was then reinforced by the water through the hole, the effects of which began to tell. Both causes, therefore, resulted in damage to the grain. The hole, however made, was not the whole reason for that damage, but unseaworthiness was an efficient cause.

Reference to secs. 6 and 7 of the statute.

The learned Judge said that he was unable to find that the owner had exercised due diligence to make the ship in all respects seaworthy; and, if the loss or damage was caused wholly or partly by the hole made owing to the collision with the dock, the evidence led to the conclusion that the damage resulted from fault or error in navigation or in managing the ship; and, the ship not being seaworthy, and the owner not having shewn due diligence to make it so, he would not be protected: sec. 6.

If the vessel struck the dock at all, it was due to an error of navigation or in the management of the vessel. If unseaworthiness exists in fact, or want of due diligence in that direction is shewn, the statute gives no help to the ship-owner in case of negligent navigation.

Under sec. 7, the owner is not to be held liable for loss arising from the dangers of the sea or for loss arising without his actual fault or privity, or without the fault or neglect of his agents, servants, or employees. In view of the contract of carriage and the warranty of seaworthiness, the onus was on the owner to bring himself within the exceptions; and it had not been proved that the loss had arisen wholly from a danger of the sea or without the fault or privity of the owner.

The appeal should be allowed, and judgment should be entered for the appellants for the amount agreed upon as the damages suffered by them. The respondents should pay the costs of the action and of the appeal.

MEREDITH, C.J.O., and MACLAREN and MAGEE, JJ.A., agreed in the result.

FERGUSON, J.A., read a dissenting judgment.

Appeal allowed (FERGUSON, J.A., *dissenting*).