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HIGH COURT DIVISION.

MIDDLETON, J., IN CHAMBERS.

SEPTEMBER 10TH, 1917.

*REX v. WELLER.

Criminal Law—Vagrancy—Criminal Code, secs. 238, 239—5 Geo. V. ch. 12, sec. 7 (D.)—Prostitution in Private Boarding-house—Conviction by Police Magistrate—Improper Admission of Evidence as to Venereal Disease—Prejudice.

Motion to quash a conviction of the defendant for vagrancy. The conviction was made by one of the Police Magistrates for the City of Toronto.

T. N. Phelan, for the defendant.

Edward Bayly, K.C., for the Crown.

MIDDLETON, J., in a written judgment, said that the only evidence was that the defendant (a woman) had on several occasions received money "for immoral purposes;" that one man had been infected with venereal disease; and that the woman was found, on examination by a surgeon, to be diseased. The woman was employed as a domestic servant in a boarding-house, and the acts of immorality were with boarders.

Section 239 of the Criminal Code, R.S.C. 1906 ch. 146, makes vagrancy punishable; but vagrancy is defined by sec. 238, and

* This case and all others so marked to be reported in the Ontario Law Reports.

there is nothing in any of the clauses of that section (since the repeal of clauses (j) and (k) by 5 Geo. V. ch. 12, sec. 7) which can be relied upon to make immorality committed in a private house evidence of vagrancy; and the facts did not bring the case under clause (i) or clause (l).

The conviction was not sustainable; but this did not mean that the woman, if a prostitute, was to be unpunished, but that the prosecution must take place under the proper provisions of the Code.

Evidence of disease was improperly admitted by the Police Magistrate; and so the case was brought within the decisions which compel the quashing of a conviction upon evidence which should not have been received and which may have prejudiced the defendant.

The remedy for the prevention of the spread of venereal disease must be found under the Public Health Act.

The conviction should be quashed.