THE BULLETIN OF
THE JAPAN SHIPPING EXCHANGE, INC.
No. 7

OCTOBER 1971

CONTENTS

Establishment of Maritime Arbitration System in Japan and Drafting of Standard Maritime Forms

Foreword

The 50th anniversary of the Japan Shipping Exchange, Inc. (Nippon Kaiun Shukaisho) falls on 8th September, this year. During this period of half a century, with a view to serving the public interest, the Exchange has made efforts to promote the better and harmonious development of maritime business transactions in respect of arbitration, drafting of standard contract forms, information, collection of business data, investigation, etc. and has been highly appreciated for the fruitful results so far obtained.

Mention should be specifically made that today the Exchange is now recognized at home and abroad as the only permanent arbitral tribunal, in Japan, for any dispute or matter in difference, arising out of contract or otherwise in respect of ownership (including co-ownership), demise, charter and consignment of vessels, carriage of goods by sea, towage, ship sale, marine insurance, shipbuilding and ship repair, salvage, average, etc. and also as the institution for drafting of standard contract forms for trade in and around Japan.

On this particularly memorable occasion of the 50th anniversary, we have taken a bird's-eye view of the developmental process regarding maritime arbitration and standard contract forms and at the same time laid our wishes before the reader for the existing stage of affairs and for the future. We shall be very happy if those concerned, even greater in number, make good use of this booklet with a full understanding.

The Course of the Arbitration System of the Japan Shipping Exchange, Inc.

Arbitration in one form or another of maritime matters has been practised in Japan since the late 19th century. In former days, however, artbiration was an unorganized, individual, *ad hoc* affair. When the Kobe Ship Broker's Association was created early in the 20th century, arbitration mainly fell into the hands of this body, which handled a number of cases during and after the First World War. Its activities in this field gradually declined, however, owing to the fact that this Association, composed exclusively of ship brokers, did not represent the entire shipping industry, and its services were not too eagerly sought after.

The Kobe Shipping Exchange, Ltd., set up in September, 1921, had, as its members, shipowners, ship brokers, marine underwriters, merchants, shipbuilders, foreign-exchange bankers, etc. Such an inclusive, representative organization would, it was felt, be fit to handle arbitration. An Arbitration Branch was established in the Exchange in May, 1926, and the Arbitration Commission was formed of scores of the members of the Exchange. It was the practice of this Commission, upon receipt of an application for arbitration, mediation, valuation, etc., to select from the Panel of Members of Arbitration Commission three, or other odd-number of persons, who had neither direct nor indirect interest in the case, to act as arbitrators, mediators, valuers, etc., as the case might be. The same practice was followed in the years after the reorganization in 1933 of the Kobe Shipping Exchange, Ltd., into the present Japan Shipping Exchange, Inc.

This system stood the test of the difficult times during and after the Second World War. In 1948, the Trade Associations Law was put into force, prohibiting all trade associations from carriyng on any quasi-judicial function of arbitration or other solution of disputes of their own members. But the arbitration, mediation, valuation, etc. by the Japan Shipping Exchange, Inc., were by special legislation exempted from this general prohibition. That was due to the Govern-

ment's recognition of the especially meritorious work done by the Exchange in maritime arbitration, etc., and of the need for preserving for the future the system that enjoyed the confidence of the trading circles.

On account of the subsequent delightful development of the shipping circles such as marine transportation, shipbuilding and trade and commerce, demands for the positive treatment of international disputes by the Exchange were made by the parties concerned. The Exchange revised its maritime arbitration rules through 1959 into 1960 in order to meet the demands. Furthermore, studies were made on the results of the working of the revised rules and in September, 1962, the present rules were enacted. The office used to be in Kobe. Another office, however, was newly established in Tokyo in April, 1961. The headquarters were moved from Kobe to Tokyo in April, 1966. Thus, arbitration business has been conducted both in Tokyo and Kobe up to the present.

In the case of a dispute which can be autonomously settled between the parties concerned if an authoritative comment is presented about the differences in opinion centering around habitual practices in relation to the interpretation of contract clauses and the fulfillment of the contract, an expert opinion in writing will be delivered at the request of the parties concerned. As regards this so-called clause appraisal, those men rich in learning and experience who have no interests in the parties concerned and the case are selected from among the listed arbitrators of the Exchange. The use and the effect of this expert opinion is paid attention to from various quarters.

The valuations of ships by the Exchange is specially noteworthy. Ship valuations given by the Exchange has been widely utilized with high dependability not only in evaluation of property but also in calculation of general average and in a collision case. Ever since 1926 when the Exchange actually started maritime arbitration, the number of cases of arbitration, mediation, appraisal, the Exchange has dealt with until the end of September, 1971, is as follows:

the number of arbitration cases

Applications accepted	~~146~~ 166 cases
against which	
Arbitrations awards given	~~92~~ 99 cases

Mediations effected 20 cases
Withdrawn by applicants 26 cases

Of 92 and given, 39 cases arose from carriage of goods by sea, 32 from time charters, 6 from ship sale, 15 from other transactions.

the number of appraisals

Expert opinions rendered 63 instances
Ship valuations rendered 891 vessels

In addition to the above-mentioned arbitration, mediation, appraisal, there have been quite a few requests for information, consultations, regarding disputes, interpretations of clauses in contract forms, judicial precedents, the number of which amounts to approximately 800 in the course of the last one year.

As mentioned above, the Exchange has enjoyed a better and fruitful development as the only permanent institution for maritime arbitration in Japan. During the last decade, it has developed especially internationally. This international development of the Exchange is largely due to the brilliant development of marine transportation, shipbuilding, trade after World War II. However, the dominant force that casued the Exchange to develop so remarkably as the permanent institution for maritime arbitration both before and after the War was nothing but the persistent and untiring efforts the Exchange had made in the capacity of the organization as a non-profit foundation having as its members, shipowners, brokers, shipbuilders, merchants, marine underwriters and others for drafting of standard contract forms with a view to promoting good habitual practices through marine business transactions not only in but also around Japan. This cannot be disregarded and so shall be discussed in detail later.

Finally, Special mention in this connection is to be made of the fact that Japan being a signatory to both the Protocol on Arbitration Clauses signed at Geneva on September 24, 1923, and the Convention on the Execution of Foreign Arbitral Awadrs signed at Geneva on September 26, 1927, and also having adhered in June, 1959, to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards signed at New York in June, 1958, the enforcement and execution of the arbitral awards rendered by the Maritime Arbitration

Commission of the Japan Shipping Exchange are procedure guaranteed in a very wide area on the glove.

Arbitration Procedure

It seems that the characteristics of the arbitration procedure of the Exchange lies in the method of selection and appointment of arbitrators and of decision of the issue. However, prior to its explanation, let's take a bird's-eye view of rules and practice of arbitration conducted by the Exchange.

The parties to a dispute desirous of applying for arbitration must first sign an agreement showing their willingness to submit to the arbitration by the Exchange. According to such an arbitration agreement, either or both of the parties shall file a written Application giving the names of the parties, the place of arbitration, the title of the case, and the main points of controversy. The Applicaion shall be accompanied by a Statement of Claim specifying the claim made by the applicant and the facts forming the cause of such claim, together with material documentary evidence (original or copy) supporting such facts.

Applications made in due form will be accepted, and Arbitrators will be appointed. Where an application has been made by one of the parties, the other party will be notified of the acceptance of the application and asked to submit a Defence.

The appointment of arbitrators is not left to the parties, but the arbitration Commission appoint an odd number of persons as arbitrators from among such persons on the Panel of Members of the Commission as are not interested in the matter in disupute. They decide the issue according to the principle of majority.

Arbitrators appointed will proceed with the deliberation of the controversy forthwith. In order to arrive at a fair and reasonable decision, it is imperative to know the true facts of the case. To this end, witnesses and experts, as well as the parties or their representatives will be examined. When all material evidence has been taken and the hearing is ripe for decision, the Arbitrators will give an award based on law and dictated by justice and equity.

Arbitration proceeding is brought to an end by —

(1) Preparation of Award. A written award, bearing the names and addresses of the parties and their representatives and the date upon which it was made, will state the award given, a summary of the facts, the point at issue, and the reasons for the award (in some cases the ground of award is omitted by mutual consent of the parties — sub-s, 2 of sect. 23 of the Rules of Maritime Arbitration — and will be signed and sealed by the Arbitrators and the Chairman of the Maritime Arbitration Commission. The award is written as a rule in the Japanese language, but it will also be written in English if so requested by either party.

(2) Service of Award. Attested copies of the award, signed by the Arbitrators and the Chairman of the Maritime Arbitration Commission, will be served on the parties.

(3) Deposit of Award. The original Award will be deposited with the Court of jurisdiction together with a certificate of service.

Upon preparation of a written award, service of its attested copies on the parties, and deposit of the original document of award with the Court, the award takes effect.

Now, as concerns the method of selection and appointment of arbitrators for the Exchange and of decision of the issue, it can be considered that the guiding principle is that the Arbitration Commission should select an odd number of persons who have no concern either with the parties or in the subject of controversy from the Panel of members of Maritime Arbitration Commission, or, in case suitable persons are not found there, from outside the list of names, that those selected should decide the issue as arbitrators on the principle of majority and that no umpire should be elected. The Kobe Ship Brokers' Association, which was mentioned earlier, had adopted the method of selection and appointment of arbirtators and of the decision of the issue that each party concerned should select one arbitrator, that when opinion is divided between the arbitrators thus selected and an award cannot be made, they should choose one umpire whose award should be authoritative. However, that was attended by various evils such as (1) it took too much time in the selection and appointment of the arbitrator, (2) especially the unfavorable party was apt to delay the selection and

appointment of the arbitrator on purpose, (3) there were some arbitrators among those thus selected and appointed who, acting as the mouthpiece of the party that selected them, went against the arbitrator the other party selected. So, the fear that unless these evils were removed, neither a truly fair and proper award nor rapidity, which is one of the merits of arbitration, could be expected thus after all resulted in the guiding principle of the Exchange that arbitrators should be selected and appointed by the Arbitration Commission. However, judging from the necessity of adopting the method of selecting internationally wellknown arbitrators by the parties concerned in dealing with international cases, the following method has been temporarily adopted:

"Selection of arbitrators for a particular case is made, as a rule, by the Arbitration Commission from among the panel of arbitration committeemen of the Exchange. Where, however, the arbitration agreement provides that arbitrators be appointed by the parties to the controversy, the parties may each appoint an equal number of arbitrators from the said panel; and where one or both of the parties to the controversy are of foreign nationality, they may each appoint, if they so desire, an equal number of arbitrators who are or are not on the said panel. In all cases, the Chairman of the Arbitration Commission appoints from the said panel another arbitrator who will preside over the proceedings and officiate as umpire."

As a consequence, the evils that were pointed out earlier appeared in some cases. Even among the foreign parties concerned, many rather wanted the selection of arbitrators in conformity with the guiding principle of the Exchange. Naturally, the present guiding principle again lies in the method of selecting fair third parties as arbitrators by the Arbitration Commission. Today, in the actual application of the rule, this guiding principle is observed by the parties concerned flexibly in due deference to the purpose of the clause specifically stipulating the selection of arbitrators.

In the arbitration proceedings care is taken to ensure secrecy. No document is open to inspection by, and no hearing is open to, any person other than those Arbitrators and those members of the staff of the Exchange who took part or otherwise were concerned in the arbitration. Awards of maritime arbitration,

however, contain such information and matters for reference as are highly useful to the shipping industry. They also form precedents for future cases. They are for this reason, in the absence of an objection from the parties, published in the monthly journal *Kaiun* ("The Shipping"), the organ of the Exchange.

Drafting of Standard Forms of Maritime Contracts

The predominating factor that has caused the Exchange to develop better and fully as the only permanent institution for maritime arbitration in Japan may be the diffusion of standard forms drafted by the Exchange. The point is whether or not able men of learning and experience can be collected as ad hoc committee members from among leading companies and firms related to maritime affairs for the promotion of better habitual practices in business transactions. The potentiality of the organization of the Exchange has made it possible.

By the way, the Exchange has Documentary Committee of the Japan Shipping Exchange, Inc. permanently established for drafting these forms. The circumstances of how the present Committee has been organized as well as the process of drafting of forms will be surveyed:

The oldest document compiled by the Japan Shipping Exchange, Inc., is the Time Charterparty (in Japanese) made in 1927, and the next oldest is the Contract of Carriage of Goods by Sea made in 1929. These were compiled on the basis of deliberations of a committee composed of shipowners and ship brokers. These forms showed a strong tendency to protect the interest of shipowners, and that was in common with the forms compiled by similar bodies in other countries. But since the close of the Second World War, Japan launched on rehabilitation of economy along the line of pacific policy, and that made it necessary to seek for cooperation not only of shipowners but also all other circles interested in maritime trade in general. This fact indeed prompted the efforts to make fair and just forms of contract guaranteeing equal oppor-

tunity to all parties concerned. The result was the participation of committeemen from insurance firms in the drafting of Bareboat Charterparty of 1947, and in the same year in the revision of Contract of Carriage of Goods by Sea and Time Charterparty in the same year. In 1950 shippers were first included in the drafting committee of Bills of Lading. In the last instance the drafting committee was "proper persons from all circles concerned including shippers, carriers, underwriters, bankers, brokers, and academic experts." These drafting committees were set up each time a new document was drafted, but in 1958 a permanent "Documentary Committee of the Japan Shipping Exchange, Inc." was created, and this Committee composed of able and experienced members finally settle the various documents drafted by various Subcommittees. The maritime documents which have hitherto been compiled by the Japan Shipping Exchange, Inc., number as many as 27 kinds, some of which are in the English language, and others in Japanese. These documents are generally regarded as standard forms in the shipping circles for reasons of the high degree of fairness and appropriateness of their contents.

