

THE AUTHORITY OF AMERICAN DECISIONS IN
CANADIAN AND ENGLISH COURTS.

An interesting question for the practitioner is, how far the decisions of American Courts are authorities in our courts. English decisions are controlling by virtue of an express statutory provision, which makes the common law of England the law of Ontario. R.S.O., 1897, c. 111, s. 1, reads as follows: "In all matters of controversy relative to property and civil rights, resort shall continue to be had to the laws of England as they stood on the said 15th day of October, 1792, as the rule for the decision of the same. . . ."

In theory the common law of England does not change; the courts in England and Ontario only discover what that law is, and apply the principles of it from time to time to different sets of circumstances. And since courts may err in declaring what the law is, although the law itself never varies, it may happen that in order to give due effect to the above statute, the actual law of England, as it stood in 1792, must be sought in a decision of an English court of the present year, which overrules and supersedes a case decided prior to 1792. But it cannot be said that the modern courts of the United States of America are in this sense authoritative exponents of the law of England as it stood in 1792.

The law of most of the States of the American Union it is true is founded on the common law of England, but the decisions of American courts have never been accepted as authorities either in England or in Canada. Recourse is had to them merely for the sake of the reasoning which is taken as a guide by our courts when the facts of the cited cases are similar to those of the case under consideration, the arguments themselves being weighed, and rejected or accepted, according as the court think proper.

The following extracts from recent reports will show the attitude of the courts of England and Canada upon this subject.

"An American case, the *Home Insurance Co. v. Holway*, 39 Am. Rep. 179, although of course not an authority in any way binding on us, is well worthy of consideration. The circumstances there were very similar to those in the appeal before us, and the numerous American authorities to the same effect cited in the judgment give it great weight." Per Strong, C. J. in *Niagara District Fruit Growers' Stock Co. v. Walker* (1896) 26 S.C.R. at p. 639.