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PREFACE

This, the first issue of the Bulletin of the Japan Shipping Exchange, Inc., contains some of the Reports of Arbitrations and Statements of Expert Opinions, which have been rendered in the past by the Maritime Arbitration Commission of the Exchange and are considered to be of interest and of some use to those concerned in the shipping trade. To these are appended the Maritime Arbitration, and other, Rules of the Japan Shipping Exchange, Inc., as well as the Forms of Arbitration Agreement and Arbitration Clause prepared and recommended by this institute. Further issues of this Bulletin will be published from time to time.

The Japan Shipping Exchange, Inc., is functioning over forty years. The international shipping trade is of recent years rapidly growing with Japan as one of its centres. The Japan Shipping Exchange, Inc., whose services were formerly limited to domestic cases, is now, to cope with this situation, ready to receive and is actually receiving submissions to arbitration of cases of world-wide scope and international nature. Maritime arbitration is a procedure which requires deep knowledge and many years' experience in both shipping practice and maritime law. Our Panel of Arbitrators, I am happy to say, is an array of persons who are perfectly qualified in this respect and ready to meet any intricate problems. Their diligence, impartiality, and promptitude in their work, together with the moderateness of their fees, are well known.

The valuable services rendered by the Japan Shipping Exchange, Inc., came to the notice of the Ministry of Trans-

portation, and to encourage and help us promote our work the Government is granting us a subsidy since two years ago. Part of the money has been appropriated to the printing of the present booklet, in presenting which to the public I sincerely hope our non-profit-making services may be widely made known and confidently utilized.

Yasuzo Ichii

President of the Japan Shipping Exchange, Inc.

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ARBITRATION

_in re_ a dispute concerning a voyage charterparty of s.s. "JOLLY"

between

Kawasaki Kisen Kaisha, Ltd., the Chartered Owners . . . . . CLAIMANTS

and

Kishimoto Shoten Kaisha, Ltd., the Charterers . . . . . RESPONDENTS.

Facts of the Case

On February 5, 1953, Claimants entered into a voyage charterparty (hereinafter referred to as "the Charterparty") with Respondents for the carriage of iron ore from Mormugao in Portuguese India to Japan. Claimants first intended to assign s.s. "Hidaka Maru" to the service, but had to alter their plan for reasons of their own, and trip-chartered the British ship s.s. "Jolly" (hereinafter referred to as "the Vessel") in London and assigned her to the service with the consent of Respondents. The Vessel reached the loading port, Mormugao on April 10, 1953, and commenced loading in stream on April 15, being scheduled to sail on April 29. She had loaded 792 long tons, when on April 23 Claimants received a telegram from their agents at the loading port informing them that the loading was stopped. The reason for the stoppage of loading was that Clause 11 of the Charterparty guarantees the lifting capacity of the winches up to 3 tons and provides for the use of grabs in loading, but the actual capacity of the winches was

only one and a half tons and the captain of the Vessel disallowed the use of grabs. Respondents were also informed to the same effect by Claimants' agents and they transmitted the same to Claimants. Claimants thereupon inquired the owners of the Vessel at Hongkong as to the lifting capacity of the Vessel's winches, and received their reply denying the alleged inferior capacity of the winches. Then Claimants requested Respondents to certify the lifting capacity of the winches by a qualified surveyor's report or some other authoritative documents. But in spite of Claimants' repeated requests, Respondents took no adequate steps but only repeated saying that they would stop loading in stream on account of the insufficient lifting capacity of the winches. On May 15 Claimants received a message from Respondents' agents, and also from Respondents, to the effect that if Claimants guaranteed issue of clean Bills of Lading, Respondents would be ready to recommence loading on condition of "no demurrage, no dispatch money" and carry on loading with all their power. Claimants replied that they would agree if Respondents would immediately recommence loading. But Respondents remained inactive until the Vessel reached wharf and recommenced loading on June 25. On July 5, at 6.00 p.m., the Vessel left the port of loading with 8,500 long tons of iron ore on board.

Pleadings

Claimants by letter dated November 11, 1953, demanding from Respondents demurrage and dead-freight, stated as follows:—

1. Excepting some special winches such as No. 2 and No. 3, the winches of the Vessel had a lifting capacity of over 3 tons. Respondents assumed it to be one and a half tons and stopped loading. That is to be ascribed to their responsibility.

2. About one month after the stoppage of loading, Respondents' agents notified to Claimants that if Claimants agreed to the condition of "no demurrage, no dispatch money" Respondents would do their best

for quick dispatch. Claimants replied by telegram that they would agree if loading was immediately recommenced. Respondents notified that they would recommence loading on May 19, but they did not recommence loading before 40 days had elapsed.

3. If the Vessel had not been thus unduly detained, she would have completed loading and sailed about the end of April. But as the result of the detention she had to leave port in the monsoon season and was by port regulations put under restriction as to displacement. For these reasons the Vessel could not load 9,900 long tons as intended, but had to sail with only 8,500 tons on board. Respondents must pay the dead-freight for 1,400 tons.

Respondents by their letter dated November 19 notified Claimants of their refusal to meet the claim.

Then Claimants in accordance with clause 34 of the Charterparty submitted the matter to arbitration claiming payment by Respondents of the following:—

(a) Demurrage (for 65 days 17 hours 32 minutes).
The Vessel arrived at loading port at 2.30 p.m. and tendered notice of readiness at 11.00 a.m. on the 11th (Saturday). The laydays, according to clause 6 of the Charterparty, commenced to run at 7.00 a.m. on the 13th, and the Vessel finished loading at 1.00 p.m. on July 5. The allowed laytime 14 days 10 hours 28 minutes being deducted, demurrage is to be paid for 65 days 17 hours 32 minutes.

(b) Dead-freight for 1,400 long tons.
Calculated According to the Charterparty.

Respondents also submitted the matter to arbitration, praying that Claimants' claim be dismissed. Respondents pleaded as follows:—

1. On February 5, 1953, Respondents concluded a Charterparty with Claimants, Nissan Kisen Kaisha, Ltd., Nittetsu Steamship Co., Ltd., Osaka Shosen Kaisha, and Yamashita Steamship Co., Ltd. for

the carriage of iron ore from Mormugao in Portuguese India to Japan. Pursuant to this Charterparty Claimants trip-chartered the s.s. "JOLLY" and assigned her to the performance of the contract. The Vessel arrived at the loading port Mormugao on April 10 and commenced loading on April 15. But the lifting capacity of the winches of the Vessel was much lower than professed, and was only one and a half tons. Consequently only about 792 tons were loaded by April 20.

Respondents' shippers informed Claimants of the above fact and notified them that this was in contravention of the provision of clause 11 of the Charterparty, that for fear of interference with the loading of other vessels chartered under the same charterparty the Vessel would have to stop loading in stream on April 23 and load at wharf, and that Claimants must bear responsibility for the time thus lost.

Subsequently as the result of negotiations between Claimants and the shippers they reached an agreement on May 15 that on condition of "no demurrage, no dispatch money" and the issue of clean Bills of Lading, Respondents should do their best to effect quick dispatch. But owing to the monsoon and the impossibility to use the grabs caused by the low lifting capacity of the winches, loading in stream was greatly hampered, and the congestion of shipping delayed the Vessel's reaching the wharf. Thus she reached the wharf on June 25, and sailed on July 5 with so much ore on board as she had been able to load.

2. Claimants had notified to their agents that the charterparty between Claimants and the owners of the Vessel and the Charterparty between Claimants and Respondents were identical in the clause relating to loading. But as a matter of fact, in the time charterparty between Claimants and the owners of the Vessel, such Union Rig Clause as clause 11 of the Charterparty is lacking. The lifting capacity of the winches of the Vessel, being much lower than was professed, was only one and a half tons, and made loading impossible. These facts, coupled with the bad weather which prevented loading in stream, were

the causes which compelled the Vessel to remain in the loading port for a long time. Therefore Respondents are not responsible for the detention of the Vessel.

3. At the port of discharge Claimants without raising any objection to Respondents deposited with the owners of the Vessel a sum of money equivalent to demurrage and dead-freight and handed to Respondents a cargo delivery order. Such act of Claimants shows that they voluntarily held themselves responsible for the demurrage and dead-freight. If Claimants contend that demurrage and dead-freight are to be paid by Respondents, Claimants as chartered owners entitled to a lien for demurrage and dead-freight ought to have made some representations to Respondents when they made the above-said deposit.

4. Claimants demand the payment of dead-freight. But in view of the agreement between Claimants and Respondents referred to in 1 above, they have no right to demand the same. At Mormugao, the port of loading, any loading causing a displacement over 25 feet is forbidden during the monsoon season (from May 16 to September 15). Respondents are not liable for the result of any restraint of Rulers or any force majeure (see clause 27 of the Charterparty).

5. In the charterparty between Claimants and the owners of the Vessel, Union Rig Clause is lacking, and so when Respondents discovered the inferior lifting capacity of the winches of the Vessel, they could have cancelled the charter on the ground of a wilful misrepresentation according to clause 5, paragraph 3, of the Charterparty. They refrained from exercising their lawful right considering an enormous loss Claimants would have incurred if they had done so, and consented to cooperate with Claimants in the loading of the cargo with a view to mitigating their loss. Claimants entirely disregarded these circumstances, and do not consider how things would have stood if Respondents had not rendered such cooperation. The Vessel was detained

long and had to sail without loading a full cargo owing to the fact that Claimants assigned a ship, the lifting capacity of whose winches was not in accord with the provisions of the Charterparty. Claimants forget or wilfully disregard this glaring fact when they shift the liability for demurrage and dead-freight to Respondents.

Findings and Award

The centre of dispute lies in the relation between the Charterparty and the agreement reached between the parties on May 15, 1953, to the effect that loading should be done with the best possible efforts for quick dispatch on condition of "no demurrage, no dispatch money" and issue of clean Bills of Lading.

Claimants maintain that the above-said agreement was applicable after the recommencement of loading and did not settle the matters in difference which arose before the agreement was made. But Respondents stated in answer to a question put to them at the hearing, "It was agreed to let bygones be bygones and to recommence loading, both parties forgiving all claims for past matters including demurrage up to May 15."

Now, the Vessel reached the loading port Mormugao on April 10 and commenced loading in stream on April 15. But such troubles arose as the inferior loading capacity of the winches of the Vessel, refusal of the use of grabs, and refusal of the crew to work the winches, and difference of opinion was found between Claimants and Respondents concerning the construction of the provisions of clauses 9 and 11 of the Charterparty. Respondents feared that the Vessel's slow loading in stream might interfere with the loading of other ships which were there under the same charterparty, and stopped loading informing Claimants that the Vessel was compelled to recommence loading at wharf and that for the consequential loss of time Claimants were responsible. The above-

said agreement between Claimants and Respondents was made for the purpose of settling such situation.

At the bottom of such situation was the fact that in the charterparty concluded between Claimants and the owners of the Vessel there was no clause of the same purport as clauses 9 and 11 of the Charterparty, and this caused lack of mutual understanding between the captain of the Vessel and the agents of Respondents' shippers. So it is evident that Claimants, when such situation arose, became aware of a fault on their part, and wished to settle the situation by making the above-said agreement.

With regard to the "quick dispatch" referred to in the agreement, Claimants say that they agreed on condition of immediate recommencement of loading, but Respondents say that their shippers did not promise to recommence loading immediately but only promised to effect quick dispatch as far as possible. Respondents also state in their written pleading, "When Respondents' shippers stopped loading they informed Claimants that it was impossible to recommence loading unless the Vessel came alongside the wharf, and this shows that by the agreement Respondents promised only to cooperate with Claimants in the loading and did not promise to recommence loading immediately." But Respondents notified Claimants under date of May 18, "The Vessel will recommence loading tomorrow 19th and expects to complete loading in the second week of June." This shows that Respondents also intended to recommence loading immediately, and there is a self-contradiction in Respondents' statements.

From the foregoing facts the Arbitrators conclude that by the said agreement both Claimants and Respondents agreed to lay aside all problems which had arisen before the conclusion of the agreement, change part of the provisions of the Charterparty, recommence loading as soon as possible, and effect quick dispatch.

In view of the foregoing findings the first point at issue, namely,

the demurrage, will now be considered.