Among the forms under deliberation at present are Ore Charterparty (in English) for carrying iron ore to Japan, Contract of Carriage by tug-boats (in English and Japanese) and Contract regarding Consignment of Ship (in Japanese).

Lastly, for the consolidation of forms internationally universal and appropriate, we intend to strengthen cooperation with the Baltic and International Maritime Conference and other institutions, so that we may contribute to the development of international maritime trade.

Closing Remarks

The Exchange will recognize the importance of its function all the more and be determined to establish a maritime arbitration system or standard forms. Its aim and end will be to contribute to the better and harmonious development of marine business transactions not only in Japan but also with countries dealing with Japan. In order to accomplish this end, a broad international understanding will be of basic necessity, to say nothing of the cooperation of the members

of the Exchange. We are fully aware that with a good and thorough international understanding we should make assiduous efforts for establishing a better and fair arbitration system and for the consolidation and improvement of standard forms.

ARBITRATION

***In re* a dispute concerning a contract for the sale of the s.s. "FONLEY"**

CLAIMANTS .....**(A)**..... **Sellers (Hong Kong)**

RESPONDENTS .....**(B)**..... **Buyers (Korea)**

RESPONDENTS .....**(C)**..... **Joint Sureties (Japan)**

The ship's sales contract.— the bare charterparty. — the reservation of ownership.— an agreement of liquidated damages.— payment in advance of a premium.——an obligation on joint liability on guarantee.

Undisputed Facts

On August 2nd, 1967, the contract of sale of the s.s. FONLEY (hereinafter referred to as the Contract) was concluded between A and B. C had Specifide itself as "B's joint surety" with signature in the Contract stipulating that the deposit of the 10% of the purchase price of the s.s. FONLEY (hereinafter referred to as the Vessel) should be paid a the time of the conclusion of the Contract with the condition that the balance should be paid in 30 monthly instalments, that by way of the payment of the above-mentioned 30 monthly instalments the bare

charterparty effective for the period of 30 months with A as the shipowner, B as the charterer, instalments as bare charterage, should be concluded, that on the termination of the bare charterparty, namely, the liquidation of the amount of the purchase price, the ownership of the Vessel should be transferred from A to B and that a premium of hull insurance after the delivery of the Vessel should be borne by B. The Contract also stipulates that in case either A or B should break the Contract, the other party shall cancel the Contract immediately without any notification procedure and that the violater ought to pay the other party the same amount of money as damages owing to a breach of the Contract that B had already paid to A. So, an agreement of liquidated damages had been made in regard to the breach of contract. In conformity with the Contract the Vessel was delivered from A to B at the port of Chiba on August 8th, the same year, and thenceforth B paid five instalments of purchase price amount before January 8th, 1968.

CLAIMANTS' case is as follows:

B neither made any payment of monthly instalments of purchase price amount on and after January 8th, 1968, nor paid any premium of hull insurance that B should bear in conformity with the Contract and any war premium necessary for the Vessel to enter service in the South Vietnam area. So, A required the fulfillment of obligations of B and his joint surety C more than once. B and C only demanded a grace of payment. Accordingly, A allowed the delay in the payment of instalments of purchase price amount and made an advance of these premiums. Besides, the boiler of the Vessel was damaged on account of B crew's mishandling. Therefore, because the execution of the Contract would not be hoped for even if A allowed a further delay in the payment of instalments, A dissolved the Contract and the Vessel was redelivered from B to A on August 28th, the same year.

B says that so long as the agreement of liquidated damages had been made, B should be under no liability to A for any obligation even if damages arose beyond the amount of liquidated damages. However, the fact that B demanded of A the grace of payment of instalments means that B promised to bear the res-

ponsibility of damages possible to arise in the future and proves that C also agreed to become B's joint surety. Therefore, A can justly claim from B and C all the damages caused by the B's breach of the Contract.

Consequently, A should claim from B and B's joint surety C the payment of the total sum of the unpaid instalments of purchase price amount, the premium paid in advance and the war premium — ¥ 30,551,159.

RESPONDENTS (B) pleaded as follows:

The Contract stipulated for the liquidated damages in case of the breach of contract. So, when B broke the Contract, the deposit B had already paid and five instalments of purchase price amount might well be confiscated by A as damages for breach of the Contract. However, B should be under no liability for any other damages as claimed by A. Therefore, B cannot accede to A's demand.

RESPONDENTS (C) pleaded as follows:

Although A calls to account C's responsibility as B's joint surety, C signed the Contract merely as a witness because A insisted with emphasis at the time of signing the Contract that C was significant only as a witness. C, for this reason, is not in the position of the joint surety in the legal sense and so should be under no liability for damages.

Even if C should hold the responsibility for being the joint surety, the agreement of liquidated damages having been made, B should not be under liability to A and so C should be under no liability for being the jiont surety once the Vessel was actually redelivered to A.

Therefore, C cannot accede to A's claim from C. As regards C's agreement in respect of the postponement of liquidation as A maintains, it has nothing to do with a special agreement valid for compensation for all the damages inclusive of the said liquidated damages. If such a special agreement is said to have been made, the document proving it should be submitted. As far as C is concerned, C has no remembrance of having proposed a special agreement which is disadvantageous to C himself. So long as there is no such a thing, it is out of place

for A to make a claim such as this case even if damages such as claimed by A should have been done.

ARBITRATORS, upon examining the pleadings of the parties concerned, find as follows:

This case contends on whether or not the fact that the period of liquidation of monthly instalments of purchase price amount was postponed should be admitted as the mutual agreement as claimable for compensation in respect of all the damages caused by the said breach of the Contract in addition to the already paid instalments. No documentary evidence worthy of proving whichever pleadings of A, B and C is in the right having been submitted, upon examining the pleadings of the parties concerned with the Contract, the following are found:

A rather preferred the continuation to the dissolution of the Contract, and wanted to realize profits by cooperating in the Vessel's advantageous operation in an attempt to make up for the amount corresponding to the instalments of purchase price amount.

Furthermore, the Vessel still being A's possession, even if the Contract was dissolved at the time of B's breach of it, there was a possibility for A to bear the repairing expenses for the damaged boiler.

B delayed in the payment of charterage and at the same time demanded a grace of the dissolution of the Contract more than once because a reduction in tonnage of vessels owned by himself had to be avoided when viewed from the point of the commercial profit to be gained from the service of his own company and because the cancellation of the permission was difficult for the vessels that had once obtained the import licence, owing to the political situation of his own country.

C demanded the dissolution of the Contract at the time of the breach of it with a view to avoiding the occurrence of unexpected damages for fear that he might have to bear the responsibility of the joint surety because C had signed the Contract specifying C as "B's joint surety", and at the same time made efforts to change the Contract to the one for cash payment in bulk by the mutual concession of the parties concerned.

The mutual agreement purporting to be claimable for compensation for all the damages in addition to the liquidated damages cannot be admitted in spite of its importance in contents because it did not come to be proved objectively. However, A and B had common interests with each other in the delay in the dissolution of the Contract and to take into account the complicated circumstances of the matter between A and B until the Vessel had been redelivered, A went so far as to assign the Vessel in the South Vietnam area in an attempt to increase the profits of the Vessel and cooperated with B in the execution of the Contract out of good will, whereas it cannot be denied that B largely presumed upon A's friendly sacrifice and there is something commonsensically unpardonable about the series of B's acts that resulted in the non-fulfillment of the Contract. Therefore, it shall be proper that B shall pay to A the sum of ¥ 1,000,000.

On top of that, taking into consideration various circumstances that took place from the conclusion up to the dissolution of the Contract, C positively took part in the affair and so long as C is specified as B's joint surety in the signed Contract, in justice, it shall be proper that C and B shall be jointly and severally liable to make compensation for such damages.

Award

1. B and C shall jointly and severally pay to A the sum of ¥ 1,000,000 within a month of the service of this award.
2. A's other claims shall not be admitted.
3. The arbitration fee and costs shall be ¥ 650,000, which shall be apportioned equally among A, B and C.
4. The Court of competent jurisdictions shall be the Tokyo District Court.

Given in Tokyo, on 23rd February 1971.

ARBITRATION

***In re* a dispute arising from a Voyage Charterparty of the m.v. "Yushun Maru"**

CLAIMANTS .....Shipowners (Kobe)

RESPONDENTS .....Charterers (Kobe)

Agents at loading port.— Demurrage and damages for detention.— Cancellation.

Undisputed facts

On 10 September, 1966, the motor vessel Yushun-maru (hereinafter referred to as the Vessel) Voyage Charterparty (hereinafter referred to as the Charterparty for carrying 1,200,000 B. M. F. of Indonesian logs to Japan was concluded between Claimants (Shipowners) and Respondents (Charterers) with a form of Fixture Note, as in the following:

1) Name of Vessel: M/S "YUSHUN MARU" Voy # 4-Homeward.
2) Cargo & Quantity: Full and completion of Indoensian Logs 1,200,000.00 (One Million and Two Hundred Thousand) B.M.F. 10% more or less and Loading on deck at Shipper's risk at Owner's option.
3) Loading Port: One safe berth of Telok Ayer, Indonesia.
4) Discharging Port: One safe port of Tokyo (Wharf) or Kawasaki (Wharf), Japan.
5) E. T. A. at Loading Port: On or about 25th October, 1966.
6) Laydays not to commence before: 25th October, 1966.

7) Cancelling date: 25th November, 1966.

8) Freight rate & Payment: Decided Later:
Payable in U. S. Dollars cash in Kobe on B/L quantity upon completion of loading discountless and non-returnable ship and/or cargo lost or not lost.

9) Shippers Name: Messrs. C. V. Djaja Kalimantan.

10) Laydays Loading: 200,000.00 B. M. F. per WWDSHEX unless used/ if used actual time to be counted as laytime.

Laydays Discharging: 500,000.00 B. M. F. per WWDSHEX unless used/ .....do.....

11) Demurrage: U. S. $ 800.00 per day or pro rata.

12) Despatch money: U. S. $ 400.00 per day or pro rata.

Remarks: 1) In case Sundays and Holidays used for loading and/or discharging time only actually worked to be counted as laydays.

2) Other termes and conditions as per "NANYOZAI" charter party.

ADDENDUM

(September 10th, 1966)

With reference to this Fixture Note Per M/S "YUSHUN MARU" Voy # 4–H. duly signed on September 10th, 1966. between Charterers and Owners covering the carriage Indonesian Logs from Telok Ayer, Indonesia to Tokyo (Wharf) or Kawasaki (Wharf), Japan.

It is this day mutually agreed and understood that: —

Freight rate: US$ 25.00 per 1,000. ft. B/M., F. I. O. and free stowed.

All other terms and conditions shall remain unaltered as Fixture Note.

One original Addendum being made mutually and possessed by Owners.

As it was found out after the conclusion of the cherterparty that the full amount of logs as stipulated in it was not collected at the loading port Telok Ayer, Respondents signed a sub-charterparty for carrying 720,000 B.M.F. of logs from Sejingkat with the Japanese D Company for the purpose of filling the space of the Vessel up with Claimants' consent.

The Vessel left the port of Penang for Telok Ayer at 17 o'clock on 5 November, 1966, and arrived at Pontianak, the quarantine anchorage of Telok Ayer at a quarter past 17 o'clock on 7 November. However, the Vessel was not allowed to go up stream and enter the port of Telok Ayer and had to stay at anchor there. (It was known later that the Vessel was arrested by the Indonesian Navy.) About ten days later, i.e. at 17 o'clock, 17 November, the Vessel weighed anchor at the anchorage of Pontianak and arrived at Telok Ayer at a quarter to nine, 8 November.

The Vessel Commenced loading at eight o'clock, 25 November, and completed the loading of 423,503 B. M. F. of logs at 14 o'clock, 26 November. Then, after leaving the port of Telok Ayer at forty minutes past six o'clock, 1st December, the Vessel called at Sejingkat and Tanjong Mani and returned home with roughly 680,000 B. M. F. of other shippers' logs loaded at the two ports in violation of the aforesaid sub-charterparty.

On top of that, on 25 November, Respondents had paid to Claimants the sum of U.S. $ 30,000 equivalent to the total amount of freight at Claimants' request, although upon the Charterparty the freight should have been paid on the completion of loading in accordance with the bill of lading quantity.

