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# TELEVISION BROADCASTS OF BOXING MATCHES

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RECENT publicity gives the public authentic information concerning radio television. David Sarnoff, president of the Radio Corporation of America, in a statement made to the press in January, 1931, said:

“In the field of sight-transmission by radio, which is popularly called television, there is no long any mystery, and I have no hesitancy in saying that in my judgment television will eventually arrive. I cannot say exactly when, but I am confident that in less than five years you will be able to receive images through space as well as you are able to receive sound through space at the present time.”

At present, the Federal Radio Commission is granting television licenses to broadcast stations for experimental purposes only. There are, at present, several broadcast stations engaged in this pioneer work. Is it unreasonable to assume, considering the tremendous strides made in radio during the past five years, that within the near future the experimental stage will have been passed? Radio television has come to stay. We need be but slightly optimistic and prophetic to state that within a few short years it will be, not only the acceptable, but the preferable program. The possibilities in relation to the choice of programs will be legion. There is—to even the slightly imaginative mind—a wealth of interesting features; and that the surface of these has hardly been scratched may not be denied.

In this article, the writer wishes to avoid statements more properly pertaining to electrical engineering, design of machines, apparatus, etc., and is concerned with them only as incidental to, the transmission of, one specific kind or type of pictorial representation; and in applying the law under statutes now in force, to that specific kind or type of pictorial representation. We are therefore assuming that radio television, as we understand it, exists in a combination of acts, concurrent and continued, which, together with the use of electrical energy, machines, apparatus, films, etc., allows the presentation of a pictorial representation to be transmitted into and through the ether, from one point to another, which may or may not lie many miles apart; and that these pictorial representations are transmitted into and through the ether from, and through, the use of positive film (still or motion). The specific kind or type of pictorial representation with which the writer

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is herewith concerned, is that of the so-called "Prize Fight Motion Picture Film."

The question herewith discussed is:

"Under present statutes, may pictorial representations of prize fights, of boxing matches, be broadcast by radio television?"

Due, no doubt, to the fact that radio legislation is of so recent origin, and that there have been no real, worthwhile "matches or fights" between recognized heavyweight contenders; and that radio television is still in the experimental stage, this question has never been before the courts. True, "word pictures" or "blow by blow" accounts by famous announcers from ringside microphones have been broadcast. What measure, therefore, may we use to determine the right (if any) to transmit "prize fight" pictures by radio television?<sup>1</sup>

Radio jurisprudence represents virgin territory and the decisions concerning it are few. The problem presented by the above question must be reasoned (in the absence of precedent) from the statutes now in force, or from common law principles. There are some phases of questions which may arise, to which we must necessarily apply common law principles or doctrines; but to say that common law, which is an outgrowth of custom, usage, and ecclesiastical rules of conduct, contemplated the existence of radio television, allocates to it a prophetic vision entirely without its province.

Our first consideration, then, is the Federal Statutes, and we find that these are:

1. (a) Chapter C, Comp. St., 1918, Sec. 8647.
- (b) Act of Sept. 26, 1914, (Comp. St., SS8836a-88836k).
2. Act of July 31, 1912, Chap. 263, Sec. 1, 37 St. 240, (Comp. St., 1913, Sec. 10416).
3. Act of March 4, 1909, (Chap. 321, Sec. 37), 35 St. 1096, (Comp. St., 1913, Sec. 10202) (Crim. Code).
4. Radio Act of 1927; 44 St. 1162-as amended by Act of March 28, 1928, 45 St. 373.

Taking the above statutes in their order, we find that Chapter C, *supra*, defines Interstate Commerce, and reads as follows:

1. (a) "The term Interstate Commerce, as used in this act shall include transportation from any State or Territory, or the Dis-

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<sup>1</sup> Under date of August 13, 1931, the United Press published the following: "Benny Leonard, retired undefeated world's lightweight champion, will meet Jimmy Martin, 32, York Golden Gloves featherweight, tonight in a three-round exhibition bout which is to be broadcast by sight and sound over the Columbia Broadcasting system's television station "W2XAB."

district of Columbia, to any other State or Territory, or the District of Columbia; and the term Foreign Country, as used in this act, shall include transportation from any State or Territory, or the District of Columbia, to any Foreign Country, and from any Foreign Country to any State or Territory, or the District of Columbia."

