hire. Upon receiving such goods for transportation, the ferry company stipulate to carry them safely, and subject themselves to strict liability for their safe delivery, being only exempted for losses occasioned by those acts known as 'acts of God, or of a public enemy.' The principle above stated would embrace the case of a horse and waggon received by a ferryman, to be transported by him on a ferry boat, *the ferryman accepting the exclusive custody of the same for such purpose; and the owner having, for the time being, surrendered possession to the ferryman.* But if the traveller uses the ferry boat, as he would a toll bridge, driving his horse upon the boat, selecting his position, and himself remaining on board; neither putting his horse into the care and custody of the ferryman, nor signifying to him or his servants any wish or purpose to do so; and the only possession and custody by the ferryman is that which necessarily results from the traveller's driving his horse and waggon on board the boat, and paying the ordinary toll for a passage; in such case, the ferry company would not be chargeable with the full liabilities of common carriers of merchandize. The liability in such a case would be one of a different character, and if the proprietors of the ferry were liable for loss or damage to the property, it would be upon different principles."

The judgment then goes on to show that there are certain responsible duties incumbent on ferry proprietors—such as a safe boat, competent crew, and necessary appliances, and it proceeds to use this language:—"For neglect of duty, they may be charged, but the liability is different from that of common carriers; * * *" and likens the traveller on a ferry to a traveller on a toll bridge or a turnpike road; and holds that if he do not use ordinary care and diligence, and injury ensues, the loss is that of the traveller. The judgment in *White* v. *The Winnisimet Company* proceeds to observe that the liability in such cases receives some light from the modified liability of common carriers where the owner accompanies the goods and retains a certain control over them; and it concludes as follows:—"Thus we perceive that a modification of the liability attached to common carriers occurs as the nature of the thing to be carried, and the extent of the custody and control over it by the carrier, varies. We think that the propriety of such a modification of what is certainly a very stringent rule of liability, in reference to cases where the entire custody and control of the property is not with the carrier, is quite obvious."

The evidence does not show in the present case that the entire custody of the property was with the ferryman, or the contrary. Perhaps, indeed, as a matter of common knowledge, we may all know very well the kind of custody which a ferryman exercises in such cases. I should feel I was doing violence to justice and reason, if I held that he was ordinarily vested with exclusive custody. He may be so vested, no doubt, in certain possible cases; but was there anything here in this case to take it out of the ordinary class of such cases? I think not. The owner of the horse, and the ferryman were both bound to ordinary, and reasonable care and diligence. When a ferryboat is crowded, and a horse is taken out of the shafts, and placed in a spot of ordinary safety, ought not the owner to look after his property to a certain extent? I think he ought: and here he certainly did not. The opinion of a witness, that if the owner had done his duty the thing would have happened all the same, is purely conjectural; but well-founded or not, the plaintiff must show that there was fault, and exclusive fault on the part of the ferryman. To attach such a liability as it is sought to attach here to the defendant, there should be clear evidence. It is impossible to say here who put the waggon, which was a cause of the injury, where it was. It is equally impossible to say from the evidence whether the mare kicked, and so caused the injury to herself, or whether the waggon ran forward and hit her before she kicked. I do not enter into the question of the treatment of the animal after the wound, which of itself might be important—the case appears not to require any further grounds of decision than those I have mentioned. If I saw there was fault on both sides, I should, of course, make each party pay his own costs; but I must be exact, and under the evidence, I see no fault in the defendant. Therefore the action is dismissed with costs.

Desjardins & Co., for plaintiff.

Lacoste & Co., for defendant.