

The common law, however, imposes this obligation, and The Canada Shipping Act gives it statutory form.²⁷ Carriers would be subject to one or the other.

2. *Insurance*.—A clause frequently met with in bills of lading is to this effect: "The shipowner is not to be liable for any damage to any goods, which is capable of being covered by insurance."

The courts have shewn a decided disposition not to give effect to this clause, if there was any way to avoid doing so. It would undoubtedly be void under sec. 4.

IV. EXEMPTIONS OF LIABILITY IN FAVOUR OF THE SHIPOWNER.

This is dealt with in section 6.

6. If the owner of any ship transporting merchandise or property from any port in Canada exercises due diligence to make the ship in all respects seaworthy and properly manned, equipped and supplied, neither the ship nor the owner, agent or charterer shall become or be held responsible for loss or damage resulting from faults or errors in navigation or in the management of the ship, or from latent defect.

1. "*Due diligence*."—The above section is the first part of sec. 3 of the Harter Act, with the most important addition of the words "or from latent defect."

This section is a modification of the common law rule and, in broad general terms, with section 7, covers the exceptions usually included in the bill of lading, except that as to negligence. Almost every one of the expressions contained in these two sections has received judicial interpretation.

"Due diligence" denotes, in the first place, all absence of negligence. Moreover, it "requires a carefulness of inspection or repair proportionate to the danger."²⁸

"It seems to be equivalent to reasonable diligence, having regard to the circumstances known, or fairly to be expected,

27. Section 963.

28. *The Edward L. Morrison* (1894) 153 U.S. 199.