1936 *Present :* **Abrahams C.J., Dalton S.P.J., and Akbar J.**

ADIHETTY *v.* ERAMUDUGOLLA.

787—P. C. Matale, 14,691.

Rubber Control—Return supplied to Rubber Investigating Officer—False entry regarding extent of estate—Adoption of return by Rubber Controller—Charge of using false entry for creating a right to the issue of coupons—Rubber Control Ordinance, No. 6 of 1934, s. 51 (1) (e).

The accused, who made a return to the Rubber Investigating Officer before the Rubber Control Ordinance, No. 6 of 1934, came into operation, was charged under section 51 (*e*) of the Ordinance with having knowingly made use of an incorrect entry for the purpose of creating a right to the issue of coupons.

The false entry in the return was to the effect that he was the proprietor of an estate of 18 acres with 2,670 rubber trees whereas, in fact, the extent of the estate was 6 acres with 575 trees. The Rubber Controller adopted the return sent by the accused as a return furnished under section 13 (1) of the Ordinance and issued coupons to him.

***Held, per* ABRAHAMS C.J. and AKBAR J. (DALTON S.P.J. dissenting), that the accused in accepting the coupons sent by the Rubber Controller could not be said to have made use of a false entry in a return to create a right to the use of coupons within the meaning of section 51 (*e*) of the Ordinance.**

***Per* DALTON S.P.J.—Where a person applies for or receives coupons on the basis of an incorrect return by him with knowledge that the return is incorrect, he offends against the section.**

Adihetty v. Wijeysekere [1] **disapproved.**

CASE referred by Koch and Poyser JJ. to a Bench of three Judges.

The accused was charged in the Police Court of Matale with having knowingly made use of an incorrect entry in a return furnished to the Rubber Investigating Officer for the purpose of creating a right to the issue of coupons, namely, that he was the proprietor of Ihalawalauwawatte in extent 1 acre exclusively planted and 17 acres interplanted with 2,670 rubber trees before the year 1927, whereas he was entitled to only about 6 acres interplanted with 575 rubber trees, an offence punishable under section 51 (*e*) of the Rubber Control Ordinance, No. 6 of 1934.

The Police Magistrate acquitted the accused, following the decision of Poyser J. in *Adihetty v. Wijeyesekere* [1].

J. E. M. Obeyesekere, Acting Deputy S.-G. **(with him *Pulle, C.C.*), for the complainant, appellant.—The Magistrate has found as a fact that Ihalawalauwawatte in respect of which the respondent made a return to the Rubber Investigating Officer is only 6 acres in extent, whereas he represented that it was 18 acres in extent. In consequence the respondent has received coupons for 2,086 lb. in excess of the amount to which he was entitled. The Magistrate has also found that the respondent's conduct was dishonest. Counsel next referred to the scheme of Ordinance No. 6 of 1934, and submitted that the prosecution had to prove (*a*) that there was an incorrect entry in a return**

[1] *37 N. L. R. 189.*

furnished to the Rubber Investigating Officer, (*b*) that the respondent knowingly used that entry, and (*c*) that he did so for the purpose of creating right to the issue of any coupon. Counsel argued that (*a*) was established, and that the letters P 2 and P 3 constituted an user within the meaning of the section. He submitted that Poyser J. in *Adihetty v. Wijeysekere* (*supra*) took too narrow a view of the section. A person who receives a coupon for a quantity in excess of that to which he is entitled is within the section. It is difficult to believe that the Legislature intended to penalize a person who, not owning any land in rubber, obtains coupons for 1 acre, whereas it did not intend to penalize a person who, owning 1 acre of rubber land, obtains coupons for 100 acres. Soertsz J. in *Adihetty v. Silva*[1] did not consider the question but distinguished the case he considered on the facts.

H. V. Perera (with him *B. H. Aluwihare*), for accused, respondent.—The prosecution must prove that the entry in the return is incorrect in fact; it must also prove an user of the entry subsequent to the coming into operation of the Ordinance for the purpose indicated—the purpose being to create a right to the issue of coupons. Before one can say that an act of the accused is an act of user, it is necessary to presume that the accused did not think that he had already effectively created that right by making a false entry. We reach a certain point when an accused—having made a false entry—has done everything he need do for the purpose of giving him a certain right. It cannot be said that an act done thereafter was intended by the accused to create a right. The letter P 3 comes too late. The prosecution regards receipt of coupons as user. The user contemplated by the Ordinance is an user after the commencement of the Ordinance. When the Ordinance commences to operate, the pretended or false right had been created. Thereafter whatever the accused does cannot be regarded as having been done for the purpose of creating a right which was already in existence.

