THE BULLETIN OF
THE JAPAN SHIPPING EXCHANGE, INC.

No. 4.

FEBRUARY 1967

PREFACE

The fourth issue of the Bulletin of the Japan Shipping Exchange, Inc., is now presented to the public in order that the interested parties may be better acquainted with its activities. As is generally known already, the Japan Shipping Exchange, Inc., established in 1921, is functioning as the sole institution of the kind in Japan, in the rendering maritime arbitration and mediation, the appraisal of prices of ships, the preparation and publication of various forms of maritime contracts, the research and investigation of maritime matters, the publication of books and periodicals on shipping trade, etc. Our services in these directions are increasingly utilized by shipping concerns both at home and overseas, and are contributing a great deal to the development of the maritime trade of the world.

In the present issue of the Bulletin are reported four cases of maritime arbitration recently handled by us, which are considered to be of interest to the international business circles.

This Bulletin is also intended to serve as a handy *Guidebook to Tokyo Arbitration,* and for that purpose it contains as its appendices the Forms of Arbitration Agreement and Arbitration Clause, the Maritime Arbitration Rules of the Japan Shipping Exchange, Inc., and other useful information.

It is most earnestly hoped that this booklet may be profitably made use of by our business friends all over the world.

Yasuzo Ichii

President of the Japan Shipping Exchange, Inc.

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ARBITRATION

***in re* a dispute concerning a Voyage Charterparty of m.s. "MARIA ROSELLO"**

between

Botelho Shipping Corporation of 525 Madrigal Bldg., Escolta, Manila, the Philippines . . . . . CLAIMANTS

and

Marubeni-Iida Co., Ltd., of 3 Honmachi 3-chome, Higashi-ku, Osaka, Japan . . . . . RESPONDENTS.

Facts and Pleadings

I. On the side of the Claimants.

The Claimants, Botelho Shipping Corporation, (hereinafter referred to as "Claimants"), in submitting this case to arbitration, stated as follows:-

The Claimants claim that:

1. The Respondents, Marubeni-Iida Co., Ltd., (hereinafter referred to as "Respondents"), shall pay to Claimants the sum of U.S. Dollars Twelve Thousand Three Hundred (@ Yen 360 per dollar) together with interest at six per cent per annum from the 1st August, 1961, till the time of full payment.
2. The costs of arbitration shall be paid by Respondents.

As regards the grounds upon which the above claims are made the Claimants stated to the following effect:

Claimants concluded with Respondents a contract under date of the 16th May, 1961, to charter m.s. "Maria Rosello" (hereinafter referred to as "the Vessel") owned by Claimants, the principal terms and conditions of which voyage charterparty (hereinafter referred

to as "the Charterparty") are as follows:

Loading port: One safe port of Parang or Linek, Mindanao, the Philippines. (Clause 2.)

Discharging Port: Osaka. (Clause 3.)

Description and Quantity of Cargo: Lauan Logs 500,000 BM, 5% more or less at ship's option. (Clause 4.)

Freight: U.S.$21.00 per 1,000 BM, F.I.O. & trimmed. (Clause 5.)

Laydays: not to commence before June 15, 1961. (Clause 7.)

Cancelling Date: July 5, 1961. (Clause 8.)

Loading Rate: @ 250,000 BM per W.W.D. SHEX unless worked. (Clause 9.)

Clause 17: Notice of readiness at loading port to be given to the following shipper:

Aboitiz & Company, Inc.

Clause 19: Owners to have the liberty to sail the vessel unless loading completes within three (3) days after expiration of loading laytime and charterers shall remain responsible for full freight to be loaded together with demurrage incurred.

In accordance with the above-said charterparty Claimants sailed the Vessel to Linek and the Vessel was in readiness to load on the 29th June, 1961, but Respondents' cargo was not ready to be loaded. The Vessel was at Linek till the 5th July urging Respondents to forward the logs, but as Respondents did not get them ready for shipment, the Vessel sailed from Linek on the 5th July. Therefore Claimants claim to recover damages for the loss thus suffered. The amount of money claimed comprises U.S.$10,500 being an amount equivalent to dead freight, and U.S.$1,800 being demurrage, and interest on these two items up to the time of payment.

In reply to Respondents' defence to the above, Claimants stated as follows:

1. Claimants admit these items which Respondents mentioned

as the principal terms and conditions of the Charterparty and that part of the laydays statement of the Vessel which Respondents alleged to be the description of what took place between the time of the Vessel's entering the port of Linek and the time of her sailing therefrom.

2. With regard to the laydays of the Vessel at Linek, Respondents, simply explaining the method of calculation of the laytime allowed by the Charterparty, allege that the Vessel sailed from the port before the expiration of the laytime and that it is breach of contract. This is an argument made in ignorance of the basic duty of the charterer to put the cargo in readiness to be loaded. As the Vessel lawfully entered and was in the port of Linek on the 29th June, Respondents, according to Clause 7 of the Charterparty, ought to have got the cargo ready so as to be loaded as soon as the Vessel entered the port.

3. Although Respondents did not tender the cargo, the Vessel waited for the cargo until the morning of the 5th July. Claimants gave special consideration to the spirit of the provisions of Clause 19 of the Charterparty and made the Vessel sail after the expiration of 5 days and 6 minutes. During this period of 5 days and 6 minutes the Vessel was actually waiting for the arrival of the logs at Linek, and requested Respondents several times to forward the logs. The fact that the Vessel actually remained in the port of Linek during this period is nothing but the result of its respecting the spirit of the contract.

4. As the reasons for which the cargo was not ready for loading, Respondents mention the facts that the captain arbitrarily made stevedores go on board the Vessel at Parang, the former port of call, and that the Vessel sailed from Linek before the expiration of the laytime stipulated in the contract, and allege that these are breach of contract. But Respondents' allegation regarding stevedores is groundless. For, as is stipulated in Clause 17 of the

Charterparty, the notice of readiness at loading port was to be given to Aboitiz & Company, Inc., the shipper, and the Vessel in accordance with this Clause dispatched a notice of readiness to load to Aboitiz & Company. And on the 28th June, the day previous to the Vessel's sailing from Parang, Parang stevedores visited the Vessel and told that they were stevedores of Aboitiz & Company, and the Customs Inspector permitted their boarding the ship. These facts are clear from Exhibit B No. 9. The Vessel thus acted according to the provisions of the special Clauses of the Charterparty. The captain could not have arbitrarily made stevedores, unwelcome to the Vessel, go on board. Furthermore, the Parang stevedores informed the Vessel that they were stevedores of Aboitiz & Company, and they also told the same thing to the Customs House and applied for permission for going on the ship as far as Linek. It is not within the authority of the captain to make stevedores go on board, but it solely rests on the permission of the Customs House. Since the Customs House granted the application of the stevedores it was perfectly right for the captain to consider them to be proper stevedores appointed by Aboitiz & Company. As the Charterparty is on the basis of F. I. O. T., the captain had no power whatever regarding stevedores.

As above stated, there was no negligence on the part of the Vessel for making stevedores board the ship. Where, then, does the responsibility lie? It is due to the lack of sufficient pre-arrangements between Aboitiz & Company and Estaniel on the side of Respondents. They failed to make the necessary arrangements about stevedores beforehand which they ought to have made, but Aboitiz and Estaniel tried each to make the stevedores of their own appointment load the cargo. Respondents, the charterers, also did not make sufficient arrangements with the shipper concerning loading. The responsibility for the unfortunate situation is solely on the side of Respondents.

