Present : Wood Renton C.J. and Shaw J.

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PEDRIS *v.* THE MANUFACTURERS LIFE INSURANCE CO., LTD.

447—D. C., Colombo, 44,358.

Life insurance—Action for recovery of amount due on a policy—Conviction of person insured for treason by Field General Court-Martial—Execution of person insured—Ceylon Indemnity Order in Council—May plaintiff prove that the person insured was not guilty of treason?—Record of conviction primâ facie *proof of guilt.*

The administrator of the estate of one Pedris brought this action to recover from the defendant company money due upon a policy of life insurance. The undertaking to pay in the event of death was a general one, and not limited to death in any particular manner. Pedris was convicted by a Field General Court-Martial of treason and shot. The Ceylon Indemnity Order in Council (section 4) provided as follows:—"The several sentences and orders pronounced by Military Courts . . . . . during the continuance of martial law are hereby confirmed, and all persons tried by such Courts and confined in any prisons . . . . . shall continue liable to be confined there . . . . . until the expiration of the sentences . . . . . and such sentences shall be deemed to be sentences passed by duly and legally constituted Courts. . . . . ."

Held, (1) that section 4 of the Order in Council prevented any question being raised for any purpose as to the jurisdiction of the Court by which the sentence was pronounced either over the charges on which the trial proceeded or over the person tried; (2) that the effect of the Order in Council did not amount to a declaration by statute that Pedris was guilty of treason; (3) that the mere fact that Pedris died at the hands of justice did not prevent his administrator from recovering on the policy; (4) that it was open to the plaintiff to lead evidence to prove that Pedris was not in fact guilty of treason; (5) that the record of the conviction of Pedris was *primâ facie* evidence of his guilt.

THE facts are fully set out in the judgment.

Bawa, K.C. (with him *E. W. Jayewardene*, *L. H. de Alwis*, and *Shelton de Saram*), for the appellant.

Drieberg (with him *Samarawickreme*), for the respondents.

Cur. adv. Vult.

February 6, 1917. WOOD RENTON C.J.—

This case, which was argued before us with very high ability on both sides, and in which we have had the advantage of a most careful and exhaustive judgment by Mr. Wadsworth, then Acting Additional District Judge of Colombo, raises questions of great public interest

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and importance. The plaintiff, as administrator of the estate of Diyunuge Edward Henry Pedris, sues the defendants, the Manufacturers Life Insurance Company, for the recovery of a sum of Rs. 25,000 on a policy of insurance effected by Pedris with them of his own life on April 30, 1907. The amount of the insurance was payable to Pedris on April 1, 1927, if he should then be alive, or to his executors, administrators, or assigns in the event of his death before that date. Pedris was, in the beginning of July, 1915, tried in Colombo by a Field General Court-Martial upon charges of (i) treason by levying war against the King contrary to section 41 of the Army Act, 1881,[1] (ii) shop breaking, (iii) attempting to murder, (iv) wounding with intent to murder, and (v) wounding with intent to do grievous bodily harm. These offences were alleged to have been committed on the 1st of the preceding June, in connection with the riots which had then broken out in the Colony. Pedris was found guilty on charges (i), (ii), (iii), and (iv), and not guilty on the fifth charge. He was sentenced to death. The sentence was confirmed by Brigadier-General Malcolm, who was then the General Officer Commanding the Troops in Ceylon, and, in pursuance of it, Pedris was shot in jail on the morning of 7th July, 1915. The question involved in the present appeal is whether the execution of Pedris is an answer to an action by his administrator on his insurance policy, which does not, it should be observed, contain any condition forfeiting the policy money, if the assured should die at the hands of justice. The learned District Judge has decided this issue in favour of the defendants, and has dismissed the action with costs. The administrator appeals.

The argument ranged over a great variety of topics. We were invited to consider numerous questions as to the jurisdiction of the Field General Court-Martial by which Pedris was tried, arising under the Army Act, 1881,[1] and the provision in section III, c. 1, of an Order in Council dated October 26, 1896, applied in this Colony by a Proclamation by the Governor of 5th August, 1914, that—

"every person who shall for the time being be within the limits of the Colony shall be subject to military law for the purposes of the Army Act, and the said Act shall, subject to the provisions of this Order, be deemed to apply to such person in the same manner as if such person had been a person accompanying His Majesty's troops, or some portion thereof, when employed in active service beyond the seas, and such person shall, for the purposes of the said Act, be deemed to be under the command of the Officer Commanding His Majesty's Troops."