CLAIMANTS' case is as follows:

At first, Claimants, upon receiving B's proposal of the Charterparty, the representative of Respondents, once rejected it, because Claimants having neither experience of assigning a ship on the Indonesian route, nor any knowledge about the state of things at the loading port and about how to go through the procedure for clearance inward and outward, quarantine, etc. B, however, proposed that C, who was dispatched to Indonesia by Respondents and was versed in the state of things because he lived there for many years, should take over all the agent's business concerning the Vessel such as procedures for her clearance inward and outward, quarantine, etc. and that no trouble should be given to Claimants. Claimants believed it and signed the Charterparty. On that occasion, in conformity with the proposal made by Respondents, it was stipulated as a condition of a special agreement that by virtue of the necessity of government

formalities "D" who was the shipper there shall be the agent for form's sake and that Claimants shall bear the expenses paid at the agent.

The Vessel arrived at Pontianak, the quarantine anchorage of Telok Ayer, but had to stay at anchor simply because the quarantine officer did not show up. The master of the Vessel contacted and urged C to enable the Vessel to go upstream and enter the port of Telok Ayer as soon as possible. However, C gradually delayed the schedule for the Vessel's entrance into the loading port. Besides, it was discovered that D which Respondents first picked out had no qualification as an agent. So, the agent was changed to E and then to F. C made efforts to get the entrance permit for the Vessel and finally obtained the permit at Jacalta. The Vessel left Pontianak anchorage at 17 o'clock, 17 November, and arrived at Telok Ayer at a quarter to nine on the following day. In the meantime, the master of the Vessel was informed of the fact that the Vessel had been arrested by the Indonesian Navy during the time.

If C had gone through due formalities concerning the Vessel's entrance, quarantine, etc. at the time of the conclusion of the Charterparty as B promised, the Vessel should have left Pontianak at 17 o'clock, 8 November, should have arrived at Telok Ayer at a quarter to nine, 9 November, and should have been able to tender N/R immediately after that. Therefore, laytime should be regarded as commencing at one p. m., 9 November, and the allowed laytime of six days as expiring at one p. m., 16 November. Since no shipment was made by Respondents (Charterer) at all during that period, the Charterparty should be regarded as cancelled.

Although the Vessel arrived at Telok Ayer on 18 November, Claimants, having been unable to trust C any longer, reached the highest point of uneasiness because the further staying there would have been sure to frustrate the next voyage of the Vessel, and telephoned and telegraphed as follows:

"Allowed laytime up. Charterparty already null and void. Your negligence in taking steps resulted in our very late departure from Telok Ayer, which might cause us great damage because we might be late for our fifth voyage schedule at the end of the month. Naturally, loading at Sejingkat dropped. Do understand. However, as for the loading at Telok Ayer, we, taking advantage

of this opportunity, shall wait for further six days — until 22 November. The Vessel shall set sail for Japan at 5 p.m., 22 November, at the latest. If you should not allow us to leave port at the said time, ¥ 500,000 per day as damages for detention in addition to the demurrage calculated according to the Charterparty will be demanded. Please act with this knowledge."

As mentioned before, in case after the legal cancellation of the Charterparty Claimants did not leave Telok Ayer with the expressed conditional intention and continued staying there, whereas Respondents loaded logs, the following legal effect may be considered:

(1) By the cancellation of the Charterparty Claimants surrendered the right of claim for dead-freight (two thirds of freight) which they acquired by the application of Item 2, Art. 745, Commercial Law.

(2) Under the same condition with the Charterparty, the contract for loading at one port of Telok Ayer was concluded.

> Art. 745 (Rescission of contract prior to commencement of voyage).
>
> 2. If, in cases where the ship is to make an outward and homeward voyage, the charterer has rescinded the contract prior to the commencement of the homeward voyage, he shall pay two-thirds of the freight. The same shall apply if, in cases where the voyage is to be made from another port to the port of loading, the charterer has rescinded the contract before the ship leaves the port of loading.

(3) The period of allowed laytime shall start at one p.m., 16 November, and finish at one p.m., 22 November.

(4) Respondents shall pay the demurrage as stipulated in the Charterparty for the Vessel's stay there after one p.m., 16 November, when the Charterparty was considered as cancelled.

(5) In case Respondents should load logs on board the Vessel at their earnest request after one p.m., 22 November, they shall pay ¥ 500,000 per day as damages for detention in addition to the demurrage under (4).

It is most reasonable to consider that such a conditional contract was concluded between the parties concerned by the expression of implied intention.

By the conclusion of the new contract Telok Ayer became the only loading

port, which however, had no more than 500,000 B.M.F. of logs. So, on 19 November, Claimants demanded from Respondents the payment of dead-freight in respect of the short of the logs as stipulated in the Charterparty. Then, Respondents made a promise of payment on 21 November and paid the sum of $ 30,000 equivalent to the total amount of freight on 25 November.

Although Respondents criticize Claimants as if for having unlawfully cancelled the contract for loading at the port of Sejingkat, in accordance with the Charterparty, Respondents should on principle pay the freight after the loading of logs. From the fact that in spite of that, however, they made a promise of payment of the total amount of freight including dead-freight on 21 November when no goods were in a condition of being on board, the cancellation of loading at the port of Sejingkat by the sub-charterparty shall be evidenced.

Accordingly, the amount of money Claimants should claim shall be as follows:

(1) Demurrage at the loading port.

The demurrage (US $ 800 per day) for the period from one p.m., 16 November, to six-forty a.m., 1 December (14.73611 days), when the Vessel set sail from Telok Ayer, shall be US $ 11,788.89.

(2) The amount of damages for detention.

The amount of damages for the special stay at Telok Ayer (¥ 500,000 per day) for eight days 13 hours 40 minutes (8.69444 days) between 5 p.m., 22 November, and 6.40 a.m., 1 December, when the Vessel left the loading port shall be ¥ 4,347.222.

(3) Demurrage at the discharging port.

Demurrage (at the rate of U.S. $ 800 per day) at the discharging port of Kawasaki shall be ¥ 50,061.

On the other hand, from within the already received sum of US $ 30,000 the profits realized by the loading of other shippers' logs at the port of Sejingkat and that of Tanjonmani that would be reimbursed to Respondents shall be ¥ 3,200,140.

The total claimed amount shall be US $ 15,114.28.

RESPONDENTS pleaded as follows:

Respondents are a trading company dealing mainly in the importation of foodstuffs, vegetables, marine products. By recommendation of a agent B, Respondents, although import trade of logs was their first experience, concluded the purchase contract of Indonesian logs with the Japanese timber and logs importer A and thus concluded the Charterparty with Claimants.

Claimants pleaded that B should be the representative of Respondents. However, B came to sell Respondents Indonesian logs at the request made by A and only arranged the Vessel in order to sell Respondents such logs.

Claimants also pleaded that C should be the on-the-spot delegate of Respondents and that C made a special agreement on taking over the business which the agent on the side of the Vessel does such as clearance inward and outward, quarantine, etc. at the shipping port. However, Respondents have no remembrance of having made a special agreement of the sort and C himself is A's delegate. In actuality, no special agreement concerning the agent is lacking and the words "other terms and conditions as per NANYOZAI Charterparty" is expressly printed as a remark in the Fixture Note. Art. 18 of "Nanyozai 1960" is specified as follows: "In every case Owners shall appoint their agents both at loading and discharging port(s)". If, as pleaded by Claimants, the special agreement contrary to this remark was made, they should assure Respondents of it with an express provision.

So, the Vessel's late arrival at the port of Telok Ayer caused by the arrest of the Vessel by the Indonesian Navy resulted from the fact that Claimants did not specify the Agent and mistook B or C for Respondents' representative or delegate — all resulted from Claimants' misunderstanding or negligence, for which Claimants must be responsible.

The Charterparty for only one loading at Telok Ayer was in the meantime changed to that for two ports loading at — the said port and Sejingkat. However, contrary to the Charterparty, Claimants concluded a contract of carriage of logs at both Sejingkat and Tanjonmani with other shippers, called at the two ports, filled the space of the Vessel up and returned home. So, Claimants should indemnify Respondents for all the damages on a charge of the breach of the Cont-

ract.

By the telegram dated 18 November, Claimants demanded the amount of damage of ¥ 500,000 per day as damages for detention at and after 5 p.m., 22 November. Respondents not only maintained that the Vessel's arrest resulted from Claimants fault, but also paid the freight of $ 300,000 out of good-will on condition that Claimants should relinquish such unreasonable demands, although it was before the arrival of the date of payment.

The amount claimed by Respondents in the present case is as follows:

(1) The profit Respondents lost owing to Claimants' default of obligations is ¥ 5,541,000.

(2) The amount of damages Respondents paid to D on account of Claimants' default of the sub-charterparty is ¥ 66,200.

(3) The amount of damages Respondents sustained because of the Vessel's delay in returning to Japan for discharging is ¥ 639,748.

(4) Other damages Respondents were obliged to pay due to Claimants' breach of the Contract amount to ¥ 161,027.

The total sum is ¥ 6,408,175.

ARBITRATORS, upon due consideration of the allegations of both parties, find as follows:

The point of issue of the case that should be first taken into consideration lies in whether whichever of the parties concerned should by contract select and appoint the owners' agent to perform formalities such as clearance inward and outward, quarantine, etc. for the Vessel at the loading port of Telok Ayer. Judging from the progress of prior negotiations ending in the conclusion of the Charterparty, it is admitted that B is not Respondents' representative but simply broker. Besides, it is clear that C was A's delegate and not Respondents' representative. In consideration of the fact that the Vessel was arrested on suspicion of illegal entry into Indonesia, it is quite natural that C, who resided in Indonesia as a resident of A, should have taken an active part in an attempt to enable the Vessel to go up stream and to enter the port of Telok Ayer. Any

one would have naturally done the same thing even if he were not a member of the parties concerned. Therefore, Claimants' pleading that Respondents were under an obligation to select and appoint the shipping agent simply because C made such efforts must be considered inappropriate.

So, Claimants were not able to prove that they had made a special agreement for selection and appointment of a Owners' agent. On top of that, no mention is made about such a special agreement in the Chaterparty. Therefore, since "Other terms and conditions as per NANYOZAI C/P" are specified in the Fixture Note, it must be concluded that Claimants should have selected and appointed the shipping agent for the Vessel in accordance with Art. 18 of "NANYOZAI 1960" Charter: "In every case Owners shall appoint their Agents both at loading and discharging ports."

Due to Claimants' negligence in the appointment of the Owners' agent and carelessness in having the Vessel enter an Indonesian port, the Vessel was arrested by the Indonesian Navy on suspicion of illegal entry and was forced to stay at anchor for a long time. It is to be understood that if Claimants had appointed the agent and had performed due formalities for clearance inward, such a long stay at anchor as mentioned above would not have happened. Therefore, Claimants pleadings that Respondents were responsible for the long stay at anchor and that because of the long stay at anchor the Charterparty was cancelled does not hold good.

Furthermore, Claimants made it a proof of the cancellation of the subcharter of the Vessel that Respondents had paid $ 30,000 equivalent to all the freight without waiting for the arrival of the date of payment of the freight. However, 25 November when Respondents paid $ 30,000 was the day when the Vessel started loading at Telok Ayer. From that, it can be inferred that since by contract freight was to be paid in accordance with the bill of lading quantity on the completion of shipping, for Respondents to pay all the freight including dead-freight is unthinkable except under special circumstances. So, the reason why Respondents paid $ 30,000 equivalent to the freight without waiting for the arrival of the date of payment is considered, as pleaded by Respondents, just for accommodation of funds at Claimants' earnest request. It seems most pro-

bable to consider that on that occasion Respondents conditioned the performance of loading at Sejingkat by the sub-charterparty as well as the Charterparty against Claimants and that Claimants accepted it. As a consequence, Claimants' pleading that the fact that Respondents paid freight in advance was a proof of the cancellation of the sub-charterparty cannot be admitted. Besides, since there is no documentary evidence worthy of proving that the sub-charterparty was cancelled, Claimants shall undertake liability for damages to Respondents that arose from not having loaded the logs at Sejingkat, as stipulated in the Contract.

In the award thus formed,

(1) Neither the demurrage at the loading port of ¥ 4,244,000 nor damages for detention amounting to ¥ 4,347,220 — both claimed by Claimants — shall be admitted.

(2) As concerns the demurrage at the discharging port amounting to ¥ 50,061, the whole amount shall be admitted by time sheet.

(3) As for the profit of ¥ 5,541,000 which Respondents lost owing to Claimants default of obligations, the whole amount shall be admitted.

(4) As regards the amount of damage of ¥ 66,200 which Respondents paid to D on account of Claimants' non-fulfilment of the sub-charterparty, the whole amount shall be admitted.

(5) As to damages to Respondents amounting to ¥ 639,748 that resulted from the delay in the Vessel's return to Japan for discharging, they shall not be admitted as such as having arisen from the delay in the Vessel's return.

(6) Concerning other damages amounting to ¥ 161,027 that Respondents were obliged to pay by virtue of Claimants' breach of contract, the whole amount shall be admitted.

Award

1. Claimants shall pay to Respondents the sum of ¥ 5,557,339 together with interest accruing at the rate of six per cent per annum to the said sum from

6 May, 1968, until the completion of the payment.

2. The fee and costs of arbitration shall be ¥490,000, which shall be borne by Claimants, provided that Respondents shall receive from Claimants payment of the said amount of money plus the sum of ¥245,000 after advancing it.
3. Other claims of both parties are dismissed.
4. The Court of competent jurisdiction in regard to this award shall be Tokyo District Court.