5. As regards the sailing of the Vessel, as alleged by Respondents, prior to the expiration of the period specified in the contract, Claimants took into consideration the spirit of the stipulation of Clause 19 and excluded 1 day and 38 minutes spent in taking refuge in Palloc Harbour from atmospheric low pressure, and sailed from Linek after expiration of the 5 days and 6 minutes which is the laytime at Linek. The 2nd July was a Sunday, but as Cotabato stevedores came to the Vessel, the aforesaid trouble about stevedores arose. Thus the responsibility for not loading lies with the shipper, and Claimants are in no way responsible. Nor is the laytime of the Vessel affected thereby.

II. On the side of the Respondents.

Against Claimants' claim, the Respondents requested that an award to the following effect should be made:-

1. Claimants' claims are dismissed.
2. Claimants shall pay to Respondents a compensation in the amount of Yen 925,471 and damages in the amount of Yen 1,000,000 to be claimed by the buyer for non-performance of a contract of sale.
3. Respondents may reserve the right of claiming Claimants to compensate any damages which the shipper may claim Respondents to pay for the ship's sailing without loading the cargo.

As the reasons for the above claim Respondents stated to the following effects:

Respondents admit the fact that for the purpose of loading about 500,000 BM of lauan logs produced in the Cotabato area, Mindanao Island, the Philippines, Respondents concluded with Nissin Kaiun Kaisha, Claimants' agent in Japan, a voyage charter-party under date of the 16th May, 1961, to charter the Philippine ship, "Maria Rosello", owned by Claimants, through the brokerage of Towa Kisen Kaisha, Ltd.

At the time of the conclusion of the charterparty it was orally arranged between Respondents and Towa Kisen Kaisha, Ltd., that the laytime should run from the time of the sailing of the Vessel from Parang, the previous port of call. The Vessel entered the port of Linek, the loading port, on the morning of the 29th June. The calculation of laytime according to the laydays statement is as follows:

(Calculation of Laytime)

		Remarks	Admissible Time	Used Time
June 29 (Thu.)	5. 16 6. 49	sailed from Parang arrived at Linek	0 day 18 hrs 44 mts	0 day 18 hrs 44 mts
June 30 (Fri.)	16. 37	took refuge in Palloc Harbour from typhoon	0 day 16 hrs 37 mts	0 day 16 hrs 37 mts
July 1 (Sat.)	17. 15	returned to Linek	0 day 6 hrs 45 mts	0 day 6 hrs 45 mts
July 2 (Sun.)		excepted	0 day 0 hr 0 mt	0 day 0 hr 0 mt
July 3 (Mon.)	5. 54	laytime expired days on demurrage commenced	0 day 5 hrs 54 mts 0 day 18 hrs 6 mts	0 day 5 hrs 54 mts 0 day 18 hrs 6 mts
July 4 (Tue.)			1 day 0 hr 0 mt	1 day 0 hr 0 mt
July 5 (Wed.)	6. 00	sailed from Linek	1 day 0 hr 0 mt	0 day 6 hrs 0 mt
July 6 (Thu.)	5. 54	days on demurrage expired	0 day 5 hrs 54 mts	4 days 0 hr 6 mts
			5 days 0 hr 0 mt	

According to Clause 9 of the Charterparty which specifies the loading rate "@ 250,000 BM per W.W.D. SHEX, unless worked", the time spent in taking refuge in Palloc Harbour from typhoon and Sunday the 2nd July should be excluded from the laytime, and consequently according to Clause 19 of the Charterparty specifying the days on demurrage, the Vessel ought to have remained at Linek at least till the morning of 6th July. Therefore it is clearly a breach of contract that the Vessel sailed from Linek on the morning of the 5th July without giving notice to Respondents, the charterers, and the shipper. Therefore Claimants' claim for dead freight and other claims are groundless. On the contrary, Respondents claim

the compensation of Yen 952,471 being the loss of profit expected to gain from the dealing with the lauan logs, and Yen 1,000,000 being damages which will be claimed by the buyer for non-performance of the contract of sale. Respondents also reserve the right of claiming the compensation for the damages to be claimed by the shipper for sailing without loading.

In refutation of Claimants' reply to the above, Respondents stated as follows:-

1. Claimants only assert that Respondents should be responsible for that the cargo was not ready for loading at the time of the Vessel's having entered the port of Linek (the 29th June, 6.49), but entirely shut their eyes to the fact of the Vessel's breach of duty to remain in port. The fact that the cargo was not ready for shipment at the time of the Vessel's arrival does not justify the Vessel's sailing without loading before the expiration of the days on demurrage. As a general principle, the only effect of the duty imposed on the charterers to get the cargo ready for loading is that when loading, being delayed owing to absence of readiness, can not be finished during the laytime, the charterers have to pay demurrage. On the other hand, not only during the laytime stipulated in a charterparty but also during the days on demurrage, if they are specified in a charterparty as in the present case, the ship owes the absolute duty to remain in port. Even after the expiration of such periods of time, the ship is not at liberty to sail unconditionally and immediately. This is the actual usage. In the present case, the Vessel left port before the expiration of these periods. Such breach of duty on the part of the Vessel—that alone, apart from any other reasons—deprives Claimants from enjoying any right to claim dead freight and demurrage.

2. Claimants say that there was no cargo to be loaded. But this is untrue. It is clear from the Certificate of Inspection dated the 2nd July which was produced by Respondents that the cargo had

passed inspection and was ready for loading on the 1st July. In spite of such situation, loading could not be made owing firstly to the fact that the Vessel had at the previous port of call made Parang stevedores who were not employed by the shipper board the ship and a dispute concerning the loading work arose at the loading port between them and the stevedores employed by the shipper and loading was thereby prevented, and secondly to the fact that the Vessel left port without obtaining consent of Respondents before the expiration of the days on demurrage. If the dispute between the stevedores had not taken place, loading would have been made during the laytime. Therefore it cannot be said that the absence of readiness for loading at the time of the ship's entering the port is the cause of the failure of loading. Furthermore, as is shown in the affidavit of the President of the Cotabato Trade Union, the captain and the chief mate said when the Vessel was in port that they would not permit loading until the dispute was settled, and as the 4th July was the Independence Day, Respondents tried to load on the 5th July, but the Vessel had already sailed. With regard to Respondents' assertion that "if the ship had stayed in port one more day, loading would have been possible", Claimants say there is no evidence. But it is proved by Exhibit B Nos. 6, 7 and 10 that the logs were in such a condition that they could at any time be towed alongside the Vessel and loaded. Therefore the responsibility for not loading must be assumed by nobody but Claimants who caused the impossibility of loading.

3. The cause for the failure to load despite the cargo was ready to be loaded was—apart from the Vessel's unjustifiable sailing before the expiration of the days on demurrage—that as the captain made stevedores board the ship at the previous port of call, Parang, the Cotabato stevedores duly employed at Linek by the shipper were prevented by force from loading the cargo, and thus the loading was made impossible until the 4th July. As regards the Parang

stevedores, Claimants say that as the Charterparty stipulates "F.I.O. & trimmed" (Clause 5), Claimants had nothing to do with stevedores, and that the Parang stevedores visited the Vessel and said they were stevedores employed by Aboitiz & Company, and the Customs House permitted them to board the ship, and therefore it was quite natural for the captain to consider they were stevedores employed by Aboitiz & Company, and therefore there was no negligence on the part of the captain. But neither what the stevedores said nor the permission of the Customs House is a notice of the employment of stevedores given by the shipper to the captain. The captain made such stevedores board the ship as were not employed by one who had power to employ stevedores, and that caused a trouble and made loading impossible. So the time during which the trouble continued should be excluded from the computation of the laytime, and all the loss Respondents incurred therefrom should be compensated.

