

BAILMENT — MASTER AND SERVANT — THEFT BY SERVANT —
SCOPE OF EMPLOYMENT.

Cheshire v. Bailey (1905) 1 K.B. 237 is one of those cases which must puzzle the mind of the "man in the street," if he ever should pry into the mysteries of the law. In this case the plaintiff, a wholesale silversmith, hired from defendant a carriage and coachman for the purpose of conveying one of plaintiff's travellers about London with samples of the plaintiff's wares to be shewn to customers. It was known to the defendant that these samples would sometimes have to be left in charge of the coachman while the traveller left the carriage. On one of such occasions the coachman during the absence of the traveller drove the carriage to a place where, in pursuance of an arrangement with confederates, the samples were stolen. The plaintiff claimed to recover their value from the defendant. Walton, J., who tried the case, thought it was governed by the decision of the Court of Appeal in *Abraham v. Bullock*, 86 L.T. 796, where the carriage owner had been held liable to make good a loss occasioned to the hirer, by reason of the coachman having, during the hirer's absence, left the carriage unguarded, in consequence of which it had been driven off by some unknown person, and the property of the hirer stolen therefrom; but the Court of Appeal (Collins, M. R., and Stirling, and Mathew, L.J.J.) held that he was wrong in that conclusion, and that though the master may be liable for damages occasioned by his servant's negligence, he is not liable for damages occasioned by his criminal act, because, in committing such an act, the servant is not acting within the scope or course of his employment: while therefore the carriage owner is responsible if a third person steal the hirer's property from the carriage owing to the driver's negligence, he is not responsible if the driver himself steals it. As *Abraham v. Bullock* never got into the regular reports, perhaps the editor may have had his doubts, and the case having now been through the process of being "distinguished" may shortly arrive at the later stage of being "doubted" as a preliminary to being finally overruled: for one would not be surprised to find that the same reasons which have exonerated the owner of a carriage from liability for the driver's dishonesty, may ultimately be found to apply equally to losses of property occasioned by the driver's negligence unless it be in the very act of driving. If a person wishes to convey valuable property in a hired carriage it would seem not unreasonable to say that the hirer and not the carriage owner, should provide for the protection of the property from theft, whether by