THE BULLETIN OF
THE JAPAN SHIPPING EXCHANGE, INC.

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FEBRUARY 1968

PREFACE

Besides its usual contents the present issue of the Bulletin of the Japan Shipping Exchange, Inc., includes Amendments to the Nanyozai Charterparty. This charterparty which was compiled by the Documentary Committee of the Japan Shipping Exchange, Inc., and has been widely used for carriage of Philippine and North Borneo lauan logs. It has now been amended and improved in certain points to meet the actual requirements, and is now known by the Code Name of "NANYOZAI 1967". Attached to this charterparty is the Fixture Note, which was prepared to meet the practical convenience and is found very useful.

The main feature of the Bulletin is of course the Reports of arbitration cases. Out of over ten cases dealt with during the past one year, three cases which are considered to be of interest as showing the recent tendency of disputes have been selected and fully reported.

Other matters printed in the present issue are the Maritime Arbitration Rules of the Japan Shipping Exchange, Inc., the Forms of Arbitration Agreement and Arbitration Clause, etc. These will serve as ready reference in matters relating to maritime arbitration.

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APPENDICES

ARBITRATION

***In re* a dispute arising from a contract for the carriage of goods *per* the motorship "TENSHO MARU"**

between

Esso Standard Sekiyu Kabushiki Kaisha of 3/3 Akasaka 5-chome, Minato-ku, Tokyo, Japan.... .....CLAIMANTS

and

Yamamoto Shoji Kabushiki Kaisha of 39 Honcho 4-chome, Naka-ku, Yokohama, Japan.... .....RESPONDENTS.

Contract for the carriage of goods by sea. — Cargo lost through shipwreck. — Master of the ship guilty of gross negligence or not.

On 30th May, 1962, a contract for the carriage of goods was concluded between Claimants and Respondents, and according to this contract Respondents, being chartered owners of the motorship *Tensho Maru,* loaded 160,000 litres motor oil of Claimants on board the said ship in order to carry it from Toa Nenryo Kabushiki Kaisha's Oil-refinery at Shimizu, Shizuoka Prefecture, to Mobil Sekiyu Kabushiki Kaisha's Tanks at Tsurumi, Kanagawa Prefecture. When the ship was sailing off the south coast of Jogashima Island at the dawn of 20th June, 1963, a dense fog set in and the ship ran on sunken rocks, and was greatly damaged under pressure of the raging waters. In this accident the whole cargo of oil loaded on the ship flowed out

and was lost. Claimants maintain that the cargo was lost through the negligence of the master of the ship and demand damages from Respondents, who deny all liability.

CLAIMANTS' case is as follows: The damage to the ship and the consequent loss of the cargo arose from gross negligence of the master of the ship. Despite he was unable in a dense fog to ascertain the ship's position, he forced forward the voyage close along the coast without taking any steps to protect the ship from the danger of wreck. He lacked the due care and diligence which he ought to have exercised in the carriage of another person's property. Under clause 18 of the contract and section 739 of the Commercial Code, Respondents are liable to pay damages for the loss of the cargo resulting from the gross negligence of the master of the ship. Even assuming that there was no gross negligence on the part of the master, Respondents admitted that there was some negligence on the part of the master, and therefore under sections 766 and 577 of the Commercial Code, Respondents cannot be relieved of liability in damages for the loss of the cargo.

RESPONDENTS pleaded as follows: It was found by the Maritime Court that the ship ran on sunken rocks not as the result of gross negligence of the master but the accident took place inevitably despite the master operated the vessel in a proper manner. The Court ordered the master to refrain from engaging in his professional work for one month, but it appears that that was for the reason that the Court deemed the accident as resulting from a mere technical fault of the master. The shipowners abandoned the ship to the insurers and received payment of the total sum of the insurance money. This is because it was proved that the wreck of the vessel was the result of neither the wrongful intention nor gross negligence of the

master. The shipowners therefore cannot be held liable under clause 18 of the contract and section 739 of the Commercial Code. Assuming there had been any negligence on the part of the master in the management of the vessel, the shipowners are by section 3(2) of the International Carriage of Goods by Sea Law and clause 12 of the Form of the Coasting Tanker Voyage Charterparty of the Japan Shipping Exchange, Inc., exempted from any liability for any loss of or damage to the cargo.

ARBITRATORS, upon examining the pleadings of both parties and the evidence adduced, find as follows: There is no dispute between the parties about the fact that the total loss of the cargo of oil was the direct result of the shipwreck. It is a generally accepted rule of law that when claiming a compensation for the loss of or damage to the goods carried by sea, the injured party must only prove the existence of the contract of carriage, and the fact of the loss or damage, and need not prove the existence of any negligence on the part of the carrier or shipowner, but on the other hand the carrier or shipowner, if he denies the liability, must prove that there was no fault on his part, and if he fails to do so he must pay damages. (Commercial Code, sections 577 and 766). Respondents have not proved that there was no fault on the part of the master of the ship relating to the care and carriage of the goods, but they admitted in their written statement produced and their oral statement made before the Arbitrators that there was some negligence on the part of the master of the ship.

The question which is now to be considered is whether there was any fault on the part of the master of the ship leading to the shipwreck so that Respondents, the carriers of the goods lost, should be held liable to pay damages to Claimants. The relevant stipulations in the contract for the carriage of the goods are clauses 16 and 18.

Clause 16 reads, "The vessel, her master and owner shall not, unless otherwise in this contract expressly provided, be responsible for any loss or damage arising or resulting from: any act of the master or other servants of the owner in the navigation or management of the vessel." This is a reproduction of a part of the wording of section 3(2) of the International Carriage of Goods by Sea Law. But the same law itself does not apply to the present contract of carriage, and besides this exemption clause is negatived by the words "unless otherwise in this contract expressly provided". On the other hand, clause 18 reads, "On any loss or damage to A (Claimants) or to others arising out of the wilful conduct or gross negligence and or grave default of B (Respondents) or B's employee . . . , B . . . shall pay full compensation for damage or loss caused to A . . ." And section 739 of the Commercial Code provides that "Even in cases where a special agreement has been made, the shipowner shall not be relieved of liability in damages resulting from his own negligence, the wrongful intent or gross negligence of any of the mariners or other employees or from the unseaworthiness of the ship," and section 577, the provisions of which are applied *mutatis mutandis* to shipowners by section 766, also provides that "A carrier shall not be relieved of liability in damages for any loss of, injury to or delay in arrival of the goods unless he proves that neither he, the forwarding agent, any of his employees nor any other person employed in respect of the carriage, has failed to exercise due care in connection with the receipt, delivery, custody and carriage of the goods."

From these stipulations and provisions it is seen that Respondents are not relieved from liability for damages if there was on their part either wrongful intent or gross negligence resulting in the loss of the goods carried. That the master of the ship was guilty of some degree of negligence was admitted in the written statement produced by Respondents and their answer to the arbitrators at the

hearing. So we must now see whether the master's negligence was gross negligence or not.

Before proceeding to deal with this point, we might do well to point out that although Respondents cite section 3(2) of the International Carriage of Goods by Sea Law and clause 12 of the Form of the Coasting Tanker Voyage Charterparty of the Japan Shipping Exchange, Inc., in defence of their non-liability, but these are entirely irrelevant to the present case. It is needless to say that the provisions of the International Carriage of Goods by Sea Law do not apply to the carriage of goods from a port in Japan to another port in Japan. Any form of contract prepared by the Japan Shipping Exchange, Inc., of course has nothing to do with a contract concluded in any other form.

Now we must consider whether there was any gross negligence on the part of the shipmaster which resulted in the shipwreck leading to the loss of the cargo, and we shall do so by first examining the weather condition at the time, the topography of the scene of the shipwreck, and the steps taken by the master to cope with these factors. We, as experienced shipping traders, can do so fairly and impartially, judging from the written statements and evidence produced by both parties. "The ship" as the decision of the Maritime Court has it, "was first sailing at full speed . . . at about 0.30 a.m. on 2nd June a fog set in making visibility worse and worse and the master commenced giving for signals . . . at 2.30 a.m. lowered the speed to half speed, i.e., about 3 knots per hour, made two men to keep watch at the bow . . . feeling that the land was close at hand ordered full speed astern at 2.45 a.m., but almost instantaneously the ship ran on sunken rocks." Thus the master properly acted as he should have done when encountering a fog. But when during night time the ship approached Jogashima Island, where it was known that there were many sunken rocks, he did not, as he ought to have done, sail away to

the offing and wait for the lifting of the fog or daybreak. In failing to do so he failed to exercise due care as the master of a ship. But whether this lack of care on the part of the master amounts to gross negligence, as Claimants allege, is a very difficult question to determine. We, the Arbitrators have most carefully examined the written statements and evidence produced by both parties, and their depositions at the hearing, and after most elaborate deliberations have come to the conclusion that although it must be admitted that there was some lack of care on the part of the master, there is no ground for saying that he committed gross negligence. We, therefore do hereby adjudge, award, and direct as follows:-

Award

1. The Claimants' claim is dismissed.
2. The fee and costs of arbitration shall be Yen 100,000, and the same being split between Claimants and Respondents, each party shall pay Yen 50,000.
3. The Court of competent jurisdiction is the Tokyo District Court.

