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by the goods innocently. It is sufficient if he can give an explanation which may raise doubt in the mind of the court as to the guilt of the accused." LORD-WILLIAMS, J., in a separate judgment said that "If he (the accused) gives any explanation which in the opinion of the jury may possibly be true, although they do not necessarily believe it, then the Crown cannot rely upon the presumption and must prove the guilt of the accused just as in any other criminal case." This is a view of law with which I agree. Now in the present case the courts below were in error in thinking that when the distance of time between the theft and the recovery of the stolen property from the possession of the accused is short, then the burden shifts on the accused to prove affirmatively that he came by the possession of the property in an innocent manner. This is clear from the fact that the lower appellate court says that the burden of proving his *bona fides* was thrown on the accused and that the oral testimony was not *very* reliable. The evidence produced by the accused is fairly satisfactory.

I have, therefore, come to the conclusion that the findings recorded by the courts below are vitiated by the fact that they did not appreciate clearly the law applicable to this case, and for this reason I allow this application, set aside the conviction and the sentence of the applicant and direct that he need not surrender to his bail.

Before Sir Shah Muhammad Sulaiman, Chief Justice, and  
 Mr. Justice King

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*Railways Act (IX of 1890), section 122—"Unlawfully" entering railway premises—Entry without permission, express or implied, is unlawful—Dismissed railway porter entering platform for purpose of carrying passengers' luggage.*

The word "unlawful" in section 122 of the Railways Act has practically the same meaning as the word "illegal" in the Indian Penal Code and includes "actionable". An entry upon railway

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premises is "unlawful" if it constitutes an actionable trespass, and so an entry without the permission, express or implied, of the railway authority amounts to an unlawful entry within the meaning of that section.

For the purpose of that section the intention of the person who enters upon the railway must be left out of account. If he enters the premises lawfully, i.e. with the permission of the railway authority, he does not commit any offence under section 122 merely because he entered with the intention of committing some offence, although he might be guilty of criminal trespass. If the meaning of the expression "unlawfully enters" in section 122 were to be restricted to entry in contravention of some statute or statutory rule, then the section would seem superfluous, inasmuch as such entry would be punishable under the particular statute itself. The word "unlawfully" must be given a wider meaning.

A railway platform to which the general public have free access, without having to show tickets, or without having to obtain special permission of any sort, is a part of the railway premises which may be entered by the members of the general public under the implied permission of the railway authority.

At some stations platform tickets are issued for persons who are not passengers, and in such a case it might be held that a member of the general public was prohibited from entering the platform without a ticket and such entry would constitute an actionable trespass and amount to unlawful entry under section 122.

A person used to work as a licensed porter at the Allahabad railway station, but was dismissed for absenting himself without permission. Subsequently he entered the platform for the purpose of carrying passengers' luggage and was prosecuted under section 122 of the Railways Act. It was not alleged that there was any barrier leading to the platform, or that entry to the platform was permitted only to ticket-holders. *Held* that the entry was with the implied permission of the railway authority and was not therefore unlawful within the meaning of section 122; nor did it become so by reason of the fact that his intention was to work as a porter although unlicensed, which he knew was prohibited by the railway authority.

Messrs. *Gopi Nath Kunzru* and *Madan Mohan Lal*,  
for the applicant.

Mr. *R. C. Ghatak*, for the opposite party.

The Assistant Government Advocate (*Dr. M. Waliullah*), for the Crown.

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SULAIMAN, C. J., and KING, J.:—This is a reference by the learned Sessions Judge of Allahabad recommending that the conviction of one Chandai under section 122 of the Indian Railways Act, 1890, be set aside.

Chandai used to work as a licensed porter at the Allahabad railway station. In accordance with an agreement between Mr. Sealey and the railway administration, the former used to supply a sufficient number of coolies for carrying passengers' luggage and doing other railway work. Every coolie engaged by Mr. Sealey had to wear a numbered badge to show that he was licensed to work at the railway station and it was understood that none but licensed coolies would be permitted to work as porters. On the 29th of September, 1931, Chandai absented himself from duty without permission and remained absent for a month. Mr. Sealey dismissed him for having absented himself without obtaining any leave and refused to enrol him on his return. On the 5th or 6th of December, 1931, Mr. Riley, a railway official, saw Chandai at the station platform carrying a passenger's luggage without wearing any badge and therefore handed him over to a policeman, charging him with an offence under section 122 of the Indian Railways Act. His defence was that he had entered the platform only for the purpose of obtaining the return of his badge, which Mr. Sealey had hitherto refused to return.

The trial court found that the accused had entered the platform for the purpose of working as a porter for hire without a licence, and, as the railway authority did not permit him to do this work without a licence, he had entered the platform "unlawfully" within the meaning of section 122 of the Indian Railways Act. The learned Sessions Judge held that the expression "unlawful entry" as used in section 122 can refer only to an entry for the purpose of committing some offence or in contravention of some definite provision of law and as none of those elements were present in this case, the accused had been wrongly convicted.

Section 122, sub-section (1) of the Indian Railways Act runs as follows: "If a person unlawfully enters upon a railway, he shall be punished with a fine which may extend to Rs.20." The question for our consideration is the meaning of the word "unlawfully".

In our opinion the intention of the person who enters upon the railway must be left out of account. If he enters the railway premises lawfully, that is, with the permission of the railway authority, he does not in our opinion commit any offence under section 122 merely because he entered the premises with the intention of committing some offence, although he might be guilty of criminal trespass. In the present case there is not even a finding that the accused intended to commit an offence.

