THE BULLETIN OF
THE JAPAN SHIPPING EXCHANGE, INC.

No. 2.

JANUARY 1965

PREFACE

The Japan Shipping Exchange, Inc., was established in 1921 as a permanent institution of maritime arbitration, and for over four decades since then we have been conducting maritime arbitrations with impartiality, promptitude, and least expense as our guiding principles. As its subsidiary functions, we also render appraisals and expert opinions in maritime matters, and prepare and publish forms of charterparty and other maritime contracts. We are through these activities endeavouring to contribute to the development of shipping trade.

Out of the arbitration awards and expert opinions rendered by the Japan Shipping Exchange, Inc., both in domestic and international cases, those available for publication have from time to time been reported in *The Kaiun* (The Shipping), the monthly magazine published by the Exchange. In view of the recent tendency of increase in the international cases submitted for arbitration, and in the applications for expert opinion on matters involving international interest, it has been considered of use to make available to the public some of the arbitration awards and expert opinions rendered by the Japan Shipping Exchange, Inc. The Bulletin of the Japan Shipping Exchange, Inc., No. 1, published in February 1964, is the result, and has been very favourably received by the shipping trade circles of the world. Encouraged by the warm welcome extended to our first attempt, we now present this second number of our Bulletin, and hope it will prove of use to the shipping and other business interests in general. Any frank view of the reader on this volume will be most highly appreciated.

It may be added that, as in the case of No. 1, the ex-

penses of compilation and printing of this booklet have been met out of a subsidy granted by the Ministry of Transport.

Yasuzo Ichii

President of the Japan Shipping Exchange, Inc.

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ARBITRATION

***in re* a dispute concerning a Voyage Charter Party of s.s. "ALMA"**

between

Compania Naviera Campos S.A., Republic of Panama, the Shipowners . . . . . CLAIMANTS

and

Iwai & Co., Ltd., Japan, the Charterers . . . . . .RESPONDENTS.

Concerning a Charter Party of s.s. "ALMA" concluded in Manila on March 31, 1959 between Shipowners, Compania Naviera Campos S.A. (hereinafter referred to as "A"), and Charterers, Iwai & Co., Ltd. (hereinafter referred to as "B"), a dispute arose, and both parties filed an application for arbitration with the Japan Shipping Exchange, Inc. The arbitrators appointed in accordance with the provisions of Section 12 of the Maritime Arbitration Rules of the Japan Shipping Exchange, Inc. do upon due deliberation hereby render an award as follows: —

AWARD

1. "B" shall pay to "A" the sum of ¥4,865,295.
2. The fee and costs of arbitration shall be ¥400,000, and "A" and "B" shall pay ¥200,000 each.
3. Other claims of both parties are dismissed.
4. The Court of competent jurisdiction in regard to this award shall be the Tokyo District Court.

FACTS AND ALLEGATIONS

1. Claimants' Side:

"A" claimed as follows:—

1. "B" shall pay to "A" the sum of ¥8,832,982 as repairing expenses, demurrage, etc. together with the interest at the rate of 6% per annum from the due date until the payment is completed.

2. The costs of arbitration shall be borne by "B".

And as the ground of claim, "A" stated as outlined hereunder:—

1. "A" through its agent Victoria Steamship Co., Ltd., London, entered into a contract with "B" for transportation of a cargo of lauan logs produced in the Philippines of 2,500,000 bd. ft. to Japan by the s.s. "ALMA" (hereinafter referred to as "the Vessel") and in Manila "A" through its agent Philipine Merchants Shipping Company, Inc., concluded a Voyage Charter Party of the Vessel (hereinafter referred to as the "Charter Party") dated March 31, 1959 with "B".

The Charter Party contains the following clauses:—

Where to load.	. . . any three (3) safe ports, Philippines, ...
Cargo.	. . . Two Million Five Hundred Thousand (2,500,000) bd. ft. Philippine Export Logs, 10% more or less at Owners' option, ...
Destination.	. . . two (2) safe ports, Tokyo/Osaka range . . . .
Rate of Freight.	U.S. Dollars Eighteen & Fifty Cents ($18.50) per 1,000 bd. ft. FIOS trimmed . . . .
Owners' Responsibility Clause.	2. Owners are to be responsible for loss of or damage to the goods or for delay in delivery of the goods only in case the loss, damage or delay has been caused by the improper or negligent stowage of the goods (unless stowage performed by shippers or their stevedors or servants) or by personal want of due diligence on the part of the Owners or their Manager to make the

vessel in all respects seaworthy and to secure that she is properly manned, equipped and supplied or by the personal act or default of the Owners or their Manager . . .

Loading. 5. Cargo to be brought alongside in such a manner as to enable vessel to take the goods with her own tackle and to load the full cargo at the rate of 50,000 bd. ft. per workable hatch WWDSHEX unless used; if used, actual working time to count as laytime.

Charterers to procure and pay the necessary men to load cargo on board the ship to do the work there, vessel only heaving the cargo on board.

Discharging. 6. Cargo to be received by Merchants at their risk and expense alongside the vessel not beyond the reach of her tackle and to be discharged at the rate of 100,000 bd. ft. per workable hatch WWDSHEX unless used; if used, actual working time to count as laytime.

Demurrage. 7. Demurrage at the rate of U.S. Dollars Five Hundred ($500.00) per day or pro rata for any part of a day, . . .

Clause 19. Laydays not reversible.

Clause 20. Lighterage at both ends, if any, for account of charterers; charterers to have privilege of working all available hatches at all times and vessel to allow free use of steam and winches and if necessary, supply light on board, free of expense to charterers. Maximum boom capacity of vessel is 5 tons.

Clause 21. Any dispute arising under this Charter to be referred to Arbitration in Tokyo; one arbitrator to be nominated by the Owners and the other by the Charterers, and in case the arbitrators shall not agree then to the decision

of an Umpire to be appointed by them, the award of the Arbitrators or the Umpire to be final and binding upon both parties.

2. In accordance with the Charter Party, the vessel loaded a cargo of lauan logs at Lianga and Parang in the Philippines during the period from May 2, 1959 to May 30, 1959, and while the cargo loading was being carried out by stevedores dispatched by the shipper, the 3-ton derrick at No. 3 portside hatch and the 5-ton derrick at No. 2 hatch were broken and damage was also sustained at various parts of the vessel.

3. The contents of Clause 20 of the Charter Party are now in dispute. But that "B" 's London broker and Manila broker had a knowledge of them is seen from the letter of "B" 's London broker, Howard Houlder & Partners Limited, addressed to "A" 's agent, Victoria Steamship Co., Ltd., dated March 31, 1959, in which there is a description reading "(9 derricks @ 5 tons, 1 @ 3 tons)" and the cable dated March 24, 1959 from "B" 's London broker to "B" 's Manila broker, Philippine Merchants Steamship Company Inc. If they had not known the fact, they not only could have understood from the wording of Clause 20 of the Charter Party that there was a derrick whose capacity was under 5 tons, but also "B" could not have misinterpreted such Clause because "B" had had long business experience.

Anyway "B" ought to have notified all those engaged in loading or discharging work such as stevedores procured by "B" of the capacity of each derrick of the vessel, and "A" was not responsible for the above matter. And as a practice of shipping trade, in case it becomes necessary to use derrick beyond its capacity, a shipper or stevedore must report it to the master or mate on duty, and then, by obtaining his consent the work is to be carried out under his instructions. If the above consent is not obtained, naturally he can only use the derrick at his own risk or expense.

"B" alleged that the insufficient supervision of the master of the Vessel caused the damage mentioned in pragraph 2. But it is entirely impossible, if the duties of master and mate are considered and that the master or mate is on duty all the time at the derricks to watch the loading work of the logs of 2,500,000 bd. ft. for nearly one month and the quantity loaded by each derrick one by one, moreover such a thing is not seen in the practice of shipping trade. Further, shippers or stevedores are only assistant performers under Clause 5 of the Charter Party, therefore "B" shall assume the liability for the acts of the above persons.

The above mentioned damage is evident from the survey report of Cornes & Co., Ltd. On the other hand, as to the repairing expenses for the damage "B" alleged its exemption from liability for the present accident under the "ordinary wear and tear" Clause of Nanyozai Charter Party (a voyage charter party form for lauan logs or lumber), but the Charter Party in the present case is in the form of Gencon charter in which there are no such clauses, and it is clear from the amount claimed by "A" that the damage in the present case exceeds the ordinary wear and tear, and the amount of repairing expenses for such ordinary wear and tear has already been deducted by Dodwell & Co., Ltd., agent for "A".

