their own property. The hospital trustees cannot of course be held responsible for thefts when proper care has been taken; but, even if they are only gratuitous bailees, reasonable care should be taken of the patients' property; and, if the story of the plaintiff, whom the jury seemed to have believed, were true, there must have been even gross negligence either in a system which did not provide for due care or in the carrying out of the system. A new trial should be granted in order that more specific findings might be made. See Giblin v. McMullen (1868), L.R. 2 P.C. 317; Wiehe v. Dennis Brothers (1913), 29 Times L.R. 250; Mitchell v. Davis (1920), 37 Times L.R. 68.

Appeal allowed (MAGEE, J.A., *dissenting*).

SECOND DIVISIONAL COURT.   FEBRUARY 11TH, 1921.

GOODERHAM v. CAPES.

Contract—Payments Made by Plaintiffs to Defendant—Allegation of Overpayment—Dispute as to whether Payment Made for Wages or for Services to be Performed and not Performed—Evidence—Onus—Failure of Plaintiffs' Claim.

Appeal by the plaintiffs from the judgment of ELLIOTT, Co. C.J., sitting in the County Court of the County of York, dismissing the action, which was brought to recover $606.35 alleged to have been advanced to the defendant and not repaid. The defendant sold goods for the plaintiffs on commission, and it was alleged that he had in fact been overpaid.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LATCHFORD, MIDDLETON, and LENNOX, JJ.
O. H. King, for the appellants.
G. W. Mason, for the defendant, respondent.

MEREDITH, C.J.C.P., reading the judgment of the Court, said that the case upon which the trial Judge based his judgment dismissing this action—Schlesinger v. Burland (1903), 42 N.Y. Misc. 206, 85 N.Y. Supp. 350—was not binding upon him, and, if it had been, should not have governed this case. It was decided upon its own facts, which, though in some respects very like those of this case, were in others quite different from it; and quite different in the controlling factor upon which the decision of that case was based. It was decided upon the meaning of the word