



1940

Stare Decisis - Where Away

North Dakota State Bar Association

Follow this and additional works at: <https://commons.und.edu/ndlr>



Part of the [Law Commons](#)

Recommended Citation

North Dakota State Bar Association (1940) "Stare Decisis - Where Away," *North Dakota Law Review*: Vol. 17 : No. 4 , Article 2.

Available at: <https://commons.und.edu/ndlr/vol17/iss4/2>

This Note is brought to you for free and open access by the School of Law at UND Scholarly Commons. It has been accepted for inclusion in North Dakota Law Review by an authorized editor of UND Scholarly Commons. For more information, please contact und.common@library.und.edu.

BAR BRIEFS

PUBLISHED MONTHLY AT DICKINSON

—BY—

STATE BAR ASSOCIATION OF NORTH DAKOTA

M. L. McBride, Editor

Entered as Second Class Matter, Dec. 9, 1936, at the Postoffice at
Dickinson, North Dakota, Under the Act of August 24, 1912.

VOL. 17.

MARCH, 1941.

NO. 4.

STARE DECISIS — WHERE AWAY

Nowadays we wonder whether our ideas on what this term means are not becoming slightly mixed. To abide by the decided cases takes in a lot of territory. Facts alter cases but not the law. Perhaps to limit the term to the law in the particular case would make it a small doctrine but in establishing reliability and stability by decision we should not lose sight of equity. The courage of courts is in the exception and not the rule. No rule should be so hard and fast that with impunity it disregards inevitable change. But a variant from it must and should avoid retrospective application which visit unjust consequences on vested rights.

While we are a code state let's not go too far afield from the "characteristic" principle of the common law that gave this very principle birth. It drew its life from the equity in the case, from the exercise and right of justice to adjust the hard rule of law to fit the circumstances of the case.

And there is no reason why its practice should not be as flexible and adoptable to change as it was in its inception. It was then a legal servant— not our lord and master.

Though we want stable and reliable rules in our decisions. Our present situation in the legal field is at least partially due to a disregard of the principle of

(Continued on Next Page)

(Continued From First Page)

progress in the ever expanding administration of justice under new and changing conditions.

Of course our courts should distinguish the change—but brevity is still the soul of wit—and it can well be repeated that “adequate” brevity in this constantly increasing stream of the legal opinions of our courts would be much appreciated by the profession.

And while we are not advocates of statutory control of the decisions or the fixing of rules by that method to obtain stability, our labor is still an endless organic process to insure law to the undying body of society, it is still to the accurate, keen, just and fearless spirits of our profession to function and perform in the life of the law as it has been in the past. It is still not words but things that make the body of our law and if you haven't given much thought to old *Stare Decisis* you better begin to do so, before he gets out of control.

SEC.

EMERGENCY LAWS

For the past several years, your association has arranged with the Bismarck Tribune for the publication of the Emergency Laws and they have been sent to each member as a part of a regular issue of the Tribune. They are sent in this way to save expense. Each year we have paid part of the cost and have assisted in selecting the laws to be published. You can readily understand that it would be a useless expenditure to publish all of the Emergency Laws. For instance the renewal of the sales tax law; some repeals; some appropriations, etc. We intend to include everything of general interest, as well as those that are vital and important.

However, it takes time to obtain copies of all such laws. The force in the Secretary of State's office have their regular work and are getting out mimeograph copies of these laws as rapidly as possible. Those to be printed have been selected and are being set up for publication as fast as received from the Secretary of State's office. Headings on all of those not printed in full will be given, so that, if necessary, copies can be secured from the Secretary of State. We hope to have the publication in your hands within the next week or ten days.

SEC.

BANKRUPTCY - FRAZIER-LEMKE ACT NATURE OF PROCEEDINGS

A farmer-debtor seeks to have the land appraised and be allowed to redeem it at that appraised amount. The secured creditor, however, claimed that according to Section 75 subsection (s) (3), its request for a sale took precedence over any such