Given in Tokyo, on 8 March, 1971.

Introduction of a New Form

The Documentary Committee of the Japan Shipping Exchange, Inc., drew up the standard form of 'Contract of Affreightment' concerning a contract of carriage for long-term fixed cargo on the coast of our country — the contract that a carrier undertakes the carriage of a certain amount of cargo in a lump for a specified cargo-owner over a long period of time.

As far as the recent contract form for coastal cargo transportation in our country is concerned, the relative importance of contract of affreightment is acutally greater than that of voyage charter. The drafting of the new form this time has therefore been conducted in order to cope with the actual circumstances.

At any rate, as this sort of standard form is fairly rare in the world, many might be interested. This is why the English translation is introduced herewith.

To begin with, a few explanations about its contents will be needed:

The Vessel column (1) in Part I is intended not for indication of a specified vessel, but only for specification of the class, type, tonnage. Actual vessels will, for this reason, be specified within the range of the vessels that meet this column. Furthermore, vessels that engage in transportation in accordance with this contract can be several in number at the same time.

As for (10) Conditions of Laytime, conditions such as "Customary Quick Despatch", "Running Laydays", "Weather Working Days, Sundays and Holidays Excepted", "Sundays and Holidays Included", etc. should be fixed upon at the loading port and at the discharging port respectively.

(14) Period of Carriage is the indication column characteristic of this form together with the above-mentioned (1) Vessel and Part II, Art. 1. The period to carry the whole amount of a large quantity of fixed cargo will be stipulated for in this column.

Paer II, Art. 1 (Vessel or Vessels to be used) is the stipulation for the method of specifying vessels that are actually used for transportation in conformity with

Cargo-Owner's Shipping Order out of the range specified in Part I, (1), and each vessel specified by this Article should engage in carriage, as in ordinary Voyage Charter, in accordance with provisions from Art. 2 to Art. 24 in Part II.

Art. 9 (Part of Space Available). From the fact that temporal variation in the amount of Cargo-Owner's shipment sometimes produces freight space on a certain voyage, it is admitted that Carrier may make use of the space so far as it does not interfere with the performance of the Contract. For this reason, this article may be said to be characteristic of the Contract.

Art. 23 (Strike). This article is applied only to vessels that are directly affected by strikes or lockouts.

What has been discussed are the characteristic contents of Contract of Affreightment Form, and what follows is the English translation of the form.

CONTRACT OF AFFREIGHTMENT

IT IS THIS DAY MUTUALLY AGREED between .... (hereinafter called Cargo-Owner) and ....(hereinafter called Carrier) under the following provisions of Part I and Part II of this Contract.

Part I

(1) Vessel:
(2) Port of Loading:
(3) Port of Discharge:
(4) Descripion of Cargo and quantity:
(5) Rate of Freight:
(6) Freight payable on
(7) Freight payable at in cash
(8) Loading and discharging in the Vessel:
who arranges:
at port of loading
who bears the expense:
who arranges:
at port of discharge
who bears the expense:
(9) Agent:
at port of loading:
at port of discharge:
(10) Conditions of Laytime:
at port of loading:
at port of discharge:
(11) Days on Demurrage:

(12) Demurrage: per day or pro rata for part thereof.
(13) Despatch Money: per day or pro rata for part thereof.
(14) Period of Carriage: from to
Special Provisions:

In witness whereof, the said parties hereto have signed this Contract in duplicate, dated , each party having one copy hereof in his possession.

Part II

1. Vessel or Vessels to be used:

In accordance with the orders of the Cargo-Owner, the Carrier shall inform the Cargo-Owner prior to the voyage in question of the sailing schedules of the definite Vessel or Vessels (hereinafter called the Vessel) together with the Vessel's estimated loading quantity of cargo and the estimated date of arrival at the port of loading.

2. Seaworthiness:

The Carrier shall, before and at the beginning of the voyage, exercise due diligence to make the Vessel seaworthy for the performance of this Contract.

3. Port of Loading or Discharge:

Loading or discharging shall be effected at such a port or place where the Vessel can safely and get and lie always afloat.

4. Notice of Readiness:

When the Vessel is ready to load or discharge at loading or discharging port, the Carrier or the Master shall give notice of readiness to the Cargo-Owner or the Shippers at loading port, and to the Cargo-Owner or the Consignees at discharging port.

5. Computation of Laytime:

Laytime shall commence at the time when the Carrier or the Master gives

the notice stipulated in the preceding Article, but in case that such notice has been given prior to the estimated date of the Vessel's arrival at port of loading informed by the Carrier in accordance with Article 1, laytime shall not commence except when the Cargo-Owner commences to load.

In case of giving notice mentioned in the preceding Article, if the Carrier or the Master cannot ascertain address of the Shippers or Consignees in due time, laytime shall commence at the time when the Vessel has been ready to load or discharge.

Time lost in waiting at or off the port for a berth, moorage or anchorage at the port of loading or discharge, shall count as loading or discharging time.

Laytime for loading and discharging shall be non-reversible.

Any time lost during which loading or discharging cannot be done through damage to or breakdown of the Vessel's hull or machinery or any other cause for which the Carrier is responsible, shall not be computed as part of laytime.

6. Demurrage, Despatch Money:

If the Vessel is detained longer at port of loading or discharge than laytime allowed (reasonable time in case of C.Q.D.), the Cargo-Owner shall pay demurrage as specified in Part I (12) to the Carrier.

If loading or discharging is completed within laytime allowed, the Carrier shall pay despatch money as specified in Part I (13) for laytime saved; but this shall not apply in case of C.Q.D.

7. Sailing of the Vessel:

If the Vessel is detained longer at port of loading than the time of demurrage specified in Part I (11) (reasonable time in case of C.Q.D.) even in case of paying demurrage, the Master shall have liberty to sail forthwith.

8. Full and Complete Cargo:

The Cargo-Owner shall load a cargo up to permissible draft or cargo capacity of the Vessel.

9. Part of Space Available:

With the consent of the Cargo-Owner, the Carrier may use a part of the space of the Vessel for carriage of the cargo other than that which contracted for so far as such carriage does not hinder or prevent the performance of this Cont-

ract.

10. Dead-freight:

Should the Cargo-Owner fail to supply a cargo as required in Article 8 on account of his own convenience or optional sailing of the Vessel as stipulated in Article 7, the Cargo-Owner must pay the freight in full for the cargo to be carried.

11. Use of Loading or Discharging Equipments of the Vessel:

The Cargo-Owner may use winches or other loading or discharging equipments of the Vessel if necessary in loading or discharge, and they shall be used under direction and control of the Master.

12. Deck Load:

The Carrier shall not be responsible for wash away and/or any other damage to deck cargo.

13. Dangerous Cargo:

Without consent of the Carrier, the Cargo-Owner shall not be allowed to load cargo of combustible, inflammable, explosive, poisonous or other dangerous nature.

14. Special Cargo:

In respect of a shipment of cargo which requires special care or handling in carrying, the Cargo-Owner shall give prior notice hereof to the Carrier or the Master and obtain his approval.

Should the Cargo-Owner give no notice provided for in the preceding paragraph, the Carrier shall not be responsible for damage to cargo caused by want of special care or handling.

15. Impossibility of Loading:

If the Master deems it impossible or impracticable to complete loading by reason of storms, bad weather, shallow water, ice, riots, or any act of God or force majeure, the Carrier or the Master shall have liberty to sail with or without cargo on board, giving notice thereof to the Cargo-Owner. If, however, circumstances should not permit him to give notice before the Vessel's sailing, the same shall be given with least possible delay after the Vessel has sailed.

In case of preceding paragraph, freight for any quantity of cargo so loaded

shall be paid in the manner specified for payment of freight in Part I (6), and the Carrier shall in no wise be held responsible for whatever consequences that may be incurred through disposition of cargo thus remained unshipped.

In case of the first paragraph, the Carrier shall have liberty to complete with other cargo at nearby port giving notice thereof to the Cargo-Owner.

16. Impossibility of Discharge:

If the Master deems it impossible or impracticable to put in port of discharge or to effect discharge thereat by reason of cause or causes specified in the preceding Article, the Carrier or the Master shall have liberty to discharge at a nearby safe port or place at the risk and expense of the Cargo-Owner, to whom notice shall be given thereof in accordance with the rule of the preceding Article.

In case of the preceding paragraph, all the liabilities of the Carrier shall cease when the cargo is discharged at such port or place.

17. Mutual Exempion:

Both parties to this Contract shall exempt each other from indemnifying for any loss or damage caused by detention or any other act of the governmental or similar authorities, civil war, riots, pirates, bandits, seamen's barratry, strike, lockout, fire, collision, grounding, sinking, jettison and any act of God or force majeure.

18. Carrier's Exemption:

The Carrier shall not be responsible for loss of or damage to cargo in cases where such loss or damage has been caused even by the Master or crew exercising due diligence.

The Carrier shall also not be responsible for loss of or damage to cargo caused by negligence in the navigation or in the management of the Vessel on the part of the Master or crew.

19. Indemnification:

The Cargo-Owner shall indemnify the Carrier if the Carrier is held liable towards the third parties under Bills of Lading or any other similar documents signed by the Master as ordered by the Cargo-Owner in respect of any claim for which the Carrier is not liable towards the Cargo-Owner under this Contract.

20. Deviation:

The Vessel shall have liberty to change the order or the route of the voyage contemplated for the purpose of saving life and/or property at sea, towing or assisting vessels in distress, taking refuge, taking in necessary stores, dealing with affairs of crew and/or cargo and/or passengers or any other reasonable purpose. In this case, the Carrier or the Master shall give notice thereof to the Cargo-Owner without delay.

21. Right of Claim for Freight and others:

Even if, after leaving the port of loading, the Vessel has been compelled to discontinue the loaded voyage by reason of accidents of the Vessel and any other cause or causes beyond control of the Carrier, the Carrier or the Master shall not be prejudiced to claim freight, charges, demurrage, disbursements, contribution for general average and/or share of salvage expense which the Cargo-Owner shall become due under this Contract.

Prepaid freight shall not be returnable, irrespective of loss of or damage to cargo, or discontinuance of the voyage or the carriage.

22. Lien on the Cargo:

The Carrier or the Master shall have the lien on the cargo for the amount due under this Contract and have right to sell part or whole of the cargo at public auction, proceeds whereof to apply to payment of the amount due. But in case of not being fully paid even by such public acution, the Carrier shall have the right to demand payment of amount remained unpaid.

23. Strike:

Either party who has got a due notification of a strike or lockout from labour unions or any other parties concerned, shall inform immediately the other party to that effect. Both parties shall talk with each other over how to do the best of minimizing their loss or damage therefrom on the assumption that both parties shall perform the voyage concerned under this Contract as much as possible.

If there is a strike or lockout preventing the loading of cargo before the Vessel's arrival at port of loading or commencement of laytime, the Cargo-Owner or the Carrier shall have the option of cancelling the voyage in question. If such strike or lockout occurs after commencement of laytime, the Cargo-Owner have the option of keeping the Vessel waiting paying reasonable demurrage, or

of ordering the Vessel to a nearby safe port or place at the expense of the Cargo-Owners: in former case, if the Vessel is detained longer at port of loading than reasonable time, the Carrier or the Master shall have liberty to sail, giving notice thereof. If such strike or lockout occurs or is certain to occur, the Cargo-Owner or the Carrier shall have liberty to sail with or without cargo on board. In this case, the Cargo-Owner shall pay the freight on loaded quantity only and the Carrier shall have liberty to complete with other cargo at nearby port.

If there is a strike or lockout preventing the discharge of the cargo at the time of the Vessel's arrival at or off the port of discharge or occuring after the Vessel's arrival, the Cargo-Owner shall have the option of keeping the Vessel waiting until such strike or lockout is at an end against paying half demurrage after expiration of laytime, or of ordering the Vessel to a nearby safe port or place where she can safely discharge her cargo at the expense of the Cargo-Owner: in former case, if the Vessel is detained longer at the port of discharge than reasonable time, the Carrier may discharge the cargo applying the provisions of Article 16.

Any time lost through strike or lockout concerning crew shall not count as laytime.

24. General Average:

General average, if any, shall be settled according to York-Antwerp Rules, 1950.

25. Breach of Contract:

A Party breaking this Contract must pay damages to the other party.

26. Arbitration:

If any dispute arises concerning this Contract between the parties thereto, either of the parties shall submit the same to an arbitration of the Japan Shipping Exchange, Inc. (Tokyo/Kobe), and an award given by the arbitrator or arbitrators appointed by the said Exchange shall be deemed final and be obeyed.

All matters relating to the appintment of arbitrator or arbitrators and arbitration procedures shall be decided by the Japan Shipping Exchange, Inc.

THE JAPAN SHIPPING EXCHANGE, INC.
(Nippon Kaiun Shukaisho)
PRINCIPAL OFFICE
Mitsui Bldg., No. 1 Muromachi 2-Chome,
Nihonbashi, Chuo-ku, Tokyo, Japan.
KOBE OFFICE
32 Akashi-Cho, Ikuta-ku, Kobe, Japan.

