case which puts the duty of a bailee of this kind higher than this, that he is bound to take the same care of the property entrusted to him as a reasonably prudent and careful man may fairly be expected to take of his own property of the like description. This was, in effect the question left to the jury in *Doorman* v. *Jenkins* (2 A. & E. 256), where Lord Denman told them that "it did not follow from the defendant's having lost his own money at the same time as the plaintiff's that he had take such care of the plaintiff's money as a reasonable man would ordinarily take of his own, and that the fact relied upon was no answer to the action if they believed that the loss occurred from gross negligence." No one can fairly say that the means employed for the protection of the property of the bank and of the plaintiff were not such as any reasonable man might properly have considered amply sufficient. But the appellant's counsel insisted that the fact appearing for the first time in the defendant's case, that the bank, after Fletcher had abused the confidence reposed in him, had introduced additional precautions to prevent the recurrence of a similar act of dishonesty, amounted to an admission that their former safeguards were not such as prudent men ought to have been satisfied with. This argument goes the length of contending that if a gratuitous depositary does not multiply his precautions, so as not to omit anything which can make the loss of property entrusted to him next to impossible, he is guilty of gross negligence. Their Lordships are clearly of opinion that the plaintiff failed upon his own evidence to prove a case of negligence against the bank, and that the evidence produced by the defendant showed more strongly the absence of any such negligence for which they would have been liable. They will, therefore, recommend to Her Majesty that the judgment appealed from be affirmed, and the appeal dismissed with costs.

Appeal dismissed.

COURT OF EXCHEQUER.

Hart v. The Lancashire and Yorkshire Railway Company.

Railway company—Accident by collision—Driver of engine seized with a fit—Pointsman turning engine on to branch line to avoid collision with express train on main line—Collision on branch line—Alteration of siding points subsequently to accident—Evidence of negligence—Number of men on engine—Liability of railway company—Subsequent alteration of rails no evidence of previous negligence.

At the Miles Platting station on the defendants' main line of railway, a few miles from Manchester, there were sidings leading from the main line of rails to coaling and engine sheds, the points of which sidings were always open on to the main line. On the day in question, an engine had, in accordance with the usual practice, been taken by the servant of the company appointed for that purpose to the coaling shed and been coaled, and was returning slowly therefrom on its way to the engine shed. In the ordinary course of things, the engine would have gone along the siding until it had passed the points of the siding leading to the engine shed, when it would have been reversed and backed over them into that shed; but at the moment that the man in charge of the engine should have reversed its action, he fell down in a fit on the foot-board of the engine, which consequently proceeded on towards the main line. At this same time a down express train from Manchester, and an up express train from Rochdale were approaching the station at full speed, and the pointsman in charge of the points at the spot seeing the runaway engine, with the man lying on the floor approaching, in order to prevent its getting on to the main line, and coming into collision with either of these express trains, deliberately, as a choice of evils, turned the points so as to send it on to a branch line of railway from Ashton, which formed a junction at this station with the main line, at the platform of which branch line he knew that a train was stopping for tickets to be collected. The consequence was, that the engine ran into the stationary branch train, and the plaintiff, a second class passenger in one of the carriages of that train, received bodily injuries from the collision, for which he sued the company for compensation, on the ground of negligence, first, in not having two men on the engine while coaling, and running it from the coaling to the engine shed; and secondly, in having the points of the sidings so arranged that the engine must necessarily, in case of accident to the driver, pass on to the main line; and the fact of an alteration having since this accident been made, so that a runaway engine would pass on to a supplementary siding leading up to a "dead end," was urged as evidence of their previous negligence in this respect; it being admitted, on all hands, that the pointsman had acted with great presence of mind, and for the best under the circumstances.

A verdict with damages was found for the plaintiff, but upon a rule for a new trial on the ground that there was no evidence of negligence in the defendants fixing them with liability, it was

Held, by the Court of Exchequer (Kelly, C.B., and Bramwell, Channell, and Cleasby, BB.), making the rule absolute, that there was no evidence of negligence in the defendants on which the verdict could be supported. First, there being nothing dangerous or attended with peculiar risk in the operation of coaling the engines, and running them to and from the coaling and engine sheds, and it being an operation usually well performed by one man, the not employing two men to perform it was not negligence in the defendants. Secondly, the arrangement of the sidings having been used for twenty years without accident, the defendants could not be held bound to have foreseen the accident, or be held responsible for it upon its happening, nor was the subsequent alteration of the siding rails evidence of antecedent negligence on their part in that respect.

[21 L. T. Rep., N. S., 261.]

This was an action brought by the plaintiff to recover from the defendants damages in compensation for bodily injuries received by him through the negligence of the defendants whilst the plaintiff was travelling as a passenger upon their line of railway from Ashton to Manchester.

At the trial before Brett, J., and a common jury, at Liverpool, at the last spring assizes, the following appeared to be the facts of the case:—At the Miles Platting Station, on the defendants' main line of railway, a few miles from Manchester, where the accident happened, there is a junction, at which a branch line of railway leads off to Ashton, the main line running on in a straight line to Rochdale. About 400 or 500 yards from the junction, and on the Manchester side of the station, there is a siding running from a point of the main line to an engine shed, and at about 200 or 300 yards from the said point there is also a branch siding to a coaling shed. A few yards from this same point there is a signal and pointsman's box, at which the pointsman works the points, which are open towards Rochdale, so that an engine running from the siding on to the main line would, unless the points were turned, go on to the up line leading from Rochdale to Manchester; there are also points further on, on the main Rochdale line, by which a train or engine can be turned from the up to the down line, and there is communication between the signal boxes at the various points. The traffic at the station is very great, upwards of 200 passenger trains, besides goods trains, passing the station daily.