THE DOCTRINE OF STARE DECISIS AND THE SUPREME COURT OF THE PHILIPPINE ISLANDS

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I. DEFINITION AND DISTINCTION

A. *Definition*

I think it highly important, in a science so vast and intricate as the law, to employ terms in a sharp, incisive. technical definition to prevent confusion and bewilderment.

The phrase "Stare Decisis" from the Latin verb "sto" which means "to be quiet" and the word *decisum,* "settled thing," is a Latin maxim conveying the idea of the policy of some courts to abide by or adhere to decided cases. It is the abbreviated expression of the Latin maxim "Stare Decisis et non quieta movere" which means "to adhere to decided cases and not to disturb settled questions." When a point or question properly decided in a previous case comes again in litigation, it was deemed advisable and more convenient to adopt the opinion and course of reasoning of the judge rendering the former decision.[1]

It is a maxim, meaning, to adhere to precedents, and not to unsettled things which are established.[2]

The doctrine, in general, is to the effect that where a point has been once settled by decision it forms a precedent which is not afterwards to be departed from.[3]

B. *Distinctions*

Stare Decisis differs from Res Adjudicata. The former relates chiefly to law; the latter to facts.[4] The doctrine of res adjudicata bears upon parties, and others privy to the immediate parties, and restrains them from litigating anew such matters as have previously been drawn into controversy between them or those representing them, and have been authoritatively decided by a competent court.[5] One case can make up the doctrine of res adjudicata; several cases that of stare decisis. For

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[1] Bouvier's Law Dictionary, p. 1028.
[2] Corpus Juris, Vol. 58, p. 1318.
[3] Ruling Case Law, Vol. 7, p. 1000.
[4] Same v. Same 34 Mich. 211.
[5] Packet Co. v. Sickles, 5 Wallace 692.

unlike res adjudicata, which may refer to a single cause of action or defense determined by a final judgment,[6] stare decisis refers to the law or the principle applied in the past and which may be controlling on future cases altho such cases may arise from different causes of action or defenses and involving different parties.

Stare Decisis also differs from Obiter Dictum. The latter is not a decision and therefore cannot in any way be the basis of stare decisis which always connote a decision in all senses of the term. Obiter dicta are not controlling in decisions of the Supreme Court.[7] Where a question passes the court "sub silencio", the case is not binding upon the court and will not preclude it from later passing upon its validity where the question is properly raised.[9] The reason for this is well stated by Chief Justice Marshall in these words: "The question actually before the court is investigated with care, and considered in its full extent; other principles, which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing in all other cases is seldom completely investigated." [10] On the other hand, the rule is almost universal for the courts to adhere to the doctrine of stare decisis. It is an adjudicated question and the subject of its correctness is a sealed book.[11]

Stare Decisis may also be distinguished from jeopardy. In as much as the plea of once in jeopardy is the res adjudicata of the criminal case,[12] it should possess the same distinctions which the doctrine of res adjudicata bears to stare decisis. The meaning of jeopardy is, that a party shall not be tried a second time for the same offense after he has been once convicted or acquitted of the offense charged by the verdict of the jury and judgment has passed thereon for or against him.[13]

II. Analysis of the Doctrine of Stare Decisis

A. *Statement of the Doctrine*

The rule of stare decisis is the authority of judicial decisions as precedent in subsequent litigations.[14] The principle of

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[6] Van Fleet, Res Adjudicata, Vol. 1, p. 2.
[7] Wells, The Doctrine of Res Adjudicata & Stare Decisis, p. 527.
[8] Uy Po v. Collector of Customs, 34 Phil. 153.
[9] McGirr v. Hamilton & Abreu, 30 Phil. 563.
[10] Marbury v. Madison, 2 Law Edition, 60.
[11] Seale v. Mitchell, 5 Cal. 403.
[12] Albert, Law of Criminal Procedure, p. 180.
[13] Story on the Constitution, 5th Edition, Sec. 1787.
[14] Sutherland, Statutory Construction, 2nd Ed., Vol. 2, p. 898.

