self. It necessarily follows that he is competent to hold a preliminary inquiry in cases exclusively triable by a Court of Session. In this case it has not been satisfactorily shown that there is a sufficient reason under section 526 of the Code of Criminal Procedure to transfer the preliminary inquiry to some other Court. It is desirable that the inquiry should be held by an officer holding the position of the District Magistrate, and there is no reason to assume that the District Magistrate of Mainpuri will not make his inquiry with an open mind. I dismiss the application and withdraw the order for stay of proceedings.

APPELLATE CRIMINAL.

1898.
September 7.

Before Mr. Justice Banerji.

QUEEN-EMPRESS *v.* JEOCHI.*

Criminal Procedure Code, section 288—*Evidence—Use in Sessions Court of evidence taken before the Committing Magistrate.*

Although under certain circumstances a Court of Session may use evidence given before the Committing Magistrate as if it had been given before itself, it is not proper for a Court of Session to base a conviction solely upon such evidence, there being no other evidence on the record to corroborate it. *The Queen* v. *Amanulla* (1), *Queen-Empress* v. *Bharamappa* (2) and *Queen-Empress* v. *Dhan Sahai* (3), referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Babu *Satya Chandar Mukerji* for the appellant.

The Government Pleader (Munshi *Ram Prasad*) for the Crown.

BANERJI, J.—The appellant, Musammat Jeochi, was charged with having torn off an earring from the ear of a boy named Muneshar, and has been convicted under section 394 of the Indian Penal Code. The evidence adduced in the Court of Session did not at all prove the guilt of the appellant. On the contrary,

* Criminal Appeal No. 793 of 1898.

(1) (1874) 12 B. L. R. App., 15. (2) (1888) I. L. R. 12 Mad., 123.
(3) (1885) I. L. R., 7 All., 862.

1898

QUEEN-EMPRESS v. JEOCHI.

that evidence showed that the ear of the boy had been torn by a mere accident. The witnesses examined in the Court of Session had all of them, with the exception of Sukhu, made statements before the Committing Magistrate which were diametrically opposed to those made in the Court of Session. The learned Sessions Judge purporting to act under section 288 of the Code of Criminal Procedure, admitted in evidence the statements made by the witnesses in the Court of the Committing Magistrate, and has convicted the accused on that evidence alone. I must observe that, beyond the evidence which was so admitted, there was no other evidence before the learned Sessions Judge which proved the guilt of the accused. It is contended that the learned Sessions Judge was not justified in convicting the appellant on the evidence given by the witnesses in the Court of the Committing Magistrate and retracted in the Court of Session. The contention of the learned vakil is supported by the ruling of the Calcutta High Court in *The Queen* v. *Amanulla* (1), which was followed by the Madras High Court in *Queen-Empress* v. *Bharamappa* (2), and by this Court in *Queen-Empress* v. *Dhan Sahai* (3). In the case last mentioned, it was observed by Straight, J., that "section 298 was never intended to be used so as to enable a Court trying a case to take a witness' deposition bodily from the Magistrate's record, as the Judge has done here, and treat it as evidence before himself." With these observations I fully concur. As remarked by Morris, J., in *Queen* v. *Amanullah* (1), a Court of Session may admit in evidence the statements made by witnesses before the Committing Magistrate when such evidence "is to a certain extent corroborated by independent testimony before himself." There was no such testimony in the present instance. It is true that the attention of the witnesses was called to the statements made by them before the Committing Magistrate, and that those statements were read to them; but the fact of that being done was not alone sufficient to justify the learned Sessions

(1) (1874) 12 B. L. R., App., 15. (2) (1888) I. L. R. 12 Mad., 123.
(3) (1885) I. L. R. 7 All., 862.

1898

QUEEN-EMPRESS v. JEOCHI.

Judge in basing the conviction solely upon evidence no part of which was given before him. Further, having regard to the fact that the witnesses had in two Courts made diametrically opposite statements, it was unsafe to found a conviction on their testimony. I accordingly allow the appeal, and setting aside the conviction and sentence, I acquit the appellant of the offence of which she was convicted, and direct that she be at once released.

Before Mr. Justice Banerji.

QUEEN-EMPRESS *v.* MUHAMMAD SAEED KHAN.*

1898 *September* 7.

Act No. XLV of 1860 (*Indian Penal Code*) *sections* 463 *et seq*—*Forgery*—*Meaning of the term "fraud" discussed.*

A Police head-constable's character and service roll in his custody was found to have been tampered with in this way, that a page, apparently containing remarks unfavourable to the head-constable, had been taken out, and a new page with favourable remarks, purporting to have been written and signed by various superior officers of Police, had been inserted in its place, the intent being to favour the chances of the promotion of the said head constable.

Held, that this interpolation amounted to forgery within the meaning of section 463 of the Indian Penal Code, but that inasmuch as it was not proved that the head-constable himself prepared and inserted the false page in his character roll, he was rightly convicted of abetment only. *Queen-Empress* v. *Shoshi Bhushan* (1), *Queen-Empress* v. *Vithal Narayan* (2) and *Lolit Mohan Sarkar* v. *The Queen-Empress* (3), referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. *Wallach* for the appellant.

The Government Pleader (Munshi *Ram Prasad*) for the Crown.

BANERJI, J.—The appellant, Muhammad Saeed Khan, has been convicted of having been in dishonest possession of stolen property and of having abetted the offence of forgery. He has been sentenced for these offences to a total term of ten years' rigorous imprisonment.

Criminal Appeal No. 711 of 1898.

(1) (1893) I. L. R., 15 All. 210. (2) (1886) I. L. R., 13 Bom 515.
(3) (1894) I. L. R., 22 Calc. 313.