

ante 77, refusing to quash a summary conviction of the defendant for vagrancy.

T. N. Phelan, for the prisoner.

No one opposed the motion.

MULOCK, C.J. Ex., in a written judgment, said that the defendant was convicted as a "loose, idle and disorderly person, being a common vagrant," within the meaning of the Criminal Code, sec. 238 (i). The defendant was arrested in an alleyway in circumstances which entitled the peace officer to ask her to account for her presence there. Without asking her for an explanation, he arrested her and brought her before the magistrate who convicted her. The magistrate did not ask her for an explanation of her presence in the alleyway. It was contended that until the peace officer asked her for an explanation and until her failure to give a satisfactory account of herself, she was guilty of no offence, and not liable to arrest. That contention was right: *Regina v. Arscott* (1855), 9 O.R. 541; *Arscott v. Lilley* (1886), 11 O.R. 153, 182.

The view that the satisfactory account contemplated by the Code is to be given to the magistrate is not shared by the learned Chief Justice of the Exchequer. Prostitutes or night walkers, like other citizens, have the right to the use of the public streets for lawful purposes. Vagrancy is a statutory offence. A prostitute, though on the public street, is not, without more, a vagrant within the meaning of the Act, and therefore is not liable to arrest until after a peace officer has asked her for a satisfactory account of herself and she has failed to give it.

Leave to appeal should be granted, if there were a right of appeal.

As to the right of appeal, counsel for the defendant relied on Rule 1287, one of the Rules made by the Judges of the Supreme Court of Judicature for Ontario on the 27th March, 1908: "An appeal shall lie from the order of the Judge to a Divisional Court if leave be granted by a Judge of the High Court." The same provision is found in sec. 101a (9) of the Judicature Act, R.S.O. 1897 ch. 51, as added by 8 Edw. VII. ch. 34, sec. 1.

The Criminal Code not authorising an appeal such as is here sought, the Ontario Legislature cannot do so in respect of what is an offence only under the Code. The scope of Rule 1287 and of sec. 101a (9) is limited to cases within the jurisdiction of the Legislature of Ontario, and therefore their provisions do not apply to the present case.

*Motion refused.*