

Statement of the Case.

FIDELITY UNION TRUST CO. ET AL., EXECUTORS,
v. FIELD.CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
THIRD CIRCUIT.No. 32. Argued November 12, 13, 1940.—Decided December 9,
1940.

1. Where the applicable rule of decision is the state law, the duty of the federal court is to ascertain and apply that law even though it has not been expounded by the highest court of the State. P. 177.
2. An intermediate state court in declaring and applying the state law is acting as an organ of the State, and its determination, in the absence of more convincing evidence of what the state law is, should be followed by a federal court in deciding a state question. P. 177.
3. Certain statutes of New Jersey had been held by the state Court of Chancery, in two cases decided independently by two Vice-Chancellors, not to have changed the preëxisting law of the State with respect to the insufficiency of a mere savings bank deposit made by a decedent in his own name as "trustee" for another, but over which he exercised complete control during his life, to establish a gift *inter vivos* or to create a trust as against the decedent's legal representatives. So far as appeared, the Court of Appeals of New Jersey had not expressed any opinion on the construction or effect of these statutes, and the decisions of the Chancery court stood as the only exposition of the relevant state law. *Held*, in a case presenting the same question, that a federal court was bound to follow the decisions of the Chancery court, and was not at liberty to reject them merely because it did not agree with their reasoning. P. 178.
4. It is inadmissible that there should be one rule of state law for litigants in the state courts and another rule, simply because of diverse citizenship, for litigants in the federal courts. P. 180.

108 F. 2d 521, reversed; District Court affirmed.

CERTIORARI, 309 U. S. 652, to review the reversal of a decree of the District Court which declined to fasten a trust on a savings bank account. Jurisdiction was by diversity of citizenship.

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Mr. Charles Danzig, with whom *Mr. Francis F. Welsh* was on the brief, for petitioners.

The New Jersey statute, as construed by the Court of Chancery of New Jersey, should have been applied. *Erie R. Co. v. Tompkins*, 304 U. S. 64; *Ruhlin v. New York Life Ins. Co.*, 304 U. S. 202; *Rosenthal v. New York Life Ins. Co.*, 304 U. S. 263; *Kuhn v. Fairmont*, 215 U. S. 349, 372; *Brine v. Hartford Fire Ins. Co.*, 96 U. S. 627; *Masino v. West Jersey & S. S. R. Co.*, 41 F. 2d 646; *Murray v. Payne*, 273 F. 820; *Island Development Co. v. McGeorge*, 26 F. 2d 841; cert. den. 278 U. S. 642; cf., *Dorrance v. Martin*, 12 F. Supp. 746; aff'd 296 U. S. 393; and, following the Pennsylvania Superior Courts (not the highest court of Pennsylvania) *Taplinger v. Northwestern National Bank*, 101 F. 2d 274; *Berlet v. Lehigh Valley Silk Mills*, 287 F. 769; cf., *Steinbach v. Metzger*, 63 F. 2d 74.

See *Blair v. Commissioner of Internal Revenue*, 300 U. S. 5, at p. 10; *New York Life Ins. Co. v. Ruhlin*, 25 F. Supp. 65, aff'd 106 F. 2d 65, 69; cert. den. 309 U. S. 655.

In many other cases, decisions of courts lower than the highest court of the State have been followed: *In re Gilligan*, 152 F. 605; cert. den., 206 U. S. 563; *American Optometric Assn. v. Ritholz*, 101 F. 2d 883; cert. den., 307 U. S. 647; *Delaware & Hudson R. Corp. v. Bonzih*, 105 F. 2d 541; *In re Wiegand*, 27 F. Supp. 725; *Gallagher v. Florida East Coast Ry.*, 196 F. 1000. Cf. *Tipton v. Atchison, T. & S. F. Ry. Co.*, 298 U. S. 141.

The Third Circuit has followed the Court of Chancery of New Jersey under the rule of the *Hilt* case in no less than three cases: *Greiman v. Metropolitan Life Ins. Co.*, 96 F. 2d 685; *Ex parte Zwillman*, 48 F. 78, appeal dismissed, 144 U. S. 310; *Radin v. Commissioner of Internal Revenue*, 33 F. 2d 39, 40.

The rulings of the Court of Chancery carry equal weight with those of the New Jersey Supreme Court in

the Court of Errors and Appeals. *Ramsey v. Hutchinson*, 117 N. J. L. 222.