It is, however, in my opinion, unnecessary for us to deal with this part of the case at all. On 12th August, 1915, the Imperial Ceylon Indemnity Order in Council, 1915, was introduced by

[1] *44 and 45 Vict., c. 58.*

Proclamation into the Colony. Section 4 of that enactment is in these terms:—

"The several sentences and orders pronounced by Military Courts held in the Colony during the continuance of martial law are hereby confirmed, and all persons tried by such Courts and confined in any prisons or other legal places of confinement in the Colony under or by virtue of such sentences shall continue liable to be confined there or elsewhere as the Governor may direct, until the expiration of the sentences respectively passed upon them or until their discharge by lawful authority; and such sentences shall be deemed to be sentences passed by duly and legally constituted Courts of the Colony, and shall be carried out or otherwise dealt with in the same manner as the sentences of duly constituted Courts of Law of the Colony."

I think that the effect of this provision, which is applicable to the case, inasmuch as Pedris was tried and sentenced during the continuance of martial law, is to prevent any question being raised for any purpose now as to the jurisdiction of the Court by which the sentence was pronounced either over the charges on which the trial proceeded or over the person tried. The section provides in effect that the sentence passed on Pedris is to be deemed to have been imposed by a "duly and legally constituted Court." The context, in my opinion, demonstrates that the word "deemed" in this connection means "shall be conclusively taken to be." We were urged by counsel for the administrator to hold that, even if this were so, the language of section 4 of the Order in Council itself shows that the jurisdiction of the Military Courts, whose sentences are confirmed, was validated only for the purpose of enabling the sentences to be carried into effect. The words of the section, it was contended, are "deemed to be," not "deemed to have been." This argument brings me to the incidental consideration of a point with which it will be necessary to deal later on. It is obvious that section 4 of the Order in Council cannot be construed in the restricted sense just mentioned, if it applies to sentences that have already been executed. I have no doubt but that it does. The confirmation in the first clause of the "several sentences" passed by Military Courts during the continuance of martial law makes this quite clear. The sentence imposed by the Field General Court-Martial upon Pedris is placed by the Order in Council on the same basis as if it had been a sentence of the Supreme Court on an indictment against him for levying war against the King within the meaning of section 114 of the Penal Code.

There remains, however, the not less important and more difficult question whether in spite of his conviction of, and execution for, treason, it is still competent for his administrator to prove in the present action that he did not, in fact, commit the offence of treason. This question has to be considered from the point of view, in the

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first place, of section 4 of the Ceylon Indemnity Order in Council, 1915, and, in the next place, of the general law apart from that enactment. Do the words "the several sentences and orders pronounced by Military Courts in the Colony during the continuance of martial law are hereby confirmed" legalize not only the sentences themselves, but the findings on which those sentences are based? As I have already indicated, I think that the language just quoted confirms sentences that have been carried out as well as those that are still current, and if it were permissible to speculate as to the intention of the framers of the Order in Council, there would be much to be said for the view that they meant to draw a politic veil of oblivion over the entire episode, with which the Order in Council is concerned, for all purposes. But we have to deal here with an enactment which not merely is retrospective in character, but was brought into operation after the right sought to be asserted in this action had accrued. It is clear, both on authority and on principle, that before the language of section 4 is construed so as to debar the legal representative of Pedris from enforcing a right already vested, we must be satisfied that the words actually used in the section are sufficient for the purpose. The points in favour of the defendants in this connection are these. The section, in my opinion, does deal with sentences that have been completely undergone, and applies, therefore, to the case of Pedris. There was no need for a statutory confirmation of such a sentence, unless with the view of preventing any of the steps that led up to it from being questioned in any future proceeding, civil or criminal. The considerations that have to be taken account of on the other side are these. In the law administered by Military Courts, an express distinction is drawn between the "findings" of those tribunals and the "sentences" passed by them. If the framers of the Order in Council had intended to validate the former as well as the latter, nothing would have been easier than for them to have said so. Moreover, even if section 4 of the Order in Council covers executed sentences as well as those which are still in progress, the primary, as opposed to the subsidiary, purpose of the section was to enable current sentences to be carried out. Applying to the enactment in question the well-established rule of law as to the interpretation of legislation of this character, I am not prepared to hold that there is anything in it which precludes Pedris' administrator from challenging the propriety of his conviction on the merits.

