mir nun aber, was die Gegenstände sein werden, mit denen Sie sich in diesen Tagen beschäftigen wollen, so springt es in die Augen, dass sie für Bremen, in dessen Namen ich Sie begrüsse, von grosser Wichtigkeit sind. Angesichts unserer alle Meere befahrenden Handelsflotte können Fragen wie die des Seefrachtrechtes, der Verpflichtung der Reeder durch Unglücksfälle an Bord ihrer Schiffe und ähnliche Fragen nur dem Interesse weiter Kreise meiner Vaterstadt begegnen.

Allein, was Sie beraten und beschliessen, gilt allen Nationen und ich hoffe und wünsche, dass, wie der

Bremer Kongress von 1876 die Vorarbeit leistete für die im folgenden Jahre 1877 zu Antwerpen beschlossenen *York and Antwerp Rules*, Ihre diesmaligen Beschlüsse in gleicher Weise alsbald eine reife Frucht den seefahrenden und Handeltreibenden Völkern schenken werden. Möge diesem Wunsche die Erfüllung nicht fehlen. — Damit nochmals mein herzliches Willkommen !

Monsieur A. BEERNAERT. — Messieurs, c'est comme président de notre Bureau international permanent que j'ai l'honneur de remercier, en votre nom à tous Sa Magnificence M. le Bourgmestre de Brême du brillant accueil qui nous est fait dans cette grande ville et des paroles à la fois si élevées et si cordiales qui viennent de nous être adressées. Cet honneur, je l'apprécie grandement. Représentant d'un petit pays qui a un certain passé maritime, mais dont la marine, à mon grand regret, ne compte plus guère, je parle ici au sein de l'une de ces nobles citées hanséatiques, de glorieuse histoire, naguère en rapports étroits avec Bruges et Anvers, presque à l'ombre du pavillon de ce Norddeutscher Lloyd qui transporte des milliers de passagers vers tous les points du globe, au cœur de ce puissant empire d'Allemagne qui a conquis si rapidement la deuxième place parmi les puissances maritimes.

Mais à défaut d'autre titre, je puis du moins rappeler des initiatives et des sympathies déjà anciennes pour la cause qui nous rassemble.

Voilà un quart de siècle et plus que j'avais l'honneur de réunir et d'inaugurer le congrès international d'Anvers pour l'Unification du droit maritime, bientôt suivi par le Congrès de Bruxelles. Et tel fut l'accueil que cette première tentative reçut de la science et de la pratique que bientôt se fonda cette puissante association internationale qui aujourd'hui relie entre elles dix-huit associa-

tions nationales et dans le Comité central de laquelle on a bien voulu me conserver une trop longue présidence.

A ce titre encore, Messieurs, j'ai à ajouter des remerciements à ceux que j'exprimais tout à l'heure à Monsieur le Bourgmestre et au Sénat souverain de Brême. Ils s'adressent tout à la fois au Comité local qui a organisé cette belle réception, spécialement à son président M. Plate et à ses adjudants MM. Reck et Rösing, à la Chambre de Commerce de Brême et au Norddeutscher Lloyd qui ont mis à la disposition du Comité leurs puissantes influences.

Ils voient avec quel empressement il a été répondu à leur appel par cette nombreuse assemblée qui compte des représentants de tous les pays groupés en vue de l'unification du droit maritime.

Mais aussi, l'on peut dire que notre grande cause n'a plus d'adversaires. Nul ne méconnaît plus l'important avantage qu'il y aurait pour toutes les nations maritimes à l'établissement de règles uniformes pour les choses de la mer. Dans tous les pays de quelque importance commerciale ou économique, nous avons avec nous les hommes de science comme les hommes de la pratique, les jurisconsultes et les professeurs comme les négociants, les armateurs, les dispatcheurs et les assureurs, et parmi les groupes qui soutiennent notre cause avec le plus de distinction et d'éclat, il me sera bien permis de citer l'Association allemande que préside si dignement M. le Dr. Sieveking.

Depuis l'assemblée de Venise, nous avons eu la vive satisfaction de voir nos rangs se renforcer encore.

Le Comité britannique s'est reconstitué sur une base agrandie et beaucoup plus puissante. Jusqu'à ces derniers temps, c'était notre fidèle alliée, l'International Law Association, qui en tenait lieu ; mais elle a elle-même

exprimé le désir d'une organisation plus spéciale et c'est à son initiative qu'est due l'institution du nouveau Comité qui a comme président le Lord Chief Justice d'Angleterre, Lord Alverstone, comme vice-présidents Sir Walter Phillimore et Sir William Pickford, comme président du Comité Exécutif Lord Kennedy, le savant auteur du traité si connu sur le Sauvetage maritime et qui aujourd'hui, aux premiers rangs de la magistrature, a gardé les vives sympathies pour le droit maritime dont il avait, au barreau, donné tant de marques.

Les secrétaires du Comité sont MM. H. R. Miller et Leslie Scott l'un de nos dévoués secrétaires généraux qui, avec M. Franck, a pris au cours de nos dernières années, une large part aux travaux du Bureau Permanent.

Voici que la Presse, aussi, est des nôtres. Le *Times* nous a consacré une longue série d'articles et qu'il me soit permis de vous citer ces lignes qui les résument :

« La mer étant ouverte à tous, les hommes d'affaires, les jurisconsultes et tous ceux qui ont quelque intérêt dans le commerce d'Outre-mer, comme armateurs, comme chargeurs, comme assureurs, comme réparateurs de navires ou comme fournisseurs, ont depuis longtemps le commun désir de voir le commerce maritime et les allées et venues des navires soumis à un code de lois qui seraient d'application universelle ».

Quelques jours plus tard, Lord Gorell, l'éminent président du premier de tous les tribunaux maritimes, la Cour d'Amirauté de Londres, en se retirant de ses fonctions, disait : « Nous voulons rendre uniformes toutes les lois de la mer de la même manière dans tous les pays ».

Voilà assurément de précieuses sympathies.

A l'autre extrémité de l'Europe, un autre pays qui a eu sur la mer des jours glorieux, et dont le pavillon recommence à y flotter beaucoup, la Grèce, est venue s'associer

à notre œuvre. C'est sous la présidence de M. Embericos, ancien ministre de la Marine, que s'est constituée l'Association hellénique de Droit Maritime, dont nous sommes heureux de saluer pour la première fois les représentants parmi nous.

Messieurs, vous savez que la Conférence de Venise a abouti à l'adoption de deux avant-projets de traités, l'un sur la Responsabilité des Propriétaires de Navires, l'autre sur l'Hypothèque et le Privilège maritime ; mais il restait à en arrêter la rédaction et c'est le Bureau Permanent qui a été chargé de ce soin par la Conférence. Il s'en est acquitté, et semble-t-il, à la satisfaction de tous.

Le Bureau a eu d'autre part à se préoccuper d'une prompte réunion de la Conférence diplomatique, appelée à couronner notre travail par l'adoption d'instruments définitifs et vous savez que cette réunion est fixée à la semaine prochaine, presque aussitôt après notre assemblée actuelle.

Il faut, Messieurs, s'en applaudir puisqu'ainsi la diplomatie pourra s'inspirer encore de vos vues et des observations qui vont être échangées. Il faudra approuver une fois de plus la prudence de la procédure suivie par l'Association. Commencée par le questionnaire qu'adresse à tous le Comité international, poursuivie dans les délibérations des Associations et des Comités nationaux, elle n'aboutit à une conclusion que dans nos assemblées internationales, et nous pouvons nous rendre cette justice que jamais nous n'avons pris de décision prématurée, attendant que les convictions soient faites et l'accord établi.

A la prochaine réunion diplomatique de Bruxelles (ce sera la troisième) vingt-deux États seront représentés, et je ne doute pas que tous n'y viennent avec le vif et sincère désir de faire œuvre féconde. L'on peut compter, je crois, que la Conférence aboutira cette fois à la signature de

traités définitifs sur l'abordage et l'assistance et qu'elle pourra arrêter des avant-projets de traités sur la responsabilité et les privilèges et hypothèques.

Je ne veux pas me poser en prophète : c'est toujours un métier dangereux ; mais j'imagine que l'on n'arrivera à l'accord que par voie de transaction, chaque pays abandonnant quelque chose de sa législation propre. Et comment ne pas espérer cet accord, puisque grâce à nos conférences, il s'est déjà établi entre les intéressés : négociants, armateurs et assureurs ?

Votre Bureau s'est également occupé de préparer le compte-rendu de la Conférence de Venise si somptueusement fêtés par nos amis d'Italie, et ce ne fut pas un mince travail puisqu'il forme un volume de 800 pages alors que le procès-verbal de notre première réunion n'en occupait qu'une centaine.

Tandis que se poursuivait ainsi la réalisation des réformes importantes dont nous nous sommes occupés jusqu'ici, de nouveaux sujets étaient mis à l'étude.

Dès avant la réunion de Venise, les questions relatives aux Conflits de lois en matière de fret avaient été soumises aux Associations et Comités nationaux et des rapports préliminaires, dont quelques-uns fort remarquables, avaient été préparés.

La Conférence ne put aborder cette partie de sa tâche. Mais les rapports constataient une concordance de vues suffisante pour qu'un premier essai de codification parût possible. Une commission spéciale fut désignée et se réunit à Paris, où l'Association française de Droit Maritime, que présidait M. Govare, lui fit grand accueil. Elle eut pour rapporteur M. Verneaux, dont la compétence est bien connue et M. le Dr. Finke dont à Brême il serait superflu de relever la science et le mérite. Ils ont résumé les délibérations de la Commission sur les points visés

dans le Questionnaire et c'est sur leurs conclusions qu'auront à porter tout d'abord vos délibérations.

C'est là une matière dont l'intérêt peut ne pas frapper le grand public autant que les redoutables problèmes dont nous nous sommes occupés précédemment. Ce ne sont plus les conflits de lois en matière d'abordage avec les grands bruits de sinistres qu'ils évoquent, ni l'Assistance avec ce que, par lui-même, ce terme rappelle de souvenirs héroïques et parfois aussi d'entreprises criminelles, ni la Responsabilité des Propriétaires de navires avec la contradiction profonde du droit universel avec le droit britannique, contradiction heureusement sur le point de s'effacer. Mais les hommes de la pratique savent combien sont fréquentes les difficultés qui s'élèvent en matière de Fret. Sans doute, il s'agit de contrats et les parties les règlent comme elles l'entendent. Mais on ne peut tout prévoir. Et voici que chaque fois qu'un voyage est interrompu en cours de route, chaque fois que des marchandises sont vendues loin du port de destination, tantôt pour les besoins du navire, — ce qui devient rare, — tantôt à raison de leur état d'avarie, — ce qui est fréquent, — chaque fois qu'il y a condamnation de navire en un port d'escale et que la marchandise est réexpédiée, des discussions surgissent ou peuvent surgir et des conflits de lois sont possibles, la solution variant selon la loi qu'on appliquera.

Or, en tout cela, aucun intérêt majeur n'est en cause ; l'une solution est souvent aussi acceptable que l'autre, mais au moins qu'il y en ait une et que ce soit la même pour tout !

Et quel bienfait aussi si un règlement uniforme déterminait les cas de rupture de voyage, les cas où le fret, ou le demi-fret, est dû sur le vide !

N'est-il pas fort peu juste que l'armateur qui compte sur

l'application de sa loi nationale, s'en trouve privé, ou que le chargeur qui ne s'attendait qu'aux sanctions du droit commun, se trouve tenu de payer une indemnité forfaitaire élevée, alors même qu'il n'y a pas de dommage ? Tout au moins de semblables surprises ne constituent-elles pas par elles-mêmes des injustices ?

Et n'en est-il pas de même en matière de surestaries ? Pourquoi tout ce bagage inutile de formalités imposées par telle loi, inconnues dans d'autres. Qui donc n'a vu des armements privés ainsi d'un droit certain, parce que dans quelque port perdu au fond d'une mer éloignée, leur capitaine avait ignoré que d'après la loi du port de destination, un protêt était nécessaire pour faire courir les délais de surestaries ?

Tout cela, Messieurs, me paraît solliciter notre attention.

Et il en est de même d'un autre sujet plus grave encore, sujet auquel, aux États-Unis surtout, de redoutables catastrophes ont donné une grande actualité, pour parler de tant de vies humaines compromises et perdues et du droit à appliquer à ce sujet, j'entends des vies humaines en général, qu'il s'agisse de l'équipage ou de l'ouvrier du port, du passager millionnaire ou de l'humble émigrant qui va chercher fortune dans un continent lointain.

Vous verrez avec intérêt les rapports préliminaires à ce sujet, et ils sont éclairés par d'excellents tableaux synoptiques dressés par deux jeunes avocats belges, MM. Sohr et Hostie, qui nous ont également assistés dans la traduction des rapports ; je me fais un devoir de les en remercier.

Ce rapide tableau vous montrera, Messieurs, que nous avons encore devant nous un large champ d'action. Tous nous y consacrons nos efforts et le jour béni est prochain, j'espère, où un succès complet les aura consacrés, nous

pourrons nous rendre cette justice que nous avons accompli une œuvre de progrès de paix et de rapprochement entre les rameaux divers de la grande famille humaine.

LORD JUSTICE KENNEDY. — I am greatly honoured by having the permission, as a member of the British branch of this Comité Maritime International, to add humbly my own expression of gratitude to the Rulers of this great City for the cordiality, as well as the courtesy, they have shewn in receiving us as they have done to-day, and allowing us to enjoy, in the kind and hospitable way in which it is proposed, the beauties and charms of this ancient, most important, and most beautiful City. I can only hope that as far as we are concerned here we shall not be unworthy of that cordiality, and we can shew our appreciation of it best by trying with sympathy, as well as with care, to achieve to some extent the success upon which we are all bent, the unification, so far as is possible, of the civilised Nations of Europe in the great matters that concern the sea and commerce.

M. F. C. AUTRAN (Marseille). — Messieurs, je ne m'attendais pas, je vous l'avoue, à avoir l'honneur de prendre la parole devant vous, ce matin, et vous excuserez par conséquent un peu mon improvisation. Ce sera du reste dans un sentiment d'entente cordiale avec les paroles prononcées par Lord Justice Kennedy que je m'adresserai à vous pour vous exprimer les sentiments que nous éprouvons tous en nous trouvant réunis de nouveau pour coopérer à cette œuvre de civilisation qui s'appelle « l'Unification du Droit Maritime ».

Comme vous le disait très bien notre éminent président, Son Excellence M. Beernaert, c'est une œuvre de civilisation, c'est une œuvre de paix que nous poursuivons en

rapprochant les peuples par l'unité de leur loi; et le jour où cette unification sera réalisée dans les limites où elle peut l'être, soyez certains que nous aurons contribué à l'un des progrès les plus signalés que l'humanité ait jamais réalisés, que nous aurons accompli une œuvre de paix, — car tout progrès par le droit est un progrès pour la civilisation.

M. FRANCESCO BERLINGIERI (Gênes). — Au nom de l'Association italienne de Droit Maritime, j'envoie un salut fraternel au Comité Maritime International, à toutes les associations nationales dont les représentants sont accourus de toutes les contrées du monde pour remplir la grande tâche de préparer les matériaux et les bases de l'unification du Droit maritime.

Je présente aussi l'expression de notre respectueuse reconnaissance à la grande ville de Brême pour la cordiale hospitalité qui nous est offerte par elle.

Les glorieuses traditions de cette libre ville hanséatique, son large et fécond mouvement de vie commerciale et industrielle sont assurément les meilleurs auspices pour la marche et l'issue de l'œuvre que nous poursuivons : l'unification du droit maritime.

M. CHARLES LE JEUNE. — Messieurs, Votre Bureau Permanent a terminé sa tâche aujourd'hui; c'est la Conférence qui prend sa place. C'est à elle à désigner les membres qui composeront son bureau et qui dirigeront ses travaux.

Je me permets, Messieurs, de me faire l'écho du sentiment général en proposant à vos suffrages, pour présider cette conférence, Monsieur le Président SIEVEKING (*Applaudissements*).

Je n'ai pas besoin de vous exprimer toute notre sym-

pathie et toute notre admiration pour l'homme qui dans cette ville hanséatique, est à la tête de la Cour Suprême et dont le nom brille d'un vif éclat, — d'un éclat que l'on peut dire international — dans le droit, et spécialement dans le droit maritime.

Messieurs, je considère donc M. SIEVEKING comme élu président de la Conférence (*Applaudissements*).

J'ai encore à vous demander, au nom des diverses nations qui sont ici réunies, de bien vouloir élire des vice-présidents pour les représenter au bureau et pour assister Monsieur le Président Sieveking.

Des propositions m'ont déjà été faites par les diverses délégations nationales. Je me permets de nommer les divers membres désignés pour représenter les Associations nationales, comme vice-présidents de cette Conférence. Ce sont :

<i>Allemagne</i> :	GEO PLATE, Président du Norddeutscher Lloyd.
<i>Angleterre</i> :	Lord Justice KENNEDY.
<i>Autriche</i> :	Dr. WORMS, conseiller.
<i>Belgique</i> :	M. BEERNAERT.
<i>Danemark</i> :	M. HINDENBURG.
<i>États-Unis</i> :	M. BRADFORD.
<i>France</i> :	M. AUTRAN.
<i>Grèce</i> :	M. GEORGE STREIT.
<i>Hongrie</i> :	M. DE NAGY, Secrétaire d'Etat
<i>Italie</i> :	M. le Prof. BERLINGIERI.
<i>Japon</i> :	M. SUKETADA ITO.
<i>Norvège</i> :	M. OSCAR PLATOU.
<i>Pays-Bas</i> :	M. LODER.
<i>Rép. Argentine</i> :	M. BELGRANO.
<i>Russie</i> :	M. OVTCHINNIKOFF.
<i>Suède</i> :	M. AFZELIUS.

Messieurs, Je pense que je répons au sentiment unanime de l'assemblée, — sauf les observations que vous pourriez avoir à faire — en considérant ces Messieurs comme élus.

Aucune observation n'étant faite. je les considère comme nommés, vice-présidents de la conférence (*Applaudissements*)

Il nous reste à désigner des Secrétaires-généraux qui sont appelés à assister M. le Président.

Je vous prie de bien vouloir porter vos suffrages sur M. ALFRED SIEVEKING, sur M. RÖSING, sur M. VERNEAUX et sur M. LOUIS FRANCK joignant encore M. le Dr. FINKE et M. le Dr. SCHULZE-SCHMIDT. (*Applaudissements.*)

Ces Messieurs sont donc nommés Secrétaires généraux. Comme secrétaires-adjoints, je vous prie de bien vouloir désigner ceux qui ont assisté la Conférence dans les travaux préliminaires, MM. JEAN HOSTIE et FRÉDÉRIC SOHR.

Messieurs, la tâche du Bureau est accomplie. Il ne nous reste qu'à vous remercier d'être venus si nombreux à cette réunion qui, j'en suis sûr, aura de grands résultats.

Präsident Dr. SIEVEKING. — Meine geehrten Herren ! Ich sage Ihnen meinen herzlichsten Dank für die Freundlichkeit, dass Sie mich wieder zum Vorsitzenden der Konferenz erwählt haben. Ich hoffe, dass es mir mit Hilfe Ihrer Nachsicht und mit Hilfe der Unterstützung von Seiten der Herren Vizepräsidenten, auf die zu hoffen ich das Recht habe, gelingen wird, meiner Aufgabe gerecht zu werden.

Ich will Sie, meine Herren, nicht mit vielen Worten aufhalten : es würde schade sein, wenn wir die kurze Zeit, die uns bemessen ist, noch verkürzen wollte durch Reden, die sich nicht auf den Gegenstand der Beratung beziehen. Aber Sie werden es mir nicht verdenken, wenn ich nach

den vielen Jahren, während denen ich Teilnehmer dieser Konferenz gewesen bin, und nachdem Sie mich wieder einmal zum Vorsitzenden ernannt haben, mir die Frage vorlege : Wird diese Konferenz dazu beitragen, die grosse Aufgabe ihrer Vollendung näher zu bringen, die wir uns gesteckt haben? Und da muss ich sagen, dass ich mich noch keiner Versammlung erinnere, wo das Gefühl in mir so lebendig gewesen ist wie diesmal, dass wir einen grossen Schritt vorwärts tun werden, um der Vollendung unserer Aufgabe näher zu kommen. (*Beifall*). Es ist schon 20 Jahre her, da versammelten sich Vertreter der zivilisierten Völker in Washington, um die Regeln über das Ausweichen der Schiffe zu beraten. Bei der Eröffnung jener Versammlung sprach der Staatssekretär Blaine das zuversichtliche Wort : The law of the ocean can be one, the law of the ocean must be one. Seitdem haben wir das Wort auf unsere Fahne geschrieben : The Law of the ocean must be one. Aber nachdem wir so oft zusammengekommen sind, glaube ich hinzufügen, zu können, dass wir alle der Ueberzeugung sind : The law of the ocean can be one. In der Tat ist die Sache nach meinem Dafürhalten nicht so schwierig, wie man sie auf den ersten Blick ansehen könnte. Es handelt sich nicht um politische Fragen, es handelt sich nicht um nationale Vorurteile, es handelt sich nicht darum, dass Prinzipien durchgesetzt werden : es handelt sich einfach um eine Frage der Zweckmässigkeit. Zweckmässig ist, dass auf dem Gebiete des internationalen Seerechts Einigkeit unter der zivilisierten Welt herrscht; das verlangt jetzt die ganze zivilisierte Welt. Und dass sie erreicht werden kann, wird einfach dadurch bewiesen, dass die Fragen, über die wir verhandeln, eben Fragen sind, über die eine Vereinbarung leicht zu erzielen ist, wenn man von Begeisterung, Nachgiebigkeit, Verträglichkeit erfüllt ist, sich

aufopfert, sich vielleicht auch von lange gehegten alten Ueberlieferungen und Vorurteilen zu befreien sucht, um sich der grossen Aufgabe zu widmen und das Ziel zu erreichen. Und, meine Herren, im Hinblick auf unsere Vergangenheit glaube ich auch hinzufügen dürfen, dass dieser Weg auch wohl zu beschreiten ist. In unsern Versammlungen hat bisher immer dieser Geist der Verträglichkeit geherrscht. Und wenn ich mir diese grosse Versammlung ansehe, so sehe ich darunter viele alte Freunde, Angehörige der verschiedensten Nationalitäten, die schon lange gewöhnt sind, mit einander in diesem Geist der Verträglichkeit zu arbeiten. Da handelt es sich nicht darum, dass ein Jurist seine Neigung durchzusetzen besonders beflissen ist, wie sonst, wo ein Jurist, wenn er das Recht sucht und Recht zu sprechen hat, leicht geneigt ist, zu sagen « ich habe recht ». Das ist das nicht, was unter uns hergebracht ist, sondern wir fragen: Was verlangen die Kreise, die bei der Sache interessiert sind? Und das sind eigentlich die Juristen gar nicht, sondern es sind nur die Kaufleute und, um es etwas banal auszudrücken, die Leute, die das Geld zu bezahlen haben, vor allem die Assekuradeure, die Eigentümer der Ladung, die Reeder. Für sie sollen die Gesetze gemacht werden, sie werden dadurch berührt. Uns Juristen ist es eigentlich gleichgültig — ob wir auf dem Richterstuhl sitzen oder als Anwälte plädieren — ; wir Richter entscheiden nur nach dem Gesetz, und wenn Anwälte plädieren, so plädieren sie nur, was mit dem Gesetz verträglich ist. Aber wir hören auf die Stimmen der Kaufleute, der Reeder, der Assekuradeure. Und wenn Sie die Kreise fragen, werden sie sagen: Vor allem kommt es darauf an, dass wir etwas Einheitliches haben; was da erreicht wird, dem passt sich nachher der Verkehr an, und schliesslich bekommt der Assekuradeur seine Prämie und der Assekuradeur zieht seinen

Geldbeutel. Also wenn ich mir diese Konferenz ansehe und an die Vergangenheit denke, die wir hinter uns haben, so habe ich die beste Hoffnung, dass wir in diesem Geiste einen grossen Schritt vorwärts tun werden.

Die Vergangenheit ! Ich will Sie nicht mit langen Worten darüber aufhalten, aber eins möchte ich sagen : welchen Dank wir denen schuldig sind, die vor allen Dingen diese Bewegung ins Leben gerufen haben. Da erinnern wir uns des leider zu früh verstorbenen belgischen Staatsmanns Jacobs und des glücklicherweise noch unter uns in aller körperlicher und geistiger Frische weilenden Ministers Beernaert. Da gedenken wir, wie unsere Erfolge vor allem der belgischen Regierung zu danken sind, indem sie vor anderen Regierungen — die sich ja so schwer bewegen lassen, auf dem Gebiet des Privatrechts tätig zu sein, weil sie so viele andere, wichtigere Dinge zu tun haben — sich durch ihre Vertreter an diesem grossen Werke beteiligt. Und wenn wir diesmal in dieser alten Hansestadt Bremen tagen, da ist es ja denen, die unsere Vergangenheit kennen, noch in lebhafter Erinnerung, welcher grossen Anteil Bremen daran gehabt hat, die grosse Bewegung ins Leben zu rufen. Denn der uns unvergessliche Vorsteher des Norddeutschen Lloyd, H. H. Meier, war es, der vor allen Dingen durch seine Erfahrungen und seine geistige Kraft die Bewegung in Deutschland angeregt und populär gemacht hat. Und Bremen als Hansestadt, als grosse Verkehrsstadt, als eine Stadt, wo alle diese Interessen ihre Vertretung finden, wo man alle zivilisierten Sprachen spricht, wo man das Fremdenrecht kennt, wo man allen Ansichten zugänglich ist und ein offenes Ohr leiht, wo mit einem Wort man sich für diese grosse Sache mit ganzer Seele interessiert, da ist ganz gewiss ein günstiger Boden, um unsere Arbeiten fortzusetzen. (*Beifall*).

So, meine Herren, lassen Sie mich die Verhandlungen

dieses Kongresses eröffnen. Halten Sie immer — ich sage das besonders den Jungen, die ja bald unsere Nachfolger sein werden — halten Sie immer das Panier hoch: The law of the ocean must and can be one. (*Lebhafter Beifall. Händeklatschen*).

DISCUSSION

Wir treten in die Beratungen ein. Da möchte ich bemerken in Bezug auf die Diskussion: es wird jeder in seiner Sprache sprechen können, es wird jeder englisch, französisch, deutsch, vielleicht auch italienisch und griechisch sprechen können, und es wird wohl nicht eines Dolmetschers bedürfen, wenn es nicht besonders gewünscht wird. Dann ist es sehr erwünscht, dass die Redner sich auf eine gewisse Zeit beschränken: es ist zwar nicht ausdrücklich im Statut vorgesehen, aber es ist Herkommen, dass von einem Redner nicht über zehn Minuten gesprochen wird.

I should like to say that what we are used to in carrying on these discussions is that every one is allowed to speak his own language, French, English or German, because we presume that everybody understands those three languages, and we do not need any interpreter, which, of course, serves to shorten the proceedings. Then the custom is that every speaker is requested not to speak for longer than ten minutes, and not to repeat unless in reply. Then, of course, as to the discussion and resolutions which are to be taken, if there is any sort of unanimity or certainty of a certain opinion prevailing there are no votes taken, but if there are questions with regard to the suggestions which are raised, and there is no decision,

then the votes are taken by the delegations of the several Nations.

ARTICLE I

Il n'est dû aucun fret pour les marchandises qui n'arrivent pas à destination, sauf les cas ci-après exceptés. Save as hereinafter provided, no freight is payable in respect of goods which do not reach their destination.

M. LOUIS FRANCK. — M. le Président nous demande de nous occuper des trois premiers articles de l'avant-projet de traité sur le fret en même temps et de leur consacrer une espèce de discussion générale, sauf ensuite à scinder les questions et à discuter les points de détail.

Je demande la parole pour résumer sommairement l'état de la question.

Vous savez que l'on s'est demandé s'il était d'un intérêt général suffisant de traiter dans nos conférences ces questions du Fret. Des objections se sont fait jour. On s'est demandé si, étant donné que les parties contractantes peuvent à cet égard exprimer leurs volontés dans leurs conventions, il ne convenait pas de s'en rapporter à elles.

Mais, Messieurs, la pratique montre que l'on ne peut point transformer chaque contrat d'affrètement en un véritable code contenant toutes les règles qui devraient faire l'objet d'une convention internationale. Les navires d'ailleurs se réfugient fréquemment dans des ports de relâche qui n'ont pas été prévus par les parties au moment où elles ont contracté et par conséquent les conflits de lois sont nombreux et leurs conséquences peuvent être graves. Leurs conséquences peuvent être d'autant plus graves que de la solution de ces questions dépend la question de savoir quel est celui des intéressés qui doit faire assurer le fret.

S'il est donc opportun qu'au point de vue international ces questions soient solutionnées, il convient de se demander dans quel sens elles peuvent l'être et dans quel sens on a la plus grande certitude de rencontrer l'adhésion générale.

Vous savez que deux systèmes sont en présence : le système de la loi anglaise qui a été adopté par plusieurs législations continentales et le système de la plupart des autres législations du Continent et notamment de la loi allemande, des lois scandinaves et de la loi française.

Dans le premier système, si la marchandise n'arrive pas à destination, en principe aucun fret n'est dû. Le contrat est considéré comme indivisible ; l'armateur ne gagne son fret que s'il transporte la marchandise à l'endroit même où il a promis de la délivrer.

L'autre système, se guidant par des considérations d'équité accorde au contraire à l'armateur, quand le voyage est interrompu sans sa faute, un fret qui est tantôt un fret de distance, calculé d'après le nombre de milles parcourus, tantôt un fret d'équité dans le calcul duquel on tient compte de toutes les circonstances du voyage.

Votre Commission de Paris, après une laborieuse discussion, c'est prononcée en principe en faveur de la solution anglaise et vous propose de dire que si la marchandise n'arrive pas à destination, aucun fret ne sera dû. Mais elle a pensé qu'il convenait d'apporter à cette règle certaines exceptions.

Il est d'abord évident que si le transport est interrompu par la faute du propriétaire de la cargaison, le fret continuera à être dû.

Ensuite, une fois qu'on aura admis ce principe, il apparaît immédiatement qu'il y a des cas qui sont dans une large mesure assimilables à la faute du propriétaire de la cargaison. Ce sont les cas où l'interruption du voyage

est due, sinon à sa faute personnelle, du moins — si l'on peut s'exprimer ainsi — à la faute de la marchandise, parce que, par vice propre, par la nature propre de la cargaison embarquée, la marchandise ne peut être transportée jusqu'à destination. On a estimé que dans ces cas encore, le fret ou un fret équitable, devait être dû.

Alors on s'est trouvé devant une autre question qui aujourd'hui est fréquente et donne lieu à de graves controverses. Voici une marchandise avariée par fortune de mer. Le capitaine relâche à un port d'escale et il se trouve devant la situation suivante : S'il obéit à l'intérêt du propriétaire de cette marchandise, il la fera vendre au lieu où elle se trouve, parce que s'il la transporte jusqu'au port de destination, les avaries s'aggraveront et il se peut que la marchandise ne vaille plus rien. S'il obéit au contraire à son propre intérêt — de gagner le fret — il achèvera le voyage.

La Commission de Paris a pensé qu'ici encore il y avait une exception à apporter à la règle et qu'il convient d'accorder également un fret d'équité.

Ce sont là les considérations essentielles que j'ai tenu à vous signaler.

* * *

I might briefly repeat in English what I have said on this matter. Taking together the resolutions of the Subcommittee which has met in Paris, I said something like this. It has been thought that these questions of freight were not a work of international or inter-State agreement seeing that it was dependent upon the parties to arrange for contracts accordingly, but it must be borne in mind that when parties are arranging at a given port, they do not know what the law of a port refuge is where the ship

may afterwards be taken, and, therefore, they may have to face a law totally different from that about which they were thinking when they made the contract. Further, you cannot make a very full code containing all rules, you have to contemplate an arrangement between the two conflicting systems of law existing in this matter, on the one hand the British system, on the other hand the system of most Continental Nations, but not all. The contract of freight in Britain is a contract where the shipowner has contracted to deliver the goods at a given port. If he does not deliver the goods there, then he is not paid his freight because he has not earned his freight. The continental system of law in many Nations on the Continent is to say that some service has been rendered by the shipowner in that case, and that he ought to get some freight, but his freight is to be assessed in various ways. In one set of laws it is said : « We will see how much mileage has been made by the ship and make a proportion, and give a *pro rata* freight. » In other laws it is said : « There ought to be some freight, and we ought to take into consideration not only the question of miles, but all the other circumstances. » Between those two systems the Committee in Paris suggest there is reason in a compromise, and they adopt as a principle the basis of the British law, consequently they take the view that if the goods are not carried to the port of destination no freight is due except as is admitted in various Capitals. Then the interpretation of the contract is by shipment of the cargo. Then also with regard to any negligence of the owner of the cargo because the goods were of a certain nature and could not reach the port of destination where the ship is ready to go ; it has been admitted in Paris that it was equity that freights should be due there — the shipowner

was ready to comply with his contract, but the cargo could do it. Then there is a case of goods sold in the port of refuge on account of their damaged condition, it being to their interest that they should be sold. The consequence to the shipowner in the case of an English ship continuing the voyage would be that the goods would lose any value they still had. It was thought by the sub-Committee in Paris that the Captain when selling the goods at the port of refuge was doing what the owner of these goods would do himself if he had been on the spot, and, that, therefore, it was equitable to give him part of the freight. These are the principal exceptions mentioned. I may just add what I had forgotten that it is admitted by the sub-Committee in Paris as a matter of equity that the shipowner has always the right to forward the goods to the port of destination, and when he has done so he would naturally be entitled to his freight. These are the brief remarks I wished to make.

M. LE PRÉSIDENT. — La discussion est ouverte. Je prie les orateurs de me dire à haute voix leur nom.

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PRÄSIDENT. — Die Herrn Redner können zunächst über das Ganze sprechen, und wir werden später, wie es sich aus der Diskussion ergibt, die einzelnen Fragen zu erörtern haben. Die Grundlage bildet der Bericht der Kommission.

Herr Landrichter Dr. SCHAPS (Hamburg). — Meine Herren, die Hauptfrage, welche die Kommission von Paris beschäftigt hat und über die wir jetzt zu beschliessen haben werden, ist die Frage der Distanzfracht. Wie Herr

Franck bereits ausführte, bestehen zwei Systeme, das englische, welches für einen Teiltransport der Güter einen Frachtanspruch leugnet, und das kontinentale, welches eine Teilvergütung im wesentlichen nach der zurückgelegten Entfernung, gewährt. In meinem der Konferenz von Venedig vorgelegten Rapport hatte ich die Einführung einer Billigkeitsfracht (Fracht ex æquo et bono) vorgeschlagen. Veranlasst wurde ich dazu, weil sowohl das englische wie das kontinentale System in ihren Konsequenzen gewisse Unebenheiten aufweisen. Das englische System führt dazu, dass manchmal ein Verfrachter, der durch die teilweise Leistung des Transports den Ladungsbeteiligten grosse Vorteile gebracht hat, dafür absolut nicht entschädigt wird, während nach dem kontinentalen System unter Umständen der Ladungsbeteiligte, welcher durch einen Teiltransport nicht nur keinen Vorteil, sondern nur Nachteile gehabt hat, trotzdem die Fracht zum Teil bezahlen muss. Deshalb habe ich damals nach dem Vorbilde der Beschlüsse des Kongresses von Antwerpen den Vorschlag gemacht, Billigkeitsfrachten einzuführen, d. h. in jedem Falle dem Verfrachter einen Frachtanspruch nur zu geben, wenn und soweit die Ladung durch den Teiltransport einen Vorteil erlangt hat. Zu einem im wesentlichen gleichen Resultat waren, unabhängig von mir, auch der französische, italienische und belgische Berichtersteller gekommen. Bei weiterer Prüfung bin ich indessen zu der Überzeugung gelangt, dass diese Lösung den Bedürfnissen der Praxis nicht entspricht. Es würde jedesmal über die Frage, ob und inwieweit eine Billigkeitsfracht geschuldet wird, Streit entstehen, es würde also zu komplizierten Prozessen kommen, die man ja gerade vermeiden will. Deshalb habe ich in Paris befürwortet, nicht die dort von der französischen Association vorgeschlagene Billigkeitsfracht anzunehmen, sondern sich den Standpunkt des

englischen Rechts anzueignen. Das englische System hat zunächst den Vorzug juristischer Konsequenz. Ich habe es, in Venedig, nicht, wie die Venediger Protokolle, S. 711, sagen, als « anti-juridique », sondern als « trop juridique » bezeichnet. Der Frachtvertrag ist eine *locatio conductio operis*: nach bürgerlichem Recht aber erhält der *conductor operis* Zahlung nicht für seine Bemühungen, sondern für das hergestellte Resultat. Denselben Standpunkt nimmt das englische Recht für den Seefrachtvertrag ein, indem es den Verfrachter eine Vergütung für Teiltransporte abspricht. Das englische System giebt ferner ein praktisches, einfaches, ein leicht anwendbares Recht, ein Recht, das keinen Zweifel lässt, und, last not least, ein Recht, durch das kein Mensch geschädigt wird. Man muss davon ausgehen, dass heut alles versichert ist, die Fracht ebenso wohl wie die Ladung. Ein grosser Hamburger Assekurateur, mit dem ich die Frage besprach, sagte mir etwa folgendes: « Heut bin ich Frachtversicherer, morgen Ladungsversicherer. Wenn man die Distanzfracht abschafft so muss ich zwar *heut* dem Verfrachter die ihm entgangene Fracht ersetzen, *morgen* aber brauche ich den Ladungseigner nicht mehr für die Distanzfracht zu entschädigen, die er dem Schiffe hat zahlen müssen, ohne von dem Teiltransport irgendwelchen Vorteil zu haben. Was ich heut verliere, gewinne ich morgen: *das gleicht sich aus.* »

Aus diesen Gründen, meine Herren, hat die Pariser Kommission beschlossen, Ihnen die Abschaffung der Distanzfracht vorzuschlagen. Alle Seerechtsvereine, mit Ausnahme des norwegischen, haben sich diesem Ergebnis angeschlossen, und ich hoffe, dass dasselbe auch Ihren Beifall finden wird. Auf Einzelheiten will ich vorläufig nicht eingehen, es handelt sich zur Zeit nur um die prinzipielle Frage.

(Traduction orale par M. LOUIS FRANCK)

M. le Dr. Schaps a expliqué à la Conférence quelles étaient les raisons pour lesquelles il était d'abord partisan du fret d'équité ; mais il a signalé ensuite que les difficultés pratiques l'ont amené à préférer l'autre solution. Il a dit que l'appréciation de ce qui était un fret d'équité pouvait donner lieu à des litiges dans chaque cas et qu'en somme le système anglais qui consiste à ne pas accorder de fret si la marchandise n'arrive pas à destination, lui paraît préférable.

Il a ajouté ce renseignement important que s'étant informé auprès d'assureurs considérables à Hambourg sur le point de savoir s'il en résulterait une augmentation des primes, il a reçue une réponse négative.

LORD JUSTICE KENNEDY. — Monsieur le Président, I wish at the beginning to say on behalf of those who come from the British branch of the Committee that, as you are aware by the letter that came, we are not in a position, we have not been in a position, to formulate any view upon this matter, and, unfortunately, owing to the time at which it was found necessary to hold the Commission of Paris, the resolutions that were there arrived at were resolutions which were arrived at without the presence of any British representatives. We all regretted it very much, but it was one of those accidents of time which could not be avoided. I, therefore, propose quite shortly within the time that is limited, to state our view. In taking these three Articles together there is sufficient matter to occupy as many hours as I shall occupy minutes, but I propose, quite shortly, with great respect, to put this Conference in possession of our general view which certainly would not accept a great deal of the second, or part of the third Articles. According to the law of my Country we say that there being, as the last speaker has said, a clear contract between the shipowner and the shipper, by the shipowner to carry the goods to a destination, and by the shipper to pay the shipowner for carrying the goods to the destina-

tion, that unless the contract is fulfilled by the shipowner the logical, sound and juridical principle is that the other side of the contract has not to be fulfilled by the payment of freight. If the shipowner carries the goods to the destination, then he is entitled to his freight; if he does not carry them he has not performed that which is a condition precedent to his right to payment. That is our general principle, and that is affirmed in Article 1 of this Resolution, and to that, so far, we agree. Of course, in all these cases the discussion, in my humble judgment, is rather academic because it is always a matter of special contract by charter party in the case of the chartering of a whole ship, and in the case of general ships, like large liners for example, they have regular set terms of contract to which the shipper subscribes in every case. But assuming for a moment that principle to be right, of course, if the shipper actually prevents the shipowner after the cargo has been loaded from carrying the cargo to its destination, and so performing his contract, the freight remains payable because but for the actual wrong, and default of the shipper, the freight would have been earned on the goods that had been loaded. But it must be an actual prevention. If the goods do not arrive at the end of the voyage no freight is payable, in the absence, of course, of special contract, assuming always that the shipper has done nothing to prevent the performance by the shipowner of his contract. There are cases, of course, which are referred to I presume in Article 2 in which even under our law a *pro rata* freight becomes payable, but particularly for the sake of brevity I will state it thus: it is only payable when the merchant, or the merchant's agent voluntarily accepts delivery at that place. If he does so we hold him liable to pay a *pro rata* freight that must be arrived at under the consi-

deration of all the circumstances, but except in that case we do not allow a *pro rata* freight. It is the whole freight that is due upon so much as is carried to its destination. Supposing that part is not carried to the destination, and part is, in the absence of a special contract freight will be payable upon the part that is carried, but not, of course, upon that which has not reached the destination. We could not admit Article 2, or any part of it, I think, according to English law as it stands, and I am bound to say, expressing now only my own opinion, that I think it would be very dangerous and unsound to accept that Article 2 because of dealing with the question of general average, which the first deals with. General average forms no part, it seems to me, of any arrangement. That is to be made by law for the relation of the parties. It is a matter dealt with in general average, and I cannot see myself how it ought to constitute any exception. As regards the cargo which has perished in course of the route that is a matter which simply falls under this head which I have already stated; the cargo has not arrived at its destination, not through the fault of the shipowner, but because owing we will say to misfortunes at sea, or the character of the cargo itself, or owing to the time that the voyage has occupied, and I will assume without fault of the shipowner in stowage, some part of the cargo has not arrived at its destination. There is this always to be borne in mind: that according to our law, if the cargo arrives at its destination in specie, although damaged, the shipper has to pay the freight. The shipowner does not lose his freight because the goods get damaged in the transit, provided always that the goods in a commercial sense arrive, and are delivered at the end. To give merely a concrete instance, suppose for a moment fruit arrives — an actual case that has been decided — in such a state

that it would be good only, we will say, for manure, or for some purpose not the ordinary purpose of the fruit, that ought to be treated, according to the last decisions of our Courts, as goods that have not arrived at all. In the same way where cement was the cargo, and unfortunately it got covered with water before the end of the voyage, and instead of remaining cement had become hard stone, it was not cement that was delivered in any commercial sense. On the other hand if a cargo arrives merely damaged, but still in the mercantile sense an article such as was shipped though a damaged article, freight is equally payable, as it would be if it had arrived perfectly sound. Of course, if damage is done to it during the voyage through something which ends the contract between the parties, as a default of the shipowner, there would be a right simply of claiming compensation in damages for the injury that was done.

The third case is the case of goods that are sold in course of the voyage, from some misfortune or through their nature, or through the fortune of the sea. I should say that our view is perfectly right, namely, that if the ship calls at a port and the shipowner by his captain sells the goods in the course of the voyage, it is the shipowner who has put an end to the possibility of performing the contract. He has always a right, if he puts into a port of refuge, to claim to carry on the goods, in the absence of contract to the contrary, on another bottom. He is always entitled to say to the shipper « I am entitled to carry on these goods and earn my freight ». Of course with reasonable men a bargain very likely will be made, if it is a good thing not to carry the stuff further, as to the terms upon which that should be done. But as long as the goods are there and the shipper does not say « You shall not carry them on », the captain is entitled to carry them on by

his own ship and earn the freight, or carry them on on another bottom and earn the freight, but he cannot turn round and say « Pay me a *pro rata* freight which is not in our contract, or pay me the whole freight which I have not earned because I have not carried to the destination », merely because it may be desirable from a mercantile point of view that the voyage should terminate there. And that is not unreasonable. It is after all, if one may say so, when the ship has put in, owing to its own misfortunes, the ship's own fault, in the sense at any rate that it is not the fault of the shipper. The captain has the right to mend his ship and carry on his goods, and the fact that it may be convenient and sensible to both parties to sell there does not alter the nature of the contract which was originally made. I may just add that at the end of Article 2 there is an article, as I have it in the Frensch, that for the merchandise that is used or sold in the course of the voyage, or for the pressing wants of the ship, freight is due. I am very sorry to say I cannot understand the reasoning of that. Why, because the shipowner for his own wants sells goods, he should be entitled to freight I will say no more about because I do not follow it. It is said at the end he is to account for the value of the goods. I suppose it is only under very extraordinary circumstances that any honest shipowner would sell the goods entrusted to his charge, and assuming that he does so honestly he would no doubt have to account for the goods to the person to whom they belonged, whoever it is, and whether or not he should account for those goods at the price of the port of destination is a matter which I should like to have time to consider before pronouncing any opinion upon, or as to whether that is the way in which it should be done. Practically all these things are done by arrangement between the parties.

