

[Deciding Court]  
Supreme Court

[Date of Decision]  
28 April 1992

[Case No.]  
Case No. 1737 (o) of 1988

[Source]  
Hanrei Jiho No.1421:122

[Party Names]  
Y vs. X

[Summary of Facts]

A coastal steamer, the M Maru towed the N Maru, a vessel designed for calm, inland waters and, behind the N Maru, a barge, while entering the East Kobe Sea Lane into Kobe Port. Due to the negligence of the Masters of the M Maru and the N Maru, the barge collided with and damaged a minesweeper owned by X that was moored at the Eastern Wharf at the Maritime Self-Defense Forces Hanshin Base. The Court in the first instance held that even though the N Maru was an inland vessel, the relevant provisions of Book IV of the Commercial Code were applied to all the vessels, the M Maru, the N Maru and the barge. The owners of the M Maru and the N Maru and Y entered into "Time Charter Contract" which provided that Y would time-charter both vessels (see the judgment for the particulars of this contract). In this suit, X claimed that Article 704 of the Commercial Code should be applied mutatis mutandis to Y, the time charterer and sought damages from Y under Article 690 of the Commercial Code in relation to the loss arising from the collision. The Court in the first instance accepted X's claim. Y appealed the decision to the Supreme Court.

[Summary of Decision]

The Supreme Court dismissed the appeal, on the following basis:

The fact that there is no express provision in the statutes on the maritime commercial law, including in the Commercial Code, means that we must apply ourselves to a consideration of the scope of these rights and duties, including the liability of time charterers for collisions, in line with the terms of and the substantive aspects related to the contracts. Each of the contracts above is an extremely short document, the main document being one page in length, containing no more than provisions such as: "The authority relating to the use of the vessel, including the giving of all orders and directions rests in Y", "The charter fee shall be 500,000 yen per month

for the M Maru and 520,000 yen per month for the N Maru and Y shall pay a high-pressure work conditions allowance to the Masters and crew corresponding to the number of voyages undertaken” and “The term of this contract shall be for one year from now, and where the parties do not give notice of an intention to cancel the contract, it shall be renewed automatically.” Turning to the substantive aspects related to the contracts, the set charter fees in these terms were not actually paid, the consideration that was paid was all calculated by reference to the hours of operation. The owner bore the fuel costs and Y could neither appoint nor discharge the Masters. Further, neither vessel was in the direct possession of Y. However, on the other hand, both vessels were engaged exclusively in carriage for Y’s business and Y’s business logo was displayed on their smokestacks. In terms of navigation, Y gave the practical everyday order and directions and as far as Y was concerned, both vessels were treated as part of Y’s corporate structure, and were subject to Y’s instructions and supervision and Y had their continuous, exclusive and monopolistic use for Y’s business on a daily basis for the duration of the contracts. The Court in the first instance held, under these circumstances, since Y had economic substance as a business organization similar to that of the vessels’ owner, that in relation to the damage caused by negligent navigation to the minesweeper owned by X, Article 704(1) of the Commercial Code was applied *mutatis mutandis* and, pursuant to Article 690, the time charterer should bear the same duty to compensate the loss as the vessels’ owner. That decision was appropriate and is upheld.