LIABILITY FOR DAMAGES ARISING IN THE NAVIGATION OF VESSELS.

ARGUMENT IN SUPPORT OF SENATE BILL 7208, "A BILL TO AMEND AN ACT ENTITLED 'AN ACT RELATING TO NAVIGATION OF VESSELS, BILLS OF LADING, AND TO CERTAIN OBLIGATIONS, DUTIES, AND RIGHTS IN CONNECTION WITH THE CARRIAGE OF PROPERTY,' APPROVED FEBRUARY 13, 1893."

Printed for the use of the Committee on Commerce.

SENATE BILL 7208—A NECESSARY AMENDMENT OF THE HARTER ACT.

The bill (S. 7208, 62d Cong., 2d sess.), introduced in the Senate on July 1, 1912, by Senator Nelson, chairman of the Committee on Commerce, and referred to that committee, is simply an amendment of the statute of February 13, 1893 (27 Stat. L., 445), generally known as the Harter Act. The proposed measure (the Nelson bill) makes only such changes in the Harter Act as are necessary to make the owners of vessels transporting merchandise or property between United States ports and foreign ports liable for loss or damage arising from faults or errors in the navigation or management of the vessels, according to the market value of the property affected. This is a matter of simple justice, long delayed, to the shippers. It is simply bringing back the Harter Act, for the most part, to the purpose intended by the House of Representatives when it passed the original Harter bill on December 15, 1892.

TEXT OF THE BILL.

The full text of the Nelson bill is as follows:

A BILL To amend an act entitled "An act relating to navigation of vessels, bills of lading, and to certain obligations, duties, and rights in connection with the carriage of property," approved February thirteenth, eighteen hundred and ninety-three.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an act entitled "An act relating to navigation of vessels, bills of lading, and to certain obligations, duties, and rights in connection with the carriage of property," approved February thirteenth, eighteen hundred and ninety-three, be amended in section one so that said section shall read:

"SECTION 1. That it shall not be lawful for the manager, agent, master, or owner of any vessel transporting merchandise or property between the ports of the United States and foreign ports to insert in any bill of lading or shipping document any

clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge, or from faults or errors in the navigation or management of said vessel, or whereby its or their liability is limited to less than the market value of such merchandise or property at the time and place of shipment. Any and all words and clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect."

SEC. 2. That said act be further amended in section three so that said section shall read:

"SEC. 3. That if the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel, her owner, or owners, agent, charterers, or master shall become or be held responsible for damages or loss resulting from latent defects in said vessel from dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect, quality, or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service; and when the vessel is engaged in transporting merchandise or property between ports in the United States of America, neither the said vessel, her owner or owners, agent, or charterers shall become or be held responsible for damages or loss resulting from faults or errors in navigation or in the management of said vessel."

SEC. 3. That said act be further amended in section four so that said section shall read:

"SEC. 4. That it shall be the duty of the owner or owners, master, or agent of any vessel transporting merchandise or property between ports of the United States and foreign ports to issue to shippers of any lawful merchandise a bill of lading or shipping document stating among other things the marks necessary for identification, number of packages, or quantity, stating whether it be carrier's or shipper's weight and apparent order or condition of such merchandise or property delivered to and received by the owner, master, or agent of the vessel for transportation; and such document shall be prima facie evidence of the receipt of the merchandise therein described. Every bill of lading or shipping receipt relating to the carriage of merchandise or property from a port in the United States to a foreign port shall contain a provision to the effect that the shipment is subject to all the terms and provisions of, and all the exemptions from, liability contained in this act; and any stipulation or agreement purporting to oust or lessen the jurisdiction of the courts of the United States or of any State thereof having jurisdiction at the port of loading, in respect of the bill of lading or shipping document, shall be null and void and of no effect."

THE CHANGES EFFECTED BY THE NELSON BILL.

The exact changes made by this bill in the Harter Act are as follows:

In section 1, in the clause providing that it shall not be lawful for the owners or managers of the vessels in question to insert in bills of lading any clauses relieving themselves from liability for loss or damage arising from negligence or faults of certain kinds, the Nelson bill adds the words:

or from faults or errors in the navigation or management of said vessel, or whereby its or their liability is limited to less than the market value of such merchandise or property at the time and place of shipment.

The effect of this is to make it impossible for foreign shipowners, through clauses or stipulations in their bills of lading, to exempt themselves from liability for the fair and actual value of merchandise lost or damaged through negligence in loading, storage, custody, care, or delivery of the merchandise, or through faults or errors in the navigation or management of the vessel. This change, written with regard to court decisions and other laws, establishes the purpose of section 1 just as it was when passed by the House of Representatives in 1892.

