

Alleged Larceny as a Bailee ZMOOD V. PALLING.

DEFENDANT COMMITTED FOR TRIAL.

On Tuesday morning last, at the Shepparton Police Court, before the Police Magistrate (Mr. C. J. Rogers), Alexander Palling, on bail, was charged that, between the 17th and the 23rd September, 1923, at Shepparton, he did, being the bailee of certain goods, to wit, a quantity of drapery to the value of £75, the property of the said William Zmood, unlawfully and fraudulently take and convert the same to his own use, and thereby did feloniously steal, take, and carry away the same. Inspector Lovitt conducted the prosecution, and Mr. W. McC. Abernethy appeared for the defendant.

Sub-Inspector Lovitt: I should like the complainant called.

The P.M.: I should think so.

The complainant was called and entered the court.

Inspector Lovitt said that the complainant told defendant he was £84 short, and asked him what he had done with it. Defendant replied that he had sent a statement to Melbourne. Subsequently defendant produced £9, and told defendant that was all the money he owed him.

William Zmood said that at present he worked at Wangaratta. In November, 1923, he conducted a business in Shepparton. He met defendant in Melbourne in September, 1923, and engaged him to work for him (plaintiff). Defendant came to Sheppar-

III). Defendant came to Shepparton, and on a Sunday in September he (witness) gave defendant a quantity of general drapery valued at £200. On the previous Saturday defendant asked witness to give him another chance. Witness said: "I did not get a fair chance in the first instance, but I will give you a chance." When witness gave defendant the goods he told him to sell the stuff and remit the proceeds to Mr. Robinov, Port Melbourne, accompanied by a statement showing the goods sold. On the following Monday defendant left Shepparton. On the following Sunday witness saw defendant at Numurkah, Louis Thompson being with witness. He found some of the cases of goods had not been opened, whilst some of the drapery was in an auctioneer's room. Witness packed the latter goods in suit cases and brought them to Shepparton, defendant accompanying witness. Defendant said he had sent a statement of sales and money obtained on to the address in Melbourne which witness had given him. That statement was made by defendant in reply to a question by witness. Witness checked the goods in the presence of Thompson, but defendant went away. He discovered that there was a shortage of about £85. On the following day (Monday) he met defendant at the Shepparton railway station. On the previous Sunday evening witness saw defendant, who said he sent £35 to Melbourne. Defendant took £9 from his pocket, threw it on the counter, and said, "That is all your money, and I am finished with you." On the following Monday evening witness saw

Following Monday evening witness saw defendant at the Shepparton railway station and said to him: "I gave you a chance, and now you give me a chance by giving me my money." Defendant replied, "I haven't got any of your money, and you won't see me again." Witness had received only £9 from defendant, and there was still a shortage of £75.

By Mr. Abernethy: I am 32 years of age. I had shops in Shepparton, Wangaratta, Corowa, and Richmond in 1923. I have not been in the Insolvency Court." I am an uncertificated insolvent at present. In May, 1924, I assigned my estate. I gave defendant a chance as he was hard up, as I was also, but I had any amount of stock, and I gave defendant a job to sell it. Defendant used to call me "Billie," and I called him "Alex." I said to defendant: "Here is the car and goods; go and sell the goods on the half-profits arrangement; but if you start to drink again I will take the car and stock." He had the right to go where he liked with the goods—to hawk the goods, for which he had a licence.

The P.M.: Did you see it?

Witness: He told me he had one.

The P.M.: Did he always speak the truth.

Witness, continuing, said: The arrangement was half profits, but that did not mean defendant was to give the goods away. For the last four years I have been buying and selling drapery. On a few occasions I opened up in a town and then sold out in a month or two. That was my practice. On two occasions I put de-

practice. On two occasions I put defendant in charge of the business, defendant getting a list of the stock and prices. When I gave defendant the £200 with the car, I gave him an invoice for the goods. I kept a copy, but that is in Melbourne, it being handed over with my books when I assigned my estate.

Mr. Abernethy: So you have no interest in the goods?

Witness: The invoice is in the hands of my assignee. I had an account in the National Bank at Shepparton, also in the National Banks at Corowa and Wangaratta. I had an account in the E.S. & A. Bank. I instructed defendant to remit the proceeds from sales direct to Robinov at Port Melbourne, to go to my credit there for money I was owing. I owed Robinov £100. It might have been more convenient if I had drawn a cheque on my Richmond account and paid Robinov. I suppose I could have drawn a cheque at that time on any of my bank accounts.