I proceed now to an examination of the other aspect of the question. If the guilt of Pedris has not been conclusively established by the Ceylon Indemnity Order in Council, 1915, is it so established by the production of the record of his conviction? An argument *ab inconvenienti* arises, in this connection, in favour alike of the defendants and of the administrator. A person accused of murder is tried by a Judge of the Supreme Court with a jury at Criminal

Sessions, is convicted, and sentenced to death. On a case reserved on certain points of law, the propriety of this conviction is affirmed by the Supreme Court. If the contention of the administrator in this case is upheld, the legal representative of the convict may reopen the whole question of his guilt or innocence and have the charge of murder incidentally re-tried in an action on an insurance policy. On the other hand, human justice is fallible. Let us suppose that, after the execution of a person convicted of murder, conclusive proof is forthcoming that he was not the murderer. Is there any rule of public policy which makes it necessary to debar his relatives from proving his innocence for the purpose of recovering a sum of money for which his life had been insured? If we must choose between the inconvenience of reopening a criminal trial as a collateral issue in civil proceedings, and the injustice of preventing the relatives of a person, who has been wrongfully condemned and executed, from proving that fact in such an action as this, I prefer to incur the risk involved in the former alternative.

The law on the subject up to a certain point is clear. Neither in England nor under section 41 of the Evidence Ordinance is the judgment of a Criminal Court a judgment *in rem*. According to all the older English authorities,[1] the record of a conviction was inadmissible as evidence of the same fact coming into controversy in a civil suit. This rule was no doubt based to some extent on the difference between the rules of practice and of procedure in criminal and in civil cases. But it survived the abolition of many of these differences, and, particularly since persons accused of offences have been fully enabled by statute to give evidence in their own behalf, a tendency, which has proceeded, I venture to think, upon reasonable grounds, has been manifested by the Courts in England to relax the old rule of law to the extent of making the record of a conviction *primâ facie* evidence of guilt. In *In re Crippen*,[2] Sir Samuel Evans gave an express ruling to this effect, declining to follow a decision of Hall V.C. in *Yates v. Kyffin-Taylor and Wark*,[3] and a dictum of Bramwell L. J. in *Leyman v. Latimer* [4] to the contrary. But, so far as I am aware, the law has as yet undergone no further relaxation. In none of the cases in which an action on an insurance policy has been met by the plea that the policy was void by reason of the fact that the person insured had died by the hands of justice, has it ever been held that the production of the record of the conviction was conclusive proof of guilt. In *Amicable Society v. Bolland*,[5] which is better known as *Fauntleroy's Case*, it appears from the pleadings that the record of the conviction was admitted, by

[1] See *Gibson v. Macarthy (10 George 11.), Cas. t. Hard. 314; March v. March, (1858) 28 L. J. P. & M. 30;* and *Castrique v. Imrie, (1870) L. R. 4 H. L. 434.*

[2] *(1911) P. 108.*

[3] *(1899) W. N. 141.*

[4] *(1878) 3 Ex. D. 352.*

[5] *(1830) 2 Dow & Clark 1* and *4 Bli. N. S. 194;* and *cf. in the Court of Chancery, 3 Russ. 351.*