The only other change in section 1 made by the Nelson bill is the omission, in the first sentence of the section, of the words "from or" from the clause "from or between ports of the United States and foreign ports." This omission simply removes words that are entirely superfluous and makes no change in the effect of the section.

In section 3 the words "or master" are added to the clause "neither the vessel, her owner or owners, agent, or charterers, shall become or be held responsible," etc., after the word "charterers." In the continuation of this clause—which in the existing law reads "responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel, nor shall the vessel, her owner or owners, charterers, agent, or master, be held liable for losses arising from dangers of the sea," etc.—the words "faults or errors in navigation or in the management of" are omitted (to establish the purpose of the proposed amendment of section 1 in the light of the court decisions), the words "latent defects in" are inserted immediately before the words "in said vessel" (as an act of justice to shipowners); and, after these words, the words "nor shall the vessel, her owner or owners, charterers, agent, or master be held liable for losses arising" are omitted as entirely unnecessary after the addition of the words "or master" earlier in the clause (to simplify the language of the section).

The only other change in section 3 is the addition of the following clause at the end:

and where the vessel is engaged in transporting merchandise or property between ports in the United States of America, neither the said vessel, her owner or owners, agent or charterers shall become or be held responsible for damages or loss resulting from faults or errors in navigation or in the management of said vessel.

The effect of this additional clause is to continue the exemption, existing under the present law, of liability for damage or loss resulting from faults or errors in navigation or management, for vessels carrying merchandise from one port of the United States to another; that is, for vessels engaged in domestic trade, such as the lake and coastwise traffic, and not in foreign trade. That is to say, the Nelson bill, by including this provision, limits the scope of its effect in this respect to vessels engaged in transporting merchandise or property between ports in the United States and foreign ports, or the foreign trade of the United States. The vessels engaged in this foreign trade are almost entirely of foreign ownership (it appears that about 93 per cent of our foreign trade is carried in foreign ships) and these, under the great latitude of foreign laws, have exacted the most unreasonable and burdensome bills of lading, in which, among other vexatious features, they have stipulated that the American shippers should have their claims adjudicated according to the laws of the country of the flag of the vessel.

With the final provision in section 3 the Nelson bill does not add in any way to the existing liabilities of domestic carriers in the coastwise and lake trade. American shippers have not had so much difficulty in securing proper adjustment of losses with these carriers, who because of the conditions of their traffic and the extent to which they compete with railroads, generally assume in their bills of lading the proper responsibility, such as the Nelson bill imposes on ocean carriers, who in fairness ought to be obliged to assume it.

After the changes mentioned above the only other change made in the existing law by the Nelson bill is in section 4, by the addition of the following sentence at the end:

> Every bill of lading or shipping receipt relating to the carriage of merchandise or property from a port in the United States to a foreign port shall contain a provision to the effect that the shipment is subject to all the terms and provisions of, and all the exemptions from liability contained in, this act, and any stipulation or agreement purporting to oust or lessen the jurisdiction of the courts of the United States or of any State thereof having jurisdiction at the port of loading, in respect of the bill of lading or shipping document shall be null and void and of no effect.

The purpose and effect of this provision is to secure proper enforcement of the law in the foreign trade. By compelling the incorporation in bills of lading of the provisions of the act, these provisions will become binding in Great Britain and other foreign countries, under the rights of contract and the laws in those countries.

The Original Purpose of the Harter Act.

Prior to 1893 the laws of the United States forbade shipowners to exempt themselves in any way from liability for loss or damage at sea due to their own faults, errors, or negligence. This situation was decidedly changed by the Harter Act. But it was not intended by its proponents that the Harter Act should change the situation referred to. The purpose of the Harter Act, when introduced in the House of Representatives in 1892, was to make it unlawful for shipowners to insert in bills of lading clauses relieving themselves from liability for losses arising from negligence or limiting their liability to less than full indemnity. This act was not necessary for those shippers who could sue in this country, because our courts have uniformly refused to sustain such clauses. But such clauses are valid in England and elsewhere, and foreign shipowners had compelled the insertion of these clauses in bills of lading, and also of another clause providing that the liability of the carrier under the bill of lading should be governed by the law of England and adjudicated in the courts of that country (or of other foreign country when the ship was registered in that country). Such unjust special clauses in bills of lading were enforced by the foreign shipowners through the power of their practical monopoly of ocean transportation between the United States and foreign countries. Humiliating and burdensome as such conditions were, American shippers were forced to submit in order to get their merchandise carried.

