

ANNIE E. NICOL, by and thru her husband, **ALBERT V. NICOL**, Appellant, v. **LIBERIA
ELECTRICITY CORPORATION**, Appellee.

APPEAL FROM CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT, MARYLAND
COUNTY.

Heard: March 28, 1983. Decided: July 6, 1983.

1. Our statute is general in nature and is legally and specifically silent as to whether criminal judgments in particular can be admitted into evidence in civil trials.
2. The general rule is that a judgment of conviction in a criminal prosecution cannot be admitted into evidence in a civil action, especially where the civil suit is for damages occasioned by the offense for which the party stands convicted.
3. The admission into evidence of a criminal judgment in a civil trial for damages could only be construed to influence the minds of the jury.

Appellant's vehicle was involved in an accident during the night, said to have been caused when the vehicle became entangled in a series of electrical wires alleged to have been left in the motor road by the appellee corporation. As a result of the entanglement, the vehicle somersaulted and was badly damaged. At a trial held in the Traffic Court for Maryland County, the appellee was found guilty of the violation with which it was charged. On appeal to the Circuit Court for the Fourth Judicial Circuit, and upon a trial had before a jury, a verdict of acquittal was returned in favour of the appellee.

Prior to the disposition of the case by the circuit court, however, appellant instituted an action of damages against the appellee. While the damages case was still pending, judgment was entered by the traffic court acquitting the appellee of the offense with which it was charged. It was this judgment that the appellee requested the trial court to admit into evidence. Over the objections of the appellant, the trial judge allowed the introduction into evidence of the judgment from the traffic case. The jury found the appellee not liable in damages to the appellant. Following the filing, hearing and denial of a motion for a new trial, the trial judge rendered judgment confirming the verdict of the jury. From this judgment, appellant appealed to the Supreme Court. The Supreme Court held that the trial judge had committed a reversible error when he admitted the criminal judgment into evidence, which it said influenced the verdict of the jury. Accordingly, the Court reversed the judgment and remanded the case to the trial court for a new trial.

in the street in which the vehicle in question got entangled while moving and somersaulted, thus causing the accident and damage to said vehicle. Trial was held in the traffic court where the appellee was adjudged guilty and from which judgment it appealed to the Circuit Court for the Fourth Judicial Circuit Court. The appeal was heard by a jury who returned a verdict of acquittal in favour of the appellee.

Prior to the disposition of the traffic case, the appellant, by and through her husband, Albert V. Nicol, instituted an action of damages against the appellee in the Circuit Court for the Fourth Judicial Circuit Court. Following the exchange and resting of pleadings, the appellant applied for default judgment against the appellee. The application was granted and the case was heard in the absence of the appellee, resulting in judgment and an award of damages in favour of the appellant. The court entered final judgment against the appellee and a bill of execution was issued to enforce the said judgment.

At this juncture, the appellee petitioned the Chambers of Mr. Justice Yangbe for an assignment of error and which proceedings were heard and decided in favour of the plaintiffs-in-error, now appellee before this Court. By mandate of Justice Yangbe, the case was remanded for a de novo trial.

In obedience to this Court's mandate, the new trial was held under the direction of the court presided over by His Honour Eugene L. Hilton. At the conclusion of this trial, the jury returned a verdict in favour of the appellee corporation. A judgment confirming the said verdict was entered by the trial judge after hearing and denying a motion for a new trial filed by the appellant. From this judgment, the appellant has appealed to this Court upon a two-count bill of exceptions. It is the first count of the two-count bill of exceptions, deemed deserving of our judicial consideration, which we shall deal with arriving at a final determination of this appeal.

In the proceedings in the trial court, the appellee offered for admission into evidence the judgment of the traffic court. The application for the admissibility into evidence of the judgment in the traffic case, growing out of the traffic accident upon which the action of damages had also germinated, was strongly objected to by the appellant. This objection was overruled by the trial judge and the judgment was admitted into evidence for the consideration of the jury. The appellant argued before this Court that the jury's verdict was influenced by this instrument which was a judgment against the appellant in the trial of the traffic case.

