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STARE DECISIS.*

The doctrine of *Stare Decisis*, so called, (the term being more frequently used in the United States than it is either in Canada or England) literally means "to abide by authorities, or cases already adjudicated upon."

In the case of *Stuart v. Bank of Montreal*,¹ Mr. Justice, now Chief Justice, Anglin has given a very clear exposition of the principles of *Stare Decisis*. He said:—

"Though, as stated by Brett, M.R., in *The "Vera Cruz" No. 2*,² it is (except in Ontario, as to which see R. S. O. 1897, Chapter 51, Section 81" (now R.S.O. 1914, Chapter 34, Section 32) "no doubt true that 'there is no common law or statutory rule to oblige a court of law to bow to its own decision—it does so on the ground of judicial comity,'—it is of supreme importance that people may know with certainty what the law is, and this end can only be attained by a loyal adherence to the doctrine of *stare decisis*."

Lord Halsbury, in giving the judgment of the House of Lords, in *London Street Tramways Co. v. London County Council*,³ said:—

"My Lords, it is totally impossible, as it appears to me, to disregard the whole current of authority upon this subject, and to suppose that what some people call an 'extraordinary case' an 'unusual case,' a case somewhat different from the common, in the opinion of each litigant in turn, is sufficient to justify a rehearing and re-arguing before the final Court of Appeal of a question which has been already decided. Of course I do not deny that cases of indi-

* Being the substance of two papers; one read before the Junior Bar Association at Winnipeg on February 21st, 1921. the other before the Bar Association of the Northern Judicial District at Shoal Lake, Manitoba, 23rd September, 1925.

¹ 41 S.C.R. 516, at p. 549.

² (1884) 9 P.D. 96.

³ [1898] A.C. 375, at p. 380.

vidual hardship may arise, and there may be a current of opinion in the profession that such and such a judgment was erroneous; but what is that occasional interference with what is perhaps abstract justice as compared with the inconvenience—the disastrous inconvenience—of having each question subject to being reargued and the dealings of mankind rendered doubtful by reason of different decisions.”

In *Precedent and Logic*,⁴ an article by C. K. Allen, we find:—

“ In all this process of forming and fashioning the law precedent is the most potent instrument. . . . Yet it appears to be a comparatively modern growth. It is difficult to say exactly by what steps and at what time it definitely established itself in our law. There was no system of precedents in Roman law, *cum non exemplis sed legibus judicandum est*; yet Bracton, though greatly influenced by Bolognese Roman law, made an extensive appeal to decided cases. Probably to him, more than to any one man we owe the foundation of the system, though even before the publication of his enormously influential treatise a tendency seems to have been growing in the Royal Courts to rely on precedent. . . . Blackstone in the eighteenth century lays it down that the ‘ duty of the judge is to abide by former precedents,’ but no rigid system seems to have been recognized in his day. . . . It seems probable that the now well-recognized hierarchy did not finally establish itself till comparatively late in the nineteenth century. This would naturally result from the enormous growth of printed decisions and the regularization of the semi-official law reports in 1865. At all events, there are throughout the nineteenth century a number of cases in which it is still debated whether the House of Lords is bound by its own decisions; and as late as 1898 in *London Street Tramways Co. v. London County Council*, (*supra*), the Lord Chancellor thought the matter still sufficiently controversial to require an *ex cathedra* pronouncement.”

It has been said that:—“ The only use of authorities, or decided cases, is the establishment of some principle which the Judge can follow out in deciding the case before him ”: per Jessel, M.R., in *Re Hallett's Estate*.⁵ Probably the best opinion and most frequently quoted statement of the law is that of the Earl of Halsbury in *Quinn v. Leathem*⁶:—“ Now, before discussing the case of *Allen v. Flood* and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have

⁴ (1925) 41 L.Q.R. 329, at pp. 338-9.

⁵ (1880) 13 Ch. D. 696, at p. 712.

⁶ [1901] A.C. 495, at p. 506.

very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

"The concrete decision is binding between the parties to it, but it is the abstract *ratio decidendi* which alone has the force of law."

