

But in the State of New York the Penal Code not only makes prize-fighting itself illegal, but by a new section (Sec. 460) makes betting or stake-holding in regard thereto criminal.

The Penal Code does not define "ring or prize-fighting," and still leaves open a question of fact often of very great difficulty, whether a contest is a prize-fight or a sparring match.

The question was considered in *Reg. v. Orton*, 14 Cox Crim. Cases, 226, where the test was held to be that, if the contest was a mere exhibition of skill or sparring it was not illegal; but if the pugilists met intending to fight till one of them gave in from sheer exhaustion or injury, it was a breach of the peace and a prize-fight. It was also held in that case, as it has been held in American cases, that the wearing of gloves made no difference.

There being no question about the law as to the prize-fighters themselves, the question arises, what conduct on the part of the spectators would make them also guilty of an offense?

It would seem that under the Penal Code, as well as under the common law, the mere presence at a prize-fight is not in itself criminal, and there must be some proof beyond that fact to show that the person "aids, encourages or does an act to further" the fight.

The leading English case is *Reg. v. Coney*, 8 Q. B. D. 534.

In that case the prize-fight took place near Maidenhead, and the defendants were in the crowd looking on. Nothing beyond this was proved against them, and it was held by the Queen's Bench Division, by eight judges against three, that the mere voluntary presence at a fight does not, as a matter of law, necessarily render a person so present guilty of an assault, as aiding and abetting in such fight. (In this case each judge thought it necessary to write an opinion.)

The cases suggested in the opinions of Pollock, B., and Coleridge, C. J., the predicament of "a very short man" who "might be at the outer edge of the crowd, and so unable either to see or apprehend what was going on,"

gave rise to much discussion of an amusing character in the English law journals.

In the opinion of Lord Coleridge the small man was equal to the emergency, for he speaks of "some one in the outskirts of a crowd, curious as to the object of it, whose shortness of stature is not aided by a friendly tree."

"If it was shown that the defendants took a walk in the direction of the fight for the purpose of seeing something of it (and, *a fortiori*, if they went by train or omnibuses with a lot of other blackguards for the purpose of the 'sport'), there will be evidence for the jury of the party's participation and encouragement." Shirley, *Leading Cases in Criminal Law*, 9, citing *Reg. v. Billingham*, 2 C. & P. 234. That case says this rule of law "ought to make persons very careful."

The cases cited in the American edition of Shirley on this point may be also consulted: *Sikes v. Johnson*, 16 Mass. 389; *State v. Starr*, 33 Me. 554; *Williams v. State*, 9 Miss. 270; *Duncan v. Cornwall*, 6 Dana, 295.

Now, as to the citizens of this State, whose idea of pleasure was to sit for two hours in a broiling July sun, in a part of Mississippi where the sand is two feet deep and hot accordingly, they were guilty of a misdemeanor under section 461 of the Penal Code. "A person who leaves the State with intent to commit an act without the State which is prohibited by this title, or who, being a resident of this State, does an act without the State which would be punishable under the provisions of this title if committed within this State, is guilty of the same offence and subject to the same punishment as if the act had been committed within this State." Section 461.

Section 458 says that a person who, within this State, engages in, instigates, aids, encourages or does an act to further any contention or fight without weapons between two or more persons, or a fight commonly called a ring or prize-fight, either within or without the State, is guilty of a misdemeanor.

And, as has been already said, one who has a wager or bet, or one who holds the stakes of such a fight, is by section 460, also guilty of a misdemeanor.—*N. Y. Law Journal*.