

黃朝琴編

廣源輪案

旅美華僑廣源輪案出版委員會發行



由國家圖書館數位化、典藏

黃朝琴編

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旅美華僑廣源輪案出版委員會發行

6-83
目錄

國民政府軍事委員會委員長蔣中正題字

國民政府外交部部長王寵惠題字

國民政府交通部部長張嘉璈題字

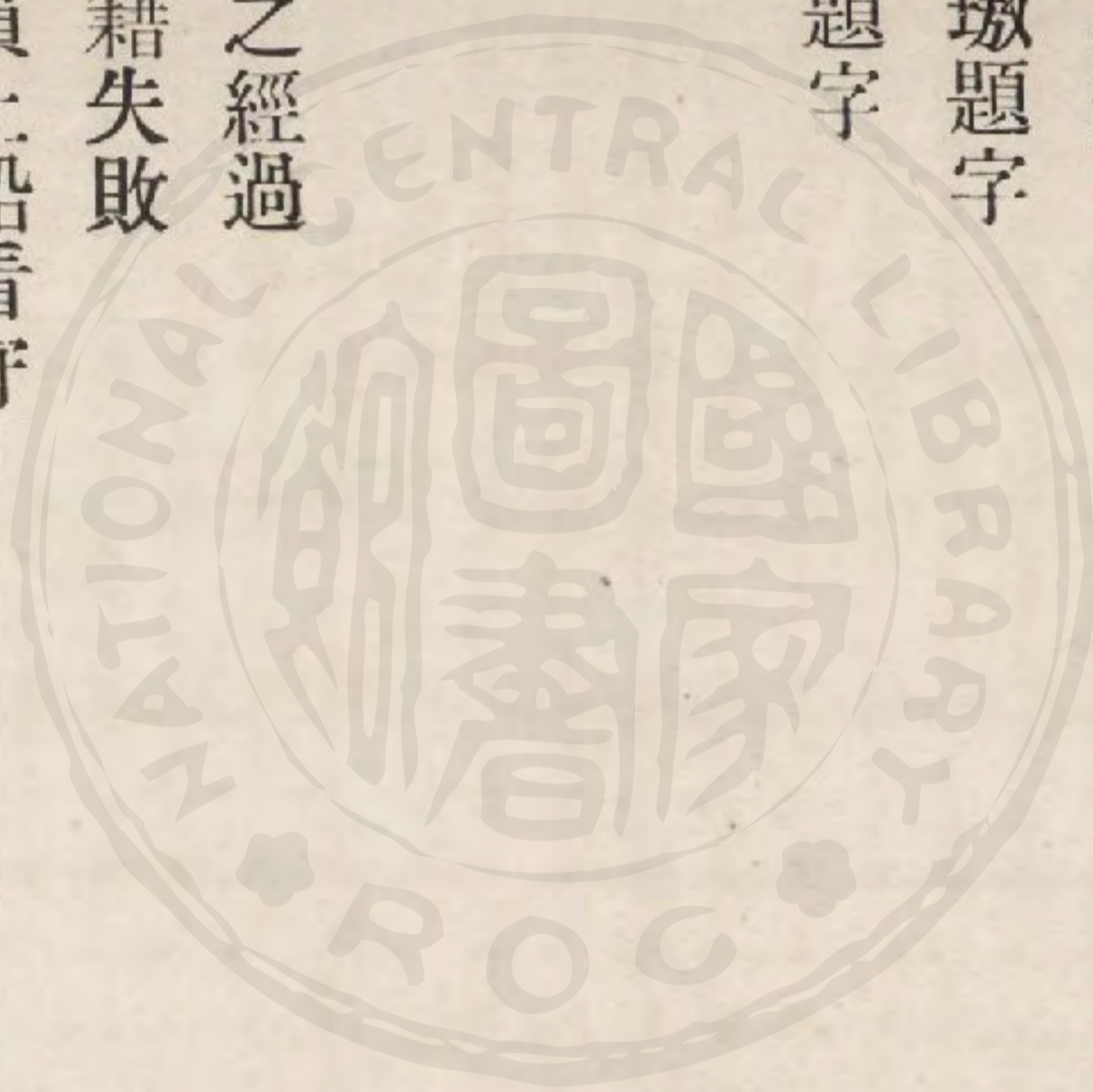
前駐美國全權大使王正廷題字

駐美國全權大使胡適序

編者序言

廣源輪案概要

- 一、領館扣留廣源輪之經過
- 二、日方運動變更船籍失敗
- 三、領館保釋華籍海員上船看守
- 四、日籍船長偷開該輪未遂
- 五、日方捏造承買該輪之交涉
- 六、中日船員發生格鬥



第一頁

國家圖書館



002406636

七、日方計迫華員赴日本未果

八、蔣委員長下令將輪征爲國有

日籍船長控告華籍海員毆打案

第二一〇頁

一、案情述畧

二、節譯華方第一次辯論書

三、節譯日方第一次辯論書

四、照譯華方第二次辯論書

五、節譯日方第二次辯論書

六、照譯金山地方法院判詞

輪船案

一、案情述畧

二、日方訴狀

三、黃總領事異議書

四、華籍海員抗辯書

第三三三頁

五、華方引證書

六、華方補充引證書

七、本案結果

廢鐵案

一、案情述畧

二、日方控辭

三、黃總領事意見書

四、華方參加訴訟申請書

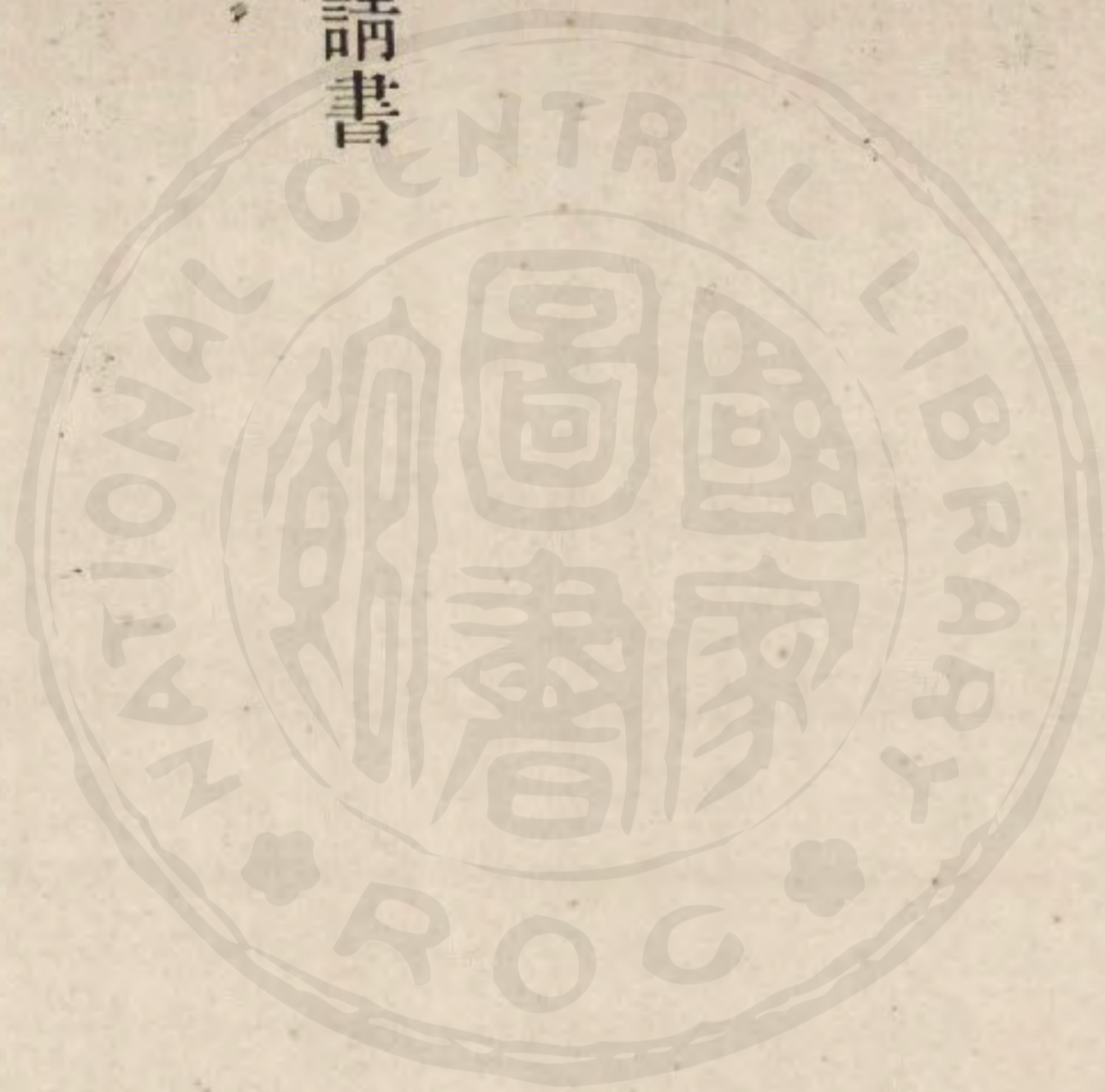
五、日方辯論書

六、華方辯論書

七、王大使申請參與訴訟書

八、王大使補充參加訴訟書

九、美國聯邦法院宣諭



十、日方案情要領書

十一、華方案情要領書

十二、日方辯駁華方案情要領書

十三、兩造律師向中國軍事委員會交通部及經濟部取錄證詞協議書

十四、軍事委員會證詞

十五、經濟部證詞

十六、交通部證詞

十七、美國聯邦地方法院判決書

美國華僑對於本案之貢獻

一、華人蝦寮工會及金山華僑

二、領館嘉獎直接協助本案人員

三、各地華僑資送海員回國

四、本書出版之經過

公

理

戰

勝

蔣中正



理

直氣

壯

王之寵惠

公

理

新

華

張嘉璈題



正

義

我

獲

王

正

廷



廣源輪案序

胡適

廣源輪船案，其實是三件案子：一為廣源船上海員毆打案，一為船的主權與國籍案，一為船上廣鐵扣押案。三案的勝訴都歸我國，這是中國外交史上的一件很有意義的大勝利。

我們讀了這三案的詳細記錄，第一不能不讚歎黃總領事朝琴的敏捷勤勞，隨機應變，堅持到底，兩年如一日，這是勝利的總指揮。

第二，我們不能不感謝我方的法律顧問 Hughton

K. McKennitt, Newell J. Hooley, Jack M. Howard, Archie
M. Stevenson 和國際法大師 Professor James W. Garner
這幾位先生用他們的知識學問，幫助我國做到
這三案的勝利。第三，我們不能不發歎美洲各
地的僑胞的慷慨合作。如金山蝦寮工會的監視
輪船行動，如各地僑胞的踴躍捐款擔負廣源輪
海員的盤費和本案的訴訟費等，都于本案的
最後勝利有很大的貢獻。

廣源輪案雖然結束了，但這三案引起的國
際法上許多有趣味的問題，是永遠有供學者引

證據用的價值的。例如第三案（廢鐵案）裡，我
方並不否認船底廢鐵屬於原告，祇主張原告無
權上船取貨。這是很有趣的辯訴。對方的律
師也不錯不承認這理論可以比莎士比亞的名
著「維尼新商人」裡女辯護士 Portia 提出的只
准割肉，不准出血的妙例。祇此一端，這案
子就可以不朽的了。

中華民國廿八年九月十二日

編者序言

余忝領金山。辦理廣源輪案。爲時二年。其間秉承國民政府軍事委員會。外交部。交通部。經濟部。及駐美大使館之意旨。得華僑之協助。仗領館同仁之努力。與強敵相周旋。卒獲勝利。現在日方控我刑民三案。均遭敗訴。美國法律界因我方引證國際條約及法律理論。多出奇制勝。足資檢討。而旅美華僑。又以本案爲我方抗日勝利史。未便湮沒。商請將本案文稿。編印成書。以公同好。余是其言。爰將案中法庭辯辭。問答紀錄。及一切有關文件。在不失外交秘密範圍之內。編輯付梓。事未及半。忽奉調印度加爾各答。倉卒從事。未盡細校。謬誤之處。幸讀者諒之。又本書中文部份。所譯法律術語。是否與國內司法界用語相同。亦未詳究。尤希讀者參閱原文。加以指正。今本案初告段落。其他船上廢鐵。及該輪處置問題。諸待解決。幸後任馮總領事執正。長才卓越。定有一番展佈也。

民國二十八年七月二十日黃朝琴誌於大西洋舟中

廣源輪案概要

一、領館扣留廣源輪之經過

民國二十六年八月間。美國金山通用輪船公司 General Steamship Corporation 代表烟台

永源輪船公司到本館聲稱。永源公司近向美國蘇登克里相森輪船公司購得輪船一艘。

原名愛娜克里相森 Edna Christensen。約有二千餘噸。經改名爲「廣源」輪。請求發給中國

船籍證書。以便開駛回華。並提出交通部天津航政局駐烟台辦事處發給各項文件爲證。

1

本館爲慎重起見。特先向各方調查真相。查悉該輪載有廢鐵二千餘噸。擬運赴日本大阪製造軍火。該輪船長機輪長及大副均爲日本人。已經登輪。二副以下及船員二十人則爲華人。尙在美國移民局看守所候保。以待上岸接船。當時中日戰事已開。本館以該輪運鐵赴日。顯係通敵行爲。所謂永源輪船公司。如非日人假借名義。卽係漢奸所設無疑。當將案情於九月一日電呈外交部。請示應否發給船籍證書。或將船扣留。旋奉電復。值此非常時期。不應發給等因。當經通知該公司代理人遵照。

二、日方運動變更船籍失敗

美國船舶買賣。按律須經美國航政局批准。方始有效。廣源輪由美商轉售華商一事。已經美國航政局批准。惟該輪因本館拒發中國船籍證書。無從開行。永源公司代理人乃密請美國航政局批准將該輪轉售英商。藉以脫離本館之管轄。俾運鐵赴日。經本館探悉。呈請駐美大使館向美國政府交涉阻止。並電呈外交部。去後。旋奉電復。畧謂永源公司電懇轉令駐金山總領事館簽發船籍證書。證明該輪確為該公司所購。俾將中國船籍確定。該項船籍證書。以後仍着該館代為保管。就近制止開行。本館乃于十一月二十四日予以發給。仍將該證書保管。不交與日籍船長。並與金山海關商妥。如無該項證書。該關不得發給出港證。該輪中國船籍因得確定。自是以後。其行動即完全在本館統制之下。

三、領館保釋華籍海員上船看守

民國二十六年十月二十七日。美國金山移民局來函譯稱。廣輪源海員一批。共計二十人。分乘秩父丸及龍田丸於八月二十六日九月三日先後到達金山。當經本局諭令每人交保金美金五百元。方准上岸接船。因永源公司代理人不能交保。經判令仍乘原船出境等語。經卽于十九日電呈外交部請示。嗣奉三十日電。飭「勿予遣回」。三十日乃致電移民局。表示願代海員上控。並於二日往晤該局局長。據云如代理人能繳保金或尙有考慮餘地。本館經卽函飭該代理人設法具保。嗣接電話。仍以公司無款滙來爲辭。不能照辦。本館乃於三日據情呈請大使館。以外交方式。向美國工部交涉。旋奉電復。工部已允予考慮。惟將來須由使館負責遣回。詢問本館能否作同樣之保證。本館以船員行動碍難監視。九日電請外交部仍飭永源公司滙款具保。十一日奉復。因大連有滙兌管理。數多難滙。該公司擬將款交與美國領事等因。正辦理間。准移民局十三日函稱。工部復判令船員離境。乃於十六日遵照外交部電。呈請大使館再行交涉。同時由本館函知移民局。二十日奉大使館電復。工部不准將保金交與大連美國領事。惟大使館如能担保或可照

辦。詢問本館能否負責。本館爲慎重起見。派員赴移民局看守所令船員連名具結。不得逃匿。本館卽於二十四日呈復大使館。表示願負責。請向美工部担保釋放船員。同時向代理人取得負擔船員伙食及零用之書面保證。三十日復奉大使館電開。工部允將船員釋放。惟須於六十日內出境。且須由大使負付回國川資之責。囑本館向大使館負責。本館以奉令飭令該船停泊金山。俟國內時局平靖始能放行。且該輪裝鐵尙未卸出。六十日限期未免太短。除向公司代理人取得書面保證照付回國川資外。三十日據情呈復大使館。願負支付川資責任。并請先向工部取得將來可以延期之諒解。旋奉十二月一日大使館復稱。工部已電令移民局釋出海員。惟二日移民局來函。僅謂遣送海員出境一事已奉命延期六十日。本館以我方所要求者非僅延期。而係請將海員釋放俾能上船看守。復於四日呈請大使館交涉。七日始准移民局釋放海員之通知。嗣復奉七日大使館及八日代理人函同前情。經卽於八日上午十時半派員會同代理人到碼頭接導海員一行。轉乘小輪前赴廣源輪。

四、日籍船長偷開該輪未遂

十二月二十九日該輪代理人突致函本館。誣指本館不給船籍證書。致使船主貨主受莫大損失。本館須負賠償責任。本館以該輪船籍證書。經於十一月二十四日簽發。並奉外交部令將證書代爲保管。經函知關係方面各在案。有無損失。實與本館無關。經面答該代理人。同時船長河野吉助因該輪被我監視。行動不得自由。屢次商請本館予以放行。均遭拒絕。難免無私開該輪逃往日本情事。查本埠華人蝦寮工會。會員六十餘人。備有汽船在金山灣內從事漁業。當經本館密令該工會輪流派船監視廣源輪之行動。一月二十三日蝦寮華僑。果見該輪升火待發。立即飛報本館。經派員上船查究。船長河野謂奉船主命令。開入船塢修理。並無別故。本館以其形跡可疑。頗有圖逃未遂之嫌。乃正式商請美國緝私兵艦在旁監視。以防萬一。越日該輪開動。美艦立即追緝。登船詰問。日人以奸計暴露。乃詭言欲測羅盤。並非圖逃。本館據報。乃向該船長河野正式警告。以後不得擅自開動。同時密令在船華員注意日人行動。一面再請美國兵艦。華人蝦寮工會加緊監視。而外間一聞該輪屢欲圖私逃。按國際公法。輪船出口。未有海關執照。一經離開領海。即視爲海賊。人人得加以捕獲。無不躍躍欲試。無形中代我監視。

五、日方捏造承買該輪之交涉

日方運動變更該輪船籍。爲本館設法打銷。計不得逞。迭次圖逃。在本館嚴密防範之下。無法逃脫。被扣留于金山港內。已越半載。廿七年二月十九日金山海關忽來電話。謂廣源輪已經華方轉賣與日本神戶某公司。並經美國駐神戶領事證明。現日船長持日本駐金山總領事館所發之日本船籍證書。前來本關。請求放行。貴館究知其事否。當答以該輪船籍證書尙存本館。絕無轉賣之事。本館未奉政府命令。絕不承認此項轉賣事實。且前此本館與貴海關曾有約言。如有人擬請開船。須先徵得本館同意。始可放行。請查照辦理等語。同時並以電報正式通知。海關謂此事當呈美京請示。本館當電呈外交部及駐美大使館。請示辦法。二月二十二日海關奉美商部航政司復電。稱「廣源輪案現正徵集事實。請轉知中國領事。如非用法律手續阻止。當于二月二十五日正午放行。」本館以時間窘迫。一面與本館法律顧問籌商法律問題。一面再電外交部及駐美大使館請示。同時再與當地華人蝦寮工會籌商安置華籍海員辦法。以便萬一法律手續失敗。可將全體華籍海員接出登岸。使該輪不能成行。二月二十四日奉大使館電開。美政府行政機關

無法干涉。唯有法律手續可以阻止海關放行。本館奉電當先請海關電美商部航政司展期若干日。以便應付。並再電大使館向美當局作同樣之要求。當晚奉大使館電開。已向美當局要求展期。着即雇用律師以便起訴。翌晨大使館來長途電話。謂美方已准展期至三月一日。旋海關亦以電話通知展期之事。本館當即派副領事孫碧奇往晤海關副稅務司。詳詢美京來電內容。始由該副稅務司口頭探悉。美航政司展期至三月一日。目的在使海關得以遵照章程在未放行以前。確定該輪國籍。同時該副稅務司當面表示該輪非有中國船籍證書。決不放行。三月二日黃總領事又親往會晤該副稅務司。當蒙詳告示美京電意。復知海關有權斟酌辦理。如是則確定船籍之責。既在海關方面。而海關又始終承認該輪確係我國國籍。本館似無即行提出訴訟之必要。除將我國海商法第二章第一節第十條規定。船舶所有權之讓與。在國外非經領事蓋印證明。不生効力之義。詳爲說明外。暫時靜待日方主動。然後相機應付。黃總領事當將此意用長途電話。與大使館應參事尙德詳細討論。應參事亦認爲我方應暫持被動地位。不必先行上訴。

本館正以日方捏造承買廣源輪之手續。美國政府無權過問。向美方阻止放行該輪。

交涉甫竣。即接所謂大阪華僑永源公司李興生五月九日呈稱：

「竊查本公司于民國廿六年七月初旬。經神戶日神商會介紹金山美商鎮你雷輪船公司。購買美輪葉獨那苦里的松號一隻。言明金山交船。美金五萬五千元。先交押金二成。計美金一萬一千元。當由中國銀行電滙交付。復由煙台美領介紹大連美國領事館由美領閱覽合同。代拍電該政府宣誓。一切俱已完全。吾中華船員已由大連美領發給去美通行證。不幸忽然發生中日衝突。華北人民所受難苦尺幅難宣。對於華員去美費用及餘欠船價毫無辦法。在連在煙均不得隨便向外滙款。迫不得已由日神商會代設一法。按日法令若船能來日境內航行。向外滙款可由日商人借款滙外。待船駛回日境內航行。可漸返還。如此敝公司在危急範圍內。只可聽從由該介紹大阪商人小谷船行借到美金四萬四千元。及美政府押款美金二千五百元。並船員去美費用日金一萬二千元。此案方始告一段落。不料船員到美又發生難題。該日人小谷恐有不安之虞。乃將船轉賣與巴那馬人攬裝廢鐵等事。敝接交通部嚴令禁裝。敝當與小谷嚴重交涉。並求美領幫忙。始將此難解消。

敝公司通告該貨主卸貨。本輪停泊于金山待命而動。而貨主方面再三要求開往馬尼拉卸貨等語。去年末又要求幫金山碼頭卸。敝公司毫不得自由。只得忍氣吞聲。緩至本年二月不幸煙市又變。而小谷輪船部聲明本廣源輪因借款船不來大連。吾方權利喪失。該由日外務局辦妥。歸該所有。敝公司聞聽之下。遂于五月二日來神戶與吾華僑有力者協商對策。又向神戶美領求援。始得日方允許。延期十天。另立一覺書爲證。如此無奈只可暫緩一步。由神戶中華會館梁君繕寫。敝今晚去東京謁吾華代理大使。請求辦法。茲附呈借款合同及覺書各一紙。伏乞查核。以備參考」等情。

計附

借款合同（華文）

茲爲中日事變發生以來。民國政府對於民間滙兌管理法。發令對外禁止滙款。如此左記輪船已買妥成約。若不能清付船價。無法可想特懇求小谷空之助。照左記條項永源輪船公司借入左記之款

(一)輪船廣源(原名 Edna Christensen)

總噸數二二四四噸 建造年西歷一九一二年

(二)一、金壹萬式仟圓也

右輪船船員去美費及船員零用

昭和十二年八月十日照上記借入

一、金十二萬八千元也(美金四萬四千弗)

右輪船買價殘額全數款項

一、金八千六百三十元正(美金二千五百弗)

右輪船對美國政府保證金

昭和十二年八月二十日照上記借入

合計金十四萬八千六百三十元正

但對債務人借入金之利息由借入當日起算每壹百元每天利息三分五厘計合
每月二十五日請付債權人利息

前記借款以別張賣渡證担保交與小谷木之助保存

(三)右借款請付條件如左

右輪船待到大連港後三天以內于大連市交式萬元殘額由下月起收入水脚內每月二十五日付壹萬五千元按數清理完善

若本船水脚收入不足或有其他情由亦得照前記款額履行清付

但萬一昭和十三年一月二十五日爲期本輪不能到大連港不問其理由及原因如何債權人對債務人不用何等通告可行使前項担保權債務人決無異議

右記合同爲證本書作成式只各持壹只分有爲憑

昭和十二年八月二十五日于大阪市

大阪市天王寺區勝山通一丁目百七十七番地、壹

債權人 小 谷 木 之 助 (印)

芝罘朝陽街式拾

債務人 永源輪船公司

李 興 生

印

(華文) 協商

據昭和十二年八月二十五日借款合同債務金十四萬八千六百元正關於清理至今日尙未履行義務按前記合同第三條分付清理之利益業已喪失于債權人宜直執行其權利然因此番債務人之懇請債權人特容緩至五月十八日延期執行權利爲此承諾之事但第一到期債務人其債務不能履行時債權人不用何等通告

右借款合同將担保物件輪船廣源號(原美國輪船 Edna Christensen)處分于債務人方面不得有何等異議之約

將本書二份作成各持一只分有爲憑

昭和十三年五月四日於大阪

債務者 大阪市天王寺區勝山通一丁目百七十一番地、一

小谷奎之助

債務者 芝罘朝陽街式拾

永源輪船公司

李興生

立會人

右事在當職面前各當事者陳述真正證明事實

昭和十三年五月五日

神戸市神戸區明石町三十一番地

辨護士 吉田精三

就上開李興生來呈及附件觀之。廣源輪顯係華人所買。至由所謂日人小谷墊付各款是真是假。以我國船舶法言之無關重要。是故日人小谷根據此種證件狀請金山美國聯邦法院判令交船。經本館引證各種法律提出異議。日人自知必敗乃自動撤回該案也。

六、中日船員發生格鬥

廣源輪華籍海員二十餘人。由本館担保登岸上船看守後迭奉本館密令。除船上例行工作。一概不聽日人船長指揮。故船長令將船名改爲德行丸。升懸日本國旗。均被海員拒絕。於是中日船員惡感日深。迨至四月二日正午十二時許。日人船主由埠上返抵船中。責罵華人海員梁振先。馬永田。劉越等三人。何以不照常工作。梁等答稱有病。已經數十天。要求船主偕同登岸就醫。船主迫得與之登岸。但直往日人旅館。延日本醫生代爲調治。梁等均不願日醫調理。要求往中國醫院或往中國總領事館。由是彼此爭執。該船主竟鳴警將梁等押解回船。並擬立即返回岸上。華人海員等因梁等醫病問題尙未解決。當向船長質問。不料日人船長及大副等竟手持木棒亂毆。華人海員乃羣起反抗。於是打作一團。爲美國海防巡艦人員瞥見。乃登船制止。幸未有人受傷。日人船主等詭稱在船上恐生命上發生危險。隨即離船而去。黃總領事聞訊。乃立即偕同警差二名。前往廣源船上調查一切。隨將病者梁振先等二名。送入金山東華醫院贈醫部調理。

七、日方計迫華員赴日本未果

本館自中日船員發生格鬪後。以雙方感情既經破裂。深恐日人居心不良。設計陷害華人。乃商准本埠警察廳雇警一名上船保護。四月十一日下午。日本總領事館人員果帶同廣源船長日人河野等三人及便衣美國人二名上船。向華人海員聲明該海員等業已由船長開除。不得再住船上。擬將彼等運往移民局看守所候船回國。當經駐船保護之警官答謂非有中國總領事館之命令。不得令船員離船。於是詭謀又告失敗。事後經本館調查悉該輪船長日人河野。自與華海員衝突後。知華員不能再留。且暫准留美之期又屆。經電准神戶總代理處。決將華員二十名於四月八日由古烈治總統輪全體遣往日本。本館以船長雖有權支配華員。惟際此中日戰爭。華員前往日本。非被迫服役卽反抗遇害。同時華員方面亦懇求本館設法營救。本館卽向永源公司駐美代理人通用輪船公司提出下列要求：

- 一、欲遣散華員須先付清各員全部薪水。由去年中國開行算起。至今年到達中國爲止。
- 二、華員歸國不得經過日本。須直達香港。該代理人以合同訂明接船回國後付薪。且日

本限制滙銀出國。卽有錢亦做不到爲詞。竟向大來輪船公司購票。欲藉移民局之力。將華員送上古烈治總統號輪船。本館乃電呈王大使請與美國中央政府交涉。再准華員延期留此。同時又向代理人表示華員誓不欲經過日本。如必相強則將來發生意外。應由代理人負責。代理人知華方強硬。乃於二十七日。邀日本總領事。移民局長。法律顧問等。在該公司開會。並電請黃總領事出席。以期和平解決。黃總領事以該輪爲中國船。揚中國旗。用中國海員。就法理上言。根本與日本總領事無涉。拒不出席。正爭論間。忽奉王大使快電。謂美國工部已接受黃總領事担保。准華員再留四十天。仍由黃總領事負責一切開支。及遣送回國川資。於是本館加請警官。住船監視。保護華員。以免中國船員被日方驅逐。

八、蔣委員長下令將輪征爲國有

廣源輪自廿六年八月間。被本館扣留後。日方初則運動改換英籍。及偷開出港未果。繼則捏造過戶手續。又爲我方向美國當局交涉制止。計不得逞。本館以輪係商船性質。且在日籍船長統制之下。難免節外生枝。又以我國政府已頒佈軍事征用令。際此抗戰時期。自可依法征用。作一根本解決辦法。經與本館法律顧問。及國際法專家美國伊利諾省立大學嘉納 James W. Garner 教授協商妥當。於二月一日擬具沒收該輪之建議。呈請駐美王大使正廷核轉政府。採納施行。旋奉二月十一日王大使復稱。該館所擬征用廣源輪之建議。已轉呈政府矣。六日外交部電飭再將征用建議之詳細辦法呈部。正辦理間。日籍船長以華籍海員違抗命令。且毆打船長及日籍長官。向金山地方法院請發拘票。依法治罪。同時日方復由所謂船主小谷。以新船主之資格。狀請美國聯邦法院。判令華員將船交其執管。黃總領事經即代表中華民國。向法庭表示異議。延聘律師爲海員抗辯。並即日據情電呈外交部速下令沒收或征用。即日奉到外交部電復。以准交通部復稱。該館建議。由政府征用一節。原則上可表贊同。惟征用令下後該館能否代爲執行。

撤換日籍船長。事實上有無困難。似應電飭該館核議具復。再行核辦。囑審慎核議卽復。當經電復執行征用及撤換日籍船長均有把握。日方現正應用種種方法。期取得船貨。運日製造軍械。征用卽所以抗戰。日內如能下令征用。則各種問題。迎刃而解。廿五日橫濱正金銀行。果向同一法院控請扣押裝在廣源輪之廢鐵二千餘噸。總領事館以征用令日內不下。恐生意外。再電外交部催發征用令。去後。廿七日奉外交部電。文曰。「電悉。廣源輪案奉軍事委員會本月二十六日代電畧開。准卽依法征用。仰速轉電駐金山總領事館。迅與執行。至征用後如何處置。並着該館負責妥籌辦理爲要。外交部。」黃總領事奉令後。卽刻趕辦接管手續。下令將船長河野大副磯谷。機輪長大森。二日人免職。並委派二副趙子明爲中華民國國有輪船廣源號船長。當派副領事孫碧奇下船傳令授職。并將征用命令張貼船艙。全體海員奉命之餘。鼓掌歡呼中華民國萬歲。一面黃總領事將征用令照會海關移民局。并親赴合衆國承發吏處面交照會。聲明該輪已經中華民國征用。現係中國國有輪船。以後美國法庭無權干涉。聞駐美王大使亦同時奉令照會美國外交部。轉行司法部。商部。財部。及各關係方面知照。

廣源輪自經本館奉令征爲國有之後。前此對於日方種種糾紛。均得迎刃以解。因該輪既屬中國國有。已取得公船之地位。由國際公法言之。該輪卽中國領土之延長在外國港口時。地方政府無權管轄。日方在金山地方法院及美國聯邦法院控告我方刑民三案。我方每訴皆勝。競辯必捷。輪船既歸我政府所有。而船上廢鐵二千一百噸雖經法院判爲日本橫濱正金銀行之物業。但輪身在本館管轄之下。日方不能提貨。歷次狀請法院下令強制移船卸貨。均被拒絕。本案外人譽爲「舊金山中日爭戰」中國勝利。良有以也。

日籍船長控告華籍海員毆打案

原告

廣源輪船長河野 大副大森 機輪長磯谷

被告

廣源輪全體華籍海員

參與訴訟

駐金山總領事黃朝琴

受理法庭

金山地方法院

法官

Thomas F. Prendergast

原告律師

Guy C. Calden; Clarence E. Todd

被告律師

Hugh K. McKevitt; Newell J. Hooley

一、案情述畧

民國二十七年二月二日。廣源輪華籍船員因被虐待。與日籍船長發生衝突以後。日

籍船長河野。大副大森。機輪長磯谷。即赴金山地方法院。第九庭。以刑事控告華籍海員。指其無故逞兇。傷害身體。請法庭簽發拘票拘拿華員。第一次該庭法官拒發拘票。第二次法官先傳日船長河野訊問經過情形。河野不能指明被告人之姓名。法官又拒受理。

河野又轉向第十一號庭投訴。該庭法官召集兩造律師及中日領事館人員在其休息室作理論上之檢討。競辯多時。事後法官乃請雙方提出書面辯論書。辯論終結。庭判事關外籍輪船海員糾紛。當地法庭未便受理。

二、節譯華方第一次辯論書

Points and Authorities Showing that the Municipal Court Has Not Jurisdiction to Issue Warrants

21
查一八六八年中美通商章程善後條約續增條款第三條訂明：「大清國大皇帝。可於大美國通商各口岸。任便派領事官前往駐紮。美國接待。與英國俄國所派之領事官。

按照公法條約所定之規。一體優待。」

一八三二年美俄條約第八條規定。「兩國可互派領事。前往駐紮各通商口岸。領事之待遇辦法。應與最惠國之領事相平等。領事應有權審判或調解其本國船隻上船長與船員之糾紛。此項糾紛事件。除危及地方治安者外。地方法庭不得干涉……」

英美條約對於此種規定與美俄條約相同。

以上各約。所規定領事審判或調解其本國船隻上之糾紛一節。其內容不僅限於工

資問題。船上所發生一切之犯罪案件。統應歸領事管轄。此點不特載在國際公法之名著。即美國及各國法庭之判例。亦有明確之規定。上述各種舉例。顯然證實金山地方法院。無權簽發拘票拘捕在廣源輪船上之中國海員。

海勒克所著之國際法曰「……國際慣例。爲便利管理及保障各方權利義務起見。各國對其在外船隻。多視爲本國領土之延長。船隻進入港口之後。當地政府可上船檢驗。如欲捕緝兇犯。則須將其管轄權確定之後。方可執行。故船上所發生之事件。如無碍於當地之安甯。或不涉及於船外之人。或發生於公海航行之時者。地方政府均不得干涉。以上三種案件。須由船籍國法庭處理之。此種理論。已成爲國際之慣例。法國法令且有明文規定。謂法國船隻在外國口岸時。船員與船員間在船上如有案件發生。法國領事應阻止當地政府之干涉。

（海勒克引證事例各件從畧）

惠登所著之國際法曰「……世界各國地位均等。國際間禮尙往還。於必要時須於國家之統治權畧與退讓。此種辦法。習尙相沿。已成慣例……如他國之船隻開到本國港口。應

受船籍國法律之支配。國際法學者海勒克氏言之甚詳。簡而言之。在公海航行時所發生之事件。及入港後船員與船員間所生之事件。均不歸當地政府處理。但如此項事件與當地之治安有關。或涉及當地人民之生命財產者。當地政府自應干涉。唯無論如何。當地政府有權上船查驗。以調查事件之真相……」

惠登又曰「……亞栢於一八六三年搜輯各種法規章程。國際條約。著成美國領事法規一書。內稱美國船隻在外國港口時。船上之工資解僱載貨以及契約關係刑民事案。僅限於船上船員及貨物者。統由美國領事管理之。但如涉及地方治安及原船以外他人之利益者。則當地政府可以干涉……」

此項原則。早經國際法學者所公認。美國及各國法庭爰爲判例。亦數見不鮮。此項案件之最著名者。爲外登赫司案。此案畧情係有一比國輪船停泊於美國紐者色港口。船員一名被另一船員謀殺。紐者色法院受理此案。比國領事出而干涉。謂地方法庭無權受理。蓋美比條約明文規定兩國船隻內部問題統由其本國領事管理之。惟案情重大。涉及地方治安。或涉及船外人之權利時。則當地法庭可以受理。

該案上訴至美國大理院。經該大理院判決。畧謂……

「……各國爲促進貿易。敦睦邦交計。對於他國在港內船隻多予優遇。船上糾紛任憑船長處置。此爲一般之通例。如船上發生重大事件。其結果足資擾亂地方治安。或影響岸上人之利權者。則當地政府自應受理其事。此種原則乃係國際公法所規定。國際條約所訂明者也。」

（以下舉判例多件從畧）

總而言之。此案係屬船員糾紛。並未擾及地方治安。鈞庭不應蔑視中華民國領事。拒其執行調解本案之職權。

三、節譯日方第一次辯論書

Points and Authorities for the Complaining Witnesses

（一）此案應由金山法庭受理 此案係中國籍輪船主要職員日人三名。投請鈞庭簽

發傳單。拘捕兇犯之刑事案件。查該輪係停泊於金山之港內。華籍海員在船上無故逞兇。傷害原告身體。華員行爲等於叛變。中國領事爲華籍海員申辯。原告並不反對。但中國領事之律師主張鈞院不應簽發傳票一節。原告方面認其無判例或法律爲根據。表示

異議。查此案既發生於金山境內。原告身受傷害。前來投訴。鈞院自應受理。鈞院有維持金山治安之責。照加省刑律規定。凡在舟車發生事件。應由舟車所在地之法院受理之。似此吾人應重申前請。鈞庭立即簽發拘票。

(二) 根據條約中國領事並無裁判權 華方辯稱。中國領事根據中美條約可以審判中國船隻內之案件。實則中美條約並無此項規定。僅謂可比照英俄條約賦與「優例」及「豁免權利」。而依照美國對英對俄所訂條約。英俄領事除優遇外。並賦有「權力」。當時各國與中國所訂條約。均係不平等性質。可知中國領事之地位不能與他國相比擬。華方詳論領事之職權。要知領事之職權。不能一般而論。亦不能因其職位而發生。總須有條約為根據方始有效也

(三) 「優例」與「權力」之分別 「優例」「豁免權利」及「權力」大有分別。自屬顯而易見。國際法專家穆爾氏著國際法檢討一書。第五冊第五章論領事之「優例」「豁免權利」。第五冊第七章論領事之「權力」及「職務」。其所以分章討論者。正因其性質完全不同。不得混為一談也。夫裁判法律案件。乃係一種「權力」。不能謂之「優例」。卑拉

克司東曾謂封建時代地主有斷訟之權利。但今日之美國乃係法律昌明之國家。司法權必須有憲法法規或條約爲根據。方始可行。關於領事之優例。士棣華所著美國外交領事制度一書論之甚詳。但其中所有「優例」及各人豁免利益。均限於領事個人本身。絕未謂領事有任何權力也。

(四)華方所舉法例理由不足 華方所舉一八六八年中美條約。謂中國領事應與俄國領事享受同等權利。殊不知根據俄美條約。俄國領事賦有「權力」。而中國領事並無「權力」。此点前段已經論及。應歸當地法庭管轄。假使鈞院欲曲解中美條約。賦中國領事以「權力」。則此次事件案情之重大。早已擾亂地方治安。蓋全體華人船員毆打全體日人船員。際此中日交戰之際。兩國人民積怨甚深。此事大有發生命案之可能。華方引證國際法中外登赫司一案。正足以證明本案應歸地方法院管理之。其餘所舉各點。大意亦同。(下畧)

結論 本案事關刑律。應請鈞院簽發傳單。緝犯歸案。

原告律師對於本案所提出之辯詞。僅重申前次非正式開審時所主張之議論。並未
能舉出事例。以證鈞院有權受理本案。反之。中國總領事備列各種法例。斷然主張鈞院
不應而實無權受理本案。

日籍海員之律師仍堅持其見解。謂一八五八年中美條約所載「優例」一語。並非指
中國領事賦有「權力」。此種議論。不值一駁。日方對於一九〇三年中美條約並不提及。
查該約第二款訂明

「現因中國可派領事官員駐割美國各地方。其所享「分位職權」並「優例及豁免利益」
均與別國駐美領事官員一律。是以美國可按本國利益情形之所宜。酌派領事官員
前往駐割中國。已開或日後開爲外國人民居住及通商各地方。此等領事官遇有事
故。應以平行之禮。互敬之道。隨事酌情。或會晤或行文。可直與該領事官員職守所
及之地方官相商辦理。凡華官遇此等官員。均須以合宜之禮相待。至所享「分位職
權」及「優例豁免」之事。並裁判管轄本國人之權。應與現在或日後中國施諸最優待
之國相等官員者無異。」

日方律師完全誤解本案之主要點。渠謂中國不能在美設立法庭。此節本律師等不必爭辯。中國領事不必有是項法庭。中國總領事所爭者。係其有權處理在外國港內之本國輪船上所發生之任何糾紛及犯罪行爲——（如其糾紛僅及輪船及船員。而不擾及該港口之治安者）

一八五八年及一九〇三年之中美條約。予中國領事以賦與其他各國領事同樣之權利「優例」及「分位職權」。查凡一國能在他國領土之內設立法庭。大多有條約之規定。少數國家。現仍享有是項權利。至於一般通例。則各國領事對於其本國船隻在外國港口發生糾紛事件時。有管轄之權。

一八五八年及一九〇三年中美條約予中國領事以是項權利。而是項權利乃係根據國際公法通例及文明國家間禮讓原則所由來也。

本律師向鈞院所陳各節。足資證明對方理論之不當。職是之故。其他舉例。恕不重述。謹請鈞院拒絕簽發拘票。捕逮中國海員。

五、節譯日方第一次辯論書 Reply of Complaining Witnesses to New Matter in the
Brief for Defendant

華方辯辭之主要點。在中美條約兩國有互派領事之權。實則細究中美條約之文義。中國領事僅賦有「分位職權」與「優例」及「豁免利益」。並未賦有「權力」。而美國駐華領事則除「分位職權」「優例」及「豁免利益」以外。尚可依照最惠國條約。享受統治其本國人民之權。由此觀之。當時美國當局與中國締結條約。其主旨有二。一、爲賦與美國駐華領事以領事裁判權。二、同時不以同等權利賦與中國駐美領事。中國領事不能根據任何條約。以主張其權力。查此案係刑事犯。發生於鈞院管轄範圍以內。應請鈞院依法簽發傳票。緝兇歸案。

六、照譯金山地方法院判詞

查中國國籍輪船廣源號。停泊於金山港內。該輪日籍職員。請本庭發給拘票。拘拿華籍船員十人。控以毆打之罪一案。原告人根據加省刑法。謂事關刑律。應由本庭發給拘票。依法懲治。被告方面。則謂本庭無管轄之權。因該輪既係中國船隻。海員糾紛。應由中國總領事單獨處理之。

美國憲法規定。美國與其他各國所訂條約。爲美國最高法典之一部份。各省憲法與地方法律。另有規定時。均爲無效。因之加省刑法。如與中美條約衝突時。則應根據中美條約辦理。

據原告方面辯稱。根據中美條約。中國總領事並無「權力」以管轄此案。中國總領事既無「權力」。則地方法庭。應出票拘捕。依法治罪。關於此點。經兩造各具意見。旁徵博引。在法學上至饒興趣。唯爭紛之焦點。可歸納於中美條約中「權力」、「分位職權」、「優例」、「豁免利益」諸名辭之意義。

一八六八年。美國與大清帝國所訂條約。訂定中國駐美領事所享之「優例」及「豁免利益」。應與英國及俄國駐美領事一體待遇。據原告方面稱。美國與英俄所訂條約。領事應有「權力」。中美條約則無「權力」隻字。可見中國領事無權管轄美國港內華籍船上之海員。

國際公法學者穆爾氏曰。「外國船隻在美國港內停泊時。如船上發生事件。影響境內治安者。地方法庭。應有管轄之權。如非影響境內治安者。則不在其管轄範圍之內。再

則屬於船隻內部事件。或在公海上發生事件。地方法庭。均不能干涉。美國各級法庭。卽有海事管轄權者。多不受理外籍船舶上船主船員之訴訟事件。其所以拒絕受理之理由。多係根據各國之慣例。與世界公認國際公法之原則」。(穆爾氏國際公法研究第二集第九二頁)此種原則。行之既久。現已爲通商各國所公認。無論何國。均不敢將此慣例打破。蓋國際往還。藉此爲禮讓及修好之南針也。照此原則。各國船隻在公海上。應由船籍國管理。在外國海港時亦然。赫力克著國際公法。(第一七二頁)謂外國船隻在港時。爲管轄船上人員之權利義務計。船隻本身。應視爲該國國土之一部份。船上所發生事件。如不涉及船外之人或與地方治安無關者。均不在地方法庭管轄之內。反而言之。如船上發生命案。則與地方治安有關。法庭不能不予以干涉。查本案發生地點。係在停泊金山港內之中國船上。據供日籍職員。與華籍海員。發生格鬥。但并未使用槍砲及其他武器。可知事屬平常。打架小故。與地方治安。可謂毫無關係。

雖然。原告謂一八六八年中美條約。未經規定中國領事有「權力」。可資管轄。因之地方法庭。應予干涉。但此項在外國船上發生之糾紛。條約既無明文規定。顯與本庭無

涉。「權力」一語。究屬何解。國際公法學者論之甚詳。其意蓋指駐美領事。在其本國國土以外行使職權。此種職權。包括取錄口供。簽證文件。設立領事法庭。管理僑民遺產之類是也。

一八六八年美國國務卿哈密而頓菲士曰。一八六八年中美條約之主旨。係承認北京清庭統治中國人民之權。並辦理該國人民對於歐西各國社會上商業上政治上種種國際關係。一九〇三年中美續訂通商航行條約。規定中國可派領事官員。駐劄美國各地方。其所享「分位職權」、「優例」及「豁免權利」。均與各最惠國領事官相同。「分位職權」一語。據韋伯司特大字典解釋。謂係屬於個人本份以內的固有的特質的意義。以此解釋。則管轄中國船上之中國海員。豈非中國總領事份內的固有的特質的職權乎。

美國大理院及巡迴法院。前有判例多件。判決海員國籍。隨船舶本身國籍而轉移。中國船上之日本人。在法律亦應視為中國人。

總而言之。此案本庭似無權干涉。狀請簽發拘票一節。應予拒絕。

法官參馬士 哀夫 勃郎的 格士

輪船案

The Case of the Ownership and Possession of the S. S. Kwang Yuan

原告 日人小谷 河野 大森 磯谷

被告 廣源輪全體華員及廣源輪本身

申請異議 駐金山總領事黃朝琴

受理法院 美國聯邦地方法院北加省分庭

法官 Michael J. Roche

原告律師 Chalmers G. Grahams

被告律師 Hugh K. McKeivitt; Jack M. Howard; Archie M. Stevenson.

一、案情畧述 二月三日中日船員在廣源輪互毆以後。日船長河野大車磯谷大副大森三人即相率離船。欲以武力驅逐華籍船員。未果。旋用所謂日籍船主小谷及河野磯谷大森四人名義向美國聯邦法院控告廣源輪華籍海員趙子明等二十人及廣源輪本身。雙管齊下。民刑並進。務須達到取得船貨之目的。查日方控辭要點。謂華籍海員毆打船

長。行同叛變。事後又將輪船非法佔據。至使小谷不能管業。擬請法院派員勒令全體華籍海員離船。以維物權。我方自接到法庭通知書後。即以中華民國駐金山總領事黃朝琴名義。向法庭提出異議書。其要點第一廣源輪係中國國籍。美國法庭無權受理。第二日人小谷自稱船舶所有人。係毫無根據。小谷所稱廣源輪係由彼向中國永源公司購到一層。因未經中國主管機關證實。與中國船舶法不符。不能成立。競辯結果。小谷氏知案必敗。自動將原案撤銷。

二、日方訴狀（節譯） Libel for Possession

（一）該輪係於一九三七年七月三十日。經美國船政委員會之許可。由前業主本埠蘇登克里相森公司賣與中國煙台永源公司。改名爲廣源輪。裝載廢鐵三千噸。卽向中國總領事。聲請發給船籍證書。遭其拒絕。因無此項證書。致使海關不許開行。

（二）未已。所有由中國運來之華員亦到。照例被移民局扣留。經中國總領事担保。然後上船看守。

（三）嗣後中國駐金山總領事。發給該輪中國船籍證書。惟將該證書故意扣押。

抗不交給日船長收執。以致無從開行。

(四)中國煙台永源輪船公司。則於一九三八年二月一日。將該輪轉售與大阪日人小谷氏。一切權利義務。應由小谷氏承頂。

(五)日人小谷承購該輪以後。中國總領事仍不允交出船籍證書。

(六)中國海員上船後。即不服從日籍船長命令。阻撓其所有權。

(七)四月三日。中國海員叛變。毆打日籍船長大副大車。致受重傷。經美國巡

艦軍官彈壓。始得息事。日人爲顧全生命起見。只得逃生。

(八)四月四日。日人爲保障船主利益計。曾回輪看守。但五日又離船他去。因華海員將危及其生命也。

(九)現在該船仍呈叛亂之狀。而船業完全在華員盤據之中。

(十)日人前曾備資擬將華員遣送回華。唯華員拒不回國。

(十一)日船長等代表日方船主。請求法院將華員驅逐離船。以便物歸原主。

三、黃總領事異議書 *Objection to the Jurisdiction*

中華民國駐金山總領事黃朝琴。爲自稱廣源輪新船主小谷狀請貴院判令華籍員海將船交出。以便管業一案。根據下開各條理由。反對貴院受理此案。再本總領事向貴院提出此項異議。純係職守所在。及爲保護華籍海員之利益。並非投訴貴院。合併聲明。

(一)原告人狀稱有權執管廣源輪。但並未能引證中華民國法律對於准許回復占有該輪之規定。更不能引證中國之任何法律。准許此項行爲之存在。

(二)原告小谷。不能引證是項交易已經中國政府之批准。

(三)原告小谷及其他原告。不能立證有權接管該輪。

(四)原告狀稱中華民國駐金山總領事始終拒絕發給中國船籍證書及阻止該輪開行各節。須知本總領事係奉中華民國令駐本埠。並爲中國大使之代表。本總領事依法不受貴院管轄。更不能被迫發給中國船籍證書。或開船執照。此種案件統須根據中國之法律。由其主管人員辦理之。

(五)詳閱原告狀詞。此案案情係屬海員之糾紛。按照中國法律。美國法律及中美條約。此項案件。應屬中華民國駐金山總領事管轄範圍。被告華籍海員。業經呈請本

總領事解決是項爭議。是則貴院無權受理此案。應請將案撤銷。

中華民國二十七年四月十一日

四、華籍海員抗辯書（從畧） Exceptions to Libel

五、華方引證書（節譯）

Points and Authorities in support of Exceptions to Libel by Respondents and by C. C. Huang,

Consul General of the Republic of China.

37

原告狀詞內自承廣源輪係中國國籍。懸有中國國旗一節。查廣源輪全體船員。無論其是日人抑係華人。應隨船籍而決定其國籍。故該輪全體船員應視為中華民國國民。美國判例。對於此点。業有明文宣判。足資引證。

一八六八年六月十八日美國與中國所訂條約第三條。規定大清帝國大皇帝。可於大美國通商各口岸。任便派領事前往駐紮。美國依照接待英國俄國所派之領事官。按照公法條約之所規定。一體優待。

一八三二年美俄條約第八條規定。美俄兩國。得任便派領駐紮對方國家之通商口

岸。享受最惠國條款之待遇。惟如領事從事商業。應一如常人。受駐在國法律之管轄。領事應有權審判或調解其本國商船船長與船員之糾紛問題。除其糾紛有害及地方之治安。或領事請代執行外。地方法庭不得干涉此種案件。惟領事之宣判或調解。不能剝奪關係人回其本國後訴諸司法機關之權利。上述第八條業經歸併在中美條約。

美國合眾國憲法第六條。規定美國與外國締訂之條約。應視爲美國最高法典。各省法官應遵守之。

是故。貴院對於本案。無權管轄。應請將案撤銷。

美國合眾國法庭。對於無條約明文之規定者。法庭對於外國輪船。得任意受理管轄之。而法庭對於船長與船員之案件。非有各該國領事之同意。應拒絕受理。中國總領事不但反對貴院辦理此案。且請貴院拒絕受理。

原告小谷自稱廣源輪船主。狀請物歸原主。但未能證明其交易手續。係根據中國法律。然則其提出之事實。不足認爲行爲原因之一種。廣源輪既係中國輪船。應受中國法律支配。原告既不能以事實證明取得所有權。其所控告之理由。自不能成立。

六、華方補充引證書（從畧）

Supplemental Memorandum of Points and Authorities in Support of Exceptions to Libel

七、本案結果 Dismissal

本案經於二十七年六月七日由原告申請自動撤回。唯仍保留將來另行申訴之權。
官判照准。



廢鐵案

Libel in Rem for Possession

原告人 日本橫濱正金銀行

被告人 廣源輪船上所載廢鐵二千一百噸

參加訴訟 中華民國駐美國全權大使王正廷代理人駐金山總領事黃朝琴

受理法院 美國聯邦地方法院北加省分院

法官 Harold Louderback

原告律師 J. F. Reslenre

被告律師 Hugh K. McKevitt; Jack M. Howard; Archie M. Stevenson.

一、案情述畧

廿七年四月二十三日日本正金銀行向美國聯邦法院具保。申請扣押廣源輪上廢鐵二千一百噸。該院即派承發吏上船執行。將命令一份交與船上二副趙子明。並將命令張貼於飯廳之中。四日後本館奉令徵用該輪。我方律師以廢鐵已由法院判交原告。我方是

否應與力爭。一時未能決定。嗣經本館引用外國主權至上原則函詢黃總領事舊師。伊利諾大學國際法教授嘉納氏。得其贊成。乃由黃總領事代表國家向法院申請參加訴訟。因日方謂領事無權代表國家。又電准以王大使名義申訴。仍以黃總領事爲代理人。日方主張則謂交貨在先。征船在後。法院仍有管轄貨物之權。我方主張不但中國國有輪船係中國主權所在。爲中國領土之延長。美國法院無權過問。且承發吏上船封貨手續不合法律。認爲無效。同時日方又謂永源公司非在中國註冊。而黃總領事僅將征用令之譯文呈閱。未將原電及電報密本提作證據。是中國政府果否徵用該輪。無從取信。乃由兩造律師擬具詢詞。狀請美國駐華大使向重慶各主管機關調取證詞。嗣因交通不便。證詞未能依時寄到。日方以咎在華方。狀請法院指定九月二十日開審。一連三天。雙方調質證人多至十餘名。開審甫畢。我方證詞適到。（請見原文）。證實永源公司曾在實業部註冊有案。購船係經交通部批准。該輪係經蔣委員長下令徵用。官判原告狀請移船提貨一節。應予拒絕。於是我方連勝民刑三訴。

本案之事實如次：

(一)原告日本橫濱正金銀行爲廣源輪上廢鐵二千一百噸之所有人。

(二)一九三七年七月二十七日美國西雅圖日商高橋公司與中國煙台永源輪船公司立有契約。訂明永源公司爲高橋公司載運廢鐵。由美國金山運赴日本大阪。所有廢鐵二千一百噸經由高橋公司在金山對岸屋崙碼頭交清。

(三)該批廢鐵於九月十一日起裝。十月六日裝畢。廣源輪船長將廢鐵收訖之後。即發掣提貨單。高橋公司即憑單向原告貼現。自是以後。原告事實上法律上爲該批廢鐵之所有人。

(四)永源公司迄今不能履行載運及交貨之契約。蓋現在該批廢鐵仍裝在金山該輪。何時可以運出交貨。遙遙無期也。

(五)原告要求提回原貨。但因該項貨物之占有權發生糾紛。以致無從進行。

(六)職此之故。根據上述之事實爲理由。合應即刻取得該輪所載廢鐵二千一百噸之占有。

權。

(七)除要求回復占有之外。原告保留根據契約追回運費。及要求賠償損失之權。

(八)本案係屬於鈞院管轄。殆無疑義。

原告茲稟請鈞院依法辦理以下數事：

(1)依法宣佈廢鐵二千一百噸係原告之物。並公告限令與該項貨物有關者。出庭申請異議。

(2)應請鈞院批准原告憑提單提回原貨。或予以相當之保障。

(3)應請鈞院下令着該輪移往碼頭。或移靠駁船。以便提貨。至原告應如何具保之處。自應照辦。

(4)對於原告之損失應如何補救之處。亦請鈞院斟酌宣判。以維物權。

三、黃總領事意見書 Suggestion

中華民國駐金山總領事黃朝琴。為向貴院發表意見事。查中國商船廣源輪。于一九三八年四月二十七日。經中華民國政府征為國有一節。中華民國外交部長業經訓令駐

美大使照會美國外交部。並請該部咨請司法部。轉知貴院。對於中國國有輪船不得施行管轄權各在案。

茲請貴院將本訴予以駁斥。以免有損中華民國及該輪或海員之利益。

一九三八年五月六日

四、華方參加訴訟申請書 *Petition in Intervention*

中華民國駐金山總領事黃朝琴。爲代表中華民國及廣源輪華人海員。向貴院申請准予干涉本訴事。查廣源輪已係中華民國國有輪船。懸有中國國旗。由中國占有並管理。其性質既係國有。貴院對於該輪船身機器及船員。概無管轄之權。更不能移動之。該輪既非本訴之對造。貴院實不能過問。根據上述理由。應請貴院對於該輪不得採取任何處置。以免有碍中華民國之利益。在未得中國政府許可以前。更不得判准任何人等上船

一九三八年五月十六日

五、日方辯論書(節譯) *Memorandum in Support of Motion to Strike Petition in Intervention*

查本案業經鈞院照准控告之呈訴。于四月廿二日。令飭執行吏將廢鐵扣押。并通知

各關係人在案。當執行吏回衙呈復時。並無人提出異議。僅由中國總領事之律師。及廣源輪日籍船長之律師出庭。作非正式之聲明。中國總領事畧謂。廢鐵與船員利益有關。日籍船長畧謂。或將提出反訴。當經鈞院限期十日。以便各關係人辦理辯訴手續。屆時中國總領事雖曾提出意見書。原告則到庭懇請鈞院。宣判各關係人。并無到案。予以缺席判決。當時原告并提出提單。證明運費。業經付清。中國總領事之律師。即放棄船員對於貨物有所要求之表示。日籍船長亦表示不再作任何要求。鈞院當即宣判缺席判決。但准中國總領事於八日內經由外交途徑。商請美國外交部長。提出干涉。

美國外交部長在此八日內。並未提出任何干涉或表示。惟至五月十六日。中國總領事又再提出請求干涉。其所提出之意見書及干涉本訴申請書。對於被扣貨物。並不作任何要求。兩次文件。僅謂廣源輪係中國國有輪船。現爲中國政府所占。有并管理。意見書並云。該輪係於被承發吏扣押四日前。即于四月廿七日經中國政府征用。

▲領事無權代表政府要求優例

中國總領事對於貨物。始終未嘗提出反訴。已如上述。渠謂貨物係原告所有。惟主

張該輪係中國國有輪船。鈞院無權管轄。其用意在不准任何人等接近該輪。永將貨物留置船內。而奪原告之所有權。換言之。中國總領事則學「維尼士商人」戲劇之故智。步抵氏謂她固欠商人肉一斤。惟准商人割其肉而不得帶血。蓋中國總領事對本案主張原告得取回原貨。但無權上船也。

關於此案美國外交部長既拒絕干涉。中國大使又無出面。顯係中國總領事無風作浪。中國總領事實係無藐視鈞院之權限。而欲援用國際優例。領事無權代表本國政府援用國際優例。迭見明文。中國總領事既無權爰用是項優例。應請鈞院將其訴呈予以撤銷

▲扣貨在先征用在後

查國際「優例」。僅適用於直接控告外國政府或其財產。本案係今年四月二十二日由合衆國承發吏奉令將貨扣押。當時中國政府並未佔據或所有該輪。中國總領事之意見書。亦聲明中國政府於四月廿七日始發征用令。在未征用之前。顯無中國官員佔據該輪。其實於日籍船長合法佔據該輪之時。或華員叛徒非法佔據該輪之後。中國政府未嘗佔有該輪。故迄今無所謂中國政府之所有權問題。在此情形之下。美國法律劃然規定。

此種案件不得享受優例。英國法律對於所有權。則給予優例。美國法律更須有實際之佔據。方准爰用優例。此種顯然之區別。迭有兩國判例。足資引證。就各案判例觀之。如佔有發生於美國法庭執行之後。則雖有實際之佔有。亦不能生效。其理由蓋恐外國政府侵害美國法庭之佔有權。當然不能照准。原告根據上述各節。認爲鈞院無理由將本案拖延。其實中國政府尙未佔據該輪。緣現在船中之叛徒。不能認爲中國官員。吾人已知渠等佔據該輪。係出自自己之意思。渠等之伙食。係靠慈善家之救濟。初則由蝦寮華人贈送。維自四月二十三日隨承發吏上船之通事回後。埠中華僑知悉渠等生活可憐。乃繼續救濟。

現在之佔據或將爲將來糾紛之目標。而須待諸來日爭辯者。惟本案出訴。在中國政府征用之前。乃係顯然之事實。況中國政府係征用該輪。並非貨物。原告並非控告中國政府或輪船。故中國政府不得享受優例。

原告懇請鈞院將中國總領事之訴呈。予以撤銷。并宣判將貨交與原告。倘蒙鈞院照准。應請飭令承發吏將船拖至碼頭。以便卸貨。原告願負賠償因卸貨萬一該輪被損之責。

任。保費若干。如鈞院能爲估價。自當如數呈繳。

六、華方辯論書（節譯） Memorandum in Opposition to Strike Petition In Intervention

（一）原告橫濱正金銀行辯論書有謂。中華民國駐金山總領事黃朝琴。無權向貴院申請參加本案訴訟一節。查中國總領事因職責所在。申請參加。實係以廣源輪船主中華民國代理人之資格。而向貴院申請參加者。

美國大理院曾主張外國政府要求豁免法院管轄有三種辦法：（一）外國政府由外交途徑要求豁免。（二）用國家名義出庭。（三）用大使名義出庭是也。本案係用中國國家名義。不過派其駐金山代表爲代理人耳。大使用自己名義派總領事爲代理人。與友邦政府用國家名義。派代理人並無區別。故控告人所駁之點。華方認爲毫無根據。惟華方爲避免糾紛起見。刻已改用駐美大使王正廷閣下名義。具狀敬祈准予代替黃朝琴。以便提出補充申請書。

（二）控告人復謂中國政府事實上並未佔有該輪。海員亦非中國政府之用人。中國政府亦未供給伙食。美國外交部對於本案。亦無採取任何舉動。中國政府與本案。並無

關係。僅係駐金山總領事單獨之行爲各節。既非事實。且蒙蔽貴院。其實（一）中國政府對於本案至爲關心。就改派王大使出面干涉一節。已足證明。（二）美國外交部長雖于其復王大使函內聲明。向例不將征用案通知法院。以避干涉司法之嫌。但其第二次復函已謂業經通知商務部船政委員會。（三）中國駐金山總領事業經遵照政府命令。接管該輪。任免船長。完全占有該輪。（四）船員伙食並不缺乏。是則原告所稱各節。並無根據。

該辯論書末段復稱。除非中國政府於美國承發吏扣押船貨之前。業經實行佔據該輪。不得要求豁免美國法庭管轄。

關於占有問題。應候舉證。不得僅憑一面之辭。而予以處理。原告之立論。並非正確。蓋本案承發吏始終未曾扣押或佔有船貨。該輪並非本案之一造。原告並未嘗企圖扣押或牽累及該輪。須知本案華方所要求豁免管轄之爭點。則在與輪船本身之關係。控告船貨事或難免。惟就豁免控告友邦主權之優例言之。實不能起訴。亦不能執行。船貨既始終未經美國承發吏占有。控告人引證各案。可謂話不對題。

查美國承發吏當時僅在船上貼一布告。並未將鐵加封。更未派員駐船看守。不能謂

爲手續完備。查有「台維」一案。美國法庭判定外國政府須于法庭未作實際佔有之先。事實上已佔有其財產。始能要求豁免。其用意在防避美國法庭吏員。與外國政府官員發生衝突。本此法理。法庭亦應于外國政府實施其主權之前。作事實上之佔有。

今貴院既未實際佔有船貨。原告自不得主張貴院仍然有權辦理此案。本案事關友邦主權。係國際法上之重大問題。深信貴院不至憑原告一面之辭。遽置華方之主張于不顧。茲謹狀請貴院照准王大使代替黃總領事。申請干涉並將提貨之議。予以拒絕。

(附件：一九二八年五月九日及十四日美外部致王大使函二件見原文)

七、王大使代替黃總領事申請參與本案訴訟書(從畧)

八、王大使補充參加訴訟書

中華民國駐美利堅合衆國特命全權大使王正廷。謹委派駐金山總領事黃朝琴爲代表。敬向貴院申請參與本訴。

(一)申請人爲中華民國駐美之正式大使

(二)本案內廣源輪船係中華民國國有輪船該輪之所有權及管轄權屬於中國

政府

(三)該輪既係中國國有則貴院對於該輪之本身輪上一切機器引擎船上船員以及輪身之行動均無管轄之權

(四)該輪並非本案之對造貴院更不應管轄之

申請人茲鄭重聲明該輪之特權。並貴院拒絕受理此案。除中國政府特許外。不准任何入等上船移動船上機器物件。

51
一九三八年五月 日

九、美國聯邦法院宣諭

(一)原告申請批銷中國總領事之異議一節。應無庸議。

(二)中國大使請求參加訴訟一節。應予照准。

(三)原告狀請取回貨物。係根據一九三八年四月二十三日美國承發吏之所謂扣押行爲。其扣押之手續。係將命令貼于船上。將抄件交與二副並無派員看守及將命令貼于貨上。

本院認爲美國承發吏始終未曾占有貨物。職是之故。原告狀請本院令飭美國承發吏將貨交與原告一節。碍難照准。

十、日方案情要領書

(一) 本案之經過

一九三八年四月二十二日日本橫濱正金銀行具狀呈請鈞院。請向泊在金山灣內之廣源輪船上。將廢鐵二千一百噸提回。當時該輪停泊于美國領海之內。實屬鈞院管轄。

次日美國聯邦承發吏下船封貨。用譯員將法庭命令譯述與廣源輪二副趙子明。並將命令一份張貼于船長艙房之內。蓋趙子明係船上之最高職員。廣源輪之正式船長。當時不在船上之理由。想鈞院早已知之矣。當時該批廢鐵係貯在艙內。而艙口係經嚴封。至于貨物係屬于原告。則毫無疑義。

五月六日中華民國駐金山總領事黃朝琴忽向鈞院提出異議。謂該輪經于四月二十七日被中華民國征爲國有。自是而後。該輪本身及裝在船上之任何物件。鈞院均無權管轄。

五月七日鈞院以並無關係人投案對於該批廢鐵有所主張。乃宣佈公告期間終結。並限中國總領事于八日之內。用外交方式。提出干涉。惟此事迄未實行。因美國外交部不允照辦故也。

原告當時即請鈞庭批銷中國總領事之異議。並令飭將貨交回原告。

六月八日華方忽改用中國駐美大使王正廷名義。代表中華民國向鈞院提出干涉。謂該輪向爲中國國有。鈞院無權干涉。中國總領事則證實其事。至于何人在此代表中國大使。則似無明確之指定。

原告當時不顧中國大使之干涉。極力向鈞院催請提貨。原告所持之見解。以爲無論華方所稱是否屬實。鈞院已于中國政府征用令未頒之前。取得管轄之權。且中國政府未經將該輪作事實上之佔有。所頒征用命令。完全無效。

六月九日鈞院諭示(一)原告申請批銷中國總領事之異議一節。應無庸議。(二)中國大使請求參加訴訟一節。應予照准。(三)原告申請提貨一節。碍難照准。等因。查鈞院未准原告提貨之理由。未經涉及國家主權之豁免優例。僅謂美國承發吏之封貨手續不

符。不能生效。鈞院之意。以爲承發吏未派人上船看守。亦未將封貨命令貼在原貨之上。且對於該承發吏將命令交與船上二副一節。似亦認爲不合手續。

九月二十日至二十二日本案正式開審。當時華方謂須經中國取具證辭以證明征用令之頒行。鈞院初擬限十月十五日着華方辦到。經原告之通融。決定以十月三十日爲期。當時原告亦要求鈞院給予同樣日數。俾得向日本方面取具證辭。原告擬取證辭之目的。在欲證明中國政府所征用之輪船。事實上乃係日本國民某甲之所有者。

華方之證辭迄未送到。將來是否可到。亦遙遙無期。同時原告方面擬候日本船主單獨提出主張廣源輪所有權。以免使本案複雜化。故暫變更計劃。已將向日本取具證辭之議打消。

似此情形。原告謹請鈞院根據事實。速予宣判。華方擬辦證辭歷時四個餘月。一無消息。不能再予佇候。且華方始終承認廢鐵之所有權屬於日方。惟立意刁難。以期阻擾日方提貨耳。

根據鈞院紀錄本案之事實如次：

原告所有之廢鐵二千一百噸貯于金山灣內之廣源輪船上。根據紀錄。該輪係屬私人之產業。究竟輪主係中國之永源輪船公司。抑係日人小谷氏。在法理上不關重要。華方所謂征爲國有一說。因證辭迄未寄到。不足憑信。華方曾以所謂征用令之抄件一份提出作證。原告認爲證據不足。經請鈞院撤銷。奉諭着于辯論時。再行討論在案。今原告再行正式提出。仍請鈞院將該證件註銷。

萬一華方在中國取具之證辭。可以寄到。則原告仍可根據有征用令及無征用令兩種理論辯論。原告方面始終懷疑中國政府曾有頒佈征用令之事實。或則中國總領事見原告向鈞院控告提貨。迫得電請中國政府下令征用。若然則在此迫促時間。中國政府所採取之征用步驟。是否合法與有效。殊屬疑問也。

(二) 美國承發吏之手續係屬合法。鈞院對於本案應有管轄之權

根據本案紀錄。假定未有中國征用令。則原告是否可以主張所有權。繫于鈞院是否有管轄之權。而鈞院之管轄權問題。則須視美國承發吏之封貨手續是否合法。

原告對於本案依法進行。鈞院將命令交與美國承發吏。囑其下船封貨。當時並無着人看守之說。承發吏依法從事。下船將命令交與船上之最高職員。並將另一份張貼于船長艙房之內。蓋廢鐵係貯在艙庫內。而艙口既經封鎖。故無從將命令黏貼于廢鐵之上也。

夫張貼命令。其目的在昭示貨物之被法院看管。初不必着承發吏打開艙口而將命令貼于其上。進而言之。一紙命令貼于二千餘噸廢鐵之間。實不能令人注意。再則該輪有數個艙口。將命令貼于一口。亦屬不足。故合理的辦法。須將命令貼于船上最注目之處即可。承發吏執行封貨。不能帶同大隊人員前去。開啓艙口。理由甚明。夫立法原則。在能普遍實行。不能曲解。設如法院須查封冷氣室內之貨物。試問是否須打開冷氣室。將命令貼在貨物之上。若然則室門開啓之後。室內溫度變更。貨物受損。承發吏焉能負責。本案開審之初。美國聯邦檢察官亦曾明白表示。查封貨物不必將命令貼于原物之上。以免有開先例之嫌。如鈞院主張如此辦法。則須更進一步。將命令貼于逐件之上。夫廢鐵二千一百噸。論數不下數千萬件。逐一黏貼。事實上即辦得到。亦未免太麻煩矣。且

照此辦法。事實上頗難收布告週知之實效。因承發吏如須開啓艙口。黏貼命令之後。再行關艙。則外間人士何從探知貨物之被封耶。

承發吏所採之辦法。乃係最適當最有效之方法。將法院命令張貼于船長之艙房。凡與該輪有來往交易之人士。均可一目了然也。

按法理而言。船上貨物一經被海事法院查封。卽在該院管轄範圍之內。而不必須派人上船看守。亦不必須有繼續之佔有。始得有效。(引判例七件從畧)

(四)假定中國政府曾發征用令該令係屬無效因法庭查封船貨在先。而中國征用在後該輪已在法庭管轄範圍以內中國無從征用也

外國政府如欲主張豁免特權。不受當地法庭管轄。不但須先證明物權係屬該政府所有。且須證明該國政府之官員曾將該輪作事實上之佔有。

查該批貨物既經于一九三八年四月二十三日由鈞院查封。則自是日以後。鈞院已取得管轄之權。當時該輪並非中國政府之產業。至四月二十七日華方雖宣稱政府征用。事實上未有中國政府專員將該輪船貨佔有。照美國法律。該輪既未經中國政府佔有。則

中國政府不能主張豁免特權。關於此點。英美兩國法律畧有不同。英國法只注重于所有權。而美國法則除所有權以外。尚須有事實之佔有。始爲合法。（判例四件從畧）

至于美國法院既經取得管轄權之後。外國政府無論是否佔有該輪。更不能主張特權。因此項主張。係侵涉美國法院之司法範圍。美國法院斷然不得許之。再則外國政府主張特權。僅限于該國政府之本身及其產業。今本案之對象爲船上之廢鐵二千一百噸。原告申請提貨。並非控告中國政府。亦非控告廣源輪本身。故中國政府無須要求豁免特權。

（五）結論

總而言之。天地之間。物各有主。船上廢鐵爲原告所有。殆無疑義。鈞院管轄該輪之權。亦早經成立。茲原告敬祈鈞院駁斥華方之異議。將廢鐵提交原主。夫原告係美國友邦人民。案關所有權。鈞院應予以保障。至華方所以千方百計與日方爲難者。皆因少數外交官。欲際中日戰爭之時。自告奮勇。興風作浪。以圖建功耳。

十一、華方案情要領書

本案係一九三八年四月廿二日。由原告日本橫濱正金銀行狀請貴院准其上中華民國國有輪船廣源號提回廢鐵二千一百噸之訴訟事件。業經貴院批准中華民國駐美大使王正廷參與訴訟。王大使之參與訴狀。係由駐金山總領事黃朝琴代表提出。畧稱廣源輪係中華民國國有輪船。懸用中國國旗。經由駐金山總領事接管。根據此種理由。貴院實無權管轄該輪。更不能支配其行動。且本案所控不在船。而在貨。原告亦無佔有該輪之企圖。由此觀之。貴院確實無權過問。原告狀請貴院令飭承發吏將船拖至碼頭以便卸貨一節。本大使認爲貴院不得發給是項命令。

廣源輪係中國國有輪船

廣源輪原爲金山基督遜公司所有。經美國船政委員會之批准。售與中國煙台永源公司。該輪之美國政府執照。因其已售與外商。經于一九三八年一月二十四日在金山繳銷。賣契並經金山海關註冊在案。中華民國駐金山總領事黃朝琴收到永源公司代表呈繳中國政府文件後。即發給船籍證書。同時以際茲中日戰爭。爲慎重起見。致電中國

政府請示。旋奉復電。准給證書。惟須將證書扣留。代爲保管。總領事扣留船籍證書之目的。在不使該輪開赴日本。資敵以軍火。而轉殺同胞。海關稅務司之職責。在證實船隻之國籍。該稅務司以其未能提出中國船籍證書。曾經拒絕放行。益見該輪確係中國輪船。永源公司又無將船變賣之證據。是以本大使始終認定該輪爲中國輪船。

廣源輪業經中國政府收爲國有

查本案並非控告輪船本身。且並無企圖占有該輪一節。實有反復鄭重指出之必要。前此雖有自稱船主之日人小谷訴請收回該輪一案。業經原告自動撤回。是則所有權一層。已不成問題。貴院對於該輪。既始終未有管轄權。而原告申請貴院將船拖至碼頭。以便卸貨一節。本大使不得不重申前情。表示反對。

一九三八年四月二十六日當廣源輪在金山灣飛揚中國國旗之時。中華民國即將該輪征爲國有。由駐金山總領事黃朝琴代表中國政府接收。在本案未開審前。華方依法擬具「詢詞」。寄回中國調取各項證據。藉以證明該輪是否確爲中國政府征用。無如此項證詞因戰爭關係。尙未寄回。原告律師亦言經辦本案之中國官員或爲日方拘禁或管束。故

無法對證。但於開審時。華方曾提出美國外交部長證明書一份。該證明書稱該部曾接中華民國駐美大使館參事應尙德錄送中國政府之徵用令等語。此種手續。國際法專家共認爲足資證明外國政府之行爲。（華方引證判例之案從畧）此外黃總領事朝琴亦在法庭證明。彼曾奉有命令。徵用該輪。同時美國財政部關務署致電金山海關。通知中國政府徵用該輪之事實。日方辯駁該輪未經合法機關徵用一節。既無文件提作反證。自無議論之餘地。（華方引用判例之案從畧）

黃總領事朝琴奉令徵用後。卽接管該輪。下開各節係其遵令所取之行爲與步驟。均有案可查：

- （一）已將徵用之經過函知貴院。海關稅務司及美國承發吏。
- （二）卽日下令將日人船長大副大車三人免職。彼等現已不在該輪服務。
- （三）派孫副領事碧奇上船佈告徵用該輪之命令。并將任命趙子明爲該輪船長之委任狀面交趙船長。

（四）命令趙船長將船由灣中駛近華人蝦寮附近停泊。

(五) 供給船員伙食。

(六) 發給關於該輪之一切命令。

(七) 發給船員薪金。

(八) 孫副領事碧奇奉黃總領事之命。于一九三八年四月二十七日上船。召集全體船員于該輪餐廳。宣佈中國政府徵用該輪之命令。船員奉命之餘。口呼萬歲。孫副領事即將此項徵用令張貼于該餐廳揭示處。俾衆週知。同時並將任命船長之委令面交船長趙子明。船長當即遵令就職。代表黃總領事統領全輪。自是以後。該輪完全在中國政府支配之下。

以上所述。皆爲不可磨滅之事實。該輪既爲友邦國有財產。根據國際公法。應享受豁免被訴之特權。

本大使認爲廣源輪于一九三八年四月二十七日以前。已爲中國政府註冊之公司所有。一向懸用中國國旗。于是日經中國政府徵用一層。乃爲顯然之事實。該輪在徵用當時。既未受貴院管轄。貴院自然無權命令承發吏上船擾動友邦政府之所有權。(華方引

用判例之案從畧)

紙上之扣貨認爲無效

原告之案情要領書力主承發吏之似是而非的封貨程序。已足邀准貴院移動該輪。原告顯係不能識別一國主權之案件。與民間貨物所有權案件之不同。原告更藐視廣源輪並非本案之對象。與原告並無企圖佔有該輪之事實。關於此點。原告于其請派承發吏將貨交出之訴狀。言之甚詳。其互相矛盾之處。不攻自破。即就開審時兩造舉出之證據言之。原告方面除譯述訴狀及法庭指令與該輪一副之通事。係其所雇用者一節外。與片面申請時所言之事實並無差異。既無新事實足資增強其論據。又未能于開審時帶同該通事作證。藉知該通事所譯爲何。一九三八年六月八日貴院曾發左開之庭諭：

「本庭認爲美國承發吏始終未曾佔有該批貨物。故本庭無法指令該承發吏將貨提交原告。就本案之經過言之。美國承發吏固未嘗扣留或佔據船貨也。」

本大使所堅持者在輪船本身。所應享受之豁免特權。美國承發吏不過僅在船上貼一扣留之佈告。將該佈告之抄件面交該輪一副。由原告所雇用之通事譯述之而已。並不

派員隨船看守。或將扣押命令張貼於廢鐵。如果此種手續。認為合法。則承發吏如將扣押廢鐵之命令張貼于本埠碼頭。而將該命令之抄件交給信步閒遊馬路之行人。亦得認為合法。

案美國最高法院所定海事條例十條。對於動產訴訟之程序有明文規定。文曰：

「欲扣留船中動產。首要發給扣留船貨之命令。承發吏奉令後應即連貨帶船一併扣留」等語。

該院判例第四百六十四頁復稱。「欲管轄船中動產。承發吏須將貨扣留。而同時並須事實上占有輪船。」

該判例第二九四頁又云。「扣留貨物。須連船扣留一層。不外乎防備判決之後。貨物為船所運走。致無法執行。如其他關係人亦向其他法院申請扣留。必發生管轄上之衝突。」

查本案承發吏既未事實上扣留船上廢鐵。其所謂占有自不能生效。良以廣源輪被中國政府徵用。當時貴院或承發吏並未占有船貨。故就原告所引證之各判例觀之。非但

不能自圓其說。反成爲擁護中國政府之立場。原告所引證各案。財產上受法庭管轄。並非由外國主權所占有。該判例第十五頁畧謂。「法庭宣判主權國須于法庭欲執行扣留或占有時已有事實上之占有。方得享受豁免之特權。」蓋所以避免主權國之官員與法庭承發吏發生衝突。在同樣理由之下。外國政府欲執行其主權之時。法庭亦須作有事實上之占有。方能行施其法權。

案貴院對於本案之輪船及廢鐵。並未作有事實上之占有。根據此理。原告更不能主張中國政府雖占有該輪。仍不能脫離貴院之管轄。

本大使認爲貴院于一九三八年六月八日。宣諭貴院無權管轄中華民國國有輪船廣源號一節。仍爲有效。

結 論

本大使正擬具本要領書之時。據黃總領事陳稱。頃奉到中國政府復電。各部會之證詞已辦妥。以航郵寄美。約於二月底可以收到等語。查關於徵用該輪一節。已於開審時據實舉證在案。如貴院及時收到該項證詞。仍請察核。

中華民國駐美特命全權大使所提華方案情要領書。並無新穎材料。其見解亦不足徵信。

對於征用令一事。該大使唯以美國外交部長何盧之證明書是賴。但該證明書僅證明應尙德乃係中國大使館之參事。對於應尙德函稱各節。是否屬實。美國外長概不負責。

該大使不能證明徵用令之實效。吾人引以為憾。華方現在中國取具證詞。內容將如何。不得而知。然久未寄到。吾人不能長此佇候。本案必須從速解決。

本律師在非正式談話時。曾戲謂「華方不能取得證詞。或係經辦本案之中國官員為日方拘禁之故」云云。對造律師即引以為據。載入案情要領書。指為不能取得證詞之理由。本律師對於此事。深加反對。蓋本律師當時所言。乃係戲謔之辭。實則本律師對於中國國內情形。並不十分明瞭。焉知中國官員有被日方拘禁之事。總之華方不能提出證詞之故。顯係證據不足耳。

