

be deemed negligence on the part of Suckling & Co., the third parties. . . . The goods selected by Swale were packed by him and shipped by him to Gravenhurst the night before the sale. . . . The goods filled six hogsheads and one barrel, weighing 1,950 lbs., and no list was then made of them by Swale or any one else; and the list now produced appears to have been prepared . . . five months after the sale. . . . The learned trial Judge has, however, accepted the list given by Swale of these goods as accurate; and I think that his finding cannot be disturbed. . . . After the sale, Swale claimed the unsold goods on behalf of the respondent, and Suckling, it is said, agreed to his taking them away. He took a velvet pile table cover and two large linen sheets, sold the grandfather's clock for \$90, found a mirror unsold and asked for a case of Sèvres china, which has since been returned. He has accepted \$25 for two Chippendale chairs said to be missing. Swale had an accounting with Suckling for the articles bought by him, amounting to \$418.85 on the 22nd October.

The actual receipt of the missing goods, a list of which is produced by the respondent, is strongly disputed by both the railway company and the third parties. . . . The list of missing goods is a compilation made long after the sale, during the next year, and from a black book. When Swale made his selection of goods before the sale, he made no list of them, nor of the goods as laid out, nor of those left over, nor did he at the sale or previous to it, nor after it, while on the spot, make any complaint or shew any of the lists he had. And this has made it almost impossible for any effective check to be had of the belated list made up from his private sources and depending for its validity entirely upon the fact, is proved, that Davies Turner & Co. properly packed all he left and safely kept all he gave them.

The method of keeping the accounts is not germane to the question of the abstraction or loss of the goods, and throws no light on it. As this Court has held that the railway company is liable only for wilful neglect or misconduct, what the third parties did or omitted to do, either as found by the trial Judge or as modified by the considerations just mentioned, is quite distinct from that sort of wilful misconduct which renders its perpetrator liable where in custody of goods of a third person. Nor, as will be observed, does it throw any real light on the point which is vital to the respondent, in view of the fact that no attention at the proper time was called to any goods as miss-