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THE PRINCIPLE OF STARE DECISIS.

I. REASONS AND IMPORTANCE OF THE RULE.—The policy of the courts, and the principle upon which rests the authority of judicial decisions as precedents in subsequent litigations, is embodied in the maxim, *Stare decisis et non quieta movere*—to abide by the precedents and not to disturb settled points. Its meaning is, that when a point of law has been once solemnly and necessarily settled by the decision of a competent court, it will no longer be considered open to examination, or to a new ruling, by the same tribunal or those which are bound to follow its adjudications. The reasons which underlie this rule are stated by Chancellor KENT, in a much quoted passage from the Commentaries, as follows: “A solemn decision upon a point of law, arising in any given case, becomes an authority in a like case, because it is the highest evidence which we can have of the law applicable to the subject, and the judges are bound to follow that decision so long as it stands unreversed, unless it can be shown that the law was misunderstood or misapplied in that particular case. If a decision has been made upon solemn argument and mature deliberation, the presumption is in favor of its correctness; and the community have a right to regard it as a just declaration or exposition of the law, and to regulate their actions and contracts by it. It would, therefore, be extremely inconvenient to the public, if precedents were not duly regarded and implicitly followed. It is by the notoriety and stability of such rules that professional men can give safe advice to those who consult them;

and people in general can venture with confidence to buy and trust, and to deal with each other. If judicial decisions were to be lightly disregarded, we should disturb and unsettle the great landmarks of property. When a rule has been once deliberately adopted and declared, it ought not to be disturbed, unless by a court of appeal or review, and never by the same court, except for very cogent reasons, and upon a clear manifestation of error; and if the practice were otherwise, it would be leaving us in a state of perplexing uncertainty as to the law:" 1 Kent's Comm. 475. And see, as enunciating the same views, *Butler v. Duncomb*, 1 P. Wms. 452; *Goodtitle v. Otway*, 7 T. R. 419; *Selby v. Bardons*, 3 B. & Ad. 17; *Anderson v. Jackson*, 16 Johns. 402; *Bellows v. Parsons*, 13 N. H. 256; *Bates v. Relyea*, 23 Wend. 340; *Jansen v. Achison*, 16 Kans. 358; *Gray v. Gray*, 34 Ga. 499; *Lindsay v. Lindsay*, 47 Ind. 286; *Day v. Munson*, 14 Ohio St. 488; Jones on Bailments 60. So, Judge BLACK referred to the principle of *stare decisis* as, "that great principle which is the sheet-anchor of our jurisprudence:" *Bank of Pennsylvania v. Commonwealth*, 19 Penn. St. 151. And Judge COOLEY observes: "Even if the same or any other court, in a subsequent case, should be in doubt concerning the correctness of the decision which has been made, there are consequences of a very grave character to be contemplated and weighed before the experiment of disregarding it should be ventured upon. That state of things, when judicial decisions conflict, so that a citizen is always at a loss in regard to his rights and his duties, is a very serious evil; and the alternative of accepting adjudged cases as precedents in future controversies resting upon analogous facts, and brought within the same reasons, is obviously preferable:" Cooley, Constitutional Limitations, 50. The principle of *stare decisis*, therefore, though presenting certain analogies to the rule which establishes the conclusiveness of an estoppel by judgment, both rests upon a broader foundation and is more comprehensive in its application. The latter doctrine springs from the two maxims, that "no one should be twice harassed concerning the same dispute," and that "the interest of the state demands there should be an end of litigation," and is necessarily limited, in its effect, to the parties to the particular controversy and their privies. But the former is predicated upon the necessity of finally settling the rules of the common law and the interpretation of statutory enactments in the interest, and for the protection and guidance, of the entire commu-

nity; and hence it interposes a barrier to fluctuations of judicial opinion in *all* similar cases.

The importance of a strict but rational adherence to the doctrines of adjudged cases is remarkably exemplified in the growth of English constitutional jurisprudence. To quote from a distinguished writer on public questions: "The principle of the precedent is eminently philosophical. The English constitution would not have developed itself without it. What is called the English constitution consists of the fundamentals of the British polity, laid down in custom, precedent, decisions and statutes; and the common law in it is a far greater portion than the statute law. The English Constitution is chiefly a common-law constitution; and this reflex of a continuous society in a continuous law is more truly philosophical than the theoretic and systematic, but lifeless constitutions of recent France:" Lieber's Civil Liberty.

