wrongful change of possession, could not result from a misappropriation.[4] The effect of the cases which have turned upon the question whether the defendant was a servant or a bailee is stated below.[5] In England the distinction between the two classes of contracts in this point of view has become less important since the passage of a statute under which bailees of chattels, etc., may be found guilty of larceny if they fraudulently convert such chattels to their own use.[6] Enactments of the same tenor are presumably in force in most, if not all, of the British Possessions and of the American States. But in Eng-

[4] Roscoe, Crim. Ev., 9th ed., 651.

[5] The prisoner was convicted on an indictment charging him with embezzlement, in one count as servant to A, and in another count as servant to B. A and B were two, among other, sewers of gloves residing at C, the manufacturers of the gloves carrying on business at D. The prisoner was a carrier residing at C, and was exclusively employed between the glove sewers at C and the manufacturers at D. The sewers were not known to the manufacturers, but when a sewer wanted work the prisoner gave her name and a number to the manufacturers, and received from them unsewn gloves for her to sew. Each sewer, having her number, sent back by the prisoner the gloves when sewn, with her name pinned to the parcel. These parcels the prisoner delivered to the manufacturers; and if the parcels were found correct he received the total amount due to the sewers in one sum, and fresh parcels of unsewn gloves. His duty then was to deliver to each sewer her fresh work and also the money due to her, deducting his charge. If any work was missing the manufacturers looked to the sewer if found, but if not they looked to the prisoner for it. The prisoner, according to the course above stated, took out the numbers for A and B, and, having received money for both of them from the manufacturers, denied the receipt of the money, and applied it to his own use. Held, that the prisoner was not a servant, but merely a bailee, and was guilty only of a breach of trust. *Reg.* v. *Gibbs* (1855) Dears. C.C. 445.

A person who has been intrusted to drive a number of sheep a certain distance, and who on the way separates one of them from the rest, with the intention of fraudulently converting it to his own use, is not guilty of larceny, as he is not a servant, but a special bailee, and there has not been such a severance of the sheep as to put an end to the bailment. *King* v. *Reilly* (1826) Jebb. C.C. 51.

A drover who is employed to take cattle by rail to a certain place and deliver them to a purchaser, but who is at liberty to take charge of the cattle of any other person, is a mere bailee, although he is paid the expenses of the cattle on the journey, and is remunerated by daily wages. *Queen* v. *Hey* (1849) Den. C.C. 602. Doubts were expressed as to the correctness of *Rex* v. *M'Namee* (1832) 1 Mood. C.C. 368, where it was held that the possession of a drover is the owner's possession, although he is a general drover, at least if he is paid by the day.

A mechanic receiving materials to be made into shoes at his own shop is not an agent or servant of the person furnishing the leather, within the meaning of the Mass. Rev. Stat. chap. 126, § 29, against embezzlement. *Com.* v. *Young* (1857) 9 Gray. 5.

See also note 3, *supra*.

[6] 24 & 25 Vict. chap. 96, § 3.