The letter P 3 is a request. He merely asks that the coupons for the 18 acres mentioned in his return be divided. It is a false statement on the footing of a certain claim. It is not made for the purpose of supporting a claim or creating a claim. P 3 is written on the basis that the Rubber Investigating Department had accepted the first return sent by accused. Once he has supplied the data and it is accepted then a subsequent request made by him to split up the issue of coupons cannot be regarded as something done for the purpose of creating a right to the issue of coupons.

When did use begin? Use is a positive act over and above the mere sending of the return. The use would end when the right has been created. The section clearly contemplates a positive act of user. Full use of incorrect entry had already been made by accused. The incorrect data had been previously sent and the Controller had acted on it.

Accused gave certain incorrect data. Rubber Controller accepted it. Once it is accepted, everything is automatic; the Rubber Controller on the footing of those figures will make certain calculations—standard production, exportable maximum, &c. Once the accused has supplied those data, he has done all the mischief.

[1] *15 C. L. Rec. 53.*

The penal provisions of the Ordinance must be interpreted in favour of the liberty of the subject : Maxwell's *Interpretation of Statutes, 6th ed., p. 464.*

Cur. adv. vult.

August 4, 1936. ABRAHAMS C.J.—

This case has been referred to us owing to a difference of opinion between Poyser J. and Koch J. as to whether the respondent ought to have been convicted under section 51 (1) (*e*) of the Rubber Control Ordinance, No. 6 of 1934.

The Magistrate who tried the respondent acquitted him on the ground that notwithstanding the proof of the allegations of fact he was entitled to some coupons, and that the provision of law under which he was charged contemplated the use of an incorrect entry for the purpose of creating a right which did not exist, *i.e.*, when the person concerned is entitled to no coupons at all. An appeal against this acquittal was lodged, and Poyser J. for the reasons stated by him in the previous case of *Adihetty v. Wijeysekere* [1], was of the opinion that the acquittal was right ; Koch J. on the other hand was of the opinion that as the respondent knowingly used an incorrect entry in his return to obtain coupons for a larger quantity of rubber than he was justly entitled to receive, he sought to create a right to the issue of excess coupons which brought his act within the words used in the enactment, namely : "to create a right to the issue of any coupon."

I agree with Koch J. that a right to the issue of any coupon means as much the right to the issue of any coupon beyond that to which there is a good title, as the right to the issue of any coupon where there is no title at all. I think the other view would permit the commission of fraudulent acts, at least, as serious as those which it condemns ; for instance, a man who had a few trees and fraudulently stated that he had a great many could escape, whereas the man who had no trees at all and who stated that he had just a few would be punished. But, as I view this case, the appeal cannot be decided on that ground but on another which apparently has not been previously advanced, since it appears to be taken for granted that the accused persons in cases previously decided, as in this case, did use the incorrect entry to create a right, the question for decision being what right had there been an endeavour to create.

Counsel for the respondent has now invited us to look at the case from a different view point. He submits that, assuming the respondent did at any time use the incorrect entry, there is no evidence to show that he used it to create or purport to create the issue to him of any coupon. For the appellant it is submitted that the respondent used the incorrect entry when he wrote the letter P 2, again when he wrote the letter P 3, and finally when he was sent the excess coupons.

Now to use a thing means to employ that thing for a particular purpose, and if it is conceded that the letters or either of them imported by reference an employment of the incorrect entry made in P 1, it has to be shown that the purpose of employment was to create a right to the excess number of coupons the respondent received. In my opinion no such purpose has been shown. It appears rather to me that the purpose for

[1] *37 N. L. R. 189.*

which P 2 was written was merely to correct an error in his name and address appearing in some document not in evidence. What that error was has not been explained but it is irrelevant. As to P 3, the purpose for which it was written was to effect a distribution between himself and his brother of the coupons which the respondent expected or hoped to receive as a result of the return he had made, and I am unable to see that anything contained or implied in the letter created or purported to create a right to the issue of any coupon. To take a simple analogy : suppose a tradesman to have sent to a customer an account claiming payment for more goods than he had supplied. Before he receives a settlement he writes again to the customer requesting him to forward part of the sum due to another tradesman for whom he had been agent for part of the goods supplied, and then to remit the balance to himself. It could not in reason be said that he had made use of a false entry in an account in order to create a right to the payment of the amount set out in the account.

Finally, it seems to me that the receipt of the coupons does not prove the respondent guilty of the offence charged. In accepting them the respondent could not be said to use a false entry much less to create a right to the coupons. The coupons were issued to him because the officer issuing them believed that the respondent had a right to receive them by virtue of the details in his return.