Given in Tokyo, on 17th March, 1967.

ARBITRATION

***In re* a dispute arising from a Time Charterparty of m.s. "HIROZURU MARU"**

between

Far East Shipping Co., Ltd., the Charterers, of No. 48 (1), Azabu Tansumachi, Minato-ku, Tokyo, Japan.... .....CLAIMANTS

and

Takebayashi Kisen Kabushiki Kaisha, the Shipowners, of No. 1633(1), Yuasamachi, Arita-gun, Wakayama Prefecture, Japan ..... RESPONDENTS

Time charterparty — Sub-charter — Non-delivery — Damages for breach of contract.

CLAIMANTS' allegations and claims are as follows:

Claimants contracted to time-charter the motor-ship *Hirozuru Maru* from Respondents, signing a charterparty in the form made, and revised in May 1959, by the Japan Shipping Exchange, Inc., in the City of Tokyo, on 3rd December, 1966. On the previous day, i.e., on 2nd December, 1966, in Hong Kong, Claimants with the consent of Respondents entered into a subcontract through the intermediation of Union Overseas Marine Transportation, Ltd., to subcharter the said vessel to China National Chartering Corporation of Peking. It was agreed by clause 1(6) of the original charterparty that Respondents should deliver the ship to Claimants at or before five o'clock p.m. on 31st January, 1967, at one of the ports between Shimonoseki-

Moji and Osaka-Kobe, and that fifteen days before the day of delivery Respondents should notify to Claimants the place where the charterparty should come into force and the day of delivery. But no notice was forthcoming from Respondents up to 17th January, 1967, and Claimants on the same day wrote to Respondents inquiring the day and place of delivery of the ship. To this, however, no reply came. Nor any communication from Respondents was received by Claimants by 31st January, 1967, the stipulated day of delivery, and Claimants sent a telegram to Respondents on the afternoon of the same day requesting them to notify the time of delivery by 2nd February, 1967, 5.00 p.m. The reply telegram read, "Substitute not available. Force majeure. Please understand." On 21st February, 1967, Claimants sent a telegram to Respondents requesting them to explain what they meant by their telegram and also to deliver the *Hozan Maru* (which Claimants learned that Respondents had recently purchased) as a substitute ship. Claimants received a reply telegram on the same day reading, "Cannot agree. Detail will follow." No further communication was received from Respondents. Claimants then sent a letter by the contents-certified mail, which it is certified reached Respondents on 1st March, 1967, informing them that the charterparty was rescinded and that Claimants demanded the payment of damages for the damage resulting from nondelivery of the vessel (including any damages which might be claimed by the subcharterers). No reply was received.

Since Respondents failed to deliver the vessel to Claimants, Claimants were unable to deliver the vessel to the subcharterers by 28th February, 1967, as they were bound to do. So Claimants explained the reason for the delay in the delivery of the vessel and requested postponement of the time of cancellation of contract. But they obtained no agreement of the subcharterers.

If the total payment consisting of the original charterage, the

crew's long-term service allowance, difference in the premium of insurance of ship, and commission for subcharter, is deducted from the profit consisting of the subcharterage and the crew's overtime, the monthly profit amounts to Yen 1,065,873; and the profit for 9 months amounts to Yen 9,592,875. In accordance with Clause 32 of the charterparty Claimants claim from Respondents damages in the said amount of Yen 9,592,857, together with interest on the same at the rate of 6% per annum from the day of the application for the present arbitration till the day of full payment.

No demand for damages has yet been received from the subcharterers, but Claimants will claim from Respondents when such demand is received.

RESPONDENTS produced no statement of their case despite a sufficient opportunity for doing so was given them. Nor did they respond to the Arbitrators' request repeated five times to appear at the hearing. Therefore, the Arbitrators have been constrained to proceed with arbitration procedure without notice of what Respondents have to say on their side, and on considering the statement of and evidence produced by Claimants and the result of the Arbitrators' investigations made of their own right, have come to the following conclusion.

The ARBITRATORS find as follows:

Both the time charterparty of m.s. *Hirozuru Maru* signed between Claimants and Respondents on 3rd December, 1966, and the subcharter of the same vessel signed between Claimants and China National Chartering Corporation of Peking through the mediation of Union Overseas Marine Transportation, Ltd., on 2nd December, 1966, were lawfully concluded and are in force. Mr. Koji Fukushima, the representative of Claimants, stated before the Arbitrators, "Respondents

told us that they were going to pay earnest money in a few days and it was certain that they would buy the ship, and so we concluded the contract." From this it appears that in spite of the fact that Respondents had not yet purchased the ship from the owners, Tamai Steamship Co., Ltd., they concluded the contract with Claimants, and they could not receive delivery of the ship from the shipowners.

According to clause 1(5) of the charterparty Respondents were liable to deliver the ship to Claimants by 5.00 p.m. on 31st January, 1967. But they failed to do so, and to Claimants' letter of 17th January, 1967, inquiring the day and place of delivery they did not reply. To Claimants' telegram of 31st January, 1967, urging them to deliver the ship without further delay, they replied by telegram, "Substitute ship not available. Force majeure. Please understand," and to Claimants' further inquiry they only replied by telegram that they would reply in detail in due course, and they sent no further communication.

Respondents expected that they would be able to deliver the ship to claimants by the stipulated time, but they were unable to obtain delivery of the ship from the shipowner by that time. Claimants when making the contract suggested that a clause to the effect that "on condition that a contract of sale of the ship is successfully concluded", but Respondents insisted that there was no need for that. Claimants by their letter of 22nd December, 1966, with reference to previous telephone conversation, demanded from Respondents confirmation of the promises that Respondents would pay earnest money to the shipowners on 27th December, 1966, that they would pay the balance of the price of the ship on 15th January, 1967, that the ship would enter the dock of Ujina Shipbuilding Yard, and that the ship would be ready for delivery about 31st January. Under these circumstances, it was naturally expected that in the event of Respondents being unable to deliver the ship by the stipulated time, they would

notify Claimants without delay. That they did not do so is against the principle of good faith. From the foregoing facts the conclusion is reached that Respondents were guilty of breach of contract and they are liable to pay damages to Claimants in accordance with clause 32 of the charterparty.

On the other hand, however, it must not be overlooked that there was some degree of lack of prudence on the part of Claimants in concluding the contract. There had been no dealing before the conclusion of the present contract between Claimants and Respondents, and therefore Claimants ought to have investigated and ascertained the degree of credit of Respondents. But there is nothing which shows that they did so. Relying on Respondents' assurance that they were capable of performing the contract, Claimants went so far as to subcharter the ship to a third party prior to the conclusion of the contract with Respondents. The contract of subcharter dated 2nd December 1966, contains a clause to the effect that the *Tsurutama Maru* is got ready as a substitute for the *Hirozuru Maru*. It seems that this clause was inserted owing to the fact that, according to Mr. Koji Fukushima, Respondents were asked by the shipowners "Shall you buy the *Hirozuru Maru*, or the *Tsurutama Maru* instead?" Claimants thought that Respondents might buy the *Tsurutama Maru* instead of the *Hirozuru Maru*. Thus, if the circumstances of the case are carefully considered, it cannot be denied that Claimants failed to exercise such care and diligence as are generally expected to be used in making any contract in order to ascertain whether the other party is capable of performing the contract. It appears that it was within the contemplation of Claimants that they must take a certain degree of the risk of Respondents being unable to perform the contract. For this reason it is not possible to admit Claimants' claim in its entirety.

