nevertheless he is chargeable. And this is a politic establishment contrived by the policy of the law for the safety of all persons, that they may be safe in their ways of dealing; for else these carriers might have an opportunity of undoing all persons that had any dealings with them, by combining with thieves, &c., and yet doing it in such a clandestine manner as would not be possible to be discovered. And this is the reason the law is founded upon, in that point." And again, Best, C. J., in *Riley* v. *Horne*, (5 Bing. 217), says, "When goods are delivered to a carrier," (meaning a common carrier), "they are usually no longer under the eye of the owner; he seldom follows or sends any servants with them to the place of their destination. If they should be lost or injured by the grossest negligence of the carrier or his servants, or stolen by them, or by thieves in collusion with them, the owner would be unable to prove either of these causes of loss. His witnesses must be the carrier's servants, and they, knowing that they would not be contradicted, would excuse their masters and themselves. To give due security to property, the law has added to that responsibility of a carrier which immediately arises out of his contract to carry for a reward, namely, that of taking all reasonable care of it, the responsibility of an insurer; the carrier is only to be relieved from two things, both so well known to all the country, when they happen, that no person would be so rash as to attempt to prove that they had happened when they had not, the act of God and the king's enemies."

Now, first, let us inquire what is meant by "the act of God." Sir William Jones contented that "the act of God" was the same as "inevitable accident;" but Lord Mansfield, in the case of *Forward* v. *Pittard*, (1 T. R. 33), denied this, and decided that a common carrier was liable for what might well be called "an inevitable accident," and laid down that "the act of God" must be a "natural necessity," as distinct from a mere inevitable accident; and gave, as examples of his meaning, "winds," "storms," and "sudden gusts of wind." And in the late case of *Oakley* v. *The Port of Portsmouth and Ryde United Steam-packet Company*, (11 Exch. 618), "an act of God" was defined by Martin, B., to mean "something of an overwhelming nature, something sudden and visible, such as lightning or tempest—not a mere misfortune occurring in the course of transit." And it has been decided, (*The Proprietors of the Trent Navigation* v. *Wood*, 4 Dougl. 287), that where a ship ran against an anchor which had been left in the bed of a river by another ship, and was thereby lost, this was not a loss by the act of God. And again, that where goods were destroyed by an accidental fire, although it originated a considerable distance off the place where the goods were, (*Forward* v. *Pittard*), this was not such a loss. But where the loss was caused by the freezing of a canal, that was considered a loss by the act of God, and the carrier was held exempt. (*Bowman* v. *Teall*, 23 Wend. 306). And again, where the defendants (common carriers by water) were conveying the plaintiff's goods for hire in a boat towed by one of their steam-packets, and as the packet approached a pier to take in passengers, the captain stopped its course to allow another vessel to leave the pier, (a proper act of the captain), and the day being boisterous, with a good deal of sea running, though the weather was not unusual, the effect of the stoppage was to drive the tow-boat against the packet, and it and the plaintiff's goods were thereby damaged; in this case (in which Martin, B., used the expressions above alluded to) it was held that there was no loss by the act of God. But when it is said that the carrier is exempt if the loss happens by the act of God, it must be borne in mind that the act of God must not only have contributed to the loss, but have been the proximate cause; and it was held on this ground, viz., that the act of God was not the proximate cause, that the carrier was liable where a bank in a river, formerly good anchorage ground, had been altered and made unsafe for anchorage by a sudden flood, and a vessel had been lost on it, and her mast floating, but attached to her, drove a second vessel (the vessel whose loss was in question) against the bank, and she was lost, though she would not have been lost if the bank had continued in the old state. In some American cases it seems to have been supposed that "perils of the sea" meant exactly the same thing as "the act of God;" and if this were so, a long line of shipping cases would have an important bearing on the point we are discussing; but we apprehend that such a doctrine is not tenable; for, to take one instance, it has been decided, that if one vessel run down another by misfortune, (*Buller* v. *Fisher*, 3 Esq. 67), or by gross negligence, (*Smith* v. *Scott*, 4 Taunt. 126), this is a loss by perils of the sea; whereas it is clear, according to the cases above cited, that it could not be held to be a loss by the act of God.

By the "Queen's enemies" is meant public enemies with whom the nation is at open war, and not merely robbers, thieves, or other private depredators, however much they may be deemed, in a moral sense, to be at war with society; and therefore losses which are occasioned even by rioters and insurgents are not such. (Story's Bailm. s. 526). It has been, however, sometimes suggested that pirates came within the definition of "Queen's enemies," as being general enemies of mankind; but it is apprehended that there is no sound distinction between them and other robbers, and that a loss by pirates is not a loss by the Queen's enemies, but by perils of the sea. (*Pickering* v. *Barkley*, 2 Roll. Ab. 248).

Up to this point it will be observed that we have treated of the liability of the common carrier as an insurer without any reference to any peculiarity in the nature of the goods themselves: we will now proceed to examine whether this makes any difference in the liability; and if it does, to what extent.

On turning to that portion of Mr. Justice Story's treatise on Bailments which treats of the liability of common carriers, we find that he lays down that a common carrier will not be liable for injuries accruing from ordinary wear and tear and chafing of goods in the course of their transportation, or from their ordinary loss or deterioration in quantity or quality in the course of the voyage, or from their inherent natural infirmity and tendency to damage, or which arise from the personal neglect or wrong of the shipper thereof. Thus, for example, he says, "The carrier is not liable for any loss or damage from the ordinary decay or deterioration of oranges or other fruit in the course of the voyage, from their inherent infirmity or nature, or from the spontaneous combustion of goods, or from their tendency to effervescene or acidity, or from their not being properly put up and packed by the owner or shipper: for the carrier's implied obligations do not extend to such cases." (Sect.