Transition of Shipowners' Liability Laws and Changes of P. & I. Clubs in the U.K. (Part I)

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I. Preface

It is a matter of common knowledge that the origin of Protection and Indemnity Associations or Clubs existing in most major shipping countries traces back to the Shipowners' Mutual Protection Society (the predecessor of the present Britannia Steam Ship Insurance Association) established in the U.K. in 1855.

It was made clear by the report entitled "the History and Development of Protecting and Indemnity Clubs" (1957) of the Advanced Study Group No. 109 of the Insurance Institute of London (hereinafter referred to as the "A.S.G. Report") that the purpose of establishment of Protection Clubs (the predecessor of the present P. & I. Clubs) in the early days was, contrary to what had been generally said, not to protect shipowners against the loss of one-fourth of collision damages which was not covered by the three-fourths Collision Clause of hull policy but to protect them against their liability for loss of life or personal injury under the Merchant Shipping Act of 1854 and also against the excess of the aggregate of the amounts of liability for damage done to another vessel, etc. and of damage received by the protected vessel in a collision over the insured amount of the hull policy on the protected vessel (different from the present practice, the cover for collision liability was not treated as a separate and additional insurance contract at that time).

When I studied previously the relation between the transition of shipowners' liability laws and the changes of collision clause of the hull policy, I noticed that P. & I. Clubs which have close connection with collision clause of the hull policy were also established and developed with the transition of shipowners' liability laws and, therefore, a study of the history of P. & I. Clubs would be of help to my better understanding of the changes of collision clause.

As I could fortunately obtain, through the kindness of Mr. M. Yagyu, Director and Manager of Insurance Department, Cornes & Co., Ltd. Tokyo Office, old leaflets and Rules of the Shipowners' Mutual Protection Society and the Britannia Steam Ship Insurance Association, I started a study of the captioned subject, and a series of treatises which I have been writing is, therefore, sister treatises to my previous treatise "Transition of Shipowners' Liability Laws and Changes of Collision Clause in the Marine Hull Policy in the U.K." contributed to Vol. 36, No. 4 of "Study of Non-life Insurance" published by the Non-life Insurance Institute of Japan in December 1974.

As part I of the series of treatises on the captioned subject, the circumstances

of development of Protection Clubs into P. & I. Clubs will first be discussed as below.

II. Establishment of Protection Clubs

As regards the circumstances of establishment of Protection Clubs, it is necessary to discuss them from two sides, that is, (1) relation between Mutual Hull Clubs (hereinafter referred to as "Hull Clubs") which existed since the beginning of the 18th century and Protection Clubs and (2) shipowners' liability laws which prompted the reorganization of Hull Clubs into Protection Clubs.

1. Relation between Hull Clubs and Protection Clubs

There seems to be no divergence of opinion as to the view that Hull Clubs were the direct ancestors of Protection Clubs.

As is well known, by the Bubble Act, 1719 any corporation, society, etc. was prohibited from writing marine insurance, except two chartered companies, i.e., the Royal Exchange Assurance Corporation and the London Assurance Corporation, and individual underwriters, such as those at Lloyd's Coffee House. As these Two companies and most of individual underwriters were in London, the above legislation brought about the results that not only it became very inconvenient for shipowners who had bases at ports other than the Port of London to effect marine insurance on their ships but the chartered companies and individual underwriters charged high premiums to shipowners owing to monopoly. It is said that the above circumstances prompted such shipowners to establish Hull Clubs on a non-profit-making basis, though they knew that such Clubs were illegal and subject to penalties.

Because of a non-profit-making basis, the premiums charged by these Clubs were lower than those charged by the chartered Companies and individual underwriters. Moreover, the chartered companies were timid in writing marine insurance business, while these Clubs were earnest in providing covers for risks required by the Club members, which is proved by the fact that these Clubs commenced to cover collision liability by drawing up a collision clause at the beginning of the 19th century when the collision liability became a serious problem for shipowners, but the chartered companies and individual underwriters did not yet provide such cover.

As regards the illegality of the Hull Clubs, the attitude of courts was very severe at first but subsequently became lenient gradually. Such circumstances can be seen, for example, in Harrison v. Millar case, 1796 and Lee v. Smith case, 1797 in which, while the courts maintained their attitude toward protecting the privilege of the chartered companies, they changed their attitude to admit the Club members to hold, severally but not jointly, liability for the cover provided by the Club. Therefore, if a club member became insolvent, the Club could not provide full cover. Nevertheless, it can be said that the existence of Hull Clubs became to be officially admitted toward the end of the 18th century.

However, the monopoly of the chartered companies and individual underwriters in the field of marine insurance which continued for more than 100 years since 1719 was terminated by the Marine Insurance Act, 1824 and many insurance companies which perceived the profitability of marine insurance business entered the marine insurance market, actively competing with each another in the premium and conditions. As a result, it became more favorable for owners of the better type of risk who were members of Hull Clubs to switch the cover to the marine insurance market, and as they gradually withdrew from the Clubs, older vessels and other worse risks remained in the Clubs. This, in turn, imposed heavier burden on the remaining members, which prompted further successive withdrawal of them from the Clubs, and many Clubs were compelled to be dissolved.

In the middle of the 19th century, however, the laws which placed new liabilities on shipowners were successively passed, and due, perhaps, to a lack of appreciation on the part of the marine insurance market of shipowners' needs, the surviving Hull Clubs found a new field of operation in the protection of shipowners against their various liabilities.

While the subject of shipowners' liabilities will be referred to later, it was natural for some managers of declining Hull Clubs to conceive the need of changing their management policy from underwriting the ordinary marine insurance in competition with insurance companies and individual underwriters to underwriting the cover for shipowners' liabilities which those insurers were not prepared to underwrite. This is clear from the fact that John Riley and Peter Tindall, Partners of Peter Tindall, Riley & Co. which was managing several Hull Clubs, established the first Protection Club, i.e., the Shipowners' Mutual Protection Society and commenced operations on the very same day as the Merchant Shipping Act, 1854 became effective, i.e., May 1, 1855. Further, the existence of close relation between Hull Clubs and Protection Clubs is clear from the fact that the date of insurance year of both Clubs was February 20.

2. Shipowners' liabilities at the time of establishment of Protection Clubs

The subject of laws placing new liabilities on shipowners, which were passed in the middle of the 19th century and prompted the establishment of The Shipowners' Mutual Protection Society and other Protection Clubs, will be discussed in the current of transition of shipowners' liability laws from the beginning of the 18th century as below.

