

Transition of Shipowners' Liability Laws and Changes of P. & I. Clubs in the U.K. (Part II-2)

Takatada Imaizumi

I. Preface

In my preceding treatise (Part II-1 of the series of my treatises on the captioned subject), discussion was focused on the changes of shipowners' liability for personal accidents to crew, etc. which were most remarkable in the changes of shipowners' liability laws in the U.K. during the period from the end of the 19th century to the end of the second world war. In the present treatise, how the risks covered by P. & I. Clubs were changed in accordance with such changes of shipowners' liability laws will be discussed. As the Rules and other materials of P. & I. Clubs at that time, those of the Britannia Steam Ship Insurance Association will mainly be used in the present treatise also as in the series of my previous treatises on the captioned subject.

II. Institute Collision Clause of 1890

Before entering into the main subject, it would be necessary to refer briefly to the Institute Collision Clause of 1890 as the purpose of P. & I. Clubs is to cover losses which are not covered by the marine hull policy with a collision clause inserted.

As a result of the passing of the Merchant Shipping Amendment Act, 1862 by which the limit of shipowners' liability was changed from the value of the vessel and her freight as before to fixed amounts per ton of the vessel, there appeared many forms of collision clause which seem to have amended the collision clause (entitled "Indemnity Clause") of 1824 drawn up by the Indemnity Mutual Marine Insurance Co.

However, the Institute of London Underwriters was established in 1884, and as a result of the Institute's efforts for standardizing various marine insurance clauses, the first Institute Time Clauses-Hulls were drawn up in 1888, in which the following Collision Clause was included as Clause 1.

And it is further agreed that if the ship hereby insured shall come into collision with any other ship or vessel and the assured shall in consequence thereof become liable to pay and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the ship hereby insured, this Company will pay the assured such proportion of three-fourths of such sum or sums so paid as its subscription hereto bears to the value of the ship hereby insured, and in cases in which the liability of the ship has been contested with the consent in writing of this Company, the Company will also pay a like proportion of three-fourths of the costs which the assured shall thereby incur or be

compelled to pay. Provided always that this Clause shall in no case extend to any sum which the assured may become liable to pay or shall pay for removal of obstructions under statutory powers, for injury to harbours, wharves, piers, stages, and similar structures, consequent on such collision, or in respect of the cargo or engagements of the insured vessel, or for loss of life or personal injury.

Only two years after, i.e. in 1890, the above Institute Collision Clause of 1888 was amended, as a result of the "Balnacraig" case of 1889, by inserting the undermentioned wording, i.e., the provision for cross liabilities in both to blame collision cases, after the words "...or be compelled to pay":

But when both vessels are to blame, then unless the liability of the owners of one or both of such vessels becomes limited by law, claims under this clause shall be settled on the principle of cross-liabilities as if the owners of each vessel had been compelled to pay to the owners of the other of such vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the assured in consequence of such collision.

The above Institute Collision Clause of 1890 remained almost unchanged for about 80 years until 1969 when the above clause was considerably amended in view of the oil pollution accident caused by the "Torrey Canyon" in 1967.

Setting aside the detailed discussion on the above Institute Collision Clause of 1890, it may suffice for the purpose of my present treatise to mention here that, under this Clause, three-fourths of the amount which the owner of the insured vessel was liable to pay by way of damages for loss of or damage to other vessel and/or cargo thereon in consequence of collision was covered up to the insured amount of the insured vessel, separately from loss of or damage to the insured vessel, but damages for loss of or damage to cargo on the insured vessel, expense of removal of wreck, etc., damages for injury to harbour, wharf, pier, etc. and damages for loss of life of or personal injury to passengers or crew, either on board the insured vessel or other vessel were not covered at all.

III. Changes of Risks covered by P. & I. Clubs

Now, I wish to enter into the main subject, that is, changes of risks covered by P. & I. Clubs in accordance with the transition of shipowners' liability laws in respect of personal accident to crew, etc. which was dealt with in my preceding treatise ("Transition of Shipowners' Liability Laws and Changes of P. & I. Clubs in the U.K. (Part II-1)" published in September 1990).

(1) The 2nd paragraph of the Original Deed of the Shipowners' Mutual Protection Society established in 1855, the first Protection Club in the world and the predecessor of the Britannia Steam Ship Insurance Association (see page 17 of the A.S.G. Report of 1957) provided as follows:

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:

(Note) The Statute 17th and 18th Vic., Cap. 104 referred to in the above paragraph is the Merchant Shipping Act, 1854.

As seen in the above paragraph, one of the main reasons for establishment of the above Club was mutually to cover shipowners' liability for loss of life of or personal injury to passengers on board their own or other vessels, and their liability for loss of life of or personal injury to crew on board their own or other vessels was not taken into consideration.

At the time of the establishment of the first Protection Club, shipowners' liability for loss of life or personal injury covered by the Protection Club was limited to that for passengers on board their own or other vessels only, as seen in the following materials:

*Extract from the leaflet distributed in 1866
by the Shipowners' Mutual Protection Society*

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). (omitted)
- (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). (omitted)

*Extracts from the minutes of the board of directors
of the United Kingdom Mutual Steam-Ship Protecting Association*

Panther: Injury to a man on board the steamer. Receipt for £6.18.0 having been shown, agreed to pass this claim if the man was not in the employ of the steamer so that the owners were legally liable. If, however, the man was employed on board the steamer it was decided to reject the claim (20th March, 1873).

Talisman: Sank French lugger with potatoes and drowned the Captain's wife. Claim for potatoes £71, claim for wife £5 passed (16th March, 1876).

Elf: A claim was made for hospital charges incurred by a man who was injured on board this steamer. It was determined to decline to admit this claim as the Association cannot entertain a claim of this kind (15th January 1874).

Fairy: This was a case in which the owners asked the Committee to pay the burial expenses of a seaman abroad. The Committee declined to entertain such a claim which is not included in the Rules of the Association (21st January, 1875).

In 1870, however, shipowners' such liability was extended to that for crew on board other vessels (see the Call Sheet dated May 4, 1870 of the Shipowners' Mutual Protection Society). The reason why the shipowners' liability for loss of life of or personal injury to crew on board their own vessels was not covered by the Clubs is not clear, but it may probably be that such liability was not heavy burden to shipowners at that time.

(2) Since around 1880, however, the cover provided by Clubs for loss of life or personal injury was extended as seen in the extract as quoted below from the leaflet of 1881 of the Britannia Steam Ship Insurance Association into which the steamer section of the Shipowners' Mutual protection Society was merged in 1876, and the risks covered under the above leaflet were same as those covered in 1880 by the United Kingdom Mutual Steam-Ship Protecting Association and the London Steam-Ship Owners' Mutual Insurance Association.

Extract from the above leaflet of 1881

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. (omitted)

C. (– do –)

D. (– do –)

Comparing the leaflet of 1881 with that of 1866, there are two differences. One of them is that under the leaflet of 1881, the cover for shipowners' liability for personal accident was extended to that for personal accident to crew on board the protected vessel or other vessels, etc. and the other is that under the leaflet of 1881, the salvage of life became to be covered.

