

hands of the Civil Surgeon and no further. We are at a loss to understand why the Civil Surgeon was not called; but even if the identity of the packet had been established, we think the certificate produced and put in at the trial was not admissible in evidence. Section 510 of the Code of Criminal Procedure enacts that a document purporting to be a report under the hand of the "Chemical Examiner or Assistant Chemical Examiner" may be used as evidence in any inquiry; the certificate in this case is signed by a person styling himself "Additional Chemical Examiner," and is of no more value as evidence than a piece of waste paper.

Serious miscarriage of justice may result from the production of certificates such as the one under discussion; the local Government may perhaps move the Government of India to amend s. 510 by the insertion of the words "and Additional Chemical Examiner" therein.

Conviction set aside.

CRIMINAL REVISION.

Before Mr. Justice Tottenham and Mr. Justice Norris.

JEEBUNKISTO ROY AND ANOTHER (PETITIONERS) *v.* SHIB CHUNDER DAS (OPPOSITE PARTY).^o

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 QUEEN
 EMPRESS
 v.
 ATTUL
 MUCHI.

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 July 31.

Discharge of accused—Further enquiry, Powers to direct—Criminal Procedure Code (Act X of 1882), ss. 253, 437.

An accused having been discharged after a full enquiry before a competent Court is entitled to the benefit of such discharge, unless some further evidence is disclosed. Consequently an order made by a District Judge directing a further enquiry to be held under s. 437 of the Criminal Procedure Code in a case where a Magistrate had discharged the accused under s. 253 was not warranted by law, when there had been a full enquiry by a competent Court and when no further evidence was disclosed, such order being based merely upon the ground that, in the opinion of the District Judge, the evidence recorded was sufficient for the conviction of the accused.

THIS was an application to set aside an order of a District Judge directing a further enquiry, under s. 437 of the Criminal Procedure Code, into a case which had been heard by a Deputy

^o Criminal Motion No. 252 of 1884, against the order of J. P. Grant, Esq., Sessions Judge of Hooghly, dated the 30th June 1884.

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 DAS.

Magistrate and which had resulted in the discharge of the accused. The case was one of trespass and unlawful cutting and taking of certain crops, the right to possession of which was disputed. The Deputy Magistrate, disbelieving the evidence on behalf of the prosecution, dismissed the case and discharged the accused under s. 253 of the Criminal Procedure Code.

The prosecutor then applied to the District Judge, who came to the conclusion that a *prima facie* case had been made out against the accused, and that they should have been called upon for their defence. He also characterised the Magistrate's order as a long and laboured effort to explain away the force of the evidence for the prosecution, which he considered clearly established their case in the absence of any evidence to rebut it, and he therefore considered that a further enquiry should be held, and under s. 437 directed such to be made.

The accused now applied to the High Court to set aside the latter order.

Baboo *Umbica Churn Bose* appeared on behalf of the petitioner.

No one appeared for the opposite party.

The judgment of the High Court (TOTTENHAM and NORRIS, JJ.) was delivered by

TOTTENHAM, J. (NORRIS, J., concurring).—We think that the order of the Sessions Judge directing a further enquiry in this case is not warranted by law. It seems to us that the law allows a further enquiry only where there has not been a full enquiry and where further evidence is disclosed. The application to the Judge was to the effect that the evidence recorded by the Deputy Magistrate was sufficient for the conviction of the accused, and the accused ought to have been convicted. The Sessions Judge seems to have endorsed the applicant's opinion, and upon that ground ordered the further enquiry. It seems to us that the accused having been discharged after a full enquiry by a competent Court, he is entitled to the benefit of that discharge, unless some further evidence is disclosed.

The order of the Sessions Judge will be set aside and the proceedings stopped.

Order set aside and proceedings stopped.