'gross negligence' is ordinary negligence with a vituperative epithet That was the law laid down in *Wyld* v. *Pickford*, 8 M. & W. 443, and upheld and recognised in the Exchequer Chamber in the judgment of Crompton, J. in *Beal* v. *South Devon Railway Company*, 3 H. & C. 337; 11 L. T. Rep. N. S. 184. The confusion seems to have arisen in using the word 'negligence' as if it was an affirmative word, whereas in truth it is a negative word; it is the absence of such care, skill, and diligence as it was the duty of the person to bring to the performance of the work which he is said not to have performed. Then, if you begin with that, what is the amount of care, skill, and diligence which a man ought to bring? In the case of a gratuitous bailment it is said, if you employ a man of no skill to ride your horse, he is bound to use such skill as he possesses, and that you can require no more, and that he is liable for gross negligence in that sense. But if you employ a man to ride your horse who professes to be a groom, he would be answerable unless he had competent skill in horseridi g. Therefore the word "gross" is a word which, as pointed out by Sir Patrick Colquhoun in his summary of the Roman civil law (ss. 1539-3), is used as a description, not as a definition. If we have to separate law from fact, and to leave the question of fact to the jury, we could not get nearer to a practical definition of 'gross negligence' than such negligence as is actionable." This, then, was a question rightly left to the jury, and their finding ought not to be disturbed. And the evidence given at the trial was sufficient to support the verdict. When a banker takes charge of extremely valuable securities, every care for their safety ought to be supplied, and that such was not taken may be presumed from the fact that additional precautions have been adopted since this loss occurred. It may be true that Fletcher had been long in the employment of the bank, and that nothing was known against him, but it would appear from the evidence that a gentleman from England called on the manager of the bank and told him that he had expected to receive money from Fletcher and had not received it. This should have put him on his guard against Fletcher. Then there is evidence that violence had been attempted on the box, and it was suggested that Fletcher took the box away, had it picked by a locksmith, and then returned it. If this were possible, there must have been negligence in the arrangements at the bank. The mere fact that the bank took as great care of Lewis's strong box as they did of their own property would not rebut their liability. Lord Holt's dictum in *Coggs* v. *Bernard*, 1 Sm. L. Cas. (5th edit.) 179, was, that if a mere depositary "keeps the goods bailed to him but as he keeps his own, though he keeps his own but negligently, yet he is not chargeable for them, for the keeping them as he keeps his own is an argument of his honesty. . . . . As suppose the bailee is an idle, careless, drunken fellow, and comes home drunk, and leaves all his doors open, and by reason thereof the goods happen to be stolen and his own, yet he shall not be charged, because it is the bailor's own fault to trust such an idle fellow." But this was clearly overruled in *Doorman* v. *Jenkins*, 2 A. & E. 256, where Denman, C. J., directed the jury that it did not follow from defendant's having lost his own money, at the same time as the plaintiff's, that he had taken such care of plaintiff's money as a reasonable man would ordinarily take of his own; and he added that that fact afforded no answer to the action if they believed that the loss occurred from gross negligence. [Lord Chelmsford said the degree of negligence for which a particular bailee is liable must be a matter of law on which the jury would have to be directed by the judge, and referred to *Shiells* v. *Blackburne*, 1 H. Bl. 159] The case of *Shiells* v. *Blackburne* has been misunderstood, and has been supposed to show that the question of negligence is a matter of law, but the verdict was there set aside because the court thought that there was no evidence of negligence to go to a jury, and that they had found the fact erroneously. (See the comments of Patteson, J., in *Doorman* v. *Jenkins*, 2 A. & E. 263)

Watkin Williams (*Beresford* with him) on the same side.—The rule to set aside the verdict and to enter a nonsuit ought not to have been made absolute but should have been discharged. The judge at the trial below ought to have left to the jury the question whether the bank was guilty of that particular degree of negligence for which gratuitous bailees are liable. The defendant at the trial, instead of relying on the objections that plaintiff had not made out a case for the jury, chose to go into evidence of his own. Some of this evidence, particularly the fact of the change made in the bank arrangements after the discovery of the loss, was favorable to the plaintiff. This evidence might have been in answer to the application for a nonsuit. [*Mellish*, Q. C., agreed that it should be considered whether upon the whole evidence there ought to have been a nonsuit.] We admit that the bankers were gratuitous bailees; that they are not liable for deposited property stolen by a clerk or servant employed about the bank, unle s they have knowingly hired or kept in their service a dishonest servant, and that they were only bound to take ordinary care; but whether they took this care is a question for the jury. The rule given by Lord Loughborough, in *Shiells* v. *Blackburne*, 1 H. Bl. 163, is that "if a man gratuitously undertakes to do a thing to the best of his skill, where his situation is such as to imply skill, an omission of that skill is imputable to him as gross negligence." Here the bankers, if they neglected precautions which their business ought to have suggested, were guilty of gross negligence. As observed by Lord Denman, in *Doorman* v. *Jenkins*, 2 A. & E. 265, it is "impossible for a judge to take upon himself to say whether negligence is gross or not." In *Wilson* v. *Brett*, 11 M. & W. 113, a person conversant with and skilled in horses, rode a horse at the owner's request, for the purpose of showing it for sale; the horse fell and was injured, and the judge in summing up told the jury that the rider, the defendant in the action, having been shown to be skilled in the management of horses, was bound to take as much care of the horse as if he had borrowed it. The jury found a verdict for the plaintiff, and the court refused a new trial on the ground of misdirection. Alderson, B., observes: "This defendant being shown to be a person of competent skill, there was no dif-