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A Review of the Harter Act

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ABSTRACT: *The US statute entitled: "An Act Relating to Navigation of Vessels, Bills of Lading, and certain obligations, duties and rights in connection with the Carriage of Property", more commonly known as the "Harter Act" after its sponsor US Representative Michael Daniel Harter, was passed on February 13, 1893. This statute was, and remains, one of the most important pieces of legislation in the history of the United States relating to the carriage of goods at sea. This statute relates to the water-based transportation of property or merchandise "from or between ports of the United States and foreign ports" (Harter, 1893). Under America's current regime of maritime law, the Harter Act has been partly supplanted by the US Carriage of Goods by Sea Act (COGSA) of 1936; especially as it relates to foreign transport of cargo by sea. However, the Harter Act has never been fully superseded, replaced or repealed and still applies to marine transport in the United States in a number of instances. Situations in which COGSA does not apply, or in which the Harter Act preempts it, include "the period before loading and after discharge" (Arzt, 1963) of cargo, domestic transport of goods by sea (i.e. as between ports of the US) except where a bill of lading expressly provides for the application of COGSA (the so-called "coastwise option"), shipments within the same port, water-based transport other than sea transport (i.e. over rivers and lakes, including the great lakes), and carriage of goods by sea in which the bill of lading expressly provides for the application of the Harter Act. The most innovative and controversial aspect of the Harter Act is the provision in section 1 that proscribes the insertion of clauses into ocean bills of lading which relieve the carrier or his interests of liability for loss or damage to cargo arising from negligence in the loading, stowage, care or proper delivery of same; as well as the provisions in section 2 which similarly proscribe the insertion of clauses into ocean bills of lading that attempt to lessen the carrier's obligation to exercise due diligence to make a vessel seaworthy. It further relieves the carrier from liability for damages arising from errors in navigation or management of an otherwise seaworthy vessel. Many of these provisions were novel at the time the Harter Act was written, and the Act subsequently has had a substantial impact on maritime legislation both inside and outside the US. Nevertheless, much ambiguity surrounds the Harter Act, and the wording and application of the act leaves much to be desired (Chiang, 1972; Sweeney, 1993). The construction of the act by the courts, especially as it relates to private carriers versus common carriers, has also been a matter of debate (Chiang, 1972). This essay will give a brief overview of the history and application of the Harter Act.*

KEYWORDS: US statute, Harter Act, An Act Relating to Navigation of Vessels

INTRODUCTION

The US statute entitled: "An Act Relating to Navigation of Vessels, Bills of Lading, and certain obligations, duties and rights in connection with the Carriage of Property", more commonly known as the "Harter Act" after its sponsor US Representative Michael Daniel Harter, was passed on February 13, 1893. This statute was, and remains, one of the most important pieces of legislation in the history of the United States relating to the carriage of goods at sea. This statute relates to the water-based transportation of property or merchandise "from or between ports of the United States and foreign ports" (Harter, 1893). Under America's current regime of maritime law, the Harter Act has been partly supplanted by the US Carriage of Goods by

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Sea Act (COGSA) of 1936; especially as it relates to foreign transport of cargo by sea. However, the Harter Act has never been fully superseded, replaced or repealed and still applies to marine transport in the United States in a number of instances. Situations in which COGSA does not apply, or in which the Harter Act preempts it, include "the period before loading and after discharge" (Arzt, 1963) of cargo, domestic transport of goods by sea (i.e. as between ports of the US) except where a bill of lading expressly provides for the application of COGSA (the so-called "coastwise option"), shipments within the same port, water-based transport other than sea transport (i.e. over rivers and lakes, including the great lakes), and carriage of goods by sea in which the bill of lading expressly provides for the application of the Harter Act.

Text of the Harter Act with translation into Chinese

An Act relating to navigation of vessels, bills of lading, and to certain obligations, duties, and rights in connexion with the carriage of property.

Section 1

Be it *enacted* by the Senate and House of Representatives of the United States of America, in Congress assembled, that it shall not be lawful for the manager, agent, master or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant, or agreement, whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge. Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect.

