

1935

Present : Maartensz J.

RATEMAHATMAYA OF WALAPANE v. JEGANATHAN.

77—P. C. Nuwara Eliya, 8,824.

Rubber control—False statement in return—Return made to the Rubber Investigating Officer prior to Ordinance—Ordinance No. 6 of 1934, ss. 13 and 51 (1) (d).

A false statement made in a return furnished to a rubber investigating officer prior to the commencement of Ordinance No. 6 of 1934 cannot be made the subject of a charge under section 51 (1) (d) of the Ordinance.

A PPEAL from a conviction by the Police Magistrate of Nuwara Eliya.

S. P. Wijeywickreme, for appellant.

E. B. Wickremanayake, C.C., for respondent.

¹ 35 N. L. R. 91.

² 25 I. L. R. Calcutta 179.

April 8, 1935. MAARTENSZ J.—

This is an appeal by the accused who was charged with and convicted of having made a false return to the Rubber Controller, an offence punishable under section 51 (1) (d) of the Rubber Control Ordinance, No. 6 of 1934.

The return which the accused made is dated May 15, 1934. On this return there is one endorsement that it was received on June 20, 1934, and the stamp of the Rubber Controller to the effect that it was received on May 21, 1934.

The evidence of Mr. Aluwihare, the Ratemahatmaya, is that it was received on May 21, 1934. According to this return the accused had 319 rubber plants planted in 1934 on a land called Cottantenne of 3½ acres in Ambaliyada village. The plants were therefore very young plants. The land was inspected on July 26 by the Korala and the Arachchi of the village and their evidence is that there was no rubber in this land and that there is no rubber in this village. The accused's defence is that the plants had been killed off by a severe drought from May onwards. That there was a drought is admitted and there can be no doubt that it was possible for these plants to be killed off. In support of his defence he produced a receipt for rubber seeds purchased by him from one Vythialingam. After the case for the defence was closed it was pointed out that this witness was not called and the accused's proctor moved to be allowed to call him. This motion was disallowed as the case for the defence had been closed.

I think in the circumstances the accused should have been given the opportunity of calling this witness. The evidence at its highest however only proves that there were no rubber plants on July 26. It is impossible to presume from this evidence that there were no plants in the land on May 15 when the accused made his return as the plants were young plants. The prosecution had therefore failed to establish that the accused's statement that he had rubber plants in May, 1934, was false.

The legal objection to the conviction is that this return is not a return made under the Ordinance. It appears that on April 12, 1934, the Governor appointed an officer called the Rubber Investigating Officer. This officer, by a notice dated April 12, requested all producers of rubber to oblige him by furnishing on or before May 15, 1934, the information required by the printed forms which could be obtained from about April 30, free of charge from all Post Offices, Kachcheries, and minor headmen in rubber growing areas, and at the Office of the Rubber Investigating Officer. The notice also intimated that white forms should be used for small holdings under 10 acres in extent and that these returns should be forwarded direct to the Rubber Investigation Officer. It is true that this return was received by the Rubber Controller, if the rubber stamp on it bears the correct date, after the Ordinance came into operation on May 17, 1934; but it certainly was not a return made under the provisions of the Ordinance unless the provisions of section 13 could be made applicable to it, that is to say, whether in view of the provisions of this section the return was in fact a return under the Ordinance.

Section 13 enacts as follows :—(1) On or before the prescribed date the proprietor of every estate or small holding and every dealer shall furnish to the Controller a return in the prescribed form containing the prescribed particulars, (2) any return furnished by the proprietor of "an estate or a small holding or by a dealer to the Rubber Investigating Officer in response to any notification published by him prior to the commencement of this Ordinance may be accepted by the Controller as a return furnished under sub-section (1) : provided that if the Controller rejects any return as furnished to the Rubber Investigating Officer, he shall call on every proprietor or dealer whose return he rejects to furnish a return in accordance with sub-section (1) or within such extended time as he may specify". It would seem that sub-section (2) enables the Controller to accept as a return furnished under sub-section (1) any return furnished by the proprietor of an estate or small holding to the Rubber Investigating Officer. I am of opinion that this section does no more than authorize the Rubber Controller to treat a return to the Rubber Investigating Officer as a return under the Ordinance for the purposes of section 13 (1). That sub-section certainly does not make the return so far as the accused is concerned a return made by him under the provisions of the Ordinance. He was therefore not liable to conviction under the provisions of section 51 (1) (d) even if the statement contained in it with regard to the rubber plants is false.

The appeal is allowed and the accused acquitted.

Appeal allowed.