The Reason for the Award

The Arbitrators omit statement concerning matters about which there is no controversy between Claimants and Respondents.

1. Claimants alleged as follows: "The Vessel arrived at the loading port, Linek, on the 29th June, 1961, at 6.49, but as the cargo was not ready for loading, the Vessel, in accordance with the provisions of the Charterparty, remained in port till 6 on the 5th July urging Respondents to forward the logs, but Respondents failed to load and the ship sailed. Regarding the Vessel's sailing from the loading port, Linek, at 6 on the 5th July, Respondents say this is sailing before expiration of the days on demurrage specified in the Charterparty, and is breach of contract. But in view of the provision of Clause 7 of the Charterparty, the duty of the charterers

to get the cargo ready for loading is an absolute duty, unless there is a special exemption clause, and the charterer must get the cargo ready by the time when the Vessel arrives at the Loading Port or time when the Vessel is expected to be ready to load. As far as there is on the part of Respondents a breach of such duty, Respondents' contention that Claimants' sailing from Linek at 6 on the 5th July is a breach of contract is groundless. Therefore Claimants demand Respondents the payment of damages calculated on the basis of the dead freight and demurrage together with interest up to the time of payment." Denying this allegation of Claimants, Respondents say as follows: "Out of the time during which the Vessel remained in the loading port, Linek, Sunday the 2nd July should be excluded from the laydays in accordance with the provision of Clause 9 of the Charterparty which says '250,000 BM per W.W.D. SHEX, unless worked', and adding the days on demurrage allowed by Clause 19 of the Charterparty, the Vessel ought to have remained in the loading port, Linek, until the morning of the 6th July, and therefore it is a breach of contract that the Vessel sailed from the loading port, Linek, on the morning of the 5th July without giving notice to Respondents. The fact that the cargo was not ready for loading at the time the Vessel arrived at the loading port, Linek, does not justify the Vessel's sailing without loading."

Now, we consider: (1) the provision of Clause 7 of the Charterparty does not mean that if the cargo is not ready for loading at the time when the Vessel has duly entered the loading port and is ready to load, the Vessel may immediately sail. Since the laydays, the rate of demurrage, and the days on demurrage are provided for in the Charterparty, the Vessel not only ought to remain in port during the laydays, but also it ought to remain in the loading port during the days on demurrage receiving payment of demurrage. The absence of readiness of the cargo for loading alone does not

justify the Vessel's sailing without loading unless there is special agreement.

(2) Claimants allege that the Vessel sailed from the loading port, Linek, in accordance with the contract. We will consider this point. The laytime of the Vessel commenced, according to the understanding between the parties, at 5.16 on the 29th June, at which the Vessel sailed from the previous port of call, Parang. The time required for loading the whole quantity 500,000 BM is two days according to Clause 9 of the Charterparty which says "@ 250,000 BM per W.W.D. SHEX, unless worked". The days on demurrage are three days according to Clause 19 of the Charterparty. So the time the Vessel should remain in the loading port, Linek, is five days. The one day and 38 minutes that the Vessel spent in taking refuge in Palloc Harbour from the atmospheric low pressure on the 30th June and the 1st July should be excluded. So far is admitted by both parties.

But concerning Sunday the 2nd July there is difference between the parties. Claimants say "the 2nd July was a Sunday as is shown in Exhibit B No. 6, paragraph 10. Although Cotabato stevedores came to the ship, the Vessel had brought on board from Parang, the previous port of call, Parang stevedores who were said to be the usual stevedores of the shipper, Aboitiz & Company, Inc., and a dispute about loading took place between the Cotabato stevedores and the Parang stevedores, and it resulted in the failure of loading. As the Charterparty is on the basis of F.I.O.T., the Vessel is not directly concerned with the employment of stevedores. The trouble on the day between the stevedores was due to the improper dealings with the stevedores on the part of the shipper, Aboitiz & Company, Inc., and so the responsibility for the failure of loading due to the trouble between the stevedores lies with Respondents. Therefore the day should be included in the laydays." On the other hand, Respondents say "in view of the 'SHEX, unless worked' condition of the Charterparty, Sunday the 2nd July on which loading

was not actually done should be excluded from the laydays."

As is shown by the Certificate of Inspection dated the 2nd July and Exhibit No. 7, that the cargo was at the mouth of the river on the morning of the 2nd July ready to be forwarded to alongside the ship. It is a fact that Cotabato stevedores boarded the ship. But a dispute arose between them and the Parang stevedores who were on board the ship, and loading could not be done on the day. So Sunday the 2nd July should be excluded from the laydays. Moreover, that the captain sailed the ship without notice to Respondents is contrary to commercial custom.

2. We will next consider the cause of the trouble between the stevedores. In view of the fact that the Vessel was to load at several ports and that Parang and Linek are located near each other, and also of the circumstances of the loading port at the time and the general custom concerning the employment of stevedores, it can hardly be said that there was any negligence on the part of the captain of the Vessel if he thought the Parang stevedores were stevedores employed by Aboitiz & Company, Inc., and allowed them to board the ship. He could not do otherwise under the F.I.O.T. condition. So the delay or failure of loading caused by the trouble at Linek can hardly be ascribed to any fault of the shipowner. On the other hand, even if the stevedores who professed to be stevedores employed by Aboitiz obtained permission of the Customs House and claimed to board the ship at Parang which was not the loading port, the charterers cannot be responsible for that, since they were not the stevedores employed by the shipper at the loading port. But the true cause of such situation was the imperfect arrangements between the shipper, Aboitiz & Company, Inc., and Estaniel whose duty was to make the necessary arrangements for loading. Under a F.I.O.T. charterparty, the charterers must accommodate themselves to the ever changing circumstances of the loading port; and therefore the charterers must bear responsibility for any result

caused by insufficient arrangements for loading at the loading port. Accordingly the charterers must be responsible for the failure of loading caused by the trouble at Linek. In the absence of special agreement, on the 3rd and 4th July the laytime continues to run as usual. Respondents' allegation which is contrary to this in interpretation cannot be admitted.

3. Now, the Arbitrators consider it necessary to weigh according to the requirements of equity the relative positions of the parties and their profits and losses, and for that purpose the Arbitrators find the following facts:-

(1) The immediate cause of the failure of loading was the imperfect arrangements for stevedores on the part of Respondents.

(2) Respondents made no efforts for the settlement of the trouble between the stevedores, and not a single log was loaded.

(3) The Vessel remained in port for full two days after the expiration of the laytime.

(4) Respondents allege that if the Vessel had been in the port of Linek for one more day, the whole cargo could have been loaded, but if we take into consideration the circumstances of the loading port at the time and the loading rate specified in the Charterparty, this allegation cannot be maintained.

(5) Owing to the limited supply of logs, it was difficult to increase at a short notice the quantity to be loaded at any other port in order to make up for the non-loading at Linek, and little time was left until sailing from the last port of call.

(6) Respondents claim Yen 952,471 as compensation for Claimants' breach of contract and Yen 1,000,000 as indemnity for damages which will be claimed by the buyer for non-performance of a contract of sale, but there is no sufficient evidence for these losses.

In view of the above observations the Arbitrators do now adjudicate and award as follows:

Award

1. Respondents, Marubeni-Iida, Co., Ltd., shall pay to Claimants, Botelho Shipping Corporation, the sum of Yen 1,200,000.
2. The arbitration fee and costs shall be Yen 350,000, and the same being split between Claimants and Respondents, each party shall pay Yen 175,000.
3. The other claims of both parties are dismissed.