The measure of damages will now be considered. The term of the original charter is one year (clause 11(7)), but the term of the

subcharter is six to nine months (clause 6). It appears from this that Claimants claim Yen 9,592,857 as the profit they would have acquired during 9 months. As has been stated, Respondents are liable for nonperformance of the contract, but Claimants' claim is not to be wholly admitted. Furthermore, in connection with a long-term charter like the present, perils of the sea and vicissitudes in economic situation must be taken into account. In consideration of these matters it is considered fair and just that Respondents shall pay as damages one half of the amount of the profits anticipated by Claimants to be obtained during six months. And in estimating the expected profits, it is just and proper that from the subcharterage the following items be deducted, namely, original charterage, commission, crew's long-term voyage allowance, balance of premium of insurance of the ship, premium of war insurance according to clause 46 of the subcharter, cost of navigation, and office expenses. The 6 months' expected profits according to the above calculation come to Yen 4,932,331, and one half of this sum is deemed to be the reasonable amount of damages which Respondents should pay to Claimants.

Claimants say that if the subcharterers claim from them any damages for breach of contract, they would newly claim compensation from Respondents. On this point, however, the Arbitrators have nothing to say hereby.

In view of these findings the Arbitrators do hereby adjudge, award, and direct as follows:-

Award

1. Respondents shall pay to Claimants the sum of Yen 2,466,165 by not later than 31st December, 1967.
2. The fee and costs of arbitration shall be Yen 220,000, and the same being split between Claimants and Respondents, each party shall

pay Yen 110,000.

Given in Tokyo, on 21st October, 1967.

ARBITRATION

***In re* a dispute arising from a Voyage Charterparty of the steamship "BLUE SHARK"**

between

Blue Shark Steamship Co., S.A., c/o Arias, Fabrega & Fabrega Arcia Building, Justo Arosemena Avenue, Panama City, Republic of Panama.....CLAIMANTS

and

Compania Naviera Lanena Limitada, S.A., c/o Antonio de Leon, P.O. Box 1456, Panama City, Republic of Panama ..... RESPONDENTS.

Voyage charterparty —
Stevedore damage —
Ordinary wear and tear.

On the 28th December, 1965, the Respondents chartered the Claimants' steamship *Blue Shark* for the purpose of carrying Philippine lauan logs from Tambungon to Tokyo. The charterparty was in the form of NANYOZAI 1960 of the Japan Shipping Exchange, Inc. Between 10th and 23rd January, 1966, the vessel loaded 6,695.38 cubic metres lauan logs at Tambungon, and on the 1st February reached Tokyo and discharged there the whole cargo. The vessel suffered damage both at the loading port and the discharging port. Prior to delivery of the cargo at Tokyo, Claimants demanded from Respondents payment of Yen 2,151,000 for the expense of repairing the damage sustained at the loading port. But as they declined this demand,

Claimants refused to deliver the cargo. Then the consignees, Shin Asahigawa Co., Ltd., handed to the Claimants' agents, in Tokyo, C. F. Sharp & Co., Inc., a Letter of Guarantee dated 14th February, 1966 guaranteeing that they would pay at the account of the shippers, C. Alkantara & Sons, up to the maximum amount of U.S.$7,500, and received delivery of the cargo.

CLAIMANTS' case is as follows: During the loading at Tambungon and unloading at Tokyo, the vessel suffered damage at the hand of stevedores, and the stevedores concerned admitted the fact. Before delivering the cargo to the consignees, Claimants instructed their agents in Tokyo, C. F. Sharp & Co., Inc., to get the cost of repairing such damage as required most immediate attention estimated, with the result that such cost was estimated by Shibaura Engineering Co., Ltd. to be Yen 2,151,000. By virtue of clause 11 of the charterparty, which says "Charterers are to be responsible for proved loss of or damage (beyond ordinary wear and tear) to any part of the vessel caused by stevedores at both ends", Claimants requested Respondents to compensate the estimated amount of damage. But Respondents denied their liability for the reason that "the damages to the vessel were no more than ordinary wear and tear and were only to have been expected". Claimants then believing that Respondents' contention was groundless retained the cargo lying in a timber yard in Tokyo. But as the consignees, Shin Asahigawa Co., Ltd., delivered to Claimants the said Letter of Guarantee, they released the cargo.

Owing to the fact that the cancelling date of the next voyage was close at hand, Claimants had to let the vessel sail for Indonesia without repairing the damage in Japan, excepting a very small portion of the damage which was repaired by the crew. The repair of the whole damage is expected to be carried out in Hong Kong in the

near future. Its cost is yet unknown. Claimants hold Respondents responsible for the whole cost of repair.

RESPONDENTS pleaded against this to the following effect: The vessel is an aged ship built in 1944 and as is clear from the deposition of the foreman of the Lasang Stevedoring who was engaged in the loading of the cargo at Tambungon, the cables, cargo wires and side preventers of the vessel in every hatch were so worn out that they were feared to be incapable of bearing the strain of loading timber, and he advised the chief mate to renew the cable, but the latter gave no heed to this warning. And sure enough, soon after the stevedores commenced loading operation, the cable of No. 3 hold was broken under the weight of timber, the handle was twisted and partly broken. The vessel was thus insufficiently equipped for loading timber, and besides the operators of the vessel lacked knowledge of the special nature of the cargo they undertook to carry. These facts are the causes of the damage. Any damage to the vessel is ordinary wear and tear, and not caused by the negligence of stevedors. The Claimants' claim is therefore rejected.

Despite the Arbitrators' repeated requests Respondents failed to appear at the hearing, and upon considering the written pleadings and written evidence produced by the parties ARBITRATORS find as follows: The Claimants' claim is grounded on clause 11 of the charterparty, which reads "Charterers to be responsible for proved loss of or damage (beyond ordinary wear and tear) to any part of the vessel caused by stevedores at both ends."

As for the damage caused at the loading port, Tambungon, it is mutually admitted by the stevedores concerned and the master of the vessel in the Damage and Indent Report signed at Tambungon that the damage was caused by the stevedores during loading operation.

The same damage is therefore "proved loss or damage" referred to in clause 11 of the charterparty. The Damage and Indent Report says, "owing to the nature of the cargo (VERY ROUGH) the following damage have to be reported", and also "in view of the nature cargo being loaded, damage incurred could not be avoided". But these remarks have no effect of exempting charterers from all liability.

As for the damage caused at the discharging port, the Damage or Indent Report signed at Tokyo by the stevedores concerned and the master of the vessel shows that it is "proved loss or damage" referred to in clause 11 of the charterparty.

Next, whether any part of the damage is "ordinary wear and tear" or not will be considered.

First about the damage caused at the loading port. The same damage is proved by two documents, namely, (1) Damage or Indent Report during the Operation of Loadiing Logs at Tambungon Anchorage by Stevedores, and (2) Estimate prepared by Shibaura Engineering Co., Ltd. Comparing these two documents it is seen that the number of items of damage reported in the latter is smaller than that of the former. This appears to be the result of the fact that while the former enumerates the whole items of damage, the latter only mentions such items of damage as require repair. We will therefore see whether each item of damage after another mentioned in the latter is ordinary wear and tear or not.

(1) No. 2, 4, 5 hatch ventilator. It is inevitable that some damage is caused during loading operation. But considering from the amount of estimated damage, it seems that a fair amount of damage is beyond ordinary wear and tear.

(2) No. 2, 4, 5 hatch port side handrails. The shipowners ought to have removed them prior to loading, but they did not. So the damage being due to the Claimants' negligence, Respondents cannot be held liable for that.

(3) No. 3 hatch port side stairway handle. Some damage is unavoidable to be caused during loading, and from the amount of the estimated damage also it is deemed to be ordinary wear and tear. Respondents cannot be held responsible.

(4) No. 2, 3, 4, 5 hatch wooden pipe covers. Some damage inflicted during loading is inevitable, but the amount of the estimate shows that not all the damage is necessarily ordinary wear and tear.

(5) hatch board. The damage cannot be ascribed to the fact that the cargo loaded was long logs. So, although it is mentioned in the stevedores' damage report, Respondents cannot be held responsible.

(6) hatch coaming. Some damage is inevitable, but from the amount of the estimate it appears that some damage is beyond the ordinary wear and tear.

(7) tarpaulin. The damage is ordinary wear and tear.

(8) sounding pipe. If it had been covered, damage would have been only damage to the cover. Therefore Respondents can be held responsible for such extent of damage as would have been beyond the ordinary wear and tear if the pipe had been covered.

(9) tween deck hatch beam. It is usual to use hatch board when loading on deck. But the vessel did not do so, and that seems to have aggravated the damage. Therefore the shipowners may not be free from some liability.

(10) No. 2 hatch beam socket. Some damage is inevitable, though it is usual to protect the socket by some means in order to avoid heavy damage.

