

[Title]

Agreed Jurisdiction (in Bill of Lading)

[Deciding Court]

Supreme Court

[Date of Decision]

28 November 1975

[Case No.]

Case No. 297 (o) of 1970

[Case Name]

Claim for Damages

[Source]

Minshu Vol. 29 No. 10: 1554

[Party Names]

Final Appellant X Tokio Marine Fire Insurance Co., Ltd.

Vs.

Final Appellee Y Koninklijke Java China Paketvaart Lijnen B.V., Amsterdam
(Royal Interocean Lines)

[Summary of Facts]

A Dutch shipping company, Y (Defendant, Intermediate Appellee, Final Appellee) transported by sea to Kobe Port raw sugar that a Japanese trading company, B, had imported from a Brazilian company, A. During the transportation, however, the raw sugar was contaminated by sea water, and a Japanese insurance company, X (Plaintiff, Intermediate Appellant, Final Appellant) paid B insurance benefits. X filed a subrogated insurance claim for damages against Y in Kobe District Court. Y disputed Japan's international jurisdiction, asserting that there was an agreement on exclusive jurisdiction stipulating the courts of Amsterdam as the sole courts with jurisdiction in the transport agreement on the back of the bill of lading that Y issued to A at the time of loading. Both the court at first instance (Kobe District Court decision, 18 July 1963, *Hanrei Jiho* No. 342: 29) and the lower court (Osaka High Court decision, 15 December 1969, *Hanrei Jiho* No. 586: 29) ruled against X. X filed a final appeal.

[Summary of Decision]

Final appeal dismissed.

(i) "There is no established statutory code with regard to the format of agreements on jurisdiction in the international laws of civil procedure. The matter should therefore be decided logically considering the purport of the provisions in the *Code of Civil Procedure*. The legislative intent of the Article (former Article 25(2): current Article 11(2) of the *Code of Civil Procedure*) is no more than an attempt to ascertain the intentions of the parties. Moreover, examples of legislation in other countries do not necessarily require an agreement on jurisdiction to be in writing, and, in

many cases, do not require the signature of the consignor on the bill of lading. Also, the correct view is that, in considering the safety of international transactions that require speed, an agreement on international jurisdiction will be sufficiently valid, if a court in a certain country is specified in a document prepared by at least one of the parties, and the existence and details of the agreement between the parties are clear. It should not be interpreted that a document signed by both parties offering and accepting the agreement is necessary.”

(ii) “An agreement on exclusive international jurisdiction in a certain lawsuit, which specifies courts in a particular foreign country as the only courts of first instance with jurisdiction, and excludes Japan’s jurisdiction, is, in principle, valid under Japan’s international laws of civil procedure if: (a) Japan does not have exclusive jurisdiction over the case; and (b) the specified courts in the foreign country have jurisdiction over the case under the law of that country. (Imperial Supreme Court decision, 18 October 1916, Case No. 473 (o) of 1916, *Minroku* No. 22: 1916)... The purport of the need for requirement (b) above is that if the courts in the foreign country did not have jurisdiction over the relevant case and did not accept the case, the parties not only cannot accomplish the purpose of the agreement on jurisdiction, but the end result is nothing other than that they also lose any opportunity to pursue a trial in court. Therefore, if the courts in the foreign country has jurisdiction over the case under the law of that country, the requirement under (b) above will be satisfied, and this does not necessarily mean that the law of the relevant country must acknowledge the validity of the agreement on exclusive international jurisdiction.”

(iii) “[X asserted that] reciprocity was required under Article 200(4) (current Article 118(4)) of the *Code of Civil Procedure* in order for the agreement on exclusive international jurisdiction to be valid. It is generally possible, however, to pursue compulsory execution in a foreign country based on a judgment in that country. Even if it were not possible to pursue compulsory execution in Japan based on the relevant foreign judgment because of a lack of reciprocity, ... this does not mean that the right could not be realized at all... In order for an agreement on jurisdiction which excludes Japan’s jurisdiction to be found valid, there is no need to require reciprocity, which requires recognition of the judgment of the foreign country...”

(iv) “With respect to Y’s agreement on exclusive international jurisdiction with a provision that specified the court with jurisdiction over Y’s general venue as the court of first instance with exclusive jurisdiction, considering the universal principle of ‘plaintiff submits to the court of defendant,’ as well as the need to protect the business strategy of a defendant that is an international shipping provider to attempt to limit jurisdiction with regard to disputes arising out of its international transactions solely to the courts of a particular country, the agreement, should in principle be held valid, unless the circumstances were such that to do so would be extremely unreasonable and contrary to the *Public Order Act*. It could not, therefore, be said that the agreement on jurisdiction, which specified the courts of the place where Y’s main office was located as the courts of exclusive jurisdiction was invalid as being contrary to the *Public Order Act*, even considering the various arguments offered.”