1. (b) The Act of Sept. 26, 1914, *supra*, in re manufacture and distribution of moving picture film, has been squarely held to constitute Interstate Commerce.<sup>2</sup>
2. The Act of July 31, 1912, *supra*, provides:

"That it shall be unlawful for any person to deposit in the mails or with any carrier, or to send or carry from one State or Territory to another State or Territory, or to bring or course to be brought into the United States from abroad, any films or any pictorial representation of any prize fight, which are designed to be used, or may be used, for the purpose of public exhibition."<sup>3</sup>

3. The Act of March 4, 1909, *supra*, says:

"That a conspiracy to commit any offense against the United States, is a felony."<sup>4</sup>

4. The Radio Act of 1927, *supra*, as amended by the Act of March 28, 1928, *supra*, provides:

"The expression, radio communicator or communications wherever used in this chapter, means any intelligence, message, signal, power picture, or communication of any nature transferred by electrical energy

<sup>2</sup> *Binderup v. Pathe Exchange*, 263 U.S. 291, 44 S. Ct. 96, 68 L. Ed. 308. In this case the Court said: "Manufacture of motion picture films in one State and finding customers for them in another State making contracts with the customers for their use, and transmitting the films from the State where manufactured to the State where they are to be used, constitutes Interstate Commerce; and the fact that, in distribution, the Films are consigned to local distributors of the manufacturer in the State where they are to be used, is immaterial." See also: *Fox Film Corp. v. Trumbull*, 7 F. (2d) 715, and *Fox Film Corp. v. Federal Trade Comm.*, 296 F. 353.

<sup>3</sup> *Weber v. Freed*, 239 U.S. 225, 36 S. Ct. 131, 60 L. Ed. 308, Anno. Cases, 1916C, 317. In this case, the Court decided and held that; "Congress has the power to regulate Interstate Commerce, as was done by the Act of 1912, and, that said Act is Constitutional." See also: *Rose v. St. Clair*, 28 F. (2d) 192.

<sup>4</sup> *Weber v. Freed*, 239 U.S. 225, *Supra*. A conspiracy to violate the above, (Prize Fight Film Act) charges an offense against the United States. *United States v. Johnston*, 232 F. 970; *Pantomimic Corp. v. Malone*, 238 F. 135, 151 C.C.A. 211. See also: *Perry v. U. S.*, 39 F. (2d) 52; *Capo v. U. S.* 50 S. Ct. 467, 281 U.S. 769, 74 L. Ed. 1176 (certiorari denied); *Satinover v. U. S.*, 59 S. Ct. 467, 281 U.S. 769 74 L. Ed. 1176 (certiorari denied); *Hill v. U.S.*, 42 F. (2d) 812, certiorari denied, 51 S. Ct. 87.

from one point to another without the aid of any wire connecting the points from, and at which, the electrical energy is sent or received, and any system by means of which such transfer of energy is effected."

This statute seems to fit our problem. Let us therefore see what legal actions have been instituted under it?

The case of *United States v. American Bond & Mortgage Company*<sup>5</sup> was a suit by the United States for an injunction to prevent defendant from radio broadcasting without a Federal license under provisions of Radio Act of 1927, as amended by the Act of March 28, 1928.<sup>6</sup> This suit was held to be within the jurisdiction of a Court of Equity, because interference in programs broadcast amounts to public nuisance, and irreparable damage to the public is liable to result. The court stated further that:

"Radio transmission and reception among the States of the Union, constitutes Interstate Commerce."

"Authority of Congress, under Commerce clause of the Constitution, extends to every instrumentality or agency by which Interstate Commerce is carried on, and is not limited by the fact that Interstate and Intrastate transactions may become so interwoven that effective government of the former, incidentally controls the latter."<sup>7</sup>

A summary of the reasoning applicable to the statutes hereinbefore stated, as construed by the Courts in the cases cited, allows the following conclusions:

*First:* The manufacture and distribution of motion picture film is engaging in Interstate Commerce.