(3) As the relation between the salvage of life and P. & I. Insurance is complicated, what mentioned in II (1) of my preceding treatise (Part II–1 of the series of my treatises on the captioned subject published in September 1990) will be supplemented as below.

The salvage of life covered by P. & I. Clubs means the reward to be paid by the owner of the protected vessel to the salvor of life of persons on board such vessel and does not include the expenses incurred for searching for missing persons on board such vessel or corpses. Though it is not clear since when the above research expenses have been covered by P. & I. Clubs, they are covered at present under the separate item "normal deviation" of the Clubs' Rules.

Originally, the reward for rescue of life only was not allowed by the Admiralty Court in the U.K. on the doctrine of real action that there was nothing to be attached in case of the vessel, cargo and freight becoming total loss. Even before 1846, however, it was the practice of the Admiralty Court that in the case where both life and property were saved by one and the same salvor, more reward than that in the case of rescue of property only was allowed, but in the case where life and property were separately saved by different salvors, no reward was allowed to the salvor of life.

As the above practice was apt to bring about the situation for a salvor to save property in preference to life, the Act consolidating and amending the Law relating to Wreck and Salvage, 1846 allowed reward to salvor of life even when life and property were separately saved by different salvors, and then Merchant Shipping Act, 1854 provided in section 459 (see II (1) of my preceding treatise (Part II–1) that salvage of life should be payable by the shipowner in priority to all other claims for salvage and that if the vessel was destroyed or the value thereof was insufficient, after payment of the actual expenses incurred, to pay the amount of salvage of life, the Board of Trade might in its discretion award necessary sum to the salvor of life out of the Mercantile Marine Fund. Further, while sections 458 and 459 of the Merchant Shipping Act, 1854 applied to saving of life on board any vessel, whether British or foreign, but within the limit of the U.K. only, the Admiralty Court Act, 1861 provided in section 9 that in so far as the British vessels were concerned, the above provisions of the Merchant Shipping Act, 1854 applied to saving of life anywhere in the world, and such provisions of these Acts were succeeded by the Merchant Shipping Act, 1894 (section 544).

In short, under the British laws, salvage of life had to be borne primarily by salvaged property and supplementarily by the Mercantile Marine Fund. Incidentally, by the Merchant Shipping

(Mercantile Marine Fund) Act, 1898, the Mercantile Marine Fund was abolished and supplementary payment of salvage of life became to be made out of moneys provided by the Parliament, but it appears that, as a matter of fact, the cases where such supplementary payments were made out of the above Fund or moneys provided by the Parliament were rather rare.

From the judicial precedents under the British laws regarding salvage of life and/or property and insurance practices, the present position may be summarized as below.

- (a) In case life only is salvaged and no property is salvaged at all, no award is given by the court in respect of salvage of life, and out of the expenses incurred for landing survivors, the port charges only are covered by the P. & I. Club to which the salvor belongs, while there seems to be a recent agreement among P. & I. Clubs in London that the extra bunkers are covered by the P. & I. Club to which the salvaged vessel belongs.
- (b) In case both life and property are salvaged by one and the same salvor, the salvage of property including the increased salvage corresponding to the saving of life is covered by the ordinary marine insurer.
- (c) In case life and property are separately salvaged by different salvors, salvage of life is covered by the P. & I. Club to which the salvaged vessel belongs, while the salvage of property is covered by the ordinary marine insurer.

Anyway, it is clear that the fact that since around 1880 salvage of life became to be covered by P. & I. Clubs was due to the passing of the Merchant Shipping Act, 1854, etc. and many judicial precedents based on these Acts.

- (4) The risks which The Britannia Steam Ship Insurance Association proposed to cover in Protection and Indemnity Divisions in its circular sent to its members, together with the notice dated February 5, 1886 of holding of the annual general meeting on February 10, 1886 for the purpose of a resolution to separate into Protection Division and Indemnity Division were as quoted below. Incidentally, other main Clubs were also separated into Protection Club and Indemnity Club in the same year.

Protection Division.

- (A) The damages which a Member may become liable to pay and shall pay in respect of any such steamship for loss of life or personal injury caused to any person; as well as any hospital, medical, or funeral expenses incurred and paid by a member in respect of such steamship in consequence of personal injury or loss of life by accident; and expenses for which a Member may become liable for life salvage.
- (B) The damages which a Member may become liable to pay and shall pay in respect of loss of or damage to any goods or merchandise on board such steamship, in so far as such loss or damage has been caused by collision, stranding, or the contact of such steamship with some substance or thing other than water, or by the negligent, unskilful, or improper navigation of such steamship; but no claim shall be allowed in respect of loss of or damage to goods or merchandise where such goods or merchandise have been carried in any water-ballast tank, or in any other part of the steamship not specially constructed for the purpose of carrying cargo, or where the loss or damage has arisen from improper stowage or unseaworthiness, nor for short delivery, nor for loss of or injury to live animals on board such steamship, nor for the steamship herself, nor for tackle, apparel, furniture or stores.

Members by undertaking their defence, and by conducting proceedings for testing how far such interference is warranted, and in cases approved of by the Committee for obtaining redress for Members, but the Association shall not pay expenses of repairs or alterations or any demurrage or other damages incurred by such Members.

- (E) Claims for loss or damage done by collision, occurring without the actual fault or privity of the Member, not covered by the Associations or policies referred to in Rule VII.
- (F) Claims for loss of or damage to the hull or materials of any steamship entered in this Division, or for expenses paid by a Member, consequent in either case on the capture or seizure of such steamship, which are not covered by the policies or Associations referred to in Rule VII, and occur without the actual fault or privity of the Member. No claim shall attach to this Division for loss, damages or expenses caused by the act of a belligerent if the Member, after hostilities have become imminent, has had time to insure against war risks.
- (G) The costs, charges and expenses incurred by a Member in prosecuting or defending any action or other proceeding, or otherwise in relation to the risks hereby indemnified against, if incurred pursuant to Rule VI.

As, however, the Rules of 1886 of the above Association is, to my regret, not available, it is not clear whether the risks proposed to be covered in Protection and Indemnity Divisions in the above circular of 1886 were approved as drafted at the general meeting and were incorporated in the Rules of 1886, but the contents of the above circular are quite similar to the Rules of 1897 of the above Association as quoted in (5) below, which are the oldest ones kept by the above Association.

Comparing the wording of "Class 3 –Protection– Ownership Risks" in the leaflet of 1881 as quoted in (2) above with that of "Protection Division (A)" in the above circular of 1886, I wonder whether (i) the hospital, medical or funeral expenses incurred in consequence of personal injury or loss of life, which seem to correspond to the provision of section 228 (1) of the Merchant Shipping Act, 1854, became to be covered by the circular of 1886 or (ii) not only damages for loss of life or personal injury but such hospital expenses, etc. also were already covered by the words "...against Liabilities arising out of...A. – Loss of life or personal injury caused by the protected Steamer..." in the leaflet of 1881 and, therefore, there was no substantial difference between the covers under the leaflet of 1881 and the circular of 1886.

