

Act goes no further, as the warranty it implies is, as to seaworthiness "at the beginning of the voyage."³⁷

Section 6 of the new Act would appear to follow the law elsewhere in this respect; but its fourth section prohibits any limitation of negligence to "make and keep the ship seaworthy." The word "keep" was first used in this connection in the Australian Act, but its effect was there nullified by the phrase in a subsequent section "at the beginning of the voyage."

The courts may at some time be called upon to determine whether sec. 4 must be read with and affects sec. 6 in this respect, so as to impose on the shipowner the necessity of using due diligence to keep his ship seaworthy after the commencement of the voyage. It is, however, unlikely that serious question can arise in this respect, in view of the other terms of the Act, as it is difficult to conceive of a ship becoming unseaworthy from any other cause than from failure to exercise due diligence before the commencement of the voyage, or each stage of the voyage, and for this failure the shipowner would be responsible, or from faults or errors in navigation, or in the management of the ship, or latent defect, from the results of which he is exempt.

The test of seaworthiness commonly applied by both the English and American courts is whether the vessel is reasonably fit in design, structure, condition and equipment to carry the goods, which she undertakes to transport, and to encounter the ordinary perils of the voyage. The ship must also have a competent master and a competent and sufficient crew.³⁸

There is such a mass of jurisprudence on this subject that it is only possible to give a few examples. In *The Rossmore*,³⁹ an English case under the Harter Act, a cargo port had been carelessly closed by the ship's carpenter before the vessel sailed. During the voyage, part of the cargo was damaged by sea-water entering through this port, which could not be reached and

37. Section 8.

38. Carver, sec. 18; *The Silvia* (1898) 171 U.S. 462.

39. (1895) 2 Q.B. 408.