When the Harter bill in its original form was taken up for consideration in the House of Representatives on February 14, 1892, Mr. Lind, of Minnesota, said:

> I will state briefly the purpose of the bill. As the gentleman is aware, nearly all the carrying of flour and other western commodities from this country to Europe is done by foreign steamships. These steamship companies have in recent years exacted the most unreasonable bills of lading that can be imagined—bills of lading in which they exempt themselves not only from risk of every character incident to transportation, but from every liability on account of their own negligence. More than that, they stipulate in their bills of lading that the American shipper shall have his rights or his claims, whatever they may be, adjudicated according to the laws of Great Britain, and only in the courts of that country. This bill simply provides that it shall not be lawful for vessels engaged in foreign commerce to exact bills of lading of that character.

The conditions which led to the introduction of the Harter bill in its original form were clearly and concisely stated in the report of the Committee on Interstate and Foreign Commerce of the House of Representatives in 1892, recommending the passage of the bill. This report quoted from the petition addressed a short time before by the Glasgow Corn Trade Association to the Marquis of Salisbury the following:

That, taking advantage of this practical monopoly, the owners of the steamship lines combine to adopt clauses in their bills of lading very seriously and unduly limiting their obligations as carriers of the goods, and refuse to accept consignments for carriage on any other terms than those dictated by themselves.

That this policy has been gradually extended by the steamship owners until at the present time their bills of lading are so unreasonable and unjust in their terms as to exempt them from almost every conceivable risk and responsibility as carriers of goods.

For example, many of these bills of lading provide in addition to the usual and reasonable exceptions that the carriers shall not be liable for loss or damage occasioned by negligence of the master, pilot, stevedores, crew, or others in their employment; nor for bad stowage; nor for defect or insufficiency of the hull, machinery, or fittings of a vessel, whether occurring before or after receiving the goods on board; nor for the admission of water into the vessel by any cause, and whether for the purpose of extinguishing fire or for any other purpose, and whether occurring previously or subsequently to the vessel sailing; nor for the difference between the quality, marks, or brands of flour or other goods shipped and those of the goods actually found to be on board of the steamer (the marks, numbers, or description in the bill of lading notwithstanding); nor for loss of weight; nor for detention, delay, or deviation.

The Original Provisions of the Harter Act.

It was, of course, not the original purpose of the Harter Act to impose on shipowners liability for losses not due to negligence—that is, such as might come from acts of God and public enemies or perils of the sea and from errors of judgment in navigation or management of the vessel which ordinary care and skill could not prevent. Accordingly the Harter Act, as passed by the House of Representatives on December 15, 1892, contained the following provisions:

Be it enacted, etc., That it shall not be lawful for any common carrier or manager, agent, master, or owners of any common carrier, whether by land or water, to insert in any bill of lading or shipping document, any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault or failure in proper loading, stowing, custody, care in transport, or proper delivery of any and all lawful merchandise or property committed to its or their charge, nor shall it be lawful to limit its or their liability to less than a full indemnity to the legal claimant for any loss or damage therefrom, and any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect.

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SEC. 3. That if any vessel transporting merchandise or property between ports in the United States of America and foreign ports shall, on starting on her voyage, be in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel, her owner or owners, agent, or master shall become or be held responsible for damage or loss resulting from error of judgment in navigation or in the management of said vessel, if navigated with ordinary skill and care, from the time of her leaving her usual place of loading on her intended voyage until her arrival at the usual place of discharge at her port of delivery, nor shall the owner or owners, the vessel, or master be held liable for losses arising from dangers of the sea, acts of God or public enemies, or in saving life, and it may be stipulated in bills of lading and shipping receipts that the vessel may render services to property in distress afloat and tow same to the nearest and most convenient port of safety without incurring penalties from deviation in rendering such service.

The Vital Amendments in the Senate.

The measure then went to the Senate and was there referred to the Committee on Commerce, which, after consideration, reported the bill favorably to the Senate with some amendments, which were accepted by the Senate and subsequently concurred in by the House of Representatives, so that the measure was enacted just as the Senate committee reported it. Some of the amendments were merely verbal and did not alter materially the effect of the measure; but a few amendments were vital in the changes they effected. One of these decisive amendments was to strike out of section 1 the words, "nor shall it be lawful to limit its or their liability to less than a full indemnity to the legal claimant for any loss or damage therefrom." Another amendment in this section was to strike out the words "in transport" after the word "care." As amended and enacted, this section 1 then read as follows:

Be it enacted, etc., That it shall not be lawful for the manager, agent, master, or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge. Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect.