4. The demurrage for the total 15 days 16 hours 40 minutes arose at loading ports, and at discharging ports the total 11 days 20 hours 58 minutes including hours for repairing work for damage sustained at loading. As the reason of demurrage at the loading ports "B" alleged that the master of the vessel did not allow stevedores to have meals in the vessel and that at the time of the vessel's entering the second loading port "A" neglected to arrange with the custom house officials. But as to the former "A" does not know the custom in the Philippines, and, if "B" asked "A" to deduct from demurrage hours spent for meals, "A" will make such deduction. And as

to the latter allegation, the arrangement with the custom house officials should have been made on the side of "B", so that "A" has no concern about the above matter. Anyway, "B" admitted the arising of damage to derricks and demurrage, and "B" admitted the demurrage at loading ports and submitted to "A" a guarantee of payment endorsed by the Nippon Kangyo Bank, Ltd., Head Office, for $6,485.43 against the sum of $7,847.22 claimed by "A". However, the above submission of the guarantee of payment by "B" to "A" was not compelled by "A".

For the repairing expenses and incidental expenses thereto and above demurrage, "A" demanded of "B" the payment of the sum of ¥8,639,158 in total dated July 6, 1959, through its agent Dodwell & Co., Ltd., Tokyo. However, "B" submitted only the above guarantee of payment and has never made payment despite repeated demands by Dodwell & Co., Ltd. and its attorney, McIvor, Kauffman & Yamamoto Law Offices.

2. Respondents' side:

"B" stated as follows:

1. "A" 's claim should be dismissed.

2. The costs of arbritration procedures should be borne by "A".

And "B" pleaded as follows:—

1. In the middle of March, 1959, "A" 's Manila broker, Philippine Merchants Steamship Company Inc., offered to "B" a charter of the Vessel through "B" 's resident staff, and "B" gave an instruction to him "to charter the said vessel, if as a result of his investigation of the ship's capacity he find the vessel suitable for loading a cargo of lauan logs". Therefore, "B" 's resident staff made an inquiry to "A" 's broker on the age and derrick capacity of the vessel, whether the vessel has an experience in lauan logs or not, etc. according to the above instruction, but received an answer only to such an extent as "the maximum capacity of derrick is 5 tons and probably the loading of lauan logs is possible", and he was demanded to reply immediately for the reason that there

were many inquiries from other companies for chartering the vessel, so that he trusted the matters described only in the Charter Party and concluded the contract.

2. "B" admits that the 3-ton derrick broke down during loading of the cargo at loading ports.

"A" stated that the derrick at No. 3 portside hatch had a capacity of only 3 tons quoting "(9 derricks @ 5 tons, 1 @ 3 tons)" mentioned in the letter of Howard Houlder & Partners Limited to Victoria Steamship Company, Ltd., but "B" has never been notified of the fact that such letter existed and its contents. Moreover, "A" called Howard Houlder & Partners as "B" 's London broker, but "B" had never appointed any person as charterer's broker at the time of conclusion of the contract. In addition to that, "B" interpreted the provisions of Clause 20 of the Charter Party to mean that the derrick can not lift more than 5 tons, but did not consider that the derrick could hoist only as much as 3 tons. And until the Vessel reached discharging port "B" had never heard that "B" had been notified of the fact that the derrick in question had a capacity of 3 tons.

3. In the broken derricks the weight of lauan logs was not measured log by log, but judged by a specialist of cargo work as to the approximate weight, and it was found there was no log of specially large size. Furthermore, there was no such fact that at the time of loading, the shipper had compelled the vessel to load the cargo, but loading was done by consent of the vessel. In order to protect the safety and seaworthiness of a vessel, the master has the right and duty to control and supervise loading work. Therefore if the master or mate on duty had supervised the loading work, the accident would have been avoided by such means that the logs beyond the capacity of the 3-ton derrick be lifted by the 5-ton derrick or if it was also beyond the capacity of the derrick, it would not be handled. Actually, other ships usually refuse to do loading work for lauan logs in such

a case. If the loading work to be carried out inside of vessel in connection with the safety and navigatability, even it is concerned with shipowner, "B" naturally consider that the master has the right and duty to supervise and instruct it.

4. "A" demanded the payment of repairing expenses for all the damage to the vessel. But it is provided in Nanyozai Charter Party that "ordinary wear and tear" shall be borne by the shipowner. In the present case ordinary logs were loaded by the ordinary way as stated in the Letter of shippers, therefore the damage is included in the category of "ordinary wear and tear". So that if there has arisen damage beyond ordinary wear and tear, it must be attributed to the responsibility of shipowner who had not made enough preparation for the loading of lauan logs against the provisions of Clause 2 of the Charter Party and to the responsibility of the master who had not taken necessary measures during the loading work.

5. As to the demurrage, it is attributed to the responsibility of "A" and the master who neglected to prepare for and supervise the loading work of lauan logs as stated above and made the loading efficiency decrease, therefore "B" does not admit its responsibility. And it is one reason for the unreasonable delay of departure that the master had not allowed stevedores to eat meals in the vessel against the custom in the Philippines, and another reason is that at the time when the vessel entered the second loading port "A" neglected to make an arrangement with custom house officials which caused the stay of the Vessel to prolong.

6. "B" was notified by "A" that unless "B" gave a guarantee for payment endorsed by a first-class bank "B" would not be allowed to issue the delivery order or carry out loading work, therefore "B" gave a guarantee promising that if an accident and demurrage clearly attributable to "B" 's act arose, "B" would pay it. This did not mean that "B" admitted its liability.

REASONS FOR AWARD

The fundamental matter in dispute is whether the damage to the 3-ton derrick at No. 3 portside hatch and the 5-ton derrick at No. 2 hatch during loading and the damage to 3-ton derrick at No. 3 portside hatch during discharging are attributable to the responsibility of "A" or "B". And if the cause of the above damage is clarified, the liability for demurrage will clarify itself. So we shall first deal with the cause of damage occasioned at loading ports and discharging ports separately.

1. Neither "A" nor "B" explained concretely the cause of damage to derricks and the time and spot thereof at loading port, but according to the Survey Report submitted by "A" which is undisputed even on the side of "B", the first accident arose on May 10, 1959, at 16:00 at Liangua, Philippines when the loading work was being carried out by the 3-ton derrick, the cargo hook was hung on the port fastener inside the hold and three logs were loaded on the cargo wire and pulled into the starboard side, but the topping lift (3½ wire) was cut off, therefore the derrick boom fell down in front of the hatch coaming of No. 3 hatch and the boom sustained damage. And the second accident occurred on May 12, 1959, at 13:50 at Lianga, when trimming work of cargo by cargowire of 5-ton derrick at the portside No. 2 hatch was being done, the topping lift was cut off causing the falling down of the derrick boom on steel handrails in front of the quarter deck under the bridge, so that the boom and front bulkhead of bridge sustained damage. And it is understood that the damage did not arise when and where logs were being lifted by the derrick from side into hold, but arose during loading and trimming of cargo inside the hold. The above point should be noticed.

Thus, if it is noticed that the damage case occurred while trimming work was being done, it would be of no significance to solve the

present case whether "B" had a knowledge of actual capacity of each derrick under dispute between "A" and "B" at the conclusion of the Charter Party, but it would be rather important by whom and under whose instructions the trimming work beyond the capacity of derricks was carried out. Therefore, the arbitrators examined the Charter Party and statements and proof documents submitted by "A" and "B", and the arbitrators considered that according to the principle of loading work under F.I.O.S.T. the shipowner does not concern as to bearing of expenses for procurement of stevedores by charterer, loading, trimming work, etc., but the master of the vessel is responsible for managing the vessel and keeping it in good navigatability at the time of leaving the port, and the master shall not be exempted from the responsibility. This principle of F.I.O.S.T. is understood not only in England as well as in Japan, but also by those who engage in shipping trade. "A" alleged that it was impossible physically for the master or mate to supervise loading work constantly, but arbitrators could not admit this allegation. On the contrary, the master or a hatch officer should have instructed and supervised properly the stevedores dispatched by the shipper as to the loading work. Arbitrators think that the master ought to have been careful on the point as the vessel was old and at the time when the damages occurred the levelling work in the hold was being carried out and they affected very much the navigatability of the vessel. On the above point, "A" stated in the Refutative Statement with Exhibit A No. 13 that before and during loading work the master notified supercargo and stevedores of the fact that the capacity of the derrick at No. 3 portside hatch was 3 tons, but Exhibit A No. 13 does not explain what attention was paid during the trimming work by the master. And those who carry out directly the loading and trimming work are stevedores of "B", the proper instructions and supervisions of the master or hatch officer are required, and especially in the case of a transporting lauan logs the master or a hatch officer must generally and con-

stantly give proper instructions and supervisions, and as to the above point any exception is not admitted, therefore the arbitrators could not help admitting that enough attention was not paid in the transportation of lauan by "A" and the master.

