

1870. Division Court after hearing the Pleader for the petitioners,
 REG. v. and the grounds of review now sought to be brought forward
 MEHTARJI are the same as those which were urged on the appeal. For
 GOPALJI these reasons we reject the application.
 et al.

MELVILL, J., concurred.

Application rejected.



Sept. 22.

REG. v. CHA'NGIA' valad SHUMIA'.

*Whipping—Conviction of Theft in a Dwelling-house—Previous
 Conviction of Theft—Act VI. of 1864, Sec. 3.*

A prisoner convicted of "theft in a dwelling-house" who has previously been convicted of "simple theft" is not thereby rendered liable to whipping, under Act VI. of 1864, Sec. 3.

CASE referred by G. F. Sheppard, Magistrate of Tháná, under Sec. 434 of the Code of Criminal Procedure, for the orders of the High Court:—

"The First Class Subordinate Magistrate of Murbár convicted one Chángiá valad Shumiá, under Sec. 380 of the Indian Penal Code, of the offence of "theft in a dwelling-house," and sentenced him to fifteen days' imprisonment and to receive in addition twenty lashes.

"On referring to the record of a previous conviction against the prisoner, I find that he was formerly convicted of simple theft, being an offence distinct from that with which he has been now charged.

"I am, therefore, of opinion that, under the provisions of Sec. 3 of Act VI. of 1864, the sentence of whipping is illegal, and, accordingly, refer the proceedings for the orders of the High Court."

PER CURIAM (WESTROPP, C.J., GIBBS and LLOYD, JJ.):—The Court annuls the sentence of whipping passed upon Chángiá valad Shumiá as illegal.

The offence, under Sec. 380 of the Indian Penal Code, of theft in a dwelling-house, is a distinct offence from that of theft under Sec. 378, and is not included under it.

Order accordingly.