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puts man in the same category as the dog, thereby denying to him a spiritual soul: "We do know that a certain complex of energies can wag its tail and another can make syllogisms."

The writer would do well to hearken to the voice of reason and experience, proclaiming the existence of Divine Providence, with which the divine, unchangeable, Natural Law is indissolubly linked, and to reflect on President Wilson's words quoted in the beginning of this article: "Without God the world would be a maze without a clue."

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## THE IMPORTANCE OF MARITIME LAW IN WISCONSIN

JOHN McD. FOX

It has been well said that the crux of the whole trade situation of the United States lies in the extension of her foreign trade. Record appropriations for the expansion of America's foreign commerce, to be used largely in hiring trade experts to extend American trade in the Orient, as well as in Europe and South America, were carried in the legislative-executive-judicial appropriation bill recently introduced in the House. It is a truism that the development of foreign trade is one of the greatest needs and opportunities of the times, and a knowledge of all factors that enter into an economical and intelligent handling of the problems of trade and commerce both domestic and foreign is of imperative necessity.

There are, roughly, four essential elements that make up the price of an article. (1) the making cost, (2) the selling cost, (3) the transportation cost, and (4) the profit. As the first three fluctuate, so does the margin of profit.

The merchant and the manufacturer knows rather well the making and selling costs, these have been worked out for him or by him. In the future there will be, as ever, problems of selling in new markets which necessarily will have to be worked out, but it is almost appalling the ignorance the every-day merchant and manufacturer has of problems dealing with the cost of transportation. Goods are wrongly routed and improper rates are obtained in this way. Lack of traffic knowledge means a loss of millions of dollars to the modern business man. The factor of transportation, as to cost, deliveries and as to hazards is frequently the cause of many enterprises foundering.

The commerce of the world is principally carried in ships, either wholly or at some point. The mutual relations of carrier to shipper, and shipper to shipper, give rise to many problems that cannot arise in rail shipments nor can they be answered by any analogy to common law. These must be solved by the application of a set of rules entirely distinct and different from common law. These rules and customs are of most ancient origin and were in use long before our modern law was conceived. They are based on altogether dissimilar principles and concepts, and, together with slight statutory modifications, constitute the body of what is known as Maritime law, or the Law of the Sea.

Maritime ventures have been encouraged and protected from time immemorial. There is something in the very nature of commerce by water, that is inherently more hazardous than that carried on by land. The sea is open to all. It is likewise the only means of communication and commerce open between countries isolated by it. Therefore it is but logical that the returns should be in proportion to the risk and that to stimulate this commerce and intercourse between nations, those who are courageous enough to enter upon seafaring pursuits and build ships should be more highly protected and encouraged than those who prefer safer pursuits on land. This has been the national policy of all commercial nations.

By Act of Parliament in 1601 (43 Elizabeth c12) it is spoken of as having existed time out of mind "by means whereof it cometh to pass that upon the loss or perishing of any ship there followeth not the undoing of any man, but the loss lighteth rather easily upon many than heavy upon few, and rather upon them that adventure not, than upon those who do adventure; whereby all merchants, especially those of the younger sort, are allured to venture more willingly and more freely."

There are certain relations which grow out of the nature of the enterprise and certain others which have grown up by custom, which it behooves shippers to know so that with full knowledge of these relations, their liabilities and their duties, they can plan their business and safeguard and protect their interests.

To cite but a few most usual examples of the situation a shipper of goods by water may find himself in, that would not occur in a rail shipment on land. A ship carries several different kinds of cargo, owned by several owners. Fire breaks out in the hold of the vessel. There is great danger that the ship and cargo will be lost. In putting out the fire, certain expenses are incurred, and

part of the cargo belonging to one of the shippers is ruined by water. In this case the ship itself and all the owners of the rest of the cargo must contribute to the loss sustained by the owner of the particular cargo damaged, and this in spite of the fact that there is a statute exempting the owner of the ship from liability for loss or damage to cargo by means of any fire happening to or on board of the vessel without the design or neglect of the master, and in spite of any similar exemption from liability in a bill of lading (*The Roanoke*, 59 Fed. Rep. 161). This is not a loss by fire so far as Admiralty conceives but is a loss known as "General Average." The reason for this is apparent. The lost portion was destroyed so that entire venture might be saved. There is a community of interest which begins with the loading of the cargo and continues until the cargo is discharged. All are in "the same boat."

Ship, cargo and freight are the great maritime interests. The objective point in all maritime ventures is to proceed from one port to the other with safety to ship and cargo and to complete the voyage in order to earn the freight. Therefore the master, when by perils of the sea the ship is damaged, may put into first one port, then another and a third and so on, at each of which he may order certain repairs to the ship, hypothecating the ship or cargo or both at each port to secure the cost of the repairs. When he finally reaches his destination, the maritime rule of priority as between the different mortgages is similar to that of the Kingdom of Heaven—the first shall be last and the last shall be first. And the reason again appeals to one's sense of equity, though contrary to all principles of common law. The important thing is to arrive at the destination else the freight cannot be earned or the cargo delivered at its contract price. That which completed the venture and enabled the ship to arrive at its destination was the last mortgage, without which the venture would have been lost.

