

strong as in a criminal case for arson. And so, in *Blaeser v. Milwaukee Mech. Mut. Ins. Co.*<sup>1</sup> it was held that proof as strong as in a criminal case for arson is not required where an insurance company pleads that the insured wilfully set fire to the insured subject. But proof beyond reasonable doubt is required. On which side does the evidence preponderate is in Wisconsin held to be the proper question.

So, in *Kane v. Hib. Ins. Co.*,<sup>2</sup> where wilful firing was pleaded, it was held that proof as strong as to convict for arson is not required.

§ 278. *Where a criminal prosecution has been brought.*

Where a criminal prosecution for arson has been brought against the assured, and he is acquitted; supposing he sues afterwards, can the insurers plead that he set fire, etc.? Or can the assured repel them by saying it is *chose jugée*? It depends. See *Journal du Palais*, volume of 1863, p. 774. Though the insured has been acquitted on the criminal charge, this does not prevent the insurance company proving *au civil* that the insured caused the fire. P. 271 *Ib.* There are *arrêts*, however, both ways, the criminal jury's finding being sometimes particular. If the criminal court has found negatively the facts which are the common basis of both actions, there is *chose jugée*.

In *Chowne v. Baylis*<sup>3</sup> it was held that the civil remedies for suing a felon which belong to the person whose property is stolen are suspended after discovery of the offence till after criminal prosecution and trial of the felon.

In France *action civile*, resulting from *délit* and prosecuted separately, cannot be decided till definitive sentence on the *action*

*publique intentée*, whether before or after the civil suit. "Il est de maxime que le criminel tient le civil en état. Il doit être sursis à statuer sur l'action civile." Cassn. 18th Nov., 1812.

Yet *chose jugée* need not necessarily be held after criminal condemnation, and will not be unless it be clear that the very facts involved in the civil suit were passed upon in the criminal. Merlin and Toullier differ between themselves.

Suppose the plaintiff to have been acquitted. This sometimes makes *chose jugée*; sometimes not. Suppose no bill found: that is not final. Roll. de Villargues, "Délit."

Fire *prima facie* is accidental. Alauzet, vol. i, p. 113. Rev. de Lég., 11 Toullier, pp. 238-240. Yet if an inn be burned there is a presumption of negligence against the innkeeper, and he must pay the guest's loss, unless he clearly prove no negligence.

Though a true bill for arson has been found against the plaintiff, his civil action against the insurance company is not to be retarded.<sup>1</sup>

§ 279. *Effect of conviction.*

As to the influence of condemnations *au criminel* upon civil suits, No. 350, 1 Sourdau, may be referred to. Suppose A prosecuted B as a cheat in a criminal court and that B was freed. B sues for damages. Can A reopen, and offer to prove B to have been guilty, or to have really cheated? *Semble* no, if A really personally acted as prosecuting the criminal proceedings.<sup>2</sup>

§ 280. *Effect of acquittal in criminal prosecution.*

Suppose the assured is indicted for arson and acquitted. According to Grun and Joliat,<sup>3</sup> *semble* he cannot be tried again (as it were) by the insurance company, sued *au civil*, putting in issue his having committed arson. But French jurisprudence is otherwise: *Le criminel n'influe pas sur le civil*, and

<sup>1</sup> 19 Am. Rep. 748.

<sup>2</sup> 17 Alb. L. J., 226 (Errors and Appeals, N. J.), dis. approving *Thurtell v. Beaumont*, 8 J. B. Moore. Best, § 95, agrees.

See 5 Bennett's Ins. Cases, 796, *Etna Ins. Co. v. Johnson*, to the same effect. *Thurtell v. Beaumont* says the evidence must be as strong as on a trial for arson. The Louisiana rule is not that, but that the jury, as in all other civil cases, find according to the weight of evidence. 1 La. Annual Rep., *Hoffman v. West. M. & F. Ins. Co.* The same rule prevails in Massachusetts; see case in 1 Gray.

<sup>3</sup> 31 Beavan, Jur. Index of 1863, 10, 91.

<sup>1</sup> 7 L. C. R. 343.

<sup>2</sup> See also 14 L. C. Jurist as to the influence of the criminal court verdict upon civil suits;—*e.g.*, A man is indicted for arson and acquitted; afterwards, can the insurance company say to him, suing for insurance money, You committed arson, and go again into that?

<sup>3</sup> Tom. iii, c. 361.