ORDER.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Northern District of New York, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said Circuit Court in this cause be, and the same is hereby, reversed, with costs, and that this cause be, and the same is hereby, remanded to the said Circuit Court, with directions to award a *venire facias de novo.*

JONATHAN W. NESMITH AND THOMAS NESMITH, COMPLAINANTS, *v.* THOMAS C. SHELDON, HORACE H. COMSTOCK, DAVID FRENCH, WILLIAM E. PETERS, JAMES FORTON, ATTA E. MATHER, HENRY B. HOLBROOK, SAMUEL P. MEAD, FRANCIS E. ELDRED, PHEBE ANN DEAN, CULLEN BROWN, AND CHARLES H. STEWART, RESPONDENTS.

The legislature of Michigan passed an act on the 15th March, 1837, entitled "An act to organize and regulate banking associations," and on the 30th of December, 1837, an act to amend the former act. By the first, any persons were allowed to form associations for the purposes of banking upon the terms specified in the law; and by the second, the stockholders were made liable, in their individual character, under certain circumstances, for the debts of the association.

The associations formed under these acts are corporations within the meaning of the constitution of Michigan, and the acts are unconstitutional and void.

The second section of the twelfth article of the constitution forbidding the legislature from "passing any act of incorporation unless with the assent of at least two thirds of each house," the judgment of the legislature is required to be exercised upon the propriety of creating each particular corporation, and two thirds of each house must sanction and approve each individual charter.

The Supreme Court of the State of Michigan has so construed its constitution, and it is the established doctrine of this court, that it will adopt and follow the decisions of the State courts in the construction of their own statutes where that construction has been settled by the decision of their highest judicial tribunal.[1]

THIS case was formerly before this court, on a certificate of division in opinion between the judges of the Circuit

[1] APPLIED. *Williamson* v. *Berry*, 8 How., 559. FOLLOWED. *Fairfield County* v. *Gallatin*, 10 Otto, 52. CITED. *Van Rensselaer* v. *Kearney*, 11 How., 318; *Leffingwell* v. *Warren*, 2 Black, 603.

Court for the District of Michigan. Its facts and the reasons for its dismissal will be found in 6 How., 41.

It now came up upon the following certificate of division in opinion.

*"This case having been remanded by the Supreme Court, on the ground that it had not been properly [*813 certified on certain points under the act of Congress, and the cause being brought before the court for their consideration and decision, the opinions of the judges are opposed on the following point:—

"Whether the banking associations organized under the act of the legislature of the State of Michigan entitled 'An act to organize and regulate banking associations,' approved March 15th, 1837, and the amended act entitled 'An act to amend an act entitled "An act to regulate banking associations and for other purposes,"' approved December 30th, 1837, were or were not corporations or bodies corporate, within the meaning of the constitution of the State of Michigan."

Article fourth, section first, of the constitution of the State of Michigan is as follows:—"The legislative power shall be vested in a Senate and House of Representatives."

Section second of article twelfth of said constitution is as follows:—"The legislature shall pass no act of incorporation, unless with the assent of at least two thirds of each house."

The first act referred to in the question upon which the judges decided, namely, that of March 15th, 1837, authorized any persons to form associations for the purpose of banking upon the terms specified in the law. It was passed by a vote of two thirds of each branch of the legislature.

The second act referred to provided as follows:—That, "for all debts of such banking association, the directors thereof, if such association shall become insolvent, in the first place shall be liable in their individual capacity to the full amount which such insolvent association may be indebted; and each other stockholder shall thereafter be also liable in like manner, in proportion to his or her amount of stock, for the payment of the full amount of the debts of such insolvent association."

The bill filed by the Nesmiths claimed to hold the defendants responsible, as stockholders, for the debts due by the Detroit City Bank.

The bill was demurred to, and, upon the hearing, the division between the judges occurred as above mentioned, and was certified to this court.

It was argued by *Mr. Seaman*, for the complainants, and *Mr. Romeyn*, for the defendants.

