of marshy ground, and was hurt. In an action against the defendant, charging him with having negligently injured the plaintiff's horse, it was proved that the defendant was skilled in the management of horses. The jury were directed to say "whether the nature of the ground were such as to render it a matter of culpable negligence to ride the horse there, and that, as the defendant was skilled in the management of horses, he was bound to take as much care of the horse as if he had borrowed it." It was held that this direction was right, and that "in the case of a gratuitous bailee, when his profession or skill is such as to imply the possession of competent skill, he is liable for the neglect to use it," "in the same way as if he had been a borrower." Rolfe, B., also says, "I see no difference between 'negligence' and 'gross negligence;' it is the same thing with the addition of a vituperative epithet." This judgment, in effect, decides that payment *per se* does not necessarily affect the liability of a bailee, as it places the liability of a borrower, which is the same as that of a paid bailee, and of a gratuitous bailee upon the same footing. This view of the law has been approved in *Grill* v. *The General Iron &c. Company* (14 W. R. 893), and in *Beale* v. *The South Devon Railway Company* (12 W. R. 1115). These three cases, besides other authorities, show that all bailees, whether paid or not, are liable for the want of reasonable care and for nothing else. That, however, which would be reasonable care by one man is not necessarily so by another. All the surrounding circumstances must be looked at. If a watch is given to a watchmaker to be repaired, he is bound to use such skill and care as an ordinary watchmaker might be expected to possess. If a watch is given to be repaired to a person who knows nothing of watches, he will be bound to use such care as may reasonably be expected from an unskilled person. In each of these cases the bailee will be liable if he is negligent, but that which would be negligent in the skilled workman would not necessarily be so in the unskilled man.

This liability would not be necessarily affected by payment. In each case ordinary care must be used, whether the bailee is paid or not. Payment may, however, sometimes indirectly affect a bailee's liability. If a person offers to do any act, as, for instance, to repair a watch for reward, he may, and in many cases certainly would, be understood to hold himself out as having competent skill to repair watches. If he either has such skill, or has represented that he has it, he is liable for any neglect of the ordinary care of a skilled workman. If, however, the payment was made under circumstances which did not amount to a representation of skill, the bailee will only be liable for neglect to use such knowledge as he in fact possesses. This is the only real distinction between paid and unpaid bailees. The payment may be evidence of a representation of skill. If it does not amount to this, it does not affect the liability.

As a matter of fact, paid bailees are usually skilled persons, or have represented themselves as such, while unpaid bailees are generally unskilled. Hence there is, perhaps, in the majority of cases, a difference between the liability of paid and unpaid bailees, but this difference does not depend on the payment, but on all the surrounding circumstances under which the bailment was made. An unskilled workman is not often paid for work which requires skill, unless he represents that he has skill, and a skilled workman seldom will work without payment. The question in each case is what were the circumstances from which the contract is to be implied, and payment may be a circumstance which should be considered, but it cannot itself *directly* affect the contract. Although this is clear, both as a matter of law and of common sense, text writers have not yet consented to consider the dicta of Holt, C.J., in *Coggs* v. *Barnard* as overruled. Almost all text-books, which treat of bailments, and even many judgments, still recognise, by their language, the distinction between paid and unpaid bailees, and between negligence and gross negligence. *Giblin* v. *M'Mullen* (17 W. R. P. C. 445), lately decided by the Judicial Committee of the Privy Council, affords an example of the vitality of a legal error when once enshrined in a judgment; and the case is also a specimen of the careless and slovenly judgments which unfortunately are not uncommon in our courts. The point for decision was as to the liability of a banker for the loss of securities deposited by a customer. The question was a very simple one, and the only wonder is, that it should have come before the Privy Council at all. It was admitted (although it is surprising that the point was given up) that the banker was a gratuitous bailee. The evidence showed that all reasonable and ordinary care had been employed to preserve the securities which had been lost. It was held that the banker was not liable. The authorities were clear in the defendant's favour, and the whole decision might have been comprised within the limits of a very short judgment. The Court, however, unfortunately took the opportunity of considering the liability of gratuitous bailees generally, and also discussed the meaning of "gross negligence."

The question for decision, as stated in the judgment, is, was there "that degree of negligence which renders a *gratuitous* bailee liable for a loss? . . . The negligence which must be established against a *gratuitous* bailee has been called 'gross negligence.' 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 terms may be usefully retained as descriptive of that