Anyway, it seems that the expenses as mentioned below were not yet covered at that time.

- (a) expenses of subsistence of an injured crew until he was cured, or died, or was brought back to some port and expenses of his conveyance to such port as provided in section 228 (1) of the Merchant Shipping Act, 1854.
- (b) expenses incurred in respect of illness as provided in section 228 (2) of the above Act.
- (c) expenses incurred in respect of distressed seamen found abroad as provided in section 213 of the above Act.

(5) The following are extracts from the Rules of 1897 of the Britannia Steam Ship Insurance Association which are the oldest Rules kept by the above Association.

PROTECTION DIVISION.

The following Rules relate and apply exclusively to steamships entered in the Protection Division of this Class, viz:-

17.— The Members of this Division shall (subject to these Rules) protect each other in respect of each steamship entered therein against the following claims, losses, demands, damages and expenses:—

(a.) Loss of life, personal injury, etc.

The damages and hospital, funeral or medical expenses which a Member may become liable to pay and shall pay in respect of any such steamship in consequence of loss of life or personal injury caused to any person, and also expenses consequent upon illness (where such last-mentioned expenses exceed £10, at any one port), which a Member may become liable to pay and shall pay in respect of such steamship; and expenses for which a member may become liable for life salvage.

(b.) Loss or damage of cargo.

The damages which a Member may become liable to pay and shall pay in respect of loss of or damage to any goods or merchandise on board such steamship, in so far as such loss or damage has been caused by collision, stranding, or the contact of such steamship with some substance or thing other than water, or by the negligent, unskilful or improper navigation of such steamship; but no claim shall be allowed in respect of loss of or damage to goods or merchandise carried in any double bottom water ballast tank, or where the loss or damage has arisen from improper stowage or unseaworthiness, or for short delivery, or for loss of or injury to live animals, or for loss of or damage to frozen meat, etc., or for loss of or damage to refrigerators, condensers, oil tanks, or fittings for cattle or other special cargoes on board such steamship, or for the steamship herself, her tackle, apparel, furniture or stores, unless so far as frozen meat and similar cargoes are concerned, the Committee have approved in writing of the protective clauses in the contracts of carriage and the instructions given to those on board the steamship.

(c.) One-fourth of damage to other ships, etc.

The damages which a Member may become liable to pay and shall pay in respect of loss or damage caused by such steamship, to any other ship or boat, or to the freight thereof, or to any goods, merchandise or other things whatsoever on board such other ship or boat, to the extent of the one-fourth part of such loss or damage, and of the costs, charges, and expenses incidental thereto not recoverable from the ordinary Mutual Marine Insurance Associations or under policies at Lloyd's or with Marine Insurance Companies with the collision clause inserted or attached. But when both vessels are to blame, then, unless the liability of the owners of one or both of such vessels becomes limited by statute, claims under this clause shall be settled on the principle of cross liabilities, as if the owners of such vessel had been compelled to pay to the owners of the other of such vessels, such one half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the assured in consequence of such collision.

(d.) General Average not recoverable from cargo owners.

Cargo's proportion of general average or special charges when not recoverable from the owners of cargo on board such steamship in consequence of the negligent, unskilful or improper navigation of such steamship; but a deduction shall be made from claims consequent on the steamship running short of fuel of double the value (at the last coaling port) of the coals saved.

(e.) Damage to harbours, docks, etc.

The damages which a Member may become liable to pay and shall pay in respect of damage done or caused by such steamship, or by any person employed about the same, to any harbour, dock, pier, quay, or works connected therewith, or to any jetty, buoy, erection, submarine or other cable, or other fixed or moveable things whatsoever, whether caused by negligence or otherwise, except as provided for in clause (c).

(f.) Removal of wreck.

The costs, charges or expenses which a Member may become liable to pay and shall pay or incur in or about or incidental to raising or removing the wreck of such steamship, less the value (if any) of the wreck itself and of the stores and materials saved; provided always that

such costs, charges, and expenses are not recoverable under any ordinary policy of marine insurance on such steamship.

(g.) Costs.

The costs, charges, and expenses incurred by a Member in prosecuting or defending any action or other proceeding or otherwise in relation to the risks hereby protected against, if incurred with the consent of the Managers in writing, or if properly incurred before it was practicable to obtain such consent, or in cases where Underwriters or Marine Insurance Associations are interested as far as their consent has been obtained.

Limit of liability £30 per ton.

Provided always that the aggregate amount payable by this Division in respect of any number of claims arising from any one occurrence shall not exceed the sum of thirty pounds per ton on the number of tons entered in this Division on the steamship in respect of which such claims are made. But when the liability of the owner of such steamship is limited by Statute, this Division shall not be liable beyond the amount of such limitation of liability.

18.—Negligence clause.

Whenever any claim is made against this Division in consequence of a Member having contracted for the carriage of goods without proper clauses exempting him from liability for the negligence of his servants in the navigation of the steamship, such claim shall be subject to a deduction of ten per cent. unless the Member shall show to the satisfaction of the Committee, either that in the circumstances he was without actual fault or privity in the matter, or that in the particular trade it was impossible to obtain such clauses.

19.—Charter parties and bills of lading.

It shall be lawful for the Committee to prescribe by Bye-law, from time to time, that either generally or for any particular port or ports, or for any particular trade or trades, the contracts of carriage, whether by Charter-Party, Bill of lading or otherwise, to be entered into by the Members shall be in a particular form, or shall contain or shall not contain any particular clauses or provisions. From and after the coming into operation of any such Bye-law every Member shall conform thereto in all contracts and engagements entered into by him, or on his behalf, to which the Bye-law applies; and in the event of any contract or engagement being entered into by or on behalf of any Member in contravention of such Bye-law, such Member shall thereby be and become disentitled to protection or indemnity in respect of any loss, damage, claim, or liability incurred during the currency of such contract or engagement. So long as any Member is unprotected or unindemnified in consequence of the operation of this rule, he shall still remain equally liable for contribution to the claims of the other Members, but there shall be no liability on the part of the Association for his claims. The Committee shall, however, be at liberty, but shall not be bound, to admit the claims of such Member to the extent of the unpaid contributions for which he is liable, to the intent that such claims may be set off against such contributions.

The Committee or the Association in General Meeting may from time to time alter, amend, or repeal any Bye-law made by the Committee under this rule.

Written notice shall forthwith be sent by post by the Managers to the Members of every Bye-law and of every alteration in, or amendment or repeal of, a Bye-law under this rule; and no such Bye-law, alteration, amendment, or repeal shall come into operation until a date to be fixed by the Committee and stated in the notice not earlier than ten days after the date of the notice. No Bye-law, nor any alteration in, or amendment or repeal of, a Bye-law under this rule shall be retrospective so as to affect the rights of the Members in respect of any antecedent loss, damage, claim or liability.

20.—Entered vessel deemed fully insured by policy.