The damage to the derricks occurred due to the lack of proper attention by "A" and the master as mentioned above, but the arbitrators have to examine if there was any blamable points on "B" 's side.

In the letter of stevedores to shippers produced as Exhibit "B" 5, there is a description reading "this is the first time of course that we have loaded an old ship", therefore if they lifted the lauan logs beyond the capacity of the derrick, such cargo work might have caused the damage during trimming work inside the hold. On this point, it is clear that there was a log of 6.70 tons among logs loaded in the vessel according to the Survey Report.

If "B" did not know the concrete contents of Clause 20 of the Charter Party, it is a problem that regardless "B" knew the maximum capacity of derrick as 5 tons "B" used it for loading logs beyond the above weight because it was clear that the maximum capacity of derrick was 5 tons. "B" stated in the Refutative Statement "if the master judges loading of logs is impossible as it is too long and large for the capacity of the vessel, he should, of course, reject to accept it", but it does not mean that the loading of log beyond the capacity of derrick by neglecting the fact is possible unless the master rejects it. In the above case, "B" should have taken necessary measures for carrying out the cargo work safely by contacting the master in advance, and it is breach of the principle of truth and faithfulness that "B" did not do so.

As mentioned previously, if the vessel was such an old ship as the stevedores had never experienced, the record of inspection of derricks of the vessel at Piraeus, Greece, dated January 2, 1959, which is Exhibit A No. 14 can not be neglected, and though the Vessel was very old,

all the derricks of the vessel had the capacity of 5 tons except the 3.5 tons of No. 3 portside hatch, therefore if the weight of log had been within 5 tons, the damage would have never occurred.

Therefore, taking into consideration the above points as to the expense for repairing No. 2 hatch of ¥415,500 and No. 3 hatch of ¥334,800 out of the repairing expenses of damage caused by loading work at loading port of ¥1,804,700 claimed by "A", the sum of ¥375,150 equivalent to a half of the total of ¥850,300 shall be borne by "B", but "A" 's claim for other expenses and an estimated amount of repairing expenses of ¥1,320,600 of the damage caused by the loading work at loading ports claimed by "A" shall not be admitted.

2. As to the accident during discharging work, the Survey Report of Cornes & Co., Ltd. pointed out that during discharging work at Tokyo Port on June 13, 1959 the boom of 3-ton derrick at No. 3 hatch was cut off and fell down caused by the latent defect of a chain joint. This accident is considered to have happened while the logs were actually being hoisted by the 3-ton derrick in question and carried away from the inside of hold to the side of the Vessel, which accident was different in a sense from that at the loading work. According to the Survey Report it is plain that there were some logs beyond capacity of derricks, and the charterer should have known well the capacity of the derrick in question but had not called the attention of the master or hatch officer, for which "B" is to blame. There remains a little doubt in the point that the master had not rejected the use of derricks, it will be proper that "B" shall assume the liability, if the various situations are considered. Therefore, the arbitrators admit that all the amount of ¥381,800 claimed by "A" as the repairing expenses of the 3-ton derrick at No. 3 portside hatch broken during the discharging work shall be borne by "B".

In connection with the above, the arbitrators admit that the survey fee of ¥62,890 of Cornes & Co., Ltd. (Yokohama) as to the

above accident during the discharging work in the total amount of ¥197,784 of survey fee claimed by "A" to "B" shall be borne by "B".

3. Next the demurrage is examined as follows:—

First, as to the approved laytime at loading port the arbitrators admit that it shall be 9 days 0 hour 0 minute in view of that the number of holds of the vessel is 5 and Clause 5 of the Charter Party reads "....to load the full cargo at the rate of 50,000 bd. ft. per workable hatch WWDSHEX unless used; if used, actual working time to count as laytime", and the loading capacity of the Vessel was 2,249,981 bd. ft. (in which the amount "said to be" is 699,996 bd. ft.) according to the Sale Invoice and Tally Sheet and that approved laytime is 9 days in the Laydays Statement. However, in the Laydays Statement and Time Sheet at the loading port submitted by "A" there is no description about conditions of loading works at each hatch at the time of and after the accident in question, therefore according to the provisions of Clause 5 of the Charter Party the amount loaded after May 10, 16:00 was 200,000 bd. ft. and that after the second accident was 150,000 bd. ft., so that the termination of approved laytime was May 13, at 10:22. Therefore, as to the termination of "A" 's approved laytime of May 12, at 18:30 and the period of laytime of 15 days 16 hours 40 minutes, the Arbitrators admit that as stated above, the termination was May 13, at 10:22 therefore the period of laytime at loading port was 15 days 0 hour 48 minutes, and then the demurrage for the above period shall be borne by "B".

Secondly, reference to the Time Sheet submitted by "A" as to the laytime at discharging port shows that the termination of approved laytime was June 17, at 15:02 and the termination of discharging work was June 19, at 16:15, and it was June 29, at 12:00 that the vessel was towed to the Ishikawajima Dockyard for repairing work after the discharging work and repaired. And as admitted above "B" is to blame for the accident of falling down of derrick boom at No. 3 portside hatch during discharging work, all the demurrage for

2 days 1 hour 13 minutes as laytime up to the completion of discharging work shall be borne by "B", and as to the 9 days 19 hours 45 minutes until the vessel was repaired there found considerable amount of items not to be attributable to the responsibility of "B" as a result of examination on the content of the repairing work in the documents relating to Ishikawajima Dockyard, so that the arbitrators admit the demurrage for 4 days 21 hours 53 minutes which is shared at fifty-fifty by "A" and "B" shall be borne by "B".

Therefore, the arbitrators admit that "B" shall pay to "A" the sum of ¥3,968,045 equal to the above total demurrage for 21 days 23 hours 54 minutes.

Moreover, "A" claimed from "B" the sum of ¥154,820 as the towing fees and pilotage for shifting the vessel to Ishikawajima after the termination of discharging work, but in consideration of the above points the arbitrators considered it proper that the sum be borne at fifty-fifty between "A" and "B", therefore the arbitrators admit that "B" shall pay to "A" the sum of ¥77,410.

Upon deliberation of all the claims and proof documents of the both parties, and questions put to both parties, results of investigation, etc. carried out under the authority of the arbitrators, the arbitrators give arbitration award as aforesaid.

March 24, 1964

ARBITRATION

***in re* a dispute concerning a Voyage Charter Party of s.s. "BRISBANE BREEZE"**

between

Pacific Navigation System, Inc. (Guam), the Shipowners . . . . . CLAIMANTS

and

Lee Chang Yung Lumber & Plywood Mfg. Works, Ltd., (Taiwan), the Charterers . . . . RESPONDENTS.

A dispute concerning a voyage charterparty of s.s. "Brisbane Breeze" entered into between the above-said parties under date of 3rd May, 1963 at Taipei having been submitted by both parties to the Japan Shipping Exchange, Inc., for arbitration, the Arbitrators who were appointed in accordance with the provisions of Section 11 of the Maritime Arbitration Rules of the Japan Shipping Exchange, Inc., upon careful deliberation adjudicate as follows:—

AWARD

1. Claim of the Shipowner, Pacific Navigation System, Inc., shall not be recognized.
2. The arbritration fee and costs shall be One Hundred and Twenty Thousand Yen (¥120,000.00) and the same being split between the parties concerned, each party shall pay Sixty Thousand Yen (¥60,000.00).
3. The Court of competent jurisdiction in regard to this Award shall be the Tokyo District Court.

FACTS AND ALLEGATIONS

Claimants, Pacific Navigation System, Inc. (hereinafter referred to as "A") demanded the Respondents, Lee Chang Young Lumber & Plywood Mfg. Works, Ltd. (hereinafter referred to as "B") to effect the payment of remaining freight in the amount of US$3,935.98 and turned the matter over to Arbitration on the following allegations.

