

in, this Act; and any stipulation or agreement purporting to oust or lessen the jurisdiction of any court having jurisdiction at the port of loading in Canada in respect of the bill of lading or document, shall be illegal, null and void, and of no effect.

This section is not to be found in the Harter Act; but it has become the almost universal custom to incorporate the Harter Act in bills of lading for the carriage of goods to and from the United States.

Section 5 only requires that a clause to the effect that "the shipment is subject to all the terms and provisions of and all the exceptions from liability contained in this Act" should be inserted in the bill for the carriage of goods to any place outside of Canada and will, therefore, not apply to Canadian coasting trade. The purpose of incorporating the Act into the contract is, no doubt, to cause foreign courts to apply its provisions.

The second part of section 5, declaring void a stipulation or agreement "to oust or lessen the jurisdiction of any court having jurisdiction at the port of loading in Canada, in respect of a bill of lading or document," is possibly prompted by the clause found in many bills of lading, particularly English bills, giving exclusive jurisdiction to courts without Canada, in respect to any dispute between the interested parties, and, at times, stipulating that all such disputes be determined by British or some foreign law. Our courts have dealt with such clauses, and, apparently, with approval.¹⁵

On the other hand, the United States courts have refused to recognize such clauses, on the ground that such stipulations are contrary to public policy.¹⁷

Our section 5 will probably leave to be determined the question as to whether "British law" or "the law of England" or the foreign law invoked, as the case may be, if applied as re-

15. *Rendell v. Black Diamond SS. Co.*, Q.R. 10 S.C. 257; *Michalson v. Hamburg-American Packet Co.*, Q.R. 25 S.C. 34; *Canada Sugar Refining Co., Limited v. Furness-Withy Co., Limited*, Q.R. 27 S.C. 502; *Ramsay v. Hamburg-American Packet Co.*, Q.R. 17 S.C. 232.

17. *The Silvia* (1808) 171 U.S. 462; *The Chattahoochee* (1809) 173 U.S. 540; *The Etona* (1894) 64 Fed. 880.