Since it has been uniformly held that the courts of the United States are compelled to observe the decisions of the Supreme Court of New Jersey construing the statutes of that State, as being declaratory of the law of that State (*Erie R. Co. v. Hilt*, 247 U. S. 97, 100; *Erie R. Co. v. Duplak*, 286 U. S. 440, 443; and *North Philadelphia Trust Co. v. Smith*, 13 F. 2d 585, 586), it follows that the decision in the case under review, which, in effect, ignored the decisions of the Court of Chancery likewise construing a statute of that State, must be based on the view that the Court of Chancery is not of equal rank or importance with the State Supreme Court. Such reasoning is patently erroneous. *Pennsylvania R. Co. v. Nat. Docks Ry. Co.*, 54 N. J. Eq. 652; *In re appointment of Vice-Chancellors*, 105 N. J. Eq. 759; *Gregory v. Gregory*, 67 N. J. Eq. 7, 10-11; *Philadelphia & Camden Ferry Co. v. Johnson*, 97 N. J. Eq. 296, 297; *Ramsey v. Hutchinson*, 117 N. J. L. 222; *Cassatt v. First National Bank of West New York*, 9 N. J. Misc. 222.

The Justices of the Supreme Court and the Chancellor both sit on the Court of Errors and Appeals, but the Chancellor is the president of the Court of Errors and Appeals.

Although, as stated in *Ludlow v. Executors of Ludlow*, 4 N. J. L. 451, and in *Whitehead v. Gray*, 12 N. J. L. 36, the Supreme Court has the superintendence of all inferior courts both civil and criminal, nowhere is it given superintendence over the Court of Chancery, nor has it ever attempted to assert such superintendence.

Federal courts, charged with a duty to ascertain a state law, need not give greater weight to decisions of a local court than other courts in the same State but outside of its territorial jurisdiction would accord, and are free to make an independent determination of state law

Argument for Respondent.

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in the same manner and subject to the same limitations as such other state courts. Cf. 53 Harv. Law Rev., No. 5, p. 880. But where the jurisdiction of an important state court, such as the Court of Chancery of New Jersey, is state-wide, its determination as to the prevailing state law should be followed by federal courts, particularly where its decisions have not been challenged for years by any other court in the State, and where the legislature has made no attempt to modify or amend the statute construed but has re-enacted it. See *Baltimore & Ohio R. Co. v. Baugh*, 149 U. S. 368.

Mr. Russell C. MacFall for respondent.

The New Jersey statute of 1932 validated tentative trusts with respect to savings bank deposits.

The Court of Chancery in *Thatcher v. Trenton Trust Co.*, 119 N. J. Eq. 408, and *Travers v. Reid*, 119 N. J. Eq. 416, and the trial court below, in refusing to apply the 1932 statute, disregarded fundamental rules of construction. No consideration was given to the presumption of the constitutionality of the Act; nor to the presumption that the legislature did not intend to adopt a superfluous law; nor to the rule that where an Act is unambiguous in its terms there is no room for judicial construction because the language is presumed to evince the legislative intent; nor to the rule that where an Act is susceptible of two constructions, that which will validate it must be adopted.

If such decisions carried the weight and authority claimed for them, it would be necessary to recognize that a situation exists whereby the will of the people of the State of New Jersey, as expressed through its legislature, may be set aside solely by the decision of a trial judge.

But that is not the fact. The effect and validity of the statute will ultimately be determined by the Court of Errors and Appeals of New Jersey. The decisions of the Court of Chancery do not settle the law of the State.

Dorman v. West Jersey Title & Guaranty Co., 92 N. J. L. 487, 489; *Flagg v. Johansen*, 124 N. J. L. 456; *McGoldrick v. Grebenstein*, 108 N. J. L. 335; *Stabel v. Gertel*, 11 N. J. Misc. 247, affirmed, 111 N. J. L. 296; *Kicey v. Kicey*, 112 N. J. Eq. 459; *Gregory v. Gregory*, 67 N. J. Eq. 7. Cf. *Ramsey v. Hutchinson*, 117 N. J. L. 222.

Until the effect of the statute is finally determined by New Jersey's court of last resort, or at least by an authoritative appellate court of that State, the federal courts are free to determine whether or not the decisions of the Court of Chancery truly express the local law.

