6. Commercial Law

The decisions in the two cases introduced here are very interesting, either as pointers in the conduct of actual business or concerning points of dispute in legal interpretations.

Of the two cases the former, dealt in connection with the corporation law, can be considered attention-getting as a matter of interpretation when viewed from the existing flow of discussions, while the latter, as a decision in the sphere of the maritime law, can be termed very important as the limitation of liability of shipowners comprising the central part of the maritime law was in dispute, in relation to its constitutionality.

Decisions concerning the Act on Bills & Checks are not introduced here at this time since few of them directly involved important points of disputes in discussions on interpretation.

1. The case of a representative director appointed by an invalid resolution of the board of directors and Article 262 of the Commercial Code.

Decision by the Second Petty Bench of the Supreme Court on Apr. 24, 1981. 1001 *Hanrei Jihō* 110. 441 *Hanrei Taimuzu* 88.

[Facts]

In April, 1972, Company X (defendant, appellant, *Jokoku* appellant) had five directors including Representative Director A and Directors B,C, D and E. Director C convened a board of directors meeting on Apr. 13 without notifying A, and, in the presence of Directors C, D and E, A was relieved of his post as representative director and C was appointed in his place, and registration to that effect was made.

Then C, as the representative director of Co. X, assigned the mining rights owned by Co. X to Co. Y (plaintiff, appellee and *Jokoku* appellee) on Apr. 20 and registration of the transfer to that effect was made on Apr. 26.

At Co. Y, immediately after the conclusion of the contract of assignment, its Representative Director F was relieved of his

post in his absence and Director G, who was then in charge of the business dealings with Co. X, became representative director. At the same time, C, D and E assumed the directorship of the company and D also became a representative director of Co. Y together with G.

Company X, contending that the transfer of the mining rights in question was null and void, brought an action against Co. Y and demanded cancellation of the registration of transfer. As the claim of Co. X was dismissed both in the first and second instances, Co. X filed a *Jokoku* appeal.

[Opinions of the Court]

Case reversed and remanded.

For failing to notify Representative Director A of the convocation of a board of directors meeting at Co. X, the resolution appointing C as representative director of Co. X was invalid.

Therefore, C could not be called the representative director of Co. X. Even so, concerning the actions of C as representative director, Co. X cannot set up against a third party in good faith about the defect of C's representative power due to the mutatis mutandis application by inference of Article 262 of the Commercial Code.

On the other hand, as to the fact that C was not the formally-appointed representative director of Co. X, it cannot necessarily be said that there had not been any bad faith on the part of Co. Y. Hence, in order to have this point further deliberated, the decision of the court below shall be reversed and remanded.

[Comment]

Those who represent a company are the directors appointed by the board of directors from among them. In practice, however, they hold various posts such as president, executive vice president, senior vice president and managing director. Anyone holding such a title enjoys the confidence of third parties outside the company that he is entitled to represent the company.

In terms of law, however, he is not necessarily entitled to re-

present the company even if he holds one of the titles mentioned above. In case a company allows expressly or impliedly a director to use such title, even though he has, in fact, no authority to represent the company, Article 262 of the Commercial Code protects the confidence of a third party in that such a person may be held a representative director and that the company is liable to a bona fide third party for any act performed by him.

In the current case, C, who was not appointed lawfully as representative director by the board of directors, did not engage in an act using the title provided for in Article 262 of the Commercial Code. C engaged in an act expressly as "representative director." In such a case, the question concerns a "de facto representative director," and the current decision by the application, by inference, of Article 262 of the Commercial Code, added a new judgment to existing precedents.

There may be a bit of possibility of dissenting opinions arising, however, if such an interpretation can be based on Article 262.

2. The constitutionality of the law concerning the limitation of liability of shipowners.

Decision by the Grand Bench of the Supreme Court on Nov. 5, 1980. 986 *Hanrei Jihō* 105.

[Facts]

On Feb. 27, 1977, the SS Eiko Maru No. 17, 59.5 tons, a fishing boat owned by Co. Y, collided with the SS Hokko Maru, 499.32 tons, owned by Co. X. The Hokko Maru sank as a result.

The loss of the vessel amounted to about ¥210 million. Thereupon, Co. Y filed a request with the Shimoda Chapter of the Shizuoka District Court to begin procedures on the limitation of the liability of the shipowner on the basis of the provisions in the "Act on the Limitation of Liability of Owners of Seagoing Ships."

According to this Act, Y's liability can be limited to ¥6.9 million. X then filed an immediate complaint against the decision allowing the start of procedures on the limitation of liability. X insisted that the Act ran counter to Article 29 of the Constitution

which protects property rights, as it unreasonably infringed upon the property rights of the creditor.

The original instance dismissed the immediate complaint and X filed a special *Jokoku* appeal with the Supreme Court.

[Opinions of the Court]

The Act on the Limitation of Liability of Owners of Seagoing Ships recognizes the limitation of the liability of shipowners on claims related to navigation for the following reasons:

1) This system has been recognized by various countries since olden times as necessary for the proper management and progress of the shipping industry, since the industry is an highly risky enterprise carrying on the navigation of ships in which a large amount of capital is invested.

2) The said Act is a domestic law enacted upon ratification of an international treaty, and it is difficult for this country alone to abstain from adopting the system of limiting a shipowner's liability because of the highly international character of the shipping industry.

3) It pays great consideration to the protection of victims by adopting the more rational principle of monetary liability in place of the "abandonment" system of the past.

4) By virtue of Article 690 of the Commercial Code, liability without negligence is recognized to a certain extent as part of the liability of shipowners.

Thus viewed, the Act on the Limitation of Liability of Owners of Seagoing Ships does not run counter to the Constitution.

[Comment]

The Act on the Limitation of Liability of Owners of Seagoing Ships came into force on Dec. 12, 1975 upon ratification of the 1957 Brussels Convention on the Limitation of Liability of Owners of Seagoing Ships. The Act newly adopted the principle of monetary liability in place of the then existing "abandonment" system as the form of limiting the liability of shipowners, and provided for detailed procedures concerning the limitation of liability.

When the "fortune de mer" perished as the result of the sinking of a vessel etc., the obligee gained no compensation under the "abandonment" system, but under the new monetary liability system he is always guaranteed a certain amount of compensation as a limitation fund based on the tonnage of the ship has been set up. On this score the Act, adopting the principle of monetary liability, can be said to be more rational than the "abandonment" system.

On the other hand, it cannot be denied that the victim is forced to suffer certain sacrifices because of the limitation of liability of the shipowner, as the claim of the obligee who is the victim is cut off at a certain amount. On this point, there was a possibility that the question might arise that the system, as such, was in contravention of the constitutional guarantee of property rights.

However, the guarantee of property rights provided for in the Constitution is not absolute, but is subject to restrictions to a certain degree by rational policies designed to promote the interest of the nation as a whole. The second paragraph of article 29 of the Constitution says that property rights shall be defined by law in conformity with the public welfare.

In the light of Japan's present situation, which is highly dependent on trade, the Act on the Limitation of Liability of Owners of Seagoing Ships can be evaluated as serving the interest of the nation as a whole through the progress and maintenance of the shipping industry. In this regard, it is believed proper for the Supreme Court to have ruled that this Act is constitutional.

By Prof. TAKAYASU OKUSHIMA
YASUHIKO YAMADA

7. Labor Law

1. A case in which the validity of discharging workers who organ-