(1) Shipowners' liability for loss of or damage to cargo carried by them and for collision damage

Since the 18th century, the British shipowners were liable, as common carriers under the common law, for loss of or damage to cargo carried by them, and their liability was so strict as they could not be free form liability unless they proved that such loss or damage had been caused by an Act of God, Kings' enemies, a defect in the cargo or the package thereof or by a general average sacrifice.

On the other hand, until the end of the 18th century, there was no remarkable development of the British law concerning collision liability as there were not so many collision cases, and both vessels were held equally liable for collision damage irrespective of whether the collision was caused by an Act of God or fault of either or both vessels. However, the attitude of courts toward collision liability seems to have since gradually changed, and the four principles governing collision liability which were mentioned as a supplementary opinion by Lord Stowell in the "Woodrop Sims" Case, 1815 were subsequently confirmed by the House of Lords in Hay v. Le Neve case, 1824.

These four principles were (a) when a collision was caused without any fault of both vessels, say by an Act of God, both vessels were not liable for the collision damage, (b) when both vessels were to blame, they were liable for the collision damage, (c) when a collision was caused by fault of the vessel which suffered damage by the collision only, the other vessel was not liable for the collision damage and (e) when a collision was caused by fault of the vessel which caused damage to the other vessel, such vessel was liable for the collision damage. As regards the principle (b) above, however, the principle of equal share of liability of both vessels was adopted only by the Admiralty Courts, while the doctrine of contributory negligence was adopted by the common law courts.

As stated above, not only shipowners had to hold, as common carriers, heavy liability for loss of or damage to cargo carried by them but they were liable for collision damage caused by a tort of their crew and, moreover, their liability was unlimited under either the common law or the maritime law.

(2) Introduction of shipowners' limited liability system and its extension

Though in the U.K. the principle of shipowners' unlimited liability was maintained for many years, the necessity of placing a limitation on their liability for the purpose of promoting the development of shipping industry was subsequently recognized, and by the Responsibilities of Shipowners Act, 1734, a shipowners' limited liability system was introduced for the first time, and under this Act shipowners' liability for loss of or damage to cargo carried by them which was caused by a tort of the crew, such as embezzling, was limited to the aggregate of the value of the vessel and the full amount of the freight due. Section 1 of the Responsibilities of Shipowners Act, 1734 is as quoted below:

> That no person or persons, who is, are, or shall be owner or owners of any ship or vessel, shall be subject or liable to answer for, or make good, to any one or more person or persons, any loss or damage by reason of any embezzling, secreting, or making away with by the master or mariners, or any of them, of any gold, silver, diamonds, jewels, precious stones, or other goods or merchandise, which from and after the 24th day of June, 1734, shall be shipped, taken in, or put on board any ship or vessel, or for any act, matter, or thing, damage or forfeiture done, occasioned or incurred, from and after the said 24th day of June, 1734, by the said master or mariners, or any of them, without the privity and knowledge of such owner or owners, further than the value of the ship or vessel, with all their appurtenances, and the full amount of the freight due, or

> to grow due, for and during the voyage wherein such embezzlement, secreting, or making away with as aforesaid, or other malversation of the master or mariners, shall be made, committed or done; any law, usage or custom to the contrary thereof in anywise notwithstanding.

The shipowners' limited liability system thus introduced extended subsequently the scope of its application gradually, and by the Responsibilities of Shipowners Act, 1786, it applied also to loss of or damage to cargo carried by them which was caused by a tort of those other than their crew, and further, shipowners were excepted from liability for loss of or damage to cargo caused by fire.

Further, in 1813 when collision cases became a serious problem in the U.K., the Responsibilities of Shipowners Act, 1813 was passed, and by this Act the shipowners' limited liability system was extended to apply to damages not only for collision but for wash damage and crowding damage also, and the liability of the owner of the vessel which was to blame in collision for loss of or damage to the other vessel and the cargo on board his own and the other vessel was limited to the aggregate of the value of his own vessel and the full amount of the freight due. The above shipowners' limited liability system was succeeded by the Merchant Shipping Act, 1854. Section 1 of the Responsibilities of Shipowners Act, 1813 is as quoted below:

> .....that no person or persons who was, were, or should be owner or owners, or part-owner or part-owners, of any ship or vessel, should be subject or liable to answer for or make good any loss or damage arising or taking place by reason of any act, neglect, matter, or thing done, omitted, or occasioned without the fault or privity of such owner or owners, which might happen to any goods, wares, merchandise, or other thing, laden or put on board the same ship or vessel after the 1st of September, 1813, or which, after the said 1st of September, might happen to any other ship or vessel, or to any goods, wares, merchandise, or other thing, being in or on board of any other ship or vessel, further than the value of his or their ship or vessel, and the freight due or to grow due for and during the voyage which might be in prosecution, or contracted for, at the time of the happenning of such loss or damage.

As, however, even when the vessel which was to blame suffered damage or was lost in consequence of collision, the value of the vessel immediately before the collision was deemed to be the value of the vessel in the limitation of liability, if a vessel was in collision with another vessel by her negligence and both vessels were lost, the owner of the responsible vessel had to bear such heavy loss as equivalent to double her value plus her freight, which was a severe burden on the British shipowners, comparing with the abandonment system in France and the execution system in Germany.

(3) Substantial extension of shipowners' liability

Contrary to the laws providing for limitation of shipowners' liability as mentioned above, prior to the passing of the Merchant Shipping Act, 1854, two laws, i.e., Lord Campbell's Act (or the first Fatal Accidents Act), 1846 and the

Harbours, Docks and Piers Clauses Act, 1847, were passed to substantially extend their liability.

(a) Lord Campbell's Act, 1846

In the U.K. there was the old proverb of the common law that "Actio personalis moritur cum persona" (A personal action dies with the person) and under the common law, as the action for damages was a personal action, such action ceased to exist when the wrongdoer or the victim was dead, even when the wrongful act was the cause of the victim's death.

Lord Campbell's Act, 1846 which was passed in view of the increase of railway accidents granted an exception to the above doctrine of the common law, providing that, in case of death of a person by wrongful act, neglect or default of another person, the other person who would have been liable if death had not ensued should be liable to an action for damages, notwithstanding the victim's death. Section 1 of Lord Campbell's Act, 1846 is as quoted below:

> When death is caused by negligence an action shall be maintainable..... Whensoever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured,.....