Given in Tokyo, on 13th December, 1962.

ARBITRATION

_in re_ a dispute concerning a Voyage Charterparty of s.s. "NINA"

between

Fancy Tsuda Co., Ltd., of Nagoya, Japan . . . . CLAIMANTS

and

Kungs Shipping Corporation (Japan) Ltd., of Tokyo, Japan . . . . . RESPONDENTS.

On the 15th October 1962, Fancy Tsuda Co., Ltd., of 109 Miyawakicho 1-chome, Nakagawa-ku, Nagoya, Japan, (hereinafter referred to as "Claimants") entered into a contract with Kungs Shipping Corporation (Japan) Ltd., of 6 Hongokucho 3-chome, Nihonbashi, Chuo-ku, Tokyo, Japan, (hereinafter referred to as "Respondents") to charter s.s. "Nina" (hereinafter referred to as "the Vessel") or a substitute vessel supplied by Respondents for the purpose of carrying Sarawak logs from Sejingkat to Nanao, Japan. The Charterparty was of the form of NANYOZAI Charterparty 1960 of the Japan Shipping Exchange, Inc., and contained the following clauses:-

"Vessel: Steamer 'Nina' or substitute vessel of 1,463 tons, 775 nett register, and carrying about 2,475 tons of deadweight, classed 100A British Lloyd, . . .

"Expected ready to load: . . . about 29th October, 1962 . . .

"Where to load: one safe port of Sejingkat (clause 1)

"Destination: one safe port of Nanao, Japan (clause 1)

"Cargo: Logs 300,000 Board Measure Feet 10% more or less at Owners' option, . . . (clause 1)

"Freight: U.S.$24.00 per 1,000 Board Measure Feet, payable in Tokyo in U.S. Dollars upon completion of loading. (clause 2)

"Penalty: Penalty for non-performance of this Charter shall be proved damages. (clause 22)

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

Claimants contracted with a third party to sell him 300,000 B.M.F. Sarawak logs to be carried to Japan in accordance with this Charter. But the Vessel was unable to sail from Hong Kong to the port of loading, nor did Respondents supply a substitute vessel, and thus they failed to perform this Charter. Claimants consequently, in order to perform the above-mentioned contract of sale, had to purchase 194,600 B.M.F. logs of the same description at Nagoya and forward them by railway to Nanao, the place of delivery. According to Claimants they suffered a loss of Yen 281,630 through the purchase of logs at Nagoya, and the railway charges for the carriage of these logs to Nanao plus the expenses incidental to the same amounted to Yen 669,530, and the total of these two items is Yen 951,160. Claimants on the 20th January, 1963, demanded Respondents to pay them this last mentioned sum of money, but Respondents refused. Then both parties agreed to submit the matter to arbitration in accordance with Clause 23 of the Charterparty.

CLAIMANTS stated at the hearing as follows: Respondents turned a deaf ear to Claimants' repeated requests for a substitute vessel at Hong Kong. Nor do they pay damages. Claimants, therefore, demand Respondents to pay them Yen 951,160 and a sum of money equivalent to interest on the same at 6% per annum from

20th January, 1963, up to the full payment of the same.

RESPONDENTS refused to appear at the hearing, but produced a written statement, the gist of which is as follows: Respondents acted as agents in Japan of Trade & Navigation Co., Ltd., of Central Bldg., Hong Kong, since April 1961, and they merely acted as an intermediary for this Charter. After the conclusion of this Charter, the engine of the Vessel went out of order, but it being an aged ship built in 1928, it was impossible to repair it, and the Vessel was unable to sail from Hong Kong to Sarawak. It was later reported that the Vessel was scrapped at Hong Kong. All this is a force majeure. Although Respondents regret what has happened, they are not in a position to meet Claimants' demand for damages.

The ARBITRATORS, upon due consideration of the allegations of both parties and the result of their own investigations, find as follows:

First, as to the privity of Respondents to this Charter. In the preamble of the Charterparty, Fancy Tsuda Co., Ltd., is mentioned as Charterers, and Kungs Shipping Corporation (Japan) Ltd., as Owners, and the Charterparty is signed by both. Respondents, therefore, cannot say that they merely acted as an intermediary between Claimants and Respondents.

Secondly, about the Vessel's disability to sail from Hong Kong to the port of loading. Respondents simply allege that the failure to sail to the port of loading was due to a force majeure, and do not prove how the situation was brought about by a force majeure. Furthermore, the Charterparty provides "Steamer Nina or substitute vessel", and therefore, if the Vessel was not available, Respondents ought to have performed the contract supplying a substitute vessel. This they did not do. Their breach of contract is clear.

Thirdly, about damages. According to the investigations made by the Arbitrators, the purchase price Claimants paid for the

Sarawak logs they bought at Nagoya is reasonable according to the market condition of the time, and it is considered true that Claimants suffered, by being forced to make this purchase, a loss of Yen 281,-630. In the contract of sale between Claimants and a third party, the place of delivery was Nanao. The sum of Yen 669,530 claimed by Claimants as the railway charge from Nagoya to Nanao and incidental expenses appears to be reasonable. Thus the total amount of the loss suffered by Claimants is Yen 951,160, and Respondents are liable to pay the same amount to Claimants.

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

Award

(1) Kungs Shipping Corporation (Japan), Ltd., the Respondents, shall pay to Fancy Tsuda Co., Ltd., the Claimants, the sum of Yen 951,160 and a sum of money equivalent to interest on the same at 6 per cent per annum from 20th January, 1963, till the day of full payment of the said sum.

(2) The fee and costs of arbitration shall be Yen 100,000, and shall be borne by the Respondents. This sum, however, shall be paid by Claimants on behalf of Respondents, and Claimants shall receive refundment of the same from Respondents together with the payment of the damages referred to in (1) above.

Given in Kobe, on 14th July, 1964.

ARBITRATION

in re a dispute concerning a Voyage Charterparty of s.s. "UNION STAR"

between

Seoul Shipping Co., Ltd., of Seoul, Republic of Korea . . . . . CLAIMANTS

and

Nozaki & Co., Ltd., of Tokyo, Japan . . RESPONDENTS.

On March 12th, 1964, in Tokyo, the Claimants, acting through their agents, World Shipping Co., Ltd., Tokyo, and the Respondents entered into a Voyage Charter of the s.s. "Union Star" (hereinafter referred to as "the Vessel"), owned by the Claimants for carrying a cargo of Philippine lauan logs to Japan.

The Charterparty contains the following clauses:-

"1. That the said vessel shall, . . . proceed to three safe ports, Bussan Bay, Butuan, and General Island, the Philippines, . . . , and there load, . . . , a full and complete or part cargo of Logs 1,300,000 Board Measure Feet 10% more or less, at Owners' option, . . . , proceed to three safe ports, Shimizu, Tokyo, and Shiogama, Japan, in this rotation . . . and there deliver the said cargo in the customary manner as ordered.

"3. Cargo to be loaded at the average rate of 200,000 Board Measure Feet per weather working day of 24 consecutive hours, Sundays and Holidays excepted unless used, if used actual working time only to be counted.

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

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

Cargo to be discharged at the average rate of 400,000 Board Measure Feet per weather working day of 24 consecutive hours, Sundays and Holidays excepted unless used.

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

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

Laydays for loading and discharging to be non-reversible.

