

**Insurance—Evidence—Admissability of Proof of Conviction for  
False Statement not Effective as Plea in Bar in Civil Actions  
(Schindler v. Royal Insurance Co., 258 N.Y. 310 (1932))**

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owner was not liable for the negligence of a person to whom he had loaned his car, be that person a member of his family, a servant on a personal errand or a stranger.<sup>4</sup>

T. J. M.

INSURANCE—EVIDENCE—ADMISSIBILITY OF PROOF OF CONVICTION FOR FALSE STATEMENT NOT EFFECTIVE AS PLEA IN BAR IN CIVIL ACTIONS.—The plaintiff sued on an insurance policy for a fire loss. The defendant denied liability on the ground that the proof of loss offered by the plaintiff was fraudulent. The plaintiff had in fact been convicted of the crime of presenting a fraudulent proof of loss even before the commencement of the civil action. The defendant reasserted this fact and alleged that the issue of plaintiff's fraud was *res judicata* and a complete bar to his recovery. The plaintiff moved to strike out the defense as invalid. On appeal, *held*, the order striking out the defense of *res judicata* should be affirmed. The prior conviction is not effective as a plea in bar, but may be shown as presumptive proof of the commission of the crime. *Schindler v. Royal Insurance Co.*, 258 N. Y. 310, 179 N. E. 711 (1932).

It has long been the established rule in New York that a prior conviction or acquittal in a criminal proceeding is not a conclusive bar to a subsequent trial in a civil action of the same issue of fact as was involved in the criminal prosecution. Thus in an action on the bond of a liquor dealer for permitting the premises to become disorderly, a conviction of the dealer's wife for keeping the premises as a disorderly house was held to be inadmissible to show that it was in fact disorderly.<sup>1</sup> Again, in an action of slander for saying that plaintiff was a thief and stole the defendant's hens, where the record of conviction of the plaintiff was offered in evidence under a plea of justification, the verdict of conviction was held to be merely *prima facie* evidence, which the plaintiff was allowed to controvert.<sup>2</sup> The cases adverted to refer to attempts on the part of defendants in civil actions to bar recovery of the plaintiffs on the ground of their prior criminal convictions. But the rule also operates to prevent plaintiffs who have been acquitted of a crime from offering their acquittal in a civil action as evidence of their innocence. Thus, where a statute designed to prevent deception in the sale of dairy products provided

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<sup>4</sup> *Potts v. Pardee*, 220 N. Y. 431, 116 N. E. 78 (1917); *Van Blaricom v. Dodgson*, 220 N. Y. 111, 115 N. E. 443 (1917); *Fallow v. Swackhamer*, 226 N. Y. 444, 123 N. E. 737 (1919); Note (1928) 2 ST. JOHN'S L. REV. 203, 204. For further discussion see Note (1926) 1 ST. JOHN'S L. REV. 53, (1927) 1 ST. JOHN'S L. REV. 202.

<sup>1</sup> *Green v. Altenkirch*, 176 App. Div. 320, 162 N. Y. Supp. 447 (2d Dept. 1916).

<sup>2</sup> *Maybee v. Avery*, 18 Johns. 352 (N. Y. 1820).

for punishment by fine and imprisonment, and also for a money penalty for each offense, in an action for the penalty, evidence of the defendant's prior acquittal in a criminal proceeding was held to be inadmissible for want of mutuality, since the record of conviction would not have been evidence against him.<sup>3</sup> It is obvious why a judgment of acquittal in a criminal case should not be used by or against a defendant in a civil action, inasmuch as it is merely a determination that guilt has not been established beyond a reasonable doubt. But where a party has been convicted in a criminal action for falsifying certain facts, there seems to be no reason why he should be allowed to attempt to prove in a civil action that the facts were not falsified.<sup>4</sup> In the principal case, the court appreciates the illogic of holding that conviction is only presumptive and not conclusive evidence of the material facts but prefers to abide by the sanctity of the doctrine of *stare decisis* and to leave to the legislature the task of changing the established New York rule. We feel that the pruning of the archaic precedents—unpleasant though the process may be—might have been done with just as much grace by the court.

A. S.

LANDLORD AND TENANT—SUMMARY PROCEEDINGS—RIGHT OF TENANT TO INTERPOSE COUNTERCLAIM THAT ACCRUED PRIOR TO ASSIGNMENT OF LEASEHOLD.—On February 10, 1930, the Correll Real Estate Corporation assigned a leasehold estate to the petitioner, the Stafford Security Company. The respondent, Kremer, was a subtenant. After \$3,500 in rent had accrued and remained unpaid, proceedings to dispossess were instituted. The subtenant set up by way of defense a counterclaim for rent due from premises occupied by the assignor and owing before notice of assignment to the petitioner. The petitioner objected to the counterclaim on the ground that at the time the assignment was made the assignor had not yet supplied the consideration, namely, possession of the land, in return for which the defendant was under a duty to pay the installment of rent now sued for. *Held*, A tenant cannot set off against a claim for rent, claims which materialized before the assignment of the leasehold. *Stafford Security Co. v. Kremer*, 258 N. Y. 1, 179 N. E. 32 (1931).

The law relative to counterclaims where plaintiff sues on an assigned claim has been set forth in the adjudicated cases. A person

<sup>3</sup> *People v. Rohrs*, 49 Hun 150, 1 N. Y. Supp. 672 (1888).

<sup>4</sup> *Cf.* the extreme to which this doctrine has been applied in New Jersey, where, in a suit to forfeit a husband's interest in his wife's property on the ground that he murdered his wife, the record of his conviction of the murder was held to be inadmissible. *Sorbello v. Mangino*, 108 N. J. Eq. 292, 155 Atl. 6 (1931).