evidence submitted to the jury in order to establish negligence is sufficient and proper to go to them." [Lord Chelmsford referred to *Ryder* v. *Wombwell,* L. Rep. 4 Ex. 32; 19 L. T. Rep. N. S. 491.]

Jos. Brown, Q C., (*Murray* and *J. D. Wood* with him), on the same side.—It is admitted that plaintiff's box had the same care as other customers' property, and as the property of the bank. The appellants are in fact urging that we ought to have taken special care of plaintiff's property. Even in the case of a bailment of goods to be kept for hire, it was held by Lord Kenyon, in *Finucane* v *Small*, 1 Esp. 314, that positive negligence must be proved, and that if "the goods were lodged in a place of security, where things of much greater value were kept, this is all that it was incumbent on the defendant to do; and if such goods are stolen by the defendant's own servant, that is not a species of negligence of a description sufficient to support this action, inasmuch as he has taken as much care of them as of his own:" (See, too, Story on Bailments, ss 63, 65, 66, 67. 71-3, 75-9.) *Doorman* v. *Jenkins* (*ubi sup*), differs from the present case, for there the plaintiff did not get the care he expected, which here he did And it would not fix the bank with liability to show that there were some additional precautions which they might have adopted, for as said by Montague Smith, J., in *Crafter* v. *The Metropolitan Railway Company*, 1 L. Rep. C. P. 304, "the line must be drawn in these cases between suggestions of possible precautions and evidence of actual negligence, such as ought reasonably and properly to be left to a jury."

Watkin Williams replied.

Judgment was delivered by Lord Chelmsford:—This is an appeal from a judgment of nonsuit of the Supreme Court of the colony of Victoria in an action by the appellant's testator against the respondent The action was brought against the defendant as inspector of the Union Bank of Australia, to recover damages for the negligent keeping of certain railway debentures delivered to the bank to be safely kept and taken care of. The plaintiff, who resided at Hobart Town, in Tasmania, had an account with the Union Bank of Australia from the year 1857. From the earliest period of his becoming a customer of the bank, he had placed in their care a box, of which he kept the key, containing securities, deeds and debentures. The bank received no consideration for taking care of the deposits of their customers. In the month of January, 1862, the plaintiff purchased the railway debentures in question and put them in his box. The box appears always to have been kept in a strong room underground, in which the boxes of other customers of the bank were placed. There were also in this strong room the manager's box, containing bills for discount and collection, worth from £1,500,000 to £2,500,000, teller's boxes, worth £50,000, and securities of the Royal, Central, and Agra Banks, in which the Union Bank was interested. The access to this room could only be obtained by passing through a compartment of the office which was separated from the part where the clerks were employed by a partition about five feet high. In this compartment Fletcher, the cashier, always sat during bank hours, and a messenger slept there during the night. There was a wooden door in this compartment which opened upon a fight of steps leading to the room where the plaintiff's box was deposited. This room had two iron doors, which were opened by separate keys. Fletcher always kept the key of the wooden door, and also, during the day, the keys of the two iron doors, but at the time the debentures in question were placed in the box one of the keys of the iron doors only was kept by him at night, the other being taken care of by another officer of the bank. Beyond the room where the box was there were two other rooms; in the outer of the two uncoined gold was kept, in the inner, bullion, and unsigned notes of the bank. The manager kept the key of the outer of these two rooms, and one of the directors of the bank that of the inner one. The plaintiff had frequent opportunities of seeing how and where his box with the debentures was kept. The customers were permitted to have access to their boxes during the bank hours, but always in the presence of a bank clerk. The plaintiff occasionally went down to the strong room to take the coupons from his debentures for collection, but generally the box was brought up to him. The coupons when taken from the debentures were always given by the plaintiff to Fletcher to collect for him. On the 19th April, 1864, the plaintiff went to the bank and asked for his box. Fletcher brought it to him. The plaintiff opened the box, took out his debentures, and carried them away. He then cut off the coupons, took back the debentures, replaced them in the box, locked it, and gave the coupons to Fletcher to collect for him as usual. Before the plaintiff's next visit to the bank, Fletcher had abstracted the debentures. The exact time at which this act of dishonesty was committed cannot be ascertained, but it must have been before the month of July, 1864, as Fletcher then left the bank on leave of absence and never returned. Up to the time of his leaving he had always maintained a good character. The plaintiff did not come again to the bank till the 3rd July, 1865. He then went into the strong room and took out of his box some gas shares. On the following day he returned to the bank and had his box brought up to him, when he discovered that the debentures were gone. All the material facts above stated were proved in the course of the plaintiff's case; that the bank were gratuitous bailees; that the plaintiff had known for years the manner in which the bank kept the property of their customers deposited with them, and the means which they employed for its protection, and that the debentures were dishonestly taken away by Fletcher At the close of the plaintiff's case, the counsel for the defendant applied for a nonsuit on the ground that the bank being gratuitous bailees no evidence had been given of such negligence as would render them liable for the loss of the debentures. The judge refused to stop the case, but reserved leave to the defendant to move to enter a nonsuit. The defendant thereupon went into his case and called witnesses. The only material additions which he made to the facts proved by the plaintiff's witnesses were the keeping in the strong room in which the