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award might be made otherwise than upon legal evidence duly recorded. It is enacted in Sec. 288 that if the Magistrate shall be satisfied that it is necessary for the preservation of the peace to take a bond from the person he has summoned, with or without security, he may make the order contemplated by that section; but it appears to us that it would be a most erroneous interpretation of this section to hold that a Magistrate might be satisfied, and could inflict what amounts to a severe penalty, in the absence of any legal evidence regularly recorded. Sec. 307 appears to us to be a clear indication that the Legislature had no such design. On this point we concur in the judgment of the Calcutta High Court in the case of *Narsingh Narayan (b)*, a decision which has already been followed by another Division Bench of this Court in the case of *Reg. v. Dalpatram Pemabha*, decided on the 17th of December 1868 (c).

In the present case, as there has been no legal evidence duly recorded as a foundation for the Magistrate's decision, we hold his proceedings to have been illegal, and we reverse his order, and direct that the bonds taken from the accused and his sureties be cancelled, or that the accused if he be in custody under the order, be discharged.

WARDEN, J, concurred.

(b) 10 Calc. W. Rep., Cr. R. 1.

(c) 5 Bom. H. C. Rep., Cr. Ca. 105.

*Order reversed.*

Reg. v. Mehervanji Bejanji.

*Cheating—Criminal Trespass—Unlawful Entry—Ind. Pen. Code, Secs. 415 and 441.*

Where the accused secretly entered an Exhibition building without having purchased a ticket, and was there apprehended:

It was held that such act did not amount to the offence of cheating under Sec. 415 of the Penal Code.

Such entry, when unaccompanied by any of the intents specified in Sec. 441 of the Penal Code, does not amount to criminal trespass or any other criminal offence.

The accused, under Sec. 417 of the Penal Code, was convicted by Umedram Ranchoddas, Magistrate F. P. at

Broach, "of cheating, in having entered the Broach Exhibition without having purchased a ticket," and was sentenced to rigorous imprisonment for one month.

The Session Judge, C. G. Kembal, referred the case for the orders of the High Court, under Sec. 434 of the Code of Criminal Procedure, with the following remarks:—

"It appears that as the prisoner was leaving the Broach Exhibition room his ticket was demanded, and on his standing that he had lost it he was arrested and taken before the Magistrate, who, upon receiving proof that no ticket such as the prisoner said he had bought was in the list as having been issued to him, convicted the prisoner of cheating, under Sec. 417 of the Indian Penal Code, and sentenced him to one month's rigorous imprisonment. At the most the evidence shows that, whereas admission to the Exhibition could only be obtained with a ticket, the prisoner was found inside without one; and supposing that the prisoner never purchased a ticket at all, it still appears to this court that he, by his presence in the Exhibition, did not commit the offence of cheating, or any other offence against the law. The High Court have held that travelling in a railway carriage without a ticket is not cheating: *Reg. v. Dayabhai Rajaram (a)*; and this appears to me an analogous case. The term of imprisonment will very shortly expire, but, as the sentence was, in my opinion, illegal, no criminal offence having been proved, it becomes my duty to refer the proceedings for the orders of the High Court."

The case was heard before TUCKER and WARDEN, JJ.

The accused was not represented.

*Dhirajlal Mathuradas*, in support of the conviction:—The accused is clearly guilty of some offence—if not of cheating, then of criminal trespass. [TUCKER, J.:—To constitute the offence of cheating there must be some person who is deceived, and who is induced to do or omit to do something that he otherwise would not do or omit. If the accused had said to the doorkeeper that he had a ticket, and had thus

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obtained access to the building, that might be cheating; but if he slipped into the building unobserved, that apparently would not.] Then it amounts to criminal trespass. [TUCKER, J.:—The accused does not seem to have entered the building with any such intention as is required for a conviction under Sec. 441 of the Penal Code.]

*Vishvanath Narayan Mandlik, amicus curiæ*, referred to the case of Kalinauth Nag Chowdhry. (b)

TUCKER, J.:—The act which the accused is proved to have committed, namely, entry of the Exhibition building without a ticket, was undoubtedly of a fraudulent character, but it does not seem to come within the definition of any offence declared penal by the Indian Penal Code or any other law. It does not come within the definition of cheating, as given in Sec. 415, as it does not appear that the accused, by deceiving any person, intentionally induced the person so deceived to do or omit to do anything which he would not have done or omitted to do if he had not been so deceived; nor does it amount to criminal trespass, as it cannot be said that the accused entered upon any property with intent to commit an offence, or to intimidate, insult, or annoy any person in possession of such property. The accused might have been proceeded against by the committee of the Exhibition in the Civil Courts for a trespass, and he might have been compelled to pay damages; but we have been unable to discover any law under which he could be punished criminally for this act. We must, therefore, reverse the conviction and sentence as illegal, and direct the discharge of the accused.

WARDEN, J., concurred.

*Conviction and sentence reversed.*

(3) 9 Calc. W. Rep. Cr. R. 1.