*Second:* The transmission or transportation of prize fight pictures is Interstate Commerce, and is expressly forbidden.

*Third:* Conspiracy to transmit or transport prize fight pictures is a felony.

*Fourth:* Transmission by electrical energy \* \* \* of any communication, picture, etc., \* \* \* of any nature \* \* \* without the aid of any connecting wire, etc., \* \* \* is Interstate Commerce.

<sup>5</sup> 31 F. (2d) 448, (March, 1929).

<sup>6</sup> 44 Stat. 1162 and 45 Stat. 373.

<sup>7</sup> *Jerome H. Remick & Co. v. American Auto Acc. Co.*, 5 F. (2d) 411, 40 A.L.R. 1511, Annotation, "Legal aspects of radio communication and broadcasting," 40 A.L.R. 1513; *Technical Radio Laboratory v. Federal Radio Comm.*, 36 F. (2d) 111, 66 A.L.R. 1355, Annotation, "Legal aspects of radio communication and Broadcasting," 66 A.L.R. 1361; *Chicago Federation of Labor v. Federal Radio Comm.*, 41 F. (2d) 422; *Marquette University v. Federal Radio Comm.*, 47 F. (2d) 406; *KFKB Broadcasting Association v. Federal Radio Comm.* 47 F. (2d) 670.

Does it not seem, however, that the words of Section 3, of the Radio Act of 1927, i.e. "any intelligence, message, picture, etc., transferred by electrical energy from one point to another, etc.," are somewhat contradictory in view of what has actually been done by duly licensed broadcast stations? The writer specifically refers to the "word by word" or "blow by blow" ringside accounts of prize fights which have been orally broadcast several times during the past few years.<sup>8</sup> If the statute above referred to is construed liberally, or strictly, the actuality exists that these "word by word" accounts or narratives, have been broadcast in direct contradiction to the words in the statute. What, therefore, are we to presume will be the court's attitude toward broadcast of prize fight pictures by television, when the question arises?

The writer examined many cases reviewed by the various courts, both State and Federal, with the thought of ascertaining the trend of the decisions in this new field of jurisprudence. To predict with certainty the holding of any court of last resort, would be presumptive. However, there is one case, which, in the writer's opinion, seems to contain certain powers of reasoning which could be applied to the "Prize Fight Film Act," in conjunction with Sec. 3, Radio Act of 1927.<sup>9</sup> This case is *United States v. Johnston*.<sup>10</sup>

This case was heard upon demurrer to the indictment which averred;

"That the defendants did bring and caused to be brought into the northern district of the State of New York, films and pictorial representations of a prize fight,<sup>11</sup> which were designed to be used, and which might be, and were, used for public exhibition, by setting up, and causing to be set up and operated, a camera and moving picture machine and apparatus on the International Boundary line between the United States and the Dominion of Canada, so that a part of the machine and apparatus was within the United States, and the remaining portion of the machine and apparatus in Canada; and that from films and pictorial representations placed in the machine on the Canadian side of the border, through the mechanical operation of the machine and apparatus, and by means in use of air, sunlight, electric light, and otherwise, were caused to be brought into the United States for the purpose of public exhibition, contrary to Act of July 31, 1912."<sup>12</sup>

The indictment averred further,

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<sup>8</sup> *Supra*—footnote one.

<sup>9</sup> *Supra*—footnote six and Sec. 37, Chap. 321, Act of March 4, 1909.

<sup>10</sup> 232 Fed. 970 (decided in 1916).

<sup>11</sup> Willard-Johnson Prize fight, fought in Havana, Cuba.

<sup>12</sup> Chap. 263, Sec. 1; 37 Stat. 240, (Comp. St. 1913, Sec. 10416).