Article 3 is as to the ship being prevented from completing her voyage. Of course that I have already dealt with, and do not wish to say more about. If it is prevented from carrying the goods to the end by the fault of the shipper then, of course, the shipowner under the contract would be entitled to his freight.

With regard to the last part as to reshipping at a higher rate, I think our law is, — and I certainly should personally hold it just, — that you can never bind a man to pay more than the contract price. If you can reship only at the higher price as a matter of business the parties would correspond and settle it, but you certainly to my mind have no right, without the will of the owner of the goods, to say « I have contracted to carry your goods to Calcutta at 20 s. a. ton, I have a right to transship at Marseilles because of the misfortune of my ship, and I can only transship at a higher rate, and whether you like it or not, I will only carry your goods at a higher rate to their destination ». That I think would be an objection strongly felt. The only possible case is where the Captain absolutely without the power of communication did his best and might be considered as agent for the shipper.

(Traduction orale par M. LOUIS FRANCK)

Lord Kennedy nous a dit que le Comité anglais n'a pu prendre une décision formelle sur les différentes questions soumises à la Conférence; mais il a désiré exposer quelles sont d'après lui les seules solutions acceptables au point de vue anglais et conformes au droit anglais.

Le principe anglais est qu'entre l'affrèteur et l'armateur est intervenu un contrat parfaitement clair. L'engagement de l'armateur est de transporter les marchandises jusqu'à un port déterminé; il aura droit au fret s'il effectue ce transport; s'il ne le fait pas, il ne touche pas de fret. A cette règle, le droit anglais n'admet pas d'exceptions. Sans doute, s'il y a faute du chargeur, l'armateur touchera son fret; mais dans ce cas, il ne s'agit pas d'une exception véritable puisqu'il dépend alors du chargeur que l'armateur ne puisse exécuter son obligation.

Sans doute, il peut encore arriver que le voyage étant interrompu, un nouveau contrat intervienne, soit expressément, soit tacitement et que les deux parties soient d'accord, ou qu'on le présume; par conséquent on exécute le contrat dans d'autres conditions. Dans ce cas encore, le droit anglais peut accorder un fret *pro rata itineris*. Mais en dehors de ces cas, il n'y a pas lieu de déroger à la règle générale. S'il s'agit de marchandises péries par vice propre, la jurisprudence anglaise va aussi loin qu'elle refuse le fret, quand même la marchandise arrive à destination, mais dans un état substantiellement différent de ce qu'elle devrait être normalement d'après les usages du commerce. et Lord Justice Kennedy a cité l'exemple de fruits qui arrivent dans un tel degré de pourriture qu'ils ne peuvent plus valoir ni être considérés comme fruits, mais seulement comme engrais. Il en est de même quand du ciment arrive à destination à l'état de pierre compacte : dans ce cas, le droit anglais, fidèle à son principe, refuse le fret.

Si la marchandise est vendue en cours de route, — et sans doute il peut y avoir des cas où cette mesure est urgente, — le capitaine n'a pas exécuté son engagement et ne touche pas de fret; mais son droit est d'achever le voyage. De même si la vente de la marchandise est faite pour les besoins du navire, aucun fret ne peut être dû.

Quant au droit de réexpédier la marchandise par un autre navire, Lord Kennedy reconnaît que l'armateur le possède; seulement l'exercice de ce droit ne doit jamais se traduire par une augmentation de fret, puisqu'on ne peut imposer à quelqu'un le paiement d'un prix qu'il ne s'est pas engagé à payer.

Herr FRANÇOIS DE NAGY. — Das Komitee in Ungarn, l'Association hongroise, hat sich mit dieser Frage eingehend beschäftigt. Ausserdem war ich in der Lage, schon vor beinahe 20 Jahren in dieser Frage Stellung zu nehmen infolge eines Auftrages vom ungarischen Ministerium behufs Ausarbeitung eines Gesetzentwurfs über das private Seerecht. Diesen Entwurf habe ich dann wieder umgearbeitet. Bei beiden Gelegenheiten habe ich mich davon überzeugt, dass der Standpunkt des englischen Rechts, wie ihn die Pariser Konferenz aufgestellt hat, der richtige ist. Wir stellen uns prinzipiell auf die Seite des von der Kommission in Paris gemachten Vorschlages. Nur möchte ich noch eins hinzusetzen. Es ist uns trotzdem unmög-

lich, dieses Prinzip zu akzeptieren, wenn es in seiner ganzen Schroffheit durchgeführt werden soll. Die Kommission schlägt ja selbst gewisse Ausnahmen vor. Diese Ausnahmen beziehen sich aber in der Hauptsache darauf, dass eine Ware zugrunde geht und deren Verlust in Havariégrosse zu vergüten ist, oder wenn sie für die Bedürfnisse des Schiffes verwandt wird. So erleidet das Prinzip schon Ausnahmen. Es handelt sich da um Fälle, wo die Ware nicht mehr existiert. Mir dagegen steht ein Fall vor Augen, wo die Ware noch vorhanden ist, aber in einem Zwischenhafen ausgeladen werden muss. Die Kommission will da keine Distanzfracht zulassen, die Fracht soll nur bezahlt werden, wenn die Ware nach dem Destinationshafen befördert wird. Hier ist ein Punkt, in dem ich eine grosse Ungerechtigkeit sehe, respektive hier können wir uns dem Prinzip nicht ganz unbedingt anschliessen, sondern wir glauben, dass die Gerechtigkeit erfordert, dass hier eine gewisse Ausnahme vorgesehen wird. Die Distanzfracht für solche Fälle zuzulassen, ist nicht zu verlangen, denn die Berechnung der Distanzfracht geschieht zu mathematisch und diese mathematische Berechnung könnte wieder zu Ungerechtigkeiten führen, und unter Umständen könnte bei Zahlung der Distanzfracht, wenn sie für die Hälfte oder einen grösseren Teil der Strecke bezahlt wird, der Befrachter weniger Nutzen haben, als wenn die Ware zugrunde gegangen wäre. Es kann auch vorkommen, dass die Ausschiffung der Ware in einem Zwischenhafen entschieden zu Nutzen des Befrachters ist, wenn es z. B. möglich ist, die Ware in dem Zwischenhafen ebensogut zu verwerten als in dem Destinationshafen, oder wenn die Weiterexpedition zu einem billigeren Preise geschehen kann als die ganze Route gekostet hätte. In solchen Fällen halte ich es entschieden für ungerecht, wenn das Prinzip schroff durchgeführt wird, dass der Schiffseigentümer gar nichts zu fordern

hat, wenn die Ware in einem Zwischenhafen ausgeladen wird. Ich glaube darum, dass es notwendig ist, resp. ich gebe anheim, den Entwurf in einer Form durchzuführen, die akzeptabel ist. Prinzipiell bin ich damit einverstanden dass der Befrachter nichts zu bezahlen hat, wenn die Ware nicht in dem Destinationshafen anlangt; wenn der Fall aber so liegt, dass der Schiffer, der die Ware in einem Zwischenhafen ausgeladen hat, beweisen kann, dass diese Ausschiffung zum Nutzen des Befrachters geschah, dass dadurch, dass die Ware bis zu einem gewissen Punkte geführt ist, der Befrachter einen Nutzen gehabt hat, so muss der Schiffer in irgend einer Weise entschädigt werden. Also insofern der Schiffer beweist, das ein gewisses Quantum von Nutzen für den Befrachter erreicht worden ist, so muss der Befrachter verpflichtet werden, ihm soviel von der Fracht zu bezahlen, als es dem Nutzen des Befrachters entspricht. Allerdings ist das in gewisser Beziehung wieder eine Distanzfracht, aber keine Distanzfracht auf mathematischer Grundlage, sondern auf der Grundlagen des erzielten Nutzens. Hat der Betreffende gar keinen Nutzen vom Löschen der Ladung in einem Zwischenhafen, so hat er gar keine Fracht zu zahlen, beweist der Schiffer aber, dass der Befrachter Nutzen davon gehabt hat, dass die Ware in dem Zwischenhafen ausgeschifft ist, dass die Ware verkauft werden kann, zu einem Preise der dem für den Destinationshafen bestimmten entspricht, oder dass die Weiterexpedition der Ware vom Zwischenhafen nach dem Destinationshafen zu einem ebenso billigen oder noch billigeren Preise erfolgt ist, dass also an Fracht gespart ist, so muss allerdings die Fracht zum Teil bezahlt werden. Das ist der Standpunkt, den wir eingenommen haben. Wir halten also, wenn auch nicht eine absolute Distanzfracht, so doch eine gewisse Entschädigung des Schiffers für gerechtfertigt. Den prin-

zipiellen Standpunkt der Kommission können wir also nur empfehlen, aber nur unter dem eben gemachten Vorbehalt. Die Textierung meines Antrages muss ich mir vorbehalten für den besonderen § 3, da hier die Frage nicht zu entscheiden ist. Das Prinzip ist in § 1 ausgesprochen. Die Ausnahmen in § 2 beziehen sich auf Fälle, wo die Ware zugrunde geht, die Fälle, die ich im Auge habe, würden in § 3 zu regeln sein, und ich behalte mir vor, einen dahingehenden Antrag für die Nachmittagsitzung zu formulieren.

(Traduction orale par M. LOUIS FRANCK)

M. de Nagy est d'accord en principe avec la règle que si la marchandise n'arrive pas à destination, le fret n'est pas dû, mais il signale qu'il y a lieu de faire une exception, par exemple lorsque la marchandise a dû être débarquée à un port de relâche, un service sérieux a été rendu à la marchandise par le transport accompli jusque là. Il ne faut pas que la règle « pas de fret de distance » permette au chargeur de profiter du service réel rendu sans rétribuer l'armateur. et M. de Nagy signale notamment que s'il n'y a qu'une petite différence de fret à payer pour la réexpédition, il ne faut pas qu'on permette au chargeur de retirer la marchandise, comme l'article 3 semble le permettre.

Enfin, il désire que quand on fixera le fret qui dans ces cas exceptionnels sera payé ailleurs qu'au port de destination, on tienne compte de toutes les circonstances; que ce fret ne corresponde pas simplement à la distance, mais qu'il soit en rapport avec le service rendu.

JACQ. LANGLOIS, (Anvers), — D'après la discussion à laquelle j'assiste maintenant, on croirait que nous n'avons rien fait jusqu'à présent.

Nous avons institué une Commission qui, à mon avis, a fait un travail remarquable. Elle est parvenue à résumer certainement d'après le désir de la grande majorité, ce que nous voulions. Les quelques articles que l'on nous propose me semblent résumer complètement la question.

Je sais parfaitement qu'en Angleterre, en Allemagne, et

du reste dans chacun des pays maritimes, nous avons une manière spéciale de considérer ces questions très intéressantes du fret. Mais c'est précisément pour en venir à cela que les Commissions ont été instituées.

Vous avez devant vous un travail qui, pour moi, est remarquable et je proposerais à la Conférence tout bonnement de l'admettre avec une petite modification au second paragraphe de l'article 2 : « Les marchandises *employées ou* vendues en cours de voyage ».

Mais il y a encore d'autres cas qui peuvent se présenter ; des marchandises peuvent être abandonnées ou laissées en arrière en cours de voyage et je crois que c'est un point qui mérite votre attention.

Sauf ces modifications, je crois que nous ne pouvons mieux faire que d'adopter le texte proposé.

JUDGE EDWARD C. BRADFORD (U. S. A.) — Monsieur le Président and gentlemen, I assume, and from the personnel of this Conference I think I have the right to assume, that we have met here in a spirit of concession. We have met here to do, so far as we have the ability, what will accord with equity and justice, not to register the existing law of any one nation, but as far as in us lies to agree upon what is just and equitable. I assume, and I think I have a right to assume, that that is the position of the members of this Conference. Now I must confess that I find a great deal that is good in these two first Articles and I find something that I cannot approve of. I think that the first Article should be amended. I think that one of the sub-divisions of the second Article should be struck out ; I believe that two of the other sub-divisions of the second Article should be somewhat amended, but I am utterly opposed, and I think that that is the attitude of my colleague, a representative of the United States, to deal

with these two Articles in a wholesale manner and disregarding them. I do not think that we can ignore them, It seems to me that justice requires a proper consideration of the labours of the Sub-Committee at Paris which will justify us in making, and in fact demand of us a careful consideration of those Articles in divisions *seriatim*, in order that we may reach what is wise and reject that which shall be found objectionable. Therefore it seems to me that in the interest of time and in order to economise time and in order to reach a more intelligent and satisfactory result, a far better method to pursue would be to take these Articles *seriatim*, and my proposition would be to take up first Article 1, and if that Article is objectionable we will vote it down, If it is unobjectionable we can pass it ; if it requires amendment we can amend it, and after we have dealt with Article 1 then we can take up Article 2 in its provisions and sub-divisions *seriatim*, and in case we are in favour of rejecting all of Article 2 then all we have to do is to go back to Article 1, and strike out the words, « save as hereinafter provided ». I think in that way we can make some progress, and we shall avoid an immense amount of confusion, and therefore I desire to offer this motion : « That this Conference do now proceed to consider Article 1 », leaving for the present the consideration of Article 2, and if that is the desire of this Conference then I wish to submit an amendment to Article 1. My motion is that we now proceed to take up Article 1 and consider that first.

THE PRESIDENT. — May I just say a few words in reply ? That was the very way we proposed to deal with these questions. Of course we cannot arrive at definite and sound resolutions without having examined all the details of the question, and we must take the details

seriatim, as Mr. Bradford says, one by one, and the details are contained in Articles 2 and 3. Article 1 merely gives as it were the principle. Articles 2 and 3 give the exceptions.

JUDGE EDWARD B. BRADFORD. — Would you allow me one moment, sir? I suggest the amendment that I intended to propose in Article 1 and you will perceive the relevancy of it. The amendment that I propose to Article 1. is this : strike out the period at the last and let it read as follows : « Save as is hereinafter provided, no freight is payable in respect of goods which do not reach their destination and any freight prepaid thereon shall be returned unless an agreement to the contrary has been made. » Now I should propose that amendment for this reason, and of course it would bear upon Article 2. It seems to me as a matter of justice and equity to be simply a corollary to Article 1 as proposed by the Sub-Committee, because if freight be not payable if the goods have not reached their destination except as hereinafter provided it would seem to me to be simply a corollary in point of equity and justice that in the absence of agreement, and of course an agreement makes law between the parties, freight prepaid should be returned in case the goods do not reach their destination; and therefore it would seem to me, as it seems to my colleague, eminently just that if Article 1 as proposed by the Sub-Committee at Paris should be adopted it should only be with an amendment requiring the repayment of prepaid freight. That is the only amendment I have to propose to Article 1. I may say that it accords with the maritime law as it exists in the United States to-day.

(Traduction orale par M. LOUIS FRANCK)

M. le Juge Bradford a dit en substance :

Nous sommes réunis ici dans un esprit de conciliation. Sans tout approuver dans les résolutions de la Commission de Paris, il y a beaucoup de solutions qui me paraissent bonnes; il convient donc de discuter les articles l'un après l'autre, de voter ce qui nous paraît acceptable, et d'amender ce que nous ne pouvons accepter.

M. Bradford propose ensuite d'amender l'article 1 en ajoutant que le fret payé à l'avance sera restitué s'il n'y a pas de convention contraire, dans le cas où aucun fret n'est dû.

THE PRESIDENT. — The way in which I wish to conduct the discussion is this. I merely wish to say that Mr. Bradford proposes to take the Articles seriatim and to go into the details. I believe as to that point that we have heard enough to know what the Conference is inclined to adopt in principle; we only want a general discussion on the broad principle of whether the Continental law, if I may call it thus, or the English system should be adopted — the distance freight system or the English system that no freight is due unless the goods are carried to their destination. It is impossible to arrive at certain positive results without now taking the proposals of the Paris Committee point for point, and the amendment of Mr. Bradford to Article 1 will of course have to be considered, but I believe the better way is to take Article 2 first and to leave out Article 1, and not to say that Art. 1 is put to the vote with amendments, but first to take the opinions of the Conference on the several exceptions mentioned in Articles 2 and 3, and then we can have a better grasp of the whole law which is to be adopted by this Conference. I believe that there are other points which must be considered than those which are mentioned in the report of the Paris Committee which are very important and which must be discussed. As far as I see it is very simple to say that if the contract which is a contract to

carry goods to their destination is not fulfilled, the equivalent, the freight is not to be paid, but it is quite clear that this statement does not exhaust the question because the adventures which may happen during the course of a voyage must be considered, and it must be considered whether those adventures which happen do not influence the principle of the system. That is the way in which Articles 2 and 3 are going, and I think it is the best way of proceeding to take those Articles 2 and 3 — the exceptions — first. Then, as I said, and other members may think of this, we must consider whether it would not be advisable to discuss the question under what circumstances the cargo owner is entitled, if the voyage is broken up by some accident, to say to the shipowner : « Now I want to take away my goods; » for example, if the ship cannot be repaired there is no question, and all the laws admit, that the master or the owner is not bound by the contract to ship the goods by another vessel. But he may say : « Well, that is an accident which prevents my vessel from carrying the goods on to their port of destination, » but then there are other cases where the vessel can be repaired, but not at reasonable expense. In those cases has the shipowner the right to say : « It will cost me more than it is worth and I will break up the voyage. » Is he entitled to freight or is he not? Certainly the answer would be in the negative. But then in case the vessel can be repaired and the owner is ready to repair it, but the repair would take a good length of time, would then the cargo owner be entitled to say, « Well, now, my whole enterprise is ruined if I have to wait for months for the repair of the vessel. I will take my cargo home by another vessel. » Is he then entitled to freight or is he not entitled to freight. Then again there is the case of war and the case of embargoes. If embargoes are laid on the vessel is the voyage broken up or must the

cargo wait, and how is the question of the duty and obligation of having to pay the freight influenced by those events? I think those are points which we shall have to consider if we intend to firmly grasp the full question about distance freight and about the consequence which events occurring during the voyage have on the obligation to pay freight. I only mention this because in the course of the discussion perhaps some one or other of the gentlemen present may follow upon these ideas and bring up some more amendments or some resolutions to complete the draft which is before us. Gentlemen, the time has arrived for a recess. We shall meet again at half-past two, when we shall take up the discussion of these details, having had a general discussion which will have thrown sufficient light on the subject to enable us to know the views of the members of the Conference.

(La séance est levée. — The Session is adjourned.)

SÉANCE DE L'APRÈS-MIDI.

AFTERNOON SITTING

THE PRESIDENT. — Now, Gentlemen, we will resume the discussion of this morning. We have had a general discussion, and broadly speaking I take it to be the meaning of this Conference that the principle of the English system is to be adopted. The representative of Austro-Hungary is about to submit an amendment which will have to be considered afterwards, and under those circumstances I think it is the best way of proceeding to consider in detail Article 2 and the following of the report which speaks of the exceptions. By considering the details

we shall be better enabled to put into a certain and distinct form the general principle upon which we are all agreed. The first exception to Article 2 runs thus, « Le fret est dû : 1^o pour les marchandises dont la valeur est admise en avarie commune. » If you will allow me one word on the subject I am of opinion that we should strike out this clause altogether because it is not a matter which must be settled by the law relative to the freight, but must be settled by the law relative to the general average, so that we need not have to deal with this exception at all. Of course that is only my private opinion, and I should be very glad to hear the opinion of others upon it.

Mr. PAGE (U. S. A.). — The motion that is made on our part is that Article 2, sub-division 1, be amended by striking out the whole of that subdivision. Does the Chairman desire me to give my own reasons for it?

THE PRESIDENT. — Yes, if you will.

Mr PAGE. — The principle reason has already been stated by yourself, Sir, when you said that it involves two separate systems of law one based upon the contract between the shipowner and the cargo, and the other based upon the rights of each together with the owner of the freight, that is the shipowner as owner of the ship, and owner of the freight, and the cargo owner as owner of the cargo which do not arise from that contract, but which arise under a right of the sea which has existed from time immemorial, and which is so far removed from the contract itself that I venture to say that any of the gentlemen present who have been accustomed to deal with charter parties in any language whatever will rarely find a single word in that written specific contract relating to all the

rights of the parties which refers to general average except in the single particular as to when the general average shall be made up in some cases or as to who shall be the chooser of the adjuster in general average in other cases. It seems to me, therefore, and it seems to us of the United States branch of the Maritime Committee that it is entirely out of keeping to place two systems of law, and to try to reconcile them in this one sub-division. The right comes in in spite of any contracts that there may be with reference to the collection of freight and I therefore submit to the Conference that that sub-division should be struck out as entirely inapplicable and inconsistent with the law with which we are dealing.

M. F. C. AUTRAN. — Il faut se référer aux principes qui sont proposés à l'article 1. Dans l'article 1, il a été indiqué que le fret serait seulement dû lorsque le contrat de transport serait accompli. En d'autres termes, c'est l'adoption par le projet de traité international des principes qui sont posés par la législation anglaise.

C'est le principe général qui a été adopté par la Commission de Paris et est indiqué dans l'article. Cependant, il est certain que dans la législation internationale ce principe, si équitable qu'il soit, doit recevoir certains tempéraments et ces exceptions ont alors été précisées dans l'article 2 de la Commission de Paris.

Je crois, — et mon ami Govare pourra à cet égard vous donner des renseignements plus circonstanciés puisqu'il a présidé la Commission de Paris, je crois que cet article 2 était absolument nécessaire pour indiquer qu'à côté du principe général qui y était adopté, il y avait certaines exceptions qui étaient en quelque sorte commandées par les circonstances, qui sont du reste reconues par la législation anglaise elle-même, ainsi que Lord

Justice Kennedy vous l'a fait connaître ce matin. Ces exceptions ont été limitées à un nombre extrêmement faible, précisément pour porter le moins possible atteinte au principe général posé dans l'article 1 et c'est pour cela qu'en ce qui me concerne, je crois qu'il serait très nécessaire d'écarter la proposition faite par les délégués hongrois, proposition qui, à mon avis tout au moins, ouvrirait la porte à toute espèce de difficultés pour arriver à déterminer les circonstances dans lesquelles, au point de vue de l'équité, on pourrait accorder un fret *pro rata itineris*. Il est donc bien indispensable, à mon humble avis, de bien maintenir notre principe que le fret n'est dû que lorsque le contrat d'affrètement est exécuté.

Arrivons maintenant à l'amendement qui est proposé par nos amis américains et qui consiste à faire disparaître le premier paragraphe relatif au paiement du fret lorsqu'il est admis en avarie commune. Si cet amendement signifie que la question reste entière lorsqu'elle est soulevée dans un règlement d'avarie commune, en ce qui me concerne personnellement (et je crois que je puis parler au nom de mes amis français) je crois qu'il n'y a aucune espèce d'inconvénient à adopter cet amendement en ce sens que comme disait mon excellent confrère et comme le disait mon excellent ami M. Le Jeune, on peut bien soutenir que cette question ne rentre pas dans le contrat d'affrètement, mais est une question d'avarie commune. Mais ce que je considère comme extrêmement dangereux serait que l'adoption de cet amendement signifîât que lorsque le fret est admis en avarie commune, il ne sera pas payé; ce serait monstrueux à mon humble avis.

Je parle devant des commerçants qui connaissent ces questions très bien et devant lesquels je n'ai pas besoin d'insister; mais il est bien certain que lorsque pour une raison ou une autre le fret d'une marchandise sacrifiée pour

le bien et le salut commun est admis lui-même en avarie commune, il n'y a aucune raison pour que ce fret ne soit pas dû au capitaine. Par conséquent, si l'amendement de nos amis américains doit avoir pour résultat de laisser entendre que cette question serait réglée suivant les usages dans le règlement d'avarie commune qui interviendrait plus tard je n'y vois pas d'inconvénient ; mais je n'admets pas l'amendement s'il doit signifier que le fret n'est pas dû, ou n'est pas admissible dans le règlement.

(*Verbal translation by Mr. LOUIS FRANCK*)

Monsieur Antran was saying that as a matter of principle no freight is payable in respect of goods which do not reach their destination, and that he cannot agree with the suggestion which was offered to the meeting this morning on behalf of the Hungarian Deputation by Monsieur de Nagy. As far as the amendment moved by Mr Page goes, Monsieur Antran would agree that the effect of the amendment would be to strike out the law relating to the average in the Article 2, but it must be understood that this omission would in no way interfere with the present position of things as far as freight in relation to general average is concerned ; it ought not to be understood that by omitting these provisions in the draft treaty it should mean that henceforward freight might not be treated in general average as it is actually in the various legislations, and should not be paid when it is sacrificed, or should not be admitted in the average adjustment. The only effect of the amendment as Monsieur Antran understands it is that it is not right in the present circumstances. The position of freight remains, but it is to be under the various legislations, or under the rules or customs which may prevail.

Mr. PAGE. — I think the gentleman from France will be satisfied with the assurance on the part of this Conference that it is understood no attempt will be made to do anything towards destroying any rule of the Maritime Law which of course includes all the general average laws unless it directs its attention to those laws and actually does declare that those laws shall no longer be operative.

M. JACQ. LANGLOIS. — Je crois que l'amendement proposé par nos amis américains ne doit pas être admis.

Il est évident que par le projet que l'on vient de nous soumettre, nous savons exactement où nous allons. Si vous commencez par déclarer qu'aucun fret n'est dû, lorsque la marchandise n'arrive pas à destination, je voudrais bien voir le dispatcheur qui viendrait dire : le frêt est dû ; ce serait un non-sens.

J'ai été étonné des résultats obtenus par votre Commission de Paris, dans son projet. Ce projet est excellent : il tranche les $\frac{3}{4}$ des questions et je ne vois réellement pas pourquoi nous abandonnerions un travail qui a été si bien fait.

Aujourd'hui, par des nuances, par des chemins détournés, on veut nous faire retourner deux années en arrière. Je vous convie, quant à moi, à n'en rien faire. Ecartez les amendements et acceptez le projet qui a été adopté à Paris ; vous ferez sagement.

M. LOUIS FRANCK. — « Les droits des parties relatifs » au fret en cas d'avarie commune, sont réglés par les lois » sur l'avarie commune. »

That would satisfy Mr. Autran.

In English, it would run like this :

« The rights of the parties concerning freight in case of » general average, are ruled by the laws on general » average. »

THE PRESIDENT. — I do not think in fact, Gentlemen, there is any difference of opinion. Monsieur. Autran says, I quite agree, if we provide that there cannot be a doubt that freight is admissible, that freight is to be paid according to the rules of general average if we only provide that the general principle laid down in Article 1 does not

disagree with the view which the American Delegates take. I think the whole thing would be simply solved in this way. Strike out N^o 1 of Article 2, and insert a proviso which would run this. (The President reads the proviso in French.) Perhaps that would satisfy Monsieur Autran, and I think it would satisfy the United States' Delegates.

MR PAGE. — Yes, that is as we understand it.

THE PRESIDENT. — It would run thus : « The rights of the parties concerning the freight in cases of general average are ruled by the law of general average. » I think we should insert a proviso to that effect.

LORD JUSTICE KENNEDY. — Would that mean that the first clause of Article 2 would be omitted ?

THE PRESIDENT. — Yes. Do you agree ?

LORD JUSTICE KENNEDY. — Yes, as far as I can. As I have already said we here are in a position in which we have not authority really because we have not had an opportunity unfortunately, for the reasons I have explained, of formulating this, but, of course, we are most desirous to assist as far as we can and to shew ourselves in sympathy, and, therefore, we would be glad to be able to express an opinion, but we should also be rather glad if we could have an opportunity after hearing other views, of discussing the matter together to-night because we should have no opportunity of dealing with it otherwise. If any vote is taken, if it could be taken to-morrow, we should personally be glad because we shall have had the advantage of hearing the views of the Committee upon the matter.

THE PRESIDENT. — As far as I see, Gentlemen, the course of the discussion will be this : that we discuss certain questions, and that the general view of the Conference, perhaps I might say the sentiment of the Conference, shall be taken, but the drafting of a law instead of this report must be very carefully considered, and must be left to a Committee which we perhaps convene to-morrow. I will not in any way, of course, prejudice the course of the discussion, but I believe that would be the best way to get on, that we dispose of the several exceptions. We have had the first one, and I take it to be the meaning of the Conference, without taking a vote, that it is advisable to strike out N^o 1 of Article 2 and, in order to remove all difficulty to insert somewhere in the draft a clause to the effect that the rights of the parties concerning the freight in cases of general average are subject to, or are governed by the laws of general average. That would dispose of it.

M. AUTRAN. — The result would be exactly the same.

THE PRESIDENT. — Now, Gentlemen, this is a question, which has to be very carefully considered.

« Le fret est dû pour les marchandises qui ont péri en cours de route par leur nature ou vice propre. »

Now just to draw your attention to the importance of the exception allow me to put a few matters to you; some of them have been mentioned this morning. Take a cargo of oxen or horses, the oxen or horses die on the course of the voyage, the Master says, « As far as I am concerned I can bring these bodies to the port of destination, but it would not be very advisable to transport their bodies, and I would rather throw them into the sea ». Is the freight due, or is no freight due? Then there is the case of a cargo

of grain. The cargo of grain is damaged by sea water, it is damaged so far that it arrives in a condition where it is not worth anything. Then there is a similar question for fruit. It is necessary to consider these questions from all those points of view.

LORD JUSTICE KENNEDY. — Might I say with regard to that, as I referred to fruit, that the question of the cattle, speaking from memory, has occurred in our Courts, and the opinion would be that if there was nothing in the contract to shew that the delivery of a dead body would be treated as equal to the delivery of a living body, the thing itself would be taken to have been a live thing that was contracted for, and, therefore, no freight would be payable on something that was not delivered living; in other words that the contract was for the transport of a living animal. But, of course, that sort of question is a matter which obviously would be regulated by the special contract in every case. If you put it as a question of contract the man has taken on board a live ox, and it is a live ox for the safe carriage of which the payment is to be made. With regard to fruit, and things of that kind, I merely state this for your information, I think it would be held that it would be a question in each case for the Judge, or the Jury, to say in substance from a commercial point of view, if the thing which arrived, and which the shipowner tendered for delivery to the merchant, represent the thing shipped, whether damaged or not does not matter? Was it in specie, or was it not that which it was contracted to carry safely to its destination?

M. LOUIS FRANCK. — I dissent from the opinion of Lord Justice Kennedy, not so far as English law goes, but as far as this Conference is concerned to adopt this view.

It seems to me the owner of a ship is liable in principle for defects and damage done by defects, and the cargo owner in principle is responsible to see that the stuff which he has put on board is of such a nature that it is able to perform the voyage, if I may express myself in that way. If the cargo cannot be carried to the port of destination owing to its known nature, its natural decay, or its vice, I think that is clearly a case where the shipowner is ready to perform his contract; his ship is there, he is willing to go to Hamburg, if he has contracted to go there, but the cargo cannot be brought there. What does it mean that it cannot be brought there? It means that if carried further on it would to a certain extent endanger the safety of other cargo on board, or if carried further on it would still damage itself further than it is damaged at some port of refuge. To put the matter clearly take a cargo of wool shipped in Australia for Hamburg. At some port in France the cargo has got heated. This is the position: What must be done with it? It is to the interest of the cargo-owner that this cargo be discharged there, and not carried further in case it would still be more damaged, or totally lost. I cannot follow why the shipowner should lose his freight in this position. The risks which are inherent to a cargo of a given description are naturally the risks of the owner of the stuff, and I think it quite fair in a situation of that sort that the shipowner should be paid his freight. In N^o 3 there is a distinction. I do not touch N^o 3; I leave outside the question of damage coming from sea water, and the goods having to be sold. I take the risks as the risks of the owner of the goods, and, therefore, it seems to us it is right that the shipowner should be paid the freight. Everyone is agreed that if the voyage is interrupted on account of some negligence or some act of the owner of

the cargo, the shipowner is entitled to the freight. I do not see that there is a serious difference between personal negligence of the cargo-owner and the special nature of the cargo which he has put on board, and I end with this remark, that in many cases the Captain may be quite out of the position to know what is the special nature of the stuff which is put on board. If he ships fruit he may know it is liable to go wrong, but if he ships some minerals he cannot know in many cases whether they are of such a nature that fire will develop. Why should he lose his freight? Is it the fault of the ship or of the cargo?

Je disais, Messieurs, en deux mots qu'à mon avis le cas de vice propre de la marchandise doit être assimilé à la faute du chargeur.

Il appartient au chargeur de savoir si la marchandise qu'il met à bord est de nature telle qu'elle puisse se perdre par elle-même, le navire et le reste de la cargaison accomplissant le voyage; si cette marchandise n'est pas en état de parfaire le voyage, il est juste, me semble-t-il, qu'elle paie le fret.

Mr. HARRY R. MILLER. — I should like to add, as a matter of bargain with regard to this matter that we have been speaking of, that at any rate so far as cattle are concerned it is very usual to find in the contract of carriage that freight shall be payable on the number of cattle shipped whether they arrive or not. There is no doubt I think that in that sense, and in the case of perishable goods, the shipowner ought to be entitled to receive his freight. I merely make these remarks as shewing the general trend of opinion so far as I have been able to follow it from the contracts of carriage that have come before me. In all cases of cattle contracts, as far as I

recollect them, that is speaking of live cattle, the freight is payable on the number of cattle shipped whether they arrive or not, so that gives the owner the right of jettisoning them if they should die on the voyage. That, to my mind, gives an indication of the views which the shipowners entertain on this subject.

Mr. ARTHUR SERENA. — I might add that as a rule the freight is paid in advance on such cargoes.

JUDGE BRADFORD (U. S. A.). — I desire to say a few words on this Article and to offer an amendment. It seems to me, representing America, in this matter, that subdivision 2 is in some respects too inclusive, and, in other respects, too exclusive, and that as it now stands in the draft proposed by the Paris sub-Committee it is objectionable in some respects. We are disposed, however, to agree with part of what has been stated by the distinguished representatives of England, and also with what has been so well stated by Monsieur Franck. We think that an amendment is very highly desirable, and with a view of reaching, if possible, an adjustment which will commend itself to our sense of justice and equity I propose the following : Resolved that sub-Division 2 of Article 2 be amended so as to read as follows : « Goods which have perished in the course of the voyage by reason of their defective or improper condition at the time of shipment or by reason of their nature provided such nature has been at the time of shipment concealed from the owner or master ; also goods of a dangerous nature which have been shipped without notice of their character and have been lawfully destroyed during the voyage ». Now recollect that if Article I should be approved we should have a general prohibition against the payment of any

freight in respect of goods which do not reach their destination except as hereinafter provided. It seems to us that when the owner of the cargo or the shipper prevents the carrier from transporting the goods to their place of destination, as suggested by Lord Justice Kennedy, clearly the carriers should be entitled to their freight. There cannot be any question in relation to that proposition. Now the principle is precisely the same although there may be a difference in degree when there is an inequality of information, an inequality of knowledge as between the shipper and the carrier. Suppose that goods are placed upon a vessel which by reason of their defective or improper condition at the time of shipment perish in the course of the voyage. Now as a matter of equity and as a matter of justice where should the loss fall? It should fall upon the owner of the cargo clearly, not upon the carrier. The carrier, it seems to us, ought, in that case, to be entitled to his freight, and to receive his freight when the goods at the very time of shipment, not by reason of their nature, but by reason of their defective or improper condition relative to the nature of the goods, are destroyed or perish during the course of the voyage; then clearly it seems to us a matter of equity and justice that the loss should rest where it falls, and that the shipowner, the carrier, should be entitled to his freight.

Now, to go to the next clause of this proposed amendment, « or by reason of their nature provided such nature has been at the time of shipment concealed from the owner or master ». It seems to us it would be difficult to conceive of a clearer case in which equity might require, and when I say equity I do not mean technical equity, I mean the sense of justice might require that the carrier should receive his freight. Now, without unduly taking up the time of this Conference I pass to the third

and concluding portion of the proposed amendment :
« also goods of a dangerous nature which have been shipped without notice of their character and have been lawfully destroyed during the voyage ». Suppose goods should be of a dangerous nature-dynamite for instance — and should be shipped under conditions when it would be perfectly proper it should be destroyed and lawfully destroyed, and shipped without notice of its nature given to the carrier. That dangerous material should be destroyed during the voyage. It seems to us that there clearly, although there is no delivery at the port of destination, the carrier should nevertheless be entitled to his freight, so that while we are thoroughly in accord with the general principle of the English law that the payment of freight depends upon delivery at the place of destination, we do think that there are cases which should be excepted, where justice requires that the carrier should be paid his freight notwithstanding the existence of that general rule, and that the three cases provided for in the proposed amendment are certainly cases, if they do not embrace all the cases, which should be treated as proper cases to be excepted.

Permit me in conclusion, and without further discussing the matter, simply to re-read the proposed amendment, « Resolved that sub-division 2 of Article 2 be amended so as to read as follows : goods which have perished in the course of the voyage by reason of their defective or improper condition at the time of shipment or by reason of their nature provided such nature has been at the time of shipment concealed from the owner or master ; also goods of a dangerous nature which have been shipped without notice of their character and have been lawfully destroyed during the voyage ».

(Traduction orale par M. LOUIS FRANCK)

L'amendement que M. Bradford propose est ainsi conçu :

Le texte de l'article 2, 2^o, serait formulé dans ces termes :

« Le fret est dû sur les marchandises qui ont péri en cours de voyage à raison de leur état défectueux ou non convenable au transport au moment du commencement du transport, de l'embarquement, ou à raison de leur nature, pourvu que cette nature ait été au moment de l'embarquement celée au propriétaire du navire ou à son capitaine, ainsi que sur les marchandises de nature dangereuse qui ont été embarquées sans avis de leur caractère et qui ont été en cours de route légalement détruites à raison de cet état. »

THE PRESIDENT. — Gentlemen, may I draw your attention to this : it is shown by this amendment that there are a number of questions to be considered, and that this section 2 of Article 2 must be very carefully considered. One of the delegates of the United States proposes that, departing from the general rule, freight is to be paid notwithstanding the non-delivery of the cargo in certain cases. Now this leaves open to be considered the amendment which these cases refer to. Secondly, are there other cases to the amendment? The first question I think is with regard to where difference has arisen between the views taken by Lord Justice Kennedy and the views taken by the Paris Commission. There is this difference. Lord Justice Kennedy says that the principle of non-delivery is the guiding principle; that no freight is paid unless the goods are delivered. That is the guiding principle. But if the owner of the vessel or the master is able to carry the goods to their destination and they arrive in a damaged condition, freight must be paid. There are certain circumstances where the goods being damaged does not affect the right of the owner to freight, but then he amends that when he says, if I correctly understand him, « If taken from a commercial point of view the cargo is entirely lost although it arrives at the port of destina-

tion — for instance, if the grain is nothing but a heap of rubbish or of manure, — then the goods are lost and no freight is to be paid ». That is what I understood him to mean.

LORD JUSTICE KENNEDY. — If it arrives in specie, I should say.

THE PRESIDENT. — You said it must be determined from a commercial point of view.

LORD JUSTICE KENNEDY. — Yes; the tribunal would have to decide it.

THE PRESIDENT. — I think that is a point which must be considered by itself, because that is the difference between the view which M. Franck takes and the view taken by Lord Justice Kennedy. Take another case. A cargo of sugar and saltpetre in bags is damaged so as to make the whole worthless, but the bags are there and the master arrives at the port of destination, and says : « Here is your cargo. It is damaged, I am sorry to say, but I cannot help it. I have carried it as far as I could. Pay me my freight. » Is he entitled to it or not? Lord Justice Kennedy would say no.

LORD JUSTICE KENNEDY. — I think that would be so.

JUDGE BRADFORD (U. S. A). — May I ask a single question, merely to elucidate this point? Does not that relate to a separate and distinct matter? The question whether or not the cargo is in existence has nothing to do with what is now involved in the consideration of subdivision 2, because this assumes that the cargo has perished. It is a distinct and independent matter which would have to be determined anyway by the Court.

Mr. R. B. D. ACLAND, K. C. — Monsieur le Président and gentlemen, speaking for myself alone I desire to give general support to what I understand to be the meaning of the amendment proposed by Judge Bradford without tying myself to the acceptance of his words, and I desire to submit for the consideration of the Conference one or two considerations which seem to me to suggest that the real difference between us is as to what is the meaning of the words « ont péri en cours de route par leur nature ou vice-propre. » I take it, it is common to all systems of law that if by reason of any act done by the shipper the goods have not been delivered he ought to pay either in the form of damages or in the form of freight, and I suggest for the consideration of the Conference whether the difficulty does not arise in determining in each case whether the failure to deliver has been due to something directly or indirectly the fault of the shipper. May I illustrate my meaning by taking one of the instances put forward by our learned President : that of the oxen which are shipped. I know it is quite obvious that apparently there is nothing in the nature of an ox of vice-propre at all, except that he is alive and may die. Why does he die ? It may be due to one of two main classes of causes. It may be due to something which has gone wrong with him inside before he steps on board, or it may be due to something which has happened to him after he has got on board the ship. If it is something which has happened to him after he has got on board the ship I submit for the consideration of the Conference that it has nothing to do with the shipper at all, and that it is a risk which the shipowner should take. On the other hand, if it is due to the fact that he had some illness when he was put on board the ship it is a thing which if concealed from the shipowner ought not to disentitle the shipowner from recovering his freight. So I say that the

illustration which our learned President gave is really capable of being explained in two ways, one of which ought to disentitle the shipowner from receiving his freight and the other one of which ought not. And so again with fruit. One can imagine that a line of steamers was in the habit of going at very great speed, and might undertake definitely to carry freight from one port to another at such a speed that it would not be damaged by the time it arrived at the port of destination, but it would be absurd to say that if by reason of some defect in the machinery or something of that kind the fruit did not arrive until it was spoiled the shipowner should be entitled to his freight. On the other hand, if it is shipped in a state so far advanced in ripeness that he could not possibly do it then it would come within the other category, and therefore what I submit to the Conference is that we have to find out if possible some form of words which would distinguish between these two classes, which I have attempted to make clear, of misfortunes which can properly be attributed to the faults of the shipowner and those which can be properly attributed to the fault of the shipper, because I believe at bottom we are all really agreed upon the principle on which these things should be decided. But there is a point which requires very careful consideration, and it is this. Supposing after some loss the ship goes to a port of call and the space which has been occupied by the oxen which have died or by the fruit which has perished is filled up again by the master for the final port of discharge, is he to get two freights? That, I submit, is a point which will have to be considered by the draughtsman in order to see that no words which are put in should by any possibility entitle the owner to two freights, one because by some accident he is entitled to freight from the shipper though the goods have not arrived, the other from

the owner of the goods which have been shipped in place of those which have perished and which have arrived at the port of destination. I submit this as a contribution to the discussion with a view of clearing up the points in the minds of the members of the Conference rather than as actually supporting anything except the general sense of Judge Bradford's amendment in the hope that by that amendment we may reach some form of words which will be acceptable to everybody.

(Traduction orale par M. LOUIS FRANCK)

M. Acland serait partisan d'une transaction. Il voudrait trouver un terme déterminant ce qui serait le risque de l'armateur et le risque que le propriétaire de la cargaison doit garder à sa charge. Il signale que la distinction peut être difficile, mais qu'elle se présente dans les cas qu'il indique, notamment pour le bétail. Si du bétail vient à mourir en cours de voyage simplement parce qu'un boeuf est mortel — c'est un risque pour le propriétaire du navire; mais si les bêtes viennent à mourir par suite d'une maladie dont elles étaient atteintes quand elles ont été embarquées, ce serait là un risque pour le propriétaire des bêtes. Mais en tout cas, il faut indiquer nettement dans le texte que si le fret est payé à l'armateur et si ultérieurement il remplace la marchandise qui a été perdue en cours de route ou débarquée, le second fret doit être crédité à celui qui l'a payé une première fois; on ne voit pas comment l'armateur pourrait toucher deux fois le fret.