No advantage exists to the litigants because the federal jurisdiction has been invoked, nor should any disadvantage result, and if in an identical action in the state courts those courts are free to disagree with the decisions of the Court of Chancery, the federal courts likewise are free, and are charged with the duty of determining and applying the applicable local law.

Erie Railroad Co. v. Tompkins, 304 U. S. 64, and *Ruhlin v. New York Life Insurance Co.*, 304 U. S. 202, left untouched the well established rule, reiterated by this Court in *Minnesota ex rel. Pearson v. Probate Court of Ramsey County*, 309 U. S. 270, that the federal courts are bound by the decisions of the highest court of the State in matters depending upon the construction of state statutes or constitution.

In *Blair v. Commissioner of Internal Revenue*, 300 U. S. 5, this Court found that the decision of the state appellate court was *res judicata*.

In *Russell v. Todd*, 309 U. S. 280, this Court followed the decision of the Appellate Division, an intermediate appellate court, not because it felt bound by that decision in the absence of a ruling upon the precise question by the court of last resort, but because the reasoning of the decision was persuasive.

The Circuit Court of Appeals correctly stated the rule: The federal courts should in all instances follow

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the law of the State with respect to the construction of state statutes. Where that law has been determined by the courts of last resort their decisions are *stare decisis*, and must be followed irrespective of the federal courts' opinion as to what the law ought to be. As to pronouncements of other state courts, however, the federal courts are not so bound, but may conclude that the decision does not truly express the state law.

Other decisions cited or discussed were: *Burns Mortgage Co. v. Fried*, 292 U. S. 487; *Kuhn v. Fairmont Coal Co.*, 215 U. S. 349; *Black & White Taxicab Co. v. Brown & Yellow Taxicab Co.*, 276 U. S. 518, 532-536; *Brine v. Hartford Fire Ins. Co.*, 96 U. S. 627; *New York Life Ins. Co. v. Ruhlin*, 25 F. Supp. 65; *DeFeo v. Peoples Gas Co.*, 104 N. J. L. 156; *Irving National Bank v. Law*, 9 F. 2d 536.

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

In 1935, Edith M. Peck caused the title of a savings bank account standing in her name to be transferred on the records of the bank to "Edith M. Peck, in trust for Ethel Adelaide Field." Miss Peck retained exclusive control over the account, with sole right of withdrawal and right of revocation, and gave no further notice of the existence of a trust.

This suit was brought by Ethel Adelaide Field against the bank and the executors of Miss Peck to obtain a decree that the credit balance of the account belonged to the complainant. The executors denied the validity of the trust and claimed title. The District Court found in favor of the executors upon the ground that under the law of New Jersey there was no trust and no valid gift. The Circuit Court of Appeals reversed the judgment, holding that under a state statute the complainant was entitled to recover. In so ruling, the court declined

to follow contrary decisions of the Chancery Court of New Jersey. 108 F. 2d 521. In view of the importance of the question thus presented, we granted certiorari. 309 U. S. 652.

In 1932, the legislature of New Jersey passed four statutes, in similar terms and approved on the same date, dealing with trust deposits in banks. The text of one of these provisions is set forth in the margin.¹ Prior to these statutes, it had been the law of New Jersey that a mere savings bank deposit made by a decedent in his own name as trustee for another, over which the decedent exercised complete control during his life, was insufficient to establish a gift *inter vivos* or to create a trust as against the decedent's legal representatives. *Nicklas v. Parker*, 69 N. J. Eq. 743, affirmed, 71 N. J. Eq. 777; 61 A. 267; *Johnson v. Savings Investment & Trust Co.*, 107 N. J. Eq. 547; 153 A. 382, affirmed, 110 N. J. Eq. 466; 160 A. 371.

The statutes of 1932 came before the Chancery Court of New Jersey in 1936, in two cases decided independently by two Vice-Chancellors, *Thatcher v. Trenton Trust Co.*,

¹Chapter 40, New Jersey Session Laws of 1932, § 1, is as follows:

"1. Whenever any deposit shall be made with any savings bank, trust company or bank by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the savings bank, trust company or bank, in the event of the death of the trustee, the same or any part thereof, together with the dividends or interest thereon, shall be paid to the person in trust for whom the said deposit was made, or to his or her legal representatives and the legal representatives of the deceased trustee shall not be entitled to the funds so deposited nor to the dividends or interest thereon notwithstanding that the funds so deposited may have been the property of the trustee; *provided*, that the person for whom the deposit was made, if a minor, shall not draw the same during his or her minority without the written consent of the legal representatives of said trustee." See Revised Statutes of New Jersey, 1937, 17: 9-4.

