timony, to come fairly and reasonably to the conclusion that Fant was Keene's partner in this transaction.

JUDGMENT AFFIRMED.

RAILROAD COMPANY *v.* PRATT.

1. Though where goods received at one place are to be transported over several distinct lines of road to another and distant one, the liability of the common carrier first receiving them (where no special contract is made) is limited to his own line, yet he may subject himself by special contract to liability for them over the whole course of transit. And this is true of a railroad corporation possessed of the powers given to railroad corporations generally and subject to corresponding liabilities; such railroad corporations, *ex. gr.*, as those incorporated under the general railroad law of New York.
2. If there is competent evidence of such a contract thus to carry, put before the jury, the weight, force, or degree of such evidence is not open for consideration by this court.
3. What amounts to competent evidence. This matter stated in a recapitulation of the evidence given in this particular case. A way-bill in which the heading spoke of the goods as goods to be transported *by* the first road, *from* the place of departure *to* the place at the end of the whole line, and at which the owner wished to have them delivered, *held* to be such evidence, whether looked upon as a contract, or as a declaration or admission.
4. Where in such a line of roads as that described in the first paragraph above, the common carrier owning the first road undertakes to carry goods over the entire line—part of the goods being put aboard the cars on his line, and a part *to be* put on at its termination and where the next road begins—the fare asked and agreed to be paid being, however, the fare usually asked and paid for the carriage over the whole line, and the contract being for transportation over the whole road and not for carriage to the end of the first line and then for delivering to the carrier owning the next road and for carriage by him—the fact that a part of the goods were put on the cars only where the second road begins, will not exonerate the owner of the first road from liability for their loss.
5. Where on such a line of road as that in the said first paragraph described, the second road posts *its* rules in the station-house of the first, a person furnishing goods for transportation "through" is not to be held as of necessity to have notice of them from the fact of such posting, and because he was often in the station-house of the first company where they were posted. Independently of which, his contract being with the first company only, and *it* agreeing to carry for the whole distance, *its* rules are the rules that are to govern the case.

Statement of the case.

6. If a common carrier by rail is negligent and careless in furnishing cars, and so furnish cars unsuitable for the case—even though they be cars for cattle, which cars the owner himself sees, and which cattle the owner himself attends—the carrier is not relieved from responsibility, even though there have been an agreement that he shall not be responsible.

ERROR to the Circuit Court for the District of Massachusetts, in which court J. Pratt and H. Brigham, of Boston, sued, by process of attachment, the Ogdensburg and Lake Champlain Railroad Company, a corporation of New York, to recover from *that* company damages for the loss of certain horses which Pratt, for the two parties, had put into the company's cars on its road in the said State, and which had been burned to death, not on the said company's road, but on the Vermont Central Railroad; a road in the State of Vermont, connecting with the former, but not belonging to the same corporation, but on the contrary belonging to a different corporation; to wit, a corporation of Vermont.

The case was thus:

In the northeastern part of New York there exists what is known as the Ogdensburg and Lake Champlain Railroad. The road begins at Ogdensburg, about ninety miles west of Lake Champlain, and runs eastwardly through a place called Potsdam to Rouse's Point on the said lake, at which point it strikes the boundary line between the States of New York and Vermont.

This Ogdensburg and Lake Champlain Railroad Company was incorporated under the general railroad law of New York, and possessed the powers possessed by railroad corporations generally, and was subject to the same liabilities as they generally are.

At Rouse's Point begins a new railroad, to wit, the Vermont Central Road; a different road, as already stated, and owned by a different corporation, one created by Vermont. The rails of the two roads, however, connect. This Vermont Central Road runs across the State of Vermont in a southeasterly direction till it comes towards the edge of Massachusetts, where it strikes a third road, which, passing through Concord in that State, enters the city of Boston.

Statement of the case.