Claimants claim Yen 14,146,410 as demurrage for the period from April 10 when the Vessel reached the port of loading till July 5 when the Vessel sailed from the Port. But the Arbitrators, as has been pointed out before, deem the Charterparty to have been partly amended by the agreement of May 15, and so take no account of the period up to the conclusion of that agreement. Consequently, concerning the question of demurrage, the period from May 15 when this agreement was made till July 5 when the Vessel giving up loading sailed with 8,500 tons on board must be considered. During this period the Vessel remained in port without doing any work for 40 days. Respondents stated, "There was no way of loading except by using country-craft, and the weather condition becoming bad from the early part of May, though country-craft owners promised cooperation the craft men did not cooperate. So loading became impossible, and as it was expected the Vessel would be able to come alongside the wharf on June 10, the Vessel had to stay in port without loading." Respondents also said in reply to a question at the hearing, "It was decided to use country-craft in loading after the agreement was made." According to the investigation made by the Arbitrators on their own authority there is no evidence proving that Claimants and Respondents did any negotiation or communication between them concerning country-craft. So the Arbitrators conclude that the agreement did not touch the method of loading after the agreement. Therefore Respondents' contention that the detention of the Vessel was due to failure to use the country-craft cannot be justified. Now that the monsoon season had set in, Respondents' plan to carry on loading in stream with country-craft only even after the agreement was careless and no sincerity can be recognized on their part.

Respondents said to Claimants, "In the light of the Charterparty the Vessel is an utterly disqualified ship, and Respondents have the right to cancel the contract, and they are not bound to carry

on the loading of the Vessel at the expense of other qualified ships which are in port under the same charterparty. Claimants are wrong in that they are placing the Vessel on the same level with other qualified vessels and asserting the same right. They are disregarding the faithful cooperation of Respondents and Respondents' shippers." But inasmuch as the above-said agreement was made on May 15, Respondents are deemed to have waived their right of cancelling the contract on the ground of the Vessel being a disqualified ship. So Respondents ought to have endeavoured to recommence loading without delay by all possible means. But the fact was that they allowed three other ships which reached the Port after the Vessel to load in stream and leave the Port before the Vessel. This is a regrettable violation of the principle of good faith.

Both Claimants and Respondents agreed by the agreement of May 15 to "no demurrage, no dispatch money", and therefore Respondents, regarding the subsequent loading, was not bound by the provisions of clause 6 (1), but they had only to follow the custom of the loading port. But if the Vessel was unduly detained, it is clear from the general principles of shipping that Respondents must be liable.

Next will be considered the second point at issue, namely, the claim for dead-freight.

Claimants maintain, "If Respondents' shippers continued loading it would have been completed before the monsoon season had set in. But as Respondents' shippers arbitrarily stopped loading, full cargo was not loaded. So Respondents are liable for dead-freight." They also stated, "When the above-said agreement for recommencement of loading was made, complete loading had already become impossible, and therefore there is no relation of cause and effect between failure of complete loading and the idle detention of the Vessel after the said agreement."

Even if it is assumed that at the time of the conclusion of the said agreement the captain of the Vessel did not know of the Port

Regulations limiting the displacement during the monsoon season, Claimants' agents were notified under date of April 11 by the Port Authority that the safe maximum displacement during the period from May 16 till September 15 was 25 feet, Claimants and the captain of the Vessel are deemed to have been at the time of the conclusion of the said agreement in a position to know that there was a displacement limit. Therefore the Arbitrators do not allow Claimants' claim for dead-freight.

Award

1. Respondents shall pay to Claimants damages in the amount of Yen 3,800,000 for detention of the Vessel at the Port.
2. The arbitration fee and expense in the amount of Yen 400,000 shall be paid by both parties being equally divided between them.

May 18, 1955

Clauses of Charterparty Cited

5. Loading and Cancelling Date

If vessel be not ready to load at loading port during office hours on or before cancelling date unless the detention be caused by average or otherwise for which Owners be not responsible, or if any wilful misrepresentation be made respecting the size, position or state of the vessel, Charterers to have the option of cancelling this vessel, such option be declared on or before cancelling date.

6. Laydays for Loading

The cargo to be loaded at the average rate of 500 long tons in stream and 600 long tons at wharf per clear working day of 24 consecutive hours (weather permitting). Sundays, Holidays and time between 6 p.m. on Saturday and 7 a.m. on Monday or the day following Holiday always not to count, whether used or not.

9. Stevedoring

The cargo to be loaded, trimmed and discharged free risk and expense to Owners. At loading port, the vessel's crew to drive winches if permitted by local labour regulations, otherwise shore hands to be employed, and Owners to pay three pence per ton on quantity loaded by vessel's winches. At discharging port, Charterers shall supply winchmen free expense to vessel.

11. Union Rig Clause

Charterers have the option of loading, in full or in part, the cargo from shore and or lighters, and/or country-craft, by grabs supplied by them and attached to the vessels derricks and winches. These grabs are to be operated by men supplied by Charterers from shore and the cost of same to be borne by Charterers. Owners undertake vessel's winches and derricks are in working order and capable of lifts up to three tons.

27. Act of God

The Act of God, the King's enemies, restraints of Princes, Rulers or People and Perils of the Seas, Rivers and Canals and of Navigation of whatever nature or kind excepted also fire, jettison, barratry of the Master and Crew, robbers by land or sea, pirates, collisions, strandings and accidents of Navigation, or latent defects in or accidents to hull and/or machinery, and/or boiler or explosion, steam, heat or fire on board in hull or craft or on shore always excepted even when occasioned by the negligence, default, or error in judgment of the Pilots, Master, Mariners or other persons employed by the Shipowner or for whose acts he is responsible not resulting however in any case from want of due diligence by the owners of the Ship or by the ships Husband or Manager. The Owner shall not be liable for any delay in the commencement or prosecution of the voyage due to a general strike or lock-out of seamen or other persons necessary for the movement or navigation of the vessel.

34. Arbitration

Any dispute arising under this charter to be referred to Nippon Kaiun Shukaisho (Japan Shipping Exchange) for Arbitration, and the decision of which shall be final and binding the parties.

ARBITRATION

in re a dispute concerning a voyage charterparty of s.s. "GUNN"

between

Kobe Sekiyu Kabushiki Kaisha, the Chartered Owners . . . . . CLAIMANTS

and

Nissho Co., Ltd., the Charterers . . . RESPONDENTS.

Facts of the Case

Claimants were the general agents in Japan of the Nanyang Steamship and Enterprises, Ltd., of Hongkong, who were time-charterers of the British steamship "Gunn" (hereinafter referred to as "the Vessel"). They, under authorization of their principals, concluded in Tokyo on the 14th March, 1956, with Respondents a voyage charterparty using "Gencon" form revised 1922 (hereinafter referred to as "the Charterparty"), of which the principal terms and conditions are as follows:—

Ship's Name (Clause 1, paragraph 1): s.s. "Gunn".

Gross Tonnage (Clause 1, paragraph 1): 4,474 tons.

Loading Port (Clause 1, paragraph 4): one port of Calcutta, Madras, or Visagapatam, India at Charterers' option.

Discharging Port (Clause 1, paragraph 6): one port of Yahata/Osaka range or Yokohama (including Kawasaki), Japan at Charterers' option.

Cargo (Clause 1, paragraph 5): Iron Ore in bulk of 7,000 tons of 2,240 lbs., 10% more or less at Owners' option.

Rate of Freight (Clause 1, paragraph 7): 108/- (British Sterling One Hundred and Eight Shillings only) for Yahata/Osaka range discharge and 110/- (British Sterling One Hundred and Ten Shillings only) for Yokohama (including Kawasaki) discharge, per ton of 2,240 lbs., F.I.O. and free stowed.

Loading (Clause 5, paragraph 3): Any pieces and/or packages of cargo over two tons weight shall be loaded, stowed and discharged by Charterers at their risk and expense.

Demurrage (Clause 7): U.S.$1,000 (U.S. Dollars One Thousand Only) per day or prorata for any part of a day.

The Vessel, having loaded 6,415 British tons iron ore, sailed from Calcutta at 6.00 p.m. on the 1st August, 1956, and arrived at Hirohata Port at 1.00 p.m. on the 29th of the same month. At 11.00 p.m. on the 1st September she commenced unloading the cargo, and continued the operation day and night. At 1.10 a.m. on the 4th September the mainmast between the 4th and 5th holds began to collapse, and fell down on the deck towards the port side behind No. 5 hatch. The collapse of the mainmast caused No. 4 hatch starboard derrick to fall towards port side, No. 5 hatch starboard derrick towards port side poop ladder, and No. 5 hatch port side derrick on to the bulwark left of the same derrick.

Pleadings

Claimants stated their claims as follows:—

The damage caused to the Vessel arose from the fact that despite the S.W.L. (safety working load) of the derrick boom was 2 tons, Respondents' stevedores hoisted iron ore weighing 2.297 tons. The Charter-party provides that "any pieces and/or packages of cargo over two tons weight shall be loaded, stowed and discharged by Charterers at their risk and expense" (clause 5, paragraph 3). Therefore Respondents are responsible for the damage. A compensation in the sum of Yen 9,019,141 is claimed.

Respondents stated in defence as follows:—

1. The certificate issued to the Vessel by the B.V. Classification Society is only a prima facie certificate of the performance and qualification of the Vessel at the time of its issue. Whether or not the Vessel had perfect performance sufficient for carrying out the obligations under the Charterparty should be decided by the circumstances at the time of occurrence of the accident. The mainmast collapsed because, as is pointed out in the surveyor's report, it was highly rusty and corroded. The Vessel lacked seaworthiness at the time of the accident. Her old age is evidence of her being in a bad state of dilapidation.

2. Stevedores, though employed by the charterers, work under the direction and supervision of the captain, unless there is special stipulation to the contrary. It is the right and duty of the captain to exercise control and supervision over the stevedores in order to protect the safety of the ship. In the present case, therefore, as far as there was no negligence on the part of Respondents in the employment of stevedores, Respondents have no responsibility for what has been done by the stevedores. The S.W.L. of the derrick boom of the Vessel being two tons, the captain had the duty of exercising special care in the direction and supervision of stevedores when they hoisted cargo of the weight of more than two tons. It is especially so in the case of such an old ship as the Vessel. But neither before nor during the unloading any direction to use special care was received from the Owners or the captain.

3. The inscription "S.W.L. 2 tons" on the derrick boom means that cargo up to 2 tons may be hoisted, but does not mean that cargo exceeding 2 tons must not be hoisted. It should be taken only to suggest "about 2 tons", and should not be interpreted to show anything in the strict mathematical precision. If the iron ore which was actually hoisted should have happened to be 2.297 tons, no blame could be laid on the stevedores. There are several American authorities which

bear this out: *Bollman* v. *Tweedia,* 150 Fed. 434; *Brit. Marit. Trust* v. *Munson,* 149 Fed. 533; *Bull* v. *N.Y. & P.R. S.S. Co.,* 167 Fed. 792, C.C.A. No more than the stevedores are the Respondents responsible who were not in a position to direct and supervise the stevedores. As regards clause 5, paragraph 3, of the Charterparty, it only lays down that in case where the weight of each piece or package of the cargo exceeds 2 tons the loss of or damage to the cargo and loading or unloading expense should be borne by Charterers, but it does not pertain to any direct or indirect damage to the Vessel.

In reply to Respondents' defence Claimants stated as follows:—

1. At the time of the conclusion of the Charterparty Respondents knew well the age and performance of the Vessel. The B.V. Classification Society had issued a verification of the seaworthiness of her hull, engine, and equipment. It duly certified that the Vessel had during the given time perfect performance and qualification to carry out the obligations under the Charterparty. The damage caused to the Vessel was due to the negligence of stevedores. It cannot be ascribed to the old age of the ship.

2. Respondents must bear all responsibility for any act done by their stevedores. According to the custom among the shipping circles, when stevedores have to hoist any cargo whose weight exceeds the S.W.L. of the derrick boom or the weight limit stipulated in the charterparty, they must beforehand inform the captain or his responsible representative, and only upon his consent having been obtained loading or unloading may be done under his direction and supervision. If no such consent is obtained, loading and unloading can only be done in accordance with the provisions of the charterparty and at the charterers' risk and expense, using a floating crane, or a crane on shore, or removing the ship to a suitable place, or by some other suitable contrivance. But in the present case the captain received no information from the stevedores concerning hoisting cargo whose weight exceeded

2 tons. Therefore Respondents are responsible for any result of discharge of such cargo. Furthermore, in the case of "Free In and Out" loading or discharge, the loading and discharge are done at the charterers' risk and expense. Charterers cannot evade responsibility for the damage caused to the Vessel by the faulty work of stevedores.