《关于船舶航行、提单以及与财产运输有关的某些义务、职责和权利的法律》。

§1:《哈特法》是一部由美国众议院通过、参议院审核颁发的有关美国港口与外国港口之间的海上货物运输的法律，就此减轻货主在承运人船舶运输中的行为疏忽或过失（装载、搬运、照料、配送）所引起的货物灭损或损坏的赔偿责任。《哈特法》规定：承运人（船舶货物或财产运输的管理者、代理人、主事人、所有者）在出口提单上或船务文件上附加的任何条款、契约、及协议都一律无效。

Section 2

That it shall not be lawful for any vessel transporting merchandise or property from or between ports of the United States of America, and foreign ports, her owner, master, agent, or manager to insert in any bill of lading or shipping document any covenant or agreement whereby the obligations of the owner or owners of the said vessel to exercise due diligence, properly equip, man, provision, and outfit said vessel, and to make said vessel seaworthy and capable of performing her intended voyage, or whereby the obligations of the master, officers, agents, or servants to carefully handle and stow her cargo, and to care for and properly deliver same, shall in any wise be lessened, weakened, or avoided.

§2: 美国港口与外国港口之间的船舶货物或财产运输，承运人不得在出口提单上或船务文件上附加任何条款、契约、及协议；承运人必须履行承运义务，谨慎处理使航船处

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于适航状态、妥善配备合格船员、装备船舶和配备供应品，应妥善谨慎的装载、操作、积载、照料、运送以尽量避免货物财产的损失。

Section 3

That if the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel, her owner or owners, agent, or charterers, shall become or be held responsible for damage or loss resulting from faults or errors in navigation, or in the management of the said vessel, nor shall the vessel, her owner or owners, charterers, agents, or master be held liable for losses arising from dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect, quality, or vice of the things 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.

§3: 来往美国港口的任何货物或财产运输船舶承运人必须谨慎处理使航船处于适航状态、妥善配备合格船员、装备船舶和配备供应品；承运人将承担船舶运输中因航行错误、管理不当、海上或其他可航水域的风险危险或者是以外事故、天灾、公敌行为、由于货物固有瑕疵、性质、或缺陷、包装不当、依法扣押或任何行为疏忽过失、或货物托运人 、其代理人或代表的行为或不行为、救助或企图救助海上人命或财产、或任何行为偏差所引起的货物或财产的损失或损坏责任。

Section 4

That it shall be the duty of the owner or owners, master or agent of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to issue to shippers of any lawful merchandise a bill of lading, or shipping document stating, among other things, the marks necessary for identification, number of packages, or quantity, stating whether it be carrier's or shipper's weight and apparent order or condition of such merchandise or property delivered to and received by the owner, master, or agent of the vessel for transportation, and such document shall be prima facie evidence of the receipt of the merchandise therein described.

Section 5

That for a violation of any of the provisions of this Act, the agent, owner, or master of the vessel guilty of such violation, and who refuses to issue on demand the bill of lading herein provided for, shall be liable to a fine not exceeding two thousand dollars.

The amount of the fine and costs for such violation shall be a lieu upon the vessel, whose agent, owner, or master is guilty of such violation, and such vessel may be libelled therefor in any district court of the United States, within whose jurisdiction the vessel may be found. One-half of such penalty shall go to the party injured by such violation, and the remainder to the Government of the United States.

§5: 承运人不得违反任何《哈特法》的规定，如有违反将处以两千美元已下罚款。

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任何区域的美国法院可能将会对承运人的违反行为提出控告，对违反规定的罚款数额、费用做出判决，二分之一的罚款金归政党所有，其余部分交由政府。

Section 6

That this Act shall not be held to modify or repeal sections forty-two hundred and eighty-one, forty-two hundred and eighty-two, and forty-two hundred and eighty-three of the Revised Statutes of the United States, or any other Statute defining the liability of vessels, their owners, or representatives.

§6: 美国修正法第 4281 条、4282 条、4283 条或其他有关承运人责任法令条例规定：不得修改或撤销《哈特法》。

Section 7

Sections one and four of this Act shall not apply to the transportation of live animals.

§7: 《哈特法》第一条第四条规定：本法规定不适用活畜。

Section 8

That this Act shall take effect from and after the first day of July, eighteen hundred and ninety-three.

Approved, February 13th, 1893.