本案關鍵之點。在于鈞院既經派遣承發吏上船封貨之後。是否對於該貨有管轄之權。關於此點。華方律師尙未能反駁本律師第一次提出之案情要領書。華方所舉之判例中。有案件數宗。法庭雖未派員將貨物作事實之占據。但對於貨物之本身。仍有管轄之權。

華方最後結論中。曾謂所有證詞已由中國航郵寄來。事如果然。則吾人自當將該證詞詳加研究。但吾人深信此項證詞之內容。不能如華方所言。且本案牽延既久。吾人不能復憑對造空言。再行佇候。爲此敬祈貴院速賜判決。

十三、兩造律師向中國軍事委員會交通部及經濟部取錄證詞協議書（從畧）

十四、軍事委員會證詞 Deposition by National Military Council

華方詰問

問答內容

問一 姓名

答 李元凱

問二 是否在軍事委員會任職

答 是

問三 任何職位

答 軍事委員會辦公廳軍事處長

問四 一九三八年四月二十六日君是否担任現職

答 是

問五 一九三八年四月二十六日軍事委員會曾下令徵用煙台永源輪船公司之廣源輪

否

答 是

問六 請將徵用令抄件檢交

答 照交致外交部令文一件

問七 此項令文係何時發出

答 一九三八年四月二十六日

問一 甲、徵用廣源輪命令究係由何人所發。乙、軍事委員會此舉。究有緊急之軍用意義否。

答 甲、徵用令係中華民國軍事委員會委員長蔣中正所發。乙、徵用令之軍事意義。事關秘密。不便答復。

問二 請檢交一九三七年七月二十二日徵用律全文之抄件

答 照交

問三 上項法令之有更改者請將抄件檢交

答 無

問四 軍事委員會下令徵用廣源輪以後究如何處置之

答 電令外交部轉電駐金山總領事採取有效步驟依法徵用之

問五 請將上項事實之關係文件檢交

答 檢交一九三八年四月二十七日外交部致駐金山總領事電令一件。又同時致駐美

大使館電令一件。

問六 徵川廣源輪時有中國正式官員管理該輪否

答 詳情須問駐金山總領事

問七 前項官員係何職位

答 須問駐金山總領事

問八 中國政府曾委定專員責任管理該輪否

答 據駐金山總領事報告。曾升委該輪二副爲船長。

問九 請述明專員之銜名

答 詳情須問駐金山總領事

問十 廣源輪上之海員是否中國之現役軍人或政府職員

答 詳情須問駐金山總領事

問十一 前問如答是。請述問各員之官職。任用日期。並請檢交任命狀。

答 詳情須問駐金山總領事

問十二 關於此案取具證辭一事。曾否接得任何人通知。如接有通知。即請將該通知或

抄件檢交。

答 曾接外交部通知

十五、經濟部證詞 Deposition by Ministry of Economic Affairs

華方詰問

問一 姓名

答 壽景偉

問二 在經濟部商業司任職否

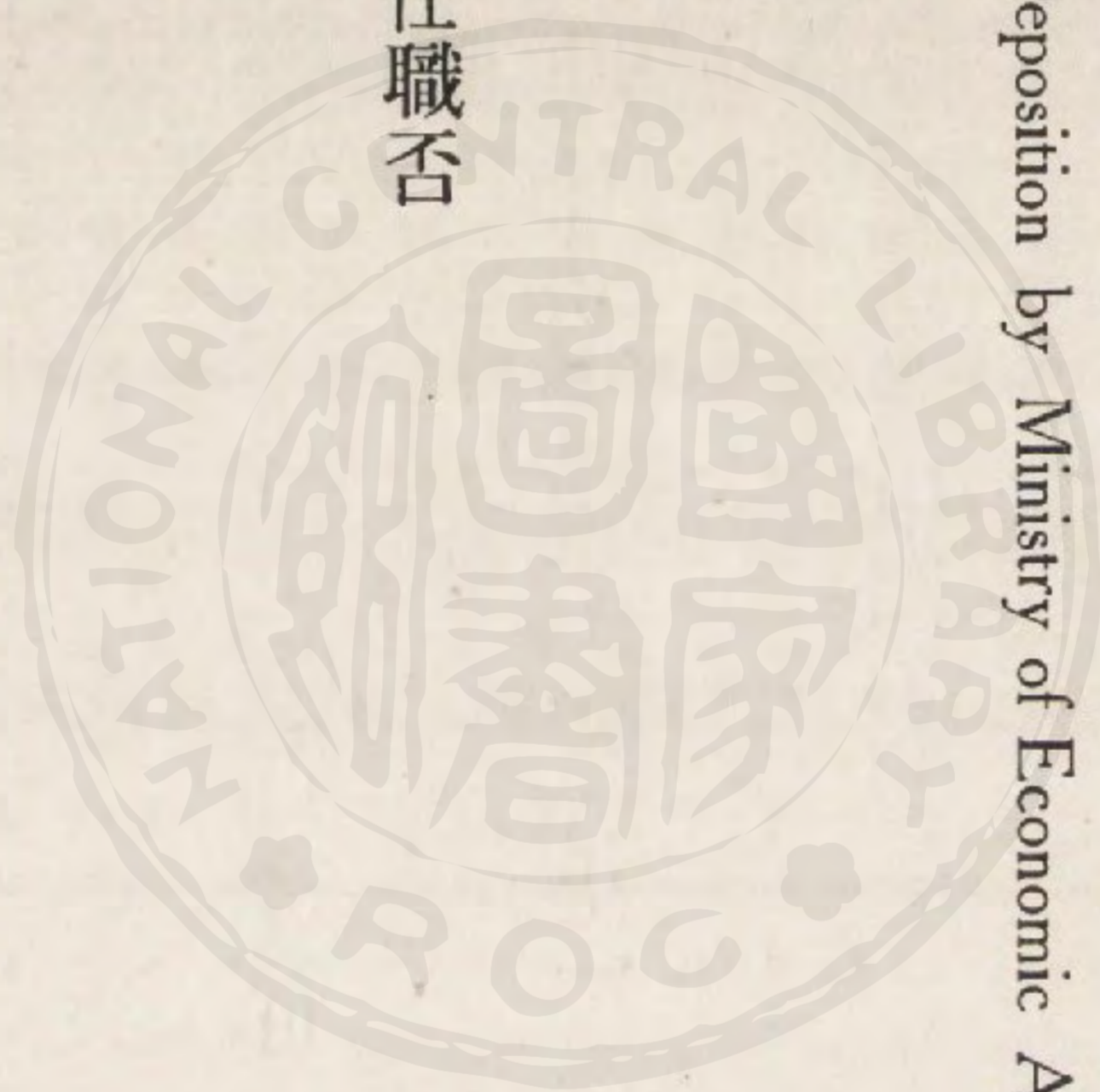
答 是

問三 任何職位

答 司長

問四 一九三七年七月七日君任現職否

答 經濟部係於一九三八年一月成立



問五 自一九三七年七月七日起是否繼續擔任現職

答 不然。但自經濟部成立以來即繼續擔任司長之職。

問六 經濟部商業司是否管理公司事務

答 是

問七 中國一切公司之創立及其存在司內是否有案可查

答 是

問八 足下能確知中國一切公司之創立及其存在之事實否

答 然

問九 煙台永源輪船公司曾否註冊爲中國公司

答 是

問十 該公司係何時組織何時成立何時註冊

答 據查司中檔案該公司係於一九三七年四月呈准註冊

問十一 凡公司之存在貴司是否給予執照

答 是

問十二 請將煙台永源輪船公司之執照抄件檢交

答 中國政府遷都二次。現在檔案不全。故該執照抄件未能檢交。唯前實業部存有永源公司呈繳登記費三聯單第一五六一五號。證明該公司註冊費已經交訖。茲將三聯單之抄件檢交。

問十三 一九三八年四月三十日以前永源公司曾否解散

答 不聞該公司有解散之說

日方詰問

問一 經濟部商業司之檔案均爲足下掌理否

答 是

問二 永源公司係何人所組織並請述明各組織人之住址及其國籍

答 該公司組織人姓名住址國籍如次

李輿生 山東牟平 中國籍

葛監周

山東蓬萊

中國籍

葛煨臣

山東蓬萊

中國籍

葛傳祺

山東蓬萊

中國籍

問三 關於此案取具證詞一事。曾否接得任何人通知。如接有通知。即請將該通知或抄件檢交。

答 曾接金山律師麥克威來函並附麥克威致中國駐金山總領事之抄件

十六、交通部證詞 Deposition by Ministry of Communications

華方詰問

問一 姓名

答 陳繼巖

問二 在交通部航政司任職否

答 然

問三 任何職位

答 薦任科員

問四 在航政司任職已歷若干年間

答 四年三個月

問五 關於中國公司或中國人民買賣船舶以及登記事宜。是否係歸交通部航政司主管

答 1 無論公司或人民購買船舶例須呈請交通部核准

2 至于取得所有權以後之登記。依法應歸船舶籍港主管航政官署辦理。此項航政官署係交通部之附屬機關。

3 船舶經由主管航政官署依法爲前項登記後。應卽轉呈交通部發給船舶國籍證書。

4 如在外國港口取得船舶時。依法應先請中國領事館核發船舶臨時國籍證書。于駛回本國後再行依法登記。並換發船舶國籍證書

問六 永源輪船公司在一九三七年七月間。曾否由貴司登記或核發執照並承認其爲中國之輪船公司

答 1 卽以一九三七年七月之時爲準。依照中國法令。凡公司（包括航業公司在內）

之登記事宜均應由實業部主辦。但實業部現已併入經濟部

2 早在一九三二年與一九三四年間。永源輪船公司所有之「永源」與「順源」兩輪。卽已依法呈部核發船舶國籍證書有案。該公司既擁有中國船舶。以經營航業。則本部承認其爲中國之輪船公司。事屬當然。爲時實遠在一九三七年七月以前。且依照中國海商法第三條之規定。凡中國公司或中國人民之船舶。均應爲中國國籍之船舶。

3 發給以上兩輪之船舶國籍證書其效力與地位迄今並無變更

問七 自一九三七年至一九三八年四月三十日之期間該公司之地位有何變更

答 在此期內該公司之地位並無變更

問八 關於中國輪船公司購買船舶事宜貴司亦有案可稽否

答 然

問九 烟台永源輪船公司。曾否於一九三七年。向美國蘇登克里相森公司 (Sudden

Christensen) 購買愛娜克里相森輪船 (S. S. Edna Christensen)

答 然

問十 此項購買貴司曾予以核准否

答 然

問十一 關於此項核准有無文書足資證明

答 有

77
問十二 如對十一問答有即請檢交該項文書抄件

答 照檢交計有下列二種抄件

- 1 天津航政局烟台辦事處二十六年七月十二日請示永源輪船公司購買廣源輪應否照准之侵電
- 2 交通部七月十三日飭復該處准其照購之元電

日方詰問

問一 如對前部第十二問已照所答檢交附件時。請問該項文書之發給是否本諸永源輪

船公司之聲請。抑或本諸他人之聲請。

答 此實本諸永源輪船公司之聲請。惟該項聲請係經由烟台航政局辦事處轉呈到部耳

問二 如對上問答「然」請將此項聲請書抄本連同其他有關文件檢交

答 1 永源輪船公司直接向烟台航政局辦事處提出之聲請書現因烟台被日軍侵佔無法檢交

2 照檢交其他有關抄件計有下列三種

A 烟台辦事處二十六年八月六日發給永源輪船公司往美接船返國之證明書

B 烟台永源輪船公司二十六年十月十八日。請求發給船舶臨時國籍證書之巧

電。

C 交通部十月二十三日轉請外交部迅電駐金山領事核發該輪臨時國籍證書

問三 關於此案取具證詞一事。曾否接得任何人通知。如接有通知即請將該通知或抄件檢交。

答 曾准外交部函知並轉到麥克威律師通知函。此外並未接到任何人通知。茲將下

列抄件檢交。

1、外交部一二三二一三號公函

2、麥克威律師一九三八年八月三十日函

(九)美國聯邦地方法院判決書 Decree

(節譯判決辭主文)：本案經本庭詳查事實。細究法規。原告請求移船提貨一節。應予拒絕……

美國華僑對於本案之貢獻

本館辦理本案。爲時二年。其中千頭萬緒。如何應付。如何處理。全賴人力財力。領館人員無多。而又限於經費。一切措施。多感困難。幸我在美僑胞。深明大義。奔走協助。始獲完全勝利。例如監視輪船行動。刺探對方消息。贈送海員物品。籌集遣散川資。擔任本書出版。莫不仗我僑胞之助。茲編所述。皆在美僑胞對於本案直接間接貢獻之種種。意在彰義舉。昭激勸耳。

一、華人蝦寮工會及金山華僑

廣源輪初泊港內。首感困難者有三。一曰監視問題。二曰交通問題。三曰伙食問題。華人蝦寮九家。每家皆有汽艇。散在該輪停泊附近。自本案發生。蝦寮工友。不僅無形中爲該輪惟一監視人。不使該輪被日人船長偷開出港。卽岸上與輪上之交通。一切消息之傳遞。亦皆惟蝦寮工友之汽艇是賴。此于監視與交通方面直接有助於本案之進行不少。至各工友接濟海員伙食。猶其餘事耳。

其後事態擴大。金山華僑各界同情于我英勇海員之抗日。又紛紛贈送物品。如食物、燃料、衣服、用品之類。日必數起。均由蝦寮工友代為轉送。迭經海員登報鳴謝。茲不贅述。

又查李糯埠華僑黃袞生。平日對於救國工作。至為熱心。此次一聞領館辦理此案。經費拮据。當即表示願為財政上之後盾。領館始得放心進行。此種愛國精神。尤屬難能可貴。

二、領館嘉獎直接協助本案人員

駐金山總領事館令 山28字第六〇一號

令李糯 僑民黃袞生

本館奉命徵用廣源輪船以來。該僑熱心協助。共紓國難。殊深嘉慰。除呈報軍事委員會

蔣委員長外。應予嘉獎。以昭激勸。此令。

中華民國二十八年四月廿四日

駐金山總領事黃朝琴

駐金山總領事館令

山28字第六〇二號

令金山蝦寮工會會員

梁有、羅金大、黃貴、黃開、李堅、劉鄺、徐啓、陳元、

林連福、郭廷輝、林添、鍾有、梁香、黃南、曾丁、文桂、江芬、王談、

郭瑞和、趙士錦、林涵、高暢如、鄧三、郭登、黃平、陳興、蘇和、梁挽、

馬沛端、伍樹、林水、鄧發、黃根、林景、趙森、劉川、劉大、黃炳、黎添、

劉孔元、陳杏基、林漢強、戴添、俞興、伍龍、鍾全、關旋、盧明、林金、

黎拔南、鍾金福、陳初開、謝開、莊有、葉連、李根、馮成、林華、黃譚、

沈坤洪、袁和興、陳松有、姜全、何樹、何鑑、

本館自扣留廣源輪船至奉命徵爲國有以來。該僑奔走效命。仗義輸財。熱心毅力。

殊深嘉慰。除呈報軍事委員會蔣委員長外。應予獎勵。以昭激勸。此令。

中華民國二十八年五月十一日

駐金山總領事黃朝琴

三、各地華僑資送海員回國

廣源輪自被徵用後。本館除將日人三名免職。升任二副趙子明爲船長。二車王其福爲大車。着令留守該輪。舵夫隋耀賢調爲領館差役外。其餘尙有華籍船員十七名。卽着永源公司代理人遣送回國。俾其另謀生計。該代理人以訟事已開。既不肯清付所欠海員一年來之薪金。又不肯照購船票。本館既無經費。以維持海員。又未便再向美工部延期。正猶豫間事爲各地華僑所知。均表示願意資助。黃總領事乃偕同孫副領事帶領海員十七名。由金山乘長途汽車出發經沙加緬度、市作頓、斐市那、北架斐、及羅省諸埠。前赴山匹度下船。沿途華僑除招待外並分別捐助海員川資。茲將各地捐助數目分列如下。

(一) 金山華人蝦寮工會

美金壹百元

(二) 金山婦女救國會及零星捐款

美金五十五元

(三) 沙加緬度中華會館

美金壹百三十七元二毛五仙

(四) 市作頓中華會館

美金壹百七十元

(五) 斐市那中華會館

美金三百四十三元七毛五仙

(六)北架斐中華會館

美金貳百五十元

(七)羅省中華會館

美金壹千壹百九十元

以上共收美金二千二百四十六元。除支付川資外。所餘之款。經按級分派各海員俾作回國後之生活費。其中船票一項。係羅省僑胞出資所購。足見駐羅省張領事紫常之同情協助暨該地僑胞領袖之見義勇爲。關於本館辦理救濟海員之經過。業經呈報外交部備案。同時除由本館代表海員函謝各地中華會館及其他團體外。並呈請外交部訓令張領事傳令嘉獎羅省中華會館。

又金山旅美華僑統一義捐救國總會曾捐助美金六百元。由該會逕交各船員攤收。

此次海員十七名由金山回國。係乘搭英國藍煙凶公司輪船。經菲列濱而至香港。船到馬尼拉時。涂總領事允檀親自下船慰問。並由該地華僑捐助菲幣一百六十八元。及至香港又由香港東華醫院接往該院居住。供給膳宿。並爲介紹職業或給資遣散。合併述明以彰義舉。

黃總領事將海員遣送回國後。卽向日方代理人要求賠償遣送海員經費。日方恐我

方提出反訴。乃交出美金一千七百元。當經本館將此款交與辦理本案律師。作爲辯護海員之酬金。外人謂日方賠了夫人又折兵。蓋卽指此。

四、本書出版之經過

本館秉承中央各部會及大使館。辦理廣源輪案。得僑胞之合作。節節勝利。現在日方控我民刑三案均告敗訴。約計損失在美金二十五萬元以上。我方以不費一兵一卒。而獲船貨。不僅廢鐵二千餘噸不致爲敵人製造軍火。轉殺同胞。并予敵人以重大經濟打擊。實屬抗戰期間之一大快事。現因我方在法庭所提出之法律根據。造成國際法之新例。案情複雜。法理精深。各國大學及國際法專家迭向本館函索。而各地華僑領袖亦以此案爲我國在美官民抗日勝利史。未便湮沒。爰組織旅美華僑廣源輪案出版委員會。商准黃總領事。將案編輯成書。交該會出版。以爲國際宣傳之用。除函請美國各地中華會館或其他團體代爲推銷外。復由黃總領事加聘常務委員五人。負責會務。本書書價每本一二元。由各地團體或個人認購。自用或交由該會作爲宣傳之用聽便。茲將該會常務委員。推銷團體及認購者姓名清單列後。

旅美華僑廣源輪案出版委員會

常務委員 黃君廸

陳篤周

鄺 墀

林華耀

黃子熊

認購本書之華僑團體及個人名單

(經辦推銷之團體)

本書出版委員會常務委員

(定書人)

秉公總堂

台山甯陽總會館

尾利允埠中華公所

黃江夏堂

陳穎川堂

劉瑞華

黃君廸

(冊數)

(內交本會幾冊)

二五

二〇

二〇

一五

一五

一〇

一〇

黃雲山公所

鄭泮初

岡州總會館

三邑總會館

同源總會

陳澤民

黃萬石寄盧

鄺墀

林華耀

陳篤周

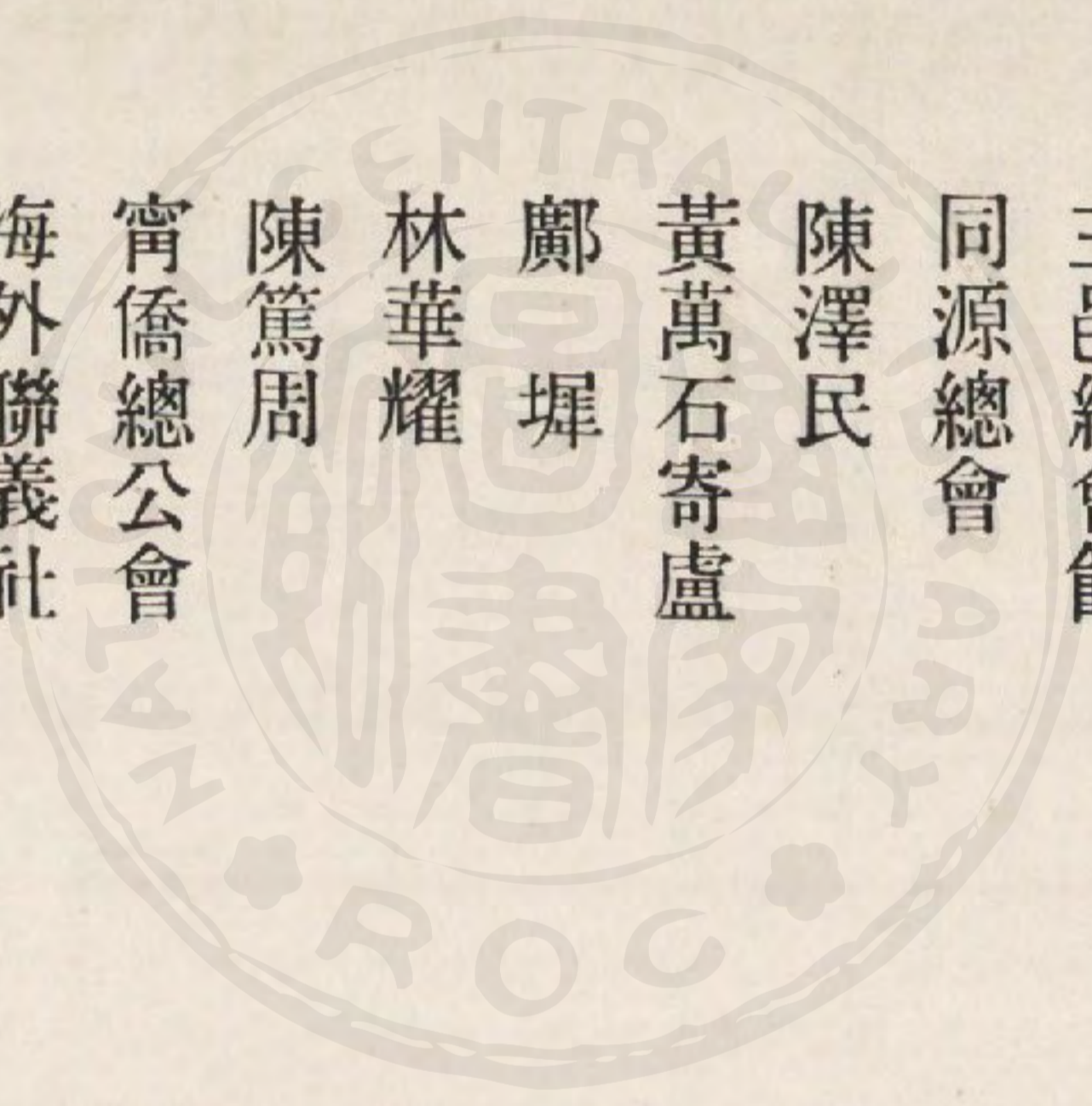
甯僑總會

海外聯義社

萃英工商會

伍家公所

麥坤



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李氏總公所

李敦宗公所

趙峻堯

趙九疇

陳天一

兆昌泰

李立生

李聖庭

中華總會館

龍岡親義總公所

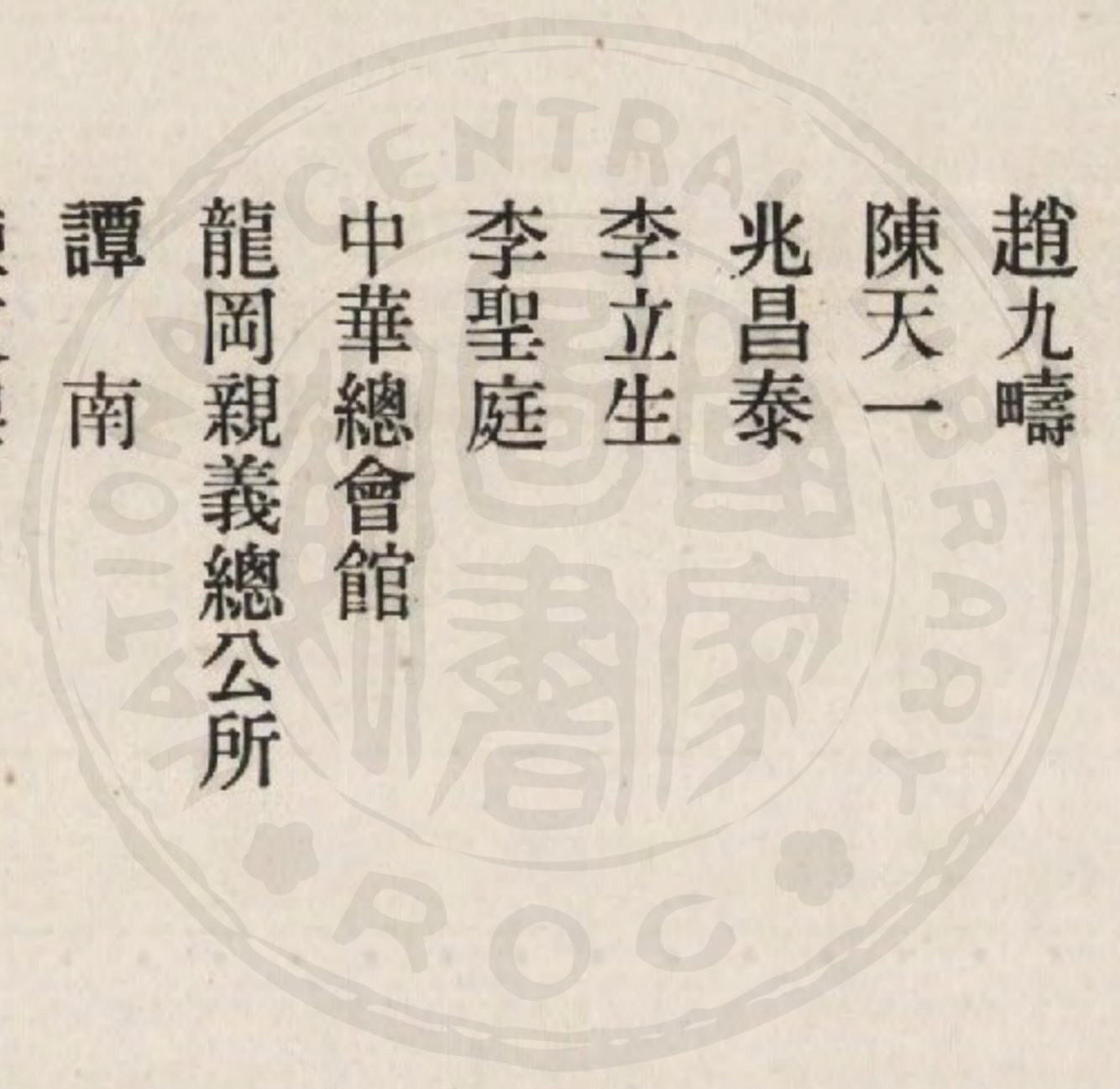
譚南

陳文樓

陳樞宜

葉樂

雷家宜



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郭育之

伍福堂

黃彪

上海樓

李榮基

黃仁俊

胡灼熊

雷堅磐

伍時謙

黃啓慈

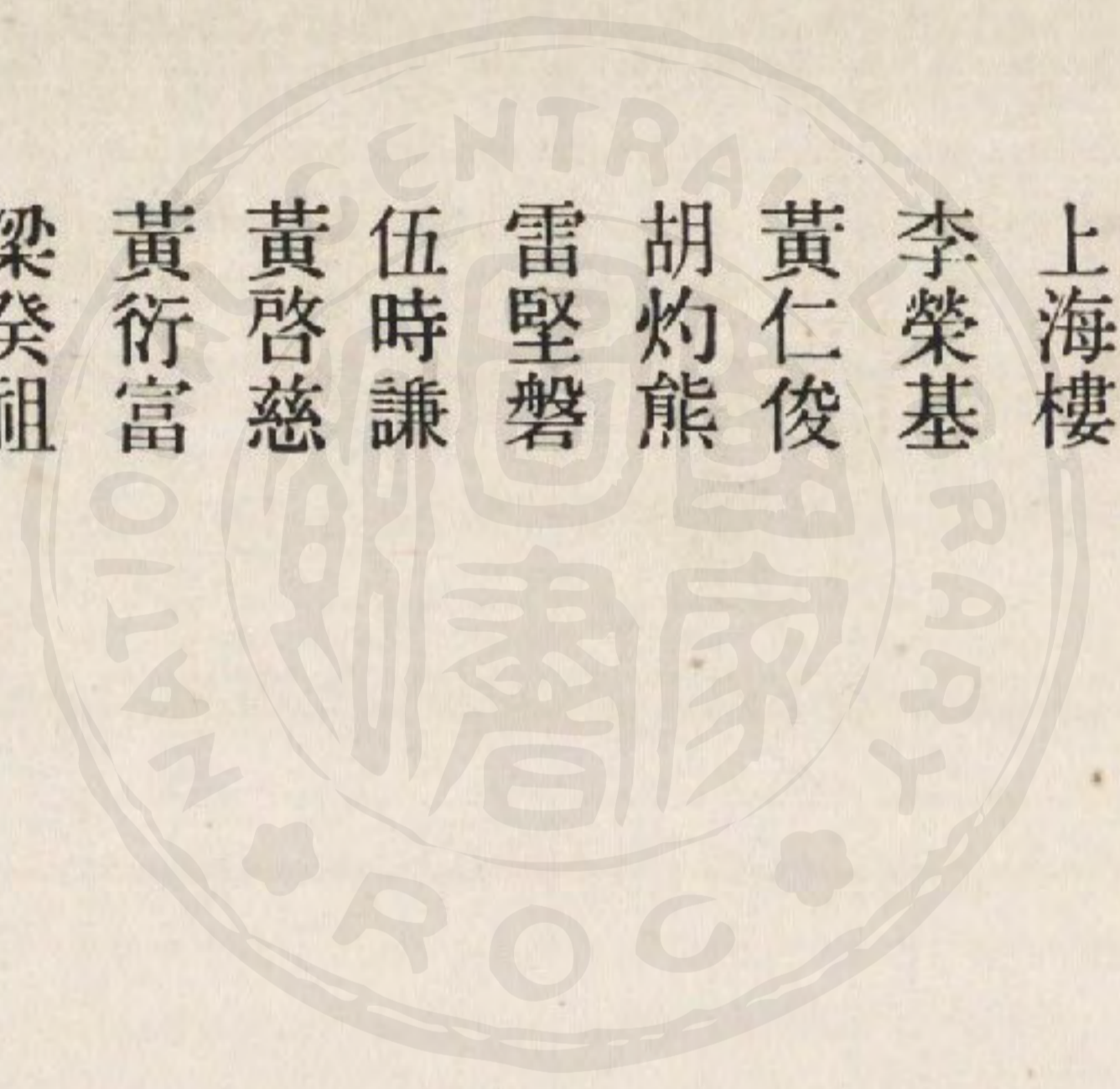
黃衍富

梁癸祖

李孟華

劉棣華

網紀慎會



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協和學校

中華聖公會

朱沛國堂

鄧寬

黃堅輝

趙家倫

黃社經

趙瑞芝

朱忠存

李煥甫

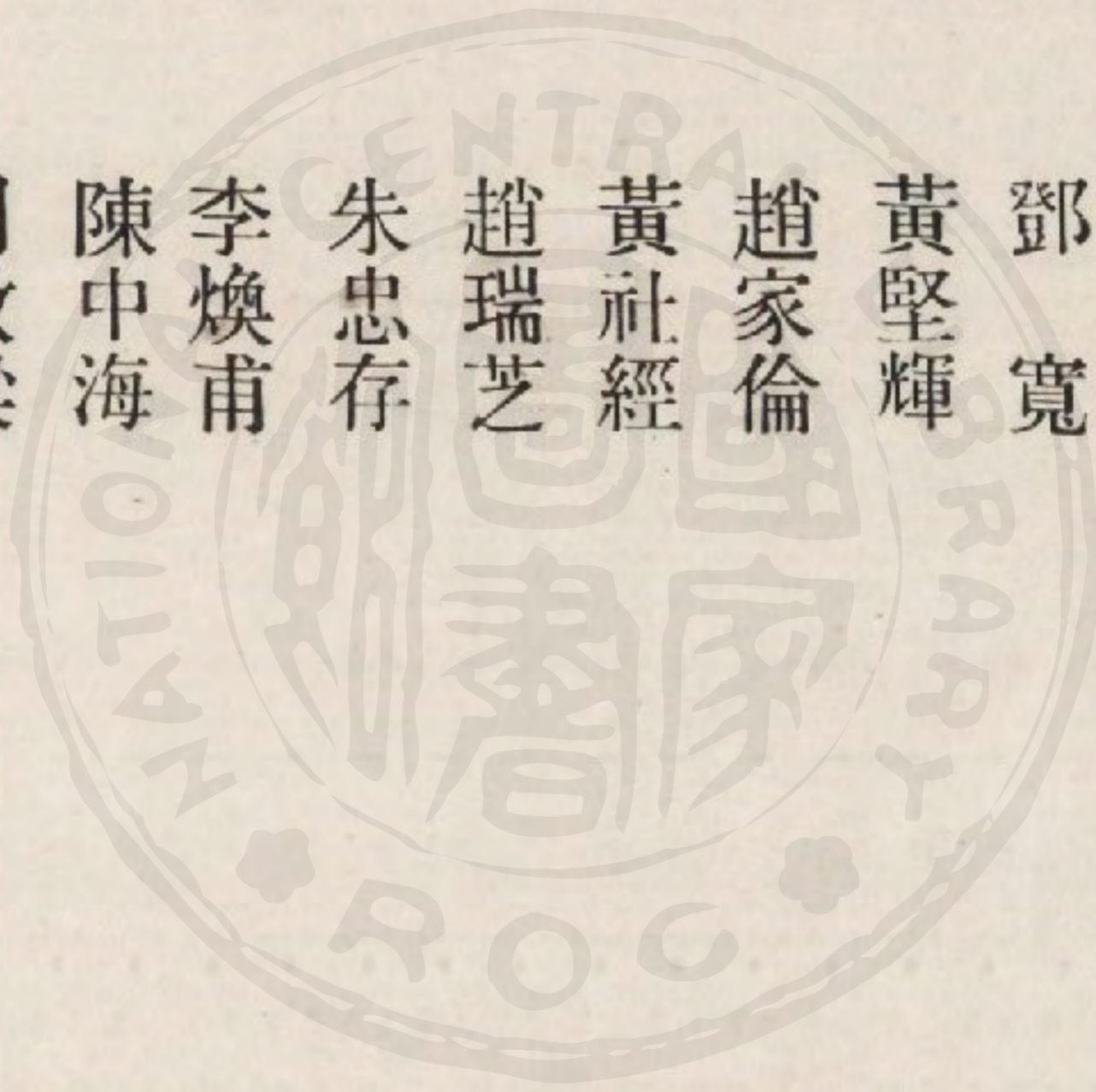
陳中海

周敬梁

黃甘家

黃榮均

黃炳榮



一一一

屋崙埠統一義捐救國會

黃遠吉

朱 享

陳緒容

司徒壽

黃 達

美洲俱樂部

黃增杰

李 成

黃德清

福泰 天寅 福昌 大新 亞洲 翁

萬利 順利 共和 文明 公司

永利源 福來公司

林德簪

遠東俱樂部

花旗 泰來 福春 發財公司

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斐市那埠中華會館

民衆俱樂部

廖錫寬

金龍俱樂部

東灣俱樂部

鄺沛

劉根盛

陳秉剛

張坤

黃起悅

斐城中華會館

救國會

馬鰲

黃子熊

秉公堂

寧陽會館 寧僑公會

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保安堂

大阪館

松島館

黎浩佳

馬春田

黃克勤

鴻昌

上海樓

林肯旅館

廖根源

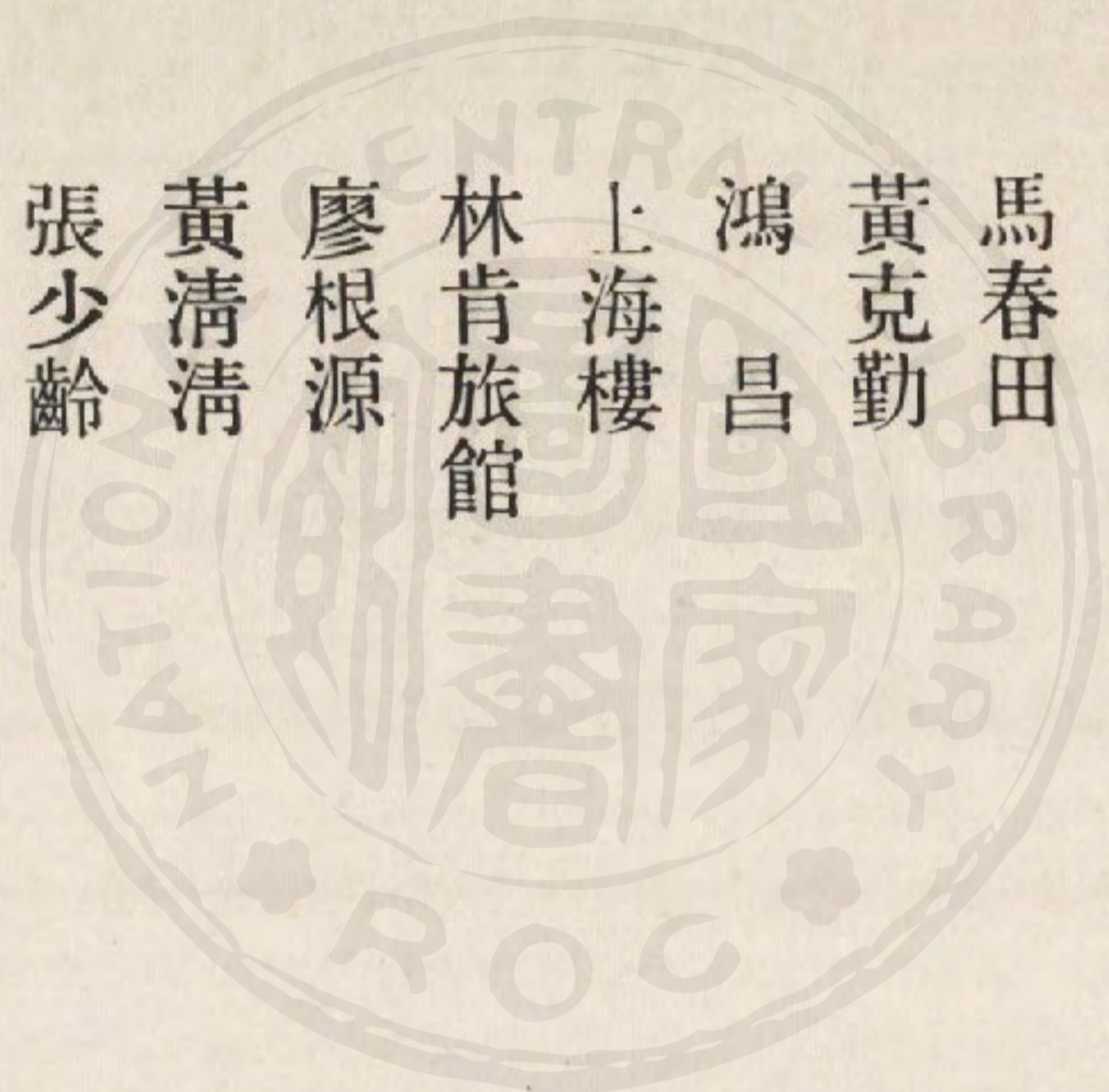
黃清清

張少齡

巴黎樓

遠東

萬國街市



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北架斐埠中華會館

周光魂

朱健民

新上海

錦鳳

陸丁

陳新才

陳桂山

廣東旅館

華洋

高頓

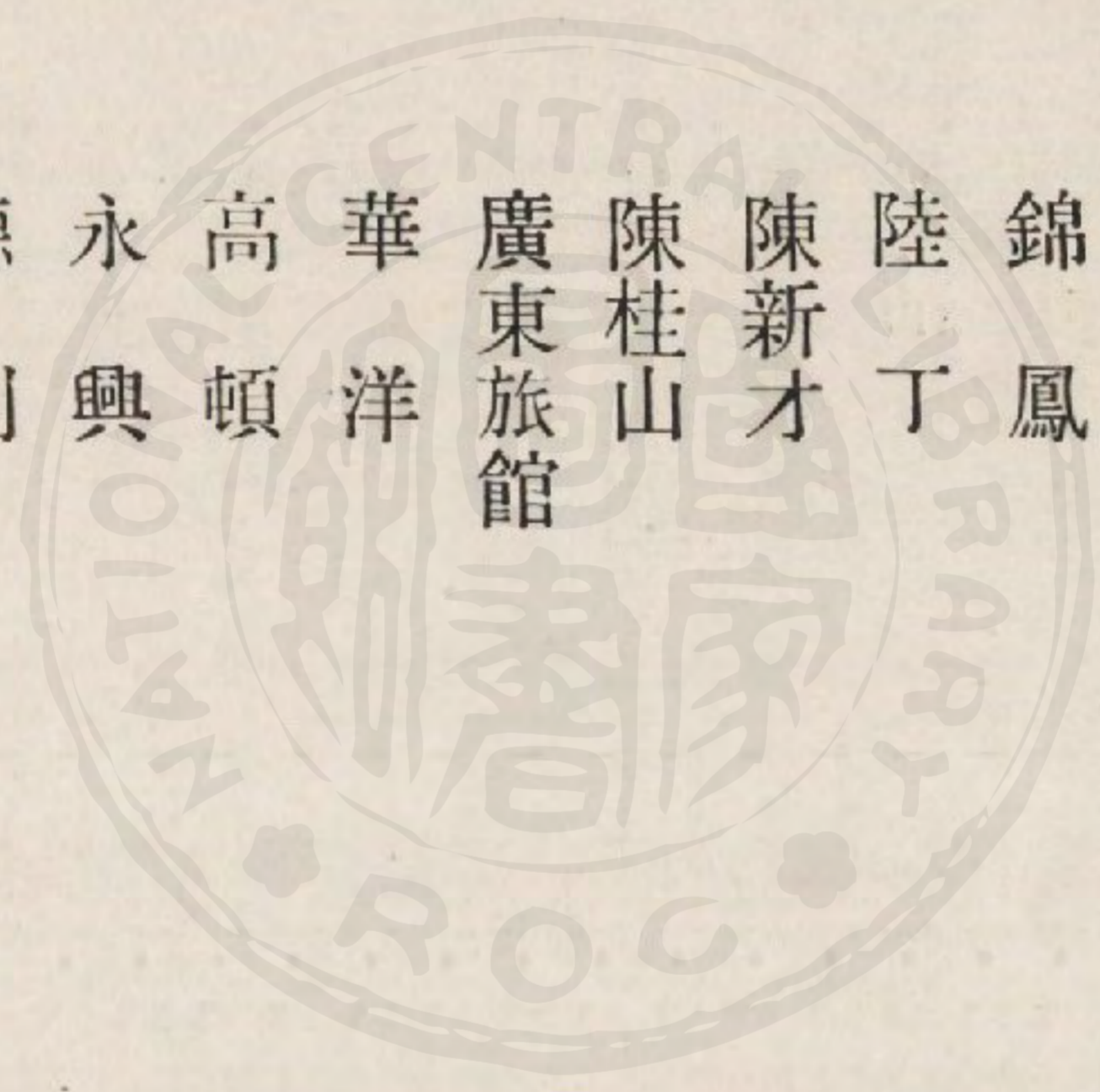
永興

德利

保滋堂

銀行酒巴

北架斐埠中華會館



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四

黃漢光

周德廉

新華公司

三民公司

共和公司

歐洲公司

民政公司

國民公司

關基

蔡敬初

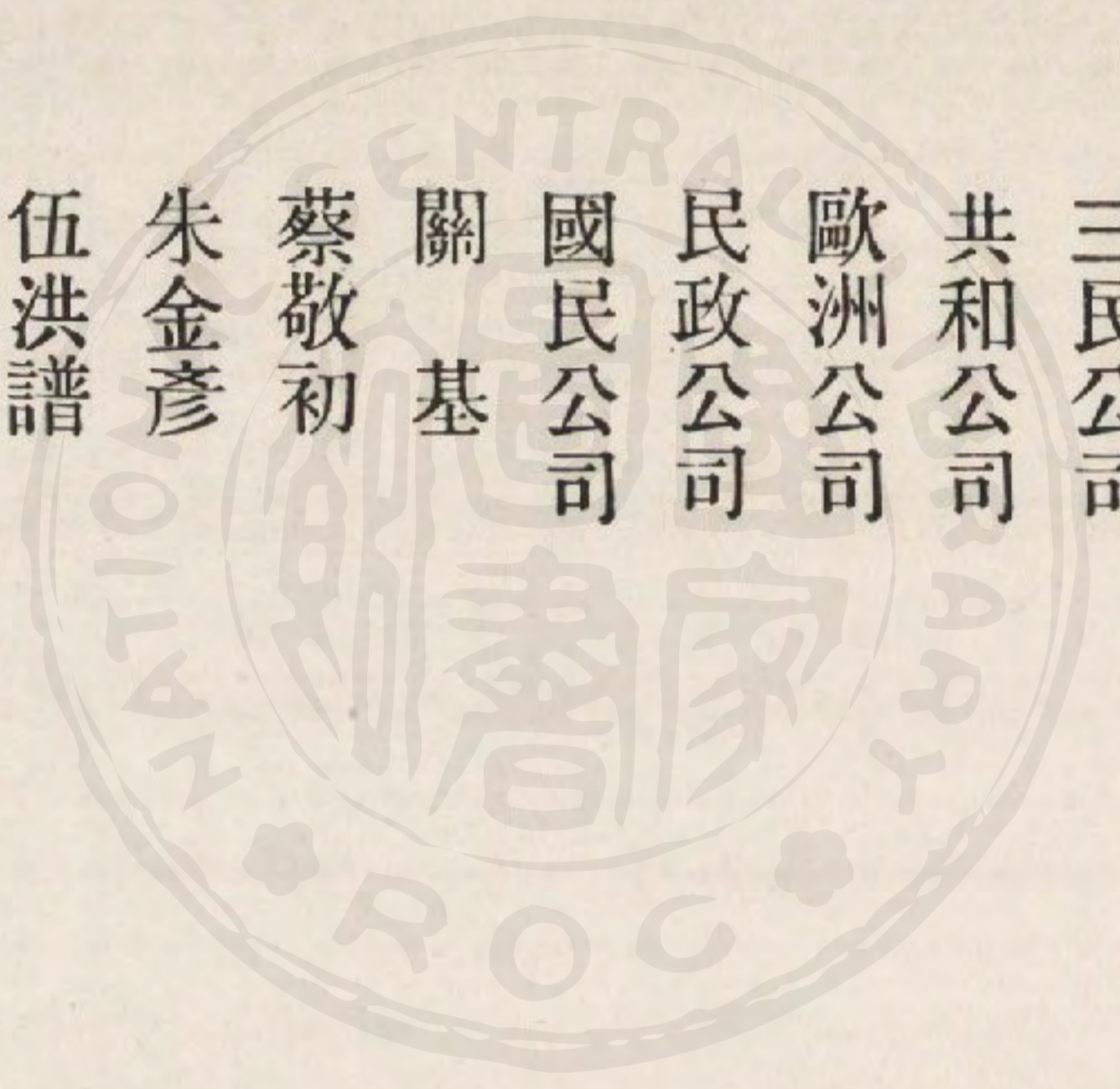
朱金彥

伍洪譜

嚴曹月蟾

鄭廣池

黃道謙



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市作頓埠中華會館

鄭龍威

沈玲

伍燦璋

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梁榮光

梁雲樹

梁葉

黃有

黃世振

黃俊傑

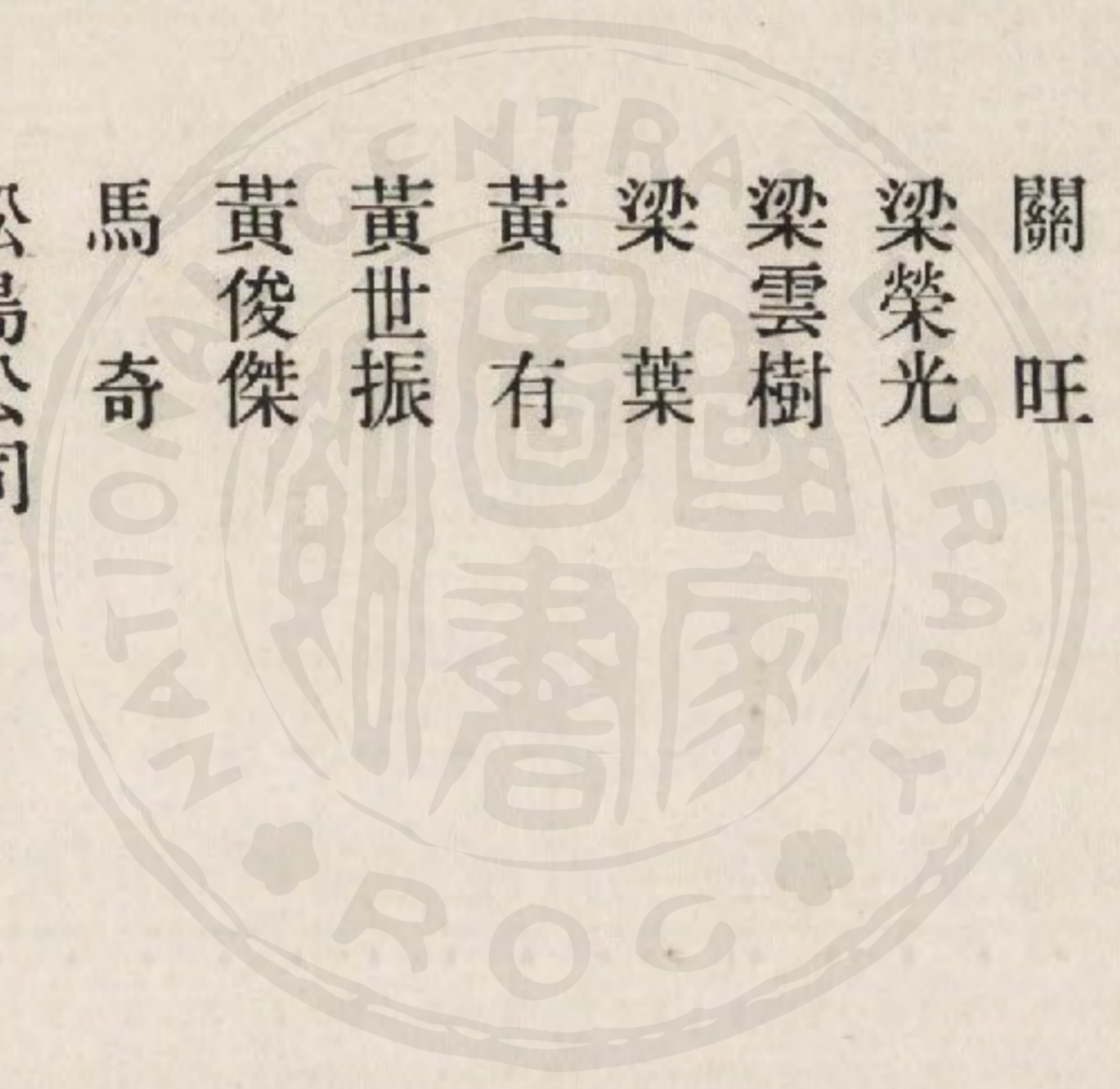
馬奇

松島公司

市作頓中華會館

日光公司

大發財公司



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黃明發

黃經芳

黃偉培

林安

古鑑泉

葉南

湯維慶

五湖洞公司

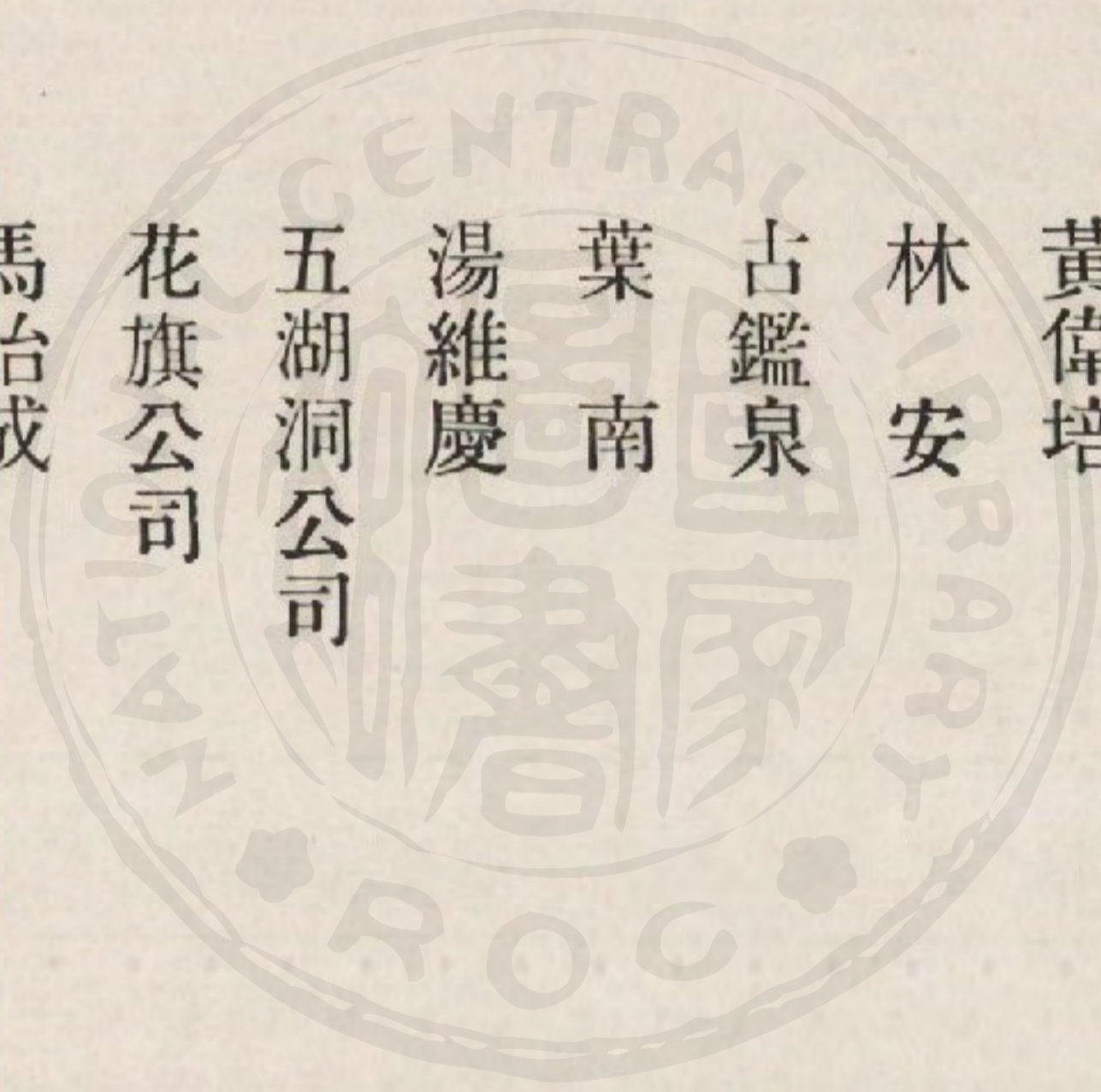
花旗公司

馬治成

振華公司

黃超寰

黃新民



挖慎委利中華會館

黃敦杰

挖慎委利中華會館

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常興

秉公堂

萃勝工商會

萬國宮

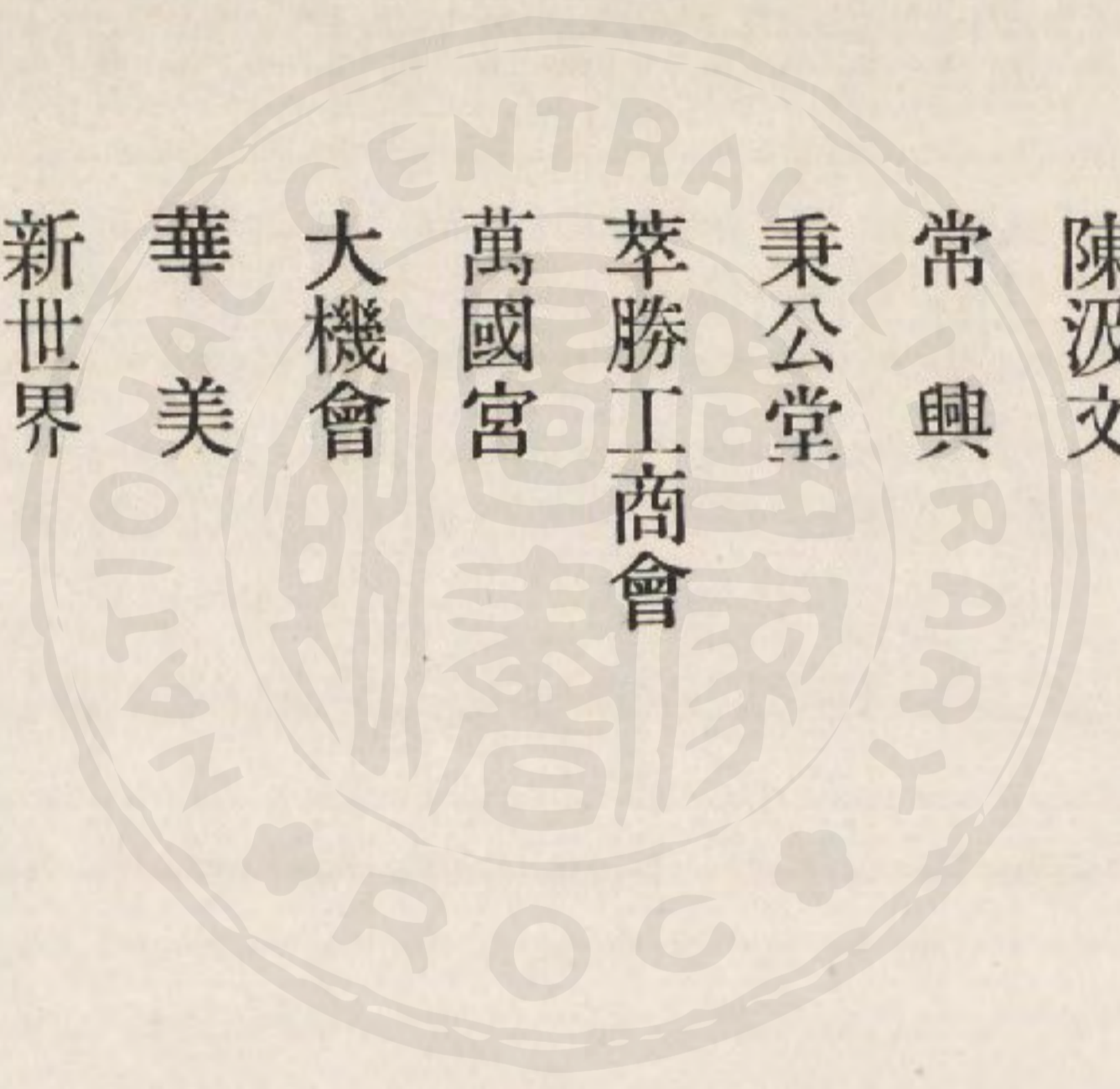
大機會

華美

新世界

珉尼罈

天寅



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鄭公司

蘇州亭

黃經璇

譚競興

劉海

陳良仕

胡毓棠

李殷靄

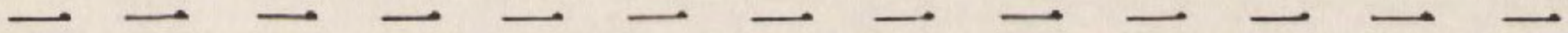
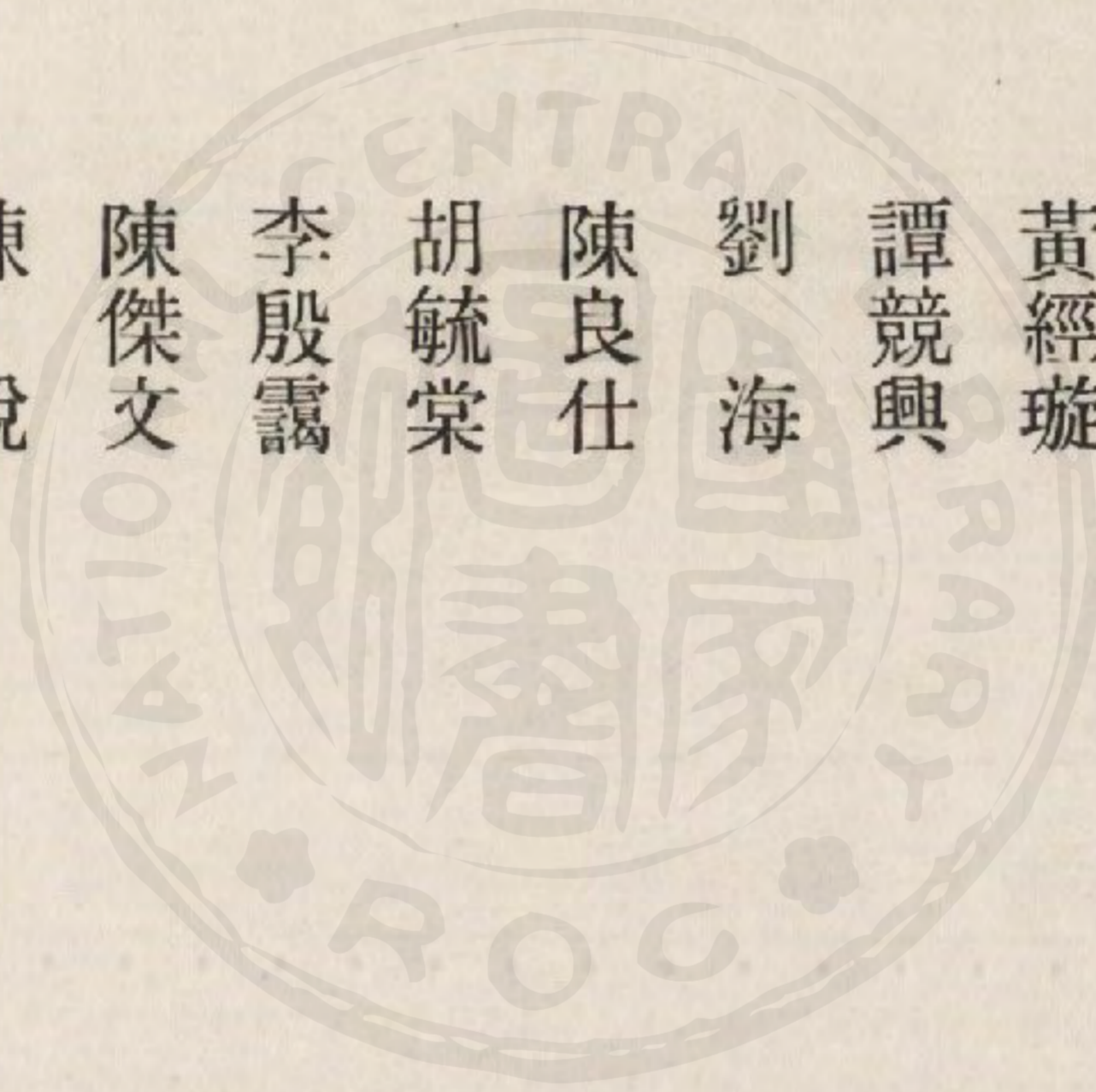
陳傑文

陳銳

陳恒

陳潮

蔡毓培



羅省華僑拒日後援會
市連拿埠中華會館

蕭球

馬深

黃祥

陳文超

羅省華僑拒日後援會

文明館

新共和

新廣東

同益館

新英京

萬國宮

安樂居

順適館

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六埠聯合救國會

陞步餐館

陳典蘭

陳現典

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市打餐館

林球

鄭璇

譚均

工商俱樂部

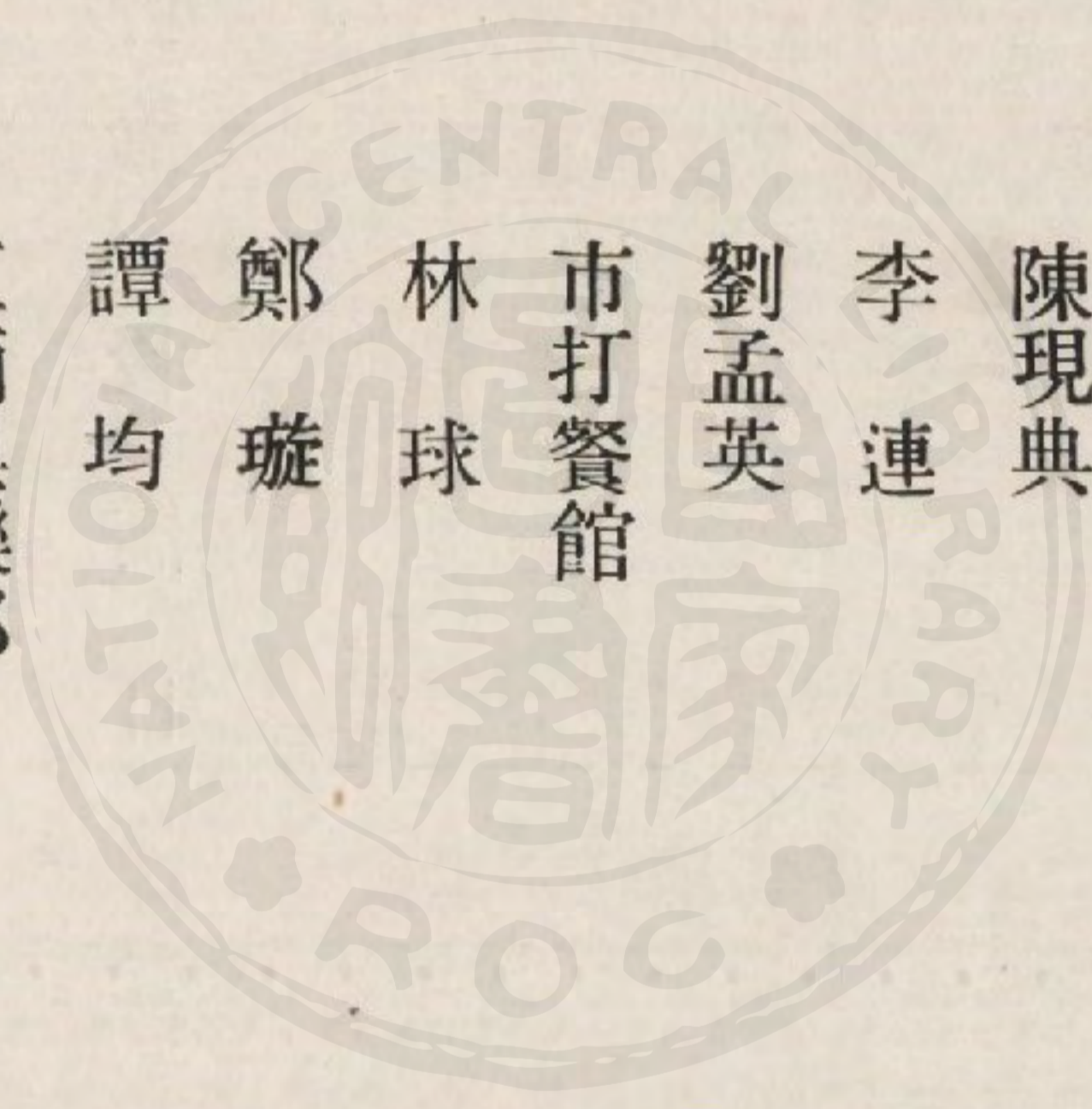
司徒仕績

同昌公司

周瑞蘭

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中央公司

伍躍雲

許大振

果達地公司

譚周洪

關增煥

黃榮光

伍于忠

馬觀

關武

亞省斐匿埠華僑救國後援會

斐匿埠救國會

砵崙埠中華會館

砵崙中華會館

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網自利埠義捐救國分會 李賢華

南京公司

林汝賢

伍萬章

上海樓

李忠焜

張守

瓊利餐館

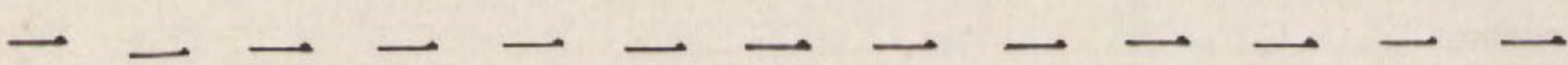
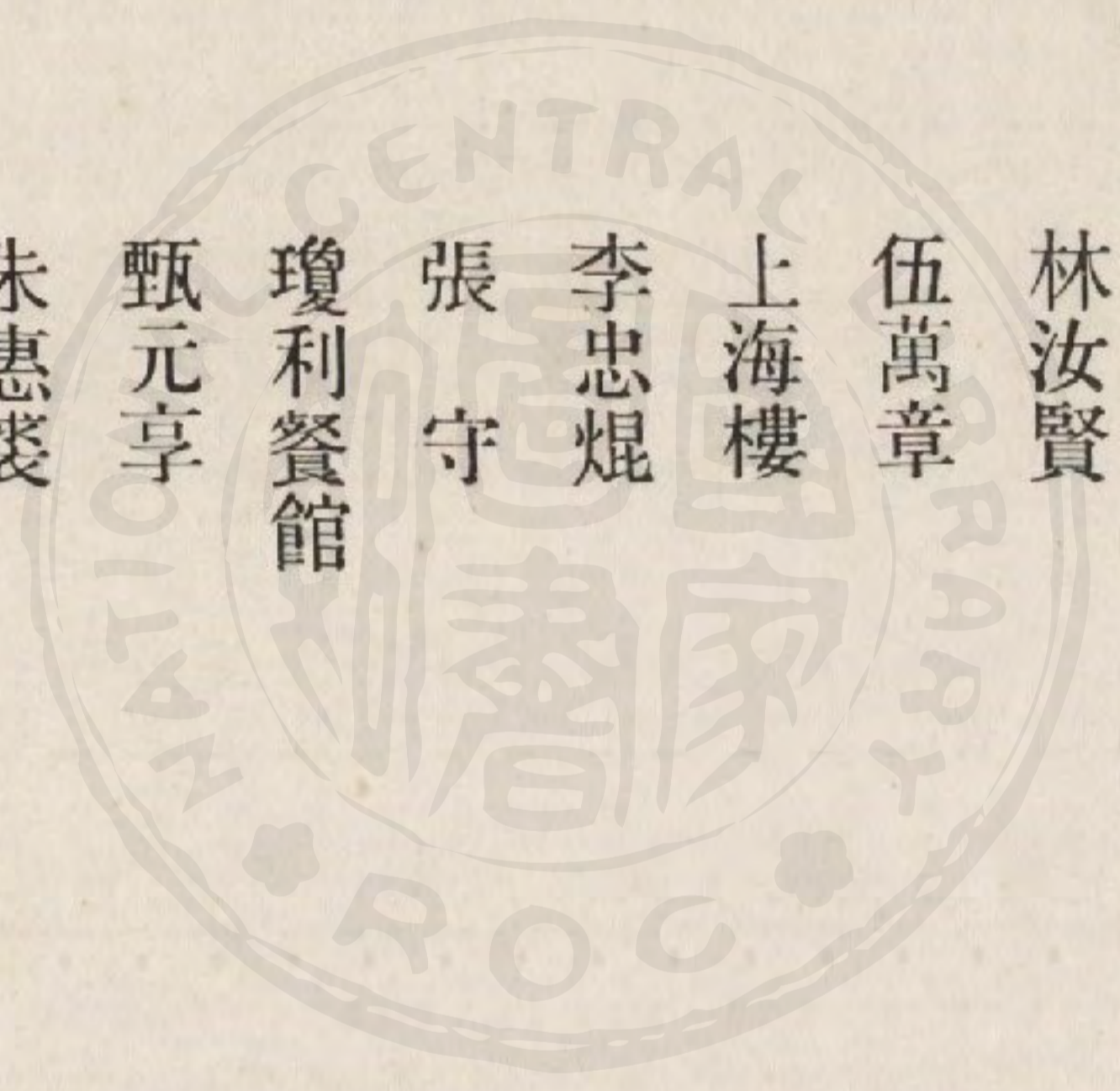
甄元亨

朱惠裘

陳寶安

網自李埠中華學校

余玉蓬



軒佛埠中華會館

洪 祺

潘仁禎

曹就德

朱由杞

郭蘇喜

鍾秀良

鄭義勝

蘇少楠

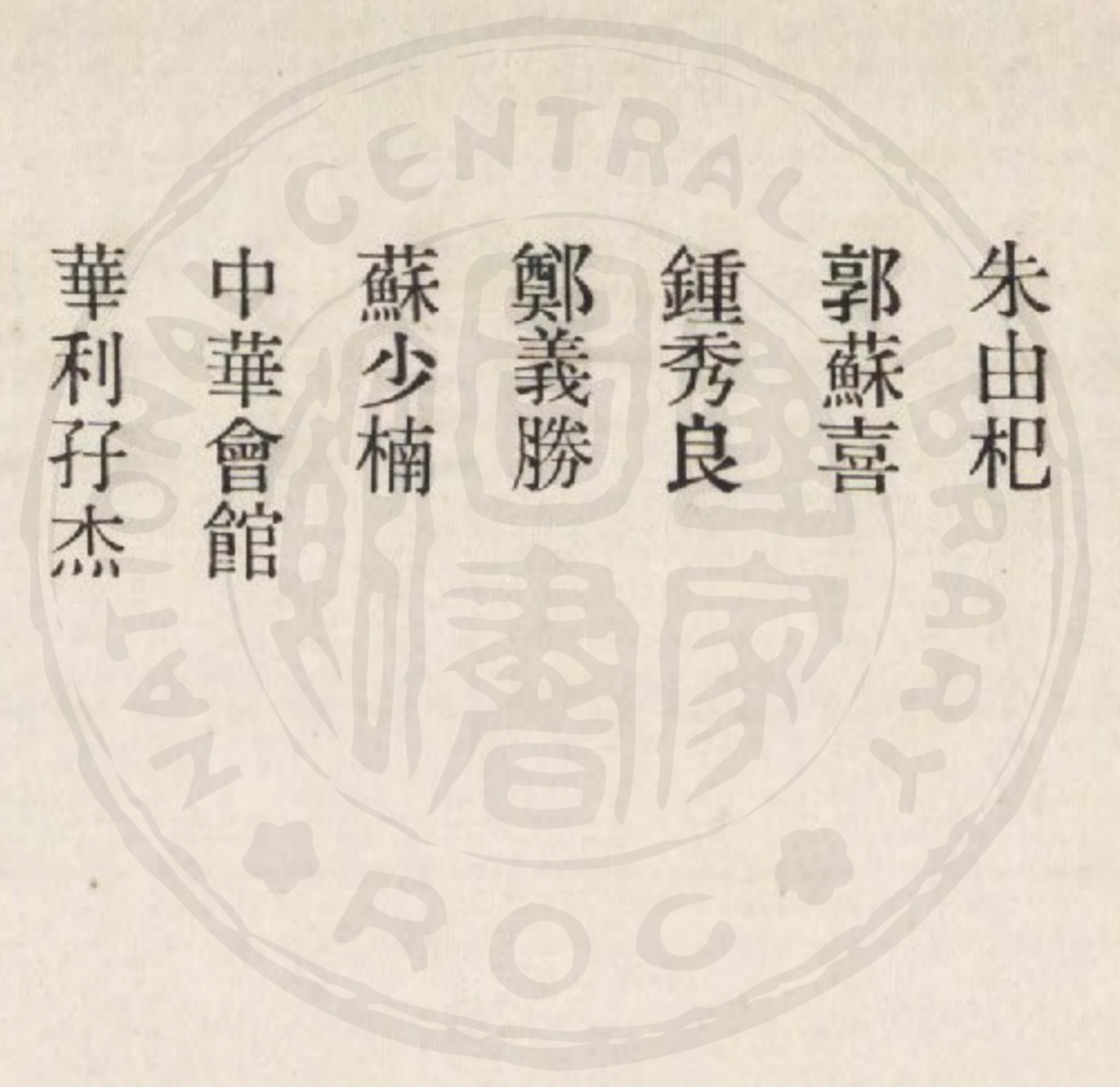
中華會館

華利孖杰

國民孖杰

蓮香樓

關國煦



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劉光

櫻花樓

天壇樓

李關雄

李光來

李福來

甄明潤

江召棠

蘇樂亭藥局

山多些救國分會

左珠省握加市打埠中華公所

林始亨

司徒洪

一五

劉子祺

黃潮

勞經鈞

周章灼

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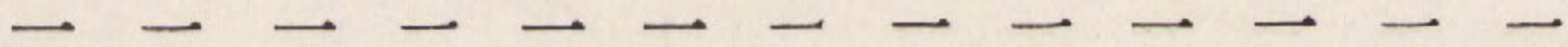
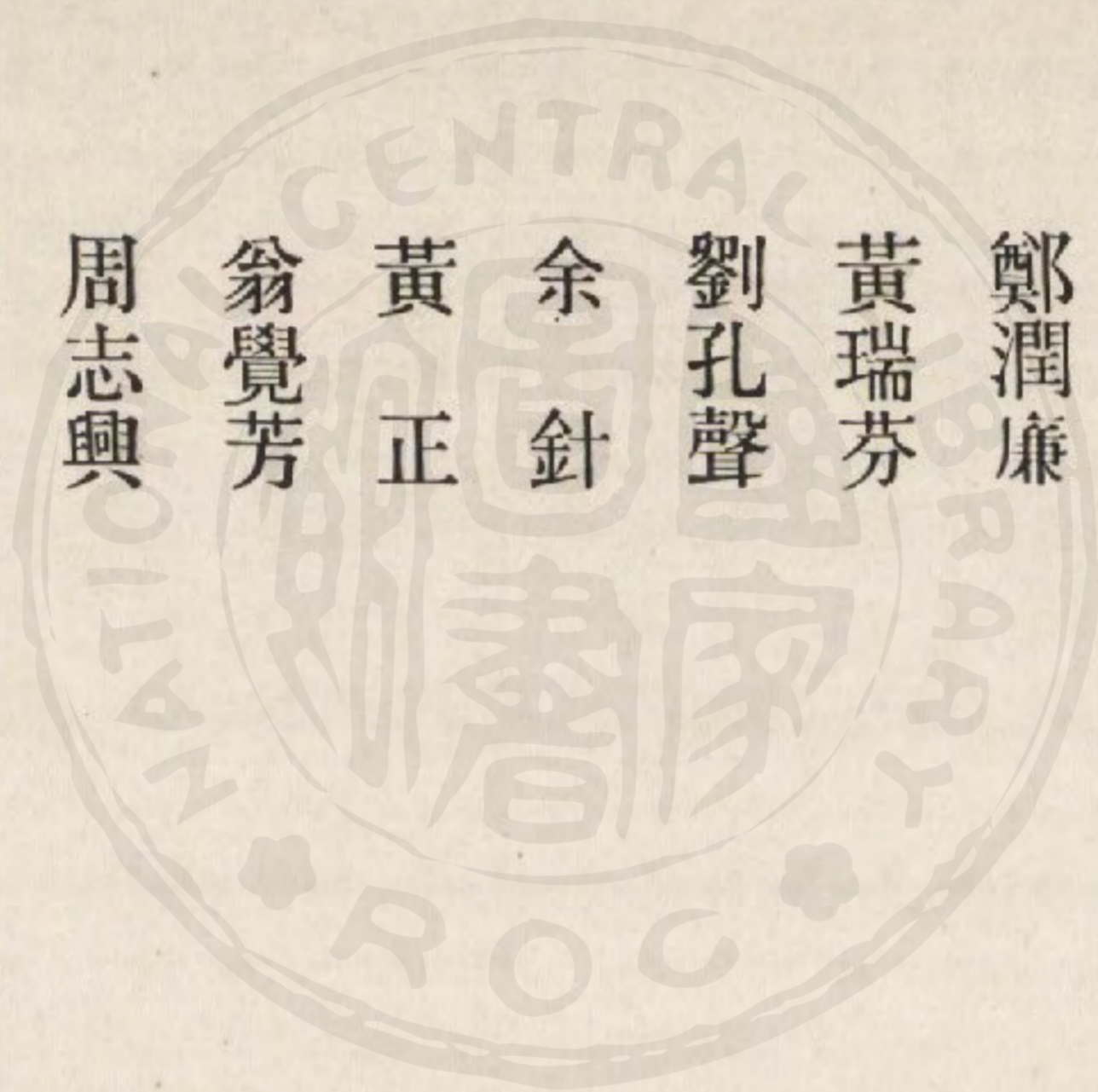
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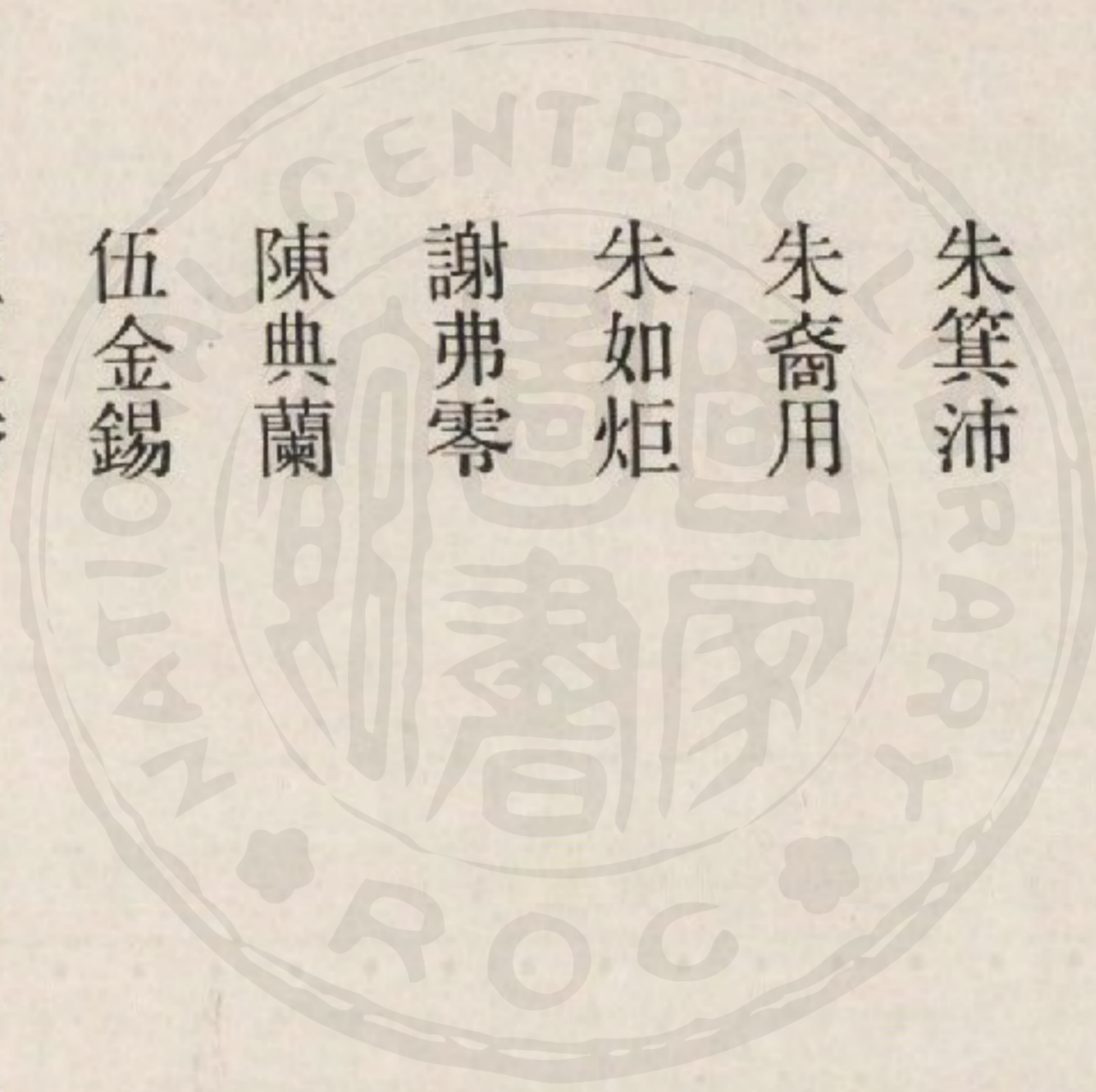
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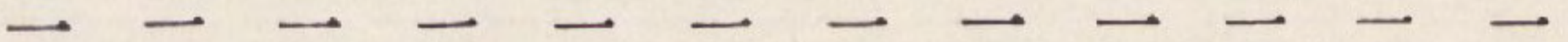
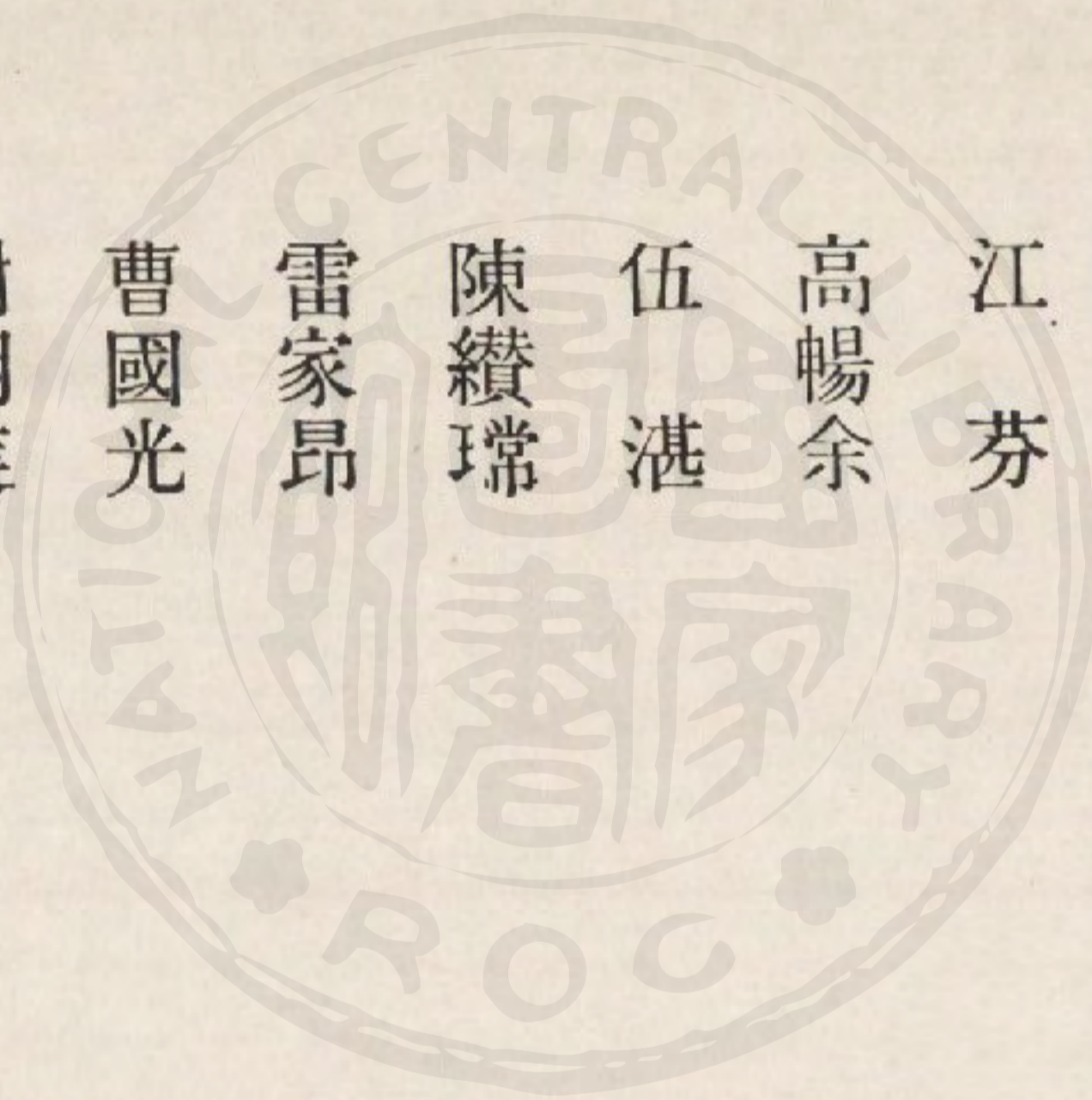
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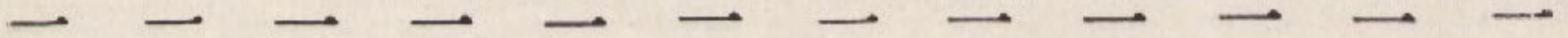
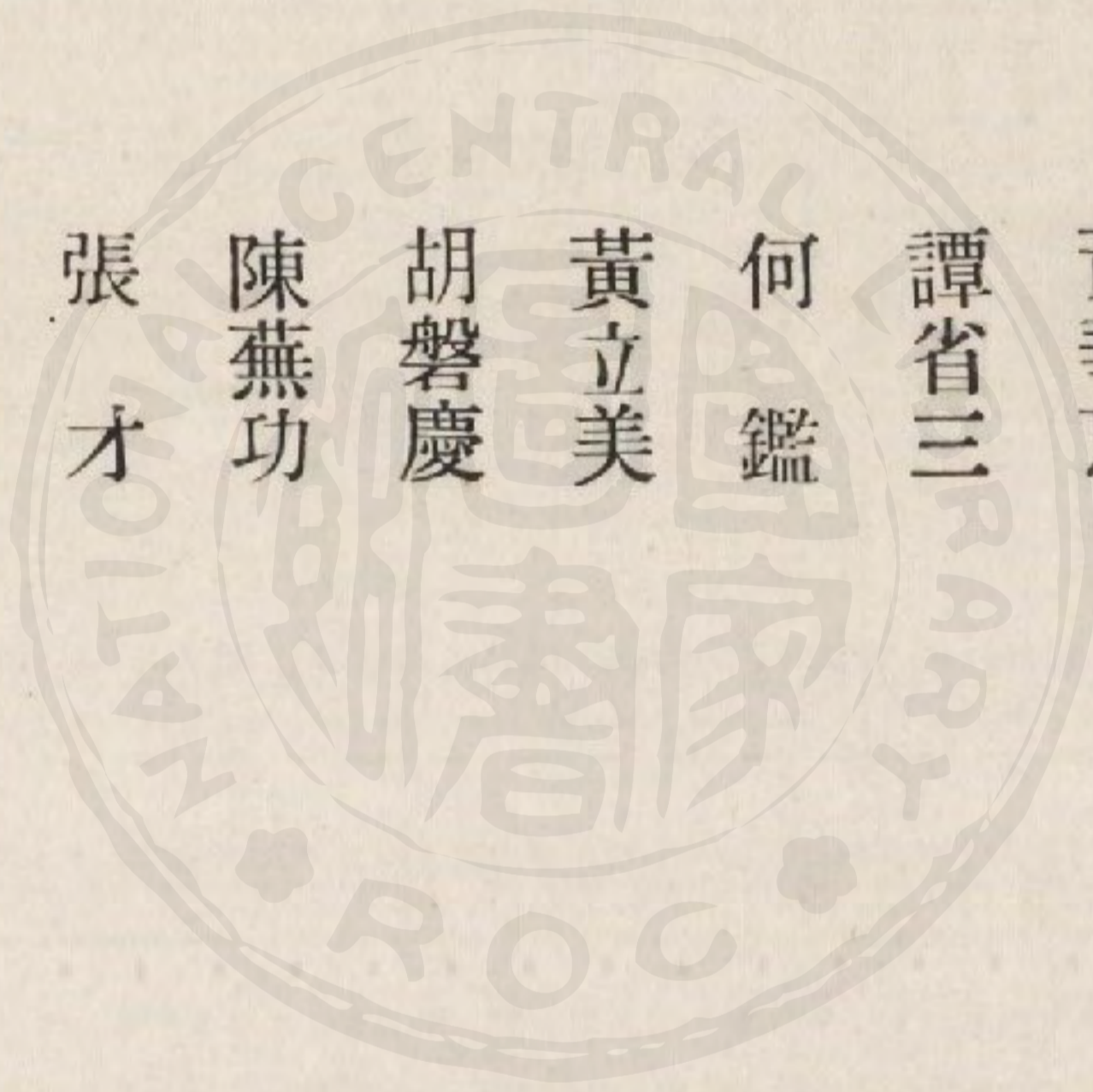
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張才

黃炳南

林連福

林添



陽和總會館

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本書中文部份勘誤表

頁數	行數	錯誤	更正
五〇	八	王大使代替黃總領事	黃總領事代替王大使
七九	五	(九)	十七、
八七	六(陳澤民)	(內交本會幾册)欄內應加「五」字	
八八	四(趙九疇)	(內交本會幾册)欄內應加「三」字	
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八八	六(兆昌泰)	(內交本會幾册)欄內應加「四」字	
八八	七(李立生)	(內交本會幾册)欄內應加「四」字	
九〇	七(黃社經)	(內交本會幾册)欄內應加「一」字	
九三	十一	黃清清	黃清源
九五	十五	黃道謙	黃道濂
一〇四	九	甄元亨	甄元亨

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that by reason of the national character of said vessel and the claim of immunity asserted herein by the Republic of China, libelant is denied an order or decree controlling the movements of said steamship "KWANG YUAN" (ex "EDNA CHRISTENSEN") or the use of its equipment for the purpose of facilitating the discharge of said melting scrap on board said steamship "KWANG YUAN", or for any other purpose, or at all; and said libel insofar as it prays for an order controlling the movements of said vessel or the use of its equipment be and the same is hereby dismissed; that all bonds and stipulations heretofore filed in the above entitled cause by said intervening petitioner be and the same are hereby exonerated and discharged and the surety and sureties thereon released; and that said intervening petitioner do have and recover from said libelant intervening petitioner's costs of suit herein, to be hereinafter taxed.