I. "A" concluded a voyage charter party through its agent United Exporters, Ltd. of a vessel owned by "A" s.s. "Brisbane Breeze" (hereinafter referred to as "the Vessel") in Taipei on the 3rd May 1963 with "B" in connection with the transportation of lauan logs from Parang and Butuan, Philippine Islands to Keelung, Taiwan in accordance with Fixture Note, of which the principal terms and conditions are as follows:—

1.	Cargo:	2,000,000 BMF of Lauan Logs (1,000,000 BMF each from Parang and Butuan respectively), each piece not exceeding 5 tons in weight.
2.	Vessel:	s.s. "Brisbane Breeze" ....
3.	Loading Ports:	One safe berth Parang and one safe berth Butuan ...
4.	Discharging Port:	One safe berth Keelung.
10.	Freight Rate:	At US$15.00 per 1,000 BMF F.I.O. ST.
11.	Freight Payment:	Payable in Taipei by Sola Draft within two weeks after the vessel's arrival at Keelung.
12.	Other Terms:	Per Nanyozai Charter Party and the Carrier's regular form of Bill of Lading.

II. (1) Article 10 of the above fixture note merely states 1,000 BMF and it is not clear whether it is gross or nett. This ambiguity gave rise to dispute. "A" claims that he has instructed through

its agent United Exporters, Ltd. to specify that Brereton Scale be used in the above fixture note, but "A" 's agent has failed so to state. However, joint letter of confirmation dated the 16th July 1963 clearly indicates concurrence by both parties that the cargoes to be measured in accordance with article No. 15 of Nanyozai Charter Party which reads "Cargo to be measured by official measurers or sworn measurers according to Brereton Scale before loading".

(2) As to what basis to be used in calculation of freights, Representative of "A" Mr. Robert R. White and Representative of "B" Mr. T. C. Kang had met on 29th June 1963 at discharging port, Keelung, prior to commencement of discharging cargoes from the said vessel, and at that time "A" insisted that gross BMF of 2,146,043 BMF less trimming allowance which comes to 2,053,348 BMF should be used as basis for Brereton scale whereas "B" insisted that waste allowance should further be deducted which meant nett BMF. Argument pursued with no agreement. Thereon "B" took an immediate measure to make settlement of freight on the basis of nett BMF which amounted to US$26,864.24 and deposited the difference in freight between US$30,800.22 calculated on the intermediate quantity by "A" and US$26,864.24 calculated on nett volume by "B" in the amount of US$3,935.98 at Taipei. Subsequently, "A" delivered the cargoes to "B". "A" received US$26,864.24 only as payment of freight and the difference of US$3,935.98 had been deposited.

(3) Both "A" and "B" confirmed through joint letter that quantity loaded on the Vessel was 2,146,043 BMF gross, 2,053,348 BMF when trimming allowance is deducted, and 1,790,949 BMF when waste allowance is further deducted. As no one from "A" 's side witnessed the surveying conducted at the ports of loading, "A" requested surveying be conducted at the port of discharge,

but "B" refused. So "A" attempted to carry on survey by himself, but it was impossible as the logs had already been let loose.

(4) While "A" recognizes the established practice existing between seller and buyer in the sales of Philippine lauan logs to take due consideration of some surplus in quantity, i.e., DEKOKU allowance, but this does not mean that freight is calculated on the basis of loaded quantity less DEKOKU allowance above mentioned. Absence of any provision in the articles of the Nanyozai Charter Party substantiates the reasoning.

III. "B" insists that payment of freight is to be made on the basis of B/L quantity, i.e., nett BMF in accordance with article 2 of Nanyozai Charter Party reading "Freight to be prepaid on Bills of Lading quantity". But payment of freight should be made in accordance with Sec. 11 of the fixture note, and not by the provision of article 2 of Nanyozai Charter Party. Bills of Lading quantity means nett BMF of 3 different quantities referred to before which is 1,790,949 BMF. The fact that Master's signature appears on the B/L merely proves that he has exercised his authorized duty and can not be construed as meaning that he has affirmed the B/L quantity as justified basis for the calculation of freight.

Furthermore, judging from the provision of articles 16 of the Nanyozai Charter Party which reads, "... but should the freight by Bills of Lading amount to less than the total chartered freight, the difference to be paid to the Owners in cash on signing Bills of Lading", the basis to be used for the calculation of freight is not B/L quantity but 2,053,348 BMF arrived at by the use of Brereton Scale.

Freight will therefore be US$30,800.22, and "B" must pay the remaining freight of US$3,935.98 to "A".

"B" requested Arbitration denying flatly the demand made by "A" and

submitted their reasoning as follows:—

I. "B" confirms having contracted with "A" as contended by "A" and having agreed to surveying the logs according to Brereton Scale, but does not admit being liable to pay the remaining balance of US$3,935.98.

II. "B" can not understand why "A" refuses to recognize deduction of waste allowance while agreeing to the deduction of trimming allowance from gross volume. During past 8 years "B" had chartered many vessels of different nationalities such as Japan, Britain, Panama, China and Philippines and had calculated the freights on the basis of B/L quantity, i.e., nett BMF. Furthermore, "A" 's agent United Exporters, Ltd. had concluded the contract to transport lauan logs from the port of Butuan to Keelung as agent for other company and freight was paid according to nett BMF quantity. In the circumstances, "A" ought to have made clear to "B" of his intention to use basis other than nett BMF.

Freight in the case under review should be calculated on the basis of Bs/L quantity as per article 2 of Nanyozai Charter Party, if we were to assume that freights are to be calculated on the basis of intermediate quantity out of 3 quantities referred to by "A", "A" 's agent in Manila would not have issued Bs/L with nett BMF. Though "A" is contending on the strength of article 16 of Nanyozai Charter Party that Captain's signature affixed to the Bills of Lading does not mean that Captain had recognized the B/L quantity as justified, but such is misinterpretation of article 16. This article can only be cited in case of shippers cancelling the ship's space on account of unreadiness of cargoes at the port of loading. In the case of the Vessel under review wherein cargoes had been shut out on account of shortage of loading capacity of the Vessel, the article 16 could not be construed to apply. As a consequence, "A" 's contention to calculate

freights on the quantity, i.e., gross BMF less trimming allowance, is one-sided opinion which is not fair.

III. Furthermore, "A" contends that he requested "B" to make re-survey because of inaccurate quantity. But judging from the fact that joint letter signed by both parties recognizes the correctness of 3 quantities, this can be construed to be the problems concerning the basis of freight calculation only. We therefore cannot understand why "A" makes reference to re-survey. Furthermore, inasmuch as the surveyed quantity at loading ports as shown on tally sheets has been clarified by the Authorized Inspector despatched from the Bureau of Forestry of Philippine Government it can not be considered UNFAIR. "A" alleges that "A" 's request for re-survey at discharging port had been turned down by "B", however, it must be noted that the vessel arrived at discharging port on 29th June and the day on which cargo was delivered after completion of freights payment was 30th July 1963. "A" could have conducted re-survey at any time during this period, should there be any doubt on the loaded quantity.

FINDINGS AND AWARD

This dispute arose owing to difference of interpretation concerning the basis to be used in calculation of freight for transportation of lauan logs from Parang, Butuan, Philippine Islands to Keelung, Taiwan. "A" demanded "B" to pay remaining freight in the amount of US$3,935.98, and used Brereton scale as basis for calculating freight, which meant trimming allowance can be deducted from gross. Whereas "B" insisted that waste allowance should further be deducted from the above, and contended that "A" 's demand was groundless.

Joint letter signed by "A" and "B" clearly specifies that lauan logs are to be loaded in accordance with provision of article 15 of the Nanyozai Charter Party, i.e., Brereton Scale is to be used. Quantity loaded

in accordance with the above named scale shows, (1) 2,146,043 BMF Gross (2) 2,053,348 BMF when trimming allowance is deducted therefrom (3) 1,790,949 BMF Nett when trimming and waste allowances are deducted. Both parties admit the correctness of these figures.

Now let us consider the basis of contention maintained by respective parties. "A" contends that in case there is no specific provision in the fixture note as to which of the three quantities should be made the basis of freight calculation, it should be the gross less trimming allowance as per Brereton scale. However, the fact that Bill of Lading contains only the nett quantity and Captain of the vessel affixed his signature thereto does not necessarily mean that "A" had accepted the B/L quantity as justified. Article 16 of Nanyozai Charter Party endorses this fact. The above is gist of "A" 's contention. On the other hand, "B" contends that inasmuch as the contract is concluded per Nanyozai Charter Party, freight should be calculated in accordance with article 2 of the said Charter Party which specifies that B/L quantity be used as basis. Further it is customary procedure to measure and/or survey Philippine lauan logs in accordance with Brereton Scale which means the nett BMF is used as a basis to calculate freight. "B" concludes that "A" 's contention is groundless in view of reasons above stated.