§8: 《哈特法》于 1893 年 7 月 1 日起开始生效。

批准, 1893 年 2 月 13 日

Concordance with the Chinese Maritime Law

Table 1: Concordance between the Harter Act and the Chinese Maritime Law

Sections of the Harter Act	Concordant articles in the Chinese Maritime Law
Section 1	Article 126-2
Section 2	Article 47, 48
Section 3	Article 51
Section 4	Article 72, 73, 80
Section 5	Article 56, 117, 135
Section 6	N/A
Section 7	Article 42-5, 52, 108-4
Section 8	N/A

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History of the Harter Act

> *"It is with mixed emotions that we should be observing a century of the operation of the Harter Act. We can look upon the act with pride as the forerunner of all cargo liability regimes, but we must also be somewhat embarrassed that we have never integrated the Harter Act into a modem and comprehensive cargo liability scheme."*
>
> *- George F. Chandler III (1993)*

The Harter Act was originally introduced in the 52nd United States Congress by Representative Michael Daniel Harter, a Democrat from Ohio's 15th Congressional district. Introduced as "a bill (H.R. 9176) relating to contracts of common carriers and certain obligations, duties, and rights in connection with the carriage of property", it was signed and promulgated by President Benjamin Harrison and went into February 13, 1893. From this date until the passages of the US Carriage of Goods at Sea (COGSA) in 1936, the Harter Act was the only law in America, forming the sole statute within the American regime of maritime law. In 1936, the US Congress passed the Carriage of Goods at Sea Act (COGSA), which supplanted the Harter Act in most situations, but nevertheless did not completely eclipse the Harter Act. If a contradiction arises between COGS and Harter, COGSA shall prevail. However, one unusual point regarding the relationship between Harter and COGSA is that the Harter Act will prevail in circumstances "before the loading or after the discharge of cargo" Chiang (1972)

The Reasoning behind the Harter Act

According to analysis of Chiang (1972), the reason the US produced the Harter Act, was to protect American shipping interests. At the time the Harter Act was written, the USA was nowhere near what it is today in terms of economic development. America's own merchant fleet accounted only for about 23% of shipping. As such, America relied heavily upon foreign shipping, especially British shipping.

The opinion of Sieveking (1906), however, is that the reason America promulgated the Harter Act, was to protect the rights of consumers, even going so far as to say the "Harter Act [was] arguably the first consumer protection law".

Special Characteristics of the Harter Act: Questions Relating to the COGSA/Harter Regime

Is the Harter Act revolutionary or ambiguous? As stated by Sweeney (1993) "The Harter Act was considered revolutionary in the field of maritime law because it forbade the inclusion of exculpatory clauses in Bills of Lading restricting the liability of carriers". One debate surrounding the Harter Act is whether this point is revolutionary or ambiguous.

Article 3 of the Harter Act includes the provision of the carrier's obligation to exercise due diligence to make a vessel seaworthy. This provision was unusual at the time of its drafting.

Another point of controversy is the relationship between the Harter Act and COGSA; specifically the depth of the relationship between the two, the point at which on ends and the other begins, and the construction of this relationship in the application of law. "The relationship between the Harter Act and COGSA remains a puzzle for and the both the courts and the bar" (Sweeney, 1993). Although the 1936 COGSA replaced the Harter Act *proprio*

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vigore, COGSA also specifically preserves the Harter Act. Also, COGSA applies only to ocean-based, foreign shipping in American ports; where as Harter applies to domestic shipping, whether by sea or by other waters. Some aspects to consider in the Harter/COGSA regime:

- Loading Problems and Unloading Problems.
- The Coastwise Option.
- Conflict between on-deck stowage and COGSA/Harter Regime: The Liberty Clause, Section 1(c), and Containerization.
- Application to private carriers or common carriers
- Applicability of Harter/COGSA Regime with private carriers.
- Time bar

Loading Problems and Unloading Problems

In the Harter/COGSA regime, COGSA applies to foreign common carriers. Two limitations that relate to COGSA are that, firstly, COGSA applies only to foreign shipping; and, secondly, COGSA applies only to "to the period from the time when goods are loaded on to the time when they are discharged from the ship" following (Section 1(e), 46 U.S.C. 1301(e) (1970), provides, "When used in this chapter— . . . (e) The term 'carriage of goods' covers the period from the time when the goods are loaded on to the time when they are discharged from the ship." 12 The Monte Icier, 167 F.2d 334 (3d Cir. 1948).

However, COGSA only applies after the loading and before the discharge of cargo from a ship Chiang (1972); outside of this range, the Harter Act applies. However, how does one determine when cargo has been "loaded" or "discharged"? In the landmark court case *Mackey v. the United States*, the "latch and tackle" rule was established.