“that the defendants conspired \* \* \* etc., contrary to the Criminal Code of the United States.”<sup>13</sup>

In discussing this case, Judge Ray said:

“The main contention of the defendants is that this indictment shows on its face that no film, or physical picture, or physical pictorial representation of a prize fight was actually brought into the United States from the Dominion of Canada; but that by an ingenious arrangement of apparatus, camera, film, etc., a picture of a prize fight was photographed on the United States side of the natural boundary, from a film located on the Canadian side, and that such process and operation, even if the moving picture of the prize fight was reproduced on the United States side of the border line between the United States and Canada, does not constitute a bringing, or a causing to be brought into the United States from abroad—that is—from Canada,—of either a film or other pictorial representation of any prize fight, etc., within the meaning of the section quoted.<sup>14</sup>

“The main weakness in this argument is, that it assumes the indictment does not mean what it says when it charges in plain and unmistakable language that defendants—did on the 2nd day of April, 1916,—bring and cause to be brought into the United States of America, \* \* \* films and other pictorial representations of a prize fight, etc. There is a plain charge of bringing in films and other pictorial representations of such prize fight. Then follows a description of the mode and manner in which such physical objects, films, and other pictorial representations of such prize fight were actually brought into the United States. The indictment does not state and charge that a photograph was taken on the United States side of the boundary line, of a film or picture located on the Canadian side,<sup>15</sup> but, after describing an apparatus, etc., says, and on account of, and by means of the operation thereof (such apparatus, etc.), films and other pictorial representations of said prize fight were taken from the films of said prize fight placed in said machine on the Canadian side thereof, and that through the mechanical operation of said machine and apparatus and camera, transmitted to the American side,—that is, brought over and carried or forwarded to the American side; but, further, the indictment says, “which said mechanical operation was set in motion and propelled, \* \* \* and by such mechanical means, and by the use of air, sunlight, electric light, and otherwise, said films and pictorial representations of the aforesaid prize fight were then and there brought, and caused to be brought into the United States from the Dominion of Canada, for use, etc.

“This is plain and unequivocal language, \* \* \* that by the means and mechanism described, and by other means, \* \* \* said films and pictorial representations were then and there brought into the United States, etc. This Court cannot be informed just what the evidence will

<sup>13</sup> 18 U.S.C.A., Sec. 88.

<sup>14</sup> *Supra*—footnote twelve.

<sup>15</sup> This is actually what happened.

show, and that is not the question here. It may appear from the evidence that no film or pictorial representation was brought into the United States, but the indictment plainly alleges that one or more films, and one or more pictorial representations of the prize fight named, were brought into the United States; and that same were designed to be used, and could be used, and might be used for public exhibition. It would be a waste of time to consider a case which argument states the evidence will show. It will be time enough to consider that when the evidence is before the Court. It is clear that no conviction can be had if the evidence fails to show the bringing in from abroad of a film or a pictorial representation of a prize fight."

The writer is of the opinion that the reasoning in the foregoing case is sound and that it could be applied to the statutes above referred to. In this case, there was no transmission of a tangible, physical, concrete thing. This being so, what was it that passed through the ether across, and over, the boundary line, from and into said machines and apparatus? The writer feels that this case has its analogy in the wording of Section 3 of the Radio Act concerning transmission by radio broadcast.

We are therefore forced to conclude that our question must be answered in the negative. We think, too, that if the question of radio broadcast of "word by word," "blow by blow" ringside accounts of prize fight arose, it must also be said to be within the purview of Section 3 of the Radio Act.

The problems of Congress and the Federal Radio Commission with respect to the enactment of new radio law are monumental. To keep in mind the proper regulatory rights of government, without its being a hindrance to progress, and the rights of vested property, is, in itself, a large problem. It is only right, therefore, that these bodies act slowly in the face of so much pressure. The writer respectfully submits that no new legislation should be enacted without the consultation or advice of recognized radio engineers. Inventive genius is working night and day toward the achievement of ultimate perfection in radio. Is it not meet, therefore, that it should have at least an advisory voice in new legislation? We are confident that in this co-operation lies the salvation of the radio industry.