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agreement of the parties, without further proof. *Amicable Society v. Bolland* [1] is a decision by the House of Lords, and it is inconceivable that if it had introduced such a wide deviation from the law as theretofore understood, Lord Blackburn would have omitted to discuss it in *Castrique v. Imrie*,[2] which is, of course, a decision of much later date. Moreover, in none of the text books in which the legal position of judgments of Criminal Courts is discussed, is *Amicable Society v. Bolland* [1] cited in that connection. In *Cleaver v. Mutual Reserve Fund Life Association* [3]—*Mrs. Maybrick's Case*—the point was not raised. The most recent authority on the question is the decision of the Court of Appeal in *Hall v. Knight and Baxter*,[4] in which a legatee, who had been convicted of the manslaughter of her testator, was held to have been rightly dismissed from an action for probate of the will, on the ground that the principle according to which a person, who is guilty of feloniously killing another, cannot take any benefit under that person's will, is based on public policy, and applies equally to a case of manslaughter as to a case of murder. There are statements in the report of *Hall v. Knight and Baxter* [4] and *dicta* in the judgments of the Court of Appeal which seem at first sight to support the contention of the defendants in this matter. The summons, taken out by the plaintiff before the Registrar to dismiss the legatee from the action, alleged as a ground for her removal that "she having been convicted of the manslaughter of the testator could take no beneficial interest under his will." The President held "that a person who had been found guilty of feloniously killing another was not entitled to take any benefit under that other person's will," and dismissed the legatee from the case accordingly. Cozens-Hardy M.R. made use of the following language:—"The death of the testator was due to the act of the (legatee). That is a fact which has been proved, and is now incontestable. She was found guilty of occasioning the death, and a verdict of manslaughter was given. The case was taken to the Court of Criminal Appeal and the decision was upheld, and, therefore, that is a fact which is conclusively proved." But, on the other hand, the President, from whose decision the appeal was taken, was Sir Samuel Evans, the very Judge who, in *In re Crippen*,[5] had held that the record of the conviction was *primâ facie* evidence of guilt. If he had intended in *Hall v. Knight and Baxter* [4] to hold that the record of a conviction was conclusive proof of guilt, he would certainly have said so in express terms, and, if the Court of Appeal had meant to lay down any such proposition, the learned Judges would not have failed to refer to the decision in *In re Crippen*.[5] Moreover, in other parts of the judgments in *Hall v. Knight and Baxter* [4] there are passages that modify the view suggested by the

[1] *(1830) 2 Dow & Clark 1* and *4 Bli. N. S. 194*; and *cf. in the Court of Chancery, 3 Russ. 351.*

[2] *(1870) L. R. 4 H. L. 434.*

[3] *(1892) 1 Q. B. 147.*

[4] *(1914) P. 1.*

[5] *(1911) P. 108.*

observations of Cozens-Hardy M.R. cited above. "I think it would be shocking," said the Master of the Rolls, if (the legatee) who was the cause of the death of this man, and was convicted of felony in respect of that, could come before the Court and claim an interest under any will made in her favour by the testator." "Why should the legatee," said Hamilton L.J., "be excluded from taking the bounty when he can be hanged, and not be excluded when he can only be sent to penal servitude for life? The distinction seems to me either to rely unduly upon legal classification, or else to encourage what, I am sure, would be very noxious—a sentimental speculation as to the motives and degree of moral guilt of a person who has been justly convicted and sent to prison." "It is against public policy," said Swinfen Eady L.J., "that a person committing a crime should directly benefit in the way that it is claimed that (the legatee) should benefit." I cannot but think that in *Hall v. Knight and Baxter*,[1] as in *Amicable Society v. Bolland*,[2] the guilt of the convict was not contested. But the decision of the Court of Appeal in the former case involves a direct recognition of the principle enunciated by Sir Samuel Evans in *In re Crippen* [3] that in civil proceedings, such as the present, the record of a conviction should be admitted as *primâ facie*, although not as conclusive, evidence of guilt. The record of the conviction of Pedris was admitted without question in this action. The point in dispute in this connection was whether or not the administrator is entitled to challenge its propriety on the merits.

I would set aside the decree of the District Judge dismissing the plaintiff's action, and send the case back for further inquiry and adjudication in the District Court. The record of the conviction of Pedris has already been admitted, and is admissible as *primâ facie* evidence of his guilt. It will, however, be open to the plaintiff to rebut that evidence by proving, if he is in a position to do so, that, in spite of his conviction, Pedris did not in fact commit treason by waging war against the King. I agree with the learned District Judge that no evidence is admissible under issue 6 (*a*), for the purpose of showing that in any event Pedris could not have had any reasonable belief that he was committing an offence punishable with death. It is quite immaterial what his belief on that point was, if he in fact committed such an offence. For the reasons given above, no question as to the jurisdiction of the Field General Court-Martial over the charges on which Pedris was tried or over Pedris himself can be raised now. The plaintiff is entitled to the costs of this appeal in any event. The costs of the original and of the subsequent proceedings will be in the discretion of the learned District Judge. The evidence already recorded may stand *quantum valeat*.

[1] *(1914) P. 1.*

[2] *(1830) 2 Dow & Clark 1* and *4 Bli N. S. 194*; and *cf. in the Court of Chancery, 3 Russ. 351.*

[3] *(1911) P. 108.*

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This action is brought by the administrator of the estate of one D. E. Pedris to recover from the defendant company the sum of Rs. 25,000 upon a policy of insurance dated April 30, 1907, whereby the defendant company promised to pay the amount insured to the said D. E. Pedris on April 1, 1927, or in the event of his death before that date, then upon the happening of such death to his representatives. The undertaking to pay in the event of death was a general one, and not limited to death in any particular manner.

