

LIABILITY OF GRATUITOUS BAILEES—SPECIAL PLEADERS.

difference." This undoubtedly implies that gratuitous bailees are, as such, under a liability different from that of paid bailees. The meaning of "gross negligence" is then discussed, and the conclusion arrived at is that "the epithet 'gross' is certainly not without its significance;" but that significance is nowhere explained, and, indeed, as far as we can gather any meaning from this part of the judgment, it seems that the duty of a bailee (whether paid or not) cannot be defined; but he must wait until an action for negligence is brought against him, and he will then find out from the direction of the judge and the verdict of the jury what amount of care he ought to have exercised. Having arrived at this conclusion as to the state of the English law, the judgment comes to the point of the case, and decides "that the bank were not bound to more than ordinary care of the deposit entrusted to them, and that the negligence for which alone they could be made liable would have been the want of that ordinary diligence which men of common prudence generally exercise about their own affairs."

No fault can be found with the law thus stated, as it is well supported by authority: but this decision, that "the banker was not bound to use more than ordinary care," would have been equally applicable if the banker had been paid for the deposit. There is ample authority to show that this would have been the correct and indeed the only proper direction of a jury in the case of a paid bailee. It follows, therefore, that, by the decision of *Giblin v. M'Mullen*, the liability of an unpaid bailee is the same as that of a paid bailee.

This decision, taken with the remarks which precede it, creates this curious contradiction on the face of the judgment. First, it is stated that there is, as a matter of law, a distinction between the liability of paid and unpaid bailees; secondly, that the bank were unpaid bailees; and, thirdly, that the liability of the bank is precisely the same as if they had been paid for the deposit. This is no exaggeration of the result of this judgment. The whole course of reasoning in the judgment, and the principles there recognized, lead logically to a decision the very reverse of that which was arrived at.

Giblin v. M'Mullen is therefore right in its result, but that result is arrived at in a most extraordinary manner. The whole framework of the judgment, the *dicta* that are scattered through it, and the grounds of the decision, resemble the hasty remarks that sometimes fall from a wearied judge at a *Nisi Prius* trial when there is no time for argument rather than the deliberate decision of an ultimate Court of appeal whose decision is final and binding upon inferior courts. The case can hardly fail to cause confusion in the law, as the principles recognized in the judgment revive an old and mischievous legal error, the authority for which has for some time been considered as overruled, and those who dis-

approve of case law are furnished with an excellent illustration of the careless way in which that law is sometimes made.—*Solicitors' Journal*.

SPECIAL PLEADERS.

We must confess that the decay and possible extinction of the noble race of special pleaders has always been to us a subject of peculiar interest. In the time of special demurrers and replications *de injuriâ*, and when it was rather more important to understand the distinction between trespass and case than it is at present, no one can wonder that pleaders were plentiful. But it is not perhaps so well known that nearly every one who in those days hoped to make his mark as a sound lawyer began practice as a pleader, and put off joining circuit until he had secured a fair number of clients. It is hardly necessary to remind any one that the Bench whose decisions were reported by Barnewall and Alderson consisted entirely of pleaders of renown, and that at a later period Patteson, Wightman, Crompton, and Hill sat in the same Court, after spending a great part of their professional lives below the bar. Moreover, two illustrious advocates, Lord Ellenborough and Lord Lyndhurst, thought a few years of a pleader's life a good introduction to the profession. No one need be reminded that all this is now changed. The Law List tells us that there are not more than sixteen or seventeen gentlemen who have certificates to practise as special pleaders 'not at the Bar,' and with the exception of the present Chief Justice of the Common Pleas and Baron Bramwell, we believe that all our present judges made their way to the bar in the ordinary course.

Of those who remain below the Bar a large proportion are in very good practice. Any one who attends a summons at Judges' Chambers is pretty sure to see some of the learned gentlemen pacing the flagstones surrounding Rolls Garden, and their chambers are crowded with pupils. If we ask why the number of pleaders has become less, we are told that it was the Common Law Procedure Act which did it. This statute introduced pleading for the million, and it was no longer worth anybody's while to cultivate the science. A pupil fresh in chambers will hardly be satisfied with this reason. He sees the table of his preceptor piled with papers, including not only instructions for pleadings but instructions to draw up all sorts of documents and cases for opinion of infinite variety. During the assize time the pressure is tremendous. Pleader, pupils, and clerk are at work upon draft and foolscap from morning till night. There are conferences, a stream of questions on points of practice, and constant rushes to the Judges' Chambers. Who can describe the amount of experience which a pleader must acquire? His fees may be small, but the questions submitted to him are most carefully considered, and require a thorough insight into every