state the place where the wrongful taking and detention took place, as this case did not fall within the provisions of section 18 of the replevin act.

Galt, J.—It is very difficult to say whether the second count is in replevin or in case for wrongfully refusing to accept the security mentioned in the declaration, although it concludes in the ordinary form of a count in replevin. I incline to think that it is in case, and, as such, is in contravention of the 73rd section of the Common Law Procedure Act, and must be struck out, but it is of very little consequence whether I am correct in this view, because if it is intended to be in replevin, it ought to be struck out as superfluous for the following reasons—From the affidavits filed it appears that this is an action against a pound keeper for detaining certain horses distrained damage feasant and placed in the pound, it is therefore a case "in which by the Law of England replevin might be made," and does not fall within the latter part of the 1st section of the replevin act, which was the portion relied upon by Dr. McMichael. The part referred to is as follows, "or in case any such goods, &c., have been otherwise wrongfully taken or detained, the owner or other person capable at the time this act takes effect of maintaining an action of trespass or trover for personal property may bring an action of replevin for the recovery thereof, and for the recovery of the damages sustained," &c., as before mentioned. If, therefore, the second count is intended to be in replevin under the foregoing provisions, it is wrong, because being a case in which by the law of England replevin might be made, the said provisions do not apply. It also appears to me that the 18th section applies only to cases of a wrongful taking and detention within the latter portion of the first section, and not to cases of unlawful distresses for damage feasant, and therefore that local description is necessary. The summons is therefore made absolute to strike out the second count, and to amend the first with costs, and the defendant to have eight days time to plead to the amended declaration.

Order accordingly.

ENGLISH REPORTS.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

(*Reported by* Douglas Kingsford, Esq., *Barrister-at-Law.*)

Giblin and others v. McMullen.

Victoria—Deposit of property at a banker's—Liability of gratuitous bailees—Gross negligence—Nonsuit.

A box containing debentures and other securities was deposited at a bank, the depositor keeping the key. The bank received no payment for their care of the box, which was kept in a strong room with similar boxes of other customers, and with property belonging to the bank.

The debentures were stolen by the cashier of the bank.

In an action by the depositor against the bank, the jury found a verdict for the plaintiff, but a rule to enter a nonsuit was afterwards made absolute.

On appeal to the Judicial committee,

Held, that the bank were not bound to more than ordinary care of the deposit entrusted to them, and that the negligence for which alone they could be made liable would have been the want of that ordinary care which men of common prudence generally exercise about their own affairs.

It is not, however, sufficient to exempt a gratuitous bailee from liability, that he keeps goods deposited with him in the same manner as he keeps his own, though this degree of care will ordinarily repel the presumption of gross negligence.

The term "gross negligence" is not intended as a definition, but is useful as expressing the practical difference between the degrees of negligence for which different classes of bailees are responsible.

The modern rule as to nonsuit is that in every case before the evidence is left to the jury there is a preliminary question for the judge, not whether there is literally no evidence, but whether there is any upon which a jury can properly find a verdict for the party producing it, upon whom the onus of proof is imposed.

A nonsuit may be directed even after the defendant has entered on his case, and evidence given by the latter may be used for the purpose of a nonsuit.

[21 L. T. Rep. N. S. 214.]

This was an appeal against a judgment of the Supreme Court of Victoria. The then plaintiff, Mr. Richard Lewis, brought an action against the defendant (the present respondent), as inspector of the Union Bank of Australia.

The declaration stated that the plaintiff delivered to the said bank certain railway debentures to be safely kept and taken care of by the bank for reward, and the bank received the debentures into their care and keeping, for the purpose and on the terms aforesaid, yet the bank kept the debentures in a negligent manner, and took no care of the same, whereby they were lost to the plaintiff. The second count charged the bank with negligence as gratuitous bailees.

The defendant pleaded not guilty, and a traverse of the delivery and receipt of the debentures by the bank.

At the trial, in Nov. 1866, on the close of the plaintiff's case, the counsel for the defendant applied for a nonsuit. The judge refused to stop the case, but gave leave to move to enter a verdict for the defendant It was understood, however, that the rule, if absolute, should be for a nonsuit, and not to enter a verdict. The defendant then called evidence, and the jury found a verdict for the plaintiff for £10.450.

The rule to set aside the verdict and enter a nonsuit was subsequently made absolute, the respondent thereupon signing final judgment.

The appellants were the executors of Mr. Lewis, who died in Nov. 1867.

The circumstances of the case are fully stated in the judgment.

The Solicitor General (Sir J. D. Coleridge, Q. C.) for the appellants.—In all cases where negligence is imputed to a bailee, whether gratuitous or for hire, the question is, what amount of attention, care, and skill can be insisted on by the bailor, so that on damage for its omission he may have an action against the bailee. This question is one of fact for a jury. A confusion has arisen from the use of the word "gross," as expressing the degree of negligence for which gratuitous bailees are to be liable, and from misusing the term "negligence" as if it were an affirmative word. Willes, J. stated the principle correctly in *Grill* v. *General Iron Screw Collier Company*. 14 L. T. Rep. N. S. 715; 35 L. J., N. S. 330, C. P. "I own I entirely agree with the *dictum* of Cranworth, L. J. in *Wilson* v. *Brett*, 11 M. & W. 113; 12 L. J., N. S. 264, Ex., that