No Member shall be entitled to receive protection in respect of any claim which is capable of being insured against by the usual form of Lloyd's policy with the collision or running-down

clause inserted or attached; or in respect of which there exists a right on the part of the Member to recover under any policy which may have been effected; and in estimating and adjusting the claim of any Member he shall be deemed to have effected the said usual form of policy on the entered steamship to the full value thereof and to be entitled to recover under the same; provided that, if the amount recoverable by virtue of any policy which may have been effected by any Member shall exceed the amount which would have been recoverable by virtue of the said usual form of policy, he shall not be entitled to receive protection in respect of the amount recoverable under the policy so effected as aforesaid.

21.—Lying up returns.

Whenever any steamship shall be laid up in any safe port for the space of fifteen consecutive days or more, the commencement and termination thereof being promptly notified in writing to the Managers, the member shall receive a return in respect thereof at the rate of seven shillings and sixpence per month for each hundred tons entered in this Division.

INDEMNITY DIVISION.

The following Rules relate and apply exclusively to steamships entered in the Indemnity Division of this Class, viz.:—

22.—The Members of this Division shall (subject to these Rules) indemnify each other in respect of each steamship entered therein against the following claims, losses, demands, damages and expenses:—

(a.) Loss or damage of cargo.

Claims for loss or damage caused to goods or merchandise shipped or to be shipped on board of or landed from each entered steamship, and from other acts or occurrences relating to such goods or merchandise which have happened without the actual fault or privity of the Member, also from claims arising without his actual fault or privity for damages, costs, charges and expenses in excess of the liabilities covered by the Associations or policies referred to in Rule 31. But no claim shall be allowed for loss of or injury to live animals, or for loss of or damage to frozen meat, etc., or loss of or damage to refrigerators, condensers, oil tanks, or fittings for cattle or other special cargoes, unless, so far as frozen meat and similar cargoes are concerned, the Committee have approved in writing of the protective clauses in the contracts of carriage and the instructions given to those on board the the steamship, or for loss or damage consequent upon entered steamships not being fitted as required by the regulations of the Rouen Chamber of Commerce for the carriage of grain to that Port, or in consequence of the omission from the Charter Parties and Bills of Lading of the Rouen Lighterage clause recommended by the Committee.

(b.) Other cargo claims.

In the event of any claim being made for loss or damage of cargo which shall not be covered by the foregoing section of this rule, the Committee shall have power to deal with such claim, if such loss or damage shall have been sustained without the actual fault or privity of the Member, in such manner as they may consider equitable, having due regard to the general spirit and intention of the Members in forming this Division.

(c.) General average not recoverable from cargo owners.

Cargo's proportion of general average or special charges (where claims in respect thereof arise without the actual fault or privity of the Member) which is not recoverable from the owners of cargo, and is not covered by the Associations or policies referred to in Rule 31; but a deduction shall be made from claims consequent on the vessel running short of fuel of double the value (at the last coaling port) of the coals saved.

(d.) Board of Trade proceedings.

In cases of interference by the Board of Trade or their surveyors, which the Committee shall consider unwarranted or as requiring investigation, the Association shall protect the Members by undertaking their defence, and by conducting proceedings for testing how far

such interference is warranted, and (in cases approved of by the Committee) for obtaining redress for the Members, but the Association shall not pay the expenses of repairs or alterations, or any demurrage or other damages incurred by such Members.

(e.) Collision.

Claims for loss or damage incurred by such steamship, occurring without the actual fault or privity of the Member, not covered by the Associations or policies referred to in Rule 31.

(f.) War risks.

Claims for loss or damage to the hull or materials of any steamship entered in this Division, or for expenses paid by a Member, consequent in either case on the capture or seizure of such steamship, which are not covered by the Associations or policies referred to in Rule 31, and occur without the actual fault or privity of the Member. No claim shall attach to this Division for loss, damages or expenses caused by the act of a belligerent or an insurgent if the Member, after hostilities have become imminent, has had time to insure against war risks.

(g.) Costs.

The costs, charges and expenses incurred by a Member in prosecuting or defending any action or other proceeding or otherwise in relation to the risks hereby indemnified against, if incurred pursuant to Rule 28.

23.—Charter parties and Bills of Lading

It shall be lawful for the Committee to prescribe by Bye-law, from time to time, that either generally or for any particular port or ports, or for any particular trade or trades, the contracts of carriage, whether by Charter-Party, Bill of Lading, or otherwise, to be entered into by the Members shall be in a particular form, or shall contain or shall not contain any particular clauses or provisions. From and after the coming into operation of any such Bye-law every Member shall conform thereto in all contracts and engagements entered into by him, or on his behalf, to which the Bye-law applies; and in the event of any contract or engagement being entered into by or on behalf of any Member in contravention of such Bye-law, such Member shall thereby be and become disentitled to protection or indemnity in respect of any loss, damage, claim, or liability incurred during the currency of such contract or engagement. So long as any Member is unprotected or unindemnified in consequence of the operation of this rule, he shall still remain equally liable for contribution to the claims of the other Members, but there shall be no liability on the part of the Association for his claims. The Committee shall, however, be at liberty, but shall not be bound, to admit the claims of such Member to the extent of the unpaid contributions for which he is liable, to the intent that such claims may be set off against such contributions.

The Committee or the Association in General Meeting may from time to time alter, amend, or repeal any Bye-law made by the committee under this rule.

Written notice shall forthwith be sent by post by the Managers to the Members of every Bye-law and of every alteration in, or amendment or repeal of, a Bye-law under this rule; and no such Bye-law, alteration, amendment or repeal shall come into operation until a date to be fixed by the Committee and stated in the notice not earlier than ten days after the notice. No Bye-law, nor any alteration in, or amendment or repeal of, a Bye-law under this rule shall be retrospective so as to affect the rights of the Members in respect of any antecedent loss, damage, claim or liability.

24.—Negligence risk.

No Member shall have any claim against this Division for or in respect of any *deduction* to which he may have been subjected in consequence of his having contracted for the carriage of goods without proper clauses exempting him from liability for the negligence of his servants in the navigation of the steamship.

25.—Deductions.

The Committee shall have power to make a deduction of not exceeding twenty per cent. from any claim upon this Division if they shall be of opinion that the owner of the steamship in

respect of which the claim is made has not taken such steps to protect his interests as he would have done if he had not been indemnified by this Division. The Committee shall also make a deduction of ten per cent. from all claims arising at Genoa or Savona, which, in their opinion, have been caused by the employment of the nominees of the Charterers or Consignees as brokers, agents or stevedores under a stipulation in the Charter-Party or contract of carriage.

26.—A Member shall not be entitled to be indemnified by this Division in any case where he has received information of any unauthorised act by which any claims for loss or damage to cargo may be made against him, against which he could have protected himself by insurance after the receipt of such information.

