the negligence, default, or error in judgment of the master, mariners, engineers, or others of the crew, or of any of the servants or employes of the ship-owners, or otherwise, however.) * * * NOTICE. In accepting this bill of lading, the shipper, or the agent of the owner of the property carried, expressly accepts and agrees to all its stipulations, exceptions, and conditions, whether written or printed." The bill of lading is dated at Buffalo, February 28, 1880, and is signed, "S. STRANDGUARD, Agent severally but not jointly," and also contains the words, "Buffalo, N. Y., to Liverpool, Eng., via New York." The bill of lading, Exhibit I, in the second-entitled cause, is like Exhibit H in the second-entitled case, except that it is for 145 boxes of bellies, shoulders, and middles. The bill of lading, Exhibit N, in the second-entitled case, is like Exhibit P in the first-entitled case, except that it is for 200 bales of cotton, and is dated March 2, 1880.

The question of negligence on the Montana has been severely litigated; but, on the facts found, there is no room for doubt as to the proper conclusion. Those facts are set forth in the findings of fact, and establish the negligence. It is not necessary to discuss the evidence. That was done in the decision of the district judge, and his views and conclusions are, in the main, satisfactory. Taking the account given by the master in his testimony, the district judge was of the opinion that it was untrue in important particulars; that it was not true that the ship ran only five minutes, and that at a slow speed, on an E. ¾ S. course; that if the master did not note the length of the time that he ran on that course, he was guilty of gross negligence; and that, if he did note the time, it was incumbent on him to state it truly, and he had not done so. The district judge was also of the opinion that the ship, instead of passing the South Stack at a distance of 15 miles, passed it close at hand, and that it was not true that the light changed its bearing to the master in one hour, with the ship at full speed on the course she was on, only two points. The district judge also commented upon the facts that the point marked by the master on the chart as that at which he lost the South Stack light, and changed his course to E. ¾ S., was a point where the Skerries light should have been in view, but was not; and yet it did not occur to him that that light and the South Stack light might be obscured by a fog, and that although both the South Stack light and the Skerries light ought to have been seen by him at the same time, if he was where he supposed he was, he did not allow a doubt to arise, nor exercise the reasonable care of using the lead when he changed his course to E. ¾ S.; that the inability to see either of the two lights while on the latter course was indicative of a fog even before the North Stack gun was heard; that the doubling of the lookouts and the blowing of the whistle indicated that a fog was thought of; that the testimony of the engineer that the engine went at full speed until just as the ship struck, is contradictory of the statement of the master that she ran at half speed on the E. ¾ S. course,

and slow after changing back again; and that to make this last change, after hearing the North Stack fog-gun abaft his starboard beam, and knowing what it indicated, and to keep on the new course, was a gross mistake. The conclusion of the district judge was that, on the master's own showing, he failed to use reasonable care and skill in navigating his vessel on hearing the North Stack gun; that such negligence caused the damage in question; and that it was not the result of a mere error of judgment.

In addition to the foregoing views, which are justified by the evidence, and involve the conclusion that the master, when he changed his course from E. ¾ S., had reasonable ground to believe that he had been mistaken all along as to the position of his ship, and mistaken as to the distance of the South Stack light from him during the time he saw it, it is to be remarked that, in determining on the course to run, on changing from E. ¾ S., the master was bound not to ignore the fact that he had taken no cross-bearings of the South Stack light. The failure to take such cross-bearings might not alone be enough to convict the master of negligence, but the recollection of the fact that he had not taken such cross-bearings, coupled with the recollection of the fact that he first saw the South Stack light in so unexpected a direction, and believed that he passed it at so unusual a distance, and with the failure to see the Skerries light in losing the South Stack light, and with the hearing of the North Stack fog-gun abaft his starboard beams, stamp his action after hearing the gun as negligence, and not error of judgment.

Stress is laid by the respondent on the provisions in the through bills of lading that "the carrier so liable shall have the full benefit of any insurance that may have been effected upon or on account of said goods." But that provision applies only to the transportation to New York, and not to the ocean transit. The terms and conditions of the transportation to New York by the railroads and their connections are separate and distinct in the through bills of lading from the terms and conditions of the ocean transportation. The agent signs as "agent severally, but not jointly." The terms and conditions of the ocean carriage contain no clause as to the benefit of insurance. No such clause is found in the bills of lading dated at New York, not issued in connection with railroad transportation. The clause as to non-liability for the negligence of the master or crew, or for any accidents of the seas, however happening, is common to all the bills of lading; and the respondent contends that under them it is not liable for the loss in these cases. The district judge held that the respondent was a common carrier. The evidence shows that the steamers of the line carried to Liverpool grain, provisions, and cotton, and brought back British products, iron, coal, salt, and dry goods; that they also carried passengers; that the respondent advertised for cargo and passengers, and carried general cargo; that it refused to carry what would taint other cargo, or be dangerous to passengers, or would

overload the vessel, but with those exceptions it took what cargo was offered, if the rate of freight was satisfactory; and that the ships sailed on regular advertised days, and had been running since 1866, and had a regular pier in New York and a regular landing-place in Liverpool. If this does not make the respondent and its ships common carriers, nothing can do so.

