INTERNATIONAL MARINE INSURANCE RULES. BUFFALO CONFERENCE, 1899

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BY

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INTERNATIONAL MARINE INSURANCE RULES.

MARITIME Commerce is international: its operations ramify from State to State. It would be well then that the rules of its conduct should be not only sound and just, but also the same in all places; that, in short, they should be international.

Perhaps the evils arising from absence of uniformity are not very acutely felt except by suffering individuals, because men adapt themselves to the conditions. Nevertheless, the progress of commerce depends upon improvement in those conditions, and the improvement of the law is not one of the least of the changes by which that progress may be fostered and helped forward. It is the faith of our Association that to bring about increased uniformity of law, among peoples whose efforts and ventures work together, and into one another, is to effect a change which will make for convenience and well-being. And as an Association we have, time after time, set ourselves (not always with success) to find out how the varying rules which govern maritime commerce may be brought into harmony.

The relations of commercial men are largely regulated by their contracts. But contracts do not get rid of the operation of laws. A contract is written always upon a background of law, which fills in the gaps of the written terms. Or perhaps it may more accurately be said that a contract creates a relationship of which the law fills out the body, while the expressed terms define merely the special features. Contracts may be made with reference to

some selected body of law; and where that is not the case expressly, there are more or less definite rules which determine the system of law deemed to be referred to. But wherever the body of law to which reference is made is not entirely ascertained and understood, the conflict of laws introduces doubts and uncertainties, and the man who has thought only of rules to which he has been accustomed finds himself at times in the clutch of others he knew nothing of; and thus unexpected, and it may be unjust, results occur.

These trite observations apply to the insurances which play so large a part in maritime commerce, and there are considerations of a practical kind which makes uniformity of insurance law even more desirable than uniformity in the law on such subjects as carriage by sea. Contracts of affreightment made by the owner of a ship for a voyage are generally made in one place, with people of one nationality, and in one form. The business of insurance has in recent times become very widespread; it tends to spread more widely, and its seat in relation to one venture is often in several places. A shipowner with a valuable ship, or a merchant with large quantities of goods, can and often does effect his insurances, not in one country, but in several. It is plain that such insurances should be on the same terms; unless it be supposed that the assured is content that his rights of indemnity shall as to one part be on one basis, and as to other parts on another basis.

In practice the difficulty in such cases is sometimes got over, when the discrepancies of law are thought of, by agreeing that the policies shall be governed by the law of some particular country; or again by some particular set of rules, as the London Rules, the New York Rules, or the Hamburg Rules.

Now, if a body of rules existed which formed a complete system of insurance law, suitable for use in all countries, and understood alike in all countries, then by incorporation of them into all insurance contracts, the business of marine insurance, wherever transacted, would stand on the same legal basis. But, short of that, if a body of rules could be prepared dealing with

those parts of the business of marine insurance on which the laws of maritime countries *differ;* and if those rules were such as to commend themselves to business men, so that they might come to incorporate them habitually into their insurance contracts; it would come about that those contracts would in effect be all on the same legal basis, although each would actually be governed by the law of the country in which it was made, subject to the rules so expressly made part of it.

The better plan, the plan which would be most worthy of the civilisation of which we boast, would no doubt be to get rid of the differences in the laws themselves. But that would involve legislation, and, moreover, similar legislation by all the legislative bodies concerned. I am not afraid that even the most optimistic of us can look upon that as a practical hope. No Englishman will recommend it. And possibly such legislation would not be desirable, even if it were attainable, in the present position of matters. Men are working now on various methods, and probably the effort to come together by the more elastic means of contract would be a prudent preliminary to fixed legislation. At any rate, that is the most we can at present work for.

Now this Association can point with just pride to successful work done on these lines in the past. Before the York-Antwerp rules of General Average were formulated and agreed upon, there existed a great and troublesome diversity of practice with regard to the adjustment of General Average claims and contributions in different countries, according to the law at the destination of the adventure upon which the General Average sacrifices were incurred.

The York-Antwerp rules are not a complete code of General Average law; they deal with the points upon which differences existed. They have been adopted very widely in contracts of affreightment, and in policies, and in that way we have now in effect a nearly uniform law of General Average.

I propose that this Association should make a similar effort in relation to marine insurance law. Let us search out the subjects on which serious differences exist. Let us arrive, if we can, at an

agreement as to the soundest and most practical principles upon those subjects; and let us work those principles out in a body of rules for general adoption.

For success, it is all important that the proposals should commend themselves to practical men. But if they express the best features of the different systems, and if they set forth clear rules upon matters which are at present left vague and doubtful, I think we may well hope that the value of the work will be recognised by adoption of the rules. There ought not, one would think, to be insuperable difficulty in arriving at agreement as to which are the most sound and practical principles. There is nothing local in the subject; the objects to be attained are the same everywhere; and there does not seem to be room for conflict of interests, unless it be in the interests of some who may desire to confine the insurance market by keeping up obstructions.

I will not pretend to indicate all the points on which differences exist; but three branches of the law stand out prominently in this respect, and if they can be successfully dealt with an important advance will have been made towards the proposed end.

These are:

I. The law as to Constructive total losses.

II. The law as to the effects of unseaworthiness and negligence,

III. The law as to Double insurances.

Upon these points I have drafted a set of Rules which are in your hands, and I will endeavour now to explain the principles on which they are drawn.

I.

Constructive Total Loss; and the Right to Abandon.

First, then, as to the rules governing the right of the assured to treat the subject which he has insured as totally lost, and to claim payment from his insurer of the full amount insured, although that

subject may not in fact have been wholly destroyed, or wholly lost, in a physical sense.

This matter divides into two. We have, first, cases in which the assured has by perils insured against been deprived of possession, or of the control or use of the thing insured, not absolutely, but with a prospect of regaining it, though after an indefinite time. Such cases are captures in which there is a prospect of avoiding a condemnation; embargoes; arrests; and other detentions by governing powers.

Secondly, we have cases in which by perils insured against the subject of insurance has been so far damaged, or completion of the adventure has been so frustrated, that the assured is allowed to treat the loss as total.

With regard to the first class of cases, I do not propose to say much. There is substantial agreement that in cases of capture and indefinite arrest the assured may abandon; that is to say, may claim payment of a total loss on giving up his rights in the insured property to the insurer. There is, however, some difficulty in accurately stating a rule on the subject; and a difference exists as to the extent of deprivation necessary to justify abandonment.

The French Code (369) does not expressly set a minimum limit of time during which the capture or arrest must have continued. Jacobs [1] (s. 832) refers to a controversy of writers on the point, and says that in Belgium, where the provision of the Code (199) is like that of France, the state of capture must have lasted at least one and a half months. The German Code (865), on the other hand, is precise, that in cases of embargo or arrest, the vessel must have been detained six, nine, or twelve months, according to the part of the world in which the ship or goods may be.

In No. 3 of the Rules which I have drafted, an endeavour is made to express what is, I believe, the rule in England and also in America on the point. That justifies abandonment when the loss of possession or control is by a detention imposed for an indefinite period; or where the deprivation is for a definite

[1] Droit Maritime Belge.