CONTENTS

Establishment of Maritime Arbitration System in Japan and Drafting of Standard Maritime Forms

Foreword

The 50th anniversary of the Japan Shipping Exchange, Inc. (Nippon Kaiun Shukaisho) falls on 8th September, this year. During this period of half a century, with a view to serving the public interest, the Exchange has made efforts to promote the better and harmonious development of maritime business transactions in respect of arbitration, drafting of standard contract forms, information, collection of business data, investigation, etc. and has been highly appreciated for the fruitful results so far obtained.

Mention should be specifically made that today the Exchange is now recognized at home and abroad as the only permanent arbitral tribunal, in Japan, for any dispute or matter in difference, arising out of contract or otherwise in respect of ownership (including co-ownership), demise, charter and consignment of vessels, carriage of goods by sea, towage, ship sale, marine insurance, shipbuilding and ship repair, salvage, average, etc. and also as the institution for drafting of standard contract forms for trade in and around Japan.

On this particularly memorable occasion of the 50th anniversary, we have taken a bird's-eye view of the developmental process regarding maritime arbitration and standard contract forms and at the same time laid our wishes before the reader for the existing stage of affairs and for the future. We shall be very happy if those concerned, even greater in number, make good use of this booklet with a full understanding.

The Course of the Arbitration System of the Japan Shipping Exchange, Inc.

Arbitration in one form or another of maritime matters has been practised in Japan since the late 19th century. In former days, however, artbiration was an unorganized, individual, *ad hoc* affair. When the Kobe Ship Broker's Association was created early in the 20th century, arbitration mainly fell into the hands of this body, which handled a number of cases during and after the First World War. Its activities in this field gradually declined, however, owing to the fact that this Association, composed exclusively of ship brokers, did not represent the entire shipping industry, and its services were not too eagerly sought after.

The Kobe Shipping Exchange, Ltd., set up in September, 1921, had, as its members, shipowners, ship brokers, marine underwriters, merchants, shipbuilders, foreign-exchange bankers, etc. Such an inclusive, representative organization would, it was felt, be fit to handle arbitration. An Arbitration Branch was established in the Exchange in May, 1926, and the Arbitration Commission was formed of scores of the members of the Exchange. It was the practice of this Commission, upon receipt of an application for arbitration, mediation, valuation, etc., to select from the Panel of Members of Arbitration Commission three, or other odd-number of persons, who had neither direct nor indirect interest in the case, to act as arbitrators, mediators, valuers, etc., as the case might be. The same practice was followed in the years after the reorganization in 1933 of the Kobe Shipping Exchange, Ltd., into the present Japan Shipping Exchange, Inc.

This system stood the test of the difficult times during and after the Second World War. In 1948, the Trade Associations Law was put into force, prohibiting all trade associations from carriyng on any quasi-judicial function of arbitration or other solution of disputes of their own members. But the arbitration, mediation, valuation, etc. by the Japan Shipping Exchange, Inc., were by special legislation exempted from this general prohibition. That was due to the Govern-

ment's recognition of the especially meritorious work done by the Exchange in maritime arbitration, etc., and of the need for preserving for the future the system that enjoyed the confidence of the trading circles.

On account of the subsequent delightful development of the shipping circles such as marine transportation, shipbuilding and trade and commerce, demands for the positive treatment of international disputes by the Exchange were made by the parties concerned. The Exchange revised its maritime arbitration rules through 1959 into 1960 in order to meet the demands. Furthermore, studies were made on the results of the working of the revised rules and in September, 1962, the present rules were enacted. The office used to be in Kobe. Another office, however, was newly established in Tokyo in April, 1961. The headquarters were moved from Kobe to Tokyo in April, 1966. Thus, arbitration business has been conducted both in Tokyo and Kobe up to the present.

In the case of a dispute which can be autonomously settled between the parties concerned if an authoritative comment is presented about the differences in opinion centering around habitual practices in relation to the interpretation of contract clauses and the fulfillment of the contract, an expert opinion in writing will be delivered at the request of the parties concerned. As regards this so-called clause appraisal, those men rich in learning and experience who have no interests in the parties concerned and the case are selected from among the listed arbitrators of the Exchange. The use and the effect of this expert opinion is paid attention to from various quarters.

The valuations of ships by the Exchange is specially noteworthy. Ship valuations given by the Exchange has been widely utilized with high dependability not only in evaluation of property but also in calculation of general average and in a collision case. Ever since 1926 when the Exchange actually started maritime arbitration, the number of cases of arbitration, mediation, appraisal, the Exchange has dealt with until the end of September, 1971, is as follows:

the number of arbitration cases

Applications accepted	~~146~~ 166 cases
against which	
Arbitrations awards given	~~92~~ 99 cases

Mediations effected 20 cases
Withdrawn by applicants 26 cases

Of 92 and given, 39 cases arose from carriage of goods by sea, 32 from time charters, 6 from ship sale, 15 from other transactions.

the number of appraisals

Expert opinions rendered 63 instances
Ship valuations rendered 891 vessels

In addition to the above-mentioned arbitration, mediation, appraisal, there have been quite a few requests for information, consultations, regarding disputes, interpretations of clauses in contract forms, judicial precedents, the number of which amounts to approximately 800 in the course of the last one year.

As mentioned above, the Exchange has enjoyed a better and fruitful development as the only permanent institution for maritime arbitration in Japan. During the last decade, it has developed especially internationally. This international development of the Exchange is largely due to the brilliant development of marine transportation, shipbuilding, trade after World War II. However, the dominant force that casued the Exchange to develop so remarkably as the permanent institution for maritime arbitration both before and after the War was nothing but the persistent and untiring efforts the Exchange had made in the capacity of the organization as a non-profit foundation having as its members, shipowners, brokers, shipbuilders, merchants, marine underwriters and others for drafting of standard contract forms with a view to promoting good habitual practices through marine business transactions not only in but also around Japan. This cannot be disregarded and so shall be discussed in detail later.

Finally, Special mention in this connection is to be made of the fact that Japan being a signatory to both the Protocol on Arbitration Clauses signed at Geneva on September 24, 1923, and the Convention on the Execution of Foreign Arbitral Awadrs signed at Geneva on September 26, 1927, and also having adhered in June, 1959, to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards signed at New York in June, 1958, the enforcement and execution of the arbitral awards rendered by the Maritime Arbitration

Commission of the Japan Shipping Exchange are procedure guaranteed in a very wide area on the glove.

Arbitration Procedure

It seems that the characteristics of the arbitration procedure of the Exchange lies in the method of selection and appointment of arbitrators and of decision of the issue. However, prior to its explanation, let's take a bird's-eye view of rules and practice of arbitration conducted by the Exchange.

The parties to a dispute desirous of applying for arbitration must first sign an agreement showing their willingness to submit to the arbitration by the Exchange. According to such an arbitration agreement, either or both of the parties shall file a written Application giving the names of the parties, the place of arbitration, the title of the case, and the main points of controversy. The Applicaion shall be accompanied by a Statement of Claim specifying the claim made by the applicant and the facts forming the cause of such claim, together with material documentary evidence (original or copy) supporting such facts.

Applications made in due form will be accepted, and Arbitrators will be appointed. Where an application has been made by one of the parties, the other party will be notified of the acceptance of the application and asked to submit a Defence.

The appointment of arbitrators is not left to the parties, but the arbitration Commission appoint an odd number of persons as arbitrators from among such persons on the Panel of Members of the Commission as are not interested in the matter in disupute. They decide the issue according to the principle of majority.

Arbitrators appointed will proceed with the deliberation of the controversy forthwith. In order to arrive at a fair and reasonable decision, it is imperative to know the true facts of the case. To this end, witnesses and experts, as well as the parties or their representatives will be examined. When all material evidence has been taken and the hearing is ripe for decision, the Arbitrators will give an award based on law and dictated by justice and equity.

Arbitration proceeding is brought to an end by —

(1) Preparation of Award. A written award, bearing the names and addresses of the parties and their representatives and the date upon which it was made, will state the award given, a summary of the facts, the point at issue, and the reasons for the award (in some cases the ground of award is omitted by mutual consent of the parties — sub-s, 2 of sect. 23 of the Rules of Maritime Arbitration — and will be signed and sealed by the Arbitrators and the Chairman of the Maritime Arbitration Commission. The award is written as a rule in the Japanese language, but it will also be written in English if so requested by either party.

(2) Service of Award. Attested copies of the award, signed by the Arbitrators and the Chairman of the Maritime Arbitration Commission, will be served on the parties.

(3) Deposit of Award. The original Award will be deposited with the Court of jurisdiction together with a certificate of service.

Upon preparation of a written award, service of its attested copies on the parties, and deposit of the original document of award with the Court, the award takes effect.

Now, as concerns the method of selection and appointment of arbitrators for the Exchange and of decision of the issue, it can be considered that the guiding principle is that the Arbitration Commission should select an odd number of persons who have no concern either with the parties or in the subject of controversy from the Panel of members of Maritime Arbitration Commission, or, in case suitable persons are not found there, from outside the list of names, that those selected should decide the issue as arbitrators on the principle of majority and that no umpire should be elected. The Kobe Ship Brokers' Association, which was mentioned earlier, had adopted the method of selection and appointment of arbirtators and of the decision of the issue that each party concerned should select one arbitrator, that when opinion is divided between the arbitrators thus selected and an award cannot be made, they should choose one umpire whose award should be authoritative. However, that was attended by various evils such as (1) it took too much time in the selection and appointment of the arbitrator, (2) especially the unfavorable party was apt to delay the selection and

appointment of the arbitrator on purpose, (3) there were some arbitrators among those thus selected and appointed who, acting as the mouthpiece of the party that selected them, went against the arbitrator the other party selected. So, the fear that unless these evils were removed, neither a truly fair and proper award nor rapidity, which is one of the merits of arbitration, could be expected thus after all resulted in the guiding principle of the Exchange that arbitrators should be selected and appointed by the Arbitration Commission. However, judging from the necessity of adopting the method of selecting internationally wellknown arbitrators by the parties concerned in dealing with international cases, the following method has been temporarily adopted:

"Selection of arbitrators for a particular case is made, as a rule, by the Arbitration Commission from among the panel of arbitration committeemen of the Exchange. Where, however, the arbitration agreement provides that arbitrators be appointed by the parties to the controversy, the parties may each appoint an equal number of arbitrators from the said panel; and where one or both of the parties to the controversy are of foreign nationality, they may each appoint, if they so desire, an equal number of arbitrators who are or are not on the said panel. In all cases, the Chairman of the Arbitration Commission appoints from the said panel another arbitrator who will preside over the proceedings and officiate as umpire."

As a consequence, the evils that were pointed out earlier appeared in some cases. Even among the foreign parties concerned, many rather wanted the selection of arbitrators in conformity with the guiding principle of the Exchange. Naturally, the present guiding principle again lies in the method of selecting fair third parties as arbitrators by the Arbitration Commission. Today, in the actual application of the rule, this guiding principle is observed by the parties concerned flexibly in due deference to the purpose of the clause specifically stipulating the selection of arbitrators.

In the arbitration proceedings care is taken to ensure secrecy. No document is open to inspection by, and no hearing is open to, any person other than those Arbitrators and those members of the staff of the Exchange who took part or otherwise were concerned in the arbitration. Awards of maritime arbitration,

however, contain such information and matters for reference as are highly useful to the shipping industry. They also form precedents for future cases. They are for this reason, in the absence of an objection from the parties, published in the monthly journal *Kaiun* ("The Shipping"), the organ of the Exchange.

Drafting of Standard Forms of Maritime Contracts

The predominating factor that has caused the Exchange to develop better and fully as the only permanent institution for maritime arbitration in Japan may be the diffusion of standard forms drafted by the Exchange. The point is whether or not able men of learning and experience can be collected as ad hoc committee members from among leading companies and firms related to maritime affairs for the promotion of better habitual practices in business transactions. The potentiality of the organization of the Exchange has made it possible.

By the way, the Exchange has Documentary Committee of the Japan Shipping Exchange, Inc. permanently established for drafting these forms. The circumstances of how the present Committee has been organized as well as the process of drafting of forms will be surveyed:

The oldest document compiled by the Japan Shipping Exchange, Inc., is the Time Charterparty (in Japanese) made in 1927, and the next oldest is the Contract of Carriage of Goods by Sea made in 1929. These were compiled on the basis of deliberations of a committee composed of shipowners and ship brokers. These forms showed a strong tendency to protect the interest of shipowners, and that was in common with the forms compiled by similar bodies in other countries. But since the close of the Second World War, Japan launched on rehabilitation of economy along the line of pacific policy, and that made it necessary to seek for cooperation not only of shipowners but also all other circles interested in maritime trade in general. This fact indeed prompted the efforts to make fair and just forms of contract guaranteeing equal oppor-

tunity to all parties concerned. The result was the participation of committeemen from insurance firms in the drafting of Bareboat Charterparty of 1947, and in the same year in the revision of Contract of Carriage of Goods by Sea and Time Charterparty in the same year. In 1950 shippers were first included in the drafting committee of Bills of Lading. In the last instance the drafting committee was "proper persons from all circles concerned including shippers, carriers, underwriters, bankers, brokers, and academic experts." These drafting committees were set up each time a new document was drafted, but in 1958 a permanent "Documentary Committee of the Japan Shipping Exchange, Inc." was created, and this Committee composed of able and experienced members finally settle the various documents drafted by various Subcommittees. The maritime documents which have hitherto been compiled by the Japan Shipping Exchange, Inc., number as many as 27 kinds, some of which are in the English language, and others in Japanese. These documents are generally regarded as standard forms in the shipping circles for reasons of the high degree of fairness and appropriateness of their contents.