precedent is sometimes called the doctrine of stare decisis.[15] The doctrine is shortly this: That a decision by a court of competent jurisdiction of a point of law lying so squarely in the pathway of judicial judgment that the case could not be adjudged without deciding it, is not only binding upon the parties to the cause in judgment but the point so decided, becomes, until it is reversed or overruled, evidence of what the law is in like cases, which the courts are bound to follow, not only in cases precisely like the one which was first determined but also in those, which, however different in their origin or special circumstances, stand, or are considered to stand, upon the same principles.[16] After a legal principle has thus been well settled, it becomes a binding rule, to be applied in all cases of a similar nature.[17]

B. *Nature and Concept of the Doctrine*

The doctrine is not founded upon a mere rule of practice, changeable at the pleasure of the courts, but upon the solid basis of justice, and vitally and essentially affects the rights and interests of defendants. It is a rule applicable to all questions of law, whether declaring a principle of common law or the construction of a statute. A deliberate decision on a point of law given in a case becomes authority in other like cases; it is then the highest evidence of what the law is applicable to the subject; it should be followed unless reversed by a superior court or changed by the legislature, unless the law was manifestly misunderstood or misapplied in the case decided; and even then, after long adherence to that error, it may become fixed and incapable of judicial correction.[18]

It is a fundamental law that a precedent must be a conclusion, a decision in a cause; and not a process of reasoning, an illustration, or analogy.[19] The member of a court often agree in a decision, but differ decidedly as to the reasons and principles by which their minds have been led to a common conclusion. If the major premise, which is the law of the case, may be stated in several forms, and is stated differently by different members of the court who join in the conclusion, this diversity will impair the force of precedent. A judicial decision should be regarded as conclusive, not only on the points presented in

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[15] Gamboa, Elementary Law, p. 13.
[16] Ibid., citing Judge Dillon, pp. 13-14.
[17] Williston, Some Tendencies in the Law, p. 123.
[18] Sutherland, Statutory Construction, 2nd Ed., Vol. 2, pp. 898-9.
[19] Wells, The Doctrine of Res Adjudicata & Stare Decisis, p. 530.

argument and expressly decided, but also of every other proposition necessarily involved in reaching the conclusion expressed.[20]

The rule is stare decisis, not *stare opinionibus* or even *stare responsis*. Opinions are not legally required in most states and in these, a decision without an opinion may none the less be binding. The opinion may not logically lead to the decision at all. There may be other and better reasons for the decision than those in the opinion. There may be several and even contradictory opinions. In all these situations, the decision is as "binding" as it was before. Opinions have only a force called authority which derive it from the personality and character of the judge, from the standing of the tribunal, and from the inherent qualities of the opinion.[21]

C. *Grounds of the Authority of the Doctrine*

The operation of precedents is based on the legal presumption of the correctness of judicial decisions. It is an application of the maxim, *Res judicata pro veritate accipitur.* A matter once formally decided is decided once for all. The courts will listen to no allegation that they have been mistaken nor will they open a matter once litigated and determined. That which has been delivered in judgment must be taken for established truth. For in all probability it is true in fact, and even if not, it is expedient that it should be held as true none the less. When, therefore, a question has been judicially considered and answered, it must be answered in the same way in all subsequent cases in which the same question again arises. Only thru this rule can that consistency of judicial decision be obtained, which is essential to the administration of justice.[22] By this reliance in the law is attained.[23]

A precedent therefore, is a judicial decision which contains in itself a principle. This underlying principle is often termed the *ratio decidendi* which alone has the force of law as regards the world at large.