In the middle of the 19th century when the above Act was passed, the number of immigrants from the U.K. and other European countries to the New World reached the peak (for example, during the period from 1841 to 1854, there were as many as about two million immigrants from Ireland alone to the New World). Moreover, in the U.K., not only the legal principle of vicarious liability was already established in 1839 by Duncan v. Finlater case but at the time of the enactment of the above Act, shipowners' liability for loss of life and personal injury was governed by the common law and was unlimited. Under such circumstances, the above Act placed enormous potential liability on owners of vessels packed with passengers.

However, shortly after the passing of the above Act, i.e., in 1850, the doctrine of common employment was established (Hutchinson v. York, Newcastle and Berwick Ry. Co. case, 1850) and by this doctrine, it became hardly possible for a crew injured or the survivors of a crew dead by negligence of his fellow servant to claim damages against the shipowner.

(b) Harbours, Docks and Piers Clauses Act, 1847

One year after the passing of Lord Campbell's Act, 1846, the above Act was passed and under this Act, the harbour master was entitled to remove any wreck being an obstruction to harbour, dock, pier, etc. and to claim, irrespective of the cause of the accident, repayment of the expenses of removal of wreck against the owner thereof (section 56 as quoted below), and a shipowner was liable to compensate the harbour or port authorities for damage done by his vessel to

harbour, dock, pier, etc., irrespective of whether there was negligence or not on the part of his own or his employees (Section 74 as quoted below).

Harbours, Docks and Piers Clauses Act, 1847

56. Harbour master may remove wreck, etc. The Harbour Master may remove any Wreck or other Obstruction to the Harbour, Dock, or Pier, or the Approaches to the same, and also any floating Timber which impedes the Navigation thereof, and the Expence of removing any such Wreck, Obstruction, or floating Timber shall be repaid by the Owner of the same, and the Harbour Master may detain such Wreck or floating Timber for securing the Expences, and on Nonpayment of such Expences, on Demand, may sell such Wreck or floating Timber, and out of the Proceeds of such Sale pay such Expences, rendering the Overplus, if any, to the Owner on Demand.

74. Owner of vessel answerable for damage to works. The Owner of every Vessel or Float of Timber shall be answerable to the Undertakers for any Damage done by such Vessel or Float of Timber, or by any Person employed about the same, to the Harbour, Dock, or Pier, or the Quays or Works connected therewith and the Master or Person having the Charge of such Vessel or Float of Timber through whose wilful Act or Negligence any such Damage is done shall also be liable to make good the same; and the Undertaker may detain any such Vessel or Float until sufficient Security has been given for the Amount of Damage done by the same: Provided always, that nothing herein contained shall extend to impose any Liability for any such Damage upon the Owner of any Vessel where such Vessel shall at the Time when such Damage is caused be in charge of a duly licensed Pilot, whom such Owner or Master is bound by Law to employ and put his Vessel in charge of.

This Act which was the first Act of this kind was passed in view, most probably, of the increase of such accidents as mentioned above at that time and became the origin of the Dockyard Ports Regulation Act, 1865, the Removal of Wreck Act, 1877 and many other local regulations based on these Acts.

Like Lord Campbell's Act, 1846, this Act also placed new liability on shipowners, but no action of shipowners to cope with such new liabilities arose as such liabilities were probably not a serious burden to them.

(4) Extension of the shipowners' limited liability system to their liability for loss of life of or personal injury to passengers

In order to cope with the shipowners' liability for loss of life aggravated by Lord Campbell's Act, 1846, they raised agitation for having the system of their limited liability for loss of or damage to cargo carried by them under the Responsibilities of Shipowners Acts, 1734–1813 extended to their liability aggravated by Lord Campbell's Act 1846, which resulted in the passing of the Merchant Shipping Act, 1854.

This Act which revised and consolidated the previous shipowners' liability laws provided, inter alia, that the shipowner's liability for loss of life of or personal injury to passengers, as well as that for loss of or damage to cargo, were limited to the value of his vessel and the freight due, provided that, in respect of loss of life of or personal injury to passengers, the value of the vessel and the freight should not be taken to be less than 15 pounds per registered

ton (Section 504 as quoted below).

Merchant Shipping Act, 1854

504. No owner of any sea-going ship or share therein shall, in cases where all or any of the following events occur without actual fault or privity, (that is to say,)

(1.) Where any loss of life or personal injury is caused to any person being carried in such ship:

(2.) Where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board any such ship:

(3.) Where any loss of life or personal injury is by reason of the improper navigation of such sea-going ship as aforesaid caused to any person carried in any other ship or boat:

(4.) Where any loss or damage is by reason of any such improper navigation of such sea-going ship as aforesaid caused to any other ship or boat, or to any goods, merchandise or ther things whatsoever, on board any other ship or boat:

Be answerable in damages to an extent beyond the value of his ship and the freight due or to grow due in respect of such ship during the voyage which at the time of the happening of any such events as aforesaid is in prosecution or contracted for, subject to the following proviso, (that is to say,) that in no case where any such liability as aforesaid is incurred in respect of loss of life or personal injury to any passenger, shall the value of any such ship and the freight thereof be taken to be less than fifteen pounds per registered ton.

Though the basis on which the minimum liability for loss of life or personal injury was fixed at 15 pounds per registered ton as above is not clear, as it is said that, at the time of passing of the Merchant Shipping Amendment Act, 1862 which amended the Merchant Shipping Act, 1854 in order to change the limit of shipowners' liability from the value of vessel and her freight to fixed amounts, the average value of British vessels was 8 pounds per registered ton, the above minimum liability of 15 pounds per registered ton was considerably on high side.

It was, therefore, natural for shipowners to think of a further action, i.e., establishment of Protection Clubs to cope with such heavy liability.

3. Collision liability covered by marine insurance at the time of establishment of the first Protection Club

As stated in 1. above, collision clause was drawn up and used for the first time by the Hull Clubs after entering the 19th century when collision cases increased (see the collision clause used by the Hull Club, "The Liberal Association", in 1811 appearing on page 2 of the A.S.G. Report), while it is said that at that time insurance companies and Lloyd's underwriters were rather reluctant to cover collision liability because of their severe attitude toward negligence of shipowners and crew.