Among the forms under deliberation at present are Ore Charterparty (in English) for carrying iron ore to Japan, Contract of Carriage by tug-boats (in English and Japanese) and Contract regarding Consignment of Ship (in Japanese).

Lastly, for the consolidation of forms internationally universal and appropriate, we intend to strengthen cooperation with the Baltic and International Maritime Conference and other institutions, so that we may contribute to the development of international maritime trade.

Closing Remarks

The Exchange will recognize the importance of its function all the more and be determined to establish a maritime arbitration system or standard forms. Its aim and end will be to contribute to the better and harmonious development of marine business transactions not only in Japan but also with countries dealing with Japan. In order to accomplish this end, a broad international understanding will be of basic necessity, to say nothing of the cooperation of the members

of the Exchange. We are fully aware that with a good and thorough international understanding we should make assiduous efforts for establishing a better and fair arbitration system and for the consolidation and improvement of standard forms.

ARBITRATION

***In re* a dispute concerning a contract for the sale of the s.s. "FONLEY"**

CLAIMANTS .....**(A)**..... **Sellers (Hong Kong)**

RESPONDENTS .....**(B)**..... **Buyers (Korea)**

RESPONDENTS .....**(C)**..... **Joint Sureties (Japan)**

The ship's sales contract.— the bare charterparty. — the reservation of ownership.— an agreement of liquidated damages.— payment in advance of a premium.——an obligation on joint liability on guarantee.

Undisputed Facts

On August 2nd, 1967, the contract of sale of the s.s. FONLEY (hereinafter referred to as the Contract) was concluded between A and B. C had Specifide itself as "B's joint surety" with signature in the Contract stipulating that the deposit of the 10% of the purchase price of the s.s. FONLEY (hereinafter referred to as the Vessel) should be paid a the time of the conclusion of the Contract with the condition that the balance should be paid in 30 monthly instalments, that by way of the payment of the above-mentioned 30 monthly instalments the bare

charterparty effective for the period of 30 months with A as the shipowner, B as the charterer, instalments as bare charterage, should be concluded, that on the termination of the bare charterparty, namely, the liquidation of the amount of the purchase price, the ownership of the Vessel should be transferred from A to B and that a premium of hull insurance after the delivery of the Vessel should be borne by B. The Contract also stipulates that in case either A or B should break the Contract, the other party shall cancel the Contract immediately without any notification procedure and that the violater ought to pay the other party the same amount of money as damages owing to a breach of the Contract that B had already paid to A. So, an agreement of liquidated damages had been made in regard to the breach of contract. In conformity with the Contract the Vessel was delivered from A to B at the port of Chiba on August 8th, the same year, and thenceforth B paid five instalments of purchase price amount before January 8th, 1968.

CLAIMANTS' case is as follows:

B neither made any payment of monthly instalments of purchase price amount on and after January 8th, 1968, nor paid any premium of hull insurance that B should bear in conformity with the Contract and any war premium necessary for the Vessel to enter service in the South Vietnam area. So, A required the fulfillment of obligations of B and his joint surety C more than once. B and C only demanded a grace of payment. Accordingly, A allowed the delay in the payment of instalments of purchase price amount and made an advance of these premiums. Besides, the boiler of the Vessel was damaged on account of B crew's mishandling. Therefore, because the execution of the Contract would not be hoped for even if A allowed a further delay in the payment of instalments, A dissolved the Contract and the Vessel was redelivered from B to A on August 28th, the same year.

B says that so long as the agreement of liquidated damages had been made, B should be under no liability to A for any obligation even if damages arose beyond the amount of liquidated damages. However, the fact that B demanded of A the grace of payment of instalments means that B promised to bear the res-

ponsibility of damages possible to arise in the future and proves that C also agreed to become B's joint surety. Therefore, A can justly claim from B and C all the damages caused by the B's breach of the Contract.

Consequently, A should claim from B and B's joint surety C the payment of the total sum of the unpaid instalments of purchase price amount, the premium paid in advance and the war premium — ¥ 30,551,159.

RESPONDENTS (B) pleaded as follows:

The Contract stipulated for the liquidated damages in case of the breach of contract. So, when B broke the Contract, the deposit B had already paid and five instalments of purchase price amount might well be confiscated by A as damages for breach of the Contract. However, B should be under no liability for any other damages as claimed by A. Therefore, B cannot accede to A's demand.

RESPONDENTS (C) pleaded as follows:

Although A calls to account C's responsibility as B's joint surety, C signed the Contract merely as a witness because A insisted with emphasis at the time of signing the Contract that C was significant only as a witness. C, for this reason, is not in the position of the joint surety in the legal sense and so should be under no liability for damages.

Even if C should hold the responsibility for being the joint surety, the agreement of liquidated damages having been made, B should not be under liability to A and so C should be under no liability for being the jiont surety once the Vessel was actually redelivered to A.

Therefore, C cannot accede to A's claim from C. As regards C's agreement in respect of the postponement of liquidation as A maintains, it has nothing to do with a special agreement valid for compensation for all the damages inclusive of the said liquidated damages. If such a special agreement is said to have been made, the document proving it should be submitted. As far as C is concerned, C has no remembrance of having proposed a special agreement which is disadvantageous to C himself. So long as there is no such a thing, it is out of place

for A to make a claim such as this case even if damages such as claimed by A should have been done.

ARBITRATORS, upon examining the pleadings of the parties concerned, find as follows:

This case contends on whether or not the fact that the period of liquidation of monthly instalments of purchase price amount was postponed should be admitted as the mutual agreement as claimable for compensation in respect of all the damages caused by the said breach of the Contract in addition to the already paid instalments. No documentary evidence worthy of proving whichever pleadings of A, B and C is in the right having been submitted, upon examining the pleadings of the parties concerned with the Contract, the following are found:

A rather preferred the continuation to the dissolution of the Contract, and wanted to realize profits by cooperating in the Vessel's advantageous operation in an attempt to make up for the amount corresponding to the instalments of purchase price amount.

Furthermore, the Vessel still being A's possession, even if the Contract was dissolved at the time of B's breach of it, there was a possibility for A to bear the repairing expenses for the damaged boiler.

B delayed in the payment of charterage and at the same time demanded a grace of the dissolution of the Contract more than once because a reduction in tonnage of vessels owned by himself had to be avoided when viewed from the point of the commercial profit to be gained from the service of his own company and because the cancellation of the permission was difficult for the vessels that had once obtained the import licence, owing to the political situation of his own country.

C demanded the dissolution of the Contract at the time of the breach of it with a view to avoiding the occurrence of unexpected damages for fear that he might have to bear the responsibility of the joint surety because C had signed the Contract specifying C as "B's joint surety", and at the same time made efforts to change the Contract to the one for cash payment in bulk by the mutual concession of the parties concerned.

The mutual agreement purporting to be claimable for compensation for all the damages in addition to the liquidated damages cannot be admitted in spite of its importance in contents because it did not come to be proved objectively. However, A and B had common interests with each other in the delay in the dissolution of the Contract and to take into account the complicated circumstances of the matter between A and B until the Vessel had been redelivered, A went so far as to assign the Vessel in the South Vietnam area in an attempt to increase the profits of the Vessel and cooperated with B in the execution of the Contract out of good will, whereas it cannot be denied that B largely presumed upon A's friendly sacrifice and there is something commonsensically unpardonable about the series of B's acts that resulted in the non-fulfillment of the Contract. Therefore, it shall be proper that B shall pay to A the sum of ¥ 1,000,000.

On top of that, taking into consideration various circumstances that took place from the conclusion up to the dissolution of the Contract, C positively took part in the affair and so long as C is specified as B's joint surety in the signed Contract, in justice, it shall be proper that C and B shall be jointly and severally liable to make compensation for such damages.

Award

1. B and C shall jointly and severally pay to A the sum of ¥ 1,000,000 within a month of the service of this award.
2. A's other claims shall not be admitted.
3. The arbitration fee and costs shall be ¥ 650,000, which shall be apportioned equally among A, B and C.
4. The Court of competent jurisdictions shall be the Tokyo District Court.

Given in Tokyo, on 23rd February 1971.

ARBITRATION

***In re* a dispute arising from a Voyage Charterparty of the m.v. "Yushun Maru"**

CLAIMANTS .....Shipowners (Kobe)

RESPONDENTS .....Charterers (Kobe)

Agents at loading port.— Demurrage and damages for detention.— Cancellation.

Undisputed facts

On 10 September, 1966, the motor vessel Yushun-maru (hereinafter referred to as the Vessel) Voyage Charterparty (hereinafter referred to as the Charterparty for carrying 1,200,000 B. M. F. of Indonesian logs to Japan was concluded between Claimants (Shipowners) and Respondents (Charterers) with a form of Fixture Note, as in the following:

1) Name of Vessel: M/S "YUSHUN MARU" Voy # 4-Homeward.
2) Cargo & Quantity: Full and completion of Indoensian Logs 1,200,000.00 (One Million and Two Hundred Thousand) B.M.F. 10% more or less and Loading on deck at Shipper's risk at Owner's option.
3) Loading Port: One safe berth of Telok Ayer, Indonesia.
4) Discharging Port: One safe port of Tokyo (Wharf) or Kawasaki (Wharf), Japan.
5) E. T. A. at Loading Port: On or about 25th October, 1966.
6) Laydays not to commence before: 25th October, 1966.

7) Cancelling date: 25th November, 1966.

8) Freight rate & Payment: Decided Later:
Payable in U. S. Dollars cash in Kobe on B/L quantity upon completion of loading discountless and non-returnable ship and/or cargo lost or not lost.

9) Shippers Name: Messrs. C. V. Djaja Kalimantan.

10) Laydays Loading: 200,000.00 B. M. F. per WWDSHEX unless used/ if used actual time to be counted as laytime.

Laydays Discharging: 500,000.00 B. M. F. per WWDSHEX unless used/ .....do.....

11) Demurrage: U. S. $ 800.00 per day or pro rata.

12) Despatch money: U. S. $ 400.00 per day or pro rata.

Remarks: 1) In case Sundays and Holidays used for loading and/or discharging time only actually worked to be counted as laydays.

2) Other termes and conditions as per "NANYOZAI" charter party.

ADDENDUM

(September 10th, 1966)

With reference to this Fixture Note Per M/S "YUSHUN MARU" Voy # 4–H. duly signed on September 10th, 1966. between Charterers and Owners covering the carriage Indonesian Logs from Telok Ayer, Indonesia to Tokyo (Wharf) or Kawasaki (Wharf), Japan.

It is this day mutually agreed and understood that: —

Freight rate: US$ 25.00 per 1,000. ft. B/M., F. I. O. and free stowed.

All other terms and conditions shall remain unaltered as Fixture Note.

One original Addendum being made mutually and possessed by Owners.

As it was found out after the conclusion of the cherterparty that the full amount of logs as stipulated in it was not collected at the loading port Telok Ayer, Respondents signed a sub-charterparty for carrying 720,000 B.M.F. of logs from Sejingkat with the Japanese D Company for the purpose of filling the space of the Vessel up with Claimants' consent.

The Vessel left the port of Penang for Telok Ayer at 17 o'clock on 5 November, 1966, and arrived at Pontianak, the quarantine anchorage of Telok Ayer at a quarter past 17 o'clock on 7 November. However, the Vessel was not allowed to go up stream and enter the port of Telok Ayer and had to stay at anchor there. (It was known later that the Vessel was arrested by the Indonesian Navy.) About ten days later, i.e. at 17 o'clock, 17 November, the Vessel weighed anchor at the anchorage of Pontianak and arrived at Telok Ayer at a quarter to nine, 8 November.

The Vessel Commenced loading at eight o'clock, 25 November, and completed the loading of 423,503 B. M. F. of logs at 14 o'clock, 26 November. Then, after leaving the port of Telok Ayer at forty minutes past six o'clock, 1st December, the Vessel called at Sejingkat and Tanjong Mani and returned home with roughly 680,000 B. M. F. of other shippers' logs loaded at the two ports in violation of the aforesaid sub-charterparty.

On top of that, on 25 November, Respondents had paid to Claimants the sum of U.S. $ 30,000 equivalent to the total amount of freight at Claimants' request, although upon the Charterparty the freight should have been paid on the completion of loading in accordance with the bill of lading quantity.

