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THE RELATION BETWEEN CONTRACTS OF SERVICE AND OF BAILMENT.

1. Generally.
2. Relationship between the proprietor and driver of a cab or hackney carriage.
3. Other relationships discussed.

1. Generally.—In the Codes which are based upon the Civil Law, the hiring of workmen is enumerated as one of the three principal species of hiring, labour and industry, the other two being the hiring of carriers, and the hiring of persons who undertake works by estimate.¹ Speaking generally, the juristic conception which, in this method of classification, associates contracts of service with one particular description of contracts of bailment is foreign to the Common Law. In a few of the older English cases, it is true, carriers have been referred to as "servants" of the bailor in some respects.² But, in view of the well recognized distinction between contracts which create the relation of master and servant and all other contracts which involve

¹ French Civil Code, Art. 1779; Quebec Civil Code, Art. 1669; Louisiana Civil Code, Art. 2673 (2643).

One of the two kinds of *locati operis faciendi* is the hire of labour and services in respect to the articles delivered. Story, Bailments, 9th ed., § 422.

² In *Ward v. Macauley* (1791) 4 T.R. 489, a case in which the question involved was one of the proper form of action, Buller, J., observed during the argument of counsel: "The carrier is considered in law as the servant of the owner, and the possession of the servant is the possession of the master."

Similarly, in *Gordon v. Harper* (1796) 7 T.R. 12, Grose, J., remarked, *arguendo*: "Where goods are delivered to a carrier, the owner has still a right of possession, as against a tortfeasor, and the carrier is no more than his servant."

In this connection reference may also be made to the rule that, delivery of goods to a carrier by a seller for transmission to the buyer is deemed to be delivery to the buyer, and to constitute an "actual receipt" by him within the statute of frauds. Pollock & Wright, Possession, p. 59.