3. The S.W.L. of the derrick boom of the Vessel is 2 tons, and therefore Charterers are responsible for any damage caused to the Vessel by hoisting iron ore weighing more than 2 tons. Each derrick boom of the Vessel bears the inscription "S.W.L. 2 tons", and so the stevedores were perfectly aware of the S.W.L. of the derrick boom of the Vessel. The B.V. surveyor's report points out that "the fixation bolt (1 inch dia.) of the rigging screw first stay excessively showing abnormal traction strain". For the fixation bolt to be twisted a traction strain of over 20 tons at least must have been placed. And that must no doubt have been owing to the fact that the stevedores, in order to speed up their work, disregarded the S.W.L. of the derrick boom and hoisted tens of times successively slings of iron ore each far exceeding 2 tons, or roughly manipulated the winch with jerks. Charterers must bear themselves responsible for the damage caused by such excessive strain unduly put on the derrick boom and the mast.

Respondents, however, maintained throughout that the accident was due to the fact that the rigging screw and mainmast were so badly corroded as to be unsuitable for operation, or in other words, the Vessel lacked seaworthiness in this respect. Therefore, Respondents contended, Claimants are guilty of breach of the guaranty provided in clause 2 of the Charterparty, and consequently Respondents do not admit any responsibility for the damage caused to the Vessel but on the contrary they have the right to demand an indemnity for the loss they suffered owing to delay in the carriage of the cargo, etc. They claimed damages in the sum of Yen 1,612,879. But Claimants refused payment thereof, contending that the whole matter is to be attributed

to the fault of the stevedores.

Findings and Award

The Arbitrators find that Claimants were duly authorized by the Owners of the Vessel, the Nanyang Steamship and Enterprises, Ltd., Hongkong, to settle the dispute by submitting it to an arbitration. They also find that Clause 23 of the Charterparty concluded between Claimants and Respondents on the 14th March, 1956, provided that in case any dispute was submitted to an arbitration, the arbitration should be conducted in Tokyo, but in regard to the present dispute they agreed to set aside this provision and submit to an arbitration of Arbitrators appointed by the Japan Shipping Exchange, Inc., in Kobe, and abide by their award as final and conclusive. An arbitration agreement to such effect was consequently signed between the parties on the 10th October, 1956.

Under authorization of the Nanyang Steamship and Enterprises, Ltd., Hongkong, their sole agents in Japan, the Claimants, concluded the Charterparty with the Respondents on the 14th March, 1956, under which the Vessel, s.s. "Gunn", loaded 6,415 British tons iron ore at Calcutta, and in the course of discharge of the cargo at Hirohata Port, the mainmast of the Vessel collapsed. The dispute between Claimants and Respondents relates to this accident and the point at issue lies on the cause of the accident.

Now, Claimants' claim for damages will be first considered. There is no controversy between the parties about the fact that the Hirohata Kaiun Kabushiki Kaisha (hereinafter referred to as "Hirohata Kaiun"), having been appointed by Respondents, were engaged in the discharge of the cargo of the Vessel. The Port of Hirohata is a special port maintained and managed by the Hirohata Iron Foundry of the Fuji Seitetsu Kabushiki Kaisha, and discharge of iron ore, coal, etc. consigned to the same foundry is solely entrusted to Hirohata Kaiun.

And there is no controversy between the parties as to the fact that discharge of the cargo of the Vessel was actually carried on by Hirohata Kaiun's stevedores. As for the ability of these stevedores, there is no doubt that they had acquired ample experience and skill from many years' work as the exclusive stevedores for the Hirohata Iron Foundry. Claimants' contention that the accident was due to the rough operation of the derricks is groundless. For it is established by the depositions of the parties and persons concerned that it is the custom at Hirohata Port to discharge the greater part of each cargo on to the wharf using a crane on land, and only a small quantity of ore remaining in each hold is hoisted with the derricks and winches of the ship and lowered into a lighter. At the time of the accident, the ore in No. 4 hold was being removed to the starboard side shore by the use of the crane. The ore in No. 5 hold had already been unloaded by the use of the crane, and after dark the remaining portion was being removed by the use of the derrick of the ship on to a lighter along the port side. Though the weight of each sling of the cargo (including the bags) exceeded the S.W.L. of 2 tons, the excess was only about ¼ ton. And assuming an excessive strain was imposed on the derrick boom, the fact remains that the usually most vulnerable derrick guy and other cargo gears were not damaged but the mainmast, which should be as strong as anything, collapsed and rigging screw was broken. That shows that, notwithstanding the Vessel was furnished with the verification of "S.W.L. 2 tons", the equipment of the Vessel was in the last stage of bad repair. In other words, the Vessel ought to have been repaired even if the accident had not taken place, and the necessary repair was prompted by the occurrence of the accident. Therefore, if the Claimants' claim were admitted, they would be shifting the burden of repairing their own ship to Respondents.

Respondents, on the other hand, contend that the inscription "S.W.L. 2 tons" only indicates Owners guarantee of the strength of

the derrick boom being up to 2 tons and does not limit the weight of the cargo hoisted at a time to 2 tons. But the words "2 tons" should be interpreted to mean literally and exactly 2 tons and not "about 2 tons". Generally speaking, in the loading and unloading of such bulk cargo as coal or iron ore, unlike in the handling of heavy cargo or machinery, no very strict attention is actually paid to the weight of the cargo hoisted with derrick. In the present case, the S.W.L. was 2 tons, and the stevedores were hoisting about 2 tons at a time. Owners, who well knew the strength of the derrick, ought to have given necessary caution to the stevedores in order to protect the safety of the ship. But there is no evidence of such caution having been given.

Furthermore, on the occurrence of such an accident as the present one, it is up to the shipowners to hold discussion with the stevedores with a view to find out who should be held responsible, and if agreement is not reached, they should obtain a written certificate certifying the relevant facts and entrust their agents with the settlement of the matter. It is to be regretted that they made no such efforts and no documents or matters which serve as evidence have been preserved.

As for the Respondents' claim for damages, it is based on the lack of seaworthiness of the Vessel. But the accident took place owing to the fact that despite the S.W.L. of the derrick boom of the Vessel was 2 tons, the weight of the cargo hoisted by the stevedores was 2.297 tons. It did not take place when the iron ore hoisted was under 2 tons. Therefore, there is no ground to say that the accident was due to the lack of seaworthiness of the Vessel. Respondents' claim cannot therefore be admitted.

The foregoing findings having been reached upon careful consideration of the pleadings of Claimants and Respondents and all evidences produced, the Arbitrators dismiss both the claims of Claimants and the claims of Respondents.

August 9, 1958

ARBITRATION

in re a dispute concerning a time charter of s.s. "ANTO" between

Nitto Shosen Co., Ltd., Charterers . . . CLAIMANTS

and

Kobe Sekiyu Kabushiki Kaisha, Chartered Owners . . . . . RESPONDENTS.

Facts of the Case

On July 10, 1956, Claimants received a transfer of a time charter of the s.s. "ANTO" (hereinafter referred to as "the Vessel") from Banno Brothers Co., Ltd., who had time-chartered the Vessel from Respondents, the Chartered Owners, under a "BALTIME 1939" time charterparty dated May 29, 1956, (hereinafter referred to as "the Time Charter"). Claimants' time charter of the Vessel was to expire on December 31, 1956. Claimants entered into a voyage charterparty with Nanyo Bussan Kabushiki Kaisha for the carriage of Samar Island iron ore, and according to this voyage charterparty for carriage of iron ore the Vessel reached off General MacArthur Port, Samar Island, (hereinafter referred to as "the Port") on December 17, 1956, for the purpose of loading iron ore. Dispute arose as to whether the Port was a safe port or unsafe port, which led to the troubles relating to off hire and other matters.

Pleadings

Claimants stated as follows:—

The Vessel entered the Port on December 20, 1956, at 8.45 a.m. She did not cast anchor at the spot designated by the Port Authority, but proceeded towards the wharf, and through a negligence in the working of the Vessel the hull came in contact with the wharf causing damage to the wharf.

Then the captain of the Vessel declared the port to be an unsafe port, and communicated refusal of loading to the shippers, Samar Mining Co., Ltd., and requested Claimants to change the port of loading on the ground of the Port being an unsafe port "in the present weather."

The Vessel came alongside the wharf on December 22, at 1.45 p.m. and commenced loading. The captain failed to notice that the mooring wire was loose. The Vessel was tossed about and the hull and the wharf were in danger. The Port Authority seeing this called the attention of the Vessel, but she gave no heed to it. On the 23rd a squall came and the situation became worse. So the Port Authority ordered the Vessel to adjust the mooring wire immediately, but no action was taken on the part of the Vessel. Moreover the captain and crew, being in Christmas mood, drank heavily, and were not fit to discharge their duty to meet such situation.

Under such circumstances it became impossible to load a full cargo. Against the 8,475 deadweight long tons of the Vessel, she loaded only 3,891 tons iron ore, and gave up loading on December 24, at 5.20 p.m. On December 25, at 2.30 a.m. another squall came, and the Vessel struck the wharf again and damaged it. The Vessel was also damaged on the hull. She sailed from the Port on December 26, at 8.00 a.m.

Now, the above-said damage to the wharf of the Port and the hull of the Vessel was caused by the negligence of the captain of the Vessel in the management of the ship. He utterly disregarded the caution given by the Port Authority. Respondents and the captain

of the Vessel are liable for indemnity.

Respondents say that the Port was an unsafe port, but it was a safe port, for (1) the telegram from the captain to Claimants reading "the Port is an unsafe port in the present weather" was dispatched on December 20, at 11.30 p.m. and therefore "the present weather" in the telegram has nothing to do with the weather at the time of the Vessel's arrival at the Port, (2) there is no noteworthy entry in the log-book concerning the weather at the time, (3) in the captain's letter of December 22 addressed to the Samar Pier Manager it is said that the Vessel would come alongside the wharf and commence loading as soon as notice of readiness was received and that no pilot was needed for the Vessel to reach the wharf, (4) under General MacArthur Iron Ore Voyage Charterparty since 1950, over 350 ships of various flags had loaded iron ore at the Port in all seasons of the year without any hitch.

For these reasons Claimants assert that the captain's declaration of the Port being an unsafe port is a deliberate falsehood uttered for the purpose of evading and shifting the liability for the compensation for the loss caused by damage to the Vessel, etc.

On the foregoing grounds, Claimants demand Respondents to pay them a total sum of Yen 3,116,155, calculated as follows:—

(1) Yen 1,131,750 is demurrage for the period from the Vessel's reaching the Port till she came alongside the wharf on December 22, at 1.45 p.m. Since the Port is a safe port and the Vessel refused loading without cause, the period is off hire and this amount is charged to Respondents.

(2) Yen 5,847,478 is the charterage for the period from the Vessel's giving up lodaing till her arrival at Moji (December 24, 5.20 p.m., 1956 to January 7, 0.30 p.m., 1957), plus cost of fuel and boiler water which are to be repaid in accordance with clause 4 of the Time Charter. The hire for the said period is regarded

as suspended by virtue of clause 11 of the Time Charter, for the reasons that the damage caused to the wharf was due to the non-performance on the part of the captain of his fundamental duty of so manning the Vessel as would maintain the efficiency of the Vessel, and that the hull of the Vesssl was also damagd and the quantity of the cargo loaded was far below the capacity of the Vessel.

(3) Yen 19,790 is the agency fee and cost of correspondence which Claimants had to pay owing to the fact that the Vessel was forced to call at Nagasaki on account of short bunker on her way from the Port to Moji.

(4) On the ground that Claimants did not pay the expenses of repairing the hull of the Vessel as well as the charterage for December 30, 1956, and onward, the captain of the Vessel retained the cargo as soon as the Vessel reached Moji and refused unloading until 6.00 p.m. on January 8. But Respondents had no right to retain the cargo, and therefore Claimants are not bound to pay Yen 651,474, charterage for the period during which unloading was refused.

(5) Claimants will pay for the remaining fuel oil and boiler water which they bought from Respondents at the commencement of charter and the unpaid charterage Yen 2,520,091 for the period from January 8, 1957, 6.00 p.m. when the above-said retention of the cargo was lifted, until January 13, 1957, 4.00 p.m. when unloading was finished and holds cleaning was completed. Owners' sundry expenses relating to the Time Charter, price of fuel oil and boiler water remaining at the time of return of the Vessel, etc., amounting in total to Yen 1,157,698 are to be borne by Respondents.