D. *Importance and Reasons of the Doctrine*

The policy of the doctrine is to give uniformity, certainty, and stability to the law and above all to afford the citizen a

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[20] Sutherland, Statutory Construction, 2nd Ed., Vol. 2, pp. 908-9.
[21] Max Radin, 33 California Law Review, Feb. 1933.
[22] Salmond, Jurisprudence, 7th Edition, p. 198.
[23] Halcomb v. Bonnell, 32 Mich. 8.

prompt and speedy administration of justice. An absolute disregard of this doctrine would necessarily lead to chaos and confusion, and leave the law as uncertain and undeveloped at the end as well as in the beginning.[24]

The legal ground on which this practice is now supported is that long continued usage furnishes a contemporaneous construction which must prevail over the mere technical import of words.[25]

For it is an established rule to abide by former precedents, where the same points come again in litigation: as well as to keep the scale of justice even and steady, and not liable to waver with every new judge's opinion; as also because the law in that case being solemnly declared and determined, what before was uncertain, and perhaps indifferent, has now become a permanent rule which is not in the breast of any subsequent judge to alter or vary from according to his own private judgment, but according to the known laws and customs of the lands; not delegated to pronounce a new law but to maintain and expound the old one.[26] It should require every controlling considerations to induce any court to break down a former decision, and lay again the foundations of the law.[27] For this maxim is a fundamental concept in the organization of every jural society.[28]

E. *Classes of Precedents*

Precedents may be declaratory, one which is merely the application of an already existing rule of law; or an original precedent, one which creates and applies a new rule. In the former case, the rule is applied because it is already law; in the latter case, it is law for the future because it is now applied. The legal authority of each is exactly the same.[29]

Precedents are further divisible into authoritative and persuasive. These two classes differ in respect of the kind of inference which they exercise upon the future course of the administration of justice. An authoritative precedent is one which judges must follow regardles of their beliefs or convictions. It is binding upon them and excludes their judicial discretion. Per-

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[24] William v. Gorney, 144 Indiana, 943.
[25] Sutherland, Statutory Construction, 2nd Ed., Vol. 2, p. 694.
[26] Blackstone, Laws of England, 4th Ed., Vol. 1, pp. 62-63.
[27] Hogatt v. Bingaman, 7 How (Miss) 569.
[28] Black, The Law of Judgment, Vol. 2, p. 599.
[29] Salmond, Jurisprudence, 7th Edition, pp. 188-189.

suasive, when the judges are under no obligation to follow, altho they may attach weight and merit to them as may be warranted. Generally, decisions of superior courts are authoritative; those of lower courts, merely persuasive.[30]

Authoritative precedents are of two kinds; either absolute or conditional. In the first case, the decision is unconditionally followed without question however unreasonable or erroneous it may be considered to be. It has a legal claim to implicit and unquestioning obedience. In the second case, the precedent possesses merely conditional authority when the courts possess a certain limited power of disregarding it.[31]

F. *Application and Effect of the Doctrine*

The following rules are generally recognized for the application of precedents: (a) Each court is bound by the decision of courts above it: (b) Any relevant judgment of any court is a strong argument entitled to respectful consideration; (c) a judgment is authoritative only as to its *ratio decidendi;* (d) a precedent is not abrogated by lapse of time; (e) Ancient precedents are not, in practice, commonly applicable to modern circumstances. These rules are practical and of salutary effect.[32]

There is a distinction in the application of the principle of stare decisis between questions which concern practice or those rules of conduct which have a mere present importance, and those which affect the validity and control the construction of contracts or rules of property. As to the former, legal precedents are followed unless they are manifestly wrong. As to the latter, they are followed with more persistency.[33]

No absolute rule can be given as to when stare decisis is imperative, so much depends on the particular case in which it may be invoked. It must be said however, that courts are not required in the exercise of their wide judicial discretion, to overturn principles which have been considered and acted upon as correct, and thereby disturb contracts and property, and involve everything in inexplicable confusion. There are questions where the decision do not constitute a business rule, and where a change would invalidate no business transactions conducted upon the faith of the adjudication. As an illustration, take a case involving personal liberty: a party restrained of his liberty claims