Dated: San Francisco, California, June 30, 1939.

HAROLD LOUDERBACK

Judge of the United States District Court.

IN THE SOUTHERN DISTRICT OF THE UNITED STATES
 DISTRICT COURT FOR THE NORTHERN DISTRICT
 OF CALIFORNIA, IN ADMIRALTY

YOKOHAMA SPECIE BANK, Ltd.,
 a corporation,

Libelant,

vs.

2100 Tons of melting scrap on board the
 Steamship, "EDNA CHRISTENSEN",

Respondent.

DECREE

This cause having come on regularly for hearing in the above entitled Court, and the Court having made and filed its findings of fact and conclusions of law herein, wherein it was found and concluded that libelant is not entitled to an order controlling the movements of said vessel or the use of the equipment thereon for the purpose of facilitating the discharge of said 2100 tons of melting scrap and that intervening petitioner is entitled to a decree with costs, dismissing the amended libel herein insofar as said libel prays for an order controlling the movements of said vessel, and the equipment thereon, for the purpose of facilitating the discharge of said melting scrap, or for any other purpose, or at all;

X.

It is not true that the nationals of the Republic of China on board said vessel at the times mentioned in said intervening petition and supplemental petition in intervention, or at any time, were unlawfully holding said vessel or that said nationals had gained possession of said vessel by reason of unlawful and/or mutinous acts against the master and/or officers of said vessel, but on the contrary, it is true that said nationals were at all said times lawfully on board said vessel.

XI.

That it is not true that the lawful possession, or any kind of possession, of said vessel was in Y. Kawano or that the said Y. Kawano was ousted of the immediate physical possession, or any kind of possession, of said vessel by the nationals of the Republic of China on board said vessel, but on the contrary, it is true that the lawful possession and immediate physical possession of said vessel was at all of the times from and after the 27th day of April, 1938, in the Republic of China.

CONCLUSIONS OF LAW

I.

That by reason of the national character of said steamship "KWANG YUAN" and the claim of immunity asserted herein by the Republic of China, the above entitled Court has no jurisdiction over said vessel, its engines, machinery, gear or appurtenances or its movements and by reason thereof libelant is denied an order controlling the movements of said vessel or the use of the equipment thereon for the purpose of facilitating the discharge of said 2100 tons of melting scrap, or for any other purpose, or at all.

II.

That intervening petitioner is entitled to a decree with costs dismissing said libel insofar as said libel prays for an order controlling the movements of said vessel or the use of the equipment thereon for the purpose of facilitating the discharge of said melting scrap, or for any other purpose, or at all.

Dated: June 30, 1939, San Francisco, California.

HAROLD LOUDERBACK

Judge of the United States District Court.

and exercised physical dominion and control over said vessel by and on behalf of said Republic.

VII.

That ever since said 27th day of April, 1938, and at all times mentioned in said intervening petition and supplemental petition in intervention, said vessel has been a national vessel of the Republic of China, flying the flag of said Republic, and in the physical possession, control, and direct management thereof, and the crew of said vessel were at all of said times nationals of the Republic of China, and in the employ thereof.

VIII.

That the steamship "KWANG YUAN" was not a party to the above entitled cause and was not seized by the United States Marshal in said cause, and was not in the possession, control or custody of the United States Marshal or of the above entitled Court in the above entitled cause at any of the times mentioned in said libel, or at any other time, or at all.

IX.

That the libel in the above entitled cause was filed in the above entitled Court on the 22nd day of April, 1938, and on said day a monition was issued by the Clerk of the above entitled Court directing the United States Marshal pursuant to said monition to seize said 2100 tons of melting scrap on board said steamship "KWANG YUAN"; that on the 23rd day of April, 1938, a Deputy United States Marshal boarded the steamship "KWANG YUAN" with a Chinese who purported to be an interpreter and who was in the employ of said libelant, and attached a copy of said monition to the bulkhead in the saloon of said vessel and requested the alleged interpreter to read the said monition to the highest officer on board said vessel; that the monition was not attached to said cargo and no keeper was placed upon said vessel or in charge of said cargo; that said Deputy United States Marshal and said alleged interpreter thereupon departed from said vessel; that at none of the times mentioned in said libel or intervening petition and supplemental petition in intervention or at any time, did the said United States Marshal have physical possession of said melting scrap nor did said Deputy United States Marshal at any of said times while he was on board said vessel see said melting scrap.

tion hereby makes its findings of fact and conclusions of law in said cause as follows:

FINDINGS OF FACT

I.

That libelant, Yokohama Specie Bank, Ltd., was at all times mentioned in said libel, a corporation, organized and existing under and by virtue of the law of the Empire of Japan, and the owner of 2100 tons, or thereabouts, of melting scrap on board the steamship "KWANG YUAN" (ex "EDNA CHRISTENSEN").

II.

That the Yung Yuan Steamship Company of Chefoo, China, was at all times mentioned in said libel and intervening petition and supplemental petition in intervention, a corporation, organized and existing under and by virtue of the laws of the Republic of China.

III.

That at all times mentioned in said libel until said vessel was expropriated by the Republic of China, the steamship "KWANG YUAN" was a vessel duly owned and operated by, and in the possession of, the said Yung Yuan Steamship Company of Chefoo, China, and flying the flag and registered under the laws of the Republic of China.

IV.

That intervening petitioner was at all times mentioned in said libel and said intervening petition and supplemental petition in intervention the duly accredited and acting Ambassador of the Republic of China to the United States of America.

V.

That on the 26th day of April, 1938, the Republic of China promulgated an order expropriating the steamship "KWANG YUAN", and said Republic directed and instructed C. C. Huang, the Consul General of the Republic of China at San Francisco, California, to take possession and control of said vessel on behalf of said Republic of China.

VI.

That on the 27th day of April, 1938, C. C. Huang, the duly authorized and accredited Consul General of the Republic of China at San Francisco, California, pursuant to said order of expropriation and the said instructions from the Republic of China, took physical possession and control of said vessel by and on behalf of Said Republic of China

IN THE SOUTHERN DIVISION OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT
OF CALIFORNIA, IN ADMIRALTY

YOKOHAMA SPECIE BANK, Ltd.,
a corporation,

Libelant,

vs.

2100 Tons of melting scrap on board the
Steamship, "EDNA CHRISTENSEN",

Respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause having come on regularly for hearing on the 20th, 21st and 22nd days of September, 1938, before the above entitled Court, the Honorable Harold Louderback presiding, the libelant being represented by its proctor, J. F. RESLEURE, ESQ., and His Excellency, The Ambassador of the Republic of China to the United States of America, Chengting T. Wang, intervening petitioner, being represented by his proctors, HUGH K. McKEVITT, ESQ., J. M. HOWARD, ESQ., and MESSRS. HENGSTLER, DORR & STEVENSON by ARCHIE M. STEVENSON, ESQ., and thereupon evidence both oral and documentary having been offered by the respective parties and upon the completion of the trial of said cause the said cause having been submitted upon briefs to the above entitled Court for decision and thereafter the depositions of Kinn Wei Shaw, Lee Yuan Kai and Chen Chi-yen having been duly received, opened, filed and admitted in evidence in said cause and thereafter said briefs having been duly filed, and said Court having considered the same, upon due delibera-

“Moreover, according to the provisions of Article 3 of the Chinese Maritime Trade Law, all vessels owned by Chinese individuals or corporations, shall be vessels of Chinese Nationality.”

(Signed) C. Y. CHEN

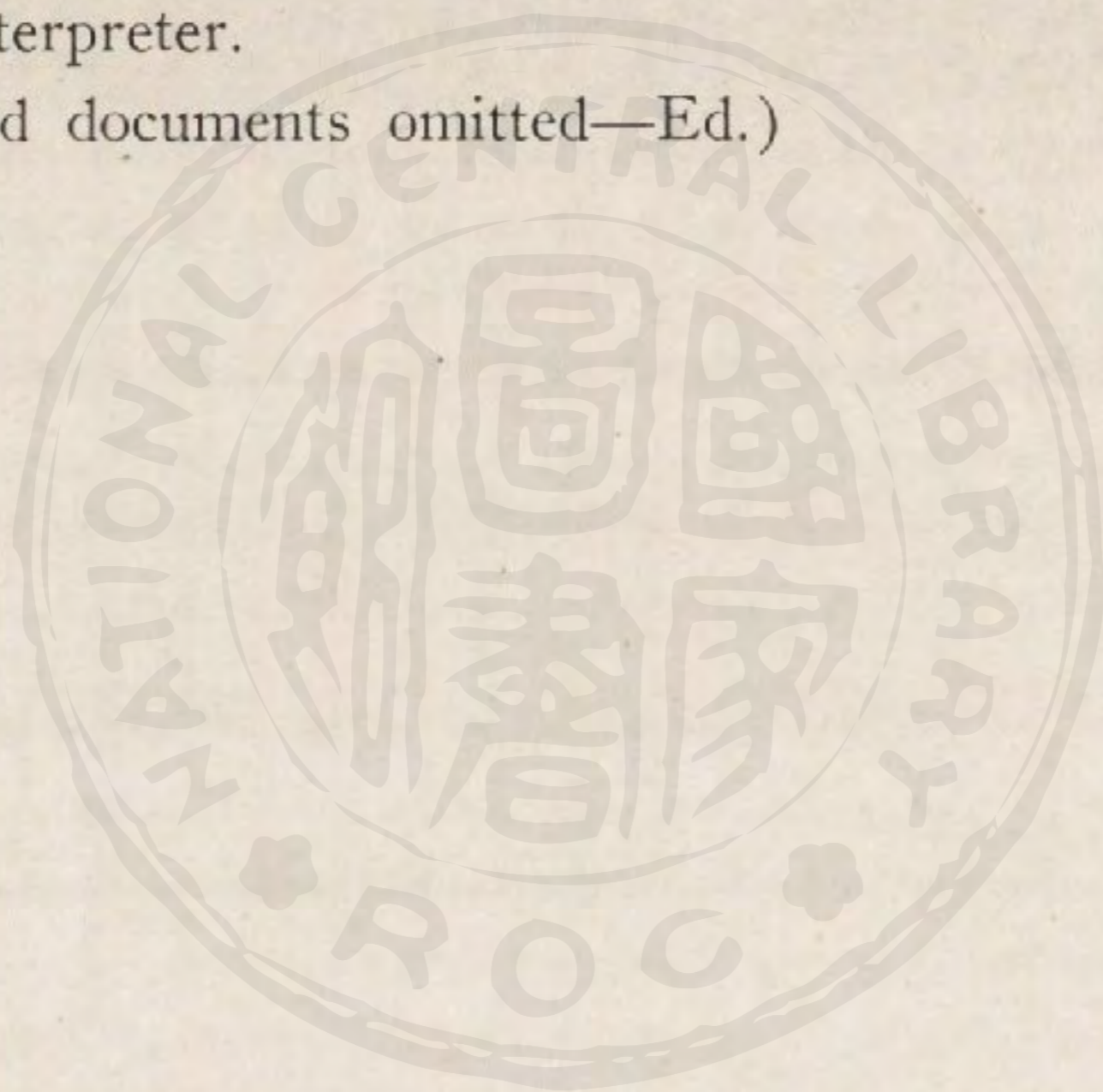
Sworn to and subscribed before me by the said Chen Chi-yen, this 21st day of November, 1938.

(Signed) CLAYSON W. ALDRIDGE,
Second Secretary of Embassy of the United States of America.

Li Si-Suen,

Signature of Interpreter.

(All annexed documents omitted—Ed.)



hibit B) are furnished herewith, both are in the Chinese language and I also submit English translation thereof.

CROSS-INTERROGATORIES

1. If in answer to direct interrogatory No. 12 you have attached a copy of any document to your deposition, will you state whether or not said document was issued pursuant to an application by Yung Yuan Steamship Company, or any other person or persons.

Answer: The document of copy of which is attached as Exhibit B under interrogatory 12 was issued pursuant to an application by the Yung Yuan Steamship Company. The application was made to the Chefoo sub-office of the Tientsin Bureau of Navigation and submitted by the Chefoo sub-office to the Ministry of Communications.

2. If your answer to the preceding interrogatory is yes, please attach a copy of such application together with copies of all documents submitted in support of the application.

Answer: The records of the Chefoo sub-office of the Tientsin Bureau of Navigation are at present not available as Chefoo is now under Japanese military occupation. However, as supporting evidence of the application in question, I attach copies of three documents in the Chinese language (Exhibits C, D and E) I submit also English translations thereof.

3. Have you received any written communication from any person whomsoever, relative to the testimony given or to be given in this matter? If so, attach such communications or copies thereof to your deposition.

Answer: I attach copies of two documents, one in English (Exhibit F) and the other in Chinese (Exhibit G). I submit also an English translation of Exhibit G. There are the only written communications which the Ministry of Communications has received relative to the testimony to be given in this matter.

The witness, Chen Chi-yen, before signing his deposition desired to add the following at the end of his answer to the Sixth interrogatory:

they are registered by a Chinese Consul and when the ships come into Chinese jurisdiction the Consular registration papers are taken up and replaced by registration papers of the Ministry of Communications. By registration papers I mean documents showing that the ships have Chinese nationality.

Prior to July 1937, i. e., between 1932 and 1934, the Ministry of Communications had, in fact, issued licenses or registration papers to two ships which were owned by the Yung Yuan Steamship Company. These ships were the S. S. Yung Yuan and the S. S. Shun Yuan. They were still licensed in July 1937. This shows that the Ministry of Communications recognized the Yung Yuan Steamship Company as a Chinese company.

7. Was there any change in that company's status between July, 1937 and April 30, 1938?

Answer: There was no change in that Company's status as a Chinese company between July 1937 and April 30, 1938.

8. Does your department have records or information regarding the purchase of vessels by Chinese Shipping companies?

Answer: Yes.

9. Will you state whether or not the Yung Yuan Steamship Company of Chefoo, China, purchased the American steamship "Edna Christensen" from Sudden & Christensen, an American Company in 1937?

Answer: Yes.

10. Was that purchase approved by your department?

Answer: Yes.

11. Was any document issued in that connection?

Answer: The application for approval of the purchase of this vessel was made by telegram to the Ministry of Communications through the sub-office at Chefoo of the Tientsin Bureau of Navigation, and the Ministry's approval was sent in the form of a telegram to the Chefoo sub-office.

12. If your answer to interrogatory No. 11 is yes, attach a copy of said document.

Answer: Copies of the telegrams requesting approval of the purchase (Exhibit A) and of the Ministry's telegram of approval (Ex-

INTERROGATORIES ANSWERED BY CHEN CHI-YEN, SENIOR MEMBER OF THE DEPARTMENT OF SHIPPING AND NAVIGATION, MINISTRY OF COMMUNICATION, OF THE REPUBLIC OF CHINA.

DIRECT INTERROGATORIES

1. What is your name?

Answer: Chen Chi-yen.

2. Are you connected with the Department of Shipping and Navigation, Ministry of Communications of the Republic of China?

Answer: Yes.

3. In what capacity?

Answer: Senior member (second grade).

4. How long have you been so connected with the department?

Answer: Four years and three months.

5. Is the Department of Shipping and Navigation, Ministry of Communications, in charge of the purchase, sale and registration of vessels by Chinese citizens or corporations?

Answer: The Department of Shipping and Navigation must approve each transaction involving the purchase and sale of vessels by Chinese citizens or corporations. Once this approval is given the owner may apply for registration in the Bureau of Navigation, an independent office of the Ministry of Communications."

6. Was the Yung Yuan Steamship Company registered or licensed by your department as a Chinese Shipping Company in July 1937?

Answer: According to Chinese law and practice, it was, in July 1937, the Ministry of Industry, which licensed all Chinese companies including shipping companies. The Ministry of Industry does not now exist as an independent Ministry of the government, having been incorporated in a new Ministry subsequently formed, called the Ministry of Economics.

However, individual Chinese ships were at that time and are now registered by the Bureau of Navigation of the Ministry of Communications, provided they are acquired in China. If acquired abroad

13. From your records or personal knowledge, will you state whether or not the Yung Yuan Steamship Company of Chefoo, China, was dissolved prior to April 30, 1938.

Answer: The Yung Yuan Steamship of Chefoo, China was not dissolved prior to April 30th, 1938, and I have no personal knowledge of the dissolution of the said Company.

CROSS INTERROGATORIES

1. Are you the official in charge of the records of the Department of Commerce, Ministry of Economics at the present time?

Answer: Yes.

2. If you have stated that the Yung Yuan Steamship Company of Chefoo, China was created, organized, formed or registered as a Chinese corporation, please state what the records of the Department of Commerce, Ministry of Economics, show as to who were the original incorporators of that corporation, giving the residences and citizenship of each incorporator, so far as know to you or shown on said records.

Answer: The records of the Department of Commerce, Ministry of Economic Affairs show that the following named persons were the incorporators of the Yung Yuan Steamship Company of Chefoo, China:

Name	Residence	Citizenship
Li Yu-sheng	Liang Chia Tsun, Mou Ping Hsien Shantung	Chinese
Ko Chien-chou	Peng Lai Hsien City, Shantung	Chinese
Ko Ku-ch'en	Peng Lai Hsien City, Shantung	Chinese
Ko Ch'uan-ch'i	Peng Lai Hsien City, Shantung	Chinese

3. Have you received any written communication from any person whomsoever, relative to the testimony given or to be given in this matter? If so, attach such communications or copies thereof to your deposition.

Answer: Yes, the Ministry of Economic Affairs received a copy of the letter from Hugh McKeivitt, Attorney-at-Law, San Francisco, to Mr. C. C. Huang, Chinese Consul-General, San Francisco, dated August 30th, 1938, a copy of which is attached.

Ministry of Economic, is the department of the Government of the Republic of China that is in charge of corporation?

Answer: Yes.

7. Do the records of such department show the formation and existence of all Chinese corporation?

Answer: Yes.

8. In your official capacity, do you have the knowledge of the formation and existence of all Chinese corporation?

Answer: Yes.

9. Will you state whether or not the Yung Yuan Steamship Company of Chefoo, China, was ever created, formed or registered as a Chinese corporation.

Answer: Yes.

10. Will you state when that corporation was created, or organized, formed or registered as a Chinese corporation.

Answer: From the documents available, it appears that the registration of the Yung Yuan Steamship Company of Chefoo, China, as a Chinese company was approved about April 1937.

11. Does your department issue a certificate or other document establishing the existence of a corporation?

Answer: Yes.

12. If your answer to interrogatory No. 11 is yes, please attach the certificate or other document showing the existence of the Yung Yuan Steamship Company of Chefoo, China, as a corporation.

Answer: The copy of the certificate showing the existence of The Yung Yuan Steamship Company of Chefoo, China, as a Chinese registered company is now not available to the Ministry of Economic Affairs, for the reason that due to war conditions complete records concerning the said company are not available in Chungking. However the available files of the Ministry of Industries, the predecessor of the Ministry of Economic Affairs, show by virtue of a receipt No. 015615 (copy attached as exhibit No. 1) that payment of registration fees in connection with the registration of the Yung Yuan Steamship Company of Chefoo, China, as a Chinese Company was made on April 26th, 1937.

11. If your answer to the preceding interrogatory is in the affirmative, please state the capacity of such member or members of the crew, the date of his or their entry into such service and attach copies of any order or other document creating or confirming such appointment.

Answer: This has also to be referred to the Chinese Consul General at San Francisco.

12. Have you received any written communications from any person whomsoever, relative to the testimony given or to be given in this matter? If so, attach such communications or copies thereof to your deposition.

Answer: Yes. A copy of a dispatch from the Ministry for Foreign Affairs to the Military Council is attached as Annex No. V.

INTERROGATORIES ANSWERED BY DR. KINN-WEI SHAW
DIRECTOR OF THE DEPARTMENT OF COMMERCE
OF THE MINISTRY OF ECONOMIC AFFAIRS.

DIRECT INTERROGATORIES

1. What is your name?

Answer: Kinn-Wei Shaw.

2. Are you connected with the Department of Commerce, Ministry of Economics of the Republic of China?

Answer: Yes.

3. In what capacity?

Answer: Director, Department of Commerce, Ministry of Economic Affairs.

4. Were you connected with that Department on July 7, 1937?

Answer: The Ministry of Economic Affairs was inaugurated in January 1938.

5. Have you been connected with that Department continuously ever since July 1937?

Answer: No, but I have been connected with the Ministry in the capacity stated in my answer to interrogatory 3 above, since the inauguration of the Ministry of Economic Affairs in January 1938.

6. Will you state whether or not the Department of Commerce,

said order the Chinese Consulate General at San Francisco has been instructed through the Ministry for Foreign Affairs to take necessary steps for carrying out the expropriation as expressly set out in the order.

5. Attach copies of all documents relating to said order or any actions pursuant thereto, taken subsequent to its issuance.

Answer: A telegram dated 27th, April 1938, from the Ministry for Foreign Affairs to the Chinese Ambassador at Washington and a copy of a telegram of the same date to the Chinese Consul General at San Francisco are attached as Annex No. III and IV.

6. Was any officer of the Republic of China or of the National Military Council in charge of the steamship "Kwang Yuan" at the time said expropriation order was issued?

Answer: I do not know. Please refer this to the Chinese Consul General at San Francisco.

7. If your answer to the preceding interrogatory is in the affirmative, please state the name and capacity of such officer.

Answer: This has also to be referred to the Chinese Consul General at San Francisco.

8. Was any officer of the Republic of China or the National Military Council at any time placed in charge of the steamship "Kwang Yuan"?

Answer: A report from the Chinese Consulate General at San Francisco stated that he had appointed the former second officer of the vessel as the captain of the same.

9. If so, state the name and capacity of such officer, giving date of his appointment and when he actually took such charge.

Answer: This has to be referred to the Chinese Consul General at San Francisco.

10. Please state whether any member of the crew of the steamship "Kwang Yuan" was at the time of the issuance of said order or at any time thereafter in the Military, Naval or Governmental service of the Republic of China.

Answer: This has also to be referred to the Chinese Consul General at San Francisco.

4. Were you so connected on April 26, 1938?

Answer: Yes.

5. Will you state whether or not the National Military Council of the Republic of China issued an order of expropriation of the steamship "Kwang Yuan" of the Yung Yuan Steamship Company of Chefoo, China, on or about April 26, 1938?

Answer: Yes.

6. If your answer to interrogatory No. 5 is yes, please attach a copy of said expropriation order.

Answer: A copy of the order which takes the form of an instruction to the Ministry for Foreign Affairs is attached to this deposition as Annex No. I.

7. Please state the exact date when said order was issued.

Answer: 26th, April, 1938.

CROSS-INTERROGATORIES

1. If in answer to direct interrogatory No. 5 you have attached a copy of any expropriation order to your deposition please state (a) what official of the National Military Council of the Republic of China actually issued the order; (b) whether the records of the National Military Council disclose any urgent military requirements necessitating the expropriation of the steamship "Kwang Yuan".

Answer: (a) General Chiang Kai Shek, President of the National Military Council. (b) Yes. But I cannot disclose to you the detailed contents of the records because of their being military secrets in nature.

2. Please attach a copy of the entire statute of the Expropriation Law promulgated July 22, 1937.

Answer: A copy of the Statute is attached as Annex No. II.

3. Please attach copy of any law or laws modifying or amending said Expropriation Law.

Answer: —

4. What do the records of the National Military Council disclose as to any further actions taken by the National Military Council with regard or pursuant to said expropriation order?

Answer: The records disclose that after the issuance of the

IN THE SOUTHERN DIVISION OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT
OF CALIFORNIA, IN ADMIRALTY

YOKOHAMA SPECIE BANK, Ltd.,
a corporation,

Libelant,

vs.

2100 Tons of melting scrap on board the
Steamship, "EDNA CHRISTENSEN",

Respondent.

INTERROGATORIES ANSWERED BY LEE YUAN KAI,
DIRECTOR OF THE MILITARY AFFAIRS OF
THE NATIONAL MILITARY COUNCIL OF
THE REPUBLIC OF CHINA.

DIRECT INTERROGATORIES

1. What is your name?

Answer: Lee Yuan Kai.

2. Are you connected with the National Military Council of the
Republic of China?

Answer: Yes.

3. In what capacity?

Answer: Major-General, Director of the Military Affairs Of-
fice of the President's Bureau of the National Military Council.

ter as to whether or not this court has jurisdiction by reason of the formal seizure of the cargo made by the United States Marshal, counsel has not made any attempt to meet the arguments of our opening brief. As a matter of fact in some of the cases cited by the intervening petitioner the actual holding was that in spite of the absence of physical possession following the seizure and the court had continued custody of the property and jurisdiction.

In the conclusion to intervening petitioner's brief there is the statement that cable advice from China has been received that the depositions have been taken and forwarded by air mail to this country and should arrive at the last of February. If such is the case, libelant would be very happy to have the depositions considered as it is confident these depositions will not show the facts contended by petitioner. We strongly urge, however, that no further delay be granted in this case by reason of the excuse that the depositions have not been returned.

We submit that the case is now ready for submission and formal motion in that regard will be made immediately.

Respectfully submitted,
J. F. RESLEURE.

knowledge. The cases from which the intervening petitioner quotes relate to such matters as general knowledge of the law with which the signer of the certificate is presumed to have knowledge. They could not possibly have any relation to a situation such as is involved in the present case.

The Ambassador's certificate in a matter of this kind would be more effective than the verified suggestion of the Ambassador himself. As to such a suggestion, the Supreme Court in the *Navemar*, 1938 A.M.C. 15 at 20 (303 U. S. 68, 58 S. Ct. 432) said:

"But the filed suggestion, though sufficient as a statement of the contentions made, was not proof of its allegations. This court has explicitly declined to give such a suggestion the force of proof or the status of a like suggestion coming from the executive department of our government."

We regret the apparent inability of the intervening petitioner to make good its attempt to prove a valid expropriation decree. What the facts would be as shown by the deposition we do not know and they are not before the court. We submit that the case must, therefore, be decided without regard to any expropriation decree.

We object strenuously to the statement, unsupported by the record, that proctor for libelant has advised intervening petitioner that he has been informed that the depositions cannot be taken because the Japanese have captured or dominate the necessary officials. Counsel for intervening petitioner is seeking to make capital of an informal conversation in which the facetious remarks of this brief writer that probably the Japanese have captured the witnesses are support for a contention that the inability to secure the evidence is due to suppression by the opposing litigant. This brief writer knows no more of the facts in regard to these depositions than counsel for intervening petitioner; probably a great deal less.

The only conclusion that can be drawn from the inability of opposing counsel to complete the depositions he desired to take is that the intervening petitioner has not produced the testimony which was essential to his case. This conclusion is not subject to detraction by reason of off-the-record hearsay and inaccurate report of conversation with opposing counsel.

With regard to the only point which is really in issue in this mat-

IN THE SOUTHERN DIVISION OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA

YOKOHAMA SPECIE BANK, Ltd.,
a corporation,

Libelant,

vs.

2100 Tons of Melting Scrap on board the
Steamship "EDNA CHRISTENSEN",

Respondent.

LIBELANT'S REPLY MEMORANDUM

Nothing new or convincing is asserted in the brief of Intervening Petitioner.

As to the expropriation decree, the intervening petitioner is forced into relying upon a certificate of Secretary of State Cordell Hull. The certificate on its face expressly refuses to vouch for the contents of the documents. It merely states that the person signing the certificate holds the position which he claims to occupy.

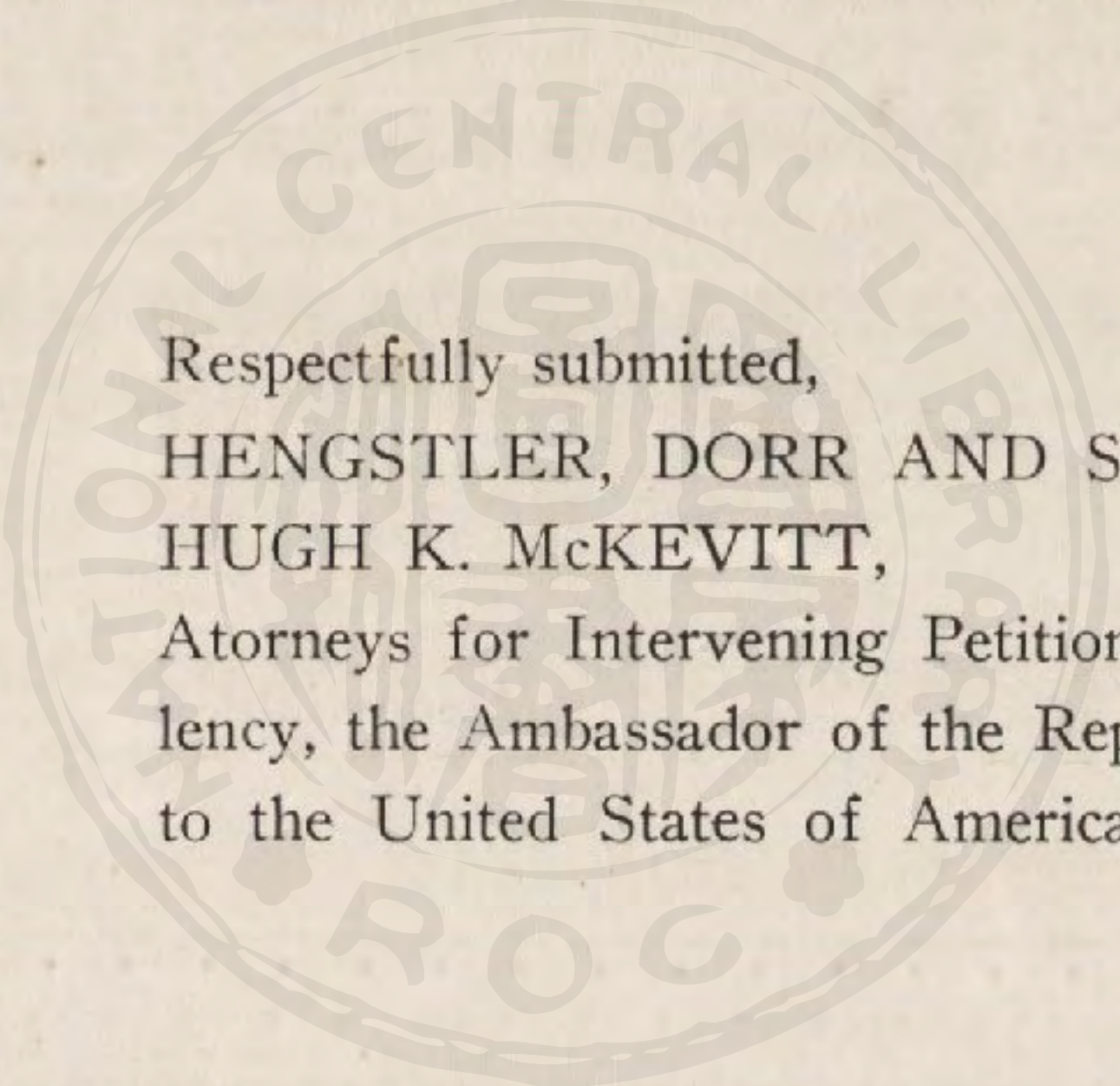
Reliance is then sought to be had upon a certificate of Mr. Z. T. Ing as to matters upon which Mr. Ing could not possibly have any

June 8, 1938, is controlling on this point.

CONCLUSION

Since writing the above, the Consul General has informed us that he has received a cable from China stating that the depositions have been taken and have been forwarded by air mail to this country and should arrive by the last of February. While we are confident that the evidence produced at the trial conclusively establishes the two expropriation of the vessel we, nevertheless, respectfully request the court to consider the depositions if they arrive in time.

It is respectfully submitted that the steamship "Kwang Yuan" is a Chinese National vessel and is not subject to any order of this Court.



Respectfully submitted,
HENGSTLER, DORR AND STEVENSON
HUGH K. McKEVITT,
Attorneys for Intervening Petitioner, His Excellency, the Ambassador of the Republic of China to the United States of America.

of the libelant the marshal did not seize the tug, but, with the acquiescence of all the parties in interest, she remained in the possession of Christian. Of this, I may here say, none of the owners under the circumstances of the case, have any right to complain.

“But it is said that the marshal’s return shows an attachment of the vessel. I do not think so. True, the language of the return is, ‘attached the steam-tug Anna P. Dorr’. But how? ‘By serving a copy of this writ personally on John Carse, part owner of same, and by serving, November 5, 1875, a copy of this writ at residence of Captain E. F. Christia non wife.’ But such service of the writ was not an attachment or seizure of the vessel.”

That case is strikingly similar to the instant one. In both cases the Marshal did not take possession or seize the property.

In *Leland v. Wescott*, 260 F. 343 (D. C. Maine), the court held that there was no valid attachment of a vessel when the deputy sheriff did not exercise any dominion over her.

Since the Marshal did not take possession or seize the cargo, the alleged seizure was not effective, and consequently neither the vessel nor the cargo was in the possession of this Court or of the Marshal when the Chinese Government expropriated and took possession of the “Kwang Yuan”.

An analysis of every case cited by the libelant shows clearly that instead of supporting the position taken by it in this case they uphold the position of the Chinese Government. In all of libelant’s cited cases the property was *actually* in possession of the sovereign. As pointed out in *The Davis*, 10 Wall. 15, the court held that the sovereign must have actual possession rather than constructive possession of the property at the time the court assumes *actual* possession of the property to assert its immunity effectively. This is necessary in order to avoid a conflict between the officers of the court and the officers of the government. For the same reasons the court must have actual rather than constructive, possession when the government asserts its sovereignty.

Here the court did not have any possession over the ship or the cargo, and consequently libelant cannot now claim that the possession of the Government of China, which was asserted immediately upon the expropriation of the ship, did not effectually remove the “Kwang Yuan” from the jurisdiction of this court.

Intervening petitioner submits that the order of this court of

in part as follows (28 U.S.C.A., p. 393):

“Process in Suits in Rem. In all cases of seizure, and other suits and proceedings in *rem*, the process, if issued and unless otherwise provided for by statute, shall be by a warrant of arrest of the ship, goods, or other thing to be arrested; and the marshal shall thereupon arrest and take the ship, goods, or other thing into his possession”

In *The Rio Grande*, 23 Wall. 458, the Supreme Court said (p. 464):

“It follows that to give jurisdiction in *rem* there must have been a valid eizure and an actual control of the ship by the marshal of the court.”

In *Brennan v. Steam-Tug Anna P. Dorr*, 4 f. 439 (W. D. Penn.), the court said (pp. 459-62):

“The facts of the case, as they now appear to the court, are as follows: On October 27, 1875, Patrick Brennan, an owner of the one-fourth of said tug, filed a libel in *rem* for her sale, and the division of the proceeds between himself and his co-owners, Christian & Carse. To the process which then issued the Marshal made a return in these words: ‘November 3, 1875, attached the steam-tug Anna P. Dorr her tackle, apparel furniture, etc., by serving a copy of this writ at residence of Capt. E. F. Christian on wife.’

* * * * *

“From the evidence now before the court it appears that the marshal did not arrest or take possession of the tug by virtue of said process. He was instructed by the libelant’s proctors not to arret her, but simply to serve a copy of the writ upon Christian & Carse, and these instruction he obeyed. At the time the libel was filed the tug was in the possession as fully after the service of the writ as before; and down until May 12, 1877, the tug was run by Christian in and about the harbor of Erie, and upon the lake, in her ordinary business. During all this time no further step was taken in this suit.

* * * * *

“*Miller v. United States*, 11 Wall. 294, it is said: ‘In revenue and admiralty cases a seizure is undoubtedly necessary to confer upon the court jurisdiction over the thing when the proceeding is in *rem*. In most of such cases the *rem* is movable personal property, capable of actual manucaption. Unless taken into actual possession by an officer of the court, it might be aleigned before a decree of condemnation could be made, and thus the decree would be ineffectual. It might arise a conflict of jurisdiction and decision if actual seizure and retention of possession were not necessary to confer jurisdiction over the subject.’

“In the present case it is certain that there was no actual seizure of the tug by the marshal under the original process issued out of this court. Acting in accordance with the express instructions

that the purported seizuer of *the cargo* by the Marshal in this case was sufficient to enable this court to authorize the Marshal to move the vessel.

Libelant tudiously fails to differentiate between a case involving a sovereign and the ordinary libel for possession of cargo between two private individuals. Furthermore, libelant ignores the fact that the "Kwang Yuan" is not a party to this suit and no attempt was ever made to seize the ship in this case.

This point was thoroughly briefed at the time libelant made an ex parte motion for an order directing the Marshal to deliver the cargo to it.

The evidence produced at the trial did not materially change the fact that was brought out at the ex parte hearing except that it appears that the interpreter who supposedly read the libel and monition to the second officer was employed by the libelant (Tr. p. 10), and no one knows what he told the second officer as the libelant did not see fit to produce him at the trial.

On June 8, 1938, this court made the following order:

"The Court finds that there has not been, and there is not now possession of said cargo in the United States Marshal, which would warrant a court order directing the Marshal to deliver possession to the applicant."

In the instant case the United States Marshal has never seized or taken into possession the cargo or the ship. The vessel is not a party to the cause, and there has been no attempt on the part of the libelant to seize or affect the vessel with process. It is to be clearly borne in mind that the claim of immunity here arises with relations to the vessel.

At no time did the Marshal take possession of the cargo. All he did was to post a notice of seizure on the vessel and to hand a copy of the same to the second officer, and to have an interpreter in the employ of the libelant read something to the second officer. No keeper was placed on board the ship, and no notice of seizure was attached to the scrap. It would have been just as effective, as far as a valid seizure is concerned, if the Marshal had posted a notice of the seizure on one of the piers in San Francisco and handed a copy of the same to the first person he saw walking along the Embarcadero.

Admiralty Rule 10 of the United States Supreme Court provides

dock Company on its part, accepted the vessel and made repairs on it as in the possession and control of the Mexican government. (6) The Master advised the manager of the company of the taking over, and of his attornment to the Republic of Mexico as in possession and control of the vessel, and that the relations between him and the company were at an end. The Consul paid in full the salaries of the officers and the wages of the men from March 19 to March 31, and furnished the necessary funds to the captain for the purchase of provisions and supplies. (7) When she came into port the San Ricardo was not in the possession of the Mexican government, but in the possession of the Campania Naviera, a Mexican corporation, and remained in that possession from March 9, to March 23, 1938. On March 23 the vessel was taken into the possession of the Mexican government and was in that possession and control on April 2, 1938, the date of her seizure by the United States Marshal, being repaired by or at the expense of the Mexican government to be used for public purposes by that government.

* * * * *

"All that is here for decision is whether the Republic of Mexico may have immunity as to this ship, a Mexican ship owned by a Mexican company, documented in Mexico and flying the Mexican flag, when, as here, she has taken peaceable possession of it in our waters through her lawful agents and representatives, and properly presents and presses her claim based upon that possession.

"We think the question is conclusively answered in the affirmative, both upon reason and authority."

It will be noted that the court upheld the immunity of the vessel from the jurisdiction of the courts of the United States.

Intervening petitioner submits that it is uncontradicted that the "Kwang Yuan" was a vessel which prior to April 27, 1938, was owned by a Chinese corporation, registered under the laws of China, flying the Chinese flag and that on that date the vessel was expropriated by the Republic of China and the possession of the vessel was taken over by the duly accredited representatives of that country. Inasmuch as the vessel was not under the jurisdiction of this court at the time of the expropriation this court has no power to order the Marshal to board the ship and move or in any way disturb the possession of this friendly foreign power.

THE PURPORTED SEIZURE WAS INEFFECTUAL IN THIS CASE

The greater portion of libelant's brief is devoted to the argument

public of China (Tr. p. 112, 106-8, 117).

It is not open to dispute that a national vessel of a friendly foreign sovereign is not subject to the jurisdiction of our courts and is entitled to claim immunity.

See: *Berizzi Brothers Co. v. S. S. "Pesaro"*, 271 U. S. 562.

A case somewhat similar to the instant one recently was decided by the Circuit Court of Appeals for the Fifth Circuit in which the court upheld the validity of an expropriation decree when the Mexican government took over the possession of a ship of one of its national in the port of Mobile, Alabama. In *The San Ricardo*, 1938 A. M. C. 1459 (C.C.A. 5), the Court said (pp. 1462-69):

"On practically undisputed evidence the District Judge found the facts as follows: (1) that the steamship San Ricardo on March 5, 1938, complying with orders from the vessel's owner, the Compañia Naviera, sailed from Tampico, Mexico, to the port of Mobile, Alabama, for the purpose of repairs, where it arrived on the 9th, and was delivered to the Alabama Drydock and Shipbuilding Company. (2) On March 19, 1938, Lizardo Cardenas, President of Mexico, issued a decree, providing 'There are hereby declared as expropriated . . . vessels of all kinds . . . Compañia Naviera San Ricardo, S. A. . . . insofar as the same may be necessary, in the judgment of the office of the Secretary of Economia Nacional for the discovery, securing, transportation, storage, refining and distribution of the products of the petroleum industry.' (3) This decree was published and became effective on March 20th and the Secretary of State at once sent written orders and instructions by air mail to the Consul of Mexico stationed at New Orleans, authorizing and directing him to proceed at once to Mobile and take physical possession of the San Ricardo in the name of that government, and to do all things necessary to accomplish such possession; that is to say, to give notice to the officers and men of the vessel, that the ship had been taken over by the Republic of Mexico; that it was no longer under the control of the Compañia Naviera; to make arrangements to employ the officers and men then in charge, if they were willing to accept service under the Republic, otherwise to employ others; and to enter into such contracts as may be necessary for the making of needed repairs to the vessel. (4) The Consul proceeded to Mobile and took possession in accordance with his instructions. He received the allegiance of the Master and men, paid the wages, arranged for the making of repairs, and peacefully, but fully and completely, and in every way possible, took possession of the vessel for the Republic of Mexico. He did this by his own acts and through the Master and crew, who willingly came over, expressing their willingness to serve and serving the Republic on the vessel. (5) The Alabama Dry-

power is within the scope of their delegated authority, viewed as a question of the foreign municipal law. Either the conduct of the officials is authorized, in which case it has the only warrant of law possible, or it is unauthorized, in which case it rests upon the foreign power first to repudiate it, and so to open the question of the effect of acts thereupon conceded to have been without warrant of law."

See also:

The Isle of Mull, 278 Fed. 131 (C.C.A. 4).

Upon receipt of the expropriation order the Consul General of the Republic of China took possession of the ship. The record discloses the following acts which were done pursuant to said order:

1. The Consul General notified the Collector of Customs, the above entitled Court, and the United States Marshal for this District that the vessel had been expropriated; (Int. Pet. Ex. 3, Tr. 61-64);
2. He dismissed the Japanese officers who were no longer on the vessel (Int. Pet. Ex. 12, Tr. pp. 66, 67, 116);
3. He sent the vice-consul to the ship with an order notifying the world that the vessel was expropriated, and also with an order appointing Chau Tsu Ming, master of the ship (Int. Pet. Ex. 11, Tr. pp. 64-65);
4. He had the vessel moved (Tr. p. 69);
5. He supplied the crew with food (Tr. pp. 69, 83);
6. He issued all orders regarding the vessel (Tr. p. 69); and;
7. He paid the crew's wages (Tr. p. 83).

Pursuant to the instructions given him by the Consul-General, Patricik Sun, the Deputy Consul at the time, went on board the vessel on April 27, 1938, assembled the crew in the dining room and read them the expropriation decree which was received with shouts of joy by the crew and he then tacked a copy of the notice of expropriation on the bulkhead of the dining room (Tr. 112, 106-8). Furthermore, he handed Chau Tsu Ming, the second officer of the ship, and the highest officer on board, a commission appointing him master of the vessel and a representative of the government (Tr. 112, 106-8, 117). Mr. Ming accepted the appointment and thereafter represented the consul-general on board the ship and was in command thereof. It is uncontradicted that ever since this time the ship has been under the exclusive control of the Re-

the proper authorities is not born out by the record nor can such an argument be advanced. It is well established that the courts of this country are bound by the acts of foreign governments and cannot determine whether the action of the foreign sovereign was taken pursuant to its law.

In *The Adriatic*, 258 F. 902 C.C.A. 3), the Court said (pp. 904, 905):

"The libelants contend, however, that it does not have that effect, because, as it is claimed, the British Admiralty had no power, under the English law, to requisition the vessel when the attempt to do so was made, because she was then upon the high seas and not within the British Isles or the waters adjacent thereto. Of course, that contention, if correct, to have any effect, must necessarily be predicated upon the assumption that the provision in question of the charter party referred only to such requisitions of the British Admiralty as should be strictly legal and in accordance with the laws of Great Britain, as distinguished from requisitions which might in fact be made by the Admiralty, but which were beyond its legal power and authority to make.

"Assuming, for the purposes of argument only, that such is a proper construction of the charter party, it is apparent that, if the vessel was legally requisitioned, no liability attached to the respondents by reason of the failure of the vessel to thereafter perform the charter, because, upon such a requisition, the charter party, by its express terms, became null and void. But, in accordance with the rule that 'the courts of one independent government will not sit in judgment on the validity of the acts of another done within its own territory, it is not within the province of a court of this country to attempt to determine whether the requisition of the vessel was valid or invalid under the laws of Great Britain; it must be here accepted as legal, or, as it is sometimes expressed such a question is not justiciable. *Ricaud v. American Metal Co.*, 246 U. S. 304, 309, 38 Sup. Ct. 312, 62 L. Ed. 733; *Underhill v. Hernandez*, 168 U. S. 250, 253, 18 Sup. Ct. 83, 43 L. Ed. 456; *American Banana Co. v. United Fruit Co.*, 213 U. S. 347, 357, 29 Sup. Ct. 511, 53 L. Ed. 826, 16 Ann. Cas. 1047; *Oetjan v. Central Leather Co.*, 245 U. S. 297, 303, 38 Sup. Ct. 309, 62 L. Ed. 726; *The Invincible*, 2 Call. 29 Fed. Cas. No. 7,054; *Hewitt v. Speyer*, 250 Fed. 367, 162 C. C. A. 437 (C.C.A. 2d Cir.); *Earn Line S. S. Co. v. Sutherland S. S. Co.*, (D.C.S.D.N.Y.) 254 Fed. 126."

In *The Florence*, 248 Fed. 1012 (S. D. N. Y.), the Court said, (p. 1017):

"To this one should add the corollary that, for obvious reasons of a diplomatic sort, no foreign court will undertake to determine whether the conduct of duly appointed officers of that

295-297) :

“This is an action in *rem*, brought against and to secure the possession of the *Rogdai* (or *Rogday*), a steamer lying in San Francisco Bay, State of California. By the bill it is represented that the libelant ‘Russian Socialist Federal Soviet Republic’ is a sovereign nation, and that it is the owner of the vessel, and that the other libelant, Ludwig C. A. K. Martens, is its agent and representative in the United States, duly authorized to act in its behalf. Process of attachment issued, by virtue of which the steamer was seized and is now held in custody by the marshal. The ‘Russian Government’ and Boris Bakhmetieff, appearing specially, move for an order dissolving the writ of attachment. The motion is supported by ‘suggestion,’ signed by Boris Bakhmetieff, and under the seal of the Russian Embassy at Washington, accompanied by a certificate duly executed by the Department of State of the United States, on April 6, 1920, certifying that Boris Bakhmetieff was formally received by the President as the duly accredited Ambassador Extraordinary and Plenipotentiary of Russia to the United States, on July 5, 1917, and that he has continuously since that date been recognized as such by the government of the United States, and further that the government has not received or recognized Ludwig C. A. K. Martens in any representative capacity, ‘nor has the so-called Russian Socialist Federal Soviet Republic been recognized in any way by the government of the United States.’ ”

* * * * *

“In assuming the correctness of the facts exhibited by the ‘suggestion’ of the Russian Embassy and the certificate of the Secretary of State, I have not been unmindful of the objection interposed by libelants to the reception and consideration of these documents. The competency of the certificate as proof of the facts therein set forth is hardly open to question, and I have already held the facts to be material.”

In addition thereto the Consul General testified that he had received notification that the vessel had been expropriated (Tr. p. 61). Furthermore, the Director of the Bureau of the Collector of Customs telegraphed the San Francisco office that he had been informed that such action had been taken.

The argument of libelant that the expropriation was not made by

stating that Boris Bakhmetieff presented his letter of credence to the President and was officially received by the President as ambassador extraordinary and plenipotentiary of Russia on July 5, 1937, and that he has since that date been recognized by the Department of State as the ambassador of Russia. The certificate of the ambassador declared the official character of the Russian Supply Commission, and that it was organized to purchase supplies in the United States for Russia, and to accept supplies purchased or manufactured in the United States for Russia, and that it had power to settle all matters relating to contracts for supplies so purchased or manufactured during the time herein involved.

“And the certificate of Mr. Bakhmetieff, given under his hand and seal as Russian ambassador, concerning the membership and powers of the Russian Supply Committee, must be regarded in like manner as an authoritative representation by the Russian government on that subject, and as such binding and conclusive in the courts of the United States against that government on the matters to which it relates.

* * * * *

“In the *Goods of Anne Dormoy*, 3 Hagg. Ecc. 767 (1832), the court held that the certificate of the French consul general was sufficient proof of the law of France, the doubt being whether the French ambassador himself should not have certified, instead of the consul general. In the *Goods of Klingman*, 3 Swabey & Tristram, 18 (1862), the ambassador to Great Britain of the King of Hanover gave a certificate under the seal of the legation that a will executed in accordance with law of England was a valid will under the law of Hanover, and the court held that such a certificate was sufficient evidence of the foreign law. In the *Goods of Prince Oldenburg* L. R. 9 Prob. Div. 234 (1884), the question was as to the law of Russia concerning the validity of a will of a deceased member of the royal family. The Court received in evidence a certificate under the hand and seal of the Russian ambassador in England to the effect that by the law of Russia no testamentary dispositions of any member of the royal family could have any effect unless approved by the Emperor. The certificate was accepted as sufficient proof of the law of Russia.”

In *The Rogdai*, 278 F. 294 (N. D. Cal.), the Court said (pp.

libel was filed against the vessel in another suit, that libel was voluntarily dismissed by the libelants (Int. Pet. Ex. 14), and what was done in that case can have no bearing in the libel now before this court.

Therefore, at no time in the instant case has the steamship "Kwang Yuan" been under the jurisdiction of this court. However, since the vessel is in the middle of San Francisco Bay, libelant seeks to have this court order the Marshal to take the necessary steps to unload the vessel (which would include moving the ship and ordering stevedores on board). We again reiterate our contention that this Court has no such power.

On April 26, 1938, the "Kwang Yuan" was a Chinese vessel lying in San Francisco Bay. On that day the Republic of China expropriated the vessel (Int. Pet. Ex. 9), and thereafter, possession of the ship in the name of the Republic of China was taken by the Consul General at San Francisco. Prior to the trial of this case intervening petitioner forwarded interrogatories to China to prove the expropriation of the ship by the Chinese Government. However, because of war conditions prevailing, those depositions have not been returned and the proctor for the libelant had advised us that he has been informed that they cannot be taken because of the fact that the Japanese have captured, or dominate the necessary officials. However, at the trial of the case we introduced in the record a certificate by Cordell Hull, the Secretary of State of the United States of America (Int. Pet. Ex. 9) which certified that Mr. Zaung Teh Ing, whose name was subscribed to the documents attached to said certificate was at the time of the signing the same, the counselor of the Embassy of China at Washington. The documents attached to the certificate of the Secretary of State of the United States of America are a translation of the expropriation decree promulgated by the Chinese Government and a certificate by Mr. Z. T. Ing that such action was taken. It has been established by the authorities that such a certificate and documents are sufficient to prove the acts of a foreign government.

In *Canadian Car & Laundry Co., Ltd. v. The American Can Company*, 258 F. 363 (C.C.A. 2), the Court said (pp. 368-369):

"On July 5, 1917, the United States government recognized Boris Bakhmetieff as the Russian ambassador. The record contains a certificate, signed and sealed on May 8, 1918, by Robert Lansing, Secretary of State of the United States of America,

had delivered to the Consul General, the necessary Chinese documents to establish their right to have a Chinese registry issued (Int. Pet. Ex. 6 and 7). However, the Consul General, because of the war between China and Japan, took the precaution of cabling his country for instructions (Tr. p. 44), and thereafter, he received orders directing him to issue the registry but to retain it in his possession. The obvious purpose of retaining the Chinese registry in his possession was to prevent the vessel from sailing from San Francisco for Japan, where the scrap iron would be made into bullets to kill the Consul General's countrymen. There can be no question that the steamship "Kwang Yuan" was a Chinese vessel since the record in the case shows conclusively that the sale from Sudden & Christensen to the Chinese corporation was approved by the United States Maritime Commission, that the bill of sale from the American corporation to the Chinese corporation was recorded in the Customs House; that the American registry was surrendered because of the sale to the Chinese corporation; that a provisional Chinese registry was issued and shown to the Assistant Collector of Customs and finally that the Charter party upon which the libellant bases his claim of title was between the Yung Yuan Steamship Company of Chefoo, China, (a corporation which the proctor for the libellant has stipulated was Chinese), and T. Takahashi & Company (Tr. p. 4). Furthermore, the record shows that the vessel flew the Chinese flag (Tr. p. 113), and the Collector of Customs, the American official whose duties require him to determine the nationality of all vessels before issuing a clearance, refused to clear the vessel unless the Chinese registry was presented to him (Tr. pp. 96, 98, 99). There has been no evidence produced in this case to show any sale of the ship by the Yung Yuan Steamship Company of Chefoo, China.

Intervening petitioner submits that it is uncontradicted that the "Kwang Yuan" was at all relevant times a Chinese vessel.

THE "KWANG YUAN" WAS EXPROPRIATED BY THE REPUBLIC OF CHINA ON APRIL 26, 1938, AND THEREAFTER BECAME A NATIONAL VESSEL OF THAT COUNTRY.

At the outset we again wish to point out to the court the fact that the instant libel is not against the vessel and that no attempted seizure of the ship in this action was ever made. While it is true that a

The petition in intervention of the Ambassador which was filed by and through his agent, the Consul-General at San Francisco, California, (the identical procedure was adopted in the case of *The Navemar*, 58 Sup. Ct. Rep. 432), alleges that the steamship "Kwang Yuan" is a national vessel of the Republic of China, flying the flag of said Republic and in its possession and control, and that by reason thereof this court has no jurisdiction over the vessel or its movements.

The instant libel does not join the vessel as a party and no attempt was made to seize the ship. While it is, therefore, obvious that this court has no jurisdiction over the "Kwang Yuan", the libelant seeks to have this court direct the Marshal to move the vessel from its anchorage in the bay to a pier where stevedores may board it, in order that the cargo on board may be unloaded. It is the contention of the petitioner that this court has no jurisdiction to make any such order.

The issues involved are as follows:

1. Is the steamship "Kwang Yuan" a national vessel of the Republic of China;
2. Was the purported seizure of the cargo by the Marshal valid for the purpose of this suit.

THE STEAMSHIP "KWANG YUAN" IS A NATIONAL VESSEL OF THE REPUBLIC OF CHINA.

The steamship "Kwang Yuan" was formerly owned by Sudden & Christensen, an American corporation, and was operated under the name of the "Edna Christensen" (Tr. p. 20). Pursuant to authorization of the United States Maritime Commission the vessel was sold to the Yung Yuan Steamship Company of Chefoo, China, a Chinese corporation (Tr. p. 4), and the United States certificate of enrollment and license was "surrendered at San Francisco, January 24, 1938, on account of sold alien, Chinese Registry under Mar. Com. Order No. 2646", (Tr. pp. 20, 21). Furthermore, the bill of sale covering the transfer of the vessel from Sudden & Christensen to the Yung Yuan Steamship Company of Chefoo, China, was recorded in the office of the Collector of Customs at San Francisco, California (Tr. pp. 20, 21).

The Consul General of the Republic of China at San Francisco, issued a Chinese provisional registry for the vessel (Tr. p. 50, Int. Pet. Ex. 8), after the representatives of the Yung Yuan Steamship Company

IN THE SOUTHERN DIVISION OF THE UNITED STATES
DISTRICT COURT, FOR THE NORTHERN DISTRICT
OF CALIFORNIA, IN ADMIRALTY

YOKOHAMA SPECIE BANK, Ltd.,
a corporation,

Libelant,

vs.

2100 Tons of Melting scrap on board the Steam-
ship "EDNA CHISTONSON",

Respondent.

BRIEF OF INTERVENING PETITIONER, HIS EXCELLENCY
THE AMBASSADOR OF THE REPUBLIC OF CHINA
TO THE UNITED STATES OF AMERICA.
INTRODUCTION

This is a suit brought by the Yokohama Specie Bank, Ltd., a corporation, organized and existing under the laws of the Empire of Japan, to recover possession of 2100 tons of melting scrap on board the steamship "Kwang Yuan", a vessel owned by the Republic of China.

The possessory libel in this cause was filed on April 22, 1938, and thereafter this court granted the motion of the Ambassador of the Republic of China to the United States of America, to intervene in the matter.

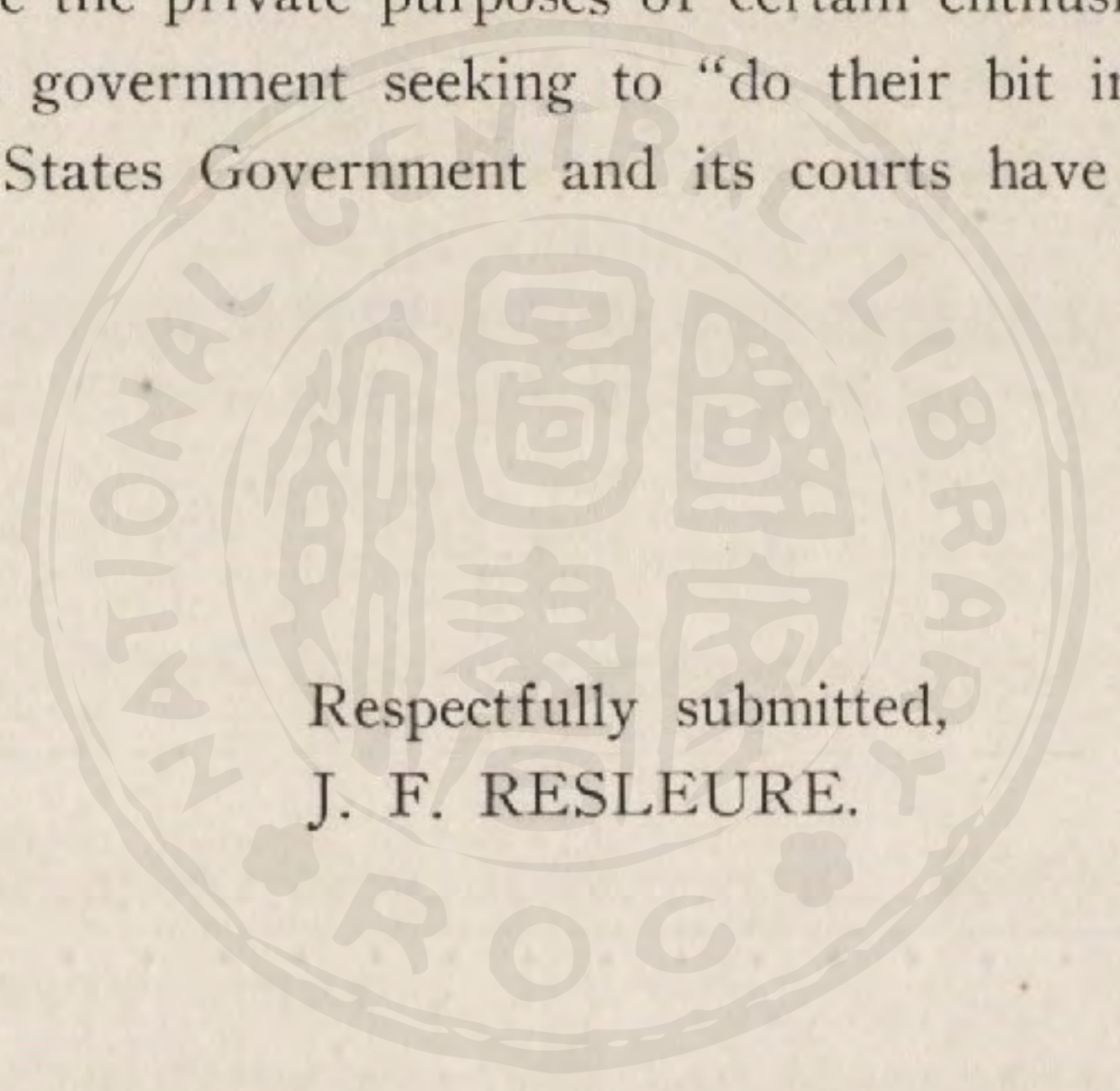
V.

CONCLUSION

In conclusion, libelant submits that it has established a claim and undisputed right to the possession of the cargo on board this vessel. The libelant's ownership is undisputed. The court's jurisdiction over the cargo was conferred prior to any claim of ownership or possession of the ship on the part of the Chinese Government.

It is respectfully submitted that either the refusal to render the decree prayed for by libelant or further delay in this matter would be a denial to a citizen of a friendly country the protection of the courts with regard to his property within the jurisdiction of the United States. It would further serve the private purposes of certain enthusiastic officials of another foreign government seeking to "do their bit in a war with which the United States Government and its courts have no concern".

Respectfully submitted,
J. F. RESLEURE.



Long v. Tampico, 16 Fed. 491, furnishes an early illustration of the same doctrine. In that case, Mexican government vessels were intrusted to certain independent sea captains to navigate to Mexico. The court held that, since the captains were not in the service of the Mexican government, and since the attachment had been made while in the captains' possession, a libel in *rem* for salvage would lie.

Again in "*The Johnston Lighterage Co. No. 24*, 231 Fed. 365, a salvage suit in *rem* was permitted against war munitions on board a private lighter although the cargo was owned by the Russian Government and destined for public use, since the lighterage company and not the Russian Government was in possession at the time of the libel. In that case the court said:

"I therefore conclude that the property in question, although it belonged to the Russian Government and was destined to its public use, was subject to a lien for salvage services rendered in saving it, and *that as it was not at that time, or at the time of its seizure by the Marshal, in the actual possession of an officer of the Russian Government, the lien may be enforced by this court by a proceeding in rem.*"

It will be noted in all of the above cases that immunity cannot be claimed by reason of even actual possession by the government, if that possession took place subsequent to the service of the writ by the United States Marshal. The reason is obvious, since, if the writ has been served by the Marshal prior to the possession of the foreign government, any subsequent possession, taken or sought to be taken by the government, would be an invasion of the jurisdiction of the court, which naturally the courts will not permit.

The immunity from process is further only an immunity from a direct suit against the government or its property. "*The Siren*", 7 Wall. 152, 19 L. Ed. 129. For this further reason there can be no immunity in this case, as it is the vessel which is claimed to be the property of the Chinese Government and not the cargo. In this case, we are neither suing the Chinese Government nor the vessel although, as above stated, suit against the vessel could be maintained, notwithstanding the claim of immunity.

merely upon the ownership but also upon an actual possession by a government officer, was very clearly brought out in the case of "*The Carlo Roma*," 259 Fed. 369, where the court said:

" * * * The English courts go the whole way in refusing process against property of a foreign sovereign under any circumstances. This is because of the international comity due from one sovereign to another. *The Parlement Belge*, Law Reports, 5 P.D. 197; *The Jassy* 1906) P. 270.

"The law of the United States is the same, except that the immunity of property of a sovereign, whether the United States or a foreign sovereign, depends, not merely upon the ownership, but also upon the actual possession by the sovereign of the property at the time process is served (underscoring ours)."

The leading case on the subject is "*The Davis*", 100 Wall. 15, 19 L. Ed. 875. In that case it was held that cotton owned by the United States Government, but on board a private vessel, could be libeled *in rem* for salvage, as it was not in the actual possession of the government. The Supreme Court, in discussing the government possession which furnishes a basis for immunity, said:

" * * * The possession which would do this must be an actual possession, and not that mere constructive possession which is very often implied by reason of ownership under circumstances favorable to such implication. We are speaking now of a possession which can only be changed under process of the court by bringing the officer of the court into collision with the officer of the Government, if the latter should choose to resist. The possession of the Government can only exist through some of its officers, using that phrase in the sense of any person charged on behalf of the Government with the control of the property, coupled with its actual possession. This, we think, is a sufficiently liberal definition of the possession of property by the Government to prevent any unseemly conflict between the court and the other departments of the Government, and which is consistent with the principle which exempts the Government from suit and its possession from disturbance of by virtue of judicial process (underscoring ours)."

" * * * The possession of the master of the vessel was not the possession of the United States. He was in no sense an officer of the Government. He was acting for himself, under a contract which placed the property in his possession and exclusive control for the voyage. His obligation was to deliver possession in New York to the agent of the Government, this he had not done when the process was served on the cotton. *The Marshal served his writ and obtained possession without interfering with that of any officer or agent of the government.*"

persons having the same in charge may take the necessary steps to protect the rights of all those interested."

Corpus Juris Secundum, Admiralty, 2 C.J.S. 155:

"It has been held to be essential to the maintenance of a proceeding in *rem* that there be an actual seizure of the property which is proceeded against, under process of the court, whereby the property seized shall be held to abide such order as the court may make concerning it, although there is authority to the effect that, where the proceeds of the *res* become a substitute for the *res* itself when the *res* is sold under a court order, a seizure of such proceeds is sufficient. At all events, where the seizure of the property proceeded against has been made, it is not necessary that the marshal shall continuously retain it in his custody."

IV.

ASSUMING INTERVENORS ESTABLISH AN EXPROPRIATION DECREE BY A RETURN OF DEPOSITIONS PRIOR TO DECISION, THEY STILL CANNOT PREVAIL SINCE THIS COURT'S ACQUISITION OF JURISDICTION ANTE-DATES THE EXPROPRIATION DECREE OR ANY ACTUAL POSSESSION OF THE VESSEL BY THE FOREIGN GOVERNMENT, AN ESSENTIAL TO ANY CLAIM OF IMMUNITY

Unlike the simple seizure which confers jurisdiction on this court, a claim to immunity by a foreign government must be based not only upon ownership of the foreign government (conferred in this case by the purported expropriation decree) but also upon an actual possession by some officer of the foreign government prior to the acquisition of jurisdiction by the court.

The seizure in this case was made on April 23, 1938 and this court at that time acquired and ever since has had jurisdiction of this Government owned this vessel or that prior to April 27, 1938 any officer of the Chinese Government held possession of the vessel or cargo in its behalf. The law is well established in the United States that without such actual possession there can be no sovereign immunity, since the immunity is only from a direct suit against the government itself, and its property.

The distinction between the English rule on this subject which grants immunity by reason of mere ownership by the foreign government, and the American rule under which the immunity depends not

world. But it follows, that to give jurisdiction in *rem*, there must have been a valid seizure and an actual control of the ship by the Marshal of the court, and the authorities are to this effect.” *Cooper v. Reynolds*, 10 Wall. 308, 19 L. Ed. 931:
 “So, also while the general rule in regard to jurisdiction in *rem* requires the actual seizure and possession of the *res* by the officer of the court, *such jurisdiction may be acquired by acts which are equivalent import*, and which stand for and represent the dominion of the court over the thing and, in effect, subject it to the control of the court.”

The Rio Grande, 23 Wall. 458, 23 L. Ed. 158:

“We do not understand the law to be that an actual and continuous possession of the *res* is required to sustain the jurisdiction of the court. *When the vessel was seized by the order of the court and brought within its control the jurisdiction was complete.* *The E. W. Gorgas*, Fed. Cas. 4,585, Choate District Judge said: “The other objections to the record are not tenable. *It is not essential to the jurisdiction that the Marshal should continue his custody of the vessel.*”

Snow v. 180-3/4 Tons of Scrap Iron, 11 Fed. 517:

“The question, then, under the exceptions, narrows itself down to this: Whether it is necessary to the maintenance of a proceeding in *rem*, by libel and monition, for the officer to actually find the property upon which to make service, and to actually take it into his possession, or whether a monition served upon the holder of the property or of the proceeds is not sufficient.”

* * * * *

“*And in this country notice of the action in rem is often served by a single monition, where there is no danger of loss and it is desirable to save the expense of custody.* *Flaherty v. Doane*, 1 Low. 148, 151.

“A libel in *rem* may be a proceeding against the property by arrest or attachment; but it does not follow that an attachment can only be made by actually taking possession of the property. Service may be made either by notice or by actual levy on the goods. ‘An attachment may be of goods and chattels, or of rights and credits, and by actual arrest of the goods, or by notice to the person having either or both in his possession.’”

Benedict on Admiralty, Section 296, says:

“The proceeding in *rem* is predicated on the assumption that the owner and other persons interested in property have it in their own charge, or have placed it under the control of others who will see that the owner’s interests will be protected, whenever any proceeds shall be served upon it. The process commands the marshal to notify all parties: *it is his duty, therefore, to make the services openly, to leave a written notice with the person in possession, and to exercise his acts of custody and control, by a keeper or otherwise, in such open and visible manner, that the*

other holds. Accordingly, the obvious place to pin the notice was on the mast prominent place in the ship. The Marshal could hardly be expected to bring a gang of men with him to open up the hatches. Moreover, the same rule must apply to all types of merchandise and all types of cargo. Let us assume that this was a cargo under refrigeration, and that in order to seize the same it was necessary that the reefer boxes be opened by the Marshal in order to pin his notice on the perishable cargo. This would undoubtedly change the temperature and render the Marshal responsible for consequent damages. As the United States District Attorney represented to this court at the hearing on libellant's motion for possession, it would be highly dangerous to establish a precedent that notice must be placed on the cargo itself. If the court believes that tacking the notice on the cargo is necessary to a valid formal seizure, then its rule must go still further and require that the notice be attached to each and every piece of cargo. There being in 2100 tons of melting scrap, many hundreds of thousands of pieces of scrap, the requirements of this rule would be extremely burdensome if not impossible to fulfill.

Such a requirement would also have been extremely ineffective as notice to the world. Had the Marshal opened up the hatches, gone below and pinned a notice, or thousands of notices, on the cargo, he would have rendered his notice of no avail the moment he came up on deck and battened down the hatches again.

What the Marshal actually did was the most effective and practical method of furnishing notice of the seizure of the cargo. He posted notice of seizure on the Master's cabin, where each and every person having business with the ship could see it.

It is well and long established that seizure of the *res* and notice or invitation to appear, confers jurisdiction in an admiralty proceeding in *rem*. It is not required that a keeper be placed in charge or that actual and continuous possession of the *res* be maintained, in order to confer and retain the jurisdiction of the court.

Taylor v. Carryl, 20 How. 583, 599, 15 L. Ed. 1023, 1034:

"The seizure of the res, and the publication of the monition or invitation to appear, is regarded as equivalent to the particular service of process in the courts of law and equity. But the res is in no other sense than this the representative of the whole

doubted that any expropriation decree was ever made by the proper authority in China. We do not doubt that a cable was received from someone in China, indicating that such a decree was made, but the possibility is very strong that the emergency created by the filing of the libel in this case on April 22, 1938, and the seizure of the cargo on April 23, 1938, caused a request for such a decree to be cabled to China and an answer thereto. The question, however, is whether, in the short time available, appropriate steps were taken to constitute a valid and effective decree).

III.