Respondents, on the other hand, declined Claimants' demand and claimed £14,345 19s. 2d. from Claimants. They pleaded as follows:

1. The Vessel reached the Port on December 20, 1956, at

8.45 a.m., and cast anchor at the designated place. At the time there were in the Port many shallows without marks, and moreover the weather was so bad that there were signs of a coming squall. The captain felt danger in the working of the Vessel, and sent a telegram to Claimants reading "As the Port is an unsafe port in the present condition, please change the port of loading." The telegram did not say "in the present weather" as Claimants allege. Claimants misread the telegram. "The Port is an unsafe port in the present condition" meant that the Port was an unsafe port not only because of the weather at the time but also because of the fact that there were not sufficient floating buoys and from all other natural and artificial points of view.

Therefore there is no truth in Claimants' argument that the Port was not an unsafe port inasmuch as there is no entry concerning the weather in the log-book. The fact that the Port has hitherto been recognized as a safe port by the ships of various countries and that the captain said in his letter of December 22 addressed to the Pier Manager that the Vessel would reach the wharf and commence loading as soon as notice of rendiness was received and that no pilot was needed for the Vessel to come alongside the wharf does not serve as decisive evidence of the Port not being an unsafe port. Whether the Port is a safe port or an unsafe port can only be decided according to the actual condition of the Port at the time of the Vessel's reaching the Port and all constant and contingent facts.

At all events, the Claimants declined captain's request to change the port of loading, and Respondents according to clause 9 of the Time Charter faithfully followed Claimants' directions and performed loading with all possible care and diligence. Respondents carried on loading at the Port which is an unsafe port, and therefore any loss incurred through the fact that the Port was an unsafe port should be indemnified by Claimants. This is self-evident from the provi-

sions of clauses 9 and 13 of the Time Charter.

2. Claimants say that the period from December 20, 8.45 a.m. when the Vessel entered the Port till December 22, 1.45 p.m. when she came alongside the wharf is off hire. However, the captain and crew never refused to sail to the Port, but as Claimants declined the captain's request to change the port of loading for the reason of the Port being an unsafe port, he felt compelled to decide to carry on loading at the Port with great efforts. Therefore Claimants' contention that the above-said period forms off hire is groundless.

3. The mooring buoy to which the Vessel was moored during the loading alongside the wharf was not fixed, and therefore when a squall came on December 23 and again on December 25, the Vessel could not get afloat, and came in collision against the wharf damaging the wharf and the hull of the Vessel, and loading became impossible. The cause of this accident was the improper position of the buoy to which the Vessel was moored, and therefore all responsibility for the result rests on Claimants. Claimants arbitrarily judge that the Vessel was not seaworthy, and connecting it with the crew's non-performmance of duty, call it the breach of Owners' warranty of the seaworthiness of the Vessel. Such argument is absolutely irrelevant. Assuming that Claimants' allegation is right, Owners are exempted from responsibility for any damage or delay caused by the neglect or default of the captain or other servants of theirs by clause 13 of the Time Charter.

4. Claimants say that the period from December 24, 1956, 5.20 p.m. when the Vessel gave up loading till January 7, 1957, 0.30 p.m. when the Vessel reached Moji is off hire according to clause 11 of the Time Charter. But the off hire clause is applicable only in a case where any event mentioned in the clause takes place making the Vessel's performance of duty impossible, no matter whether or no there is any malfeasance or negligence on the part of Owners.

During the said period the Vessel continued voyage and discharged the duty in accordance with the Time Charter. Neither theoretically nor practically can the said period be said to be off hire. Therefore Claimants have no cause whatever for claiming the repayment of the paid charterage for the said period amounting to Yen 2,876,019, price of fuel oil and boiler water amounting to Yen 2,971,459, and agency fee at Nagasaki and correspondence cost amounting to Yen 19,790.

For the foregoing reasons Respondents demand Claimants to pay compensation for the damage caused by the accident, the charterage the payment of which is suspended on account of the dispute, and other various expenses. But Respondents will pay £149 7s. 5d., the price of remaining oil and boiler water which Respondents received at the time of the delivery of the Vessel at Wakamatsu on January 14, 1957.

Findings and Award

The Arbitrators will make no comment on the matters about which there is no controversy between the parties.

The points at issue are whether or no the Port was an unsafe port at the time; whether or no the period during which the Vessel was moored off port, the period from the time when loading at the Port was given up till the time of Vessel's reaching Moji, and the period during which the cargo was retained at Moji are off hire; and who is to pay the expense caused by the Vessel's calling at Nagasaki, the cost of repairing the Vessel, and other expenses.

The starting point of the dispute is the question whether the Port was an unsafe port or not. So the Arbitrators will first deal with this question. That a port is a safe port means that at a given time the port is in such a condition as a ship can safely enter it and safely come alongside a wharf and load cargo. Whether a port is

a safe port or an unsafe port may not be decided only by the subjective judgment of the captain of the ship, but in each actual instance it must be judged objectively according to such general idea as any navigator should have.

Now, on Samar Island in winter the north-east monsoon blows occasionally accompanied by squalls. This is well known to navigators. Even if there were some adverse weather conditions at the time when the Vessel reached the Port, that was a temporary natural phenomenon which could have been foreseen and there is no evidence of the presence of such worst condition as would have made the Port an unsafe port. And since the Port was opened in 1938 as a port for shipping Samar iron ore, many Japanese ships went to the Port, and especially after the War till the happening of the present accident over a hundred ships of about the same size had yearly visited the Port, but not a single case has as yet taken place which would have proved the Port an unsafe port. On the contrary, it appears that the captain of the Vessel failed to work the Vessel properly at the Port. Consequently it is not hard to determine that the Port was not an unsafe port as Respondents allege.

The Port having been found to be a safe port, if the damage caused to the hull of the Vessel was of such a degree as did not hamper the working of the Vessel, Respondents were bound to perform their duty under the Time Charter. Now on this premise we shall consider which side is right in their contention and whether claims are justifiable.

1. Claimants say that the loss of charterage Yen 1,131,750 for the period from December 20, 1956, 8.45 a.m. when the Vessel reached the Port till December 22, 1956, 1.45 p.m. when the Vessel came alongside the wharf was caused by Respondents' refusal to come alongside the wharf, and therefore should be treated as off hire. But if the time spent after the occurrence of the accident in

the correspondence between Claimants and the Vessel and between the Vessel and the shippers, Samar Mining Co., Ltd., the above-said period is of the length usually necessary for the correspondence and negotiation concerning an accident of this kind, and it cannot be said to be unjustifiable, nor can it be treated as off hire. So we do not find Claimants are entitled to demand Respondents to pay the charterage loss Yen 1,131,750 as off hire.

2. Claimants say that the loss caused by the detention of the Vessel and short loading arose from Owners' nonperformance of their fundamental duty of maintaining the seaworthiness of the Vessel by supplying able captain and crew, and that by causing damage to the hull made it impossible for the Vessel to load a complete cargo, and as the result, in spite of the dead weight tonnage of the Vessel being 8,475 long tons the Vessel could load only 3,891 kilo tons iron ore. For this reason Claimants regard the period from December 24, 1956, 5.20 p.m. when the Vessel gave up loading till January 7, 1957, 0.30 p.m. when the Vessel reached Moji as off hire and demand Respondents to repay the paid charterage, price of fuel oil and boiler water for the period amounting to Yen 5,847,478.

But the Vessel cannot be deemed to have lacked seaworthiness as alleged by Claimants. Assuming the Vessel lacked seaworthiness, the relevant clauses of the Baltime 1939 Time Charterparty do not justify a breach of warranty of seaworthiness creating off hire.

Clause 11 on which Claimants rely provides for the suspension of payment of charterage on the ground of equity, irrespective of any responsibility of Owners, when any loss of time occurred from the charterers' failure to satisfy the service required at the time by the charterers owing to the occurrence of any event mentioned in the clause. Samar Mining Co., Ltd. feared their wharf might be further damaged by the aforementioned accident and communicated to the captain of the Vessel on December 24 "If you promise in writing that

you will not further damage the wharf, you may continue loading." The captain, maintaining that the Vessel has no responsibility for such accident, refused to give a written promise and said "If you desire the continuation of loading, we will fully cooperate as we have hitherto done by the services of our crew. If you compel the Vessel to give up loading without loading a complete cargo, I shall demand you to issue a certificate of dead-freight. I believe in the present condition loading can be continued," and attempted to load a complete cargo. Samar Mining Co., Ltd., who had misgivings about the working of the Vessel tried to avoid complete loading and seems to have waited for the Vessel to be in better trim until December 24 when they arbitrarily finished loading. On December 25 the Vessel came in collision against the wharf and the hull was damaged, but by reference to the surveyor's report given at Moji at the close of the voyage it is seen that the Vessel during this voyage at least was in a condition capable of navigating with a complete cargo.

As far as the Vessel was in a condition capable of sailing with a complete cargo, even if there was some misfeasance on the part of the captain in the working of the Vessel, Samar Mining Co., Ltd. ought to have in cooperation with the captain endeavoured to see that the Vessel loaded a complete cargo. In spite of the fact that it was clear to them that the captain was ready to load a complete cargo, they arbitrarily gave up loading. Claimants should place responsibility on Nanyo Bussan Kabushiki Kaisha who is the party to the contract of carriage.

In the foregoing circumstances, the Vessel must be said to have been in a condition capable of performing the work requiured by Claimants on December 24, 1956, at 5.20 p.m., when loading was given up and Claimants allege off hire commenced, and according to clause 11 of the Time Charter no fact causing the commencement of off hire can be found.

3. Next will be considered the fact that the Vessel, owing to the want of fuel, called at Nagasaki on January 2, 1957, without notice to Claimants, and stayed there till January 6. Now the Vessel had left the Port on December 26, 1956, with 370 tons fuel oil in stock. Owing to a high pressure engine trouble the daily consumption of fuel oil rose to 34 tons on December 29, and the captain informed Claimants of his desire to call at Naha in order to replenish fuel and requested them to make the necessary arrangements. But Claimants refused the captain's request alleging that the Vessel was able to proceed as far as Yahata if the Vessel had 370 tons fuel oil on it and that the damage caused to the hull at General MacArthur brought about off hire and it was not necessary to replenish fuel oil at Naha. In this connection it is seen from the documentary evidence produced by Claimants that the fuel consumption is 27 tons, the speed is 9.5 knots, and during the first and second voyages under the present time charter the actual average daily consumption of fuel oil was 30.4 tons and the speed was 8.816 knots. But Claimants never raised any objection to Respondents regarding such difference between the contract and the actual facts, and during the examination of Claimants they made no statement regarding such difference. Therefore Claimants are deemed to have to some extent tacitly consented to the increase of fuel consumption and the decrease of speed. So it was not right for Claimants to refuse the captain's request to call at Naha. Nor was there any fault on the part of the Vessel in calling at Nagasaki for fuel oil, as will be seen from reference to the docuumentary evidence produced by Sawayama Shokay, Nakasaki, at the instance of the Arbitrators. Thus Claimants' contention to treat the period from December 24, 1956, 5.20 p.m. when the Vessel gave up loading till January 7, 1957, 0.30 p.m. when the Vessel reached Moji as off hire by virtue of clause 11 of the Time Charter cannot be admitted, and Claimants' demand for refundment of the paid charterage, cost of consumed fuel

oil, and the cost of boiler water, totalling Yen 5,847,478, is not allowed.

The agency fee at Nagasaki and correspondence expenses, amounting to Yen 19,780, must be borne by Claimants.

4. It is contended by Claimants that the period from January 7, 1957, 0.30 p.m. till January 8, 1957, 6.00 p.m., during which the captain according to Respondents' instruction exercised the right of lien on the cargo and refused unloading should be treated as off hire and the charterage for that period Yen 651,474 is not to be paid by Claimants. But it was shown by Respondents' statement made during the hearing that Claimants did not pay charterage to Respondents and Respondents also had not paid charterage to the owners of the Vessel, and so the owners of the Vessel instructed the captain to retain the cargo, and upon Respondents' paying charterage to the owners of the Vessel the lien on the cargo was lifted. Therefore there was no fault on the part of Respondents, and the cause was Claimants' nonpayment of charterage. Therefore Claimants' demand to treat the period of retention of cargo as off hire cannot be admitted.

