1952 *Present :* **Swan J.**

B. H. DE SILVA, Appellant, *and* EKANAYAKE (Sub-Inspector of Police), Respondent

S. C. 152—M. C., Galle, 2,213

Rubber Thefts Ordinance (Cap. 29)—Section 14—Meaning of " books "—Direction of Government Agent.

If on an inspection under section 10 of the Rubber Thefts Ordinance it is discovered that there is a discrepancy between the weight shown in the Rubber Sales Register and that found by the inspecting officer, the dealer would be deemed to be guilty of an offence within the meaning of section 14 of that Ordinance.

Wimalaguneratne v. Weerasekera (1951) 53 N. L. R. 93, considered.

A prosecution under section 14 of the Rubber Thefts Ordinance should not be instituted without giving the accused an opportunity of avoiding the prosecution by obtaining a direction from the Government Agent under the proviso in that section.

[1] *(1898) 4 N. L. R. 236.* [2] *(1908) A. C. 92.*

APPEAL from a judgment of the Magistrate's Court, Galle.

H. V. Perera, Q.C., with *E. B. Sathurukulasinghe*, for the accused appellant.

Boyd Jayasuriya, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

October 30, 1952. SWAN J.—

The accused in this case was charged under section 14 of the Rubber Thefts Ordinance with having on his licensed premises 87 lbs. of rubber in excess of the weight "*appearing in his books*". The detection was made about 3.35 p. m. on 23.7.51 and this prosecution was entered the following day. Appearing on summons the accused pleaded not guilty, and the case was fixed for trial. On 20.11.51 Counsel for the accused drew the attention of the learned Magistrate to the proviso to section 14 and contended that before a prosecution was launched the sanction of the Government Agent was necessary. Inspector Kandiah who had filed the plaint stated to Court that after this case was instituted the Government Agent had issued a circular that he should be consulted before any prosecution under section 14 was entered. Counsel for the accused thereupon moved for a date to summon the Government Agent and the Superintendent of Police, S. P., to produce this circular or cause it to be produced and the learned Magistrate postponed the trial for 21.12.51.

On that date the case proceeded to trial. Inspector Ekanayake who had inspected the premises on 23.7.51 admitted that he had not obtained the Government Agent's sanction to prosecute the accused. When he was questioned about the circular to which Inspector Kandiah had referred on 20.11.51 he claimed privilege adding that he was not aware of this circular. Such want of candour is much to be deplored.

The accused in his evidence said that the excess was due to the custom of the trade when purchasing rubber to pay up to the nearest pound—anything less than 8 ounces being disregarded and anything over 8 ounces being reckoned to be a pound. The Rubber Storekeeper of E. Coates & Co., Ltd., gave evidence testifying to the existence of such a custom, and the learned Magistrate in his judgment has said that the suggestion cannot be entirely "thrown overboard", adding however, "according to the custom of the trade in buying rubber there should be some deficits too". But he did not consider the explanation with reference to the "offence" of the accused because he disposed of the matter on the assumption that the accused was guilty whatever his explanation might be.

At this stage I think I should reproduce section 14. It reads as follows :—

" Whenever the weight of rubber found on the premises of a licensed dealer does not agree with the weight which, according to his books, ought to be on such premises, he shall be deemed to be guilty of an offence against this Ordinance :

Provided that if he satisfies the Government Agent that such discrepancy is due to natural causes, or has arisen through some bona fide mistake, or owing to some loss, the Government Agent may direct that no prosecution shall be instituted against the licensed dealer. "

The first point taken by Mr. Perera on behalf of the accused is that the prosecution must fail because it has not established a discrepancy between the weight as found by Inspector Ekanayake and the weight according to the accused's *books*. In this connection he has drawn my attention to the case of *Wimalaguneratne v. Weerasekera* [1] where my brother Pulle took the view that an offence under section 14 could not be established except upon an examination of *all the books* required to be kept by a licensed dealer under the Ordinance. Undoubtedly the section uses the words " *according to his books,* " and the side note speaks of " *discrepancy* between weight of rubber in licensed premises and weight *according to books* ". But I do not think there is any special magic in the use of the word " books ". The Interpretation Ordinance tells us that words in the singular number shall include the plural and *vice versa*. It is also probable that a licensed dealer doing business on a large scale will need more than one book which under section 9 he " shall keep " and " which shall be supplied to him by the Government Agent ". Again it is not inconceivable that the declarations in forms C and D referred to in section 8 (1) and illustrated in the schedule may be bound so as to appear like books. It should be noted that under section 8 (5) these declarations have to be preserved for a period of one year and are as much liable to inspection as the book referred to in section 9. It will also be seen that in section 10 which provides for the inspection of licensed premises the words used are " *to call for, inspect and take extracts of any book required to be kept by this Ordinance* ". It is clear that " *any book* " includes the declarations in forms C and D. Again I find that in Section 15 which deals with cases where the inspecting officer is refused admittance the phrase used is " *dealer's books* " which description also clearly includes the declarations in forms C and D.

In my opinion a licensed dealer is required to keep only one " book ", namely, the book referred to in section 9 and generally called, I believe, the Rubber Sales Register. It may be that he keeps the declarations in book form. It may also be that he keeps his own private set of books—journal, day book and ledger. But if on an inspection under section 10 it is discovered that there is a discrepancy between the weight shown in the Rubber Sales Register and that found by the inspecting officer the dealer would be deemed to be guilty of an offence against the Ordinance

[1] *(1951) 53 N. L. R. 93.*

within the meaning of section 14. Possibly this discrepancy can be explained ; but that is a matter upon which the dealer must satisfy the Government Agent if he desires to avert a prosecution.

I shall now deal with the second point taken by Mr. Perera. He did not contend that the sanction of the Government Agent was a condition precedent to a prosecution but he submitted that the prosecution in this case was contrary to the spirit of the proviso in section 14. The accused had no opportunity of avoiding or staying the prosecution. It was entered on 24.7.51 within twenty-four hours of the alleged offence. When the existence of the proviso was brought to the notice of the Court neither the Police nor the Magistrate made any effort to stay proceedings so as to give the accused an opportunity of availing himself of the proviso. A prosecution under section 14 should be so launched and conducted as not to make the proviso entirely nugatory. That the accused endeavoured to explain the discrepancy to the Government Agent is borne out by the letter D 1. Here, too, he was thwarted ; for in letter D 1 the writer says " there may be something in what you say but the case has gone rather far now for me to interfere at this stage ".

I quash the conviction. The Police may initiate fresh proceedings if so advised.

Conviction quashed.