

REX v. BRITS.

1910. July 29. WARD, J.

Criminal law.—Review.—Remitted case.—Reading evidence given at preparatory on trial before different magistrate.

Where, after remittal of a criminal case, evidence taken at the preparatory examination is read over to the accused, the trial must take place before the same magistrate that sat at the preparatory examination.

This case, heard before the Assistant Resident Magistrate of Heilbron, came up for review. The accused had been charged with fraud and theft by false pretences.

WARD, J.: This case was remitted by the Attorney-General on a charge of fraud only. All the proceedings subsequent to the remittal must be quashed and the case sent back to the magistrate to try *de novo*. It is stated that "the evidence taken at the preparatory examination was duly read over to the accused," but this is not legal, as the preparatory examination was taken before a different magistrate (see sec. 87 of Ordinance 7 of 1902).