In *London Street Tramways Co. v. London County Council*, *supra*, Lord Halsbury is reported thus:—

"My Lords, I only wish to say one word in answer to a very ingenious argument which the learned counsel set before your Lordships. It is said that this House might have omitted to notice an Act of Parliament or might have acted upon an Act of Parliament which was afterwards found to have been repealed. It seems to me that the answer to that ingenious suggestion is a very manifest one—namely, that that would be a case of a mistake of fact. If the House were under the impression that there was an Act when there was not such an Act as was suggested, of course they would not be bound, when the fact was ascertained that there was not such an Act or that the Act had been repealed, to proceed upon the hypothesis that the Act existed. They would then have ascertained whether it existed or not as a matter of fact, and in a subsequent case they would act upon the law as they then found it to be, although before they had been under the impression, on the hypothesis I have put, either on the one hand that an Act of Parliament did not exist, or on the other hand that an Act had not been repealed (either case might be taken as an example) and acted accordingly."

Mr. Justice Mignault in an article in⁸ "The Authority of Decided Cases" graphically puts the result in this way:—

"This distinction between a decision founded on a 'mistake in fact,' which is not binding, and a decision of the House of Lords supposedly erroneous on a question of law, which 'can be set right only by an Act of Parliament,' is really fundamental, because it is only the legal proposition or rule of law which is laid down that has

⁷ 18 Hals. para. 535(b).

⁸ (1925) 3 C. B. Rev. p. 4.

force of law. In other words, and to borrow some terms from another science, it is only when the House of Lords speaks *ex cathedra*, when it 'defines' a dogma of the law, that its doctrine must be held to be true and all controversy must cease unless the law-making department of the State intervenes and corrects the error, and it may after all have been no error whatever."

The statement already quoted, of the Earl of Halsbury, that a case is only authority for what it actually decides has been said to be an unfortunate *dictum*. Whether it can be said to be a *dictum* or not, in turn depends upon what is a *dictum*. "*Obiter dictum*," literally a "saying by the way," is an opinion of a Judge not necessary to the judgment given of record, in contradistinction to a "*judicial dictum*," which is necessary to the judgment. This latter is of much greater authority than the former because delivered upon deliberation under sanction of the Judge's oath. The *judicial dictum* is sometimes distinguished as the "*ratio decidendi*," the reason for the decision. The application of this definition of "*dictum*" is seen in the case of *Michigan Trust Co. v. Canadian Puget Sound Lumber Co.*⁹ Mr. Justice McPhillips quoted and followed a statement of Lord Dunedin in *Davidson and Co. v. Officer*.¹⁰ Lord Dunedin said:—

"I apprehend that the dicta of noble Lords in this House, while always of great weight, are not of binding authority and to be accepted against one's own individual opinion, unless they can be shown to express a legal proposition which is a necessary step to the judgment which the House pronounces in the case."

There again you get emphasized the idea of the "*ratio decidendi*," the necessary step to the judgment which the House pronounces in the case.

Sometimes you will find that the Court in giving judgment will decide on two separate and distinct points. They will say, "the plaintiff or the defendant fails on this ground, but if he does not fail on this ground he fails on this other ground." It has been attempted to be suggested that only one of these can be a "*ratio decidendi*" of the decision and that the other must therefore be "*obiter dictum*." That however has been disposed of and Lord Macnaghten in *New South Wales Tax Commissioners v. Palmer et al.*,¹¹ said:—

"It is impossible to treat a proposition which the Court declares to be a distinct and sufficient ground for its decision as a mere dictum simply because there is also another ground stated, upon which, standing alone, the case might have been determined."

⁹ (1918) 3 W.W.R. 273.

¹⁰ [1918] A.C. 304, p. 322.

¹¹ [1907] A.C. 179, at p. 184.

And Lord Bramwell's remarks in the case of *Membery v. G.W.R.*¹² are to this effect:—

"Of course it is in a sense not necessary that I should express an opinion on this, as the ground I have first mentioned in my opinion disposes of the case. But if instead of mentioning that ground first, I had mentioned the one I am now dealing with, it would on the same reasoning, be unnecessary to mention that. What I am saying is not obiter, not a needless expression of opinion on a matter not relevant to the decision. There are two answers to the plaintiff, and I decide against him on both; on one as much as the other."