5. As regards the advances which Claimants demand Respondents to refund, it has been found on careful examination that since clause 14 of the Time Charter had been struck out by mutual consent, the advences must be regarded as having been made on Claimants' own account unless it is proved that they were made with Respondents' previous consent. The Arbitrators, accordingly, decide that out of Yen 1,157,698 claimed by Claimants, Yen 809,698 is adequate.

Next, Respondents' Claims will be considered.

1. Respondents, in connection with the contention that the Port was an unsafe port, say that Claimants should, according to clauses 2, 9(1) and 13, bear full responsibility for the damage suffered by the Vessel at the Port and the damage caused to the wharf by the Vessel being tossed by the squall and colliding against the wharf owing

to the buoy not being fixed. And Respondents claim Claimants to pay damages of £2,791 6*s*. 4*d*. But it cannot be admitted that the Port was an unsafe port, and according to investigations made by the Arbitrators and depositions of witnesses, the damage to the wharf and the hull must be attributed to the failure on the part of the Vessel to sufficiently adjust the mooring buoy. Moreover, when a violent squall was threatening, the Vessel ought to have immediately moved off, but there is no trace of the Vessel's having taken such steps. So there is no reason for Claimants' demand for damages from Respondents.

Clauses 2, 9(1), and 13 have no direct relation to the controversy.

2. As regards Respondents' claim for charterage unpaid by Claimants, Respondents say the charter came to an end on January 14, 1957, at 8.00 p.m., when replenishment of 379 tons fuel oil for sailing to Hongkong completed at Wakamatsu. But Claimants say that the charter ended on January 13, 1957, at 8.00 p.m., when unloading completed and holds cleaning was finished.

In clause 5 of the Time Charter it is provided that the remaining fuel oil at the close of the charter may be 400 tons minimum and 600 tons maximum. So Claimants should deliver the Vessel after replenishing oil up to the fixed amount at the time of the close of the charter. And the time spent in replenishing oil up to the stipulated amount should be accounted for by Claimants. Therefore the Arbitrators dismiss Claimants' contention and admit Respondents' claim. The Arbitrators, therefore, are unable to find any reason to treat the period from December 20, 1956, 8.45 a.m. till January 14, 1957, 8.00 p.m. when the charter came to end as off hire, and admit Respondents' claim for £7,373 5*s*. 0*d*. being unpaid charterage for the period from December 31, 1956, 8.00 a.m. till January 14, 1957, 8.00 p.m. when the charter ended.

3. As regards Respondents' demand to Claimants for the cost

of repairing the damaged part of the hull amounting to £849 17*s.* 4*d.*, charterers' liability for repair is usually determined by examining the condition of the ship at the time of the commencement of charter (so-called on hire survey) and the condition of the ship at the time of the close of charter (so-called off hire survey) and comparing the results of both examinations. But the statement of account of the repairing expense does not show such details.

4. Respondents demand from Claimants the price of fuel oil and boiler water delivered to Claimants at the time of the commencement of charter amounting to £2,599 11*s.* 9*d.* Claimants have already accepted this demand of Respondents.

5. As regards Respondents' other claims to Claimants, the Arbitrators have carefully considered them and have come to the conclusion that there is no reason why the following should be borne by Claimants, namely interest on the price of fuel oil and boiler water delivered to Claimants at the commencement of charter on July 4, 1956, amounting to £162 10*s.* 9*d.*, allowance paid to the crew at the Port on December 25, 1956, amounting to £17 10*s.* 0*d.*, the Vessel's telegraphic fee during the charter to be borne by Claimants amounting to 8*s.* 9*d.*, part of the cost of Surveyor's Report, to be borne by Claimants, of the quantity of remaining fuel oil and boiler water at the time of the delivery of the Vessel at Wakamatsu on January 13, amounting to £2 4*s.* 7*d.*, and Claimants' general average contribution owing to typhoon near Okinawa Islands on August 1, 1956, amounting to £104 0*s.* 11*d.* Respondents' other claims totalling £693 11*s.* 2*d.* are admitted.

Award

1. Claimants shall pay to Respondents Yen 9,842,237.

2. Arbitration fee and expence Yen 500,000 shall be paid by Claimants and Respondents being equally devided between both parties.

September 7, 1959

Clauses of Charterparty Cited

Trade 2. The Vessel to be employed in lawful trades for the carriage of lawful merchandise only between good and safe ports or places where she can safely lie always afloat .....

Master 9. The Master to prosecute all voyages with the utmost despatch and to render customary assistance with the Vessel's Crew. The Master to be under the orders of the Charterers as regards employment, agency, or other arrangements. The Charterers to indemnify the Owners against all consequences or liabilities arising from the Master, Officers or Agents signing Bills of Lading or other documents or otherwise complying with such orders, as well as from any irregularity in the Vessel's papers or for overcarrying goods. The Owners not to be responsible for shortage, mixture, marks, nor for number of pieces or packages, nor for damages to or claims on cargo caused by bad stowage or otherwise.

Suspension of Hire etc. 11. In the event of drydocking or other necessary measures to maintain the efficiency of the Vessel, deficiency of men or Owners' stores, breakdown of machinery, damage to hull or other accident, either hindering or preventing the working of the vessel and continuing for more than twenty-four consecutive hours, no hire to be paid in respect of any time lost thereby during the period in which the vessel is unable to perform the service immediately required. Any hire paid in advance to be adjusted accordingly.

Responsibility and Exemption 13. The Owners not to be responsible in any other case nor for damage or delay whatsoever and howsoever caused even if caused by the negrect or default of their servants.

Lien 18. The Owners to have a lien upon all cargoes and sub-freights belonging to the Time-Charterers and any Bill of Lading freight for all claims under this Charter, and the Charterers to have a lien on the Vessel for all moneys paid in advance and not earned.

INDEPENDENT EXPERT OPINIONS

rendered by Special Referees of the Japan Shipping Exchange, Inc.

1. Computation of Demurrage.

Date on which the opinion was given: September 20, 1962.
Applicants for the opinion: Nippo Kisen Kabushiki Kaisha.

Questions Referred

1. Is demurrage as a rule payable for running days?

2. In case where it is clear from the contract that only weather working days are to count as laydays, is demurrage also to be payable only for weather working days unless there is an agreement to the contrary between the parties?

Expert Opinion

1. As a general rule, demurrage is payable for running days. If on any day, or part thereof, during the days on demurrage, loading or unloading is impossible owing to the fact of the day falling on a Sunday or Holiday or owing to bad weather or other vis major, such day is not excluded in the computation of demurrage. The days on demurrage commence to run as soon as the laydays allowed for loading or unloading have expired and when once the days on demurrage have commenced to run, they run on continuously independently of any stipulation concerning the laydays, and a Sunday or Holiday or any

day or part thereof on which loading or unloading is prevented by bad weather or other vis major is not excluded from the days on demurrage (*Antiere Navale Triestina* v. *Handelsvertretung,* [1925] 2 K.B. 172). This is the meaning of the maxim: "Once on demurrage, always on demurrage." Therefore, if it is intended to exclude from the days on demurrage any day or part thereof on which loading or unloading becomes impossible owing to the fact of the day falling on a Sunday or Holiday or owing to bad weather or other vis major, that must be expressly stipulated in the contract.

2. If it is expressly provided in a charterparty that the laydays allowed for loading or unloading should be weather working days, that is a condition only relating to the laydays allowed for loading or unloading, and it does not follow that the days on demurrage should also be weather working days. If it is intended that the days on demurrage should be limited to weather working days, such condition must be expressly provided in the charterparty.

In limiting laydays to weather working days and excepting therefrom Sundays and Holidays, it is expected that the charterers will complete loading or unloading within the laydays allowed. The vessel is not expected to be detained after the laydays have expired. Consequently, for any detention after the expiration of laydays an ample compensation has to be paid to the shipowners. This is the basis of the doctrine of "once on demurrage, always on demurrage."

If it is desired to exclude Sundays and Holidays and days on which loading or unloading is impossible on account of bad weather or other vis major from days on demurrage, as well as from laydays, that should be expressly provided in the charterparty or "demurrage to be paid per like day" should be inserted (see *Rayner* v. *Condor Co.* (1895), 1 Com. Cas. 80; J.Bes, *Chartering and Shipping Terms,* pp. 30-31). In the absence of such stipulation, the matter must be dealt with according to the general principle referred to in 1 above.

Addendum. We may add our views on two arguments which were put forward in connection with the questions referred. The arguments are: (1) The printed demurrage clause in the charterparty reading "Ten running days on demurrage at the rate . . . per day" was crossed out, and a new clause reading "Demurrage, if incurred, to be paid by the charterer" was inserted. This shows that it was not intended that demurrage be paid for running days. (2) It was provided in the charterparty that "Cargo to be loaded, stowed and discharged within a total of twenty-three (23) weather working days of 24 hours, Sundays and Holidays excepted, even if used, if longer detained, charterer to pay Demurrage . . ." From this can be inferred that the days on demurrage should be weather working days of 24 hours, Sundays and Holidays excepted. But both these contentions are wrong. The words "ten running days on demurrage" means that the vessel may be detained for ten running days paying demurrage, and the removal of these words from the charterparty cannot be construed to suggest that demurrage is payable only for weather working days. The words "cargo to be loaded . . . within a total of twenty-three (23) weather working days of 24 hours, Sundays and Holidays excepted, even if used" refer to the laydays allowed for loading, and cannot connote any departure from the principle that demurrage is payable for running days. The nature of demurrage does not permit of any conclusion to the contrary.

2. Relation between the Computation of Laydays and the Bad Weather during the time when a vessel is waiting for berth.

Date on which the opinion was given: September 25, 1963.
Applicants for the opinion: Iwai & Co., Ltd.

Questions Referred

1. In case where one of the conditions relating to the discharge of cargo is "Weather working days, Sundays and Holidays excepted, even if used", should any such part of the time lost in waiting for berth on account of congestion as is not weather working be deducted from the laydays which has already commenced to run?

2. Can a fact of which there is no remark on a time sheet be proved by facts given in evidence?

Expert Opinion

1. If there is in a charterparty a clause stipulating that whether the vessel is in berth or not the laydays shall commence and run, then as far as the vessel is in free pratique and ready to reach a berth and commence loading or discharge, the laydays commence and run, while the vessel is waiting for berth, even if the vessel cannot reach the nominated berth on account of congestion. But if there is in a charterparty a clause limiting laydays to weather working days, then any days during the period of waiting for berth on which no loading or discharge can be done owing to bad weather should not count as laydays. Such is the principle generally accepted. But in actual practice at some ports in Japan, days on which loading or discharge cannot be done on

account of bad weather are counted as laydays.

The clause in the Charterparty now in dispute reading "At each port, time to count 8.00 a.m. first working day after due notice given, whether vessel in berth or not" only stipulates that if the Owners have given to the Charterers due notice of readiness, the laydays commence to run even if the vessel is not in berth. It has nothing to do with the computation of laydays. Therefore, the said clause does not settle the question whether any event happening and making loading or discharge impossible after the laydays have commenced to run should affect the computation of laydays. But the clause "The cargo shall be discharged, . . . per weather working days, Sundays and Holidays excepted, even if used" provides a method of computing laydays. It limits laydays to weather working days, that is, any days on which storm, snowfall or other bad weather do not allow loading or discharge do not count as laydays.

2. There is no doubt that a statement of facts is evidence of high value. But unless the parties have agreed that a statement of facts shall be conclusive evidence, either party may produce evidence in rebuttal of the truth of that statement of facts. If a party to a charterparty has obtained an independent evidence by a reliable means, and produces it to prove the falsehood or imperfectness of a statement of facts produced by the other party, there is a conflict between two items of evidence, and the issue must be decided by due judgement of the cogency of evidence.

It appears that in the time sheet (which is a statement of facts) there was no remark concerning the weather. By the time sheet, therefore, neither can be established that the weather was fine on the day nor that the weather was bad on the day. Therefore, the Charterers must be allowed to

cause their cargo handling agency to investigate the weather of the day, obtain a weather report of the Meteorological Observatory, and statements of facts of other vessels which were loading or discharging at the port on the same day, and preparing a laydays statement based upon these materials, contend the falsehood or imperfectness of the statement of facts of the Owners.