(11) No. 3 hatch main deck. The damage is due to the noncompliance with the stevedores' request to provide new cable. Therefore Respondents are not liable.

(12) "leaking bers" or "locking bars". Neither the Arbitrators nor their experts are aware what part of the vessel this refers to, and therefore they do not admit the Respondents' liability for this item.

Next we will examine the damage caused at the port of discharge. That can only be done with reference to the Damage or Indent Report during the Operation of Discharging Logs at Tokyo Port by Stevedores.

(1) No. 1 hatch port side winch lever, No. 3 hatch port side bulwarks. It is not clear from this report whether the damage (which is usually unavoidable to some extent) was beyond the ordinary wear and tear. Therefore Respondents are not liable.

(2) No. 2 hatch port side stanchion, No. 4, 5 hatch starboard side stanchion. The damage being due to the default of the shipowners to remove the stanchion before unloading, Respondents cannot be held liable for that.

From the foregoing considerations the Arbitrators have come to the conclusion that Respondents should be held responsible only for such damage caused at the port of loading as is beyond the ordinary wear and tear, and that the proper and reasonable amount of damages to be paid to Claimants is Yen 1,034,530.

In view of the above findings the Arbitrators do hereby adjudge, award, and direct as follows:-

Award

1. The Respondents shall pay as damages to the Claimants the sum of Yen 1,034,530 not later than the 25th March, 1968.
2. The fee and costs of arbitration shall be Yen 150,000, and the same being split between Claimants and Respondents each party shall pay Yen 75,000; Provided that the Claimants shall first pay the whole amount and then receive refundment from Respondents of the portion which is to be borne by them.
3. The Court of competent jurisdiction is the Tokyo District Court.

Given in Tokyo, on 24th February, 1968.

AMENDMENTS TO NANYOZAI CHARTER PARTY

The Nanyozai Charterparty compiled by the Documentary Committee of the Japan Shipping Exchange, Inc., in 1960 has found a great favour among the shipping circles and has been widely used for carriage of nanyozai logs not only to Japan but also to Formosa, Korea, and other countries. To improve it in a few points and also to bring it into harmony with our Voyage Charter Party (Code Name "NIPPONVOY 1963") and Beizai Charter Party (Code Name "BEIZAI 1964"), some amendments were made in April, 1967, and the amended charterparty is now known by the code name "NANYOZAI 1967". The chief amendments relate to the commencement of lay days, notice of readiness, demurrage, despatch money, and arbitration clause; and a new clause on sublet has been inserted. We print below side by side the old 1960 form and the amended 1967 form. The underlined words show the amendment or new introduction. Clauses 11 and 12 have been simply interchanged without any alteration in the wording. The "Fixture Note" which we have prepared to meet the demand of business circles and is being found very useful is attached to the charterparty.

NEW
NANYOZAI
1967

Owners, Vessel, Position, Charterers

IT IS THIS DAY MUTUALLY AGREED between .....as Owners/Chartered Owners of the.....Steamer/Motor Vessel..... .....built....., of..... .....tons $\frac{\text{gross}}{\text{nett}}$ Register and carrying about..... .....tons of deadweight cargo, classed..... ....., now.....and expected ready to load under this Charter about..... ..... and .... as Charterers.

Where to load, Cargo, Destination

1. That the said vessel shall, with all convenient speed, sail and proceed to ..... as ordered by Charterers or so near thereto as she may safely get and lie always afloat, and there load, with her own tackle, a full and complete/part cargo of Logs ..... Board Measure Feet/Cubic Meters .....% more or less at Owners' option, which Charterers bind themselves to ship, and being so loaded the vessel shall, with all convenient speed, proceed to ..... as ordered by Charterers or so near thereto as she may safely get and lie always afloat and there deliver the said cargo in the customary manner.

Freight

2. Freight to be prepaid on Bills of Lading quantity as follows:

Freight to be considered as earned upon completion of loading, vessel and/or cargo lost or not lost.

O L D
N A N Y O Z A I
1 9 6 0

Owners, Vessel, Position, Charterers

It is this day Mutually Agreed between ....Owners (or Chartered Owners) of the ..... Steamer or Motor Vessel .... of ..... tons $\frac{\text{gross}}{\text{nett}}$ Register and carrying about ..... tons of deadweight cargo, Classed ...., now ..... and expected ready to load under this Charter about ..... and Messrs. .... of ..... as Charterers.

Where to load, Cargo, Destination

1. That the said vessel shall, with all possible despatch, sail and proceed to ..... or so near thereto as she may safely get and lie always afloat, and there load, with her own tackle, a full and complete or part cargo of Logs ..... Board Measure Feet .....% more or less, at Owners' option, which Charterers bind themselves to ship, and being so loaded the vessel shall, with all possible despatch, proceed to ..... or so near thereto as she may safely get and lie always afloat and there deliver the said cargo in the customary manner as ordered.

Freight

2. Freight to be prepaid on Bills of Lading quantity as follows

Prepaid freight to be considered earned, vessel and/or cargo lost or not lost.

Loading and Discharging

3. Cargo to be loaded at the average rate of..... .....Board Measure Feet/Cubic Meters per weather working day of 24 consecutive hours, Sundays and Holidays excepted unless used.

Lay days to commence at 1 p.m. if notice of readiness to load is given at or before noon and at 6 a.m. next working day if notice given after noon unless worked sooner whereupon lay days to begin.

Notice of readiness at loading port(s) to be given during office hours to ....

Cargo to be discharged at the average rate of .... Board Measure Feet/Cubic Meters per weather working day of 24 consecutive hours, Sundays and Holidays excepted unless used.

Lay days to commence at 1 p.m. if notice of readiness to discharge is given at or before noon and at 6 a.m. next working day if notice given after noon unless worked sooner whereupon lay days to begin.

Notice of readiness at dicharging port(s) to be given during office hours to ....

Time lost in waiting for berth to count as lay days.

Lay days for loading and discharging to be non-reversible.

Rotation of loading and discharging ports to be at Owners' option.

Demurrage and Despatch Money

4. Demurrage to be paid to Owners at the rate of US$ ..... per day of 24 running hours or pro rata for any part thereof, payable day by day, for all time used in excess of lay days at loading or discharging ports(s). Despatch Money to be paid to Charterers at the rate of US$ ..... per day of 24 running hours or pro rata for any part thereof for lay days saved at loading or discharging port(s).

Loading and Discharging

3. Cargo to be loaded at the average rate of .... Board Measure Feet weather working day of 24 consecutive hours, Sundays and Holidays excepted unless used.

Laydays to commence at 1 p.m. if notice of readiness to load is given before noon and at 6 a.m. next working day if notice given during office hours after noon unless worked sooner whereupon laydays to begin.

The notice of readiness at loading port(s) to be given to the Shippers, Messrs. ....

Cargo to be discharged at the average rate of .... Board Measure Feet per weather working day of 24 consecutive hours, Sundays and Holidays excepted unless used.

Time to commence at 1 p.m. if notice of readiness to discharge is given before noon and at 6 a.m. next working day if notice given during office hours after noon unless worked sooner whereupon laydays to begin.

The notice of readiness at discharging port(s) to be given to the Consignees, Messrs. ....

Time lost in waiting for berth to count as laydays.

Laydays for loading and discharging to be non-reversible.

Rotation of loading and discharging port(s) to be at Owners' option.

Demurrage, Despatch Money

4. Demurrage to be paid to Owners at the rate of US$.....per day of 24 running hours or pro rata for any part thereof, payable day by day, for all time used in excess of laytime at loading or dicharging port(s). Despatch Money to be paid to Charterers at the rate of U.S.$ ..... per day of 24 running hours or pro rata for any part thereof for laytime saved at loading or discharging port(s).

Demurrage and/or Despatch Money at loading port(s) to be settled in .... and at discharging port(s) to be settled in .....

Free In and out

5. Charterers to load, stow and discharge the cargo free of risks and expenses to Owners. Charterers to have the liberty of working all available hatches. The vessel to provide motive power, winches, gins and falls at all times and, if required, to supply light for night work on board free of expenses to Charterers.

Overtime

6. Overtime for loading and discharging to be for account of the party ordering the same. If overtime be ordered by Port Authorities or any other Governmental Agencies, Charterers to pay extra expenses incurred. Officers' and crew's overtime always to be paid by Owners.

Deck Cargo

7. Owners to have the option to load cargo on deck at Charterers' risk within the limit of the vessel's seaworthiness, in which case Owners not to be responsible for wash away and/or any other damage to on-deck cargo.