HERR DR. ANTONIO VIO (Fiume) : Die ungarische Gesellschaft für internationales Seerecht ist, wie der hochgeehrte Herr Prof. de Nagy heute früh gesagt hat, mit der Abschaffung der Distanzfracht einverstanden, jedoch unter der Bedingung, dass der Artikel 3 einen Zusatz bekommt, welcher nach unserer Ansicht notwendig ist, um eine Ungerechtigkeit abzuwenden, die aus der schroffen Anwendung des in Artikel 1 festgestellten Prinzips entspringen könnte. Der Artikel 3 bedarf zur Vervollständigung des Zusatzes :

« es sei denn, dass dieser (der Ladungsinteressent) entweder selbst die Weiterbeförderung besorgt oder anderweitig die Güter verkauft. »

Ohne diesen Zusatz könnte die Bestimmung zu Ungerechtigkeiten führen. Nehmen wir an, ein Schiffer habe eine Ladung von Smyrna nach Marseille in Frankreich zu führen.....

PRESIDENT. — Verzeihen Sie, Sie sprechen über Artikel 3, wir sind aber noch in der Diskussion zu Artikel 2.

M. F. C. AUTRAN. — Si je me permets de prendre la parole c'est pour appeler votre attention de la façon la plus sérieuse sur la nécessité qu'il y aurait de maintenir autant que possible le texte qui a été proposé par la Commission de Paris.

Je ne veux pas dire du mal du travail qui se fait par des réunions nombreuses, mais je crois que vous serez tous d'accord avec moi pour penser qu'un travail qui a été élaboré par une réunion restreinte, a beaucoup plus de chances d'avoir été étudié avec précision, en pesant bien la valeur de tous les termes dont on a pu se servir, et en appréciant les principes dont on devait s'inspirer.

Croyez par conséquent que lorsque votre Commission s'est réunie, elle a examiné avec le plus grand soin toutes les hypothèses en face desquelles on pouvait se trouver et elle est partie d'un même principe dont elle a dégagé ensuite toutes les conséquences. C'était la manière la plus pratique, et en même temps la plus logique, de procéder. Remarquez du reste que du moment que nous nous préoccupons d'élaborer un projet de loi maritime internationale, il faut que chaque pays soit disposé le cas échéant à faire abandon d'une partie de ses principes, car

si chacun veut garder intacte sa propre législation, nous n'avons plus qu'à prendre notre chapeau, les uns et les autres et à nous en aller.

La Commission de Paris s'est donc préoccupée d'une chose : c'est de poser les principes sur lesquels, d'après elle tout au moins, une législation rationnelle devrait être établie, et c'est ainsi, comme je vous le disais tantôt, qu'après avoir adopté le système anglais d'après lequel, quand il n'y a pas de transport complet effectué, il n'y a pas de fret dû, on a cependant été conduit, par la nature même des choses, à poser certaines exceptions.

Ces exceptions sont-elles justifiées ou ne le sont-elles pas ; et quels sont les principes sur lesquels ces exceptions sont fondées, c'est là, si vous le permettez, ce que je vais examiner très rapidement.

Je ne reviens pas sur la première exception sur laquelle on s'est déjà expliqué. J'en arrive à la seconde : le fret est dû pour les marchandises perdues en cours de route par leur nature ou vice propre. Qu'est-ce que cela veut dire ? Un négociant met à bord d'un navire une marchandise quelconque ; elle tient de la place dans le navire ; elle empêche l'armateur d'en prendre une autre ; du moment où cette marchandise a occupé de la place, il faut qu'elle paie si l'armateur remplit vis-à-vis d'elle toutes ses obligations de transporteur. Or, si cette marchandise n'arrive pas, soit par sa nature, soit par un vice propre, — est-ce la faute de l'armateur ? Il a donné un navire absolument en état de faire le voyage ; le navire a fait sa traversée ; il est arrivé à bon port ; vous n'avez par conséquent absolument rien à reprocher à l'armateur. C'est le chargeur, qui aura embarqué une marchandise qui par sa nature ou son vice propre est sujette à dépérissement, qui en supporte les risques. Par exemple si vous chargez des bananes sur un navire et que les bananes se gâtent en cours de route, ce

n'est pas la faute de l'armateur; n'empêche que ces bananes ont pris de la place et qu'elles ont empêché l'armateur de prendre un autre fret.

De même si du maïs est embarqué trop frais, s'il vient à fermenter, et si on doit le jeter à la mer, le chargeur doit payer le fret : c'est du moins le principe sur lequel la Commission de Paris s'est fondée pour arriver à la solution qui se trouve dans l'article 2, et je crois qu'il faut s'en tenir à ce texte qui est suffisamment court, clair et précis.

Quand j'écoutais tout à l'heure la lecture de l'amendement proposé par notre honorable collègue M. le Juge Bradford, je me disais qu'il ne change pas grand' chose au principe posé par l'article 2. Voyons en effet cet amendement proposé par notre collègue, pour vous demander de bien vouloir le repousser, parce que je crois qu'au point de vue des principes, cet amendement n'apporte rien de nouveau à ce qui a déjà été dit, et que d'autre part, il pourrait y avoir certain danger à l'accepter. Je vous demande la permission de le lire :

« Le fret est dû sur les marchandises qui auront péri au cours du voyage à raison de leur condition défectueuse ou impropre au moment de l'embarquement ».

Il y a là une restriction qui me paraît absolument inutile. C'est que pour que le fret soit dû d'après l'amendement de M. Bradford, il faut que le « defective or improper condition » ait existé « at the time of the shipment ».

Mais, Messieurs, ce « defective or improper condition » peut se manifester en cours de voyage; supposez par exemple que de l'eau pénètre dans une cale et que cette eau produise une fermentation de la marchandise. Est-ce que l'armateur n'aura pas droit à son fret? Oui, parce que c'est là un risque qui doit demeurer pour compte du propriétaire de la marchandise. D'ailleurs, est-ce que dans les conditions générales de tous les connaissements,

vous n'avez pas la clause que l'armateur ne répond pas du « rust, decay » et autres choses du même genre ?

Par conséquent, je crois que ces mots qui figurent dans l'amendement de notre honorable collègue « defective or improper condition at the time of shipment » devraient disparaître, et par conséquent, comme le commencement de la phrase est absolument conforme au texte de la Commission de Paris, je ne vois pas pourquoi nous devrions accepter cet amendement.

J'en arrive ensuite à la fin de l'amendement qui me paraît dangereux parce qu'il pourrait donner lieu à bien des procès. L'amendement de M. Bradford continue :

« Goods which have perished in the course of the » voyage by reason or by reason of their nature, » provided the same has been at the time of shipment » concealed from the owner or master ».

Cette question de savoir si le vice, défaut ou nature de la marchandise a été dissimulé au propriétaire du navire ou au capitaine, laisse la porte ouverte à toute espèce de difficultés.

« Also goods of dangerous nature which have been » shipped without notice of their character and have been » lawfully destroyed during the voyage ».

Ces exceptions sont parfaitement comprises dans le projet, paragraphe 2 de la Commission de Paris, et il suffit d'en énoncer la pensée générale, sans prétendre prévoir toutes les circonstances qui peuvent se produire. Par conséquent, je pense qu'il suffira amplement de dire que le fret sera dû toutes les fois qu'une marchandise aura été détruite en cours de route à raison de sa nature ou de son vice propre; vous aurez prévu tous ces cas. Je conclus très énergiquement au rejet de tous les amendements qui ont été proposés à l'encontre de ces textes.

Mr. PAGE (U. S. A.). — I think, gentlemen, there has been a slight misunderstanding between the gentlemen who have spoken against these amendments and Judge Bradford who presented them as to their exact purport and meaning. With regard to the remarks that were made by the gentleman who spoke from this place before me, his idea is that the words which are contained in the proposed law or the law as proposed by the Paris Committee, are broad and precise, and that they include sufficiently the matter that is presented in the amendment, which he says would rather restrict the operation although apparently it is intended to cover the same ground. In that I think he is absolutely mistaken. We do not understand from our point of view of the law, from our point of view of the rights of the shipowner, from our point of view of the right of the cargo owner, that it is fair or proper that he should demand his freight in cases of the destruction of a cargo which he took on board his ship, the nature and the probable inherent vice of which he was as much aware of as the man who put the cargo on board the ship. In other words, our view is that if potatoes are to be carried from one port to another in a ship, the shipmaster knows that he has potatoes on board as well as the shipowner who places them on board. The shipowner knows that he will run a certain risk of never getting a cargo of potatoes there, and he charges you freight accordingly. So that if the potatoes get there he will make sufficient to protect him in another case where the potatoes may not get there. That is our position. But the moment that the shipper of the goods fails to do that to which the shipowner is entitled, namely, to put a cargo of potatoes in an ordinarily transportable condition on board the ship, that moment we think in fairness and justice the shipowner should be accorded certain rights with regard to his freight which

the law as we understand it in our country and as we understand it to be in England does not at the present time accord him. Now, therefore, if the potatoes are put on board wet, but apparently dry, if they have been in the rain so that they will rot after they have been in the confinement of the ship's hold for a certain time, or if coal has been subjected to constant rains so that after it has been confined in a ship with the intention of taking it round Cape Horn, and after three or four months becomes liable to spontaneous combustion, and those two facts, the wetness in the one case and the wetness in the other case, are concealed by the mere fact that the sun's rays have been allowed to pour on those two articles previous to their shipment, and the captain of the ship is not aware of their condition, in that case we say there has been an improper and defective condition of the goods at the time that they were placed on board, and that the ship ought to be protected against having unknowingly been compelled to make a contract with its eyes shut as to the actual freight. In that case we think the ship should be protected. That is the difference between our amendment and the original document. We say that the owner of the ship must know the nature of the goods; he must be aware of their vice-propre, but he does not know of the fact, which may possibly occur that at the time he makes his contract and receives the goods he is being deceived as to the probable chance of his carrying them. He has made a contract under circumstances where the parties were not standing upon an equal basis; the shipper knew a fact which would go to the destruction of the goods before they got there. The shipowner did not know of that fact. It seems to me it is very simple on the part of the owner of the ship if he is taking goods difficult to carry to say, « Give me my freight now and if the ship does not arrive

I am to keep that freight or give me in your contract a statement that I shall be paid my freight at all events, whether these goods, perishable in their nature, arrive there or not.» That is perfectly easy on his part. These two people, the shipowner and the shipper, are acting at arm's length; they are not children, and do not have to be protected by any special provision of the law. Every man who goes into business knows what he is about or is supposed to, and needs no guardian, but when a cargo goes on board which apparently is perfect although it is defective really, in that case a fraud is being perpetrated on the shipowner and ought to be dealt with by the provision which we now desire to make a part of the law. I desire to say that I think the gentlemen who spoke before me have been under a misapprehension as to what we meant; we did not mean the nature of the goods or the vice-propre of the goods. We think the law ought to apply there as in other cases, and if the goods do not arrive no freight should be payable; we meant that if defective condition exists at the time of the making of the contract in that case the shipowner should be protected

(Traduction orale par M. LOUIS FRANCK).

M. Page a dit en substance :

M. Autran a mal compris la portée de l'amendement proposé par l'honorable M. Bradford. M. Bradford n'est pas d'accord avec le principe adopté par la Commission de Paris et n'admet pas que le vice-propre, la nature spéciale de la marchandise, le dommage qui en résulte, et par conséquent aussi l'impossibilité d'arriver à destination, doivent donner toujours lieu au paiement du fret et soit à charge de la marchandise. Il considère que le vice-propre que le propriétaire de navire connaît aussi bien que le chargeur et dont il doit accepter les risques comme lui, ne constitue pas une exception; mais il admet bien comme un cas d'exception celui où en réalité l'armateur a été trompé. M. Page a indiqué le cas de pommes de terre mises à bord en bonne condition apparente, bien qu'elles aient séjourné dans la

pluie et qu'elles se gâtent donc à bref délai, sans que le capitaine le sache; alors seulement il y aura exception.

Il y a donc divergence sur le principe, dit M. Page; nous ne voulons accepter d'exception que lorsqu'il y a réticence ou fraude.

M. F. C. AUTRAN. — Messieurs, je demande pardon d'abuser de vos instants, mais la question soulevée par les délégués américains mérite que nous nous y arrêtions quelques secondes.

Il n'y a pas de malentendu entre nous; il y a tout simplement un point de départ qui est absolument différent. Lorsque vous chargez des marchandises à bord d'un navire, vous prenez, je le répète, à bord de ce navire une place qui aurait pu être occupée plus utilement si vous n'aviez pas embarqué une marchandise d'une nature périssable. Or, il y a une clause insérée dans tous les connaissements qui porte « shipped in apparent good order; weight, quality, quantity and contents unknown » et par conséquent, si la marchandise, par suite de sa nature spéciale, ou de son vice-propre, vient à s'avarier, à disparaître, nous avons estimé que c'étaient là des risques qui devaient rester pour compte du propriétaire de la marchandise, mais ne pas peser sur les épaules du propriétaire de navire. Ce principe est-il vrai ou faux? C'est ce que la Conférence aura à trancher; mais nous avons estimé qu'il était absolument exact et nous nous sommes inspirés, en cela, par la pratique.

Et pour terminer, j'ajoute que le système contraire ne tend à rien moins qu'à rendre le propriétaire de navire assureur au point de vue de l'arrivée de la marchandise ce qui est ni conforme à la théorie, ni conforme à la pratique commerciale.

Vous aurez à vous prononcer maintenant en pleine connaissance de cause sur le principe qu'il conviendra d'adopter.

THE PRESIDENT. — I must ask whether the meeting is ready for the question because I understand our English friends wish for the decision to be postponed until they have had an opportunity of discussing the question amongst themselves. Perhaps we had better postpone the vote until to-morrow if that meets with the approval of the meeting, and now we will go on to N^o. 3.

«..... Pour les marchandises qui sont vendues en cours de route à raison de leur état d'avarie provenant, soit de leur nature ou vice propre, soit d'une fortune de mer. » «..... all goods sold in the course of the voyage by reason of their defective condition, whether arising from the nature or inherent vice of such goods or from perils of the sea. »

M. CHARLES LE JEUNE. — Je voulais encore faire une remarque au sujet de la question soulevée par Messieurs les délégués américains et du texte que nous avons sous les yeux.

La question du vice-propre, comme vous le savez, est une question fort délicate ; mais dans le texte même que vous avez sous les yeux toutes les difficultés sont à charge du propriétaire du navire et du capitaine, qui auront à faire la preuve du vice propre. Quand l'accident surviendra le propriétaire du navire n'aura pas le droit de réclamer un fret ; il sera obligé de prouver le vice propre. C'est donc une situation qui est plutôt difficile pour le propriétaire et qui doit tendre à nous faire admettre de la façon la plus large la clause d'exception dans le sens où elle se présente dans l'article du projet de Paris.

Au contraire, en admettant la distinction faite dans le texte des délégués américains, nous arrivons à des difficultés sans nombre et à instaurer un véritable bureau d'expertise préalable à la mise à bord des marchandises,

car comment le capitaine pourrait-il se rendre compte de la condition des marchandises qui sont mises à son bord et connaître les vices propres qu'elles contiennent en elles?

Je crois donc qu'il faut accepter l'article 2 du texte de Paris, sans y apporter aucune modification.

Herr FRANÇOIS DE NAGY. — Meine Herren! Ich schliesse mich vollständig den Anschauungen des Herrn Le Jeune an und ich bin dafür, dass Artikel 2 angenommen wird. Aber er müsste doch noch etwas ergänzt werden und zwar in Bezug auf Tiere. Bei Tieren kommen verschiedene Umstände vor, die ihren Tod herbeiführen können, ohne dass man sagen könnte, dass die Tiere infolge ihrer natürlichen Beschaffenheit zugrunde gegangen seien, z. B. die Tiere stossen sich beim Stampfen des Schiffes gegeneinander und die Hörner eines Ochsen erstechen ein anderes Tier. Da kann man nicht sagen, dass das Tier infolge seiner natürlichen Beschaffenheit gestorben sei. Es ist darum eine Ergänzung des Artikels notwendig, die sich auf Tiere bezieht, und ich proponiere in dieser Beziehung eine Ergänzung, die folgendermassen lautet:

« de même pour les animaux périssant en cours de route ».

Die Ergänzung ist notwendig, damit kein Zweifel entsteht. Eine weitere Aufklärung halte ich hier nicht mehr für nötig.

Mr. LOUIS FRANCK. — We are passing to the question of Article 2, which, as you know from the text before the Conference, relates to the question of freight in the case where goods have been sold during their voyage on account of their damaged state, whether that damaged state is due to their nature or vice-propre, or whether it is

due to fortune de mer. I will leave outside my explanation anything relating to vice-propre or nature of the goods, but there is the question of fortune de mer, and I would try to make a place for this exception in the minds of our British friends. Take the case of a collision or any other accident having happened, and a ship put in a port of refuge with goods in such a condition that the interest of the cargo-owner is that the goods be sold on the spot. I respectfully venture to submit that there is a good reason in principle and a better reason in practice to allow the freight. The reason in principle is the following one. Lord Justice Kennedy, explaining to us in the most admirable manner the English law, was just saying that British law admits of an exception to the rule of no distance freight whenever there is an express or an implied agreement made at the port of refuge, whenever in agreement with the cargo-owner or with the agent of the cargo-owner the cargo is accepted there and the transaction terminated, those circumstances being considered as meaning an agreement to pay freight pro rata. Now if you have a captain, a diligent captain, at a port of refuge, the goods being in a bad condition so that it is to the interest of the cargo owner that they be sold there because by continuing the voyage they would lose any value whatsoever, I submit that it is sound law to say that this captain if he sells these goods is acting as an implied agent to the cargo-owner, and is doing what any reasonable cargo owner would have done himself, and if this be the case I want to ask what is the difference between these two positions? On the one hand the master wiring to the cargo-owner and receiving the reply: « Yes, I agree to the sale at this port of refuge; » on the other hand, the master doing what every reasonable cargo-owner would have agreed to do, sell the goods in the same condition and

realise for the cargo the same benefit. I ask you whether in the first case the shipowner should be paid his freight, and why he, in the second case, should not be paid. If the position could be always such that if it was open to the poor master of the ship at the port of refuge to ascertain who has the cargo there would be a very good reply to my objection. The reply would be, « By all means, the master will not run the risk of losing his freight. Let him wire to the owner of the cargo and get the latter's agreement. » But, as you all very well know, there is no such thing in the practice of modern commerce as the possibility of a captain in a port of refuge in 90 cases out of 100 to ascertain who is the owner of the cargo on board the ship. The cargo will be represented by a bill of lading; this bill of lading will be in the hands of the bankers at some distant port; will have passed from one to another, and I know enough of cargo-owners in general and merchants in particular to say that if in the course of the voyage it would be even possible for the captain to wire to one of these various parties, either to the shippers, or to the man who bought the cargo in the first instance or the second instance, none of them would give any answer. They would all say : « What have I to do with this cargo? I have sold it », and the buyer would say : « I have got it. I have only to take delivery of certain goods. I will look to my underwriters. The market is bad and the later the cargo arrives the better. » What can the captain do? At the port of refuge they will say : « As a diligent man you ought to sell this cargo », and we say if this be the position it will always be on the shipowner to prove it was the position if he acts reasonably. If he does what the cargo-owner would have done himself he must be paid his freight, and you cannot put him in this position and say : « You must do an impossible thing : wire to a man whom

you cannot know and from whom you cannot expect an answer. » That is my theory, and I submit that in many cases in which the British Courts have accepted that there was an implied agreement to pay freight it has been under the pressure of this doctrine of equity which I have just tried to make clear to you. Now there is a second point, and this is one of particular importance. When you say that a cargo-owner must not pay freight you are I suppose under the impression that you are defending and protecting the interests of the cargo-owner. It is my opinion that you are not protecting his interests, because he is not on the spot at this port of refuge; the captain is there, and the captain alone is in the position to do his best for this cargo in its damaged condition. I submit that you must never by your law put a man between his clear duty and his still clearer interest, and if you say to the captain: « You are bound to be paid your freight », you give him an interest to carry on the contract; suppose a ship with a cargo of maize going to Antwerp which has put in distress into the port of Marseilles; the captain goes to our good friend M. Autran, and asks for his advice. If you have the law which you suggest should be the law I think my friend M. Autran would say: « Well, captain, equity would order you to have this maize sold here, but under this new law which they have made at Bremen your interest is to bring it on to Hamburg. » The captain will say, « It will no more be worth anything. » M. Autran would say: « It is for you to decide whether this feeling of your duty outweighs the full value of your freight, because if you carry it to Hamburg you will get your freight though the man will get nothing. » I think you should not put a man in that position because he is not able to send a wire. It seems that the proposal in Paris is nearer than any other, and I finish by this reflection: Do

not forget that the contract is always there, and that such parties as will not be satisfied by this rule may amend it and change it by the way, but if they have said nothing I submit the construction we must put upon their silence is, that they want things to be arranged reasonably and when the captain has done what any reasonable man would have done himself he must not be the loser.

LORD JUSTICE KENNEDY. — Gentlemen, I entirely dissent from the argument which has just been addressed to you. I think it involves two fallacies on its face. The one is that this particular clause which is being dealt with does not confine the sale to cases in which the goods will not arrive at their destination. Therefore there is no choice between duty and not duty. The question would have been different if the clause had said that owing to circumstances the goods never had arrived so that freight would not be payable at their destination, but it assumes a case in which there is simply damage to the goods, so that the goods will arrive in specie at their destination, and he will get his freight. It seems to me on principle, as far as I can see on the first blush, although of course one considers with care an argument so powerfully put as it has just been put, a most dangerous thing to give one man the right to sell another's goods. We cannot tell what causes might be at work at a port of refuge at the other end of the world. We cannot tell what a man who has not been accustomed to deal with cargoes, — many of which are of a very complicated and delicate nature in these days, possibly cargoes requiring chemical treatment and matters of that sort — would do. That is a second point which I venture to think my friend who has just addressed you has left out of sight. It does not say here, « Sold with the consent of the owner ». If this clause were

passed, however much the owner might protest the goods would have been sold, and if anybody thought that the captain had on the whole been a wiser man than the true owner, the owner would have to pay freight, although against his protest his own property had been dealt with in that manner. It does not say with the consent of the owner, but simply if he sells them in the course of their voyage because some misfortune has come to them « à raison de leur état d'avarie provenant, soit de la nature ou vice propre, soit d'une fortune de mer ». Surely if a man has to earn the freight he can do so by transshipment. He can say, « I cannot myself carry on and I cannot transship », but then he has failed in his contract and the owner has the right to take the goods such as they are at the port of refuge or make any terms that he may choose; but that the captain of a ship should be entitled to sell, as this clause would entitle him, without the consent of the owner, and even against his express instructions, merely because there may be a difficulty of communication, does seem to me on the face of it, as I respectfully submit to this Conference, a most dangerous thing. One must presume that the owner is a sensible man and has the facts brought before him, and the persons interested in the cargo, who as a rule in a case of this kind, in « fortune de mer » would be the underwriters, would say what their interests would be and give instructions accordingly. If on the other hand it is a case in which the goods have perished there will be nothing to sell. If the goods have been carried to their destination, although in a damaged condition, I should suggest that the safer thing is the law as it stands, I believe, in America, and certainly with us, that the shipowner if he cannot carry on his own ship, is entitled to earn his freight by sending in another, or by carrying on in his own ship when repaired; but to give a

man absolute power without even consulting anybody and even against a person's will, as this clause says, to sell, seems to me a discretion which no sea captain — and one must deal with small ships as well as large — ought to be entrusted with.

Mr. RALPH CARR (England). — Monsieur le Président and Gentlemen, it appears to me that the word « captain » seems to have frightened some of our friends. Mr. Frankk was saying that if a captain were to come into Marseilles in such a position as has been suggested the would go to M. Autran and get to know what to do. It is not exactly that. The captain of a ship in a French port will, in the first place, apply to the tribunal, and the tribunal without hesitation whatever, would name a curator bonorum, and the curator would take care of them as an expert, and, if not sufficiently informed himself, he would get another merchant to say what was the position of the cargo, and he would say perhaps : « In a short time the cargo will be perished ». I say that the curator who takes that position would perfectly cover the captain. The captain would have very little to say in it, and although he was the master of the ship he would be backed up by the curator ; he would follow the advice of the man who would be supposed to know.

Mr. PAGE. — What would you do at Port Stanley ?

Mr. CARR. — There the captain would have to act on his own judgment. If there is no one better than the captain I do not see why he would be in a worse position.

Mr. PAGE (U. S. A.) I propose, Mr. Chairman, an amendment to that sub-division 3 which will bring out the

very point which has been discussed, and which was spoken on by the last gentleman who spoke. I propose that we should amend the Article sub-division 3, so that it will read as follows, « for goods which are necessarily sold in the course of the voyage on account of their damaged condition, whether the same arises from their nature or inherent vice or from a peril of the sea, provided the goods were then in a condition to have reached the port of destination in specie », because if at the time the character of the goods had been so far determined that they never could reach the port of destination in specie, then they were no use to anybody and the Captain would be demanding his freight. The exception, therefore, is to cover the owner of the cargo, who is far away, from the act of the Captain who will proceed to sell the cargo which may be manure for instance, and then claim that he is entitled to his full freight by virtue of this section. There are two dangers you will see ; the danger that I suggested to the gentleman who spoke last which is not that the Captain would go to consult a distinguished lawyer in Marseilles, or go to some place where there is an Admiralty Court which should give him advice, or a tribunal in France, but that he is calling in a port of refuge where none of those advantages are to be had, and where the owner of the cargo has nothing in the world to rely upon except the honesty and the good judgment of the Master of the ship. Therefore, from time immemorial it has been the law, as much of one Country as of another, that there is no justification for the Captain of the ship parting with the property in the goods except on absolute necessity, one that overrides every course that is open to the Captain of the ship. That is the proposition. Now, it is a matter that is so well known that everybody who lives for instance on the West Coast of the United States, where we

depend almost entirely for the transportation of our goods from Antwerp to California let us say, will know that the masters of the ships who come up, however well intentioned they may be, are men who are sadly underpaid. £ 15 a month is first class wages for most ships masters, £ 30 a month is a decidedly good wage for the master of a very large steamer that comes all the way round the Horn, or sometimes across the Pacific, from all oceans to places like San Francisco and California. Those men, I am sorry to say it is my experience, and I have had 30 years dealing with Captains of ships, are invited by the avarice of their owner in a great many cases to do that which is wrong. I have known ships to come into ports, large steamers which have gone into the dock to have replaced thousands and thousands of rivets which were absolutely unnecessary ; the Captain had the confidence of his owner, and he suggested that these things be done with the owner a long way off, and I have known a large percentage of the amount of the money which was collected by the vendor from the owner of that ship partly paid to the Captain as his bonus. Now under those circumstances if you take the masters of vessels who are underpaid, and who generally are not men of a very broad idea of business, and say to them, « Captain, should you arrive at Port Stanley » — where I think there are 600, or 700, or 800 people — « on your voyage round the Horn, it is in your power if you think it best, and an accident has happened to the ship, to dispose of your cargo at auction there ». There is nobody to buy, and no money to pay, and he puts it up to auction, and it is sold for almost nothing. Is the Captain of a ship to be justified in a thing of that kind, or ought he not to shew it was a necessity to make that sale — I am talking of a damaged cargo all the time. Is not the word « necessarily »,

therefore, a word that should be inserted there so that it covers every possibility of an interpretation of the clause which could indicate that anything was to be left to the discretion of the Master ?

M. LOUIS FRANCK. — M. Page estime qu'il conviendrait d'introduire les mots « que la vente doit avoir été nécessaire ».

Je m'empresse d'ajouter que c'est bien là la portée du texte. L'article que nous discutons n'a pas pour objet de régler l'état dans lequel un propriétaire de navire a le droit de vendre une partie de la cargaison. Il s'agit ici uniquement du sort du fret. Je ne m'oppose donc pas à l'ajoute du mot « nécessaire ».

Ensuite, qu'en cas de vente, le fret sera dû lorsque la marchandise était déjà au port de relâche dans un état tel qu'elle n'aurait pu arriver à destination *in specie*, — en nature.

Je me permets de signaler à nos amis que dans la plupart des législations continentales, le fret est dû du moment où les marchandises arrivent à destination, à la seule exception, je pense, de futailles qui ont coulé en route et qui arrivent vides à destination.

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I may say in English that it has never been the intention to give by this Article a right to a Captain to sell the cargo he has on board. The conditions and circumstances under which in cases of absolute necessity a master may sell part or all of his cargo are fixed in other parts of our Codes, or by other principles of the Maritime law. The only question which is discussed is the incidence of a sale of that sort on the question of payment of freight. There-

fore I see no objection in admitting the first amendment of Mr. Page which would tend to insert the word « necessarily », and I may say that any other word which would clearly define that that is the object of this paragraph would meet equally with my approval. If Lord Justice Kennedy would translate into text what he was saying, that when the Captain has acted for the benefit of the cargo-owner, and as done what a reasonable owner of the cargo would have done himself, that would cover what I mean. We do not want to give the Captain the right to sell the property except on reasonable conditions. There must be some exceptions, namely, for instance, that fruit should only be necessarily sold at the port of refuge provided that it was then in such a condition that it would not have reached the port of destination in specie.

MR. PAGE (U. S. A.). — Provided they would have reached.

M. LOUIS FRANCK. — It is a very difficult question because on the Continent we have no rule as the English rule with regard to arriving in specie. As long as the goods arrive you must pay the freight. There is only one exception namely, where barrels of liquid have been shipped, and the barrels arrive totally empty. That is a condition which prevents the receiver of the cargo having to pay the freight.

MR. PAGE (U. S. A.). — That must account for the fact that every French ship that comes to San Francisco — and there are hundreds of them — is engaged upon the terms of an English charter party.

THE PRESIDENT. — That disposes of the discussion on N° 3 and we will leave the voting until to-morrow.

LORD JUSTICE KENNEDY. — There is the last clause of N° 3.

THE PRESIDENT. — The meaning of it is that if the Master, because there are no other funds at his disposal, has sold part of the cargo, that is to be considered as if he had borrowed money from the cargo-owner, and therefore, the money must be refunded, and if he pays the value of the merchandise sold at the port of destination, of course, he must get his freight.

M. FR. BERLINGIERI. — Je voudrais demander une explication sur le 2^o de l'article 2. Est-ce qu'on peut y revenir ?

Cet article dit que pour les marchandises péries en cours de route par leur nature ou par vice propre, il n'est pas dû de fret. Or, M. Autran a donné un exemple de l'eau qui s'introduirait dans la cale et qui, aidée par la nature de la marchandise, causerait la perte de la marchandise.

Si ce cas se présente, est-ce que le capitaine aura droit à son fret entier ou non ?

Voilà l'explication que je demande, car si on répond affirmativement à ma question, il y aura lieu d'ajouter à cette clause les mots « ou par fortune de mer », parce que j'observe que nous n'avons pas mis cela dans le 2^o, mais seulement dans le 3^o.

Et que décider dans le cas de l'autre exemple que l'on a donné du ciment perdu par suite de ce que l'eau s'introduit dans la cale ? L'eau qui pénètre dans la cale, c'est bien une fortune de mer. Voilà l'explication que je voulais demander.

M. LOUIS FRANCK. — D'après moi le fret n'est pas dû parce que la cause est évidemment la fortune de mer.

M. BERLINGIERI. — Mais M. Autran a parlé de l'eau s'introduisant dans la cale, et aidant en quelque sorte la nature de la marchandise....

M. LE PRÉSIDENT. — Il peut être douteux si la marchandise périt en cours de voyage par sa propre nature ou son vice propre, ou par la fortune de mer.

C'est l'exemple auquel j'ai fait allusion déjà : du salpêtre qui est en sacs, ou du sucre ; les sacs sont délivrés à destination ; mais par suite de l'eau qui est entrée dans le navire, le salpêtre ou le sucre sont fondus, et à destination, il n'y a plus rien dans les sacs, ni sucre, ni salpêtre ; il n'y a que des sacs. Est-ce que la marchandise a alors péri ?

C'est pourquoi j'ai attiré l'attention de l'assemblée sur la question de savoir quel est le sens de périr. Sur quoi Lord Justice Kennedy m'a répondu qu'une marchandise a péri quand elle a, au point de vue commercial, perdu sa nature.

Ce n'est pas tout-à fait clair, mais c'est une question qu'il faudrait examiner de plus près. Nous pourrions reprendre la question demain, peut-être ?

M. SCHAPS (Hambourg). — L'Association allemande propose d'ajouter quelques mots à l'alinéa 3 de l'article 2, notamment ce qui suit :

« Ainsi que pour les marchandises qui sont détruites ou »
» vendues en cours de route, en exécution d'une mesure »
» de police, si le capitaine se trouvait prêt à continuer le »
» transport et capable de le faire ».

Notre Association croit en effet que dans des cas pareils, il n'est pas justifiable d'enlever au capitaine son droit au fret.

M. H. A. WUPPESAH. — I only want to make a few remarks, Gentlemen. If a Captain arrives at a port of

destination and declares that he has lost his goods, or that he was obliged to sell his goods during the voyage because he was in want of funds, he, as the President has already said, has, of course, to refund the value of the goods sold at the market value of the port of destination. I think that will be law in every Country. I want to propose instead of this note here another one which might also immediately cover the question that was raised before. We have said that freight is due on goods that have been sacrificed, or that have to be made good in general average. I think we might word the text as follows : « In all cases which entitle the owner of the goods to claim their market value for their non-delivery at the port of destination freight is due ». I venture to submit that proposal to the consideration of the Conference.

Mr PAGE (U. S. A.). — Would you read that over again ?

M. H. A. WUPPESAHL. — « In all cases which entitle the owner of the goods to claim their market value for their non-delivery at the port of destination, freight is due ». If goods have been sacrificed during the voyage in a case of general average their value is made good in general average as it is at the port of destination, and at the same time the Captain gets his freight so that covers the question that was raised before. It also covers the question of all those cases where the Captain is compelled to sell for his own benefit ; for instance if he finds no money, he is obliged to sell goods to enable him to continue the voyage ; then the owner of the cargo would also claim the value of the goods at the port of destination. Of course, if the Captain has to pay that value the owner of the goods would benefit because he had not to pay the freight then, and so

the Captain would have the right to deduct the freight from the value at the port of destination. The owner could not get more than he would have got if the goods had arrived. I think that is clear.

THE PRESIDENT. — What Mr Wuppesahl appears to me to mean is that it is simply a question of how the law is to be drafted. I do not think that anybody will doubt the truth of the principle that if goods are sold during the course of the voyage for the benefit of the voyage because the Master has no other fund at his disposal, he must refund the value of the goods at the port of destination, and then the further consequence is that he must get the freight. What Mr Wuppesahl points out is simply this that just as we have said the general average clause ought not to form part of this law — it belongs to other parts of the law because this law is only to deal with the question of when is freight due or not due, and simply in order to relieve the same doubt which has arisen in consequence of a proposal striking out the general average clause, N^o 1 of Article 2 — he is of opinion that a clause should be inserted to say that this law does not affect the right of the owner to receive his freight in the cases mentioned under Article 2 § 2.

Lord JUSTICE KENNEDY. — I entirely agree, if I may say so, and I hope that something of that kind can be done. All I object to in it, as at present drafted, is this — and I think you will agree with it — we do not want to make that, which may be a wrong act of the Captain, entitle the owner nevertheless to freight. It is a very serious thing for the Captain to choose part of the cargo to sell; he might do an irreparable injury. No doubt also it would be the law, certainly in my country, that if on the conclusion

of the voyage an action was brought against the shipowner for short delivery of goods from any cause, in calculating his damages you would have to take into consideration that, if they had been carried, there would have been freight payable. That is perfectly clear. The question whether anything of this ought to come into this code at all is a different matter. It is merely a question of the measure of damages for short delivery. I should humbly suggest that when we are laying down the law about freight we ought not to say freight shall be paid when a Captain sells a cargo-owner's goods, but of course we should take it is the law, without saying it, that when compensation is to be paid in the form of damages to the cargo-owner whose goods have been sold, we, of course, would have to allow for the freight in calculating what he is entitled to.

(La séance est levée. — The sitting was adjourned).

JEUDI, 23 SEPTEMBRE

THURSDAY, 23rd SEPTEMBER

M. B. C. J. LODER (La Haye). — On a dit que le capitaine doit payer l'affréteur qui n'a pas reçu sa marchandise, — ce qui est évident; mais on oblige dans ce cas l'affréteur à payer le fret. Il nous semble qu'il serait inique s'il devait payer tout son fret, même si le capitaine avait remplacé la place vide par d'autres marchandises. C'est pourquoi nous proposons de dire :

« Lorsque le capitaine remplace la cargaison non trans-
» portée à destination par d'autres marchandises, le mon-
» tant du fret de ces marchandises sera porté au crédit
» du chargeur jusqu'à concurrence du fret dû pour ces
» marchandises non-arrivées, et moins 10 % de ce fret
» qui seront acquis au capitaine à titre de provision. »

Je dis 10 %; on pourrait mettre tout aussi bien 20 ou 25 %. C'est uniquement pour donner au capitaine un intérêt à remplacer la marchandise.

M. FRANCESCO BERLINGIERI (Gênes). — Au nom de l'Association italienne, je me rallie complètement à l'amendement proposé par M. Loder. Quand le capitaine parvient à remplacer la marchandise périe ou vendue en cours de route, il est de toute justice que le nouveau fret ne soit pas complètement acquis au capitaine. Mais la proposition que nous avons faite est celle-ci : il n'est pas juste que

ce nouveau fret soit acquis exclusivement au chargeur. Nous proposons donc un dernier alinéa à l'article 2 qui serait ainsi conçu :

« Le nouveau fret éventuellement gagné par le capitaine » par le transport de marchandises embarquées en rem- » placement de celles péries ou vendues en cours de » route à raison de leur état d'avarie, sera partagé par » moitié entre le capitaine et le précédent chargeur. »

En explication de cet amendement, nous disons qu'il faut que le capitaine ait un intérêt à remplacer les marchandises péries ou vendues, parce que s'il ne gagnait rien par là, il n'aurait aucun intérêt à remplacer ces marchandises, d'autant plus qu'un nouvel embarquement de marchandises entraîne nécessairement de nouvelles responsabilités pour le capitaine vis-à-vis de la nouvelle marchandise. C'est pour ce motif que je propose de partager le nouveau fret entre le capitaine et le chargeur précédent. Au lieu de 10 ou de 25 0/0, nous disons 50 0/0.

M. LODER. — Le principe étant le même, je n'insiste pas sur le chiffre de 10 0/0.

M. BERLINGIERI. — Si le principe est le même, je me rallie complètement à votre amendement.

(*Verbal translation by Dr. A. SIEVEKING*).

Mr. Loder thinks that, when goods have been sold in the course of their voyage through their state and had to pay the freight, if the Master instead of these goods has taken other goods and earned freight on the other goods, the payment for the new goods should not be kept only by the Master, but should go to the benefit of the owner of the cargo sold who has paid the whole freight. Mr Loder's proposal is that the Captain should participate in this new

freight, let us say up to 10 per cent, or any other sum, 10, 20 or 30 per cent as may be thought fit.

Mr Berlingieri seconds this motion but he thinks that the Captain should have half of the new freight because the Captain has a great responsibility involved upon him by taking the new cargo.

M. MIRELLI (Naples). — Messieurs, je demande la parole seulement pour m'acquitter d'un mandat de confiance de mes amis de Naples qui m'avaient chargé de demander à la Conférence une déclaration au sujet de l'article 2.

La section de Naples était un peu désorientée devant la disposition de l'article 2 qui contenait des exceptions qu'elle croyait tout à fait limitatives et non pas explicatives. Mais les déclarations faites hier par M. Le Jeune ont expliqué clairement la chose, de manière que je comprends de ce qu'il a dit hier que les exceptions faites dans l'article 2 représentent des indications et ne se rallient pas au principe général d'exceptions limitatives et restrictives, comme on doit entendre en général en droit commun toutes les exceptions, de sorte que je puis me passer de demander des déclarations à ce sujet.

Vous avez entendu les très admirables discours faits par Lord Kennedy, par M. de Nagy et par M. Bradford qui ont proposé des amendements, et vous avez entendu en ce moment les dispositions que propose M. le Professeur Berlingieri. Nous autres, de Naples, nous avons demandé de laisser l'article tel qu'il est en réclamant seulement cette déclaration, qu'il n'est pas exclu de se rapporter au droit commun. Or, je vois que les amendements qu'on a présentés aujourd'hui se trouvent déjà prévus par cette loi, surtout, par exemple, la proposition faite par M. le Juge Bradford est déjà prévue par l'article 577 du code de commerce italien. Ensuite, vous savez que les dispositions des articles du code de commerce italien doivent s'inter-

préter avec les autres dispositions sur le contrat de transport et surtout l'article 400.

Le fréteur est responsable de la perte et de l'avarie des choses qui lui sont confiées pour le transport, à partir du moment où il les reçoit jusqu'au moment où il les délivre au destinataire, à moins qu'il ne prouve que la perte ou l'avarie sont dues à des cas fortuits ou de force majeure, qu'elles sont causées par le vice de la chose même ou par sa nature, ou par le fait du chargeur ou destinataire. De telle manière que vous avez déjà ces stipulations dans le droit commun. M. de Nagy propose dans son projet de loi, qu'il y ait des cas dans lesquels le transporteur soit tenu absolument de dommages envers l'expéditeur ; et s'il est obligé de payer les dommages, il est d'autant plus évident qu'il n'a plus à toucher de fret.

C'est pour cela que je désire laisser l'article tel qu'il a été formulé par la Commission de Paris, en prenant acte de tout ce qu'on a dit dans cette discussion plénière. Les séances ici ne sont pas faites pour arranger les articles qui se rapportent à un objet de droit privé. Les parties ont bien le droit d'arranger leurs contrats comme elles veulent ; mais enfin, lorsqu'il s'agit d'indiquer les lignes générales, il faut simplement marquer l'idée et laisser les choses comme elles ont été très bien faites par une Commission expressément nommée.

M. LE PRÉSIDENT. — Je vous remercie de vos paroles ; mais permettez-moi de faire observer que nous ne rentrons pas dans la discussion de l'article 2 et que l'amendement de M. Loder seul est en discussion.

M. MIRELLI. — Eh bien, quant à cet amendement, vous avez entendu ce qu'a dit M. Berlingieri ; je me rallie aux observations qu'il a présentées.

JUDGE BRADFORD. (U. S. A.). — Gentlemen, I wish to draw your attention to the fact that in the printed copy of the amendment which I had the honour to propose yesterday the word «solely» seems to have been omitted; it was certainly intended to have been inserted by me.

THE PRESIDENT. — We are not discussing that subject now, we are discussing the amendment of Monsieur Loder.

JUDGE BRADFORD (U. S. A.). — This is in the hands of the Members of the Conference, and is now being considered.

THE PRESIDENT. — It will come afterwards when we come to discuss your amendment.

M. ED. SCHWENN (Anvers). — Je voudrais dire quelques mots au sujet des amendements de M. Bradford.

M. LE PRÉSIDENT. — Pardon, nous discutons seulement l'amendement de M. Loder en ce moment.

M. LOUIS FRANCK (Anvers). — Messieurs, au sujet de l'amendement de mon ami M. Loder et de M. Berlingieri, j'ai pour ma part une observation à présenter.

L'amendement se divise en deux parties. La première partie d'abord : lorsque le capitaine remplace la cargaison non transportée à destination par d'autres marchandises, le montant du fret de ces marchandises nouvelles est porté au crédit du chargeur, jusqu'à concurrence du fret de la marchandise non arrivée. C'est un principe auquel, pour ma part, j'accorde mon entière approbation.

La seconde partie est ainsi conçue : « moins 10 % de ce fret qui seront acquis au capitaine à titre de provision »,

et notre honorable ami M. Berlingieri, avec une générosité toute italienne, propose de porter les 10 % à 50 %.

Moi, je propose de n'accorder ni les 10 %, ni les 50 %. Et voici mes raisons : tout d'abord, nous espérons faire une loi internationale et mon expérience est que toutes les dispositions de ce genre qui ont un caractère de mesure d'expédient, d'évaluation forfaitaire, donnent toujours lieu dans beaucoup de pays à des critiques. Il y a beaucoup de systèmes de législation où l'idée de solutionner des difficultés pratiques par une cote mal taillée n'est pas accueillie. On vous dit : pourquoi 10 %, pourquoi pas 30 % ? A quoi bon des chiffres de ce genre ?