THE SEIZURE BY THE UNITED STATES MARSHAL WAS PROPER AND THIS COURT HAS JURISDICTION OVER THE CONTROVERSY AND SUBJECT MATTER.

Assuming, as we must, from the present state of the record, that there was no valid expropriation decree of the Steamer "Edna Christensen", the only question as to libelant's right to possession of this cargo is whether this court has jurisdiction. This depends on whether or not the libel and seizure were properly filed and made.

The libel was filed and process issued in due form. This has not been questioned. The process was delivered to the Marshal with instructions to seize the cargo. No keeper was requested and the Marshal went through the ordinary and customary steps of a formal seizure. He went on board the vessel, in which the libeled cargo was located, served the highest officer in command of the vessel with a copy of the libel and the motion, had same read to the person in charge, and tacked up a notice of attachment on the master's cabin. The cargo was then under battened hatches, rendering the pinning of the notice on the cargo entirely impracticable.

The purpose of posting notice of attachment is to give notice to all the world of the seizure. It would have been highly impracticable to have required the hatches to be opened in order that the Marshal could pin this notice on the cargo itself. It would have been somewhat difficult to have inserted a thumb tack into a piece of steel or iron. One small piece of paper, located in amongst 2100 tons of melting scrap, would probably never have been noticed. A notice placed on the scrap in one hold would hardly have been effective as to the cargo in the

In the circumstances, libelant urges immediate submission of the case on the record as it now stands, without further delay for the return of intervenors' depositions. In this connection, libelant urges that nearly four months have gone by since the depositions were forwarded to China, no additional time has been requested, and no showing has been made for further delay. From the beginning, intervenors have admitted they have no right to ownership or possession of the cargo, but are simply trying to prevent or delay its delivery to its rightful owner.

II.

STATEMENT OF FACTS

As the record now stands, the following are the facts of the case:—

The 2100 tons of melting scrap, possession of which is sought by the libelant, is owned by libelant. This cargo is located on board the S. S. "Edna Christensen", otherwise known as the S. S. "Kwang Yuan", which is lying in the Harbor of San Francisco. The vessel is privately owned, as far as appears in the record. It is immaterial whether the ownership is in the Kwang Yuan Steamship Company, a Chinese corporation, or in Kotani Mokunosuke, a Japanese citizen. Due to libelant having abandoned its proposed depositions, it has perhaps failed in proving the transfer from the Kwang Yuan Steamship Company to Kotani Mokunosuke. Due to intervenor's failure to have their proposed depositions returned, there has been no proof whatsoever of the alleged expropriation decree. In this connection, a document purporting to be a copy of the expropriation decree was offered and received in evidence as respondent's Exhibit 9, subject to a motion to strike out. Counsel for libelant requested that the motion be deemed made, to which the court assented, stating that the matter could be taken up at the time the case was argued. Inasmuch as the case was submitted on briefs, at this time libelant renews its motion to strike and urges the objections made at the hearing (Tr. 51-59).

In view of the fact that intervenor's depositions may be returned before this case is decided, and that they may show a valid expropriation decree, we will argue this case on both theories: (1) On the theory that there was no expropriation decree and the vessel is privately owned, which is the situation prevailing on the record at this time; (2) That there was an expropriation decree of some kind. (We have always

ity to act for the Ambassador.

Libelant's motion was pressed, notwithstanding the purported intervention of the Ambassador. Libelant's theory was that, admitting all of the allegations of the petition were true, it was still entitled to possession for the reason that the court, on the face of the record and pleadings, had acquired jurisdiction prior to any expropriation decree or any possession by the Chinese Government, and that no expropriation decree had been, or could have been, effective to create immunity in the absence of actual possession by the foreign government.

On June 9, 1938, the court denied the motion to strike the Consul's pleading, granted the Ambassador's motion to intervene, and denied the motion for possession. The court's ruling on the motion for possession did not mention the subject of sovereign immunity, but was based solely on the ground that the Marshal's seizure in this proceeding was ineffective, in that no keeper was placed on board and the notice of seizure was not posted on the cargo, itself. There is also an intimation the service of the notice on the second officer was not sufficient.

The case was brought on for trial and a hearing on the merits had on September 20th, 21st and 22nd, 1938. The case could not be submitted at the close of the testimony for the reason that the intervenors were expecting certain depositions back from China, designed mainly to show an expropriation decree. The court allowed until October 15th for these depositions to be returned, subject to a further extension only if justice required it. Counsel for libelant then agreed to October 30, 1938 as the dead line date for the return of these depositions (Tr. 135, 136).

At the close of the case, libelant requested the same time be allowed for the taking of depositions in behalf of libelant. These depositions were to show that the vessel sought to be expropriated by the Chinese Government was, in fact, owned by a Japanese citizen.

The intervenor's depositions have never been returned and there is no indication that they ever will be returned. Meanwhile libelant has decided to allow the Japanese owner of the vessel to prove his title in an independent proceeding and not to complicate these proceedings by trying the title to the boat. It has, accordingly, abandoned the depositions proposed to be taken by it.

Seizure of the said cargo was made on April 23, 1939 by the United States Marshal. This seizure was accomplished by serving a copy of the libel and monition on Chau Tsu Ming and reading its contents to him by an interpreter (Tr. 7), also by tacking a notice of attachment on the master's cabin (Tr. 7, 8). Chau Tsu Ming was the second officer of the vessel and the highest officer on board the vessel at the time (Tr. 9). The real captain was not in command of the vessel, for reasons which may be readily surmised (Tr. 120-123).

At that time, the cargo involved was in the hold of the vessel under closed hatches (Tr. 119, 120).

There is no dispute that libelant is the owner of the cargo (Tr. 5, 6, 17).

On May 6th, 1938 C. C. Huang, Consul General of the Republic of China at San Francisco, California, through his proctors, filed a suggestion alleging that, on April 27, 1938, four days subsequent to said seizure, the Republic of China expropriated the vessel, and that, by reason of such expropriation, this court had no jurisdiction over the vessel or of anything contained therein.

On May 7, 1939, default of all parties was ordered, except that the Consul General was allowed 8 days within which to secure an intervention, through appropriate diplomatic channels, by the United States Secretary of State. This intervention has never been made. On the contrary, the Secretary of State refused to act (Memorandum in Opposition to Motions, Exhibit "A").

Libelant thereupon moved to strike the Consul's pleadings and applied for an order for delivery of possession of the cargo.

On June 8, 1938, while the above motions were pending, and apparently to offset the obvious lack of authority on the part of the Consul to claim sovereign immunity, a motion was made for an order to substitute Chingting T. Wang, Ambassador for the Republic of China to the United States of America, in place of the Consul General at San Francisco, also a petition in intervention claimed to be in behalf of the Republic. This petition alleged the said vessel, at all times, was a national vessel of the Republic of China and this Court has no jurisdiction over the vessel or its movements. The Consul verified the petition. So far in this case, nothing appears to show that anyone here has author-

IN THE SOUTHERN DIVISION OF THE UNITED STATES
DISTRICT COURT, FOR THE NORTHERN DISTRICT
OF CALIFORNIA, IN ADMIRALTY

YOKOHAMA SPECIE BANK, Ltd.,
a corporation,

Libelant,

vs.

2100 Tons of Melting Scrap on board the
Steamship "EDNA CHRISTENSEN",

Respondent.

LIBELANT'S OPENING BRIEF

I.

STATEMENT OF THE CASE

The libel in this proceeding was filed on April 22, 1938, by Yokohama Specie Bank, Ltd., a Japanese private corporation, to recover possession of 2100 tons of melting scrap belonging to it, on board the S. S. "Edna Christensen", otherwise named the S. S. "Kwang Yuan", then and now lying in the Harbor of San Francisco and within the territorial waters of the United States and within the jurisdiction of this court.

thing is Chinese?

MR. HOWARD: Yes.

MR. RESLEURE: I will ask a further question. May I have that book for just one moment? I think I can show the materiality. That is a preliminary question.

THE COURT: Let us go right to the point, itself.

MR. RESLEURE: I don't think this ever was a Chinese vessel.

THE COURT: Then the testimony would not be of any moment unless it is.

MR. RESLEURE: We have a statute here—the only witness testifying to the Chinese law says every ship must be under the—

MR. HOWARD: We will stipulate it relates to the Chinese ships.

THE COURT: He said he will stipulate to that.

MR. RESLEURE: No transfer of even a Chinese vessel shall be valid unless the vessel be duly registered—a duly registered Chinese vessel. Is that correct?

A. The ship is duly registered with the Chinese Consul already. That is why the Chinese Consul issued the provisional certificate.

Q. It is your opinion it was duly registered?

A. Yes.

Q. But if it was not a duly registered vessel then no transfer would be valid at all of a Chinese vessel which—

MR. HOWARD: That is objected to as calling for his conclusion.

THE COURT: I think that would speak for itself.

THE WITNESS: I think—I would not answer a further question to interpret the law for my government because the only Chinese—the Consul General has no authority to interpret the law. No other official can have—there is no official here to interpret the law.

MR. RESLEURE: That is all.

MR. HOWARD: That is all.

THE COURT: Do you want some papers—the book to be left?

MR. HOWARD: We offered an English translation in evidence, and the book for identification.

of a ship shall not be valid against third parties unless duly registered."

MR. RESLEURE: May I have the same thing marked for identification and that document, also? That is not—

MR. HOWARD: We are not offering this. We will make it available.

THE WITNESS: This is only for information to—

MR. HOWARD: As a matter of fact, it belongs to the California Law Library, and it is not our book.

MR. RESLEURE: I withdraw that suggestion. The California University Law Library?

MR. HOWARD: Yes.

Q. Mr. Huang, in your consular duties are you called upon to administer that law in this port?

A. Yes.

Q. And you have familiarized yourself with it?

A. Yes.

Q. Have you ever approved a transfer of the vessel "Kwang Yuan" from the Yung Yuan Steamship Company?

A. No, never.

Q. And never have attested or approved a document or transfer?

A. Yes.

CROSS EXAMINATION

MR. RESLEURE: Q. Are you familiar with the Chinese law?

A. Yes.

Q. In this translation it appears there was a statement that a transfer of a ship or share therein shall not be vaild unless made in writing and in accordance with the following conditions, etc.—sealed by Chinese consular authorities. Can you tell us whether that applies to a ship, any and every ship, of any or every nationality, or only to Chinese ships?

A. This is—

MR. HOWARD: I object to that as immaterial. There is no evidence of anything but a Chinese ship here.

THE WITNESS: This article dealing entirely—

MR. HOWARD: Was there a ruling, your Honor?

THE COURT: I will sustain the objection. I think the only

does.

MR. RESLEURE: I think if you are putting in a part of the book—

MR. HOWARD: I object to the rest.

THE COURT: My thought was to put it in for identification, where it would be held safe by the Clerk and he would be given an opportunity and have someone examine the book, but as Mr. Resleure does not care to have anybody examine that book and if he does not examine it I think the man should receive his book back even though you take an appeal.

MR. RESLEURE: I think that is very practical, your Honor, because if Mr. Howard should take an appeal we would not want that part of the record.

MR. HOWARD: It is not material except this—

THE COURT: He is offering it for identification.

MR. RESLEURE: Yes. For identification.

MR. HOWARD: We will offer the book for identification, and we will offer the particular statute in evidence.

THE COURT: One will be received as Intervenor's D— the book.

(The book was marked "Intervenor's Exhibit D for identification.")

MR. HOWARD: And if there is no objection, Mr. Resleure—

THE COURT: And the statute, itself, is No. 16.

(The statute was marked "Respondent's Exhibit 16.")

MR. HOWARD: We will offer in evidence as a part of the exhibit, then, the English translation.

THE COURT: No. 16.

MR. HOWARD: Yes, your Honor.

For the Court's information and also counsel's, I have here—it is not an official book—this translation by a Chinese law professor, and that article is also translated in this volume. Article X, reading:

"A transfer of a ship or any share therein shall not be vaild unless made in writing and in accordance with the following conditions: If made in China, attested and sealed by the competent authorities of the place either where the contract is made or where the ship is. If made abroad, attested and sealed by Chinese Consular authorities. A transfer

issued under authority of your Government?

A. Yes.

Q. Does it contain Chinese statutes?

A. Its title is "Chinese Statutes of the National"—

Q. Under those statutes is there a special statute in your maritime code which refers to the transfer of vessels owned by Chinese nationals?

A. Yes, there is. On page 904 there is an article relating to the commercial relations.

Q. In what Code is that?

A. In the Civil Code.

Q. What chapter? Does it show the chapter?

A. Chapter—Section—Chapter 3.

Q. Have you translated that into English?

A. Yes.

Q. Is that a true and exact translation?

MR. RESLEURE: I will state at this time, your Honor, I have no objection to this witness making the translation for the Court or offering this document, or the document being offered, but inasmuch as it is translated from a certain book from which the witness is reading, I would suggest that the book should be received in evidence—that particular statute. This is an unusual book of which we have been unable to receive a copy, and I think it should be available for both sides.

THE COURT: You want someone to look at that who understands Chinese and translate it themselves?

MR. RESLEURE: Yes. I think the whole book should go in.

MR. HOWARD: Do you want the entire book?

MR. RESLEURE: Yes.

MR. HOWARD: Do you have a copy of that?

THE WITNESS: We can dig that up in a few days.

THE COURT: Until this suit is disposed of—

THE WITNESS: We can wire for another copy.

MR. HOWARD: You can leave that here in evidence?

A. Yes.

THE COURT: Do you want it in evidence?

MR. HOWARD: We do not wish it in evidence unless counsel

protest.

MR. RESLEURE: That is satisfactory. In other words, even though on some other ground the case might be won by the libelant, nevertheless if those ruled out as not material the winning side will—

THE COURT: I don't know when we have this showing just what it will be, but I will put it on the ground of responsibility rather than the ground of, shall I say, common subject matter? Let us put it that way. If it is received in any part it will be in to that extent, and it will become just like any other deposition. But it must be here at that time.

MR. RESLEURE: My client is only the Yokohama Specie Bank. It is only interested and has knowledge only of matters pertaining to the cargo. All this information was in the possession of Mr. Kotani, and also the Japanese Consul, who were interested in the ship. The status of the ship has become material to the bank's claim, and we have pointed out—

THE COURT: As a matter of general information, what has become of the other suit?

MR. STEVENSON: Dismissed without prejudice.

MR. RESLEURE: Without prejudice.

MR. HOWARD: That was a suit by Kotani.

MR. STEVENSON: We filed our briefs and demanded it be heard by Judge Roche, but two days later they dismissed it.

THE COURT: Without prejudice?

MR. STEVENSON: They came into court and dismissed it that way. I did not have anything to do with it.

MR. HOWARD: With your Honor's permission, and while we are in session, if I might show the law. I think it goes to the materiality of this evidence.

THE COURT: The Chinese law, you mean?

MR. HOWARD: The law of the Chinese relative to the transferring of vessels.

THE COURT: All right.

CHAO CHIN HUANG

Recalled for Respondents.

MR. HOWARD: Q. Mr. Huang, I call your attention to a book which is in the Chinese language, and ask you if that is an official book

under the Chinese law, whether it fulfills the requirements of Chinese statutes relating to a loan agreement, and I further object to the document on the ground it does not purport to effect title to the vessel; that it merely refers to possession, which possession, as shown by the record, has not been taken.

We also wish the privilege in connection with this document in aid of our objection to show the Chinese law relative to transfers of vessels. We will make an offer to show it affirmatively.

MR. RESLEURE: In other words, Mr. Howard, I presume, objects to the introduction of that evidence, so we will offer it for identification.

THE COURT: Received as C for identification—Lieblant's C.

(The document was marked "Libelant's Exhibit Co for identification.")

MR. RESLEURE: I might state, your Honor, in spite of the utmost research on my part and of my client's information and knowledge, it was not until yesterday that I discovered these documents were in existence. They were not in my client's possession, but had been sent by Mr. Kotani to Mr. Hirota and I was unable to prepare my case in order to authenticate these documents for the trial. I will ask that inasmuch as thirty days has been granted from yesterday to opposing counsel to have their depositions returned from China, that I be given the same time to apply the necessary proof by deposition as to the identification of these documents and showing delivery, etc.

MR. HOWARD: If the Court please, I wish to object to that on the ground that there is no sufficient showing of any surprise in connection with these documents, nor is there any reason why their authenticity has not been established in time for the trial. We also wish to suggest that we deem those documents entirely immaterial to the issues here, and I will ask your Honor, if you will, to read the documents and consider them in connection with this objection before you direct a deposition to be taken.

THE COURT: I will tell you what we can do about the depositions. Let the depositions be taken under the terms as suggested but if the depositions are not received by the Court as being pertinent to the issues, the expense of taking them will fall naturally on the person who applied for them, and will not be received until you have a chance to

acknowledgment of the default under the previous agreement, and that the debtor, the Yung Yuan Steamship Company, has lost their benefit for repayment in installments on the loan and acknowledges that Mr. Kotani has exercised his rights automatically of taking possession of the steamer "Kwang Yuan" and that as the result provisional ship's register of the Japanese government was furnished on February 18, 1938, and the vessel renamed the "Tokku Maru." There is a further statement that the creditor will agree to return possession of the ship if the debtors repay the loan by May 18, 1938, and if that obligation is not carried out before May 18, 1938, that the creditor can make void the promise to return the possession of the vessel back. Attached to this Japanese document is the acknowledgment executed by William C. Affeld, Vice Consul of the United States at Kobe, Japan. That acknowledgment is dated May 12, 1938. Also there is attached an English translation of the agreement, itself and the certificate of the Vice-Consul that the interpreter or translator appeared before him and stated it was a true and correct translation.

MR. HOWARD: To this offer, if the Court please, we would object on the ground there has been no foundation laid. I understand it is merely offered for identification?

MR. RESLEURE: I am offering it in evidence.

MR. HOWARD: And I am also objecting on the ground that it has not been properly identified in that there is no showing of the authority of the man purporting to have signed for the Yung Yuan Steamship Company of any right or power to execute the agreement. I object on the further ground that there is no showing of his connection with the Yung Yuan Steamship Company. I object to the English translation on the ground that it is hearsay as to petitioners, that it merely recites what a person not a witness in the case said to be a true translation and the right of cross-examination is therefore not allowed to us. I object to the document on the ground of its materiality, in that it purports to be dated May 11, 1938, long subsequent to any acts involved here in connection with expropriation. I also object to the document as being self-serving, in that there is no foundation, that any possession was ever taken. I object further on the ground there is no foundation in that there is no showing of the validity of this document

Cross-examination would clear up as to the circumstances under which those documents are signed, and we certainly cannot stipulate unsight unseen to something and bar ourselves to cross-examination.

MR. RESLEURE: Counsel's objection is good, your Honor. I will concede it. I will offer this document as Libelant's Exhibit B for identification.

THE COURT: What is that document?

MR. RESLEURE: The Japanese certificate of vessel's nationality.

MR. HOWARD: May we also add to our objection, your Honor, at this time, that the document would be entirely immaterial, and I would also wish, then, in aid of these objections which I am making, since they are to be offered in this manner, to prove the Chinese law with reference to the transfer of such a vessel as the Steamship "Kwang Yuan." In other words, if those documents are to be offered this morning merely for identification, I would then like in aid of our objection to say the law—

THE COURT: It is offered for identification. B may be received under your objection.

MR. HOWARD: Yes.

MR. RESLEURE: The Consul General may secure permission to testify. I suggest that be done by deposition within the time that is allowed for the respondent or the intervenor to—

THE COURT: It is satisfactory for you gentlemen to get together on the matter.

MR. HOWARD: I do not undersand that last suggestion. The man is here who signed that.

THE COURT: He has not authority to testify. The suggestion is that the authority is granted by the Imperial Government for him to testify, then if you will take his depositions, providing the act is done before the matter is submitted.

MR. HOWARD: To take the deposition here?

THE COURT: Instead of having another hearing.

MR. RESLEURE: Yes.

I will offer in evidence another document. This document is dated May 11, 1938, and is in Japanese signed by Kotani and by Li Yu-sun, manager for the Yung Yuan Steamship Company, Chefoo, and it is an

MR. RESLEURE: Yesterday I said put in the original and if we wanted to check it up we could.

THE COURT: As to the signature of the company, and as to whether this man has authority to sign for the company that is another issue. So I think we had better mark this for identification if you hope to supply that foundation.

MR. RESLEURE: Of course, all I have to supply is in Japan, and the document introduced for identification may be withdrawn for the purpose of sending it back there and a copy substituted?

MR. HOWARD: We will so stipulate.

THE COURT: That is Exhibit—

MR. RESLEURE: That will be Libelant's Exhibit A for identification.

(The document was marked "Libelant's Exhibit A for identification.")

MR. RESLEURE: I next offer a document dated February 14, 1938, calling the Court's attention to the fact that just prior to this time of the loan taking place under that agreement for the loan—it was not repaid—entitled "Consulate General of Japan, 22 Battery Street, San Francisco, California; Temporary Certificate of Vessel's Nationality, Mokunosuke Kotani, Consul General of Japan, Osaka City, Tennoji-Ku, Katsuyama-dori." We will offer this in evidence at this time. I am making the tender without attempting to authenticate the document. If there is any objection that you wish to make?

MR. HOWARD: To which we object, primarily, on the ground there is no foundation in that there is no identification of the document, that it is highly self-serving. It shows no issuance; it shows no delivery; it shows no basis upon which it might have been issued, and the testimony as to signing the document is the best evidence of its identification; that it is entirely hearsay in so far as we are concerned.

MR. RESLEURE: In that regard, Mr. Hirota, who is in court at the present time and he could identify this document, is the Consul here at San Francisco, and is not permitted by his Government to testify in court. Yesterday we had a similar situation and it was stipulated Mr. Hirota, if he took the stand, would testify to certain facts.

MR. HOWARD: That related to an entirely different issue here.

and the acknowledgment is dated May, 1938. Attached to the document is an English translation, and attached to that is a certificate of the Vice-Consul to the effect that the translator or the interpreter had appeared before him and sworn that this was a true and correct translation. We will offer this document in evidence.

MR. HOWARD: If the Court please, we wish to offer several objections to the offer. First, we object to the offer on the ground that there is no foundation laid in that the execution of the agreement is not established to be by authority of the Yung Yuan Steamship Company, in that there is no showing by the document as to either the office or authority of Li Yu Sheng, purporting to sign for debtor. We wish to further object to the offer of the translation on the ground that it is purely hearsay, what someone appearing before the Consul advised him was a true and correct copy. It offers no opportunity for cross-examination here, and is not a proper identification of the English translation of the document; on the further ground that there is no showing of any authority on the part of the signing person to represent the Yung Yuan Steamship Company, and lastly, that the offer is entirely immaterial in that any loan agreement between the Yung Yuan Steamship Company and any other party is immaterial in so far as the issues in this case are concerned, and on the further ground that there is no showing that the law of China—that such a loan agreement is effective or that it in any sense creates an interest in the vessel.

MR. RESLEURE: As to the objection on the materiality, I will point out this is just preliminary. We will introduce further documents if the Court permits us to, to show that once default was made by the Yung Yuan Steamship Company possession was taken and certificate of Japanese registry issued, and later on an acknowledgment of the default and the recognition of the right of Kotani to the vessel by reason of the default given by the Yung Yuan Steamship Company. I think that answers the materiality. Of course, the materiality of a loan agreement will not appear without the other documents.

THE COURT: Then it would not be receivable at this time until you lay the foundation. There is no chance to cross-examine this witness. I presume the translation could be supplied here.

MR. HOWARD: Yes.

depositions will be back?

THE COURT: What do you want to make it?

MR. RESLEURE: I think another twenty days from now would be ample.

MR. HOWARD: I know your Honor wants the facts.

THE COURT: Make it the 15th of October.

MR. HOWARD: Subject to further extension.

THE COURT: If justice requires it.

MR. HOWARD: Yes.

THE COURT: And that will have to be done on a legal showing, unless you can stipulate.

MR. HOWARD: I think that the period should not be less than thirty days, knowing the uncertainties of travel and the uncertainties of warfare.

MR. RESLEURE: The 30th, and the briefs are to be written in the meantime at our convenience. How about 15, 10 and 5?

MR. STEVENSON: 10, 10 and 5.

MR. RESLEURE: 10, 10 and 5.

THE COURT: I don't like to mark it submitted at this time.

MR. HOWARD: Suppose that when the depositions are here that we call it to your Honor's attention and ask them to be opened and then the matter can be submitted.

THE COURT: That would be better.

(Whereupon a recess was taken until Thursday, September 22, 1938.)

THURSDAY, SEPTEMBER 22, 1938

MR. RESLEURE: If the Court please, I have here a document in Japanese characters, dated August 25, 1937, which is a loan agreement which recites generally the loan by Mr. Kotani Mokunosuke to the Yung Yuan Steamship Company, of 148,000 odd yen, apparently for the purchase of the steamship "Kwang Yuan", providing in the event of certain defaults creditor Kotani Mokunosuke should have the right of possession or disposition of the steamer "Kwang Yuan," without notice and without recourse. This is acknowledged by both Kotani Mokunosuke and Li Yu Sheng, Mr. Sheng representing the steamship company, before the Vice-Consul of the United States at Kobe,

THE COURT: Tell him to come in tomorrow morning, and if you don't come in tomorrow morning I know you have no more oral witnesses. Is that the understanding?

MR. HOWARD: Yes.

MR. RESLEURE: Yes, and I will advise your Honor and opposing counsel. As I understand it, on the matter of the stipulation—

THE COURT: Supposing that we put it over until tomorrow morning, with the understanding if you do not respond to the calling of the case I will drop it off calendar, and if not you can go on at that time.

MR. RESLEURE: That is a little indefinite at the present time. Shall we write briefs?

MR. HOWARD: We will be guided by your Honor.

THE COURT: I have not said I will let you write briefs. If you see in it legal issues that you feel you can add material to what has been before the Court, why, naturally, I would be glad to have you present it, because it saves me a certain amount of effort by having your thoughts. On the other hand, you always have the advantage of having your authorities gone into. With an oral argument, you know what it amounts to. It may be very interesting, but, after all, it is not a question of persuasion, and I know sometimes attorneys feels they can accomplish much with a speech; so I will do it either way you may elect. If you want to come into court, or you might even let me read the depositions.

MR. HOWARD: We will notify your Honor when the depositions are received.

THE COURT: If you want to brief it just come in and announce that and take such time as you want.

MR. RESLEURE: As I understand it, your Honor, the understanding in this case was that the matter would be submitted on these depositions to come in at a later date, but we have a definite—

THE COURT: I have not as yet—

MR. RESLEURE: (Continuing)—and we will set a limited time at this time. 20 days have gone by since the depositions went by Clipper Ship. I have had information for something like ten days the depositions were there. Can we not fix a definite time within which the

copy or anything else you wish.

MR. HOWARD: Leaving an English translation in the file.

MR. RESLEURE: Suppose we let the matter go until I consult with my client as to whether they want to go to the expense of checking up on the document.

THE COURT: If you will stipulate I am inclined to believe there will be no purpose in my refusing to—

MR. HOWARD: With the exception of the despositions being taken that is our case.

THE COURT: It will go off calendar, of course, until—

MR. HOWARD: I assume Mr. Resleure is desirous of proceeding at the earliest possible time.

THE COURT: I suppose your intention is merely to file those depositions as exhibits in evidence. There is no intention to attempting to strike out any of the answers or modifying it so that it would be necessary to have a hearing for that.

MR. HOWARD: We assume your Honor will accept them for what they are worth. As to the questions, I think the materiality was reserved. Your Honor can just pass on that.

THE COURT: If you come into court and advise me that they have arrived I can then mark the case as submitted and you can make—

MR. HOWARD: We have in mind we could brief it while we are waiting.

MR. RESLEURE: I am not sure that we have completed our case. I have a witness this afternoon. I may have some further testimony on rebuttal. I am not sure—

THE COURT: It is up to you to have your witnesses ready.

MR. RESLEURE: At twelve o'clock, your Honor?

THE COURT: At the time the other side rests, the Court is still in session. I can hold a session right along until one o'clock. I would like to utilize my afternoon in some way. I will have to call court for you especially, and maybe you won't have a witness.

MR. RESLEURE: Suppose I find out whether Mr. Hulme can give the testimony I have asked him to dig up, and that we have a short session sometime at your convenience.

MR. RESLEURE: No objection.

(The document was marked "Respondent's Exhibit 15.")

THE COURT: Was that the only one?

MR. HOWARD: These are the only instructions that we wanted to introduce.

THE COURT: I thought there was another document.

MR. HOWARD: I don't think it is material.

CROSS EXAMINATION

MR. RESLEURE: Q. Mr. Sun, there was a further document which was a Chinese translation of the telegram that is presented here, is that correct?

A. We have quite a number of telegrams. I don't know which one you refer to.

Q. I show you this telegram dated April 27, which you have stated is in code.

A. Yes.

Q. There was a translation of that in Chinese, was there not?

A. It's right here.

Q. The translation is in pen right over it, is that correct?

A. Yes.

Q. Right over each of the words in the code message?

A. Yes.

MR. RESLEURE: That is all.

MR. HOWARD: That is all.

May we have a stipulation that that may be withdrawn subject to the Court's examination or counsels' examination at any time?

MR. RESLEURE: What I propose to do with it is to give my client the opportunity of determining whether they want to examine that further.

MR. HOWARD: You will certainly have the privilege.

MR. RESLEURE: I cannot state exactly when, but I will not object to its withdrawal and the substitution of a copy.

MR. HOWARD: Or its withdrawal with the understanding it will be supplied on request?

THE COURT: If you can stipulate as to that exhibit I am perfectly willing to allow you to withdraw it or to put in a photostatic

MR. HOWARD: We are willing to put this in evidence.

PATRICK P. SUN,

Recalled for Respondents.

MR. HOWARD: Q. Mr. Sun, I hand you what purports to be a Western Union page, and ask you if you will identify it.

A. This is a cablegram we received in regard to the expropriation of the S. S. "Kwang Yuan."

Q. Is the message in code?

A. Yes.

Q. Do you know how to decode it?

A. I do.

Q. I hand you here a page, dated April 27, 1938, Nanking, China, and ask if that is a true and exact translation of that message.

MR. RESLEURE: I object to the question until this other document is received in evidence. I will stipulate—

MR. HOWARD: I offer this —

MR. RESLEURE: I think the first one should go in evidence.

MR. HOWARD: I don't think I am obliged to offer it yet.

MR. RESLEURE: Subject to the agreement both documents may go into evidence.

MR. HOWARD: If they are found admissable.

THE COURT: He has given you his assurance it is going to be offered, and if not I will strike it out of the record.

MR. RESLEURE: What is the question?

THE COURT: Read the question, Mr. Reporter.

(Question read.)

MR. HOWARD:: Q. Do you have the question?

A. Yes. This is a translation of the message. In other words, this is not decoded from the code, itself, directly, but is a translation of the decoded message in Chinese.

Q. That is a true and exact English translation of the message which is in code and in Chinese, is that correct?

A. That is correct.

MR. HOWARD: We will offer this, your Honor, as Petitioner's Exhibit next in order, as one exhibit.

THE COURT: Yes. No. 15.

(Mr. Howard confers with Mr. Huang.)

THE COURT: The whole thing wanted by Mr. Resleure if he really desires to have that—he must get someone to do the decoding, to see if they cannot decode it, and then you will disclose the Chinese method of communicating with one another through code.

MR. RESLEURE: It is obviously an economy code.

MR. STEVENSON: It is a code used between the State Department and all other departments, and they certainly don't want to disclose it, especially to the libelant, who is a corporation there in a country they are at war with at the present time.

THE COURT: I seriously question whether it wouldn't work out.

MR. RESLEURE: I didn't quite understand that.

THE COURT: I seriously question the matter of this code—whether the consulate officer should be protected by the Court in their code, and that this testimony here that he did certain things on the basis that was the order of instruction; that orders were issued in China prior thereto by the Government—I think that could be received, because other than that you would defeat justice and you would not protect the foreign government. We protect our own government that way.

MR. RESLEURE: If there were any really secret code which would —

THE COURT: I think he said it was a secret code. Somebody testified it was.

MR. RESLEURE: If your Honor will look at the code you will realize it is an economy code.

MR. STEVENSON: It is up to the Chinese Government to determine that. That is an executive department of the Chinese government.

THE COURT: If it was merely an economy code and not a secret code I think then the Consul General is perjuring himself in this Court.

MR. HOWARD: I would like, with the Court's permission, to prove this through one of our witnesses. I have just ascertained that the English translation with this in the file would not necessarily reveal this key. It might assist.

MR. RESLEURE: I don't think the Court would want to undertake the work. If this is such a good code nobody can understand it then they don't have to worry about my amateur efforts in checking up.

MR. HOWARD: The Consul General is confronted with the inability to disclose his code. I have been trying to analyze this thing, your Honor, along the line of your thought. It seems to me a cablegram as actually handed over is not in one sense an original, but a message that came through wires.

THE COURT: I can see how you can do it by deposition and then you have already got his statement that he so interpreted them. It is an awkward position.

MR. HOWARD: By a deposition I think we can ask the office of the Foreign Ministry the direct question, "Did you issue the instructions?" That is establishing the fact. We can put that question in English to the man who issued the instructions.

MR. RESLEURE: I am not objecting that this is not the original. They cannot do anything by deposition there that they cannot do here.

THE COURT: If they issued such an order and this Consul General acted on an order of a similar nature, even though the atmosphere of mental telepathy, he has carried out the order of the Government. I don't know whether the order was issued there and they did the act here.

MR. RESLEURE: They have asked for the order.

MR. HOWARD: These are different instructions. That is the expropriation order. These are the instructions to carry out that order.

MR. RESLEURE: They cannot do any better being there in China than here.

MR. HOWARD: A man can state what instructions he issued.

THE COURT: If something had been issued and the order acted on here, I don't see why it needs very much connection. You gentlemen think it over and see what you want to do about it. The consul is not willing to testify and I would not want to compel him to.

MR. HOWARD: May I have the privilege of speaking to the consul?

THE COURT: Yes.

MR. HOWARD: Pursuant to counsel's request, we have also produced a translation of a wire of April 11th, which is also in code, and to which the Consul General had reference in his testimony on cross-examination.

MR. RESLEURE: If that goes in I will consent to the translation going in.

MR. HOWARD: You mean if the original code message—

MR. RESLEURE: Yes.

MR. HOWARD: Under the circumstances, your Honor, then, we ask the privilege of taking depositions to establish the evidence.

MR. RESLEURE: If your Honor please, this matter has been one of continued delay, and your Honor has consented to hear this case to-day, leaving open a certain definite time for the taking of those depositions which counsel said he arranged to take sometime in August. I will object to the taking of any further depositions. Counsel, it seems to me, should anticipate that the opposing counsel should not be asked to stipulate to the introduction of translations when the originals do not go in. They have the originals. Obviously, there cannot be any military secrets involved.

THE COURT: Are the originals as written here?

MR. HOWARD: Yes, the code messages.

THE COURT: Undeciphered?

MR. HOWARD: Yes, in code.

THE COURT: You are not offering them, are you?

MR. HOWARD: No. We will offer to decode those before your Honor and identify the code and what it means.

THE COURT: The whole trouble is it is a very strange situation. The witness says he has it translated.

MR. HOWARD: Yes.

THE COURT: And he is willing to swear that is the translation?

MR. HOWARD: Yes. After all, a cablegram is not in the —

THE COURT: You do not want those for public records, for someone to see?

MR. HOWARD: If they could be under seal we could introduce them; if they would be available to no one but the Court.

MR. RESLEURE: Q. There was also some difficulty about having keepers on board there, wasn't there?

A. Along what line?

Q. Do you remember you told me that you would not go on board that boat, yourself, without an interpreter, because you would not take a chance with that Chinese crew?

A. That is correct.

Q. And we also discussed the matter of keepers and the charge if they were left on board with the Chinese crew, didn't we?

A. Yes.

Q. And I employed a Chinese interpreter for you, didn't I?

A. You did.

Q. And he went on board so as to establish that the Marshal was going on a friendly mission, isn't that true?

A. Yes, yes.

MR. RESLEURE: That is all.

MR. STEVENSON: Q. You did not have anyone in your office who could speak Chinese, did you?

A. No, we did not.

MR. STEVENSON: That is all.

MR. HOWARD: If the Court please, that is the Petitioner's case, with the exception of the depositions which are now in process of being taken and this other phase of the matter which—you will recall the discussion yesterday about these instructions and the possible necessity of a further deposition of the Foreign Minister's Office.

THE COURT: Yes.

MR. HOWARD: I repeat our offer to identify and establish as a correct copy of a telegram in code these wires, and this one I have exhibited to Mr. Resleure I will return it to him and I will produce the other.

MR. RESLEURE: This is a letter and not a telegram.

MR. HOWARD: It is a cablegram, a cablegram advising—

MR. RESLEURE: I will insist, as far as this cablegram of April 27, 1938 is concerned, that the original is the best evidence, and that unless the original is put into evidence I will object to the introduction of the alleged translation.

Marshal's position would be if they did not put up the keeper's fees?

A. Yes.

Q. What did you tell them?

A. I told them unless they advanced the fees so that we could employ keepers we could not assume responsibility for the ship or the cargo in case anything happened to it.

Q. Have you at any time since that date had actual possession of the vessel or the cargo on board?

A. No, we have not.

MR. STEVENSON: That is all.

CROSS EXAMINATION

MR. RESLEURE: Q. By not having actual possession of the cargo, Mr. Ryan, you simply mean you have not had a keeper on board?

A. That's it, exactly.

Q. Do you recall definitely that you asked for keeper's fees?

A. Absolutely, in every instance.

Q. Isn't it a fact that I talked with you and you asked me if I wanted a keeper and I said no? Isn't that all that took place between us?

A. That's asking for keeper's fees. I do not recall the exact words.

Q. Mr. Ryan, let us get this straight. You never made a demand on me for keeper's fees or said "Please give me keeper's fees," did you?

A. I do not recall whether you were there or some other attorney. Just brought the paper in.

Q. I remember I talked with you. Didn't you simply ask me, "Do you want a keeper put in charge?" And I said, "No." Isn't that all that took place between us? "I don't want a keeper; just a formal seizure?"

A. No, that is not all.

Q. What is that?

A. That is not all, because I couldn't docket my writs if that was all that was said.

THE COURT: Tell us what you did.

A. I asked if you wanted a keeper put on, "because if you do I will have to collect fees in advance." You said, "No, it will not be necessary to employ keepers,"

THE COURT: Any questions?

MR. HOWARD: No questions.

RAYMOND W. RYAN

Called for the Respondent;

Sworn

MR. HOWARD: If the Court please, may I have the privilege of addressing just one question to the previous witness without his taking the stand?

THE COURT: Let us learn what the question is first.

MR. HOWARD: I wanted to ask him whether there was any request made to him to remove the hatches on the occasion of the service by the marshal.

THE COURT: There is no objection to—

MR. RESLEURE: I will stipulate that what the marshal has told—he did not make any request. He went straight to the captain.

DIRECT EXAMINATION

MR. STEVENSON: Q. You are a Deputy United States Marshal for the Northern District of California?

A. Yes.

Q. And you are in charge of the Admiralty Division of the Marshal's office?

A. Yes.

Q. And you held that position on April 22nd and April 23rd of 1938?

A. Yes.

Q. On that date did Mr. Resleure or Mr. Elerding request you to serve a monition on the steamship—on the 2100 tons of scrap iron on board the vessel?

A. Yes.

Q. Do you remember which one it was, whether Mr. Elerding or Mr.—

A. Really, I do not recall.

Q. Did they put up keeper's fees at that time?

A. No.

Q. Did you make a demand for keeper's fees?

A. Yes.

Q. Did you have any conversation with them in regard to what the

on the same date.

Q. Then did he come back again?

A. That was after a long time. He returned on the 30th of April to take his personal belongings.

Q. Do you know why he did not come back from the 8th to the 30th of April, 1938?

MR. HOWARD: That is objected to as called for the conclusion of the witness.

THE COURT: I will sustain the objection.

MR. RESLEURE: I am sorry it has taken so long, your Honor, to bring out what I wanted to develop.

Q. Did you hear anything about the men on board claiming that they would be poisoned by a Japanese doctor?

MR. HOWARD: That is objected to as calling for hearsay, and not binding, and absolutely immaterial.

THE COURT: I will allow the question. Answer the question.

A. I did not hear.

MR. RESLEURE: Q. So everything was friendly and peaceful between the captain and the crew, is that right, after the 3rd of April?

MR. HOWARD: That is objected to as calling for his conclusion. The witness has testified what happened.

THE COURT: I think that is correct. He did not see any more difficulties. It might go to a state of mind or surmise.

MR. RESLEURE: Q. You did not see any more difficulties or any more trouble between the captain or any members of the crew after they shook hands on April 6th, is that right?

A. No difficulties.

MR. RESLEURE: Your Honor, if I have the opportunity to develop this testimony to impeach this witness I will.

MR. HOWARD: I do not understand counsel's statement.

THE COURT: You would be impeaching your own witness.

MR. RESLEURE: Yes. That is why I am pleading surprise.

MR. HOWARD: How can you plead surprise? I object—

MR. RESLEURE: I believe if he told the truth—

THE COURT: He has not established surprise, and until he does—

MR. RESLEURE: That is all.

A. No.

Q. Did any members of the crew threaten the captain if he came back again?

A. No, Sir.

THE COURT: When was it? After this occurrence or the next time he left the ship?

MR. RESLEURE: Q. When did this fight between the captain and the other members of the crew and the sick men and the rest of the crew take place?

A. Will you repeat that?

Q. When did this take place—the fight between the captain and the chief officer on the one side, and the sick crew and the other members of the crew? What time was that?

A. April 3rd.

Q. After April 3rd the captain did not come back again, did he?

A. He did.

Q. When was that?

A. On the 4th of April.

Q. What happened when he came back on the 4th?

A. The captain went back to the ship. He called a meeting of all the crew in the saloon and he explained to them that the affairs of the fighting was past “let bygones be bygones. Let no one remember that incident.”

Q. What did the crew say?

A. The crew said it is very good and they shook hands and say, “We are friends again.”

Q. After that when did the captain leave the ship?

A. The 5th—April 5th.

Q. Did he leave peaceably at that time on April 5th?

A. He left peacefully. He did not say anything. He went away in a water taxi.

Q. Did he come back again after that?

A. He came back on the 6th.

Q. When did he leave after coming back on the 6th?

A. He came back and he said there was a boat leaving San Francisco on the 8th. He said, “We ought to go back to China,” and he left

THE WITNESS: Will you read the question?

THE COURT: Read it, Mr. Reporter.

(Question read.)

A. There were three crew who were sick at that time. Captain Kawano supposed to take them ashore and attend their sickness. They went around without having the sickness taken care of.

THE COURT: Q. He did not have them attended to?

A. No. They came back to the ship.

MR RESLEURE: Q. What happened when he came back to the ship?

A. Came back to the ship—the captain attempted to leave the ship again. Then the three sick crew asked him about their sickness. The captain did not pay any attention. He wanted to go on the water taxi to get on shore again.

Q. And then what prevented him from coming back again on the ship?

A. The sick men asked the captain that their sickness must be attended, and asked him to stay there for a while. The captain struck one of the men who was sick.

Q. What did the men who were sick, or any other members of the crew, do to the captain?

A. When the captain hit the sick crew the sick crew pulled on his coat, on his lapel, and the captain hit him a few times more. Then the other crew came around—pardon me. His story is too long. I have to recollect a moment.

Q. Other members of the crew came around.

A. (Continuing) And saw the sick man—down on the floor—on the deck. Then there two other Japanese officers, one the first officer and the other the chief engineer, came with a wooden club and a broom handle to hit the sick Chinese people.

MR. RESLEURE: Q. Just ask him whether he was the leader of the crew. Whether he assumed the leadership of the crew at that time—this captain. Did he take over the leadership of the crew against the captain and the chief officers?

A. He said he took no part in the affair. He was watching it.

Q. Were any of the members of the crew armed?

THE COURT: You have concluded your cross-examination.

MR. RESLEURE: Yes.

THE COURT: Proceed, then. He is your witness now.

DIRECT EXAMINATION

MR. RESLEURE: Q. Were you on board the vessel "Kwang Yuan" on April 23rd, when the United States Marshal came on board with the interpreter?

A. I was on board.

Q. Were the hatches closed—the cargo hatches closed or open at that time?

A. They were closed.

Q. Where was this melting scrap located on the vessel at that time?

A. They were in the hatch.

Q. Under these battened down hatches, is that right?

A. Yes. It was in the closed hatch.

Q. How many men would it take to remove those hatches?

A. Two or three men would do—

Q. How long would it take them to remove them?

A. About fifteen minutes.

Q. When did Captain Kawano leave the vessel for the first time?

A. The 5th of April.

Q. Do you know the circumstances under which he came to leave the vessel?

MR. HOWARD: That is objected to as being immaterial. It has no bearing on our case whatsoever.

MR. RESLEURE: An important part of my case is that this vessel was not in the possession of the Chinese Government through any officer of the Chinese Government, and that there could be no expropriation prior—that is, on the 23rd of April, 1938, and that when the Marshal came on board and seized the cargo—

MR. HOWARD: There is no contention there was.

MR. RESLEURE: It is important for me to know whether the vessel was then in the hands of a mutinous crew or not.

MR. HOWARD: That is immaterial. We have not claimed an expropriation prior to April 27

THE COURT: I will allow the question.

Q. You were first employed by the Chinese Consul on April 27, 1938, is that correct?

A. Yes.

Q. Up until that time by whom had you been empolyed?

A. I was employed by the Yung Yuan Steamship Company.

Q. When were you employed by the Yung Yuan Steamship Company?

A. August 5th.

MR. STEVENSON: I think you misunderstood him.

MR. RESLEURE: I was just trying to bring that out.

MR. STEVENSON: The Yung Yuan Steamship Company. Not the—

MR. RESLEURE: Q. Up to April 27th you were employed by the Yung Yuan Steamship Company? Was that your answer? April 27, 1938?

MR. RESLEURE: That is all.

MR. HOWARD: That is all.

MR. RESLEURE: Just a moment, your Honor.

Q. Mr. Ming, up until April 27, 1938, did you recognize Captain Kawano as the captain of that vessel?

A. He was.

Q. Were you on board the ship on April 23, 1938 when the United States Marshal came on boardy?

MR. HOWARD: That is objected to as not proper cross-examination.

THE COURT: I will sustain the objection.

MR. RESLEURE: Q. Did you assist in expelling Captain Kawano from the vessel?

MR. HOWARD: I will object to that as not proper cross-examination, and assuming something not in evidence.

THE COURT: The same ruling.

MR. RESLEURE: In order not to bring this witness back I would like to make him my own witness, if your Honor please.

THE COURT: That depends upon counsel for the other side, if he objects. I have no objection to a witness testifying out of order.

MR. HOWARD: I have no objection.

explained.

Q. What did they do then?

A. They cheered and applauded.

Q. Since that time have you been employed by the Chinese Consul General?

A. Yes.

Q. Since that time have you been employed any longer by the Yung Yuan Steamship Company?

A. No more.

Q. Since that time from whom have you taken orders?

A. I take orders from the Chinese Consul.

Q. Do you allow anyone go on board without his direction?

A. I do not allow.

MR. HOWARD: That is all.

CROSS EXAMINATION

MR. RESLEURE: Q. May I have your name again?

MR. HOWARD: You better ask him.

A. Chau Tsu Ming.

Q. (By Mr. Resleure) Mr. Ming, you are an ordinary merchant seaman, are you not? You are a merchant seaman?

A. Yes.

Q. Always been in private business on Chinese ships or other ships, is that right?

A. Yes. Always on private ships.

Q. You have never been connected with the Chinese Navy or Army, have you?

MR. HOWARD: That is objected to as being immaterial.

THE COURT: I cannot see the purpose of it.

MR. RESLEURE: Under the decisions, your Honor, there is quite a line of authorities to the effect that the consummation of any expropriation must be through an officer of a military or naval force of the country, or must have some governmental connection.

THE COURT: So as to cover that as a possible tissue, I will allow it.

MR. RESLEURE: Answer the question.

A. No.

MR. HOWARD: That is all.

If the Court please, Mr. Ming does not speak English, and Mr. Sun, by stipulation, will interpret.

THE COURT: Do you wish to have the interpreter sworn, or does your stipulation include that? It is our practice to swear the interpreter.

MR. RESLEURE: I think we should swear the interpreter.

THE COURT: Let the interpreter be sworn to act as the interpreter.

(Patrick P. Sun was sworn to act as interpreter from English into Chinese and from Chinese into English.)

CHAU TSU MING

Called for Respondents, being sworn and examined through Interpreter Patrick P. Sun, testified as follows:

DIRECT EXAMINATION

MR. HOWARD: Q. On April 27th—I will withdraw that question. Prior to April 27, 1938, were you on board the vessel “Kwang Yuan”?

A. Yes, I was on board.

Q. Were you in the employ of the Yung Yuan Steamship Company?

A. I was employed by the Yung Yuan Steamship Company.

Q. On April 27, 1938, do you recall Mr. Patrick Sun and myself coming on board the vessel “Kwang Yuan”?

A. I remember that.

Q. What happened at that time?

A. Mr. Sun explained to me in a meeting which he called of the crew into the saloon, that the ship “Kwang Yuan” had been taken over by the Chinese Government.

Q. Did anything else happen?

A. He appointed me as the new captain of the ship. He explained to me that the Japanese captain had been dismissed.

Q. Did you accept that appointment?

A. I accepted the appointment.

Q. Did the crew hear what Mr. Sun said?

A. They were all there—they were all listening to what Mr. Sun

propriated?

A. Shall I give the counsel what my opinion is; or what I did on that ship?

THE COURT: No. He wants to know whether you told them anything like that. Did they simply remain on and you thought they would be willing to work for the Chinese Government, or did you tell them they had to work for the Government whether they wanted to or not?

A. I simply explained to them they're in the service of the Chinese Government.

MR. RESLEURE: Q. From your knowledge of the entire transaction was there ever a decree issued out of China by the National Military Council expropriating the services of the crew?

MR. HOWARD: That is objected to as immaterial.

THE COURT: I will sustain the objection.

MR. RESLEURE: I am asking if he knows that.

THE COURT: I will sustain the objection.

MR. RESLEURE: That is all.

MR. HOWARD: That is all.

WILLIAM K. MORDOCK,

Called for the Respondent;

Sworn.

MR. HOWARD: Q. Mr. Mordock, are you an attorney-at-law?

A. I am.

Q. Are you connected with the firm of Hengstler, Dorr & Stevenson?

A. Yes, I am.

MR. HOWARD: The testimony, your Honor, that we wish to establish by this witness is that the notices, Respondent's Exhibit 12, were delivered to the General Steamship Company by Mr. Mordock on April 27, 1938. I believe that will be stipulated to?

MR. RESLEURE: Yes.

MR. HOWARD: And that he delivered a notice, being Respondent's Exhibit No. 3, to the Collector of Customs.

MR. RESLEURE: Yes, I will stipulate to that.

MR. HOWARD: On that date?

MR. RESLEURE: Yes.

they're in the service of the Chinese Government.

Q. That is what you said to them?

A. Yes.

MR. RESLEURE: Q. Did you use to them the word "expropriate" in saying "Your services have been expropriated"?

A. I said "expropriated". Then again said "taken over by the Chinese Government."

MR. RESLEURE: Q. I will ask you this question: Do you know whether or not there has ever been an expropriation, or an attempted expropriation of the services of that crew on board the vessel?

MR. HOWARD: That is objected to as absolutely immaterial whether there has been or not. That is not necessary to the employment of a crew.

MR. RESLEURE: He had just told us that he told the crew their services had been expropriated.

MR. HOWARD: I don't think he did. He said he had expropriated. He meant the vessel.

THE COURT: You didn't mean—you mean the crew's services?

A. I mean when the ship is expropriated and the crew working on the ship is in the service of the Chinese Government.

THE COURT: You wanted them to remain in the services of the Government?

A. Yes, your Honor.

MR. RESLEURE: Q. But you did not tell them their services had been expropriated, did you?

MR. HOWARD: Objected to as immaterial.

THE COURT: It is part of what went on.

Q. You did not make that statement to them?

A. No. I explained to them they're in the service of the Chinese Government.

MR. RESLEURE: Q. That was your opinion, they were in the service even though there was no expropriation decree as to the services of the crew?

A. No.

Q. And you know this fact from your knowledge of this entire transaction that the services of the crew have never been officially ex-

A. Yes.

Q. Who has maintained the crew?

A. The Chinese Consul.

MR. RESLEURE: I object to the question in that it is too indefinite.

MR. HOWARD: Q. Since that time who has maintained the crew?

A. The Chinese Consul has been maintaining the crew.

Q. Were some of the members of the crew returned to China?

A. Yes.

Q. Who is in charge of the vessel at the present time?

A. Captain Chau Tsu Ming.

Q. Is there anyone with him?

A. There is a chief engineer.

Q. Was he a member of the crew?

A. Yes, he is a member of the crew. His name is Wang Chi Fu.

Q. Is Wang Chi Fu a Chinese?

A. Yes.

MR. HOWARD: That is all.

CROSS EXAMINATION

MR. RESLEURE: Q. Did you, Mr. Sun, at the time you went on board the vessel on April 28, 1938, tell those members of the crew, or the second mate, that their services had been expropriated by the Government?

A. Yes, I did. In the first place, may I correct the date? It was April 27th. Not the 28th.

Q. Get my question correctly: You have so far stated that you told them the vessel had been expropriated.

A. I have already explained to them that since that time the crew were in the service of the Chinese Government.

MR. RESLEURE: That is not responsive to my question and I ask that it be stricken.

MR. HOWARD: I submit it is responsive, your honor.

THE COURT: Now he has disclosed he did not tell everything that transpired on that occasion. Is there anything else that occurred at that time?

A. Yes, your Honor. I explained to them that since that time—

“Kwang Yuan” had been expropriated by the Chinese Government in accordance with the law. Then I posted a notice on the bulkhead in that room. I handed a copy of appointment to the second mate on the ship during that time appointing him as a captain.

Q. What did the second mate say, if anything?

A. He accepted that—

MR. RESLEURE: I object to that question.

THE WITNESS: Pardon me?

MR. RESLEURE: I object on the ground of hearsay.

THE COURT: I presume it shows what went on at that time, there. Say what he said. You said he accepted—

THE WITNESS: He took the appointment and saluted me. He didn't say anything.

MR. HOWARD: Q. I hand you Respondent's Exhibit No. 3, and ask you if that is a true and exact copy of the notice which you stated you posted.

A. That is a copy of the notice that I posted in the dining-room.

Q. I hand you Respondent's Exhibit No. 6, and ask you if that is the appointment to which your testimony refers? The appointment of Mr. Ming.

A. This is another paper.

Q. That is not the appointment?

A. It is not.

Q. I hand you what is Respondent's Exhibit No. 11, and ask you if that is the appointment of Mr. Ming which your testimony referred to?

A. Yes, this is the appointment.

MR. RESLEURE: May I see that again?

(Mr. Howard hands paper to Mr. Resleure.)

MR. HOWARD: Q. What flag was on the vessel at that time?

A. The Chinese flag.

Q. What flag has been on the vessel, if any, since that time?

A. The Chinese flag.

Q. Has Mr. Ming taken orders from the Consul-General since that time?

A. Yes, since that time, and at all times.

Q. Have orders been given to him?

produce for you an exact copy, which is in evidence. It is the same notice which was given, Mr. Resleure. I believe it is.

MR. RESLEURE: That is all.

MR. HOWARD: Do you want to identify that?

MR. RESLEURE: What was that?

MR. HOWARD: Do you want to identify that as being—

MR. RESLEURE: Is this an exact copy of that document, as far as you remember (handing paper to witness)?

A. Yes, sir.

MR. HOWARD: The record will show that the witness was referring to Exhibit No. 3. That is all.

THE COURT: Exhibit No. 3—Libelant's.

MR. HOWARD: Petitioner's or Libelant's—I have been referring to the Petitioner's. The exhibit refers to Respondent's. Respondent's Exhibit No. 3.

PATRICK P. SUN,

Called for the Respondent;

Sworn.

MR. HOWARD: Q. Mr. Sun, are you connected with the Chinese Consulate at San Francisco?

A. Yes.

Q. In what capacity?

A. I am the Vice-Consul.

Q. How long have you been Vice-Consul?

A. I have been Vice-Consul since July 1st, this year.

Q. Prior to that time were you connected with the Consulate?

A. I was the Deputy Consul.

Q. For how long were you Deputy Consul?

A. Since February, 1933.

Q. Do you recall an occasion on April 27, 1938 when in my company you went to the vessel "Kwang Yuan"?

A. Yes, I do.

Q. Did you go there pursuant to directions from the Consul General?

A. I acted under the instructions of the Chinese Consul General.

Q. What did you do on board the vessel?

A. I went on board the ship with Mr. Jack Howard. I assembled all the crew in the dining room. I announced to them that the ship

Q. What is your connection with the Chinese Consulate, if any, or with the Yung Yuan Steamship Company?

A. I was employed by the Chinese Consul because I am a police officer and also have shipping experience.

Q. And when did your employment first take place?

A. The 7th day of April, this year.

Q. Are you still employed by the Chinese Consul.

A. I am not.

Q. When did your employment terminate?

A. The 13th day of May.

Q. Are you familiar with the time—do you know the time that this Captain Ming—that is, the former second officer, went back to China?

A. No, sir. Went back to China?

Q. Yes.

A. Captain Ming went back to China—

MR. HOWARD: For your information, he is here in the courtroom.

MR. RESLEURE: He is?

MR. HOWARD: Yes.

MR. RESLEURE: Will he be a witness?

MR. HOWARD: Yes.

MR. RESLEURE: I will pass that question.

Q. This document that was read on board the ship was read in English and also in Chinese?

A. No. I would say—he translated it in Chinese to the crew, but the only one he put on the bulkhead was in English.

Q. You say the document was pinned up?

A. Tacked on the bulkhead of the dining saloon.

Q. Was it there when you left the ship last?

A. Yes.

MR. RESLEURE: We will call for the production of that document.

MR. HOWARD: Pardon me?

MR. RESLEURE: We will call for the production of that document.

MR. HOWARD: I presume the document is on the ship. I will

ing on board by permission of the Chinese Consul, and that I would be in charge of conditions and preserving peace and order while he was on board. I instructed him that one Japanese would come on board at a time and those conditions were complied with. He took his personal effects—the Chinese crew assisted him in taking those effects from the ship and putting them on the launch for him. There were a few articles that he wished to leave on board, and asked for a receipt for, and I told him that under no condition would I give him a receipt for any goods that he claimed as personal property; that we would put them on his boat for him if he wanted them, but if he left them there he left them at his own responsibility. I did give him a receipt for a few articles that was in dispute, as to whom they rightfully belonged, but that was all.

Q. Were you on board continuously from April 27th until the time Captain Kawano came on that occasion?

A. Yes.

Q. Had he been there previously?

A. I may be in error in saying I was on board continuously. I was away about three hours the day that he came on board. I saw his boat leaving the ship as I came there, but I was informed that he did not board the ship. He came back within a few hours and did board, and that is the occasion which I mentioned.

Q. Other than the occasion which you have described was Captain Kawano ever on board while you were there?

A. No, sir.

MR. HOWARD: That is all.

CROSS EXAMINATION

MR. RESLEURE: Q. Mr. Imus, what is your occupation?

A. I am a shipping man and also a special police officer.

Q. What is your connection with the shipping business?

A. I was with the United States Shipping Board for about ten years and I have been with shipping off and on from then until now.

Q. With whom have you been connected since the war?

A. American-Hawaiian—the Matson people.

Q. In what capacity—special police officer?

A. I have been supercargo and purser—paymaster of the United States Shipping Board.

Q. You do not understand Chinese?

A. No.

Q. What flag was the ship flying at that time?

A. The Chinese commercial flag.

Q. Did you remain on board the vessel after that time?

A. I did.

Q. Did the members of the crew thereafter take orders from Mr. Ming?

A. Yes.

Q. Do you know who gave Mr. Ming orders?

A. All that I can—that I transmitted myself came from the Consul, and I noticed that he got communications from the Consul quite regularly.

Q. Do you know who maintained the crew?

A. The Consul.

MR. RESLEURE: May I have that question a little more definitely? At what time?

MR. HOWARD: Q. After April 27, 1938.

A. Yes, sir, he did.

THE COURT: Q. What was the date this occurred?

A. April 27th. That was the date of expropriation.

THE COURT: Q. This year?

A. Yes, sir.

MR. HOWARD: Q. Did you ever meet Captain Kawano?

A. Yes, sir.

Q. Did he return to the ship after April 27, 1938?

A. Yes, sir.

Q. Will you state what happened?

A. The Chinese Consul told me that Captain Kawano was to come—

MR. RESLEURE: I object to the witness testifying as to what the Chinese Consul told him. The question was what happened when he came on the boat.

THE COURT: Q. Just what happened when he came on.

A. Captain Kawano came on board with three Pinkerton men, or rather, I should say he came alongside in a water taxi. I met him and told him—asked him his business on board—told him that he was com-

witness testifying as to it.

THE COURT: He can state what he heard. That is part of what occurred on there.

MR. RESLEURE: What he heard is hearsay.

THE COURT: What did you hear him say?

MR. RESLEURE: I still object to the question.

THE COURT: Overruled.

MR. RESLEURE: There is a document which was read.

THE COURT: Supposing he did not read it correctly? Supposing he missed a paragraph? He wants to know what actually transpired on that ship. Proceed.

THE WITNESS: He stated that this was a document of expropriation. He read the document and then tacked it on the bulkhead of the dining saloon and I re-read it, myself, and it was as he had read it. He issued instructions that—

THE COURT: You will have to say what he said.

A. He told the captain to look to the Chinese Consul for all matters with reference to the ship in the future.

MR. HOWARD: Q. By whom do you mean—the captain? Whom do you refer to when you say that?

A. Captain Ming, whom he had detailed at the same time as captain of the ship.

Q. Did you see the reaction of the crew of Mr. Sun's statement?

A. Yes.

Q. What was that reaction?

MR. RESLEURE: If your honor please, I don't think this witness is competent to testify as to the reactions of the crew.

THE COURT: It all depends on how that word "reaction" is interpreted. He can say what they did, or what he saw them do; if they started in to riot, if they did that, or whatever occurred, he cannot certainly go into the mental reactions.

MR. HOWARD: Q. What visible reactions did you see?

A. There was the wildest scene of pleasure indicated by them that I ever saw—extremely happy over it.

Q. They indicated that visibly?

A. They did so.

MR. HOWARD: Q. Mr. Imus, were you on board the vessel "Kwang Yuan" on April 27, 1938?

A. I was.

Q. At that time were you employed by the Chinese Consul General?

A. I was.

Q. Do you recall an occasion when Mr. Patrick Sun and myself came on board the vessel that day?

A. Yes, sir.

Q. Will you state what occurred?

MR. RESLEURE: What occurred on the vessel when Mr. Howard went there I cannot see where that would be—it seems to me it would be incompetent, irrelevant, and immaterial.

MR. HOWARD: These are what acts were taken in regard to dominion over the vessel.

MR. RESLEURE: I will make the further objection that Mr. Sun's capacity as representative of the Chinese Government has not been shown.

MR. HOWARD: Mr. Sun is identified as the Vice-Consul sent to the vessel by the Consul General.

THE COURT: I will overrule the objection.

MR. HOWARD: Q. Do you have the question, Mr. Imus?

THE COURT: Read the question. Do you know the question?

THE WITNESS: Yes. Mr. Sun came on board with yourself. At that time he read to the captain and the assembled crew the document—

MR. RESLEURE: I will object to any statement as to what he read to the captain.

THE COURT: He can state what went on.

MR. RESLEURE: As far as that is concerned, your Honor—

THE COURT: The reading is part of what went on.

MR. RESLEURE: He read a document to the whole—

THE COURT: Let the witness tell us what he remembers about it.

THE WITNESS: He read a document that was in English, to the Captain. He read it first in English and then translated it in Chinese, stating that the ship had been expropriated.

MR. RESLEURE: I object to what that document stated, this

A. There was no official record made except the instructions were given to those who could handle the transaction afterwards that there was a document presented for clearance.

THE COURT: Q. You told them about this particular document and said it must be presented when the issue of clearance came up?

A. Yes.

MR. RESLEURE: Q. There was no entry made as to that document at all in the books or records of the department?

MR. STEVENSON: I object to that as having been asked and answered.

THE COURT: Several times. I will sustain the objection.

MR. RESLEURE: Q. And the object of the mark that you did make on the document was simply to insure that another document would not be presented in place of the old one you had seen?

A. That is correct.

Q. In connection with your ordinary transactions in regard to certificates of registry of foreign countries, it is not the custom to make identifying marks, is it?

A. It is not.

Q. Your instructions to the subordinate offices relate to this particular document and the identification of it—were they written or verbal?

A. They were verbal.

MR. RESLEURE: That is all.

REDIRECT EXAMINATION

MR. HOWARD: Q. Mr. Marshall, is it customary in connection with any foreign registry of a foreign vessel in port to make any official entry in regard to it?

MR. RESLEURE: I object.

A. No. It isn't customary.

MR. RESLEURE: I object to the question.

THE COURT: I will overrule the objection.

MR. HOWARD: That is all.

MR. RESLEURE: Just a moment. That is all.

CLIFFORD L. IMUS

Called for the Respondent;

Sworn.

A. J. B. Twigg would normally do—

Q. What is the name?

A. Twigg—"T-w-i-g-g."

Q. Is he still with the department?

A. He is.

Q. Would he be available to come to court if we sent a message to him or brought him—

A. I don't know. I just got back from Los Angeles this morning and I am not certain whether he is on duty or not.

Q. We can check that up later. Getting back to this little dot between the "Y" and the "u" on the Provisional Certificate of Registry, or the alleged certificate—that was a special personal identification mark of your own, wasn't it?

A. Yes.

Q. And you put it in an inconspicuous place so that you could identify it and probably no one else excepte the people you told where the mark was?

A. Yes.

Q. It was in no sense an official act on your part, was it?

MR. HOWARD: I think the act speaks for itself. I object to that as calling for a conclusion of the witness.

THE COURT: I suppose he can say whether or not he thought any official act done by him is in pursuance of his official position, or whether an act is done outside of that.

MR. RESLEURE: I will waive the question. I think this has been brought out sufficiently clearly, but I would like to settle the matter once and for all.

Q. Mr. Marshall, there was no entry—official entry—on the books of the Customs House with regard to the presentation of the document to you, was there?

MR. HOWARD: I will object—

THE WITNESS: It wasn't—

MR. HOWARD: —to the question as being entirely immaterial.

THE COURT: I will allow it.

Q. As a result of your seeing that, was there any record made by you or under your direction?

employees were acting on instructions previously presented that clearance was only to be made on the presentation of this registry.

Q. Were any documents filed in connection with this other attempt—with this attempt to get clearance?

A. No.

Q. Were any documents presented?

A. I am informed there were at the time.

MR. HOWARD: Q. Do you know of your own knowledge?

A. I didn't see them.

MR. HOWARD: I move the answer go out as hearsay.

THE COURT: It goes out.

MR. STEVENSON: I would like to make an objection to this whole line of questioning, on the ground that Mr. Resleure is in the horns of a dilemma. He cannot say I am contending there was never any registry issued and the vessel remained American and then say "I assume the vessel was Chinese but there was a sale to Japanese."

MR. RESLEURE: The fact is I might or might not be in the horns of a dilemma excepting—

MR. STEVENSON: He cannot come into court and say, "I am going to stand on one or two grounds, whichever one I want. We submit he must make his election.

THE COURT: Let us proceed.

MR. RESLEURE: Q. Can you tell me the names of the assistants in your office to whom these documents were presented by the Japanese captain?

MR. HOWARD: Q. Do you know, Mr. Marshall, if—

THE WITNESS: They would be presented—

THE COURT: They would be? You don't know personally who got them?

A. No.

MR. RESLEURE: I just want to find out the name of the witness, what witnesses who would have the material information.

THE COURT: Ask him the proper question. I suppose you could ask him who would normally be the person.

MR. RESLEURE: Q. Who would normally be the person then at this time?

with this?

MR. RESLEURE: Q. You saw the document again in 1938, sometime in February, didn't you?

A. Yes.

Q. Again you asked the consul to bring it to you to show you that he still had it in his possession?

A. Yes.

Q. How long did it take him to come over with the document?

A. As I recall, within the hour.

Q. Did he tell you at that time whether or not he had it in his possession all of the while, in the meantime, between November and February, 1938?

A. He did in answer to the question.

Q. You wanted to verify that fact, didn't you?

A. I did.

Q. The reason that you called the consul and had him bring the document over so that you could verify that he still had it in his possession was that some other document had been presented to you?

A. That's true.

Q. By whom were those other documents presented to you?

A. They were presented to the Clearance Division by the Captain of the vessel.

Q. That was Captain Kawano, is that correct?

A. I don't recall the name.

Q. By the captain of the vessel you mean the Japanese captain, is that correct?

A. I presume it was.

MR. RESLEURE: You will stipulate that was Captain Kawano?

MR. HOWARD: I don't know the fact.

MR. RESLEURE: Q. Had you ever seen this captain before?

A. I had not.

Q. He was Japanese, was he?

A. I think he was—captain of that vessel.

Q. Who was with this Japanese captain when he presented the document to you?

A. I was not in the Marine Division when it was presented, but the

Q. By issuing the provisional registry you mean by having written up such a provisional registry?

A. Yes.

Q. And you knew at that time that he had not issued that to the captain, didn't you?

A. Well, we had never seen it.

Q. In the ordinary case that would be delivered to you and handed to the captain, would it not?

A. It would be exhibited to us when the vessel was to be cleared.

Q. By the captain?

A. Yes.

Q. By the party, whoever it may be, to whom the document was issued, is that right?

A. They would deliver it probably to the captain.

Q. And because of this particular case—the document had been delivered to the captain, you had to ascertain there was such a document written up?

THE COURT: What is the answer? Any answer?

A. Yes.

MR. RESLEURE: Q. Would you mind answering the question audibly, so that the reporter may get it? He can't get it when you just shake your head. You stated that you were aware of or knew the custom with regard to the holding or the disposition of this certificate of registry in cases of this kind, is that correct?

A. That is true.

THE COURT: That is in the record.

MR. RESLEURE: The question was let in as to whether he knew it or not.

THE COURT: What difference does it make? If the evidence, itself, is not—

MR. RESLEURE: Q. Have you ever had a case of this kind before?

A. Not in my incumbency.

Q. So you didn't even know what the custom was, did you?

THE COURT: That is just argumentative.

MR. HOWARD: I guess there has never been a case identical

was you nodded your head. If your answer is "Yes" say "Yes".

THE WITNESS: The answer is not "Yes" for the reason I went to the other employees who might be concerned in clearing that vessel in our Marine Division, and told them of the fact this had been presented to the Chief of our Division and that no clearance was to be made unless this provisional document was presented to them with the identifying marks to show it was the one that had been issued by the Chinese Consul.

THE COURT: Q. Can you identify the mark or marks you made?

A. Yes. That information—

THE COURT: Your mark was a dot?

A. Yes, between the "Y" and the "u".

Q. How did you come to select that particular place for that?

A. Because of the name. They don't often have a "u" in the name of a vessel.

THE COURT: Proceed.

MR. HOWARD: That is all.

CROSS EXAMINATION

MR. RESLEURE: Q. You stated that you saw this document in November, 1937?

A. Yes.

Q. Where did you see it?

A. In the Customs House in the office of Collector of Customs.

Q. Who brought it there?

A. The Consul General of China.

Q. He stated at that time to you that he could not leave it with you?

A. We didn't make any request to leave it with us, because he could keep possession of them until clearance of the vessel, and then exhibit it to us.

Q. Who asked him to bring it over? Did you?

A. I did.

Q. What was the reason you asked him to bring it over?

A. Because of his request for information—clearance of the vessel. I wanted to be satisfied they had actually made the change of nationality by issuing the provisional registry.

MR. RESLEURE: I object to the question on the grounds already stated.

MR. HOWARD: You have made this material. He has been making a great hue and cry about the documents having—

THE COURT: I think the only important thing is:

Q. You did not retain any such document as that in your office?

A. In this particular instance the change was made to another nationality and under such circumstances the consul of the country would ordinarily retain that provisional registry.

Q. They did not turn it over to you?

A. They did not, but they exhibited it.

Q. Do you make notations of that exhibition?

A. There was no official action indicated in our—

Q. Do you make notation as to the fact it is exhibited?

A. Our records show that the—she became a Chinese vessel.

Q. Under the terms of that agreement?

A. Yes. Not that this was exhibited to us. Mr. Clifford, who was the Chief of our Marine Division at that time, and myself, saw the document when it was brought in.

Q. You made no notation of it, whatsoever?

A. It would not be the custom to make a—

THE COURT: You actually made no notation? In other words, it is just in the minds of you two gentlemen—that fact?

MR. RESLEURE: The answer is yes.

MR. HOWARD: Q. There was correspondence passing between you and the consul?

A. Yes, correspondence which established the fact.

MR. RESLEURE: The witness just nodded his head. I wonder if the reporter got that.

THE COURT: You said—Read the answer, Mr. Reporter.

(Answer read.)

MR. RESLEURE: The witness nodded his head affirmatively.

THE WITNESS: Can I clarify that a little?

THE COURT: Answer and then clarify it if you wish.

THE WITNESS: Immediately after—

THE COURT: You have answered the question. The objection

A. Yes.

Q. Was that made by you on the first occasion that you saw the certificate.

A. It was.

Q. One further question: Is it customary, where a foreign vessel is in this port that the certificate of registry be deposited with the consul of the country—

MR. RESLEURE: I object to this witness testifying what is customary. It is not material here.

THE COURT: Sustain the objection.

MR. HOWARD: Do you have knowledge—Pardon me?

THE COURT: I sustain the objection.

MR. HOWARD: Q. Do you have knowledge of the custom with respect to a certificate of registry for a foreign vessel when it is in this port and know where it was kept?

A. With the consul of that country ordinarily under these conditions—

MR. RESLEURE: I still object and ask that the answer be stricken.

MR. HOWARD: There was no objection.

MR. RESLEURE: You asked this witness whether or not he had knowledge of it. There can be no objection to that question. The witness went on and answered what the customs was, in his opinion and I ask that it be stricken.

MR. HOWARD: That it was not responsive?

MR. RESLEURE: No. I am objecting to this evidence of custom the witness brought out in answer to a question, "Do you have know-objectionable.

MR. HOWARD: Will you repeat the question, Mr. Reporter?

THE COURT: Read it, Mr. Reporter.

(Record read.)

MR. HOWARD: Q. The question is, did you have knowledge of the custom? Did you gain that knowledge through your official capacity, your connection with the Collector of Customs?

A. Yes.

Q. What is that custom?

to clear this particular vessel—the former “Edna Christensen”—because he had just received wire from his Government that he was to issue the provisional registry, making her a Chinese vessel.

MR. RESLEURE: I wil ask that this hearsay evidence be stricken, if your Honor please, as to what the China Consul told this gentleman.

THE COURT: What is the answer to that?

MR. HOWARD: I will consent that it go out.

THE COURT: It goes out.

MR. HOWARD: Q. Will you state to the—

A. He had also written a communication along the same lines to the Collector.

Q. Will you just state who presented that to you and where?

A. I told the Chinese Consul at the time that there must—it was customary to either leave the registry of a foreign vessel with the Collector of Customs to be used—to be exhibited at the time of clearance and given to the Captain, or that the Consul of the country concerned would keep possession of it; that we wanted to be certain that a registry had been issued making her a Chinese vessel. For that reason if he had issued one he should bring it over and exhibit it to the Collector of Customs, which was done.

Q. Then you saw it during the last week of November, 1937?

A. I did.

Q. Did you ever see that document again?

A. I did.

Q. Do you recall the occasion?

A. It was—we requested that office to exhibit this registry sometime after the last week in February, because an attempt had been made to clear the vessel as of another nationality, and it was necessary to verify the nationality of the vessel before we could proceed with the clearance. I so informed the Consul General of China, and he brought the registry over to satisfy us that he still had the provisional registry.

Q. Was it the same document that you have in your hand?

A. It was that same document, because in the first instance I had put a small dot near the “U” in the “Yuan”—the name of the steamship—

Q. Do you find that dot present on this document?

MR. RESLEURE: The question was whether any entry had been made in the records of the Customs House as to this particular document having been issued, and the answer is obviously no record has been made. If Mr. Howard wishes this to go into evidence I think we should have the complete situation, and I will stipulate that that may go into the record providing you will stipulate that shortly prior to the date of that message—and we will establish the date of that message—the Yung Yuan Steamship Company had made out and delivered to Mr. Kawano a bill of sale to the vessel.

MR. HOWARD: I don't know a thing about it.

MR. RESLEURE: That was the explanation of the whole transaction.

MR. HOWARD: I think this situation will be cleared up entirely by our next witness in two minutes. I don't wish to introduce that, though. We will introduce other testimony.

GEORGE A. MARSHALL

Called for the Respondent,

Sworn.

MR. HOWARD: Q. Mr. Marshall, are you connected with the office of the Collector of Customs of San Francisco?

A. I am. I am the Assistant Collector of Customs at San Francisco.

Q. How long have you been such Assistant Collector of Customs, Mr. Marshall?

A. Five years ago last August.

Q. Continuously since that time?

A. I have.

Q. I show you a document called Provisional Certificate, being—

A. Certificate of Registry?

Q. Yes. Being Petitioner's Exhibit No. 8, and ask if you have ever seen that document before.

A. Yes, I have.

Q. When did you first see it?

A. To the best of my recollection it was the last week of November in 1937.

Q. Under what circumstances did you see the document, Mr. Marshall?

A. The Chinese Consul had phoned over to request our office not

That, by way of a copy, is in evidence. I don't know whether it was for identification or whether it was actually received subject to our verification.

THE COURT: There is only one matter for identification now, and that is Exhibit B. That is a letter, as I understand it. With that exception, everything is in evidence, according to my records.

MR. HOWARD: With that explanation, then, I assume it will be deemed in evidence.

MR. RESLEURE: Yes. Subject to our objection it is not material.

MR. HOWARD: Yes, Mr. Resleure, we were also to advise with Mr. Riley by 'phone concerning any record which might appear as to the presentation of the certificate of registry.

MR. RESLEURE: Yes.

MR. HOWARD: My advice from Mr. Riley is that there is no record there except as indicated by a wire, a copy of which I have, being a wire to R. S. Field, Director, Bureau of Marine Inspection and Navigation, which wire advises that the Chinese consul—

MR. RESLEURE: Might I suggest I just read this instead of its going into the record?

MR. HOWARD: That is agreeable to me.

MR. RESLEURE: All right. Then the evidence of Mr. Riley would be there is no record in his office of that matter, is that correct?

MR. HOWARD: Except as indicated by wire to Mr. R. S. Field, Director of Bureau of Marine Inspection and Navigation, which wire states that they—

MR. RESLEURE: If your Honor please, I object to this matter going to be read into the record. I suggest the matter—

MR. HOWARD: That is what you are calling for.

MR. RESLEURE: Suppose we hand it to the Court. (Handing paper to court.)

THE COURT: It is not dated.

MR. HOWARD: That is a copy of their wire.

MR. RESLEURE: This is.

MR. HOWARD: Though the contents refer to dates, as your Honor will notice—that was offered by Mr. Riley as the only portion of their record which indicated presentation of the certificate.

is not pertinent here.

MR. HOWARD: Mr. Resleure, by your examination you have developed the levying of the monition in the previous case, which certainly makes it material to show what disposition was made of it, there being an issue here as to the jurisdiction of the Court which might be derived.

MR. RESLEURE: I cannot see any connection. There was only one purpose in the introduction of evidence—the seizure was in connection with the fact that our process was pinned under the other process in the captain's cabin.

MR. HOWARD: You developed that there was a prior monition levied against the vessel. I wish to show a dismissal of the action in which that monition issued.

THE COURT: No. 14, then.

MR. HOWARD: We offer as Exhibit No. 14, then, the dismissal in the action entitled Kotani et al v. Chau Tsu Ming, No. 22685-R, filed in the records of this court on June 7, 1938.

(The document was marked "Respondent's Exhibit 14.")

MR. HOWARD: Yesterday one of the exhibits was introduced by way of a copy with the understanding that its existence was to be verified through Mr. Riley by telephone.

MR. RESLEURE: Yes.

MR. HOWARD: I wish to state to the Court I have it verified and I assume you have—

MR. RESLEURE: Mr. Riley said he was looking the matter up for you and would communicate with you.

MR. HOWARD: Mr. Riley did advise that he found the original of the wire of May 14th, reading as follows:

"Customs: Secretary of State has transmitted to Bureau copy of communication from Chinese Ambassador under date April twenty-eight, nineteen hundred thirty-eight; that Chinese Government has expropriated S. S. Kwang Yuan ex Edna Christensen from Yung Yuan Steamship Company for use of Chinese Government. Notify Chinese Consul General or his attorneys. Copies of communications this connection being forwarded you to-day air mail. Acknowledge receipt of this telegram by wire."

THE WITNESS: In case of safety—because I gave the order to the captain that nobody is permitted to go to the ship without my permission. That man came—the captain told him “If you have no permission from the Consul General we cannot let you come to the ship”; so he went to the consulate and applied for permission.

MR. RESLEURE: Q. Then he went there himself, without permission from you?

A. Yes. He couldn't get in.

Q. And the new captain would not let him on board, so he came to you and asked for permission?

THE COURT: Is that what he told you?

A. Yes.

MR. RESLEURE: Q. And the sole object of his going there was to get his clothes, is that what he told you?

A. Yes.

MR. RESLEURE: That is all.

MR. HOWARD: That is all.

THE COURT: I presume this will run another day?

MR. HOWARD: I would judge so, your Honor.

THE COURT: Then we will have to adjourn at this point.

(An adjournment was here taken until tomorrow, Wednesday, September 21, 1938, at ten o'clock a. m.)

WEDNESDAY, SEPTEMBER 21, 1938.

THE COURT: The attorneys being present in the matter on trial we will proceed.

MR. HOWARD: If the Court please, preliminarily this morning I would like to offer in evidence as Petitioner's Exhibit next in order the dismissal in the previous libel action. Do you have that file here, Mr. Clerk?

(The Clerk hands papers to Mr. Howard.)

THE COURT: What do you allude to?

MR. HOWARD: The one first filed, which was before Judge Roche.

MR. RESLEURE: At this time, I make the objection that any action taken by some other litigant in some other case is not binding on the parties to this action, and the dismissal in the previous action

minutes.

MR. RESLEURE: I am not trying to take counsel by surprise, so they cannot claim later on they inadvertently waived the right.