Days on Demurrage

8. ..... days of 24 running hours on demurrage for loading to be allowed Charterers at loading port(s). Should Charterers be unable to load within the above period, the vessel to have liberty to sail with the cargo then on board, Charterers paying the dead-freight and demurrage incurred.

Commencement of Lay Days, Cancelling

9. Lay days are not to commence before .... Should the vessel not be ready to load (whether in berth or not) at or before noon of ...., Charterers shall have the option of cancelling this

Demurrage and/or Despatch Money at loading and/or discharging port(s) to be settled in ...., Japan .....

Overtime

6. Overtime charges for loading and discharging, except officers' and crew's to be for the account of the party ordering the same. If overtime be ordered by Port Authorities or any other governmental Agencies, Charterers to pay extra expenses incurred.

Days on Demurrage

8. Should Charterers be unable to load the cargo in ..... days of 24 running hours on demurrage at loading port(s), the vessel to have the liberty to sail with the cargo then on board, Charterers paying the dead-freight and demurrage incurred.

Laydays and Cancelling Date

9. Laydays are not to commence before .... and, should the vessel not be ready to load (whether in berth or not) on or before ....., Charterers

Charter, such option to be declared, if demanded, at least 48 hours before the vessel's expected arrival at port of loading.

Owners' Responsibility and Exemption

10. Owners shall, before and at the beginning of the voyage, exercise due diligence to make the vessel seaworthy and properly manned, equipped and supplied and to make the holds and all other parts of the vessel in which cargo is carried fit and safe for its reception, carriage and preservation. Owners shall properly and carefully handle, carry, keep and care for the cargo.

Owners shall not be liable for loss of or damage to the cargo arising or resulting from: unseaworthiness, unless caused by want of due diligence on the part of Owners to make the vessel seaworthy, and to secure that the vessel is properly manned, equipped and supplied, and to make the holds and all other parts of the vessel in which cargo is carried fit and safe for its reception, carriage and preservation. Owners shall not be responsible for loss of or damage to the cargo arising or resulting from: act, neglect or default of the master, mariner, pilot, or the servants of Owners in the navigation or in the management of the vessel; fire, unless caused by the actual fault or privity of Owners; perils, dangers and accidents of the sea or other navigable waters; act of God; act of war; act of public enemies; arrest or restraint of princes, rulers or people, or seizure under legal process; quarantine restrictions; act or omission of Charterers or of the shippers or owners of the cargo, their agents or representatives; strikes or lock-outs or stoppage or restraint of labor from whatever cause, whether partial or general (provided that nothing herein contained shall be construed to relieve Owners from responsibility for their own acts); riots and civil commotions; saving or attempting to save life or property at sea; wastage in bulk or weight or any other loss or damage arising from in-

have the option of cancelling this Charter, such option to be declared, if demanded, at least 48 hours before the vessel's expected arrival at port of loading.

Owners Responsibility

10. Owners shall, before and at the beginning of the voyage, exercise due diligence to make the vessel seaworthy and properly manned, equipped and supplied and to make the holds and all other parts of the vessel in which cargo is carried fit and safe for its reception, carriage and preservation. Owners shall properly and carefully handle, carry, keep and care for the cargo.

Owners shall not be liable for loss of or damage to the cargo arising or resulting from; unseaworthiness, unless caused by want of due diligence on the part of Owners to make the vessel seaworthy, and to secure that the vessel is properly manned, equipped and supplied, and to make the holds and all other parts of the vessel in which cargo is carried fit and safe for its reception, carriage and preservation; act, neglect or default of the master, mariner, pilot, or the servants of Owners in the navigation or in the management of the vessel; fire, unless caused by the actual fault or privity of Owners; perils, dangers and accidents of the sea or other navigable waters; act of God; act of war; act of public enemies; arrest or restraint of princes, rulers or people, or seizure under legal process; quarantine restrictions; act or omission of Charterers or of the shippers or owners of the cargo, their agents or representatives; strikes or lock-outs or stoppage or restraint of labor from whatever cause, whether partial or general (provided, that nothing herein contained shall be construed to relieve Owners from responsibility for their own acts); riots and civil commotions; saving or attempting to save life or property at sea; wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the cargo; insufficiency of packing; insufficiency or inadequacy of marks; latent

herent defect, quality or vice of the cargo; insufficiency of packing; insufficiency or inadequacy of marks; latent defects not discoverable by due diligence any other cause arising without the actual fault or privity of Owners or without the fault of the agents or servants of Owners.

Responsibility for Cargo

11. Owners shall not be responsible for split, chafing and/or damage unless caused by the negligence or default of master or crew.

Stevedore Damage

12. Charterers are to be responsible for proved loss of or damage (beyond ordinary wear and tear) to any part of the vessel caused by stevedores at both ends.

Such loss or damage, as far as apparent, to be reported by the Master to Charterers, their Agents or their stevedores within 24 hours after occurrence.

Deviation

13. The vessel has liberty to call at any port or ports en route, to sail without pilots, to tow and/or assist vessels in all situations, and to deviate for the purpose of saving life and/or property or for bunkering purposes or to make any reasonable deviation.

Owners' Lien

14. Owners shall have a lien on the cargo for all freight, dead-freight, demurrage, damages for detention, average and all and every other sum of money which may become due to Owners under this Charter. Charterers shall remain responsible for above sum only to such extent as Owners have been unable to obtain payment thereof by exercising the lien on the cargo.

Measurement

15. Cargo to be measured by official measurers or sworn measurers according to Brereton Scale/Hoppus Scale before loading.

defects not discoverable by due diligence; any other cause arising without the actual fault or privity of Owners or without the fault of the agents or servants of Owners.

Deviation

13. The vessel has liberty to sail without pilots, to tow and be towed and/or assist vessels in all situations, to deviate for the purpose of saving life and/or property, and also to call at any port(s) in any other reasonable purpose.

Lien

14. Owners shall have a lien on the cargo for all freight, dead-freight, demurrage, damages for detention, average and all and every other sum of money which may become due Owners under this Charter. Charterers shall remain responsible for above sum only to such extent as Owners have been unable to obtain payment thereof by exercising the lien on the cargo.

Scale

15. Cargo to be measured by official measurers or sworn measurers according to Brereton Scale or Hoppus Scale before loading.

Bills of Lading

16. The Captain to sign Bills of Lading at such rate of freight as presented without prejudice to this Charterparty, but should the freight by Bills of Lading amount to less than the total chartered freight, the difference to be paid to Owners in cash on signing Bills of Lading.

General Average

17. General average to be settled acoording to York-Antwerp Rules, 1950, in Tokyo.

Agency

18. In every case Owners shall appoint their Agents both at loading and discharging port(s).

Strike Clause

19. Neither Charterers nor Owners are responsible for the consequences of any strikes or lock-outs preventing or delaying the fulfilment of any obligations under this Charter.

If there is a strike or lock-out affecting the loading of the cargo or any part of it at the time when the vessel must start on or during her voyage to the port(s) of loading, Charterers or Owners shall have the option of cancelling this Charter. If such strike or lock-out is going on at or occurs after the vessel's arrival at port(s) of loading, Charterers have the right either to keep the vessel waiting paying full demurrage or to cancel this Charter. Such cancellation to take place within 24 hours after the vessel's arrival or 24 hours after the subsequent occurrence of such strike or lock-out. If part of the cargo has then already been loaded, Owners must proceed with same if requested by Charterers, having liberty to complete with other cargo at the same loading port or any other nearby port(s) for the same destination or any other nearby port(s) for their account.

If there is a strike or lock-out affecting the discharge of the cargo at the time of the vessel's arrival at or

General Average 17. General average to be settled according to York-Antwerp Rules, 1950.

off the port(s) of discharge, or occurring after the vessels arrival, Charterers shall have the option of keeping the vessel waiting until such strike or lock-out is at an end against paying half the demurrage for the time the vessel is delayed or, of ordering the vessel to nearby safe port where she can safely discharge her cargo without risk of being detained by strike or lock-out, against paying all extra expenses incurred: such option to be declared within 36 hours after the arrival at or off the port(s) of discharge or the subsequent occurrence of the strike or lock-out. On delivery of the cargo at such port(s), all conditions of this Charter-party and of the Bill of Lading shall apply and the vessel shall receive the same freight as if she had discharged at the original port(s) of destination.

General War Clause

20. If the nation under whose flag the vessel sails should be engaged in war and the safe navigation of the vessel should thereby be endangered either party to have the option of cancelling this Charter, and if so cancelled, cargo already shipped shall be discharged either at the port(s) of loading or at the nearest safe place at the risk and expense of Charterers.

