

CRIMINAL REFERENCE.

Before Mr. Justice Tottenham and Mr. Justice Norris.

QUEEN EMPRESS *v.* AUTAL MUCHI.*

1884.

July 22.

*Evidence—Criminal Procedure Code—Act X of 1882, s. 510—Report of
“Additional Chemical Examiner.”*

A document purporting to be a report under the hand of an “Additional Chemical Examiner” upon a matter or thing submitted to him for analysis and report, cannot be received in evidence under s. 510 of Act X of 1882.

THIS was a reference under s. 438 of the Code of Criminal Procedure.

One Autal Muchi was charged by a Deputy Magistrate under ss. 428—511 of the Penal Code for an attempt at cattle-poisoning.

At the trial, the evidence against him was that he was seen by the villagers to offer bamboo leaves to some cattle; that the villagers suspecting him searched him and found upon him a small packet, containing some white powder. It was then proved that the packet found upon him was made over to the Civil Surgeon of the station for transmission to a Chemical Examiner in Calcutta; there was, however, no evidence to connect the packet produced in Court with the packet stated to have been made over to the Civil Surgeon; and the report which purported to give the analysis of the packet produced was signed by a person styling himself “Additional Chemical Examiner.”

The Deputy Magistrate found the prisoner guilty and fined him two rupees.

The District Magistrate, after calling upon the Deputy Magistrate for an explanation, referred the case to the High Court.

No one appeared on the reference.

The opinion of the Court (TOTTENHAM and NORRIS, JJ.) was as follows:—

The conviction in this case must be set aside, and the fine, if realized, refunded. There is no evidence on the record to show that the packet received by the Chemical Examiner in Calcutta was the packet taken from the prisoner; the packet is traced into the

* Criminal Reference No. 101 of 1884 from an order passed by the Deputy Magistrate of Burdwan, Moulvi Ikram Russoul, dated 12th June 1884.

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

1884
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.