

these goods belonged to his Master and were in his possession and were stolen by breaking up doors & chests or trunks; he came to being a servant in the house the goods might have belonged to him self and been in his possession. ~~And~~ ^{And} ~~the~~ ^{the} ~~Lord~~ ^{Lord} ~~was~~ ^{was} thus qualified, this Defences had found he consented to Exculpate the servant, that he did not actually wear the said Clothes and Arms which he found his master's: Which is a defence, that he had right thereto without other proof it being ordinary for servants to get Clothes and other furniture from their Masters 13 King's Bench 1669 Alexander Noil. A Plea of Money in the Bank of Scotland who Embeziled or stole 425 pound 10 shillings sterling of the Money entrusted to his taking and fled, being apprehended was indicted for the breach of trust and Stealing and Conceiving his Master's Money in order to Capital punishment. He pleaded, that he could not be charged with the Crime of Domestic Theft because he did not live in the Bank office, but had only been coined so much Money for Negotiating upon furnished found for his being accountable for the Value of the Treasurer of the Company, and so was not liable as a Thief for borrowing part of it to his own use: being the Money was entrusted to him and the property thereof transferred by the Treasurer who can only seek Reparation of his loss by a Bill of Action against him and his Counters; or Indict to have him declared infamous and put to an arbitrary punishment, as a fraudulent Bankrupt. To which it was answered, that this must be understood Domestic Theft because the Money was within the Bank house deposited by the Treasurer for the use of the Company, where the servant was an Under servant having a salary for lodging out of the Money deposited there: And his taking out of the house is no more than what happens in the case of all Menial servants. There are also many places where servants are largely reckoned without strictly being given for their honesty, as was given for the pawnshop's fidelity to the value of 1000 pound sterling, and not for payment of

of any sum 20th of the money in Contracts be considered as a fine given containing the Value of every thing, yet when trusted to servants or in the case of theft, it is considered as a Forfeiture. The Keeping of the Key and taking of the Money was allowed by the Treasurer his Master; but his taking the Money out of the office and applying it to his own use, was Contractatio fraudulenta. *Nulla Dominio Luri facienda gratia.* The property or possession of the Money was never in the servant's person; he had the Money in custody and was by way of and with receiving the Money and taking it out by his back, but he had no more of it in the Bank than a civil debt had in the hands of his Master. He kept the Money in the Bank office was for Consonancy the Place for taking the Money belonged to the Bank, any Acts of Negotiation betwixt him and the Bank without the office, was good. Nor was he free of the hazard of the Money which was entrusted to him by the Treasurer, had the same been taken out of the Drawer in the Bank allotted to him for Keeping it: But his case comes close to that of a cash keeper to a Company, upon finding Bail forth his honesty to a sum of 1000 pound Value; to whom Money was not delivered to him as a fungible, but as a specific, but numerous and indistinct as a fungible to be negotiated. The Lord found the Indictment to be just only to go for any arbitrary punishment, the Panel being brought in guilty by the officers, he was declared infamous and adjudged to stand in the stocks for the space of an hour with a paper on his breast having this inscription, for Breach of trust, & taking the Bank of their Money and Embezzling it; and then after to be carried to prison, and to stay there until the Bank be satisfied, and his Counters released of all that is due to them 26 February 22 March 1705 Robert Springs. But simple breach of trust by Embezzling and appropriating to one's private use, may