use as a safe and convenient medium for the settlement of balances among mercantile men, and any course of judicial decision calculated to restrain or impede their unembarrassed circulation would be contrary to the soundest principles of public policy.

Mercantile law is a system of jurisprudence recognized by all commercial nations, and upon no subject is it of more importance that there should be, as far as practicable, uniformity of decision throughout the world.*

Apply these several suggestions to the case and it follows that the statute, when properly construed, does not include the indorser of a negotiable promissory note whose liability has become absolute by due notice of the dishonor of the note.

JUDGMENT AFFIRMED.

RAILROAD COMPANY *v.* ANDROSCOGGIN MILLS.

The Evansville and Crawfordsville Railroad Company, of Indiana, owning a railroad running from the south line of that State northward to another point in it, and which made a line of road by which cotton was brought from Columbus, Mississippi, to Boston, Massachusetts, established, apparently with the view of procuring freights over its road, an agency in the former place; and there, as it seemed, was in the habit of contracting for the transportation of cotton from Columbus to Boston, its own road providing one link of the chain for transportation.

Planters in Columbus shipped from that place to manufacturers in Boston a quantity of cotton. The bill of lading, dated at Columbus, Mississippi, and signed by the agent, at Columbus, of the railroad company, had in display letters at its top—

"EVANSVILLE AND CRAWFORDSVILLE RAILROAD COMPANY.

"Great *through* fast freight route to all points north and east, via Pennsylvania Central, Erie, and New York Central Railroads. Contract for through rate. This reliable *through* line makes the shipment of cotton a specialty, and guarantees quick time and delivery in good order."

The bill, after stating the destination of the cotton to be Boston, Massachusetts, went on to say:

"The Evansville and Crawfordsville Railroad Company hereby agree that

* Goodman *v.* Simonds, 20 Howard, 364.

upon arrival at Evansville, and delivery of the property, they will receive and forward said property to destination upon the following conditions: That the shipper, owner, and consignee do hereby release the said company and the boats and railroads with which they connect, from the acts of Providence, or from damage or loss by fire or other casualty while in depots or places of transhipment; also, damage or delays by unavoidable accidents; also, loss by fire, collision, or dangers of navigation, or for loss or difference in weights, torn baggage, or condition of said property.

"*The Evansville and Crawfordsville Railroad Company will not be liable for loss or damage by fire, from any cause whatever.*

"All property shipped on this contract will be subject to the expense of necessary repairs and remarking. In the event of loss or damage under the provisions of this agreement, the value or cost at the point of shipment shall govern the settlement of the same. Said property to be forwarded immediately after its arrival at Evansville, . . . and to be delivered at Boston, upon the payment of the freight and charges as herein specified.

"Through rate $10.25 per bale, from Columbus to Boston."

The exemption just above put in italics was printed in red ink. *Held*—

1. That the cotton being delivered to the company's agent, at Columbus, there was a contract by the company to carry from Columbus to Boston.
2. That the exemption in red ink applied to the whole route, between Columbus and Boston, and not to the part alone between Evansville and Boston; and that the cotton having been burned between Columbus and Evansville, without fault of the railroad company, the exemption in red ink applied, and absolved the company from liability for the loss.

ERROR to the Circuit Court for the District of Indiana; the case being thus:

The Evansville and Crawfordsville Railroad Company was a railroad company incorporated by the State of Indiana, and having a railroad between Evansville, in the southern part of Indiana, and Crawfordsville, in the northern. The road is part of a line of road for the transportation of cotton between the cotton fields of the South and the cotton mills of the North. For the purpose, apparently, of procuring freights over its road, this company had established an agency at Columbus, in Mississippi, and was in the habit of making contracts there for the transportation of cotton from that place to Boston, Massachusetts, its own road forming one link of the chain of transportation.

On the 10th of January, 1873, Mitchell & Co. shipped, from the said Columbus, in Mississippi, to B. F. Bates, the treasurer of the "Androscoggin Mills," an incorporated

company in New England, two hundred bales of cotton, to be delivered at Boston.

The bill of lading, creating the contract between the parties, was as follows, viz.:

EVANSVILLE AND CRAWFORDSVILLE RAILROAD COMPANY.

Great through Fast Freight Route to all points North and East, via Pennsylvania Central, Erie, and New York Central Railroads.

CONTRACT FOR THROUGH RATE.

A. E. SHRADER,
General Freight Agent, Evansville, Indiana.

This reliable through line makes the shipment of cotton and tobacco a specialty, and guarantees quick time and delivery in good order.

COLUMBUS, MISS., January 10th, 1873.