MR. HOWARD: The representation is the Ambassador, being directly before the Court, and we are representing him as attorneys. We offer, if Counsel wishes it, a wire saying, "You are authorized to intervene in the cargo suit on my behalf." In addition, the Ambassador, himself, is directly before the Court, and I do not see there is any issue.

THE COURT: The Court passed upon that and authorized the Ambassador to intervene, and he has intervened.

MR. STEVENSON: Yes, and the verification is signed by the Consul General.

THE COURT: He is here already, and is a party to the litigation. You can attack the order made by the Court permitting him to intervene. Why should we need any authority to show the Ambassador to be a party?

MR. RESLEURE: I am pointing it out now so it will not be claimed later I have taken them by surprise—that there is no authority on file for this gentleman to represent the Republic of China in the matter of claiming immunity. He has an authorization to intervene and your Honor has given that. I am perfectly willing to let the matter drop there. If they want to do anything further they are put on notice. I am not satisfied that this gentleman claims the—

MR. STEVENSON: This gentleman is not before the Court. It happens to be the Ambassador.

MR. RESLEURE: Q. You know the condition prevailing, did you not, on the "Kwang Yuan" when Captain Kawano asked for permission to go on board?

A. What?

Q. Did you know the conditions prevailing on the "Kwang Yuan" when Captain Kawano asked permission to go on board?

A. What do you mean?

Q. In June, 1938, would it have been safe in your opinion for Captain Kawano to go on board?

THE COURT: As I understand, he never went on the boat.

Q. If you have any other will you produce it?

MR. HOWARD: If the Court please, counsel has asked for an authorization to appear for the Ambassador in this suit. We produce here a telegram saying he is authorized to intervene in the cargo suit on his behalf—

THE WITNESS: Yes.

MR. HOWARD: I submit it is not necessary to search our entire file to produce everything that may be there.

MR. RESLEURE: The Court, I do not believe, would be inclined to let a foreign government waive any right it might have possibly due to an oversight. As I understand the law, there is no authority in anyone other than the Ambassador to claim immunity of a foreign sovereign. A telegram such as this, if this is this gentleman's authority, is simply showing he may intervene in the suit, and is not an authorization or a delegation of power to him to claim immunity in the Ambassador's behalf.

MR. STEVENSON: To carry on the suit he does not have to show anything else.

THE COURT: As I understand it, you are going to supply this by a deposition?

MR. STEVENSON: We are not going to supply authority from Washington.

THE COURT: But you are going to supply the necessary deposition?

MR. HOWARD: With reference to those instructions. This is merely a wire instructing him—Counsel has requested it. Do you want to identify it?

MR. STEVENSON: It is not an issue in the case, your Honor, that the Ambassador has not the right to intervene. Counsel has admitted that Changting T. Wang was the ambassador, and there is no affirmative defense he had a right—

THE COURT: The Court allowed him to intervene.

MR. STEVENSON: If he desires to object he has to come in on an affirmative defense, and we should have a right to meet it at the time. He cannot wait until the last minute and say you have no authority to come in and take us by surprise. We can get depositions in two

you, is it?

A. I have another one.

Q. What is that?

A. I have another one.

Q. Do all of your communications come through your department—the Ministry of Foreign Affairs?

A. Yes.

Q. Any instruction you receive from your government, regardless of the source, is transmitted through the Ministry of Foreign Affairs?

A. Yes.

Q. Is there any other wire besides this one?

A. Yes.

v. Can you produce that? When you displayed this certificate of registry to Mr. Marshall of the Customs House you asked him to keep the matter confidential, did you not?

A. No.

Q. You signed the supplemental petition in intervention in this case, did you not?

A. Yes.

Q. I will show you the original file. That is your signature?

A. Yes.

Q. The verification before the Notary Public?

A. Yes.

Q. Have you any document giving you authorization to appear here in behalf of the Ambassador of the Republic of China to San Francisco?

A. Yes, I have a telegram instruction in plain language.

Q. May I have that?

MR. HOWARD: Can Mr. Sun get that?

THE WITNESS: Ask Mr. Sun to get it. Authorization for me to act for the ambassador—telegram.

MR. RESLEURE: I will come back to that later.

Q. You instituted—strike out that question—This telegram of May 17th is the only authorization you have had from the Chinese Ambassador?

A. I think we have some correspondence later from him in connection with this case. I can't—

THE WITNESS: No. I was instructed—

MR. HOWARD: I will—

THE COURT: Wait a second. He said he was not instructed—

THE WITNESS: I was instructed to remove—to appoint a captain. He did not specify. In other words, I am given blank power that I must remove the Japanese captain and appoint somebody to be the captain.

MR. RESLEURE: Q. You acted entirely on your own authority?

THE COURT: His instructions, he said, were that he was to remove the Japanese captain and to appoint a new captain.

MR. RESLEURE: Those are the instructions I want.

THE COURT: And he picked the individual himself.

THE WITNESS: Yes.

MR. RESLEURE: Those are the instructions I wish produced, your Honor.

MR. HOWARD: If the Court please, those are the instructions which we offered in evidence and which counsel would not stipulate to receiving through an English translation. The original instructions are in code.

Q. Is that correct?

A. Yes.

MR. HOWARD: We will offer an English translation of those instructions, or we will offer to take a deposition and prove facts.

MR. RESLEURE: May I see the message? Maybe we can get together on that.

THE WITNESS: Yes. I don't think it is in that telegram. I think in a different telegram.

MR. RESLEURE: May I identify this by the witness, your Honor?

THE COURT: Yes.

(Mr. Resleure hand paper to witness.)

THE WITNESS: This is from the Minister of Foreign Affairs.

MR. RESLEURE: Q. You have read this telegram, yourself, now, have you not?

A. Yes, but this is not the one regarding the appointment of the captain.

Q. This is not the message from the National Military Council to

A. Yes.

Q. That is after April 27th?

A. Yes.

Q. Is that correct?

A. Yes.

Q. What is your authority as consul general of the Republic of China at San Francisco limited to? What matters?

A. In what—you mean general authority?

Q. Yes.

A. I am acting—not only as consul general, but also as a representative of the Military Council.

Q. You are a representative of the Military Council?

A. Yes.

Q. When were you appointed as a representative of the Military Council?

A. I have been—I do not mean exactly that, but when I receive an instruction from the Military Council I am to take care of—to appoint a captain, and to appoint a captain.

Q. You are not a representative, though, of the Military Council? You do some acts for them?

A. Yes, I am given full power to take over the ship.

Q. You never act for the Military Council without special instructions, do you?

A. No.

Q. When you appointed Chau Tsu Ming as captain of this boat, the "Kwang Yuan," you acted under the instruction of the National Military Council of China?

A. Yes.

Q. And your instructions were given to you in what form?

A. In telegram.

Q. By telegram?

A. Yes.

MR. RESLEURE: I will ask for the production of the telegram dated around—somewhere around April 27, 1938, from the National Military Council, to this witness, instructing him to appoint Chau Tsu Ming captain of that vessel.

tion, very well. I won't pursue the matter any further.

MR. HOWARD: He testified he delivered certain food before, but what bearing has that on the fact somebody else gave food?

MR. RESLEURE: I want to bring out by this witness that neither he nor anybody connected with the Chinese Government was supporting those men on the boat or paying them wages. They were not employees of the Chinese Government.

THE COURT: Before expropriation?

MR. RESLEURE: Yes.

THE WITNESS: The Chinese Government was not under obligation to pay wages except being consul general I have to give them some food because it was not given by the Japanese captain.

THE COURT: Q. Did you give it before expropriation?

A. Yes.

Q. Merely because they were your nationals?

A. Yes.

MR. RESLEURE: Q. Not because they were employees of the Chinese Government?

A. No.

Q. Was there a commission issued to this new Captain Chau Tsu Ming—

A. Yes.

MR. RESLEURE: Did that go in evidence.

MR. HOWARD: Exhibit No. 11.

THE COURT: Exhibit 11.

MR. RESLEURE: Q. What was Mr. Chau Tsu Ming doing previous to the time you gave him this appointment?

A. He was second officer of the ship.

THE COURT: Second mate?

A. Second—

Q. Mate?

A. No, sir. You see, the first is Captain, then the second is the Chief Officer; then second officer. Not mate.

MR. RESLEURE: Q. He was a private individual, wasn't he?

A. Before, yes.

Q. You claim he became a public individual after that?

A. No.

Q. And you never maintained them except to send a little food as a personal gift?

A. Not as a personal gift. As a consul general I have to see to it my nationals are protected.

Q. When was the first time you sent them food?

A. I cannot recall but I think a few times. I cannot recall when.

Q. Isn't it a fact that when the United States Marshal went on board on April 23, 1938, in conversing with the Chinese interpreter, that he found the Chinese crew practically starving?

MR. HOWARD: That is calling for something obviously beyond the knowledge of this witness.

THE COURT: The objection is sustained.

THE WITNESS: I—

MR. RESLEURE: He said he was maintaining them on the boat.

A. I don't think I have anything to complain because I told them if anybody needed food let me know and I send the food to them.

Q. Isn't it a fact that those men on board the boat were maintained largely by the donations of shrimp fishermen about the bay?

A. During that time before the expropriation?

Q. Before the expropriation.

A. I think they give them some fish when they came—when they came back.

Q. Isn't it a fact that thereafter there were voluntary gifts made from—charitable gifts for these men?

A. I don't call it charity, because the Chinese people see that those China seamen suffer in this ship and were not paid by the Japanese. They did not get anything from the Japanese captain and they give some food, cigarettes, and chocolate, and so on.

Q. And those were voluntary gifts by private individuals, weren't they, that maintained those men?

MR. HOWARD: That is objected to as immaterial.

THE COURT: During what period? I will sustain the objection. He has testified he did something during a certain period.

MR. HOWARD: After expropriation.

MR. RESLEURE: If you limit his statement to after expropria-

Q. And as far as you know there was no officer—Chinese officer—or official, who instructed that crew to mutiny or to resist Captain Kawano, is that right?

A. No.

Q. And the first time Chau Tsu Ming—the new Captain—was installed on that vessel by any official act was subsequent to April 27, 1938, is that right?

A. Pardon me?

MR. RESLEURE: May I have the question read back?

THE COURT: Read the question, Mr. Reporter.

(Question read.)

A. You mean before?

MR. RESLEURE: Subsequent to the expropriation order.

A. After the expropriation order, from time to time.

Q. You mean after?

A. After.

Q. I don't understand "from time to time".

THE COURT: "subsequent" means after.

THE WITNESS: After.

MR. RESLEURE: Q. You said that you maintained that crew on board the ship. That was after the expropriation order also, was it not?

A. I think before I also—I sent some food to them because they said they have not enough money so they cannot obtain—I buy some food before the expropriation order.

Q. The Chinese Government were not paying them wages prior to the expropriation order?

A. No.

Q. Did they pay them wages subsequent to the expropriation order?

A. Yes.

Q. How much?

A. I cannot recall, and in this connection I would like to say this for your information. After the — I have to meet the budget to the Government, but pending that we pay from the official fund of the consulate, not as regularly, but we pay something to captain and engineer, and they also sent some money, too.

Q. You never paid them anything before the expropriation decree?

MR. HOWARD: We object to that as immaterial.

THE COURT: Well, unless he personally knows.

Q. Do you know of your own knowledge?

MR. RESLEURE: Q. I am asking if he is acquainted with them.

A. Well, that Chinese sailors were—not given enough food, and then caused three of them being sick for more than ten days. I don't know what the sickness—something they ate. I cannot explain what the sickness was, and they wanted to—they asked the captain to give them enough food, and also medical treatment. The captain was unable to give them enough food and so—at the same time this captain—the Chinese crew, knowing this ship is going to carry scrap iron to Japan for manufacture of munitions against China, and they have been for a certain period not on good terms—I mean feelings, not very good, and so one day this captain take the three Chinese crew to the Japan doctor to be treated. The three Chinese crew refused to see Japanese doctor, because they are afraid maybe poison, so they request the captain to take them to the Chinese Consulate or Chinese doctor, which the captain refused, so they came back--the Japanese captain took the three China crew back to the ship and then all of the crew was not satisfied, and maybe the captain—Japaneses captain was afraid maybe something happen to him, so he quit. That's what I heard, and we went to the ship—

THE COURT: That is all hearsay.

THE WITNESS: Yes.

MR. RESLEURE: I am not objecting to this particular hearsay, your Honor.

THE COURT: What is that?

MR. RESLEURE: We have got that answer, and we are not objecting as hearsay.

THE COURT: I know.

MR. HOWARD: I will ask it go out as hearsay and not binding.

THE COURT: It goes out.

MR. RESLEURE: Q. Did you give any orders to the Chinese crew to put the captain—the Japanese captain—ashore?

A. No, I give them instructions after that, after the captain left the ship, that after—or before—I can't recall—they must obey the captain so far as the work is concerned.

MR. RESLEURE: I will ask that those documents received as Respondent's Exhibit No. 7 in the absence of the production of the original message be stricken.

MR. HOWARD: Counsel does not have the original message. He merely has a communication from the Embassy. We will offer the English translation of that to Mr. Resleure if he wishes.

MR. RESLEURE: I am not interested in that particularly. I would like it along with the original message.

MR. HOWARD: We object to that as privileged.

THE COURT: This is what the Chinese Embassy says has been done?

MR. HOWARD: Yes.

MR. RESLEURE: From some message they got in code.

THE COURT: I know, but I don't know you are entitled to that if the decisions are correct.

MR. RESLEURE: Your Honor, I do not desire that particular document. I have asked for its production; in the absence of its production I simply say that this Respondent's Exhibit No. 7 is not the best evidence available.

THE COURT: That is the question that you left for argument at the end of the case, is it not?

MR. RESLEURE: Yes.

THE COURT: We are going over the same thing again.

MR. HOWARD: Let the record clearly show we are perfectly willing to produce an English translation.

THE COURT: And he is not willing to accept it, even though it is given under oath. He wants to see what the document is and to see if he can work out something from it.

MR. RESLEURE: Q. You said it was sometime subsequent to April 27th that you sent these men; that is, Mr. Howard and your Deputy Consul, on board the boat to dismiss Captain Kawano, is that right?

A. No. They no longer in the ship at that time. The ship go into—to inaugurate the office of the new captain.

Q. Are you acquainted with the circumstances under which Captain Kawano left the ship?

A. From the Embassy.

Q. The Embassy in Washington?

A. In Washington, and one copy from the Ministry of Foreign Affairs, and also a telegram, but that was not certified by the State Department.

Q. Did you get one from China?

A. Yes.

Q. That was in the form of a cable?

A. Only a copy—I don't recall—in my file—I can't recall.

Q. You are acquainted with the method of communicating between China and the Ambassador, are you not?

A. Yes.

Q. All of those messages come in code?

A. Yes.

MR. RESLEURE: We will ask for the production of the original code message—the message in code to the Chinese Ambassador of this purported expropriation order.

THE WITNESS: You want that?

MR. HOWARD: You are asking for a code message?

MR. RESLEURE: For the original message which this witness has said would be in code.

MR. HOWARD: Between the Ambassador and the Consulate office?

MR. RESLEURE: The Ambassador received it and apparently it was sent from the National Military Council or from the Ministry of Foreign Affairs in China. Somebody in China sent it.

THE WITNESS: They sent to the Embassy—the Embassy sent that to me, accompanied with that date. They sent it by air mail.

MR. HOWARD: We will offer to supply an English translation of that message, but we will object to the code message as being a privileged governmental communication in code; but we will make the offer of translating correctly that message.

THE COURT: You will have to produce the code message, but the only thing is whether you can prove it.

MR. HOWARD: If Mr. Resleure wishes to prove it we have no objection. If he wants to offer the English translation—

Q. What is the one—the square one?

A. The square one is—

Q. The third down.

A. The seal of the Corporation. This one.

Q. By “the Corporation” you mean—

A. The Company, the Steamship Company’s seal. In other words—

Q. That is the Yung Yuan Steamship Company’s seal?

A. Yes.

Q. On this document, Exhibit 6, what is this square seal?

A. This square seal is Bureau of the Shipping and Navigation—official seal.

Q. What is this seal?

A. This is the same.

Q. The round one.

A. Office seal of the same bureau. We have mostly two kinds of seals in China in my office, too. One square one and one round one.

MR. RESLEURE: I wonder if I could get the reporter to read back what the seals were.

THE COURT: Read it, Mr. Reporter, if you can find it.

(Record read.)

THE WITNESS: May I make the statement clear? I don’t say they’re not the same—two seals are made by the same person, Li Yu-sun, because one is used on the revenue stamp.

MR. RESLEURE: Q. Will you tell me again, on Exhibit 6 the square seal is what?

A. The official seal of the Bureau of Shipping and Navigation.

Q. And the round seal there?

A. An official seal of the same Bureau.

Q. One is the official seal and the other the office seal?

A. Yes.

Q. And Exhibit 7 bears no official seal, does it?

A. No.

Q. You received a copy of this expropriation order, didn’t you? This purported copy of the expropriation order?

A. Yes.

Q. Whom did that come from?

Q. And you now say you are referring to that?

A. Yes.

Q. As the seal of the—

A. Office—seal of the Bureau.

Q. Didn't you tell us that round seal was the notary seal?

A. No, I didn't. I just say this, in China we have no notary public.

The Government seals this simply just like something a notary public in your country.

Q. You say now there was no notary public in China?

A. We have no such system.

Q. If I remember correctly you said that is a notarial seal.

A. No. Maybe poor English. I can not speak—

Q. Let us see these seals on Respondent's Exhibit No. 7. What is the little one at the top? There are four altogether.

A. This is—

Q. The one at the top, what is that—the little square one?

A. The same seal what Mr. Li—this is what we call a revenue stamp

They issue the revenue stamp to show he pays the tax.

Q. That is Mr. Li's stamp?

A. His name, I think.

Q. That is Mr. Li Yu-sun?

A. Yes.

Q. Does the average Chinese gentleman have two kinds of seals?

A. Yes.

Q. What seal is that? That little square one cancelling the stamp?

A. They call—literally translated it is "Seal of Li Yu-sun" and here is the seal of Li Yu-sun. This was the seal—

Q. You are referring to the one at the top cancelling the stamp and the little square at the bottom?

A. Yes.

Q. They both mean seal of the user?

A. Yes.

Q. What is the second seal on that page, the round one on the left-hand side?

A. The office seal of the Bureau of Navigation—Shipping and Navigation.

A. On February 24th. The same day I showed—I bring this certificate to him in his office.

Q. Did he tell you he would make a mark on it or had a mark made on it?

Q. He said he had a mark already on it?

A. Yes.

Q. You testified in regard to Respondent's Exhibit No. 6 that you could identify the stamp of the Bureau of Shipping and Navigation. I will show it to you now.

A. Yes.

Q. That is the stamp of the Bureau of Shipping and Navigation, is it not?

A. Yes.

Q. On Respondent's Exhibit No. 7, which is the power of attorney from Li Yu-sun, you also testified that you could identify the same seal of the Bureau of Shipping and Navigation, is that correct?

A. Yes, I saw—there is two kinds of seals there, a square one is unofficial seal, and the round one is the office seal.

Q. You told us that it was the same seal on both exhibits 6 and 7 of Respondents, did you not?

A. Yes, one of the same, because we—the first one has two seals and the second one has one seal.

Q. You told us it was the same one, didn't you?

A. The same.

Q. I will ask you to look at Exhibit 6, the seal on there, and I will ask you to look at the same seal on Exhibit No. 7.

A. Yes.

Q. Is there any similarity between those two square seals?

A. Oh, no. I mean the round one is the same.

Q. You are pointing now to the round one on the left-hand side in the middle of the page?

A. Yes.

Q. Some hieroglyphics in a circle?

A. Yes.

Q. Is that correct?

A. Yes.

MR. RESLEURE: Then I will ask the witness' testimony as to the mark made by Mr. Marshall on this document be stricken out. It appears now it is simply hearsay evidence in that Mr. Marshall told him he had put a mark on it.

Q. Mr. Marshall told you that?

A. Yes.

THE COURT: Q. Was there any mark on it when it came back to you?

A. I didn't notice that, but he told me, "Here is the pencil. Make a small mark." I couldn't find where—

MR. RESLEURE: May we look at that certificate and see if there is any mark on it?

MR. STEVENSON: I think I can show you a mark. Right here. That is what he told me the other day.

MR. RESLEURE: Who is this?

MR. STEVENSON: Mr. Marshall.

MR. RESLEURE: I would like this identified as the mark that Mr. Marshall made.

MR. STEVENSON: That is what Mr. Marshall told me.

MR. HOWARD: You are objecting as hearsay?

MR. RESLEURE: This is what counsel informs me constitutes the mark. There is a period after the "Y".

MR. STEVENSON: That is what Mr. Marshall told me.

THE COURT: Q. You did not sign that?

A. I didn't see that.

MR. RESLEURE: I think we ought to indicate with pencil what counsel advises is the mark.

MR. STEVENSON: What Mr. Marshall told me was the mark. I didn't know.

MR. RESLEURE: We should indicate what Mr. Marshall told you was the mark, and I will state it for the record. On the second page of the certificate, line 14, at the end of the line there is the word "Yuan", and the mark indicated is a perforation mark on a dot between the "Y" and the "u".

Q. When was it that Mr. Marshall told you that he had made a mark on the paper?

MR. RESLEURE: Q. Will you answer the question?

MR. HOWARD: That is an answer, I think.

THE COURT: Q. Who was it issued to?

A. To the captain.

Q. You displayed it to him, but you did not give it to him?

A. Because I informed him I was under instructions to keep this.

MR. RESLEURE: Q. By the captain you mean Captain Kawano?

A. Yes.

Q. When was it that you showed that certificate to Captain Kawano?

A. I think after—I cannot recall, because this is not on record, you see. I only have a record of the issuance but I have no record of the time.

MR. RESLEURE: This is my difficulty—the witness does not understand, apparently, the difference between issue and write.

MR. HOWARD: The witness is simply testifying about the facts.

THE COURT: The question is whether it was really promulgated in having written it and only putting it in his safe. He said he displayed it to the captain one time, I think, and said he showed it to the customs people.

Q. Did you?

A. Yes.

Q. So that you showed it to the Customs people?

A. Yes.

Q. You showed it to the captain?

A. Yes.

Q. And then you put it away again?

A. Yes.

MR. RESLEURE: The time you showed it to the Customs people was in February, 1938?

A. I think—this is the second time, because Mr. Marshall want to mark some—make some mark on the registry so that he can be sure there is no—

Q. You saw him make a mark on there, did you?

A. No, I didn't.

Q. You testified that he made a mark.

A. He told me he had a mark.

MR. RESLEURE: Q. The fact is, you never issued a certificate of registry?

MR. HOWARD: We object to that as having been asked and answered.

MR. RESLEURE: Q. You never issued a certificate of registry?

A. I did, sure.

Q. Isn't it a fact all you did was to write out a certificate and put that in your safe?

THE COURT: Once before he answered differently. Once he said yes and the other time he said he presented it to the Customs people.

Q. Which is correct?

A. I would like to try the—the issuance of the registry is a very common duty of my office.

MR. RESLEURE: Q. As a matter of fact you never presented that or filed that with the Customs House—that actual certificate, did you?

A. I went to the Customs and at the conversation they said it was not necessary because I write a letter to act as receipt from the customs. I bring—

MR. RESLEURE: Q. All you—

MR. HOWARD: Wait until he finishes.

MR. RESLEURE: All you did, as far as making that record public or issuing that document was to write out a document and put it in your safe and write a letter to the Collector of Customs that a certificate had been issued, is that right?

A. Yes.

Q. But no certificate was ever issued to anybody, was it?

MR. HOWARD: That is objected to as calling for the conclusion of the witness, and having been asked and answered. He stated what was done.

THE COURT: In the form it is kind of argumentative, too. I know he said two ways, because I followed him. I will allow the question. Answer the question.

A. Well, I can see that the subject is closed—that the seal of the consulate is issued. I showed it to the captain and inform him that I keep it.

THE WITNESS: There is two things. I was urged — we come back to the direction again — to issue the registry, because of I don't issue the registry we have six months contract of sailing the ship will be cancelled by the Maritime Commission. In order to safeguard China property I was instructed by the Minister of Foreign Affairs at the request — to issue —

MR. RESLEURE: I object to the witness testifying as to what he was instructed.

MR. HOWARD: He may explain.

THE WITNESS: That is my explanation. To issue it in order to avoid the loss of this and then to withhold the provisional registry so that the ship cannot be permitted by the Customs to sail from San Francisco.

MR. RESLEURE: In the normal case and in the practice of your office, when you issue a certificate you turn that over to the master of the vessel so that the ship will have some papers?

A. Not necessary until the master report again to my office saying that he is sailing. Then I give that paper to him.

Q. Captain Kawano asked you for such a certificate?

A. Yes.

Q. And you refused to issue it to him?

A. I did not refuse to issue it. I issued it.

Q. All you did prior to that was write this document and put it in your safe?

A. I was instructed to keep it.

Q. And the only reason you wrote that out was so as to be able to let the Maritime Commission know you had complied with a certain order of the Maritime Commission? Wasn't that right? That was your object in writing it?

MR. HOWARD: That is objected to as immaterial—what his purpose was.

THE WITNESS: There is two things you must understand. One is the issuance of this certificate, and I must issue it at the request of the captain, and with the confirmation from China. At the same time I withhold that certificate because the owner in China, knowing that China had been blockaded by the Japaneses, and they request me—

Q. Have you studied law?

A. I studied some, but not all of them.

MR. RESLEURE: I will ask that the witness' testimony as to what the law of China is to be stricken.

MR. HOWARD: He is testifying as to his own duties as Consul General.

MR. RESLEURE: He said "according to our law."

MR. HOWARD: That is the law that controlled his office.

THE WITNESS: I issued in accordance with the Maritime Law of China—

THE COURT: Q. You studied that, did you?

A. Yes.

MR. RESLEURE: Q. Then in your belief it was not necessary to do anything more than to write the document and put it in your safe, is that correct?

A. Yes.

Q. And that is all you did?

A. I notified the Custom House.

Q. When did you notify the Custom House?

A. The same day.

Q. That you had issued it?

A. Yes.

Q. And by issuing a document, when you wrote the Custom House you issued the document you simply meant, did you not, that you had signed such a certificate and that you had it in our safe?

A. There is two things that you got—there is a custom—some consuls deposit the registry with the Customs. After depositing it with the Customs we write a letter to the Customs saying that letter will serve authority and receipt —

Q. The practice of your office in the ordinary case is when you issue a certificate you turn that over to the master of the vessel so that the ship will have some papers?

A. Yes, but this—

MR. HOWARD: Let him finish.

MR. RESLEURE: It just calls for "Yes" or "No".

THE COURT: He may explain.

A. That is — a deputy consul drew it.

Q. What was his name?

A. Patrick Sun.

Q. When Mr. Patrick Sun signed that document did he put a seal on it?

A. No, he didn't.

Q. What did he do with the document?

A. He just prepared it ready for me to sign.

Q. And you signed it, did you?

A. Yes.

Q. What did you do with the certificate, itself?

A. Then I informed the Japanese captain that—

Q. I don't want to know what you informed the Japanese captain. I want to know what you did with this piece of paper.

A. Put it in the safe.

Q. Put it in the safe?

A. Yes.

Q. And it stayed there until what date?

A. Until the day Mr. Marshall wanted to see the registry.

Q. What date was that?

A. I think February 24.

Q. Then what did you do with that piece of paper after that?

A. I took it back and put it in the same place.

Q. All that you did with that certificate after you signed it was to keep it in your safe except one time you took it out of your safe and showed it to Mr. Marshall?

A. Except bringing it to the court here.

Q. You never issued that certificate to the master* of the vessel?

A. No.

Q. You did not put it out of your office and make it public, at all, did you?

A. According to our law it is not necessary to make it public except to notify the captain—tell the captain that I issue that registry order.

Q. Are you a lawyer recognized to practice law in China?

A. No.

MR. RESLEURE: It shows that no other person in San Francisco would go on board the vessel without permit.

MR. HOWARD: Except that this is the previous captain of the vessel recognizing the authority of the Consul.

THE COURT: That simply shows his recognition—that he has no right to go on?

MR. HOWARD: Yes.

THE COURT: But, as you say, the actual possession is distinguished, however, from the legal right.

MR. HOWARD: Yes.

THE COURT: Received as 13.

(The document was marked "Respondent's Exhibit 13.")

MR. HOWARD: Q. After April 27th did you cause the vessel to be moved?

A. Yes. The ship was near the San Francisco Oakland Bridge, and in view of the fact I was going to have the ship stay here a long period, and in order to protect the ship and to protect other ships in the bay I caused the ship to be moved from the bay to be near the shore near the Hunter's Point.

Q. Did you maintain the crew on board the ship?

A. Of course.

Q. All but three members of the crew there, have been returned to China?

A. Two stayed after the rest of them went back to China.

Q. Has Mr. Chau Tsu Ming, the man appointed by you as master of the vessel, taken orders from you subsequent to his appointment?

A. Yes.

Q. Does anyone else give him orders?

A. Nobody give orders except—

MR. RESLEURE: I do not think this witness can testify as to that.

THE COURT: I will sustain the objection to that.

MR. HOWARD: That is all.

CROSS EXAMINATION

MR. RESLEURE: Q. You stated you issued a provisional certificate of registry, which is Respondent's Exhibit No. 8. Who in your office actually wrote up that certificate?

MR. HOWARD: Q. You delivered this notice. Petitioner's Exhibit 3, to the Marshal's office personally, did you?

A. Yes.

Q. Did Mr. Kawano after that time ever request the right to go on board the vessel?

A. Yes, he wrote — he went to my office several times and I was not in and he wrote a letter asking me to give him permission to go to the ship and to get his luggage, because he was going back to Japan.

Q. Is that the letter to which you refer?

A. Yes, this is the letter I refer to.

Q. And is that a true English translation—

A. Yes.

Q. Of the letter?

A. Yes.

Q. Which is attached to it?

A. Yes.

MR. HOWARD: We offer this in evidence, if the Court please, as Petitioner's Exhibit next in order.

MR. RESLEURE: May we have a statement of the purpose of that? It seems to me that is just burdening the record.

MR. HOWARD: It is simply to show that Captain Kawano, the representative of the former owner of the vessel, recognized' dominion of the consul over the vessel after its expropriation. For your Honor's information, he requested the privilege of the Consul General to board the ship to get his personal belongings.

THE COURT: With knowledge on the part of that particular person?

MR. HOWARD: Captain Kawano has been identified as the previous captain of the ship appointed by the Yung Yuan Steamship Company. We are showing acts of possession after the expropriation and we are showing a recognition—

THE COURT: That would be possibly rebuttal if Captain Kawano should be called here to make any statements.

MR. HOWARD: It shows a recognition of the dominion of the Consul over the vessel.

THE COURT: Actual possession, distinguished from a legal right.

officers and dismissed them. I sent those papers in care of General Steamship Company through Mr. Stevenson's office.

THE COURT: Q. All this you told about is what you directed them to do.

A. No, they just went into the ship—

THE COURT: It goes out.

MR. HOWARD: Q. You are describing what you directed to be done, is that not right?

Q. You didn't go to the ship?

A. No.

Q. You are telling what you instructed Mr. Patrick Sun to do?

A. Yes.

MR. RESLEURE: I have no objection to that, your Honor, on the ground that he gave those instructions in three letters, and the three letters are the best evidence.

THE COURT: Q. You gave no oral instructions?

A. Yes, I gave oral instructions.

Q. As well?

MR. HOWARD: There were no instructions in writing—

MR. RESLEURE: Didn't he just say he gave those people three letters?

THE COURT: Let us proceed.

MR. HOWARD: Q. I hand you here an original letter and what purport to be two carbon copies, under date of April 27, 1938, and ask you what those are.

A. Yes. Those are the letters I sent to Captain Kawano and another—two Japanese officers.

Q. Is that your signature on the original and the copies?

A. Yes.

Q. As I understand it these were sent through Mr. Stevenson's office.

A. Yes.

MR. HOWARD: We will offer them in evidence, if the Court please, as one exhibit, as Petitioner's next in order.

THE COURT: No. 12.

(The documents were marked "Respondent's Exhibit 12.")

A. Yes. This is the commission I issued.

Q. Did you issue that personally?

A. Yes. My signature is here.

Q. I hand you a letter in English, dated April 27, 1938, and ask you what that is.

A. This is something similar to the commission in Chinese. This was given to the new captain for the purpose of showing to somebody who can not read the Chinese.

Q. These were issued then simultaneously, were they?

Yes.

Q. And they both constitute the same appointment?

A. Yes.

MR. HOWARD: We will offer them as one exhibit, your Honor, as Petitioner's Exhibit—

THE COURT: No. 11.

(The documents were marked "Respondent's Exhibit 11.")

MR. RESLEURE: If your honor please, this witness went on with his testimony and gave more hearsay. I move that everything in his last testimony be stricken out, except that he gave instructions to the Deputy Consul to do certain things, all his testimony as to what those men did when they went on board is incompetent, irrelevant, and immaterial, and obviously hearsay.

MR. HOWARD: I don't know of anything he testified to that they did on board.

MR. RESLEURE: He said they dismissed the ship's officers and captain.

THE COURT: That was the instruction he gave them. I may be in error, but I thought he was testifying as to the instructions he gave.

MR. RESLEURE: Could we have that read back? I am not sure.

THE COURT: Yes. Read it, Mr. Reporter.

(Record read.)

THE WITNESS: I would like to make some supplemental statement.

THE COURT: Q. Did you mean that was the instruction you gave?

A. No. I issued three papers to the Japanese captain and Japanese

Q. What else did you do?

A. Then I sent—

MR. RESLEURE? Are you introducing that?

MR. HOWARD: That is already in evidence. I was referring to an exhibit in evidence.

THE WITNESS: I then sent Mr. Patrick Sun, the Deputy Consul to go on board with Mr. Howard, my attorney, to take possession of the ship, and I discharged the Japanese captain and two Japanese officers and appointed Mr. Chau Tsu Ming as captain of the vessel.

MR. RESLEURE: Might I have the answer read back?

THE COURT: I don't know whether it is completed.

Q. Had you completed your answer?

A. No, not yet.

THE COURT: Let him complete his answer. Proceed.

Q. Do you want it read back, what you said?

A. Yes.

THE COURT: Read his answer, Mr. Reporter.

(Answer read.)

THE COURT: Anything further?

THE WITNESS: No. That's all.

MR. HOWARD: Q. Who was Mr. Chau Tsu Ming?

A. Chau Tsu Ming was second officer of the vessel before his appointment.

Q. Was Captain Kawano a Japanese?

A. Yes.

Q. Is it customary for Chinese vessels to be navigated by Japanese officers?

A. Yes, it is very common in China.

Q. Why is it?

A. Due to the fact that the Chinese—China has not enough experts in navigation and mostly shipping business and ships are owned by foreign people in China, and ships—even the Chinese ships—most of the Chinese ships here—foreigners act as captain and officers.

Q. You say that you appointed Mr. Chau Tsu Ming as master of the ship. I hand you a document in Chinese and ask you if you will identify that.

THE COURT: You see my difficulty?

MR. HOWARD: Yes, your Honor.

THE COURT: Of course, I regret there isn't a better understanding.

MR. HOWARD: May I suggest this, that we show what acts were taken and done and we will request the privilege before the conclusion of the case if we deem it necessary to take the necessary depositions.

THE COURT: I have no objection to your making a motion to that effect.

MR. RESLEURE: I think Mr. Howard is a little unduly worried about his interrogatories. He did not, as he said, ask the question of the Chinese witnesses in China what instructions were given, but in the cross-interrogatories I think I supplied the gap. I asked what the records disclosed as to any further actions taken by the National Military Council pursuant—

THE COURT: They communicate those actions. That is where the trouble comes in.

MR. HOWARD: His instructions came from his superior.

THE COURT: If you are going to follow it that close it will involve a deposition.

MR. HOWARD: Q. You did receive instructions from the foreign ministry, did you not?

A. Yes.

Q. The office of the foreign ministry?

A. Yes.

Q. Thereafter did you do certain things?

A. I sent notice to this Honorable Court, the United States Marshal and the Collector of Customs informing them that the Chinese had expropriated this vessel.

Q. I show you what is Petitioner's Exhibit No. 2, and ask you if that is the notice which you sent to the Collector of Customs, or a copy of it?

A. Yes, the Collector of Customs and United States Marshal, and this Honorable Court.

Q. Did you deliver a similar notice to the United States Marshal?

A. Yes.

THE COURT: I am confronted with that objection being on its face good. I realize the difficulties here and the peculiarities and as I go along I try and listen to see if there can't be some harmony before I rule. Sometimes about the time I am going to rule you seem to have an agreement.

MR. STEVENSON: We can prove the instructions easy enough by going to China, without the—

THE COURT: What are we going to do?

MR. STEVENSON: We will withdraw the question and ask your Honor to hold the case open until we can take the depositions in China to prove the instructions.

MR. RESLEURE: I understood you already sent the depositions.

MR. STEVENSON: You read the depositions and there is nothing in them about instructions.

THE COURT: You didn't anticipate objection along this line?

MR. STEVENSON: No, we did not.

MR. HOWARD: I don't feel counsel's last objection is good. I think the witness can testify to the fact that he did receive certain instructions and then he can go on and say what he has done.

THE COURT: I think he could testify what he did and he could testify the fact what the instructions contained I suppose that would come to a question, since he got his instructions in writing—

Q. You are not authorized to act without instructions, are you?

A. No, I am not.

THE COURT: This goes back to the authority for instructions. Of course, here we go up against the Code again.

MR. HOWARD: Your Honor feels that we can show certain instructions were given and then we can go on and show acts?

THE COURT: Yes.

MR. HOWARD: Whether they complied with the instructions or not is not—

THE COURT: Then comes the question would he have the right under the law by his own voluntary unassisted act to make these rulings so that they would be effective as far as the ownership of property is concerned.

MR. HOWARD: May I suggest this?

THE COURT: The objection will be overruled and it will be received as No. 10.

MR. RESLEURE: Is it introduced for the purpose that counsel stated?

THE COURT: Just as the record states. They stated why they wanted it in. I presume that is the only reason.

(The document was marked "Respondent's Exhibit 10.")

MR. HOWARD. Q. Did you receive notice from your government of an order of expropriation having been made?

A. Yes.

Q. From whom did that notice come?

A. That came from the Ministry of Foreign Affairs.

Q. Did it carry instructions to you?

A. Yes.

Q. What were you instructed to do?

MR. RESLEURE: I object, if your Honor please, on the ground that the instructions, themselves, would be the best evidence.

MR. HOWARD: We are confronted, your Honor, by the same situation that existed with reference to the other instructions. I will withdraw the question.

Q. Did you carry out certain instructions of your government?

A. Yes.

Q. What did you do pursuant to those instructions?

A. I issued a notice — to the United States Marshal and to this Honorable Court, and the Collector of Customs, to the effect that this ship has been expropriated by the Chinese Government.

MR. RESLEURE: I will ask that that testimony be stricken out on the ground that what this witness did pursuant to instructions is not competent until such time as it is shown what the instructions were.

MR. HOWARD: I think the acts speak for themselves.

MR. RESLEURE: Then he can testify to certain acts, but not that they were pursuant to instructions. That is just another way of getting around the objection which you admitted was good.

MR. STEVENSON: If Mr. Resleure wants we can prove the instructions by taking some more depositions. If he wants to expedite the matter, if he will let the instructions go in—

dated February 7, 1938, over the signature of W. C. Peet, Jr. That is the typed signature, certified to be a true copy of the original by the writer, W. C. Peet, Jr., as Secretary of the United States Maritime Commission. (handing paper to Court). The purpose of the offer, your Honor, is simply to show that in so far as the Maritime Commission was concerned the transaction was completed and closed.

MR. RESLEURE: Well, if that is the purpose, then the matter is incompetent, irrelevant and immaterial. If it is intended to show by that that a provisional certificate was ever issued the statement there is also incompetent, irrelevant and immaterial, and it is also hearsay. This gentleman states he was advised by somebody that that certificate was issued. That is not proof of the fact.

MR. HOWARD: It shows the Maritime Commission was satisfied that the transaction had been closed.

MR. RESLEURE: What might satisfy the Maritime Commission might not be acceptable evidence in court.

MR. HOWARD: Except that they are an official commission with the duty of passing upon the transfer.

MR. RESLEURE: This is like the Industrial Accident Commission. They will receive all sorts of testimony—hearsay testimony—and they will be perfectly satisfied with that kind of testimony.

MR. HOWARD: This goes to their action, not the court's action. We are simply showing they were satisfied. That is the only—

MR. RESLEURE. Whether they were satisfied or not is immaterial, but whether or not a certificate was issued by this witness is an entirely different matter. They just say that they were advised of that.

MR. STEVENSON: Under the law it is the duty of the Maritime Commission on sales of American vessels to a foreign country to approve, and your Honor will take judicial notice of the law. That letter is merely to show the Maritime Commission approved the sale, and so far as the Maritime Commission is concerned the vessel was actually registered in order to comply with their order, the registry has already been put into evidence by the customs official here in San Francisco.

THE COURT: Are you offering that in evidence.

MR. HOWARD: Yes, your Honor.

original record, itself, I think there is a distinct difference, and any testimony that he might give if the ambassador were present would be purely heresay. Certainly a certificate cannot come into evidence. Reference was made to Cordell Hull's certificate. It goes just this far, that Mr. Ing was at the time of signing the same Counsellor of the Embassy of China at Washington. That is all that Cordell Hull has said. Then Mr. Ing, apparently not the ambassador, but the counsellor for the ambassador, attempts to state a certain document is a correct translation of the original text in English of the expropriation order. He has never seen it, and has not seen the records, and is not custodian of the records. I submit the cases just cited are clearly distinguished, and the documents should not be admitted in evidence.

THE COURT: I will receive it subject to a motion to strike out.

MR. RESLEURE: The motion will be deemed made?

THE COURT: Yes, and it can be taken up at the time we argue the case.

MR. RESLEURE: Yes, your Honor.

THE COURT: That is No. 9, Mr. Clerk.

THE CLERK: Yes, your Honor.

(The document was marked "Respondent's Exhibit 9.")

MR. HOWARD: Q. Do you know Mr. Z. Teh Ing?

A. Yes. He is the counsellor of the Embassy of the Republic of China.

Q. What is meant by counsellor of the Embassy?

A. Counsellor is next to the ambassador. He is authorized to write communications on behalf of the ambassador, just like an assistant Secretary of State write to the ambassador in Washington.

Q. He is an official next to the ambassador?

A. Yes.

Q. Signs documents for the ambassador?

A. Yes.

MR. RESLEURE: I make the further objection, if the Court please, Mr. Ing is not a party who can represent his government in matters of this kind. We have already cited numerous authorities to the effect that only the ambassador can act.

MR. HOWARD: We wish to offer, if the Court please, a letter

involves consideration of national policy, which are not justiciable, and touching it the voice of the Chief Executive is the voice, not of a branch of the government, but of the national sovereignty, equally binding upon all departments. Accordingly it must be held that the courts are powerless to grant the relief which the libelants seek. It is to be reiterated that we are not here concerned with the claim of a third party, either public or private, to the property in controversy, nor have we a case where the Department of State has failed to act, or where it is sought only to protect a party in actual possession. The case is one where the court is asked to take property conceded to be that of the Russian nation from the actual possession of those whom the State Department unmistakably recognizes as the accredited agents of the Russian government, and turn it over to other persons whom that department has declined to recognize as having any official standing whatsoever.

“In assuming the correctness of the facts exhibited by the ‘suggestion’ of the Russian Embassy and the certificate of the Secretary of State, I have not been unmindful of the objection interposed by libelants to the reception and consideration of these documents. The competency of the certificate as proof of the facts therein set forth is hardly open to question, and I have already held the facts to be material. The objections to the ‘suggestion’ are overruled with less confidence. I am inclined to the view that logically the representations made in the ‘suggestion’ should come through the appropriate executive channels of the American government.”

I think, your Honor, that those authorities fully support the admissibility of this certificate—the regular manner of proving this through the highest Chinese official in this country.

MR. RESLEURE: Might I be heard on that?

THE COURT: Yes.

MR. RESLEURE: It seems to me to draw a distinction between the ambassador certifying as to the law of this country, a matter within his knowledge, presumably, or as to the membership or powers of a certain Supply Committee operating in this country, which is also presumably within his knowledge; but when he attempts to certify that a certain document is the actual order of the National Military Council when he could not possibly have personal knowledge, when he has not seen the

ing the war with Germany, and that on the 6th day of October, 1919, with the written consent of the Secretary of State of the United States, she was again taken over by the Russian Embassy at Washington, and was in its possession and under its control at the time of her seizure by the marshal. No counter showing is made by the libelants, except in so far as the averments in the libel to the effect that the 'Russian Socialist Federal Soviet Republic' is Russia, or the Russian government, may be considered as such.

"It will be noted that fundamentally there is no controversy touching the real ownership of the transport; she belongs to Russia; no adverse claim, either public or private, is involved. By Russia, of course, I do not refer to any particular political group or organization, but to the nationality entity or sovereignty. It follows that the issue is reduced to the simple question whether the Russian nation is represented by Ludwig C. A. K. Martens and the organization back of him or by Boris Bakhmeteff and the group for which he speaks. Plainly, consideration of such an issue upon the merits would of necessity draw us into the realm of international diplomacy; and it is equally plain that no useful purpose could be subserved by such an investigation. If the court assumes the right to make an original inquiry, it logically follows that it must exercise its own independent judgment upon the facts thus disclosed and reach an independent conclusion. In that view it might recognize Martens, while Washington recognizes Bakhmeteff. To state the proposition is to discredit it. True, the Russian sovereignty may speak through different representatives, and it may have business agents as well as diplomatic agents; but all must derive their authority from a single source. The national will must be expressed through a single political organization; two conflicting 'governments' cannot function at the same time. By the same token, discordant voices cannot express the sovereign will of the American nation. Either the executive or the judiciary must be supreme in a given sphere.

"The question at issue is one of state; it involves international relations, and is primarily for the State Department. If, as contended by libelants, it be granted that a revolution has taken place in Russia, and that the Soviet Republic is in actual control, the question when, if at all, such *de facto* government shall be recognized, is a political one. It

"*In the Goods of Anne Dormoy*, 3 Hagg. Ecc. 767 (1832), the court held that the certificates of the French consul general was sufficient proof of the law of France, the doubt being whether the French ambassador, himself, should not have certified, instead of the consul general. *In the Goods of Klingman*, 3 Swabey & Tristram, 18 (1862), the ambassador to Great Britain of the King of Hanover, gave a certificate under the seal of the legation that a will executed in accordance with law of England was a valid will under the law of Hanover, and the court held that such a certificate was sufficient evidence of the foreign law. *In the Goods of Prince Oldenburg*, L. R. 9 Prob. Div. 234 (1884), the question was as to the law of Russia concerning the validity of a will of a deceased member of the royal family. The Court received in evidence a certificate under the hand and seal of the Russian ambassador in England to the effect that by the law of Russia no testamentary dispositions of any member of the royal family could have any effect unless approved by the Emperor. The certificate was accepted as sufficient proof of the law of Russia."

We have had somewhat of a similar question presented in this District, in 278 Fe. at page 294, *The Rogdai*, in an opinion rendered by Judge Dietrich.

"The motion is supported by 'suggestion,' signed by Boris Bakhmeteff, and under the seal of the Russian Embassy at Washington, accompanied by a certificate duly executed by the Department of State of the United States, on April 6, 1920 certifying that Boris Bakhmeteff was formally received by the President as the duly accredited Ambassador Extraordinary and Plenipotentiary of Russia to the United States, on July 5, 1917, and that he has continuously since that date been recognized as such by the government of the United States, and further that the government has not received or recognized Ludwig C. A. K. Martens in any representative capacity, 'nor has the so-called Russian Socialist Federal Soviet Republic been recognized in any way by the government of the United States.'

"By the 'suggestion' it is shown that the *Rogdai* is a 'Russian naval transport under the command of Mili Gordener, a lieutenant commander in the Russian navy,' that she was purchased for Russia in the United States on July 20, 1917, that thereafter under an agreement in prosecut-

“On July 5, 1917, the United States Government recognized Boris Bakhmetieff as the Russian ambassador. The record contains a certificate, signed and sealed on May 8, 1918, by Robert Lansing, Secretary of State of the United States of America, stating that Boris Bakhmetieff presented his letter of credence to the President and was officially received by the President as ambassador extraordinary and plenipotentiary of Russia on July 5, 1917, and that he has since that date been recognized by the Department of State as the ambassador of Russia. The certificate of the ambassador declared the official character of the Russian Supply Commission, and that it was organized to purchase supplies in the United States for Russia, and to accept supplies purchased or manufactured in the United States for Russia, and that it had power to settle all matters relating to contracts for supplies so purchased or manufactured during the time herein involved.

“Who is the sovereign *de jure* or *de facto* of a country is a question for the political departments of the Government. It is not a judicial question. The decision of the matter by the political departments is in this country conclusive upon the judges.

“The same principle is the established law of England. In the same way the question who represents and acts for a foreign sovereign or nation in its relations with the United States is determined, not by the judicial department, but exclusively by the political branch of the Government. So that the certificate of the Secretary of State, above referred to, certifying to the official character of Boris Bakhmetieff as the Russian ambassador to the United States is not only evidence, but it is the best evidence, of Mr. Bakhmetieff's diplomatic character, and is to be regarded by the courts as conclusive of the question, and the court could not proceed upon argumentative and collateral proof. And the certificate of Mr. Bakhmetieff, given under his hand and seal as Russian Ambassador, concerning the membership and powers of the Russian Supply Committee, must be regarded in like manner as an authoritative representation by the Russian government on that subject, and as such binding and conclusive in the courts of the United States against the government on the matters to which it relates.

Court?

MR. RESLEURE: No. In other words, the cargo was, according to our contention, in the possession of the United States Marshal, and the entire matter was within the jurisdiction of this Court before this document purported to be issued. On the next ground I object because this document is apparently not signed by anyone. It apparently does not bear any seal or similar mark—anything similar to the seals that this witness has testified to on the previous documents. On the other ground I object that it is not certified to by anyone in the National Military Council, nor is his witness the person who has custody of the records of the National Military Council of China.

MR. HOWARD: If the Court please, the certificate, of course, of Cordell Hull is taken judicial notice of under Section 661, Title 28 of the United States Code. This is somewhat of a novel question. I don't know whether it was presented before to this Court or not, but in view of that we have the authorities which fully sustain the order. May I refer to them, with your Honor's permission?

THE COURT: Yes.

MR. HOWARD: I would like to say preliminarily that of course this does not purport to be an original copy of this expropriation order. Rather, it is a certified copy of the order, certified to by the Embassy, the highest state officer of the Chinese government in this country, and that from the standpoint of proof in this Court, of course, it is the regular and only possible way of proving that document. Naturally, we are not offering it as something signed in the nature of an original document.

THE COURT: It is merely the text certified to by the Embassy?

MR. HOWARD: Yes. I refer your Honor to the case of *Agency of Canadian Car & Foundry Co., Ltd. v. the American Can Company*. That was a decision by the Second Circuit Court of Appeals in 1919. The decision is reported in Volume 258, Fed. Rep. at page 363. There it involved the question of proof through the Russian Ambassador's certificate, similar to this document, of certain action taken by the Government of Russia.

ance by printed petition of this copy, so in order to know the true copy he put some mark on the registry which I don't know.

MR. RESLEURE: I object, and ask what Mr. Marshall told this witness be sticken, your Honor, as hearsay.

MR. HOWARD: What did he—

MR. RESLEURE: He said he made some mark on there.

THE COURT: That goes out.

MR. HOWARD: Q. Has that certificate of registry, then, been in your possession ever since its issuance?

A. Yes.

Q. Was that registry—was that the registry referred to in your letter of November 24, 1937 to the office of the collector of Customs?

A. Yes.

MR. HOWARD: If the Court please, at this time we wish to offer as Petitioner's Exhibit next in order a certificate under the seal and signature of Cordell Hull, Department of State, certifying to the office of Mr. Zaung Teh Ing as Counsellor of the Embassy, and attached to which is the certificate of Mr. Ing, showing an expropriation order affecting the vessel (handing paper to court.) We make the offer of that, your Honor, as Petitioner's Exhibit next in order.

MR. RESLEURE: I will object to the introduction of that document in evidence on the following grounds:

I will have to see the document, your Honor, before I can state them, perhaps. In the first place, the document is incompetent, irrelevant and immaterial in that it purports to have been issued on April 26, 1938, which was three days subsequent to the time the vessel "Kwang Yuan", the "Edna Christensen", came within the jurisdiction of this Court by virtue of seizure by the United States Marshal on the 23rd of April, 1938; on the ground that the document, itself,—

THE COURT: When you are talking of the seizure you are referring to the seizure made—

MR. RESLEURE: Of the cargo.

THE COURT: With this particular load of iron?

MR. RESLEURE: Yes.

THE COURT: You are not referring to the case in Judge Roche's

me to issue the registry, to keep the registry and pending the further instructions from China and then that instruction said the Government at the request of the owner—asked me to hold the ship here until the situation in China improves.

MR. RESLEURE: I ask the testimony be stricken out as to what the instruction were. The document is the best evidence.

MR. HOWARD: I presume the objection is good in that regard.

THE COURT: Yes.

MR. HOWARD: Q. Pursuant to instructions, did you issue a provisional registry?

A. Yes, I issued one.

Q. I hand you what is marked as Exhibit C for identification, and ask you if you are able to identify that.

A. Yes. This is the registry that I issued.

MR. HOWARD: We now offer this in evidence, if the Court please, as Petitioner's Exhibit next in order.

(The document was marked "Respondent's Exhibit 8.")

MR. HOWARD: Q. Was that registry ever exhibited to the Collector of Customs?

A. Yes.

Q. When?

A. About February 24th. I went to the—

Q. What year?

A. This year. I went to the Customs House at the request of Mr. Marshall, Assistant Collector, to show his certificate to him.

Q. Did you exhibit to him in his office at that time?

A. Yes.

Q. Who else was present?

A. I think Mr. Sun, the Deputy Consul, went with me, and one officer of the Custom named Mr. Clifford.

Q. Mr. Clifford?

A. Yes, he was with Mr. Marshall, assistant collector.

Q. Did Mr. Marshall inspect the document?

A. Yes, he told me—he made special mark on the registry with a view that he many receive some copy, and that he may give some clear-

you have confidence, advise you to that extent? Someone looking at it might work it out. We know the best of codes were worked out during the last World War. There were some very clever codes, but after going over them several years they began to decipher them.

MR. RESLEURE: If they want to produce that kind of a record in Court it seems to me they should not have it in secret code. Nobody can tell whether it is a correct translation. This Court cannot tell.

THE COURT: There is no way to check it, of course, excepting through the veracity of the witness who is testifying.

MR. RESLEURE: By litigating these matters it seems to me they waive the privileges.

THE COURT: I am afraid your objection is good if you press it. I was wondering if the situation was such that was one of the things you were not standing out on. In other words, if this procedure was followed whether it had any effect on other issues to be—

MR. HOWARD: The witness testifies that is a true translation of the message.

MR. RESLEURE: But he just testified this was exactly the same seal as the one on the previous exhibit and on examining it I find no similiarity whatsoever between the two seals.

MR. HOWARD: May I offer this suggestion: As your Honor well recognizes, the code is essential to be kept secret, but we have no objection to revealing it to the Court. We will have this translated to the satisfaction of the Court, showing just what the code means, if that will satisfy counsel.

MR. RESLEURE: If the Court cares to—

MR. HOWARD: This is not an essential proof, and if counsel make sthe objection I prefer to withdraw the offer.

THE COURT: All right.

MR. HOWARD: Q. After receiving the instructions from your Ministry of Foreign Affairs to which you have just referred, what then did you do?

A. Well, after receiving the first instruction I—I have no form of this registry in hand, and I have to wait for the form to be sent from the New York Office, and then I received another instruction urging

and this is typed on the 25th. The day is—this is the 25th. In China it is on the 26th, because of the time difference.

Q. As I understand it, it was received in San Francisco on what date?

A. On the 25th.

Q. What date was that in China?

A. In China the 26th.

Q. Because of the difference in time?

A. Yes.

Q. You say that it is a true translation of the wire?

A. Yes, yes.

MR. HOWARD: Have you seen this, Mr. Resleure?

MR. RESLEURE: No.

(Mr. Howard hands paper to Mr. Resleure.)

MR. HOWARD: We will offer this translation as Petitioner's Exhibit next in order, your Honor.

MR. RESLEURE: If anything is going in I think the original should go in.

MR. HOWARD: It is in code, Mr. Resleure, and it is a code which the witness is not privileged to reveal.

MR. RESLEURE: I make no objection to the introduction of the document in its entirety.

THE COURT: It is a very peculiar situation. If I receive it it becomes a public document.

MR. HOWARD: I had merely offered the English translation.

THE COURT: He is objecting to not giving the original. Is it because the original is not given or because you feel it is not pertinent?

MR. RESLEURE: I don't doubt the credibility of any of these witnesses, but we know legally there is a situation which we do not believe may obtain in China. As far as this record is concerned, we could have anything given to the Court as a translation if we could not have the original. Probably I cannot check up on the code, but it should be available so we can tell it is a translation.

THE COURT: How could you prove it unless you are either able to decipher the code or have someone that knows the code, in whom

acknowledgment there which they have in China to authenticate the signature.

MR. RESLEURE: Does he know the attorney?

THE WITNESS: No. this is authenticated by the Bureau of Shipping and Navigation of the Ministry of Communications, which in China—anything connected with the shipping and the ship owned by—

THE COURT: Q. Are you familiar with the seal of that Bureau?

A. Yes, because this seal, as I just said, is the same as the one I showed last and this is the office seal.

THE COURT: The objection will be overruled. It will be received in evidence.

(The document was marked "Respondent's Exhibit 7.")

MR. HOWARD: Shall I proceed with the questions?

MR. RESLEURE: I think I would like to examine this. I can check this up on cross-examination.

MR. HOWARD: As I understand it, those documents were presented to you—the last two exhibits in evidence—at the time a request was made of the issuance of a provisional certificate?

A. Yes.

Q. What action did you take upon them?

A. As a general practice I issued the registry upon receiving those documents, but in view of the fact the war was going on in China I took the precautionary action of wiring the Government for further instructions whether I should issue the registry or not.

Q. Did you receive those instructions?

A. Yes, I received the instructions from the Ministry of Foreign Affairs, Nanking, the capital.

Q. I hand you here what purports to be a wire and ask you if that is the instruction you refer to.

A. Yes, this is the original telegram I received.

Q. Is that in code?

A. Yes, in code.

Q. I hand you a paper written in English and ask if that is a true translation of that wire.

A. Yes, except this date is a mistake. The date should be the 26th,

Company, in Chefoo, China, signed by Li Yu-Sun, representing the Yung Yuan Steamship Company, Chefoo, China.

Q. What insignia does that bear? What are those seals?

A. This seal is an office seal of the Bureau of Shipping and Navigation, Ministry of Communications, in Chefoo.

Q. Is that the same seal which you identified on the preceding exhibit?

A. Yes.

MR. RESLEURE: May I ask a question on *voir dire* here?

THE COURT: Q. This document purports to be signed by the Appointer Li Yu-Sun, representing the Yung Yuan Steamship Company, Chefoo, China. Where is that signature on the original?

A. I think in this connection I have to make an explanation: in China there is no law requiring a signature, but every individual must have a seal of his own and that is equivalent to the signature of your country.

Q. This little circle here with some writing in it is presumably the seal of—

A. Li. This square one is the seal of the corporation.

Q. Are you acquainted with the seal of Li Yu-sun?

A. No, because that is authenticated by the Bureau of Shipping and Navigation of the Ministry of Communications. That is why this acts like something like we call a notary public in your country.

MR. HOWARD: Q. One further question: Is that an accurate and true English translation of the document which is attached to it?

A. Yes.

MR. HOWARD: We will now offer this in evidence, your Honor, as Petitioner's Exhibit next in order.

MR. RESLEURE: I will object to the introduction of this document in evidence on all of the grounds specified this morning as objections to the preceding exhibit, and on the further ground that this document apparently bears the seal of some party who is the Appointer of this power of attorney, and this witness is unable to identify his seal. He does not know it.

THE COURT: He said it is the equivalent of a notary public's

A. No, this is—in asking for information, when I receive those two papers instructing me to issue the registration I am afraid maybe there is some change made by the Government and I wired back and follow this paper to the Government, asking for instructions. The Government order me to issue the registry, so from all of this I am sure from the beginning I know this is an authentic paper, but my Government upon my report cabled to me to issue the registry.

Q. Why do you know it is an authentic paper?

A. I have been in the China Government, and I know all the seals just like you know the seal of the State Department, and so on.

Q. You know the seal, but you don't know who put it on there? I might have been an office boy?

A. The seal is very important in China, that only one person is entitled to keep—just like the State Department. Only the chief clerk.

Q. You feel it is important, but you do not know who put that seal on, of your own knowledge, do you?

MR. HOWARD: That is objected to as immaterial.

THE WITNESS: No.

MR. HOWARD: As to whether he knows or not.

MR. RESLEURE: I believe that document is not properly admissible, if your Honor please, and I ask it be stricken.

THE COURT: Same will be denied.

Gentlemen, we will have to recess until two o'clock.

(A recess was here taken until two o'clock p. m.)

AFTERNOON SESSION.

THE COURT: There being no ex parte matters, we may proceed, then, with the hearing.

CHAO CHIN HUANG,

DIRECT EXAMINATION (Resumed).

MR. HOWARD: Q. Mr. Huang, I hand you a document or paper which appears to be in the Chinese language, and ask you if you will identify it.

A. Yes.

Q. State what that is, please.

A. It is a power of attorney given by the Yung Yuan Steamship

A. The Government.

Q. That would not mean every person in China, or every person employed by the Government. Who can make that order?

A. In our case there is one person appointed to take care of the seal, and on the signature he is ordered to put the stamp, so when you present a document prepared by some department—then you send this document to the seal office. We call him the chief clerk. Then he sees the order is already signed by the chief of the Bureau. Therefore, he will put the stamp on the document to be sent out.

MR. RESLEURE: Perhaps I could ask a couple of questions that would clear this up, if I may.

THE COURT: If counsel does not object.

MR. HOWARD: That is agreeable with me.

MR. RESLEURE: Q. You do not know who that person is in the department that has charge of the seal?

A. It is not necessary, according to China practice.

Q. Do you know what his title is?

A. Pardon me?

Q. Do you know what the title of the man who has charge of the seal is? What his title in this department of the Bureau of Shipping and Navigation is?

A. I couldn't understand.

Q. What is his office there?

A. His office is a branch office of the Ministry of Navigation, which is equivalent to your Interstate Commerce Commission.

Q. You don't know who that man was and you don't know who issued this document, do you?

A. In this Commission I have wired and sent a copy of this document to the Government, asking for information, but I have not heard anything contrary to this. So, therefore, I am sure this is an original document issued.

Q. And the reason you are sure that this is a correct document—that this is the original document—is that you asked for confirmation to find out whether it was a correct document but that you have had no answer?

MR. RESLEURE: What does the seal say? We can all see the seal.

A. The seal is only the name—"Bureau of Shipping and Navigation, Ministry of Communications."

MR. RESLEURE: I have never seen a document like that before.

THE COURT: I am going on the testimony on which it is predicated. I did not know that orders like that were ever issued where they depended solely on a seal. He claims they are, and that that seal was placed on it after the order was written.

THE WITNESS: I have no excuse on this one, because actually my government don't use this kind of paper very much.

THE COURT: Who made this?

A. This is the Government. This is for the purpose of going to a foreign country so we have English headline and in order to write it correctly to show the form we write first. We stamp it first in order to make this writing clear. Actually our document is not on this paper.

THE COURT: Q. In this case it was first written across the top?

A. Yes.

Q. What is this stamp, here?

A. We call it the Office Stamp, just to make this addition of paper fit this original one.

Q. So it will form a part of the original?

A. Yes.

MR. RESLEURE: I still am very much at sea, your Honor.

THE COURT: The question is whether that is an official order or not. He stated it is, and contains the seal of that department, and in that department the original is not signed. It is simply stamped with the seal of the department. He identifies that as the seal of that department.

MR. RESLEURE: Any particular person in the Department who issued that certificate?

THE WITNESS: I think in a case like this it is not necessary to sign any name. You will be receiving so many documents in China. This is not a petition or anything. The government just puts the seal on the document and to satisfy—

THE COURT: Q. Who can use that seal?

it contain the signature of the officer?

A. No, not necessary. The proper document must be signed by the agent of the Bureau. When the original copy issue it is not necessary to have signature according to the provision of the Chinese Government.

Q. Is that a certified copy of the—

A. The original copy. When you make a draft you always—that should be signed by the agent of the Bureau, but when the clerk see it was signed by the agent of the Bureau he simply affix seal.

Q. Does the seal which you identified—

MR. RESLEURE: I believe I have inadvertently given the stipulation not realizing it was not a certificate.

THE COURT: He said they sealed those and did not sign them.

MR. RESLEURE: I ask the last order be set aside and I be permitted to object, and I do object, to the introduction of this in evidence. There is no authentication of this document, whatsoever, except these peculiar-looking heiroglyphics, which are evidently printed, and I don't think there has been proper identification. It might satisfy this gentleman, but it should not satisfy the Court.

THE COURT: Let me see it.

Q. Is this stamped on?

A. Yes. This is the official seal of the Bureau.

Q. Is that on the paper before it is written, or stamped on?

A. After writing you put the seal on the paper.

Q. What is this written across it, after—

A. The date—27th—excuse me. 26th year of the Republic of China.

Q. This was stamped and they wrote the 26th across it?

A. No. Must write first and then stamped it.

Q. This has been stamped over that—

A. Yes, to show—

THE COURT: It looks like the writing was put over the stamp.

A. No.

Q. That is incorrect?

A. This is right.

THE COURT: I will deny it then. If he can tell from the seal—

Q. Is the second sheet part of it?

A. Yes, this is the name of the crews.

Q. Will you read to the Court what that document says?

THE COURT: Which one is it?

MR. HOWARD: It is one document. One is an English translation of the other, your Honor.

THE WITNESS: I will read in English, of course?

MR. HOWARD: Q. Yes.

MR. RESLEURE: If your Honor please, there is an English translation here. I would stipulate that that is the translation, subject to my checking with the original with an interpreter.

MR. HOWARD: Very well.

MR. RESLEURE: That will save a lot of time.

MR. HOWARD: We will offer it with the translation.

THE COURT: You are offering that as No. 6?

MR. HOWARD: Yes, your Honor.

MR. RESLEURE: The original will be available to me at any time?

MR. HOWARD: The original will be introduced. It will be left here with the translation. It is not necessary to read it now, I presume?

THE COURT: No.

MR. HOWARD: May these be marked as one exhibit?

THE COURT: No. 6

(The documents were marked "Respondent's Exhibit 6.")

MR. RESLEURE: I think I have another objection to this.

THE COURT: I have received it already under your agreement. If you make a motion to set aside that—

MR. RESLEURE: I would like to point out on this translation I cannot see anybody signed this certificate. It just says "Given to the Yung Yuan Steamship Company, Chefoo."

MR. HOWARD: Yes, and it is not signed. May I direct a question to the witness?

THE COURT: Yes.

MR. HOWARD: Q. When a document such as Exhibit No. 6, such as is referred to, is issued by a Bureau of your Government, does

MR. HOWARD: I will produce a copy, then. May I produce it as soon as it can be found, your Honor—the copy?

THE COURT: I suppose it will be a copy of the copy?

MR. HOWARD: Yes. Subject to correction. May we produce that, then during the recess, and may I deliver this to Mr. Riley?

Q. Mr. Huang, did you have a request made at your office for the issuance of a provisional registry for a ship which had been named the S. S. "Edna Chirstensen"?

A. Yes, when the Agent of the ship—General Steamship Co.—came to my office and applied for the registry.

Q. Do you recall what representative of the company appeared at your office?

A. The Japanese—by the name of Mr. Kawano, and also the second officer of the ship.

Q. Do you recall who was the representative of the General Steamship Company?

A. Captain Lester.

Q. Were any documents presented to you at that time?

A. Two documents in Chinese and one copy of bill of sale.

Q. I hand you a document which is entitled, "Bureau of Shipping and Navigation, Ministry of Communications," and ask you if that is the document to which you have just referred?

A. Yes.

Q. That document was delivered to you at the time the request for issuance of a registry was made, is that correct?

A. Yes.

Q. What is that stamp on the document?

A. This stamp is official Seal of the Chinese Government, and this one what we call "Office Seal." This is not very official, so we put two together.

Q. Can you translate it?

A. I have the English translation already.

Q. I hand you this sheet of paper and ask you if that is a true English translation of the document?

A. Yes.

A. Yes.

Q. How long have you been Consul General?

A. About three years and five months.

MR. HOWARD: This is out of order, but I would like to identify this at this time.

Q. I hand you a letter, dated November 24, 1837, and ask you if that is your signature.

A. Yes.

Q. Was that mailed by you to Mr. Charles O. Dunbar, by United States Mail?

A. This is my date. I cannot remember whether I mailed it or sent it by special messenger.

MR. RESLEURE: May I have the answer, please?

THE COURT: Read the answer, Mr. Reporter.

(Answer read.)

MR. HOWARD: Q. You did, however, address such a letter to Mr. Dunbar?

A. Yes.

MR. HOWARD: We will offer this in evidence. This is Respondent's A for identification, and this is the identification of —

THE COURT: What? A for identification? I haven't had any A.

MR. HOWARD: It is so marked.

THE COURT: That is the letter of the 24th?

MR. HOWARD. Yes.

THE COURT: That will be received, then, as 5.

(The document was marked "Respondent's Exhibit 5.")

MR. HOWARD: This is from the files of the Collector of Customs. May we substitute a copy?

MR. RESLEURE: Yes.

MR. HOWARD: This original is marked for identification. May we withdraw it, your Honor, at this time, by stipulation?

THE COURT: And substitute—

MR. HOWARD: And substitute a copy.

MR. RESLEURE: We will stipulate to that.

THE COURT: That is satisfactory, then.

that the witness come back.

MR. HOWARD: I just offered the stipulation with regard to anything he states to us over the telephone.

MR. RESLEURE: That is all I have been asking for, for the last fifteen minutes.

MR. HOWARD: And I have been offering it about fifteen minutes.

MR. RESLEURE: That is all.

THE COURT: Proceed.

REDIRECT EXAMINATION

MR. HOWARD: Q. Mr. Riley, you referred to Mr. Marshall saying that he had been given notice of this registry. Who is Mr. Marshall?

A. Assistant Collector of Customs. He is in charge when Mr. Dunbar is not there.

Q. I hand you here a document called "Provisional Certificate", and ask you if you have seen that before.

A. That is the one I saw in Mr. Marshall's office.

Q. When did you first see it?

A. Less than a week ago. I don't recall the exact date.

MR. HOWARD: We will offer this in evidence at this time.

THE COURT: What is that?

MR. HOWARD: That is the provisional certificate. We will offer it for identification.

(The document was marked "Respondent's Exhibit C for identification.")

MR. HOWARD: I have here, Mr. Resleure, for identification,—well, I can do this by the next witness.

That is all, Mr. Riley.

Mr. Resleure, then we can have Mr. Riley's statement by telephone as to that wire?

MR. RESLEURE: Yes.

CHAO CHIN HUANG,

Called for the Respondent;

Sworn.

MR. HOWARD: Q. Mr. Huang, are you the duly accredited Consul General of the Republic of China at the port of San Francisco?

Mr. Riley back?

MR. HOWARD: If there is such a record, yes.

MR. RESLEURE: If there is no record I will be—

THE COURT: I presume that is to be presumed, unless there is one produced.

THE WITNESS: I could identify the registry, but when it was first brought to the office I do not believe—there is nothing in the official file nor—

THE COURT: We will assume it does not exist unless it is established.

MR. RESLEURE: Q. Has any clearance been issued on the vessel at all?

A. No.

MR. RESLEURE: I have been trying to get a very simple stipulation from counsel, your honor, and it would be a lot easier going over this with the witness, who tells us things we know already, but we can stipulate very easily that I can call Mr. Riley up this afternoon and ascertain what his records actually show in regard to this matter, and if he tells me there is no record I will so advise the Court.

MR. HOWARD: That is perfectly agreeable.

THE WITNESS: It is possible Mr. Clifford may have written on one letter down there "Registry presented," and date of that. He was very, very careful about all matters pertaining to anything that might be important and he was forever putting pencil notations or something like that down for different things. Would you consider that a record?

MR. RESLEURE: I don't know. If you will stipulate, Mr. Howard, we can strike out all the witness' testimony in regard to that question, by agreement.

MR. HOWARD: I don't see any occasion to strike out anything. The witness had testified what he thinks the record shows, but I will stipulate to what he will say over the telephone.

MR. RESLEURE: I don't think anybody should be bound by what the witness thinks. The record will speak for itself.

MR. HOWARD: You have developed the testimony. Now let it stand.

MR. RESLEURE: Then there will be no stipulation. We will ask

provisional registry.

A. I, myself, saw it less than a week ago; but it was presented to the office before that.

Q. If we could have the record of when it was presented to your office.

A. The first time?

Q. Not just the notification the Chinese Ambassador issued, but when somebody had actual knowledge that that certificate was delivered to anybody or issued.

A. It was shown—I was up in the Assistant Collector's Office within a week—

Q. Within the last week?

A. Yes, and Mr. Marshall identified the document and told me I could state it was the document that was shown to him. When, I don't know, but that is sufficient then.

Q. I don't think we are getting very far.

MR. HOWARD: You are asking the witness about something with which he is not personally familiar.

MR. RESLEURE: That is what I want to show. As far as this gentleman is concerned, he saw it a week ago. Shall we bring Mr. Riley back or shall we have the stipulation that we will ascertain what the records show and advise the Court of that?

MR. HOWARD: If the records show anything.

THE WITNESS: The records show that the Chinese Consul has issued the registry, and when—the order is consummated that the sale had been effected, and the registry had been issued, and the request not to clear the vessel until the registry was brought down, and the registry was brought down and marked so they would know when it came back again.

MR. RESLEURE: Q. I know all that. We want the official record of when that document was brought down to you for identification and when some official act was taken in regard to it.

A. We don't make records like that. When a ship comes—

MR. RESLEURE: I believe the Court has my point in mind. Will you make that stipulation we will advise the Court, or will we bring

A. It is in the files, yes.

MR. RESLEURE: I don't want to bring Mr. Riley back again, Mr. Howard. So can we have a stipulation that we will ascertain from Mr. Riley what the date of the record is, what it is, and what—

MR. HOWARD: The letter of November 24th advised the Customs Collector that the registry had been issued. The letter of November 26th—

THE WITNESS (Interrupting): I want that original letter back again.

MR. HOWARD: Those are in evidence. I don't think I took any originals.

THE WITNESS: Yes, you did. On that November letter. You will find our file number in the right-hand corner of it.

THE COURT: It is marked "A".

MR. HOWARD: That is a letter from your office to Mr. Huang.

THE WITNESS: One from him to us.

MR. HOWARD: I don't think I kept that.

THE WITNESS: I don't think you gave it back to us.

MR. RESLEURE: You know what I am trying to get at, and your answer does not satisfy me. There was a notification a document was issued. That document was never delivered to anybody; the consul apparently wrote it and kept it right there. We will be contending that does not constitute an actual change until some delivery or some overt act transpires. The Chinese consul might issue all sorts of documents, but until he took some official act to make it public it is not effective. I want this man to tell me when he actually saw and made an entry of this provisional certificate.

A. I believe in the files I can cover that. The Maritime Commission order states that the order is null and void after six months. All orders state that, and this order, itself, too, and the Chinese Consul at San Francisco, if my recollection is correct,—it is in the files—requested, I believe, the Ambassador in Washington to notify us—he had his office there—that the register had been issued and that the sale to Chinese had been consummated, and —

MR. RESLEURE: Q. I want to know when you saw actually that

Q. In other words, that is just for clearance purposes of the particular vessel, is that correct?

A. Well, as far as our records are concerned, yes.

Q. As far as you or the records of your office are concerned you have no information or knowledge as to the ownership of this vessel subsequent to this last bill of sale to Yung Yuan Steamship Company, is that right?

A. I say according to what we have in the files.

Q. There is no record with regard to the ownership of that vessel subsequent to the recording of the bill of sale—

A. Yes, there has been.

Q. (Continuing)—which is Respondent's Exhibit No. 2?

A. The Chinese Consul has sent the ship's register down.

Q. When was that done?

A. Well, I saw it less than a week ago.

Q. Do you know when that—when the register was sent to you and what date it bears?

A. No, I could not say.

Q. Could you get that for us?

A. Well, I couldn't very well. When the ship clears—if it clears under Chinese registry we will have it.

Q. You said the copy of the ship's register, or the ship's register was sent to you and you saw it a week ago?

A. Yes.

Q. Where is it now?

A. I imagine the Chinese Consul has it in the proper place.

Q. You gave it back to him?

A. He sent it for identification.

Q. What record did you make at that time?

A. Well, I have no record to make, except we know that there is a Chinese registry outstanding against the vessel.

Q. In the records of your office is there any notification or is that—

A. (Interrupting) There is a notation—there is a record of it in our files such a thing has been issued.

Q. That record is available, is it?

MR. STEVENSON: In order to save the trouble of bringing Mr. Riley here this afternoon can we stipulate if he has this telegram we put this in its place, subject to your same objection?

MR. RESLEURE: Yes, subject to the same objection.

MR. HOWARD: If Mr. Riley will advise us there is such a wire and—

MR. RESLEURE: Yes. Let it go in subject to it going out if you cannot connect it up.

MR. HOWARD: All right. We will offer in evidence a copy of such a wire with that stipulation.

THE COURT: That will be No. 4.

(The document was marked "Respondent's Exhibit 4.")

MR. HOWARD: That is all, Mr. Riley.

CROSS EXAMINATION

MR. RESLEURE: Q. Mr. Riley, you say that there was an attempt to obtain clearance by some party of a Japanese name.

A. Yes.

Q. About what time was that?

A. The only way I could identify the time was after we recorded the bill of sale to Chinese registry.

Q. You do not recall who the Japanese was?

A. I personally had no contact.

Q. Do your records disclose anything with regard to the transfer from the Yung Yuan Steamship Company to anyone else.

A. They wouldn't be filed with us.

Q. So far as your records disclose, the Yung Yuan Steamship Company may have sold that vessel to Japanese ownership, is that correct?

A. Well, if you can consider files records, I would say no.

Q. Your office would not have any record of such a transaction, would it?

A. It would not have a record of the transaction, itself, no.

Q. It is the practice for you to receive any notification or records as to provisional certificates issued by the Chinese Consul?

A. It is. Any vessel sold alien must clear and leave the country and we must see the registry before we will clear them.

MR. HOWARD: We offer it on the same basis.

THE COURT: On hearsay—

MR. RESLEURE: I will object on the same ground.

THE COURT: The same ground?

MR. RESLEURE: The same ground, and also that it is hearsay.

THE COURT: Limiting it to the ground you made to No. 3?

MR. RESLEURE: Yes.

THE COURT: I will overrule the objection.

MR. HOWARD: May we have a stipulation that a copy may be substituted for the official record?

MR. RESLEURE: Yes.

MR. HOWARD: Subject always to correction from the original.

THE COURT: This is only historic.

MR. RESLEURE: May I compare that just a moment, with the original? I think they gave us the wrong copy.

MR. HOWARD: We have the wrong document. If the Court please, we have identified the wrong telegram.

Q. Do you have any other wire from Mr. Field?

A. No, not with me.

Q. Do you know whether your records contain a telegram dated May 14th?

A. There are so many telegrams I could not say, to be exact. What was the telegram you have in mind?

Q. I hand you what purports to be a copy of such a telegram.

A. I can't recall, to be exact.

Q. You are not able to identify that at this time?

A. No.

MR. HOWARD: I have no objection to this being in evidence, but it was not what I expected to offer.

THE COURT: Apparently you don't want it.

MR. HOWARD: I will withdraw it unless the Court is interested.

Q. May I ask, then, that you ascertain, Mr. Riley, from your records, whether you have such an original telegram as I show you by this copy?

A. I will do that.

THE COURT: Let me see it, then.

MR. HOWARD: Yes, your Honor. (handing paper to court)

MR. HOWARD: If the Court please, if I may suggest, we do not contend that is proof of the expropriation in and of itself. We are merely offering it as a notice served on the Governmental official in charge of the records.

MR. RESLEURE: Then it has no materiality.

MR. HOWARD: Certainly it has. It shows a step taken under the expropriation.

THE COURT: I will allow it to be received.

MR. HOWARD: I then offer the copy pursuant to the stipulation. (The document was marked "Respondent's Exhibit 3.")

MR. HOWARD: Q. Do your records contain any other notification relative to expropriation of the vessel?

A. I have a telegram.

A. From the Director.

Q. Does this telegram come from your files?

A. It does.

Q. Was that received by your office through the telegraph company?

A. It was received on—on May 19, at 11:30 a. m.

Q. Who is the sender of that wire?

A. R. S. Field, Director of the Bureau of Inspection and Navigation.

Q. Is he officially connected with the same department of the Government with which you are connected?

A. That is kind of a hard question. All my work comes under the direction of Bureau of Marine Inspection and Navigation, although I am attached to the Treasury Department.

Q. And that is from the Secretary?

A. From the Director, himself.

Q. At Washington? (No response.)

MR. HOWARD: We offer this wire in evidence, if the Court please, as Petitioner's Exhibit next in order.

THE COURT: Was there an objection?

MR. RESLEURE: The same objection as the last one.

THE COURT: Not as hearsay?

A. They haven't.

THE COURT: Q. You have not seen any change?

A. No, sir.

Q. You looked today, did you?

A. I have looked and I have read the—all the correspondence we have in our office.

Q. And there are no records that you could find which you changed or attempted to change?

A. No.

MR. HOWARD: Q. I will ask you if your files contain a notice dated April 27, 1938, signed C. C. Huang, Consul General of the Republic of China, of San Francisco.

A. I have it in my—

Q. Does that come from your files?

MR. HOWARD: Mr. Resleure, we would like to offer a copy of this original record.

MR. RESLEURE: I will object to the introduction of this letter or note from the Ambassador or from the Consul General to the United States Customs. It is not a self-serving document — it is not attempting to prove the expropriation—just a notification to this gentleman that Mr. Huang has received some other paper, and I don't think it is at all competent or relevant.

MR. HOWARD: The first part of your objection, as to the admissibility—have you any objection to a copy being used?

MR. RESLEURE: I don't mean copies.

MR. HOWARD: In connection with the objection I wish to point out that this is an official notice in connection with the ownership of this vessel. We offer it as a public record, a notification to the Collector of Customs in his official capacity, of expropriation. As far as being self-serving, this is a question between Governments as to the ownership of the vessel. I offer it for what it purports to be—simply an official notice. The contents I do not claim are in any particular binding on Mr. Resleure except as constituting a notice.

