

under the provisions of the Harter Act (1) apply only to the period of navigation itself; and that is said to end when the vessel comes into dock. . . . I do not say whether navigation in the strict sense of the term is limited to the period that the vessel is sailing—that is to say, in motion—but I confess I see no reason whatever for limiting the word 'management' to the period of the vessel being actually at sea."

4. "*Latent defect*."—Under the Harter Act it has been held, in effect, that a latent defect is one which could not have been discovered by inspection.⁴⁴

Under the law of England a warranty of seaworthiness, at the beginning of the voyage, is implied;⁴⁵ and stipulations excluding this warranty are strictly construed.⁴⁶

In fact, the Australian Act, sec. 8, expressly provides that, "In every bill of lading with respect to goods, a warranty shall be implied that the ship be, at the beginning of the voyage, seaworthy in all respects and properly manned, equipped and supplied."

It has been held in England that, even under the Harter Act, an express stipulation excluding warranty of seaworthiness was essential to relieve the shipowner from liability for latent defects, such warranty being otherwise always presumed;⁴⁷ and this might, also, be inferred from decisions of the United States Supreme Court.⁴⁸

It has, however, also been held in the United States that "the main purposes of the Act were to relieve the shipowners from liability for latent defects, not discoverable by the utmost care and diligence."⁴⁹

It would, therefore, appear that this statutory exemption from the results of "latent defects" is a gain for the shipowner.

44. *The Manitoba*, 104 Fed. Rep. 151; *The Phonicia*, 90 Fed. Rep. 118; *The Carib Prince*, 170 U.S. 655.

45. Carver, sec. 17, seq.

46. Carver, sec. 79, seq.

47. *McFadden v. Blue Star Line* 74 L.J.K.B. 423; (1905) 1 K.B. 697 and 707.

48. *The Caledonia* (1895) 157 U.S. 124; *The Carib Prince* (1898) 170 U.S. 655.

49. *The Irrawaddy* (1898) 171 U.S. 187, 192.