Received from Mitchell & Co. the following packages (contents unknown), in apparent good order, viz.:

Mark, consignees, and destination.	Articles.	Weight, Subject to correction.
<BA>B. F. Bates, Treas., Boston, Mass.	200 bales cotton.	

The Evansville and Crawfordsville Railroad Company hereby agree that, **upon arrival at Evansville, and delivery of the property** above described and consigned, **they will receive and forward said property to destination** upon the **following** conditions: That the shipper, owner, and consignee do hereby release the said Evansville and Crawfordsville Railroad Company, and the boats and railroads with which they connect, from the acts of Providence, or from **damage** or **loss by fire** or other casualty **while in depots or places of transhipment**; also, damage or delays by **unavoidable accidents**; also, **loss by fire,** collision, or dangers of navigation, or for loss or difference in weights, torn baggage, or condition of said property.

THE EVANSVILLE AND CRAWFORDSVILLE RAILROAD COMPANY WILL NOT BE LIABLE FOR LOSS OR DAMAGE BY FIRE, FROM ANY CAUSE WHATEVER.

All property shipped on this contract will be subject to the

expense of necessary repairs and remarking. In the event of loss or damage under the provisions of this agreement, the value or cost at the point of shipment shall govern the settlement of the same. Said property to be forwarded immediately after its arrival at Evansville, or as soon thereafter as it is ready for shipment, and to be delivered at Boston, Massachusetts, upon the payment of the freight and charges as herein specified.

In witness whereof the agent hath affirmed to four bills of lading of this tenor and date, one of which being accomplished the others to stand void.

Through rate $10.25 per bale, from Columbus to Boston.

L. Q. AYRES,
Agent.

The words in small capital letters at or near the bottom of the preceding page were printed, in the bill of lading, in red ink, so as to be conspicuous. Those in bold face in the twelve lines before, are here so put by the Reporter, being words on which the question partly turned.

The cotton was burned on the way from Columbus to Evansville; that is to say, was burned before it ever reached Evansville.

The Androscoggin Mills now sued the Evansville and Crawfordsville Railroad Company, declaring upon that clause of the contract which contained the provision that "upon the arrival at Evansville and delivery of the property above consigned, they will receive and forward said property to destination upon the following conditions;" conditions among which, as the reader has noted, was one that the company would not be liable for loss by fire while in depots or places of transhipment; and another, that they would not be liable for loss by fire, collision, or dangers of navigation, or loss or difference in weights, &c. And as the cotton had not arrived at Evansville when the loss occurred, the argument of the Androscoggin Mills was that the condition of an exemption from liability in the case of a loss by fire did not attach, and that the railroad company was to be subjected to the loss upon the general principle of its liability as a common carrier.

On demurrer the court below was of the opinion that this position was a sound one, and gave judgment against the Evansville and Crawfordsville company.

From that judgment the company appealed.

Mr. A. Inglehart, for the plaintiff in error:

I. The bill acknowledges receipt of the cotton at Columbus, Mississippi, but only undertakes to carry the same when it arrives at Evansville; and to construe the undertaking according to its terms, the railroad company is not liable till the goods reached Evansville. Now, as the goods never reached Evansville, and were never delivered to the company within the terms of the contract sued on, there is no liability at all.

II. But if the court should hold the bill of lading to be a contract to carry from Columbus to Boston, then clearly the whole contract with all its conditions and stipulations is also extended to the whole distance.

The exemption, which is declared in the most general terms, "The Evansville and Crawfordsville Railroad Company will not be liable for loss by fire for any cause whatever," is surely as broad as the obligation to carry. It is almost equivalent in words to saying that the company will not be liable for loss by fire wherever occurring.

This declaration is made the subject of a new and isolated paragraph, displayed, by red ink, as a prominent and pervading feature of the contract.

As confessedly the loss occurred without the fault of the company, it is under the exemption not liable.

This company, it is obvious, was seized and pervaded by a sense of peril from fire. We have no less than three provisions in about as many lines, against liability for loss by it. Can it be supposed that the company meant to say that if a fire occurred on the first part of the route they would pay the loss with pleasure, but that if it occurred on the second they would not pay it at all?

Argument for the owner of the goods.

Mr. Charles Denby, contra:

The opposing counsel admits the *receipt* by the company's agent of the cotton at Columbus, Mississippi, and the position is that there was no contract to carry from Columbus to Evansville at all, but only to carry from Evansville to Boston. Hence, that there can be no liability for the loss between Columbus and Evansville. But what was the company to do with the cotton after receiving it unless to carry it? keep it forever at Columbus?

