

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.

1898

 QUEEN-
EMPERESS
v
JEGOOT.

Before Mr. Justice Banerji.

QUEEN-EMPRESS v. MUHAMMAD SAEED KHAN.*

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

1898

 September 7.

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 *Lalit 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.

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QUEEN-
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He was a head-constable stationed at a police station in the city of Agra. Upon information received by the District Superintendent of Police that Saeed Khan had received a bribe in marked rupees, the District Superintendent searched his quarters, and found in a box belonging to him, of which he produced the key, certain books and papers. Among these were eleven "character and service roll" books of the N.-W. P. and Oudh Constabulary, five of which were blank. These books are Government property, and, with the exception probably of one, were kept either in the Police Office at Agra or in the Office of the Inspector-General of Police. They must have been stolen from the place where they were kept, and as the accused has not given any explanation of his possession of them, it is clear that he knew that they were stolen property. He has therefore been rightly convicted under section 411 of the Indian Penal Code.

Mr. *Wallach*, the learned counsel for the appellant, addressed his argument chiefly to the second branch of the case, namely, that relating to the abetment of forgery. He does not dispute the facts as found by the learned Sessions Judge, which are as follows :—In the character and service roll of "the accused (Ex. 14), page 11 has been substituted for some other page, very probably Ex. 12, which contained remarks apparently unfavourable to the accused made by several District Superintendents of Police as to the general conduct and Police work of the accused; and the entries in p. 11 of Ex. 14 are undoubtedly false entries, in which the unfavourable remarks contained in Ex. 12 do not find place. A glance at the entries on p. 11 of Ex. 14 leaves no room for doubt that they are false. Mr. *Wallach* contends that, accepting the entries to be false, they do not amount to forgery as defined in section 463 of the Indian Penal Code. He urges that the fabrication of p. 11 was not made dishonestly or fraudulently, and therefore the said page is not a false document within the meaning of section 464, and that even if it is a false document, it was not made with any of the intents mentioned in section 463, and is consequently not a forgery. Two questions thus arise for

determination. First, whether the document is a false document ; and second, whether it was made with one or more of the intentions specified in section 463. In reference to the first point, it may be conceded that the document was not made "dishonestly ;" but was it made "fraudulently," that is, "with intent to defraud ?" If the document was made "with intent to defraud," as stated in section 25, and "with intent to commit fraud or that fraud may be committed," as stated in section 463, it is a forgery. The terms "fraud" and "defraud" are not defined in the Indian Penal Code. Sir James FitzJames Stephen in his History of the Criminal Law of England, vol. II, p. 121, observes that "whenever the words 'fraud' or 'intent to defraud' or 'fraudulently' occur in the definition of a crime, two elements at least are essential to the commission of the crime ; namely, first, deceit or an intention to deceive, or in some cases mere secrecy ; and secondly, either actual injury or possible injury, or an intent to expose some person either to actual injury or to a risk of possible injury by means of that deceit or secrecy." "This intent," he adds, "is very seldom the only or the principal intention entertained by the fraudulent person, whose principal object in nearly every case is his own advantage. * * * A practically conclusive test as to the fraudulent character of a deception for criminal purposes is this:—Did the author of the deceit derive any advantage from it which could not have been had if the truth had been known? If so, it is hardly possible that the advantage should not have had an equivalent in loss or risk of loss to some one else, and if so, there was fraud." Where, therefore, there is an intention to deceive and by means of the deceit to obtain an advantage there is fraud, and if a document is fabricated with such intent, it is a forgery. This was held by this Court in *Queen-Empress v. Shoshi Bhushan* (1). A somewhat wider interpretation has been placed on the word 'fraud' by the Bombay High Court in *Queen-Empress v. Vithal Narayan* (2), which was followed by the Calcutta High Court in *Lalit Mohan Sarkar v. The*

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QUEEN-
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Queen-Empress (1). In the case in the Bombay High Court the learned Judges accepted the interpretation of LeBlanc, J., in *Haycraft v. Creasy* (2), that "by fraud is meant an intention to deceive; whether it be from any expectation of advantage to the party himself or from ill will towards the other is immaterial." Whatever interpretation of fraud may be adopted, the false entries in the character roll of the accused were made with the intention of committing fraud. The intention was to deceive the superior officers of the accused, and by means of such deception to secure his advancement in the service, and thus to gain an advantage for him at the sacrifice of others. The entries were therefore a forgery within the meaning of section 463. As it has not been shown that the forgery was committed by the accused himself, he has been rightly convicted of the abetment of that offence.

It is next urged that the sentence passed on the accused is unduly severe. The learned Judge has inflicted on him the highest penalty to which he could be liable under sections 411 and 466. In my opinion this was not such a gross case as to call for such severe punishment. The stolen character books, of which the accused was in possession, were of little value, and had his object in retaining possession of them not been to obtain facilities for the perpetration of the forgery, his offence would not have justified a heavy sentence. The forgery also was not of a very heinous character, although fabrication of the writing and signatures of several superior officers of the Police was a most impudent act. In my opinion it will be sufficient for the ends of justice to sentence the appellant to two years' rigorous imprisonment for the offence under section 411, and to three years' rigorous imprisonment for the other offence, and altogether to a term of five years' rigorous imprisonment. While, therefore, I confirm the convictions, I reduce the sentence to the extent stated above.

(1) (1894) I. L. R., 22 Calc., 313.

(2) (1801) 2 East 92.