The Arbitrators investigated the "A" 's allegation wherein he insists that an intermediate quantity is to be used as a basis for calculation of freight. It must be pointed out that tally sheet or survey report giving measurement of Philippine lauan logs measured according to Brereton scale does not usually show such basis being used. And we cannot find any instance of such basis being used in calculation of freight.

The Arbitrators' decision denying "A" 's allegation that Captain's signature on the Bill of Lading does not signify his acceptance of B/L quantity as justified basis is on the following ground.

Article 16 of the Nanyozai Charter Party is known as adjustment clause and is principally used to adjust freight when the freight

for space sublet by the charterer becomes lower than original freight contracted by the charter party.

In the above interpretation, we cannot consider "A" 's allegation as justifiable.

The Arbitrators then considered "B" 's allegation and find that "B" 's argument is based on article 2 of Nanyozai Charter Party which specifies that B/L quantity is to be used as basis for calculation of freight. We further find that there is no concrete ground to deny that B/L quantity is correct. It must be noted that in the calculation of freight on Philippine lauan logs the B/L quantity is generally accepted as basis.

We therefore conclude that "B" 's allegation is justified on the ground that "B" calculated the freight on the basis of B/L quantity. It became known from the actual result of Philippine lauan logs carried by the Vessel under review that freights had been paid on the quantity ranging between 1,702,440 BMF and 1,749,414 BMF. In the light of this fact we do not consider "B" 's allegation of 1,790,949 BMF as basis for the calculation of freight unreasonable.

Now the Arbitrators adjudicate the award above written.

May 14, 1964

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

* * *

1. The effect of seamen's strike on the calculation of laytime, etc.

in re m.s. *Usa Maru*, m.s. *Hide Maru*, and m.s. *Madras Maru*.

During April and May, 1962, in connection with a revision of the Labour Agreement, the All Japan Seamen's Association carried on a general strike at various ports in Japan. The period of strike was from April 23rd till May 3rd for the first wave and May 9th for the second wave. For such ships as were to load or discharge during these periods, the strikers refused night work only, and for such ships as already completed loading or discharging, they refused sailing and shifting. Against this strike the owners of some ships declared lockout. Then the question arose as to what effect the strike and the lockout had on the calculation of laytime, and a dispute arose between the Shipowner and the Charterer or Consignee concerning the damage suffered by the Shipowners from the occupation of the berths by the ships whose seamen went on strike. The three shipping companies, namely, Mitsui Steamship Co., Ltd., Osaka Shosen Kaisha, and Shinwa Kaiun Kaisha, Ltd., applied to the Japan Shipping Exchange, Inc., for an expert opinion on the "Effect of Seamen's Strike on the Calculation of Laytime, etc."

QUESTIONS REFERRED

1. Concerning Laytime.

(A) A ship whose seamen were to take part in strike tendered a

notice of readiness upon entering the port, but the Charterer or Consignee refused to accept the notice in order to forestall the ship's occupation of berth after completion of loading or discharge, and did not allow the ship to reach the wharf. In such case, does the laytime commence and run as agreed?

Would there be any difference according as the notice of readiness was tendered before the commencement of strike or during the period of strike?

If Charterer or Consignee, after the close of the strike, refuses to accept the notice of readiness on the ground of the congestion of shipping caused by a seamen's strike, and refuses to reach the wharf, does the laytime commence to run?

(B) The ship reached the wharf and commenced loading or discharge, but the seamen refused to work outside of the working hours. Does the laytime stop to run? Is there any difference regarding this matter between a port at which work is usually done outside of the working hours and a port where no such work is done?

(C) If during the agreed period of laytime a seamen's strike is considered imminent and the Charterer or Consignee or the owner or manager of a berth requests the ship to leave the wharf in order to forestall the occupation of the berth and the Shipowner complied with the request,

(a) does the laytime stop to run on account of the ship's leaving the wharf for a time?

(b) can Shipowner recover from Charterer all costs caused by the ship's leaving the wharf?

2. Concerning Damages.

(A) If, owing to a seamen's strike or a lockout declared against it, a berth is occupied after completion of loading or discharge, can the owner or manager of the berth recover damages from Shipowner? and if so, to what extent?

(B) If owner or manager of berth can recover such damages from Shipowner, is Shipowner entitled to demand Seamen's Union to indemnify him for such damages? and if so, to what extent?

EXPERT OPINION

1. Concerning Laytime.

(A) (a) (in the case of m.s. *Usa Maru*)

If the ship reached port and tendered notice of readiness to discharge, and the notice is valid and effective in every respect, then notwithstanding Charterer or Consignee refuse to accept the notice and disallow the ship to reach the wharf on the ground that they thereby prevent the berth from being occupied as the result of the ship's refusal to sail or shift after finishing discharge, the laytime does commence, run, and end as agreed. The above conclusion stands no matter whether the notice of readiness was tendered before the commencement or during the progress of strike.

(b) (in the case of m.s. *Madras Maru*)

Where Charterer or Consignee refused to accept the notice of readiness on such pure and simple ground as in the present case of congestion of shipping owing to a strike after the end of a strike by a former ship's seamen, laytime does not commence and run on the ground of a force majeure, even though there is a clause in the charter providing that any time lost in waiting for berth shall be counted as laytime.

(B) (in the case of m.s. *Hide Maru*)

Where a ship reached the wharf and commenced discharge, refusal to work outside of the working hours on the ground of a strike does not, as a general rule, stop the progress of laytime. But those hours during which no night work was done owing to strike according to clause 7 of the charter (Loading and Discharging.) need not be included in the laytime.

On this point there is no difference between a port where loading or discharge is usually done outside of the working hours and a port where no such work is done.

(C) (in the case of m.s. *Madras Maru*)

Where according to the request of Charterer or Consignee the ship stops discharging and leaves the wharf, laytime does not stop to run. Also where according to the request of the owner or manager of berth the ship stops discharging, laytime does not stop to run.

All the expenses incurred through ship's leaving the wharf should be borne by the Charterer or Consignee or the owner or manager of the berth who required the ship to leave the wharf.

2. Concerning Damages (in the case of m.s. *Hide Maru*)

(A) Where after the close of loading or discharge a berth is occupied owing to a seamen's strike, the owner or manager of the berth cannot demand the Shipowner to indemnify the loss incurred through the occupation of the berth.

Where a berth is occupied owing to a lockout declared by Shipowner against a seamen's strike, the owner or manager of the berth cannot demand the Shipowner to indemnify any loss incurred from the lockout.

(B) Where Shipowner incurred any loss from a seamen's strike, he cannot demand the Seamen's Union to indemnify the loss as far as the strike was justifiable. Where the owner or manager of a berth incurred any loss from a seamen's strike, he cannot demand the Shipowner to indemnify the loss as far as the strike was justifiable. Consequently it is out of the question for shipowner to demand any indemnity from the Seamen's Union.

REASONS FOR EXPERT OPINION

I. Preliminary Remarks.

It would be well to make a few remarks about some important matters before proceeding to state the reasons for the expert opinion rendered.

(1) Scope of the subject matter.

The questions referred to us are expressed in abstract terms. But in order to be exact in our answers, we have confined our deliberation to the three actual cases submitted, viz. the cases of m.s. *Usa Maru*, m.s. *Hide Maru*, and m.s. *Madras Maru*, and we have assigned those cases separately to each question as follows:—

1. Concerning laytime.

   For (A) (a)—the case of m.s. *Usa Maru* (Australia/Japan Coal Charter)

   (b)—the case of m.s. *Madras Maru* (Uniform General Charter)

   For (B)—the case of m.s. *Hide Maru* (Dungun Iron Ore Charter)

   For (C)—the case of m.s. *Madras Maru*.

2. Concerning damages.

   For (A) and (B)—the case of m.s. *Hide Maru*.

(2) Proper law.