Having received the cotton at Columbus it was the plain duty of the company to deliver it in Boston. The plaintiff had lost all power or control over it, and it being exclusively in the hands of the company *it* must be responsible for its safe delivery at Boston via Evansville, where the company had agreed to receive and to forward it, upon the restricted terms of the bill of lading as applied to that portion of the route from Evansville to Boston.

Flanders, in his authoritative work on Shipping,* considers this exact case. He says:

"The responsibility attaches from the moment of the receipt. . . . Contracts to forward goods from one place to another and distant place, subject the party as common carrier for the whole route, although his own transportation line extends only part of the distance, and the loss occurs on a portion of the route in which he is not interested."

It is quite plain, however, in looking at the bill of lading, that the *exemptions* do have a special reference to the transit from Evansville to Boston; and so plain is this, that the other side is actually led into the position that unless and until the cotton got to Evansville, there was not even a contract to carry at all.

Anybody looking at the bill of lading will see that while in general there is a contract to carry all the way through from Columbus to Boston, the exemptions—the earlier ones confessedly—have an exclusive reference to carriage between Evansville, where the company's road begins, and

* Section 311.

Boston. That is a matter to be decided by "inspection." "Upon arrival at Evansville and delivery of the property" *there*, it is that the company will receive and forward it upon "the *following* conditions." Does not the condition in red ink follow, and follow without a word interposited to show that it does not come into operation until "upon arrival and delivery at Evansville, and delivery of the property." What has red ink or a new paragraph—devices of the printer merely—got to do with the legal interpretation of a contract? Either may make the exemption more conspicuous, but neither can make it apply to that which it would not have applied to, had it been in black ink or without the paragraph. The exemption is sensible enough as it stands. The bill makes three exemptions about fire:

1. "*Damage* OR *loss* by fire while in depots or places of transhipment."

2. "Damage or delays by *unavoidable accident;* also *loss* by fire; *i. e.*, loss by fire arising by unavoidable accident, or else, perhaps, loss by fire whether occurring in depots, &c., or not."

3. "Loss or damage from *any cause whatever.*"

We have here a progressive series of exemptions. The first two have confessedly reference to the transit between Evansville and Boston. Why shall the third not have the same? The third only extends what the first two less fully provide for. It may attempt to extend the exemption to an unlawful degree in attempting to exempt "from loss or damage by fire *from any cause whatever.*" But the question here is not about the lawfulness of it, but as to what it applies.

We admit that the exemptions, meant to be secured by the bill, are confusedly stated. But there is less difficulty in interpreting them as we would interpret them, than in the way in which the other side would interpret them. If you would apply the red-letter exemption to the whole transit, of what effect are the two exemptions confessedly confined to the partial transit between Evansville and Boston?

If you confine it to the transit between Columbus and Evansville, then you give, for that part of the road, an exemption *greater* than that for the other; that other which it is plain from other provisions was the part more particularly meant to be guarded. The construction is, perhaps, one of a balance of difficulties. The difficulties of the construction sought to be set up by the other side are more weighty than those of the one sought to be maintained by us.

Mr. Justice HUNT delivered the opinion of the court.

Had the bill of lading contained nothing more than the terms and clauses in the part of it which is before the red-letter clause, the argument made in behalf of the Androscoggin Mills would be a strong one. We must, however, examine the whole contract, and construe and give effect to all its provisions.

This bill of lading, in the first place, is a contract covering the cotton during the entire period of its transmission from Columbus to Boston, and over every part of the route. Not only is this the general law of the bill of lading, from the fact that Columbus was the place of receiving, and Boston the place of delivering, the cotton, but this bill of lading is emphatic in its declaration that such is its character. It is headed, "Great through fast route to all points north and east," &c. It says: "This reliable through line makes the shipment of cotton and tobacco a specialty;" "contract for a through rate;" and again, "Through rate $10.25 per bale from Columbus to Boston." It is evident, therefore, that the cotton is the subject of the contract of carriage not only from Evansville to Boston, to which the plaintiffs in error would confine it, but from Columbus to Evansville as well.

Bearing this in mind, it will be observed in the second place, that the contract separates itself into two parts—one, limiting the liability of the railroad company from Evansville to Boston, the other governing its liability generally. Thus the portion already referred to as relied upon by the defendants in error, undoubtedly was intended to be limited in its range. The liability under it and the exemption also,

is expressly made dependent on the arrival of the goods at Evansville, and until they have so arrived, neither the liability nor the exemption commences. We can, however, be asked to hold that the liability or the exemption on a portion of the route is entirely omitted from the terms of a bill of lading which provides for transportation over the whole route, and where the compensation is specified as covering the whole route, only where it so appears by the plainest language. No doubt terms might be used in a bill of lading for the transportation of cotton from Mississippi to Massachusetts, by which exemptions from liability for loss by fire while in a railroad car from Evansville northward should be made, and no such exemptions should be made while the cotton was on the deck of a steamboat. We should not, however, expect to find such provisions, and we should require them to be clearly expressed.