In view, however, of the fact that, after steamships reached the stage of practical use and gradually replaced sailing vessels, collisions frequently occurred due to crew's lack of experience of operating steamships and also of the

judgment in De Vaux v. Salvador case, 1836 that the liability for collision damage done to another vessel, etc. was not recoverable under marine policy unless a collision clause was included in the policy, the inclusion of a collision clause in marine policies seems to have subsequently become fairly general.

The collision clause used by marine underwriters when the movement of establishment of Protection Clubs started was exactly or almost same as the Indemnity Clause drawn up and used by The Indemnity Mutual Marine Insurance Co. at the start of its operations in 1824 (hereinafter referred to as "the Collision Clause of 1824"), which was as follows:

> AND WE, for ourselves and each of us, do covenant and agree, that in case the said Ship shall, by accident or negligence of the Master or Crew, run down or damage any other Ship or Vessel, and the assured shall thereby become liable to pay and shall pay any Sum not exceeding the value of the said Ship or Vessel and her Freight, by or in pursuance of the Judgment of any Court of Law or Equity, or by or in pursuance of any Award made upon any Reference entered into by the Assured with the concurrence of Two of the Directors for the time being of the said Company, the Capital Stock and Funds of the said Company shall and will bear and pay such proportion of Three Fourth Parts of the Sum so paid as aforesaid as the Sum of..... Pounds hereby assured bears to the value of the said Ship or Vessel and her Freight.

In order to clarify the background of establishment of Protection Clubs, the scope and limit of damages covered by the Collision Clause of 1824 will, in relation to the shipowners' liability laws mentioned in 2. above, be discussed as below.

(1) Liability for collision damage to cargo on the insured vessel

It is presumed that, different from the current Collision Clause, the Collision Clause of 1824 covered liability for collision damage not only to another vessel (including cargo thereon) but to cargo on the insured vessel also.

The above presumption comes from the words "by accident" in the Collision Clause of 1824. As mentioned in 2(1) above, according to the four principles mentioned by Lord Stowell in the "Woodrop Sims" case, 1815, a shipowner was not liable for any collision damage to another vessel unless there was a fault on his part, and, therefore, it seems that the words "by accident" were specially included in the Collision Clause of 1824 for the purpose of covering liability for collision damage to cargo on the insured vessel, which had to be held by the assured as a common carrier under the common law, irrespective of whether there was a fault on his part or not.

Judging from the fact that the Collision Clause of 1824 was drawn up after about 10 years from the "Woodrop Sims" case and the above four principles were, as already mentioned, confirmed by the House of Lords in Hay v. Le Neve case in 1824 when the above Collision Clause was drawn up and further from the fact that among various forms of collision clause which were subsequently drawn up most probably on the model of the above Collision Clause, there were those expressly providing for coverage of liability for collision damage to cargo

on the insured vessel also, the above Collision Clause may be construed to have also covered such liability.

(2) Collision liability for loss of life or personal injury

It is not clear from the judicial precedents whether collision liability for loss of life or personal injury should have been covered by the Collision Clause of 1824 which had no express provision for this problem.

The first cases in which the above problem was disputed were Excelsior v. Smith case, 1860 and Coey v. Smith case, 1860, both in Scotland and in these cases the courts gave the affirmative decision, while in Taylor v. Dewar case, 1864 in England the court gave the negative decision. Though the attitude of the courts toward this problem lacked consistency as above, in view of the transition of shipowners' liability laws, the above problem may be concluded as below.

The Collision Clause of 1824 was drawn up more than 20 years before the enforcement of Lord Campbell's Act, 1846, and at that time, not only there were not yet so many passengers carried in vessels but in the case of death of passengers, the shipowner was not liable to pay damages under the common law according to the proverb "Actio personalis moritur cum persona" as mentioned in 2(3)(a) above. Under the circumstances, there was no urgent need for shipowners to obtain the cover for collision liability for loss of life and personal injury and, therefore, the draughter of the above Collision Clause must have had no intention to cover such liability.

However, not only the passengers carried in vessels subsequently much increased in number but by the passing of Lord Campbell's Act, 1846 shipowners became liable for loss of life due to their negligence, and though the shipowners' limited liability system was introduced by the Merchant Shipping Act, 1854, the minimum limit of their liability was, contrary to their expectation, fixed at a considerably high amount as already mentioned in 2(4) above.

As one of the measures to cope with the above circumstances, the shipowners brought the above two suits in 1860 in order to shift their collision liability for loss of life and personal injury to the marine underwriters and won the suits. However, a Lloyd's underwriter who had a doubt about the appropriateness of the decision in the above two suits disputed in Taylor v. Dewar case, 1864 and won the suit.

Anyway, in view of the above two cases of 1860, Lloyd's underwriters added in the following year the undermentioned words to the end of the collision clause of their marine policies in order to clarify that they had no intention to cover the shipowners' liability for loss of life and personal injury, and insurance companies followed suit.

"But this Agreement is in no case to be construed as extending to any sums which the Assured may become liable to pay or shall pay in respect of loss of life or personal injury to individuals, from any cause whatever."

(3) Expenses of removal of wreck which was an obstruction to harbour, dock, pier, etc. and shipowners' liability for damage done to harbour, dock, pier, etc.

As regards the question whether the captioned expenses and liability should have been covered by the Collision Clause of 1824, no judicial precedent set around the time when Protection Clubs were established can be found. It was as late as by the Merchant Shipping (Liability of Shipowners and Others) Act, 1900 that the shipowners' limited liability system was extended to their liability for damage done to harbour, dock, pier, etc. under the Harbours, Docks and Piers Clauses Act, 1847, and it was probably after the enforcement of the Removal of Wreck Act, 1877 that the above liability and the expenses of removal of wreck became to be covered by Protection Clubs. Section 1 of the Merchant Shipping (Liability of Shipowners and Others) Act, 1900 is as quoted below:

> The limitation of the liability of the owners of any ship set by section five hundred and three of the Merchant Shipping Act, 1894, in respect of loss of or damage to vessels, goods, merchandise, or other things, shall extend and apply to all cases where (without their actual fault or privity) any loss or damage is caused to property or rights of any kind, whether on land or on water, or whether fixed or moveable, by reason of the improper navigation or management of the ship.

The above question is, therefore, obscurer than the case of collision liability for loss of life or personal injury as discussed in (2) above, but it may most probably be concluded as below.

Surely, with the progress of replacement of wooden sailing vessels by iron steamers, vessels became larger and speedier, and coupled with the crew's lack of experience of operating steamers, the number of cases where vessels caused damage to harbours, docks, piers, etc. or sank or stranded, obstructing the marine traffic, increased, which resulted in the passing of the Harbours, Docks and Piers Clauses Act, 1847.

