Lord Hatherley, affirming the Master of the Rolls, held that the mortgagee must pay his principal a second time or be foreclosed. The first payment was held to have been in his own wrong, because he made it to a person who was not authorised to receive it; if he had gone with his money to his original mortgagee, the original mortgagee would have said, "The mortgage is transferred," and passed him on to the transferee, and so the payment would have got into the right hands. But if the original mortgagee had played the knave and pocketed the money, the fault would have been the transferee's, for not giving to the mortgagor notice of his having taken the transfer.

The case was a particularly hard one upon the mortgagor, because, receiving back his deeds, his mortgage, with a re conveyance, he had everything to assure him that the mortgage was extinguished. Yet the decision is unimpeachable. If, when the mortgage was created, the mortgagor had from the mortgagee been given to understand that the solicitor had authority to receive principal as well as interest, here, we imagine, the transferee, not having given notice, would have been bound by this arrangement, and the payment made would have been good as against him. The moral of the case is—that mortgagors should, unless they have a special authority, take care, in paying off their mortgages, to pay direct to the mortgagor, and not to the solicitor through whom the advance was effected.—*Solicitors' Journal.*

BANKERS AS GRATUITOUS BAILEES.

Since the days of Chief Justice Holt the subject of bailments has probably never been so elaborately dealt with as in the case of *Giblin* v. *McMullen*, in the Privy Council*, a most important case as affecting the relationship between bankers and their customers.

The facts were, that a customer of the Union Bank of Australia entrusted to it certain railway debentures. These debentures were placed in the ordinary depository, but they were extracted by a dishonest cashier, and converted to his own purposes. The jury, at the trial found a verdict against the bankers for the full value of the securities. A rule was made absolute to set aside the verdict, and from this decision of the colonial court, an appeal was made to the Privy Council which upheld the decision.

The bankers being gratuitous bailees, the question really turned on the meaning to be given to the term "gross negligence." It was contended by the Solicitor-General on behalf of the appellant that the question of negligence being one of fact, had been properly left to the jury, whose finding ought not to be disturbed. The negligence alleged against the bank was in allowing the cashier access alone to the strong room, and in not employing an honest person as cashier, and it was contended that although the individual had been long in the employ of the bank, the fact that a gentleman from England had called on the manager and told him that he had expected to receive money from the cashier, and had not received it, was such a notification as ought to have put the bank on its guard, and consequently that they were guilty of gross negligence in the keeping of the securities.

On the other hand, it was argued that if the question whether bankers have taken proper care of the securities of their customers is to be left to the jury, no banker would accept such a liability without reward, and that the negligence to make the respondents liable must be wilful negligence, which would be near to fraud. We will first see what the Privy Council say as to gross negligence. Upon this the dictum of Lord Cranworth in *Bond* v. *The South Devon Railway Company*, 11 L. T. Rep. N. S. 184, and the judgment of Willes, J., approving of that dictum in *Grill General Iron Screw Collier Company*, 14 L. T. Rep. N. S. 715, were adopted. Willes, J., said: "Confusion has arisen from regarding negligence as a positive instead of a negative word. It is really the absence of such care as it was the duty of the defendant to use." Crompton, J., in delivering the opinion of the court said: "It is said that there may be difficulty in defining what gross negligence is, but I agree in the remark of the Lord Chief Baron in the court below, where he says, 'There is a certain degree of negligence to which every one attaches great blame. It is a mistake to suppose that things are not different because a strict line of demarcation cannot be drawn between them;'" and he added, "for all practical purposes the rule may be stated to be, that the failure to exercise reasonable care, skill and diligence, is gross negligence." M. Smith, J., in the case in which the above-mentioned observations of Willes, J., were made, said: "The use of the term gross negligence is only one way of stating that less care is required in some cases than in others, as in the case of gratuitous bailees, and it is more correct and scientific to define the degrees of care than the degrees of negligence." Commenting on this case, Lord Chelmsford said: "It is hardly correct to say that the Court of Exchequer Chamber in the case referred to adopted the view of Lord Cranworth as to the impropriety of the term "gross negligence;" and the judgment of the Privy Council proceeds:—The "epithet 'gross,' is certainly not without its significance. The negligence for which, according to Lord Holt, a gratuitous bailee incurs liability is such as to involve a breach of confidence or trust, not arising merely from some want of foresight or mistake of judgment, but from some culpable default. No advantage would be gained by substituting a positive for a negative phrase, because the degree of care and diligence which a bailee must exercise corresponds with the degree of negligence for which he is respon-

* See *post*, page 318.