

STARE DECISIS IN COMMONWEALTH APPELLATE COURTS. By J. DAVID MURPHY and ROBERT RUETER. [Canada: Butterworths. 1981. xv+117 pp. including index.]

DESPITE the apparently broad scope which the title of the book suggests, this publication is in fact limited in three respects. First, it deals only with “the extent to which appellate courts regard themselves bound by their own previous decisions”, the so-called concept of “horizontal” *stare decisis*, and makes only fleeting references to other equally interesting facets of precedent such as the extent, if at all, to which decisions of English courts of superior jurisdiction are still binding on various Commonwealth courts. Secondly, the book is confined to *stare decisis* in civil cases, although it is conceded that precedent as far as criminal cases are concerned poses far fewer

problems. Thirdly, and this is perhaps the most disappointing aspect of the book, is the fact that the focus is upon the Canadian context (approximately two-fifths of the book, for example, is devoted solely to *stare decisis* in Canadian appellate courts), although this is explicable on the basis that both the authors hail from Canada. There are chapters on *stare decisis* in English, Australian and New Zealand appellate courts as well, but, even so, one wonders whether the sum total of coverage as described could justify the broad claims which the title of the book seems to make. A glance at the admittedly sporadic but no less interesting literature on precedent with regard to Africa, Malaysia and Singapore, for example, will reveal that there are Commonwealth countries besides those mentioned in the book with problems which could have made for much interesting discussion (see, for example, Antony Allott, "The Authority of English Decisions in Colonial Courts" in Chapter Two of *Essays in African Law* (1960) and "Judicial Precedent in Africa Revisited" in Chapter Three of *New Essays in African Law* (1970), and, in the local context, Walter Woon, *Precedents that Bind—A Gordian Knot: Stare Decisis in the Federal Court of Malaysia and the Court of Appeal, Singapore*, (1982) 24 Mal. L.R. 1).

The book is, however, not without its merits. Chapter Two, for example, contains an admirably succinct and updated account of precedent in the English courts, as well as references to current and other pertinent articles of which there is a dearth in the late Sir Rupert Cross's *Precedent in English Law* (Third Edition, 1977). Cross must still, however, be considered the definitive work although some revision to take into account recent developments is required. There are a few minor errors in the chapter. *Worcester Works Finance Ltd. v. Codden Engineering Co. Ltd.*, [1971] 3 All E.R. 708, for example, did not escape "the notice of the commentators" for it is in fact mentioned in Cross (at pages 144 and 145). The reviewer is also a little surprised at the cursory manner in which the authority of *Police Authority for Huddersfield v. Watson*, [1947] K.B. 842 (dealing with precedent in the Divisional Court) is accepted, since the rationale enunciated by Lord Goddard C.J. in that case (*viz.* that an appellate court of final resort should hold its previous decisions to be strictly binding upon itself) must be considered superseded not only by the House of Lords Practice Statement of 1966, but also by comments in recent cases, notably *Attorney-General of Saint Christopher, Nevis and Anguilla v. Reynolds*, [1979] 3 All E.R. 129 and *Davis v. Johnson*, [1978] 1 All E.R. 1132. These latter two cases are in fact noted in the book, and the authors' failure to utilize them in the context mentioned is highlighted by their understanding and contrast of these cases with the Canadian position inasmuch as owing to procedural requirements and reasons of expense, in Canada, at least, the intermediate appellate courts are effectively the courts of last resort, thus making a strong case *against* rigid adherence of these courts to the doctrine of *stare decisis*, unlike, for example, the position of the English Court of Appeal. As an aside, this best-mentioned point should give us some food for thought in view of the fact that, owing to the statistically small number of cases which go on appeal to the Judicial Committee of the Privy Council, the undoubted expense involved, and the fact that one cannot appeal as of right (see the Judicial Committee Act, Cap. 8, Singapore Statutes, 1970 Revised Edition), our Court of Appeal is, in many ways, a *de facto* final court of appeal.

Chapter Three contains a comprehensive account of *stare decisis* in Canadian appellate courts, although one wonders whether many of the apparently conflicting cases could have been rationalised had two additional points been considered; first, the fact that some of the cases concerned antedated *Young v. Bristol Aeroplane Co. Ltd.*, [1944] K.B. 718, the leading authority which crystallised the rule (applicable by analogy to other intermediate courts of appeal in other countries which choose to adopt the principle, as did the Singapore court (albeit the High Court only): *Mah Kah Yew v. P.P.* [1971] 1 M.L.J. 1) that the English Court of Appeal is bound by its previous decisions subject to stipulated exceptions. Secondly, the fact that appeals to the Judicial Committee of the Privy Council in certain jurisdictions had already been abolished together with the fact that intermediate appellate courts were effectively the courts of last resort as mentioned above could explain the sudden departure by certain courts from the doctrine of *stare decisis*.

Chapter Four deals with the Australian and New Zealand position, albeit rather briefly. The account is clear enough although it is submitted that a closer reading of *In re Rayner*, [1948] N.Z.L.R. 455 may cast some doubts on the ostensible clarity of the proposition drawn by the authors from the case itself with regard to the practice of the New Zealand Court of Appeal.

The fifth chapter marks a sudden break with the general trend. Entitled "Stare Decisis: Collateral Issues", it covers a whole host of unrelated problems ranging from different sized panels to the nature of the *per incuriam* doctrine. Although the material is covered adequately from the student's viewpoint, certain topics could have been covered in more depth. The *per incuriam* doctrine, for example, merited a little more coverage and brevity need not be a stumbling block in this regard as the concise but comprehensive piece by Peter Wesley-Smith entitled "The Per Incuriam Doctrine" in (1980) 15 J.S.P.T.L. 58 shows.

Chapter Six deals with the rationale behind the doctrine of *stare decisis* in a rather conventional fashion, the usual pros and cons being set out. It is, again, ample fare for the (hopefully) voracious Legal Method student looking for some additional reading, but one wonders what its place is in a book like this. Even if its inclusion can be justified, the penultimate position accorded to the topic is a little puzzling.

The general thrust of the seventh and concluding chapter seems to suggest that the doctrine of *stare decisis* be done away with so far as intermediate (especially Canadian) appellate courts are concerned. But the authors end tentatively. In their view, the final decision rests on the circumstances prevailing in the country concerned and, in particular, on the nature of its legal system: "The matter is not static, but ever changing".

As a descriptive work, this publication has the virtue of being written in a crisp and simple style with copious references to relevant authorities and literature in the footnotes. There could, however, have been a little more analysis of controversial propositions and, as mentioned earlier, more coverage of precedent in other Commonwealth

countries. This latter point would surely reduce the direct value of the book for the Singapore student and teacher who must continue their study of the tangled maze of local *stare decisis* with existing materials; neither can they rely upon any further enlightenment with regard to the binding effect, if any, of the English courts for both the leading authorities of *Trimble v. Hill*, (1879) 5 App. Cas. 342 and *de Lasala v. de Lasala*, [1979] 2 All E.R. 1146, dealing with the Court of Appeal and House of Lords respectively, are tucked away in a couple of insignificant footnotes. The book, however, is a "pioneer" of sorts in this field of study and its chapters constitute a useful starting-point for comparative study, especially with regard to the local position.

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