27.—Minimum amount of cargo claims

This Division shall not be liable in respect of any one cargo for any claim amounting (exclusive of legal charges and expenses) in the case of steamships of 800 tons net register and upwards to less than forty pounds, and in the case of steamships under 800 tons to less than one shilling per net register ton. The Committee before settling and passing any claim shall deduct therefrom the sum of forty pounds in the case of steamships of 800 tons net register and upwards, and a sum equal to one shilling per ton in the case of steamships under 800 tons net register, and the sum so deducted shall be borne by the Member. The Committee may, in cases approved by them, protect any Member by undertaking his defence against, or instituting proceedings for, any amount not recoverable from this Division as above mentioned, and testing in due course of law the liability of such Member, and this Division shall bear the expenses attendant upon any such legal proceedings, but such Member shall himself pay the damages; provided always that the Committee shall have power, in cases where (in their opinion) by the efforts of the Member or the Club a substantial reduction has been made in any claim originally exceeding the above-mentioned limits of forty pounds or one shilling per ton respectively, to allow the reduced amount or any part thereof as they may deem equitable notwithstanding the said limits.

28.—Consent necessary before legal proceedings.

Before any legal proceedings shall be taken or defended in the United Kingdom by any Member in respect of any matter covered by his membership of this Division, the consent of the Managers in writing shall be obtained, otherwise this Division will not be liable for any part of the expenses of such proceedings. Should proceedings be commenced against a Member abroad, such consent shall, if practicable, be obtained, but in any event, the Member against whom such proceedings are commenced abroad shall give prompt notice thereof to the Managers. All such legal proceedings shall be conducted by instructions from the Managers, unless otherwise directed by the Committee.

29.—Shipping Federation, etc.

The Committee may join in the promotion of, and affiliate this Division to, the Shipping Federation or any other Association which may be formed for the purpose of protecting, indemnifying and/or defending Shipowners against unreasonable demands or actions of Trades' Unions or Combinations, or the consequences of such demands or actions, upon such terms as they may deem desirable, and to nominate representatives upon the Committee of the said Shipping Federation or Association. For the purpose of carrying this Rule into effect, the Committee shall have power to contribute from time to time to the funds of the said Shipping Federation or Association such sums as they may think fit, and to make calls upon the Members of this Division, as provided by Rule 7, for the purpose of raising such sums as may be required for the said contributions.

30.—Lying up returns

Whenever any steamship shall be laid up in any safe port for the space of thirty consecutive days or more, the commencement and termination thereof being promptly notified in writing

to the Managers, the Member shall receive a return in respect thereof at the rate of ten pence per month for each hundred tons entered in this Division.

31.—Entered vessel deemed fully insured by policy, etc.

Every steamship entered in this Division, and its freight, shall be deemed to be already fully insured by the ordinary Mutual Marine Insurance Associations, or by policies at Lloyd's or Marine Insurance Companies with the Collision clause inserted or attached; and shall also be deemed to be fully entered in the Protection Division of this Class, or in some other Protection Association for her gross tonnage to the extent of not less than £15 per ton, and also in Small Damage, Detention, Thirds, Freight, Demurrage and Defence Associations. And this Division shall not indemnify the Members against the risks usually covered by such Associations or policies, unless the claim exceeds their limit of liability and then only for the excess of such limit.

The risks covered in Protection and Indemnity Divisions under the above Rules of 1897 were, in substance, almost same as those under the circular of 1886 as quoted in (4) above and the whole construction of the above Rules was, in substance, almost same as that of subsequent Rules. It seems, therefore, that the Rules of P. & I. Clubs were standardized before or after the standardization of various hull insurance clauses by the Institute Time Clauses—Hulls (1888).

As seen in Rule 17 (a) of the above Rules of 1897, expenses consequent upon illness exceeding £10 at any one port became to be also covered by the above Association.

From now, I wish to trace the subsequent changes of Rule 17 (a) of the Rules of the above Association by referring to its Rules, notices of holding of annual general meetings and circulars sent to its Members.

(6) Rule 17 (clause a) proposed in the notice dated January 20, 1900 of holding of the annual general meeting on January 31, 1900

Rule 17 (clause a) Protection Division—The first paragraph to be expunged and the following substituted:

“The damages and hospital, medical, funeral or other expenses incurred in consequence of loss of life of, personal injury to, or illness of any person, also statutory expenses in respect of distressed seamen, and expenses for life salvage, which a member may become liable to pay and shall pay in respect of any such steamship; but no claim in respect of natural sickness shall be admitted which is under £10 at any one port, the Member bearing the first £10 of any such claim.”

There are three differences as mentioned below between the above rule 17(a) and that of the Rules of 1897 as mentioned in (5) above.

(A) By adding the words “or other expenses” after the words “hospital, medical, funeral”, expenses of subsistence of an injured crew until he was cured, or died, or was brought back to some port and expense of his conveyance to such port as provided in section 207 (1) of the Merchant Shipping Act, 1894 which succeeded to section 228 (1) of the Merchant Shipping Act, 1854 became to be covered.

(B) Statutory expenses in respect of distressed seamen as provided in section 193 of the Merchant Shipping Act, 1894 which succeeded to section 213 of the Merchant Shipping Act, 1854 became to be also covered.

(C) As regards expenses consequent on illness, the exclusion of such expenses under £10 at any one

port became to apply to natural sickness only. Rule 17(a) of the Rules of 1900 adopted at the annual general meeting held on January 31, 1900 as mentioned above provided as follows:

(a.) Loss of life, personal injury, funeral and medical expenses and life salvage.

The damages and hospital, medical, funeral or other expenses incurred in consequence of loss of life of, personal injury to, or illness of any person, also statutory expenses in respect of distressed seamen, and expenses for life salvage, which a Member may become liable to pay and shall pay in respect of any such steamship; but no claim in respect of natural sickness shall be admitted which is under £10 at any one port, the Member bearing the first £10 of any such claim.

Workmen's Compensation Act, etc.

Claims for loss of life or personal injury arising in relation to handling of the cargo of the entered steamer from the time of receipt alongside or on quay or wharf for shipment until final delivery ex quay or wharf or from alongside at the port of discharge, notwithstanding that such claims may arise under a contract of indemnity between the Member and his sub-contractor.

While the 1st paragraph of Rule 17(a) in the above Rules of 1900 was same as Rule 17 (a) proposed in the notice dated January 20, 1900 of holding of the annual general meeting as mentioned above, the 2nd paragraph of Rule 17 (a) was newly added as a result of the first Workmen's Compensation Act, 1897 having applied to workers of stevedoring contractors as explained in II (4) of my preceding treatise (Part II-1). In this connection, refer to the 2nd and 3rd paragraphs of page 8 of the A.S.G. Report of 1957 concerning the above Act and the Liverpool & London Club.

(7) The amendment to Rule 17(a) proposed in the notice dated January 25, 1902 of holding of the annual general meeting

Rule 17(clause a) Protection Division—To add the following new clause: "In cases of outbreak of plague or other contagious disorder upon the entered steamship, whereby extraordinary expenses to an amount exceeding £40 are incurred at any one port for disinfection of the steamship or persons on board her, or for quarantine expenses (not being the ordinary expenses of loading or discharging nor the wages and/or provisions of crew or passengers), the Member shall be indemnified against the excess of such expenses over the said sum of £40. In case of a steamship being chartered or (not being under contract) ordered to proceed to a port where it is known that she will be subjected to quarantine, the Member shall have no benefit under this clause."