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119 N. J. Eq. 408; 182 A. 912, and *Travers v. Reid*, 119 N. J. Eq. 416; 182 A. 908. In the *Thatcher* case it appeared that the decedent, at the time of her death in 1934, had two bank balances standing to her credit "in trust for Clifford Thatcher," the complainant. The bill was dismissed. The court found that there were no facts, beyond the mere opening of the account in that manner, "in any way tending to prove the declaration of a trust." The court examined the legislation of 1932, which it was argued had changed the law of the State, and after considering possible purposes of the legislature and analyzing the language employed, which was deemed to be "confused" and "difficult to comprehend," the court decided that the legislation was inoperative to change the law applicable to the facts before the court. In the *Travers* case, the decedent had changed his bank account to his name "in trust for Joseph Jennings," a minor. In a suit by the decedent's executrix to recover the money, a motion by the minor's guardian to strike the bill for want of equity and upon the ground that the fund was the property of the ward or held in trust for him, was denied. After stating the law as it stood before the statutes of 1932, the court concluded that they had not been effective to alter the previous legal requirements of a gift *inter vivos* or a valid trust. These cases were not reviewed by the Court of Errors and Appeals of New Jersey and, so far as appears, that court has not expressed an opinion upon the construction and effect of the statutory provisions.²

² In *Cutts v. Najdrowski*, 123 N. J. Eq. 481; 198 A. 885 (1938), the Court of Errors and Appeals held that the validity of a trust of choses in action created by a transaction *inter vivos* was determined by the law of the place where the transaction occurred, in that case New York. In *Trust Company of New Jersey v. Farawell*, 127 N. J. Eq. 45; 11 A. 2d 98 (1940), the Court of Errors and Appeals held that, where the decedent had made a deposit in her name in trust for her daughters, and the savings bank book was

The Circuit Court of Appeals found it impossible to distinguish the facts in the two Chancery cases from those shown here. The court recognized its duty to follow the law of the State and said that where that law had been determined by the state court of last resort its decision must be followed irrespective of the federal court's opinion of what the law ought to be. But the majority of the Circuit Court of Appeals took the view that it was not so bound "by the pronouncements of other state courts" but might conclude that "the decision does not truly express the state law." The court held that the statute of 1932 was "clearly constitutional and unambiguous" and that "contrary decisions" of the Chancery Court of New Jersey were not binding. Accordingly, the judgment of the District Court was reversed.

We think that this ruling was erroneous. The highest state court is the final authority on state law (*Beals v. Hale*, 4 How. 37, 54; *Erie Railroad Co. v. Tompkins*, 304 U. S. 64, 78), but it is still the duty of the federal courts, where the state law supplies the rule of decision,³ to ascertain and apply that law even though it has not been expounded by the highest court of the State. See *Ruhlin v. New York Life Insurance Co.*, 304 U. S. 202, 209. An intermediate state court in declaring and applying the state law is acting as an organ of the State and its deter-

thereafter in the possession of the daughters and withdrawals were made upon the signatures of the mother and the daughters and were used for maintaining properties devised to the daughters by the mother shortly after the account was opened, there was sufficient evidence to show a presently effective trust. The court said that such a trust depends essentially upon the same principles "that activate a gift *inter vivos*, comprising donative intent, delivery of the subject-matter to the extent that delivery is possible or can be indicated, and the abdication by the donor of dominion over the subject-matter." *Id.*, p. 48. In these cases, the court did not refer to the statutes of 1932 or to the Chancery decisions cited in the above text.

³ Judiciary Act of 1789, § 34; R. S. 721, 28 U. S. C. 725.

mination, in the absence of more convincing evidence of what the state law is, should be followed by a federal court in deciding a state question. We have declared that principle in *West v. American Telephone & Telegraph Co.*, *post*, p. 223. It is true that in that case an intermediate appellate court of the State had determined the immediate question as between the same parties in a prior suit, and the highest state court had refused to review the lower court's decision, but we set forth the broader principle as applicable to the decision of an intermediate court, in the absence of a decision by the highest court, whether the question is one of statute or common law.