And in our own country the maintenance of this doctrine is of peculiar importance on account of the deference which we are accustomed to pay to the decisions of the law courts, even in cases where their logical correctness is open to doubt. This recognition of the power and province of the judicial tribunals in the guidance and settlement of our civil institutions, leads the American citizen to yield his implicit obedience to their doctrines even when the decision of a court lays a controlling and shaping hand, not formally, perhaps, but in the necessary deductions from its conclusions, upon the most zealously debated political questions, or the most important affairs of government. Then if progress be desirable, if the growth of the nation, in the perfect development of constitutional government, as well as in the stability of its institutions, be a desideratum, these objects can certainly not be attained by a disregard of the principle of *stare decisis*. Our past history declares this truth with unmistakable voice. For, to appreciate its value, we have only to reflect how seriously the progress of American federalism would have been retarded if the interpretations put upon the Constitution by the Supreme Court, in the formative period of our national career, had been thought open to contradiction by any and every court. Hence, in the construction of statutes and the organic law, whether of a State or of the Union, the rule is almost universal to adhere to the doctrine of *stare decisis* under any and all circumstances: *Seale v. Mitchell*, 5 Cal. 401. And see *Grubbs v. State*, 24 Ind. 295.

II. PROPER LIMITATIONS OF THE DOCTRINE.—The principle of *stare decisis* is subject to certain necessary and proper limitations, which, on the one hand, secure and enhance its practical utility, and on the other hand, prevent its abuse. The more important of these limitations will be discussed in order.

1. *Overruled Cases*.—If a decision has been expressly overruled, either by the same court which rendered it, or by a court exercising appellate jurisdiction, it can of course no longer be cited as a precedent. The latest utterance of the court, on any given point of law, constitutes the authority which is not to be departed from without cause. And the same is true of decisions overruled by necessary implication in a subsequent case. But here it would be necessary to show beyond reasonable cavil, that the two authorities were really and necessarily inconsistent rulings on a state of facts substantially identical. An exception, however, would probably be made in the case of a single decision, probably erroneous, which should overrule a series of previous authorities or unsettle the established principles of commercial or statutory law. See *Aud v. Magruder*, 10 Cal. 282. And if a rule of law has been changed by legislative enactment, the authorities which announced it are of course stripped of all binding force: *Lemp v. Hastings*, 4 Greene (Iowa) 448.

2. *Two Extremes to be avoided*.—“That doctrine,” says LOWRIE, J., speaking of the rule under consideration, “though incapable of being expressed by any sharp and rigid definition, and therefore incapable of becoming an institute of positive law, is among the most important principles of good government. But like all such principles, in its ideal it presents its medial and its extreme aspects, and is approximately defined by the negation of its extremes. The conservatism that would make the instance of to-day, the rule of to-morrow, and thus cast society in the rigid moulds of positive law, in order to get rid of the embarrassing but wholesome diversities of thought and practice that belong to free, rational, and imperfect beings; and the radicalism that, in ignorance of the laws of human progress and disregard of the rights of others would lightly esteem all official precedents and general customs that are not measured by its own idiosyncrasies; each of these extremes always tends to be converted into the other, and both stand rebuked in every volume of our jurisprudence. And the medial aspect of the doctrine stands everywhere revealed as the only practical one.

Not as an arbitrary rule of positive law, attributing to the mere memory of cases higher honor and greater value than belong to the science and natural instinct and common feeling of right; not as withholding allowance for official fallibility, and for the changing views, pursuits and customs that are caused by, and that indicate an advancing civilization; not as indurating, and thus deadening the forms that give expressions to the living spirit; not as enforcing 'the traditions of the elders,' when they 'make void the law' in its true sense; nor as fixing all opinions that have ever been pronounced by official functionaries; but as yielding to them the respect which their official character demands, and which all good education enjoins:" *Callender v. Keystone Mut. Life Ins. Co.*, 23 Penn. St. 474.