Mr. Seaman, in noticing the argument of the binding authority of the decision of the Supreme Court of Michigan, said:—

It is insisted by the defendants' counsel, that the case of *814] **Green* v. *Graves* is a judicial exposition, by the Supreme Court, of the constitution of the State, and of the general banking acts passed by the State legislature, and comes within the principles established by this court in the case of *Green* v. *Neal*, reported in 6 Pet., 291. The point there decided is, that "a fixed and received construction of a statute of a State by its own courts makes a part of the statute law," citing the case of *Shelby* v. *Guy*, 11 Wheat., 361, and also a case in 7 Wheat., 361, and several other cases. This rule is adopted on account of the State statute forming a rule of property, and it applies more particularly to real estate, as is stated in 2 How., 125, and 5 Cranch, 22. As stated in 6 Pet., 298, rights are acquired under this rule, and it regulates all the transactions which come within its scope; and on page 296, referring to the case of *Massie* v. *Watts*, 6 Cranch, 165, the court says,—"A great proportion of the landed property of the country depends on adhering to them." The professed object of the rule is, to prevent two rules of property, and particularly in relation to real property, in the same State,—one in the State courts, and another in the national courts. This is undoubtedly desirable. The principal reason on which the rule is founded appears to be this, as referred to on pages 298 and 296 in 6 Pet., citing the case of *McKeen* v. *Delaney* in 5 Cranch, 22, that when the State courts have given a construction to their statutes, and contracts, deeds, &c., have been made in pursuance of such construction, and rights have been thus acquired and have become vested, those rights ought not to be divested and contracts invalidated by a different construction of the statute by the national courts. This is undoubtedly in accordance with the principles of natural justice, and is sound reason as well as sound law. The principle recognizes the decision of the State court as forming "part of the statute," and thereby recognizes the highest court of the State as part of the law-making power; as vested with the power of legislating and making laws,—that is, of engrafting upon the enactments of the legislature new clauses and sections, explanatory of the original statutes; and that acts done, contracts made, and rights acquired under these judicial enactments, called decisions, shall be equally valid and sacred in the national as in the State courts. All this seems to be correct; the legislative power of our courts seems to arise from the structure of our institutions; and so far as regards common law rights, it arises from the very nature of things. The only difficulty in the case arises from the fact, that human reason is weak and feeble, short-sighted, cannot look into futurity to see the ultimate effect of its own opinions, and is extremely liable to be swayed by passion, prejudice, and *interest; and in attempting to engraft upon the statute explanatory clauses and sections, judges often [*815 materially change the purport, nature, and effect of it. If judges were omniscient in wisdom, pure in morals, free from passion and prejudice, and unerring in judgment, this difficulty would not exist. But let us suppose the State courts do, in effect, materially change the statute in constructing it, as seems to have been suspected and intimated by this court in the case of *McKeen* v. *Delaney*, 5 Cranch, 22, and rights are acquired under and on the faith of such wrong judicial expositions; such rights ought to be protected, and for that purpose the wrong judicial construction ought to be regarded as an alteration, as an amendment to the statute, and should be so treated, so far as respects all rights accruing under it, by courts of justice, both State and national.

The question, then, resolves itself into this,—Should these judicial alterations and amendments of the statute have a retrospective, or only a prospective effect? If they are to have only a prospective effect, their influence may be in the highest degree salutary; but if a retrospective effect and application are to be given to them, the consequences will be in many cases very pernicious. The second question is,—Will the judges of this court presume that the State Courts are infallible, and their decisions an unerring exposition of the State statute, and shut their eyes entirely to the terms and provisions of the statute, and refuse to inquire whether the decision of a State court is a fair explanatory law, or should be regarded in the light of a material amendment and change of the original statute. If your honors should look into the statute as well as into the decision, and find the decision equivalent to an amendment of the statute, then the amendment should not have a retrospective effect; and if the State courts give it a retrospective effect, and thereby wrong, injure, and defraud their own citizens, who are obliged to sue in those courts, it is no reason why the national courts, which were created to protect the rights of citizens of other States, should allow their suitors to be wronged and defrauded in like manner. The next question is,—If your honors allow the State courts, not only to assume law-making powers, but to set the legislature of the State at defiance, disregard their statutes, and engraft upon such statutes as many alterations and amendments as they think fit and proper, will your honors allow them to play the same pranks with the State constitutions also, and engraft as many of their dogmas and as many alterations and amendments upon these fundamental laws of the people as they see fit?