In the case *Mackey v. United States* the court ruled that: *"COGSA shall govern before the goods are loaded on and after they are discharged from the ship, and throughout the entire time the goods are in custody of the carrier. [The shippers'] cargo having been damaged on the lighters, while secured alongside the [steamer] but before the goods had reached the ship's tackles, the provisions of [Cogsa] are not applicable proprio vigore. The provisions of [COGSA] are made applicable and control the relations of the parties by virtue of [Clause 1]*.

The "latch to latch" or "latch to tackle" rule follows the notion that cargo is considered "unloaded" or "discharged" at the point that a cargo container has been detached from the latch of the carrier's vessel; and similarly that cargo is "loaded" at the point that the cargo container is detached from the latch carrying the cargo from the port or lighter onto the carrier's vessel.

Some important court cases relating to the loading and discharge of cargo include:

- *Pyrene Co. Ld. v. Scindia Navigation Co. Ld.*
- *Federal Insurance Co. v. American Export Lines, Inc*
- *Hoegh Lines v. Green Truck Sales, Inc.*
- *Federal Insurance Co.*

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- *Remington Rand, Inc. v. American Export Lines 8*
- *Isthmian Steamship Co. v. California Spray Chemical Corp*
- *Caterpillar Overseas, S.A. v. S.S. Expediton*
- *Krawill Machinery Corp. v. Robert C. Herd & Co.*

The Coastwise Option

Another problem area in the implementation of the COGSA/Harter Regime concerns the scope of its "coastwise option" provision. It is clear that this provision allows a bill of lading issued for transportation between two ports of the United States or its possessions to stipulate that COGSA should govern instead of the Harter Act, which would normally apply in these cases.' However, it is unsettled whether the "coastwise option" provision permits stipulation out of the relevant sections of the Harter Act in a bill of lading for foreign commerce.

In the case *Remington Rand, Inc. v. American Export Lines, Inc*. the Court ruled: *"the court ruled that a bill of lading provision which stipulated that Cogsa was to govern the period after goods left the ship's tackle was invalid. The court reasoned that the character of proof required by COGSA violated the basic character of proof required by Harter."*

Conflict between on-deck stowage and the COGSA/Harter Act: The Liberty Clause, Section 1(C), and Containerization

Sometimes technology outpaces policy-making. The COGSA/Harter regime seems to have paucity as it concerns containerization. The use of modern containerships in the shipping industry revolutionized the stowage of cargo, as it allowed the stowage of cargo on a ship's deck to become convenient, even more so then stowage below deck. This rendered somewhat irrelevant the classical proscription against the stowing of cargo on deck, at least without the express permission of the shipper, as provided for in law. This issue was brought to light in the landmark court case *Encyclopedia Britannica, Inc. vs. SS Hong Kong Producer*, as the court ruled:

> *Encyclopaedia Britannica, Inc. v. SS Hong Kong Producer 422 F.2d 7 (2d Cir. 1969).* In the present case the bill of lading stated that option, but it contained no information or declaration whatever as to how it was exercised.... [T]he option could not be left to be exercised by the actual placing of the cargo on deck or below deck. The court therefore concluded that stowage of the goods on deck constituted an unreasonable deviation, and that such deviation rendered the shipowner liable for the full amount of damages sustained without the benefit of the COGSA limitation of five hundred dollars per package. Thus, in the final analysis, although the court found certain parts of the liberty clause to be violative of COGSA, it did not find the liberty clause itself to come within the scope of Section 1(c) of the Act.

One way to circumvent this issue was through the invocation of the so-called "Liberty Clause" in Section 1(c) of COGSA, which imports the doctrine of "Liberty of Contract" into the COGSA, by including clauses in bills of lading relieving the carrier of liability for damages relating to the carriage of cargo on deck. However

