[Deciding Court]
Supreme Court

[Date of Decision]
27 March 1998

[Case No.]
Case No. 1492 (O) of 1993

[Source]
Minshu Vol.52 No.2: 527

[Party Names]
X vs. Y1

[Summary of Facts]
Y2 was the owner of a vessel, the "JASMIN" ("the Vessel") and Y1 was the Vessel's time charterer. A, who was a shipping agent for the consignor in Cirebon Port, Indonesia, signed bills of lading ("the B/L") on April 26 and 27, 1986, in relation to the carriage of rice bran pellets from Indonesia to South Korea (voyage charter contract). The signatures were expressed as being "FOR THE MASTER" and the B/L had "KANSAI STEAMSHIP COMPANY, LTD (Note: Y1's company name) BILL OF LADING" written across the top. The time charter contract was in the New York Produce Exchange (NYPE) format widely used across the globe. It provided: "It is agreed that, pursuant to the Mate's Receipt or the Tally Clerk's Receipt and this charter contract, the Master shall give the charterer and the charterer's agent authority to sign bills of lading on behalf of the Master." Further, under the voyage charter contract for grain between Y1 and the consignor, Y1, the time charterer, shall give the carriage charterer and their agent (A in this case) authority to sign bills of lading on behalf of the Master. The B/L was signed to the effect that the shipping agent A had received the shipping fee on behalf of the owner/Master. Further, the B/L contained the following demise clause: "Where the Vessel is not in the possession of or under a bareboat charter to Y1, notwithstanding written provisions to the contrary, the B/L is, pursuant to Y1's agency, valid solely as a contract with the owner or the bareboat charterer and Y1 shall act solely as the agent of the owner or the bareboat charterer and shall bear no liability whatsoever in relation to the above contract." The Vessel sailed from Cirebon Port on April 27 1986 and entered Inchon Port in South Korea on May 8 of the same year, however it was found that parts of the cargo – along the side plating and the top surface of the hold cargo – had suffered water damage. The wet cargo had hardened, changed color and become moldy. Insurance Company X, which had paid cargo insurance benefits to the holder of the B/L pursuant to the contract for carriage, claimed damages pursuant to subrogation; from Y1 on the basis of liability for non-performance of obligations under the contract for carriage and from Y2 on the basis of liability

for non-performance of obligations under the contract for carriage or, in the alternative, on the basis of tort liability. The governing law was Japanese law.

On the basis of these facts, the Court in the first instance (Tokyo District Court, 19 March 1991 Hanrei Jiho No.1379: 134) held that since there were no circumstances to negate the validity of the entry of the owner as the carrier on the B/L, the B/L had the effect of making Y2 the carrier, according to its terms. As Y1, the time charterer, was according to the B/L not the carrier, the claim against Y1 was held to be unjustified. The claim against Y2 was also dismissed on the basis that the loss was not attributable to Y2. The demise clause was held to be valid on the basis that such terms, which restrict the carrier to the owner, do not obscure the carrier on the face of the B/L, but limits carrier's liability and was also not contrary to the provisions of the Law for the International Carriage of Goods by Sea listed in Article 15(1) of that law and hence was not a prohibited "special agreement" under that article.
X's claims were also dismissed in the appeal decision at the High Court. X appealed the decision to the Supreme Court.

[Summary of Decision]
The Supreme Court dismissed the appeal, on the following basis:

Where a vessel is chartered pursuant to a time charter contract in the NYPE format, is used for the carriage of goods, in regard to a B/L issued by the Master relating to the cargo loaded on the vessel, it is possible for the owner to be the obligor in relation to the right of claim shown on the B/L under the contract for carriage. The appropriate interpretation is that the question of the identity of the carrier, who bears the obligations under the contract for carriage, in relation to third party holders of B/L, must be determined on the basis of the entry made on the B/L. This is because: (1) Article 704(1) of the Commercial Code provides, "If the lessee of a vessel makes it available in navigation for the purpose of engaging in commercial transactions, he shall in relation to third person[s] have the same rights and duties as the owner in connection with matters relating to the use of the vessel,"; (2) under the lease of a vessel, the lessee who has taken possession of the vessel outfits the vessel, appoints a Master and employs crew members, and has the complete control and possession of the vessel through the direction and supervision of all crew members below the Master. Hence, there is no scope for the lessor owner to become party to a contract for the carriage of cargo on the vessel in the role of carrier; (3) however, under such a time charter contract, it is the owner of the vessel who provides the outfit of the vessel, the appointment of the Master and the employment of the crew and, leaving aside the fact that the time charterer has authority to give orders and directions in relation to certain commercial matters, the fact that the owner retains the authority to direct and supervise all crew members below the Master means that the owner can still remain in control and possession of the vessel; and (4) in consideration of this difference, it is not possible to interpret that the time charterer is treated in the same way as a lessee and that, irrespective of the entries on the bill of lading issued by the Master in relation to the cargo loaded on the vessel, the time charterer alone is at all times the obligor in relation to the right of claim under the contract for carriage mentioned on the bill of lading and the owner bears no liability whatsoever by directly applying or applying mutatis mutandis Article 704(1) just because such time charter contract is entered into. The decision of the Daishinin… of September 4, 1935 should be altered to the extent that it conflicts with this

decision... The decision in the first instance that Y1 could not be held liable as the carrier in relation to the right to claim under the contract of carriage mentioned on the B/L is, in conclusion, upheld.