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SUPREME COURT OF SOUTH AUSTRALIA

WHITMORE v HARDING

Wells J

11, 13 February, 4, 13, 14 March, 2 September, 7, 24 October 1974

(1974) 9 SASR 312

CRIMINAL LAW – INDIAN HEMP DEFINED AS CANNABIS SATIVA L. – NO EVIDENCE LED THAT INDIAN HEMP WAS CANNABIS SATIVA – DEFENDANT CONVICTED – WHETHER COURT IN ERROR: NARCOTIC & PSYCHOTROPIC DRUGS ACT 1934-72, S3.

W. was charged upon complaint in a Court of summary jurisdiction with smoking Indian Hemp, a drug to which the *Narcotic and Psychotropic Drugs Act 1934-1972* applies, contrary to s5 of that Act. By s3 of the Act, Indian Hemp was defined as meaning 'any part of the plant known as *Cannabis Sativa L.*, or any resinous or other extract or derivative obtained therefrom, or the residue of any part of that plant after the extract or derivative has been obtained therefrom, and includes any such part, extract, derivative or residue in any state of dehydration and by whatever name it is called'. Expert evidence was called for the prosecution to prove the scientific identity of the substance which W. was alleged to have smoked stated simply that it was Indian Hemp, and there was no evidence that the substance was *Cannabis Sativa L.* W. was convicted. On appeal—

HELD: Appeal allowed. Conviction quashed.

1. That the Court could not take judicial notice that Indian Hemp was *Cannabis Sativa L.*
 2. That it was essential for the prosecution to establish, upon a charge of smoking Indian Hemp contrary to s5 of the *Narcotic and Psychotropic Drugs Act 1934-1972*, that the substance alleged to be Indian Hemp came within the definition of Indian Hemp in s3 of the Act.
 3. That the conviction should be quashed and the complaint remitted for re-hearing.
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