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> *Svenska Traktor Akt. v. Maritime Agencies (Southampton) Ld. 11953] 2 Q.B. 295.* [T]he Act . . . [left] the shipowner free to carry deck cargo on his own conditions, and unaffected by the obligations imposed on him by the Act in any case in which he would, apart from the Act, have been entitled to carry such cargo on deck, provided that that cargo in question was in fact carried on deck and that the bill of lading covering it contained on its face a statement that the particular cargo was being so carried .... A mere general liberty to carry goods on deck is not in my view a statement in the contract of carriage that the goods are in fact being carried on deck. Stowage by the shipowner on deck was not deviation or negligence per se; the shipowner bore the burden under the Act of proving that he had used the care required by the Act in stowing the tractor on deck. The court, then, found that the liberty clause did not remove the goods from Cogsa's governance.
>
> *St. Johns Corp. v. Companhia Geral Commercial Do Rio De Janeiro, 263 U.S. 119 (1923) ; The Delaware, 81 U.S. (14 Wall.) 579 (1871) ;*
>
> *Propeller Niagara v. Cordes, 62 U.S. (21 How.) 7 (1858).*

Application to Private Carriers or Common Carriers

The question whether the Harter Act applies to bills of lading issued by the private carrier is a confusing one. A study by Chiang (2003) shows that this question has been interpreted differently by the courts at different times. These shifts in interpretation largely follow three consecutive periods. *The Fort Gaines 24 F.2d 849 (D. Md. 1928), aff'd sub nom. Federal Forwarding Co. v. Lanaza, 32 F.2d 154 (4th Cir. 1929).* For the thirty year period following the passage of the Harter Act both the Courts held that the Act applies to bills of lading issued by private as well as by common carriers. This rule was seemingly supported by the legislative history behind the Act. Then, after that thirty-year period, the courts selectively applied the provisions of the Harter Act to private carriers. This shift began with the case of *The Fri 154 F. 333 (2d Cir. 1907), cert. denied, 210 U.S. 431 (1908).* Finally, through a reversal of reasoning, they found the Harter Act totally inapplicable to bills of lading issued by private carriers.

- **Cases Holding the Act Applicable to Private Carriers:**
  - *The Carib Prince 170 U.S. 655 (1898)*
  - *The Silvia 171 U.S. 462 (1898)*
  - *Sun Co. v. Healy 163 F. 48 (2d Cir. 1908)*
- **Cases Holding the Act Inapplicable to Private Carriers**
  - *The Fri 154 F. 333 (2d Cir. 1907), cert. denied, 210 U.S. 431 (1908)*
  - *The G.R. Crowe 294 F. 506 (2d Cir. 1923), cert. denied, 264 U.S. 586 (1924)*
- **Cases Showing Selective Application of the Harter Act to Private Carriers**
  - *The Fort Gaines 24 F.2d 849 (D. Md. 1928), aff'd sub nom. Federal Forwarding Co. v. Lanaza, 32 F.2d 154 (4th Cir. 1929)*

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- *Warner Sugar Refining Co. v. Munson S.S. Line 23 F.2d 194 (S.D.N.Y. 1927), aff'd per curiam, 32 F.2d 1021 (2d Cir. 1929)*
- *Elizabeth Edwards 27 F.2d 747, 748 (2d Clr. 1928)*
- *Norris Grain Co. v. Empire Canal Corp. (The Herkimer) 42 F.2d 482 (E.D.N.Y. 1930), rev'd, 52 F.2d 41 (2d Cir. 1931)*
- *The Alberta M. 60 F.2d 154 (E.D.N.Y. 1932)*
- *The Nat Sutton 62 F.2d 787 (2d Cir. 1933)*
- *The Westmoreland 86 F.2d 96 (2d Cir. 1936)*
- *Koppers Connecticut Coke Co. v. James McWilliams Blue Line, Inc. 89 F.2d 865 (2d Cir.), cert. denied, 302 U.S. 706 (1937)*

In maritime law, there is a distinction drawn between what are called "common carriers" and "private carriers". A common carrier (or public carrier) is a master of ship, ship owner, or similar party who agrees, under the classical regime of a contract of affreightment and bill of lading, to transport cargo or passengers on behalf of a shipper for a set rate (called "freight") and to render to the consignor (that is, the receiver of the cargo) a bill of lading upon request which acts as a receipt of goods delivered, as well as prima facie evidence of a contract of affreightment. In other words, a common carrier is one who engages in sea-based transport following the classical regime of maritime law. By contrast, a private carrier is one who instead charters a vessel (typically under a time charter-party) and then proceeds to stow and transport cargo on board the chartered vessel. In other words, a private carrier circumvents the classical regime of the contract of affreightment and bill of lading (the regime of the common carrier) by instead renting (chartering) a vessel to do with as he or she may please, and then using said vessel to transport their own cargo. In this way, the transportation of cargo becomes a private matter in a charter-party. There seems to be no question as to the application of the Harter Act upon common carriers. However, there is substantial debate over its application to private carriers. The premise of this debate was the subject of a 1972 study by (Dr. Y. F. Chiang).