In my opinion the charge against the respondent cannot be sustained. He might have been properly charged under some other law, but that is not to the purpose. I would dismiss the appeal.

DALTON S.P.J.—

This appeal originally came before Koch J. He referred it to a Bench of two Judges for the reason he sets out in his judgment. It then came before Poyser and Koch JJ. They were not able to agree, and the appeal has now come before a Bench of three Judges.

The appeal is by the complainant in the Police Court, described as a clerk in the Rubber Controller's Department, against the acquittal of the accused. The latter was charged in the following terms :—

> " that you did on or about the 27th day of April at Matale within the division aforesaid knowingly make use of an incorrect entry in the return furnished to the Rubber Investigating Officer for the purpose of creating a right to the issue of coupons, to wit, that you are the proprietor of Ihalawalauwawatte in extent 1 acre exclusively planted and 17 acres interplanted with 2,670 rubber trees before the year 1927; whereas you are entitled to only about 6 acres interplanted with 575 rubber trees, and that you have thereby committed an offence punishable under section 51 (1) (*e*) of Ordinance No. 6 of 1934 (Rubber Control Ordinance) ".

The facts found by the Magistrate to be proved are that the accused stated in a return furnished to the Rubber Investigating Officer that his land Ihalawalauwawatte was 18 acres in extent and contained 2,670 trees. On the basis of this return his land was assessed at 4,018 lb. of rubber, standard production, and in pursuance of this assessment he

has received coupons for 2,722 lb. On April 27, 1935, he received coupons for 552 lb., a portion of the total of 2,722 lb. Investigation showed that the land in question was 6 acres in extent and contained only 575 rubber trees. On this acreage and on this number of trees the accused would only be entitled to coupons for 805 lb., standard production, and on that standard he should have received coupons for 647 lb. only. He has therefore received coupons for 2,086 lb. in excess of the amount to which he was entitled. The coupons are, under the Ordinance, valuable securities. The Magistrate finds that the accused knowingly made use of the false return made by him, and that the fraud committed by him has been established beyond all doubt. Following, however, the decision of Poyser J. in *Adihetty v. Wijeysekere* [1] in view of the fact that the accused was entitled to some coupons, he held that he had not committed an offence in contravention of section 51 (1) (*e*) of Ordinance No. 6 of 1934.

Section 51 (1) (*e*) of the Rubber Control Ordinance, 1934, enacts that "any person who knowingly uses or attempts to use . . . . any incorrect entry . . . . in any return furnished to the Rubber Investigating Officer prior to the commencement of this Ordinance, for the purpose of creating or purporting to create a right to the issue of any coupon . . . . shall be guilty of an offence . . . ."

Prior to the commencement of the Ordinance an officer, called the Rubber Investigating Officer, had called for returns from rubber growers. The returns purport to give particulars required for the control of the production and export of rubber under the Ordinance to be enacted. By section 13 (2) of the Ordinance the Controller was empowered to accept returns so sent in, as being furnished to him under the Ordinance. The accused in this case, as correspondence between him and the Rubber Controller after the Ordinance was in force shows, fully adopted the position that his return to the Rubber Investigating Officer was a return furnished under the Ordinance. In his letter P 2 he called attention to an error in his name and in the name of the estate, and in his letter P 3 of September 7, 1934, he asked that the coupons for the 18 acres mentioned in his return be divided, 8 acres in favour of his brother and 10 acres in his favour. In reply he was informed that coupons could only be issued to the registered number and he must himself make arrangements with his brother to share the coupons when he received them. He therefore, on the facts proved, has furnished an incorrect return under the Ordinance for the purpose of obtaining a larger number of coupons, valuable securities, than he was entitled to, and on or about April 27, 1935, he knowingly made use of this incorrect return for the purpose of obtaining a portion of those coupons, which on that date he obtained.

He had no answer to the evidence led against him establishing the facts, but was acquitted on the ground that, whatever other offence he may have committed, he had not committed the offence charged against him.

Section 51 (1) (*e*) is not an easy section to interpret, and in the argument on the appeal before us the main ground urged in support of the correctness of the Magistrate's decision was not the ground upon which

[1] *37 N. L. R. 189.*

the Magistrate proceeded in acquitting the accused, and apparently was not one raised at all at the trial. It was, as I understood it, to the effect that the accused had not been proved to have even used on or about the date set out in the charge any incorrect entry in the return for the purpose of creating or purporting to create a right to the issue of any coupon; that if he had purported to use any such incorrect entry for that purpose, he had done so when he first sent in the return, and that therefore he was properly acquitted on the charge before the Court.