In cases where the decision of a Court is a majority decision, only the judgments of the majority are to be looked at in deciding at what decision the Court arrived—*Suffell v. Bank of England*.¹³ And it might be of interest to consider the effect of a decision where the Court, consisting of an even number of Judges, divides evenly. In that case it cannot properly be taken into consideration when the point again comes up, and the judgments in every such case must be treated as *obiter dicta*. The decision is only binding on the parties to the judgment: *Re Stanstead Election*.¹⁴

It is advisable first to consider how the English "hierarchy" functions—that is, to what extent each Court is bound by its own decisions and the decisions of the other English Courts.

Reference has already been made to the debate as to whether the House of Lords is bound by its own decisions.

In *Stuart v. Bank of Montreal* (*supra*), Anglin, J., said at p. 544:—

"Lord Eldon, Lord Lyndhurst and Lord St. Leonards are distinguished law Lords who thought that judgments of the House of Lords did not absolutely bind the House itself. Lord Campbell always held the opposite opinion to which Lord Wensleydale, Lord Cranworth and Lord Chelmsford assented. Since the decision in *Beamish v. Beamish*,¹⁵ the House of Lords has consistently acted upon the latter view. . . . Finally, in *London Street Tramways Co. v. London County Council* (*ante*), it was expressly held by Lord Halsbury, L.C., the other members of the House, Lords Macnaghten, Morris and James of Hereford, concurring, that 'a decision of this House upon a question of law is conclusive and nothing but an Act of Parliament can set right that which is alleged to be wrong in a judgment of this House.'"

¹² (1889) 14 A.C. 179, at p. 187.

¹³ [1882] 9 Q.B., at p. 555.

¹⁴ (1891) 20 S.C.R. 12.

¹⁵ 9 H.L. Cas. 274.

That is the principle now followed by the highest Court in the British Isles. And if you are sufficiently interested to follow it up you will find a later case, *Equitable Life Assurance Society v. Bishop*,¹⁶ where the Court had to deal with two decisions of the House of Lords diametrically opposed to each other and the way they got round the difficulty was this. In effect they said, "there are two decisions; they are contrary; there must be a difference; we will distinguish them." and they did. Whether they distinguished them properly or not is another question: see 15 Law Quarterly Review 340.

It has been said—"Precedent and Logic" (*ante*), p. 334:—

"The most Olympian decision of the House of Lords will not bind a County Court Judge, unless he thinks he ought to be bound by it—unless, in other words, he thinks it presents an analogy to the case before him; and on that question opinions may greatly differ. The 'binding force' of precedents has, through constant and often unthinking repetition, become a kind of sacramental phrase which contains a large element of fiction. If a Court is quite clear about the rule of law which should be applied to the case before it, it will seldom allow itself to be embarrassed by an inconvenient decision. There are many ways of 'distinguishing' and a bad case which runs counter to the *communis opinio doctorum* is soon distinguished out of existence. When in 1923 the House of Lords definitely overruled *Miller v. Hancock*,¹⁷ in *Fairman v. Perpetual Investment Building Society*,¹⁸ it merely gave the earlier decision its *coup de grâce*; it had been on the point of death for twenty years, because single judges, as well as the Court of Appeal, had repeatedly 'distinguished' it in ways which were more ingenious than ingenuous. What judge, save a pedant, would consider himself bound by *Gibbons v. Proctor*?¹⁹ It is simply pronounced 'bad law,' and if all else fails, the blame for its badness can be laid at the door of the reporter."

Then we come to the next Court in England, the Court of Appeal. Mr. Justice Anglin, *Stuart v. Bank of Montreal* (*supra*), sums that situation up in this way, p. 547:—"It is fairly well established, therefore, that the English Court of Appeal now holds itself bound by its own previous decisions in matters of law. Since the express decision of that court in *Pledge v. Carr*,²⁰ it is quite improbable that

¹⁶ [1899] 2 Q.B. 439, affirmed (1900), 1 Q.B. 177.

¹⁷ [1893] 2 Q.B. 177.

