

and to the nature of the voyage, and the cargo to be carried. It will suffice to satisfy the condition if such diligence has been exercised down to the sailing from the loading port.<sup>29</sup> But the fitness of the ship at that time must be considered with reference to the cargo,<sup>31</sup> and to the intended course of the voyage; and the burden is upon the shipowner to establish that there has been diligence to make her fit.<sup>32</sup> The actual exercise of such diligence by the owner or his agents is a condition precedent to his claiming the protection of the statute, and he cannot rely on the *prima facie* presumption of law that his ship is seaworthy.<sup>33</sup>

It is not enough to satisfy the condition that the shipowner has been personally diligent, as by employing competent men to do the work. The condition requires that diligence to make her fit shall, in fact, have been exercised, by the shipowner himself, or by those whom he employs for the purpose.<sup>34</sup> The shipowner is responsible for any shortcomings of his agents or subordinates in making the steamer seaworthy at the commencement of the voyage for the transportation of the particular cargo.<sup>35</sup>

2. "To make the ships seaworthy and properly manned, equipped and supplied."—The English and United States law is that the obligation of the owner, as to seaworthiness, is satisfied, if the ship be seaworthy before the inception of the voyage and until it has actually commenced.<sup>36</sup> Even the Australian

29. *The Guadeloupe* (1899) 92 Fed. Rep. 670; *The Cygnet* (1904) 126 Fed. Rep. 742.

31. *The Southwark* (1903) 191 U.S. 1; *The Alvena* (1896) 74 Fed. Rep. 252, 79 Fed. Rep. 973.

32. *The Southwark* (1903) 191 U.S. 1.

33. *The Wildcroft* (1905) 201 U.S. 378. Cf. *The Nina* (1907) 156 Fed. Rep. 512.

34. *Dobell v. Steamship Rosamore Co.*, 64 L.J.Q.B. 777, (1895) 2 Q.B. 408; *The Flamborough* (1895) 69 Fed. Rep. 470; *The Mary L. Peters* (1897) 68 Fed. Rep. 919, 79 Fed. Rep. 998; *The Colima* (1897) 82 Fed. Rep. 665; *International Nav. Co. v. Farr* (1901) 191 U.S. 218.

35. *The Frey* (1899) 92 Fed. Rep. 667, at p. 669; *Putnam v. Manitoba* (1900) 104 Fed. Rep. 145; Carver, p. 149.

36. Carver, sec. 17 et seq.; *The Silvia* (1898) 171 U.S. 462; *The Germanic* (1903) 124 Fed. 1; *The Caledonia* (1895) 157 U.S. 124.