The addition of the above new clause was most probably owing to the black plague which prevailed throughout the world since 1894.

(8) The amendment to Rule 17(a) proposed in the notice dated January 27, 1905 of holding of the annual general meeting.

Rule 17.— Clause (a) Protection Division: To insert after the word "steamship" in the 4th line, "also hospital, medical or funeral expenses, or expenses of sending home the Master of an entered steamship, in consequence of illness or injury, or the loss of such steamship (notwithstanding the absence of statutory obligation), where the Committee consider such

expenses ought not to be charged against the Master.”

Though the intention of the insertion of the above wording is not clear to me, I presume that as the words “hospital, medical or funeral expenses, or expense of sending home the Master of an entered steamship, in consequence of illness or injury” seem to be nothing but the repetition of such expenses already covered, the expenses newly added were only those for sending home the Master in consequence of the loss of the vessel for which the shipowner was, in principle, not liable, as section 193 of the Merchant Shipping Act, 1894 which succeeded to section 213 of the Merchant shipping Act, 1854 applied to distressed seamen and apprentices only. It seems that my above presumption may be supported by the fact that in the notice dated February 6, 1924 of holding of the annual general meeting referred to in (13) below, the repetition of the words “hospital, medical or funeral expenses” was omitted and only the wording “also the expenses of repatriating the Master in consequence of the loss of such steamship...” remained.

(9) The amendment to Rule 17(a) proposed in the notice dated January 27, 1906 of holding of the annual general meeting

Protection Division – Rule 17 Clause(a). – To insert after the words “statutory expenses in respect of distressed seamen” in the 3rd line, the words “except such as arise out of or ensue upon the termination of the agreement in accordance with the terms thereof, or by mutual consent, or by the sale of the steamship, or by other act of the owner, but wages shall not be considered as part of the said expenses.

The reason for the insertion of the above exception may be that in the case of the termination of the ship's articles due to any of the above four reasons, the shipowner could find a way to prevent a seaman from becoming the distressed seaman.

(10) The amendment to Rule 17(a) proposed in the notice dated January 26, 1907 of holding of the annual general meeting

Rule 17.–Clause (a). Protection Division. To insert after the word “Master” in the 16th line, “Where port charges are incurred solely for the purpose of landing an injured or sick seaman, and no bunkers or provisions are taken in, such port charges are allowed in full.”

However, the above wording proposed to be inserted in rule 17(a) for the benefit of shipowners is not found in Rule 17(a) of the rules of 1910 as quoted in (11) below, though the reason why it was not incorporated in the rules is not clear.

(11) Rule 17 (a) of the Rules of 1910

(a.) Loss of life, personal injury, medical and repatriation expenses, etc.

The damages and hospital, funeral or other expenses which a Member may become liable to pay and shall pay in respect of any such steamship in consequence of loss of life of, personal injury to or illness of any person, expenses for life salvage, and statutory expenses in respect of distressed seamen except such as arise out of, or ensue upon the termination of the agreement in accordance with the terms thereof, or by mutual consent, or by the sale of the

steamship, or by other act of the owner, but wages shall not be considered as part of the said expenses; also hospital, medical or funeral expenses, or expenses of sending home the Master of an entered steamship, in consequence of illness or injury, or the loss of such steamship (notwithstanding the absence of statutory obligation), where the Committee consider such expenses ought not to be charged against the Master. No claim in respect of natural sickness shall be admitted which is under £10 at any one port, the Member bearing the first £10 of any such claim.

Claims for loss of life or personal injury arising in relation to the handling of the cargo of the entered steamship from the time of receipt alongside or on quay or wharf for shipment until final delivery ex quay or wharf or from alongside at the port of discharge, notwithstanding that such claims may arise under a contract of indemnity between the Member and his sub-contractor.

In the above Rule 17(a), all of the amendments to Rule 17(a) proposed or made till then, except the proposals referred to in (7) and (10) above, were incorporated, but no reference to the Workmen's Compensation Act, 1906 is found in the above Rule 17(a), in spite of the application of the above Act to seamen by the provisions of section 7 of the Act.

As materials of this Club during 10 years after 1910 (mostly the period of the 1st world war) are not available, it is not possible to trace the changes of the Rules of this Club during the above period, but it is presumed that the Clubs playing an active part during the above period were War Clubs rather than P. & I. Clubs as during the civil war in Spain in 1936 to 1939 and the ensuing 2nd world war.

(12) Rule 17(a) of the Rules of 1920

(a.) Loss of life, personal injury, medical and repatriation expenses, etc.

The damages and hospital, medical, funeral or other expenses which a Member may become liable to pay and shall pay in respect of any such steamship in consequence of loss of life of, personal injury to or illness of any person, expenses for life salvage, and statutory expenses in respect of distressed seamen except such as arise out of, or ensue upon the termination of the agreement in accordance with the terms thereof, or by mutual consent, or by the sale of the steamship, or by other act of the owner, but wages shall not be considered as part of the said expenses; hospital, medical or funeral expenses, or expenses of sending home the Master of an entered steamship, in consequence of illness or injury, or the loss of such steamship (notwithstanding the absence of statutory obligation), where the Committee consider such expenses ought not to be charged against the Master; also port charges incurred solely through landing an injured or sick seaman and the net loss to owners in respect of bunker coals, stores and provisions, as the result of the deviation. No claim for hospital or medical expenses in respect of natural sickness shall be admitted which is under £10 at any one port, the Member bearing the first £10 of any such claim, but the Committee may in their sole discretion admit as one claim the combined claims arising at more than one port when sickness such as fever has been continuous during the voyage and has necessitated medical assistance at more than one port.

Claims for loss of life or personal injury arising in relation to the handling of the cargo of the entered steamship from the time of receipt alongside or on quay or wharf for shipment until final delivery ex quay or wharf or from alongside at the port of discharge, notwithstanding that such claims may arise under a contract of indemnity between the Member and his sub-contractor.

By the above Rule 17(a), not only port charges proposed in 1907 as mentioned in (10) above but

net loss in respect of bunker coals, etc. as the result of the deviation for landing an injured or sick seaman became to be covered, and the provision regarding the Committee's discretion in settling claims for natural sickness arising at more than one port was inserted, but the Maritime Conventions Act, 1911 did not affect the above Rules.