¹⁸ [1923] A.C. 74.

¹⁹ (1892) 64 L.T. 594.

²⁰ [1895] 1 Ch. 51.

any of its members will in the future hold the view that the court is at liberty, even for grave reasons, to disregard such decisions."

It has been laid down in *Forster v. Baker*,²¹ by Bray, J., that he was not bound by a decision of another Judge at *nisi prius*. And he refused to follow a prior decision of Darling, J., on the same point and gave a contrary decision. He says:—

"I have always understood that one judge is not bound by the decision of another judge on a point of law at *nisi prius*, and, therefore, I think I am bound to consider the case and to decide it according to my own opinion, at the same time, of course, giving great weight to the decision of Darling, J."

We now come to our "Canadian Hierarchy." The question first arises as to our "final Court of Appeal"—the Judicial Committee of the Privy Council. As you are aware the decision, so called, of the Privy Council, the Judicial Committee, is not really a decision, but is advice given to the Sovereign, and is always the advice of the whole Committee. There can, therefore, really be no such thing as a dissenting judgment. But the Privy Council, on account of its composition and duties, has always claimed the right, and in one or two cases has exercised it, of refusing to give the same advice twice. In a case of *Read v. Bishop of Lincoln*,²² Lord Halsbury said this:—

"It was argued for the appellants that the doctrine thus laid down in *Ridsdale v. Clifton* was only applicable where there was some 'fresh light' and that by this was meant some fact which had not been under the consideration of the tribunal on the previous occasion. But an examination of the arguments and judgments shews that this was not the meaning of the Committee. They entered upon an elaborate and independent examination of the law bearing upon the legality of acts already pronounced illegal, and it was expressly stated, as their Lordships' conclusion, 'that although great weight ought to be given to the decision in *Hebbert v. Purchas*,²³ yet they ought in the present case to hold themselves at liberty to examine the reasons upon which that decision was arrived at, and, if they should feel themselves forced to dissent from those reasons, to decide upon their own view of the law.' In the result their Lordships dissented upon one point from the reasoning of the previous Committee, and came to the conclusion that an act was lawful which had been previously pronounced illegal."

We should bear in mind the difference between a Court of last

²¹ [1910] 2 K.B. 636.

²² [1892] A.C. 644, at p. 655.

²³ L.R. 3 C.P. 605.

resort and a Court from which there is an appeal. We should also bear in mind that there are two different kinds of decisions.

Sometimes a decision acquiesced in for a considerable length of time will not be interfered with, even though subsequent enquiry shows that the decision was wrong. The only thing that justifies a decision being allowed to stand in this way is when title to property depends upon the incorrect decision. In *Read v. Bishop of Lincoln* (*supra*), Lord Halsbury quoted the remarks of Lord Cairns in *Ridsdale v. Clifton* ²⁴:—

“In the case of decisions of final Courts of Appeal on questions of law affecting civil rights, especially rights of property, there are strong reasons for holding the decisions, as a general rule, to be final as to third parties.”

The case of *Law v. Acton*,²⁵ holding that the Statute of Mortmain was in force in this Province was said to be binding, not only on account of the fact that it had been decided by a careful Judge, but also because to hold otherwise would unsettle the law and property rights might depend upon it. That was very quickly disposed of the Court of Appeal.²⁵

In the case of *Doe d. Anderson v. Todd*,²⁶ a decision that the Statute of Mortmain was in force in Ontario was given, and although there is considerable doubt as to whether or not that decision was correct, it was followed and given effect to, because property rights were thought to have depended upon it.

A final Court of Appeal will always claim the right to correct error. In the case of *Bourne v. Keane and others*,²⁷ the question arose as to whether the bequest of personal property for masses for the dead was void as a gift to superstitious uses. A long line of decisions, commencing in 1835 and continuing to 1919 had consistently held that such disposition was void. When the matter came before the House of Lords, those decisions were all over-ruled and Lord Birkenhead, L.C., said (page 860:—

“In my view it is undoubtedly true that ancient decisions are not to be lightly disturbed when men have accepted them and regulated their dispositions in reliance upon them. And this doctrine is especially deserving of respect in cases where title has passed from man to man in reliance upon a sustained trend of judicial opinion. But this, my Lords, is not the present case. If my view is well

²⁴ [1876] 2 P.D. 276.