MR. RESLEURE: I think if you will just read the first few lines I will have to carry my objection farther.

before they sail?

A. Yes.

Q. Where is that determination entered? You go back and look at this?

A. Yes.

Q. Did you make any record then?

A. No. We just refused clearance.

Q. Is it an oral matter?

A. Yes.

MR. HOWARD: Q. Clearance was refused upon your request?

A. It was.

MR. RESLEURE: I object.

THE COURT: That was an oral statement.

MR. RESLEURE: I ask it go out.

THE COURT: It is only their determination and has no other bearing?

A. No.

THE COURT: I will sustain the objection. Let the record speak for itself.

MR. HOWARD: Under the law they are required to make such a determination on their records. The credibility to be given this testimony is for the Court, but I feel it is admissible. I do not contend it is binding on the Court, but I think the determination they make on their records is at least evidence for the Court.

MR. RESLEURE: Q. Where is the determination on the records?

THE COURT: He has already stated what the effect of those records were, so it makes no difference, I presume. I think it is before the Court.

MR. HOWARD: Q. From the time of the recording of the document which you have identified here in evidence has there been any change in the status of your records up to April 27, 1938?

A. Just what do you mean? Change in the records?

Q. Have your records been changed in any regard?

A. Regarding the nationality of the vessel?

Q. Yes.

to ascertain the nationality of that vessel, is that true?

A. The party clearing the vessel must ascertain its nationality, yes.

Q. Were you requested to permit the clearance of the vessel "Kwang Yuan" from this port?

A. The request came into the office, but I believe it had a different name. I think it had a Japanese name and when we came to finally identify the vessel the clearance clerk came over to me and asked whether it was all right to clear the "Edna Christensen", and I told him "Yes," under Chinese registry.

Q. Then there was a request for the clearance of the "Edna Christensen," now called the "Kwang Yuan"?

A. Yes.

Q. In connection with this request, you determined the nationality on your records to be Chinese?

A. Absolutely.

MR. RESLEURE: Oh, I ask that be stricken out.

THE COURT: Was there an answer, Mr. Reporter?

(Answer read.)

MR. RESLEURE: I don't think we are bound by this gentleman's determination of the nationality of the vessel.

MR. HOWARD: Of course, that is a question of law. It was a determination by the official—

MR. RESLEURE: The witness answered before I could make my objection to the question. I ask it be stricken.

THE COURT: Q. You made no record of that determination, did you?

A. Yes, sir.

THE COURT: I will let it stand. It shows what his record was.

MR. RESLEURE: They have not offered a record. It is just this witness' own determination of what it was. If there is a record of it, it is a different thing.

THE COURT: You made a record?

A. I have here the copy of the recorded bill of sale.

THE COURT: You say you have to make that determination just

Q. Is that a part of the record which you identified in connection with this exhibit.

A. It is.

Q. Mr. Riley, after receiving the letter dated November 24th, addressed to Mr. Dunbar, from the Chinese Consul General, does your file show a response to that letter—the letter dated November 26th is what I am referring to.

A. I am afraid I haven't got that letter with me. No. I just have that one letter. I didn't bring the entire file because it is so bulky.

Q. Do you recall seeing the letter to which I refer, in your files?

A. Who is it from—the Collector of Customs?

Q. The Consul General to the Collector of Customs under date of November 26, 1937. I will withdraw that statement. It would be a letter from Mr. Dunbar to Mr. Huang, Consul General, under date of November 26th.

A. Acknowledging his letter?

Q. Yes. Do you have a copy of such a letter in your files?

A. The original is in the files, but I didn't bring the copy with me.

Q. I show you the letter referred to and ask if you know Mr. Marshall's signature.

A. Yes.

Q. Is that Mr. Marshall's signature?

A. It is. I have a copy of that in the files.

Q. You have a copy of this letter in your files, have you?

A. Yes, sir.

MR. HOWARD: I am going to offer this letter, if the Court please, in connection with the exhibit offered here for identification, so I still hand it to the Clerk.

THE COURT: Marked for identification?

MR. HOWARD: Yes.

(The document was marked "Respondent's Exhibit B for identification.")

MR. HOWARD: Q. I believe that you have testified that when a request for a clearance from this port is made in connection with the vessel sailing for a foreign port you are required under your duties

A. That was after an attempted clearance.

Q. I will ask you if you have with you a letter dated November 24, 1937, addressed to Mr. Dunbar, by the Chinese Consul General?

(Witness hands paper to Mr. Howard.)

Q. Is the letter which you just handed me from the files of the Collector of Customs?

A. It is from the master files.

Q. And is produced from those records?

A. Yes.

MR. HOWARD: We will offer a letter dated November 24, 1937 addressed to Hon. Charles O. Dunbar, and signed Chao-Chin Huang, Consul General of China, for identification at this time.

THE COURT: It may be received as Exhibit A for identification. (The document was marked "Respondent's Exhibit A for identification.")

MR. HOWARD: Q. Mr. Riley, when an American vessel is sold to an alien is it necessary to have the approval of the United States Maritime Commission?

A. It is.

MR. RESLEURE: I will object to that question as calling for the conclusion of the witness.

MR. HOWARD: It is a question of law, I guess.

THE COURT: Yes.

MR. HOWARD: Q. Referring to Petitioner's Exhibit No. 2, I call your attention to an attachment on the second page of the bill of sale marked "Copy, United States Maritime Commission," and ask you what that is.

A. It is a copy of the copy of the Maritime Commission Order attached to the bill of sale upon recording it. Without this Maritime Commission order we could not record the sale alien.

Q. Was the original recorded?

A. No—I don't know where the original—we get certified copies, as shown here—a true copy, signed by the Secretary.

Q. Was a certified copy of that order recorded in your records?

A. Yes.

MR. HOWARD: Q. Mr. Riley, under the duties of the Collector of Customs it is necessary to determine the nationality of a vessel before it clears this port for a foreign port, is it not?

A. It is.

Q. And in order to determine that nationality you are interested in the registry of that vessel or provisional certificate?

A. Yes.

Q. And in making that determination is it necessary such a certificate of registry be produced signed by the Consul of that foreign government?

A. It does—signed by some official of the Government—of the nation to which the vessel—

MR. RESLEURE: May my objection stand to all of this line of testimony as to what is necessary or what is the practice? We have not had anything to show what was actually done in this particular case.

MR. HOWARD: This is preliminary. That is what I am leading up to.

THE COURT: He said someone. He did not say who.

MR. RESLEURE: I would like my objection to stand as to the custom and practice and what is necessary, and this witness' conclusions of what the international law is.

THE COURT: I don't know that this is supposed to be the law. It is supposed to—

MR. HOWARD: It is the practice of the office, rather than law.

THE COURT: He does not specify which it is. Proceed.

MR. HOWARD: Q. Do you recognize a registry or provisional registry issued by such a consul of this port at a foreign country?

A. Yes.

Q. In the case of the "Edna Christensen", after recording that bill of sale, did you receive any notice that a Chinese registry had been issued?

A. No, not until after the vessel — the master had come to clear it with a Japanese registry of—

Q. Do your records contain a letter from the Chinese Consul General notifying you of the issuance of Chinese registry?

A. On cancellation of the original certificate, because of sold alien.

Q. Did you receive a bill of sale showing sale to an alien?

A. Yes. I have recorded —

Q. Where is the document recorded?

A. 202 E. V. of Bills of Sale, page 85.

Q. Did you bring with you a certified copy of the bill of sale?

A. Yes, sir. (handing paper)

MR. HOWARD: We will offer this in evidence, if the Court please, being a certified copy of the bill of sale of enrolled vessel, recorded as indicated by the witness, as Petitioner's Exhibit 2, and ask it may be deemed read in evidence.

THE COURT: So received.

(The document was marked "Respondent's Exhibit 2.")

MR. HOWARD: Q. When an American registry or enrollment is surrendered, what is the practice with reference to the issuance of a new registry for such a vessel?

MR. RESLEURE: I will object to the question as to what the practice is.

MR. HOWARD: It is preliminary.

THE COURT: I will allow the question.

A. Will I answer?

MR. HOWARD: Q. Yes.

A. It all depends on the cause of the surrender of a document.

Q. When a vessel is sold to alien as indicated by your records, what would be the practice with reference to issuance of a new registry?

A. There would not be a new registry issued by our office. We would record the bill of sale if it was presented, but it is up to the consul of the nation to which the vessel is sold to issue a registry.

MR. RESLEURE: I will ask the last part of the answer as to what the duty of the consul of the nation is to which the vessel is sold. It is not responsive, and, after all, that is expressing an opinion of this witness on a matter of law—international law.

MR. HOWARD: I can lay a foundation. The witness is familiar with the practice.

THE COURT: Proceed.

A. Ownerships, mortgages, and liens.

Q. Pursuant to subpoena have you been requested to produce here your official records relating to the American Steamship "Edna Christensen"?

A. I have.

Q. Do your records show a certificate of enrollment and license for that vessel?

A. Yes.

Q. Will you produce that record, please?

A. The original?

Q. Yes.

A. Or the office copy?

MR. RESLEURE: I will stipulate that the original or the copy may go into evidence.

MR. HOWARD: Yes. We have a certified copy here, Mr. Resleure.

Q. Where do you find that record, Mr. Riley?

A. In volume 83 of Enrolled Vessels, page 316.

Q. Did you bring a certified copy of that record?

A. Yes.

Q. May I have it, please?

(Witness hands paper to Mr. Howard.)

MR. HOWARD: Do you wish to see this, Mr. Resleure?

MR. RESLEURE: Yes.

MR. HOWARD: We will offer a certified copy of the Consolidated Certificate of Enrollment and License as the Intervening Petitioner's Exhibit 1.

THE COURT: So received.

(The document was marked "Respondent's Exhibit 1.")

MR. HOWARD: We will ask it may be deemed read in evidence.

Q. Mr. Riley, I call you attention to an endorsement on this certificate of enrollment and license reading: "This document surrendered at San Francisco January 24, 1938, on account of sold alien, Chinese registry under Mar. Com. Order No. 2646." What caused that endorsement?

THE COURT: Are you going to put on evidence?

MR. HOWARD: Yes, your Honor, with your Honor's permission. Our evidence will relate first to the ownership of the vessel of the Yung Yuan Steamship Company at Chefoo, China, whatever the record will be as to its expropriation by the Chinese Government. Mr. Resleure, could we have the stipulation that on April 27th, 1938, the vessel was owned by the Yung Yuan Steamship Company, a Chinese corporation?

MR. RESLEURE: As far as I can go is that the Yung Yuan Steamship Company was a Chinese corporation of Chefoo, China.

HARVEY B. RILEY

Called for the Respondent;

Sworn.

MR. RESLEURE: If your honor please, before we go into the Intervenor's case I would like the record to show who that last witness was—that it was stipulated his testimony would be given a certain way. I think we ought to have that for the record.

THE COURT: No one has testified to who he was.

MR. RESLEURE: What are your initials, Mr. Hirota?

MR. HIROTA: Mr. Y. Hirota.

MR. RESLEURE: And your position is—

MR. HIROTA: A Consul.

MR. RESLEURE: Consul General in San Francisco?

MR. HIROTA: No.

MR. RESLEURE: Consul for Japan at San Francisco.

DIRECT EXAMINATION

MR. HOWARD: Q. What is your name?

A. Harvey B. Riley.

Q. Are you connected with the office of Collector of Customs?

A. I am.

Q. In what capacity?

A. Registry clerk, Marine Division.

Q. As such Registry Clerk do you have charge of or supervision over the records of the Collector of Customs, showing the registry of vessels in this port?

A. Yes, sir.

Q. What records does your office have in connection with vessels?

MR. RESLEURE: Mr. Howard and Mr. Stevenson, Mr. Hirota, of the Japanese Consulate, is in Court, and he can testify that he was on board the vessel subsequent to the loading of the cargo, and at that time the hatches were closed. He cannot testify unless he secures the consent of the Japanese diplomatic corps, or chief consul, and I want to know if you will stipulate if Mr. Hirota were called to the stand he would so testify?

MR. HOWARD: What date?

MR. RESLEURE: In March of 1938.

MR. HOWARD: We will so stipulate.

MR. RESLEURE: Will you also stipulate that demand has been made on you for the possession of this cargo, and that it has been refused?

MR. HOWARD: What do you mean by "demand"? You mean the suit?

MR. RESLEURE: Also the suit, and we request you, as representatives of the owner a number of times to give us the cargo. Will you stipulate?

MR. STEVENSON: I will say you told me you wanted your cargo if you stipulate I represent the owner.

MR. RESLEURE: I may stipulate as you are putting in the case—

MR. STEVENSON: Then I will make the stipulation.

THE COURT: The owner of what?

MR. RESLEURE: Of the vessel. I will stipulate that he represents the Yung Yuan Steamship Company.

MR. STEVENSON: I do not represent them. I have no connection with them. I represent the Chinese Government.

MR. RESLEURE: I don't just get the import.

MR. STEVENSON: If you are willing to stipulate I will make that stipulation. If you want to think it over it is all right.

MR. RESLEURE: I will think it over. That is our case, your Honor.

THE COURT: Less the depositions?

MR. RESLEURE: The other side took the depositions. They have not been returned.

MR. HOWARD: No.

ter for rebuttal.

THE COURT: Proceed, then.

MR. RESLEURE: I did not wish to bring Mr. Hulme here again, and, therefore, I would like to be able to bring it out now. You won't be able, as a matter of fact, to complete your case, so at this time I have to anticipate rebuttal on some matters. It would be easier for all concerned if I just asked this question.

MR. HOWARD: I think experience shows the orderly way is the best way of trying a case.

THE COURT: If you object I will sustain the objection.

MR. HOWARD: Yes, your Honor.

MR. RESLEURE: That is all.

MR. HOWARD: No questions.

MR. RESLEURE: We will have to call on you again, Mr. Hulme.

KOJI MATSUMOTO

Called for the Libelant;

Sworn.

MR. RESLEURE: Q. Mr. Matsumoto, what is your occupation?

A. Clerk of the Yokohama Specie Bank.

Q. And you are connected with the San Francisco Branch of the Yokohama Specie Bank, are you not?

A. Yes.

Q. Have you ever seen this document, Libelant's Exhibit 2, and also Libelant's Exhibit 3, before, which I introduced in evidence this morning?

A. Yes.

Q. Do you know how I got possession of these?

A. Yes. They came from Seattle Branch.

Q. They were sent from your Seattle Branch to you at the San Francisco Branch?

A. Yes, sir.

Q. And you gave them to me, is that correct?

A. That's right.

Q. You have never been on board the boat, have you?

A. No.

MR. RESLEURE: That is all.

MR. HOWARD: No questions.

THE COURT: I was thinking of the company, not of the vessel. Proceed.

MR. RESLEURE: The question I am leading up to—maybe there will be objections: Is there any reasonable expectation of that vessel moving to Japan with this cargo?

MR. HOWARD: That is objected to as incompetent, irrelevant, and immaterial.

THE COURT: I will sustain the objection.

MR. RESLEURE: Q. Do you know anything about a sale or an attempted sale to the Japanese—

A. Yes, I do.

Q. To the Japanese interests?

A. Yes, I do.

Q. About what time was that sale, or attempted sale, made? Was that in April?

MR. HOWARD: That is objected to as immaterial and no foundation laid.

THE COURT: What foundation do you want?

MR. HOWARD: If the Court please, there is no foundation.

THE COURT: What is the foundation that is lacking in your opinion?

MR. HOWARD: There is no materiality, if the Court please, at this time. There is no issue on the evidence as to ownership as yet. That is our case. On this case Mr. Resleure is simply proving his interest in a cargo on board. There is no materiality as to the ownership of the vessel at this point.

MR. RESLEURE: You are waving your objection there was no lack of foundation?

MR. HOWARD: No.

MR. RESLEURE: That there is no materiality?

THE COURT: Yes.

MR. HOWARD: Yes, that is the real objection, I think.

THE COURT: Just what is the difficulty?

MR. HOWARD: In other words, this would be a matter of rebuttal if admissible at all.

MR. RESLEURE: I think counsel is probably correct. It is a mat-

THE COURT: He said nothing at all.

THE WITNESS: I had not finished.

THE COURT: I will sustain it.

THE WITNESS: Will I answer?

THE COURT: No.

MR. RESLEURE: Q. In connection with a cargo of melting scrap what is done—with your experience can you tell us in regard to the hatches of the vessel?

A. The hatches are closed.

MR. HOWARD: The same objection. It is immaterial.

MR. RESLEURE: The question is can he tell us.

Q. You can tell from your experience?

A. Yes.

Q. What is done?

A. The hatches are closed tight, and left that way. Nothing else is done.

Q. Was there any other cargo besides melting scrap on that boat?

A. Not to my knowledge, no.

Q. Are you still agent for the Yung Yuan Steamship Company? I mean is your company, the General Steamship Company?

A. It is difficult to say. The ship has been sold apparently to Japanese and they told us to take orders—

MR. HOWARD: I object to the answer and move to strike it out as not responsive.

THE COURT: It goes out.

MR. RESLEURE: What is my question?

THE COURT: Read the question, Mr. Reporter.

(Question read.)

MR. HOWARD: I will also object to the question, your Honor, on the ground it is immaterial at this time.

THE COURT: He ought to know whether he is an agent or not.

MR. HOWARD: But the objection goes to the materiality; whether he is or not is immaterial at this time.

A. I am willing to answer we were the agents until they lately sold the vessel to the Japanese. We have been the agents of the Yung Yuan.

I will let him look at it now.

MR. HOWARD: I just want the understanding that the original would be available whenever necessary.

THE WITNESS: It is always available if anyone asks for it.

MR. RESLEURE: Mr. Hulme, can you tell us when the loading of the cargo commenced?

A. I would have to refer to my file to find that out. The correspondence is very voluminous on this. The captain served notice of his readiness to load on September 1st, as being ready on that date.

A. That was when he served notice as being ready. Now, I will have to find the exact day he started. I doubt if he started at that time. There was some delay in commencing loading, due to letter of credit difficulties. He didn't start on the 1st, anyway, although she was ready then. September 13th she started loading.

Q. When was the loading completed, Mr. Hulme?

A. That will be easy to find out. (Witness refers to papers.) What is the date of that bill of lading? It may help me to find this.

MR. RESLEURE: October 6th.

THE WITNESS: October 6th.

MR. RESLEURE: Q. Can you tell us that prior to the issuance of the bill of lading the loading was completed?

A. Oh, yse.

Q. And that would make it about October 6th?

A. Yes, before that, the 5th or the 6th.

Q. Then I won't bother to go through these papers. Were you, during the period of loading, on board the vessel?

A. Yes. The first, or second, or third day she was loading I was on board two or three times.

Q. Have you been on board the vessel since she was loaded?

A. No, I have not.

Q. With a cargo such as melting scrap, what is done for the protection of that cargo with regard to the hatches?

A. Nothing at all.

MR. HOWARD: That is objected to as incompetent, irrelevant, and immaterial.

Q. And you are still in that position?

A. Yes, I am still in that position.

Q. Are you acquainted with the facts relating to the chartering and loading of the "Edna Christensen" with this melting scrap?

A. Yes.

Q. Have you the original charter party with you, dated July 27, 1937?

A. Yes.

MR. RESLEURE: I think it might save time if we can have the stipulation that the copy is correct, subject to correction, if we just display this to Mr. Howard. (Handing paper to Mr. Howard.)

Q. By whom is this charter party signed, Mr. Hulme?

A. It is signed by myself on behalf of the owners at that time.

Q. By whom is it signed on behalf of the ship owners?

A. By Mr. Osawa, the Assistant Manager of Takahashi & Company.

Q. Is that his signature.

A. That seems to be it, yes.

MR. RESLEURE: We have already offered a copy of this document in evidence as Libelant's Exhibit No. 1.

Q. I will ask Mr. Hulme if this is a copy of the—a correct copy of the document?

A. Without checking it through, it seems to me—yes, it is. It is certified to as being a true copy of the original.

MR. RESLEURE: Can we have the complete stipulation as to Libelant's Exhibit No. 1, now that we have proved the original through Mr. Hulme?

MR. HOWARD: Yes, with the general stipulation in connection with any copies offered the original would always control as to corrections if necessary.

MR. RESLEURE: You have a copy of the original?

MR. HOWARD: No.

MR. RESLEURE: Mr. Hulme may be you can lend that to Mr. Howard for a while and he can make a comparison and you can have your record back.

THE WITNESS: I don't like to let the original out of my hands.

A. No, sir.

Q. As far as you, personally, knew at the time there wasn't any cargo on board the vessel? You did not know it, did you?

A. Not personally, sir, but the interpreter reading to the captain, or the second officer, the contents of the libel, it has always been my experience if there was no cargo or nothing to answer that description he would object and not take a copy of the libel.

Q. You did not know, yourself?

A. No.

Q. You didn't see any?

A. No.

Q. You did not ask them to open up the hold for you to look around?

A. No, sir.

MR. RESLEURE: May I ask, Mr. Stevenson, if there is any contention the cargo was not on board at the time, on April 23, 1938?

MR. STEVENSON: No.

MR. RESLEURE: Will you stipulate it was on board?

MR. STEVENSON: Yes. So stipulated.

MR. HOWARD: Yes.

THE COURT: I suppose if any one counsel says "Yes" to these matters he is speaking for the whole, there being two firms involved.

MR. RESLEURE: That is all.

MR. STEVENSON: That is all, your Honor.

ALLAN HULME,

Called for the Libelant:

Sworn.

MR. RESLEURE: Q. What is your residence, Mr. Hulme?

A. 240 Battery Street.

Q. And your occupation?

A. Ships broker.

Q. Have you any connection with the General Steamship Company?

A. Yes, I am manager of their charter department.

Q. You have held that position prior to — how long have you held that position?

A. About fifteen years.

Q. The libelant had not given you any funds to place a keeper on board, correct?

A. He didn't — of course, that would be given to the deputy in charge in the office. He didn't give the office any funds.

Q. You did not leave a keeper on board?

A. No, sir.

Q. This interpreter you went out with, was he an official of the Marshal's office?

A. No, sir.

Q. You don't speak Chinese?

A. No, sir, I don't.

Q. And the Chinese did not speak English?

A. No, sir.

Q. So you had to rely entirely upon the interpreter?

A. Yes, sir.

Q. As a matter of fact, the interpreter was furnished by Mr. Resleure, was he not?

A. Yes, sir, Mr. Resleure.

Q. When you went on board the vessel you just went up this wooden ladder and went immediately to the captain's cabin?

A. Yes, sir.

Q. And you handed this service or this paper to the second officer?

A. Yes, sir.

Q. I suppose the interpreter told you he was the second officer?

A. Yes, sir, he told me.

Q. But you tacked your notice on the cabin —

A. That's right.

Q. And you immediately left?

A. Not Immediately. It takes quite a while.

Q. After you completed that you left?

A. Yes.

Q. You did not go forward at all?

A. No, I proceeded right back to where the ladder was and climbed back onto the cutter.

Q. And you made no effort to put any notice on the cargo, itself?

is that correct?

MR. HOWARD: All except the last part. We will not stipulate officer on board at that time or moment.

MR. RESLEURE: That is satisfactory.

THE COURT: Of the vessel?

MR. HOWARD: Yes, your Honor.

MR. RESLEURE: Q. What was the condition of the vessel at the time you were on board, Mr. Ward, as to her hatches?

A. That is something I did not observe, Mr. Resleure. When I — I might say, your Honor, there was no — I found out since — they call a Jacob's Ladder on board, but there was merely a wooden ladder, and the Coast Guard cutter alongside, and as I proceeded up the ladder the boats began to separate and when I got on deck I was more than thankful to be on something more firm, and I proceeded immediately to the captain's cabin without looking either to the right or left at that time, so I am afraid I cannot say what the hatches were —

THE COURT: Open or closed?

A. I did not observe any at all, sir.

MR. RESLEURE: Q. You walked across the deck, didn't you, to get to the captain's cabin?

A. No. The captain's cabin was on the same side as we approached the vessel.

MR. RESLEURE: I wonder if I can have the stipulation after the cargo was loaded the hatches were closed and so remained, and still remain closed?

MR. HOWARD: There, again, that is a fact beyond my knowledge. I am not able to stipulate so.

MR. RESLEURE: Q. You didn't see any hatches open then?

A. I did not see any hatches at all, Mr. Resleure. That's about the size of it.

MR. RESLEURE: That is all, Mr. Ward.

CROSS EXAMINATION

MR. STEVENSON: Q. Mr. Ward, you did not place a keeper on board the vessel, did you?

A. No, sir, I did not.

of attachment, which was the Marshal's notice to the world of his attaching the vessel, beneath a similar attachment that had already been tacked onto the cabin, due to the fact that our notice had written in it that this second notice was subject to the first one, and I felt at the time that would be the proper place to show there was a relationship between the two notices.

THE COURT: Q. What was the first notice?

A. The seizure of the vessel; and I did not read the notice at the time, but our records show the seizure of the vessel—the attachment of the cargo and the other matters which are ordinarily printed in a libel.

THE COURT: On the cargo?

A. Yes, your Honor.

MR. RESLEURE: Will you stipulate that was the notice of seizure in connection with the libel for possession of the vessel?

MR. HOWARD: Put the monition in the other case in.

MR. STEVENSON: We will stipulate the monition in the other case may go in.

MR. STEVENSON: We will stipulate the monition in the other case is the monition which the witness referred to.

MR. RESLEURE: Suppose we introduce that monition and return as Libelant's No. 5.

THE COURT: So received. In what case?

MR. RESLEURE: That is case No. 22685-R.

(The documents were marked "Libelant's Exhibit 5.")

MR. RESLEURE: Q. You said something about the captain, if I heard you correctly.

A. I said the captain's cabin. The second officer was at that time, I was told, commanding the vessel, and the man to whom we always serve the libel—as the officer in charge on board at the time.

Q. And the highest officer in charge, as far as you know at that time, was the second mate?

A. Yes, sir.

MR. RESLEURE: We can have a stipulation here. I understand, Mr. Howard, that you will stipulate that the service of a copy of the monition was made on Chau Tsu Ming, and that he was the highest officer and in charge of the vessel at the time of the attempted seizure,

MR. HOWARD: I think the record will speak for itself. If it so shows, yes.

MR. RESLEURE: May I have the file? I understand the Marshal's return is in this first file.

(Clerk hands papers to Mr. Resleure.)

MR. RESLEURE: We will offer in evidence the process of monition issued by this Court on April 22, 1938, together with the Marshal's return, signed by Bernard J. Ward, Deputy, showing the service made on the "Kwang Yuan" as Libelant's Exhibit 4.

MR. HOWARD: I have no objection to the document, itself. It is part of the Court records here, but I think the document will speak for itself as to what it is.

THE COURT: No. 4, then, in evidence.

(The document was marked "Libelant's Exhibit 4.")

MR. RESLEURE: May I call Mr. Ward to the stand now?

BERNARD J. WARD, Jr.,

Called for the Libelant;

Sworn.

MR. RESLEURE: Q. What is your occupation, Mr. Ward?

A. Deputy United States Marshal.

Q. Do you remember serving a process on the melting scrap here involved on board the "Edna Christensen" or the steamship "Kwang Yuan."?

A. Serving it?

Q. Yes.

A. Yes, I remember going out there.

Q. Will you tell the Court just what you did on that occasion of that service?

A. I proceeded to contact the Coast Guard cutter at the Fisherman's Wharf pier, and the cutter proceeded out to the vessel and we boarded the vessel, and after coming on board, why, we proceeded to what I was told by the interpreter with me was the captain's cabin, and the Chinese are very hospitable, and before we could do any official business we had to drink some chocolate with the captain and the other members of the crew seated there, and then I served the copy of the libel and monition on the second officer, and the interpreter read to the second officer the contents of the libel, and then I proceeded to tack the public notice

MR. HOWARD: That will be a matter of proof.

MR. RESLURE: It is in Japanese. Then we will offer as Libelant's Exhibit 2, the charter party being Libelant's No. 1, two original copies of bill of lading No. 1 covering 1108.5936 tons of 2240 pounds of No. 2 melting scrap.

THE COURT: So received, in evidence.

(The documents were marked "Libelant's Exhibit 2.")

MR. RESLURE: Will you stipulate, Mr. Howard, that there were only two bills of lading—two original bills of lading issued?

(Mr. Resleure hands paper to Mr. Howard.)

MR. HOWARD: I think that will speak for itself. I think the bill of lading will speak for itself.

MR. RESLEURE: We will now offer a second set of duplicate bills of lading entitled "Bill of Lading No. 2" covering 984.1473 tons of 2240 pounds No. 1 melting scrap, as Libelant's Exhibit 3.

THE COURT: So received.

(The documents were marked "Libelant's Exhibit 3.")

MR. HOWARD: That is also signed by Mr. Kawano, is it?

MR. RESLEURE: Yes, this is also the same signature. Will you stipulate, Mr. Howard, that the loading of the scrap commenced at Oakland on September 11, 1937, and was completed on October 6, 1937—the date of the bills of lading?

MR. HOWARD: That is a thing beyond our knowledge.

MR. RESLEURE: I think we can prove it by Mr. Hulme. Will you stipulate that those bills of lading were received by Takahashi & Company and delivered to the Yokohoma Specie Bank?

MR. HOWARD, No, we cannot so stipulate, because we have no knowledge on the subject.

MR. RESLEURE: Will you stipulate that since those bills of lading were issued the vessel has been in the harbor of San Francisco and has not made any step toward completing her voyage?

MR. HOWARD: We will stipulate the vessel has been in the harbor since this time.

MR. RESLEURE: And is still here.

MR. RESLEURE: Will you stipulate the libel here was filed on April 22, 1938?

Yokohoma Specie Bank is a Japanese corporation, and Mr. Reslure in turn will stipulate that the Yung Yuan Steamship Co. is a Chinese corporation.

THE COURT: Yes. Will you stipulate that on or about July 27, 1937 T. Takahashi & Company, of Seattle, Washington, entered into a charter party with the Yung Yuan Steamship Co. for the transportation of this merchandise involved from San Francisco to Osaka on board the "Edna Christensen"?

MR. HOWARD: That is a subject on which we have no information, so obviously we are not in a position to stipulate.

MR. RESLURE: Suppose at that point we call a witness. I will offer in evidence a copy of that charter party of July 27, 1937, and Mr. Howard will stipulate that this may go in at the present time subject to Mr. Hulme proving the original charter party and Mr. Howard—

MR. HOWARD: So stipulated.

THE COURT: It will be received, then, as Libelant's Exhibit No. 1. (The document was marked "Libelant's Exhibit 1.")

MR. RESLURE: Will you stipulate, Mr. Howard, that thereafter T. Takahashi & Company delivered the cargo to the Yung Yuan Steamship Company at Oakland for shipment on board the "Edna Christensen", and that the 2100 tons of cargo of melting scrap were actually loaded on board the vessel.

MR. HOWARD: Of course, these are facts entirely beyond our knowledge, your Honor, and therefore we are not in a position to stipulate.

MR. RESLURE: All right. I show you the two bills of lading issued, in duplicate. (Handing papers to Mr. Howard.)

MR. HOWARD: If the Court please, in connection with this request for a stipulation, the document Mr. Reslure desires to introduce is signed by Y. Kawano, as Master of the vessel. We also have a letter signed by Mr. Kawano which we will desire to offer in evidence, and we offer the stipulation that we will stipulate to the signature of Mr. Kawano on both documents.

MR. RESLURE: Yes. I am perfectly willing to stipulate that this is the same signature. Of course, I cannot stipulate to the contents of the document.

THE COURT: Then there is the issue of the ownership of the vessel. It is just like a warship and I do not know who has authority to go on board.

MR. HOWARD: Our proofs will be directed to those two issues, the previous Chinese ownership and the expropriation while owned by a Chinese citizen.

THE COURT: I think you could almost make a legal issue of this, except it was the illegal and —

MR. HOWARD: I think it will resolve itself into that.

THE COURT: So as to shorten the proceeding.

MR. RESLEURE: I will attempt, as I go along with the very brief proof I have, to secure stipulations to save time.

THE COURT: As I recall it, there was a proceeding before Judge Roche where the Marshal had seized or intended to seize the ship.

MR. HOWARD: Yes. This proceeding only affects the cargo.

MR. RESLEURE: And the real point in this case, as I understand it, or the main point, is simply whether the formal seizure, that is, a definite seizure by the Marshal, not being followed by the actual placing of the keeper on board, gives this Court jurisdiction.

THE COURT: There comes the question of whether you could go upon the ship of another country to secure what is yours on the ship, even though it is yours, and it would be proven to be yours. Can you go on foreign territory to get it?

MR. RESLURE: Long before the Chinese attempted to expropriate this boat, if they had done so, the Court had jurisdiction over the matter.

THE COURT: We had better put in the proof. Those are the only issues, as I recall.

MR. HOWARD: Yes.

THE COURT: It would seem to me it would shorten the matter very much if we could —

MR. RESLURE: I understand counsel stipulate that the Yokohoma Specie Bank, Ltd., is a corporation organized under the laws of the Empire of Japan, is that correct?

MR. HOWARD: Yes, your Honor. In a discussion yesterday we arranged to certain stipulations, one that we would so stipulate the

MR. RESLEURE: No, we have not. That is the object now.

MR. HOWARD: I presume, then, Mr. Resleure will present his proofs on his libel and then the question of the intervening petition will arise.

THE COURT: This was a case of a boat which had a Chinese crew, and the officers of which were Japanese?

MR. HOWARD: Yes.

THE COURT: I do remember that.

MR. RESLEURE: It is the same matter, and I doubt whether any opening statement is necessary. We simply intend to prove at this time that the cargo on board the "Edna Christensen", or "Kwang Yuan", is owned by the Yokohama Specie Bank, and also that it was loaded, or, rather, the loading was completed on October 6, 1937, and the vessel was not moved, and did not arrive at her intended destination, and we are entitled to the possession at this time. That is the Libelant's entire case, except to anticipate a possible defense of immunity, which we will have to do at this time, because the depositions are not yet back from China, and we will show that the libel was filed in this case on April 22nd, 1938, and the cargo was formally seized by the United States Marshal on April 23rd, and at that time the method of service was to serve the second mate, who was the highest officer in command, and that the notice of seizure has been on the vessel, and not on the cargo, but it was the practical thing to do. I assume your Honor is familiar with all the material?

THE COURT: Yes.

MR. HOWARD: I will make a brief statement at the time the evidence is directed towards our intervening petition.

THE COURT: I assume a great deal of this could be stipulated to, could it not?

MR. RESLEURE: I think we will have—

MR. HOWARD: I think we will be able to make some stipulations.

THE COURT: As I understood the prior hearing, the only issue was as to whether the Marshal—as to whether or not it came under his control.

MR. HOWARD: Yes, your Honor, and under the petition the question arises of the ownership of the vessel and its expropriation.

IN THE SOUTHERN DIVISION OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT
OF CALIFORNIA, IN ADMIRALTY

YOKOHAMA SPECIE BANK, Ltd.,
a corporation,

Libelant,

vs.

2100 Tons of melting scrap on board the steam-
ship "Edna Christensen".

Respondent.

REPORTER'S TRANSCRIPT

Appearances :

For Libelant :

J. F. RESLEURE, Esq.

For Respondent :

J. M. HOWARD, Esq.

HUGH K. MCKEVITT, Esq.

Messrs. HENGSTLER, DORR & STEVENSON,
by ARCHIE M. STEVENSON, Esq.

TUESDAY, SEPTEMBER 20, 1938

THE COURT: You may proceed.

MR. HOWARD: May it please the Court, your Honor will recall some of the issues in this matter on account of the motion which was addressed to the pleadings and presented to you some weeks ago. I do not know whether you submitted formal proof on your case or not.

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that the testimony and depositions of the Director of the Department of Commerce, Ministry of Economics, or any assistant or deputy in charge of the records thereof, of the Republic of China, the Director of the Department of Shipping & Navigation, Ministry of Communications or any assistant or deputy in charge of the Records thereof, of the Republic of China, and the Secretary-General of the Military Council, or any assistant or deputy in charge of the Records thereof, of the Republic of China, witnesses on behalf of His Excellency, Changting T. Wang, Ambassador of the Republic of China to the United States of America, may be taken under oath before his Excellency, the Ambassador of the United States of America to the Republic of China, or any official connected with the Embassy of the United States of America to the Republic of China, upon direct interrogatories and cross-interrogatories annexed hereto.

IT IS FURTHER STIPULATED AND AGREED that when the said interrogatories and cross-interrogatories are asked and the answers thereto are written up they shall be returned to the Clerk of the United States District Court for the Southern Division of the Northern District of California, at San Francisco, California, and they may be opened to the inspection and use of either party and offered in evidence by either party at the trial of the above entitled cause.

Dated: August 29, 1938.

IN THE SOUTHERN DIVISION OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT
OF CALIFORNIA, IN ADMIRALTY

YOKOHAMA SPECIE BANK, Ltd.,
a corporation,

Libelant,

vs.

2100 Tons of melting scrap on board the steam-
ship "Edna Christensen".

Respondent.

J. F. RESLEURE

Proctor for Libelant

HENGSTLER, DORR & STEVENSON

HUGH K. McKEVITT

Proctors for His Excellency Changting T.
Wang.

STIPULATION FOR TAKING DEPOSITIONS OF THE DIRECTOR OF THE DEPARTMENT OF COMMERCE, MINISTRY OF ECONOMICS, OR ANY ASSISTANT OR DEPUTY IN CHARGE OF THE RECORDS THEREOF, OF THE REPUBLIC OF CHINA, THE DIRECTOR OF THE DEPARTMENT OF SHIPPING AND NAVIGATION, MINISTRY OF COMMUNICATIONS OR ANY ASSISTANT OR DEPUTY IN CHARGE OF THE RECORDS THEREOF, OF THE SECRETARY GENERAL OF THE NATIONAL MILITARY COUNCIL, OR ANY ASSISTANT OR DEPUTY IN CHARGE OF THE RECORDS THEREOF, OF THE REPUBLIC OF CHINA UPON WRITTEN INTERROGATION.

IN THE SOUTHERN DIVISION OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT
OF CALIFORNIA, IN ADMIRALTY

YOKOHAMA SPECIE BANK, Ltd.,
a corporation,

Libelant,

vs.

2100 Tons of melting scrap on board the steam-
ship "Edna Christensen".

Respondent.

NOTICE OF TRIAL

To the Intervenor, Changting T. Wang, Ambassador of the Republic of China to the United States of America, and to his agent C. C. Huang, Consul General of the Republic of China at the City and County of San Francisco, State of California, and to Hugh K. McKevitt, Esq., and Messrs. Hengstler, Dorr & Stevenson, their proctors:

You and each of you will please take notice, and you are hereby notified that on August 8, 1938, the above entitled court made its order herein setting the above case for trial on Tuesday, September 20, 1938, at the hour of 10 o'clock A. M. on said day, or as soon thereafter as counsel may be heard, at the court room of the above entitled court before the Hon. Harold Louderback, room 258, Post Office Building, San Francisco, California.

Dated August 10, 1938.

J. F. RESLEURE
Proctor for Libelant

IN THE SOUTHERN DIVISION OF THE UNITED STATES
DISTRICT COURT IN AND FOR THE NORTHERN
DISTRICT OF CALIFORNIA, IN ADMIRALTY

YOKOHAMA SPECIE BANK, Ltd.,

a corporation,

Libelant,

vs.

2100 Tons of melting scrap on board the steam-
ship "Edna Christensen",

Respondent.

NOTICE OF MOTION TO SET FOR TRIAL

To the Intervenor, Chengting T. Wang, Ambassador of the Republic of China to the United States of America, and to his agent C. C. Huang, Consul General of the Republic of China at the City and County of San Francisco, State of California, and to Hugh K. McKevitt, Esq., and Messrs. Hengstler, Dorr & Stevenson, their proctors:

You and each of you will please take notice, and you are hereby notified, that on Monday, August 1, 1938, at the hour of 10 o'clock A. M. on said day, or as soon thereafter as counsel may be heard, in the courtroom of the above entitled court, before the Honorable Walter C. Lindley, Judge of said court, libelant herein will move the above entitled court for an order setting the above case for trial.

Said motion will be based upon this notice of motion and upon the ground that said cause is now at issue and ready for trial.

Dated July 28, 1938.

J. F. RESLEURE

Proctor for Libelant

GOOD CAUSE APPEARING, it is hereby ordered that time for service of this Notice of Motion to Set for Trial shall be shortened to and including July 28, 1938.

WALTER C. LINDLEY

Judge

IN THE SOUTHERN DIVISION OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT
OF CALIFORNIA, IN ADMIRALTY

YOKOHAMA SPECIE BANK, Ltd.,
a corporation,

Libelant,

vs.

2100 Tons of melting scrap on board the steam-
ship "Edna Christensen".

Respondent.

ORDER

ORDER on motions to strike pleadings in intervention, motion for Ambassador to intervene, and motion for possession.

The motion to strike pleadings in intervention is denied.

The motion for the Ambassador to intervene is granted.

The motion for possession of certain cargo is based upon an alleged seizure by the United States Marshal on April 23rd, 1938. The seizure was attempted by posting a notice of seizure on the vessel, and handing a copy to the second officer. No keeper was placed on board, and no notice of seizure was posted on the cargo itself, sought to be thus seized.

The Court finds that there has not been, and there is no now possession of said cargo in the United States Marshal, which would warrant a court order directing the Marshal to deliver possession to the applicant.

THEREFORE, the motion for possession is denied.

United States District Judge.
HAROLD LOUDERBACK

June 8th, 1938

AFFIDAVIT

STATE OF CALIFORNIA,
City and County of San Francisco

C. C. HUANG, being first duly sworn, deposes and says:

That he is the Consul General of the Republic of China at the City and County of San Francisco, State of California, and the agent of Chengting T. Wang, Ambassador of the Republic of China to the United States of America; that he has received authorization and instructions from said Chengting T. Wang, Ambassador, to appear for and intervene in behalf of said Ambassador in the above entitled cause; that said Chengting T. Wang is the duly accredited and acting Ambassador of the Republic of China to the United States of America and resides in the City of Washington, District of Columbia, which is outside the jurisdiction of this Honorable Court; that said affiant has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters that he believes it to be true.

C. C. HUANG

Subscribed and sworn to before me this
19th day of May, 1938

EDITH GOEWY

Notary Public in and for the City and
County of San Francisco, State of
California.

was at all of the times herein mentioned, and now is, a National vessel duly owned by the Republic of China flying the flag of the said Republic, and in possession, control, and direct management thereof.

That by reason of the National character of said steamship Kwang Yuan this Honorable Court has no jurisdiction over said vessel, its engines, machinery, gear, or appurtenances, or its movements, or over the crew of said vessel, who are Nationals of the Republic of China and are now on board said vessel.

That said steamship Kwang Yuan is not a party to the above entitled cause, and this Honorable Court has no jurisdiction over said vessel, its engines, machinery, gear, or appurtenances, or its movements.

WHEREFORE, Chengting T. Wang, Ambassador of the Republic of China to the United States of America, expressly asserts the immunity of said steamship Kwang Yuan from the jurisdiction of this Honorable Court, and respectfully prays this Honorable Court to take no action in the above entitled cause that will prejudice the interests of the Republic of China with respect of said vessel, or the ownership, management, or possession thereof, or that will cause or direct said vessel to be moved, or that will cause or direct the gear, engines, or machinery of said vessel to be operated, disturbed, or used in any manner whatsoever, or that will permit or direct any person to go on board said vessel without the permission of the Republic of China

HUGH K. McKEVITT
HENGSTLER, DORR & STEVENSON
Proceors for Chengting T. Wang, Amba-
sador of the Republic of China to the
United States of America.

IN THE SOUTHERN DIVISION OF THE UNITED STATES
DISTRICT COURT IN AND FOR THE NORTHERN
DISTRICT OF CALIFORNIA, IN ADMIRALTY

YOKOHAMA SPECIE BANK, Ltd.,
a corporation,

Libelant,

vs.

2100 Tons of melting scrap on board the steam-
ship "Edna Christensen".

Respondent.

AUTHORIZED FILING OF PETITION IN INTERVENTION

Comes now Chengting T. Wang, Ambassador of the Republic of China to the United States of America, by and through his agent C. C. Huang, Consul General of the Republic of China at the City and County of San Francisco, State of California, and appearing specially files this supplemental petition in intervention in the above entitled cause, and in that behalf alleges as follow:

I.

That petitioner is the duly accredited and acting Ambassador of the Republic of China to the United States of America.

II.

That the steamship Kwang Yuan, referred to in the libel on file in the above entitled cause as the steamship Edna Christensen,

IN THE SOUTHERN DIVISION OF THE UNITED STATES
DISTRICT COURT IN AND FOR THE NORTHERN
DISTRICT OF CALIFORNIA, IN ADMIRALTY

YOKOHAMA SPECIE BANK, Ltd.,
a corporation,

Libelant,

vs.

2100 Tons of melting scrap on board the steam-
ship "Edna Christensen".

Respondent.

MOTION FOR ORDER OF SUBSTITUTION AND FOR ORDER
AUTHORIZING FILING OF PETITION IN INTERVENTION

Comes now Chengting T. Wang, Ambassador of the Republic of China to the United States of America, and moves the above entitled Court for an order authorizing said Ambassador to be substituted in the petition in intervention heretofore filed in the above entitled cause in the place and stead of C. C. Huang, as Consul General of the Republic of China at San Francisco, California, and for an order authorizing said Ambassador to file a supplemental petition in intervention in the above entitled cause, a copy of said supplemental petition in intervention being hereunto annexed and made a part hereof.

Dated: San Francisco, California, May 19, 1938.

HENGSTLER, DORR & STEVENSON
HUGH K. McKEVITT

Proctors for Changting T. Wang, Amba-
sador of the Republic of China to the
United States of America.

AFFIDAVIT

STATE OF CALIFORNIA,
City and County of San Francisco

W. K. MORDOCK, being first duly sworn, deposes and says:

That he is an attorney at law duly admitted to practice in the above entitled court, and employed by Hengstler, Dorr & Stevenson, proctors for the petitioner in intervention in the above entitled cause; that on the 18th day of May, 1938, affiant examined the return of the Marshal heretofore filed in the above entitled cause, and conferred with the Deputy Marshal in charge of said matters in the office of the United States Marshal for the Northern District of California, in the Post Office Building, Seventh and Mission Streets, San Francisco, California; that it appears from the return of the Marshal on file in the above entitled cause that said 2100 Tons of melting scrap was never seized by said Marshal by attaching a copy of said notice of seizure on said melting scrap, and that said melting scrap was not at any time taken into possession by said Marshal; that said affiant was informed and believes that neither said vessel nor said scrap is now, or at any time has been in the possession or control of said United States Marshal.

WM. K. MORDOCK

Subscribed and sworn to before
me this 19th day of May, 1938.

EDITH GOEWEY

Notary Public in and for the City and
County of San Francisco, State of
California.

EXHIBIT "B"

DEPARTMENT OF STATE
WASHINGTON

May 6, 1938

My dear Mr. Ambassador:

I have received your notes of April 6 and 27, 1938, in regard to the status of the S. S. Kwang Yaun, which has been lying in the port of San Francisco.

Copies of your notes have been forwarded to the United States Maritime Commission and to the Department of Commerce for their information. As of possible interest I enclose a copy of the decision rendered by the Supreme Court of the United States on January 31, 1938, in the case of Compania Espanola De Navigacion Maritima, S. A., Owner of the Spanish Steamship "Navemar", Petitioner, vs. Spanish Steamship "Navemar", Her Engines, etc., et al.

I am my dear Dr. Wang,

Sincerely yours,

/S/ ROBERT M. MOORE

Enclosure:

Copy of Supreme
Court Decision.

195.2/354,3438

EXHIBIT "A"

DEPARTMENT OF STATE

May 14, 1938

My dear Mr. Ambassador:

I have received your note dater May 9, 1938 stating that there are now two actions pending in the United States District Court at San Francisco, California, involving the S. S. *Kwang Yuan* which are entitled respectively *Mokunosuke Kotani, et al., vs. Chau Tsu Ming, et al.*, No. 22685-R, and *Yokohama Specie Bank, Ltd., vs. 2100 tons of melting scrap*, No. 22697-L. As the vessel has been expropriated by the Chinese Government, you request me to notify the Department of Justice of this action so that the United States District Court for the Northern District of California, Southern Division, may be duly informed accordingly.

In reply you are advised that it is the practice of this Department in cases of this character to refrain from taking any action which might constitute an interference by the Executive authorities of this Government with a judicial determination of the merits of the controversy. As you will observe from an examination of the decision of the Supreme Court of the United States in the case of *Compania Espanola De Navegacion Maritima, S. A., Owner of the Spanish Steamship "Navemar", Petitioner, vs. Spanish Steamship "Navemar", Her Engines, etc., et al.*, a copy of which was transmitted with the Department's note of May 8, 1938, you as a representative of your Government, have the right to appear directly before the court considering this case in order to present evidence regarding the ownership and right to possession of this vessel.

I am, my dear Dr. Wang,

Sincerely yours,

/S/ R. WALTON MOORE

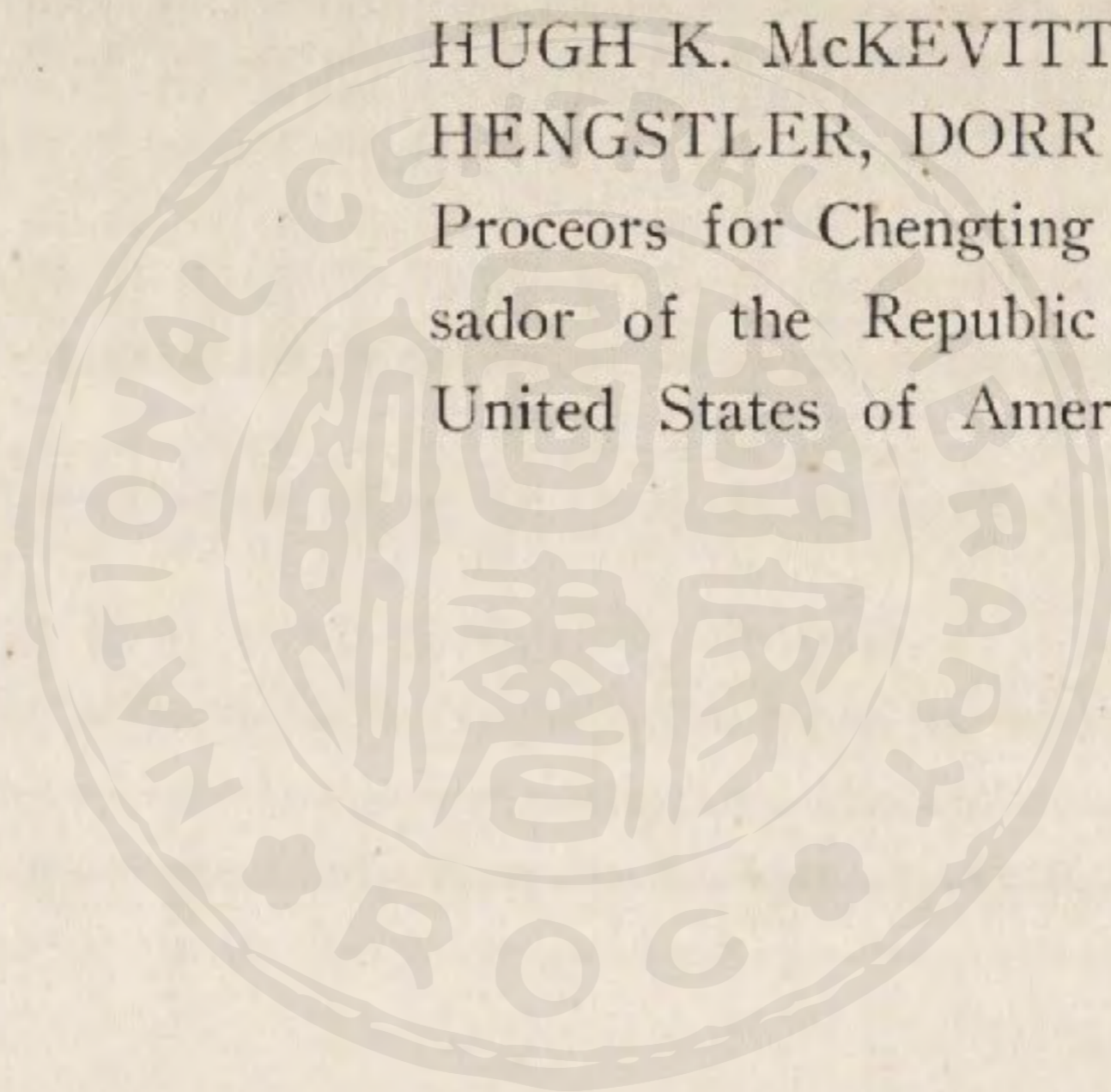
His Excellency

Dr. Changting T. Wang
Chinese Ambassador.

An important question of international law is presented in the instant case involving the sovereignty of a friendly foreign government that should not be decided summarily upon an oral motion to dismiss which is predicated upon an *ex parte* motion.

It is respectfully submitted that the motion of His Excellency, the Chinese Ambassador, to be substituted in the place and stead of the Consul General should be granted and libelant's motion to strike and for an order for delivery of the cargo should be denied.

HUGH K. McKEVITT
HENGSTLER, DORR & STEVENSON
Proceors for Chengting T. Wang, Amba-
sador of the Republic of China to the
United States of America.



Attorney-General, a bill was filed in foreclosure a mortgage after the court refused a foreclosure against the crown, but directed that the mortgages should hold and enjoy the mortgaged premises until the crown thought proper to redeem the estate.

“In *Hodge v. Attorney-General*, the deeds of certain leasehold estates had been deposited by one Bailey with the plaintiffs, who were bankers, to secure a balance of a running account between him and them. Bailey was afterwards convicted of felony, and the leasehold estates vested in the crown. At the time of his conviction he was indebted to the plaintiffs, who filed a bill against the attorney-general, claiming to be equitable mortgages of the leasehold estates, to subject the property to sale, and the application of the proceeds to the payment of the amount due them. But the court said that the only decree which could be made in the case was to declare the plaintiffs to be equitable mortgagees of the property, to direct an account to be taken, and that the plaintiffs hold possession of the property until their lien was satisfied. ‘I do not think,’ said Baron Alderson, in giving the decision, ‘that I have any jurisdiction in this case to order a sale. Here the legal estate is vested in the crown; and I do not know any process by which this court can compel the crown to convey that legal estate.’”

“In this country, where, as a general rule, a mortgage is treated as a lien or incumbrance, and the mortgagor retains possession of the premises, the relief granted in the two cases cited would be of no avail.

“*The authorities to which we have referred are sufficient to show that the existence of a claim, and even of a lien upon property, is not always dependent upon the ability of the holder to enforce it by legal proceedings.*”

In *The Luigi*, 230 F. 493, the Court, in holding that an Italian government ship was not subject to the jurisdiction of a United States Court, said (p. 496):

“It is far more important for the courts of the United States to recognize the international rule of comity that an independent sovereign cannot be personally sued, * * * than it is to take cognizance of private rights, if, by so doing, that rule is violated.”

Libelant does not dispute the fact that the vessels of a friendly foreign government are not subject to the jurisdiction of the United States courts, and it can not, since the Supreme Court, in *Berizzi Brothers Co. v. S. S. Pesaro*, 271 U. S. 562, expressly upheld the immunity of vessels of foreign governments from the jurisdiction of the courts of the United States.

and cannot be decided at this time.

Libelant would have the Court believe that the instant case is unusual. There are many situations where a person may have a right against a sovereign, but be unable to exercise his right because of the immunity of the sovereign from suit or from the enforcement of an order of the court.

In *The Siren*, 7 Wall. 152, the Supreme Court said (pp. 156-8):

“The inability to enforce the claim against the vessel is not inconsistent with its existence.

“Seaman’s wages constitute preferred claims, under the maritime law, upon all vessels; yet they cannot be enforced against a vessel of the nation, or a vessel employed in its service. In a case before the Admiralty Court of Pennsylvania, in 1781, it was adjudged, on a plead to the jurisdiction, that mariners enlisting on board a ship of war belonging to a sovereign independent state could not libel the ship for their wages.

“In a case in the English Admiralty Court, a libel having been filed to enforce a claim for seamen’s wages against a packet ship employed in the service of the General Post Office, Sir William Scott declined to take jurisdiction until notice was given to the Post Office Department, and he was informed that no objection was taken to the proceeding. The fact that the court took jurisdiction when the exemption, upon which the government could insist, was waived, shows that a claim against the vessel existed, as only upon its existence could the libel in any event be sustained.

“Even where claims are made liens upon property by statute, they cannot be enforced by direct suit, *if the property subsequently vest in the government*. Thus in Massachusetts the statutes provide, that any person to whom money is due for labor and materials furnished in the construction of a vessel in that commonwealth, shall have a lien upon her, which shall be preferred to all other liens except mariners’ wages, and shall continue until the debt is paid, unless lost by a failure to comply with certain specified conditions; yet in a recent case, where a vessel subject to a lien of this character was transferred to the United States, it was held that the lien could not be enforced in the courts of that State. The decision was placed upon the general exemption of the government and its property from legal process.

“So also express contract liens upon the property of the United States are incapable of enforcement. A mortgage upon property, the title to which had subsequently passed to the United States, would be in the same position as a claim against a vessel of the government, incapable of enforcement by legal proceedings. The United States, possessing the fee, would be an indispensable party to any suit to foreclose the equity of redemption, or to obtain a sale of the premises. In *Lutwich v. The Attorney-General*, a case cited by Lord Hardwicke in deciding *Reeve v.*

instructions of the libelant the marshal did not seize the tug, but, with the acquiescence of all the parties in interest, she remained in the possession of Christian. Of this, I may here say, none of the owners, under the circumstances of the case, have any right to complain.

“But it is said that the marshal’s return shows an attachment of the vessel. I do not think so. True, the language of the return is, ‘attached the steam-tug Anna P. Dorr.’ But how? ‘By serving a copy of this writ at residence of Captain E. F. Christian on wife.’ But such service of the writ was not an attachment or seizure of the vessel.”

That case is strikingly similar to the instant one. In both cases the Marshal did not take possession or seize the property.

In *Leland v. Wescott*, 260 F. 343 (D. C. Maine), the court held that there was no valid attachment of a vessel when the deputy sheriff did not exercise any dominion over her.

Since the Marshal did not take possession or seize the cargo, the alleged seizure was not effective, and consequently neither the *vessel* nor the cargo was in the possession of this Court or of the Marshal when the Chinese Government expropriated and took possession of the Kwang Yuan.

An analysis of every case cited by the libelant shows clearly that instead of supporting the position taken by it in this case they uphold the position of the Chinese Government. In all of libelant’s cited cases the property was *actually* in possession of the court, and not in the possession of the sovereign. As pointed out in *The Davis*, 10 Wall. 15, the court held that the sovereign must have actual possession rather than constructive possession of the property at the time the court assumes *actual* possession of the property to assert its immunity effectively. This is necessary in order to avoid a conflict between the officers of the court and the officers of the government. For the same reasons the court must have actual, rather than constructive, possession when the government asserts its sovereignty.

Here the court did not have any possession over the ship or the cargo, and consequently libelant cannot now claim that the possession of the Government of China, which was asserted immediately upon the expropriation of the ship, did not effectually remove the Kwang Yuan from the jurisdiction of this Court.

Furthermore, we again reiterate that this is a matter of proof

other suits and proceedings in rem, the process, if issued and unless otherwise provided for by statute, shall be by a warrant of arrest of the ship, goods, or other thing to be arrested; *and the marshal shall thereupon arrest and take the ship, goods, or other thing into his possession * * *.*”

In *The Rio Grande*, 23 Wall, 458, the Supreme Court said (p. 464):
 “it follows that to give jurisdiction in rem there must have been a valid seizure and *an actual control* of the ship by the marshal of the court.”

In *Brennan v. Steam-Tug Anna P. Dorr*, 4 F. 459 (W. D. Penn.), the court said (pp. 459-62):

“The fact of the case, as they now appear to the court, are as follows: On October 27, 1875, Patrick Brennan, an owner of the one-fourth of said tug, filed in rem for her sale, and the division of the proceeds between himself and his co-owners, Christian & Carse. To the process which then issued the marshal made a return in these words: ‘November 3, 1875, attached the steam-tug Anna P. Dorr, her tackle, apparel, furniture, etc., by serving a copy of this writ, personally, on John Carse, part owner of same, and by serving, November 5, 1875, a copy of this writ at residence of Capt. E. F. Christian on wife.’

* * * * *

“From the evidence now before the court it appears that the marshal did not arrest or take possession of the tug by virtue of said process. He was instructed by the libelant’s proctors not to arrest her, but simply to serve a copy of the writ upon Christian & Carse, and these instructions he obeyed. At the time of the libel was filed the tug was in possession of Christian, and she remained in his possession as fully after the service of the writ as before; and down until May 12, 1877, the tug was run by Christian in and about the harbor of Erie, and upon the lake, in her ordinary business. During all this time no further step was taken in this suit.

* * * * *

“In *Miller v. United States*, 11 Wall. 294, it is said: ‘In revenue and admiralty cases a seizure is undoubtedly necessary to confer upon the court jurisdiction over the thing when the proceeding is in rem. In most of such cases the res is movable personal property, capable of actual manucaption. Unless taken into actual possession by an officer of the court, it might be eloigned before a decree of condemnation could be made, and thus the decree would be ineffectual. It might come into the possession of another court, and thus there might arise a conflict of jurisdiction and decision if actual seizure and retention of possession were not necessary to confer jurisdiction over the subject.’

“In the present case it is certain that there was no actual seizure of the tug by the marshal under the original process issued out of this court. Acting in accordance with the express

expropriation of said vessel has been, on board. Furthermore, the Republic of China is in exclusive possession and control of said vessel.

(4) None of the crew of said vessel are in want or starving.

Thus, it appears that there is no basis for the irrelevant statements contained in libelant's memorandum.

Libelant's final point is that the Chinese Government cannot claim its immunity unless it was actually in possession of the vessel prior to the time the United States Marshal took possession of the cargo.

While the question of possession is a matter of proof and cannot properly be disposed of summarily on a motion such as is now presented to the Court, nevertheless libelant's argument is not sound because in the instant case the United States Marshal has never seized or taken into possession the cargo or the ship. The vessel is not a party to the cause, and there has been no attempt on the part of the libelant to seize or affect the vessel with process. It is to be clearly borne in mind that the claims of immunity here arises with relation to the vessel. As will appear from the cases hereinafter cited, there may be a right against the vessel or its cargo, but because of the immunity of the friendly sovereign from suit it cannot be asserted or enforced. However, since neither the ship nor the cargo is now, or at any time has been, in the possession of the Marshal, the authorities relied upon by the libelant are not in point.

It appears from the affidavit of W. K. Mordock on file herein, that the attempted seizure of the twenty-one hundred tons of melting scrap was ineffective. At no time did the Marshal take possession of the cargo. All he did was to post a notice of seizure on the vessel and to hand a copy of the same to the second officer. No keeper was placed on board the ship, and no notice of seizure was attached to the scrap. It would have been just as effective, as far as a valid seizure is concerned, if the Marshal had posted a notice of the seizure on one of the piers in San Francisco and handed a copy of the same to the first person he saw walking along the Embarcadero.

Admiralty Rule 10 of the United States Supreme Court provides in part as follows (28 U. S. C. A., p. 393):

“Process in Suits in Rem. In all cases of seizure, and in

Ambassador of the Republic of China to the United States of America, respectfully praying this Honorable Court to substitute the Ambassador in the place of C. C. Huang as petitioner in the above entitled cause, and to allow the Ambassador to file a supplemental petition in intervention. We respectfully submit that said motion should be granted.

II. THE STEAMSHIP KWANG YUAN IS NOT SUBJECT TO THE JURISDICTION OF THIS HONORABLE COURT

Ordinarily we do not believe it is proper to set forth in a memorandum any facts that do not appear from the records and files of the court, but it is necessary for us in the instant case to correct certain misstatements contained in libelant's memorandum which deal with such extraneous matter.

Libelant would have this Court believe that the Chinese Government has not in fact taken possession of the ship, that the crew of the vessel are not representatives of the Chinese Government and that they are starving, that the Department of State has taken no action in this case and it is being prosecuted solely by the Consul General at San Francisco.

Not only are such statements improperly presented to the Court at this time, but they are not correct. The true facts are as follows:

(1) The Chinese Government is vitally interested in this case, as appears from the petition filed herewith by His Excellency, the Chinese Ambassador.

(2) Although following precedent, the Secretary of State of the United States has notified this Honorable Court of the action of the Republic of China, for the reasons set forth in his letter of May 14, 1938, to the Chinese Ambassador, a copy of which is hereunto annexed and marked Exhibit "A", nevertheless he has notified the Department of Commerce and the United States Maritime Commission of the action of the Chinese Government, as appears from the letter of the Department of State to the Chinese Ambassador of May 6, 1938, a copy of which is hereunto annexed and marked Exhibit "B".

(3) The Consul General of the Republic of China at San Francisco has heretofore taken possession of said vessel on behalf of the Chinese Government and has appointed a national of the Republic of China master of said vessel, and said master is now, and ever since the

his direction. * * * The foreign government is also entitled as of right, upon a proper showing, to appear in a pending suit, there to assert its claim to the vessel, and to realize the jurisdictional question in its own name or that of its accredited and recognized representative."

In the instant case the Republic of China has appeared in the pending suit in its own name by and through its representative at San Francisco. In *The Navemar*, *supra*, the Spanish Ambassador appeared in the suit by and through the Spanish Consul General at New York, and *this procedure was expressly approved by the Supreme Court*. That this method of procedure was adopted by the Spanish Ambassador appears from the decisions of the British Court and the Circuit Court of Appeals.

In *The Navemar*, 90 F. (2d) 673 (C. C. A. 2), the court said (p 675):

"The consul, * * * made an application * * * to intervene in the suit on behalf of the Spanish Ambassador. * * *

"In filing the suggestion through the consul as his agent and in seeking to intervene in the suit, the ambassador followed a permissible and adequate procedure * * * ."

See also:

The Navemar, 18 F. Supp. 153 (154) (E. D. N. Y.).

It is obvious that there is no distinction between an ambassador appearing in action through his agent—the Consul General—and a friendly foreign sovereign adopting the same procedure. Therefore, the statement contained on page 5 of libelant's memorandum to the effect that counsel for the Chinese Consel "inadvertently misinformed the court" regarding the effect of *The Navemar* decision is not correct, since it appears from the above citations that the procedure adopted in the instant case was expressly approved by the Supreme Court in its decision in that case.

The decisions cited by libelant are not in point, since in those cases the Consul General of the foreign government asserted the foreign government's immunity from suit "merely by virtue of his office" and not as the agent of the sovereign.

However, in order that there may be no question regarding the procedure in the instant case, we have filed herewith a motion and a supplemental petition by His Excellency, Changting T. Wang, the

be stricken from the files of the above entitled cause and that the Marshal be directed to deliver said twenty-one hundred tons of melting scrap to libelant. No written motions have ever been filed by the libelant.

In support of its oral motions libelant contends: (1) that the Consul General of the Republic of China has no power or authority to file the petition in intervention, and (2) that even if a proper petition in intervention had been filed, the immunity of a vessel of a friendly foreign government from the jurisdiction of the Courts of the United States does not apply in this case.

Neither of the libelant's points are tenable, for the reasons that appear hereafter.

I. THE PETITION IN INTERVENTION WAS PROPER

The Consul General of the Republic of China did not file the petition in intervention "merely by virtue of his office," but "for and on behalf of the Republic of China, as owner of the steamship Kwang Yuan."

The Supreme Court of the United States has held that there are three methods open to a foreign sovereign to appear and assert its immunity from suit. The foreign government may claim immunity from suit by, (1) diplomatic channels, (2) by appearing in the pending suit in its own name, or (3) by appearing in the pending suit in the name of its ambassador.

In *Ex Parte Muir*, 254 U. S. 522 (1919), the Supreme Court said (p. 532):

"As of right the British Government was entitled to appear in the suit, to propound its claim to the vessel and to raise the jurisdictional question. * * * Or, with its sanction, its accredited and recognized representative might have appeared and have taken the same steps in its interest."

In *The Navemar*, 58 Sup. Ct. Rep. 432, the court said (pp. 434-5):

"And in a case such as the present it is open to a friendly government to assert that such is the public status of the vessel and to claim her immunity from suit, either through diplomatic channels or, if it chooses, as a claimant in the courts of the United States.

"If the claim is recognized and allowed by the Executive Branch of the government, it is then the duty of the courts to release the vessel upon appropriate suggestion by the Attorney General of the United States, or other officer acting under

IN THE SOUTHERN DIVISION OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT
OF CALIFORNIA, IN ADMIRALTY

YOKOHAMA SPECIE BANK, Ltd.,
a corporation,

Libelant,

vs.

2100 Tons of melting scrap on board the steam-
ship "Edna Christensen",

Respondent.

MEMORANDUM IN OPPOSITION OF MOTION TO STRIKE
PETITION IN INTERVENTION AND IN OPPOSITION TO
REQUEST FOR ORDER FOR DELIVERY OF CARGO.

This is a libel in rem by the Yokohama Specie Bank, Ltd., against twenty-one hundred tons of melting scrap on board the Chinese national vessel Kwang Yuan, referred to in said libel as the steamship *Edna Christensen*. *The ship is not a party to action, and the United States Marshal has never taken possession of said vessel.*

On May 16, 1938, C. C. Huang, the Consul General of the Republic of China at San Francisco, California, filed in the above entitled cause a petition in intervention *for and on behalf of the Republic of China, as owner of the Chinese steamship Kwang Yuan*. The petition alleged in substance that said ship was a national vessel duly owned by the Republic of China, flying the flag of the Republic of China, and in the possession and control thereof, and not subject to the jurisdiction of this Honorable Court. On May 17, 1938, proctor for libelant presented an *ex parte* oral action to the Court requesting that said petition

an interpreter, employed by the United States Marshal, went aboard the vessel on April 23, 1938.

The question of present possession, however, might be a subject of controversy calling for a further hearing. For that reason, we reply on the undisputed fact that, at the time of the service of the writ, the Chinese Government had no possession whatsoever and not even a claim to ownership.

The immunity from process is further only an immunity from a direct suit against the government or its property. *The Siren*, 7 Wall. 152, 19 L. Ed. 129. For this further reason there can be no immunity of the Chinese Government and not the cargo. In this case, we are neither suing the Chinese Government nor the vessel although, as above stated, suit against the vessel could be maintained, notwithstanding the claim of immunity.

Libelant respectfully submits that the pleadings of the Chinese Consul General should be stricken and that an order be made forthwith decreeing possession of the cargo to libelant with appropriate directions to the United States Marshal to deliver possession, taking such steps as shall be necessary to accomplish that result as a practical matter.

If, in delivering possession of the cargo to libelant, it shall be necessary for the Marshal to set foot upon the vessel, or even to move the vessel to a wharf or dock, such acts will be merely the essential and ordinary steps needed to be taken in order to enforce the decree of this court. No injury to the vessel will result and libelant is prepared to give a bond to the Marshal indemnifying him against any claim which might arise against him by reason of possible damage to the vessel. The question of the form and amount of such bond is properly a matter for the Marshal to decide, but it would aid in facilitating the delivery of the cargo if the court should make a suggestion to the Marshal in this regard.

Respectfully submitted.

J. F. RESLEURE

Proctor for libelant.

Long v. Tampico, 16 Fed. 491, furnishes an early illustration of the same doctrine. In that case, Mexican government vessels were intrusted to certain independent sea captains to navigate to Mexico. The court held that, since the captains were not in the service of the Mexican government, and since the attachment had been made while in the captains' possession, a libel in rem for salvage would lie.

Again in *The Johnston Lighterage Co. No. 24*, 231 Fed. 365, a salvage suit in rem was permitted against war munitions on board a private lighter although the cargo was owned by the Russian Government and destined for public use, since the lighterage company and not the Russian Government was in possession at the time of the libel. In that case, the court said:

"I therefore conclude that the property in question, although it belonged to the Russian government and was destined to its public use, was subject to a lien for salvage services rendered in saving it, and *that as it was not at that time, or at the time of its seizure by the marshal, in the actual possession of an officer of the Russian government, the lien may be enforced by this court by a proceeding in rem.*"

It will be noted in all of the above cases that immunity cannot be claimed by reason of even actual possession by the government, if that possession took place subsequent to the service of the writ by the United States Marshal. The reason is obvious, since, if the writ has been served by the Marshal prior to the possession of the foreign government, would be an invasion of the possession of the court, which naturally the courts will not permit. It is on this point that libelant desires principally to rely, since the facts are obvious from the present pleadings on file and since, on this ground, there can be no question as to the facts or excuse for further delay.

As a matter of fact, however, the Chinese Government is still not in possession of the vessel. Obviously, the mutineers on board cannot, in any sense, be regarded as officers of the Chinese Government. We know that they were on board and in possession by virtue of their own desires and that they are still being supported aboard by voluntary charitable contributions of food first, by certain shrimp fishermen in the locality and, at the present time, by contributions from other fellow countrymen ashore who became aware of their deplorable condition when

ownership, but also upon actual possession by a government officer, is very clearly brought out in the case of *The Carlo Poma*, 259 Fed. 369, where the court said:

“ * * * The English courts go the whole way in refusing process against property of a foreign sovereign under any circumstances. This because of the international comity due from one sovereign to another. *The Parlement Belge*, Law Reports, 5 P. D. 197; *The Jasey* (1906) P. 270.

“The law of the United States is the same, except that the *immunity of property of a sovereign, whether the United States or a foreign sovereign, depends, not merely upon the ownership, but also upon the actual possession by the sovereign of the property at the time process is served.* (Underscoring ours).”

The leading case on the subject is *The Davis*, 101 Wall. 15, 19 L. Ed. 875. In that case it was held that cotton owned by the United States government, but on board a private vessel, could be libeled in rem for salvage, as it was not in the actual possession of the government. The Supreme Court, in discussing the government possession which furnishes a basis for immunity, said:

“ * * * The possession which would do this must be an actual possession, and *not that mere constructive possession which is very often implied by reason of ownership under circumstances favorable to such implication. We are speaking now of a possession which can only be changed under process of the court into collision with the officer of the Government, if the latter should choose to resist. The possession of the Government can only exist through some of its officers, using that phrase in the sense of any person charged on behalf of the Government with the control of the property, coupled with its actual possession. This, we think is a sufficiently liberal definition of the possession of property by the Government to prevent any unseemly conflict between the court and the other departments of the Government, and which is consistent with the principles which exempts the Government from suit and its possession from disturbances of by virtue of judicial process (underscoring ours).*”

“ * * * The possession of the master of the vessel was not the possession of the United States. He was in no sense an officer of the Government. He was acting for himself, under a contract which placed the property in his possession and exclusive control for the voyage. His obligation was to deliver possession in New York to the agent of the Government. This he had done when the process was served on the cotton. *The Marshal served his writ and obtained possession without interfering with that of any officer or agent of the Government.*”

Ambassador, as will appear from the following excerpt from the decision :

“A second application by the *Ambassador* for leave to appear as a claimant upon a verified suggestion, stating additional circumstances relied upon to establish possession of the vessel by the Republic of Spain was denied.”

As a matter of fact, the United States Secretary of State has referred opposing counsel to *The Navemar* decision and, in refusing to intervene, has suggested that the procedure in *The Navemar* be followed.

We respectfully submit that the suggestion and petition of the Consul be stricken and, in view of the various extensions which have already been granted, that the matter be determined upon the present pleadings, without further time being allowed for the Ambassador to appear.

III.

EVEN IF CLAIM OF IMMUNITY WERE PROPERLY PRESENTED, IT SHOULD NOT BE ALLOWED WHERE GOVERNMENT'S POSSESSION, AS DISTINGUISHED FROM MERE OWNERSHIP, IS NOT INVOLVED, ESPECIALLY WHERE MARSHAL'S SERVICE OF WRIT ANTEDATES FOREIGN GOVERNMENT'S OWNERSHIP OF POSSESSION.

Moreover, the immunity is only from a direct suit against the government or its property. As above stated, the service of the writ of attachment by the United States Marshal was made on April 23, 1938. At that time the Chinese government had neither ownership or possession, even of the vessel. This fact appears on the face of the Chinese Consul's suggestion which states that the Chinese Expropriation Decree was made on April 27, 1938. Obviously there could be no possession of an officer of the Chinese government prior to the Expropriation Decree. As a matter of fact, even today there is no possession of the Chinese Government involved, since the vessel is either in the rightful possession of the Japanese master or the wrongful possession of the Chinese crew, by reason of the mutiny which took place some months ago. Under these circumstances it is well settled by the law of the United States that there is no immunity from suit. The distinction between the English rule which grants immunity by reason of mere ownership and the American rule under which the immunity depends not merely upon

assertion of the violated rights of his sovereign? We are of opinion, that his office confers on him no such legal competency. A consul, though a public agent, is supposed to be clothed with authority only for commercial purposes. He has an undoubted right to interpose claims for the restitution of property belonging to the subjects of his own country; but he is not considered as a minister, or diplomatic agent of his sovereign, intrusted, by virtue of his office, with authority to represent him in his negotiations with foreign states, or to vindicate his prerogatives. There is no doubt, that his sovereign may specially intrust him with such authority; but in such case his diplomatic character is superadded to his ordinary powers, and ought to be recognized by the government within whose dominions he assumes to exercise it. There is no suggestion or proof of any such delegation of special authority in this case; and therefore, we consider this claim as asserted by an incompetent person, and on that ground, it ought to be dismissed."

The same rule was laid down in *The Sao Vicente*, 260 U. S. 151, where Mr. Justice McReynolds said:

"The Consul General (of the Republic of Portugal) was not a party to any of the proceedings below, and is not competent, merely by virtue of his office, to appear here for his government and claim an immunity from process in the manner attempted."

The entire subject was fully discussed in *Lydera v. Lund*, 32 F. (2d) 308, in which case Judge Kerrigan, after discussing the authorities at length and quoting from *The Anne* the same passage above quoted, said:

"In view of these decisions, I conclude that the consul of Denmark at San Francisco, is not authorized, merely on account of his official status or his being named as defendant in the suit, to claim immunity from suit on behalf of the kingdom of Denmark, and that such claim can be recognized by me only when made in accordance with the decisions above cited."

Counsel for the Chinese Consul suggested in court this morning that, in the case *The Navemar*, 1938 A. M. C. 15, the Supreme Court recognized as proper a claim to immunity by the Spanish Consul at New York, and hence argued that the proceedings taken here are correct. Counsel inadvertently misinformed your Honor in this regard. The only thing that the Spanish Consul General at New York did in that case was to instruct the master of *The Navemar* to await further instructions and to render a detailed account of expenses. He made no claim of immunity to the court, as that was done entirely by the Spanish

indicates the basis of the Republic of China's ownership, which is an expropriation decree of the Government or Republic of China, made at 8:00 A. M. on April 27th, 1938, that is, four days subsequent to the seizure by the United States Marshal under process herein.

II.

A CONSUL HAS NO STANDING OR AUTHORITY TO CLAIM IMMUNITY ON BEHALF OF HIS GOVERNMENT

As has been repeatedly pointed out, the Chinese Consul makes no claim adverse to libelant with regard to the ownership of the cargo. He admits that libelant owns the cargo and is entitled to possession, but suggests that he would like to keep the cargo on board the vessel and deprive libelant thereof on the theory that, in order to remove the same from its present location, it would be necessary to interfere in some way with a vessel belonging to the Chinese Government, as to which he suggests there is an immunity from all contact by the officers of this court. In other words, counsel for the Chinese Consul takes upon himself the role of Portia in the Merchant of Venice when she argued that the merchant was entitled to his pound of flesh, but that he could not have any blood with it. In this case he states that libelant can have its cargo, but it must not touch the vessel in order to take possession of it.

It appears that the Chinese Consul is waging this fight alone, since the Secretary of State has refused to intervene in the matter and the Ambassador of the Republic of China has not acted. Libelant submits that the pleadings of the Chinese Consul simply attempt to invoke an immunity against process of this court, and that such pleadings should be stricken, for the reason that the Consul General at San Francisco is not authorized to invoke such immunity.

It has long been settled that a consul has no such power or authority as the Chinese Consul at San Francisco here attempts to exercise.

In the case of *The Anne*, 3 Wheat. 435, Mr. Justice Story discussed this question at considerable length, and on page 445 of the report appears the following clear cut statement of the consul's powers:

“And this brings us to the second question in the cause; and that is, whether it was competent for the Spanish consul, merely by virtue of his office, and without the special authority of his government, to interpose a claim in this case for the

Formal seizure was made by the United States Marshal on April 23, 1938, and all parties who might have any interest in the matter of the cargo, including the attorneys for the Chinese consul and the master and agents for the vessel, were given notice of seizure on April 25, 1938.

On the return date the proclamation was read before the Honorable A. F. St. Sure, sitting for the Honorable Harold Lauderback on account of the latter's absence from San Francisco. No claims were filed to the cargo by any person, but informal appearances were made by Hengstler, Dorr & Stevenson, counsel for the Chinese Consul and by Chalmers Graham, counsel for the master of the vessel, the former claiming a possible interest in the cargo in behalf of the crew and the latter asserting that there might be possible adverse claimants to the cargo. At the suggestion of these appearing parties, no defaults were taken at that time and Judge St. Sure allowed ten days for all parties to appear and plead.

At the expiration of the ten days, namely on Saturday, May 7th, 1938, libellant appeared before your honor and requested the default of all parties, notwithstanding the intervening filing of a suggestion by the Chinese Consul on May 6th. At that hearing, upon an offer being tendered of the bills of lading, showing that the freight was prepaid, counsel for the Chinese Consul waived apparently all claims of an interest in the cargo by the crew and counsel for the master of the vessel, appearing only informally, waived all claim to the cargo.

Your honor ordered the default of all persons claiming any interest in the cargo but allowed the Chinese Consul 8 days within which to secure, through appropriate diplomatic channels, an intervention by the United States Secretary of State.

No intervention or representation by the Secretary of State has been filed within the eight days allowed, or at any time, but on May 16, 1938 a petition in intervention was served and filed herein, again by the Chinese Consul at San Francisco. Neither the suggestion nor the petition in intervention asserts any claim to the cargo libeled. Both pleadings simply state that the steamship "Edna Christensen", otherwise known as the "Kwang Yuan", is a national vessel owned by the Republic of China and in possession and control thereof. The suggestion

IN THE SOUTHERN DIVISION OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT
OF CALIFORNIA IN ADMIRALTY

YOKOHAMA SPECIE BANK, Ltd.,
a corporation,

Libelant,

vs.

