with the vessel owner to inspect or learn of the vessel's condition or the causes of damage. He must either accept the terms offered by the carrier or not ship the goods.

In England and Canada the general rule of evidence would appear to be similar, but with some modifications.[56]

Query.—How far would a clause be upheld, which stipulated that the onus of proof would, in all cases, be upon the plaintiff, seeking a condemnation against the shipowner, under a bill of lading? Would such a clause be contrary to public policy, or not?

I have not been able to find any jurisprudence to the effect that it would be contrary to public policy; but, on the contrary, I find that the French courts, when they have refused to exonerate the shipowner under a clause contracting out of his negligence and that of his servants, have held that the clause had, at least, the effect of shifting the onus of proof on to the cargo owner.[57]

XI. Priority of Lien.

There seems to be only one case so far decided in the United States, under the Harter Act, wherein priority of lien, as between the vessel owner and the cargo owner, has been considered. It was there held that the cargo owner had the prior lien, upon the ground that the negligence of the officers of the vessel contributed to cause the loss and that both they and the shipowner were prevented, thereby, from recovering with or before the cargo owner.[58] In other words, although the shipowner might not be responsible for the fault of the officers in the management of the ship, so as to make him liable for the loss of the goods; he, nevertheless, was responsible for the acts of his servants to the extent of giving to the cargo owner a prior lien upon

56. Carver, sec. 78; *Dominion Express Company* v. *Rutenberg*, Q.R. 18 K.B. 50.

57. Sirey, C.N. 1784, No. 10; Sirey Rec. (1901) 1, 401, note; Dalloz, P. Tables, 1897-1907, Vo. Commissionaire de Transport, Nos. 68 and 69.

58. *In re Lakeland Trans. Co.* (1900) 103 Fed. 328, affirmed, 111 Fed. 601.