

the case would otherwise seem to demand. The liability of the railway company is only that of an involuntary bailee, and it held the goods, under the statute, at the risk of the owner. It can only be made liable for wilful neglect or misconduct, such as conversion or wilful misdelivery: *Shaw v. Great Eastern R.W. Co.*, [1894] 1 Q.B. 373; or, if it did not act as reasonable men would act. See 5 O.W.N. 402, 29 O.L.R. 634. On this basis the claim against the railway company, and its claim over against the third parties, must be dealt with.

The railway company admits the sale of the ninety-seven packages or cases of settlers' goods and effects, except the goods removed by the respondent Swale, but there is no admission that the goods claimed by the latter as missing were among those settlers' goods and effects; and the contention is strongly pressed that the respondent Swale has failed to prove the delivery to the railway company of the actual goods set out in this list. These goods are said to have been among those packed up in England, partly by T. Swale and partly by Davies Turner & Co. The onus is upon the respondent Swale to prove her damages, and such a cause therefor as will render the railway company liable, upon the principle already laid down; and it is not incumbent on the appellants to prove affirmatively that they had used reasonable care: *Marsh v. Horne* (1826), 5 B. & C. 322.

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. . . .

No attempt was made before trial, by comparison of the rough list, packers' list, and shippers' list—whether admissible or not—and by inquiries from the shippers, to determine if there was any real loss of the respondent's goods, quite apart from the legal liability. . . . I attach a good deal of importance to the action of the respondent's husband in regard to the goods taken away before the sale. . . . 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 Sèvres china, is of importance as shewing that the absence of a prior list cannot