ignoring the classification of negligence into degrees as unpractical and useless. The first criticism of this kind which we find in the reports is contained in an opinion of Lord Denman, delivered in 1843, in which he says, "When we find gross negligence made a criterion to determine the liability of a carrier, who had not given the usual notice, it could perhaps have been reasonably expected that something like a definition should have been given to the expression. It is believed further, that in none of the numerous cases on this subject is any such attempt made; and it may well be doubted whether between gross negligence and negligence merely any intelligible distinction exists" (*Hinton* v. *Dibbin*, 2 Q. B. 646, 661). This was followed by Baron Rolfe in *Wilson* v. *Brett*, (11 M. & W. 113), who, in an action against a gratuitous bailee, told the jury that he could see no difference between negligence and gross negligence,—that it was the same thing with the addition of a vituperative epithet, and further, that the defendant, being shown to be a person skilled in the management of horses, was bound to take as much care of the horse as if he had borrowed it. The jury finding for the plaintiff, under these instructions, the court refused to grant a rule for a new trial: Lord Abinger saying, "We must take the summing up altogether; and all that it amounts to is that the defendant was bound to use such skill in the management of the horse as he really possessed." In *The New World* v. *King* (16 Howard, 474), Curtis, J., expressed considerable doubt as to whether any distinction between degrees of negligence could be usefully applied in practice. In *Perkins* v. *New York Central Railroad Co.* (24 N. Y. 207), Smith, J., said, "The difficulty of defining gross negligence, and the intrinsic uncertainty appertaining to the question as one of law, and the improbability of establishing any precise rule on the subject, render it unsafe to base any legal decision on distinctions of the degrees of negligence;" and he also approved the *dictum* of Lord Denman before quoted. In *Wells* v. *New York Central Railroad Co.* (24 N, Y. 181, 190), Sutherland, J., after reviewing the doctrine of degrees of negligence at some length, dismissed it by saying that the classification might be philosophically correct, but was impracticable, and that attempts to make it useful and practicable had produced confusion and made it mischievous. In *Grill* v. *General Iron Screw Collier Co.* (Law Rep. 1 C. P. 612), Willes, J., approved of the *dictum* of Baron Rolfe above cited, and said, "Confusion has arisen from regarding negligence as a positive instead of a negative word. It is really an absence of such care as it was the duty of the defendant to use." In support of this view he cited *Beal* v. *South Devon Railway Co.* (3 H. & C. 337); but in that case the court said, "It is said that there may be difficulty in defining what gross negligence is, but I agree in the remark of the Lord Chief Baron, in the Court below, when he says, 'There is a certain degree of negligence to which every one attaches great blame. It is a mistake to suppose that things are not different because a strict line of demarcation cannot be drawn between them.'" And in the same case in which Mr. Justice Willes expressed the opinion above cited, Montague Smith, J., said, "The use of the term gross negligence is only one way of stating that less care is required in some cases than in others, as in the case of gratutious bailees, and it is more correct and scientific to define the degrees of care than the degrees of negligence."

After much consideration and examination, we have come to the conclusion that the root of the whole controversy on this point lies in the assumption, on one side, that the meaning of the word negligence is the want of that care which the law requires, and, on the other side, that its meaning is simply the want of *some* care, whether more or less,—whether required by law, or not so required. In short, if "negligence" means in all cases "*culpable* negligence," the controversy is at once decided, and degrees of negligence should no more be heard of. But this would not abrogate the distinction between degrees of *care*; and the argument in favor of drawing such distinctions, and recognizing them in the law, remains unaffected by any thing which the courts have said in respect to degrees of *negligence*. It is not worth while to discuss the question whether negligence must necessarily mean culpable negligence; for that is a question which has no practical application, except where a contract is made stipulating for or against liability for negligence, or where a pleading alleges negligence. It has been generally held in such cases that the word negligence is sufficient to cover all its degrees; * and this ruling may very well stand, without affecting the general question, because it is obvious that in such cases the word negligence is used in the sense of *culpable* negligence. And, with two exceptions, all the cases in which the distinction between degrees of negligence has been mentioned with disapproval have been cases which presented simply this question. The two exceptions referred to were both of them cases in which the judge before whom the cause was tried declined to define gross negligence to the jury, and instructed them particularly what the defendant was bound to do or not to do.† It was contended by the unsuccessful parties in those cases that the judge ought to have left to the jury the question whether or not the defendant had been guilty of *gross* negligence. This the court in *banc* overruled, and, as we think, very properly. If degrees of care and negli-

* *Bissell* v. *N. Y. Central Railroad Co.*, 25 N. Y. 442. But the reverse was held in *Illinois Central Railroad Co.* v. *Read*, 37 Ill. 484. See also *American Express Co.* v. *Sands*, 55 Penn. St. 140; *Pennsylvania Railroad Co.* v. *Henderson*, 51 Penn. St. 315.

† *Wilson* v. *Brett*, 11 M. & W. 113; *Grill* v. *General Iron Screw Collier Co.*, Law Rep. 1 C. P. 600.