Il y a une autre raison encore : c'est que nous ne devons pas oublier quelle est la réalité des choses. Dans la réalité des choses, ce n'est pas le capitaine qui engage de nouvelles marchandises. En pratique, c'est un courtier de navires ou un agent maritime, et cette noble et puissante corporation est parfaitement en état de veiller elle-même à ses intérêts, et jé pense que quand elle aura l'occasion de remplacer 300 ou 400 tonnes qui manquent, elle touchera sa commission et s'arrangera même pour toucher encore un peu plus.

Proclamons donc simplement le principe qu'on pourra remplacer la marchandise venant à manquer, sans exiger encore une récompense.

* * *

I may say in English that I think the principle of freight on cargo which replaces cargo which has been sold on any occasion must be taken into account, but I think it useless to allow a commission to the Captain on that freight. It would be considered in many Administrations as quite an outside provision, and I think we may look to the brokers and shipping agents to protect their interests.

M. JACQ. LANGLOIS (Anvers). — Messieurs, je crois que M^e Franck, qui a certainement une grande expérience en matière maritime, perd de vue que lorsque la cargaison aura été réalisée, ou en partie réalisée, et qu'il y a donc un vide dans le navire, il surgit une seconde question d'intérêt. Cet intérêt se résout entre le capitaine et celui qui a la marchandise à bord. Il est évident que si je prends un fret de remplacement, c'est en principe au profit de celui qui a payé le premier fret. Mais du moment que vous voulez que je fasse ce sacrifice, moi, à mes dépens, alors je vous dis : gardez votre fret de remplacement et je m'en vais, tel que je suis ; je prendrai du charbon ou quelque autre chose à ma guise, mais je ne ferai rien pour diminuer votre perte.

Si vous me donnez 5 %, permettez-moi de dire que cela n'est pas sérieux ; si vous mettez 10 % c'est déjà un peu mieux, mais pas encore assez, parce que pour avoir du nouveau fret, moi je dois perdre du temps, je dois payer mon arrimeur, je dois faire un tas de frais à l'embarquement et j'ai de plus une responsabilité considérable pour le débarquement. Et voilà qu'on veut m'envoyer promener avec 10 %. Il est évident que je vous enverrai promener à mon tour et je préférerai m'en aller avec mon navire à moitié vide.

M. Franck se trompe considérablement quand il croit que cela donnera lieu à difficultés ; à Anvers, nous appliquons toujours ce système et nous accordons 25 % et jusqu'à présent, nous n'avons jamais entendu la moindre critique, parce que c'est à peu près juste.

Voilà les quelques observations que je voulais présenter.

M. BERLINGIERI (Gênes). — Messieurs, c'est une question d'équité et d'utilité qui doit nous convaincre qu'il faut allouer quelque chose au capitaine ou à l'armateur ;

car je vous le demande, quel sera le capitaine ou l'armateur qui aura intérêt à remplacer des marchandises s'il sait d'avance qu'il n'aura rien à y gagner, et qu'il y aura en outre pour le capitaine la responsabilité à l'égard de la nouvelle marchandise. S'il sait qu'il n'a rien à y gagner, qu'est-ce qui l'engagera à prendre de nouvelles marchandises ?

C'est donc une question d'utilité et d'équité, pour engager le capitaine ou l'armateur (car quand nous parlons de l'un, nous parlons de l'autre) à prendre de nouvelles marchandises. Il est donc dans l'intérêt même de la navigation et du commerce de lui donner quelque chose.

M. Franck a dit que pour ces indemnités forfaitaires, il y a toujours des difficultés toutes les fois que les législations ont voulu adopter ce système. Mais du moment où, comme je vous le dis, c'est conforme à l'utilité et à l'équité, je pense qu'il ne faut pas écarter ce principe pour le seul motif qu'il pourrait y avoir des difficultés à se mettre d'accord. C'est pourquoi j'insiste, non pas sur les 50 %, mais sur le principe, sauf à déterminer ensuite le taux qui sera alloué au capitaine.

M. LODER. — Je voudrais répondre aux observations de M. Franck que les affaires sont les affaires. Quand on demande à quelqu'un de faire ce qu'il ne doit pas faire, il n'est que juste qu'on le récompense, car sinon, il n'y a aucun motif pour qu'il le fasse.

(Des membres demandent le vote.)

M. LE PRÉSIDENT. — Nous voterons sur cet amendement après les autres que nous avons encore.

Nous passons à l'article 3.

ARTICLE 3.

Lorsqu'après le départ le navire est empêché d'achever le voyage, le capitaine a droit au fret convenu, si la marchandise arrive néanmoins à destination par ses soins.

Si la réexpédition ne peut se faire que moyennant un fret supérieur, la différence en plus est à charge de la marchandise, sauf le droit du chargeur d'effectuer lui-même le réexpédition ou de disposer autrement des choses transportées.

In the event of the ship, after sailing, being prevented from completing her voyage, the Captain shall be entitled to demand the agreed freight, should he, in spite of such prevention, succeed in getting the goods carried to their destination.

Should a reshipment rendered necessary in the last mentioned case, be practicable only at a rate of freight higher than the agreed freight, the difference between the two rates of freight shall be chargeable upon the goods; but nothing herein shall interfere with the right of the shipper to effect such reshipment on his own account or otherwise to dispose of the goods carried.

PRESIDENT. — Zuerst wird Paragraph 1 zur Discussion gestellt. Hierzu hatte Herr de Nagy, glaube ich, Ausführungen zu machen.

Herr FRANÇOIS DE NAGY. — Meine Herren! Ich war so frei, in der allgemeinen Debatte schon den Standpunkt zu vertreten, dass wir das Prinzip selbst vollkommen akzeptieren, wonach die Distanzfracht beseitigt wird und dass der Kapitän nichts zu fordern hat, wenn er die Ware nicht an den Destinationsplatz führt. Nun gibt es aber

Fälle, wo es absolut ungerecht wäre, dass der Kapitän die Fracht vollständig verliert und der Befrachter nichts zu bezahlen hätte. Das ist besonders in dem Falle, wo der Kapitän ganz in die Nähe des Bestimmungsorts gekommen ist und die Ausschiffung der Ware im Zwischenhafen im Interesse des Befrachters gelegen ist, weil der Befrachter in der Lage ist, die Ware entweder in dem Zwischenhafen gut zu verkaufen — vielleicht zu einem bessern Preise als am Bestimmungsort, oder wenigstens zu einem Preise, der ihm einen Nutzen bringt.....

PRESIDENT. — Verzeihen Sie, dass ich Sie unterbreche, was Sie aber ausführen, gehört nicht zu 3 alinea 2.

Herr DE NAGY. — Dann werde ich das aussetzen.

M. RENÉ VERNEAUX (Paris). — Messieurs, sur le paragraphe 1 de l'article 3, je demande à déposer un amendement tendant à ajouter, à la fin, ces mots :

« ou par les soins d'un mandataire nommé par justice ».

Ce premier paragraphe ne donne droit au capitaine au fret que si la marchandise arrive à destination par ses soins. Or, en pratique, on nomme très souvent un curateur ou mandataire de justice qui, pour compte de qui de droit, prend soin de faire arriver la marchandise à destination. Souvent pour des motifs très légitimes, notamment pour ne pas compromettre son droit d'abandon, l'armateur ne soigne pas lui-même la réexpédition et en pareil cas, on nomme un curateur.

C'est pour prévoir ce cas que je demande l'ajoute des mots « ou par les soins d'un mandataire nommé par justice ». Je pense qu'il n'y a aucune objection à ce que ces mots soient ajoutés.

(*Verbal translation by M. LOUIS FRANCK*).

Monsieur Verneaux was just saying that in his opinion the words at the end of the first paragraph as they stand in the French text mean where goods get to their destination by the care of the Captain, ought to be completed by adding words to this effect : that where a person appointed by the Court has to forward the goods the same benefit will go to the shipowner. He mentions that in various Countries, for instance, in France, in a case of that sort the Captain in order to be sure that his acts will not be criticised afterwards will have an expert appointed.

M. LOUIS FRANCK. — I may say that I think with regard to the Paris Commission there is no objection to that.

Je pense, quant à moi, qu'il n'y a aucune objection à ce que ces mots soient ajoutés.

M. LE PRÉSIDENT. — Procédons à la discussion de l'alinéa 2 de l'article 3.

LORD JUSTICE KENNEDY. — Monsieur le Président, may I say that none of us quite accept that Article ; it is really to make a new contract against the will of the cargo-owner for the carriage of the goods at a higher rate. In practice I believe, and those who are more versed in commerce who are here will agree, that if a difficulty arises it ought to be arranged between the merchant and the carrier of the goods, and in practice that is done without difficulty, but to give a compulsory obligation to accept a higher rate of freight at the discretion of the Captain of the ship is a matter which is in fact not permissible according to our law, nor — and this is the one thing we have to consider here — is it, in our opinion, a just thing to enact. Those are matters which ought to be arranged, but certainly in our view the owner of the goods, if it is entirely the ship which is unable to carry on, must be bound to accept the right of the ship to tranship if it can, but the risk of the

freight, if it exceeds the agreed contract freight, must then be taken by him who is seeking advantage of such transshipment, namely, the owner of the ship.

(Traduction orale par M. LOUIS FRANCK).

Lors Kennedy est d'avis que le paragraphe 2 n'est fondé ni en équité, ni en droit. Le capitaine peut, s'il le désire, réexpédier la marchandise : il n'y est pas tenu ; il lui appartient d'apprécier dans quelles circonstances il le fait et il semble que dans aucune circonstance, il ne peut, sans autorisation du propriétaire de la marchandise, réexpédier celle-ci à un fret plus élevé. Lorsque véritablement il importera de faire la réexpédition à un fret supérieur, il sera toujours aisé de conclure un arrangement particulier à ce sujet. Ainsi on évitera des abus.

M. LODER (La Haye). — Le Comité néerlandais propose un amendement à cet article

Nous proposons de dire :

« La différence de fret sera à la charge de l'affréteur »
» pourvu que le capitaine l'ait informé en temps utile de »
» l'empêchement du navire, afin que le capitaine puisse »
» faire lui-même la réexpédition ou disposer autrement »
» des choses transportées. ».

Il me semble que c'est une question d'équité. L'amendement rentre complètement dans l'esprit de l'article tel qu'il a été conçu à Paris et je crois donc qu'il n'y aura pas d'objection à notre amendement.

HERR FRANÇOIS DE NAGY. — Ich möchte zunächst bemerken, dass ich das, was Lord Kennedy gesagt hat, meinerseits nicht für akzeptabel halte, da ich glaube, es gibt Verhältnisse, wo der Kapitän absolut nicht in der Lage ist, vom Befrachter genaue Anweisungen zu bekommen, und dass er sich entschließt, die Ware weiterexpedieren zu lassen und zwar, wenn es nicht anders geht, zu einem höheren Preise. Den muss der Befrachter zahlen,

da, wenn der Kapitän die Ware nicht weiterbefördern lässt, sie vielleicht in dem Zwischenhafen zugrunde geht. Es ist dies übrigens ein Prinzip, das z. B. auch in dem belgischen Code — ich glaube von 1908 — enthalten ist. Kurzum ich kann die Begleichung der Differenz nur für ganz gerechtfertigt ansehen und gerade auch im Interesse des Verfrachters gelegen.

Nun komme ich zu dem Amendement, das ich so frei war zu stellen. Ich proponiere als Ergänzung zu al. 2 Artikel 3 :

« dans ce cas le fret proportionnel jusqu'au port de »
» déchargement est dû en tant que le chargeur a tiré »
» profit du voyage interrompu ».

Das ist ein Zusatz, der nach meiner Ansicht der Gerechtigkeit entspricht. Denn wenn auch das Prinzip anerkannt wird, dass eine Fracht nicht zu bezahlen ist, wenn eine Ware nicht am Bestimmungsort anlangt, so müssen wir doch andererseits zugeben, dass der Schiffer im Interesse des Befrachters gehandelt hat, wenn er die Ware in einem Zwischenhafen ausgeschifft hat, das heisst insofern er im Interesse des Befrachters gehandelt hat. In sehr vielen Fällen hat allerdings der Befrachter absolut keinen Nutzen davon, dass die Ware in einem Zwischenhafen ausgeschifft wird, wenn sie dort gar nicht oder zu einem schlechteren Preise verkauft werden kann oder wenn ihr Weitertransport sehr erhebliche Kosten erfordert. Darum ist eben eine Distanzfracht mit ihrer mathematischen Berechnung nach der zurückgelegten Strecke ungerechtfertigt. Andererseits gibt es aber Fälle, wo der Befrachter wirklich Nutzen davon hat, wenn die Ware sehr nahe dem Bestimmungsort anlangt, von wo aus die Weiterbeförderung sehr leicht ist oder wo er die Ware sehr gut verkaufen kann. In solchen Fällen sollte der Verfrachter dem Schiffer dankbar dafür sein, dass er die Ware so weit

befördert hat. Es entspricht insofern, glaube ich, der Gerechtigkeit, dass wir hier anerkennen: Wenn der Schiffer die Ware weiterexpediert und dadurch dem Befrachter den vollen Nutzen verschafft, so hat dieser die ganze Fracht zu bezahlen, während, wenn die Ware in dem Bestimmungshafen verkauft und dadurch ziemlich dasselbe erreicht wird, wie wenn die Ware in dem Bestimmungshafen angekommen wäre, in solchen Fällen muss doch wenigstens dem Schiffer soviel von der Fracht zuerkannt werden, als bewiesen werden kann, dass und insofern die Reise bis zum Zwischenhafen im Interesse und zum Nutzen des Befrachters gewesen ist. Das ist freilich eine Beweisfrage: der Schiffer muss das beweisen; er fordert die Fracht bis zu dem Zwischenhafen und er muss beweisen, dass der Befrachter die Ware im Zwischenhafen zu demselben Preise verkauft wie es im Destinationshafen möglich gewesen wäre, oder er muss beweisen, dass die Fracht vom Zwischenhafen bis zum Destinationshafen nur minimal gewesen ist, so dass jedenfalls ein Nutzen für den Befrachter herausgekommen ist. Diesen Beweis zu führen, wird aber schliesslich nicht so schwer sein: der Schiffer kann sich davon überzeugen, was der Befrachter getan hat, ob er die Ware verkauft hat und zu welchem Preise, oder zu welcher Fracht die Ware weiter expediert ist. Die Frage ist in der Praxis nicht so schwierig, als dass man der Gerechtigkeit nicht entsprechen sollte, wo das Gegenteil die grösste Ungechtigkeit für den Schiffer wäre, wenn er in einem solchen Falle keine Fracht erhielte. Ich habe diesem meinem Standpunkt schon in meinem *Projet de Loi* in folgender Weise Ausdruck gegeben:

« Si le fréteur fait parvenir à destination la marchandise
» sauf à décharger en cours de voyage et à recharger sur
» un autre navire, l'affréteur ou le réclamant, sont tenus

» de payer non seulement le fret stipulé, mais encore
» l'excédent qui se présente en sus du fret stipulé par le
» contrat, à la suite du fret payé par le fréteur jusqu'à
» destination des marchandises. »

An « sauf le droit du chargeur d'effectuer lui-même la
» réexpédition ou de disposer autrement des choses trans-
» portées » — möchte hinzugesetzt werden :

« Dans ce cas, le fret proportionnel jusqu'au port de
» déchargement est dû en tant que le chargeur a tiré
» profit du voyage interrompu ».

Das ist die Bestimmung, die ich als Amendement für
absolut notwendig halte, damit wir das englische Prinzip
akzeptieren können. Ohne diese Modifikation des Prinzips
können wir es mit unserem Gerechtigkeitsgefühl nicht ver-
einbaren, die Distanzfracht absolut beiseite zu legen.
Durch dieses Amendement aber repariert sich eigentlich
das Prinzip, dass eine Distanzfracht nicht zu bezahlen
ist. Ich empfehle Ihnen also mein Amendement zu al. 2
Artikel 3.

PRAESIDENT. — Wollen Sie Ihr Amendement nicht
schriftlich einreichen ?

HERR DE NAGY. — Es liegt ja gedruckt vor.

Mr SUKETADA ITO (Tokio). — I beg to express the
opinion of the Japanese Association of Maritime Law on
two points concerning the second paragraph of Article 3.
1° If the difference between two rates of freights was
made chargeable upon the goods, under the said para-
graph, in consequence of the Captain's fault or absence
of reasonable prudence, the shipper, the Association
thinks, may claim against the Captain for the damages
arising out of payment of the difference. This principle
should be expressly provided in the draft.

2° If the shipper himself has taken all necessary measures, that is to say, reshipment, or other means, to dispose of the goods carried in the case mentioned in the said paragraph, shall the freight be payable? If so, how? According to the text of the draft it seems not. Because the payment of freight in the case I referred to is not specially excepted in the draft in the meaning of Article 1, but this in any article should be inadequate and in that case freight *pro rata* shall be paid.

M. F. C. AUTRAN (Marseille). — Messieurs, je vous demande de bien vouloir maintenir dans son intégrité le texte proposé par la Commission de Paris et par suite d'écarter l'amendement de Lord Justice Kennedy ainsi que les amendements déposés par nos amis hollandais et hongrois. Je vais vous dire tout de suite les raisons pour lesquelles je vous prie de maintenir le texte en question.

Dans la discussion de notre projet de loi, il ne faut pas perdre de vue que les principes que nous posons ne sont que des principes qui trouveront leur application lorsque les conventions n'auront pas réglé elles-mêmes la situation, soit par la charte-partie, soit par le connaissement, et par conséquent, nous avons à nous préoccuper de poser des règles qui recevront leur application dans des cas extrêmement rares, et nous retiendrons, pour établir ces règles, tout ce que nous croyons la solution la plus équitable d'une part et la plus conforme à la pratique des affaires de tous les jours, d'autre part. Or, lorsqu'un capitaine ne peut pas continuer son expédition et qu'il ne peut transporter la marchandise à destination avec son propre navire, que se passe-t-il dans la pratique? Vous êtes tous des gens d'affaires et vous savez qu'aujourd'hui, avec le télégraphe, avec les câbles sous-marins, lorsqu'un navire ne peut continuer son expédition, tous les intéressés sont

prévenus dans les 24 heures. Les assureurs sont représentés par leurs comités. Ces comités donnent des instructions à leurs agents, et lorsque donc le navire ne peut continuer son voyage, les assureurs interviennent et pour éviter un délaissement de la marchandise, ce sont eux qui affrètent un navire et terminent le voyage. J'en appelle aux souvenirs de tous ceux qui m'écoutent : c'est bien ainsi que les choses se passent. Par conséquent, qu'est-ce qui est proposé dans le texte de la Commission de Paris ? C'est tout simplement de donner au capitaine le droit de faire, ce qui, dans la pratique, se fait tous les jours.

D'autre part, croyez-vous qu'il y a un capitaine au monde qui affrèterait un autre navire sans l'avis soit de ses chargeurs, soit de ses assureurs ? Par conséquent, le texte tel qu'il a été posé par la Commission de Paris, répond en fait à des considérations d'équité et de pratique courante. Si l'on fait supporter au chargeur l'excédent de fret, pourquoi est-ce ? Parce que c'est un risque de la navigation. D'ailleurs, en fait, qui est-ce qui paye cet excédent ? Est-ce que vous croyez que ce sont les chargeurs ? D'après toutes les polices d'assurance sur facultés, c'est un risque à la charge de la marchandise. Et la solution qui est ainsi consacrée par les polices d'assurances est également consacrée par la législation française. Il y a un article spécial qui met ce risque à charge de l'assureur sur facultés ; c'est un des périls admis ; c'est une fortune de mer comme une autre.

Voilà pourquoi, dans quel but, dans quelle idée, nous avons inséré ce texte à la Commission de Paris.

J'en arrive à l'amendement hollandais et je regrette de me séparer de nos excellents amis de Hollande ; mais il me semble qu'ils veulent obliger le capitaine à consulter les chargeurs qui dans les trois quarts des cas, sont introuvables, et qui sont en tous cas souvent très nombreux —

car si vous avez un manifeste de general cargo avec 5 ou 600 connaissements, dont presque la totalité sont à ordre, comment le capitaine peut-il savoir, en cours de voyage à qui il doit s'adresser ? Et lorsque le chargeur aura contracté une police, ou que la marchandise sera assurée par aliment sur une police d'abonnement, pour un navire en relâche, ce ne sera pas le capitaine, ce seront les assureurs, qui auront à s'occuper de la réexpédition. Soyez bien convaincus que nous ne comptons pas sur les efforts du capitaine pour terminer le voyage et que ce sont les assureurs qui interviennent toujours en payant tous les suppléments de fret qui peuvent être dus.

N'imposez donc pas au capitaine une obligation puérile. Comptez plutôt sur l'œil vigilant des assureurs.

J'en arrive ici à l'amendement de nos amis hongrois. Nous avons posé en principe, au début même de l'art. I que nous adoptions la solution anglaise « pas de fret si pas d'accomplissement complet du voyage ». Or, l'amendement de nos amis hongrois a pour effet d'ouvrir de nouveau la porte au fret proportionnel. Les délégués hongrois ne parlent pas de fret proportionnel à proprement parler, mais d'une espèce de fret d'équité. Comme avocat, je devrais me réjouir de cette proposition, car il est bien certain que jamais les capitaines et les chargeurs ne seraient d'accord sur la valeur des services rendus, et il en résulterait des litiges dans chaque cas.

Non, Messieurs, maintenons le texte de la Commission de Paris. Il n'a pas été rédigé à la légère, ce n'est qu'après un examen minutieux de tous les points que l'on vient de soulever que nous avons arrêté cette rédaction, que je vous prie de maintenir.

Herr Dr. GÜTSCHOW (Hamburg). — Meine geehrten Herren ! In dem Absatz des Artikels 3 haben wir eigent-

lich ohne Diskussion die eminente Neuerung einstimmig angenommen, dass die Distanzfracht abgeschafft werden soll. In dem Paragraphen, der jetzt besprochen wird, sind die einzelnen Ausnahmen, Einschränkungen dieses neuen Prinzips getroffen worden. Gegen diese Einschränkungen sind zwei Einwendungen erhoben. Die eine vom Lord Justice Kennedy, der sagte, diese Einschränkungen seien überhaupt unrichtig, weil der Reeder nie zu höheren Frachten Waren befördern würde. Herr de Nagy und eben auch Herr Autran sagten, dass das möglich sei, da der Kapitän sehr wohl manchmal in der Lage sei, im Interesse der Ladung sie zu einer höheren Fracht weiter zu befördern. Das ist zutreffend und dagegen wird wenig zu sagen sein. Dann hat Herr de Nagy aber befürwortet, in gewissen Fällen doch dem Kapitän eine Distanzfracht zuzuweisen, namentlich in dem Falle, wenn das Schiff sehr dicht beim Bestimmungsort angekommen sei und die Ware dort günstiger oder wenigstens ebenso günstig verwertet werden könne als im Bestimmungsort, da erfordere es die Billigkeit, dem Verfrachter, insoweit die Distanzfracht zuzuweisen, als der Befrachter Vorteil davon habe. Ich glaube, das beruht auf einer nicht ganz richtigen Auffassung des Prinzips, das wir im ersten Absatz des Artikels festgestellt haben. Da ist gesagt: Der Kapitän ist befugt, die Ware weiter zu befördern, wenn er sie weiter befördern will. Liegt nun die Sache so, dass der Schiffer bis ganz dicht am Bestimmungshafen angekommen ist, so wird ja aller Wahrscheinlichkeit nach der Kapitän es in seinem Interesse für zweckmässig finden, den Frachtvertrag aufrecht zu erhalten und mit einem andern Schiffe die Ware an den Bestimmungsort zu bringen versuchen. Liegt die Sache aber so, dass der Befrachter sagt: Ich will nicht, dass sie dahin befördert wird, sondern sie soll hier in dem Zwischenhafen verwertet

werden, so ist das ein ganz anderer Fall. Denn nun sagt der Befrachter, während der Verfrachter den Vertrag ausführen will : Ich will den Vertrag nicht ausgeführt haben. Er tritt vom Vertrage zurück und hat infolgedessen die volle Fracht zu bezahlen. Ich glaube, das ist eine Konsequenz, die sich aus der Sache selbst ergibt. Nun gebe ich Herrn de Nagy recht : ich glaube, dass dieser Absatz unseres Artikels 3 nicht sehr glücklich abgefasst ist und dass daraus verschiedene Missverständnisse entstanden sind. Gemeint ist doch das : es tritt ein Unfall ein, so dass die Reise in ihrer ursprünglichen Beschaffenheit mit dem ersten Schiffe nicht ausgeführt werden kann. Das ist die Tatsache, die vorliegen kann : die Reise kann nicht in der bestimmten Weise ausgeführt werden. Dann hat der Verfrachter resp. der Kapitän die Wahl, was er tun will : entweder er führt die Reise aus mit einem andern Schiff — dann bekommt er die volle Fracht — oder er führt sie nicht aus — dann bekommt er gar keine Fracht. Wenn er sie nun aber nicht ausführen will, dann hat er nach wie vor die Verpflichtung, für das Beste der Ladung zu sorgen. Er hat die Verpflichtung, wenn er es kann, mit seinem Verlader in Verbindung zu treten und dessen Weisung einzuholen und diese zu befolgen. Das haben meines Erachtens die holländischen Herren bei ihrem Antrage übersehen. Wenn der Kapitän dazu in der Lage ist, so hat er, wie gesagt, von selbst die Verpflichtung, mit dem Verlader in Verbindung zu treten. Für diesen Fall ist also der ungarische Antrag nicht erforderlich. Wenn der Kapitän die Möglichkeit hat, sich mit dem Verlader in Verbindung zu setzen, dann liegt die Sache sehr einfach : dann hat er zu tun, was der Verlader ihm anweist. Ist es aber nicht möglich, sich mit ihm in Verbindung zu setzen, dann hat der Kapitän das zu tun, was nach seinem eigenen Ermessen das Beste für die Ladung

ist. Was er dann tut, ist etwas Höheres, als was er ursprünglich zu tun hatte : er handelt jetzt nicht als Vertreter des Reeders, sondern als Vertreter der Ladung und infolgedessen ist an ihn für die Ladung eine höhere Fracht zu zahlen. Die ursprüngliche Fracht ist nicht zu zahlen, darauf hat der Kapitän kein Anrecht, weil er den Vertrag mit dem Reeder nicht ausgeführt hat. Ich glaube, dass dadurch die Sachlage klargestellt worden ist und halte es für ausreichend, wenn gesagt wird :

« Endigt die Reise in einem Nothafen, so hat der Kapitän, wenn tunlich, betreffs derselben, Weisungen des Verladere einzuholen ; ist dieses nicht tunlich, so hat er nach pflichtmässigem Ermessen für das Beste der Ladung zu sorgen und kann sie für Rechnung des Absenders nach dem Bestimmungsort befördern lassen oder verkaufen. »

Ich glaube, dass das dem Prinzip entspricht und die Sache der Billigkeit entsprechend regelt.

M. CHARLES LE JEUNE (Anvers). — Après les explications si précises et si concluantes données par notre ami, M. Autran, je m'abstiendrai d'entrer dans de nouveaux détails sur les questions qui viennent d'être discutées, et je me permettrai simplement de poser une question à Lord Justice Kennedy. Je voudrais lui demander, dans le cas où un navire se trouve empêché de continuer le voyage et où la cargaison est réexpédiée à destination par un autre navire et par les soins du capitaine, et si ce capitaine fait suivre par un « respondentia bond » le montant du fret, — quelle est la solution que vous donneriez présentement en Angleterre à la question du payement du fret ?

Il me semble qu'il vous serait, même dans ce cas, difficile de vous soustraire au payement d'un fret supérieur à celui originairement contracté.

PRAESIDENT. — Wir haben jetzt über den Artikel 3 diskutiert. Es sind keine weiteren Redner dafür angemeldet.

HERR HERMANN SCHULDT (Flensburg). — Darf ich noch ein Wort dazu sagen? Es scheint im zweiten Absatz ein redaktioneller Irrtum vorzuliegen. Es wird da der Ausdruck « chargeur » gebraucht, während das Konossement weiterverkauft sein kann, es sich also um eine Ware handelt, die ihm gar nicht mehr gehört.

PRAESIDENT. — Das ist die Meinung : der Ladungsinteressent.

M. LOUIS FRANCK. — Le Dr. Schuldt fait observer qu'au lieu de « chargeur », il faut évidemment dire « intéressé à la cargaison ».

HERR DR. ANTONIO VIO (Fiume). — Meine Herren! Ich werde nur ein paar Worte zur Begründung des ungarischen Standpunktes sagen. Die ungarische Gesellschaft hat sich dem Artikel 1 angeschlossen, aber nur unter dem Vorbehalt, dass in den ferneren Text des Gesetzentwurfs ein Zusatz eingefügt wird, welcher geeignet ist, die schroffen und nach unserer Ansicht ungerechten Folgen des ersten Artikels abzuwenden. Nehmen wir an, ein Schiff führe Waren von Smyrna nach Marseille, würde aber in Palermo seeuntüchtig und könnte die Reise nicht fortsetzen. Der Ladungsinteressent könnte ein anderes Schiff nehmen für eine etwas höhere Fracht, er tut es aber nicht. Warum nicht? Der Preis dieser Ware ist in der Zwischenzeit in Marseille gefallen, und er kann die Ware in Palermo ebensogut oder besser verkaufen als in Marseille. Was soll er in diesem Falle tun? Natürlich nicht die grössere Fracht bezahlen, um die Ware nach Marseille

zu expedieren, sondern er wird die Ware in Palermo verkaufen. Damit wird er einen doppelten Gewinn haben : erstens wird er die Ware besser verkauft haben und zweitens erspart er vollständig die Fracht. Nach unserer Ansicht, nach unserem Gerechtigkeitsgefühl glauben wir, dass er in diesem Falle doch dem Schiffsreeder eine Fracht zahlen müsste, denn wenn er diesen Vorteil gewonnen hat, so hat er ihn der Tätigkeit des Schiffsreeders zu verdanken, der die Ware bis Palermo geführt hat.

Nehmen wir einen andern Fall. Das verunglückte Schiff bleibt in einem Nothafen liegen. Der Kapitän tut sein Möglichstes, um die Ware weiter zu expedieren, der Ladungsinteressent will aber nicht warten und zieht gleich seine Ware zurück. Nach einigen Tagen oder Wochen findet er ein anderes Schiff, welches ihm die Ware zu einem Spottpreise vom Nothafen bis zum Bestimmungshafen führt. Der Ladungsinteressent hat wiederum Vorteil davon, und den Vorteil hat er nur dem Reeder zu Verdanken, der die Ware so nahe bis zum Bestimmungsort geführt hat. Alles dieses hat uns zu der Ueberzeugung gebracht, dass wir die Fassung des Artikels 1 ohne den Zusatz nicht annehmen können.

Gehen wir ein bisschen weiter, so wissen wir, dass in allen Gesetzgebungen und im allgemeinen Zivilrecht der Grundsatz besteht, dass niemand zum Schaden eines andern sich bereichern darf. In diesem Falle wäre die Bereicherung zum Schaden des Schiffsreeders offenkundig.

Zweitens haben wir in allen zivilisierten Gesetzbüchern den Grundsatz, dass der *negotiorum gestor* das Recht hat, sich den gemachten Aufwand ersetzen zu lassen. Wenn der *negotiorum gestor* dazu ein Recht hat und sogar ohne dass er einen besonderen Auftrag gehabt hat, warum sollte dann der Schiffsreeder, der Kapitän, der mehr als ein *negotiorum gestor* ist, nicht das Recht haben, sich für

seine Leistungen bezahlen zu lassen, wenn sie zum Nutzen des Ladungsinteressenten ausgefallen sind?

Ferner wäre, wenn wir das schroffe Prinzip annehmen, doch ein zu grosser Kontrast zwischen dem Seerecht und dem Handelsrecht. Im ungarischen Handelsgesetzbuch, im österreichischen, in vielen anderen, vielleicht kann man sagen in sämtlichen, gilt das Prinzip für Frachtgeschäfte auf festem Lande: wenn der Frachtführer die Ware ohne sein Verschulden nicht zum Bestimmungsort bringen kann, so ist doch der Eigentümer der Ware verpflichtet, die Fracht bis zum Zwischenort zu zahlen. Wenn ein solches Prinzip in dem Handelsgesetzbuch angenommen ist — ich sage nicht, dass dasselbe Prinzip dann auch für das Seerecht gelten soll, da eine teilweise Reise für den Ladungsinteressenten hier meist keinen Nutzen hat — aber es müsste doch das Prinzip gelten, dass dem Schiffseigner und dem Kapitän auch eine Teilleistung bezahlt wird, falls sie für den Ladungsinteressenten von Nutzen gewesen ist. Deswegen stimme ich dem Amendement des Herrn Prof. de Nagy vollkommen zu.

Nur eines wäre vielleicht noch zu beachten. Herr Prof. de Nagy sagte, in diesem Falle wäre es natürlich Pflicht des Kapitäns, zu beweisen, dass die von ihm geleistete Arbeit dem Ladungsinteressenten zum Nutzen ausgefallen ist. Dieses Verlangen würde aber zu grossen Schwierigkeiten führen, und der Ladungsinteressent wird meiner Ansicht nach diese Schwierigkeiten leicht benutzen, um sich von der Zahlung loszumachen. Darum, meine ich, muss er beweisen, dass die teilweise Reise bis zum Nothafen für ihn von wenig oder keinem Nutzen gewesen ist. Dieses Beweis kann für den Ladungsinteressenten sehr leicht sein, da er alle Behelfe hat, er kann alles beweisen: um wieviel er gekauft und verkauft hat und um wieviel er am Bestimmungsort hätte verkaufen können.

PRAESIDENT Dr. R. MARTIN. — Meine geehrten Herren! Die Herren Vio und de Nagy haben sich bei ihren Ausführungen von Gedanken leiten lassen, die sehr wohl verständlich sind und in gewisser Hinsicht, vom theoretischen Standpunkt aus, auch volle Sympathie verdienen. Aber wir dürfen nicht vergessen, dass die Pariser Kommission den Vorschlag gemacht hat, mit der Distanzfracht zu brechen und dass sich die deutsche Kommission dem Vorschlage der Pariser Kommission angeschlossen hat. Der Vorschlag aber, der eben an uns herangetreten ist, führt auf die Distanzfracht zurück. Auf Einzelheiten möchte ich eingehen. Dem, was Herr Dr. Autran gegen den zuletzt gemachten Vorschlag vorgetragen hat, kann ich mich anschliessen, desgleichen kann ich dem beistimmen, was Herr Dr. Gütschow gesagt hat. Ich will nur das eine noch sagen: wenn Herr Vio damit operiert, dass der Kapitän ein *negotiorum gestor* für die Ladungsinteressenten sei, so ist das unrichtig. Das ist, wie mir scheint, gerade der Ausgangspunkt des Irrtums, in den er und seine Freunde bei Stellung ihres Antrages verfallen sind. Kapitän und Befrachter stehen in einem Vertragsverhältnis zu einander, und alle Folgerungen, die aus dem Gesichtspunkt abgeleitet sind, scheinen mir hinfällig zu sein.

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J'aimerais à dire un mot en français, puisque c'est la langue du Congrès.

J'ai dit en résumé que tout ce qu'ont dit MM. Vio et de Nagy mérite toute notre attention. Mais si nous voulons adopter le système anglais et abandonner le fret pro rata itineris, il ne faut pas accepter ces amendements qui nous y conduisent par un autre chemin. Je me suis prononcé contre tout ce que l'on a dit au sujet du capitaine qui serait

un negotiorum gestor de la cargaison. Le capitaine a un contrat d'affrètement et c'est uniquement d'après cela qu'il doit se diriger et en vertu duquel il doit agir dans l'intérêt de la cargaison. Je vous propose donc de suivre le rapport de M. Autran et de M. Gütschow. Les propositions hollandaises ne me semblent pas nécessaires non plus.

PRAESIDENT DR. SIEVEKING. — Wir würden nach der Geschäftsordnung bei der jetzigen Sachlage jetzt abzustimmen haben. Es hatten aber unsere englischen Freunde und Lord Kennedy besonders, wie Sie erinnern werden, den Wunsch ausgesprochen, sich miteinander, wozu sie noch keine Gelegenheit gehabt hatten, zu unterhalten über den Standpunkt, den sie verschiedenen Bestimmungen in 1-2-3 gegenüber einnehmen. Das würde also jetzt noch nachzuholen sein und in der Beziehung würde Herr Kennedy noch zum Wort zuzulassen sein.

LORD JUSTICE KENNEDY. — Monsieur le Président, I have much pleasure in doing my best to submit clearly to the Members of the Conference our views on the first three Articles, bearing in mind, if Members kindly will, what I said at the beginning, that we are assisting as far as we can, but that our Committee in England, our English branch, has not formulated any express instructions. I will now proceed.

With regard to Article 1, of course, we agree to that, but we think it would be desirable that that Article as well as all the other Articles, the second and third, should be prefaced in any draft with such words as, « save as may be agreed by special contract », so as to make it clear that what we are proposing to be the general law is subject to the special contract which is made. Of course in fact in shipping matters there is almost always a special

contract, and a very very special contract as to carriage. Then we suggest respectfully, as we have done already, that Article 2, « pour les marchandises dont la valeur est admise en avarie commune », should be omitted. We think that the question of general average is not one that comes into the law of freight by way of a Statute, but that it should be dealt with when an average question arises.

The next question is the second paragraph of Article 2, « pour les marchandises qui ont péri en cours de route par leur nature ou vice-propre ». With regard to that we should ourselves unanimously prefer that that also should be omitted, but it is desirable always as far as one can to try sympathetically to meet the views of others who differ, and, therefore, we should be willing to accept in its entirety for present purposes — because this matter has to go further to be drafted by a Committee — the amendment which has been moved by our friend Judge Bradford as regards that, and which would then run, « In respect of » goods which have perished in the course of the voyage » solely by reason of their defective or improper condition » at the time of shipment, or solely by reason of their nature, » provided such nature has been at the time of shipment » concealed from the owner or master ; also in respect of » goods of a dangerous nature which have been shipped » without notice of their character, and have been lawfully » destroyed during the voyage ».

With regard to the third proposition in Article 2, « pour les marchandises qui sont vendues en cours de route à raison de leur état d'avarie provenant, soit de leur nature ou vice-propre, soit d'une fortune de mer », we cannot bring ourselves — any of us — to accept that. It seems to us that would be a thing which would be unjust for reasons which have already been dealt with. With regard to the paragraph which ends Article 2, « pour les

marchandises employées ou vendues au cours du voyage en raison des besoins urgents du navire », it is agreed to be merely a matter of drafting, and we have endeavoured to put that draft into a form which I think our President suggested in starting would be right. We all mean the same thing, but we do not quite like the language of this, and we should respectfully propose these words in substitution, translated, of course, into French, I am only giving them in English, and some body more competent will translate them into French, « In assessing the compensation or damage for non-delivery of goods necessarily employed to satisfy the urgent needs of the ship allowance shall be made for the amount of freight on such goods ».

Then we come to Article 3, and we have no sort of objection — we entirely agree — to the first paragraph of the Article, and, therefore, I pass on.

With regard to the second, we are, unfortunately, unable to agree for the reasons I tried as shortly as possible to state. We do not think that it would be right as a general matter of law that a Captain, however honest, and of course, Captains in my view generally wish to be honest, should have the power to make a new contract at a higher rate absolutely binding the owner of the goods without even communication, and we, therefore, could not agree to that in any form, and I only wish to add, as my friend Monsieur Le Jeune appealed to me with regard to a respondentia bond — and I feel the highest respect for any suggestion he makes — it is totally different as he will agree in principle to this that after the respondentia bond has been given under old practice before this modern practice, there would be a right in the owner of the goods to seek indemnity from the owner of the ship to the extent to which he had been made liable under the bond, whereas this Article proposes absolutely to fasten for ever the

burden of the extra freight upon a man with whom the principal of the Captain, namely, the owner of the ship, has contracted for good consideration to carry, not at that rate, but at a lower rate.

JUDGE BRADFORD (U. S. A.). — May I ask now to have a correction made ? I rose to the point some time ago. The amendment I had the honour to propose, and which has been printed and is now in the hands of the members of the Conference, does not contain the word « solely ». If you will look at Article 2, sub-division 2, and kindly insert the word « solely » after the word « voyage » in the second line and also insert the word « solely » after the word « or » in the third line, it will represent the amendment as I intended it.

M. BERLINGIERI. — Comme le chemin que nous avons à faire est très long, je propose que les orateurs ne pourront parler que 5 minutes.

M. LOUIS FRANCK. — Messieurs, j'ai demandé la parole sur l'état général de la question au point de vue des votes que vous avez à émettre et de la décision à laquelle il convient d'aboutir.

Je considère pour ma part que le résultat de ces deux jours de discussion est important et considérable à un point de vue qui me paraît essentiel.

Nous avons entendu beaucoup d'orateurs ; nous n'avons entendu personne, je pense, défendre le système du fret de distance ou du fret proportionnel, et je pense que la Conférence pourrait donc, par un vote que j'espère unanime, consacrer son sentiment que le système du fret de distance, ou de fret proportionnel, sous l'une ou l'autre de ces formes, doit être aboli.

Viennent alors les questions d'application, et la question de savoir si, et dans quelle mesure, des exceptions doivent être apportées à cette règle. Et là, la situation présente est également fort simple. Quatre cas ont été examinés :

1. Avarie commune. Je crois qu'il n'y a pas de doute que tout le monde ne soit d'accord pour reconnaître qu'en tant qu'il s'agit d'une avarie commune, elle sort des limites de ce traité. Il importe seulement d'insérer une réserve pour bien marquer que ce que nous disons au sujet de la déduction du fret en cas de non-arrivée à destination, ne touche pas aux intérêts se rattachant au fret en règlement d'avarie commune. Voilà donc encore un point sur lequel encore une fois toute controverse disparaît.

2. Le second point est relatif à l'effet que peut avoir sur le fret, le dommage, la destruction de la marchandise par vice propre ou par la nature de la marchandise. A cet égard, je suis heureux de constater, après le discours — clair comme toujours, — de l'honorable Lord Justice Kennedy, que nous avons réussi, sinon à nous entendre complètement, du moins à faire un pas certain vers l'entente. Après le système qui nous était proposé d'abord et qui consistait à dire que le risque du vice-propre est assimilable à la fortune de mer, on nous propose maintenant de dire que tout au moins dans un certain nombre de cas, le fret sera dû. Quand on ne peut pas tout avoir, c'est déjà quelque chose d'obtenir à mi-chemin une concession. Nos amis anglais et américains nous proposent, d'accord, un amendement à ce sujet.

Je ne vous cache pas qu'à mon avis, pour les créances qui se présentent en pratique au point de vue des intérêts de ce genre, la seconde solution ne me paraît pas considérablement différente de la première. Des théoriciens peuvent discuter longuement là-dessus, mais il me semble que dans la pratique, on trouverait encore à mi-chemin

entre les deux formules, une solution élégante qui donnerait satisfaction à tout le monde. Je voudrais qu'on me donnât quelque temps pour la chercher, et je vous l'indiquerai tout à l'heure.

3. J'arrive au troisième cas, le cas où les marchandises n'arrivent pas à destination, parce que dans leur propre intérêt, il en a été disposé. L'honorable M. Bradford et l'honorable M. Page proposent un amendement que la Commission de Paris peut accepter. Ils proposent de marquer dans le texte que c'est uniquement dans le cas où la vente a été légitime et nécessaire, que le fret serait dû. Mais nos amis anglais ne sont pas d'accord. Je fais appel à eux. Je trouve que le système est très dur pour les armateurs. Seulement, nous n'avons jamais eu l'habitude, dans ces conférences, de trancher ces questions par majorité. Nous avons toujours montré tous les égards pour l'avis de la minorité. Cela étant, il sera dans les vœux de la Conférence de marquer, au point de vue de ce numéro 3, quelles sont les tendances générales de l'assemblée; mais je la prierais, si elle estime qu'il y a lieu de voter, de n'admettre qu'un vote en première lecture.

4. Vient alors le quatrième cas : celui où la marchandise est vendue en cours de route pour les besoins du navire. Ici de nouveau, pas de désaccord; tout le monde est d'accord pour dire que c'est une question de calcul.