²⁵ (1902) 14 M.R. 246; (1920) 30 M.R. 246 (Ct.App.).

²⁶ (1846) 2 U.C.Q.B.R. 82.

²⁷ [1919] A.C. 815.

founded citizens of this country have for generations mistakenly held themselves precluded from making these dispositions. I cannot conceive that it is my function as a judge of the Supreme Appellate Court of this country to make error perpetual in a matter of this kind."

So much for the Judicial Committee. Now to come to the question as to what decisions the Supreme Court of Canada will follow.

It will of course first of all, follow any decision of the Privy Council. It will secondly, without question, follow any decision of the House of Lords. Will it, however, follow a decision of the English Court of Appeal? In the case of *Stewart v. LePage*,²⁸ Sir Louis Davies indicates that the Court would consider itself bound by a decision of the English Court of Appeal. That infers, however, that there is no conflicting decision of the Supreme Court of Canada. In such a case the question is still open. As Mr. Justice Anglin said in *Stuart v. Bank of Montreal (supra)*:—"Should such a case arise, . . . the duty of this court would require most careful consideration."

The question which came up for consideration in the case of *Stuart v. Bank of Montreal (supra)*, was whether the Supreme Court of Canada should follow certain principles laid down in a prior decision of its own, or should apply contrary principles which were said to have been decided by the English Courts. It was held that it would follow its own decision. That involved a consideration of a principle laid down in case of *Trimble v. Hill*,²⁹ where Sir Montague E. Smith giving the judgment of the Privy Council on appeal from the Court of New South Wales said:—

"Their Lordships think the Court in the Colony might well have taken this decision as an authoritative construction of the statute. It is the judgment of the Court of Appeal, by which all the Courts in *England* are bound, until a contrary determination has been arrived at by the House of Lords. Their Lordships think that in colonies where a like enactment has been passed by the Legislature, the Colonial Courts should also govern themselves by it. . . . Their Lordships would not have felt themselves justified in advising Her Majesty to depart from the decision in *Diggle v. Higgs* unless they entertained a clear opinion that the construction it has given to the proviso in question was wrong, and had not settled the law; since in their view it is of the utmost importance that in all parts of the

²⁸ 53 S.C.R. 337, pp. 340-342; 29 D.L.R. 607.

²⁹ (1879) 5 A.C. 342.

Empire where English law prevails, the interpretation of that law by the Courts should be as nearly as possible the same."

That brings the two problems together. Was the Supreme Court to follow its own decision? What was the effect of the contrary English decisions?

Let us deal first of all with the stand that the Court took as to its own decision. At page 548 of 41 S. C. R., Anglin, J., said:—

"The Supreme Court of Canada occupies a somewhat peculiar position. From it no appeal lies as of right. By special leave an appeal may be had to the Judicial Committee. In the great majority of the cases which it hears it is a final appellate tribunal; in other cases, it occupies the position of an intermediate appellate court. But, whether it be regarded as final or intermediate, in view of the current of recent decisions to which reference has been made, the attitude of this court towards its previous decisions upon questions of law should, in my opinion, be the same. Of course, if the Privy Council should determine that the law is not what this court has declared it to be, the view of this court must be deemed to be overruled. A decision of the House of Lords should, likewise, be respected and followed though inconsistent with a previous judgment of this court. In the event of an irreconcilable conflict upon a decision of law between a decision of this court and a subsequent decision of the English Court of Appeal—should such a case arise—in view of what was said by the Privy Council in *Trimble v. Hill* (*supra*), the duty of this court would require most careful consideration. But we should not, in my opinion, hesitate now to determine that, in other cases, unless perhaps in very exceptional circumstances, a previous deliberate and definite decision of this court will be held binding, if it is clear that it was not the result of some mere slip or inadvertence."