In all the three cases of m.s. *Madras Maru*, m.s. *Usa Maru*, and m.s. *Hide Maru*, the Charterparties are in the English language. But from this fact alone it cannot be said that the proper law for these contracts is English law. Nor is there any stipulation in the contracts as to the proper law. Consequently, the general principle laid down in section 7 of *Horei* is to be applied, viz. concerning the formation and effect of a juristic act, the proper law should be decided according to the intention of the person who acts, and where such intention is not known the lex loci contractus should be the proper law of the contract. Now the parties to the Charterparties for m.s. *Madras Maru* and m.s. *Usa Maru* are Japanese corporations, and the contracts were concluded in

Tokyo. Also an arbitration clause in the Charterparty prescribes Tokyo as the place of arbitration. From these facts it can be said that the parties had the intention to make the Japanese law the proper law. In the case of m.s. *Hide Maru,* the parties to the Charterparty are a Japanese corporation and an alien corporation. The Charterparty is made out in the English language. The contract was made in London. And the place of arbitration is designated to be Hong Kong, where English law is generally in force governing commercial transactions. Therefore it is presumed that the parties acted according to English law.

(3) Charterer or Consignee.

Parties to a Charterparty are Shipowner and Charterer. Consignee is merely an interested person. Therefore, unless there is any special clause in the Charterparty, Consignee has no right to receive notice of readiness from Shipowner, or to refuse the ship's reaching the wharf, or to demand the ship to leave the wharf. But it is provided by section 583(1) of the Commercial Code that upon the arrival of the goods at the destination, the consignee shall acquire these rights of the consignor which have arisen out of the contract of carriage; and this rule is made to apply, by section 20(2) of the Carriage of Goods by Sea Act of Japan, to cases where the port of loading or discharge is out of Japan. Moreover, in actual practice, in the case of carriage of raw material for iron manufacturing (pig iron, crude iron) the mill which is the consignee has more say in connection with the charterparty than the charterer, and the charterer is in a position to act in concert with the mill. In view of these facts we have been led to use the expression "Charterer or Consignee".

In the present case the owner or manager of the berth seems to be actually the same person as Consignee. But as far as he acts according to the right of ownership or the right of management of the berth, he must be treated in the law as a person distinct from Consignee, i.e., a person merely interested in the Charterparty.

(4) Seamen's strike.

Where a lawful strike carried on by seamen has caused any loss to a third party, he cannot hold the seamen or their union liable for a tort. But can he demand the Owner of the ship who is the employer of the seamen to pay damages for non-performance of contract or tort? The answer to this question is divided. On the one hand, seamen are regarded as Shipowner's tools for performing contract of carriage and therefore he not his seamen, must be responsible for non-performance of contract or tort no matter whether the strike is lawful or not. On the other hand, it is held that seamen's right to strike is guaranteed by the Constitution and they carry on a strike quite independently of Shipowner's order or instructions, and therefore seamen's strike is a force majeure for which Shipowner is not responsible. The actual practice in the shipping circles of the world today generally tends to the latter interpretation. Seamen's strike is regarded as "an accident or hindrance beyond one's control", and not a few forms of Charterparty and Bill of Lading actually in use contain a strike clause providing for Shipowner's immunity from responsibility. Article 4(2(j)) of the International Convention for the Unification of Certain Rules Relating to Bills of Lading and Section 4(2(7)) of the Carriage of Goods by Sea Act of Japan have adopted the same principle.

It should also be noted that some of the special features of the seamen's strike under discussion are that the strike was carried on with the prospect that it would last uniformly in the full area, and for a fairly long period, and it took the form of refusal to load or discharge outside of working hours, to shift, and leave the port.

(5) Shipowner's lockout.

The purpose of a lockout is defensive and passive and is carried out within the limits of such purpose. It is carried out in accordance with a resolution of a group of shipowners and within the limits of their instructions. Shipowners are bound to carry out a lockout when

instructed to do so by a resolution of the group to which they belong. It is an act done owing to a coercion from outside, and therefore it must be said to be a force majeure.

II. Reasons for Expert Opinion.

1. Concerning Laytime.

(A) (a) M.S. *Usa Maru* entered the port of Hezaki on April 27th at 2:10 p.m., and obtained pratique at 2:30 p.m. on the same day and was ready to discharge. According to clause 12(2) of the Charterparty she tendered notice of readiness. But Charterer or Consignee, in order to prevent the occupation of berth owing to the seamen's strike (refusal to leave port, refusal to shift) after the completion of discharge, required the ship to shift to a suitable place. But as the ship refused this request, she was refused to reach the berth, and consequently she had to remain in the port of Hezaki waiting for berth until 12:00 p.m. on May 2nd. Then owing to congestion of shipping caused by the strike refusing to shift and leave the port she was obliged to remain waiting for berth until 10:10 a.m. on May 7th.

M.S. *Usa Maru* was refused to, and therefore unable to, reach the berth. The ship had reached the port of Hezaki, obtained pratique and was ready for discharging and in accordance with Clause 12(2) of the Charterparty, stating "notice of readiness to be given between business hours of 9:00 a.m. and 5:00 p.m. and 1:00 p.m. on Saturday, whether in berth or not", she tendered notice of readiness. As far as notice of readiness was thus duly tendered, then even if the ship was actually prevented from reaching the wharf, the notice of readiness took effect no matter whether Charterer or Consignee accepted it or not, and the laytime must be said to have commenced, run, and come to an end at the fixed times according to the provisions of the contract.

The Charterparty for m.s. *Usa Maru* provides in clause 26(1)

(Strike clause) as follows:—"any time lost through . . . strikes, lock-outs, . . . not to be computed as part of the loading time (unless any cargo be actually loaded during such time)." This refers to strikes at loading port. But the Charterparty contains no such provision regarding strikes at the port of discharge. Assuming there were similar express provision regarding strikes at the port of discharge, that would make no difference to what has already been stated. For when notice of readiness was tendered, the berth was actually in such a condition as to be able to be made use of, and the ship did not refuse loading during daytime at least.

It appears that Consignee expected the strike to continue for a fairly long time and prevented the ship's reaching the wharf by non-acceptance of notice of readiness for fear that if the ship was allowed to reach the wharf the berth would be occupied. The propriety or otherwise of such action taken by Consignee should be considered in connection with the large responsibility persuant to seamen's strike. The question regarding laytime cannot but be decided as aforesaid.

In the present case, m.s. *Usa Maru* tendered notice of readiness while the seamen were on strike. But assuming the notice of readiness had been tendered before the commencement of strike (though such is outside the scope of the questions referred), that would have been no cause for admitting any difference concerning the commencement and running of laytime.

(b) M.S. *Madras Maru* arrived at Mutsure on May 7th, 1962, at 6.20 p.m. and tendered notice of readiness at 6.40 p.m. But owing to congestion of shipping caused by the first strike of other ships she had to wait for berth at Mutsure till 1 p.m. on May 8th, and Charterer or Consignee, for reasons of congestion caused by strike, refused to accept m.s. *Madras Maru's* notice of readiness till the first office hour after her reaching the wharf.

Such situation is different from an ordinary one where the ship cannot reach the berth to discharge the cargo owing to the congestion of cargo on wharf or congestion of shipping. It is also different from such a case as is referred to in (A) (a). Owing to the occupation of berths by earlier ships whose seamen went on strike, no berth was to be found in order to discharge the cargo. It is a matter to be regarded similar to force majeure. Furthermore, m.s. *Madras Maru* reached the port immediately after the close of the strike on May 7th, and the congestion of shipping must be regarded as the immediate consequence of strike, and therefore the provision of clause 6 of the Charterparty stating "Time lost in waiting for berth to count as discharging time" is not operative here.

The above is in accord with the spirit of clause 10 (Strike clause) of the Charterparty which has been laid down in accordance with the principle of equity and says as follows:—"Neither Charterers nor Owners shall be responsible for the consequences of any strikes or lock-outs preventing or delaying the fulfilment of any obligations under this contract."

(B) M.S. *Hide Maru,* after the completion of discharging of ships of prior arrival, reached a berth in the port of Muroran on April 23rd 1962, at 9:30 p.m. She commenced discharging on April 24th at 8:05 a.m. and working during daytime between 8:00 a.m. and 5:00 p.m. completed discharging on 28th at 3:00 p.m. During this time, from 5:00 p.m. till 8:00 a.m. of the following morning, no night work was done contrary to the general custom of Muroran owing to instructions of the Seamen's Union to refuse work.

The proper law of the Charterparty of s.s. *Hide Maru* is English law, according to which, where loading or discharging has been duly commenced at a designated place, unless there is an

express exception clause, the time during which loading or discharging has been delayed or made impossible on account of seamen's strike shall not be excluded from the fixed laytime (Carver, *Carriage by Sea* 11th ed., §1214; Halsbury, *Laws of England,* 3rd ed., §§401 647; *H.V. Reedery Amsterdam* v. *President of India,* The Amstelmolen (1960) 2 Lloyd's Rep. 82, p. 94). Therefore stoppage of work outside the working hour (night work) caused by seamen's strike—even if such is the custom of the port concerned —cannot always be made the ground for suspension of laytime.

