the goods he shipped, on the ground of their having been lost through their fault and negligence. The defendants answer, 1st. That the plaintiff has no interest, he having insured, and having been paid by the insurer. The reply to this is that the insurer, on making payment, was subrogated in all the rights of the insured. Then, it is contended that the insurance, having been against loss by the perils of the sea, cannot now be recovered for on the ground of fault of the owners; but it is plain, I think, that the perils of the sea included negligence by the owners or their servants. That was decided in the case of *Cross* v. *The British America Insurance Company et al.* It was there distinctly held that if a vessel be portworthy at the time an insurance is effected, her becoming shortly afterwards unportworthy by the act of those in charge will not render the insurance void;—22 L. C. Jurist, 10. The perils of the sea insured against include a loss caused, or a peril made operative and destructive by the negligence of the master or crew. See Parsons on Marine Insurance, vol. 1, p. 381; Ed. 1868. Therefore the subrogation is perfect, and there is really nothing inconsistent between the pretension of the plaintiff to the insurance company, that the loss was by the perils of the sea, and the contention here by the insurance company in his name that the loss was occasioned by the fault of the owners. In their second plea the defendants admit receiving the goods on board; but they formed, as the defendants say, only part of a larger quantity to be shipped according to an understanding between the shipper and the agents of the ship; and a bill of lading was only to be given afterwards, and by the conditions of the bill of lading subject to which the shipment was made, the owners were not to be liable for any damage that could be covered by insurance. The plaintiff answers this by falling back on his allegation of fault and negligence of the owners as set up in his declaration. There is a third plea averring that the loss was occasioned by irresistible force and a peril of the sea, excepted in the bill of lading;—and to this the plaintiff makes the same answer, therefore the only question will be the question of fault and neglect of the owners or those for whom they are responsible under Art. 1676 C. C.

The ship in this case was the St. Patrick, owned by the defendants, and the question of fault and negligence was fully discussed and finally disposed of by a special jury in that case, and I might perhaps assume that the same facts would be established here; but, of course, I have not felt at liberty to act on that assumption; and I have had to make a careful examination of all the evidence, which is very long, that has been taken at *enquête* in this case. I can come, however, to no other conclusion than the jury did in the case of Butters; and, without recapitulating the well known facts, I must act as the jury did in that case, and find for the plaintiff. I may add that it was my lot to read all the evidence taken before the jury in the case of *Butters* v. *Allan*, when it came up on a motion for new trial on account of the verdict being against the evidence. I see also there was a motion made at the hearing to overrule all the evidence objected to and reserved at the time it was taken. I think this motion should be granted in part, and rejected in part. It applies first to the evidence of two witnesses, Norval and Rhynas, who are asked what Capt. Barclay said to them. That is pure hearsay, as Captain Barclay was not in the ship at the time, nor acting as the agent of the owners, and it is therefore rejected. Then the other objection is made to their opinion of the mode of tipping the vessel, given by Mr. Morrison and Captain Herriman. One of these gentlemen was a marine inspector, and the other a marine underwriter, and from their knowledge perfectly competent to give such an opinion, and their evidence is legal evidence.

Dunlop & Lyman for plaintiff.

Abbott, Tait, Wotherspoon & Abbott for defendants.

Copyright.—The portrait of any well-known character, copied from a photograph and applied to earthenware, with a wreath or other ornamentation, is not a new and original design, and cannot therefore be copyrighted. *Adams* v. *Clementson*, L. R., 12 Ch. D. 714.

An important functionary who died recently in England, was Calcraft, hangman during six and forty years. The deceased official was accustomed to speak with professional delicacy and pride of his "patients."