Pedris died on July 7, 1915, having been executed at the Welikadá Jail in pursuance of the sentence of a Field General Court-Martial held on July 1, 1915, and delivered by the Court-Martial upon a finding by the Court that Pedris was guilty of treason, in that he did on or about June 1, 1915, levy war against our Lord the King.

I do not propose to set out the numerous issues which were before the Judge, or to deal with his findings upon all of them, because, in view of the opinion I have arrived at as to the effect of the Order in Council of August 12, 1915, the decision of many of these issues becomes unnecessary.

The Judge has held that Pedris having met with his death at the hands of justice, the policy on his life cannot be enforced, and has refused to allow evidence to be called with the object of showing that the finding of the Court-Martial was wrong. He has also held that the Order in Council of August 12, 1915, amounts to a statutory enactment declaring that Pedris was guilty of the offence in respect of which he was convicted, and has, in addition, decided several objections to the validity of the proceedings of the Court-Martial and the execution of the sentence in favour of the defendants, and has dismissed the action with costs.

From his decision the plaintiff appeals.

I am unable to agree with the finding of the District Judge that the effect of the Order in Council of August 12, 1915, amounts to a declaration by statute that Pedris was guilty of the offence in respect of which he was convicted.

The Order in Council, called "The Ceylon Indemnity Order in Council," is admittedly part of the law of this Colony, and was proclaimed in Ceylon on August 30, 1915. As its name implies, its purpose was mainly to indemnify persons for acts done in good faith in suppressing the riots that had occurred in the previous June. This object is achieved by the earlier sections of the Order, which I need not set out. Section 4 then provides as follows:—"The several sentences and orders pronounced by Military Courts held in the Colony during the continuance of martial law are hereby confirmed, and all persons tried by such Courts and confined in any prisons or other legal places of confinement in the Colony under or by virtue of such sentences shall continue liable to be confined there or elsewhere as the Governor may direct, until the expiration

of the sentences respectively passed upon them or until their discharge by lawful authority; and such sentences shall be deemed to be sentences passed by duly and legally constituted Courts of the Colony, and shall be carried out or otherwise dealt with in the same manner as the sentences of duly constituted Courts of Law of the Colony."

This is a legislative enactment of a very unusual character, made in a very unusual way, and one that must be strictly construed, and not extended beyond the scope that its wording necessitates. I cannot agree that it in any way amounts to a legislative enactment that Pedris and the other persons convicted by the Military Courts were guilty of the offences for which they have been convicted and sentenced.

The enactment confirms "the several sentences and orders." It does not purport to confirm the "findings" of the Courts, which are quite different to, and precede, the "sentences and orders." The section then goes on to provide that the sentences shall be deemed to be sentences passed by duly and legally constituted Courts of the Colony and carried out as such.

The meaning of the enactment seems to me to be clearly apparent from its wording. It is to place the sentences and orders of Military Courts on exactly the same footing as those of the Civil Courts of the Colony, and to make such of the sentences and orders as have not been fully enforced enforceable in the same way as sentences of the Civil Courts.

The decision of the District Judge on this point has been influenced by consideration of what he thought were the objects of the enactment and the requirements of public policy. In the absence of any ambiguity in the language used, I cannot see that any inquiry into the intention of the legislative authority is admissible, but, even if it were, there is no reason to suppose that the object of the enactment was to give to the findings of the Military Courts any greater effect than those of the Civil Courts of the Colony, which were sitting and trying very similar cases at the same time, and I am unable to see that any principle of public policy requires the finding of a Military Court not to be open to challenge in subsequent civil proceedings in cases where such challenge would be permissible had the finding been one of a Civil Court.

The construction, however, that should, in my opinion expressed above, be placed on the Order in Council of August 12, 1915, disposes of many of the points taken by the appellant. The legislative confirmation of the sentences, and the placing of them on the footing of sentences of the duly constituted Courts of the Colony, appears to me to cure any irregularity in the constitution of the Military Courts, and any defects in the confirmation of the sentences by the Governor or Officer Commanding, and prevents any question being raised as to the capacity of the Military Courts to try and sentence

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any particular class of persons. I, therefore, think that it is unnecessary to go into the question whether any irregularities or want of jurisdiction existed or not.