CLAIMANTS' case is as follows:

At first, Claimants, upon receiving B's proposal of the Charterparty, the representative of Respondents, once rejected it, because Claimants having neither experience of assigning a ship on the Indonesian route, nor any knowledge about the state of things at the loading port and about how to go through the procedure for clearance inward and outward, quarantine, etc. B, however, proposed that C, who was dispatched to Indonesia by Respondents and was versed in the state of things because he lived there for many years, should take over all the agent's business concerning the Vessel such as procedures for her clearance inward and outward, quarantine, etc. and that no trouble should be given to Claimants. Claimants believed it and signed the Charterparty. On that occasion, in conformity with the proposal made by Respondents, it was stipulated as a condition of a special agreement that by virtue of the necessity of government

formalities "D" who was the shipper there shall be the agent for form's sake and that Claimants shall bear the expenses paid at the agent.

The Vessel arrived at Pontianak, the quarantine anchorage of Telok Ayer, but had to stay at anchor simply because the quarantine officer did not show up. The master of the Vessel contacted and urged C to enable the Vessel to go upstream and enter the port of Telok Ayer as soon as possible. However, C gradually delayed the schedule for the Vessel's entrance into the loading port. Besides, it was discovered that D which Respondents first picked out had no qualification as an agent. So, the agent was changed to E and then to F. C made efforts to get the entrance permit for the Vessel and finally obtained the permit at Jacalta. The Vessel left Pontianak anchorage at 17 o'clock, 17 November, and arrived at Telok Ayer at a quarter to nine on the following day. In the meantime, the master of the Vessel was informed of the fact that the Vessel had been arrested by the Indonesian Navy during the time.

If C had gone through due formalities concerning the Vessel's entrance, quarantine, etc. at the time of the conclusion of the Charterparty as B promised, the Vessel should have left Pontianak at 17 o'clock, 8 November, should have arrived at Telok Ayer at a quarter to nine, 9 November, and should have been able to tender N/R immediately after that. Therefore, laytime should be regarded as commencing at one p. m., 9 November, and the allowed laytime of six days as expiring at one p. m., 16 November. Since no shipment was made by Respondents (Charterer) at all during that period, the Charterparty should be regarded as cancelled.

Although the Vessel arrived at Telok Ayer on 18 November, Claimants, having been unable to trust C any longer, reached the highest point of uneasiness because the further staying there would have been sure to frustrate the next voyage of the Vessel, and telephoned and telegraphed as follows:

"Allowed laytime up. Charterparty already null and void. Your negligence in taking steps resulted in our very late departure from Telok Ayer, which might cause us great damage because we might be late for our fifth voyage schedule at the end of the month. Naturally, loading at Sejingkat dropped. Do understand. However, as for the loading at Telok Ayer, we, taking advantage

of this opportunity, shall wait for further six days — until 22 November. The Vessel shall set sail for Japan at 5 p.m., 22 November, at the latest. If you should not allow us to leave port at the said time, ¥ 500,000 per day as damages for detention in addition to the demurrage calculated according to the Charterparty will be demanded. Please act with this knowledge."

As mentioned before, in case after the legal cancellation of the Charterparty Claimants did not leave Telok Ayer with the expressed conditional intention and continued staying there, whereas Respondents loaded logs, the following legal effect may be considered:

(1) By the cancellation of the Charterparty Claimants surrendered the right of claim for dead-freight (two thirds of freight) which they acquired by the application of Item 2, Art. 745, Commercial Law.

(2) Under the same condition with the Charterparty, the contract for loading at one port of Telok Ayer was concluded.

> Art. 745 (Rescission of contract prior to commencement of voyage).
>
> 2. If, in cases where the ship is to make an outward and homeward voyage, the charterer has rescinded the contract prior to the commencement of the homeward voyage, he shall pay two-thirds of the freight. The same shall apply if, in cases where the voyage is to be made from another port to the port of loading, the charterer has rescinded the contract before the ship leaves the port of loading.

(3) The period of allowed laytime shall start at one p.m., 16 November, and finish at one p.m., 22 November.

(4) Respondents shall pay the demurrage as stipulated in the Charterparty for the Vessel's stay there after one p.m., 16 November, when the Charterparty was considered as cancelled.

(5) In case Respondents should load logs on board the Vessel at their earnest request after one p.m., 22 November, they shall pay ¥ 500,000 per day as damages for detention in addition to the demurrage under (4).

It is most reasonable to consider that such a conditional contract was concluded between the parties concerned by the expression of implied intention.

By the conclusion of the new contract Telok Ayer became the only loading

port, which however, had no more than 500,000 B.M.F. of logs. So, on 19 November, Claimants demanded from Respondents the payment of dead-freight in respect of the short of the logs as stipulated in the Charterparty. Then, Respondents made a promise of payment on 21 November and paid the sum of $ 30,000 equivalent to the total amount of freight on 25 November.

Although Respondents criticize Claimants as if for having unlawfully cancelled the contract for loading at the port of Sejingkat, in accordance with the Charterparty, Respondents should on principle pay the freight after the loading of logs. From the fact that in spite of that, however, they made a promise of payment of the total amount of freight including dead-freight on 21 November when no goods were in a condition of being on board, the cancellation of loading at the port of Sejingkat by the sub-charterparty shall be evidenced.

Accordingly, the amount of money Claimants should claim shall be as follows:

(1) Demurrage at the loading port.

The demurrage (US $ 800 per day) for the period from one p.m., 16 November, to six-forty a.m., 1 December (14.73611 days), when the Vessel set sail from Telok Ayer, shall be US $ 11,788.89.

(2) The amount of damages for detention.

The amount of damages for the special stay at Telok Ayer (¥ 500,000 per day) for eight days 13 hours 40 minutes (8.69444 days) between 5 p.m., 22 November, and 6.40 a.m., 1 December, when the Vessel left the loading port shall be ¥ 4,347.222.

(3) Demurrage at the discharging port.

Demurrage (at the rate of U.S. $ 800 per day) at the discharging port of Kawasaki shall be ¥ 50,061.

On the other hand, from within the already received sum of US $ 30,000 the profits realized by the loading of other shippers' logs at the port of Sejingkat and that of Tanjonmani that would be reimbursed to Respondents shall be ¥ 3,200,140.

The total claimed amount shall be US $ 15,114.28.

RESPONDENTS pleaded as follows:

Respondents are a trading company dealing mainly in the importation of foodstuffs, vegetables, marine products. By recommendation of a agent B, Respondents, although import trade of logs was their first experience, concluded the purchase contract of Indonesian logs with the Japanese timber and logs importer A and thus concluded the Charterparty with Claimants.

Claimants pleaded that B should be the representative of Respondents. However, B came to sell Respondents Indonesian logs at the request made by A and only arranged the Vessel in order to sell Respondents such logs.

Claimants also pleaded that C should be the on-the-spot delegate of Respondents and that C made a special agreement on taking over the business which the agent on the side of the Vessel does such as clearance inward and outward, quarantine, etc. at the shipping port. However, Respondents have no remembrance of having made a special agreement of the sort and C himself is A's delegate. In actuality, no special agreement concerning the agent is lacking and the words "other terms and conditions as per NANYOZAI Charterparty" is expressly printed as a remark in the Fixture Note. Art. 18 of "Nanyozai 1960" is specified as follows: "In every case Owners shall appoint their agents both at loading and discharging port(s)". If, as pleaded by Claimants, the special agreement contrary to this remark was made, they should assure Respondents of it with an express provision.

So, the Vessel's late arrival at the port of Telok Ayer caused by the arrest of the Vessel by the Indonesian Navy resulted from the fact that Claimants did not specify the Agent and mistook B or C for Respondents' representative or delegate — all resulted from Claimants' misunderstanding or negligence, for which Claimants must be responsible.

The Charterparty for only one loading at Telok Ayer was in the meantime changed to that for two ports loading at — the said port and Sejingkat. However, contrary to the Charterparty, Claimants concluded a contract of carriage of logs at both Sejingkat and Tanjonmani with other shippers, called at the two ports, filled the space of the Vessel up and returned home. So, Claimants should indemnify Respondents for all the damages on a charge of the breach of the Cont-

ract.

By the telegram dated 18 November, Claimants demanded the amount of damage of ¥ 500,000 per day as damages for detention at and after 5 p.m., 22 November. Respondents not only maintained that the Vessel's arrest resulted from Claimants fault, but also paid the freight of $ 300,000 out of good-will on condition that Claimants should relinquish such unreasonable demands, although it was before the arrival of the date of payment.

The amount claimed by Respondents in the present case is as follows:

(1) The profit Respondents lost owing to Claimants' default of obligations is ¥ 5,541,000.

(2) The amount of damages Respondents paid to D on account of Claimants' default of the sub-charterparty is ¥ 66,200.

(3) The amount of damages Respondents sustained because of the Vessel's delay in returning to Japan for discharging is ¥ 639,748.

(4) Other damages Respondents were obliged to pay due to Claimants' breach of the Contract amount to ¥ 161,027.

The total sum is ¥ 6,408,175.

ARBITRATORS, upon due consideration of the allegations of both parties, find as follows:

The point of issue of the case that should be first taken into consideration lies in whether whichever of the parties concerned should by contract select and appoint the owners' agent to perform formalities such as clearance inward and outward, quarantine, etc. for the Vessel at the loading port of Telok Ayer. Judging from the progress of prior negotiations ending in the conclusion of the Charterparty, it is admitted that B is not Respondents' representative but simply broker. Besides, it is clear that C was A's delegate and not Respondents' representative. In consideration of the fact that the Vessel was arrested on suspicion of illegal entry into Indonesia, it is quite natural that C, who resided in Indonesia as a resident of A, should have taken an active part in an attempt to enable the Vessel to go up stream and to enter the port of Telok Ayer. Any

one would have naturally done the same thing even if he were not a member of the parties concerned. Therefore, Claimants' pleading that Respondents were under an obligation to select and appoint the shipping agent simply because C made such efforts must be considered inappropriate.

So, Claimants were not able to prove that they had made a special agreement for selection and appointment of a Owners' agent. On top of that, no mention is made about such a special agreement in the Chaterparty. Therefore, since "Other terms and conditions as per NANYOZAI C/P" are specified in the Fixture Note, it must be concluded that Claimants should have selected and appointed the shipping agent for the Vessel in accordance with Art. 18 of "NANYOZAI 1960" Charter: "In every case Owners shall appoint their Agents both at loading and discharging ports."

Due to Claimants' negligence in the appointment of the Owners' agent and carelessness in having the Vessel enter an Indonesian port, the Vessel was arrested by the Indonesian Navy on suspicion of illegal entry and was forced to stay at anchor for a long time. It is to be understood that if Claimants had appointed the agent and had performed due formalities for clearance inward, such a long stay at anchor as mentioned above would not have happened. Therefore, Claimants pleadings that Respondents were responsible for the long stay at anchor and that because of the long stay at anchor the Charterparty was cancelled does not hold good.

Furthermore, Claimants made it a proof of the cancellation of the subcharter of the Vessel that Respondents had paid $ 30,000 equivalent to all the freight without waiting for the arrival of the date of payment of the freight. However, 25 November when Respondents paid $ 30,000 was the day when the Vessel started loading at Telok Ayer. From that, it can be inferred that since by contract freight was to be paid in accordance with the bill of lading quantity on the completion of shipping, for Respondents to pay all the freight including dead-freight is unthinkable except under special circumstances. So, the reason why Respondents paid $ 30,000 equivalent to the freight without waiting for the arrival of the date of payment is considered, as pleaded by Respondents, just for accommodation of funds at Claimants' earnest request. It seems most pro-

bable to consider that on that occasion Respondents conditioned the performance of loading at Sejingkat by the sub-charterparty as well as the Charterparty against Claimants and that Claimants accepted it. As a consequence, Claimants' pleading that the fact that Respondents paid freight in advance was a proof of the cancellation of the sub-charterparty cannot be admitted. Besides, since there is no documentary evidence worthy of proving that the sub-charterparty was cancelled, Claimants shall undertake liability for damages to Respondents that arose from not having loaded the logs at Sejingkat, as stipulated in the Contract.

In the award thus formed,

(1) Neither the demurrage at the loading port of ¥ 4,244,000 nor damages for detention amounting to ¥ 4,347,220 — both claimed by Claimants — shall be admitted.

(2) As concerns the demurrage at the discharging port amounting to ¥ 50,061, the whole amount shall be admitted by time sheet.

(3) As for the profit of ¥ 5,541,000 which Respondents lost owing to Claimants default of obligations, the whole amount shall be admitted.

(4) As regards the amount of damage of ¥ 66,200 which Respondents paid to D on account of Claimants' non-fulfilment of the sub-charterparty, the whole amount shall be admitted.

(5) As to damages to Respondents amounting to ¥ 639,748 that resulted from the delay in the Vessel's return to Japan for discharging, they shall not be admitted as such as having arisen from the delay in the Vessel's return.

(6) Concerning other damages amounting to ¥ 161,027 that Respondents were obliged to pay by virtue of Claimants' breach of contract, the whole amount shall be admitted.

Award

1. Claimants shall pay to Respondents the sum of ¥ 5,557,339 together with interest accruing at the rate of six per cent per annum to the said sum from

6 May, 1968, until the completion of the payment.

2. The fee and costs of arbitration shall be ¥490,000, which shall be borne by Claimants, provided that Respondents shall receive from Claimants payment of the said amount of money plus the sum of ¥245,000 after advancing it.
3. Other claims of both parties are dismissed.
4. The Court of competent jurisdiction in regard to this award shall be Tokyo District Court.