At the town of Potsdam, above spoken of as near the west end of the Ogdensburg and Lake Champlain road, Pratt, already mentioned, a transporter of horses, went, in March, 1868, to one Graves, who was the station agent at Pottsdam of the Ogdensburg and Lake Champlain road, and informed him that he wished two good "stock cars" to carry certain horses for himself and Brigham to Boston. Pratt thus testified:

"I have been for twenty years in the habit of buying horses (one or two hundred a year), and of transporting them over the Ogdensburg and Lake Champlain and the Vermont Central roads to Boston. I have known Graves five or six years as station agent at Potsdam. His office was in the freight-house. He always furnished me stock cars. This occurred from five to ten times a year. The cars thus furnished by him went without any change right through over these roads, and the arrangements made by him were always recognized by the roads through to Boston. A week before the horses for whose loss this suit is brought, were brought to Potsdam, Mr. Graves engaged to give me two good stock cars to carry them to Boston. He did at the time appointed give me two cars, and I took my horses to them. I objected to one of the cars. Graves said that I must take it or wait for a week, as no others than these were there. I took the car rather than wait, and repaired it as well as I could. I put in some hay—wet and rotten hay—to keep the horses from slipping. I always did that. One of the railroad hands and I put it in on this occasion; and in full view of the office. This railroad hand had been in the service of the company for three or four years. I then told Mr. Graves that I wished to put in other horses at Rouse's Point. He agreed to this. We agreed upon the price, $85 per car, through to Boston; being the same price as if all the horses had been put in at Potsdam; the horses to be transported from Potsdam; some taken on there and some at Rouse's Point. We had passes to go on the train which took our horses. I always put my horses in and go on the cars myself to take care of the horses, or else send a man. On this occasion Mr. Brigham was in charge all the way. I had no other man. You can't go in the same car with the horses. A place called a box car was furnished for us. The way-bill was thus made out:

Way-bill of merchandise transported by Ogdensburg and Lake Champlain Railroad Company, from Potsdam Junction to Boston, via Concord, March 20th, 1868.

Name and residence. Designation.	Description of articles.	Weight.	Rate.	Freight.	Back charges.	Total charges.	Remarks.
J. Pratt, Boston,	1 car horses..... 1 man in charge, free, O'g.	20,000	.....	$85.00	.....	$85.00	Coll.
H. Brigham, . . .	1 car horses..... 1 man in charge, free.	20,000	.....	85.00	.....	85.00	.....
		40,000		$170.00		$170.00	

"I saw the bill at Potsdam after it was made out."

The plaintiffs here put this question to the witness:

"In these acts of Graves in furnishing cars and making arrangements for transportation through to Boston as testified by you, for whom did he assume to act?"

The defendant objected to the question, asserting that the witness could be asked only as to what was said and done, and that the question was incompetent on this account, and as calling from the witness an expression of his own opinion or inference. The court admitted the question, and defendant excepting, the witness answered:

"He assumed to act for the Ogdensburg and Lake Champlain Railroad Company."

In consequence of the cars being broken and very much exposed, and sparks from the locomotive getting into them the hay took fire, and the horses were burnt to death. This took place on the road of the Vermont Central Company. Some of the horses were put in at Rouse's Point.

No freight was paid on this particular occasion at Potsdam; and indeed it was generally paid, in transactions between these parties, in the depot in Boston.

The defendants produced Graves, the station master already mentioned. He testified that there were several cars at Potsdam when Pratt brought the horses to the station, and that he could have had his choice, and as he, the

witness, supposed did have it; that all cars were examined before being sent off, and if unfit were reported; that the cars were "billed" as per the way-bill above shown; that the freight might have been paid in advance, but was not; that the witness knew of no hay put into the cars; that it was against the rules of the Vermont Central road to put any litter in them. Two men were allowed to go free, one in each car.