[30] Ibid., p. 191.
[31] Ibid., p. 192.
[32] Allen, Law in the Making, 2nd Edition, p. 203.
[33] Sutherland, Statutory Construction, 2nd Ed., Vol. 2 p. 899.

to be discharged under some constitutional provision; the court erroneously decides against him; the same question arises again. To change such a decision would destroy no rights acquired in the past; it would only give better protection in the future. The maxim in such a case would be entitled to but very little weight, and mere regard for stability ought not to be allowed to prevent a more perfect administration of justice. But when a decision relates to certain modes of doing business, which business enters largely into the transactions of the people, and a change of decision must necessarily invalidate everything done in the mode prescribed by the first, then, when a decision has once been made and acted upon for any considerable length of time, the maxim becomes imperative, and no court is at liberty to change.[34] They are rules of property on which the repose of the country depends; titles acquired under the proceedings of courts of competent jurisdiction must be deemed inviolable in collateral action or none can know what is his own.[35] From thence, it is the sacred duty of a court to adhere to such decisions on property unless there are the most convincing and overwhelming reasons for overruling them.[36] That judge who, from petty vanity, and for the sake of showing himself more wise and learned than his predecessors, would overturn a rule which for years had settled the rights of property should be regarded as the common enemy of mankind, and unworthy of the high trust that had been confided to him.[37] There would be no reliance where precedents would be nothing more than a precarious temporary security.[38]

G. *Limitations of the Doctrine*

The doctrine of stare decisis is not altogether absolute or inflexible. In some instances it can be set aside. But even in such cases the subsequent judges do not pretend to make a new law, but to vindicate the old one from misrepresentation. For if it be found that the former decision is manifestly absurd or unjust, it is declared, not that such a statement was a bad law, but that what is not reason is not law. In that case, the interpretation becomes the spirit of the old law.[39] In order that a court is justified in disregarding a conditionally authoritative

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[34] Sutherland, Statutory Construction, 2nd Ed., Vol. 2, pp. 902-3.
[35] Grignon's Lessee v. Astor, 2 Howard 343.
[36] Lindsay v. Lindsay, 47 Indiana 286.
[37] Welch v. Sullivan, 8 Cal. 188.
[38] Hibu v. Courtis, 31 Cal. 402.
[39] Blackstone, Laws of England, 4th Edition, Vol. 1, p. 62.

precedent, two conditions must be fulfilled. In the first place, the decision must be a wrong decision, that is, contrary to law, when there is already in existence an established rule of law on the point in question, and the decision fails to conform to it. In the second place, the decision must be a wrong decision, that is, wrong being contrary to reason. When there is no settled law to declare and follow, the courts may make law for the occasion, and in so doing, it is their duty to follow reason, and so far as they fail to do so, their decisions are wrong, and the principles involved in them are defective authority. Unreasonableness is one of the vices of a precedent no less than of a custom and of certain forms of subordinate legislation.[40]

Authorities agree that there are indeed good reasons why the doctrine of stare decisis should not be so rigidly applied to the constitutional as to other laws. In cases of purely private import, the chief desideratum is that the law remain certain, and, therefore, where a rule has been judicially declared and private rights created thereunder, the courts will not, except in the clearest cases of error, depart from the doctrine of stare decisis. When, however, public interests are involved, and especially when the question is one of constitutional construction, the matter is otherwise.[41] In the former case, mistakes may be corrected either by the higher court or by legislation, while in the latter case there is no method of correction available except thru the overruling of a mistaken decision and judgment.[42] In all cases, a departure from constitutional interpretations must be with grave reasons.[43] However, there are two grounds of justification in departing from even a single decision which has become a general rule of property, namely; (a) the necessity of preventing continued injustice; and (b) the necessity of vindicating clear and obvious principles of law.[44] And so, even if a rule of property is established by a series of decisions, resulting, however, in a dangerous precedent of monopoly, and in effect setting aside a wholesome provision in the constitution designed to suppress such abuse of the rights of property, the rule thus established, may properly be abrogated, by overruling the decisions under which it grew up to so dangerous and over-

