where there is a stream of judgments in the same sense, comparatively little weight attaches to them. In Scotland the continental theory, resting as it does upon the traditions of the Roman Law, held its own until towards the and of the 18th century. Erskine, a very high authority upon the law at that period, uses language which would be accepted as correct in France at the present day. His Institutes were published in 1773. He says speaking of prior decisions of the Court of Session; (the Supreme Court of Scotland) they have no proper authority in similar cases; because the tacit consent on which unwritten law is founded cannot be inferred from the judicial proceedings of any court of law however distinguished by dignity or character, and judgments ought not to be pronounced by examples or precedents.[1] "Decisions therefore," says Erskine, "though they bind the parties litigating, create no obligation on the judges to follow in the same track, if it shall appear to them contrary to law. It is, however, certain that they are frequently the occasion of establishing usages, which after they have gathered force by a sufficient length of time, must from the tacit consent of the state make part of our unwritten law" (Inst. 1. 1. 47). In the reports of Scots cases during the 18th century, the English rule is gradually winning its way to recognition. (See c. g. Hailes' Reports *passim*. In one case Lord Gardenston says: "One decision is nothing. This puts me in mind of what Gulliver reports to the law of England, that if once Judges go wrong they make it a rule never to come right").

[1] This is the Roman law text always cited upon this point by French writers "non exemplis sed legibus judicandum est." It is in a rescript of the year 529 by Justinian himself, and the whole passage very clearly states that no decision is to have binding authority. Code, 7, 45, 13.