Mr. Seaman then proceeded with his argument at great length.

*816] **Mr. Romeyn*, after stating the case, said:—

This question has been submitted to the Supreme Court of the State of Michigan, the highest judicial tribunal in the State. The report of the decision of that court is found in the case of *Green, Receiver of the Bank of Niles*, v. *Graves*, in 1 Doug. (Mich.), 351. The concluding sentence of the decision (on p. 372) is as follows:—"The result of our deliberations, then, is, that so much of the act under which the Bank of Niles was organized, as purports to confer corporate rights upon the associations organized under its provisions, is unconstitutional and void, and that the demurrer in this case must be sustained."

The court consisted of four judges, three of whom concurred in that opinion, and the fourth did not dissent, but declined to participate in it, because he had not heard the argument.

In the case of *Brooks et al., plaintiffs in error*, v. *Warren Hill, defendant in error*, decided in March, 1848, and not yet reported, the Supreme Court unanimously reaffirmed the decision in the case of *Green* v. *Graves*, and decided, further, that the associations under the laws in question had in no sense or form a valid and legal existence. The adjudications of the highest tribunal in the State are thus consistent and settled.

I do not propose to reargue the questions involved in these decisions. The opinion of the Supreme Court discloses fully the grounds of the judgment.

These decisions affect the construction of the organic law of the State in a most important particular, and they involve interests of vast extent. It is difficult to imagine a case in which a disagreement between the federal tribunals and the State judicatories would be more alarming or mischievous. The bills of these associations are principally payable to bearer, and transferable by delivery. Any holder in another State would therefore have a right to sue in the Circuit Court. They are not affected by the statutes of limitations.

Mich. Rev. Stat. of 1838, p. 576, § 4. It is plain that the consequences would be most disastrous of a decision by this court, by virtue of which a non-resident could, at any time, enforce the collection of the issues of these banks from parties who are prevented by the State decisions from collecting the assets of the bank, or availing themselves of its collateral securities, or compelling a contribution from others.

The obligation of this court to respect and follow the decisions of the State courts on the construction of their local laws will not be disputed. *Brown* v. *Van Braam*, 3 Dall., 344; note to the same case in 1 Pet. Cond., 159; *Elmendorf* v. *Taylor*, 10 Wheat., 152; *Swift* v. *Tyson*, 16 Pet., 18; *Groves et al.* v. *Slaughter*, 15 Pet., 497; *Rowan* v. *Runnels*, 5 How., 139.

*The last case contains the only limitations of the general rule. These limitations do not touch this suit. In it there has been no decision by this court. [*817

There was a decision by the Circuit Court of the United States for the District of Michigan, in the case of *Falconer and Higgins* v. *Campbell et al.*, reported in 2 McLean, 195. It was a suit against the defendants as directors, and it was followed by a bill in equity in the same court against the stockholders, to enforce the collection of the judgment. This case is still undisposed of,—the result, by stipulation, awaiting the decision of the suit now before this court. Surely a single decision in a single circuit, and that virtually appealed from and pending in this court, will not lead to a disregard of the settled and deliberate adjudications of the highest tribunal of a State upon a most important part of its own constitution.

Mr. Chief Justice TANEY delivered the opinion of the court.

In this case, the Circuit Court for the District of Michigan have certified that the following point arose in this case, upon which the justices were opposed in opinion:—

"Whether the banking associations organized under the act of the legislature of the State of Michigan, entitled 'An act to organize and regulate banking associations,' approved March 15th, 1837, and the amended act, entitled 'An act to amend an act, entitled "An act to regulate banking associations and for other purposes,"' approved December 30th, 1837, were or were not corporations or bodies corporate, within the meaning of the constitution of the State of Michigan."