(13) Alteration of Rule 17(a) proposed in the notice dated February 6, 1924 of holding of the annual general meeting

Class 3. – Protection Division. – Rule 17(a). To alter the rule to read as follows:–

“The claims and hospital, medical, funeral or other expenses which a member may become liable to pay and shall pay in respect of any such steamship in consequence of loss of life of, personal injury to, or illness of any person (including compensation for loss of life of or personal injury to the Master or any Officer who may, by reason of his remuneration and the nature of his employment, be outside the provisions of the Workmen's Compensation Acts); also expenses for life salvage and statutory expenses in respect of distressed seamen, except such as arise out of, or ensue upon the termination of the agreement in accordance with the terms thereof, or by mutual consent or by the sale of the Steamship or by other act of the Owner, but wages shall not be considered as part of the said expenses: also the expenses of repatriating the Master in consequence of the loss of such steamship (notwithstanding the absence of statutory obligation), where the Committee consider such expenses ought not to be charged against the Master; also expenses (not being wages), which may be necessarily incurred in repatriating or deporting substitutes shipped abroad to replace members of the crew who die or are left behind in consequence of illness, injury, desertion or other cause, where in sole discretion of the Committee the steps taken which resulted in liability for such expenses could not reasonably be avoided; also port charges incurred solely through landing an injured or sick seaman and the net loss to Owners in respect of bunker coals, insurance, stores and provisions, as the result of the deviation; also claims for loss of life or personal injury arising in relation to the handling of the cargo of the entered Steamship from the time of receipt alongside or on quay or wharf for shipment until final delivery ex quay or wharf or from alongside at the port of discharge, notwithstanding that such claims may arise under a contract of indemnity between the Member and his sub-contractor. The Committee may in their sole discretion admit as one claim the combined claims for hospital or medical expenses in respect of natural sickness arising at more than one port when sickness such as fever has been continuous during the voyage and has necessitated medical assistance at more than one port.”

The words “The damages” at the beginning of Rule 17(a) which had been used for many years were substituted by the words “The claims”. Though the reason for such substitution is not clear, it may be that the words “The claims” would be suitable for including liability for compensation under the Workmen's Compensation Act, 1906.

The parenthesized words in the 4th to 6th lines of the above Rule seem to have been inserted in relation to sections 7 and 13 of the above Act as quoted below.

7. Application of Act to seamen

(1) This Act shall apply to masters, seamen and apprentices to the sea service... , provided that such persons are workmen within the meaning of this Act, ...

13. Definitions.

In this Act, unless the context otherwise requires,—

“Workman” does not include any person employed otherwise than by way of manual labour whose remuneration exceeds two hundred and fifty pounds a year, or a person whose

employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, or a member of a police force, or an out worker, or a member of the employer's family dwelling in his house, but, save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing;

The words "also expenses (not being wages) which may be necessarily incurred in repatriating or... be avoided; " in the 13th to 17th lines of the above Rule were also newly added.

I wonder why the provision regarding the Committee's discretion in settling claims for natural sickness arising at more than one port still remained in the above rule, in spite of the exception provision regarding a claim for natural sickness under £10 at any one port having been deleted in the above Rule.

(14) Amendment to Rule 17 (a) proposed in the notice dated February 3, 1926 of holding of the annual general meeting

Class 3. – Protection Division. – Rule 17(a). To erase the words "but wages shall not be considered as part of the said expenses" in the tenth line and substitute the words "but wages shall only be considered as part of the said expenses when payable during unemployment due to the wreck or loss of the Steamship."

The reason for the above proposal was apparently the passing of the Merchant Shipping (International Labour Conventions) Act, 1925, section 1 (1) of which provided as follows:

Amendment of section 158 of Merchant Shipping Act 1894

1–(1) Where by reason of the wreck or loss of a ship on which a seaman is employed his service terminates before the date contemplated in the agreement, he shall, notwithstanding anything in section one hundred and fifty-eight of the Merchant Shipping Act 1894, but subject to the provisions of this section, be entitled, in respect of each day on which he is in fact unemployed during a period of two months from the date of the termination of the service, to receive wages, at the rate to which he was entitled at that date.

(15) Amendment to Rule 17(a) proposed in the notice dated February 19, 1930 of holding of the annual general meeting

Class 3.—Protection Division. Rule 17.(a) To add after the word "incurred" in line 14, the following: "in sending abroad a substitute for any Master or Officer who shall have died or become incapacitated by illness or accident, or"

(16) Rule 17(a) of the Rules of 1930

(a.) Loss of life, personal injury, medical and repatriation expenses, etc.

The claims and hospital, medical, funeral or other expenses which a Member may become liable to pay and shall pay in respect of any such steamship in consequence of loss of life of, personal injury to, or illness of any person (including compensation for loss of life of or personal injury to the Master or any Officer who may, by reason of his remuneration and the nature of his employment, be outside the provisions of the Workmen's Compensation Acts);

also expenses for life salvage and statutory expenses in respect of distressed seamen, except such as arise out of, or ensue upon the termination of the agreement in accordance with the terms thereof, or by mutual consent or by the sale of the Steamship or by other act of the Owner, but wages shall only be considered as part of the said expenses, when payable during unemployment due to the wreck or loss of the Steamship, also the expenses of repatriating the Master in consequence of the loss of such steamship (notwithstanding the absence of statutory obligation), where the Committee consider such expenses ought not to be charged against the Master; also expenses (not being wages), which may be necessarily incurred in sending abroad a substitute for any Master or Officer who shall have died or become incapacitated by illness or accident, or in repatriating or deporting substitutes shipped abroad to replace members of the crew who die or are left behind in consequence of illness, injury, desertion or other cause, where in sole discretion of the Committee the steps taken which resulted in liability for such expenses could not reasonably be avoided; also port charges incurred solely through landing an injured or sick seaman and the net loss to Owners in respect of banker coals, insurance, stores and provisions, as the result of the deviation; also claims for loss of life or personal injury arising in relation to the handling of the cargo of the entered Steamship from the time of receipt alongside or on quay or wharf for shipment until final delivery ex quay or wharf or from alongside at the port of discharge, notwithstanding that such claims may arise under a contract of indemnity between the Member and his sub-contractor. The Committee may in their sole discretion admit as one claim the combined claims for hospital or medical expenses in respect of natural sickness arising at more than one port when sickness such as fever has been continuous during the voyage and has necessitated medical assistance at more than one port.

As seen in the above, all amendments to Rules 17(a) proposed in the notices of holding of annual general meetings during 1920's were incorporated in the above Rule.

(17) Amendment to Rule 17(a) proposed in the notice dated February 8, 1938 of holding of the annual general meeting

Class 3. Protection Division. Rule 17(a). To insert the words "securing, engaging," before the word "repatriating" in the sixteenth line.

In respect of amendment to rule 17(a), the above is the only proposal found in the notices of holding of annual general meetings during the period from 1931 to 1940.

It is not clear whether the above proposal was made in view of shortage of crew due to the civil war in Spain (July 1936 to March 1939) and the threat of outbreak of the 2nd world war, but reflecting such unstable world situation at that time, most of the amendments to the Rules proposed in the above notice dated February 8, 1938 were those concerning war risks.

(18) Rule 17(a) of the Rules of 1940

(a.) Loss of life, personal injury, medical and repatriation expenses, etc.