Mr. Abernethy: Would it have been honored?

Witness: I cannot say. I was not then expecting to have my credit stopped, as I got an extension of time then. I said to defendant: "I'll be lucky if I get a run till Christmas. That was a week before defendant came to Shepparton in October last."

Mr. Abernethy: Is Robinov a relation of yours?

Witness: Yes.

Mr. Abernethy: Your wife was a creditor too?

Witness: Yes, for rent for the Wangaratta shop.

garatta shop.

Mr. Abernethy: And you work for her now?

Witness: Yes.

Mr. Abernethy, replying to an interposition by the P.M., said he submitted the complainant was trying to make a scapegoat of the defendant.

By Mr. Abernethy: Defendant went away when we were checking the goods brought from Numurkah to Shepparton. If I had known the case was going on as it has done to-day, I would have brought all my books.

Mr. Abernethy: Has it struck you

that defendant was entitled to half the profit on the goods sold?

Witness: Yes; but he should have submitted a full statement of sales. At present, on sales, allowing for expenses, one must work on a 50 per cent. advance on invoice prices. I did not inquire as to who bought the goods from defendant in Numurkah, or as to what they brought. Defendant told me he sent £35 to Robinov. Defendant practically got the sack from my employment about a month or six weeks prior to his asking me to give him another chance. The defendant complained to me that I was not carrying out an agreement that he and his wife were to be employed in the same shop. When defendant was dismissed by me I gave him three suit lengths to give him a start.

Mr. Abernethy: Do you still say you sacked him?

Witness: Well, I had to put him off.

By Sub-Inspector Lovitt: I had an interest in the goods at the time I

interest in the goods at the time I took out the warrant.

Louis James Thompson, draper, carrying on business in Wangaratta, said he was in complainant's employ from October, 1922, till May, 1924, at Shepparton. He knew defendant slightly. Defendant came to work for complainant in September, 1923. He assisted to pack the goods in the car for defendant, and next saw the goods in Numurkah on the following Sunday, the defendant being present, also complainant. Complainant said to defendant: "What did you sell the goods by auction for? I didn't tell you to do so." Defendant answered, but witness could not remember what it was. Complainant then said: "What have you done with the money?" Defendant said: "I sent a statement and the money yesterday."

The P.M.: Did he say to whom?

Witness: No; I do not think he did.

Continuing, witness said later complainant, defendant and witness returned to Shepparton with the unsold goods, and took the latter to complainant's shop. Defendant and witness went to tea, whilst complainant went on with the checking of the goods. Defendant was present during most of the time. Complainant said to defendant: "You are £84 short." Defendant replied: "I sent a statement and the money yesterday." Complainant said: "You didn't. I rang up Melbourne, and they state there such has not been received." Defendant threw £9 on the counter, and said: "That's all the money belonging to you. I don't want to have anything more to do with you." Defendant then opened the door and left

defendant then opened the door and left the shop. Witness never heard anything about the argument between complainant and defendant.

By Mr. Abernethy: It was about 10 p.m. when defendant left the shop after throwing £9 on the counter. We got back to Shepparton from Numurkah about 6.30 p.m. on a Sunday, having travelled by car, the goods being brought in Cronk's motor lorry, driven by Mr. Cronk, and he reached Shepparton about the same time as witness did. Defendant and witness went away to tea, leaving complainant in the shop with the goods. About half an hour later defendant and witness returned to the shop. Complainant was in the shop. He could not say whether or not the goods had been opened up in the meantime. Complainant went on checking the goods, whilst defendant and witness sat on the counter and chatted. Complainant checked the goods against copies of loose sheet invoices. He did not hear complainant ask defendant to produce the original invoices. About 9 p.m. defendant said, "I'd better book a bed," and he went away. Before defendant returned complainant finished checking and totalling the goods. Returning about 20 to 30 minutes after he left the shop, complainant told him he was £84 short. I am now in business for myself at Wangaratta, where I first worked for complainant.

By Sub-Inspector Lovitt: When we met defendant at Numurkah, he was under the influence of drink.

By Mr. Abernethy: At Shepparton I assisted in packing the goods for the

assisted in packing the goods for the defendant. Defendant picked out some of the goods, and complainant the remainder, the complainant recording the quantities on an invoice at figures which were called "the cost prices to Zmood's."

Defendant, who pleaded not guilty, was committed for trial to the Court of General Sessions, to be held in Shepparton on November 25, bail being allowed defendant, himself in the sum of £150, and one surety of £50.