Another vital amendment was in section 3, to insert the words "faults or errors" in place of the words "error of judgment" immediately before the words "in navigation or in the management of said vessel," etc. After this and other changes, section 3, as amended and enacted, read as follows:

SEC. 3. That if the owner of any vessel transporting merchandise or property to or from any port of the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel, her owner or owners, agent, or charterers shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel, nor shall the vessel, her owner or owners, charterers, agent, or master be held liable for losses arising from dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect, quality, or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service.

The Effect of the Senate Amendments.

The word "faults," thus skillfully introduced into section 3, has, as a result of much adjudication in the courts, a legal meaning and effect so broad as to include acts which really constitute negligence. The effect, then, of this section as enacted was to prevent American shippers from recovering damages for losses due to faults or errors of navigation or management. This was a result entirely different from that which was intended to be secured by the passage of the act. The enactment in its distorted form really left the American exporters in a worse situation than they were in before. Before the enactment they had a right under the common law to recover damages for losses due to faults or errors in navigation or management, and this right could be effectively maintained in the courts of this

country, although nullified in foreign courts by the clauses which the foreign shipowners required in bills of lading for their vessels. Since the enactment of the Harter Act American exporters and shippers have been almost powerless to recover damages for losses at sea caused by negligence of the servants of the ocean carriers. In almost all cases of suits for such damages, even where the losses are clearly the result of acts of negligence on the part of the ship's captain or crew, the defense is set up that due diligence was exercised to make the vessel in all respects seaworthy and properly manned, equipped, and supplied, and that the acts in question were "faults or errors in navigation or in the management of said vessel," and under the broad interpretation of this phrase judgment is denied to the shippers and the shipowners escape responsibility.

The full meaning and effect of the amendments made in the Senate were not made clear or understood in the House of Representatives, which concurred in the Senate amendments on the assumption that they were of minor importance. The only reason given to the House for the decisive change in section 3 above referred to was that shipowners ought not to be held responsible for losses at sea caused by unavoidable exhaustion of master and crew through extraordinary stress of weather. The argument that consideration for such circumstances required the extraordinary amendment made by the Senate committee is utterly fallacious and inadequate. The provisions of the bill as passed by the House, which exempted the vessel from responsibility for damage or loss "resulting from error of judgment in navigation or in the management of said vessel, if navigated with ordinary skill and care," would have fairly and entirely covered all the conditions arising from unavoidable exhaustion of master and crew; and the courts have never failed to give just consideration to such circumstances. Moreover, the substitution by the Senate committee of the clause exempting the vessel from responsibility for damage or loss "resultiug from faults or errors in navigation or in the management of said vessel" covered vastly more than the conditions of unavoidable exhaustion referred to. The effect of this broad change has been so great that cases of exhaustion are the merest trifles in comparison. Soon after the enactment of this provision court decisions began to show the extensive and unjust features of this change. An examination of the decisions under section 3 of the Harter Act reveals clearly the discouragements and unfair burdens which American shippers now have to contend with from this section as it stands.

For example, in the case of the *Silvia* (171 U. S., 462), a steamship sailed with a porthole in her between decks unsecured, and water entered, damaging her cargo. It was held that as the porthole was capable of being speedily got at and closed if occasion should require, any subsequent neglect in not closing same was a "fault or error in the management of the vessel" within the meaning of section 3 of the Harter Act. The court said:

> This case does not require a comprehensive definition of the words "navigation" and "management" of a vessel within the meaning of the act of Congress. They might not include stowage of cargo not affecting the fitness of the ship to carry her cargo, but they do include, at the least, the control during the voyage, of everything with which the vessel is equipped for the purpose of protecting her and her cargo against the inroad of the seas.

The following are a few of the decisions in which the protection of the act has been held to cover the negligent use or negligent failure to use the ordinary appliances of vessels provided for the protection of cargo.

The *Sandfield* (79 F. R., 371, affd. 92 F. R., 663). The opening of a sluice gate designed to empty the bilges was neglected for 20 days during heavy weather. The accumulating water overflowed the bilges and damaged the cargo. It was held that the neglect to open the sluice gate was neglect in the "management of the vessel" within section 3 of the Harter Act, and that the owners were exempted thereby from liability.

