

tion and comparison of that list seems to me to be quite a reasonable thing to do.

I think the respondent should have the opportunity of giving evidence to clear up this vital point. The only solution, therefore, is a new trial, which should be confined to the goods in the list of those missing which are not covered by this judgment.

There are some matters dealt with by the judgment in appeal which might be disposed of now. The learned trial Judge allows \$84.75 for goods sold and accounted for at less than their sale price. This appears to have been allowed on the evidence given by T. Swale that he had entered in a little book as the sale was going on. At p. 16 this occurs:—

“Q. You were going around with Mr. Suckling; tell us what you did in going around the different lots? A. I followed him around and jotted them down in a black book that is here.

Q. Is this the book? A. Yes, and as the lot was called, out, the number, I put it down and just made a rough note of what the article was and the price it fetched at the sale.”

On the list, Exhibit 18, all of which is allowed by the learned trial Judge, the following items, out of fourteen, were not entered by Swale in his book, Exhibit 15, when following Suckling around and noting the prices:—

Item	24	1 chair	\$ 6.00	sold for	\$ 6.50	difference	\$.50
“	32/3	stand and mirror	20.00	“	30.00	“	10.00
“	34	stand	1.35	“	1.75	“	.40
“	46	table	5.25	“	10.25	“	5.00
“	805	picture	9.00	“	10.50	“	1.50
“	830	print	1.30	“	1.50	“	.20
“	848/9	2 pictures	2.00	“	2.20	“	.20
							<hr/>
							\$17.80

Two other items are unsatisfactory. Items 37 and 38 are respectively a clothes closet and a wardrobe, in the Suckling list Exhibit 9, and sold for \$15 and \$25 respectively. In Swale's book No. 37 is given as a wardrobe sold at \$25 while item 38 is not noted at all. Item 136 in Exhibit 9 is 14 pieces crockery sold for \$17.50, while in Swale's book it is given as 136, china 15, at \$1.25, equals \$19.75, a difference of one piece and \$1.

Speaking for myself, I would not allow any of these items as against the auctioneer's book as they should depend upon a memorandum taken at the time and cannot