APPENDICES

Forms of Arbitration Agreement and Arbitration Clause

I. Each form of maritime contract prepared by the Japan Shipping Exchange, Inc., contains an arbitration clause. In case where any other form of contract without an arbitration clause is employed, it is desirable that the following clause be inserted in the contract:—

"Any dispute arising from this (Charter Party / Contract) shall be submitted to arbitration by the Japan Shipping Exchange, Inc., in Tokyo or Kobe conducted in accordance with the Maritime Arbitration Rules of the said Exchange in force for the time being, and the award given by the arbitrators appointed by the said Exchange shall be final and binding."

II. Where it is contemplated to apply for an arbitration by the Japan Shipping Exchange, Inc., in accordance with an arbitration clause contained in a contract, the following agreement should first be made between the parties:—

"It is hereby expressly agreed that arbitration stipulated in (Article / Clause) _____ of the (Charter Party / Contract) dated _____, 19__, shall be arbitration by the Japan Shipping Exchange, Inc., in Tokyo or Kobe conducted in accordance with the Maritime Arbitration Rules of the said Exchange in force for the time being, and that the award given by the arbitrators appointed by the said Exchange shall be final and binding."

III. If the parties to a contract desire to appoint their respective

arbitrators, wholly or in part, outside of the Panel of Members of the Arbitration Commission of the Japan Shipping Exchange, Inc., the arbitration agreement should contain the following words:—

"It is understood that each party shall have the right of appointing an equal number of arbitrators from and/or outside of the Panel of Members of the Arbitration Commission of the Japan Shipping Exchange, Inc."

The Maritime Arbitration Rules of the Japan Shipping Exchange, Inc.

Section 1. There shall be set up in the Japan Shipping Exchange, Inc. (hereinafter referred to as "the Exchange") a Maritime Arbitration Commission, which shall perform arbitration, mediation, and other solution of any dispute relating to the ownership (including joint-ownership) of a ship, an agreement of demise, charter or consignment of a ship, or any other maritime matter such as carriage of goods by sea, bills of lading, marine insurance, sale of a ship, building or repair of a ship, salvage, average, etc.

Section 2. If in accordance with an agreement between the parties to a dispute relating to a maritime matter an application in writing is made for its settlement by arbitration, the Exchange will accept the application.

Section 3. If the parties to a dispute have, by an arbitration agreement entered into between them or by an arbitration clause contained in any other agreement between them, stipulated to submit a matter to an arbitration under these Rules, these Rules shall be deemed to constitute part of such arbitration agreement or arbitration clause.

Section 4. (1) Any person desiring to submit a matter to the arbitration of the Exchange shall file a written Application stating that the matter is submitted to arbitration under these Rules. The Application must be accompanied by a Statement of Claim.

(2) An applicant who is a legal person must file a document showing the authority of its representative or a power of attorney empowering its agent to act on its behalf.

Section 5. The Application for Arbitration shall specify the names of the parties, their residences (or their trade names and business offices,

if they are legal persons), capacities of their representatives if they are legal persons, the place of arbitration, the title of the case, and the main points of controversy.

Section 6. (1) The Statement of Claim shall specify the claim made by the applicant and the facts forming the cause of such claim, and shall be accompanied by material documentary evidence (original or copy) supporting such facts.

(2) After a Statement of Claim referred to in the preceding Sub-section has been filed, a varied or additional claim may only be made prior to the appointment of Arbitrators. Such a claim, however, may be made at any time if the consent of the Arbitrators and the other party to the dispute is obtained.

(3) The Exchange may require the applicant to file the Statement of Claim in so many copies as may be needed for the proceedings.

Section 7. When a proper application for arbitration has been made by a party to a dispute, the Exchange shall forward to the other party the Application for Arbitration, the Statement of Claim, and other documents and shall instruct him to file within one month a Statement of his Case together with necessary evidence. The time limit of one month, however, may, if deemed necessary, be conveniently extended.

Section 8. (1) The party who has received delivery of an Application for Arbitration, a Statement of Claim, and other documents may bring a counterclaim in the same matter. Whether such counterclaim should be handled together with the original claim shall be decided by the Arbitrators.

(2) Application for arbitration of any counterclaim must be made in accordance with these Rules.

Section 9. The parties to a dispute must designate Tokyo as the place of arbitration, unless they by mutual consent choose Kobe instead.

Section 10. Documents relating to arbitration shall be sent by

registered post to the residence or business office of each party, except in case where they are handed in exchange for a receipt. Each party, however, may specify a person authorized to receive documents on his behalf and a spot in the place of arbitration upon which he is authorized to do so.

Section 11. (1) When both parties to a dispute are Japanese citizens, the Maritime Arbitration Commission (hereinafter referred to as "the Commission") shall appoint an odd number of Arbitrators from among such persons listed on the Panel of Members of the Maritime Arbitration Commission as have any concern neither with the parties nor in the subject of controversy. But a person or persons not on the Panel may be appointed an Arbitrator or Arbitrators, when such appointment is deemed particularly necessary.

(2) After the appointment of Arbitrators the Commission may appoint an additional Arbitrator or additional Arbitrators if required by mutual consent of the Arbitrators.

Section 12. (1) When one of the parties is not, or neither of them is, a Japanese citizen, the parties, notwithstanding the provisions of the preceding Section, may each appoint an equal number of Arbitrators.

(2) If in a written agreement between the parties there is a stipulation about the method of appointing Arbitrators, the parties may in accordance with that stipulation appoint to be Arbitrators such persons as they think fit.

(3) When Arbitrators have been appointed according to the provisions of either of the preceding two Sub-sections, the parties shall without delay file with the Exchange a notice of appointment accompanied by written acceptances of the office signed and sealed by the Arbitrators appointed. These Arbitrators, in performing the office of arbitration, shall be deemed to be Arbitrators appointed by the Commission.

Section 13. In the arbitration proceedings constituted according to the provisions of the preceding Section, an Umpire to preside over the proceeding shall be appointed by the Commission from among such persons on the Panel of Members of the Commission (or persons not so empanelled, in case of particular need) as have any concern neither with the parties nor in the subject of controversy.

Section 14. If a vacancy takes place in the Arbitrators through resignation or otherwise, it shall be filled according to the provisions of the preceding Sections.

Section 15. The parties may challenge an Arbitrator on the same grounds as a party to a civil action might challenge a Judge (Section 792 of the Civil Procedure Code). If a party, knowing the existence of a cause of challenge against an Arbitrator, attends the hearing before that Arbitrator, he shall forfeit the right to challenge him; but if a cause of challenge arises after the commencement of the arbitration proceeding or if a party did not know the fact upon which he could have objected the Arbitrator, he shall not be prevented from making challenge.

Section 16. A motion for challenge shall be made to the Commission in writing showing cause.

Section 17. (1) Challenges shall be tried and determined by the Commission.

(2) A party challenging cannot appeal from a decision allowing challenge. From a decision dismissing challenge an immediate appeal may be made to the competent Court.

Section 18. (1) The Arbitrators shall fix the date and place of hearing and give notice of them to the parties at least seven days prior to the day of hearing. But the notice may be given later in case where special reasons exist for delay.

(2) The parties, if they find it necessary, may request a change of the date of hearing, in writing showing cause, so as to reach the

Exchange at least three days prior to the originally fixed date. The request will be granted only for a cogent reason.

Section 19. The parties shall appear at the hearing at the appointed date either in person or by proxy.

Section 20. The Arbitrators, in order to examine the subject of controversy and elucidate relevant facts, may request voluntary appearance of witnesses and experts and examine them, and take evidence in any other way.

Section 21. The parties may, at any time before the conclusion of hearing, produce evidence, and with the consent of the Arbitrators call witnesses or experts.

Section 22. The Arbitrators shall question the parties whether any evidence, witness, or expert still remains to be called, and upon ascertaining that there is none, shall declare the conclusion of hearing. But the Arbitrators may, by their own discretion, or in compliance with either party's admissible request, allow further evidence to be taken or order the hearing to be re-opened, at any time before an award is given.

Section 23. When oral examination of the parties is impossible or there is a reasonable ground for dispensing with such examination, an ward may be adjudicated solely on the documentary evidence produced by the parties.

Section 24. At any stage of the arbitration proceeding the Arbitrators may, with the consent of the parties, settle whole or part of the dispute by mediation.

Section 25. In any of the following cases the Arbitrators may without going into examination of the subject of controversy disallow or dismiss the application for arbitration or make such other decision as they deem fit:—

1. When the arbitration agreement is not lawfully made, is void, or cancelled.

2. When either of the parties is not lawfully represented or his agent has no authority to act on his behalf.
3. When both parties without cause fail to appear at the date set for hearing.
4. When both parties fail to comply with such directions or requirements of the Arbitrators as they consider necessary for a proper conduct of the arbitration proceeding.

Section 26. The Arbitrators shall within thirty days after the annoucement of the conclusion of hearing adjudicate a final award. This time, however, may be extended if necessary.

Section 27. (1) A final award, the disallowance or dismissal of an application for arbitration, or any finding, rule, or order of the Arbitrators must be made upon their deliberation and resolution.

(2) The resolution referred to in the preceding Sub-section must be passed by a majority vote of the Arbitrators who took part in the arbitration proceeding, unless there is a stipulation to the contrary in the arbitration agreement.

Section 28. (1) A final award must be reduced to writing and signed and sealed by all the Arbitrators who took part in the proceeding and the Chairman of the Commission (or a person authorized by him to sign and seal on his behalf). The written award shall state the following:—

1. The names and addresses of the parties to the dispute and their representatives or agents.
2. The ward.
3. The material facts and the main points at issue.
4. The grounds upon which the award is rendered.
5. The date on which the written award is prepared.
6. The costs of arbitration and a direction as to their payment.
7. The competent Court. (It should be the Tokyo District Court or the Kobe District Court, but another Court may be

selected by mutual consent of the parties.)

(2) The written award shall as a rule be in the Japanese language, but according to the request of either party it may be made out in the English language in addition to the Japanese version, and both the Japanese and the English versions may be regarded as the original texts of the award. Should any conflict or variance arise in the interpretation of the award between the two versions, the Japanese version should be regarded as conclusive.

Section 29. If during the progress of the arbitration proceeding the parties settle out of the arbitration proceeding any part of the dispute, the terms of such settlement may, if required by the parties, be embodied in the award.

Section 30. Authentic copies of the award signed and sealed by the Arbitrators shall be served on the parties, and the original document of award shall be deposited with the Office of Clerks of the Court of competent jurisdiction in accordance with Sub-section 2 of Section 799 of the Civil Procedure Code.

Section 31. If any miscalculation, misprint, mistyping, miswriting, or any other apparent error is discovered on the face of the written award within a week after its service, the Arbitrators can rectify it.

Section 32. Only the parties to the dispute, but no other persons, will for a reasonable cause be permitted to inspect documents relating to the arbitration.

Section 33. The awards given by the Arbitrators shall be published in the periodical issued by the Exchange, *The Kaiun,* unless both parties beforehand communicate their objections.

Section 34. Documents submitted to the Exchange by the parties will not as a rule be returned. If any document is desired to be returned, it must be marked to that effect at the time of its submission, and a copy thereof must be attached to it.

Secion 35. (1) Each party shall within a reasonable time after

filing an Application for Arbitration pay to the Exchange an engagement fee of Yen 30,000, and deposit, for appropriation to the payment of the arbitration fee and ordinary expenses, one per cent of the amount of his claim when such amount is designated (or Yen 50,000 if one per cent of his claim is less than Yen 50,000) or Yen 100,000 when the amount of his claim is not designated.

(2) The money deposited against the arbitration fee and expenses will not be returned in any case other than where the application for arbitration is withdrawn prior to the day set for the first hearing. The engagement fee will in no case be returned.

Section 36. Expenses caused by the particular nature of the subject of controversy, and the expenses defrayed on account of calling witnesses or experts by the Arbitrators, shall, notwithstanding the provisions of the preceding Section, be equally apportioned between the parties to the dispute. The expenses in respect of witnesses or experts called by a party shall be borne by the party who called them.

Section 37. Payment or otherwise of a remuneration to the Arbitrators appointed by the Commission, its amount, and how it shall be disbursed shall be determined by consultation between the Chairman and the Deputy Chairman of the Commission taking into consideration the degree of difficulty of the subject of controversy and other circumstances.

Section 38. The formation of the Commission, the Panel of its Members, and the appointment of Arbitrators from among the empanelled Members shall be provided for in the Rules of the Maritime Arbitration Commission.