The *Mexican Prince* (82 F. R., 484; affd. 91, F. R., 1003). The *Mexican Prince* was a convertible-tank steamship built to carry both fluids and dry cargo. Each tank or compartment was connected with a pipe line by a Kingston valve operated by a spindle from the deck. The ship sailed from Rio with her No. 2 tank full of ballast water and the neighboring compartments or tanks full of coffee in bags. After leaving Rio the ballast water was pumped out through the pipe line, but the valve in the offset leading into No. 3 tank was not closed and the ballast water from No. 2 ran into the No. 3 tank, damaging the coffee. Those in charge failed to properly test the valves by means of the pumps or by fully opening and closing them and counting the turns of the spindle, either of which tests would have shown that No. 3 valve was not closed. It was held that the damage to the coffee arose from neglect in the "management of the vessel," within the third section of the Harter Act, and that the ship was not responsible therefor.

The *British King* (89 F. R. 872, affd. 92 F. R. 1018). The cargo was damaged by water from a ballast tank which was found sprung and the rivets started after heavy weather. The court said:

> The secondary cause of the damage was the failure to take soundings and apply the pumps between 10 p. m. of the 20th and 8 a. m. of the 21st. Considering that the ship's carpenter and the officers who attended to the soundings had notice of an accumulation of 14 inches of water in the bilges in four hours from 6 p. m. to 10 p. m. of the 20th of April during heavy weather, and that this weather continued with equal or increasing severity during the night, it was a very plain lack of ordinary prudence and hence was negligence not to make any soundings during the following 10 hours up to 6 a. m. of the next day, during which time an accumulation of water at the same rate as during the preceding 4 hours must manifestly exceed 20 inches, which, as all knew, would be dangerous to the cargo. * * * Had soundings been properly repeated after 10 p. m. of the 20th, there is no question that the pumps would have controlled the leak, as they did the next day, and no damage would have arisen. The failure to take soundings and to apply the pumps, as the known facts showed to be necessary, was, therefore, the final and immediate cause of the damage. But for this negligence the ship and owners are not liable, under the third section of the Harter Act, because it was negligence in the "management of the ship."

The *Merida* (107 F. R., 146). Hides were damaged by an accumulation of water in the bilges due to a failure to use the pumps. It was held to be a fault in the management of the vessel, and the vessel was exonerated.

American Sugar Refining Co. *v.* Rickerson (124 F. R., 188). The cargo was damaged by water which entered the hold through a manhole in a ballast tank. Shortly after sailing the sea cock was opened for the purpose of filling the ballast tank. Two hours would have been sufficient for this purpose, but the sea cock was negligently left open for 7½ hours, and the resulting pressure blew out the packing of

the manhole joint. It was held to be negligence in the management of the vessel and the owner not liable.

The *Wildcroft* (130 F. R., 521; 201 U. S., 378). While the *Wildcroft* was discharging a cargo of sugar in Philadelphia she took in water for her boilers through a pipe line running to the engine-room tank, and on this pipe line was a valve connected to a pipe leading into the ship hold and used to pump out her bilges. The sugar was badly damaged by water, and the court found that the presence of such water could only be accounted for by the valve connecting the pipe leading to the engine-room tank and the pipe leading to the hold having been partly open, owing to some foreign substance, such as a piece of wood, having lodged in the seat of the valve when the bilges were last pumped, and that the failure to see that this valve was properly closed was a fault in the management of the vessel, and that the Harter Act exempted the vessel from liability for such fault.

Sun Co. *v.* Healy (163 F. R., 48). The tank steamship *Toledo* was discharging a bulk cargo of molasses at Hoboken. The molasses was being pumped out and, a sea valve not being properly closed, a large quantity of water entered the vessel, diluting and damaging the molasses. It was held that the failure to keep the valve properly closed was a fault in the management of the vessel, from liability for which the Harter Act protected the ship and her owner.

The *Indrani* (177 F. R., 914). This vessel arrived in New York with cargo stowed in the lower forepeak, which was used at times as a ballast tank and was connected with the pumps in the engine room by a pipe running through the ballast tanks under No. 1 and No. 2 holds. The vessel, while passing through the Suez Canal, had picked up a piece of cable with her propeller, which had been removed by a diver at Algiers. After arrival at destination and before the cargo had been discharged from the forepeak, her master desired to examine the propeller, and, to avoid the expense of going on dry dock, decided to tip the vessel by the head so as to bring her propeller out of the water. To accomplish this the No. 1 ballast tank was filled with water, and, owing to the pipe which ran through such tank to the forepeak having been fractured during the voyage, the forepeak filled with water which was not discovered for several days, damaging the cargo stowed therein. It was held to be a fault in the "management of the ship" and the vessel not liable.

