1951 *Present :* **Pulle J.**

S. WIMALAGUNERATNE, Appellant, *and* WEERASEKERA (Inspector of Police), Respondent

S. C. 178—M. C. Matara, 21,074

Rubber Thefts Ordinance (Cap. 29)—Section 14—Meaning of " books ".

In a prosecution under section 14 of the Rubber Thefts Ordinance it was alleged against the appellant that he, being a licensed dealer in rubber, did have in his premises a certain quantity of rubber which was in excess of the weight *according to his books*. The prosecutor led no evidence of the examination of any book except the Rubber Sales Register.

Held, that an offence under section 14 could not be established except upon an examination of all the books required to be kept under the Ordinance.

APPEAL from a judgment of the Magistrate's Court, Matara.

G. E. Chitty, with *A. S. Vanigasooriyar*, for the accused appellant.

Ananda Pereira, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

August 13, 1951. PULLE J.—

This is an appeal from a conviction under the Rubber Thefts Ordinance (Cap. 29). At first sight the case appeared to be a simple one pointing to the guilt of the appellant but as the argument proceeded many difficulties were revealed and I am indebted to learned Counsel on both sides for their assistance.

The charge against the appellant was laid under section 14. It is alleged that he, being a licensed dealer in rubber, did on October 6, 1950, have in his premises 555 lbs. of rubber which was 381 lbs. in excess of the weight *according to his books*.

The evidence for the prosecution was that the Inspector of Police, Kamburupitiya, visited the licensed premises and examined the Rubber Sales Register. According to this Register the appellant had on September 24, 1950, purchased 142 lbs. of sheet rubber and 32 lbs. of scrap rubber which had not been disposed of on October 6. In short, the case for the prosecution was that having regard to the entries in the Register, the appellant ought not to have had more than 174 lbs. of rubber on the premises. The defence admitted the discrepancy between the amount appearing in the Sales Register and the quantity found on the premises. The appellant's explanation was that one J. Wimalagunaratne brought a quantity of rubber to the premises to be sold but pending the ascertainment, in the course of the day, of the market price, the sale was not completed and, therefore, the amount was not entered in the Register. It is not necessary to determine whether the explanation given by the appellant was true because the learned Magistrate proceeded on the basis that even if the explanation was true it did not disclose a defence to the charge, so long as the appellant admitted that there was a discrepancy between the quantity of rubber found in the store and the amount appearing in the Register.

Section 14 of the Rubber Thefts Ordinance, without the proviso which is not material to the case, reads as follows:—

> "Whenever the weight of rubber found on the premises of a licensed dealer does not agree with the weight which, according to his books, ought to be on such premises, he shall be deemed to be guilty of an offence against this Ordinance."

It was urged on behalf of the appellant that it is not sufficient for the prosecution to prove a discrepancy between any particular book, like the Sales Register, and the amount found. There must be a discrepancy between the "books" and such amount.

Section 9 (1) of the Ordinance contemplates the making of entries in a book of rubber purchased by a licensed dealer. Sub-section 2 of section 9 deals with rubber which has not been purchased but which is brought into any licensed premises. In that event the licensed dealer is required to enter forthwith the receipt in the book required to be kept under sub-section 1 or, "in such other form as may be prescribed for the purpose ". In the present case there is no evidence that besides the book in form B in the Schedule to the Ordinance any other form has been prescribed for the purposes indicated in sub-section 2. If such a form has been prescribed, there is no evidence that the appellant kept a book in that form or not. Further, section 8 (1) prohibits a licensed dealer from receiving on his premises rubber, which has neither been purchased nor is the produce of lands in his possession or occupation, unless there is delivered to him a declaration in form C. There is no evidence that the excess rubber was not entered in one of the C forms. In fact there is no evidence of the examination of any book save the Sales Register.

Now it is conceivable that upon an examination of all the books required to be kept under the Ordinance an offence under section 14 might have been disclosed, but there is no evidence of such an examination. It is equally possible that the appellant was guilty of an offence under section 8 (3) in receiving rubber without a C form but he has not been charged with it.

Upon a consideration of the provisions of the Rubber Thefts Ordinance and the evidence which the learned Magistrate has accepted I am of opinion that the prosecution has failed to establish the offence with which the appellant was charged.

I set aside the conviction and sentence and acquit the accused.

Appeal allowed.