Je passe à l'article 3 et je trouve encore que nous sommes d'accord sur le paragraphe 1; et s'il y a désaccord sur le paragraphe 2, ce désaccord pourra dans une certaine mesure s'atténuer en tant qu'il s'agit de cet amendement proposé par l'honorable M. Loder, appuyé par MM. Berlingieri et Langlois et qui vise le fret de remplacement. Tout le monde est d'accord. Il n'y a de discussion que sur le point de savoir s'il faut allouer 10, 25 ou 50 %. J'ai suggéré qu'il y a là surtout une question

de pratique ou d'usage du port et que peut-être on pourrait se contenter d'insérer cette règle d'équité que l'on tiendrait compte au capitaine, s'il y a lieu, d'une façon équitable, de ses peines et de ses frais en vue du remplacement. M. Loder et M. Berlingieri ont bien voulu me dire que pareille disposition aurait leur agrément. Dans ces conditions, je puis me résumer de la façon suivante. Je propose d'émettre le vote suivant :

« La Conférence estime qu'il y a lieu de supprimer le système du fret de distance ou fret proportionnel ».

Je voudrais ensuite, si vous le jugez nécessaire, un vote en première lecture sur la question de la vente des marchandises en cours de route et le sort du fret en ce cas, — il est entendu qu'on ne votera qu'en première lecture.

Je voudrais en troisième lieu qu'il y eût un premier vote du même genre sur le second paragraphe de l'article 3 et qu'ensuite, une Commission soit désignée par le Bureau Permanent pour tenir compte de ces solutions et présenter un avant-projet modifié conformément à ces résolutions, à la prochaine Conférence. Cela est d'autant plus nécessaire que quel qu'ait été le désir de la Commission de Paris d'être complète, il y a une série de questions non encore solutionnées et que si nous voulons faire un code international sur le fret, il faudra que l'on s'occupe également de ces questions : fret en cas de stipulation de « lump sums » ; fret payé à l'avance qui, aujourd'hui, est restituable d'après les lois continentales, mais pas en Angleterre ; les cas d'avarie particulière, mesures sanitaires et autres, — tout cela doit être mentionné pour que le code soit utile. Cela ne sera pas un retard, mais une fois de plus la manifestation de l'esprit de bon sens et d'application qui a toujours caractérisé vos travaux.

PRAESIDENT HERR DR. SIEVEKING. — Sie haben von

Herrn Franck gehört, und ich stimme dem Vorschlage des Herrn Franck zu — natürlich vorbehaltlich der Entscheidung des Kongresses, worüber wir nun durch die Abstimmung zu entscheiden haben — dass wir an die Spitze unserer Resolution den Satz stellen: Das System der Distanzfracht ist abzuschaffen. Das ist dasjenige, worüber sich die Versammlung im grossen und ganzen einig ist. Nun haben, aber die Vertreter von Ungarn sich dahin ausgesprochen, dass dieses System nicht unbedingt zur Anwendung kommen soll, sondern dass in dem Falle, wo die Reise unterbrochen ist und die Ladung in einem Nothafen gelöscht wird, wenn der Ladungsinteressent doch Nutzen davon gehabt hat, doch eine Fracht gezahlt und dieser Nutzen dabei in Betracht gezogen wird. Das ist aber etwas, was wieder auf die Distanzfracht hinauskommt. Daher wird bei der Abstimmung über diesen Vorschlag des Herrn de Nagy im Auge zu behalten sein, dass diejenigen Herren, die dem Vorschlage des Herrn de Nagy beitreten wollen, sich bei der Frage, ob die Distanzfracht abgeschafft werden soll, mit Nein aussprechen müssen.

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M. Franck vous a fait un discours fort clair sur les principes à suivre en prenant les votes et en fixant les résultats de la discussion. C'est, — sauf les indications que l'assemblée donnera au président, pour diriger les votes, — c'est en premier lieu la question la plus importante que nous avons traitée : Est-ce que le système du fret proportionnel doit être aboli oui ou non ?

On y a fait opposition dans une certaine mesure. On a dit : dans le cas où le voyage est interrompu le navire aurait le temps de continuer le voyage, ou bien la cargaison est déchargée dans un port de refuge ; dans ce dernier cas,

il faut tenir compte des avantages que la cargaison a retirés de ce que le transport a été fait jusqu'au port de refuge. Voilà une opinion qui diffère de l'autre système — le système anglais — lequel dit : le système du fret proportionnel est aboli, sauf la question de savoir comment cet avantage doit être calculé.

Donc, lorsque nous votons sur cette question essentielle, ceux qui se rallieront à l'opinion de Messieurs les délégués de la Hongrie, auront à voter « non » contre la proposition : d'abolition du fret proportionnel.

Voilà le vote le plus important que nous aurons à émettre ; puis, après avoir tranché cette question de principe, nous prendrons les autres articles et nous nous occuperons du vote sur les autres questions.

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In order to make myself fully understood, allow me just in a few words to give in English what I have said. I have said that M. Franck has very clearly explained what in his view is the correct way of taking the votes and, subject of course to the direction of the meeting, it is the duty of the President to put to the vote the question in the way he thinks just and proper. In my view the principal question which we have to decide here, which will be the main question, and which will furnish the main result of these meetings, is the question whether the system of distance freight is to be abolished. Are we to follow the English system which does not give the right of distance freight to the owner, or are we to grant in such cases a distance freight on the Continental laws? Now there has been a proposition made by the representative of Hungary that distance freight is to be abolished, but he has recommended this : « In case of rupture of voyage

and discharge of the cargo in an intermediate port of refuge and inability of the vessel to continue the voyage, then the advantage is to be taken into account which the cargo derives from the transport having been brought up to the port of refuge. » This is contrary to the system of abolishing the distance freight because in some way or other a compensation is given for part of the freight to the owner of the vessel for having conducted the transport to the port of refuge. Therefore, they who agree with the representative of Hungary and with this view have to vote in the negative on the question which is the first I put to the vote. This is an important point, and it will be, as I may say, a resume in one word of the results, of the Bremen Conference : Whether the system of distance freight is abolished, and therefore as it is the most important vote we have to take and in order to let the world know what is the point of view of the different nations as regards this, I think it correct to take the view of the nations and Mr. Franck will be good enough to give me the list of nations so that I may know how to put the question.

Herr DE NAGY. — Meine Herren! In Bezug auf die Abstimmung muss ich meiner entgegengesetzten Auffassung Ausdruck geben. Ich bin der Ueberzeugung und wir alle sind es, dass kein Gegensatz zwischen dem Amendement, das ich gestellt habe, und dem Prinzip, welches in § 1 zum Ausdruck gebracht werden soll, besteht. Der Gegensatz besteht nur darin, ob eine Fracht bezahlt werden soll oder nicht, wenn die Ware in einem Zwischenhafen zu Gunsten des Verfrachters gelöscht wird. Wenn wir beantragen, dass in dem Falle, wo der Verfrachter einen Nutzen von dem Löschen in einem Zwischenhafen hat, doch die Fracht bezahlt werden soll, so ist das kein Gegensatz zu dem Prinzip. Infolgedessen glauben wir,

dass wir für § 1, Abschaffung der Distanzfracht stimmen und trotzdem unser Amendement aufrecht erhalten können. Der Herr Präsident hat die Frage so gestellt, dass, wer für unser Amendement stimmen will, gegen die Abschaffung der Distanzfracht stimmen müsste. Wir sind auch der Ueberzeugung, dass die Distanzfracht abgeschafft werden muss, und ich bitte, uns Gelegenheit zu geben, dass wir vor der ganzen Versammlung für Abschaffung der Distanzfracht stimmen können. Im entgegengesetzten Falle müssten wir uns der Abstimmung enthalten, damit unser Verhalten nicht ausgelegt werden könnte, als ob wir für Aufrechterhaltung der Distanzfracht seien, wo wir doch für ihre Aufhebung stimmen wollen. Ich bitte — es wäre vielleicht möglich, auf diese Weise abstimmen zu lassen, dass nicht ein Gegensatz konstatiert wird zwischen dem Amendement und dem in § 1 ausgesprochenen Prinzip, sondern unser Amendement zu behandeln wie die andern Ausnahmen. Wir möchten nicht gegen das Prinzip stimmen, wo wir doch dafür stimmen wollen.

PRAESIDENT HERR DR. SIEVEKING. — Ich kann diese Auffassung nicht als richtig anerkennen. Ich werde aber zunächst darüber abstimmen lassen: Ist das System der Distanzfracht abzuschaffen, vorbehältlich der Abstimmung über das Amendement, ob eine Ausnahme in dem erwähnten Falle gemacht werden soll. Sind Sie damit einverstanden? (*Allseitige Zustimmung*). Ist die Versammlung damit einverstanden: Das System der Distanzfracht ist abzuschaffen? Es ist dagegen kein Widerspruch. Der Antrag ist einstimmig angenommen.

Dann würden wir abzustimmen haben über das von dem Vertreter Ungarns, Herrn de Nagy, gestellte Amendement, dass in dem Fall der Unterbrechung einer Reise in einem Nothafen und der Unfähigkeit des Schiffes, die Reise

fortzusetzen, Rücksicht genommen werde auf die Vorteile, die die Ladungsinteressenten davon gehabt haben, dass die Ladung bis zum Nothafen befördert worden ist. Nach meiner Meinung ist das ein Punkt, der als eine Negation des eben angenommenen Prinzips aufzufassen ist — das kann aber dahingestellt bleiben. Wir werden uns also darüber auszusprechen haben, ob nach dem Vorschlage des Herrn de Nagy in diesem Falle eine Vergütung zu gewähren ist, oder ob man stramm und starr das Prinzip durchführen will, dass auch in einem solchen Falle, wie es das englische Recht vorzieht, dem Schiffer eine Vergütung nicht zukommt.

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I have explained, I believe, very distinctly already what is the vote we have to take, and I need not put in French or English the views which I have on the question of voting. I put to the vote the following amendment of the representative of Hungary: « That in the case of the rupture of voyage, in the discharging of the cargo at an intermediate port of refuge and the inability of the vessel to continue the voyage, is a compensation to be given to the shipowner to the amount of the advantage that is derived from having been forwarded to the port of refuge in some way or other ». Yes or no ?

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Es ist klar, dass die Resolution, die angenommen ist und die an die Stelle des Artikels 1 gesetzt wird, den Ausgangspunkt unserer ganzen Resolution bilden muss. Eben klar ist, dass die folgenden Bestimmungen nicht mehr Ausnahmen von diesem Prinzip sind, sondern dass die folgenden Bestimmungen in Artikel 2 und 3 den Anfang

eines Gesetzes über das Seefrachtrecht überhaupt bilden, und zwar bilden sie nur den Anfang. Denn wie Herr Franck richtig auseinandergesetzt hat, bleiben noch eine Menge von Fragen übrig, die ebenso wie die in den Artikeln 2 und 3 behandelten beantwortet werden müssen, um zu einem vollständigen, für eine internationale Beratung und Festsetzung brauchbaren Gesetzenwurf zu gelangen. Wenn wir die Artikel 2 und 3, wie sie vorliegen, den Regierungen allein vorlegten, so würden sich die Regierungen sofort dahin äussern: Das ist ja eine ganz unvollkommene gesetzliche Bestimmung, die weiter ausgebildet, weiter ausgeführt werden muss. Ich erinnere nur an die Fälle, die Herr Autran erwähnt hat, ferner an vorausbezahlte Frachten. Es ergeben sich eine Menge von Fragen, die beantwortet werden müssen und die die Versammlung zu beantworten gar nicht in der Lage ist. Da es aber einen sehr erwünschten und sehr grossen Fortschritt bedeuten würde, wenn sich die seefahrenden Nationen über das Seefrachtrecht überhaupt verständigten, so würde eine weitere Vorberatung der Frage durch eine Kommission gewiss im allgemeinen Interesse sein. Es würde sich nur fragen: soll diese Kommission eine Direktive erhalten, die durch eine Abstimmung über die Artikel 2 und 3 gegeben würde, und die für sie bindend sein soll, oder nicht? Es könnte vielleicht empfehlenswert sein, wenn man dem Vorschlage beitrifft, die Frage an eine Kommission zu verweisen, ohne ihr eine bestimmte Direktive zu geben, das Resultat der Abstimmung über die in Artikel 2 und 3 behandelten Punkte könne man dann gewissermassen als Resultat einer ersten Lesung über diese Frage ansehen und die Kommission sodann mit der Bearbeitung der weiteren Fragen beauftragt werden. Bei dieser, wie mir scheint sehr klaren Sachlage möchte ich mir erlauben, den Vorschlag zu unterbreiten, dass, vorbehaltlich der

Frage, ob wir über die in Artikel 2 und 3 behandelten Fragen abstimmen wollen, die Sache behufs Ergänzung der Vorschläge und einer Beratung über ein internationales Seefrachtgesetz an eine Kommission zur Berichterstattung an das Comité Maritime International und an die Konferenz zu verweisen.

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What I say is this : By having resolved that the system of distance freight is abolished it is clear that what is said in Articles 2 and 3 of the Report of the Paris Committee is no longer an exception but is part of the commencement of the code of affreightment in maritime law but that this code is not complete, and that there are several questions, parts of this law, treated in Articles 2 and 3, and therefore it seems advisable in order to properly complete a code of affreightment, which would be a great benefit, of course, to the public, to be drafted, that this matter ought to be referred back to the Committee in order to complete the proposals now contained in Articles 2 and 3, because, as I need not explain any further, this is the commencement only of the law, and does not exhaust the law of affreightment at all. The question is whether the vote ought to be taken on Articles 2 and 3 in order to bring about the resolutions which may be considered as the resolutions of the first reading or whether we should leave the whole question open to the Committee to report upon. That would be a further question, and there may be different opinions about it, but the main and principal question which I wish to put to the meeting is whether it pleases the meeting to refer the rest of the matter back to the Committee in order to prepare the draft of a law of affreightment to be considered by the Comité Maritime International and by the Conference on a later occasion.

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En somme, il est inutile de voter en première lecture. Je ne puis vous cacher que c'est une matière dans laquelle une rédaction précise et exacte peut faire beaucoup pour rallier l'unanimité. Nous prendrons donc les explications qui ont été données comme l'expression des sentiments de la Conférence ? (*Adhésion*).

Ich möchte also die Versammlung fragen, ob sie damit einverstanden ist, dass die Vorschläge Artikel 1 und 3 an eine Kommission zurückverwiesen werden, um weiter darüber Bericht zu erstatten und diese Vorschläge zu ergänzen durch Ausarbeitung eines internationalen Seefrachtgesetzes behufs einer Vorlage an das Comité Maritime International und später an die Konferenz.

Ich glaube, dass wir damit einen guten Schritt vorwärts getan haben. Dann würde es sich nur noch darum handeln, die Mitglieder der Kommission zu bestimmen. Wenn es nicht unbescheiden ist, möchte ich Sie bitten, auch mich in diese Kommission zu wählen; die Arbeiten in der Kommission würden mir sehr erfreulich sein. (*Lebhafter Beifall.*)

M. LOUIS FRANCK. — Monsieur le Président Sieveking vient d'annoncer qu'il veut bien faire partie de la Commission qui s'occupera à nouveau de l'avant-projet sur le Fret. C'est un gage de succès. (*Appl.*)

M. A. BEERNAERT. — Je voudrais faire la proposition à Lord Justice Kennedy de faire également partie de cette sous-Commission. (*Appl.*)

LORD JUSTICE KENNEDY. — I should be verry hapy to give my services.

PRAESIDENT HERR DR. SIEVEKING. — Dem Bureau soll es also überlassen bleiben, die Mitglieder des Ausschusses zu bestimmen.

(La séance est levée. — The Session is adjourned.)

SÉANCE DE L'APRÈS-MIDI

AFTERNOON SITTING

PRÉSIDENCE DE LORD JUSTICE KENNEDY

LORD JUSTICE KENNEDY IN THE CHAIR

THE CHAIRMAN. — Gentlemen, there were still left untouched two of the Articles which were proposed by the Commission of Paris in reference to the freight, but it will probably be the opinion of all of you that after the reference back to the Committee of Articles 1, 2 and 3 we had better leave for them also the consideration of Articles 4 and 5 that have not been discussed, because it would be little better than waste of time to merely discuss again, and refer upon certain matters of detail, the various views to a vote when the whole thing will have to go back to the Commission to consider when they make their complete draft, but if there are any to whom a different view seems better we may have time possibly after discussing the question of compensation in the case of personal injuries, if it should be the general wish, to refer to those matters again, but subject to your approval it is proposed by the Secretaries that we should consider this afternoon the interesting and important question of compensation in the

case of personal injuries. You have all before you a very excellent synoptical summary prepared by the Committee of cases of compensation in the case of personal injuries. That synoptical summary has been drawn up from the reports which were sent by the different nations in answer to questions addressed to them as to the law of each country. It is not proposed to-day to discuss any question of how the compensation should be either assessed or limited. That is a question which it is not convenient to discuss to-day, and which in some sense has been or will be discussed elsewhere. Therefore it will do no good to discuss it here. We have quite enough in the important question as to the views which we shall have the opportunity of collecting from actual speech with regard to the law of different countries and that law has to be considered from three different points of view. When there is a ship which may do injury to another ship at sea there are several classes of persons who may be injured. There are those who may be injured who have made a contract of carriage with the ship which suffers hurt, the carrying ship, as it is called. The shipowner has undertaken in his ship to carry those passengers under the terms of a contract with them, and the question arises to what extent, apart from special contract, ought a passenger to be entitled to recover from the ship with whose owners he has contracted for safe carriage to the port where he will land. Then there is also, of course, the passenger on board the other ship whom we may suppose to be injured by the collision caused by the colliding ship. His right may be a double right. He will have a contract with the ship that carried him which will regulate his rights of damage if the contract is broken by his being injured during the passage. He will also have a right of action for negligence if he can prove that the other ship has, by the mismanagement of

that ship caused him personal injury, and, besides personal injury, the question arises as to how far, if at all, either in the case of a person who has a contract with the ship that carries him or in the case of one who is killed by the action of another ship which is a wrong doer, the relations, if death ensues from the injury, ought to be entitled to a remedy either against the ship which has carried their wage-earner or how far they are entitled to sue the person who is the owner of the ship which has collided with the ship in which their wage-earner was carried and so killed him ; in other words, what remedies, if any persons connected by family and dependent upon the support of a man who is killed in a collision should be entitled to claim, first, against the ship which carried the deceased, and, secondly, against the ship which has caused the death by coming into collision with the ship which carried him. So much for passengers on board.

Then there is the third class which is a question of great interest in these days no doubt to all European countries and I presume also the United States of America and elsewhere, as to how far, if at all, the owner of a vessel ought to be made responsible to the workmen who may be employed by him upon his ship either as sailors while the ship is being navigated, and when a crew, as it is called in England, is on board, or in regard to those workmen who are not sailors but who are employed from time to time in port, either in unloading the ship or in repairing the ship or in doing services on board which might possibly be done by a sailor when the full crew is there, but work which is in fact done by men whose business and avocation is that of workmen, either as carpenters or boiler-makers, or even in manual employment, but still as the servants of the shipowner temporarily when the ship is in port. We are not here at all to discuss to-day

the extent to which possibly the liability should extend ; we are not here to discuss at all whether there should be a limitation of that liability either in our English fashion or in the fashion which has approved itself to several Continental nations in limiting the responsibility of the ship-owner in either case to the value of his ship, and its accessories. What we wish to do with your assistance, what is presumed to be the wish of this Committee to do this afternoon, is to try to ascertain accurately the views of various countries as to what should be the right of claim, whatever might be the fruits of its assertion in either of these cases, the case of the passenger by contract, the case of the passenger on a ship who is injured or killed by another, and the case of the workmen, whether sailor or other, who happens to be employed on a ship in port by the owner of that ship for the purpose of his business connected with that ship. There may be very important questions arising afterwards as to how that should be enforced, and there again it would be desirable to ascertain, and very important I think for particular purposes, to have the views of the Committee as to how far that should be enforced, if it is to be enforced at all, either against the persona, that is against the owner by action, or enforced against the res, that is against the ship, by proceeding in rem, but whether either or neither of those courses should be adopted, one wishes to know what is the view of those who represent various countries as to both their present practice and any desired improvements in the universal practice which we hope to forward in these matters. We in England, for example, have a Workmen's Compensation Act. In that, I believe, we stand alone in that exact form. In the form of contributory insurance, I believe, it exists to some extent in other countries, in Germany and elsewhere, but it is not

at all the question of what the extent shall be or how far it should be limited that we have to discuss. It would be both useless and undesirable to do it here to-day, but whether and how far there should be a remedy at all.

M. LOUIS FRANCK. — M. le Président a indiqué à l'assemblée qu'il faut qu'il soit bien entendu que les questions qui nous sont posées, n'ont pas trait à la limitation de la responsabilité des propriétaires de navires pour les dommages corporels et pertes de vies humaines.

Il s'agit uniquement de rechercher quelles sont les bases d'un recours en responsabilité qui peut être exercé contre le propriétaire de navire, lorsqu'un accident a entraîné la mort ou des blessures. Ce sera à d'autres occasions que vous aurez à discuter comment cette responsabilité, si elle est admise, se traduira dans la pratique et jusqu'à quelles limites elle ira.

Quant aux questions soumises en ce moment à la Conférence, Monsieur le Président en a signalé l'étendue, la complexité et l'intérêt. Il vous a dit qu'à un triple point de vue, — des passagers à bord, des tiers se trouvant à bord d'un autre navire et lésés par une faute, et puis en troisième lieu au point de vue des équipages et des ouvriers que l'on peut assimiler aux équipages, — pour chacun de ces groupes de problèmes, il faut se demander à qui appartient l'action et sur quelle base une indemnité pourra être accordée. Sera-ce sur la base du droit commun, ou bien suivant un forfait convenu, comme le propose un projet américain. Enfin, les différentes questions qui ont été formulées dans le questionnaire que vous avez sous les yeux et auquel la plupart des associations nationales ont déjà répondu. En terminant, M. le Président a encore une fois insisté pour que les orateurs se pénétrant bien de la base du débat. La question de la limitation de la respon-

sabilité à concurrence de £ 15 par tonne, ou sur la base du système adopté à Londres n'est pas en discussion en ce moment ; il s'agit simplement qui aura le recours et quelle sera la base même de ce recours, enfin, de quelle manière il pourra être exercé.

M. F. C. AUTRAN. — Messieurs, après l'exposé si clair qui vous a été fait par M. le Président, le sujet de la discussion d'aujourd'hui se trouve par le fait très étroitement limité. Nous n'avons en effet pas à examiner cette question extrêmement importante de savoir s'il convient d'introduire dans une législation internationale le système forfaitaire de £ 15 par tonne de jauge adopté par la loi anglaise, ou de savoir si au contraire on doit maintenir le principe de la fortune de mer, le principe de la responsabilité limitée au navire lui-même, tel que ce principe a été adopté par les législations continentales et même, si mes renseignements sont exacts, par la législation américaine.

Ainsi que M. le Président vous l'a dit, il y a trois catégories de personnes qui peuvent être intéressées. Je suivrai à cet égard un ordre inverse de celui qui a été suivi par Lord Justice Kennedy. Je commencerai d'abord pas parler des employés, des ouvriers qui sont chargés par le propriétaire de navire du chargement et du déchargement, de l'arrimage de la cargaison. A cet égard, je vous dirai qu'à mon humble avis, il est absolument impossible de régler une question de cette nature par une entente internationale. En effet, ces questions d'assurances ouvrières sont des questions qui sont du domaine national, du domaine municipal, comme diraient nos amis anglais. Chaque pays, suivant ses mœurs, suivant ses coutumes, chaque pays, quelque soit son régime politique, sera plus ou moins disposé à donner des compensations plus ou moins amples à cette classe si intéressante de travailleurs, et par con-

séquent, je crois qu'on s'exposerait d'avance à un échec certain si on voulait régler par une entente internationale d'une manière uniforme, les questions d'assurance ouvrière, qui doivent rester d'après moi, le domaine de chaque pays pour être réglées de la façon dont chaque gouvernement l'entend.

Reste la seconde catégorie de victimes éventuelles : c'est l'équipage de chaque navire.

Or, dans presque tous les pays, à l'heure actuelle, les risques professionnels des matelots sont couverts par des caisses d'assurance. En France, la loi de 1898, complétée par une loi de 1902, a créé une caisse de secours et d'assurance mutuelle entre tous les matelots. En Angleterre, tout récemment, on a étendu aux marins le Workmen's Compensation Act, et en Italie, comme veut bien le faire remarquer M. Berlingieri, la situation est la même. De telle sorte que lorsqu'il arrive un sinistre, si des gens de l'équipage viennent à périr et si c'est le navire qui porte les victimes qui est en faute, les héritiers de ces victimes se font payer l'indemnité par la Caisse d'assistance du pays auquel appartient le navire. Si au contraire, c'est l'autre navire qui est déclaré en faute, les victimes de cet accident commenceront toujours par se faire payer par la caisse nationale de leur pays. Je ne sais pas si vous suivez bien mon raisonnement ; mais supposez un navire anglais entrant en collision avec un navire allemand et dans ce sinistre, le navire allemand est coulé et il est déclaré plus tard que c'est le navire anglais qui est en faute, à la suite d'un procès qui a lieu devant la juridiction compétente. Croyez-vous que les parents des matelots attendront l'issue du procès qui se débattrà ? Les héritiers des matelots allemands commenceront certainement par se faire payer par la caisse d'assurance allemande, et s'il y a un recours à exercer, ce sera la caisse alle-

mande qui aura à excercer ce recours contre le navire anglais.

Voilà quelle sera la situation dans l'état actuel des Caisses d'assurance existant dans tous les pays.

Or, est-il bien nécessaire, est-il indispensable de donner aux Caisses d'assurance contre accidents professionnels des matelots, qui peuvent exister dans les différents pays, un recours les unes contre les autres. Quant à moi, je ne le crois pas. Toutefois la question reste ouverte à cet égard. Mais le point sur lequel je tiens à appeler votre plus sérieuse attention, c'est qu'en ce qui concerne les équipages et leur famille, ils sont en quelque sorte désintéressés de la question; il suffit que pareil sinistre entraîne des conséquences dommageables, pour que les victimes, leurs héritiers ou représentants, soient remboursés par la Caisse d'assurance nationale du pays auquel ils appartiennent, et une fois qu'ils sont remboursés, c'est fini; peu leur importe que ce soit leur navire — « the carrying ship » — qui est déclaré en faute, ou que ce soit l'autre navire : eux, ils sont désintéressés par leur assurance.

Voilà un point de vue tout à fait spécial qui nous permet d'envisager cet objet sous un jour absolument nouveau.

Reste alors la question des passagers. Là, comme l'a bien fait remarquer Lord Justice Kennedy il y a quelques instants, il y a deux catégories de passagers : les passagers du « carrying ship » qui peut être en faute, et les passagers à bord du second navire, qui n'a rien à se reprocher.

En ce qui concerne le « carrying ship », les passagers sont encore une fois désintéressés de cette question. Pourquoi ? Parce que dans les billets de passage de toutes les compagnies du monde se trouve la « negligence clause » d'après laquelle les propriétaires de navire ne sont pas responsables de fautes nautiques — et cette

impossibilité de rendre les armateurs responsables de fautes nautiques de leurs préposés, est une nécessité tellement impérieuse, que lorsqu'en Amérique, on s'est préoccupé d'étendre la responsabilité des armateurs pour ne pas leur permettre de s'affranchir de toute responsabilité, et qu'on a promulgué cette loi connue sous le nom de « Harter Act » on a bien spécifié qu'il était parfaitement possible aux armateurs de s'exonérer des fautes nautiques de leurs préposés. Par conséquent, vous ne pouvez supposer qu'aucun pays du monde ira interdire d'insérer la « negligence clause » en ce qui concerne les fautes nautiques des préposés des armateurs. Il ne reste donc en réalité, comme intéressés dans cette question que les passagers du navire qui aura été victime d'un accident causé par la faute d'un autre navire. En réalité si l'on serre la difficulté de près, c'est cette seule catégorie de personnes qui est intéressée, et à cet égard, il est bien certain que ces passagers peuvent avoir un intérêt considérable, et c'est ici que la question devient extrêmement délicate, parce qu'un petit bateau, si petit qu'il soit, peut causer des pertes et des dommages incalculables. Prenez par exemple un de ces grands « liners » qui font la traversée de l'Atlantique et dont nous avons pu admirer ici même des échantillons extrêmement remarquables, ayant à bord un équipage ou des gens de service dont le nombre atteint 900 ou 1000 ; des passagers et des émigrants qui peuvent représenter 2000 à 2500 personnes, de telle sorte que vous avez en tout à bord 3000 à 3500 personnes qui forment presque la population d'une petite ville. Supposez qu'un bâtiment de cette taille soit coulé par un petit bateau. Est-ce un rêve cela ? Aucunément. Nous avons eu malheureusement la « Bourgogne » de la Compagnie Transatlantique qui, par un temps de brouillard a été coulé par un bateau anglais jaugeant à peine 800 à 900

tonnes, et malheureusement, un nombre considérable de vies humaines ont été perdues.

Est-il alors possible que l'on étende la responsabilité de petits armateurs dans de semblables proportions et que vous ayez l'idée de modifier le système existant ? Je ne le crois pas, parce qu'étant donné le risque que court le moindre petit navire de couler des bâtiments dans lesquels se trouvent transportés un nombre aussi considérable de vies humaines, les primes que vous demanderaient les assureurs seraient tellement élevées qu'aucun armateur ne pourrait les payer, parce qu'il n'en aurait pas les moyens.

J'ai fait valoir ces quelques considérations avec d'assez longs commentaires, dont je vous prie de m'excuser ; mais j'ai tenu à vous faire part du sentiment que j'ai éprouvé lorsque j'ai reçu le questionnaire qui nous a été adressé par le Comité Maritime International. Et pour dire un dernier mot, nous allons nous réunir à Bruxelles dans quelques jours, pour étudier, diplomatiquement cette fois, le projet de traité international relatif à la responsabilité des propriétaires de navires. Ce projet international ne vise, comme vous le savez, que les accidents aux marchandises, et nous avons eu toujours bien soin, dans les conférences qui ont précédé l'élaboration de ce traité, de laisser de côté la responsabilité des armateurs à raison d'accidents corporels et de pertes de vies humaines, parce que nous pensions que nous mettrions le feu aux poudres. J'ai eu l'occasion de parler de cette question avec plusieurs délégués et ils ont exprimé leur pensée que si l'on venait par malheur jeter cette question sur le tapis en ce moment, à propos du projet de traité sur la responsabilité des propriétaires de navire, « it would be a wreck », ce serait un naufrage pour le projet qui est actuellement soumis à la Conférence diplomatique. Je crois donc que nous ne

devons avancer qu'avec prudence, et si nous voulons faire aboutir le projet de traité international qui est actuellement au point d'aboutir, je vous le répète : nous devons nous garder de prendre des résolutions et de nous livrer à des discussions qui seraient de nature à compromettre le sort d'une réforme qui est cependant ardemment désirée par tous ceux qui sont au courant de la question.

JUDGE BRADFORD (U. S. A.). — Mr. Chairman and Gentlemen, I do not know that this subject is in a condition now that really calls for any argument in favour of any specific provision. It seems to me that the matter as it is presented to this Conference now is in a very general and indefinite shape, and that we are hardly prepared to take action upon any specific points that may be involved. I should infer from the remarks made by Lord Justice Kennedy that what he thinks desirable at the present time to have is rather a statement of existing laws in different nations than an argument in favour of any specific proposition.

Now under the general maritime law as administered in the United States where injury results from negligence on a ship, and death does not ensue, as a general rule the injury is considered the result of a maritime tort, and, it being a maritime tort, the person suffering the injury may maintain in personam for the recovery of damages, or in rem against the vessel itself. That is the general rule undoubtedly in America. With that rule we are very well satisfied. Of course that rule is subject to certain qualifications in the case of fellow servants. My understanding is that when the injury results to one man from the negligence of one who may be treated and considered fairly as a fellow servant the common law doctrine comes in which will prevent a recovery, but, subject to that

exception, generally the remedy is in personam and also in rem, and with us that system has worked very satisfactorily. I am not aware that any distinction has ever been drawn or will be drawn in America, unless the maritime law should be very much changed, between the different classes of cases suggested or enumerated by Lord Justice Kennedy. In other words, it is a question of negligence : Was the management of the ship at fault? Was there negligence? Was the ship improperly equipped? Was it in an imperfect condition, and was that the occasion of the injury? Now whether the negligence is to be considered as consisting in the faulty management or in the imperfect and negligent condition of the ship, in either case it is a maritime tort for which damages may be recovered, and may be prosecuted, as I say, either in personam or in rem. Now of course when the person injured is under a contract of carriage there may be a proceeding on the contract, but that would not affect the right of the injured person to proceed for damages for the tort considering the matter as a matter of tort, and I do not conceive that there is any difference. In fact it seems to me to be wholly immaterial whether the negligence is negligence on the part of the ship or the management of the ship carrying the injured person or on the part of another vessel ; if there be negligence and the injury is the result of that negligence then there can be a recovery under the general maritime law as administered in the United States.

Now with respect to rights to recover damages in case of death that right does not exist in the absence of a Statute there we have no United States Statute allowing the recovery of damages in the case of death ; and in the absence of such a Statute there can be no recovery of damages unless there be a Statute of the particular

State to which the vessel is considered to belong, where the vessel is owned, and under those circumstances the vessel is considered though floating as a portion of the territory of the State, and where the negligence occurs which results in the death and the Statute of that State provides for the recovery of damages, in such case there may be a recovery, and the method to be pursued, the particular proceeding, of course will depend upon the provisions of the Statute containing the right, but the Courts of the United States in the exercise of their admiralty and maritime jurisdiction, the right having been created by the Statute, but relating to a maritime matter, consider that it comes properly within their jurisdiction and will enforce it. I do not know that I can add anything more. My general understanding is that where such Statutes exist they are propagated upon the existence of a fault or negligence ; in other words, such a condition of things as would allow the action to be maintained by the injured person had death not ensued, carries that well recognised right a step further, and notwithstanding the fact that death has ensued the action may be brought for the benefit of those more immediately interested in the life of the deceased. I may say that the Maritime Law Association of the United States is in favour of the passage by Congress of a general Act allowing the recovery of damages for death in the case of negligence where death has resulted from such negligence as would have warranted the recovery of damages by the injured person had death not resulted. I believe I have stated all the considerations which occur to me as material to the suggestions of the Chairman.

(Traduction orale par M. LOUIS FRANCK)

M. le Juge Bradford a demandé la permission de résumer brièvement l'état de la législation des Etats-Unis sur la question. Le

principe qui sert de base à cette législation est que dans tous les cas, il n'y a de recours que sous l'empire des règles générales sur la faute, sous forme — comme nous le dirions sur le Continent, — de quasi-délit. Il importe donc en tous cas que l'on démontre l'existence d'une faute ou négligence, qu'il s'agisse de passagers — ce qui est un contrat de transport; qu'il s'agisse de l'équipage — ce qui est un contrat d'engagement, ou encore qu'il s'agisse de tiers n'ayant pas de contrat. Cette règle s'applique aussi en cas d'accident causé par la chose, vice de la chose qui donne lieu à responsabilité s'il y a faute prouvée à charge de celui qui doit veiller au bon état de cette chose. Mais M. le juge Bradford nous a en même temps signalé que d'après le droit fédéral des Etats-Unis, il n'y a pas d'action pour lésions corporelles en cas de mort. Il n'y a pas de loi fédérale sur la question; il n'y a que des lois qui ont été promulguées dans différents États de la Confédération.

Il a ajouté que la Maritime Law Association of the United-States a fait présenter au Sénat américain un projet de loi qui créerait un droit au recours et que dans les dispositions de ce projet figure le système d'un recours forfaitaire limité à \$ 5,000 pour chaque cas, pour passagers.

M. LÉON HENNEBICQ (Bruxelles). — Messieurs, je n'ai que quelques mots à dire, qui seront à la fois un exposé sommaire de ce que peut être le droit belge en la matière et d'autre part, au moins sur certains points, une réponse à ce que M. Autran nous a dit tout à l'heure.

Si je comprends bien l'examen des différentes catégories qu'on doit passer en revue dans ces questions de responsabilité et qui sont les équipages et ouvriers des ports, les passagers et enfin les tiers, les réponses que M. Autran nous a données tout à l'heure étaient de nature à nous amener à cette conclusion que des deux classes de responsabilités qui existent en matière maritime, la responsabilité contractuelle n'existait pas, et qu'en pratique était seule possible la responsabilité du quasi-délit. Or, comme le touchait du doigt, au début de la discussion, avec une prévision vraiment fort juste Monsieur le Président, c'est la question des preuves qui n'est pas la même dans les deux cas. Quand nous sommes en matière de responsabilité

contractuelle, la preuve à faire par la personne lésée n'est pas la même que lorsqu'on se trouve en matière de quasi-délict, et de toutes les considérations de M. Autran, j'ai retenu que la malheureuse victime d'un accident en matière maritime, n'avait à sa disposition que le recours en responsabilité quasi-délictuelle, c'est-à-dire, à son point de vue, la situation de preuve la plus fâcheuse, puisque dans une matière où le transport mécanique et les engins mécaniques abondent, les cas douteux et les cas de preuve difficiles se font de jour en jour plus nombreux.

Cependant, au moins en Belgique, présenter la question de cette manière n'est pas conforme à la réalité des choses et à la réalité du droit. En effet, ceux qui sont victimes d'accidents maritimes n'ont pas que cette dérisoire ressource de l'action aquilienne à leur disposition ; ils ont autre chose.

Assurément, mon honorable contradicteur a parlé d'une responsabilité contractuelle, mais il avait l'air de croire que le régime qui existait actuellement suffisait, soit en fait, soit en droit, à couvrir toutes les susceptibilités. Il nous a dit, en ce qui concerne les ouvriers et les équipages : les ouvriers des ports ! mais il y a une loi sur les accidents du travail. Les marins et équipages ! Mais il y a des caisses d'assistance pour les gens de mer. Et par conséquent l'indemnité qui sera, du fait de ces lois sociales, touchée pour l'accident, suffira à satisfaire son dommage. C'est vrai dans la mesure où ces Caisses d'assistance et où ces lois accordent des indemnités aux victimes d'accidents. Mais comme elles n'accordent jamais que des satisfactions qui sont beaucoup au-dessous du dommage réellement souffert, ce n'est pas suffisant de présenter ces réparations comme complètes. Si la victime d'un accident devait, sur le pied du droit commun, obtenir une indemnité, cette

indemnité serait considérablement supérieure à celle de la Caisse d'assistance.

Et en ce qui concerne les passagers, on dit : il y a des clauses d'exonération sur les billets de passage. C'est vrai ; mais est-ce qu'il est aussi vrai de dire que ces clauses d'exonération, qui ont donné lieu à tant de débats il y a un certain nombre d'années en ce qui concerne le transport des choses, ne vont pas donner lieu à autant de débats pour ce qui concerne le transport des personnes ? Car il y a une profonde différence entre une ville flottante qui transporte des existences humaines très précieuses et des fortunes, des expériences, des avenirs, — toutes choses difficiles à transposer en chiffres, — et un cargo-boat qui transporte des marchandises inertes, et vouloir prétendre qu'on peut étendre la jurisprudence au sujet des clauses d'exonération dans les connaissements aux billets de passage c'est aller loin, d'autant plus que ces clauses ne couvrent pas toutes les hypothèses : elles ne sont applicables que pour les fautes nautiques. Mais précisément dans les transports maritimes, où les engins mécaniques abondent et où la force mécanique prend le dessus sur la direction humaine, pour ce qui concerne tout cet ordre d'accidents qui se rapportent aux choses et non plus aux personnes, aux instruments mécaniques principalement et non plus seulement aux fautes de direction nautique, les clauses d'exonération des billets de passage n'ont plus de valeur et n'ont plus de force. D'autant que si, comme vous le savez dès à présent, en droit commun, on peut s'exonérer de sa faute pour les choses inertes, c'est d'après des législations plus ou moins sévères. Il y a dans certaines législations la barrière du dol ; mais dans d'autres, la barrière de la faute lourde est beaucoup plus fréquente. Par conséquent, il ne serait pas vrai de dire que les clauses d'exonération inscrites sur les billets de passage sont de

nature à rejeter du débat la discussion en ce qui concerne le contrat de transport et de dire que la question de responsabilité ne se pose que lorsqu'on se trouve en présence d'une action contre l'autre navire, action qui, celle-là en effet, se meut dans les limites du droit commun en matière de quasi-délit.

Il y a donc autre chose. et le droit commun ne se compose pas seulement de cette question à résoudre : quels vont être les rapports entre la personne qui a souffert un dommage à bord d'un navire et l'autre navire qui a causé le dommage ?

Les relations contractuelles existent tant entre les personnes de l'équipage et l'armateur qu'entre le passager et le transporteur, et à cet égard, il y a la question de preuve.

Comment cette responsabilité va-t-elle se dénouer ? Va-t-on se trouver dans les termes de l'action aquilienne c'est-à-dire que les membres de l'équipage et les passagers seront sur le même terrain que ceux qui sont à bord de l'autre navire, et devront par conséquent faire la preuve de la faute ; ou bien va-t-on se trouver en présence d'une présomption de faute, soit qu'elle ait sa source dans l'obligation du transporteur vis-à-vis du passager, ou dans l'obligation de l'armateur vis-à-vis de ses propres gens de service, ou bien du contrat d'engagement, ou enfin, quelle est sa source ? Suivant un certain nombre de législations, la présomption de faute pèse sur le propriétaire d'une chose qui est cause du dommage. Il y a faute présumée non seulement en droit belge, mais dans bon nombre de législations et cette présomption de faute se fonde sur des considérations qui sont faciles à comprendre, par exemple en ce qui concerne le contrat de transport. Voilà un armateur qui doit connaître son navire — instrument qui constitue à la fois le véhicule de transport et le logement

des passagers, endroit dans lequel il faut passer un certain nombre de jours, y vivre d'une manière complète et voir son existence dépendre du logis dans lequel on se trouve. De ces deux personnes qui sont en présence — l'émigrant qui entre dans le bateau, qui n'a souvent aucune connaissance des choses de la navigation, qui est un profane, — et le transporteur dont c'est l'obligation professionnelle, sur les épaules de qui vont peser les risques maritimes ? Et dans les cas douteux où il est si difficile de faire la preuve de la faute en matière de quasi-délit, sur les épaules de qui le risque va-t-il être reporté ? Voilà toute la question. Car quand j'examine ce point en matière maritime, surtout avec les risques de transport en matière de navigation contemporaine, je trouve au fond une question, qui n'est peut-être pas une question de responsabilité mais une question de risque professionnel, qui assurément n'est pas tout à fait la même que la question du risque en ce qui concerne un industriel qui a des engins mécaniques à sa disposition et qui emploie des ouvriers. Cependant là aussi dans une large mesure la législation a reconnu que le droit commun était un poids trop lourd pour ces faibles épaules, et dans certaines théories, on a renversé la preuve de la faute, et, dans les lois sociales, on a inventé le forfait et c'est je pense, dans cet esprit et avec cette tendance que l'Association Belge a répondu au questionnaire.

Je pense que c'est dans le sens du renversement de la présomption de faute et du forfait que la solution de ces questions très graves (puisque ce sont de précieuses vies humaines qui sont en jeu) va pouvoir être trouvée. On se dira que seul peut parer aux multiples risques maritimes et mécaniques, celui dont c'est la profession, l'armateur, le transporteur, comme déjà en matière de droit commun, notamment en matière de transports terrestres, le transporteur est responsable s'il ne prouve pas — et ce principe

est général pour toutes les obligations de faire — le cas de force majeure ou le cas fortuit. Une chose est certaine c'est qu'il s'est engagé à transporter ces personnes à destination ; il ne l'a pas fait ; il n'a donc pas rempli son obligation ; est-il en droit de se plaindre si le fardeau de la preuve est rejeté de son côté ? Mais, dit-on alors, et avec raison : ce serait charger les armateurs de risques considérables ; ce serait rendre la profession impossible !

Les industriels ont dit la même chose, et c'est la raison pour laquelle faisant justice et déférant à leurs observations, on a inventé le système d'indemnité à forfait et que, mettant sur les épaules de l'industriel la plus large part des responsabilités, par une compensation, on en a réduit le chiffre et on a accordé aux victimes des accidents des réparations moins amples, moins considérables, assurément, que celles du droit commun, mais infiniment plus sûres, puisqu'elles se présentent sans difficultés et que les questions de preuve sont écartées.