Originally, according to Chiang (1972) the Harter Act was assumed, *a priori* to apply to all carriers, both public and private. This is evidenced by the ruling of the court in several early cases beginning with *The Carib Prince 170 U.S. 655 (1898).* This position remained unchanged for a few years afterwards.

However, a turning point emerged in 1907 with the case *The Fri 154 F. 333 (2d Cir. 1907).* In this case, which occurred long before the passage of COGSA, a vessel ran aground on a reef while transporting cattle. This transportation took place between entirely foreign ports, and did not involve shipment into the United States. The bill of lading for this shipping transaction incorporated the Harter Act by reference; however the original charter-party did not incorporate Harter. Moreover, a negligence clause violating section 2 of the Harter Act was included in the charter-party. The court ruled that because a bill of lading cannot alter the original agreement represented in the charter-party (which made no reference to Harter), and because the Harter Act did not apply *ex proprio vigore* since the shipment did not occur to or from ports of the United States; there was no reason to deem the negligence clause in the charter-party invalid despite its proscription in Harter. The second circuit noted, as referenced in Chiang (1972):

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> "In this case, however, a common carrier was not a party to the contract. When a charter party gives to the charterer the full capacity of the ship, the owner is not a common carrier, but a bailee to transport as a private carrier for hire . . . . It has not yet been decided by any court that a condition in such a contract, to which the Harter [A]ct has no application, relieving a ship-owner from liability on account of the carelessness of its employees, is contrary to public policy ".

Does this reasoning show that the Harter Act does not apply to private carriers generally, or merely that it did not apply to the private carrier in this case? Chiang (1972) argues the latter, reasoning that the assertion that the Harter Act applies only to common carriers is a canard that originated with a confused reading of this case, which then became compounded and entrenched by the court in *The G.R. Crowe 294 F. 506 (2d Cir. 1923).* However, Sweeney (1993) seems to argue the opposite, citing legislative history and the language of the act its self.

While noting that the bill that would become the Harter Act originally included references to charter-parties, such specific references were removed from the final form as it passed the Senate. The first two sections of the Harter Act include the phrase "any bill of lading or shipping document" in their language, inclusive of charter-parties. Section 3 also includes the language "vessel, her owner or owners, agent, or charterers". Nevertheless, section one mentions "bills of lading or shipping receipts", exclusive of charter-parties. It is based on this usage that the Second Circuit excluded common carriers.

The tides turned again with the *The Fort Gaines 24 F.2d 849 (D. Md. 1928)*, which began a trend by the courts to selectively apply the Harter Act to private carriers. Following the linguistic discrepancy noted by Sweeney (1993) above, section 3 was applied to the case, but sections 1 and 2 were not. This began a confusing precedent regarding the application of the Harter Act to private carriers. *The Fort Gaines*, as well as a number of other cases afterwards, private carriers were determined to be exempt from section 2, but not necessarily from section 3. The real turning point in this was the case of *The Alberta M. 60 F.2d 154 (E.D.N.Y. 1932)*, in which the doctrine of the selective applicability of different clauses within the Harter Act became cemented, following the logic already given by Sweeny (1993) above. This remained the dicta until the *Koppers Connecticut Coke Co. v. James McWilliams Blue Line, Inc. 89 F.2d 865 (2d Cir.)*, in which after long review of previous cases, the court ruled (as cited by Chiang (1972)):

> Verbally, [the language of section 3] is broad enough to include private carriers by water as well as common carriers. But the words of a statute are not to be read in vacuo; all the sections of the Act must be studied together and the words must be interpreted in the light of the purpose of the legislation.

This then brings us to the current interpretation regarding the applicability of the harter Act to private carriers; namely that Harter does not apply to private carriers. Chiang (1972) argues that this reasoning is a canard, however his Sweeney (1993) disagrees. It should be noted that Section 5 of COGSA exempts private carriers.

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Table of Cases

Table 2: List of Cases Relating to the Harter Act

Cases Relating to the Harter Act

- New Jersey Steam Nav. Co. v. Merchants' Bank (The Lexington), 47 U.S. 344 (1848)
- Clark v. Barnwell 53 U.S. 272 (1851)
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