This question, it appears, depends on the construction of the constitution of Michigan, which declares that the legislature shall pass no act of incorporation unless with the assent of at least two thirds of each house.

The legislature chosen under this constitution, with the assent of two thirds of each house, passed an act authorizing any persons resident in any county in the State to form associations for banking business, upon the terms and conditions prescribed in the law; and declaring the stockholders in such associations to be a body politic and corporate, by such name as they should designate and assume, and conferring upon them the usual powers of banking corporations.

Under this act of the legislature, an association of persons was organized, under the name of the Detroit City Bank.

Another act was afterwards passed by the legislature, under a power reserved in the first, to amend its provisions. And this act, under certain circumstances, made the stockholders liable for the debts of the association.

*818] *The complainants in this case, having become creditors of the association, filed their bill in equity, to charge the defendants as stockholders, under the provisions of the last-mentioned act. And in the progress of this suit, the question arose which has been certified as above mentioned.

If we regarded the question as an open one, a more particular statement of the provisions of these acts of the legislature would be necessary, and also of the transactions which led to this suit. And the point certified would require a very careful and deliberate examination by this court.

But it appears that the same question has arisen in the State courts of Michigan, and been decided in its Supreme Court, upon full argument and consideration. We refer to the case of *Green* v. *Graves*, decided in 1844, and reported in 1 Doug. (Mich.), 351. In that case, the court held, that the banking associations organized under the acts of the legislature mentioned in the certificate of division were corporations within the meaning of the constitution of Michigan; and that these acts were unconstitutional and void.

The point certified is precisely the same. It relates altogether to the construction and legal effect of the constitution of that State, and of the two acts passed by its legislature. And it is the established doctrine of this court, that it will adopt and follow the decisions of the State courts in the construction of their own constitution and statutes, when that construction has been settled by the decision of its highest judicial tribunal. After the decision above mentioned, therefore, the question certified cannot be considered as open for argument in this court. The cases of *Groves* v. *Slaughter*, 15 Pet., 449, and the two cases of *Rowan* v. *Runnels*, 5 How., 134, in relation to the construction of the constitution of Mississippi, stand on very different grounds, as will be seen by a reference to the cases.

Upon this view of the subject, it will be certified to the Circuit Court, as the opinion of this court, that the banking associations organized under the acts of the legislature mentioned in the certificate of division were corporations within the meaning of the constitution of Michigan; and that these acts of the legislature are unconstitutional and void.

ORDER.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Michigan, and on the point and question on which the judges of the said Circuit Court were opposed in opinion, and which was certified to this court for its opinion, agreeably to *the act of Congress in such case made and provided, and was argued by counsel. On consideration [*819 whereof, it is the opinion of this court, that the banking associations organized under the act of the legislature of the State of Michigan, entitled "An act to organize and regulate banking associations," approved March 15th, 1837, and the amended act entitled "An act to regulate banking associations, and for other purposes," approved December 30th, 1837, were corporations or bodies corporate within the meaning of the constitution of the State of Michigan, and that these acts of the legislature are unconstitutional and void; whereupon it is now here ordered and decreed by this court, that it be so certified to the said Circuit Court.

George B. Stearns, Administrator de bonis non of John O. Page, Appellant, v. Rufus R. Page.

The general rules stated which govern a court of equity in opening accounts and sustaining claims which are barred by the statute of limitations.

Great caution is exercised, and the complainant is holden to stringent rules of pleading and evidence. He must state in his bill, distinctly, the particular act of fraud, misrepresentation, or concealment; must specify how, when, and in what manner it was perpetrated. The charges must be definite and reasonably certain; capable of proof and clearly proved.

If a mistake is alleged, it must be stated with precision and made apparent, so that the court may rectify it, with a feeling of certainty that they are not