

1935

*Present : Poyser J.*ADIHETTY *v.* WIJEYSEKERE.407—*P. C. Panadure, 31,308.*

Rubber control—False return made before the Ordinance—Charge under the Ordinance—Ordinance No. 6 of 1934, s. 51 (1) (e).

Where a person made use of an incorrect entry in a return forwarded to the Rubber Controller prior to the Rubber Control Ordinance for the purpose of obtaining a Coupon for a larger quantity of rubber than he was entitled to,—

Held, that he cannot be convicted under section 51 (1) (e) of the Ordinance of making use of an error in the return for the purpose of creating a right to the issue of rubber coupons.

A PPEAL from a conviction by the Police Magistrate of Panadure.

R. L. Pereira, K.C. (with him *S. P. Wijewickrama* and *Kumarasingham*), for accused, appellant.

H. W. R. Weerasooria, Acting C.C., for Crown, respondent.

Cur. adv. vult.

August 30, 1935. POYSER J.—

The appellant was convicted under section 51 (1) (e) of Ordinance No. 6 of 1934 for knowingly making use of an incorrect entry in a return forwarded to the Rubber Controller for the purpose of creating a right to the issue of rubber coupons. The facts were as follows:—The appellant made a return (P 1) setting out that on his land Talagahawatta there were 160 rubber trees whereas in fact there were only 142 trees.

This return was made prior to the date the Ordinance came into force. It has already been held by this Court (*Ratemahatmaya of Walapane v. Jaganathan*) that such a return could not be considered a return made under the Ordinance and that a person making such a return cannot be convicted under section 51 (1) (d) of the Ordinance. It is not argued that that case was wrongly decided and it was presumably in view of that case that the appellant was charged under sub-section (e). Consequently the only point that arises on this appeal is, whether the making of a false return before the coming into force of the Ordinance and obtaining coupons based on such return, can be said to be making use of an error in any return for the purpose of creating a right to the issue of any coupons.

The Police Magistrate finds that the appellant got a larger number of coupons than he was entitled to by several acts commencing with the return (P 1) and ending with the acceptance of coupons and convicted the accused.

It is clear that the appellant, in consequence of his false return, got coupons for a greater amount of rubber than he was entitled to, but can such action come under the provisions of section 51 (1) (e)? In my opinion it cannot.

The appellant had the right to the issue of coupons and such right was not created by the "error" in the return made by him and there is no provision in this sub-section in regard to the issue of coupons for a greater amount of rubber than a person is entitled to.

The appeal is allowed and the conviction set aside.

Set aside.
