

B yd, C.]

[Dec. 12, 1911.

REX v. MUNROE.

*Criminal law—Vagrancy—"Visible means of maintaining himself"—Money derived from begging—Previous conviction for begging.*

Motion by the defendant, on the return of a habeas corpus, for an order for his discharge from custody under a conviction for vagrancy.

BOYD, C.:—The vagrancy clauses of the Canadian Criminal Code are derived from the English general Vagrancy Act (still in force, 5 Geo. IV. c. 83, ss. 3 and 4), and in small part from the later Act 1 & 2 Vict. c. 38, s. 2: see marginal note to Dominion statute 49 Vict. c. 157, s. 8; *Rex v. Johnson*, [1909] 1 K.M. 439. . . .

It is inherently evident from this legislation that the man who makes a living by begging or by gambling or by trickery is not regarded as a person who maintains himself by honest work or other lawful means. Begging is stamped as being a disreputable mode of life and an offence against the good order of society. Our Code declares a man to be a vagrant who, not having any visible means of maintaining himself, lives without employment. The maintaining himself by means of begging and the gathering of such gains to the extent of a few dollars would not seem reasonably sufficient to exonerate him from punishment because with the dollars he might be said to have visible means of maintaining himself for a few days or weeks. . . . As said by Mr. Justice Osler in *Regina v. Bassett*, 10 P.R. 306, it is the general tend of his life that is to be looked at, the sort of character he is exhibiting. The true meaning of the section in the Code 238(a), that every one is a vagrant "who . . . not having any visible means of maintaining himself, lives without employment," is, visible *lawful* means of support. This word "lawful" is explained in the criminal laws of Australia relating to idle and disorderly persons or vagrants: *Appleby v. Armstrong*, 27 Vict. L.R. 136, and *Le Fan v. Dempsey*, 5 Com. L.R. 316. . . .

The defendant moves for his discharge, on the ground that, as he had \$28 in his possession at the time of his arrest, he was not "without visible means of maintaining himself," and so is wrongly convicted as being a loose, idle vagrant under the Criminal Code of Canada, s. 238(a).