"4. Demurrage to be paid to Owners at the rate of U.S.$600.00 per day of 24 running hours or pro rata for any part thereof for all time used in excess of laytime at loading or discharging port(s). Despatch Money to be paid to Charterers at the rate of U.S.$300 per day of 24 running hours or pro rata for any part thereof laytime saved at loading or discharging port(s).

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

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

"8. Should Charterers be unable to load the cargo in Five(5) days of 24 running hours on demurrage at loading port(s), the vessel to have the liberty to sail with the cargo then on board, Charterers paying the dead-freight and demurrage incurred.

"11. As per clause No. 33.

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

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

"24. Laydays at loading port to commence as per NANYOZAI C/P, but in case of working commenced before stipulated time laytime to be counted from actual working time.

"25. Cargo to be loaded, stowed and discharged by Charterers free of risk and expenses to the vessel.

"27. Cargo wire, stanchion etc. if any to be for Owners' account.

"30. On Sundays and Holidays at loading port if used, actual time used only to be counted as laytime.

"31. Notice of Readiness to load and to discharge to be given during office hours upon the vessel's arrival at the port whether in berth or not.

"33. Charterers shall be responsible for damage to vessel exceeding the amount of U.S.$1,000.00 against stevedore's certificate but free from responsibility for any damage under U.S.$1,000.00.

"34. Laytime at the second discharging port to commence upon vessel's arrival at the port whether in berth or not, but if the vessel arrives later than 5 p.m. laytime to commence at 6 a.m. next working day."

Under the above Charterparty, the Vessel loaded cargo at Bussan Bay, Butuan, and Lanuza, the Philippines. At the first port of loading, Bussan Bay, the Vessel arrived on March 27th, 1964, Good Friday, and tendered notice of readiness at 9.20 a.m. At the second port of loading, Butuan, loading was done from April 2nd, 9.15 a.m. till April 5th, 12.30 p.m. causing detention of the Vessel for 3 hours

and 10 minutes beyond the fixed laydays. At the last port of loading, Lanuza, loading was commenced on April 7th at 1.00 p.m., but Claimants shut out 184,675 B.M.F. out of the 400,000 B.M.F. fixed to be loaded. The laytime ended on April 8th at 2.50 p.m., but the Vessel remained in port till April 11th, 3.00 p.m., when she sailed. On the day previous to the Vessel's arrival at Tokyo Port, Claimants intimated that they would discharge the whole cargo there and leave it undelivered unless Respondents paid demurrage, and Respondents promised in writing to pay Yen 387,000 as demurrage. At each port of loading the Vessel suffered damage caused by the stevedores during loading. The damage certificates are signed by the master as well as by the foreman of stevedores. Claimants have produced Particulars of Repair, Debit Note for Repairing Cost, and Receipt for Yen 1,284,236. The shippers and the Customs Inspector made use of the telegraphic service of the vessel.

The facts of the case being as above, Claimants claimed Yen 924,236 as the cost of repair of the damage inflicted on the Vessel by stevedores, Yen 519,484 as demurrage, and Yen 51,134 for the telegraphic service supplied by the Vessel. Respondents refused to meet these claims, but on the contrary demanded Claimants to pay Yen 2,079,860 as damages for shutting out loading and Yen 58,036 as despatch money. Both parties submitted the dispute for arbitration, and stated as follows before the Arbitrators.

CLAIMANTS argued that: in the first place, the Vessel suffered damage caused by stevedores at each port of loading, and Claimants had to pay for its repair Yen 1,284,236 as is certified by the Damage Certificate, and so this sum minus $1,000.00 according to Clause 33 of the Charterparty, viz., Yen 924,236, is owing to Claimants by Respondents; secondly, the Vessel reached the first port of loading, Bussan Bay, on March 27th, 1964, and tendering notice of readiness at 9.20 a.m., the laytime commenced at 1.00 p.m. on the same day,

and on April 9th at 8.00 p.m. at the last port of loading, Lanuza, the Vessel shut out loading and the shippers stopped the Vessel in port till April 11th 3.00 p.m., and computing laydays under these circumstances Claimants claim demurrage in the amount of Yen 519,484; thirdly, Claimants demand Respondents to pay Yen 51,134 for the telegraphic service rendered by the Vessel to the shippers during loading of cargo.

RESPONDENTS, in defence, rejected all the claims of Claimants, but demanded them to pay Yen 2,079,860 as damages for shutting out loading and Yen 58,036 as despatch money—totalling Yen 2,137,-896—on the following grounds:-

(1) The damage certificate produced by Claimants is void since it was signed by the shippers and the foreman of stevedores under duress. The master of the Vessel threatened to refuse issue of clean bills of lading unless they signed the damage certificate. If clean bills of lading were not obtained, the shippers, being of a small capital, would be unable to pay the cost of shipping and repay bank loans, with the result that they could not continue their business, and they were forced unwillingly to sign the damage certificate.

(2) None of the items of damage alleged by Claimants to have been inflicted on the Vessel are such that Respondents should be made responsible for.

(i) Damage to hatch coaming, bulwark, etc. However carefully the work may be done, it is impossible to avoid this damage in loading logs. In loading nanyozai logs it is customary to treat this kind of damage as ordinary wear and tear.

(ii) Damage to hook shackle, snatch block, etc. This is due to the lack of proper equipment necessary for loading nanyozai logs. This damage rather caused Respondents to sustain loss from delay in loading.

(iii) Damage to life-boat trap, handrail of bridge, winch con-

trol handle, rail, stanchion, etc. It is impossible to consider that any damage should have been inflicted on these parts by loading nanyozai logs. The damage, if any, must have existed before the Vessel started on the present voyage.

(3) March 27th, 1964, being Good Friday and general holiday in the Philippines, the Vessel carried on no loading, and therefore the day should be excluded from the laytime in accordance with Clause 3 of the Charterparty.

As regards the computation of laytime, the Charterparty only provides "Laydays for loading and discharging to be non-reversible" (clause 3), and therefore it must be construed not to forbid to treat only loading days or only discharging days as reversible. If the total number of the laydays at the three loading ports is set against that of the laydays at the discharging port, Claimants must pay to Respondents Yen 58,036.

The demurrage after the shutting out of loading at Lanuza is what took place while negotiation was carried on between the shippers there and the master of the Vessel after the closing of loading, i.e., the decision to shut out loading, and therefore the Respondents have nothing to do with it. The written promise to pay this demurrage was given by Respondents under duress, viz., on the day previous to the Vessel's arrival at Tokyo port Claimants threatened to discharge the whole cargo and leave it undelivered unless Respondents paid the demurrage. Such promise is null and void.

(4) The Vessel shut out at Lanuza such a large portion of cargo as 184,675 B.M.F. out of the whole cargo of 400,000 B.M.F. that should have been loaded. This shutting out was caused by the fact that the Vessel had no stanchions which ought to have been installed in a ship employed for carrying logs, and then the Vessel failed to exercise such diligence as would have saved a fair amount from shutting out. In other words, Claimants failed to perform

their duty as carriers to carry goods in good condition and promptly. Respondents therefore demand Claimants to pay damages in the total amount of Yen 2,079,860, which consists of overpayment of towing charges, loss of shut out logs, and deterioration of logs, and such benefit as would have accrued to Respondents from the sale of lost logs.

(5) As to who should pay for the telegraphic service rendered by the Vessel, there is no stipulation in the Charterparty. As Claimants appointed their agents at Manila and entrusted them with the execution of business in connection with the Vessel, they should collect through their agents any charges for the Vessel's telegraphic service from the person who applied for the service.

