that there was a prize or that there was not. Can it be that the onus of proving that there was no prize is upon the accused? And is it to be left to the accused in the event of there being no prize to also shew that the fight was *bonâ fide* the result of a quarrel or dispute? While evidence as to the latter might not be essential to the principal or greater offence of prize fighting, it is probably admissible in mitigation; but different considerations as to the admissibility of evidence would apply as to proving that the fight was not for a prize, if a prize be not requisite to the offence of participating in a prize fight. It does not seem reasonable that the accused should be forced to give that evidence in order to get the benefit of sec. 108. Clear words should appear where it is intended by a statute to make it an offence to fight to a finish without a prize, where prior to the statute the striving for a prize was an essential; and it might also be expected that more precise terms than are to be found in sec. 108 would be necessary to displace the onus of proof ordinarily laid upon the prosecution.

Reading together all of the sections above referred to it seems more probable that sec. 105 requires that the "prize fight" engaged in must be a fight in which (1) each strives to overcome or conquer the other, (2) there was a prize, which might consist of a reward to one or both contestants or might consist of what is termed the "gate receipts" or a prize in the sense that the transfer of money or property depended on the result of the fight undertaken with such transfer in view by the contestant who is charged, and (3) that the fight was pre-arranged.

It is submitted further that the offence under sec. 108 is a lesser offence in which there are the same elements as the offence of "prize fighting" except that the prize is lacking, and that in default of satisfactory proof by the prosecution that there was a prize in the sense above indicated, the prosecution has the alternative of offering evidence that the fight or intended fight was *bonâ fide* the consequence or result of a quarrel or dispute between the principals, and the magistrate may thereupon impose the lesser penalty of a fine not exceeding $50, or may in his discretion discharge the accused. Then, if there were no prize and no quarrel or dispute there would be no offence and the accused would have to be discharged unless the fighting were in public so as to cause public alarm and so constitute an affray, as to which see sec. 100 of the Criminal Code, 1906.

If one consents to be beaten, the person who inflicts the battery is not ordinarily chargeable with an offence; the limit to this doctrine being, that the beating must be one to which the party has the right to consent: *Pillow* v. *Bushnell*, 5 Barb. 156. No concurrence of wills can justify a public tumult and alarm; and so persons who voluntarily engage in a prize fight, and their abettors, are all guilty of an assault: *Rex* v. *Perkins*, 4 Car. & P. 537. And see *Rex* v. *Billingham*, 2 Car. & P. 234; *Reg.* v. *Brown*, Car. & M. 314. But see *Duncan* v. *Commonwealth*, 6 Dana 295.

Sparring with gloves is not dangerous or likely to kill, and a death caused by such sparring is not manslaughter, unless continued to such an extent that the parties are exhausted so that a dangerous fall, causing death, is likely to result from its continuance: *R.* v. *Young*, 10 Cox C.C.