The defendants also put in evidence certain rules printed on a single sheet, entitled "Vermont Central Railroad Special Live-stock Tariff," which after reciting certain rates of freight per ton, contained, under the head of "DIRECTIONS," the following provisions:

"In consideration of drovers being permitted to ride free on the same train with their stock for the purpose of taking charge of it, it will, in all cases, be their duty, or that of shippers of live stock, to examine cars before loading, and if they accept them the stock will be at their risk of loss or damage occasioned by doors being displaced or otherwise. Hay, straw, and like combustibles will, under no circumstances, be allowed in a car with live stock. Persons violating this rule will not only suffer all loss which the same may cause to his or their own stock, but will be held responsible for all damage caused by such violation, whether it be to individuals or to the railroad."

They then introduced evidence tending to show that these rules were posted up in the Potsdam station, and that the plaintiffs were often there, and so must have seen them. The plaintiffs denied being often in the station-house, and testified that they had never seen or heard of the said rules until after this loss occurred.

On the trial, the court having charged that the defendants would not be liable for a loss occurring on any other railway in the line unless, at least, they specifically and expressly contracted to transport the horses through or beyond their own road to where the accident happened; that otherwise they would be forwarders, and their liability would be discharged by safely delivering to the next road in the line, was asked by the defendants to charge further thus:

"If the jury are satisfied that the plaintiffs at Potsdam Junction, when they took the car in question, knew of its defects, and that it was unsafe, and liable to catch fire and burn, having full opportunity to see and examine it, and that they did see and examine it, and had full knowledge of its condition, and either selected or accepted this when they might have had another car; or if they consented to take this, and were allowed to take it at their request and wish, they electing and proposing to do so, and insisting upon it rather than wait a reasonable time for another car, they by so selecting or accepting the car took their risk of these defects, and cannot recover for losses occurring because of them."

In lieu of the charge requested, the court charged as follows:

"The common carrier is bound to furnish suitable vehicles and means of transportation for the carriage of such articles as he undertakes to carry and transport. If he furnishes unsafe or unfit cars he is not exempted from liability by the mere fact that the shipper knew them to be defective and used them. Nothing less than an agreement by the shipper to assume that risk would have that effect. In this case, if the plaintiffs expressly agree to assume the risks of defective cars rather than to wait a reasonable time for other cars, they cannot recover."

The jury found for the plaintiff, and the Ogdensburg and Lake Champlain Railroad Company brought the case here on different causes of error, which were resolvable into these four questions:

1. Had the Ogdensburg and Lake Champlain Railroad Company power or right to contract as a common carrier to transport the horses to Boston over another railroad, and beyond its own terminus?

2. Was there competent evidence given on the trial that the company did so contract in relation to the horses in question?

3. Did the plaintiffs, by putting their horses into a car which they knew was defective and unsuitable, thereby assume the risk of such defects, and relieve the company from responsibility for the same?

4. Was there error in admitting in evidence the way-bill made and forwarded with the property by the defendants, or in allowing the witness to state for whom the station agent assumed to act?

Mr. C. H. Hill, for the plaintiff in error; Messrs. E. L. Pierce and A. Churchill, contra.

Mr. Justice HUNT delivered the opinion of the court.

The several causes of error assigned present four separate principles, and we will consider the questions which they raise in their order. The questions may be thus stated:

First. As to the power of the railroad company to contract as a common carrier for the transportation of property beyond the terminus of its own road.

The distinction between the liability of a carrier, in carrying goods upon his own line, and in forwarding them when the duty to carry is at an end, is well defined. In the language of Mr. Justice Davis, in *Railroad Company* v. *Manufacturing Company*,* "It is the duty of the carrier, in the absence of any special contract, to carry safely to the end of his line, and to deliver to the next carrier in the route beyond." What constitutes a sufficient delivery to the succeeding carrier is often a difficult question, but we have no occasion to embarrass ourselves with it here.

The fair result of the American cases limits the carrier's liability as such, when no special contract is made, to his own line, although there are cases which hold the liability as continuing the same throughout the whole route, and such is the English doctrine. A discussion on this point is unnecessary, as the judge on the trial held the rule as we have stated it, and as was most favorable to the defendants. He charged the jury that the defendants were only liable upon a contract to be proved that they had assumed a liability beyond that imposed by law.

