

man, dealing with his own property under like circumstances, would have done, and if they were careless in not doing so, then the plaintiff would be entitled to a verdict in this case."

The Court held this instruction to be erroneous because "it imposed upon the defendants liability for simple negligence." The Court admits that the facts were sufficient to support a verdict for plaintiff, but insisted that the jury should be required to say whether it was gross negligence or want of good faith for defendant "to re-ship such a large quantity of silk with an excessive undervaluation." The Court then essays the difficult task of stating the proper distinction between these two terms. The Court says:—

"Gross negligence is substantially and appreciably higher in in magnitude than ordinary negligence. It is materially more want of care than constitutes simple inadvertence. It is an act or omission respecting legal duty of an aggravated character, as distinguished from a mere failure to exercise ordinary care. It is very great negligence, or the absence of slight diligence, or the want of even scant care. It amounts to indifference to present legal duty and to utter forgetfulness of legal obligations so far as other persons may be affected. It is a heedless and palpable violation of legal duty respecting the rights of others. The element of culpability which characterizes all negligence is in gross negligence magnified to a high degree, as compared with that present in ordinary negligence. Gross negligence is manifestly less watchfulness and circumspection than the circumstances require of a person of ordinary prudence. But it is something less than the wilful, wanton and reckless conduct which renders a defendant who has injured another liable to the latter even though guilty of contributory negligence, or which renders a defendant in rightful possession of real estate liable to a trespasser whom he has injured. It falls short of being such reckless disregard of probable consequences as is equivalent to a wilful and intentional wrong. Ordinary and gross negligence differ in degree of inattention, while both differ in kind from wilful and intentional conduct which is or ought to be known to have a tendency to injure. This definition does not possess the exactness of a mathematical demonstration, but it is what the law now affords."—*Central Law Journal*.