

Province of Alberta.

SUPREME COURT.

Harvey, C.J.]

REX v. PELKEY.

[12 D.L.R. 780.]

Prize fighting—What constitutes—Prize or reward—Homicide.

An encounter of the nature of a fight, with fists or hands, between two persons who have met for such purpose by previous arrangement is a "prize fight" under Cr. Code, 1906, s. 105, within the statutory definition of the phrase "prize fight" contained in Cr. Code, 1906, s. 2 (31), if the contest be one in which each strives to overcome or conquer the other, although there is no prize offered to the victor.

R. v. Wildfong, 17 Can. Cr. Cas. 251; *R. v. Fitzgerald*, 19 Can. Cr. Sas. 145; and *Steele v. Maber*, 6 Can. Cr. Cas. 446, referred to.

On a trial for manslaughter against one of the contestants in a so-called boxing contest in respect of the death of the other contestant in the ring following a knock-out blow, the jury in considering whether the contest was one prohibited by the provisions of the Criminal Code as to prize fights, may take into consideration the weight of the gloves as bearing on the intention that the fight should terminate by one or the other being incapacitated, although limited to ten rounds.

James Sh. K.C., for the Crown. *A. L. Smith*, for Pelkey.

ANNOTATION ON THE ABOVE CASE.

The present sections of the Criminal Code of 1906, relating to "Prize fights" have their origin in the Statutes of Canada, 44 Vict. ch. 30, being "An Act respecting prize fights." This Act was consolidated in the Revised Statutes of Canada of 1886 as ch. 153 of same. A reference to the original statute may be of assistance in ascertaining the meaning of secs. 104 to 108 inclusive of the Criminal Code 1906, those being the sections bearing the sub-title "Prize fights." The case of *R. v. Pelkey*, above reported, contains a dictum *per* Harvey, C.J., that the presence or absence of a prize which is suggested by the name of the offence has no significance whatever and as there is nothing suggesting a prize in the statutory definition the offence may be complete as a "prize fight," although there be no prize or the handing over or transfer of money or property on the result. A similar dictum is contained in the case of *R. v. Wildfong*, 17 Can. Cr. Cas. 217, decided by Judge Snider, of Hamilton, in 1911. The point cannot be said to have been actually essential to the result in either of these two