CLAIMANTS then replied as follows:-

(1) Good Friday is a national holiday in the Philippines. March 27th, 1964, on which the Vessel arrived at Bussan Bay, being Good Friday, notice of readiness was tendered at 9.20 a.m., and the laydays commenced at 1.00 p.m. on the same day.

(2) Notice of readiness is tendered at each port of loading, and it is customary in the Philippines not to treat laydays for loading reversible.

(3) The Vessel shut out loading at Lanuza on April 9th at 8.00 p.m., and the shippers detained the Vessel until April 11th 3.00 p.m. in order to receive instructions from their head office at Manila and Respondents. The shutout was made for the safety of the Vessel, and Respondents gave a written promise to pay the demurrage caused by the shutting out in the amount of Yen 387,000.

The ARBITRATORS, upon due consideration of the arguments put forward by both parties, find as follows:-

In the first place, we will consider the question whether Respondents are responsible for the damage caused to the Vessel. It

could be answered only by due interpretation of Clause 33 of the Charterparty, which reads "Charterers shall be responsible for damage to vessel exceeding the amount of U.S.$1,000.00 against stevedore's certificate but free from responsibility for any damage under U.S.$1,000.00." In the present Charterparty the form NANYOZAI 1960 of the Japan Shipping Exchange was employed with some modification. Clause 11, para. 1, of NANYOZAI 1960 Charterparty says: "Charterers are to be responsible for proved loss of or damage (beyond ordinary wear and tear) to any part of the vessel by stevedores at both ends." This clause was struck out in the present Charterparty and instead reference was made to Clause 33 which reads as above. These circumstances must be construed to show that the parties' intention was to exclude any responsibility for ordinary wear and tear, as is customary in the carriage of nanyozai logs, and to replace it by responsibility for damage exceeding U.S.$1,000.00, making the charterers free from responsibility for damage under U.S.$1,000.00.

It is argued by Respondents that the damage certificate was signed under duress. But the Arbitrators are convinced from their own past experience that even under such circumstances as are alleged by Respondents it is inconceivable that the shippers and stevedores should have signed the certificate under duress. Respondents are, therefore, liable for damages proved by the damage certificate.

According to the above views and in consultation of the report of damage, and the particulars of repair cost, Respondents are deemed liable for the cost of repair in the amount of Yen 550,750.

Next, the computation of laydays and demurrage. We must first ascertain whether March 27th, 1964, Good Friday, was a working day or a non-working day. According to Lloyd's Calendar, Good Friday is a holiday, and it is customary that no work is done on a Good Friday. Therefore the day in question should not be counted

in the laydays.

As to the question whether the loading days are reversible, both parties are ready to follow the custom if there is any. The Arbitrators find upon investigation that where in the shipment of Philippine logs the cargo is loaded at two or more ports and by different shippers, a proper notice of readiness is given at each port, and laydays are computed independently at each port. Therefore in the present case laydays for loading should not be deemed to be reversible. The demurrage after shutout at Lanuza on April 9th, 8.00 p.m. shall be considered in the light of circumstances shown by the statements of both parties and other documentary evidence. It is clear that the Vessel did not sail in compliance with the shippers' requirement. The shipper stopped the Vessel because of the fact that the Vessel was expected to load 400,000 B.M.F. but shut out almost half the amount, 184,675 B.M.F., and it took time in the adjustment of the situation owing to the divergence of opinion among the shippers themselves and between shippers and Respondents. There is no dispute as to the fact that Respondents gave to Claimants a written promise to pay the demurrage. Respondents contend that they were forced by Claimants to give this promise. But they ought not to have sign the promise unless they were prepared to carry it out. It is therefore right that they should pay the demurrage.

In consideration of the above views it is deemed right and proper that Respondents should pay to Claimants a demurrage of Yen 431,250.

Thirdly, we shall consider the question of compensation for loss Respondents suffered from shutting out loading. The master intimated that the Vessel was prepared to load 400,000 B.M.F. Why then did the Vessel shut out half the amount? If it was because the cargo consisted of logs of widely different sizes or lengths, as is alleged by Claimants, why did the master notify 400,000 B.M.F.?

In the Charterparty the quantity to be loaded is stipulated to be so many B.M.F. 10% more or less at Owners' option. Therefore Respondents had the duty to put the intimated quantity in readiness for shipment, and Claimants had the duty to load the intimated quantity. From the photograph depicting the scene of loading it appears that the Vessel was obliged to shut out loading by the lack of stanchions. As to who should furnish stanchions, Claimants or Respondents, the Charterparty only stipulated in Clause 27 that they should be for Owners' account and does not say who should actually see to the installation of stanchions. But it is customary in the shipment of nanyozai logs that the shipowners install stanchions. Therefore Claimants are liable for the loss caused to Respondents by the shutout. The loss has been ascertained to be Yen 521,060.

Lastly, the charges for telegraphic service of Yen 51,134 rendered by the Vessel. The telegrams were dispatched by the shippers as agents of Respondents in the course of performance of the contract. Therefore they should be paid for by Respondents.

In view of the above observations the Arbitrators do now adjudicate and award as follows:

Award

1. Respondents, Nozaki & Co., Ltd., shall pay to Claimants, Seoul Shipping Co., Ltd., the sum of Yen 512,074.
2. The arbitration fee and costs shall be Yen 100,000, and the same being split between Claimants and Respondents, each party shall pay Yen 50,000.

Given in Tokyo, on 30th October, 1965.

ARBITRATION

in re a dispute concerning a Contract for the Sale of m.v. "NAMISHIMA MARU"

between

Yamada Kaiun Co., Ltd., of 68 Suehiro, Kurotsujicho, Anan-shi, Tokushima, Japan . . . . . CLAIMANTS

and

San-o Tsuun Co., Ltd., 17 Nishi-umedacho, Fukushima-ku, Osaka, Japan . . . . . RESPONDENTS.

On the 1st May, 1965, Claimants and Respondents went into a contract of sale of the motor vessel "Namishima Maru". The Memorandum of Agreement was made out in the form prepared and published with revision in December, 1956, by the Japan Shipping Exchange, Inc., and contained the following Articles:-

"1. (Subject matter of the contract.) Motor vessel 'Namishima Maru'.

"2. (Price and Payment.) The Purchase Price shall be Yen 64,000,-000.

"As a security for the correct fulfilment of this Contract, the Buyers shall, upon signing this Contract, pay a deposit of Yen 6,400,000 to the Sellers.

"The deposit referred to in the preceding paragraph shall be appropriated for part of the Purchase Money upon delivery of the Vessel, and the Buyers shall pay to the Sellers the balance, viz. Yen 57,600,000, on taking delivery of the Vessel against all documents necessary for the register of transfer of ownership of the Vessel.

"4. (Delivery of the Vessel.) The Sellers shall put the Vessel into a deliverable state between 20th June and 20th July, 1965, at Tsuneishi Shipbuilding Co., Ltd., in Hiroshima Prefecture.

"The Buyers shall take delivery of the Vessel without delay after the Sellers have put the Vessel into a deliverable state.

"12. (Default.) Either party who makes default in the fulfilment of this Contract shall pay Yen 6,400,000 as a penalty to the other party.

"13. (Special Agreement.) (a) Out of the deposit money Yen 6,400,000 mentioned in Article 3, para. 2, the Buyers shall pay to the Sellers Yen 1,000,000, at the time of signing this Contract and the balance Yen 5,400,000 on 7th May, 1965.