If owing to outbreak of hostilities the cargo loaded or to be loaded under this Charter or part thereof become contraband of war whether absolute or conditional or liable to confiscation or detention according to international law or the proclamation of any of the belligerent powers, each party to have the option of cancelling this Charter as far as such cargo is concerned, and contraband cargo already loaded to be then discharged either at the port(s) of loading or at the nearest safe place at the expense of Charterers. Owners to have the right to fill up with other goods instead of the contraband.

Should any port(s) where the vessel has to load under

this Charter be blockaded, the Charter to be null and void with regard to the goods to be shipped at such port(s).

No Bills of Lading to be signed for any blockaded port(s), and if the port(s) of destination be declared blockaded after Bills of Lading have been signed, Owners shall discharge the cargo either at the port(s) of loading, against payment of the expenses of discharge if the ship has not sailed thence or, if sailed, at any safe port(s) on the way as ordered by Charterers or if no order is given at the nearest safe place against payment of full freight.

Both-to-Blame Collision Clause

21. If the vessel comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of Owners in the navigation or in the management of the vessel, the owners of the cargo carried hereunder will indemnify Owners against all loss or liability to the other or non-carrying ship or her owners insofar as such loss or liability represents loss of or damage to, or any claim whatsoever of the owners of said cargo, paid or payable by the other or non-carrying ship or her owners to the owners of said cargo and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying vessel or Owners. The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

Indemnity

22. Idemnity for non-performance of this Charter shall be proved damages.

Penalty

22. Penalty for non-performance of this Charter, shall be proved damages.

Sublet

23. Charterers shall have the option of subletting whole or part of the vessel, they remaining responsible for due fulfilment of this Charter.

Arbitration

24. Any dispute arising from this Charter shall be submitted to arbitration held in Tokyo by the Japan Shipping Exchange, Inc., in accordance with the provisions of the Maritime Arbitration Rules of the Japan Shipping Exchange, Inc., and the award given by the arbitrators shall be final and binding on both parties.

This Charter Party has been signed by both parties and shall be in the custody of Owners.

Arbitration

23. Any dispute arising from this Charter shall be submitted to arbitration by the Nippon Shipping Exchange in Tokyo or Kobe conducted in accordance with the Rules of the Exchange then prevailing and the award given by the arbitrators appointed by the Exchange shall be final and binding.

FIXTURE NOTE
(NANYOZAI)

The Documentary Committee of
The Japan Shipping Exchange, Inc.

Issued 4/4/1967

Revenue Stamp	Revenue Stamp

Place and Date:

The fixture of charter is this day mutually confirmed

between

Owners/Chartered Owners

and

Charterers

on the following terms and conditions.

(1) Description of Vessel: flag s.s./m.v.
built tons $\frac{\text{gross}}{\text{nett}}$ register and carrying
about tons of deadweight cargo, classed

(2) Position of Vessel: now and expected ready to load under
this charter about

(3) Description and Quantity of Cargo:
a full and complete/part cargo of Logs M³/BMF
% more or less at Owners' option.

(4) Loading Port(s):

(5) Discharging Port(s):

(6) Freight Rate:

(7) Payment of Freight: prepaid on B/L quantity in in cash in US Dollar or Yen
at the exchange rate of

(8) Lay days Commencement:

(9) Cancelling Date:

(10) Lay days
for loading: M³/BMF per WWD of 24 consecutive hours, SHEX unless used.
for discharging: M³/BMF per WWD of 24 consecutive hours, SHEX unless used.

(11) To whom Notice of Readiness to be given
at loading Port:
(Cable Address)
at discharging Port:
(Cable Address)

(12) Days on Demurrage: days of 24 running hours.

(13) Demurrage Rate: US $ per day of 24 running hours.

(14) Despatch Money Rate: US $ per day of 24 running hours.

(15) Place of Settlement, and Currency, of Demurrage and/or Despatch Money
for loading:
for discharging:

(16) Other Terms and Conditions including Arbitration Clause (clause 24) as per NANYOZAI CHARTER PARTY 1967.

(17) Remarks:

This Fixture Note has been signed by both parties and shall be in the custody of Owners.

Owners: Charterers:

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 the 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.

[*As amended in November, 1964, and December, 1967*]

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, a third arbitrator 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 award 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 announcement 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 award.
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. [*Amended in November, 1964*] The awards given by the Arbitrators may be published in the periodical, *The Kaiun* (The Shipping), and other suitable papers issued by the Exchange, 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.

Section 35. [*Amended in December, 1967*] (1) An applicant for arbitration shall within one week of the acceptance of the application pay to the Exchange an engagement fee of ¥50,000.

(2) Each party shall deposit with the Exchange, for appropriation to the payment of the arbitration fee and ordinary expenses, such sum of money as the Arbitrators may determine according to the rates given below within one week of his receipt of notice thereof.

When the amount of claim is ¥5,000,000 or less, the sum to be deposited is ¥100,000.

When the amount of claim exceeds ¥5,000,000 but does not exceed ¥10,000,000, the sum to be deposited is ¥100,000 for the first ¥5,000,000, and ¥15,000 for each additional ¥1,000,000.

When the amount of claim exceeds ¥10,000,000 but does not exceed ¥50,000,000, the sum to be deposited is ¥175,000 for the first ¥10,000,000, and ¥7,500 for each additional ¥1,000,000.

When the amount of claim exceeds ¥50,000,000 but does not exceed ¥100,000,000, the sum to be deposited is ¥475,000 for the first ¥50,000,000, and ¥3,500 for each additional ¥1,000,000.

When the amount of claim exceeds ¥100,000,000, the sum to be deposited is ¥650,000 for the first ¥100,000,000, and ¥2,000 for each additional ¥1,000,000.

(*Table of the amounts of deposit is appended at the end of the Rules.*)

(3) The engagement fee paid shall, and money deposited for appropriation to arbitration fee or other purposes shall after the first hearing, as a rule not 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 be-

tween 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. [*Amended in December, 1967*] Remuneration to the Arbitrators shall be determined by the Chairman and the Deputy Chairman of the Commission upon consultation with the Arbitrators.

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. Where any doubt, or a difference of opinion among the Arbitrators, arises on the interpretation of these Rules, it shall be determined by a majority vote of the Arbitrators; and failing such determination, the matter may be referred to the Commission, whose decision shall be final and binding.

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.

Table of the Amounts of Deposit

Amount of Claim	Deposit
¥ 5mil.	¥100,000
¥ 6mil.	¥115,000
7	130,000
8	145,000
9	160,000
10	175,000
¥ 11mil.	¥182,500
12	190,000
13	197,500
14	205,000
15	212,500
16	220,000
17	227,500
18	235,000
19	242,500
20	250,000
21	257,500
22	265,000
23	272,500
24	280,000
25	287,500
26	295,000
27	302,500
28	310,000
29	317,500
30	325,000
31	332,500
32	340,000
33	347,500
34	355,000
35	362,500
36	370,000
37	377,500
38	385,000
39	392,500
40	400,000
41	407,500
42	415,000
43	422,500
44	430,000
45	437,500
46	445,000
47	452,500
48	460,000
¥ 49mil.	¥467,500
50	475,000
¥ 51mil.	¥478,500
52	482,000
53	485,500
54	489,000
55	492,500
56	496,000
57	499,500
58	503,000
59	506,500
60	510,000
61	513,500
62	517,000
63	520,500
64	524,000
65	527,500
66	531,000
67	534,500
68	538,000
69	541,500
70	545,000
71	548,500
72	552,000
73	555,500
74	559,000
75	562,500
76	566,000
77	569,500
78	573,000
79	576,500
80	580,000
81	583,500
82	587,000
83	590,500
84	594,000
85	597,500
86	601,000
87	604,500
88	608,000
89	611,500
90	615,000
91	618,500
92	622,000
93	625,500
94	629,000
¥ 95mil.	¥632,500
96	636,000
97	639,500
98	643,000
99	646,500
100	650,000
¥101mil.	¥652,000
102	654,000
103	656,000
104	658,000
105	660,000
—	—
110	670,000
—	—
115	680,000
—	—
120	690,000
—	—
125	700,000
—	—
130	710,000
—	—
135	720,000
—	—
140	730,000
—	—
145	740,000
—	—
150	750,000
—	—
160	770,000
—	—
170	790,000
—	—
180	810,000
—	—
190	830,000
—	—
200	850,000
—	—
210	870,000
—	—
220	890,000
—	—
230	910,000
—	—
¥240mil.	¥930,000
—	—
250	950,000
—	—
260	970,000
—	—
270	990,000
—	—
280	1,010,000
—	—
290	1,030,000
—	—
300	1,050,000
—	—
325	1,100,000
—	—
350	1,150,000
—	—
375	1,200,000
—	—
400	1,250,000
—	—
425	1,300,000
—	—
450	1,350,000
—	—
475	1,400,000
—	—
500	1,450,000
—	—
550	1,550,000
—	—
600	1,650,000
—	—
650	1,750,000
—	—
700	1,850,000
—	—
750	1,950,000
—	—
800	2,050,000
—	—
850	2,150,000
—	—
900	2,250,000
—	—
1,000	2,450,000

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 num-

ber 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 two Deputy Chairmen 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 Com-

mission 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 of 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

[*As amended in May and November, 1964*]

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. [*Amended in November, 1964*] (1) Upon receipt of an application referred to in the preceding section, the Maritime Arbitration Commission shall decide whether or not it should accept the same, and if it is accepted, the Commission 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).