Here, the question was as to the construction and effect of a state statute. The federal court was not at liberty to undertake the determination of that question on its own reasoning independent of the construction and effect which the State itself accorded to its statute. That construction and effect are shown by the judicial action through which the State interprets and applies its legislation. That judicial action in this instance has been taken by the Chancery Court of New Jersey and we have no other evidence of the state law in this relation. Equity decrees in New Jersey are entered by the Chancellor, who constitutes the Court of Chancery,⁴ upon the advice of the Vice-Chancellors,⁵ and these decrees, like the judgments of the Supreme Court of New Jersey, are subject to review only by the Court of Errors and Appeals.⁶ We have held that the decision of the Supreme Court upon the construction of a state statute should be followed in the absence of an expression of a countervailing view by the State's highest court (*Erie Railroad Co. v.*

⁴ N. J. Constitution, Art. VI, § 4.

⁵ See *Gregory v. Gregory*, 67 N. J. Eq. 7, 10, 11; 58 A. 287; *In re Appointment of Vice-Chancellors*, 105 N. J. Eq. 759; 148 A. 570.

⁶ Revised Statutes of New Jersey, 2: 27-350, 2: 29-117.

Hilt, 247 U. S. 97, 100, 101; *Erie Railroad Co. v. Duplak*, 286 U. S. 440, 444), and we think that the decisions of the Court of Chancery are entitled to like respect as announcing the law of the State.

While, of course, the decisions of the Court of Chancery are not binding on the Court of Errors and Appeals, a uniform ruling either by the Court of Chancery or by the Supreme Court over a course of years will not be set aside by the highest court "except for cogent and important reasons." *Ramsey v. Hutchinson*, 117 N. J. L. 222, 223; 187 A. 650. It appears that ordinarily the decisions of the Court of Chancery, if they have not been disapproved, are treated as binding in later cases in chancery (*Philadelphia & Camden Ferry Co. v. Johnson*, 94 N. J. Eq., 296, 297; 121 A. 900), but there is always, as respondent urges, the possibility that a particular decision of the Court of Chancery will not be followed by the Supreme Court (see *Flagg v. Johansen*, 124 N. J. L. 456, 461; 12 A. 2d 374) or even by the Court of Chancery itself. See *Kicey v. Kicey*, 112 N. J. Eq. 459, 461; 164 A. 684. It is the function of the court of last resort to resolve such conflicts as may be created by decisions of the lower courts, and except in rare instances that function is performed and the law is settled accordingly. Here, however, there is no conflict of decision. Whether there ever will be, or the Court of Errors and Appeals will disapprove the rulings in the *Thatcher* and *Travers* cases, is merely a matter of conjecture. See *West v. American Telephone & Telegraph Co.*, *supra*. At the present time the *Thatcher* and *Travers* cases stand as the only exposition of the law of the State with respect to the construction and effect of the statutes of 1932, and the Circuit Court of Appeals was not at liberty to reject these decisions merely because it did not agree with their reasoning.

The question has practical aspects of great importance in the proper administration of justice in the federal

courts. It is inadmissible that there should be one rule of state law for litigants in the state courts and another rule for litigants who bring the same question before the federal courts owing to the circumstance of diversity of citizenship. In the absence of any contrary showing, the rule of the *Thatcher* and *Travers* cases appears to be the one which would be applied in litigation in the state court, and whether believed to be sound or unsound, it should have been followed by the Circuit Court of Appeals.

The decree of the Circuit Court of Appeals is reversed and that of the District Court is affirmed.

Reversed.

SIX COMPANIES OF CALIFORNIA ET AL. *v.* JOINT HIGHWAY DISTRICT NO. 13 OF CALIFORNIA.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 267. Argued November 13, 14, 1940.—Decided December 9, 1940.

1. An announcement of state law by an intermediate state appellate court, in the absence of a contrary ruling by the highest state court or of other convincing evidence that the state law is otherwise, should be followed by federal courts. P. 188.
2. An intermediate appellate court of California had ruled that, in that State, a stipulation in a construction contract for liquidated damages in case of delay in completion was inapplicable after abandonment of the work. This, apparently, had not been disapproved, and there was no convincing evidence that the law of the State was otherwise. *Held*, that the ruling should have been followed by the federal courts in a case involving the same questions, in California. P. 188.

110 F. 2d 620, reversed.

CERTIORARI, *post*, p. 631, to review the affirmance of a judgment for damages awarded on a cross-complaint, against a building contractor for delay in completing