On May 13, 1912, the Supreme Court of the United States delivered a unanimous opinion in the case of the *Jason* (Actieselskabet *Jason v.* John Arbuckle et al). The decision in this case did not turn upon the question of the liability of the shipowner, but in its opinion the court said, in reference to the Harter Act:

> Prior to the Harter Act it was established that a common carrier by sea could not, by any agreement in the bill of lading, exempt himself from responding to the owner of cargo for damages arising from the negligence of the master or crew of the vessel. Liverpool and G. W. Steam Co. *v.* Phenix Ins. Co. (The Montana, 129 U. S., 398, 438, 32 L. ed. 788, 791, Sup. Ct. Rep. 469; following New York C. R. Co. *v.* Lockwood, 17 Wall., 357, 21 L. ed., 627.)
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> But of course the responsibilities of the carrier were subject to modification by law, and with respect to vessels transporting merchandise from or between ports of the United States and foreign ports, they were substantially modified by the Harter Act. The first three sections of this enactment are pertinent to the present discussion, and are set forth in full in the margin.
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> Section 1 deals with the shipowner's responsibilty for the proper loading, storage, custody, care, and delivery of the cargo, prohibits the insertion in any bill of lading of

an agreement relieving him from responsibility for negligence in respect of these duties, and declares such agreements null and void. Section 2 prohibits the insertion in any bill of lading of an agreement lessening or avoiding the obligation of the shipowner to "exercise due diligence [to] properly equip, man, provision, and outfit said vessel and to make said vessel seaworthy," etc. Section 3 proceeds to limit the responsibility of a shipowner who shall have exercised due diligence to make his vessel seaworthy and properly manned, equipped, and supplied. Instead of merely sanctioning covenants and agreements limiting his liability, Congress went further and rendered such agreements unnecessary by repealing the liability itself, declaring that if the shipowners should exercise due diligence to make the vessel in all respects seaworthy, and properly manned, equipped, and supplied, neither the vessel, her owner or owners, etc., should be responsible for damage or loss resulting from faults or errors in navigation or in the management of the vessel, etc. The antithesis is worth noting. Congress says to the shipowners: "In certain respects you shall not be relieved from the responsibilities incident to your public occupation as a common carrier, although the cargo owners agree that you shall be relieved; in certain other respects (provided you fulfill conditions specified) you shall be relieved from responsibility, even without a stipulation from the owners of cargo."

Unjust Burdens on American Exporters.

The effect of the Harter Act has been constantly burdensome to American shippers ever since its enactment. The full force of its provisions has been made conclusive by court decisions. In practically all cases of damage or loss, whatever the actual facts may be, it is almost impossible to show that the shipowners have not used due diligence to make the vessel seaworthy and properly manned, equipped, and supplied; and it is almost always possible for the shipowners to allege, for the purpose of escaping liability, that the accident was due to faults or errors in navigation or in the management of the vessel. Shipowners naturally equip and manage their vessels in the most economical way, and it often happens, especially with foreign ships, that officers and crew are underpaid and overworked, though it is obviously difficult for cargo owners to prove such allegations. The real cause of many accidents to such vessels is incompetence of officers or crew, or what is actually unseaworthiness, yet under the Harter Act the shipowners defend themselves by pleading negligence of their servants, and such defense is usually effective because it can not be shown that due diligence was not exercised in obtaining efficient master and crew. It appears also that shipowners deliberately practice an unwise and unsafe economy in manning and equipping their vessels, with the expectation that if disaster occurs they can, under the Harter Act, plead as a defense the negligence of their servants.

The result is the establishment of a condition that imposes an unlooked-for and uncalled-for obstacle in the way of American exporters, and one which is contrary to American precedent and a wise public policy. The change which Congress made in the standard of duty has been unfortunate. Under the Harter Act as it stands severe losses have continued to fall upon American exporters, due entirely to the negligence of the shipowners' servants; and the exporters, without fault or negligence on their part, and while engaged in the difficult and important work of increasing the exports of American agricultural products and manufactures to foreign countries, are deprived of any recourse or recovery.

Conditions Now Obsolete Produced the Exemption.