Section 39. (1) Any difference among the Arbitrators concerning the interpretation of these Rules shall be determined by a majority vote of the Arbitrators.

(2) Failing the determination referred to in the preceding Sub-section, the Arbitrators may refer the matter to the Commission

for final decision. Any doubt in the interpretation of these Rules may likewise be settled.

Section 40. Regulations necessary for putting these Rules into operation shall be separately made.

Supplementary Rules.

These Rules shall come into operation on the 13th September, 1962. Matters for which application for arbitration was made prior to the coming into force of these Rules shall be dealt with according to the former Rules governing Maritime Arbitration.

The Rules of the Maritime Arbitration Commission

Section 1. There shall be set up in the Japan Shipping Exchange, Inc., a Maritime Arbitration Commission.

Section 2. The object for which the Maritime Arbitration Commission is set up is to promote arbitration, mediation, and other means of solution of disputes relating to maritime matters, and thereby to contribute to a satisfactory operation of maritime trade.

Section 3. In order to attain the object referred to in the preceding Section, the Commission will carry on the following activities:—

1. To make, alter, and interpret the Rules of Maritime Arbitration.
2. To participate in consultation and give advice relating to international maritime arbitration cases.
3. To examine, investigate, and study matters relating to maritime arbitration.
4. To appoint arbitrators, experts, and certifiers in regard to maritime disputes.
5. To compile and maintain a Panel of Members of the Maritime Arbitration Commission.
6. To encourage and promote the insertion of an arbitration clause in maritime contracts.
7. To compile and publish materials relating to maritime arbitration.
8. To do other things necessary for achieving the object of the Commission.

Section 4. (1) The Commission shall be composed of a number of persons selected by the Board of Directors, and recommended by the President, of the Japan Shipping Exchange, Inc., from among the

Members (both regular and associate) of the Exchange and other persons of learning and experience.

(2) Those persons who have been recommended to be members of the Commission shall be listed on the Panel of Members of the Maritime Arbitration Commission.

(3) The vacancy made by the resignation of a Member of the Commission may be filled according to the provisions of the preceding two Sub-sections.

(4) The term of office of the Members of the Commission shall be two years.

(5) A Member who fills the vacancy caused by the resignation of a Member shall be in office for the remaining period of his predecessor's term.

Section 5. There shall be in the Commission a Chairman and a Deputy Chairman elected by and from among the Members of the Commission.

Section 6. The Chairman of the Commission represents the Commission and has general control of the business of the Commission. The Deputy Chairman assists the Chairman and acts on his behalf.

Section 7. The Chairman shall convene a meeting of the Commission when necessary.

Section 8. (1) The meeting of the Commission shall be constituted by one fourth or more of its Members, and its resolutions shall be passed by a majority of the Members present.

(2) The chairman of the meeting has a vote in the resolutions referred to in the preceding Sub-section.

Section 9. The Chairman and the Deputy Chairman of the Documentary Committee (Rules of the Documentary Committee, Section 5) can be present at the meeting of the Maritime Arbitration Commission and give their opinions, but have no right of vote.

Section 10. The Chairman of the Commission shall preside over the meeting of the Commission. If he is unable to do so, the Deputy Chairman shall take his place. If both the Chairman and the Deputy Chairman are unable to take the chair, a person elected by and from among those present shall preside.

Section 11. The Chairman of the Commission shall report to the Commission the results of arbitrations, filing with the Commission copies of the awards, reports, or certificates prepared by Arbitrators, experts, or certifiers respectively.

Section 12. The Chairman of the Commission, if he considers it necessary, can entrust a suitable person with the investigation of a professional, technical, or other specific matter and let him report the results to the Commission.

Section 13. (1) In case where any business of the Commission needs deliberation or investigation extending over some length of time, the Chairman of the Commission can nominate a number of persons from among those on the Panel of Members of the Maritime Arbitration Commission and assign the task to them.

(2) The persons nominated in accordance with the provisions of the preceding Sub-section shall form a Special Committee.

(3) The Special Committee shall report to the Commission the results of its deliberation or investigation.

Section 14. The Chairman of the Commission shall from time to time report to the Board of Directors decisions made, resolutions passed, and other matters dealt with by the Commission.

Section 15. Matters necessary for the management of the business of the Commission shall be provided for in the private regulations of the Commission.

Section 16. Any amendment to these Rules can upon the instance of the Chairman be made by the Commission with approval of the Board of Directors.

Supplementary Rule.

These Rules shall come into operation on the 13th September, 1962.

The Rules of Appraisal, Certification, etc., of Maritime Matters

Section 1. Any person desirous of obtaining from the Japan Shipping Exchange, Inc., a written opinion, advice, appraisal, or certificate relating to the ownership (including joint-ownership) of a ship, an agreement of demise, charter, or consignment of a ship, or any other maritime matter such as carriage of goods by sea, bills of lading, marine insurance, sale of a ship, building or repair of a ship, salvage, average, etc., may file with the Exchange a signed and sealed written application showing the subject matter of the application.

Section 2. Upon receipt of an application referred to in the preceding Section, the Exchange shall decide whether or not it should accept the same, and if it is accepted, the Exchange shall cause the thing applied for to be prepared by such a person as it shall appoint from among those on the Panel of Members of the Maritime Arbitration Commission (or other persons in case of special need).

Section 3. (1) The written appraisal, expert opinion, or certificate shall be in the Japanese language, but it may, according to the request of the applicant, be made out in the English language or in both the Japanese and the English languages.

(2) When a document is made out both in Japanese and in English, both versions shall be regarded as authentic texts. But in case of any difference of interpretation between the two versions, the Japanese version shall be regarded as conclusive.

Section 4. The written appraisal or certificate shall be signed and sealed by the appraiser or certifier and the Chairman of the Commission of Maritime Arbitration (or a person authorized by him to sign and seal on his behalf).

Section 5. (1) When the applicant has received a notice that a written appraisal, opinion, or certificate shall be delivered, he must pay a fee for the same together with such expenses as may have been defrayed.

(2) The amount of the fee referred to in the preceding Subsection shall be fixed by the Maritime Arbitration Commission according to the nature and degree of difficulty of the subject matter and in consultation with the appraiser, expert, or certifier; provided that the fee for appraising the price of a ship shall be Yen 20,000 or more per vessel irrespective of the size and description of the vessel.

Section 6. Regulations necessary for the enforcement of these Rules shall be separately made.

Supplementary Rule.

These Rules shall come into operation on the 13th September, 1962.

Rules relating to Arbitration in the Code of Civil Procedure of Japan

ARBITRATION PROCEDURE

Section 786. An agreement to submit a controversy to one or more arbitrators is valid only when the parties have the right to make a compromise regarding the matter in dispute.

Section 787. An agreement to submit a future controversy to arbitration is void unless it relates to a particular relation of right and a controversy arising therefrom.

Section 788. If in the arbitration agreement no provision is made for the nomination of arbitrators, each party shall nominate an arbitrator.

Section 789. (1) If both parties are entitled to nominate arbitrators, the party initiating the procedure shall in writing signify to the other party the arbitrator of his own nomination and call upon that other party to take the corresponding steps on his side within a period of seven days.

(2) In default of the nomination of an arbitrator within the period specified in the preceding Sub-section, the competent Court, upon application by the party initiating the procedure, shall appoint an arbitrator.

Section 790. A party having nominated an arbitrator is bound by such nomination in relation to the other party as soon as he has given to that other party notice of the nomination.

Section 791. Where an arbitrator nominated otherwise than by an arbitration agreement dies, or his position is otherwise vacated, or he refuses to accept or exercise the office of arbitrator, the party who

has nominated him shall, upon demand by the other party, appoint another arbitrator within a period of seven days. In default of the appointment of an arbitrator within the specified period, the competent Court, upon application by the said other party, shall appoint an arbitrator.

Section 792. (1) The parties may challenge an arbitrator on the same grounds and on the same conditions as they would have the right to challenge a Judge.

(2) Apart from the provisions of the preceding Sub-section, an arbitrator nominated otherwise than by an arbitration agreement may be challenged if he unduly delays the exercise of his office.

(3) Persons under disability, the deaf, the dumb, and persons deprived of or suspended from the enjoyment of public rights may, if nominated to be arbitrators, be challenged.

Section 793. An arbitration agreement shall be void unless by mutual consent of the parties provisions are made therein against the following contingencies:—

1. That, specified persons being nominated arbitrators in the arbitration agreement, any one of them dies, or his position is otherwise vacated, or he refuses to act, or withdraws from the agreement entered into by him, or unduly delays the exercise of his duties;
2. That the arbitrators notify the parties that their opinions are equally divided.

Section 794. (1) The arbitrators, before making an award, shall hear the parties and make such enquiries into the causes of controversy as they deem necessary.

(2) If the parties disagree on the arbitration procedure to be followed, the arbitrators shall adopt such procedure as they think fit.

Section 795. (1) The arbitrators may examine such witnesses and experts as may voluntarily appear before them.

(2) The arbitrators have no power to administer an oath to a witness or an expert.

Section 796. (1) Any act which the arbitrators consider necessary in the course of the arbitration procedure but which they are unable to perform shall, upon application by the parties, be performed by the competent Court, provided such application is deemed proper.

(2) If a witness or an expert refuses to give evidence or expert opinion, the Court which ordered him to do so shall have the power to make such adjudication as may then be necessary.

Section 797. If the parties contend that the arbitration procedure entered upon is not one which is to be allowed, or in particular, that no legally binding agreement of arbitration has been made, or that the arbitration agreement does not relate to the controversy to be settled, or that the arbitrators have no power to exercise their office, nevertheless the arbitrators may proceed with their function and make an award.

Section 798. When an award is to be made by several arbitrators, it shall be decided by a majority vote of the arbitrators, unless otherwise provided in the arbitration agreement.

Section 799. (1) The award shall bear date of the day on which it was prepared, and be signed and sealed by the arbitrators.

(2) Authentic copies of the award signed and sealed by the arbitrators shall be served on the parties, and the original document of award accompanied by a certificate of service shall be deposited with the Office of Clerks of the competent Court.

Section 800. As between the parties the award has the same effect as a final and conclusive judgement of a Court of Justice.

Section 801. (1) Application to set aside an award may be made in any of the following cases:—

1. Where the arbitration was one which ought not to have been allowed;
2. Where the award orders a party to do an act which is pro-

hibited by law;

3. Where in the arbitration procedure the parties were not lawfully represented;
4. Where the parties were not heard in the arbitration procedure;
5. Where the award does not show the ground on which the decision was made;
6. Where for any of the reasons specified in 4, 5, 6, 7 and 8 in Section 420 a motion for a new trial is to be allowed.

(2) An award cannot be set aside for the reasons specified in 4 and 5 in the preceding Sub-section if special agreement has been made between the parties.

Section 802. (1) Execution by virtue of an award can be carried out only if it is pronounced to be allowed by an execution-judgement.

(2) No such execution-judgement as is referred to in the preceding Sub-section shall be given, if there exists a ground upon which application for setting aside an award can be made.

Section 803. After an execution-judgement has been given application for setting aside the award can be made only on the ground specified in 6 in Section 801, and then only if it is shown that the party has, not owing to any fault on his part, been unable to plead the ground for setting aside the award in the previous procedure.

Section 804. (1) An action for setting aside an award under the provisions of the preceding Section must be instituted within a peremptory period of one month.

(2) The period referred to in the preceding Sub-section commences to run from the day on which the party becomes aware of the ground for setting aside the award, but not before the excution-judgement becomes conclusive. After the expiration of five years from the day on which the execution-judgement becomes conclusive, this action cannot be brought.

(3) When an award is set aside, the Court shall also pronounce the execution-judgement to be set aside.

Section 805. (1) The Court competent to entertain an action having for its object the nomination or challenge of an arbitrator, the termination of an arbitration agreement, the disallowance of arbitration, the setting aside of an award, or the giving of an execution-judgement is the Summary Court or District Court designated in the arbitration agreement. In the absence of such designation, the action may be brought before such Summary or District Court as would be the competent Court if the claim were judicially made before a Court of Justice.

(2) In case there are two or more Courts having jurisdiction according to the preceding Sub-section, the Court to which the parties or arbitrators first resorted shall be the competent Court.

