to contract and be contracted with, to sue and be sued, as if *sole*. *Clark* v. *Valentino*, 41 Ga., 143. See also as supporting the same view, the following cases: *Rhea* v. *Rhermer*, 1 Peters, 105; *Cornwall* v. *Hoyt.*, 7 Conn., 427; *Arthur* v. *Broadnax*, 3 Ala., 557; *Jones* v. *Stewart*, 9 Ala., 855; *Roland* v. *Logan*, 18 Ala., 307; *Rose* v. *Bates*, 12 Mo., 47; *Starrett* v. *Wynn*, 17 Serg. & Rawle, 130; *Bean* v. *Morgan*, 4 McCord, 148; *Valentine* v. *Ford*, 2 P. A. Brown, 193.

It would seem to follow, by reasonable analogy, that where a married woman is, for any such reason, liable to be sued as if *sole*, at least in an action at law, she may, if otherwise amenable to the provisions of the bankrupt act, be proceeded against thereunder. Accordingly it was held in England in *ex parte* Franks, 7 Bing., 762, that the wife of a convict sentenced to transportation was liable to be made a bankrupt, she having become a trader, although her husband had not been sent out of England. The sentence of transportation against her husband rendered her liable to suit generally; and the fact that she had become a trader brought her within the provisions of the English bankrupt law.—*Editor of Central Law Journal.*

SUPREME COURT OF PENNSYLVANIA.

John Scott et al. v. The National Bank of Chester Valley.

Bank—Bailment—Negligence.

The plaintiffs below, who keep an account with the defendant, made a special deposit of certain bonds for safe keeping, paying nothing for the privilege; the bonds were stolen by the teller, who had always borne a good character.

Held, 1. That the bank was a gratuitous bailee, and as such not liable, except for gross negligence.

2. That neither the fact, that the bank might have discovered that the teller was dishonest, by a more frequent or accurate examination of his accounts, nor that he was allowed to keep the "individual ledger," which was the only book which was a check upon him, nor that he was not dismissed, when it was discovered that he had made a successful speculation in stocks, was such negligence as to render the bank liable.

3. That nothing short of knowledge or reasonable grounds of suspicion by the bank, that the teller was unfit to be appointed or retained, would render it liable: *Foster* v. *Essex Bank*, 17 Mass., 478, approved and followed; *Lancaster Bank* v. *Smith*, 12 P. F. S. (62 Penna. Stat.), 47, remarked on.

[Feb. 16, 1874.]

Error to the Court of Common Pleas of Chester County.

Agnew, C. J.—As early as the case of *Tompkins* v. *Saltmarsh*, 14 S. & R., 275, it was decided that a delivery of a package of money to a gratuitous bailee, to be carried to a distant place and delivered to another for the benefit of the bailor, imposes no liability upon the bailee for its safe keeping, except for gross negligence. In that case, the package was stolen from the valise of the bailee, at an inn in the course of his journey, after it had been carried to his room, in the usual custom of inns in that day (1822). The same rule is laid down by Justice Coulter, *arguendo*, in *Lloyd* v. *West Branch Bank*. He says, a mere depository, without any special undertaking, and without reward, is answerable for the loss of the goods only in case of gross negligence, which in its effects on contracts, is equivalent to fraud. He further remarks, that the accommodation here was to the bailor, and to him alone, and he ought to be the loser, unless he in whom he confided, the bank or cashier, had been guilty of bad faith in exposing the goods to hazards to which they would not expose their own. These rules he derives from *Coggs* v. *Bernard*, 2 Lord Raymond, 909 (1 Smith's Lead. Ca., Part I., 369, ed. 1872); and *Foster* v. *Essex Bank*, 17 Mass., 501. In the latter case, the law of bailment was exhaustively discussed by Parker, C. J., and the conclusions were as above stated. It was further held that the degree of care which is necessary to avoid the imputation of bad faith, is measured by the carefulness which the bailee uses towards his own property of a similar kind. When such care is exercised, the bailee is not answerable for a larceny of the goods, by the theft even of an officer of the bank. It is further said, that from such special bailments, even of money in packages, for safe keeping, no consideration can be implied. The bank cannot use the deposits in its business; and no such profit or credit from the holding of the money can arise as will convert the bank into a bailee for hire or reward of any kind. The bailment in such case is purely gratuitous, and for the benefit of the bailor, and no loss can be cast upon the bank for a larceny, unless there have been gross negligence in taking care of the deposit. These appear to be just conclusions, drawn from the nature of the bailment. The rule in this State is stated by Thompson, C. J., in *Lancaster Bank* v. *Smith*, 12 P. F. Smith, 54. He says, "The case on hand was a voluntary bailment, or, more accurately speaking, a bailment without compensation, in which the rule of liability for loss is usually stated to arise on proof of gross negligence." That case went to the jury on the question of ordinary care, and hence the observation of the Chief Justice, that the same idea was sufficiently expressed by the judge below in using the words, want of ordinary care. It may be proper, however, to say, that want of ordinary care is applicable to bailees with reward, when the loss arises from causes not within the duty imposed by the contract of safe-keeping, as from fire, theft, &c., and hence is not the measure in such a case as that before us, which we have seen is gross negligence.