Given in Tokyo, on 8 March, 1971.

Introduction of a New Form

The Documentary Committee of the Japan Shipping Exchange, Inc., drew up the standard form of 'Contract of Affreightment' concerning a contract of carriage for long-term fixed cargo on the coast of our country — the contract that a carrier undertakes the carriage of a certain amount of cargo in a lump for a specified cargo-owner over a long period of time.

As far as the recent contract form for coastal cargo transportation in our country is concerned, the relative importance of contract of affreightment is acutally greater than that of voyage charter. The drafting of the new form this time has therefore been conducted in order to cope with the actual circumstances.

At any rate, as this sort of standard form is fairly rare in the world, many might be interested. This is why the English translation is introduced herewith.

To begin with, a few explanations about its contents will be needed:

The Vessel column (1) in Part I is intended not for indication of a specified vessel, but only for specification of the class, type, tonnage. Actual vessels will, for this reason, be specified within the range of the vessels that meet this column. Furthermore, vessels that engage in transportation in accordance with this contract can be several in number at the same time.

As for (10) Conditions of Laytime, conditions such as "Customary Quick Despatch", "Running Laydays", "Weather Working Days, Sundays and Holidays Excepted", "Sundays and Holidays Included", etc. should be fixed upon at the loading port and at the discharging port respectively.

(14) Period of Carriage is the indication column characteristic of this form together with the above-mentioned (1) Vessel and Part II, Art. 1. The period to carry the whole amount of a large quantity of fixed cargo will be stipulated for in this column.

Paer II, Art. 1 (Vessel or Vessels to be used) is the stipulation for the method of specifying vessels that are actually used for transportation in conformity with

Cargo-Owner's Shipping Order out of the range specified in Part I, (1), and each vessel specified by this Article should engage in carriage, as in ordinary Voyage Charter, in accordance with provisions from Art. 2 to Art. 24 in Part II.

Art. 9 (Part of Space Available). From the fact that temporal variation in the amount of Cargo-Owner's shipment sometimes produces freight space on a certain voyage, it is admitted that Carrier may make use of the space so far as it does not interfere with the performance of the Contract. For this reason, this article may be said to be characteristic of the Contract.

Art. 23 (Strike). This article is applied only to vessels that are directly affected by strikes or lockouts.

What has been discussed are the characteristic contents of Contract of Affreightment Form, and what follows is the English translation of the form.

CONTRACT OF AFFREIGHTMENT

IT IS THIS DAY MUTUALLY AGREED between .... (hereinafter called Cargo-Owner) and ....(hereinafter called Carrier) under the following provisions of Part I and Part II of this Contract.

Part I

(1) Vessel:
(2) Port of Loading:
(3) Port of Discharge:
(4) Descripion of Cargo and quantity:
(5) Rate of Freight:
(6) Freight payable on
(7) Freight payable at in cash
(8) Loading and discharging in the Vessel:
who arranges:
at port of loading
who bears the expense:
who arranges:
at port of discharge
who bears the expense:
(9) Agent:
at port of loading:
at port of discharge:
(10) Conditions of Laytime:
at port of loading:
at port of discharge:
(11) Days on Demurrage:

(12) Demurrage: per day or pro rata for part thereof.
(13) Despatch Money: per day or pro rata for part thereof.
(14) Period of Carriage: from to
Special Provisions:

In witness whereof, the said parties hereto have signed this Contract in duplicate, dated , each party having one copy hereof in his possession.

Part II

1. Vessel or Vessels to be used:

In accordance with the orders of the Cargo-Owner, the Carrier shall inform the Cargo-Owner prior to the voyage in question of the sailing schedules of the definite Vessel or Vessels (hereinafter called the Vessel) together with the Vessel's estimated loading quantity of cargo and the estimated date of arrival at the port of loading.

2. Seaworthiness:

The Carrier shall, before and at the beginning of the voyage, exercise due diligence to make the Vessel seaworthy for the performance of this Contract.

3. Port of Loading or Discharge:

Loading or discharging shall be effected at such a port or place where the Vessel can safely and get and lie always afloat.

4. Notice of Readiness:

When the Vessel is ready to load or discharge at loading or discharging port, the Carrier or the Master shall give notice of readiness to the Cargo-Owner or the Shippers at loading port, and to the Cargo-Owner or the Consignees at discharging port.

5. Computation of Laytime:

Laytime shall commence at the time when the Carrier or the Master gives

the notice stipulated in the preceding Article, but in case that such notice has been given prior to the estimated date of the Vessel's arrival at port of loading informed by the Carrier in accordance with Article 1, laytime shall not commence except when the Cargo-Owner commences to load.

In case of giving notice mentioned in the preceding Article, if the Carrier or the Master cannot ascertain address of the Shippers or Consignees in due time, laytime shall commence at the time when the Vessel has been ready to load or discharge.

Time lost in waiting at or off the port for a berth, moorage or anchorage at the port of loading or discharge, shall count as loading or discharging time.

Laytime for loading and discharging shall be non-reversible.

Any time lost during which loading or discharging cannot be done through damage to or breakdown of the Vessel's hull or machinery or any other cause for which the Carrier is responsible, shall not be computed as part of laytime.

6. Demurrage, Despatch Money:

If the Vessel is detained longer at port of loading or discharge than laytime allowed (reasonable time in case of C.Q.D.), the Cargo-Owner shall pay demurrage as specified in Part I (12) to the Carrier.

If loading or discharging is completed within laytime allowed, the Carrier shall pay despatch money as specified in Part I (13) for laytime saved; but this shall not apply in case of C.Q.D.

7. Sailing of the Vessel:

If the Vessel is detained longer at port of loading than the time of demurrage specified in Part I (11) (reasonable time in case of C.Q.D.) even in case of paying demurrage, the Master shall have liberty to sail forthwith.

8. Full and Complete Cargo:

The Cargo-Owner shall load a cargo up to permissible draft or cargo capacity of the Vessel.

9. Part of Space Available:

With the consent of the Cargo-Owner, the Carrier may use a part of the space of the Vessel for carriage of the cargo other than that which contracted for so far as such carriage does not hinder or prevent the performance of this Cont-

ract.

10. Dead-freight:

Should the Cargo-Owner fail to supply a cargo as required in Article 8 on account of his own convenience or optional sailing of the Vessel as stipulated in Article 7, the Cargo-Owner must pay the freight in full for the cargo to be carried.

11. Use of Loading or Discharging Equipments of the Vessel:

The Cargo-Owner may use winches or other loading or discharging equipments of the Vessel if necessary in loading or discharge, and they shall be used under direction and control of the Master.

12. Deck Load:

The Carrier shall not be responsible for wash away and/or any other damage to deck cargo.

13. Dangerous Cargo:

Without consent of the Carrier, the Cargo-Owner shall not be allowed to load cargo of combustible, inflammable, explosive, poisonous or other dangerous nature.

14. Special Cargo:

In respect of a shipment of cargo which requires special care or handling in carrying, the Cargo-Owner shall give prior notice hereof to the Carrier or the Master and obtain his approval.

Should the Cargo-Owner give no notice provided for in the preceding paragraph, the Carrier shall not be responsible for damage to cargo caused by want of special care or handling.

15. Impossibility of Loading:

If the Master deems it impossible or impracticable to complete loading by reason of storms, bad weather, shallow water, ice, riots, or any act of God or force majeure, the Carrier or the Master shall have liberty to sail with or without cargo on board, giving notice thereof to the Cargo-Owner. If, however, circumstances should not permit him to give notice before the Vessel's sailing, the same shall be given with least possible delay after the Vessel has sailed.

In case of preceding paragraph, freight for any quantity of cargo so loaded

shall be paid in the manner specified for payment of freight in Part I (6), and the Carrier shall in no wise be held responsible for whatever consequences that may be incurred through disposition of cargo thus remained unshipped.

In case of the first paragraph, the Carrier shall have liberty to complete with other cargo at nearby port giving notice thereof to the Cargo-Owner.

16. Impossibility of Discharge:

If the Master deems it impossible or impracticable to put in port of discharge or to effect discharge thereat by reason of cause or causes specified in the preceding Article, the Carrier or the Master shall have liberty to discharge at a nearby safe port or place at the risk and expense of the Cargo-Owner, to whom notice shall be given thereof in accordance with the rule of the preceding Article.

In case of the preceding paragraph, all the liabilities of the Carrier shall cease when the cargo is discharged at such port or place.

17. Mutual Exempion:

Both parties to this Contract shall exempt each other from indemnifying for any loss or damage caused by detention or any other act of the governmental or similar authorities, civil war, riots, pirates, bandits, seamen's barratry, strike, lockout, fire, collision, grounding, sinking, jettison and any act of God or force majeure.

18. Carrier's Exemption:

The Carrier shall not be responsible for loss of or damage to cargo in cases where such loss or damage has been caused even by the Master or crew exercising due diligence.

The Carrier shall also not be responsible for loss of or damage to cargo caused by negligence in the navigation or in the management of the Vessel on the part of the Master or crew.

19. Indemnification:

The Cargo-Owner shall indemnify the Carrier if the Carrier is held liable towards the third parties under Bills of Lading or any other similar documents signed by the Master as ordered by the Cargo-Owner in respect of any claim for which the Carrier is not liable towards the Cargo-Owner under this Contract.

20. Deviation:

The Vessel shall have liberty to change the order or the route of the voyage contemplated for the purpose of saving life and/or property at sea, towing or assisting vessels in distress, taking refuge, taking in necessary stores, dealing with affairs of crew and/or cargo and/or passengers or any other reasonable purpose. In this case, the Carrier or the Master shall give notice thereof to the Cargo-Owner without delay.

21. Right of Claim for Freight and others:

Even if, after leaving the port of loading, the Vessel has been compelled to discontinue the loaded voyage by reason of accidents of the Vessel and any other cause or causes beyond control of the Carrier, the Carrier or the Master shall not be prejudiced to claim freight, charges, demurrage, disbursements, contribution for general average and/or share of salvage expense which the Cargo-Owner shall become due under this Contract.

Prepaid freight shall not be returnable, irrespective of loss of or damage to cargo, or discontinuance of the voyage or the carriage.

22. Lien on the Cargo:

The Carrier or the Master shall have the lien on the cargo for the amount due under this Contract and have right to sell part or whole of the cargo at public auction, proceeds whereof to apply to payment of the amount due. But in case of not being fully paid even by such public acution, the Carrier shall have the right to demand payment of amount remained unpaid.

23. Strike:

Either party who has got a due notification of a strike or lockout from labour unions or any other parties concerned, shall inform immediately the other party to that effect. Both parties shall talk with each other over how to do the best of minimizing their loss or damage therefrom on the assumption that both parties shall perform the voyage concerned under this Contract as much as possible.

If there is a strike or lockout preventing the loading of cargo before the Vessel's arrival at port of loading or commencement of laytime, the Cargo-Owner or the Carrier shall have the option of cancelling the voyage in question. If such strike or lockout occurs after commencement of laytime, the Cargo-Owner have the option of keeping the Vessel waiting paying reasonable demurrage, or

of ordering the Vessel to a nearby safe port or place at the expense of the Cargo-Owners: in former case, if the Vessel is detained longer at port of loading than reasonable time, the Carrier or the Master shall have liberty to sail, giving notice thereof. If such strike or lockout occurs or is certain to occur, the Cargo-Owner or the Carrier shall have liberty to sail with or without cargo on board. In this case, the Cargo-Owner shall pay the freight on loaded quantity only and the Carrier shall have liberty to complete with other cargo at nearby port.

If there is a strike or lockout preventing the discharge of the cargo at the time of the Vessel's arrival at or off the port of discharge or occuring after the Vessel's arrival, the Cargo-Owner shall have the option of keeping the Vessel waiting until such strike or lockout is at an end against paying half demurrage after expiration of laytime, or of ordering the Vessel to a nearby safe port or place where she can safely discharge her cargo at the expense of the Cargo-Owner: in former case, if the Vessel is detained longer at the port of discharge than reasonable time, the Carrier may discharge the cargo applying the provisions of Article 16.

Any time lost through strike or lockout concerning crew shall not count as laytime.

24. General Average:

General average, if any, shall be settled according to York-Antwerp Rules, 1950.

25. Breach of Contract:

A Party breaking this Contract must pay damages to the other party.

26. Arbitration:

If any dispute arises concerning this Contract between the parties thereto, either of the parties shall submit the same to an arbitration of the Japan Shipping Exchange, Inc. (Tokyo/Kobe), and an award given by the arbitrator or arbitrators appointed by the said Exchange shall be deemed final and be obeyed.

All matters relating to the appintment of arbitrator or arbitrators and arbitration procedures shall be decided by the Japan Shipping Exchange, Inc.

THE JAPAN SHIPPING EXCHANGE, INC.
(Nippon Kaiun Shukaisho)
PRINCIPAL OFFICE
Mitsui Bldg., No. 1 Muromachi 2-Chome,
Nihonbashi, Chuo-ku, Tokyo, Japan.
KOBE OFFICE
32 Akashi-Cho, Ikuta-ku, Kobe, Japan.