3. *Decision manifestly Erroneous.*—Hence, in the third place, if a decision is clearly incorrect, whether from a mistaken conception of the law or through a misapplication of the law to the facts, and no injurious results would be likely to flow from a reversal of it, and especially if it is injurious and unjust in its operation, it is not only an allowable departure from precedent, but the imperative duty of the court, to reverse it: *Linn v. Minor*, 4 Nev. 462; *Paul v. Davis*, 100 Ind. 422; *Sydnor v. Gascoigne*, 11 Tex. 449. BLACK, C. J., says: "Of course I am not saying that we must consecrate the mere blunders of those who went before us, and stumble every time we come to the place where they have stumbled. A palpable mistake, violating justice, reason and law, must be corrected, no matter by whom it may have been made. There are cases in our books which bear such marks of haste and inattention that they demand reconsideration. There are some which must be disregarded because they cannot be reconciled with others. There are old decisions of which the authority has become obsolete, by a total alteration in the circumstances of the country and the progress of opinion:" *McDowell v. Oyer*, 21 Penn. St. 423. But from this rule is to be excepted the case of a settled and established rule of property, founded upon a series of erroneous decisions. It is only upon serious considerations that the court will overturn such a rule, no matter how incorrect the previous authorities. This point will be discussed in another connection.

4. *Isolated Cases.*—A single decision upon any given point of law is not regarded as conclusive as a precedent in the same degree that a series of decisions upon that point would be: *Duff v. Fisher*,

15 Cal. 375; Wells on Res Adjudicata, sects. 589, 599. And the Supreme Court of California declares that the doctrine of *stare decisis* will lead it to conform to a principle of mercantile law established all over the world, rather than to follow a decision of its own made a few years before, which is a very decided and probably injudicious innovation upon that principle: *Aud v. Magruder*, 10 Cal. 282.

5. *Obiter Dicta*.—The maxim *stare decisis* contemplates only such points as are actually involved and determined in a case, and not what is said by the court or judge outside of the record, or on points not necessarily involved therein. Such expressions, being *obiter dicta*, do not become precedents: *Cohens v. Virginia*, 6 Wheat. 399; *Ex parte Christy*, 3 How. 322, dissenting opinion of CATRON, J.; *Peck v. Jenness*, 7 How. 612. Thus Mr. Justice CURTIS observes: "If the construction put by the court of a state upon one of its statutes was not a matter in judgment, if it might have been decided either way without affecting any right brought into question, then, according to the principles of the common law, an opinion on such a question is not a decision. To make it so, there must have been an application of the judicial mind to the precise question necessary to be determined to fix the rights of the parties and decide to whom the property in contestation belongs:" *Carroll v. Carroll*, 16 How. 286. But this limitation is itself to be taken with a limitation. Thus, although a point may not have been fully argued, yet the decision of the court upon it cannot be considered *obiter dictum*, when the question was directly involved in the issues of law raised by demurrer, and the mind of the court was directly drawn to and distinctly expressed upon the subject: *Michael v. Morey*, 26 Md. 239; *Alexander v. Worthington*, 5 Id. 488; Wells on Res Adjudicata, sect. 582. So an expression of opinion on a point involved in a case, argued by counsel, and deliberately passed upon by the court, is not necessarily *obiter dictum*, although not essential to the disposition of the case: *Buchner v. Railroad*, 60 Wis. 264. Thus, when the record fairly presents two points upon the merits in a case, upon either of which the appellate court might rest its decision, and the court actually decides both, without indicating that it is intended to rest the judgment upon one rather than the other, the decision upon neither can be regarded as *obiter dictum*: *Starr v. Stark*, 2 Sawyer 603. And when judicial decisions may fairly be presumed to have been acted upon as a rule of property, they

should be upheld, not only as to points necessarily involved and decided, but also as to the principles declared to have been established by them in subsequent cases; *Matheson v. Hearin*, 29 Ala. 210.

6. *Illustration and Arguments.*—The language of a decision is to be construed not as a statement of abstract propositions without limitation, but in connection with the particular facts of the case and the specific matters had in view when the language was used, and when applied to an essentially different state of facts, is to be understood as subject by implication to many limitations and restrictions not expressly stated: *Holcomb v. Bonnell*, 32 Mich. 6; *Pass v. McRae*, 36 Miss. 143. Consequently, it is not enough to satisfy the maxim that the particular doctrine or rule for which an authority is cited is mentioned or formulated in it. The process of reasoning, the illustrations, arguments, analogies, or references found in the opinion of the court are not authority or precedent, but only the points arising in the specific case and which are decided by the court: *Lucas v. Commissioners*, 44 Ind. 524; *Wells, op cit.*, sects. 583, 584. But such illustrations and arguments may be, and frequently are, used to show the grounds on which a doctrine rests, or to differentiate the particular authority from another case or line of cases.

