

**Yam Tin Yang t/a Sin Kwong Goldsmith v. Holiday Inn
Drug Store and Others**

District Court Summons No. 6259 of 1976

The plaintiff, pursuant to an oral agreement, had delivered to the defendant a quantity of jewellery for display and sale at the latter's 'drug store' located in the shopping arcade of a hotel. Under the terms of the agreement, the defendants undertook to take "due and proper care" of the jewellery whilst they were held in their custody and that they would redeliver the jewellery that remained unsold to the plaintiff at his request. Subsequently, when the plaintiff demanded the return of his jewellery, the defendants failed to do so without giving any reasonable explanation for such failure. The plaintiff brought an action to recover the jewellery or alternatively, their value, with damages.

The defendant denied having given any undertaking to the plaintiff to be responsible for any loss of or damage to the jewellery while these were displayed in their drug store. No charge was payable by the plaintiff to them for the display of his jewellery in one of their show-cases, except for a commission of 20% of the sale price of any item of jewellery sold by them. Therefore, they contended, they were merely gratuitous bailees. As the plaintiff knew that the showcase in which his jewellery was displayed was not locked and therefore accessible to any one, it was an implied term of the agreement that the jewellery was to be displayed at the plaintiff's sole risk.

Held: (1) The defendants took delivery of the jewellery from the plaintiff for a reward in that for every item sold they would receive a commission of 20% of the sale price of that item. Although such a

commission was merely anticipated, it nevertheless was sufficient to deprive the defendants of the protective vestiges of “gratuitous bailees”.

(2) The defendants were negligent as they failed to take sufficient and reasonable precautions to protect the contents of the showcases from loss. They knew that only one salesgirl was in charge of both showcases from 4 p.m. to 10 p.m. daily and that browsing or prospective customers could wander behind the showcases without being attended to by anybody. By leaving the sliding doors of the showcases unlocked, they had exhibited scant regard for the safety of the articles therein displayed, including the plaintiff’s jewellery.

(3) As bailees, the onus of disproving negligence rested on the defendants and they had not discharged this onus. *People’s Credit (Pte) Ltd. v. Ee Kee Chai* [1974] 1 M.L.J. 6, applied.

[Summary by T. Shue]