There remain for consideration the important questions whether the mere fact that Pedris died at the hand of justice prevents his administrator recovering on the policy, irrespective of the question whether he was in fact guilty of the treason in respect of which he was sentenced or not, and whether the conviction is conclusive of his guilt and not open to challenge in a subsequent civil suit.

In the case of *The Amicable Society v. Bolland*,[1] one Henry Fauntleroy, who had effected an insurance on his life in the Society, was convicted of felony, and executed in pursuance of the sentence passed upon him. The Vice-Chancellor directed the Society to pay to Fauntleroy's assignees the amount due on the policy, but on appeal to the House of Lords the judgment was reversed, and the money was held not to be recoverable. The reason given by the Lord Chancellor for the decision was that it would be contrary to public policy to insure a person a benefit in the event of his committing a capital felony and being tried, convicted, and executed for that felony; and, as it would be contrary to public policy for any such express contract to be made, so no contract can be implied in a policy to pay the money in such an event. In that case no evidence was given that Fauntleroy had actually committed the felony for which he had suffered death beyond putting in a copy of the conviction by consent of the parties, but it is clear that the question of Fauntleroy's guilt was never disputed in the case, and the judgment of Lord Brougham throughout proceeded on the assumption of his guilt. The question, says the Lord Chancellor, is this, "whether the assignee can recover against the insurance company the amount of this insurance; that is to say, whether a party, effecting with an insurance company an insurance upon his life and afterwards committing a capital felony, being tried, convicted, and finally executed, whether, under such circumstances, the parties representing him and claiming under him can recover the sum insured in the policy so effected." The Lord Chancellor did not hold, and, in my opinion, did not intend to hold, that the mere fact that the insured was convicted of felony and executed prevented the assignees from recovering, but only that if an insured actually committed felony and was executed for it the money was not recoverable.

The principle of the decision in *Fauntleroy's Case* is the same as that of *Cleaver v. Mutual Reserve Fund Life Assurance*,[2] *In re Crippen*,[3] and *Hall v. Knight and Baxter*,[4] and is well set out in the

[1] *(1830) 4 Bligh N. S. 194.*
[2] *(1892) 1 Q. B. 147.*
[3] *(1911) P. 108.*
[4] *(1914) P. 1.*

judgment of Sir Samuel Evans in *In re Crippen*,[1] where he says: "It is clear that the law is that no person can obtain or enforce any right resulting to him from his own crime; neither can his representative claiming under him obtain or enforce any such rights. The human mind revolts at the very idea that any other doctrine could be possible in our system of jurisprudence."

If none of the cases I have mentioned was any question raised as to the guilt of the convicted person, and none of them can, in my opinion, be considered as an authority for the proposition that mere conviction and execution of a person for a felony will prevent his assignees or representatives recovering on a policy on his life, if he be in fact innocent of the offence in respect of which he has been convicted. It is worthy of note that neither in *Taylor on Evidence* or in *Roscoe's Nisi Prius Evidence is Fauntleroy's Case* referred to as an authority for the admissibility or conclusiveness of judgments of Criminal Courts in subsequent civil proceedings, nor is it mentioned in the subsequent leading case on the subject, *Castrique v. Imrie*, which I shall refer to later. In *Cleaver v. Mutual Reserve Fund Life Assurance* [2] the question of law to be decided was "whether, if it were proved that James Maybrick died from poison intentionally administered to him by Florence E. Maybrick, that would offer a defence to the action," and the judgment of the Lords Justices all proceed on the assumption that she was in fact guilty. In *Hall v. Knight and Baxter* [3] the Master of the Rolls says in his judgment: "If there were any possibility of a question as to whether Jean Baxter had been guilty of the crime, that would be a matter which ought to have been tried in Court, but when the fact is perfectly indisputable and beyond contest, I know nothing whatever which prevents the Court, in a case of this kind, dealing with what is a pure question of law on an application to stay proceedings." So also Hamilton L.J. says it is against public policy that a person "committing a crime" should benefit thereby.