It seems, however, that as the liability imposed by the above Act of 1847 was not so heavy a burden to shipowners at that time, there was neither any agitation for having the shipowners' limited liability system extended to such liability nor any attempt to obtain the cover from marine underwriters for such liability and the expenses of removal of wreck. Moreover, as the Collision Clauses of 1824 was drawn up prior to the enforcement of the Harbours, Docks and Piers Clauses Act, 1847, it appears that the draughter of the above Collision Clause had no intention to cover such liability and expenses as well as liability for loss of life and personal injury and the above Collision Clause was generally so construed.

(4) The cover for collision liability was not treated as a separate and additional insurance contract at the time when the Collision Clause of 1824 was used

It is generally said that the concept of insurable interest was established by the judgment of Lawrence, J. in Lucena v. Crauford case, 1806. One may, therefore, be apt to suppose that in the middle of the 19th century the cover

for collision liability was, as a liability insurance contract, already treated as a separate and additional insurance contract and that loss of or damage to the insured vessel and her collision liability were covered up to her insured amount separately. However, as it is said that until the end of the 19th century there was no person, except J. Arnould, who supported the above judgment of Lawrence, J., the circumstances at that time seem to have not yet reached the stage to assert that the concept of insurable interest was established.

Before the passing of the Marine Insurance Act, 1906, gaming or wagering policies were forbidden by the Marine Insurance Act, 1745. Though wagering policies continued to be used, from this Act of 1745 came out the two kinds of thought that (a) valued policies were illegal and (b) insurance effected on a ship or freight beyond the value of such ship or freight was also illegal, in spite of no express provision to that effect in the Act, and while the thought (a) above became extinct before long, the thought (b) above continued to exist for more that 100 years.

As stated above, in the middle of the 19th century, the concept of insurable interest was still in an undeveloped stage, there being no such classification of insurable interest as owner's interest, liability interest, etc. and a policy covering various interests on a ship beyond her value was deemed to be against the law until the judgment that the cover for collision liability should be treated as a separate and additional insurance contract was given in Xenos v. Fox case, 1868.

The insurance cover at that time was, therefore, insufficient for shipowners, because not only (a) the cover under the Collision Clause of 1824 was only for three-fourths of the damages paid for loss of or damage to another vessel (including cargo thereon) and cargo on the insured vessel but (b) the insurer's liability for the aggregate of the amounts of loss or damage received by the insured vessel and of the collision liability was limited to her insured amount. For example, therefore, if both vessels sank in consequence of a collision for which the insured vessel was liable, the owner of the insured vessel had to bear a heavy loss, notwithstanding the limitation of his collision liability under the Responsibilities of Shipowners Act, 1813 or the Merchant Shipping Act, 1854.

4. Establishment of Protection Clubs

As discussed in details in the above, until the middle of the 19th century, while shipowners had to bear enormous potential liability, they could not obtain sufficient cover for such liability from marine underwriters. Under the circumstance, they started first an agitation for having the shipowners' limited liability system extended to their liability for loss of life of or personal injury to passengers and succeeded partly in achieving their aim by the passing of the Merchant Shipping Act, 1854. As, however, the minimum limit of their above liability under the above Act was set at an unexpectedly high amount, they had still to bear enormous potential liability.

Some managers of Hull Clubs who perceived the shipowners needs for a new type of insurance to cover their above potential liability called out to the

members of their Clubs and reorganized their Clubs into Protection Clubs in order to mutually cover not only the liability for loss of life or personal injury but, in case the aggregate of the amounts of liability for damage done to another vessel, etc. and of damage received by the protected vessel exceeded the insured amount of the hull policy on the protected vessel, such excess which was not covered by the three-fourths Collision Clause of hull policy.

The first Protection Club, the Shipowners' Mutual Protection Society (the predecessor of the present Britannia Steam Ship Insurance Association) started the operations on the very day, i.e. May 1, 1855, when the Merchant Shipping Act, 1854 became effective, and this fact shows the existence of close connection between the establishment of the Protection Clubs and the above Act. In the same year, i.e., 1855, the Shipowners' Protection Association (the predecessor of the present West of England Protection and Indemnity Association) was established and started the operations on January 1, 1856, and in 1860 the North of England Protecting Association (the predecessor of the present North of England Protecting and Indemnity Association) was established. And most of the predecessors of other Protection and Indemnity Associations were also established in the latter half of the 19th century.

Before closing the study of establishment of Protection Clubs, for the purpose of proving what has been discussed in the above, some parts of the Original Deed of the Shipowners' Mutual Protection Society will be quoted as below.

(The preamble and the succeeding three paragraphs)

The Ship Owners Mutual Protection Society
Capital—one million

established for the purpose of protecting Ship Owners against the liability incurred under the 504 Sect. of the "Merchant Shipping Act, 1854," and also the risk of running down other Vessels and Craft, not covered by the ordinary Marine Policies. This Society admits every description of Vessels, without respect to class, including those built of Iron, to the extent of £10,000 each.

To all to whom these Presents shall come.

The several persons whose names are hereunto subscribed and Seals affixed send greeting.

WHEREAS ships and vessels very frequently receive considerable damage, and together with their freights (if any) are sometimes wholly lost, by reason of their coming in contact with other ships and vessels; and it often happens that the owners of the first-mentioned ships and vessels have not only to pay to the owners of the secondly-mentioned ships and vessels, or of their cargoes, damages amounting to the full value of the first-mentioned ships and vessels and their freight (if any), but have also to expend considerable sums of money in repairing the damage so as aforesaid occasioned to their own ships and vessels:

AND WHEREAS since the passing of the Statute 17th and 18th Vic., Cap. 104, sect. 504, the owners of ships and vessels may, and probably will, in some instances, also become liable to pay damages in consequence of loss of life, or personal injury caused to passengers, either on board their own or other ships or vessels, by the improper navigation of their ships or vessels:

AND WHEREAS an Insurance cannot legally be effected upon a ship or upon freight beyond the value of such ship or freight, consequently ship owners may

be subjected to heavy losses, claims, and demands arising as aforesaid against which they cannot and will not be able to protect themselves by ordinary insurances upon their ships and freights:

The purpose of establishment of the Protection Club was shown in the above, and the 3rd paragraph proves that the concept of liability interest was not yet established at that time.