III. THE RULE AS BETWEEN DIFFERENT COURTS OF THE SAME STATE.—The opinions of the court of last resort, in any state, upon the points in judgment, presented and passed upon in the cases brought before it, are the law of the land until overruled, and inferior courts are bound to obey them: *Attorney-General v. Lum*, 2 Wis. 507. The opinion of a *Nisi Prius* court, though, perhaps, admissible as persuasive evidence of the principle contended for, is of course, not binding as a precedent upon the appellate court; except in one instance, viz.: that the Supreme Court will adopt the construction placed by an inferior court upon its own rules of practice: *Mix v. Chandler*, 44 Ill. 174. The decisions of the chief appellate court of a territory, before its erection into a state, or of the Supreme Court of a state prior to the adoption of a new constitution, will be recognised and followed by its successor under the new system, unless manifestly erroneous: *Doolittle v. Shelton*, 1 Greene (Ia.) 272; *Emery v. Reed*, 65 Cal. 351. Two or more decisions concurring on the same point, made by the co-ordinate branches of the same court, in different districts, should be recognised as prece-

dents in the other districts, until reversed by a higher authority: *Andrews v. Wallace*, 29 Barb. 350; *Bentley v. Goodwin*, 38 Id. 633. But when there is a conflict of decisions on a given point, among the tribunals of equal rank in a state, a court in which the point has been decided upon mature deliberation, should adhere to its decision until overruled by a court of last resort: *Greenbaum v. Stein*, 2 Daly 223.

IV. AS BETWEEN FEDERAL AND STATE COURTS.—The decisions of the Supreme Court of the United States, upon the construction of the Federal Constitution or the laws of the Union, are conclusive and binding upon all the state tribunals; both because the interpretation of the organic law and the statutes of the nation properly belongs to its own judiciary, and because that court exercises a certain appellate jurisdiction, in these matters, over the courts of last resort, in the several states: *Black v. Lusk*, 69 Ill. 70; *Lebanon Bank v. Mangan*, 28 Penn. St. 452. But it is said that a court of Common Pleas should follow the decisions of its own Supreme Court, though opposed to the doctrines held by the federal judiciary, inasmuch as there can be no appeal to the Supreme Court of the United States, except from the court of last resort: *Commonwealth v. Monongahela Nav. Co.*, 2 Pears. (Pa.) 372.

The converse of this rule is equally true. The federal courts will uniformly adopt the decisions of the state tribunals in the construction of their statutes or constitutions; and the interpretation given to a law of a state by its highest judicial tribunal, is regarded, in the federal courts, as a part of the statute, and is as binding upon them as the text; *Leffingwell v. Warren*, 2 Black (U. S.) 599; *Smith v. Kernochen*, 7 How. 198; *Christy v. Pridgeon*, 4 Wall. 196; *Nichols v. Levy*, 5 Id. 433; *Williamson v. Suydam*, 6 Id. 723; *Randall v. Brigham*, 7 Id. 523; *Morgan v. Town Clerk*, Id. 610; *Boyle v. Arledge*, 1 Hempst. 620. Thus, on the question of whether a state tax law conforms to the state constitution, the federal courts are bound by decisions of the state court of last resort: *Dundee Mortgage Co. v. Parrish*, 24 Fed. Rep. 197. But there is one exception to this rule, viz. : when the constitutional enactment or statute is alleged to be in violation of the federal constitution or laws, the Supreme Court will be at liberty to put its own construction upon it; for example, when the act in question is objected to as contravening the constitutional prohibition of legislation impairing the obligation of contracts, the court will ascertain



