

tially the same; a second appeal is authorized where the cause is remanded and a new trial ordered, but such second appeal brings up for consideration by the appellate court such things only as occurred subsequently to the order of remand, and does not authorize an inquiry into and an examination anew into the merits of the original judgment, decree or order, or into any questions which were properly before the court on the first appeal, or could have been properly presented to the court on that appeal.

Concisely stated, the doctrine of "the law of the case" is that an adjudication by a final court of appeal becomes the law of the case upon all subsequent trials thereof and proceedings therein, and is regarded as a wholesome rule and should be enforced, where no new proof is introduced at the retrial on remand; but questions of fact are not within the rule, and anything an appellate court may have said in respect thereto on a former appeal cannot bind the trial court on a retrial. From this it follows that where an appellate court states a principle or rule of law necessary to the decision—and some of the cases go even farther than this; but they are not thought to be sound in so holding—that principle or rule of law must be adhered to in all subsequent proceedings in that cause, unless the facts on the retrial are substantially different from those on the first trial, and such former decision is to be followed in its spirit as well as its letter, even though in a subsequent consideration of the case the judges of the appellate court are convinced that their former decision was fundamentally erroneous.

This rule, in all its strictness, applies, however, it seems, in those cases only in which the judges of the appellate court agree upon questions of law; for if they fail to so agree the decision does not become the law in the case, and cannot serve as a rule or guide to the lower court upon the retrial of the cause.

On second appeals the final court of appeals is subject to and bound by this rule the same as the trial courts, and must apply and enforce the decision in the first appeal in its spirit as well as its letter, even though additional assignments of error are made raising, upon the second appeal, questions which were not presented on the first appeal. The rule, however, is inapplicable