

1930

Present : Lyall Grant J.

ALBERT v. BAPTIST.

797—*P. C. Galle*, 37,216.

Rubber Thefts Ordinance—Rubber entrusted to carrier—Delivery for sale—Ordinance No. 21 of 1908, s. 3.

A servant or carrier to whom rubber had been entrusted for conveyance to a shop cannot be said to "take delivery of rubber for sale" within the meaning of section 3 of the Rubber Thefts Ordinance.

A PPEAL from a conviction, by the Police Magistrate of Galle.

Ranawaka, for accused, appealant.

January 28, 1930. LYALL GRANT J.—

The accused in this case appeals from a conviction for taking delivery of rubber for sale without a licence from the Government Agent. This is an offence punishable under section 3 of Ordinance No. 21 of 1908, which makes it "unlawful for any person to purchase rubber or to take delivery of rubber for sale or shipment unless he has been licensed under this Ordinance to deal in rubber or has received from the Government Agent a permit authorizing him to do so".

The evidence is that the accused was found carrying rubber on his shoulders along the road and, when stopped and questioned, the accused handed to the police constable a letter. The letter reads as follows :—

"I, the undersigned, entrusted to Hiriburugamage Baptist of Ganegama 258 lb. of rubber and 50 lb. of scrap rubber from Nugamullawatta, situated at Hamurakriya, belonging to me, to be sold at Ambalangoda and to bring the money."

This is signed by one P. Munasinghe.

Munasinghe gave evidence and stated that he gave the accused about 300 lb. of rubber with this letter and told him to take the rubber to a certain shop—R. de Silva's shop at Ambalangoda. He said that the accused worked under him occasionally.

The accused giving evidence stated that he lived near Munasinghe's house and did odd jobs for him. He said that on the day in question he took this rubber to Ambalangoda to R. de Silva's shop. There is no evidence that the accused owns any rubber or is a rubber dealer. The question is whether he can be said to have taken delivery of this rubber for sale. From the context it seems to me fairly clear that the Ordinance does not intend to strike at persons who are mere servants or carriers. It makes it unlawful for a person to purchase rubber without a permit, and it also makes it unlawful for a person to take delivery for sale or shipment. This would seem to apply to persons who though not actual buyers of rubber have received the rubber as agents or brokers.

I do not think it is clearly intended to apply to such cases as the present one, where the accused was evidently acting as a servant of Munasinghe for the purpose of taking rubber to the store.

It is proper to say that the Magistrate does not accept the story told by Munasinghe and by the accused that the accused was taking the rubber to R. de Silva's shop. He says "it is clear from the letter that Munasinghe intended the rubber to be sold by the accused to anyone at Ambalangoda who paid the best price for the rubber". The letter, however, is quite indefinite on the point and is quite consistent with the only evidence in the case which is to the effect that the rubber was sent to R. de Silva's shop.

Munasinghe is called as a witness for the prosecution, and if the prosecution desired to contradict his evidence on this point they ought to have called R. de Silva or someone else to do so.

The only evidence in the case is that the rubber was, as the accused says, being carried by the accused on behalf of Munasinghe to a shop at Ambalangoda and that the accused had nothing else to do with it. The appeal is allowed, and the conviction quashed.

Appeal allowed.