

closed on account of freight being stowed against it. It was held that the ship was unseaworthy at the time of sailing.⁴⁰

Due diligence to make the ship seaworthy imposes an obligation on the shipowner to exercise due diligence as to the condition and working of the refrigerating machinery, prior to the commencement of the voyage.⁴¹

It is of interest to note that the act of sending or taking unseaworthy ships to sea is a crime under Cr. Code secs. 288 and 289.

3. "*Faults or errors in navigation or in the management of the ship.*"—"It has been repeatedly held that the word 'management' does not include acts of preparing the ship for a voyage. Thus, omission in the ship's equipment, negligence or mistake in the stowage, or so loading her that she will get out of safe trim on the voyage, are not faults in 'management.' Even if such defaults could be described as faults or errors in management, they would, if they occurred at the commencement of the voyage, negative the condition of due diligence in making the ship fit, and so would exclude its exemption. Where the act negligently done or omitted has been one which was or ought to have been done during the course of the voyage, and had reference to the safety of the ship, whether regarded as a navigating vessel or as a cargo carrier, it has generally been a fault in navigation or management."⁴²

The remarks of Sir F. Jeune, in *The Glenochil*,⁴³ in comparing secs. 1 and 3 of the Harter Act (our secs. 4 and 6) are of sufficient interest to quotation:—

"The bill of lading in this case incorporates, by words added to it, what is known as the Harter Act—the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States, approved on the 13th of

40. *Also International Navigation Co. v. Farr* (1901) 181 U.S. 238.

41. *The Southwark* (1903) 191 U.S. 1; *The Maori King* (1895) 22 B. 550.

42. Carver, sec. 103 (c), cases cited and examples given.

43. (1895) 65 P. 1.