

REG. V. BA'BJI valad BA'PU.

1867.
July 24.*Whipping Act, No. VI. of 1864—Previous Conviction.*

On a reference by a Session Judge, under Sec. 434 of the Crim. Proc. Code, a sentence of whipping in addition to one of rigorous imprisonment, in the case of an offence specified in Sec. 4 of Act VI. of 1864, was annulled; as the prisoner had not been previously convicted of the same offence.

THE prisoner was convicted, by W. A. East, Magistrate F. P. in the Puná District, of the offence of committing housebreaking by night with intent to commit theft and sentenced, under Sec. 457 of the Indian Penal Code, to suffer one year's rigorous imprisonment, and, in accordance with the provisions of Act VI. of 1864, Secs. 4 and 10, to receive fifty lashes with a cat of nine tails, in the manner prescribed by law, after fifteen days of such imprisonment.

The record and proceedings had been called for by R. W. Hunter, Acting Session Judge of Puná, and were referred for the orders of the High Court, under Sec. 434 of the Criminal Procedure Code, with the following remark:—

“The sentence of whipping was passed by Mr. East under Sec. 4 of Act VI. of 1864, but the accused has not been previously convicted of the *same* offence, nor even of any of the offences mentioned in that section.”

PER CURIAM (COUCH, C.J., and NEWTON, J.):—The Court annuls the sentence of whipping, as the accused does not appear to have been previously convicted of the same offence.

NOTE.—Sec 3 Bom. H. C. Rep., Cr. Ca., pp. 37, 38.—Ed.