The doubt that has been raised as to the effect of the decision in *Fauntleroy's Case* seems to have principally arisen from the somewhat loose language employed by text book writers, who cite that case as an authority for the proposition that "death at the hands of justice" prevents a policy being enforced, an error that Vice-Chancellor Wood falls into in *Horne v. Anglo-Australian Life Assurance Co.* [4]

I can see no reason on grounds of public policy why the representative of an innocent person, who has been convicted and executed, should not recover the amount of an insurance on his life, his death would have been just as much an accident as if he had been killed by a chance shot of the military when firing on rioters, and I can see no public policy that demands that a conviction for crime resulting

[1] *(1911) P. 108.*
[2] *(1892) 1 Q. B. 147.*
[3] *(1914) P. 1.*
[4] *(1861) 30 L. J. Ch. 517.*

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in sentence of death should have any different effect, or be in any way less open to question in subsequent civil proceedings, than any other criminal conviction.

That a conviction for crime is not so conclusive has been held in an unbroken chain of authorities from the earliest times down to the present day. In *Castrique v. Imrie*,[1] Blackburn J., in giving the opinions of himself and four other Judges to the House of Lords, said: "A judgment in an English Court is not conclusive as to anything but the point decided, and therefore a judgment of conviction on an indictment for forging a bill of exchange, though conclusive as to the prisoner being a convicted felon, is not only not conclusive, but is not even admissible evidence of the forgery in an action on the bill, though the conviction must have proceeded on the ground that the bill was forged." So also in *Leyman v. Latimer*[2] Bramwell L.J. says: "It is plain from the numerous cases cited in *2 Taylor on Evidence*[3] that a conviction for felony is *res inter alios acta*, and of itself is no evidence in any civil proceeding that the person convicted has committed felony."

One of the more recent cases on the subject is *Caine v. Palace Steam Shipping Co.*,[4] where it was held that the conviction of certain seamen for refusing to proceed to sea was not conclusive against them in a subsequent civil suit brought for their wages.

It has also been held in several cases in the Indian Courts, of which I will mention *Ram Lal v. Tula Ram*,[5] that a judgment of a Criminal Court is not conclusive in subsequent civil proceedings, and in this Colony a similar opinion was expressed by Berwick D.J. in the case *of Gould v. Ferguson*.[6]

Whether the opinion expressed by the Judges in *Castrique v. Imrie* and in the text books that a conviction is not only not conclusive, but even inadmissible, in a subsequent civil suit does not go too far is open to some doubt. Sir Samuel Evans in *In re Crippen* expressed his dissent from a decision of Hall V.C. given in a case of *Yates v. Kyffin-Taylor and Wark*,[7] where the Vice-Chancellor, after reviewing all the cases, held that the conviction of the defendant Wark for the murder of a testatrix, under whose will he was claiming a benefit, was not only not conclusive against him, but altogether inadmissible.

The reasons given by Sir Samuel Evans in the case above mentioned appear to me to be deserving of much weight, and I should not be prepared to hold, whatever may have been considered to be the law at one time, that a conviction in a criminal case is now altogether inadmissible in a subsequent civil suit to which the convicted person or his representative is a party.

[1] *(1870) L. R. 4 H. L. 414.*
[2] *(1878) L. R. 3 Ex. Div. 352.*
[3] *Pt. 3, ch. IV., par. 1698, p. 1416 (7th ed.).*
[4] *(1907) 1 K. B. 670.*
[5] *(1881) 1 L. R. 4 All. 97.*
[6] *(1880) 1 Br. App. B IX.*
[7] *(1899) W. N. 141.*

This question has, however, no great importance in the present case, for the conviction of Pedris was put in evidence at the trial unobjected to by the plaintiff, and both sides were prepared to lead evidence on the issue of the guilt of the accused had the District Judge not decided that no evidence could be given to show that the finding of the Court-Martial was wrong.

In my opinion the mere fact that Pedris was executed in consequence of his conviction by Court-Martial does not prevent his administrator recovering on the policy, and, notwithstanding that conviction, it is still open to the plaintiff to satisfy the Court by evidence, if he is in a position to do so, that the insured was not in fact guilty of the crime of treason.

The plaintiff desired also to lead evidence on issue 6 (*a*), viz.:— "Were the circumstances in which the acts for which Pedris was sentenced to death were committed such that he could not have had any reasonable belief that he was committing an offence punishable with death?"

I think the Judge rightly excluded evidence on this issue, for, if Pedris in fact committed treason and was executed for it, his belief as to the possible punishment for his acts is entirely immaterial.

I would set aside the order dismissing the action, and remit the case to the District Court to enable both sides to lead evidence on issue 4 (*b*). The appellant having succeeded in getting the decree against him set aside should have the costs of this appeal.

Sent back.