The defendants were an incorporation organized under

* 16 Wallace, 324.

the general railroad law of the State of New York. They possessed the powers given to corporations generally and were subject to the corresponding liabilities.*

Assuming the case to stand upon the general principles applicable to the question, the doctrine that a railroad company may subject itself to the obligations of a carrier beyond its own line, has been distinctly held in the State of New York, where this contract was made; in the State of Massachusetts, where its performance was to be completed, and in the State of Vermont, where the alleged injury occurred.†

In the case of *Burtis* v. *Buffalo and St. Lawrence Railroad*, *supra*, it was held that this principle applied to connecting roads extending beyond the limits of the State. The single exception to this holding, so far as we are aware, is in the State of Connecticut, where the contrary has been held by its Supreme Court.‡

This case, however, does not stand upon the general principle only. By the statutes of New York§ it is enacted as follows: "Any railroad company receiving freight for transportation shall be entitled to the same rights and subject to the same responsibilities as common carriers. Whenever two or more railroad companies are connected together, any company owning either of said roads receiving freight to be transported to any place on the line of either of said roads so connected shall be liable as common carriers for the delivery of such freight at such place. In case any such company shall become liable to pay any sum by reason of the

* New York, Laws of, 1848, p. 221; Same, Laws of, 1850, p. 211.

† Bissell *v.* Michigan Railroad, 22 New York, 258; Buffett *v.* Troy and Boston Railroad, 40 Id. 168; Root *v.* Great Western Railroad, 45 Id. 524; Burtis *v.* Buffalo and St. Lawrence Railroad, 24 Id. 269; Hill Manufacturing Co *v.* Boston and Lowell Railroad Co., 104 Massachusetts, 122; Feital *v.* Middlesex Railroad, 109 Id. 398; Noyes *v.* Rutland and Bennington Railroad Co., 27 Vermont, 110; Morse *v.* Brainerd, 41 Id. 550; Railroad Co. *v.* Manufacturing Co., 16 Wallace, 324; Evansville and Crawfordsville Railroad Co. *v.* Androscoggin Mills.

‡ Converse *v.* N. and N. Y. Transportation Co., 33 Connecticut, 166; 22 Id. 502.

§ Statutes of 1847, 299, § 9; 2 Revised Statutes, 5th edition, 693, § 67.

neglect of any other company or companies, the company paying such sum may collect the same of the company by whose neglect it became so liable." This statute is declared by Rappallo, J., in *Root* v. *Great Western Railroad*,* to be declaratory merely.

We do not see that there is room to doubt the power of the company to make the contract in question.

Second. Was there evidence in this case that the Ogdensburg and Lake Champlain Railroad Company did contract as a common carrier to transport this property beyond its own terminus over other roads to Boston?

The weight, the force, or the degree of the evidence is not before us, if there was competent evidence, on which the jury might lawfully find the existence of the contract alleged.†

Both the authority of Graves, the station agent, to make the contract, and the evidence of Pratt and others of the making of the contract, were questions of fact for the consideration of the jury. If the jury have found in the plaintiffs' favor on these points, upon evidence legally sufficient to justify it, this court cannot interfere with their findings.

The evidence on both these points may properly be considered at the same time. Pratt testified that he had for many years been in the habit of transporting horses over the defendants' road to Boston, to the number of two hundred a year, and that Graves had been the station agent at Potsdam for five or six years; that nearly a week before the present shipment Graves engaged to give him on that day two good stock-cars to carry his horses to Boston, and that the cars furnished by Graves had always come over these roads and delivered the horses in Boston, and that the arrangements made by him were recognized by the other roads; that Graves's office was in the Potsdam freight-house, and that he paid the freight through, sometimes at Potsdam

* 45 New York, 524.

† Dirst *v.* Morris, 14 Wallace, 484; Mills *v.* Smith, 8 Id. 27.

and sometimes at Boston; that on this occasion he agreed with Graves upon the price through to Boston, viz., $85 a car, and that a way-bill was made out for the horses and cars to Boston at the price mentioned. Other witnesses give testimony in corroboration, which it is not necessary to refer to. Graves testified that he was the station-master at Potsdam, and that the cars were billed from Potsdam to Boston, via Concord, as per bill; that the price agreed upon was not paid in advance, but it might have been.