In 2 Kent, Comm. 598, it is said: "Common carriers undertake, generally, and not as a casual occupation, and for all people indifferently, to convey goods, and deliver them at a place appointed, for hire as a business, and with or without a special agreement as to price. They consist of two distinct classes of men, viz.: inland carriers by land or water, and carriers by sea." It is also there said that "in the aggregate body are included * * * owners of ships, vessels, and all watercraft, including steam vessels and steam tow boats, belonging to internal as well as coasting and foreign navigation." In 1 Pars. Marit. Law, c. 7, § 5, p. 173, it is said: "One who carries by water, in the same way and on the same terms as a common carrier by land, is also a common carrier; or, in other words, it is not the *land* or the *water* which determines whether a carrier of goods is a common carrier, but other considerations, which are the same in both cases," and a common carrier is said (p. 174) to be "one who offers to carry goods for any person, between certain *termini* as on a certain route."

It is contended for the respondent that a carrier of goods by a vessel may lawfully contract for exemption from liability for the negligence of his agents in charge of the navigation of the vessel. In *New Jersey Steam Nav. Co.* v. *Merchants' Bank*, 6 How. 344, the navigation company, a carrier by water, by a steam-boat between New York and Providence, carried goods for one Harnden, under an agreement that he alone should be responsible for the loss or injury of any property committed to his care, and that no risk was assumed by or should be attached to the company, as proprietor of the steam-boat. Harnden was an expressman who carried, on the steam-boat, under that agreement, money, in specie, for the bank. The boat was burned through the negligence of the company in the equipment of the boat and the stowage of cargo, and the negligence of her officers on the voyage. The court treated the company as liable as a carrier, and considered the question as to how far its special agreement had qualified its common-law liability. The court held that while a carrier might limit his liability by a special agreement expressly assented to by both parties, the agreement in that case could not be considered as stipulating for willful misconduct, gross negligence, or want of ordinary care, either in the seaworthiness of the vessel, her proper equipment and furniture, or in her management by the master and hands; that the burden was on the bank to show such negligence or want of care; that that was shown; and that the company was liable for the loss, notwithstanding the special agreement. In *Railroad Co.* v. *Lockwood*, 17 Wall. 357, a drover was traveling on a railroad on a stock train

to look after his cattle, on a free pass, under an agreement by which he assumed all risk of personal injury. He was injured while traveling on the stock train, and then sued the railroad company for damages. Negligence on its part was proved and found by the jury. The supreme court held that the case, on its facts, was one of carriage of the drover for hire. The distinct question raised, as stated by the court, was whether a railroad company carrying passengers for hire can lawfully stipulate not to be answerable for their own or their servants' negligence in reference to such carriage.

The court says that a common carrier may, by special contract, limit his common-law liability; that that was held in *New Jersey Steam Nav. Co.* v. *Merchants' Bank;* and that the case of *Lockwood* seemed to be almost precisely within the category of the decision in 6 How.—the contracts in both cases being general, exempting the carrier from all risk, and the court in the case in 6 How. having held that it would not be presumed that the parties intended to include the negligence of the carrier or his agents in such exemption. The court then, in the *Lockwood* case, proceeds to examine the question whether common carriers may excuse themselves from liability for negligence. It reviews the course of decisions in New York on the subject, and concludes that the courts of New York had carried the power of the common carrier to make special contracts to the extent of enabling him to exonerate himself from the effects of even gross negligence; but it proceeds to examine the question as one of general commercial law, arising in a federal court administering justice in New York, and having equal and co-ordinate jurisdiction with the courts of that state. It then discusses the cases on the subject in Pennsylvania, Ohio, Maine, and Massachusetts, and cites those in other states, and English cases, and cases as to both passengers and goods in the supreme court. Among the cases as to goods were *York Co.* v. *Central R. R.* 3 Wall. 107, and *Express Co.* v. *Kountze,* 8 Wall. 342. In view of all these cases, it holds that a carrier, having a regularly established business for carrying all or certain articles, and especially if that carrier be a corporation created for the purpose of the carrying trade, and the carriage of the articles is embraced within the scope of its chartered powers, is a common carrier; that a special contract about its responsibility does not divest it of that character; that it cannot be permitted to stipulate for immunity for the negligence of its servants; that the business of a carrier is a public one, and those who employ the carrier have no real freedom of choice, and the carrier cannot be allowed to impose conditions adverse to public policy and morality; that freedom from liability for losses through sheer accident, or dangers of navigation, which no human skill or vigilance can guard against, or for losses of money, or valuable articles, liable to be stolen or damaged, unless apprised of their character or value, or for like cases, is just and reasonable, and may be stipulated for; but that a public carrier cannot stipu-