In dealing with this argument it is necessary to ascertain at what point of time a right to the issue of a coupon arises under the Ordinance. It certainly does not arise, so far as I can see, at the time the return is furnished, or immediately after it has been accepted, or when the Controller receives and registers it. It would seem that no one could have any right to any coupon at the earliest until the exportable maximum of rubber had been ascertained, under the provisions of the Ordinance. If that is so, when the false return was furnished, I am unable to see how at that point of time the accused could be said to be purporting to create a right to the issue of coupons.

Again, under the provisions of section 24 (1) of the Ordinance, the right of the registered proprietor to receive coupons is a right which depends upon the quantity of rubber which may be exported from his estate during the period of control. That right is not created to use that word in possibly its commonest meaning, so far as I can see, by anything the accused can do. The right to coupons is created by the Ordinance, but the extent of the right, so far as it relates to the number of coupons to which a person may be entitled, may vary from year to year (see section 41). It is not impossible to conceive, in certain circumstances, a right to obtain coupons coming to an end during the period of control, *e.g.*, by the action of the International Regulation Committee dealing in a particular way with the exportable quota, or even by the unfortunate destruction of the rubber trees of a registered proprietor by hurricane or fire. Further, the accused could not create by his fraud any right at all to receive coupons for 2,722 lb. of rubber, although he might fraudulently attempt to establish a claim to them. He having received a large excess over the number to which he was entitled, the Rubber Controller is empowered, under section 22 of the Ordinance, by making the necessary adjustments to withhold all further coupons in any succeeding year.

I can find nothing in the Ordinance to support the position, which, it seems to me, is necessary if there is anything in this argument in favour of the accused, that a right to the issue of coupons is created, that is, brought into existence, by his furnishing any return under the Ordinance to the Rubber Investigating Officer. In the course of his argument Mr. Perera asked how could the accused come within the sub-section and be said to create a right to the issue of coupons by making use on a particular date of some incorrect entry in his return, when he had in fact created that right at a much earlier point of time. The answer to that question, in my opinion, is that he had not created the right at all, as I have pointed out. As I understand the Ordinance, he is by that step doing no more than setting the law in motion for the purpose of obtaining a right to the issue of coupons at some later period.

What then is the intention which the legislature wished to express by using the language they have used in this section? In construing an Ordinance one must bear in mind the object of the Ordinance and, in certain circumstances, one is entitled to modify the language used to meet that intention. One may go so far as to give an unusual meaning to particular words, if one is driven to the irresistible conclusion that the legislature could not possibly have intended what its words signify, and that the modification thus made is merely the correction of careless language used for the porpose of giving the true meaning (Maxwell's *Interpretation of Statutes, 7th ed., p. 198*).

To construe the words "for the purpose of creating or purporting to create" in the sub-section in the sense Mr. Perera has asked us to do is, having regard to the provisions of the Ordinance, to give them a meaning which I can find nothing in the Ordinance to support, but which would rather imply that the sub-section provides for an offence which never can in fact be committed by anyone.

The intention expressed in the sub-section seems to me to be an intention to penalize a person who knowingly uses an incorrect entry in a return of the kind mentioned, when used for the purpose of setting up a right or claim to the issue of coupons to which a person is not entitled. The words "purport to create" must, in my opinion, be construed as having reference to a purpose of setting up, or seeking to establish or support, a right or lawful claim to the issue of coupons at the time the incorrect entry is knowingly used or attempted to be used. If that is correct, it seems to me to follow that on any occasion on which a person applies for coupons or receives coupons on the basis of the incorrect entry in a return made by him, with knowledge that the entry is incorrect, he knowingly uses that entry, and he uses it for the purpose set out in the sub-section.

The ground upon which the Magistrate acquitted the accused has been argued before us, but Mr. Perera concedes that he places more reliance upon the ground with which I have already dealt. I regret I am unable to agree with the conclusion come to in *Adihetty v. Wijeysekere* (*supra*). The fact that a person, who knowingly uses an incorrect entry in a return by him to obtain more coupons than he is entitled to, is entitled to some coupons does not, in my opinion, take him out of the operation of the sub-section.

It has been proved and found that the accused knowingly used the incorrect statement in the return furnished by him for the purpose of establishing his claim to the issue of the coupons set out in the charge. I am of opinion therefore for the reasons I have given that he has committed an offence within the meaning of section 51 (1) (*e*). I have come to the same conclusion as Koch J., possibly by a different method, and I would allow the appeal, with a direction to the Magistrate to convict the accused and thereupon to pass sentence upon him.