NEW TRIAL

Section 420. (1) For any one of the following reasons, except where the party has in an appeal pleaded it or knowingly has not pleaded it, a final judgement which has become conclusive may be appealed against in the form of a motion for a new trial:—

1. If the Court which gave judgement was not so constituted as the law prescribed;
2. If a Judge who was precluded by law from participating in the decision participated therein;
3. If the legal representative or process-attorney or agent was not vested with the necessary power to do acts of procedure;
4. If a Judge who participated in the decision was guilty of an offence relating to his official duties in connection with the case tried before him;
5. If the party by a criminally punishable act of another person was led to make a confession or prevented from producing a

means of attack or defence calculated to affect the decision;

6. If a document or any other object which was produced in evidence and on which the judgement was based was a forged or fraudulently altered matter;
7. If the judgement was based on a false statement of a witness, expert, or interpreter or a sworn party or legal representative;
8. If a civil or criminal judgement or any other judicial decision or an administrative decision on which the judgement was based has been altered by a subsequent judicial or administrative decision;
9. If no adjudication was made of a material fact which would have affected the judgement;
10. If the judgement appealed against conflicts with a conclusive judgement previously pronounced.

(2) In the case of 4, 5, 6, or 7 of the preceding Sub-section, a motion for a new trial may be made only when a judgement of conviction or a decision imposing a non-criminal fine has become conclusive in regard to the punishable act, or when a conclusive judgement of conviction or a decision imposing a non-criminal fine cannot be obtained for a reason other than the lack of evidence.

(3) If judgement on the subject-matter of the action was given by the Court of second resort, a motion for a new trial against the judgement given by the Court of first instance cannot be made.

The Panel of Members of the Maritime Arbitration Commission

Chairman: Katsuya, Toshiaki
Vice-Chairman: Matsumoto, Ichiro

Tokyo Group

Adachi, Mamoru	Kawasaki Kisen Kaisha, Ltd.
Akita, Eikichi	Osaka Shosen Kaisha, Ltd.
Anan, Masatomo	Yasuda Fire & Marine Co., Ltd.
Baba, Kentaro	Kawasaki Kisen Kaisha, Ltd.
Churiki, Isao	Kawasaki Dockyard Co., Ltd.
Futo, Takeo	Tokio Marine & Fire Insurance Co., Ltd.
Fuji, Yutaka	Shinwa Kaiun Kaisha, Ltd.
Furuya, Tojiro	Kanasashi Shipbuilding Co., Ltd.
Gunji, Akira	Mitsui & Co., Ltd.
Hagiwara, Masahiko	Nitto Shosen Co., Ltd.
Hamada, Kisao	Daido Kaiun Kaisha, Ltd.
Hamatani, Genzo	Hitotsubashi University
Hayashida, Katsura	Tokio Marine & Fire Insurance Co., Ltd.
Hirai, Toshiya	Azuma Kaiun K. K.
Ishigaki, Rei	C. F. Sharp & Co., Ltd.
Ishihara, Jujiro	Shinwa Kaiun Kaisha, Ltd.
Ishiwata, Toshio	Taisho Marine & Fire Insurance Co., Ltd.
Iwaki, Onoji	Fujinagata Shipbuilding & Engineering Co., Ltd.
Iwamoto, Tsugio	Tokyo Shipping Co., Ltd.
Izuta, Tomiya	Taiyo Shosen Kaisha, Ltd.
Kaba, Akira	Daian Shosen Co., Ltd.
Kagami, Hachiro	Mitsubishi Shipping Co., Ltd.
Kajikawa, Masutaro	Shinnihon Steamship Co., Ltd.
Kamata, Kunio	Nissan Kisen Kaisha, Ltd.
Katsuya, Toshiaki	Fuji Steamship Co., Ltd.

Kikuchi, Shojiro	Nippon Yusen K. K.
Kimura, Ichiro	Yamashita-Shinnihon Steamship Co., Ltd.
Kitamura, Shotaro	Interocean Shipping Corporation
Komachiya, Sozo	Hosei University
Koto, Shin-ichi	Mitsubishi Shipbuilding & Engineering Co., Ltd.
Kuno, Takeo	Marubeni-Iida Co., Ltd.
Masukawa, Haruo	H. Masukawa & Co., Ltd.
Matsumoto, Seisuke	Tohnan Shokai, Ltd.
Misumi, Ken	Nissho Co., Ltd.
Miyata, Chuya	Miyata Shoten Co., Ltd.
Mizoguchi, Taizo	Kokusai Kaiun Kaisha, Ltd.
Nagai, Akio	Fuji Steamship Co., Ltd.
Nagayama, Wataru	Chuwa Kaiji Co., Ltd.
Nakatani, Masayuki	Sasebo Heavy Industries Co., Ltd.
Nihei, Hisashi	First Central Shipping Co., Ltd.
Nishimura, Jiro	Sanwa Shosen Kaisha, Ltd.
Ogaki, Mamoru	Inui Steamship Co., Ltd.
Ogawa, Tomohaya	Nitto Shosen Co., Ltd.
Ohara, Shozo	Ohara Kaiun Co., Ltd.
Oikawa, Matsunosuke	Hachiuma Steamship Co., Ltd.
Onishi, Tokunobu	C. Itoh & Co., Ltd.
Osawa, Seiichi	Mitsui Shipbuilding & Engineering Co., Ltd.
Sasaki, Syuichi	Mitsui Steamship Co., Ltd.
Sato, Miyozo	Keihoku Shipping Co., Ltd.
Sato, Shuzo	Nippoh Kisen Co., Ltd.
Sato, Zentaro	Nippon Oil Tanker Co., Ltd.
Shibata, Yoshiyuki	Ishikawajima-Harima Heavy Industries Co., Ltd.
Shimatani, Shigeo	Toyo Kaiun K. K.
Shimazu, Tomotsugu	Shimazu & Co.
Shimizu, Hideo	Shin-Mitsubishi Heavy Industries, Ltd.
Takuma, Kenji	Uraga Heavy Industries, Ltd.
Tokura, Ichiro	Mitsubishi Shoji Kaisha, Ltd.
Tottori, Yoshio	Kowa Koeki Co., Ltd.
Tsuboi, Gengo	Tokyo Tanker Co., Ltd.

Tsuji, Hutoshi	Mitsui Steamship Co., Ltd.
Tsuruoka, Nobuo	Nippon Yusen K. K.
Tsuyama, Shigemi	Iino Kaiun Kaisha, Ltd.
Uchida, Mitsuji	Uchida Kaiun K. K.
Umeda, Zenji	Kawasaki Dockyard Co., Ltd.
Ushiki, Chuji	Shin-Mitsubishi Heavy Industries, Ltd.
Yabe, Giichi	General Shipping Co., Ltd.
Yabuki, Toyohiko	Daiko Shosen Kaisha, Ltd.
Yagi, Noboru	Towa Steamship Co., Ltd.
Yamada, Asahiko	Daini-Kyoritsu Steamship Co., Ltd.
Yokoi, Shinkichi	Yasuda Fire & Marine Insurance Co., Ltd.

Kobe Group

Aono, Kiyoaki	Onomichi Dockyard Co., Ltd.
Azuma, Toshio	Bank of Tokyo, Ltd.
Dei, Jiro	Hara Shosen Kaisha, Ltd.
Eriguchi, Hajime	Daido Kaiun Kaisha, Ltd.
Fujita, Shinji	Dai-Ichi Bank, Ltd.
Fusano, Masaharu	Dowa Fire & Marine Insurance Co., Ltd.
Futakami, Hanzo	Yamashita Kinkai Steamship Co., Ltd.
Haba, Katashi	Kawasaki Dockyard Co., Ltd.
Hachiuma, Kei	Hachiuma Steamship Co., Ltd.
Hachiya, Shuzo	Ishikawajima-Harima Heavy Industries Co., Ltd.
Hamane, Yasuo	Yachiyo Kisen Kaisha, Ltd.
Harashina, Yasuyuki	Nippoh Kaiun Kaisha, Ltd.
Hayashi, Yutaka	Shin-Mitsubishi Heavy Industries, Ltd.
Hori, Ryoichi	Nissan Kisen Kaisha, Ltd.
Ichino, Sen	Meiji Shipping Co., Ltd.
Igarashi, Etsuo	Tokai Rinko Kaisha, Ltd.
Ikuta, Sun-ichi	Tokio Marine & Fire Insurance Co., Itd.
Imura, Junji	Gokoh Kaisho Co., Ltd.
Ishizaki, Tadao	Iino Kaiun Kaisha, Ltd.
Kai, Katsuro	Kai Kisen Co., Ltd.
Kato, Kyoichi	Mitsui Shipbuilding & Engineering Co., Ltd.

Kato, Masayuki	Mitsubishi Shoji Kaisha, Ltd.
Kato, Senmatsu	Shinko Shosen K. K.
Kawamura, Kiyoshi	Kyoei Tanker Co., Ltd.
Kitamura, Genzo	Kyosei Kisen Co., Ltd.
Kobayashi, Ryozo	Ocean Transport Co., Ltd.
Komaki, Toshio	Taisho Marine & Fire Insurance Co., Ltd.
Kondo, Eiichi	C. Itoh & Co., Ltd.
Kotanaka, Tetsuo	Tokio Marine & Fire Insurance Co., Ltd.
Koyama, Takumi	C. Itoh Transportation & Warehousing Co., Ltd.
Kurakawa, Masao	Mitsui & Co., Ltd.
Marutani, Matsuji	Kyosei Kisen Co., Ltd.
Matoi, Katsuma	Nitto Transportation Co., Ltd.
Matsuda, Gen-ichi	Osaka Shosen Kaisha, Ltd.
Matsuda, Haruyuki	Nippon Fire & Marine Insurance Co., Ltd.
Matsumoto, Ichiro	Shinnihon Steamship Co., Ltd.
Matsumoto, Sasao	F. Kanematsu & Co., Ltd.
Matsumoto, Shoichi	Yamashita Kinkai Steamship Co., Ltd.
Matsunami, Satoru	Kansai Kisen Kaisha, Ltd.
Miura, Katsuichiro	Kinka Kisen Co., Ltd.
Miyake, Tokusaburo	Far East Shipping Co., Ltd.
Miyao, Ryozo	Taitsu Shipping Co., Ltd.
Miyazaki, Misao	Inui Steamship Co., Ltd.
Morishita, Shigekazu	Fuji Iron & Steel Co., Ltd.
Nakagiri, Tetsuo	Setoda Shipbuilding Co., Ltd.
Nakai, Reizo	Mitsui Steamship Co., Ltd.
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Nii, Tadami	Shinnihon Steamship Co., Ltd.
Ogawa, Ryoichi	Nitto Transportation Co., Ltd.
Okaniwa, Hiroshi	Sanko Steamship Co., Ltd.
Osaki, Kenji	Nihon Kisen Kaisha, Ltd.
Ozawa, Matsuzo	Nitto Shosen Co., Ltd.
Oya, Sueo	Sasebo Heavy Industries Co., Ltd.
Sato, Kunikichi	Satokuni Kisen Kaisha, Ltd.

Sawayama, Nobukichi	Sawayama Steamship Co., Ltd.
Saito, Yasuji	First Central Shipping Co., Ltd.
Sato, Kitsuji	Daiko Shosen Kaisha, Ltd.
Shimizu, Shigenobu	Yasuda Fire & Marine Insurance Co., Ltd.
Shirasugi, Masanobu	Shinwa Kaiun Kaisha, Ltd.
Sugaya, Kan-ichi	Sugaya Steamship Co., Ltd.
Sumitomo, Tomoo	Sumitomo Marine & Fire Insurance Co., Ltd.
Suzuki, Riichiro	Mitsui Steamship Co., Ltd.
Takahashi, Masahico	Institute for The Maritime Law and Practice
Takami, Sueo	Bank of Kobe, Ltd.
Takemoto, Nariyuki	Miyachi Steamship Co., Ltd.
Tamai, Misao	Tamai Shosen Kaisha, Ltd.
Tochiki, Sakuya	Tochiki Steamship Co., Ltd.
Tsubokawa, Keiji	Houn Shipping Co., Ltd.
Urabe, Jinzo	Hitachi Shipbuilding & Engineering Co., Ltd.
Yagi, Hiroshi	Kobe University
Yamasaki, Hisao	Kawasaki Kisen Kaisha, Ltd.
Yasuhara, Meiji	Seiko Kaiun Co., Ltd.
Yoshida, Tokuzo	Kurushima Dockyard Co., Ltd.
Yoshimura, Jiro	Fujinagata Shipbuilding & Engineering Co., Ltd.
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