Telles sont les observations qui, je pense, justifient les conclusions de l'Association Belge.

(Verbal translation by Mr. LOUIS FRANCK)

May I translate in a few words what has fallen from Professor Hennebicq. He says the question is not so simple as it appears to have been treated by M. Autran. First, as to the law of compensation, it does not solve all the questions which may arise, for instance, as to workmen temporarily on board, the law of compensation only applies between them and their direct employers, and they may be a stevedore firm and not the shipowner. Secondly, as far as passengers go, the question of what must be the *onus probandi*, on whom it must rest to prove the basis of the action, is a matter in dispute. It may be maintained that for the passenger there is a contract of carriage, that the shipowner has undertaken to land the passenger in the state he started when he came on board, and that it is on him to prove if some accident occurs that accident was not through his default, but through the negligent state of the ship or part of the ship. Then there is the objection of M. Autran as to the negligence clause, to

which Professor Hennebicq objected, that the value of the life clause, as far as life claims are concerned, has not been yet definitely tested. Then M. Hennebicq proceeded to point out that in his opinion there is a presumption of fault on the shipowner in the contract of carriage of persons, but that the way of solving the difficulty would be that, by an international law, the amount of damages which may be claimed in each case, should not exceed a certain amount as is proposed in the American Bill.

M. LE PROF. BERLINGIERI. — Je voudrais demander si le « Harter Act » s'applique aussi aux dommages corporels ?

Mr. PAGE (San Francisco). — No ; its heading is « An Act affecting Bills of lading ».

HERR HINDENBURG (Kopenhagen). — Als Repräsentant der dänischen Gesellschaft halte ich es für meine Pflicht, zu konstatieren, was dänisches Gesetz in dieser Beziehung ist. In Kürze kann man sagen, dass in der Praxis der Reeder für persönliche Verletzung und Tötung nicht verantwortlich ist. Und wir sind der Ansicht, dass dieses Gesetz nicht geändert werden sollte. Das ist die Meinung unseres Verwaltungsrates und ich darf sagen, dass sich darunter auch hervorragende Männer, so der Minister für Handel und Schifffahrt in Dänemark befinden. Und nun will ich sagen, wie unser Gesetz ist. Es beruht auf einem Urteil des höchsten Gerichts. Der Fall war, dass ein Reeder zum Schadenersatz verurteilt war, weil man davon ausgegangen war, der Kapitän habe sich einer Irrung schuldig gemacht und dadurch war eine Tötung hervorgerufen. Er wandte sich dann an das höchste Gericht und dieses hat die Meinung vertreten, dass freilich ein Reeder verantwortlich sein kann, wenn eine wirkliche culpa vorliegt, aber das eine solche vorliege, ist bei weitem nicht immer gesagt, wenn der Schiffer sich geirrt hat. Man muss

die Nachlässigkeit beweisen und auch Rücksicht darauf nehmen, wie schwierig seine Lage war und wie es notwendig war, in der schwierigsten Lage sofort eine Entschliessung zu fassen. Wir haben es in Kopenhagen erlebt, dass wir mit einem Kapitän über eine Kollisionssache berieten und da wurde der Kapitän gefragt: Wie würden Sie unter diesen Umständen manövert haben? Der Kapitän wollte sich besinnen, da wurde ihm aber gesagt: Nein, nicht erst lange besinnen, sondern augenblicklich sagen, was Sie in diesem Falle getan hätten! Das ist die Situation, in der sich ein Schiffer im Augenblick einer plötzlichen Gefahr befindet. Er kann sich da irren, aber ein Verschulden wird ihm schwer nachgewiesen werden können. Andere Leute irren auch, auch Richter mögen irren, und sie können doch erst nachschlagen in ihren Büchern und brauchen nicht augenblicklich sich entschliessen. Wenn sich aber ein Richter irrt, wird man ihm doch nicht eine culpa beimessen und ihn nicht schadenersatzpflichtig machen. In dem betreffenden Falle hat das höchste Gericht das erste Urteil annulliert und seine Meinung dahin ausgesprochen: Der Umstand, dass der Kapitän sich geirrt hat, genügt nicht, um ihn verantwortlich zu machen; und wenn er nicht verantwortlich ist, ist es der Reeder auch nicht. So das dänische Gesetz. Und in den seltensten Fällen — glücklicherweise — wird man einem Kapitän wirkliche Nachlässigkeit nachsagen können. Man kann nun vielleicht sagen: Wenn es so ist, wird sich der Kapitän auch nicht verantwortlich fühlen. Glücklicherweise ist aber der Schiffer doch immer ein Mann, der mit der grössten Sorgfalt verfährt, er weiss wohl, welche Verantwortung auf ihm liegt, was ihm anvertraut ist. Abgesehen von anderem, schon der Gedanke, dass es auch sein Leben gilt, wenn eine Kollision droht, macht es klar, dass er alles tun wird, was in seinen Kräften steht, um

ein Unglück zu verhüten. Wenn er aber alles getan hat, was in seinen Kräften steht, dann, so meint das höchste Gericht, kann er für das Unglück nicht verantwortlich sein. Das praktische Ergebnis dieses Urteils unseres höchsten Gerichts ist, dass der Reeder bei uns in Dänemark nur in den seltensten Fällen, man kann sagen in Praxi in fast keinem Falle verantwortlich ist. Und dieses Gesetz finden wir gerecht und wir wünschen nicht, dass es geändert werde.

(*Verbal translation by* Dr. ALFRED SIEVEKING)

M. Hindenburg says that practically in Danish law the ship-owner is never made responsible because to make him liable it is necessary to prove an actual fault committed by the captain, and it would not be sufficient to prove an actual error committed by the captain because an error is not an actual fault, and to prove an actual fault committed by the captain is in most cases impossible. Therefore the state of things in Denmark is that he has no responsibility in such cases, and they do not wish to alter this state of things.

VENDREDI, 24 SEPTEMBRE 1909

FRIDAY, 24th SEPTEMBER 1909

PRÉSIDENTE DE LORD JUSTICE KENNEDY

LORD JUSTICE KENNEDY IN THE CHAIR

THE CHAIRMAN. — We will now proceed with the consideration of some of the propositions which are contained in the Synoptical Summary, the Tableau Synoptique, and I think you will agree that we had better get to the questions which are of a more practical nature, and therefore omit some of the earlier questions purely of theory, such as whether or not it is desirable or possible that an international agreement should be come to. It is proposed with your approval that we should begin with the question which is N^o 2 of the second part, and runs in English thus : « Should this liability be presumed, as arising out of the contract of carriage » — that is the liability of the shipowner — « or must the passenger prove negligence in the captain, crew or marine superintendent ? Upon whom should the burden rest of proving that the damage was caused by accident or force majeure ? 3^o What provisions should apply to cases in which an accident is due to a vice or defect in ship or engines ? Should a distinction be drawn between a latent and a patent defect ? » That in the French version, in the Tableau Synoptique is : « 2^o a. Convient-il que cette responsabilité soit présumée, comme une conséquence du contrat de transport, ou faut-il que le passager prouve qu'une faute a été commise par le capitaine, l'équipage,

ou un préposé de l'armement ? *b.* A qui doit incomber la preuve que le dommage a été causé par cas fortuit ou force majeure ? 3^o Quelle solution faut-il adopter lorsqu'un accident est dû à un vice ou défaut du navire ou d'un engin du bord ? Faut-il distinguer entre un vice caché et un vice apparent ? »

Herr HINDENBURG (Kopenhagen). — Meine Herren ! Die Ansicht, die sich bei uns geltend gemacht hat, ist, dass wir jede Verantwortlichkeit der Reeder für persönliche Schäden und Todesfälle ganz ablehnen müssen. Es geschieht dies aus prinzipiellen Rücksichten. Wir meinen, dass es eigentlich ein veraltetes Gesetz ist, welches den Reeder für materielle Schäden verantwortlich macht. Wir geben zu, dass wir sonst diese Haftung haben und dass wir sie anwenden, aber wenn es sich um persönliche Schädigungen handelt, da sagt unser höchstes Gericht : Es genügt nicht, dass man sagt, es hätte anders manövert werden müssen, es muss bewiesen werden, dass sich der Kapitän einer Nachlässigkeit schuldig gemacht hat. Nun ist es Tatsache, dass in 90 von 100 Kollisionsfällen sich der Kapitän keiner Nachlässigkeit schuldig macht — er ist in noch mehr Fällen unschuldig — und es ist ungerecht, ja grausam, den Kapitän da persönlich verantwortlich zu machen. Das sollte weggelassen werden aus der Gesetzgebung. Wir können die Initiative dazu nicht nehmen, weil wir politisch und wirtschaftlich klein sind, wir meinen aber, es wäre die rechte Art, die Gesetzgebung so zu ändern, dass die Verantwortlichkeit der Reeder in Kollisionsfällen ganz abgeschafft wird. In 90 von 100 Fällen ist der Kapitän unschuldig, und in den 10 Fällen, die zurückbleiben, ist auch der Reeder unschuldig, er ist in allen 100 Fällen ganz und gar unschuldig. Im Mittelalter hat man sagen können, weil sich der

Staat damit nicht befasste : der Reeder ist dafür verantwortlich zu machen, wenn er einen schlechten Schiffer angenommen hat and dadurch ein Unfall hervorgerufen ist. Das kann man jetzt nicht mehr sagen, da sich der Staat der Sache angenommen und durch die staatliche Prüfung der Schiffer den Reedern die Verantwortlichkeit für die richtige Auswahl abgenommen hat. Und wenn man sagt, es sei notwendig, im Interesse der Sicherheit der Seefahrt, Kapitän und Reeder in solchen Fällen, wo sie ganz unschuldig sind, nichtsdestoweniger verantwortlich zu machen, so ist dieser Satz falsch. Es ist nicht so, dass die Sicherung der Seefahrt das verlangte. Und wenn man sagt, dass weder Reeder noch Kapitän von dieser Verantwortlichkeit befreit werden könnten, so ist das nicht wahr, denn in Wirklichkeit machen sich die Reeder von der Verantwortlichkeit alle Tage frei durch die Negligenceklausel, und niemand wird behaupten, dass dadurch die Seeunfälle häufiger geworden wären, weil die Reeder sich von der Verantwortlichkeit befreit haben. Ich meine aber, wenn man behaupten kann, dass die Negligenceklausel keinen Einfluss auf die Häufigkeit der Seeunfälle gehabt hat, so kann man, glaube ich, die Verantwortlichkeit der Reeder ohne Gefahr ganz streichen. Denn die Sicherung der Seefahrt ist auf anderer Art geschützt : sie wird geschützt durch die Tüchtigkeit der Schiffer, die der Staat durch die Prüfungen verbürgt, und dadurch, dass es im Kollisionsfalle um das Leben des Schiffers geht. Er mag sich einmal irren in der Manöverierung — das ist natürlich bei seiner grossen Gemütsbewegung — aber die genügende Sorgfalt wird er anwenden und eine Nachlässigkeit, von der im Gesetz die Rede ist, ist ausgeschlossen, da er weiss, dass es sein eigenes Leben und das Leben der Besatzung gilt. Ich meine, die Gerechtigkeit erheischt dringend die Abschaffung der Verant-

wortlichkeit der Reeder, und wenn man sie abschafft, würde die Seefahrt in keinem Falle Schaden erleiden.

Verbal translation by Dr. ALFRED SIEVRKING

Mr. Hindenburg points out to you that according to the decisions of the highest Court in Denmark the owner is only responsible when the master is responsible, and in cases of collision it does not suffice to state an error in judgment or an error in navigation on the part of the captain, but it is necessary to establish an actual fault of the captain, and therefore, because this proof is very difficult, in 90 cases out of 100, the captain will be found innocent, and the liability of the owner does not arise. In the ten remaining cases, M. Hindenburg points out to you that if the captain is not innocent, at any rate the owner is. Perhaps there may have been cases in the middle ages where he had chosen an unable captain, but now this cannot be the case because he is not free in the choice of his captain; the Government chooses for him, so to speak: the captain has to pass certain examinations. Therefore the owner certainly is not liable in any case, and M. Hindenburg pleads for completely abolishing the liability of the owner in cases of collision, and he says the safety of navigation does not depend upon any argument which might be put against his proposal; the safety of navigation depends upon the ability of the master, and as the Government provides for able masters there is no reason for doubting the ability of the master. Furthermore, the master's own life is endangered by a collision, and this would be sufficient to make all masters attentive to all matters of navigation. Therefore Mr. Hindenburg pleads for completely abolishing the liability of the owner in cases of collision.

M. HINDENBURG. — Ce que j'ai à dire est que chez nous, on a pensé que la responsabilité des armateurs en cas d'abordage est une jurisprudence qui devrait être abolie. C'est encore quelque chose que nous tenons du Moyen-Age où cela pouvait paraître nécessaire, puisque le choix du capitaine dépendait alors entièrement de l'armateur: l'Etat ne s'en souciait pas, et laissait l'armateur libre de son choix; on pouvait donc lui imputer une « culpa in eligendo » pour avoir pris un mauvais capitaine. Mais de nos jours, tout ceci n'est plus le cas. L'Etat s'en

charge maintenant. Il désigne une personne capable et le choix n'est pas abandonné à l'armateur. On ne peut donc plus lui reprocher une « culpa in eligendo ». C'est l'opinion que nous avons au Danemark, non pas une opinion à moi personnellement, mais une opinion de mes compatriotes, partagée par le ministère actuel. A coup sûr, nous ne prendrons pas l'initiative d'une pareille modification de la loi ; nous sommes trop petits, politiquement et économiquement parlant. Mais il nous sera cependant permis de dire à cette assemblée que nous trouvons que cette jurisprudence est surannée et injuste. Dans quatre-vingt-dix cas sur cent, le capitaine est tout à fait innocent ; il peut avoir fait une fausse manœuvre ; mais quant à le rendre responsable comme celui qui s'est rendu coupable de négligence, c'est injuste ; je dirai même que c'est cruel. Il s'est trouvé sur la passerelle de son navire ; il a fait tout ce qui était possible pour éviter la collision mais il n'a pas été heureux sous ce rapport. Donc, nous pensons que dans la grande majorité des cas, le capitaine est tout à fait innocent, et nous disons en outre que dans les dix cas qui restent, l'armateur est complètement innocent et c'est une injustice de le rendre responsable.

Maintenant, on dit — et je ne prétends pas que ce soit juste — que l'argument principal est qu'il est nécessaire, pour la sécurité de la navigation, de conserver cette responsabilité. Nous ne le pensons pas. S'il était vrai que le maintien de cette responsabilité fût nécessaire pour la sécurité de la navigation, il ne saurait être admis que le capitaine, ou plutôt l'armateur, s'en déchargeât en aucune façon ; mais il s'en décharge tous les jours par les « négligence-clauses » et personne n'a dit, je pense, que les sinistres maritimes se soient accrus par suite de l'emploi de la « négligence-clause » dont la validité a été reconnue dans tous les pays.

Je pense d'ailleurs qu'on peut dire que maintenant que nous avons déjà cet état de choses, la responsabilité des armateurs pour les cas d'abordage a déjà sensiblement diminué ; si on la fait disparaître tout à fait, je suis convaincu que les sinistres de mer ne s'accroîtront pas pour cette raison. Donc il n'est pas juste de dire que le maintien de cette responsabilité soit nécessaire pour la sécurité de cette navigation.

M. RENÉ VERNEAUX (Paris). — Je demanderai tout d'abord la permission d'appuyer les observations qui viennent d'être présentées par M. Hindenburg. Je crois que les considérations qu'il a fait valoir sont profondément justes. J'estime comme lui qu'il n'est pas juste, que l'on fasse peser sur l'armateur la responsabilité des fautes simplement nautiques qui ont pu être commises par le capitaine. La responsabilité des erreurs de jugement que dans les besoins de la navigation le capitaine a pu commettre, sans doute, il faut s'en préoccuper pour la sécurité des vies humaines, mais j'estime que la responsabilité qu'on ferait peser sur les armements n'est nullement de nature à augmenter la sécurité pour les vies humaines. S'il faut s'en préoccuper, c'est d'une autre manière : par des mesures préventives. Notamment en France, nous avons eu tout récemment une loi très importante, celle de 1907, qui prend les précautions les plus complètes en vue d'assurer la sécurité de la navigation. Je ne vous parlerai pas des charges considérables qui résultent de cette loi ; ces charges, les armateurs sont prêts à les supporter. Mais il ne servira pas à la sécurité de la navigation de créer une responsabilité qui est au contraire de nature à effrayer l'armement.

En ce qui nous concerne, je dois vous apporter l'écho des discussions qui ont eu lieu au sein de notre Associa-

tion française de Droit Maritime. Là, nous avons pu constater une grande division dans les esprits. J'en conclus simplement que la question n'est pas mûre. Mais je crois que l'on peut retenir en tout cas ceci, c'est qu'il serait extrêmement regrettable que la question en discussion fût liée quant à présent à la question des dommages matériels et que la solution au sujet de ces dommages fût retardée par cette considération.

Je vous demande maintenant la permission de m'expliquer sur les points indiqués dans le questionnaire et notamment sur la question du fardeau de la preuve et du vice caché.

En ce qui concerne le fardeau de la preuve, j'estime que ce n'est pas au transporteur qu'il incombe de faire la preuve d'un cas fortuit ou de force majeure pour se décharger de la responsabilité d'un accident. Le passager n'est en aucune façon comparable à un colis. Le colis est inerte, le passager ne l'est pas. Si on rendait l'armateur responsable à l'égard d'un passager comme à l'égard d'un colis, il en résulterait souvent les conséquences les plus injustes. Ainsi, prenons par exemple l'hypothèse du passager qui pendant la nuit se jette à l'eau ; l'accident est ignoré. Le lendemain le passager a disparu. Est-ce à l'armateur à faire la preuve de la force majeure ou du cas fortuit ? Dans ce cas, comme la cause de la disparition est inconnue, il serait responsable. Ce serait évidemment injuste.

J'en conclus qu'il est au contraire juste de dire que c'est au passager, ou à la famille de la victime qu'il incombe de faire la preuve de la faute du capitaine. D'ailleurs la jurisprudence française, après avoir hésité, s'est fixée dans le sens des idées que je viens d'exprimer à savoir que c'est à la personne transportée de faire, dans les termes du droit commun, la preuve précise d'une faute

déterminée du transporteur et je demande donc à la Conférence de bien vouloir se rallier à cette règle, qui est contraire à l'avis exprimé hier par M. Hennebicq.

En ce qui concerne le vice caché, nous avons aussi en France un mouvement de jurisprudence extrêmement intéressant. A une certaine époque, on pouvait croire que la jurisprudence s'orientait en ce sens qu'il suffisait de prouver un vice caché du navire pour que l'armateur fût responsable. Mais notre jurisprudence semble maintenant fixée en ce sens que le vice caché n'engage pas la responsabilité du capitaine. Je crois que c'est en ce sens que nos idées devront s'orienter.

Je me réserve de présenter ultérieurement d'autres observations, s'il y a lieu.

(Verbal translation by Dr. ALFRED SIEVEKING)

M. Verneaux says that his personal opinion quite coincides with that of Mr. Hindenburg, that is to say, he would be in favour of abolishing the liability of owners. He says increasing the liability of owners in cases of collision would not be the way of assuring the safety of life and of navigation.

As regards the question put here in the Questionnaire, and first, as to the burden of proof, M. Verneaux is in favour of putting the burden of proof on the passenger or the injured party, and not on the owner, and thinks there should be no presumption of fault. As to latent defects, M. Verneaux further on points out that originally in the French jurisprudence it was sufficient to prove a latent defect in order to make the owner responsible, but that the recent tendency of jurisprudence, was to the effect that this proof is not sufficient to establish the liability of the owner, but, that negligence on the part of the owner must also be proved.

M. DE SADELEER (Bruxelles). — Messieurs, je serai très bref.

Je félicite la Conférence, contrairement à ce que quelques-uns d'entre nous ont dit, d'avoir porté à son ordre du jour la question si importante de la réparation des

accidents survenus en mer. La diversité des législations de tous les pays prouve suffisamment combien il est utile qu'une institution ayant l'autorité de la nôtre, s'occupe de cette question, pour tâcher d'amener dans la mesure du possible, l'adoption d'un texte d'application générale. C'est assez vous dire que je ne puis partager l'avis qui a été exprimé en termes éloquents, par mon honorable ami M. Autran, qui est arrivé à la conclusion, peu attendue, qu'il n'y a rien ou presque rien à faire en la matière.

Je reconnais que le problème est complexe et d'un caractère tout spécial. Je pense que pour aboutir, on doit d'abord tenir compte des principes généraux du droit qui, quoi qu'on dise sont, avec des nuances diverses, admis aujourd'hui dans tous les pays civilisés, ainsi que des principes d'humanité qui, de plus en plus, régissent les législations modernes. Mais, je reconnais en même temps que l'on se trouve en présence de graves difficultés et quant à la preuve, et quant à la réparation qui peut être due aux victimes, difficultés inhérentes aux conditions mêmes où se meuvent les transporteurs, difficultés qui peuvent surgir du défaut de liberté de leurs mouvements, comme vient de le signaler encore M. Verneaux, et de mille circonstances imprévues devant lesquelles transporteurs et transportés peuvent se trouver et qui ne se rencontrent pas dans les transports terrestres. Il ne faut pas enfin que notre projet puisse semer des ruines, affaiblir nos compagnies de navigation, tuer l'initiative et enrayer le développement du commerce maritime.

Il ne faut pas que la loi devienne une charge trop lourde que les armateurs ne puissent supporter.

Le délégué des Etats-Unis nous a dit hier qu'on n'y a pas de législation fédérale sur les accidents ; quelques Etats ont une législation spéciale et encore ne s'applique-t-elle qu'au transport de marchandises. Dans la plupart

des pays représentés ici, on applique le droit commun. D'autres ont une tendance — comme certains Etats Scandinaves — à créer une présomption en faveur du transporteur. En Belgique, je pense que nous avons une jurisprudence plus progressive. Nous n'avons pas de texte spécial régissant la réparation des accidents sur mer au point de vue des transportés, mais nous avons notre code de commerce ; nous avons aussi les principes généraux du code civil qui disent que celui qui s'engage à transporter une personne, ou qui s'engage à transporter un colis, doit les faire arriver à destination. Si le contrat n'est pas exécuté par le transporteur, en vertu même des principes généraux du code de commerce et du code civil, il naît une présomption de responsabilité contre lui et c'est à lui à faire la preuve du cas fortuit ou de la force majeure. Voilà le droit commun, et je me permets d'y insister parce que sous ce rapport, l'étude présentée par le Comité ne me paraît pas complète. Je précise. Beaucoup d'entre vous ont connu notre éminent compatriote M. Victor Jacobs. Il a publié quelques années avant sa mort un travail remarquable, et, en ouvrant cette conférence, M. le Président Sieveking a bien voulu rendre un hommage mérité à sa mémoire. M. Jacobs a développé la thèse que je viens d'indiquer et qui depuis lors a été consacrée par des décisions judiciaires. En Belgique, on le sait, l'Etat est le principal transporteur. Les tribunaux ont admis une présomption de faute à charge de l'Etat dans diverses affaires d'accidents survenus sur la ligne d'Ostende-Douvres.

J'ajoute que nous avons, en vertu de la loi spéciale de 1891 sur le contrat de transport, une présomption formelle existant à charge du transporteur par chemin de fer. Tout voyageur blessé a en principe une action contre le chemin de fer. Les railways en Belgique sont, à peu d'exceptions près, entre les mains de l'Etat et l'Etat, en cas d'accident,

doit faire la preuve de la force majeure ou du cas fortuit. Et notre jurisprudence a admis le même principe pour les transports maritimes. En France, vous n'avez pas de loi spéciale ; ce sont les principes généraux du droit qui régissent la responsabilité du voiturier.

Une seconde question qui mérite de fixer l'attention de la Conférence est celle-ci : Faut-il, d'une manière générale, permettre dans les contrats l'exonération de toute faute stipulée d'avance par le transporteur ? C'est encore une question très-importante. Ne doit-on pas exclure les stipulations de l'espèce comme étant contraires à l'ordre public, lorsqu'il y a faute lourde, assimilable au dol ? Certaines législations considèrent semblables clauses comme légales. Cela est-il admissible ? En faisant le contrat, en percevant le prix du transport on s'engage d'un côté à transporter l'individu sain et sauf, et vous dites en même temps, si on n'exécute pas ses engagements, si on se rend coupable des fautes les plus graves qu'il n'y aura pas de responsabilité. C'est déchirer d'une main ce que l'on fait de l'autre. La Cour de cassation de France, par une série d'arrêts, a déclaré que semblables clauses sont contraires à l'ordre public. La Cour de cassation de Belgique par un arrêt récent s'est prononcée dans le même sens. Il me paraît qu'il y a lieu de préciser dans quel cas l'affranchissement préventif de la faute pourra être stipulé.

Messieurs, nous en sommes à la discussion des articles ; j'ai promis d'être bref et je m'excuse d'avoir été trop long. Je ne pense pas que dans une question de cette importance, il soit possible de passer au vote en ce moment. Dans la plupart des rapports, les rapporteurs font ressortir la précipitation qu'ils ont dû mettre à répondre aux questions posées. D'autre part, nous nous trouvons en présence des vœux les plus divers : droit commun,

création de présomptions ou encore dispositions embrassant toute la matière des accidents, y compris la grosse question des accidents du travail qui préoccupe vivement et à juste titre les assureurs. Est-il possible, après des débats forcément raccourcis, de procéder à un vote sur toutes ces questions, vote qui, comme tous ceux de la Conférence, aura une grande influence au dehors ?

Je demanderai que cette discussion soit continuée dans une prochaine session, afin que chacun puisse méditer davantage le problème que nous avons à résoudre. J'exprime le vœu que nous puissions arriver à une solution qui sauvegarde les droits de chacun, du transporté, du transporteur, des compagnies, et sans méconnaître les grands principes d'humanité que nous sommes fiers aujourd'hui de faire régner de plus en plus dans toutes les législations !

(*Verbal translation by Dr. ALFRED SIEVEKING*)

M. de Sadeleer points out that the question before us cannot be decided without considering the general principle of common law as existing in the various countries. According to the common law of Belgium, as contained in the Civil Code and in the Commercial Code of that country, the carrier either by land or by sea undertakes to forward safely and to safely land passengers and goods at the port of destination. Therefore if either goods or passengers do not arrive safely at the port of destination then the carrier is liable unless he can prove that the damage has arisen from acts of God or from force majeure. Therefore in Belgian law there is a presumption of fault in favour of the injured person. Secondly, as to whether it is desirable to allow the carrier to exempt himself from his liability M. de Sadeleer thinks that the distinction should be made between exempting one's self from grave negligence and from slight negligence, and he thinks it is against public policy to allow the carrier to free himself from liability from all sorts of negligence including gross negligence. It is also the law in Belgium that if the owner has done that and the carrier has thus exempted himself this clause is void as being against public policy. As far as personal liability is concerned M. de Sadeleer asks us not to take votes on

this question because it is so important that he thinks it is better the voting should be postponed to a future meeting.

Mr. R. B. D. ACLAND, K. C. (England). — Mr. Chairman and Gentlemen, I confess I rather feel tempted to follow out the line of thought which was suggested by the speech of our friend Mr. Hindenburg, but, tempting as is the prospect, I propose to confine the few observations which I shall make to the questions our President has directed our attention to, and to explain to you as shortly and as clearly as I can what is the English law upon the two questions which are now under discussion: « 2 a. Convient-il que cette responsabilité soit présumée, comme une conséquence du contrat de transport, ou faut-il que le passager prouve qu'une faute a été commise par le capitaine, l'équipage, ou un préposé de l'armement? » The answer according to English law is this: There is no presumption of negligence at all, but the person complaining must prove negligence in one of the three persons mentioned in the question. The duty of the owner of the carrying ship may be summed up in this way: that he is bound to take all due care and to carry safely as far as reasonable care and forethought can obtain that result. It is incumbent upon the person who complains, to prove that there has been what we call in England clear negligence. Negligence has been defined in this way: the doing of something which no reasonable man would do; the omitting to do something which a reasonable man would do. In order, therefore, that the person who has the complaint against the carrier, should establish his cause of action, he must give evidence that there has been negligence in that sense. Now it is not necessary, nor do I think it would be desirable to attempt before such a body as I have the honour to address, to go into detail as to what

is sufficient evidence to establish negligence according to our ideas. Sometimes it is sufficient to show that something has occurred which would not occur if due care had been taken. But speaking generally, and as a perfectly safe proposition of English law, it may be said that the person who complains must establish that there has been such a departure from due care as to constitute a fault in the owner of the ship or his representative or agent, the captain, or others connected with the ship, for whom he is responsible. Now the answers which the shipowner or the defendant may make when some evidence has been given of negligence are twofold. First of all, he may show that the negligence was not the sole cause of the accident which has happened and of the injury which has been done to the person who is complaining. It is a doctrine of English law that if there has been negligence on the part of the plaintiff, which has contributed to the accident, the plaintiff cannot recover. Therefore if the complainant can be shown himself by his own negligence to have contributed to the accident the defendant will not be liable unless, again, on the other hand, it can be shown that he could by the exercise of reasonable care have avoided the consequence of the negligence of the person who is originally complaining. That is the first defence which may be made. The second defence which may be made is one common, I believe, to all systems of law. That is, he may show that so far from the negligence having been the cause of the injury to the person who is complaining the whole of the chain of circumstances which have resulted in damage to the plaintiff has been the result of what we call the act of God or *force majeure*, something which does not happen in the ordinary course of things, and which no foresight or care on his part could possibly have provided against. That I think answers, in the most sum-

mary possible way, of course, the first question which appears in this document which I have before me.

The second question is : « *b. à qui doit incomber la preuve que le dommage a été causé par cas fortuit, force majeure?* » Now that I have, I think, indicated the answer to. It is for the Defendant to show that it is an inevitable accident or force majeure which has caused the accident ; it is not any part of the Plaintiff's duty to get rid of that possibility. The duty is imposed upon the defendant, if he thinks that he can establish this proposition, to put proof before the Court, and establish before the Court that the accident has occurred by one of those two causes mentioned in the second part of the question.

Gentlemen, I have stated as clearly, and I hope as simply, as possible what I conceive to be the English law upon these two propositions, and I make this contribution to the subject which is before us believing that we are now in the preliminary stage of the important work which is finding out what is the state of the law in different countries, and when we once thoroughly understand that, we have made some advance towards finding out whether it is possible to make some universal law which would be universally applicable.

THE CHAIRMAN. — Would you mind, Mr. Acland, dealing also with N° 3 : « What provisions should apply to cases in which an accident is due to a vice or defect in ship or engines ? Should a distinction be drawn between a latent and a patent defect ? »

M. ACLAND. — I am obliged to our Chairman for calling attention to the fact that I have omitted one of the questions which is under discussion. The third question is : « Quelle solution faut-il adopter lorsqu'un accident

est dû à un vice ou défaut du navire ou d'un engin du bord? Faut-il distinguer entre un vice caché et un vice apparent?» The answer according to English law is quite a simple one. There is no cause of action unless there is negligence, speaking quite generally, and if evidence is given that some machinery or something of that sort is defective that evidence may in certain circumstances amount to evidence of negligence which calls for an answer on the part of the Defendant. But the mere fact — stating it quite broadly — that a part of the machinery, a part of the structure, if I may say so, of the ship is defective does not of itself necessarily impose a liability upon the shipowner unless that defect is of such a kind that it could not have occurred unless there had been negligence on the part of somebody for whom the shipowner is responsible. That, I think, answers the third question as the English law stands.

(Traduction orale par M. LOUIS FRANCK)

M. Acland a dit en substance : D'après nous en Angleterre, le propriétaire de navire est tenu de prendre toutes les mesures requises pour transporter et débarquer les passagers en sécurité. Mais il ne résulte pas de là ce que les lois continentales ou les orateurs du Continent appellent une présomption de faute. Il n'y a aucune présomption. En cas d'accident, il appartiendra à la partie qui se prétend lésée, d'établir que le propriétaire de navire a manqué à ce devoir qui lui incombe d'après son contrat, et par conséquent, à prouver qu'il y a eu faute ou négligence. Quant au point de savoir ce que devra être cette preuve, M. Acland a pensé qu'il ne pouvait pas entrer à cet égard dans des explications de détail. Dans certains cas, il pourra suffire en Angleterre de prouver que l'accident est dû à un événement qui normalement ne se produit pas au cours du voyage pour lequel toutes les précautions ont été prises. Dans d'autres cas, la preuve devra être plus précise; mais la règle a toujours été la même : c'est au demandeur à prouver qu'il y a faute ou négligence du propriétaire de navire. Il appartient alors au propriétaire de navire de repousser cette responsabilité en prouvant qu'il se trouvait

dans l'une des conditions suivantes : ou bien une exonération contractuelle ; ou bien une faute commise par un tiers ; ou bien une faute commise par le passager lui-même ; et il suffit, suivant le droit anglais, que le passager ait contribué en partie à l'accident par sa négligence, pour qu'il soit sans recours. La faute commise supprime donc le recours de la partie lésée. Enfin, l'armateur peut établir que c'est par force majeure ou cas fortuit que l'accident a eu lieu, nonobstant la preuve faite contre lui que tous les soins nécessaires n'avaient pas été pris.

Quant au vice caché, il est de principe que le vice ou le défaut ne donnent lieu à recours, que s'ils trouvent leur base dans une faute ou une négligence de l'armement, ou des personnes pour lesquelles il est responsable.

M. FR. BERLINGIERI (Gênes). — Messieurs, je crois devoir prendre la parole au nom de mes collègues italiens.

La question qui se pose aujourd'hui est celle de savoir s'il faut adopter le système du renversement du fardeau de la preuve ou s'il faut s'en tenir au droit commun. M. de Sadeleer vous a dit que le système du renversement du fardeau de la preuve est celui qui prévaut en Belgique et il vous a cité la loi sur les transports par chemin de fer et la jurisprudence de son pays qui est d'accord sur ce point.

Nous autres, en Italie, nous avons dans notre code, pour ce qui a trait au transport de marchandises, des dispositions (dans l'article 400 de notre code) qui consacrent explicitement le système du « *receptum nautæ, cautionis et stabularii* ». Le transporteur est responsable de la perte ou de l'avarie aux choses lui confiées pour le transport, à partir du moment où il les reçoit jusqu'à la livraison à destination, s'il ne prouve pas que la perte ou l'avarie est due à un cas fortuit ou à une force majeure, ou au fait de l'expéditeur ou du destinataire. Comme vous le voyez, c'est précisément le système du renversement du fardeau de la preuve en matière de transport des choses. Notre jurisprudence est peut-être encline

à admettre même pour les personnes ce renversement de la preuve. Mais il n'y a pas de principes arrêtés définitivement sur ce point. Or, la question du renversement du fardeau de la preuve a une grande importance et une haute signification, parce que les conséquences en sont très graves pour l'armement. Comme vous l'a si bien dit M. Verneaux, les compagnies de navigation devraient toujours prouver, pour exclure leur responsabilité, que la faute incombe au passager.

La question du renversement du fardeau de la preuve, a été discutée dans tous les parlements européens pour la question des recours en matière d'accidents du travail, et tous les règlements et lois ont écarté ce système pour s'en tenir au système du risque professionnel. C'est pour cela qu'avant d'adopter un système comme celui-ci, il faudrait savoir quel est le système qu'on va adopter pour ce qui a trait à la limitation de la responsabilité des propriétaires des navires. Si, par hasard, nous écartons le système de la limitation de la responsabilité des armateurs, pour consacrer le principe de la responsabilité illimitée, vous voyez de suite à quelles conséquences cela nous conduit vis-à-vis des armateurs. Nous allons détruire, nous tuons l'industrie maritime, la navigation. C'est pourquoi, avant d'adopter un système dont les conséquences sont si graves pour l'armement, il faudrait savoir à quoi nous en tenir pour les questions ayant trait à la limitation de la responsabilité des armateurs. Nous pouvons bien aujourd'hui discuter sur les questions de principe, parce que les débats actuels ne sont que les séances préliminaires sur des questions d'une si haute importance. Mais nous ne pouvons certainement émettre un vœu sur cette question avant de savoir ce que l'on décide sur la question de la limitation de la responsabilité elle-même. C'est pour ce

motif que je me rallie à la proposition de M. de Sadeleer de renvoyer à une autre session cette question si importante.

(*Verbal translation by Dr. A. SIEVEKING*)

M. Berlingieri has pointed out that in Italy there is no fixed state of things as to the burden of proof. The question is still open, and he thinks the whole question cannot be settled without having settled beforehand the question of limitation of liability of the owner. Indeed if, for instance, the limitation of liability of owners is abolished great care should be taken not to put too heavy a burden on the shipping world. Therefore he asks you not to go into any resolution of principle upon this question and to postpone the discussion of this question to the next meeting.

THE CHAIRMAN. — I am merely expressing that which appears sufficiently by the question itself when I say that we are dealing now with the question particularly of the burden of proof when there is no special contract regulating the rights.

M. LOUIS FRANCK (Anvers). — Je pense, en ce qui me concerne que les questions que nous avons à examiner en ce moment, doivent être étudiées et tranchées en elles-mêmes, d'après leurs mérites propres et que la méthode logique de discussion consiste à déterminer d'abord quelles sont les bases de la responsabilité que nous devons admettre, parce que c'est uniquement quand vous connaissez ces bases de cette responsabilité que vous pouvez déterminer comment vous allez la restreindre et dans quelles limites.

Les deux questions sont donc absolument séparées. Le Bureau Permanent vous a soumis aujourd'hui les questions contenues dans le Questionnaire, pour des raisons sur lesquelles je préfère ne pas insister, et ne vous en a soumis aucune autre.

Il est hautement désirable que la Conférence, dans une matière qui est presque d'ordre politique et diplomatique, suive les désirs du Bureau Permanent. Nous pouvons avoir tort ou nous pouvons avoir raison, mais il importe que les débats soient restreints à la matière qui est soumise à la Conférence. Cette matière est indiquée et précisée dans les différentes questions qui vous sont soumises, et parmi ces questions, celle que nous discutons en ce moment est de la plus grande importance. Il s'agit de savoir si, lorsqu'un accident se produit au cours du transport des passagers, il suffira que le passager ou ses héritiers viennent dire : Il y a eu mort d'homme, ou il y a eu blessures ; vous, armateur, vous êtes de plein droit responsable sans que j'aie quant à moi à prouver autre chose que l'existence du contrat de transport. Ou bien s'il faudra que le demandeur prouve qu'il y a eu manquement aux obligations de ce contrat ou aux obligations générales de prudence et, par conséquent, une faute.

Mon avis personnel est nettement favorable à la seconde solution.

Qu'est-ce qu'on dit en faveur de la première ?

On dit que quand il s'agit de transporter du ciment, des grains ou des rails, l'armateur les a reçus en bon état et doit les délivrer en bon état à destination. Je crois qu'on ne peut pas assimiler les personnes à du ciment, des rails ou d'autres marchandises, et que c'est, Messieurs, céder d'une façon peut-être trop aisée à ce courant de logique qui emporte si facilement nos esprits que d'établir des comparaisons de ce genre. N'oubliez pas que renverser la charge de la preuve quand il s'agit du transport de personnes par mer, c'est tout autre chose que de renverser le fardeau de la preuve lorsqu'il s'agit de transport de personnes par terre, par chemin de fer ou en tramway. Dans les transports par terre, dans les chemins de fer,

en tramway, il y a de nombreux témoins étrangers à l'accident. Les éléments, même matériels, de l'accident, sont là, sous les yeux de l'expert. Une investigation soigneuse peut se faire et on peut avec certitude découvrir la vérité dans un certain nombre de cas.

Mais en mer, combien n'y a-t-il pas de navires qui disparaissent sans que l'on sache dans quelles conditions ? Il ne reste aucun témoin. On sait que le navire est parti ; il n'arrive jamais. Dans tous les cas, si vous établissez la présomption de faute, vous direz que l'armateur est responsable de l'accident.

Et, pour parler d'accidents qui, sans perdre le navire, occasionnent des blessures, une pareille présomption est-elle juste ?

La situation du passager, définie comme elle l'est dans la loi, est fort simple. L'obligation de l'armateur est d'user de tous les soins nécessaires. Le passager démontrera que sur le pont-promenade, par exemple, il a été atteint par un engin manipulé sur le pont supérieur, donc atteint par suite d'une imprudence des hommes de l'équipage qui manipulaient cet engin. Comme vous ne savez pas, en dehors d'un examen, à qui l'accident est dû, il faut rester sous l'empire du droit commun. Celui qui réclame des dommages-intérêts, doit prouver soit une faute, soit un manquement aux règles de prudence.

A mon avis, la même solution doit s'appliquer pour vice ou défaut. Ou bien il s'agit de vices ou défauts apparents au moment du départ et visibles par le capitaine et les préposés, et la seule preuve que ces éléments sont réunis, suffira ; ou bien ce sont des vices cachés, et alors, avec la complexité des moyens de transport, avec les navires qui ont des appareils de toutes espèces, comment peut-on dire qu'il y a une présomption absolue de responsabilité et que pour ces défauts, qu'aucune prudence humaine ne peut

découvrir, l'armateur est responsable ? Mon opinion est que la solution la plus simple est la solution anglaise. Les Anglais ont une grande expérience de ces choses-là, et leur solution semble en tout cas équitable.

* * *

May I briefly repeat in English what I have already said. At present we are only discussing the question whether in matters of accident the general rule of common law should apply and the claimant should have the onus probandi. It will be on him to show that the due care to which he was entitled has not been exercised, and that negligence has been shown on the part of the owner. There ought not to be a presumption of negligence because this does not convey the same sense as, for instance, where goods are carried. It is quite different carrying goods from carrying passengers. As far as defects of machinery and inanimate objects are concerned, if there is a latent defect we ought not to make the shipowner responsible for a matter which no human prudence could have seen or prevented.

Herr A. VIO (Fiume). — Bei der Beantwortung der Fragen, die in Punkt 2 und 3 angestellt sind, habe ich mir zuerst die Frage gestellt : Wie sind diese Materien in den Gesetzen über die Haftpflicht der Eisenbahnen entschieden ? Bei dieser Frage bin ich auf das ungarische Gesetz über die Haftung dem Eisenbahnen gekommen das ausdrücklich sagt :

« Wenn jemand bei dem Betriebe, der Verwaltung auch einer dem öffentlichen Verkehr noch nicht übergebenen Eisenbahnen sein Leben verliert oder eine körperliche Verletzung erleidet, so haftet die betreffende Eisenbahn-

unternehmung für den dadurch verursachten Schaden. Ausgenommen ist jedoch der Fall, wenn die Unternehmung nachweist, dass der Todo der die körperliche Verletzung durch einen unvermeidlichen Zufall, vis major, oder einen unabwendbaren Dritten, welchen die Unternehmung zu verhüten nicht in der Lage war, oder durch eigenes Verschulden des Verstorbenen oder Verletzten verursacht wurde ».

Nach dem Prinzip des Gesetzes über die Haftung der Eisenbahnen ruht die Last des Beweises auf der Unternehmung der Eisenbahn. Nun entspringt die Frage: Ist diese Regel auf die Schifffahrt anwendbar? In betreff dieser Frage habe ich folgende Erwägungen gemacht. Eisenbahnen sind nicht wie Schiffe den Gefahren von Wind und Wellen ausgesetzt. Die meisten Unfälle auf den Eisenbahnen sind entweder der schlechten Ausführung des Unterbodens, der fehlerhaften Beschaffenheit des rollenden Materials oder der Unvorsichtigkeit des Personals zuzuschreiben. Die Gefahren der Seefahrt sind mannichfach, die vor allem in unvermeidlichen Zufällen oder in der höheren Gewalt begründet erscheinen. Bei Seeunfällen ist es daher redlich, zu verlangen, dass der Beschädigte die Schuld des Reeders, des Kapitäns oder der Mannschaft beweist. Das umsomehr, als dies den Grundsätzen des Zivilrechts entspricht. Eine Ausnahme könnte vielleicht gerechtfertigt sein, wenn ein Unglück durch die Fehlerhaftigkeit des Schiffes, seiner Teile oder seiner Werkzeuge verursacht ist. In diesem Falle müsste vielleicht der Reeder, beziehungsweise der Kapitän beweisen, dass der Fehler solcher Art war, dass er trotz der üblichen Aufsicht und Aufmerksamkeit nicht entdeckt werden konnte, denn der schlechte Zustand des Schiffes oder dessen Werkzeuge setzt eine Fahrlässigkeit und dadurch eine Schuld des

Reeders oder des Kapitäns voraus. Also meine Schlüsse sind, dass im allgemeinen der Beschädigte, der Verletzte die Schuld des Reeders oder des Kapitäns beweisen muss, wenn aber die Verletzung, der Unfall durch die schlechte Qualität des Materials des Schiffes verursacht worden ist, wird in diesem Falle schon die Schuld des Kapitäns vermutet, und darum muss der Reeder beweisen dass es sich um heimliche Fehler, die nicht so leicht entdeckt werden konnten, gehandelt hat.

