

Deoki Koeri Vs. Emperor

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Court : Allahabad

Decided On : Mar-15-1926

Reported in : AIR1926All405; 95Ind.Cas.287

Appellant : Deoki Koeri

Respondent : Emperor

Judgement :

ORDER

Daniels, J.

1. The learned Sessions Judge has referred this case on the ground that the accused cannot be tried for an offence of illicit possession of opium under Section 9, Opium Act, because he has been previously convicted of theft under the Indian Penal Code in respect of the same opium. The learned Sessions Judge has misunderstood the provisions of Section 403 of the Criminal P.C. The facts necessary to support a conviction for theft are by no means the same as the facts which have to be proved in a trial under Section 9 of the Opium Act. For an offence under Section 379 the essential facts to be proved were that the gunny bags in which the opium was found belonged to some one else and that they were removed by the accused dishonestly without the owner's consent. For a conviction under Section 9 of the Opium Act the essential facts to be proved are that the accused was in possession of the opium and that the opium was crude opium

which the accused could not lawfully have in his possession. Section 403(2) permits a separate trial for a distinct offence of which a charge might have been framed under Section 235, Sub-section (1) as having been committed in the Course of the same transaction. I cannot, therefore, accept this reference.

2. Let the record be returned.

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