[40] Salmond, Jurisprudence, 7th Edition, pp. 193-194.
[41] Willoughby, Constitutional Law, p. 52.
[42] Matthews, The American Constitutional System, p. 152.
[43] Black, Constitutional Law, p. 81, 3rd Edition.
[44] Lion v. Burtiss, 20 Johns 487.

whelming an influence in contravention of public policy.[45] So also, any error may be corrected when no substantial injury is to be expected from the change, or when the evils of adherence are manifestly greater than those of departure. In this case, the consideration is the eventual results.[46]

Another limitation should also be born in mind. The doctrine of stare decisis, is only applicable, in its full force, within the territorial jurisdiction of the courts making the decision, since there alone can such decisions be regarded as having established any rules. Rulings made under a similar legal system elsewhere 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. Great Britain and the thirteen 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 every 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 decision in any one of the other states upon the same point.[47]

H. *Criticisms on the Doctrine*

Some of the objections put forth by critics against the application of the doctrine of stare decisis are:

Firstly, case law is law made by judges and not by the people. It should be noticed, however, that in all constitutions of all modern states, provisions exist, assuring the impartiality and integrity of the judges on pain of removal. The judge must consider the requirements of fair dealing, even at the expense of popular disapproval. Altho the fact remains that case law is the product of judges and not by the people, yet it is not so much a defect but a characteristic of it.[48]

Secondly, case law cannot reform the law by abolition of unwanted rules. It can only add an increasing number of exceptions to existing rules, thus increasing the complexity of a legal system.

Thirdly, as Bentham objected, case law is "dog law" in that the infringer of rule only becomes conscious of his error after

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[45] San Francisco v. S. V. W. W. 48, Cal. 509.
[46] Wells, The Doctrine of Res Adjudicata & Stare Decisis, p. 576.
[47] Cooley, Constitutional Limitations, 7th Ed., p. 85.
[48] Keeton, Elem. Principles of Jurisprudence, pp. 68-69.

the infringement has taken place, and so, in some cases at least he would enjoy no opportunity whatever of avoiding wrong-doing.[49]

Lastly, it should be noticed that not everything contained in a judicial decision is in strictness a binding source of law, but only so much as is necessary for the formation of a decision by the judge upon the facts before hm.[50]

Courts have been restive under the angry criticism to which they have been subjected and have reacted in one of three ways: either by defiantly maintainting stare decisis, by painfully rationalizing it, or by boldly rejecting it. It often happens, further, that the defiant maintenance and bold rejection are both merely screens behind which courts in fact do the opposite of what they declare.[51]

III. Status of the Doctrine of Stare Decisis in Various Jurisdiction

A. *Roman Jurisprudence*

In the Roman system, precedents most certainly were not binding until the time of Augustus, but the right usually known as *jus respondendi,* conferred upon certain eminent jurists, seems to have made the precedents embodying their replies binding. Justinian himself expressly forbade any "interpretation" of his legislation, judicial or otherwise, and altho this regulation proved impossible in practice, precedents were never regarded as binding under the later Empire.[52]

B. *Some Continental Jurisprudence*

In Germany, during the Middle Ages, there was considerable development of case law, but this source, in more recent times has been allowed to fall largely out of use. In France, judicial decisions are not regarded as binding; the Civil Code expressly forbids the use of precedents, the idea in this case being obviously the same as Justinian's—that the code should be the sole authoritative source of law.[53] The codes of Prussia and Austria expressly provide that judgment shall not have the force of law. Altho the codes of Italy and Belgium are silent

[49] Ibid., p. 69.
[50] Ibid., p. 69.
[51] Max Radin, California Law Review, Feb. 1933.
[52] Keeton, Elem. Prin. of Jurisprudence, p. 66.
[53] Ibil., p. 66.

on the point, their tendency is that previous decisions are instructive but not authoritative.[54]