What particular interest or importance is this subject in Wisconsin today—in Milwaukee? Outside of personal injury litigation, the lawyer of tomorrow even more than today must be in a position to advise business of its rights and liabilities. The eyes of the world look to America for everything. The Nation's interest is awakened, and manufacturers are seeking foreign markets. The coming era is one of Trade, and the world's trade is carried on in bottoms. Maritime law is the law that governs the carriage of it.

In this connection Mr. James A. Farrell, President of the United States Steel Corporation, has to say: "It may be hoped that when peace returns bringing with it normal conditions of foreign commerce, the necessity for contributing to the prosperity of our new merchant marine by every means in our power will be impressed on every department of American industry, and on every productive interest in the country. Foreign nations having been quick to recognize the new position in which the possession of so large a proportion of the mercantile ship tonnage of the world has placed the United States. It is a position that presents great opportunities and devolves on all concerned, including the legislators of the nations, great responsibilities. It is nothing less than a new era in its commercial and industrial development that the possession of this huge fleet will open to the United States. There was a period in our history, and a particularly glorious one it was, when the gaze of this nation was turned seaward, and when we took as a matter of course, the job of being the ocean carriers of the world. But two generations of development mainly landward, have somewhat dulled the old aptitudes and disturbed the old sense of confidence. I have not the faintest doubt that both will return as they are needed, and that nothing but the shortsightedness of self-seeking politicians and the misplaced activity of injudicious friends of labor can prevent this nation becoming once more the foremost seafaring people of the world."

There are a great number of merchants and manufacturers in Wisconsin—in Milwaukee, who will go extensively into this field. A recent news item in one of the Milwaukee papers is headed as follows, "Milwaukee Business Men Go to Europe," for the purpose, of course, of establishing trade relations. Though there are many Wisconsin firms going to establish commercial relations, are there many Wisconsin lawyers who are competent to advise on Maritime questions? A great number of lawyers, even the most eminent, are competent to advise on many matters in which they are not specialists merely because they happen to have a very fine legal mind and by analogy to other branches of law, they can unerringly reason out the correct result of a problem dealing with phases of the law with which they are not familiar. Admiralty and Maritime law is not based on common law, its basic concepts are not the same, it is highly specialized and no analogies to anything but Civil law will help, and that not a great deal. Much of the legal work in this field that nat-

usually pertains to Milwaukee, and Wisconsin generally, is being transacted in Cleveland, in Buffalo and in Chicago, for the reason that the profession here has, as a whole, taken the attitude that there is no Admiralty work here, or at most, not enough to keep anyone very busy. There is a great deal now that is diverted, there is opportunity for a great deal more if manufacturers are awake and seek proper advice before entering upon foreign fields, and there will be a great deal very soon, especially of an advisory sort.

The business men of Wisconsin generally and of the Port cities of the Great Lakes particularly are earnestly urged not only to consider foreign trade and its endless opportunities, but also to consider together with that question, the wonderful opportunities for transportation which Lake Michigan and the Great Lakes generally, afford.

The early history of the development of Milwaukee is a source of pride and sorrow—pride in its development from a small village to a growing position of prominence as a commercial center. Sorrow at allowing various combinations of circumstances to retard its growth and to discriminate against it. It was the Lake that gave Milwaukee her growth and importance as a commercial metropolis then, and it is by the Lake that she must redeem her lessening prestige now. And as it is possible for Milwaukee so to do, by the same means and the same process is it possible to develop to positions of prominence and importance other port cities of Wisconsin. This is not a matter of interest alone to carriers of goods and shippers, but to the cities generally, as whatever makes for the development of a city commercially, benefits it as a whole.

As an illustration of what happened to Milwaukee in the past take the wheat market as an example as it appears in the annual report of the Milwaukee Harbor Commission published April, 1915.

In 1862 Milwaukee by reason of her lake commerce was the greatest primary wheat market in the world, when the total receipts of wheat aggregated 15,613,995 bushels and the shipments 14,915,680. "In the early days of Milwaukee's prominence as a grain market the bulk of the outgoing surplus went forward by way of the lower lakes, but rail routes gradually made inroads on the sum total of grain shipments until in late years shipments by way of the lower lakes except on railway line steamers have been nominal in character. The change was largely the result of

rail rate manipulation, the ex-lake or the rate between the lakes and the seaboard being maintained at a point which, coupled with other insinuating advantages, made it more profitable for shippers to consign grain products by way of all rail routes. Since 1880 shipments of grain from upper lake ports by way of the Great Lakes and Erie canal have declined over 85 per cent."