for itself, independently of the state decisions, whether a contract in fact exists, and whether the statute has the effect attributed to it: *Jefferson Branch Bank v. Skelly*, 1 Black (U. S.) 436; *Louisville, &c., Rd. v. Palmes*, 109 U. S. 244. And on questions of interstate extradition, it is said, the decisions of the state courts do not conclude the federal courts: *Ex parte Roberts*, 24 Fed. Rep. 132. Where the rulings of the state court upon the construction of its constitution or laws have been subject to changes of opinion, the federal courts will, in general, follow the latest settled adjudications. But where a question was once definitely settled by a series of decisions in the state court, such decisions being sustained by reason and authority, and one or two later cases overrule them, against all law and reason, the Supreme Court will not feel itself bound to follow every oscillation of opinion: *Gelpcke v. Dubuque*, 1 Wall. 175. And where the United States Circuit Court, in a particular case, adopts the construction of a state statute, put upon it by the highest courts of the state, and afterwards the state courts overrule the former decisions and interpret the statute differently, this will not authorize a reversal of the judgment of the Circuit Court: *Morgan v. Curtenius*, 20 How. 1. So, where the Supreme Court of the United States has maturely adopted the construction placed by the state court on the statutes of the state, and the latter court afterwards gives a different interpretation of the same act, it is deemed more respectful to the supreme national court for the circuit courts to adhere to its decision, rather than to adopt the latest ruling of the state court, until the question shall be again reviewed: *Neal v. Green*, 1 McLean 18.

But in questions of general commercial law, the state adjudications, though entitled to great respect, do not furnish a binding rule of decision for the federal courts; and, conversely, the state courts, in such matters, are not concluded by the rulings of the national courts: *Supervisors v. Schenck*, 5 Wall. 772; *Towle v. Forney*, 14 N. Y. 423. Thus, although the rule that the law of the place where a contract is made will ordinarily govern its interpretation, applies to endorsements of negotiable paper, yet when that law is the common law or law merchant, the question as to what such law is, will not be concluded by the decisions of the highest courts of the state where the endorsement is made, suit being brought in a different jurisdiction: *Franklin v. Twogood*, 25 Ia. 520. And in such a question as this, the federal courts are not bound by the

adjudications of the state within whose borders they sit; *National Bank of Worcester v. Lock-Stitch Fence Co.*, 20 Reporter 235. So, a decision of a state court, involving only the general principles of equity jurisprudence, is not binding as authority on the federal courts: *Neves v. Scott*, 13 How. 268; *Russell v. Southard*, 12 Id. 139.

It has been suggested, with much wisdom and candor, that as commercial law is national in its character, a paramount authority ought to be attributed to the decisions of the highest national tribunal, when dealing with such questions, in order to secure uniformity: *Stoddard v. Railroad*, 5 Sandf. 180. If such an idea were practicable, it would certainly contribute largely to an increase of harmony and certainty in our judicial reports.

V. AS BETWEEN COURTS OF DIFFERENT STATES.—Rulings made under a similar legal system, prevailing in another state, may be cited and respected for their reasons, but are not necessarily to be accepted as guides, except in so far as those reasons commend themselves to the judicial mind: *Caldwell v. Gale*, 11 Mich. 77; *Boyce v. St. Louis*, 29 Barb. 650. The decisions of another state, however, would doubtless be accepted as authoritative guides, in cases where a construction of the statutory law of such state became necessary. But the opinion has been expressed, that they would be persuasive, but not conclusive as to such construction, where the statutes in question, but not the decisions, are put in evidence: *Nelson v. Goree*, 34 Ala. 565.

VI. VALUE OF THE ENGLISH DECISIONS.—“Great Britain and the thirteen original states had each substantially the same system of common law originally, and a decision now by one of the higher courts of Great Britain as to what the common law is upon any point, is certainly entitled to great respect in any of the states, though not necessarily to be accepted as binding authority any more than the decisions in any one of the other states upon the same point. It gives us the opinions of able judges as to what the law is, but its force as an authoritative declaration must be confined to the country for which the court sits and judges. But an English decision before the Revolution is in the direct line of authority:” Cooley’s *Constitutional Limitations* 52. And see *Chapman v. Gray*, 8 Ga. 341; *Koontz v. Nabb*, 16 Md. 549. And in California it is said that, in a case arising for the first time in that juris-

diction, the common-law rule of the case will not be disregarded and a new rule created, merely because the English judges have frequently regretted the adoption of the rule; such a course would be an usurpation of power by the judiciary: *Johnson v. Fall*, 6 Cal. 359.