2100 Tons of melting scrap on board the Steam-
ship "Edna Christensen"

Respondent.

MEMORANDUM IN SUPPORT OF MOTION TO STRIKE PET-
ITION IN INTERVENTION AND SUGGESTION OF C. C.
HUANG, CONSUL GENERAL OF THE REPUBLIC OF
CHINA, AND IN SUPPORT OF APPLICATION FOR OR-
DER FOR DELIVERY OF POSSESSION.

I.

HISTORY OF THE CASE

In order that there may be no confusion of this with any other pending litigation, I submit the following brief history of the proceedings and only proceedings which have taken place so far in this case, as follows:

On April 22, 1938 a libel in rem for possession of the above mentioned cargo was filed and process issued, returnable under Admiralty Rule 7 on April 26th.

engines, machinery, gear, or appurtenances, or its movements, or over the crew of said vessel who are nationals of the Republic of China and are now on board said vessel.

III.

That said steamship Kwang Yuan is not a party to the above entitled cause and this Honorable Court has no jurisdiction over said vessel, its engines, machinery, gear or appurtenances, or its movements.

WHEREFORE, C. C. Huang, as Consul General of the Republic of China, respectfully prays this Honorable Court to take no action in the above entitled cause that will prejudice the interests of the Republic of China with respect to said vessel, or the ownership or possession thereof, or that will cause or direct said vessel to be moved, or that will cause or direct the gear, engines, or machinery of said vessel to be operated, disturbed, or used in any manners whatsoever, or that will permit or direct any person to go on board said vessel without the permission of the Republic of China.

HUGH K. McKEVITT.

HENGSTLER, DORR & STEVENSON

Proctors for C. C. Huang, a Consul

General of the Republic of China.

IN THE SOUTHERN DIVISION OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT
OF CALIFORNIA IN ADMIRALTY

YOKOHAMA SPECIE BANK, Ltd.,
a corporation,

Libelant,

vs.

2100 Tons of melting scrap on board the Steam-
ship "Edna Christensen"

Respondent.

PETITION IN INTERVENTION

Comes now C. C. Huang, as Consul General of the Republic of China at the City and County of San Francisco, State of California, and files this petition in intervention in the above entitled cause for and on behalf of the Republic of China, as owner of the Chinese steamship Kwang Yuan, and in that behalf alleges as follows:

I.

That the steamship Kwang Yuan, referred to in the libel on file in the above entitled cause as the steamship Edna Christensen, was at all times herein mentioned, and now is, a National vessel duly owned by the Republic of China, flying the flag of said Republic, and in the possession and control thereof.

II.

That by reason of the national character of said steamship Kwang Yuan this Honorable Court has no jurisdiction over said vessel, its

the United States of America at the city of Washington, District of Columbia, of the action of the government of the Republic of China in expropriating said steamship Kwang Yuan, and said Ambassador has heretofore notified the Department of State of the United States of America of said action, and has requested said Department of State to notify the Department of Justice of the United States and to have the Department of Justice notify this Honorable Court of said action of said Republic of China. That this Honorable Court has no jurisdiction over the steamship Kwang Yuan, a vessel of the Republic of China, or of anything contained thereon.

WHEREFORE, this petitioner prays that this Honorable Court dismiss said libel and that no action be taken by this Honorable Court which would in any way prejudice the interests of the Republic of China in/or to said steamship Kwang Yuan, or in any way prejudice the interests of the crew of said vessel who are nationals of the Republic of China, and are now on board said vessel.

Dated: May 6, 1938, San Francisco, California.

HUGH McKEVITT

HENGSTLER, DORR & STEVENSON

Proctors for C. C. Huang, Consul General
of the Republic of China.

IN THE SOUTHERN DIVISION OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT
OF CALIFORNIA IN ADMIRALTY

YOKOHAMA SPECIE BANK, Ltd.,
a corporation,

Libelant,

vs.

2100 Tons of melting scrap on board the Steam-
ship "Edna Christensen"

Respondent.

SUGGESTION

Comes now C. C. Huang, as Consul General for the Republic of China at the City and County of San Francisco, State of California, and suggests to the above entitled Court as follows.

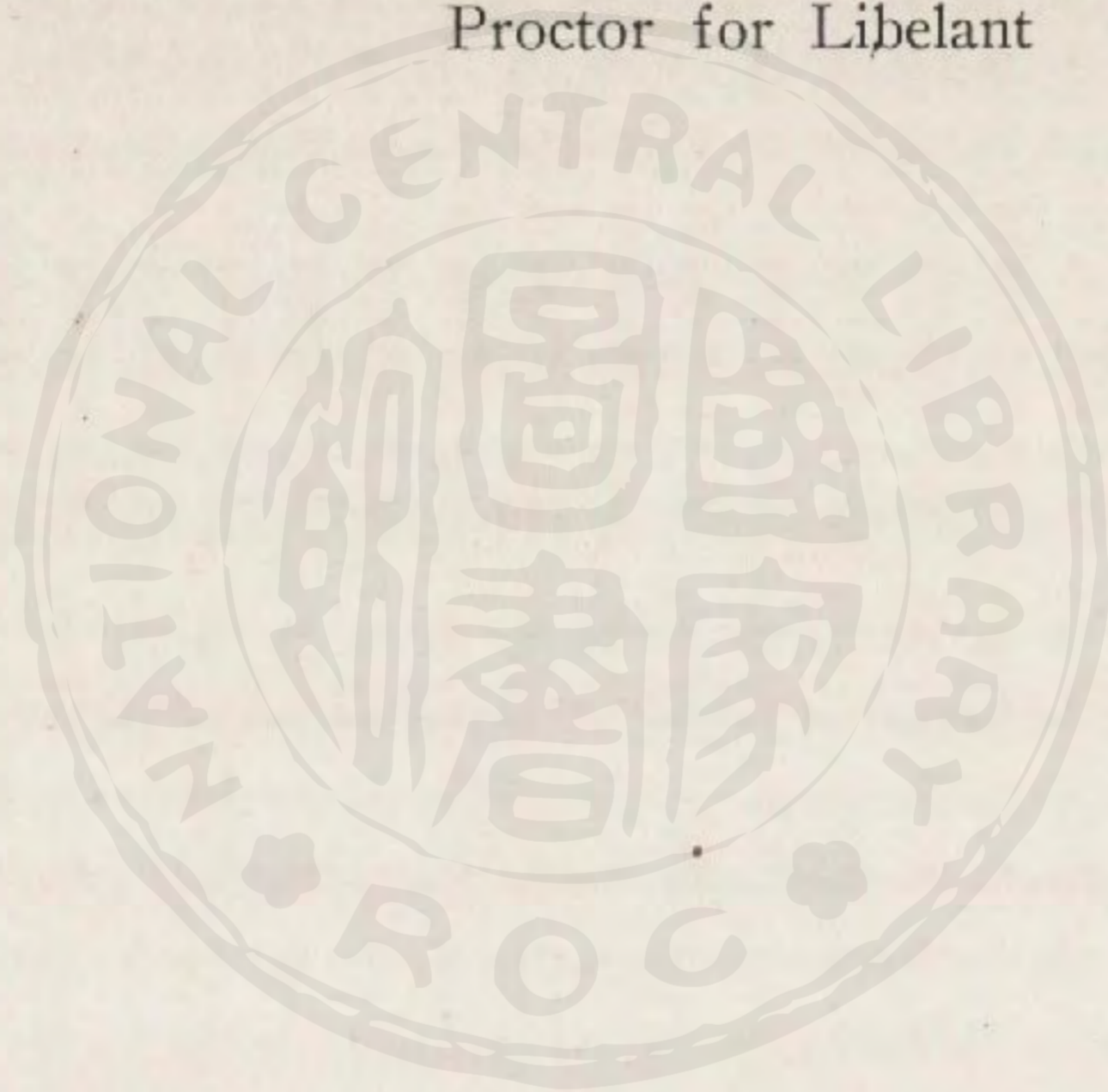
I.

That on the 27th day of April, 1938, at the hour of 8:00 o'clock A. M. of said day, the Government of the Republic of China expropriated the steamship Kwang Yuan, referred to in the above entitled libel as the steamship "Edna Christensen", a vessel of Chinese registry and flying the flag of the Republic of China, and ever since said day said vessel has been, and now is, a national vessel of the Republic of China. That the Minister of Foreign Affairs of the Republic of China has heretofore notified the Ambassador of the Republic of China to

dock, into lighters and/or other vessel or vessels, or such movement of said vessel as shall be required to accomplish the effective and economical delivery of possession of said merchandise to libelant, subject to the giving by libelant of such bond or bonds to the United States Marshal for said district, in such form and amount as may appear to the court to be proper in the premises.

4. That this Honorable Court grant to libelant such other and further relief as may be just.

J. F. RESLEURE
Proctor for Libelant



That libelant has duly demanded the return to it of said merchandise, but the possession thereof has been and still is wrongfully refused and withheld from libelant.

VI.

By reason of the premises libelant has become and is entitled to immediate possession of said 2100 tons of melting scrap and the whole thereof.

VII.

That neither this libel for possession nor the aforesaid demand for possession is or was intended as a waiver of libelant's claim for the refund freight paid on said merchandise nor for damages for breach of contract of affreightment committed by said steamship and/or its owner or owners, agents, master or crew in failing to transport and deliver said merchandise as agreed, and libelant reserves all rights it may have in the premises in addition to the right of possession herein asserted.

VIII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE libelant, claiming the right to immediate possession of said 2100 tons of melting scrap, prays:

1. That process in due form of law, according to the course and practice of this Honorable Court in causes of possession within the admiralty and maritime jurisdiction, may issue against 2100 tons of melting scrap and that all persons having or claiming to have any right, title or interest therein may be cited to appear and answer on oath all and singular the matters aforesaid.

2. That this Honorable Court order that said 2100 tons of melting scrap be delivered to libelant forthwith upon surrender into court of outstanding bills of lading, or the giving of appropriate security in lieu thereof.

3. That this Honorable Court make such appropriate order or orders as to the movement of said steamship "Edna Christensen" to facilitate the discharge of said 2100 tons of melting scrap onto the

ant is the owner and entitled to the possession of 2100 tons of melting scrap now loaded on board the steamship "Edna Christensen" in the harbor of San Francisco, State of California, and within the jurisdiction of this Honorable Court.

II.

That on or about the 27th day of July, 1937, C. T. Takahashi & Company of Seattle, Washington, entered into a certain written charter party with Yung Yuan Steamship Co. for the transportation of certain merchandise from the harbor of San Francisco, State of California, to the port of Osaka, Japan, on board the steamship "Edna Christensen"; that thereafter said C. T. Takasashi & Company delivered to said Yung Yuan Steamship Co. at the port of Oakland, in said Harbor of San Francisco, for shipment on board the said steamship "Edna Christensen", approximately 2100 tons of melting scrap which the said Yung Yuan Steamship Co. agreed to transport and carry from said port of Oakland, State of California, to the port of Osaka, Japan, there to be delivered under the order of libelant.

III.

That the loading of said melting scrap was commenced on or about September 11, 1937 and was completed on or about the 6th day of October, 1937; that on or about said last mentioned date certain bills of lading were issued by the master of said vessel, which bills of lading acknowledged receipt of said cargo and evidenced the contract for transportation to and delivery at Osaka, Japan, to the order of libelant as aforesaid; that said merchandise and said bill of lading were thereafter sold and delivered to libelant who became and is the true and lawful owner thereof.

IV.

That said Yung Yuan Steamship Co. has wholly failed, refused and neglected to transport or carry or deliver said merchandise as required by said contract and said bills of lading, and the same remains on board said steamship in the harbor of San Francisco without reasonable or any expectation that same will or can be carried, transported or delivered in accordance with said contract and said bills of lading for a long time to come, if ever.

THE CASE OF THE OWNERSHIP AND MOVEMENT OF THE
CARGO ON BOARD THE S. S. KWANG YUAN

IN THE SOUTHERN DIVISION OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT
OF CALIFORNIA IN ADMIRALTY

YOKOHAMA SPECIE BANK, Ltd.,
a corporation,

Libelant,

vs.

2100 Tons of melting scrap on board the Steam-
ship "Edna Christensen"

Respondent.

LIBEL IN REM FOR POSSESSION

To the Honorable, the Judges of the United States District Court for the Northern District of California, Southern Division, sitting in Admiralty.

The libel of Yokohama Specie Bank, Ltd., against 2100 tons of melting scrap now on board the steamship "Edna Christensen" and in possession of Y. Kawano, master of, and/or First Doe, Second Doe, Third Doe, Fourth Doe, Fifth Doe, etc. members of the crew of, and/or Yung Yuan Steamship Co., a corporation, and/or Yung Yuan Steamship Co., a corporation, and/or John D. Kotani, alleged owners of the steamship "Edna Christensen", in a cause of possession, civil and maritime, respectfully shows:

I.

That libelant is and at all times herein mentioned was a corporation organized and existing under the laws of the Empire of Japan; that libel-

IN THE SOUTHERN DIVISION OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT
OF CALIFORNIA IN ADMIRALTY

MOKUNOSUKE KOTANI, Y. KAWANO, T.
ISOO, and K. OMORI,

Libelant,

vs.

Chau Tsu Ming, Wang Che Fu, Ma Yung Hsin,
Sung Fu Shun, Liang Chen Sien, Lu Hwa Hsi,
Liu Ming Shan, Liu Yueh, Chang Shih, Wang
Yu Chung, Chiang Fang Ting, Sui Yao Hsien,
Wang Chen Yun, Tang Ting Fu, Sung Yuan
Siang, Tu Tsai Shien, Sung Hsiao Meng, Chang
Chun Ting, Li Shui Ting, Li Pen Hsiao and the
Chinese steamer KWANG YUAN formerly and
otherwise known as the EDNA CHRISTENSEN
Respondent.

DISMISSAL WITHOUT PREJUDICE

The above entitled proceeding is hereby dismissed without prejudice to the institution of any further proceedings herein.

CHALMERS G. GRAHAM
Proctor for Libelants.

IT IS SO ORDERED
this 7th day of June, 1938
MICHAEL J. ROCHE
U. S. District Judge

under the principle of international comity heretofore discussed in our opening memorandum on page four to eight because as decided by the above two cases the facts set forth in the instant libel disclose a controversy involving the internal order of the ship.

Respectfully submitted,

HUGH K. McKEVITT

HENGSTLER, DORR & STEVENSON

Proctors for respondents and C. C. Huang,

Consul General of the Republic of China.



Binna, in the port of Texas City, was loading scrap iron to be shipped to Japan, the crew went on a strike but remained on the vessel, simply announcing that they would not make the trip to Japan.

There is a treaty between the United States and the Kingdom of Norway, signed by President Coolidge about February 7, 1929, and which was formally presented and accepted by the United States Senate about January 22, 1932. Article 22 of this treaty provides that the resident consul on either of the contracting powers shall have jurisdiction over all questions of wages and control of the ship arising from internal affairs in the management of the ship. The ship owners in this case appealed to the Norwegian Consul at Galveston, John W. Focke, who entertained the hearing and found that the seamen were breaking their contract and were at fault.

* * * * *

“It is the opinion of the court that the controversy between the ship owners and the crew is an internal affair, controlled by the treaty, and under its provisions the Norwegian consul has jurisdiction over the question, and his decision precludes any action on the part of this court.

COMITY.

“If there were no treaty containing such provisions, these questions would perhaps be determined as a matter of comity between the two nations. In such event an American citizen, whether he were a member of the crew or a ship owner, if thrown into court in a European port, would deem it a gracious act on the part of the resident court to refer it back to the American Consul, and through him to the American courts. If the members of this crew have any grievance, they can settle it in the courts of Norway, which is their home.”

Since under the treaty of 1903 between China and the United States the Consul General of the Republic of China has the same rights, privileges and attributes as have the Consuls of other countries, and since the treaty between Norway and the United States gives the Norwegian Consul exclusive jurisdiction of cases such as this, it is apparent that the Consul General of China has exclusive jurisdiction over the instant matter and the libel should be dismissed.

Furthermore, even if there were no treaties involved this court should not assume jurisdiction over the protests of the Consul General

United States is without jurisdiction to adjudicate it. *Elwine Kreplin*, 9 Blatchf. 438 Fed. Cas. No. 4,426; *Burchard*, 42 Fed. 608; *Marie*, 49 Fed. 286; *Welhaven*, 55 Fed. 80; *Bound Brook*, 146 Fed. 160; *Ester*, 190 Fed. 216.

“This brings us to the question whether the averments of the present libel disclose a controversy within the exclusive jurisdiction of the Norwegian Consul under the provisions of the treaty. As we have seen, those provisions confer upon him exclusive jurisdiction ‘over controversies arising out of the internal order of private vessels of his country’ and direct that he alone shall exercise jurisdiction in cases, wherever arising, between officers and crews, pertaining to the enforcement of discipline on board.’ We think that the libel clearly discloses a controversy arising out of the ‘internal order’ of a Norwegian private vessel and that this is a case ‘between officers and crews, pertaining to the enforcement of discipline on board.’ Certain it is that the suit is brought by the master as libellant against the members of his crew as respondents and that the controversy between them arises as a result of the refusal of the crew to obey the master’s orders to proceed with the ship from the port of Philadelphia to New York where they were to be paid off and discharged. Nothing could be more clearly a breach of internal order and discipline on board ship than the refusal of the members of the crew to obey the master’s orders to perform their duties incident to the navigation of a vessel from an intermediate port of call to its port of destination, to which under their articles they were obligated to take her. We, therefore, conclude that the controversy disclosed by the libel in the present suit is a controversy within the exclusive jurisdiction of the Norwegian Consul at Philadelphia and that this court accordingly has no jurisdiction of the case.

Our conclusion is fortified by the fact, disclosed in the libel, that the Norwegian Consul at Philadelphia has actually taken jurisdiction of the controversy and has proceeded to adjudicate it. The fact that he is unable, because of the failure of the Kingdom of Norway to make similar provision for the execution of the treaty in favor of the United States, to invoke the aid of this court under Sections 4079, 4080 and 4081 R. S., 22 Mason’s U. S. C., secs. 26, 257 and 258, in carrying out his adjudication cannot operate to confer upon this court jurisdiction of which it has been expressly deprived by a valid subsisting treaty. Nor can the refusal of the local police authorities to assist the consul, as by the express terms of the treaty they are required to do, confer such jurisdiction upon us. The responsibility for the consequences, as Judge Smith said in *Ester*, *supra*, ‘rests upon the lawmaking, not the judicial, department of the Government.’

“The libel is dismissed for want of jurisdiction.”

In the *Binna*, *Supra*, the Court said:

“About the 7th of March, 1938, while the Norwegian ship

failed and refused to vacate the vessel and have since continued in such refusal. The Consul for Norway thereupon appealed to the Mayor and Superintendent of Police of the City of Philadelphia for assistance in enforcing his orders, which assistance has been refused.

“The libel further avers that the vessel is loaded with a valuable cargo which will deteriorate and be damaged unless it is promptly discharged at its destined port of New York and that because of the presence of respondents aboard it is impossible to obtain a new crew and any effort on the part of the master and his officers to evict the men would result in violence and breach of the peace. The request of the Consul of Norway at Philadelphia to this court to assume jurisdiction of the case is annexed to the libel.

“It is the contention of the respondents that the averments of the libel disclose a controversy, exclusive jurisdiction of which is conferred upon the Norwegian Consul at Philadelphia by the express provisions of Article XXII of the Treaty of 1932 between the United States and Norway (47 Stat. 2152). The Treaty provisions referred to are as follows:

ARTICLES XXII.

“A consular officer shall have exclusive jurisdiction over controversies arising out of the internal order of private vessels of his country, and shall alone exercise jurisdiction in cases, wherever arising, between officers and crews, pertaining to the enforcement of discipline on board, provided the vessel and the persons charged with wrongdoing shall have entered a port within his consular district. Such an officer shall also have jurisdiction over issues concerning the adjustment of wages and the execution of contracts relating thereto provided, however, that such jurisdiction shall not exclude the jurisdiction conferred on local authorities under existing or future laws.

* * * * *

“A consular officer may freely invoke the assistance of the local police authorities in any matter pertaining to the maintenance of internal order on board of a vessel under the flag of his country within the territorial waters of the State to which he is appointed, and upon such a request the requisite assistance shall be given.”

“It is well settled that where treaty stipulations exist between the United States and the country to which a foreign ship belongs, with regard to the right of the consul of that country to adjudge controversies arising between the master and crew, or other matters occurring on the ship exclusively subject to the foreign law, such stipulations are the law of the land and must be fairly and faithfully observed, *Belgenland*, 114 U. S. 355; *Wildenhus' case*, 120 U. S. 1. It follows that where such a treaty confers upon the foreign consul exclusive jurisdiction over such a controversy a court of admiralty of the

and immunities as are enjoyed by consular officers of other nations, the United States may appoint, as its interest may require, consular officers to reside at the places in the Empire of China that are now or that may hereafter be opened to foreign residence and trade. They shall hold direct official intercourse and correspondence with the local governments of the Chinese Government within their consular districts, either personally or in writing as the case may require, on terms of equality and reciprocal respect. These officers shall be treated with due respect by all Chinese authorities, and they shall enjoy all the attributes, privileges, and immunities, and exercise all the jurisdiction over their nationals which are or may hereafter be extended to similar officers of the nation most favored in these respects."

In the *Wind, Supra*, the Court said:

"A libel has been filed in this case seeking a decree requiring the respondents to leave the M/V *Wind* and directing the delivery thereof to libelant. The respondents have moved to dismiss the libel upon the ground that this court is without jurisdiction to entertain it.

"The libel avers that libelant is the master of the Norwegian M/V *Wind* and that respondents are former members of the crew, none of them being citizens of the United States. It is further averred that on October 13, 1937, respondents signed Norwegian Articles of Agreement before the Vice Consul for Norway at Mobile, Alabama, under which they agreed to serve in their respective capacities on a voyage from Mobile, Alabama, to Japan, and return, and pursuant to said articles the vessel proceeded to Japan, and returned to the United States at the completion of the voyage. On March 6, 1938, in accordance with Norwegian Law, and with the provisions of the articles, the master served upon the members of the crew a notice that they would be paid off and discharged upon arrival at the port of destination in the United States. The *Wind* arrived at Philadelphia, on March 15, 1938, with a cargo of sugar; part of which was destined to be discharged in Philadelphia, and the balance was to be discharged at New York.

"The libel further avers that upon arrival here respondents notified libelant that they would not proceed with the ship to New York. Libelant thereupon notified respondents to go to the Norwegian Consulate at Philadelphia and receive their pay and discharges, which respondents failed and refused to do. Thereafter the Consul at Philadelphia for Norway took jurisdiction over the matter, and, upon shearing the facts, decided that the term of service of said men under the said articles had expired and that they should be discharged and should leave the vessel and said Consul personally went aboard the *Wind* on March 16, 1938, and so advised respondents. Nevertheless respondents

IN THE SOUTHERN DIVISION OF THE UNITED STATES
DISTRICT COURT IN AND FOR THE NORTHERN
DISTRICT OF CALIFORNIA, IN ADMIRALTY

MOKUNOSUKE KOTANI, Y. KAWANO, T.
ISOO, and K. OMORI,

Libelants,

vs.

Chau Tsu Ming, Wang Che Fu, Ma Yung Hsin,
Sung Fu Shun, Liang Chen Sien, Lu Hwa Hsi,
Liu Ming Shan, Liu Yueh, Chang Shih, Wang
Yu Chung, Chiang Fang Ting, Sui Yao Hsien,
Wang Chen Yun, Tang Ting Fu, Sung Yuan
Siang, Tu Tsai Shien, Sung Hsiao Meng, Chang
Chun Ting, Li Shui Ting, Li Pen Hsiao and the
Chinese steamer KWANG YUAN formerly and
otherwise known as the EDNA CHRISTENSEN
Respondents.

SUPPLEMENTAL MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
EXCEPTIONS TO LIBEL

In addition to the treaties and cases heretofore cited by respondents and the Consul General, we wish to call to the Court's attention Article II of the treaty of 1903 between the United States and China, and also the recent cases of the "*Wind*", 1938 A. M. C. 471 (March, 1938, E. D. Pa.) and the "*Binna*", 1938 A. M. C. 682 (April, 1938, S. D. Ter.).

"As China may appoint consular officers to reside in the United States and to enjoy there the same attributes, privileges

the United States. Therefore, since the respondents are lawfully on board the vessel and have a lawful right to remain thereon, this Court cannot order the Marshal to dispossess them.

We wish to call to the Court's attention the difference between the instant case and the case of *The Oakmar*, 1937 A. M. C. 1135, and *The Losmar*, 1937 A. M. C. 1925, which libelants will undoubtedly rely upon. In both of the latter cases the crew's employment had been terminated, and therefore they had no right to remain on board the vessels. The court very properly ordered the Marshal to dispossess them. In the instant case *the respondents are still members of the crew of the ship*, and they cannot lawfully be discharged in the United States and therefore cannot be dispossessed.

We respectfully submit that the exceptions should be sustained that the libel should be dismissed.

HUGH K. McKEVITT

HENGSTLER, DORR & STEVENSON

Proctors for Respondents and for C. C. Huang,
Consul General of the Republic of China.

Since the libel does not allege that the alleged transfer was made pursuant to the laws of the Republic of China, it does not set forth sufficient facts to state a cause of action.

IV. THE LIBEL DOES NOT STATE A CAUSE OF ACTION SINCE IT DOES NOT ALLEGE THAT A POSSESSORY ACTION MAY BE MAINTAINED BY CHINESE LAW

The Kwang Yuan is a Chinese vessel and therefore the law of the Republic of China controls. Since libelant has failed to allege that the libelants have a right under the Chinese law to maintain a possessory action under the facts alleged, the libel does not state facts sufficient to constitute a cause of action, and therefore the exceptions should be sustained.

In *Carroll v. The Tug "Baymead"*, 88 F. (2d) 144 (C. C. A. 9), the Court said (pp. 146-7):

"The first question that presents itself for decision arises from the contention of the appellee that inasmuch as the vessel at the time of the injury was owned by Sovertorgflot and was flying the flag of the U. S. S. R., the injured seaman cannot recover from the tug damages arising from its unseaworthiness or for maintenance and cure, without affirmately proving that the laws of the U. S. R. R. authorizes such recovery. No such proof is offered. It is clear that we cannot assume that the law of the U. S. S. R. relating to rights of seamen is the same as that of this nation, notwithstanding the fact that our courts have jurisdiction to enforce the rights of the seamen as against the vessel where the ship is seized withi nthe jurisdiction of the United States and the libel in rem is instituted in the United States District Court having jurisdiction over the territorial waters in which the vessel was seized. *Cuba Railroad Company v. Crosby*, 222 U. S. 473, 32 S. Ct. 132, 58 L. Ed. 274, 38 L. R. A. (N. S.) 40; *Bonsalem v. Bryon S. S. Co.* (C.C.A.) 50 F. (2d) 114; *Commissioner of Internal Revenue v. Hyde* (C.C.A.) 82 F. (2d) 174; *The Hanna Nielsen* (C.C.A.) 273 F. 171.

V. THE LIBEL DOES NOT STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION

The libel alleges that the respondents are members of the crew of the stemship Kwang Yuan. There is no allegation that the respondents have been discharged by the alleged owners or master of said vessel. In fact, under the laws of the United States (8 U. S. C. A. Sec. 168) respondents cannot lawfully be discharged while the vessel is in

It appears from the allegations of the libel and the affidavit of the Consul General of the Republic of China that this case involves a dispute between the master and crew of the vessel, in which the Consul General has heretofore assumed jurisdiction, and that the dispute does not threaten the peace and tranquillity of the port of San Francisco.

It is respectfully submitted that even if this Court has jurisdiction, it should refuse to exercise the same, and the libel should be dismissed.

III. THE LIBEL DOES NOT ALLEGE THAT THE ALLEGED TRANSFER OF SAID VESSEL TO THE LIBELANT WAS MADE PURSUANT TO THE LAWS OF THE REPUBLIC OF CHINA

Mokunosuke Kotani, one of the libelants, has alleged that it is the owner of the steamship Kwang Yuan and is therefore entitled to the possession of the vessel. However, the libel does not allege that the purported sale from the Chinese company to Mokunosuke Kotani was made pursuant to the laws of the Republic of China.

In *Cuba Railroad Co. v. Crosby*, 222 U. S. 473, the Supreme Court said (pp. 478-9):

“With very rare exceptions the liabilities of parties to each other are fixed by the law of the territorial jurisdiction within which the wrong is done and the parties are at the time of doing it. *American Banana Co. v. United Fruit Co.*, 213 U. S. 347, 356. See *Bean v. Morris*, 221 U. S. 485, 486, 487. That and that alone is the foundation of their rights.

* * * * *

“We repeat that the only jurisdiction for allowing a party to recover when the causes of action arose in another civilized jurisdiction is a well founded belief that it was a cause of action in that place. The right to recover stands upon that is its necessary foundation. It is part of the plaintiff’s case, and if there is reason for doubt he must allege and prove it. The extension of the hospitality of our courts to foreign suitors must not be made a cover for injustice to the defendants of whom they happen to be able to lay hold.”

See also:

The Hanna Nielsen, 273 F. 171 (C. C. A. 2);

Manning v. International Mercantile Marine Co., 212 F. 933 (C. C. A. 2);

Bonsalem v. Byron S. S. Co., Ltd., 50 F. (2d) 114 (C. C. A. 2).

ship belongs, where the controversy involves matters arising beyond the territorial jurisdiction of this country, or relates to differences between the master and the crew, or the crew and the shipowners. In such cases on such general principles of comity, the admiralty courts of this country will not interfere between the parties, unless there is special reason for doing so, and will require the foreign consul to be notified, and although not absolutely bound by, will always pay respect to, his wishes as to taking jurisdiction. *Ex parte Newman*, 14 Fall. 152, 20 L. Ed. 877; *The Belgenland*, 114 U. S. 355, 5 Sup. Ct. 860, 29 L. Ed. 152; *Patterson v. Eudora*, 190 U. S. 169, 23 Sup. Ct. 821, 47 L. Ed. 1002.

* * * * *

“Consideration of these cases shows that they may be said to fall within the following four classes or categories:

“First. This class includes cases in which it has been held that the courts of admiralty have the right to take jurisdiction in the absence of special treaty stipulations in controversies between foreign seamen and foreign vessels, whether arising on the high seas or in the port, and whether based on tort or for wages. That this jurisdiction is not compulsory, but is discretionary. That this discretion will not be exercised against the protest of the consul of the country to which the vessel belongs, except under special circumstances.”

In *Canada Malting Co., Ltd., v. Paterson Steamships, Ltd.*, 285 U. S. 413, the Court said (p. 418):

“The libelants concede, as they must, that in a suit in admiralty between foreigners it is ordinarily within the discretion of the District Court to refuse to retain jurisdiction; and that the exercises of its discretion will not be disturbed unless abused. *Charter Shipping Co. v. Bowring, Jones & Tidy, Ltd.*, 281 U. S. 515, 517. Compare *Watts, Watts & Co. v. Unione Austriaca di Navigazione*, 248 U. S. 9; *Langnes v. Green*, 282 U. S. 531, 544. They claim, however, that the rule is not applicable here since the cause of action arose within the territorial limits of the United States; and, moreover, that if the District Court had discretion, the decrees should be reversed because, on the undisputed facts, it was an abuse of discretion to decline jurisdiction. We are of opinion that neither claim is well founded.”

See also:

The Falco, 15 F. (2d) 604 (E. D. N. Y.);

Bruse v. Steamship Venus, 1935 A. M. C. 488 (E. D. N. Y.);

Nakken v. Knutsen, 1938 A. M. C. 316 (S. D. Cal.).

only refused to consent to the court exercising its jurisdiction, but has requested the court to decline to exercise jurisdiction.

In *The Ester, supra*, the Court said (pp. 220-2) :

“The general rule of international law is stated in the Digest of the International Law of the United States, edited by Francis Wharton, and published by the government (volume 1, p. 130), to be that:

“‘So far as regards acts done at sea before her arrival in port, and acts done on board in port by members of the crew to one another, and so far as regards the general regulation of the rights and duties of those belonging on board, the vessel is exempt from local jurisdiction; but if the acts done on board affect the peace of the country in whose ports she lies, or the persons or property of its subjects, to that extent that state has jurisdiction.’

“This rule as so stated, however, has been modified by the decisions of the Supreme Court of the United States.

“ In *Ex parte Newman*, 14 Wall. 150, 20 L. Ed. 877, the court, in the course of the delivery of its opinion (although the point was not involved in the question actually decided), states, on the question of a libel by a Prussian seaman against a Prussian vessel for wages, that admiralty courts, it is said, will not take jurisdiction in such a case except where it is manifestly necessary to do so to prevent a failure of justice; but the better opinion is that, independent of treaty stipulations, there is no constitutional or legal impediment to the exercise of jurisdiction in such a case. Such courts, may, if they see fit, take jurisdiction in such a case; but they will not do so as a general rule without the consent of the representative of the country to which the vessel belongs, where it is practicable that the representative should be consulted. His consent, however, is not a condition of jurisdiction, but is regarded as a material fact to aid the court determining the question of discretion whether jurisdiction in the case ought or ought not to be exercised.

* * * * *

“In the absence of treaty stipulations, the courts of admiralty have civil jurisdiction in all matters appertaining to the foreign ship while in port, and also in certain cases when the court has the vessel in its territorial jurisdiction, although the cause of action arose on the high seas. *The Belgenland*, 114 U. S. 355, 5 Sup. Ct. 860, 29 L. Ed. 152; *Wildenhus' Case*, 120 U. S. 1, 7 Sup. Ct. 385, 30 L. Ed. 565.

“The exercise of this civil jurisdiction, where those who are concerned are all citizens of the same foreign state and the cause of action occurred on or with regard to the ship, is not imperative, but discretionary, and the courts from motives of convenience or international comity will not take jurisdiction *without the assent of the consul of the country to which the*

Article VI of the Constitution of the United States of America provides that "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby * * * *"

In *The Ester*, 190 F. 216, the Court said (p. 221):

"Where treaty stipulations exist, however, with regard to the right of the consul of a foreign country to adjudge controversies arising between the master and the crew, or other matters occurring on the ship exclusively subject to the foreign law, such stipulations are the law of the land, and must be fairly and faithfully observed. *The Belgenland*, 114 U. S. 355, 5 Sup. Ct. 860, 29 L. Ed. 152; *Wildenhus' Case*, 120 U. S. 17, Sup. Ct. 385, 30 L. Ed. 565."

In *The Belgenland*, 114 U. S. 355, the Court said (p. 364):

"Of course, if any treaty stipulations exist between the United States and the country to which a foreign ship belongs, with regard to the right of the consul of that country to adjudge controversies arising between the master and crew, or other matters occurring on the ship exclusively subject to the foreign law, such stipulations should be fairly and faithfully observed. *The Elwin Kraplin*, 9 Blatchford, 438, reversing S. C. 4 Ben. 413; see S. C. on application for mandamus, *Ex parte Newman*, 14 Wall. 152. Many public engagements of this kind have been entered into between our government and foreign States. See *Treaties and Conventions*, Rev. Ed. 1873, Index, 1238."

It is therefore respectfully submitted that the Court has no jurisdiction and the libel should be dismissed.

II. EVEN IF THE COURT HAS JURISDICTION, SUCH JURISDICTION IS DISCRETIONARY, AND THE COURT SHOULD REFUSE TO EXERCISE THE SAME

The Federal Courts have held that in the absence of a treaty admiralty courts have discretionary jurisdiction in matters appertaining to foreign vessels, and the courts will refuse to exercise jurisdiction without the consent of the consul of the country to which the ship belongs, where the matter relates to differences between the master and crew, or the crew and the shipowner.

In the instant case the Consul General of the Republic of China, the country to which the steamship Kwang Yuan belongs, has not

vessel. The libelant was for the time being a Norwegian, and owed obedience to the laws of Norway and Sweden.”

See also :

- New York & Cuba Mail S. S. Co. v. U. S.*, 297 F. 159
(C. C. A. 2);
The Falco, 15 F. (2d) 604;
The Leon XIII, 5 Asp. M. C. 25.

On June 18, 1858, the United States of America and the Ta-Tsing Empire, the predecessor to the Republic of China, entered into a treaty which ever since said date has been, and now is, in full force and effect. Article III provides as follows :

“The Emperor of China shall have the right to appoint consuls at ports of the United States, who shall enjoy the same privileges and immunities as those which are enjoyed by public law and treaty in the United States by the consuls of Great Britain and Russia, or either of them.”

The treaty of December 6, 1832, between the United States of America and Russia, proclaimed by the President of the United States of America on May 11, 1933, provides in Article VIII as follows :

“The two contracting parties shall have the liberty of having in their respective ports, consuls, vice consuls, agents and commissaries, of their own appointment, who shall enjoy the same privileges and powers as those of the most favored nations; but if any such consul shall exercise commerce, they shall be submitted to the same laws and usages to which the private individuals of their nation are submitted, in the same place.

The consuls, vice consuls, and commercial agents shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without interference of the local authorities, unless the conduct of the crews, or of the captain, shall disturb the order or tranquillity of the country, or the said consuls, vice consuls or commercial agents should require their assistance to cause their decisions to be carried into effect or supported. It is, however, understood, that this species of judgment or arbitration shall not deprive the contending parties of the right they have to resort, on their return, to the judicial authority of their country.”

Article VIII was incorporated by reference in the treaty between the United States of America and the Ta-Tsing Empire, now the Republic of China.

all of the members of the crew are Chinese.

In *re Ross*, 140 U. S. 453, the Court said (p. 472):

“The national character of the petitioner, for all the purposes of the consular jurisdiction, was determinable by his enlistment as one of the crew of the American ship *Bullion*. By such enlistment he becomes an American seaman—one of an American crew on board of an American vessel—and as such entitled to the protection and benefits of all the laws passed by Congress on behalf of American seamen, and subject to all their obligations and liabilities. Although his relations to the British government are not so changed that, after the expiration of his enlistment on board of the American ship, that government may not enforce his obligation of allegiance, and he on the other hand may not be entitled to invoke its protection as a British subject, that relation was changed during his service of seaman on board of the American ship under his enlistment. He could then insist upon treatment as an American seaman, and invoke for his protection all the power of the United States which could be called into exercise for the protection of seamen who were native born. He owes for that time to the country to which the ship on which he is serving belongs, a temporary allegiance, and must be held to all its responsibilities.

In *Rainey v. New York & P. S. S. Co., Ltd.*, 216 F. 449 (C. C. A. 9,) the Court said (p. 454):

“When Rainey, although a citizen of the state of Washington, went before the British consul at Seattle and signed the shipping articles, and thereupon stepped upon the British ship flying the British flag as a member of its crew, as the record shows he did, he stepped upon British territory and became entitled to the protection and benefit of all British law in behalf of British seamen, and subject to all of its obligations and liabilities.”

In *The Maria*, 49 F. 286, the Court said (p. 238):

“In the case of *Ross v. McIntyre*, 140 U. S. 453, 11 Sup. Ct. Rep. 897, it was held that the petitioner, a British subject, who, while serving as a seaman on an American vessel, in the harbor of Yokohama, committed murder thereon, of which he was convicted by the consular tribunal for Japan, was an American seaman, and subject to the laws relating thereto;

“Mr. Justice Field, speaking for the court, said:

“‘While he (*Ross*) was an enlisted seaman on the American flag, he was, within the meaning of the statute and the treaty, an American, under the protection and subject to the laws of the United States equally with the seaman who was native born.’

“Of course, the doctrine of this case applies equally well to an American citizen who ships as a seaman on a foreign

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Libelants,

vs.

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Sung Fu Shun, Liang Chen Sien, Lu Hwa Hsi,
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Yu Chung, Chiang Fang Ting, Sui Yao Hsien,
Wang Chen Yun, Tang Ting Fu, Sung Yuan
Sian, Tu Tsai Shien, Sung Hsiao Meng, Chang
Chun Ting, Li Shui Ting, Li Pen Hsiao and the
Chinese steamer KWANG YUAN formerly and
otherwise known as the EDNA CHRISTENSEN

Respondents.

POINTS AND AUTHORITIES IN SUPPORT OF EXCEPTIONS
TO LIBEL BY RESPONDENTS HEREIN AND BY
C. C. HUANG, CONSUL GENERAL FOR THE
REPUBLIC OF CHINA

I. THIS COURT HAS NO JURISDICTION OF THIS CONTROVERSY

The libel alleges that the steamship Kwang Yuan is of Chinese registry and flies the flag of the Republic of China.

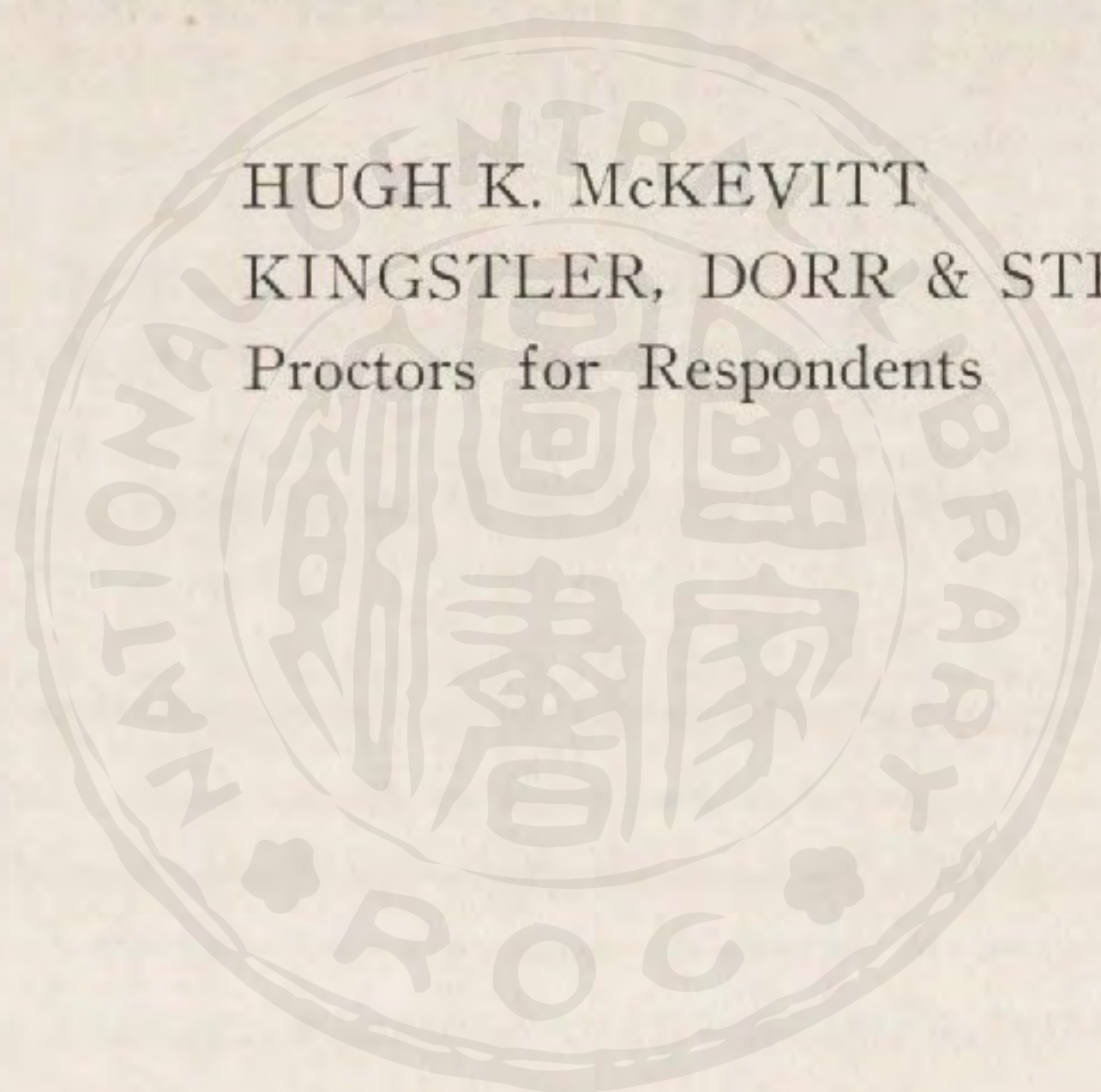
The nationality of all of the members of the crew, whether they be Japanese or Chinese, is merged in that of the vessel, and consequently

and the Republic of China the matters alleged in said libel relating to a dispute or controversy between the master, officers, and crew of said vessel of Chinese registry are solely within the jurisdiction of the Consul General of the Republic of China, at the port of San Francisco, and that this Honorable Court has no jurisdiction of said controversy.

WHEREFORE, said respondents pray that these exceptions may be sustained, that libelants may take nothing by said libel, and that the same may be dismissed, with costs to respondents, and that respondents may have such other and further relief as may be deemed meet in the premises.

Dated: San Francisco, California, April 11, 1938.

HUGH K. McKEVITT
KINGSTLER, DORR & STEVENSON
Proctors for Respondents



to be entitled to the possession of the Chinese steamer Kwang Yuan, now lying in the Bay of San Francisco; that it does not appear in said libel, nor can it be ascertained therefrom that under the laws of the Republic of China a possessory action for the recovery of the possessory action for the recovery of the possession of said vessel will lie, or that there is any law of said Republic which will permit said action to be maintained.

II.

That it does not appear in said libel, nor can it be ascertained therefrom, whether or not the alleged transfer of said steamship Kwang Yuan to the libelant Mokunosuke Kotani was made pursuant to or with the permission of the Government of the Chinese Republic.

III.

That it does not appear in said libel, nor can it be ascertained therefrom that said libelant Mokunosuke Kotani, or any of the libelants, are entitled to maintain an action for the possession of said vessel.

IV.

That it specifically appears from the allegations of said libel that the Consul General in San Francisco for the Republic of China has refused and still refuses to issue a Chinese registry for said vessel and to permit the clearance of said vessel from the port of San Francisco; that said Consul General in San Francisco for the Republic of China is the duly accredited representative at said port of the duly accredited, appointed and acting Chinese Ambassador to the United States; that the said Consul General of the Republic of China is exempt from the jurisdiction and process of this Honorable Court, and cannot be compelled to issue a Chinese registry or clearance for said vessel, said matters being entirely subject to the regulation of the Republic of China and its proper officers.

V.

That it specifically appears from the allegations in said libel that the matters therein set forth constitute a dispute between the master and officers of the Chinese steamship Kwang Yuan on the one hand and the crew of said vessel on the other that under the laws of the Republic of China and under the laws of the United States and under and pursuant to existing treaties between the United States of America

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 Chun Ting, Li Shui Ting, Li Pen Hsiao and the
 Chinese steamer KWANG YUAN formerly and
 otherwise known as the EDNA CHRISTENSEN

Respondents.

EXCEPTIONS TO LIBEL

The exceptions of Chau Tsu Ming, Wang Che Fu, Ma Yung Hsin, Sung Fu Shun, Liang Chen Sien, Lu Hwa Hsi, Liu Ming Shan, Liu Yueh, Chang Shi, Wang Yu Chung, Chiang Fang Ting, Sui Yao Hsien, Wang Chen Yun, Tang Ting Fu, Sung Yuan Siang, Tu Tsai Shien, Sung Hsiao Meng, Chang Chun Ting, Li Shui Ting, and Li Pen Hsiao, respondents in the above entitled cause, to the libel filed herein by Mokunosuke Kotani, Y. Kawano, T. Isoo, and K. Omori, libelants, respectfully show:

I.

That said libel has been filed by or on behalf of persons alleged

of the Republic of China, at the port of San Francisco; that the crew of said vessel has called upon said Consul General to settle said dispute and controversy; and that this Honorable Court has no jurisdiction of said controversy.

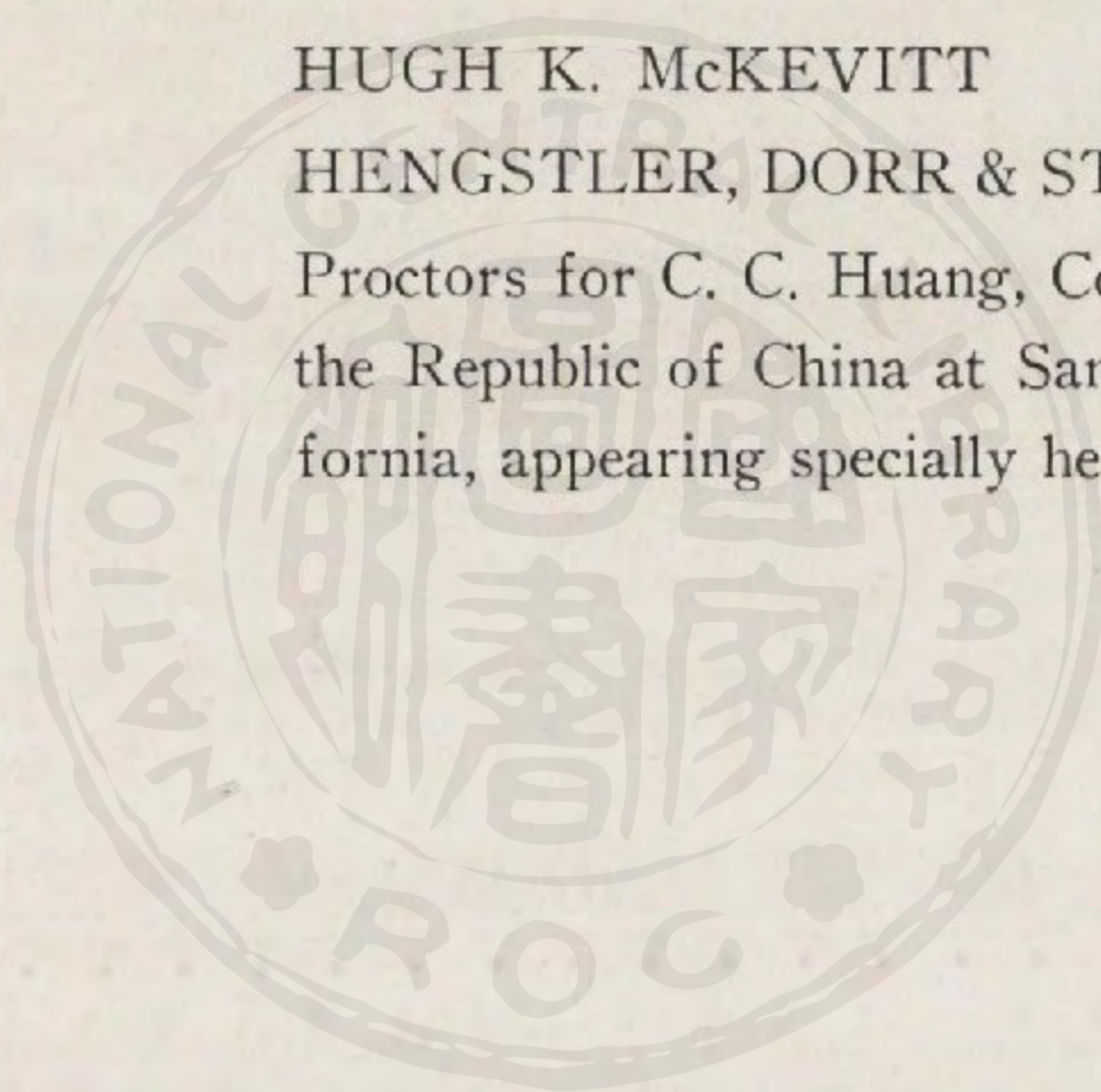
WHEREFORE, said objector prays that these objections may be sustained, that libelants may take nothing by said libel, and that the same may be dismissed.

Dated: San Francisco, California, April 11, 1938.

HUGH K. McKEVITT

HENGSTLER, DORR & STEVENSON

Proctors for C. C. Huang, Consul General for the Republic of China at San Francisco, California, appearing specially herein.



libel, nor can it be ascertained therefrom that under the laws of the Republic of China a possessory action for the recovery of the possession of said vessel will lie, or that there is any law of said Republic which will permit said action to be maintained.

II.

That it does not appear in said libel, nor can it be ascertained therefrom, whether or not the alleged transfer of said steamship Kwang Yuan to the libelant Mokunosuke Kotani was made pursuant to or with the permission of the Government of the Republic of China.

III.

That it does not appear in said libel, nor can it be ascertained therefrom, that said libelant Mokunosuke Kotani, or any of the libelants, are entitled to maintain an action for the possession of said vessel.

IV

That it specifically appears from the allegations of said libel that the Consul General in San Francisco for the Republic of China has refused and still refuses to issue a Chinese registry for said vessel and to permit the clearance of said vessel from the port of San Francisco; that said Consul General in San Francisco for the Republic of China is the duly accredited representative at said port of the duly accredited, appointed, and acting Chinese Ambassador to the United States; that the said Consul General of the Republic of China is exempt from the jurisdiction and process of this Honorable Court, and cannot be compelled to issue a Chinese registry or clearance for said vessel, said matters being entirely subject to the regulation of the Republic of China and its proper officers.

V.

That it specifically appears from the allegations in said libel that the matters therein set forth constitute a dispute between the master and officers of the Chinese steamship Kwang Yuan on the one hand and the crew of said vessel on the other; that under the laws of the Republic of China and under the laws of the United States and under and pursuant to existing treaties between the United States of America and the Republic of China the matters alleged in said libel relating to a dispute or controversy between the master, officers, and crew of said vessel of Chinese registry are solely within the jurisdiction of the Consul General

IN THE SOUTHERN DIVISION OF THE UNITED STATES
DISTRICT COURT IN AND FOR THE NORTHERN
DISTRICT OF CALIFORNIA, IN ADMIRALTY

MOKUNOSUKE KOTANI, Y. KAWANO, T.
ISOO, and K. OMORI,

Libelants,

vs.

Chau Tsu Ming, Wang Che Fu, Ma Yung Hsin,
Sung Fu Shun, Liang Chen Sien, Lu Hwa Hsi,
Liu Ming Shan, Liu Yueh, Chang Shih, Wang
Yu Chung, Chiang Fang Ting, Sui Yao Hsien,
Wang Chen Yun, Tang Ting Fu, Sung Yuan
Siang, Tu Tsai Shien, Sung Hsiao Meng, Chang
Chun Ting, Li Shui Ting, Li Pen Hsiao and the
Chinese steamer KWANG YUAN formerly and
otherwise known as the EDNA CHRISTENSEN

Respondents.

OBJECTIONS TO THE JURISDICTION

Comes now C. C. Huang, as Consul General for the Republic of China at the City and County of San Francisco, State of California, appearing specially herein solely for the purpose of objecting to the jurisdiction of this Honorable Court over the subject matter of this action, and not submitting to the jurisdiction of said Court, in his own behalf and in behalf of the respondents above named, and hereby objects to said jurisdiction upon the following grounds:

I.

That said libel has been filed by or on behalf of persons alleged to be entitled to the possession of the Chinese steamship Kwang Yuan, now lying in the Bay of San Francisco; that it does not appear in said

by and through their Attorney, Chalmers G. Graham, at the hour of 10 o'clock, A. M., on the 12 day of April, 1938, or as soon thereafter as they may be heard, will present to the above entitled Court at its Court Room in the Post Office Building, 7th and Mission Street, City and County of San Francisco, State of California, their libel for Possession and Order with the prayer that the said Order be signed by the above entitled Court, directing the United States Marshall to take possession of the Chinese steamer KWANG YUAN, formerly and otherwise known as the S. S. EDNA CHRISTENSEN, and to dispossess the named respondents from said vessel and to deliver the said vessel to the libelants herein and for such other and further relief as may be meet and proper.

YOU ARE HEREBY FURTHER NOTIFIED to be there present and enter any objection or plea if you be so advised.

Dated this 9th day of April, 1938.

CHALMERS G. GRAHAM
Proctor for Libelants

Service of a copy of the libel herein and a copy of the above entitled notice may be made upon the respondents herein and upon the Honorable C. C. Huang, Consul General of the Republic of China, San Francisco, California, on or before 5 o'clock P. M., of the 9th day of April, 1938.

MICHAEL J. ROCHE
U. S. District Judge

Dated this 9th day of April, 1938.

IN THE SOUTHERN DIVISION OF THE UNITED STATES
DISTRICT COURT IN AND FOR THE NORTHERN
DISTRICT OF CALIFORNIA, IN ADMIRALTY

MOKUNOSUKE KOTANI, Y. KAWANO, T.
ISOO, and K. OMORI,

Libelants,

vs.

Chau Tsu Ming, Wang Che Fu, Ma Yung Hsin,
Sung Fu Shun, Liang Chen Sien, Lu Hwa Hsi,
Liu Ming Shan, Liu Yueh, Chang Shih, Wang
Yu Chung, Chiang Fang Ting, Sui Yao Hsien,
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Siang, Tu Tsai Shien, Sung Hsiao Meng, Chang
Chun Ting, Li Shui Ting, Li Pen Hsiao and the
Chinese steamer KWANG YUAN formerly and
otherwise known as the EDNA CHRISTENSEN

Respondents.

NOTICE

TO Chau Tsu Ming, Wang Che Fu, Ma Yung Hsin, Sung Fu Shun,
Liang Chen Sien, Lu Hwa Hsi, Liu Ming Shan, Liu Yueh, Chang
Shih, Wang Yu Chung, Chiang Fang Ting, Sui Yao Hsien,
Wang Chen Yun, Tang Ting Fu, Sung Yuan Siang, Tu Tsai
Shien, Sung Hsiao Meng, Chang Chun Ting, Li Shui Ting, Li
Pen Hsiao, AND TO THE HONORABLE C. C. HUANG,
Consul General for the Republic of China, San Francisco, Cal-
ifornia:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE,
and you are hereby notified that Y. Kawano, T. Isoo, and K. Omori,

permit the libelants herein to take possession of the said vessel and return the said respondents and all of them to China, they and all of them have refused and now refuse to leave the said vessel or to permit the said libelants to go aboard the said vessel with safety to themselves and refuse to permit the said libelants to return the said respondents to China.

WHEREFORE, libelants pray that process in due form of law, according to the course and practice of this Honorable Court in causes of maritime and admiralty jurisdiction, may issue against the said Steamer Kwang Yuan, formerly and otherwise known as Edna Christenson, and against the said respondents, and that an order may be entered as above described requiring the United States Marshal to take possession of said steamer Kwang Yuan, formerly known as Edna Christenson, and the cargo on board thereof and deliver the same to the said libelants, Y. Kawano, T. Isoo and K. Omori, as representatives of the owner, Mokunosuke Kotani and entitled to possession thereof, and requiring the said United States Marshal to dispossess and remove the respondents and all of them from the said vessel and for such other and further relief as libelants may be entitled to receive.

CHARLES G. GRAHAM
Proctor for Libelants.

of the Empire of Japan in San Francisco, California concerning the protection of the property of the owner of said vessel and thereafter on the 6th day of April, 1938 the libelants, T. Isoo and K. Omori, left the said vessel under threat of bodily harm by the respondent Chinese members of the crew thereof who warned them that if the Master of the said vessel, Y. Kawano, returned thereon, serious consequences to his health and safety would result. Libelants allege that during all of the time respondent members of the said crew absolutely failed and refused to work and obey or comply with the orders or commands of libelants, Y. Kawano, T. Isoo and K. Omori, and have been in a state of mutiny and taken possession of the said vessel and its appurtenances and are now in full and complete control thereof all to the harm and detriment of the libelant, Mokunosuke Kotani and the officers of said vessel, Y. Kawano, T. Isoo and K. Omori.

XI.

Libelants, Y. Kawano, T. Isoo and K. Omori, further allege that should they return to said vessel with the said respondents and all of them in control and possession thereof, great bodily harm and damage would be done to the said libelants, Y. Kawano, T. Isoo and K. Omori. That unless the said vessel is restored to the owner thereof and to libelants, Y. Kawano, T. Isoo and K. Omori, and the said respondents and all of them dispossessed and removed immediately from the said vessel, serious damage will be then done to the said vessel and to its machinery and appurtenances by the said respondent and all of them, all to the harm and detriment of the said owner hereof and to the owner of the said cargo laden on board and should the said respondents not be dispossessed, the libelants allege upon information and belief that the said vessel may be so damaged by them as to render repairs thereto expensive or impossible to effect.

XII.

Libelants allege that although demand has been made therefor of the said respondents and all of them through the Honorable, the Chinese Consul of the Republic of China, San Francisco, California that the said respondents and all of them leave the said vessel and dispossess themselves therefrom in order that they and all of them may

Kotani of Osaka, Japan as the said vessel lay laden with cargo in San Francisco Bay, State of California and that the said Mokunosuke Kotani is now and has been since said time the owner of and entitled to possession of the said vessel *pursuant* to the registry issued by but retained by the Honorable, the Consul General of the Republic of China in San Francisco.

X.

Libelants allege that the respondent Chinese subordinate officers and members of the crew of the said Steamer Kwang Yuan have been for the past several months and are now on board the said vessel and refused and continue to refuse to obey or fulfill the orders and commands of their superior officers, to wit: Libelants Y. Kawano, T. Isoo, and K. Omori and refused and continue to refuse to work and perform the duties for which they and each of them were employed there and the said respondents and each of them unlawfully, illegally and without proper or any authority are now and have been unlawfully withholding and interfering with the possession of the said vessel by the libelants herein, Y. Kawano, T. Isoo, and K. Omori, and the owner of the said vessel, Mokunosuke Kotani. And in addition thereto, on or about the 3rd day of April, 1938, the said respondent members of the crew of said vessel mutinied and attacked the libelant officers of the said vessel, Y. Kawano, T. Isoo, and K. Omori, causing serious injury to Chief Officer T. Isoo and forcing the said libelants, Y. Kawano, T. Isoo and K. Omori, to hastily depart from the said vessel in order to escape further harm and injury and that the said respondent members of the crew of said vessel at the said time and place were subdued by members of the United States Coast Guards patrolling the Coast of San Francisco and waters of San Francisco Bay, State of California, adjacent to said vessel. That said libelants, Y. Kawano, T. Isoo and K. Omori, escaped by launch therefrom.

That thereafter the libelants, Y. Kawano, T. Isoo and K. Omori, on or about the 4th day of April, 1938 returned to the said vessel for the purpose of taking charge thereof and protecting the interests of the owner thereof and the said vessel and thereafter and on the 5th day of April, 1938 the libelant Y. Kawano, left the said vessel to confer with the agent of the owners and the Honorable, the Consul General

to issue Chinese registry to the said vessel pursuant to the approval of the United States Immigration Service, Department of Labor, the said vessel were released from the custody of the said United States Immigration Service at Angel Island, San Francisco Bay, State of California and placed on the said vessel lying at anchor. Libelants are informed and believe and therefore allege that the said Chinese Consul General and/or the Ambassador of the Republic of China to the United States of America guaranteed to the United States Immigration Service, Department of Labor the safe passage and return to the Republic of China and exit from the United States of America of the said respondent Chinese and all of them and that then and there all of the said respondent Chinese were placed aboard the said steamer Kwang Yuan ex Edna Christenson, as members of the crew thereof and they and all of them have been ever since and now are on board the said vessel.

VIII.

That heretofore and prior to the 30th day of January, 1938, being the date set forth in the approval and permit of the United States Maritime Commission for issuance of Chinese registry to the said vessel, the Consul General of the Republic of China in the City of San Francisco, State of California issued a Chinese registry to and for the said vessel but in spite of demand therefor refused and continues to refuse to deliver the same to the Master of the said vessel, its owners or agents although demand therefor has been continually made by the said parties of the said Consul General of the Republic of China and as a result thereof the United States Customs Service, Treasury Department, have refused to issue a clearance to permit the said vessel to sail as demanded by the Captain of the said vessel and its owners and agents and that the said vessel with all of the respondents on board thereof and laden with the aforesaid cargo of scrap iron is now lying and has been during all of the aforesaid times, at anchor in San Francisco Bay, State of California.

IX.

That heretofore as aforesaid and on the first day of February, 1938 the said Yung Yuan Steamship Company of Chefoo, China sold the said Kwang Yuan, a vessel of Chinese registry, to Mokunosuke

Steamer at the Port of San Francisco, State of California, for delivery at Osaka, Japan approximately 2,000 gross tons of scrap steel which the said Yung Yuan Steamship Company, then owners of the said vessel, agreed to carry and transport to the said Osaka, Japan and deliver the same to the owners and holders of bills of lading issued and delivered by the Master of the said vessel Y. Kawano, for and on behalf of the owners of the said vessel and that all of the said cargo is laden on board of the said vessel.

VI.

That heretofore and during the month of August, 1937 the respondent Chinese subordinate officers and members of the crew of the Steamer Kwang Yuan arrived in the Port of San Francisco together with libelants Y. Kawano, T. Isoo and K. Omori, officers of the said vessel for the purpose of manning the said vessel and navigating it to Osaka, Japan and thereafter for delivery to the purchasing owners.

That the said respondents and members of the crew of said vessel being Chinese aliens and not entitled to free entry into the United States of America were placed in the care and custody of the United States Immigration Service, Angel Island, San Francisco Bay, while libelant officers of the said vessel went on board and took charge thereof.

VII.

That immediately upon the approval by the United States Maritime Commission of the sale and transfer of the said vessel to Chinese registry and flag the agents of the said purchasers of said vessel made request upon the Honorable, the Consul General of the Republic of China in San Francisco for the issuance of Chinese registry for the said vessel.

That same was refused by the said Consul General of the Republic of China and the said vessel and the cargo on board was denied clearance by the Collector of Customs of the United States of America at San Francisco, California and remained in the Bay of San Francisco, State of California.

That thereafter and while the said vessel remained at anchor and while the said Consul General of the Republic of China refused

Christenson, a corporation, owners of the American Steamer Edna Christenson, entered into a contract of sale and sold the said Steamer Edna Christenson, then and there lying and being in the Bay of San Francisco, State of California, to Yung Yuan Steamship Company of Chefoo, China, subject to the approval of the United States Maritime Commission of the sale of the said vessel and the transfer to Chinese ownership and Chinese registry and flag.

IV.

That heretofore on or about the 30th day of July, 1937, pursuant of application of Sudden and Chirstenson to the United States Maritime Commission, the said United States Maritime Commission approved the sale of the said steamer Edna Christenson to Yung Yuan Steamship Company of Chefoo, China and the transfer of the registry and flag of said vessel to Chinese registry and flag contingent upon the sale and transfer to foreign ownership, registry and flag so approved within six months from the sale thereof, to wit: 30th day of July, 1937; that thereafter and prior to the expiration of the period hereinbefore set forth, that is to say, the 30th day of January, 1938, the said sale and transfer of the said vessel was effected to Yung Yuan Steamship Company of Chefoo, China, and the registry and flag of the said vessel transferred from that of the United States of America to the Republic of China and the name of the said vessel changed from the said Steamer Edna Christenson to the Steamer Kwang Yuan, all in compliance with the approval of sale and transfer issued by the United States Maritime Commission, July 30, 1937 as aforesaid.

That thereafter and on the first day of February, 1938 the said Yung Yuan Steamship Company of Chefoo, China sold to the said Mokunosuke Kotani of Osaka, Japan the above named Steamer then and there lying and being in the Bay of San Francisco, State of California, acceding to the said Mokunosuke Kotani all rights and responsibilities in connection with the said vessel.

V.

That heretofore and on or about the 13th day of September, 1937 and thereafter, following the sale and approval thereof of the said Steamer Edna Christenson to the said Yung Yuan Steamship Company of Chefoo, China there was loaded on board of the said

Sung Yuan Sian, Tu Tsai Shien, Sung Hsiao Meng, Chang Chun Ting, Li Shui Ting, Li Pen Hsiao, in a cause of possession civil and maritime, alleges as follows:

I

That libelant, Makunosuke Kotani, is now and has been since the first day of February, 1938 the owner of and entitled to possession of the steamer Kwang Yuan formerly and otherwise known as the Edna Christenson, and that the said Mokunosuke Kotani is now and has been during all the times herein mentioned a resident of the City of Osaka, Japan and a citizen of the Empire of Japan.

That libelant, Y. Kawano, is now and has been during all the times herein mentioned Master of the said Steamer Kwang Yuan formerly and otherwise known as the Edna Christenson and in charge and entitled to possession thereof.

That libelant, T. Isoo is now and has been during all the times herein mentioned Chief Officer of the Kwan Yuan formerly and otherwise known as the Edna Christenson.

That libelant, K. Omori, is now and has been during all the times herein mentioned Chief Engineer of the Kwang Yuan formerly and otherwise known as the Edna Christenson, and

That said Y. Kawano, T. Isoo, and K. Omori are citizens of the Empire of Japan, presently in the City and County of San Francisco, State of California.

II.

That the said Chau Tsu Ming, Wang Che Fu, Ma Yung Hsin, Sung Fu Shun, Liang Chen Sien, Lu Hwa Hsi, Liu Ming Shan, Liu Yueh, Chang Shih, Wang Yu Chung, Chiang Fang Ting, Sui Yao Hsien, Wang Chen Yun, Tang Ting Fu, Sung Yuan Siang, Tu Tsai Shien, Sung Hsiao Meng, Chang Chun Ting, Li Shui Ting and Li Pen Hsiao are now and have been during all the times herein mentioned citizens of the Republic of China and are subordinate officers and members of the crew of the said Steamer Kwang Yuan formerly and otherwise known as the Edna Christenson.

III.

That heretofore and on the 7th day of July, 1937 Sudden and

THE CASE OF THE OWNERSHIP AND POSSESSION OF
THE S. S. KWANG YUAN

IN THE SOUTHERN DIVISION OF THE UNITED STATES
DISTRICT COURT IN AND FOR THE NORTHERN
DISTRICT OF CALIFORNIA, IN ADMIRALTY

MOKUNOSUKE KOTANI, Y. KAWANO, T.
ISOO, and K. OMORI,

Libelants,

vs.

Chau Tsu Ming, Wang Che Fu, Ma Yung Hsin,
Sung Fu Shun, Liang Chen Sien, Lu Hwa Hsi,
Liu Ming Shan, Liu Yueh, Chang Shih, Wang
Yu Chung, Chiang Fang Ting, Sui Yao Hsien,
Wang Chen Yun, Tang Ting Fu, Sung Yuan
Siang, Tu Tsai Shien, Sung Hsiao Meng, Chang
Chun Ting, Li Shui Ting, Li Pen Hsiao and the
Chinese steamer KWANG YUAN formerly and
otherwise known as the EDNA CHRISTENSON
Respondents.

LIBEL FOR POSSESSION

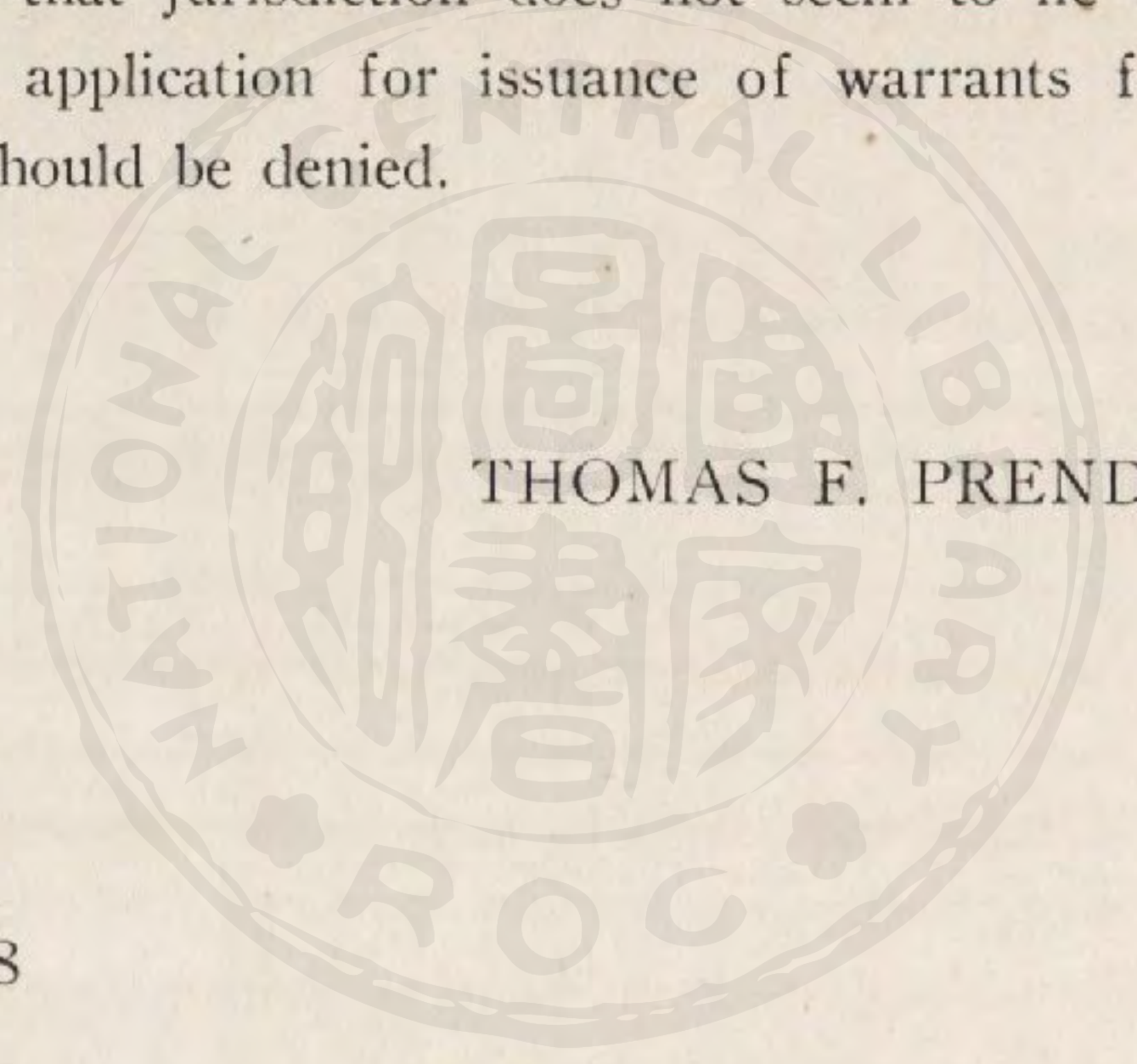
The libel and claim of Makunosuke Kotani, Y. Kawano, T. Isoo, and K. Omori to the Kwang Yuan otherwise and formerly known as the Edna Christenson and against the respondents, Chan Tsu Ming, Wang Che Fu, Ma Yung Hsin, Sung Fu Shun, Liang Chen Sien, Lu Hwa Hsi, Liu Ming Shan, Liu Yueh, Chang Shih, Wang Yu Chung, Chiang Fang Ting, Sui Yao Hsien, Wang Chen Yun, Tang Ting Fu,

hereafter be extended to similar officers of the nation most favored in these respects.”

An attribute is that which is considered belonging to, inherent in, or characteristic of a person (Webster). It may reasonably be inferred that jurisdiction over the Chinese crew on this Chinese ship in the port of San Francisco is inherently and exclusively in the local Chinese Consul General.

There are several decisions of the United States Supreme Court and the United States Circuit Courts holding the nationality of the seamen is merged in the nationality of the ship on which they are employed.

It follows that jurisdiction does not seem to lie in the Municipal Court and the application for issuance of warrants for arrest of the Chinese crew should be denied.

A large, faint circular seal of the National Central Library, Republic of China, is centered on the page. The seal contains the text "NATIONAL CENTRAL LIBRARY" around the top edge and "ROC" at the bottom. In the center, there are Chinese characters "國立中央圖書館" (National Central Library) and "中華民國" (Republic of China).

THOMAS F. PRENDERGAST,
Judge

April 29, 1938

to the territorial justice. Where acts committed on board such ship in port disturb the peace of the port, as for instance, murder, then, so the authorities hold, the local authority has jurisdiction to deal with the crime.

In the case under consideration a Chinese ship in the port of San Francisco, having a Chinese crew of ten men and Japanese officers, is said to have been the scene of a conflict between officers and crew. It does not appear that arms were used; nor were "deadly weapons" employed. Only battery is alleged in the complaints of the officers. No evidence is presented to indicate that the peace or tranquillity of the port was disturbed.

In the absence of some positive law (namely a treaty) the conclusion must be that such conflict upon a foreign ship does not concern the local municipal authority.

However, since the treaty with China in 1868 does not give the Chinese Consul "power", it is contended by complainants that the local Chinese Consul has no jurisdiction in the premises, and only the municipal authority may intervene.

As to "power", there seems to be abundant authority in the standard works on international law for this conclusion:

The term connotes permission to perform extra-territorial acts by foreign consuls in the United States, or elsewhere. Such acts include taking of depositions, certifying to various papers, holding a consular court, intervening in settlement of estates of nationals of consuls, etc., by consular offices in the United States. Mr. Hamilton Fish, Secretary of State, in 1869 stated that the great principle which underlay the treaty of 1868 was "the recognition of the sovereign authority of the imperial government at Peking over the people of the Chinese Empire, and over their social, commercial and political relations with the Western Powers."

In 1903 a treaty was entered into between the United States and China, which gives Chinese consuls enjoyment of the same "attributes, privileges and immunities" as are enjoyed by the consuls of other nations; and furthermore this treaty states, "They (Chinese consuls) shall enjoy all the attributes, privileges and immunities, and exercise all the jurisdiction over their nationals which are or may

The treaty of 1868 with Ta Tsing Empire gives Chinese consuls in the United States all the privileges and immunities accorded to consuls of Russia and Great Britain. In the latter treaties the word "power" is employed, as pointed out by counsel for the complaining witnesses (the Japanese officers of the ship); and, as no "power" is given in the Chinese treaty, he contends Chinese consuls in the United States have no power to exercise jurisdiction over their nationals on a ship of Chinese registry in an American port.

"The local port authority has jurisdiction of acts committed on board of a foreign merchant ship while in port, provided those acts effect the peace of the port, but not otherwise; and its jurisdiction does not extend to acts internal to the ship, or occurring on the high seas.

"The courts of the United States, even those possessing admiralty jurisdiction, have repeatedly declined to take cognizance of cases of this nature when the parties to the action were seamen and masters of foreign vessels. The reasons assigned by the courts of the United States for refusing to entertain jurisdiction of such cases are believed to be in accord with the general practice of other maritime powers and supported by the principles of international maritime law, as understood and interpreted by the highest judicial authority of maritime nations."

(Moore, International Law Digest, II. 292-3.)

Nations dealing with one another in matters affecting maritime relations, as may be presumed from this statement of a foremost authority on international law, shrink from breaking long established rules, which through centuries have resolved themselves into principles. Comity, or amity, between nations has ever been the guide. The general principle involved in cases of crimes on board ships on the high seas leaves jurisdiction to the nation holding registry of the vessel. And such is the rule where the ship is in a foreign port. Halleck, "International Law", states at page 172 that for the general purposes of governing and regulating the rights, duties and obligations of those on board, such ship is to be considered as a part of the territory of the nation to which she belongs. And further with respects to facts happening on board, which do not concern the peace or tranquillity of the port, or persons foreign to the crew, or acts committed while such vessel was on the high seas are not amenable

OPINION AND DECISION OF COURT

In the matter of application for warrants on complaints of Japanese officers of a Chinese ship, having a Chinese register, for the arrest of ten members of the crew, all Chinese, on charges of battery, while in the port of San Francisco.

Complainants, replying on a provision of the Penal Code of California, contend that this court has jurisdiction to issue the warrants and to try the crew of said charge. Counsel for the crew insists that this court is without such jurisdiction over the persons of the crew; and further that the Chinese Consul General in San Francisco has exclusive jurisdiction over them as nationals of the Chinese Republic on a Chinese ship in a foreign port.

It is conceded that, under the United States Constitution, treaties between the United States and foreign powers are part of the supreme law of the land, State constitutions and statutes to the contrary notwithstanding. Then, of course, the California penal statute in question must give way to treaty conventions between China and the United States, if they conflict with the California statute. Here rises an issue, since complaints hold there is no *power* stipulated in treaties With China, giving the Chinese Consul General jurisdiction to act in the premises, and, in the absence of such power, the State court has authority to cause the arrest of the crew and try them on charges of assaulting their officers on board the vessel. Scholarly and interesting briefs have been tendered by both sides, which narrow the issue to the meaning of the words "powers", "privileges", "attributes", and "immunities", as used in two treaties between China and the United States.

In closing we respectfully urge upon the Court that since the Chinese Consul possesses no power whatever under any treaty with the United States and since counsel for the Chinese Consul concede that he has no judicial power, there is no shadow of a reason why this Court should decline to assume jurisdiction over the crimes referred to in the sworn complaints on file herein which crimes were committed within the City and County of San Francisco, and are clearly within the jurisdiction of this Court. We ask that the warrants be issued as prayed.

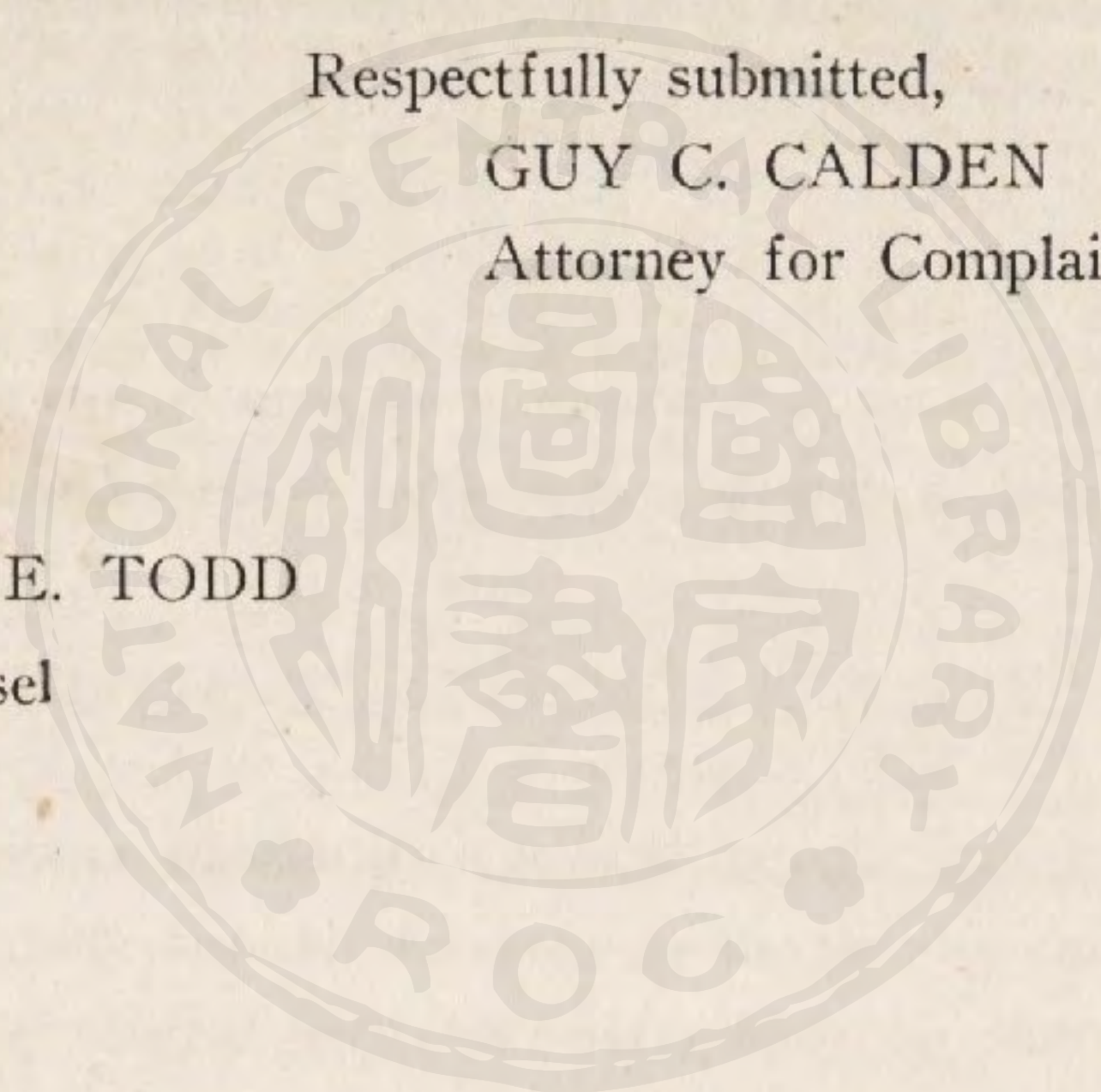
Respectfully submitted,

GUY C. CALDEN

Attorney for Complaining Witness

CLARENCE E. TODD

Of Counsel



the closing points and authorities shows clearly two things: First, that the Chinese Consul was granted no *power* by this Treaty any more than by any previous treaty, and second, that the omission to clothe the Chinese Consul with any power or jurisdiction of any kind was deliberate on the part of the American Government.

