pellants, and THE GRAND TRUNK RAILWAY CO. OF CANADA (plffs. below), Respondents.

Employee—Liability for money of his employer lost through his negligence—Guarantee bond.

An employee left a large sum of money belonging to his employers in open bags in his room, while he went to lunch, without availing himself of the means of safe-keeping provided for him. On his return from lunch the money had disappeared. Held, *that he was guilty of negligence, so as to constitute a breach of a guarantee policy, the condition of which was that he should diligently and faithfully discharge his duty as employee.*

The appeal was from a judgment of the Superior Court, Montreal, Rainville, J., Sept. 30, 1878, maintaining an action brought on a guarantee policy by the Grand Trunk Railway Company. The facts are fully set out in the observations of the learned Judge who delivered the judgment in the Court below, which will be found in 1 Legal News, pp. 485,6.

RAMSAY, J. This is an action by the Grand Trunk Railway Company of Canada on a guarantee policy of insurance. The condition of the policy is that one Faulkner should honestly, diligently and faithfully discharge and transact the duties devolving upon him in his employment by the said company, plaintiffs; "and that he, the said David Faulkner, should faithfully account for and pay over to the said railway company all such money," &c., "he should receive for or from the said company." The breach is that Faulkner had received $22,-489.65 of the money of the company, and that he had not faithfully accounted for or paid over any portion of said sum except $412.65. The facts are that Faulkner drew the money from the Bank of Montreal on the 22nd June, 1877, a little before 12 o'clock; that he carried the money in two bags to his office in Jacques Cartier Square, in a building used by plaintiffs, respondents, and having occasion to go out to his lunch, he placed the two bags under his desk, locked the door of his room, and went out. When he returned in twenty minutes or half an hour after, he found the door unlocked; that the bag with the notes in it had been opened, and all the money, except a $10 bill, which had fallen on the floor, had been carried off. The bag with the silver was untouched.

The insurance company, appellants, contend that Faulkner has faithfully accounted for the whole money, which was stolen in his absence, and that if there was any negligence it was on the part of the railway company, which did not provide him with the proper means of preserving the money entrusted to his care, and, consequently, that the company, appellants, is not liable.

It may at once be said that the company respondent has never alleged, and does not contend that Faulkner is guilty of dishonesty in the matter. His antecedents and his conduct at the time of the transaction repel any suspicion of the sort. But the policy warrants his diligence and fidelity. Did he use all the care a man dealing with so large a sum of money ought to have used? Could he have taken greater precautions under the circumstances? It seems to us he did not exercise common prudence in leaving this large sum of money under the table, in what may almost be called an open room, for it was a badly fastened door on a common stair without any guardian, and leaving the building. Again, we find nothing to show that the Grand Trunk Railway Company, by its arrangements, either ordered or sanctioned such a proceeding. It evidently was not necessary. He could have placed the money in the vault down stairs if he had liked, —he could easily have placed it in the galvanized iron box,—he need not have drawn it from the Bank till after his lunch, and above all he might have sent out for his lunch, or done without it. He was, therefore, guilty of negligence, and we think the judgment should be confirmed.

Judgment confirmed.

Abbott, Tait, Wotherspoon & Abbott, for Appellants.

G. Macrae, for Respondents.

S. Bethune, Q. C., Counsel for Respondents.

RECENT ENGLISH DECISIONS.

Will.—A. left by will all his property to his widow "for the term of her natural life, to be disposed of as she may think proper for her own use and benefit, according to the nature and quality thereof," and, "in the event of her decease, should there be anything remaining of said property, or any part thereof," he gave "said part or parts thereof" to certain persons. *Held*, that the widow had no power to dispose of property by will and that it went to ulterior takers in her husband's will. *Herring v. Barrow*, L. R. 14 Ch. D. 263.