VII. STATUTES OF ONE STATE RE-ENACTED IN ANOTHER.—Where a particular statute or clause of the constitution has been adopted in one state from the statutes or constitution of another, after a judicial construction had been put upon it in such last-mentioned state, it is but just to regard the construction as having been adopted along with the words, and all the mischiefs of disregarding precedents would follow as legitimately here as in any other case: *Commonwealth v. Hartnett*, 3 Gray 450; *Bemis v. Becker*, 1 Kans. 226; *Cooley, op. cit.* 52. But it does not necessarily follow that the prior decision construing the law must be inflexibly followed, since the circumstances in the state adopting it may be so different as to require a different construction: *Little v. Smith*, 4 Scam. 402; *Gray v. Askew*, 3 Ohio 479. And the same is in general true of English statutes re-enacted in this country. Thus, Mr. Justice STORY observes: "It is doubtless true, as has been suggested at the bar, that where English statutes—such, for instance, as the Statute of Frauds and the Statute of Limitations—have been adopted into our own legislation, the known and settled construction of those statutes by courts of law, has been considered as silently incorporated into the acts, or has been received with all the weight of authority:" *Pennock v. Dialogue*, 2 Pet. 18.

VIII. PROPERTY RIGHTS NOT TO BE DISTURBED BY REVERSAL OF DECISIONS.—There are some questions in the law the final settlement of which is vastly more important than how they are settled; and among these are rules of property, long recognised and acted upon, and under which rights have vested. Accordingly, when a principle of law, doubtful in its character or uncertain in the subject-matter of its application, has been settled by a series of judicial decisions and acquiesced in for a considerable time, and important rights and interests have become established under such decisions, the court will hesitate long before attempting to overturn the result, notwithstanding they may think the previous authorities to be entirely erroneous: *Pratt v. Brown*, 3 Wis. 609; *Rockhill v. Nelson*, 24 Ind. 422; *Harrow v. Myers*, 29 Id. 469; *Field v.*

*Goldsby*, 28 Ala. 218; *Hihn v. Courtis*, 31 Cal. 398; *Emerson v. Atwater*, 7 Mich. 12. In such cases it is better to leave the correction of the error to the legislature, which can control its action so as to make it prospective only, and thus prevent unjust consequences. But these authorities must not be understood as holding that a previous line of decisions affecting property rights can *in no case* be overruled. That would be pushing the doctrine altogether too far. Hence, if it should appear that the evils resulting from the principles established must be productive of greater mischief to the community than can possibly ensue from disregarding the previous adjudications on the subject, a new rule should be created: *Boon v. Bowers*, 30 Miss. 246. "When a rule of property has been once deliberately adopted and declared," say the court, in New York, "it ought not to be disturbed by the same court, except for very cogent reasons:" *Goodell v. Jackson*, 20 Johns. 722. And when a question involving important public or private rights, extending through all coming time, has been passed upon on a single occasion, and when the decision can in no just sense be said to have been acquiesced in, it is not only the right but the duty of the court when properly called on, to re-examine the questions involved, and again subject them to judicial scrutiny: *Pratt v. Brown*, 3 Wis. 603. In the case cited Judge SMITH observes: "We are by no means unmindful of the salutary tendency of the rule *stare decisis*, but at the same time we cannot be unmindful of the lessons furnished by our own consciousness, as well as by judicial history, of the liability to error and the advantages of review."

**IX. THE LAW OF THE CASE.**—When a case has been decided in the appellate court, and afterwards comes there again by appeal or writ of error, only such questions will be noticed as were not determined in the previous decision; the points of law already adjudicated become the law of the case, and are not to be reversed or departed from in any of its subsequent stages: *Overall v. Ellis*, 38 Mo. 209; *Phelan v. San Francisco*, 20 Cal. 45; *Davidson v. Dallas*, 15 Id. 82. "Nevertheless, if the *facts change* on a second trial of the whole cause, in the court below, after remanding, these may so change the nature of the case as to require a new decision as applicable thereto; and if so, the former decision ceases, under the new development, to be the law of the case. For it is clear that a party on a re-trial *de novo* may introduce new evidence, and establish an entirely different state of facts, to conform to which is