The way-bill was headed thus: "Way-bill of merchandise transported by Ogdensburg and Lake Champlain Railroad Company from Potsdam Junction to Boston via Concord, March 28th, 1868." It describes the two cars with horses, and as consigned to Pratt & Brigham, at Boston.

We see no sound objection to the admission of this way-bill as evidence. If a written contract, it was not only evidence, but the best evidence of what the contract was. It was exhibited to Pratt before the cars were started, as a part of the transaction.

If not a contract, it was an act done and a declaration made by the agent in the very act of transacting the business, and as a part of it, which brought it within the principle of the *res gestæ*.

This evidence shows that the oral engagement was "to carry his horses to Boston," not to carry to Rouse's Point and thence to forward to Boston, but "to carry" as well and as fully over the Vermont and Massachusetts roads as over the Ogdensburg road.

Again, a specific price was agreed upon for transportation over the whole route. This was in accordance with the practice, and whether paid at Potsdam or at Boston was unimportant. This practice had been continued for years, and the jury had the right to hold the contract to be the same, without reference to prepayment or postpayment. The jury were justified in inferring that where a carrier fixes a price for transportation over the whole route, that he makes the entire contract his own. One who carries simply over his own line, and thence forwards by other lines, would ordi-

narily, the jury may say, make or collect his own charges and leave the remaining charges to be collected by those performing the remaining service. Receipt of the entire pay affords a fair presumption of an entire contract.

The language of the way-bill is quite expressive. It describes "merchandise transported . . . from Potsdam to Boston." Transported or carried are equivalent terms, and quite distinct from the idea of forwarding. Whether looked upon as a contract, or as a declaration, or an admission simply, the way-bill furnishes evidence that the Ogdensburg company undertook to carry the horses to Boston.

In *Root* v. *Great Western*,* in speaking of the contract to transport as a common carrier over other lines, the court say: "Such an undertaking may be established by express contract, or by showing that the company held itself out as a carrier for the entire distance, or received freight for the entire distance, or other circumstances indicating an understanding that it was to carry through."

We think there was competent evidence before the jury that the company undertook to carry this property to Boston, and the jury having found such to be the fact, the other companies are to be deemed the agents of the defendants, for whose faults they are responsible.

Third. The loss, it is contended, arose from the defective condition of the car in which the horses were placed, whereby it was exposed to danger from fire. It is said that Pratt was aware of the defective condition of the car; that he voluntarily made use of it, and that the risk of loss by its use thus became his and ceased to be that of the company. The judge charged the jury that it was the duty of the carrier to furnish suitable vehicles for transportation; that if he furnished unfit or unsafe vehicles he is not exempted from responsibility by the fact that the shipper knew them to be defective and used them; that nothing less than a direct agreement by the shipper to assume the risk would have that effect.

* *Supra*, p. 131.

There was a conflict in the testimony upon the point whether other cars were to be had. Pratt testified that he was compelled to take these cars or wait with his horses for a week. The station-agent testified that there were other cars which Pratt might have had if he preferred them.

The authorities sustain the position taken by the judge at the trial.

In *New Jersey Steam Navigation Company* v. *Merchants' Bank*,* Mr. Justice Nelson says: "If it is competent at all for the carrier to stipulate for the gross negligence of himself and servants or agents in the transportation of goods, it should be required to be done at least in terms that would leave no doubt as to the meaning of the parties."

To this effect are the New York and Massachusetts cases before cited.

In *Railroad Company* v. *Manufacturing Company*† it was declared that the court did not intend to relax the rule by which the liability of carriers was established. In *Railroad Company* v. *Lockwood*‡ the following, among other propositions, were reiterated and established by the unanimous judgment of the court:

1st. That a common carrier cannot lawfully stipulate for exemption from responsibility when such exemption is not just and reasonable in the eye of the law.

