

tance as shewing that the absence of a prior list cannot be deemed negligence on the part of Suckling. It appears that the respondent's husband having, through her solicitor, asked to have withdrawn from sale a quantity of baby clothes, of old letters and correspondence, some old books of a business once carried on in England, only good as waste paper, certain household linen with Mrs. Swale's name on it, all of very little commercial value, was told he would have to attend the sale and buy them in. Swale, however, before the sale, went to Suckling and mentioned to him that he wanted to select things of sentimental value (p. 46), and was referred to Butler, the manager. He was told by Butler to pick them out, put them in a pile and shew Butler after. This took him from 1 p.m. till 5 or 6 p.m., and from 8.30 to 11 a.m., next day. He says he shewed Butler the pile, priced them at \$15 and was told to get them away. He says that, in addition to what the letter mentioned, he took family portraits, china and bedding and a violin and guitar, and the list produced (Ex. 13) contains a long schedule of goods quite different from what he had asked to be allowed to remove, e.g., wall bracket, sewing machine, two marble clocks, equestrian group, three feather beds, seventeen pair lace curtains, three crown derby vases, walnut filing cabinet, walnut coal box, three plush curtains, and etc. These goods were packed by Swale on Tuesday and Wednesday and shipped by him to Gravenhurst the night before the sale, notwithstanding that "the C. P. R. people came around and they were creating bother and wanted to know what Suckling was allowing these things to be taken away for." Swale did not pay the \$15. The goods filled six hogsheads and one barrel weighing 1,950 pounds (Ex. 20), and no list was then made of them by Swale or anyone else, and the list now produced appears to have been prepared, owing to a demand in this action, begun 4th March, 1912, five months after the sale.

I can hardly reconcile this transaction with a desire on Swale's part to deal honestly with Suckling. He admits that \$15 was **not** a fair value. Indeed this is obvious, and his offer of it was, I think, intended to mislead Butler, and enable him to get the goods away without remark or payment of their value, which he did as they were packed up before Butler saw them, so the latter says. The learned trial Judge has, however, accepted the list given by Swale