

the performance of work, this language is manifestly wanting in precision. A carrier is an independent contractor, not a servant.

A point of contact between service and bailment is found in those cases where there is an undertaking by one person to assume the custody of a chattel delivered to him by the owner, either for safe-keeping merely or for the purpose of doing certain work in respect to it, or by means of it. Here, if the person to whom the chattel was delivered was a servant of the owner before the transaction took place, or was to pass under the control of the owner while his custody of the chattel continued, he might, from one point of view, be regarded as acting in the double character of servant and bailee. This situation may be dismissed with the remark that in almost every conceivable state of facts a merger of the character of bailee in that of servant would be implied, and the possession thus assumed would be treated as being that of the master himself.<sup>3</sup> On the other hand, if no such control over the bailee is to be exercised by the bailor, the rights and liabilities of the parties to the contract, both as between themselves and as regards third persons, are determined upon the theory that the bailee is an independent contractor. The question whether the latter situation is predictable under the circumstances is often one of no small practical importance. The effect of the decisions in which it has been dealt with is stated in the two following sections.

In criminal prosecutions the importance of differentiating bailees from servants arises from the fact that at common law a bailee, being considered to have rightful possession of property in his charge, could not be guilty of larceny in respect of it, for the reason that a conversion, that is to say, a

<sup>3</sup> It has been remarked that the holder of goods may make his servant a bailee if he thinks fit; but that the law does not regard this as a normal state of things, and probably rather strict proof would be required. Pollock & Wright, *Possession*, p. 60.

In *Reg. v. Green* (1856) Dears. & B. C. C. 113, where the prisoner was charged with stealing a pair of boots from a stall, of which a boy who was living with and assisting the owner, his father, had charge when the crime was committed, it was held that the boy was not a bailee, but a servant, and that the property in the boots could not be alleged to be in him.