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Evidence: Effect of Conviction in Subsequent Civil Suit

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issue to the courts of each jurisdiction a list of the qualified and competent psychiatrists in that jurisdiction. Let the court choose from that list, let us say three psychiatrists, to study the accused and submit to the jury their findings as to just what his mental condition was at the time of the crime, such specialists to be paid by the county. Then have the court instruct the jury as to the basic requirement that the accused be capable of formulating the intent necessary to commit the crime in order to be guilty of that crime, and at the same time instruct them that the findings of the committee are to be taken as impartial evidence upon the question of whether or not the accused was capable of formulating that intent at the time of the crime, to be considered in arriving at their verdict. This solution preserves the jury system with its advantages (and disadvantages), but gives this body the benefit of unbiased expert opinion on what may be a highly difficult question—was the defendant insane?

Although the above suggestion may not be the best solution to the problem, it is the author's contention that in view of the present circumstances, if adopted they would accomplish a great deal toward improving a bad situation.

CARLETON M. DAVIS

EVIDENCE: EFFECT OF CONVICTION IN SUBSEQUENT CIVIL SUIT

The great weight of authority, both ancient and modern, supports the rule that a judgment of conviction or acquittal is inadmissible in a civil suit to establish the truth of the facts on which it was rendered. As an exception to this rule it is well settled that a prior conviction rendered upon a plea of guilty is admissible. Where the judgment in the criminal court is the foundation of the civil suit or where the subsequent action, although civil in form, is quasi-criminal, as in actions for penalties, the courts have readily admitted the judgment.

1 The source of the rule dates back to The King v. The Warden of the Fleet, 12 Mod. 337, 88 Eng. Rep. 1363 (1721).
2 See note 3 infra.
3 Notes (1924) 31 A.L.R. 261; (1928) 57 A.L.R. 504; (1932) 80 A.L.R. 1145; (1941) 130 A.L.R. 690.
4 Duerr v. Ky. & Ind. Bridge & R. R. Co., 132 Ky. 228, 116 S.W. 325 (1909); Stewart v. Stewart, 93 N.J. Eq. 1, 114 Atl. 851 (1921); Russ v. Good, 92 Vt. 202, 102 Atl. 481 (1917). In this class of cases, however, the judgment is not considered as conclusive evidence of the truth of the facts on which it is rendered. Anders v. Clover, 198 Mich. 763, 165 N.W. 640 (1917); Burgess v. Burgess, 47 N.H. 395 (1887); Spain v. Oregon Was. & Na. Co., 78 Ore. 355, 153 Pac. 470 (1917).
However, the modern tendency, both in England and America, is to favor the admissibility of a conviction as evidence of the facts on which it is based. Those jurisdictions admitting such convictions are in conflict, however, as to the evidential weight such judgments should carry. The conflict concerns the question whether one conviction shall be deemed a conclusive bar to the civil suit or merely as prima facie evidence which may be rebutted.

In Matter of Crippen's Estate, the leading English authority, the executrix and legatee of a man convicted and executed for wife murder unsuccessfully sought administration of the wife's estate. It was held that judgment of conviction of the criminal offense was admissible against the convict and those claiming under him as presumptive proof of his actual guilt.

The rule in New York has from an early day relaxed the strict rule of complete exclusion. In the early case of Maybee v. Avery, the plaintiff instituted an action of slander, alleging that defendant had called him a thief and charged him with stealing chickens. Defendant offered in evidence the record of conviction of plaintiff for the offense charged. The judgment of conviction was admitted but held to be merely prima facie evidence which the plaintiff was allowed to controvert. This view was sustained in the recent New York case of Schindler v. Royal Insurance Co.

Here the answer set out a provision of the policy avoiding liability in case of fraud by the insured, and as a bar to the action, the conviction of the insured of the statutory offense of making fraudulent proof under such policy. The court refused to accept the former conviction as a plea in bar but admitted it as prima facie evidence of the facts involved. The majority of the jurisdictions which admit in evidence a former conviction have seen fit to follow the New York rule in determining the weight to be given such judgment.

