

quired by the bill of lading, would oust or lessen the jurisdiction of the Canadian courts, in view of the fact that they might, nevertheless, retain jurisdiction respecting the matters at issue, subject to the obligation to apply the English or foreign law.

It is possible that our courts would hold in the affirmative, and would refuse to recognize such a clause, on the grounds of public policy, following the decisions in United States.

The jurisdiction of English or foreign courts is, of course, unaffected.

Before the Senate Committee it was argued that the bill, as originally drafted, would permit of the shipowner being sued at some point of original shipment remote from the actual port of loading, where presumably the Canadian domicile of the shipowner would be; and it was pointed out that the words "at the port of loading," as used in this section, would preclude such a possibility. This is open to doubt, inasmuch as the section does not, in terms, exclude the jurisdiction, otherwise existing, of any such court, any more than it excludes the jurisdiction of any court abroad.

III. CONTRACTING OUT OF NEGLIGENCE PROHIBITED.

Section 4 of the Act reads as follows:—

4. Where any bill of lading or similar document of title to goods contains any clause, covenant or agreement whereby:—

- (a) the owner, charterer, master or agent of any ship, or the ship itself, is relieved from liability for loss or damage to goods arising from negligence, fault, or failure in the proper loading, stowage, custody, care or delivery of goods received by them or any of them to be carried in or by the ship; or,
- (b) any obligations of the owner or charterer of any ship to exercise due diligence to properly man, equip, and supply the ship, and make and keep the ship seaworthy, and make and keep the ship's hold, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation, are in any wise lessened, weakened or avoided; or,