If a person enters upon the railway premises in contravention of the provisions of any statute, or of any rule made in exercise of statutory powers, we think that the entry would undoubtedly be "unlawful" within the meaning of section 122. If the meaning of "unlawful" were restricted to entry in contravention of some statute or statutory rule, then section 122 would seem superfluous. If the entry is expressly prohibited by a statute or statutory rule, it is hardly possible that a breach of the prohibition should not be made punishable by the statute or statutory rule, and therefore there would be no point in having the entry made also punishable under section 122. In our opinion, the expression "unlawfully" must be given a wider meaning. We think that if the entry constitutes an actionable trespass, it would also be "unlawful" within the meaning of section 122. We think the word "unlawful" has practically the same meaning as "illegal", and it is worth noting that the word "illegal" is defined in the Indian Penal Code, section 43, as follows: "The word 'illegal' is applicable to everything which is an offence, or which is prohibited by law, or which furnishes ground for a civil action." We think it would be reasonable to interpret the word "illegal" in section 122 as

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including 'actionable'. In other words, an entry upon railway premises may be held to be unlawful if it constitutes an actionable trespass.

As the railway premises are the property of the Secretary of State and are in the possession and under the control of the railway authority, we think that any entry by a member of the public upon railway premises would constitute an actionable trespass, unless such entry is permitted by the railway authority, expressly or by implication. At some railway platforms the general public are excluded and only passengers are admitted who hold tickets. At some stations platform tickets are issued for those who wish to enter the platform for purposes other than travelling by the train, and no member of the general public is admitted without the passenger's ticket or a platform ticket. In such a case it might well be held that a member of the general public was prohibited from entering the platform without a ticket, and if he did so his entry would constitute an actionable trespass, and would therefore amount to an unlawful entry under section 122. At other stations, however, members of the public are freely admitted to the platform although they are not travelling and do not possess any tickets. In the present case it is not alleged that there was any barrier leading to the platform, or that entry to the platform was permitted only to ticket-holders. On behalf of the railway authority we have been referred to a certain rule No. 9 at page 123 of the Time Table of the East Indian Railway from September, 1931. This rule comes under the heading "General information, Rules and Regulations concerning passengers" and runs as follows, so far as is relevant to this case: "Platform tickets. As a rule, ticket-holders only are admitted to station platforms, but station masters have discretion to admit a limited number of persons who are not passengers." Counsel have not been able to inform us by what authority this rule was made or when it was made. There is nothing to show that it purports to be a rule made in exercise of any statutory power. In any

case, the rule is very vaguely worded and we think it cannot be taken to mean that none except ticket-holders are admitted to station platforms. It is clear from the language of the rule that this rule is not uniformly observed and that station masters have discretion to admit persons who are not passengers. It appears to us that a railway platform to which the general public have free access, without having to show tickets, or without having to obtain special permission of any sort, is a part of the railway premises which may be entered by the members of the general public under the *implied permission* of the railway authority. In such circumstances we think it would not be justifiable to treat the accused as a trespasser merely because he entered the platform without express permission. It is argued, however, that he entered the platform for the purpose of working as a porter and he knew that this was prohibited by the railway authority unless he was provided with a licence. As we have already mentioned, we do not think that his intention can be taken into consideration if he entered the platform lawfully, that is, with the implied permission of the railway authority. We do not think that his entry would become "unlawful" merely because he subsequently did something which was not an offence but which was understood to be prohibited by the railway authority. It does not appear that the local railway officials had any special objection to the accused entering upon the railway platform. Their objection was that he worked as a porter without a licence. They could not prosecute him for working as a porter without a licence, since such an act does not constitute an offence, and therefore they prosecuted him under section 122 for having "unlawfully" entered the railway platform. We have been referred to certain cases in which the meaning of the word "unlawfully" has been considered. In *Mewa Lal Jha v. Emperor* (1) a single Judge of the Patna High Court held that the word "unlawful" meant contrary to the law laid down in

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(1) (1924) 88 Indian Cases, 522.

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the statute. We think this puts too narrow a meaning upon the word, but we agree to the following observation: "But there are numerous cases where entry upon the platform can be perfectly lawful. If the station master leaves the platform gate open, those who enter upon the platform can hardly be considered to be other than licensees. It is absurd to think of them as trespassers." In *Mohan Malik v. Emperor* (1) a Division Bench of the Punjab Chief Court held that the word "unlawful" in section 122 meant without the leave of the railway administration. Practically the same view was taken by the Calcutta High Court in *Durreil v. Kumud Kanta Chakrabarty* (2). The word "unlawful" was interpreted as meaning against the will of, or without the permission of, the owner. We are of the same opinion. The State railway authority is in the same position as a company or a private person who owns or controls property. Any entry upon the property without the permission, express or implied, of the owner or occupier would constitute an actionable trespass and any such entry would in our opinion amount to an unlawful entry within the meaning of section 122. In this case, however, we hold that there was implied permission to enter upon the platform.

We agree with the learned Sessions Judge that no offence has been established against the accused, as he cannot be held to be a trespasser upon the platform. We accordingly accept the reference, set aside the conviction and sentence and direct that the fine, if paid, be refunded.

(1) (1913) 24 Indian Cases, 348.

(2) (1917) 47 Indian Cases, 74.