

of these goods as accurate, and, I think, his finding cannot be disturbed.

During the sale Swale followed Suckling around and jotted down the sales in a little book, but examination of it shews that it does not profess to include all, but only those which Swale thought well to note. Others he made no memorandum of. 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 clock for \$90, found a mirror unsold and asked for a case of Sevres 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 October 22nd.

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. It may be mentioned in passing that, while there is a multiplicity of lists now, there were none at the time when a list would have been useful and would have prevented a lawsuit. The respondent had the three lists I have mentioned, and he now produces lists of what were removed before the sale, and of the missing goods, and there are two auctioneers' lists. The list of missing goods is a compilation made long after the sale during the next year and from a black book. When he 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, if proved, that Davies, Turner & Co. properly packed all he left and safely kept all he gave them.

It is best put in T. Swale's own language:—

"Q. You had it in your mind that there were goods missing? A. Yes.

"Q. And you just carried that thought in your mind without putting it on paper for some considerable length of time? A. No, the early part of the year following when we were requested to produce the list I got a rough list of my own, a rough idea.