

Wm. M. Hall, for the plaintiff.

S. Denison, K.C., for the defendants.

W. Laidlaw, K.C., for the third parties.

HON. MR. JUSTICE LENNOX:—The action of the defendants is not complained of, and I may say at once that throughout they treated the plaintiff with great patience and leniency. The liability of the defendants, if any, arises out of the conduct of the third parties, the auctioneers employed to dispose of the plaintiff's goods.

As the third parties are said to be a well established firm, doing a large business, I will assume that, generally speaking, their business may be well conducted. In this instance, however, their method of handling, caring for, keeping track of, and accounting for the goods entrusted to them by the defendants was negligent and unbusinesslike to a marked degree. Their records are inaccurate, and the account rendered to the defendants was in fact, and I am afraid intentionally, inaccurate and misleading. No account was taken of the goods as they were taken in or when they were unpacked and distributed about the warehouse, although there were goods of other customers there as well. No effort was made to care for the smaller articles—many of them now missing—although this firm were not in exclusive occupation, and although the premises were during business hours open to the public.

It is said there were men taking care of the goods. There was no specific evidence of this, and I cannot find that any men were there outside the regular staff of porters and clerks. No catalogue of the goods was ever made. They were advertised as ninety instead of ninety-seven cases; as the goods of parties who had no interest in them; the list of the goods sold cannot be found; and Mr. Suckling now admits that in one instance at all events, out of many similar errors claimed, they credit less than thirty per cent. of the amount actually received.

But the worst feature is the manner of keeping the accounts. Here, in their account with the defendants, one item of receipt \$90, is altogether omitted; and although their ledger without this item shews total receipts of \$1,855.20, their statement to the defendants shews total receipts of only \$1,790.20—a shortage of \$65.