(Verbal translation by Dr. ALFRED SIEVEKING)

Dr. Vio states that according to the Hungarian law relating to accidents on railways there is a presumption of fault, but he thinks in maritime matters the presumption of fault should not exist so as to make the rule of common law apply : the plaintiff must prove negligence on the part of the owner. But he would like to admit of one exception to this principle in the case of the injured person or the plaintiff proving that the injury has been caused by a defect in the ship or part of the ship. In such a case he thinks that after this has been established the owner should prove that either the defect was a latent one or that he cannot be made liable for the existence of this defect in the ship because he had exercised all due diligence.

M. F. C. AUTRAN (Marseille). — Messieurs, les explications que j'aurai à fournir sur l'article I seront très brèves, car une grande partie de ce que je comptais vous indiquer, a déjà été dit par mon excellent ami Franck dans des termes tels que je ne ferais que répéter ce qu'il a dit.

Si je me permets d'appeler votre attention sur cet article I, c'est qu'à mon avis, le précédent orateur n'a peut-être pas suffisamment établi la différence qu'il convient de faire entre la faute personnelle de l'armateur et la faute de ses préposés.

La question que nous étudions aujourd'hui dans ce paragraphe I est à proprement parler la question de la

responsabilité personnelle du propriétaire de navire, et je crois que la discussion de la responsabilité du propriétaire de navire à raison des faits ou des fautes de ses préposés, viendra d'une façon beaucoup plus pratique et beaucoup plus utile lorsque nous examinerons la question de la « negligence clause ». Ce sera à ce moment qu'on aura à apprécier les conséquences que peut avoir pour le propriétaire de navire la faute qui a été commise par un de ses préposés. Je ne reviendrai donc pas sur ce qu'a dit M. Franck relativement à la responsabilité du propriétaire de navire. A mon avis comme au sien, il faut à tous les points de vue établir une faute à l'encontre du propriétaire de navire ; il ne doit point y avoir une responsabilité contractuelle résultant du contrat de transport ; il ne doit y avoir qu'une responsabilité « ex delicto », c'est-à-dire il faut que le demandeur établisse, comme en Angleterre, une faute à l'encontre du propriétaire de navire. A cet égard, je vous supplie, à l'heure actuelle, de vous dégager des vieux souvenirs que nous pouvons avoir du droit romain. Le droit romain a pu avoir ses mérites à son heure, mais à notre époque, il faut être de son temps, ne pas regarder en arrière, mais regarder devant soi et apprécier la situation, non pas d'après des principes qui peuvent avoir été vrais au temps où ils ont été édictés mais qui aujourd'hui ne sont plus en harmonie avec les conditions de l'existence moderne. Laissons donc de côté toute théorie contredite par l'application.

Il en est d'autant plus ainsi que je vous prierais de ne pas vous baser sur les principes appliqués aux transports terrestres : les situations sont absolument différentes.

Dans ces conditions, une fois que ces deux principes sont posés, la réponse à donner à la seconde question résulte des explications que je viens de vous fournir.

En ce qui concerne le 3^{me} paragraphe, là encore, il ne

faut pas se laisser inspirer par des idées réactionnaires ou rétrogrades. Est-ce que vous pouvez comparer les villes flottantes d'aujourd'hui avec un de ces voiliers qui étaient considérés comme des géants de mer quand ils portaient 600 tonnes ? Assurément non. Comme le disait M. Franck tout à l'heure, à bord des navires modernes, il y a je ne sais combien de machines, d'emprises, de kilomètres de tuyaux, de fils électriques. Quels que soient les soins et la diligence que l'on apporte à tenir tout en bon état, il n'y a pas de prudence humaine qui puisse mettre le propriétaire de navire à l'abri d'un accident dû à un vice caché, même d'un vice qui ne serait pas entièrement caché.

Et est-ce que là encore, vous vous trouvez dans la situation où l'on était autrefois ? Un grand écrivain, de Courcy, dont vous connaissez le nom et les ouvrages, avait mille fois raison de dire qu'en matière maritime il ne fallait pas appliquer des principes théoriques. Est-ce que dans le droit civil, pour les transports terrestres, vous avez par exemple quelque chose de comparable à cet admirable Lloyd's Register de Londres, ou au Bureau Véritas Français ? Quand une locomotive a un accident, on la met en réparations et tout est dit. Mais quand un accident arrive à un navire, il faut qu'il obtienne de nouveau sa classe au Lloyd's. Après un accident, un navire doit passer la visite des experts du Lloyd's, qui ne délivre son diplôme que lorsque tout est en règle. Dans de semblables conditions, en droit maritime on se trouve dans une situation absolument différente. Là où vous vous trouvez en présence d'un vice caché, ou même d'un vice qui ne sera pas caché entièrement, vous iriez admettre à priori la responsabilité du propriétaire de navire ? Je répondrai hardiment non. Lorsque l'armateur a fait construire son navire par un bon constructeur, qu'il

l'a entretenu dans un bon état de conservation, que son navire est coté aux registres de classification, lorsqu'il a passé toutes les visites administratives que dans tous les pays on se plaît à compliquer de jour en jour, le malheureux propriétaire a déjà assez à faire pour satisfaire aux exigences du Lloyd's et de son propre Gouvernement, sans que vous fassiez encore peser sur lui les conséquences énormes d'un vice ou défaut. Par exemple, je me rappelle il y a quelques années un capitaine qui prenait son chargement à Marseille où habitait son propriétaire. Il veut mettre une cargaison de grains dans un water-ballast tank : quand le water-ballast tank est vide, on le transforme en supplementary bunker. Il se trouvait que l'indicateur qui doit prouver si les water ballast tanks étaient ouverts, ne marchait plus. On met donc les grains dans les water-ballast et puis, l'eau arrive tranquillement dedans. Vous comprenez que les grains sont sortis de là dans un état plutôt fâcheux. Pourriez-vous dire que le malheureux propriétaire a eu tort de ne pas pénétrer lui-même dans le trou du water-ballast ? Assurément non. Et puis, remarquez que ces questions concernent bien plus les assureurs que les chargeurs et peuvent être considérées à juste titre comme partie des « perils of the sea » que les assureurs ont pris à leur charge. Par conséquent, vouloir faire peser sur le propriétaire de navire des responsabilités semblables serait, je le répète, aller à l'encontre du bon sens et de la pratique actuelle. Et c'est par là que je termine en vous demandant pardon d'avoir retenu trop longtemps votre attention. Je crois être dans le vrai en disant que dans tous les pays, l'armement traverse une crise dont on ne peut prévoir la fin, et sous prétexte de donner plus de garanties aux passagers, et aux chargeurs, vous arriveriez tout simplement à tuer l'armement. Ce serait, comme dans le conte, Ugolin qui mange ses enfants pour leur

conserver leur père, et je vous citerai enfin ces vers de Lucrèce : *propter vitam vivendi perdere causas.*

(Verbal translation by Dr ALFR. SIEVEKING)

Being perfectly unable to imitate the eloquence of my friend M. Autran, you will allow me briefly to state that he perfectly adheres to the view of Mr. Acland and our English friends.

THE CHAIRMAN. — M. Franck will read the communication which we have received from our friends the Japanese Association, which they wish shortly read on this point.

(M. Louis Franck reads the communication, according to which the Japanese Association express their view that the burden of proof should rest upon the shipowner.)

THE CHAIRMAN. — Gentlemen, it appears to me, following what has been the views of different speakers, that upon this which is the main question and purport of the matters we have been discussing, namely, whether or not the burden of proof should rest upon the passenger to prove negligence, or upon the owner, where misfortune has happened, to prove that he had not been negligent but careful, we have had practically but one opinion, namely, that the burden of proof should rest upon the passenger, and that the owner in regard to passengers should not be treated as an insurer. That seems to be practically unanimous with the exception perhaps, I should say, of our friends from Japan, who, if I follow the statement made, would treat the burden of proof as a burden of disproof to rest upon the shipowner. If there are any gentlemen who wish to argue in that sense and who wish to state their views I am sure the Committee would wish to hear them,

but otherwise, without putting a definitive vote, may I take it that the general view which I think it is desirable to have is that there should be no presumption of blame on the shipowner, but that the burden of proof by a passenger who claims compensation for injury should rest upon him to make out his case.

(Traduction orale par M. LOUIS FRANCK)

M. le Président a fait observer à l'assemblée que sur la question de présomption de faute, presque tous les orateurs se sont prononcés en faveur de la règle selon laquelle le passager qui a subi des lésions — ou ses héritiers en cas de mort — doivent prouver qu'il y a eu faute, à charge du propriétaire de navire ou de ceux dont il répond.

M. le Président désire accorder encore la parole aux membres de la Conférence qui soutiendraient la thèse qu'il faut maintenir une présomption de faute, sinon. et sauf ce qui résultera de ces débats, il demande s'il peut considérer comme l'opinion générale de la Conférence qu'il n'y a pas lieu d'accorder une présomption de faute, mais de laisser la charge de la preuve à ceux qui demandent des dommages-intérêts.

Herr Dr GÜTSCHOW (Hamburg). — Meine Herren ! Ich möchte nur kurz bemerken, dass ich mich im gegenteiligen Sinne aussprechen muss, will aber nur eine Bitte an den Herrn Präsidenten richten, nämlich : es heute bei einer einfachen Aussprache der Meinungen zu belassen und nicht als Ergebnis dieser Erörterungen es so aufzufassen, als ob die Versammlung sich ganz in diesem oder jenem Sinne ausgesprochen habe. Leider sind wir noch nicht in der Lage gewesen, diese Fragen, die von ausserordentlicher prinzipieller und tatsächlicher Wichtigkeit, sind, genau zu prüfen und überliegen zu können, und wenn es auf den ersten Blick, nach dem was wir hier gehört haben, scheinen könnte, als ob wir einig seien in der Frage, wie sie der verehrte Herr Präsident formuliert hat, so habe ich doch grosse Bedenken, dem zuzustimmen und auch

nur in einer vorläufigen Weise zuzustimmen. Ich möchte daher beantragen, dass alle diese Fragen über die persönliche Haftung lediglich diskutiert werden, ohne eine Entscheidung nach dieser oder einer andern Richtung daraus abnehmen zu können.

THE CHAIRMAN. — What we have just heard is exactly what I wish to put as the view of the Committee. With regard to the course we should take I may assume as President here, having listened, that without coming to any definite vote the general sense of all the nations present is in favour of the view which I have expressed, namely, that there is no presumption of blame against the owner of the ship for the accident, but no decision is come to, because the matter is still in a fluid state although that is the general impression that anybody here would draw from the remarks we have listened to.

(Traduction orale par M. LOUIS FRANCK)

M. Gütschow fait observer qu'à son avis, il ne convient pas de prendre une décision, même provisoire, et qu'on doit s'en tenir à la constatation de ce qui s'est passé à l'assemblée même. D'après ce qu'a dit Lord Justice Kennedy, c'est dans ce sens qu'il a entendu parler : c'est comme président résumant la discussion qu'il a parlé, mais sans qu'une décision ait été prise et la question reste entière. Il a tout simplement dit cela pour qu'il en reste trace et pour que dans les travaux futurs, on pût tenir compte de ces discussions.

M. BERLINGIERI. — L'association italienne n'accepte pas la solution : elle se réserve.

M. FRANCK. — C'est bien cela.

M. LANGLOIS. — Vous serez probablement étonnés que je sois assez téméraire pour me mêler à des discussions où les jurisconsultes sont mieux à leur place que moi. Vous m'excuserez si je me permets de me mêler à vos discus-

sions en ce moment. C'est que toutes les difficultés qu'on rencontre en cette matière, je les connais, et ce que j'ai entendu à cette tribune ce matin n'a certainement pas changé ma manière de voir.

C'est un dédale : nous sortons d'une difficulté pour entrer dans une autre et chacune de ces difficultés se subdivise à l'infini.

Le Comité a mis à l'ordre du jour la question fort simple : ne conviendrait-il pas d'établir un forfait ? Pour moi je serais d'accord pour l'établissement d'un forfait, en admettant une présomption de faute. De cette façon, on saurait à l'avance ce que la responsabilité peut entraîner. Libre à celui qui trouverait que ce forfait ne suffit pas pour représenter sa valeur intrinsèque, d'augmenter cette valeur par un ticket supplémentaire.

Remarquez bien que si je vous signale ce point c'est uniquement parce que si vous adoptez cette solution-là toutes les autres discussions deviennent parfaitement inutiles.

Voilà ce qui m'a amené à la tribune.

(Verbal translation by Dr. ALFR. SIEVEKING)

M. Langlois is in favour of establishing a presumption of fault if and in so far as the liability of the owner is limited to a certain sum for each case.

THE CHAIRMAN. — Now we pass to another group of questions which we can take together conveniently, which will be numbers 4, 5 and 7. The first in English, N^o 4, is : « Upon what basis should damages be awarded? Should general damages be given? Should damages, indirectly attributable to the accident (consequential damages), be allowed? » In French : « Quelle est la base des dommages-intérêts? Faut-il y comprendre le dommage moral? Faut-il y comprendre les dommages indirects et médiats? » Then

question 5 : « In whom should the right of action rest? In the injured party? In the widow or children, or descendants? To all persons beneficially interested in the estate?» In French : « A qui convient-il de donner action? A la partie lésée? A la veuve, aux enfants et descendants? A tous héritiers?» Then question 6 we leave out; it is separate altogether from this discussion. Then question 7 : « Should the right of action, for damages for the death of a person, depend upon the condition that the persons claiming were dependent on the deceased person?» In French : « L'action doit-elle être subordonnée à la preuve que la victime était le soutien des parties demanderesses?» In other words, what should be the basis of claim? Should it be a claim in itself including something beyond the directly attributable damages or not, and should the right to damages whatever they are be a right which exists not only in the person injured but in the case of death to persons interested in his life, and should that right be limited or contracted in any way in the form which is put in the 7th question, namely, that the person must prove not only the relationship but the pecuniary dependence.

La séance est levée. — The session was adjourned.

SÉANCE DE L'APRÈS-MIDI.

AFTERNOON SITTING.

Mr ACLAND. — Mr President, I propose to address the Conference in answering the questions which are now put before us, namely, 4, 5 and 7, but in doing so I wish to say that I am attempting to place succinctly before the

Conference the general principles which regulate the matter according to the law of Great Britain, and although it is possible that the statement which I shall make will require amplification at much greater length than the Conference would put up with, I hope it will be a substantially accurate statement of the principles upon which the law is based.

Now, first of all it is to be remarked that the rules with regard to damages vary, and the right of action indeed varies according to whether the accident has resulted in personal injury alone, or in personal injury which results in death. Taking, in the first instance, alone personal injury, the right of action rests in the person who has been injured, and with regard to the fourth question, which is, in French, « *Quelle est la base des dommages-intérêts? Faut-il y comprendre le dommage moral? Faut-il y comprendre les dommages indirects et médiats?* » it will be found, I think, a sufficiently accurate statement of the English law to say that the person who has been injured by such an accident as that is entitled to recover all the damages which flow directly from the injury which he has sustained, and, in addition, a sum of money which is assessed by the Jury, or other body who assess the damage, to compensate him for the personal suffering which he has undergone. As an example of the damage which flows directly from the accident, apart from compensation for his personal suffering, I may explain that it includes, generally speaking, all the expenses to which the individual has been put in curing himself of the injury which he has suffered, for instance, the doctor's bill, the bill for the expenses of nursing, and so on. In addition, the results which are less direct perhaps, the damage which he has suffered by reason of being unable to continue his profession or business, and the loss which is occasioned to

his property thereby — to himself in relation to his property thereby. Question 7 and question 4 must be answered in a different way when the injury which has been occasioned to the person who has been personally injured results in his death because then by the Common Law of England there was no right of action at all survived to anybody. That system of law was contained in the maxim *actio personalis moritur cum persona*. The man who was killed cost the person who killed him nothing, according to the Common Law of England. That was altered by an act of Parliament which was passed early in the last Century, which we call Lord Campbell's Act, and by that the persons whom I may sum up as the descendants, the wife and children, and grandchildren, even the father and mother, persons dependent upon him, were given a right of action to recover damages. What those damages were I will try to explain in reference to question 4, which I have already read, and question 7, which I will now read, « L'action doit-elle être subordonnée à la preuve que la victime était le soutien des parties demanderesses ? » The answer that English law at present gives to that last question 7 is that he must have contributed, at all events to some extent, to the support of those persons who are making a claim against the wrong-doer, that is to say, that if, as sometimes happens, the result of the death of the person who has been killed is that if children are put into a better position pecuniarily, those children, or his wife, whichever it may be, can recover no damages at all on the ground that they have suffered no pecuniary damage because that is the principle upon which, according to our law, the damages are assessed. If I may give one simple example which I hope will make it clear to those who hear me, I may perhaps put it in this way : Supposing that a millionaire of any nationality proceeds in a ship to sea,

and by the negligence imputable to the owner, loses his life, and the result is that by his will his wife and children obtain the whole of his estate so that having originally been dependent upon his bounty they now come as of right to possess the property which he hitherto had possessed. In those circumstances, according to the English law, damages would not be recoverable because there has been no pecuniary injury done to the persons who would be putting forward the claim. The death of the person who has been killed has been actually, from a pecuniary point of view, to the benefit of those who come after him, and so according to the English law there would be no damage at all. There remains, therefore, to be answered question N° 5.

JUDGE BRADFORD — Would you allow me to ask one question? Does any portion of the damages, under any circumstances, go to the creditors of the deceased, or only to the widow, or next of kin?

Mr. ACLAND. — Only to the widow.

JUDGE BRADFORD. — Not to the general estate?

Mr. ACLAND. — Not to the general estate.

Now, Gentlemen, question No. 5 is, « A qui convient-il de donner action? A la partie lésée? A la veuve, aux enfants et descendants? A tous héritiers? » According to the English law that has been decided under Lord Campbell's Act which gives the right of action to the personal representatives. I have here the text of the book before me, and perhaps the Conference will bear with me if I read it, « The action should be for the benefit of the wife, husband, parent and child of the person whose death shall

have been so caused and shall be brought by and in the name of the executor or administrator of the deceased ». Then, after the manner of English Acts of Parliament, « parent » is explained to mean « father and mother, grandfather and grandmother, stepfather and stepmother ; and the word « child » shall include son, daughter, grandson and granddaughter, and stepson and stepdaughter ». So that those are the people who, according to English law, can recover. That I hope is an accurate statement of the principles — it does not pretend to be more than that — upon which this matter is regulated in English law, and I do not know whether the Conference would desire that I should express any opinion at all as to the questions which are asked in this section. I think on the whole it would be more useful that the time at our disposal, which is short, should be employed by obtaining from the different Nationalities statements of the law which govern the matter in those States, rather than that we individuals should express any opinion at all in answer to the questions which have been put.

* * *

May I add this. The answer which I have given applies simply to passengers, and has no relation whatever to members of the crew, or others employed on the ship. Utterly different considerations apply according to English law in those circumstances.

(Traduction orale par M. LOUIS FRANCK)

M. Acland a résumé brièvement les dispositions de la loi anglaise sur cette matière. La loi anglaise fait une distinction essentielle entre le cas de blessures et le cas de mort. Quand il s'agit de blessures, c'est la victime elle-même qui est présente ; on lui alloue à titre d'indemnité tous les frais qu'elle a été exposée à faire, frais de guérison,

etc, et ensuite une indemnité qui compense la perte subie dans sa capacité professionnelle ou autres biens.

Quand il s'agit au contraire d'un cas de mort l'action est donnée à des parties déterminées, à titre personnel ; mais cette action ne fait pas partie du patrimoine du défaut. Ces parties ainsi déterminées sont : la veuve, le conjoint survivant, le père, la mère, les grands-parents ainsi que les beaux-parents, et puis les enfants, les petits-enfants ainsi que le beau-fils et la belle-fille. Quand il s'agit de l'action des héritiers ainsi déterminés, le dommage ne comprend que le préjudice que ces personnes ont elles-mêmes subi. On ne tient point compte du préjudice que le défunt a pu subir, on ne reconstitue pas son patrimoine. On n'accorde une indemnité que pour le dommage que les parties demanderesses ont personnellement et directement subi.

M. Acland fait observer que les observations qu'il a présentées n'ont trait qu'aux passagers et à leurs héritiers ou ayants-droit, mais il ne s'agit pas des autres catégories, ouvriers ou équipages.

M. BENYOVITS. — Les questions mises en discussion maintenant sont si importantes qu'il me semble qu'on ne peut pas y répondre aussi facilement. Il faut d'abord les examiner très minutieusement et il me semble que cela sera pour la conférence prochaine.

Quant à la question dont s'agit, j'aimerais pourtant faire quelques observations. Il y a deux bases : les dommages-intérêts, c'est-à-dire le « *lucrum cessans* » et puis le « *damnum, emergens* ». Dans la plupart des législations, on n'accorde que les pertes réelles ; il me semble que nous ne devons pas faire autrement et n'accorder que la perte réelle.

Quant à la 5^{me} question : à qui convient-il de donner une action ? il me semble que cette question est en stricte relation avec l'autre question qui a trait aux dommages-intérêts. A mon avis, personne ne peut avoir droit à dommages-intérêts que la personne lésée ou bien, en cas de mort, les personnes dont la victime était le soutien. Et il me semble que pour avoir cette action, il est absolument nécessaire que la victime fût le soutien des réclamateurs.

M. LOUIS FRANCK. — Permettez-moi de vous poser une question. Vous dites qu'il faut limiter les dommages-intérêts à la perte réelle. Est-ce que vous entendez par exemple dire que ce que l'on appelle le dommage moral doit être compris dans la perte réelle?

M. BENVOVITS. — Oui.

M. L. FRANCK, — Aussi les perspectives d'avenir?

M. BENVOVITS. — Non, cela est trop difficile à juger. Comment appréciez-vous cela?

(Verbal translation by Dr. A. SIEVERING)

Monsieur Benyovits points out that according to his opinion only actual damage should be assessed, but actual damage not including loss of gain. Secondly, that the right of action is only for the injured person, and, in case of death, only for those who were dependent upon him during his lifetime, and, thirdly, that, of course, damage must have ensued, or else there lies no action at all — damage must be proved by the Plaintiff.

HERR LODER (Holland). — Meine Herren! Das holländische Komitee hat über diese verschiedenen Fragen, die in verschiedenen Gesetzbüchern bearbeitet sind, einen Rapport abgegeben. Ich will darüber nicht sprechen und nur angeben, wie ich selbst und die verschiedenen Mitglieder des Komitees darüber denken. Ich erinnere daran, dass sich in unserem Handelsgesetzbuche eine Bestimmung befindet, wonach der Reeder verpflichtet ist, für die Unterhaltung, Genesung und Schadenersatz der Bemannung zu sorgen. Das gehört unserer Ansicht nach zweifellos zum Seerecht. Was aber hier weiter behandelt wird, gehört, wie ich glaube, nicht zum Seerecht, nicht zu einem Sonderrecht, sondern zum Kreis der bürgerlichen

Gesetzgebung; und wenn ich darüber spreche so hat das bloss Bezug auf die bürgerliche Gesetzgebung. Im allgemeinen kann ich sagen, dass wir uns der englischen Gesetzgebung anschliessen. Wir glauben auch, dass zwischen den drei Fragen ein innerer Zusammenhang besteht. Die erste Frage betrifft die Basis der « *dommages-intérêts* » und den Begriff des « *dommage moral* ». Ich glaube nicht, dass die Fragen allgemein beantwortet werden können. Einem jungen Mann gegenüber, der ein kluger Mensch ist, der viel Perspektive im Leben hat, und der auf dem Schiff einen Unfall erleidet und dadurch seine Perspektive verliert, wird man meiner Ansicht nach die Bestimmung nicht zur Anwendung bringen. Wenn aber auf der andern Seite ein junger Mann schon eine Karriere angefangen hat, die ihm wahrscheinlich eine gute Perspektive eröffnet, einen Unfall erleidet, so müsste die Entschädigung eintreten. Wir glauben, dass der Unterschied zwischen dem *dommage direct* und dem *dommage indirect* schwer zu machen ist, da in jedem Fall der Schaden faktisch anders zum Ausdruck kommt.

Ich komme zur zweiten Frage: « *A qui convient-il de donner action? A la partie lésée? A la veuve, aux enfants et descendants? A tous héritiers?* »

Wir müssen uns, ehe wir uns darüber verständigen können, was geschehen soll, fragen, wem der Schaden zugefügt worden ist. Ist er etwa den Erben zugefügt? Nein, was haben die Erben damit zu schaffen? Sie bekommen, was der Tote hinterlässt und weitere Ansprüche haben sie nicht, und ist das Datum des durch den Unglücksfall eingetretenen Todes früher als der Tod sonst gekommen wäre, um so besser für die Erben, dann kommen sie früher zu ihrem Gelde. Aber einen Schadenersatzanspruch der Erben anzuerkennen, den der Gestorbene selbst nicht fordern kann, das geht zu weit. In unserer

Gesetzgebung, — und ich halte das für richtig, — wird dieser Anspruch nur denjenigen Personen gegeben, die von dem Verstorbenen persönlich unterhalten wurden. Das basiert sich eigentlich nicht im strikten Recht, sondern das basiert sich auf ein Billigkeitsgefühl, da einer Witwe zum Beispiel durch den Unglücksfall, das Leben nicht mehr gesichert ist. Dasselbe kann man auch in Bezug auf die Kinder des Verstorbenen sagen. Darum sagt auch das Bürgerliche Gesetzbuch : diejenigen, welche unterhalten werden von Personen, die durch Verschulden eines Dritten zu Tode gekommen sind, haben eine Forderung auf Schadenersatz. Ich glaube, man muss auch in der Zukunft diesem Prinzip treu bleiben. Ich will nicht mehr sagen, glaube aber, dass durch internationale Abmachungen nicht solche Fragen geregelt werden sollten, die nach dem bürgerlichen Recht schon ihre Erledigung gefunden haben. Hierbei kommt auch die Kontraktfrage in Betracht. Selbstverständlich muss durch jede Person der Kontrakt respektiert werden.

(Verbal translation by DR ALFR. SIEVEKING).

Mr Loder points out that according to Dutch law as regards the crew the Dutch law contains many particulars as to what the owner is to pay to the crew. As regards the passengers, of whom we speak here, he says that the views of the Dutch Association of Maritime Law, generally speaking, coincide with the views expressed by the English Delegates. As regards what damage should be awarded, there should be only the damage directly consequent upon the fault which gives rise to the action. The right of action accrues, according to the opinion of the Dutch Association, only in case of injury to the person who has been injured, or, in case of death, to those persons who have been dependent upon the deceased, and, as I understand Monsieur Loder, without any restrictions as to relationship. These persons need not be related to the injured one.

Am I right in that, Monsieur Loder?

M. B. C. J. LODER. — Yes.

M. LOUIS FRANCK. — La question que nous examinons a une très grande importance pratique et je pense que si nous voulons nous rendre compte de cette difficulté véritable, nous devons la préciser davantage. Un premier point sur lequel nous devons nous rendre un compte plus exact, est celui-ci : doit-on comprendre dans les indemnités en cas d'accident le dommage moral, c. à. d. une indemnité pour les souffrances de la victime qui survit, même pour les souffrances des parents ou des enfants atteints dans leur affection ? C'est la jurisprudence dans un grand nombre d'États. C'est une question que l'on ne peut point résoudre a priori. On peut donner dans l'un comme dans l'autre sens, différentes raisons. Je vois que plusieurs membres font un signe négatif. Je serai heureux d'entendre leurs raisons, car s'il est vrai qu'on ne paie pas la douleur, il n'en est pas moins vrai que si on ne peut la faire disparaître ou la payer en argent, on peut cependant attribuer une certaine compensation. C'est ce qui s'appelle en allemand « Schmerzensgeld ». Cela arrête un peu les esprits sentimentaux ; mais les victimes en général dont les sentiments ont aussi quelque importance, ne se plaignent pas de se voir allouer une indemnité. Je ne me prononce pas ; je signale simplement le point.

Une seconde question surgit : les perspectives d'avenir. Je laisse de côté les considérations émises par M. Loder. Mais pour ceux qui exercent des professions libérales, par exemple, et dont le gain n'a cessé de croître, doit-on tenir compte de cette augmentation, ou peut-on dire, — ce qui semble être l'idée de M. Benyovits — : je coupe pour vous toutes les chances de cette carrière brillante, et je ne compte donner de recours qu'à la femme et aux enfants ? C'est encore une question sur laquelle il y aura à s'expliquer, car lorsqu'on dit simplement qu'il faut prendre les

dommages directs et immédiats, on n'est pas plus avancé. Il faut serrer la question de plus près.

* * *

I was pointing out to the meeting in a few words that when one says you want to allow damages for all the immediate consequences of the loss, the form of the drafting of the text may appear clear, but you want to make clear what you think does come near to the question, and then you will see that it goes mainly into these two points on which the practice of the foreign Countries widely differs. First, are you going to take into consideration moral suffering, allowing an indemnity, for instance, to a wife, as a sort of compensation for the loss she bears by the death of her husband? And then the second question is, are you going to take into consideration the prospects of the increase in the earnings of a professional man for instance, or the head of a commercial firm, who may come to the Court and say, « I have been in business seven or eight years, I have made so much; for four, five, six or seven years, my earnings were increasing, it is reasonable to expect they would have increased, and you must take that into consideration ». The practice of law in most Countries takes that into account. Do you think it right or wrong? It would be worth while to hear what the gentlemen here think about that matter. I abstain from expressing any opinion, but we ought to go to the root of the matter if we desire to do useful business.

THE CHAIRMAN. — Does any gentleman wish further to address the Conference upon this matter? If not it appears to me that the Conference would be of opinion that it is a matter upon which it is impossible to formulate an exact

question now. We have heard some views, and it is one of the questions which the Council would desire to be formulated when a further Code is suggested. I do not know what question can be formulated at present, but I understand all are agreed that in some form, in the absence of special contract, a man who is injured will be entitled to damages such as he can really prove and in some degree, at any rate, his near relations, in the form of his family, will be entitled to damages if he dies, and has not recovered damages in his lifetime — but only in respect of the actual money loss which they can prove they have suffered, the money loss taking the form of the reasonable expectation of advantage in the form of money which they would have had taking human life to be what it is, and the chances of life to be what they are. They shall be entitled to that only if they can prove that such a loss has happened by the death, and that they are not, as they may be in one of the cases put by Mr Acland, actually benefitted, in which case they can claim nothing at all. It has been suggested by Monsieur Loder that it might be extended to persons who are other than relations. We have got to consider what the law ought to be. I can only say it seems to me it would be very dangerous to go on extending the right because in the case of the ship-owner unfortunately killing a passenger of very philanthropic charitable tendencies you might have a very hungry crowd who were really dependent upon voluntary gifts, and not even upon moral obligations like the members of a family, and common sense, I think, rather points to confining those claims to the claims which in the eye of humanity a civilised man would be bound to recognise if he had lived. I take that to be the general view, but upon the question of the degree of when the person is injured, and does not die, I can quite imagine there

may be, and I rather gather there is, some difference of opinion. The law of my Country, at any rate, is simple. I do not say it is necessarily right, but it is this, that if a person is injured by the negligence of another his damage divides itself practically into two heads: first, the expense to which he is put in to be cured, past, present or future; secondly, some compensation that a Jury may think fair for actual pain suffered when there is suffering of bodily pain. Then, after allowing for these two, you come to the money compensation which must be awarded, taking the circumstances of life: his age, his health, and the chances of his life, and looking at the business that he is doing, in consideration of the difficulties that he may have in the future by reason of his injury in earning his livelihood. That seems a reasonable basis, but, of course, it is open to comment, and may be dealt with. I think the Conference might be of opinion, having ventilated this matter, and finding substantial agreement, that we may pass on to another topic unless there is any gentleman who wishes further to address the meeting. I may take it that is the view of the Conference.

Then, Gentlemen, the next matter which I think might be usefully dealt with now is one upon which an opinion could be given. That is question 8, « Should contracting out be prohibited? » that is to say should the shipowner be allowed by law to make a contract with his passenger that he shall in no case be liable to that passenger? One would have to consider what is not apparent upon the questionnaire, namely, whether or not that is intended to apply only to the person injured because I do not quite see how, if the general law was that his relations could claim in a case of death, he could contract with those relations out of liability because the contract would be with the passenger. We can take the simple case of a pas-

senger, and the Conference might express its view as to whether or not a shipowner should be allowed to make a special contract which would exempt him from liability. As those who are present know, the American law with regard to goods has legislated upon this subject in what is known as the Harter Act, but all this question is whether or not in principle with regard to injuries to persons it should be lawful for the shipowner to make such a contract.

Traduction orale par M. LOUIS FRANCK

M. le Président a résumé la discussion en disant qu'en ce qui concerne les héritiers, il lui semble qu'ils devaient obtenir une indemnité raisonnable correspondant à ce qu'ils pouvaient légitimement attendre comme avantage pécuniaire, de la survie du défunt s'il n'avait pas eu d'accident et qu'il lui semble que ce dommage devrait être limité au dommage matériel. Il pense également que sous l'une ou l'autre forme il conviendrait que les catégories d'héritiers ainsi admis à réclamer, fussent mieux déterminées et qu'il ne conviendrait pas d'accorder ce droit à quiconque pourrait avoir un intérêt, même éloigné.

En ce qui concerne au contraire les actions introduites par les victimes mêmes, le président considère qu'il y a deux catégories de dommages : tout d'abord les frais et pertes matérielles, conséquences directes des lésions, et en second lieu une somme à estimer qui devrait autant que possible placer la victime pécuniairement dans la situation qu'elle aurait eu si l'accident ne s'était pas produit, sans se mettre dans des hypothèses de pure spéculation.

M. LOUIS FRANCK. — M. le Président passe à la question 8 : Faut-il permettre de s'exonérer par contrat de la responsabilité de droit commun ? En d'autres termes : la negligence-clause en matière d'accidents de personnes doit-elle être considérée comme valable ?

Herr Dr. GÜRSCHOW (Hamburg). — Meine Herren ! Darf ich eine Bemerkung machen, die sich mir aufdrängt, da es mir scheint, dass die Versammlung auf diesem Gebiet überhaupt noch zu keiner bestimmten Ansicht gekommen ist. Mir kommt es vor — unter allem Vorbehalt — als ob in

dieser Beziehung doch kein Unterschied bestehe zwischen der Haftung für Personenschäden und für Sachschäden. Ich habe mich schon früher gefragt, warum denn in der Haftung dieser Unterschied gemacht wird, und bisher ist es mir nicht gelungen, mir eine befriedigende Antwort auf die Frage zu geben. Bleiben wir beispielsweise bei der Harter-Act. Die Harter-Act befreit den Reeder, wenn er gewisse Verpflichtungen in bezug auf die Ausrüstung der Schiffe, Stellung seetüchtiger Schiffe erfüllt, von der Haftung für ein Verschulden in der Führung und im Betriebe des Schiffes — allerdings nur Sachschäden gegenüber. Ich muss gestehen, dass ich es bisher so aufgefasst habe, als ob die Befreiung eine allgemeine sei, ich bin aber von Herrn Bradford gestern belehrt worden, dass diese Bestimmung der Harter-Act sich nur auf Sachschäden bezieht. Aber es bleibt doch die Frage: Was für ein Unterschied ist zwischen einem Sachschaden und einem Personenschaden? Ich vermag einen inneren Unterschied nicht zu erkennen. In moralischer Beziehung ist natürlich ein Personenschaden anders als ein Sachschaden zu beurteilen, aber davon abgesehen: warum wird dann ein Personenschaden so ganz anders beurteilt als ein Vermögensschaden? Ich vermag es nicht zu sagen. Ich halte es für wünschenswert darüber die Ansichten des einen oder andern Herrn zu hören. In einer Beziehung, hinsichtlich der Haftung Gütern gegenüber, kann sich der Reeder nach der Harter-Act nicht freizeichnen von einem Verschulden in Bezug auf Beaufsichtigung, richtige Fürsorge, Empfang und Ablieferung der Güter, warum soll, wenn man eine Beschränkung den Gütern gegenüber für richtig hält, nicht dieselbe Beschränkung der Vertragsfreiheit auch Personen gegenüber stattfinden, dass man sagt: der Reeder kann sich freizeichnen von dem Verschulden seiner Leute, wenn im Betriebe seines Schiffes seine Passagiere

beschädigt werden, aber nicht freizeichnen, wenn die Einrichtungen für die Unterbringung der Passagiere schlecht sind und dadurch ein Unglück herbeigeführt wird. Verantwortlich machen sollte man einen Reeder, meiner Ansicht, nicht dürfen, wenn von der Mannschaft ein Versehen gemacht wird, wenn z. B. der Koch nicht aufpasst und die Speisen, während ihm der Proviant ordnungsmässig in gutem und brauchbarem Zustande geliefert ist, so zubereitet, dass sie giftig sind. Es können derartige Fälle vorkommen. Mit einem Wort, ich halte es nicht für gerechtfertigt, hinsichtlich der Vertragsbestimmungen einen Unterschied zwischen Personen- und Sachschäden zu machen.

(Verbal translation by DR A. SIEVEKING).

Dr. Gütschow thinks that there should not be any difference as regards liability in principle, the liability of doing damage to goods, or doing damage to persons. He has been told by Mr Justice Bradford that the Harter-Act applies only to goods. Dr Gütschow asks why should not the same distinction which the Harter-Act contains as to the possibility of the owner freeing himself from certain liability be made applicable also to cases of personal injury. He would like to hear an opinion expressed upon this point. I think as far as I could understand Dr Gütschow he is in favour also of the Harter-Act not only being introduced into other Countries with regard to the carriage of goods by sea, but also to its being applicable everywhere in the case of transport of passengers.

M. LOUIS FRANCK. — Messieurs, je crois que ce que vous avez en ce moment à l'examen peut être résolu indépendamment de la décision que l'on peut prendre ou de l'opinion qu'on peut avoir sur les clauses d'exonération en matière de transport de cargaisons. Que disent en effet ceux qui sous ce rapport combattent la tendance de la jurisprudence actuelle qui, dans presque tous les pays, admet la parfaite validité et tolère l'entière généralité de

ces clauses ? Ils ne disent pas à mon sens qu'il faudrait interdire d'une façon absolue aux armateurs et aux chargeurs de faire un contrat par lequel les garanties en matière de diligence se trouveraient limitées. Ce qu'ils veulent, c'est généraliser les dispositions législatives comme le Harter Act et comme la loi australienne sur le même objet, — et ces dispositions font une distinction entre les fautes nautiques et les fautes commises dans la garde et la conservation de la marchandise. Cette distinction, Messieurs, à voir la chose dans ses grandes lignes, qu'est-ce ? C'est l'irresponsabilité de l'armement pour la navigation et la conduite technique du navire par le capitaine et ses subordonnés en leur qualité de marins et c'est au contraire la responsabilité du propriétaire de navire pour tout ce qui est relatif à l'arrimage, la garde et la conservation de la marchandise. Si vous voulez réfléchir un moment à la différence profonde qui sépare à cet égard le transport des personnes du transport des choses, vous reconnaîtrez immédiatement qu'une distinction de ce genre ne peut pas s'appliquer au transport de passagers. Il n'y a pas d'arrimage en matière de passagers. Pour ce qui est de leur garde et de leur conservation, ce n'est pas comme en matière de cargaisons un domaine distinct qu'il soit possible de limiter. En réalité, l'ensemble des soins qu'un armateur doit prendre à l'égard de passagers, ne peut se subdiviser comme en matière de cargaisons.

On dit, pour les marchandises, que conduire un navire c'est autre chose que de veiller à la sécurité. Mais transporter des passagers, c'est encore toute autre chose. Je crois donc qu'il n'est pas possible d'introduire une disposition comme celle du Harter Act et de la loi australienne. Ou bien laissez les clauses d'exonération sous l'empire du droit commun et à l'entière liberté des parties ; ou bien ne

tolérez aucune exonération, n'importe laquelle. Il n'y a pas d'autre solution.

Les raisons pour lesquelles la question doit être tranchée, sont aussi différentes, parce qu'en matière de vies humaines, l'intérêt qui s'attache à la conservation de la vie doit entrer surtout en ligne de compte. Je crois que pour la résoudre, il faut considérer trois catégories de causes.

En premier lieu, l'innavigabilité;

En second lieu, les fautes personnelles aux propriétaires ou armateurs ;

Et en troisième lieu, les faits et fautes des préposés.

En ce qui concerne l'innavigabilité, l'Association Belge est d'avis que sous aucune condition il ne faut permettre à un propriétaire de navire de se montrer à cet égard négligent ou insouciant. La vie humaine est sacrée. D'après la loi française, la loi belge, presque toutes les lois continentales, quiconque par imprudence, quelque minime qu'elle soit, cause des lésions corporelles ou la mort, est nécessairement responsable. Il est responsable devant les tribunaux correctionnels et les cours criminelles. Il doit donc être aussi responsable pécuniairement.

La seconde question : que faut-il décider quand il s'agit de la faute personnelle du propriétaire ?

Je crois que c'est la même solution à laquelle on doit s'arrêter et je ne crois pas non plus que sous ce rapport, le propriétaire de navire ait quelque chose à gagner à une solution contraire. Tout d'abord, en pratique, leur intervention personnelle directe dans les opérations qui peuvent compromettre la sécurité des passagers, est restreinte, et quand elle se produit, elle prend alors un caractère tel qu'une exonération serait impossible. A cet égard, notre décision serait emportée comme une feuille par le vent.

Nous ne pouvons espérer obtenir en faveur d'une classe, quelle qu'elle soit, un régime privilégié.

Mais si une exonération n'est pas possible dans ces deux premiers cas, je suis d'avis que quand on entre dans la troisième catégorie, c'est-à-dire les faits et fautes des préposés, il n'y a aucune raison de ne pas permettre aux propriétaires de navire et aux passagers qui s'embarquent, de faire ce qui leur convient. Ils sont maîtres de leur personne ; ils traitent d'intérêts pécuniaires et ils peuvent convenir de leurs droits. Le passager soucieux de sa vie ou de ceux qu'il laisse prendra toujours d'autres précautions.

La solution consiste donc à dire que l'exonération de responsabilité est permise sauf pour la navigabilité du navire et sauf pour toutes les précautions et mesures que le propriétaire doit personnellement prendre pour assurer la sécurité des passagers, et je suis convaincu que tous les armateurs vraiment honorables et soucieux de leur situation et de leur avenir, ne demandent pas un autre traitement.

* * *

May I just say in English that to my mind the question of the Harter Act, and the distinction which is made in the Harter Act as between nautical negligence, and negligence of the conservation of the cargo cannot be made applicable to passengers. The matters are totally different. You have, therefore, to decide whether you are going to have an absolute liberty of exempting oneself from negligence, or whether you are going to say there cannot be a distinction of that character. To my mind the negligence clause is valid, and you ought not to interfere with the liberty of the parties as to that, it being understood that the negligence clause applies to the negligence of the

Master, or other agent in the service of the shipowner, but the shipowner is only liable for seaworthiness at the beginning of the voyage and is also liable for any personal fault which may occur. It would be more difficult to introduce a system contrary to those rules as in most Continental Nations any personal negligence, the result of which is damage done, is a criminal offence, and no contract contrary to that would be valid.

M. F. C. AUTRAN. — Messieurs, je suis complètement d'accord avec les principes qui viennent de vous être exposés par mon ami Franck. Je ne reviendrai pas sur les considérations qu'il a si magistralement exposées. Il y a seulement un point sur lequel je me permettrai d'attirer l'attention de la Conférence et qui me paraît devoir être précisé. On nous a indiqué qu'après la mort de la victime, ses héritiers avaient un droit personnel à réclamer compensation et indemnité et qu'ils tirent ce droit de la perte qu'ils ont éprouvée; qu'ils avaient en d'autres termes un droit qui leur est personnel et qu'ils ne trouvent pas dans la succession de la victime. Cependant, il me semble qu'il devrait être bien entendu que lorsque la victime a accepté dans son contrat de transport la negligence-clause pour fautes nautiques ses héritiers ne peuvent réclamer une compensation que la victime elle-même n'aurait pu réclamer, et cela malgré le montant du préjudice qu'ils pourraient subir par suite de la perte de leur auteur.