Chinese Consuls, according to this Treaty, shall enjoy "the same *attributes, privileges and immunities* as are enjoyed by Consular Officers of other nations". Note carefully that no power or jurisdiction is granted.

Then note the reference to American Consuls in China. They shall enjoy "all the *attributes, privileges and immunities* and *exercise all the jurisdiction* over their nationals which are or may hereafter be extended to similar officers of the nation most favored in these respects".

It does not require any profound consideration of this portion of the Treaty, but merely a careful reading of it to indicate clearly that when the President, Secretary of State and the Senate negotiated and approved this Treaty with China, they had two things in mind—one, to give to the American Consuls in China all the power and jurisdiction over controversies arising between American citizens in Chinese waters which Consuls of the most favored nations should ever enjoy, and two, to grant none of such power or jurisdiction to Chinese Consuls in America, but only such attributes, privileges and immunities as are enjoyed by Consuls generally. (Note that the words "most favored nation" are not used in this connection.)

We do not desire to answer any of counsel's second brief except this new matter, nor, in fact, would such answer be necessary since counsel for defendants seem to feel that unsupported assertion is a substitute for argument and authority, and even counsel's assertions quarrel with each other, because in one breath, they claim that the Chinese Consul has jurisdiction over all disputes *including crimes* on a Chinese ship in a foreign port, while in the very preceding sentence, they concede that the Consul *has no judicial* power. How any man or group of men can have jurisdiction over crimes without having any judicial power, we'll leave it to the Court to figure out.

IN THE MUNICIPAL COURT OF THE CITY AND COUNTY
OF SAN FRANCISCO, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

vs.

LIAN CHEN SIEN, et al., before the
HONORABLE THOMAS R. PRENDERGAST
Judge of Department No. 11

REPLY OF COMPLAINING WITNESSES TO NEW MATTER
IN THE BRIEF FOR DEFENDANTS

In the opening points and authorities filed on behalf of the Chinese Consul and defendants above named, exclusive reliance was placed on the Treaty of 1858.

In the closing points and authorities a quotation is given from the Treaty of 1903 with the implication, of course, that this Treaty strengthens in some way the position of the defendants.

A careful reading of the excerpt found at the top of page two of

foreign ports. This right is given to the Chinese Consul by the said treaties of 1858 and 1903. It is given to him by the sound and universally accepted principles of international law. This jurisdiction is given to him by the principles of comity existing among civilized nations.

It is felt that the points and authorities heretofore handed to Your Honor conclusively answer all arguments advanced by the Japanese and for this reason additional cumulative authorities are not submitted.

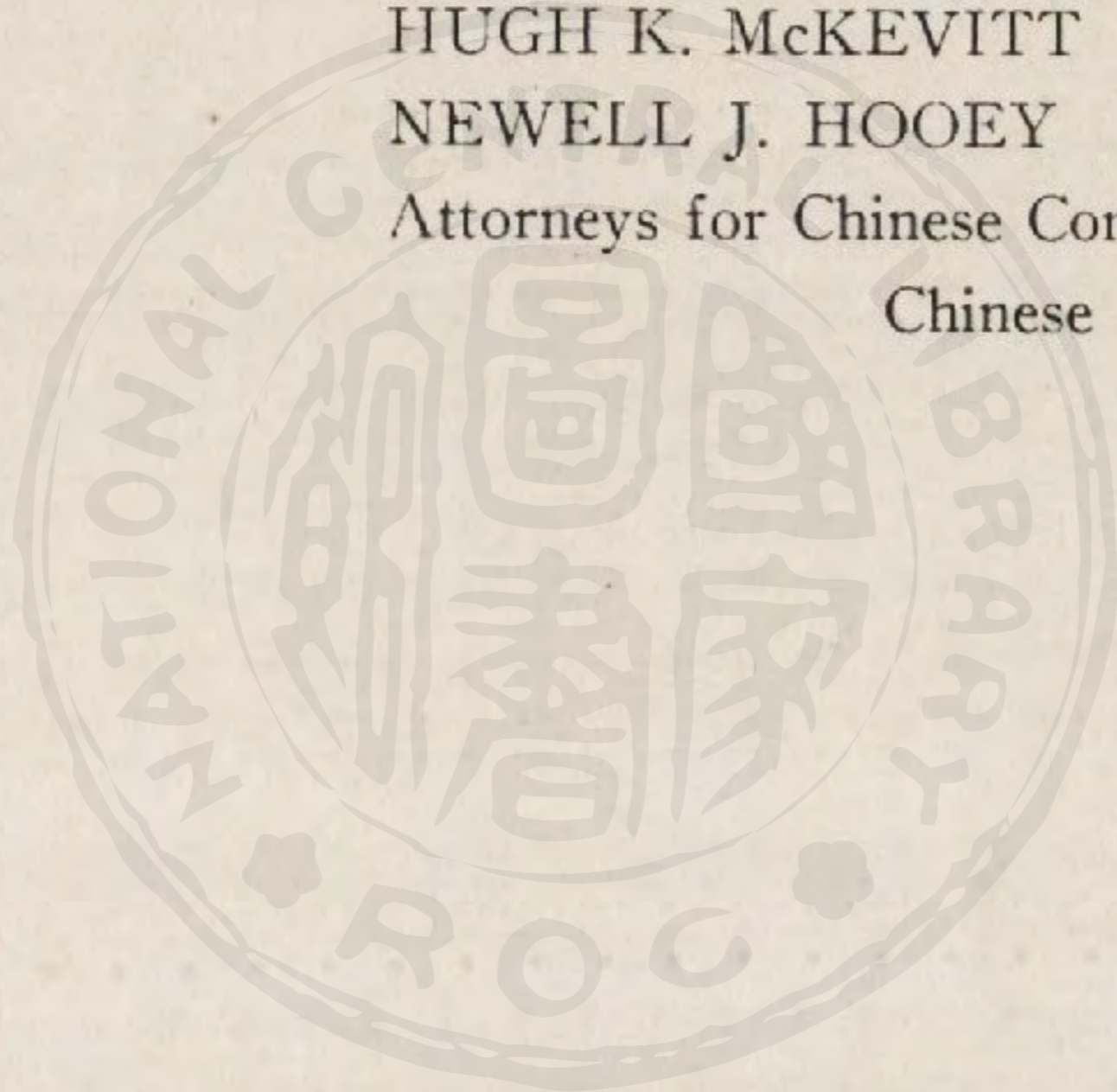
It is therefore respectfully submitted that this Court is without jurisdiction to issue warrants for the arrest of the Chinese sailors.

Respectfully submitted,

HUGH K. McKEVITT

NEWELL J. HOOEY

Attorneys for Chinese Consul General and
Chinese Sailors.



Counsel for the Japanese officers still argues at great length that the word "privilege" in the treaty between China and the United States of 1858 does not mean that the Chinese Consul has "powers". It is believed that it is useless to answer this argument again. No mention is made by him about the treaty between China and the United States in the year 1903. Article II provides as follows:

"As China may appoint consular officers to reside in the United States and to enjoy there the same attributes, privileges and immunities as are enjoyed by consular officers of other nations, the United States may appoint, as its interest may require, consular officers to reside at the places in the Empire of China that are now or that may hereafter be opened to foreign residence and trade. They shall hold direct official intercourse and correspondence with the local governments of the Chinese Government within their consular districts, either personally or in writing as the case may require, on terms of equality and reciprocal respect. These officers shall be treated with due respect by all Chinese authorities, and they shall enjoy all the attributes, privileges, and immunities, and exercise all the jurisdiction over their nationals which are or may hereafter be extended to similar officers of the nation most favored in these respects."

Counsel misconceives the point entirely. He argues that the Chinese have no Judicature Court in the United States. We, of course, do not contend this. It is not necessary that the Consul of China have such court, nor do we contend that he has any judicial power.

All that is claimed by the Chinese Consul is that he has the jurisdiction over any dispute or controversy, including crimes, which take place on board a ship flying the Chinese flag, while in a foreign port—so far as they concern only the vessels and their crew, and so long as they do not disturb the tranquillity of the port. To do this he need not have a judicature court, nor need he have judicial powers.

The treaties of 1858 and 1903 give the Chinese Consul the same rights, privileges and attributes as have other consuls. This, of course, means the same powers as other consuls. In all cases where a judicature court is allowed a foreign nation, it is specifically provided in the treaty—few countries have this right—all countries and their consuls, however, have jurisdiction over controversies aboard their ships in

IN THE MUNICIPAL COURT OF THE CITY AND COUNTY
OF SAN FRANCISCO, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

vs.

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HONORABLE THOMAS R. PRENDERGAST,
Judge of Department No. 11

POINTS AND AUTHORITIES FOR CHINESE CONSUL
AND CHINESE SAILORS.

The brief presented in behalf of the complaining witnesses in the above matter merely reiterates the argument advanced at the last hearing in Your Honor's Chambers.

No authorities are cited to the effect that this Court has jurisdiction over the controversy. The Chinese Consul, on the other hand, cited numerous authorities conclusively showing that this Court should not and cannot assume jurisdiction.

a de facto mutiny, but the assaults would have the same gravity and the mutiny would be as real whether the ship is of Chinese, Japanese, British or any other ownership.

It must be kept in mind that this is a criminal proceeding and since counsel are not able to show any provision of law or treaty giving them or their client, the Chinese Consul, the right to interfere in this criminal proceeding, they seek to bring in extrenuous issues to divert the attention of the Court from the only issue properly before the Court, namely, the commission of crimes within the City and County of San Francisco, of which this Court has exclusive jurisdiction.

The complaining witnesses ask for issuance of warrants according to the terms of the sworn complaints on file.

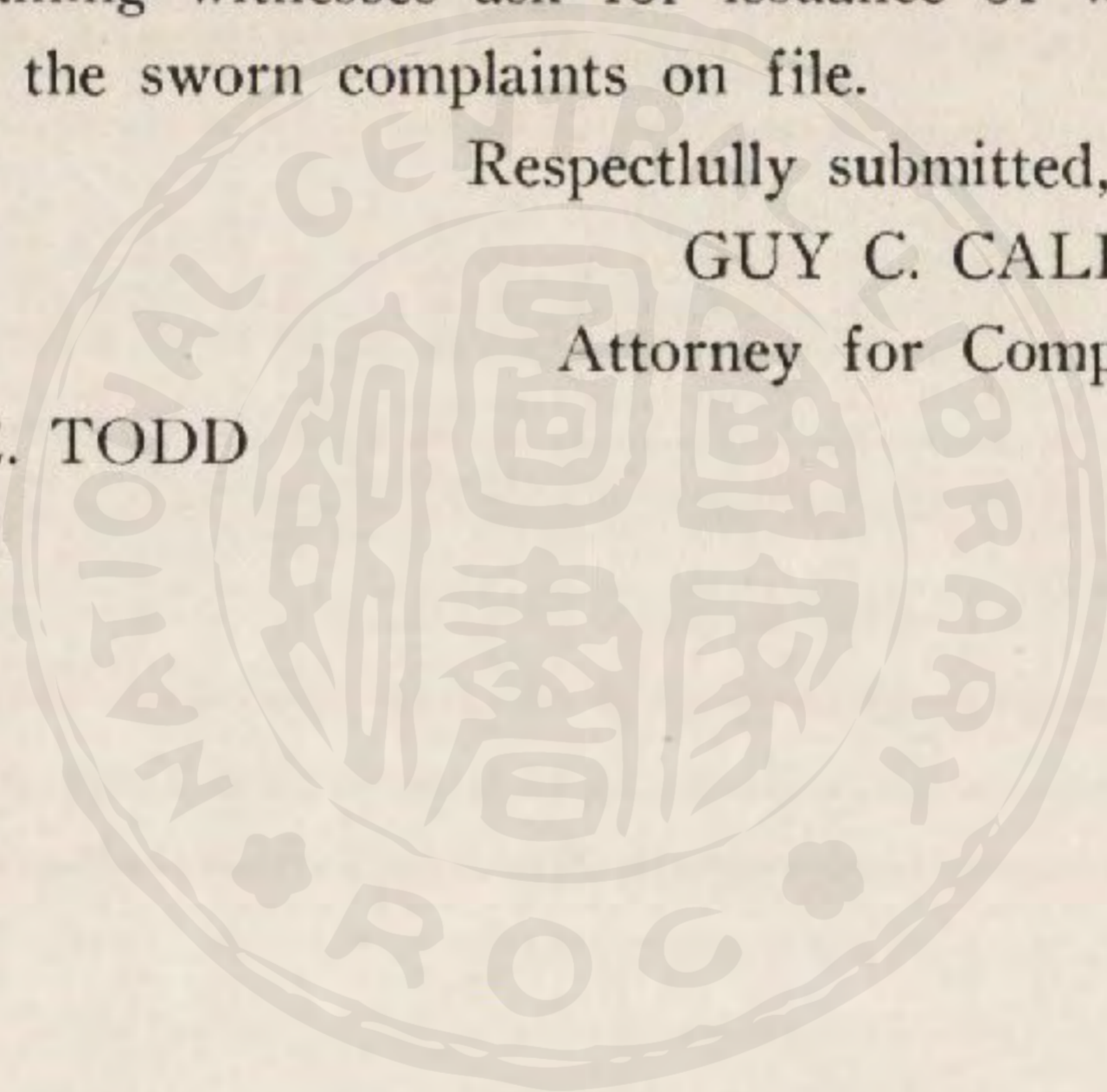
Respectlully submitted,

GUY C. CALDEN

Attorney for Complaining Witnesses

CLARENCE E. TODD

Of Counsel



The case of "The Thorgerd", 11 Fed. (2d) 971 involved a tort committed by a Norwegian seaman *in a British Port*, and this apparently was the reason why our Federal Court denied jurisdiction.

The last decision cited in the counsel's brief at the bottom of page eight, the People of New York vs. Gabrielson, involved merely a refusal of a crew which had been discharged to leave the vessel. It is certainly a far cry from that state of facts to the one at bar where open mutiny exists on the ship accompanied by assaults on all of the officers of the ship.

V. THE EXERCISE OF CRIMINAL JURISDICTION BY CONSULS HAS BEEN CONDEMNED BY THE COURTS

Counsel for defendants are not content with claiming judicial power for the Chinese Consul, but they insist that he has the jurisdiction to act as a criminal court. The Wildenhuis case cited supra and dilated upon by counsel in their brief denied criminal jurisdiction to the Consul of Belgium, even though his powers to adjudicate the Treaty.

In the following cases, the practice of consuls in imprisoning seamen abroad is condemned in strong terms: Wilson v. The Mary, Gilpin, 31; Shorey v. Rennel, 1 Sprague, 407; Magee v. The Moss, Gilpin 219; Buddington v. Smith, 13 Conn. 334, 33 Am. Dec. 407; Johnson v. The Coriolanus, Crabbe, 241.

VI. THE OWNERSHIP OF THE VESSEL HAS NOTHING TO DO WITH THE MATTER BEFORE THE COURT

Statements were made by counsel at the oral argument to the effect that litigation is now pending in another tribunal between claimants to the ownership of the vessel. In that behalf, it is sufficient to remind the Court that these are criminal complaints and that a crime is no less a crime whether committed on one person's property or another's. It is not claimed that the officers of the ship are owners or part-owners, nor is it contended that the sailors are owners or part-owners. The facts before the Court do not bring into issue any acts of ownership or control or dominion whatever by any of these parties. To be sure, the complainants here are officers of the ship who have been assaulted by the crew under circumstances creating

Supreme Court of the United States held that the local authorities had jurisdiction of the particular disorder which involved a murder on board ship. The state of facts before Your Honor in this case has not yet led to murder, but attacks apparently concerted by members of the crew who are of Chinese Nationality against all the officers who are Japanese Nationals, in view of the bitter and sanguinary warfare now going on in Asia, have potentialities of more than one murder.

So the Wildenhuis case held that the courts should assume jurisdiction in the particular facts then before the court and its discussion of what might happen under different facts are not necessarily anything other than dictum, but what seems to impress counsel more than anything else is the discussion found in that decision and quoted on page six of their brief with regard to the laws and customs of France in which country, it appears, the Consuls are believed to have very wide powers. We are here concerned, however, with the laws of the United States and of the State of California and not with the customs of France or any other country.

At the top of page seven of the brief in question appears a statement by counsel which gives away their whole case, as follows: (underscoring ours)

“The court goes on to state, at page 19, that the treaty is part of the supreme law of the land and has the same force and effect in New Jersey as it has elsewhere, and that if it gives the Consul of Belgium exclusive jurisdiction over the offense, the Consul should be entitled to this right.

The case of the United States vs. Rogers, 150 U. S. 250, 37 L. Ed. 1071, refers to the “statutes of government” founded on the law of nations. As frequently pointed out, we have no statute in the case at bar which gives the Chinese Consul the *power* claimed for him and in the case of “The Estes”, reported at 190 Fed. 218, this language is used: (underscoring ours)

“Where treaty stipulations exist, however, with regard to the right of a Consul” etc.

On the next page of the brief, page eight, another case is cited which offers no comfort to counsel, as follows:

“In the absence of treaty stipulation, the courts of admiralty of the United States have jurisdiction of all matters appertaining to a foreign ship while in the ports of this country.”

IV. THE AUTHORITIES CITED BY COUNSEL FOR DEFENDANTS PRESENT
NO REASON WHY THESE WARRANTS SHOULD NOT BE ISSUED

On the first page of the brief for the defendants, they quote a provision which they say is a part of the Chinese Treaty of 1858, but which really is a section of the Treaty of 1868 which allows the Consuls of China the same "privileges" and "immunities" enjoyed by the Consuls of Great Britain and Russia.

Then, at the bottom of page one and top of page two they quote from the Russian Treaty of December 6, 1832, providing that the Consuls of Russia shall have certain "privileges" and "powers", designating and describing in detail the power to sit as "judges and arbitrators" between captains and crews "unless the conduct of the crews or of the captain shall disturb the order or tranquillity of the country".

Now, we contend first of all that since the Chinese Consul is given no *power*, it is immaterial what powers are given to the Consuls of Russia, and second, even conceding, for the purpose of this part of the argument only, that this Court may add to the Treaty with China any language which the President, Secretary of State and Senate left out of the Treaty, the facts before this Court showing a mutiny on board a ship in San Francisco Harbor is certainly something which disturbs the "order or tranquillity" of the City and County of San Francisco.

Counsel then proceed in their brief to quote various authorities on international law dealing with the *powers* of Consuls. As we have shown in this brief, such powers can be given only by Treaty stipulation and since they are not granted by the treaties in question, the powers do not exist and any discussion by learned text writers or even by courts of powers which are actually given under treaties, have no place in this discussion and merely confuse the issue.

A large part of the brief is devoted to quotations from the Wildenhuis case reported at 120 U. S. 1, 30 L. Ed., 565, 7 S. Ct., 385. In that case the Treaty between Belgium and the United States was specific in granting *powers* to the Consul with regard to controversies on ships, with the same exception noted above as to any disorder which disturbs "tranquillity and public order on shore or in the port", but in that case, in spite of the specific *power* given to Belgian Consul, the

to exercise judicial functions in the country to which he is accredited, and the basis of such judicial powers as he may possess is to be found in the treaties entered into with that nation and the laws of the country that he represents." 3 C. J. S. page 1030.

III. THE PRIVILEGES AND IMMUNITIES ENJOYED BY THE CHINESE CONSUL BY TREATY STIPULATION FALL SHORT OF AND ARE ENTIRELY DISTINCT FROM JUDICIAL POWER

It should hardly require the citation of authority to show the Court that a *power* is entirely distinct from a *privilege* or *immunity*. As a matter of fact, John Bassett Moore, the distinguished authority on International Law, in V. 5 of his International Law Digest, treats of *privileges* and *immunities* of Consuls in Chapter V, while he devotes Chapter VII to *powers* and *duties*, thus indicating the separate and distinct character of the two classification. It should be agreed by counsel, and at any rate, it is undoubtedly clear to the Court that jurisdiction as a Court to adjudicate disputes would undoubtedly be considered to be a *power* and not a *privilege* or *immunity*.

Those of us who can remember our study of Blackstone will recall that two hundred years ago, the privilege of holding court was in many instances a personal privilege of an individual, particularly of a land owner, and that this privilege of the old Feudal Law descended from father to son, but under our American jurisprudence, there is no such thing as the "privilege" of exercising judicial power. Judicial power in America can be exercised only under the law of the land, that is to say, by Constitution, Statute or Treaty.

Another authority on International Law—Stewart on American Diplomatic and Consular practice gives certain examples of "consular privileges and immunities", discussing at page 433 "inviolability of archives of office", at page 435, "display of national arms and flags", at page 437, "exemption from customs duties", at page 440, "amenability to civil and criminal process", and at page 443, "serving as witnesses".

The above are *privileges* and *immunities* which, as clearly appears, are personal to the Consular Officer and cannot, by the widest stretch of imagination, be considered to be *powers*.

II. THE CHINESE CONSUL, BY TREATY PROVISION, IS GIVEN NO JUDICIAL POWER.

Counsel contend that by virtue of the treaty made between the United States and the then Empire of China in 1863, the Chinese Consul is invested with power and jurisdiction to deal with crimes committed on Chinese ships in American waters, but when the treaty is examined, it is found that the United States granted to Chinese Consuls no such power, and in fact, no power whatever. The treaty grants to Chinese Consuls the "privileges and immunities" appertaining to Russia and Great Britain. When we turn to the treaty with Russia, we find that Russian Consuls are granted "privileges and powers". When it is remembered that this treaty with China was made in 1868, the reason for granting the Chinese Consuls only "privileges and immunities" and not "powers" is very clear. The treaties made by foreign nations with China during that period were not reciprocal in character; they were entirely one sided. There was every reason in the mind of the American Government at that time for not granting to China the same rights and powers which China granted to the United States, so that if there were any uncertainty or ambiguity in the treaty, it would undoubtedly be construed to give the United States the best of the bargain in all matters covered by the treaty, such clearly being the intention of the parties.

However, there is no ambiguity whatever in the treaty. The Chinese Consul is granted no power whatever. There is, therefore, no reason for the citation of authorities construing the powers of Consuls under other treaties since the Consul, under this Treaty is granted no power whatsoever.

Counsel include in their brief elaborate citations as to the status of consuls, but no authority which gives a Consul any right not based upon the provisions of a treaty. A late authority states the law as follows:

"No foreign power can, of right, establish a court of judicature of any kind within the United States, but only such as may be authorized by treaty, and such foreign consular tribunals as exist in the United States exercising jurisdiction over matters affecting foreign nationals find their authority in applicable treaties." 3 C. J. S. page 1030.

"A consul does not, by virtue of his office, possess power

set out in the sworn complaints is to all intents and purposes a mutiny by the crew of the ship against the officers.

The request of the complaining witnesses is that warrants be issued out of this Court for the arrest of the sailors alleged to be guilty of attacking the officers.

The Chinese Consul has appeared in the case on behalf of the Chinese sailors and this activity of the Chinese Consul on behalf of his nationals is not in any sense objectionable.

To the argument advanced by counsel for the Chinese Consul, however, we make strenuous objections, for the contention of counsel is that these warrants should not be issued and the arguments advanced find no support either in the record before the Court or in the law.

It appearing from the sworn complaints that crimes have been committed within the City and County of San Francisco, that the perpetrators of the crime are known, and the victims of the crimes having asked for the issuance of warrants, it is this Court's plain duty to issue the warrants.

We can see that should the Court be satisfied beyond a reasonable doubt that the jurisdiction to try, and if found guilty, to punish the perpetrators of these crimes should lie in some other tribunal, then this Court would be justified in refusing to act. However, the duty of this Court is to do all in its power to keep the peace in San Francisco and it would be justified in refusing to carry out this duty in the instant cases only if some other tribunal has full and complete power in that behalf.

Section 783 of the Penal Code of the State of California fixes the jurisdiction of this Court as follows:

“Offenses on ships or cars, jurisdiction of. When an offense is committed in this state, on board a vessel navigating a river, bay, slough, lake, or canal, or lying therein, in the prosecution of her voyage, or in the county where the voyage terminates; and when the offense is committed in the state, on a railroad train or car prosecuting its trip, the jurisdiction is in any county through which the train or car passes in the course of her trip, or in the county where the trip terminates.”

It is the duty, therefore, of this Court, we repeat most respectfully but most emphatically, to issue warrants for these offenses committed within the boundaries of the City and County of San Francisco.

IN THE MUNICIPAL COURT FOR THE CITY AND COUNTY
OF SAN FRANCISCO, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

vs.

LIAN CHEN SIEN et al., before the
HONORABLE THOMAS R. PRENDERGAST,
Judge of Department No. 11

POINTS AND AUTHORITIES FOR COMPLAINING
WITNESSES

I. THIS COURT HAS JURISDICTION

The above-entitled Court has before it in this matter sworn complaints of the three Japanese officers of a ship of Chinese registry, now and at all times herein mentioned, lying in the Harbor of San Francisco and within the territory limits of this City and County. These complaints charge the commission of battery by the Chinese sailors on the ship against and upon the officers who are of Japanese nationality. In other words, while perhaps not technically a mutiny, the state of affairs

vessel. The matter was then taken up before the New York Magistrate Court, and jurisdiction was declined on the ground that acts on board foreign vessels should not be interfered with and such acts on the part of the sailors were not such as to disturb the peace and dignity of the local port.

George B. Davis in his book on Elements of International Law, at page 70, discusses at length all of the principles involved in the points and authorities submitted herewith, and states that it is the universal practice of all nations not to interfere in controversies which take place on board a foreign vessel in a local port, even though a crime be committed thereon, unless the crime is of much magnitude as to disturb the quiet of the port.

A practical consideration showing the reason why local authorities decline jurisdiction of internal strife occurring on board ship of a foreign nation is that to sentence such a seaman would infringe upon the policy of our immigration laws. In this regard, it is provided that it shall be unlawful to pay off or discharge any alien employed on board any vessel arriving in the United States from any foreign port or place unless he is duly admitted pursuant to the laws and treaties of the United States relating to the immigration of aliens. (8 U. S. Codes Ann., Sec. 168.)

It is respectfully submitted that the Municipal Court has not the jurisdiction to issue warrants in this matter and that the court should not insult the Consul of China by refusing him the authority to arbitrate this dispute.

HUGH K. McKEVITT

NEWALL J. HOOEY

Attorneys for the Chinese Consul General

Again, at page 1077 :

“But, nevertheless, the law of nations, as I have stated it, and the statutes of governments founded on that law, as I have referred to them, show that the enlightened nations, in modern times, do clearly hold that the jurisdiction and laws of a nation accompany her ships not only over the high seas, but into ports and harbors, or wheresoever else they may be water-borne, for the general purpose of governing and regulating the rights, duties and obligations of those on board thereof, and that, to the extent of the exercise of this jurisdiction, they are considered as parts of the territory of the nation herself.”

Judge Smith of the United States District of South Carolina, in a learned opinion in the case styled ‘The Estes’ (D.C.) 190 Fed. 216, on page 221, states :

“Where treaty stipulations exist, however, with regard to the right of the Consul of a foreign country to adjudge controversies arising between the master and the crew, or other matters occurring on the ship, exclusively subject to the foreign law, such stipulations are the law of the Land, and must be fairly and faithfully observed.”

The case of *Heredia vs. Davies*, 12 Fed. (2) 500, in discussing the question of jurisdiction of the courts of the United States in cases such as the instant case, states at page 501 :

“In the absence of treaty stipulation, the courts of admiralty of the United States have jurisdiction of all matters appertaining to a foreign ship while in the ports of this country.”

Of course, it follows, when there is a treaty, the United States Courts are without jurisdiction.

The case of “The Thorgerd”, 11 Fed. (2d) 971, involving a tort committed by a Norwegian seamen, states at page 971 :

“Applying the principles of the *Wildenhuis* case, 7 S. Ct. 383, 30 L. Ed. 565, there would seem to be no good reason here why this court should assume jurisdiction and ‘enforce by comity the substantially applicable law’ (*The Hanna Neilsen*, supra), against the protest of the Kingdom of Norway, whose subject libelant is, and under whose flag the ship was owned and operated.”

People of New York vs. Gabrielsen, 1930 A. M. C. 1138: In this case, the captain of a foreign vessel in an American port discharged his crew and paid them off, but the crew then refused to leave the

given in Wheaton's Elements of International Law, 3d ed. 153, and in 1 Phillimore's International Law, 3d ed. 484 and (2d. ed.) 407. The Sally was an American merchant vessel in the Port of Marseilles, and The Newton a vessel of a similar character in the Port of Antwerp, then under the dominion of France. In the case of The Sally, the mate, in the alleged exercise of discipline over the crew, had inflicted a severe wound on one of the seamen, and in that of The Newton, one seaman had made an assault on another seaman in the vessel's boat. In each case, the proper consul of the United States claimed exclusive jurisdiction of the offense, and so did the local authorities of the port; but the Council of State, a branch of the political department of the Government of France to which the matter was referred, pronounced against the local tribunals, 'Considering that one of these cases was that of an assault committed in the boat of the American ship Newton, by one of the crew upon another, and the other was that of a severe wound inflicted by the mate of the American ship Sally upon one of the seamen for having made use of the boat without leave.' This was clearly because the things done were not such as to disturb 'the peace or tranquillity of the port.' Wheaton, Elements Int. Law, 3d ed. 154. The case of The Sally was simply a quarrel between certain of the crew while constructively on board the vessel, and that of the Newton grew out of a punishment inflicted by an officer on one of the crew for disobedience of orders. Both were evidently of a character to affect only the police of the vessel, and thus within the authority expressly granted to the consul by the treaty."

The court goes on to state, at page 19, that the treaty is part of the supreme law of the land and has the same force and effect in New Jersey as it has elsewhere, and that if it gives the Consul of Belgium exclusive jurisdiction over the offense, the Consul should be entitled to this right. However, the court then found that the crime of murder was of such gravity as to awaken public interest and was one which was denounced by every civilized nation, and should therefore be punished.

This case has been followed without interruption by all the courts of the United States.

In *United States vs. Rogers*, 150 U. S. Supreme Court Rep. 250—7 L. Ed. 1071 at 1075, it is stated:

"The general rule is that the country to which the vessel belongs will exercise jurisdiction over all matters affecting the vessel or those belonging to her, without interference of the local government, unless they involve its peace, dignity or tranquillity, in which case it may assert its authority."
(Citing the Wildenhus case.)

of the merchant vessels of their nation, and shall alone take cognizance of all differences which may arise, either at sea or in port, between the captains, officers, and crews, without exception, particularly with reference to the adjustment of wages and the execution of contracts. The local authorities shall not interfere, except when the disorder that has arisen is of such a nature as to disturb tranquility and public order on shore, or in the port, or when a person of the country or not belonging to the crew, shall be concerned therein.

In all other cases, the aforesaid authorities shall confine themselves to lending aid to the consuls and vice consuls or consular agents, if they are requested by them to do so, in causing the arrest and imprisonment of any person whose name is inscribed on the crew list, whenever, for any cause, the said officers shall think proper."

The matter was appealed to the Supreme Court of the United States, and the Supreme Court, in discussing the case, uses the following language :

"From experience, however, it was found long ago that it would be beneficial to commerce if the local government would abstain from interfering with the internal discipline of the ship and the general regulation of the rights and duties of the officers and crew towards the vessel or among themselves. And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquillity of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require. But if crimes are committed on board of a character to disturb the peace and tranquillity of the country to which the vessel has been brought, the offenders have never by comity or usage been entitled to any exemption from the operation of the local laws for their punishment, if the local tribunals see fit to assert their authority. Such being the general public law on this subject, treaties and conventions have been entered into by nations having commercial intercourse, the purpose of which was to settle and define the rights and duties of the contracting parties with respect to each other in these particulars, and thus prevent the inconvenience that might arise from attempts to exercise conflicting jurisdictions."

The court then goes on to discuss the principles with respect to treaties between contracting nations, and discusses the two cases of *The Sally* and *The Newton*, and uses the following language.

"It was when this convention was in force that the cases of *The Sally* and *The Newton* arose, an account of which is

in his treatise, pp. 171-2. It may be said to be this: So far as regards acts done at sea before her arrival in port, and acts done on board in port, by members of the crew to one another, and so far as regards the general regulation of the rights and duties of those belonging on board, the vessel is exempt from local jurisdiction. But if the acts done on board affects the peace of the country in whose port she lies, or the persons or property of its subjects, to that extent the state has jurisdiction. The local authorities have a right to visit all such vessels, to ascertain the nature of any such occurrence on board. Of course, no exemption is ever claimed for injuries done by the vessel to property or persons in port, or for acts of her company not done on board the vessel, or for their personal contracts or civil obligations or duties to persons not on the ship's company."

The same author then states at page 150 in quoting from Abbott's U. S. Consuls Manual:

"Abbott's United States Consuls Manual, 1863, gives the treaties, statutes, and regulations bearing upon the rights and duties of consuls. The general principle runs through our treaties, that consuls shall take jurisdiction over questions of wages, shipment, and discharge of seamen, and over all transactions occurring on board vessels of the United States lying in a foreign port, whether in the nature of contracts, torts or crimes, so far as they concern only the vessels and their cargoes and the persons belonging on board. If they concern the public peace of the country, or the rights of persons not belonging on board, they are subjects of local jurisdiction"

The doctrine set forth in those text books has been incorporated into the decisions of the United States courts and the courts of all lands.

The leading case on his subject in the United States is the famous case of Charles Mali, Consul of his majesty the King of the Belgians and Joseph Wildenhuis vs. The Keeper of the Common Jail, 120 U. S. Supreme Court Reports 1—30 L. Ed. 565. This case is commonly known and cited as the Wildenhuis case. In this case, a Belgium ship was lying in port at New Jersey, and one of the crew was murdered by another member of the crew. The New Jersey Court took jurisdiction of the case, and the Consul of Belgium sued out a writ of habeas corpus on the ground that the New Jersey Court did not have jurisdiction in the matter. The pertinent part of the Treaty between Belgium and the United States is as follows:

"The respective consuls general, consuls, vice consuls and consular agents shall have exclusive charge of the internal order

“Nor, if her master or crew, while on board in such port, break the peace of the community by the commission of crimes, can exemption from local laws be claimed for them. But the comity and practice of nations have established the rule of international law, that such vessel, so situated, is, for the general purpose of governing and regulating the rights, duties and obligations of those on board, to be considered as a part of the territory of the nation to which she belongs. The local authorities, therefore, have a right to enter on board a foreign merchantmen in port, for the purpose of inquiry universally, but for the purpose of arrest, only in matter within their ascertained jurisdiction. It, therefore, follows, that, with respect to facts happening on board, which do not concern the tranquility of the port, or persons foreign to the crew, or acts committed on board while such vessel was on the high seas, are not amenable to the territorial justice. All such matters are justiciable only by the courts of the country to which the vessel belongs. So firmly in this doctrine incorporated into the practice of nations, that the French regard it as a positive rule of international law, and the French laws do not hesitate to prescribe that, when crimes are committed on board a French vessel in a foreign port, by one of the crew against another of the same crew, the French Consul is to resist the application of the local authority to the case.”

(Here the author cites many authorities and texts.)

Wheaton in his *Classics of International Law* states at page 130:

“The world being composed of distinct sovereignties, possessing equal rights and equal independence, whose mutual benefit is promoted by intercourse with each other, and by interchange of those good offices which humanity dictates and its wants require, all sovereigns have consented to a relaxation in practice, under certain peculiar circumstances, of that absolute and complete jurisdiction, within their respective territories, which sovereignty confers.

This consent might, in some instances, be tested by common opinions growing out of that usage. A nation would justly be considered as violating its faith, although that faith might not be expressly plighted, which should suddenly, and without jurisdiction in a manner not consonant to the usages and received obligations of the civilized world.

This perfect equality and absolute independence of sovereigns, and this common interest impelling them to mutual intercourse, has given rise to a class of cases, in which every sovereign is understood to waive the exercise of a part of that complete, exclusive territorial jurisdiction, which has been stated to be the attribute of every nation.”

The author then states at page 129 of his text:

“The state of international law on the subject of private vessels in foreign ports is judiciously explained by Mr. Halleck

“The Emperor of China shall have the right to appoint consuls at ports of the United States, who shall enjoy the same privileges and immunities as those which are now enjoyed by public law and treaty in the United States by the consuls of Great Britain and Russia, or either of them.”

The Treaty between the United States and Russia of December 6, 1832, and proclaimed by the President on May 11, 1833, provides in Article VIII as follows:

“The two contracting parties shall have the liberty of having in their respective ports, consuls, vice consuls, agents and commissaries, of their own appointment, who shall enjoy the same privileges and powers as those of the most favored nations; but if any such consul shall exercise commerce, they shall be submitted to the same laws and usages to which the private individuals of their nation are submitted, in the same place.

The consuls, vice consuls, and commercial agents, shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews, or of the captain, shall disturb the order or tranquility of the country, or the said consuls, vice consuls or commercial agents should require their assistance to cause their decisions to be carried into effect or supported. It is, however, understood, that this species of judgment or arbitration shall not deprive the contending parties of the right they have to resort, on their return, to the judicial authority of their country.”

The provisions of the Treaty between England and the United States are substantially the same as those contained in the Treaty between Russia and the United States.

The provisions of these treaties to the effect that the consul shall sit as a judge or arbitrator in differences arising between the captain and crew of the vessels belonging to a nation means not only controversies between the captain and crew with respect to wages, but likewise with crimes committed on board. This statement is borne out not only by all of the leading text books on International Law, but by the decisions of the courts of the United States and all other countries.

Halleck's Work on "International Law" is a leading authority on International Law. This work seems to be quoted in most of the United States cases dealing with the subject of jurisdiction. The author states at page 172:

THE CASE OF DISPUTE BETWEEN THE JAPANESE
OFFICERS AND THE CHINESE SEAMEN.

IN THE MUNICIPAL COURT FOR THE CITY AND COUNTY
OF SAN FRANCISCO, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

vs.

LIAN CHEN SIEN, et al., before the
HONORABLE THOMAS R. PRENDERGAST,

POINTS AND AUTHORITIES SHOWING THAT THE
MUNICIPAL COURT HAS NOT JURISDICTION
TO ISSUE WARRANTS

The following excerpts from the Treaty between China and the United States and between the United States and Russia and England together with the decisions of the courts of the United States, conclusively show that the Municipal Court of the City and County of San Francisco is without jurisdiction to issue warrants against the Chinese sailors now on board the Kwang Yuan:

The Treaty between the United States of America and The Ta-Tsing Empire of June 18, 1858, which Treaty is now in effect between these two nations, provides in Article III:

the courts of the United States.

The Japanese then attacked the authority of the Consul General to intervene, and while the procedure that had been adopted was undoubtedly sufficient, it was decided to have His Excellency Chengting T. Wang, the Ambassador of the Republic of China at that time, intervene in the case. Therefore, a supplemental petition in intervention was filed by the Ambassador of the Republic of China through his representative, the Consul General at San Francisco. Again, the Japanese attacked the sufficiency of the supplemental petition but the Court ruled in favor of the Ambassador on this point. Thereafter, the case was tried before the United States District Court at San Francisco.

Inasmuch as the cargo had not been expropriated it was admitted by all concerned that it belonged to the Yokohama Specie Bank, Ltd. Nevertheless, it was the position of the Republic of China that the court had no authority to order the vessel moved or to send stevedores on board to unload it. Obviously, if the vessel could not be moved from its anchorage in the bay to a dock the cargo could not be discharged. After the trial, permission was granted by the court to take the depositions of certain officials of the Republic of China in China to show the expropriation and national character of the Kwang Yuan. The depositions were taken and returned to the court. Briefs were thereupon filed with the court by all the parties, and finally the case was submitted to the court for its decision.

On May 8, 1939, the court held in favor of the Republic of China, and denied to the Yokohama Specie Bank, Ltd. the right to an order controlling the movements of the Kwang Yuan for the purpose of facilitating the discharge of the scrap iron.

Once again the Japanese had been defeated.

THE LIBEL FOR POSSESSION OF THE CARGO ON BOARD
THE S. S. KWANG YUAN.

The Japanese, having failed to gain possession of the vessel, next turned their efforts to attempting to recover the twenty-one hundred tons of scrap iron on board the steamship Kwang Yuan.

The Yokohama Specie Bank, Ltd., on April 22, 1938, filed a libel in the United States District Court for the Northern District of California against the cargo on board the Kwang Yuan, and asked the court to order the United States Marshal to unload the scrap iron so that it could be forwarded to Japan on another vessel.

On April 26, 1938, a hearing was held, and C. C. Huang, the Consul General of the Republic of China at San Francisco, appeared in court, and through his attorneys Hugh K. McKeivitt, Jack Howard, and Dorr & Stevenson, asked permission to intervene in the suit to protect any interest that the crew might have in the cargo. The court continued the case for ten days to allow the interested parties to enter their appearances. Two days later the Consul General received a cablegram from China, advising him that the Kwang Yuan had been expropriated by the Republic of China and instructing him to take all necessary steps to carry out the expropriation decree. The Consul General immediately notified the various interested governmental departments of the United States in San Francisco of this action. Similarly, His Excellency, the Ambassador of the Republic of China to the United States of America, notified the United States Department of State. Furthermore, the Consul General sent Patrick Pichi Sun, the Vice Consul of the Republic of China at San Francisco, to the vessel where he took possession of the ship in the name of the Republic of China and appointed Chau Tsu Ming, master of the Kwang Yuan. The Consul General then filed a suggestion with the court alleging that the vessel had been expropriated and advising the court that the Ambassador of the Republic of China had requested the Department of State of the United States to so notify the court. Because of a long established custom not to intervene in judicial matters, the Department of State informed the Chinese Embassy that it could not do so. Therefore, the Consul General intervened directly in the suit and set up the defense of the national character of the vessel and its immunity from control by

THE LIBEL FOR POSSESSION OF THE S. S. KWANG YUAN

M. Kotani and Y. Kawano, Japanese subjects, and claiming to be the owner and master, respectively, of the vessel Kwang Yuan, on April 9, 1938, commenced a suit in admiralty in the United States District Court for the possession of the vessel. This suit named the Chinese members of the crew as respondents and alleged that the crew had mutinied and were unlawfully withholding possession of the vessel from the Japanese owner and officers. By the suit, the Japanese sought to be placed in control of the vessel through the process of the United States Federal Court and its officers.

C. C. Huang, Consul General for the Republic of China at San Francisco, appeared specially in the suit, objecting to the jurisdiction of the Court over the subject of the action, for himself as Consul General and for the respondent crew members. He was represented by attorneys Hugh K. McKevitt and Dorr & Stevenson. With such opposition was filed an affidavit of the Consul General showing that he was duly accredited as such; that the controversy involved in the suit was between officers and members of a crew; that the crew desired the Consul General to settle the dispute and that he was willing to do so, the matter involving nationals and a vessel of the Republic of China which he represented. There were also filed exceptions to the libel attacking its legal sufficiency.

Apparently the Japanese recognized that the Consul General occupied an unassailable position, for they gave up the suit without pressing it to an issue and trial. The legal position of the Consul General which thus prevailed was that since the matter involved a dispute was not one which threatened the general peace and tranquility of the port, under treaty provisions and international law, jurisdiction to determine the controversy rested with the Consul General. The exceptions were also based on the proposition that the libelants would have to show the right to bring a possessory suit under the Chinese law, since such would control a Chinese vessel.

The outcome was an abandonment of the suit and its dismissal, so again the Japanese failed to carry out what they had started.

A BRIEF HISTORY OF THE CASE OF THE**S. S. KWANG YUAN****THE CASE OF DISPUTE BETWEEN THE JAPANESE
OFFICERS AND THE CHINESE SEAMEN**

The battle for the possession and control of the vessel Kwang Yuan was fought on three fronts, one extending into the criminal courts, through an application made to the Municipal Court of the City and County of San Francisco by the Japanese officers of the vessel for warrants to issue against certain Chinese crew members. The Japanese charged the crew with a breach of the peace claimed to disturb the tranquility of the port and cried mutiny. This move, along with the others made by the Japanese interests, proved futile.

The case, or rather attempted case, came on for hearing before Honorable Judge Thomas F. Prendergast. Consul General C. C. Huang appeared in behalf of the Chinese sailors, being represented by attorneys Hugh K. McKevitt and Newell J. Hooey. The contention was made by them that the court had no jurisdiction to issue the warrants, or would not invoke such jurisdiction because of the treaties between China and the United States. Under the treaty of June 18, 1868, China is given the right to appoint Consuls at ports of the United States, to enjoy the same privileges and immunities enjoyed by Consuls of Great Britain and Russia, or either of them. By the treaty of May 11, 1883, with Russia, it is provided that the Consul should sit as judge or arbitrator in differences arising between the captain and crew of vessels belonging to foreign nations in ports of the United States.

After arguments and written briefs, and based upon the treaty provisions and accepted principles of international law, Judge Prendergast declined to assume jurisdiction and issue the warrants, holding that the authority to arbitrate and settle the dispute was in the Consul General of China. The Japanese had started something which they were unable to finish.

Acknowledgment

In editing this volume, I wish to acknowledge my indebtedness to all those who had aided me in the case of the S. S. Kwang Yuan. I am especially grateful to late Professor James W. Garner and Mr. Elmer A. Johnson for their counsel and advice; to Messrs. Hugh K. McKevitt, Jack M. Howard, Newall J. Hooey, Frederick W. Dorr, and Archie M. Stevenson for their estimable services; and to Mr. Patrick Pichi Sun for his valuable assistance.

Chao Chin Huang



經辦本案之駐金山總領事館職員及律師(自右至左)副領事孫碧奇、律師高活、律師多爾、
總領事黃朝琴、律師麥克威、律師斯底文生、律師胡以、

Officials and attorneys of the Chinese Consulate-General at San Francisco, California, in charge of the case of the S. S. Kwang Yuan.
(From left to right) Patrick Pichi Sun, Vice-Consul; Jack M. Howard, attorney; Frederick W. Dorr, attorney; Chao Chin Huang, Consul General; Hugh K. McKevitt, attorney; Archie M. Stevenson, attorney; and Newell J. Hooley, attorney.

Chinese Crew Halts Ship With Iron for Japan

International Complications Surround Steam Schooner

The Edna Christensen, San Francisco steamer, Chinese owned, found no national flag, loaded with 8000 tons of scrap steel for Japan, officered with Japanese, but with a Chinese crew, was lying against an Oakland wharf yesterday, its sailing with its war cargo indefinitely delayed.

International complications, with three maritime nations involved, surrounded the steam schooner, formerly owned by the local firm of Swenson & Christensen, but now the property of the Chinese shipping firm of Yung Yuan & Co., Chefoo, China.

Bought to the Chinese company shortly before the outbreak of hostilities in China, the Edna Christensen, built in 1912, was destined for the China coast trade. Japanese agents of the Chinese company in Kobe were asked to have the vessel brought to the Orient.

CREW SENT FROM ORIENT

The Yung Yuan Company sent 30 Chinese seamen, under head, to San Francisco to take the ship to Shanghai. The Japanese agents sent Japanese officers here to negotiate the vessel. All arrived in San Francisco within a few weeks of each other. They sat down and commenced negotiations regarding the fate of the Edna Christensen.

Kwang Yuan Quarrel

Attached off Hunters Point July loaded with a \$64,000 cargo of scrap iron, the freighter Kwang Yuan has lain in the stream of San Francisco since September, 1937, patiently waiting for the tangled web of litigation over its ownership and disposition to be unraveled.

Formerly the Edna Christensen, the Kwang Yuan was bought by the Yung Yuan Steamship Company of Chefoo, China, in July, 1931, was subsequently chartered to a Japanese firm. The Chinese owners then sold the ship back to St. Kwan of Yenan, Japan, who completely re-equipped it under the Japanese flag.

CHINESE AWARDED SHIP

Law Routs Japanese in Local 'War'

On its San Francisco front, the Sino-Japanese war ended in a legal rout of the Japanese yesterday when Federal Judge Harold Louderback awarded the S. S. Kwang Yuan to the Chinese government, lock, stock and barrel.

The Japanese were asking through the Yokohama Specie Bank that the Federal Courts deliver to them the 2,100 tons of scrap-iron aboard. The Japanese said that the United States Marshal had gone to the Kwang Yuan on April 23, placed a notice of seizure of the cargo on the vessel, served the second mate with a duplicate.

The Chinese government, which expropriated the Kwang Yuan four days later, said no proper seizure had been made, that the Federal Courts had no jurisdiction over a national vessel of China.

JAPANESE SHIP SUIT DELAYED

The Kwang Yuan, San Francisco's "ship without a country," will be an orphan for at least two more weeks.

Federal Judge Michael J. Roche so decided this morning when he continued for that period the suit brought by four Japanese officers to dispose of twenty Chinese crew members who now hold the ship.

Both sides to the suit agreed to the continuance.

Since the action started a month ago the ship has been expropriated by the Chinese government through Consul General C. C. Huang, who contended the Chinese government originally purchased the ship from American owners and was forced at bayonet point in China to sell to

Chinese Will Let Scrap Iron Ship Stay in Bay

Local Sino-Japanese 'War' Ends in Court

Now that these Chinese sailors are off and on their way to China, the good ship Kwang Yuan may stay in the bay until she rots, for all the Chinese government cares.

That is, unless the Japanese try to collect the scrap iron aboard and ship it to Japan to make munitions with which to kill Chinese.

Thus matters appeared in Federal Court yesterday in the complicated series of actions involving the Kwang Yuan. One action, that of the Japanese officers to dispose the Chinese crew, was dropped because the Chinese crew has departed.

The action of the Yokohama Specie Bank, claiming the scrap iron cargo on behalf of the Japanese government, was continued with vigor. The Chinese admitted that the cargo belonged to the Japanese, but said it was on a Chinese national vessel, had been expropriated, and furthermore the Federal courts here had no jurisdiction over a Chinese vessel.

"Do you just propose to allow the Kwang Yuan to lie idle in the harbor?" asked Judge Harold Louderback.

"Exactly," replied C. C. Huang, Chinese consul general.

Chinese Again Win in 'War' Over Ship

The Chinese are winners in the latest round today in their miniature war with Japanese interests over the steamer Kwang Yuan and its cargo of 21,000 tons of scrap iron.

The ship has been tied up in San Francisco Bay more than a year as Japanese have fought in vain to get her cleared through the port and en route to Japan with her war cargo.

This attempt was blocked when the San Francisco Chinese consular general refused to give clearance to the ship, which was still registered locally as Chinese owned. Japanese contended in vain that it had become a Japanese owned ship after the fall of Shanghai.

At one time a year ago the tension between opposing forces erupted into a riot aboard the ship between the Japanese officers and the Chinese seamen. The Japanese officers were discharged by the Chinese consulate.

Yesterday afternoon the Chinese won again when Federal Judge Harold Louderback declared himself powerless to issue an order controlling movements of the ship now docked at South San Francisco.

Agents of the Yokohama Specie Bank had sought to get the United States marshal to aid them in removing the 21,000 tons of scrap iron and the marshals office had referred the request to the federal courts.

San Francisco steamship men today turned their eyes on Washington, where the naval affairs committee of the House of Representatives was examining hearings on the proposed purchase of Hunters Point, divided by the United States navy.

Yuan's hearings follow representations by A. B. Innes, assistant vice president of the Edna

JAPAN WINS METAL

But Chinese Crew Remains Aboard Vessel in Bay

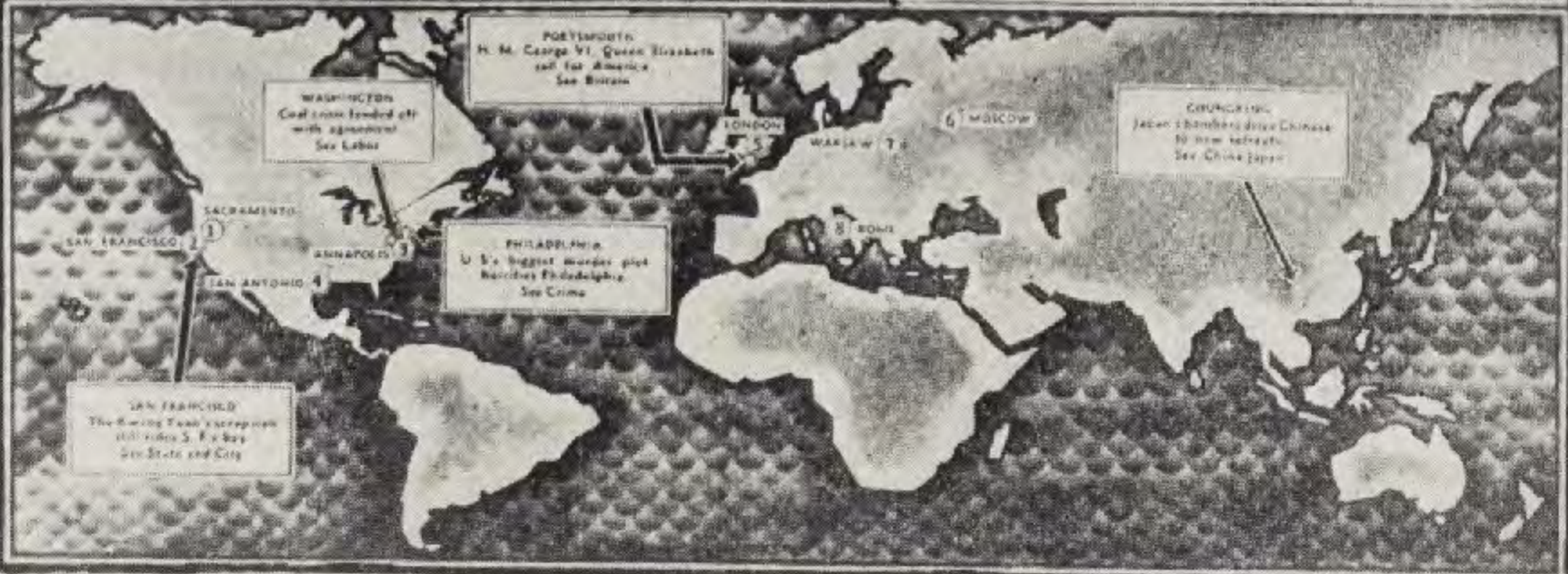
The \$64,000 worth of scrap iron aboard the expropriated Chinese vessel Kwang Yuan was awarded the Yokohama Specie Bank in a decree of default today by Fed. Judge Harold Louderback, but Japanese access to the munitions materials held by the Chinese appeared as remote as ever.

Counsel for the Chinese consulate and crew, who took the vessel over, admitted having no claim to the cargo, but pointed out the Federal Court has no right to order a Chi-



SINO-JAPANESE 'WAR' IN S. F. BAY

On Sunday afternoon, August 1, the Kwang Yuan, a Chinese freighter, was seen in the bay. The ship was carrying a cargo of scrap iron and was being used by the Japanese government to make munitions. The Chinese government had expropriated the ship from American owners and was forced to sell it to Japan at bayonet point in China. The ship was now docked at South San Francisco, and the Japanese were trying to get it cleared through the port and en route to Japan with its war cargo.



美國報紙騰載廣源輪案新聞之一斑 (三)

Newspaper headlines concerning the S. S. Kwang Yuan (3)

S. F. PHASE OF SINO-JAPANESE WAR CONTINUES

Judge Refuses to Issue Warrants Against Chinese Crew Who Fought Jap Officers

More than 100 miles from the China coast, the Sino-Japanese war today is being fought in the S. F. phase of the conflict. Municipal Judge Daniel S. Clifton refused to issue warrants against ten members of the Kwang Yuan's Chinese crew who fought against their Japanese officers.

The American has been ordered off Hunter's Point for six months. Navy will send him to Japan.

DISPUTE OVER OWNERSHIP

Ownership of the ship is in dispute. Requiring clearance papers through the Chinese register, the vessel has been considered the property of China, owned, Jap officers considered it as the property of the Japanese officers and their employees are held purchased the ship.

Judge Clifton held there was no clear evidence that the Kwang Yuan was within the jurisdiction of San Francisco courts. He suggested the problem be left to the Chinese government.

THREE IN HOSPITAL

Japanese members of the Chinese crew remained aboard the Kwang Yuan. Three other members were in the Chinese Hospital here claiming poor food and other conditions.

Japanese claim of kidnapping the Chinese crew rested on a law passed in Federal Court. Chinese claimed the crew would be released until arrangements were made to send them home.

KWANG-YUAN TAKEN OVER BY CHINESE

Japanese Officers Refused to Take as Orders From China

The Kwang Yuan was taken over by Chinese officers. The Chinese took over the ship because the Japanese officers refused to take orders from China.

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Chinese Crew Merry As Consul Removes Japanese Captain

Much Disputed Vessel of Kwang Yuan Has New Master as China Expropriates Enemy Claims to Cargo

SAN FRANCISCO, April 28.—A joyful contented crew made merry today on the much disputed ship Kwang Yuan as the Chinese government ordered expropriation of the vessel by the Chinese Consulate here.

Consul C. C. Huang and Hugh McKeivitt, attorney for the consulate, bought a small drinking vessel which took formal possession of the ship last night. All hands were around the tables and the consul appointed the new officers to man the new Chinese-controlled vessel.

Officers Named
Chou Tzu Ming, second mate under the former Japanese command, was made new Captain. Wang Kuo Fok was named Chief Mate. There was much cheering and clapping of hands as the new crew cheered and the proclamation ordering expropriation of the vessel was read to the crew.

The ship has flown the Chinese flag since the Chinese crew rebelled at the intolerable impositions of the Japanese officers and the had food given the men. The Kwang Yuan, formerly the Edna Christiansen, was sold to a Chinese firm in Chefoo, China last year. Kuo Fok then the crew of Chefoo has fallen to the Japanese. Claim is made by the Japanese that a transfer has been made to a new Japanese owner in Osaka. According to the Chinese, this might very well have been done with a document at the back of the register-Chinese owner.

The Chinese Consulate has refused to issue a Japanese register to the ship, as the register book of an American register required approval of the state of the ship in another country.

Two Suits On

Two suits are pending for the Japanese owner and former captain. The Yokohama Bank has also secured a judgment against the cargo which will be returned by the Chinese because of the large amount that the Chinese crew took in unpaid wages during the last 10 months.

The Chinese Consulate will claim exemption from the jurisdiction of the S. F. District Court and will make the dispute between officers and crew to be held under the

The Japanese owner and former captain. The Yokohama Bank has also secured a judgment against the cargo which will be returned by the Chinese because of the large amount that the Chinese crew took in unpaid wages during the last 10 months.

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CHINESE HERE ACT AS SPIES ON JAPANESE

Keep Watchful Eye on Vessels Belonging to Enemy of Homeland

American-born Chinese fishermen are acting as unofficial and "permissible" agents of the land of their ancestors by watching Japanese maritime activities in San Francisco Bay, it was disclosed today.

They are not paid agents and have no orders or specific assignments, said a Chinese Government official who disclosed their activities.

They are strong fishermen who keep because they want to help and have supplied valuable information in China about Japanese commercial shipping.

Watch Freighter
Their goal took form in watching the freighter Kwang Yuan, which under with 1000 tons of cargo from the Japanese maritime activities in San Francisco Bay.

Three times the Chinese authorities had to inform have prevented the freighter from leaving the harbor. They were notified was preventing one of the on the vessel, namely, Wang Kuo Fok, crew and their Japanese officers, stated.

Friendly With Crew
For these men without the fishermen were friendly with the crew of the ship, said the Chinese authorities. "When the crew stays in contact with us, it is in San Francisco harbor. That was the last



THE CHINESE KUOMINTANG flag flies proudly over the vessel Kwang Yuan.

Men of 'Chinese Navy' In S. F. Paid Tribute

RESIDENTS HONOR CREW OF DISPUTED SHIP

They dedicated the ship to the Chinese navy. The residents of San Francisco paid tribute to the crew of the disputed ship Kwang Yuan.

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S. F. SHIP GETS RECORD FOR LONG DELAY

Chinese-Owned Schooner Here Seven Months Waiting Release Word

BY FELIX HESSENBERG JR.
The Kwang Yuan, a 2000-ton steamer schooner which has been riding at anchor in Mission Bay since last fall, today became a "recovered ship."

She has no nationality, is manned by both Japanese and Chinese and has been delayed in sailing from San Francisco since last September—longer than anyone can remember a ship being held here.

Said to Chinese
The Kwang Yuan was the old Edna Christiansen, an American vessel in the Pacific coastwise lumber trade out of San Francisco. She was sold to Chinese interests, loaded with scrap and ready to sail for the Orient last fall.

Just before sailing her Japanese captain proposed she had been sold by her Chinese owners to a Japanese firm. But the Chinese captain, who held the registration papers which U. S. Customs cannot issue a vessel, refused to recognize the sale until officially advised.

No Word Yet
Today, after several months of delay, the vessel has been released and the Kwang Yuan, with her crew in Japanese officers, Chinese crew and 1000 tons of cargo for Osaka, Japan, was set to sail.

The crew is still waiting the Chinese government and the vessel's departure from the harbor will be in a matter of days, it is believed.

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Chinese Victors In Battle Over Disputed Ship

Jap Captain Ousted When Freighter Is Expropriated

Blindness, but glorious, was the coup which yesterday placed the Chinese navy in command of Hunter's Point.

Once-drawn-into-the-jelly where practical Chinese thought it would do the most good—only to be ousted by the capture of the vessel Kwang Yuan, under the leadership of Consul General C. C. Huang and Attorney Hugh McKeivitt.

McKeivitt explained the latest move in the long Japanese-Chinese struggle for the Kwang Yuan, when with scrap iron originally destined for Japan.

"A cable from the minister of foreign affairs in China informed the consulate here that the Kwang Yuan had been expropriated and now is a Chinese national vessel."

Huang explained that Japanese Captain Y. Kawano had been released of duty and Chinese Captain Chou Tzu Ming had been named in command of the ship.

The Chinese crew of the Kwang Yuan has been involved in a struggle of several months' duration with the Japanese officers.

CHINA 'SEIZES' S. F. JAP SHIP

San Francisco, Calif. (AP)—The Chinese government today announced that it had seized the Japanese ship Kwang Yuan, which has been held in San Francisco harbor since last September.

The ship, which was originally owned by the Japanese, was taken over by Chinese forces. The Japanese captain was ousted and the ship was declared a Chinese national vessel.

The seizure of the ship is part of a larger dispute between China and Japan over the ownership of the vessel. The Chinese government claims that the ship was sold to Chinese interests, while the Japanese government claims that it was sold to Japanese interests.

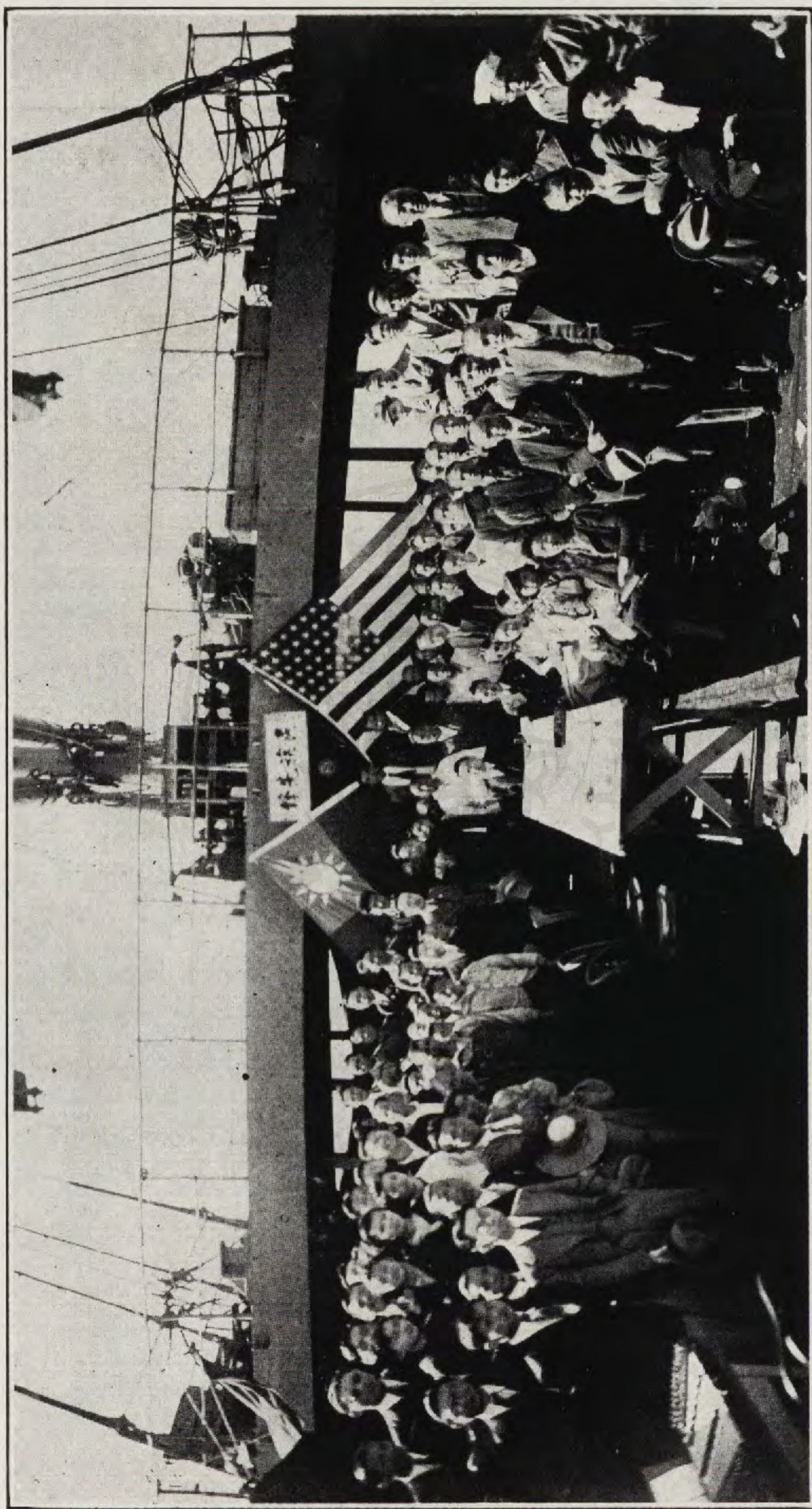
The dispute has led to a series of incidents in San Francisco, including the seizure of the ship and the arrest of several Japanese officers. The Chinese government has demanded that the Japanese government release the ship and the officers.

The Japanese government has refused to release the ship and the officers, claiming that the ship was sold to Japanese interests. The Chinese government has threatened to take further action if the Japanese government does not comply with its demands.

The dispute over the ship has become a major issue in the Sino-Japanese conflict. It has led to a deterioration of relations between the two countries and has caused a great deal of international concern.

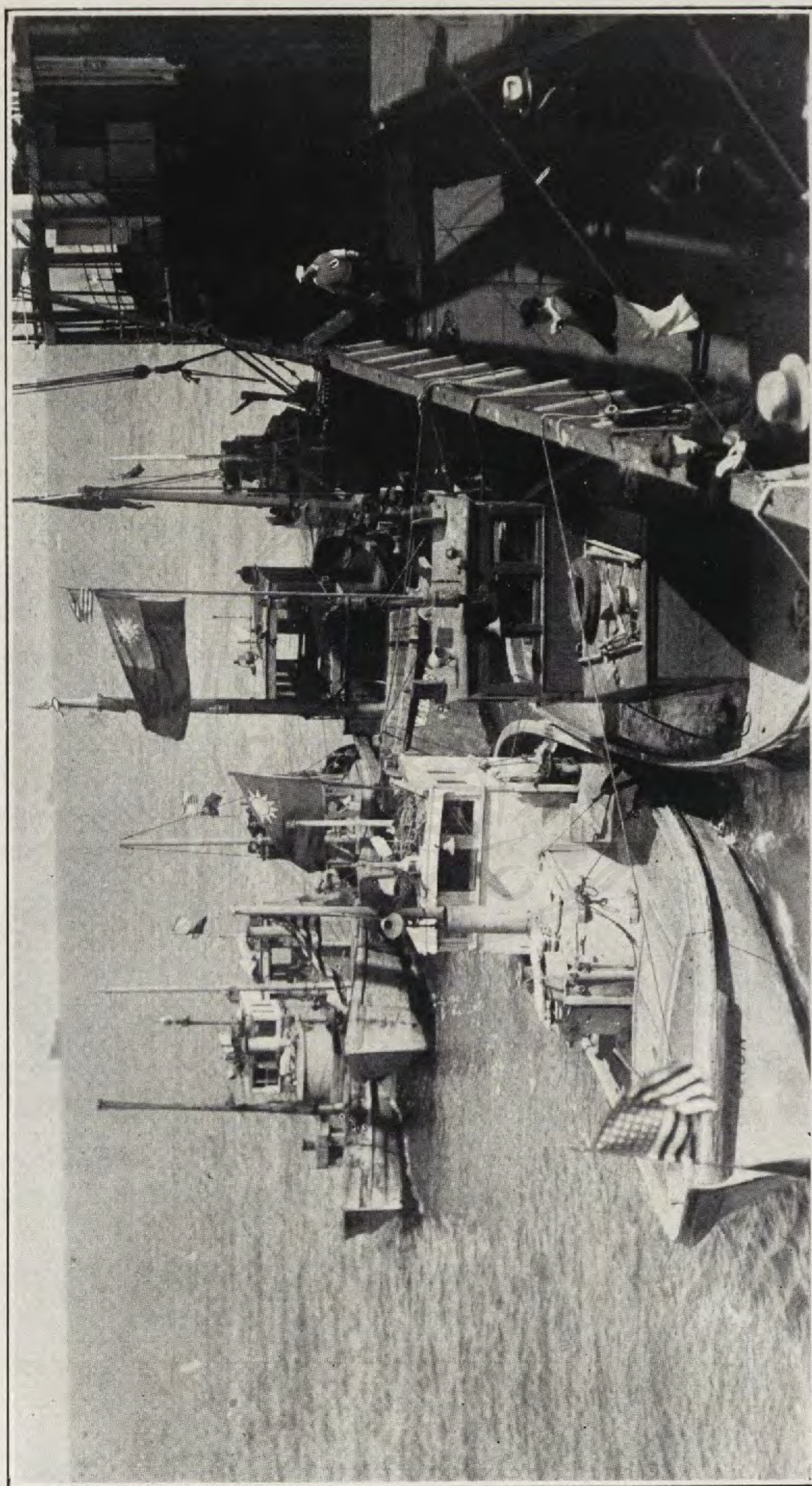
The seizure of the ship is a clear violation of international law. It is a gross act of aggression and a serious challenge to the principles of justice and fairness.

The Chinese government's actions are a clear demonstration of its determination to assert its sovereignty and its right to self-determination. It is a bold and courageous move that has earned the respect and admiration of many people around the world.



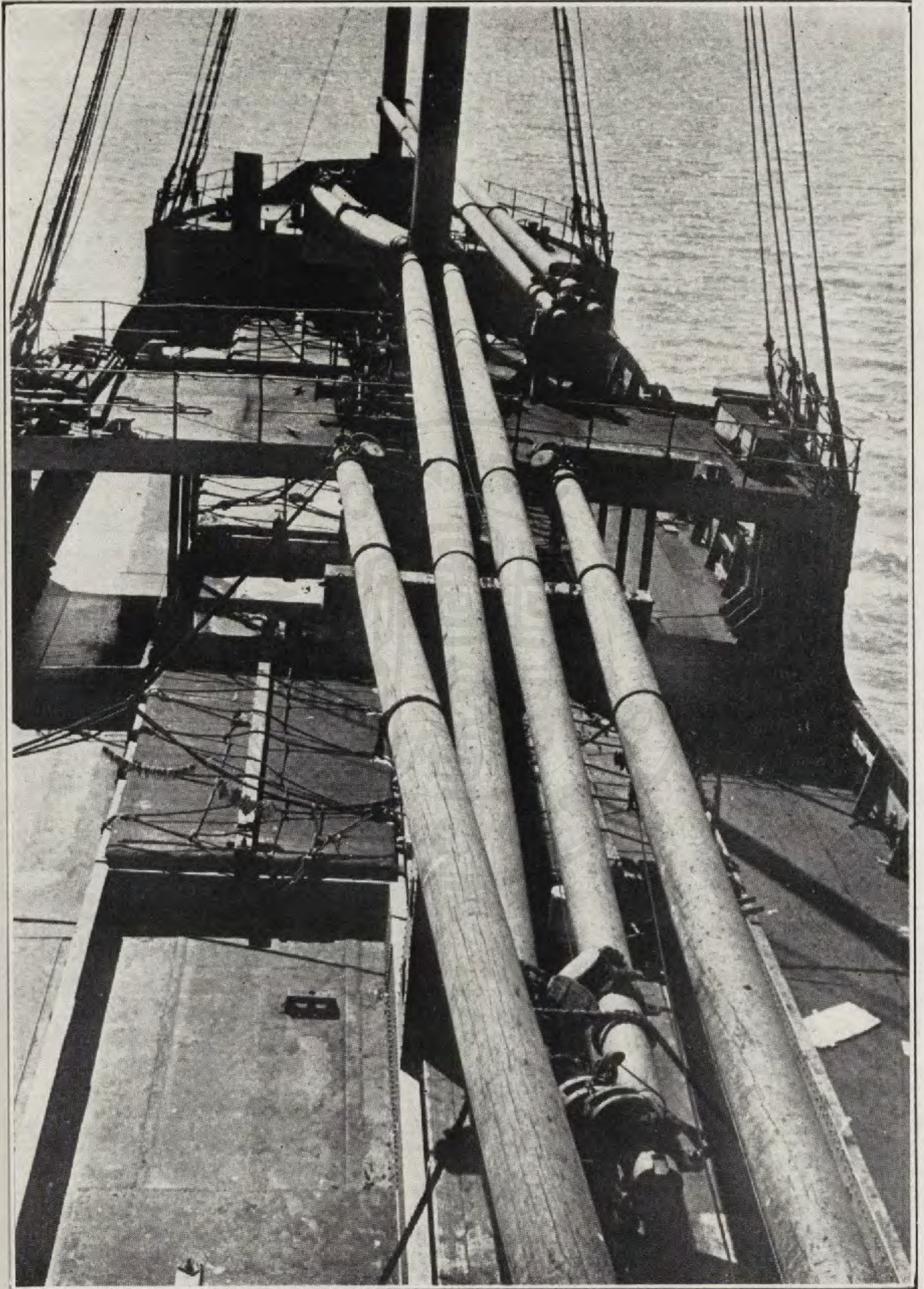
華人蝦寮工會餞別廣源輪全體海員

The farewell party given by the Chinese shrimp fishermen in honor of the Chinese crew of the S. S. Kwang Yuan.



廣源輪及華人蝦寮工會之汽艇

The S. S. Kwang Yuan and the fleet of Chinese shrimp boats



廣源輪甲板

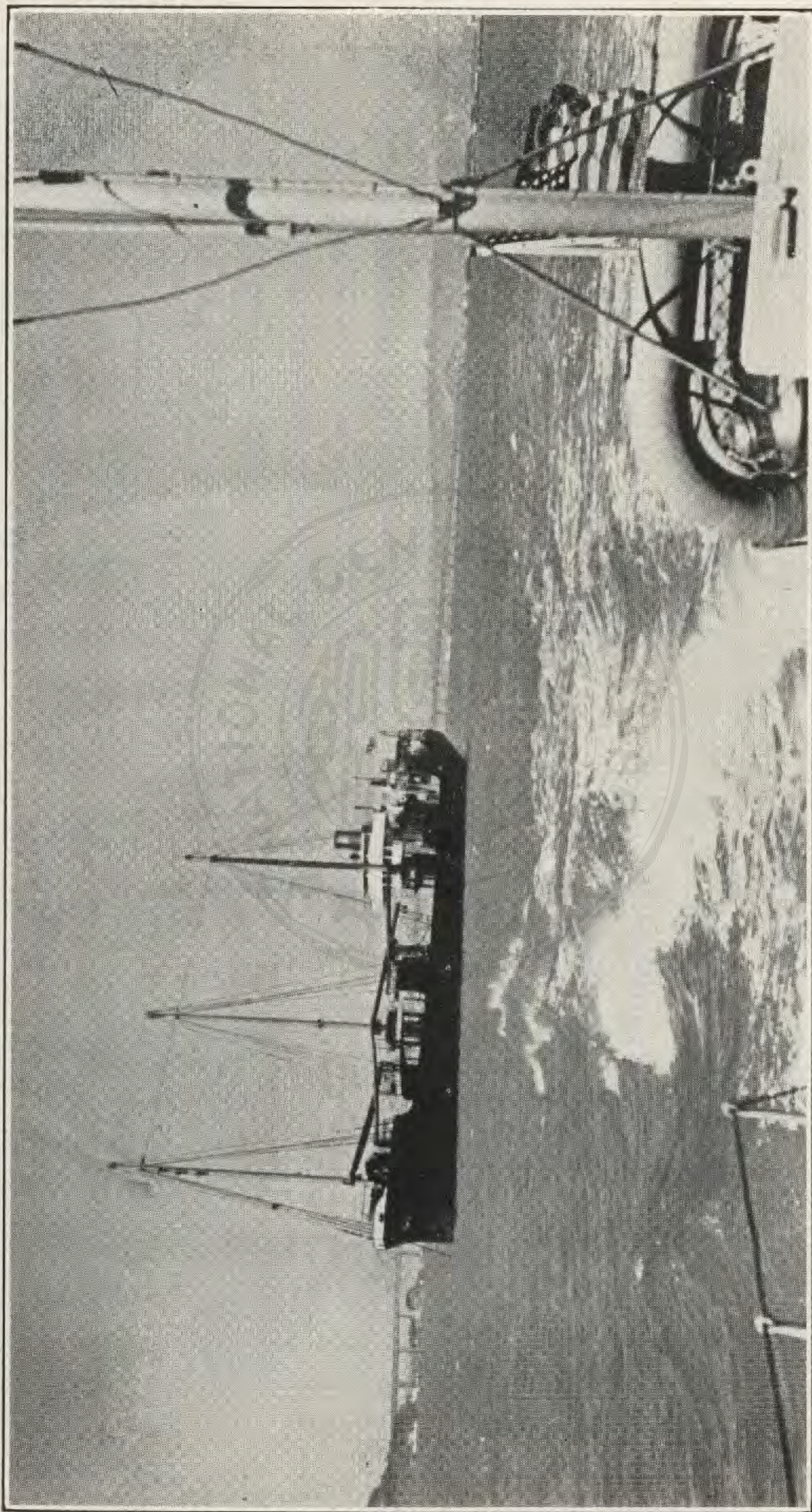
The S. S. Kwang Yuan—the deck



廣源輪船尾

The S. S. Kwang Yuan—the stern.

(v)



廣源輪側面圖

The S. S. Kwang Yuan at Anchor.

III. The Case of the Ownership and Movement of the Cargo on Board
the S. S. Kwang Yuan.

Libel in Rem for Possession.....	59
Suggestion	63
Petition in Intervention	65
Memorandum in Support of Motion to Strike Petition in Intervention	67
Memorandum in Opposition of Motion to Strike Petition in Intervention	75
Motion for Order of Substitution and For Order Authorizing Filing of Petition in Intervention.....	88
Authorizing Filing of Petition in Intervention.....	89
Court Order	92
Notice of Motion to Set for Trial.....	93
Notice of Trial	94
Stipulation for Taking Depositions	95
Reporter's Transcript	97
Libelant's Opening Brief.....	229
Brief of Intervening Petitioner	240
Libelant's Reply Memorandum.....	254
Depositions	257
Court Decree	267

TABLE OF CONTENTS

	Page
<i>Photographs</i>	(v) - (xiii)
BRIEF HISTORY OF THE CASE OF THE S. S. KWANG YUAN	
I. The Criminal Proceedings.....	(xv)
II. The Libel for Possession of the S. S. Kwang Yuan.....	(xvi)
III. The Libel for Possession of the Cargo on Board the S. S. Kwang Yuan	(xvii)
PLEADINGS, BRIEFS, AND COURT ORDERS IN THE CASE OF THE S. S. KWANG YUAN.	
I. The Case of Dispute between the Japanese Officers and the Chinese Seamen.	
Points and Authorities Showing that the Municipal Court Has Not Jurisdiction to Issue Warrants.....	1
Points and Authorities for Complaining Witnesses.....	9
Points and Authorities for Chinese Consul and Chinese Sailors	17
Reply of Complaining Witnesses to New Matter in the Brief for Defendants	20
Opinion and Decision of Court.....	23
II. The Case of the Ownership and Possession of the S. S. Kwang Yuan.	
Libel for Possession	27
Notice	35
Objections to the Jurisdiction	37
Exceptions to Libel	40
Points and Authorities in Support of Exceptions to Libel	43
Supplemental Memorandum of Points and Authorities in support of Exceptions to Libel.....	52
Dismissal Without Prejudice	58

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