In counts one and two of its brief, the appellee countered count one of the bill of exceptions by stating that the statute provides for the admissibility of judgments into evidence and does not expressly state whether or not judgments in criminal cases are not admissible into evidence in civil trials. It argued further that this rule of statutory law was supported by this Supreme Court when it held in *Walker v*

pleadings was that of a title deed. That title deed, although referred to in the testimony of witnesses, exhibited at the trial and marked by court, was refused admission on the ground that it was not pleaded. This Court held that it was a reversible error on the part of the trial court to refuse admission into evidence of the material document which constituted the substance of all ejectment actions, and that by this act of the trial court, the jury was deprived of a substantial opportunity to look at a clearer picture of the case. An ejectment action that is void of title is like the Pacific Ocean without water.

Conversely, in the instant case, there is not a scintilla of fact raised in the seven-count answer which bears relevancy or materiality to the criminal judgment from the traffic trial. The answer in the action of damages embraced no fact that related to the criminal judgment and vice versa. Hence, the complete dissimilarity between criminal judgment in this case at bar and the title deed in *Walker v. Morris*[1963] LRSC 42; , 15 LLR 424 (1963). Since a criminal judgment of conviction or acquittal does not obviate or bar civil liability, it is our holding that the admission into evidence of a criminal judgment in a civil trial of damages could only be construed to influence the minds of the trial jury. The opinion of this Court in *Walker v. Morris*, which the appellee has cited for reliance in its argument, is therefore misconstrued and misapplied by it.

The argument on part of the appellee that the statute provides for the admissibility of judgments into evidence and does not expressly state whether or not judgments in criminal cases are not admissible into evidence in civil trials is well grounded. Civil Procedure Law, Rev. Code 1:25.11. We conclude, and rightly so, that our statute, being general in nature and scope on this point, is legally and specifically silent as to whether criminal judgments in particular can be admitted into evidence in civil trials. Hence, in consonance with practice and procedure hoary with age in this jurisdiction that whenever our statute is silent on points of law, we resort to the principles of common law which are not repugnant to the provisions of our Constitution to construe and give effect to the statute, we shall now proceed to cite the common law relevant to the issue at bar.

15 Ruling Case Law, § 477, page 1000, provides:

"Application of rule whether judgment be of conviction or acquittal --The general rule undoubtedly is that a judgment of conviction in a criminal prosecution cannot be given in evidence in a civil action, especially where the civil suit is for damages occasioned by the offense of which the party stands convicted. Thus the records of a conviction for an assault and battery are not admissible in a civil action arising out of the same circumstances. . . . In an action against a licensed dealer in intoxicating liquors for breach of the bond given by him to obey the provisions of the state law regulating the sale of liquors, it is no defense that the defendant has been acquitted in a criminal prosecution based upon

a conviction may be the result of a testimony not admissible in a civil action. And, while in criminal actions a defendant may not be compelled to testify, all of the parties may usually be compelled to testify in civil cases. To make the decision of a court in such a case as evidence in a criminal proceeding would be to compel the defendant in the criminal case to be a witness against himself. Furthermore, in order to procure a conviction on a criminal charge, it must be established beyond a reasonable doubt that the defendant had violated the law, while to obtain a recovery in a civil action it is only necessary to show this by a preponderance of evidence. This difference in the degree of proof required is generally considered sufficient to prevent the application of the doctrine of res judicata. It has properly been said that an acquittal in a criminal case does not for all purposes amount to adjudication against the State that the defendant did not commit the acts charged against him. What a verdict of not guilty really decides is that the evidence does not exclude every reasonable doubt of the defendant's guilt."

In view of the above circumstances, the facts narrated, and the legal citations herein quoted, it is our holding that the trial judge committed a reversible error when he admitted the criminal judgment into evidence over and above the objections of the appellant in this case and by this act, influenced the minds of the jury in the consideration of their verdict. Therefore, the verdict of the trial jury in the trial court is hereby set aside and the judgment confirming the same is hereby reversed and the case remanded. The Clerk of this Court is ordered to send a mandate to the trial court commanding the judge presiding therein to resume jurisdiction over the cause and to give effect to this judgment. And it is hereby so ordered.

Judgment reversed; case remanded.