It is questionable how far the rule in *Trimble v. Hill* (*supra*) will be applied in our Canadian Courts. It is probable that in a case such as is stated by Anglin, J.—that of an irreconcilable conflict upon a question of law between a decision of the Supreme Court of Canada and a subsequent decision of the English Court of Appeal—the Supreme Court would follow its own decision.

In connection with *Trimble v. Hill* (*supra*), an interesting point is made by Martin, J.A., of the British Columbia Court of Appeal in the case of *Pacific Lumber Co. v. Imperial Timber and Trading Co.*,³⁰ where he points out that the Colony, the judgment of whose Court of Appeal was in question, had no Court corresponding to our

³⁰ (1917) 1 W.W.R. 507, at 508; 31 D.L.R. 748.

Supreme Court of Canada. He says there is a difference between the Dominion of Canada, South Africa and Australia on the one hand and on the other those Colonies where there is no Court such as the Supreme Court of Canada constituted. That probably is the state of affairs that really exists and *Trimble v. Hill* (*supra*) must be read in view of that decision. And it is probable that a judgment of the Supreme Court of Canada would be followed by the Supreme Court of Canada in preference to a judgment of the English Court of Appeal to a contrary effect. The same point is made by Metcalfe, J., in *Manitoba Bridge and Iron Works v. Minnedosa Power Co.*³¹

Then we come down to our own Court of Appeal. It will be bound by the decisions that the Supreme Court of Canada would be bound by, and in addition, any decision of the Supreme Court of Canada. In the *Pacific Lumber Co.* case (*supra*), Martin, J., says:—

“The Supreme Court of Canada primarily settles the law of Canada, being only subject to review by the Judicial Committee of the Privy Council, and save as aforesaid, in its determination of that law, the said Court may, if it sees fit, disregard the opinion of any other Court in the Empire including the House of Lords, which only settles the law of the United Kingdom.”

Contrast that language with that used by Anglin, J., in the *Bank of Montreal* case. That statement of the law, however, has been approved in British Columbia in the case of *Chilliwack Evaporating and Packing Co. v. Chung*,³² and in *Trumbell v. Trumbell*.³³ *Slater v. Laboree*,³⁴ is to the same effect; the Court preferring a decision of the Supreme Court of Canada to one of the House of Lords.

In *Wood v. Guillett*,³⁵ Taylor, C.J., applied *Trimble v. Hill* (*supra*), and followed a decision of the English Court of Appeal disregarding a contrary decision of the Manitoba Full Court.

In *Schwartz v. Winkler*,³⁶ Killam, C.J., considered himself bound by a previous decision of the Full Court of King's Bench and declined to follow contrary decisions of the Ontario Court of Appeal.

But in *Manitoba Bridge and Iron Works v. Minnedosa Power Co. et al.* (*supra*); Metcalfe, J., at trial, followed a judgment of the Supreme Court of Canada in preference to contrary English decisions, one being a decision of the House of Lords, and said after a full discussion of the authorities (p. 738):—

³¹ (1917) 1 W.W.R. 731.

³² (1918) 1 W.W.R. 870.

³³ (1919) 2 W.W.R. 198.

³⁴ (1905) 10 O.L.R. 648.

³⁵ (1895) 10 M.R. 570.

³⁶ (1901) 13 M.R. 493.

“With all deference, I think that the general statement in *Trimble v. Hill* made as it was regarding the circumstances in that case, was not intended to apply, and ought not to apply to the Courts of the Dominion of Canada.”

The Court of Appeal for Manitoba will consider itself bound by its own previous decisions in the absence of a later contrary decision of the Supreme Court of Canada, the House of Lords or the Privy Council. In the case of conflicting decisions one of our Court of Appeal and one a subsequent decision of the English Court of Appeal our Court would probably follow its own decision.

Ontario has attempted by Statute to make certain provisions (The Judicature Act, R.S.O. 1914, c. 34), which are briefly as follows:

By section 32-1, the decision of a Divisional Court which corresponds to our Court of Appeal, on a question of law or practice unless over-ruled or otherwise impugned by a higher Court, shall be binding on all Divisional and on all other Courts and Judges and shall not be departed from in subsequent cases without the concurrence of the Judges who gave the decision.