Rail lines adopted roughly four methods of discrimination, (1) by giving higher rates for rail and water transportation, (2) by allowing rebates and discriminatory charges against Milwaukee, (3) by lower competitive all-rail shipments and by entering the Lake trade themselves at ruinous rates and (4) by diversion by means of lower rates to other Lake ports.

The Panama Canal Act divorced the railroads as owners, from their water holdings. Then the war came on and took a number of our lake boats. Subsequently there was a scarcity of coal and grain in the Lake Superior ports and what boats we had left were diverted by the attraction of a higher rate to that trade and a return cargo, which by reason of lack of interest of Milwaukee shippers was not obtainable at Milwaukee.

Last year there was the most terrific traffic congestion in Chicago and New York yards known to the history of transportation. At that time shipments could have been made avoiding Chicago, to Milwaukee, cross the Lake and to inland points by rail, and from Milwaukee to Duluth to the ocean. But it was not done—no inducements were offered. Therefore deliveries of freight were held up all over the country by reason of congestion in railroad terminals. Much of the heavier rail shipments now carried, which tend chiefly to tie up traffic, could more easily and promptly be handled by water. There should likewise be a great increase in the package freight and general merchandise shipments which have fallen off tremendously. Soon by the completion of the improvements on the Welland canal and the fulfillment of the Milwaukee Harbor projects, it will be possible, if inducements are attractive enough, to load ocean vessels at our own docks. Milwaukee seems to be a little slow. Duluth already has an association to push the project for its benefits to that city. Delegates from Minnesota, Wisconsin, Illinois, Michigan, Iowa, Ohio, North Dakota and probably other states will meet in Washington February 4th to coordinate views and develop plans for this project.

There should be a movement in Milwaukee loyally supported by all, whereby merchants and manufacturers would pledge

freight for water transportation in sufficient quantities to induce new lines to come, or if necessary to organize a company here to lease, purchase or build additional vessels.

This is already being done all over the country where water transportation is available. Allusion has already been made to the Tidewater Association originating in Duluth. In La Crosse, the Mississippi Navigation Company, recently organized in St. Paul, is soon to set in operation on their first trip, a fleet of barges laden with ore from the Mesaba range to St. Louis, returning with coal from the Illinois fields. Twenty more barges are being built at Stillwater, the capacity of each being a thousand tons of freight. Many manufacturers in the river cities and adjoining territory have not only pledged freight but actually have entered into contracts with the company.

There is a strong movement on foot for additional railway facilities in Milwaukee. This is supported fairly widely and properly should be. Milwaukee has been in the clutches of the railroads long enough with hardly any competition and scarcely any service. But of even more importance than this, or the establishment of a belt line, is to build up our Lake commerce.

A meeting has been called by the Mayor of Milwaukee to which the mayors of almost every port city on the Great Lakes have been invited. This meeting which will be held in the near future, promises to be largely attended. This project is uppermost in the minds of every student of traffic problems and it is to be hoped that Wisconsin and Milwaukee business men will give it their wholehearted support.

There is likewise a movement on foot to place the Harbor Commission of Milwaukee, now merely an advisory board, on an independent footing. A Board that has been of such inestimable service to this city in the past and due to whose foresight our harbor will soon be the finest on the Great Lakes, surely should be granted independent authority.

Therefore, with all these movements on foot, it would seem evident that the importance of regaining lost water transportation is surely uppermost in the minds of shippers and carriers. To encourage this project shippers should, and they are, pledging their freight. The many advantages of water shipment are obvious. Not only are the rates lower under the Inter-State Commerce regulations, but it is surer, no liability of congestion, less damage in transit, no long delays in delivery. Though not as



swift in one sense as rail, it is more swift in results, as delivery at the port is almost immediate.

In conclusion it is submitted that the business man of today is confronted with various problems which will arise out of the wonderful opportunities of entering foreign trade. Many business men of Wisconsin, individually or as firms, will enter into foreign trade relations. The commerce thus created must, of necessity, be carried in ships, which gives rise to the necessity in the solution of these problems of a knowledge of Maritime Law. Therefore, a study of the law of Admiralty is of growing importance for Wisconsin lawyers.

There is here and elsewhere a movement to re-establish our lake commerce. This movement is of great importance to citizens and business men of Wisconsin and in the development of this commerce, which is bound to come, it will be necessary to solve certain maritime problems which will constantly arise. Therefore, in Wisconsin today, it is of importance to be familiar with the law of Admiralty.

As then, it is of paramount interest to Wisconsin merchants and manufacturers to look to foreign trade, which is carried on in ocean bottoms, and to gain back the lake traffic, both for their own pecuniary advantage and the prestige of this stat<sup>e</sup>, so it becomes most prudent for those who are to act as business and legal advisers to know the solution of traffic problems and to be familiar with the law governing navigable waters.