(8th paragraph)

THAT in ascertaining the sums to be paid by virtue of these presents in respect of losses, claims, and demands arising as aforesaid, the Committee hereinafter mentioned shall take into account not only the damages and costs payable by the owners of ships or vessels for injuries done by their ships or vessels to other ships or vessels or their cargoes, but also the damages and costs payable in consequence of loss of life or personal injury caused to passengers as aforesaid, and also the injury done or to be sustained by their own ships or vessels owing to, or in consequence of, their coming in contact with other ships or vessels: and if aggregate amount of such damages and injury shall exceed the value of the ship doing or causing the damage or injury, and the freight (if any) the excess not exceeding the sum agreed to be secured as aforesaid, shall be borne and paid by all the parties executing these presents, other than and except the owner (as such) of the particular ship doing or causing the damage or injury rateably, and in proportion to the sums in that behalf, set opposite their names and aforesaid.

The above paragraph 8 proves that the purpose of establishment of the Protection Club was, contrary to what had been generally said, not to protect shipowners against the loss of one-fourth of collision damages which was not covered by the three-fourths Collision Clause of hull policy.

III. Transition of Shipowners' Liability Laws after the Establishment of Protection Clubs and Changes of the Clubs

The major changes of the Clubs before around 1886 when Protection Clubs developed into P. & I. Clubs which have both nominally and virtually both Protection Club and Indemnity Club were (a) the establishment of Indemnity Club and (b) the provision of cover for the expenses of removal of wreck and for liability for damage done to harbours, docks, piers, etc., but there were also other minor changes.

1. Passing of the Merchant Shipping Amendment Act, 1862 and the changes of the Collision Clause of 1824

(1) Change of the basis of working out the limit of shipowners' liability from the value of the responsible vessel and her freight to fixed amounts per ton of the vessel by the Merchant Shipping Amendment Act, 1862

The Merchant Shipping Act, 1854 succeeded to the system established by the Responsibilities of Shipowners Acts, 1734–1813 of limiting shipowners' liability to the value of their vessel and her freight, but such defects in this system as

the difficulty in assessing the appropriate values of vessels and the unfairness that vessels valued at a smaller sum were favorable comparing with those valued at a larger sum became gradually obvious.

In order to remedy the above defects the Merchant Shipping Amendment Act, 1862 was passed, and under this Act the shipowners' liabilities for (a) loss of or damage to vessels, cargoes, etc. and (b) loss of life or personal injury were respectively limited to (a) 8 pounds and (b) 15 pounds per ton of their vessel (the registered ton in the case of sailing vessels and the gross ton in the case of steam vessels). It can be said that shipowners' burden was to some extent lightened by this Act.

Incidentally, by the Merchant Shipping (Liability of Shipowners and Others) Act, 1958, the above 8 pounds and 15 pounds were revised to 1,000 gold francs and 3,100 gold francs respectively.

(2) Amendment of the Collision Clause of 1824

As the Collision Clause of 1824 was drawn up at the time when the shipowners' liability was limited to the value of their vessel and her freight, it became to be unable to meet the situation after the passing of the Merchant Shipping Amendment Act, 1862 and was amended according to the provisions of this Act.

At that time there appeared many new forms of collision clause which seem to have modified the Collision Clause of 1824, and the undermentioned clause which is called the Original or Old Lloyd's Clause (hereinafter referred to as "the Original Lloyd's Clause") is one of the typical forms of collision clause which were used by Lloyd's underwriters until 1883 (this Clause is called the Limited Clause (£8 Clause) and after 1883 the Unlimited Clause was used by Lloyd's underwriters until 1888 when the Institute Collision Clause was introduced for the first time.)

Original Lloyd's Clause

> And it is further agreed, that if the ship hereby insured shall come into collision with any other ship or vessel, and the insured shall in consequence thereof become liable to pay, and shall pay, to the persons interested in such other ship or vessel, or in the freight thereof, or in the goods or effects on board thereof, any sum or sums of money not exceeding the value of the ship hereby assured, calculated at the rate of eight pounds per ton on her registered tonnage, we will severally pay the Assured such proportion of three-fourths of the sum so paid as our respective subscriptions hereto bear to the value of the ship hereby assured, *calculated at the rate of eight pounds per ton,* or if the value hereby declared amounts to a larger sum, then to such declared value, and in cases where the liability of the ship has been contested with our consent in writing, we will also pay a like proportion of three-fourth parts of the costs thereby incurred, or paid, provided also, that this Clause shall in no case extend to any sum which the insured may become liable to pay or shall pay in respect of loss of life or personal injury to individuals for any cause whatsoever.

The main features of the Original Lloyd's Clause, as compared with the Collision Clause of 1824, were not only (a) that the limit of the assured's liability

covered was revised according to the provisions of the Merchant Shipping Amendment Act, 1862 but (b) that the liability for wash damage or crowding damage which had also been covered by the Collision Clause of 1824 was excluded and the liability covered was limited to that for collision damage only and (c) that the liability for loss of or damage to cargo on the insured vessel which had been covered by the Collision Clause of 1824 was also excluded. The features (b) and (c) above had close relations with the subsequent development of Protection Clubs.

Further, as regards the important question whether the Original Lloyd's Clause should be construed to have treated the cover for collision liability as a separate and additional insurance contract, though there is no express provision in the above Clause, it seems, in view of Xenos v. Fox case, 1868 as mentioned in II.3(4) above, that such treatment was first introduced in the above Clause.

2. Extension of cover provided by Protection Clubs

(1) Establishment of Indemnity Club

It is stated in page 5 of the A.S.G. Report that, though for the greater part of the 19th century cargo claims were not a serious burden to shipowners as common carriers, being prompted by the "Westenhope" case, 1870 Indemnity Clubs were subsequently established, and many literatures published later support the above statement.

The above statement is, however, doubtful, because damages for cargo on the protected vessel were already covered by a Protection Club in 1865 at the latest.

The following is a leaflet distributed in 1866 by The Shipowners' Mutual Protection Society.

The Ship Owners' Mutual Protection Society,
Established 1856.

Ships may be entered at the rate of £15 per ton, to the extent of £10,000 each. Nearly 250 are now protected for upwards of £1,275,000.

