There is some testimony very much the other way. Mr. Suckling says: "The grandfather clock was broken in about one hundred pieces. I could not recognize that it was a clock." The one hundred fragments sold for an average of ninety cents each, and I find it a little difficult to believe that the clock was so much broken up, and very very difficult to believe that an auctioneer of forty years experience would have no idea that it was a clock.

A number of technical objections were raised on behalf of the third parties. Recovery is limited by the bill of lading to $5 a package. I do not think this applies here. This is a sale under sec. 345 of the Railway Act, and under sub-sec. 3; "the company shall pay or deliver the surplus, if any, or such of the goods as remain unsold, to the person entitled thereto."

The defendants do not take this objection; and it is clearly not any objection that the third party can set up against their employers.

The third parties also argue that the bill of lading has never been properly endorsed. The defendants, by their letters, their statement of defence, and otherwise, have over and over again recognized the right of the plaintiff to immediate delivery of the goods on payment of the tolls and storage charges, have settled with Davies, Turner & Co., in full, and obtained an indemnity from them, and have not, and do not raise this objection. And as to both these objections the order made in this action as to the issues to be tried and method of trial does not give liberty to the third parties to dispute the liability of the defendants to the plaintiff or to take part in the trial as between these parties, and there are no such objections attempted to be raised by their statement of defence. On the contrary, so far from setting up an identity of interest, they distinctly plead that the question of their liability is entirely distinct from the questions determining the liability of the defendants. The facts and figures in this case, too, afford cogent reasons against this argument, even if they were technically well lodged.

The defendants were paid in full when the sale was discontinued on the 21st October, 1909, and the plaintiff was entitled to immediate delivery of the goods now sued for; and I may add, incidentally, would have got them at that