Spain does not seem to adhere to stare decisis. Before 1812, the function of the judiciary was to apply the plain words of the law to cases presented before them. The judges were forbidden to give opinions and in cases of doubtful nature they were to consult the king who will settle the matter once for all.[55] But by the enactment of the Constitution of 1812, the Spanish courts were reorganized and the Supreme Court was given the power to review by means of the "recurso de nulidad" all cases, civil and criminal, decided by inferior courts. But this practice was abolished by the Royal Decree of June 23, 1778. Later, the practice of review was again revived by the "Enjuiciamiento Mercantil" which required the mercantil tribunals to insert in their decisions the grounds whether of law or fact upon which their determinations were based. This practice was followed by the other courts of the kingdom by virtue of the Royal Decree of November 4, 1838. Then came the "Ley de Enjuiciamiento" of 1856 which provided among other things that all decisions handed down by all courts shall distinctly state the grounds upon which they are based, and that all such decisions must be published in the "Gazeta de Madrid" In spite of this legal provision the judges continued to decide cases according to the peculiarities and circumstances without turning back to what had been decided before; lawyers did not find ready and practical help from what were published in the gazette and for that reason the development of the law of precedent was retarded.

This historical account points plainly to the fact that no force was given to previous decisions as guiding precedents in Spain. And this is best proved by citing Article 6 of the Spanish Civil Code which makes no mention of judicial decisions as one of the sources of law and therefore the controlling factor in the disposition of a case. This omission prompted the learned commentator, Sanchez Roman to comment that "there is an apparent lack of logic in the drafting" of the Spanish Civil Code.[56] This is to be expected because Spanish jurisprudence is based upon the Civil Law of Rome which disregards previous decisions for present adjudications.

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[54] Holland, Jurisprudence, pp. 68-69.
[55] Ordenanza de Alcala, Book I, Title 28.
[56] Sanchez Roman, Treatise on the Civil Code, Vol. 2, p. 79.

C. English Jurisprudence

The history of the Common Law reveals that in early times the practice of deciding cases by precedents was unknown to the English judges. Later, however, for reasons of convenience and expediency, they allowed litigants to cite cases in court to support their respective claims. This practice began during the reign of Edward I altho the decisions were stated by Lord Hale to be "less than law, though greater evidence thereof than the opinion of any private person." [57] Bracton's use of cases is by way of illustration merely; the Yearbooks collect together cases for reference and study because they were interesting. By the seventeenth century, and at the time of Coke, precedents have become fully binding. The era of Lord Mansfield with his specially trained juries may be said to mark the Golden Age of English Case Law. At this period, precedent is indubitably the most important source of English law. At the present time, precedents are as fully binding as at any period in their history, but their importance as a source of law has been considerably diminished thru the enormous increase of legislation.[58] But while this is true, courts remain tied to the rule of precedents.

D. American Jurisprudence

The policy of the early American courts with regard to previous decision was the same as that of the British courts at that time and was followed without qualification for years and years during the English sovereignty over the American colonies. However, the declaration of independence of the colonies marked a completely new era in American jurisprudence. Since then, there seem to be a tendency in American courts to deviate from the views of British courts and had relaxed the doctrine of stare decisis. On this point, Chief Justice Marshall said: "The interpretation of British statutes adopted in the States are not with absolute authority. If the British courts vary their construction of a statute which is common to both countries, we do not hold ourselves bound to fluctuate with them." [59]

Decisions of the United States Supreme Court as to questions which are federal in nature are binding upon all courts in the United States, whether federal or state courts. But in cases not arising from the construction of the constitution, laws,

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[57] Holland, Jurisprudence, p. 69.
[58] Keeton, Elem. Prin. of Jurisprudence, pp. 66-67.
[59] Cathcart v. Robinson, 5 Pet. 280.