There is no shadow of occasion or need to-day, or for our country, for the provision in section 3 of the Harter Act relieving shipowners from responsibility for losses due to their negligence. This provision is a piece of legislation in imitation of the English policy, and is principally for the benefit of English and other foreign shipowners. The English policy in this respect is a very old one, and is based upon the natural situation and necessities of England. The isolated geographical position of England and the scarcity of her natural resources in food supplies forced her from a very early date to engage extensively in maritime adventure and commerce, and the maintenance of her prosperity and power has required that every possible encouragement be given to her merchant marine. Such encouragement has been given principally by means of special privileges in the way of limitation of ocean carriers' liability and by subsidies. Under the English laws ocean carriers are permitted to insert broad exceptions and conditions in their bills of lading, and under such legal privileges the objectionable clauses in bills of lading have been gradually enlarged so as to provide for the carriers' exemption from liability for loss from almost every accident of navigation, whether caused by negligence, inefficiency, or other reason.

This English policy of granting to shipowners a rather broad exemption from liability for losses at sea was established a great many years ago. At that time the conditions of ocean navigation were such as to afford some reason for such indulgence to the owners of ships. All navigation was by sailing vessels. The voyages were very long and all means of communication were slow and uncertain. Shipowners would be deprived of all communication from their vessels for months at a time, and captains could not receive orders from the owners and were obliged to act entirely on their own responsibility. It was true, as the shipowners stated, that they could have no control over their ships after they left port, and in those days the vessels of the merchant marine were owned principally by individuals and firms, and the loss of a vessel would frequently mean the loss of the entire capital of the owner.

Yet under the hard conditions of those former times shipowners in the United States were held liable for faults and errors in the navigation and management of their ships. It was considered contrary to a wise public policy to relieve them from such liability. At the present time conditions of ocean navigation have changed greatly. The sailing vessels have given way to steamers. Voyages are much briefer than ever before. Vessels no longer remain unheard from for long periods. Instead of slow mails, telegraphy, both by cable and wireless, is at the command of shipowners for communication with their captains and agents. With modern facilities and improved organization shipowners have to-day much better control over their vessels, whether at sea or in distant ports, than they ever had before. If the servants of the shipowners, from the nature of their work, are at times beyond the immediate reach of their employers' attention, the servants of other business enterprises are often similarly situated; and in all such cases the servants must, of course, be selected with regard to the circumstances of the work and in view of the responsi-

bilities which properly rest upon owners and employers for the acts of their servants. And to-day the shipowners, almost without exception, are great corporations, instead of individuals and firms of very limited resources, At no former time has there been less reason for exemption from liability for losses due to fault or negligence than exists to-day. Yet exemptions from such liability have increased under corporate ownership of the merchant marine and notwithstanding the improved facilities of navigation and management. This policy is not consistent with the welfare of the general public or of American business enterprise. There is no reason why ocean carriers should be treated differently from other carriers and other business concerns, all of whom are held responsible for the acts of their servants within the scope of their proper services and authority.

Full Responsibility Establishes Safety at Sea.

The special indulgence to shipowners granted by the Harter Act as it stands is a menace to the safety of the public at sea. All other common carriers are held liable in this country for the faults, errors, and negligence of their servants. No proposal to exempt railroads from such liability would be seriously entertained in Congress or in any legislature in this country. Yet the effect of such exemption is bound to be the same, in a general way, with any class of common carriers. In fact it is the same in all kinds of business or personal activity, and this is universally recognized. Almost all corporations and persons are or can be made liable for damages resulting from negligence on the part of themselves or their servants. Without such liability the practical incentive for care and precaution is removed. In all activities there is a natural tendency toward the relaxation of vigilance. There is also a constant tendency to get the business done in the easiest and cheapest way. These tendencies can only be counteracted by the persistent and unremitting pressure of actual responsibility.

Accidents at sea almost invariably result in loss of property. Loss of life is a much less frequent result. All the precautions that can be taken to prevent loss of property are doubly effective in preventing loss of life. There is no surer way of preventing loss of life at sea than by compelling all reasonable precautions to prevent loss of property. All such precautions are thoroughly and effectively compelled by making shipowners actually responsible for property losses and damages arising from faults and negligence of their servants. Under all the conditions of ocean navigation to-day, safety of life and property can really be obtained. The public realize that this is so and demand safety. Shipowners, of course, know better than any other class of people how to provide safety at sea, but business considerations lead them to equip and manage their vessels as economically as possible in all matters that do not affect the comfort or luxury of passengers. Hence the shipowners provide just about as much in the way of safety appurtenances and equipment as the laws require (laws of foreign countries, for the most part, but affecting the lives of our own people), and navigate their vessels in ways and methods established with regard to the extent of the responsibility they are obliged to assume.

