

THE WIRELESS IN COURT

IT was recently reported in the Press that Judge H. W. Falk, of Los Angeles, had granted permission for microphones to be installed in the witness-box and at counsels' table in his court in order that the trial for murder of a former District Attorney might be broadcasted.

An innovation so profoundly affecting the conduct of courts of law gives rise to questions which concern intimately the judicature, the radio and the general public. It is true that the case in point hails from the United States, where the judicial atmosphere is less rarefied than it is in this country, and where restraint in matters of jurisprudence is not a particularly salient characteristic of public affairs. Its significance lies in its being the first indication that wireless threatens to invade a department of public life which has hitherto been regarded as sacrosanct, as much, one believed, by common consent, whether for reasons based on sentiment or public expediency, as, privately, on grounds of good taste. Although there does not at present appear to be any likelihood of the occasion at Los Angeles being cited as a precedent for similar action in this country, it marks an appropriate moment in which to review certain aspects of broadcasting with which considerations affecting public policy and decorum are closely bound up.

It may be said that to broadcast a court case is, in effect, to do no more than to enlarge the court and enable members of the public at a distance to hear what they could have heard *in propria persona* had they been actually present in the public gallery. Just as the public is entitled to hear a case in open court within the limits of the accommodation, so, it might

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be urged, it can claim the right to hear a case in which it is interested outside the limits of the court now that aural extension of its proceedings is made possible by wireless transmission. It may be observed, also, that public participation by means of the radio in all proceedings in which the polity is concerned is a legitimate use of the means available. Again, it might be pointed out that wireless transmission merely performs more directly—more realistically—what is already performed by the Press; that the essential use of the radio for all purposes in which wide dissemination of news or propaganda is desired is implicit in the invention itself; and that improvements, designed to increase its utility and efficiency in this respect, are destined to occupy a prominent place in its mechanical development.

These are weighty objections, and it is admittedly difficult to rebut arguments in favour of the transmission of anything and everything the public may demand when the plea is based on the 'right' of those at a distance, whether distance be due to necessity or choice, to participate in what those nearer at hand may enjoy in person. When to an established civil right is added the incentive to its exercise which the new convenience offers, the combination is by no means easy to withstand. If, then, on the ground of convenience, the public were to demand the facilities of the wireless in order to be able to listen in to proceedings in court, it would appear to make out a *prima facie* case, and it is not clear on what statutory pretext they could be withheld. Such a claim, if preferred, would seem to be compatible with British notions of good citizenship and legally valid.

It remains, then, to consider whether or not there are other than legal grounds on which the expediency or the desirability of the broadcasting of cases in court can be questioned.

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At the outset it may be observed that the broadcasting of the proceedings in a civil action, or commonplace criminal prosecution, might, or might not, provide edifying pabulum for listeners-in. It might enable wireless enthusiasts to listen to the dialectical ingenuities of counsel, to the discomfiture of witnesses, or to the wit of My Lord. It might provide a fireside education in legal procedure and forensic eloquence and prove both instructive and entertaining. It might, now and then, provide intellectual enjoyment of a rare order—a devastating cross-examination, a battle royal of opposing counsel, an epic appeal to the jury, or a masterly summing-up. Even a dull issue might, once in a while, provide all this—far more often it would result in a dismal performance that would provoke a storm of bored complaint and a bombardment of the B.B.C. with protests against its repetition. But whatever might be its wisdom, whatever its merit as an item in a radio programme, the broadcasting of a civil cause, of a suit embodying technical infringement of the law, or, even, of a trivial criminal prosecution, could scarcely be held to offend public decency or good taste, though it might reasonably be regarded as unworthy of the dignity of judicial procedure. Can the like be said regarding the transmission of a major criminal case? If it can—is it even then desirable that such cases be broadcast? If it cannot—what are the objections?

It is submitted that, for most of us, the difference between all categories of misdemeanour—even serious misdemeanour—and felony is of an egoistical as well as ethical order. Apart altogether from their content, our reaction toward felonies is due to the personal threat we see in them to our own security. A misdemeanour we can regard as an unfortunate *faux pas*, and we are often not unready to exculpate the offender from an uneasy feeling that we ourselves might quite

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conceivably have stood in his shoes. But we find it much less credible that we could ever fulfil the *rôle* of the felon, and it is this difference which ultimately determines our attitude toward those major criminal offences which menace the public weal and seriously attack the integrity of society.

But before we examine particularly the nature of the objections which can be advanced against wireless transmission of prosecutions for felony, it will be well to bear in mind that, if ever there should arise a demand for the broadcasting of cases in court, it will be precisely to cases of this kind that the public will wish to listen. It is true that a criminal *cause célèbre* at the Old Bailey might prove to be every whit as wearisome to listen to as an action in Chancery. On the other hand, such cases are often the tensest drama and such as would hold a radio audience spell-bound. It would be in anticipation of morbid excitement of the kind to which it has become accustomed on cinema screens and in detective 'thrillers' that it would tune in a 'sensational' criminal case. It would derive little gratification from a case, whether civil or criminal, whatever might be its social or political significance, however admirable its argumentation, were there lacking the dramatic element of a human being brought to bay.

