plaintiff's box with the debentures was placed, not only of the boxes of other customers, but also of the before-mentioned valuable property belonging to the bank; the good character of Fletcher, and his leaving the bank in the end of the month of July, 1864; and that after Fletcher left, but before the loss of the plaintiff's debentures was discovered, a rule was made in the bank that two clerks instead of one (as formerly) shou'd go with a customer wishing to examine his box in the strong room. The jury found a verdict for the plaintiff upon an issue as to the delivery of the debentures to be kept by the bank without reward, and also upon the plea of not guilty (which raised the question of negligence). and they assessed the damages at £10,450. The defendant, upon the leave reserved at the trial, moved for and obtained a rule from the Supreme Court to set aside the verdict and to enter a verdict for the defendant, or a judgment of nonsuit That rule was afterward made absolute, the Chief Justice stating that "in the opinion of the court the defendant was entitled to a verdict, but that as at the trial, when leave to enter a verdict was reserved, there was an understanding that the rule if absolute, should be for a nonsuit, and not to enter a verdict, the rule would be absolute accordingly." In the argument of the appeal the counsel for the appellant, admitting that the bank were gratuitous bailees, and therefore not responsible except fer the highest degree of negligence usually styled "gross negligence," insisted that it was a question of fact for the jury whether the bank had been guilty of this species of negligence, and that the judge would not have been justified at the close of the plaintiff's case in withdrawing the question from the jury and directing a nonsuit, and that after the defendant's case had been gone into, and the jury had pronounced a verdict upon all the evidence upon both sides, it was not competent to the court to give a judgment of nonsuit or to do more than to direct a new trial upon the question of negligence. The learned counsel contended that the bank had been guilty of negligence, because there being two iron doors with protecting locks to the strong room where the plaintiff's debentures were, the cashier was permitted to keep both keys. And they urged that the bank by their own act admitted that they had not been sufficiently careful, as after Fletcher left, they made a rule that two clerks should always accompany the customers to the strong room instead of only one, as had previously been the practice. The first question to be considered is, whether the Supreme Court was right in directing a nonsuit to be entered. It was the duty of the court to do what the judge ought to have done at the trial; and if, at the close of the plaintiff's case, there was not evidence upon which the jury could reasonably and properly find a verdict for him, the judge ought to have directed a nonsuit. Formerly it used to be held, that if there were what was called a scintilla of evidence in support of a case, the judge was bound to leave it to the jury. But a course of recent decisions (most of which are referred to in the case of *Ryder* v. *Wombwell*, L. Rep. 4 Ex. 32; 19 L. T. Rep. N. S. 491), has established a more reasonable rule,—viz., that in every case before the evidence is left to the jury, there is a preliminary question for the judge, not whether there is literally no evidence, but whether there is any upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the onus of proof is imposed. If, therefore, the plaintiff's evidence in this case was such that the judge ought to have considered that it fell short of proving the bank to have been guilty of that species of negligence which would render them liable to an action, he ought to have withdrawn the case from the jury, and directed a nonsuit. But the appellant's counsel insisted that, as the defendant at the trial did not rest upon his objecttion to the sufficiency of the plaintiff's case, but went into evidence of his own, he did it at his peril; and that if he pr ved any facts which were favorable to the plaintiff, they might be used in answer to the application to the court for a nonsuit, upon the leave reserved at the close of the plaintiff's case. It is unnecessary to determine whether this position is correct or not, because the counsel for the respondent agreed that the appellant's counsel might be at liberty to use in argument any facts which they could extract from the defendant's evidence in support of their case. But it may be convenient to see how the plaintiff's case stood upon his own evidence, before considering whether it was at all improved by any facts obtained from the defendant's witnesses. Did the plaintiff, then, give any evidence of the bank having been guilty of that degree of negligence which renders a gratuitous bailee liable for the loss of property deposited with him? From the the time of Lord Holt's celebrated judgment in *Coggs* v. *Bernard*, 1 Sm. L. Ca. 177, 5th edit., in which he classified and distinguished the different degrees of negligence for which the different kinds of bailees are answerable, the negligence which must be established against a gratuitous bailee has been called "gross negligence." This term has been used from that period, without objection, as a short and convenient mode of describing the degree of responsibility which attaches upon a bailee of this class. At last, Lord Cranworth (then Baron Rolfe). in the case of *Wilson* v. *Brett*, 11 M. & W. 113 objected to it, saying that he "could see no difference between negligence and gross negligence; that it was the same thing, with the addition of a vituperative epithet." And this critical observation has been since approved of by other eminent judges. Of course, if intended as a definition, the expression, "gross negligence," wholly fails of its object. But as there is a practical difference between the degrees of negligence for which different classes of bailees are responsible, the term may be usefully retained as descriptive of that difference, more especially as it has been so long in familiar use, and has been sanctioned by such high authority as Lord Holt and Sir William Jones in his Essay on the Law of Bailments. In the case of *Grill* v. *General Iron Screw Collier Company*, L. Rep. 1 C. P. 612; 14 L. T. Rep. N. S. 715, Willes, J., after agreeing with the dictum of Lord Cranworth, and stating that the same view of the term "gross negligence" was held by the Exchequer Chamber in *Beal* v. *The South Devon Railway Company*, 3 H. & C. 337; 11 L T. Rep. N. S. 184, said: "Confusion has arisen from