2d. That it is not just and reasonable in the eye of the law for a common carrier to stipulate for exemption from responsibility for the negligence of himself or his servants.

The judge at the trial in this case might have gone much further than he did, and have charged that if the jury found the company to have been negligent and careless in furnishing cars, they would not be relieved from responsibility, although there had been an agreement that they should not be liable therefor.

Fourth. It is contended that there was error in the admission of evidence on the trial. The admission of the way-

* 6 Howard, 344, 383. † 16 Wallace, 318. ‡ 17 Wallace, 357.

bill we have considered, and we think it was properly admitted.

When the plaintiff, Pratt, was on the stand as a witness the following question was put to him: "In these acts of Graves in furnishing cars and making agreements for transportation through to Boston, as testified by you, for whom did he assume to act?" This question was objected to by the defendants, and the objection was overruled. We think this question was erroneous in its form, and that, as insisted by the defendants, he should have been asked to state only what was said and done. The error was, however, harmless. That Graves was acting for the Ogdensburg company was disputed by no one. All that had been testified to, showed it. Graves himself testified that he was so acting, and there was no evidence or pretence to the contrary, either on the trial or the argument. The question is as to the effect of his acts, and not as to whether he acted for the company. His authority has not been repudiated by the company at any time or in any form. We have often held that we will not reverse a judgment on account of an error which clearly appears to have produced no injury.

Two suggestions are made by the counsel for the plaintiffs in error which require consideration.

The first is that the rules of the Vermont Central road forbade the use of combustible material in the cars on their road, and that if known to the plaintiffs, and the contract were made in reference to them, the presence of this material in the car while on their road was a bar to the action. The answer to this suggestion is, first, that there is no competent evidence of such contract and agreement; and second, that the contract was made with the Ogdensburg road alone. The shippers were strangers to the rules as well as to the owners of the Vermont road. Their dealings were with the Ogdensburg road only, one of whose agents aided in putting the litter into the car, and the rules of which company were not violated by that act.

The second suggestion is that some of the horses injured were not placed in the cars till they were at Rouse's Point,

beyond the terminus of the defendants' road. The contract was in substance for transportation over the Ogdensburg road of all the horses. For the convenience of the shipper he was allowed to put them on board at different points. This was an incidental circumstance merely, and does not affect the contract. If it receives the full price for the transportation of all the property from Potsdam to Boston it is evidently to the advantage of the company if it escapes the danger incident thereto for a portion of the distance. The power to contract for the whole distance of all the horses, and the making of such contract, and the receipt of the compensation specified, fix the rights of the parties. The precise details of its performance are not essential.

JUDGMENT AFFIRMED.

ST. JOHN *v.* ERIE RAILWAY COMPANY.

A railroad company, built originally with money contributed as stock, subsequently borrowed money, issuing its bonds at five several dates and giving five several mortgages to secure them. It also borrowed money, issuing bonds for which it gave no mortgage; unsecured bonds. It finally proved insolvent, and proceedings to foreclose the last two mortgages were had. The stockholders and creditors now entered into an agreement for the adjustment of its liabilities, and pursuant to the agreement the road was sold under the proceedings of foreclosure to trustees, who transferred all its property subject to all the existing mortgage liens to a new corporation authorized by the legislature, with an agreement confirmed by legislative act, by which it was agreed that the stockholders of the old company should be stockholders—*common* stockholders—in the new; and the *un*secured creditors of the old one be stockholders *preferred*. This agreement was carried out, and the parties further agreed—

> "Such preferred stock shall be entitled to preferred dividends out of the net earnings of said road (if earned in the current year, but not otherwise), not to exceed seven per cent. in any one year, payable semi-annually, *after payment of mortgage interest and delayed coupons in full.*"

The new company now worked the road, and for a considerable time paid to the preferred stockholders seven per cent. out of its net earnings, and of course after payment of mortgage interest and delayed coupons.