It is this predilection for scandalous melodrama, this propensity for being morbidly stimulated by the sordid details of a deplorable crime, which is evinced by much human nature, that would make the broadcasting of such cases a public reproach. Trials take place, now and then, to which sections of the public would listen in with avidity, but it is submitted that no consideration whatsoever, in defence of their being broadcast, could outweigh the grievous affronts alike to the cause of justice and to public decorum that such a course would entail. It would be grossly offen-

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sive to every notion of good taste and to all sense of the fitness of things that a drama in which a prisoner might be on trial for his life should provide thrilling entertainment for listeners-in. For can anyone acquainted with the manner in which broadcast matter is normally received, at all events in mixed company, doubt for a moment that it would be as a form of entertainment that matter of the kind would be regarded? At best it would pander to degenerate tastes, and, by making judicial procedure the subject of diversion and flippancy, go far to bring the solemn cause of justice into contempt. At worst it would lead to popular prejudgments upon grave issues and to outbursts of sentimental and ill-informed opinion wholly alien to the impartial composure and judicial spirit of a court of law and likely seriously to hamper the ends of justice. Whatever the heinousness of his crime, a prisoner in the dock is a pathetic figure whose desperate situation should protect him from all risk of being made the sport of public prejudice and caprice. That even the most brutal miscreant should have his case tried at the bar of uncritical and incompetent public opinion, after providing a sort of gladiatorial show for the populace, would be intolerable.

Because, therefore, broadcasting of cases of the kind referred to would be demoralising to an indiscriminating public, would react unfairly against the accused, and be detrimental to the whole spirit and prestige of the law, it is to be hoped that it will never be resorted to in this country. It would provide the public with realism only at the expense of that reverential and dispassionate attitude toward judicial issues which, for the most part, now distinguishes it. The gain in public amenity would be nil—the loss to discipline, to the sentiment of awe and to the deliberation and restraint proper to criminal prosecutions, would be incalculable but profound.

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It is worthy of note that the desiderata which compel us to condemn as socially undesirable the broadcasting of cases in criminal courts closely resemble those that can be urged against the dissemination of religious services and addresses by the same means, notwithstanding that both the latter already enter into wireless programmes. But, whatever there may be to regret in religious broadcasting, it can be justly claimed that it gives consolation to thousands of the infirm and aged who have no means otherwise of enjoying the comfort and pleasure it confers. To those who cannot participate in public worship the broadcasting of religious offices is unquestionably a great boon of which none would seek to deprive them, however dubious he might be regarding the spiritual value of the same service when listened to by some of the young and well. The broadcasting of religious matter can be condoned precisely because it does give pleasure to those most in need of it. Could a similar plea be advanced on behalf of the proceedings in a criminal court? Nobody, probably, would contend that it could, though it may be pertinent to point out that, whatever gratification such matter might give would be a fair measure of the degree of its undesirability.

If one could believe that broadcasting of criminal cases would serve to quicken the public conscience and lead to wider understanding of the manifold causes which underlie criminal conduct and to deeper concern for their elimination from our midst—it would be possible to regard it not only as socially justifiable but as an educative and humanitarian medium of the greatest import to the whole community. Unfortunately there is little likelihood that it would have any such effect. On the contrary the replacement of the solemnity of the court by what would often correspond more to the irresponsible levity of the theatre would turn a grave case, not indeed into a spectacle, but into

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an audition into which very little beyond unhealthy curiosity would enter.

Although, therefore, in principle, it may seem reasonable enough, now that it is mechanically possible, that the public should be able to listen to a case in which it is particularly interested without the necessity of personal attendance in court, consideration of the resultant tendencies suggests that in practice the use of the facilities for this purpose would be less wholesome than might at first sight appear. By taking the hearing of the case and the hearer out of the court, both are deprived of that atmosphere which, however depressing—even chilling—it may at times be, does, beyond question, dispose all within its reach to a frame of mind befitting the administration of justice and the majesty of the law. Those in the public gallery, equally with those in the well of the court, are unmistakably aware that they are assisting at a very awesome thing, and the impressions left upon the minds of all present are very different from such as would be made, in wholly altered surroundings, upon listeners at a distance. The difference here is of the same order as that which makes a broadcast religious service listened to in a drawing-room a totally different experience from the same service listened to in a church. Though the broadcast matter in each case may be regarded as substantially identical with what would have been heard in church or court, it is evident that a great deal of its *manner* is in both cases entirely lacking. Incongruities of time, place and attitude—the absence of the appropriate demeanour and mental disposition give to listeners at a distance a distorted version of the original—hence the false values they attach to much they hear and the irresponsible judgments to which they are prone.

It is a prime and inescapable disability of wireless transmission that, while control can be exercised over

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what is transmitted, none can be effected upon the circumstances of its reception. Were this not so—were one able to feel that the mind of the listener would be in tune with the nature, spirit and purpose of the matter transmitted—it would be possible to view without misgiving the broadcasting of many things which, in fact, one cannot contemplate without apprehension. For it is undeniably in the power of the radio to cheapen and vulgarise things wholly laudable in themselves just because subjects broadcast with the worthiest of motives are so often received in a manner that not only robs them of all educative value, but exposes them to frivolity. Religion, unfortunately, is already unavoidably exposed to this owing to the superior claim it has to benefit those who earnestly desire it, but, in the absence of all comparable extenuating circumstances, we may hope that Justice will not be subjected to similar risk.

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