(2) The decision of the Maritime Arbitration Commission referred to in the preceding paragraph shall be notified to the applicant in writing.

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. [*Amended in May, 1964*] 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); provided that when the applicant has required only the signature and seal of the Chairman of the Maritime Arbitration Commission, the same alone will suffice.

Section 4 *bis*. [*Amended in November, 1964*] An applicant, upon receipt of a notice of the acceptance of the application referred to in paragraph 2 of section 2, shall pay to the Exchange an engagement fee of ¥20,000, provided that an applicant for the appraisal of the price of a ship need not pay an engagement fee. An engagement fee once paid shall not be returned for any reason.

Section 5. [*Amended in November, 1964*] (1) An applicant, upon receipt of a notice from the Exchange that a written appraisal, opinion, or certificate shall be delivered, pay to the Exchange a fee therefore and such expenses as shall have been defrayed by the Exchange in regard to the appraisal, expert opinion, or certification.

(2) Notwithstanding the provision of the preceding paragraph, the applicant shall pay in advance to the Exchange part of the fee for appraisal, expert opinion, or certification, when the Exchange deems it necessary.

(3) Money paid in advance according to the provision of the preceding paragraph shall, after the first deliberation of the appraisers or experts, not be returned for any reason.

Section 5 bis. [*Amended in November, 1964*] (1) The amount of the fee for the appraisal, opinion, or certificate referred to in the preceding section, 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.

(2) The fee for the appraisal of the prices of ships shall be

¥30,000 per vessel, and any expenses specially required shall be separately collected.

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 where the parties have the right to make a compromise regarding the subject matter in dispute.

Section 787. An agreement to submit a future controversy to arbitration shall have no effect unless it relates to a particular relation of right and a controversy arising therefrom.

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

Section 789. (1) Where both parties are entitled to nominate arbitrators, the party initiating the arbitration 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 nomination of an arbitrator within the period specified in the preceding sub-section the competent Court, upon application by the party initiating the arbitration procedure, shall appoint an arbitrator.

Section 790. A party having nominated an arbitrator shall be 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, ap-

point another arbitrator within a period of seven days. In default of 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 were entitled to challenge a Judge.

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

(3) Persons who are under disability, deaf, dumb, or 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 discharge 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) Where 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 shall have 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 prohibited 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 of section 420 a motion for a new trial is to be allowed.

(2) Where otherwise agreed between the parties, an award cannot be set aside for the reasons specified in 4 and 5 in the preceding sub-section.

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 any 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) In the case mentioned in the preceding section, an action for setting aside an award must be instituted within a peremptory term of one month.

(2) The term referred to in the preceding sub-section shall commence to run from the day on which the party becomes aware of the ground for setting aside the award, but not before the execution-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 setting aside an award, the Court shall also pronounce the setting aside of the execution-judgement.

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 shall be 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 (1966-1967)

Chairman:	Katsuya, Toshiaki
Deputy-Chairman:	Hamada, Kisao
	Suzuki, Takashi

Tokyo Group

Abe, Ken-ichi	Kawasaki Kisen Kaisha, Ltd.
Adachi, Mamoru	Iino Kaiun Kaisha, Ltd.
Akita, Eikichi	Mitsui O.S.K. Lines, Ltd.
Anan, Masatomo	The Yasuda Fire & Marine Insurance Co., Ltd.
Asukabe, Suekichi	Taisho Marine & Fire Insurance Co., Ltd.
Baba, Kentaro	Iino Kaiun Kaisha, Ltd.
Churiki, Isao	Kawasaki Dockyard Co., Ltd.
Ebato, Tetsuya	The Tokio Marine & Fire Insurance Co., Ltd.
Fujii, Man-ichi	Toko Company, Ltd.
Furuya, Tojiro	Kanasashi Shipbuilding Co., Ltd.
Gunji, Akira	Mitsui & Co., Ltd.
Hagiwara, Masahiko	Japan Line, Ltd.
Hamada, Kisao	Japan Kinkai, Ltd.
Hamatani, Genzo	Hitotsubashi University
Hara, Hiroshi	Mitsui O.S.K. Lines, Ltd.
Harada, Kensuke	The Ocean Transport Co., Ltd.
Hasegawa, Motokichi	Inner Temple, London
Hayashida, Katsura	Taisei Fire & Marine Insurance Co., Ltd.
Hirai, Toshiya	Azuma Shipping Co., Ltd.
Hirao, Koji	Mitsubishi Heavy Industries, Itd.

Ichikawa, Masao	Ataka Co., Ltd.
Iida, Hideo	Yamashita-Shinnihon Steamship Co., Ltd.
Inoue, Jiro	The Nisshin Fire & Marine Insurance Co., Ltd.
Ishigaki, Rei	C. F. Sharp & Co., Ltd.
Ishimitsu, Teruo	Shimoda Dockyard Co., Ltd.
Ishizuka, Kohei	Hitachi Shipbuilding & Engineering Co., Ltd.
Itano, Kamehachiro	The First Central Shipping Co., Ltd.
Iwamoto, Tsugio	Tokyo Shipping Co., Ltd.
Izuta, Tomiya	Taiyo Shosen Kaisha, Ltd.
Kaba, Akira	Nihonkai Steamship Co., Ltd.
Kafuku, Tatsuro	Nihonkai Steamship Co., Ltd.
Kai, Motoo	C. Itoh & Co., Ltd.
Kajikawa, Masutaro	Shinnihon Kinkai Kisen Kaisha, Ltd.
Kamata, Kunio	Showa Shipping Co., Ltd.
Karaki, Itsuo	Masaki Shokai, Ltd.
Katsuya, Toshiaki	Fuji Steamship Co., Ltd.
Kawamura, Kiyoshi	Kyoei Tanker Co., Ltd.
Kikkawa, Hiroshi	Sasebo Heavy Industries Co., Ltd.
Kikuchi, Kunio	Kyosei Kisen Co., Ltd.
Kikuchi, Shojiro	Nippon Yusen Kabushiki Kaisha
Kimura, Ichiro	Yamashita-Shinnihon Steamship Co., Ltd.
Kitagawa, Tokusuke	Tokyo Metropolitan University
Kitamura, Shotaro	Interocean Shipping Corporation
Kobayashi, Shosuke	Sumitomo Shoji Kaisha, Ltd.
Komachiya, Sozo	Kanagawa University
Komatsu, Jiro	Mitsui Shipbuilding & Engineering Co., Ltd.
Kondo, Masao	Mitsui Shipbuilding & Engineering Co., Ltd.

Kubo, Hajime	Harumi Senpaku Co., Ltd.
Kuniyuki, Eiichi	Mitsui & Co., Ltd.
Masaki, Goro	Nippon Kokan Kabushiki Kaisha
Masukawa, Haruo	H. Masukawa & Co., Ltd.
Matsumoto, Ichiro	Shinnihon Kinkai Kisen Kaisha, Ltd.
Matsumoto, Seisuke	Tohnan Shokai, Ltd.
Misumi, Ken	Sansho Marine Agency Co., Ltd.
Miwa, Susumu	Shinwa Kaiun Kaisha, Ltd.
Miyata, Chuya	Miyata Shoten Co., Ltd.
Mizuno, Tokio	Mitsui Shipbuilding & Engineering Co., Ltd.
Murakami, Eisuke	Ishikawajima-Harima Heavy Industries Co., Ltd.
Murakami, Sotoo	Ishikawajima-Harima Heavy Industries Co., Ltd.
Nagai, Akio	Fuji Steamship Co., Ltd.
Nagayama, Wataru	Chuwa Kaiji Co., Ltd.
Nakase, Naoo	Japan South Sea Lumber Conference
Nakatani, Masayuki	Sasebo Heavy Industries Co., Ltd.
Nakazawa, Rokuro	Kawasaki Kisen Kaisha, Ltd.
Nishikawa, Isamu	Sanko Steamship Co., Ltd.
Nishimura, Jiro	Sanwa Shosen Kaisha, Ltd.
Ogawa, Takeshi	The First Central Shipping Co., Ltd.
Ogawa, Tomohaya	Japan Line, Ltd.
Ogawa, Torazo	Japan Port Transportation Association
Ohara, Shozo	Ohara Kaiun Co., Ltd.
Ohashi, Mitsuo	Attorney at Law
Okuyama, Kazuo	Iwai & Company, Limited
Osawa, Seiichi	Mitsui Shipbuilding & Engineering Co., Ltd.
Otsu, Yoshio	C. Itoh & Co., Ltd.
Otsuka, Takashi	Nissho Co., Ltd.