Shipowners being personally liable by law for damages to the extent of £15 per ton, whatever may be the actual value of their Ships (even if lost), the Members of this Society bear amongst themselves rateably, each in proportion to the amount for which he is protected, such damages, as under, which individual Members may become legally liable to pay, in respect of protected Ships, *so far as the same could not have been covered by ordinary policies on such Ships for their full value*, with the usual collision clause therein, after taking into account the injury sustained by the protected Ships themselves.

The damages so protected against are

(1). Where any loss of life or personal injury is caused to any person being carried in the protected Ship.

(2). Where any damage or loss is caused to any goods, merchandize, or other things whatsoever, on board any such Ship.

(3). Where any loss of life or personal injury is, by reason of the improper navigation of such Ship as aforesaid, caused to any person carried in any *other* Ship or Boat.

(4). Where any loss or damage is, by reason of the improper navigation of such Ship as aforesaid, caused to any other Ship or Boat, or to any goods, merchandize, or other things whatsoever, on board any other Ship or Boat.

Rules, and full particulars, may be obtained on application to the Managers,

PETER TINDALL, RILEY & CO.,
17, Gracechurch Street,
London.

July, 1866.

(Note) The year of establishment should correctly be not 1856 but 1855.

As seen in the above leaflet, the damages protected against were enumerated in the cases (1) to (4), and the case (2) clearly provided for cover for Indemnity risks. It is also of interest to note from the case (4) that the words "owing to, or in consequence of, their coming in contact with other ships or vessels" in the 8th paragraph of the Original Deed of the above Society as mentioned in II.4, above were replaced by the words "by reason of the improper navigation of such Ship as aforesaid", thus damages for wash damage or crowding damage having become to be also covered.

Next, the influence which the "Westenhope" case referred to in page 5 of the A.S.G. Report had on the establishment of Indemnity division in Protection Clubs will be discussed as below.

Though the above case is obscure as it cannot be found in any casebook, it is outlined in the above Report as quoted below:

> In 1870, however, a ship called the *Westenhope* was lost off the South African Coast. This ship had on board a quantity of cargo which had been carried past Port Elizabeth and was intended to be discharged on the return journey to Cape Town. The Shipowners were compelled to pay for the value of the lost cargo, the Court holding that they could not rely on the Bill of Lading exceptions in respect of such a deviation. The *Westenhope* was entered in a Protecting Association, but the Directors refused to reimburse the Shipowner on the grounds that the loss was not covered by the Rules, although a small *ex gratia* payment was eventually made.

It is also stated in the above Report that being prompted by the above case, the movement for establishment of Indemnity Clubs became strong and, as a result, the Steamship Owners Mutual Protection and Indemnity Association was formed at Newcastle in 1874 (this Association was later amalgamated with the North of England Protecting Association to form the North of England Protecting and Indemnity Association).

However, even if the Indemnity risks were not covered by the Protection Club which the "Westenhope" was entered, it is a fact that such risks were already covered in 1865 by the Shipowners' Mutual Protection Society as mentioned before, and, therefore, it seems not to be accurate to say that the "Westenhope" case became the motive of covering Indemnity risks.

Anyway, as a result of the "Westenhope" case, shipowners' interest in Indemnity risks increased and Protection Clubs which had so far not covered

such risks established Indemnity Clubs to cover such risks, while Protection Clubs which had already been covering such risks separated Indemnity Club from Protection Club. Thus, the foundation of the modern P. & I. Clubs which have both Clubs, i.e., (a) Protection Club to cover third party liabilities of shipowners or demise-charterers due to improper navigation of their vessel and their liability for crew as employers and (b) Indemnity Club to cover their liabilities for cargo owners as carriers, was established at that time.

As the shipowners' liability for cargo owners was made clearer by the "Westenhope" case, the "Emily" case, 1876 (see page 7 of the A.S.G. Report. This case also cannot be found in any casebook.), etc., the Indemnity Club was developed on one hand, but on the other hand, P. & I. Clubs recommended to shipowners the inclusion of the Negligence Clause in their bills of lading or reduced the claim amount unless the Negligence Clause was inserted in their bills of lading. The complicate exception clauses in the bills of lading which were used until 1924 when the Carriage of Goods by Sea Act modifying the Hague Rules, was passed seem to have been drawn up after that time.

(2) Extension of cover at the expenses of removal of wreck and Shipowners' liability for damage done to harbours, docks, piers, etc.

As stated in II.2(3)(b) above, the first Act providing for the above expenses and liability was the Harbours, Docks and Piers Clauses Act, 1847, and subsequently the Dockyard Ports Regulation Act, 1865 and the Removal of Wreck Act, 1877 which was later replaced by Sections 530 to 534 of the Merchant Shipping Act, 1894 were passed to modify the above first Act. Many local regulations based on these Acts were also made, and shipowners' liabilities under these Acts and regulations were gradually aggravated.

As, however, shipowners' liability for damage done to harbours, docks, piers, etc. was unlimited until the enforcement of the Merchant Shipping (Liability of Shipowners and Others) Act, 1900 and the Collision clause of hull policy did not cover such liability as well as the expenses of removal of wreck, Protection Clubs and Protection divisions of P. & I. Clubs extended their cover to such liability and expenses.

According, however, to the leaflet of 1870 as quoted below of the Shipowners' Mutual Protection Society, such liability and expenses were not yet covered by the Society.

> The Shipowners' Mutual Protection Society,
> Established 1855,
>
> For mutual insurance against *extra* risks not covered by ordinary policies on Ships. Two hundred Owners of 425 Ships have now 210,000 tons protected to the extent of £3,150,000, reckoning their liability at £15 per ton. Ships may be entered for any number of registered tons, not exceeding 1000 tons each. The Calls, for losses in fifteen years, have averaged about two pence per ton per annum.
>
> By the Merchant Shipping Acts 1854 and 1862, in cases where all or any of the following events occur, the Owners of the Ship in fault are answerable in damages to the extent of £8 or £15 for each ton of her registered tonnage,

whatever her real value may be, and whether she be lost or not lost; and they are liable on *each* and every *separate* occasion, to the same extent, as if no other loss, injury, or damage had arisen: that is to say.

(1.) Where any loss of life or personal injury is caused to any person being carried in *such* Ship;

(2.) Where any damage or loss is caused to any goods, merchandize, or other things whatsoever, on board any *such* Ship;

(3.) Where any loss of life or personal injury is, by reason of the improper navigation of *such* Ship as aforesaid, caused to any person carried in any *other* Ship or boat;

(4.) Where any loss or damage is, by reason of the improper navigation of *such* Ship as aforesaid, caused to any *other* Ship or boat, or to any goods, merchandize, or other things whatsoever, on board any *other* Ship or boat.