(Verbal translation by Dr. A. SIEVEKING)

Mr. Autran expresses the same view as Monsieur Franck did, but points out one thing more : that as, in case of death, the person who has been killed had made the contract containing the negligence clause it goes without saying that the heir of the deceased is bound by the negligence clause contracted by the deceased.

Mr. HARRY R. MILLER (London). — Mr. Chairman, I wish to confine my remarks with regard to question 8 within a very short space, because the general reluctance of the members to address the Conference upon this point, together with the remarks we have already heard seem to indicate that there is more or less a general unanimity upon this question, and as far as I have been able to judge the feeling on the matter it is that contracting out should be permitted within certain limits. Now these limits have been put into three categories by M. Franck, and in one aspect I am sorry to say I must differ from him. I cannot help thinking that if an owner is entitled to contract out in respect of the acts of his agents or his servants he should also be permitted to contract out in that frequently occurring case of unseaworthiness of the vessel and I venture to say so for this reason, because nowadays almost every defect might occur in any ship, no matter what precautions have been taken by the owner, no matter whether she is classified in the highest class, whether it be the Bureau Veritas, Lloyd's, or the German Lloyd's, or any of the other classification societies, no matter the amount of forethought : just think of the case in which a rivet may have been hammered too hard in the bulkhead, that rivet may get crystallised or the head may drop off, water may enter the ship and it is conceivable that the ship in consequence may founder.

M. LOUIS FRANCK. — I was speaking of unseaworthiness at the beginning of the voyage.

MR. RISH MILLER. — I take it, it is quite conceivable that the rivet may have been crystallised before the voyage began, and in a case of that kind it is always a matter of the greatest difficulty to say the precise moment at which

the unseaworthiness began. That doctrine of unseaworthiness has been so much extended in the present day that I venture to think an owner should be at liberty to contract himself out of the liability for occurrences of that description. I shudder to think what would happen if one of the big Atlantic liners met with such an accident. I shudder to think what would happen if we had three or four Vanderbilts and three or four Rockefellers on board, and they happened not to make their wills, such as the gentleman Mr. Acland has alluded to — the capital of the company would probably be all absorbed in paying the loss of life claims. I do wish to impress on this meeting that the doctrine of unseaworthiness prevalent at the present day is to my mind a very great hardship to ship-owners, and that they ought to be at liberty to contract themselves out of it.

(Traduction orale par M. LOUIS FRANCK)

H. Miller a fait observer que la notion d'innavigabilité a été, dans ces derniers temps, étendue très considérablement et que la question de savoir si l'innavigabilité existait au moment du départ ou à la suite du voyage, peut être difficile à résoudre. Il serait donc d'avis qu'il conviendrait que l'exonération du chef d'innavigabilité fût également permise.

Herr LÖDER (Holland). — Meine Herren! In erster Linie wollte ich sagen, dass ich ganz und gar die Meinung des Herrn Franck teile, dass wir hier nicht die Harter-Act heranziehen dürfen. Wie schon heute morgen hervorgehoben ist, hat sich auch nicht ein Kollege dafür ausgesprochen. Wenn wir dann auf die Fragen sehen, die uns vorliegen, so sieht die eine ja sonderbar aus; sie lautet :

« Faut-il permettre de s'exonérer par contrat de la » responsabilité du droit commun ? »

Bis jetzt habe ich noch niemals gehört, dass die Frage anders beantwortet worden ist als hier. Man wird immer sagen, dass es sich höchstens um eine allgemeine Rechtsregel handelt, aber nicht um ein zwingendes Recht. Wenn Herr Franck verlangte, dass eine offizielle Interpretation gegeben werden möge, so war doch aus seinen weiteren Ausführungen zu schliessen, dass er seinen Sinn geändert hat. Es kommt bei Beurteilung des einzelnen Falles doch auch darauf an, was der Reeder sonst getan hat, ob nicht doch grobe Fahrlässigkeit, ein fast doloses Verhalten angenommen werden muss, und man darf nicht soweit gehen, zu gestatten, dass er sich in jeder Beziehung von der Verantwortlichkeit freizeichnet. Ich würde es für richtig halten, die Diskussion über diese Frage nicht weiterzuführen. Von einem zwingenden Recht kann jedenfalls keine Rede sein. Wir müssen erst wissen, ob die Frage überhaupt eine Frage des Seerechts sein soll, was für mich fraglich ist.

(Verbal translation by Dr. A. SIEVEKING)

M. Loder says that according to his opinion upon one thing all seem to agree; that is, that the owner should not be permitted to free himself for his own fault or privity, but that as regards all other questions he thinks, first of all we must decide the meaning of the words « common law » before we can decide or even discuss the question whether the owner can exempt himself from liability imposed upon him by the common law, and therefore he wishes us first to discuss what the common law is before we ask whether he can exempt himself from liability as imposed by that law.

M. BERLINGIERI. — Comme c'est une discussion préliminaire, je me permets, sans émettre une opinion décisive, de faire quelques observations sur ce que vient de dire M. Franck sur le Harter Act et sur la distinction qui est faite par la loi australienne.

Il a dit qu'il faut absolument écarter la distinction faite par le Harter Act et la loi australienne entre les fautes nautiques et les fautes commerciales, car, dit-il, lorsqu'il s'agit du transport de personnes, on ne peut parler du mauvais arrimage, de la garde et de la conservation de la marchandise. Or, je me permets de faire observer que si cette distinction ne peut, matériellement, être reçue en matière de transport de passagers, pourtant, elle pourrait avoir une grande importance et on pourrait dire, d'après moi que la distinction doit être faite de la façon suivante : faute nautique et faute commune. Il peut y avoir à bord mauvais traitement des passagers, des blessures de la part de l'équipage ou du capitaine, et alors il ne s'agit plus de fautes nautiques. On peut donc se demander si cette distinction faite par le Harter Act, ne doit pas être faite aussi en cette matière en disant, fautes nautiques et fautes communes. Nous avons eu à Gênes un important procès par steamer « Carlo Raggio » ; il s'agissait d'émigrants qui avaient subi de mauvais traitements de la part du capitaine et de l'équipage : des femmes avaient été outragées, des hommes maltraités. Or, je vous pose cette question : est-ce que dans ce cas-ci, on ne pourrait introduire la distinction faite par le Harter Act en permettant l'exonération pour les fautes nautiques, les erreurs de jugement du capitaine, mais en ne permettant pas l'exonération pour les fautes communes qui peuvent être commises à bord par le capitaine ou l'équipage ?

Je fais cette observation parce que je crois que cette distinction peut être faite, et je ne pense pas que cette question puisse être complètement écartée.

(*Verbal translation by Dr. A. SIEVEKING*).

M. Berlingieri differs from the opinion expressed by M. Franck as to the applicability of the Harter Act in so far as he thinks that the

distinction made in the Harter Act as to goods between faults relating to navigation and negligence committed in the care of and stowing of the goods in this sense should be made applicable also to the contract of carrying passengers in so far as you can distinguish between *faute nautique* and *faute commune*; that is to say, between negligence in matters of navigation and other faults. For instance, passengers could be injured by ill treatment on the part of the captain or the crew. In so far he thinks it is a question which could well be considered whether this distinction could not in the same way be made applicable also to the case of passengers being carried on board ship.

MR. ACLAND. — What is meant by « *faute commune* ? »

M. LOUIS FRANCK. — Ordinary negligence with the exception of nautical negligence.

M. PAGE (U. S. A.). — M. Chairman and Gentlemen, the question has arisen and has been discussed to some extent as to whether the law of the United States called the Harter Act which applies only to goods and to the provisions of bills of lading, and not to question of the carriage of passengers, can be made in any way the basis of a suggestion of the probability that the same rule that is applied with regard to the carriage of merchandise would be held to apply to the case of passengers. In other words, would Congress of the United States in dealing with the question of passenger service, should that matter come before it anew, extend the rule which exists at the present time and adopt a rule with reference to the passenger service which would be the rule analogous to the Harter Act with regard to the carriage of merchandise. Perhaps it might be of some little interest to you gentlemen of the Conference to know how the Harter Act came about. English ships, steamers, were in the habit of carrying large cargoes of flour from New York to Great Britain to meet the needs of the markets

there. English ships naturally have their bills of lading drawn in England to meet the various circumstances which may be required of them in the foreign ports, and it was found that the bills of lading issued by these ships contained a number of clauses which worked very much against the interests of the miller whose cargo was being taken from New York to England. For instance, they contained the negligence-clause in its most stringent form; they contained also the rule that that negligence clause, should occasion ever arise, should be construed in accordance with the meaning of the English law, and they also contained another clause requiring, in order to avoid accident on that point, that the owner of the goods should restrict himself to applying for relief for any damage done to his goods only to English Courts in England. A miller suffered large loss in his cargo under those conditions. He brought a suit in the United States and the question then arose which was finally taken to the Supreme Court of the United States to determine whether this clause in the first place was against public policy, and in the second place, whether the contract being one which was to be partly performed by delivery of the goods in England the Courts of the United States had any right to pass judgment upon the matter or whether they should not leave it to the English Courts to determine. The Supreme Court of the United States decided that the clause exonerating the carrier from the delivery of the goods according to his contract of carriage was against the public policy of the United States and invalid, and, as a supplementary and necessary corollary to that finding, the Court determined that the application to have those clauses considered according to English law must fail, and above all, that the contract could not deprive the man in New York from his right to resort to the Courts of his own country for the

purpose of protecting his contract. The result then was that in that case — it was the Phoenix Insurance Company, I think — the entire negligence clause of the English bill of lading was destroyed. There was a gentleman in the House of Representatives from one of the western States of the United States, whose home was the exporting point of pretty much all of the flour that went to Great Britain. He was aggrieved, or his friend had been aggrieved, and he therefore felt that he was aggrieved as their representative in Congress, and he introduced a bill which subsequently obtained the name of the Harter Act, in which simply and plainly he laid down very unnecessarily the principles which had been determined by the Supreme Court of the United States. That Bill went to the Senate for concurrence; there it met the observation and fell under the eye of some gentlemen who represented maritime societies in the Union, men of great ability and also men of great power in the Senate. The result was that while they conceded that all contracts on a bill of lading made with the object of changing the ordinary laws of carriage as they had always been understood in the United States, and of relieving the shipowner of the liability for negligence, were void, they inserted the second or third paragraph, which in effect provides that if the owner shall use due diligence in making his ship seaworthy in all respects and in properly victualling and manning her and sending her to sea, then the owner could not be made liable thereafter for any faults or error in judgment or neglect of the master of the ship in her navigation provided always, however, that nothing in the Act should be construed as taking away from the ship the obligation to properly stow, care for, and deliver the cargo. That is the condition in which the law now stands, and it has been determined many times now by the Supreme Court of the

United States that the exercise of due diligence includes the old warranty of the common law that the ship shall be seaworthy when she starts. I have given you the history of this Act in order that you may know that the passing of the Act was not the result of any abstract reasoning of the members of the House and Senate of the United States with reference to the change in the law, but that it was something that was brought about by the necessities of a particular trade.

Now then, what is the condition with reference to life, because I have, as I have said, explained the Harter Act to you in order to show you that it has nothing to do with the question of life, and whatever the liberality may have been in extending the rule under the Harter Act, it is not likely that the same liberality would be exercised in extending the exemption in a negligence clause which prevents liability for loss of life. We have a series of Acts which require the steamship owner — and after all practically the commerce of the world is coming nearer to being reduced to the use of steamers alone — to furnish vessels which come up to a certain degree of efficiency. These must all pass muster before certain officers of the United States ; they must be manned in a certain way and must have a proper crew. The importance of that comes in in this : if there is a failure in this regard, a failure in those essentials required of vessels that are to transport passengers as those essentials are laid down in the laws of the United States, then the very great penalty is visited upon the owner of the ship that, notwithstanding the fact that the ship may have been lost without his knowledge or privity, he nevertheless shall be denied the right of limitation of liability. When it comes to the question of the owner of a steamer transporting passengers the matter is absolutely cast iron ; if the obligations imposed by the

laws of the United States have not been followed then regardless of any innocence on the part of the owner of the ship he is denied a limitation of liability if his ship is overwhelmed by disaster. We may take it for granted from this explanation that I now make to you that it is the policy of the United States with reference to the preservation of life travelling upon steamships that the utmost shall be required of the shipowner, and that the law will tolerate nothing which will relieve him of the responsibility of performing those things which the law deems so very essential to the safety of life, that though an accident happens without the knowledge of the owner or of his superintendent, if, for instance, the crew has been inefficient in any way or if the machinery has not come up to or been kept up in accordance with the requirements of the Statute, in such case he is denied a limitation of liability. I may say that cases have been decided. One case was decided in which I took part, and which I lost, a very important case, affecting the Pacific Mail Steamship Company, where the Federal Court of Appeal, not the Supreme Court, held that the fact that a crew had been shipped, upon a mail steamer, of Chinamen who did not understand the orders of their officers constituted a violation of those laws with regard to the management and use of steamships, and that that fact deprived the owner of the ship of the right to apply for a limitation of liability when there was a loss. I may add that to approach the law-making body in United States with a proposition that the hold that the law has upon the steamship owner to compel him to do everything for the purpose of preserving human life should be relaxed would be utterly useless, or at any rate it would be very difficult to get them to give way upon the subject. My object in making these remarks is to explain that there

is absolutely no relation between the passing of the Harter Act and the matters which we have been discussing.

(Traduction orale par M. LOUIS FRANCK)

M. Page, à propos de la question du Harter Act en tant qu'il s'agit de lésions corporelles, nous a donné des renseignements que je considère comme extrêmement intéressants et qui sont, je pense, nouveaux au moins pour un certain nombre d'entre nous.

M. Page dit qu'il n'y a aucune assimilation possible entre les deux matières, tout au moins en tant qu'il s'agit de la législation des Etats-Unis.

Le Harter Act a spécialement été introduit, non pas, comme on semble le croire, à la demande des propriétaires de cargaison, pour restreindre le droit des armateurs en ce qui concerne les clauses d'exonération, mais dans une situation complètement différente. Après que la Cour Suprême des Etats-Unis eût décidé que les clauses d'exonération étaient sans valeur, le Harter Act a été rédigé par les sénateurs représentant les ports maritimes en vue de permettre, contrairement à cette décision, des exonérations dans les limites que vous connaissez, c'est-à-dire pour les fautes nautiques.

Ceci vous montre, dit M. Page, qu'il n'y a aucune assimilation possible entre les deux ordres d'idées, et il a ajouté qu'à son avis, toute disposition même dans le sens du Harter Act au point de vue de la sécurité des passagers, n'aurait guère de chance de succès.

THE CHAIRMAN. — If no other gentleman of the Conference wishes to address us upon this clause I think I ought now to read the document which our Japanese friends from the Japanese Association have handed in with regard to the Article. They say it is desirable that the liability for damages may be released by the contract to a certain degree, but at the same time no special agreement shall exempt the shipowner from liability for damages caused by his own fault or by the bad fault or the gross fault of the captain and seamen or of any other person employed or by the unseaworthiness of the ship, but they add that this answer is founded on the provisions

of existing commercial codes which the Japanese Association reserve for further study.

It appears to me, gentlemen, that the result of the interesting discussion on this question really is a great general concurrence that the shipowner should not be prevented from making a special contract in regard to the carriage of passengers limiting his liability, but there is some difference of opinion as to whether or not that right should be unlimited or whether it should be limited in some degree or in reference to a certain portion of the service to be performed towards the passenger, what has been called the nautical service. That is a matter no doubt which should be considered, but I think I may take it without putting it to the vote that speaking generally the shipowner ought not to be prevented from contracting out of his obligation to the passenger.

JUDGE BRADFORD (U. S. A.) — I do not understand that that is the general sentiment.

THE CHAIRMAN. — I only want to gather the general sentiment.

JUDGE BRADFORD. — I may be mistaken about it. It is not my sentiment.

Mr. F. SIEVEKING. — You will allow me, gentlemen, a few words in English because I am sure it will be understood by all members here. I do not think I can offer any important new views on the question because what I have to say has been touched upon already by several of the speakers. I only want to explain what in my opinion is the general view which is taken by the Conference as it appears by this discussion. The Harter Act has been mentioned as a model for legislation. Then the question has been raised :

Is there any similarity, any analogy, between the contract for transporting goods and the contract for transporting passengers? Then the question has been raised, or rather it has been said we must in the first place consider what are the duties of the shipowner as regards the passengers, and I think we must start from this last point of view in order to be able to answer the question : How far can he exonerate himself from those duties? Now looking at the practice and at the nature of things I think it is rather easy to answer this question : What is the duty of the owner as regards the transport of passengers? The owner by contracting with a passenger to transport him on board his vessel to the port of destination has, of course, in the first place, to procure a vessel which is proper for such transport; and, in the second place, or perhaps it is included in the first point, to provide for the means of preserving the life of the passenger during the transport by giving him sufficient and good provisions on board. That is the duty of the owner. The duty of the master and the crew is to take care of the life of the passenger and to effect the transport by dealing out to the passenger his daily food and by conducting the vessel in a reasonable and cautious way to its port of destination. That is what is intended by the nature of things.

Now as to the first point : the owner has to procure a vessel which is sufficient to ensure a safe transport to the passenger. Is he to be allowed to enter into a contract with a passenger and to say, « I am not responsible for the good condition of my vessel? » In answering this question there comes in, in my opinion, the difference between the transport of goods and the transport of passengers, because the violation of duties against persons is dealt with by penal laws. That is a thing which has been mentioned by several of the speakers already, and

which I think presents itself as a natural and necessary consideration. A man who would enter into a contract with another man to say that « If I break your arm I am not responsible, » could not plead such a contract in the criminal court, but he would be punished for doing bodily harm to a fellow-man. A man entrusts a chattel to another for custody, the man who undertakes the custody may say, « I am not responsible for taking any care of the chattel entrusted to me ; » he is certainly allowed to do so. But the owner who would say, « I am not responsible for providing a good vessel to the passenger in case the passenger suffers bodily or loses his health in consequence of a good vessel not having been procured », could not by such a contract exonerate himself from his duty. But then how far does this duty go ? Is it a warranty of seaworthiness which is required, or is it only due diligence and care required ? Considering the criminal consequences certainly the owner would be responsible only for due care and diligence, and I think the same thing must be as to the civil consequences, the damages. The owner must be allowed, if the law imposes upon him the duty of a warranty for seaworthiness in a contract of affreightment of passengers, to exonerate himself and to restrict his liability to reasonable and due diligence and care in procuring a sufficient and a good discharge, and the same principle would apply as to the provisions. He could not contract himself out of the liability to provide or to use sufficient and reasonable care and diligence in procuring good provisions, but the law must allow him, in case he has used sufficient diligence and care, to declare himself not responsible to any further degree. That is the same principle, as far as I know, as the principle of the Harter Act. With regard to the liability of the shipowner for the seaworthiness of his vessel as regards the contract

of affreightment of goods, the same principle applies to the care which the owner has to take for supplying a good and sufficient crew.

Now the other question is as to the treatment of the passengers on board. It has been said that the principle of the Harter Act cannot be applied, but I believe to a certain extent this is not correct. Dr. Gütschow is quite right in mentioning the example of the cook on board poisoning by negligence the dinner of his passengers. The question is : How far can the owner exonerate himself from liability? That is a question merely of policy. The Harter Act says that the owner is not allowed to exonerate himself from the liability for the stowage and for the guarding and correct delivery of the cargo, guarding the cargo, for example, by due ventilation, guarding the lives of the passengers by giving them their proper food. I think it is quite on the same footing, and it is a matter of policy which I think should be taken into consideration by the legislature as to whether it ought not to be said that in order to ensure the safe transport of passengers and the safety of human life, which is of greater importance, speaking from the point of view of public policy, than the preservation of goods, there should not be established a responsibility of the owner for the good treatment of passengers, in order to avoid ill-treatment by the crew, at least to a certain extent. There may be different views about it, but I think we should not say here that it would be a bad policy to establish this responsibility to a certain degree, and, as M. le President mentioned it to be in his opinion the general view taken by the meeting that the owner ought to be allowed to exonerate himself from the consequences of his own negligence and the consequence of the negligence of the crew, I might say that I would not, as I have explained, agree to such a general expres-

sion of feeling, but that I would, recommend a law which prohibits him to a certain degree from exonerating himself, and leave it open to serious consideration whether this prohibition ought not to a certain degree to be extended to the faults of the master and crew committed during the voyage — not the nautical faults — and there the principle of the Harter Act applies. It is a thing where so many reasons can be given for exempting the owner from responsibility for the acts or the negligence of the master and crew that a law may be recommended which says : « We allow the owner to exonerate himself from this liability ». The same may be said with regard to the transport of passengers. But the other principle of the Harter Act, the guarding of the cargo, and, by analogy, the preservation of the crew and passengers on board, is a principle which, in my opinion, requires serious consideration.

THE CHAIRMAN. — I think the very interesting and important speech we have just heard is one more reason for not coming, or attempting to come, to any definitive decision. We cannot conclude the matter here by a vote, and, therefore, it is perhaps better not to draw any conclusion which is not satisfactory to everybody unless the majority of the Conference wish to have a vote taken as to whether there should be absolute freedom, or whether there should be restricted freedom to contract out. I understood our President, Dr Sieveking, rather to suggest that there should be a certain degree of right to contract out, but a limited degree, limited in some respects. Some of us may still possibly think that there should be no restriction of freedom of contract in the matter. Others may think there ought to be no permission at all to contract out of whatever liabilities the law or the Common Law may affix,

but at any rate I think there is one thing you will all agree upon, and that is that we have to rise now, and there being unanimity I presume on that point, we can continue the further discussion of this subject to-morrow morning.

La séance est levée. — The Conference adjourned.

SÉANCE DU SAMEDI, 25 SEPTEMBRE 1910
SITTING OF SATURDAY, 25th SEPTEMBER 1910

PRÉSIDENCE DE M. FR. SIEVEKING

MR. FR. SIEVEKING IN THE CHAIR

M. LE PRÉSIDENT. — Messieurs, avant de reprendre la discussion, je vous demande la permission de faire une communication.

Notre excellent ami M. Filippo Artelli, de Trieste, a bien voulu mettre à notre disposition une somme de deux mille francs pour être attribuée à titre de prix à l'auteur du meilleur mémoire sur les travaux accomplis jusqu'à ce jour par le Comité Maritime International, en y comprenant l'étude des réformes sur base desquelles l'unification du droit de la mer pourrait se faire le plus rapidement.

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I may repeat in English that our friend Mr Artelli has communicated to the Bremen Bureau his desire to put at our disposal an amount of 2,000 francs to be awarded as a prize to the author of the best book or pamphlet of the work accomplished by the International Maritime Committee, and on the best ways of reform in the direction of unification of maritime law. I suppose it will be the intention of the meeting to accept this amount put at its disposal, and to express to Mr Artelli its most cordial thanks.

JUDGE BRADFORD (U. S. A.). — I respectfully move that the cordial thanks of this conference be extended to the generous donor. (*Cheers*).

M. LE PRÉSIDENT. — Nous venons de terminer la discussion sur les n^{os} 8 et 9 : reste la question :

Faut-il mettre sur le même pied les étrangers et les nationaux ?

C'est un détail que peut-être nous ferons mieux de remettre à une autre conférence.

Nous ne sommes ici qu'au commencement de notre étude. Je crois que c'est aussi l'opinion de l'assemblée de remettre l'examen de ces petits détails à une prochaine réunion ? (*Assentiment*).

I do not believe there is any difference of opinion about that, and we may take it as agreed.

As far as I can see, Gentlemen, that finishes the questions. There is nothing left but the question of the means of giving publicity to maritime mortgages and liens in the various Countries. That is a question we have not yet dealt with.

M. LOUIS FRANCK. — You will remember M. President and Gentlemen, that at the Conference of Venice Sir William Pickford moved that it be entrusted to the care of the Permanent Bureau, to collect and publish the various laws as to the means of giving publicity to maritime mortgages and maritime liens in some cases, and that the Permanent Bureau should consider whether the state of these laws warranted efforts to arrive at some common understanding on this matter. It is a very long, tedious and difficult task. We have, however, set ourselves to do it, and several gentlemen of various Countries,

amongst whom I may mention M. Adam and M. Jacobs of Antwerp, have given us their valuable help, and the work has progressed so far that the text of nearly all laws is in our hands, but I do not think it would be wise to publish a Code of that sort, or to publish a compendium of that sort before it is absolutely complete. I may mention to the meeting that we have not left the matter out of consideration, and that we expect to be able, either at the next meeting, or between this and the next meeting, to submit to you a complete report which will, outside the business of the Conference, be very valuable. I may just add that as far as reforms go in that direction the only point which seems of particular interest, and which seems practically possible to realise would be that, as far as the registers of maritime mortgages go in the various Countries, some means should be devised so that there might be a central office where in an easy way it would be possible to see at a glance the state of each ship without having to resort to the various reports, and to find out to which port the ship belongs. I would not make any remark as to different legislations, but in some legislations it is difficult to find the exact state of the ship as far as maritime law is concerned.

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Messieurs, à la Conférence de Venise, Sir William Pickford avait exprimé le désir de voir réunir par le Bureau Permanent, la collection complète des dispositions administratives dans les différents pays quant à la publicité relatives aux hypothèques et aux privilèges maritimes. Le Bureau Permanent n'a pas perdu cet objet de vue. Il a réuni la plupart des lois existant en la matière, mais le travail n'a pas encore pu être achevé parce que les textes de plusieurs

législations ne nous sont pas encore parvenus. Ils seront distribués à la prochaine Conférence.

Nous pourrions aussi examiner si dans ces questions qui touchent au domaine administratif, il est possible d'introduire des mesures d'ordre international. J'ajoute que l'objet qui paraît d'un réel intérêt, c'est un arrangement en vertu duquel dans chaque pays les registres relatifs aux hypothèques pourront être centralisés, ou transcrits dans un registre central, de façon à ce qu'on puisse facilement vérifier quelle est la situation d'un navire, sans devoir se livrer à des recherches trop étendues.

M. LE PRÉSIDENT. — Au nom de la Conférence, je remercie le Bureau Permanent des soins qu'il a pris au sujet de cette question, qui sera donc soumise à une prochaine assemblée.

Il reste encore à régler quelques détails au sujet de la question du fret, notamment la matière des articles 4 et 5, relativement aux questions du dead-freight et du demurrage. Je suis sûr que je parle en votre nom en réservant cette matière à la Commission qui devra s'occuper des questions du Fret.

Nos travaux sont donc terminés et je donne la parole à M. Autran.

M. F. C. AUTRAN. — Messieurs, au moment où nos travaux sont terminés, je crois être votre interprète à vous tous en adressant au bureau de cette Conférence et notamment à ses deux éminents présidents Monsieur le Président Sieveking et Lord Justice Kennedy, l'expression de nos plus affectueux sentiments et de notre sincère reconnaissance.

Nous avons tous pu apprécier la compétence, le tact et la courtoisie avec laquelle ils ont dirigé nos travaux et si ces derniers aboutissent à un résultat utile, il est bien

certain que la meilleure part leur en reviendra. Je le répète encore une fois, il est toujours fort difficile de diriger une assemblée composée de membres appartenant à des nationalités très différentes et qui — je ne dirai pas, apportent ici des préjugés, — mais dont les esprits sont tout au moins imprégnés de leurs traditions nationales. Il faut donc, par la douceur, par la persuasion, amener chacun de nous à abandonner un peu de son patrimoine national pour arriver à constituer le patrimoine commun qui sera le patrimoine international ; et on ne peut arriver à ce résultat que précisément, en faisant toucher du doigt aux esprits non prévenus qui sont réunis dans cette enceinte que la solution proposée dans un intérêt commun est celle qui satisfait à la fois l'équité et les intérêts de chacun.

Du reste, — et c'est par là que je termine le vote de remerciements que vous adresserez certainement au bureau de la Conférence et à ses deux éminents présidents, — du reste, nous sommes à la veille, c'est le cas de le dire, de voir nos travaux recevoir une sanction définitive et une consécration officielle et vous pourrez vous dire que l'initiative individuelle dans la matière de l'unification du droit maritime, aura joué le rôle que cette initiative joue toujours : sans vouloir dire du mal des gouvernements, il faut un peu les faire marcher, il faut un peu leur faire connaître les besoins qui animent l'humanité. Parmi ces besoins de l'humanité, il est certain que l'unification du droit maritime est un des plus pressants. Et sans vouloir flatter notre amour-propre de façon exagérée, je pourrais terminer ce discours en rappelant un mot du grand historien anglais Macaulay, qui était en même temps un grand philosophe et qui a dit que les esprits qui sont soucieux des besoins de l'avenir sont comme les sommets des montagnes qui le matin, sont éclairés par le soleil, alors que le reste de la plaine est encore dans l'ombre.

MR CHARLES PAGE (U. S. A.) — Mr President and Gentlemen of the Conference, now that we are about to depart I wish, on behalf of the American Delegation that is present here, to express our admiration and appreciation of the great courtesy and the great skill with which the presiding officers and the assistant officers of the Conference have performed the duties which have fallen upon them. We wish to thank them. Although by reason of the eminence of their own personal leadership it has been our privilege to hear them express their views at all time, yet there is no voice in this Conference, that wished to be heard and that had to remain silent. I wish to thank, on behalf of the American Delegation, the courteous gentlemen who compose the great body of this Conference. It has been a great pleasure to meet them, and we have to thank them for the courtesy with which they have received us. I wish to ask the Delegates from the great City of Bremen to convey to the officers of this City, and to all of its good people, our thanks for the generous hospitality which they have shewn us. I do not know any better way in which I can express the feeling that we have towards the people of Bremen than to use words which, throughout all the world where the English language is spoken, speak more from the heart under conditions like this than any other words. I ask you, gentlemen of the Bremen Delegation, to say to all of your fellow citizens that their generosity, their hospitality, their kindness has made the American Delegation feel during every hour of their sejour in this City that they were at home with them.

JUDGE BRADFORD (U. S. A.) — Mr. President, to what has just been said by my colleague from the United States I desire personally to add but a word to express my high appreciation of the dignity and impartiality with which

you and also Lord Justice Kennedy have presided over the deliberations of this body, and equally my appreciation of the courtesy I have received from the other officers, and also from the members of this body. I shall carry back with me to the United States the pleasant recollections of this Conference, and of the grateful and generous hospitality lavished upon us by the good people of the Free City of Bremen, this interesting and historic City, a City which more than 600 years ago adopted its own code of maritime laws, which Centuries ago valiently and successfully contended for the protection of life, of liberty and of the freedom of commerce. I say that I shall carry back with me the very pleasantest recollections of this City whose illustrious past can only be equalled by what I believe will be the golden prosperity in store for it in the future. Now, Gentlemen, finally, I wish to express the very great regret I feel at my absolute inability to accompany you upon the delightful excursion proposed for to-day, and to wish you one and all at this point long life, good health and happiness.

M. CHARLES LE JEUNE. — Voilà, Messieurs, douze ans que nous allons de ville en ville, tâchant de répandre la bonne parole et d'introduire dans l'esprit des grandes masses maritimes les vues que nous préconisons. Cette œuvre, que nous considérons comme presque impraticable, il semble qu'aujourd'hui, nous en voyions poindre la réalisation. Comme vous le disait M. Autran, de grandes assises se préparent à Bruxelles, et déjà nous pouvons croire, avec quelque raison, qu'elles ne seront pas sans résultat.

Mais, comment se fait-il que nous ayons pu poursuivre cette œuvre ? Comment se fait-il qu'au milieu des difficultés si multiples qui faisaient obstacle à sa réalisation, nous

ayons pu atteindre à ce succès que nous constatons aujourd'hui. C'est, Messieurs, que partout où nous nous sommes rendus, dans toutes ces villes, nous avons rencontré des hommes qui étaient prêts à nous tendre la main ; que nous avons rencontré des hommes qui étaient prêts à comprendre le but élevé que nous poursuivions ; que nous rencontrions partout des négociants, des juriconsultes, des armateurs, des assureurs qui, sentant l'importance de nos travaux, se mettaient à notre disposition et nous secondaient de tous leurs efforts. Et chaque fois, et de ville en ville, nous avons vu ce mouvement s'accroître avec plus de force. Aujourd'hui, c'est à Brême, et je ne suis que l'interprète de ce que vous pensez tous en vous disant qu'après les splendeurs de Venise, nous sommes surpris de voir que les splendeurs de Brême puissent nous produire une impression si considérable et telle que, si nous ne pouvons effacer de notre esprit les magnificences de Venise qui sont doublées de la beauté de son climat, de ses palais, de ses grands canaux, nous retrouvions ici à Brême des impressions égales avec le sentiment d'une cordialité non moins grande. Nous avons été reçus ici, Messieurs, par le Sénat de Brême, cette institution séculaire d'une république dont les libertés, dont les traditions ont joué un rôle si grand dans l'histoire et particulièrement dans l'histoire de la ligue hanséatique. Nous sommes profondément émus des témoignages qui nous ont été donnés par ce Sénat, de la réception qu'il nous a offerte, des paroles qui nous ont été dites par Sa Magnificence Monsieur le Bourgmestre Pauli ; nous en exprimons nos sentiments de profonde gratitude.

Nous avons, à côté de cela vu la Chambre de Commerce nous convier à un banquet magnifique ; nous avons vu son président M. Vietor se multiplier pour nous. Nous avons vu autour de nous se grouper tout le Commerce de Brême,

ce Commerce qui aux traditions du passé sait joindre l'esprit progressif du présent et même les vues larges de l'avenir.

Nous avons vu, Messieurs, le Norddeutscher Lloyd nous préparer une réception merveilleuse dont nous allons goûter tous les charmes bientôt. Nous avons vu M. Plate, son président, se multiplier pour nous faire apprécier tout ce que Brême peut posséder de plus intéressant. A côté du commerce, nous allons voir l'armement, ce grand armement qui est la gloire de Brême et qui lui a valu un nom dans le monde entier.

Enfin, Messieurs, nous nous sommes trouvés ici devant un Comité d'organisation dont je ne sais réellement que dire, tant cette organisation était belle, tant elle était cordiale et tant elle était parfaite. Jamais, en aucun temps, il ne m'a été donné de voir avec cet esprit que j'appellerai bien Brémois, cet ordre, je dirais même presque cette discipline qui fait que chaque détail, jusqu'au moindre, a été mené à la plus exquise perfection, si bien que dans toutes les fêtes merveilleuses qui nous ont été préparées, il s'est trouvé des détails d'exécution qui nous ont tous infiniment charmés.

Puis, Messieurs, il semble que cela n'était pas assez. Nous avons vu ici quelque chose que nous n'avons encore vu nulle part, et je dois le dire, nous nous trouvons pris d'une émotion toute particulière : il y a eu un Comité de Dames. Cela indique bien l'esprit qui se révèle quand on se trouve dans ce milieu : la femme secondant l'homme dans ses travaux, dans ses œuvres utiles ; la femme ne dédaignant pas d'y prendre sa part et même se mettant à l'unisson de tous ces sentiments pour joindre, semble-t-il, le charme, la fleur de la poésie, à tous ces arides travaux auxquels nous nous livrons. (*Applaudissements*).

A tous, Messieurs, une fois de plus, j'exprime mes

sincères et profonds remerciements au nom du Comité Maritime International.

LORD JUSTICE KENNEDY. — Monsieur le President and Gentlemen, I should be very sorry if, on behalf of myself and the English branch of this Committee which has had the privilege of joining your labours here, I were not to express, though in a very few words, the same sentiments that have been already very admirably expressed by our friends from America, by Monsieur Le Jeune and Monsieur Autran who have already spoken. Nobody who has been here can fail to remember for ever with gratitude and with pleasure, the splendid reception, and what is better, the hearty reception, which we have all of us had from this great City, and from the Public Bodies and Institutions who have entertained us. But, Gentlemen, there is something more to me in all of this, and that is that with the feeling of admiration for the place and its people, with the feeling of sympathy for the great kindness with which we have been received, we also, as members of this Comité Maritime International will carry away with us a permanent source of encouragement for future work, of feelings that we are really trying to do something worth doing, and that we shall have the cooperation of all Nations, as we have had so far, whatever Country we have visited, in the work which we are humbly trying, bit by bit, to do, undaunted by delay, and, I am quite sure, hopeful ultimately of success. I wish to express on behalf of the particular branch of this Association to which I belong my hearty thanks to the people of Bremen, the pleasure that we have had, and the hope which they have founded in our minds and hearts for the future of the work which we have tried to carry one step further.

M. L. R. S. TOMALIN (England). — May I ask one moments time to express what I know is the feeling of all our colleagues in this room how greatly indebted we are to Monsieur Louis Franck for his assistance, and for his splendid translations of the various speeches that have been made. I think we all of us know far more of what has gone on here in consequence of the immense trouble that he has taken, and the great ability which he has shewn in translating those speeches, and I ask all gentlemen present, with the President's consent, to join in a hearty vote of thanks to Monsieur Louis Franck.

(The motion was carried unanimously).

M. HINDENBURG. — Dans notre Association Danoise de Droit Maritime, il a été résolu de présenter à l'assemblée réunie ici nos vœux pour que la prochaine réunion ait lieu dans la ville de Copenhague. Nous ne savons pas exactement quand la prochaine réunion aura lieu. Nous avons pensé qu'elle se tiendrait dans deux années, ou si cela convient à la Conférence en 1910. Tant mieux. Le plus tôt que nous aurons le plaisir de vous voir sera le mieux.

Naturellement, après les splendeurs de Venise et de Brême, c'est avec une modestie naturelle que nous formulons notre invitation. Cependant, si vous aviez l'amabilité de l'accepter, nous ferions de notre mieux.

Les étrangers ne nous visitent pas beaucoup — il y a surtout les Allemands. Nous désirerions être visités aussi par des nations qui nous connaissent trop peu. Je n'ose rien vous dire de la réception que nous pourrions vous faire; mais vous pouvez être persuadés que notre réception n'en sera pas moins cordiale. Des étrangers qui nous ont visité, aucun ne contestera que les environs de Copenhague sont les plus beaux que l'on puisse trouver.

M. CHARLES LE JEUNE. — Au nom du Comité Maritime International, je désire remercier M. Hindenburg de l'invitation qu'il a bien voulu nous adresser.

Il nous est impossible de nous prononcer définitivement sur l'acceptation de cette invitation, qui nous paraît pleine d'attraits et que certes, pour ma part, je ne demanderais qu'à appuyer de toutes mes forces si les circonstances le permettent.

Donc, sous les réserves d'usage, nous prenons acte de l'invitation qui nous est faite pour Copenhague et nous en remercions sincèrement l'Association danoise en espérant que nous pourrons donner suite à cette gracieuse invitation.

PRESIDENT HERR DR. SIEVEKING. — Meine geehrten Herren! Bevor ich die Konferenz schliesse, gestatten Sie mir mit nur wenigen Worten zunächst meinen aufrichtigen Dank auszusprechen für die freundlichen Worte, mit denen die Mühen, wie Sie sagten, Anerkennung gefunden haben, die mir als Präsidenten und dem Lord Justice Kennedy und den andern Vizepräsidenten die Leitung dieser Versammlung gemacht haben. Das Wort « Mühen » ist nicht der richtige Ausdruck : es war eine Freude, in einer Versammlung den Vorsitz zu führen, wo in der Tat eine Leitung der Debatten eigentlich fast überflüssig war, weil durch die konziliante Art und Weise der Beratungen, durch die Unterordnung aller unter die Regel, sich alles von selbst ergab, ohne dass irgendwo ein Eingreifen erforderlich war. Dadurch ist in der Tat ein Resultat erzielt worden, dessen wir uns alle freuen dürfen. Wir scheiden mit dem Bewusstsein, dass hier ein weiterer Schritt und zwar ein nicht unbedeutender Schritt vorwärts getan ist in unserer Arbeit. Meine Herren! Der Beschluss, der von Vertretern von 14 Nationen hier einstimmig gefasst worden ist « Das System der Distanzfracht ist abzuschaffen » ist

ein Wort, das seinen Wiederhall finden wird in der ganzen seefahrenden Welt, ein Wort, das eine Zukunft hat, und diesen Worten werden sich später andere anschliessen. Davon bin ich deshalb überzeugt, weil ich die Fortschritte erfahren habe, die im letzten Jahrzehnt in unserer Arbeit getan worden sind.

Und noch einen andern Punkt möchte ich erwähnen, der mich besonders erfreut hat. Das ist, dass ich sehe, wie von Jahr zu Jahr die Jugend, der junge Nachwuchs, die Söhne der Väter, die diese Arbeit unternommen haben, der Arbeit sich anschliessen. An sie richte ich besonders meine Worte in der Hoffnung, dass sie, wenn wir Alten nicht mehr an der Arbeit werden teilnehmen können, mit derselben Freude, mit der wir die Arbeit begonnen und bis an unser Ende geführt haben werden, die Arbeit aufnehmen werden, um sie zu einem glücklichen Ende zu führen. Was aber mich anlangt, so scheidet mich von Ihnen mit dem Gelöbniß, dass, solange mir die Kraft verliehen sein wird zu arbeiten, meine Arbeitskraft und mein Enthusiasmus und mein Herz im Dienste sein wird des Comité Maritime International (*Lebhafter Beifall. Händeklatschen*). Ich spreche in Ihrer aller Sinn, wenn ich die Versammlung schliesse mit dem Worte : Au revoir ! (*Beifall*).

La séance est levée. — The proceedings terminated.

Prize Artelli of Trieste

Rules

ARTICLE 1. — A prize of **two thousand Francs** (£ 80) has been established by Mr. Filippo Artelli, of Trieste, to be awarded to the writer of the best book on the work of the unification of Maritime Law and on the history of the International Maritime Committee.

ART. 2. — Manuscripts should reach the office of the Secretaries of the International Maritime Committee (30, rue des Escrimeurs, Antwerp) not later than April 15th, 1912.

ART. 3. — A jury shall be appointed, consisting of five members to be nominated by the Permanent Bureau.

ART. 4. — Manuscripts may be written in English, French, German or Italian.

ART. 5. — The International Maritime Committee reserve to themselves the right to publish the work to which the prize is awarded.

ART. 6. — The prize may also be divided. In the event of the jury deciding that the prize ought not to be awarded, the sum of 2000 francs may be devoted in whole or in part to provide certificates of honourable mention or to the payment of rewards.

Administrative Sitting

GENERAL MEETING OF THE PERMANENT MEMBERS OF THE INTERNATIONAL MARITIME COMMITTEE

After the closing of the Conference, the Permanent Members of the International Maritime Committee have held their annual general meeting under the presidency of M. Charles LE JEUNE, Vice-President of the International Maritime Committee.

M. Charles LE JEUNE opens the sitting. He gives notice to the meeting that the Permanent Bureau, in accordance with the powers extended to them, have appointed as permanent members :

For the United States : H. Hon. Judge BRADFORD, of Wilmington, and D^r BROWN, of New-York.

For the Argentine Republic : D^r Estanislao S. ZEBALLOS, Mr. Juan C. BELGRANO, Prof. Juan Carlos CRUZ and Prof. Honorio PUEYRREDON, of Buenos-Aires.

These nominations are unanimously confirmed.

On President SIEVEKING's proposal, the following gentlemen are appointed as permanent members :

Mr. HEINEKEN, President of the Board of Directors of the Norddeutscher-Lloyd.

Director ECKER, of the Hamburg-Amerika Line.

On Lord Justice KENNEDY's proposal :

Lord Gorell BARNES, of London.

On Mr. FRANCK's proposal :

D^r LEWIES, Barrister-at-Law, St-Petersburg.

On the Austrian members' proposal :

Mr. Stephen WORMS, Counsel to the Board of Trade,
Vienna.

For Japan :

Mr. K. UCHIDA, Director at the Ministry of Communi-
cations, Tokio.

Mr. FRANCK reminds that M. Filippo ARTELLI of Trieste has instituted a prize of two thousand francs for the best book on the work of Unification of Maritime Law and the History of the International Maritime Committee.

The Meeting decide to leave it to the Permanent Bureau to determine the conditions according to which this competition shall be held (1).

(1) The Permanent Bureau since then has published the rules of this competition which are to be found on page 404 of this volume.

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