

5. "*Fire, dangers of the sea, etc.*"—These exceptions are dealt with in the following section:—

7. The ship, the owner, charterer, agent or master shall not be held liable for loss arising from fire, dangers of the sea or other navigable waters, acts of God or public enemies, or 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, or other reasonable deviation, or from strikes, or for loss arising without their actual fault or privity or without the fault or neglect of their agents, servants or employees.

This section forms the latter part of sec. 3 of the Harter Act, and the exemptions contained in sec. 7 are, in the Harter Act, made conditional upon the exercise of due diligence, as expressed in the first part of the section, which forms our sec. 6.

According to the terms of sec. 7, it would appear that the shipowner is exempted from liability for the result of the events mentioned, down to the word "strikes," whether or not, in respect to those to which human negligence could contribute, such as fire, for example, they have resulted from his fault or privity; and it would appear from the debate before the Senate Committee that the intention was to exonerate the shipowner from loss by fire, even when his negligence or that of his servants contributed to it. The courts will, no doubt, be called upon to determine in how far the section has this desired effect.

In this connection the following facts are of interest:—

The former Canadian Act respecting the Liability of Carriers by Water,⁵⁰ exempted shipowners from liability from fire and dangers of navigation or other causes of loss therein mentioned, "happening without their actual fault or privity." The revisers of the statutes of 1906 drafted sec. 964 of The Shipping Act,⁵¹ to represent the above, in the following manner:—

50. R.S.C. of 1886, c. 82, s. 2, par. 4.

51. R.S.C., c. 113, ss. 961 to 966.