

the third parties, if accepted, that the missing goods could not have been stolen from their premises.

In the judgment at the trial it is said:—

“No account was taken of the goods as they were taken in, or when they were unpacked and distributed about the warehouse, although there were goods of other customers there as well. No effort was made to care for the smaller articles—many of them now missing—although this firm were not in exclusive occupation, and although the premises were during business hours open to the public.

“It is said there were men taking care of the goods. There was no specific evidence of this, and I cannot find that any men were there outside the regular staff of porters and clerks. No catalogue of the goods was ever made. They were advertised as ninety, instead of ninety-seven cases; as the goods of parties who had no interest in them; the list of the goods sold cannot be found; and Mr. Suckling now admits that in one instance, at all events, out of many similar errors claimed, they credit less than thirty per cent. of the amount actually received.

“But the worst feature is the manner of keeping the accounts.”

In dealing with this finding it must be observed that when the goods were received they were stored in their cases in the basement from 14th, 15th and 16th September, 1908, till some days before the sale on the 21st October, and the goods unpacked from the seven or eight cases were stacked on top of the unopened packages. When the sale was imminent Jenkins was sent for and unpacked the goods from the cases or packages, perhaps from seventy-five or eighty of them, he say, and had them delivered by the elevator into the room set apart for the sale. Their custody there I have already spoken of. I can find no evidence of the unpacked goods being distributed through the warehouse, except in the sale room, and the goods of the other customers spoken of as being there as well, were taken in on the day of the sale and the evening before. Some of the smaller packages containing small china and things were not unpacked by Jenkins nor by Swale, but Jenkins saw the contents upon the tables in the sale room all sorted and says that he re-sorted into lots those broken. Swale, arriving there on the Monday, before the sale, occupied his time on Tuesday and Wednesday picking out what he wanted, and was most likely conversant with what was being done