Sakuma, Seiji	Mitsui & Co., Ltd.
Sasaki, Shuichi	Japan Association for Preventing Sea Casualties
Sato, Miyozo	Keihoku Shipping Co., Ltd.
Sato, Shuzo	Dodwell & Co., Ltd.
Sato, Zentaro	Showa Shipping Co., Ltd.
Shimatani, Shigeo	Baba-Daiko Shosen Co., Ltd.
Shimaya, Kiyoshi	Marubeni-Iida Co., Ltd.
Shimazu, Tomotsugu	Shimazu & Co.
Shimizu, Tatsuo	Taiyo Gyogyo Kabushiki Kaisha
Takada, Shoichi	The Dowa Fire & Marine Insurance Co., Ltd.
Takanashi, Masao	Japan Maritime Research Institute
Takeuchi, Ken-ichi	C. Itoh & Co., Ltd.
Takuma, Kenji	Uraga Heavy Industries, Ltd.
Totsuka, Gen-ichiro	Kawasaki Kisen Kaisha, Ltd.
Tottori, Yoshio	Kowa Kaiun Kaisha, Ltd.
Tsuboi, Gengo	Tokyo Tanker Co., Ltd.
Tsuji, Futoshi	Mitsuiline Industries, Ltd.
Tsunado, Masao	M. O. Nearseas, Ltd.
Tsuruoka, Nobuo	Okada Shosen Kaisha, Ltd.
Uchida, Isamu	Meiji Shipping Co., Ltd.
Uchida, Mitsuji	Uchida Kaiun Kabushiki Kaisha
Umeda, Zenji	Kawasaki Dockyard Co., Ltd.
Umetani, Riichi	The Japan Hull Insurance Union
Urakami, Tsutomu	Nissho Co., Ltd.
Yabe, Giichi	General Shipping Co., Ltd.
Yabuki, Toyohiko	Baba-Daiko Shosen Co., Ltd.
Yagi, Noboru	Towa Steamship Co., Ltd.
Yokoi, Shinkichi	The Yasuda Fire & Marine Insurance Co., Ltd.

Yaguchi, Toshikazu	Hitachi Shipbuilding & Engineering Co., Ltd.
Yukawa, Isamu	Okada Shosen Kaisha, Ltd.
Zento, Keiichi	Yamashita-Shinnihon Steamship Co., Ltd.

Osaka-Kobe Group

Adachi, Shin-ichiro	The Tokio Marine & Fire Insurance Co., Ltd.
Aoki, Toshio	Kansai Steamship Co., Ltd.
Aono, Kiyoaki	Onomichi Dockyard Co., Ltd.
Dan, Nobushige	Yamashita-Shinnihon Steamship Co., Ltd.
Emi, Yoshikazu	Japan Lumber Importers Association
Haba, Katashi	Kawasaki Dockyard Co., Ltd.
Hachiuma, Kei	Hachiuma Steamship Co., Ltd.
Hamane, Yasuo	Chiyoda Shipping Co., Ltd.
Hatta, Ichiro	Showa Shipping Co., Ltd.
Hayashi, Yutaka	Mitsubishi Heavy Industries, Ltd.
Igarashi, Etsuo	Tokai Rinko Kaisha, Ltd.
Imafuku, Yasuo	Mitsui O.S.K. Lines, Ltd.
Imamura, Osamu	Tamai Shosen Kaisha, Ltd.
Ishida, Naomiki	The Bank of Tokyo, Ltd.
Kai, Katsuro	Kai Kisen Co., Ltd.
Kai, Sokichi	Yamashita-Shinnihon Steamship Co., Ltd.
Kajiwara, Hiroshi	Meiji Shipping Co., Ltd.
Kaneko, Kazuo	Mitsubishi Heavy Industries, Ltd.
Kataoka, Hiroshi	Iwai & Company, Limited
Kato, Senmatsu	The Fuso Shipping Co., Ltd.
Kitamura, Genzo	Kyosei Kisen Co., Ltd.
Kobayashi, Kaoru	Japan Line, Ltd.
Kondo, Mikio	Ishikawajima-Harima Heavy Industries Co., Ltd.

Kotanaka, Tetsuo	The Tokio Marine & Fire Insurance Co., Ltd.
Koyano, Katsuzo	Mitsubishi Shoji Kaisha, Ltd.
Kubota, Hiroshi	Kobe University
Kurakawa, Masao	Mitsui & Co., Ltd.
Makikawa, Teiji	The Daiichi Bank, Ltd.
Makino, Toshio	Nippon Yusen Kabushiki Kaisha
Marutani, Katsuji	Kyosei Kisen Co., Ltd.
Matoi, Katsuma	Nitto Transportation Co., Ltd.
Matsumoto, Sasao	Shoei Kabushiki Kaisha
Matsumoto, Shoichi	Yamashita Kinkai Steamship Co, Ltd.
Miyake, Tokusaburo	Far East Shipping Co., Ltd.
Miyao, Ryozo	Taitsu Shipping Co., Ltd.
Mizutani, Katsuji	The Tokio Marine & Fire Insurance Co., Ltd.
Moriyama, Mitsuaki	Sumitomo Shoji Kaisha, Ltd.
Murachi, Shigeharu	Meiji Shipping Co., Ltd.
Murakami, Kennosuke	Marubeni-Iida Co., Ltd.
Narutomi, Takeo	Towa Steamship Co., Ltd.
Nihei, Hisashi	Daiichi Senpaku Kabushiki Kaisha
Ogaki, Mamoru	Inui Steamship Co., Ltd.
Ogawa, Ryoichi	Nitto Transportation Co., Ltd.
Okabe, Keizo	The Dowa Fire & Marine Insurance Co., Ltd.
Okaniwa, Hiroshi	Sanko Steamship Co, Ltd.
Onishi, Yutaka	C. Itoh & Co., Ltd.
Osaki, Kenji	Nippon Kinkai Kisen Co., Ltd.
Saito, Yasuji	The First Central Shipping Co., Ltd.
Sato, Kitsuji	Baba-Daiko Shosen Co., Ltd.
Sato, Kunikichi	Satokuni Kisen Kaisha, Ltd.
Sawayama, Nobukichi	Sawayama Steamship Co., Ltd.
Shimada, Shoji	Setoda Shipbuilding Co., Ltd.

Shimizu, Shigenobu	The Yasuda Fire & Marine Insurance Co., Ltd.
Sugaya, Kan-ichi	Wayoo Kisen Kabushiki Kaisha
Suzue, Akira	Mitsui Shipbuilding & Engineering Co., Ltd.
Suzuki, Takashi	Matsuoka Steamship Co., Ltd.
Takaue, Toshi	Hitachi Shipbuilding & Engineering Co., Ltd.
Takami, Sueo	The Bank of Kobe, Ltd.
Takemoto, Nariyuki	Kawasaki Kinkai Kisen Kaisha
Tamai, Misao	Tamai Shosen Kaisha, Ltd.
Taota, Nobukazu	Taisho Marine & Fire Insurance Co., Ltd.
Tochiki, Sakuya	Tochiki Steamship Co., Ltd.
Torii, Masaru	Yamashita-Shinnihon Steamship Co., Ltd.
Tsubokawa, Keiji	Houn Shipping Co., Ltd.
Yagi, Hiroshi	Kobe University
Yamasaki, Hisao	Kawasaki Kisen Kaisha, Ltd.
Yamashita, Kiichiro	Kansai Steamship Co., Ltd.
Yasuhara, Meiji	Seiko Kaiun Co., Ltd.
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