The claims and hospital, medical, funeral or other expenses which a Member may become liable to pay and shall pay in respect of any such steamship in consequence of loss of life of, personal injury to, or illness of any person (including compensation for loss of life of or personal injury to the Master or any Officer who may, by reason of his remuneration, and the nature of his employment, be outside the provisions of the Workmen's Compensation Acts); also expenses for life salvage and statutory expenses in respect of distressed seamen, except

such as arise out of, or ensue upon the termination of the agreement in accordance with the terms thereof, or by mutual consent or by the sale of the steamship or by other act of the Owner, but wages shall only be considered as part of the said expenses, when payable during unemployment due to the wreck or loss of the steamship; also the expenses of repatriating the Master in consequence of the loss of such steamship (notwithstanding the absence of statutory obligation), where the Committee consider such expenses ought not to be charged against the Master; also expenses (not being wages), which may be necessarily incurred in sending abroad a substitute for any Master or Officer who shall have died or become incapacitated by illness or accident, or in securing, engaging, repatriating or deporting substitutes shipped abroad to replace members of the crew who die or are left behind in consequence of illness, injury, desertion or other cause, where in the sole discretion of the Committee the steps taken which resulted in liability for such expenses could not reasonably be avoided; also port charges incurred solely through landing an injured or sick seaman and the net loss to Owners in respect of bunker coals, insurance, wages of crew, stores and provisions, as the result of the deviation; also claims for loss of life or personal injury arising in relation to the handling of the cargo of the entered steamship from the time of receipt alongside or on quay or wharf for shipment until final delivery ex quay or wharf or from alongside at the port of discharge, notwithstanding that such claims may arise under a contract of indemnity between the Member and his sub-contractor, provided that before entering into the contract the Member has secured the approval of the Managers. The Committee may in their sole discretion admit as one claim the combined claims for hospital or medical expenses in respect of natural sickness arising at more than one port when sickness such as fever has been continuous during the voyage and has necessitated medical assistance at more than one port.

The above Rule 17(a) was same as that of the Rules of 1930 as quoted in (16) above, except the insertion of the words as mentioned in (17) above.

(19) Amendments to Rule 17(a) proposed in the notice dated February 23, 1948 of holding of the annual general meeting

The following alterations in the Rules will be proposed for adoption:—

Class 3. Protection Division. Rule 17(a). To delete the words "(not being wages)" in the fourteenth line and to add the following after the word "avoided" in the nineteenth line:—
"but wages shall only be considered as part of the said expenses when payable whilst awaiting and during repatriation."

Class 3. Protection Division. Rule 17(a). To substitute the word "person" for the word "seaman" in the twentieth line.

The latter of the above amendments seems to have intended to cover port charges incurred solely through landing an injured or sick passenger also.

(20) Amendment to Rule 17(a) proposed in the notice dated March 31, 1949 of holding of the annual general meeting

The following additions to and alterations in the Rules of Class 3 will be proposed for adoption, with or without modification:—

To delete from rule 17(a) the words:—

"(including compensation for loss of life or personal injury to the Master or any officer who may by reason of his remuneration and the nature of his employment, be outside the provisions of the Workmen's Compensation Acts)."

As regards the above proposal, it may be mentioned that the National Insurance (Industrial Injuries) Act, 1946 passed to substitute for the Workmen's Compensation Acts, 1925 to 1945.

(21) Rule 17(a) of the Rules of 1950

(a) Loss of life, personal injury, medical and repatriation expenses, etc.

The claims and hospital, medical, funeral or other expenses which a Member may become liable to pay and shall pay in respect of any such steamship in consequence of loss of life of, personal injury to, or illness of any person; also expenses for life salvage and statutory expenses in respect of distressed seamen, except such as arise out of, or ensue upon the termination of the agreement in accordance with the terms thereof, or by mutual consent or by the sale of the steamship or by other act of the Owner, but wages shall only be considered as part of the said expenses when payable during unemployment due to the wreck or loss of the steamship; also the expenses of repatriating the Master in consequence of the loss of such steamship (notwithstanding the absence of statutory obligation), where the Committee consider such expenses ought not to be charged against the Master; also expenses which may be necessarily incurred in sending abroad a substitute for or in securing, engaging, repatriating or deporting a substitute engaged abroad to replace any Master, Officer or other member of the crew who shall have died or been left behind in consequence of illness, injury, desertion or other cause where in the sole discretion of the Committee liability for such expenses could not reasonably be avoided, provided always that there shall be no recovery when the expenses result from the Member's breach of a statutory or contractual obligation or of the terms and conditions of a Collective Agreement or from the termination of any agreement of service in accordance with the terms thereof or by mutual consent, and wages shall only be considered as part of the said expenses when payable to substitutes shipped abroad whilst awaiting and during repatriation; also port charges incurred solely through landing an injured or sick person and the net loss to Owners in respect of bunker coals, insurance, wages of crew, stores and provisions, as the result of the deviation; also claims for loss of life or personal injury arising in relation to the handling of the cargo of the entered steamship from the time of receipt alongside or on quay or wharf for shipment until final delivery ex quay or wharf or from alongside at the port of discharge, notwithstanding that such claims may arise under a contract of indemnity between the Member and his sub-contractor, provided that before entering into the contract the Member has secured the approval of the Managers. The Committee may in their sole discretion admit as one claim the combined claims for hospital or medical expenses in respect of natural sickness arising at more than one port when sickness such as fever has been continuous during the voyage and has necessitated medical assistance at more than one port.

Comparing the above Rule 17(a) with that of the rules of 1940 as quoted in (18) above, not only the amendments mentioned in (19) and (20) above but other amendments as mentioned below also were made in the above Rule 17(a).

- (a) Expenses for securing, engaging, repatriating or deporting a substitute engaged abroad not only to replace a member of the crew as provided in the Rules of 1940 but to replace any Master or Officer also became to be covered.
- (b) The words "provided always that there shall be no recovery when the expenses result from . . . or by mutual consent," were newly inserted in the sixteenth to nineteenth lines, and by this proviso, some restriction was put on the discretion of the Committee.

It is not clear when the proposal for the amendments mentioned in (a) to (b) above was made, but

it was most probably made in the notice of holding of the annual general meeting of 1950, though such notice is not available.

The shipowners' liabilities and expenses in respect of accident to crew, etc. which were covered under Rule 17(a) of the Rules of 1950 may be summarized as below.

- (a) liability for, and hospital, medical, funeral expenses etc. incurred in consequence of loss of life of, personal injury to or illness of a seaman of the entered vessel, etc.
- (b) expenses for life salvage
- (c) statutory expenses in respect of distressed seamen
- (d) compensation for unemployment of seamen due to the wreck or loss of the vessel
- (e) expenses of repatriating the Master in consequence of the loss of the vessel
- (f) expenses of sending abroad a substitute for, or of securing, engaging, repatriating or deporting a substitute engaged abroad to replace a seaman who died or was left behind in consequence of illness, injury, etc.
- (g) port charges incurred solely through landing an injured or sick person and net loss of bunker coals, etc. as the result of the deviation
- (h) liability for loss of life or personal injury arising in relation to the handling of the cargo of the entered vessel under a contract of indemnity between the Member of the club and his sub-contractor.

[Takadata Imaizumi, Professor of Insurance,
Yokohama National University]