

(c) the obligations of the master, officers, agents, or servants of any ship to carefully handle and stow goods, and to care for, preserve, and properly deliver them, are in any wise lessened, weakened or avoided; such clause, covenant or agreement shall be illegal, null and void, and of no effect, unless such clause, covenant or agreement is in accordance with other provisions of this Act.

1. *Scope of sec. 4.*—The provisions contained in the above section are practically the same as those in secs. 1 and 2 of the Harter Act, with these differences:—

In respect of paragraph (a): The Harter Act reads, after the word "care," "or proper delivery of any and all lawful merchandise or property committed to its or their charge." There is substantially no difference in meaning. Our Act follows the Australian Act.

In respect of paragraph (b): After the words "and supply the ship," the Harter Act reads, "and make said vessel seaworthy and capable of performing her intended voyage."

The provision as to *keeping* the ship seaworthy, and as to making and *keeping* her "hold, refrigerating and cooled chambers and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation," are taken from the Australian Act.

It has, however, been held under the Harter Act, even in the absence of special reference to that Act, that the shipowner was responsible for the break-down of the refrigerator, notwithstanding the bill of lading exception "against such break-down, even though arising from defect existing at or previous to the commencement of the voyage."¹⁸

In respect of paragraph (c): The Harter Act does not contain the word "preserve," which is also taken from the Australian Act.

Section 4 contains the most important provision of the new Act, in that it makes a radical change in the law heretofore existing in Canada, as laid down by the Supreme Court of

18. *The Southwark* (1903) 191 U.S. 1.