Ordinary insurances on the wrong-doing Ship would not extend to cover damages payable for loss of life, or personal injury, or damage or loss of *her own* cargo, and sometimes not any, and frequently not the whole loss or damage done to *other* Ships and *their* cargoes.

The Members of this Society bear amongst themselves, rateably, the damages that any individual Member may become legally liable to pay, upon the protected tonnage of his Ship to blame for loss of life, personal injury, loss of or damage to *her own* cargo, in cases 1, 2, 3; and, in case 4, so much of the loss or damage done by the protected Ship to any *other* Ship or her cargo, as shall exceed the full value of the protected Ship, and could not have been covered by a collision clause in an ordinary policy of insurance on the protected Ship for her full value.

In certain cases, where the Shipowner's liability is *unlimited*, the Society protects its Members to the extent of £30 per ton.

Rules, Forms of Entry, and full particulars may be obtained on application to the Managers,

PETER TINDALL, RILEY & Co.,
Ship and Insurance Brokers.

17, GRACECHURCH STREET, E.C.,
LONDON, JUNE, 1870.

After the steamer section of the above Society was merged into the Britannia Steam Ship Insurance Association which was established in 1871 as a Hull Club for owners of iron steam vessels, the Association was incorporated in 1876.

The Class 3(D) of the leaflet of 1881 as quoted below of the above Association expressly provided for the cover for the above-mentioned liability and expenses, and, therefore, it appears that the passing of the Removal of Wreck Act, 1877 became the motive of providing such cover.

Established 1871. *Incorporated 1876.*

THE BRITANNIA
Steam Ship Insurance Association, Limited.
Class 1.—Hull and Machinery Risks. Class 2.—Freight Risks.
Class 3.—Protection—Ownership Risks.

Class 1.—Hull and Machinery Risks.—The Members of this Club mutually insure each others, Iron Steam Ships, from the date of their entry until noon of the 20th February then next, and afterwards from year to year unless notice be given to the contrary, against all risks usually covered by marine policies on *Hull and Machinery*, including Perils of the Seas, War risk, Fire, Pirates, Barratry,

and three-fourths of damage done by Collision, at all times and in all places, with liberty to tow and to be towed.

All Steamers contribute to losses in the same proportion, but those engaged in the North American, Baltic, and White Sea Trades, during the *winter* months, pay additional contributions according to an equitable scale.

Particular average is allowed on the Hull and Machinery respectively, as if separately insured, when required by the Assured.

Returns are made Steamers remaining in port in the United Kingdom, or in Continental ports between Hamburg and Bordeaux inclusive, for fifteen days or more, as well as to those detained for thirty days or upwards in a Foreign port under average repairs.

Averages are adjusted by Professional Average Staters, in most respects according to the usage at Lloyd's, but repairs to the ironwork of the Hull are allowed *in full* during the first *six years;* after that period a deduction of *one-sixth*, and after ten years a deduction of *one-third* is made. The cost of repairs to Machinery (Boilers excepted,) is allowed *in full* until it is *three years* old; after three years a deduction of *one-sixth*, and after six years a deduction of *one-third*, is made. Other repairs, except scraping, painting or coating, are allowed *in full* during the first year.

Crew's wages and provisions are allowed in certain cases where Steamers are detained in port for the purpose of average repairs.

Missing Steamers are dealt with as if lost on the day they were last heard of.

Claims are settled weekly by the Committee, and Calls are made upon the Members every alternate month. Settlements on account are made to meet payments for Repairs, &c., if the Club's proportion of such payments amount to ten per cent. or more of the sum insured under the policy.

The Committee have power to release any Member, on the loss, sale, or withdrawal of his Steamer, from all further liability, on terms to be mutually agreed upon.

Class 2.—Freight Risks.—To be commenced on the 20th February, 1882, for the mutual insurance of the Freights of Steamers for time as above.

Class 3.—Protection.—Ownership Risks.—This Club is for the mutual protection of *Steam* Ship Owners against Liabilities arising out of any of the following events, viz.:—

A.—Loss of life or personal injury caused by the protected Steamer to any person in or near the said Steamer, or in any other Ship or boat, or elsewhere; also salvage of life.

B.—Loss or damage caused by the improper navigation of the protected Steamer to any goods, merchandize or other things whatsoever, whether on board such Steamer or elsewhere, except as named in the next clause.

C.—Loss or damage caused by the improper navigation of the protected Steamer to any other Ship or her cargo, to the extent of the *one-fourth* thereof not covered by the usual collision clause in an ordinary policy of insurance on the protected Steamer for her full value.

D.—Damage done to Docks, Piers, Jetties, Structures, Harbours, Buoys, or Submarine Cables; and also the compulsory removal of the Wreck of any protected Steamer from navigable rivers or waters: in these and certain other cases in which the Shipowners' liability is *not limited* by the Merchant Shipping Acts, and also in cases of damage done coming under the operation of *Foreign* Laws which provide no statutory limitation of liability, the Members of this Club are protected to the extent of £30 per ton.

Returns are allowed to Steamers laid up, for thirty consecutive days or more,

in any port of the United Kingdom, or on the Continent of Europe between Hamburg and Bordeaux inclusive.

For further particulars see Club Rules, which, with forms of proposal and other information, may be obtained on application to the Managers,

TINDALL, RILEY & Co.,
Marine Insurance Brokers.

17, Gracechurch Street, E.C.,
London, *June*, 1881.

3. Supplement

The scope of cover stated in the above leaflet of 1881 is same as that provided around 1880 by the United Kingdom Mutual Steam Ship Assurance Association (established in 1869) as stated in page 5 of the A.S.G. Report.

Thus, Protection Clubs which started operations with the narrow scope of cover as stated in II.4. above extended the cover by around 1880 to the extent that the foundation of the modern P. & I. Clubs may be said to have been established.

Last, I wish to refer to Class 3.C. of the above leaflet of 1881. According to the leaflet of 1870, the excess of collision damages over the value of the protected vessel, which could not be covered by the Collision Clauses of hull policy, was covered, while, according to the leaflet of 1881, the one-fourth of collision damages which could not be covered by the Collision Clause of hull policy was covered. This change means that the insurance cover for collision liability became to be treated as a separate and additional insurance contract within about ten years from 1870 to 1881.

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