By section 32-2 of the Act, any Judge of the High Court Division must follow a prior known decision of any other Judge of co-ordinate jurisdiction.

Toronto v. Toronto Railway Co.,³⁷ seems to decide that section 32-1 interferes with the rule laid down in *Trimble v. Hill*. It is interesting to note that this judgment is a decision of Mr. Justice Anglin who wrote the judgment in *Stuart v. Bank of Montreal (supra)*, to which I have so frequently referred.

In the same connection there is a recent and interesting Ontario case of *Re Empire Timber and Tie Lumber Co.*,³⁸ where a decision of the Court of Appeal for Manitoba was referred to and not followed, and Orde, J., said:—

“If the decision of the Manitoba Court of Appeal . . . was upon a question of procedure, or involved the mere interpretation of some section of the Act, I should probably feel it my duty to follow it, but the decision deals with the question of the power of a provincial Judge to interfere with the constitution of a provincial company. For this reason, I deem it my duty to consider whether or not I should follow that decision here.”

But how about our Judges at *nisi prius*? In the case of *Re Fenton*,³⁹ Galt, J., said:—

³⁷ (1904) 4 O.W.R. 330-335.

³⁸ (1920) 48 O.L.R. 193, p. 196.

³⁹ (1920) 2 W.W.R. 34, p. 37.

"The practice in Manitoba is that when a question has been decided by one of the Judges, the decision is accepted and followed by any other single Judge, except under very exceptional circumstances."

This practice is not in accordance with the view taken in *Forster v. Baker* which was not referred to. In *Re Fenton (supra)*, Galt, J., held that he was bound by a decision of Richards, J., in a case of *Law v. Acton (supra)*, which decided that the Statute of Mortmain was in force in the Province of Manitoba. If *Forster v. Baker* had been brought to his attention, he might have considered that he had the right to refuse to follow *Law v. Acton* which he felt himself bound to follow, but not apparently because he approved of the *ratio decidendi* of the case. The Court of Appeal, however, (1920) 30 M. R. 246, over-ruled *Law v. Acton*. In Saskatchewan, *Forster v. Baker* was applied and followed by Lamont, J., in *Rural Municipality of Bratt's Lake v. Hudson's Bay Company*,⁴⁰ where he refused to follow a previous decision of Brown, J.

I append a partial list of articles and cases bearing upon the subject other than those referred to in the cases and articles quoted above.*

Winnipeg.

E. K. WILLIAMS.

⁴⁰ (1918) 2 W.W.R. 962; 11 Sask. L.R. 357.

* "The Theory of Judicial Decision," by Roscoe Pound, D.C.L., 2 C.B.R. 263.

Laird v. Laird, [1920] 3 W.W.R. 1; 51 D.L.R. 642.

"Some Differences between the Law of Quebec and the Law as Administered in the other Provinces of Canada," by Hon. Mr. Justice Anglin, 1 C.B.R. 33.

Michigan Trust Co. v. Can. Puget Sound Lumber Co., [1918] 3 W.W.R. 273.

"The Authority of English Decisions," by Hon. Mr. Justice Hodgins, 1 C.B.R. 470.

MANITOBA.

In re Bell, (1922) 32 M.R. 9; 67 D.L.R. 66.

"Stare Decisis in Criminal Matters," (1921) 41 C.L.T. 208.

Loczka v. Ruthenian Farmers etc. Co., (1922) 32 M.R. 137; 68 D.L.R. 535.

"The Codification of Laws," by J. Ogle Carss, D.C.L., (1920) 40 C.L.T. at pp. 296 et seq.

St. Vital Investments Ltd v. Halldorson, (1920) 30 M.R. 573; 56 D.L.R. 418.

"The Authority of Decisions," (1910) 30 C.L.T. 63.

ONTARIO.

CASES.

ALBERTA.

Hamilton v. Hamilton, (1920) 47 O.L.R. 359.

Rex v. Hartfeil, [1920] 3 W. W. R. 1051; 16 Alta. L.R. 19; 55 D.L.R. 524.

Driscoll v. Colletti, (1926) 29 O.W.N. 460.

BRITISH COLUMBIA.

SASKATCHEWAN.

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