

The respondent's case as opened was for "nearly one hundred articles missing," and for "eight or ten overcharges," *i.e.*, less accounted for than received, and her counsel stated that he was not concerned as to how the accounts were rendered by the third parties to the railway company, but only how the latter rendered them to the respondent, and that the real point of the case was with regard to the missing articles.

It is to be regretted that in a case depending so largely upon details, and intimate knowledge of the varied assortment called settlers' effects, so little assistance has been given to the Court of first instance or to this Court in ascertaining the real facts as to these missing articles. The railway company apparently decided to throw all responsibility on the third parties, and pursued this course at the trial. They had previously abandoned the English commission asked for by them. The third parties devoted themselves to dealing with the allegation that goods were abstracted while in their possession. In the result no attempt was made before trial by comparison of the rough list, packer's list and shipper's list, whether admissible or not—and by enquiries from the shippers, to determine if there was any real loss of the respondent's goods, quite apart from the legal liability. This might have been done, or at all events, the case might have been much simplified, if counsel concerned had endeavoured, after these lists were produced on 13th May, 1910, on the examination for discovery, to ascertain the identity of the goods said to be missing with those mentioned in these lists, a fact quite impossible to be done by merely comparing one list with another. Nor is the respondent's husband free from blame. I attach a good deal of importance to his action in regard to the goods taken away before the sale. These articles were selected when the goods were being placed for sale, and it is of what was then left that Suckling made his list, Ex. 29, with T. Swale assisting, certainly as to the pictures. Suckling says the latter was on very friendly terms with them all, and gave him a lot of information in making up the list. It must be obvious that no list made prior to his selection would be of any value, unless he himself kept a record of what he was taking away. Hence, what he did and his assistance to Suckling in making a list of the remaining goods, and his abstention from any complaint till November, and then only as to the Sevres china, is of impor-