

## THE QUEEN v. ALEXANDER.

1898.  
July 9.*D. C., Galle (Criminal), 12,590.*

*Penal Code, s. 68—Enhanced punishment for previous convictions, when awardable—Ordinance No. 17 of 1894—Relevancy of proof of previous convictions for order as to police supervision.*

It is only a repetition of offences punishable under chapters XII. and XVII. of the Penal Code which is punishable by the double punishment provided by section 68 of that Code. Therefore it is irrelevant to charge or prove previous convictions in a trial for an offence punishable under any other chapter.

Under the Ordinance No. 17 of 1894, it is relevant to charge and prove a previous conviction for any offence for the purpose of placing an offender under police supervision.

THE accused was indicted under section 315 of the Penal Code for voluntarily causing hurt to one Pandita Gunawardana with an instrument for cutting. The indictment also contained a further charge of several previous convictions for theft punishable under sections 367 and 368 of the Code.

The District Judge found the accused guilty under section 315, and in view of the previous convictions, all of which were admitted by the accused, appeared to think the punishment should be enhanced owing to previous convictions. He sentenced the accused to twelve months' rigorous imprisonment and to receive ten lashes, and under the 6th section of the Ordinance No. 17 of 1894 he further ordered him to be subjected to the supervision of the police for three years immediately after discharge from jail.

The accused appealed.

There was no appearance of counsel for the accused.

*Loos, C.C., for the Crown.*

9th July, 1898. LAWRIE, J.—

From the judgment of the District Court it seems that the learned District Judge took the previous convictions into consideration and gave a longer period of imprisonment than he would have given had no previous convictions been proved. I think it necessary to correct this error in law, and to reduce the sentence of imprisonment to six months' rigorous imprisonment: the sentence of lashes to remain untouched.

The accused was charged with having committed an offence punishable under section 315, which is part of chapter XVI. of the Penal Code. Now, as I read the 68th section, it is only a repetition

1898.  
July 9.  
LAWRIE, J.

of offences punishable under chapters XII. and XVII. which is punishable by the double punishment provided by section 68. According to the Code, it is irrelevant to charge or prove previous convictions in a trial under any other than chapters XII. and XVII., and the only previous convictions which can be proved are convictions under these chapters.

For instance, in a trial for theft it is irrelevant and improper to prove a previous conviction for assault or causing hurt, or *vice versa*. A previous conviction of theft is not provable in a trial for causing hurt for the purpose of enhancing the punishment.

By the Ordinance No. 17 of 1894 it is relevant to charge and prove a previous conviction of any crime for the purpose of enabling the Judge to order the offender to be subject to police supervision, and to that extent the charge and proof here were right, but not to the extent of giving power to impose double the amount of imprisonment.

