ing, except some specific ones since accounted for. Did these missing goods actually arrive in these cases or were they lost or abstracted in England or forgotten to be packed by the employees of Davies Turner & Co. there? This is the point, and it is, except in a few instances, left entirely in doubt. . . . The learned trial Judge . . . merely says that he is satisfied that the ninety-seven cases delivered to the third parties contained all the goods said to have been shipped from England. . . .

Suckling says that he saw the Brussels carpet in lot 168, and the wolf robe in the pile of rugs sold, so that the identification is confined, apart from those taken by Swale before the sale, those sold to him, and those sold to the public, to a typewriter-stand, a fitted luncheon-basket, two pair garden-shears, and a brass syringe, all valued at $26.25.

The history of the goods which he alleged were packed by Davies Turner & Co. is as follows. He produces a list of goods that were in the house at Monmouth previous to being packed. The list, he says, was an inventory taken by him in Monmouth before they were shipped. They were put, unpacked, into large vans, sent to Liverpool, and packed there by Davies Turner & Co. in their warehouse. These he never saw after they were taken loose into the vans. Exhibit 22, the shipping list, is an inventory taken by Davies Turner & Co.'s men before the goods left Monmouth, and is unverified. Exhibit 23, the packers' list, came, so Swale says, with the bill of lading, but it is also unverified. The appellants' argument is that any of these goods were liable to abstraction in the vans, and in Davies Turner & Co.'s warehouse, and that some may have been forgotten, and that the small cases into which Swale packed his goods, were also subject to the same contingency. To found a claim upon the railway company here or against Suckling & Co., it is obvious that this argument must be met. Did they all actually arrive in Toronto? is the point which, to my mind, admits of question. Bearing in mind that the onus is on the plaintiff to shew wilful neglect or abstraction, it seems impossible to assume against the appellants the arrival of all these goods, and then to found upon that assumption the finding that the appellants were guilty, under the circumstances already stated, of not merely want of ordinary care but wilful neglect.

This would be to carry responsibility too far. On the other hand, to cut down the respondent's claim to the $26.25 might result in a denial of justice, if evidence can be had to shew that