It was known, even before the *Titanic* disaster, that in ocean steamships safety was being sacrificed for the sake of speed and luxury. Much legislation is now pending which is intended to secure safety of life at sea. However excellent these measures may be, the most effective legislation for the purpose must be that which will make the owners of vessels in ocean traffic responsible for faults or errors in navigation or management. This liability will make the interests of shipowners identical with the interests of the public. The shipowners will then make sincere, earnest, and constant efforts to avoid disaster, and will apply their superior knowledge and experience to this end. Whatever may be lacking in the rules and requirements imposed by Congress or the laws of foreign countries, will be more than made up through the force and keenness of self-interest. The laws regarding safety, while doubtless very desirable on the whole, must almost necessarily be lacking in some respects. Even if they could be perfect originally, the conditions of ocean travel are so constantly and rapidly changing that lawmakers can scarcely keep up with them. Moreover, the laws and regulations for safety and the inspections to enforce them are frequently limited by necessity to vessels within a specified range of class and size, as, for example, to steam vessels of not less than a stated minimum tonnage.

In such cases all vessels outside of the specified range as would be, in the example suggested, sailing vessels and very small steamers would not be reached at all by the laws and regulations. But full responsibility for life or property lost through faults or negligence will automatically safeguard the navigation of all vessels of all classes, sizes, and conditions. When full responsibility is established and every accident is expensive to shipowners, it will no longer pay to be careless and indifferent or to incur unnecessary risks; and the humanitarian impulses of the shipowners, which it is believed are not less pronounced than those of other business men, will run in the same channel with business considerations and meet the just expectations of the public.

The Public Demand Safety and the Shippers Justice.

The great evil of the Harter Act as it stands is that by taking away from shipowners liability for the loss of property intrusted to them as common carriers for transportation, the natural penalty for negligence is removed and with it the ever-present and controlling motive for prudence and care. This evil has for a long time caused uneasiness on the part of a large number among the general public and serious loss and disadvantage to thousands of American shippers of all sorts of merchandise. A number of the shippers have sought through the courts to recover damages for their losses incurred through the faults and negligence of ocean carriers and have made every possible effort to secure by judicial interpretation some modification of the evil feature of the Harter Act. The uneasiness and discontent among travelers and the general public has, since the great disaster of the *Titanic* on April 15, 1912, increased to such a point that the most effective and complete provisions and precautions to secure safety of life and property at sea are now universally demanded.

ESPECIAL NEED FOR ENFORCING RESPONSIBILITY ON FOREIGN VESSELS.

It is generally agreed in this country that there is especial need for enforcing fair responsibility for life and property on the foreign vessels plying between our ports and foreign ports. The report, dated May 4, 1912, of the Committee on the Merchant Marine and Fisheries of the House of Representatives, accompanying the bill (H. R. 24025) relating to the inspection of steam vessels, said:

> In the opinion of the committee there is greater need for the rigid inspection of foreign vessels entering and clearing from our ports than there is for the inspection of vessels of the United States, in view of the fact that most of our oversea commerce, both passenger and freight, is carried in foreign ships. The great foreign passenger lines on the North Atlantic, and plying between European ports and our eastern seaboard, are largely dependent on the American traveler for their profitable business.

THE NELSON BILL RESTORES RESPONSIBILITY.

The Nelson bill (S. 7208) restores the act of February 13, 1893 (the Harter Act) to the form necessary to carry into effect the purpose of the House of Representatives at that time, will remove the injustice now prevailing in the relations between shippers and shipowners, and will undoubtedly give a greater degree of security to the increasing volume of the export trade of our country. Moreover, it will compel the precautions which protect life and afford the necessary complement of all other measures to this end.

There is overwhelming reason for the existing uneasiness and fear among the shippers and the public concerning losses and disasters at sea. The loss of the *Titanic*, great and impressive as it was, and thoroughly arousing the conscience and judgment of all of our people as it did, is but the latest and greatest in a long list of disasters at sea during the past 20 years. From this list many persons have been impressed with the idea that the enactment of the Harter Act in its present form has brought distinctly traceable results in a pitiable and dreadful toll of life and property needlessly lost at sea. For a number of years past the newspapers have been constantly reporting disasters to vessels at sea by stranding, collision, and other accidents, including very many cases of total loss, and it is well known by the people engaged in shipping and allied enterprises that the majority of the cases of stranding and collision are really the result of negligence, such as can only be overcome by the imposition of full responsibility on foreign shipowners.

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