"(b) It is expected that the sale of the Vessel will be approved of by the Government of Japan, the country of export, the Government of Hong Kong, the place of import, and the Government of the Republic of Liberia, to which the port of registry belongs. But in case no approval of any of these Governments is obtained, the Buyers shall be at liberty to rescind this Contract unilaterally without paying any compensation to the Sellers."

According to this Contract, Respondents paid to Claimants Yen 1,000,000, part of the deposit money as prescribed in Article 13(a), but did not pay the balance Yen 5,400,000, and refused to take delivery of the Vessel. Claimants, then, according to Article 12 of the Agreement demanded Respondents to pay a penalty of Yen 6,400,000. Respondents rejected this demand, saying that the Contract had been rescinded with mutual consent. Both parties then submitted the dispute to an arbitration to be conducted by the Japan Shipping Exchange, Inc.

RESPONDENTS, rejecting Claimants' demand, stated that they had concluded this contract with the intention to resell the Vessel to Inhong & Trading Co. of Hong Kong and promised to buy the Vessel on condition that this Hong Kong company approved of the purchase price, but since they failed to obtain the approval, they rescinded the contract. In giving a notice of rescission they notified Claimants

that they would on behalf of Claimants try to find a buyer. It was then agreed between Claimants and Respondents that if a buyer of the Vessel was successfully found, Claimants would return to Respondents the Yen 1,000,000, deposit money and pay them another Yen 1,000,000 as a commission, but otherwise Respondents would forfeit the said deposit money. In an endeavour to procure a respectable buyer, Respondents recommended to Claimants Nisshin Sangyo Co., Ltd., and Daiichi Kisen Co., Ltd., as potential buyers. But in utter disregard of Respondents' efforts, Claimants made a contract of sale of the Vessel with Kobe Tanker Co., Ltd., on 19th June, 1965. In these circumstances Respondents have no obligation to meet the demand of Claimants.

CLAIMANTS then argued as follows: They were given to understand that Respondents were planning to create a company under joint control of them and Inhong & Trading Co. of Hong Kong and let the new company operate the Vessel, but they did not intend to resell the Vessel to the Hong Kong company, nor did they conclude the contract to buy the Vessel on condition that this Hong Kong company approved of the purchase price. This is quite clear from the contents of the Memorandum of Agreement. Respondents had no right to rescind the contract. Claimants proposed that if Respondents found a buyer who was willing to buy the Vessel for Yen 64,000,000, and the bargain was made, they would dispense with the penalty stipulated in Article 12 of the Memorandum of Agreement. According to this proposal, Respondents recommended Nisshin Sangyo Co., Ltd., to Claimants. But in an interview with a representative of this company it transpired that they were only contemplating to buy a ship and were not ready either to make an offer or an invitation to make an offer. Respondents totally failed to perform the contract, and therefore are liable to pay to Claimants a penalty of Yen 6,400,000.

The ARBITRATORS, upon due consideration of the arguments put forward by both parties, find as follows:

It is alleged by Respondents that one condition in the contract for the sale of m.v. Namishima Maru was that it would come into operation only if and when they have successfully concluded a contract to resell the Vessel to Inhong & Trading Co. of Hong Kong. But no evidence has been produced to prove the existence of such condition. However, it is clear from Article 13(b) that Respondents intended to export the ship to Hong Kong after purchase, and Claimants knew this fact as they stated before the Arbitrators.

Claimants demanded from Respondents a penalty of Yen 6,400,-000 for non-performance of the contract, but Respondents refused payment alleging that the contract had been rescinded by mutual consent. It is necessary to go to some length to disentangle the situation. It was stipulated that out of the deposit money to be paid as a security for the due performance of the contract, Respondents should pay to Claimants Yen 1,000,000 at the time of signing the contract and the balance Yen 5,400,000 on 7th May, 1965. But Respondents did not pay this balance on the fixed day, and on the 11th May sent a note to Claimants requesting them to wait till 11.00 a.m. on the 15th May, and added "in the event of our failing to pay on that day, let us *nariyuki ni makaseru* (leave the matter to take its own course)." What does this ambiguous colloquial Japanese expression mean? Neither party did attempt or demand definition of its meaning, but they interpreted it each in their own way. Claimants understood the phrase as meaning that in case of Respondents' non-performance of the contract Claimants can rescind the contract and claim the payment of a penalty of Yen 6,400,000. On the other hand, Respondents thought that there was mutual consent to rescind the contract and they would be released from all liability if they forfeited the Yen 1,000,000 which they had deposited. Both were wrong; they ought to have made sure and done something to protect

their rights. First, let us consider Claimants' position. They did not ascertain what Respondents meant by *"nariyuki ni makaseru"*, nor did they urge for the performance of the contract when Respondents failed to pay the balance of the deposit money on the fixed day. They did not demand payment of the penalty stipulated in Article 12, but on the contrary, they requested Respondents' good offices in procuring a new buyer of the Vessel. They were thus treating the contract as extinguished, without reserving the right to claim the penalty. It appears that Claimants were willing to deem the contract as having come to an end if Respondents forfeited the Yen 1,000,000 which they had deposited. Next, Respondents' position will be considered. As has been said, there is no evidence supporting Respondents' allegation that the contract was rescinded by mutual consent. It seems that when they used the above-mentioned Japanese phrase in their note to Claimants, they meant that if they forfeited the Yen 1,000,000 deposit money they would be released from all liability under the contract. But it is impossible to read such meaning into the phrase *"nariyuki ni makaseru."* In the light of the such aspects of the case on both sides, it is considered right for Claimants to appropriate to themselves the deposited Yen 1,000,000.

Respondents failed either to pay the unpaid balance of the security money which they promised to pay to secure due performance of the contract, or complete the purchase of the Vessel, this caused Claimants a great loss, for which Respondents are held responsible. An adequate compensation for this is estimated to be Yen 800,000.

In view of the above considerations, the Arbitrators adjudge, award, and direct as follows:

Award

(1) Respondents shall forfeit the Yen 1,000,000 which they deposited with Claimants as part of a security for due performance of

the contract, and also pay to Claimants damages in the amount of Yen 800,000.

(2) The fee and costs of arbitration shall be Yen 120,000, and shall be borne by Respondents. But a half of this sum shall be paid by Claimants on behalf of Respondents, and Claimants shall have refundment of the same from Respondents together with the payment of the damages mentioned in (1) above.

Given in Kobe, on 17th March, 1966.

APPENDICES

Forms of Arbitration Agreement and Arbitration Clause

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

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

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

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

III. If the parties to a contract desire to appoint their respective arbitrators, wholly or in part, outside of the Panel of Members of

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

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

[*As amended in November, 1964*]

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 ap-

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

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

Supplementary Rules.

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

Table of the Amounts of Deposit

Amount of Claim	Deposit
¥ 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
36,000,040	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 two Deputy Chairmen elected by and from among the Members of the Commission.

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

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

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

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

Section 9. The Chairman and the Deputy Chairman of the Documentary Committee (Rules of the Documentary Committee, section 5) can be present at the meeting of the Maritime Arbitration 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 where the parties have the right to make a compromise regarding the subject matter in dispute.

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

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

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

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

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

Section 791. Where an arbitrator nominated otherwise than by an arbitration agreement dies, or his position is otherwise vacated, or he refuses to accept or exercise the office of arbitrator, the party who has nominated him shall, upon demand by the other party, appoint another arbitrator within a period of seven days. In default of

appointment of an arbitrator within the specified period, the competent Court, upon application by the said other party, shall appoint an arbitrator.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 804. (1) In the case mentioned in the preceding section, an action for setting aside an award must be instituted within a peremptory term of one month.