However, clause 7 (Loading and Discharging.) of the Charter-party of s.s. Hide Maru provides as follows:—"Time lost by reason of all or any of the following causes shall not be computed . . . in discharging time viz. . . . strikes, lockouts . . ." Therefore, any time during which owing to seamen's strike no actual work outside of the working hours (night work) was done need not be computed in discharging time. Thus laytime is not suspended no matter whether work outside of the working hours (night work) is admitted as general custom or not (though this is a matter outside the scope of the questions referred).

(C) M.S. Madras Maru arrived at Mutsure on May 7th, 1962, at 6:20 p.m., and after waiting for berth commenced discharging cargo on the 8th at 3:55 p.m. She left the wharf on May 9th at 8:30 p.m. in compliance with the request of Charterer or Consignee in order to avoid the occupation of the berth which would have been caused by the second strike, which started on the 10th at 0:00 a.m. She stayed at Mutsure till 11:20 a.m. on the 10th and recommenced discharging cargo at 4:30 p.m. on the same day.

A ship leaves the wharf temporarily in the interest of Charterer or Consignee. On the other hand, for such a serious matter as the suspension of laytime, it is necessary first to obtain an express consent of Shipowner. From the fact that Shipowner agreed to the

ship's leaving the wharf it cannot be implied that he tacitly consented to the suspension of laytime.

Where the owner or manager of a berth requested Shipowner that the ship should leave the wharf in order to avoid the occupation of the berth caused by the seamen's strike, and the ship in compliance with this request stopped loading or discharging and left the wharf, this may be regarded in the same way as formerly stated, since the owner or manager of the berth is, practically if not theoretically, the same person as Charterer or Consignee.

The ordinary expenses incurred as the consequence of the ship's leaving the wharf should be borne by the Charterer or Consignee or the owner or manager of the berth who requested the ship to leave the wharf.

2. Concerning Damages.

(A) After completion of discharging the cargo, the seamen of m.s. *Hide Maru* went on strike refusing to leave the port or to shift and occupied the berth, and consequently the owner or manager of the berth suffered loss on account of ships of later arrival being unable to discharge the cargo. Can the owner or manager of the berth demand Shipowner to indemnify the loss he has thus incurred? The answer to this question must be considered in the following two ways:—

(1) Non-performance of obligation.

Where there is a contract between Shipowner and the owner of a particular berth for the use of that berth, the ship must leave the berth as soon as the intended loading or discharging is completed.

Where the seamen who are the employees of Shipowner refused to leave the wharf after completion of loading or discharging by reason of strike and caused loss to Charterer or Consignee, Shipowner who is the employer of the seamen must pay damages

for non-performance of obligation (Civil Code, ss. 415 and 416). But the strike of the seamen of m.s. *Hide Maru* was a sort of force majeure for which Shipowner was not responsible, and therefore he is not to be held liable for non-performance of obligation (indirect interpretation of the latter half of s. 415 and the latter half of s. 419(2) of the Civil Code).

(2) Tort.

Where the occupation of a berth by a ship took place as the result of seamen's strike, and thereby the owner or manager of the berth suffered loss, Shipowner who is the employer of the seamen is held responsible for such loss, no matter whether or no there is any contractual relations between Shipowner and the owner or manager of the berth (Civil Code, s. 715). But in order that the Shipowner may be held responsible for the acts of his employees, the Shipowner must have failed to exercise due care in the appointment of his employees and in the supervision of his undertaking and the employees must have actually taken part in the execution of the undertaking. Also the act of the employees which caused damage or loss to the owner or manager of the berth must be an act which is within the scope of the undertaking and within the limit of duties of the employees (Civil Code, s. 715). But where seamen carry on a strike, there is no longer any relation of instruction and supervision between shipowner and seamen, and therefore any seamen's strike is entirely out of the scope of the shipowner's business. So there is no reason whatever why a Shipowner should indemnify a third party for any loss which he has suffered from seamen's strike.

The owner of m.s. *Hide Maru* gave an instruction for the ship to shift and leave the port after completion of unloading, but the vessel in accordance with an instruction from the Seamen's Union refused to obey and remain at berth. As a passive defence

against this the Shipowner declared a lockout, and therefore the lockout is a lawful defence for which Shipowner is not to blame.

(B) Where a Shipowner has suffered any loss from a seamen's strike, can he claim the Seamen's Union to indemnify the loss? The answer to this general question cannot but be in the negative as far as the seamen's strike is lawful in its purpose means, and form (Trade Union Law, s. 8). But it appears that the question asked is whether the Shipowner can demand the Seamen's Union to compensate for the damages which he has paid to the owner or manager of a berth for the occupation of the berth after completion of loading or discharging caused by seamen's strike. As has already been stated, where seamen's strike is lawful, and where it can be regarded as force majeure, the Shipowner as the employer of seamen cannot be held liable either for non-performance of obligation or for tort. The Shipowner is not bound to pay any damages to the owner or manager of the berth, and accordingly there arises no question of his claiming compensation from the Seamen's Union.

III. In fine.

It would be necessary to add a few remarks in fine. Each of the questions referred implies a very important issue, and the answer given may have a far reaching effect. Unfortunately, however, there is little or no custom to rely on or legal treaties to consult regarding the matter. Whether a seamen's strike or a shipowner's lockout was a lawful act and consequently immune from payment of damages to a third party who have suffered any loss therefrom is a question which can only be decided by the Court of law on the strength of the evidence of relevant facts. As far as the contract of carriage by sea is concerned, it would be of vital importance to collect all possible data without delay and prepare such effective strike clause to be inserted in the charterparty as

would meet every possible eventuality which might be caused to arise as the result of seamen's strikes.

March 5, 1964

Civil Code of Japan

Section 415. If an obligor fails to effect performance in accord with the tenor and purport of an obligation, the obligee may demand damages; the same shall apply in cases where performance becomes impossible for any cause for which the obligor is responsible.

Section 416. A demand for damages has for its object the reparation by the obligor of such damage as would ordinarily arise from the non-performance of an obligation.

(2) The obligee may demand compensation also for damage which has arisen through special circumstances, if the parties have foreseen or could have foreseen such circumstances.

Section 419. The amount of damages in respect of the non-performance of an obligation having money for its subject shall be determined by the legal rate of interest; but in case the rate agreed upon exceeds the legal rate, it shall be determined by the former.

(2) With regard to the damages mentioned in the preceding paragraph, the obligee is not bound to prove the damage nor may the obligor set up *vis major* as a defence.

Section 715. A person who employs another to carry out an undertaking is bound to make compensation for damage done to a third person by the employee in the course of the execution of the undertaking; but this shall not apply, if the employer has exercised due care in the appointment of the employee and in the supervision of the undertaking or if the damage would have ensued even if due care had been exercised.

(2) A person who has supervision of the undertaking in place of the employer also shall assume the responsibility mentioned in the preceding paragraph.

(3) The provisions of the preceding two paragraphs shall not preclude the employer nor the supervisor from availing themselves of the right to obtain reimbursement from the employee.

Trade Union Law

Section 8. An employer cannot demand compensation from a trade union or members thereof on the ground that he has suffered damage owing to a strike or other act of dispute which is lawful.

Horei

Section 7. (1) The proper law to apply to the formation and effect of a juristic act shall be the law of the country of either one of the parties to the act to be determined according to the intention of the parties.

(2) In case where the intention of the parties is not known, the proper law shall be the law of the place of the act.

Clauses of Charterparty Cited

m.s. *Usa Maru.* Australia/Japan Coal Charter.
(concluded in Tokyo, 2nd April, 1962)

Clause 12. (Commencement of Laytime)

The laytime at both ends to commence 24 hours, after Vessel is ready to load or to discharge respectively and written notice given, unless sooner commenced working.

The laytime at discharging port to commence from 0800 hours of the next working day if 24 hours turn time expires on Sunday or Holiday.

Notice of Readiness to be given between business hours of 9 a.m. and 5 p.m. or 9 a.m. and 1 p.m. on Saturdays, whether in berth or not.