All of the first general paragraph of the bill of lading may fairly be said to relate to the conditions upon which the transportation from Evansville northward shall be made. In its general terms we have already considered that paragraph.

A new subject, however, is taken up in the next sentence. It is not only the beginning of another paragraph, with the usual space between it and what precedes it, but it is printed in red ink, while what precedes it is in ordinary black type. Its importance in the opinion of the shippers is thus manifested. Attention is called to it as involving important provisions. Dropping the reference to Evansville, and the arrival of the goods there, it uses the most general terms: "*The Evansville and Crawfordsville Railroad Company will not be liable for loss or damage by fire, from any cause whatever.*" It is an evident addition to the contract as expressed in the first clause. The railroad company there define the terms and conditions upon which they will be liable after the property has reached Evansville. While on the passage from Evansville northward, non-liability for loss by fire is twice stipulated for,—once while in depots or places of transhipments, and again in general terms,—the evident object and

intent of the first clause is to affect this part of the route only. A new branch of the contract is then taken up, and the difference is intended to be made plain to the eye as well as the understanding. In the red-ink clause they use terms applicable to the entire contract of shipment, viz.: They "will not be liable for loss or damage by fire, from any cause whatever." No language of limitation is used. It is as if they had said, "Should damage by fire occur to this cotton during any part of the route, and from any cause whatever, this company will not be liable."

It is quite unreasonable to suppose that the company here intended to guard themselves against a liability for which they had twice already stipulated that they should not be *liable*, to wit, of loss by fire after the cotton had reached Evansville. The clause in red was intended to cover the whole contract. Wherever, whenever, or however they would by law be liable for a loss by fire, from that liability they intended to relieve themselves. The exemption was intended to be as broad as was the original liability.

A careful reading of the bill of lading shows that the red-ink clause not only, but all that follows it, must have been understood by the parties to cover the whole route, and not to be limited to a part of the distance only. Thus, after providing an exemption from liability for loss by fire from any cause whatever, the bill of lading goes on to say, "All property shipped on this contract will be subject to the expense of necessary repairs and remarking." Can it be doubted that if the sacks of this cotton had required repairing or remarking from causes occurring before it reached Evansville, that it would have been a proper item of expense under this clause? "In the event of loss or damage under the provisions of this agreement (it proceeds) the value or cost at the point of shipment shall govern the settlement of the same." No one can doubt that the value at Columbus will govern the amount of a recovery under this clause. And again, the clause, "Said property to be forwarded immediately after its arrival at Evansville, . . . and to be delivered at Boston upon the payment of freight and charges,"

is, by its very terms, applicable to goods not yet at Evansville, when the contract takes effect.

We are of opinion that the argument of the defendants in error, upon which the judgment below was based, that the exemption from liability by fire was limited to fire occurring after the cotton had been received at and shipped from Evansville, was erroneous. The exemption covers the entire route.

JUDGMENT REVERSED, and judgment upon the demurrer ordered in favor of

THE PLAINTIFFS IN ERROR.

BAILEY *v.* RAILROAD COMPANY.

1. In December, 1868, a railroad company, which was in existence in 1862, and before, but which by its charter was limited to 10 per cent. dividends on its capital, now all taken, reciting that it had "hitherto expended of its earnings for the purpose of constructing and equipping its road, and in the purchase of real estate and other properties with a view to the increase of its traffic, moneys equal to 80 per cent. of its capital," and reciting further that the stockholders were "entitled to evidence of such expenditure and to reimbursement of the same at some convenient future period," resolved to give them and did give them in proportion to the amount of stock held by them respectively, certificates which it called "interest certificates;" which certified that A. B. "being the holder of —— shares of the capital stock of the company, was entitled to $——, payable ratably with the other like certificates, *at the pleasure* of the company out of its future earnings, with dividends thereon at the same rates and times as dividends should be paid upon the capital stock of the company." The "certificate" was declared to be transferable on the books of the company, and had a transfer in blank at the foot of it, in the form common at the foot of certificates of stock, with an appointment in blank of an attorney to transfer.

Held, that this was a "dividend in scrip," within the twenty-second section of the Internal Revenue Act of June 30th, 1864, as subsequently amended, which enacts that "any railroad company which may have declared any *dividend in scrip* or money due or payable to its stockholders as part of the earnings, profits, income, or gains of such company, carried to the account of any fund, or used for construction, shall be subject to and pay a tax of five per centum on the amount of such