371. And the question whether such a contest is merely a sparring exhibition or a prize fight, within the meaning of statutes condemning prize fights as misdemeanours, is one of fact for the jury in a prosecution for a resulting homicide: *People* v. *Fitzsimmons*, 69 N.Y.S.R. 191, 34 N.Y. Supp. 1102.

In *R.* v. *Coney*, 8 Q.B.D. 534, two men fought with each other in a ring formed by ropes supported by posts and in the presence of a large crowd. Amongst the crowd were the prisoners, who were not proved to have taken any active part in the management of the fight, or to have said or done anything. They were tried and convicted of aiding and abetting an assault. Upon a case reserved the conviction was quashed by eight Judges against three, the majority holding that mere voluntary presence at a fight does not as a matter of law necessarily render persons so present guilty of aiding and abetting an assault, although the mere presence unexplained may, it would seem, afford some evidence for the consideration of a jury: *R.* v. *Coney*, 8 Q.B.D. 534, *per* Denman, J., Huddlestone, B., Manisty, Hawkins, Lopes, Stephen, Cave and North, JJ. (Coleridge, C.J., Pollock, B., and Mathew, J., *diss.*). This decision appears to overrule *R.* v. *Murphy*, 6 C. & P. 103; *R.* v. *Perkins*, 4 C. & P. 537; and *R.* v. *Billingham*, 2 C. & P. 234, if and so far as they decided that mere presence at a prize fight is encouragement. Cf. *R.* v. *Young*, 8 C. & P. 644, where mere presence at a duel was held not enough to warrant conviction for aiding and abetting in the murder of one of the combatants.

In *R.* v. *Young*, 10 Cox 371, seven men were indicted for manslaughter. They had been sparring with gloves on, and the deceased was with them. After several rounds the deceased fell and struck his head against a post, whilst he was sparring with the prisoner. The men were all friendly, but as the deceased and the prisoner came up to the last round they were "all in a stumble together." The medical testimony was to the effect that sparring might be dangerous, but that death would be unlikely to result from such blows as had been given. The danger would be where a person was able to strike a straight blow, but the danger would be lessened as the combatants got weakened. Bramwell, B., said, the difficulty was to see what there was unlawful in this matter. It took place in a private room; there was no breach of the peace. No doubt if death ensued from a fight, independently of its taking place for money, it would be manslaughter; because a fight was a dangerous thing and likely to kill; but the medical witness here had stated, that this sparring with the gloves was not dargerous, and not a likely thing to kill. After consulting Byles, J., Bramwell, B., said, that he retained the opinion he had previously expressed. It had, however, occurred to him that supposing there was no danger in the original encounter, the men fought on until they were in such a state of exhaustion that it was probable they would fall, and fall dangerously, and if death ensued from that, it might amount to manslaughter, and he proposed, therefore, so to leave the case to the jury and reserve the point if necessary. The prisoners were acquitted.

In *R.* v. *Orton*, 14 Cox 226 (C.C.R.), it was held upon a case reserved