Clause 26. (Strike Clause)

Any time lost through . . ., strikes, lockouts, . . ., not to be computed as part of the loading time (unless any cargo be actually loaded during such time).

m.s. *Hide Maru.* Dungun Iron Ore Charter.
(concluded in London, 1st April, 1961)

Clause 7. (Loading and Discharging)

Time lost by reason of all or any of the following causes shall not be computed in the loading or discharging time viz:— . . ., Strike, Lock-out, . . .

m.s. *Madras Maru.* Uniform General Charter as revised 1922.
(concluded in Tokyo, 23rd Feb., 1962)

Clause 6. (Discharging)

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 sooner commences whether in berth or not. Time lost in waiting for berth to count as discharging time.

Clause 10. (General Strike Clause)

Neither Charterers nor Owners shall be responsible for the consequences of any strikes or lock-outs preventing or delaying the fulfilment of any obligations under this contract.

2. Computation of Laytime —— rain during fixed laytime, stevedores not being on board

In compliance with an application by a foreign firm, in Tokyo, under date of 16th June, 1964, an Independent Expert Opinion is rendered hereby on matters concerning Computation of Laytime.

QUESTION REFERRED

At a certain port in the Kansai district of Japan some scrap-iron was to be discharged. Though the fixed laytime had commenced to run, no stevedores went on board the ship and consequently no discharging of the cargo was carried on. Then it rained. The voyage charterparty provides concerning discharging laytime as follows:— "weather working days, Sundays and Holidays excepted, even if used." Is the period of rain to be excluded from the fixed laytime?

EXPERT OPINION

It appears that at ports in the Kansai district a working day for discharging of scrap-iron generally means a day of 24 consecutive hours and night work is usually done. In the case which has been referred to us, the charterparty prescribes the laytime to be weather working days and also allows night work. And the Lay Day Statement clearly deals with the "weather working days" prescribed in the charterparty as "weather working days of 24 consecutive hours," and also admits of night work. For these reasons we hold that where the laytime has commenced to run under the provision of charterparty stating

"weather working days, Sundays and Holidays excepted, even if used", if discharging of cargo becomes practically impossible owing to rain or other bad weather, then no matter whether stevedores have gone on board the ship or not, or in other words whether or no the consignees had an intention to discharge the cargo, the period of bad weather should be excluded from the fixed laytime.

August 14, 1964

APPENDICES

Forms of Arbitration Agreement and Arbitration Clause

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

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

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

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

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

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

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

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

[As amended in November, 1964]

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 November, 1964*] (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, a sum of money calculated according to the rates given below when the amount of his claim is designated, or ¥100,000 when the amount of his claim is not designated, 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 ¥50,000.

When the amount of claim exceeds ¥5,000,000, but does not exceed ¥20,000,000, the sum to be deposited is ¥50,000 for the first ¥5,000,000, and ¥10,000 for each additional ¥1,000,000.

When the amount of claim exceeds ¥20,000,000, but does not exceed ¥50,000,000, the sum to be deposited is ¥200,000 for the first ¥20,000,000, and ¥5,000 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 ¥350,000 for the first ¥50,000,000 and ¥2,500 for each additional ¥1,000,000.

When the amount of claim exceeds ¥100,000,000, the sum to be deposited is ¥475,000 for the first ¥100,000,000 and ¥1,000 for each additional ¥1,000,000.

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

(3) The engagement fee once paid shall not, and money deposited for appropriation to arbitration fee or other purposes shall after the first hearing not be returned for any reason.

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

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

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

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

(2) Failing the determination referred to in the preceding Sub-section, the Arbitrators may refer the matter to the Commission for final decision. Any doubt in the interpretation of these Rules may likewise be settled.

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

Supplementary Rules.

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

Table of the Amounts of Deposit

Amount of Claim	Deposit
¥ 5,000,000	¥ 50,000
¥ 6,000,000	¥ 60,000
7,000,000	70,000
8,000,000	80,000
9,000,000	90,000
10,000,000	100,000
11,000,000	110,000
12,000,000	120,000
13,000,000	130,000
14,000,000	140,000
15,000,000	150,000
16,000,000	160,000
17,000,000	170,000
18,000,000	180,000
19,000,000	190,000
20,000,000	200,000
¥21,000,000	¥205,000
22,000,000	210,000
23,000,000	215,000
24,000,000	220,000
25,000,000	225,000
26,000,000	230,000
27,000,000	235,000
28,000,000	240,000
29,000,000	245,000
30,000,000	250,000
31,000,000	255,000
32,000,000	260,000
33,000,000	265,000
34,000,000	270,000
35,000,000	275,000
36,000,000	280,000
37,000,000	285,000
38,000,000	290,000
39,000,000	295,000
40,000,000	300,000
41,000,000	305,000
42,000,000	310,000
43,000,000	315,000
44,000,000	320,000
45,000,000	325,000
46,000,000	330,000
47,000,000	335,000
48,000,000	340,000
¥49,000,000	¥345,000
50,000,000	350,000
¥51,000,000	¥352,500
52,000,000	355,000
53,000,000	357,500
54,000,000	360,000
55,000,000	362,500
56,000,000	365,000
57,000,000	367,500
58,000,000	370,000
59,000,000	372,500
60,000,000	375,000
61,000,000	377,500
62,000,000	380,000
63,000,000	382,500
64,000,000	385,000
65,000,000	387,500
66,000,000	390,000
67,000,000	392,500
68,000,000	395,000
69,000,000	397,500
70,000,000	400,000
71,000,000	402,500
72,000,000	405,000
73,000,000	407,500
74,000,000	410,000
75,000,000	412,500
76,000,000	415,000
77,000,000	417,500
78,000,000	420,000
79,000,000	422,500
80,000,000	425,000
81,000,000	427,500
82,000,000	430,000
83,000,000	432,500
84,000,000	435,000
85,000,000	437,500
86,000,000	440,000
87,000,000	442,500
88,000,000	445,000
89,000,000	447,500
90,000,000	450,000
91,000,000	452,500
92,000,000	455,000
93,000,000	457,500
¥94,000,000	¥460,000
95,000,000	462,500
96,000,000	465,000
97,000,000	467,500
98,000,000	470,000
99,000,000	472,500
100,000,000	475,000
¥101,000,000	¥476,000
102,000,000	477,000
103,000,000	478,000
104,000,000	479,000
105,000,000	480,000
-	-
-	-
-	-
200,000,000	575,000
-	-
-	-
-	-
205,000,000	580,000
-	-
-	-
-	-
210,000,000	585,000
-	-
-	-
-	-
220,000,000	595,000
-	-
-	-
-	-
300,000,000	675,000
-	-
-	-
-	-
400,000,000	775,000
-	-
-	-
-	-
500,000,000	875,000
-	-
-	-
-	-
1,000,000,000	1,375,000

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 number of persons selected by the Board of Directors, and recommended by the President, of the Japan Shipping Exchange, Inc., from among the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Supplementary Rule.

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

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

[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 Japan Shipping Exchange, Inc., 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 therefor 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 when the parties have the right to make a compromise regarding the matter in dispute.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

hibited by law;

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

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

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

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

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

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

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

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

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

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

NEW TRIAL

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

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

means of attack or defence calculated to affect the decision;

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

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

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

The Panel of Members of the Maritime Arbitration Commission

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Deputy-Chairman: Hamada, Kisao

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Adachi, Mamoru	Iino Kaiun Kaisha, Ltd.
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Asukabe, Suekichi	Taisho Marine & Fire Insurance Co., Ltd.
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Churiki, Isao	Kawasaki Dockyard Co., Ltd.
Ebato, Tetsuya	The Tokio Marine & Fire Insurance Co., Ltd.
Fuji, Yutaka	Shinwa Kaiun Kaisha, Ltd.
Furuya, Tojiro	Kanasashi Shipbuilding Co., Ltd.
Gunji, Akira	Mitsui & Co., Ltd.
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Hamada, Kisao	Japan Line, Ltd.
Hamatani, Genzo	Hitotsubashi University
Hara, Hiroshi	Mitsui O.S.K. Lines, Ltd.
Harada, Kensuke	The Ocean Transport Co., Ltd.
Hayashida, Katsura	The Tokio Marine & Fire Insurance Co., Ltd.
Hirai, Toshiya	Azuma Kaiun K.K.
Ichikawa, Masao	Ataka Co., Ltd.
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Ishihara, Jujiro	Shinwa Kaiun Kaisha, Ltd.
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Tottori, Yoshio	Kowa Koeki Co., Ltd.
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Tsuji, Futoshi	Mitsui O.S.K. Lines, Ltd.

Tsunado, Masao	Mitsui O.S.K. Lines, Ltd.
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Uchida, Mitsuji	Uchida Kaiun K.K.
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Yoshimura, Keijiro	Nissho Co., Ltd.
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