The minority view adopts the rule of conclusiveness in its entirety and holds the former conviction a complete bar to the civil suit. This is best exemplified by Eagle, Starr and Dominion Insurance Co. v. Heller. Here the claimant was tried and convicted of the crime of burning his house. In an action brought by him to recover on an insurance policy it was held that the record of con-
viction in the criminal action was admissible as *conclusive* proof of the fact that the plaintiff had burned his house and hence was a bar to the recovery on the policy. In its opinion the court stated:

"To permit a recovery under a policy of fire insurance by one who has been convicted of burning the property insured, would be to disregard the contract, be illogical, would discredit the administration of justice, defy public policy and shock the most unenlightened conscience."

Kentucky has seen fit to adopt the rule laid down by New York. This view was taken by the court in *Wolff et al. v. Employers Fire Insurance Company,* the most recent Kentucky decision on the point. In this case a final judgment, convicting insured of willfully and feloniously burning insured property was not *res judicata* of the right of the insured to maintain a civil action against the insurer on the policies but was admissible as a relevant circumstance to be considered by the jury in determining whether or not the insured willfully destroyed such property.

An inquiry into the reasons usually assigned for the rule of complete exclusion causes them to appear inadequate. It is often said that the prior judgment of conviction or acquittal is inadmissible because of the difference in parties," the possible variations in the rules of evidence," the degrees of proof," and the competency of the witnesses." Since it is not argued that the

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11Ibid., at 323.
12282 Ky 824, 140 S.W (2d) 640 (1940).
13Other Kentucky cases are Occidental Ins. Co. v Chasteen et al., 255 Ky. 710, 75 S.W (2d) 363 (1934) (prior acquittal of arson excluded, prejudicial error by the court), Westchester Fire Insurance Company of New York v. Brown, 219 Ky 41, 292 S.W 504 (1927) (acquittal for barn burning held not conclusive in suit on policy), Liverpool & London & Globe Insurance Company v. Wright et al., 166 Ky. 159, 179 S.W 49 (1915) (conviction of arson not a bar to subsequent suit on policy).
14It is interesting to note that in Kentucky "in an action for false imprisonment or malicious prosecution a rule peculiar to such actions applies to the efficacy of the judgment which terminates the proceedings. If the prosecution or arrest complained of terminated in the acquittal of the party of the crime or offense for which he was prosecuted or arrested, he can use the judgment in his favor as evidence that there was no probable cause for his prosecution or arrest, and if convicted the judgment is *conclusive* (italics added) evidence of the existence of probable cause."
15Liverpool & Globe Insurance Co. v. Wright, et al., 166 Ky. 159, 166, 179 S.W 49, 52 (1915).
conviction be used in any way except against the original defendant, the difference in parties seems to be of no material significance. While the objection based upon the degrees of proof might be warranted if an acquittal were introduced as evidence of the fact upon which it is based, it is clearly unsound when applied to convictions where the state has the burden of proof beyond a reasonable doubt. If there are any differences in the rules of admissibility of evidence and competency of witnesses, they are usually in favor of the accused. The want of mutuality has also been advanced to support the rule of exclusion. Here the judicial thought seems to be that a party should not introduce evidence of a conviction since his adversary could not have introduced a verdict of acquittal if such had been rendered.

It has been argued that the opinion rule and the hearsay rule present obstacles to the admission of the prior convictions. But the objections based upon the hearsay rule are easily surmounted when it is remembered that the party against whom the conviction is offered was present at the criminal trial and was confronted by the witnesses against him with the right to cross examine them. Although the judgment of conviction represents the opinion of the jury or judge, it is usually a reliable and trustworthy opinion formed by those acting under a duty imposed by law. It is not unusual in our law to allow as evidence the findings of those required by law to make official investigations.

In conclusion, it would appear that the modern tendency, followed by Kentucky, which allows a prior conviction to be admitted in a subsequent civil suit as merely prima facie evidence of the facts upon which it was based, is most logical and will insure justice in the greater number of cases.

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21 In Georgia the defendant in a criminal case is not allowed to testify under oath, Ga. Code (Michie, 1926), Penal Code Sec. 1037 (2). It has been suggested that a finding influenced by this rule should not be used against the criminal defendant in a subsequent civil action, where he may be a witness. Seaboard Air Line Ry. v. O'Quin, 124 Ga. 357, 52 S.E. 427 (1905) cited supra note 18.


23 2 Freeman, Law of Judgments (5th ed. 1925) Sec. 654, cited supra note 22.