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

(3) When setting aside an award, the Court shall also pro-

nounce the setting aside of the execution-judgement.

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

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

NEW TRIAL

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

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

sion;

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

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

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

The Panel of Members of the Maritime Arbitration Commission (1966-1967)

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

Tokyo Group

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

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

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

	Co., Ltd.
Otsu, Yoshio	C. Itoh & Co., Ltd.
Otsuka, Takashi	Nissho Co., Ltd.
Sakuma, Seiji	Mitsui & Co., Ltd.
Sasaki, Shuichi	Japan Association for Preventing Sea Casualties
Sato, Miyozo	Keihoku Shipping Co., Ltd.
Sato, Shuzo	Nippoh Kisen Co., Ltd.
Sato, Zentaro	Showa Shipping Co., Ltd.
Shimatani, Shigeo	Baba-Daiko Shosen Co., Ltd.
Shimaya, Kiyoshi	Marubeni-Iida Co., Ltd.
Shimazu, Tomotsugu	Shimazu & Co.
Shimizu, Tatsuo	Taiyo Gyogyo Kabushiki Kaisha
Suganuma, Takeo	Nihonkai Steamship Co., Ltd.
Takada, Shoichi	The Dowa Fire & Marine Insurance Co., Ltd.
Takanashi, Masao	Japan Maritime Research Institute
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Takezawa, Isoe	Mitsubishi Heavy Industries, Ltd.
Taki, Tsuneo	Nippon Yusen Kabushiki Kaisha
Takuma, Kenji	Uraga Heavy Industries, Ltd.
Tokura, Ichiro	Mitsubishi Shoji Kaisha, Ltd.
Totsuka, Gen-ichiro	Kawasaki Kisen Kaisha, Ltd.
Tottori, Yoshio	Kowa Kaiun Kaisha, Ltd.
Tsuboi, Gengo	Tokyo Tanker Co., Ltd.
Tsuji, Futoshi	Mitsuiline Industries, Ltd.
Tsunado, Masao	M. O. Nearseas, Ltd.
Tsuruoka, Nobuo	Nippon Yusen Kabushiki Kaisha
Uchida, Isamu	Meiji Shipping Co., Ltd.
Uchida, Mitsuji	Uchida Kaiun Kabushiki Kaisha
Umeda, Zenji	Kawasaki Dockyard Co., Ltd.
Umetani, Riichi	The Japan Hull Insurance Union

Urakami, Tsutomu	Nissho Co., Ltd.
Yabe, Giichi	General Shipping Co., Ltd.
Yabuki, Toyohiko	Baba-Daiko Shosen Co., Ltd.
Yagi, Noboru	Towa Steamship Co., Ltd.
Yokoi, Shinkichi	The Yasuda Fire & Marine Insurance Co., Ltd.
Yuguchi, Toshikazu	Hitachi Shipbuilding & Engineering Co., Ltd.
Yukawa, Isamu	Okada Shosen Kaisha, Ltd.
Zento, Keiichi	Yamashita-Shinnihon Steamship Co., Ltd.

Osaka-Kobe Group

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Dei, Jiro	Hara Shosen Kaisha, Ltd.
Emi, Yoshikazu	Japan Lumber Importers Association
Emura, Hideo	Mitsui O.S.K. Lines, Ltd.
Fujiwara, Keizo	The Bank of Tokyo, Ltd.
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Hachiuma, Kei	Hachiuma Steamship Co., Ltd.
Hamada, Shoichi	The Dowa Fire & Marine Insurance Co., Ltd.
Hamane, Yasuo	Chiyoda Shipping Co., Ltd.
Hatta, Ichiro	Showa Shipping Co., Ltd.
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Imamura, Osamu	Tamai Shosen Kaisha, Ltd.
Ishida, Hiroshi	Shinwa Kaiun Kaisha, Ltd.
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Kai, Sokichi	Yamashita-Shinnihon Steamship Co., Ltd.

Kajiwara, Hiroshi	Meiji Shipping Co., Ltd.
Kato, Senmatsu	Shinko Shosen Kabushiki Kaisha
Kawai, Junzo	Showa Shipping Co., Ltd.
Kitamura, Genzo	Kyosei Kisen Co., Ltd.
Kobayashi, Kaoru	Japan Line, Ltd.
Kondo, Mikio	Ishikawajima-Harima Heavy Industries Co., Ltd.
Kotanaka, Tetsuo	The Tokio Marine & Fire Insurance Co., Ltd.
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Kubota, Hiroshi	Kobe University
Kurakawa, Masao	Mitsui & Co., Ltd.
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Maruyama, Noboru	Mitsui Shipbuilding & Engineering Co., Ltd.
Matoi, Katsuma	Nitto Transportation Co., Ltd.
Matsumoto, Sasao	Shoei Kabushiki Kaisha
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Miyake, Tokusaburo	Far East Shipping Co., Ltd.
Miyao, Ryozo	Taitsu Shipping Co., Ltd.
Mizutani, Katsuji	The Tokio Marine & Fire Insurance Co., Ltd.
Murachi, Shigeharu	Meiji Shipping Co., Ltd.
Murakami, Kennosuke	Marubeni-Iida Co., Ltd.
Nagaoka, Mikio	The Kure Shipbuilding & Engineering Co., Ltd.
Nakagiri, Tetsuo	Setoda Shipbuilding Co., Ltd.
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Nihei, Hisashi	Daiichi Senpaku Kabushiki Kaisha
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Ogaki, Mamoru	Inui Steamship Co., Ltd.
Ogawa, Ryoichi	Nitto Transportation Co., Ltd.
Okaniwa, Hiroshi	Sanko Steamship Co., Ltd.
Onishi, Yutaka	C. Itoh & Co., Ltd.
Osaki, Kenji	Nippon Kinkai Kisen Co., Ltd.
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Sato, Kitsuji	Baba-Daiko Shosen Co., Ltd.
Sato, Kunikichi	Satokuni Kisen Kaisha, Ltd.
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Shigematsu, Minoru	Sumitomo Shoji Kaisha, Ltd.
Shimizu, Shigenobu	The Yasuda Fire & Marine Insurance Co., Ltd.
Shimizu, Tatsuta	The First Central Shipping Co., Ltd.
Sugaya, Kan-ichi	Sugaya Steamship Co., Ltd.
Suzuki, Takashi	Matsuoka Steamship Co., Ltd.
Takami, Sueo	The Bank of Kobe, Ltd.
Takemoto, Nariyuki	Kawasaki Kinkai Kisen Kaisha
Tamai, Misao	Tamai Shosen Kaisha, Ltd.
Tanuma, Hiroshi	Iwai & Company, Limited
Taota, Nobukazu	Taisho Marine & Fire Insurance Co., Ltd.
Tochiki, Sakuya	Tochiki Steamship Co., Ltd.
Tomi, Atsuji	Mitsubishi Heavy Industries, Ltd.
Torii, Masaru	Yamashita-Shinnihon Steamship Co., Ltd.
Tsubokawa, Keiji	Houn Shipping Co., Ltd.
Urabe, Jinzo	Hitachi Shipbuilding & Engineering Co., Ltd.
Yagi, Hiroshi	Kobe University
Yamasaki, Hisao	Kawasaki Kisen Kaisha, Ltd.
Yamashita, Kiichiro	Kansai Steamship Co., Ltd.
Yasuhara, Meiji	Seiko Kaiun Co., Ltd.

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