

says (k) Having in one's possession includes not only having in one's personal possession, but also knowingly (1) having in the actual possession or custody of any other person (Criminal Code, 1892, Sect. 3).

Regina vs Graham, 13 Cox, 57.

Re Parsons, 16 Cox, 498.

And so long as this money was not given to accused, Carter was possessing for the United States.

Section 305, Criminal Code, defines theft:

"Theft or stealing is the act of fraudulently and without colour of right taking, or fraudulently and without colour of right converting to the use of any person anything capable of being stolen, with intent (*a*) to deprive the owner, or any person having any special property or interest therein, temporarily or absolutely of such thing or of such property or interest.

2.—The taking or conversion may be fraudulent, although effected without secrecy or attempt at concealment.

3.—It is immaterial whether the thing converted was taken for the purpose of conversion or whether it was at the time of the conversion in the lawful possession of the person converting."

According to my interpretation of the law and my appreciation of the transaction under examination, this transaction of Carter would not have constituted embezzlement under our former criminal law but would then have been larceny, and would now be theft by a public officer, punished by section 319 (*c*) of our Criminal Code.

319.—Every one is guilty of an indictable offence and liable to fourteen years imprisonment, who:

(*c*) Being employed in the service of His Majesty, or of the Government of Canada or the Government of any Province of Canada, or of any municipality steals anything in his possession by virtue of his employment, and also punishable at common law.

To constitute one guilty of theft it is not necessary that the thief should appropriate or convert the thing stolen to