and treaties of the federal government, the decisions of the Supreme Court of the United States are not binding upon the supreme courts of the several States of the Union as precedents.[60] The rule in courts of coördinate jurisdiction constituting but a single system is that a decision in one shall be controlling in the other, until reversed by the appellate court.[61] Without the aid of the federal constitution and the legislation of Congress, regulating the interstate effect of public acts, records, and judicial proceedings, the judgment and decrees of each State would be regarded as foreign judgments in the courts of every other state and their effect would have to be determined by the principles of international law, by the preponderance of judicial opinions, or by such other consideration as are influential in fixing the status of judicial records brought from foreign lands.[62] But decisions of State supreme courts are binding upon inferior courts of the same State.[63]

IV. Stare Decisis in Philippine Jurisprudence

A. Legal System of the Philippines

As was stated by Justice Malcolm: There is in the Philippine Islands a unique legal system, in which the two great streams of the law the civil, the legacy of Rome to Spain, coming from the West, and the common, the inheritance of the United States from Great Britain, applied by American written laws, coming from the East have met and blended.[64]

Our civil law is mostly of Spanish origin; our procedural laws are altogether American. In the interpretation of these laws we resort to their source of origin and adopt similar if not absolutely identical construction. For it is a general rule that where a State adopts a statute of another States, it adopts also the construction placed on that statute by the courts of the States, because it is regarded as a conclusive presumption that the legislature, in passing the act, knew what construction had been placed upon it by the courts of the State whence it was borrowed.[65] Thus, our courts are bound by the rulings of the Supreme Court of the United States in construing and applying statutory enactments modelled upon or borrowed from English

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[60] Belcher v. Chambers 53 Cal. 635.
[61] McMurray v. Gorney 106 Fed. 11.
[62] Taylor v. Barron, 64 American Decisions 281.
[63] Wiggins Ferry Co. v. Chicago Rd. Co., 11 Fed. 381.
[64] Gamboa, Elementary Law, p. 32, citing Justice Malcolm.
[65] Bernis v. Becher, 1 Kansas, 248.

and American originals.[66] That a doctrine established by American jurisprudence, not contradicted by Spanish Jurisprudence, will be accepted by the Supreme Court.[67] And also, in the absence of local law, the decision of the Supreme Court of the United States based upon general principles of commercial law are binding upon the Supreme Court of the Philippine Islands.[68]

With this state of our legal system where two different jurisprudence are equally controlling, it is difficult to make a general conclusion as to what is the status of the doctrine of stare decisis in our jurisdiction. Before venturing for an answer, it will be advisable to review the few cases on stare decisis decided by our supreme court. After that, the reader shall, I hope, have a better and more plausible revelation than mine, as to the attitude of our Supreme Court with respect to the doctrine now under consideration.

B. Some Philippine Case on Stare Decisis

(a) *Kuenzle, Strief & Co. v. Insular Collector of Customs, 12 Phil. 17* —The plaintiffs imported certain cotton goods in these Islands in 1906 upon which the Collector of Customs imposed a duty of 18% per kilo according to Article 117 of the tariff laws, plus a surtax of 30%. The plaintiff contended that the surtax could not be legally imposed upon his goods because that part of Article 117 providing for an additional surtax, refers to textiles stamped, printed, or manufactured with dyed yarn and not to textiles which are plain and without figures. The defendant, on the otherhand contended that the contrary interpretation was followed since Nov. 12, 1901 and therefore ought not to be departed from. The contention of the plaintiff did not prosper in the Court of First Instance and so he appealed but the Supreme Court sustained the view of the lower, saying: "It is a rule established in the interpretation of Custom laws that where there has been a long acquiescence in a regulation by which the right of parties for years have been determined and adjusted, such interpretation should be followed in the absence of the most cogent and persuasive reasons to the contrary."

