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*Present: Jayewardene A.J.*INSPECTOR OF POLICE, ALUTGAMA *v.* PAUL SILVA.421—*P. C. Kalutara, 16,015.**Rubber Thefts Prevention Ordinance—Declaration by owner—Right to delegate—Ordinance No. 38 of 1917, s. 8A (1).*

Where a licensed rubber dealer purchased rubber on a declaration in form C signed by an agent of the owner of the rubber,—

Held, that the requirements of section 8A (1) of the Rubber Thefts Prevention Ordinance were not satisfied by such a declaration.**A** PPEAL from a conviction by the Police Magistrate of Kalutara. The facts appear from the judgment.*J. S. Jayewardene (with Gnanaparagasam)*, for appellant.

July 21, 1926. JAYEWARDENE A.J.—

This appeal involves a question regarding the construction of section 8A of the Rubber Thefts Prevention Ordinance, 1908. The case against the accused, who is a licensed rubber dealer, is that he purchased about 50 lb. of rubber in April, 1925, on a declaration in the form "C" which was signed not by the owner of the rubber but by an agent of the owner. The owner of the rubber was one Endoris de Silva, and the "C" form was signed by one Podi Singho for the owner. On these facts the charge framed was that the accused "did on April 17, 1925, receive on his licensed premises 50 lb. of rubber from W. Endoris Silva of Beruwala, not the produce of lands of the said W. Endoris Silva, in breach of section 8A (1) (b) of Ordinance No. 38 of 1917." This seems to be wrong. It was never suggested that the rubber was not the produce of the lands of Endoris de Silva. The charge should have stated that the rubber was purchased from Podi Singho, not the produce of lands of the said Podi Singho. However that may be, no objection was taken to the charge. The accused understood what the charge against him was and he has not been prejudiced. The question for decision is whether the declaration in the form "C" can be signed by an agent of the owner. Section 8A, sub-section (1), declares that it shall be unlawful for any licensed dealer to purchase any rubber or to receive upon his licensed premises otherwise than by purchase any rubber not the produce of

his own lands " unless in the case of every such purchase or receipt there shall be delivered with the rubber a declaration substantially in the form ' C ' in the schedule hereto or in such other form as may be prescribed, signed by the owner of the rubber, specifying the lands of which the rubber is the produce " And sub-section (2) of the section says:—

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" For the purpose of this section ' owner ' includes any person for the time being in charge of the lands of which the rubber in question is the ' produce.' "

The learned Police Magistrate has held that reading the two sub-sections together an agent of the owner is not entitled to sign a declaration in the form " C." The correctness of this view is contested, and it is argued that, in the absence of an express prohibition, where a person is permitted to do a thing he is entitled to do it through his duly authorized agent: *qui facit per alium facit per se*. That, no doubt, is the general rule, but the language or the object of a statute might indicate that a personal act was intended. I think section 8A itself shows that an agent of the owner is not entitled to sign declarations in the form " C " on behalf of the owner. For sub-section (2) extends the right to so sign to persons for the time being in charge of lands, such as superintendents of estates, &c. If the term " owner " was intended to include every agent of the owner such an extension would not have been necessary for a person in charge of an estate for the time being is in a sense an agent of the owner.

Further, the object of the Ordinance, as the title itself indicates, is to prevent theft of rubber, and one of the ways in which that object is to be achieved is by seeing that estate owners do not sell more rubber than their trees are capable of producing. Thus, under section 16A of the Ordinance the owner or the person for the time being in charge of any lands on which rubber shall have been produced, who shall be proved to have represented himself in any declaration or declarations made for the purpose of section 8A of this Ordinance to have been in possession of rubber substantially in excess of the capacity of lands alleged to have produced it, is declared guilty of an offence under the Ordinance and rendered liable to severe penalties. If an agent is permitted to make the declaration required by section 8A, the enforcement of the provisions of section 16A would be rendered difficult and the object of the Ordinance would to a large extent be frustrated. Sections 8A and 16A are amendments to the main Ordinance of 1908 and were introduced by Ordinance No. 39 of 1917 to give the authorities a stricter control over the disposal of rubber.

An argument was based on the grounds of inconvenience. It was urged that " C " forms are kept by the licensed dealers, and that

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every time an owner wished to sell rubber he would be compelled to come personally to the licensed dealer's premises to sign the form. The Ordinance does not require that these forms should be kept by licensed dealers alone. Owners might keep them and send them filled up and signed with the rubber to be delivered. One of the particulars to be given on the form " C " is according to the schedule to the Ordinance, " Person by whom brought." The declaration has to be *substantially* in the form " C," and in the form kept by the accused, which, I believe, is a copy of a form officially sanctioned, this particular is " Person by whom brought or how sent." The name of the person by whom the rubber is sent can be entered under this head by the owner. Section 8A requires the declaration to be delivered with the rubber. The alleged inconvenience is more imaginary than real.

In my opinion, both the language of the relevant sections and the object of the Ordinance show that the construction placed on the word " owner " in section 8A by the learned Police Magistrate is correct. The appeal is therefore dismissed.

Appeal dismissed.