

LATCHFORD, J., in a written judgment, said that the transactions in February, 1916, were the culmination of a series of purchases and sales of "futures" conducted by the plaintiffs for the defendant. If the purchases and sales were made by the plaintiffs with the authority of the defendant, and were not prohibited by sec. 231 of the Criminal Code, there was no defence to the claim.

At the time the first order was given to Mr. Plewes, the manager of the plaintiffs' Toronto office, with whom the defendant dealt, on the 29th December, 1915, the defendant was a clerk in a bank at Lucknow; he had no intention, when ordering a purchase or sale, to accept or make delivery of May wheat; and Mr. Plewes was well aware from the 31st December, 1915, that the defendant was merely a bank clerk, and that his orders were purely speculative. It was "buy to-day and sell to-morrow" for some time, to the common advantage of the plaintiffs and defendant; but when, with holdings of 10,000 bushels, the price of May wheat fell nearly 20 cents, the margin and profits of the defendant disappeared, and he was "short the sum now claimed by the plaintiffs."

The case was similar in nearly all respects to *Beamish v. James Richardson & Sons Limited* (1914), 49 S.C.R. 595, where the majority of the Supreme Court of Canada held that the transactions there in question were *malum prohibitum*.

In this case, the result was the same. The transactions came within the literal terms of sec. 231 of the Code, and the action failed.

Action dismissed with costs.

MULOCK, C.J.EX., IN CHAMBERS.

APRIL 20TH, 1917.

*REX v. JACKSON.

Criminal Law—Vagrancy—Common Prostitute—Summary Conviction—Criminal Code, sec. 238 (i)—“Satisfactory Account of herself”—No Offence until Asked for by Peace Officer and not Given—Order Refusing to Quash Conviction—Motion for Leave to Appeal—No Right of Appeal—Rule 1287 (27th March, 1908)—Judicature Act, R.S.O. 1897 ch. 51, sec. 101a (9)—8 Edw. VII. ch. 34, sec. 1—Inapplicability to Offence against Provisions of Criminal Code.

Motion by the defendant for leave to appeal to the Appellate Division from the order of FALCONBRIDGE, C.J.K.B., in Chambers,