(b) *Montano v. Insular Gov't., 12 Phil. 534.*—This case called for the construction of an Act of Congress regarding the

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[66] Cuyugan v. Santos, 34 Phil. 100.
[67] Aldez v. Gay, 7 Phil. 268.
[68] Bryan, London Co. v. American Bank, 7 Phil. 255.

so-called "Manglares" in the Philippines. The Supreme Court gave the following construction: "Under the uncertain and somewhat unsatisfactory condition of the law, the custom had grown up of converting "Manglares" and nipa lands into fisheries which became a common feature of settlements along the coast and at the same time of the change of sovereignty constituted one of the most productive industries of the Islands, the abrogation of which custom, would destroy vested rights and cause a public disaster. In our opinion it was the object of Congress not to work such a result, but on the contrary, in furtherance of the purposes of the Treaty of Paris to recognize and safeguard such property."

(c) *McGirr v. Hamilton, 30 Phil. 563.*—This was a case in which the constitutionality of Act 1627 of the Philippine legislature was involved. This Act was previously applied and followed by the Supreme Court itself, but its illegality was never raised before. The Supreme Court disregarding all previous decisions declared the Act to be unconstitutional because it said, that the question of constitutionality was passed "sub silencio".

(d) *In the Matter of the Involuntary Insolvency of Rafael Fernandez, G. R. No. 38398.*—The issue in this case is whether or not the claims of the Philippine Trust Company and Smith, Bell and Company, Ltd., in its capacity as trustee of the properties of the San Nicolas Iron Works, Ltd., presented in the Involuntary insolvency proceedings of Rafael Fernandez, should be classified as ordinary or preferred. A resolution of the issue in turn depends on an answer to the question of whether or not claims not classified as preferred under the Insolvency Law, gain a special right of priority under the Civil Code. This question has already been decided in a former case, Involuntary Insolvency of Mariano Velasco & Co., 1930, XXIX O. G. 2868, where it was held that the preferential right of the civil law should be treated as approximately equivalent to the lien of the Insolvency Law and that the statutory preferences furnished by the Civil Code were not destroyed by the Insolvency Law. In spite of the decision in that Velasco case, the Supreme Court in the present case disregarded it, holding that claims not classified as preferred under the Insolvency Law cannot be thus classified with the aid of the Civil Code and gain no special right of priority under the Insolvency Law which is exclusively controlling.

The Court stated further: "Is the Court with new membership compelled to follow blindly the doctrine of the Velasco case? The rule of stare decisis is entitled to respect. Stability in the law, particularly in the business field, is desirable. But idolatrous reverence for precedent, simply as precedent, no longer rules. More important than anything else is that the court should be right. And particularly is it not wise to subordinate legal reason to case law and by so doing perpetuate error when it is brought to mind that the views now expressed conform in principle to the original and that since the first decision to the contrary was set forth there has existed a respectable opinion of non-conformity in the Court. Indeed, on at least on one occasion has the court broken away from the revamped doctrine, while even in the last case in point the court was as evenly divided as it was possible to be and still reach a decision." (Per Malcolm, with Justices Santos, Hull, Vickers, Butte, and Diaz concurring. Justices Imperial, Villa-Real, and Avanceña, dissented from the decision).

V. CONCLUSION AND SUGGESTION

The doctrine of stare decisis is the authority of judicial decisions as precedents in subsequent litigations. To afford to the citizen a sound administration of justice is the justification of its existence. Certainly, stability, and symmetry in any system of jurisprudence are the necessary results of its application. But the rule is not inflexible; it may be disregarded when the evils of adherence are manifestly greater than those of departure. Thus, decisions on constitutional question are more liable to changes than decisions on property rights.

Common law countries have venerated the doctrine; civil law countries have shown disrespect for it. In Philippine jurisprudence, the status of the doctrine of stare decisis is uncertain. Our Supreme Court had applied the doctrine in the past altho recent cases have been decided in the contrary.

The writer suggests that our high tribunal set certain fixed landmarks in their decisions, approaching correctness, though not perfection, of course for the determination as to when the doctrine of stare decisis should apply. A provision in the constitution is not necessary. But a consistent and well-defined attitude on the part of the court is indispensable.