AKBAR J.—

In this case a clerk of the Rubber Controller's Department charged the accused under section 51 (1) (*e*) of the Rubber Control Ordinance, No. 6 of 1934, with having on April 27, 1935, knowingly made use of an incorrect entry in a return furnished by him to the Rubber Investigating Officer for the purpose of creating a right to the issue of

coupons, the entry being to the effect that he was the proprietor of Ihalawalauwawatte in extent 1 acre exclusively planted with rubber and 17 acres interplanted with 2,670 rubber trees planted before 1927. The learned Police Magistrate found as a fact that the accused was the owner of 6 acres only interplanted with 575 rubber trees, but he acquitted the accused, as he was of opinion that section 51 (1) (*e*) did not apply to a person who had a right to some coupons and that the sub-section covered the case of only a person who was not entitled to any coupons at all.

In *Adihetty v. Wijeysekere*[1] Poyser J. came to the same conclusion. He stated in the course of his judgment as follows:—"The appellant had the right to the use 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 complainant appealed with the sanction of the Solicitor-General, and as there was a difference of opinion between my brothers Poyser J. and Koch J. the appeal has been referred to a Bench of three Judges.

Sub-section (51) (1) (*e*) is not at all clear, but I regret I cannot agree with Poyser J. in his interpretation of the words "for the purpose of creating a right to the issue of any coupon" when he thought these words were applicable only to persons who had no right to any coupons at all and that the sub-section had no application to persons in the position of the accused who had "the right to the issue" of some coupons. In my opinion the words "any coupon" are wide enough to include a person who claims more coupons than he is entitled to, but the offence contemplated by the sub-section is the user with knowledge of the incorrect entry in the return for the purpose mentioned in the sub-section.

This seems to me to be the real point in this appeal, and as the whole appeal has been referred to us, it is open to us to give a judgment on all the points raised in this case. The return was sent by the accused to the Rubber Investigating Officer before the Ordinance came into force, and under section 13 (2) any return so sent may be accepted by the Controller as a return furnished under sub-section (1) of section 13. When the Controller adopted the return sent by the accused to the Rubber Investigating Officer as a return under the Ordinance, that was a spontaneous act of the Controller and there is no evidence in this case that the Controller accepted the return as one under the Ordinance owing to the persuasion of the accused.

The Deputy Solicitor-General argued that the accused knowingly made use of the incorrect entry for the purpose indicated in the sub-section when he wrote letters P 2 and P 3. Letter P 2 (dated June 2, 1934) is a letter written by the accused returning a certain letter (not produced) of the Rubber Investigating Officer and asking him to correct the name of the estate and that of the writer. Letter P 3 dated September 7, 1934, is a request "to issue coupons hereafter" for 8 acres to accused's brother and coupons for the balance 10 acres were to be sent in favour of the accused "as usual". The reply was that coupons could only be issued to the registered proprietor and that accused should make arrangements with his brother to share the coupons when received.

[1] *37 N. L. R. 189.*

I cannot see on P 2 and P 3 any wrongful user of the incorrect entry in the return already sent or any attempt to do so for the purpose of creating a right to the issue of coupons. Letter P 3 is merely a request that the coupons when issued should be divided between the accused and his brother. Moreover, no evidence has been led to prove that the number of coupons had not been allotted to the accused at the time when P 3 was written. Under section 19 of the Ordinance the Controller after registration of the estate assesses the standard production. Letters P 2 and P 3 show that accused 's estate was already registered in June, 1934. In the ordinary course the returns will be made use of for the assessment of the standard production only, and it may well be that the standard production of the accused's estate had been assessed when P 2 and P 3 were written. At any rate the prosecution has led no evidence to prove that it had not been assessed at those dates.

Under section 23 the exportable maximum is determined and that depends on the standard production and not on the return. Under section 24 the registered proprietor " shall be entitled to receive . . . . coupons " only after the exportable maximum has been determined.

It will thus be seen that there is no evidence in this case of a wrongful user or an attempt to use wrongfully the incorrect entry in the return after it was sent to the Rubber Investigating Officer. The document P 4 shows that the accused received coupons for 552 lb. of rubber on April 27, 1935, and that he signed his name opposite the issue of the coupons for 552 lb. I fail to see how this receipt of coupons given to him by the Controller can be said to be a wrongful user of the incorrect return. It is significant that the date given in the complaint and in the charge is this date April 27, 1935, and not the dates given in letters P 2 and P 3.

In my opinion the appeal fails and it should be dismissed.

Appeal dismissed.